

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

S.C. SUPREME COURT

Roger L. Couch, Circuit Court Judge

Opinion No. 5490 (S.C. Ct. App. Withdrawn, Substituted, and Refiled August 16, 2017)

Anderson County.....Petitioner,

v.

Joey Preston and the South Carolina Retirement System.....Respondents.

**APPENDIX TO ANDERSON COUNTY'S
PETITION FOR WRIT OF CERTIORARI
VOLUME II**

Candy M. Kern-Fuller
Upstate Law Group, LLC
200 East Main Street
Easley, SC 29640
(864) 250-2300

Lane W. Davis
Nelson Mullins Riley & Scarborough, LLP
P.O. Box 10084
Greenville, SC 29603
(864) 250-2300

ATTORNEYS FOR RESPONDENT
JOEY PRESTON

Justin R. Werner
SC Public Benefit Authority
P.O. Box 11960
Columbia, SC 29211-1960
(803) 737-6800

ATTORNEY FOR RESPONDENT SOUTH
CAROLINA RETIREMENT SYSTEM

J. Theodore Gentry
Troy A. Tessier
Wade S. Kolb, III
WYCHE, P.A.
44 East Camperdown Way
Greenville, South Carolina 29601
(864) 242-8200

Alice W. Parham Casey
WYCHE, P.A.
801 Gervais Street, Suite B
Columbia, SC 29201
(803) 254-6542

ATTORNEYS FOR PETITIONER

**APPENDIX
INDEX**

**APPENDIX
VOLUME ONE**

Record on Appeal Volume 1.....	1

**APPENDIX
VOLUME TWO**

Record on Appeal Volume 2.....	264

**APPENDIX
VOLUME THREE**

Record on Appeal Volume 3.....	667

**APPENDIX
VOLUME FOUR**

Record on Appeal Volume 4.....	1078

**APPENDIX
VOLUME FIVE**

Record on Appeal Volume 5.....	1476

**APPENDIX
VOLUME SIX**

Record on Appeal Volume 6.....	1891

**APPENDIX
VOLUME SEVEN**

Record on Appeal Volume 7.....	2346

**APPENDIX
VOLUME EIGHT**

Record on Appeal Volume 8.....	2698

**APPENDIX
VOLUME NINE**

Record on Appeal Volume 9.....	3042

**APPENDIX
VOLUME TEN**

Final Brief of Appellant, October 7, 2014.....	3327

Final Brief of Respondent Joey Preston, October 7, 2014.....	3392

Final Brief of Respondent South Carolina Retirement System, October 7, 2014	3457
Final Reply Brief of Appellant, October 7, 2014.....	3471
Court of Appeals Opinion, May 31, 2017.....	3501
Petition for Rehearing of Appellant, June 14, 2017.....	3529
Petition for Rehearing of Respondent, June 15, 2017	3540
Order Denying Petitions for Rehearing, August 16, 2017.....	3669
Decision of the Court of Appeals, August 16, 2017.....	3671

THE STATE OF SOUTH CAROLINA

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APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

Roger L. Couch, Circuit Court Judge

Case No. 2013-002499

Anderson County Appellant,

v.

Joey Preston and The South Carolina Retirement System Respondents.

**RECORD ON APPEAL
VOLUME II OF IX (Pages 264-666)**

[Counsel listed inside front cover]

J. Theodore Gentry (No. 64038)
Troy A. Tessier (No. 13354)
Wade S. Kolb III (No. 100379)
WYCHE, P.A.
44 East Camperdown Way
Greenville, SC 29601
Telephone: 864-242-8200
Fax: 864-235-8900
E-Mail: tgentry@wyche.com;
ttessier@wyche.com; wkolb@wyche.com

Alice W. Parham Casey (No. 13459)
WYCHE, P.A.
801 Gervais Street, Suite B
Columbia, SC 29201
Telephone: 803-254-6542
Fax: 803-254-6544
E-Mail: tcasey@wyche.com

ATTORNEYS FOR APPELLANT
ANDERSON COUNTY

Lane W. Davis, Esquire
NELSON MULLINS RILEY & SCARBOROUGH,
LLP
104 South Main Street / Ninth Floor
Greenville, SC 29601
Telephone: 864-250-2300
Fax: 864-232-2925
E-Mail: lane.davis@nelsonmullins.com

Candy M. Kern-Fuller, Esquire
UPSTATE LAW GROUP, LLC
200 East Main Street
Easley, SC 29640-2073
Telephone: 864-855-3114
E-Mail: candy@upstatelawgroup.com

ATTORNEYS FOR RESPONDENT JOEY
PRESTON

David K. Avant, Esquire
Justin R. Werner, Esquire
SOUTH CAROLINA PUBLIC EMPLOYEE
BENEFIT AUTHORITY
Post Office Box 11960
Columbia, SC 29211-1960
Telephone: 803-737-6894
E-Mail: jwerner@peba.sc.gov;
davant@retirement.sc.gov

ATTORNEYS FOR RESPONDENT SOUTH
CAROLINA RETIREMENT SYSTEM

INDEX

<u>I. ORDERS & PLEADINGS</u>	<u>PAGES</u>
1. Final Order and Judgment of the Honorable Roger L. Couch dated May 3, 2013	1-43
2. Order of the Honorable Roger L. Couch dated November 8, 2013	44-79
3. Order of the Honorable J. Cordell Maddox, Jr. dated December 7, 2011 designating case as Complex	80
4. Notice Assigning Case to the Honorable Roger Couch dated February 28, 2012	81
5. Order of the Honorable Roger L. Couch dated October 23, 2012 Denying Summary Judgment Motions	82-83
6. Complaint dated November 12, 2009	84-96
7. Defendant South Carolina Retirement System's Answer and Cross-Claim Against Defendant Joey Preston dated January 13, 2010	97-108
8. Answer & Counterclaims to Plaintiff's Complaint & Co-Defendant's Cross-Claims dated August 10, 2010	109-122
9. Reply to Counterclaim dated September 7, 2010	123-126
10. Amended Complaint dated March 30, 2012	~~127-159~~
11. Answer & Counterclaims to Plaintiff's Amended Complaint & Co-Defendant's Cross-Claims dated May 3, 2012	160-228
12. Plaintiff's Reply to Amended Counterclaims dated June 29, 2012	229-237
13. Defendant South Carolina Retirement System's Notice of Motion and Motion for Summary Judgment dated September 12, 2012	238-246
14. Stipulation of Dismissal as to Certain Counterclaims dated October 23, 2012	247-248

15. Stipulations as to Evidence Related to Defendant South Carolina Retirement System dated October 26, 2012	249-263

II. TRANSCRIPT

PAGES

Transcript of Record of Hearing on October 29, 2012 – November 2, 2012; November 5, 2012.....	264-1890
1. Testimony of Robert Waldrep	
Direct examination by Mr. Tessier	297
Cross-examination by Mr. Davis	359
Redirect examination by Mr. Tessier.....	436
Recross examination by Mr. Davis.....	437
2. Testimony of Thomas Bright	
Direct examination by Mr. Gentry	439
Cross-examination by Mr. Davis	475
Redirect examination by Mr. Gentry	533
3. Testimony of Michael Cunningham	
Direct examination by Mr. Tessier	536
Cross-examination by Mr. Davis	556
Redirect examination by Mr. Tessier.....	579
4. Testimony of William McAbee	
Direct examination by Ms. Parham	586
Cross-examination by Ms. Kern-Fuller	632
Redirect examination by Ms. Parham.....	667

5. Testimony of Ron Wilson	
Direct examination by Mr. Tessier	685
6. Publication of excerpt of deposition of Heather Jones by Mr. Gentry.....	690
7. Publication of excerpt of deposition of Michael Thompson by Mr. Tessier	767
8. Publication of excerpt of deposition of Joey Preston by Mr. Tessier	907
9. Testimony of Kelly Nichols	
Direct examination by Mr. Tessier	1115
Cross-examination by Mr. Davis	1145
Redirect examination by Mr. Tessier.....	1175
Recross examination by Mr. Davis.....	1180
10. Testimony of Larry Greer	
Direct examination by Mr. Tessier	1182
Cross-examination by Ms. Kern-Fuller	1237
Redirect examination by Mr. Tessier.....	1269
Recross examination by Ms. Kern-Fuller	1276
11. Testimony of Charles Alford	
Direct examination by Mr. Gentry	1280
Cross-examination by Mr. Davis	1296
Redirect examination by Mr. Gentry	1319
12. Testimony of Cindy Wilson	
Direct examination by Ms. Parham	1325

13. Publication of excerpt of deposition of Mr. Thomas Allen by Ms. Kern-Fuller.....	1400
14. Publication of excerpt of deposition of Mr. Eddie Moore by Mr. Davis.....	1476
15. Testimony of Gracie Floyd	
Direct examination by Mr. Davis.....	1590
16. Publication of excerpt of deposition of Cindy Wilson by Mr. Davis.....	1628
17. Testimony of Allison Schaum	
Direct examination by Mr. Davis.....	1711
Cross-examination by Mr. Tessier.....	1740
Redirect examination by Mr. Davis.....	1780
18. Testimony of Brooks Brown	
Direct examination by Ms. Kern-Fuller.....	1785
Cross-examination by Mr. Tessier.....	1794
Redirect examination by Ms. Kern-Fuller.....	1798
19. Testimony of Joey Preston	
Direct examination by Mr. Davis.....	1801
Cross-examination by Mr. Tessier.....	1846
Redirect examination by Mr. Davis.....	1873

III. PLAINTIFF'S EXHIBITS

PAGES

- **Plaintiff's Exhibit 1** (Master Employment Agreement dated 7/22/1998) 1891-1899
Introduced into evidence.....292
- **Plaintiff's Exhibit 2** (Anderson County Council Audit Meeting 8/5/08)..... 1900-1913
Introduced into evidence.....292
- **Plaintiff's Exhibit 3** (9/25/08 Letter to Counsel from Foster Law Firm) 1914-1915
Introduced into evidence.....292
- **Plaintiff's Exhibit 4** (Agenda – Anderson County Council 11/18/08) 1916-1917
Introduced into evidence.....292
- **Plaintiff's Exhibit 5** (Minutes – Anderson County Council 11/18/08) 1918-1959
Introduced into evidence.....292
- **Plaintiff's Exhibit 5-A** (Minutes – Anderson County Council 11/18/08) 1960-1982
Introduced into evidence.....292
- **Plaintiff's Exhibit 6** (CD) 1983-1984
Introduced into evidence.....292
- **Plaintiff's Exhibit 7** (Severance Agreement and Release of Claims dated 11/18/08) 1985-1989
Introduced into evidence.....292
- **Plaintiff's Exhibit 8** (Administrator's Transferred Appropriations) 1990-1992
Introduced into evidence.....292
- **Plaintiff's Exhibit 9** (Master Employment Agreement dated 11/19/08) 1993-2001
Introduced into evidence.....292
- **Plaintiff's Exhibit 10** (Waiver of Attorney-Client Privilege and Consent to Produce File) 2002
Introduced into evidence.....292

- **Plaintiff's Exhibit 12** (Email dated 10/8/08 from Michael Thompson to Thomas A. Bright) 2003-2006
Introduced into evidence.....292
- **Plaintiff's Exhibit 14** (Email dated 10/14/08 from Diane K. Ryder to P. McAlister) 2007-2017
Introduced into evidence.....1397
- **Plaintiff's Exhibit 15** (Email dated 10/17/08 From Gina Humphreys to Thomas A. Bright) 2018-2019
Introduced into evidence.....292
- **Plaintiff's Exhibit 17** (Hand-written notes dated 10/13/08 - TC Bob Waldrep).....2020
Introduced into evidence.....1882
- **Plaintiff's Exhibit 18** (Hand-written notes dated 10/13/08 - TC Gracie Floyd) 2021
Introduced into evidence.....1882
- **Plaintiff's Exhibit 20** (Hand-written notes dated 10/13/08 - TC Ms. Wilson) 2022-2024
Introduced into evidence.....292
- **Plaintiff's Exhibit 21** (Hand-written notes dated 10/14/08 - Bill McAbee) 2025
Introduced into evidence.....292
- **Plaintiff's Exhibit 22** (10/23/08 Settlement Offer) 2026-2028
Introduced into evidence.....292
- **Plaintiff's Exhibit 23** (Anderson County Council Personnel Committee)..... 2029-2032
Introduced into evidence.....1882
- **Plaintiff's Exhibit 24** (Hand-written notes dated 11/10/08 Meeting with Joey Preston) 2033-2034
Introduced into evidence.....1882
- **Plaintiff's Exhibit 25** (Hand-written notes dated 11/11/08 - TC Ron Wilson)..... 2035-2036
Introduced into evidence.....292
- **Plaintiff's Exhibit 26** (11/17/08 Letter to Tom Bright from Robert Hoskins) 2037-2039
Introduced into evidence.....292

• Plaintiff's Exhibit 27 (Hand written notes Ron Wilson)	2040
Introduced into evidence.....	292
• Plaintiff's Exhibit 28 (10/20/08 Letter to Tom Bright from Robert Hoskins)	2041-2043
Introduced into evidence.....	292
• Plaintiff's Exhibit 29 (Memo dated 11/3/08 to Joey Preston from Rita Davis)	2044
Introduced into evidence.....	292
• Plaintiff's Exhibit 30 (Appropriation Summary dated 11/3/08)	2045-2046
Introduced into evidence.....	292
• Plaintiff's Exhibit 31 (11/4/08 Memo to Councilman Ron Wilson from Gina Humphreys)	2047-2048
Introduced into evidence.....	292
• Plaintiff's Exhibit 33 (Transcription of Anderson County Council Meeting)	2049-2062
Introduced into evidence.....	1237
• Plaintiff's Exhibit 34 (3/2/08 Email from Michael Thompson to Joey Preston).....	2063-2066
Introduced into evidence.....	292
• Plaintiff's Exhibit 35 (3/4/08 Email from Michael Thompson to Joey Preston).....	2067-2070
Introduced into evidence.....	292
• Plaintiff's Exhibit 36 (3/22/08 Email from Michael Thompson to Joey Preston).....	2071
Introduced into evidence.....	874
• Plaintiff's Exhibit 37 (8/5/08 Job Advertisement)	2072-2075
Introduced into evidence.....	292
• Plaintiff's Exhibit 38 (8/14/08 Email from Joey Preston to Michael Thompson; Kathy Fulbright)	2076
Introduced into evidence.....	292
• Plaintiff's Exhibit 39 (8/8/08 Email from Joey Preston to Michael Thompson)	2077
Introduced into evidence.....	292

• Plaintiff's Exhibit 40 (10/22/08 Email from Michael Thompson to Thomas Bright)	2078
Introduced into evidence.....	292
• Plaintiff's Exhibit 41 (11/13/08 Job Advertisement)	2079-2081
Introduced into evidence.....	292
• Plaintiff's Exhibit 42 (11/19/08 In-house Only Job Opening)	2082-2083
Introduced into evidence.....	292
• Plaintiff's Exhibit 43 (Severance Agreement and Release of Claims dated 11/18/08)	2084-2088
Introduced into evidence.....	292
• Plaintiff's Exhibit 44 (Michael Thompson direct deposit statement).....	2089
Introduced into evidence.....	292
• Plaintiff's Exhibit 45 (Michael Thompson Real Estate School Certificate)	2090-2092
Introduced into evidence.....	292
• Plaintiff's Exhibit 46 (Copy of check to Michael Thompson dated 12/3/08)	2093-2099
Introduced into evidence.....	292
• Plaintiff's Exhibit 47 (11/28/08 Email from Heather Jones to Joey Preston).....	2100-2101
Introduced into evidence.....	292
• Plaintiff's Exhibit 48 (11/26/08 Email from Heather Jones to Joey Preston).....	2102-2103
Introduced into evidence.....	292
• Plaintiff's Exhibit 49 (11/26/08 Email from Heather Jones to Joey Preston).....	2104
Introduced into evidence.....	292
• Plaintiff's Exhibit 50 (10/16/06 Email from Joey Preston to Heather Jones).....	2105
Introduced into evidence.....	292
• Plaintiff's Exhibit 51 (12/1/08 message to Phyllis from JRP)	2106

Introduced into evidence.....	292
• Plaintiff's Exhibit 52 (11/26/08 Email from Heather Jones to Joey Preston).....	2107-2108
Introduced into evidence.....	292
• Plaintiff's Exhibit 53 (10/16/06 Memo to Heather Jones from Joey Preston)	2109
Introduced into evidence.....	292
• Plaintiff's Exhibit 54 (10/16/06 Memo to Heather Jones from Joey Preston)	2110
Introduced into evidence.....	292
• Plaintiff's Exhibit 55 (12/1/08 Email from Heather Jones to Joey Preston).....	2111
Introduced into evidence.....	292
• Plaintiff's Exhibit 56 (12/1/08 Email from Heather Jones to Joey Preston).....	2112-2114
Introduced into evidence.....	292
• Plaintiff's Exhibit 57 (2/16/06 Letter to Amy Plummer from Bill McAbee).....	2115
Introduced into evidence.....	292
• Plaintiff's Exhibit 58 (7/13/08 Letter to SC Ethics Commission from Bill McAbee)	2116
Introduced into evidence.....	292
• Plaintiff's Exhibit 59 (7/22/08 Letter to Bill McAbee from SC State Ethics Commission)	2117-2120
Introduced into evidence.....	292
• Plaintiff's Exhibit 60 (Copy of check to Bill McAbee dated 4/23/08)	2121
Introduced into evidence.....	292
• Plaintiff's Exhibit 61 (Settlement Statement dated 9/18/08)	2122-2123
• Plaintiff's Exhibit 62 (Settlement Statement dated 9/18/08)	2124-2125
• Plaintiff's Exhibit 63 (Expense Report Bill McAbee)	2126

• Plaintiff's Exhibit 64 (Expense Report).....	2127-2128
• Plaintiff's Exhibit 65 (Expense Report).....	2129-2130
• Plaintiff's Exhibit 66 (6/28/07 Hotel Receipt Willie McAbee)	2131-2132
• Plaintiff's Exhibit 67 (Expense Report)	2133
• Plaintiff's Exhibit 68 (Advance Travel Request)	2134
• Plaintiff's Exhibit 69 (Employee Expense Report for Bill McAbee)	2135-2138
• Plaintiff's Exhibit 70 (Expense Report).....	2139
• Plaintiff's Exhibit 71 (Expense Report).....	2140
• Plaintiff's Exhibit 72 (9/30/08 Hotel Registration form for Bill McAbee)	2141-2143
Introduced into evidence.....	292
• Plaintiff's Exhibit 73 (Employee Expense Report for Bill McAbee)	2144-2145
Introduced into evidence.....	292
• Plaintiff's Exhibit 74 (Expense Report).....	2146
Introduced into evidence.....	292
• Plaintiff's Exhibit 75 (Business Expense Information for Bill McAbee)	2147-2148
Introduced into evidence.....	292
• Plaintiff's Exhibit 76 (9/4/07 Agreement)	2149-2152
Introduced into evidence.....	292
• Plaintiff's Exhibit 76a (10/27/08 Email from Allison Schaum to Joey Preston with PAC Service Agreement)	2153-2157
Introduced into evidence.....	292
• Plaintiff's Exhibit 77 (11/1/08 Services Agreement).....	2158-2161
Introduced into evidence.....	292
• Plaintiff's Exhibit 78 (8/11/08 Memo to Anderson County Council from Joey Preston)	2162-2169

Introduced into evidence.....	292
• Plaintiff's Exhibit 79 (10/16/08 Affidavit of Joey Preston).....	2170-2226
Introduced into evidence.....	292
• Plaintiff's Exhibit 80 (7/10/08 Email from Gwen Bynoe to Sharon Pigage).....	2227
• Plaintiff's Exhibit 81 (7/10/08 Letter to Gwen Bynoe from Rita Davis)	2228-2232
• Plaintiff's Exhibit 82 (7/15/08 SC Retirement Systems Member Service Payment Invoice).....	2233-2235
Introduced into evidence.....	292, 1397
• Plaintiff's Exhibit 83 (11/26/08 SC Retirement Systems Member Service Payment Invoice).....	2236-2238
Introduced into evidence.....	292
• Plaintiff's Exhibit 84 (11/17/08 SC Retirement Systems Member Service Payment Invoice).....	2239-2241
Introduced into evidence.....	292
• Plaintiff's Exhibit 85 (11/21/08 Letter to Gwen Bynoe from Joey Preston)	2242-2244
Introduced into evidence.....	292
• Plaintiff's Exhibit 86 (12/1/08 Letter to Amanda Green from Joey Preston)	2245
Introduced into evidence.....	292
• Plaintiff's Exhibit 87 (12/10/08 Letter to Joey Preston from State Budget and Control Board)	2246-2248
Introduced into evidence.....	292
• Plaintiff's Exhibit 88 (12/22/08 Letter to Peggy Boykin from Joey Preston)	2249-2252
Introduced into evidence.....	292
• Plaintiff's Exhibit 89 (4/7/09 letter to Brian L. Quisenberry from State Budget and Control Board)	2253-2259
Introduced into evidence.....	292
• Plaintiff's Exhibit 90 (8/28/12 Affidavit of Joey Preston).....	2260-2262
Introduced into evidence.....	292

- **Plaintiff's Exhibit 91** (Personal Financial Statement of
Joey Preston)..... 2263-2265
Introduced into evidence.....1882

- **Plaintiff's Exhibit 92** (Screen Print and 11/17/08 Memo to
Joey Preston from Heather Jones)..... 2266-2267
Marked for identification 752

- **Plaintiff's Exhibit 93** (Screen Print and 10/16/06 Memo to
Heather Jones from Joey Preston)..... 2268-2269
Marked for identification 752

- **Plaintiff's Exhibit 94** (S11/26/08 Email from Heather
Jones to Joey Preston; 7/18/07 Email from Allison Schaum
to Joey Preston; 8/15/07 Correspondence from Allison
Schaum) 2270-2310
Introduced into evidence.....292

- **Plaintiff's Exhibit 95** (Hand-written notes dated 10/9/08 -
TC Rob Hoskins) 2311
Introduced into evidence.....535

- **Plaintiff's Exhibit 96** (5/11/11 Order of Judgment)..... 2312-2324
Introduced into evidence.....583

- **Plaintiff's Exhibit 97** (1/25/13 Letter to Hon. Roger L.
Couch from Ted Gentry; 1/25/13 Letter to Hon. Roger L.
Couch from Lane W. Davis) 2325-2332
Introduced into evidence.....1882

- **Plaintiff's Exhibit 98** (2/22/13 Letter to Hon. Roger L.
Couch from Ted Gentry)..... 2333-2344
Introduced into evidence.....1882

- **Plaintiff's Exhibit 99** (3/8/13 Email from Troy Tessier to
Lane Davis; Judge Couch; Jean Marie Jennings) 2345
Introduced into evidence.....1882

IV. DEFENDANT'S EXHIBITS

PAGES

• Defendant's Exhibit 1 (3/29/06 News-Chronicle Letters to the Editor)	2346
• Defendant's Exhibit 2 (2/28/07 Letter to Prudential C. Dan Joyner Co. from Joey Preston)	2347
Introduced into evidence	295
• Defendant's Exhibit 3 (5/28/09 Affidavit of Steve Ebbeler).....	2348
• Defendant's Exhibit 4 (Title to Real Estate).....	2349-2351
Introduced into evidence	295
• Defendant's Exhibit 5 (8/13/09 News Article)	2352-2354
• Defendant's Exhibit 6 (List of Payments)	2355-2362
Introduced into evidence	295
• Defendant's Exhibit 7 (3/3/10 News Article)	2363
Introduced into evidence	1883
• Defendant's Exhibit 8 (6/1/10 News Article)	2364-2365
Introduced into evidence	1883
• Defendant's Exhibit 9 (6/13/12 Grand Jury Report).....	2366-2368
Introduced into evidence	1883
• Defendant's Exhibit 10 (9/24/08 Michael Thompson pay stub and Advance Travel Request)	2369-2378
Introduced into evidence	295
• Defendant's Exhibit 11 (9/30/08 Michael Thompson pay stub and Advance Travel Request)	2379-2387
Introduced into evidence	295
• Defendant's Exhibit 12 (9/24/08 Michael Thompson pay stub and Advance Travel Request)	2388-2397
Introduced into evidence	295
• Defendant's Exhibit 13 (Advertisement)	2398
Introduced into evidence	295
• Defendant's Exhibit 14 (1/12/09 Email from Gina Humphreys to Gail King; Mike Cunningham)	2399-2400

Introduced into evidence.....	1883
• Defendant’s Exhibit 15 (Affidavit of Gina Humphreys).....	2401-2410
Introduced into evidence.....	1883
• Defendant’s Exhibit 16 (11/26/08 Memo to County Council Members from Thomas A. Bright).....	2411-2412
Introduced into evidence.....	295
• Defendant’s Exhibit 17 (Tom Bright Hand-written notes).....	2413
Introduced into evidence.....	295
• Defendant’s Exhibit 18 (Tom Bright Hand-written notes).....	2414-2416
Introduced into evidence.....	295
• Defendant’s Exhibit 19 (Tom Bright Hand-written notes).....	2417-2420
Introduced into evidence.....	295
• Defendant’s Exhibit 20 (10/13/08 Tom Bright Hand- written notes)	2421-2422
Introduced into evidence.....	295
• Defendant’s Exhibit 21 (10/13/08 Hand-written note TC Larry Greer)	2423
Introduced into evidence.....	295
• Defendant’s Exhibit 22 (10/13/08 Hand-written note TC Bob Waldrep).....	2424
Introduced into evidence.....	295
• Defendant’s Exhibit 23 (10/13/08 Hand-written note TC Ms. Wilson)	2425-2427
Introduced into evidence.....	295
• Defendant’s Exhibit 24 (10/14/08 Tom Bright Hand- written notes)	2428
Introduced into evidence.....	295
• Defendant’s Exhibit 25 (10/21/08 Hand-written note TC Michael Thompson).....	2429-2431
Introduced into evidence.....	295
• Defendant’s Exhibit 26 (11/4/08 Hand-written note Ron Wilson).....	2432-2434
Introduced into evidence.....	295

• Defendant's Exhibit 27 (11/11/08 Hand-written note TC Ron Wilson).....	2435-2436
Introduced into evidence.....	295
• Defendant's Exhibit 28 (Anderson County Council Personnel Committee).....	2437-2440
Introduced into evidence.....	295
• Defendant's Exhibit 29 (11/11/08 Fax to Ron Wilson from Ogletree).....	2441-2444
Introduced into evidence.....	295
• Defendant's Exhibit 30 (11/18/08 Letter to Robert Hoskins from Thomas Bright)	2445-2447
Introduced into evidence.....	295
• Defendant's Exhibit 31 (11/18/08 Fax to Ron Wilson from Ogletree).....	2448-2456
Introduced into evidence.....	295
• Defendant's Exhibit 32 (9/28/09 Memo to Ted Gentry from Thomas Bright)	2457-2463
Introduced into evidence.....	1883
• Defendant's Exhibit 33 (11/18/08 Fax to Ron Wilson from Ogletree Confirmation of delivery).....	2464-2509
Introduced into evidence.....	295
• Defendant's Exhibit 34 (1/23/08 Supreme Court Case M. Cindy Wilson v. Joey Preston).....	2510-2519
Introduced into evidence.....	295
• Defendant's Exhibit 35 (10/17/96 Supreme Court Case Piedmont Public Service District v. Douglas W. Cowart).....	2520-2523
Introduced into evidence.....	295
• Defendant's Exhibit 36 (Code 1976 § 4-9-620)	2524-2525
Introduced into evidence.....	295
• Defendant's Exhibit 37 (12/3/09 letter to Joey Preston from Nelson Mullins).....	2526-2532
Introduced into evidence.....	295
• Defendant's Exhibit 38 (Copy of Check from Joey Preston to Nelson Mullins for Legal Fees)	2533-2535
Introduced into evidence.....	295

• Defendant's Exhibit 39 (Costs Summary)	2536-2544
Introduced into evidence.....	295
• Defendant's Exhibit 40 (Legal Services and Fee Agreement Hourly/Retainer)	2545-2548
Introduced into evidence.....	295
• Defendant's Exhibit 41 (12/9/09 Invoice to Joey Preston from Upstate Law Group).....	2549-2560
Introduced into evidence.....	295
• Defendant's Exhibit 42 (1/31/11 Invoice to Joey Preston from Upstate Law Group).....	2561-2586
Introduced into evidence.....	295
• Defendant's Exhibit 43 (Text Message/Telephone Log of messages/calls to and from Joey Preston)	2587-2625
Introduced into evidence.....	295
• Defendant's Exhibit 44 (1/13/10 Copy of Check to Upstate Law Group from Joey Preston)	2626-2632
Introduced into evidence.....	295
• Defendant's Exhibit 45 (8/5/08 Email from Michael Thompson to Joey Preston).....	2633-2634
Introduced into evidence.....	295
• Defendant's Exhibit 46 (8/14/08 Email to Robert Waldrep from Eddie Moore)	2635
Introduced into evidence.....	295
• Defendant's Exhibit 47 (9/23/08 Email to Robert Waldrep from Eddie Moore)	2636
Introduced into evidence.....	295
• Defendant's Exhibit 48 (10/13/08 Email to Bob Waldrep from Tom Beck).....	2637-2638
Introduced into evidence.....	295
• Defendant's Exhibit 49 (11/25/08 Email to Henry McMaster from Eddie Moore)	2639
Introduced into evidence.....	295
• Defendant's Exhibit 50 (12/29/08 Order granting Temporary Injunction)	2640-2647

Introduced into evidence.....	295
• Defendant’s Exhibit 51 (6/10/10 Summary of Costs Associated with Investigation)	2648
Introduced into evidence.....	1883
• Defendant’s Exhibit 52 (8/4/08 Email to Robert Waldrep from Eddie Moore)	2649-2650
Introduced into evidence.....	295
• Defendant’s Exhibit 53 (10/1/12 Letter to Troy Tessier from Charles Alford).....	2651-2670
Introduced into evidence.....	295
• Defendant’s Exhibit 54 (10/9/12 Letter to Troy Tessier from Charles Alford).....	2671-2681
Introduced into evidence.....	295
• Defendant’s Exhibit 55 (10/1/12 Letter to Troy Tessier from Charles Alford).....	2682-2683
Introduced into evidence.....	295
• Defendant’s Exhibit 56 (September 2007 Visa Statement)	2684
Introduced into evidence.....	295
• Defendant’s Exhibit 57 (4/1/08 Memo to William McAbee from Joey Preston)	2685
Introduced into evidence.....	295
• Defendant’s Exhibit 58 (10/7/08; 10/21/08 and 11/3/08 Memo to County Council from Bill McAbee).....	2686-2688
Introduced into evidence.....	295
• Defendant’s Exhibit 59 (12/12/06 Agreement to Buy and Sell Real Estate).....	2689-2691
Introduced into evidence.....	295
• Defendant’s Exhibit 60 (Anderson County Position Description for Economic Development Division Director)	2692-2697
Introduced into evidence.....	295
• Defendant’s Exhibit 61 (9/20/06 News Release).....	2698
Introduced into evidence.....	295
• Defendant’s Exhibit 62 (Heather Simmons Jones Resume)	2699-2700
Introduced into evidence.....	1883

• Defendant’s Exhibit 63 (9/7/06 Email from Heather to Joey Preston).....	2701
Introduced into evidence.....	1883
• Defendant’s Exhibit 64 (9/14/08 Email from Heather to Joey Preston).....	2702-2705
Introduced into evidence.....	1883
• Defendant’s Exhibit 65 (11/3/09 Email from Jana Pressley to Rita Davis).....	2706
Introduced into evidence.....	1883
• Defendant’s Exhibit 66 (2/24/09 Email to Tommy Dunn from Michael Cunningham).....	2707-2712
Introduced into evidence.....	1883
• Defendant’s Exhibit 67 (11/1/07 Letter to Joey Preston from Palmetto Agricultural Consultants).....	2713-2755
Introduced into evidence.....	295
• Defendant’s Exhibit 68 (11/3/08 Email from Allison Schaum to Joey Preston).....	2756
• Defendant’s Exhibit 69 (11/24/08 Agenda – Personnel Committee Meeting).....	2757-2758
Introduced into evidence.....	295
• Defendant’s Exhibit 70 (11/4/08 Personnel Committee Special Called Meeting).....	2759
Introduced into evidence.....	295
• Defendant’s Exhibit 71 (11/17/08 Letter to Joey Preston from Councilmen).....	2760
Introduced into evidence.....	295
• Defendant’s Exhibit 72 (12/6/06 Incident Report)	2761-2771
• Defendant’s Exhibit 73 (10/30/06 Letter to K. E. Nichols from William H. “Billy” O’Dell).....	2772
• Defendant’s Exhibit 74 (11/28/06 Letter to K. E. Nichols from South Carolina Supreme Court).....	2773-2774
• Defendant’s Exhibit 75 (12/13/06 Newspaper Article)	2775

• Defendant's Exhibit 76 (Letter to Council Members from Kelly Nichols).....	2776
Introduced into evidence.....	1181
• Defendant's Exhibit 77 (10/30/06 Letter to K. E. Nichols from William H. "Billy" O'Dell).....	2777-2804
• Defendant's Exhibit 78 (4/16/07 Letter to K E. Nichols from Theresa Weathers).....	2805
• Defendant's Exhibit 79 (6/1/07 Hand-written statement of Kelly Elaine Nichols).....	2806
• Defendant's Exhibit 80 (4/23/08 Email to Eddie Moore from Jena Trammel).....	2807-2810
Introduced into evidence.....	295
• Defendant's Exhibit 81 (4/24/08 Email to Eddie Moore; waimradio@yahoo.com from Eddie Moore).....	2811-2813
Introduced into evidence.....	295
• Defendant's Exhibit 82 (5/8/08 Email to Eddie Moore from Jena Trammel).....	2814-2816
Introduced into evidence.....	295
• Defendant's Exhibit 83 (6/11/08 Email to Ed Moore from Jena Trammel)	2817
Introduced into evidence.....	1883
• Defendant's Exhibit 84 (6/15/08 Email from Eddie Moore to emoore@trivergent.net).....	2818-2820
• Defendant's Exhibit 85 (8/3/08 Email to Eddie Moore from emoore@trivergent.net)	2821-2822
Introduced into evidence.....	295
• Defendant's Exhibit 86 (8/4/08 Email from Eddie Moore)	2823-2824
Introduced into evidence.....	295
• Defendant's Exhibit 87 (8/4/08 Email to Jena Trammel from Eddie Moore)	2825
Introduced into evidence.....	295
• Defendant's Exhibit 88 (8/4/08 Email to Eddie Moore from Jena Trammel).....	2826
Introduced into evidence.....	295

• Defendant's Exhibit 89 (8/13/08 Email to Eddie Moore from Stan Welch).....	2827-2828
Introduced into evidence.....	295
• Defendant's Exhibit 90 (10/13/08 Email to Eddie Moore from Linda Gilstrap)	2829-2830
Introduced into evidence.....	295
• Defendant's Exhibit 91 (10/20/08 Email to Stan Welch from Eddie Moore)	2831
Introduced into evidence.....	295
• Defendant's Exhibit 92 (11/13/08 Email to Joey Preston from Eddie Moore)	2832-2835
Introduced into evidence.....	295
• Defendant's Exhibit 93 (11/13/08 Email to Gail King from Eddie Moore)	2836
Introduced into evidence.....	295
• Defendant's Exhibit 94 (11/13/08 Email to Waimradio@yahoo.com from Eddie Moore)	2837
Introduced into evidence.....	295
• Defendant's Exhibit 95 (6/16/08 Email to Waimradio@yahoo.com from Eddie Moore)	2838
Introduced into evidence.....	295
• Defendant's Exhibit 96 (6/1/12 Order to Cease and Desist).....	2839-2840
Introduced into evidence.....	1883
• Defendant's Exhibit 97 (9/23/08 Email to Waimradio@yahoo.com from Eddie Moore)	2841-2842
Introduced into evidence.....	295
• Defendant's Exhibit 98 (10/9/08 Email to Tom Allen; Eddie Moore; Bob Waldrep from Tom Beckwith)	2843-2844
Introduced into evidence.....	1883
• Defendant's Exhibit 99 (10/13/08 Email to Eddie Moore from Linda Gilstrap)	2845-2846
• Defendant's Exhibit 100 (11/10/08 Email to Tom Beckwith from Eddie Moore)	2847-2849
Introduced into evidence.....	295

• Defendant's Exhibit 101 (11/25/08 Email to Henry McMaster from Eddie Moore)	2850
Introduced into evidence.....	295
• Defendant's Exhibit 102 (12/1/08 Email to Eddie Moore from Stan Welch)	2851-2853
• Defendant's Exhibit 103 (12/1/08 Email to thomas9976@charter.net; kelli@waldreplaw.com from Eddie Moore)	2854-2856
• Defendant's Exhibit 104 (12/1/08 Email to Stan Welch from Eddie Moore)	2857
Introduced into evidence.....	295
• Defendant's Exhibit 105 (12/1/08 Email to Eddie Moore from Stan Welch)	2858
Introduced into evidence.....	1883
• Defendant's Exhibit 106 (2/7/08 letter to Sheriff David Crenshaw from Michael Thompson)	2859
• Defendant's Exhibit 107 (12/12/05 Incident Report)	2860-2862
• Defendant's Exhibit 108 (12/4/08 Email from Michael Thompson to Mike Cunningham)	2863-2865
Introduced into evidence.....	295
• Defendant's Exhibit 109 (7/16/08 Email to thomas9976@charter.net; eddie.moore@fluor.com from Tom Beckwith)	2866-2869
• Defendant's Exhibit 110 (11/25/08 Email to Eddie Moore from Tom Allen)	2870-2871
Introduced into evidence.....	1883
• Defendant's Exhibit 111 (12/24/08 Email to Tommy Dunn; Eddie Moore from Tom Allen)	2872-2873
• Defendant's Exhibit 112 (5/14/10 Email from Janice Yates to Brent Moore)	2874
• Defendant's Exhibit 113 (General Orders Surveillance)	2875-2877
Introduced into evidence.....	295

• Defendant's Exhibit 114 (12/14/05 Newspaper Article)	2878
• Defendant's Exhibit 115 (11/30/10 Newspaper Article)	2879-2881
• Defendant's Exhibit 116 (12/12/05 Incident Report)	2882-2884
• Defendant's Exhibit 117 (9/25/08 Letter to Council from Foster Law Firm)	2885-2886
Introduced into evidence.....	295
• Defendant's Exhibit 118 (10/27/08 Hand-written notes).....	2887
Introduced into evidence.....	295
• Defendant's Exhibit 119 (Municode Sec. 2-37 Meetings of the Council)	2888-2893
Introduced into evidence.....	295
• Defendant's Exhibit 120 (Municode Sec. 2-288 Conflict of interest)	2894-2895
Introduced into evidence.....	295
• Defendant's Exhibit 121 (7/16/03 Memo from Special Agent Eugene G. Donohue to Case File 34-02-96)	2896-2898
• Defendant's Exhibit 124 (Hotel Receipt)	2899
• Defendant's Exhibit 127 (9/22/02 Newspaper Article)	2900-2907
• Defendant's Exhibit 128 (11/29/06 Forensic Services Laboratory Report).....	2908-2910
• Defendant's Exhibit 129 (9/11/06 Forensic Services Laboratory Report).....	2911-2915
• Defendant's Exhibit 130 (Letter to Dr. Alan Elmore)	2916-2917
• Defendant's Exhibit 131 (Letter to Robert Stansell)	2918-2919
• Defendant's Exhibit 132 (2/15/05 Judgment).....	2920-2921
• Defendant's Exhibit 133 (March 2006 Letter to council , members).....	2922-2926
Introduced into evidence.....	653
• Defendant's Exhibit 135 (Copy of note and envelope addressed to Sarah Ricketson)	2927

• Defendant's Exhibit 136 (2/7/08 Letter to Sheriff David Crenshaw from Michael Thompson)	2928
Introduced into evidence.....	1266
• Defendant's Exhibit 137 (Fuelmaster Transaction Listing)	2929-2932
Introduced into evidence.....	295
• Defendant's Exhibit 138 (3/06 Letter).....	2933
Introduced into evidence.....	1264
• Defendant's Exhibit 139 (12/24/08 Email to Tommy Dunn; Eddie Moore from Tom Allen).....	2934-2935
• Defendant's Exhibit 140 (1/6/09 County Council Minutes).....	2936-3009
• Defendant's Exhibit 141 (10/29/08 Email to thomas9976@charter.net from Eddie Moore)	3010
• Defendant's Exhibit 142 (9/23/08 Email to waimradio@yahoo.com from Eddie Moore)	3011
• Defendant's Exhibit 143 (11/20/08 Email to thomas9976@charter.net from Eddie Moore)	3012
• Defendant's Exhibit 144 (5/19/08 Email to Eddie Moore from Jena Trammel).....	3013
• Defendant's Exhibit 145 (6/22/08 Email to Eddie Moore from Jena Trammel).....	3014
• Defendant's Exhibit 146 (6/16/08 Email to Eddie Moore from Jena Trammel).....	3015-3016
• Defendant's Exhibit 147 (7/3/08 Email to Eddie Moore from Eddie Moore)	3017-3019
• Defendant's Exhibit 148 (7/17/08 Email to Tom Beckwith from Eddie Moore)	3020
• Defendant's Exhibit 149 (8/5/08 Email to hhopkins@andersoncountysc.org from Eddie Moore)	3021
• Defendant's Exhibit 150 (8/13/08 Email to waimradio@yahoo.com; suthrnboy@charter.net from Eddie Moore)	3022-3023

• Defendant's Exhibit 151 (8/13/08 Email to Stan Welch from Eddie Moore)	3024
• Defendant's Exhibit 152 (10/16/08 Email to Eddie Moore from Heather Jones).....	3025-3027
• Defendant's Exhibit 153 (10/1/08 Email to Tom Allen from Eddie Moore)	3028
• Defendant's Exhibit 154 (10/2/08 Email to Tom Allen from Eddie Moore)	3029
• Defendant's Exhibit 155 (10/13/08 Email to Bob Waldrep from Tom Beckwith).....	3030-3031
• Defendant's Exhibit 156 (10/17/08 Email to Eddie Moore from Stan Welch).....	3032
• Defendant's Exhibit 157 (10/22/08 Email to Tom Beckwith from Eddie Moore)	3033-3034
• Defendant's Exhibit 158 (11/21/08 Email to Eddie Moore from Elaine@News-Chronicle)	3035
• Defendant's Exhibit 159 (12/1/08 Email to Eddie Moore from Stan Welch).....	3036
• Defendant's Exhibit 160 (12/3/08 Email to Eddie Moore from Tom Beckwith).....	3037-3038
• Defendant's Exhibit 161 (3/6/13 Email from Lane Davis to Judge Couch)	3039-3041

V. POST TRIAL ORDERS & PLEADINGS

PAGES

1. Post-Trial Brief of Defendant South Carolina Retirement System dated November 16, 2012	3042-3051
2. Plaintiff's Post-Trial Memorandum dated November 16, 2012	3052-3098
3. Closing Argument for Defendant Joey Preston dated November 16, 2012.....	3099-3162

4. Anderson County’s Motion to Alter or Amend Judgment dated May 13, 2013	3163-3176
5. Preston’s Memorandum Opposing Plaintiff’s Motion to Reconsider dated July 16, 2013	3177-3244
6. Plaintiff Anderson County’s Motion to Amend Complaint dated July 15, 2013	3245-3270
7. Plaintiff Anderson County’s Reply in Support of its Motion to Alter or Amend Judgment dated July 24, 2013	3271-3303
8. Preston’s Memorandum Opposing Plaintiff’s Motion to Amend dated September 3, 2013	3304-3324
VI. <u>CERTIFICATE OF COUNSEL</u>	3325-3326

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF ANDERSON) COURT OF COMMON PLEAS NONJURY
3
4 ANDERSON COUNTY,) TRANSCRIPT
5 PLAINTIFF,) OF
6 vs.) RECORD
7 JOEY PRESTON AND THE SOUTH)
8 CAROLINA RETIREMENT SYSTEM,) 2009-CP-04-4482
9 DEFENDANTS.)
10
11 October 29th - November 2nd, 2012
12 November 5th, 2012
13 Anderson, South Carolina
14 B E F O R E :
15 THE HONORABLE ROGER L. COUCH, Judge.
16
17 A P P E A R A N C E S :
18 TROY A. TESSIER, JAMES GENTRY, and TALLY PARHAM
19 ESQ.
20 Attorneys for the Plaintiff
21
22 LANE W. DAVIS and CANDY M. KERN-FULLER
23 ESQ.
24 Attorneys for the Defendant
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1893

1	<u>I N D E X O F W I T N E S S E S</u>	
2	<u>WITNESSES</u>	<u>PAGE</u>
3		
4	Motions	19
5		
6	ROBERT WALDREP	
7	Direct examination by Mr. Tessier	34
8	Cross-examination by Mr. Davis	96
9	Redirect examination by Mr. Tessier	173
10	Recross examination by Mr. Davis	174
11	THOMAS BRIGHT	
12	Direct examination by Mr. Gentry	176
13	Cross-examination by Mr. Davis	212
14	Redirect examination by Mr. Gentry	270
15	MICHAEL CUNNINGHAM	
16	Direct examination by Mr. Tessier	273
17	Cross-examination by Mr. Davis	293
18	Redirect examination by Mr. Tessier	316
19	WILLIAM MCABEE	
20	Direct examination by Ms. Parham	323
21	Cross-examination by Ms. Kern-Fuller	369
22	Redirect examination by Ms. Parham	404
23	RON WILSON	
24	Direct examination by Mr. Tessier	422
25		

1	<u>WITNESSES</u>	<u>PAGE</u>
2		
3	Publish Deposition of Heather Jones	426
4	Publish Deposition of Michael Thompson	504
5	Publish Deposition of Joey Preston	644
6		
7	KELLY NICHOLS	
8	Direct examination by Mr. Tessier	852
9	Cross-examination by Mr. Davis	882
10	Redirect examination by Mr. Tessier	912
11	Recross examination by Mr. Davis	916
12	LARRY GREER	
13	Direct examination by Mr. Tessier	919
14	Cross-examination by Ms. Kern-Fuller	974
15	Redirect examination by Mr. Tessier	1006
16	Recross examination by Ms. Kern-Fuller	1013
17	CHARLES ALFORD	
18	Direct examination by Mr. Gentry	1017
19	Cross-examination by Mr. Davis	1033
20	Redirect examination by Mr. Gentry	1056
21	CINDY WILSON	
22	Direct examination by Ms. Parham	1062
23		
24	Motions	1086
25		

1	<u>WITNESSES</u>	<u>PAGE</u>
2		
3	Publish Deposition of Mr. Thomas Allen	1137
4	Publish Deposition of Mr. Eddie Moore	1213
5		
6	GRACIE FLOYD	
7	Direct examination by Mr. Davis	1327
8		
9	Publish Deposition of Cindy Wilson	1366
10		
11	ALLISON SCHAUM	
12	Direct examination by Mr. Davis	1448
13	Cross-examination by Mr. Tessier	1477
14	Redirect examination by Mr. Davis	1517
15	BROOKS BROWN	
16	Direct examination by Ms. Kern-Fuller	1522
17	Cross-examination by Mr. Tessier	1531
18	Redirect examination by Ms. Kern-Fuller	1535
19	JOEY PRESTON	
20	Direct examination by Mr. Davis	1538
21	Cross-examination by Mr. Tessier	1583
22	Redirect examination by Mr. Davis	1610
23		
24	Certificate	1627
25		

1	E X H I B I T S			
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
3	<u>Plaintiff's Exhibits</u>			
4				
5	P-1	Employment Agreement		29
6	P-2	Audit Meeting		29
7	P-3	Letter		29
8	P-4	Agenda		29
9	P-5	Transcript		29
10	P-5-A	Transcript		29
11	P-6	DVD		29
12	P-7	Severance Agreement		29
13	P-8	Transfer Document		29
14	P-9	Employment Agreement		29
15	P-10	Waiver		29
16	P-11	No Exhibit		
17	P-12	Email		29
18	P-13	No Exhibit		
19	P-14	Emails		1134
20	P-15	Email		29
21	P-16	No Exhibit		
22	P-17	Notes		1619
23	P-18	Notes		1619
24	P-19	No exhibit		
25	P-20	Tom Bright Notes		29

	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
1				
2				
3	P-21	Tom Bright Notes		29
4	P-22	Letter		29
5	P-23	Personnel Committee		1619
6	P-24	Tom Bright Notes		1619
7	P-25	Ron Wilson Notes		29
8	P-26	Letter		29
9	P-27	Tom Bright Notes		29
10	P-28	Letter		29
11	P-29	Memorandum		29
12	P-30	Appropriation Summary		29
13	P-31	Memorandum		29
14	P-32	No Exhibit		
15	P-33	Transcript		974
16	P-34	Email		29
17	P-35	Email		29
18	P-36	Email		611
19	P-37	Job Advertisement		29
20	P-38	Email		29
21	P-39	Email		29
22	P-40	Email		29
23	P-41	Job Advertisement		29
24	P-42	Job Advertisement		29
25	P-43	Severance Agreement		29

	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
2				
3	P-44	Record of County Payment		29
4	P-45	Real Estate School Certificate		29
5	P-46	Payment for Travel		29
6	P-47	Email		29
7	P-48	Email		29
8	P-49	Email		29
9	P-50	Email		29
10	P-51	Email		29
11	P-52	Email		29
12	P-53	Email		29
13	P-54	Email		29
14	P-55	Email		29
15	P-56	Email		29
16	P-57	Letter		29
17	P-58	Letter		29
18	P-59	Letter		29
19	P-60	Commission Check		29
20	P-61	Settlement Statement		
21	P-62	Settlement Statement		
22	P-63	VISA Expense Report		
23	P-64	VISA Expense Report		
24	P-65	VISA Expense Report		
25	P-66	Receipt		

	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
1				
2				
3	P-67	VISA Expense Report		
4	P-68	Advance Travel Request		
5	P-69	Expense Report		
6	P-70	VISA Expense Report		
7	P-71	VISA Expense Report		
8	P-72	Registration Form		29
9	P-73	Expense Report		29
10	P-74	Expense Report		29
11	P-75	Reimbursement Form		29
12	P-76	Contract		29
13	P-76-A	Email		29
14	P-77	Contract		29
15	P-78	Memorandum		29
16	P-79	Affidavit		29
17	P-80	Email		
18	P-81	Letter		
19	P-82	Letter		29, 1134
20	P-83	Letter		29
21	P-84	Letter		29
22	P-85	Letter		29
23	P-86	Letter		29
24	P-87	Letter		29
25	P-88	Letter		29

	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
1				
2				
3	P-89	Letter		29
4	P-90	Affidavit		29
5	P-91	Personal Financial Statement		1619
6	P-92	Screen Print and Memo	489	
7	P-93	Screen Print and Memo	489	
8	P-94	Email		29
9	P-95	Rob Hoskins Notes		272
10	P-96	Order	317	320
11	P-97	Correspondence		1619
12	P-98	Correspondence		1619
13	P-99	Correspondence		1619
14				
15				
16				
17				
18				
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21				
22				
23				
24				
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<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
	<u>Defendant's Exhibits</u>		
4	D-1 Letter		
5	D-2 Letter		32
6	D-3 Affidavit		
7	D-4 Title		32
8	D-5 News Article		
9	D-6 List of Payments		32
10	D-7 Statement		1620
11	D-8 Letter		1620
12	D-9 Grand Jury Report		1620
13	D-10 Expense Report		32
14	D-11 Expense Report		32
15	D-12 Expense Report		32
16	D-13 Job Posting		32
17	D-14 Email		1620
18	D-15 Affidavit		1620
19	D-16 Memorandum		32
20	D-17 Tom Bright Notes		32
21	D-18 Tom Bright Notes		32
22	D-19 Tom Bright Notes		32
23	D-20 Tom Bright Notes		32
24	S-21 Tom Bright Notes		32
25	D-22 Tom Bright Notes		32

	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
1				
2				
3	D-23	Tom Bright Notes		32
4	D-24	Tom Bright Notes		32
5	D-25	Tom Bright Notes		32
6	D-26	Tom Bright Notes		32
7	D-27	Tom Bright Notes		32
8	D-28	Tom Bright Outline		32
9	D-29	Fax		32
10	D-30	Email		32
11	D-31	Tom Bright Fax		32
12	D-32	Tom Bright Memo		1620
13	D-33	Tom Bright Fax		32
14	D-34	Supreme Court Ruling		32
15	D-35	Supreme Court Ruling		32
16	D-36	S.C. Code 4-9-620		32
17	D-37	Retention Letter		32
18	D-38	Check		32
19	D-39	Costs Summary		32
20	D-40	Retention Agreement		32
21	D-41	ULG Invoice		32
22	D-42	ULG Invoice		32
23	D-43	ULG Summary		32
24	D-44	Checks		32
25	D-45	Email		32

	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
1				
2				
3	D-46	Email		32
4	D-47	Email		32
5	D-48	Email		32
6	D-49	Email		32
7	D-50	Order		32
8	D-51	Summary		1620
9	D-52	Email		32
10	D-53	Letter		32
11	D-54	Letter		32
12	D-55	Letter		32
13	D-56	VISA Statement		32
14	D-57	Letter		32
15	D-58	Recusal Memo		32
16	D-59	Contract		32
17	D-60	Job Description		32
18	D-61	Press Release		32
19	D-62	Resume		1620
20	D-63	Email		1620
21	D-64	Email		1620
22	D-65	Email		1620
23	D-66	Letter		1620
24	D-67	Work Report		32
25	D-68	Email		

	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
1				
2				
3	D-69	Agenda		32
4	D-70	Agenda		32
5	D-71	Letter		32
6	D-72	Incident Report		
7	D-73	Letter		
8	D-74	Letter		
9	D-75	News Article		
10	D-76	Letter		918
11	D-77	Letter		
12	D-78	Letter		
13	D-79	Statement		
14	D-80	Email		32
15	D-81	Email		32
16	D-82	Email		32
17	D-83	Email		1620
18	D-84	Email		
19	D-85	Email		32
20	D-86	Email		32
21	D-87	Email		32
22	D-88	Email		32
23	D-89	Email		32
24	D-90	Email		32
25	D-91	Email		32

	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
1				
2				
3	D-92	Email		32
4	D-93	Email		32
5	D-94	Email		32
6	D-95	Email		32
7	D-96	Order		1620
8	D-97	Email		32
9	D-98	Email		1620
10	D-99	Email		
11	D-100	Email		32
12	D-101	Email		32
13	D-102	Email		
14	D-103	Email		
15	D-104	Email		32
16	D-105	Email		1620
17	D-106	Letter		
18	D-107	Incident Report		
19	D-108	Email		32
20	D-109	Email		
21	D-110	Email		1620
22	D-111	Email		
23	D-112	Email		
24	D-113	Orders		32
25	D-114	News Article		

	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
1				
2				
3	D-115	News Article		
4	D-116	Incident Report		
5	D-117	Letter		32
6	D-118	Tom Bright Notes		32
7	D-119	Code 2-37		32
8	D-120	Code 2-288		32
9	D-121	Memorandum		
10	D-122	Statement		
11	D-123	Statement		
12	D-124	Bills		
13	D-125	Letter		
14	D-126	Letter		
15	D-127	News Article		
16	D-128	SLED Report		
17	D-129	SLED Report		
18	D-130	Letter		
19	D-131	Letter		
20	D-132	Judgment		
21	D-133	Letter		390
22	D-134	Memorandum		
23	D-135	Letter		
24	D-136	Letter		1003
25	D-137	Fuel Master Transaction		32

1	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
2				
3	D-138	Letter		1001
4	D-139	Agenda		
5	D-140	Minutes		
6	D-141	Email		
7	D-142	Email		
8	D-143	Email		
9	D-144	Email		
10	D-145	Email		
11	D-146	Email		
12	D-147	Email		
13	D-148	Email		
14	D-149	Email		
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16	D-151	Email		
17	D-152	Email		
18	D-153	Email		
19	D-154	Email		
20	D-155	Email		
21	D-156	Email		
22	D-157	Email		
23	D-158	Email		
24	D-159	Email		
25	D-160	Email		

1	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
2				
3	D-161	Email		
4	D-162	Bills		
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8				
9				
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1	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
2		<u>Court's Exhibits</u>		
3				
4	C-1	Transcript		881
5	C-2	Larry Greer Deposition		
6				
7				
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1 P R O C E E D I N G S

2
3 THE COURT: Good morning.

4 MR. TESSIER: Morning, Your Honor.

5 MR. GENTRY: Good morning.

6 MR. DAVIS: Good morning.

7 THE COURT: All right. I would -- I asked the
8 attorneys to dispense with opening arguments in this case.
9 However, I do know that there were some changes in the
10 posture of some of the claims that have been made, and I
11 would like the attorneys to, first of all, state your
12 appearances on the record, and then, if you would, for the
13 plaintiff, go over the causes of action that you're going
14 forward on. Just name them. No need to argue them.

15 I've heard a good bit of argument on those already, and
16 then, when we get to the defense, I'd like to also know what
17 counterclaims you're still going forward on so that we've
18 got a clear understanding as to what issues are being
19 presented before the Court during these hearings.

20 So, I'll give you a second to take a look at that. I
21 didn't -- I asked you to dispense with opening arguments,
22 but I think, since we did have that change in the, in the
23 posture of the case, that we ought to be clear about what
24 we're going forward on.

25 MR. TESSIER: Your Honor, Troy Tessier for the

1 plaintiff --

2 THE COURT: Yes, sir.

3 MR. TESSIER: -- Anderson County. Joined by Ted Gentry
4 and Tally Parham also from the Wyche Firm --

5 THE COURT: Good morning.

6 MR. TESSIER: -- all representing Anderson County. We
7 also have Tom Allen here who's chair of Anderson County
8 Council.

9 THE COURT: Good morning. Good to see you all.

10 MR. TESSIER: My client -- we represent, and just to
11 try to answer your question, Your Honor, the plaintiff's
12 claims I believe are all going forward. Let me find my
13 amended complaint.

14 THE COURT: I listed some 11 of them on the notes that
15 I took, and maybe I just should go over with you what I
16 have, and see if you disagree with what I have.

17 I have that you're alleging ethics code violations
18 concerning the contract?

19 MR. TESSIER: Yes, sir.

20 THE COURT: That it's void as a matter of public policy
21 is the second one. That Mr. Preston violated the State and
22 local ethics code, that Mr. Preston committed fraud, that
23 Mr. Preston committed constructive fraud, that Mr. Preston
24 committed a negligent misrepresentation, that the actions of
25 council constituted actions that were arbitrary and

1 capricious, that Preston breached the contract, that Preston
2 breached fiduciary duties, that the retirement system should
3 refund monies paid to it, and that Mr. Preston has been
4 unjustly enriched.

5 MR. TESSIER: That's correct, sir.

6 THE COURT: Have I correctly stated the actions that
7 you're still going forward on?

8 MR. TESSIER: Yes, sir.

9 THE COURT: Okay. Any others?

10 MR. TESSIER: No, sir.

11 THE COURT: Thank you.

12 All right. For the defense.

13 MR. DAVIS: Good morning, Your Honor.

14 THE COURT: Good morning.

15 MR. DAVIS: Lane Davis and Kern-Fuller---

16 THE COURT: Good to see both of you again.

17 MR. DAVIS: ---for defendant Joey Preston.

18 THE COURT: Yes, sir.

19 MR. DAVIS: I believe that some communications with the
20 Court have occurred. with respect to our tort based
21 counterclaims, we have reached a settlement and those claims
22 won't be part of the case. However, that does not impact
23 our contract based counterclaim arising out of the severance
24 agreement and specifically with respect to Paragraph 8.

25 In the case there has been a limitation with respect to

1 the damages that we're claiming. That limitation is that we
2 are going to be pursuing basically the defense costs and
3 defense fees arising out of the breach of the covenant not
4 to sue. In the severance agreement, all of the income based
5 claims and---

6 THE COURT: I'm sorry. The what based claims?

7 MR. DAVIS: The lost income based---

8 THE COURT: Oh, income based claims.

9 All right. Excuse me.

10 MR. DAVIS: And, also, all of that---

11 THE COURT: I just didn't catch the word.

12 Go ahead.

13 MR. DAVIS: All the reputational based claims were
14 wrapped up in the settlement that occurred.

15 THE COURT: So, that's all out now?

16 MR. DAVIS: That's all out.

17 THE COURT: Okay.

18 MR. DAVIS: And as a consequence of that, Your Honor, I
19 think you may recall we had a limine motion and part of the
20 reason why the Court didn't rule upon that limine motion was
21 because of the reputational element of the damages as well.
22 All of that has been removed from the case.

23 THE COURT: Okay.

24 MR. DAVIS: As a consequence, I'm hereby removing our
25 motion in limine with respect to all those grounds and ask

1 the Court that it limit the scope of this case because I
2 believe that that will greatly simplify what's before Your
3 Honor.

4 THE COURT: All right. Let's hear from the plaintiff
5 concerning that particular issue.

6 MR. TESSIER: One point, Your Honor. We agree with
7 most of what Mr. Davis said about the counterclaim. The
8 tort based counterclaims have been removed. As Your Honor
9 knows, you did sign a consent order as well which strikes
10 from the pleadings certain paragraphs of the breach of
11 contract claim, which then focuses the, the damages there.

12 THE COURT: Uh-huh. (Affirmative).

13 MR. TESSIER: We think it's still, Your Honor,
14 premature to rule on the motion in limine and really believe
15 the Court needs to hear some context in which you decide for
16 certain what should stay or not stay in the case. I don't
17 want to reargue the entire thing unless the Court wants---

18 THE COURT: Well, I don't want you to reargue it
19 either. I will -- and I, and I won't rule on that at this
20 time. But I will tell you that, as Mr. Davis has said, if
21 the tort based counterclaims have been resolved, then the
22 degree to which we would go into those matters I think would
23 be somewhat limited. I'll just tell you that before we get
24 there.

25 MR. TESSIER: Yes, sir, and I think our position is

1 going to be that there will be a distinction between
2 reputational injury type claims and, for example,
3 credibility, which will be an issue in this case regardless
4 of the---

5 THE COURT: Well, again, I don't know where that will
6 lead -- what's that gonna lead us. So, I will reserve my
7 rulings in that regard.

8 Yes, sir, Mr. Davis.

9 MR. DAVIS: Your Honor, one more preliminary motion.
10 At this time the defense would move to sequester the
11 witnesses.

12 THE COURT: Any objection to that from the plaintiff?

13 MR. TESSIER: No, Your Honor.

14 THE COURT: Well, before I make that order, are there
15 particular individuals that you think should remain in the
16 courtroom to assist you with your case, presentation of your
17 case that may also be a witness in the case?

18 MR. DAVIS: No, Your Honor.

19 MR. TESSIER: My, my understanding of the rule, Your
20 Honor, is that primarily applies to expert witnesses, and
21 we -- we don't have our expert witness here. Don't think we
22 need him. If we choose to try to have him present at some
23 point we'll let you know.

24 THE COURT: If I issue a sequestration order, it will
25 apply to all, anyone you intend to present as a witness in

1 the case.

2 MR. TESSIER: And one last point on that, Your Honor,
3 we do -- Tom Allen is our, is our client representative
4 here. He is likely to be a witness I think.

5 THE COURT: That's what I was referring to.

6 MR. TESSIER: Okay.

7 THE COURT: Is there somebody that you want to keep in
8 the courtroom---

9 MR. TESSIER: Yes, sir.

10 THE COURT: ---that would be of assistance during the
11 trial?

12 MR. TESSIER: Yes, sir, that's, that's him.

13 THE COURT: Okay. He's named Mr. Allen.

14 Anyone, anyone else?

15 MR. DAVIS: Well, yes, Your Honor, we would object to
16 that. I mean obviously Mr. Allen is only one of seven
17 council members, and, in addition to that, the county
18 attorney's sitting right behind him, and in addition to
19 that, you know, he's under subpoena, and, in this case, Your
20 Honor, we think that one of the most critical things that
21 you're gonna hear by way of evidence is that there's going
22 to be, let's say, contrastic evidence from
23 witness-to-witness about identical issues, and, obviously,
24 there is some danger, with respect to the defense in this
25 case, if the witnesses are allowed to remain and---

1 THE COURT: Well, what they're, what they're asking for
2 though is just for one person to remain who is considered to
3 be their client.

4 MR. DAVIS: Yes, Your Honor, out of the county council
5 members, however --

6 THE COURT: Uh-huh. (Affirmative).

7 MR. DAVIS: -- I think I have Mr. Allen under subpoena
8 and I have Ms. Wilson under subpoena.

9 THE COURT: Well, I'm gonna let them designate one.
10 And, so, whoever that is, I'll let them have one.

11 MR. DAVIS: Okay.

12 THE COURT: All right. So -- all right. So -- and
13 that is Mr. Allen?

14 MR. TESSIER: Yes, sir.

15 THE COURT: And I assume Mr. -- obviously Mr. Preston
16 is a party and I'll allow him to stay as well.

17 All right. I then will grant the motion for
18 sequestration of the witnesses.

19 If there's anyone in the courtroom who is a potential
20 witness in this case, I'll be asking that you leave the
21 courtroom at this time. I will caution those who would be
22 involved in this not to discuss your testimony or possible
23 testimony with anyone. As long as the trial is proceeding,
24 that order will remain in effect whether you have testified
25 yet or have not testified yet. In other words, you should

1 not discuss your testimony with anyone during the progress
2 of this trial. Whether it's present testimony, past
3 testimony, or future testimony.

4 So, anyone who's a potential witness in this case, I'll
5 ask you to step outside, remain there until called as a
6 witness in the case. If anyone remains in violation of the
7 order, they will be denied the opportunity to testify.

8 MR. TESSIER: Your Honor?

9 THE COURT: Yes, sir.

10 MR. TESSIER: Mr. Waldrep is gonna be the first
11 witness. I don't know if you want him to leave or stay.

12 THE COURT: No, he can stay if he's gonna be the first
13 one. I don't see how that's gonna be a problem.

14 You may have a seat, Mr. Waldrep. You're gonna be the
15 first witness.

16 MR. WALDREP: Yes, sir.

17 THE COURT: Thank you, sir. Just have a seat back
18 there, Mr. Waldrep, until you're called. They may have some
19 more things they want to go over with me.

20 Thank you, sir.

21 MR. WALDREP: I'll be glad to be outside.

22 THE COURT: No, no, have a seat right there. That's
23 okay. Thank you, sir.

24 (Pause.)

25 MR. TESSIER: Your Honor, if it's helpful, both parties

1 have agreed to try to preadmit a bunch of exhibits. We each
2 have a notebook---

3 THE COURT: All right.

4 MR. TESSIER: ---we would offer the Court.

5 THE COURT: Okay.

6 MR. TESSIER: If I may approach?

7 THE COURT: Thank you.

8 MR. TESSIER: They're segregated. So, we have a
9 plaintiff's binder and a defendant's binder.

10 THE COURT: All right. Now, as to the documents that
11 are in the binder, have both sides agreed to their
12 admissibility?

13 MR. TESSIER: No, Your Honor. We're about to cover
14 that right now.

15 THE COURT: All right. Let's talk about it then.

16 MR. TESSIER: We have done as, as well as we could,
17 Your Honor, in trying to agree to what, what exhibits are
18 not objectionable to each side, and if I may, for the
19 record, I'd like to go through them right now. For the
20 court reporter's sake and the parties sake, we can check off
21 the ones that are not objectionable. We don't mind that you
22 have exhibits that are, you know, going to be objected to.
23 But we'll leave those for a later time.

24 THE COURT: All right.

25 MR. TESSIER: The ones, Your Honor, from the

1 plaintiff's side that we have agreed that are admissible and
2 should be admitted into evidence at this time are Exhibits 1
3 through 5, Exhibit 5-A, Exhibit 6 through 10, Exhibit No.
4 12, Exhibit No. 15, Exhibits 20 through 22, Exhibits 24 and
5 then 26 through 31, and then it starts again, Your Honor,
6 Exhibit 34 is preadmitted. Exhibit 35 is preadmitted.
7 Exhibits 37 through, through 60 are preadmitted. Exhibits
8 72 through 76 are preadmitted. Exhibits 76-A is
9 preadmitted. Exhibits 77 through 79 are preadmitted.
10 Exhibit 82 through 90 are preadmitted, and I believe Exhibit
11 94 is preadmitted, Your Honor, from the plaintiff's side.

12 THE COURT: Defense agreed to the admission of those
13 documents identified?

14 MR. DAVIS: Yes, Your Honor.

15 THE COURT: All right. Did you get that, Pam?

16 COURT REPORTER: Yes, sir.

17 (WHEREUPON, Plaintiff's Exhibit Nos. 1 through 5, 5-A,
18 6 through 10, 12, 15, 20 through 22, 25, 26 through 31, 34,
19 35, 37 through 60, 72 through 76, 76-A, 77 through 79, 82
20 through 90, and 94 were received into evidence at this
21 time.)

22 MR. TESSIER: All right. And to make it easier, Your
23 Honor, I didn't, I didn't get Mr. Davis a hard copy of my
24 list, which affected the defense exhibits. So, I'll go
25 ahead and tell you which ones we don't object to the -- from

1 the defense side.

2 THE COURT: Is that satisfactory, Mr. Davis?

3 MR. DAVIS: Yeah, you see how it is, Your Honor.

4 THE COURT: All right. Go ahead.

5 MR. TESSIER: Your Honor, here are the ones that we
6 agreed to be preadmitted without objection.

7 From the defense binder, that's Exhibit No. 2, Exhibit
8 No. 4, Exhibit No. 6, Exhibits 10 through 13, Exhibit 16
9 through 31.

10 I believe we reached agreement that there are certain
11 notes that Mr. Bright was going to be a witness, handwritten
12 note, that he had and we just agree, I think Mr. Davis will
13 agree, that we were okay with the admission of the ones that
14 Mr. Davis wanted to admit provided that all of his notes
15 were admitted. The only exception, Your Honor, is Exhibit
16 No. 32, which is a different animal, and we'll talk about
17 that when we get to it, and we're okay with admitting these
18 exhibits, Your Honor, with the sort of caution, I guess,
19 that some of these notes contain hearsay and/or even hearsay
20 within hearsay.

21 And, so, we're -- since it's a bench trial, we, we are
22 confident that the Court can sort out the value of such
23 information.

24 THE COURT: I understand.

25 MR. DAVIS: Your Honor, I agree that that is our

1 agreement with that stipulating to counsel's view of the
2 evidence rule upon the hearsay.

3 THE COURT: I understand. I won't, I won't hold you to
4 what he said.

5 MR. TESSIER: Sorry.

6 And then, Your Honor, we're, we're okay with and don't
7 object to the preadmission of Exhibits 33 through 50. Same
8 is true for Exhibits 52 through 61. We have no objection to
9 the preadmission of Exhibits 67, 69, 70, 71, 80, 81, and 82,
10 and we have no objection to the preadmission of Exhibits 85
11 through 95. No, no objection to the preadmission of 97 and
12 100.

13 No, 97 and 100. Not 97 through 100.

14 No objection to the preadmission of Exhibit 101,
15 Exhibit 104, Exhibit 108, Exhibit 111, Exhibit 113, Exhibit
16 117 through 120, and no objection to the preadmission of
17 Exhibit 137.

18 And what we propose to do, Your Honor, is, as we get to
19 witnesses who have exhibits that we have objection about,
20 we'll make that as clear as we can to the other side and
21 raise it with you at that time.

22 THE COURT: I understand.

23 Has he correctly stated the ones we've agreed on?

24 MR. DAVIS: Your Honor, he has absolutely stated our
25 agreements correctly.

1 (WHEREUPON, Defendant's Exhibit Nos. 2, 4, 6, 10
2 through 13, 16 through 31, 33 through 50, 52 through 61, 67,
3 69 through 71, 80 through 82, 85 through 95, 97, 100, 101,
4 104, 108, 113, 117 through 120, and 137 were received into
5 evidence at this time.)

6 MR. DAVIS: Do we want to mention to him the agreements
7 about interrogation notes?

8 MR. TESSIER: Yes.

9 MR. DAVIS: Your Honor, in addition, we have an
10 agreement about what would happen in the instances where, in
11 this case, because it's somewhat unusual as far as posture,
12 when the plaintiff or the defense, for example, calls a
13 witness that is affiliated with the other side in this, and,
14 for example, the potential council members who voted in
15 favor of Mr. Preston's severance agreement, we think that
16 underneath that rules of evidence that they should be
17 arguably treated as affiliated witnesses, and that the
18 plaintiff could cross those witnesses on their direct
19 examination, and part of that agreement is also that, on
20 cross-examination, and I'll be able to cross them as well.
21 So, you'll have double crosses.

22 THE COURT: All right.

23 MR. DAVIS: That is the same agreement that we have
24 going in the other direction. Everything that we agreed to
25 is a two way street, and to the -- that, that -- during my

1 case in chief, I call sitting council members, for example,
2 Mr. Allen, Ms. Wilson, or Mr. Moore, that I'll be able to
3 cross them on direct and they as well.

4 THE COURT: If you'll just make me aware of that
5 situation. I think I'll probably be aware, but be sure I'm
6 aware of that and we'll, we'll be able to handle that.

7 MR. DAVIS: We wanted to mention that to you just
8 because when you heard the examination you may be puzzled as
9 to why the---

10 THE COURT: I understand. Well, since it's a nonjury
11 hearing, we would relax those rules somewhat.

12 MR. DAVIS: Well, thank you, Your Honor.

13 THE COURT: All right. Anything further that we need
14 to take up as a pretrial matter from the plaintiff's
15 prospective?

16 MR. TESSIER: Yeah, we agree with what Mr. Davis said
17 about the cross of witnesses, and we do have -- as I noted,
18 there are some Tom Bright notes that we did not object to
19 the admission of. We have a few of those as well that I
20 just need to give you some exhibit numbers for. We can do
21 that as to each---

22 THE COURT: We can do that as they come up. That will
23 be fine.

24 Anything further from the defense?

25 MR. DAVIS: No, Your Honor.

Robert Waldrep - Direct examination
by Mr. Tessier

1 THE COURT: All right. Plaintiff ready to call the
2 first witness?

3 MR. TESSIER: Yes, Your Honor.

4 THE COURT: You may do so.

5 MR. TESSIER: Your Honor, Anderson County calls Bob
6 Waldrep to the stand.

7 THE COURT: Mr. Waldrep, come forward please.

8 ROBERT WALDREP, being first duly sworn,
9 testified as follows:

10 THE CLERK: If you would take the witness stand, and
11 state your name for the record and spell your last name
12 please, sir.

13 THE WITNESS: My name is Robert Waldrep.
14 W-A-L-D-R-E-P.

15 THE COURT: Mr. Tessier, your witness.

16 MR. TESSIER: Thank you, Your Honor.

17 THE COURT: Yes, sir.

18 DIRECT EXAMINATION

19 BY MR. TESSIER:

20 Q Good morning, Mr. Waldrep.

21 A Good morning.

22 Q would you tell us please where you currently reside?

23 A I reside at [REDACTED]
24 [REDACTED]

25 Q And how long have you lived in Anderson County?

Robert Waldrep - Direct examination
by Mr. Tessier

- 1 A In Anderson County since 1964.
- 2 Q where did you go to school or college?
- 3 A I went to the University of South Carolina.
- 4 Q And after you graduated -- did you graduate?
- 5 A I did.
- 6 Q what did you do after graduation?
- 7 A I went to the United States Navy for two years.
- 8 Q And what did you do in the Navy?
- 9 A I was a generalist and a radar man.
- 10 Q And what years did you serve in the Navy?
- 11 A Beg your pardon?
- 12 Q what years did you serve in the Navy?
- 13 A That would of been 1959/1960 I believe.
- 14 Q Did you receive an honorable discharge?
- 15 A I did.
- 16 Q And thank you, Mr. Waldrep, for your service.
- 17 what did you do after you left the Navy?
- 18 A I applied to law school at the University of South
- 19 Carolina, was accepted, and finished law school in about
- 20 1964.
- 21 Q And did you pass a bar exam after you graduated?
- 22 A I did.
- 23 Q where did you pass the bar?
- 24 A In South Carolina, in Columbia.
- 25 Q Have you been licensed to practice law in South

Robert Waldrep - Direct examination
by Mr. Tessier

1 Carolina since you passed the bar?

2 A I have. Since 1964.

3 Q How would you -- do you have a law practice today?

4 A I do.

5 Q How would you describe your law practice?

6 A It's a general law practice. My daughter and I
7 practice together right across the street in -- from the
8 courthouse.

9 Q Have you ever served on the Anderson County Council?

10 A I have.

11 Q And when?

12 A I believe my first service was something like '90 to
13 '91 or '91 to '92, that era. I served one term.

14 Q And then what did you do after that term on the
15 council?

16 A I ran for the South Carolina State Senate.

17 Q Were you successful?

18 A I was successful and I served three terms. I served 12
19 years in the South Carolina Senate.

20 Q Did you have another opportunity, at some later point,
21 to serve on the Anderson County Council?

22 A Yes, I volunteered to leave the Senate and then I ran
23 for Council District 1.

24 Q And do you recall when that second period of service on
25 Anderson County Council occurred?

Robert Waldrep - Direct examination
by Mr. Tessier

- 1 A I'm trying to think. It probably was about 2004 to
2 2006 maybe.
- 3 Q You realize that part of this case deals with the
4 administration of Joey Preston.
- 5 Is that --?
- 6 A I do.
- 7 Q And was Mr. Preston the county administrator when you
8 served on the council the second time you served?
- 9 A Yes, he was.
- 10 Q And do you remember when you began your service or do
11 you remember when Mr. Preston left his service with the
12 council just to try to get you to---
- 13 A I believe he left in December of 2010 I think.
- 14 Q And I can show you some documents in a minute.
- 15 A Yes, right. I, I just---
- 16 Q That will allow you to refresh your memory.
- 17 A Okay.
- 18 Q When you started with Anderson County, after your
19 service on the South Carolina Senate, was Joey Preston the
20 county administrator?
- 21 A Yes, he was.
- 22 Q And did you serve as the chair of county council when
23 you started again with Anderson County?
- 24 A That's right. My first year I was elected chair of
25 county council.

Robert Waldrep - Direct examination
by Mr. Tessier

1 Q And how did your service on Anderson County Council
2 come to an end?

3 A I served that term. Then I ran for reelection, and
4 after -- I served for about 18 months. They're two year
5 terms. And after I served about 18 months I was requested
6 to be a trustee of, at Orangeburg, South Carolina State, and
7 I found out that there was a conflict there, and I could not
8 serve both as a trustee of South Carolina State and as a
9 county councilman. Didn't know that when I first started.
10 But then, at that point, I resigned and Francie Crowder
11 succeeded me.

12 Q Do you recall what year that was?

13 You may not, but I'm just asking.

14 A I'm trying. I thought that would be some time in 2010.

15 Q Let me show you -- Your Honor, may I approach the
16 witness?

17 THE COURT: Yes, you may.

18 MR. TESSIER: Let me find that.

19 Q Mr. Waldrep, I'm gonna hand you what's been preadmitted
20 as Plaintiff's Exhibit No. 7, and I'm showing you this, Mr.
21 Waldrep, to see if I can refresh your recollection as to
22 when did you serve on Anderson County Council before you
23 started with South Carolina State?

24 Do you recognize that document?

25 A I do.

Robert Waldrep - Direct examination
by Mr. Tessier

1 Q what is that document?

2 A That's a severance agreement and release of claims for
3 Mr. Joey Preston and accounting and it's dated the 18th of
4 November, 2008.

5 Q Okay. Now, does that help you---

6 A It, it does.

7 Q ---bring to mind when you served -- after, after your
8 service with the South Carolina Senate, does this help you
9 remember when you served on Anderson County Council?

10 A Yes, sir, it does.

11 Q What do you remember about what your dates of service
12 were roughly?

13 A Well, Mr. Preston was to leave. I continued to stay on
14 until -- I still thought it was December. Let's see. Mr.
15 Preston stayed on until December the 31st, 2008.

16 Q And did you continue on after?

17 A And, so, I thought it was maybe 2009/2010, sometime
18 when I, I stayed on, you know, after Mr. Preston left.

19 Q Okay. Were you on the county council all of the Year
20 2008?

21 A Yes.

22 Q And was it your understanding that -- or let me ask it
23 this way.

24 Was Mr. Preston serving the county as county
25 administrator pursuant to an employment agreement in 2008?

Robert Waldrep - Direct examination
by Mr. Tessier

1 A Yes, he -- pursuant to some kind of employment
2 agreement, when I went on council, I had never seen his
3 employment agreement until sometime later when some issues
4 arose about his employment.

5 MR. TESSIER: Okay. May I approach again, Your Honor?

6 THE COURT: Yes, you may.

7 Q Mr. Waldrep, I'm now gonna hand you what's marked as
8 Exhibit, Plaintiff's Exhibit No. 1 and it's been
9 preadmitted.

10 A All right.

11 MR. TESSIER: And, Your Honor, I'm hoping it's okay
12 with the Court, but at times we will present these documents
13 on a screen---

14 THE COURT: That's all right.

15 MR. TESSIER: ---if that's all right.

16 THE COURT: That's fine.

17 Q Mr. Waldrep, Plaintiff's Exhibit No. 1, can you
18 identify what that is?

19 A It's a master employment agreement dated the 22nd of
20 July of 1998 between the county and Mr. Joey R. Preston.

21 Q Is it your understanding that this is the employment
22 contract that Mr. Preston was operating under in 2008?

23 A Yes, sir.

24 Q If you would, look at Section 2-A of that contract for
25 us, and I'll present it on the screen---

Robert Waldrep - Direct examination
by Mr. Tessier

- 1 A Right. I see.
- 2 Q ---as well?
- 3 would you mind publishing to the Court by reading that
- 4 Section 2-A to us?
- 5 A All right, sir. It says term. Section 2-A. The
- 6 administrator serves at the pleasure of council, and nothing
- 7 in this agreement shall prevent, limit, or otherwise
- 8 interfere with the right of Anderson County Council to
- 9 terminate the services of the administrator at any time
- 10 subject to the provisions set forth in Section 3, Paragraph
- 11 A, B, and C of this agreement.
- 12 Q And now, Mr. Waldrep if you look at Section 3-A of the
- 13 agreement, which, if you'll turn, it's on the next page, and
- 14 I'm not gonna ask you to read all this, Mr. Waldrep, but
- 15 it's a little lengthier, but would you agree with me that
- 16 that first provision is a provision concerning termination
- 17 with cause?
- 18 A Yes.
- 19 Q And if you look at Section 3-B, which is on that same
- 20 page --
- 21 A Okay.
- 22 Q -- is that a section of the contract that discusses
- 23 termination of county administrator without cause?
- 24 A Yes, sir, it does.
- 25 Q So, was it your understanding that the agreement that

Robert Waldrep - Direct examination
by Mr. Tessier

1 Mr. Preston was operating under provided for or allowed for
2 the council to terminate him either with or without cause?

3 A Yes, sir.

4 Q Do you have any understanding as to whether, if the
5 county council were to terminate Mr. Preston without cause
6 in 2008, does it have to do anything with respect to Mr.
7 Preston's contract if it made that choice?

8 A Well, the -- I'm saying the council had the absolute
9 choice to do it either way. But if it's without cause, then
10 certain issues would come up about his severance.

11 Q And does the contract provide for a mechanism by which
12 to calculate a severance payment---

13 A It would---

14 Q ---to Mr. Preston?

15 A It appears to provide a mechanism.

16 Q Mr. Waldrep, if you look at Section 13 of the contract,
17 which is on Page 7 of the document in front of you?

18 (Witness complies.)

19 Q Does the contract with Mr. Preston, back in 2008, also
20 have a provision concerning suspension---

21 A Yes.

22 Q ---of Mr. Preston?

23 A Yes, it does.

24 Q And does this Section 13 that's on the screen and on
25 Page 7 of Exhibit 1, is this the section that discusses how

Robert Waldrep - Direct examination
by Mr. Tessier

1 the county may go about suspending the administrator if it
2 so chooses?

3 A Yes, it does. It -- if a majority of council votes to
4 suspend the administrator, it has here for just cause, the
5 administrator shall be given written notice and ten days
6 notice prior to a hearing and so forth.

7 Q So, it---

8 A Give him an opportunity to have a hearing if he desires
9 one.

10 Q Is it fair to say Exhibit 13 or Section 13 of the
11 contract provides a process by which---

12 A That's correct.

13 Q ---suspension must occur?

14 A Correct.

15 Q Do you, Mr. Waldrep, just from your experience working
16 for the State of South Carolina, do you know what state
17 retirement service credit is?

18 A Yes, sir.

19 Q What is it, generally speaking?

20 A State retirement service credit is based upon the
21 number of years, and also the salary or the compensation
22 that a person receives that's a state employee.

23 Q And are you eligible for state retirement because of
24 your service on the South Carolina Senate?

25 A Yes, I am.

Robert Waldrep - Direct examination
by Mr. Tessier

1 Q Are you aware or do you know whether or not a person
2 who has state employment, do they have an opportunity, if
3 they wish, to purchase state retirement credits on their own
4 behalf?

5 A They can.

6 Q Is there any provision in the contract that you're
7 looking at, Exhibit No. 1, the contract with Mr. Preston
8 that is, is there any provision in that contract that
9 requires the county to purchase retirement service credit
10 for Mr. Preston at -- under any circumstances?

11 A I'm not aware that the county would be required. I
12 think the individual might have a right to, but not, not the
13 county.

14 Q Now, Mr. Waldrep, if I may, I would like to talk to you
15 about the Year 2008 as you will. Some would say, I suspect,
16 that it was an interesting year for the County of Anderson.

17 A Yes.

18 Q Does Anderson County Council operate with staggered
19 terms for its council members?

20 A No, it just -- everyone runs at the same time for two
21 year terms.

22 Q Okay.

23 A Each -- all seven council people.

24 Q So, would it be fair to say that the entire Anderson
25 County Council will be elected every two years?

Robert Waldrep - Direct examination
by Mr. Tessier

- 1 A That's correct.
- 2 Q Was 2008 an election year for the Anderson County
3 Council?
- 4 A I believe it was.
- 5 Q And who was on the council at the beginning of 2008 by
6 name?
- 7 A We had Mr. Michael Thompson. We had Larry Greer, Ron
8 Wilson, Gracie Floyd, myself, Cindy Wilson, and Larry Greer.
9 Did I say Larry Greer?
- 10 Q Yes.
- 11 Mr. McAbee?
- 12 A And Bill McAbee.
- 13 Q And, and perhaps for ease of reference, if you don't
14 mind, Mr. Waldrep, I'd like to call that group of
15 individuals the 2008 Council.
- 16 Is that fair?
- 17 A That's, that's fine.
- 18 Q Did every one of the members of the 2008 Council run
19 for reelection in 2008?
- 20 A I believe everybody ran for reelection if I'm aware,
21 yeah.
- 22 Q And did that include you?
- 23 A That's, that's correct.
- 24 Q When were the primary elections held in 2008?
25 Do you recall?

Robert Waldrep - Direct examination
by Mr. Tessier

1 A You know, it was always a little bit fuzzy sometimes,
2 but I believe that they were in June of that year.

3 Q And what is the significance of the primary election in
4 Anderson County in your mind?

5 A Well, it -- everyone was a republican as I recall
6 except Ms. Floyd. She was a democrat. But the -- I guess
7 you might say nomination by the party was tantamount to
8 election at the general election. So, if you were elected
9 in your primary, and there was no opposition, you know,
10 usually there might be a petition candidate or something
11 like that, but basically that meant you were going to be
12 elected and you would be seated sometime in January. You
13 know, the following January.

14 Q Okay. And the general election was held in November of
15 every year?

16 A That's, that's correct.

17 Q What do you recall about the various platforms of the
18 candidates that were running in the Year 2008 for county
19 council?

20 A Well, it was a hotly contested election, and there were
21 a lot of candidates that put a lot of work into it, and the
22 way the county was being run, and Mr. Preston was a big
23 issue in that campaign and---

24 Q And what happened?

25 I'm sorry. Go ahead.

Robert Waldrep - Direct examination
by Mr. Tessier

1 A From what I know, several candidates mentioned
2 Mr. Preston in their campaign literature as, as being
3 interested in changing the county council way of doing
4 things.

5 Q So, it sounds like some people are running on a
6 platform that included concern about how the county was run
7 up to that point?

8 A That's, that's correct. And, interestingly enough,
9 before this election in 2008, the same issue had come up I
10 think in 2006. Mr. Preston was also an issue in that, that
11 race as well.

12 Q And do you know which candidates, in 2006, raised
13 concerns or issues in their campaign literature about Mr.
14 Preston back in '06?

15 A I know that the chairman did, Michael Thompson, in
16 particular had indicated, I think, that he was not favorable
17 for Mr. Preston, and then there was some others -- let's see
18 who else.

19 I just know that a couple other candidates did, you
20 know, but I, I don't think that I got too much involved in
21 that. I might have had an opinion, but I was not, in the
22 prior election, I was not focused on Mr. Preston.

23 Q And what about in 2008, what, what happened at the
24 actual primaries in 2008 in terms of who won and who lost?

25 A In 2008 Mr. Allen, who is chairman now, replaced

Robert Waldrep - Direct examination
by Mr. Tessier

1 Mr. McAbee, and let me go back a minute. If my memory
2 serves correctly, Mr. McAbee was one of those who appeared
3 to question Mr. Preston, you know, in his campaign
4 literature, kind of ran on that.

5 Q In 2006 you mean?

6 A In 2006. But not 2008. Because when Mr. Allen ran, I
7 think people came to Mr. Allen, my understanding, and, and
8 they wanted to know how the money was being spent in the
9 county. So, that was a change.

10 Then Mr. Greer lost his seat to Mr. Moore, who had been
11 questioning the county administrator and the way that the
12 county was being run, and then Mr. Dunn replaced Mr.
13 Thompson who had done a hundred and eighty degree turn from
14 2006 to he, he became a very strong proponent of
15 Mr. Preston. And, so, Mr. Dunn was elected to replace Mr.
16 Thompson. So, that created, again, the word "C" change in
17 the politics.

18 Q So, how would you describe the "C" change -- as a
19 result of the primary election results, how would you
20 describe that "C" change in terms of the level of support
21 for Mr. Preston?

22 A It was eroding quickly.

23 Q And were -- is it fair to say that the three you just
24 mentioned who succeeded in the primaries, Tommy Dunn, Tom
25 Allen, and Eddie Moore, appeared all to run on campaign

Robert Waldrep - Direct examination
by Mr. Tessier

1 platforms that were more questioning perhaps of
2 Mr. Preston's administration?

3 A That's my belief. That was my perception. Of course,
4 I was running my own race and I didn't, you know, wasn't
5 closely following their election. But that was my general
6 impression.

7 Q And it sounds like 2008 wasn't the first time that
8 candidates for county council ran on platforms that, at
9 least, asked questions about the administrator's service?
10 Is that fair?

11 A Mr. Thompson, the previous, you know, term, what he ran
12 for was -- I understand he was pretty adamant about being
13 opposed to Mr. Preston.

14 Q Back in '06?

15 A Yeah, '06 I think.

16 Q Now, if you succeed in the -- for those candidates who
17 succeeded in the primary in June of 2008, do they have any
18 authority to act for the county or for the county council?

19 A Not until they were sworn into office. That would be
20 January of 2009 I guess that would be.

21 Q And do those folks who succeeded in winning the
22 primaries in June of 2008, do they have any authority beyond
23 that of a private citizen?

24 A No.

25 Q In terms of what they can do for the county?

Robert Waldrep - Direct examination
by Mr. Tessier

1 A That's, that's correct. As a, as a matter of fact,
2 that, that was cited by the chairman at one time during our,
3 one of our meetings. But we, we all knew that their terms
4 did not begin until in January, and their terms would not
5 begin until they took the oath of office, which is required,
6 and that would be in -- January the 9th of 2009. So, they
7 were just like anybody on the street, you know. They, they
8 had opinions, but they had no, no power.

9 Q And, in June of 2008, having succeeded in winning the
10 primary, these folks still had to survive the general
11 election. Although the way Anderson County is, that seemed
12 pretty likely?

13 A That's correct.

14 Q What about the 2008 Council and that's the one I
15 described earlier, the sitting council in 2008, how would
16 you describe its level of support for Mr. Preston in 2008?

17 A Well, it was very strong.

18 Q And did you see any danger to Mr. Preston that the 2008
19 Council would do anything to terminate his employment or
20 otherwise breach his contract with the county?

21 A The 2008 Council would of been very supportive of Mr.
22 Preston, and I can't imagine that they would of done
23 anything to jeopardize his, his employment.

24 Q After the primary elections were held in June of 2008,
25 did you meet with some of those folks who had won the

Robert Waldrep - Direct examination
by Mr. Tessier

1 primaries?

2 A I did.

3 Q Would you tell the Court about that like who did you
4 meet with or how often---

5 A All right.

6 Q ---you know what you were talking about?

7 A Okay. We had meetings, Your Honor, at my office over a
8 period of time. We had weekly meetings and that -- those
9 people that attended would be me and Ms. Wilson, and the
10 reason we had -- and the people there would be -- Mr. Allen
11 would come occasionally, Mr. Dunn would come, and Mr. Moore
12 would come, and we had these meetings at my office on
13 Whitner Street for the purpose of looking at what financial
14 information that we had, how the budget was being done, how
15 the money was being spent, who was in charge, what kind of
16 contracts were out there.

17 This new council people had -- most had not been ever
18 elected before to any kind of office. And, so, what we were
19 doing were going through kind of an orientation process.
20 That was my intent. So that whenever these folks got into
21 office in January that they would hit the ground running so
22 to speak, that we would not be a gap there, a learning curve
23 gap, for this, for this new council coming on. And, so, we,
24 we would meet in my office on Sunday afternoon usually for a
25 couple hours.

Robert Waldrep - Direct examination
by Mr. Tessier

1 Q And as part of the orientation idea that you're talking
2 about, is it true that newly -- or I guess I should say it
3 this way.

4 Folks who have appeared to be elected as council
5 members incoming say, so a primary winner in 2008 who's
6 going to take office in 2009, are there ways in which those
7 folks get orientation through the departments of council as
8 well or the departments of the county as well by meeting
9 with county department heads, things like that?

10 A I think they were interested in, in getting that
11 information, you know. As to the extent of us being able to
12 get that information was another matter.

13 I know that the atmosphere, as far as the
14 administration was concerned, was to prevent us from getting
15 information, and that, that made it difficult and I guess
16 each other -- I really don't know to what extent the, the
17 newly nominated people were able to get information, but
18 that was one of our purposes was to say finance knows this,
19 purchasing people know this, and there were a lot of
20 questions about the finance department or budget and also,
21 as I recall, our purchasing. You know, county purchasing.

22 Q About how many times would you estimate you met over
23 the course of the summer of 2008 with folks who had won the
24 primaries?

25 A I'm saying around five times. It could of been more

Robert Waldrep - Direct examination
by Mr. Tessier

1 than that, but we---

2 Q well---

3 A We also had people that were just interested in
4 government come in and listen to what we had to say and make
5 suggestions as well. It was, it was rather open, you know,
6 and I think Mr. Beckwith attended, Mr. Tom Beckwith. He was
7 a -- like a retired accountant. We were sort of trying to
8 get advice and share ideas so that we would be able to make
9 an intelligent judgment about how to run a county that we
10 considered to be pretty much out of control or as far as
11 information is concerned.

12 Q Now, Ms. Floyd and Mr. Wilson had also won primaries in
13 2008, is that correct?

14 A That's correct.

15 Q So, they were gonna continue on the council after 2008?

16 A That's correct.

17 Q Did you invite Ms. Floyd or Mr. Wilson to meet with
18 you?

19 A Did not invite them because they, they made it clear
20 that they had great admiration for Mr. Preston. So, I did
21 not invite them. If they came, I guess we would of said
22 okay, but I didn't specifically invite those people to come.

23 Q Did you talk about Mr. Preston at some of these
24 meetings?

25 A To some degree, as, as administrator and who was in

Robert Waldrep - Direct examination
by Mr. Tessier

1 charge of matters/information, I'm sure that we did.

2 Q And, and generally speaking, what was the concern
3 expressed by the group, if there was a concern expressed,
4 during the course of those meetings?

5 A We didn't know how the money was being spent. We could
6 not get information from as -- we, we had -- after we got
7 started and we got a, a, kind of an audit report, we located
8 all this money that was being spent, but was not verified.
9 There was no documentation for it. You know, there were
10 credit card expenses to one particular councilman who was a
11 great admirer of Mr. Preston. In one month, I think, we
12 were -- learned that he had spent something like \$30,000 or
13 so.

14 MR. DAVIS: Your Honor, hearsay with -- I mean with
15 respect to contents of documents that have not been
16 presented. It's an out-of-court statement that's basically
17 referring to a document that its contents aren't even before
18 the Court.

19 MR. TESSIER: First of all, I think he's -- it's not
20 hearsay. He's just explaining something that he learned
21 during the course of his work in 2009, and I was just gonna
22 clarify that.

23 THE COURT: I'll overrule the objection.

24 Q Mr. Waldrep, this audit that you're talking about---

25 A That -- I'm talking about Mr., Mr. Bob Daniels audit

Robert Waldrep - Direct examination
by Mr. Tessier

1 reflected undocumented expenditures, which were extravagant,
2 you know, in, in our judgment, you know, at that time, and
3 it was a grave concern to us along with other matters.

4 Q That was---

5 MR. DAVIS: Your Honor, renew the objection. The audit
6 is also not before the Court. I mean that's the document
7 that he's referring to. That's not into evidence.

8 THE COURT: Well, he didn't quote the document. I
9 think he said unauthorized expenditures that totaled to a
10 certain amount. I haven't heard him yet say anything that
11 he says directly came from the document. He said he
12 reviewed it..

13 MR. DAVIS: Yeah, he was just -- he was just testifying
14 about the document's contents, that they were unauthorized
15 transactions. If they want, if they want to put in an
16 expert report, then they should get the expert on the stand.
17 They should put his report in the right way. They should
18 lay the foundation. They should have the compliance with
19 Rule 702.

20 THE COURT: Well, I'm gonna give you an opportunity to
21 cross-examine him on those points obviously, and, again, I
22 haven't heard him indicate that he's directly quoting from
23 the document. My understanding of the testimony was it was
24 information that he learned during these meetings. One of
25 the documents they reviewed was this audit report from

Robert Waldrep - Direct examination
by Mr. Tessier

1 someone, and -- but I didn't say -- hear him say that he was
2 quoting directly from that document.

3 There could of been other documents I guess that were
4 involved in point this -- what he's referring to and you
5 certainly have the right to test the basis of his opinion
6 concerning those things.

7 MR. DAVIS: I understand.

8 THE COURT: So, my ruling would remain the same and you
9 may proceed.

10 MR. TESSIER: Thank you, Your Honor.

11 Q And just to clarity for the Court, Mr. Waldrep, what
12 you're talking about, in terms of these things you seen were
13 from a report of Mr. Bob Daniel, but that occurred in 2009,
14 is that right?

15 A I think so. I believe that was the day.

16 Q All right. So, what I want to do is take you back to
17 2008 in the meetings you were having with some of these folk
18 who had---

19 A Okay.

20 Q ---who had succeeded winning---

21 A All right.

22 Q ---in their primaries to ask what were the concerns, at
23 that point in time, and this is before you knew any results
24 of any audit?

25 A It was still this spending issue, and the information

Robert Waldrep - Direct examination
by Mr. Tessier

1 issue, and if I may, when I was elected chairman, I pretty
2 much ran my campaign on the basis of transparency and
3 clarity in government. I thought that was important. And
4 the first statement that I made, upon my election as
5 chairman, to the, to the public and to the rest of the
6 council that that was my intent, was to seek clarity in
7 government. That did not---

8 Q And did some of these---

9 A That did not receive a warm look at that time from the
10 administration.

11 Q And did some of the primary winners, in June of 2008
12 who were meeting with, people like Mr. Moore and Mr. Allen
13 and Mr. Dunn, did they seem to share that same view of open
14 government?

15 A They seemed to, yes. I think they continued to do
16 that.

17 Q At your meetings with these folks during the Summer of
18 2008, did you ever talk about the possibility of doing an
19 audit of some kind of Anderson County records---

20 A Yes, we did.

21 Q ---once they came into---

22 A General discussion on that.

23 Q Did this group that was meeting on occasion in your
24 office, did it have any authority to act for the county?

25 A Absolutely none.

Robert Waldrep - Direct examination
by Mr. Tessier

1 Q And, to your knowledge, did that group ever make any
2 kind of a plan to fire Mr. Preston after it came to power in
3 January of '09?

4 A No, the only plan that came up that I recall was we had
5 a workshop at one time, and Mr. Moore had prepared a, a list
6 of items that were of concern to him such as purchasing and
7 what have you that might be an, an exhibit in this trial.
8 I'm not sure.

9 But that was provided to me at a meeting, and I think
10 it was in August the 5th maybe of that year, 2008, and I
11 shared that letter that came from Mr. Moore with the rest of
12 the, the 2008 Council, and we had a great exchange in there
13 between me and Mr. Wilson, Mr. Ron Wilson, about the idea of
14 an audit and also the idea of putting Mr. Preston on
15 administrative leave and also the finance director, Ms.
16 Humphries, on administrative leave while we did an audit to
17 determine what was the status, you know, the status of the
18 books.

19 Q And you were talking about -- what were you talking
20 about in terms of an audit?

21 When would such an audit occur if it -- at all?

22 A Well, you know that was to be determined, but I think,
23 at that particular meeting, I was requesting council, this
24 2008 Council, to wait until we got to 2000 -- the next
25 council, and to defer that action on that, and I think that

Robert Waldrep - Direct examination
by Mr. Tessier

1 was agreed because the prior council, of 2008 Council, had
2 already prepared an ordinance for an audit. But it was a
3 penny in penny out audit, and I don't know how familiar you
4 are with auditing.

5 I continued to learn more, but that would be the most
6 expensive kind of audit that you could possibly have, and it
7 would not be really productive of the information we were
8 looking for. That, that kind of audit is when you go and
9 count the nuts and bolts in the transportation department,
10 things of that nature.

11 we were looking for a focused audit that was focused on
12 the main part of the expenditures, you know. So, we, we had
13 a big discussion on that for -- having said that, the
14 council, it was a consensus of the 2008 Council to wait
15 until 2009, till the new council was seated.

16 Q Wait till that -- wait till then to allow the new
17 council to direct to whether or not---

18 A To, to direct it, that's correct.

19 Q ---it occurred?

20 And what scope of the audit might be?

21 A Beg your pardon?

22 Q And what the scope of any audit might be?

23 A Yeah, and the scope and, and timing and also the person
24 that was gonna conduct the audit.

25 MR. TESSIER: Your Honor, may I approach the witness?

Robert Waldrep - Direct examination
by Mr. Tessier

1 THE COURT: Yes, you may.

2 Q Mr. Waldrep, you've referenced it and I'm gonna show
3 you now what's been preadmitted as Plaintiff's Exhibit No. 2
4 --

5 A Right.

6 Q -- and ask if you can identify -- is this a document
7 that reflects minutes of a workshop that was held by 2008
8 Council members on August 5th, 2008?

9 A It does.

10 Q And is this talking about what you've just mentioned,
11 the discussion about whether or not to have an audit in
12 2009?

13 A I believe that it, it does.

14 Q If you would look, just to try to clarify, on the
15 second page of the document that you have in front of you,
16 which is the first page of the actual minutes, I'm gonna
17 blow up a portion on the screen, but if you'll look at the
18 very beginning, it appears that Mr. Thompson, who was the
19 chair of county council at the time, is making a statement
20 to the group at that meeting, correct?

21 A Yeah.

22 Q And he said -- he references, at the very beginning, on
23 Page 35 of the budget ordinance, Section 48, the caption is
24 special audit and then it appears that he actually reads
25 from a budget ordinance of Anderson County talking about a

Robert Waldrep - Direct examination
by Mr. Tessier

1 special one time audit that was gonna be a total complete
2 penny in penny out audit.

3 Is that the audit that you were talking about that had
4 already been approved by county council in 2008?

5 A Yes, it -- yes, it was.

6 Q And that was the one you mentioned it sounded like that
7 would be, if it were done or conducted, it would be a very
8 time consuming expensive audit?

9 A It's fairly -- yeah, not only expensive, but would not
10 serve, serve the purpose of getting down to what we, we
11 needed to determine and let me say this. When -- Mr. Finney
12 I think was that auditor at that point, and when I would ask
13 Mr. Finney questions about the audit, it seems that his --
14 it would also get back to control. You know, how the money
15 was being controlled.

16 You see, we had a, a budget process that apparently
17 allowed the administrator to shift funds from one department
18 to the next. That's -- can be done, you know, and is done.
19 It depends on how much you're doing that and what the
20 amounts are and what the justification is for. You know,
21 those are some of the things that we were concerned with
22 because the whole time I was on council, this, this idea of
23 shifting money around like walnuts and the pea under the
24 walnut, nobody could ever figure out where it was sometimes.

25 So, that, that was a -- that was just some of the

Robert Waldrep - Direct examination
by Mr. Tessier

1 thoughts that we were, we were going through when we were
2 trying to understand the process. We were talking to each
3 other. We were trying to talk to county employees. We were
4 trying to talk to the, the auditors that were doing this
5 work.

6 Q And the 2008 audit that's referenced in the budget
7 ordinance that had, had already passed, do you recall who
8 voted in favor of that penny in penny out complete audit
9 back in June of 2008?

10 A You know, I'm trying to think. You know, I know it
11 passed, you know, and tell you the truth, I'm -- I could of
12 voted against it on the basis it was a penny in penny out
13 audit. I think -- I believe I did. Help me with that.

14 Q Well, do you remember -- is, is there -- when -- if you
15 looked at the actual budget ordinance document that's---

16 A Yeah.

17 Q ---voted on and signed, would that help you remember
18 it?

19 A Yeah.

20 Q All right. Well, if I -- I'll just show it on the
21 screen. I don't intend to offer it into evidence, but
22 simply to refresh your memory.

23 This is a Ordinance Number 2008-027, Mr. Waldrep, which
24 is the one that Mr. Thompson referred to in the minutes of
25 the meeting that you have in front of you. And if you look

Robert Waldrep - Direct examination
by Mr. Tessier

1 at the following page, this is the portion of the ordinance
2 that was actually read by Mr. Thompson talking about the
3 penny in penny out audit, and the last page shows all who
4 voted on it, and I don't know if you can make it out from
5 there. I can give you a copy if it helps you refresh your
6 memory and see it better.

7 A Yeah, I see that and, and I'm trying to recall why I
8 voted the way I -- that I voted.

9 Q Well, what I'm really wanting to know, Mr. Waldrep, is
10 do you recall that many of the supporters of Mr. Preston
11 voted in favor of that---

12 A They did.

13 Q ---very extensive audit?

14 A Yes, sir.

15 Q Okay. That's all I wanted to ask you about that.

16 A Okay.

17 Q At the conclusion of -- well, let me ask this I guess.

18 During the course of the August 2008 meetings, the
19 minutes of which you have in front of you, did you make a
20 statement or comments to the county council members who were
21 assembled at that meeting?

22 A I, I did. Well, now, understand this is a workshop
23 meeting. Minutes were taken of it. But my understanding
24 was nobody could really take a, a vote at that time because
25 it was -- it's a workshop, and as we discussed the audit, I

Robert Waldrep - Direct examination
by Mr. Tessier

1 made some statement about well, the elephant in the room is
2 the new council that's coming on in 2009, and I said I have
3 a letter or communication that had been delivered to me
4 shortly before the, the workshop I think by Mr. Moore, who
5 Mr. Moore was more or less taking it upon himself also to
6 speak for Mr. Allen and from -- and for Mr. Dunn about what
7 their wishes were, you know, as far as any action that
8 council would take with, with auditing and with purchasing
9 and some of these things. I think it was about a one page
10 or page and a half letter, and I just simply -- I think I
11 read that out to the council.

12 Q And did you see anything wrong with advising the
13 sitting 2008 Council members about your understanding of
14 what these primary winners had in terms of concerns about an
15 audit that might be conducted in 2009?

16 A No, I, I actually thought that they might be pleased to
17 know. I know that's, that's kind of a stretch in a way
18 because of the atmosphere, but I think, in the ideal world,
19 a sitting council member would want to know how some of --
20 his replacement was gonna vote just to know where the
21 county's going, you know, where they're headed financially
22 and how they're gonna be arranged. So, I saw absolutely
23 nothing inappropriate with communicating that information to
24 the -- particularly in a workshop. We weren't taking any
25 action at that time.

Robert Waldrep - Direct examination
by Mr. Tessier

1 Q And did you make -- mention during the comments you
2 made in those minutes about a possibility of placing the
3 county administrator and county financial department head on
4 some sort of administrative leave if and when an audit might
5 ever occur in 2009?

6 A That was communicated and that was -- let me say that
7 was not my idea, but an idea that I was not adverse to, to
8 allow Mr. Preston and Ms. Humphries to be put on
9 administrative leave so that we could take a look at the
10 books, and I think that's kind of common practice.

11 Q You don't want the folks that you were sort of looking
12 behind to be in charge of turning the time that you're
13 looking behind them?

14 A Right.

15 Q If that group -- if the group of folk that won the
16 primaries plus you and anyone else who was meeting in 2008,
17 if you had wanted to do something to fire or suspend or
18 place Mr. Preston on leave in 2008, could you do it?

19 A No, sir.

20 Q Did the sitting county council, the 2008 Council, ever
21 express any desire to do anything to get rid of Mr. Preston
22 during 2008 prior to y'all taking---

23 A You mean the new council as a whole, the 2008 --?

24 Q Right.

25 A I don't believe they ever did.

Robert Waldrep - Direct examination
by Mr. Tessier

1 Q Did you believe, based on your understanding of Mr.
2 Preston's employment agreement, that an audit could be
3 accomplished by Anderson County in 2009 without violating
4 the terms of Mr. Preston's contract?

5 A Oh, yes.

6 Q And---

7 A I felt it was our duty. I mean we had the financial
8 fiduciary responsibility of running that council and running
9 the money coming in and the money going out. And, so,
10 that's why I felt very strongly that we, we had not only the
11 right to do it, we had the duty to do it.

12 Q And, Mr. Waldrep, would you personally have supported
13 any action by any county council that you were a member of
14 to breach provisions of your county administrator's
15 contract?

16 A No.

17 Q At some point in time, in 2008, did you get word that
18 Mr. Preston was making a claim against the county concerning
19 his employment?

20 A I did. I got a letter from his attorney, Mr. Hoskins I
21 believe it is, from over in Greenville, and Mr. Hoskins
22 wrote me a letter, which he was giving his legal opinion
23 that there was a theory that Mr. Preston's employment had
24 been -- the agreement had been breached, and this was based
25 upon a theory of anticipatory breach, which was somewhat of

Robert Waldrep - Direct examination
by Mr. Tessier

1 a novel idea that I was not totally aware of nor aware of it
2 as far as employment law is concerned. I've seen it used in
3 contract law building, building construction and things of
4 that nature, but was not that familiar with it and -- so,
5 have I answered your question?

6 I probably went over.

7 Q Yes, sir. No, you certainly did.

8 May I approach, Your Honor?

9 THE COURT: You may.

10 Q Mr. Waldrep, now I'm going to show you what's been
11 preadmitted as Plaintiff's Exhibit No. 3.

12 A Yes, sir.

13 Q I believe this is what you're talking about.

14 Is this the letter that you received a copy of in
15 September of 2008 from Mr. Hoskins who represented himself
16 to be the lawyer for Mr. Preston?

17 A Yes, sir, and the letter goes on to say that he felt
18 assaulted in some way by these issues or questions that were
19 being raised, and that he felt overcome and stymied in an
20 intolerable positions, you know, so that he could
21 anticipate -- he could see the writing on the wall. I guess
22 you might say that things were not going to go well, and the
23 only thing I could think of was he was predicating this on
24 the fact that we were gonna have an audit and an
25 investigation about his performance.

Robert Waldrep - Direct examination
by Mr. Tessier

1 Q And the audit and the investigation you were talking
2 about would have occurred when, if at all?

3 A You know, in the future. Sometime that we didn't --
4 you know, if, if, if it came up -- we did not know what was
5 going to be found because we had blocked so much from
6 getting information. So, no one was really making a
7 decision, to my knowledge, of whether what we would do one
8 way or the other. We were just pursuing our right to
9 investigate and to get the information and so we could make
10 a decision.

11 Q And when this letter came in from Mr. Hoskins -- I'll
12 show you a short portion of it. Call it out as the second
13 sentence. Mr. Hoskins says, among other things, regretfully
14 it has come to Mr. Preston's attention that certain existing
15 council members have made statements that they, and certain
16 newly elected council members intend, after January of 2009,
17 to prevent him from carrying out his duties as county
18 administrator.

19 was that one of the things that Mr. Hoskins seemed to
20 be relaying to you was a concern about what might happen
21 after January 2009?

22 A Yes, uh-huh. (Affirmative).

23 He was, he was projecting and surmising what might
24 happen.

25 Q And then later in the same paragraph, Mr. Hoskins goes

Robert Waldrep - Direct examination
by Mr. Tessier

1 on to say, and this is talk about attempts to stimpie him
2 that you mentioned, attempts -- he says those attempts have,
3 thus far, been most unfortunate for the people of Anderson
4 County, but Mr. Preston has overcome the efforts of those
5 who would stimpie him in the performance of his duties, and
6 then he concludes with another highlighted portion where he
7 talks about considering the intent of certain members of
8 council and their allies to prevent him from performing his
9 job as anticipatory breach, and I think he mentioned that
10 term that basically your understanding was he was making an
11 anticipatory breach claim?

12 A I'm not -- what was the --?

13 Q I'm sorry.

14 was he making -- as your -- as you understood the
15 letter that you received that you---

16 A Yeah. Oh, yeah. Yes, he was.

17 Q ---he was making an anticipatory breach claim?

18 A He was making some kind of -- I, I---

19 Q And---

20 A I'm frankly not an expert in employment law, and that's
21 one reason that later on, I think as things developed, we
22 sought the counsel of Mr. Tom Bright to interpret this
23 letter from Mr. Hoskins so we would know what kind of legal
24 position that we were taking.

25 Q Now, Mr. Waldrep, up until this point in time, had Mr.

Robert Waldrep - Direct examination
by Mr. Tessier

1 Preston quit his job?

2 A No, he was still there. He was still getting a check.

3 Q He was still drawing a pay check?

4 A Yeah.

5 Q You're an attorney obviously.

6 Did you form an opinion about the validity of the claim
7 that Mr. Hoskins was representing in this letter?

8 MR. DAVIS: Your Honor, he's not identified as an
9 expert in this case.

10 THE COURT: Are you offering him as an expert for an
11 opinion?

12 MR. TESSIER: No, Your Honor. I'm just asking his
13 personal opinion. He happens to be a lawyer. I'll grant
14 you that, but---

15 MR. DAVIS: I think he started his question by saying
16 as an attorney, did you form an opinion.

17 THE COURT: He did frame it as an attorney.
18 I'll let you rephrase---

19 MR. TESSIER: Yes, sir.

20 THE COURT: ---the question.

21 Q Mr. Waldrep, did you form an opinion personally as to
22 the validity of any claim that was set forth in Mr. Hoskins
23 letter of September 2008?

24 A Yeah, qualifying that with my lack of expertise in that
25 particular action, and also qualifying it by the fact that

Robert Waldrep - Direct examination
by Mr. Tessier

1 there would be some deference placed to those who practiced
2 law in that area as a specialty, I looked upon this letter
3 as bologna.

4 Q And the prospective council members who had won
5 primaries back in June, at the point of September of 2008,
6 were they in office yet?

7 A No.

8 Q Had the general election even been held at this point?

9 A No, sir.

10 Q And after that letter came in, what did the county do,
11 to your knowledge, in response?

12 A Well, when, when this letter came in from Mr. Preston's
13 attorney, our chairman, Mr. Thompson, appointed a committee
14 headed up by, I believe, Mr. Ron Wilson might of been the,
15 the chairman of the personnel committee, to investigate the
16 allegations of Mr. Preston as to whether or not there was or
17 there was not a breach and what kind of damages and where
18 were we and we gonna -- headed down the old litigation path,
19 you know, again. So, that was done.

20 Q Do you recall who served on the personnel committee --

21 A I do.

22 Q -- that addressed the letter of Mr. Hoskins in
23 September of '08?

24 A I do. It was Mr. Greer, Mr. McAbee, and Ms. Wilson.

25 Q And do you, do you happen to remember, one way or

Robert Waldrep - Direct examination
by Mr. Tessier

1 another, if that was a standing committee that had already
2 been existing in 2008?

3 A You know, I believe it was a standing committee because
4 we are required, as chairman, to formulate or form a
5 committee within a particular period of time. I think it
6 was right at the beginning of the, the term, and if you
7 don't form that committee at that time, then you don't have
8 a right to have committees. You have to have ad hoc
9 committees, you know.

10 Q Mr. Waldrep, what was your understanding of what the
11 personnel committee was charged to do with respect to the
12 claim that Mr. Preston appeared to be making in September of
13 '08?

14 A They were charged with, I guess, investigating the, the
15 merits of the claim as to whether or not there was any legal
16 foundation for it or whether we were to be liable, in some
17 way, for the breach of the contract.

18 Q And did you have any understanding as to whether or not
19 the personnel committee was suppose to come back to the
20 council as a whole with any kind of a recommendation?

21 A Yes, sir, that's, that's -- that is a practice and
22 procedure that you turn this over to the committee, the
23 committee does the study, then they come back and they make
24 a presentation to council so the council can either accept
25 or reject or ask questions or have discussion on what the

Robert Waldrep - Direct examination
by Mr. Tessier

1 personnel committee has, has done as the reason why they did
2 what they did, you know, that --.

3 Q So, would it be fair to say that, at the time the
4 personnel committee was charged with researching and
5 investigating this particular claim, your expectation was
6 that you would receive a recommendation back from that
7 committee at some point?

8 A Yes, sir.

9 Q Did the committee hire or did the county hire legal
10 counsel to assist the committee in its evaluation of the
11 claim of Mr. Preston?

12 A Yes, we, we had a -- if I can give you a little bit of
13 background in the path. I remember us going over to council
14 members. I don't know if it was everybody there, but I know
15 that there was a number -- I know Ms. Floyd was there. I
16 know Mr. McAbee was there. I know -- it might -- no, it
17 might of just been Ms. Floyd, Mr. McAbee, Mr. Greer, Ms.
18 Wilson, and I when they had a meeting. I always tried to go
19 to some of these committee, committee meetings.

20 MR. DAVIS: May I, Your Honor?

21 THE COURT: Yes, sir.

22 MR. DAVIS: I mean this is a question and answer mode
23 of interrogation.

24 THE COURT: I think he's gotten away from the question
25 that you asked.

Robert Waldrep - Direct examination
by Mr. Tessier

1 MR. TESSIER: I'll give, I'll give a better question,
2 Your Honor.

3 THE COURT: Why don't you give him another question?

4 Q The question, Mr. Waldrep, was did just -- this was an
5 easy question.

6 Did they hire council, either the personnel committee
7 or did the county council hire---

8 A Well, they did, and---

9 Q And tell us, if you would---

10 A I just wanted to explain how that process --.

11 Q And that was my next question.

12 Can you tell us how that process occurred?

13 A Okay.

14 Q Were you involved in it, how many lawyers were, were
15 interviewed, that kind of thing?

16 A Well, there were three lawyers that were proposed, and
17 I can't remember the names of the other two, but I
18 particularly remember Mr. Bright's name.

19 Q Is that Tom Bright?

20 A Tom Bright, right.

21 Q Do you remember what firm he's from?

22 A Ogletree Firm.

23 Q And, so, Tom Bright from Ogletree and a couple other
24 law firms were considered?

25 A That's correct, that I understood practiced law and we,

Robert Waldrep - Direct examination
by Mr. Tessier

- 1 we, we met in the side room beside the, the main room that
2 we have at the courthouse. It was kind of a call meeting I
3 guess you might say of that committee.
- 4 Q And, and let me understand that.
- 5 Basically it sounds like the council itself evaluated
6 three different law firms and ultimately hired Mr. Bright?
- 7 A No, it's a committee.
- 8 Q Oh, a committee.
- 9 A Committee. Now, I, I chirped in although I was not on
10 the committee because I was interested in who would be the
11 interpreter of Mr. Hoskins letter, and when I saw that Mr.
12 McAbee and Mr. Greer and Mr., Ms. Floyd -- I'm trying to
13 think about her being in there too. Anyway -- and they
14 were, they were very anxious for Mr. Bright to be the, the
15 attorney. That made me uncomfortable, you know, and -- but,
16 nevertheless, they had the votes to get it done.
- 17 Q And Mr. Bright was ultimately hired?
- 18 A Yeah, and, so, he was, he was selected.
- 19 Q And, to your knowledge, was Mr. Bright an employment
20 lawyer?
- 21 A Yes.
- 22 Q And did -- and as I understand it, Mr. Bright was
23 charged with helping the personnel committee evaluate Mr.
24 Preston's---
- 25 A That's correct.

Robert Waldrep - Direct examination
by Mr. Tessier

1 Q Did the personnel committee actually meet at some point
2 to discuss the claim?

3 A They did.

4 Q How -- how did that happen and did you attend?

5 A Well, it was interesting. The way it happened was that
6 I did not get a notice myself that they were gonna have a
7 personnel meeting. Normally we have our personnel meetings
8 in the city of, in Anderson at the courthouse, you know.
9 But I found out, at the last minute, that they were having
10 this personnel meeting in Powdersville at the, the library
11 out there. Mr. Welch's district, which is about 20 miles
12 away, and I was -- Ms. Wilson and I were -- she found out
13 too and we were able to make it to the, to the meeting in
14 Powdersville.

15 Q Did you have the impression that the meeting was set in
16 Powdersville for a reason, that far away?

17 A I, I felt like maybe I wasn't welcome, you know.

18 Q And what, what happened when you got to the meeting in
19 Powdersville, the meeting of the personnel committee?

20 A They immediately decided that they would go into
21 "executive session." It's three of them, go into executive
22 session, and they decided that I -- neither I nor Ms. Wilson
23 would, would be able to go in. I pulled a section of the
24 code out, the statute that we operate under, which says, in
25 effect, that county council members are encouraged to be in

Robert Waldrep - Direct examination
by Mr. Tessier

1 attendance of, of committee meetings.

2 And, so, finally, they, they let me attend, but it was
3 a lot of noise about it, and I knew that they didn't really
4 want me in there, but felt like maybe they had to let me in.
5 So, I was able to attend.

6 Q And what happened when you attended that, that
7 personnel committee meeting?

8 what was discussed?

9 A Well, I particularly remember Mr. Wilson, who didn't
10 want me in there anyway, speaking to Mr. Bright and
11 encouraging Mr. Bright to find justification for Mr. Hoskins
12 position, and it was, when Mr. Bright did not agree that Mr.
13 Hoskins letter had real merit to it, the atmosphere became a
14 little bit charged and irritated on the committee that
15 Mr. Bright had come up with a decision, which obviously they
16 found displeasing.

17 Q And before that meeting had occurred, were you aware
18 that Mr. Bright interviewed the various council members
19 about Mr. Preston's claim just as a general matter?

20 A You know, I, I came -- I wasn't sure that he had talked
21 to everybody. I know I talked to him a couple of times.

22 Q And what was your assessment of the general advice
23 Mr. Bright was giving to the personnel committee at the
24 meeting that you attended?

25 A Well, I was, I guess, kind of felt pleased that my

Robert Waldrep - Direct examination
by Mr. Tessier

1 humble common sense opinion, with limited experience in that
2 area, coincided with Mr. Bright's opinion that this matter
3 had little, little merit to it.

4 Q What happened after that first meeting?

5 Did the personnel committee meet again?

6 A They did and this time I tried to attend. It was at
7 the courthouse, and I tried to attend the meeting, but I was
8 told that I could not enter this time, that they had done
9 more research, and they found out that executive sessions --
10 they could still exclude me from executive sessions, and
11 they had, I don't know, park police, deputies up there, and
12 I decided that discretion was the better part of valor, and
13 I did not try to break into the meeting or anything. So,
14 they had their meeting alone in executive session.

15 Q Were you the only county council member who wanted to
16 attend that second meeting of the personnel committee and
17 did not?

18 A I think Ms. Wilson wanted to attend also.

19 Q Did Ms. Wilson attend the first personnel committee
20 meeting with you?

21 A Yes, she did, as I recall.

22 Q Do you recall how long that first meeting took roughly?

23 A We must of been in there -- well, maybe a little more
24 than a half an hour or so, and that was -- the first thing
25 that I, I recall was the, the amount that Mr. Hoskins had

Robert Waldrep - Direct examination
by Mr. Tessier

1 demanded I think in his letter about how much money he
2 wanted. Well, I'm not sure whether it's in the---

3 Q I think that comes in a subsequent letter, Mr. Waldrep.
4 Just to help you.

5 THE COURT: I didn't see it in there.

6 Go ahead.

7 Q That comes in a subsequent letter, the amount.

8 A Okay. All right. Okay. Anyway, there was a
9 tremendous sum, over a million dollars, that, that
10 Mr. Bright talked about as a demand that he, he felt like
11 that we were not liable for that, that sum.

12 Q Did you ever hear back from the personnel committee
13 with any sort of recommendation as to how, if at all, to
14 respond to the Preston claim?

15 A No, we never heard back.

16 Q What is the next you heard about Mr. Preston's claim
17 after that second personnel committee meeting that you were
18 not allowed to attend?

19 A November the 18th of 2000 -- let's see. See, that
20 would be 2008?

21 Q I'll show you---

22 A Two thousand -- well --.

23 Q Sir, I -- let me show you, Mr. Waldrep, if I may -- may
24 I approach, Your Honor?

25 THE COURT: Why don't we take a short break?

Robert Waldrep - Direct examination
by Mr. Tessier

1 I think we're getting ready to go into the meetings
2 where the agreement---

3 MR. TESSIER: Yes, sir.

4 THE COURT: ---was approved and rather than break that
5 up, we've been going for about two hours. So, we'll take,
6 we'll take a short break.

7 I'll caution the witness that, during the break, you
8 should not discuss your testimony, either past, present, or
9 future, with anyone. You're, of course, you can move about
10 the room.

11 we'll be on recess for about five to ten minutes.

12 Court's in recess at this time.

13 Thank you very much.

14 (Whereupon, a short recess was taken at this time.)

15 THE COURT: Mr. Tessier, you may proceed.

16 MR. TESSIER: Thank you very much.

17 Your Honor, may I approach the witness?

18 THE COURT: Yes, sir, you may.

19 MR. DAVIS: Your Honor, one point out of order. I
20 don't know -- is this a live telecast that, that's going on
21 over here?

22 THE COURT: I'm not aware that it's live, no, sir.

23 MR. DAVIS: Okay. Just recording. I want to make sure
24 in light of the Court's sequestration, sequestration order.

25 THE COURT: Sequestration.

Robert Waldrep - Direct examination
by Mr. Tessier

1 MR. DAVIS: I was a little concerned. Something
2 happened to my ability to speak.

3 THE COURT: No, I wasn't aware that there was any live
4 broadcast.

5 MR. DAVIS: I was a little bit worried that that might
6 be running afoul of that.

7 THE COURT: No, sir.

8 MR. DAVIS: Thank you.

9 THE COURT: All right. I'm sorry. You may proceed and
10 you may approach.

11 MR. TESSIER: Thank you, Your Honor.

12 THE COURT: Yes, sir.

13 CONTINUED DIRECT EXAMINATION

14 BY MR. TESSIER:

15 Q Mr. Waldrep, I just want to hand you three documents
16 that have been preadmitted Exhibits 4, 5, and 5-A, and just
17 to see if you agree with me as to what they are.

18 Mr. Waldrep, would you agree that Exhibit 4 is a copy
19 of the agenda for the Anderson County Council meeting that
20 occurred on November 18th, 2008?

21 A Yes, sir.

22 Q And that's a certified copy of that agenda?

23 A Yes, sir.

24 Q And Exhibits 5 and 5-A, would you agree Exhibit 5 is a
25 complete copy of the actual minutes from the

Robert Waldrep - Direct examination
by Mr. Tessier

1 November 18th, 2008, county council meeting as certified
2 Mr. Eddlemon?

3 A Yes, sir.

4 Q whereas Exhibit 5-A, for the Court's sake as well, is
5 actually a condensed version that starts from the motion
6 made by Mr. Ron Wilson at that meeting and continues to the
7 end.

8 Is that your understanding as well?

9 A Yes, sir.

10 Q If you look at the agenda which is marked as Exhibit
11 No. 4, does it indicate anywhere on this agenda, Mr.
12 Waldrep, that a severance agreement for Joey Preston will be
13 considered at the meeting?

14 A No, sir, there's nothing to indicate that.

15 Q And does it indicate anywhere on the agenda for the
16 November 18th, 2008, county council meeting that an
17 employment contract for Michael Cunningham as county
18 administrator will be considered?

19 A No, sir.

20 Q You have an item, Mr. Waldrep, on the second page of
21 Exhibit 4, Item Number 16 on the agenda, is a item entitled
22 discussion of the authority of county council to employ an
23 administrator listing Mr. Bob Waldrep?

24 A Yes, sir.

25 Q Is that item on the agenda, Mr. Waldrep, have anything

Robert Waldrep - Direct examination
by Mr. Tessier

1 to do with a severance agreement for Mr. Preston?

2 A No, sir, it does not.

3 Q And did you ever reach that item on the agenda at the
4 meeting of November 18th?

5 A Say, say that again for me.

6 Q Did this item on the agenda, Item Number 16, was that
7 ever reached by county council---

8 A Oh, no.

9 Q ---at this meeting?

10 A No, it was -- the council dissolved -- they adjourned I
11 think before they got to anything like that.

12 MR. TESSIER: And, Your Honor, at this time, if we can
13 beg the Court's indulgence, what we'd like to do is play a
14 video that shoes the portion of the Anderson County Council
15 meeting of November 18th. It's been preadmitted as
16 Plaintiff's Exhibit No. 6. It goes from that portion where
17 Mr. Wilson makes his motion to amend the agenda to the end
18 of the meeting. It takes about 35 -- oh, I'm sorry. It
19 doesn't go to the meeting, Your Honor. It goes through Ms.
20 Floyd's motion to consider hiring Mr. Cunningham. So, I
21 think the title is about 35 minutes probably.

22 THE COURT: This is, this is the video we saw during
23 the pretrial?

24 MR. TESSIER: It's similar to that, Your Honor. This
25 is actually an extended version of that.

Robert Waldrep - Direct examination
by Mr. Tessier

1 THE COURT: Okay.

2 MR. TESSIER: It's a little bit more content. We think
3 it's important for, for the public to see this and for Mr.
4 Waldrep to see it so that he can then answer the remaining
5 questions I have, which will be pretty short.

6 THE COURT: All right. I'll allow you to do that.
7 I've seen, I've seen the one that you showed during the
8 pretrial---

9 MR. TESSIER: Yes, sir, Your Honor.

10 THE COURT: ---hearings and I recall it vividly. I
11 don't know that you need to---

12 MR. TESSIER: Yeah, this is---

13 THE COURT: ---go through it again.

14 MR. TESSIER: Well, this is the complete version is the
15 difference.

16 THE COURT: Okay.

17 MR. TESSIER: Every vote comes up on this version.

18 THE COURT: All right. I'll allow you to do it.

19 MR. TESSIER: We'll hand up to the Clerk of Court the
20 exhibit, a copy of the same, and if it suits the Court, Mr.
21 Waldrep can remain there or sit wherever he likes.

22 THE COURT: What -- however you want to do it. I mean
23 you said you're gonna ask him some questions about that.

24 MR. TESSIER: Afterwards. Not during that, but
25 afterwards.

Robert Waldrep - Direct examination
by Mr. Tessier

1 THE COURT: Okay. As long as he can see it well, I'm
2 happy. If he needs to move he's welcome to move around.

3 WITNESS: I'm fine, yes, sir.

4 THE COURT: All right.

5 (WHEREUPON, Plaintiff's Exhibit No. 6 was played for
6 the Court at this time.)

7 MR. TESSIER: Your Honor, if I may continue the
8 questioning?

9 THE COURT: Yes, sir.

10 Q Mr. Waldrep, can you describe for us how you felt as
11 that meeting on November 18th, 2008, took place?

12 MR. DAVIS: Your Honor, objection. Relevance.

13 why does how he feels make a difference in this case?

14 MR. TESSIER: I think it's relevant, Your Honor, state
15 of mine. It shows what was happening at the time to---

16 THE COURT: I'm gonna ask you to rephrase it. I'm not
17 sure---

18 MR. TESSIER: Okay. Let me.

19 THE COURT: Feelings, feelings are one thing.

20 MR. TESSIER: Let me ask it this way then.

21 THE COURT: All right. Please do.

22 Q Mr. Waldrep?

23 THE COURT: Thank you.

24 Q Mr. Waldrep, can you describe for us how the meeting
25 took place in your view in terms of the procedures that were

Robert Waldrep - Direct examination
by Mr. Tessier

1 followed and---

2 MR. DAVIS: Your Honor---

3 A well---

4 MR. DAVIS: ---cumulative. The video we just watched
5 was the exact thing he's about to testify to.

6 THE COURT: Well, I'm going to allow him to state,
7 state how he felt the meeting went forward. I'll let him go
8 ahead and do that.

9 A I was -- first of all, I was shocked and surprised. I
10 had never seen a public body act in that way before without
11 notice to the public or notice to the body itself. They
12 were taking that action, and I was, of course, greatly
13 disappointed and shocked.

14 Q were there other meetings, regularly scheduled Anderson
15 County Council meetings, that were on the calendar that
16 would occur between that November 18th meeting at the end
17 of the calendar year?

18 A Yes, there were meeting -- that meeting was in
19 November. I think we had a couple of meetings, maybe three,
20 I'm not sure, that, that we could of had notice of such a
21 contract, and, you know, that at least a couple of meetings
22 in December, as I recall, that was -- we usually have the
23 scheduled meetings.

24 Q Was there any reason that you could see why this issue
25 of Mr. Preston's severance agreement had to be conducted at

Robert Waldrep - Direct examination
by Mr. Tessier

1 this meeting without being placed on the agenda?

2 A No, I couldn't understand why unless there was a
3 tactical reason for Mr. Preston's attorney to accelerate
4 this process and to get it done, and, and, you know, in a
5 fashion that---

6 MR. DAVIS: Your Honor, I move to---

7 A That's the only reason I can think of.

8 MR. DAVIS: I move to strike that.

9 THE COURT: I'll sustain the objection. Strike that
10 response as to what tactics the attorney may of had---

11 MR. TESSIER: Yes, sir.

12 THE COURT: ---in his mind.

13 Q Let's move on to a different question, Mr. Waldrep.

14 Was Mr. Preston present at that meeting that we just
15 observed?

16 A Yes, he was.

17 Q Did you ever see him leave the meeting?

18 A I don't recall seeing him leave the meeting. He might
19 of moved his chair or something I think when Mr. Cunningham
20 was appointed.

21 Q Had you been given any indication that the agenda for
22 that meeting was going to be amended to discuss the topics
23 of both Mr. Preston's severance agreement and the hiring of
24 Mr. Cunningham?

25 A None whatsoever.

Robert Waldrep - Direct examination
by Mr. Tessier

- 1 Q At some point the severance agreement for Mr. Preston
2 was, in fact, passed out at the meeting, correct?
- 3 A Was there a point---
- 4 Q At some point the severance agreement, which I believe
5 you have in front of you, still Mr. Waldrep---
- 6 A Yeah.
- 7 Q ---Exhibit 7---
- 8 A Uh-huh. (Affirmative).
- 9 Q ---was that passed out at the meeting at some point?
- 10 A I believe it was, yes.
- 11 Q Had you ever seen that severance agreement prior to the
12 November 18th, 2008, meeting?
- 13 A No, sir.
- 14 Q Did you have time to study it sufficiently to be in a
15 position to vote on it that night?
- 16 A No, sir, I didn't.
- 17 Q Did you observe whether other, other council members
18 present at the meeting actually took the time to read the
19 document when it was passed out?
- 20 A I didn't notice that they had. It appeared to me that
21 they had read it sometime before they get to the meeting.
- 22 Q What type of substantive debate did you have about the
23 severance agreement at that meeting?
- 24 A What type of --?
- 25 Q Substantive debate about the content.

Robert Waldrep - Direct examination
by Mr. Tessier

1 A well, I had a lot of questions about, first of all,
2 whether it was justified. Secondly, whether or not the
3 amounts that were put in were appropriate, and that -- that
4 concerned me.

5 MR. DAVIS: Your Honor, it was nonresponsive. I mean
6 it's not even answering the questions that are being asked
7 at this point.

8 MR. TESSIER: I will---

9 THE COURT: I will ask the witness to be responsive.
10 You may proceed.

11 Q Mr. Waldrep, listen to the question if you would.
12 My question was what type of substantive debate, if
13 any, was held during that meeting---

14 A Oh, I'm sorry. I---

15 Q ---about the agreement, the severance agreement?

16 A I, I didn't know of any. I couldn't see of any debate.
17 The argument seemed to be about whether the procedure,
18 whether we should even be looking at this agreement at that
19 time.

20 Q And at the same meeting, November 18th, 2008, of
21 county council, would you agree that we saw a document
22 passed out that showed a proposed transfer of county funds
23 that would be used to pay for the severance agreement for
24 Mr. Preston?

25 A Yes, it's on there.

Robert Waldrep - Direct examination
by Mr. Tessier

1 MR. TESSIER: If I may approach, Your Honor?

2 THE COURT: You may.

3 Q I'm gonna hand you what's been marked as Plaintiff's
4 Exhibit No. 8, which has been preadmitted.

5 Is that the document, Mr. Waldrep, that was passed out
6 at the November 18th, 2008, meeting---

7 A Yes.

8 Q ---concerning the transfers?

9 A Yes, I've, I've seen it. I mean this is what they
10 presented. That was the first time I'd seen it.

11 Q Were their motions to reconsider that were made at that
12 meeting?

13 A Yes, there were.

14 Q What was -- what did you make of that?

15 A Well, council had gotten sort of sophisticated I think
16 in parliamentary procedure to the extent that they realized
17 that the, the people that were kind of running the show that
18 night, that if they made a motion for reconsideration, and
19 that would cutoff any further opportunity for council to
20 meet at a separate time, subsequent time to change their
21 decision on the contract.

22 Q The final vote that we saw, Mr. Waldrep, in -- on the
23 reconsideration of Mr. Preston's severance agreement was a
24 vote that was five to one with you abstaining.

25 Why did you abstain from that last vote?

Robert Waldrep - Direct examination
by Mr. Tessier

1 A well, it's -- things were moving along, I think, at a
2 pretty rapid clip. I was trying to factor in what the
3 strategy was that they were using to cut-off debate. I --
4 and I, I don't know if I was thinking exactly clearly when I
5 made that of what the implications were gonna be with regard
6 to reconsideration or non-reconsideration, and because I
7 just didn't feel comfortable with the whole thing. I
8 disproved of everything. I just decided I wouldn't vote on
9 that issue.

10 Q And, at some point, we saw Ms. Floyd handed out a
11 proposed contract to hire Mr. Cunningham as the new county
12 administrator.

13 Do you remember that?

14 A That's correct.

15 Q And let me -- may I approach one last time, Your Honor?

16 THE COURT: You may.

17 Q This I'm gonna show you, Mr. Waldrep, has been
18 preadmitted as Plaintiff's Exhibit No. 9.

19 Is that the proposed master employment agreement that
20 was handed out by Ms. Floyd to hire Mr. Cunningham as the
21 new county administrator?

22 A Yes, this, this is what was handed out.

23 Q And had you seen that document before the
24 November 18th, 2008, meeting?

25 A No, sir, I had not seen this document. I was just

Robert Waldrep - Direct examination
by Mr. Tessier

1 checking the, the dates on this document here. I think it
2 appears to be dated the 19th of November, 2008.

3 Q So, the day after the meeting?

4 A Yes.

5 Q But is that still the document that was actually passed
6 out at the meeting?

7 A That, that appears to be the document that was passed
8 around.

9 Q It appears to you though that, when looking at it, and
10 it was actually signed or executed on the next day, is that
11 right?

12 A Yes.

13 Q Did it surprise you that Ms. Floyd had that contract
14 already prepared and in her hand for this meeting?

15 A Well, yeah, it, it surprised me. She just pulled it
16 out of her pocketbook. She had several copies and pulled it
17 out of her pocketbook.

18 MR. DAVIS: Your Honor, we just watched the videotape.
19 She did not pull it out of her pocketbook.

20 THE COURT: Well, the videotape speaks for itself, and,
21 of course, you can cross-examine the witness as to his,
22 extent of his recollection. I -- the videotape's in
23 evidence. So, we'll -- I'll probably take a look at it for
24 a third or fourth time before I'm through with this case.

25 MR. DAVIS: Yes, sir.

Robert Waldrep - Direct examination
by Mr. Tessier

1 THE COURT: You may proceed.

2 Q Mr. Waldrep, were any inquiries made to you as to how
3 you might vote on a severance agreement for Mr. Preston
4 before this meeting happened?

5 A Was there any what?

6 Q Anybody ask how you might vote on a severance agreement
7 before the meeting.

8 A Before, no, no.

9 Q Did council ever consider the remaining items that were
10 left on the agenda after it voted on the contract to employ
11 Mr. Cunningham that night?

12 A They did not.

13 Q I'm gonna show you now -- if you don't mind putting
14 Exhibit 7 in front of you, which is the severance agreement
15 for Mr. Preston.

16 A Okay. Let me see if I've got them all.

17 Q Tell me when you---

18 A Yeah. Okay.

19 Q If you look at the severance agreement, and if you turn
20 to Section 4 of the severance agreement.

21 A Right.

22 Q Are you there?

23 I'm also gonna show it on the screen.

24 How much did the severance agreement provide for in
25 payments to or for the benefit of Mr. Preston?

Robert Waldrep - Direct examination
by Mr. Tessier

1 A well, it was a total of \$1,139,833 plus a 2006 Yukon
2 vehicle.

3 Q Okay. And how much of the \$1,139,833 figure was
4 attributed to the value of the severance provision of Mr.
5 Preston's master employment agreement?

6 A Looks like it's 700 -- it's the severance benefit?

7 Q Right.

8 A Oh, it looks like it's \$780,575.

9 Q And how much of that severance, total severance payout
10 to or on Mr. Preston's behalf was attributed to the value of
11 the county purchasing retirement service credit on Mr.
12 Preston's behalf?

13 A It appears to be \$359,258.

14 Q Did you think those payments were justified to
15 Mr. Preston?

16 A No, sir.

17 Q Did you ever hear any explanation as to the legal basis
18 that would justify the payment of those amounts?

19 A Not really. We had no debate on that. No figures to,
20 to, to look at or to determine or to compare to anything
21 else. And, so, these were the, seems like, pretty much the
22 same figures that Mr. Hoskins had asked for.

23 MR. TESSIER: Your Honor, I don't have any further
24 questions for Mr. Waldrep.

25 Would you like me to retrieve those exhibits for the

Robert Waldrep - Direct examination
by Mr. Tessier

1 clerk or leave them with him?
2 THE COURT: Are those the actual exhibits?
3 MR. TESSIER: Yes, sir.
4 THE COURT: Yes, you might want to -- well, you might
5 go and get them back. I don't know if---
6 MR. TESSIER: I'll just---
7 THE COURT: ---Mr. Davis wants to get into that.
8 MR. TESSIER: I'll assemble them back in order, Your
9 Honor.
10 THE COURT: All right.
11 (WHEREUPON, Mr. Tessier tripped at this time.)
12 THE COURT: Are you all right?
13 Hope there's no charge---
14 MR. TESSIER: I better be careful.
15 THE COURT: I hope there's no extra charge for that.
16 Okay.
17 MR. TESSIER: Thank you, Your Honor. That's all I
18 have.
19 THE COURT: Yes, sir, glad you're okay.
20 Mr. Davis, you may proceed.
21 MR. DAVIS: Thank you.
22 Your Honor, I could only hope to be half as cat like as
23 my opposing counsel.
24 THE COURT: I don't recommend that lawyers do that very
25 often.

Bob Waldrep - Cross-examination
by Mr. Davis

1 You may proceed.

2 CROSS-EXAMINATION

3 BY MR. DAVIS:

4 Q Mr. Waldrep, I'd like to back-up just for a minute and
5 go back to a little bit about your background.

6 You've, you've been practicing law since 1968?

7 A '64.

8 Q 1964?

9 A That's correct.

10 Q You were on Anderson County Council in 1990?

11 A I was on county council in 1990, '91, something in
12 that, that era.

13 Q Okay. You went to the Senate?

14 A Yes.

15 Q Served there 12 years?

16 A I did.

17 Q You returned to county council somewhere in that
18 '06 timeframe?

19 A Yeah, that's correct.

20 Q Served for another four years?

21 A No, not, not a full term. I served a term and then I
22 served about three-quarters of a term because I had to
23 resign and to be trustee at South Carolina State University.

24 Q You started in '06, right?

25 A I think so.

Bob Waldrep - Cross-examination
by Mr. Davis

1 Q And you ended in 2010, according to your testimony on
2 direct?

3 A I think so. You know, I, I --.

4 Q You served District 1?

5 A I did.

6 Q This lawsuit was filed in 2009, correct?

7 A I guess it, it is. Whatever the record showed.

8 Q You were on county council in 2009, right?

9 A Yes, I was. I was for a while until, until I resigned.

10 Q While you were on county council, it's true, is it not,
11 that you became familiar with the Anderson County Code
12 provision that's relate to when council members can and can
13 not vote in relation to financial interests that they may
14 have?

15 A I think so, yeah.

16 Q You know those provisions, right?

17 A I think I do.

18 Q And then that's another provision in the Anderson
19 County Code that relates to ethics as pertaining to
20 confidential information.

21 You know that provision too, don't you?

22 A Well, yeah, generally.

23 MR. DAVIS: Now, Your Honor, if you don't mind, we'd
24 like to approach. I think I have a way that we may be able
25 to accelerate---

Bob Waldrep - Cross-examination
by Mr. Davis

1 THE COURT: You may, you may approach the witness.

2 MR. DAVIS: And, Your Honor, if I may approach you as
3 well. I have a binder too.

4 THE COURT: All right.

5 MR. DAVIS: And what this binder is, Your Honor, it's
6 the exhibits that I'm gonna be asking questions about, and
7 what I hoped was that, by virtue of our flipping through
8 them in the order I'm gonna ask, it would help the Court and
9 would help the witness and help opposing counsel just stay
10 on the same page and just move more quickly.

11 THE COURT: Sure. You may proceed.

12 Q Under the tab that is Defendant's Exhibit 119, Mr.
13 Waldrep, is this Anderson County Code provision Section
14 2-37?

15 A I see --.

16 Q And what I'd like to turn your attention to, sir---

17 A I see Muni Code up there. I didn't know whether this
18 is specifically labeled for Anderson County. But I---

19 Q Well, let me turn your attention to Page 4.

20 A Okay.

21 Q Can you look at the paragraph that's numbered four?

22 Does that paragraph state, state, in part, and I quote,
23 "when members may not vote, no member shall vote on any
24 matter in which he/she has a personal or financial interest
25 greater than that of the general Anderson County public or

Bob Waldrep - Cross-examination
by Mr. Davis

1 in which he/she is otherwise disqualified by any state or
2 county law or regulation."

3 A Right.

4 Q I read that correctly, right?

5 A I see that.

6 Q Can you turn to the next tab, which is Defendant's 1?

7 A Right.

8 Q Mr. Waldrep, is this Anderson County Code Section
9 2-288?

10 A I see that.

11 Q Okay. And underneath Section A-2, it says "disclosure
12 of confidential information."

13 Do you see that?

14 A Yes.

15 Q And does that provision state, and I quote, "no
16 official or employee shall, without proper legal
17 authorization, disclose confidential information concerning
18 property, government, or affairs of the county nor shall he
19 use such information to advance financial or other private
20 interests of himself or others?"

21 A Yes.

22 Q Now, Mr. Waldrep, I'd like to turn your attention to
23 somewhat of a different topic. If you could look at Defense
24 Exhibit 136.

25 MR. TESSIER: Your Honor, this is one of the ones we

Bob Waldrep - Cross-examination
by Mr. Davis

1 object to. This exhibit, we object based on hearsay and
2 lack of foundation.

3 THE COURT: He hasn't sought to introduce it yet.

4 MR. TESSIER: Okay.

5 THE COURT: So, it's not before me---

6 MR. TESSIER: Yes, sir.

7 THE COURT: ---technically.

8 Are you going there?

9 MR. DAVIS: I'm going to introduce this exhibit into
10 the record, Your Honor.

11 THE COURT: All right. Then maybe we ought to address
12 it right now, and then I'll get ahead of myself there.

13 MR. TESSIER: Yes, sir.

14 THE COURT: Mr. Tessier.

15 MR. DAVIS: I think it may be a little bit premature
16 cause I think if I ask a couple questions it may---

17 THE COURT: Well, I'm gonna let him ask his foundation
18 questions.

19 MR. TESSIER: Yes, sir.

20 THE COURT: When the times comes, you have the right to
21 make your objection.

22 MR. TESSIER: Yes, sir.

23 THE COURT: Yes, sir, you may proceed.

24 Q Mr. Waldrep, you were on county council as of
25 February 7th, 2008, were you not?

Bob Waldrep - Cross-examination
by Mr. Davis

- 1 A Yes, I think so.
- 2 Q And if you look at Defense Exhibit 136. It reflects a
3 carbon copy down at the bottom.
- 4 Do you see that?
- 5 A Yes.
- 6 Q And it reflects all council members received this
7 letter, does it not?
- 8 A Yes.
- 9 Q And you received this letter in February of 2008,
10 didn't you?
- 11 A Mr. Davis, if I did receive this I don't recall it. I
12 may have received it because we get an awful lot of mail.
- 13 Q Mr. Waldrep, do you recall an instance back in February
14 of 2008 where County Council Chairman Michael Thompson
15 related to the council that he was experiencing harassment
16 from members of the community?
- 17 A You know, I really don't. I was -- I -- that, that, to
18 me, doesn't register at all that he was.
- 19 Q And, Mr. Waldrep, you also don't recall instances where
20 all the other council members, except for perhaps you and
21 Ms. Wilson, received threatening letters threatening
22 sodomization of those council members, do you?
- 23 MR. TESSIER: Objection, Your Honor. This is hearsay.
- 24 A No, sir, I---
- 25 THE COURT: Just one second, Mr. Waldrep. Don't try to

Bob Waldrep - Cross-examination
by Mr. Davis

1 answer the question. He's trying to put in an objection.

2 Thank you, sir.

3 Yes, sir.

4 MR. TESSIER: What, what council members may have said
5 about harassing letters they may have received is, first of
6 all, hearsay because they're not here to say it, and, second
7 of all, harassing letter content is further hearsay one step
8 removed because it is an anonymous letter from who knows
9 whom. So, I don't think this is a fruitful area of inquiry.

10 MR. DAVIS: Well, Your Honor---

11 MR. TESSIER: It's objectionable.

12 MR. DAVIS: Number one, that wasn't the question I
13 asked him. I asked him did he remember, during this
14 timeframe, whether there were council members who were
15 complaining of receiving threatening letters, letters
16 wherein such things as sodomization were being threatened.

17 Now, he was on county council at that time. If -- it
18 seems like to me that if somebody got a letter or heard
19 about a threat like that, that would be the type of threat
20 someone might remember. And, so, I'm asking him does he
21 recall that.

22 MR. TESSIER: And one other objection with regard to
23 relevance.

24 THE COURT: Well, he's not asking it, I don't think,
25 for the truth of the matter asserted. I think he's asking

Bob Waldrep - Cross-examination
by Mr. Davis

1 whether he heard of that and what his state of mind might
2 have been. I think that's where you're going. Had he heard
3 those things.

4 I'm gonna overrule the objection. If he has a
5 recollection, maybe that becomes objectionable at some point
6 in time, but we'll see whether he's heard of that or not.

7 Go ahead, Mr. Davis. I'll allow you to ask the
8 question. He's on cross-examination.

9 Q Mr. Waldrep, do you recall an instance, in the
10 beginning of 2008, where it was reported to the entirety of
11 county council that the other council members were actually
12 receiving anonymous threatening letters at their home?

13 A The only thing I can remember is that there was an
14 atmosphere of counterthreats of people getting letters that
15 were suppose to be investigated by SLED. I remember that
16 much, Mr. Davis. But as to a particular letter going to
17 someone on council, I don't. I really don't.

18 Q Fair enough. Let's move on.

19 Mr. Waldrep, I'd like to turn your attention to the
20 2008 primary. You were asked some questions about the 2008
21 primary on direct.

22 Remember that?

23 A Yeah.

24 Q If I recall correctly, the 2008 primary and I guess all
25 primaries occur in June, is that right?

Bob Waldrep - Cross-examination
by Mr. Davis

1 A Yeah, I believe so. Some, sometimes that -- they other
2 times. But, as I recall, that was in June that year.

3 Q In June of 2008, Tom Allen ran against Bill McAbee for
4 District 4?

5 A Right.

6 Q Tom Allen won?

7 A Right.

8 Q In June of 2008, Eddie Moore ran against Larry Greer in
9 District 3?

10 A Right.

11 Q Eddie Moore won?

12 A Right.

13 Q In 2008, Tom -- Tommy Dunn ran against Michael
14 Thompson?

15 A Correct.

16 Q Tommy Dunn won, right?

17 A well, he did after -- he didn't really win. Actually
18 what happened was I think he got less votes than that were
19 necessary for him to prevail, and then there was another
20 process that continued on where I think Mr. Thompson
21 withdrew or in some way, and ultimately Mr. Dunn was
22 declared the winner. That's what I -- for some reason.

23 Q In June of '08, Tommy Dunn and Michael Thompson ran
24 into a run-off?

25 A Right.

Bob Waldrep - Cross-examination
by Mr. Davis

- 1 Q And then Mr. Thompson dropped out? .
2 A Right.
3 Q Tommy Dunn won?
4 A Ultimately.
5 Q And in June of '08, you ran against Raymond MacKay?
6 A He ran against me.
7 Q Right.
8 Raymond -- this is a fair point.
9 A Okay.
10 Q Raymond MacKay, he ran against you---
11 A Right.
12 Q ---in June of '08, right?
13 A Right.
14 Q And you and Mr. MacKay got into a run-off?
15 A Right, Mr. Brooks Brown ran also.
16 Q And Brooks Brown, when he was the third vote getter, he
17 endorsed you, right?
18 A Ultimately he did.
19 Q And then you got into the run-off with Mr. MacKay?
20 A That's correct.
21 Q And you won?
22 A I did.
23 Q And you won sometime on or about June 24th of 2008?
24 A I think it's -- the run-off is two weeks or something
25 after the regular time had passed. That probably coincides.

Bob Waldrep - Cross-examination
by Mr. Davis

- 1 Q In a very short timeframe after you won on
2 June 24th of 2008 you had a victory party?
3 A I did.
4 Q That victory party occurred somewhere around the
5 July 4th of 2008 timeframe, did it not?
6 A I think so. I think so.
7 Q It would of happened after June 24th, right?
8 A Yeah, I wouldn't of been celebrating before I won.
9 Q And it would of happened in a fairly short period of
10 time after you won on June 24th?
11 A That's correct.
12 Q On June 24th of 2008 you told the Anderson Independent
13 Mail, and I quote, "it's not often you get the chance to run
14 against a candidate and an administrator."
15 A Right.
16 Q End quote.
17 You said that, right?
18 A I did. I believe I did. That sounds like something
19 I'd say.
20 Q You don't deny saying it?
21 A No.
22 Q Between June of '08 and December 31st of '08, that's
23 the timeframe when you started having meetings in your
24 office, right?
25 A That sounds about right.

Bob Waldrep - Cross-examination
by Mr. Davis

- 1 Q And for the next series of questions I'm gonna talk,
2 talk to you about that time period.
3 okay?
4 A Okay.
5 Q You had meetings at your law office, right?
6 A I did.
7 Q You had them on Sundays?
8 A I did. After church.
9 Q You had them after the primary, right, in June?
10 A Yeah.
11 Q You invited Tommy Dunn?
12 A I did.
13 Q You invited Tom Allen?
14 A I did.
15 Q You invited Cindy Wilson?
16 A I did.
17 Q You obviously were there too?
18 A Uh-huh. (Affirmative).
19 Q That's a yes?
20 A Eddie Moore.
21 Q Eddie Moore was there. That's right.
22 A Right.
23 Q You, at one point, you, you invited Bob Daniel to come,
24 didn't you?
25 A Yes, I think we did.

Bob Waldrep - Cross-examination
by Mr. Davis

- 1 Q And at one point there were attorneys from the Nexsen
2 Pruet Law Firm that attended some of those meetings, did you
3 not?
- 4 Were there not?
- 5 A I'd have to think about that one. I don't remember --
6 I really don't remember -- now, we had Kurt Gibson come in.
- 7 Q Kurt Gibson was there?
- 8 A Yeah, Kurt Gibson and we had Tom Beckwith there.
- 9 Q Tom Beckwith was there?
- 10 A Uh-huh. (Affirmative).
- 11 Q You testified on direct that these were very open and
12 inclusive meetings, did you not?
- 13 A Yes, for kind of good government meetings I thought
14 they were.
- 15 Q Open inclusive meetings for people who thought exactly
16 like you though, right?
- 17 A Not exactly. That's what we were trying to determine.
- 18 Q And, for example, Gracie Floyd, she's a democrat,
19 right?
- 20 A She is.
- 21 Q You didn't invite her?
- 22 A I, I haven't invited Ms. Floyd anywhere.
- 23 Q And Ron Wilson, he was a republican, right?
- 24 A Right.
- 25 Q You didn't invite him?

Bob Waldrep - Cross-examination
by Mr. Davis

- 1 A No, I didn't.
- 2 Q Mr. Waldrep, during those meetings, it's true, is it
- 3 not, that you discussed a number of things?
- 4 A That's very true.
- 5 Q One thing that you talked about was the services of the
- 6 McNair Law Firm, right?
- 7 A Possibly, yes.
- 8 Q And you also discussed, during those meetings, the
- 9 potential hiring of Nexsen Pruet, did you not?
- 10 A We may have, yes.
- 11 Q And, in fact, at one point you actually met with a
- 12 member of the Law Firm of Nexsen Pruet?
- 13 A Did.
- 14 Q And we had a -- we had a motions hearing in this case
- 15 about that, didn't we?
- 16 A About hiring -- oh, you---
- 17 Q About your meeting with the Nexsen Pruet lawyer, right?
- 18 A Yeah.
- 19 Q And you submitted an affidavit, did you not?
- 20 A I guess. I may have.
- 21 Q And during that meeting and in your affidavit, the
- 22 county took the position that it was partly privileged
- 23 because you were talking to Nexsen Pruet about the potential
- 24 of hiring them for the county, right?
- 25 A Right.

Bob Waldrep - Cross-examination
by Mr. Davis

1 Q You discussed with folks at your meeting at your law
2 office the prospect of hiring a financial investigator, did
3 you not?

4 A A financial --?

5 Q Investigator. An auditor.

6 A Oh, yes, yes.

7 Q A CPA, whatever.

8 A Oh, yeah, yeah. Well, somebody. An auditor.

9 Q You talked about that at length?

10 A Uh-huh. (Affirmative).

11 We did.

12 Q After county council changed in January of 2009, in the
13 very first meeting, the county hired Nexsen Pruet, did it,
14 did it not?

15 A I believe they did.

16 Q And the very first meeting the county hired Bob Daniel,
17 did they not?

18 A They did.

19 Q And during your meetings in your office, between June
20 of '08 and 12/31 of '08, you had conversations about certain
21 employees, didn't you?

22 A Conversation with whom?

23 what?

24 Q You had conversations about certain employees, didn't
25 you?

Bob Waldrep - Cross-examination
by Mr. Davis

1 A With whom?

2 I mean you're talking---

3 Q The group. The group in your office.

4 A The group?

5 At that time I'm sure we had various employees talk --
6 conversations about employees and Bob Daniels and attorneys
7 and we had -- we did all that.

8 Q Do you deny having talked about Heather Jones?

9 A When?

10 Q During the meetings in your office between June of 2008
11 and 12/31/08, do you deny having spoke with the group about
12 Heather Jones?

13 MR. TESSIER: Objection. At this point, Your Honor, I
14 just want to clarify one thing. I think it's not relevant
15 to the issues before the Court, what may of happened after
16 the severance agreement was signed November 18th, 2008,
17 until December 31st, 2008. I think it's an important
18 distinction, and if there are questions about the timeframe
19 before the severance agreement, that's one thing. We think
20 questions about what may of happened after the severance
21 agreement is now over is not relevant.

22 MR. DAVIS: Your Honor?

23 THE COURT: Mr. Davis.

24 MR. DAVIS: There is a material timeframe at work here,
25 and there is a systematic pattern that we're talking about,

Bob Waldrep - Cross-examination
by Mr. Davis

1 and that time period runs from June of 2008, and what they
2 were doing all along and then, when it came to fruition in
3 January of 2009. What they're gonna come in here and tell
4 you oh, we didn't have any authority. We didn't have any
5 authority. We wouldn't -- we didn't -- we couldn't do
6 anything.

7 what you're gonna hear systematically, maybe from this
8 witness, maybe he won't, but maybe he'll deny it, but you'll
9 hear over the couple of days is that chapter, line, and
10 verse, they sat there, they planned what they were gonna do,
11 they had the majority of votes, and on January 1st, 2009,
12 as the meetings minutes reflect, they did exactly what they
13 planned save one thing. Joey Preston. Because the going --
14 outgoing county council stopped them in their tracks before
15 they could do that.

16 And, so, I'm asking him questions about that. I don't
17 understand what the objection even is.

18 MR. TESSIER: It's a pretty simple objection, Your
19 Honor. What they were predicting -- what they were
20 predicting to do by Mr. Preston, which is the basis of this
21 entire claim, right, is he said there's an anticipatory
22 breach that is happened because this group of people who is
23 meeting is gonna do something to me after January, 2009.
24 whatever it was that they were going to do to him, he
25 resolves that on November 18th, 2008, when he signed off

Bob Waldrep - Cross-examination
by Mr. Davis

1 on his severance agreement.

2 So, what they might have done after that has no bearing
3 whatsoever on Mr. Preston's concern about what they might do
4 because he's now gone.

5 THE COURT: Overruled.

6 You may proceed.

7 Q Mr. Waldrep, we were talking about Heather Jones.

8 Do you remember that?

9 A Uh-huh. (Affirmative).

10 Q Between June of 2008 and December 31st of 2008, do
11 you deny that the group that met at your office was
12 discussing Heather Jones?

13 A I'm trying to think, Mr. Davis. We, we discussed all
14 employees. She may have been discussed, you know, but to
15 what degree, I, I'm somewhat, honestly, somewhat doubtful
16 because we had such a large agenda. Heather Jones was not
17 the purpose of those meetings. The meeting -- purpose of
18 those meetings was something else. Now, incidentally, her
19 name could of been mentioned because she was -- I think she
20 was economic director or something of that nature.

21 Q The question's actually much simpler than that.

22 Do you deny that the group had conversations about
23 Heather Jones?

24 A Are you saying me personally or are you saying---

25 Q No.

Bob Waldrep - Cross-examination
by Mr. Davis

- 1 A You didn't say the group.
- 2 Q Is there anybody else on the witness stand, sir?
- 3 A Yeah, you -- if you're saying that I did or did not, I
- 4 don't really remember. I just don't.
- 5 Q So, you don't deny it?
- 6 A Well, I can't, I can't if I don't remember, Mr. Davis.
- 7 I really don't recall.
- 8 Q Do you deny that the group that met in your office
- 9 between June of 2008 and December 31st of 2008 had
- 10 specific conversations about Gina Humphries?
- 11 A No, no, we, we had -- cause she was a finance director.
- 12 So, we had specific conversations I feel sure about her.
- 13 But, but Heather Johns, I don't -- she was kind of way away
- 14 from the thrust of what we were trying to do, and that was
- 15 to get our hands on the financial information.
- 16 Q You don't remember Heather Jones being discussed then,
- 17 right?
- 18 A I don't.
- 19 Q Okay. Michelle Ricketson, did you have conversations
- 20 about Michelle Ricketson?
- 21 A Mitchell Ricketson?
- 22 Q (Nods affirmatively.)
- 23 A Probably.
- 24 Q Bill Strewing.
- 25 Do you know who Bill Strewing is?

Bob Waldrep - Cross-examination
by Mr. Davis

- 1 A Oh, yeah.
- 2 Q You had a conversation about him, right?
- 3 A Yeah, we did. We -- because that was a necessity of
- 4 the park police, and I think he headed up the park police.
- 5 Q During your meetings between June 2008 and December of
- 6 2008, have you discussed who's gonna be the next county
- 7 council chairman, did you not?
- 8 A Probably.
- 9 Q You even discussed who was gonna nominate them?
- 10 A I don't remember that, but I know it was discussed.
- 11 Q The group decided that Cindy Wilson was gonna nominate
- 12 them, didn't they?
- 13 A Mr. Davis, I don't remember that process. That was
- 14 just we knew that we were talking about trying to find out
- 15 who wanted to be chairman of Anderson County Council, and
- 16 that was not something that anybody was going into lightly.
- 17 I think that was kind of a, a poll in a way of who was
- 18 interested.
- 19 Q Between June of 2008 and December 31st of 2008, the
- 20 group discussed Brandon Grace, did it not?
- 21 You know who Brandon Grace is, don't you?
- 22 A Yeah, I think I do. He was an employee at the farm.
- 23 Q Farmer's Market?
- 24 A Farmer's Market I think at one time, yeah.
- 25 Q You talked about him too, right?

Bob Waldrep - Cross-examination
by Mr. Davis

1 A It's possible he was talked about because, you know, we
2 talked about a lot of areas of operation of the county, The
3 Farmer's Market. We talked about the operation of the
4 economic development. So, these names -- the people that
5 were head of those departments would be talked about, yes.

6 Q Mr. Waldrep, Heather Jones is no longer with the
7 county, is she?

8 A Say again.

9 Q Heather Jones, she's not with the county anymore, is
10 she?

11 A No.

12 Q Bill Strewing, he's not with the county anymore, is he?

13 A No.

14 Q How about Brandon Grace, is he with the county still?

15 A No.

16 Q How about Michelle Ricketson?

17 A No.

18 Q Mr. Waldrep, you were asked questions earlier about
19 remarks that you made at the audit committee meeting on
20 August 5th, 2008.

21 Do you remember those?

22 A Yeah.

23 Q During those remarks, you discussed the potential
24 putting on leave of the county administrator and the finance
25 director?

Bob Waldrep - Cross-examination
by Mr. Davis

1 A Correct.

2 Q And that finance director is Gina Humphries, is it not?

3 A That's right.

4 Q Mr. Waldrep, during your meetings that you had at your
5 office, which you initiated, wherein you invited what would
6 be a majority of council as of January of 2009, you also
7 discussed Mr. Preston, did you not?

8 A Well, Mr. Preston was a source of conversation at some
9 of the meetings, but nothing was said about what was gonna
10 happen to Mr. Preston. We were just trying to wait until we
11 had the authority to do something. Nothing was done, no
12 action was taken, nor could any action be taken until we
13 were sworn in as elected officials.

14 Q Now, Mr. Waldrep, I know you want to tell me about all
15 the other things that you have on your mind, but my question
16 was actually very simple.

17 During those meetings between June of 2008 and
18 December 31st of 2008, you talked about Mr. Preston too,
19 didn't you?

20 A Yes, sir.

21 Q And you talked about him just like you talked about
22 Bill Strewing, and just like you talked about Gina
23 Humphries, and just like you talked about the whole other,
24 Michelle Ricketson, and all the other employees that we just
25 talked about?

Bob Waldrep - Cross-examination
by Mr. Davis

1 You talked about Mr. Preston just like them, right?

2 A I don't know if you could categorize it talk about him
3 like that. I think we gave them their individual
4 characteristics and tried to evaluate what their performance
5 was. That was a concern and that -- I think the members at
6 the meetings that I attended wanted to get information and
7 share information as to how these employees were working out
8 for the county.

9 Q And when you won your election on June 24th of 2008,
10 you proudly announced to the Anderson Independent Mail it's
11 not often you get to run against a candidate and county
12 administrator, did you not?

13 A Yes, sir, I did because Mr. Preston was very active in
14 the political process, and he prided himself on being a
15 tactician of some sort. It was my belief, if you were to
16 look at that, that election that Mr. -- what I'm trying to
17 say.

18 The guy that ran, Raymond MacKay, was pretty much a
19 product, you know, in my mind, in my belief, because when I
20 first ran Mr. Preston was extremely cordial to me. We got
21 along fine. I found him to be very charismatic and fun to
22 be around, you know, very convivial sort of guy until I
23 started asking questions, and I got elected, and I said my
24 big agenda here is I want transparency and clarity in
25 government, and that's when he did a hundred and

Bob Waldrep - Cross-examination
by Mr. Davis

1 eight degrees, and he is often, you know in the time that
2 we've been together, spoken about his political abilities.

3 Q Let me ask you a question.

4 You understand that your direct examination period is
5 over, right?

6 A The what?

7 Q You understand your direct examination period is over,
8 right?

9 I'm cross-examining you at this point.

10 A I know, but I just thought you might need that as
11 information.

12 MR. TESSIER: Objection.

13 THE COURT: Well, I'm gonna ask that you ask questions.
14 Don't lecture the witness. That's my job if I choose to do
15 it.

16 You may proceed.

17 Q Now, during that election in 2008, it's true, is it
18 not, Mr. Waldrep, that you sent out actual political
19 campaign letters that specifically spoke about Mr. Preston?

20 A There might be one out there. I haven't looked at -- I
21 haven't looked back at that campaign. So, I'm trying to
22 really wash all that out of my mind. But there's -- it's
23 conceivable that I might of said something about Mr. Preston
24 as being, you know, a manipulator and different, different
25 things that really disturbed me about an administrator that

Bob Waldrep - Cross-examination
by Mr. Davis

1 would not come forth to an elected official and answer
2 questions.

3 Q You painted him quite in an unflattering light, didn't
4 you?

5 A Well, if the truth is unflattering, that's -- so be it.

6 Q The truth in your eyes you mean?

7 A Well, that's true. But it seemed like that an awful
8 lot of people agree with my eyes.

9 Q Well, let's keep looking at some more documents. Maybe
10 we, we can make some progress together.

11 Can you turn to Defense Exhibit No. 52 for me?

12 A (Witness complies.)

13 Q Mr. Waldrep, is this email address on here
14 kelly@waldreplaw.com, is that your email address?

15 A That's correct.

16 Q And this other email address on here is sort of
17 self-explanatory, eddiemoore@fluor.com.

18 That's Eddie Moore's email address, right?

19 A Yes.

20 Q Eddie Moore was one of the incoming county council
21 members, right?

22 A That's right.

23 Q And you asked Mr. Moore, according to this
24 correspondence, to email you back the information you had
25 earlier discussed with him, correct?

Bob Waldrep - Cross-examination
by Mr. Davis

1 A We had conversations in preparation, Mr. Davis, for, I
2 think, a workshop that we were gonna have. That would of
3 been sometime I think in, in August of 2008. Yeah, sometime
4 in 2008. And what was going on was we were gonna have this,
5 this workshop meeting with the 2008 Council and we had it at
6 the library.

7 Mr. Moore wanted to communicate to me from the new
8 council people that would be elected. And, so, he, he and I
9 did communicate back and forth and I think he emailed or
10 sent something to my secretary that talks about the bid
11 procedures and financial director being placed on, on leave
12 and---

13 Q Let me ask you a question about that.

14 A Okay.

15 Q Up above the very top email, that's an email from Eddie
16 Moore to your email address dated August 4th of 2008?

17 A Uh-huh. (Affirmative).

18 Q Is it not?

19 A Right.

20 Q And it's -- what it's saying is "hey, Bob, feel free to
21 comment in red line what I'm sending to you as attached,"
22 right?

23 A Uh-huh. (Affirmative).

24 Q And then we turn the page and we look at what was
25 attached, right?

Bob Waldrep - Cross-examination
by Mr. Davis

1 A Yeah.

2 Q Okay. And those comments right there, those were Eddie
3 Moore's ideas, were they not?

4 A That's right.

5 Q Now, what I'd like to point your attention to is the
6 third sentence on this attachment, and it says, and I quote,
7 "however, I think it would be the benefit of all Anderson
8 County to wait until after January 1 in order to make sure
9 that we have an audit that would encompass the requirements
10 of our new council."

11 Do you see that in that document, sir?

12 A On paragraph -- which one?

13 Q First paragraph. Third sentence.

14 A Yeah. Generally, yeah.

15 Q And early on, in direct examination, you testified that
16 that proposal that Mr. Moore sent to you and to which you
17 turned around and delivered to the audit committee on
18 August 5th of 2008 was intended to be performed in January
19 of '09.

20 Do you remember that?

21 A Yeah, I remember that we, we discussed about what we
22 were going to do when we got into office --

23 Q Now, look down---

24 A -- if everybody's mind did not change, and there's a
25 period of time in which people made plans and then people

Bob Waldrep - Cross-examination
by Mr. Davis

- 1 sit down and things could of been different, you know.
- 2 Q Yeah.
- 3 A You never know until you're giving the discussion, the
- 4 full discussion to give somebody an opportunity to think
- 5 about it---
- 6 Q Let's keep going---
- 7 A ---and know.
- 8 Q ---and let's see -- look to see just what we can find
- 9 out in this document, sir.
- 10 Look down a little bit further.
- 11 Do you see -- and let me, let me make a footnote here.
- 12 There's a sentence here that says "you have retired army --
- 13 "you have a retired army lieutenant colonel, a construction
- 14 engineer, and a highly respected local building contractor
- 15 each with a world of experience."
- 16 Do you see that?
- 17 A Are we still on -- what, what page -- are we on Exhibit
- 18 52 on---
- 19 Q Exhibit 52, second page.
- 20 A All right. The second page and what part of that?
- 21 Is it -- what paragraph are you referring to?
- 22 Q well, we're actually just three sentences below right
- 23 where we were before.
- 24 A which is?
- 25 Q where it says "you have a retired army lieutenant

Bob Waldrep - Cross-examination
by Mr. Davis

1 colonel, construction engineer, and a highly respected local
2 building contractor---

3 A Right.

4 Q ---each with a world of experience."

5 Do you see that?

6 A Yes.

7 Q Okay.

8 A I went over---

9 Q Here's the question I have for you.

10 The army lieutenant colonel, that was Tom Allen, right?

11 A That's right.

12 Q And the highly respected local building contractor,
13 that was Tommy Dunn?

14 A That's correct.

15 Q And in this passage, Mr. Moore was referring to himself
16 as a construction engineer, was he not?

17 A That's correct.

18 Q Mr. Moore's not a construction engineer, is he?

19 A I thought he was.

20 Q Okay. Let's keep going.

21 The, the sentence -- two sentences down, which is the
22 sentence that begins with however, do you see that sentence,
23 sir?

24 However, do you see it?

25 A Wait just a minute. Oh, I'm sorry. I'm, I'm with you

Bob Waldrep - Cross-examination
by Mr. Davis

1 up here now. "However, however, if you still decide to go
2 forward and make sure---"

3 Q "However, if you still decide to go forward, we would
4 like to make sure you follow the parameters that we feel are
5 required of a credible audit."

6 Right?

7 That's what it says?

8 A Right.

9 Q This wasn't an audit that you were proposing for
10 January of 2009. This was an audit, an audit you were
11 proposing for August of '08.

12 Right?

13 A Wrong.

14 Q Not---

15 A I, I don't think you're right. We were proposing --
16 there was -- the history of this, Mr. Davis, is that the
17 county council had already decided to have an audit.

18 Right?

19 They had -- they voted to do that and -- but they voted
20 for a penny in and penny out audit, which I was opposed to,
21 and I talked to some others that that was not a wise thing
22 to do. It was extremely expensive and failed to answer the
23 questions that we were trying to, to answer.

24 So, I, I don't know what you're digging for, but as far
25 as an audit is concerned, the audit that, that we wanted to

Bob Waldrep - Cross-examination
by Mr. Davis

- 1 do was allow, first of all, the old council, 2008, to defer
2 to the new council and give them a chance to look at these
3 things.
- 4 Q That's your testimony, sir?
- 5 That's---
- 6 A Is that okay?
- 7 Q Let's just keep going.
- 8 A Okay.
- 9 Q Down below there's eight different things that---
- 10 A Yes, sir.
- 11 Q ---you're proposing?
- 12 A Yes, sir.
- 13 Q One is that a bid procedure will be written into an
14 ordinance, right?
- 15 A Uh-huh. (Affirmative).
- 16 Q Two was that the company had to not be connected to any
17 Anderson County employee?
- 18 A Right.
- 19 Q Three is that the administrator and financial director
20 would be placed on paid leave?
- 21 A Right.
- 22 Q Four, a temporary acting administrator would be hired?
- 23 A Right.
- 24 Q Five, the acting administrator will fulfill compliance
25 with Home Rule?

Bob Waldrep - Cross-examination
by Mr. Davis

- 1 A Right.
- 2 Q Six, will meet with -- the full county council will
- 3 meet with the financial audit committee, right?
- 4 A Right.
- 5 Q Seven, the acting administrator will accept bids for
- 6 the audit?
- 7 A Right.
- 8 Q Eight, after the auditing firm is chosen, it will meet
- 9 with the acting administrator, right?
- 10 A Right.
- 11 Q And then---
- 12 A And then, let me -- if I may explain unless you want to
- 13 press on before I do?
- 14 Q Well, your, your attorney can ask you whatever he'd
- 15 like on redirect, but I'd like to ask you my questions if
- 16 you don't mind.
- 17 A Well, I want to answer your question that about -- the
- 18 origin of this, Mr. Davis, is that this was Mr. Moore's
- 19 suggestion. These are not my words. But this is just
- 20 general -- I guess we talk about parameters of ideas that
- 21 Mr. Moore wanted to put forth.
- 22 Q Now, what I want you to do is to go back up above those
- 23 eight items and I want you to read a sentence that says --
- 24 and it says, I quote, "first, we would like you to appoint a
- 25 financial audit committee that includes the three newly

Bob Waldrep - Cross-examination
by Mr. Davis

- 1 elected council members."
- 2 Do you see that?
- 3 A Yes.
- 4 Q I'd like you to turn to Defense Exhibit 45.
- 5 A Okay.
- 6 Q Down on the bottom of Exhibit 45 there's an email from
- 7 your email address to Linda Gilstrap, is there not?
- 8 A That's, that's correct.
- 9 Q That email is dated August 5th of 2008?
- 10 A Right.
- 11 Q It's time stamped at 1:27 in the afternoon?
- 12 A Uh-huh. (Affirmative).
- 13 Q Linda Gilstrap is who, Mr. Waldrep?
- 14 A She was the clerk for the council.
- 15 Q Linda Gilstrap is the county council clerk, right?
- 16 A Yes.
- 17 Q Let's go to the next exhibit, which is Plaintiff's
- 18 Exhibit 2.
- 19 A If I may explain?
- 20 Q I'd like to ask you about Plaintiff's Exhibit 2.
- 21 You're sort of interfering with my examination, sir.
- 22 A I'd like to explain the origin of this document and/or
- 23 are you -- unless you're not asking---
- 24 THE COURT: I'm gonna ask that you be responsive to the
- 25 questions, Mr. Waldrep. He just asked you what that lady's

Bob Waldrep - Cross-examination
by Mr. Davis

1 position was.

2 Does that require explanation?

3 THE WITNESS: Yes, Your Honor. I, I admit that this is
4 a document, but that what I was trying to say that this
5 language is not mine.

6 THE COURT: Well, again, he's asking the questions.
7 I'm gonna ask that you be responsive to his questions.

8 THE WITNESS: All right.

9 THE COURT: If the attorney for the plaintiff thinks
10 you need to have an opportunity---

11 THE WITNESS: Yes, sir.

12 THE COURT: ---to explain, he'll get a chance to ask
13 questions in just a minute.

14 THE WITNESS: Yes, sir.

15 THE COURT: So, his question was the position of the
16 lady and I think you answered that, and I think he's got the
17 right to ask the -- unless that needs to be explained, the
18 position of the person.

19 THE WITNESS: I defer.

20 THE COURT: Okay. I'm trying to keep this moving along
21 and, of course---

22 THE WITNESS: Yes, sir.

23 THE COURT: ---if your attorney thinks it needs further
24 explanation, I'm sure he's keeping notes right now, and
25 he'll do that in just a few minutes.

Bob Waldrep - Cross-examination
by Mr. Davis

1 we're gonna go until about one o'clock and stop for
2 lunch. So, I'm just gonna tell you that so whatever plans
3 you need to make you make.

4 You may proceed, Mr. Davis.

5 MR. DAVIS: Thank you, Your Honor.

6 Q Plaintiff's Exhibit 2, that was the minutes from the
7 audit meeting that you talked about on direct, is it not?

8 A Yes, sir.

9 Q Now, normal, normally these minutes are certified by
10 Linda Eddlemon, are they not?

11 A Yes.

12 Q Linda Eddlemon is actually Linda Gilstrap, isn't that
13 right?

14 A Yes.

15 Q Once it was---

16 A The -- it says county council audit meeting. This was
17 a, a workshop. It wasn't a regular meeting.

18 Q And these minutes, as a result, aren't a certified
19 transcript, are they?

20 A They did. They did one.

21 Q They did a certified transcript?

22 A Well, it says that it is and I assume that they would
23 not certify something that was not certified.

24 Q Can you point to me in this transcript, sir, where it's
25 certified?

Bob Waldrep - Cross-examination
by Mr. Davis

1 A On the question of certification, I, I really don't
2 know what you're -- what do you mean by certification?

3 Tell me what your definition of certification is and
4 I'll try, try to respond.

5 Q On your county council meeting minutes, sir, there's
6 actually a stamp that appears on the front that says
7 certified by either Linda Eddlemon or Linda Gilstrap.

8 A I see nothing in your exhibit that indicates
9 certification.

10 Can you show me on -- in your exhibit here?

11 Q That's what I'm asking you.

12 A I don't see it here.

13 Q Great.

14 And this is the Plaintiff's Exhibit, is it not?

15 A Right.

16 Q All right. Let's keep going.

17 It's true, is it not, that during the press
18 administration before this period of time, for several years
19 in a row, Anderson County got a clean audit?

20 A A clean audit in what sense?

21 They're different types of audits that go on.

22 Q well, a clean---

23 A we had some question -- he always got a clean audit.

24 Q A clean audit in the sense that they had a certified
25 public accountant---

Bob Waldrep - Cross-examination
by Mr. Davis

1 A Yeah.

2 Q ---come in?

3 A That's right.

4 Q Did an audit, right?

5 A Yes.

6 Q Came back clean?

7 A According to this auditor it did.

8 Q According to the certified public accountant, right?

9 A Yes.

10 Q And that happened not once, not twice, but it happened
11 three times in a row, didn't it?

12 A I, I suppose so, yes.

13 Q Uh-huh. (Affirmative).

14 And it's during this period of time where Mr. Preston
15 and Anderson County got a clean audit for three consecutive
16 years in a row where you're raising all sorts of questions
17 about financial improprieties, isn't that right?

18 A That's correct.

19 THE COURT: I'm gonna caution people in the gallery,
20 you're here to watch as long as you can watch quietly. If
21 that gets to be a problem, then I'll have to take action
22 which I really don't want to take. That's about the third
23 time it's happened. I let it go the first couple. Won't
24 let it go again.

25 Thank you.

Bob Waldrep - Cross-examination
by Mr. Davis

- 1 You may proceed, Mr. Davis.
- 2 Q Now Mr. Waldrep, on direct examination you testified
- 3 that the beholding supporters of Mr. Preston, as you, as you
- 4 characterized them, they had all voted in favor of a penny
- 5 in penny out audit, didn't they?
- 6 A That's correct.
- 7 Q The people who are completely beholding to Mr. Preston
- 8 were willing to conduct a penny in penny out audit --
- 9 A Uh-huh. (Affirmative).
- 10 Q -- on a budget that ranged between a hundred and fifty
- 11 and two hundred million dollars, isn't that true?
- 12 A That's correct.
- 13 Q In relation to this August 5th, 2008, meeting, did
- 14 you, at sometime, become aware of the fact that Mr. Preston
- 15 was asked not to attend?
- 16 A What, what meeting is this you're talking about?
- 17 I'm sorry. That---
- 18 Q Okay. Well, we're looking -- let me see if I can help
- 19 you out.
- 20 we're looking at Plaintiff's Exhibit 2 you remember?
- 21 A Right.
- 22 Q And that was the transcript you were talking about?
- 23 A Let's see. Oh, the---
- 24 Q August 5th.
- 25 A Oh, yeah.

Bob Waldrep - Cross-examination
by Mr. Davis

1 Q And my question is did you become aware---

2 A I think he---

3 Q ---at some point in time---

4 A I, I understand---

5 Q ---that Mr. Preston---

6 A ---what your question is now.

7 Q ---was invited not to come?

8 A You know, that was up to the chairman I thought whether
9 Mr. Preston came or didn't come, but I don't think he was
10 there.

11 Q It's a different question than what I asked you.

12 Did you become aware, at some point in time, that
13 Mr. Preston was asked not to attend---

14 A No..

15 Q ---the August 5th of 2008 meeting?

16 A No.

17 Q You deny that?

18 A I deny that. I -- but, as far as I know, I can't --
19 and the reason I say that is because I can't imagine any
20 circumstance where we wouldn't want to have the public
21 administrator there, but --.

22 Q Mr. Waldrep, if you don't mind, will you turn to Page
23 13 of Plaintiff's Exhibit 2.

24 A Page 13?

25 Q Yes, sir.

Bob Waldrep - Cross-examination
by Mr. Davis

- 1 A Oh, of the Exhibit 2?
- 2 Q Yes, sir.
- 3 Mr. Waldrep, can I get you some water while we're --
- 4 may I approach, Your Honor?
- 5 THE COURT: You may.
- 6 A You know, I'll get him to do -- are you sure?
- 7 Q I'll be glad to.
- 8 A Okay.
- 9 Q I figured you must be getting low at this point.
- 10 A Number 13.
- 11 Okay. I'm with you.
- 12 Q Mr. Waldrep, these ideas were not fundamentally your
- 13 ideas, were they?
- 14 A Fundamentally, I shared a lot of the ideas with Mr. --
- 15 with Mr. Moore's assessment because Mr. Moore had talked
- 16 with some of the incoming council members and we talked
- 17 about it.
- 18 Q Mr. Waldrep, these weren't extemporaneous remarks, were
- 19 they?
- 20 A On Page 13?
- 21 Q Page 13.
- 22 A Is that what you're talking about, what I'm saying?
- 23 Q Page 13 reflects the remarks that you gave to the audit
- 24 committee on August 5th of 2008, does it not?
- 25 A Mr. Davis, on that date I had in my hand a letter of

Bob Waldrep - Cross-examination
by Mr. Davis

1 some kind from Mr. Moore. I may have amplified some things
2 that Mr. Moore said. I may have editorialized a little bit
3 on what Mr. Moore said. But it was a combination of, of
4 probably some things that I approved of as well as
5 Mr. Moore.

6 So, as to the authorship of this, I would say that we
7 would have to share, to some degree, credit for authoring
8 the ideas that come forth on Page 13.

9 Q You have to share credit for the idea that's on Page
10 13, is that right?

11 A That's right.

12 Q Well, are you denying then that the ideas on Page 13,
13 Plaintiff's Exhibit 2, are the same eight ideas that
14 appeared on Defense Exhibit 52 Page 2?

15 A Well, hadn't had time to put them down side-by-side.

16 Q But we just went through them.

17 Do you remember that?

18 A But they're very similar.

19 Q They're the same, aren't they?

20 A Yeah, very similar.

21 Q And they're the same ideas that came from Eddie Moore,
22 didn't they?

23 A Oh, well, as to it being identical, no. But very
24 similar.

25 Q Those are fundamentally Eddie Moore's ideas, weren't

Bob Waldrep - Cross-examination
by Mr. Davis

1 they?

2 A Generally.

3 Q Fundamentally?

4 A well, you've -- you select the words you like. I
5 just---

6 Q well, I---

7 A You know, and I -- we're just bandying and parsing
8 words here, but I'm just trying to give you what I recall as
9 being the general idea that both of us had talked to one
10 another. He had sent me these ideas. I presented them to
11 council at that workshop meeting.

12 Q And do you deny that when I asked you the same exact
13 question during your deposition, when you were under the
14 same exact sworn oath that you have, are under here today,
15 under the same penalty of perjury during your deposition,
16 your response was that they were contemporaneous remarks?

17 A They were.

18 Q Right?

19 A They were.

20 Q Thank you.

21 A And let me, let me, let me try to answer that question.
22 You know, you, you have---

23 MR. DAVIS: Oh, Your Honor, we have a witness in the
24 courtroom.

25 Mr. Bright, we sequestered the witnesses.

Bob Waldrep - Cross-examination
by Mr. Davis

1 A what I was doing---

2 THE COURT: Thank you.

3 A ---was taking Mr. Moore's letter, and I didn't prepare
4 any remarks myself, any personal remarks, and I think that
5 was one of the big disputes that we had, and I'll -- I tried
6 to go back to -- I think it's Page 65 in the deposition, my
7 deposition.

8 Q Oh, you remember that one, do you?

9 A I did because you kept asking me that same question
10 over and over.

11 Q And I asked you are these ideas fundamentally your
12 ideas and you said yes, they were fundamentally your ideas,
13 did you not?

14 A No, I don't deny that. But I, I think what your
15 question was directed at was your prepared remarks. You
16 prepared something, did I prepare this. I was speaking
17 extemporaneously pretty much based on what these ideas were
18 and they were similar. That's why I went back to try to
19 give you an explanation. I think it was on Page 65 in the
20 deposition, and if you look at that answer in the
21 deposition, you'll find that that's exactly what I did.

22 Q well, let's keep going and see what else we can see.
23 Okay.

24 THE COURT: well, let's take our break for lunch right
25 now, and I'll let you get back on that when you come back,

Bob Waldrep - Cross-examination
by Mr. Davis

1 Mr. Davis.

2 MR. DAVIS: Yes, sir.

3 THE COURT: All right. I'll caution the witness not to
4 discuss his testimony during the break. You may step down
5 at this time.

6 We will resume, let's say, about 1:15.

7 Court's in recess -- excuse me. Not 1:15. 2:15.

8 Thank you very much.

9 (WHEREUPON, Court was in recess for the lunch break.)

10 THE COURT: Mr. Davis, you may resume your
11 cross-examination.

12 MR. DAVIS: Thank you, Your Honor.

13 THE COURT: Yes, sir.

14 CONTINUED CROSS-EXAMINATION

15 BY MR. DAVIS:

16 Q Mr. Waldrep, it's true, is it not, that, at some point
17 in August of 2008, Mr. Preston filed a lawsuit in his
18 capacity as council administrator against you and against
19 Cindy Wilson?

20 A Yes.

21 Q The allegations from the lawsuit were that you and
22 Cindy Wilson were interfering with Mr. Preston's ability to
23 do his job as a county administrator?

24 A Yes, that's what he said.

25 Q The allegations from that lawsuit were that you and Ms.

Bob Waldrep - Cross-examination
by Mr. Davis

1 Wilson were running afoul of the Home Rule Act?

2 A Yes.

3 Q If you would, about four or five tabs down there's a
4 tab that's marked as Plaintiff's 1.

5 Will you turn to that for me?

6 A Plaintiff's 1?

7 Q Yes, sir.

8 A Right.

9 Q This is the Preston master employment agreement that
10 you testified about on direct, is it not?

11 A Yes.

12 Q During the Summer of 2008 you reviewed this contract,
13 right?

14 A In 2000 um -- yes. Yes, sir.

15 Q Now, on Page 1, if you look down at the bottom of the
16 page, there's a section and it talks about Section 4-9-660.

17 Do you see that?

18 A I do.

19 Q And if you turn the page, Mr. Waldrep, at the top of
20 the next page there's a quote.

21 Do you see that quote?

22 A Yes.

23 Q And that quote says "except for the purposes of
24 inquiries and investigations, the council shall yield to
25 county officers and employees who are subject to the

Bob Waldrep - Cross-examination
by Mr. Davis

1 direction or supervision of the county administrator solely
2 through the administrator and neither the council nor its
3 members shall give orders or instructions to any such
4 officers or employees."

5 That statute actually appears directly in Mr. Preston's
6 master employment contract, does it not?

7 A Yes.

8 Q While we're here, can I turn your attention also to
9 Page 4 of this master employment contract?

10 A (Witness complies.)

11 Q Do you see way down in the bottom where it says
12 Subparagraph E?

13 A E, yeah.

14 Q And that paragraph says, and I quote,
15 "contemporaneously with the delivery of all severance pay
16 and entitlements here and above set out, the administrator
17 agrees to execute and deliver to the county a release
18 releasing the county of all further claims the administrator
19 may have against the county."

20 Right?

21 A That's what it says. .

22 Q And this provision appears underneath the termination
23 without cause provision that Mr. Tessier talked to you about
24 on direct examination, right?

25 A Let me see what -- what are you saying exactly?

Bob Waldrep - Cross-examination
by Mr. Davis

1 what's your -- rephrase your question.

2 Do you mind?

3 Q I don't mind at all, sir.

4 On direct examination, Mr. Tessier asked you questions
5 about the buy-out provisions in Mr. Preston's master
6 employment agreement.

7 A Right.

8 Q Do you remember that?

9 A Yeah.

10 Q And that buy-out provision actually appears in Section
11 3-B under the section that says termination without cause,
12 right?

13 A Right.

14 Q And what we just looked at was Subsection E underneath
15 that provision, and what that provision reflects is the
16 scope of the release that Mr. Preston was required to
17 deliver upon pay-out of the severance monies, does it not?

18 A Upon payment to him, he's suppose to give a release.
19 But that doesn't address the severance agreement itself.
20 So, it might be two different things we're looking at here.

21 Q Well, what I'm asking you about is what Paragraph E
22 says.

23 In Paragraph E---

24 A That's what it says, but I think your -- I think you
25 might be doing some legal interpretation and manipulation on

Bob Waldrep - Cross-examination
by Mr. Davis

1 that point because I think that maybe the judge -- that's
2 the question for the judge is whether or not that---

3 Q well, let me ask you this.

4 Can we agree that what Subparagraph E says is that the
5 administrator will agree to deliver to the county a release,
6 right?

7 That's what it says?

8 A Yeah, it says it will, uh-huh. (Affirmative).

9 Q All right. Now let's keep going.

10 Mr. Waldrep, there came a point in time, did there not,
11 when you became aware that the intent of Eddie Moore, a
12 councilman-elect, was, in fact, to get rid of Joey Preston?

13 A Mr. Davis, I can not answer that because it's
14 impossible to know the intent of Eddie Moore on everything.
15 It really is. I, I could surmise. I could speculate. I
16 could do a lot of things, but I can not tell you exactly
17 what Mr. Moore's intentions were.

18 Q Will you turn back to Defense Exhibit 46 for me, sir?

19 A Beg your pardon?

20 Q Defense Exhibit 46, could you turn to that for me?

21 A 46?

22 I got you -- I got -- excuse me. I got 45.

23 Q Are you there?

24 A Yeah.

25 Q Defense Exhibit 46 is an email from Eddie Moore, right?

Bob Waldrep - Cross-examination
by Mr. Davis

1 A That is.

2 Q And it's an email to you?

3 A It -- yes, I think it is.

4 Q And it's dated August 14th of 2008?

5 A Yes.

6 Q And it states, in the second sentence, and I quote, "he
7 is desperate and just wants to freeze everything so we can't
8 run him off."

9 A Right.

10 Q And the next sentence says, and I quote, "I find it
11 particularly interesting that you are getting the blame from
12 an idea about suspension of finance, finance director and
13 himself."

14 That's what he wrote to you, right?

15 A That's what it says.

16 Q That's what he wrote to you, right?

17 A That is what is in Exhibit 46, Mr. Davis, yes, sir.

18 Q Let's keep going.

19 will you look---

20 A Do you have a response?

21 Excuse me. Do you---

22 Q ---at Defense Exhibit 47 for me, sir?

23 A Excuse me.

24 Do you have a response to that in your---

25 THE COURT: Mr. Waldrep, he's not required to respond

Bob Waldrep - Cross-examination
by Mr. Davis

1 to your questions.

2 THE WITNESS: Yes, sir. All right, sir.

3 THE COURT: You may proceed, Mr. Davis.

4 Q Can you look at Defense Exhibit 47 for me, sir?

5 A (Witness complies.)

6 Q Is Defense Exhibit 47 an email from Eddie Moore?

7 A Yes, sir.

8 Q Is it dated September 23rd of 2008?

9 A Yes, sir.

10 Q Is it addressed to you?

11 A It is.

12 Q Does it reflect that that coming Sunday there would be
13 a meeting with Tom Beckwith?

14 A It says "hey, Bob, do you have the email addresses for
15 Joey Preston, Gina Humphries, and Linda Eddlemon. I want to
16 send one requesting budget copies for us. I also talked
17 with Tom Beckwith and Bob Daniels. They will be there on
18 Sunday." That's what he said.

19 Q In September of 2008, sir, it's true, is it not, that
20 you were meeting at your office with Bob Daniels to look at
21 requested, requested budget materials from the county?

22 A I suppose so.

23 Q Mr. Waldrep, can you turn and look at Defense Exhibit
24 No. 22 for me?

25 A (Witness complies.)

Bob Waldrep - Cross-examination
by Mr. Davis

1 Q On direct examination, do you recall testifying that
2 Mr. Bright never contacted you to try to ascertain what your
3 opinion was in relation to the Preston matter?

4 MR. TESSIER: Objection, Your Honor. That's not the
5 testimony. He did say he talked with Tom Bright.

6 THE COURT: Beg your pardon?

7 MR. TESSIER: That's not the testimony -- the way he's
8 characterizing that testimony is not accurate.

9 MR. DAVIS: Well, he can explain it. I'm not trying to
10 say anything -- that's what I thought I remembered him
11 saying. If I'm wrong I'm wrong. I'm not trying to mislead
12 anyone.

13 THE COURT: I'll allow him to respond and he can either
14 admit or deny whether he made those statements.

15 You may proceed, Mr. Waldrep.

16 A And your question is?

17 Q It's true, is it not, that on October 13th of 2008
18 you were contacted by Tom Bright in order for him to
19 ascertain what your view was about the Preston employment
20 dispute?

21 A I didn't keep a calendar on that, but if that's
22 reflected in Mr. Bright's calendar, I would take what he
23 said to be true.

24 Q Well, Mr. Bright is gonna testify next, but these are
25 his notes from his telephone conversation with you, and

Bob Waldrep - Cross-examination
by Mr. Davis

1 they're dated October 13th of 2008, aren't they?

2 A I, I just know that we -- I talked to Mr. Bright on
3 maybe two or three occasions, but I didn't make notes as to
4 what or when except to say that when I, I contacted
5 Mr. Bright to ask him, after the second meeting that he had
6 with the personnel committee --

7 Q Uh-huh. (Affirmative).

8 A -- whether his opinion had changed any from the first
9 time he met with Mr. -- with the, with the committee.
10 Because at that committee meeting, the first committee
11 meeting we had, he had indicated that -- an offer made was
12 didn't have merit at the second -- and I wanted to know, in
13 talking with him, as to whether or not his opinion had
14 changed.

15 Q Okay. Let me turn your attention back to Defense
16 Exhibit 22, and I have a question for you.

17 Did you or do you deny, that on or about
18 October 13th of 2008, you told Bob Waldrep that, and I
19 quote, "five council members want to buy-out his contract"?

20 A That I told that to Mr. Bright?

21 Q Yes.

22 Do you admit that?

23 A I -- that might be true because five council members
24 did want to buy-out his contract.

25 Q And you knew that as early as October 13th of 2008,

Bob Waldrep - Cross-examination
by Mr. Davis

1 right?

2 A Not for sure. But I, I had every indication, I think,
3 that they wanted to give Joey a parachute.

4 Q A parachute --

5 A A golden parachute.

6 Q -- from your --

7 A Yeah, a golden parachute.

8 Q -- point of view, right?

9 A Uh-huh. (Affirmative).

10 Q That's what you think?

11 A That's my language.

12 Q And then, down below, these notes also reflect, in
13 quotation marks, "just cause, nothing concrete yet" and what
14 I'd like to know is do you deny that you told Mr. Bright, in
15 a telephone conversation on October 13th of 2008, that
16 there was nothing concrete to support just cause of the
17 termination of Mr. Preston?

18 A At that point I may have said that because we hadn't
19 had an opportunity to fulfill our investigation about Mr.
20 Preston's activities.

21 Q At that point is all I'm asking you.

22 A No, that's what I said then.

23 Q During your direct examination, do you recall a line of
24 questioning about the retention of Mr. Bright?

25 A The retention of Mr. Bright at, at the first meeting

Bob Waldrep - Cross-examination
by Mr. Davis

- 1 that we had?
- 2 Q Yes, sir.
- 3 A Yes.
- 4 Q And during that line of questioning, what you said was
- 5 the majority had the votes to get it done, right?
- 6 A To appoint Mr. Bright?
- 7 Q Yes, sir.
- 8 A Yes, I did.
- 9 Q You opposed it, but the majority had the votes, right?
- 10 A That -- yeah, I was, I was overruled. But I wouldn't
- 11 have voted that way if I had known more about Mr. Bright. I
- 12 just never met Mr. Bright, didn't know him, and it concerned
- 13 me that the same crowd that was supporting Joey was asking
- 14 to appoint Mr. Bright. That, that troubled me. And, so,
- 15 that was the reason I voted against him.
- 16 Q The vote to hire Mr. Bright --
- 17 A Right.
- 18 Q -- it was a five to two vote, wasn't it?
- 19 A I think I -- you know, we met in that room and I, and I
- 20 just remember voting against it. That's all I can remember
- 21 because we were not in regular council. It looked like we
- 22 were in some kind of committee room or something of that
- 23 nature. So, that's true. I voted against Mr. Bright.
- 24 Q The severance agreement though was a vote of either
- 25 five to two or---

Bob Waldrep - Cross-examination
by Mr. Davis

- 1 A Right.
- 2 Q Five one-to-one, wasn't it?
- 3 A That's right.
- 4 Q Because the majority had the votes, right?
- 5 A They did.
- 6 Q You were in the minority?
- 7 A That's, that's correct.
- 8 Q Now, during your direct examination you talked about
- 9 instances where you attended the personnel committee
- 10 meetings.
- 11 Do you remember that?
- 12 A Something about personnel, yeah.
- 13 Q And there was testimony at length about how you were
- 14 excluded from those personnel committee meetings.
- 15 Do remember that?
- 16 A That's correct. I remember that.
- 17 Q At the time that those personnel committee meetings
- 18 occurred, in October and into November, it is true, is it
- 19 not, that you were the defendant in a lawsuit that was filed
- 20 by the county administrator?
- 21 A I -- the timing might be that.
- 22 Q The timing is, in fact, that, isn't it?
- 23 A Yeah. Okay. Well, it is. I, I, I wouldn't argue that
- 24 with that.
- 25 Q Notwithstanding that lawsuit that was filed against

Bob Waldrep - Cross-examination
by Mr. Davis

- 1 you in your individual capacity---
- 2 A That was the usual vote, five to two.
- 3 Q Notwithstanding that lawsuit filed against you in your
- 4 individual capacity, you wanted to attend and participate in
- 5 the personnel committee meetings that were discussing Mr.
- 6 Preston's employment dispute?
- 7 A Mr. Davis---
- 8 Q Is that a yes or no?
- 9 A I wanted -- wait, wait a minute. Let me get -- can I
- 10 answer?
- 11 Q Answer yes or no and then explain it.
- 12 A Okay. I wanted to find out what the recommendations
- 13 were of the personnel committee, and to know what was going
- 14 on because, under our ordinance, we are encouraged to go to
- 15 all committee meetings.
- 16 Q There were personnel committee meetings, right?
- 17 A Any, any committee meetings.
- 18 Q I'm talking about these two.
- 19 There were two personnel committee meetings about Joey
- 20 Preston, right?
- 21 A Right.
- 22 Q You attended them, right?
- 23 A No.
- 24 Q During those two committee meetings---
- 25 A I tried to get -- I tried to get into the first one.

Bob Waldrep - Cross-examination
by Mr. Davis

1 Q Right.

2 A And over the objection of Mr. Wilson, I think it was, I
3 was able to attend because Mr. Greer read the statute the
4 same way that I did, that I was encouraged to attend. The
5 second meeting they had, I think they changed their position
6 and said I could not attend and I attempted to attend.

7 Q Now, my question is actually much more simple.

8 During the pendency of both of those personnel
9 committee meetings, you were the defendant in a lawsuit that
10 was filed by---

11 A That's right.

12 Q ---Mr. Preston as the county administrator?

13 A That's right.

14 Q Mr. Waldrep, can you turn the page and look at Defense
15 Exhibit 48 for me?

16 A (Witness complies.)

17 Okay. All right. Let's see. I see that.

18 Q Okay. Mr. Waldrep, is this an email from Tom Beckwith
19 to you?

20 A Did I email him?

21 Q No.

22 Is this an email from Tom Beckwith to you?

23 A This looked like it was an email -- well, I see at the
24 top, but it -- basically it was an email to the editor of
25 the Anderson Independent with a copy to me.

Bob Waldrep - Cross-examination
by Mr. Davis

1 Q And it's dated October 13th of 2008, correct?

2 A That's right.

3 Q And the very first line of this email from Mr. Beckwith
4 with the albeit contained letter to the editor says, and I
5 quote, "recently I have been made aware of certain actions
6 that the majority of the present Anderson County Council is
7 considering taking involving certain council members and the
8 county administrator."

9 Do you see that?

10 A Yeah.

11 Q And that is a reference to the severance agreement
12 of---

13 A Right.

14 Q ---Mr. Preston, right?

15 And, so, as of October 13th of 2008, there's no secret
16 going on?

17 You knew exactly what the majority was planning on
18 doing in relation to resolving this dispute, right?

19 A Mr. Davis, I have to respectfully disagree with knowing
20 what a political body is going to do.

21 Q Okay. No problem. Let's keep going.

22 A Yeah.

23 Q If you don't mind, look at Defense Exhibit 118.

24 A One --?

25 Q Eighteen.

Bob Waldrep - Cross-examination
by Mr. Davis

1 A Is that -- let's see.

2 Q This is the one that's---

3 A Is that the master employment agreement?

4 Q No, sir.

5 Defense Exhibit 118 is the one that has handwritten
6 notes, and in the top hand corner it's a ten -- the date,
7 10/27/08.

8 A If you want to help me out and show me and make sure I
9 get, I get the one you're talking about?

10 MR. DAVIS: Your Honor, may I approach?

11 THE COURT: You may approach.

12 A You said one and I thought you said -- oh, okay.

13 Q My question about this document is simple.

14 Does this reflect to you or refresh your recollection
15 about the exact date on when the first personnel committee
16 meeting occurred?

17 A You know, it's a -- sketchy notes that's apparently
18 made by the chairman I guess of the committee.

19 Q Actually these were made by Mr. Bright, but---

20 A Okay.

21 Q ---is this document dated, sir?

22 A Oh, okay. I didn't know who, who made this. You know,
23 it just speaks for itself. I don't know what to say about
24 it. It's---

25 Q Does this document reflect a date of October 27th of

Bob Waldrep - Cross-examination
by Mr. Davis

- 1 2008?
- 2 A It's dated.
- 3 Q Is that the date?
- 4 A That's right. It has the date on it.
- 5 Q All right. Can you turn and look at Plaintiff's
- 6 Exhibit 22, which is very next tab?
- 7 A Okay.
- 8 Q Mr. Waldrep?
- 9 A Yeah.
- 10 Q This is the letter from Rob Hoskins dated
- 11 October 23rd of 2008, is it not?
- 12 A Yes, it is.
- 13 Q You've seen this letter, right?
- 14 A Let me take a look at it and make sure. I, I would --
- 15 I would say that I have.
- 16 Q This says letter that contains a settlement offer---
- 17 A Yeah.
- 18 Q ---does it not?
- 19 And this letter is dated October 23rd of 2008. While
- 20 the personnel committee notes reflect that that meeting
- 21 occurred on October 27th of 2008.
- 22 A Uh-huh. (Affirmative).
- 23 Q Correct?
- 24 A Right.
- 25 Q And during that meeting you testified, on direct, that

Bob Waldrep - Cross-examination
by Mr. Davis

1 there was some conversation about a settlement demand made
2 by Mr. Preston?

3 A Yeah.

4 Q And this is that settlement demand?

5 A Apparently.

6 Q And in this settlement demand made by Mr. Preston was
7 discussed during the meeting of October 27th that you had,
8 and it states, and I quote, "per your request, I'm sending
9 you Mr. Preston's proposal for a complete resolution of all
10 claims against the county and the two individual council
11 members we previously mentioned."

12 Do you see that, sir?

13 A I do.

14 Q Did I read that correctly?

15 A Yes.

16 Q Those two council members as, that are referenced in
17 Plaintiff's Exhibit 22 are Cindy Wilson?

18 Yes?

19 A That's right.

20 Q And yourself?

21 A Right.

22 Q The very next sentence, sir, states, and I quote, "as
23 you know, the scope of potential claims go beyond the four
24 corners of Mr. Preston's employment contract with the
25 county."

Bob Waldrep - Cross-examination
by Mr. Davis

1 As of October 23rd of 2008, or at least by
2 October 27th of 2008, you understood, did you not, that
3 Mr. Preston's claim was exceeding the four corners of his
4 master employment agreement?

5 A That's what he said.

6 Q You understood that's what the claim was though, right?

7 A I -- that's the---

8 Q I'm not saying whether it was true. I'm saying that's
9 the claim. That was the claim.

10 Right?

11 A He represented that to be true. Whether it was true or
12 not I don't know.

13 Q And down in the next paragraph, that states, and I
14 quote, "unfortunately, there also existed a number of causes
15 of action which Mr. Preston will assert against two current
16 council members as well as maybe one or more incoming
17 council members."

18 Do you see that?

19 A Yes.

20 Q And those two council members are you and Ms. Wilson?

21 A Yeah.

22 Q Mr. Waldrep, will you turn to Plaintiff Exhibit 7 for
23 me?

24 A Okay.

25 Q Is Plaintiff's Exhibit 7 the Preston severance

Bob Waldrep - Cross-examination
by Mr. Davis

1 agreement?

2 A Yeah, November the 18th of 2008. Okay.

3 Q And this severance agreement, it's four pages long,
4 right?

5 A Right.

6 Q And this severance agreement is 19 paragraphs long,
7 right?

8 A Yes.

9 Q Will you look at Paragraph 6 for me?

10 A I see it.

11 Q Does Paragraph 6 state, and I quote, "in consideration
12 of the county's agreement to provide employee with severance
13 payments described in this agreement, employee, for himself,
14 his heirs, his legal representatives, and his assigns,
15 hereby covenant irrevocably never to make any claim or
16 demand or to commence, cause, or permit to be instituted or
17 prosecuted any suit, charge, proceeding, or action at law or
18 in equity against the county of any of its any, of any of
19 its council members, employees, managers, officers, board
20 members, or any of its affiliated parts, entities, or
21 subsidiaries, as well as successors and assigns of those
22 entities or persons by reason of or any claims, demand, or
23 cause of action which an employee may now have or may here
24 and after apply or relating to his employment, dot dot dot."

25 Did I read that right?

Bob Waldrep - Cross-examination
by Mr. Davis

1 A That's what it says.

2 Q Mr. Waldrep, did you cast a vote against the county
3 executing this agreement?

4 A I did.

5 Q Will you turn to Defense Exhibit 93 for me, sir?

6 A (Witness complies.)

7 Q Mr. Waldrep, Defense Exhibit 93 is an email from Edwin
8 Moore, is it not?

9 A It is.

10 Q It's dated 11/13/2008?

11 A That's correct.

12 Q The time stamp on Eddie Moore's email is 6:58AM,
13 correct?

14 A Wait a minute. I've got -- let's see. This -- 92,
15 I've got it from Eddie Moore and it's -- the time I have is
16 7:09AM.

17 Is that---

18 Q Are you looking at Defense Exhibit 93?

19 A I'm looking at -- I thought -- 92?

20 THE COURT: Ninety-three.

21 Q Ninety-three, sir.

22 A Ninety-three.

23 Q Ninety-three.

24 A Three. Oh, I'm sorry.

25 Yeah, 6:58AM, right.

Bob Waldrep - Cross-examination
by Mr. Davis

- 1 Q 6:58, November 13th, right?
- 2 A Yeah.
- 3 Q of 2008, right?
- 4 A Yes.
- 5 Q who's Gail King?
- 6 Gail King, who's Gail King?
- 7 A From Gail King, yeah.
- 8 Q Yeah.
- 9 No, it's to Gail King, but who is Gail King?
- 10 A She works I thought in the -- one of the finance areas
- 11 of the, of the county.
- 12 Q And, and you are blind copied on this email, are you
- 13 not?
- 14 A Yes, I -- well, yeah, it looks like I was up here.
- 15 Q And it's time stamped 6:58AM?
- 16 A Right.
- 17 Q And down below, the email from Eddie says, and I quote,
- 18 "thanks for your quick response. We new council members
- 19 just want to make sure no county documents are destroyed at
- 20 all before our auditors examine them. You have a great
- 21 weekend."
- 22 Do you see that?
- 23 A That's what it said.
- 24 Q And Tom Allen is also blind copied on this email, is he
- 25 not?

Bob Waldrep - Cross-examination
by Mr. Davis

1 A I don't know if that's Tom's email. I seen Thomas9976.

2 I don't know if that's Thomas Allen or not. It might be.

3 Q Okay.

4 A But I don't know that.

5 Q Will you turn and look at Exhibit 92 for me?

6 A Okay.

7 Q What I'd like you to do is turn your attention to the
8 email at the very bottom of the chain?

9 A Okay. What, what do you want from this?

10 Q I want you to turn your attention to the very bottom
11 email.

12 Can you do that for me?

13 A Oh, okay.

14 Q Okay. Is that an email from Eddie Moore to Joey
15 Preston dated November 1st of 2008 with a time stamp of
16 9:24AM?

17 A I have trouble reading these things sometime, but I see
18 this, this is November the 13th, 2008. I've got at
19 7:09AM.

20 Is that what you have?

21 Q I have---

22 THE COURT: You may approach the witness.

23 MR. DAVIS: May I approach?

24 Sorry, Your Honor.

25 Q I'm talking about down here, sir.

Bob Waldrep - Cross-examination
by Mr. Davis

- 1 A Oh, I'm sorry. Yes.
- 2 Q It says Mr. Preston and then continues on the next
3 page?
- 4 Q Oh, okay.
- 5 A I'm sorry, Mr. Davis. I just don't do email and---
- 6 Q I understand.
- 7 A ---this, this is a very confusing communication to me.
- 8 Q I apologize.
- 9 A So that's why I'm having this problem.
- 10 Q And the email at the bottom of the chain is dated
11 November 13th, 2008, with a time stamp---
- 12 A Right.
- 13 Q ---of 9:24AM?
- 14 A Right.
- 15 Q And you are carbon copied on it, correct?
- 16 A I see my name, yes.
- 17 Q And the council clerk, Linda Gilstrap, she's carbon,
18 she's carbon copied too, right?
- 19 A Yes.
- 20 Q And then that other email address, that Thomas9976
21 email address, that's copied too, right?
- 22 A Yes.
- 23 Q At 9:24 on November 13th of 2008, does Mr. Email
24 write -- does Mr. Moore write an email to Mr. Preston
25 stating, and I quote, "I am respectfully asking that you

Bob Waldrep - Cross-examination
by Mr. Davis

- 1 hold off on doing any shredding of any kind of documents
2 from Anderson County at the present time. We newly elected
3 council members would like to examine any documents that are
4 slated to be destroyed, to be destroyed before this takes
5 place"?
- 6 That's what that email says, right?
- 7 A That's what it says.
- 8 Q Can you turn to page -- and look at Defense Exhibit 71
9 for me, sir?
- 10 A I got you.
- 11 Q This is a letter dated November 17th of 2008, right?
- 12 A Right.
- 13 Q This is a letter that's asking Mr. Preston to freeze
14 hiring of 25 positions in the budget, correct?
- 15 A That's correct.
- 16 Q You signed it, right?
- 17 A I did.
- 18 Q Next to District 1 down in the bottom?
- 19 A Yes.
- 20 Q Ms. Wilson signed it next to District 7 down there in
21 the bottom, right?
- 22 A Right.
- 23 Q And then the three council members elect signed it?
24 Mr. Moore next to the District 3?
- 25 A Yes.

Bob Waldrep - Cross-examination
by Mr. Davis

1 Q Mr. Dunn next to District 5?

2 A That's correct.

3 Q Tom Allen next to the District 4, correct?

4 A That's correct.

5 Q And the second sentence of this letter up above
6 instructs Mr. Preston, and I quote, "the -- this hiring
7 freeze shall include the 25 positions provided for in our
8 current FY2008/2009 budget, which will be funded after
9 January 1, 2009."

10 Right?

11 Did I read that right?

12 A I, I don't know if you did or not. What you did was --
13 as I understood it, you said we directed him?

14 Q Yes, sir, you did.

15 A That's not what the letter said.

16 Q Well, let's just keep---

17 A The letter says we, the undersigned councilmen and
18 councilmen-elect, ask that a hiring freeze be effective
19 immediately.

20 Q And the next sentence says this hiring freeze shall
21 include---

22 A Right.

23 Q ---does it not?

24 A Okay. That's true. But we were---

25 Q And then down below it carbon copies all media outlets,

Bob Waldrep - Cross-examination
by Mr. Davis

- 1 does it not?
- 2 A That's true.
- 3 Q So, on November 17th of 2008, yourself and Ms.
- 4 Wilson, who are on county council---
- 5 A Right.
- 6 Q ---are sending out correspondents to the county
- 7 administrator on county council letterhead telling him what
- 8 to do with respect to hiring?
- 9 A Asking.
- 10 Q Asking.
- 11 A Not directing. We had no authority to do that.
- 12 Q Mr. Waldrep, what is your experience that the term
- 13 shall means when used?
- 14 shall?
- 15 A My -- what, shall?
- 16 Q Let's turn the page and look at---
- 17 A No. Yeah, the, the word -- it says hiring freeze. If
- 18 he grants the request, it said shall include the 25
- 19 positions, but it doesn't say you shall do it. It says
- 20 we're requesting that you do it, and if you do it, it shall
- 21 include the 25 positions.
- 22 Q You had meetings in your office between June of 2008
- 23 and December 31st of 2008, did you not?
- 24 A I think we've been over that, yes.
- 25 Q I'm asking you a question.

Bob Waldrep - Cross-examination
by Mr. Davis

- 1 Did you not?
- 2 A Yeah. Well---
- 3 Q Okay. Tom Allen attended those meetings, Tommy Dunn?
- 4 A Yeah.
- 5 Q Eddie Moore, Cindy Wilson?
- 6 A Right.
- 7 Q Right?
- 8 A Right.
- 9 Q In November of 2008, those five individuals are sending
10 out correspondents on Anderson County letterhead, are they
11 not?
- 12 A They are.
- 13 Q Let's look at the next exhibit, Exhibit 49.
- 14 A Is that 40 -- 49?
- 15 Q Yes, sir.
- 16 A Okay.
- 17 Q Mr. Waldrep?
- 18 A Yes, sir.
- 19 Q This is a letter---
- 20 A Yes, sir.
- 21 Q ---from Eddie Moore to the Attorney General of South
22 Carolina and it's dated November 25th, 2008, is it not?
- 23 A It is.
- 24 Q As of November 25th of 2008, the county hadn't
25 conducted the investigation.

Bob Waldrep - Cross-examination
by Mr. Davis

1 That didn't commence until January of '09, did it?

2 A Okay.

3 Q That's true, right?

4 A We had not been able to institute -- we didn't have the
5 mechanism in place to do anything.

6 Q Let me, let me apologize. That question was confusing.
7 I'll -- let me try it again.

8 A Thank you.

9 Q At some point the county launched an investigation,
10 correct?

11 A Yeah, we did.

12 Q That didn't occur until after the new members came in
13 in January of 2009, right?

14 A That's correct. We attempted to get information before
15 that. I mean Ms. Wilson and I did. But we were thwarted by
16 the administration. And, so---

17 Q This letter is dated November 25th of 2008, right?

18 A That's right.

19 Q And this letter is from Eddie Moore to Henry
20 McMaster---

21 A Correct.

22 Q ---and it's asking Mr. McMaster to start an
23 investigation into Mr. Preston as early as
24 November 25th of 2008?

25 A Yes, sir.

Bob Waldrep - Cross-examination
by Mr. Davis

1 Q And on this email or letter, yeah, this email, up
2 above, do you see the blind copy field?

3 A Let me see. I -- yeah, I do.

4 Q And in that blind copy field, it's true, is it not,
5 that WAIM Radio's email address appears, appears?

6 A Right.

7 Q And that WAIM Radio, that's Rick Driver, right?

8 A Yes.

9 Q And also in that blind copy field you see an email
10 address that's suthernboy@charternet, charternet?

11 Do you see that?

12 A Yes.

13 Q Do you know whose email that is?

14 A Do I know who that --?

15 Q Do you know whose email that is?

16 A It's Suthernboy?

17 Q Yeah.

18 A It look likes it's an abbreviation. It's S-U-T-H Boy.
19 No, never heard of him.

20 Q Okay. How about the county clerk's email?

21 She's blind copied, isn't he?

22 A Yeah, I see the -- I see that, uh-huh. (Affirmative).

23 Q And up above you're copied and Mr. Allen's copied,
24 correct?

25 I'm sorry. I said you didn't know---

Bob Waldrep - Cross-examination
by Mr. Davis

1 A If I can read, read all this.

2 Q You're copied up above, right?

3 A Okay. Yeah.

4 Q And then in the third sentence of his, of his email,
5 Mr. Moore writes, and I quote, "the new majority of Anderson
6 County Council, five members of the seven, that takes office
7 on January 1, 2009, would like your help with what happened
8 at, and I think it means our, but I think it's a typo, at
9 out meeting on November 16th, 2009," which is also a typo.
10 It should be November 18th of 2008.

11 But the question I have for you is, as of
12 November 25th of 2008, Mr. Moore has sent an email to the
13 Attorney General asking him for his help along with the
14 majority of the county council for January of '09.

15 Isn't that what that document reflects?

16 A Yeah.

17 Q Mr. Moore -- Mr. Waldrep, sorry, can you turn to
18 Defense Exhibit 50?

19 A (Witness complies.)

20 Q Mr. Waldrep?

21 A Yes.

22 Q Are you at Defense Exhibit 50?

23 A Yeah, I'm looking at it.

24 Q Okay. Do you need more time?

25 A I got you.

Bob Waldrep - Cross-examination
by Mr. Davis

1 Q Mr. Waldrep, is this the order that was granted by
2 Judge Nicholson on December 29th of 2008 wherein he
3 granted an injunction against you from any -- and that
4 injunction was to enjoin you from interfering with the
5 county administrator's duties any further, correct?

6 A That's correct.

7 Q And in that first paragraph, second to last sentence,
8 it reflects, and I quote, "a motion hearing was held in
9 Anderson on Wednesday, September 24th, 2008."

10 Do you see that?

11 A What page are you on?

12 Q The first page.

13 A Okay. Yes, uh-huh. (Affirmative).

14 Q And September 24th, 2008, was actually the day just
15 prior to when Anderson County received the letter from Mr.
16 Hoskins putting the county on notice of his claims against
17 the county, was it not?

18 A If the dates coincide, the dates speak for themselves I
19 guess.

20 Q This order issues approximately 30 paragraphs or 31
21 paragraphs of factual findings against you and Ms. Wilson,
22 does it not?

23 A Yeah.

24 Q And in particular, Paragraph 27 states, and I quote,
25 "the county administrator's duty to supervise his employees

Bob Waldrep - Cross-examination
by Mr. Davis

1 is being intentionally and purposefully thwarted by
2 defendants."

3 That's what Judge Nicholson found?

4 A That's what it says.

5 Q Paragraph 29, second sentence. Judge Nicholson found,
6 and I quote, "the actions of defendants have interfered with
7 the county administrator's ability to do his job."

8 Correct?

9 A That's correct.

10 Q If you turn to page, two pages from there.

11 A Which page?

12 Q Two more pages.

13 A Okay.

14 MR. DAVIS: May I approach, Your Honor?

15 THE COURT: You may.

16 Q This one's actually a little harder to find I think.

17 A That's November.

18 Q This one right here.

19 A Okay.

20 Q Two pages later below the blocked quote, and as a part,
21 as a showing to support the preliminary injunction, Judge
22 Nicholson found, and I quote, "that the plaintiff,
23 Mr. Preston, has shown he is likely to prevail on the merits
24 in this, in this case."

25 A Right.

Bob Waldrep - Cross-examination
by Mr. Davis

1 Q That's what he found, right?

2 If you'll turn, sir, to the last page or the last
3 exhibit, which is Defense Exhibit 51.

4 A (Witness complies.)

5 Q This exhibit reflects fees from the Richter Law Firm,
6 correct?

7 A Yeah.

8 Q And that's you?

9 Those were your fees, were they not?

10 A Yes.

11 Q And those fees were paid by the county, were they not?

12 A They were.

13 Q And they were paid by the county because, at some
14 point, the county council agreed that when you were doing
15 the things reflected in Judge Nicholson's order, you were
16 acting in your official capacity, right?

17 A That's correct.

18 Q So, the county agreed to pay your fees because, in the
19 instances of interference in that order, you were acting in
20 your official capacity?

21 A I was.

22 Q Mr. Waldrep, it's good to see you again. I wish I
23 could of seen you under better circumstances. Thank you for
24 your time.

25 THE COURT: Redirect.

Robert Waldrep - Redirect examination
by Mr. Tessier

1 MR. TESSIER: Thank you, Your Honor.

2 REDIRECT EXAMINATION

3 BY MR. TESSIER:

4 Q Mr. Waldrep, if you will, look at Defendant's Exhibit
5 50, the one you just had a moment ago, the temporary
6 injunction order.

7 A Yes.

8 Q Was there ever a hearing on the merits in that case?
9 They talk about a hearing on the merits.

10 A Yeah, there were no merits in the case because we were
11 never afforded to put up a response to---

12 Q What---

13 A ---to this case. Judge Nicholson had not terminated
14 the case, but he had listened to the plaintiff's side, and
15 we were never able -- given an opportunity to respond.

16 Q The document in front of you, Exhibit, Defendant
17 Exhibit 50, is a temporary injunction, is it not?

18 A That's correct.

19 Q Was a permanent injunction ever issued?

20 A No, I don't think he could do a permanent injunction.

21 Q And what happened with this particular lawsuit?

22 A It was dismissed. The county dismissed it later on.

23 Q Thank you. That's all I have.

24 MR. DAVIS: Your Honor, just one or two more questions.

25 THE COURT: Yes, sir.

Bob Waldrep - Recross examination
by Mr. Davis

1 RECROSS EXAMINATION

2 BY MR. DAVIS:

3 Q Isn't the reason, sir, that a permanent injunction was,
4 in fact, not issued because, when the new council took
5 office in January of 2009, they instructed Mike Cunningham
6 to dismiss that case?

7 MR. TESSIER: Objection, Your Honor. It calls for
8 speculation as to what permanent injunction---

9 THE COURT: He's a member of council. He can say
10 whether he knows. I don't know is the answer to that
11 question if he doesn't know.

12 So, I would ask the witness to answer of his own
13 knowledge.

14 A I think a request was made to Mr. Cunningham to dismiss
15 this action, and then he declined to do so for a while. And
16 then, later on, he did comply with that request and, and
17 dismiss the action against me and Ms. Wilson.

18 Q Thank you for your time, sir.

19 THE COURT: Anything further?

20 MR. TESSIER: No, Your Honor.

21 THE COURT: Sir, you may step down. Thank you very
22 much.

23 THE WITNESS: I have to leave?

24 THE COURT: Sir?

25 Do you wish to leave?

1 THE WITNESS: No, sir, I just said do I have to leave
2 you know.

3 THE COURT: Well, the witnesses are sequestered. So,
4 you're gonna have to step outside.

5 MR. TESSIER: Your Honor, we were gonna ask whether or
6 not he can be released. I don't know if he has a preference
7 on that. We don't intend to call---

8 THE COURT: Do you want to excuse the witness from any
9 further participation?

10 MR. DAVIS: I'll be glad to excuse him as well.

11 THE COURT: All right, sir. You're excused. You can
12 stay. But I will caution you you will remain under the
13 order not to discuss your testimony.

14 THE WITNESS: Not to say anything. All right, sir.

15 THE COURT: Yes, sir, you can have a seat in the
16 courtroom.

17 THE COURT: State may call its next witness.

18 MR. GENTRY: Anderson County calls Thomas Bright. I
19 believe Mr. Bright is stepped---

20 THE COURT: I believe he's outside.

21 would you call Mr. Bright for me, sir?

22 THE BAILIFF: Yes, sir.

23 THE COURT: Thank you.

24 Mr. Bright, if you'll come forward and be sworn right
25 here in front of me.

Thomas Bright - Direct examination
by Mr. Gentry

1 (Witness complies.)

2 THE COURT: Thank you, sir.

3 THOMAS BRIGHT, being first duly
4 sworn, testified as follows:

5 THE CLERK: If you would take the witness stand, and
6 state your name and spell your last name for the record
7 please.

8 THE WITNESS: I will. Thank you.

9 My name is Tom Bright. B-R-I-G-H-T.

10 THE COURT: Mr. Gentry, your witness.

11 MR. GENTRY: Thank you, Your Honor.

12 THE COURT: Yes, sir.

13 DIRECT EXAMINATION

14 BY MR. GENTRY:

15 Q Good afternoon, Mr. Bright.

16 A Mr. Gentry, how are you today?

17 Q I'm well. I appreciate your time.

18 Tell the Court, if you would, what you do for a living.

19 A I am a practicing attorney.

20 Q All right. Where did you get your Bachelor's Degree?

21 A I got my Bachelor's Degree from a small state school in
22 Pennsylvania, Clarion State College.

23 Q When was that?

24 A That would of been in 1978.

25 Q And where did you attend Law School?

Thomas Bright - Direct examination
by Mr. Gentry

- 1 A University of South Carolina.
- 2 Q When did you graduate?
- 3 A I graduated in 1981.
- 4 Q All right, sir. Where are you currently employed?
- 5 A I am employed by the Ogletree Deakins Law Firm in
- 6 Greenville, South Carolina.
- 7 Q Are you a shareholder there?
- 8 A Yes, I am.
- 9 Q How long have you been practicing at Ogletree?
- 10 A I've been practicing with Ogletree probably for about
- 11 five years, maybe six. But I actually practiced with a
- 12 predecessor firm that is now merged into Ogletree for about
- 13 23 years.
- 14 Q Does your practice have a particular focus?
- 15 A I have practiced almost exclusively in the field of
- 16 labor and employment law for the 31 years that I've been
- 17 practicing.
- 18 Q All right, sir. Have you had any involvement, in the
- 19 course of your career, in the labor and employment section
- 20 of the South Carolina Bar?
- 21 A Yes, I have. I've, I've been a member -- I was a
- 22 member for a number of years and held several positions.
- 23 Q Were you president at one time?
- 24 A I was -- I'm sure I worked my way up all the way
- 25 through, through programs managers, through secretary, and

Thomas Bright - Direct examination
by Mr. Gentry

1 eventually became the president of that section of the Bar
2 Association.

3 Q Mr. Bright, do you recall being engaged, in the Fall of
4 2008, 2008, by Anderson County?

5 A Yes, I do.

6 Q And are you able to testify today about that
7 engagement?

8 A As best I can remember, yes, I will.

9 Q All right. Is, is, is the attorney/client privilege a
10 barrier to your testimony?

11 A It, it is not in this case simply because the county,
12 at one point in time, actually provided me with a witness, a
13 written waiver of the attorney/client privilege, which would
14 ordinarily prohibit or impede a lawyer from discussing
15 anything that he had, his retention by a client.

16 MR. GENTRY: May I approach the witness?

17 THE COURT: You may.

18 Q Mr. Bright, I'm handing you what's been preadmitted as
19 Plaintiff's Exhibit 10.

20 Do you recognize that as a copy of the waiver that you
21 mentioned?

22 A Yes, I do. This is it.

23 Q Thank you, sir.

24 What, in general terms, was the nature of the
25 engagement with -- for Anderson County in 2008?

Thomas Bright - Direct examination
by Mr. Gentry

1 A In -- and I can't remember if it was early October,
2 which I think is the time frame in 2008, one of my partners
3 received a telephone call from the county. It involved
4 Mr. Joey Preston and a letter that his lawyers had sent to
5 the county, and we were retained to give the county advice
6 with regard to that letter and the relationship with
7 Mr. Preston.

8 MR. GENTRY: May I approach the witness?

9 THE COURT: You may.

10 Q Mr. Bright, I'm now going to hand you what's been
11 preadmitted as Plaintiff's Exhibit 12, and ask you if you
12 recognize that and can identify it.

13 A This looks like the initial contact with our law firm
14 through Buddy Daniel from, from the county council, and then
15 it's also a letter to me saying that we had been retained.

16 Q All right. And what's the date on the communication to
17 you?

18 A The communication to me from Mr. Thompson, who was the
19 chairman at the time, is October 8th, 2008.

20 Q All right. And is that consistent with your general
21 recollection about the time that you first got involved?

22 A Yes. Yes, it is.

23 Q All right. Let me ask you to look first at the, at the
24 message from Mr. Thompson to you. The first thing he does
25 is wish you congratulations, which, in hindsight, is

Thomas Bright - Direct examination
by Mr. Gentry

1 interesting.

2 How does, how does Mr. Thompson, in the, in the next
3 paragraph, characterize the, the claim that Joey Preston is
4 making?

5 A He characterizes it as a contractual claim.

6 Q Look, if you would, at the, at the paragraph below
7 that.

8 what does Mr. Thompson say to you in this email about
9 the desired timing of the handling of this matter?

10 A He, he makes the point that there's only four meetings
11 of council left before the new council is to be seated, and
12 he says time is of the essence.

13 Q All right, sir. The third and fourth pages of Exhibit
14 12 are a copy of a letter on Foster Law Firm letterhead
15 dated September 25th of 2008. It's -- the fourth page is
16 signed by Rob Hoskins, and the, the letter has a number of
17 addressees.

18 Do you remember receiving this letter as part of a
19 communication from Mr. Thompson?

20 A I remember this as being a part of the initial contact
21 with our law firm, yes.

22 Q All right. What, what is this letter?

23 Do you recall?

24 A It is -- and, again, I can, I can read it and tell
25 you -- I can tell you what my recollection was is that Rob

Thomas Bright - Direct examination
by Mr. Gentry

1 Hoskins was representing Mr. Preston at the time, who was
2 the county administrator. I believe the letter reflects
3 that several people had made some comments on the campaign
4 trail that year who were running for county council. Let's
5 see.

6 Q Let me, let me direct -- I'm sorry. You hadn't
7 finished.

8 A That's all right. Go ahead.

9 Q Let me direct your attention to the first three or four
10 lines of, of the letter. There's a statement there from
11 Mr. Hoskins regarding the time frame in which he says
12 actions are expected to take place.

13 What's his statement there?

14 A It's, it's basically saying that newly elected council
15 members intend, after January of 2009, to prevent
16 Mr. Preston from carrying out his duties as the county
17 administrator.

18 Q All right. If you, if you look down about four lines
19 from there?

20 After talking about what Mr. Hoskins characterizes as
21 attempts to hinder Mr. Preston's ability to perform his
22 duties, there's a sentence that begins those attempts.

23 Would you publish that sentence by reading it in the
24 record?

25 A "Those attempts have, thus far, been most unfortunate

Thomas Bright - Direct examination
by Mr. Gentry

1 for the people of Anderson County, but Mr. Preston has
2 overcome the efforts of those who would stimy him in the
3 performance of his duties."

4 Q Thank you, sir.

5 In this letter, this September 25th letter from Mr.
6 Hoskins to the members of county council, is there any
7 statement that the current council, as a body, had taken any
8 adverse employment action against Mr. Preston?

9 A The focus of the letter, and you can go down about four
10 more lines, Mr. Preston considers the intent, the intent of
11 certain members of council and their allies to prevent him
12 from performing his jobs, and he looked at that as an
13 anticipatory breach of his contract. But the focus is on
14 the people that had been elected and will be coming into
15 office.

16 Q So, the, the expectation of what might happen in
17 January of 2009?

18 A Just that they would do something to terminate his
19 employment.

20 Q But there was no description of any current wrong by
21 the, by the current council?

22 A No, the, the -- Rob Hoskins used the terms anticipatory
23 breach, which means anticipating a breach of contract at
24 some time in the future of his employment contract.

25 Q Do you recall, after receiving this email, Exhibit 12

Thomas Bright - Direct examination
by Mr. Gentry

1 from Mr. Thompson, when you first met with someone from the
2 county?

3 A I, I couldn't tell you what the date was. I could tell
4 you that I most likely had a telephone call with someone
5 from council. Most likely Mr. Thompson. I know that the
6 first meeting that I had was with Mr. Thompson.

7 Q And was that after the receipt of this letter?

8 A Was after the receipt of this letter, yes.

9 Q Do you recall having a conversation with Mr. Hoskins in
10 around this same time frame?

11 A I'm sure I would have because it would make sense that,
12 as someone that's been asked by Anderson County to respond
13 to a letter that Mr. Hoskins had wrote, Mr. Hoskins and I
14 live in the same town. We run in some of the same circles.
15 He and I know each other. So, it would of made sense for me
16 to have called him as a courtesy to say that I was going to
17 be involved.

18 Q Do you recall how Mr. Hoskins characterized generally
19 what he was trying to accomplish for Mr. Preston?

20 A I know that---

21 MR. DAVIS: Your Honor, objection.

22 THE COURT: Are you asking for what Mr. Hoskins said?

23 MR. GENTRY: Yes, Your Honor. As it's -- he's a
24 representative of the party opponent. It would be an
25 admission of a party opponent through his attorney.

Thomas Bright - Direct examination
by Mr. Gentry

1 MR. DAVIS: He's right about that. I think I was
2 wrong.

3 THE COURT: I think he is right about that.

4 You may proceed.

5 A Again, I don't remember my -- the specifics. I do
6 remember, having reviewed my file at some point in time,
7 that there is a, a handwritten note of my conversation with
8 Mr. Hoskins. But, quite frankly, I don't remember the
9 specifics of what's on that note.

10 MR. GENTRY: For the record, the parties have agreed
11 that all of Mr. Bright's notes are preadmitted. I'm not
12 sure whether this one made it into that stack.

13 THE COURT: I understand.

14 MR. GENTRY: So, this is not -- this is not marked.
15 I'm gonna show it to Mr. Bright as you---

16 THE COURT: All right. You may approach the witness.

17 MR. GENTRY: Thank you.

18 THE COURT: Yes, sir.

19 Q Mr. Bright, is that your note and is it the note you
20 were referring to?

21 A Yes, it is, and, and I specifically note -- this is the
22 way that I would typically make notes is I would point out
23 that I talked to someone who they represent, who they were
24 involved with or why I was making the note. It shows a
25 date, which, in this case, is October 9th, 2008, and this

Thomas Bright - Direct examination
by Mr. Gentry

1 is my handwriting.

2 Q would, would you have made that contemporaneously with
3 your conversation with Mr. Hoskins?

4 A Absolutely. That's the way I typically do things.

5 Q And what does it indicate that Mr. Hoskins said to you?

6 A He was telling me that, during various press
7 conferences, that, and I can't remember if he said existing
8 council members or newly elected council members, said that
9 they would suspend Joey. Come January 1st, they will
10 assign him tasks he cannot complete, and, and ultimately
11 terminate his employment.

12 Q And what -- how did Mr. Hoskins characterize his goal
13 for --?

14 A It was, it was clear -- it was apparent to me, from the
15 very beginning, that -- from his prospective, his client,
16 because of the disruption within the county government and
17 the, the newly elected people coming on board, that he was
18 telling me and I, these are words that I used, that he knows
19 he's finished and he needs to go out on his own terms.

20 Now, I'm not sure that Mr. Hoskins said that exactly,
21 but that is the impression I got. Those were my words.

22 MR. GENTRY: And, and we will deal with admitting that
23 appropriately if it's not marked.

24 MR. DAVIS: We'll take care of that.

25 THE COURT: Thank you.

Thomas Bright - Direct examination
by Mr. Gentry

1 Q Mr. Bright, do you recall what you did next in order to
2 carry out your responsibilities for the county?

3 A Well, as I said, one of the first things that I did was
4 I, I met with Michael Thompson, who was, at the time,
5 chairman of county council. I, I did several things just to
6 kind of get a sense from him well, what, what was the scope
7 of what he wanted me to do, and the scope of what he
8 suggested to me is we need to find a way to have an amicable
9 separation of Mr. Preston from the position of
10 administrator, of administrator.

11 I wanted to make sure that Mr. Mitchell or that Mr.
12 Thompson understood that I had done work for Anderson County
13 before. So, I shared that with him. And, in fact, had
14 worked with Joey Preston and he understood that.

15 I also made it abundantly clear that I wanted to talk
16 to every council member before I did anything so I could
17 just get some sense of what each of the council members were
18 thinking.

19 Q All right. Did you also perform legal research?

20 A I'm sure, at some point in time, we did legal research
21 because that's what this was about. This was about an
22 employment contract. One of the questions I had in my mind
23 was was it enforceable, what were some of the legal issues
24 associated with that, what are some of the practical issues
25 associated with the, what they were trying to accomplish.

Thomas Bright - Direct examination
by Mr. Gentry

1 So, to tell you I did the research before I talked to
2 people or after I talked to people, I can't tell you that.
3 But, yes, legal research would have been part of that
4 process.

5 Q Did you read Mr. Preston's existing employment
6 contract?

7 A No doubt I read his contract probably more than once.

8 Again, could I tell when, in this sequence of events, I
9 read it?

10 No.

11 But I certainly would of read it fairly early on.

12 Q All right. Did you, in fact, talk to each member of
13 county council?

14 A Yes, sir, I did.

15 Q All right. And, and you're -- there are notes in the
16 file that have been preadmitted that reflect all of those
17 conversations.

18 A Yeah, in fact, that's one of the things I did is to
19 make sure that I had made notes of those conversations,
20 which I did.

21 Q Do you have a, a general recollection, as we sit here
22 today, of the impression that you came away from after
23 completing those conversations?

24 A It was clear to me that there were, there were members
25 of the sitting county council who were supporters of Joey

Thomas Bright - Direct examination
by Mr. Gentry

1 Preston, who believed in Joey Preston. There were those who
2 did not. I could, at that point in time, I could of
3 identified who they were.

4 But I think the -- there was a unanimous feel that this
5 is not going to be a good situation. There was a need, and
6 these are my terms, my words, for a, for basically a divorce
7 and to -- for him to leave county government and for the
8 council to move on and find another county administrator.

9 Q Did you, at some point, Mr. Bright, ask for a
10 calculation of the amount of severance that would of been
11 due to Mr. Preston under his employment contract had he been
12 terminated without cause?

13 A Yeah, at some point in time I believe that I made a
14 contact through the then personnel office through I think
15 Phyllis McAllister to contact the right person who would be
16 able to look at his employment contract and be able to
17 provide me with the, the various elements of what those
18 pieces were worth.

19 MR. GENTRY: May I approach the witness?

20 THE COURT: You may.

21 Q Mr. Bright, I'll show you what's been preadmitted as
22 Plaintiff's Exhibit 15.

23 Do you recognize that?

24 A Yes, I do.

25 Q What is that?

Thomas Bright - Direct examination
by Mr. Gentry

1 A This is, in fact, the communication from Gina Humphries
2 to me saying here is the spreadsheet that entails the value
3 of his, of Mr. Preston's contract and then the second page
4 is an itemized listing of all the elements that were
5 contained in that contract, and I'm not -- that's, that's
6 basically what it is.

7 Q What's the date of the email from Ms. Humphries to you?

8 A October 17th, 2008.

9 Q All right. And do you know what role Ms. Humphries had
10 in Anderson County?

11 A I believe she was the head of finance if I'm not
12 mistaken.

13 Q Turn your attention to the second page.

14 Is it your understanding that this, this spreadsheet or
15 this table on the second page is Ms. Humphries calculation
16 of the aggregate value of the severance benefits under Mr.
17 Preston's contract?

18 A Yeah, in fact, it says summary of all compensation and
19 benefits that would be expended either to administrator or
20 on his behalf in the event of a contract termination without
21 cause.

22 Q All right. And what is the total amount that Ms.
23 Humphries calculated?

24 A The total at the bottom right was \$827,222.

25 Q All right, sir. Did you, at some point after that,

Thomas Bright - Direct examination
by Mr. Gentry

1 receive a, a demand letter from Rob Hoskins?

2 A There was a detailed letter from Rob Hoskins. I
3 couldn't tell you exactly what date, I want to say
4 September 27th, but I'm not positive, that detailed not
5 only -- well, it detailed his position on behalf of his
6 client of why he was asking for what he was asking for.

7 MR. GENTRY: Okay. May I approach the witness?

8 THE COURT: You may. Excuse me.

9 Q Mr. Bright, I've handed you what's been preadmitted as
10 Plaintiff's Exhibit 22.

11 Do you recognize that letter as Mr. Hoskins demand
12 letter that was sent to you?

13 A Yes, it's a little later than I thought. It's October
14 23rd, but, yes, this is the letter.

15 Q All right. Does, does this -- is this letter the first
16 dollar demand on behalf of Mr. Preston that you're aware of?

17 A It's the first one that I can recall. That doesn't
18 mean Rob Hoskins didn't say something to me earlier, but
19 this is the first one that I recall.

20 Q Okay. Let me ask you first to look at the last
21 sentence of the first paragraph.

22 What's Mr. Hoskins conveying there?

23 A The -- it is consistent with Plaintiff's Exhibit No. 15
24 in that he's reflecting that the value of his employment
25 contract was \$827 -- \$827,222.

Thomas Bright - Direct examination
by Mr. Gentry

1 Q All right. And, in fact, it's -- that's identical, to
2 the dollar, to what Ms. Humphries provided?

3 A Yes.

4 Q Is that correct?

5 A Yes, it is.

6 Q All right. Was that all that Mr. Hoskins was demanding
7 on behalf of Mr. Preston?

8 A Again, I don't -- there's, there's clearly references
9 to the potential for other claims against individual council
10 members. There's a request for retirement service credit.
11 So, there are additional dollar amounts.

12 Q All right. Mr. Bright, let me ask you to look at the
13 first sentence of the second paragraph of this, of this same
14 letter there on the first page. Mr. Hoskins there refers to
15 a number of causes of action which Mr. Preston will assert
16 against two current council members as well as maybe one or
17 more incoming council members.

18 A Yes.

19 Q Do you recall that as, as Mr. Hoskins justification for
20 claiming more than the amount due under the contract?

21 A Yes. And if you go on to the next sentence he also
22 talks about tort claims given the extreme malice and
23 intentional nature of the actions of the council over the
24 past several years. I don't know that Rob ever articulated
25 a specific tort claim. But it was clear that this was, in

Thomas Bright - Direct examination
by Mr. Gentry

1 his mind and in the message he was conveying to me as
2 counsel for the county, that this was more than a breach of
3 contract.

4 Q And, and you anticipated, to, to some extent, the
5 question I was going to ask you.

6 This letter does not specify any particular tort claim,
7 does it?

8 A No, it does not.

9 Q And, and I think you said you, you don't recall if Mr.
10 Hoskins ever did specify a particular tort claim?

11 A No, I don't remember. He may have, but I just don't
12 remember it. But I don't have any specific recollection of
13 that.

14 Q Was Mr. Hoskins asserting that Mr. Preston had tort
15 claims against the county as an entity or only against
16 individual council members and council members-elect?

17 A Again, when I read this letter, it, it talks about the
18 individuals. I don't remember having any recollection that,
19 in his mind, there was a difference, or in what he was
20 conveying to me, that there was a difference between the
21 two.

22 Q Were, were you being paid by the Insurance Reserve Fund
23 or by the county itself to your knowledge?

24 A I don't remember. I just don't remember.

25 Q All right. Let me ask you this.

Thomas Bright - Direct examination
by Mr. Gentry

1 A I would suspect it was probably the county.

2 Q Let me ask you to look at the second page of this
3 letter. This second paragraph details additional amounts,
4 amounts that Mr. Hoskins says Mr. Preston needs is the way
5 he puts it.

6 what, what are the additional amounts that Mr. Hoskins
7 is claiming and actually the third paragraph is a better
8 summary of all the, all the amounts if I can direct your
9 attention there.

10 A I think there's a \$356,000 and 87 -- \$356,087
11 through -- to purchase credits through the South Carolina
12 Retirement System. Retiree health benefits of an additional
13 \$92,772.

14 Q And those are in addition to the \$827,222 that had been
15 calculated as the maximum amount available under the
16 severance provision of the contract, employment contract?

17 A Correct.

18 Q What, what is your recollection of how Mr. Hoskins
19 explained that he arrived at the \$356,087 retirement system
20 credit payment?

21 A I, I, I don't know how he calculated that number. I
22 don't know where that came from. I do know that, at one
23 point in time, my office tried to contact and did, in fact,
24 contact the South Carolina Retirement System, and in
25 providing them with a scenario of someone with this number

Thomas Bright - Direct examination
by Mr. Gentry

1 of years of service and trying to get this much credit, what
2 would that cost me, and I know that we, at least, looked at
3 that.

4 Q Was, was Mr. Hoskins' goal to allow Mr. Preston to
5 retire immediately?

6 A The goal was to have an immediate separation of his
7 employment and that he would -- this would be an attempt in
8 resolution of all his supposed claims, allow him to have
9 that level of retirement, and to leave the county.

10 Q And did, did -- did you understand that that included
11 his commencing to draw a pension immediately after the
12 separation?

13 A I, I don't remember that Rob and I ever discussed what,
14 when, or if Mr. Preston would begin to draw anything. This
15 was an attempt to try and put a value on what does it cost
16 to get him to a place where he could.

17 Q Do you recall, Mr. Bright, how many times you met with
18 the personnel committee of the Anderson County Council?

19 A I know I met at least twice with the personnel
20 committee.

21 Q Were both of those meetings after your receipt of this
22 October 23rd letter?

23 A I have to believe that the answer to that question is
24 yes.

25 Q All right.

Thomas Bright - Direct examination
by Mr. Gentry

1 A Cause there wouldn't of been anything to discuss with
2 them until we had this demand letter.

3 Q Mr. Davis just showed Mr. Waldrep a moment ago a
4 document that suggested, and I think it was one of your
5 notes, that suggested the first meeting was October 27th,
6 2008.

7 Is that consistent with your recollection?

8 A Yes, it is.

9 Q At that meeting, what advice did you give to the
10 personnel committee?

11 A well, by that point in time, as I told you, I couldn't
12 remember when we did research and when I talked to all the
13 individual council members, but by that point in time I
14 would have done my legal research. I would have had a
15 conversation with Rob Hoskins. I would of had the letter
16 from October 23rd with his various demands, and I would of
17 talked to each of the council members.

18 At that point in time I had two or three things that I
19 felt I needed to convey to the personnel committee.

20 The first of those was that Rob Hoskins had, had, in
21 his initial letter of September 25th and then again in the
22 letter of October 23rd, was claiming that his client was
23 being constructively discharged. For lack of a better term,
24 that's the creation of intolerable working conditions that
25 forces someone out of their job. I made the observation to

Thomas Bright - Direct examination
by Mr. Gentry

1 the personnel committee that I didn't see anything that
2 suggested anything of the sort, and, therefore, I didn't
3 think much of a claim of constructive discharge.

4 I also made the observation that, you know, be, because
5 the consternation seems to be, seemed to be between the
6 newly elected council members and Mr. Preston, one of the
7 recommendations I made is that they not do anything right
8 now, that they allow the new sitting council to deal with
9 the issue of Mr. Preston. Have Mr. Preston go about his
10 job, do what he'd been hired to do, and let the new council
11 deal with it.

12 The third thing that I tried to share with the council
13 was that there was a long line of cases in the State of
14 South Carolina that suggested that his employment contract,
15 in the first place, was, was void or voidable. In other
16 words, they didn't have to pay him this money. He didn't
17 have a three year contract as you and I would think of it
18 and I made that very clear to them.

19 But at the same time, as any good lawyer does, I made
20 sure that they understood, but you never know, when you get
21 in a courtroom, what's gonna happen. And, so, I shared with
22 them what I felt might be some of the worst case scenarios
23 if Mr. Preston were to sue the county, and if Mr. Preston
24 were able to prevail. So, I shared that full panoply of
25 thoughts that I had about how to handle this whole process.

Thomas Bright - Direct examination
by Mr. Gentry

1 Q All right. Mr. Bright, you, you mentioned or you
2 testified that you advised the committee specifically on the
3 claim of constructive discharge.

4 Did you separately analyze and advise, advise on a
5 claim of anticipatory breach?

6 A Yeah, I mean, to me, the concept of either constructive
7 discharge or anticipatory breach went hand-in-hand in my
8 legal thinking. Whether something had been done that would
9 suggest a breach in the future or whether something had
10 already been done, I didn't think either of those things had
11 happened. And, so, I didn't give much credence to those
12 claims at that time.

13 Q We also talked about Mr. Hoskins claim of unspecified
14 torts.

15 Did you place an additional value on those purported
16 tort claims?

17 A Again, I think that in trying to convey to the
18 personnel committee -- again, what a good lawyer does is he
19 doesn't make decisions for his clients. He lays out all the
20 facts and allows them to make choices, and I wanted to make
21 sure they had a full understanding of what all the possible
22 ramifications were for this particular contract, and, and
23 for the claims that Mr. Preston was raising.

24 Q Did you tell the committee that, that you had concerns
25 about their own personal liability potential?

Thomas Bright - Direct examination
by Mr. Gentry

1 A One of the last things that I made sure that the
2 council was aware of, and I'm not sure exactly how I put
3 this, but I said to them, and, and this really kind of goes
4 hand-in-hand with telling them to leave it for the new
5 council, is I made the comment that I said I, I can't tell
6 you right now that I know of any theory of law which would
7 support a lawsuit against the individual council members if
8 they were to make a decision to give Joey the kind of money
9 that he was asking for in these letters. But that I had a
10 concern that that is something that could happen in the
11 future.

12 In fact, it became a matter of dialogue between Mr.
13 Hoskins and myself because he wrote me a letter, at some
14 point in time, saying he can't think of any theory like that
15 either. But I was concerned that, at some point in time, a
16 tax payer within the county might say to the sitting council
17 members you gave our money away and you shouldn't have done
18 that, and I said I couldn't come up with a theory, but I was
19 concerned about that issue.

20 Q Did that concern arise in part out of the fact that, as
21 you put it, you didn't think much of the anticipatory breach
22 and the constructive discharge claims?

23 A I don't, I don't know that I necessarily connected
24 those two thoughts. I think my thought was, in the grand
25 scheme of things, the picture was, as I said, a divorce, and

Thomas Bright - Direct examination
by Mr. Gentry

1 a payment of a lot of money to one person for that divorce,
2 and I was concerned that, after the fact, that if somebody
3 felt this was not a proper action for the board or the, the
4 council to have taken, especially in light of my research
5 that I'd done on the contract claims and the tort claims,
6 that someone might pursue a cause of action against those
7 council members.

8 Q Mr. Bright, you said that, that you tried to sketch a
9 worst case scenario for the committee.

10 Is that accurate?

11 A Yes.

12 Q what, what did you tell them about the worst case
13 scenario?

14 A well, what we talked about is we, we obviously talked
15 about the allegations in the October 23rd letter that was
16 a contract claim, there were potential for tort claims,
17 wrongful discharge, those types of things.

18 And what I tried to share with them is, okay, if you
19 were to lose, here's what the contract's worth, here's what
20 the litigation costs could be going forward. There's always
21 the potential, if he's going to raise tort claims, for
22 compensatory and punitive damages. And, so, we would of
23 discussed the fact that if, if Armageddon were to occur,
24 this could certainly clear two million-dollars in exposure
25 for the county.

Thomas Bright - Direct examination
by Mr. Gentry

1 Q Did -- was that Armageddon number intended by you to be
2 a valuation in the case?

3 A No, sir, I was, I was not trying to tell them that I
4 thought they were on the hook for a two million-dollar --
5 but, as a good lawyer, I was trying to say that's always a
6 possibility. It was not done on my part to parcel out each
7 element of the claims and add them up and say here's the
8 exposure. I was merely trying to give them a big picture of
9 he's certainly claiming this much for breach of contract.
10 If he's claiming more for tort claims, if there's a, you
11 know, your expense cost and everything else, you could be
12 talking in excess of two million dollars.

13 Q So, you started with his 1.2 million dollar,
14 approximately, demand?

15 A The components of that, yes --

16 Q All right.

17 A -- and, and worked our way up from there.

18 Q All right. And with, without factoring in any analysis
19 of the, the likelihood of covering those?

20 A This, this was not a function of suggesting to them the
21 likelihood of recovery. It was merely expressing to them
22 that this is a possibility, and, in fact, I would suggest to
23 you that I made it abundantly clear that I felt that the
24 contract claim, in light of the research that I had done,
25 was highly questionable.

Thomas Bright - Direct examination
by Mr. Gentry

1 Q At that first meeting on October 27th, did the
2 committee give you any instructions or have any reaction for
3 you at that time?

4 A No, in fact, I can remember leaving and I, I was
5 impressed by the fact that it wasn't just the personnel
6 committee. I had been instructed, deal with the personnel
7 committee. That's the way we want you to communicate with
8 the council.

9 But I was impressed by the fact that Mr. Waldrep came.
10 I believe Cindy Wilson came to that meeting, neither of whom
11 were members of the personnel committee, and it -- as, as
12 the lawyer giving the advice to the entire council and to
13 the county, I was encouraged by the fact that they were
14 there. But at the, at the end of the meeting, I left
15 thinking I don't know what's gonna happen next.

16 Q Was there then a second meeting?

17 A There was a second meeting.

18 Q Between the two meetings, did your view of the merits
19 of Mr. Preston's claim change any?

20 A No.

21 Q What do you recall about the discussion at the second
22 meeting?

23 A It, it was very much akin to the, the first meeting
24 that we had in that I was, again, reiterating the various
25 five or, five or six points that I laid out here a few

Thomas Bright - Direct examination
by Mr. Gentry

1 minutes ago, and the -- you know, again, it was at that
2 point in time that I was going to -- they basically gave me
3 my marching orders on, on what to do next.

4 Q And, and what were those marching orders?

5 A The marching orders were that we appreciate what you've
6 told us. We've taken that into consideration. We've
7 decided that it's best for the county that Mr. Preston no
8 longer be the county administrator, that we end this
9 chapter, that's my words, not theirs, end this chapter in
10 county history and move on. So, Mr. Bright, we direct you
11 to go and talk to Mr. Hoskins and try and get the best deal
12 you can.

13 Q But did you understand that your assignment was to, to
14 settle the matter?

15 A Resolve it. Yeah, that he was no longer gonna work
16 there, they were going to pay him some amount, and I was to
17 find out what that amount was going to be.

18 MR. GENTRY: May I approach?

19 THE COURT: You may.

20 Q Mr. Bright, Plaintiff's Exhibit 24, also preadmitted,
21 appears to be your notes of a November 10th, 2008,
22 meeting. It says meeting with Joey Preston, but it appears
23 that Rob Hoskins, Candy Kern-Fuller were there representing
24 Mr. Preston and you were there with Ellis Fisher from your
25 office.

Thomas Bright - Direct examination
by Mr. Gentry

1 Is that correct?

2 A That's correct.

3 Q What do you recall about that meeting?

4 A This was a meeting that was scheduled through Rob
5 Hoskins office. The, the point was to try and have a
6 discussion about trying to have a resolute, meet a
7 resolution to, to, you know, separate Mr. Preston from the
8 payroll, to find a, a -- basically work out a severance
9 agreement to end the relationship.

10 Q Was Gina Humphries present at that meeting?

11 A Yes, she was.

12 Q How did she come to be there?

13 A I have no idea.

14 Q You didn't ask her to come?

15 A No, sir, I did not.

16 Q And I think you testified previously that your
17 involvement with Ms. Humphries was that you received her
18 calculation of the severance benefits?

19 A Correct.

20 Q What was your reaction to her presence there?

21 A It, it was, it was troubling to me in the sense that --
22 and, again, you have to understand the, the mindset that I'd
23 come from, representing management in these kind of
24 relationships, is that, that she was a member of the
25 management team. I didn't invite her to be there. I was

Thomas Bright - Direct examination
by Mr. Gentry

1 surprised she was there. When I got there, I believe she
2 was in the conference room with Rob Hoskins and Joey Preston
3 and that troubled me.

4 I know I discussed it with either Mr. Wilson or some,
5 one of the, maybe several of the members of the committee
6 saying I don't understand this. But I don't think I really
7 did anything about it other than expressed my surprise and
8 it was disconcerting that she was there.

9 Q Was she, was she there supporting Mr. Preston in, in
10 determining the financial calculations?

11 A That was the conclusion that I reached.

12 MR. DAVIS: Your Honor, he hasn't laid a foundation
13 that he would know that.

14 THE COURT: It would call for speculation at this point
15 in time. If you can lay a foundation for his knowledge as
16 to why she was there.

17 Q Did, did Ms. Humphries, in, to your knowledge, provide
18 calculations to Mr. Hoskins or Mr. Preston or his team?

19 A The only thing I can tell you is that there -- I was
20 provided by Mr. Hoskins with a spreadsheet that was very
21 similar to what you handed me as Plaintiff's Exhibit No. 15
22 except that it had a few more notations added to it, and I
23 want to say the numbers went as high as 1.3 million-dollars.
24 So, the conclusion that I reached is that she had provided
25 that to Mr. Preston.

Thomas Bright - Direct examination
by Mr. Gentry

1 Q In the course of this November 10th meeting, did, did
2 Mr. Hoskins reiterate the demand that he had made in his
3 October 23rd letter?

4 A Again, I, I can't remember the specifics, but my, my,
5 my general recollection was something in the vicinity of
6 1.3 million-dollars was his demand, and the other thing I
7 think it's important to understand is that, that, at the
8 point in time that I went into those meetings with Rod
9 Hoskins, I made it abundantly clear to him, as I had to the
10 council members that I was dealing with, that they had
11 nothing in particular to offer to Mr. Preston. In other
12 words, county government can only act in an open session of
13 their meetings.

14 So, they didn't have -- they hadn't gotten all the
15 council members together to say what do we want to do with
16 Joey Preston. This was the personnel committee exploring
17 possibilities and asking me to find out, from Mr. Hoskins
18 and from Mr. Preston, what their offer to the county would
19 be, and that was my -- that was the approach that I took to
20 the entire process.

21 Q So, you had to go to Mr. Hoskins and, and say to him,
22 in effect, would you take any less than what you've asked?

23 A Well -- and then I had those discussions with him, yes.

24 Q Did that, did that put you in a little bit of a
25 negotiating disadvantage?

Thomas Bright - Direct examination
by Mr. Gentry

1 A I would say a little bit, yes.

2 Q Did Mr. Hoskins, on behalf of Mr. Preston, move down
3 much in his demand in the course of this November 10th
4 meeting?

5 A I don't know that it was in that meeting or if it was
6 in subsequent conversations and phone calls we had later,
7 but eventually the number came down to 1.1, and, again, I'm
8 not -- that's not an exact number, but it's round figures.

9 Q Let me direct your attention, Mr. Bright, to the, the
10 second page of this Exhibit 24, the, the last line.

11 After the November 10th meeting was over, did you
12 make a report back to the personnel committee?

13 A Yes, and I want to -- I don't -- in fact, this, this
14 reflects that I talked to Mr. Wilson, I talked to
15 Mr. McAbee, and I had left a message for Mr. Greer. So,
16 those were the two, the three gentlemen on the personnel
17 committee that I was reporting to. So, I tried to keep them
18 up-to-date on what had happened in that meeting.

19 Q What, what did Mr. McAbee say in response to you?

20 A Well, again, I don't remember the specific call. I can
21 tell you these are my notes. These are -- this is my
22 handwritten notes from November 10th, and it reflects that
23 he said to go ahead and give him the 1.3 million dollars.

24 Q Mr. McAbee, based on that, was prepared to, to settle
25 at that time?

Thomas Bright - Direct examination
by Mr. Gentry

1 A Yes.

2 Q Does that suggest that the 1.1 million dollar number
3 was arrived at some time after this?

4 A Then there's, and then there's a -- no, it's clear that
5 it was.

6 Q After November 10th, did you talk to, to Mr. Wilson
7 and, and get some more specific guidance from him on a
8 target number?

9 A I would of had to. I don't, I don't have a
10 recollection. I know that I would of made notes of that in
11 my file if I had. But most definitely I would of talked to
12 him after that meeting. I didn't just leave it at one phone
13 call.

14 Q Do you recall when you -- and the one -- your
15 recollection of the 1.1 million-dollar number is, in fact,
16 roughly consistent with what's in the, in this severance
17 agreement.

18 Do you know when that number was arrived at?

19 A I can remember -- I can tell you that, and I'm not -- I
20 want to say that somewhere, either on the 17th or the
21 18th, we were exchanging drafts of a proposed settlement
22 agreement. So, the number would of had to have been arrived
23 at between November 10th and either the 17th or the
24 18th.

25 Q But you---

Thomas Bright - Direct examination
by Mr. Gentry

- 1 A I don't think it would of been as late as the 18th.
2 It would of had to have been before that. And, again,
3 understand that the way I postured this all along with Rob
4 Hoskins is Rob, this has to come as an offer from you. We
5 talked about ballparks, we've talked about possibilities,
6 and what, what is something that the committee felt they
7 could put before council to be accepted. So, these were
8 numbers that were always coming from Rob Hoskins as an offer
9 to the county and that's the way I presented it.
- 10 Q But you had guidance from the committee---
- 11 A Absolutely.
- 12 Q ---about that?
- 13 A Absolutely.
- 14 Q Was Mr. Wilson, as, as chairman of the personnel
15 committee, the primary person involved in giving you that
16 guidance?
- 17 A Yes, he was.
- 18 Q At the time that the, that the 1.1 roughly
19 million-dollar number was being arrived at, were you asked
20 by anyone on county council for your assessment for paying
21 1.1 million-dollars to settle these particular claims was a
22 good use of county money?
- 23 A No one asked me that question, no.
- 24 Q Did you have such an assessment?
- 25 A I wouldn't have done it if it were me. But that was

Thomas Bright - Direct examination
by Mr. Gentry

1 based on the research that I had done and shared with the
2 county that, in fact, I didn't think this was an enforceable
3 contract.

4 Q Did you take upon -- excuse me.

5 Were you primarily the drafter of the severance
6 agreement?

7 A Yeah, I, I told Rob that I had -- and, again, most law
8 offices have these, some form of a template that you use for
9 severance agreements and the like with things that we have
10 tried over the years that have been proven successful and,
11 and permissible. So, that's what, that's what I did. I
12 took the major responsibility for drafting the agreement.

13 Q All right. The, the severance agreement has, has been
14 admitted and I can certainly put it in front of you if it
15 would be helpful to you in answering this question.

16 But my question to you is with regard to the provision
17 of the severance agreement, which is a covenant by the
18 county not to sue Mr. Preston, and specifically did you have
19 any discussion with Mr. Hoskins about whether that language
20 should be drafted to prevent a suit like this one
21 challenging the validity of the severance agreement?

22 A We've never had that discussion, no.

23 Q When you were drafting, was that question in your
24 contemplation?

25 A That was not something we were contemplating. Again,

Thomas Bright - Direct examination
by Mr. Gentry

1 what we were contemplating was a no fault divorce that was
2 basically gonna say in exchange for this amount of money,
3 you're not gonna work there anymore, and the parties are
4 gonna, not gonna have anything to do with each other.

5 MR. GENTRY: May I approach the witness?

6 THE COURT: You may.

7 Q Mr. Bright, Plaintiff's Exhibit 26 has also been
8 preadmitted. It appears to be an email from Rob Hoskins to
9 you dated November 17th, 2008.

10 Do you recognize that?

11 A I sure do.

12 Q If you would, look at the, the fourth and fifth lines.
13 Mr. Hoskins writes "although I know that the agreement needs
14 to be voted on tomorrow night, and that the substantive
15 figures are what is being considered, there are a few legal
16 issues with regard to the final settlement agreement that I
17 need to obtain consultation on."

18 Did I read that correctly?

19 A Yes, you did.

20 Q At least by November 17th were you aware that there
21 was a plan to vote on the severance agreement on
22 November 18th?

23 A I knew that the objective was to try and have the
24 details worked out so that the matter could be presented to
25 the full council on the evening of the 18th.

Thomas Bright - Direct examination
by Mr. Gentry

1 Q Did Mr. Wilson give you any instructions about whether
2 or not you should come to that November 18th council
3 meeting?

4 A I know that he and I talked about it, and I, I offered.
5 I said I'd be more than happy to be there if you think that
6 that might help if people have questions. You can certainly
7 go into executive session of the council to have them ask me
8 questions about any of the legal issues that are involved.

9 Part of that was predicated on my concerns that they
10 were paying this kind of money when I felt that there was a
11 contract that might not be enforceable. But he said there's
12 no need for you to do that. And, so, I did not attend.

13 Q Thank you, sir. Please answer any questions Mr. Davis
14 may have.

15 A Thank you.

16 THE COURT: Mr. Davis, before you begin that we're
17 gonna take about a five minute break.

18 I'll caution the witness not to discuss your testimony
19 during the break with anyone.

20 Court will be in recess for about five to ten minutes.
21 Thank you very much.

22 (WHEREUPON, a short recess was taken at this time.)

23 THE COURT: Let's see. Mr. Davis, where are -- there
24 you are.

25 Are you ready to proceed?

Thomas Bright - Direct examination
by Mr. Gentry

1 MR. DAVIS: I am, Your Honor.

2 THE COURT: All right. You may do so.

3 MR. DAVIS: Your Honor, may I approach?

4 THE COURT: You may.

5 CROSS-EXAMINATION

6 BY MR. DAVIS:

7 Q Mr. Bright?

8 A Yes.

9 Q Did you meet with the attorneys for the county to
10 prepare for your testimony today?

11 A I have had several telephone calls with them, and I
12 think I met with them one day last week before my
13 deposition.

14 Q And how many telephones call have you had since your
15 deposition?

16 A Two, and there may have been an email message or two
17 just telling me when to be available.

18 Q And how long did those telephone conversations last?

19 A Relatively short. I think the longest one was probably
20 40 minutes.

21 Q Did you discuss your testimony today?

22 A We discussed the facts as I know them.

23 Q Mr. Bright, you referenced, on direct examination,
24 incidents when you previously represented Anderson County.

25 Do you remember that?

Thomas Bright - Cross-examination
by Mr. Davis

- 1 A Yes, I do.
- 2 Q One of those cases was the Jackie Hunter case, wasn't
3 it?
- 4 A Yes, it is.
- 5 Q The Jackie Hunter case is a case that went to trial,
6 right?
- 7 A Yes, it is.
- 8 Q The Jackie Hunter case was a case where you gave advice
9 to the county that they had a really great defense to the
10 Jackie Hunter case, right?
- 11 A I'm sure we did.
- 12 Q You went to trial?
- 13 A Correct.
- 14 Q You lost?
- 15 A I think we did, yes.
- 16 Q You lost a several hundred thousand dollar verdict?
- 17 A I believe so.
- 18 Q The county paid for all your attorney fees and a
19 judgment, right?
- 20 A Yes.
- 21 Q Many of the council members who were on the county
22 council in 2008 were on county council when you represented
23 them in the Jackie Hunter case, were they not?
- 24 A I don't know.
- 25 Q Larry Greer was, wasn't he?

Thomas Bright - Cross-examination
by Mr. Davis

- 1 A I don't know.
- 2 Q Larry Greer, he was on the personnel committee?
- 3 A Yes, he was.
- 4 Q Now, you told the county in this case they had a good
5 defense too, right?
- 6 A I don't think I was discussing with them a defense. I
7 told them I did not, I did not think that the contract was
8 enforceable.
- 9 Q And you cited a long history of---
- 10 A Yes.
- 11 Q ---South Carolina precedent?
- 12 A They're very old cases on this point.
- 13 Q A long history?
- 14 A They go back a long ways.
- 15 Q Newman versus McCauley, that's a seminal case, right?
- 16 A I don't remember what the seminal case is.
- 17 Q Cowart v. Poore, that's the next one, right?
- 18 A That's the one I remember.
- 19 Q After Cowart v. Poore, there was the case down in
20 Beaufort, Beaufort-Jasper, right?
- 21 A I remember a Beaufort County case, yes.
- 22 Q During your deposition I asked you what the exception
23 was to that rule.
- 24 Do you remember that?
- 25 A We -- I think that's how you characterized it, yes.

Thomas Bright - Cross-examination
by Mr. Davis

1 Q And you told me you didn't know what the exception is.

2 A I don't -- I think my answer to you was I'm not sure
3 that I'd call it an exception. I remember discussing with
4 county council that there was something in the enabling
5 legislation that would allow, under certain circumstances,
6 for the county to enter into a contract for a term of years.

7 Q And, in fact, in the decision of Cowart v. Poore, one
8 of the things that they said was that there is a specific
9 enabling statute that prescribed legislative authority with
10 respect to a term of contract, you can do it, right?

11 A I'm not here to interpret the, the law --

12 Q Oh.

13 A -- as the Supreme Court interprets it. I'm here to
14 tell you what my conclusions were based on the laws that was
15 presented to me---

16 Q You're only---

17 A ---and the facts as they were presented to me.

18 Q You're only here to testify that you provided advice
19 that the contract was unenforceable?

20 A No, I didn't provide advice that it was unenforceable.
21 I said I had strong questions about the enforceability of
22 the contract and I still maintain that today.

23 Q Well, now, Mr. Bright, on -- out of fairness to me, on
24 direct examination you got up and you suggested that you
25 told them that this was an unenforceable contract, right?

Thomas Bright - Cross-examination
by Mr. Davis

1 A I didn't. You didn't listen to me.

2 Q Oh.

3 A I told them that I had a real strong concern about the
4 enforceability of the contract, and if you have them read
5 the record back, I think you'd, you'd see that that's
6 exactly what I said.

7 Q All right. Well, let me ask you about your real strong
8 concern.

9 In relation to forming that real strong concern, Mr.
10 Bright, did you take into consideration the exception that
11 was outlined in the case of Cowart v. Poore?

12 A Again, you characterize it as an exception. I remember
13 that there's something in the enabling legislation that said
14 that there is a possibility that a contract, for a term of
15 years, might be something that is outside of that general
16 proposition. But I also believe that there's, there's case
17 law that talks about the fact that those can be reconciled.

18 Q Can you turn to Defense Exhibit No. 35?

19 A I assume it's in this booklet?

20 Q Yes, sir.

21 A All right. I've got it.

22 Q And all I'd like to know is, by scanning this decision,
23 does this look like an opinion that you would of had in your
24 file and how you would of marked it up?

25 A Yes, it is. It's the Cowart, Cowart decision, yeah.

Thomas Bright - Cross-examination
by Mr. Davis

1 Q Can you turn to Defense Exhibit 36, which should be
2 right after that one?

3 A I've got it.

4 Q And this is part of the enabling legislation that
5 relates to the employment and qualifications of an
6 administrator, is it not?

7 A I believe it is.

8 Q And it reflects South Carolina Code 4-9-620?

9 A Yes, sir.

10 Q And this is how you would mark up that statute as it
11 appeared in your file?

12 A Again, it looks like this is the way I would of
13 highlighted something as I read through it.

14 Q Now, I'm sorry about, to flip around on you, but your,
15 you're a little bit more versatile of a witness for
16 exhibits. If you could look at Defense Exhibit 16, which
17 should be the very first exhibit.

18 A Yes, I've got it.

19 Q Defense Exhibit 16 is an outline or it's, more
20 correctly, a timeline of events during your representation,
21 is it not?

22 A Yes, it is.

23 Q You wrote this document?

24 A Yes, I did.

25 Q You sent it to the Anderson County Council?

Thomas Bright - Cross-examination
by Mr. Davis

1 A I believe we did, yes.

2 Q Now, I'm not -- I'm kind of interested in something,
3 Mr. Bright.

4 If you had any inkling, any inkling that there was
5 fraudulent conduct going on with respect to Mr. Preston's
6 severance agreement, would you have pushed forward with the
7 representations, sir?

8 A I'm not---

9 MR. GENTRY: Objection.

10 A I'm not sure what you're asking me.'

11 Q Okay. If, during your representation, you learned
12 facts that cause you to believe that the execution of the
13 severance agreement was, in some way, fraudulent, would you
14 have persisted in representation?

15 A I doubt that I would have, no.

16 Q You doubt or you absolutely would not have?

17 A I'm sure that I -- in any situation where there's a
18 possibility that someone is committed fraud, I will not say
19 categorically one way or the other that I'm gonna pass
20 judgment on that while hypothetical to present me.

21 I can tell you this. I have been in the courtroom
22 before where a witness has testified falsely and has
23 committed perjury, and as a result of that, I took my
24 responsibility and oath that I took 31 years ago and that
25 you've taken the same one, and I took it very seriously. I

Thomas Bright - Cross-examination
by Mr. Davis

1 took it to the Supreme Court. I took it to the Court of
2 Appeals. I took it to the client and we exposed that that's
3 what was going on, that there was false testimony in a
4 trial.

5 And, so, if you're asking me whether I would have the
6 integrity to report something that was fraudulent, yes, sir,
7 I would.

8 Q Mr. Bright, I have no idea what you're talking about.

9 What I was trying to ascertain was if, during this
10 process, the contract negotiation, you learned that it was
11 somehow a fraudulent deal, that it was a put up job, a sham
12 as the county's alleging, you would of quit, right?

13 You wouldn't have participated?

14 A I would have explored the issue as I just explained the
15 way I've handled it before, and I would of done the
16 appropriate thing that my oath requires me to do and that
17 the disciplinary rules that you and I are under would
18 require me to do.

19 Q You wouldn't of participated in what you perceived as a
20 potential fraud?

21 A Absolutely not.

22 Q Absolutely not.

23 And, in this case, that didn't happen, right?

24 A In what case?

25 You mean did anybody tell me that?

Thomas Bright - Cross-examination
by Mr. Davis

1 Q When you were representing the county---

2 A I did.

3 Q ---in relation to Joey Preston's severance agreement,
4 you didn't throw up a flag and say woa, woa, woa, I'm out of
5 this, I'm not gonna represent the county in relation to this
6 deal if there's something wrong?

7 You -- that never happened, right?

8 A Again, what are you talking about?

9 Are you talking about fraud or something that's wrong?

10 Q Fraud.

11 A Fraud. No, no one expressed anything that suggested
12 fraud to me.

13 Q Mr. Bright, on direct examination you, you testified
14 about how you informed the personnel committee about a
15 potential down, downside risk of about two million-dollars.

16 Do you remember that?

17 A Again, I, I, I think what I should of said is it
18 wouldn't of surprised me that I used an analysis, an
19 analysis that may of suggested two million-dollars. I don't
20 remember saying that, but that would not have surprised me.
21 I, I would have outlined for them what that risk was.

22 Q Because I asked you about that just about a week and a
23 half ago, right?

24 A I believe so.

25 Q And, at that time, you told me you didn't really

Thomas Bright - Cross-examination
by Mr. Davis

1 remember exactly, but it didn't surprise you?

2 A That's right.

3 Q Will you turn for me to Plaintiff's Exhibit 3?

4 A (Witness complies.)

5 Q On direct examination you were asked questions about
6 how the anticipatory breach or constructive discharge
7 wouldn't occur until January 1st of 2009.

8 Do you remember that?

9 A I don't think I said January 1st, 2009. I think we
10 talked about anticipatory breach and that sort of thing.
11 Yes, I remember that.

12 Q Well, you remember the whole line of questioning about
13 the new council coming in and---

14 A Correct.

15 Q ---those are the ones that you were really concerned
16 about and it was in the future.

17 Do you remember that?

18 A Yes.

19 Q And the new council came in in January of '09, right?

20 A Okay.

21 Q About halfway down the middle of paragraph or
22 Plaintiff's Exhibit 3 in the paragraph in the main body,
23 there's a sentence that states, and I quote, "certain
24 council members have hindered Mr. Preston's ability to
25 perform his duties as county administrator for at least

Thomas Bright - Cross-examination
by Mr. Davis

1 seven and a half -- seven years now. Those attempts have,
2 thus far, been most unfortunate for the people of Anderson
3 County."

4 Right?

5 A Yes, you've read that correctly.

6 Q Those aren't attempts to hinder Mr. Preston that are
7 occurring in the future, right?

8 A This sentence doesn't reflect that, no.

9 Q And in that exact letter they're, they're referencing
10 attempts to hinder Mr. Preston's ability to do his job now
11 and in the past?

12 A That's the language that's used in this letter.

13 Q It's true, is it not, that you didn't conduct a factual
14 investigation into the validity of Mr. Preston's claims?

15 A What were his claims?

16 Tell me what claims you're talking about and I'll try
17 to answer that as best I can.

18 Q Okay. Well, he had claims, you remember, for
19 anticipatory breach?

20 A Yes.

21 Q He had claims for constructive discharge.

22 A Yes.

23 Q And then we looked at a letter, from October 23rd
24 of 2008, that reflected potential tort claims.

25 A Correct.

Thomas Bright - Cross-examination
by Mr. Davis

1 Q It's true, is it not, that you didn't conduct an
2 investigation into the facts supporting those claims?

3 A I did not go out and try and interview individuals to
4 find out whether or not there were tort claims that existed.
5 Rob Hoskins didn't share any of those with me specifically.
6 So, no, I didn't conduct an independent investigation of
7 those things. That wasn't what I was asked to do.

8 Q In fact, when I asked you this a week and a half ago
9 your answer was none whatsoever?

10 A That's right.

11 Q Is that right?

12 A That's exactly right.

13 Q All right.

14 A That's what I'm telling you today.

15 Q Can you turn to Defense Exhibit 17 for me?

16 A (Witness complies.)

17 Q The first question I have for you.

18 That's your handwriting, right?

19 A Yes, it is.

20 Q Those are your notes?

21 A Yes, they are.

22 Q Those are notes that you take either contemporaneously
23 when you're on the phone with someone or---

24 A Correct.

25 Q ---when you're meeting with them?

Thomas Bright - Cross-examination
by Mr. Davis

1 A Correct.

2 Q You don't intentionally put incorrect facts into your
3 notes, right?

4 A I put information in my notes that people are informing
5 me of. So, whether they're accurate or not I don't know.
6 I'm merely reporting -- I'm putting down what people are
7 telling me.

8 Q Your intent is to capture what they're telling you---

9 A Yes.

10 Q ---accurately and correctly?

11 A Yes.

12 Q Okay. In Defense Exhibit 17, do you see, in the upper
13 left-hand corner, it says five for Joey, two against Joey?

14 A Yes.

15 Q And this memoranda was something that you wrote when --
16 I'm not -- I don't have any video. You can leave the lights
17 on.

18 This was a memorandum that you wrote right after you
19 were first retained, correct?

20 A It, it, it reflects my notes the very moment that we
21 were retained. Now, whether or not this was Buddy Daniel,
22 my partner, who was sharing this with me or whether it was
23 Mr. Thompson over the phone, I don't remember that. But I
24 do remember this was the first note that I made of any
25 information that I had.

Thomas Bright - Cross-examination
by Mr. Davis

1 Q And down in the middle of the page it says, and I
2 quote, "WAIM-AM, 1230 Rick Driver, rumor, arrow, second set
3 of books."

4 A Yes.

5 Q Right?

6 And someone was telling you, at that point in time,
7 that this radio station, WAIM, was reporting a rumor about
8 Mr. Preston?

9 A Yeah, I believe that's what it was, yes.

10 Q And the rumor apparently was that there was some sort
11 of second set of books?

12 A Yes.

13 Q At some point, Mr. Bright, did you come, become aware
14 that Mr. Preston had sued, in his official capacity, two
15 sitting county council members?

16 A Someone shared that with me.

17 Did I ever verify it?

18 No.

19 But someone shared that with me, yes.

20 Q And the facts and circumstances relating to a suit like
21 that, those wouldn't be facts and circumstances that you
22 might like to know when offering opinions about someone's
23 employment claims?

24 A No.

25 Q None?

Thomas Bright - Cross-examination
by Mr. Davis

1 A No.

2 Q Did you ever come to learn, Mr. Bright, that the Court,
3 in the case that Mr. Preston actually filed against Ms:
4 Wilson and Mr. Waldrep, actually issued a preliminary
5 injunction against them?

6 A Someone told me that. But I don't specifically
7 remember digging into that. I mean someone may of told me
8 that. I may of looked at something that said that, but
9 that's not something that's in my memory today.

10 Q And would it be an important fact if Anderson County
11 took the position that Mr. Waldrep, for example, was acting
12 in his official capacity when found to have been interfering
13 with Mr. Preston's contract?

14 A I wasn't asked to evaluate whether anybody was
15 interfering with Mr. Preston's contract. I was asked here's
16 a demand from his lawyer that says he wants to leave and he
17 wants this money. Will you please evaluate that for us, and
18 give us your best advice, and that's what I did.

19 Q I am---

20 A I wasn't asked to look into the background of
21 Mr. Preston. I wasn't asked to look into any allegations
22 that anybody was making about Mr. Preston. That wasn't what
23 I was asked to do.

24 Q On October 23rd of 2008 you received a letter from Rob
25 Hoskins?

Thomas Bright - Cross-examination
by Mr. Davis

1 A I'm sure that's the right date.

2 Q And that letter stated in it that Mr. Preston's claims
3 exceeded the four corners of his master employment
4 agreement?

5 A It -- you know, I went over it a few moments ago and I
6 read different parts of it. My position was he was making
7 claims that went beyond just a contract claim, that he
8 specifically was identifying tort claims against individual
9 council members, and, again, whether it was in the, my
10 conversations with Rob Hoskins, he was reflecting wrongful
11 discharge, and any number of other types of claims. Yes, I
12 thought it was more than a contract claim that he was
13 articulating.

14 Q You thought it was more than a contract claim also
15 because the October 23rd, 2008, correspondence says that
16 his claims do, in fact, exceed the four corners of the
17 contract, does it not?

18 A Again, I think that's what I've said earlier, and I
19 think I referred to the second paragraph of the letter, and
20 the second page of the letter, several paragraphs in there.

21 Q And those claims included tort claims, did they not?

22 A Yes, specifically -- and never knew the content of what
23 those tort claims were, but they were -- the way the letter
24 put it was tort claims against several of the council
25 members and newly elected council members.

Thomas Bright - Cross-examination
by Mr. Davis

1 Q When providing advice about potential liability with
2 respect to Mr. Preston's claims, did you ever study and
3 research the Tort Claims Act?

4 A I've studied the Tort Claims Act on many occasions.

5 Q And what does the Tort Claims Act say when there is
6 instances where an individual is named, a government
7 individual, is named in their personal capacity?

8 A Give me -- be more specific.

9 what are you, what are you looking for?

10 Q The truth.

11 Does it not---

12 A You suggest that I would offer anything else then
13 that---

14 Q No, it was a joke.

15 A ---I, I would be highly offended that somebody I
16 practiced law with would say that. But go ahead.

17 Q Now, just, Mr. Bright, it was, it was a joke.

18 A I didn't find it very funny.

19 Q Okay. Well, let's move on.

20 Does the Tort Claims Act not, in fact, require the
21 substitution of the government entity when individuals are,
22 are named in lawsuits?

23 A There are -- there -- the Tort Claims Act is very
24 detailed, and certainly one of the aspects of the Tort
25 Claims Act is when a tort claim is brought against an

Thomas Bright - Cross-examination
by Mr. Davis

1 individual, in appropriate circumstances, the entity becomes
2 the defendant. There are other circumstances where the
3 individual can be sued in their individual capacity.

4 Q And, in fact, if the person were acting in their
5 official capacity or the county, for example, in this
6 instance, acknowledged that they were acting in their
7 official capacity, it would require the substitution of the
8 county, would it not?

9 A I think, by operation of the law, that happens. I
10 don't think that there's any -- if a lawsuit gets, gets
11 filed, and it has five or six different names attached to
12 it, I don't think they're automatically eliminated from the
13 caption of the pleading and the entity is inserted. I think
14 that's an operation by law. That's something that happens
15 by operation of law---

16 Q And in that---

17 A ---who's gonna be held responsible for it.

18 Q In fact, there's a statute that provides for that,
19 correct?

20 A It could be, yes.

21 Q And there's an opinion. I think it's the Flato
22 opinion.

23 A I'm not, not familiar with it.

24 Q Did you make any efforts to obtain the pleadings from
25 the lawsuit where Mr. Preston sued Bob Waldrep or Cindy

Thomas Bright - Cross-examination
by Mr. Davis

1 Wilson?

2 A I don't remember doing that, no.

3 Q Will you turn to Defense Exhibit 18 please?

4 A (Witness complies.)

5 Q And the very first thing I need to ask you is, up in
6 the top left-hand corner, I can't quite read your
7 handwriting.

8 What does that little note say up there?

9 A Which one, the one in the upper right, left-hand
10 corner?

11 Q Yeah, the very top one.

12 A I don't -- I can't tell.

13 Q Something---

14 A Something, but won't say so, and I don't know.

15 Q Okay.

16 THE COURT: What exhibit are you looking at now?

17 I was typing. I missed the number.

18 MR. DAVIS: Defense Exhibit 18, Your Honor.

19 THE COURT: Thank you.

20 Q October -- do these -- does this exhibit reflect your
21 notes from October 9?

22 A Yes, they are.

23 Q And that was a meeting with Michael Thompson?

24 A Yes, sir.

25 Q And, to your knowledge, was Michael Thompson the

Thomas Bright - Cross-examination
by Mr. Davis

1 chairman of the county council?

2 A That was my understanding.

3 Q And is it also your knowledge that the chairman of
4 county council constitutes an ex-officio member of every
5 subcommittee?

6 A Didn't know that, no.

7 Q Didn't know that?

8 A No.

9 Q Down towards the very bottom there's one straggly line
10 and then right above it there's four lines that begins with
11 Preston.

12 Do you see that, Preston had sued?

13 A Yes.

14 Q It says "Preston has sued waldrep and wilson for
15 interfering with Preston's job. went into finance office
16 with Channel 7 demanding certain financial records."

17 A Yes.

18 Q what do you remember about that?

19 A I, I don't -- I'm, I'm -- I obviously had to have been
20 told that in this meeting by Mr. Thompson. But I don't have
21 any specific recollection of that.

22 Q was -- do you recall that Mr. Waldrep and Ms. Wilson
23 actually went into the finance department with the news
24 crew?

25 A I have no idea.

Thomas Bright - Cross-examination
by Mr. Davis

1 Q would that of been something you'd like to know when
2 you were providing advice?

3 A In terms of the, the job that I was asked to do and
4 what I was asked to look at, no.

5 Q On direct examination I thought I understood your
6 testimony to be that the amounts underneath Mr. Preston's
7 severance agreement were way too high.

8 Is that incorrect?

9 A No, I think what I said is I wouldn't have agreed to
10 it.

11 Q You wouldn't have agreed to it?

12 A No, sir.

13 Q But would it have been contrary to what you advised the
14 county?

15 A I didn't advise the county. I gave the county, as a
16 good lawyer does, an understanding of what the options were
17 and the upside and the downside of those options for them to
18 make a choice in the decision on what they wanted to do.

19 Q And the potential downside, you don't deny, was
20 communicated as potentially exceeding two million-dollars?

21 A Absolutely.

22 Q Right above that passage we just read, Mr. Bright, does
23 it reflect that Michael Thompson told you, as of
24 October 9th of 2008, while he was county council chairman
25 that when, quote, "when new council members are seated there

Thomas Bright - Cross-examination
by Mr. Davis

1 will be changes?"

2 A where are you reading now?

3 MR. DAVIS: May I approach the witness?

4 THE COURT: You may.

5 Q Sorry. I did that out of order.

6 A Again, I don't have a specific recollection of that
7 being said, but obviously I wouldn't of written it in my
8 notes if someone hadn't said that to me. I assume it was
9 Mr. Thompson.

10 Q Okay. And these are your---

11 A Absolutely.

12 Q ---notes from your meeting with Mr. Thompson?

13 A In my handwriting.

14 Q I was gonna ask you that next.

15 If you'd turn the page and look down. There's a
16 passage in the very middle that says, and I quote, "Bob plus
17 Cindy, arrow, opposed to hiring anyone." He presented --
18 end quotation mark.

19 Do you see that?

20 A Yes, I do.

21 Q And was it your understanding, during your meeting with
22 Mr. Thompson, that Ms. Wilson and Mr. Waldrep were actually
23 opposed to your retention?

24 A I -- even sitting here reading that today I don't have
25 that recollection. It does -- doesn't say that. It says

Thomas Bright - Cross-examination
by Mr. Davis

1 hiring -- opposed to hiring anyone. I don't know who that
2 anyone refers to. So, no, I can't agree with your
3 statement.

4 Q And then down below that it reflects, and I quote,
5 "five others looked at and decided to hire after executive
6 session, May of -- 5-2."

7 A That seems to suggest that I was making notes about
8 retaining the law firm that I worked for.

9 Q And the ultimate severance agreement though, it was on
10 5-2 or 5-1-1?

11 A I have no idea.

12 Q You don't even know that?

13 A I -- they -- no one asked me that question. I
14 didn't---

15 Q Well, I'm asking you.

16 A I don't know. I never did know. In fact, I'll take
17 that back. I'm sure someone may have told me, but I don't
18 have any independent recollection of it.

19 Q Will you turn the page and look at the next passage?

20 A (Witness complies.)

21 Q Does that reflect, on the first real line, and I quote,
22 "that three auditing firms have said clean?"

23 A Again, somebody would of had to tell me that and I
24 assume it was Mr. Thompson.

25 Q And actually I, I made a knucklehead mistake when I was

Thomas Bright - Cross-examination
by Mr. Davis

1 talking to Mr. Waldrep.

2 Did, did you ever find out that Anderson County, as of
3 2008, had, had, had 11 clean audits that mirrored every
4 single year that Mr. Preston worked for Anderson County?

5 A No one ever shared that with me, no.

6 Q No one ever told you that, right?

7 A No.

8 Q If you look down, there's one sentence there. It's
9 under -- do you see where the number 21st appears?

10 A Okay.

11 Q Now, I thought you said on direct that you told Mr.
12 Thompson that you insisted on interviewing every single
13 council member.

14 A I did.

15 Q And your notes reflect that Mr. Thompson told you that
16 he wanted you to contact each council member and let them
17 tell you their side of the story.

18 A He may of said that as well.

19 Q Mr. Thompson told you to call all the council members
20 and find out what their position was, did he not?

21 A That's what my notes reflect. I also specifically
22 remember that's something I wanted to do and I told him I
23 was going to do.

24 Q In your conversation with Mr. Thompson you found that
25 Mr. Thompson viewed that it was important for you to find

Thomas Bright - Cross-examination
by Mr. Davis

1 facts and opinions that were believed by all the other
2 county council members that were sitting at that time?

3 A He, he didn't give me any guidance on what he wanted me
4 to ask them. I wanted to be comfortable that each one of
5 them had an understanding of what my role was, what my job
6 was, what I was being retained to do, and I wanted to hear
7 from them.

8 Q Now, Mr. Bright, when a layman tells you, and I quote,
9 "let them tell you their side of the story," what do you
10 normally perceive that to mean?

11 A Tell you whatever they want to tell you.

12 Q About Mr. Preston's employment situation?

13 A I, I didn't try to characterize it as anything in
14 particular. That's obviously what I'd been retained to
15 handle.

16 Q Let's look at the next exhibit, Defense Exhibit 19.

17 A (Witness complies.)

18 Q Is there a -- if you turn to Page 3 of this exhibit.
19 There's a paragraph in the middle that refers to Bob Waldrep
20 and I guess I should clarify.

21 These are your notes from either a conversation on the
22 telephone or in person with Tom Martin?

23 A Yes.

24 Q Tom Martin was the county attorney?

25 A Yes, he was an attorney in McNair if I remember

Thomas Bright - Cross-examination
by Mr. Davis

1 correctly.

2 Q Page 3 of this exhibit discusses what Mr. Martin told
3 you about Bob Waldrep, right?

4 A Yes.

5 Q And what Mr. Martin told you about Bob Waldrep was that
6 one, he ran for the State Legislature, he was a good
7 reformer, but now he's a changed man. He's -- he hates Tom
8 and he hates Joey.

9 He feels that Joey's not forthcoming, right?

10 That's what Tom Martin told you, right?

11 A Correct. That's -- again, I wouldn't of written that
12 down if that's not what he told me.

13 Q Down below in the very bottom Tom Martin also told you,
14 and I quote, "Joey's seeking injunctive relief to enjoin
15 them" and it notes up above Cindy and Bob, "from interfering
16 with his job, Buddy Nicholson."

17 And Buddy Nicholson was the judge, right?

18 A That was my understanding.

19 Q If you turn the page, there's another passage, and it
20 refers to a lawsuit that Joey brought, and it says, and I
21 quote, "Joey sued Cindy for invasion of privacy arrow,
22 settled (running registration of his BMW)."

23 Tom Martin also told you about a potential problem in
24 the relationship between Cindy Wilson and Mr. Preston,
25 right?

Thomas Bright - Cross-examination
by Mr. Davis

1 A I'm sure I knew that at some point in time, and whether
2 or not it was Tom Martin who told me that I'm not sure I can
3 remember.

4 Q Now, did you do any investigation into what the dispute
5 was between Ms. Wilson and Mr. Preston?

6 A No, there's no need for me to do that.

7 Q Will you turn to Defense Exhibit 20 for me?

8 A (Witness complies.)

9 Q Defense Exhibit 20 are notes from a telephone
10 conversation that you had with Ron Wilson on
11 October 13th of 2008?

12 A That's right.

13 Q And that's still right in that initial timeframe when
14 you were first retained?

15 A Correct.

16 Q Okay. In the middle of the page there's a section that
17 talks about Bob Waldrep and it says, and I quote, "Waldrep
18 allied with Cindy. His daughter applied for a job at
19 McNair, turned down, Waldrep upset."

20 Do you see that?

21 A Yes, I do.

22 Q At some point in time did you become aware of the fact
23 that McNair was fired as the county attorney?

24 A I knew that at some point in time. When, I don't
25 remember.

Thomas Bright - Cross-examination
by Mr. Davis

1 Q If you turn to the top of Page 2, and there's a
2 passage, and it says, and I quote, "spend whatever to make
3 sure they know where all money is."

4 Do you see that?

5 A Yes.

6 Q Can you ascertain, from your notes, who that statement
7 is attributed to?

8 A Again, it's a, it's -- it's part of my notes of my
9 conversation with Ron Wilson. Whether he's saying that or
10 someone else has said that, it's information he's conveying
11 to me.

12 Q Okay. At the very bottom of the page there's a page,
13 there's a passage and it says, and I quote, "he's heard her
14 say let's fire him."

15 Do you see that?

16 A Yes, I do.

17 Q And when Ron Wilson told you that, he was attributing
18 that statement to Cindy Wilson, was he not?

19 A I don't have---

20 MR. GENTRY: Objection. Your Honor, this is one of the
21 passages we were talking about, which, as far as state of
22 mind of Mr. Bright when he was forming his findings, but it
23 is obvious hearsay within hearsay.

24 MR. DAVIS: It's been preadmitted. I don't understand
25 what their objection is.

Thomas Bright - Cross-examination
by Mr. Davis

1 MR. GENTRY: The objection is as to the use of it to,
2 for the truth of the matter asserted as Mr. Williams
3 statement. Mr. Bright had before it---

4 MR. DAVIS: Now, wait a minute, Judge. We had a deal.
5 All the notes were coming in. They've been preadmitted.
6 I -- you know, when it hurt me and there was stuff in there
7 that I didn't like, I didn't object because they were
8 preadmitted.

9 But now, guess what?

10 THE COURT: Has -- this is been put into the record as
11 an exhibit, is that right?

12 MR. GENTRY: That's correct, Your Honor. My, my point
13 is just the scope for which it may be used.

14 THE COURT: Overruled.

15 You may proceed.

16 Q Mr. Bright, it's true, is it not, that on
17 October 13th of 2008 Mr. Wilson was talking to you on the
18 phone and he indicated to you on the phone that he had heard
19 Cindy Wilson say that she -- he heard Cindy Wilson say let's
20 fire them?

21 A Again, that is a -- I don't know who he's referring to.
22 I don't remember a lot of the conversations specifically.
23 That makes sense. But I don't know what her refers to
24 specifically. That certainly makes sense to me.

25 Q Well, let me ask you this, Mr. Bright.

Thomas Bright - Cross-examination
by Mr. Davis

1 On county council, in 2008, when the employment dispute
2 came up, how many women were on county council?

3 A I don't have any recollection.

4 Q Were there two?

5 A I don't know.

6 Q Was one---

7 A I do know there were two. I don't know if there were
8 more.

9 Q Was one Gracie Floyd?

10 A Yes, I believe so.

11 Q Was one Cindy Wilson?

12 A Yes, I believe so.

13 Q If you could rule out Gracie Floyd, could you
14 reasonably conclude it was Cindy Wilson?

15 A Again, I don't know -- I don't have an independent
16 recollection sitting here today of him saying that he heard
17 somebody say let's fire her. Obviously he told me that
18 cause it's in my notes. But I don't know who her refers to.

19 It could of been, been somebody in the public. That
20 doesn't make sense to me. But I don't remember. What does
21 make sense is that it was Cindy Wilson he was referring to.

22 Q Right above it says, and I quote, "easiest way out is
23 to buy him out."

24 Does it not?

25 A Yes, it is.

Thomas Bright - Cross-examination
by Mr. Davis

1 Q And Ron Wilson was telling you, as early as October
2 13th of 2008, that it was, in his opinion, the easiest way
3 out of this mess, right?

4 A Yes.

5 Q And on direct examination you testified about how the
6 political climate had deteriorated in this time frame,
7 right?

8 A That was my understanding, yes.

9 Q And your understanding was further that Mr. Preston was
10 the lightning rod at the center of that, right?

11 A I would certainly agree with that.

12 Q And what Mr. Wilson is telling you is that the easiest
13 way out of this mess is to buy the guy out and send him on
14 his way?

15 A Correct.

16 Q And an amicable divorce?

17 A Correct.

18 Q Will you turn and look at the next exhibit, Defense
19 Exhibit 21?

20 A (Witness complies.)

21 Q Mr. Bright, are these your notes, from
22 October 13th of 2008, from a telephone conversation you
23 had with Larry Greer?

24 A Yes.

25 Q Larry Greer was on the personnel committee?

Thomas Bright - Cross-examination
by Mr. Davis

1 A Yes.

2 Q And Mr. Greer's conclusion, as reflected in the last
3 sentence on the bottom of Defense Exhibit 21, was, and I
4 quote, "a buyout is cheaper than protracted litigation."

5 A Yes.

6 Q That was his conclusion, right?

7 A That was his conclusion then and throughout the process
8 of my dealing with him.

9 Q And, in fact, that has borne out to be true, right?

10 A I, I have no idea.

11 Q 1.1 is less than 2.5.

12 Can we agree to that?

13 MR. GENTRY: Objection. No foundation.

14 Q Mr. Bright?

15 THE COURT: Well, if you'll -- I'll ask him to rephrase
16 the question.

17 MR. DAVIS: I'll, I'll, I'll do that, Your Honor. I
18 should probably have let you rule. I'm sorry.

19 THE COURT: Thank you, sir.

20 Q Mr. Bright, did you ever learn how much, to date, the
21 county has spent investigating Mr. Preston---

22 A No.

23 Q ---and on lawsuits?

24 A No.

25 Q Can we agree that when a county council member makes

Thomas Bright - Cross-examination
by Mr. Davis

1 decisions that impact her or his constituents, they have to
2 take into consideration more then maybe just a lawyer does,
3 right?

4 A I don't -- I've never run for public office. So, I
5 have no idea what they take into consideration.

6 Q well, you represented a county in this instance, didn't
7 you.

8 A Yes, I did.

9 Q And, in this instance, these representatives have to
10 take into broader consideration things that may impact the
11 best interest of the county, right?

12 A I'm, I'm sure they do. There's no question in my mind.
13 That's what I would do if I were in public office.

14 Q And those things don't stack up in a neat little one,
15 two, three column that allows you to calculate a specific
16 number, do they?

17 A Again, you're asking me something I'm not familiar
18 with. So, I don't -- I would say no, it doesn't.

19 Q You don't know?

20 A Correct.

21 Q Right?

22 A Correct.

23 Q Can you turn the folder to Defense Exhibit No. 22,
24 Mr. Bright?

25 A (Witness complies.)

Thomas Bright - Cross-examination
by Mr. Davis

- 1 Q Mr. Bright, these are your notes from a telephone
2 conversation that you had with Bob Waldrep on
3 October 13th of 2008, isn't that correct?
- 4 A Yes, it is. Yes, they are.
- 5 Q And the second sentence states, and I quote, "five
6 council members want to buy-out his contract."
7 Right?
- 8 A Yes.
- 9 Q And Bob Waldrep told you, on October 13th of 2008,
10 that five council members wanted to buy-out Joey Preston's
11 contract?
- 12 A I'm sure that's what he told me cause that's what I
13 wrote down, yes.
- 14 Q Mr. Waldrep knew that all the way back in
15 October 13th of 2008, right?
- 16 A Again, I can only tell you what he told me.
- 17 Q Down below it says "just cause" in quotation marks.
18 Do you see that?
- 19 A Yes.
- 20 Q And it says "just cause" arrow, and I quote, "nothing
21 concrete yet."
22 Right?
- 23 A Correct.
- 24 Q And Mr. Waldrep told you, as of October 13th of 2008,
25 in your telephone conversation, that there was nothing

Thomas Bright - Cross-examination
by Mr. Davis

1 concrete to support a just cause termination, right?

2 A I'm sure that's what we were talking about and that's,
3 I'm sure, what he told me.

4 Q Mr. Bright, when you were rendering your opinions about
5 enforceability of Mr. Preston's contract, did you take into
6 consideration when the budget ordinance is passed funding
7 that contract?

8 A We didn't discuss it, no, and I did not research it,
9 no.

10 Q So, you don't have any idea how that might impact the
11 enforceability of a contract, do you?

12 A No.

13 Q Will you turn to Defense Exhibit 23 for me?

14 A (Witness complies.)

15 Q Now, in comparison to what Mr. Waldrep told, if you
16 look down, it looks like Ms. Wilson told you, and I quote,
17 "there's a strong possibility of cause for discharge."

18 A Again, because I wrote it down, that must be what she
19 told me.

20 Q And you had that conversation with Ms. Wilson on
21 October 13th of 2008?

22 A Correct.

23 Q Is that right?

24 A Correct.

25 Q And it was by telephone?

Thomas Bright - Cross-examination
by Mr. Davis

- 1 A I believe so.
- 2 Q Down in the middle of the page there's a sentence that
3 begins "the lame ducks."
- 4 Do you see that?
- 5 A Yes, I do.
- 6 Q And it says, and I quote, "the lame ducks want to
7 buy-out the administrator, put new administrator in place."
- 8 Do you see that?
- 9 A I sure do.
- 10 Q As of October 13th of 2008, it's true, is it not,
11 that Ms. Wilson communicated to you, on the telephone, that
12 the lame ducks, who were the majority of council at the
13 time, wanted to buy-out Mr. Preston's contract?
- 14 A Again, that's what she told me. I can't tell you what
15 she believed or didn't believe. I can only tell you what
16 she told me.
- 17 Q This wasn't something that sprung up on
18 November 18th of 2008, was it?
- 19 The two minority members knew it in October, right?
- 20 A What's your question?
- 21 Q The two, the two minority members on council knew this
22 in October, right?
- 23 A Knew, knew what?
- 24 Q That the, that the majority was looking to buy-out Mr.
25 Preston's contract.

Thomas Bright - Cross-examination
by Mr. Davis

1 A Again, I can only tell you what, what was shared with
2 me, and what was shared with me is the lame ducks want to
3 buy-out the administrator's contract.

4 Q And then down at the bottom of the page, again, it
5 says, it says again, and I quote, "five council members
6 looking to buy-out a contract."

7 A Yes.

8 Q Quote---

9 A Yes.

10 Q Turn the page and look at Defense Exhibit 24.

11 A (Witness complies.)

12 Q And these are the notes from your conversation with
13 Councilman Bill McAbee on October 14th of 2008?

14 A Yes.

15 Q And Mr. McAbee, he's on the personnel committee, right?

16 A Yes, he was.

17 Q Down in the middle of the page he is indicating to you
18 where the bad blood with Cindy Wilson came from, is he not?

19 All related, all related to Beaver Dam Sewer Line?

20 A That is what he shared with me, yes.

21 Q What Mr. McAbee shared with you on October 14th of 2008
22 was, and I quote, "this is pay back for her."

23 Right?

24 A Yes.

25 Q Down below Mr. McAbee says, and I quote, "her

Thomas Bright - Cross-examination
by Mr. Davis

1 allegations are unfounded."

2 Right?

3 A That's what he told me and that's what I wrote down.

4 Q Now, Mr. Bright, will you turn to Plaintiff's Exhibit
5 15 for me, and if you could turn to page -- and I guess,
6 just for purposes of the record, Plaintiff's Exhibit 15,
7 that's the email from Gina Humphries to you dated
8 October 17th of 2008, right?

9 A Yes.

10 Q And you asked Gina Humphries to do this, didn't you?

11 A Yes, and, again, I think, if I remember correctly, the
12 original request was made through Phyllis McAllister, who I
13 was much more familiar with, in the Human Resource Office.
14 I may of talked -- excuse me. I may of talked to Gina
15 directly. I just don't have a recollection of that.

16 Q And, in fact, your billing records actually reflect
17 conversations that you had, you had with Ms. Humphries, did
18 they not?

19 A I have no -- I haven't looked at the billing records.
20 So, I don't know.

21 Q You don't deny that though?

22 A I don't know.

23 Q Right, which means you don't deny it, right?

24 A It means I don't know.

25 Q Let's turn to Page 2.

Thomas Bright - Cross-examination
by Mr. Davis

1 A (Witness complies.)

2 Q Mr. Bright, can you look at Line 3 for me and tell me
3 how that number was calculated?

4 A No.

5 Q Mr. Bright, can you look at Line 5 for me and tell me
6 how that number was calculated?

7 A No.

8 Q Can you look at Line 6 for me and tell me how that
9 number was calculated?

10 A No.

11 Q And how about seven?

12 A I don't know how any of these numbers were calculated.

13 Q You don't know how any of these numbers were
14 calculated, right?

15 A That's correct.

16 Q And you were surprised then when the person who
17 actually calculated the numbers attended the meeting where
18 settlement negotiations occurred between the parties?

19 A Yes.

20 Q Mr. Bright, can you skip over to Defense Exhibit 25 for
21 me?

22 A (Witness complies.)

23 Q Now, Exhibit 25 has two passages in it, passages in it
24 that I'd like to ask you about.

25 A Okay.

Thomas Bright - Cross-examination
by Mr. Davis

1 Q The first one is in the first line. It says, and I
2 quote, "at Waldrep campaign event, arrow, made clear they
3 will assign Preston tasks he can not perform. Will run him
4 out."

5 Do you see that?

6 A I do.

7 Q And that was what Mr. Thompson was communicating to you
8 in October 21st of 2008?

9 A Yes, it is.

10 Q And then on down in the next little paragraph it says,
11 and I quote, "original and corrected transcripts, arrow,
12 said "suspension" in original."

13 What is your recollection about what that passage is
14 referring to?

15 A I remember there being -- I can't remember if it was,
16 it was a subcommittee of the council and there was a
17 transcript of people who said, said things during that
18 committee meeting, and I remember that it related to that.
19 But I don't -- beyond that, I don't remember anything
20 specific.

21 Q Are you referring to the August 5th subcommittee
22 meeting of the finance committee?

23 A It may be. I don't know. I know I looked at those
24 minutes at one point in time.

25 Q And, in fact, the minutes that you looked at didn't

Thomas Bright - Cross-examination
by Mr. Davis

1 have a certification of their authenticity on it, do they?

2 A I, I don't remember if they did or not.

3 Q Mr. Bright, I have one quick question for you about
4 Plaintiff's Exhibit 22, which will be the next exhibit in
5 the packet, and my question for you is this. And if it
6 helps you, perhaps you might like to look back to your
7 timeline that we put on the very first exhibit.

8 But at the personnel committee meeting that's reflected
9 as having occurred on October 27th of 2008 where Ms.
10 Wilson and Mr. Waldrep also attended, did you communicate to
11 that personnel committee the contents of this October 23rd,
12 2008, settlement offer?

13 A I can't imagine that that subject didn't come up.

14 Q Cause -- yeah, cause lawyers have to communicate
15 settlement offers, right?

16 A Well, I would of done it. So, yes, I can't imagine it
17 didn't come up. But I don't remember handing them a copy of
18 that.

19 Q Now, that settlement offer is dated October 23rd of
20 2008, correct?

21 A Correct.

22 Q Now, if we look at the next exhibit, Plaintiff's
23 Exhibit 29, that's a memorandum dated November 3rd of
24 2008, right, and it reflects that Mr. Greer, from District
25 Number 3, called to request about certain information in the

Thomas Bright - Cross-examination
by Mr. Davis

1 general fund, right?

2 A Okay. I've never seen this before. So, I don't know.

3 Q The question I have for you though is, is it consistent
4 with your recollection, that after you got the demand from
5 Mr. Preston's attorneys, that what the personnel committee
6 would have done next was to look and see what monies it had
7 available to negotiate the dispute with him?

8 A I have no idea what they did after that. I -- that
9 makes -- that's a lot of logical sense. But I have no idea.

10 Q But they would have to know what they had on hand to be
11 able to spend, right?

12 A I have no idea what they have to know. I know that
13 would make sense to me.

14 Q You don't think that the---

15 A I didn't ask them to do it.

16 Q ---the personnel committee would need to know what
17 funds the county had available to it in order to settle with
18 Mr. Preston in order to actually settle with him?

19 A I have no idea what they did or did not do or had to
20 know or didn't have to know. I know it makes sense to me
21 that they would do that. But I have no idea whether they
22 did or not.

23 Q And if you look at Plaintiff's Exhibit 31, and this was
24 the memoranda from Gina Humphries to Ron Wilson?

25 A I've never seen this before either.

Thomas Bright - Cross-examination
by Mr. Davis

1 Q And in it she specifies an amount, right down there in
2 the second paragraph short answer, "I believe the county
3 will have sufficient budgeted funds to cover the amount
4 that's in discussion."

5 Right?

6 A Again---

7 Q That's what it says.

8 A That's what it says. I've never seen it before.

9 Q And on November 4th of 2008, the county had the
10 benefit of Mr. Preston's settlement demand dated
11 October 23rd of 2008, right?

12 A I assume so.

13 Q Will you turn to Defense Exhibit 26?

14 A (Witness complies.)

15 Q And this, Mr. Bright, I believe are your notes from the
16 November 4th, 2008, personnel committee?

17 A That's what it looks like to me.

18 Q And there's a section that's labeled Ron Wilson, and
19 under that section it reflects that, and I quote, "this
20 controversy, ongoing for several years, wants to find the
21 quickest way to get it over with."

22 A Correct.

23 Q And isn't it true, Mr. Bright, that when you were
24 polling the county council members, with save two, the other
25 five uniformly communicated that sentiment to you?

Thomas Bright - Cross-examination
by Mr. Davis

- 1 This has been going on for years, we need to get this
2 over with, right?
- 3 A First off, I never did a polling of the county council,
4 number one.
- 5 Q well---
- 6 A Number two---
- 7 Q Okay.
- 8 A Let me finish my question or my answer.
- 9 Number two, there were three people that expressed to
10 me that this controversy had been going, ongoing, or that I
11 recall expressing this feeling, and that is Mr. Wilson,
12 Mr. McAbee, Mr. Greer. I specifically remember them telling
13 me that this controversy, meaning Joey Preston, had been
14 going on for years.
- 15 Q And my client---
- 16 A I may of had -- I may have gotten that reaction in some
17 respect from Mr. Waldrep. I don't remember Ms. Wilson. The
18 others, I don't have a distinct recollection about.
- 19 Q Okay. Fair enough.
- 20 But we looked at some notes from Mr. Thompson --
- 21 A Sure.
- 22 Q -- and Mr. Thompson was telling you the same thing?
23 This is gotten out of control, right?
- 24 A I, again, I, I don't remember what they said from the
25 30 minutes ago that we looked at them. So --.

Thomas Bright - Cross-examination
by Mr. Davis

- 1 Q Now, I don't, I don't understand your testimony here
2 today to mean that you're trying to second guess the council
3 members' decisions with respect to such issues, right?
- 4 A My testimony here is to merely ask y'all's, answer
5 y'all's questions. I don't have a position.
- 6 Q So, the answer is that's correct?
- 7 A I don't, I don't know if that's the right answer to
8 your question or not. I can only tell you that my, my
9 position here today is to tell you what happened. Not to
10 take a position. I don't have a position.
- 11 Q Down below, in Defense Exhibit 26, under Greer, it
12 says, and I quote, "time for him to go, but make it, make it
13 an equitable solution."
- 14 A Correct.
- 15 Q Right?
- 16 A Correct.
- 17 Q And then, if you turn the page, there's a specific
18 passage in your handwriting. It says, and I quote, "get
19 Gina. Call to get the limits."
- 20 Correct?
- 21 A Yes.
- 22 Q Gina was your numbers girl?
- 23 A Well, it was the person I was referred to to get the
24 numbers, yes.
- 25 Q Gina was not only the person that you were referred to,

Thomas Bright - Cross-examination
by Mr. Davis

- 1 she was actually the department head, was she not?
- 2 A She -- my understanding is she was finance director.
- 3 Q There's nobody above her in the finance department,
- 4 right?
- 5 A I don't believe so.
- 6 Q Gina Humphries, she's a CPA, right?
- 7 A I don't remember.
- 8 Q Will you turn the page, Mr. Bright, and, again, your
- 9 notes state, and I quote, "meeting held, arrow, they would
- 10 give him something to do that he could not perform, and that
- 11 he would be fired for insubordination."
- 12 A I see that note.
- 13 Q And that was something that you were again told on
- 14 November 4th of 2008?
- 15 A I can only assume so because it's attached to and
- 16 appears to be a part of the notes from that day.
- 17 Q That wouldn't of been something you would of put in
- 18 their on your own, right?
- 19 A No, absolutely not.
- 20 Q Mr. Bright, if you'd look at Defense Exhibit 28 for me?
- 21 A (Witness complies.)
- 22 Q It's broken down by sections, right?
- 23 A Yes, it is.
- 24 Q And Section 2, that's a section about legal analysis,
- 25 right?

Thomas Bright - Cross-examination
by Mr. Davis

1 A Yes, it is.

2 Q And under legal analysis, you go through anticipatory
3 breach, and you go through constructive discharge, and you
4 go through other issues, and then you say what you do going
5 forward could create that situation.

6 But can we agree, Mr. Bright, that under legal
7 analysis, there's no section that addresses the potential
8 tort liability?

9 A I don't believe there is, no.

10 Q And in order to address the potential tort liability,
11 it's true, is it not, Mr. Bright, that you would need to do
12 an investigation of the underlying facts?

13 A I would think that would be true.

14 THE COURT: Mr. Davis, we're about 15 minutes past
15 5:00. I don't know how much longer the cross is gonna be,
16 but going through all of these tabs, I expect it to be a
17 long time.

18 MR. DAVIS: Well---

19 THE COURT: Am I right?

20 MR. DAVIS: The upside, Your Honor, is---

21 THE COURT: And I'm not trying to cut you off. It's
22 just that---

23 MR. DAVIS: I think one of them is a big thick one.

24 THE COURT: Yeah. Well, so, sounds like to me we'd be
25 better served to come back tomorrow.

Thomas Bright - Cross-examination
by Mr. Davis

1 THE WITNESS: Your Honor, if I may?

2 THE COURT: Yes, sir.

3 THE WITNESS: I'm scheduled to leave at seven o'clock
4 in the morning to go to Tryon, Georgia, and I don't have a
5 choice in the matter. I've got a client training session
6 that begins tomorrow.

7 THE COURT: Well, this is, this is a nonjury hearing.
8 I'll be glad to suspend his testimony and give you a chance
9 to finish your cross-examination at a later time.

10 MR. DAVIS: I'll make a deal with you, Your Honor.

11 THE COURT: I'll go to 5:30 if you'll finish by 5:30.

12 MR. DAVIS: If you'll give me until 5:30---

13 THE COURT: Well, now, I don't know about these
14 gentlemen on redirect. They got a right to redirect you
15 know.

16 MR. DAVIS: I -- yeah, that's right. I can't, I can't
17 make the deal.

18 THE COURT: You can't speak for them. So --.

19 MR. GENTRY: As of right now, I'd like about two
20 minutes.

21 THE COURT: Two minutes. Well, then I'll give you till
22 5:28.

23 THE WITNESS: And I apologize if that creates a
24 problem. I'm sorry.

25 THE COURT: Well, that's all right. Like I say, if we

Thomas Bright - Cross-examination
by Mr. Davis

1 have to come back on another day, I, I can do that.

2 MR. DAVIS: Well, if it suits you, if it suits you the
3 same, Your Honor, I'll just try and go ahead and get it
4 done.

5 THE COURT: I was, I was hoping to. That's the reason
6 I let you go past five o'clock, and I'm looking at the
7 lengthy numbers of tabs here, and that was the reason I was
8 thinking this may go on for some time.

9 So, let's try to get it wrapped up then.

10 CONTINUED CROSS-EXAMINATION

11 BY MR. DAVIS:

12 Q Mr. Bright, in forming your opinions that were
13 communicated to the Anderson County personnel committee, did
14 you take into account any information about meetings that
15 may of been held at Mr. Waldrep's office in the summer of
16 2008?

17 A No.

18 Q If you'd turn the page to Page 2. There's a section
19 that's called contract.

20 A Yes.

21 Q And, specifically, on -- I'm interested in Number 2,
22 and it says, and I quote, "appointment and removal of chief
23 executive is a governmental function."

24 Do you see that?

25 A Yes, I do.

Thomas Bright - Cross-examination
by Mr. Davis

1 Q In fact, that's the analysis that the Cowart theory is
2 bottom, bottomed on, isn't it?

3 A Yes, it is.

4 Q The reason why you can't bind successive county
5 councils, unless there's legislative enhancement, is because
6 the hiring and firing of an administrator is a governmental
7 function, right?

8 A Correct.

9 Q And one council can't bind the ability of the next
10 council's ability to exercise discretion about that
11 authority?

12 A Correct.

13 Q Will you turn to Page 3 for me, Mr. Bright?

14 A (Witness complies.)

15 Q There's a section that says value to contract demand,
16 and then there's a section that says B-1 Cause, and what I'd
17 like to know is that 3-A, that's referring to a section of
18 the contract that's termination for cause.

19 Is that right?

20 A I would suspect that's true. That's typically the way
21 I would do that.

22 Q And in order to terminate somebody under the contract
23 for cause, when the contract being the master employment
24 agreement, there would have to be a conviction of a crime of
25 personal gain or moral turpitude in your analysis?

Thomas Bright - Cross-examination
by Mr. Davis

1 A Right. And now that you've, you've shown that to me,
2 it refreshes my memory on something you asked me earlier
3 today when we were talking about termination for cause.
4 Termination for cause, in many circumstances, has a
5 generic -- it's a generic term for do you have any reason to
6 terminate. Termination for cause in contract, in, or in the
7 context of this contract means those specific three
8 provisions.

9 Q Exactly.

10 A So, that's -- that may of been a disconnect between a
11 question you asked me and an answer I gave you.

12 Q Do you see that?

13 We're building bridges.

14 I think you're right---

15 A They won't be long enough, counsel.

16 Q Under Section 6, there's a section called
17 recommendation.

18 Do you see that?

19 A Yes, I do.

20 Q And it says A, B, C, D, E, F, and G, right?

21 A Yes.

22 Q And that's not meant to be a singular recommendation.
23 That's meant to be different options, isn't it?

24 A Yes, it is.

25 Q And, for example, one of the things you say is well,

Thomas Bright - Cross-examination
by Mr. Davis

1 you can write back a letter and say there is not
2 anticipatory breach, and then, if you go down to Number or
3 Letter F, you say settle with him and pay out his contract,
4 right?

5 A Yes.

6 Q And one of the options that you identified for them was
7 you could settle with him, you can buy-out his contract?

8 A Yes, I think that, that, that whole section is
9 consistent with my prior testimony I think.

10 Q Okay. If you turn to Exhibit 27 for me?

11 A (Witness complies.)

12 Q What I'd simply like to know, in relation to this, is
13 this is -- these are your notes of a telephone conversation
14 with Ron Wilson on November 11th of 2008, correct?

15 A Yes.

16 Q And if you'd look on the second page of that on the
17 top. There's a little line sort of -- I don't want to call
18 it bullet points. I'll call it something else. It's a line
19 I guess.

20 It says, and I quote, "full release of county council
21 members."

22 Right?

23 A And, in fact, it's true, isn't that, that under the
24 master employment agreement, it doesn't require or release
25 of the council members. It only requires a release of the

Thomas Bright - Cross-examination
by Mr. Davis

1 county.

2 Right?

3 A Well, again, you have to understand that what I was
4 dealing with was creating a separate contract that would
5 provide "X" compensation to Mr. Preston in exchange for a
6 release. I was not trying to do something that mirror
7 imaged the employment contract.

8 So, this, this may be consistent with or more than or
9 less than the employment contract. I don't know. We were
10 trying to structure a complete agreement.

11 Q Turn to Plaintiff's Exhibit 1 for a minute, and let's
12 look at that real quick.

13 A Exhibit number what?

14 Q One.

15 A Got it.

16 Q Turn to Page 4 for me.

17 A (Witness complies.)

18 Q And if you put your finger back on Page 3, Section 3-B
19 that starts on Section 3, it's the section about termination
20 without cause, correct?

21 A Yes.

22 Q And underneath that section there's a section,
23 Subsection Letter E, right?

24 A Yes.

25 Q And under Letter E it says, and I quote,

Thomas Bright - Cross-examination
by Mr. Davis

1 "contemporaneously, the delivery of all severance pay
2 entitlements hereupon set out, the administrator agrees to
3 execute and deliver to the county a release releasing the
4 county of all further claims that the administrator may have
5 against the county."

6 Right?

7 A Correct.

8 Q Where in that paragraph does it use the term council
9 members?

10 A I don't see it in there.

11 Q It doesn't appear, right?

12 A No.

13 Q So, the severance agreement by contrast, which is the
14 loose document that I have for you -- and I lost mine. So,
15 I'll just---

16 A It's Plaintiff's Exhibit No. 7?

17 Q I believe that's correct, Tom, but I truly don't have
18 it in front of me.

19 THE COURT: My copy indicates seven.

20 Q Under Plaintiff's 7, Paragraph 6, it's the section
21 where Mr. Preston is releasing claims, is that correct?

22 A Yes.

23 Q And under that section it's not limited to just the
24 county. It also includes everything against the county, of
25 any of its council members, employees, managers, officers,

Thomas Bright - Cross-examination
by Mr. Davis

1 board members, or any of its affiliated parts, entities, or
2 subsidiaries, as well as successors and assigns of those
3 entities and persons by reason of any claim, and on and on
4 and on, right?

5 A Yes.

6 Q And that's broader, is it not, than the master
7 employment agreement?

8 A Again, I -- these two documents serve different
9 purposes. So, I will agree with you that one is broader
10 than the other, but---

11 Q Right.

12 A ---they don't serve the same purpose.

13 Q The severance agreement's release is broader than
14 what's required under the master employment agreement,
15 section 3, Subsection 2, Sub-Subsection E?

16 A Again, I would, I would agree with you, but I would
17 point out that I think you're comparing apples to oranges.

18 Q I know that that's what you think, but I just want to
19 know the answer to that question.

20 A Yeah.

21 Q Paragraph 34, Mr. Bright.

22 A Paragraph -- oh, you mean Defendant's No. 34?

23 Q Yes, that's what I do mean.

24 A Okay.

25 Q This is the opinion of Cindy Wilson versus Joey

Thomas Bright - Cross-examination
by Mr. Davis

- 1 Preston, right?
- 2 A Yes.
- 3 Q Went all the way up to the Supreme Court, right?
- 4 A Yes.
- 5 Q It was decided in June of 2008?
- 6 Yes?
- 7 A Yes.
- 8 Q Turn to Page 5 of that opinion.
- 9 A (Witness complies.)
- 10 Q In the middle of the page it reflects that all the way
- 11 back in 2005, during her deposition, that Ms. Wilson had
- 12 already received, and I quote "59,000 pages of documents
- 13 from the administrator."
- 14 Do you see that?
- 15 A Where are you referring to?
- 16 Page 5. Yes, I see it. Yes.
- 17 Q That's all I wanted to ask you about that.
- 18 A I don't know whether it's true or not.
- 19 Q Well, it's in a Supreme Court opinion, right?
- 20 A I---
- 21 Q If you look back at Defense Exhibit 31 for me?
- 22 A Okay.
- 23 Q Actually if you could do me a favor, if you could go to
- 24 Defense Exhibit 30 real quick. I have one question for you
- 25 about that.

Thomas Bright - Cross-examination
by Mr. Davis

1 THE COURT: This could be your last set of questions,
2 Mr. Davis.

3 MR. DAVIS: I know. I'll -- I have three minutes.

4 Q Mr. Bright, on November 18th, 2008, you sent a letter
5 to Rob Hoskins?

6 A Yes.

7 Q And at the very bottom of that paragraph it references
8 the \$24,000 Social Security issue.

9 Do you see that?

10 A Yes.

11 Q And basically you're writing there that hey, listen, I
12 don't understand this and you don't understand that, right?

13 A I didn't understand it and don't today, no.

14 Q All right. If you turn to 31?

15 A (Witness complies.)

16 Q Does 31 reflect a finalized settlement agreement that
17 you sent to Ron Wilson on November 18th of 2008?

18 A I know it was the last revision. Well, I shouldn't say
19 that. It's, it's what I viewed as the final version of the
20 employment, of the severance agreement.

21 Q And on November 18th of 2008 you sent the last draft
22 as of 4:54PM, right?

23 A Yes.

24 Q And that was were -- that was literally one hour and
25 six minutes before the county council meeting started?

Thomas Bright - Cross-examination
by Mr. Davis

- 1 A I have no idea.
- 2 Q So, when the county council members said they had never
3 seen this before, that was true, wasn't it?
- 4 A I don't know if the council members have said that, and
5 I don't know whether it's true.
- 6 Q And Defense Exhibit 33, real quickly, in the very
7 middle of it, there's a, there's a letter, and let me just
8 show it to you.
- 9 If I may approach, Your Honor?
- 10 THE COURT: You may.
- 11 Q This is a letter from Rob Hoskins to Tom Bright. It's
12 dated October 27th of 2008.
- 13 A Did you say Exhibit No. 33?
- 14 Q Yes.
- 15 A What's the date of the letter?
- 16 The 23rd?
- 17 Q 27th. Just look at mine cause all I wanted to ask you,
18 is this letter from October 27th of 2008---
- 19 A Okay.
- 20 Q ---to you from Rob Hoskins?
- 21 A Yes.
- 22 Q It specifically addresses or talks about that issue
23 relating to the exception to Cowart about which we talked
24 about.
- 25 A Yes.

Thomas Bright - Cross-examination
by Mr. Davis

1 Q Mr. Bright, my sense from you -- and I may of asked an
2 inartful question that caused you to think I was asking
3 something that I wasn't. If that happened, and it upset
4 you, I'll give you my sincere apologies. I thank you for
5 your time and it's good to see you again.

6 THE COURT: Yes, sir, Mr. Gentry.

7 REDIRECT EXAMINATION

8 BY MR. GENTRY:

9 Q Mr. Bright?

10 A Yes.

11 Q Were you asked, by Anderson County Council, for any
12 advice or opinion on whether certain members of county
13 council should or should not have voted on Mr. Preston's
14 severance agreement?

15 A No.

16 Q In your file, when there's an indication that you have
17 highlighted portions of a statute for a case, does that mean
18 that you read only the highlighted portion?

19 A Oh, no, it's -- typically what I will do is I'll read
20 an entire document and I'm -- things that, that either are
21 extremely important to me at that time or something I may
22 want to remember or may want to refer back to, I'll
23 typically highlight it. But I'll read the whole thing.

24 Q Thank you. No further questions.

25 THE COURT: Thank you.

1 All right. We're going to recess at this time. We'll
2 resume in the morning.
3 Any problems with starting at nine o'clock?
4 MR. TESSIER: No, Your Honor.
5 May we excuse this witness from the trial?
6 THE COURT: Any objection?
7 MR. DAVIS: No, Your Honor. He may be excused.
8 THE WITNESS: Thank you.
9 THE COURT: You're free to go to make your appointment
10 tomorrow.
11 THE WITNESS: Thank you very much.
12 THE COURT: All right. Any problem with nine o'clock
13 in the morning?
14 MR. TESSIER: No, sir, no problem.
15 MR. DAVIS: No, Your Honor.
16 THE COURT: Nine o'clock.
17 We're in recess until that time.
18 Thank you very much.
19
20 (WHEREUPON, Court was in recess for the evening.)
21
22
23
24
25

1 Tuesday, October 30th, 2012

2
3 THE COURT: All right. Is the plaintiff ready to
4 proceed?

5 MR. TESSIER: Yes, Your Honor.

6 THE COURT: Defense ready?

7 MR. DAVIS: Yes, Your Honor.

8 THE COURT: You may call your next witness.

9 MR. TESSIER: Your Honor, just as a preliminary matter,
10 we did talk about an exhibit yesterday during the testimony
11 of Mr. Bright.

12 THE COURT: Yes, sir.

13 MR. TESSIER: We have now marked that exhibit as
14 Plaintiff's Exhibit 95. We would like to offer it into
15 evidence.

16 THE COURT: Any objection to 95?

17 MR. DAVIS: No, Your Honor.

18 THE COURT: And that document is?

19 Can you tell me what that is?

20 MR. TESSIER: These are some notes of a telephone
21 conference between Mr. Bright and Rob Hoskins. The date on
22 them is October 9th of 2008.

23 THE COURT: Thank you.

24 (WHEREUPON, the notes were marked as Plaintiff's
25 Exhibit No. 95 and received into evidence at this time.)

1 THE COURT: All right. Anything else we need to take
2 up before you call your next witness?
3 MR. TESSIER: No, Your Honor.
4 THE COURT: All right. That will be?
5 MR. TESSIER: At this time we will call Michael
6 Cunningham.
7 THE COURT: All right. Come forward to be sworn
8 please.
9 MICHAEL CUNNINGHAM, being first duly
10 sworn, testified as follows:
11 THE CLERK: If you would take the witness stand please,
12 sir, and state your name and spell your last name for the
13 record please.
14 THE WITNESS: Okay. My name is Michael Cunningham.
15 Cunningham, C-U-N-N-I-N-G-H-A-M.
16 DIRECT EXAMINATION
17 BY MR. TESSIER:
18 Q Good morning, Mr. Cunningham.
19 A Good morning.
20 Q My name is Troy Tessier as you probably know, and we
21 represent Anderson County in the case involving Mr. Preston.
22 where do you currently live?
23 A Anderson.
24 Q And how long have you lived in Anderson?
25 A Since 1997.

Michael Cunningham - Direct examination
by Mr. Tessier

- 1 Q What do you do for a living?
2 A I work for AmMed Health.
3 Q And you went to college at Clemson?
4 A Yes, sir.
5 Q Did you start working for Anderson County while you
6 were in college?
7 A No, sir.
8 Q When did you start working for Anderson County?
9 A January of 1998.
10 Q And didn't you work with Anderson County prior to that
11 as an intern?
12 A No, sir.
13 Q Okay. Not during college at all?
14 A No, sir, I worked for Greenville County.
15 Q I got you.
16 A Yes, sir.
17 Q Were you the assistant county administrator for
18 Anderson County for a period of time?
19 A Yes, sir.
20 Q And about what time period?
21 A Perhaps roughly 2002 forward.
22 Q Okay. And at some point were you then promoted to
23 deputy county administrator?
24 A Yes, sir.
25 Q And when was that approximately?

Michael Cunningham - Direct examination
by Mr. Tessier

- 1 A Perhaps 2006.
- 2 Q Can you describe, generally speaking, what the
3 differences are in responsibilities for an assistant county
4 administrator and a deputy county administrator?
- 5 A Assistant county administrator, I think I had more
6 direct departmental responsibility then as deputy county
7 administrator. We had levels, division directors, which
8 would then kind of directly report up to the deputy
9 administrator to the county administrator, and I served as
10 the county administrator, whatever the -- our current county
11 administrator was not there. So, I think it was a bit
12 higher level of administrative responsibility from the
13 assistant to the deputy.
- 14 Q Okay. And as the deputy county administrator, are you
15 the person next in line behind the county administrator---
- 16 A Yes, sir.
- 17 Q ---in terms of the chain of command so to speak?
- 18 A Yes, sir.
- 19 Q And did you report directly to Joey Preston during the
20 entire time you worked with Anderson County leading up to
21 November of 2008?
- 22 A Yes, sir.
- 23 Q We want to talk to you a little bit about some of the
24 things that happened in, in 2008, and I want to focus you,
25 if I could, on October 2008.

Michael Cunningham - Direct examination
by Mr. Tessier

1 By October of 2008, did you know that there were
2 discussions being held about the possibility of a severance
3 agreement for Mr. Preston, Preston?

4 A Not until late October.

5 Q Okay. And then at about that same time, in late
6 October of 2008, did you know there was discussions going on
7 about the possibility of these hiring you to replace
8 Mr. Preston as the county administrator?

9 A Not until, again, late October.

10 Q And do you recall how you came to know that?

11 A Yes, sir, I had a meeting with three of the members of
12 county council, on or about October the 22nd, where this
13 issue was discussed.

14 Q And do you remember the circumstances of the meeting in
15 terms of, for example, where did you meet?

16 A Yes, sir, we met in Greenwood, South Carolina at a
17 restaurant. At O'Charley's I believe.

18 Q Okay. And present with you at the meeting were Gracie
19 Floyd, Larry Greer, and Ron Wilson?

20 A Yes, sir, that's correct.

21 Q And what did you discuss at the meeting?

22 MR. DAVIS: Your Honor, hearsay.

23 THE COURT: Well, he hasn't asked him to quote anyone.
24 He asked the subjects that were discussed.

25 MR. TESSIER: Right.

Michael Cunningham - Direct examination
by Mr. Tessier

1 THE COURT: I overrule that objection.

2 Q What, what was discussed at the meeting?

3 A We discussed the possibility of me becoming the county
4 administrator and the issue that, that there was the
5 potential for some type of severance agreement with
6 Mr. Preston.

7 Q And was one of the things that was discussed whether or
8 not you might be interested in taking the job as county
9 administrator if Mr. Preston left that job?

10 A Yes.

11 Q Did you talk at all about what the salary might look
12 like if you were to take the job as county administrator?

13 A Not at that time.

14 Q Did you have discussions with Mr. Greer, at this point
15 in time, about how challenging the job would be if you were
16 to take the job?

17 MR. DAVIS: Your Honor, same objection. He is now
18 specifically asking about discussions with an identified
19 person.

20 THE COURT: Increasingly becoming more specific. I
21 agree with the objection. At this time I'm gonna overrule
22 it unless he asked for specific quotes.

23 MR. TESSIER: And, Your Honor, we're not offering it to
24 prove the truth of the matter asserted as much as the impact
25 on Mr.---

Michael Cunningham - Direct examination
by Mr. Tessier

1 THE COURT: I've overruled the objection---

2 MR. TESSIER: Thank you, sir.

3 THE COURT: ---at this point in time. But I'll caution
4 you about becoming too specific about who said what when.
5 So, I've ruled in your favor.

6 Go ahead.

7 Q Did the discussion include discussion about how
8 difficult the job of county administrator might be if you
9 were to take on that job?

10 A Yes, sir, that was a part of the conversation.

11 Q And did you have an impression, based on your
12 experience in working with Anderson County up until that
13 point, and you had been working there for several years, did
14 you have an impression about how difficult the job might be
15 if you were to take the job serving as county administrator?

16 A Yes.

17 Q What was your impression?

18 A That it would be a challenge.

19 Q And why?

20 A There was -- there had been, for sometime, a very
21 contentious relationship between some members of county
22 council, and it was, it was a difficult political
23 environment certainly. And, so, that -- I, I was aware of
24 all of that.

25 Q After this meeting that you had at O'Charley's in

Michael Cunningham - Direct examination
by Mr. Tessier

1 Greenwood, did you obtain a copy of Mr. Preston's existing
2 employment agreement?

3 A I did.

4 Q How did you get that?

5 A I followed Mr. Greer to his home and he had a copy of
6 it, and he made a copy of that for me to take and look over.

7 Q And why did you do that?

8 why did you want a copy of Mr. Preston's existing
9 contract?

10 A I, I didn't have a copy of it, and if we were talking
11 about employment, I wanted to see some document that, that
12 set out terms for employment for a county administrator.

13 Q And would you agree with me, Mr. Cunningham, that you
14 communicated with Mr. Preston about the possibility that you
15 might be hired in his place?

16 A I did.

17 Q And how did that happen?

18 what, what type of communication did you have with Mr.
19 Preston?

20 A I spoke with him person-to-person about that. It was
21 my desire not to have anything happen behind his back or
22 that he would be aware of, of all conversations that I had.

23 Q And what do you recall specifically about your
24 communication with Mr. Preston about the possibility that
25 you might end up taking over his job?

Michael Cunningham - Direct examination
by Mr. Tessier

1 A Only that, you know, I, I hoped that that wouldn't be
2 the case, but that I certainly would, would look at it
3 absent of anything that happened to him, and that, that I
4 would reach some conclusion, conclusion about that. But I
5 had not, at that point, done so.

6 Q And did you -- included in the communications you had
7 with Mr. Preston about this possibility that you might be
8 asked to take over as county administrator, did you discuss
9 with him proposed changes you wanted to make in the
10 employment agreement that you might sign if you did take
11 over?

12 MR. DAVIS: Leading, Your Honor.

13 THE COURT: Leading is allowed to a certain degree, and
14 I'm gonna allow it in this case. It's not a particularly
15 critical question.

16 Go ahead.

17 MR. TESSIER: Thank you, Your Honor.

18 A Yes, I gave him what I thought I would like to see as
19 changes in the employment contract.

20 Q And did you recall how, how you did that?

21 I mean was it a marked up copy or --?

22 A I believe I either -- I think I emailed that to him.
23 Just here's what I would see as changes in an employment
24 contract.

25 Q And you think that was a separate email where you

Michael Cunningham - Direct examination
by Mr. Tessier

1 outlined the changes or did you also include the document
2 itself with mark-ups?

3 A I think it was in a separate email.

4 Q And do you recall any of the particular changes you
5 were mentioning to Mr. Preston that you would like to see?

6 A I don't recall the specifics of what all those changes
7 were at the time other than I know that there was one
8 related to the county vehicle.

9 Q would it be fair to say, Mr. Cunningham, that, in
10 general terms, you used Mr. Preston's existing employment
11 agreement as a guide for one that you might consider signing
12 yourself?

13 A Yes.

14 Q And did you later meet with anyone else from Anderson
15 County about the possibility that you might take over as
16 county administrator?

17 A I had another meeting with those three members of
18 county council.

19 Q Okay. which three members are you talking about?

20 A That would be -- well, I'm sorry. Two members at that
21 time. Mr. Wilson and Mr. Greer.

22 Q Did you recall where that meeting was?

23 A That was also in Greenwood. Also at a restaurant. I
24 believe Ruby Tuesdays, and that would of been in
25 mid-November of 2008.

Michael Cunningham - Direct examination
by Mr. Tessier

1 Q And would you agree that both of the meetings you've
2 mentioned that were held in Greenwood were held before the
3 November 18th, 2008, county council meeting?

4 A Yes.

5 Q What did you discuss at the second meeting, the one
6 with Mr. Greer and Mr. Wilson?

7 A That, again, I was not privy to what was happening with
8 negotiations with Mr. Preston. But should things proceed,
9 that I would be willing to take on the responsibility as
10 county administrator and then we discussed salary.

11 Q And do you recall what you asked for in terms of an
12 annual salary?

13 A Yes.

14 Q What did you ask for?

15 A 125,000.

16 Q Do you know whether you would of then, or whether you
17 know it now, do you know how that salary, \$125,000 a year,
18 compares with the salary that Mr. Preston was getting for
19 the job as county administrator in 2008?

20 A I believe that it was less than what he was getting as
21 county administrator, but I did not know his exact salary,
22 no.

23 Q Would it be fair to say that you were willing to take
24 on the job of county administrator, if they asked you to do
25 it, at a rate of pay less than what Mr. Preston had been

Michael Cunningham - Direct examination
by Mr. Tessier

1 getting?

2 A Yes.

3 Q Is that based, in part, on the fact that you had less
4 experience at that point in time?

5 A I think, yes, that was, that was a part of it as well
6 as just it was what I deemed to be a fair starting salary.

7 Q Would you agree with me, Mr. Cunningham, that you did
8 not ask for any type of a premium in terms of your annual
9 salary in order to deal with the difficult political
10 environment that you knew you would be stepping into?

11 A No, sir.

12 Q You would not agree?

13 A No, I'm sorry. That, that is an accurate statement,
14 and, no, I did not ask for a premium.

15 Q When did you know, if at all, that a vote would happen
16 at the November 18th, 2008, county council meeting that
17 would include a consideration of hiring you as county
18 administrator?

19 A Probably on November the 17th.

20 Q And do you remember how you came to know that?

21 A I think it was a conversation with Mr. Preston just
22 regarding the fact that there had been no resolution to his
23 particular issue. I had a contract in hand that, should
24 that move forward, that I would be willing to consider, and
25 I think, during that, that time frame, he said well, you

Michael Cunningham - Direct examination
by Mr. Tessier

1 know, this is something that will come up.

2 Q And do you know whether or not Mr. Preston had any
3 involvement in the actual drafting of the employment
4 agreement that you ended up signing?

5 A No, I don't know if he had any actual involvement. I
6 sent it to him and then I don't know exactly who drafted the
7 actual document. My assumption is the county attorney.

8 Q And did you get the final version of the proposed
9 contract that you had, on November 17th it sounds like,
10 did you get that from Mr. Preston?

11 A I did.

12 Q Let me ask you some questions about Michael Thompson.
13 You agree with me, do you not, that Michael Thompson
14 was the chair of county council in 2008?

15 A Yes, sir.

16 Q Do you have any understanding as to whether or not Mr.
17 Thompson was seeking or actually sought employment with the
18 county beyond his service as county councilman during 2008?

19 A Not until mid-November of 2008 that that was, that was
20 a desire of his.

21 Q And how did you come to learn, in mid-November 2008,
22 that Mr. Thompson was looking for a job from Anderson
23 County?

24 A It was a conversation with Mr. Preston regarding that
25 issue.

Michael Cunningham - Direct examination
by Mr. Tessier

1 Q And what do you remember about that conversation?

2 A Just that Mr. Preston mentioned that Mr. Thompson was
3 indeed looking for employment beyond his, his term on county
4 council, possibly with the county, and that he had concerns
5 about a number of issues, but mainly about the health of his
6 wife and their economic viability, and that he was, he was,
7 indeed, seeking employment with the county.

8 Q Did you have any conversation with Mr. Preston about
9 whether or not it would be appropriate for the county to
10 hire Mr. Thompson under the circumstances?

11 A We did.

12 Q And what, what do you remember about that conversation?

13 A I told him that I had concerns about hiring Mr.
14 Thompson as a county employee.

15 Q And why did you have concerns about hiring Mr. Thompson
16 as a county employee in November of 2008?

17 A And it goes back to the contentious political
18 environment that was existed -- that existed at the county
19 at the time, and it was my opinion that that would, would
20 not help resolve any of those issues.

21 Q And did Mr. Thompson come to see you, at some point
22 after the November 18th, 2008, county council meeting, to
23 ask you to hire him for a job?

24 A He did come and ask me about the possibility of
25 employment with the county.

Michael Cunningham - Direct examination
by Mr. Tessier

1 Q And was that after November 18th, 2008?

2 A It was.

3 Q Do you remember what job he was asking you to hire him
4 into?

5 A I don't recall what specific job that he was asking to
6 be hired into. Only that he was, he was hoping for
7 employment.

8 Q And did you actually hire Mr. Thompson at that point?

9 A I did not.

10 Q What did you tell him, if anything?

11 A I told him that I would certainly consider something
12 like that, but I shared with him my real concerns about him
13 being employed by the county and how I didn't think that
14 would be a benefit for the county and not for him
15 personally.

16 Q And at the time that Mr. Thompson came to see you about
17 a job, was he also coming to see you as county council
18 chairman to have you execute your master employment
19 agreement as a new county administrator?

20 A No, I don't believe those were at the same time.

21 Q Did, did Mr. Thompson -- is he the one who brought you
22 your master employment agreement to sign?

23 A I don't recall who brought that agreement to me
24 directly, but certainly, as his, in his capacity as
25 chairman, he would of been involved in that process.

Michael Cunningham - Direct examination
by Mr. Tessier

1 Q And---

2 A But I don't recall him hand delivering it to me.

3 Q And do you agree with me, and I'll show it to you if I
4 need to, I'm just wondering if you remember, but your
5 employment agreement with the county dated November 19th,
6 2008, is signed by you and Mr. Thompson and Mr. McAbee?

7 A That's -- I'm -- I have not seen the document that
8 you're referring to, but I'm sure that --.

9 MR. TESSIER: Okay. May I approach, Your Honor?

10 THE COURT: Yes, sir.

11 Q I'm just gonna---

12 THE COURT: At this point, I want to remind the
13 attorneys that we're still under the sequestration order.
14 If there are any witnesses present, I don't know if there
15 are any, they need to step out. That continues throughout
16 the trial. I didn't mention it before we started.

17 MR. TESSIER: Thank you, Your Honor.

18 THE COURT: Okay. That's fine.

19 Yes, sir, you may approach.

20 Q Mr. Cunningham, I'm gonna try to do this without
21 falling down like I did yesterday. This is Exhibit No. 9.

22 A Okay.

23 Q It's already been admitted.

24 Just to refresh your memory, but do you agree that
25 that's a copy of the contract you signed on or about 19

Michael Cunningham - Direct examination
by Mr. Tessier

1 November, 2008?

2 A Yes, sir.

3 Q And does it have your signature, Michael Thompson's
4 signature, and Mr. McAbee's signature on the final page?

5 A Yes, sir.

6 Q You don't remember looking at this document how you
7 received it in terms of when it was brought to you for
8 signature?

9 A That's correct.

10 Q Okay. Was one of the reasons why you thought it would
11 be not in the best interest of the county to hire Mr.
12 Thompson, the fact that you believed it would be a conflict
13 of interest for Mr. Thompson to seek employment after he had
14 voted on your contract?

15 MR. DAVIS: Your Honor, I appreciate the Court's
16 willingness to have some leeway, but there should be some
17 sort of---

18 THE COURT: I'll sustain the objection at this time.

19 Q Can you tell me any other reasons why you were
20 concerned about hiring Mr. Thompson for county employment?

21 A Again, it was clearly as a result of the political
22 environment at the time. That my goal was, hopefully, to
23 serve as a bridge to kind of where we were to where I would
24 hope we could get to as a county, and that I saw that as, as
25 a possible obstacle to that. And, again, I didn't feel like

Michael Cunningham - Direct examination
by Mr. Tessier

1 it was in his best interest or was in the best interest of
2 the county.

3 Q And are you aware of the ethical rules that apply to
4 conflicts of interest in Anderson County?

5 A I'm not.

6 Q As a general matter?

7 A As a general matter, I'm, I'm aware of, of certain
8 conflicts of interest that could be there. But my
9 understanding for Mr. Thompson is that he was seeking
10 employment when his relationship as a county councilperson
11 with the county would have concluded.

12 Q Do you know what happened after you told Mr. Thompson
13 that you would not hire him into a county job with respect
14 to Mr. Thompson?

15 A Do I know what happened to him or --?

16 Q Yeah.

17 In other words, after -- you, you told Mr. Thompson
18 that you would not hire him.

19 Is that fair?

20 A Right.

21 Q After you told him you would not hire him, do you know
22 what he did with respect to county employment?

23 A Oh, I do not.

24 Q Do you know whether or not he went to see Mr. Preston
25 to try to get hired for a job?

Michael Cunningham - Direct examination
by Mr. Tessier

- 1 A No, I do not know that for sure.
- 2 Q At the time, would you agree with me that, as of
3 December 1st, 2008, you were the county administrator for
4 Anderson County?
- 5 A That's correct.
- 6 Q So, after December -- on or after December 1st, would
7 you agree with me that Mr. Preston was no longer serving as
8 county administrator?
- 9 A That's correct.
- 10 Q So, any decision to hire Mr. Thompson, if one were
11 made, would you agree would of had to have been made by you
12 if it was on or after December 1st?
- 13 A Yes.
- 14 Q And did you ever come, become aware that Mr. Thompson
15 had been hired to a county job?
- 16 A No.
- 17 Q When you became county administrator on December 1st,
18 2008, did you become aware, at some point in time, that the
19 county had a contract between itself and a company owned by
20 Allison Schaum?
- 21 A Yes.
- 22 Q Do you know who Allison Schaum is?
- 23 A Yes, I do.
- 24 Q And did you know that she was the daughter of Ron
25 Wilson?

Michael Cunningham - Direct examination
by Mr. Tessier

- 1 A Yes.
- 2 Q Did you know that at the time that you learned that she
3 had a contract with the county?
- 4 A Yes.
- 5 Q Did the contract that Ms. Schaum's company had with the
6 county include a buy-out provision?
- 7 A I did not know that the contract had a buy-out
8 provision until probably early January of 2009 when that was
9 brought to my attention by Mr. Daniels, I believe, who was
10 the internal auditor that county council had hired.
- 11 Q When you learned that Ms. Schaum's company's contract
12 with the county had a buy-out provision, did that surprise
13 you?
- 14 A Yes.
- 15 Q Do you know about any -- well, let me ask this.
16 Do you know who Heather Jones is?
- 17 A Yes.
- 18 Q Did you become aware, at anytime, that there were
19 certain documents in Heather Jones file that were backdated?
- 20 A No.
- 21 Q Did Mr. Preston ever talk to you about backdating any
22 documents for Ms. Jones' personnel file?
- 23 A We talked about a number of issues as related to
24 economic development. The thing that stood out to me was an
25 employment issue with a former county employee that, that

Michael Cunningham - Direct examination
by Mr. Tessier

1 stood out. But there was a lot of conversations during that
2 time. I don't recall one about backdating anything in
3 Heather's file.

4 Q Well, let me ask you a different way then, Mr.
5 Cunningham.

6 If Mr. Preston were to ask you to approve backdating
7 documents for Ms. Jones' file or any employee's file, would
8 that be troubling to you?

9 A Yes.

10 MR. DAVIS: Your Honor, I'd object to the question to
11 the extent that he's using the term backdating. I mean
12 there was a -- it's clear in this case that what happened
13 was they dated a document at the point in time Ms. Jones'
14 employment starting, and to the extent that he's asking the
15 witness to imply there was some sort of -- I just -- I
16 object to the term he's used.

17 THE COURT: Oh, I understand you object to the term,
18 but he's questioning the witness, and you can certainly urge
19 a different term later if you'd like.

20 You may proceed.

21 MR. TESSIER: Okay. Thank you, Your Honor.

22 Just a couple more questions at most, Mr. Cunningham.

23 If Mr. Preston had asked you to sign off on a document
24 for Ms. Jones or any other employee of the county at the
25 time you were county administrator where the document was

Michael Cunningham - Direct examination
by Mr. Tessier

1 backdated, in other words, sign a document today, but it has
2 a date a year from, a year ago, would you have done it?

3 A I think I would of had, had trouble signing that type
4 of document. I would of certainly wanted a lot more
5 information as about why it was necessary. I don't say that
6 I wouldn't have, but it would of been troubling.

7 Q And you don't recall any situation in which Mr. Preston
8 talked to you about putting dates on any documents for
9 personnel files that were dates prior to the date of the
10 conversation you might of had with him?

11 A I don't recall any of those conversations.

12 Q That's all I have. If you'd answer Mr. Davis'
13 questions.

14 THE COURT: Mr. Davis, your witness.

15 MR. DAVIS: Thank you, Your Honor.

16 Your Honor, may I approach?

17 THE COURT: Yes, you may. Thank you.

18 MR. DAVIS: Your Honor, may I approach the witness?

19 THE COURT: Yes, you may.

20 CROSS-EXAMINATION

21 BY MR. DAVIS:

22 Q Good morning, Mr. Cunningham.

23 A Good morning.

24 Q We haven't met, but my name is Lane Davis and I
25 represent Mr. Preston in this case.

Michael Cunningham - Cross-examination
by Mr. Davis

- 1 A Uh-huh. (Affirmative).
- 2 Q Let me first start by returning to a little bit of your
3 background just briefly.
- 4 You had a B.A. from Clemson, is that right?
- 5 A That's correct.
- 6 Q And you had an M.B.A. from the University of South
7 Carolina and Clemson?
- 8 A M.P.A.
- 9 Q M.P.A.?
- 10 A Uh-huh. (Affirmative).
- 11 Q And just for purposes of the record, can you say what
12 an M.P.A. is?
- 13 A Sure. It's a Masters in Public Administration.
- 14 Q After that you went to Greenville for a short stint?
- 15 A Yes, sir.
- 16 Q And then you went to Anderson County and started off as
17 an intern?
- 18 A That's correct.
- 19 Q And you progressively worked yourself all the way up
20 the ladder to deputy administrator?
- 21 A That's correct.
- 22 Q How long were you with Anderson County?
- 23 A From January of 1998 up until March the 1st, 2009.
- 24 Q And during that time, there was about a six year period
25 that you worked with Mr. Preston?

Michael Cunningham - Cross-examination
by Mr. Davis

1 A Actually I worked with him the entire time I was with
2 the county.

3 Q So, the entire time?

4 A Yes.

5 Q And during that period of time, it's true, is it not,
6 that you, you never saw Mr. Preston do anything illegal, is
7 that right?

8 A That's correct.

9 Q And during that time you never saw Mr. Preston do
10 anything unethical, right?

11 A That's correct.

12 Q You were asked some questions on direct examination
13 about meetings that occurred in Greenwood.

14 Do you remember that?

15 A Yes, sir.

16 Q Or it was a meeting in Greenwood, right?

17 A Two meetings.

18 Q Two meetings.

19 And, at that point in time, is it your understanding
20 that an employment dispute had arisen between the county and
21 Mr. Preston?

22 A Yes, sir.

23 Q And that during that period of time, is it also your
24 understanding that Mr. Greer, for example, on the personnel
25 committee, was trying to evaluate potential alternatives for

Michael Cunningham - Cross-examination
by Mr. Davis

1 succession after Mr. Preston, Preston's potential leaving
2 the county?

3 A Yes, sir.

4 Q And, in fact, you were the person that they wanted to
5 be the successor?

6 A Yes, sir.

7 Q Now, having been in county government for all these
8 years, can we agree that it makes sense that if there's a
9 potential for the administrator to leave employment that the
10 county council would evaluate who would come in behind him?

11 A Yes, sir.

12 Q You wouldn't want there to be some sort of back gap in
13 the administrator position when the administrator left,
14 right?

15 A Ideally.

16 Q In your experience with the county, it's true, is it
17 not, that personnel matters are treated with
18 confidentiality?

19 A That is correct.

20 Q And your meetings in Greenwood were in Greenwood, in
21 part, because you were discussing personnel matters---

22 A That is correct.

23 Q ---right?

24 And on direct you referenced the contentious political
25 climate that had arisen during this time frame.

Michael Cunningham - Cross-examination
by Mr. Davis

- 1 Do you remember that?
- 2 A Yes.
- 3 Q And it's true, is it not, that having the meeting
4 outside of the actual immediate area of Anderson was
5 probably the only way that the confidentiality could be
6 maintained?
- 7 A I would agree with that, yes.
- 8 Q On direct examination you were asked a question about a
9 proposed draft of a master employment agreement that you
10 sent to Mr. Preston.
- 11 Do you remember that?
- 12 A Yes, sir.
- 13 Q And it's true, at the time that you sent that draft,
14 that Mr. Preston responded to you, right?
- 15 A That's correct.
- 16 Q And one of the things that Mr. Preston said to you, at
17 that time, was, hey, Michael, just to let you know, my
18 employment situation remains unresolved?
- 19 A Yes.
- 20 Q If you look at Plaintiff's Exhibit 9 for me?
- 21 A (Witness complies.)
- 22 Q It's the exhibit that's behind the paragraph symbol in
23 the nine that's in your binder. It should be the first tab.
- 24 A Okay.
- 25 Q Plaintiff's Exhibit 9 is the master employment contract

Michael Cunningham - Cross-examination
by Mr. Davis

1 that you executed with the county, is it not?

2 A Yes.

3 Q And you mirrored that master employment contract upon
4 the existing administrator's contract, right?

5 A To a degree, yes.

6 Q And it would make sense to mirror your contract on what
7 the contract of the prior administrator actually was, right?

8 A It would.

9 Q There's no point in reinventing the wheel?

10 A None that I saw. Again, to a degree, there were things
11 that I felt I would like to, to do differently.

12 Q Will you look at Defense Exhibit 108 for me, which
13 should be the very next exhibit behind the following tab?

14 A (Witness complies.)

15 Q Mr. Cunningham, Page 1 is an email from Michael
16 Thompson to you dated December 4th of 2008, is it not?

17 A It is.

18 Q And attached to that email is Michael Thompson's
19 resume, right?

20 A It is.

21 Q And on Michael Thompson's resume, on Page 1, it
22 reflects that Michael Thompson had an M.D.A., did he not?

23 A It does.

24 Q And he had, as it says in the very top, he was a
25 business professional who had experienced managing a

Michael Cunningham - Cross-examination
by Mr. Davis

1 55 million-dollar account for an international automotive
2 company.

3 You understood that too, right?

4 A Yes.

5 Q And beyond that, Mr. Thompson had significant
6 experience in real estate matters.

7 Did you know that?

8 A I did.

9 Q And he had nine years in purchasing experience, did he
10 not?

11 A He did.

12 Q And but for the fact that Mr. Thompson had been the
13 county council chairman, and but for the fact that the
14 political climate in Anderson County, at that point in time,
15 had been contentious, can we agree that Mr. Thompson would
16 of been a great candidate to work for the county?

17 A I could agree with you, yes.

18 Q And beyond that, his experience as a county council
19 member put him in a unique position with respect to knowing
20 about how the county worked, right?

21 A I would agree.

22 Q Mr. Cunningham, in your experience it's true, is it
23 not, that Mr. Thompson was a good man?

24 A Yes.

25 Q He was a fair man?

Michael Cunningham - Cross-examination
by Mr. Davis

1 A Yes.

2 Q And he was an honest man, wasn't he?

3 A Yes.

4 MR. TESSIER: Objection, Your Honor. I don't believe
5 the reputation of Mr. Thompson was an issue in the case.

6 MR. DAVIS: Your Honor, his pleading has an allegation
7 that Mr. Thompson is some sort of liar. His complaint.

8 THE COURT: Overruled.

9 Q Each time -- I paused, Mr. Cunningham. I'm skipping
10 things. So, that's a good thing.

11 A No complaint.

12 Q I want to turn your attention to the early 2008 time,
13 timeframe.

14 Do you remember an instance where certain council
15 members came to the administrator's office to copy credit
16 card receipts?

17 A I do.

18 Q And those council members were Cindy Wilson?

19 A That's correct.

20 Q And was Bob Waldrep there too?

21 A Yes, sir.

22 Q And did they bring a, a wide variety of people with
23 them?

24 A They did.

25 Q And the purpose of them coming to the administrator's

Michael Cunningham - Cross-examination
by Mr. Davis

- 1 office was cause they requested to see county credit card
2 receipts, right?
- 3 A That's correct.
- 4 Q And the response from the administrator's office was,
5 yeah, sure, no problem, we'll let you look at those
6 receipts, right?
- 7 A That was the response.
- 8 Q And all those receipts were up in the administrator's
9 library waiting or the administrator's conference room
10 waiting for them to look at them?
- 11 A That's correct.
- 12 Q But when they arrived, they arrived with an entourage?
- 13 A That's correct.
- 14 Q And part of that entourage included people from radio
15 stations, news stations, paper media, all sorts of people,
16 right?
- 17 A There was, there was a large group of people.
- 18 Q And beyond that, they brought with them, to look at
19 those documents that they requested in their capacity as
20 county council members, they brought with them a mass of
21 people from the general public at large too, right?
- 22 A Again, there was a large group. Some I was familiar
23 with and most I was not.
- 24 Q I'd like to turn your attention to the Palmetto
25 Agricultural Consultants contract, and I'll call it P.A.C,

Michael Cunningham - Cross-examination
by Mr. Davis

1 if you don't mind, because I don't think I can say that
2 again. It's too early.

3 It's true that there was a first P.A.C. contract and
4 then there was an amended P.A.C. contract, correct?

5 A I was not familiar with the first or the iterations of
6 the contract. Again, it's early 2009.

7 Q And you were asked, on direct, about a buy-out clause
8 in the amended contract.

9 Do you remember that?

10 A Yes.

11 Q It's true, however, that in that amended contract there
12 was no minimum hourly amount of time that Schaum was
13 required to work?

14 A I don't recall that in the contract, no.

15 Q And there was nothing that required the county to hire
16 Schaum for any minimum amount of time, isn't that right?

17 A No, I don't recall that in the contract.

18 Q But the earlier contract actually had a requirement in
19 it with respect to time commitments.

20 Do you remember that?

21 A Again, I don't recall the, the first contract. The one
22 that, that is most significant to me is the one that was
23 brought to my attention by Mr. Daniels.

24 Q I understand.

25 Do you ever recall a point in time when a personnel

Michael Cunningham - Cross-examination
by Mr. Davis

1 issue with respect to Bob Daniel arose?

2 A I'm sorry?

3 A personnel issue as a result -- as it relates to Bob
4 Daniel?

5 Q Yes, sir.

6 A Yes.

7 Q What was that?

8 A The actual hiring of Mr. Daniel and how that would be,
9 I guess, facilitated by the county.

10 Q Do you recall any other personnel issues relating to
11 Mr. Daniel?

12 MR. TESSIER: Objection, Your Honor. Relevance.

13 THE COURT: What's the relevance?

14 MR. DAVIS: This is their financial guru I mean that,
15 that the whole underpinnings of their case arose out of an
16 investigation commencing in January of 2009, and then going
17 all the way through to the Fall of 2009, and then you see,
18 in November of 2009, that they filed a complaint against
19 Mr. Preston and the person who was going through all of
20 these financial documents, going through line-by-line, you
21 know, going through and bean counting, every single thing,
22 and presumably the person who they actually asked about on
23 direct with respect to the Schaum contract, and he was the
24 guy, at least as to the financial components, who was
25 conducting the investigation.

Michael Cunningham - Cross-examination
by Mr. Davis

1 And, so, I'm just asking Mr. Cunningham if he knows
2 something about any personnel matters that may have risen
3 about this person who was in the dead center---

4 THE COURT: I'll overrule the objection.

5 You may proceed.

6 Q Do you recall any other personnel issues?

7 A Yes, as it relates to accusations about county
8 employees. Also as it relates to just the flow of
9 information to Mr. Daniel from county employees. There,
10 there was a question of there's a huge volume of information
11 being requested, how do we facilitate that, and, again,
12 there was -- I assume that Mr. Daniel was chasing down any
13 number of rumors as related to county employees.

14 Q What were the accusations against Mr. Daniel?

15 MR. TESSIER: Objection. Hearsay. Relevance.

16 THE COURT: Ask you to lay a foundation as to his
17 knowledge of how he might have come about any information
18 he's gonna testify about.

19 Q Mr. Cunningham, it's true, is it not, during this
20 timeframe you were actually the acting county administrator?

21 A Yes.

22 Q And when personnel issues came up involving people who
23 were working with the county, they would flow back to you,
24 would they not?

25 A They would.

Michael Cunningham - Cross-examination
by Mr. Davis

- 1 Q You'd be aware of a personnel issue if it arose with
2 respect to a person like Bob Daniel, right?
- 3 A I would. Although he was not my employee.
- 4 Q Fair enough.
- 5 And, in fact, you do know about those issues, don't
6 you?
- 7 A I'm aware of some.
- 8 Q And what were those accusations?
- 9 A Some -- one that sticks out was the accusation that
10 there was a relationship between a consultant with the
11 county and a county employee.
- 12 Q The consultant with the county was Mr. Daniel?
- 13 A No. I'm sorry.
- 14 Q Who was it?
- 15 A It was Representative John Scott.
- 16 Q Let me ask you this.
- 17 During this time frame, were you looking at -- you took
18 over on December 1st of 2008, correct?
- 19 A Uh-huh. (Affirmative).
- 20 Q During that time frame, it was your understanding that
21 Mr. Preston was suppose to stick around until the beginning
22 of the year, right?
- 23 A That he would be there to the end of the year to clean
24 out his office, and to be around to assist should I need it,
25 yes.

Michael Cunningham - Cross-examination
by Mr. Davis

1 Q And what was Mr. Preston suppose to be doing during
2 this time period, time period to your understanding?

3 A To my understanding, providing any support should I
4 need it as it related to the transition between me being the
5 county administrator and his ultimate departure.

6 Q Mr. Preston was suppose to stick around for a month to
7 help you with the transition, right?

8 A Should there be any assistance needed, yes.

9 Q And Mr. Preston was suppose to stick around for a month
10 to help you clean-up whatever loose ends were straggling
11 from his administration to help usher your administration
12 in?

13 A He was there to, to be a resource.

14 Q Mr. Cunningham, will you turn to Defense Exhibit 66?

15 A (Witness complies.)

16 Q Was this a memorandum that you authored to Tommy Dunn
17 who was the representative from District 5 on the Anderson
18 County Council?

19 A Yes.

20 Q And this memorandum specifically relates to Heather
21 Jones vehicle, does it not?

22 A It does.

23 Q And, at this point in time, as in February of 2009,
24 there were allegations swirling about about her vehicle,
25 were there not?

Michael Cunningham - Cross-examination
by Mr. Davis

- 1 A There was.
- 2 Q And even more specifically, those allegations were that
3 Homeland Security funds were used to buy that vehicle?
- 4 A That is correct.
- 5 Q Do you remember where those allegations came from?
- 6 A I really do not. There -- if you're familiar at all
7 with Anderson County politics, they're, they're lots of
8 allegations that flow daily.
- 9 Q Is -- there's, there's a lot of unsubstantiated
10 allegations, aren't there?
- 11 A They're lots of allegations of all sorts.
- 12 Q Okay.
- 13 A It's a colorful place to be.
- 14 Q And after these allegations cropped up, there was an
15 investigation into, into whether Homeland Security funds
16 were, were used to buy Heather Jones vehicle, right?
- 17 A Absolutely.
- 18 Q And during that investigation, if you'll turn three
19 pages, it's true, is it not, that it was discovered that Ms.
20 Jones vehicle was purchased all the way back in
21 December 13th of 2006, right?
- 22 If you turn the page you should see a---
- 23 A Okay.
- 24 Q ---what looks like a --.
- 25 A Is that a copy of a check?

Michael Cunningham - Cross-examination
by Mr. Davis

1 Q Check register, yes.

2 A Right. Okay. Yes, I see that dated December of 2006.

3 Q And the date of that check is, is December 15th of
4 2006 because Heather Jones commenced working with the county
5 in October of 2006, did she not?

6 A Yes, that, as I recall, that was the -- roughly the
7 timeframe she started working with the county.

8 Q And all those questions that were asked to you about
9 backdating documents, they were, they were asked to you
10 about backdating memoranda that related to the October of
11 2006 timeframe when Heather Jones first started to work,
12 isn't that true?

13 A Yes.

14 Q As the economic development director, it's true, is it
15 not, that, during the entirety of your time with Anderson
16 County, Heather Jones had a vehicle?

17 A Yes.

18 Q The economic development director needs a vehicle,
19 right?

20 A That is correct, yes.

21 Q If, if people from major corporations are interested in
22 investigating in Anderson County and they're flying in, the
23 economic development director needs something to pick them
24 up in at the airport, right?

25 A That is correct.

Michael Cunningham - Cross-examination
by Mr. Davis

1 Q In the December of 2008 timeframe, do you remember any
2 issues that arose with respect to the Broadway Lake project?

3 A I do.

4 Q And just by way of background, what exactly was the
5 Broadway Lake project?

6 MR. TESSIER: Objection. Relevance.

7 MR. DAVIS: Your Honor, it's relevant because what
8 we're gonna see, and this, this is actually a fairly short
9 and the very next one is a very short line of questions, but
10 it's relevant because of this. In December of 2008, I
11 believe the witness is gonna testify about communication
12 that he had with an incoming county council member, and
13 that, that incoming county council member gave him a certain
14 instruction with respect to this project, and that he's
15 gonna probably testify about what his response to that
16 instruction was, and he's also gonna testify, most likely,
17 about what another council member may have, actual sitting
18 council member may of told him about this project, and that
19 later, after that person was sworn in, what his reaction to
20 that incoming county council members request was, was, I
21 believe, used as something cited as an act of
22 insubordination.

23 And, so, it goes to the line of questioning and what we
24 were starting to establish yesterday was that we had this
25 control group, starting in June of 2008 and continuing

Michael Cunningham - Cross-examination
by Mr. Davis

1 through December 31st of 2008, and that the chapter, line,
2 and verse, they increasingly started acting like they were
3 the county council, and it didn't matter whether they were
4 sworn in or not, and, in fact, in this instance, this guy
5 told him something to do, and when he didn't respond the way
6 he wanted, when he became a county council member, he cited
7 that as insubordination against the guy. And that's the
8 point, and there's, there's another point is that we have
9 another line of questioning about some other things he told
10 him in this exact same timeframe that I think that it will
11 inform the Court about exactly---

12 THE COURT: Timeframe between June, June --?

13 MR. DAVIS: This is -- now---

14 THE COURT: ---'08 and January of '09?

15 MR. DAVIS: Yes, sir, and it's specifically what we're
16 talking about now is the December of '08 timeframe after Mr.
17 Cunningham had assumed the position as county administrator,
18 and before these incoming folks had actually been sworn in
19 and taken office at least officially.

20 MR. TESSIER: And, Your Honor, that's what we said
21 yesterday. There's a time period that's relevant in this
22 case, and that's leading up to the vote on
23 November 18th of 2008 when the severance agreement was
24 approved.

25 As a legal matter, the Court can recognize or take

Michael Cunningham - Cross-examination
by Mr. Davis

1 judicial notice, if you wish to, but there's no legal
2 authority for newly elect county council members to do
3 anything on behalf of the county until they're sworn in.
4 That should be conceded.

5 And, so, whether they were acting or talking amongst
6 each other or giving a heads-up to somebody that, when we
7 come on board, here's some of the things we're thinking
8 about has no bearing on the issues before the Court, which
9 are was the signing of the vote forward and the signing of
10 the severance agreement worth a million one to Joey Preston,
11 was arbitrary and capricious at the time.

12 So, it has -- nothing after that time has any bearing
13 on whether that was arbitrary or capricious at the time, and
14 whether there were tainted votes that supported that at the
15 time.

16 MR. DAVIS: Your Honor, is he, is he dismissing all
17 claims except for the arbitrary and capricious one because
18 if he is I'll make that---

19 THE COURT: I asked that question at the beginning of
20 the hearing as to what issues were still in the case, and I
21 didn't see that you pared any down.

22 Have you?

23 MR. TESSIER: No, sir, and tainted votes I just said.

24 THE COURT: Okay. Overruled.

25 You may proceed.

Michael Cunningham - Cross-examination
by Mr. Davis

1 MR. DAVIS: I apologize, Your Honor. My consumption
2 rate is alarming at this point.

3 THE COURT: That's okay. You're talking a lot. So are
4 others in the courtroom. Not holding that against you.

5 You may proceed.

6 Q Mr. Cunningham, what was the Broadway Lake project
7 again?

8 A It was a project to build a new community center on
9 existing county property on the shores of Broadway Lake.

10 Q And it's true, is it not, that in the December of 2008
11 timeframe, Mr. Moore had a conversation with you about
12 Broadway Lake?

13 A He did.

14 Q And Mr. Moore told you something that he had about
15 concerns with the bidding of the project, right?

16 A He did.

17 Q And he wanted you to halt progress on that project,
18 right?

19 A He did.

20 Q And he cited that there were problems with this bidding
21 process, but he never told you what they were, right?

22 A That's correct.

23 Q Never provided you with sort of back-up documents with
24 respect to problems with the bid process?

25 A He did not.

Michael Cunningham - Cross-examination
by Mr. Davis

1 Q At the same time, and acting also in concert with,
2 Council Member Cindy Wilson also sent you a memo, didn't
3 she?

4 A She did.

5 Q And what Cindy Wilson told you, sir, was that you
6 needed to cease and desist the Broadway Lake project, didn't
7 she?

8 A That is correct.

9 Q It's true, is it not, that after the new council was
10 sworn in in January of 2009, sometime after that they --
11 there were allegations of insubordination made against you,
12 were there not?

13 A That's correct.

14 Q And one of the things that they cited was that you
15 disobeyed Eddie Moore with respect to the Broadway Lake
16 project?

17 A That's correct.

18 Q You had another meeting with Mr. Moore too in the
19 December timeframe, didn't you?

20 A Yes.

21 Q And during that meeting Mr. Moore came into your
22 office, right?

23 A That's correct.

24 Q And during that meeting Mr. Moore posed a question to
25 you, and he said if I give you a list of employees, will you

Michael Cunningham - Cross-examination
by Mr. Davis

1 terminate them?

2 A Yes.

3 Q And this was before Mr. Moore was ever sworn in, right?

4 A That's correct.

5 Q And later you found out that, on the actual day that
6 Mr. Moore was sworn in, he vowed that your time as the
7 administrator was now over, right?

8 A I did hear that, yes.

9 Q At some point in time you were terminated, weren't you,
10 Mr. Cunningham?

11 A Yes, sir.

12 Q And you were terminated because you were asked to sign
13 a new contract?

14 A That is correct.

15 Q And the new contract that they asked you to sign wasn't
16 one that had a term, right?

17 A That's correct.

18 Q So what you were asked to do was to forego your
19 contract with the term and replace it with an at will
20 contract?

21 A That is the term that was used to describe that
22 particular contract, yes.

23 Q And this conversation first or this issue was first
24 brought to your attention in the Law Office of Bob Waldrep

25 --

Michael Cunningham - Cross-examination
by Mr. Davis

- 1 A That's correct.
- 2 Q -- where you had a conference, right, with Mr. Waldrep?
- 3 A Yes, sir.
- 4 Q And Mr. Waldrep assured you that your family didn't
5 have the financial resources to litigate this as far as it
6 needed to go, didn't he?
- 7 MR. TESSIER: Objection. Hearsay.
- 8 MR. DAVIS: Admission by a party opponent. He was on
9 county council, Your Honor.
- 10 MR. TESSIER: Mr. Waldrep in 2009?
- 11 MR. DAVIS: Yes, he was. He was on -- testified
12 yesterday he was on county council---
- 13 THE COURT: Address me. Don't address him, Mr. Davis.
14 Thank you.
- 15 MR. DAVIS: Sorry, Your Honor. He was on county
16 council until 2010 as he testified just yesterday.
- 17 THE COURT: That was my recollection of the testimony.
18 Overruled.
- 19 You may proceed.
- 20 Q And what Mr. Waldrep told you was that your family
21 didn't have the financial resources to fight this battle as
22 far as it needed to go, didn't he?
- 23 A That's correct.
- 24 Q Mr. Waldrep told you one more thing, didn't he?
25 Didn't he say that it was better, better to know the

Michael Cunningham - Cross-examination
by Mr. Davis

1 judge than the law?

2 A Yes, sir.

3 Q Mr. Cunningham, I wish we could of had -- could have
4 met under better circumstances, but I appreciate you being
5 here, sir. Thank you.

6 A Yes, sir.

7 THE COURT: If you'll wait just one second, sir, before
8 you start. Thank you.

9 MR. TESSIER: Yes, sir.

10 (Pause.)

11 THE COURT: Thank you, sir.

12 You may proceed.

13 MR. TESSIER: Thank you, Your Honor.

14 REDIRECT EXAMINATION

15 BY MR. TESSIER:

16 Q Mr. Cunningham, in December of 2008 you had a
17 considerable amount of experience, would you say, in being
18 at the deputy county administrator?

19 A Yes, sir.

20 Q Did you need Mr. Preston to help you do your job during
21 that 30, 31 day period of time?

22 A I appreciated his help in doing my job.

23 Q And did you need it?

24 A Need, I would say no.

25 Q Mr. Davis asked you about your master employment

Michael Cunningham - Redirect examination
by Mr. Tessier

1 agreement, which is Exhibit No. 9. I don't know if you
2 still have that in front of you.

3 A I have two copies of it actually.

4 Q Okay. By and large, would you agree that that contract
5 is very much the same as the master employment agreement
6 under which Joey Preston was operating?

7 A I can't give you a percentage. It is different from
8 Mr. Preston's agreement, but the, the, the structure and
9 form I would say is similar.

10 Q And they both have the same provision with respect to
11 how long they last, correct?

12 A Yes.

13 Q And you have had litigation with the county over that,
14 your, your version of the contract, right?

15 A Yes, sir.

16 MR. TESSIER: If I may mark an exhibit as for
17 identification, Your Honor?

18 THE COURT: Uh-huh. (Affirmative).

19 MR. TESSIER: This would probably be No. 96.

20 (WHEREUPON, an order was marked as Plaintiff's Exhibit
21 No. 96 for identification purposes only at this time.)

22 MR. TESSIER: May I approach, Your Honor?

23 THE COURT: You may.

24 Q Mr. Cunningham, I'm gonna show you what I have marked
25 as Plaintiff's Exhibit No. 96 for identification. Just ask

Michael Cunningham - Redirect examination
by Mr. Tessier

1 if you can identify what that is.

2 A It reads Court of Common Pleas, Tenth Judicial Circuit,
3 Civil Action Number 2009-CP-04-1693. Mike Cunningham,
4 plaintiff, versus Anderson County, defendant.

5 Q Would you agree with me that that is an Order of
6 Judgment issued by Judge Macaulay in your case against
7 Anderson County?

8 A Yes, sir.

9 Q And in that case, Judge Macaulay granted summary
10 judgment in favor of Anderson County on your claims related
11 to your contract, correct?

12 A Yes, sir.

13 Q And if you look at Page 10 of that document for me.

14 A (Witness complies.)

15 Q Are you there?

16 A Yes, sir.

17 Q At the bottom, the last paragraph, it says, in sum, the
18 law in South Carolina is that once a new county council has
19 taken office, a contract that deals with the governmental
20 function and that purports to bind a new council is invalid
21 as a matter of law, and a party to the contract has no right
22 of action to enforce the contract or to seek damages for its
23 breach for any period of the contract that extends beyond
24 the term of the old council. Accordingly, this Court
25 concludes that Cunningham has no right to enforce the master

Michael Cunningham - Redirect examination
by Mr. Tessier

1 employment agreement to the extent it purported to be for a
2 term extending beyond January 4th, 2009.

3 Isn't that what the judge ruled in your case?

4 A Yes, sir.

5 Q And that case now I believe is currently on appeal, is
6 that right?

7 A Yes, sir.

8 MR. TESSIER: Your Honor, we would offer Exhibit No. 96
9 into evidence.

10 THE COURT: Objection?

11 MR. DAVIS: Your Honor, I actually think that they may
12 have a relevance problem with it and here's why. It's not a
13 final order in there. It's, it's admittedly under appeal.

14 MR. TESSIER: That doesn't go to relevance, Your Honor.

15 THE COURT: well, that doesn't go to relevance.
16 Overruled.

17 MR. DAVIS: well, how would, how would it be relevant?

18 THE COURT: To the fact it is a public record. I mean
19 I assume it's filed with the Clerk's Office, is it not?

20 MR. DAVIS: But, but it goes to later issues---

21 THE COURT: well, you're arguing the weight of it as
22 opposed to its admissibility.

23 MR. DAVIS: well, I guess, I guess my argument is this,
24 Your Honor.

25 THE COURT: And you have the right to argue weight of

Michael Cunningham - Redirect examination
by Mr. Tessier

1 it, but there's another time to do that.

2 MR. DAVIS: Yeah, I mean but if it's an order that's
3 under appeal or something that has no finalization, then
4 it's something that's limited. So, I mean it's -- how can
5 they have it, Your Honor---

6 THE COURT: I understand your position, Mr. Davis.
7 I'll admit it and you can argue the weight of it later.

8 It's admitted.

9 MR. TESSIER: Thank you, Your Honor.

10 (WHEREUPON, Plaintiff's Exhibit No. 96 was received
11 into evidence at this time.)

12 THE COURT: You may proceed.

13 Q Mr. Cunningham, to your knowledge, did Mr. Moore or any
14 other council member-elect, in December of 2008, so before
15 they took office, did any of them have the legal authority
16 to act for the county?

17 A No, sir.

18 Q Mr. Davis asked you about accusations and personnel
19 issues that you became aware of in 2009.

20 Do you remember that?

21 A Yes, sir.

22 Q And then you indicated that you had heard about an
23 accusation involving a county consultant and a county
24 employee having an affair, right?

25 A Yes, sir.

Michael Cunningham - Redirect examination
by Mr. Tessier

- 1 Q He didn't ask you much further about that obviously
2 once you told him the answer, but that consultant issue was
3 Representative John Scott?
- 4 A That's correct.
- 5 Q Representative John Scott is a friend of Joey
6 Preston's, correct?
- 7 A An acquaintance. I'm not sure how close their
8 friendship is, but --.
- 9 Q Are you aware or did become aware that Representative
10 John Scott had a consulting contract with Anderson County
11 that predated your time as the county administrator?
- 12 A Yes, sir.
- 13 Q And that consulting contract had a generous buy-out
14 provision, did it not?
- 15 A I was not aware of that until, again, Mr. Daniel
16 brought that to my attention, I guess, in 2009, early 2009.
- 17 Q And it was brought to your attention that
18 Representative John Scott's consulting contract with the
19 county had a generous buy-out provision, right?
- 20 A It was brought to my attention, yes.
- 21 Q And that's a contract that was signed on behalf of
22 Anderson County by Mr. Preston?
- 23 A That's correct.
- 24 Q Thank you. That's all I have.
- 25 A Okay.

Michael Cunningham - Redirect examination
by Mr. Tessier

1 MR. DAVIS: Nothing further, Your Honor.

2 THE COURT: You may step down.

3 MR. TESSIER: Your Honor, may we excuse the witness?

4 THE COURT: Any objection to the witness being excused?

5 MR. DAVIS: None, Your Honor.

6 THE COURT: Sir, you're free to go. You don't have to
7 stay, but you do remain under the Court's order concerning
8 sequestration of witnesses.

9 THE WITNESS: Yes, sir.

10 THE COURT: You should not discuss your testimony with
11 anyone until this case is been ended.

12 THE WITNESS: Thank you.

13 THE COURT: Thank you very much.

14 You may call your next witness.

15 MS. PARHAM: Your Honor, Anderson County calls
16 Mr. William McAbee.

17 THE COURT: Is he in the courtroom?

18 MR. TESSIER: He's just outside.

19 THE COURT: All right, sir. If you'd step outside and
20 ask for William McAbee, William McAbee.

21 WILLIAM MCABEE, being first duly
22 sworn, testified as follows:

23 THE CLERK: If you would, take the witness stand and
24 state your name and spell your last name for the record
25 please.

William McAbee - Direct examination
by Ms. Parham

1 THE WITNESS: I'm Willie Horton McAbee, Junior.

2 M-C-A-B-E-E.

3 THE COURT: Your witness, counselor.

4 MS. PARHAM: Thank you, Your Honor.

5 Your Honor, I believe we agree yesterday that any
6 witnesses that are associated with the other side we would,
7 we may interrogate by leading questions.

8 THE COURT: Any objection?

9 MR. DAVIS: That is our agreement.

10 MS. PARHAM: I thought that would be the case.

11 You may proceed, Ms. Parham. Thank you.

12 DIRECT EXAMINATION

13 BY MS. PARHAM:

14 Q Good morning, Mr. McAbee. My name is Tally Parham.
15 I'm here on behalf of Anderson County.

16 Are you involved in the Sons of Confederate Veterans
17 with Mr. Ron Wilson and Joey Preston?

18 A Yes.

19 Q And you know those two individuals from that
20 organization?

21 A Yes.

22 Q And do you socialize with Mr. Preston?

23 A I have, yes.

24 Q You served two terms on Anderson County Council,
25 correct?

William McAbee - Direct examination
by Ms. Parham

1 A Yes.

2 Q The first -- you were elected in 2004?

3 A Yes.

4 Q And the second, in 2006?

5 A Yes.

6 Q When you ran in 2006, did you actually run on a
7 platform that was opposed to Mr. Preston?

8 A No.

9 Q You did not?

10 A I did not.

11 Q What about Mr. Ron Wilson, when he ran in 2006, did his
12 platform include criticism or opposition to Mr. Preston?

13 A Yes.

14 Q And Mr. Michael Thompson's 2006 campaign, did he also
15 include, in his, in his campaign, opposition to Mr. Joey
16 Preston?

17 A Not in 2006.

18 Q Was it another year?

19 A Yes.

20 Q Okay. So at some point he campaigned against
21 Mr. Preston?

22 A Yes.

23 Q Mr. Wilson and Mr. Thompson never actually took any
24 action designed to carry out their, their promise or their
25 campaign against Mr. Preston, did they?

William McAbee - Direct examination
by Ms. Parham

1 A They did not.

2 Q So, Mr. Thompson and Mr. Wilson would be examples that
3 someone who, proof of someone who makes a campaign promise
4 does not always carry through with that promise, is that
5 correct?

6 MS. KERN-FULLER: Objection, Your Honor. Those are the
7 campaign statements of two other people. I don't know that
8 there's a foundation that Mr. McAbee would know that.

9 THE COURT: I'll ask you to lay a better foundation for
10 that.

11 MS. PARHAM: Yes, Your Honor.

12 Q Would you, would you agree that Mr. Thompson and
13 Mr. Wilson made promises -- well, made statements in their
14 campaign that were contrary to Mr. Wilson?

15 MS. KERN-FULLER: Objection. Hearsay, Your Honor.

16 THE COURT: Not asking for the, asking for the truth of
17 the matter asserted. Just asking if they made those
18 statements if he's aware that he made statements as to that.
19 I'll allow him to answer that question please if he's aware
20 that they made statements such as that.

21 You may proceed.

22 A Could you repeat the question?

23 Q Let me put it this way.

24 I believe you testified that Mr. Thompson and
25 Mr. Wilson, during their campaign, made comments about Mr.

William McAbee - Direct examination
by Ms. Parham

1 Preston that were opposed to him or against him, but once
2 they took office, neither one took any action against
3 Mr. Preston.

4 Is that an accurate characterization of your testimony?

5 A Yes.

6 Q You had your real estate license for one year from
7 approximately September 2007 until 2008?

8 A That's correct.

9 Q And during that period you were affiliated with Allison
10 Properties?

11 A Yes.

12 Q Who is Amy Plummer?

13 A She's also an agent with Allison Properties.

14 Q And the two of you together operated a business that
15 you called Peerless Economic Development?

16 A Yes.

17 Q And the goal of that business was to do site consulting
18 and sell real estate to companies locating in Anderson
19 County?

20 A Yes, commercial industrial properties.

21 Q You also appointed her to the Anderson County Economic
22 Development Advisory Board?

23 A Yes.

24 MS. PARHAM: Your Honor, may I approach the witness?

25 THE COURT: You may.

William McAbee - Direct examination
by Ms. Parham

1 Q Mr. McAbee, I'm showing you what's been previously
2 admitted, admitted as Plaintiff's Exhibit 57.

3 Is that a letter from you to Ms. Plummer notifying her
4 that you had appointed her to the Anderson County Economic
5 Advisory Board?

6 A Yes.

7 Q And you received one, one commission in your real
8 estate career, is that correct?

9 A That's correct.

10 Q Do you remember what the amount was for?

11 A It was approximately \$72,000.

12 MS. PARHAM: Your Honor, may I approach?

13 THE COURT: You may.

14 MS. KERN-FULLER: And, Your Honor, we -- this is a --
15 if I -- if it's what I think it is, it's an exhibit that we,
16 I believe, objected to.

17 MS. PARHAM: It's 60 I believe. It's been admitted.

18 MS. KERN-FULLER: I'm sorry. I was wrong. She has the
19 right to ask about that.

20 THE COURT: Okay. You may proceed, ma'am.

21 MS. PARHAM: Thank you.

22 Q I'm handing you what's been previously admitted as
23 Plaintiff's Exhibit 60.

24 Can you identify that for me please, sir?

25 A Yes, it is the commission check for the, the property I

William McAbee - Direct examination
by Ms. Parham

1 was involved in selling.

2 Q Do you remember what -- which property that was?

3 A It's a property located on Highway 20 north of Belton.
4 Approximately 30 acres.

5 Q Who is the purchaser of that property?

6 A B&B Properties.

7 Q And who is the seller?

8 A Steve Kay.

9 Q What was the property -- was what the intended use for
10 the property?

11 A Lincoln Energy Solutions was gonna put in a economic
12 trans-low (sic) facility.

13 Q Was Greenville & Western Railway involved in that
14 transaction?

15 A Yes.

16 Q In what, what respects?

17 A Greenville & Western Railroad initially optioned the
18 property and transferred their option to B&B Properties.

19 Q You shared this \$73,000 commission with Ms. Plummer, is
20 that correct?

21 A That's correct.

22 Q Now, Amy Plummer had a listing on two properties near
23 the Anderson County Airport at one point, did she not?

24 A Yes, as I understand it.

25 Q And she had those listings since at least 2007?

William McAbee - Direct examination
by Ms. Parham

1 MS. KERN-FULLER: Your Honor, I'm gonna object based on
2 relevance of what happened in 2007. They've repeatedly
3 argued that the relevant timeframe is from some point in
4 2008 up until November of 2008, and now they want to go
5 backwards to 2007 and some of the other I believe that we're
6 gonna object to go back to 2006.

7 THE COURT: Yes, ma'am.

8 MS. PARHAM: We can get to those in a minute, Your
9 Honor. But why don't I start from -- I'm gonna ask him
10 about a bond issue in 2008, and it may demonstrate that
11 the -- what occurred in 2007 is, is relevant.

12 MS. KERN-FULLER: And, Your Honor, the whole issue is
13 how is that relevant to this severance or what happened in
14 2007, what happened prior to the primary in 2008, what
15 happened prior to Mr. Hoskins letter in September of 2008.
16 At the time this begins -- the earliest time that's in
17 evidence that the legal controversy began is August of 2008.
18 And, so, all of this stuff that happened in 2007 and then
19 backwards is not relevant and it's outside the timeframe.

20 THE COURT: Yes, ma'am.

21 MS. PARHAM: I'll ask another question first, Your
22 Honor, and I'll try that one again later and see if it is
23 less objectionable.

24 THE COURT: All right. That will be fine.

25 Q You, you voted on a bond issue to purchase those two

William McAbee - Direct examination
by Ms. Parham

1 properties, is that correct?

2 A The bond issue was not specifically for those two
3 properties. I voted on a bond issue for county improvements
4 that could be used for a number of different things.

5 Q Part of the purpose of the bond issue, however, was to
6 purchase those two properties specifically, correct?

7 A At the time the bond purchase was voted on, the
8 decision to purchase those two properties had not been made.

9 Q But the two properties were actually identified in the
10 bond ordinance itself specifically?

11 A I don't recall.

12 MS. PARHAM: I'd like to hand the witness something to
13 refresh his memory.

14 THE COURT: You may approach the witness.

15 Q Mr. McAbee, did you vote on ordinance 2008-28?

16 A Yes.

17 MS. KERN-FULLER: Your Honor, I would renew my
18 objection. This ordinance, the time period of the first
19 reading is May 6th, 2008. The second reading was May 20th.
20 The third reading was June the 3rd.

21 Your Honor, the primary's happened in mid-June. The
22 dispute arose regarding Mr. Preston's employment in August
23 of 2008 at its earliest. And, so, again, the issue of how
24 this is relevant to the severance that we have here at issue
25 with today is the issue.

William McAbee - Direct examination
by Ms. Parham

1 MS. PARHAM: Your Honor, ultimately the properties that
2 are identified here were purchased by the county and the
3 closing occurred in September of '08. Very much in the
4 relevant timeframe. And the point that I'm trying to
5 establish here with my questioning is actually the
6 relationship that existed between Mr. McAbee, Ms. Plummer,
7 and the benefits that were received as a result.

8 THE COURT: I'll overrule the objection. It's for the
9 Court to decide the weight of this testimony. Later on I'll
10 make those decisions.

11 You may proceed.

12 Q Mr. McAbee, the 2008 projects that were intended to
13 be -- for which the bond issue, 2008-28, was going to be
14 used actually included the properties near the Anderson
15 Airport specifically that Ms. Plummer had a listing on,
16 correct?

17 A Yes.

18 Q And she had those listings at the time of the vote,
19 correct?

20 A Yes.

21 Q And you voted on the bond -- this bond issue -- you
22 voted on this bond issue, correct?

23 A Yes.

24 Q And, in fact, you voted on it several times because
25 there were, there were three readings, correct?

William McAbee - Direct examination
by Ms. Parham

1 A Correct.

2 Q One on May 6th, 2008?

3 A Yes.

4 Q And May 20th was the second reading and public
5 hearing, and---

6 A I'm assuming that you have the dates. I can't remember
7 exactly by -- from my memory.

8 Q I believe they're in the ordinance itself if you'd like
9 to refer to that.

10 A Yes, that appears to be correct.

11 Q And the third reading and actually date of the bond was
12 June the 3rd, 2008, correct?

13 A Yes.

14 Q As a result of this ordinance, actually three
15 properties were purchased, correct?

16 A Correct.

17 Q The first two we've already discussed. They were --
18 one was on Dobbins Bridge Road and the other on Scarborough
19 Road, is that correct?

20 A Yes.

21 Q And those are the two properties that Ms. Plummer had
22 listings on?

23 A Yes.

24 Q And for each of those purchases, she earned a
25 commission of over \$13,000, is that correct?

William McAbee - Direct examination
by Ms. Parham

- 1 A I don't know how much the commission was.
- 2 Q Okay.
- 3 THE COURT: I'm sorry. I couldn't hear your question.
- 4 who earned the commission?
- 5 Did you---
- 6 MS. PARHAM: Ms. Plummer.
- 7 THE COURT: Ms. Plummer earned the commission?
- 8 MS. PARHAM: Yes, sir.
- 9 THE COURT: Thank you.
- 10 Q The third property that was purchased was on Old
- 11 Portman Road, correct?
- 12 A Yes.
- 13 Q And that property was not listed by Ms. Plummer, but
- 14 she received a referral fee, correct?
- 15 A That's my understanding.
- 16 Q And the referral fee was also a little over \$13,000, is
- 17 that correct?
- 18 A I don't know.
- 19 Q After that, on or about July 13th, you sought an
- 20 ethics opinion as to whether it was a problem for the county
- 21 to use the funds from the bond issue to purchase property in
- 22 which you had a listing, is that correct?
- 23 A That's correct.
- 24 MS. PARHAM: May I approach, Your Honor?
- 25 THE COURT: You may.

William McAbee - Direct examination
by Ms. Parham

1 Q I'm handing you what has been marked as -- previously
2 admitted as Plaintiff's Exhibit 58.

3 Is this the letter that you wrote to the Ethics
4 Commission?

5 A Yes, it is.

6 Q And in this letter you say that Anderson County wishes
7 to purchase property with the proceeds of this bond issue
8 that the owners have listed for sale with another agent in
9 the same office where I have my license.

10 And you're referring to Ms. Plummer there, correct?

11 A That's correct.

12 Q And she had an exclusive right to sale listing of the
13 property, correct?

14 A Correct.

15 Q When you actually voted on the bond, however, you knew
16 that Ms. Plummer had the listing, is that correct?

17 A I knew she had those properties listed.

18 Q But you did not mention that in your letter to the
19 Ethics Commission, correct?

20 A I did not.

21 MS. PARHAM: Okay. May I approach the witness, Your
22 Honor?

23 THE COURT: You may.

24 Q I'm gonna give you Plaintiff's Exhibit 59. It is also
25 been previously admitted.

William McAbee - Direct examination
by Ms. Parham

1 Is that the opinion that was issued by the Ethics
2 Commission in response to your letter?

3 THE COURT: I'm sorry. What exhibit number did you
4 say?

5 MS. PARHAM: Sorry, Your Honor. It's 59.

6 THE COURT: Fifty-nine. I thought you said 69. Thank
7 you.

8 Go ahead.

9 Q Is Exhibit -- is Plaintiff's Exhibit 59 the ethics
10 opinion that was issued in response to your letter?

11 A Yes, it is.

12 Q And the county ultimately did purchase those
13 properties, correct?

14 A That's correct.

15 Q Do you know when they closed?

16 A I do not.

17 Q Are you not aware that the county closed on purchasing
18 all three of those properties on or around September of
19 2008? ~

20 A I don't know the exact date. That would sound right.

21 Q To your knowledge, has the county done anything with
22 those properties?

23 A I don't know.

24 Q So, you acknowledged, in your request for an ethics
25 opinion, that your relationship with Ms. Plummer was so

william McAbee - Direct examination
by Ms. Parham

- 1 close that you should recuse yourself from any matter that
2 might affect her interests?
- 3 A I requested an opinion from the Ethics Commission
4 because an agent in my office, in the same office I was in
5 had a listing on a piece of property that the county was
6 interested in buying.
- 7 Q A business relationship---
- 8 A Yes.
- 9 Q ---is what you're referring to.
10 You and Amy Plummer did business together?
- 11 A Yes.
- 12 Q All right. You shared a real estate commission
13 together, correct?
- 14 A Yes.
- 15 Q And you actually sought additional business together?
- 16 A Correct.
- 17 Q And during 2007 and 2008, you and Ms. Plummer took a
18 number of out of town trips, correct?
- 19 A Yes.
- 20 Q And you've testified that the purpose of those -- in
21 your deposition last year, you testified that the purpose of
22 those trips was economic development for the county?
- 23 A Yes.
- 24 Q And the county reimbursed your expenses and Ms., Ms.
25 Plummer's expenses for certain of those trips?

William McAbee - Direct examination
by Ms. Parham

1 A Yes.

2 Q And Mr. Preston was aware of those trips and, on
3 occasions, signed off on them, correct?

4 A Yes.

5 Q But the actual selection of which trips to take or
6 which conferences to attend, that was your -- that was
7 yours, correct?

8 A Yes.

9 Q No one with the county directed that you attend
10 specific conferences, correct?

11 A No.

12 Q And Heather, Ms. Heather Jones never suggested that you
13 attend any particular conferences, correct?

14 A She, she and I would often talk about what might be
15 good conferences to go to, what might be good events to go
16 to, and what fit in with the overall plan of the county.
17 But she never actually suggested a particular destination.

18 Q She never suggested a particular destination for you
19 and Ms. Plummer to go?

20 A Exactly.

21 Q And as you testified in your deposition, you're not
22 aware of any economic activity that Anderson County has
23 been -- that has resulted to the county from those trips,
24 correct?

25 A Not any site announcements.

William McAbee - Direct examination
by Ms. Parham

1 Q And in your deposition, you were actually not able to
2 identify any other Economic Development Advisory Board
3 members that engaged in such extensive travel?

4 A I don't know of any at that time.

5 Q Mr. McAbee, in -- to the best of your recollection, in
6 April of 2007, did you attend the Society for Automotive
7 Engineers Conference?

8 MS. KERN-FULLER: Your Honor, I'm gonna renew my
9 objection. Now we're going way back to 2007 about an
10 Automotive Engineers conference.

11 MS. PARHAM: Your Honor, I have about six trips to ask
12 him about that occurred before the primary. Those are not
13 the extent of all the trips he and Ms. Plummer did, but they
14 are -- they're an example and I'm gonna ask him questions
15 about each one. I have documents to refresh his
16 recollection, recollection of the trips.

17 The point is that there was a, a relationship, there
18 was a benefit personally to Mr. McAbee and to his business
19 partner from the trips at the expense of the county with no
20 clear result for the county.

21 MS. KERN-FULLER: And, Your Honor, my argument back is
22 that what this has to do with the severance because in order
23 for Mr. Preston, which I think is what they want to
24 intimate, that Mr. Preston was somehow influencing Mr.
25 McAbee's vote on the severance, Mr. Preston would have to be

William McAbee - Direct examination
by Ms. Parham

1 the most impressionable person around because he had no clue
2 who would win or lose the primary in June of 2008 back in
3 2007.

4 So, this is not relevant, Your Honor. We think the
5 purpose of it would be to embarrass the, the witness, and to
6 imply an improper relationship that did not exist. They
7 have deposed Mr. McAbee. They've deposed Ms. Plummer. They
8 deposed Ms. Allison and they have repeatedly inferred an
9 improper relationship, and all of the parties have denied
10 it.

11 Your Honor, the purpose of this, we believe, is just to
12 embarrass Mr. McAbee. It's not relevant.

13 MS. PARHAM: Your Honor, I can assure you that it's not
14 my intention to embarrass Mr. McAbee and I apologize if you
15 so feel that way. But---

16 THE COURT: Well, again, the question is relevance---

17 MS. PARHAM: Yes, Your Honor.

18 THE COURT: ---and how does it tie into the issues that
19 are before the Court.

20 MS. PARHAM: Your Honor?

21 THE COURT: I'm, I'm having some difficulty when you go
22 back as far as you're talking about going back.

23 MS. PARHAM: I understand, Your Honor.

24 THE COURT: Especially when you folks object to the,
25 the political atmosphere that existed at the, at the time,

William McAbee - Direct examination
by Ms. Parham

1 then going into that. And, so, I---

2 MS. PARHAM: Yes, Your Honor.

3 THE COURT: I've been somewhat liberal with them. I'll
4 be somewhat liberal with you. I'm gonna rule consistently.
5 But I will decide the relevance of it and the weight that it
6 has myself when I make the appropriate decision. I'm having
7 a little difficulty in this situation, but I'm gonna let you
8 go forward and see if you can tie it together.

9 MS. PARHAM: I understand, Your Honor.

10 THE COURT: Thank you, ma'am.

11 MS. KERN-FULLER: Thank you, Your Honor.

12 Q Mr. McAbee, do you remember, in April of 2007,
13 attending the Society for Automotive Engineers Conference in
14 Detroit?

15 A Yes.

16 Q And did you attend with Ms. Plummer?

17 A Yes.

18 Q And the county paid the expenses for that trip?

19 A Yes.

20 Q Did you take any other members of county council?

21 A No.

22 Q Any other members of the Economic Development Advisory
23 Board?

24 A No.

25 Q And you did not limit your expenditures to the county

William McAbee - Direct examination
by Ms. Parham

- 1 per diem limits, correct?
- 2 A It's my understanding that the county per diem limits
- 3 didn't apply to economic development or elected officials.
- 4 Q And no one in the county asked you to take that trip?
- 5 A I discussed it with Heather Jones. She was unable to
- 6 attend it. But it is an event that a lot of counties
- 7 participate in.
- 8 Q Did you invite her to go with you?
- 9 A Heather Jones?
- 10 Q Yes.
- 11 A Yes.
- 12 Q Did you invite her to go with you to any other
- 13 conferences?
- 14 A I don't remember.
- 15 Q Did you make a formal report after that conference?
- 16 A If you -- and by formal, if you mean written, no, I met
- 17 with Heather Jones and discussed what transpired.
- 18 Q Do you remember -- did you travel to Chicago in June of
- 19 2007 to visit the CSX facility?
- 20 A Yes.
- 21 Q And did the county pay the expenses for that trip?
- 22 A Yes.
- 23 Q Did Ms. Plummer go with you?
- 24 A Yes.
- 25 Q Did you take any other members of council, county

William McAbee - Direct examination
by Ms. Parham

1 council?

2 A No.

3 Q How about any other members of the Economic Development
4 Advisory Board?

5 A No.

6 Q And you didn't limit your expenditures to the per diem
7 limits?

8 A No.

9 Q Did anyone at the county ask you to take this
10 particular trip?

11 A No.

12 Q And you can't point to any specific economic, concrete
13 economic development benefit that flowed to Anderson County
14 from the trip?

15 A This was part of laying the groundwork for attracting
16 an automotive facility to Anderson County. The, the Norfolk
17 Southern has said that they -- one of their worst mistakes
18 was closing their automotive facility in Greenville. The
19 State Department of Commerce wants an automotive facility in
20 the Upstate of South Carolina. They're more interested in
21 the Greer area. It would be better for Anderson if it were
22 here.

23 Q But it's not here yet, is it?

24 A No, it's in Greer.

25 Q Did you travel to -- did you make a formal report after

William McAbee - Direct examination
by Ms. Parham

- 1 that trip?
- 2 A I don't recall.
- 3 Q And in June of 2007 did you travel to the RailX
- 4 conference in Albany, New York?
- 5 A That was not a conference.
- 6 Q Can you tell me about that trip?
- 7 A That is a company in Albany, New York, RailX.
- 8 Q Right.
- 9 And the -- Ms. Plummer went with you on that trip?
- 10 A Yes.
- 11 Q And the county paid your expenses?
- 12 A Yes.
- 13 Q And her expenses?
- 14 A Yes.
- 15 Q And did anyone ask you to go?
- 16 A I don't think so, no.
- 17 Q Did you take anyone else with you?
- 18 A No.
- 19 Q Can you point to any concrete economic benefit that the
- 20 county received from this trip to RailX?
- 21 A No, not of yet.
- 22 Q And in September of 2007, you and Ms. Plummer attended
- 23 the Rail Trends conference in New York City, correct?
- 24 A That's correct.
- 25 Q And the county paid your expenses?

William McAbee - Direct examination
by Ms. Parham

1 A Yes.

2 Q And Ms. Plummer's expenses?

3 A Yes.

4 Q And you didn't take any other members of county council
5 or the advisory board, correct?

6 A That's correct.

7 Q And you didn't limit your expenditures to per diem
8 limits?

9 A No.

10 Q And you can't point to any concrete economic
11 development benefit the county has received from this trip,
12 correct?

13 A The county did get a visit out of that trip. Chris
14 Mohowski, who is the president of Railcar Leasing Company,
15 came and visited the site in Anderson County and looked at a
16 section of rail that the county owns. He was with --
17 considering buying it.

18 Q Did he buy it?

19 A No.

20 Q In October of -- I'm sorry. Going back to 2000 -- 2007
21 trip to Rail Trends -- I'm sorry. Moving on.

22 In October of 2007, did you and Ms. Plummer travel to
23 Chicago and New York?

24 A Yes.

25 Q What was the purpose of that trip?

William McAbee - Direct examination
by Ms. Parham

- 1 A The -- to Chicago was to visit Archer Daniels Midland.
2 They were looking to expand into the southeast, and we were
3 hoping that they would consider Anderson County.
- 4 Q And did you take anyone else with you on that trip?
- 5 A Yes.
- 6 Q And who was that?
- 7 A Steve Hawkins.
- 8 Q And you had done business with Mr. Hawkins in the past?
- 9 A Yes.
- 10 Q You and Ms. Plummer together?
- 11 A Yes.
- 12 Q And did you -- did the county pay for his expenses as
13 well?
- 14 A Yes.
- 15 Q Did you-all limit your expenditure to the per diem
16 limits in that trip?
- 17 A No.
- 18 Q And no one in the county asked you to take this
19 particular trip?
- 20 A I don't recall. No, I don't think so.
- 21 Q And can you point to any concrete economic development
22 benefit that resulted from this trip?
- 23 A well -- no.
- 24 Q And in April of 2008, you attended the Society of
25 Automotive Engineers conference in Detroit like the year

William McAbee - Direct examination
by Ms. Parham

- 1 prior, correct?
- 2 A That's correct.
- 3 Q And, again, you traveled with Ms. Plummer, correct?
- 4 A Correct.
- 5 Q And the county paid your expenses and her expenses,
- 6 correct?
- 7 A Yes.
- 8 Q And you weren't limited to the per diem limits?
- 9 A Correct.
- 10 Q And no one in the county asked you to take this
- 11 particular trip?
- 12 A We -- again, we discussed this one with Heather Jones
- 13 prior to going.
- 14 Q Just like you did the year prior?
- 15 A Yes.
- 16 Q This was the one event you discussed with her?
- 17 A Yes, it --.
- 18 Q And you can't point to any economic, concrete economic
- 19 development benefit that's resulted from that trip?
- 20 A We created some interest with some -- a couple of
- 21 companies, but no one -- no site visits.
- 22 Q Is it your opinion that economic development is forward
- 23 looking?
- 24 A I don't understand what you mean.
- 25 Q Does it require follow-up to be effective?

William McAbee - Direct examination
by Ms. Parham

1 A Yes.

2 MS. PARHAM: Your Honor, may I approach the witness?

3 THE COURT: Yes, ma'am, you may.

4 Q Mr. McAbee, I'm handing you three exhibits. They have
5 been previously admitted as Plaintiff's Exhibits 72, 73, and
6 74.

7 Plaintiff's Exhibit 72, is that a registration form for
8 the Rail Trends conference in New York in September --
9 September 30th through October 1st of 2008, that you
10 attended with Ms. Plummer?

11 A Yes.

12 Q And the front of that page shows that you were
13 reimbursed, by check, for the registration fee, which looks
14 like it was \$1,195, is that correct?

15 A Yes, I would assume that's the---

16 Q Did you pay that fee twice, once for you and once for
17 Ms. Plummer?

18 A I don't -- I don't understand.

19 Q The, the registration single rate on this registration
20 form is \$1,195?

21 A well -- right.

22 Q Were you -- did you pay that amount -- did the county
23 reimburse you for that time one for yourself or for Ms.

24 Plummer as well?

25 A which year is this?

William McAbee - Direct examination
by Ms. Parham

1 Q This is September 30th through October 1st, 2008.

2 A I don't remember if the county paid for both our
3 registrations or not.

4 Q At this point in time you had already lost the primary,
5 correct?

6 A That's correct.

7 Q And it was your idea for you and Ms. Plummer to go to
8 this conference?

9 A Yes.

10 Q And the county reimbursed you both for your expenses,
11 correct?

12 A I don't know if they reimbursed Ms. Plummer's expenses
13 or just mine.

14 Q You ended up getting a check for \$2,606.90, correct?

15 A That's, that's correct.

16 Q And if you look at Exhibit, Plaintiff's Exhibit 73, is
17 that a reflection of your expenses from that trip?

18 A Yes.

19 Q Does that include some of Ms. Plummer's expenses?

20 A I don't know.

21 Q Did Mr. Preston sign-off on the reimbursement expenses
22 for this trip?

23 A I would assume so.

24 Q If you'll turn to Plaintiff's Exhibit 74, and if you
25 look in the upper right-hand corner---

William McAbee - Direct examination
by Ms. Parham

1 MS. KERN-FULLER: Your Honor, I'm gonna object. I
2 think these are hearsay.

3 MS. PARHAM: This is a previously admitted exhibit.

4 MS. KERN-FULLER: I understand, but you're asking Mr.
5 McAbee about what someone else wrote regarding a
6 conversation with Mr. Preston, and even though the exhibit
7 is in evidence, you're asking Mr. McAbee to testify about it
8 would be hearsay.

9 MS. PARHAM: I'll ask him questions to try to avoid the
10 issue, Your Honor.

11 THE COURT: Well, I'm gonna, I'm gonna let you ask the
12 questions about it since I don't know whether that's his
13 note or someone else's note and how it came about. So, I'll
14 let you explore it more fully and you reserve your right to
15 object at the appropriate time.

16 Yes, ma'am.

17 Q Mr. McAbee, do you recognize, recognize the handwriting
18 on that reimbursement?

19 A No.

20 Q Did you restrict yourself to the per diem limits in
21 requesting reimbursement for this trip?

22 A No, I don't think so.

23 Q Were you questioned about whether or not it was
24 appropriate for you to exceed the per diem limits in
25 connection with this trip?

William McAbee - Direct examination
by Ms. Parham

1 A I'm sorry.

2 Could you repeat the question?

3 Q Was there any question -- were you, were you asked --
4 was there any questions about your request to seek
5 reimbursement above and beyond the county per diem limit in
6 connection with this trip?

7 A No.

8 Q Can you read the handwriting that's on this
9 reimbursement sheet?

10 MS. KERN-FULLER: Your Honor, that's the hearsay that
11 she's trying to get him to testify to. This document's
12 already in evidence. He said he doesn't know.

13 THE COURT: Well, the exhibit is already been admitted,
14 is that correct?

15 MS. KERN-FULLER: Yes, Your Honor.

16 THE COURT: Well, she can ask him about an exhibit
17 that's in evidence and whether he can read it. He says he
18 doesn't recognize the handwriting.

19 MS. KERN-FULLER: Yes, Your Honor.

20 THE COURT: So, it's in evidence. So, overruled.

21 You may proceed.

22 A Per Mr. P, do not restrict to 28 per diem something.
23 Pay actual expenses and then there's a mark and a date,
24 10/27/08. Michael something this if, I don't know, Mr. P.
25 The above to me.

William McAbee - Direct examination
by Ms. Parham

1 Q Other than at your deposition last year, have you ever
2 seen this document before with that handwriting on it?

3 A No.

4 Q Do you have a -- do you know who Mr. P is?

5 A I would assume our -- it would be an assumption on my
6 part if I were to---

7 Q Did anyone approve your expenses other than
8 Mr. Preston?

9 A No.

10 Q In October of 2008, again, you and Ms. Plummer traveled
11 to Washington D.C. for the Gasification Conference, is that
12 correct?

13 A That's correct.

14 MS. PARHAM: May I approach the witness, Your Honor?

15 THE COURT: Yes, you may.

16 Q This is previously admitted Plaintiff's Exhibit 75.
17 Does that document reflect some of the expenses from
18 your trip to the Gasification Conference?

19 A Let's see. Yes.

20 Q And the second page, is that the check that was -- your
21 reimbursement check from the county?

22 A Yes.

23 Q And was it your idea to go to this conference and take
24 Ms. Plummer?

25 A Yes, it was.

William McAbee - Direct examination
by Ms. Parham

- 1 Q And the county paid for your expenses and hers as well?
- 2 A Yes.
- 3 Q In addition to this check, didn't you also get a
- 4 mileage reimbursement or over a thousand dollars for driving
- 5 your own car?
- 6 A Yes.
- 7 Q And Mr. Preston signed off on that trip as well,
- 8 correct?
- 9 A I would assume so.
- 10 Q And at this point do you -- can you identify any
- 11 concrete economic development benefit to the county?
- 12 A No.
- 13 Q Mr. McAbee, did you run for reelection in 2008?
- 14 A Yes.
- 15 Q And you lost in the primary?
- 16 A Yes.
- 17 Q To whom?
- 18 A Tom Allen.
- 19 Q Did that effectively mean that you would not return to
- 20 office in January of 2009?
- 21 A Unless I got enough write-in votes, yes.
- 22 Q Did you run an active write-in campaign?
- 23 A No.
- 24 Q Were you permitted to do so?
- 25 A I don't know.

william McAbee - Direct examination
by Ms. Parham

1 Q Were you on the personnel committee of county council
2 in the Fall of 2008?

3 A Yes.

4 Q And Mr. Preston's claim of anticipatory breach was
5 referred to that committee, correct?

6 A That's correct.

7 Q Did you understand that Mr. Preston's claim arose out
8 of a threat of suspension by the incoming council?

9 A Yes.

10 Q And you favored settling the claim, correct?

11 A Yes.

12 Q Do you recall receiving advice from Mr. Tom Bright in
13 connection with that claim?

14 A Yes.

15 Q Do you recall any specific assessment of the strength
16 of the claim from Mr. Bright?

17 A Mr. Bright told us that it's possible that he could
18 succeed. It's possible the county could prevail. I asked
19 him specifically, if we litigated this case, what would it
20 cost the county if we litigated and lost. He said it could
21 be in excess of two million-dollars, and I, I, I had some
22 doubts about his assessment that he could win the case.

23 Q Are you referring to Mr. Bright's assessment of the
24 legal, the strength of his legal claim or the various risks
25 that, that you were facing?

William McAbee - Direct examination
by Ms. Parham

1 A I'm referring to the -- to both actually. The -- I had
2 some doubts about his assessment of the strengths of the
3 legal claims. He, he had made similar assessments in the
4 past.

5 Q So, today you recall that there -- he did make a
6 specific assessment of the strength of his legal claim, is
7 that correct?

8 A He -- what I recall is he said -- he thought it was a
9 case that, that the county could win, but that it might
10 necessarily could win. I recall that he said that if we
11 lost it would be two million-dollars.

12 Q Would it be two million-dollars?

13 A That would be the estimate of the cost if we lost the
14 case.

15 Q That was his estimate of, of the cost or the potential
16 cost?

17 A The potential costs.

18 Q The outside risks or was he -- did he give you any sort
19 of percentage guarantee that that was what---

20 A No, he never put it in percentages and he gave us a
21 number of options that we could pursue including settling
22 the case.

23 Q Didn't he advise -- do you, do you recall that he
24 advised you and the personnel committee to do nothing and to
25 let the next incoming council handle it?

William McAbee - Direct examination
by Ms. Parham

1 A I don't recall him saying that.

2 Q Did you do any independent evaluation of the strength
3 of Mr. Preston's claim?

4 A No.

5 Q Were you aware of -- that part of his claim was against
6 individuals, individual council members?

7 A I came to, to learn of that.

8 Q But you did not know that at the time?

9 A Not immediately.

10 Q And you were eager to settle the claim, his claims,
11 correct?

12 A Well, I -- once I learned the, the nature of his claims
13 and the extent of his claims, I felt it was prudent for the
14 county to settle his claims.

15 Q You were eager to strike a deal before you left office?

16 A I was -- I thought it was in the best interest of the
17 county to strike a deal.

18 Q The council, in 2008, had not done anything that had
19 breached Mr. Preston's contract, correct?

20 A I don't know if the -- I don't think the council, as a
21 body, as a whole, had done anything to breach Mr. Preston's
22 contract.

23 Q Are you saying that you believed some individuals had
24 breached his contract?

25 A Some individuals had acted in violation of the Home

William McAbee - Direct examination
by Ms. Parham

1 Rule Act, which I don't know if that would be a breach of
2 the contract on their part or not.

3 Q You were part of the sitting council in 2008, correct?

4 A Yes.

5 Q Did you do anything to breach Mr. Preston's contract?

6 A I did not.

7 Q Did the council, as a whole in 2008, do anything to
8 breach Mr. Preston's contract?

9 A Not to my knowledge.

10 Q Did the council -- did the sitting council threaten to
11 breach his contract?

12 A The sitting council in 2008?

13 Q Yes.

14 A No, not to my knowledge.

15 Q Do you agree that the county should not pay to settle
16 claims against individuals not yet sworn into office?

17 A I'm not sure I follow -- understand your question.

18 Q I'll withdraw it.

19 I'd like to hand you what has been marked as
20 Plaintiff's Exhibit 21 previously admitted.

21 Approach the witness, Your Honor, Your Honor?

22 THE COURT: You may.

23 MS. KERN-FULLER: Ms. Parham, may I have a copy of
24 that?

25 It was gone from our book, and I think it's been

William McAbee - Direct examination
by Ms. Parham

1 since---

2 MS. PARHAM: Yes, you may.

3 Q Mr. McAbee, have you had a chance to look at
4 Plaintiff's Exhibit 21?

5 A Yes.

6 Q These are notes that Mr. Tom Bright testified about
7 that he took while he communicated with you about the events
8 surrounding Mr. Preston's claims, and at the top of the page
9 you notice that your, yours is at the top, Bill McAbee,
10 correct?

11 A Yes.

12 Q And it's dated October 14th of 2008?

13 A Yes.

14 Q Do you recall having a conversation with Mr. Bright on
15 or about October 14th, 2008?

16 A I recall having a telephone conversation with him, but
17 I don't remember the exact date.

18 Q Okay. Fair enough.

19 Do you remember the, the content of that conversation?

20 A We discussed the situation of the county, the toxic
21 political atmosphere, the, the, the factions on council that
22 were seeking to terminate Mr. Preston, the -- and how it had
23 really become a, a problem for, for the council to --
24 conducting the county's business.

25 Q Did you have more than one telephone conversation with

William McAbee - Direct examination
by Ms. Parham

1 Mr. Bright?

2 A I don't know. I may have.

3 Q You just said that you spoke to him about the council
4 members who were seeking to terminate Mr. Preston---

5 A Yes.

6 Q ---is that correct?

7 And I see a note in here, if you look at the second
8 line of his notes, Mr. Bright writes "faction on council to
9 get rid of Preston, an arrow, looking for reason to
10 discharge for cause."

11 Do you see that?

12 A I see that.

13 Q Does that reflect generally what you were telling him,
14 what you told him during that conversation?

15 A Specifically, yes -- well, I don't -- can't tell you
16 what exactly I said. But, yes, that is the gist of what I
17 was telling him.

18 Q So, there were members of council who were looking for
19 a reason to discharge Mr. Preston, but they hadn't done it
20 yet, correct?

21 A They had not done it.

22 Q At the time the personnel committee that you were
23 sitting on was considering Mr. Preston's claim, did you read
24 the, read Mr. Preston's employment contract?

25 A I have read Mr. Preston's employment contract. But I

William McAbee - Direct examination
by Ms. Parham

1 don't know what timeframe it was when I, when I read his
2 contract.

3 Q Had you read it at the time of your deposition last
4 year in September/November of last year?

5 A I don't remember.

6 Q Would you like to look at something to refresh your
7 recollection?

8 A Yes.

9 Q Do you recall giving your deposition on
10 November 23rd, 2011---

11 A Yes.

12 Q ---in this case?

13 Have you read your deposition transcript recently?

14 A I -- yes, I guess I've -- since the deposition I have.

15 Q Do you recall being asked in your deposition by, by
16 Mr. Gentry, "in relation to Mr. Preston's employment
17 contract, have you ever reviewed that contract" and do you
18 remember that your response was "no"?

19 A Then I guess, at that time, I had not read it.

20 Q And he then asked, "so, to this day, you have not read
21 Mr. Preston's employment contract" and you responded "no, I
22 have not."

23 Was that accurate at the time you said it?

24 A Yes, it was.

25 Q But you -- well, you've read it since that time I

William McAbee - Direct examination
by Ms. Parham

1 suppose?

2 A Yes.

3 Q But at the time you were serving on the personnel
4 committee, you had obviously not read his employment
5 contract, right?

6 A That's correct.

7 Q And you had never calculated the amount due to him
8 under the severance provision?

9 A I had not.

10 Q But you have the belief that it was around 1.2
11 million-dollars, is that correct?

12 A Yes, that's from -- based upon what Mr. Bright has told
13 us.

14 Q Do you recall receiving a telephone, a telephone call,
15 it may of been the one we're just talking about or another
16 one, in which Mr. Tom Bright said that Preston was demanding
17 about 1.3 million-dollars?

18 A I do.

19 Q Do you recall what your response to him was?

20 A I told him that if that's what it took to settle it
21 that was close enough and that I would agree to it.

22 Q At that time did you believe that, that, that was the
23 amount due to Mr. Preston under the severance provision of
24 his employment agreement?

25 A I felt that it -- if, if the county could avoid

william McAbee - Direct examination
by Ms. Parham

1 spending two million-dollars in litigation, paying
2 65 percent of that amount would be to the county's
3 advantage.

4 Q Did you believe that it was inappropriate for the
5 county to pay Mr. Preston an amount in excess of what would
6 of been due under the severance provision of his employment
7 contract?

8 A I don't know how to answer that. I'm not sure I
9 understand it.

10 Q Okay. Let me ask it this way.

11 Did you, did you discuss -- did you make it clear to
12 Mr. Wilson that you favored severance, the severance
13 agreement if it would come in under the amount -- if it came
14 in below the severance amount that he was due in his
15 contract?

16 A I told him -- I told Mr. Wilson that if, if we could
17 bring it in at two million -- 1.2 million-dollars, which I
18 felt, based upon my conversations with Mr. Bright was the
19 damages and the cost of the paying off the contract, that I
20 would agree to that.

21 Q Did you tell Mr. Wilson that you would agree to the
22 severance agreement if it would come under the value of the
23 contract?

24 A I don't recall telling Mr. Wilson that.

25 Q You don't recall those specific words?

William McAbee - Direct examination
by Ms. Parham

1 A No, I don't.

2 Q Did you tell Mr. Greer that?

3 A I don't recall that. Larry and I had a telephone
4 conversation, and he was hoping to get the contract in at
5 about one million-dollars, and I told him that I would be
6 willing to be in at 1.2 neighborhood at the top to settle.

7 Q You knew Mr. Greer had the assignment of identifying
8 funds in the budget to pay the severance, correct?

9 A I didn't learn that till November 18th, 2008.

10 Q Okay. But he -- you would agree that he did perform
11 that task in advance of the meeting?

12 A He, he performed that task at some point, yes.

13 Q Did Mr. Wilson tell you, before the meeting, that an
14 agreement, a severance agreement would be coming?

15 A It was before -- he told me that settlement was
16 possible the day of the meeting. He told me, at the meeting
17 but before -- at the county council meeting when we were
18 arriving prior to the start of the meeting that he had, he
19 had gotten a contract -- an agreement.

20 Q So, you knew, going into the meeting, before the
21 meeting began, that you would be voting on the contract?

22 A I didn't know that we'd be voting on a contract, but I
23 knew that he had a contract.

24 Q Let's turn to the November 18th, 2008, council
25 meeting.

William McAbee - Direct examination
by Ms. Parham

1 You were present at that meeting, correct, when the
2 severance agreement was considered?

3 A Yes.

4 Q And, as you testified, you knew, just prior to the
5 meeting, that the severance agreement would be considered?

6 A Yes.

7 Q But you had not read that agreement yet, correct?

8 A I had not read the agreement.

9 Q And to your knowledge, no one, other than Mr. Wilson,
10 had seen the agreement prior to his handing it out at the
11 meeting?

12 A That's correct. Well, I assume that the attorneys
13 involved in negotiating the agreement had seen it.

14 Q But no other members of council, correct?

15 A That's correct.

16 Q Would you agree that it was -- that you couldn't give a
17 careful reading in the time between its distribution and the
18 vote?

19 A I was able to read it.

20 Q You absorbed it fully?

21 A I found out how much it was gonna cost us and that was
22 the key number I was looking for.

23 Q Did that number reflect what you had, you had indicated
24 would be acceptable to you?

25 A Yes.

William McAbee - Direct examination
by Ms. Parham

1 Q And when the severance agreement came up for a vote,
2 you moved to call the question, correct?

3 A Yes.

4 Q Is that because you knew there were enough votes to
5 pass it?

6 A The situation in Anderson was such that the, the
7 political atmosphere was, was completely toxic, and, at that
8 point, everyone had -- every member of council had spoken.
9 You could gauge by their remarks perhaps how the vote was
10 gonna be, how it's gonna come out. There was -- it was
11 certain there were two against it, and I moved to close
12 debate so we could have an up or down vote and, and see if
13 it passed or not.

14 Q You're talking about the initial vote, correct?

15 A Each -- well, yes.

16 Q And you said that everyone -- with regard to the
17 initial vote, everyone had a chance to speak?

18 A Everyone that wished to.

19 Q Did everyone speak on it?

20 A I don't recall.

21 Q But you knew that there would be enough votes to pass?

22 A Based upon what I was hearing in the debate I thought
23 it would pass.

24 Q And did you vote in favor of the agreement?

25 A Yes.

William McAbee - Direct examination
by Ms. Parham

- 1 Q Do you recall that Mr., Mr. Greer's funding proposal
2 was then immediately taken up after that vote?
3 A I believe it was, yes.
4 Q And you voted for that as well, correct?
5 A Yes, I did.
6 Q And then you moved to reconsider it -- that issue,
7 correct?
8 A Yes, I did.
9 Q Had you discussed with any council members, prior to
10 the meeting, your plan to move to reconsider it?
11 A No.
12 Q And what was the purpose of your motion to reconsider
13 it?
14 A Under our ordinances for procedure, any act of county
15 council can be reconsidered at that meeting or at the next
16 county council meeting. But it can only be reconsidered
17 once, and once it's been reconsidered once, it's no -- it
18 can no longer be voted on for reconsideration.
19 Q So, you're very familiar with Robert's Rules of Order?
20 A My wife teaches it.
21 Q After the funding proposal passed a second time, you
22 moved to reconsider the severance agreement, correct?
23 A Yes.
24 Q And did everyone have a chance to speak twice on the
25 severance agreement?

William McAbee - Direct examination
by Ms. Parham

- 1 A The, the second debate?
- 2 Q Correct.
- 3 A I, I don't think so.
- 4 Q And, again, your motion to reconsider the severance
5 agreement was a parliamentary tactic as you indicated?
- 6 A It precludes any further reconsideration.
- 7 Q In other words, you hadn't changed your mind in the
8 interim?
- 9 You were, you were -- this was a parliamentary maneuver
10 on your part?
- 11 A It was -- yes, it prevents another reconsideration.
- 12 Q And as soon as you could get the floor after
13 reconsideration passed, in fact, within about 12 seconds,
14 you moved to call the prior question?
- 15 You moved to end debate, correct?
- 16 A That's correct.
- 17 Q And then you voted for the motion to end debate,
18 correct?
- 19 A Yes.
- 20 Q And that passed only four to three?
- 21 A That's correct.
- 22 Q Do you agree that Robert's Rules require a two-thirds
23 vote to end debate?
- 24 A Well, that is -- that may be in Robert's Rules. But if
25 you also read Robert's Rules, it says any customary practice

William McAbee - Direct examination
by Ms. Parham

1 of a body that is longstanding supersedes the provisions of
2 Robert's Rules. It also, in our county ordinances, if we
3 have a specific ordinance that it differs from Robert's
4 Rules in our procedures, it, it supercedes Robert's Rules of
5 Order.

6 Q Was it the customary practice of the Anderson County
7 Council to vote to end debate with only a 4-3 vote?

8 A It -- I don't know if it's actually in the ordinance or
9 if it's in, if it's, if it's customary. I do know that it's
10 customary practice for many years, through many councils,
11 that debate ends on a simple majority vote to end debate.

12 Q After that motion passed, you voted for the severance,
13 severance package a second time, correct?

14 A That's correct.

15 Q So, the purpose of your motion to reconsider was not
16 actually to entertain further debate, but to foreclose
17 further debate?

18 A It was to prevent any other motion to reconsider.

19 Q You signed the severance agreement immediately after
20 that meeting, correct?

21 A That's correct.

22 Q And, at that time, you had still not read Mr. Preston's
23 employment contract, correct?

24 A That's correct.

25 Q And, at that time, the sitting council had not done

William McAbee - Direct examination
by Ms. Parham

1 anything to breach his employment contract, correct?

2 A At the time I signed it?

3 Q Yes, sir.

4 A Unless you count hiring Michael Cunningham as
5 administrator. That may have been considered a breach of
6 his contract.

7 Q Had the sitting council done anything to breach his
8 contract -- had any expressed intent of -- had the majority
9 of council done anything to breach his contract at that
10 time?

11 A At the time prior to our vote are you asking?

12 Q At the time, at the time that you signed the severance
13 agreement --

14 A Yes.

15 Q -- had the council done anything to breach
16 Mr. Preston's, Mr. Preston's employment contract?

17 A No.

18 Q Thank you, Mr. McAbee.

19 A Thank you.

20 THE COURT: We're gonna take a short recess at this
21 point in time before we begin cross-examination.

22 I'll caution the witness, you can step down, but do not
23 discuss your testimony with anyone during the break.

24 THE WITNESS: Yes, Your Honor.

25 THE COURT: Court will be in recess.

William McAbee - Cross-examination
by Ms. Kern-Fuller

1 (WHEREUPON, a short recess was taken at this time.)

2 THE COURT: I believe we're going to begin with the
3 cross-examination of the witness.

4 Ms. Kern-Fuller, you ready?

5 You may proceed.

6 CROSS-EXAMINATION

7 BY MS. KERN-FULLER:

8 Q Good morning, Mr. McAbee.

9 A Good morning.

10 Q We've met. I'm Candy Kern-Fuller. I represent
11 Mr. Preston in this matter.

12 I want to start with discussing with you the topic of
13 conversation Ms. Parham finished up with you about.

14 Explain to me, if you would, your thinking behind the
15 debate and calling into question on November 18th of 2008.

16 A As I said, at the time the political atmosphere was so
17 completely toxic and the, the council and the community was,
18 to some extent, were divided into two waring camps. The --
19 once the settlement agreement was put before council, and
20 debate was begun, and the council members had spoken, it
21 became obvious to anyone that no amount of debate was gonna
22 change anyone's mind, and this was an opportunity for us to
23 put this whole chapter behind us and end it.

24 Q And coming up to the severance vote on November the
25 18th of 2008, what generally was the vote on council on

William McAbee - Cross-examination
by Ms. Kern-Fuller

1 matters of political importance?

2 A It had been five to two.

3 Q And those five members were whom?

4 A Myself, Larry Greer, Ron Wilson, Michael Thompson, and
5 Gracie Floyd.

6 Q And who were the two members that consistently voted
7 the other way?

8 A Bob Waldrep and Cindy Wilson.

9 Q And you were a member of the personnel committee that
10 took this matter to investigate and meet with Mr. Bright and
11 determine a resolution to it, is that correct?

12 A That's correct.

13 Q And in the process of the personnel committee, you had
14 discussions at personnel committee meetings that were
15 noticed to the public, right?

16 A That's correct.

17 Q And do you recall how many personnel committee meetings
18 you had that were noticed to the public?

19 A Two.

20 Q And did Ms. Wilson and Mr. Waldrep come to either of
21 those meetings?

22 A Yes, they came to the first one.

23 Q And did they voice an opinion about the matter of the
24 severance under consideration?

25 A They didn't seem to think the -- it should be pursued.

william McAbee - Cross-examination
by Ms. Kern-Fuller

1 They didn't, they didn't seem to think that the -- there
2 were any claims to be made and they wanted to delay and
3 postpone as long as possible to get it past January 1st of
4 the following year.

5 Q Did they ever express why they wanted it to go past
6 January 1st of 2009?

7 A They wanted the new members of council, the three
8 incoming members of council, to join them and, and do
9 whatever they planned to do regarding Mr. Preston, which
10 I'm, I'm assuming would be suspend him as they stated in
11 their letter.

12 Q And I'm gonna show you a document that's been
13 previously admitted as Plaintiff's Exhibit No. 2.

14 Were you present at an audit committee meeting on
15 August the 5th of 2008?

16 A Yes, I was.

17 Q And at that audit committee meeting, was there a
18 proposal made by Mr. Waldrep?

19 A Yes, there was.

20 Q What was that proposal?

21 A That the administrator, Mr. Preston, and our assistant
22 administrator in charge of finance, Ms. Gina Humphries, be
23 suspended from duties and have no contact with anyone in the
24 county and -- while a forensic audit was conducted or an
25 audit was conducted to determine or to search for, as I'm

William McAbee - Cross-examination
by Ms. Kern-Fuller

1 assuming, grounds for their termination.

2 Q And with regard to that audit, I believe Ms. Parham
3 showed you notes on conversations that you had with
4 Mr. Bright as Plaintiff's Exhibit 21. Leave those there
5 cause I'm gonna ask you another question about those.

6 You voted for that audit, didn't you, sir?

7 A Yes.

8 Q And that vote on that audit was taken when?

9 A I don't remember. It would of been after the June
10 primary, but I believe it was taken prior to this August
11 meeting.

12 Q So, sometime between June of 2008 and August of 2008
13 you voted for an audit of Mr. Preston's administration?

14 A Yes.

15 Q And that was after all this travel that Ms. Parham went
16 over with you from 2006 and 2007 and early 2008, wasn't it?

17 A Yes.

18 Q And isn't it true that you voted for that despite the
19 fact that Anderson County has had over ten years of clean
20 unqualified audits?

21 A That's correct.

22 Q Now, you spoke with Mr. Bright on the 14th of October
23 of 2008, is that correct?

24 A It was in that timeframe. I'm assuming that was the
25 date, but it was in that timeframe. I don't remember the

William McAbee - Cross-examination
by Ms. Kern-Fuller

1 exact date.

2 Q And during that conversation -- and I'm showing you
3 what is Plaintiff's Exhibit 21. It's also Defendant's
4 Exhibit 24.

5 But Mr. Bright wrote down that, with regard to Cindy
6 Wilson, "it's all related to Beaver Dam Sewer Line. This is
7 pay back for her."

8 A Yeah.

9 Q Do you recall saying that to him?

10 A Yes, I do.

11 Q What was Ms. Wilson's problem with Mr. Preston about
12 the Beaver Dam Sewer Line?

13 A She didn't want the Beaver Dam Sewer Line built. She
14 had opposed it from the time before she was on council. I
15 first met her before she was on council, and when I was on
16 the County Economic Development Board, and she was doing
17 everything she could to stop the construction of the Beaver
18 Dam Sewer Line.

19 Q And isn't it true that she launched her political
20 career on Anderson County Council as a result of this fight
21 of the Beaver Dam Sewer Line?

22 A At that meeting we had with her regarding Beaver Dam
23 trying to convince her of the, of the benefits of it, I
24 became rather exasperated with her and said if you feel that
25 strongly about it just run for county council and she did.

William McAbee - Cross-examination
by Ms. Kern-Fuller

1 Q So, it's your fault she's on county council?

2 A I guess so.

3 Q All right. Let me back up.

4 You said that, with regard to when you're on the
5 Economic Development Board, how many years have you been in
6 public service, through the Economic Development Board, on
7 the county council and been actively involved in party
8 politics?

9 A A number of years. Up until the time I left county
10 council, probably 16, 17 years. I served ten years on the
11 County Economic Development Board. I served -- I was
12 chairman of the Republican Party for two years. I was on
13 the State Executive Committee of the Republican Party for
14 four years. I served four years on the 320 Water
15 Conservation District Commission prior to being on county
16 council.

17 Q And was there anything that would of prevented you from
18 being reappointed to the Economic Development Board when you
19 left office as a county council member?

20 A No, there's not.

21 Q Is it a fair assessment to say that economic
22 development was your thing on council?

23 A Yes, it was.

24 Q Is it the fair thing to say that alternative fuel
25 sources and energy sources were your thing as council member

William McAbee - Cross-examination
by Ms. Kern-Fuller

1 and an individual?

2 A Yes, it, it was. In Anderson County actually, at that
3 time, had a policy of trying or strategy of trying to build
4 a, an alternative fuels cluster. We had attracted the
5 biofuels plant. We had opened -- we attracted the ethanol
6 facility, and we were pursuing alternative energy as one of
7 our economic development clusters.

8 Q As is the nation in general, right?

9 A Yes.

10 Q And with regard to the Society of Automotive Engineers
11 Conference that you went to in Detroit, what was the purpose
12 of your going to that conference?

13 A It's more than a conference. It's really a trade show.
14 All of the tier one, tier two suppliers and the O.E.M.
15 manufacturers, the actual automakers, have a presence there.
16 If -- a lot of counties and states -- Texas was there.
17 Tennessee was there. Dorchester County was there. Aiken
18 County was there.

19 They, they have a presence at this because it's a,
20 it's -- the, the communities that want automotive industry
21 or manufacturers in their community go to S.A.E. because
22 that's where you find the companies that are gonna be
23 automobile suppliers.

24 Q And is it a fair assessment that South Carolina and the
25 counties therein are pursuing automotive industry?

William McAbee - Cross-examination
by Ms. Kern-Fuller

1 A Yes, particularly the Upstate. The tech school system
2 had a, had a presence there. The State Department of
3 Commerce from South Carolina had their own booth.

4 Q And during the period of time that you traveled to
5 these conferences, was Ms. Plummer on the Economic
6 Development Board?

7 A Yes.

8 Q Have you ever had your travel questioned when you
9 traveled with a male?

10 A No.

11 Q If you were still on county council today, would you
12 still be actively advocating for that intermodal facility
13 that you were describing?

14 A Yes, I would.

15 Q Tell me what -- let me ask you a second question I'll
16 ask you before I do that.

17 Had you been appointed to the Economic Development
18 Board after your term on council, would you be actively
19 advocating for that intermodal facility?

20 A Yes, I would. It's good for Anderson County.

21 Q Tell me what an intermodal facility is and why it's
22 good for Anderson County.

23 A An intermodal facility is -- it's a rail yard
24 essentially, but it has cranes where they take the, the
25 containers off of the railroad cars, the, the well cars, and

William McAbee - Cross-examination
by Ms. Kern-Fuller

1 put them on truck chaises for delivery to their destination
2 or they receive the containers from a shipper and put them
3 on the railroad. The communities that have intermodal
4 facilities, their manufacturers have lower freight rates
5 than the companies that are competing against us, and
6 there's part of what the companies, when they're looking at
7 a community and deciding whether to locate, they want to
8 know what the freight costs are gonna be.

9 Anderson County, historically, has had the highest
10 freight costs in the Upstate compared to Greenville and
11 Spartanburg, and it's been a disadvantage for us. It had
12 the -- with the intermodal facility in Greer, it's gonna put
13 Anderson County at a disadvantage. If it were here -- which
14 I think is a better location for us and for the railroad.
15 It would, it would be an advantage to Anderson County and
16 our manufacturers.

17 Q And, Mr. McAbee, your family had a trucking industry,
18 which is no longer, right?

19 A That's correct.

20 Q And, so, you grew up with this transportation kind of
21 climate in your household, didn't you?

22 A Yes, I did, my whole life. I drove a truck.

23 Q And when Ms. Parham asked you about these trips that
24 you took that didn't result in any tangible economic
25 development as of the time you left council, would it be a

William McAbee - Cross-examination
by Ms. Kern-Fuller

1 fair statement to say that economic development is like
2 planting seeds?

3 A It is.

4 Q Does it sometimes take a long time to grow?

5 A It does. The initial contact is not gonna result in an
6 announcement. It -- you have to repeatedly go back, talk to
7 the same people, look for when they're interested in
8 expanding, and to -- and seek that opportunity to settle
9 them on, on Anderson County or your community, whoever your
10 community is.

11 Q Do you believe it was useful for the people of the
12 S.A.E. trade show to see the same faces over and over again?

13 A It is.

14 Q Do you believe---

15 A I---

16 Q I'm sorry. Go ahead.

17 A I -- that type of continuity, whether you're selling a
18 product or whether you're, you're promoting your community,
19 helps reassure them in the stability that you can offer.

20 Q Are you aware of how many trips the economic
21 development director in Greenville or Spartanburg took over
22 the two years to get economic development?

23 A No, I'm not. I'm -- no.

24 Q Do you think the number of trips that you took on
25 behalf of Anderson County for economic development purposes

William McAbee - Cross-examination
by Ms. Kern-Fuller

1 was unreasonable?

2 A No.

3 Q Did the trips that you took as a council member, on
4 behalf of economic development, did that, in anyway,
5 influence how you voted on Mr. Preston's severance?

6 A No.

7 Q Did you make other council members aware of your
8 economic development activities?

9 A Yes, I did. Specifically I spoke with Larry Greer
10 about it regularly and Mr. Wilson and Ms. Floyd.

11 Q Is Mr. Greer very knowledgeable about the budget of
12 Anderson County?

13 A He's the best there's ever been.

14 Q So, finances are something he watched?

15 A Exactly. He was always who I went to if I had a
16 question about the budget.

17 Q Would you deem yourself a fiscal conservative?

18 A Yes, I am. I've always considered myself a fiscal
19 conservative. That's why I got involved in Republican Party
20 politics.

21 Q Are you a republican today?

22 A Yes, I am.

23 Q And does your wife still serve on the Executive
24 Committee of the State Republican Party?

25 A Well, actually she's on the Executive Committee of the

William McAbee - Cross-examination
by Ms. Kern-Fuller

1 Anderson County Republican Party. She was on the state
2 committee of the, State Executive Committee and is past
3 president of the South Carolina Federation of Republican
4 women.

5 Q I want to move back to a question that Ms. Parham asked
6 you with regard to Exhibit 72 and 73. I think Ms. Parham
7 may have intimated that Ms. Plummer's registration was paid
8 for by the county.

9 Do you have those exhibits in front of you?

10 A I do.

11 Q All right. Now, on Exhibit 72, it appears to me that
12 the standard rate for the Rail Trends Conference in 2008 was
13 \$1,095 if the registration occurred after August 30th, is
14 that correct?

15 A That's correct.

16 Q All right. Move over to Exhibit 73 for me if you
17 would.

18 A (Witness complies.)

19 Q And I think that there was a check cut in the amount of
20 26 -- \$2,606.90.

21 Did you see that expense report that's Exhibit 73?

22 A Yes.

23 Q And how many registrations do you see on that expense
24 report?

25 A One.

William McAbee - Cross-examination
by Ms. Kern-Fuller

- 1 Q And that was your registration, right?
- 2 A That's correct.
- 3 Q So, when you testified you did not think that Anderson
- 4 County paid for Ms. Plummer's trip that time, you were
- 5 correct, weren't you?
- 6 A I believe so, yes.
- 7 Q Now, I think Ms. Parham asked you about whether you had
- 8 ever read Mr. Preston's contract, employment contract with
- 9 the county.
- 10 A Right.
- 11 Q And I believe you testified you had not.
- 12 Were you generally familiar, through council meetings
- 13 and advice from attorneys, as to what reasons Mr. Preston
- 14 could be terminated for cause for?
- 15 A Yes, I was. In fact, I had had discussions with
- 16 council members, with the county attorney. In fact, I think
- 17 I first learned of what was required for cause from Ms.
- 18 Wilson when she said she was looking for something that
- 19 would -- to terminate him on --
- 20 Q All right.
- 21 A -- and that was -- and that's conviction of a crime to
- 22 his financial advantage, a conviction of a crime of moral
- 23 turpitude, or abandoning his job, not doing his, not doing
- 24 his duty.
- 25 Q And those duties are the duties as defined by the Home

William McAbee - Cross-examination
by Ms. Kern-Fuller

1 Rule Act right?

2 A Yes.

3 Q Were you aware, at the time in November of 2008, of any
4 conviction that Mr. Preston had at all?

5 A No.

6 Q And there were no convictions, let alone of moral
7 turpitude or a crime for personal gain, were there?

8 A No.

9 Q And had Mr. Preston ever refused to perform the duties
10 to the majority of council, the council in 2008, as of
11 November of 2008?

12 A No, it's not really a question of majority. It's a
13 question of the council as a body. A majority voting in the
14 council constitutes the council. The body -- as a body,
15 politics constitutes of the will of the council.

16 Q And had the body of politics, as of November of 2008,
17 ever voted in a session that Mr. Preston had not performed
18 the duties as outlined in the Home Rule Act?

19 A No.

20 Q And based upon that, did you receive a memo from Mr.
21 Bright that's been identified as Defendant's Exhibit 28 as a
22 member of the personnel committee?

23 A Yes, I did.

24 Q And did that memorandum also lay out options that the
25 personnel committee could have entertained?

William McAbee - Cross-examination
by Ms. Kern-Fuller

- 1 A Yes.
- 2 Q And was one of those options to buy-out Mr. Preston?
- 3 A Yes, it was.
- 4 Q And was one of those options not to buy-out
- 5 Mr. Preston?
- 6 A Yes, it was.
- 7 Q And did you listen to the advice and consider it
- 8 carefully when Mr. Bright gave you-all what your options
- 9 were?
- 10 A Yes, I did.
- 11 Q And when you took that into consideration, was it a
- 12 deliberative process?
- 13 A Yes, it was.
- 14 Q Did you have a deliberative process, as part of the
- 15 personnel committee meeting, with your comembers, Mr. Greer
- 16 and Mr. Wilson?
- 17 A Well, yes, we discussed it.
- 18 Q Do you recall what the initial demand was from our camp
- 19 to settle this matter?
- 20 A I think it was something like one and three-quarter
- 21 million-dollars.
- 22 Q And---
- 23 A 1.75.
- 24 Q And you recall that it was actually negotiated down to
- 25 the 1.14 million?

William McAbee - Cross-examination
by Ms. Kern-Fuller

1 A Yes, it was. But upon counsel, Mr., Mr. Bright and---

2 Q My co-counsel, Mr. Hoskins?

3 A Mr. Hoskins.

4 Q And did you weigh the advice that you received from
5 Mr. Bright that, after his attorneys fees and the potential
6 that you have to pay Mr. Preston's severance and other
7 damages, that it could exceed two million-dollars?

8 A Yes, I did.

9 Q And when Ms. Parham asked you about paying for tort
10 claims of people who are not on council yet, were you aware
11 that Mr. Preston had current pending litigation against
12 Mr. Wilson and Mr. Waldrep?

13 A Yes, I was. That was, that was -- I was well aware of
14 it.

15 Q And, in fact, on August 11th of 2008, was Plaintiff's
16 Exhibit 78 -- Mr. Preston actually notified you and all the
17 other members of council that he was forced to bring suit
18 against Ms. Wilson and Mr. Waldrep, right?

19 A That's correct. For interfering with his abilities to
20 perform his duties.

21 Q And you received a copy of that memorandum?

22 A Yes, I did and he informed us that he was gonna move
23 forward with seeking an injunction.

24 Q I'm sorry. Say that again.

25 A He said -- he informed us that he was gonna move

William McAbee - Cross-examination
by Ms. Kern-Fuller

1 forward then with seeking an injunction.

2 Q And he did that, didn't he?

3 A He did.

4 Q And prior to the severance vote on the night of
5 November 18th of 2008, they had had a temporary
6 restraining order hearing prior to that, hadn't they?

7 A They had.

8 Q And you-all had a meeting of the personnel committee on
9 October 27th of 2008 and November 4th of 2008, is that
10 correct?

11 A That's correct.

12 Q And the one that was held at the Powdersville Library
13 and Government Center, the one on October 27th, is the
14 Powdersville Library and Government Center in Anderson
15 County?

16 A Yes, it is.

17 Q And approximately how far is that building from
18 Mr. Wilson's office at that time?

19 A It was very close to his office, within a couple of
20 blocks I would say or a half a mile. It was -- wasn't far
21 from my home. It was as close to my house as Anderson is.

22 Q And you live over off of Highway 178?

23 A Yes.

24 Q And was Mr. Bright intended to come to this meeting on
25 October 27th?

William McAbee - Cross-examination
by Ms. Kern-Fuller

1 A Yes, he was.

2 Q And was it reasonable for you-all to travel to the
3 northern part of this county and save Mr. Bright having to
4 travel and charge the county by the hour?

5 A Exactly. It saved the county money, us meeting him
6 there.

7 Q Now, the second meeting that y'all had on
8 November 4th, you actually had it across the street in the
9 historic courthouse, right?

10 A That's correct.

11 Q And Mr. Bright traveled for that meeting as well?

12 A Yes.

13 Q And you were at that meeting?

14 A I was at that meeting.

15 Q And do you recall, at that meeting, there was a
16 discussion reflect, which is reflected in Mr. Bright's
17 notes, that Mr. Preston would be given something to do that
18 he could not perform and that he would be fired for
19 insubordination?

20 Do you recall that discussion?

21 A Yes, I do.

22 Q Tell me the context of that discussion and how it came
23 up.

24 A That was a statement that was attributed to an incoming
25 council member, Tom Allen, that had defeated me in the

William McAbee - Cross-examination
by Ms. Kern-Fuller

1 election that we discussed that this was gonna be the
2 tactics of the three incoming members and the two incoming
3 members, Ms. Wilson and Mr. Waldrep, were gonna use in order
4 to fire Mr. Preston for cause.

5 Q And the Mr. Allen you're talking about is the council
6 chairman that's been sitting here?

7 A That's correct.

8 Q You may not have seen him. He may of left before you
9 came.

10 But he's the current council chairman, right?

11 A That's correct.

12 Q Now, I want to talk a little bit about this toxic
13 climate you were talking about.

14 During the course of your service on council, did you
15 get letters that threatened you in anyway?

16 A Yes, I did. There were letters sent to myself and to
17 other members of the council saying that we were -- Joey was
18 going to prison, we were going to prison, we were gonna be
19 sodomized, that it was -- just all kind of terrible things
20 were gonna happen to us because of the way we were
21 conducting the county business.

22 Q And I'm gonna show you what's been marked as
23 Defendants's 133.

24 Do you recognize that document, sir?

25 A Yes, I do.

William McAbee - Cross-examination
by Ms. Kern-Fuller

1 Q Is that a letter you personally received?

2 A Yes, it is.

3 MS. PARHAM: I believe that's an exhibit that we are
4 not agreeing it's admissible.

5 MS. KERN-FULLER: All right. Let's lay the foundation
6 for it then.

7 Mr. McAbee, is that a letter that you personally
8 received?

9 A Yes, it is.

10 Q And how did you receive that letter?

11 A Through the mail.

12 Q And were those some of the threats that you were
13 getting, both verbally and in writing?

14 A Yes, it is.

15 Q And did that match some of the things that other
16 council members were saying happened to them?

17 A Yes. In fact, it matched some of the letters that I
18 saw that other council members had received.

19 MS. KERN-FULLER: Your Honor, I move to admit that as
20 Defendant's Exhibit 133.

21 THE COURT: Yes, ma'am.

22 MS. PARHAM: Your Honor, objection to this as
23 relevance.

24 MS. KERN-FULLER: Your Honor, it goes to the toxic--

25 THE COURT: Do you want to argue that point?

William McAbee - Cross-examination
by Ms. Kern-Fuller

1 Ma'am, do you wish to argue that point?

2 MS. PARHAM: Yes, Your Honor. It is -- it goes to
3 relevance. It's hearsay, foundation. It has nothing to do
4 with the issues in this case.

5 THE COURT: All right. She's claiming it violates the
6 hearsay, and it's not relevant. So, I'll hear from you,
7 ma'am.

8 MS. KERN-FULLER: Your Honor, it's -- we're not putting
9 it forth for the truth of the matter asserted that Mr.
10 McAbee would be put in prison, that he would be buggered in
11 prison. We're putting it into evidence for the purpose of
12 this toxic political climate.

13 But what was happening is these council members were
14 getting threats from the people that supported Ms. Wilson
15 and her group, and that he felt threatened, other council
16 members felt threatened, and that that's the kind of toxic
17 political climate that, when they voted on November 18th,
18 they voted to rip the band-aid off and try to make the
19 county move on.

20 THE COURT: I think you're saying it goes to his state
21 of mind?

22 MS. KERN-FULLER: Yes, Your Honor.

23 THE COURT: Is that what you're saying?

24 Yes, ma'am.

25 MS. PARHAM: It is a letter from March of 2006, Your

William McAbee - Cross-examination
by Ms. Kern-Fuller

1 Honor, and I believe we heard plenty of argument about,
2 about how that was too early to go back and it's from an
3 unidentified person.

4 THE COURT: Yes, ma'am, but I let you go back there,
5 didn't I?

6 MS. PARHAM: Yes, Your Honor. You did.

7 THE COURT: All right. Overruled. I'm gonna allow it
8 in.

9 MS. KERN-FULLER: Thank you, Your Honor.

10 (WHEREUPON, Defendant's Exhibit No. 133 was received
11 into evidence at this time.)

12 Q And, Mr. McAbee, in February of 2008, did you receive a
13 copy of a letter from Mr. Thompson that was to Sheriff
14 Crewshaw and copied to all county council members?

15 A Yes, I did.

16 Q And as a result of the letter that you received, which
17 is Defendant's 133 and the letters from Mr. Thompson, was
18 there any state or local law enforcement investigation as a,
19 as a result of that?

20 A Yes, the sheriff told me that he was looking into it.

21 Q And are you aware of any investigation by SLED
22 regarding the letter that you got back in March of 2006?

23 A Yes, in fact, Special Agent Ken, I think they're called
24 special agents, came to my office and collected this letter
25 and questioned me about, questioned me about this letter and

William McAbee - Cross-examination
by Ms. Kern-Fuller

1 also a credit card receipt I received from Ms. Wilson at the
2 same time. I mean he -- I had received it. He questioned
3 me about it at the same time.

4 Q Okay. And were -- was SLED ever able to determine who
5 these people were that were making threats to, to sitting
6 elected-officials about being buggered and sodomized and put
7 in jail?

8 A No, not to my knowledge.

9 Q Did those threats continue during your term on council?

10 A Yes.

11 Q Have they continued since you've came off council?

12 A I've not received anything like this since I left
13 office.

14 Q Okay. Have you had any verbal threats that have been
15 verbalized on the radio against you and your family?

16 A Yes.

17 Q And I want to back-up a little bit to some questions
18 that Ms. Parham asked you about, the bond issue.

19 Now, with regard to the bond issue, you actively sought
20 an ethics opinion about that, right?

21 A Yes, I did.

22 Q And after that ethics opinion was issued, and the
23 actual votes were taken on by the council about fee in lieu
24 for Lincoln Energy, you recused yourself, didn't you?

25 A Yes, I did.

William McAbee - Cross-examination
by Ms. Kern-Fuller

1 Q How many times did you recuse yourself?

2 A On that particular -- relating to that particular
3 property, there were three votes on the fee in lieu
4 ordinance, one vote on the resolution to offer the
5 inducement agreement, and then there were three votes on the
6 Lewis Drive road closing. And, so, there would of been,
7 relating to that property, there would of been a total of
8 seven recusals.

9 Q And I'm gonna show you the ones that we're premarked as
10 Defendant's Exhibit 58.

11 Can you tell me if you recognize that document?

12 A Yes, I do.

13 Q And are those your recusals?

14 A Yes, they are.

15 Q All right. Can you tell me what a recusal entails?

16 A A recusal is more than just abstaining. You, you don't
17 remain in the room while debate takes place. You don't
18 participate in debate. If -- at the beginning of the time
19 the matter is taken up -- you, first of all, file this form
20 prior to the meeting. You -- at the beginning of the time
21 council is taking up the matter, you state to the chairman
22 that you are conflicted and leave the chambers until such
23 time as the matter is, is completed.

24 Q And in each of those times you recused yourself you
25 left the chambers, right?

William McAbee - Cross-examination
by Ms. Kern-Fuller

1 A Yes.

2 Q Now, Ms. Parham also asked about the commission that
3 you received, which is Plaintiff's Exhibit 60 I believe, and
4 I think you testified that that was the only commission
5 you've ever received?

6 A That's correct.

7 Q So, you didn't share in any of the referral fees that
8 Ms. Plummer received from the properties out at the airport,
9 did you?

10 A No.

11 Q And is it fair to say that the airport expansion had
12 been a topic of discussion in Anderson County since the
13 early 90s?

14 A Yes, the county had an industrial park out there, and
15 that, over the years, they had been expanding the park,
16 expanding their holdings for the industrial park, and had
17 also been buying properties under the bypass of the runway.
18 The F.A.A. had been encouraging airports to do that.

19 Q And do you recall, as someone actively involved in
20 economic development, that Heather Simmons-Jones, as the
21 economic development director, actually recommended that the
22 property that was purchased at the airport that Ms. Plummer
23 got a referral fee on be purchased?

24 A I don't recall that, but it wouldn't surprise me to
25 learn that she had because it was a good buy for the county.

William McAbee - Cross-examination
by Ms. Kern-Fuller

1 Q And were there other real estate agents that were also
2 watching this situation at the airport and trying to list
3 properties around there as well?

4 A Yes, there were.

5 Q And that was kind of general knowledge in the
6 community?

7 wasn't anything specific that was a secret, was it?

8 A Right. Airports have been -- airports have been
9 expanding, in most communities, their property holdings
10 around their sites for years, and it's a great place for an
11 industrial site. You wouldn't -- you, you don't have the
12 problems if you build residential there of complaints about
13 plane noise and that sort of thing.

14 Q And when you testified, and I'm gonna move back a
15 little bit back to these expenditures, when you testified
16 that Mr. Preston signed off on these expenditures, did he
17 have any ability to tell you no, Mr. Council Member, you
18 can't go?

19 A No, not to my understanding. He had no authority to
20 say that.

21 Q Was he your boss?

22 A No.

23 Q Who was his boss?

24 A The council.

25 Q So, if there was a problem with an expenditure, could

William McAbee - Cross-examination
by Ms. Kern-Fuller

1 he say you're missing receipts, you got to turn these in
2 before I pay them, but he couldn't tell you he couldn't go,
3 could he?

4 A That's my understanding that he couldn't, he couldn't
5 direct us and I wouldn't expect him to. I was a councilman.

6 Q And you were one of his bosses, right?

7 A Yes.

8 Q And when you did have missing receipts for
9 reimbursements, did you get a memo that said hey, you got to
10 turn these in before we can pay this?

11 A Yes, I did.

12 Q And I'm gonna show you what's been marked as
13 Defendant's Exhibit 57.

14 Do you recognize that document, sir?

15 A Yes, I do.

16 Q And you're kind of bad with keeping up with receipts,
17 aren't you?

18 A I am. I'm -- unfortunately.

19 Q So, you get those memos and you have to turn all that
20 in before you get your reimbursement, right?

21 A That's correct.

22 Q Would it be a fair statement to say that Mr. Preston
23 signing off on those expenditures, as the county
24 administrator, which is a ministerial function?

25 A Yes, that'd be a fair statement.

William McAbee - Cross-examination
by Ms. Kern-Fuller

1 Q I want to go back to the advice that Mr. Bright was
2 giving you about the severance and the settlement.

3 Now, you said that there was concern because of another
4 case where he litigated on behalf of Anderson County.

5 Can you expand on that a little bit more and make me
6 understand that, please?

7 A Yes, there was the case where Jackie Hunter had sued
8 Anderson County for wrongful termination. Mr. Bright
9 represented Anderson County in that, had assured the county
10 that they felt like he had a strong case, and he lost it.

11 Q Do you recall how much the verdict was?

12 A I'm -- I believe it was around \$300,000.

13 Q And that didn't include Mr. Bright's fees then, did it?

14 A No, it didn't.

15 Q And that case went all the way to a jury trial?

16 A Yes, it did.

17 Q Mr. Hunter still works for the county today, doesn't
18 he?

19 A Well, he is an elected official in the county. He's
20 the auditor.

21 Q Did you have concerns, based on your knowledge of that,
22 about the assessment that Mr. Bright made to the county in
23 the Jackie Hunter case?

24 A I did. I -- my, my concern was that and that was --

25 I -- because of his assessment in, in the Jackie Hunter case

william McAbee - Cross-examination
by Ms. Kern-Fuller

1 and the fact he, in this case, he was saying that -- I
2 discounted the weight I gave to his recommendations of our
3 ability to win at trial. The -- I felt like that we, we
4 could end up paying Ogletree and Mr. Bright a lot of money
5 and lose the case, and it would be -- you know, pursuing it
6 would, would end up costing the county two million-dollars.

7 Q Were there nonmonetary considerations also?

8 A Yes, the -- we could find an end to this, this, I'd
9 hoped, this bitterness in Anderson County between Cindy
10 Wilson and her focus on Mr. Preston and trying to get rid of
11 him. I thought it might help heal the county if we just put
12 this behind us finally in 2008.

13 Q When you voted on the severance on November 18th of
14 2008, did you ever dream that Anderson County would spend
15 over two and a half million-dollars trying to get back
16 1.4 million-dollars?

17 A No.

18 MS. PARHAM: Objection, Your Honor. Foundation.

19 THE COURT: I'm sorry?

20 MS. PARHAM: Foundation, Your Honor.

21 MS. KERN-FULLER: Does the county dispute they've spent
22 over two hundred -- two and a half million-dollars?

23 MS. PARHAM: That's not relevant in this case, Your
24 Honor. That's not relevant in this case.

25 THE COURT: Well, I'll ask you -- I'll let you ask some

william McAbee - Cross-examination
by Ms. Kern-Fuller

1 foundation questions before I make a ruling as to what his
2 knowledge might be of the current situation.

3 Q Mr. McAbee, you're a pretty politically astute
4 gentlemen, aren't you?

5 A I'd like to think so. I -- although after my defeat in
6 2008 I wonder about that sometimes.

7 Q You read a lot?

8 A Yes.

9 Q You stay very politically up-to-date on what's going on
10 in the county---

11 A Yes.

12 Q ---and in politics?

13 A Yes.

14 Q Have you followed the expenditures of Anderson County
15 as disclosed by the county in media sources?

16 A Yes, I have.

17 Q And following what's been disclosed by the county in
18 media sources about how much they have paid in prosecuting
19 these matters, what is your understanding of how much they
20 have paid in prosecuting this case against Mr. Preston and
21 investigating it?

22 A According to the Anderson Independent, it's
23 2.3 million-dollars.

24 MS. PARHAM: Your Honor, that's hearsay as well. It is
25 also---

William McAbee - Cross-examination
by Ms. Kern-Fuller

1 THE COURT: She, she asked what his understanding was.
2 He did not answer the question.

3 Reask the question.

4 Q what is your understanding, Mr. McAbee, sitting here
5 today, about what you believe the county has spent?

6 A 2.3 million-dollars.

7 MS. PARHAM: Your Honor, I'd just like to make the
8 objection that this whole issue is completely irrelevant to
9 the issues in this case.

10 THE COURT: Overruled.

11 You may proceed.

12 Q As a political fiscal conservative, Mr. McAbee, did you
13 ever envision, when you voted for Mr. Preston's severance,
14 that the county would spend over two times that to try to
15 recoup it?

16 A No, I, I looked at it and saw that we could end up
17 spending two million-dollars on this case, and I felt like
18 being able to settle it for 1.2 or 1.14, as it turns out,
19 would be a, a good deal. It eliminates the upside risk,
20 risk.

21 Q And that upside risk has, to date, come to pass?

22 A Yes.

23 Q Now, when you voted on the severance on the night of
24 November 18th of 2008, I believe you and other council
25 members had said that you didn't receive the severance

William McAbee - Cross-examination
by Ms. Kern-Fuller

1 agreement prior to that meeting?

2 A That's correct.

3 Q And were you aware that the revision, the last revision
4 of that severance agreement was sent to Mr. Wilson an hour
5 and six minutes before the meeting started?

6 A I didn't realize it was -- that was when it was. I
7 knew it was just very soon before the meeting.

8 Q Okay. And you skimmed this before the meeting, right?

9 A Yes.

10 Q And if I understood your testimony correctly, it was
11 you were worried about the numbers?

12 A Yes.

13 Q And did you have an understanding that, in addition to
14 the numbers, that in exchange for Mr. Preston and the county
15 having a divorce, what you thought was an amicable divorce
16 at the time, but having a divorce, that he was releasing all
17 his claims including potential tort claims against Cindy
18 Wilson and Bob Waldrep?

19 A Yes.

20 Q And, at that time, as a member of the personnel
21 committee, you'd received Mr. Hoskins letter where there was
22 an assertion that were tort claims potentially against
23 Mr. Wilson and Ms. Walker?

24 A Yes.

25 Q Against Ms. Wilson and Mr. Walker. Let me get my

William McAbee - Cross-examination
by Ms. Kern-Fuller

- 1 pronouns correct here.
- 2 A Yes.
- 3 Q Okay. And did Ms. Wilson vote on this severance?
- 4 A Yes, she did.
- 5 Q And did Mr. Waldrep vote on this severance?
- 6 A Yes, he did.
- 7 Q They didn't recuse themselves the way you did when it
8 came to Lincoln Energy, did they?
- 9 A No, they, they didn't.
- 10 Q And as a person who has over 20 years experience on, in
11 public matters and on boards, do you believe they should of
12 recused themselves?
- 13 A Had I been in their situation I would of.
- 14 Q But they were financially interested in this severance,
15 right, because, if it passed, Ms. Wilson wouldn't have to
16 get her homeowner's insurance to defend her again, would
17 she?
- 18 A That is correct.
- 19 Q And Mr. Waldrep wouldn't have to hire an attorney and
20 then get the county to pay for that later, would he?
- 21 A No.
- 22 Q Did Mr. Preston offer you anything in exchange for your
23 vote on November 18th of 2008?
- 24 A No.
- 25 Q And last I want to ask you about the agenda on

William McAbee - Cross-examination
by Ms. Kern-Fuller

1 November 18th of 2008. It's Plaintiff's Exhibit 4.

2 Do you recall the agenda from the night, sir?

3 A Yes, somewhat.

4 Q Take a moment and re, refamiliarize yourself with it.

5 A (Witness complies.)

6 Q Are you familiar with it?

7 A Yes.

8 Q Was there an item on the agenda that gave the public
9 notice that the employment of Mr. Preston would be taken up
10 at that meeting?

11 A I would say so, yes.

12 Q What is that item?

13 A Number 16, discussion of the authority of county
14 council to employ the administrator.

15 Q And with regard to that item, could the discussion of
16 the severance have come up under that even though it was Mr.
17 Waldrep's item?

18 A I would assume so, yes.

19 Q And with regard to the vote about calling the question,
20 if the question hadn't been called, debate would of
21 naturally ended at some point and the vote would of been
22 taken, right?

23 A Yes.

24 Q Thank you. I appreciate you being here with us today,
25 Mr. McAbee. I'll collect those exhibits from you if I may.

William McAbee - Cross-examination
by Ms. Kern-Fuller

1 My exhibits at least.

2 A Here is this one.

3 Q Thank you.

4 THE COURT: Pam, did you get that new exhibit?

5 COURT REPORTER: Sir?

6 THE COURT: Did you get the new exhibit that came in?

7 MS. KERN-FULLER: The new one, he's got it.

8 The new one Ms. Parham gave him?

9 THE COURT: Well, I just wanted to be sure you weren't
10 taking it back.

11 MS. KERN-FULLER: No, sir, I have a blue sticker.

12 THE COURT: Whatever was admitted stays up here.

13 MS. KERN-FULLER: Yeah. No, mine don't have any
14 stickers on them, sir.

15 THE COURT: I don't want to lose any exhibits.

16 MS. KERN-FULLER: Yes, sir, I think mine are all
17 copies, sir.

18 THE COURT: Okay. All right.

19 THE WITNESS: This has no number on it.

20 MS. KERN-FULLER: Let me see that one. That was the
21 one Ms. Parham gave you.

22 Tally, did you admit this ordinance or did you just
23 give it to him for recollection?

24 MS. PARHAM: I gave it for his recollection.

25 THE COURT: All right. You may redirect.