

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

S.C. SUPREME COURT

The Honorable Roger M. Young, Sr., Circuit Court Judge

Trial Court Case No.
2015-CP-10-3550

Appellate Case No. 2019-002031

Richard Ralph and Eugenia
Ralph.....Respondents,

v.

Paul Dennis McLaughlin and Susan Rode McLaughlin.....Petitioners.

APPENDIX
VOLUME III

G. Hamlin O'Kelley, III
Buist, Byars & Taylor, LLC
652 Coleman Blvd., Suite 200
Mt. Pleasant, SC 29464
(843) 856-4488
Attorneys for Petitioners

Ainsley Fisher Tillman
Ford Wallace Thomson LLC
715 King Street
Charleston, SC 29403
(843) 277-2011
Attorney for Respondents

G. Dana Sinkler
Gibbs & Holmes
2180 Rosebank Plantation Rd.
Wadmalaw Island, SC 29487
(843) 224-1758
Attorney for Respondents

INDEX

Record on Appeal

Index.....i

VOLUME I

ORDERS

Consent Order, filed June 24, 2014.....1

Consent Order to Restore Case to the Docket, filed June 23, 2015.....3

Order of the Honorable G. Thomas Cooper, dated May 26, 2016,
Granting Third-Party Defendant Seabrook Island Property Owners
Association's Motion for Summary Judgment.....5

Order of the Honorable G. Thomas Cooper, dated May 26, 2016, Denying
Defendants' and Third-Party Defendant's Motion for summary Judgment.....13

Order of the Honorable G. Thomas Cooper, dated May 26, 2016, Denying
Plaintiffs' Motion for Summary Judgment.....15

Order/Jury Verdict for the Plaintiff, dated January 26, 2017.....19

Order of the Honorable Roger M. Young, Sr., dated February 28, 2017,
Denying Plaintiffs' Motion for a New Trial.....22

PLEADINGS

Summons and Complaint, filed September 30, 2011.....34

Defendants' Answer and Third-Party Complaint, filed December 6, 2011.....50

Answer of Third-Party Defendant, filed January 6, 2011.....84

Amended Complaint, filed July 17, 2013.....97

Defendants' Answer to the Plaintiffs' Amended Complaint and Third Party
Complaint, filed July 22, 2013.....107

Answer of Third-Party Defendant SIPOA to Amended Complaint and
Third Party Complaint, filed August 23, 2013.....145

Plaintiffs Motion for Partial Summary Judgment, filed February 14, 2014.....150

Defendants' Motion for Summary Judgment, filed February 19, 2014.....171

Third-Party Defendant's Motion for Summary Judgment, filed February 20, 2014.....193

Plaintiffs' Motion for Partial Summary Judgment, renewed, filed March 17, 2016.....197

Third-Party Defendant's Motion for Summary Judgment, renewed, filed March 25, 2016.....	217
Defendant's Motion for Summary Judgment, renewed, filed March 28, 2016.....	220
Exhibits to Defendants' Motion for Summary Judgment, dated March 30, 2016.....	223
Plaintiffs' Memorandum in Support of Motion for Partial Summary Judgment, filed May 9, 2016.....	241
Defendant's SIPOA's Memorandum in Support of Motion for Summary Judgment, filed May 11, 2016.....	254
Defendants/Third-Party Plaintiffs' Memorandum in Support of Motion for Summary Judgment, filed May 11, 2016.....	342i

VOLUME II

EXHIBITS

Plaintiffs' Exhibits 1, Ralphs' Title to Real Estate.....	375
Plaintiffs' Exhibit 2, Plat by E.M. Seabrook, Jr., dated May 8, 1987.....	380
Plaintiffs' Exhibit 3, McLaughlins' Title to Real Estate.....	381
Plaintiffs' Exhibit 4, Plat E.M. Seabrook, JR., dated September 6, 1984.....	387
Plaintiffs' Exhibit 5, Plat by Forsberg Engineering, dated January 17, 2001.....	388
Plaintiffs' Exhibit 6, Emails from Paul McLaughlin and John Thompson, dated September 23, 2008.....	389
Plaintiffs' Exhibit 7, Email from Scott Wallinger, dated September 24, 2008.....	391
Plaintiffs' Exhibit 8, Email from Paul McLaughlin, dated October 3, 2008.....	392
Plaintiffs' Exhibit 9, Email from C.R. & Deena Ralph, dated October 6, 2008.....	393
Plaintiffs' Exhibit 10, Letter from SIPOA to Richard and Eugenia Ralph, dated October 22, 2008.....	395
Plaintiffs' Exhibit 11, Email from Paul McLaughlin, dated December 5, 2008.....	397
Plaintiffs' Exhibit 12, Email from John Thompson, dated September 22, 2008.....	400
Plaintiffs' Exhibit 13, Series of photographs.....	403
Plaintiffs' Exhibit 14, Curriculum Vitae of G. Robert George, P.L.S., P.E.....	406
Plaintiffs' Exhibit 15, Series of 41 photographs.....	407

Plaintiffs' Exhibit 16, Site Plan for McLaughlin Residence.....	456
Plaintiffs' Exhibit 17, Complaint filed December 9, 2008.....	457
Plaintiffs' Exhibit 18, Email from Bill Crater, dated October 3, 2008.....	466
Plaintiffs' Exhibit 19, Email from Jon van Heerden, dated October 4, 2008.....	467
Plaintiffs' Exhibit 20, Title to Real Estate.....	469
Defendants' Exhibit 1, Minutes of the SIPOA, dated May 20, 2002.....	474
Defendants' Exhibit 2, Letter from Coy Faster, dated August 18, 2006.....	479
Defendants' Exhibit 3, Letter from John Thompson, dated June 19, 2007.....	480
Defendants' Exhibit 4, Series of photographs.....	481
Defendants' Exhibit 5, Withdrawal of Motion for Temporary Restraining Order, dated December 11, 2008.....	485
Defendants' Exhibit 6, Form 4 Order, dated January 27, 2011.....	498
Defendants' Exhibit 7, Email from Paul McLaughlin, dated June 2, 2009.....	499
Court's Exhibit 2, Note from Jury.....	506
Court's Exhibit 3, Note from Jury.....	507
Jury Charges.....	508

VOLUME III

TRANSCRIPTS

Transcript of the January 23-26 trial proceedings.....	512

VOLUME IV

Final Brief of Appellants.....	991
Final Brief of Respondents.....	1018
S.C. Court of Appeals, Opinion No. 5681, filed August 21, 2019.....	1047
Petition for Rehearing.....	1073
Order Denying Petition for Rehearing.....	1084
Certificate of Counsel.....	1086

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Roger M. Young, Sr., Circuit Court Judge

Trial Court Case Nos.
2011CP-10-7065 and 2015-CP-10-3550

Appellate Case No. 2017-000866

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SC Court of Appeals

Richard Ralph and Eugenia Ralph,

Appellants,

v.

Paul Dennis McLaughlin
and Susan Rode McLaughlin,

Respondents.

RECORD ON APPEAL
VOLUME III

Ainsley Fisher Tillman
29 Brisbane Drive
Charleston, SC 29407
(843) 277-4497
and
G. Dana Sinkler
2180 Rosebank Plantation Rd.
Wadmalaw Island, SC 29487
(843) 224-1758

Attorneys for Appellants

G. Hamlin O'Kelley, III
Buist, Byars, & Taylor, LLC
652 Coleman Boulevard
Suite 200
Mount Pleasant, SC 29464
(843) 284-1408

Attorneys for the Respondents

STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
COUNTY OF CHARLESTON 2015-CP-10-03550

RICHARD RALPH, et al.,	)	
Plaintiffs,	)	TRANSCRIPT OF RECORD
-vs-	)	January 23-26, 2017
PAUL McLAUGHLIN, et al.,	)	Charleston, South Carolina
Defendants.	)	

B E F O R E:

The Honorable Roger M. Young, Sr., Judge, and a Jury.

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

G. Dana Sinkler, Esquire,
Ainsley F. Tillman, Esquire
Attorneys for the Plaintiffs

G. Hamlin O'Kelly, III, Esquire
Attorney for the Defendants

Amanda K. Haffenden, RPR, CRR
Circuit Court Reporter

I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
Howard Yates	36	38	40 53	49 54
Eugenia Ralph	55	90	102	104
Richard Ralph	106	129	138	---
Robert George	142	183	206	214
Cornelius Owens Thompson	217	230	235	---
Paul McLaughlin	236 297	250 340	256 358	260 359
John Wells	362	424	---	---
Susan McLaughlin	374	377	---	---

E X H I B I T S				
	NUMBER	DESCRIPTION	MARKED	ADMITTED
1				
2				
3	Plaintiff's 1	Title to Real Estate	18	18
4	Plaintiff's 2	Large Plat	18	18
5	Plaintiff's 3	Title to Real Estate	18	18
6	Plaintiff's 4	Large Plat	18	18
7	Plaintiff's 5	Large Plat	18	18
8	Plaintiff's 6	E-mail dated 9/23/08	18	18
9	Plaintiff's 7	E-mail dated 9/24/08	18	18
10	Plaintiff's 8	E-mail dated 9/23/08	18	18
11	Plaintiff's 9	E-mail dated 10/06/08	18	18
12	Plaintiff's 10	E-mail dated 10/22/08	18	18
13	Plaintiff's 11	E-mail dated 12/05/08	18	18
14	Plaintiff's 12	E-mail dated 12/05/08	61	61
15	Plaintiff's 13	Group of Three Photographs	81	81
16	Plaintiff's 14	CV of G. Robert George	143	143
17	Plaintiff's 15	Series of 41 Photographs	158	158
18	Plaintiff's 16	Large Plat	162	162
19	Plaintiff's 17	Complaint	241	241
20	Plaintiff's 18	E-mail dated 10/03/08	243	243
21	Plaintiff's 19	E-mail dated 10/04/06	244	244
22	Plaintiff's 20	Title to Real Estate	348	348
23	Defendant's 1	Meeting Minutes of May 2002	18	18
24	Defendant's 2	Letter from the		
25		ARB dated 8/18/08	18	18

E X H I B I T S

NUMBER	DESCRIPTION	MARKED	ADMITTED
Defendant's 3	Letter dated 6/19/07	18	18
Defendant's 4	Group of Photographs	18	18
Defendant's 5	Motion for Withdrawal	254	254
Defendant's 6	Form Four	255	255
Defendant's 7	E-mail dated 6/02/09	337	337
Court's 1	Deposition transcript Of Eugenia Ralph	91	---
Court's 2	Note from Jury	419	419
Court's 3	Note from Jury	419	419

1 (January 23, 2017.)

2 THE COURT: Everybody ready? Be seated.

3 All right, folks. Welcome. My name is Roger
4 Young. You met Judge Jefferson, I believe, earlier who
5 qualified the jury, and then probably most if not all of
6 you went through the process that we're getting ready to
7 go through, but it will be a lot shorter because I told
8 the lawyers to go in there and listen to that
9 questionnaire that they were doing down there because if
10 that trial was going to take two weeks, I'm sure they
11 covered everything that you could come up with.

12 But we go through this process here with a
13 few questions that are this case intensive, namely
14 introduce you to the parties, the lawyers, let you know
15 who the witnesses will be so that we can find out if
16 there is anybody in here that knows them to the point
17 that would affect your ability to be a fair and impartial
18 juror.

19 This is a civil case, and I'm sure Judge
20 Jefferson told you civil cases are people who have had a
21 disagreement with people who can't work it out, and they
22 want to you help them resolve it. So we're trying to
23 find 12 people who will listen to the facts, I'll tell
24 you what the law is in this kind of case, and you come up
25 with the verdict. All right? Now, in a difficult case

1 like this, the person who brings the lawsuit are called
2 plaintiffs. The people who get sued are called the
3 defendants, so the plaintiffs in this case are
4 Mr. Richard Ralph and Eugenia Ralph.

5 Mr. and Mrs. Ralph aren't here this
6 afternoon, but they'll be here tomorrow morning when we
7 call the case because the first case we had, a witness
8 whose husband not is a car wreck last night, so I
9 continued this case. We let these people know on short
10 notice that they were next up, so we're going to draw the
11 jury this afternoon and start the case tomorrow -- Mr.
12 and Mrs. Eugenia Ralph are the plaintiffs -- otherwise, I
13 would ask them to stand and you could see them.

14 Is there any member of the jury panel who is
15 related by blood or marriage or acquainted in any way
16 with Mr. Richard Ralph or Eugenia Ralph? If so, would
17 you please stand. Okay. I find none. They are
18 represented by Mr. Dana Sinkler and Ms. Ainsley Tillman.
19 These are the two lawyers there standing beside you.

20 Any member of the jury panel related by blood
21 or marriage or acquainted with them or perhaps been
22 represented by them somewhere in the past? If so, would
23 you please stand. Okay. I find none. You can be
24 seated.

25 The defendants in this case are Paul and

1 Susan McLaughlin. Will y'all stand, please? That's the
2 McLaughlins there. Is there any member of the jury panel
3 who is related by blood or marriage or acquainted in any
4 way with Mr. Paul McLaughlin or Susan McLaughlin? If so,
5 would you please stand. Okay. I find none.

6 They are represented by Mr. George Hamlin
7 O'Kelley with the Buist Byars & Taylor law firm. Any
8 member of the jury panel related by blood or marriage or
9 acquainted in any way with him or his law firm? If so,
10 would you please stand.

11 MR. O'KELLEY: Would you like me to name the
12 other members in my firm?

13 THE COURT: If you would like, go ahead.

14 MR. O'KELLEY: Thank you, Your Honor. Thomas
15 Buist was the founder of our firm. I practice with Gray
16 Taylor, Constance Meyers, Tiffany Davis, Tread Josey, and
17 Joseph Garcia.

18 THE COURT: Anyone? Okay. I find none.
19 Thank you. Yes, your name please?

20 A PROSPECTIVE JUROR: April Sermento, 304.

21 THE COURT: 304? Okay.

22 A PROSPECTIVE JUROR: I believe your firm was
23 the closers on my house in 2011.

24 THE COURT: Do you think that would affect
25 your ability to be fair and impartial in this case,

1 either for or against the plaintiffs or for or against
2 the defendants?

3 A PROSPECTIVE JUROR: No, sir.

4 THE COURT: All right. Thank you. Anyone
5 else? You can be seated.

6 I'm going to call out the names of some
7 people who might be called as witnesses in this case, and
8 when I call the names out, if you are related by blood or
9 marriage or acquainted in any way with them, would you
10 please stand when I call the name? First is Howard Yates
11 who is a lawyer here in town. I find none. Mr. Robert
12 George? I find none. Nick Thompson? I find none.
13 Dr. Jonathan van Heerden, H-e-e-r-d-e-n? I find none,
14 and Mr. John Wells, who's a representative from the
15 Seabrook Island Property Owners Association.

16 Any member of the jury panel ever lived out
17 at Seabrook Island or been a member of the Seabrook
18 Island Property Owners Association? If you so, give me
19 your name and number, please.

20 A PROSPECTIVE JUROR: Darlene Stanek, 336,
21 and I live on Seabrook.

22 THE COURT: Do you know anything at all about
23 this dispute between these folks?

24 A PROSPECTIVE JUROR: No, sir.

25 THE COURT: Okay. All right. Thank you.

1 This the is a dispute between these two folks
2 over a drainage easement and construction easement at
3 Seabrook Island. Does anybody know anything at all about
4 this case? Okay. I find none.

5 Anybody know of any reason why they do not
6 think they could be a fair and impartial juror in this
7 case, either for or against the plaintiffs or for or
8 against the defense?

9 Yes, sir, your name and number?

10 A PROSPECTIVE JUROR: Attorney Sinkler, did
11 you go to the University of Virginia?

12 MR. SINKLER: I did.

13 A PROSPECTIVE JUROR: I think I may have had
14 lunch with you about 15 years ago in at a gathering at
15 Charlottesville.

16 THE COURT: Well, did he pay for it?

17 A PROSPECTIVE JUROR: It was free all the way
18 around.

19 THE COURT: Could I get your name and number?

20 A PROSPECTIVE JUROR: 214, John Macilwaine.

21 THE COURT: Do you think that would affect
22 your ability to be fair and impartial in this case,
23 either for or against the plaintiffs or for or against
24 the defense?

25 A PROSPECTIVE JUROR: I don't think so.

1 THE COURT: Anyone else? Okay.

2 Well, folks, as I said, all the questions we
3 normally ask have been asked in the other case and the
4 parties sat in. Is there any other questions you want me
5 to ask before we have the clerk push out the numbers?
6 Okay. That was the easy part.

7 These things can sometimes draw on, but they
8 tend to all pretty much be the same thing, so what we do
9 right now is we're going to draw 12 jurors and two
10 alternates. The clerk will push a couple of numbers, and
11 it will spit out a list with 20 names, in order, and then
12 they'll have a few extras over there for alternates.

13 I'll give the lawyers about 15 minutes to
14 study that list, and then we will come back in here and
15 draw the jury, and that will conclude what we need you
16 for this afternoon.

17 So I've got 10 minutes to 3:00. If y'all
18 would be back in your chairs at 5 after 3:00, this won't
19 take long, but you can go out in the hallway, go to the
20 rest room. Please don't leave the floor or the
21 courthouse, and just be back in your seats in 15 minutes.
22 It moves pretty quick, as you know, as you set through
23 this earlier, so see you back in about.

24 (Recess taken.)

25 (In open court, jury panel present.)

1 THE COURT: Anything from the plaintiff
2 before we begin?

3 MS. TILLMAN: No, sir.

4 THE COURT: From the defense?

5 MR. O'KELLEY: No, sir.

6 THE COURT: Okay. Each side will get four
7 strikes from numbers 1 through 20 on the left, and then
8 we'll draw two alternates. Each side will get one
9 strike.

10 Mr. Clerk?

11 THE CLERK: Using numbers 1 through 20 on the
12 left, each side, as the judge said, gets four strikes.
13 The plaintiff strikes first.

14 MS. TILLMAN: The plaintiffs strike number
15 five.

16 THE CLERK: Plaintiff strikes number five.

17 MR. O'KELLEY: The defendant strikes number
18 two.

19 THE CLERK: Defendant strikes number two.

20 MS. TILLMAN: The plaintiff strikes number
21 seven.

22 THE CLERK: The plaintiff strikes number
23 seven.

24 MR. O'KELLEY: The defendant strikes number
25 six.

1 THE CLERK: Defendant strikes number six.

2 MS. TILLMAN: The plaintiff strikes number
3 12.

4 THE CLERK: Plaintiff strikes number 12.

5 MR. O'KELLEY: The defendant strikes number
6 11.

7 THE CLERK: The defendant strikes number 11.

8 MS. TILLMAN: The plaintiff strikes number
9 14.

10 MR. O'KELLEY: And, Your Honor, the defendant
11 strikes number 13.

12 THE CLERK: Now picking for alternate using
13 numbers 21, 22, and 23. Each side gets one strike. The
14 plaintiff strikes first.

15 MS. TILLMAN: The Plaintiff strikes number
16 22.

17 THE CLERK: The plaintiff strikes number 22.

18 MR. O'KELLY: The defendant strikes number
19 21.

20 THE CLERK: And the defendant strikes number
21 21. Now picking for the second alternate using numbers
22 24, 25, and 26. Each side gets one strike. The
23 plaintiff strikes first.

24 MS. TILLMAN: The plaintiff strikes number
25 26.

1 THE CLERK: Plaintiff strikes number 26.

2 MR. O'KELLEY: We strike number 24.

3 THE CLERK: And the defendant strikes number
4 24.

5 To ensure we have the same remaining, please
6 follow along. I have remaining number one, number three,
7 number four, number eight, number nine, number ten,
8 number 15, number 16, number 17, number 18, number 19,
9 number 20, number 23, and number 25.

10 THE COURT: That's what I have.

11 MR. O'KELLEY: That's what we have.

12 MS. TILLMAN: That's what we have also.

13 THE COURT: Anything from the plaintiff?

14 MS. TILLMAN: No, Your Honor.

15 THE COURT: From the defense?

16 MR. O'KELLEY: No, sir.

17 THE COURT: All right. Seat the jury.

18 THE CLERK: Ladies and gentlemen, if I call
19 your name, please gather your belongings and come up and
20 have a seat in the jury box: Juror number 390, Connie
21 Wilders; juror number 34, Robert Streisel; juror number
22 163, Jeanne Hunt; juror number 154, Brooke Hiers; juror
23 number 72, Henry Condon; juror number 80, Elizabeth
24 Curry; juror number 62, Clay Chaplin; juror number 147,
25 Steven Hays; juror number 369, Wanda Wallace; juror

1 number 123, Bianca Gardner; juror number 112, Jason
2 Franz; juror number 174, Kristy Johnson; and the first
3 alternate is juror number 331, Madeleine Socia, and the
4 second alternate is juror number 65, Tammy Cheek.

5 Your Honor, the jury has been selected and is
6 seated.

7 THE COURT: I'm going to send you with the
8 bailiff now, and he'll show you where to report in the
9 morning. You don't come back into the courtroom here
10 directly. You'll go where he'll be taking you, and he
11 will show you how to get in and out of the courthouse.

12 Again, you don't really know anything about
13 the case, but I'll be telling you a lot because there's a
14 standard instruction, but don't talk to anybody about the
15 case including other jury members. Don't try to find
16 anything out on the internet. Don't go on the case
17 management system now. What you need to know to help
18 resolve this case we will tell you in this courtroom, so
19 any outside influences aren't fair to anybody else
20 because tomorrow morning you'll be taking an oath that
21 says you'll be making your decision based on the evidence
22 that you hear presented in this courtroom and the law
23 that I charge you and not on anything else.

24 So that's why we give those instructions.
25 Avoid posing anything on social media while you are a

1 juror, about your jury experience, anyway. After the
2 trial is over with, you can post whatever you want to,
3 but during the trial, it would be just the same as if you
4 went out and talked to somebody else, so all those things
5 like Facebook, twitter, Instagram, or any of 100 other
6 ones nowadays, just wait until after the trial is over
7 with in order to post anything about the trial. You can
8 still look at them or put anything else up you want to,
9 but just don't talk about your jury experience or the
10 trial during the trial. All right?

11 We will see you in the morning. We'll try to
12 start right at 9:30. If you could get into the jury room
13 about 9:20, we will hopefully be ready to go for you at
14 9:30, so you're free to go for the rest of the day. Just
15 go back there and let him show you where to go and how to
16 get in and out, and we'll see you tomorrow morning.

17 (In open court, jury not present.)

18 Okay. Be seated. Mike, what do you want me
19 to tell these folks?

20 THE CLERK: Leave for the day with
21 instructions to call the juror line after 6:00.

22 THE COURT: Folks, it looks like you're done
23 for today. If you would, the telephone number they gave
24 you, call after 6:00. It may tell you to report tomorrow
25 or it may just tell you to call back tomorrow morning.

1 You don't just have to report back unless after 6:00 that
2 phone number tells you to report back. Please call after
3 6:00 because sometimes right up until 5:59 they're
4 putting the message on, but if I don't get to see you
5 again, thank you so much for showing up, and I hope we
6 didn't inconvenience you too much. Enjoy the rest of
7 your day, and thank you so much.

8 (Jury panel dismissed.)

9 Well, I see the summary judgment motions
10 between y'all were denied, so is there anything else we
11 need to take up before tomorrow morning?

12 MR. SINKLER: We'd like to renew the motion
13 for summary judgment.

14 THE COURT: Well, I don't know that you can
15 renew it. You can make a directed verdict motion. Judge
16 Cooper turned it down.

17 MR. SINKLER: You can renew by -- it says
18 judges usually want just to go ahead and do it, if that's
19 the way you suggest.

20 THE COURT: Well, I'll let you -- I'll take
21 it under advisement until we get to the directed verdict
22 stage, all right?

23 MR. SINKLER: Thank you, Your Honor.

24 THE COURT: Okay. If y'all would, go over
25 your designations. I'll be here about 9:15 in the

1 morning. If we need to take up anything at that time,
2 we'll do that, and if you can get here earlier and mark
3 the exhibits, that will be awful helpful.

4 MR. O'KELLEY: And your question about why
5 this is a jury trial, there are a lot of exhibits and
6 facts that aren't in dispute. I think we can short
7 circuit a lot of that process, which will help the jury.
8 And, Your Honor, thanks for your help with the folks
9 downstairs.

10 THE COURT: All right.

11 (January 24, 2017.)

12 (In open court, jury not present.)

13 THE COURT: Do we have anything we need to
14 take up before the jury comes out?

15 MR. O'KELLEY: Your Honor, I would request
16 any non-party witness not be allowed to stay in the
17 courtroom due to the prejudicial quality of any person
18 hearing testimony, and would ask any nonparty not be
19 present.

20 THE COURT: And who would that be?

21 MR. O'KELLEY: So far -- I think Mr. Yates is
22 the only person who I see is a nonparty present.

23 THE COURT: Who is your first witness?

24 MR. SINKLER: Mr. Yates.

25 MR. O'KELLEY: That takes care of that, Your

1 Honor.

2 THE COURT: All right. All jurors here yet?

3 MS. TILLMAN: I've given Mr. O'Kelley the
4 exhibits I will use today. Are there any you would be
5 willing to go ahead and mark, just to save time?

6 MR. O'KELLY: Ms. Tillman and I premarked,
7 and I didn't know if Your Honor wanted us to read what we
8 are admitting.

9 THE COURT: Go right ahead.

10 MS. TILLMAN: Plaintiff's Exhibit No. 1 has
11 been marked. It's a title to real estate from March
12 19th, 1997 to the Ralphs.

13 MR. O'KELLEY: Your Honor, anything we read
14 in will be admitted on both sides without objection.

15 MS. TILLMAN: Plaintiff's Exhibits
16 No. 1 through 11 are admitted without objection.

17 MR. O'KELLEY: And, Your Honor, Defendant's
18 Exhibits 1, 2, 3, and 4 are admitted without objection,
19 and Exhibit 4 are some exhibits containing four photos in
20 toto.

21 THE COURT: Very well.

22 (Plaintiff's Exhibit Nos. 1 through 11 and
23 Defendant's Exhibit Nos. 1 through 4 were marked for
24 identification and admitted into evidence.)

25 Let me ask you, Mr. Sinkler, or Ms. Tillman:

1 I was reading your summons and complaint. What is your
2 actual cause of action?

3 MR. SINKLER: Trespass.

4 THE COURT: It never does say that in there,
5 but now I know.

6 MR. O'KELLEY: And that's been one of our
7 difficulties in this case. There were no causes of
8 action spelled out for us, and we have had to flesh that
9 out.

10 MR. SINKLER: Is that the first complaint?
11 Or I think there was another --

12 MR. O'KELLEY: That's the first.

13 THE COURT: I only got one. Apparently, it's
14 an old file they downloaded me. I guess it was the first
15 one. The second one entitles it something?

16 MS. TILLMAN: There's an amended complaint,
17 and -- hold on. I've got it right here.

18 Yes. Paragraph 24: The actions of the
19 MacLaughlins constituted a trespass.

20 THE COURT: There you go. All right.
21 Are you all ready? Bring the jury in.

22 (In open court, jury present.)

23 THE COURT: All right. Be seated.

24 All right. Are you Mr. Hays?

25 THE FOREPERSON: Yes, sir.

1 THE COURT: You're the foreman of the jury.
2 You'll find there is no extra pay involved. You just get
3 to write what the verdict is at the end of the trial.

4 Folks, I'm going to give you some preliminary
5 remarks, tell you about what we'll be doing over the next
6 couple days, but the first thing I need to remember to do
7 is to have the clerk administer your oath to you, so, if
8 you would, stand and raise your right hand.

9 (Whereupon, the jury was duly sworn.)

10 THE CLERK: Please let the record reflect all
11 14 jurors took their seats.

12 THE COURT: Folks, I like to give you some
13 opening remarks just to tell you what we're doing.
14 Sometimes people haven't ever served on a jury, and we
15 use some terms that aren't part of everyday language, and
16 if you haven't ever been on a jury, you probably have
17 only seen the way it is in TV and movies, and, you know,
18 it's somewhat like that, but we don't do it as fast as
19 they do it on TV. We don't resolve it within 58 minutes
20 and there's not commercial breaks every 8 to 12 minutes,
21 but there's a method to the madness. So I like to try to
22 explain it to you, and then we will get started with it.

23 This is a civil case. We have two types of
24 courts, civil and criminal, and criminal is known as
25 general sessions court and civil is known as common pleas

1 court, so if you're walking around and you see those
2 little TV cameras and it says common pleas court, that's
3 you guys. We're doing civil here today.

4 In a civil court, you have two parties,
5 usually. There's the plaintiff and there's the
6 defendant. The plaintiff is simply our big, fancy word
7 for the person that brings the lawsuit. The defendant is
8 the person that got sued. There's no allegations of
9 criminal actions in this case, so the fact that the
10 person is called a defendant doesn't make him accused of
11 a crime, it just means they're the person that got sued
12 and are defending the lawsuit. Okay?

13 You get started by having a complaint or
14 summons in complaint being filed, and it alleges what the
15 other side has alleged to have done wrong and what relief
16 they're seeking from it.

17 Now, the person that brings the lawsuit, the
18 plaintiff, has the burden of proof because they brought
19 the lawsuit, so they have to prove what they alleged.
20 Now, we have burdens of proof in both criminal cases and
21 civil cases, but they're different. In a civil case like
22 this, it's not as high a burden of proof as it is in a
23 criminal case where the State has accused somebody of
24 committing a crime. Here there's an allegation of
25 wrongdoing, but it's on the civil level, and, again,

1 there's been no allegations of commission of a crime.

2 So the person has to prove what they alleged
3 by a burden of proof that we call a preponderance of the
4 evidence, or, stated another way, the greater weight of
5 the evidence, or, even another way, is whatever the party
6 trying to prove more likely true than not.

7 Now, some of you may have grasped all the
8 intricacies of that and some of you are probably like me
9 and are visual learners and say, Huh? So it helps if you
10 see things sometimes if you're a visual learner, so
11 imagine that scale of justice you see, lady justice,
12 holding her hands out like that.

13 Well, you have two parties, the plaintiff and
14 the defendant. At the beginning of the trial, the scales
15 are even. Well, the preponderance or the greater weight
16 of the evidence means that the party who has the burden
17 of proof, the plaintiff, tips those scales just slightly
18 in their favor. They don't have to prove more than just
19 the preponderance or the greater weight of the evidence,
20 so it's just tipping the scales just slightly in their
21 favor.

22 If the plaintiffs tip the scales in their
23 favor, at the end of the trial, if that's what you feel
24 like they have done, then they're entitled to a verdict.
25 On the other hand, at the end of the trial if you think

1 those scales are still even, or maybe you even think they
2 tip in favor of the defendant, then the plaintiff has not
3 met their burden of proof and the defense is entitled to
4 a verdict.

5 Now, contrast that to a criminal case where
6 the burden of proof is what we call a preponderance of
7 the evidence -- or, excuse me, beyond a reasonable doubt.
8 Beyond a reasonable doubt is you have the State alleging
9 somebody has committed a crime. Well, the State has to
10 tip those scales quite a bit in their favor to prove
11 guilt beyond a reasonable doubt.

12 The law also says, well, you, the jury, have
13 to be firmly convinced of that person's guilt. Well,
14 that is a much higher burden of proof in a civil case
15 than in a criminal case, so it's not as high in a civil
16 case as it is in a criminal case, but the plaintiff still
17 has that burden of proof. The defendants do not have to
18 prove anything.

19 So because the plaintiffs have the burden of
20 proof, they get to put up their evidence first, and they
21 do that by way of calling witnesses, putting in
22 documents, photographs, that sort of thing. People are
23 testifying. They get up. They're put under oath, and
24 they tell you what they heard, they saw, they touched,
25 they felt, they smelt. That's evidence.

1 What's important to remember is that when the
2 lawyers are talking to you, they are not giving evidence
3 because they weren't there. They didn't see what
4 happened. They're advocates for their clients. So when
5 they speak, what they say is not to be considered by you
6 as evidence. Again, evidence is people telling you on
7 the witness stand what they heard, saw, touched, felt,
8 smelt, or the documents or the photographs that I allow
9 you to see.

10 When a lawyer asks a witness a question,
11 that's not evidence. The answer to the question is
12 evidence. Okay? So keep that in mind. And the reason I
13 point that out is often during the trial you hear more
14 from the lawyers than you do anybody else, including me,
15 all right? So that's an important thing to remember.

16 Now, we start off the trial with the lawyers
17 getting up and giving opening statements in which they
18 kind of give you what I call just a little Reader's
19 Digest condensed version of the trial; in other words,
20 they're just telling you what this case is about. It
21 helps you to understand what you're about to hear by way
22 of evidence. They're not, again, testifying, and I
23 usually just give them five, maybe ten minutes to give
24 you what their theory of the case is.

25 Then we move into evidence with the

1 plaintiffs calling their witnesses first. Because the
2 plaintiffs call the witness first, they get to ask the
3 questions first. That's called direct examination, but
4 the other side will then get to ask questions, and that's
5 called cross-examination. So after we have direct, we
6 have cross, and then I usually allow one follow-up round.
7 We have redirect, recross, so it's cross -- or direct,
8 cross, redirect, recross, and then we move on to the next
9 witness.

10 All right? So once the plaintiffs have put
11 in all of their evidence, the defense will have the
12 opportunity to call witnesses if they choose, and, again,
13 they're not required to because they don't have a burden
14 of proof in this case, but sometimes they do and
15 sometimes they don't. After you've heard all the
16 evidence in the case, then you will retire and consider
17 whatever your verdict will be. We'll have closing
18 arguments, excuse me, before we have your deliberations,
19 but once you've heard all the evidence, the lawyers will
20 get up, review the evidence, make closing arguments in an
21 attempt to persuade you to render a verdict on their
22 clients' behalf. I'll charge you on what the law is, and
23 then you'll retire to consider your verdict.

24 Now, we all have roles in this courtroom.
25 You are the jury, and you are considered judges, but

1 you're the judges of the facts, all right? You're going
2 to hear some discrepancies between the parties as to what
3 actually happened, and it's up to you to decide how to
4 resolve factual discrepancies, all right? You decide
5 things by just using credibility questions, the way you
6 would normally judge credibility: Does what this person
7 say make any sense to me? Does it look like they're
8 telling the truth? Do they have a bias or interest in it
9 or a prejudice in this lawsuit?

10 All of the things that you normally decide
11 credibility about you bring to the courtroom with you and
12 you decide how to resolve those factual disputes. My job
13 is two-fold: One, I'm the judge of the law in that I
14 tell you what the law is at the end of the trial and say,
15 All right. This is a case that involves trespass.
16 Here's the law of trespass. Here's what you consider in
17 order to help you decide if they've met the burden of
18 proving trespass, and if you do believe that, here are
19 things that you can consider on damages, so that's part
20 of my job. The other part is to preside over the trial
21 and make sure both sides get a fair trial. All right?

22 I don't have an interest in the outcome of
23 this lawsuit. The law doesn't permit me to have an
24 interest or an opinion, so during the trial I say
25 something and you think, well, that means the judge is

1 favoring one side or the other, you're reading it wrong,
2 okay? That's not my job. I'm just here to make sure
3 that we follow our rules of procedure and our rules of
4 evidence, and, procedurally, I told you pretty much how
5 the flow of the trial goes.

6 Rules of evidence are simply making sure that
7 we get the evidence in the best form that we can to you
8 so that you can judge whether or not it's reliable. So
9 sometimes you'll have a lawyer stand up and say
10 objection, and that is simply the code kind of word that
11 we have to say, well, Judge, you have to make a decision.
12 This person may be getting ready to say something that we
13 don't think is proper, or maybe the opposite, and I've
14 got to make a decision as to whether or not you can hear
15 it or not.

16 Sometimes because of just the context and
17 having some experience in this, I can say, well, you
18 know, I sustain the objection or I overrule the
19 objection. Sometimes I have to have the lawyers come up
20 and just give me a little brief "this is what our
21 objection is about" outside of your earshot. Sometimes I
22 have to send you out, back to the jury room or to the
23 hallway, just so I can hear what it is that the witness
24 is going to say in order to determine whether or not it's
25 proper for you to hear it, because I don't know anything

1 about this case very much.

2 I mean, I had a few papers to take home with
3 me last night, but, by and large, I don't know anything
4 more about this case than you know about this case at
5 this point, so I'll be hearing it for the first time as
6 well. So it doesn't do any good to have you hear
7 something that you're not supposed to hear and then just
8 say, well, you need to disregard that. You can do that,
9 and it's, you know, a thing that we do and you're under
10 an obligation at that point to say, well, I can't
11 consider that. The judge said not to consider that, but
12 it's better if I send you out and make a decision as to
13 whether or not you can hear it.

14 All I'm saying is those things happen. They
15 don't happen often, but they sometimes happen in trials,
16 so don't get upset or think we're trying to hide
17 something from you, is really my point. Everybody is
18 doing their job because we really only are trying to do
19 this one time. Nobody wants to have an error made and
20 then we have to come back and get another jury and retry
21 this case, so that's really, at least, my main objective,
22 is to try this case and do it one time and do it
23 correctly because this is these folks' day in court.

24 You'll hear this has taken a number of years
25 to get here. It's an important day for them, and so it's

1 a serious matter for them, so they're entitled to have
2 your attention and your respect, my attention and my
3 respect, and then we follow our rules. Whatever you
4 folks decide is the outcome, by and large, that's what we
5 live with. Okay?

6 So I'm going to turn this over now so that
7 the lawyers can begin with their opening statements. So,
8 Ms. Tillman, if you're making opening statements, you may
9 begin.

10 MS. TILLMAN: Thank you, Your Honor.

11 Good morning. My name is Ainsley Tillman,
12 and I, along with my cocounsel, Dana Sinkler, represent
13 the plaintiffs, Mr. and Mrs. Ralph.

14 First of all, we want to thank you all for
15 being here this morning. I know it requires a lot of
16 rearranging of your life and of your work and of your
17 child care, and we really appreciate your being willing
18 to serve on a jury this morning.

19 You'll be glad to know that this case is, at
20 its heart, pretty simple. It has its moments of
21 complication, but at its heart it's a simple property
22 dispute between neighboring property owners. You'll hear
23 testimony today that when my clients, the Ralphs,
24 purchased their home on Seabrook Island, they understood
25 that behind it, in its back yard, was a pipe. It was a

1 drainage pipe, and it ran all along the block, and also
2 when they purchased that home, they understood that there
3 was -- right over the pipe was designated a no-build
4 area.

5 And when they bought their home, they
6 understood that that was sort of the terms of how they
7 were buying their home. You'll hear testimony that they
8 lived happily in their home until a few years later when
9 the defendants, the McLaughlins, purchased the lot next
10 door. The lot had not had a house built on it at that
11 point. Several years passed, and you'll hear the Ralphs
12 testify that they learned that the McLaughlins' house
13 plans, or building plans, included a plan to dig up the
14 drainage pipe and to build their house on the no-build
15 area.

16 You'll hear that they objected, and you'll
17 hear that they involved the Seabrook Island Property
18 Owners Association. You'll hear testimony from a Mr. Bob
19 George. Mr. Bob George was hired by the Seabrook Island
20 Property Owners Association to do a study to see what
21 impact the McLaughlins' building plans would have on
22 their neighbors.

23 You'll hear that Mr. George did that study
24 and determined if the McLaughlins were to dig up the pipe
25 and build their house as planned that it could have a

1 negative effect on their downstream neighbors. You'll
2 hear testimony from the Ralphs that they objected in
3 meetings and in e-mails over and over again to the
4 McLaughlins' plans, but, nonetheless, you'll learn that
5 the McLaughlins went ahead with their building plans.
6 They dug up the pipe, and they built their house in the
7 no-building area.

8 Finally, you'll hear testimony from Mr. Nick
9 Thompson who is a real estate appraiser, and he will tell
10 you about the impact to the Ralphs' house that has
11 resulted from flooding which occurs because of the
12 drainage pipe having been dug up on the McLaughlins'
13 property. He'll testify as to the reduced value in the
14 Ralphs' property because of that drainage problem that
15 they're now experiencing.

16 We'll start off today to view the sort of
17 complicated issue. We'll start off today with the
18 testimony of Mr. Howard Yates. He's an attorney, and
19 he's going to be explaining to you how deeds and plats --
20 it's a fascinating law school subject -- how deeds and
21 plats work in the course of property transfers, so that
22 will be how we start, but we appreciate your attention
23 today, and thank you for your willingness to be here.

24 MR. O'KELLEY: May it please the Court:
25 Ladies and gentlemen of the jury, I too thank you for

1 being here. My name is Hamlin O'Kelley. Judge Young
2 introduced us yesterday. Thank you for your willingness
3 to serve. I know you don't have a choice, but we
4 appreciate you being here and giving us our day in court
5 as well.

6 I am here today with my clients that Judge
7 Young introduced to you yesterday, Paul McLaughlin and
8 Susan McLaughlin. Mr. and Mrs. McLaughlin own property
9 on Seabrook Island, here in Charleston County. They had
10 lived in Winston-Salem, North Carolina for years.

11 Mr. McLaughlin runs a charitable foundation
12 called Moravian Ministry Foundation, which helps the
13 Moravian church establish new churches or ministries
14 around the country, helps Moravians with financial
15 planning. Ms. McLaughlin just recently retired from
16 being a schoolteacher in North Carolina. She retired as
17 the lead counselor at a middle school.

18 It is true that the McLaughlins own property
19 at lot 22 block 32 at 3016 Baywood Drive. Their
20 neighbors are the Ralphs, who are also in the courtroom
21 here today. They bought this property back in October of
22 2001, and at the time they purchased the property, and
23 you'll see this from the deeds that will be given to you,
24 they bought this property from the Gantzes, a fellow
25 named Carroll and a lady named Elaine Gantz. And when

1 they bought this property back in 2002, the Gantzes told
2 them that the Seabrook Island Property Owners Association
3 had a drainage easement -- and the judge will explain to
4 you the law of easements at the end of the case -- had a
5 drainage easement on the north side of their property.

6 The Gantzes also told the McLaughlins that
7 the POA met, the property owners association met, and by
8 an affirmative vote of its board abandoned the easement.
9 When my clients took title to their property -- and,
10 again, you'll see it in the deed -- they took title in
11 reference to a plat, and as Ms. Tillman just told you,
12 we're going to have deeds and plats, a first semester
13 property law course here today. But under the deed to my
14 clients, the plat they took title to showed the property
15 owners association had clearly abandoned their easement.

16 The McLaughlins at the time were still busy
17 with their careers, working, and four years went by
18 before they could have, basically, the wherewithal to
19 build on their lot. And in 2006, the McLaughlins hired
20 an architect. The architect came up with plans, and
21 those plans were submitted to the Seabrook Island
22 Property Owners Association. And nothing gets built on
23 Seabrook Island or Kiawah Island and certain places like
24 that unless you have the approval of your property owners
25 association through what is called its board of

1 architectural review.

2 My clients will testify that they went back
3 and forth with the board of architectural review, and
4 eventually their plans were approved. Their plans were
5 approved to build their house where it's currently
6 situated in the former no-build area granted to the
7 Seabrook Island Property Owners Association, and I think
8 that's important for the testimony to bear out, that my
9 clients went through a lot of time and effort with the
10 property owners association to build in this no-build
11 area with the abandoned easement.

12 My clients then, as they were processing
13 along in the building of their house, the neighbors, such
14 as the Ralphs, started objecting, saying, Wait a minute.
15 We don't want these people to build in here because
16 basically what the testimony will show is the Ralphs were
17 essentially mad because they were building on the
18 formerly empty lot.

19 The evidence will also show that in 2007 the
20 Ralphs received a copy of a letter to my clients, and in
21 that letter, it stated -- it's from the Seabrook Island
22 Property Owners Association, and we'll provide the letter
23 to you -- that the plan had been approved, that the
24 POA knew they were going to build in the no-build area,
25 and the POA said, Any responsibility for moving the pipe

1 is on you. Good luck. That was in 2007.

2 My clients then proceeded to build, and they
3 built their house, and the Ralphs had never done anything
4 except complain about this house and say that it has
5 somehow cause caused a drainage issue for them and my
6 clients somehow trespassed on their property. The
7 evidence in this case will show the lot's on Baywood
8 Drive, backs up to a golf course, and that golf course is
9 built on an old dune line. Seabrook Island, being a
10 barrier island, there are dune lines all over the island,
11 and this property is low.

12 We'll present to you the deposition of Mr.
13 and Mrs. Ralph in which they both agreed that their
14 property had flooding issues before my clients even
15 thought about building on their property. We'll also
16 present evidence to you that will show that Mr. Ralph is
17 a decorated fighter pilot, flew lots of tours in Vietnam,
18 and was basically complaining about having a few inches
19 of standing water in his yard after rain, which he
20 testified to in his deposition, and we'll present this to
21 you, happened before my clients built their home and
22 after my clients built their home.

23 Judge Young will present the law to you in
24 this case. In his presentation, he will explain to you
25 the law of trespass because that is what my clients are

1 alleged to have done to the Ralphs' property. The
2 evidence that we'll show you in this case will prove that
3 my clients did not set one toe on to the Ralphs' property
4 and haven't done anything to create a trespass.

5 We're confident that once you listen to all
6 the evidence, you'll return a verdict in our favor.
7 Again, I thank you for your service and we look forward
8 to presenting our case to you today.

9 THE COURT: All right. Plaintiffs, call your
10 first witness.

11 MR. SINKLER: Mr. Yates.

12 JOSEPH HOWARD YATES,
13 having been first duly sworn,
14 was examined and testified as follows:

15 DIRECT EXAMINATION

16 THE WITNESS: My first full name is Joseph
17 Howard Yates, Junior, and Yates is Y-a-t-e-s.

18 BY MR. SINKLER:

19 Q. Mr. Yates, how old are you?

20 A. I'm 65.

21 Q. And when did you become a lawyer?

22 A. I was admitted to the bar in 1985.

23 Q. Prior to that, had you done any work in real
24 estate?

25 A. Yes. I was a real estate paralegal for my father

1 for about five or six years before I went to law school.

2 Q. And when did you complete law school?

3 A. I finished in December of 1984.

4 Q. And have you practiced real estate law then?

5 A. I have, yes. Since then, I've done primarily real
6 estate and probate and estate law.

7 Q. Have you practiced in various counties?

8 A. Yes. I've practiced in Charleston County,
9 Berkeley, and Dorchester.

10 Q. And have you also practiced in the master's office
11 also?

12 A. Yes, I have.

13 Q. And what have you done there?

14 A. I have had the opportunity to give expert
15 testimony in cases concerning land.

16 Q. Have you been granted permission to -- I mean,
17 have you been granted that you are an expert in that area
18 by judges?

19 A. Yes. Judge Michael Scarborough has recognized me
20 as an expert witness on several occasions.

21 Q. You've practiced law for 30 years now.

22 A. Thirty-one, approximately.

23 Q. And it's all been in real estate?

24 A. Yes.

25 MR. SINKLER: I would tender him as an expert

1 in the field of real estate.

2 THE COURT: Any objection, or do you wish to
3 voir dire?

4 MR. O'KELLEY: Your Honor, I need to voir
5 dire because I don't have any copy of reports or opinions
6 or anything --

7 THE COURT: Well, you can voir dire him on
8 his qualifications.

9 MR. O'KELLEY: Thank you, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. O'KELLEY:

12 Q. Mr. Yates, in this case, have you written a
13 formal -- excuse me. Let me ask you this: How many
14 times have you been approved as an expert witness,
15 Mr. Yates?

16 A. Probably about four or five times.

17 Q. And when was the last time, Mr. Yates?

18 A. It was probably three years ago.

19 Q. And what areas of expertise have you been allowed
20 to opine in?

21 A. As to ownership of land.

22 Q. Okay. Have you ever been approved as an expert as
23 to trespass to property?

24 A. Not on that specific area.

25 Q. Okay.

1 MR. O'KELLEY: That's all the questions I
2 have right now, Your Honor.

3 THE COURT: Do you have any objection to his
4 being qualified as an expert?

5 MR. O'KELLEY: No, sir.

6 THE COURT: All right.

7 Well, you know, folks, a few minutes ago I
8 just told you about when we have witnesses testify, they
9 tell you what they heard, they saw, they touched, they
10 felt, they smelt. We don't normally let witnesses get up
11 and give you their opinion about evidence.

12 Well, the law says that when somebody,
13 because of specialized training or experience or
14 education in some field, rises to the level of expertise,
15 we allow them to come in to court and testify as an
16 expert within their field of expertise. They not only
17 can tell you about their observations, but they can give
18 you their opinions about those things within certain
19 parameters and give you the basis for their opinion.

20 This witness has now been qualified as an
21 expert in the area of real estate law and will be allowed
22 to testify in the form of an opinion as well. Now,
23 expert witnesses, you are not automatically required to
24 give their testimony any greater weight than you will any
25 other testimony that you will hear or any other evidence

1 that you hear. You decide how much weight to give this
2 witness's testimony based on all of the evidence that
3 you'll hear throughout the trial.

4 All right? Mr. Sinkler, you may resume.

5 MR. SINKLER: Thank you, sir.

6 REDIRECT EXAMINATION

7 BY MR. SINKLER:

8 Q. Did you at my request examine the title to the
9 property owned by Mr. and Mrs. Ralph?

10 A. Yes. I examined the title to the Ralphs' property
11 and to the McLaughlins' property. My title examination
12 involved the examination of records in the Register of
13 Mean: Conveyance office where these mortgages,
14 easements, et cetera, are kept. My search went from the
15 present to approximately 1985.

16 Q. And did you find the deed to the Ralphs?

17 A. Yes, I did.

18 Q. And the chain of title?

19 A. Yes.

20 Q. I'm going to hand you Plaintiff's Exhibit 1 and
21 ask you if this is the title to the real estate.

22 A. Mr. Sinkler, what I like to -- I use the term
23 chain of title. When you use the words, the phrase chain
24 of title, what that essentially is, is a list of owners
25 in a chain, just like you would see a chain, each owner

1 is a link.

2 And this deed that you have presented to me is a
3 deed from Seabrook Ventures to Richard and Eugenia Ralph,
4 and it is a deed that was dated March the 19th, 1997, and
5 it was recorded on April 10th, 1997, and it conveyed to
6 them lot 23, block 32, as shown on a plat in plat book
7 BN at page 49.

8 Q. Okay. We have a copy of the plat over here. You
9 want to come down and perhaps --

10 A. Yeah.

11 Q. Was there anything other than the plat that
12 describes what the deed actually conveyed?

13 A. Well, the deed conveyed lot 23, block 32 and what
14 I pointed out is this rectangular land here. I'm not
15 sure if the jury can see.

16 It conveyed lot 23, this is in block 32, to the
17 Ralphs, and it conveyed it -- well, subject to all the
18 deed restrictions and requirements that you buy into when
19 you buy into a development like Seabrook or Kiawah. They
20 have rules and regulations that you automatically assume,
21 and what it did, it referenced -- and this is a term of
22 art. It incorporated by reference this plat that we're
23 looking at right here, and a plat is a horizontal
24 representation of a tract of land, and it incorporated
25 plat book -- recorded in plat book BN at page 49.

1 This is BN 49, and what it does by the conveyance,
2 it conveyed lot 23, block 32, but it also gave everyone
3 that purchased, particularly in this area here, a special
4 property interest in this easement. This easement was
5 dedicated; that is, it was offered, and it was accepted
6 by the property owners who purchased these lots.

7 And so lot 23 had a special property interest by
8 virtue of purchasing -- according to this deed and the
9 plat that's incorporated herein, they acquired a special
10 property interest in this easement that goes vertical and
11 goes horizontal. This is the area that is the subject
12 matter of this dispute.

13 And so this one deed --

14 MR. O'KELLEY: Your Honor, is there a
15 question pending?

16 THE COURT: I don't know. He's answering the
17 original one. He's kind of explaining still, I guess,
18 what he's asking him.

19 THE WITNESS: This deed says all streets,
20 easement shown are private and are to be maintained by
21 the Seabrook Island company, its successors and assigns.
22 The easements are owned by the people that purchase
23 according to this plan. They have a special property
24 interest or right in those easements that protects them,
25 according to the design and layout of the easements.

1 They have an interest in those easements as well as their
2 lot.

3 Q. Is that a legal interest?

4 A. Yes. According to the cases, this interest is
5 referred to as a special property interest, and it is an
6 interest that must be addressed. It's a legal or
7 equitable interest. It is an interest, whichever you
8 call it.

9 Q. All right. And how could that interest -- how
10 could that interest be abandoned?

11 A. Well, the only way it could be abandoned is for
12 everyone, at the minimum, everyone that has a special
13 property interest in that easement to join in an
14 instrument stating that they're all in agreement and they
15 want to close the easement.

16 In addition, because so many people have mortgages
17 on properties, the mortgage holders who hold equitable
18 interest in real property that they may divulge, they
19 have to join in it too, so it is a very cumbersome
20 process. And, least of all, you've got to have all of
21 the people, at least on that area that are benefitting
22 from that easement, to all join in. One person cannot
23 unilaterally close off an easement.

24 Q. Did the property owners association have the right
25 to abandon anything?

1 A. No. Categorically, no.

2 Q. So then the only way to do that would be, as you
3 say, for everybody to agree?

4 A. You've got to get the Ralphs to agree; you've got
5 to get everybody that's downstream to agree.

6 Q. How could a person interested in determining
7 whether or not the property owners association had that
8 authority to determine whether that would serve?

9 A. Well, all they would need to do is hire an
10 attorney and have the attorney look at the deed, and
11 these deeds are online. You can look at them from a
12 desktop at home, or they could go to the Register of
13 Mean: Conveyance office which is right next door and
14 look at the deed and also look at the plat, and the plat
15 will tell you, just by looking at it, that this is an
16 easement. You've got the vertical and you've got the
17 horizontal easements, but the knowledge of case law
18 concerning easements and dedication, it's apparent --
19 should be apparent to anyone who's finished Property One
20 and Two that there are interests that are held by other
21 people.

22 Q. How much time would it take for a person -- a
23 property lawyer to do that?

24 A. Well, logistically, if you didn't have a computer
25 on your desk to look at, you'd have to come down to the

1 Register of Mean: Conveyance office, but once you're in
2 there, you open up whatever books are necessary, it would
3 take you 20 minutes, half an hour.

4 Q. What would it cost?

5 A. I charge \$175 an hour -- and I don't know. It
6 might cost \$100 or so to look and determine whether or
7 not there are entities that have interests in this, and
8 from a very, you know, easy perspective, all you have to
9 do is look at it and see. If you know the easement laws,
10 you can determine.

11 Q. Now, did you also do the title on the McLaughlins'
12 property?

13 A. Yes. I examined the title. I examined the chain
14 of title, that is, the list of owners, from the present
15 back to approximately 1985.

16 Q. And what did you find?

17 A. Well, I found, in all of the deeds back in the
18 chain of title, there was included in each deed, in each
19 legal description, a requirement that the property was
20 purchased subject to the two easements and subject to a
21 no-build zone. And the no-build zone, in my opinion, is
22 there so that heavy equipment can get into that area in
23 order to maintain the drainage pipes.

24 These are big culverts, and that is the reason
25 that you have no-build zone and that you have the

1 easements on all of the lots. The lot that the
2 McLaughlins have has a no-build zone, the lot that the
3 Ralphs have has a no-build zone, and all of them have
4 easements. The no-build zone is to get heavy equipment
5 in there and to provide access to the drainage pipe.

6 Q. Did you look at a plat that is in the deed by
7 which the McLaughlins got their property?

8 A. Yes, I did.

9 Q. And what did you find there?

10 A. I saw that there was a plat that unilaterally
11 terminated the easement; that is, the easement that dealt
12 with particularly the horizontal easement and also
13 eliminated the no-build zone, and that's an area where
14 you want to be able to get heavy equipment in, and it
15 unilaterally terminated those easements.

16 Q. In your opinion, did they have a right to
17 terminate that easement?

18 A. No. I mean, they could do whatever they want,
19 but, in my opinion, it's not enforceable because they
20 didn't get the consent of those that are most impacted by
21 the drainage.

22 Q. And that would be the other seven owners?

23 A. At least the other seven and their mortgage
24 holders.

25 Q. And that's the deed that you found?

1 A. Yes. The deed that I looked at incorporated by
2 reference, not the plat that the Ralphs purchased, but it
3 incorporated by reference a plat that was done
4 unilaterally by the McLaughlins. It was drawn by
5 Forsberg Engineering, and it unilaterally terminated
6 those easements.

7 Q. Let me show you Exhibits 3 and 4 and ask if these
8 are what you are talking about.

9 A. Exhibit 3 is a deed in the chain of title, and
10 it's from Carroll M. Gantz and Lorraine D. Gantz to Paul
11 Dennis McLaughlin and Susan Rode McLaughlin as joint
12 tenants with right of survivorship, and this deed was
13 recorded in book L-421 at page 820, and it was signed on
14 October 1st, 2002 and it was recorded in the Register of
15 Mean: Conveyance office on October 9th, 2002, and its
16 legal description referenced this as lot 22, block 32 as
17 shown on this plat that is referred to as Exhibit 4.
18 This is the plat that was done by Forsberg Engineering
19 that unilaterally terminated the easements that were
20 shown on plat -- that included the easements, and this
21 plat that included the easements is Exhibit 4. My eyes
22 aren't good enough to get the exact book and page, but
23 it's identical to the plat that we have on the easel.

24 Q. Did the deed that went to the defendants, did
25 that --

1 A. It eliminated the no-build zone, and it also
2 eliminated the easement.

3 Q. Did it have any reference to other things that the
4 lot was charged with, other -- was there anything in the
5 deed or plat that spoke of other --

6 A. Well, it says --

7 Q. -- obligations?

8 A. Remarkably, it has, This conveyance is subjective
9 to any and all restrictions, covenants, easements,
10 rights-of-ways, and matters and conditions of record.
11 So, essentially, they have recorded this plat that
12 eliminates the easement, and then in the legal
13 description they say that it is subject to the easements.

14 Q. Thank you. Is this the plat by which the
15 McLaughlins' property --

16 A. Could I come down from the stand and look at that?

17 Q. Yeah.

18 A. This is the plat that is an exact duplicate of the
19 original plat that I referenced a little while ago: Lot
20 23, block 32. They've got an easement here. We've got
21 an area that says no-build zone right here on the bottom
22 on the north side of the lot, and the only difference
23 between these two plats is that there is, written on the
24 side of the plat, that the plat was conditionally
25 approved, and it says conditionally approved under

1 bonding and surety provisions. That is a provision on
2 plats that established that the developer has put enough
3 security, surety bond out there to complete the roads and
4 do the subdivision development.

5 It doesn't mean the lots have changed or anything,
6 it just means that if you buy a lot, you're buying it
7 subject to a surety coming in and completing all of the
8 roads and amenities because they haven't been included at
9 that time.

10 MR. SINKLER: Your witness.

11 RE-CROSS EXAMINATION

12 BY MR. O'KELLEY:

13 Q. Thank you. Thank you, Your Honor. Mr. Yates, how
14 much have you been paid to date in this case?

15 A. \$800.

16 Q. That represents how much time?

17 A. I can't multiply it in my head very well, but --
18 seven hours.

19 Q. It represents almost seven hours if we take your
20 hourly rate?

21 A. Yes.

22 Q. Besides Mr. Sinkler and Mr. Tillman, who else have
23 you talked to in this case to create your opinion?

24 A. That's all.

25 Q. Okay. And then, of course, you testified a few.

1 minutes ago you reviewed plats and the chain of title,
2 correct?

3 A. I did. I also went to the site and walked it.

4 Q. The plat you referenced that shows the -- I've got
5 two. There are actually copies in front of you,
6 Mr. Yates, if that makes life easier, the Forsberg
7 Engineering plat.

8 A. I don't think I have that one in front of me.

9 Q. Forsberg Engineering plat, that plat was made --
10 can you tell the jury the date of that, if you can read
11 it? Let's do it this way: It may be easier to read on
12 McLaughlins' deed.

13 A. I've got the date. It was dated, that is, it was
14 drawn on January 17th, 2001.

15 Q. And can you tell the recording date? If I tell
16 you it was recorded September 11, 2002 at plat book EF at
17 page 883 -- it's hard to read on there.

18 A. I think that's correct.

19 Q. All right. And, Mr. Yates, you've been qualified
20 as an expert witness in this court. People take deeds in
21 South Carolina subject to plats all the time, do they
22 not?

23 A. The plat becomes part of the deed for descriptive
24 purposes.

25 Q. And that's the Blue Ridge Realty cases, for all

1 intents and purposes; if something is on a plat and it's
2 part of your deed, then that plat becomes part of your
3 deed, correct?

4 A. I think you're a little confused on that --

5 Q. I'll withdraw the question. Let me ask it this
6 way: When my clients took title to their property, they
7 took title with a reference to the Forsberg Engineering
8 plat, did they not?

9 A. Yes.

10 Q. And that plat is incorporated as part of their
11 property description, correct?

12 A. Yes.

13 Q. And can you, again, tell the jury the date of the
14 deed from the Gantzes to my client, clients?

15 A. The date of the Gantzes' deed is October 1, 2002.

16 Q. Go ahead. Sorry.

17 A. It was recorded October 9th, 2002.

18 Q. And that was after the Forsberg Engineering plat
19 had been recorded, correct?

20 A. Yes.

21 Q. And my clients took title subject to the Forsberg
22 Engineering plat, correct?

23 A. Well, they took title subject to the earlier ones.

24 Q. But this plat, the Forsberg Engineering plat, is
25 specifically referenced in your deed, correct?

1 A. Yes, but so were the others by implication.
2 They're all included in the derivation clause. You can't
3 escape and willy nilly decide, I don't want to take this;
4 I don't want to take that. They took it subject to the
5 prior plats as well.

6 Q. And the easement that you've described on the
7 prior plat, the drainage easement, that was in favor of
8 Seabrook Island Property Owners Association, correct?

9 A. It was dedicated by whoever it was that drew
10 the -- developed that tract, but under multiple real
11 estate cases -- as you mentioned, Blue Ridge Realty vs.
12 Williamson, and I'll mention Carolina Land vs. Blaine,
13 these interests are special property interests, and those
14 exact words are used in those decisions that say that
15 anyone that buys according to a plat that has roads,
16 alleys, avenues, areas, particularly no-build areas, on
17 them, then they have a special property interest in those
18 and that one person cannot unilaterally say, I don't want
19 to be subject to that.

20 Q. I'll ask the question again: Was the easement in
21 favor of the Seabrook Island Property Owners Association
22 to your understanding?

23 A. No. It was to the interest of everybody that
24 purchased on that plat.

25 Q. And have you seen a written grant of easement for

1 that drainage easement?

2 A. A written grant, no. It's not necessary because
3 it's on the plat.

4 Q. But, again, my question was you haven't seen a
5 separate document, correct?

6 A. Well, I see it on the plat, but I haven't seen it
7 on a separate document.

8 Q. Did you review any of the Seabrook Island Property
9 Owners Association minutes from 2002 where they abandoned
10 the easement, or attempted to abandon the easement?

11 A. Yeah. I've examined some of them. I'm not that
12 fresh with those.

13 MR. O'KELLEY: Thanks, Mr. Yates.

14 THE COURT: Redirect?

15 MR. SINKLER: One more.

16 REDIRECT EXAMINATION

17 BY MR. SINKLER:

18 Q. Mr. Yates, in your words, why is the language of
19 the McLaughlin deed and/or the Forsberg plat insufficient
20 to extinguish the easement and the no-build zone?

21 A. Well, Mr. Sinkler, you cannot unilaterally take
22 restrictive covenants out of your deed. I think a lot of
23 people would like to say, well, I don't want that
24 drainage easement in my back yard, but that drainage
25 easement connects to somebody else's back yard, or if

1 they say, well, I don't like this power line that goes
2 over my house, over my lot, I'm going to take it down,
3 you can't do it because you've got to get consent from
4 everyone that has that special property interest in that
5 easement to agree.

6 The deed that we were talking about is a
7 unilateral deed. It's very self-serving, and it doesn't
8 accomplish anything as it relates to the extinguishment
9 of the easement, in my opinion.

10 MR. SINKLER: Thank you.

11 MR. O'KELLEY: Just one quick question, Your
12 Honor.

13 RECROSS EXAMINATION

14 BY MR. O'KELLEY:

15 Q. Mr. Yates, the deed from the Gantzes is not to the
16 McLaughlins, correct?

17 A. The deed to -- well, from the Gantzes to the
18 McLaughlins?

19 Q. Correct. The McLaughlins didn't execute that
20 deed, the Gantzes did, correct?

21 A. Correct.

22 Q. And until the deed was recorded, my clients didn't
23 own the property, correct?

24 A. Correct.

25 MR. O'KELLEY: Thank you, sir.

1 THE COURT: You may step down.

2 THE WITNESS: Thank you.

3 THE COURT: Next witness?

4 MS. TILLMAN: Your Honor, we would like to
5 call Mrs. Ralph to the stand.

6 EUGENIA RALPH,
7 having been first duly sworn,
8 was examined and testified as follows:

9 DIRECT EXAMINATION

10 THE WITNESS: Eugenia Ralph, R-a-l-p-h.

11 BY MS. TILLMAN:

12 Q. Good morning, Ms. Ralph. Would you tell us a
13 little bit about yourself. Where are you from? Where
14 did you grow up?

15 A. Well, my husband and I live at 3055 Baywood Drive.
16 We moved there, to Seabrook, 20 years ago from
17 Philadelphia in Pennsylvania. We are very happy in
18 Seabrook, and we retired there as well, even though I do
19 work a couple days a week.

20 Q. Where do you work?

21 A. I work at Kiawah Golf Resort at the Sanctuary
22 Hotel.

23 Q. Tell us, when did you decide to move down here to
24 Charleston?

25 A. It was -- probably we would have done it as soon

1 as we were introduced to this beautiful area. My husband
2 brought me here in the late '80s, early '90s, and we
3 started out renting -- or, actually staying at the old
4 inn in Kiawah and then quickly we came and started to
5 rent on Seabrook. And the Lowcountry -- my husband loves
6 history, the beauty of Charleston, and it's such a lovely
7 place to be, certainly with Seabrook. We're a member of
8 the Seabrook Island club. My husband's an avid golfer.
9 I play a lot of tennis, and we decided, after several
10 journeys here, we probably would come here maybe three
11 times a year, that we would like to have and own a small
12 villa, and then we quickly stumbled upon this house at
13 3055 Baywood Drive and we purchased that so we moved down
14 after we came here.

15 Q. All right. And I'm going to show you what's been
16 marked as Plaintiff's Exhibit 1. Is this the real estate
17 title to your property?

18 A. Yes.

19 Q. And tell me, when you bought your house, did
20 you -- were you aware that in your back yard was an
21 easement and a no-build area and a pipe running
22 underneath it?

23 A. Yes.

24 Q. And what was your understanding of the function of
25 that pipe? What did you think it did?

1 A. It drained water from the -- the water that would
2 be in our back yard.

3 Q. Which would come from rain --

4 A. Rain, yes, yes.

5 Q. And the no-build area, what did you understand the
6 function of that was?

7 A. It's a no-build area. You're not going to build
8 over it at all.

9 Q. That's a good answer. Now, tell me, when you
10 first moved into your house and had lived there for a
11 little while, when it rained, tell me what happened in
12 your back yard. This would be before the McLaughlins
13 purchased their lot.

14 A. We would have puddles of rain that would be in our
15 back yard, but the advantage of having the drainage pipe
16 helped dissipate the puddles.

17 Q. I see. And when you -- well, about how much water
18 would you say you got in your back yard before the
19 McLaughlins' construction? Let's say there was a big
20 heavy rain, and while you're answering that question,
21 about how long would it take for that water to dissipate?

22 A. After a heavy rain?

23 Q. Yes.

24 A. We might have, after a heavy rain, an inch, but it
25 really would depend, you know, how much rain we had, but

1 it would certainly dissipate quicker than it does now.

2 Q. Let's move on to the McLaughlins, when you first
3 learned they purchased the lot. Well, when did you first
4 learn about their plans to build on the lot?

5 A. It was June of 2007.

6 Q. All right. And how did you find out about that?

7 A. A letter.

8 Q. A letter -- from whom was the letter?

9 A. From John Thompson at Seabrook Island Property
10 Owners office.

11 Q. And who was John Thompson?

12 A. Managing director of Seabrook Island.

13 Q. And what specifically did he inform you? Or did
14 he inform you specifically or was it a --

15 A. No.

16 Q. How did you find out?

17 A. It was in a letter, that there was a concern about
18 a drainage pipe in June of 2007.

19 Q. Okay. And when you heard about the McLaughlins'
20 plan to build their house, what was your reaction?

21 A. Well, we certainly have been there longer than --
22 well, I'm sorry. Ask the question --

23 Q. When you first heard about the McLaughlins'
24 construction, when you learned they planned to build part
25 of their house in the no-build area, what was your

1 reaction?

2 A. That the drainage pipe was going to be coming up,
3 and we knew that that pipe served a purpose and function.

4 Q. All right. Did you raise any objections at the
5 time? Did you contact --

6 A. Well, my husband had gone to the office and
7 certainly knew that this pipe had functioned and asked to
8 have a report from the engineering company that would
9 state that it really is serving a purpose.

10 Q. Well, now, who did he ask? Did he ask the
11 Seabrook Island Property Owners Association to examine
12 the effect of the pipe and --

13 A. He went to John Thompson.

14 Q. Okay.

15 A. He went to the board of the property owners
16 association.

17 Q. And I will show you what -- so much paper.
18 Actually, I'd like to show you an e-mail, any moment now,
19 from John Thompson. Forgive me. I have copious amounts
20 of paper here.

21 All right. I'd like to show you an e-mail. Can
22 you tell me who this e-mail is from.

23 A. John Thompson.

24 Q. All right. And to whom is it addressed? Sorry.
25 The print is tiny.

1 A. To owners of lots 21 through 28, block 32.

2 Q. What is your lot?

3 A. 23.

4 Q. And the McLaughlins' lot is --

5 A. 22.

6 Q. Okay. So this e-mail would have included yourself
7 as well as the McLaughlins?

8 A. Yes.

9 Q. Yes. And can you read to me what the e-mail says?

10 A. Our e-mail address is not on there.

11 Q. Can you read to me this?

12 MR. O'KELLEY: Your Honor, just -- I'm not
13 sure what we're referring to. Has this been premarked as
14 an exhibit?

15 MS. TILLMAN: It has.

16 THE COURT: Which one is it?

17 MR. O'KELLEY: It hasn't been premarked. May
18 I just --

19 MS. TILLMAN: May I take this back? Yes.

20 MR. O'KELLEY: Your Honor, I'm going to have
21 to object to any testimony about this. It's hearsay.
22 It's an out of court statement provided for the matter --
23 the truth of the matter asserted herein from John
24 Thompson who is not here to a bunch of other people and
25 it's got a letter attachment to it as well. That would

1 also be hearsay.

2 MS. TILLMAN: Well, Your Honor, we're not
3 offering it for the truth of the matter asserted but,
4 rather, to demonstrate that the McLaughlins had notice
5 and were aware of the study by Mr. George and also of
6 this meeting that was soon to transpire.

7 THE COURT: Okay. Well, if it's for that
8 purpose then it's not hearsay. Overruled.

9 MS. TILLMAN: I'd like to mark this, please,
10 as Plaintiff's Exhibit 12.

11 (Plaintiff's Exhibit No. 12 was marked for
12 identification and admitted into evidence.)

13 BY MS. TILLMAN:

14 Q. In your estimation, what would be a fair summary
15 of this e-mail? What does it announce to the property
16 owners?

17 A. This is actually the summary of Mr. George's
18 report, attachment to his report.

19 Q. Okay. What was Mr. Thompson --

20 A. Oh, a meeting?

21 Q. Yes.

22 A. Thank you. The -- it's a meeting that was being
23 held on September 29th at 10 a.m. for the property owners
24 with the lots that were involved to go over the situation
25 at hand with the easement and the drainage pipe.

1 Q. So this e-mail announcing a meeting, it included
2 all the lot owners on your lot, correct?

3 A. Yes.

4 Q. Including yourself?

5 A. Yes.

6 Q. And including Mr. McLaughlin and Mrs. McLaughlin?

7 A. Yes.

8 Q. And what is your recollection of that meeting?
9 Did you attend that meeting?

10 A. I did.

11 Q. You did? Did the McLaughlins attend that meeting?

12 A. Mr. McLaughlin did.

13 Q. And was he alone?

14 A. No.. He came with his lawyer. He came with his
15 architect. He came with his builder.

16 Q. All right. And what is your memory of that
17 meeting? What was said and by who?

18 A. I'm sorry?

19 Q. What was said and by whom was said at that
20 meeting, do you remember?

21 A. We were trying to find a way to maintain that
22 pipe, the drainage pipe. It was very, very important,
23 and it was also at that time where Mr. George said that
24 the pipe did serve a purpose --

25 MR. O'KELLEY: Your Honor, I'm going to have

1 to object. This exhibit was offered for proof of the
2 notice of the meeting. I'm going to have to object to
3 Mrs. Ralph telling us what Mr. George said.

4 THE COURT: Sustained.

5 BY MS. TILLMAN:

6 Q. Tell me, were you in attendance at this meeting?

7 A. Yes.

8 Q. And did you at the meeting object or did you or
9 your husband object to the McLaughlins' building plans?

10 A. Yes.

11 Q. And when you did so, what was your purpose for
12 doing so? Why did you tell Mr. McLaughlin that you were
13 objecting?

14 A. Because of the easement and the drainage pipe, to
15 maintain the drainage pipe because it did serve a purpose
16 and function.

17 Q. All right. And tell me, what was the, as it were,
18 the upshot of that meeting? What was resolved at that
19 meeting between the members of the POA and the owner of
20 the lots on block, on your block?

21 A. Really, nothing was resolved because we really
22 could not come to a conclusion except the drainage -- the
23 pipe did serve a purpose and was in good shape to stay in
24 place.

25 Q. All right. So would it be fair to say that you

1 left that meeting with a hope that some resolution would
2 be reached?

3 A. I was hopeful that it would. I was always hopeful
4 that that would happen.

5 Q. Right.

6 A. But it just didn't.

7 Q. I'm going to show you what's been marked as
8 Plaintiff's Exhibit No. 6. Can you describe from whom
9 this e-mail comes?

10 A. It comes from John Thompson.

11 Q. Okay. And can you tell me -- could you read to me
12 what he says.

13 A. Certainly. We do not have -- Paul and all: We do
14 not have a plan --

15 Q. And let me interrupt you. Is Paul Mr. McLaughlin?

16 A. Yes.

17 Q. Is his address included in the e-mail?

18 A. Yes.

19 Q. All right. Go ahead.

20 A. We do not have a plan that we believe will satisfy
21 all property owners, as some would like to leave
22 everything as it is and others would like to have things
23 changed, hence the need for the Monday powwow to share
24 mutual concerns, and, if we're fortunate collectively,
25 perhaps reach some agreement.

1 That's really small print.

2 Q. I'm sorry. It is very fine print. All right.

3 And now would you read also paragraph two.

4 A. Allowing removal of the drain pipe across lot 22
5 could possibly affect the drainage on the other lots in
6 the areas. Removing any portion of the pipe would give
7 rise to need through some complimentary improvements in
8 order to ensure drainage on the neighbors' lots.
9 Easements would be necessary.

10 Q. Okay. Thank you very much. All right.

11 Now, I'm going to ask you to look at some e-mails
12 and verify they are a correct copy. First of all, from
13 whom is this e-mail sent?

14 A. This is from Bill Crader.

15 MR. O'KELLEY: Your Honor, I'm not sure what
16 we're looking at, if you could just identify what we're
17 looking at.

18 MS. TILLMAN: This e-mail also has not been
19 admitted into evidence.

20 MR. O'KELLEY: I just want to know which one
21 we're looking at, that's all.

22 Thank you, Your Honor.

23 THE COURT: If it's a document that has not
24 been agreed upon, you need to show it to him before you
25 show it to the witness, okay?

1 MS. TILLMAN: I'm sorry.

2 MR. O'KELLEY: Your Honor, I'm going to
3 object to the document which was just shown to me. It's
4 an e-mail from somebody named Bill Crader to John
5 Thompson and Dale Foster. My grounds are that it is
6 hearsay and should not be admitted.

7 MS. TILLMAN: Your Honor, again, I'm actually
8 not going to ask Mrs. Ralph any questions about these
9 e-mails. I just want her to verify their authenticity.
10 I plan to ask a later witness about them, and I will not
11 introduce them again for the truth of the matter asserted
12 but, rather, to show notice.

13 MR. O'KELLEY: And, Your Honor, there are no
14 questions being asked.

15 THE COURT: She's just establishing
16 authenticity at this point, she's not asking for
17 admission, so you can do that.

18 BY MS. TILLMAN:

19 Q. So, Ms. Ralph, this is an e-mail dated October the
20 3rd, 2008?

21 A. Yes.

22 Q. And it is from whom?

23 A. Bill Crader.

24 Q. And is your e-mail address on here?

25 A. Yes.

1 Q. And do you remember receiving this e-mail?

2 A. Yes, I think I do.

3 Q. All right. And now I'm going to show you another
4 e-mail. This is an e-mail from a Mr. Van Heerden.

5 A. Doctor.

6 Q. I'm sorry. Dr. John Van Heerden. What is the
7 date on that document?

8 A. October 4th.

9 MR. O'KELLEY: Just to preserve the record, I
10 have the same objection to this e-mail as well. If it's
11 only being offered for authentication, then I'll withdraw
12 my objection, but if it's being offered into evidence, I
13 do object.

14 MS. TILLMAN: Again, I'm only offering it for
15 authentication.

16 THE COURT: Okay.

17 BY MS. TILLMAN:

18 Q. Is your e-mail address on this correspondence?

19 A. Yes.

20 Q. And do you recognize this e-mail?

21 A. Yes.

22 Q. All right. Mrs. Ralph, going back to the meeting
23 that took place in September, which you attended, which
24 the McLaughlins attended, the purpose of that meeting was
25 to talk about the McLaughlins' construction site; is that

1 correct?

2 A. Yes.

3 Q. And your memory is -- again, tell me whether you
4 believe any resolution was reached.

5 A. No resolution was reached.

6 Q. All right. Can you tell me, after that meeting,
7 were there conversations -- did you have conversations
8 with the McLaughlins about their construction plans?

9 A. We had another meeting, a POA meeting.

10 Q. You did?

11 A. On, I believe it was -- I'm not sure about the
12 date, October 9th, but there was a follow-up meeting.

13 Q. October the 22nd?

14 A. 22nd? I can't remember the date. I'm sorry.

15 Q. All right. But before that time and after the
16 September meeting, do you recall -- well, I'm going to
17 show you what's been marked as Exhibit 9, Plaintiff's
18 Exhibit 9.

19 A. Yes.

20 Q. Can you tell me what this is.

21 A. This is an e-mail that we sent to the lot owners
22 and the property owners association.

23 Q. All right. Did you send it to Mr. McLaughlin?
24 Was he included among the addressees?

25 A. Yes, he was.

1 Q. All right. And take a minute to review that
2 e-mail, and then if you would like to summarize what it
3 says, I'd appreciate it.

4 A. Well, this was an e-mail that really states how
5 long we've been on Baywood Drive, knowing that there is
6 sometimes standing water, but that the pipe has certainly
7 been a benefit to all of us on Baywood Drive.

8 Q. And that's what you told Mr. McLaughlin in your
9 e-mail?

10 A. Yes, and also that everyone should take the time
11 to read the Bob George report as well.

12 Q. And tell me, what was the Bob George report?

13 A. It was a survey on the drainage pipe because there
14 was concern from some people that it was just not
15 working. It was not doing its job, so they did a survey.
16 The report came back that it does serve a purpose --

17 MR. O'KELLEY: Your Honor, I'm going to have
18 to object to Mrs. Ralph testifying about what his survey
19 said. That's hearsay.

20 THE COURT: Sustained.

21 BY MS. TILLMAN:

22 Q. All right. And so would it be fair to say that in
23 this e-mail you expressed your objections to the
24 McLaughlins' construction plans?

25 A. Yes.

1 Q. Thank you. So after you sent that e-mail and
2 there was another meeting of the property owners, did
3 that second meeting of the property owners also include
4 the McLaughlins?

5 A. Just Mr. McLaughlin.

6 Q. And what was said at that second meeting, which
7 was in mid-October of 2008?

8 A. That, once again, everybody was concerned about
9 the drainage pipe coming up.

10 Q. Okay. And at that meeting, did Mr. McLaughlin
11 appear willing to work on finding some sort of resolution
12 to the problem these construction plans presented?

13 A. Unfortunately not.

14 Q. Would you describe Mr. McLaughlin's attitude about
15 his construction plans?

16 MR. O'KELLEY: Your Honor, I'm going to
17 object. That calls for an opinion.

18 THE COURT: Overruled.

19 BY MS. TILLMAN:

20 Q. Could you describe Mr. McLaughlin's attitude about
21 these construction plans?

22 A. He was just unwilling to try to be supportive for
23 the good of all, for all of us behind him, on the
24 easement.

25 Q. And this is an important question that I didn't

1 think to ask earlier, but when you say behind him on the
2 easement, Mr. McLaughlin and Mrs. McLaughlin, they are on
3 lot 22; is that correct?

4 A. Yes.

5 Q. And you are on lot 23?

6 A. Yes.

7 Q. Is Mr. McLaughlin's, too use the -- well, from
8 which direction does water flow? Is he upstream or
9 downstream of you?

10 A. Upstream.

11 Q. And so from which direction would water flow?

12 A. Onto our property.

13 Q. All right. And so when you say for the good of
14 all, what specifically was your concern that -- with
15 Mr. McLaughlin's construction?

16 A. That he was going to sever our drainage pipe and
17 that we're at the end of that property so that we would
18 have more water sitting on our land.

19 Q. Now, I'd like you to tell me a little bit about
20 the following weeks after that second meeting in
21 November. Was it your understanding that some sort of
22 solution was being worked toward?

23 A. The POA was assuring us that hopefully -- that
24 they were working not to have that pipe taken up.

25 THE COURT: We need to take a break. It's

1 probably time for one anyway, but somebody on the jury
2 just indicated they need to use the rest room.

3 Don't begin deliberations or discussions, and
4 we'll see you back in about ten minutes.

5 (In open court, jury not present.)

6 THE COURT: Because you're on the stand, you
7 can go to the rest room, just go -- the bailiffs will
8 show you one back here, but you can't talk to anybody
9 while you're on the witness stand.

10 See everybody back in ten minutes.

11 (Recess taken.)

12 (In open court, jury not present.)

13 THE COURT: One woman approached me back
14 there and said her husband worked for Forsberg
15 Engineering and she wanted to let us know. I said, Do
16 you know anything about this case? And she said no, and
17 I said, Would it affect your ability to be fair and
18 impartial in this case? And she said it would not.

19 I said I would bring it up to you.

20 MR. O'KELLEY: And I do remember that lady
21 from jury qualification and she did mention that, but I
22 totally spaced until just now.

23 MS. TILMAN: I probably spaced also.

24 MR. O'KELLEY: It just occurred to me. I
25 think I know exactly which lady it is. She did mention

1 it, and I don't think either of us --

2 THE COURT: What was the number of the lady
3 who spoke to me?

4 THE BAILIFF: I'll find out for you.

5 MS. TILLMAN: Your Honor, we wouldn't --

6 THE COURT: It's okay with both of you all?

7 MR. O'KELLEY: Yes, sir.

8 THE COURT: Just for the record, we'll get
9 her number.

10 THE BAILIFF: Juror 174.

11 THE COURT: 174 would be Kristy Johnson. Let
12 the record reflect both parties are fine with her
13 continued service.

14 All right. Bring them back in.

15 (In open court, jury present.)

16 THE COURT: All right. We will resume now
17 with the direct examination of the witness.

18 BY MS. TILLMAN:

19 Q. All right, Mrs. Ralph. Before we took our brief
20 commercial break, we were describing the process leading
21 up to the McLaughlins' construction; is that correct?

22 A. Yes.

23 Q. And do you believe that you had done everything in
24 your power to object to their construction plans?

25 A. Yes.

1 Q. All right. And you had, you and your husband,
2 Mr. Ralph, had met with the McLaughlins and the Seabrook
3 Island Property Owners Association; is that correct?

4 A. Yes.

5 Q. And at those meetings, you objected to the
6 McLaughlins' construction plans?

7 A. Yes.

8 Q. I'm going to show you what has been marked as
9 Plaintiff's Exhibit No. 11. Can you tell me what this
10 is?

11 A. This is from Paul McLaughlin.

12 Q. It's an e-mail?

13 A. It's an e-mail.

14 Q. And what is the date on that e-mail?

15 A. December 5th.

16 Q. And to whom was the e-mail sent?

17 A. To ourselves and the Fosters. You want me to read
18 these names?

19 Q. Sure. You may read their names.

20 A. To the property owners.

21 Q. To the property owners along the block?

22 A. Some are missing, but yes.

23 Q. Okay. Now, what is the date of this e-mail?

24 A. December 5th, 2008.

25 Q. So would this e-mail have been after discussions,

1 after the meetings with the property owners association?

2 A. Yes.

3 Q. Okay. Could you read to me what Mr. McLaughlin
4 says right here.

5 A. We also said that we would move forward with
6 removing the pipe that crosses our lot so we can proceed
7 with building our home. As you know, we have no easement
8 on our lot.

9 Q. All right. And could you please read this
10 paragraph from Mr. McLaughlin right here?

11 A. Well, we could have proceeded with construction of
12 our home. We chose to wait and work out an agreement.
13 Nonetheless, we will wait no longer, and we will be
14 forced to do anything more than we proposed. In fact, we
15 are now proceeding with construction.

16 Q. And then could you read this sentence right here.

17 A. We will not assume any financial responsibility
18 for the new pipe and nor should you.

19 Q. Do you remember receiving this e-mail?

20 A. Yes.

21 Q. What would you say is the tone of that e-mail?

22 MR. O'KELLEY: Your Honor, I'm going to
23 object. That calls for an opinion.

24 THE COURT: She can describe her reaction to
25 it.

1 BY MS. TILLMAN:

2 Q. What was your reaction to that e-mail when you
3 received it?

4 A. Just that he was going to go forward to construct
5 his home, not worrying about any of us, but in addition
6 to that, he's telling us not to take on any financial
7 responsibility to an issue that's going to affect
8 everybody.

9 Q. Did you think that ultimately you'd have financial
10 responsibility, or were you worried that you might?

11 A. Yes.

12 Q. Tell me again the date on that e-mail.

13 A. December 5th.

14 Q. All right. When you received that e-mail, what
15 did you do?

16 A. I believe once my husband and I got this e-mail,
17 we contacted the POA office again.

18 Q. Who did you contact at the POA office?

19 A. John Thompson.

20 Q. And who again was John Thompson?

21 A. I believe his title was managing director.

22 Q. Okay. And what did you say to him?

23 A. Mr. McLaughlin is proceeding with his plans, and
24 he will be taking up our pipe, taking up the drainage
25 pipe, to build his house.

1 Q. And what did Mr. Thompson tell you?

2 A. He told me he was not supposed to be taking up
3 that pipe.

4 Q. Can you tell me, did the pipe come up?

5 A. Yes, it did.

6 Q. When did the pipe come up?

7 A. December 9th, 2008.

8 Q. And how many days was that after
9 Mr. McLaughlin's --

10 A. Four.

11 Q. How do you know the pipe came up?

12 A. That day, that morning of December 9th, I was
13 going out the driveway to work, actually, and I saw a
14 large piece of equipment coming on to the McLaughlin
15 lawn. And I called the POA that day, and I said, It
16 looks like something is going to happen, and he said, He
17 knows he's not supposed to bring up that pipe.

18 And my husband was not home at the time, and I
19 said I really didn't think it was in my best interest to
20 leave the house because they had told us that it would
21 not be coming up, and he said, You don't have to worry
22 about that. The pipe is not coming up.

23 Q. Tell me, who was "he"?

24 A. Mr. John Thompson.

25 Q. All right. And so did you leave?

1 A. I did.

2 Q. And when you returned, was the pipe still in the
3 ground?

4 A. No.

5 Q. How do you know?

6 A. My husband had called me and left me a message
7 that the pipe had been brought up.

8 Q. All right. After the pipe was brought up, did
9 construction of the McLaughlin residence continue?

10 A. Yes.

11 Q. Is that construction now completed?

12 A. Yes.

13 Q. In your estimation, where does the McLaughlins'
14 house sit in relation to where the pipe once was?

15 A. Over it.

16 Q. Would you say that their house is in the no-build
17 area, or a portion of it?

18 A. Yes.

19 Q. And the during the course of the McLaughlins'
20 construction, did you continue to object?

21 A. During construction?

22 Q. Yes.

23 A. Yes.

24 Q. Can you tell me, while did you ultimately decide
25 to sue the McLaughlins?

1 A. It was on our counselor's advice to sue.

2 Q. Was it an easy decision?

3 A. No.

4 Q. Why not?

5 A. I don't think my husband and I would ever want to
6 sue anybody. You know, we're -- Seabrook is a very
7 small, little island, and everybody wants to be happy
8 there, but we too wanted our property to be the way it
9 was when we purchased it.

10 Q. Okay. Tell me about how your property is now
11 different after the McLaughlins' construction.

12 A. Our water -- there's a deeper bowl, if you will.
13 Water sits longer. It doesn't drain. Water pools off of
14 his property line into our property.

15 Q. All right. How deep would you say the water gets?
16 And I know it's so subjective because sometimes there's a
17 light rain, sometimes there is a heavy rain, but how deep
18 would you say the water gets in your back yard after,
19 say, a moderate rain?

20 A. It could be eight inches.

21 Q. I would like to show you some photographs.

22 Ms. Ralph, I'm going to show you some
23 photographs. Would you look them over and tell me if you
24 recognize them.

25 A. Yes.

1 Q. Describe them -- well, first of all, who took
2 these photographs?

3 A. My husband.

4 Q. And who is this person in the photograph?

5 A. Me.

6 Q. And when did he take these pictures?

7 A. Sunday, this past Sunday, the 21st, 22nd.

8 Q. And were you present when he took these pictures?

9 A. I was for the one of me in the water. I was not
10 for the morning, but I was for the afternoon and this
11 one.

12 Q. What do the photographs depict?

13 A. The ponding of the water from a heavy rain.

14 Q. And would you say that they are a fair
15 representation of what your back yard looks like after a
16 heavy rain?

17 A. Yes.

18 MS. TILLMAN: Your Honor, I would like to
19 mark these photographs as an exhibit.

20 THE WITNESS: And also with my -- we measured
21 those boots so that's how --

22 THE COURT: Any objection?

23 MR. O'KELLEY: To the one she said she wasn't
24 present for because she can't say it was a fair and
25 accurate representation, Your Honor.

1 THE COURT: She doesn't have to be there when
2 the photo was taken, she just has to tell us whether it
3 was a fair and accurate representation of what the water
4 looked like at that time, or thereabouts.

5 THE WITNESS: Yes.

6 MS. TILLMAN: I think that she did.

7 THE COURT: All right. Admitted.

8 (Plaintiff's Exhibit No. 13 was marked for
9 identification and admitted into evidence.)

10 BY MS. TILLMAN:

11 Q. Ms. Ralph, if I could get you to hold these
12 photographs up, which, unfortunately, are woefully small,
13 but if you do describe -- hold them up so possibly the
14 jury can see them, and just use words to describe what
15 they contain.

16 A. This photograph is our back yard, and we see the
17 green grass is the beginning of the McLaughlins'
18 property. And this is where the ponding is, and it even
19 goes beyond it, this way, so it goes, really, across our
20 back yard. And in this picture, which I'm not really
21 very proud of, I got a pair of boots, so you got to
22 measure the water line, which we have been doing, and
23 that's where, after a heavy rain, the water will hit, the
24 ponding will sit, and this measured to about eight to
25 nine inches on me with boots on.

1 And this one is just a shot of the water in the
2 morning of Sunday, most recently Sunday, going out to the
3 fairway from our back yard, and it was right at the
4 beginning of the rain, so I can tell you this was around
5 2:30 in the afternoon. You can all see that.

6 Q. Would you say these photographs are sort of a
7 typical representation of what your back yard looks like
8 after a moderate rain?

9 A. Yes, moderate and heavy.

10 Q. All right. About how long does it take this sort
11 of ponding to drain?

12 A. It's still there now.

13 Q. And that was from the rain this past weekend?

14 A. Yes, same day.

15 Q. And today is Tuesday?

16 A. Tuesday.

17 Q. All right. From your experience, how long do you
18 think it will take that water to drain?

19 A. Probably several more days.

20 Q. Going back to your property before the McLaughlins
21 built their house, would there have been that much water
22 on your property after the same sort of rain?

23 A. No.

24 Q. And also the same sort of rain, how long would it
25 take before the McLaughlins built their house for that

1 sort of water to drain?

2 A. Maybe a day and a half or so.

3 Q. And would it ultimately drain?

4 A. Yes.

5 Q. Have you come up -- have you tried or hired
6 someone to try to come up with a solution to your
7 drainage problems?

8 A. Yes.

9 Q. Who is that?

10 A. Mr. Bob George.

11 Q. And how did you know Mr. Bob George?

12 A. From our first meeting back in September. He was
13 an engineer hired by Seabrook Island.

14 Q. And what has Mr. George done to -- or suggested to
15 you to help with your drainage problems?

16 MR. O'KELLEY: Your Honor, again, I have to
17 object to Mrs. Ralph telling us what Mr. George told her
18 on hearsay grounds.

19 THE COURT: Sustained.

20 BY MS. TILLMAN:

21 Q. Is it your understanding Mr. George has been able
22 to come up with a solution that would work to drain your
23 property the way it had been before the McLaughlins built
24 their house?

25 A. They can't because they can't service it. There's

1 no -- there no way to have it fixed for the property.

2 Q. Tell me more about that. What do you mean they
3 can't service it?

4 A. The McLaughlins' house is right -- you can't get
5 between our houses to service a pipe, and you can't get
6 on the other side to service the pipe because the pipe is
7 broken -- well, it's sitting on Mr. McLaughlin's
8 property, but you can't get to service to pipe.

9 Q. Have you -- do you feel as if you've tried hard to
10 come up with a solution?

11 A. Yes.

12 Q. How much has Mr. George billed you in his effort
13 to come up with a solution to this problem?

14 A. \$17,000.

15 Q. Nonetheless, no solution has been reached?

16 A. No.

17 Q. Are you aware of any possible solution that could
18 put your property back to how it was before the
19 McLaughlins built their house?

20 A. No.

21 Q. Do you think it would take the McLaughlins moving
22 their garage or the part of their house that is in the
23 no-build area?

24 MR. O'KELLEY: Your Honor, I'm going to
25 object. This calls for an opinion, and she's not been

1 qualified as any expert.

2 MS. TILLMAN: I would say --

3 THE COURT: Go ahead. You said you were
4 going to rephrase.

5 BY MS. TILLMAN:

6 Q. What do you think would be the only solution to
7 your drainage problem in the back yard?

8 MR. O'KELLEY: Again, Your Honor, I'm going
9 to object because that calls for an opinion.

10 THE COURT: You can ask her if she's been
11 made aware of any solutions.

12 BY MS. TILLMAN:

13 Q. Ms. Ralph, have you been made aware of any
14 solutions as to the drainage problem?

15 A. The solution would be to have the pipe be put back
16 in place the way it was so that it also can be serviced.

17 Q. What do you estimate to be the damage in terms of
18 cost to your property by the pipe having been removed and
19 it's no longer able to be serviced?

20 A. The damage is, obviously, when we go to sell our
21 house, we're going to have to divulge what's happened to
22 our property, so it's going to devalue the value of our
23 house, so that's damage, as well as the fact that we have
24 all this sitting water and it breeds mosquitoes.

25 We have trees that -- we've lost a tree already.

1 We can't get anything in on the other side of our house
2 because there's not enough room to bring anything in to
3 even alleviate if we lose any more trees, so we -- I
4 think that the lot next door to us is on the market for
5 \$286,000.

6 Q. Sorry. Is that lot -- does it have a house on it?

7 A. No.

8 Q. All right. If you did not have the ponding in
9 your back yard, what do you think that your house would
10 sell for, if you were to put it on the market?

11 MR. O'KELLEY: Your Honor, I think this calls
12 for speculation.

13 MS. TILLMAN: A property owner can testify to
14 the value of their property.

15 THE COURT: She's the property owner.

16 MR. O'KELLEY: Yes, sir, but she said if, not
17 what do you think your house is worth if you were to do
18 something, so I think it calls for hearsay.

19 MS. TILLMAN: I'll rephrase my question.

20 BY MS. TILLMAN:

21 Q. Mrs. Ralph, what do you think your house is worth
22 without the ponding in the back yard?

23 A. \$775,000.

24 Q. How did you come up with that?

25 A. I spoke to a realtor yesterday.

1 Q. Are there any other similar houses in your
2 neighborhood for sale?

3 A. Yes.

4 Q. Can you tell me about them.

5 A. They -- actually, there's a -- the real estate
6 office did a comparable for me, whatever it's called,
7 when they can run a real estate -- what's been sold --

8 Q. Well, for example, do you know what another house
9 in your neighborhood -- or, rather, a comparable house
10 would be listed for?

11 A. There's one down the street that's listed for 1.2
12 million.

13 Q. To your knowledge, does that house have ponding
14 issues in the back yard?

15 A. I don't know.

16 Q. In your opinion, what do you think the -- if you
17 had to disclose the ponding issues in your back yard,
18 what do you think the impact that would have on the sale
19 price of your home?

20 A. I think we really --

21 MR. O'KELLEY: Again, Your Honor, I have to
22 object. That calls for speculation.

23 MS. TILLMAN: I think, again, the property
24 owner can testify to what she believes the value of her
25 property would be.

1 THE COURT: Overruled.

2 BY MS. TILLMAN:

3 Q. Tell me what --

4 A. \$200,000 off the price, maybe 500. I would really
5 have to ask. I think less \$200,000, probably, 250.

6 Q. Do you think -- would you be willing to buy a
7 house such as yours if you knew that there was
8 significant ponding in the back yard?

9 A. No.

10 Q. Do you think if you were to list your house for
11 sale it would be easy to find a purchaser?

12 A. No.

13 MR. O'KELLEY: Again, Your Honor, I would
14 have to object as to speculation. There's been no
15 testimony she's tried to list the house.

16 THE COURT: I'll sustain that one.

17 BY MS. TILLMAN:

18 Q. Can you tell me, have you ever contemplated adding
19 on to your house, just thought about it?

20 A. I always think about things like that.

21 Q. Is there any reason you think that you could not
22 do that?

23 A. Because we have an easement.

24 Q. And what easement are you talking about?

25 A. The easement in back of our house.

1 Q. Are you talking about the no-build area?

2 A. The no-build area.

3 Q. How do you think that no-build area would impact
4 the ability to add on to your house?

5 A. You wouldn't be able to do it.

6 Q. Because you would respect the --

7 A. Right.

8 Q. So would you do it, nonetheless?

9 A. No.

10 MS. TILLMAN: I have no further questions.

11 THE COURT: Cross?

12 MS. TILLMAN: Oh, perhaps --

13 THE COURT: Are you finished?

14 MS. TILLMAN: I'm sorry. Well, I will ask.

15 BY MS. TILLMAN:

16 Q. Ms. Ralph, you have testified -- how much have you
17 paid Mr. George in an effort to come up with a solution
18 to the problem?

19 A. Between 16 and 17,000.

20 Q. And how much have you spent overall just trying to
21 resolve this issue?

22 A. About \$75,000, \$80,000.

23 Q. Does that include attorneys' fees?

24 A. Yes, it does.

25 MS. TILLMAN: Thank you. I have no further

1 questions.

2 CROSS-EXAMINATION

3 BY MR. O'KELLEY:

4 Q. Mrs. Ralph, you've been a member of the Seabrook
5 Island Property Owners Association since 1997; is that
6 correct?

7 A. We've lived in Seabrook Island since '97. The
8 property owners association is an association -- a
9 member, yes, I guess.

10 Q. And do you remember testifying that you've been
11 very involved with the property owners association during
12 your deposition?

13 A. In what sense?

14 Q. It was your words, ma'am. Do you remember
15 testifying that you've been very involved? And I can
16 show you your deposition if that helps.

17 A. Please.

18 THE COURT: You can open it.

19 MR. O'KELLEY: Thank you, Your Honor.

20 THE COURT: Do you need to ask her a question
21 to impeach her on?

22 MR. O'KELLEY: Yes.

23 MS. TILLMAN: Your Honor, I'm all right with
24 Mr. O'Kelley using excerpts from the depositions --

25 MR. O'KELLEY: This is for impeachment

1 purposes.

2 MS. TILLMAN: Right.

3 (Court's Exhibit No. 1 was marked for
4 identification.)

5 BY MR. O'KELLEY:

6 Q. If you'll turn with me -- and this was your
7 original deposition that was taken, if you'll remember,
8 on October 8th of 2013.

9 If you'll turn to page 36 for me, ma'am, if you
10 look at page 36, lines 6 through 8, you testified you've
11 lived at Seabrook Island for 16 years. We're very, very
12 involved with the community there.

13 Do you remember that testimony, ma'am?

14 A. Yes.

15 Q. And are you still involved with the community
16 there today?

17 A. As a humble property owner, very involved; in
18 fact, we live there and we honor where we live and we
19 have many friends there, and -- yes.

20 Q. And have you been actively receiving minutes and
21 notices and letters from the property owners association
22 the entire time you've lived there?

23 A. No.

24 Q. You have not?

25 A. No.

1 Q. Let me show you what's been marked as Defendant's
2 Exhibit No. 3. It's a 2007 letter to my clients, the
3 McLaughlins, and I've got a larger copy here, Your Honor,
4 if it makes life easier for people to view.

5 Do you remember ever seeing a copy of this letter
6 from 2007?

7 A. The one that was dated -- Paul and Dina -- well,
8 it's to the McLaughlins.

9 Q. It's to the McLaughlins, yes, ma'am. Do you
10 recall seeing this letter?

11 A. Yes, I do. I recall seeing this letter.

12 Q. And do you recall getting this letter some time in
13 June of 2007?

14 A. Yes.

15 Q. And do you recall that in this letter,
16 Mr. Thompson of the Seabrook Island Property Owners
17 Association was providing some notice to my clients?

18 A. Yes, I see that.

19 Q. And, in fact, the letter does state the purpose of
20 this letter is to inform you of a plan being developed by
21 the Seabrook Island Property Owners Association to
22 address an abandoned storm water system on your property
23 at lot 22, block 32, 3061 Baywood Drive. This older,
24 corrugated metal type drainage system was abandoned in
25 1992 as a parallel. Drainage system high density plastic

1 piping was installed on the Crooked Oaks golf course.

2 Our goals in developing this project are as follows:

3 Number one: To eliminate a 20-foot wide
4 drainage easement across your property held by SIPOA.
5 Eliminating the easement will provide you with more
6 freedom to build or expand on your property in the
7 future; number two: To determine the best way to
8 eliminate any future problems associated with the
9 inevitable degradation of the old pipe; number three: To
10 minimize any inconvenience to you during this project.

11 Does this fairly and accurately represent
12 what Mr. Johnson wrote in his letter on June 19 of 2007,
13 what I've just said?

14 A. We did not have any knowledge of that abandonment
15 of the easement. /

16 Q. You do acknowledge getting this letter some time
17 in June of 2007, correct?

18 A. Yes. ✓

19 MS. TILLMAN: Your Honor, I'd like to object
20 because I believe that this issue that Mr. O'Kelley is
21 working around to has already been ruled on by Judge
22 Cooper.

23 MR. O'KELLEY: Absolutely not, Your Honor.
24 We've been establishing facts, whether or not she
25 received this letter in June 19th of 2007. What was

1 before Judge Cooper was another motion entirely.

2 THE COURT: Overruled. Go ahead.

3 MR. O'KELLEY: Thank you, Your Honor.

4 BY MR. O'KELLEY:

5 Q. Your testimony a few moments ago, Mrs. Ralph, was
6 you think your property is worth \$775,000; is that
7 correct?

8 A. That's what I was told, sir.

9 Q. You filed this lawsuit, do you remember, in
10 September 2011, correct?

11 A. Yes.

12 Q. And you didn't sue the property owners
13 association, did you?

14 A. No.

15 Q. Even though you state in your deposition you felt
16 betrayed by the property owners association, did you not?

17 A. Yes.

18 Q. But yet as we sit here today, you've only chosen
19 to sue my clients, correct?

20 A. Yes.

21 Q. Are you aware, and I think you testified earlier,
22 that there have been discussions with my client involving
23 Bob George about potential solutions or fixes to drainage
24 of the property. You remember that testimony a little
25 while ago?

1 A. Yes.

2 Q. And you're aware that you, Mrs. Ralph, thought
3 that the POA owned this easement, correct?

4 A. No. I think I said, sir, that the POA led us to
5 believe that they owned this easement.

6 Q. And who at POA led you to believe they owned that
7 easement? And I'm not trying to mischaracterize your
8 testimony, but on page 59 of your deposition, you do say
9 that you did believe that the POA led you to believe they
10 owned the easement.

11 Who in the POA made those representations to you?
12 Who in the POA led you to believe the POA owned the
13 easement in question?

14 A. John Thompson and the board in our meetings.

15 Q. And were those meetings in the fall of 2008?

16 A. Yes.

17 Q. And was that also sometime pursuant to the letter
18 you got a copy of in June of 2007?

19 A. I'm sorry?

20 Q. Did you also ask about representations from the
21 POA about who owned the easement, or representations
22 being made to you in 2007 that the POA owned the
23 easement?

24 A. You'll have to -- I'm sorry. I'm very sorry.
25 You'll just have to repeat that again. I want to make

1 sure I understand your question.

2 Q. In 2007, was Mr. Thompson or anybody else
3 associated with the Seabrook Island Property Owners
4 Association telling you and your husband that the
5 POA owned the easement we're here about today?

6 A. They told us what they were going to be doing with
7 that easement.

8 Q. But did they tell you in 2007 they owned the
9 easement? Because your testimony was a few minutes ago
10 in 2008 they were telling you they owned the easement.

11 A. In 2007, this letter to me even makes it sound
12 like they own the easement.

13 Q. Okay. Was there ever an agreement reached between
14 you and the McLaughlins and the POA sometime in 2008 on
15 Mr. George's recommendation about a potential fix for
16 your property?

17 A. Say that one more time.

18 Q. Yes, ma'am. You were testifying a little while
19 ago that you had meetings in 2008.

20 A. Yes.

21 Q. And that Mr. McLaughlin was at least at one of
22 those meetings and that --

23 A. He was at both meetings.

24 Q. Let me just finish the question -- that Mr. George
25 had come up with a potential solution for the drainage on

1 your property? Do you remember that testimony?

2 A. No, he did not come up with a solution.

3 Q. Was work ever started or contemplated on your
4 property to fix any problems on your property?

5 A. No.

6 Q. No. Was any work ever going to be done as
7 recommended by the POA that you and your husband, after
8 speaking to your brother-in-law who is an attorney in
9 Philadelphia, said we aren't going to agree to any work?

10 A. Repeat that one more time again.

11 Q. Yes, ma'am. Was there ever a fix that was agreed
12 to by the POA by installing some pipes, and y'all had
13 some discussions with your brother-in-law who is a lawyer
14 in Philadelphia, or somewhere in Pennsylvania, and you
15 said, We aren't agreeing to any work being done on our
16 property?

17 A. That's not how it was set, Mr. O'Kelley. What
18 happened was they were going to put a -- what's it
19 called, a -- they wanted to put a -- I don't know the
20 name of the

21 Q. If I told you your testimony was about a culvert
22 or a manhole to be put on your property, does that
23 refresh your recollection?

24 A. Thank you, and, actually, I really wanted to --
25 before agreeing to anything, my husband and I wanted to

1 seek legal advice to have that done.

2 Q. But you never allowed that work to be completed on
3 your property, correct?

4 A. No.

5 Q. Let me find Plaintiff's Exhibit 9.

6 Mrs. Ralph, you were asked some questions about
7 that exhibit. Do you remember those questions a few
8 minutes ago?

9 A. I was waiting for you to ask me something. I do.

10 Q. And in this e-mail, your husband states, Because
11 of standing water, locals could not ride horses through
12 this area.

13 Your property is pretty low, isn't it, ma'am?

14 A. It is.

15 Q. And there was always standing water on your
16 property before the McLaughlins built their house, was
17 there not, after a rain?

18 A. There were puddles on our property.

19 Q. But there was always standing water. A puddle is
20 standing water, is it not? Is that a yes?

21 A. Yes.

22 Q. Plaintiff's No. 11, for me, would you please,
23 ma'am -- I know we have 11, Your Honor, but it seems to
24 have disappeared. Mrs. Tillman has it.

25 Mrs. Ralph, this is Plaintiff's Exhibit 11 which

1 you testified to a little while ago. Mrs. Tillman asked
2 you the third full paragraph on the first page that
3 begins: We also said we would move forward with removing
4 the pipe that crosses our lot so we can proceed with
5 building our home.

6 You recall receiving this e-mail ma'am?

7 A. Yes.

8 Q. And does it also state, As you know, we have no
9 easement on our lot.

10 Is that what is written on this exhibit?

11 A. Yes.

12 Q. Does it also state, The letter prepared by the
13 previous owner of our property approved and signed off by
14 the former executive vice president of the POA and duly
15 recorded at the courthouse makes very clear that the
16 easement on our property was abandoned by the POA in 2002
17 before we purchased the lot, and we are authorized to
18 remove it at any time. This is an irrefutable fact.

19 Is that what that exhibit says, ma'am?

20 A. Yes.

21 Q. And you're aware that the POA ultimately approved
22 plans for my client to build, correct?

23 A. Yes.

24 Q. And did you file a lawsuit trying to stop the
25 building of my clients' property?

1 A. No.

2 Q. Did you file a temporary injunction or some sort
3 of emergency relief to stop my clients building on their
4 property?

5 A. No.

6 Q. Did you apply to anyone other than contacting the
7 POA in December of that year saying, Hey, I don't want
8 them to build on their property?

9 A. Did I --

10 Q. Did you file anything in this courthouse where we
11 are today or any other courthouse trying to stop my
12 clients from building on their property?

13 A. No.

14 Q. And you didn't see my clients until after their
15 house was completed, correct?

16 A. Correct.

17 Q. And your testimony a little while ago was that you
18 didn't want to sue, but you have, in fact, sued my
19 clients, and that brings us here today, right?

20 A. That's right.

21 Q. And you're not a surveyor, are you, ma'am?

22 A. No.

23 Q. Plaintiff's Exhibit 13, which are these pictures
24 you said were taken this weekend, they were taken on
25 Sunday?

1 A. Yes, sir.

2 Q. Did we have a good deal of rain this weekend?

3 A. Yes, we did.

4 Q. Was there water standing in various low spots all
5 over Seabrook Island today? Did you notice any on your
6 way to the courthouse?

7 A. I didn't.

8 Q. On the entire island, you didn't notice?

9 A. I didn't. I wasn't paying attention.

10 Q. You never listed your property for sale, have you,
11 ma'am?

12 A. No.

13 Q. And you bought your current property in 1997 and
14 paid \$284,000 for it, correct?

15 A. Correct.

16 Q. And that included the house, correct?

17 A. Yes.

18 Q. And today you say that property is worth \$775,000?

19 A. That's what I was told.

20 Q. Do you know if my client installed any surface
21 drains on their property during their construction?

22 A. I think I heard that. I don't --

23 Q. If you don't know, you don't know.

24 A. I don't know.

25 Q. You or your husband, do you have any surface

1 drains on your property to collect water?

2 A. Yes.

3 Q. And did you install them or was it there?

4 A. It was there.

5 Q. It was there prior. Do you have any contractual
6 agreement with my clients of any sort?

7 A. I don't believe we do, no.

8 MR. O'KELLEY: That's all we have, Your
9 Honor.

10 THE COURT: Redirect?

11 REDIRECT EXAMINATION

12 BY MS. TILLMAN:

13 Q. All right, Mrs. Ralph. You just told us that the
14 block in which your husband and the McLaughlins' house is
15 situated, is low lying; is that correct?

16 A. Yes.

17 Q. So why do you think the developer who developed
18 Seabrook Island when he was -- when he was planning this
19 block, what do you think the purpose of the drainage pipe
20 and no-build area was?

21 A. I think he knew exactly what was wrong --

22 MR. O'KELLEY: Your Honor, I have to object.
23 She's trying to say what somebody else is thinking.

24 THE COURT: It would be speculation.
25 Sustained.

1 BY MS. TILLMAN:

2 Q. What do you believe is the purpose of the drainage
3 pipe in the no-build area?

4 A. To serve a purpose, to drain the water in heavy
5 rains.

6 Q. Is it your understanding that the POA actually
7 owned the pipe in the no-build area?

8 A. I didn't know that until I had legal counsel tell
9 me that we owned our easement.

10 Q. So you do not believe that the POA actually owned
11 the no-build area and the drainage pipe; is that your
12 understanding?

13 A. It's my understanding that -- yes, that the POA is
14 there to service the pipe and to maintain the pipe.

15 Q. And to whom does the pipe in the no-build area
16 belong, to your understanding?

17 A. To us.

18 Q. Does it also belong to other lot owners on the
19 block?

20 A. Yes.

21 Q. And to your knowledge -- Mr. O'Kelley asked
22 whether you had filed any sort of lawsuit to stop the
23 McLaughlins' construction. To your knowledge, did the
24 Seabrook Island Property Owners Association file any sort
25 of lawsuit to stop the McLaughlins' construction?

1 A. Yes.

2 Q. What's your understanding or your knowledge of
3 that?

4 A. It was filed for a cease and desist order, I
5 believe, lawsuit, and it was filed on December 9th.

6 Q. And so you believe that the Seabrook Island
7 Property Owners Association filed a lawsuit to stop the
8 McLaughlins' construction?

9 A. Yes.

10 Q. And did that -- did that lawsuit, in fact, stop
11 the McLaughlins' construction?

12 A. No.

13 Q. All right.

14 MS. TILLMAN: Those are all the questions I
15 have.

16 THE COURT: Recross?

17 MR. O'KELLEY: Thank you, Your Honor.

18 RECROSS EXAMINATION

19 BY MR. O'KELLEY:

20 Q. Ms. Ralph, are you aware that the POA dismissed
21 that lawsuit after three days?

22 A. Because the pipe had already been taken up.

23 Q. That wasn't my question. Are you aware that the
24 POA dismissed that lawsuit after three days?

25 A. Yes.

1 Q. All right. And are you also aware, this exhibit
2 which you say you got, the letter, that there was a 1992
3 drainage system that was abandoned and the POA put in a
4 new drainage system that they would try?

5 A. It states it there, but we never knew -- we never
6 got it. We never got a personal one.

7 MR. O'KELLEY: Thank you, ma'am. I have
8 nothing further.

9 THE COURT: All right. Well, folks, it's
10 12:30. We'll take a break now until 2:00. You can go to
11 lunch wherever you want with whoever you want. If you go
12 with another member of the jury, please don't discuss the
13 case or witness demeanor or the case in any manner. You
14 can go to lunch, as I said, with somebody or alone, but,
15 again, don't try to find out anything about the case. If
16 anybody does try to talk to you about it or approach you
17 about the case, please report that when you come back.

18 Again, it's 12:30. If y'all would be back in
19 the jury room at 2:00, we'll try to resume right at 2:00.
20 Thank you all, and we'll see you at 2:00.

21 (Recess taken.)

22 A F T E R N O O N S E S S I O N

23 (In open court, jury present.)

24 THE COURT: All right, folks. We'll resume
25 with the plaintiffs calling their next witness.

1 MS. TILLMAN: Thank you, Your Honor. The
2 plaintiffs would like to call Mr. Richard Ralph.

3 RICHARD RALPH,
4 having been first duly sworn,
5 was examined and testified as follows:

6 DIRECT EXAMINATION

7 BY MS. TILLMAN:

8 Q. Thank you, Mr. Ralph. Could you tell us, please,
9 how old you are.

10 A. Seventy-three.

11 Q. What is your address?

12 A. 3055 Baywood Drive, and that's Seabrook Island,
13 South Carolina.

14 Q. Where were you born?

15 A. Philadelphia, PA.

16 Q. And how about your education? Tell us about that.

17 A. College graduate, four years.

18 Q. Where did you go to college?

19 A. Washington & Jefferson College in Little
20 Washington, Pennsylvania.

21 Q. And what year did you graduate?

22 A. '66, 1966.

23 Q. And after you graduated from college, what did you
24 do?

25 A. My senior year, after my senior year, I joined the

1 Marine Corps.

2 Q. You did? What year was that?

3 A. That was '66.

4 Q. So was this right as the Vietnam --

5 A. I graduated in June. I joined the Marine Corps --
6 I think it was in January.

7 Q. Were you drafted or did you join?

8 A. I joined.

9 Q. And tell me about your service in the Marines.

10 A. I went through OCS at Quantico, Virginia, officer
11 candidate school in Quantico, and then from there, I went
12 down to Pensacola to learn to fly. Navy flight school
13 trains the Marines. So I learned to fly, and I got my
14 wings in '67.

15 Q. When you say you learned to fly and you got your
16 wings, what sort of aircraft were you flying?

17 A. Initially you learn how to fly fixed wing, and
18 then the needs of the service -- you go into whatever the
19 service needs at the time, and for us, all the people I
20 went through, we had to go to helicopters because of
21 Vietnam.

22 Q. So you were trained to fly a helicopter?

23 A. Yes.

24 Q. What sort of helicopters?

25 A. I flew an H-34 and an H-46, both of which are at

1 Patriot's Point.

2 Q. Are those ~~are~~ are their nicknames the Hueys?

3 A. Sea Knight. The aircraft I flew mostly, the
4 helicopter was called Sea Knight, CH-46.

5 Q. So you were trained to fly helicopters, and then
6 did you go on to serve in Vietnam?

7 A. Yes.

8 Q. What can you tell me about your service there?

9 A. I went to Vietnam in 1969, January of '69, and
10 flew missions in Vietnam for nine months of that.

11 Q. Where were you in Vietnam?

12 A. I was stationed outside of Da Nang. My flight
13 territory was the DMZ, down south of the DMZ, about 140
14 miles or so down to Chu Lai, around by Khe Sanh.
15 Everybody has probably heard of Khe Sanh, that part of
16 the world. That's where I flew.

17 Q. So near a beach? Near the beach?

18 A. Yeah, where -- I was based at Marble Mountain,
19 which is right on the beach, South China Sea, right south
20 of Da Nang.

21 Q. And what were you doing there in Vietnam?

22 A. The missions were a lot of Bs, bullets and
23 bandages, but the bad missions were the Medevacs, and we
24 did a lot of pulling troops out, evacuations, emergency
25 evacuations, recon teams. That was our worst missions,

1 where we got called out at night it would always be the
2 3:00 in the morning kind of thing. You get called out,
3 fly out to the jungle, and try to save these five-man
4 teams, and that was done with other people with us.

5 We had fixed wing ready to come in, and once we
6 get these kids out of the jungle, they turned into be bad
7 missions because the NVA, or VC, mostly the NVA --

8 Q. The Vietcong?

9 A. As long as the recon teams were kept in position,
10 they were safe. Once we got those kids out, then all
11 hell would break loose, and they knew they weren't going
12 to survive, so the fight was on. And the way we got them
13 out in the jungle, we had great big jungle penetrators.
14 It looks like artillery shell. You drop that down
15 through the canopy, triple canopy, generally, jungle, and
16 the seats would open up, metal seats, umbrella, and we
17 pluck them up, back up through the canopy.

18 Q. In the helicopter?

19 A. Yeah, in the helicopter, through the hole or
20 there's a boom on the side. We pick them up either way.
21 If we could work troops toward a riverbank, or an
22 opening, we could would get them out with a collapsable
23 ladder, a two-rung ladder. A lot of sad moments because
24 you get the living and the dead out, both, and the death
25 would be on hooks, and we'd hook them on to the rungs and

1 get them out. That's the kind of missions I get probably
2 every two weeks.

3 Q. And so for how many years were you flying those
4 sorts of missions?

5 A. I was flying there for that year, January to
6 January, January of '69 to '70.

7 Q. Do you have any idea how many missions?

8 A. I have 17 flight strike awards, which means I have
9 340 missions.

10 Q. You flew 340 missions?

11 A. Yes.

12 Q. Well, tell me about -- you concluded your service
13 in 1969; is that correct?

14 A. 1969 I went to Vietnam. 1970 I came back, and
15 then in 1971, I got out, discharged, honorably
16 discharged.

17 Q. Did you receive any awards?

18 A. Yes. I have the Air Medal, the Vietnamese Cross
19 of Gallantry, and the Combat Action ribbon. That's a
20 personal decoration.

21 Q. And what is that for?

22 A. It's just doing the things we did, basically.

23 Q. And what did you do after the Marines?

24 A. I got out of the Marine Corps in '71. I went down
25 to Braniff in Texas and was trained as a flight engineer

1 on the 727, and then from there I went back to
2 Philadelphia and flew for Altair Airlines. I flew a
3 Fokker, an F-28. It looks like a DC-9. Then they went
4 out of business. I went to Midway, out of business, and
5 I finished up flying from '82 to '99 with Continental. I
6 finished up my career with Continental.

7 Q. And up until the point you moved to Seabrook
8 Island, were you based in Philadelphia?

9 A. I was based in New York, Newark and La Guardia,
10 and five years I was based in Houston, Texas.

11 Q. Well, what led you to Seabrook Island? Because if
12 I understand your timeline, you were still flying --

13 A. I flew into Charleston in the service, and then
14 once I started flying commercially, I also flew through
15 Charleston. I knew about it, how beautiful it was.

16 Q. All right.

17 A. And that's how it all started.

18 Q. And when did you meet Mrs. Ralph?

19 A. I met Dina in 1985, about '85.

20 Q. And when did you buy this house on Seabrook
21 Island?

22 A. We were coming down three or four years before we
23 bought. We bought in '97. When we bought, there was
24 nobody on our street within 500 yards. Our neighbors,
25 only construction on that side of the road were deer

1 stands. That's how vacant it was, and, of course, that
2 easement was there at the time. I knew all about it.

3 Q. Tell me about that. When you bought your house in
4 1997, you were aware there was a drainage pipe?

5 A. Yes.

6 Q. And also a no-build area?

7 A. Yes.

8 Q. And what did you understand those things to mean?

9 A. Well, reading through it, they were there --
10 through Bob George's report, they were there to lower the
11 water table and to leak surface ponding.

12 Q. When you bought your house, did you believe you
13 could build on the no-build area?

14 A. We knew we couldn't. The no-build area comes
15 right back -- right next to our back deck, so we knew we
16 couldn't do anything toward the golf course.

17 Q. Where is the drainage pipe in relation to your
18 back deck?

19 A. Right underneath it. We're probably a foot away
20 from it, from the easement, from the easement itself.

21 Q. So just to make it more clear, the drainage pipe
22 does not run underneath your deck?

23 A. No, no, it doesn't -- no. It's ten feet out from
24 our deck, but the easement itself is 20 feet, 10 feet
25 inside of that pipe, so the easement itself and the

1 no-build area comes right up to our deck.

2 Q. So the no-build area begins about a foot from your
3 deck?

4 A. Yes.

5 Q. And where does it extend to, if you just give us a
6 visual image?

7 A. It extends 20 feet out from my back deck.

8 Q. And when you stand on your back deck, what do you
9 see? Just -- what are you looking out on?

10 A. At the golf course.

11 Q. Do you -- in relation to the golf course, how
12 close does the no-build area extend?

13 A. From the golf course property to the no-build
14 area?

15 Q. Sure, or from --

16 A. Sixty feet, probably.

17 Q. About how big would you describe your backyard as
18 being?

19 A. It's probably 70 feet from the golf course
20 property.

21 Q. Would you say the no-build area takes up a pretty
22 substantial portion of --

23 A. Yeah, it takes up 20 feet of that.

24 Q. And that no-build area would have prevented the
25 original builders of the house from building it closer to

1 the golf course?

2 A. Yeah, yes.

3 Q. Tell me about -- when you first moved into your
4 house, tell me about after a rain, before the McLaughlins
5 built their house.

6 A. It would puddle, but after a while it would
7 disappear.

8 Q. And now tell me about when the McLaughlins
9 purchased their lot next door. The lot had been vacant;
10 is that right?

11 A. Right, right.

12 Q. Did you meet the McLaughlins when they purchased
13 their house?

14 A. Mr. McLaughlin stopped in, just to say hello, but
15 that's the only time I really met him, except for the two
16 meetings we had with Bob George.

17 Q. Correct. Well, so let's fast forward then, I
18 think about four years or five years, to when you first
19 learned of the McLaughlins' building plans. How did you
20 find out about their building plans?

21 A. Well, they came -- there was a letter sent out by
22 John Thompson about the pipe issue, and that's when we
23 first started questioning about the pipe.

24 Q. And what were your questions and who did you
25 question?

1 A. He came out with a letter -- I think it was around
2 October of 2007. The POA, through John Thompson, the
3 executive director, came out and said they were thinking
4 about abandoning the easement, the pipe, at which
5 point -- this is long before we would be in court.

6 I went right over to John Thompson and immediately
7 said, That pipe serves a function. That has been
8 functioning here for years and years before McLaughlin
9 showed up, and there's a manhole cover on the right side
10 of our property, looking out toward the golf course. And
11 I lifted up that manhole cover occasionally to see what
12 was happening, and there was action in there. It was
13 doing something.

14 Q. So when you say there was action in there --

15 A. It was flowing. Things were flowing. It wasn't
16 fast, but it was flowing. You could see water moving.

17 Q. After a rain, would you see more water?

18 A. Yeah, yes, yes.

19 Q. So it was your understanding that -- well, what
20 was your understanding?

21 A. Well, my understanding as a function of the pipe
22 was, like I say, to lower the water table and to delete
23 surface ponding, and I -- you know, the fact that
24 somebody wanted to rip that pipe up, it was like cutting
25 the artery. It was going to destroy that system.

1 Q. Well -- because we've heard already this morning
2 that that -- the lots along that block are in what sort
3 of terrain? Is it --

4 A. It's -- Mr. Seabrook, who was the original
5 engineer, couldn't place an easement more perfect than
6 that easement, right down a 12, a dune line. From our
7 back, you have to go up to get on the golf course. It's
8 not terribly steep, but you do have to go up.
9 Topographically, we were low.

10 Mr. McLaughlin's property was just as low as ours
11 was originally until he brought in truckloads of fill to
12 fill the property back in, and that's another problem.
13 It's also damming us up, what he did, and that's against
14 the bylaws of the POA.

15 Q. Now, you said Mr. McLaughlin's lot was low before
16 this was constructed?

17 A. Yeah, yeah. I think you'll get that from Ed
18 George, if he has the topographical map there.

19 MR. O'KELLEY: I'm going to object to
20 Mr. Ralph telling us what we'll be getting from another
21 witness.

22 BY MS. TILLMAN:

23 Q. So your knowledge is Mr. McLaughlin's lot upstream
24 or downstream?

25 A. Upstream.

1 Q. He is upstream?

2 A. Yes.

3 Q. So the water would flow --

4 A. Down our way.

5 Q. Okay. And how about your other neighbors
6 father -- say if you are -- if your lot -- if you're
7 looking out toward the golf course and Mr. McLaughlin's
8 lot is to your left, do you have many neighbors to the
9 right?

10 A. Yes. The majority of the neighbors are to the
11 right. There are 21 through 28, so there's eight lot
12 owners, and it starts with Mr. McLaughlin on number two
13 and then six others are to the right, downstream, toward
14 the pond.

15 Q. The six others are downstream from Mr. McLaughlin
16 also.

17 A. Yes.

18 Q. So your memory of learning about Mr. McLaughlin's
19 plans to construct his house, what happened after you
20 expressed your concerns to the POA?

21 A. Really, nothing until -- I mean, I let John
22 Thompson know that you should think twice about
23 abandoning the easement, even though they didn't own the
24 abandoned easement, but I said, You should probably think
25 about not getting rid of that because it functions. It

1 has been functioning for all these years, and we're
2 basically living in a quasi-jungle. And, of course, we
3 had meetings about that pipe, October 29th -- or
4 November --

5 Q. September --

6 A. September 29th and October 1.

7 Q. All right. Well, tell me about the meeting
8 September 29th. Who was present at that meeting?

9 A. Myself, Bill Crader, the neighbor on the other
10 side of McLaughlin, and my other neighbor one vacant lot
11 down, Dr. John Van Heerden, the three of us. And Mr.
12 McLaughlin came in with his lawyer, his construction
13 foreman and owner of the construction company, and his
14 architect, and it was kind of intimidating, very -- for
15 Dr. John -- John Van Heerden left that room saying, Boy,
16 this is something. How intimidating for that guy to come
17 in when it's a friendly meeting between neighbors.

18 Q. Now, where was this meeting held?

19 A. It was at the POA building.

20 Q. The POA building, and what was the general -- what
21 was said --

22 A. The general --

23 Q. -- or what was your impression?

24 A. Bob George made the point the pipe should stay.

25 MR. O'KELLEY: Your Honor, I'm going to

1 object to any testimony by Mr. Ralph about what
2 Mr. George said.

3 BY MS. TILLMAN:

4 Q. What was your impression of what went on in the
5 meeting?

6 A. My impression was keep the pipe in place.

7 Q. And did you express that opinion?

8 A. Yes, we all did.

9 Q. And what was your impression of Mr.
10 McLaughlin's --

11 A. There's a bit of arrogance, like, I'm here. This
12 is what I'm doing.

13 MR. O'KELLEY: Your Honor, I'm going to
14 object to this.

15 BY MS. TILLMAN:

16 Q. Well, rather than his attitude, what did you feel
17 was his intent at the end --

18 A. My feeling of his intent was --

19 MR. O'KELLEY: Your Honor, again, I'm going
20 to have to object because I don't think Mr. Ralph is
21 qualified to state what my client's intent was.

22 THE COURT: You can tell us what he said.

23 THE WITNESS: Thank you. The feeling I got
24 out of that meeting, is Mr. McLaughlin was going to do
25 exactly what he wanted to do and to heck with the rest of

1 us.

2 BY MS. TILLMAN:

3 Q. Was there some sort of attempt at that meeting to
4 come up with another alternative?

5 A. Yes. There was -- it was mentioned about running
6 a pipe out between our houses, back on to the golf
7 course, and that was a proposal, but I knew for a fact it
8 would never work because the club would never allow him
9 on the golf course for two reasons.

10 MR. O'KELLEY: Again, Your Honor, I'm going
11 to have to object to Mr. Ralph testifying about what
12 somebody else would or wouldn't allow.

13 THE COURT: It's speculation.

14 BY MS. TILLMAN:

15 Q. Did you -- so let me back up, because you used a
16 lot of "hes" and "theys", so I just want to be clear.
17 Your impression was one attempt at a solution would be
18 for he, is that Mr. McLaughlin, to tie in -- tell me
19 about that.

20 A. It was suggested or there was a proposal, put a
21 pipe down between our property, McLaughlins' property and
22 our property, down to the golf course, which would kind
23 of satisfy the situation somewhat, and that was a viable
24 alternative, but it was --

25 Q. So was that alternative ever used?

1 A. No, no. It would never happen.

2 Q. Why not?

3 A. Because the -- my take on it, talking to the
4 people at our club, that it would never be allowed, to
5 dig up the club property, and also the fact that Mr.
6 McLaughlin has written so many e-mails against the club
7 and the club members, naming club numbers and the club
8 itself. They would never allow him to do anything like
9 that.

10 Q. And did they ever allow him to do that?

11 A. No, no. That was never going to happen.

12 Q. And that was -- was that fix the most viable fix?

13 A. That was the only fix I got out of the two
14 meetings.

15 Q. Okay. So then -- all right. So you refer to two
16 meetings. Did you ever have any other meetings or
17 conversations with Mr. McLaughlin before he began
18 construction?

19 A. No.

20 Q. Did you receive an e-mail from Mr. McLaughlin that
21 was -- this is an e-mail that's been marked as
22 Plaintiff's Exhibit 11 from Mr. McLaughlin to -- can you
23 tell me who this --

24 A. You want me to read this?

25 Q. You don't have to read it, but tell us to whom

1 it's addressed.

2 A. It's to Robin Foster, Boyette, R and Dina Ralph,
3 Tony Valencourt.

4 Q. Who are all those people?

5 A. They're owners of the property at the time.

6 Q. All right. And just in your words, what was Mr.
7 McLaughlin saying in that e-mail?

8 A. Well -- can I read a paragraph?

9 Q. Sure.

10 A. This is from Mr. McLaughlin: We also said that we
11 would move forward with removing the pipe that crosses
12 our lot so we can proceed with building our home. As you
13 know, we have no easement on our lot.

14 Q. All right. So your understanding of that e-mail
15 was that Mr. McLaughlin was going to proceed with
16 construction?

17 A. Yes, that's pretty much.

18 Q. Was it your understanding that some sort of
19 solution had been reached to ameliorate the drainage that
20 would cause?

21 A. No, there is nothing.

22 Q. And did --

23 A. I got from this e-mail that that pipe was coming
24 up and there was no alternative what to do once that pipe
25 came up and was destroyed.

1 Q. So no solution had been reached.

2 A. No.

3 Q. But there was an effort to come up with some sort
4 of solution.

5 A. Yes, the 29th of September and 1 October. Those
6 were the only meetings, and then this happened. This
7 letter came out.

8 Q. The letter came out, but was it your understanding
9 that there was -- that there was still some sort of
10 effort to find a solution?

11 A. Well, yeah. The pipe hadn't come up yet. It's
12 very close. It's four days away. It didn't give us much
13 time to do anything.

14 Q. So tell me about your recollection of four days
15 after that e-mail was sent, December the 9th.

16 A. December the 9th, 2008, I was playing golf with
17 three other friends, and Bill Crader called me up and he
18 said to me, They're bringing equipment in --

19 Q. Can I back you up? Who is Bill Crader?

20 A. The neighbor on the other side of the McLaughlins.
21 He called me up and said, By the way --

22 MR. O'KELLEY: I have object to Mr. Ralph
23 telling us what Mr. Crader said. It's hearsay.

24 THE WITNESS: Well, I got information that
25 the pipe was coming up from a neighbor, and then I came

1 back home because Dina was promised by the executive
2 director of the POA, John Thompson, that the pipe wasn't
3 going to be coming up. So I went back home. Got off the
4 golf course, went back home, and they had the equipment
5 already.

6 Q. And just to interrupt you, what kind of
7 equipment --

8 A. That big backhoe kind of deal, looks like a big
9 cutter at the end of it. A track vehicle, it tracks like
10 a tank, and it was over the pipe, and I went up to the
11 foreman of the job, Mr. Easling. I said, What are you
12 doing?

13 And he basically said, Off the property. This is
14 private property, which --

15 MR. O'KELLEY: Again, Your Honor, I'm going
16 to have to object to any statements by anyone other than
17 parties to this case as being hearsay.

18 THE COURT: Overruled. Go ahead.

19 THE WITNESS: So I was told to get off the
20 property, which I did. Mr. Easling was on the phone with
21 somebody, and then Mr. Easling gave the thumbs up to the
22 driver of the backhoe, and up came the pipe. It's huge.
23 You can crawl through it. It's a huge pipe, and so it
24 was torn up that day, gone.

25 BY MS. TILLMAN:

1 Q. About how many inches or feet --

2 A. I think it's 22 inches by 34.

3 Q. Twenty-two inches by thirty-four?

4 A. Yes, huge, huge. You can crawl through it.

5 Q. So you saw the pipe come up.

6 A. I saw it come up.

7 Q. Do you remember about what time that was?

8 A. It was after lunch; I would say 3:00, 2:00 to 3:00
9 somewhere.

10 Q. After the pipe came up, did the McLaughlins
11 proceed with the construction of their house?

12 A. Yes.

13 Q. In relation to the no-build area, where is that
14 house located now?

15 A. The back garage and the room above their garage is
16 right over the no-build area.

17 Q. And tell me about what you perceive the difference
18 in drainage on your lot to be before and after the
19 construction of the McLaughlins' house.

20 A. Well, the construction, during the construction, a
21 lot of flooding right up to his foundation, actually,
22 once that pipe came up. Of course his property at that
23 time was as low as our property until they built it up,
24 so there's a lot of water.

25 Q. A lot of water. Now, go ahead to after the

1 construction of the house, though. How about on your
2 property? How do you believe that the pipe, having come
3 up --

4 A. Well, what happened with the pipe issue, it came
5 up. It comes up in, I think, 20-foot sections, so
6 there's a section of that pipe still on his property, and
7 what the POA -- this is why we seek legal action.

8 The POA wanted to terminate the box on our
9 property with a terminal box, a cement box with a manhole
10 cover, right down our steps, and that's when I called
11 home. My brother's a lawyer, and there's actually three
12 lawyers in the family, and I told him what happened.

13 I said that we had just had an easement pipe
14 removed, and his first reaction was, Why? And I told him
15 that the property owners association wanted to put a
16 terminal box on our property with a manhole cover, at
17 which time -- with a manhole, at which time he said,
18 you --

19 MR. O'KELLEY: Your Honor, again, I have to
20 object. This is hearsay.

21 THE COURT: Sustained.

22 BY MS. TILLMAN:

23 Q. Do you remember the property owners association
24 asking you to put a terminal box on your property?

25 A. Yes. It was an e-mail.

1 Q. And did you allow them to do so?

2 A. No.

3 Q. And what would have been the function of that
4 terminal box?

5 A. Just to seal it properly. Mr. McLaughlin was told
6 to seal that pipe properly and to be certified by an
7 engineer, which wasn't done.

8 Q. Was there anything that you know to have prevented
9 Mr. McLaughlin from putting that -- from sealing the pipe
10 on his property?

11 A. No. I think he said, I don't want to incur that
12 kind of financing.

13 Q. Tell me about the drainage in -- in your back yard
14 now after the McLaughlins' house has been completed.

15 A. Well, it's a lot more. The ponding -- I mean,
16 it's really ponding. It's a lot deeper for two reasons,
17 in my opinion, two reasons, the pipe's up and the fill in
18 the back, dump truck's worth of fill, which I watched
19 over, and --

20 Q. Describe that. The dump trucks were --

21 A. The dump trucks -- and they spread fill to build
22 up their back lot, which dams up.

23 Q. When you say they, could you be specific?

24 A. The dump truck people, whoever had that contract.

25 Q. Onto whose lot?

1 A. Onto the McLaughlin's lot.

2 Q. Did they put it in the no-build area?

3 A. Yeah, throughout the back, no-build area and
4 throughout the area.

5 Q. Tell me -- I guess what I really would like to
6 know is the difference, both before and after, the
7 McLaughlins --

8 A. Substantial. The difference is substantial.

9 Q. And what do you think is the value of your home
10 without flooding in the back yard, if it were --

11 A. I would say what Dina, my wife, has said, about
12 \$775,000.

13 Q. And how do you think the flooding issues in the
14 back yard impact the worth of your home?

15 A. It's going to lessen the value tremendously. If
16 anybody comes and takes a look at that property now,
17 there's no way they would want to deal with that, and I
18 would say it's at least \$200,000 worth being deleted, the
19 value.

20 Q. And during your meetings with Mr. McLaughlin in
21 the course of trying to find some sort of solution to
22 this problem, what was your overall impression? Did you
23 tell Mr. McLaughlin that you were worried this would have
24 an impact on your property?

25 A. I think we all did. There was a haughtiness to,

1 This is what I'm going to do, and that's what was done.

2 MS. TILLMAN: All right. I have no further
3 questions.

4 THE COURT: Cross?

5 MR. O'KELLEY: Thank you, Your Honor.

6 CROSS-EXAMINATION

7 BY MR. O'KELLEY:

8 Q. Mr. Ralph, you're not suing my clients because
9 they filled in their property, are you?

10 A. Well, yes, yes and no. There's two issues to it:
11 One is that he broke the bylaws of Seabrook. You cannot
12 use fill to the detriment of your neighbors; and, two, to
13 bring up an easement pipe.

14 Q. You've been a member of the Seabrook Island
15 Property Owners Association --

16 A. You're not a member there. You're automatically a
17 member of the club.

18 Q. Let me finish my question.

19 A. Okay.

20 Q. You've owned property on Seabrook since 1997,
21 correct?

22 A. Yes.

23 Q. And as a property owner, aren't you a member of
24 the property owners association in Seabrook?

25 A. Membership -- yes, a member.

1 Q. And you and Mrs. Ralph bought your house, and it
2 was completed at the time you bought it, correct?

3 A. Yes.

4 Q. And are you familiar with the architectural review
5 process on Seabrook Island?

6 A. Not really because I never had to deal with them.

7 Q. Are you aware that no one is allowed to build on
8 Seabrook Island unless they have permission of the
9 architectural review board?

10 A. I've heard that. I never had to go through it.

11 Q. You mentioned a letter from June 2007, which is
12 Exhibit 3, and I've got a larger copy of that if that
13 will help you, Mr. Ralph. You've seen that letter
14 before, haven't you?

15 A. Let me see. Yes.

16 Q. And you're aware this is a letter from John
17 Thompson at the POA regarding an abandoned storm water
18 drainage system, correct?

19 A. Yes.

20 Q. And did you receive this letter sometime in June
21 of 2007?

22 A. Yes.

23 Q. And you were here for your wife's testimony
24 earlier, correct?

25 A. Yes.

1 Q. And you heard me ask questions about this
2 document, correct?

3 A. Yes.

4 Q. And I read, basically, from, "dear Mr. and Mrs.
5 McLaughlin" to the end of "during the project". Do you
6 see the language about the drainage easement and the way
7 to eliminate future problems and minimizing inconvenience
8 assigned by Mr. Thompson?

9 A. Yes, I see that.

10 Q. In other words, you've read the language of this
11 letter before, and you understand --

12 A. Yes. Can I --

13 Q. You understand it's a contract, correct?

14 A. Yes.

15 Q. Your testimony to Mrs. Tillman a few minutes ago
16 was that I think your property sits -- it's what you call
17 a dune line on the back of the property?

18 A. Yes.

19 Q. Does the property go up towards the golf course,
20 for lack of an unartful term? Does it rise?

21 A. Yes.

22 Q. And there's an old dune line there, correct?

23 A. Correct.

24 Q. And your wife testified, and I think your
25 testimony would probably be consistent, that even before

1 the McLaughlins thought about building a house, it would
2 pond in your back yard, right, when it would rain?

3 A. It would puddle.

4 Q. There was standing rain in your back yard after
5 every rain, correct?

6 A. There was water, yes.

7 Q. And there's still a drainage pipe on your
8 property, correct?

9 A. Yes.

10 Q. And if you'll bear with me one second, I need to
11 find my exhibit. Here it is, Defendant's Exhibit No. 3.
12 Are you aware that my clients purchased their property
13 from the Gantzes who formerly owned this lot?

14 A. Well, yeah. I've seen this.

15 Q. And are you aware that that deed references a plat
16 from Forsberg Engineering?

17 A. Yeah.

18 Q. Which we've got to find. I was trying to find the
19 smaller version.

20 Mr. Ralph, I apologize. This is a large exhibit,
21 but this is Exhibit No. 3. It's your exhibit, but it's
22 the Forsberg plat. Have you seen that document before,
23 sir?

24 A. Yes, I have seen this.

25 Q. And this document that I'm holding in my hand,

1 this blowup, does this appear to you to be the same?

2 A. Yes.

3 Q. All right. And does this plat show a current
4 no-build area to be abandoned and then existing 20-foot
5 drainage easement to be abandoned as defined by ABCDA?

6 A. Yes.

7 Q. And you've seen this document before, correct?

8 A. Yes.

9 Q. You were a property owner at Seabrook Island back
10 in 2002, were you not?

11 A. Yes. I didn't see this in 2002.

12 Q. No, sir, I'll represent to you that isn't from
13 2002, so you couldn't have seen it in 2002. Did you
14 attend homeowners' association meetings in 2002?

15 A. Not that I remember.

16 Q. Okay. Do you know how the Seabrook Island
17 Property Owners Association communicates to its members?
18 Do they send out letters? Do they send out e-mails? How
19 do they communicate things?

20 A. They will generally e-mail, and if you were not on
21 e-mail, I think they'll mail.

22 Q. How long have you had an e-mail address, sir?

23 A. About ten years.

24 Q. Do you know if you had one back in 2002?

25 A. I don't think so.

1 Q. I'm going to show you what's marked as Defendant's
2 Exhibit 1 and ask you to look over that document and tell
3 me if you've ever seen that. Specifically, I'm going to
4 ask you about the section entitled operations and
5 maintenance committee on -- it says page three, but it's
6 the second page of the document.

7 A. Yeah, there's something here that's not correct.

8 Q. Well, that document states, does it not, and I'll
9 read it as follows: Mr. Giuffreda clarified to Mr. Mineo
10 in talking about block 32, lot 22 to 28, a no-build zone
11 is currently implied. Mr. Giuffreda would recommend the
12 Board vote favorably on Mr. Mineo's proposal. Discussion
13 followed. Various questions/comments were asked and
14 answered.

15 Mr. Mineo made a motion to give the easement back
16 to the property owner with the understanding that the
17 property owner pay all costs necessary to remove the
18 easement. Mr. Giuffreda seconded it. The motion passed
19 by unanimous vote.

20 Is that what that document says, sir? Did I read
21 that document correctly?

22 A. Yes. Can I say something about that these
23 minutes?

24 MR. O'KELLEY: There's not a question
25 pending, Your Honor, but if he would like to explain

1 himself, that's fine.

2 THE WITNESS: Those meetings of the POA are
3 not always open.

4 BY MR. O'KELLEY:

5 Q. Do you know if that meeting in 2002 was open?

6 A. Probably not because I never saw that until this
7 all started.

8 Q. You're aware that the property owners association
9 eventually approved the plans and construction for my
10 clients on their lot, correct?

11 A. Yes.

12 Q. And your wife answered these questions earlier,
13 but at no time did you sue the property owners
14 association about its conduct in this manner, have you?

15 A. No, we have not.

16 Q. And you did not sue my clients for a temporary
17 injunction or a restraining order or for any other relief
18 from this Court or any Court to stop them from building
19 their house, correct?

20 A. There is an injunction.

21 Q. There is? Well, where's that injunction,
22 Mr. Ralph?

23 A. It's not in my hands right now, but it was filed.

24 Q. You're aware that that lawsuit was dismissed after
25 three days, correct?

1 A. Yeah, because the pipe was up, of course.

2 Q. But the injunction never went through, did it?
3 You didn't bring the lawsuit to stop construction, did
4 you?

5 A. The POA -- may I explain? The POA made out an
6 injunction, which was served the very day that that pipe
7 came up, which was December 9, 2008; very, very speedy.
8 That injunction was filed at 11:40. The pipe comes up at
9 3:00 in the afternoon.

10 Q. But you have no reason to doubt that that lawsuit
11 was dismissed, correct?

12 A. It was certainly dismissed, yeah. Why keep a
13 lawsuit going that didn't affect anything? The pipe was
14 up.

15 Q. The pipe you're describing, would that be fair to
16 describe that as a transmission pipe? In other words,
17 it's not a pipe that has a pump attached to it; it's a
18 way for water to get from point A to point B?

19 A. It's a transmission pipe, yes.

20 Q. Mr. Ralph, you're a seasoned U.S. Marine Corps
21 pilot?

22 A. Helicopter pilot.

23 Q. You flew 340 missions in Vietnam, correct?

24 A. Yes.

25 Q. You've received numerous awards as a decorated

1 veteran, correct, and you want this jury to believe that
2 a meeting with my clients, an architect, a construction
3 foreman was somehow intimidating. Was that your
4 testimony?

5 A. I said it was intimidating to Dr. Van Heerden, not
6 to myself.

7 Q. And Dr. Van Heerden is not here today?

8 A. No, he's not.

9 Q. I asked your wife some questions about potential
10 solutions, one of which involved a manhole to be put on
11 your property; is that correct?

12 A. Yes.

13 Q. And you objected to that after talking to your
14 brother, correct?

15 A. I objected to that by calling my brother.

16 Q. And your brother is not a licensed attorney in the
17 State of South Carolina, is he?

18 A. No, he's not.

19 Q. There was a solution, in other words, and you and
20 Mrs. Ralph blocked it?

21 A. It wasn't a solution. It was just a terminal box
22 on my property, and I decided maybe that shouldn't be on
23 my property since we didn't bring up the easement. If
24 there's going to be a terminal box on somebody's
25 property, it probably should be on the person who brought

1 the pipe up.

2 Q. Are you aware my clients gave permission to the
3 POA to put an additional easement on their property for a
4 solution that you blocked?

5 A. We both were going to accept that easement, both.

6 Q. But you never allowed the work to go through, did
7 you, Mr. Ralph?

8 A. What?

9 Q. You never approved the work and let it go through,
10 did you?

11 A. It wasn't my approval. It had to be approved by
12 the golf course. It had to be approved by the club. My
13 approval was there, the club --

14 Q. Your approval was there?

15 A. If that had come through, if that process had come
16 through, I would have approved it, but I knew damn well
17 that the club would never allow Mr. McLaughlin to do
18 anything.

19 MR. O'KELLEY: Your Honor, I'm going to
20 object to his testifying as to what the club would do,
21 and at that point, I have no further questions.

22 THE COURT: Sustained. Redirect?

23 REDIRECT EXAMINATION

24 BY MS. TILLMAN:

25 Q. All right. Mr. Ralph, I'm going to show you again

1 Defendant's Exhibit No. 1, if I can lay my hands on it.

2 These are the minutes from the Seabrook Island
3 Property Owners Association meeting Mr. O'Kelley was
4 talking about earlier, and those notes talk about giving
5 the easement back to the property owners.

6 A. Right.

7 Q. At the top of the minutes is a list of the members
8 present?

9 A. Right.

10 Q. Is your name on that list?

11 A. No.

12 Q. Were you present at that meeting?

13 A. No, I was not.

14 Q. Did you know about that meeting?

15 A. No.

16 Q. And you heard this morning the testimony of
17 Mr. Howard Yates?

18 A. Yes.

19 Q. Is it your understanding from his testimony that
20 the drainage pipe and that the no-build area belonged to
21 the Seabrook Island Property Owners Association?

22 A. No. It belongs to each individual owner.

23 Q. So do you believe that the Seabrook Island
24 Property Owners Association had the right to surrender
25 that easement?

1 A. No.

2 MR. O'KELLEY: I'm going to object. That
3 calls for an opinion. Mr. Yates was the only person
4 qualified to give an opinion in this case.

5 THE COURT: Sustained.

6 BY MS. TILLMAN:

7 Q. In your opinion, could the Seabrook Island
8 Property Owners Association unilaterally decide to
9 surrender that --

10 MR. O'KELLEY: Same objection, Your Honor.
11 She's just asked the same question she just asked.

12 THE COURT: Sustained.

13 BY MS. TILLMAN:

14 Q. Also, Mr. Ralph, Mr. O'Kelley talked about
15 property owners, when they're constructing a house on
16 Seabrook Island, need to get permission from the
17 architectural review board. Was it your understanding
18 that the meetings they've had were a part of that
19 process?

20 A. Well, it's a different committee. This was -- the
21 two meetings we had, the 29th and the 1st, were strictly
22 dealing with the easement, the pipe and the no-build
23 area. It's not the construction and what the house was
24 made of or the size.

25 Q. I see. Is a homeowner required to get permission

1 from the Seabrook Island Property Owners Association to
2 begin construction?

3 A. Yes.

4 Q. Do you think that the injunction lawsuit filed by
5 the Seabrook Island Property Owners Association against
6 Mr. McLaughlin was granting permission to Mr. McLaughlin
7 to begin construction?

8 A. No.

9 MR. O'KELLEY: Your Honor, I think this calls
10 for a legal opinion.

11 THE WITNESS: No.

12 THE COURT: Sustained.

13 MS. TILLMAN: I have no further questions.

14 MR. O'KELLEY: No redirect, Your Honor.

15 THE COURT: All right. You can step down.

16 Okay, folks. We're going to take about a
17 ten-minute break while we're getting ready for the next

18 witness. Again, don't begin deliberations or discussions
19 about the case, and we'll see you back in about ten
20 minutes.

21 (Recess taken.)

22 (In open court, jury present.)

23 THE COURT: All right. Thank you, folks.
24 Welcome back. We'll resume now with the plaintiffs
25 calling their next witness.

1 MS. TILLMAN: Thank you, Your Honor. The
2 plaintiffs would like to call Mr. Robert George.

3 ROBERT GEORGE,
4 having been first duly sworn,
5 was examined and testified as follows:

6 DIRECT EXAMINATION

7 BY MS. TILLMAN:

8 Q. Hello, Mr. George. Can you tell me, what is your
9 job title?

10 A. I am president and senior project engineer of G.
11 Robert George & Associates Consulting Engineers.

12 Q. And tell me about your education.

13 A. I have a bachelor's degree in civil engineering as
14 an honor graduate from the Citadel and a master's in
15 business administration from the Citadel, and I'm a
16 graduate of the United States Naval training command,
17 Naval training command.

18 Q. Where did you receive your formal engineering
19 training?

20 A. The Citadel for the bachelor of science degree,
21 and I've had my own company, been in engineering, since
22 1972, and I started my own company in March, on March
23 7th, 1977, and we will celebrate our 40th year this
24 coming March.

25 Q. And during all that time you've been a practicing

1 engineer?

2 A. Yes, ma'am.

3 Q. Tell me about the -- what I'm giving you, can you
4 tell me what this is?

5 A. It's a CV, or a resume for myself.

6 Q. And tell me, please, did you prepare this resume?

7 A. Yes, ma'am.

8 Q. You did. And is it a fair and accurate
9 representation of your experience as an engineer?

10 A. Yes, ma'am.

11 MS. TILLMAN: If there are no objections, I
12 would like to mark Mr. George's resume as Plaintiff's
13 Exhibit 14.

14 MR. O'KELLEY: No objection, Your Honor.

15 THE COURT: Go ahead.

16 (Plaintiff's Exhibit No. 14 was marked for
17 identification and admitted into evidence.)

18 BY MS. TILLMAN:

19 Q. We've marked Plaintiff's Exhibit No. 14 for
20 identification. It's Mr. George's resume.

21 Mr. George, as an engineer, what is it that you do
22 on a day-to-day basis?

23 A. We are consulting civil engineers, environmental
24 engineers. We specialize in hydrology and hydraulics.
25 Over the last four years we've done a lot of resort

1 building on the barrier islands. One of my specialties
2 is hydraulic modelling and storm water modelling.

3 Q. Tell me about that in layman's terms. What does
4 that mean you do?

5 A. Basically, we would take a topographical survey,
6 which is a two-dimensional representation of a
7 three-dimensional surface, and we can create with a -- if
8 it's an existing system of storm drainage or a proposed
9 systems, we're going to create, replicate what actually
10 exists in reality, and then we will run various storm
11 water models to replicate different storm events of
12 different duration of different frequency of different
13 intensity.

14 We can do that either to evaluate an existing
15 system or to determine what the capacity would be
16 available for a new development. It could be a
17 subdivision; it could be a highway; it could be a
18 commercial site; it could be a condominium project.
19 We've done all of those.

20 Q. Mr. George, were you hired in conjunction with
21 this case to evaluate the storm water drainage?

22 A. Not specifically with this case to begin with. We
23 were the resident engineers for Seabrook Island
24 POA association, and we performed several different
25 functions for them, but we were asked by the POA to

1 become involved in this particular project and evaluate
2 the storm water system as it existed.

3 Q. And this is the sort of work that you've done?

4 A. Yes, ma'am.

5 Q. Have you ever testified as an expert witness or
6 been certified as an expert witness?

7 A. I will tell you, on several different -- dozens of
8 occasions, I've testified in court, yes, ma'am, in storm
9 water.

10 MS. TILLMAN: Your Honor, the plaintiff would
11 like to proffer Mr. George as an expert in storm water
12 drainage.

13 THE COURT: How about civil engineering.

14 MS. TILLMAN: And/or civil engineering.

15 MR. O'KELLEY: And, Your Honor, I would not
16 object to civil engineering and registered land survey,
17 if he's going to testify as to --

18 THE COURT: Well, there you go. Well, he
19 definitely gets to be an expert, so it sounds like civil
20 engineering, registered land surveying with maybe a
21 specialty in storm water drainage. That's what he's an
22 expert in. The same instructions I gave you earlier
23 about expert witnesses apply to this witness as well.

24 He'll be able to give you his opinion and
25 state the basis for his opinion. You decide how much

1 weight to give his testimony based on all of the evidence
2 that you'll hear throughout the trial.

3 Go ahead.

4 BY MS. TILLMAN:

5 Q. All right, Mr. George. Tell me about how you
6 first became involved with this situation between the
7 McLaughlins and the Ralphs.

8 A. We were asked by the POA to evaluate what would
9 happen, and I'd have to say hydraulically, from a
10 standpoint of storm water management, if a series of old
11 existing cones were to be abandoned through a series of
12 lots, lots that fronted on the 11th fairway, I believe,
13 and were basically -- the back of the lots from the 11th
14 fairway front would be on Baywood, and the --

15 Q. May I stop you right there and ask you, I'm going
16 to show you what's been marked as Plaintiff's Exhibit No.
17 4. This is a plat of Seabrook Island, Baywood Drive?

18 A. Yes, ma'am.

19 Q. Is this -- you can see here -- you can see a
20 picture of --

21 A. I'm familiar with the plat.

22 Q. You are familiar with the plat?

23 A. Yes, ma'am.

24 Q. Can you tell me what the plat depicts.

25 A. Well, it's a plat of lots, titled lot 7 through

1 25, lot 23, but specifically the lots that we were asked
2 to look at would be lots 21 through, I believe, 28, which
3 show on another plat, and those lots contain -- at the
4 point in time when this plat was prepared, those lots
5 contain a 20-foot wide access easement to maintain a
6 storm water culvert that was constructed from Baywood
7 Drive, and it intercepted the water in the storm drains
8 in Baywood Drive which is a paved street, and the runoff
9 from Baywood Drive was then diverted down lots 21 and 22
10 as indicated on this plat.

11 And then they came to a structure, and then the
12 easement and the culvert continued across what was at
13 that time labelled a no-build zone across lots 20 -- 22
14 through, I believe, lot 28, and in that easement, there
15 was a corrugated metal arch culvert that had been
16 constructed back in, I think, the late '70s. I've
17 actually got the drawings. I believe I brought them with
18 me.

19 Q. Well, tell me, the culvert, since I'm a layman,
20 it's another word for a pipe?

21 A. Yes, ma'am. It's a pipe.

22 Q. And do you see that pipe on this plat?

23 A. The pipe is not shown on the plat. The center of
24 the easement is where the pipe is located, but the
25 20-foot wide easement is shown on the plat.

1 Q. And what is it labelled that --

2 A. It's hard to read, but I believe it's 20-foot
3 drainage easement.

4 Q. All right. So, backtracking, you were hired by
5 the POA, which is the property owners association --

6 A. Yes, ma'am.

7 Q. -- to evaluate the effectiveness of that drainage
8 pipe?

9 A. We were asked to evaluate the impact of abandoning
10 the culvert and abandoning the easement.

11 Q. Did you do a study?

12 A. We did an extensive study. We did an analysis of
13 the complete drainage area, the drainage basin that that
14 culvert served. We did quite an extensive one.

15 Q. Do you remember the year of that study?

16 A. I believe it was -- I want to say 2007, just to
17 take a shot at it. I may be wrong. It was a while ago.

18 Q. I'm going to show you what's been marked as
19 Plaintiff's Exhibit 12, and can you tell me what this is?
20 And take your time.

21 A. No. 12 is an e-mail from John Thompson, who was
22 the chairman of the POA at the time, and it's copied to
23 several people. The subject is old easement on the
24 Baywood lot, important, and then it goes on to talk
25 about -- you want me to read the whole thing?

1 Q. No. Attached to that e-mail --

2 A. There's a paragraph that's highlighted. Do you
3 want me to read that or --

4 Q. That's all right. If you would, tell me what
5 Mr. Thompson attached to that e-mail.

6 A. Okay. He attached an executive summary of our
7 drainage report.

8 Q. And what is that? Tell me what you mean, an
9 executive summary?

10 A. It's a finding and summary of recommendations.

11 Q. And did you prepare this?

12 A. Yes, ma'am.

13 Q. Could you tell me, in layman's terms, what were
14 your findings and recommendations to the POA in regards
15 to that drainage easement?

16 A. Surprisingly enough, we found that the old
17 culverts, the corrugated metal culvert, if I can use it
18 as an exhibit, the corrugations in this stack of cups --
19 if you've ever seen a corrugated pipe, it's a metal pipe
20 with corrugations up and down, and the old culvert --
21 specifically, it was asbestos bonded bituminous coated
22 pipe, which was typical to use on a barrier island. It
23 was in surprisingly good condition, but all of the joints
24 leaked pretty bad. The structures were there, the drop
25 inlets and junction structures -- actually, there were

1 more junction structures, but they leaked like sieves,
2 but they were there and they were sound.

3 So we did find that the storm drain was very
4 functional. The POA had it cleaned out with high
5 pressure water, and they actually did a closed circuit
6 TV evaluation of the inside that we looked at and we
7 evaluated, and what we determined was that the culvert,
8 through those lots, 21 through 28, all right, it was
9 still functional, and it functioned in two ways: One, it
10 did transport the water from Baywood Drive down to,
11 ultimately, an outfall, or a discharge into a golf course
12 water hazard, and then because of the joints that were
13 actually leaking, it acted somewhat like a de facto
14 French drain.

15 The soil right there is very sandy, and if you've
16 ever been at the beach and dug a hole as a kid, just dug
17 a hole in the sand, eventually when you hit the water,
18 the hole keeps coming in and the water keeps coming in.
19 The sand out there is very similar. It's beach sand. It
20 has a high permeability rate. The water can go through
21 it very quickly. It's like putting marbles in a pot.
22 There's a lot of voids in it. The water can just run
23 right through it.

24 Well, this pipe, because of the leaking joints and
25 because of the holes that were in the covers, not exactly

1 drop inlets, it did two things: It lowered the
2 groundwater table, and it provided some surface drainage.
3 And it was a functional pipe, and we felt like because of
4 the -- the best example I can give is to think of Folly
5 Beach or another barrier island, and these barrier
6 islands, they have what's called dune trough, dune
7 trough, dune trough, and it's like a wave of sand. And
8 if you ride some of the roads on Folly Beach, you realize
9 that hey, these roads are on a high crest of the a dune,
10 and the houses are down a little bit lower in some cases.

11 Well, the culvert was located, on purpose, by E.M.
12 Seabrook, who has passed away, but Mike Seabrook was the
13 engineer at Seabrook when it was developed. He put these
14 culverts in those troughs to -- purposely put them there
15 to drain those areas and to drain the roads. It doesn't
16 make a lot of sense to put a covered system on a high
17 dune. You want to put it down in the trough, so he put
18 it there for a reason.

19 We felt like that if it were to be abandoned, if
20 you were to go to -- Kiawah Island is probably a good
21 example as well, a lot of these islands the trough that
22 you'll find actually has a lake there, a freshwater lake,
23 and the reason is it's freshwater is freshwater is less
24 dense than salt and actually floats on the salt water, so
25 if you don't drain these low troughs in some cases, and

1 you can even find them on Seabrook, there'll be a lake
2 there. It may not be there 12 months a year, but it will
3 be there sometimes when the groundwater table is high and
4 when there's been a lot of rainfall.

5 So we found because it was functional, if it was
6 taken out, it would adversely impact the lots that we
7 felt that they had a no-build zone. A couple of lots,
8 including the Ralphs, had already built on theirs, and if
9 you took the culvert out, it would be discontinuous, and
10 there would be, basically, no way to effectively drain
11 those lots the way it was intended to be drained and the
12 way Mike Seabrook had designed the system.

13 So we recommended that, and I'll just -- I'll tell
14 you my last statement. Removing any portion of the
15 existing system within lots 21 through 28 will likely
16 increase the likelihood of roadway and area flooding for
17 storm water events exceeding the ten-year frequency. We
18 actually went through this in our model and modelled what
19 would flood for storm water events from a two-year storm
20 to a 100-year storm, and that's in the report.

21 Q. And that's in the report. Have you got any
22 depictions of that in this sheaf of papers I'm holding?

23 A. Depictions of what, ma'am?

24 Q. Oh, sorry, of the models that you created?

25 A. The model is bound. It's about that thick, and in

1 that model, it has several attachments, and several of
2 them show the areas that would flood. It gives an
3 elevation of the surface, and then it gives an elevation
4 of what the water level would be above that surface and
5 that's in the report. Unfortunately, it's kind of
6 technical, but it is what it is.

7 Q. I did warn the jury that this might get
8 complicated. Now, you provided this report to whom?

9 A. To the Seabrook Island POA.

10 Q. And based on that e-mail you read, to whom did the
11 POA provide the results of that study?

12 A. Excuse me. It was sent to Paul McLaughlin, Paul
13 and then -- you know how e-mail addresses are.

14 Q. Yes. Would it be --

15 A. It's kind of blurred here, Van Heerden -- several
16 people.

17 Q. Is it addressed, though, at the top to the lot
18 owners?

19 A. It is.

20 Q. Okay. So would it be --

21 A. To the best of my knowledge, it is.

22 Q. Were you present at a meeting in September of 2008
23 with the property owners association and various lot
24 owners on that lot?

25 A. I believe I was, yes, ma'am.

1 Q. Do you remember what you said at that meeting?

2 A. We basically presented the findings in our report
3 at the request of the POA.

4 Q. All right. And do you remember whether the
5 defendant, Mr. McLaughlin, was present at that --

6 A. I can't remember. I can't recall. A lot of
7 people in the room. I think Whitney Powers, his
8 architect, was there. I know Whitney, and I remember
9 that she was at one of the meetings, and I think it was
10 that particular meeting.

11 Q. All right. And tell me, at that meeting did you
12 give any recommendations, and what were they?

13 A. We honestly gave our recommendation that if lot 22
14 was built upon as it was then proposed and the easement
15 would be abandoned and the culvert would be removed, we
16 felt like it would have adverse impacts trickle down to
17 the property owners.

18 And storm water in college is called a black
19 kettle science; you either like it or you don't, and
20 there's so many unintended consequences. I grew up
21 downtown, and, you know, if -- it's like a waterbed. You
22 push something down here, something comes up here, and so
23 with storm water design and storm water management, you
24 really, number one, have to be very careful; and, number
25 two, you got to know what you're doing, and even though

1 you do the best job you can, there's going to be
2 unintended consequences of your actions. And what our
3 concern was is the unintended consequences of abandoning
4 that entire pipe and that series of easements.

5 Q. Did you advise against digging up the pipe?

6 A. Yes, ma'am, we did.

7 Q. And to your mind, what is the detriment to
8 building in the no-build area? What is the purpose of
9 the no-build area?

10 A. Well, the no-build area, I can only surmise what
11 it was intended to be by the surveyor that drew the plat
12 and by Mike Seabrook, but there wasn't sufficient area
13 between --

14 MR. O'KELLEY: Your Honor, I would object to
15 Mr. George surmising. If he knows, great, but if he's
16 guessing --

17 THE WITNESS: I'll rephrase that. I know. I
18 know there's insufficient area, given the setbacks, to
19 build from the golf course side of the 20-foot easement
20 to the property line separating the lots and golf course.
21 It's just a strip of land. You couldn't put a house
22 there, a structure, and the easement being what it is, it
23 would not allow a structure to be built upon it anyway,
24 so it's a no-build zone. It's designated that way.
25 BY MS. TILLMAN:

1 Q. Would it have served an additional purpose of
2 allowing the property owners association to maintain the
3 culvert or the pipe?

4 A. Without a continuity of the easements, there would
5 be no way to maintain the culvert. There would be no
6 ingress and egress, nothing, to maintain the culvert, to
7 remove sediment from it, or to repair it without an
8 easement from a roadway to all the way down. You just
9 could not legally get to it. You would be encroaching on
10 somebody's property.

11 Q. During that meeting, or at any time, did you
12 discuss with the Seabrook Island Property Owners
13 Association some sort of solution to the possibility of
14 that pipe being removed?

15 A. Yes, ma'am, we did.

16 Q. Can you tell me about that.

17 A. We were asked and offered some solutions, and one
18 of them was to try to reconnect the pipe at basically the
19 lot line between lots 21 and 22 and to construct a
20 culvert from there out into the golf course to discharge
21 into a new 30-inch diameter carbon pipe that the golf
22 course had constructed, the club being very separate from
23 the POA.

24 Q. I see. Did the club need to grant permission?

25 A. Yes, ma'am, they would. I mean, they would have

1 had to grant permission, yes, ma'am.

2 Q. And to your knowledge, did they grant it?

3 A. No, ma'am, not at that point in time.

4 Q. And was that solution that you proposed ever
5 implemented?

6 A. No, ma'am, it wasn't.

7 Q. Are you aware that ultimately the pipe was dug up
8 and the defendants built their house on --

9 A. Very much aware.

10 Q. All right. Have you yourself gone to visit these
11 properties?

12 A. Yes, ma'am.

13 Q. All right.

14 A. On several occasions.

15 Q. Well, I believe you have a series of photographs
16 that -- I'd like to speak with Mr. O'Kelley briefly.

17 Mr. George, would you take a moment to look

18 through the photos and make sure they're photographs that
19 you are familiar with and whether they're a fair and
20 accurate representation of the property you visited.

21 A. Yes, ma'am. I took these personally on the 8th of
22 February 2014.

23 Q. All right.

24 MS. TILLMAN: The plaintiffs would like to
25 admit these series of photographs as Plaintiff's Exhibit

1 15.

2 (Plaintiff's Exhibit No. 15 was marked for
3 identification and admitted into evidence.)

4 BY MS. TILLMAN:

5 Q. I'm going to put these photos on the screen behind
6 you, if you would walk us through, and tell me what I'm
7 putting on the screen here.

8 A. I think it goes to the reason I went out there on
9 that day. We had obtained some drawings from -- I think
10 they came through the POA, and at that time I believe
11 that we were retained by Mr. Sinkler to represent the
12 Ralphs.

13 We had obtained a couple of drawings that we
14 wanted to check, and one of them specifically was the
15 drawing L-1. It was a landscape design drawing that had
16 been revised and there had been some correspondence back
17 and forth between myself and Whitney Powers, who was the
18 architect for the McLaughlins, but the reason I went out
19 there, I wanted to see if what was on that drawing was
20 actually built.

21 Q. Let me pause you right there and tell me whether
22 that drawing is present in this sheaf of -- let me show
23 this to Mr. O'Kelley.

24 All right. Mr. George, can you tell me, where did
25 you get this and what does it depict? Specifically --

1 let me start with, where did you get this representation?

2 A. This drawing was provided to us, and I believe we
3 got it from Whitney Powers.

4 Q. Who is Whitney Powers?

5 A. She was the architect for the McLaughlins.

6 Q. At which point did she give it to you?

7 A. It's several years ago, but there was a series of
8 e-mails where we looked at and commented on a grading
9 plan, which this is. This is a site grading plan.

10 Q. Does it have a title on it that tells you that?

11 A. It's sheet L-1, and it just says McLaughlin
12 residence, and it says site plan, but it has both dotted
13 lines which represent it just in contours, and solid
14 lines which represent proposed contours and changes in
15 the earth's surface, and it's called a site grading plan
16 in the profession.

17 Q. All right.

18 A. And this particular one, which we has revised note
19 on it, there was an earlier version of this one that's
20 been revised, and to the best of my knowledge, it was
21 revised as the result of discussions between Ms. Powers
22 and I.

23 Q. And this particular version, though, was provided
24 to you by the McLaughlins' architect?

25 A. I believe so.

1 Q. Was that during the course of when you were
2 working for the POA in an attempt to --

3 A. It may have been very early on, but the house may
4 have been under construction. At this point, ma'am, I
5 just can't remember the detail. It was -- it was in -- I
6 would just say it was in that transitional period.

7 Q. All right.

8 A. I don't think the house had been finished at that
9 point in time. It may have been under construction.

10 Q. Okay.

11 MS. TILLMAN: If there are no objections, I
12 would like to mark this as Plaintiff's Exhibit 16.

13 MR. O'KELLEY: There are objections, Your
14 Honor. We don't know who created this document. All we
15 heard was it was hearsay since it was produced by
16 somebody out of court.

17 It is not stamped, doesn't have -- for
18 example, like, Mr. George's registered land surveyor or
19 engineering stamp on it. We have no idea knowing where
20 it was from, the office, where it was scanned, so it's
21 hearsay.

22 THE COURT: Can you address any of those?
23 Where -- what is it of?

24 THE WITNESS: Your Honor, would you like for
25 me to describe it?

1 THE COURT: Yes.

2 THE WITNESS: A site plan -- this, to me as a
3 professional engineer in this state, as a registered land
4 surveyor, this is a site plan. It has the location of
5 the house, the location of the driveway's, I would say,
6 proposed location. It has the existing contours as I
7 mentioned before.

8 It has the location of specific trees on it,
9 and it also has certain details about driveways and tree
10 protection. It has a legend on it. It has a scale on
11 it. It does not have a stamp. It should, but it
12 doesn't. This drawing has been around for a long time.

13 THE COURT: You saw it before today?

14 THE WITNESS: Sir?

15 THE COURT: You've seen it before today?

16 THE WITNESS: I prepared -- several years ago
17 I prepared what you see, is the reason I went out to take
18 a series of photographs --

19 THE COURT: I asked that because it aids you
20 in giving your opinion as an expert.

21 THE WITNESS: Yes, sir.

22 THE COURT: Then you can use it. Yes, sir?

23 MR. O'KELLEY: I withdraw my objection. I
24 didn't know he had prepared it. I thought it was
25 somebody else.

1 THE WITNESS: Excuse me. I'll qualify. We
2 prepared annotations on top of it. We put a layer on top
3 of it. The reason I had went out there in February of
4 2013 with this drawing was to check to see if the grading
5 plan that was proposed on this drawing was actually
6 built.

7 THE COURT: That's fine. You can use it.

8 THE WITNESS: Yes, sir. Thank you.

9 MS. TILLMAN: Thank you, Your Honor. The
10 plaintiffs would like to mark this as Plaintiff's 16.

11 (Plaintiff's Exhibit No. 16 was marked for
12 identification and admitted into evidence.)

13 THE WITNESS: Your Honor, if I could --

14 BY MS. TILLMAN:

15 Q. All right. Mr. George, would you --

16 A. It may be better if I actually went over there and
17 looked at the photos at the same time. Would that be
18 permissible?

19 THE COURT: Yeah. You need to step down?

20 THE WITNESS: Yes, sir.

21 THE COURT: Go ahead.

22 THE WITNESS: That will make it easier.

23 MR. O'KELLEY: Just briefly, I've been pretty
24 patient, but I don't understand the relevance of this
25 related to the Ralphs' cause of action and against my

1 client. Mr. George is a very qualified engineer. He's
2 taken pictures, but where are we going with this?

3 MS. TILLMAN: These photographs are going to
4 demonstrate what the contours of the land look like and
5 the effect that the McLaughlins' residence, construction,
6 has had on the Ralphs' property.

7 THE COURT: Well, then it's relevant. Go
8 ahead.

9 THE WITNESS: What I did, just to run
10 through -- not run through, but just to describe, I
11 walked in front of Baywood and took photographs there,
12 and then I walked down easement. I did not go on the
13 Ralphs' property. I walked down the easement on the
14 adjacent property and then walked out in the front on the
15 golf course side, and then I went on the Ralphs'
16 property, but I did not go on the McLaughlins' property
17 to take this photograph.

18 What I'd like to just -- and there is no
19 other way to do it than just demonstrate it. If you were
20 to look where I've pointed on this drawing right there,
21 you'll see a 12 contour. Well, that's the top of that
22 dune that I was talking about earlier, and the land form
23 drops down, and it drops down to an area that is below 7
24 contour. And when the house was built, the culvert and
25 the easement -- we had another exhibit that shows that --

1 that the culvert and easement went right underneath where
2 the driveway -- excuse me, where the garage is, so the
3 culvert would have been almost centered right on the
4 center of the garage.

5 The reason that I went out with this document
6 was that in talking to Whitney Powers and just looking at
7 our e-mails and the e-mail support letter, they were
8 trying to build a berm or a ridge, and I'm doing this,
9 Your Honor. They were going to build a berm up along the
10 lot line and construct a depression in the front of their
11 lot, in front of that lot between the house and the golf
12 course, and that depression would have been below
13 seven-foot elevation.

14 The ridge of the berm, these red lines,
15 they're eight foot contours, so this would have been
16 above eight, this would have been below seven, so we're
17 talking anywhere from a foot to a foot and a half, and to
18 see a berm like this on a drawing, as an engineer, you
19 would be able to clearly see that in the field, and when
20 you go out, you could see this mounded berm.

21 So, if you would, running through the
22 photographs real quickly, that's the front of the house,
23 the driveway, and I'm going to just show you on the
24 photograph, the next photograph. This is a swale that
25 runs along the side of lot 20 and 21, I believe. Next

1 photograph: We're coming down the driveway. I'm right
2 about here. Next photograph: We're looking at the house
3 in this direction.

4 Q. I'm sorry, can you tell us whose house?

5 A. That's McLaughlin's house, and the next
6 photograph -- and, again, I'm just taking a shot, and if
7 you look at the photograph, you can see in here there is
8 a little bit of a high point. There's an eight-foot
9 contour, so this is the area where the contour starts to
10 drop. It starts to drop in this lower area in the front.

11 Next photograph: We're just looking down at the
12 rock line and vegetation as planted. Next photograph:
13 That's the sidewalk you can see in the photograph. Next
14 photograph: That's looking into this area, and right at
15 this point, the drainage -- and you can judge by looking
16 at that and by looking at the intent of the site plan.
17 The drainage was to flow into this lower area that was
18 planned in front.

19 Again, we're standing right here at the edge of
20 the driveway going into the -- going into the garage, and
21 you can see that the land does drop from right to left.
22 Next photograph?

23 Q. One minute, Mr. George. Is this the front of the
24 McLaughlins' house?

25 A. This is looking into their garage, the front of

1 their garage right there.

2 Q. All right. From the street?

3 A. From the easement.

4 Q. Uh-huh.

5 A. Sidewalk line easement. Next photograph: That's
6 the double garage that they've got. Notice the little
7 walkway, and the walkway actually shows on this exhibit.

8 Next photograph: All right. Now, we're looking
9 back up this way. Next photograph: This is standing in
10 the corner and looking at this area, and you can see that
11 it's what in engineering terms would be flat graded.
12 It's graded just a very gradual slope in the front.

13 Next photograph: Again, and I'm on the golf
14 course here. You can look up the driveway and it's plain
15 to me as an engineer, I'm sorry, but you can see that the
16 water comes this way. It just comes to the front.

17 Next photograph?

18 Q. Well, can you elaborate on that? First of all,
19 whose house are we looking at?

20 A. We're looking at the McLaughlins' house. We're
21 looking at the garage and, I believe, that's the bedroom
22 above, and you can see in this photograph that the site
23 is graded from right to left where that grass is, that
24 green lawn in there. All right? And we're coming into
25 what should be this basin area that is intended to be

1 constructed in the front.

2 Next photograph?

3 Q. I'm sorry.

4 A. That's just sort of a stand-back look, and what
5 I'm doing here, I'm looking at this whole area, and you
6 can see that grassed area in there is this whole area.

7 Next photograph: What I'm looking for here is
8 this berm, and that berm was intended to serve a critical
9 purpose. This berm was to retain water on site, on the
10 McLaughlins' property, and it's retention and detention.

11 Retention, to retain it, would allow it to soak
12 into the grass and into the ground, so it would go into
13 the groundwater table. To detain it is to hold it back
14 and to allow it to flow out, if it got to a certain
15 elevation. The intent was to allow this area to flood
16 during a major event, during a shower, maybe a foot and
17 to come in this area between two berms, and it would be

18 like this right here, and the water would be allowed to
19 pass through here, only if it got up to this elevation.

20 Q. And where would the water go?

21 A. It would then go in -- back into the Ralphs'
22 property, but a lot of it would be retained here, and it
23 would soak into the ground. The intent was to try to get
24 as much of the surface runoff intercepted before it ran
25 into the Ralphs' property. That was the intent of this

1 plan. Unfortunately, the berm didn't get filled.

2 Next photograph: I'm looking down what should be
3 this lot line right here, and water comes -- you'll see
4 it in more photographs. The water just comes in and goes
5 right on to the Ralphs' property. Next photograph:
6 That's looking into the Ralphs' property and theirs is
7 low. There is no question about it. It's this six-foot
8 contour that shows, and we picked that up doing
9 topographical surveys as well.

10 The next photo, that's the lot line. Where those
11 bushes are there, there should be a berm about that high
12 according to this drawing. It's not there.

13 Q. What is the effect?

14 A. It allows water that should flow from the
15 McLaughlins' property on to the Ralphs' property.

16 Q. Go to the next photograph.

17 A. Yeah, next one. That's just another shot and
18 looks in this area. Keep going. That's looking back
19 from the Ralphs' property, and you can see the gray area
20 in there, the water just flows into their property. Next
21 photograph: Just looking for that berm. There's some
22 bushes in there. There's no berm in there. Keep going.

23 That's in front of the Ralph property, looking at
24 the McLaughlins'. The right-hand side of the photograph
25 is pretty close over on the right-hand side. Next

1 photograph: That's pretty much looking right up where
2 the water flows, surface flows, from the McLaughlins'
3 property on to the Ralphs' property, and it's just really
4 a consistent, uniform gradient.

5 Q. Okay. Carry on.

6 A. That's just looking at the side of the Ralphs'
7 property at an area that culvert -- remember, this, for
8 them, is still a no-build zone because the house was
9 built behind the no-build zone. The culvert would be
10 right behind that property, and the culvert still exists.
11 It's still there.

12 Q. Just in layman's terms, we're looking where the
13 drainage pipe is on the Ralphs' property?

14 A. We're looking from the golf course into the
15 Ralph's property, and the culvert would run right to
16 left.

17 Q. From -- I see.

18 A. The culvert was cut off on the line pretty close
19 to where the right edge of the photograph is. Next
20 photo: Again, that's just showing the consistent surface
21 gradient from the grassed area on the McLaughlins'
22 property on to the Ralphs' property.

23 Next photo: That's just looking down the center
24 line of the easement, turning and looking along the front
25 of the Ralphs' property. Next photograph?

1 Q. Well, one minute. When you say you're standing
2 on --

3 A. I just turned, and I'm looking with my back to the
4 McLaughlins', looking across the front, pretty much right
5 down where the culvert is.

6 Q. So we're looking right down the drainage pipe?

7 A. Pretty much, yes, ma'am. That's looking for the
8 berm. It's not there. That would have been right in
9 here, and, again, you can see there no berm there, and
10 that's drainage just coming right on to Ralphs' property.

11 That's looking into the area between the Ralphs'
12 and the McLaughlins'. That's up in this area where that
13 low spot should have been and would have been constructed
14 between the two eight-foot contours, and that's a seven.
15 The green line's a seven, red's an eight and that's a
16 six, right in the middle of it, and that would be on the
17 Ralphs' property.

18 That's looking for the berm and it's not there.
19 Again, no berm, and here I'm looking from the front to
20 the back down the Ralphs' property, and that's looking
21 down that side, and you can actually see a pronounced
22 swale that runs from the lower left down to the center of
23 the photograph, up where that metal structure, that hoop
24 is.

25 Next photo: Again, that's looking down that

1 swale. That's the swale that runs down this property
2 line right into the Ralphs' property.

3 Q. Mr. George, is the house that we see in this
4 photograph? Is that the McLaughlins' house?

5 A. Yes, ma'am. That's the side of the McLaughlins'.

6 Q. Is that the portion of it that faces the golf
7 course?

8 A. Yes, ma'am. If you look in the distant
9 photograph, that's the golf course.

10 Q. Would you say that portion of the house is
11 constructed in what was once the no-build area?

12 A. Actually, the garage is. We're looking at the
13 side which would have been outside of the easement of the
14 garage. Some of the deck would be in the easement, yes,
15 ma'am.

16 That's pretty much it. I just went back up the
17 side. You can see here -- that's a good look between the
18 McLaughlins' and the Ralphs', and you can clearly see
19 there's a swale running from the lower left corner of the
20 photograph up into the center into the left side of that
21 tree.

22 Q. And tell us what a swale is. Is that a country
23 term?

24 A. A swale is a tiny little ditch. It's not a formal
25 ditch. It has a parabolic. Generally, it's to direct

1 surface water, to take surface water from one point to
2 another. Swale is an immature ditch.

3 Q. And so it is not a naturally existing condition?

4 A. No.

5 Q. And at what point was this swale constructed?

6 A. It would have been constructed when the final site
7 grading and landscaping was done. That's pretty much it.

8 Q. That's pretty much it?

9 A. Yes, ma'am.

10 Q. Mr. George, would you say to a reasonable degree
11 of engineering certainty that the effect of the
12 McLaughlins tearing up the pipe and building their home
13 in the no-build area, has that affected the Ralphs'
14 drainage?

15 A. Yes, ma'am, it has.

16 Q. Tell me specifically how in the best layman's
17 terms you've got.

18 A. You won't let me talk about the common enemy rule
19 then. Storm drainage is an enemy to all, and in my
20 layman's understanding of it, I cannot take my storm
21 water and discharge it on to my downstream property
22 owners's lot at a rate that is higher than the
23 predevelopment rate at a point that is different from the
24 predevelopment rate or the concentrated point or at a
25 quantity that's greater than the predevelopment rate.

1 Q. How has the McLaughlins' construction of their
2 residence affected the way storm water flows?

3 A. The best example is? Let's take that glass table
4 top. If you would imagine, we would prop one end of the
5 table up and cover that with old -- big, old, thick shag
6 carpet. That would be the predevelopment property, and
7 we take that pitcher of water, and we pour it on the end
8 where Mr. Sinkler is. It would take a long time for that
9 water to get to the other end across that shag carpet.

10 If we were to put a couple of boxes to represent
11 the house and some glass or hard surface to represent the
12 driveways, a lot more water is going to run off a lot
13 quicker, not as much is going to absorb into the ground,
14 and it's called the runoff coefficient. There's a
15 difference between permeable and impermeable surfaces.
16 Impermeable would be a hard driveway, concrete walkway, a
17 roof; completely impervious. 99 percent of the rain that
18 hits it is going to run off.

19 A well-manicured lawn would be more like Astroturf
20 on that table. It would be different than a natural
21 predevelopment site where you would have a lot of litter
22 fall and a lot of pockets and a bunch of little
23 depressions that would be latent detention areas. They
24 would have to fill up before the water would run off.

25 So by building -- and this is pretty much true

1 universally. By developing a piece of property, the time
2 that it takes for water to get from the remotest point of
3 that drainage area, the upper end of that table, to where
4 it comes off the table, or the outfall, the time is
5 decreased and the amount of water that comes off is
6 increased, so you have a greater volume of water that
7 comes off, and it comes off quicker.

8 In this case, the intent was to try to hold back
9 some of that water, retain it and detain it. That wasn't
10 done, so this surface water -- there's very few roof
11 gutters and drains on the McLaughlins' house. There's a
12 couple in some crooked areas, but that's it. There's a
13 lot of water. About half a lot now from the front of
14 their house drains to the back towards the golf course,
15 and the surface water runs into the Ralphs' property.

16 Now, there's another issue with the culvert not
17 being there, and the problem is this: The next lot, the
18 lot 24 on the -- I'll say the northeast side of the
19 Ralphs' --

20 Q. Just for the sake of the jury's understanding, the
21 Ralphs are lot 23; is that correct?

22 A. Yes, ma'am.

23 Q. And the McLaughlins are lot --

24 A. 22, and 24 would be if you were down on the street
25 looking at the Ralphs, it would be the lot to the right.

1 I believe in 2007, might be a little bit off, that the
2 easement and the pipe on lot 27 was also abandoned by the
3 POA.

4 Q. Right. Well, now, so what are you suggesting then
5 that the implication would be?

6 A. Well, if someone were to build on lot 24 over that
7 pipe, they would have been over it. If they took that
8 pipe out, there would be essentially a higher lot from
9 the McLaughlins' and a higher lot from the neighbor, and
10 the Ralphs' house would be in a hole.

11 Q. So you're saying that if another lot owner were to
12 do the same thing the McLaughlins have done --

13 A. Downstream to the Ralphs, yes, ma'am.

14 Q. And to disregard the drainage easement in their
15 back yard and the pipe -- tear up the pipe, that it would
16 have an increasingly --

17 A. Very detrimental effect on the Ralphs' property.

18 Q. Now, back to how the McLaughlins' actions
19 specifically have impacted the Ralphs. Can you tell
20 us -- have you been to the Ralphs' house during a rain?

21 A. No, ma'am.

22 Q. What would you have -- based on your expert
23 engineering analysis, would you describe what you believe
24 would happen in the Ralphs' back yard during rain?

25 A. Well, this past weekend we had -- and I looked

1 this up on the old weather reports. We had less than
2 nine-tenths of an inch on the 21st, and I think we had
3 1.97 inches on the 22nd. That's not a real big storm
4 event.

5 To give you some idea of a 2-year storm, a storm
6 that reoccurs every 2 years would have a rainfall amount
7 in 24 hours of 2-and-a-half inches. A 5 year would be
8 5.7 inches. A 10-year storm, a storm that runs a
9 frequency every 10 years is 6.7. A 25 year is 8, a 50
10 year is 9, and 100 year is 10 inches.

11 That's a lot of water, so I would imagine that
12 with the groundwater table being high, the trees are not
13 sucking up water. Evapotranspiration is what it's
14 called, but the trees are not pulling water up and
15 blooming out. So the groundwater table in January,
16 February, and the first part of March in the South
17 Carolina coast is really at its seasonal highest. It's
18 called seasonal high running table, so I imagine the
19 groundwater table is pretty close to the surface, and if
20 we had nearly two inches of rain, they would have had
21 some water in their front yard.

22 Q. And I believe we had some photographs that we
23 previously admitted. They probably have run away with
24 the other exhibits. I'm trying to find them for you.

25 Would it be a fair representation -- Mr. O'Kelley,

1 I can't locate these photos -- we previously saw a
2 photograph of Mrs. Ralph standing with water up to her
3 boot tops. Would that seem to you to be about what --

4 A. I would imagine that to be absolutely believable.

5 Q. All right. And can you tell us, does the drainage
6 pipe that's on the Ralphs' property, in fact, help to
7 drain the water on their property?

8 A. It does now. As long as it's continuous to its
9 outfall, it will help, and it helps, basically, with
10 subsurface and some surface. The round cast iron tops on
11 the surfaces have holes about this big around, four of
12 them. It's not truly a drop inlet, but over time -- and
13 they leak. We popped the covers on them and looked
14 inside, and they leak, so over time surface water could
15 run in it and a lot of the drainage is subsurface going
16 into the leaks, and the color -- closed circuit TV that
17 we looked at, you could see the joints, and there was
18 water squirting in the joints and sand coming in.

19 So it's really sort of like an informal French
20 drain. It tends, over time, to lower the water table.
21 Over time, it will take in some surface water, but if you
22 were to create another discontinuity of that culvert by
23 building on a downstream lot, there would be nowhere for
24 that water to go, and we go back to the morphology of a
25 barrier island, and we're back in that dune. And you're

1 going to have that high water table, and you're going to
2 have surface flooding in that dune, and that's what the
3 Ralphs' front yard is, it's a trough.

4 Q. And it's a trough, but the design of Seabrook
5 Island and the original engineers was to alleviate that.

6 A. Yes, ma'am.

7 Q. And that design -- has that design been
8 interrupted by Mr. McLaughlin and Mrs. McLaughlin's
9 actions?

10 A. Yes, ma'am, yes, ma'am.

11 Q. Have you been working with Mr. and Mrs. Ralph to
12 come up with a solution that would alleviate the problem
13 with water on their property?

14 A. Yes, ma'am, not only with them, but with the POA
15 earlier. You can effectively mitigate some of the
16 problem if you would be able to tie in from the section
17 of existing culvert on that property. If you were able
18 to tie into the storm drain in the golf course and the
19 golf club would give you that permission, that would
20 mitigate some of the problem. I don't think it would
21 mitigate all of it, but you could -- the more money you
22 throw at it, the more you're going to mitigate it.

23 Q. And when you say the more money you throw at it,
24 how much money are we talking about to mitigate this
25 problem?

1 A. Well, we looked at a couple, going from smaller to
2 larger things. If the culvert continued to exist -- and
3 let's for the sake of discussion assume that the culvert
4 was still continuous across their lot all the way to lot
5 28 to its outfall --

6 Q. Let me interrupt you for a moment when you say
7 across their lot, when you say the pipe was still
8 continuous across the --

9 A. The Ralphs' property.

10 Q.. The Ralphs' property?

11 A. Yes, ma'am. If it started where it -- the end of
12 it now, my understanding, is the end of it is on the
13 McLaughlins' property, where they cut it off. If that
14 pipe from that point on to its outfall at lot 28
15 continued to exist and could be maintained properly, key,
16 could be maintained properly -- no way to get to it right
17 now, but we're assuming it could be maintained, if it was

18 maintained properly, you could put an aggregate French
19 drain. A French drain is just big -- bigger stone that
20 is all uniform size and it has a lot of space between
21 them, a lot of voids, so it has a high void ratio.

22 If I was to take a 12-ounce can and fill it full
23 of marbles, there would be a lot of air in that can.
24 That's a high void content. That's what you want to
25 create in a French drain so the water could flow through

1 those voids. So by doing that, you would pull the water
2 out of that sandy, wet soil and lower it so it wouldn't
3 be so high. That's one thing.

4 The other, again, with continuity of the existing
5 drain, you could put a true drop in a grade on the
6 structures. If the drain's not continuous, then it
7 ratchets up. Dollar-wise, you're going to throw more
8 money at it because you're going to have to go out on the
9 golf course to have any prayer of doing anything.

10 Q. I'll back you up a minute. You said that this
11 French drain would be possible if you could maintain the
12 pipe.

13 A. Yes, ma'am.

14 Q. Tell me why, can't you maintain the pipe?

15 A. Well, the POA can't maintain it because they can't
16 get to it. That's why they gave it to the property
17 owners.

18 Q. And why can't the POA --

19 A. They can't get to it because they abandoned the
20 20-foot easement across from the McLaughlins' property.

21 Q. Well, more specifically, relinquishing abandoning
22 of easements, does the McLaughlins' residence in the
23 no-build area prevent them from accessing this drainage
24 pipe?

25 A. There is no legal way to get to the easement to

1 maintain it, and the POA couldn't do it. They would have
2 to do it privately. That's the only way they can do it,
3 and they can't go on the downstream property owner's
4 property to maintain the pipe. They had no right to go
5 there. It's somebody else's property.

6 Q. I see. So the McLaughlins, the construction of
7 their home in what was once the maintenance easement

8 A. Yes, ma'am.

9 Q. -- does that prevent them maintaining the pipe?

10 A. That's why -- my understanding, I've been told,
11 that's why the Seabrook Island POA relinquished the
12 easement and the pipe because they no longer have access
13 to it. He couldn't get to it.

14 Q. I'm trying to find out which came first, the
15 chicken or the egg. Before they relinquished the
16 easement to, in their minds, were they able to maintain
17 the pipe?

18 A. Yes, ma'am, they did. We went in there and took
19 the -- that's when they -- the POA went in and had it
20 cleaned out with high pressure water, and then they took
21 the closed circuit TV cameras on a remote little buggy,
22 neat little deals, and went all the way down to the end,
23 and they stopped and inspected, and the little camera can
24 turn around and look at all the joints, and that's when
25 we found, surprisingly, it's in pretty good shape.

1 Q. However, the McLaughlins' construction in the
2 no-build area that was previously used to maintain the
3 easement --

4 A. Access to maintain, yes, ma'am.

5 Q. It prevents access?

6 A. And the access would have been provided from
7 Baywood Drive, the 20-foot easement between 20 -- 21.

8 Q. I think it's 21 and 22?

9 A. 21 and 22. It's a lot on the left side of the
10 McLaughlins that was the 20-foot easement so the POA
11 could have the right of ingress and egress to maintain
12 that easement, and then when they got to where the
13 easement basically turned 90 degrees to the right across
14 the McLaughlins' property, they would have the right to
15 go all the way to the end of it, to lot 28, if you will,
16 a 20-foot easement.

17 Q. All right. And I want to make sure that I get
18 this correctly -- all right. Mr. George, you were
19 present at the meeting of the property owners association
20 on September the 29th.

21 A. I believe I was, yes, ma'am.

22 Q. And in that meeting on September 29th, 2008, just
23 in a very tiny nutshell, did you tell those present of
24 the implications of removing the drainage pipe?

25 A. Yes, ma'am, we did.

1 Q. And did you suggest that removing the drainage
2 pipe would have a negative effect on downstream water?

3 A. Yes, ma'am, we did.

4 Q. And have your opinions here today been given to a
5 reasonable degree of engineering certainty?

6 A. Yes, ma'am.

7 MS. TILLMAN: I have no further questions.

8 THE COURT: Cross?

9 MR. O'KELLEY: Thank you, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. O'KELLEY:

12 Q. Mr. George, how much have you been paid by the
13 Ralphs today?

14 A. How much have I been?

15 Q. How much have you been paid?

16 A. I think close to \$17,000.

17 Q. And are you being paid for the attendance at trial
18 today?

19 A. I hope.

20 Q. Have they promised you would be paid here today?
21 Let's put it that way.

22 A. The Ralphs have always struck me as pretty
23 honorable people, and Mr. Ralph is a former Naval
24 aviator. He will tell you he's a Marine aviator, but
25 he's a Naval aviator and so I am. We are a small

1 community.

2 Q. You were paid by the property owners association
3 to do work back in 2008; is that correct?

4 A. Yes, sir.

5 Q. Are you still on retainer or do you work for the
6 Seabrook Island Property Owners Association?

7 A. No, sir.

8 Q. When did you quit doing work for the property
9 owners association?

10 A. It was a couple years ago.

11 Q. So after you had been hired by the Ralphs?

12 A. Yes, sir, probably a couple a years, easily.

13 Q. Is that not a conflict of interest, to be doing
14 work for the POA and the Ralphs?

15 A. Restate your question.

16 Q. It's pretty straightforward. Is that a conflict
17 of interest?

18 A. No. It wasn't straightforward to me, sir.

19 Q. Was it a conflict of interest for you to be doing
20 work for the POA and the Ralphs at the same time?

21 A. What I did specifically -- and you can ask, I
22 believe, Mr. Wells who will testify later. I actually
23 asked the POA -- the Ralphs came to me and Mr. Sinkler
24 asked me and I asked the POA what would be their position
25 if I represented the Ralphs, and they had no objection.

1 Q. In terms of storm water puddling -- and I was
2 taking notes when you were testifying, do you run any --
3 and I'm going to be rather unartful in my questions --
4 any sort of computer models or graphics or animation or
5 CAD-type drawings to show the way storm water worked on
6 these lots? Do you know what I'm talking about?

7 A. And my answer will be pretty much all of the
8 above. It depends on the degree of the study and the
9 objective, but in this case, we did, and the software's
10 universally accepted. It's called ICPR, Interconnected
11 Pond Routing Program, and it was developed out of the
12 University of Florida by a gentleman who -- a doctor
13 who's an engineer, and he has a firm called Streamline
14 Technologies.

15 Q. And did you prepare those models, for the lack of
16 a better word, for the POA back in 2008?

17 A. Yes, sir.

18 Q. And do you have those models with you today?

19 A. No, I don't.

20 Q. The topography of Baywood Drive, you mentioned
21 there were some old dunes, and it's my understanding the
22 old dune line is toward the golf course, for lack of a
23 better description.

24 A. I would agree. If you want to talk about where
25 the ridge and trough is --

1 Q. Yes, sir.

2 A. -- you can look at that exhibit.

3 Q. Well, I'll do it this way: We've got this plat of
4 lot 22.

5 A. That lot doesn't have any contours.

6 Q. It doesn't have any contours, but whereas you can
7 look on this, where would the old dune line be, toward
8 the golf course or toward Baywood Drive or both?

9 A. Sir, I'm going to refer to that exhibit right
10 there, if you don't mind.

11 Q. That's fine.

12 A. And, again, we're talking about the coastal
13 morphology of barrier islands. If you look at the upper
14 right, there is an elevation 12, and my interpretation as
15 a professional engineer is the dune ridge would be pretty
16 much in the front -- I would say in the front half of the,
17 McLaughlins' lot, and then the topography drops out and
18 the golf course at one time was another ridge. It's been
19 heavily modified. The trough is pretty much where the
20 easement was constructed.

21 Q. I know you testified that you were asked to come
22 up with a solution. Have the Ralphs implemented any
23 mitigating solution on their lot, to the best of your
24 knowledge?

25 A. No, sir.

1 Q. Okay. Do you know why not?

2 A. It would only be my -- I can surmise they wanted
3 to get through this trial to find out who was going to
4 pay for it.

5 Q. All right. The old pipes -- are you aware the
6 POA attempted to abandon the easement back in 2002?

7 A. I don't recall it was that early. I don't
8 remember.

9 Q. And the easement -- excuse me. Exhibit 4, which
10 is this large plat, you were asked some questions about
11 this no-build area and the easement that shows up on this
12 plat. Do you remember those questions, Mr. George?

13 A. You have one, sir?

14 Q. I do. I was asking if you recall your testimony.

15 A. Yes, sir, I do.

16 Q. The easement, I think your testimony was, was to
17 help drain Baywood Drive; is that correct?

18 A. Yes, sir. The storm drainage comes down lot line
19 21-22, and then it goes across lots 23 through 28. I
20 believe I testified to that.

21 Q. Thank you. And I think you said there were some
22 old culverts that were made partially of asbestos or
23 something?

24 A. No, sir. I said asbestos bonded bituminous coated
25 steel, corrugated steel.

1 Q. Is that part of the joints that leaked in that
2 corrugated steel?

3 A. Every 20 feet there is a joint where those two
4 pieces -- and I'll demonstrate it with the cups. If I
5 were joining two sections of that pipe, back then they
6 did not, technical term, re-roll the ends. It was
7 corrugated. It had a helix. These are angular. They
8 are completely round, round, round, and they're not in a
9 helix. They used to just take what was called a hugger
10 band. Surprisingly enough, I have one right here.

11 Q. Just for the record, you've got the water cups and
12 the paper towels.

13 A. Yes. The old hugger band was actually just a
14 piece of the corrugated pipe, a flat sheath, and they
15 modified it -- I'll modify it real quick. The angle line
16 is where my fingers are holding together, and they bolted
17 it together. And they actually take the two ends of the
18 pipe, and they would put them together, and that's a
19 hugger there.

20 Q. And, just for the record, right now you've got the
21 paper towels wrapped around the cup to demonstrate this?

22 A. Yes, sir.

23 Q. And you just testified they leaked like a sieve?

24 A. Yes, sir. They leaked like a sieve.

25 Q. And the leaking -- I think your testimony was that

1 leaking provided additional drainage --

2 A. Subsurface.

3 Q. -- subsurface for these lots, correct?

4 A. Yes, sir. It tended to keep the groundwater level
5 lower in the proximity of that culvert.

6 Q. Is that the same type of culvert that is still in
7 place on the Ralphs' property today?

8 A. Yes, sir.

9 Q. And so do you know if, in your opinion, that
10 culvert existing on the Ralphs' property is helping to
11 keep the subsurface water table lower than it would be if
12 it weren't there?

13 A. If it is functioning today as it would and it did,
14 yes, sir.

15 Q. And it's functioning because it leaked like a
16 sieve, correct?

17 A. And it's continuous. It also -- the water leaking
18 into it runs all the way into the water hazard at lot 28.

19 Q. And you're not aware of anyone building further
20 downstream that's blocking this? Because I think your
21 testimony was if someone built further downstream it
22 could cause further problems, correct?

23 A. Not could, would.

24 Q. Excuse me. Your testimony was it would cause a
25 further problem?

1 A. It would be a discontinuity.

2 Q. You mentioned the law of unintended consequences,
3 which that was concerned with, so basically, the failure,
4 the sieving, for lack of a better term, is that the law
5 of unintended consequences?

6 A. No, sir. My intent in mentioning in what I've
7 witnessed so many times in my profession engineering
8 career is that actions have consequences, and a lot of
9 the actions that we take have unintended consequences,
10 and the actions in the specific instance that I referred
11 to, the action of abandoning the culvert and the
12 easement, would precipitate the unintended consequences
13 of allowing those lots that had already been built upon
14 to suffer, dearly, in my professional opinion, storm
15 water accumulating in the yard.

16 Q. Did you review any amendment --

17 THE COURT: Hold on, Mr. O'Kelley. I got a
18 note. One of the jurors needs to use the rest room.

19 Okay. We'll take a ten-minute break. Don't
20 begin deliberations or discussions. We'll see you back
21 in ten minutes.

22 (Recess taken.)

23 (In open court, jury present.)

24 BY MR. O'KELLEY:

25 Q. When we left, we were talking about unintended

1 consequences, and we were talking about that. Did you
2 see any amended drawings or landscape plans for the
3 McLaughlins by an architect named Julie Hemsley?

4 A. I remember the name, that's all.

5 Q. If I represented to you that their final plans
6 were by Julie Hemsley, do you have any reason to doubt
7 that?

8 A. No, sir.

9 Q. And you didn't review any final plans by Ms.
10 Hemsley, did you, that you're aware of?

11 A. That I'm aware of. I had asked for discovery from
12 the Ralphs, including any drawings that we have that we
13 did not receive.

14 Q. And you're aware of the POA's ARB process, are you
15 not?

16 A. Yes, sir.

17 Q. You said that with a little bit of a disdainful
18 look.

19 A. It's common.

20 Q. It's common on Seabrook to have to jump through
21 the POAs and the --

22 A. And everywhere else.

23 Q. And you're aware that generally if the property
24 owner doesn't comply with the plans and what the ARB has
25 approved, they get in trouble, for lack of a better term?

1 A. Yes. We're residential engineers, and that's one
2 of our responsibilities.

3 Q. I'm going to show you -- and I don't know where
4 they were in Ms. Tillman's slide show, but I'm going to
5 show you four of the photographs you took back on 2/8 of
6 2013.

7 A. Okay.

8 Q. All right. I'll take them back. I just want to
9 walk through them.

10 You testified earlier that you did not enter the
11 McLaughlins' lot when you took these pictures, did you
12 not?

13 A. Not to my knowledge.

14 Q. Do you know if these pictures in any way mask any
15 surface drains that were put on the McLaughlins'
16 property, or do you know?

17 A. Say that again. I've got a terrible head cold and
18 it's taking me, you know --

19 Q. Let me do it this way: Do you know if the
20 McLaughlins were required to put surface drains on their
21 property.

22 A. No, sir. I don't know if they were required or
23 not.

24 Q. If I told you that the POA required them to put
25 surface drains on certain places on their property, would

1 that surprise you?

2 A. Not really.

3 Q. And you testified a little bit earlier about the
4 water being a common enemy. What is your understanding
5 of that term, water is a common enemy?

6 A. Common enemy to all; that, basically, everybody
7 has to deal with it, everybody has to respect -- from the
8 standpoint of a property owner. I cannot have any
9 adverse impact on anyone.

10 Q. And I think -- in terms of adverse impact on your
11 neighbor, are you saying this as a professional or
12 someone who studied it legally or both?

13 A. Both, because I've testified several times before.

14 Q. And has anyone asked you to testify today as to
15 the water being a common enemy other than what you've
16 already testified to?

17 A. No, sir, but the water -- from my professional

18 opinion, the water from surface water runoff from the
19 McLaughlins' property, about half of it, from the front
20 on back, has every opportunity to surface drain on to the
21 Ralphs' property.

22 Q. You just testified a few minutes ago you don't
23 know about the surface drains on the McLaughlins'
24 property, didn't you?

25 A. I'm talking about the surface gradient, surface

1 gradient when I looked at it.

2 Q. The surface gradient that occurred naturally or
3 was changed or just -- which surface gradient?

4 A. In my opinion, they would have been part of the
5 landscape final grading plan.

6 Q. But you testified as to the swale that's on the
7 Ralphs' property. Do you remember that testimony?

8 A. Uh-huh.

9 Q. And Ms. Tillman asked you what a swale was?

10 A. Yes, sir.

11 Q. And you said it was an immature ditch, and I
12 thought that was pretty humorous, so I wrote it down.
13 The swale that was on the Ralphs' property, I think your
14 testimony was that had to have been a part of grading of
15 the Ralphs' lot. In other words -- let me ask it this
16 way: Do you know if that swale is something that
17 occurred naturally on the Ralphs' lot?

18 A. Let me refer to one of these photographs.

19 Q. Absolutely. And that is the photograph that is
20 showing the side of the -- the swale, it shows the side
21 of the McLaughlins' house, some Ligustrum bushes, and the
22 Ralphs' property, correct?

23 A. Unless you can tell me, sir, I don't know where
24 the property line is, but, in my opinion, the property
25 line is pretty close to the center of that swale.

1 Q. Okay. But my question was, do you know if that
2 swale is something manmade or --

3 A. I would say it would be manmade.

4 Q. And do you know if it was made during the time
5 that these lots were developed and subdivided and --

6 A. Oh, no. It would have been part of a final lot
7 grading plan.

8 Q. As done by the developers of Seabrook Island,
9 correct?

10 A. No, sir, no. No, by the individual lot owners.

11 Q. Right.

12 A. Or their contractors.

13 Q. So whoever was the contractor or builder for the
14 Ralphs' predecessor in interest to the Ralphs would have
15 put in that immature ditch, correct?

16 A. Given this photograph and not knowing exactly
17 where the property line is in relation to this, the
18 vegetation, I can't tell you whose swale that is.

19 Q. Okay.

20 A. I know that swale transports water, surface water
21 from the front of the lot to the back, and I know from
22 observation, I believe professionally from observation,
23 that some of that water comes off the McLaughlins'
24 property.

25 Q. Because it drains from the McLaughlins' to the

1 Ralphs because it's lower, correct?

2 A. Yes, sir.

3 Q. For those of us who are just laymen.

4 A. That's correct.

5 Q. And do you know if this part of Seabrook Island is
6 especially low lying?

7 A. The front where the -- well, go back to my
8 testimony. In general, not necessarily, because it's got
9 12-foot elevations in the front, but it's got elevations
10 less than six foot in the trough where the old culvert
11 and easement was.

12 Q. And was that part of the naturally occurring --
13 what you described at Folly Beach as the dune trough?

14 A. The dune trough and coastal barrier island.

15 Q. And that just occurs on islands like Seabrook or
16 Kiawah or Folly?

17 A. Go on Google, and you can see it all day long.

18 Q. And it's something the McLaughlins didn't create
19 and the Ralphs didn't create?

20 A. No, sir.

21 Q. That's a function of forces much greater than --

22 A. And, generally speaking, engineers, I would say in
23 older times, back when Kiawah Island and -- I was
24 involved very early on in Kiawah Island when I was with
25 another firm, but I've worked on barrier islands, from

1 St. Simons Island, Georgia up to North Carolina, and the
2 structure of the barrier islands here have the
3 predominant dune trough, dune trough morphology, and the
4 way the culvert was constructed -- an engineer, back
5 before computer modelling and all that, we didn't have
6 all that stuff. We had slide rules. I actually have my
7 slide rule in my office. It doesn't require batteries.

8 Q. Or the Internet.

9 A. Or the Internet, believe it or not. You could
10 talk face-to-face, but engineers back then knew and
11 understood and -- I'd say nature, they understood it. We
12 had -- as students, we had courses in geology and we
13 understood -- I still serve on two boards at the Citadel,
14 and I'm very proud of that place, and it was always known
15 for being able to produce an engineer's terminal degree.
16 You could go to work the next day. But having said that,
17 engineers back then were -- I think were a little bit
18 more careful to modify nature because they had inherent
19 understanding of those unintended consequences.

20 Q. Would you also say they had a healthier respect
21 for the natural flow of --

22 A. I'd say that is a good way to put it: They had a
23 healthy respect for it. They were very reluctant to
24 modify it to any degree. That's why they -- in these
25 trough areas, if they were going to develop them as a

1 subdivision and as lots, they would want to drain them,
2 and they would naturally want to drain the roadways, and
3 they would have to get that drainage off of the roadway
4 down to that trough where that culvert's located, and
5 that defines the lot line 21-22 easement.

6 Q. And in your professional opinion, is that why you
7 think -- or let me ask it this way: Is that why this
8 easement along Baywood Drive was put in?

9 A. It was probably a trough, or it is a trough, so
10 you had to drain Baywood Drive.

11 Q. Let me ask it this way: Is Baywood Drive along a
12 trough or a dune?

13 A. It's on a rising part of the a ridge, close to a
14 ridge. I think I testified earlier that the front of the
15 McLaughlins' and Ralphs' lots, and probably most of those
16 lots, the front of them on Baywood Drive is pretty much
17 where the crest of the dune or a very flat structure,
18 dune appears, and then the old trough line is pretty much
19 where the common easement was constructed.

20 Q. You testified earlier about the golf course being
21 on a modified dune?

22 A. Yes, sir. It appears to me, my opinion, that it
23 was at one time higher. Golf courses need to be drained
24 well, and if you know anything about them and dealt with
25 them before, golf courses have real problems when it

1 comes to turf grass. So you got to be able to drain it
2 well, so if it's not high enough, you're going to have to
3 modify and bring fill in and elevate it, and if you go on
4 any of these golf courses on barrier islands, for the
5 most part, you'll find the fairways and the tees and the
6 greens are somewhat elevated to drain properly.

7 A lot of times you'll have to put under drain in
8 them, and it almost looks like a herringbone of a fish.
9 It's got little drains going out from a smaller drain,
10 but it was smart to put a golf course on a ridge, not a
11 trough.

12 Q. And do you know -- the eleventh fairway of the
13 golf course that abuts up to this property, have you done
14 any research as to what type of drains it has on it?

15 A. I know what it has on it. I have drawings of it.
16 I don't have as-builts, but I have two sets of drawings
17 that were designed by another engineer, and they were

18 given to me by the POA.

19 Q. And is this eleventh fairway golf course higher
20 than the Ralphs' lot and the McLaughlins' lot?

21 A. Yes, it is.

22 Q. So you would expect water from the golf course to
23 flow to their property?

24 A. Yes, sir.

25 Q. Do you know if the golf course is adding any

1 additional water on to the Ralphs' lot?

2 A. It would. It's uniformly graded. It would add it
3 to all of the lots because it's higher and it would
4 naturally drain into what was initially a no-build zone.

5 Q. And you testified about shag carpeting on grass a
6 little while ago. Putting in turf grass, golf course
7 grass, would that cause the water to flow faster off of
8 the golf course versus if it was to use your metaphor of
9 the shag carpet?

10 A. It would increase the runoff -- do I explain what
11 the runoff course is?

12 Q. That was going to be my next question. Explain
13 what the run off coefficients are to me and the jury.

14 A. If it is a piece of glass like on the table and we
15 were to prop up the end where Mr. Sinkler is about six
16 inches, the runoff coefficient on that glass I would like
17 to tell you would be 100 percent, but that would not be
18 actually what it would be because some of the water
19 surface would be adhered -- so 90 percent.

20 Q. So for those of us who aren't versed in your
21 language, runoff coefficient is the rate at which water
22 flows?

23 A. No. It's a ratio of the amount of water that will
24 run off of a surface.

25 Q. Okay.

1 A. So if we take a forested area that could be
2 relatively flat but it has some gradient enough where it
3 could drain and it's a wooded forest area with a lot of
4 old limbs and trees and bushes, it's going to have a
5 runoff coefficient probably close to .2, 1 being
6 everything on that glass table.

7 Normally, in Charleston County, a pre-developed
8 runoff coefficient of about .3 would be what you would
9 use in what's called rational modelling for storm water
10 runoff, and as you would add a roof or an impervious
11 surface like that glass, then you would start saying,
12 Okay, I have 50 percent .99 and the 50 percent at .3, so
13 I'm going to have somewhere -- my total average runoff
14 coefficient is going to be somewhere like .6, .65.

15 Q. And that takes into account roofs, impervious
16 surfaces, landscaping?

17 A. Yes. If this were their lot, and I'm holding up
18 my little pad and I put a house and I put -- and the
19 runoff coefficient before development, let's say, is .3
20 and I put a house and I put a driveway and these are
21 almost one, then what I've done is I've increased the
22 impervious area, the percentage of the total area that
23 water is going to run off in that catchment area. Let's
24 call it a catchment area.

25 Q. And tell the jury what a catchment area is.

1 A. A catchment area is -- every bit of water that
2 falls in that area has the potential of falling out at
3 one point, and if I took my little pad and I said, This
4 is a catchment area and this is the outfall, you want to
5 know what the time of concentration is?

6 Q. Absolutely, absolutely.

7 A. The time of concentration is the time it takes for
8 a drop of water to land on the most remote point of a
9 catchment area and run to the outfall. Now, if we have a
10 real rough surface and we got limbs and trees and all,
11 it's going to take a long time for that water to run off.

12 Q. And would that be like the shag carpet you were
13 describing earlier?

14 A. Right, right, but as we add roof area and
15 driveways and roadways and go from the shag carpet to,
16 let's say, Astroturf

17 Q. What if we go to turf grass?

18 A. Analogy I'm using, so what that's done is actually
19 you've influenced three things: You've influenced the
20 amount of total runoff by raising the runoff coefficient.
21 More water runs off, you decrease the time of
22 concentration because this little remote raindrop can run
23 a whole lot quicker now, and this thing is going to take
24 a leap of faith, in storm drainage. If you decrease the
25 time of concentration for a given area, you effectively

1 increase the intensity of the rain.

2 Q. Because the water is not going anywhere; is that
3 right?

4 A. That's right. That's why I say take a leap of
5 faith. Think of a thunderstorm coming across, just --
6 you know, it's like emptying this pitcher. It just comes
7 down. As you decrease the concentration, the relative
8 intensity decreases, so you've decreased the time of
9 concentration, which increases the relative intensity,
10 and you've also increased the amount of total runoff, so
11 developing property -- that's why downtown Charleston
12 floods.

13 I mean, we don't have any green space. We got
14 roofs and houses and streets, and there is no place for
15 the water to go, and the storm drains are really small.
16 They haven't been maintained in ages. I know that.
17 Believe me, I'm an engineer. You're going to have

18 runoff. You're going to have flooding. That water has
19 no place to go. The same thing happens in a subdivision.
20 I think it's Baypoint condominiums, Shadowmoor, terrible
21 problem over there. I was an expert witness in that
22 case, and, you know -- just overdevelopment and getting
23 rid of wetlands and increasing the amount of hard
24 surfaces is going to increase not only the rate, but it's
25 going to increase the total volume of runoff that comes

1 off of that catchment area.

2 Q. Versus if it were a forested lot with --

3 A. Or a shag carpet.

4 Q. Or the shag carpet?

5 A. Right.

6 Q. I want to get it fully explained. Is it your
7 understanding that eventually the property owners
8 association gave back the easement to certain lot owners
9 on Baywood Drive?

10 A. My understanding, as I sit here today, they gave
11 them all back.

12 Q. And when you say all back, are you saying --

13 A. 21 through 28.

14 Q. This lot shows -- excuse me. This exhibit shows
15 21 through 26, but the POA said, They're yours. Deal
16 with them as you want?

17 A. They did not give away the sideline easement down
18 21-22.

19 Q. And the sideline easement is the one that runs
20 between Baywood Drive and the golf course?

21 A. That's the one that drains Baywood Road and takes
22 the water to the culverts that are now located in Fairway
23 Run.

24 Q. And I think your testimony, Mr. George, was they
25 gave them back because there was no way for the POA to

1 maintain these?

2 A. No way to access them.

3 Q. And would that be for all of the lots?

4 A. There is no way to get to them except for the lot
5 21 and 22 down the side.

6 Q. And would there be no way to get to them?

7 A. To go to --

8 Q. Lots 21 through 28, not the Baywood easement, but
9 the easement that makes comes in and --

10 A. No legal access way.

11 Q. And there was no legal access because of what, is
12 your understanding?

13 A. Because they gave the easement away.

14 Q. And do you know when that was?

15 A. I think it occurred at various times. I've seen
16 some of plats, and I can't say the exact date. I think
17 it was either 2004 or 2007. I think it was more like

18 2007 that lot 24, the easement on it, was abandoned.

19 Instead of given away, abandoned is a more proper word.

20 Q. And do you know when the POA abandoned the
21 easement on my clients' property?

22 A. I think it was 2005, 2006, sometime in that time
23 frame.

24 MR. O'KELLEY: Thank you, Mr. George. You've
25 been very educational. I appreciate it.

1 THE WITNESS: Thank you, sir.

2 THE COURT: Redirect?

3 REDIRECT EXAMINATION

4 BY MS. TILLMAN:

5 Q. All right. Mr. George, are you a lawyer?

6 A. Excuse me?

7 Q. Are you a lawyer?

8 A. No.

9 Q. Do you believe that you can testify as to whether
10 the POA had a legal ability to abandon the easement or
11 give it away?

12 A. Ma'am, I've been involved as an expert and as a
13 consulting engineer in similar cases. The POA, my
14 understanding and --

15 THE COURT: Hold on. The answer is no, you
16 don't. Next question?

17 THE WITNESS: Pretty much.

18 BY MS. TILLMAN:

19 Q. Let me ask the question again: Can you testify as
20 to whether the POA had the legal right to give away or to
21 abandon the easement?

22 A. I believe they did.

23 Q. Can you testify as to that --

24 THE COURT: He cannot opine as to the
25 legal -- legality of the POA's actions, okay?

1 MS. TILLMAN: Thank you, Your Honor.

2 BY MS. TILLMAN:

3 Q. All right. And can you tell me, was the golf
4 course there before the McLaughlins built their house?

5 A. Oh, yes. Before they built it, yes.

6 Q. And ~~was~~

7 A. It's Crooked Oaks. I've played it many times.

8 Q. And so would you assume that any drainage from the
9 golf course, any surface water runoff from the golf
10 course, would have been present in the Ralphs' yard
11 before the McLaughlins' house was built?

12 A. That's true. I don't think there's been any --
13 I'm not aware of any changes of the grading at all. In
14 fact, two of the sets of drawings that I referred to
15 earlier when I was asked about drainage in 11, that was
16 constructed to assist the under-draining and the lowering
17 of the water table in the fairway.

18 Q. So your understanding is that the golf course has
19 its own draining system?

20 A. It does, it does.

21 Q. Now, would it make sense to you, just from an
22 engineering perspective, that prior to the McLaughlins'
23 construction, even with possible runoff from the golf
24 course, the Ralphs only had puddles as opposed to large
25 amounts of standing water?

1 A. That's exactly what I demonstrated. If you take
2 an undeveloped lot, the McLaughlins' lot before it was
3 developed, if you look at the topography, the existing
4 topography, there's a lot of little pockets and dunes and
5 latent detention areas. That's what we call them in the
6 engineering business, latent detention areas. They will
7 hold water like a saucer until they fill up, and then
8 they will spill over the edge.

9 The good thing about these latent detention areas,
10 they're more like a colander. They have holes in the
11 bottom so water can soak into the groundwater table, but
12 when you modify that surface and flatten it out, you
13 remove those latent detention areas. Then you provide an
14 overland path so the water, the surface water, can drain
15 more quickly.

16 So the construction of the McLaughlins' lot, from
17 the standpoint of surface water only, I'll address
18 sub-surface, surface water only, they decrease the term
19 of concentration. They increase the runoff coefficient
20 that made it more a hard surface, and they increase the
21 intensity of rainfall that would occur. So the amount of
22 the runoff, in my professional opinion that I've
23 discussed with you, in the photographs, the runoff from
24 just about the front of the McLaughlins' house to the
25 back has increased significantly, in my opinion, than the

1 pre-developed versus post-developed condition.

2 Q. And how is that caused by the McLaughlins'
3 construction of their home in that no-build area?

4 A. Well, they filled -- if you look back at the
5 topography, the preexisting topography in front of their
6 lot, that was a major depression there. There was an
7 area there that was below six feet, and it was an area --
8 I testified earlier that Whitney Powers and I had some
9 discussions and e-mail exchanges about wanting to try to
10 improve the drainage, to modify it so that they would
11 mitigate any adverse impacts on the routes.

12 So they were -- the drawing indicates the intent
13 was that they were going to construct -- that colander
14 that I referred to earlier is not there. The saucer is
15 not there. It's a flat plate on edge.

16 Q. And I'll tell you, I was an English major, and I
17 speak very little math or science but my understanding is
18 from the previous testimony that the drainage pipe and
19 that no-build area, they were all in a naturally
20 occurring trough; is that --

21 A. Yes, ma'am, that's correct.

22 Q. And, in fact, if that drainage pipe was put in --
23 was it put into counteract the natural -- what, the
24 morphology of the island?

25 A. Yes, ma'am. During cross-examination, I testified

1 engineers back then -- and we're not talking that far
2 back, but it just goes to show you how all of our
3 experiences are based on empirical design, is what
4 happened in the past and we learn from what happens in
5 the past.

6 Well, not that many years ago we did not have the
7 means to model nature and model what would occur in the
8 real world. We can do -- as Mr. O'Kelley was referring
9 to, we can do three-dimensional models and we can design
10 bridges in a three-dimensional model and put a flood
11 underneath the bridge. We have all these tools now.

12 We didn't have those before, so engineers were, by
13 and large, much more careful, and I knew Mickey Seabrook.
14 I knew him well and I knew Mike. I knew Mickey and Mike
15 was his father. I knew him very well, and he was an
16 excellent engineer, and he was a good old -- if you want
17 to say it, good old country engineer. He took the safe
18 road on what he did. He was going to make sure that his
19 project drained, that his roads drained, and he wasn't
20 going to have any standing water that somebody could pick
21 up a phone and fuss at him about. He was that kind of
22 guy.

23 Q. Now, tell me, you were doing a little visual
24 exhibit with two cups and a paper towel.

25 A. Uh-huh, yes, ma'am.

1 Q. And you were talking about how the water would
2 flow?

3 A. Joints leak.

4 Q. The joints leak and the water would flow in there?

5 A. Yes, ma'am.

6 Q. And that would alleviate the water?

7 A. What it does, and I'll go back to the analogy we
8 had of when we were all kids, digging holes in the sand
9 at the beach. You dig the hole down, and all of a sudden
10 you get to the water table. The water keeps flowing in
11 the hole, and the more you dig, the more you see the
12 water flowing in from the sides.

13 If you can imagine, from your mind, that it's not
14 just a hole, that's a trench, it's a linear trench, and
15 all along that trench the water is flowing in that hole,
16 and that hole has got a pipe in, it and that pipe is
17 collecting the drainage. Well, the poor old hugger bands

18 that leak like a sieve, they allowed water to come into
19 that pipe, and I testified earlier that the POA had to
20 actually wash out a very large amount of sand to even get
21 a camera in that line, so it's still infiltrating, is
22 what it's called. It's infiltrating.

23 Q. And where does this pipe, if -- where does this
24 pipe begin in relation to the McLaughlins' property?
25 Where does it start?

1 A. Well, it begins at their front lot corner, Baywood
2 right-of-way, goes down the lot line, and then it turns
3 90 degrees across the front of their property in what was
4 the old easement, the 20-foot easement, and it continues
5 across lots 22 through 28 to a water hazard that is very
6 close to the green of the eleventh fairway.

7 Q. And so my question would be, all along this pipe
8 there are joints or hugger bands?

9 A. Every 20 feet.

10 Q. And how far across is the McLaughlins' property?
11 Is it more than 20 feet?

12 A. Oh, yeah. They've got several joints on their
13 property. I think it's 117 wide. I could pull the plat
14 up and tell you every 20 feet you're going to have a
15 leaky joint.

16 Q. And we also enjoyed talking about the unintended
17 consequences of storm water. I'm going to break that up
18 yet again.

19 If someone knew that the construction of their
20 home were to have a consequence, would that consequence
21 be unintended?

22 MR. O'KELLEY: Your Honor, that calls for
23 speculation.

24 BY MS. TILLMAN:

25 Q. If Mr. McLaughlin was warned by you in a meeting

1 that if he were to construct his house, it would have a
2 negative impact on his downstream neighbors, would it
3 necessarily be unintended consequences without the
4 unintended if, in fact, there were negative impact?

5 MR. O'KELLEY: Same objection.

6 THE COURT: Hold on. I'm trying to
7 understand the question.

8 MS. TILLMAN: Sorry.

9 MR. O'KELLEY: I think it calls for --

10 MS. TILLMAN: It's sort of a English major
11 question.

12 THE COURT: You're going to have to rephrase
13 that question.

14 BY MS. TILLMAN:

15 Q. All right. At the meeting at which Mr. McLaughlin
16 was present and with the Seabrook Island Property Owners
17 Association, your testimony is that you stood up and told
18 the people assembled that they should leave the drainage
19 pipe in place; is that correct?

20 A. We are retained by the POA. The board was there.
21 We were presenting to the board. There were property
22 owners and some of their representatives there as, I
23 would assume, invited guests because they were there, but
24 we were not necessarily addressing the property owners.
25 We were addressing our client. We were presenting our

1 findings to our client.

2 Q. And one of your findings was that digging up the
3 drainage pipe would have a negative consequence on
4 downstream neighbors.

5 A. We actually stated that.

6 MS. TILLMAN: I have no further questions.

7 THE COURT: Recross?

8 RECROSS EXAMINATION

9 BY MR. O'KELLEY:

10 Q. You're not aware of the surface drains that my
11 clients put on their property; is that correct?

12 A. No, sir.

13 Q. And are you aware of the driveway that my clients
14 put in, whether it's a pervious or impervious surface?

15 A. I think it's semi-pervious.

16 Q. Which would allow water -- some, semi, partial
17 water drainage, correct?

18 A. I didn't address the subsurface drainage before.
19 Would you like for me to go into that?

20 Q. No, sir. I was just asking if you knew you what
21 the driveway was, but you did testify earlier that my
22 clients couldn't have built without approval from the
23 POA and the ARB, correct?

24 A. It's my understanding of the rules.

25 Q. And you did state earlier you didn't see the final

1 plan from landscape architect Julia Hemsley from their
2 property, correct?

3 A. Sir, I don't know if the plan I had was hers or
4 not. I don't know.

5 MR. O'KELLEY: Thank you, Mr. George.

6 THE COURT: Are you done?

7 MR. O'KELLEY: Yes, sir.

8 THE COURT: Okay. All right.

9 Well, folks, that's where we'll break for
10 today then. Now, it's almost 5:30. You'll be smack dab
11 in the middle of traffic, but I would like you to return
12 tomorrow. I can't promise you there won't be any more
13 riveting engineering testimony, but I do need you to come
14 back at 9:30 and we will resume promptly at 9:30.

15 I'll leave you with the same instructions
16 I've been leaving you with, and that is don't talk to
17 anybody about the case, including other members of the
18 jury panel. Don't try to find out anything about it or
19 post anything on social media sites, so we'll see you
20 tomorrow morning at 9:30, and thank you for your
21 patience.

22 (Recess taken.)

23 (January 25, 2017.)

24 (In open court, jury not present.)

25 THE COURT: All right. Are y'all ready with

1 your next witness?

2 MS. TILLMAN: Yes, Your Honor, but before the
3 jury comes in, I wanted to ask you a question.

4 We're seeking punitive damages in this case,
5 and I wanted to ask questions accordingly but wanted your
6 advice on how we need to address that.

7 THE COURT: Who are you asking?

8 MS. TILLMAN: Mr. McLaughlin.

9 THE COURT: What do you want to ask him?

10 MS. TILLMAN: I want to ask him questions
11 about his property value, income, state of mind.

12 THE COURT: Okay. Well, if you're asking for
13 punitive damages, you are entitled to do that. Do you
14 have any thoughts on that?

15 MR. O'KELLEY: I'm hoping we don't get that
16 far, Your Honor, but we'll see.

17 THE COURT: Is he your next witness?

18 MS. TILLMAN: No.

19 THE COURT: Well, we'll get there some time,
20 I imagine. Who is your next witness?

21 MS. TILLMAN: Mr. Thompson, Nick Thompson.

22 THE COURT: Okay.

23 (In open court, jury present.)

24 THE COURT: All right, folks. Welcome back.
25 We're going to resume now with the plaintiffs calling

1 their next witness.

2 MS. TILLMAN: The plaintiffs would like to
3 call Mr. Nick Thompson to the stand.

4 CORNELIUS OWENS THOMPSON,
5 having been first duly sworn,
6 was examined and testified as follows:

7 DIRECT EXAMINATION

8 THE WITNESS: My name is Cornelius Owens
9 Thompson. Everybody calls me Nick. With a name like
10 Cornelius, you got to have a nickname.

11 BY MS. TILLMAN:

12 Q. Thank you, Mr. Thompson. Good morning.

13 A. Good morning.

14 Q. Mr. Thompson, how long have you lived in the
15 Charleston area?

16 A. With the exception of three years that I lived in
17 Atlanta and one year I went to school in Tennessee, I've
18 lived here all my 74-year life.

19 Q. And what is your job? What is it that you do on a
20 day-to-day basis?

21 A. I am a commercial real estate appraiser,
22 primarily. I'm an MAI. I'm also a real estate broker.
23 I've been a broker since the mid-'70s. I've been an
24 MAI since 1977. I initially started in the process of
25 the MAI designation in 1969.

1 Q. Where did you go to school to study that?

2 A. Study appraising?

3 Q. Well, before --

4 A. Well, I went to Bennett, and then went to school,
5 Charleston High School, Sewanee my freshman year and then
6 transferred down to the College of Charleston and
7 graduated in 1964 from the College of Charleston with a
8 major in economics, minor in physics, minor in math, and
9 an additional major in history.

10 Q. And then you went on to school to study
11 appraising?

12 A. Well, school, per se, for appraisers is a series
13 of courses --

14 Q. Where did you --

15 A. -- that is taken all over the country. I took the
16 first two courses at the University of Georgia. In fact,
17 I think I took the first three courses at the University
18 of Georgia. Back then, there were three basic courses of
19 study, two weeks long. I also had an apprenticeship.

20 Q. With whom?

21 A. But I worked at the assessor's office for the
22 first eight years of my profession and attained
23 supervisor of the Charleston County assessor's office --
24 supervisor of the appraisers in the early '70s and was
25 hired in 1975 by Sears Roebuck as their territorial

1 property manager for ten states, handling all their real
2 estate, arguing with tax assessors, so I went from one
3 side of the fence to the other side of the fence.

4 Q. I see that.

5 A. Then in 1978, I decided I didn't want to work for
6 Sears anymore because of their corporate policies, so I
7 came back, was invited to join Ralph Linebach, who was a
8 senior MAI in Charleston at that point in time as a
9 partner, and walked in and they made me managing partner.

10 Q. Well done.

11 A. And did that in various iterations. I've been
12 with the same group, same firm, until it's just me now.
13 All the rest of them have died.

14 Q. So for how many years would you say you've been
15 doing commercial and residential real estate appraisals
16 here?

17 A. Well, I started at the assessor's office 49 years
18 ago. I've been associated with iterations of the
19 appraisal institute for 47 -- almost 47-and-a-half years.
20 I've been an MAI for almost 40 years.

21 Q. Thank you, Mr. Thompson.

22 MS. TILLMAN: The plaintiff would like to
23 proffer Mr. Thompson as an expert in real estate
24 appraisal.

25 MR. O'KELLEY: Your Honor, only as to

1 commercial. I don't think we've heard anything that he's
2 an expert in residential appraisals.

3 BY MS. TILLMAN:

4 Q. Mr. Thompson, I did ask you for how many years
5 you've been doing commercial and residential appraisals
6 here in Charleston.

7 A. However, over the years I have done -- counting my
8 assessor's office work, I've probably appraised probably
9 8 or 9,000 residential properties, including -- I'm
10 trying to remember the account. In 1983 I had to
11 appraise a great portion of the south of Broad
12 properties. The most recent residential appraisal I did
13 was a beach front property in Hilton Head Island. It was
14 \$5 million, and it was part of a commercial litigation.

15 MS. TILLMAN: Again, Your Honor, the
16 plaintiff would like to proffer Mr. Thompson as an expert
17 in real estate appraisal.

18 MR. O'KELLEY: Your Honor, same objection,
19 that he is an expert in commercial. He's testified that
20 he has an MIA designation.

21 THE WITNESS: Excuse me, it's -- MAI, not
22 MIA.

23 MR. O'KELLEY: MAI designation, that he has
24 done mostly commercial appraisals, and we object to his
25 being an expert in any residential appraisal.

1 THE COURT: Well, he says he's done both, and
2 I would say doing 8 or 9,000 of them certainly qualifies
3 you as an expert, so I'll qualify him as an expert in
4 commercial and residential real estate.

5 Again, folks, he's now been qualified as an
6 expert. He can give you his opinion. Same instruction I
7 gave you earlier as to other witnesses who were qualified
8 as an expert apply to this witness as well. You decide
9 how much weight to give his testimony based on all of the
10 evidence that you've heard throughout the trial.

11 Go ahead.

12 BY MS. TILLMAN:

13 Q. All right. Mr. Thompson, have you had a chance to
14 appraise the Ralphs' property?

15 A. I was retained to appraise it. I appraised it as
16 to what is called before value, before the occurrence of
17 a diminution in value.

18 Q. Is this the report that you prepared?

19 A. Well, this is a quite unique situation in that I
20 was retained to appraise it, I appraised it before value,
21 and was told to wait until an engineer could give the
22 value -- excuse me, the cost to cure, to damages as a
23 result of the next door neighbors' actions, and I got to
24 this point. Mr. George never gave me a written
25 indication of value.

1 Q. Let me interrupt you just for one moment, just --
2 I'd like you just to look at this report and tell me, is
3 this the report that you prepared, albeit incomplete
4 because of questions that you had?

5 A. Yes.

6 Q. Can you certify that this is a complete -- this is
7 the complete report that you prepared?

8 A. Well, it's not complete because I have not signed
9 it.

10 Q. All right. -- Nonetheless, do you recognize this to
11 be your report?

12 A. I do.

13 MS. TILLMAN: I'd like to admit this as
14 Plaintiff's Exhibit No. 17. It is an unsigned report,
15 Your Honor; however, he did prepare it and --

16 THE WITNESS: Excuse me. By complete report,
17 that is how far I had gotten in completion at the point
18 in time that I was awaiting the information. The
19 appraisal file, which both parties have had access to,
20 has substantial information that goes into the final
21 report. The final report is bound.

22 BY MS. TILLMAN:

23 Q. Is this a true and correct copy of that report?

24 A. It's a true and correct copy of how far I got at
25 that point in time, plus information which I have in the

1 file which would have been inserted in there, the final
2 report.

3 Q. I understand, and you did produce your file to the
4 defendants?

5 A. To them in 2013. They copied the whole thing.

6 MR. O'KELLEY: Your Honor, I object to this
7 being admitted as evidence. It's an unsigned,
8 uncompleted appraisal. We've had subpoenas out to
9 Mr. Thompson since 2013. We've never received a
10 completed appraisal that would comply with appraisal
11 guidelines under what is called USPAP, and I would object
12 to this being admitted for anything other than being an
13 incomplete statement that has really no bearing on the
14 case.

15 MS. TILLMAN: And, Your Honor, we understand
16 that it is incomplete; nonetheless, it contains all of
17 the research that Mr. Thompson did in the course of
18 appraising this property. It is unfinished because there
19 has been a disagreement as to whether there could be some
20 sort of fix to the property.

21 THE COURT: Well, it's incomplete hearsay
22 document, which I would say makes it probably more
23 prejudicial than probative, so I won't allow it in, but
24 he can still give his opinion, so --

25 BY MS. TILLMAN:

1 Q. All right. Mr. Thompson, you say that you had an
2 opportunity to evaluate and appraise the Ralphs'
3 property. Can you tell me what you did in the course of
4 so doing? What analysis did you use?

5 A. The process is to inspect the property, to
6 research the information pertinent to the physical
7 property; that is, to determine the ownership, the
8 zoning, find comparable sales, find comparable rentals,
9 if that is an appropriate method of evaluation, estimate
10 the cost of the property, and then come to a correlation.

11 In this particular case, and as true of most cases
12 that go to court, there are two values that you're
13 looking for: One value before whatever the issue in
14 argument is, and the other is the value considering the
15 issue in argument, if it has an adverse effect on the
16 property or a positive effect on the property. In this
17 case it was an adverse effect.

18 Q. And what do you understand to be the issue with
19 the Ralphs' property?

20 A. As I understand, the issue is the adjoining
21 property owner went into what had been defined as a
22 drainage easement area and built a property, built a
23 house on it, and tore up the drainage system.

24 Q. And what is your understanding of what effect this
25 has had on the Ralphs' property?

1 A. Basically, it has broken the drainage system,
2 which involves -- to the left, facing the front of both
3 properties, to the left of that property is the drainage
4 easement that goes to Baywood, and that drainage also
5 connects to a pond at lot 28, legal lot 28, which is down
6 the street in the opposite direction.

7 Q. Downstream?

8 A. Basically downstream, and, by that, that took away
9 the POA's only legal access to that drainage easement,
10 and it cannot be maintained. In addition, the
11 McLaughlins, in building the house and landscaping, added
12 height to their lot which dumped water on to the Ralphs'
13 property.

14 MR. O'KELLEY: Your Honor, I'm going to
15 object to his testimony. He's not been qualified as any
16 sort of engineering or hydrology expert.

17 MS. TILLMAN: Your Honor, I asked him what
18 his understanding of the issue with the Ralphs' property
19 is.

20 MR. O'KELLEY: At the same time she asked him
21 that, Your Honor, he's giving an opinion.

22 THE COURT: Overruled.

23 BY MS. TILLMAN:

24 Q. If you could continue, Mr. Thompson, as to what
25 you believe, or what you understand the impact to the

1 Ralphs' property to be.

2 A. Well, all of the property on Seabrook -- and I'm
3 very familiar with Seabrook Island. All the property on
4 Seabrook is subject to a substantial amount of rainwater,
5 and the drainage system is critical, and is the drainage
6 system is abrogated, potentially severe flooding of the
7 lot would occur.

8 Q. And have you spoken with the Ralphs and do you
9 understand that to be their situation?

10 A. It is.

11 Q. Tell me particularly what they've told you about
12 what happens when it rains in their back yard.

13 A. Their back yard becomes a pond.

14 Q. And so have you evaluated the effect on the
15 property value of ponding in the Ralphs' back yard?

16 A. I have not been able to find any real estate
17 comparables that have sold, and that's the key. To have
18 a sales comparable, you've got to find properties that
19 have sold that show that kind of damage.

20 Q. What does that suggest?

21 A. I have -- as part of this research, which is noted
22 in that write-up, I've contacted numerous number of my
23 peers, which are MAIs and appraisers in the state of
24 South Carolina, and asked them if they have found any
25 sales with this problem. I have also asked the real

1 estate agents in Seabrook Island, which would be the guys
2 that are in the trenches. They have --

3 MR. O'KELLEY: Your Honor, I'm going to
4 object to any hearsay about what other people told
5 Mr. Thompson.

6 THE COURT: You know, he's an expert. He can
7 testify to some hearsay if it's how he got the basis for
8 his opinion, so overruled.

9 THE WITNESS: That's what I do for a living,
10 is I talk to people and find out anything, any
11 information available, including my peers and other real
12 estate professionals. That's what I've done for the last
13 49 years.

14 BY MS. TILLMAN:

15 Q. So continue with what you were saying. You talked
16 with other professionals --

17 A. I have not been able to find any sales that have
18 occurred that have that problem.

19 Q. What does --

20 A. The alternative to finding sales to demonstrate
21 change in value is cost to cure. Cost to cure is cost to
22 fix the system, fix what that damage is. In this case,
23 you've got to be able to somehow move the water off the
24 property, which is now trapped.

25 Q. Now, how does it affect your appraisal evaluation

1 if there is no way to cure or to put the Ralphs' property
2 back to how it was before the McLaughlins built their
3 house?

4 A. If there is no way to cure it -- and the drainage
5 system has now been abandoned by the POA. They've also
6 looked at -- the engineers have looked at the alternative
7 of going into the golf course drainage, and the golf
8 course will not allow that. So the only other
9 alternative is to run that water down property lines to
10 the drainage system in the roadway, to reattach the
11 system and recreate it.

12 They've abandoned the right-of-way, number one, so
13 that's not going to be able to -- they're not going to be
14 able to necessarily maintain.

15 Q. Well, is your understanding -- what is your
16 understanding of the reason they've abandoned the
17 right-of-way?

18 A. Because Mr. McLaughlin abrogated the easement,
19 blocked it, tore out the pipe.

20 Q. Is it your understanding they can no longer
21 maintain the pipe because they can't access it?

22 A. They can't get to it.

23 Q. Tell me again, what effect does that have on the
24 Ralphs' property value? Would they be able to find a
25 purchaser for their property?

1 MR. O'KELLEY: Your Honor, I'm going to
2 object. That calls for speculation. Ms. Ralph testified
3 yesterday she's never tried to list the property.

4 BY MS. TILLMAN:

5 Q. What do you, in your professional understanding,
6 believe to be the impact on the value of the property?

7 A. The absence of sales tells me one of two things:
8 Either the situation has never existed before, or nobody
9 has been able to find a buyer for a property that has
10 that problem.

11 Q. So --

12 A. It's got to be one or the other, so there is no
13 finite measure of the damage. My original estimate in
14 that write-up was a minimum of probably 10 percent. That
15 was when we were looking at a cost to cure, but we can't
16 determine a cost to cure because the engineer has
17 testified yesterday that there is no cost to cure.

18 Q. So rather than 10 percent, what do you think the
19 effect on the Ralphs' property value would be?

20 A. It would be a guess. It would be a professional
21 guess or estimate. It would be somewhere between 10 and
22 50 or 60 percent, and the reason for that is that one of
23 the problems a property owner has, by law in this state,
24 they've got to disclose it if they put it on the market.
25 They've got to disclose the problem, so that disclosure,

1 in itself, will create a question in a buyer's mind. If
2 you disclose the true aspect of it, that is, now there's
3 no solution to it, it's going to have a major impact.

4 The probability exists in the market -- and this
5 is a real world situation. The probability exists that
6 somebody is going to be willing to buy on the cheap a
7 nice property with the problem and put up with the
8 problem, but that discount is going to be 50 to 60
9 percent.

10 Q. And tell me what you appraised -- if you were to
11 appraise the value of the Ralphs's house without this
12 problem, what would you appraise the house?

13 A. As of 2011, which is when I did this original
14 study and have not done any studies since then, because
15 that's approximate to the occurrence, I found the value
16 to be approximately \$567,000.

17 Q. And your testimony is that you could possibly find
18 a buyer who would, sort of a fire sale situation, pay
19 half of that?

20 A. Somewhere in the neighborhood of half.

21 MS. TILLMAN: I have no further questions,
22 Your Honor.

23 THE COURT: Cross?

24 MR. O'KELLEY: Thank you, Your Honor.

25 CROSS-EXAMINATION

1 BY MR. O'KELLEY:

2 Q. Mr. Thompson, how much were you paid for your
3 opinion?

4 A. I was paid \$1,400.

5 Q. And did the Ralphs pay you or did Mr. Sinkler or
6 Ms. Tillman pay you?

7 A. The Ralphs paid me.

8 Q. And are you being paid to be here today?

9 A. Yes.

10 Q. How much are you being paid to be here today?

11 A. \$250 an hour, which is my standard fee for court
12 testimony.

13 Q. Yes, sir. Who told you about the facts of this
14 case, Mr. Sinkler or the Ralphs?

15 A. A great amount of it from Mr. George.

16 Q. From Mr. George. You weren't in court yesterday
17 when Mr. George testified, were you?

18 A. No.

19 Q. If I use the term USPAP, would you explain to the
20 jury what USPAP is?

21 A. USPAP is Uniform Standards of Professional
22 Appraisal Practice.

23 Q. And is that the, for lack of a better term,
24 governing practice guidelines for a professional
25 appraiser such as yourself?

1 A. Yes.

2 Q. And you were required to follow USPAP guidelines
3 and recommendations in giving appraisals, correct?

4 A. Yes, but there is not a finite definition of what
5 constitutes an appraisal.

6 Q. But there are finite definitions of USPAP. Those
7 guidelines are finite, correct?

8 A. They are.

9 Q. And they are pretty specific, are they not?

10 A. They are.

11 Q. And they are pretty detailed --

12 A. I was qualified to teach it 25 years ago.

13 Q. So you know -- you're very familiar with USPAP.
14 Under the USPAP guidelines, to do an abrasional, you do
15 look at comparable sales, correct?

16 A. Correct.

17 Q. And is it your testimony today that there have
18 been no sales on Seabrook since 2011?

19 A. I said there were no sales that suffered the
20 damage that the Ralphs' property suffers.

21 Q. But there have been sales on Seabrook?

22 A. Plenty, and in my write-up, I said five sales on
23 Baywood for the value before.

24 Q. So there have been sales on Baywood, where the
25 Ralphs' property and the McLaughlins' property is, that

1 you looked at in coming up with your appraisal value?

2 A. Yes, in 2011.

3 Q. 2011. You haven't done any updates to that value
4 since 2011?

5 A. No.

6 Q. You've appraised lots of property in Charleston
7 County with the assessor's office and with your business
8 and with Sears, and I think your testimony was at one
9 point you had to appraise most of the houses across Broad
10 Street; is that correct?

11 A. Most of the residential houses south of Broad
12 Street.

13 Q. Yes, sir.

14 A. Along the East Battery.

15 Q. Would you agree with me in your opinion since 2011
16 property prices have generally increased in Charleston
17 County?

18 A. There would be some increase probably, but
19 Charleston is a very unique market.

20 Q. My question is, have property values increased in
21 Charleston County since 2011 as an appraiser? Have you
22 seen that value increase?

23 A. In certain locations.

24 Q. What about Seabrook Island? Have you seen values
25 increase on Seabrook since 2011?

1 A. I haven't studied the market on Seabrook Island
2 regarding residential property; however, I have appraised
3 several parcels on Seabrook Island for Seabrook Island
4 company.

5 Q. Have you seen those values increase since 2011?

6 A. Yes.

7 Q. And you were never given an actual finite number
8 for what you said is some sort of diminution in value for
9 the Ralphs' property, have you?

10 A. I haven't been able to find any indication in the
11 marketplace, and the engineer told me last week -- and
12 that's why I've been on hold since 2011, because I have
13 been waiting on a written number from the engineer for
14 over five years.

15 Q. Yesterday -- if I represented to you that Mr. and
16 Mrs. Ralph testified their property is worth \$775,000, do
17 you have any reason to dispute that?

18 A. In the before value? No.

19 Q. They testified yesterday, I'll represent to you,
20 that their property was worth \$775,000 as of yesterday.
21 Do you have any reason to doubt that?

22 A. I would have a problem with that.

23 Q. But, again, you haven't done any updates since
24 2011?

25 A. No.

1 MR. O'KELLEY: That's all I've got, Your
2 Honor.

3 THE COURT: Redirect?

4 REDIRECT EXAMINATION

5 By MS. TILLMAN:

6 Q. Yesterday Mrs. Ralph testified that before there
7 was injury to her property, or if there was no injury to
8 her property, she would imagine that her property would
9 be valued at about \$775,000. Would that sound correct to
10 you?

11 A. It could very well be possible, very well be
12 probable. I haven't studied the market, so I can't say
13 as an appraiser that I would say that was the value of
14 the property in the before condition, as of yesterday.

15 Q. However, would, in your opinion, Mr. and Mrs.
16 Ralph be able to get \$775,000 for their property as it is
17 now, with flooding water on their back yard?

18 MR. O'KELLEY: Your Honor, again, that calls
19 for speculation. There is no testimony the property is
20 listed for sale.

21 THE COURT: Overruled. Go ahead.

22 THE WITNESS: I would say -- I don't think
23 there's a prayer anywhere that it would be able to get
24 that kind of money for it.

25 MS. TILLMAN: All right. Thank you very

1 much. I have no further questions.

2 THE COURT: Recross?

3 MR. O'KELLEY: No, sir.

4 THE COURT: You may step down.

5 THE WITNESS: Am I released?

6 THE COURT: You are free to go.

7 THE WITNESS: Thank you very much.

8 THE COURT: Welcome to stay.

9 Your next witness?

10 MS. TILLMAN: Your Honor, the plaintiffs
11 would like to call Mr. McLaughlin.

12 THE COURT: Okay.

13 PAUL DENNIS McLAUGHLIN,

14 having been first duly sworn,

15 was examined and testified as follows:

16 DIRECT EXAMINATION

17 BY MS. TILLMAN:

18 Q. Good morning, Mr. McLaughlin. I just have a few
19 questions for you.

20 Is your house currently situated in what was once
21 the no-build zone, or no-build area on your property?

22 A. A portion of it is, yes.

23 Q. And did you authorize your construction company to
24 dig up the pipe that was once running through the
25 drainage easement in your back yard?

1 MR. O'KELLEY: Your Honor, these are leading
2 questions. This is direct. I think we need a
3 non-leading question.

4 THE COURT: Well, he's the opposing party, so
5 I'll allow her to lead as a hostile witness.

6 BY MS. TILLMAN:

7 Q. Did you authorize the construction company to dig
8 up the pipe that was once in the drainage easement in the
9 back yard?

10 A. Yes. We received approval from the POA to do
11 that.

12 Q. Had the POA approved of your -- had they, in fact,
13 approved of your desire to dig up the pipe?

14 A. They had authorized it, yes.

15 Q. Mr. McLaughlin, I'm going to show you a lawsuit
16 that was filed on December the 9th, 2008. It was filed
17 by Seabrook Island Property Owners Association by Mr. and
18 Mr. McLaughlin? Do you recognize this lawsuit?

19 A. Yes, I do.

20 Q. Were you served with this lawsuit?

21 A. Served with my attorney.

22 Q. Would you read to me paragraph number 16, please.

23 MR. O'KELLEY: Your Honor, I'm going to
24 object to this. The testimony has been that this lawsuit
25 has was dismissed after three days, and I don't see the

1 relevance of it.

2 THE COURT: Overruled.

3 THE WITNESS: The plaintiff has defined the
4 cost necessary to remove the easement to be the cost of
5 reworking the drainage in the manner that maintains the
6 existing drainage for other lots; i.e., cost of
7 installing alternative drainage in a manner that will not
8 undermine or adversely affect such existing drainage
9 system downstream.

10 Q. Could you read paragraph 17.

11 A. Plaintiff is informed and believes that defendants
12 have begun site preparation work for the building of
13 their house on their property. Defendants and/or their
14 building contractor have indicated to plaintiff the plan
15 intends to destroy and remove the drainage pipe within
16 the abandoned drainage easement without first installing
17 a relocated or substitute draining system.

18 Defendants have refused to acknowledge any duty or
19 obligation on their part to rework the drainage in a
20 manner that maintains the existing system for remaining
21 downstream lots.

22 Q. And now would you read paragraph 26, please.

23 A. Plaintiff is informed and believes that the
24 defendants' unilateral action will result in irreparable
25 damage by diminishing the drainage capacity of the

1 drainage easement as it affects the downstream lots.

2 Q. And were you the defendant in this lawsuit?

3 A. Yes, ma'am.

4 Q. And the plaintiff was the Seabrook Island Property
5 Owners Association?

6 A. That's correct.

7 Q. And if they had granted you permission to tear up
8 the drainage pipe, then why did they file a lawsuit
9 against you to stop you from doing that?

10 A. I can't answer that question.

11 Q. Would you read for me -- there's attached to the
12 lawsuit an affidavit by Mr. John Thompson. Who is
13 Mr. John Thompson?

14 A. Mr. Thompson was the executive director of the
15 property owners association.

16 Q. And would you read from me in his affidavit
17 paragraph number 17?

18 MR. O'KELLEY: Your Honor, I'm going to
19 object to that. That is hearsay. Mr. Thompson is an
20 out-of-court person, and she's offering it for the truth
21 of the matter asserted here.

22 MS. TILLMAN: Your Honor, I'm offering it to
23 show that the POA was objecting to Mr. McLaughlin's plan
24 to dig up the drainage easement.

25 THE COURT: Overruled. Go ahead.

1 BY MS. TILLMAN:

2 Q. Let's see.

3 A. Plaintiff is informed or believes that defendants
4 have begun site preparation for the work of the building
5 of their house on the property. Defendants and/or the
6 property contractor indicated to plaintiff the plan
7 intends to destroy and remove the drainage pipe within
8 the abandoned drainage easement without first installing
9 a relocated or substitute draining system.

10 Defendants had refused to acknowledge any duty or
11 obligation on their part to rework the drainage in a
12 manner that maintains the existing system on lots 21, 23,
13 25, 26, 27, and 28. Plaintiff is informed that
14 defendants' continued actions and destruction of the
15 subject damage drainage pipe without some alternative
16 plan will seriously and adversely and irreversibly impact
17 the plaintiffs' drainage systems for lots 21, 23, 25, 26,
18 27, and 28.

19 Q. And, to your knowledge, are the Ralphs on lot 23?

20 A. I believe so. I can't say that for certain.

21 MS. TILLMAN: I have just realized that I
22 neglected to get this entered into as an exhibit, and I
23 would like to do so.

24 MR. O'KELLEY: Your Honor, I would object to
25 it as being hearsay.

1 THE COURT: It's admitted.

2 MS. TILLMAN: I would like to mark this
3 series of documents as 17.

4 (Plaintiff's Exhibit No. 17 was marked for
5 identification and admitted into evidence.)

6 BY MS. TILLMAN:

7 Q. Were you at the September 2008 meeting held by the
8 Seabrook Island Property Owners Association at which
9 Mr. George, Mr. Bob George, gave a presentation?

10 A. Yes, ma'am.

11 Q. And what do you remember Mr. George saying about
12 the effect your construction would have on downstream
13 lots?

14 A. I heard much of what he said yesterday.

15 Q. So was it your understanding at that meeting that
16 if you were to dig up the drainage pipe and construct
17 your house in the no-build area it would have a negative
18 effect on your neighbors downstream?

19 A. That's what he said, yes.

20 Q. All right. Did any of your neighbors voice
21 concerns to you about your construction?

22 A. Yes, at that meeting they did.

23 Q. And which of those neighbors did that?

24 A. Well, the Ralphs, the Craters, Dr. Van Heerden, or
25 something like that.

1 Q. Did any of your neighbors send e-mails voicing
2 objections to your construction plans?

3 A. I can't remember that.

4 Q. I'm going to show you this e-mail that has been --

5 A. Okay.

6 Q. Can you tell me, from whom was this e-mail sent?

7 A. This is Bill Crader, the neighbor next door,
8 former neighbor next door.

9 Q. And are you included in the number of people that
10 were copied on this e-mail?

11 A. Yes, ma'am.

12 Q. All right. And if you take a minute to read the
13 e-mail, can you tell me whether the gist of it is that
14 Mr. Crader is objecting to your construction.

15 MR. O'KELLEY: Your Honor, before he reads
16 that e-mail, I'm going to object to it on the grounds it
17 is, indeed, hearsay.

18 THE COURT: And who is it from?

19 MS. TILLMAN: It is from Mr. McLaughlin's
20 neighbor.

21 THE COURT: To --

22 MS. TILLMAN: To Mr. McLaughlin and other lot
23 owners, and it is for the purpose of demonstrating that
24 the neighbors had objected to Mr. McLaughlin's
25 construction plans.

1 THE COURT: Overruled. Go ahead.

2 THE WITNESS: Do you want me to read it?

3 BY MS. TILLMAN:

4 Q. You don't have to read it, if you would just tell
5 me whether the gist of it was he was objecting to your
6 construction plans.

7 A. Yes, he was objecting to it.

8 Q. All right.

9 MS. TILLMAN: I'd like to have this e-mail
10 that I've previously shown to Mr. O'Kelley marked as
11 Plaintiff's Exhibit No. 18.

12 MR. O'KELLEY: With the same objection, Your
13 Honor.

14 THE COURT: Overruled. It's admitted.

15 (Plaintiff's Exhibit No. 18 was marked for
16 identification and admitted into evidence.)

17 BY MS. TILLMAN:

18 Q. Mr. McLaughlin, I'm going to show you this e-mail
19 from Dr. John Van Heerden.

20 A. Yes, ma'am.

21 Q. Do you remember seeing this e-mail?

22 A. Yes, ma'am.

23 Q. Are you copied on this e-mail?

24 A. I believe -- yes, I am.

25 Q. All right. Would you read me, please, what Dr.

1 Van Heerden says in capital letters?

2 MR. O'KELLEY: And, Your Honor, before that
3 is read, I would like the same objection as to hearsay.

4 THE COURT: Overruled.

5 THE WITNESS: The pipe was put where it is
6 for good reason. It's in amazingly good shape, and
7 taking it out will cause problems for all of us. Taking
8 out any section of pipe will cause problems.

9 BY MS. TILLMAN:

10 Q. All right. Thank you.

11 MS. TILLMAN: And I'd like to have this
12 e-mail admitted as Plaintiff's Exhibit No. 19.

13 THE COURT: Over objection, it's admitted.

14 MR. O'KELLEY: Thank you, Your Honor.

15 (Plaintiff's Exhibit No. 19 was marked for
16 identification and admitted into evidence.)

17 BY MS. TILLMAN:

18 Q. So, Mr. McLaughlin, you were aware of your
19 neighbors' objections to your construction plans?

20 A. Yes, at that meeting, after the meeting.

21 Q. And what, in your mind, would have solved this
22 problem? Could you have, perhaps, adjusted your
23 construction plans and moved your house backward so that
24 it was no longer on the easement?

25 A. I can't answer that question.

1 Q. Had you begun construction at the time that your
2 neighbors were objecting?

3 A. No, I hadn't.

4 Q. Had you begun construction at the time the
5 Seabrook Island Property Owners Association was
6 attempting to find a solution to the problem that your
7 construction plans would cause for your neighbors?

8 A. They were working on it for six months, and I
9 hadn't heard anything from them.

10 Q. Did you grow frustrated?

11 A. Well, yes.

12 Q. Were your neighbors telling you you couldn't
13 construct a house at all on your lot?

14 A. They never said that.

15 Q. Was the Seabrook Island Property Owners
16 Association telling you that you could never construct a
17 house at all on your lot?

18 A. No, but they gave us permission to build the house
19 as sited on the lot during the ARB process.

20 Q. However, they later sort of back pedalled on that?

21 A. No, they did not. We still had the standing
22 approval from the ARB from 2006 to build our house on the
23 location as approved by them and to move forward with
24 that. We had that. They approved the location of the
25 house, not only the design, and they approved -- and

1 during that whole ARB process, there was never any
2 question raised during that process about the location of
3 the house in the former easement and no-build zone at
4 all.

5 Q. However, wouldn't it be fair to say that the
6 Seabrook Island Property Owners Association filed a
7 lawsuit against you to prevent construction, that they
8 had not entirely approved of your plans?

9 A. No. I had approval from their plans. I had
10 written approval from the ARC in 2005 approving the
11 location, exact location, of the house as sited, and a
12 portion of the area was in the former abandoned easement
13 no-build zone, and they never rescinded that at all.

14 Q. And -- however, that approval was in 2005. If
15 they were entirely approving of your design, why would
16 they have these meetings in September and October of
17 2008, prior to your construction, to try to ameliorate --

18 A. I can't answer that question, ma'am. I'm not in
19 the mind of the POA. All I know is I had an approved
20 plan to place the house as sited through the ARB, and I
21 had a letter to that effect as well as drawings, and at
22 no time was any discussion during that process was I told
23 or suggested to move the house because of the pipe or the
24 former easement.

25 Q. Mr. McLaughlin, what would you say the value of

1 your house is?

2 MR. O'KELLEY: Objection, Your Honor. What
3 is the relevance of this?

4 THE COURT: Overruled.

5 THE WITNESS: I have no idea. I haven't put
6 it up for sale. I know that it went down in value
7 because appraisals went down through the county, but I
8 have not tried to sell the house at all.

9 BY MS. TILLMAN:

10 Q. Have you ever had your house appraised?

11 A. Yes, I have.

12 Q. And what did those appraisals suggest that your
13 house is worth?

14 A. Oh, my goodness. That's when we did construction
15 financing. I think probably -- \$850,000, I think, was
16 the amount they talked about, but I wouldn't want to
17 be -- I'm not certain on that.

18 Q. And what year was that?

19 A. When we refinanced -- when we went to
20 construction. When we got a construction loan, they had
21 to get an appraisal, and that was in June of 2008. We
22 had gotten our construction approval then and had to get
23 financing at that point.

24 Q. And so in about 2008, your property was valued at
25 about \$850,000?

1 A. Yeah, I think so.

2 Q. And would you agree that property values on
3 Seabrook Island have increased since 2008?

4 A. No, I don't think they have. I think the market
5 has been kind of stable. It's kind of a second housing
6 market.

7 Q. Do you think it would be fair to say your house is
8 probably worth \$1 million now?

9 A. I couldn't speculate on that. I have no idea. I
10 have no interest in selling the house. We enjoy it so
11 much.

12 Q. Now, when you were constructing your home, was it
13 desirable to you to have a house that was close to the
14 golf course?

15 A. There were issues regarding the placement of the
16 house having to do with oak trees, and we had to work
17 around those oak trees. We had an oak tree -- I think
18 you saw in yesterday's photograph an oak tree that hangs
19 over the driveway, and so dealing with oaks becomes a
20 big, big problem in terms of siting the house. You could
21 put it in front or you could put it in back. We just put
22 it on the back side of the oak tree.

23 Q. Would you agree, though, that property values are
24 improved by houses that are closer to the golf course?

25 A. I have no knowledge of that.

1 Q. Was it valuable to you, though, to have it close
2 to the golf course? Did you like the situation of that?

3 A. I don't play golf, so it didn't make any
4 difference to me.

5 Q. Mr. McLaughlin, are you employed?

6 A. Yes, ma'am.

7 Q. What is your employment?

8 A. I'm president of the Moravian Ministries
9 Foundation of America.

10 Q. What is your annual salary?

11 MR. O'KELLEY: Objection, Your Honor. I
12 don't see how this is remotely relevant.

13 THE COURT: Overruled.

14 THE WITNESS: It's about \$171,000. I'm going
15 to be retiring on June 30th of this year, so it won't be
16 that much.

17 BY MS. TILLMAN:

18 Q. And, Mr. McLaughlin, I just want to reiterate, you
19 were aware of your neighbors' objections to your
20 construction?

21 A. Yes, I was.

22 Q. And you understood those objections to be -- or
23 did you understand those objections to be that they were
24 concerned that your construction would have an adverse
25 effect on your property?

1 A. On my property?

2 Q. On your neighbors' property.

3 A. I never heard it expressed in that regard. They
4 were concerned with the piping impact on the drainage.
5 No one ever said to me they were going to lose value on
6 their house by our moving the pipe.

7 Q. Fair enough, but were they concerned that they
8 would have drainage problems in the future because of
9 your construction?

10 A. Yes, I think that's a fair statement that they
11 said. They expressed concern.

12 Q. And you built your house, nonetheless?

13 A. As we had been approved by the ARB and the POA to
14 build it in the location that they approved it to be
15 sited.

16 Q. Even with concerns from your neighbors?

17 A. Even with concerns from the neighbors, yes, ma'am.

18 MS. TILLMAN: Okay. I have no further
19 questions.

20 THE COURT: Cross?

21 MR. O'KELLEY: Thank you.

22 CROSS-EXAMINATION

23 BY MR. O'KELLEY:

24 Q. Mr. McLaughlin, there is no doubt that you
25 received approval from the Seabrook Island POA to build

1 your house where it is; is that correct?

2 A. That's correct.

3 Q. And the lawsuit you were just asked about, you
4 testified your attorney was served with that lawsuit?

5 A. Yes, sir.

6 Q. And was your attorney at the time Eric Davidson?

7 A. Yes, sir.

8 Q. All right. And Mr. Davidson, when he was served
9 with that lawsuit, informed you about it, correct?

10 A. Yes, sir.

11 Q. And that lawsuit was dismissed three days later,
12 or two days later?

13 A. I think it was three.

14 Q. All right. And let me find -- it's up here
15 somewhere. Did you talk to anybody at the Seabrook
16 Island POA about the dismissal of that lawsuit?

17 A. I did not.

18 Q. Did you talk to John Thompson about his affidavit
19 in this lawsuit?

20 A. No, I did not.

21 Q. The let me show you Mr. Thompson's affidavit.
22 Paragraph 11, will you read Mr. Thompson's affidavit to
23 the jury, please.

24 A. Defendant's building plans were approved subject
25 to the condition that the defendant would assume all the

1 responsibilities for the underground drainage line at the
2 20-foot drainage easement/driveway along the adherence to
3 related town of Seabrook and Charleston County drainage
4 requirements. A copy of the ARC approval is attached as
5 Exhibit B.

6 Q. And Defendant's Exhibit 2, that's your
7 understanding of the approval, is it not?

8 A. That is correct.

9 Q. And Mr. Thompson's language in his affidavit
10 actually tracks the language in Exhibit 2, doesn't he?

11 A. Yes, it does.

12 Q. In fact, it's almost verbatim, isn't it?

13 A. Yes, sir.

14 Q. And read the language in Exhibit 2 that
15 Mr. Thompson basically lifted and put in his affidavit.

16 A. Okay. Number one: Owner is to assume all
17 responsibility for the underground drainage line at the
18 20-foot drainage easement/driveway. Owner is to assume
19 all responsibility for the abandoned drainage easement
20 that may contain a pipe. Property lines must be located
21 prior to any grading because of the right-of-way of the
22 20-foot drainage easement.

23 Q. Thank you, sir. If you will, please, looking at
24 Mr. Thompson's affidavit, please read paragraph 13 to the
25 jury.

1 A. Number 13: The Seabrook Island Property Owners
2 Association has also abandoned a portion of the drainage
3 easement that crosses lot 24 upon a request of the owners
4 of said lot, subject to the same conditions as those
5 imposed in connection with the requested abandonment
6 of -- for the property; however, the owners are -- of lot
7 24 are not parties of this action.

8 Q. And do you know who owned lot 24?

9 A. I believe it was Mr. Foster.

10 Q. I'm going to show you two more documents. This is
11 relating to my earlier question. There's a document that
12 says withdrawal of -- well, tell the jury what that
13 document says.

14 A. Should I read it?

15 Q. Yes, sir.

16 A. Now comes the plaintiff --

17 Q. No, sir, no. Read the title of this document.

18 A. Oh, withdrawal of motion for temporary restraining
19 order.

20 Q. And that was the case filed by the town, correct?

21 A. By the property owners association.

22 Q. Excuse me, by the --

23 A. Property owners association.

24 Q. And that was filed on December 11, 2008, was it
25 not?

1 A. Yes, sir.

2 MS. TILLMAN: I have no objection.

3 MR. O'KELLEY: I would like to move that in,
4 I think, as Defendant's No. 5, and it's not been
5 premarked yesterday.

6 THE COURT: It's admitted.

7 MR. O'KELLEY: Thank you, Your Honor.

8 (Defendant's Exhibit No. 5 was marked for
9 identification and admitted into evidence.)

10 BY MR. O'KELLEY:

11 Q. The next document that's in front of you is the
12 document filed in this court January 27, 2011. If you
13 will read -- it says it is ordered and adjudged. Please
14 read to the jury what that says.

15 A. It is ordered and adjudged -- statement of
16 judgment by the Court.

17 Q. There's a statement of judgment by the Court, and
18 please read what it says the Court advised.

19 A. Court advised dismissed per attorney filing.

20 Q. And that was filed on January 27 of 2011, correct?

21 A. Yes.

22 MS. TILLMAN: I have no objection.

23 MR. O'KELLEY: Your Honor, I would like to
24 move what is a form order signed by Judge Nicholson into
25 evidence as Defendant's 6.

1 THE COURT: Admitted.

2 (Defendant's Exhibit No. 6 was marked for
3 identification and admitted into evidence.)

4 BY MR. O'KELLEY:

5 Q. So it's your understanding that at some point an
6 attorney represented to the Court that the case had been
7 dismissed, correct?

8 A. Yes.

9 Q. And it's your understanding also, based on
10 Mr. Thompson's affidavit, that the POA attempted to
11 abandon an easement on another lot besides yours on
12 Baywood Drive, correct?

13 A. That's correct.

14 Q. And do you remember who owned lot 24?

15 A. Mr. Fowler.

16 Q. Mr. Fowler. You worked with an architect, Whitney
17 Powers, in coming up with the design plans for your
18 house, correct?

19 A. Yes, sir.

20 Q. And you worked with a landscape architect named
21 Julie Hemsley to come up with the plans for the yard.
22 Did the ARB require you or POA require you to save the
23 oak tree that is along the driveway in siting your house?

24 A. Yes, sir.

25 Q. You have to work very carefully with the POAs and

1 ARBs in coming up with plans, correct?

2 A. Yes.

3 Q. And did the POA's ARB eventually sign off on your
4 house once it was built?

5 A. Yes, sir.

6 Q. And, in fact, they signed off because they saved
7 that oak tree and complied with the plans as approved,
8 correct?

9 A. Yes, sir.

10 MR. O'KELLEY: Thank you, Mr. McLaughlin.

11 THE COURT: Redirect?

12 REDIRECT EXAMINATION

13 BY MS. TILLMAN:

14 Q. Mr. McLaughlin, Seabrook Island Property Owners
15 Association filed that lawsuit against you on November
16 the 9th, 2008; is that correct?

17 A. That is correct.

18 Q. And were you served with it shortly thereafter?

19 A. Yes, on December 9.

20 Q. On December the 9th? And when you were served
21 with that lawsuit and you saw the Seabrook Island
22 Property Owners Association was seeking legal action to
23 prevent you from constructing your home, did you
24 immediately stop plans for construction?

25 A. I think we might have stopped because we had to

1 see what was going to happen. I can't remember exactly.

2 Q. Or did perhaps -- Mr. and Mrs. Ralph have
3 testified that the pipe was removed from your back yard
4 on that same day.

5 A. Yeah, but I think it was removed before the action
6 by the Court, or filing by the Court. I think so. It
7 was back in -- that was quite a while, but I think that
8 was the sequence. The injunction was not filed before we
9 removed the pipe.

10 Q. Would you tell us when this was filed with the
11 Court?

12 A. 11:30 in the morning.

13 Q. And Mr. Ralph testified earlier that pipe was
14 removed in the afternoon, around 3:00. Would you agree
15 with that?

16 A. No, I wasn't there. I was in Winston-Salem, North
17 Carolina. I wasn't supervising construction, so I wasn't
18 standing over, keeping track of the time, so I can't
19 answer what time it was removed.

20 Q. And would it be fair to say this lawsuit was to
21 prevent you from removing the pipe from the ground, or
22 that was one of the reasons for this lawsuit?

23 A. I would say so.

24 Q. Does it also make sense that the lawsuit would be
25 dismissed because the pipe had already come up from the

1 ground?

2 A. I don't know why it was dismissed except what I do
3 know is that my attorney called the POA attorney and read
4 through the document and saw the inconsistencies because
5 we had received approval to build the house as sited by
6 the POA, so how can you now go after my client because
7 their filing had been approved by the POA.

8 And their attorney answered. He said I'll get
9 back to you, and then that means their attorney gets back
10 to my attorney, and said, well, we're withdrawing the
11 complaint.

12 Q. Now, Your Honor -- I mean -- I'm sorry, Mr.
13 McLaughlin. You'll see that this complaint asks for
14 injunctive relief. Do you know what injunctive relief
15 is?

16 A. I'm not a lawyer.

17 Q. Would it make sense, based on the paragraphs you
18 read earlier, is that relief was to stop you from digging
19 up the pipe?

20 A. It could have been, but they could have worded it
21 reinstallation. I don't know.

22 Q. And have they asked for any money from you in this
23 lawsuit, or was it merely to stop your construction?

24 A. They didn't ask for any money.

25 Q. All right. Then would it be fair to say that they

1 would no longer have a claim against you once your
2 construction had begun?

3 MR. O'KELLEY: Your Honor, I think that calls
4 for speculation as to what the Seabrook Island POA
5 thought at the time.

6 THE COURT: Sustained.

7 THE WITNESS: I can't answer that.

8 BY MS. TILLMAN:

9 Q. Okay. And, Mr. McLaughlin, you testified earlier
10 that lot number 24 is also -- has anyone constructed on
11 lot 24?

12 A. I have no idea. I can't tell one lot -- I mean, I
13 don't know. There have been some houses going up, and I
14 don't supervise construction of individual properties.

15 Q. If I were to represent to you that no construction
16 has begun on lot 24, would you agree with me? It's the
17 lot -- your house is lot number 22, the Ralphs are lot
18 number 23, and I believe you can see lot 24 there --

19 A. I don't look -- that's not -- you know, I ride my
20 bike. I go to the beach. I don't go looking at lots and
21 trying to figure out what numbers are associated with
22 what lots. I just don't know. I'm not being evasive, I
23 just don't know.

24 Q. You did testify earlier, though, that your
25 understanding is that lot 24 has -- that the Seabrook

1 Island Property Owners Association has also attempted to
2 abandon the easement on that lot; is that your
3 understanding?

4 A. Yes. He was seeking to have that, Mr. Fowler was.

5 Q. So there is something of a risk to the Ralphs that
6 the owners of lot 24 could also dig up the drainage pipe.
7 Is that your understanding?

8 A. I don't know. You know, you're asking me
9 questions about properties I don't know anything about.

10 Q. All right.

11 MS. TILLMAN: I have no further questions.

12 MR. O'KELLEY: Just very briefly, Your Honor.

13 RECROSS EXAMINATION

14 BY MR. O'KELLEY:

15 Q. Mr. Thompson, in his affidavit in that earlier
16 lawsuit, averred and represented to this Court that the
17 POA had abandoned an easement on lot 24, correct?

18 A. That is correct.

19 MR. O'KELLEY: Thank you.

20 THE COURT: Finished?

21 MS. TILLMAN: Yes, sir.

22 THE COURT: All right, folks. Let's go ahead
23 and take our morning break. It's 10:45, so let's
24 reconvene at 11:00. Again, don't begin deliberations or
25 discussions about the case, and we will see you back in

1 15 minutes.

2 (In open court, jury not present.)

3 MS. TILLMAN: I'd like to bring something to
4 the attention of the Court. There's a previous order
5 from Judge Cooper in this case dated May 26, 2016 who was
6 ruling on summary judgment motions by the POA, the
7 Seabrook Island Property Owners Association, as well as
8 by the McLaughlins, and he made two rulings: First, that
9 the Ralphs' claim is not barred by the statute of
10 limitations; and, also, that the McLaughlins' third party
11 claim against Seabrook Island Property Owners Association
12 must be dismissed with prejudice because they cannot show
13 any evidence of reasonable reliance on the Seabrook
14 Island Property Owners Association's representations.

15 THE COURT: So what are you --

16 MS. TILLMAN: So I would object to testimony
17 relating to representations that the Seabrook Island
18 Property Owners Association may have made to Mr.
19 McLaughlin authorizing him to construct his house --

20 THE COURT: Well, you brought it up.

21 MS. TILLMAN: That's true.

22 THE COURT: I mean, once that door's open,
23 you can't shut it, so -- all right?

24 MR. SINKLER: That's the law of the case,
25 what he's decided.

1 THE COURT: As far as him ruling, they're
2 bound by that, but if they want to ask about
3 representations that Seabrook Island made to Mr.
4 McLaughlin, that question didn't come up.

5 MS. TILLMAN: I have no objection to
6 questions about that.

7 THE COURT: Then what are you asking me?

8 MS. TILLMAN: Whether the jury will be bound
9 by the previous decision in --

10 THE COURT: Well, there's no third-party
11 claim being made. This is a lawsuit between the
12 plaintiffs and the defendants. I don't know what the --
13 I haven't read the order, so I don't know what would bind
14 anybody else who wasn't a party to the lawsuit.

15 MS. TILLMAN: Well, all of the parties here
16 were a party to the lawsuit. This -- originally the
17 Ralphs sued the McLaughlins.

18 THE COURT: Let me ask you this: Does this
19 have anything to do with our next witness?

20 MS. TILLMAN: The plaintiff has no further
21 witnesses.

22 THE COURT: Okay. I'll read this, and I'll
23 try to figure out what it is you're asking me, but if
24 we've got a jury waiting, I want to bring them in, and
25 let's keep moving.

1 So you're resting?

2 MS. TILLMAN: We are, yes.

3 MR. O'KELLEY: Then, Your Honor, there are
4 some things we need to take up outside the presence of
5 the jury.

6 THE COURT: Let me bring the jury back in so
7 that you can rest in front of them. I'll send them out
8 and tell them we got a few legal matters, and then we'll
9 figure out where we go from there, so bring the jury in.

10 (In open court, jury present.)

11 All right. Does the plaintiff have any other
12 witnesses?

13 MS. TILLMAN: No, Your Honor. The plaintiff
14 rests.

15 THE COURT: All right.

16 Okay, folks. You've now heard the
17 plaintiffs' case, so this is the point in the trial where
18 we have to take up some legal matters before we figure
19 out where we go with the rest of the case.

20 So I'm going to send you back to the jury
21 room while we take up these matters of law. I would send
22 you to lunch, but it's still a little bit early, so let
23 me hear these motions, and then we'll figure out what
24 we're going to be doing with the rest of the case.

25 I'll bring you back in, probably dismiss you

1 to go to lunch, but with some idea when we'll resume. So
2 go on back. Don't begin deliberations or discussions.

3 (In open court, jury not present.)

4 THE COURT: Motions?

5 MR. O'KELLEY: At this time I would like to
6 make a directed verdict motion as to the only cause of
7 action that is pending against my client -- clients,
8 rather.

9 When this case started, Your Honor, you asked
10 Mr. Sinkler a question about what the cause of action was
11 in this case. Mr. Sinkler replied that the cause of
12 action was for trespass only. That is set forth in his
13 amended complaint in paragraph 23, paragraph 24.

14 In those paragraphs, they are claiming causes
15 of action for trespass; and, Your Honor, we don't think
16 they have proven the elements of trespass at all. Those
17 elements require an entry upon the land of another.
18 There's been absolutely no testimony that my clients
19 entered on to the land of the Ralphs in order to invade
20 it, break the enclosure, or do any affirmative act.

21 The only testimony was that Mr. McLaughlin
22 came on to the Ralphs' property years ago to introduce
23 himself soon after he bought the property. That was no
24 invasion, and certainly introducing himself didn't result
25 in any harm to the plaintiffs.

1 There has been absolutely zero testimony
2 about that. South Carolina doesn't recognize any sort of
3 strict liability for trespassing, and, again, without an
4 invasion or the breaking of the close of the Ralphs'
5 property, there can be no claim for trespass.

6 Further, Your Honor, we think we're entitled
7 to a directed verdict based upon the testimony of the
8 Ralphs and their experts as to damages. Yesterday you
9 heard Mr. and Mrs. Ralph both state that there's \$775,000
10 worth of value in their property. You also heard today
11 from Mr. Thompson, the appraiser that was hired, who set
12 forth some value, and he couldn't give you a number.
13 Mr. George couldn't give you a number. We don't know
14 what the damages are in the case, Your Honor, and without
15 being able to prove damages, we don't think the case
16 should go further.

17 Your Honor, we also asserted various
18 affirmative defenses, including the failure to mitigate.
19 Since the pipe was removed in December of 2008, you heard
20 that Mrs. Ralph and Mr. Ralph have not done anything -- I
21 will repeat, have not done anything -- on their property
22 to deal with what was formerly called a puddling event
23 and is now called a ponding event. That is not something
24 that reasonable people -- a standard to which reasonable
25 people should be held, that they can sit back, lo these

1 many years later, and then come into court and seek
2 damages when they've done nothing to mitigate them.

3 We also asserted a cause of action
4 for acceptance of the property. You heard that
5 Mrs. Ralph and Mr. Ralph didn't sue for any injunction or
6 to stop construction at any time. The POA did, and the
7 POA dismissed that lawsuit, and we think they are bound
8 by the collateral estoppel of that lawsuit, Your Honor.

9 We also think that based on the letter that
10 Mr. and Mrs. Ralph acknowledged receiving in 2007, Your
11 Honor, that they were on notice that my clients were
12 going to be dealing with the no-build area and the
13 easement that the POA had been telling them they had
14 abandoned, and they didn't file suit until 2011, some
15 four years after that notice.

16 Your Honor, we also think that there has been
17 absolutely no proof about anything other than -- for an
18 intentional infliction of emotional distress or
19 discomfort. There's been no testimony as to physical
20 pain, physical damage, having to see a doctor, having to
21 see someone for the emotional trauma this matter has
22 caused them, and that was alleged in the complaint.

23 Your Honor, we also don't think the standard
24 for punitive damages has been reached. You heard Mr.
25 McLaughlin testify that he was relying on the POA when

1 they built their house. There was no wrongdoing of which
2 he was conscious that has been proven by clear and
3 convincing evidence as required for punitive damages, so
4 we would ask Your Honor to strike the punitive damage
5 demand for a lack of proof and the lack of ability to
6 comply with the case law regarding punitive damages.

7 So, in summary, there's been no trespass
8 shown by an affirmative act, invasion of land that was
9 intentional with harm resulting from that invasion as set
10 forth in Snow vs. The City of Columbia, 409 S.E. 2d 797.
11 We think that the statute of limitations has run based on
12 the notice that was given to the Ralphs, which they
13 acknowledged back in June of 2007.

14 We also don't think there's been any
15 testimony of any severe emotional distress, so that
16 should be tossed. We also, again, Your Honor, don't
17 think there's been any clear and convincing evidence of
18 any conscious wrongdoing on the part of my client, and
19 that is the case of Madison vs. Dallas Carrier
20 Corporation, which is a Fourth Circuit case, and, of
21 course, Your Honor, the case of Gamble vs. Stevenson that
22 requires the Court to go through an extensive analysis of
23 factors relating to punitive damages being proven by
24 clear and convincing evidence.

25 So for those reasons, Your Honor, we think

1 we're entitled to a directed verdict on all causes of
2 action.

3 THE COURT: Talk to me about your theory on
4 collateral estoppel again.

5 MR. O'KELLEY: Yes, Your Honor. In our
6 pleading, we put that there was an earlier lawsuit that
7 was filed in 2008 that created issues of preclusion
8 because the POA sued to stop the building of my clients'
9 house. The POA then withdrew that lawsuit, and that is
10 the law of the case, that under our law, that issue has
11 been litigated and decided. The statute of limitations
12 has actually run as to that issue at this point, and we
13 think that case binds anyone else who would come back and
14 say, hey, we need to stop the building on this property
15 because it was tried and withdrawn, and that counts as an
16 adjudication, Your Honor, under our case law.

17 That's our theory. I hope that answers Your
18 Honor's question about our theory as to the collateral
19 estoppel issue, which we asserted as an affirmative
20 defense as well. And at the time, Your Honor, there's no
21 doubt that the Ralphs were members of the property owners
22 association. They admitted yesterday they were members,
23 have been members since they bought their property back
24 in 1997.

25 And, Your Honor, one last thing: We also

1 think that this case is barred. We had the affirmative
2 defense of waiver estoppel because the Ralphs stood by
3 while this house was being built, took no action to
4 assert what they are claiming are their rights, let the
5 house be built, let the construction finish, and didn't
6 do anything. And in our answer, we actually cited the
7 case of McClintick vs. Davis, Your Honor. It's an old
8 case from 1955 at 90 S.E. 2d 364, for the Court's
9 reference.

10 THE COURT: Who would like to respond for the
11 plaintiffs?

12 MS. TILLMAN: I'd like to, Your Honor. If
13 you'd like me to address the issue of collateral estoppel
14 first --

15 THE COURT: Take them in any order you want.

16 MS. TILLMAN: The Seabrook Island Property
17 Owners Association was not filing a lawsuit for trespass,
18 they were filing a lawsuit to stop the construction of
19 the McLaughlins' building. The Ralphs have filed a cause
20 of action for trespass.

21 We certainly have argued or have presented
22 evidence on all the elements of trespass, the first being
23 that we had ownership or possession of the property. You
24 heard the testimony of Howard Yates. The law in South
25 Carolina is that where a deed references a plat, then

1 that deed is presumed to incorporate every easement,
2 appurtenance, and the other benefits depicted on the
3 plat, and, in fact, the owners of the property, through a
4 deed that references a plat, are deemed to have a vested
5 property interest in every easement depicted on that
6 plat.

7 So there can be no question of fact that the
8 Ralphs possessed the easement in question, that the
9 drainage pipe and the no-build area belonged to them.
10 There can also be no question of fact that the
11 McLaughlins have built, have trespassed, on that
12 easement. Their house is sitting on that easement right
13 now, which we allege belongs to the Ralphs.

14 And, third, the Ralphs never granted
15 permission to the McLaughlins to construct their house.
16 That's the third element of trespass, that it would be
17 without permission of the plaintiff, and as to the
18 requirement that Mr. O'Kelley has cited, that there needs
19 to be some sort of physical trespass, I would say that
20 the backhoe, digging up the pipe in the presence of the
21 McLaughlins' house on the easement is certainly a
22 physical manifestation, and as to the statute of
23 limitations running, although the Ralphs may have had
24 some awareness of the McLaughlins' plans to construct the
25 house, they did not have a cause of action. A cause of

1 action didn't accrue until the backhoe actually
2 trespassed on their property, until the pipe was torn up.

3 And we have argued this already in front of
4 Judge Cooper, and he has ruled in our favor that the
5 statute of limitations did not begin to run until there
6 was a physical manifestation. In fact, he said
7 specifically in his order, on page seven: The statute of
8 limitations for an action of trespass upon or damage to
9 real property is three years. On December the 9th, 2008,
10 the McLaughlins removed the drainage pipe. At this time,
11 the statute of limitations began to run on the
12 plaintiffs' trespass claim.

13 As far as failure to mitigate, the Ralphs --

14 THE COURT: Did he grant you summary judgment
15 or deny summary judgment?

16 MS. TILLMAN: He denied the McLaughlins'
17 motion for summary judgment.

18 MR. O'KELLEY: And he also denied the
19 plaintiffs' motion for summary judgment on that day, Your
20 Honor.

21 MS. TILLMAN: The plaintiffs had made a
22 motion for summary judgment as to the issue of trespass.
23 We were arguing or asking the judge to make a ruling that
24 there had been trespass, as a matter of law, because
25 there is no question of material fact as to whether the

1 McLaughlins have trespassed on the easement that belongs,
2 under the law of South Carolina, to the Ralphs. So that
3 was our request, and Judge Cooper ruled that because
4 there could be a question of fact, he was not going to
5 make a ruling at this time. He would allow the case to
6 proceed.

7 As to the issue of failure to mitigate, the
8 Ralphs have been trying to mitigate this. They've hired
9 an engineer. They've been attempting to work with the
10 numerous parties to this lawsuit, including, up until
11 Judge Cooper's order in May of 2016, the POA. They've
12 been trying to work to find out some sort of solution to
13 their problem, and, in fact, the McLaughlins' actions
14 have prevented that solution because the presence of
15 their house on the no-build area prevents the POA from
16 accessing the drainage pipe, which is necessary to
17 maintain it. Mr. George, our engineer, has said that
18 there can be no solution if the POA can't access the
19 drainage pipe to maintain it. So although they've tried
20 to mitigate the problem, they've not been able to come up
21 with a way to do so.

22 And as to the punitive damages, I think Mr.
23 McLaughlin's testimony today demonstrates that he acted
24 with a reckless disregard for the effects of his actions
25 on the rights of others, and therefore I think we're

1 entitled to punitive damages in this case.

2 I think I've addressed all of the issues.

3 THE COURT: All the testimony I heard about
4 Mr. McLaughlin was that he was acting the way he did
5 because he thought he had the right to do it.

6 MS. TILLMAN: Actually, Your Honor, we
7 presented testimony from -- in the form of e-mails and in
8 meetings from neighbors and from Mr. George who advised
9 all assembled, including Mr. McLaughlin, that his actions
10 would have a negative impact --

11 THE COURT: I don't think there's any
12 question that it was disputed, but that he thought he had
13 the right to do it, not that he didn't think he had the
14 right to do it and did it anyway.

15 MS. TILLMAN: I think that he acted with
16 reckless disregard for the rights of others.

17 THE COURT: This is a trespass case. If he
18 thought he had the right to do it, to use that, I'm not
19 sure that that goes to your theory of recklessness on
20 punitive damages. That's the issue I guess I'm
21 addressing at this point.

22 MS. TILLMAN: I guess I would argue that we
23 presented evidence that he had reason to believe that he
24 did not have a right to do it. He had been -- a lawsuit
25 was filed against him by the POA, trying to stop him from

1 doing it.

2 There had been conversations with the POA.
3 There had been conversations with neighbors, all of them
4 trying to stop him from this construction that
5 constituted a trespass. So I believe he was aware that
6 he shouldn't do it, and he acted, nonetheless, in willful
7 and reckless disregard of the rights of the property
8 owners, including the Ralphs.

9 THE COURT: You have a bunch of other things
10 you need to address. Go ahead.

11 MS. TILLMAN: Well, I would say --

12 THE COURT: Damages, mitigation of damages --

13 MS. TILLMAN: Oh, I thought I had addressed
14 the mitigation of damages.

15 THE COURT: Well, what about your evidence of
16 damages?

17 MS. TILLMAN: Our evidence -- oh, thank you.
18 Our evidence of damages -- well, the property owner is
19 able, under the law of South Carolina, to testify as to
20 their opinion or belief as to the value of their
21 property, which Mr. and Mrs. Ralph did. They are also
22 able to testify to what they believe to have been the
23 damage to their property, and that's found in --

24 THE COURT: Tell me what the evidence was on
25 that. They think it's worth 775,000.

1 MS. TILLMAN: That's right. Well, they
2 think --

3 THE COURT: Which has gone up in value since
4 the time they bought it, so what was the evidence that
5 they thought it was worth more, that it's only worth 775?

6 MS. TILLMAN: I'm not sure that I understand
7 your --

8 THE COURT: I guess what I'm saying is, in a
9 trespass case, your evidence -- your damages are
10 diminution of value, so if they think their house is
11 worth 775, what is the evidence that it would have been
12 more but for this, but for the water?

13 MS. TILLMAN: Well, the evidence would have
14 been Nick Thompson's testimony that he wouldn't be able
15 to find -- or that he has spoken with numerous other
16 appraisers on the island and hasn't been able to find a
17 like sale, and his conclusion from that is that perhaps
18 the land is un-sellable as it is.

19 The Ralphs testified as to the value of their
20 property without the issue of flooding in their back
21 yard. They did not -- they also testified as to how they
22 thought that that flooding would impact a possible sale.
23 Also, Mr. Thompson has testified too that the damages,
24 or, rather, that flooding in the back yard is something
25 that you have to disclose in the course of a sale and

1 that it would have a negative impact in the mind of a
2 buyer and perhaps make it difficult to find a buyer for
3 the property in the future.

4 THE COURT: Do you agree that there are no
5 other damages other than diminution in value?

6 MS. TILLMAN: Are you referring to
7 emotional --

8 THE COURT: I'm referring to anything else.
9 I mean, what do you plan to ask the jury for?

10 MS. TILLMAN: I plan to ask the jury for
11 damages of diminution of value, also for the costs that
12 the Ralphs have undertaken in an attempt to find some way
13 to mitigate this problem, and that -- their necessity to
14 find a way to mitigate the problem was proximately caused
15 by the McLaughlins' construction.

16 THE COURT: And what was that amount?

17 MS. TILLMAN: Well, they testified that
18 Mr. George has charged them about \$18,000 so far in his
19 engineering studies and other examinations in an attempt
20 to find a solution to the problem, and Mr. George
21 testified to that as well. But for the McLaughlins'
22 actions, the Ralphs would have had no need to undertake
23 these sort of studies and to try to find some sort of
24 solution to the flooding in their back yard.

25 THE COURT: Do you have any law that that's

1 allowable in a trespass case?

2 MS. TILLMAN: Well, the law in a trespass
3 case is that any damages that are proximately caused by
4 the defendant's trespass are considered proper
5 compensatory damages, and I'm certain that I could find a
6 case for that.

7 All right. Well, here is the case of Vaught
8 v. Hardee Sons. It's 366 South Carolina 475. It's a
9 Supreme Court decision from 2005 in which the judge ruled
10 that the goal is to restore the injured party as nearly
11 as possible through the payment of money to the same
12 position he was in before the wrongful injury occurred.

13 This is a trespass case, Your Honor, in which
14 they were discussing the value of fruit trees on the
15 property, which were destroyed, and the judge also noted
16 in that case that -- well, he noted in that case that a
17 party seeking damages for trespass may either be granted
18 damages, including the cost to repair the situation,
19 which would put him back into the position he was
20 before --

21 THE COURT: Well, you haven't shown any cost
22 for that, so the only thing you would be asking for is
23 Mr. George's fee?

24 MS. TILLMAN: Yes, Mr. George's fee, and the
25 diminution in the property value as a result of the

1 McLaughlins' actions and punitive damages, Your Honor.

2 THE COURT: Okay. Anything else?

3 MS. TILLMAN: No, Your Honor.

4 MR. O'KELLEY: Your Honor, just briefly in
5 reply, I think Your Honor's question was exactly on
6 point, and the case that Ms. Tillman just cited to you is
7 on point as well.

8 The fruit trees -- the diminution in the
9 value of the fruit trees is what was allowed in that
10 case. To prove damages in this case, they would have to
11 show some diminution in value, and they haven't been able
12 to do that. Mr. Thompson, of course, was speculating as
13 to what would happen if the property was sold, and,
14 again, the only evidence we have is that their property
15 is worth \$775,000, which has certainly gone up.

16 There's been also, Your Honor, absolutely no
17 evidence of the intent to trespass by my client. As Your
18 Honor noted, my client -- the only testimony is my client
19 thought he was acting correctly because of the permission
20 given to him by the POA. The permission, the affidavit
21 which the plaintiffs put in, is acknowledged by the POA
22 in Mr. Thompson's affidavit.

23 THE COURT: Let me ask you something.

24 MR. O'KELLEY: Yes, sir.

25 THE COURT: You own a car, right?

1 MR. O'KELLEY: Yes, sir.

2 THE COURT: What if I told my law clerk he
3 could go have your car? You would probably be going,
4 well, wait a minute. You don't have the right to give
5 away my car, which would be true.

6 How can the POA give away something they
7 didn't have the right to give away?

8 MR. O'KELLEY: But they did have the right to
9 give it away.

10 THE COURT: Is that dedicated to the
11 POA easement? It was just platted.

12 MR. O'KELLEY: Just platted, and --

13 THE COURT: Does it say anywhere on there
14 that it's dedicated only to the property owners
15 association?

16 MR. O'KELLEY: It says on the plat, Your
17 Honor -- I'm pretty sure it says for the maintenance of
18 the POA, and the testimony from Mr. Yates shows that the
19 POA maintained it. And it's hard to read, but it's a
20 drainage easement for Baywood Drive. I'm looking at
21 Exhibit 2, and then runs along these lots 22, 23, 24, 25,
22 26, et cetera, and empties out on to the golf course, but
23 the question Your Honor is asking about, the car, I think
24 is different, because the easement still exists on the
25 Ralphs' property. The car hasn't been given away on the

1 Ralphs' property. The easement is still there.

2 THE COURT: The easement across their
3 property is still there, but the easement across your
4 clients' property is still there if the POA didn't have
5 the right to give it away.

6 MR. O'KELLEY: But they did have the right to
7 give it away.

8 THE COURT: They only had the right to give
9 away their interest in it. If other people bought it --
10 if the other people bought a piece of property and
11 there's a road on there or there's an easement on there,
12 then they relied on that, and that's a right that they
13 got the day they bought that piece of property.

14 MR. O'KELLEY: That may be, Your Honor, but
15 they brought a cause of action for trespass, which is an
16 intentional tort. They have to prove the intent of my
17 client to trespass, and they haven't done it because my
18 client, we asserted this in our answer, had the right to
19 rely on the ARB to build and a right to rely on the
20 POA to build. The testimony, even from Mr. George, is
21 that, oh, you have to go through the POA. If the POA
22 didn't like their plans, they wouldn't have approved it.

23 Also, the testimony -- Your Honor, there has
24 been absolutely no testimony that my clients broke the
25 close on the Ralphs' property. We couldn't find a case

1 on point about trespass to an easement. Your Honor asked
2 early on in this case --

3 THE COURT: He didn't accidentally dig up the
4 pipe.

5 Mr. Kelley: Absolutely not.

6 THE COURT: He intended to go on there. He
7 knew the easement was there, he just thought it had been
8 abandoned and that he had the right to go on there and
9 dig it up.

10 MR. O'KELLEY: That's correct, Your Honor,
11 and so there's no intent to trespass if he thought he had
12 the right to do something.

13 THE COURT: But if he was mistaken and it
14 belonged to somebody else, it's still trespass. That may
15 go to punitive damages, which would be an argument, but
16 to trespass -- as I'm reading the law on trespass, it
17 says plaintiff must prove that he was in legal possession
18 of the property and the defendant or his agent
19 voluntarily entered upon the plaintiff's property and
20 that such entrance was made without the plaintiff's
21 permission.

22 MR. O'KELLEY: And, Your Honor, there's been
23 no testimony that they entered on to the plaintiffs'
24 property.

25 THE COURT: The plaintiffs' property being

1 the ownership interest that they had in that easement
2 that went over you're your clients' property.

3 MR. O'KELLEY: And they also have to show
4 harm from the result, is my understanding.

5 THE COURT: Well, it's pretty obvious what
6 the harm is.

7 MR. O'KELLEY: Is it? Because Your Honor
8 asked the question --

9 THE COURT: They dug up the drainage pipe,
10 which caused the property to flood every time it rains.

11 MR. O'KELLEY: But the testimony is the
12 property flooded before.

13 THE COURT: Only a little bit. Now it's a
14 lot worse. That was the testimony.

15 MR. O'KELLEY: The testimony is it has gone
16 up a few inches, Your Honor, but either way, the
17 diminution in value is the key to the damages here, and
18 there has been no proof of that.

19 THE COURT: Well, it's not as easy as saying,
20 Here's a dollar figure. What you have is their estimate
21 of what they think their property is worth, and then you
22 have Mr. Thompson's opinion that whatever the property is
23 worth, you've got to probably discount it by 50 percent
24 in order to be able to sell it. He couldn't put a dollar
25 figure on it, but the jury is capable of doing the math

1 on that.

2 They may agree -- he said anywhere from 10 to
3 50 to 60 percent they would have to discount that to find
4 a buyer who would be willing to buy that piece of
5 property and put up with the flooding.

6 MR. O'KELLEY: And, Your Honor, again, there
7 was no dollar figure, there was no substance, there was
8 no update to Mr. Thompson's work since 2011, and I think
9 he --

10 THE COURT: Well, Mr. Thompson doesn't have
11 to give an update. He was giving his theory on how you
12 get to a number, and that is whatever the number of that
13 value of that property is, it probably really isn't that
14 by at least 50 to 60 percent.

15 MR. O'KELLEY: And, Your Honor, the other
16 reason for our motion is, of course, the acquiescence and
17 the waiver and the estoppel, that my clients built their
18 house, and during the entire time they were building, the
19 Ralphs stood idly by and didn't do anything. They waited
20 almost three years from the time the pipe was removed
21 before they did anything, and then they're going to come
22 to this Court and seek some relief from trespass while
23 this house is being built.

24 THE COURT: Well, they didn't ask for an
25 injunction, they asked for damages.

1 MR. O'KELLEY: Which, frankly, again, Your
2 Honor, we don't think --

3 THE COURT: This wasn't until the trespass
4 and the drainage pipe was wiped out that they began
5 having flooding problems. At that point, that's when the
6 trespass took place. They didn't have three years to
7 bring a lawsuit.

8 It's abundantly clear absent a Court order
9 from a judge saying stop, he wasn't going to stop, so I
10 don't know that there is an estoppel argument there.
11 Once the trespass took place, it's there. It's a
12 permanent trespass. If the jury believes that they had a
13 property right, which in that easement, which the
14 homeowners association, property owners association did
15 not have the right to give away their right -- the
16 property owners association only had the right to give up
17 their interest in it.

18 They didn't have the right to give up anybody
19 else's, at least the way I understand the law. Unless
20 you can show me a document that says we are dedicating --
21 we are granting this drainage easement to the property
22 owners association and nobody else, then, as I understand
23 the law, when that drainage easement shows up on a plat,
24 everybody that buys a piece of property with reference to
25 that in the chain of title buys it subject to that chain

1 of title, so they can't remove it, and they have the
2 right to benefit from it, even if it runs across other
3 people's pieces of property.

4 So if the jury believes that, you might be
5 able to convince them of your theory that the property
6 owners association did have the right to give it away,
7 but I'm not so sure I agree with you on the law that just
8 because it appears on the plat the homeowners association
9 is the only one that could give it away, and when they
10 did, they gave away everybody's right to it. I think the
11 law, as I've been researching it, Blue Ridge Realty and
12 Carolina Land says that -- as I used to hear it back when
13 I was in law school, that bundle of rights -- bundle,
14 stick of rights, whatever they used to call it, but in
15 Blue Ridge, it says, The purchasers of lots with
16 reference to the plat of this subdivision require every
17 easement, privilege, and advantage shown upon said plat.

18 And then it refers to, Including the right to
19 the use of the streets, is what was involved in that
20 case, as laid down on the plat by which the lots were
21 purchased.

22 MR. O'KELLEY: Your Honor, by that same
23 token, our clients are allowed to rely on the plat that
24 was approved by the town and recorded, the Forsberg
25 Engineering plat, showing the abandonment.

1 THE COURT: I don't know that he has the
2 right to say that that extinguished what everybody else
3 in the chain of title did. I just think you're going to
4 have to get some legal expertise in here to tell me
5 otherwise, but once you buy a piece of property and
6 there's something in the chain of title, somebody else
7 subsequent down the road may, under certain
8 circumstances, be able to extinguish the right to
9 something, but this is where we get back to the example
10 of me giving your car to my law clerk.

11 He goes out and grabs the keys and drives
12 around, he's going to get probably arrested for driving a
13 stolen vehicle, because I didn't have the right to give
14 away your car, and the property owners association didn't
15 have the right to give away the plaintiffs' interest in
16 those drainage easements. They could give away their
17 interest, the property owners association's interest in
18 the drainage easements, but the property owners
19 association did not have the right to give away the
20 plaintiffs' or anybody else's rights in those drainage
21 easements. That's the problem.

22 MR. O'KELLEY: I understand, Your Honor.

23 THE COURT: Okay? As far as mitigation goes,
24 I mean, they clearly have been trying to figure out a way
25 to fix this problem, including spending up to \$17,000 to

1 Mr. George on that. The jury may or may not buy their
2 theory on diminution of value. Statute of limitations, I
3 think they're safe on that. They filed a lawsuit before
4 three years ran from the day he actually trespassed on to
5 that easement and dug up the pipe.

6 I don't see intentional infliction of
7 emotional distress being applicable to this lawsuit, only
8 if he had been acting in -- he obviously knew that people
9 disputed his right to build it, but he was acting on the
10 advice of others and a clear indication that he had
11 approval from the property owners association and the
12 architectural review board to build, so I don't buy
13 intentional infliction of emotional distress case here.

14 And, you know, that's where I come in with
15 the problem of whether or not this is a punitive damages
16 case. Again, he was acting on -- clearly, he was acting
17 willfully. I don't think he was acting recklessly, but
18 he was obviously acting -- he knew what he was doing,
19 but, again, he was acting under the, I think, mistaken
20 belief he had the right to do that, but if the jury
21 agrees that he wasn't trespassing, then he did have the
22 right to do it.

23 He still maintains he has the right to do it.
24 I don't think you can be punished for doing something
25 that you had the right to do, and he believes he had the

1 right to do it and he still believes he has the right to
2 do it. I just think there's a genuine issue as to
3 whether or not he did have the right to do it, but I
4 don't think he was acting malevolently, certainly not to
5 a level of clear and convincing, so I'll grant their
6 motion for punitive damages.

7 MS. TILLMAN: Your Honor, may I speak to that
8 briefly?

9 THE COURT: Go ahead.

10 MS. TILLMAN: Under the law of South
11 Carolina, a purchaser is imputed with the knowledge or
12 with all of the other deeds in his chain of title. He is
13 presumed to have known that the property is subject to
14 plats and other things that are in his chain of title,
15 and, in fact, Mr. McLaughlin's and Mrs. McLaughlin's
16 deed, on the second page, specifically says that the
17 property is subject to any and all restrictive covenants,
18 easements, right-of-way, and conditions and that said
19 grantor hereby bind themselves and their heirs and
20 assigns forever.

21 So I would argue that that's -- in fact, the
22 law presumes that Mr. McLaughlin and Mrs. McLaughlin knew
23 of the easement that ran across their property and
24 belonged to all the other owners who had an interest in
25 it by virtue of the plat and therefore that you could

1 construe willfulness from that as well.

2 THE COURT: Well, I got to disagree with you
3 on that. That's language in the deed. I doubt there's
4 probably anybody in this room, including all the lawyers,
5 who read the deed when they bought their piece of
6 property. They had their lawyer read it, and it's there.
7 The law is they take it subject to that, but my point
8 was, he believed he had the right to build this house
9 over that easement and to dig that up because he was
10 granted the right from the homeowners association and the
11 architectural review board.

12 He may be mistaken on that, but there's no
13 evidence that he knew he was mistaken. He knew it was
14 disputed, but we're talking about the cause of action you
15 have pled, which is trespass. I believe that the theory
16 that you -- if you have any success with the jury on is
17 going to be he was mistaken about his right to consider
18 that to have been abandoned. All right?

19 MR. SINKLER: Your Honor, may I just say one
20 thing? He moved for summary judgment on that ground, and
21 Judge Cooper ruled that he did have knowledge, and I
22 don't understand why that's not -- I mean, it's the same
23 case we're in.

24 THE COURT: He does have -- there's no
25 question he had knowledge. He admitted that he knew

1 everybody up and down that street didn't want him to do
2 it, but he believed that he had the right to do it
3 because he had approval of his plans by the homeowners
4 association and by the architectural review board. That
5 doesn't make his belief legitimate..

6 I guess I'm addressing -- the defense's
7 argument is that you cannot trespass unless you knew that
8 it wasn't yours. I believe that you could be mistaken in
9 your belief that you have the right to do -- to be there
10 and still trespass.

11 MR. SINKLER: Well, the purpose of this
12 motion for summary judgment was that the POA had
13 authorized him to do what he did, and Judge Cooper ruled
14 that he did not -- he did not know and then ruled against
15 him. It says, in fact: The record is completely clear
16 that there was absolutely no -- this is Judge Cooper's
17 order: The record is completely clear that there was
18 absolutely no unambiguous representation from SIPOA that
19 the McLaughlins' only responsibility regarding the pipe
20 was that it had to pay to remove the pipe. Rather, the
21 entire history of the interaction between SIPOA indicates
22 the opposite, that the McLaughlins had to assume all
23 responsibility for disposition of the pipe. Indeed, by
24 their own admission, the McLaughlins blamed SIPOA for
25 leaving them in limbo in 2008 prior to their removal of

1 the pipe, rejected SIPOA's proposals to resolve the
2 matter prior to the McLaughlins' unilateral decision to
3 remove the pipe, and were defendants in a lawsuit filed
4 by SIPOA to stop them from removing the pipe.

5 For these reasons, the McLaughlins simply
6 cannot prevail in their third party claim against SIPOA,
7 so they found that they did not know.

8 MR. O'KELLEY: Your Honor, what Judge Cooper
9 ruled on was the motion for summary judgement for the
10 third party complaint, and I think Your Honor is exactly
11 right, that there's been no testimony that my client
12 thought that they were anything but authorized so that
13 punitives go by the wayside, as Your Honor has ruled.

14 THE COURT: Well, to get back to -- a summary
15 judgment order, unless it's granting summary judgment,
16 doesn't do anything except say, It's going on to trial.
17 There's a genuine issue of disputed fact.

18 MR. O'KELLEY: And Judge Cooper granted the
19 motion of the POA to get out of this case.

20 THE COURT: So the POA is out.

21 MR. O'KELLEY: The POA is out. That's it,
22 Your Honor, exactly.

23 MR. SINKLER: He granted our motion for a --

24 MS. TILLMAN: Well, he granted the POA's
25 motion, finding that there was no question of material

1 fact that the McLaughlins had any right to reasonably
2 rely on the POA's representation, and, in fact, the
3 record demonstrated that the POA had -- the entire
4 history of interaction between the POA indicate the
5 opposite, the McLaughlins had to assume all
6 responsibility of the disposition of the pipe.

7 That's a finding of fact as to the POA's
8 motion for summary judgment -- motion for summary
9 judgment, which was granted by Judge Cooper.

10 MR. O'KELLEY: And, Your Honor, Judge Cooper
11 was not ruling on the punitive damage issue at the time.
12 He just said POA was out because he didn't have a right
13 to rely on them to bring a third party complaint under
14 rule --

15 THE COURT: Well, Judge Cooper's order
16 between them --

17 MR. O'KELLEY: And the POA.

18 THE COURT: Between the defendants and the
19 property owners association is not binding on this jury's
20 finding. I don't know how to put it any other way.
21 We're having this argument, but I don't understand why
22 we're having it, necessarily. There's a genuine issue in
23 my mind as to whether or not he was acting lawfully. I'm
24 letting you go forward and argue to the jury that he was
25 not acting lawfully, but what are you asking me to do?

1 MR. SINKLER: We're asking you to let us
2 argue that it was intentional.

3 THE COURT: Are you asking me to grant you
4 summary judgment or directed verdict?

5 MR. SINKLER: I would renew my motion for
6 that at the end of the evidence. I thought that would
7 come at the end, when we talked about that at the
8 beginning. I mean, I think the --

9 THE COURT: I'm at the point right now where
10 I am hearing arguments on their directed verdict motion,
11 and I'm saying no, we're going to go to the jury on
12 trespass.

13 MR. SINKLER: Well, we made a motion to
14 dismiss the argument that the statute of limitations has
15 run, and he granted our motion, and that can come up
16 again?

17 MR. O'KELLEY: Your Honor just denied it --
18 Your Honor has just denied that.

19 THE COURT: The statute of limitations has
20 not run.

21 MR. SINKLER: But then the holding of Judge
22 Cooper in that -- there was no appeal from that. I'm
23 just pointing out that -- I mean, I just assumed that
24 Judge Cooper ruled that the statute of limitations had
25 not run, that it couldn't come up again, unless it was

1 appealed.

2 THE COURT: Well, Judge Cooper and I are not
3 making inconsistent rulings. I have denied their motion
4 for a directed verdict on that, so --

5 MR. O'KELLEY: And, Your Honor, just to
6 clarify, I think you granted it as to intentional
7 infliction of emotional distress and punitive damages,
8 correct?

9 THE COURT: I did grant as to intentional
10 infliction of emotional distress. I have granted your,
11 the defendants', on that. Aside from the fact that I
12 don't think, factually, it fits, there's also been no
13 evidence. I mean, they didn't suffer -- they didn't have
14 to go see a psychiatrist. They didn't incur any medical
15 bills. They obviously have the stress of a lawsuit, but
16 that doesn't give rise to intentional infliction of
17 emotional distress, and it's not a consequential damage
18 that is allowed under trespass, so that's out. That's
19 not going -- emotional damages are not going to be argued
20 to the jury.

21 MR. O'KELLEY: And, Your Honor, are punitives
22 out as well, based on --

23 THE COURT: And punitive damages are out. I,
24 again, don't think this is a case in which there has been
25 a rise to clear and convincing evidence that he acted

1 intentionally, knowing that he did not have the right to
2 do that.

3 He knew it was disputed. He had been arguing
4 about it for, apparently, a couple of years, but it
5 didn't get resolved to his satisfaction, to anybody's
6 satisfaction, so he moved forward with what he thought
7 was his rights. I don't think that rises to the level of
8 punitive damages, so you won't be able to argue punitive
9 damages.

10 MR. O'KELLEY: Thank you, Your Honor.

11 THE COURT: Now, what is your case going to
12 be, witness-wise?

13 MR. O'KELLEY: Witness-wise, it will be
14 pretty short. Mr. McLaughlin's already testified. Put
15 him back on the stand. He's still under oath. Maybe
16 Mrs. McLaughlin, and we've got Mr. Wells here under
17 subpoena, who is the boots on the ground guy at the POA;
18 so two, maybe three witnesses, Your Honor.

19 THE COURT: Okay.

20 MR. O'KELLEY: So maybe a lunch break would
21 be warranted for our friends in the jury room.

22 THE COURT: Why don't I send them to lunch,
23 and Dan and I will work on jury charges a little bit, and
24 when we come back from lunch, we'll finish up. We may be
25 able to argue today; we might have to wait until the

1 morning. We'll see how long it takes us.

2 MR. O'KELLEY: And, Your Honor, based on the
3 Court's ruling, we're down to three jury charges,
4 preponderance of the evidence, easement rights, and --

5 THE COURT: What you proposed.

6 MR. O'KELLEY: Yes, sir. That's what I'm
7 talking about, so I didn't know if Your Honor -- we
8 e-mailed all those, and there's for mitigation of damages
9 as well. I e-mailed your clerk those. I didn't know if
10 you wanted to discuss jury charges now.

11 THE COURT: Not yet. I want to see what he's
12 got. Okay. All right. Let's see. Let's resume at
13 1:30, so bring the jury in.

14 MS. TILLMAN: Thank you, Your Honor.

15 (In open court, jury present.)

16 THE COURT: Okay. I'm sending you to lunch.
17 We're going to have a few witnesses after lunch, so --
18 let's see. It's 10 after. How about be back in the jury
19 room at 1:40, and we'll get started back then. Again,
20 don't begin deliberations or discussions or post anything
21 on social media, and we'll see you back in an hour and a
22 half. All right? Thank you.

23 (Recess taken.)

24 A F T E R N O O N S E S S I O N

25 (In open court, jury not present.)

1 THE COURT: All right. Before we bring the
2 jury in, anything you want to bring up?

3 Tell me what you want on your jury charges.

4 MR. O'KELLEY: I think they're fine. I just
5 want to put on the record that I think you've
6 incorporated the charges we asked for and there are no
7 changes or exceptions.

8 THE COURT: Have you had a chance to look at
9 them yet?

10 MS. TILLMAN: Your Honor, I'm still reviewing
11 them. I'm not as fast of a reader as Mr. O'Kelley.

12 THE COURT: That's okay. He's obviously
13 perceptive because he said no changes.

14 (In open court, jury present.)

15 THE COURT: Welcome back, folks. We're going
16 to resume now with the defense calling their first
17 witness.

18 MR. O'KELLEY: Thank you, Your Honor. At
19 this time we call Mr. McLaughlin back to the stand.

20 THE COURT: I remind you that you're still
21 under oath.

22 THE WITNESS: Yes, sir.

23 PAUL DENNIS McLAUGHLIN,
24 having been previously duly sworn,
25 was examined and testified as follows:

1 DIRECT EXAMINATION

2 BY MR. O'KELLEY:

3 Q. Mr. McLaughlin, could you please tell the jury
4 where you live.5 A. We live at 3061 Baywood Drive. The address is
6 Johns Island, South Carolina 29455.

7 Q. And how long has that been your permanent address?

8 A. I think since 2010.

9 Q. And prior to that, where did you live?

10 A. We lived in Winston-Salem, North Carolina.

11 Q. And Ms. Tillman asked you this question earlier,
12 but tell the jury what you do for a living.13 A. I'm president of the Moravian Ministries
14 Foundation in Winston-Salem, North Carolina.

15 Q. Is that a charitable organization?

16 A. Yes, it is. It's a religious affiliate.

17 Q. What does the foundation do?

18 A. We do three things for the Moravian church, and
19 the Moravian church is a small Protestant denomination.
20 It's headquartered in both Winston-Salem and Bethlehem,
21 Pennsylvania and is the oldest Protestant denomination of
22 the Protestant group, pre-dating Luther by 60 years.
23 They came to America and settled in Bethlehem and then
24 Winston-Salem.

25 Our job, within the church, is three-fold: One is

1 we help people make planned gifts, gifts from their wills
2 and estates for ministries that are important to them, so
3 we help them make gifts for one world mission,
4 educational institutions affiliated with the group,
5 camping programs, et cetera.

6 The second thing we do is we work with individual
7 churches, and we do that in two ways: One is we help
8 them develop stewardship programs to increase giving on
9 Sundays because we know that churches are struggling.

10 We have a pretty effective program doing that, and
11 the second thing we do in regard to that is help churches
12 raise money for capital projects; for example, if they
13 need to replace their roof, expand a building, and those
14 types of things, so we do that, and the last thing we do
15 is we manage the investment portfolio for the
16 denomination.

17 We manage about \$150 million in invested assets
18 and follow local churches and agencies affiliated with
19 the church, and I've been doing that -- actually, I was
20 hired to be the founding president 20 years ago, and I'll
21 retire this year.

22 Q. And prior to that, where did you grow up, Mr.
23 McLaughlin?

24 A. I grew up -- my hometown is Boston. I was born in
25 Everett, Massachusetts, just outside of Boston, and we

1 moved into the city and then out into the suburbs, and
2 all my family -- most of my family is still up there.

3 Q. And tell the jury about your educational
4 background.

5 A. I have a bachelor's degree from Suffolk University
6 in Boston. I graduated high school in 1969, but I didn't
7 graduate from college until 1974. I took a year out
8 because at one point in my life I was considering a
9 religious vocation, and I decided I didn't want to pursue
10 that.

11 Q. When you say religious vocation, were you trying
12 to become a minister or a priest?

13 A. I was almost akin to what they do up in Moncks
14 Corner, at the Trappist monastery.

15 Q. And you decided not to proceed with that and went
16 on to college?

17 A. Yeah. I guess I wanted to date girls.

18 Q. After you graduated from college, just tell the
19 jury briefly about your work experience up until the
20 Moravian Foundation.

21 A. I went on and earned my master's degree from St.
22 Louis University, and my primary focus has been working
23 with older people in different ways. So for a period of
24 time after I graduated from graduate school, I worked in
25 Pennsylvania, and one of the things we worked on is

1 developing community-based care for homebound, healthy
2 people and trying to develop a system of care so people
3 didn't have to go to nursing homes.

4 Then I went back to Boston and directed a large
5 home care corporation that provided coordinated care to
6 inner city elderly people in Boston, and I did that for
7 about, I guess, six or seven years, and then went back to
8 Pennsylvania. I became vice president of a retirement
9 community in the area of fundraising and development
10 because I developed a skill and I realize liked it, and
11 the reason I liked it, especially in the area of planned
12 giving, was that it gave me an opportunity to sit down
13 with people, old people, and allow them to tell me their
14 stories, what brought them to the point of deciding to
15 give something to support ministries and the church.

16 And then after that, I took the job with the
17 Moravian Ministries Foundation and came to Winston-Salem,
18 and, like I said, I felt like I died and went to heaven
19 20 years ago.

20 Q. You enjoy your job, do you not? How and when did
21 you meet Mrs. McLaughlin?

22 A. I don't know. It's funny. I was doing an
23 undergraduate internship and Susan, my wife, was doing a
24 graduate internship. She was going to Boston College,
25 and I was finishing up my degree, and I remember we were

1 given field placements, not knowing, of course, each
2 other because she was originally from Pittsburgh, and she
3 thought she had her own office, and, lo and behold, who
4 shows up? So it became an office romance.

5 Q. I don't want to get you in trouble, but how long
6 have you been married?

7 A. Forty-one, going on forty-two.

8 Q. Do you have children?

9 A. One daughter.

10 Q. Where does she live?

11 A. In Charleston, by coincidence.

12 Q. Does she have any children?

13 A. Yes.

14 Q. How many grandchildren?

15 A. One.

16 Q. And do you and your wife help with that
17 grandchild?

18 A. Yes. Susan watches her.

19 Q. Is your wife retired?

20 A. Yes, she did.

21 Q. From where is she retired?

22 A. She had been a middle school guidance counselor in
23 Winston-Salem until she retired and came down here full
24 time.

25 Q. And how many years ago was that, sir?

1 A. Two or three years ago?

2 Q. But it was after your house on Seabrook was built
3 sometime?

4 A. Yes, it was after the house.

5 Q. And for time y'all used the house on weekends or
6 in the summer; is that correct?

7 A. Yes.

8 Q. And how did you come to own property on Seabrook
9 Island?

10 A. We had made, a number of years ago -- we liked
11 Winston, but we decided that we wanted to be close to the
12 ocean, so we spent a couple years going up and down the
13 North and South Carolina coast, looking for communities
14 to live in, and we came to Charleston, originally to stay
15 at Kiawah, and simply stumbled upon Seabrook.

16 We didn't know anything about it, but when we came
17 on to the island, visited the island, we liked it a lot.
18 The beach is really spectacular. I used to play golf. I
19 don't play golf anymore, but the attraction was the
20 beauty of the island and the closeness of the beach, and
21 the other issue was we were going to come here as a
22 retirement place and so having access to good health care
23 was really important because some of the places we liked
24 better than others were far away from big cities, not
25 that we have health issues, but my mother had

1 Alzheimer's, my dad had heart issues, and Susan's dad had
2 MS and her mom had cancer.

3 Q. So you settled on Seabrook, and how did you come
4 to find the property on Baywood Drive?

5 A. In early 2002, maybe it was towards the spring or
6 summer, I can't remember, when we were down here, we
7 stopped by into the real estate office. We didn't like
8 the agent that we went out with, so we didn't go back,
9 but we liked the island, so we got in touch with another
10 agent, took us around and showed us properties, both
11 villas and land, and we originally -- we were thinking
12 about a villa, but then we thought, Let's just move once.
13 Let's buy some land and eventually build a house that
14 would be hopefully our next to last resting place.

15 Q. So that was your plan, to build a house for it to
16 be your retirement home; is that correct?

17 A. Yes, sir.

18 Q. And do you know who owned the property you own
19 now? Who owned it at the time you looked at it?

20 A. Well, I know it now, I didn't know it then, a
21 fellow by the name of Carroll Gantz.

22 Q. And did you have any discussions with Mr. Gantz
23 prior to closing on your property?

24 A. Never.

25 Q. Did you meet him at the closing table?

1 A. No.

2 Q. Was your closing done by powers of attorney or
3 anything like that?

4 A. Yes, because we bought the lot; yes, powers of
5 attorney.

6 Q. Let me show you Exhibit 3 and ask you if you
7 recognize that document.

8 A. Yes, I do.

9 Q. And tell the jury what that document is.

10 A. It's the title to the real estate.

11 Q. And the title to your property on Baywood Drive?

12 A. Yes, sir.

13 Q. And who sold you the property?

14 A. The Carroll M. Gantz Revocable Trust.

15 Q. And how much did you pay for your lot?

16 A. I think it was \$170,000.

17 Q. It might say on the front page of that document.

18 A. Yes, 170.

19 Q. And when you were buying your property, did you
20 have any discussions with anyone, your real estate agent,
21 your attorney about the easement that brings us here
22 today?

23 A. Yes. We were made aware it had been abandoned.

24 Q. Who told you that, sir?

25 A. Our agent.

1 Q. And who was your agent, if you recall?

2 A. It was John Engstrom.

3 Q. And who was he, or where was he?

4 A. I think he is with Seabrook Island Real Estate.

5 Q. And did you discuss the easement and the
6 abandonment with your attorney at any time?

7 A. Yes, I did.

8 Q. Who was your closing attorney?

9 A. A fellow named Eric Davidson.

10 Q. And what did Mr. Davidson and you discuss?

11 A. He said -- he brought it to my attention. I asked
12 him, just to check to make sure the easement had been
13 abandoned, and he said it had been and that everything
14 was appropriate and in order.

15 Q. Okay. And let me show you Plaintiff's Exhibit 5,
16 it's a plat, and ask you, sir, if you have ever seen this
17 plat.

18 A. Yes, I have.

19 Q. And just tell the jury when you first saw that
20 plat.

21 A. I think we saw the it at closing.

22 Q. And do you know if that plat is referenced in your
23 deed?

24 A. Yes, it is.

25 Q. All right. And that plat shows what?

1 A. Lot 32, block 22, and it shows the abandoned
2 easement and no-build zone on the property.

3 Q. All right. And do you know if the town of
4 Seabrook Island signed off on this plat?

5 A. I believe they did.

6 Q. In addition to your agent and your closing
7 attorney, did you talk to anybody else about the easement
8 prior to your closing?

9 A. No.

10 Q. And based on the representations that were given
11 you by your agent and the closing attorney, you and
12 Mrs. McLaughlin closed on the property; is that correct?

13 A. That's correct, yes, sir.

14 Q. And did you try to confirm with anyone at Seabrook
15 Island, whether it was the town or the property owners
16 association, about the abandonment and the no-build zone?

17 A. No. We had given up. We took it at face value
18 that it was abandoned and was properly recorded, and we
19 relied on the advice of counsel and the real estate
20 agent.

21 Q. When you bought the property, you and your wife
22 didn't immediately build on it, did you?

23 A. No, we did not.

24 Q. And why was that?

25 A. Well, first of all, we didn't have the money. We

1 bought it as an investment, so we just came down
2 periodically, would stay and would come to the lot and
3 walk around the lot and think about what we wanted as a
4 future home, and that was basically the extent for a
5 number of years.

6 Q. When you bought your property, were you aware that
7 you had to comply with certain methods of approval per
8 the town of Seabrook?

9 A. Yes, sir.

10 Q. And you had to comply with the architectural
11 review board?

12 A. Yes, we knew that.

13 Q. And you had to submit plans to them before you
14 could build?

15 A. Yes. We had to select an architect, and we just
16 weren't prepared to do that initially.

17 Q. And do you pay dues to the property owners
18 association?

19 A. Yes, we do.

20 Q. And how much are those dues a year?

21 A. Well, currently now that we have what they call an
22 approved lot, it's \$1,900. They had a lesser rate for an
23 unimproved lot because there was no house.

24 Q. And do you recall what that amount was?

25 A. I want to say it was about 800 or 900.

1 Q. And since you bought your lot, you've always paid
2 those dues, right?

3 A. Yes, sir.

4 Q. How did you come to meet your neighbors Mr. and
5 Mrs. Ralph?

6 A. I was down one time. I guess it was part of the
7 planning process for our house as we began to move
8 forward with the planning and I decided -- well, I had
9 written to the other neighbors, created an e-mail, and I
10 basically said the same thing to them I said to the
11 Ralphy.

12 I knocked on Mr. Ralph's door, and he came to the
13 door and he came out and he introduced himself. I
14 learned he had been an airplane pilot. He had been on
15 the island for a number times and we talked. But,
16 basically, my message to him was, you know, I understood
17 that we were going to be building a house and that he had
18 a private lot beside us for a long period of time and
19 that we would try to work with them to add a particular
20 type of buffer, trees or something, to retain some type
21 of privacy, knowing that a house was going next door.

22 And I simply said to him that if he has any
23 questions or if he'd like to sit down and look at those
24 plans in terms of landscaping, to add that buffer, we'd
25 be happy to sit down and explore working with him. We

1 didn't make a commitment that we would make big changes,
2 but we said that we would.

3 So he said that that was fine. He knew that the
4 house was going next door, and that was basically the
5 same response that Mr. Crader had to me in an e-mail. I
6 don't have it with me, but it was basically the same
7 thing we said. We knew somehow somebody would buy that
8 lot and build some time.

9 Q. And that was the extent of the conversation?

10 A. Yes, sir.

11 Q. And you didn't discuss any easement or no-build
12 areas or ponding or anything like that?

13 A. No. It was just, Hi. How are you? Nice to meet
14 you.

15 Q. And do you know if that was in 2006, '07?

16 A. I think it was in 2005, working on the approval
17 process of the building.

18 Q. And when you decided to build, who did you hire to
19 be the architect?

20 A. Whitney Powers Studio A Architecture here in
21 Charleston.

22 Q. Who is Whitney Powers?

23 A. She's a registered architect here in Charleston.

24 Q. And did you pay her to come up with the plans for
25 your house?

1 A. Yes, sir.

2 Q. And, just briefly, tell the jury about the process
3 of getting a house plan approved on Seabrook.

4 A. Well, the rules are fairly complicated. I guess
5 they've gotten more complicated over time in terms of
6 setback requirements, height requirements, style of
7 homes, colors, roof colors, even gets down to what kind
8 of exterior lights you put on and what kind of
9 landscaping you have done, et cetera; the placement of
10 the house on the lot, what you do with trees and other
11 foliage and all those kinds of things.

12 Q. And how long does that -- or let me ask you this:
13 How long did that process take for you and your wife?

14 A. From architectural design time to presenting to
15 the POA?

16 Q. Yes, sir.

17 A. It took about a year.

18 Q. So you started sometime, you think, in 2005?

19 A. Yes, 2004, 2005.

20 Q. Let me show you what's been marked as Defendant's
21 Exhibit 2 and ask you if you can identify that document.

22 A. Yes. This is the letter of approval for our plans
23 to build our house. It's dated August 18th, 2006.

24 Q. And who is it from?

25 A. It's from Mr. Coy Foster who was the administrator

1 who oversees -- who oversaw the architectural review
2 process.

3 Q. And if you could, please, just tell the jury what
4 that letter says about the easement and no-build area.

5 A. Well, there are three points, and I read them this
6 morning. One is that the owner is to assume all
7 responsibility for the underground drainage line at the
8 20-foot drainage easement driveway. That's the one
9 that -- there's an easement that runs parallel to our
10 house, so that's -- and then the owner is to assume all
11 responsibilities for the abandoned drainage easement that
12 may contain a pipe, and the property lines must be
13 located prior to any grading because of right-of-ways for
14 Seabrook and 20-foot drainage easement.

15 Q. And was that abandonment the same abandonment you
16 had been told about by your agent and your closing
17 attorney?

18 A. Yes, sir.

19 Q. Let me show you what's been admitted as Exhibit 1,
20 Defendant's Exhibit 1. I'll ask if you have ever seen
21 that document before.

22 A. Yes, I have.

23 Q. If you could, please, tell the jury what that
24 document is.

25 A. It's the minutes from the Seabrook Island Property

1 Owners Association meeting dated Monday, May 20th, 2002,
2 and that meeting was held at the community center.

3 Q. And on the second page of that document, in the
4 middle of the page, there's some reference to a decision
5 by the board and the POA regarding the easement. Would
6 you just please read that for the jury.

7 A. You want me to read the whole paragraph, all three
8 paragraphs?

9 Q. Not all three, but the paragraph that relates --
10 the paragraph that begins here, Mr. Giuffreda?

11 A. Mr. Giuffreda was the head of the -- staff head of
12 the property owners association at this particular time,
13 and he preceded Mr. Thompson, who we've been talking
14 about.

15 Mr. Giuffreda clarified Mr. Mineo -- Mr. Mineo is
16 one of the board members -- is talking about block 32,
17 lot 22 to lot 28. No-build zone is currently applied.
18 Mr. Giuffreda would recommend the board vote favorably on
19 Mr. Mineo's proposal. Discussion followed. Various
20 questions and comments were asked and answered.

21 Mr. Mineo made a motion to give the easement back
22 to the property owners with the understanding that the
23 property owner pay all the costs necessary to remove the
24 easement. Mr. Giuffreda, who was a board member,
25 seconded it and the motion passed unanimously.

1 Q. And when did you receive that document, do you
2 recall?

3 A. I don't remember when I received it.

4 Q. But it was sometime after you closed?

5 A. Yes, sir.

6 Q. Because you didn't own property on Seabrook in
7 2002?

8 A. No. I wouldn't have received that otherwise.

9 Q. Have you talked to any of those board members that
10 were present at the time about the action they took in
11 May of 2002?

12 A. I have not.

13 Q. Have you talked to Mr. Giuffreda about the action
14 that was taken back in May of 2002?

15 A. I have not.

16 Q. That was the document you came to know of later,
17 correct?

18 A. Yes, sir.

19 Q. You were here yesterday when Mr. and Mrs. Ralph
20 testified about their property and Mr. George testified,
21 correct?

22 A. Yes, sir.

23 Q. All right. Tell the jury about the topography or
24 the layout of your lot and the Ralphs' lot.

25 A. Okay. I think we saw in the pictures yesterday

1 that our house sits a little bit lower, so we sit on the
2 lower end of the lot, and it has various swales coming
3 down from the street to the lot. And then we obviously
4 have a house, and then behind the house, the topography
5 continues down a little bit, and then it goes back up
6 toward the golf course behind us.

7 That probably stands -- the height of the golf
8 course, if you stand in the low area, is probably four to
9 five feet higher, you know, where the ridge is to the
10 golf course, and then it tails off a little bit.

11 Q. Would you agree with the assessments here
12 yesterday by the Ralphs and Mr. George about the way the
13 two lots are situated on Baywood Drive?

14 A. Yes, I would; yes, sir.

15 Q. And the golf course, in relationship to your
16 property, do you consider that the back of your lot or
17 the front of the lot?

18 A. That's the back.

19 Q. But to your mind it is a higher elevation?

20 A. Oh, absolutely. I cut the grass and worked in the
21 bed there.

22 Q. And is the golf course higher in elevation from
23 the rest --

24 A. Oh, the golf course? Yes, it is.

25 Q. Do you know how many times you had to meet with

1 the POA regarding the approval of your house plans?

2 A. There was probably three or four meetings, plus
3 our architect had numerous conversations with people over
4 the phone, but I think I was there for at least three
5 meetings face-to-face.

6 Q. And was the POA insistent you do certain things
7 with your house, different types of colors, things of
8 that nature?

9 A. Yeah. You know, we originally presented a plan
10 where the rear portion of the house was a little bit
11 configured differently, and they didn't like that, so we
12 had to move that around a little bit and make some other
13 changes to accommodate their artistic wishes.

14 Q. And you had a landscape architect on the project
15 that you testified about earlier, Julie Hemsley?

16 A. Yes.

17 Q. And do you know if Ms. Hemsley was required to do
18 certain things by the property owners association?

19 A. Yes. As part of the plan, we had to submit a
20 landscape plan for the property that included all
21 shrubbery, particular types of shrubbery, their exact
22 location, what trees were going to come down, which trees
23 were going to remain. It was fairly detailed.

24 Q. And did the POA require you to put in certain
25 drains on your property?

1 A. Not at that time.

2 Q. When did they require that?

3 A. That was later, after construction began, and that
4 was in June, I think, of 2008 or 2009 -- no, 2008, after
5 construction began. I received a call and followed up
6 with an e-mail from Mr. Thompson, and they said to me,
7 Would you be willing to install some surface drains on
8 your property to alleviate some of the runoff of water on
9 to your property as well as on to the Ralphs' property?

10 And I said, Well, sure. I would be happy to do
11 that. We'd do that at our expense. We thought it would
12 be a benefit to our property to do that, and so we
13 received permission to do that in June of 2009.

14 Q. And how many drains were you required to install?

15 A. There were three drains on the property. If you
16 remember from yesterday, from Mr. George's presentation,
17 he showed the driveway where it sort of tails down a
18 little bit and the water kind of flowed from the front to
19 the back. So we installed a drain in that side of the
20 house near the driveway to capture some of the water that
21 was coming down the driveway.

22 The second drain that we installed, when
23 Mr. George was talking about the grass being an area,
24 Julie mentioned that that strategically would be a very
25 good place to put a drain as well, so there's a drain in

1 the low area by the grass, on the grass, to capture the
2 rainwater that runs on the grass, so everything kind of
3 flows into that.

4 The third place where there's a drain is on the
5 swale. Remember we talked yesterday about the swale? If
6 we -- she identified a low area on the swale on our
7 property that would capture water coming between our
8 house and the Ralphs' house, and the drain on the side,
9 by the driveway, feeds into the pipe that runs parallel
10 into our driveway.

11 The POA gave us permission to connect the pipe,
12 the drainage pipe, the two drainage pipes on the back and
13 side to run into the pipe that was on our yard, so we
14 installed that at our expense and received approval from
15 them.

16 Q. You were here yesterday when Mr. George testified
17 about islands like Seabrook containing dunes and troughs,
18 correct?

19 A. Yes.

20 Q. And the drains that the POA required you to put
21 in, were those in trough areas or dune areas?

22 A. They were in low areas, trough areas. Also, the
23 other thing we did too, again because -- if you remember
24 Mr. George's presentation yesterday, when we were
25 meeting -- and this was a landscape and architectural

1 issue, the question of what kind of driveway to put in,
2 and I think Mr. George made an excellent point, because
3 we chose not to put a concrete driveway in, which was
4 permissible.

5 Instead, we chose to put in a crushed rock
6 driveway so that when the rain comes down, it doesn't run
7 down, it simply gets drained into the soil through the
8 various rocks and stuff like that. So we have much less
9 water that runs down the driveway to the yard. I'm
10 sorry.

11 Q. No, sir. That was answering the question.

12 Let me show you some pictures that were marked as
13 Defendant's Exhibit 4. If you could, please, there are a
14 total of four pictures. If you could please just tell
15 the jury about that and what those pictures represent.

16 A. They represent the front -- they represent the
17 construction site on our property before we built the
18 house.

19 Q. And if you could just hold them up and explain
20 what each picture is one by one.

21 A. This is a -- this is a street view -- I'm sorry --
22 of the property. They require a sign and all sorts of
23 stuff in the front. It looks like this is sort of the
24 side of the property between ours and the Ralphs'
25 property. It was during a very heavy rainstorm.

1 Q. Is there water ponding in that picture?

2 A. Yes. There is water ponding on that picture, both
3 on their property and on our property. This picture
4 looks like it's taken from their property.

5 Q. All right. And tell the jury about the next
6 picture.

7 A. This is a picture from our property on to -- on to
8 the Ralphs' property. I wouldn't call it a puddle. I
9 would call it pools of water on their property.

10 Q. And what is the last picture?

11 A. Last picture is a picture of our lot looking down,
12 I guess, the eventual driveway to the end of the
13 driveway.

14 Q. And you took those pictures, did you not?

15 A. Yes, I believe I did.

16 MR. O'KELLEY: Your Honor, if I may publish
17 these to the jury?

18 THE COURT: Are they admitted?

19 MR. O'KELLEY: Yes, sir.

20 THE COURT: You may.

21 BY MR. O'KELLEY:

22 Q. Mr. McLaughlin, you're aware that prior to your
23 building or doing anything on your lot, when it rained,
24 the Ralphs would have water in their yard, correct?

25 A. Yeah. We would go down there, of course, as I

1 said. Before we built the lot, we would come down often
2 to Charleston, stay in town, go out to Seabrook, go to
3 the beach if the weather was good, walk around our lot,
4 and on a number of occasions we came down after a heavy
5 rain, and I know on at least -- and I can't give you the
6 dates, but I can think of at least three occasions where
7 there had been very, very heavy rain, and they obviously
8 hadn't done anything to our lot, and there was water in
9 the Ralphs' yard up to the steps of their porch.

10 Q. And did the Ralphs have water in their front yard
11 and back yard?

12 A. Yeah, there was water all over the place. I mean,
13 this is the Lowcountry, you know. They call it the
14 Lowcountry for a reason.

15 Q. On June 19, 2007, Mr. Thompson wrote to you on and
16 I'm showing you Defendant's Exhibit 3? And does this
17 blow-up reflect a copy of that letter?

18 A. Yes, sir.

19 Q. Tell the jury about this letter and what your
20 understanding is and why you received it. First of all,
21 what is the subject line?

22 A. The subject is abandoned storm water drain system.

23 Q. And it's written to you and Ms. McLaughlin at 309
24 North Green Street in Winston-Salem. Is that your former
25 address?

1 A. Yes, it was. We had a condo downtown.

2 Q. And what was the genesis of this letter, to your
3 understanding?

4 A. Well, I think they had become aware that, I guess,
5 they needed to deal with this issue and wanted to
6 communicate to property owners what they intended to do
7 because our easement had already been abandoned, and I
8 think it was intended to communicate to the rest of them
9 that they were intending to continue to move forward with
10 the rest of the abandonment of the easement.

11 Q. And, if you could, just read the first paragraph
12 to the jury.

13 A. The purpose of this letter is to inform you of a
14 plan being developed by the Seabrook Island Property
15 Owners Association to address an abandoned storm water
16 drainage system on your property at lot 22, block 32,
17 3061 Baywood.

18 The older corrugated metal drain pipe was
19 abandoned in 1992 because of a parallel drainage system
20 of high density plastic piping was installed on the
21 Crooked Oaks golf course.

22 Q. So it's your understanding that there was an
23 additional parallel drainage system installed on the golf
24 course?

25 A. Yes. The pipe that runs between our house and the

1 Craters' house runs out to -- all the way out to the golf
2 course. It runs from the street to the golf course.
3 Then it takes a hard right and goes down to the golf
4 course to the pond that we talked about previously.

5 Q. And what did Mr. Thompson say as to the goals in
6 developing the project? What did he say those goals
7 were?

8 A. To eliminate the 24 drainage easements across your
9 property held by a Seabrook property owner. Eliminating
10 the easement will provide you with more freedom to build
11 or expand on your property in the future, to determine
12 the best way to limit any future problems associated with
13 the inevitable degradation of the old metal pipe, and to
14 minimize any inconvenience to you in this project.

15 Q. And then what else does he go on to say in the
16 next project?

17 A. We will begin planning for this project by
18 surveying the affected areas of your lot to determine the
19 exact location of the drain pipe. We'll also identify
20 significant trees and landscape and shrubs on your lot
21 that might be affected by future work to stabilize and
22 remove the drain pipe.

23 Q. And then if you had questions, who were you to
24 call?

25 A. To either call John Wells or Mr. Henry Fellers,

1 who is Mr. Wells' assistant.

2 Q. And what was Mr. Wells' position at Seabrook
3 Island POA to your understanding?

4 A. Meaning no disrespect to John, he was in charge of
5 the streets and drains. He was an engineer.

6 Q. And do you know if the POA actually did what they
7 said they were going to do in that letter in terms of
8 surveying your lot and dealing with trees and telling you
9 about your site plan?

10 A. I didn't hear anything. There was nothing, sir.

11 Q. And you heard the testimony from Mr. and Mrs.
12 Ralph that they received that same letter, correct?

13 A. Yes.

14 Q. And the POA did advise you in that letter that you
15 could have, quote, unquote, more freedom to build, did
16 you not?

17 A. Yes, that's correct.

18 Q. And what was your understanding of that freedom to
19 build?

20 A. That means that people could build their house any
21 place on the lot they wanted to.

22 Q. And have you had discussions with your other
23 neighbors up and down Baywood about more freedom to
24 build?

25 A. I didn't; no, I didn't.

1 Q. Okay.

2 A. I didn't know the neighbors to speak to.

3 Q. What conversation did you have specifically with
4 the man in charge of drainage or roads about this?

5 A. Well, when we were going through the ARB process,
6 I came out and I spoke with John, and John said,
7 Remember, you got to take care of that pipe. That's on
8 your dime.

9 Q. Do you know a fellow by the name of Anthony
10 Valencourt?

11 A. Yes, I do.

12 Q. And do you know anything about the abandonment or
13 the alleged abandonment or the attempted abandoned
14 easement on his property?

15 A. Yeah. What he told me was that he was told that
16 his easement was abandoned, and then he came to learn
17 that it hadn't been. And he went after the real estate
18 company, and they proceeded to work with whomever to get
19 that easement abandoned on his property.

20 Q. And do you know if the POA finalized abandonment
21 of the easement on his property?

22 A. I believe they did.

23 Q. And what was your understanding about the time of
24 the POA's retention of Mr. George to address the issues
25 along Baywood Drive?

1 A. Well, we had closed on the construction loan to
2 build our house in June of 2008, and we had received a
3 call from a fellow Ron Ciancio, who was the chair of the
4 legal committee of the board, saying there were some
5 issues having to do with the pipe.

6 And our attorney, Eric Bradshaw, who is a partner
7 of Eric Davidson, had spoken with him and received
8 assurance that things would be taken care of and that we
9 should go close on our construction loan and begin to
10 build the house that we were approved for.

11 And that was in June, and nothing really was going
12 on. I didn't know exactly what the issues were. No one
13 was really sure what the problem was in any detail. I
14 was trying to get information. I was really very, very
15 frustrated.

16 Then I received a call that there was going to be
17 a neighborhood meeting about the easement, and so --

18 Q. Was that the September 29th --

19 A. That's the September 29th.

20 Q. And let me just finish -- September 29, 2008
21 meeting there was testimony about yesterday and today?

22 A. That's the meeting, sir, and so I drove down, my
23 wife was working at school, and attended that meeting.

24 Q. And you attended that meeting in person, you
25 recall, correct?

1 A. Yes, yes.

2 Q. And do you recall who was at that meeting?

3 A. Mr. and Mrs. Ralph, Mr. and Mr. Crader; I believe
4 the doctor -- whatever his -- Van Heerden or whatever.
5 I'm sorry. I don't mean any disrespect to him.

6 I think some other people were in the line. They
7 weren't there in person. I think, Valencourt, Fowler --
8 is one of the other property owners; Sam Reed, who is the
9 president of the POA; Mr. Fellows, staff person; John
10 Thompson, staff person, and Mr. George.

11 Q. And was Ms. Powers with you --

12 A. Oh, yes, and who I asked to join me was my
13 architect, my builder, and the lawyer. I guess -- it was
14 intended because if there was any direction or anything
15 that we needed to do, I wanted them to hear it firsthand
16 if it was something that we needed to do rather than try
17 to explain stuff that I really don't understand.

18 Q. You were here yesterday when Mr. Ralph testified,
19 correct?

20 A. Yes.

21 Q. Were you trying to intimidate anyone by bringing
22 these other people to this meeting?

23 A. No. These are the people I relied on to sort of
24 help me build a house, and if issues came up that I
25 didn't know about, I wanted them dealt with. I felt it

1 was helpful to have them sitting around the table and
2 offering their input as the discussion unfolded.

3 Q. And they were really the ones shepherding your
4 plans through the process, were they not?

5 A. Yes, sir.

6 Q. And at that meeting, what do you recall happening?

7 A. Well, Mr. George went through much of the same
8 stuff he went through yesterday, a lot of the details,
9 although he didn't go into some of the calculus of stuff
10 that he did, and so he laid out the issue of the pipe and
11 how he would prefer it to be kept.

12 And then he also presented a plan as a remedy, and
13 I think we talked about that yesterday, that could be
14 installed to compensate if we removed the pipe, and --

15 Q. Let me show you what's been marked as Plaintiff's
16 a Exhibit 12. There's a letter from John Wells from
17 September 16th, 2008. Is that the plan you're talking
18 about, from Mr. George?

19 A. Yeah, I believe so.

20 Q. And what did you agree to do at the end of that
21 meeting?

22 A. Well, obviously, the neighbors were really
23 concerned, and I'm sitting there with a construction loan
24 that's been -- I didn't have to take any money out, but,
25 you know, time is money, and my goal was to try to reach

1 accommodation so that I could move on and get the house
2 built.

3 Q. And it was your understanding at that point your
4 plans had been approved?

5 A. Yes. My plans had been approved. We already had
6 final plans approved. We received no information from
7 the POA that they were withdrawing approval of the plans
8 or anything like that.

9 Q. And at the end of the meeting, what did you agree
10 to do?

11 A. Well, I agreed at that meeting to give the POA a
12 new easement in the area between our house and the
13 Ralphy's house so that they could install what the -- what
14 Mr. George had proposed.

15 Q. When you say them, you're talking about the POA?

16 A. The POA, yes. I agreed at that meeting on our
17 property exclusively -- I wasn't able to speak for
18 anybody else. I wouldn't speak for anybody else, but I
19 was willing to agree to have that installed on our
20 property in the area between us and the Ralphy's.

21 Q. And did you shake hands with Mr. Ralph?

22 A. Yes. Then after the meeting itself, we all went
23 out to the lot. I don't know why. I guess everybody
24 wanted to look at the lot, so I guess the surveyor,
25 Mr. George, went out there. Mr. Ralph went out there.

1 Mr. Crader went out there, Whitney.

2 The lawyer was not with us there, and out there,
3 behind our lot, I guess on the property on the golf
4 course, I shook hands with Mr. Ralph in the presence of
5 Mr. Fellers, and we agreed to move forward with this, and
6 I said to Mr. Fellers, Please talk to your bosses about
7 moving forward with this plan, because, you know, we
8 wanted to get rocking on our house and build it.

9 So I left that meeting feeling pretty good because
10 their concerns, I thought, were heard. I heard their
11 concerns, you know, about the impact of the pipe, and I
12 agreed to something that had no impact on them. I was
13 giving a piece of property back to the POA to control
14 that they didn't have before.

15 Q. And did that plan ever get implemented?

16 A. It did not.

17 Q. Why is that?

18 A. The neighbors objected. We had a phone call.
19 There was a meeting a week later, I think it was about a
20 week later.

21 Q. Were you at that meeting personally?

22 A. I was not at that meeting. I was in Winston-Salem
23 at the time, and I called in, and I heard that the
24 neighbors had objected. And I was befuddled, because I
25 thought this was the plan that everybody bought into.

1 Keeping the pipe was the preference, but from my
2 perspective, the pipes had to go out because the easement
3 had been abandoned. And we agreed to give the POA a new
4 easement at no expense to the other property owners to
5 have them install what Mr. George proposed.

6 Q. And you were going to build your house, part of
7 it, in the no-build area, as designed by Ms. Powers,
8 correct?

9 A. That is correct.

10 Q. And your testimony earlier today was that you did
11 that because the POA was requiring you to site the house
12 a certain way to protect certain trees?

13 A. Yeah. As I said this morning, we had an oak tree
14 that hangs, and it's kind of -- it's a nice location, but
15 it's kind of a strategic location. It kind of messes up
16 the options that you have for placing the house.

17 Q. So in the fall of 2008, you're waiting to build,
18 fixes agreed to, shake hands with Mr. Ralph, and the
19 neighbors say, We're not going to let this go forward?

20 A. That's right. And the POA threw their hands up
21 and said, We can't do anything more.

22 And I thought, Well, what do I do?

23 Q. Did you at that point hire a general contractor
24 and proceed with building?

25 A. We had the general contractor all signed and

1 agreed to back in June when we got construction financing
2 because we assumed he was ready to start building at that
3 time.

4 Q. And he begins building in November or December?

5 A. He started in December because we had been --
6 after the meeting, I was left in limbo. We had approval
7 on the house. We thought we had an agreement on the --
8 an agreement to deal with the drainage issue, and then
9 all of a sudden, we got stopped, so we kind of figured,
10 What are our options? We still had the plans in hand, so
11 we were really kind of stuck.

12 MR. O'KELLEY: Mr. McLaughlin, I saw the
13 bailiff just indicate somebody needs a break.

14 THE COURT: We'll to ahead and take a
15 ten-minute break. Again, don't begin deliberations or
16 discussions, and we'll see you back in ten minutes.

17 (Recess taken.)

18 (Open court jury present.)

19 THE COURT: Okay. We will resume now with
20 the questioning of the witness.

21 MR. O'KELLEY: Thank you, Your Honor.

22 BY MR. O'KELLEY:

23 Q. Mr. McLaughlin, right before we took a break, you
24 were explaining to the jury the construction process in
25 the fall of 2008. When did you start building?

1 A. We started building in December.

2 Q. And in December, that was also the time period
3 that the pipe came up, correct?

4 A. Yes, sir.

5 Q. And we've established that the POA took action
6 against you by filing a lawsuit?

7 A. That's correct.

8 Q. And that lawsuit, to your knowledge, was
9 dismissed, correct?

10 A. Yes, sir.

11 Q. And after you were building on your property, did
12 you have any other meetings with any of your neighbors or
13 other homeowners on Baywood Drive about any drainage
14 issues at Baywood?

15 A. No.

16 Q. Did you have any discussions with any of your
17 neighbors or anyone following your construction process
18 about the ways to deal with the alleged abandonment of
19 the easement or any drainage issues on Baywood?

20 A. No, sir.

21 Q. All right. When you were building your house, did
22 you receive any notices from the POA to stop work, other
23 than that original lawsuit?

24 A. No, sir.

25 Q. When you were building your house, up until it was

1 completed, did the POA tell you to stop doing anything on
2 your property?

3 A. No, sir.

4 Q. After your house was completed, did the property
5 owners association do an inspection or walk the lot or do
6 anything to confirm you had built according to plan?

7 A. Yes. One of the things that they do before you
8 get I think a certificate of occupancy, one of the steps
9 in the process, is that the ARB staff person walks the
10 property, goes through -- they don't go through the
11 interior of the house because they don't regulate what
12 goes on on the inside the house, just the exterior of the
13 house, to make sure everything was done according to the
14 approved plans, and so they do that.

15 Q. I'd like to show you what's been marked as
16 Defendant's Exhibit 7.

17 A. Yes, sir.

18 Q. And ask if you recognize that document and the
19 attachments.

20 A. Yes, I do.

21 Q. Tell the jury what that document is.

22 A. The POA came to us --

23 Q. Well, just briefly, just tell the jury what
24 they're actually looking at when they see this Exhibit 7.

25 A. This is a series of memos, or e-mails, between

1 myself with copies to Whitney Jones, Julie Hemsley from
2 Scott Waller. Scott was the then POA president, POA
3 president changes every year, and carbon copies to John
4 Thompson.

5 Q. These e-mails were sometime in May or June of
6 2009, correct?

7 A. That's correct.

8 Q. And that was after your house was under
9 construction, correct?

10 A. Yes, sir.

11 Q. And, if you could, just summarize this exhibit for
12 the jury, please.

13 A. This goes back to the drainage issue. They
14 approached us --

15 Q. And when you say they --

16 A. Oh, the POA. I'm sorry. The POA came to us and
17 asked us if we would install those drains mentioned
18 earlier.

19 Q. And those were the drains you told us about
20 earlier.

21 A. Yes, sir.

22 Q. And these e-mails were concerning those drains and
23 what else?

24 A. And the -- let me go on and see. Just the drains.

25 Q. And were there recommendations to put in certain

1 French drains?

2 A. Yeah, put in three French drains, surface drains,
3 to collect the water.

4 Q. And was there discussions about your neighbors
5 having longstanding problems in their back yard?

6 A. Yes, sir.

7 Q. And the topography of your lots being like a bowl?

8 A. Like a bowl to collect the water.

9 Q. And that they would have water in their lot after
10 it rains?

11 A. Yes, sir.

12 MS. TILLMAN: Object, Your Honor.

13 THE COURT: Hold on.

14 MS. TILLMAN: These conversations are
15 hearsay.

16 MR. O'KELLEY: Mr. McLaughlin was there, Your
17 Honor. He's right here to be asked about them. I don't
18 see how they're hearsay.

19 THE COURT: Overruled.

20 BY MR. O'KELLEY:

21 Q. So, again, tell the jury what these discussions
22 were.

23 A. Well, they had to do with the lots, how they're --
24 how they exist in terms of the topography and the various
25 things related to that.

1 Q. And did you tell the property owners association
2 if they wanted to help out your neighbors they were more
3 than welcome to?

4 A. I'm sorry?

5 Q. I'll ask it again.

6 In these e-mails, were you basically telling the
7 POA if they want to assume the responsibility or take on
8 some fix, they were welcome to do so?

9 A. Yes.

10 MR. O'KELLEY: Your Honor, at this time I
11 would like to move Exhibit 7 into evidence.

12 THE COURT: Do you have any objection?

13 MS. TILLMAN: No objection.

14 THE COURT: They're admitted.

15 MR. O'KELLEY: Thank-you, Your Honor.

16 (Defendant's Exhibit No. 7 was marked for
17 identification and admitted into evidence.)

18 BY MR. O'KELLEY:

19 Q. Well, after you had started constructing your
20 house, did you have any communications with the Ralphs?

21 A. I think Mr. Ralph came over and started yelling at
22 me one day.

23 Q. And tell the jury about that.

24 A. I was in the yard, observing, and he came over and
25 he called me a selfish SOB.

1 Q. And any other discussions with Mr. or Mrs. Ralph
2 since construction started?

3 A. No. Since construction started?

4 Q. Yes, sir.

5 A. That was the one I remember the most.

6 Q. I think your testimony earlier today was when it
7 rains, you get standing water in your yard, correct?

8 A. Oh, yes.

9 Q. And that's back towards the golf course?

10 A. Yes, sir.

11 Q. And how much water ponds in your yard after it
12 rains?

13 A. We can get a couple inches.

14 Q. You were here yesterday when Mr. George testified
15 that the pipes really remove -- the underground pipes
16 removed subsurface water because there were leaks in
17 them, correct?

18 A. Yes, sir.

19 Q. And he did that demonstrative with the cups and
20 the paper towel. Have you been told about those leaks
21 and that the leaky joints were the reason that they were
22 working to lower the water table?

23 A. Yeah, and there's two things: One is that the
24 pipe was not designed as a water collection pipe for any
25 of the properties and that the only benefit -- and this

1 happened in the September meeting. The only benefit they
2 provide is simply that they capture water through the
3 leaky joints, so there is no design intention to capture
4 water upon the surface at all.

5 Q. Was your wife living at the Baywood property back
6 in October of 2015?

7 A. Yes.

8 Q. Did she report to you any ponding or flooding of
9 your yard or the Ralphs' yard as a result of what they
10 called the thousand year flood and hurricane, whatever it
11 was that came through at that time?

12 A. Yeah. There was a lot of water. We couldn't even
13 get off the island at various points it was so bad.

14 Q. And what about this past October when Hurricane
15 Matthew came? Did your wife report serious ponding or
16 puddling?

17 A. It wasn't as bad, but there was ponding of water.
18 We didn't get as much on Seabrook as people anticipated.

19 Q. You were here for Mrs. Ralph's testimony when she
20 said they had a tree down. What was your understanding
21 of when this tree came down?

22 A. As a function of the wind and rain of a hurricane.

23 Q. Was it after Hurricane Matthew or during Hurricane
24 Matthew?

25 A. Yeah, it was during the hurricane. There were

1 trees down all over the place. The island was a mess.

2 Q. This past weekend we had a lot of rain. Did you
3 notice any standing water in your yard?

4 A. Yes. We had standing water in our yard.

5 Q. And did you notice any standing water at any
6 places on the island?

7 A. All over the place. I mean, there was water all
8 over the place; on the properties, on the streets some of
9 the low-lying intersections. When we came in to court on
10 Monday, Seabrook Island Road, which is the main
11 thoroughfare that connects us to Johns Island, had water
12 fairly deep on both sides and we went through -- not
13 puddles, I would say more than puddles, pools of water,
14 just to come down to court.

15 Q. Mr. McLaughlin, just to make sure the jury
16 understands, it's you're your understanding there was a
17 fix for this solution and the Ralphs stopped it. Is that
18 your understanding?

19 A. That's correct. We agreed to grant the POA and do
20 an easement to install what Mr. George had proposed as an
21 alternative to keeping the pipe, and they objected to
22 that.

23 Q. And since then, nothing's been done, correct?

24 A. Nothing's been done.

25 MR. O'KELLEY: Thank you, sir. Nothing

1 further.

2 THE COURT: Cross?

3 CROSS-EXAMINATION

4 BY MS. TILLMAN:

5 Q. Mr. McLaughlin, you just testified that the fix
6 that you had agreed to -- was that the fix that required
7 drainage being tied into the golf course's drainage?

8 A. That is correct.

9 Q. And did the golf course, club, ever give
10 permission for that pipe to be tied in?

11 A. I don't know if the POA asked them because the
12 agreement that we had in September was that the POA would
13 take responsibility for installing that and so I presume
14 any conversations they would have --

15 Q. What about the testimony that you gave earlier,
16 that you understood that you were responsible -- that you
17 bore the responsibility for the removal of the pipe?
18 Would that not include coming up with a fix?

19 A. No.

20 Q. Is that your interpretation?

21 A. No. When I purchased the property, in the
22 approval of the POA, it only talked about removal of the
23 pipe. It didn't talk about imposing any fix so that we
24 were not bound by anything.

25 Q. My understanding of your testimony was that --

1 let's see, that you would -- and somewhere there is a
2 document. You would be responsible for the removal of
3 the pipe and --

4 A. I didn't agree to that.

5 Q. I'm going to give you what's been marked as
6 Defendant's Exhibit No. 2. Who is this letter to?

7 A. To me.

8 Q. All right. And would you read me paragraph one.

9 A. Owner to assume all responsibility for the
10 underground drainage line at the 20-foot drainage
11 easement.

12 Q. And then could you read paragraph two?

13 A. Owner assumes all responsibility for the abandoned
14 drainage easement that may contain a pipe.

15 Q. All right. And it's your testimony that all
16 responsibility does not include coming up with a solution
17 to --

18 A. That's correct.

19 Q. All right. However, you were nonetheless
20 participating in discussions to try and come up with a
21 solution?

22 A. That's correct. As a good neighbor, I was trying
23 to work with my fellow neighbors.

24 Q. All right. I'd like to show you what has been
25 marked, I think, as Plaintiff's Exhibit 3. Can you tell

1 me what this is.

2 A. This is the -- our title to the real estate.

3 Q. All right. And if I could ask you to -- I'm
4 sorry, if you could read this paragraph right here.

5 A. And subject to all restrictive covenants,
6 easements, right-of-ways, and conditions said grantors do
7 hereby bind themselves and the heirs and assigns to
8 warrant and forever defend all and singular said premises
9 on to said grantees, their heirs and assigns against
10 themselves and their heirs and assigns and all persons
11 whomever lawfully claiming or to claim the same in any
12 part thereof.

13 Q. So your deed contains language saying that your
14 property is subject to any and all restrictive covenants,
15 easements, rights-of-ways, and conditions, correct?

16 A. That's correct.

17 Q. And your deed references on it a plat created by
18 Forsberg Engineering. Are you familiar with that plat?

19 A. Yes, ma'am.

20 Q. I'm going to show it to you. This has been marked
21 as Plaintiff's Exhibit No. 5.

22 A. Yes.

23 Q. All right. Would you please read to me paragraph
24 four right here.

25 A. Reference plat by E.M. Seabrook, Jr. dated

1 September 6, 1994 in the Court in the Charleston County
2 RMC office in plat book ED page 23.

3 Q. All right. All right. And can you identify this
4 document. It's been marked as Plaintiff's Exhibit No. 4.
5 Can you tell me first what plat book, if you can read, it
6 was reported in?

7 A. Plat recorded 21st day of BD 23.

8 Q. Would you agree with me that that says BD page 23?

9 A. Yeah.

10 Q. All right. So would you agree with me that this
11 is the plat that's referenced by this Forsberg
12 Engineering plat which also refers to a plat by E.M.
13 Seabrook on page ED -- in plat book BD page 23?

14 A. Yes, ma'am. I guess that's true.

15 Q. All right. And on that plat, what do you see
16 right here?

17 A. The easement, I guess the original easement,
18 that's recorded.

19 Q. And does it run across lot 22, which is your lot?

20 A. Yes, ma'am.

21 Q. Do you see -- what does this say right here?

22 A. It says no-build area.

23 Q. And is that no-build area on your lot, lot number
24 22?

25 A. Yes, it's on this lot.

1 Q. And I'll also show to you Plaintiff's Exhibit No.
2 1, which is the Ralphs' title.

3 A. Uh-huh.

4 Q. All right. And -- sorry. I can't read it upside
5 down. Could you read the description of the Ralphs' lot.

6 A. All that certain lot, piece, or parcel of land
7 situate lying and being on the Seabrook Island,
8 Charleston County, State of South Carolina and known and
9 designated as lot 23, block 32 on the plat of E.M.
10 Seabrook, Jr. CE and LS recorded in plat book BN page 49
11 in the Charleston County RMC office.

12 Q. And now I'm going to show to you what has been
13 marked as Plaintiff's Exhibit No. 2. It's a plat by E.M.
14 Seabrook. I believe it's the plat referenced in the
15 Ralph deed as it's recorded in plat book BN on page 49.
16 Would you agree with me?

17 A. It's comparing apples and oranges. It says BN 49,
18 yes.

19 Q. All right. Now, o this plat that's referenced by
20 the Ralphs' deed, what do you see -- what am I pointing
21 at right here?

22 A. You are pointing at the easement.

23 Q. All right. And is this the Ralphs' lot number 23?

24 A. I believe it is.

25 Q. And in this depiction of their property, what is

1 in their back yard?

2 A. No-build zone.

3 Q. All right. And, also, what is this right here?

4 A. I guess that's where the pipe was, actually.

5 Q. And does this depiction of the pipe in the
6 no-build area extend on the -- where they purchased their
7 lot, does it extend on to your lot, lot number 22?

8 A. Yes, ma'am.

9 Q. So does your lot have in this plat a picture of
10 the no-build area in the back?

11 A. Yes, ma'am.

12 Q. And in this plat, does your lot have a picture of
13 the drainage easement?

14 A. Yes. Yes, ma'am.

15 Q. And the pipe -- where the pipe would be.

16 A. Yes, ma'am.

17 Q. All right. So now I'm going to show you
18 Plaintiff's Exhibit No. 2 and Plaintiff's Exhibit No. 4,
19 and you can take a minute to look at these, but I'm going
20 to ask you to agree that they're substantially similar
21 insofar as their depictions of your lot, the Ralphs' lot,
22 on both of those?

23 A. Yes, that is correct.

24 Q. All right. So in both the plat by which the
25 Ralphs took title to their lot, there is a picture of the

1 drainage easement and no-build area, and in the plat
2 that's depicted -- or that's referenced in the plat by
3 which you took your lot, there is a drainage easement and
4 no-build area in both your yard and --

5 A. That's correct.

6 Q. Okay. And tell me again, Mr. Ralph, from whom did
7 you purchase -- excuse me, Mr. McLaughlin, from whom did
8 your purchase your property?

9 A. Mr. Gantz.

10 Q. All right. Was it Mr. Carroll Gantz?

11 A. Yes, Mr. Carroll Gantz.

12 Q. I'm going to give you this deed, or this title.

13 A. Okay.

14 Q. Can you tell me who is --

15 MR. O'KELLEY: Your Honor, may I just quickly
16 see what she's presented?

17 MS. TILLMAN: I think I've shown this to you.
18 Look.

19 BY MS. TILLMAN:

20 Q. Looking at this, would you say this was the deed
21 by which Mr. Gantz originally bought the property? And
22 you can take a minute to look at it. Does it look like
23 the title, Mr. Gantz's title, to the property that is now
24 yours?

25 A. Let me just see where lot 23, block 32 is. Yes.

1 Q. All right.

2 MS. TILLMAN: The plaintiff would like to
3 admit this as Plaintiff's Exhibit 20.

4 THE COURT: No objection?

5 MR. O'KELLEY: Correct.

6 THE COURT: It's admitted.

7 (Plaintiff's Exhibit No. 20 was marked for
8 identification and entered into evidence.)

9 BY MS. TILLMAN:

10 Q. So we've agreed this is the title of the previous
11 owners of the property, and could you read to me where it
12 says that that property is described.

13 A. On attachment A.

14 Q. Okay. And now if you'll look with me on
15 attachment A, would you read the description of lot 22,
16 which is now yours.

17 A. This portion?

18 Q. Yes, this paragraph.

19 A. All that certain lot, piece, or parcel of land
20 situate line and being on Seabrook Island, Charleston
21 County, South Carolina, known and designated as lot 22,
22 block 32 on a plat by E.M. Seabrook, Jr. CE and LS dated
23 September 6, 1984 and recorded in the RMC office for
24 Charleston County in plat book BD page 23.

25 Q. And I'll show you again Plaintiff's Exhibit No. 4,

1 which is the plat by Mr. Seabrook on page -- in plat book
2 BD on page 23.

3 A. Okay.

4 Q. So in this plat, do you see the no-build area on
5 lot 22?

6 A. Yes, ma'am.

7 Q. And do you see the drainage pipe on lot 22?

8 A. Yes, ma'am.

9 Q. All right. Are you familiar with the term chain
10 of title?

11 A. Vaguely. I mean --

12 Q. Would you -- a chain of title means other deeds
13 that were in -- other deeds that are referenced or that
14 were previously recorded on the same piece of property
15 that you have.

16 A. Okay.

17 Q. In layman's terms. Would you agree then since
18 this title of real estate of Mr. Carroll Gantz, who later
19 sold the property to you, is in the chain -- in your
20 chain of title?

21 A. If you say so.

22 Q. All right. And I'm going to show you again what's
23 been marked as Plaintiff's Exhibit 1. It's the deed to
24 the Ralphs' property.

25 A. Okay.

1 Q. Or the title to the Ralphs' property, and read me
2 again how this is described.

3 A. All that certain lot, piece, or parcel of land
4 situate lying and being on Seabrook Island, Charleston
5 County, State of South Carolina, and known and designated
6 as lot 23, block 32 on plat of E.M. Seabrook, Jr., CE LS,
7 recorded in plat book BN, page 49, Charleston County
8 RMC office.

9 Q. All right. And would you read -- let me get the
10 right -- all right, if you would read just the first two
11 lines.

12 A. This conveyance is subject to the covenants,
13 conditions, restrictions, limitations, affirmations --
14 affirmative obligations and easements of the record and
15 more particularly set forth in the instruments duly
16 recorded.

17 Q. So would you agree that the Ralphs' property --
18 well, you've just read the Ralphs' property is subject to
19 the easements that are depicted on this plat that's
20 referenced in their deed.

21 A. Yes, ma'am.

22 Q. So would you agree with me that the Ralphs had
23 ownership of the easements as their title?

24 MR. O'KELLEY: Your Honor, I object to that.
25 I think that is the ultimate question to be decided by

1 the jury.

2 THE COURT: Sustained.

3 BY MS. TILLMAN:

4 Q. Mr. McLaughlin, when you purchased your house and
5 received your deed, did you understand that everything in
6 it was yours?

7 MR. O'KELLEY: Your Honor, I'm going to
8 object because Mr. McLaughlin testified it was a vacant
9 lot when he bought it.

10 THE WITNESS: Yeah, it was a vacant lot.

11 BY MS. TILLMAN:

12 Q. That everything it was conveying to you, the title
13 to that land and everything --

14 A. We own the land, purchased the land.

15 Q. Mr. McLaughlin, have you brought a lawsuit against
16 your closing attorney in this case?

17 A. I have not.

18 Q. Have you brought a lawsuit against --

19 A. I don't litigate.

20 Q. Have you brought a lawsuit against your
21 architect --

22 A. I have not.

23 Q. -- in relation to this case? Have you sued your
24 real estate closing agent?

25 A. I have not sued anybody. I won't do that.

1 Q. You testified that your construction loan
2 financing was approved, I think you said, in either June
3 or July of 2008; is that right?

4 A. That is correct.

5 Q. And then you began construction in 2008?

6 A. December.

7 Q. December. All right. Correct me if I'm wrong,
8 but, generally, construction loans need to be refinanced,
9 financed periodically, particularly if construction has
10 not begun. How long of a term did you have before you
11 had to begin construction or you would be forced to
12 refinance?

13 A. BB&T have pretty flexible terms. I told them it
14 might be delayed. They said it was fine because it was
15 an interest only loan, and we hadn't drawn down anything.

16 Q. So you were under no urgency as far as your
17 construction loan as --

18 A. Well, we knew at some point it would run out.
19 They would extend it for a couple months, but they
20 wouldn't extend it forever.

21 Q. But BB&T didn't tell you if you didn't begin
22 construction immediately --

23 A. We had to ask permission. We didn't assume that,
24 but we had to ask permission.

25 Q. But you were not under some sort of gun to begin

1 construction on December 8, 2008?

2 A. Except we had the loan and wanted to move forward.
3 We took the loan out for a purpose, that we wanted to
4 build the house, not to have the loan we were sitting on,
5 not using for any particular purpose. I mean, we wanted
6 to build our house. That was the purpose.

7 Q. That was the purpose?

8 A. Six months we were trying to work with the
9 community to address the issues that were being raised.

10 Q. And for the same six months that you were trying
11 to work with the community, were you hearing objections
12 from your neighbors to your construction plans?

13 A. I heard them at the September meeting.

14 Q. And you heard them again in October?

15 A. Well, yes, subsequently, yes.

16 Q. And then you also heard them in numerous e-mails
17 from those neighboring property owners, those downstream
18 property owners?

19 A. Yes, that's correct.

20 Q. Did Mr. and Mrs. Ralph ever grant any permission
21 to begin construction?

22 A. I never asked them, no.

23 Q. Did Mr. or Mrs. Ralph ever give you permission to
24 dig up the pipe?

25 A. I never talked to them about asking for

1 permission.

2 Q. You never asked them -- you never specifically
3 asked them permission?

4 A. No, because from our perspective, the easement had
5 been abandoned by the owners association, and it was our
6 responsibility to deal with it and to remove it.

7 Q. Again -- and that's right, that you were to bear
8 all responsibility for the drainage easement that may
9 contain a pipe.

10 A. That's correct.

11 Q. However, your understanding of all responsibility
12 was limited just to digging it up?

13 A. Well, I guess if we chose to leave it, we would
14 bear responsibility for taking care of it, but who wanted
15 a pipe across their yard if something happened to it? So
16 we removed it.

17 Q. But you, despite your neighbors' objections and
18 despite the actions of the Seabrook Island Property
19 Owners Association, you did not perceive the
20 responsibility, included finding some sort of fix that
21 would work and could be implemented to --

22 A. I agreed to -- I agreed to a proposal made by
23 Mr. George that was a fix, and I agreed to that at the
24 September meeting, to grant them a new easement, so I did
25 that as a gesture of goodwill on our part.

1 Q. Yes, and Mr. George testified earlier that that
2 proposal ultimately came to nothing, because the golf
3 club would not allow, I believe, you to tie in to the --

4 A. It wasn't me. It was -- the POA designed it. I
5 was not asking permission -- it was the POA's drainage
6 system and not my drainage system, and then it's their
7 responsibility to maintain -- to upkeep their system.
8 It's not my responsibility to upkeep their system.

9 Q. And, nonetheless, though, no resolution had been
10 arrived at between you, the property owners association,
11 and the neighbors, no resolution at the point that you
12 began --

13 A. Well, I believe we had reached a resolution
14 because I had agreed to what Mr. George had proposed.

15 Q. You agreed to it, but were you not aware it had
16 been rejected and was not going to work?

17 A. It was rejected. It wasn't a matter of not going
18 to work.

19 Q. All right. You're correct about that. It would
20 have worked if it could have been implemented, but you
21 were aware that it could not be implemented.

22 A. Yes, because the neighbors didn't -- objected over
23 what they had been proposed and agreed to at that
24 meeting.

25 Q. Or could it have also been because the golf club

1 was not going to allow the pipe --

2 A. I don't know anything about the golf club and
3 can't answer that question. I don't have any direct
4 personal knowledge to that effect, what the golf club
5 would or would not do.

6 Q. Mr. McLaughlin, did you ultimately authorize your
7 construction crew to dig up the pipe?

8 A. Yes, ma'am.

9 Q. All right. How did you do that?

10 A. Well, after six months of messing around and
11 getting, really, no direction, satisfactory response to
12 move forward at approval to move from the ARC, original
13 approval, to build our house as approved by the ARC in
14 the location and no one had rescinded that, I talked with
15 counsel and he said, well, you got approval, you might as
16 well move forward.

17 Q. And was that counsel Mr. O'Kelley?

18 A. No.

19 Q. Who was the counsel you spoke to?

20 A. Eric Davidson.

21 Q. And have you brought a malpractice lawsuit against
22 him?

23 A. No I have not. I talked about that before. I
24 don't sue people.

25 Q. My question was, I don't believe you ever

1 answered, how did you authorize your construction crew to
2 dig up the pipe? Did you call them up?

3 A. I called them up and I said, you know, it's time
4 to move forward and begin construction on our house.

5 Q. All right. So you were aware and intended for the
6 construction crew to go ahead and dig up the pipe?

7 A. That's correct.

8 Q. All right. And at the time that you told your
9 construction crew to dig up the pipe, you were aware that
10 your neighbors were objecting.

11 A. I didn't know -- they objected to it back in
12 October, so I presume that they were still not happy with
13 it.

14 Q. Had there been e-mails sent as recently as a few
15 days before you dug up your construction pipe? And I
16 probably could find some --

17 A. I can't remember every date. Every day there was
18 an e-mail sent. I mean, that's true in every aspect of
19 my life.

20 Q. The neighbors, on the day that you authorized your
21 construction crew to dig up the pipe, had they changed
22 their mind and given you permission?

23 A. I didn't ask for permission.

24 Q. You didn't ask them permission?

25 A. No, because the pipe was on my property.

1 MS. TILLMAN: All right. I have no further
2 questions.

3 THE COURT: Redirect?

4 MR. O'KELLEY: Thank you, Your Honor.

5 REDIRECT EXAMINATION

6 BY MR. O'KELLEY:

7 Q. Your deed, your title to real estate, references
8 this Forsberg Engineering plat?

9 A. That is correct.

10 Q. The plat that clearly states there is a no-build
11 area to be abandoned and easement to be abandoned,
12 correct?

13 A. Yes, sir.

14 Q. We've got a bit of a mess here. Defendant's 2,
15 the August 18, 2006 letter, paragraph number two, states
16 what, Mr. McLaughlin?

17 A. Of the list one, two, and three?

18 Q. No, sir, paragraph -- it's numbered.

19 A. Okay. I'm sorry. I'm going through the numbers.

20 Number one: Owner is to assume all responsibility
21 for the underground drainage line at the 20-foot drainage
22 easement driveway, one parallel to our yard and Craters'.

23 Number two: Owner to assume all responsibility
24 for the abandoned drainage easement that may contain a
25 pipe; and, number three, property lines must be located

1 prior to grading those of the right-of-way of the
2 Seabrook -- right-of-way for the Seabrook Island Property
3 Owners 20-foot drainage easement.

4 Q. Mr. McLaughlin, to beat this horse until it is no
5 longer moving, you did believe and were told that the
6 easement had been abandoned and you could build in the
7 no-build area, correct?

8 A. That is correct, sir.

9 Q. And anyone from the POA, ARB, officers, the board,
10 did anyone tell you, You need permission from anyone
11 other than us to build on your lot?

12 A. No.

13 Q. When you built on your lot, you had permission of
14 the POA and the Town of Seabrook, correct?

15 A. That is correct.

16 Q. You actually had to get a building permit,
17 correct?

18 A. That's correct.

19 Q. And those building permits were never rescinded
20 and you never received a stop work order from the town or
21 the POA, correct?

22 A. That is correct.

23 MR. O'KELLEY: That's all I have, Your Honor.

24 THE COURT: Recross?

25 RECROSS EXAMINATION

1 BY MS. TILLMAN:

2 Q. Mr. McLaughlin, I'm going to go ahead and show you
3 again what's been marked as Plaintiff's Exhibit No. 17,
4 and ask you to read paragraph number 23. This is the
5 lawsuit filed by the Seabrook Island Property Owners
6 Association, who is the plaintiff, against you, the
7 defendant.

8 Could you read what paragraph 23 says, the
9 Seabrook Island property owners --

10 A. This was the lawsuit that was withdrawn three days
11 later.

12 Q. That's correct. This was the lawsuit withdrawn
13 three days after you dug up the pipe. The plaintiff is
14 Seabrook Island Property Owners Association. Could you
15 read --

16 A. Sure. Plaintiff seeks an order that the
17 defendants' commencement of construction and demolition
18 activities on the property without authorization from
19 plaintiff and without adherence to the requirements
20 placed on the defendants for construction over the site
21 of the drainage easement is in violation of the
22 covenants.

23 Further, plaintiff seeks an order authorizing
24 plaintiff recovery related attorney fees and costs
25 associated with the covenants in article 35.

1 Q. All right. So the plaintiffs in this lawsuit are
2 the Seabrook Island Property Owners Association; is that
3 correct?

4 A. That's correct.

5 Q. And as you read paragraph 23, it says that the
6 Seabrook Island Property Owners Association seeks an
7 order that the defendants' commencement of construction
8 and demolition activities without authorization from the
9 plaintiff and without adherence from the requirements
10 placed on defendants for construction over the side of
11 the drainage easement is in violation of the covenants.

12 If you're testifying that the Seabrook Island
13 Property Owners Association was complicit with your
14 plans, why are they filing a lawsuit and complaining that
15 your construction activities are without authorization?

16 A. I can't answer that question because it's contrary
17 language in that that undermines that deposition.

18 MS. TILLMAN: All right. I have no further
19 questions.

20 THE COURT: Okay. You can step down.

21 THE WITNESS: Thank you.

22 THE COURT: Next witness?

23 MR. O'KELLEY: Your Honor, Mr. John Wells has
24 been patiently waiting with us all morning, so we call
25 him to the stand -- all afternoon as well.

1 JOHN WELLS,
2 having been first duly sworn,
3 was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. O'KELLEY:

6 Q. Thank you for being here today. Mr. Wells, would
7 you please tell the jury how you used to be employed by
8 the Seabrook Island Property Owners Association.

9 A. I went to work for the Seabrook Island property
10 owners in 1997. I built a house there. I retired from
11 working civil service and became the director of the
12 maintenance and operations in 1997, and I carried that
13 title up until I retired in 2013. I was in maintenance
14 and operation and dealt with 26 miles of road, about
15 9,000 feet of storm drainage pipe, beach erosion, as well
16 as taking care of building maintenance.

17 Q. And you were responsible for, as Mr. McLaughlin
18 said, drains and roads?

19 A. Yes.

20 Q. And you had that position from '97 until '2013?

21 A. That's correct.

22 Q. And how familiar are you, sir, with the roads and
23 drainage system on Seabrook Island?

24 A. Very familiar. We've got -- and I understand
25 Mr. George was here yesterday, which is an expert, as far

1 as we're concerned, and we've got undulating ground as
2 well as basically real -- almost ancient sand dunes
3 throughout the island, so ponding, or puddling, ponding
4 is very prominent throughout the island.

5 In fact, in the storm of Matthew, we had the
6 flooded areas over on the beach T areas, which was
7 probably two acres of houses and roads which were
8 underwater.

9 Q. And you have seen flooding and ponding and
10 puddling all over Seabrook Island for years?

11 A. Yes, yes.

12 Q. Are you familiar with the properties along Baywood
13 Drive?

14 A. Very much. It's called Baywood. Well, bay is a
15 natural area that holds water, yes.

16 Q. And is Baywood Drive part of your understanding of
17 the Carolina Bay or some sort of --

18 A. No, it's just a bay area where on one side of
19 Seabrook Island Baywood is the marsh area, on the
20 left-hand side; on the right-hand side, where the
21 McLaughlins live, it backs up to the golf course, and the
22 golf course was put there, I guess, in the mid or early
23 '70s.

24 Q. And prior to your working for Seabrook Island POA,
25 were you familiar with Seabrook Island and the property?

1 A. No, I wasn't.

2 Q. You came to work in 1997 from the civil service.
3 What was your job with civil service?

4 A. I was an electrical engineer in charge of
5 construction at the Naval Sea Systems Command.

6 Q. But you did construction work and maintenance and
7 operations type work?

8 A. Yes, very much so.

9 Q. Similar to what you did at Seabrook, correct?

10 A. Yes, except for the civil service part of it. A
11 lot of that had to do with building, maintenance, and
12 stuff like that, except it was on the ships.

13 Q. Right. Let me show you two plats, and they're
14 big, Exhibit No. 2, which is a plat of Seabrook Island,
15 South Carolina, properties along Baywood Drive. There's
16 a no-build area and a drainage easement. Are you
17 familiar with that no-build area and drainage easement?

18 A. Yes, I am.

19 Q. Tell us how you became familiar with that.

20 A. This came to light to us back in 2002 when the
21 gentleman who was selling the lot came to the POA with a
22 request to eliminate this storm drainage system on the
23 back of it.

24 Q. Had the property owners association, to your
25 knowledge, from 1997 to 2002, had they been maintaining

1 the easement and these pipes?

2 A. One of the issues we always had is you could never
3 get to that particular pipe to maintain it, because
4 coming down the easement between them and the lot 21 was
5 the only entrance in for about 500 feet of pipe, and the
6 other end of the pipe was on the golf course, going out
7 the other way, so I don't think there was much
8 maintenance to it at all.

9 Q. And you weren't here yesterday, but Mr. George
10 actually testified that the pipe had leaks in the joint.
11 Were you familiar with that?

12 A. Yes. Most corrugated metal pipes or pipes that
13 have been in the ground for ten years with salt water, or
14 the water in there, they get leaky joints and it
15 basically becomes subterranean, yes.

16 Q. Were you familiar with who the owner of the
17 property was at the time this plat was made?

18 A. No, I don't.

19 Q. All right. I'll show you, can you read this
20 notation --

21 A. Owner of the property is the Seabrook Island
22 Company. That's the people who originally developed the
23 island.

24 Q. And let me show you Plaintiff's Exhibit 4 and ask
25 you if that also represents the lots on Baywood Drive

1 showing the easement and no-build area.

2 A. Yes.

3 Q. And who is listed as the owner in note number
4 four?

5 A. It's still listed as the Seabrook Island Company.

6 Q. And do you know what happened to the Seabrook
7 Island Company?

8 A. Yes. In 1989, on the eve of Hurricane Hugo, it
9 declared bankruptcy.

10 Q. And do you know who bought the assets or how the
11 assets of the Seabrook Island Company were dealt with in
12 the bankruptcy or out of bankruptcy?

13 A. Yes. There was actually a group of owners on
14 Seabrook Island who realized what a catastrophe it was.
15 They got together pooled their money and bought the club
16 as well as all the island from bankruptcy in '91, '92.

17 Q. And would that entity be called the Seabrook Club
18 or Seabrook Island Club?

19 A. Seabrook Island Club, and it also formed in I
20 think it was about 1989 when the property owners
21 association was formed in which they inherited all the
22 roads and storm drainage, which is not on the golf course
23 property.

24 Q. And was it your understanding, Mr. Wells, that the
25 Seabrook Island Property Owners Association, through the

1 club, inherited, to your mind, to your understanding,
2 these easements, these drainages, these --

3 A. The ones they sought to give to us. What they
4 also did, and I think they live to regret it today, is
5 they would not give us any of the road, any of the storm
6 drains which crossed the club property for the simple
7 reason that they weren't sure whether they were going to
8 be able to come out of bankruptcy or not. What they
9 didn't want is somebody else interrupting the complete
10 flow of land for real estate sales.

11 Q. You testified a few minutes ago back in 2002 you
12 thought someone who owned this lot had tried to --

13 A. Yeah, Mr. Gantz.

14 Q. Hold on a second -- had tried to give us these
15 easements back. You worked for the POA back in May of
16 2002, correct?

17 A. That's correct.

18 Q. And it's your understanding that Mr. Gantz
19 approached the POA and asked the POA to give these
20 easements back to the lot owners, correct?

21 A. He requested for his particular lot, the lot 22, I
22 believe it was, that's the one that he owned, and he was
23 concerned, from what I remember, about real estate sales
24 and possibly opening it up where it could be used a
25 little bit more rather than having the limitations on it

1 that the storm drain put across it.

2 Q. And is it your understanding that the POA
3 attempted to give that back to Mr. Gantz and maybe the
4 other property owners along Baywood Drive?

5 A. I was not a part of that negotiation. That was
6 handled by the board of directors, which has their own
7 legal counsel. They made that decision, and from my
8 understanding, it was all ten lots at one time. It
9 was -- the easement was considered a continuation from
10 one point to the other of termination.

11 Q. And your boss at one time POA was a fellow named
12 John Thompson, correct?

13 A. Yes. He was the second boss I had. Mr. Bob
14 Giuffreda was the first, and that was about '94.

15 Q. And listed on Defendant's Exhibit 1, there is a
16 reference to Mr. Giuffreda. Is that the man that used to
17 be your boss?

18 A. Yes.

19 Q. And Mr. Thompson was your boss; is that correct?

20 A. Yes.

21 Q. And Mr. Thompson, how long did he work at the POA?

22 A. He worked there until my retirement in 2013, and
23 he retired, I think it was, in 2014, after I left.

24 Q. Did you have anything to do with the plans as
25 submitted by my clients to the POA?

1 A. No.

2 Q. Do you recall any discussions with my clients
3 about you're their on their lot?

4 A. We had numerous discussions off and on because it
5 was storm drainage issues that we had, but he was a new
6 owner on the island, and I made myself available to him
7 when he had questions.

8 Q. Were you involved with Mr. George and with my
9 clients in discussions in September of 2008 about
10 potential, quote, unquote, fixes for drainage on these
11 lots along Baywood?

12 A. We entered into those discussions, but I was not
13 present at any time. It was part of the legal matter;
14 therefore, I was not included.

15 Q. All right, sir. Are you aware of any additional
16 drainage or fixes put in according to Mr. George along
17 these lots on Baywood Drive?

18 A. We, along with the club, in about 2001, I believe
19 it was from 2001 to 2003, had a major upgrade in storm
20 drainage, and it was a cooperation between the club and
21 the POA because water doesn't care where property lines
22 are, and what we tried to do was to facilitate both
23 people with the best fit for that, and we put in a
24 41-inch drain line. I think it was about 1800 feet
25 across, went across the golf course, and we also put in

1 30-inch pipeline feeding down the back of Baywood to
2 basically catch the runoff coming down there that was
3 ponding on the club side as well as on the property that
4 was adjoining Baywood.

5 Q. Let me show what has been marked as Defendant's
6 Exhibit No. 3. Just take a look at that for a second.

7 A. That was the pipe I was referring to. It was
8 high-density piping in there.

9 Q. And that's -- the piping that you reference was
10 the high-density plastic piping installed on the Crooked
11 Oaks golf course, correct?

12 A. Yes, yes.

13 Q. And just for those of us who are not in the world
14 you worked for years, is there any way to point out on
15 this plat where that piping is in relation to the lots?

16 A. It's pretty difficult because when you're doing a
17 dual job like this with somebody like a country club with
18 the POA and then the club, there are two separate
19 entities. One is a 401-C corporation, and the other is a
20 for profit club and run for the benefit of the people,
21 but, basically, this is actually --

22 Q. And we're looking at Plaintiff's Exhibit 4.

23 A. That's right. It would be coming down this side,
24 and down on the golf course, right along the edge here.

25 Q. And what you're pointing to, Mr. Wells, is from

1 lot 7 to 25 --

2 A. I think it really stopped somewhere in about this
3 area. Whether or not it got back into this area, I just
4 don't remember.

5 Q. That's around lot 20, you say it stopped?

6 A. I think it stopped somewhere down in this area,
7 but the intent of the whole line was to put in connection
8 drains at the points here coming through, but that was
9 not necessarily done when we got through dealing with the
10 contractor.

11 Q. To your knowledge, it was always the POA's intent
12 to abandon the easement along my clients' property,
13 wasn't it?

14 A. Yes.

15 MR. O'KELLEY: Thank you, Mr. Wells. That's
16 all I have.

17 THE COURT: Cross?

18 CROSS-EXAMINATION

19 BY MS. TILLMAN:

20 Q. Mr. Wells, you said, to your knowledge, it was
21 always the POA's intent to abandon the easement on the
22 property; is that correct?

23 A. That was the agreement that I got from the
24 lawyers, and that was what was filed with the county of
25 Charleston, for the easement to be abandoned across all

1 ten lots across the place, yes.

2 Q. To your knowledge, was the POA abandoning their
3 interest in the easement?

4 A. Their interest?

5 Q. Yes, what belonged to them as far as the easement
6 went.

7 A. Well, the only connection we really had was down
8 between the property, which was 21 and 22, which was a T,
9 and an existing drain coming off of Baywood Drive, and
10 that box was removed, or at least it was blocked off and
11 it was not useable any longer, so we abandoned the
12 easement to go down, yes.

13 Q. Now, you said earlier that you know Mr. Bob
14 George?

15 A. Yes.

16 Q. And you also said that you perceive him to be an
17 expert?

18 A. Yes. I know Bob George. I worked for -- I'm on
19 city counsel in the town of Seabrook, and we have him
20 under contract to do work for us on the city, so I'm
21 familiar with him that way too.

22 Q. And do you perceive him to be an expert on storm
23 water drainage and that sort of thing?

24 A. Absolutely, yes.

25 Q. Would it surprise you to learn that he testified

1 yesterday that the removal of the drainage pipe there in
2 the back yard of the McLaughlins' property has resulted
3 in major storm water drainage problems on the Ralphs'
4 property?

5 A. I'm not aware of that, but I wouldn't be
6 surprised. I don't think Bob George was even consulted
7 at the time they made the decision in 2002 to abandon the
8 issue.

9 Q. To your knowledge, was he consulted later?

10 A. Yes. I know he was later because we talked a good
11 bit about what the solution to the problem -- something
12 that was amenable to everyone to solve the problem.

13 Q. And Mr. George perceived that a solution was
14 necessary. Is that because the removal of the drainage
15 pipe in the no-build area would cause surface water
16 drainage problems on the downstream lots?

17 A. Yes.

18 MS. TILLMAN: I have no further questions,
19 Your Honor.

20 THE COURT: Redirect?

21 MR. O'KELLEY: None, Your Honor.

22 THE COURT: You may step down.

23 MR. O'KELLEY: Mr. Wells is under subpoena.
24 I would ask that he be released from subpoena and be
25 allowed to go.

1 THE COURT: You're free to go.

2 Do you have any other witnesses?

3 MR. O'KELLEY: Just one briefly, Your Honor.

4 At this time we call Susan McLaughlin to the stand.

5 SUSAN McLAUGHLIN,

6 having been first duly sworn,

7 was examined and testified as follows:

8 DIRECT EXAMINATION

9 BY MR. O'KELLEY:

10 Q. Ms. McLaughlin, you've been patiently sitting
11 through this trial since the beginning; is that correct?

12 A. That is correct.

13 Q. And I'm not trying to drive a wedge between you
14 and your husband, but is his assessment of your history
15 together correct?

16 A. That is correct.

17 Q. And you've taught school for how many years,
18 Ms. McLaughlin?

19 A. Twenty-nine.

20 Q. And you retired two years ago, or three years ago?

21 A. In 2015.

22 Q. And that's when you moved to Seabrook Island full
23 time, correct?

24 A. I'm back and forth. We still have a place in
25 Winston, so --

1 Q. You're registered to vote at Seabrook Island?

2 It's your official residence, correct?

3 A. Yes, that's correct.

4 Q. And you are helping take care of your grandchild
5 most days, are you not?

6 A. That's correct.

7 Q. Ms. McLaughlin and I'm asking you this to try
8 and shorten things up for these nice people. In terms of
9 your lot and POA approvals and dealing with the Ralphs,
10 that was really a lot of your husband's doing, correct?

11 A. Yes.

12 Q. You were in Winston teaching school and wrapping
13 up your career, and he was the one who was, for lack of a
14 better term, the boots on the ground as far as this
15 matter is concerned, correct?

16 A. That's correct.

17 Q. And your dealings with the Ralphs include what,
18 ma'am?

19 A. I've never really met the Ralphs. I had one
20 encounter with Mr. Ralph.

21 Q. And what was that?

22 A. On the island there's a fitness center called the
23 Lake House. I was exercising at the fitness center, and
24 Mr. Ralph came up to me and he began shouting, There she
25 is. There is the wife of the jerk. There's the wife of

1 the jerk. There she is. Brad Reynolds ought to sue
2 them.

3 I was just kind of taken aback by that, and I
4 didn't say anything. And I just left and tried to avoid
5 the fitness center in the afternoon.

6 Q. Besides dealing with that situation with
7 Mr. Ralph, have you had any discussions with Mr. or
8 Mrs. Ralph about their property?

9 A. No, never.

10 Q. And you've heard your husband's testimony about
11 the Ralphs' property flooding prior to building on your
12 lot. Do you agree with his assessment about that?

13 A. Yes. As he mentioned, we would come down and just
14 look at our lot periodically, and on several occasions,
15 we saw quite a bit of water, not puddles. I would
16 describe it as a pond, really, the length of their house.

17 Q. And your husband said that at one time he saw
18 water almost to their back steps. Do you recall seeing
19 that type of ponding on their yard?

20 A. Absolutely. It went right in front of where their
21 deck was, and it ran the full length of their deck and
22 out, and they've always had water on their property for
23 as long as we've owned the lot and since we've lived
24 there.

25 Q. Ms. McLaughlin, you didn't come to any meetings

1 about the dispute with the Ralphs, did you?

2 A. No.

3 Q. And were you ever on any conference calls with
4 anyone about the dispute about the Ralphs?

5 A. No, never.

6 Q. You, in fact, let your husband handle most of
7 this, correct?

8 A. Yes.

9 MR. O'KELLEY: Thank you, Ms. McLaughlin.
10 That's all I have.

11 CROSS-EXAMINATION

12 BY MS. TILLMAN:

13 Q. Mrs. McLaughlin, I have a few questions for you.
14 I think you testified that you would -- prior to
15 construction, you would come down just for the weekend to
16 look at your lot; is that correct?

17 A. That is correct.

18 Q. And is that because you would -- you were working
19 during the week?

20 A. Yes.

21 Q. All right. So you would see water on the Ralphs'
22 lot maybe on a Saturday or Sunday; is that correct?

23 A. That's correct.

24 Q. But you didn't stick around to see how quickly it
25 would drain?

1 A. No, uh-huh.

2 MS. TILLMAN: All right. I have no further
3 questions.

4 MR. O'KELLEY: No redirect.

5 THE COURT: All right. You can step down.
6 Thank you.

7 Do you have any other witnesses?

8 MR. O'KELLEY: Your Honor, I have numerous
9 deposition excerpts that we had submitted to the Court
10 prior to, but I don't think we need them, so that is our
11 case.

12 THE COURT: All right. So the defense rests.
13 Is there going to be any reply?

14 MS. TILLMAN: I'm sorry. Could Mr. O'Kelley
15 repeat himself?

16 THE COURT: He's not publishing his
17 depositions.

18 MR. O'KELLEY: We're not going to publish the
19 deposition excerpts that we published to counsel.

20 MS. TILLMAN: I have nothing.

21 THE COURT: Nothing in reply?

22 Okay, folks. Well, you've heard all the
23 evidence you're going to hear in the trial now. I'm
24 going to send you back to the jury room for a minute
25 while we plot out where we're going.

1 I suspect that we're going to have our charge
2 conference and legal things that we need to do and bring
3 you back in the morning to do final arguments and I'll
4 charge you on the law for deliberations, but let me send
5 you back there right now, and I'll have you back in just
6 a few minutes and let you know what we'll be doing.

7 Again, don't begin deliberations or
8 discussions about the case.

9 (In open court, jury not present.)

10 THE COURT: Okay. Motions?

11 MS. TILLMAN: Your Honor, the plaintiffs
12 would like to make a motion for a directed verdict.

13 As to the issue of whether -- I want to be
14 sure that I've phrased this correctly. Well, as to the
15 fact -- as to the law that the abandonment of the
16 easement by the POA would not have affected the rights of
17 the owners of other lots and that in order for any
18 abandonment to have been made the Ralphs would have had
19 to agree to it. In fact, all of the lot owners would
20 have had to agree to it.

21 THE COURT: Are you finished, or thinking?

22 MS. TILLMAN: I'm sorry. I'm thinking very,
23 very slowly, but specifically that because the Ralphs did
24 not abandon their interest in the easement that
25 therefore, as a matter of law, the defendants' actions

1 constituted trespass as there can be no question of fact
2 that their house is in that easement.

3 THE COURT: So, in essence, you're asking me
4 to direct a verdict on your cause of action for trespass
5 and have the jury rule on damages; is that right?

6 MS. TILLMAN: That's correct.

7 THE COURT: Okay. Would you like to respond?

8 MR. O'KELLEY: I would, Your Honor. That's
9 the ultimate issue in the case, generally a question of
10 fact as to whether or not there's been a trespass.

11 You just heard testimony from Mr. Wells
12 referencing the plats that the POA thought the easement
13 was theirs, through the club, through the bankruptcy,
14 from the Seabrook Island Company that is listed as the
15 owner on those plats, Your Honor, and, ultimately, it is
16 a question of fact as to trespass, as to intent, as to my
17 clients' intent. You just heard from him for the second
18 time today that they always thought there was an
19 abandonment of the easement.

20 Your Honor's ruling earlier on punitive
21 damages set forth the Court's position that my client
22 always thought he was doing what he was allowed to do
23 because of the abandonment that he had been told. It is
24 a question of fact, ultimately, Your Honor, we think for
25 the jury to decide, so we ask you to deny the motion. We

1 will, of course, renew our motions for directed verdict.
2 I understand Your Honor's prior ruling on them.

3 I would establish, just to keep our record
4 clean, we are moving for directed verdict again as to the
5 issue of trespass. I understand Your Honor's prior
6 ruling, but I would like to renew my motion now. I don't
7 think we need to reargue it, but I just want to preserve
8 it for the record, understanding Your Honor's prior
9 ruling, not just as to trespass, but as to all issues in
10 the case.

11 THE COURT: Well, as to these issues, you
12 know, ultimately there's enough in the record that I
13 think that the jury is going to need to rule on whether
14 or not there was, in fact, a trespass or a valid
15 abandonment, either by the property owners association or
16 perhaps by some of the earlier actions in the record, but
17 that's something that the jury will need to figure out,
18 so I'm going to deny both the plaintiffs' directed
19 verdict motion and the defendants' renewed directed
20 verdict motions on the issue of trespass.

21 Anything else?

22 MR. O'KELLEY: Your Honor, I think we've gone
23 over the jury charges, and I think we're --

24 THE COURT: Have you had a chance to look at
25 them?

1 MS. TILLMAN: I have, and I did want to -- I
2 had originally submitted a jury charge on the elements of
3 trespass, and I wanted to request that that specific
4 charge be included. The elements of trespass are -- and
5 you probably --

6 THE COURT: Is it different from what I did?

7 MS. TILLMAN: I believe it is unless I'm --

8 THE COURT: Let's take a look. Voluntarily
9 entered on to the property, made entry --

10 MS. TILLMAN: I'm very sorry. I must have
11 missed it.

12 THE COURT: It looks like exactly the same
13 thing.

14 MS. TILLMAN: Yes, that is exactly the same
15 thing. I just reviewed that.

16 THE COURT: Anything else?

17 MS. TILLMAN: No, Your Honor. I have no
18 requests.

19 MR. SINKLER: I've got one, Judge. The other
20 one has been denied, but I'd like to move for a directed
21 verdict that the abandonment of the easement by the POA
22 did not affect the rights of the other owners of the lots
23 for complete abandonment of easements and the no-build
24 zone that would have required the agreement of all of the
25 lot owners.

1 MR. O'KELLEY: Your Honor, in reply, I
2 thought that was what you just ruled upon in denying your
3 directed verdict motion.

4 THE COURT: I did. It just sounds like he's
5 just restated her argument, but if you feel like it
6 didn't restate her argument, I've denied it as well.

7 All right. Anything else? All right. Well,
8 I've got 4:00. I know you will probably want 30, 45
9 minutes each, and it will take me, you know, probably
10 another 20 minutes. That's not getting it to them much
11 before 6:00, so I propose we just meet back here tomorrow
12 morning at 9:30 and do the charge and argument in the
13 morning.

14 Does that work for everybody?

15 MR. O'KELLEY: Yes, sir.

16 MS. TILLMAN: Yes, Your Honor.

17 THE COURT: Okay.

18 MR. O'KELLEY: Do we need to bring the jury
19 back in here?

20 THE COURT: Yeah. Verdict form is simply a
21 general one. One is for the plaintiff against the
22 defendant in the amount of blank actual damages or for
23 the defendant, and when y'all -- before you leave, why
24 don't you just make sure you've got all of the exhibits
25 together and they're accounted for so we don't go through

1 that headache in the morning.

2 Okay. Bring the jury back in, please.

3 (In open court, jury present.)

4 THE COURT: Folks, what we're going to do is
5 break for the day because it will probably take about an
6 hour and a half to two hours to get it to you to begin
7 your deliberations with the closing arguments, replies,
8 and then my charge. We'll come back fresh in the
9 morning.

10 So now you have heard all of the evidence,
11 but it's still too early for you to begin your
12 deliberations or discussions. Just go home and enjoy the
13 evening. Tomorrow morning you'll hear the arguments
14 about the evidence, and I will tell you what the law is
15 in this area, and then you will begin your deliberations.

16 So, if you would, be back in the jury room at
17 9:30. Our plan to start right in as soon as we get
18 everybody here. So enjoy your evening, and we'll see you
19 at 9:30 tomorrow morning.

20 (Recess taken.)

21 (January 26, 2017.)

22 (In open court, jury present.)

23 THE COURT: Welcome back, folks. We are now
24 in the final phase of the trial where we will have the
25 closing arguments of the lawyers and I will go over the

1 law with you, and then you will retire to consider what
2 your verdict will be.

3 Just to go over with you a couple of things,
4 remember the first day of the trials, I said what the
5 lawyers say is not to be considered by you as evidence.
6 They are going to get up now, review the evidence you
7 heard and some of the things that you saw that you will
8 be able to take back with you, but what they say is not
9 to be considered by you as evidence. They're simply
10 making argument to persuade you to render a verdict on
11 their client's behalf.

12 Now, our rules of procedure provide that
13 because the plaintiffs have the burden of proof they get
14 to go first and last, so you will hear from the
15 plaintiffs' lawyer first and you'll hear from the
16 defendants' lawyer and then you will hear from the
17 plaintiffs' lawyer in brief reply.

18 So, if you're ready, you may begin.

19 MS. TILLMAN: Thank you, Your Honor.

20 Remember at the beginning of this trial I
21 told you this is a simple property dispute between
22 neighbors, and it is. The bottom line is that the
23 plaintiffs, my clients, the Ralphs, owned property. That
24 property with a drainage easement that contained a
25 drainage pipe in a no-build area, and it ran through

1 their back yard and it ran through the defendants' back
2 yard and it ran through all of the back yards along that
3 particular street, Baywood Drive, and the plaintiffs
4 owned that property.

5 The defendants entered that property with a
6 backhoe. Later, they built part of their house on the
7 plaintiffs' property, and the plaintiffs did not give
8 them permission to do that. And as a result of the
9 defendants' actions, the plaintiffs have suffered harm.
10 That's it. That's it in a nutshell. That's all you need
11 to know to return a verdict in favor of the plaintiffs.

12 But since I have a little more time, I'll
13 give you more information.

14 You remember first that you heard from
15 Mr. Howard Yates. Mr. Howard Yates has, for 30 years,
16 been examining titles and plats and deeds and how they
17 affect property transfers right here in Charleston, South
18 Carolina. That's what he does. He's an expert in real
19 property law, and he told you that when the Ralphs bought
20 their house that behind it was a drainage pipe and a
21 drainage easement in a no-build area. And when they
22 bought their house, they also acquired an ownership
23 interest in that easement, and not just the part of the
24 easement that was in their back yard, but in the entire
25 easement that stretched all along through multiple lots,

1 all along Baywood Drive.

2 Mr. Yates also told you that the McLaughlins,
3 the defendants, when they purchased their house, that
4 their house referenced a different plat, made up by the
5 previous owner, that attempted unilaterally to abolish
6 the easement. Mr. Yates told you one person couldn't do
7 that. One surveyor, one owner could not just abolish the
8 easement unilaterally.

9 Mr. Yates, who is an expert in real property
10 law, told you that in order to get rid of that easement,
11 in order to abandon that easement, every single lot owner
12 who, when they purchased their house, when they got their
13 deed, every single lot owner whose lot appears on that
14 plat that was prepared by Mr. Seabrook back in 1985 when
15 he was developing Seabrook Island, every lot owner whose
16 lot is on that plat would have to agree to abandon the
17 easement in order for it to be abandoned, and that didn't
18 happen. The Ralphs, the plaintiffs, would have had to
19 have agreed to abandon the easement, and they never did.

20 Mr. Yates told you that, and he is an expert
21 in property law in South Carolina. Then you heard from
22 the Ralphs, the plaintiffs, and they told you that when
23 they bought their house back in 1997, they knew there was
24 a drainage easement, and they knew there was a no-build
25 area in the back yard, and they knew it extended all

1 along the lot and they knew it benefitted everybody along
2 that street.

3 And they said they understood they couldn't
4 add on to their house because their house was subject to
5 a no-build area, and the Ralphs told you that from 1997,
6 all the way up until 2008 when the defendants began their
7 construction, it would rain sometimes, and in their back
8 yard, the Ralphs said they got puddles. Sometimes after
9 a heavy rain they would get big puddles, but those
10 puddles drained, and the reason they drained was because
11 of the drainage easement and the drainage pipe in their
12 back yard.

13 The Ralphs also told you that after the
14 defendants dug up the drainage pipe, the portion of the
15 drainage pipe that was in the defendants' back yard, that
16 the Ralphs' property no longer drained the way it used
17 to, and where there was puddles after the rain there were
18 now pools of water.

19 You saw pictures of Mrs. Ralph standing in
20 one of those pools of water that was eight inches deep.
21 The Ralphs testified that did not happen before the
22 McLaughlins' construction, before the McLaughlins dug up
23 their portion of the drainage pipe and put their house in
24 the no-build area. The Ralphs also testified their yard
25 doesn't drain. Not only do they get pools of water

1 there, it doesn't go away. It doesn't drain. It takes
2 days to drain where it used to drain quicker.

3 You heard from Mr. Robert George.

4 Mr. George, every day, at his desk, at work, for the past
5 30 years, deals with storm water drainage issues across
6 the Lowcountry. The man knows how to handle heavy rains.
7 He designed storm water drainage systems for residents,
8 for developments, for commercial properties, and he told
9 you that he had gone to the Ralphs' property and he told
10 you that he examined the maps. He does the scientific
11 measurements, and his conclusion was that the Ralphs'
12 property doesn't drain anymore because the portion of the
13 pipe, the drainage pipe, that was on the McLaughlins'
14 property is gone.

15 Mr. George also told you that he can't come
16 up with the solution for that problem, even though he is
17 an expert engineer, and what he does is storm water
18 drainage. He told you that he's tried, and he cannot
19 come up with a way to make the Ralphs' property drain the
20 way it used to before the McLaughlins' construction.

21 And even the defendants' witness from the
22 POA, Mr. Wells, said that Mr. George knows his stuff. He
23 knows what he's talking about. If he couldn't find a way
24 to drain the property, and the defendants could have
25 brought in an expert engineer of their own, but they

1 didn't.

2 Last, after you heard from Mr. George, you
3 heard from Mr. Nick Thompson, Cornelius. Mr. Nick
4 Thompson told you in his 40-year career, he's done 8,000
5 or 9,000 residential real estate appraisals here in
6 Charleston, South Carolina. He also knows his stuff. He
7 told you that he looked at the Ralphs' property value,
8 and in his attempt to determine a value to appraise the
9 value of the Ralphs' property, he's attempting to find a
10 comparable sale, and he said that the trick is that in
11 South Carolina, if a seller wants to sell property, they
12 have to disclose defects in their property. It's the
13 law.

14 Mr. Thompson told you that he couldn't
15 find -- even though he called real estate appraisers
16 across South Carolina, he couldn't find a comparable
17 sale, and Mr. Thompson told you that he thinks one of the
18 reasons that might be is because the Ralphs' property
19 might not be sellable. Mr. Thompson also told you that
20 if it were sellable, it would attract the sort of buyer
21 who was looking for a deal and looking for a discount,
22 and that's the sort of buyer that might take on the
23 Ralph's property, and Mr. Thompson testified that that
24 kind of deal could be 50 to 60 percent off what would be
25 the market value of the property without the drainage

1 problem on it.

2 Mr. and Mrs. Ralph told you that in their
3 estimation, without the drainage problem that was caused
4 by the McLaughlins' actions, without that problem they
5 thought their house would be worth about \$770,000, their
6 lot would be worth \$770,000 without the drainage problem.
7 Mr. McLaughlin testified that it's possible his house
8 could be worth a million up. This is Seabrook Island.

9 Mr. Thompson said, though, that with the
10 drainage problem that they would have to disclose in the
11 course of the sale that their property might be devalued
12 50 to 60 percent, and, last, you heard from Mr.
13 McLaughlin himself, the defendant. Mr. McLaughlin told
14 you that he's a nice guy. He does good things in the
15 world, but in this particular instance, he was in such a
16 hurry to build his house that he went ahead and dug up a
17 pipe that was going to damage his neighbors.

18 He went ahead and authorized his construction
19 crew to build part of his house in a no-build area that
20 he knew, by doing so, was going to damage his neighbors,
21 but he did it anyway, and so we're asking you to award a
22 verdict in favor of the plaintiffs, and we're asking you
23 to award them damages to compensate them for the effects
24 of the defendants' actions.

25 You've heard that their property has been

1 devalued from an expert witness, Mr. Thompson. Again,
2 the defendants could have put up their own expert real
3 estate appraiser, but they didn't. It's a simple
4 property dispute. The defendants have caused damage to
5 the plaintiffs' property, and they ought to be made to
6 pay for the damage that they have done.

7 Thank you.

8 MR. O'KELLEY: Thank you for your due
9 diligence this week. As Judge Jefferson said on Monday,
10 we can't do this without you. My clients appreciate you
11 being here. They know what an inconvenience this is to
12 you and your families. We agree with Ms. Tillman: This
13 case does involve a dispute between neighbors. That's
14 all we agree with.

15 The remainder of the case as characterized by
16 Ms. Tillman and her clients could not be more different
17 from my clients' perspective. It's been my pleasure to
18 represent the McLaughlins in this matter. I've been
19 involved in this case since 2012.

20 Mr. McLaughlin testified that for his adult
21 working career, he's been in the nonprofit world. He
22 told you he even considered being a monk at one point.
23 Mrs. McLaughlin is a retired teacher. They put their
24 life into public service.

25 The evidence presented to you, and it's

1 uncontroverted, is my clients did buy the property on
2 Seabrook back in 2002. They purchased this property from
3 the Gantzes. The Gantzes, when they sold this property,
4 sold it according to the plat. It's the plat that you'll
5 take back into the jury room, the plat from Forsberg
6 Engineering. It's the plat that shows the abandonment of
7 the easement by the Seabrook Island Property Owners
8 Association and the abandonment of the no-build area on
9 their lot. And that's important, because you didn't hear
10 the plaintiffs' counsel mention the permission that my
11 clients had to build because they know it's fatal to
12 their case.

13 The plat clearly shows that there had been an
14 effort to remove the easement from the Gantzes' property
15 which my clients eventually bought. There are minutes
16 from the 2002 May meeting of the Seabrook Island Property
17 Owners Association that show the intent was always there
18 to abandon the easement. You heard Mr. Wells testify
19 yesterday that the intent was there to abandon it, but,
20 more importantly, you heard from Bob George, the expert
21 who has been paid \$17,000 by the plaintiffs.

22 You heard him say, well, the easement had
23 been abandoned by the POA. My clients', of course, rely
24 on the representation of their sellers and the
25 representation of the Seabrook Island Property Owners

1 Association that they could build. Mr. McLaughlin
2 testified, and you'll remember this, that early on, soon
3 after he bought the property, he went over and introduced
4 himself to Mr. Ralph.

5 He knew the Ralphs had lived next door for a
6 long time, and you heard Mr. Ralph testify that they've
7 owned the property since 1997. You heard Mrs. Ralph
8 testify they've owned the property since 1997. You heard
9 Mr. Ralph testify that they lived in what was, for all
10 intents and purposes, a jungle. They were down on
11 Baywood, down at the end for a long time.

12 In 2006 and 2007, my clients testified they
13 began working with their architect, Whitney Powers, to
14 design their house, to put their house on the lot, to go
15 through the ARB, the architectural review board process
16 with Seabrook Island, which my clients testified is a
17 long, arduous process where they make you jump through
18 lots of hoops. Mr. George sat right there and testified
19 that he's been dealing with ARBs all over the coast of
20 South Carolina for years, and he acknowledged that it's a
21 hard process.

22 He's been hired by ARBs. He was hired by the
23 POA in this matter. He's testified he's worked for the
24 POA for years. You heard Mr. John Wells yesterday. He's
25 qualified and the POA relied on him for years.

1 There are two letters that we submitted as
2 evidence without any objection, a letter from August 18,
3 2006 from Coy Foster, who is the ARB administrator for
4 Seabrook Island, and the letter from June 19, 2007 from
5 John Thompson who is the head of the POA. Those letters
6 confirm what the McLaughlins relied on, that the easement
7 had been abandoned, they could remove the pipe, they
8 could build in the no-build area.

9 And, of course, you heard from my clients
10 that the ARD did make them jump through hoops. They
11 required that their house be built on a certain area of
12 their lot to save an oak tree. They required that the
13 McLaughlins install three more drains on their property,
14 three drains that we asked Mr. George about, and he
15 testified, under oath, that he knew nothing about them.
16 Wouldn't it be important to look at my clients' property
17 to figure out what the drainage is?

18 All Mr. George told you was that he had put a
19 lot of drawings on Plaintiff's Exhibit 6, which he wasn't
20 able to tell you where it's from or if it correctly shows
21 what's built out on the property, and, again, this is a
22 man who has been paid \$17,000 by the Ralphs.

23 And, of course, you got to look and see who
24 the Ralphs are. Ms. Tillman referenced my clients, so
25 I'll explain to you a little something about the Ralphs.

1 Mr. Ralph is a decorated United States Marine pilot. He
2 flew 340 missions in Vietnam. What he described on the
3 stand was harrowing. What he did in Vietnam was amazing,
4 and here he is, coming into court today complaining about
5 eight inches of water in his yard.

6 Mrs. Ralph, who is retired from the retail
7 work, still works some, keeps her hand in the retail
8 business, testified that she's been very involved with
9 the POA since 1997. You'll remember we pulled out her
10 deposition and asked her about prior testimony, her being
11 involved with the POA, and she said she was involved.
12 They are, for all in intents and purposes, a retired
13 couple with nothing better to do.

14 The testimony is also uncontroverted that my
15 clients met with the Ralphs and a bunch of other
16 neighbors in 2008, and this is important. We're talking
17 about the September meeting in 2008. Mr. George showed
18 up to discuss the potential fix for drainage along
19 Baywood Drive, and why is this important? In September
20 2008, my clients hadn't taken out the first tree limb,
21 hadn't disturbed the first piece of dirt, yet the Ralphs
22 were complaining about water on their property. You
23 heard Mr. George's testimony about Seabrook being a
24 barrier island, dunes and troughs, dunes and troughs.

25 He said all the barrier islands from St.

1 Simons Island, Georgia to North Carolina have similar
2 topography, similar drainage issues, and in 2008, the
3 Ralphs knew they had a drainage problem. They also knew
4 in 2008 that the only reason the drainage was even
5 working on their property was because the pipes were
6 actually broken. These pipes were put in to drain
7 Baywood Drive, taking water from Baywood Drive, back
8 along between lots 21 and 22. You'll remember that
9 testimony, and then turning and emptying out on the golf
10 course.

11 Mr. George, to his credit, grabbed two Dixie
12 cups, two little cups like this, put them together, put
13 some paper towels around them, and showed you the way the
14 joint had failed, which actually provided a benefit to
15 the Ralphs. It was an unintended benefit, but it was a
16 benefit nonetheless. The only reason their lot drained
17 at all was because the pipe was essentially broken.

18 In the meeting in 2008, September of 2008,
19 you'll remember my client testified at the end of that
20 meeting, he stuck out his hand, shook Mr. Ralph's hand,
21 and then he and a bunch of folks went over to their lot.
22 My clients had agreed to give the property owners
23 association a new easement, and the property owners
24 association agreed. Why would they need a new easement
25 if they had a valid one? They wouldn't. They thought

1 they had abandoned it. Mr. Wells testified to that.
2 Mr. George, of all people, testified to that. My clients
3 testified to that.

4 So the fix was ready. Mr. George now, for
5 some reason, says there's no fix available. Got together
6 with everyone and decided what they could do, and, lo and
7 behold, the Ralphs objected. Back in 2008, the testimony
8 was that the Ralphs discussed this matter. Mr. Ralph's
9 brother is a lawyer in Philadelphia, and he told him,
10 Don't do it. The Ralphs didn't want anyone building next
11 to their jungle paradise on Baywood Road. There was a
12 fix. It was stopped, not by my clients, my clients who
13 relied on the POA exclusively to get their house built;
14 the fix was stopped by the Ralphs.

15 You heard my clients testify that they did
16 have a construction loan and they were eager to build and
17 they started building in 2008 when the POA, the same day
18 they dug up the pipe, had the temerity to sue my clients,
19 sued them in this very court, sued them with an affidavit
20 that the plaintiffs want you to read, an affidavit from
21 John Thompson, who is head of the property owners
22 association, and what did Mr. Thompson say in that
23 affidavit?

24 And you'll have it back in the jury room. He
25 said, We've abandoned the easement. He said, We've

1 approved their house plans, but we want them to stop
2 because there might be some irreparable harm, so stop.
3 Stop building. Three days later, that lawsuit was
4 withdrawn. You'll see that withdrawal by an attorney
5 named David Wheeler as part of the exhibits. You'll be
6 able to look at that, and the case was ultimately
7 dismissed. And you heard my clients testify that they
8 went ahead and they built their house.

9 They built their house according to the POA's
10 approval, and they built their house with three
11 additional storm drains that the POA required them to put
12 in. Mr. George didn't testify about that and those
13 effects at all. We don't know why. We're left to wonder
14 why he didn't testify about it. The Ralphs have known
15 that the pipe has been removed under their property, and
16 I had to do some calculations, since December 8, 2008:
17 Eight years, one month, eighteen days. The testimony is
18 that the Ralphs have done nothing to fix their lot in
19 eight years, one month, and eighteen days.

20 Judge Young will be charging you on the law
21 shortly. One of the things he'll be charging you on is
22 something called mitigation of damages. During those
23 eight years, one month, and eighteen days, the Ralphs
24 could have and should have taken some action to mitigate
25 the damages. We didn't hear a word about that, not one

1 word.

2 The Ralphs have valued their property at
3 \$775,000, which is well above the \$284,000 they paid for
4 this lot and house back in 1997, and that's consistent
5 with their appraiser, Mr. Thompson, whose report has
6 never been finished and whose report was excluded from
7 evidence. His report you can't even consider.

8 Mr. Thompson sat on that stand and gave wild
9 swings and speculation. I think what he said was, well,
10 I think the property has been devalued 10 percent; oh,
11 maybe 60 percent; oh, I talked to somebody somewhere else
12 who told me this is what happened. No evidence that the
13 Ralphs had tried to sell their property, no evidence that
14 the Ralphs have a true appraisal that tells you what a
15 true diminution in value it is, and the only cause of
16 action that is pending in front of you, ladies and
17 gentlemen, is trespass, and the judge is going to explain
18 the law on trespass.

19 One of the things you get to consider is
20 diminution of value, and, frankly, we don't think the
21 Ralphs have proven one dime of diminution of value, so
22 it's impossible to even figure out how to value this
23 case.

24 You didn't hear one word from my client, Mr.
25 McLaughlin, that his house was worth \$1 million. You

1 didn't hear that. You heard from the Ralphs there is a
2 house down the street for \$1 million. What does that
3 have to do with this case? We contend absolutely
4 nothing.

5 Yesterday we heard from Mr. Wells, and
6 remember Mr. Wells testified that he's the boots on the
7 ground, or was the boots on the ground, the go-to guy at
8 Seabrook Island for years. Mr. McLaughlin called him the
9 roads and drainage guy. Mr. Wells testified that after
10 he retired as an electrical engineer, he moved to
11 Seabrook, got the job, and he was the go-to guy, and he
12 testified, We gave back the easement. We gave back those
13 pipes. We couldn't get to them. We didn't want them
14 anymore.

15 He also testified that he knew the Gantzes,
16 the people who sold the property to my clients, also
17 said, We'll take the easement back, and the POA was
18 thrilled because they didn't have to deal with it
19 anymore, but you also heard from Mr. Wells, and this is
20 consistent with the 2007 letter that you'll have back in
21 the jury room with you. What you heard from Mr. Wells
22 was that the POA had put in alternate drainage.

23 Mr. Wells sat on the stand and he took his
24 finger and he ran it from the right side of Exhibit No. 2
25 to the left side of Exhibit No. 2 to show you all what

1 the POA had done to fix drainage on Baywood Drive. Did
2 the plaintiffs bring in somebody to refute that
3 testimony? No, they didn't. In fact, Judge Young asked
4 them, Any reply? And Ms. Tillman said no, because they
5 can't. It's unrefutable.

6 Mr. Wells also testified, Mr. McLaughlin also
7 testified, the Ralphs also testified, and Mr. George
8 testified that Baywood Drive is low. It's got flooding,
9 flooding that's exacerbated by a golf course that
10 Mr. George told you about. Mr. George held up his pad.
11 He demonstrated a drop of water. He discussed shag
12 carpeting. He discussed coefficients of drainage, all
13 sorts of scientific things that he is probably the most
14 qualified person in South Carolina to talk about. He's
15 been doing it for years, but yet he didn't say that my
16 clients caused these problems.

17 He said there was a pipe that had failed, and
18 there was benefit from the pipes failing. He's been paid
19 \$17,000, and I keep bringing that up, and he can't come
20 up with a fix, a fix he knew in 2008, so he gets \$17,000
21 from the Ralphs and says, oh, there's no fix. I'll let
22 you decide what you want to do with that.

23 Again, the only cause of action pending
24 against my clients is trespass, trespass against the
25 Ralphs. Mr. Ralph, a decorated pilot, he sees my client

1 at the gym and called my client a son of a bitch. The
2 Ralphs had constant use of their property. There's been
3 no testimony that they somehow couldn't get there. The
4 Ralphs have always had problems with their property, and
5 my clients have done everything they were supposed to do,
6 according to the POA and the ARB. The Ralphs have done
7 nothing to fix their situation. Remember that. And
8 remember also Mrs. Ralph doesn't sue people.

9 Thank you again, ladies and gentlemen. We're
10 confident once you review all these exhibits and go back
11 over the testimony you'll return a verdict in my clients'
12 favor.

13 THE COURT: Reply?

14 MS. TILLMAN: Yes, Your Honor.

15 Well, now, speaking of the \$17,000 that the
16 plaintiffs paid to Mr. George, the reason they paid him
17 that money was to try to come up with a fix. They were
18 trying to somehow mitigate their damages, but Mr. George,
19 who by the defense's own admission is an expert in storm
20 water drainage in the Lowcountry of South Carolina, he
21 could not come up with a fix for the drainage problem on
22 the plaintiffs' property that the defendants had caused,
23 even after the plaintiffs paid him \$17,000, trying to
24 come up with a fix. It's not their fault that an
25 engineer who deals with storm water drainage couldn't

1 find a fix.

2 Mr. O'Kelley also makes much of how the
3 defendants relied on the POA, claiming that they had
4 permission from the POA to tear up the pipe and to build
5 their house in a no-build area. Listen, people will say
6 anything to save their own skin, but documents speak
7 louder than words.

8 You'll see in the exhibits in a lawsuit filed
9 by the POA as the plaintiff against the McLaughlins as
10 defendants asking for injunctive relief to stop the
11 defendants from their construction. In that lawsuit, the
12 POA, which Mr. McLaughlin would have you believe had
13 given him approval to build, the POA said that they're
14 seeking an order to stop the McLaughlins' actions because
15 the demolition activity that was on the property are
16 without authorization from the Seabrook Island Property
17 Owners Association.

18 Those are the words in the document. It's
19 hard to imagine how the defendants could have construed
20 that they had permission to build in light of that, and
21 I'll leave you with an analogy. Imagine that in the
22 plaintiffs' back yard and in the defendants' back yard
23 and along all the back yards of this block of Baywood
24 Drive instead of a drainage pipe, imagine that there was
25 a power line and that that power line supplied power to

1 all of the people who lived on that block and they all
2 benefitted from it.

3 But imagine that one of those owners decided
4 that he could hook up his power line in a different way
5 and cut off the power line and build his house on it.
6 And imagine that all of the property owners objected and
7 that the subdivision objected and that everybody said,
8 No, no. If you do this, we're going to lose power. This
9 is going to harm us.

10 And imagine that they were all working
11 together to find out a different way to hook up the power
12 lines so they would be okay, everybody would still have
13 power, but imagine the property owner got tired of that,
14 impatient with that, and brought in a backhoe and dug up
15 the power line and everybody along that power line was
16 powerless.

17 We ask you again to return a verdict in favor
18 of the plaintiffs, not only for the damage, the
19 diminution in value of their property, 50 to 60 percent
20 as Mr. Thompson testified, but also for the \$17,000 that
21 they paid to Mr. George in an effort to come up with some
22 sort of solution to the drainage problem in their back
23 yard that was caused by the defendants' construction.

24 Thank you.

25 THE COURT: All right. Well, folks, you will

1 remember that at the beginning of the trial I told you
2 you have duties to perform. I have duties to perform as
3 the trial judge. Part of my duties are to preside over
4 the trial, and I also do things like, you know, rule on
5 the admissibility of evidence that you've heard:

6 You are only to consider the evidence that
7 you've heard in this courtroom during this trial.
8 Evidence is, again, people testifying to what they've
9 heard, touched, felt, smelt. Experts were allowed to
10 give their opinions about certain things, but that,
11 documents, photographs, that is the only evidence that
12 you are allowed to consider in your deliberations.

13 Now, I also have the additional duty now to
14 charge you on the law that applies to this case. It's
15 your duty as jurors to accept this law and apply the law
16 as I now state it to you, and if you think you have some
17 idea as to what the law is or what the law ought to be
18 and it does not agree with what I now charge you, you
19 are, under the oath that you took, to forget that
20 misconception and apply only the law that I now charge
21 you.

22 Again, you, as the jurors, are the judges of
23 the facts. Where there is a dispute on the facts, that
24 is your province. I, as the judge, am not allowed to
25 give you an opinion about my opinion about the facts of

1 this case or make any statements during the trial to give
2 you my opinion about this case. The law does not allow
3 me to have an opinion about the facts of the case. That
4 is solely a matter for you to determine, and it is your
5 duty as jurors to determine the effect, the value, the
6 weight, and the truth of the evidence that has been
7 presented throughout this trial.

8 As jurors, you must determine the credibility
9 of the witnesses who testified in front of you this week.
10 Credibility simply means believability, and it's your
11 duty as jurors to analyze and evaluate the evidence and
12 determine what evidence convinces you of its truth. In
13 determining the believability of witnesses who testified
14 in the trial, you can believe one witness over several
15 witnesses, or you can believe several witnesses over one
16 witness. You can believe the testimony of a witness in
17 its entirety or you can reject the testimony of a witness
18 in its entirety, and you may also believe part of the
19 witness testimony, and you can reject part of the
20 testimony of a witness, and if you reject part of it, you
21 can still accept the remaining part of a witness's
22 testimony.

23 You can consider things like has any witness
24 exhibited to you any interest, bias, prejudice, or motive
25 in this case, and you can consider things like appearance

1 and demeanor of a witness while they were on the witness
2 stand. You're not bound to decide this case based on the
3 number of witnesses that a side produces. The fact that
4 the testimony is not contradicted does not necessarily
5 render it undisputed. You may consider the inherent
6 probability of testimony and credibility of witnesses.

7 Uncontradicted testimony is not binding on
8 you. You have the right to consider it in light of all
9 of the circumstances and give it such weight, if any, as
10 you think it deserves. I explained to you at the
11 beginning of the trial that the plaintiff has the burden
12 of proof in a civil case like this, and the burden of
13 proof in this type of case is what we call a
14 preponderance of the evidence, which simply also means
15 the greater weight of the evidence.

16 It's evidence that when viewed as a whole
17 shows you that that a fact that is sought to be proved is
18 more likely true than not. Again, I use the example of
19 those scales, and when the trial began, those scales were
20 even. After all of the evidence was presented, if the
21 scales remained even or if you think they tip even
22 slightly in favor of the defendant, then the plaintiff
23 has failed to meet the burden of proof and is not
24 entitled to recover in this case. On the other hand, if
25 those the scales tip even slightly in favor of the

1 plaintiff, then the plaintiff has met the burden of
2 proof, and you should return a verdict for the plaintiff.

3 A preponderance of the evidence is not
4 determined, again, by the number of witnesses that a side
5 produces. Instead, it is determined by the greater
6 weight of all of the evidence. Now, there is, generally
7 speaking, two types of evidence that you hear during the
8 trial; that is direct evidence and circumstantial
9 evidence, and direct evidence directly proves the
10 existence of a fact. It does not require deduction.
11 Circumstantial evidence is proof of a chain of facts and
12 circumstances that indicate the existence of a fact.

13 I also explained to you that we don't
14 ordinarily allow witnesses to give their opinion about
15 evidence in a case, but we do make an exception for
16 expert witnesses, and we had several of those testify.
17 Those are people who are experts because of experience or
18 education or specialized training in some field. We
19 allow them to give their opinion and state the reasons
20 for their opinion.

21 You can give an expert's opinion and their
22 testimony as much or as little weight as you think it
23 deserves, and if you don't think it's based on sufficient
24 education or experience or you conclude that the expert's
25 opinions are not sound or they're outweighed by other

1 evidence, you can disregard the opinion entirely. In
2 other words, you're not compelled to blindly accept an
3 expert's opinion. You have the right to consider that
4 testimony in light of all of the circumstances and give
5 it such weight, if any, that you think it is entitled to.

6 Now, an easement is an interest in land that
7 is owned by another person, and it consists of the right
8 to use or control the land or an area above or below it
9 for a specific purpose. A deed is a written instrument
10 by which land is conveyed. A deed describes the land
11 with reference to a plat or a map, and such map or plat
12 becomes part of the deed.

13 The purchaser of a land, with reference to
14 such plats or maps, acquires every easement, privilege,
15 and advantage that is shown on such plat or map. Such an
16 easement is deemed part of the property to which the
17 purchaser is entitled and cannot be divested from the
18 purchaser except by due process of law.

19 The law imputes to a purchaser who proposes
20 to acquire title to real estate notice of the recitals
21 contained in any properly recorded instrument of writing
22 which forms a link in the chain of title to the property
23 proposed to be acquired.

24 The fact that a new plat or map of the
25 property in question is made does not destroy the

1 easement that's previously created. An easement may be
2 lost or abandoned, and in determining such question, the
3 intention of the owner to abandon such easement is the
4 primary inquiry. An owner's intention to abandon an
5 easement need not appear by express declaration but may
6 be inferred by all of the facts and circumstances of the
7 case. It may be inferred from the acts and conduct of
8 the owner and the nature and situation of the property
9 and where there appears to be some clear and unmistakable
10 affirmative act or series of acts clearly indicating
11 either a present intent to relinquish the easement or
12 purpose inconsistent with its further existence. The
13 burden to prove abandonment is on the party claiming
14 abandonment, and such proof must be shown by clear and
15 unequivocal evidence.

16 Now, the plaintiff claims that defendant
17 trespassed on the plaintiffs' property. In order to
18 recover for trespass, the plaintiff must prove by a
19 preponderance or a greater weight of the evidence that
20 the plaintiff was in legal possession of the property,
21 that the defendant, or the defendants' agent, voluntarily
22 entered the plaintiffs' property or committed an
23 intentional physical interference with the plaintiffs'
24 present right to possession or to possess the property
25 and that the entry or interference was made without the

1 plaintiffs' permission.

2 The entry or interference by the defendant
3 must be intentional. Intent is proven by showing that
4 the defendant acted voluntarily and knew or should have
5 known that the result would follow the act. Motive or
6 malice on the part of the defendant is not required. The
7 defendant does not have to prove intending damage
8 consequences, but must only intend the act which
9 constituted the unwarranted entry on the plaintiffs'
10 property or the interference with the plaintiffs' right
11 of possession.

12 If you find that the defendant committed an
13 unauthorized act onto the plaintiffs' property or
14 intentional interference with the plaintiffs' right of
15 possession of the property, you must then determine the
16 damages that the plaintiff suffered as a direct and
17 proximate result of the defendants' acts.

18 Now, there's nominal damages that you can
19 consider, and there's actual damages. A plaintiff is
20 entitled to at least nominal damages if you find the
21 defendant committed a trespass. Nominal damages may be a
22 token sum, such as a cent or a dollar; however, you may
23 also find that the defendant, or the plaintiff, suffered
24 actual damages, and these would include depreciation,
25 injury, or damage to the property or loss of use or

1 enjoyment of the property. The amount of damages for
2 injury or damage to the property would be the difference
3 between the fair market value of the property immediately
4 before the trespass and the value of the property
5 immediately after the trespass.

6 Fair market value is the price that a willing
7 buyer would pay and a willing seller would take in the
8 ordinary course of business if a sale were not required.
9 Damages for loss of use or enjoyment of the property may
10 include recovery for the loss of value of the use and
11 enjoyment of the property during the time that the injury
12 to the property exists, and this should be measured by
13 the loss of use or enjoyment an ordinary person, acting
14 reasonably under the same or similar circumstances, would
15 suffer. The plaintiff is entitled to recover for any
16 other actual damages which have been proved by the
17 greater weight of the evidence to have been proximately
18 caused as a result of the trespass.

19 Now, the defendants claim the plaintiffs
20 failed to mitigate their damages. The defendant must
21 prove by a preponderance or a greater weight of the
22 evidence that the plaintiffs could have taken action to
23 avoid or reduce those damages. A party who has suffered
24 injury or damage from the actionable conduct of another
25 is under a duty to make all reasonable efforts to

1 minimize the damages incurred. To the extent that he
2 could have minimized these damages and failed to do so,
3 he is not entitled to recover from another party. In
4 other words, one cannot recover any damages that might
5 have been avoided by the use of reasonable care and
6 diligence.

7 A plaintiff's failure to mitigate damages
8 allows the defendant to avoid only those damages that
9 reasonably could have been avoided by the plaintiff. An
10 injured party is required to do that which an ordinary,
11 prudent person would do under similar circumstances to
12 mitigate his damages; however, the injured party is not
13 required to unreasonably exert himself or incur
14 substantial expenses in an effort to mitigate damages.

15 Now, your verdict may not be based on
16 sympathy, passion, prejudice, or emotion or on some other
17 consideration not found in the record, and, of course,
18 your verdict must be unanimous. In other words, all 12
19 of you must agree on what the verdict is.

20 Now, there are two possible verdicts in this
21 case? There is a verdict for the plaintiff and for the
22 defendant. Foreman, this is where you actually have a
23 job other than to conduct deliberations, which you will
24 begin in a moment, but the verdict form has those two
25 possible verdicts, and there is no significance to the

1 fact that I put one over the other. You have to put
2 something first, and the first possible verdict says:
3 We, the jury, find for the plaintiff against the
4 defendant in the amount of blank actual damages.

5 So if you believe the plaintiff's met his
6 burden of proof and is entitled to damages, you write
7 that dollar amount there, check that little box, sign it,
8 date it, let the bailiffs know when you've reached a
9 verdict. On the other hand, if you feel like the
10 plaintiffs have not met their burden of proof and are not
11 entitled to an award of money damages, check that second
12 block that says, We, the jury, find for the defendant,
13 sign it, date it, let the bailiffs know you've reached a
14 verdict.

15 Now, we send these jury charges back with you
16 and the verdict form back with you as well as the
17 evidence that came in, but I have to send you back first,
18 give the lawyers the opportunity to tell me if I misspoke
19 during my jury charge. Once we go through that
20 formality, if I don't have to bring you back in to
21 recharge you, I'll send this evidence, the verdict form,
22 and the jury charges back with the bailiff, and the
23 bailiff will tell you you can begin your deliberations.

24 Take as long as you need. If you need to
25 take a smoke break or anything, you have to cease

1 deliberations. You can only deliberate when all of you
2 are in the jury room. We've ordered you lunch. They
3 usually tell them to be here around about 12:00. It will
4 be here in about an hour, roughly.

5 You can eat during your deliberations, or you
6 can stop if you want while you're eating. Totally up to
7 you, but once you have reached a verdict, a unanimous
8 verdict, you let the bailiffs know that you have reached
9 that verdict.

10 So go back to the jury room just a minute,
11 and don't begin your deliberations until I send word back
12 with the bailiff that it's okay to begin.

13 (In open court, jury not present.)

14 THE COURT: Is there anything from the
15 plaintiffs?

16 MS. TILLMAN: No, Your Honor.

17 THE COURT: From the defense?

18 MR. O'KELLEY: Not about the charge but a
19 matter of housekeeping, Your Honor, you need to do
20 something with the alternative jurors.

21 THE COURT: Yeah, I'll be discharging them in
22 a minute. So got all of these. Everything is together
23 on the evidence?

24 MS. TILLMAN: May I peek one more time?

25 THE COURT: Sure.

1 Let them know that they can begin their
2 deliberations, and I'm going to discharge the alternates.

3 (At 10:49, the jury retired to deliberate and
4 the alternate jurors were discharged.)

5 A F T E R N O O N S E S S I O N

6 (3:59 p.m., in open court, jury not present.)

7 THE COURT: Well, they're locked up right
8 now, so I'll bring them in and give them an Allen charge
9 and see if that helps.

10 (In open court, jury present.)

11 THE COURT: I got your note, and it tells me
12 you haven't been able to reach a unanimous verdict, and
13 what I would like to do is just talk with you for a
14 minute and give you a couple things to think about.

15 Obviously, this isn't the first time this has
16 ever happened. It's not going to be the last time this
17 ever happened. When we get 12 people together, I
18 sometimes say we can't get 12 people to agree that the
19 sun rises in the east sometimes, so to listen to some of
20 the cases that we hear and expect you all to come up with
21 a unanimous decision I think is asking a lot sometimes.
22 Some cases are easy; some cases are hard. This one you
23 all are obviously struggling with, so it's a hard one
24 just by definition.

25 When you come to an impasse like this, what I

1 like to ask juries to do is go back in and give it
2 another shot, thinking about a couple of things. You
3 have -- I don't know what the breakdown is, and I don't
4 know want to know what the breakdown is numerically. I
5 speak in terms of minority and majority, just because
6 that's easier, but I'm not picking on one side or the
7 other. I just want to say sometimes it's easier to put
8 yourself in the other fellow's shoes, and so if you're in
9 the majority, perhaps it's good to put yourself in the
10 minority's shoes and say, you know, does their side have
11 merit? If you're in the minority, maybe put yourself in
12 the majority's shoes and say, Does their side have merit?

13 That's sometimes a helpful way to resolve
14 these things. It's good to listen to what the other
15 person's saying, give everybody the opportunity to speak.
16 Y'all have been at it for a long time now, and I figure
17 you probably have been doing that, but here's the deal:
18 If y'all can't come up with a unanimous verdict, then I
19 have to declare a mistrial, and we go out and get another
20 jury and come back another day and try it.

21 I don't have any reason in the world to think
22 that I'm going to find any 12 better people than you 12
23 folks to come in, listen to the exact same evidence,
24 exact same law, and try to come up with a decision. So
25 we've got you here. I would like to ask you to go back,

1 try to come up with a unanimous verdict within a
2 reasonable period of time, if you can't come with it,
3 well, then, you let me know, but if you could go back in
4 and just think about some of the things that I've just
5 said and try to give it one more shot, that's all we can
6 do.

7 So I would ask that you go back and try to
8 give it one more attempt and try to think about some of
9 those things I asked you to think about, and let me know
10 what your decision is. All right? Thank you.

11 (At 4:03 p.m., jury resumes deliberations.)

12 (Court's Exhibit Nos. 2 and 3 were marked for
13 identification.)

14 (In open court, jury not present.)

15 THE COURT: All right. We got everybody
16 here? I understand we have a verdict, so bring the jury
17 in.

18 (At 5:22 p.m., in open court, jury present.)

19 THE COURT: All right. Mr. Foreman, I
20 understand the jury has reached a verdict?

21 THE FOREPERSON: We have, Your Honor.

22 THE COURT: Is it unanimous?

23 THE FOREPERSON: It is, Your Honor.

24 THE COURT: Will you hand it to the bailiff,
25 please. All right.

1 The verdict is: We, the jury, find for the
2 plaintiff against the defendant in the amount of \$1,000
3 actual nominal damages; is that correct?

4 THE FOREPERSON: That is correct.

5 THE COURT: If that is, in fact, your
6 verdict, will you please indicate that by raising your
7 right hand? All right. Let the record reflect all the
8 jurors have raised their right hand. You can put your
9 hands down. Thank you. Be seated, folks.

10 I won't take up a long time. I want to thank
11 you for your service. Obviously, these cases, some of
12 them, can be real difficult even though, you know, not
13 the -- when you first get jury service, you probably
14 wonder, Am I going to be doing some big murder case or
15 whatever? But sometimes it's disputes like this that
16 just cannot be resolved, and I think you can understand
17 after listening to the testimony for the week, you know,
18 why this is a difficult case.

19 It's a hard one to figure out, and, you know,
20 all we can do is ask that you come in, listen to the
21 evidence, pay attention, understand this is serious for
22 both of these folks, take the law that I applied to you
23 and go back in and try to help us come to a decision, and
24 that you've done.

25 My job is to, you know, make sure the trial

1 goes, and I told you about procedures and evidence, but I
2 also look around and make sure everybody is paying
3 attention and nobody is nodding off, and that was never
4 an issue in this case. Everybody was paying attention
5 the entire time, and, obviously, everyone took their
6 duties very seriously. So you have done your job, done
7 your duty, and I want to thank you for your service.

8 You are finished for the week, and you don't
9 have to come back. You don't have to call. You're
10 disqualified for service for the rest of the year, and
11 you might remember from Monday morning, you will have an
12 exemption for an additional three years, but you don't
13 have to exercise that exemption.

14 My hope is that you enjoy your jury service
15 enough that you look forward to doing it some day, maybe
16 not any time soon, but my experience is most people, when
17 they get that notice, they go, Oh, man. I'd like to do
18 it but just not this week. It's not a good week.

19 Then when they get in, especially if they get
20 in on a jury, then they get involved and they get
21 invested. This is your government at work, you know?
22 Everybody wants to complain about the government and the
23 way the things are in the world. In the United States,
24 we have three branches of government: Legislative,
25 executive, and judicial. This is the judicial branch.

1 As I told you, you were judges this week, just a
2 different type than I am, and so this is your government.
3 It's working, and it means that 12 people have to show
4 up, do their duty.

5 It's a responsibility of citizenship to serve
6 on a jury. It's a duty, but it's also a privilege to
7 serve on a jury, and I hope that you'll look at this way
8 because not everybody around the world has the right to
9 do this, and when people have disputes, they don't get
10 this right all over the world. So this is really
11 something special you did and participated in this week,
12 so I want to thank you sincerely on behalf of the parties
13 and the citizens of South Carolina for doing that this
14 week and showing up.

15 Now, all week long, I've told you you can't
16 talk to anybody else about the case, but you're free to
17 talk to anybody else about the case now. You can go look
18 on the Internet, do whatever you want, post social media,
19 but most importantly why I tell you that is sometimes you
20 might get a call from one of the lawyers or somebody in
21 their office to say, Would you mind talking to us about
22 your verdict? Because it helps them prepare for other
23 trials and do their job better in the future and so they
24 learn and get feedback.

25 It is perfectly fine for you to talk to

1 somebody about it now, if you want to, but if you don't
2 want to, you just say, I'd rather not, and they'll
3 respect that, but it's fine. You're not breaking any
4 rules if you talk to anybody about the case at all on the
5 whole earth now, all right?

6 So thank you very much for your service, and
7 you're free to go. The clerk's office will have some
8 notes for you if you need it for work.

9 (Jury dismissed.)

10 THE COURT: Okay. Well, folks, I'll give the
11 parties five days to file post-trial motions if you want
12 to.

13 You know, I was beginning to wonder there if
14 they were going to hang it up, and I know as much as
15 everybody just feels probably mixed feelings about the
16 outcome of this, it's over. They're glad to have it
17 over. You don't want to do this again, hopefully, so I
18 hope you felt like you got a fair trial.

19 The lawyers -- I always am amazed at how good
20 we have lawyers, both sides have excellent representation
21 in this case, so however else you feel about the outcome
22 of the case, you had good lawyers, so thank you for this
23 week and you're free to go.

24 -- -- --

25 (Whereupon, the proceedings were concluded.)

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I, the undersigned, Amanda Kelly Haffenden, RPR, CRR, Circuit Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Charleston County, South Carolina, on the 26th of January 2017.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

July 23, 2017

Amanda K. Haffenden

Circuit Court Reporter

\$	362:18 '99 [1] - 111:5	12-ounce [1] - 179:22 12/05/08 [2] - 3:13, 3:14 123 [1] - 14:1 129 [1] - 2:5 12:00 [1] - 416:1 12:30 [2] - 105:10, 105:18 13 [5] - 3:15, 12:11, 81:8, 100:23, 252:24, 253:1 138 [1] - 2:5 14 [5] - 3:16, 12:9, 20:11, 143:13, 143:16, 143:19 140 [1] - 108:13 142 [1] - 2:6 143 [2] - 3:16 147 [1] - 13:24 15 [5] - 3:17, 9:14, 10:13, 10:21, 13:8, 158:1, 158:2, 261:1 154 [1] - 13:22 158 [2] - 3:17 16 [5] - 3:18, 13:8, 89:19, 91:11, 160:12, 162:10, 162:11, 237:22 162 [2] - 3:18 163 [1] - 13:22 16th [1] - 328:15 17 [5] - 3:19, 13:8, 110:8, 222:14, 238:10, 239:17, 241:3, 241:4, 360:1 17,000 [1] - 89:19 170 [1] - 305:16 174 [5] - 14:2, 73:10, 73:11 17th [1] - 50:14 18 [35] - 3:3, 3:4, 3:5, 3:6, 3:7, 3:8, 3:9, 3:10, 3:11, 3:12, 3:13, 3:20, 3:23, 3:25, 4:3, 4:4, 13:8, 243:11, 243:15, 358:13, 394:25 1800 [1] - 369:22 183 [1] - 2:6 18th [1] - 311:21 19 [7] - 3:21, 13:8, 93:12, 244:12, 244:15, 321:13, 395:2 1955 [1] - 269:8 1964 [1] - 218:7 1966 [1] - 106:22 1969 [5] - 108:9, 110:13, 110:14, 217:25, 300:4	1979 [1] - 110:14 1971 [1] - 110:15 1972 [1] - 142:22 1974 [1] - 300:5 1975 [1] - 218:25 1977 [2] - 142:23, 217:24 1978 [1] - 219:5 1983 [1] - 220:10 1984 [2] - 37:3, 348:21 1985 [5] - 36:22, 40:15, 45:15, 111:19, 387:12 1989 [2] - 366:6, 366:18 1992 [3] - 92:25, 105:2, 322:17 1994 [1] - 343:24 1997 [18] - 18:12, 41:4, 41:5, 90:5, 101:13, 112:4, 129:20, 268:24, 362:8, 362:10, 363:25, 364:23, 387:21, 388:3, 394:5, 394:6, 396:7, 400:2 19th [3] - 18:12, 41:4, 93:25 1:30 [1] - 296:11 1:40 [1] - 296:17 1st [2] - 47:14, 140:21	348:1, 348:5, 371:3, 383:8 20-foot [1] - 147:5 20-foot [18] - 93:3, 126:5, 133:4, 147:25, 148:2, 155:19, 180:20, 182:7, 182:10, 182:16, 212:4, 252:2, 252:18, 252:22, 312:6, 312:12, 342:8, 358:19, 359:1 2001 [4] - 32:22, 50:14, 369:16, 369:17 2002 [28] - 3:23, 33:1, 47:14, 47:15, 50:16, 51:15, 51:17, 53:9, 99:16, 133:10, 133:11, 133:13, 133:14, 133:24, 135:5, 187:6, 304:3, 312:24, 314:5, 314:9, 314:12, 364:18, 364:23, 367:9, 367:14, 373:5, 392:25, 393:14 2003 [1] - 369:17 2004 [2] - 205:17, 311:17 2005 [7] - 205:22, 246:10, 246:14, 277:9, 310:14, 311:16, 311:17 2006 [4] - 33:19, 205:22, 245:22, 310:13, 311:21, 358:13, 394:10, 395:1 2007 [28] - 34:19, 35:1, 58:5, 58:18, 92:2, 92:6, 92:13, 93:12, 93:17, 93:25, 95:18, 95:22, 96:2, 96:8, 96:11, 115:2, 130:11, 130:21, 148:16, 175:1, 205:17, 205:18, 266:10, 267:13, 321:13, 394:10, 395:2, 401:18 2008 [49] - 66:20, 70:7, 74:24, 77:7, 95:15, 96:10, 96:14, 96:19, 123:16, 136:7, 153:22, 182:22, 184:3, 185:16, 237:16, 241:7, 246:17, 247:21, 247:24, 248:3, 253:24, 258:16, 265:19, 268:7, 271:9,
\$	'07 [1] - 310:13 '2013 [1] - 362:18 '66 [2] - 106:22, 107:3 '67 [1] - 107:14 '69 [2] - 108:9, 110:6 '70 [1] - 110:6 '70s [3] - 147:16, 218:24, 363:21 '71 [1] - 110:24 '80s [1] - 56:2 '82 [1] - 111:5 '85 [1] - 111:19 '90s [1] - 56:2 '91 [1] - 366:14 '92 [1] - 366:14 '94 [1] - 368:12 '97 [3] - 90:7, 111:23,	1 1 [27] - 3:3, 3:23, 4:8, 11:7, 11:11, 18:10, 18:16, 18:18, 18:22, 18:23, 40:20, 51:15, 56:16, 91:3, 118:6, 123:5, 134:2, 139:1, 201:5, 248:8, 312:17, 312:18, 344:25, 349:21, 368:13, 400:23, 400:25 1.2 [1] - 87:11 1.97 [1] - 176:3 10 [12] - 3:12, 10:17, 61:23, 112:24, 176:9, 176:10, 229:14, 229:18, 229:21, 283:1, 296:16, 400:8 10-year [1] - 176:8 10/03/08 [1] - 3:20 10/04/06 [1] - 3:21 10/06/08 [1] - 3:11 10/22/08 [1] - 3:12 100 [3] - 15:5, 176:10, 200:17 100-year [1] - 152:20 102 [1] - 2:4 104 [1] - 2:4 106 [1] - 2:5 10:45 [1] - 260:23 10:49 [1] - 417:1 10th [1] - 41:5 11 [14] - 3:13, 12:6, 12:7, 18:16, 18:22, 50:16, 74:9, 98:22, 98:23, 98:25, 121:22, 207:15, 251:22, 253:24 112 [1] - 14:1 117 [1] - 212:13 11:00 [1] - 260:24 11:30 [1] - 257:12 11:40 [1] - 136:8 11th [2] - 146:12, 146:13 12 [21] - 3:14, 5:23, 10:9, 12:3, 12:4, 20:20, 61:10, 61:11, 116:6, 148:19, 148:21, 152:2, 163:21, 186:14, 328:14, 414:16, 417:15, 417:16, 418:20, 422:1 12-foot [1] - 196:9	2 2 [19] - 3:4, 3:24, 4:9, 18:18, 176:6, 201:5, 252:6, 252:10, 252:14, 279:21, 311:19, 342:4, 345:11, 346:16, 358:12, 364:12, 401:22, 401:23, 419:10 2-and-a-half [1] - 176:7 2-year [1] - 176:5 2.d [2] - 267:10, 269:8 2/8 [1] - 192:5 20 [23] - 3:22, 10:11, 11:7, 11:11, 13:9, 45:3, 55:16, 112:24, 113:7, 113:23, 147:13, 164:25, 182:7, 188:3, 212:9, 212:11, 212:14, 299:18, 301:17,	

290:23, 317:2, 325:25, 326:18, 328:15, 331:15, 332:23, 352:1, 352:3, 352:24, 369:7, 388:4, 396:14, 396:15, 396:18, 396:25, 397:2, 397:16, 398:5, 398:15, 399:14, 402:18 2009 [g] - 317:2, 317:11, 335:4 2010 [i] - 298:6 2011 [i] - 7:23, 94:10, 230:13, 232:18, 233:2, 233:3, 233:4, 233:15, 233:21, 233:25, 234:5, 234:12, 234:24, 254:12, 254:20, 266:14, 283:7 2012 [i] - 392:17 2013 [i] - 91:8, 162:4, 192:6, 223:5, 223:9, 362:11, 368:20 2014 [g] - 157:22, 368:21 2015 [g] - 339:4, 374:19 2015-CP-10-03550 [i] - 1:2 2016 [g] - 261:5, 272:11 2017 [i] - 1:6, 5:1, 17:11, 215:23, 384:19, 424:9, 424:12 206 [i] - 2:6 20th [i] - 312:24 21 [g] - 12:13, 12:19, 12:21, 60:1, 117:11, 147:2, 147:9, 150:8, 152:15, 156:19, 164:25, 182:7, 182:8, 182:9, 204:13, 204:15, 205:5, 205:8, 240:12, 240:17, 365:2, 372:6, 397:6 21-22 [g] - 187:19, 198:5, 204:18 214 [g] - 2:6, 9:20 217 [i] - 2:8 21st [g] - 80:7, 176:2, 344:5 22 [g] - 12:13, 12:16, 12:17, 32:19, 47:16, 60:5, 65:4, 71:3, 92:23, 125:2, 134:10, 147:9, 147:13, 154:13,	156:19, 174:24, 182:8, 182:9, 186:4, 205:5, 212:5, 259:17, 279:21, 306:24, 313:15, 322:14, 344:17, 344:22, 346:5, 348:13, 348:19, 349:3, 349:5, 367:19, 372:6, 397:6 22nd [g] - 68:13, 68:14, 80:7, 176:3 23 [g] - 5:1, 12:13, 13:9, 41:6, 41:13, 41:16, 42:2, 42:7, 48:20, 60:3, 71:5, 147:1, 174:21, 187:19, 240:12, 240:17, 240:19, 259:18, 264:13, 279:21, 343:25, 344:5, 344:6, 344:11, 345:7, 345:21, 347:23, 348:22, 348:25, 350:4, 360:2, 360:6, 361:3, 424:12 23-26 [i] - 1:6 230 [i] - 2:8 235 [i] - 2:8 236 [i] - 2:9 24 [g] - 12:22, 13:2, 13:4, 17:11, 19:18, 174:18, 174:24, 175:6, 176:7, 205:18, 253:3, 253:7, 253:8, 255:14, 259:10, 259:11, 259:16, 259:18, 259:25, 260:6, 260:17, 264:13, 279:21, 323:6 241 [g] - 3:19 243 [g] - 3:20 244 [g] - 3:21 25 [i] - 12:22, 13:9, 147:1, 176:9, 215:23, 232:12, 240:13, 240:17, 279:21, 370:24 250 [g] - 2:9, 88:5 254 [g] - 4:5 255 [g] - 4:6 256 [i] - 2:9 26 [i] - 12:22, 12:25, 13:1, 204:15, 238:22, 240:13, 240:17, 261:5, 279:22, 362:12, 384:19 260 [i] - 2:9 26th [i] - 424:8 27 [g] - 175:2,	240:13, 240:18, 254:12, 254:20 28 [g] - 60:1, 117:11, 134:10, 147:2, 147:14, 150:8, 152:15, 179:5, 179:14, 182:15, 187:19, 189:18, 204:13, 205:8, 212:5, 225:5, 240:13, 240:18, 313:15 29 [i] - 326:18 29455 [i] - 298:4 297 [i] - 2:9 29th [i] - 61:23, 118:3, 118:6, 118:8, 123:5, 140:21, 182:20, 182:22, 326:16, 326:17 2:00 [g] - 105:10, 105:19, 105:20, 125:8 2:30 [i] - 82:5	3 3 [i] - 3:5, 4:3, 4:10, 18:18, 47:7, 47:9, 92:2, 130:12, 132:11, 132:21, 201:8, 201:12, 201:19, 305:4, 321:14, 342:23, 370:4, 419:10 30 [g] - 37:21, 383:6, 386:13, 389:3 30-Inch [g] - 156:21, 369:24 3016 [i] - 32:19 304 [g] - 7:20, 7:21 3055 [g] - 55:15, 56:13, 106:12 3061 [g] - 92:23, 298:3, 322:15 309 [i] - 321:21 30th [i] - 249:15 32 [i] - 32:19, 41:6, 41:13, 41:16, 42:2, 47:16, 48:20, 60:1, 92:23, 134:10, 306:24, 313:14, 322:14, 345:7, 347:23, 348:20, 350:4 331 [i] - 14:3 336 [i] - 8:20 337 [g] - 4:7 34 [g] - 13:21, 125:2 340 [g] - 2:9, 110:9, 110:10, 136:23, 395:25 348 [g] - 3:22	35 [i] - 360:23 358 [i] - 2:9 359 [i] - 2:9 36 [g] - 2:3, 91:9, 91:10 362 [i] - 2:10 364 [i] - 269:8 366 [i] - 277:8 369 [i] - 13:25 374 [i] - 2:11 377 [i] - 2:11 38 [i] - 2:3 390 [i] - 13:20 3:00 [i] - 10:17, 10:18, 109:2, 125:8, 136:9, 257:14 3:59 [i] - 417:4 3rd [i] - 66:20	4 4 [i] - 3:6, 4:4, 18:18, 18:19, 18:23, 47:7, 47:17, 47:21, 146:17, 187:9, 319:11, 344:2, 346:16, 348:23, 365:22, 370:20 40 [g] - 2:3, 219:20 40-year [i] - 390:2 401-C [i] - 370:17 409 [i] - 267:10 40th [i] - 142:23 41 [i] - 3:17 41-Inch [i] - 369:22 419 [g] - 4:9, 4:10 424 [i] - 2:10 45 [i] - 383:6 47 [i] - 219:19 47-and-a-half [i] - 219:19 475 [i] - 277:8 49 [i] - 2:3, 41:7, 41:25, 42:1, 219:17, 227:13, 345:8, 345:13, 345:15, 350:5 4:00 [i] - 383:6 4:03 [i] - 419:9 4th [i] - 67:8	230:8, 282:24, 283:2, 283:13, 390:22, 391:10, 405:17 500 [g] - 88:4, 111:24, 365:3 53 [i] - 2:3 54 [i] - 2:3 55 [i] - 2:4 58 [i] - 20:19 59 [i] - 95:8 5:22 [i] - 419:16 5:30 [i] - 215:10, 5:59 [i] - 16:3 5th [g] - 74:15, 74:24, 76:13
				6	6 [i] - 3:8, 4:6, 64:8, 91:10, 201:14, 254:25, 255:2, 343:24, 348:21, 395:17 6.7 [i] - 176:9 6/02/09 [i] - 4:7 6/19/07 [i] - 4:3 60 [g] - 229:22, 230:8, 283:2, 283:13, 298:20, 390:22, 391:10, 400:9, 405:17 61 [g] - 3:14 62 [i] - 13:24 65 [g] - 14:4, 36:20, 201:14 6:00 [g] - 15:21, 15:24, 16:1, 16:3, 383:9	
				7	7 [g] - 3:9, 4:7, 146:25, 163:23, 334:14, 334:22, 337:9, 337:14, 370:24 70 [i] - 113:19 72 [i] - 13:23 727 [i] - 111:1 74-year [i] - 217:18 775 [g] - 275:5, 275:11 775,000 [i] - 274:25 797 [i] - 267:10 7th [i] - 142:23	
				8	8 [g] - 3:10, 20:20, 91:10, 176:9, 220:9,	

221:2, 352:24, 399:14 8,000 [1] - 390:2 8/18/08 [1] - 3:25 80 [1] - 13:23 800 [1] - 308:23 81 [2] - 3:15 820 [1] - 47:13 883 [1] - 50:17 8th [2] - 91:8, 157:21	205:19, 205:20, 228:5, 228:12, 228:16, 238:16, 240:8, 246:12, 252:19, 253:2, 260:17, 266:14, 281:8, 289:16, 305:21, 306:11, 306:24, 307:16, 312:9, 321:20, 322:5, 322:13, 322:17, 325:11, 325:14, 325:17, 331:1, 342:11, 354:3, 358:9, 358:22, 359:4, 371:23, 372:9, 387:15, 393:21, 395:5, 397:24, 398:23, 410:25 abandoning [2] - 115:4, 117:23, 148:9, 148:10, 155:3, 180:21, 190:11, 371:25 abandonment [23] - 93:14, 253:5, 285:24, 306:4, 307:14, 312:13, 322:8, 325:10, 325:11, 325:18, 333:16, 379:13, 379:16, 380:17, 380:21, 381:13, 382:19, 382:21, 393:4, 393:6, 411:11, 411:12 ABCD [1] - 133:5 ability [7] - 5:17, 7:25, 9:22, 72:17, 89:4, 208:10, 267:5 able [38] - 46:14, 83:21, 85:19, 89:5, 145:24, 164:19, 178:16, 178:17, 181:16, 197:15, 199:1, 226:16, 227:17, 227:23, 228:13, 228:14, 228:24, 229:9, 234:10, 235:16, 235:23, 265:15, 272:20, 274:19, 274:22, 275:14, 275:16, 278:11, 285:4, 286:7, 295:6, 295:23, 329:15, 367:6, 385:6, 395:18, 399:4, 417:10 abolish [2] - 387:3, 387:5 abrasional [1] -	232:14 abrogated [2] - 226:6, 228:18 absence [1] - 229:7 absent [1] - 284:7 absolutely [16] - 93:23, 177:4, 194:19, 202:6, 264:18, 265:1, 266:17, 278:16, 280:24, 290:14, 290:16, 315:18, 372:22, 376:18, 401:1 Absolutely [1] - 281:5 absorb [1] - 173:13 abundantly [1] - 284:7 abuts [1] - 199:13 accept [4] - 138:5, 406:13, 407:19, 409:25 acceptance [1] - 286:4 accepted [2] - 42:5, 185:10 access [14] - 46:5, 147:5, 181:12, 182:4, 182:5, 182:6, 205:2, 205:10, 205:11, 222:19, 225:9, 228:21, 272:18, 303:20 accessing [2] - 180:23, 272:16 accidentally [1] - 281:3 accommodate [1] - 316:11 accommodation [1] - 328:24 accomplish [1] - 54:8 according [12] - 42:8, 42:23, 42:25, 43:4, 52:15, 168:12, 334:4, 334:11, 369:14, 393:2, 399:7, 403:4 accordingly [1] - 216:5 account [2] - 201:15, 220:10 accounted [1] - 383:23 accrue [1] - 271:1 accumulating [1] - 190:15 accurate [5] - 80:25, 81:3, 143:8, 157:20, 424:4	accurately [1] - 93:11 accused [2] - 21:10, 21:23 acknowledge [3] - 93:16, 238:18, 240:10 acknowledged [4] - 266:10, 267:13, 278:21, 394:18 acquainted [5] - 6:15, 6:21, 7:3, 7:9, 8:9 acquiescence [1] - 283:15 acquire [1] - 410:18 acquired [3] - 42:9, 386:20, 410:21 acquires [1] - 410:12 across [1] - 363:5 act [6] - 264:20, 267:8, 411:8, 412:3, 412:6, 412:11 acted [6] - 150:13, 272:23, 273:15, 274:6, 294:23, 412:2 acting [13] - 273:4, 278:19, 287:7, 287:8, 287:15, 287:16, 287:17, 287:18, 288:3, 292:21, 292:23, 413:11 Action [1] - 110:19 action [32] - 19:2, 19:8, 115:12, 115:14, 126:7, 162:25, 190:11, 238:24, 253:7, 256:22, 257:5, 264:7, 264:10, 264:12, 264:15, 266:3, 268:2, 269:3, 269:20, 270:25, 271:1, 271:8, 280:15, 289:12, 314:8, 314:11, 333:3, 380:2, 399:22, 400:14, 402:21, 413:20 actionable [1] - 413:22 actions [23] - 19:18, 21:9, 155:2, 175:18, 178:9, 190:8, 190:9, 190:10, 206:25, 221:23, 240:14, 272:13, 272:24, 273:9, 276:22, 278:1, 354:16, 379:23, 381:14, 386:7, 391:2, 391:22, 404:12 actively [1] - 91:20 activities [3] -	360:16, 361:6, 361:13 activity [1] - 404:13 acts [3] - 411:5, 411:8, 412:15 actual [8] - 19:2, 234:7, 383:20, 412:17, 412:22, 413:14, 415:2, 420:1 add [7] - 89:4, 200:2, 201:10, 202:14, 309:17, 309:22, 388:2 added [1] - 225:11 adding [2] - 88:18, 199:25 addition [4] - 43:16, 76:5, 225:10, 307:4 additional [10] - 138:3, 156:1, 189:1, 200:1, 218:9, 322:21, 369:13, 399:9, 406:11, 421:10 address [19] - 60:10, 64:17, 66:24, 67:18, 92:22, 106:11, 133:22, 160:22, 208:17, 214:18, 216:6, 269:13, 274:10, 298:3, 298:5, 321:23, 322:13, 325:22, 353:7, addressed [8] - 43:6, 59:24, 122:1, 153:17, 273:2, 274:13 addressees [1] - 68:24 addresses [1] - 153:13 addressing [4] - 213:24, 213:25, 273:21, 290:4 adhered [1] - 200:19 adherence [3] - 252:2, 360:17, 361:7 adjacent [1] - 163:14 adjoining [2] - 224:20, 370:2 adjudged [2] - 254:13, 254:15 adjudication [1] - 268:15 adjusted [1] - 244:22 administer [1] - 20:7 administration [1] - 142:15 administrator [2] - 311:23, 395:1 admissibility [1] - 406:3 admission [3] - 66:17, 290:22, 403:17
9				
9 [7] - 3:11, 68:17, 68:18, 98:5, 136:7, 176:10, 256:19 9,000 [4] - 220:9, 221:2, 362:13, 390:3 9/23/08 [2] - 3:8, 3:10 9/24/08 [1] - 3:9 90 [5] - 2:4, 182:13, 200:19, 212:3, 269:8 900 [1] - 308:23 91 [1] - 4:8 99 [2] - 173:17, 201:12 9:15 [1] - 16:25 9:20 [1] - 15:13 9:30 [5] - 15:12, 15:14, 215:14, 215:20, 383:10, 384:15, 384:17 9th [12] - 47:15, 51:17, 68:12, 77:7, 77:12, 104:5, 123:15, 123:16, 237:16, 256:16, 256:20, 271:9				
A				
a.m. [1] - 61:23 aback [1] - 376:1 abandon [16] - 43:25, 53:10, 187:6, 206:10, 206:21, 255:11, 260:2, 371:10, 371:19, 373:5, 379:22, 387:9, 387:14, 387:17, 393:16, 393:17, 411:1, 411:2 abandoned [6] - 33:8, 33:15, 34:11, 43:10, 43:11, 53:9, 92:22, 92:24, 99:16, 105:3, 117:24, 130:17, 133:4, 133:5, 146:11, 151:19, 154:15, 175:2, 180:19, 205:18,				

admit [3] - 157:25, 222:13, 348:1 ADMITTED [2] - 3:2, 4:2 admitted [34] - 18:14, 18:16, 18:18, 18:24, 36:22, 61:12, 65:19, 66:6, 81:7, 81:9, 143:17, 158:3, 162:12, 176:23, 223:7, 223:12, 241:1, 241:5, 243:14, 243:16, 244:12, 244:13, 244:16, 254:6, 254:9, 255:1, 255:3, 268:22, 289:23, 312:17, 320:16, 337:12, 337:15, 348:4 admitting [1] - 18:8 adult [1] - 392:18 advantage [3] - 57:15, 285:16, 410:13 adverse [7] - 154:16, 193:9, 193:10, 209:11, 224:15, 224:17, 249:24 adversely [3] - 152:6, 238:8, 240:16 advice [5] - 79:1, 98:1, 216:6, 287:9, 307:17 advise [2] - 155:5, 324:12 advised [3] - 254:18, 254:19, 273:8 advisement [1] - 16:21 advocates [1] - 24:4 affect [11] - 5:17, 7:24, 9:21, 65:5, 72:17, 76:7, 136:13, 227:25, 238:8, 382:20, 386:15 affected [5] - 172:13, 173:2, 323:16, 323:19, 379:14 affects [1] - 239:1 affidavit [15] - 239:12, 239:16, 251:18, 251:21, 251:22, 252:9, 252:15, 252:24, 255:10, 260:15, 278:20, 278:22, 398:17, 398:18, 398:21 affiliate [1] - 298:14 affiliated [2] - 299:2, 299:16	affirmations [1] - 350:11 afternoon [9] - 6:6, 6:11, 10:16, 80:10, 82:5, 136:9, 257:14, 361:23, 376:3 agencies [1] - 299:16 agent [12] - 281:18, 304:6, 304:8, 305:18, 305:23, 305:24, 307:4, 307:9, 307:18, 312:14, 351:22, 411:19 agents [1] - 227:1 ages [1] - 203:16 aggregate [1] - 179:18 ago [32] - 9:14, 38:18, 39:7, 48:19, 50:1, 55:16, 94:5, 94:25, 96:9, 96:19, 98:8, 99:1, 100:17, 131:15, 148:17, 159:7, 161:16, 184:10, 193:22, 200:6, 210:6, 219:18, 232:12, 264:22, 299:18, 301:17, 302:23, 302:24, 303:8, 367:9, 374:18 agree [35] - 44:3, 44:4, 44:5, 54:5, 97:9, 185:24, 233:15, 248:2, 248:23, 257:14, 259:16, 276:4, 283:1, 285:6, 315:9, 328:18, 329:7, 329:17, 342:2, 344:6, 344:8, 345:14, 346:18, 349:15, 350:15, 350:20, 376:10, 379:17, 379:18, 387:14, 392:10, 392:12, 406:16, 414:17, 417:16 agreed [22] - 35:13, 65:24, 97:11, 329:9, 329:14, 330:3, 330:10, 331:1, 331:16, 331:24, 340:17, 341:4, 348:8, 354:20, 354:21, 355:12, 355:13, 355:21, 387:17, 397:20, 397:22 agreeing [2] - 97:15, 97:25 agreement [10] - 43:14, 64:25, 75:12, 96:13, 102:6, 332:5, 332:6, 341:10, 371:21, 382:22 agrees [1] - 287:20 ahead [27] - 7:13, 16:18, 18:5, 18:9, 31:5, 51:16, 64:19, 85:3, 94:2, 124:18, 125:25, 143:15, 146:3, 162:21, 163:8, 221:11, 235:21, 239:25, 243:1, 260:22, 288:8, 332:12, 357:4, 359:25, 391:14, 391:16, 399:6 aids [1] - 161:19 Ainsley [3] - 1:15, 6:18, 29:11 Air [1] - 110:18 air [1] - 179:23 aircraft [2] - 107:16, 108:3 Airlines [1] - 111:2 airplane [1] - 309:12 akin [1] - 300:11 al [2] - 1:4, 1:7 albeit [1] - 222:3 allegation [1] - 21:24 allegations [2] - 21:8, 22:1 allege [1] - 270:13 alleged [7] - 21:15, 21:19, 22:2, 36:1, 266:22, 325:11, 333:16 alleges [1] - 21:14 alleging [1] - 23:8 Allen [1] - 417:6 alleviate [5] - 86:3, 178:5, 178:12, 211:6, 317:6 alleys [1] - 52:16 allow [24] - 24:8, 25:6, 39:15, 120:8, 120:12, 121:8, 121:10, 127:1, 138:17, 155:23, 167:11, 167:14, 167:15, 214:16, 223:23, 228:8, 237:5, 272:5, 301:11, 355:1, 355:24, 406:25, 409:12, 409:17 allowable [1] - 277:1 allowed [17] - 17:16, 38:19, 39:21, 98:2, 121:4, 130:7, 138:6, 167:18, 211:18,	278:9, 285:22, 294:16, 373:23, 380:20, 406:7, 406:10, 406:22 allowing [3] - 65:4, 156:2, 190:13 allows [2] - 168:14, 414:6 almost [12] - 49:19, 164:3, 199:8, 201:21, 215:10, 219:19, 219:20, 252:12, 283:19, 300:11, 362:25, 376:16 alone [2] - 62:13, 105:14 Altair [1] - 111:2 alternate [5] - 12:12, 12:21, 14:3, 14:4, 401:20, 417:2 alternates [4] - 10:10, 10:12, 11:8, 416:25 alternative [11] - 120:4, 120:24, 120:25, 122:24, 227:20, 228:6, 228:9, 238:7, 240:15, 340:19, 416:18 Alzheimer's [1] - 303:24 Amanda [2] - 1:19, 424:1 amazed [1] - 423:17 amazing [1] - 396:1 amazingly [1] - 244:6 ameliorate [2] - 122:19, 246:17 amenable [1] - 373:10 amended [3] - 19:16, 191:2, 264:13 amendment [1] - 190:16 amenities [1] - 49:8 America [2] - 249:9, 298:21 amount [19] - 174:5, 176:6, 200:23, 202:20, 203:10, 203:23, 208:21, 211:20, 226:4, 231:15, 247:16, 276:16, 308:22, 383:20, 412:24, 415:2, 415:5, 419:25 amounts [2] - 59:19, 207:25 analogy [3] - 202:18,	211:7, 404:19 analysis [4] - 148:12, 175:23, 224:4, 267:22 analyze [1] - 407:9 ancient [1] - 362:25 angle [1] - 188:15 angular [1] - 188:7 animation [1] - 185:4 annotations [1] - 162:2 announce [1] - 61:15 announcing [1] - 62:1 annual [1] - 249:10 answer [13] - 24:11, 57:9, 185:7, 206:15, 239:10, 244:25, 246:18, 257:19, 259:7, 269:6, 280:18, 356:1, 361:14 answered [5] - 134:14, 135:12, 258:8, 313:18, 356:24 answering [3] - 42:16, 57:20, 319:9 answers [1] - 268:17 Anthony [1] - 325:7 anticipated [1] - 339:16 anyway [5] - 15:1, 72:1, 155:23, 273:14, 391:19 apologize [1] - 132:20 apparent [2] - 44:18, 44:19 appeal [2] - 293:20, 424:7 appealed [1] - 293:24 appear [3] - 70:11, 133:1, 411:3 appearance [1] - 407:23 apples [1] - 345:15 applicable [1] - 287:6 applied [2] - 313:15, 420:20 apples [1] - 406:12 apply [5] - 100:6, 145:23, 221:8, 406:13, 406:18 appraisal [14] - 219:19, 219:24, 220:12, 220:17, 220:25, 222:19, 223:8, 223:10, 227:25, 232:5, 233:1, 247:21, 400:12

Appraisal [1] - 231:22 appraisals [3] - 219:15, 220:2, 220:5, 220:24, 232:3, 247:7, 247:12, 390:3 appraise [3] - 220:11, 221:14, 221:15, 221:20, 224:2, 230:11, 230:12, 233:9, 390:6 appraised [7] - 220:8, 221:15, 221:20, 230:10, 233:6, 234:2, 247:10 appraiser [3] - 217:21, 231:25, 233:21, 235:13, 265:11, 392:1, 400:3 appraisers [5] - 218:12, 218:24, 226:23, 275:16, 390:13 appraising [3] - 218:2, 218:11, 223:18 appreciate [5] - 29:17, 31:22, 32:4, 69:3, 205:25, 392:8 apprenticeship [1] - 218:19 approach [1] - 105:16 approached [3] - 72:13, 335:12, 367:17 appropriate [2] - 224:9, 306:12 approval [30] - 33:24, 138:11, 138:13, 138:14, 214:22, 237:10, 245:22, 246:9, 246:10, 246:14, 247:22, 250:25, 252:4, 252:7, 258:5, 287:10, 290:1, 308:5, 310:14, 311:20, 315:24, 318:12, 329:5, 332:4, 341:20, 356:10, 356:11, 356:13, 399:8, 404:11 approvals [1] - 375:7 approved [39] - 34:4, 34:5, 34:23, 38:14, 38:22, 48:25, 99:13, 99:21, 135:9, 138:9, 138:11, 138:12, 138:16, 191:25, 237:12, 237:13, 245:23, 245:24, 245:25, 246:8, 246:19, 250:13, 250:14, 251:24, 256:7, 258:7, 280:22, 285:23, 308:20, 311:1, 326:8, 329:2, 329:3, 329:4, 334:12, 351:25, 356:11, 398:24 approving [2] - 246:10, 246:15 approximate [1] - 230:15 appurtenance [1] - 270:2 April [2] - 7:20, 41:5 ARB [18] - 3:25, 191:14, 191:24, 214:23, 245:19, 245:22, 246:1, 246:20, 250:13, 255:22, 256:3, 280:19, 325:3, 334:7, 359:7, 394:13, 395:1, 403:4 ARBs [3] - 256:1, 394:17, 394:20 ARC [4] - 246:10, 252:4, 356:10, 356:11 arch [1] - 147:15 architect [21] - 33:20, 62:15, 118:14, 137:2, 154:8, 158:18, 159:5, 159:24, 191:3, 215:1, 255:16, 255:20, 308:13, 310:17, 310:21, 316:1, 316:12, 327:11, 351:19, 394:11 architectural [13] - 34:1, 34:3, 130:4, 130:9, 140:17, 287:11, 289:9, 290:2, 308:8, 311:12, 311:24, 318:23, 394:13 Architecture [1] - 310:18 ARD [1] - 395:8 arduous [1] - 394:15 area [146] - 30:4, 30:15, 31:7, 34:6, 34:11, 34:24, 37:17, 38:24, 39:21, 42:3, 42:11, 43:21, 45:22, 46:13, 48:21, 56:1, 56:21, 57:5, 57:7, 58:25, 78:17, 84:23, 89:1, 89:2, 89:3, 98:12, 102:20, 103:3, 103:7, 103:11, 103:15, 112:6, 112:13, 112:14, 113:1, 113:2, 113:12, 113:14, 113:21, 113:24, 125:13, 125:16, 128:2, 128:3, 128:4, 133:4, 139:20, 140:23, 148:13, 152:16, 155:8, 155:9, 155:10, 155:12, 155:18, 163:23, 165:9, 165:10, 165:14, 165:17, 166:10, 166:25, 167:5, 167:6, 167:15, 167:17, 168:18, 168:19, 169:7, 169:21, 170:11, 170:12, 171:11, 172:13, 174:3, 180:23, 182:2, 187:11, 201:1, 201:3, 201:22, 201:23, 201:24, 201:25, 202:1, 202:2, 202:4, 202:9, 202:14, 202:25, 204:1, 209:3, 209:7, 209:19, 217:15, 224:22, 236:21, 241:17, 246:12, 266:12, 270:9, 272:15, 301:7, 301:9, 312:2, 315:6, 317:21, 317:24, 318:4, 329:10, 329:18, 331:5, 344:20, 344:21, 346:4, 346:8, 346:24, 347:2, 349:2, 358:9, 359:5, 363:13, 363:16, 363:17, 364:14, 364:15, 365:24, 371:1, 371:4, 373:13, 384:13, 385:23, 386:19, 387:23, 388:3, 388:22, 391:17, 393:6, 395:6, 395:9, 404:3, 410:6 areas [21] - 38:19, 52:16, 65:6, 151:15, 153:2, 173:23, 174:12, 197:25, 208:5, 208:6, 208:9, 208:13, 310:10, 318:19, 318:20, 323:16, 363:4 argue [3] - 273:22, 288:19, 292:22, 292:25, 295:6, 295:23	argued [3] - 269:21, 271:3, 294:17 arguing [3] - 219:2, 271:23, 295:1 argument [11] - 224:14, 224:15, 281:15, 284:9, 290:5, 292:19, 293:12, 303:3, 383:4, 383:10, 385:8 arguments [7] - 25:18, 25:20, 293:8, 379:1, 384:5, 384:11, 384:23 arrested [1] - 286:11 arrived [1] - 355:8 arrogance [1] - 119:11 art [1] - 41:22 artery [1] - 115:25 article [1] - 360:23 artillery [1] - 109:14 artistic [1] - 316:11 as-bullets [1] - 199:16 asbestos [3] - 149:21, 187:22, 187:24 aside [1] - 294:9 aspect [2] - 230:2, 357:16 assembled [2] - 213:18, 273:9 assert [1] - 269:4 asserted [3] - 60:23, 61:3, 66:11, 239:21, 265:17, 268:3, 268:19, 280:18 assessment [2] - 374:12, 376:10 assessments [1] - 315:9 assessor's [5] - 218:21, 218:23, 219:17, 220:8, 233:7 assessors [1] - 219:2 assets [3] - 299:15, 366:8, 366:9 assigned [1] - 131:8 assigns [5] - 42:21, 288:18, 343:5, 343:7, 343:8 assist [1] - 207:16 assistant [1] - 323:24 associated [3] - 93:8, 96:3, 219:18, 259:21, 323:10, 360:23 Associates [1] - 142:11	Association [58] - 8:15, 8:18, 30:18, 30:20, 33:2, 33:22, 34:7, 34:22, 52:8, 52:21, 53:9, 59:11, 74:3, 90:5, 92:17, 92:21, 96:4, 103:24, 104:7, 129:15, 133:17, 139:3, 139:21, 139:24, 140:8, 141:1, 141:5, 156:13, 184:6, 213:17, 237:17, 239:5, 241:8, 245:5, 245:16, 246:6, 253:2, 258:15, 258:22, 260:1, 261:7, 261:11, 261:18, 269:17, 312:24, 322:13, 354:17, 360:4, 360:12, 360:25, 361:4, 361:11, 362:6, 366:23, 393:6, 393:15, 393:24, 404:15 association [30] - 33:7, 33:15, 33:25, 34:10, 43:24, 44:7, 59:16, 68:22, 75:1, 90:8, 90:11, 91:21, 94:13, 94:16, 126:15, 126:23, 129:24, 133:14, 135:8, 135:14, 144:24, 148:5, 153:23, 156:2, 182:19, 184:2, 184:9, 204:8, 239:15, 253:21, 253:23, 268:22, 279:15, 284:13, 284:15, 284:21, 285:5, 285:7, 286:13, 286:17, 287:10, 289:8, 290:2, 292:17, 307:14, 308:16, 313:10, 316:16, 334:3, 336:24, 354:3, 355:8, 364:22, 366:19, 381:13, 397:21, 397:22, 398:20 Association's [1] - 261:14 assume [17] - 41:20, 75:17, 179:3, 207:8, 213:23, 251:25, 252:16, 252:18, 290:20, 292:3, 312:4, 312:8, 337:5, 342:7, 352:21, 358:18, 358:21

assumed [2] - 293:21, 331:25 assumes [1] - 342:11 assuming [1] - 179:17 assurance [1] - 326:6 assuring [1] - 71:23 Astroturf [2] - 173:19, 202:16 Atlanta [1] - 217:17 attached [5] - 136:17, 149:1, 149:5, 149:6, 239:11, 252:4 attachment [4] - 60:25, 61:18, 348:11, 348:13 attachments [2] - 153:1, 334:17 attained [1] - 218:22 attempt [5] - 25:21, 120:3, 120:17, 160:2, 276:12, 276:19, 390:6, 419:6 attempted [7] - 53:10, 187:6, 255:10, 260:1, 325:11, 368:1, 387:3 attempting [3] - 245:6, 272:9, 390:7 attend [3] - 62:9, 62:11, 133:14 attendance [2] - 63:6, 183:17 attended [4] - 67:23, 67:24, 326:21, 326:22 attention [3] - 29:2, 31:22, 101:9, 261:4, 306:9, 420:19, 421:1, 421:2 attitude [3] - 70:14, 70:20, 119:16 attorney [28] - 9:10, 31:18, 44:10, 97:8, 137:16, 237:21, 251:4, 251:6, 254:19, 255:6, 258:3, 258:8, 258:9, 258:10, 304:25, 305:3, 305:19, 306:4, 306:6, 307:5, 307:9, 312:15, 326:4, 351:14, 360:22, 399:2 Attorney [1] - 1:17 Attorneys [1] - 1:15 attorneys [1] - 89:23 attract [1] - 390:18 attraction [1] - 303:17	August [3] - 311:21, 358:13, 394:25 authentication [2] - 67:11, 67:15 authenticity [2] - 66:9, 66:16 authority [1] - 44:8 authorization [4] - 360:16, 361:6, 361:13, 404:14 authorize [4] - 236:23, 237:7, 356:4, 356:24 authorized [5] - 99:17, 237:14, 290:11, 291:10, 357:18, 391:16 authorizing [2] - 261:19, 360:21 automatically [3] - 39:23, 41:20, 129:16 available [4] - 144:16, 227:11, 369:4, 398:3 avenues [1] - 52:16 average [1] - 201:13 averred [1] - 260:16 aviator [3] - 183:24, 183:25 avid [1] - 56:8 avoid [4] - 14:25, 376:2, 413:21, 414:6 avoided [2] - 414:3, 414:7 awaiting [1] - 222:18 award [3] - 391:19, 391:21, 415:9 awards [3] - 110:8, 110:17, 136:25 aware [43] - 56:20, 61:5, 84:17, 85:11, 85:13, 94:21, 95:2, 99:21, 104:20, 104:23, 105:1, 112:4, 130:7, 130:16, 132:12, 132:15, 135:8, 135:24, 138:2, 157:7, 157:9, 187:5, 189:19, 191:10, 191:11, 191:14, 191:23, 207:13, 214:10, 214:13, 244:18, 249:19, 274:5, 305:21, 308:4, 320:20, 322:2, 355:13, 355:19, 357:3, 357:7, 369:13, 373:3 awareness [1] - 270:24	awful [1] - 17:3 B bachelor [1] - 142:20 bachelor's [2] - 142:13, 300:3 background [1] - 300:2 backhoe [5] - 124:8, 124:22, 270:20, 271:1, 386:4, 405:12 backs [2] - 35:8, 363:19 backtracking [1] - 148:4 backward [1] - 244:23 backyard [1] - 113:17 bad [5] - 108:23, 109:6, 149:24, 339:11, 339:15 bailiff [5] - 14:8, 332:11, 415:20, 415:21, 416:10, 419:22 BAILIFF [2] - 73:4, 73:10 bailiffs [4] - 72:7, 415:6, 415:11, 416:6 band [2] - 188:10, 188:13 bandages [1] - 108:23 bands [2] - 211:17, 212:8 bankruptcy [5] - 366:7, 366:10, 366:14, 367:6, 380:11 bar [1] - 36:22 barred [2] - 261:9, 269:1 barrier [13] - 35:10, 144:1, 149:22, 151:5, 177:25, 186:13, 196:14, 196:25, 197:2, 199:4, 396:22, 396:23 based [23] - 14:21, 40:2, 108:18, 111:8, 111:9, 111:10, 146:1, 153:10, 175:22, 210:3, 221:9, 255:9, 258:17, 265:7, 266:9, 267:11, 294:20, 295:25, 300:24, 307:8, 407:25, 409:21, 414:13	basic [1] - 218:18 basin [2] - 148:13, 166:25 basis [5] - 39:19, 143:22, 145:25, 217:20, 227:7 batteries [1] - 197:7 Battery [1] - 233:14 bay [2] - 363:12, 363:16 Bay [1] - 363:15 Baypoint [1] - 203:20 Baywood [67] - 32:19, 35:7, 55:15, 56:13, 69:5, 69:7, 92:23, 106:12, 146:14, 146:17, 147:6, 147:8, 147:9, 148:24, 150:10, 163:11, 182:7, 185:20, 186:8, 187:17, 198:8, 198:10, 198:11, 198:16, 204:9, 204:20, 204:21, 205:8, 212:1, 225:4, 232:23, 232:24, 255:12, 279:20, 298:3, 304:2, 305:9, 315:11, 322:15, 324:21, 325:23, 333:11, 333:12, 333:17, 339:3, 363:10, 363:12, 363:14, 363:17, 364:13, 365:23, 368:2, 369:9, 369:15, 369:24, 370:2, 372:7, 386:1, 386:24, 394:9, 396:17, 397:5, 398:9, 401:24, 402:6, 404:21 BB&T [2] - 352:11, 352:19 BD [5] - 344:5, 344:6, 344:11, 348:22, 348:25 Beach [3] - 151:5, 151:8, 196:13 beach [13] - 108:17, 108:19, 150:16, 150:19, 211:9, 220:13, 258:20, 303:16, 303:18, 321:1, 362:13, 363:4 bear [4] - 34:8, 132:10, 354:5, 354:12 bearing [1] - 223:13 beat [1] - 359:2 beautiful [2] - 56:1, 111:15	beauty [2] - 56:6, 303:18 became [5] - 146:6, 301:6, 302:2, 362:9, 364:17 become [4] - 36:21, 145:1, 300:10, 322:2 becomes [5] - 50:23, 51:2, 226:13, 248:19, 365:13, 410:10 bed [1] - 315:19 bedroom [1] - 166:21 befuddled [1] - 330:22 began [12] - 121:17, 271:11, 284:3, 309:5, 317:1, 317:3, 352:3, 355:10, 375:22, 388:4, 394:11, 408:17 begin [32] - 11:2, 29:7, 29:9, 72:3, 141:2, 141:7, 141:18, 144:22, 190:20, 211:24, 260:24, 264:2, 271:5, 296:18, 323:15, 326:7, 332:13, 352:9, 352:19, 352:23, 353:19, 357:2, 379:5, 384:4, 384:9, 384:13, 385:16, 414:22, 415:21, 416:9, 416:10, 416:24 beginning [3] - 22:14, 81:17, 82:4, 293:6, 374:9, 385:18, 405:24, 408:9, 423:11 begins [5] - 99:3, 113:2, 212:1, 313:8, 332:2 begun [7] - 238:12, 240:4, 245:1, 245:4, 259:2, 259:16, 352:8 behalf [3] - 25:22, 385:9, 422:10 behind [10] - 29:25, 70:23, 71:1, 158:5, 169:9, 169:10, 315:2, 315:4, 330:1, 386:18 behold [2] - 302:1, 398:5 belief [4] - 274:20, 287:19, 290:3, 290:7 believability [2] - 407:8, 407:11 believable [1] - 177:4 believes [5] - 87:24,

238:11, 238:23, 240:3, 284:11, 285:3, 287:24, 287:25 belong [2] - 103:16, 103:18 belonged [5] - 139:20, 270:9, 281:14, 288:22, 372:3 belongings [1] - 13:19 belongs [3] - 139:22, 270:13, 272:1 below [5] - 163:23, 164:12, 164:16, 209:7, 410:6 benefit [10] - 69:7, 285:1, 317:10, 338:23, 338:24, 370:18, 397:12, 397:13, 397:14, 402:16 benefits [1] - 270:2 benefitted [2] - 387:24, 404:25 benefitting [1] - 43:21 Bennett [1] - 218:4 Berkeley [1] - 37:9 bern [16] - 164:8, 164:9, 164:14, 164:18, 164:20, 167:8, 167:9, 168:1, 168:11, 168:21, 168:22, 170:8, 170:9, 170:18, 170:19 berms [1] - 167:17 beside [2] - 6:19, 309:16 best [12] - 27:7, 77:19, 93:7, 151:4, 153:21, 155:1, 159:20, 172:16, 173:3, 186:23, 323:10, 369:21 Bethlehem [2] - 298:18, 298:21 betrayed [1] - 94:16 better [12] - 28:12, 162:16, 185:16, 185:23, 190:4, 191:25, 231:23, 303:22, 375:12, 396:11, 418:20, 422:21 between [48] - 8:23, 9:1, 16:10, 26:2, 29:22, 48:23, 63:19, 84:5, 89:19, 96:13, 118:17, 120:6, 120:21, 146:6,	155:13, 156:19, 158:17, 159:21, 164:11, 167:17, 170:11, 170:14, 171:17, 173:15, 179:20, 182:7, 204:20, 229:21, 262:11, 290:19, 292:2, 292:14, 292:16, 318:5, 319:22, 322:23, 329:10, 329:18, 334:23, 355:8, 365:2, 369:18, 372:6, 374:11, 385:19, 392:11, 397:6, 413:1 beyond [4] - 23:7, 23:8, 23:11, 81:19 Blanca [1] - 14:1 bias [2] - 26:8, 407:22 big [18] - 21:6, 45:24, 57:19, 109:13, 113:17, 124:8, 173:5, 176:3, 177:11, 179:19, 248:20, 303:22, 309:24, 364:12, 388:7, 420:12 bigger [1] - 179:19 bike [1] - 259:20 Bill [5] - 65:14, 66:4, 118:9, 123:17, 123:19, 242:7 bill [1] - 66:23 billed [1] - 84:12 bills [1] - 294:13 blind [3] - 262:13, 288:18, 343:5 binding [2] - 292:17, 408:5 binds [1] - 268:12 blit [24] - 23:10, 55:13, 71:19, 119:11, 151:10, 165:8, 175:1, 191:17, 193:3, 197:17, 202:1, 263:22, 282:13, 295:21, 314:24, 315:3, 315:8, 316:8, 316:10, 317:16, 358:12, 367:23, 373:9, 376:13 blitch [1] - 402:24 bituminous [2] - 149:21, 187:24 black [1] - 154:18 Blaine [1] - 52:12 blamed [1] - 290:22 blank [2] - 383:20, 415:2	blindly [1] - 409:25 block [28] - 30:1, 32:19, 41:6, 41:13, 41:16, 42:2, 47:16, 48:20, 60:1, 63:20, 74:21, 92:23, 102:14, 102:19, 103:19, 116:2, 134:10, 306:24, 313:14, 322:14, 345:7, 347:23, 348:20, 350:4, 404:21, 404:24, 415:10 blocked [4] - 137:20, 138:4, 228:19, 372:8 blocking [1] - 189:20 blood [5] - 6:15, 6:20, 7:3, 7:8, 8:8 blooming [1] - 176:15 blow [1] - 321:15 blow-up [1] - 321:15 blowup [1] - 123:1 Blue [4] - 50:25, 52:11, 285:10, 285:14 blurred [1] - 153:15 BN [7] - 41:7, 41:25, 42:1, 345:8, 345:13, 345:15, 350:5 board [22] - 33:8, 33:25, 34:3, 59:15, 95:14, 130:9, 140:17, 213:20, 213:21, 287:11, 289:9, 290:2, 308:9, 313:3, 313:14, 313:16, 313:22, 314:7, 326:2, 359:7, 368:4, 394:13 Board [1] - 134:12 boards [1] - 197:13 Bob [16] - 30:18, 30:19, 69:11, 69:12, 83:10, 33:11, 94:23, 112:10, 114:16, 118:24, 241:9, 368:11, 372:11, 372:16, 373:4, 393:18 bolted [1] - 188:16 bond [1] - 49:3 bonded [2] - 149:21, 187:24 bonding [1] - 49:1 book [14] - 41:6, 41:25, 47:13, 47:22, 50:16, 343:25, 344:3, 344:11, 345:8, 345:13, 348:22, 348:24, 350:5 books [1] - 45:2 boom [1] - 109:20	boot [1] - 177:3 boots [7] - 80:21, 81:21, 81:25, 295:15, 375:12, 401:4, 401:5 bore [1] - 341:15 horn [2] - 106:14, 299:22 boss [4] - 368:9, 368:11, 368:15, 368:17 bosses [1] - 330:4 Boston [5] - 299:22, 299:23, 300:4, 301:2, 301:4, 301:22 bottom [3] - 48:21, 208:11, 385:20 bought [35] - 30:5, 32:21, 32:24, 33:1, 56:19, 101:13, 111:23, 112:3, 112:12, 130:1, 130:2, 264:23, 268:23, 275:4, 280:9, 280:10, 280:13, 289:3, 305:2, 307:19, 307:24, 308:4, 308:24, 330:23, 347:19, 351:7, 366:8, 366:13, 366:17, 366:20, 387:21, 393:13, 394:1 bound [7] - 152:25, 222:21, 262:2, 262:8, 266:7, 341:22, 407:25 bow [3] - 79:12, 336:5, 336:6 box [11] - 13:20, 126:8, 126:9, 126:16, 126:24, 127:4, 137:21, 137:24, 372:8, 415:5 boxes [1] - 173:10 boy [1] - 118:15 Boyette [1] - 122:2 Brad [1] - 375:24 Bradshaw [1] - 326:4 branch [1] - 421:23 branches [1] - 421:22 Braniff [1] - 110:25 break [16] - 71:25, 73:20, 105:10, 109:11, 141:17, 190:19, 212:17, 215:9, 260:23, 264:20, 295:18, 332:11, 332:13, 332:21, 384:3, 415:23 breakdown [2] - 418:1, 418:2 breaking [2] - 265:4,	423:1 breaks [1] - 20:20 breeds [1] - 85:24 bridge [1] - 210:11 bridges [1] - 210:10 brief [3] - 27:20, 73:19, 385:15 briefly [3] - 157:16, 162:23, 260:12, 278:4, 288:7, 300:17, 310:25, 334:21, 374:1 Bring [1] - 19:21 bring [26] - 26:11, 72:19, 73:14, 77:17, 86:2, 129:13, 136:3, 137:23, 199:3, 261:3, 262:24, 263:6, 263:9, 263:25, 284:6, 292:11, 296:11, 296:24, 296:25, 378:25, 383:16, 383:25, 401:25, 415:18, 417:6, 419:14 bringing [3] - 123:18, 327:19, 402:17 brings [5] - 6:1, 21:7, 21:17, 100:19, 305:19 Broad [3] - 220:11, 233:9, 233:11 broke [2] - 129:11, 280:24 broken [4] - 84:7, 225:1, 397:4, 397:15 broker [2] - 217:22, 217:23 Brooke [1] - 13:22 brother [6] - 97:8, 97:13, 137:14, 137:15, 137:16, 398:7 brother's [1] - 126:11 brother-in-law [2] - 97:8, 97:13 brought [17] - 21:18, 56:2, 78:7, 78:8, 116:11, 137:25, 147:17, 261:20, 280:15, 301:12, 306:9, 351:13, 351:16, 351:18, 356:19, 389:23, 405:12 Bs [1] - 108:22 buffer [2] - 309:18, 309:22 buggy [1] - 181:21 build [167] - 30:3, 30:14, 30:25, 33:19, 34:5, 34:6, 34:10,

34:15, 34:24, 35:2, 45:21, 45:25, 46:2, 46:3, 46:4, 46:13, 48:1, 48:21, 52:16, 53:20, 56:21, 57:5, 57:7, 58:4, 58:20, 58:24, 58:25, 76:25, 78:16, 84:23, 89:1, 89:2, 89:3, 93:6, 99:22, 100:8, 102:20, 103:3, 103:7, 103:11, 103:15, 112:6, 112:13, 112:14, 113:1, 113:2, 113:12, 113:13, 113:21, 113:24, 125:13, 125:16, 127:21, 128:2, 128:3, 130:7, 133:4, 134:10, 139:20, 140:22, 147:13, 152:7, 155:8, 155:9, 155:10, 155:19, 155:24, 164:8, 164:9, 169:8, 169:9, 171:11, 172:13, 175:6, 180:23, 182:2, 187:11, 200:4, 209:3, 209:19, 236:21, 241:17, 245:18, 245:22, 246:3, 246:13, 250:14, 250:25, 258:5, 266:12, 270:9, 272:15, 280:19, 280:20, 287:8, 287:11, 289:6, 304:11, 304:13, 306:25, 307:14, 307:20, 308:12, 310:6, 310:9, 310:16, 311:21, 312:2, 313:15, 323:8, 324:13, 324:17, 324:18, 324:22, 325:25, 326:8, 327:22, 330:6, 331:4, 331:5, 331:15, 344:20, 344:21, 345:25, 346:4, 346:8, 346:24, 347:2, 349:2, 353:2, 353:4, 356:11, 358:8, 359:4, 359:5, 359:9, 364:14, 364:15, 365:24, 373:13, 382:21, 385:23, 386:19, 387:22, 388:3, 388:22, 391:14, 391:17, 393:6, 393:9, 393:24, 395:6,	398:14, 404:2, 404:3, 404:11, 404:18, 405:3 builder [3] - 62:15, 195:13, 327:11 builders [1] - 113:25 building [56] - 30:13, 30:21, 31:5, 31:7, 34:13, 34:17, 35:15, 63:9, 75:7, 99:5, 99:25, 100:3, 100:12, 113:25, 114:19, 114:20, 118:19, 118:20, 122:12, 132:1, 135:18, 144:1, 155:8, 172:12, 173:25, 177:23, 189:19, 225:11, 238:12, 238:14, 240:4, 251:24, 268:8, 268:14, 269:19, 283:17, 299:11, 309:15, 310:15, 320:21, 331:22, 331:25, 332:2, 332:23, 332:24, 333:9, 333:19, 333:23, 359:14, 359:17, 362:14, 364:9, 376:9, 398:8, 398:15, 399:1 built [53] - 30:10, 31:6, 33:22, 35:3, 35:9, 35:21, 35:22, 82:21, 82:25, 83:23, 84:19, 98:16, 114:5, 125:23, 152:8, 154:14, 155:23, 157:8, 158:20, 162:6, 163:24, 169:9, 189:21, 190:13, 207:4, 207:5, 207:11, 214:22, 224:22, 228:2, 250:12, 256:4, 267:1, 269:3, 269:5, 270:11, 283:16, 283:22, 302:25, 319:15, 320:24, 328:25, 334:4, 359:11, 362:8, 386:4, 395:9, 395:19, 398:11, 399:6, 399:7, 399:8 builts [1] - 199:16 bulst [2] - 7:7, 7:15 bullets [1] - 108:22 bunch [5] - 60:24, 173:22, 274:9, 396:13, 397:19 bundle [2] - 285:12 burden [19] - 21:18,	21:22, 22:3, 22:16, 23:3, 23:6, 23:14, 23:17, 23:19, 25:13, 26:17, 385:11, 408:9, 408:10, 408:21, 408:24, 411:11, 415:4, 415:8 burdens [1] - 21:20 bushes [4] - 168:11, 168:22, 194:21, 201:4 business [7] - 111:4, 142:15, 208:6, 233:7, 396:6, 413:6 busy [1] - 33:16 buy [13] - 41:18, 41:19, 49:6, 88:6, 111:20, 230:6, 283:3, 286:4, 286:25, 287:11, 304:11, 310:5, 392:24 buyer [3] - 229:9, 230:18, 276:2, 283:3, 390:18, 390:20, 413:5 buyer's [1] - 230:1 buying [3] - 30:7, 49:6, 305:17 buys [3] - 52:15, 284:23, 284:24 BY [97] - 36:18, 38:11, 40:7, 49:12, 53:17, 54:14, 55:11, 61:13, 63:5, 66:18, 67:17, 69:21, 70:19, 73:18, 76:1, 81:10, 83:20, 85:5, 85:12, 86:20, 88:2, 88:17, 89:15, 90:3, 91:5, 94:4, 102:12, 103:1, 104:19, 106:7, 116:22, 119:3, 119:15, 120:2, 120:14, 124:25, 126:22, 129:7, 135:4, 138:24, 140:6, 140:13, 142:7, 143:18, 146:4, 155:25, 158:4, 162:14, 183:11, 190:24, 206:4, 208:18, 207:2, 212:24, 213:14, 214:9, 217:11, 220:3, 221:12, 222:22, 223:25, 225:23, 227:14, 229:4, 231:1, 236:17, 237:6, 240:1, 241:6, 243:3, 243:17, 244:9, 244:17, 247:9, 249:17, 250:23, 254:10, 255:4,	256:13, 259:8, 260:14, 297:25, 320:19, 332:20, 336:18, 337:16, 341:2, 347:17, 348:7, 351:1, 351:9, 358:4, 359:24, 362:3, 371:17, 374:7, 377:10 Byars [1] - 7:7 bylaws [2] - 116:14, 129:11 C CAD [1] - 185:5 CAD-type [1] - 185:5 calculations [1] - 399:14 calculus [1] - 328:7 camera [2] - 181:23, 211:21 cameras [2] - 21:2, 181:21 camping [1] - 299:3 cancer [1] - 303:25 candidate [1] - 107:11 cannot [15] - 43:22, 52:18, 53:21, 129:11, 172:20, 193:8, 206:24, 225:10, 261:12, 290:5, 291:4, 389:16, 410:15, 414:2, 420:14 canopy [3] - 109:15, 109:17 capable [1] - 282:25 capacity [2] - 144:15, 238:25 capital [2] - 244:1, 299:10 captioned [1] - 424:6 capture [5] - 317:18, 317:24, 318:5, 338:25, 339:1 car [8] - 6:8, 278:25, 279:3, 279:5, 279:23, 279:25, 286:9, 286:13 carbon [2] - 156:21, 335:1 care [14] - 17:25, 29:17, 300:24, 300:25, 301:3, 303:20, 325:5, 326:6, 354:12, 362:14, 369:19, 375:2, 414:3 career [5] - 111:6, 190:8, 375:11, 390:2, 392:19	careers [1] - 33:17 careful [3] - 154:24, 197:18, 210:13 carefully [1] - 255:25 CAROLINA [1] - 1:1 Carolina [39] - 1:7, 32:10, 32:16, 50:21, 52:12, 106:13, 137:17, 176:17, 197:1, 226:24, 257:17, 265:2, 269:25, 272:2, 274:19, 277:8, 285:11, 288:10, 298:4, 298:8, 298:12, 303:11, 345:6, 348:19, 350:3, 363:15, 364:13, 386:16, 387:19, 390:4, 390:9, 390:14, 394:18, 396:24, 402:12, 403:18, 422:11, 424:3, 424:8 carpet [7] - 173:6, 173:9, 200:9, 202:12, 202:15, 204:3, 204:4 carpeting [2] - 200:5, 402:10 carried [1] - 362:10 Carrier [1] - 267:19 Carroll [7] - 32:25, 47:10, 304:19, 305:12, 347:8, 347:9, 349:16 carry [1] - 169:5 case [159] - 5:13, 5:19, 5:24, 5:25, 6:3, 6:7, 6:9, 6:11, 6:25, 7:25, 8:7, 9:4, 9:7, 9:22, 10:3, 14:13, 14:15, 14:16, 14:18, 19:7, 20:23, 21:9, 21:21, 21:23, 23:5, 23:14, 23:15, 23:16, 24:20, 24:24, 25:14, 25:16, 26:15, 28:1, 28:4, 28:21, 28:22, 29:19, 33:4, 35:7, 35:24, 36:2, 36:8, 38:12, 44:17, 49:14, 49:23, 72:16, 72:18, 105:13, 105:15, 105:17, 124:17, 140:4, 141:19, 144:21, 144:22, 174:8, 185:9, 203:22, 215:17, 216:4, 223:14, 224:11, 224:17, 227:22, 231:14, 253:20,

255:6, 260:25, 261:5, 261:24, 263:17, 263:19, 263:24, 264:9, 264:11, 265:14, 265:16, 267:6, 267:18, 267:20, 268:9, 268:12, 268:16, 269:1, 269:7, 269:8, 272:5, 273:1, 273:17, 275:9, 277:1, 277:3, 277:6, 277:7, 277:13, 277:16, 278:6, 278:10, 280:25, 281:2, 285:19, 287:12, 287:15, 289:21, 291:17, 294:22, 295:9, 351:14, 351:21, 378:9, 379:6, 380:7, 381:8, 392:11, 392:13, 392:17, 393:10, 399:4, 400:21, 401:1, 406:12, 406:24, 406:25, 407:1, 407:23, 407:25, 408:10, 408:11, 408:22, 409:13, 411:5, 414:19, 420:12, 420:16, 421:2, 422:14, 422:15, 423:2, 423:19, 423:20, 424:7 cases [15] - 5:20, 21:20, 21:21, 37:15, 43:4, 50:25, 52:11, 151:10, 151:25, 206:13, 224:11, 417:18, 417:20, 420:9 cast [1] - 177:10 catastrophe [1] - 366:12 catch [1] - 369:25 catchment [7] - 201:23, 201:24, 201:25, 202:1, 202:4, 202:9, 204:1 categorically [1] - 44:1 caused [12] - 35:5, 209:2, 266:21, 276:14, 277:3, 282:10, 391:1, 392:2, 402:14, 403:20, 405:21, 413:16 causes [3] - 19:7, 264:14, 268:1 CE [3] - 345:8, 348:20, 350:4	cease [2] - 104:4, 415:23 celebrate [1] - 142:23 cement [1] - 126:9 cent [1] - 412:20 center [10] - 147:23, 164:4, 169:23, 170:22, 171:20, 194:25, 312:25, 375:20, 375:21, 376:3 centered [1] - 164:3 certain [23] - 33:23, 39:18, 161:9, 167:14, 192:25, 204:8, 233:23, 240:20, 247:17, 277:5, 286:6, 308:5, 316:4, 316:16, 316:22, 331:10, 335:23, 345:4, 348:17, 350:1, 395:9, 406:8 certainly [13] - 56:7, 58:1, 58:21, 59:7, 64:13, 69:6, 136:12, 221:2, 264:24, 269:21, 270:21, 278:15, 288:3 certainly [2] - 172:11, 183:5 certificate [1] - 334:6 certified [2] - 127:6, 145:6 certify [3] - 222:6, 424:4, 424:10 cetera [4] - 40:14, 279:22, 299:3, 311:7 CH-46 [1] - 108:4 chain [2] - 40:18, 40:23, 40:25, 45:13, 45:18, 47:9, 50:1, 284:24, 286:2, 286:5, 288:11, 288:13, 349:7, 349:10, 349:17, 349:18, 409:9, 410:20 chair [1] - 326:1 chairman [1] - 148:22 chairs [1] - 10:18 chance [3] - 221:13, 297:6, 381:22 change [1] - 227:21 changed [4] - 49:5, 64:23, 194:3, 357:19 changes [7] - 159:14, 207:13, 297:5, 297:11, 309:24, 316:11, 335:1 Chaplin [1] - 13:24	characterized [1] - 392:13 charge [18] - 14:23, 25:22, 45:5, 324:2, 325:2, 364:2, 378:24, 379:2, 381:25, 382:2, 383:10, 384:6, 406:12, 406:16, 406:18, 415:17, 416:16, 417:6 charged [2] - 48:4, 276:18 charges [8] - 295:21, 296:1, 296:8, 297:1, 297:4, 381:21, 415:13, 415:20 charging [2] - 399:18, 399:19 charitable [2] - 32:11, 298:13 CHARLESTON [1] - 1:2 Charleston [37] - 1:7, 32:9, 37:8, 55:24, 56:6, 111:13, 111:15, 201:7, 203:11, 217:15, 218:5, 218:6, 218:7, 218:23, 219:8, 220:6, 233:6, 233:16, 233:19, 233:21, 252:3, 302:9, 303:12, 310:19, 310:21, 320:25, 343:24, 345:6, 345:9, 348:18, 343:22, 350:2, 350:5, 371:23, 386:15, 390:4, 424:8 Charlottesville [1] - 9:15 cheap [1] - 230:6 check [5] - 158:14, 162:4, 306:10, 415:5, 415:9 cheek [1] - 14:4 chicken [1] - 181:15 child [1] - 29:17 children [2] - 302:6, 302:10 China [1] - 108:19 choice [1] - 32:3 choose [1] - 25:12 chose [4] - 75:12, 319:1, 319:3, 354:11 chosen [1] - 94:18 Chu [1] - 108:14 church [8] - 32:13, 298:16, 298:17, 298:23, 299:17, 301:13 churches [5] - 32:13,	299:5, 299:7, 299:9, 299:16 Ciancio [1] - 326:1 circuit [4] - 17:7, 150:5, 177:16, 181:21 Circuit [8] - 1:19, 267:20, 424:2, 424:3, 424:7, 424:16 circumstances [7] - 286:7, 408:7, 409:10, 410:2, 411:4, 413:12, 414:9 circumstantial [2] - 409:6, 409:9 Citadel [1] - 142:14, 142:15, 142:20, 197:13 cited [3] - 269:6, 270:18, 278:6 cities [1] - 303:22 citizens [1] - 422:11 citizenship [1] - 422:3 City [1] - 267:10 city [4] - 299:24, 301:4, 372:17, 372:18 civil [23] - 5:19, 5:20, 20:23, 20:24, 20:25, 21:3, 21:4, 21:21, 21:25, 23:14, 23:15, 142:13, 143:23, 145:13, 145:14, 145:16, 145:19, 362:9, 363:25, 364:1, 364:8, 408:10 claim [8] - 259:1, 261:9, 261:11, 262:11, 265:5, 271:12, 291:4, 343:9, 413:17 claiming [5] - 264:14, 269:4, 343:9, 404:1, 411:11 claims [1] - 411:14 clarified [2] - 134:9, 313:13 clarify [1] - 294:4 clause [1] - 52:2 Clay [1] - 13:24 clean [1] - 381:2 cleaned [2] - 150:4, 181:20 clear [14] - 99:15, 112:21, 120:16, 267:2, 267:17, 267:23, 284:7, 287:9, 288:4, 290:13, 290:15, 294:23, 411:7, 411:12 clearly [8] - 33:15,	164:19, 171:18, 286:23, 287:15, 358:8, 393:11, 411:8 Clerk [1] - 11:10 clerk [8] - 10:5, 10:10, 20:7, 279:2, 286:9, 296:7 CLERK [15] - 11:11, 11:16, 11:19, 11:22, 12:1, 12:4, 12:7, 12:12, 12:17, 12:20, 13:1, 13:3, 13:18, 15:20, 20:10 clerk's [1] - 423:5 client [2] - 51:14, 94:22, 99:22, 101:20, 163:1, 213:25, 214:1, 258:6, 264:7, 267:18, 278:17, 278:18, 280:17, 280:18, 291:9, 380:19, 397:17, 400:22, 402:23, 402:24 client's [2] - 119:21, 385:9 clients [8] - 24:4, 29:23, 32:6, 33:9, 33:14, 34:2, 34:9, 34:12, 34:20, 35:2, 35:6, 35:14, 35:21, 35:22, 35:25, 36:3, 51:6, 51:14, 51:21, 54:22, 92:2, 92:17, 94:19, 100:3, 100:12, 100:14, 100:19, 102:6, 129:8, 132:12, 135:10, 135:16, 137:2, 138:2, 214:11, 214:13, 214:22, 264:7, 264:18, 266:11, 280:24, 283:16, 285:22, 368:23, 368:25, 369:7, 385:21, 392:8, 392:14, 392:24, 393:9, 393:13, 394:10, 394:14, 395:7, 395:22, 396:13, 396:18, 397:20, 397:25, 398:10, 398:13, 398:16, 399:5, 401:14, 402:14, 402:22, 403:3 clients' [12] - 25:22, 99:25, 205:21, 268:8, 280:4, 282:2, 371:10, 380:15, 392:15, 393:21, 395:14, 403:9 close [18] - 43:15,

43:23, 113:12, 123:12, 168:25, 169:18, 176:19, 183:16, 194:25, 198:13, 201:5, 212:6, 248:13, 249:1, 265:4, 280:25, 303:9, 326:7 closed [g] - 150:5, 177:16, 181:21, 307:10, 314:2, 325:24 closeness [i] - 303:18 closer [z] - 113:25, 248:24 closers [i] - 7:23 closing [is] - 25:17, 25:20, 304:21, 304:23, 304:25, 306:6, 306:19, 307:4, 307:6, 307:9, 312:14, 351:14, 351:22, 384:5, 384:23 Club [s] - 366:15, 366:16, 366:17 club [s] - 56:8, 120:8, 121:4, 121:5, 121:6, 121:7, 129:17, 138:12, 138:13, 138:17, 138:20, 156:22, 156:24, 178:19, 341:7, 355:1, 355:23, 355:25, 356:2, 366:13, 366:24, 367:4, 369:16, 369:18, 370:1, 370:15, 370:16, 370:18, 380:11 coast [s] - 176:17, 303:11, 394:17 coastal [z] - 186:12, 196:14 coated [z] - 149:21, 187:24 cocounsel [i] - 29:12 code [i] - 27:10 coefficient [g] - 173:14, 200:16, 200:21, 201:5, 201:8, 201:14, 201:19, 202:20, 208:19 coefficients [z] - 200:13, 402:10 coincidence [i] - 302:9 colander [z] - 208:10, 209:13 cold [i] - 192:17 collapsible [i] -	109:22 collateral [d] - 266:8, 268:4, 268:18, 269:13 collect [s] - 102:1, 336:1, 336:6 collecting [i] - 211:17 collection [i] - 338:22 collectively [i] - 64:24 college [r] - 106:17, 106:18, 106:23, 154:18, 300:5, 300:14, 300:16 College [d] - 106:19, 218:6, 218:7, 301:22 color [i] - 177:16 colors [s] - 311:5, 316:5 Columbia [i] - 267:10 Combat [i] - 110:19 coming [z] - 49:7, 59:2, 70:9, 77:14, 77:21, 77:22, 111:22, 122:23, 123:25, 124:3, 142:24, 150:18, 165:1, 166:24, 170:10, 177:18, 203:5, 233:1, 255:17, 256:1, 314:25, 317:19, 318:5, 341:16, 342:14, 365:2, 369:25, 370:21, 371:6, 372:7, 396:2 command [z] - 142:16, 142:17 Command [i] - 364:3 commencement [z] - 360:15, 361:5 commented [i] - 159:8 comments [i] - 313:18 commercial [i] - 20:20, 73:20, 144:18, 217:21, 219:15, 220:1, 220:5, 220:14, 220:19, 220:24, 221:4, 389:6 commercially [i] - 111:14 commission [i] - 22:1 commitment [i] - 309:24 committed [d] - 23:9,	411:20, 412:10, 412:19 committee [s] - 134:5, 140:20, 326:2 committing [i] - 21:24 COMMON [i] - 1:1 common [i] - 20:25, 21:2, 172:18, 191:19, 191:20, 193:4, 193:5, 193:6, 193:15, 198:19 communicate [s] - 133:19, 322:4, 322:6 communicates [i] - 133:17 communications [i] - 337:18 communities [i] - 303:11 community [g] - 91:12, 91:15, 184:1, 300:24, 301:7, 312:25, 353:7, 353:9 community-based [i] - 300:24 company [g] - 42:21, 59:8, 118:13, 142:21, 142:22, 234:4, 236:23, 237:7, 325:16 Company [s] - 365:20, 366:3, 366:5, 366:9, 380:12 comparable [g] - 87:6, 87:9, 224:8, 226:18, 232:15, 390:8, 390:14 comparables [i] - 226:17 comparing [i] - 345:15 compelled [i] - 409:25 compensate [z] - 328:12, 391:21 compensatory [i] - 277:5 complain [z] - 35:4, 421:20 complaining [d] - 35:18, 361:12, 396:2, 396:20 complaint [i] - 19:1, 19:10, 19:16, 21:13, 21:14, 258:11, 258:13, 264:13, 266:22, 291:8, 292:11 Complaint [i] - 3:19 complete [i] - 37:2, 49:3, 148:13, 222:6,	222:7, 222:8, 222:16, 367:7, 382:21, 424:5 completed [g] - 78:11, 98:2, 100:15, 127:14, 130:2, 223:10, 333:24, 334:2 completely [d] - 173:17, 188:8, 290:13, 290:15 completing [i] - 49:7 completion [i] - 222:17 complicated [d] - 31:17, 153:8, 311:2, 311:3 complication [i] - 29:21 complicit [i] - 361:11 compiled [i] - 256:7 complimentary [i] - 65:7 comply [s] - 191:24, 223:10, 267:5, 308:5, 308:8 computer [s] - 44:24, 185:4, 197:5 concentrated [i] - 172:24 concentration [r] - 202:5, 202:7, 202:22, 202:25, 203:7, 203:9, 208:19 concern [s] - 58:17, 69:14, 71:14, 155:3, 250:11 concerned [s] - 70:8, 190:3, 249:24, 250:4, 250:7, 328:21, 362:24, 367:21, 375:13 concerning [s] - 37:15, 44:18, 335:20 concerns [r] - 64:24, 117:20, 241:21, 250:16, 250:17, 330:8, 330:9 conclude [z] - 10:15, 409:22 concluded [z] - 110:12, 423:23 conclusion [s] - 63:22, 275:17, 389:9 concrete [z] - 173:16, 319:1 condensed [i] - 24:19 condition [s] - 149:23, 172:3, 209:1, 235:14, 251:25	conditionally [z] - 48:24, 48:25 conditions [g] - 48:10, 253:4, 288:17, 343:4, 343:13, 350:11 condo [i] - 321:24 condominium [i] - 144:18 condominiums [i] - 203:20 Condon [i] - 13:23 conduct [d] - 135:14, 411:5, 413:22, 414:21 cones [i] - 146:11 conference [z] - 377:1, 378:25 confident [z] - 36:5, 403:8 configured [i] - 316:9 confirm [s] - 307:12, 334:4, 395:4 conflict [s] - 184:13, 184:16, 184:19 confused [i] - 51:4 conjunction [i] - 144:20 connect [i] - 318:9 connection [s] - 253:5, 371:5, 372:5 connects [s] - 53:25, 225:5, 340:9 Connie [i] - 13:20 conscious [z] - 267:2, 267:17 consent [z] - 46:20, 54:3 consequence [s] - 212:20, 214:3 consequences [is] - 154:20, 155:2, 155:3, 190:2, 190:5, 190:8, 190:9, 190:12, 191:1, 197:19, 212:17, 213:3, 412:6 consequential [i] - 294:15 consider [i] - 25:16, 25:23, 26:16, 26:19, 28:11, 289:15, 315:14, 384:24, 400:5, 400:17, 406:4, 406:10, 407:21, 407:23, 408:3, 408:6, 410:1, 412:17 consideration [i] - 414:15 considered [r] - 24:5, 25:25, 277:4, 368:7, 385:3, 385:7,

392:20 considering [2] - 224:14, 300:6 consistent [5] - 131:25, 169:4, 169:20, 400:2, 401:18 consists [1] - 410:5 Constance [1] - 7:16 constant [1] - 402:25 constituted [4] - 19:19, 274:5, 379:24, 412:7 constitutes [1] - 232:5 construct [12] - 76:4, 117:19, 156:19, 164:10, 209:13, 213:1, 241:16, 245:13, 245:16, 261:19, 270:15, 270:24 constructed [14] - 116:16, 147:6, 147:16, 156:22, 167:1, 170:13, 171:11, 172:5, 172:6, 186:20, 197:4, 198:19, 207:16, 259:10 constructing [4] - 140:15, 248:12, 256:23, 337:17 construction [12] - 9:2, 57:19, 58:24, 67:25, 68:8, 69:24, 70:12, 70:15, 70:21, 71:15, 73:21, 73:24, 74:6, 75:11, 75:15, 78:9, 78:11, 78:20, 78:21, 79:11, 101:21, 103:23, 103:25, 104:8, 104:11, 111:25, 118:12, 118:13, 121:18, 122:16, 125:11, 125:19, 125:20, 126:1, 135:9, 136:3, 137:2, 140:23, 141:2, 141:7, 160:4, 160:9, 163:5, 173:1, 181:6, 182:1, 207:23, 208:16, 209:3, 212:19, 236:23, 237:7, 241:12, 241:21, 242:2, 242:14, 242:25, 243:6, 244:19, 244:23, 245:1, 245:4, 245:7, 246:7, 246:17, 247:14, 247:20,	247:22, 249:20, 249:24, 250:9, 256:24, 257:17, 258:23, 259:2, 259:14, 259:15, 266:6, 269:5, 269:18, 274:4, 276:15, 317:1, 317:3, 319:15, 325:24, 326:7, 328:21, 331:24, 332:22, 333:15, 335:7, 337:25, 338:1, 351:24, 352:3, 352:6, 352:7, 352:9, 352:15, 352:20, 352:24, 353:10, 353:19, 356:5, 356:24, 357:2, 357:4, 357:7, 357:13, 357:19, 360:15, 360:18, 361:5, 361:8, 361:13, 364:3, 364:4, 377:13, 388:5, 388:20, 389:18, 391:16, 398:14, 404:9, 405:21 construe [1] - 288:24 construed [1] - 404:17 consulted [2] - 373:4, 373:7 Consulting [1] - 142:11 consulting [2] - 143:23, 206:13 contact [2] - 59:5, 76:18 contacted [2] - 76:17, 226:22 contacting [1] - 100:6 contain [5] - 81:15, 147:3, 147:5, 252:20, 312:10, 342:12, 354:7, 358:22 contained [2] - 385:22, 410:19 containing [2] - 18:19, 318:15 contains [2] - 223:16, 343:11 contemplated [2] - 88:18, 97:3 contend [1] - 401:1 content [1] - 179:24 context [1] - 27:16 Continental [2] - 111:5, 111:6 continuation [1] - 368:7 continue [5] - 78:9,	78:20, 225:24, 227:15, 322:7 continued [6] - 6:9, 73:13, 147:12, 179:2, 179:15, 240:14 continues [2] - 212:4, 315:3 continuity [2] - 156:4, 180:4 continuous [5] - 177:8, 179:4, 179:8, 180:6, 189:17 contour [5] - 163:21, 163:24, 165:9, 168:8 contours [8] - 159:13, 159:14, 161:6, 163:4, 164:15, 170:14, 186:5, 186:6 contract [3] - 127:24, 131:13, 372:18 contractor [6] - 195:13, 238:14, 240:6, 331:21, 331:23, 371:8 contractors [1] - 195:12 contractual [1] - 102:5 contradicted [1] - 408:2 contrary [1] - 361:14 contrast [1] - 23:5 control [2] - 330:11, 410:6 conversation [2] - 310:7, 325:1 conversations [8] - 68:7, 121:17, 274:2, 274:3, 316:1, 336:12, 341:12 Conveyance [4] - 40:13, 44:13, 45:1, 47:15 conveyance [3] - 42:1, 48:8, 350:10 conveyed [7] - 41:5, 41:12, 41:13, 41:16, 41:17, 42:2, 410:8 conveying [1] - 351:10 convince [1] - 285:4 convinced [1] - 23:13 convinces [1] - 407:10 convincing [5] - 267:3, 267:17, 267:23, 288:4, 294:23 Cooper [15] - 16:16, 93:22, 94:1, 261:5,	271:4, 272:3, 289:19, 290:11, 291:6, 291:16, 292:7, 292:8, 293:20, 293:22, 293:25 Cooper's [3] - 272:11, 290:14, 292:13 cooperation [1] - 369:18 coordinated [1] - 301:3 copied [4] - 148:22, 223:5, 242:10, 243:23 copies [3] - 50:5, 334:24, 335:1 copious [1] - 59:19 copy [12] - 34:20, 38:5, 41:8, 65:12, 92:3, 92:5, 95:18, 130:12, 222:23, 222:24, 252:4, 321:15 Cornelius [4] - 2:7, 217:8, 217:10, 390:1 CORNELIUS [1] - 217:4 Corner [1] - 300:12 corner [3] - 166:10, 171:19, 212:1 corporate [1] - 219:6 Corporation [1] - 267:19 corporation [2] - 301:3, 370:17 Corps [4] - 107:1, 107:5, 110:24, 136:20 correct [16] - 50:2, 50:18, 51:3, 51:11, 51:19, 51:22, 51:25, 52:8, 53:5, 54:16, 54:19, 54:20, 54:21, 54:23, 54:24, 62:2, 65:12, 66:1, 71:3, 73:21, 74:3, 90:6, 93:17, 94:7, 94:10, 94:19, 95:3, 98:3, 99:22, 100:15, 100:16, 101:14, 101:15, 101:16, 102:15, 110:13, 114:17, 129:21, 130:2, 130:18, 130:24, 131:2, 131:13, 131:22, 131:23, 132:5, 132:8, 133:7, 134:7, 135:10, 135:19, 135:25, 136:11, 136:23, 137:1, 137:11, 137:14, 174:21,	184:3, 187:17, 189:3, 189:16, 189:22, 194:22, 195:9, 195:15, 196:1, 196:4, 209:21, 213:19, 214:11, 214:17, 214:23, 215:2, 222:23, 222:24, 232:3, 232:7, 232:15, 232:16, 233:10, 235:9, 239:6, 251:1, 251:2, 251:9, 252:8, 253:20, 254:20, 255:7, 255:12, 255:13, 255:18, 256:1, 256:8, 256:16, 256:17, 260:17, 260:18, 281:10, 294:6, 303:4, 304:14, 307:10, 307:11, 314:15, 314:19, 318:16, 320:22, 324:10, 324:15, 326:23, 327:17, 331:6, 331:7, 333:1, 333:5, 333:7, 335:4, 335:5, 335:7, 338:5, 338:15, 340:17, 340:21, 341:6, 342:16, 342:20, 343:13, 343:14, 346:21, 347:3, 348:3, 352:2, 352:5, 353:17, 354:8, 355:17, 357:5, 358:7, 358:10, 359:5, 359:6, 359:12, 359:13, 359:15, 359:16, 359:19, 359:20, 360:10, 361:1, 361:2, 362:19, 364:7, 367:14, 367:15, 367:18, 368:10, 368:17, 370:9, 371:20, 374:9, 374:10, 374:13, 374:14, 374:21, 374:25, 375:1, 375:4, 375:8, 375:13, 375:14, 377:5, 377:14, 377:15, 377:20, 377:21, 380:4, 420:1, 420:2 correctly [8] - 28:23, 134:21, 182:18, 278:19, 379:12, 395:18 correlation [1] - 224:10 correspondence [2] - 67:18, 158:16 corrugated [10] -

92:24, 147:15, 149:17, 149:19, 187:25, 188:2, 188:7, 188:14, 322:16, 365:10 comugations [2] - 149:18, 149:20 cost [16] - 45:4, 45:6, 85:18, 221:22, 224:10, 227:21, 229:15, 229:16, 229:17, 238:4, 238:6, 277:18, 277:21 costs [4] - 134:17, 276:11, 313:21, 360:22 counsel [10] - 103:8, 307:17, 356:13, 356:15, 356:17, 368:5, 372:17, 378:17, 393:8, 424:11 counselor [2] - 32:17, 302:20 counselor's [1] - 79:1 counteract [1] - 209:23 counties [1] - 37:7 counting [1] - 220:7 country [5] - 32:14, 171:22, 210:17, 218:15, 370:15 counts [1] - 268:15 COUNTY [1] - 1:2 County [16] - 32:9, 37:8, 201:7, 218:23, 233:7, 233:17, 233:21, 252:3, 343:24, 345:6, 345:9, 348:19, 348:22, 350:3, 350:5, 424:8 county [2] - 247:7, 371:22 couple [18] - 10:10, 20:6, 55:19, 152:7, 158:13, 173:10, 174:12, 179:1, 184:10, 184:12, 295:2, 303:10, 338:11, 352:17, 385:1, 396:11, 417:12, 417:25 course [104] - 31:21, 33:13, 35:8, 49:25, 78:19, 93:1, 112:1, 112:16, 113:10, 113:11, 113:13, 113:19, 114:1, 115:10, 116:7, 117:7, 118:2, 120:7, 120:9,	120:22, 124:4, 125:22, 128:21, 131:19, 136:1, 138:12, 150:11, 155:19, 155:20, 156:20, 156:22, 160:1, 163:15, 164:12, 166:14, 169:14, 171:7, 171:9, 174:14, 178:18, 180:9, 185:22, 186:8, 186:18, 198:20, 199:10, 199:13, 199:19, 199:22, 199:25, 200:6, 200:8, 200:11, 204:20, 207:4, 207:9, 207:10, 207:18, 207:24, 223:17, 224:3, 228:7, 228:8, 248:14, 248:24, 249:2, 267:20, 275:25, 278:12, 279:22, 283:15, 301:24, 315:4, 315:6, 315:8, 315:13, 315:20, 315:22, 320:23, 322:19, 322:22, 322:25, 323:2, 330:2, 338:7, 341:7, 363:19, 363:20, 365:4, 366:20, 369:23, 370:9, 370:22, 380:24, 391:9, 393:21, 395:7, 395:21, 397:8, 402:7, 413:6, 414:15 course's [1] - 341:5 courses [8] - 197:12, 198:23, 198:25, 199:4, 218:13, 218:16, 218:17, 218:18 COURT [283] - 1:1, 5:2, 7:13, 7:18, 7:21, 7:24, 8:4, 8:22, 8:25, 9:16, 9:19, 9:21, 10:1, 11:1, 11:4, 11:6, 13:10, 13:13, 13:15, 13:17, 14:7, 15:22, 16:14, 16:20, 16:24, 17:10, 17:13, 17:20, 17:23, 18:2, 18:9, 18:21, 19:4, 19:13, 19:20, 19:23, 20:1, 20:12, 36:9, 38:2, 38:7, 39:3, 39:6, 42:16, 53:14, 55:1, 55:3, 60:16, 61:7, 63:4, 65:23, 66:15, 67:16, 69:20, 70:18,	71:25, 72:6, 72:13, 73:2, 73:6, 73:8, 73:11, 73:16, 75:24, 80:22, 81:1, 81:7, 83:19, 85:3, 85:10, 86:15, 88:1, 88:16, 89:11, 89:13, 90:18, 90:20, 94:2, 102:10, 102:24, 104:16, 105:9, 105:24, 119:22, 120:13, 124:18, 126:21, 129:4, 138:22, 140:5, 140:12, 141:12, 141:15, 141:23, 143:15, 145:13, 145:18, 160:22, 161:1, 161:13, 161:15, 161:19, 161:22, 162:7, 162:19, 162:21, 163:7, 183:8, 190:17, 206:2, 206:15, 206:24, 213:6, 213:12, 214:7, 215:6, 215:8, 215:25, 216:7, 216:9, 216:12, 216:17, 216:19, 216:22, 216:24, 221:1, 223:21, 225:22, 227:6, 230:23, 235:3, 235:21, 236:2, 236:4, 236:6, 236:8, 236:12, 237:4, 238:2, 239:25, 241:1, 242:18, 242:21, 243:1, 243:14, 244:4, 244:13, 247:4, 249:13, 250:20, 254:6, 255:1, 256:11, 259:6, 260:20, 260:22, 261:15, 261:20, 261:22, 262:1, 262:7, 262:10, 262:18, 262:22, 263:6, 263:15, 264:4, 268:3, 269:10, 269:15, 271:14, 273:3, 273:11, 273:17, 274:9, 274:12, 274:15, 274:24, 275:3, 275:8, 276:4, 276:8, 276:16, 276:25, 277:21, 278:2, 278:23, 278:25, 279:2, 279:10, 279:13, 280:2, 280:8, 281:3, 281:6, 281:13, 281:25, 282:5, 282:9,	282:13, 282:19, 283:9, 283:23, 284:2, 285:25, 286:22, 288:8, 288:25, 289:22, 291:12, 291:18, 292:13, 292:16, 293:1, 293:7, 293:17, 293:25, 294:7, 294:21, 295:9, 295:17, 295:20, 296:3, 296:9, 296:14, 296:24, 297:6, 297:10, 297:13, 297:18, 320:16, 320:18, 332:12, 332:17, 336:11, 336:17, 337:10, 337:12, 340:25, 348:2, 348:4, 350:25, 358:1, 359:22, 361:18, 361:20, 371:15, 373:18, 373:20, 373:24, 378:3, 378:10, 378:14, 378:19, 379:8, 379:19, 380:1, 380:5, 381:9, 381:22, 382:4, 382:6, 382:10, 382:14, 383:2, 383:15, 383:18, 384:2, 384:21, 403:11, 405:23, 416:12, 416:15, 416:19, 416:23, 417:5, 417:9, 419:13, 419:17, 419:20, 419:22, 420:3, 423:8 court [49] - 10:25, 15:17, 17:12, 19:22, 20:25, 21:1, 21:2, 21:4, 28:23, 32:4, 39:15, 50:20, 60:22, 72:5, 72:12, 73:15, 105:23, 115:5, 141:22, 145:8, 160:16, 190:23, 215:24, 216:23, 224:12, 231:11, 231:16, 239:20, 254:12, 261:2, 263:10, 264:3, 266:1, 296:13, 296:23, 297:12, 332:16, 340:7, 340:12, 379:7, 384:1, 384:20, 396:2, 398:17, 416:11, 417:4, 417:8, 419:12, 419:16 Court [23] - 1:19, 31:24, 135:18, 254:16, 254:17,	254:18, 254:19, 255:6, 257:6, 257:11, 260:16, 261:4, 267:21, 277:9, 283:21, 284:7, 343:24, 378:7, 424:2, 424:7, 424:16 Court's [9] - 4:8, 4:9, 4:10, 91:3, 269:8, 296:1, 380:19, 419:10 courthouse [6] - 10:21, 14:11, 99:15, 100:10, 100:11, 101:6 courtroom [8] - 14:9, 14:18, 14:22, 17:17, 25:24, 26:11, 32:20, 406:5 courts [1] - 20:24 covenants [9] - 48:9, 53:22, 288:16, 343:3, 345:12, 350:10, 360:20, 360:23, 361:9 cover [5] - 115:9, 115:11, 126:10, 126:16, 173:5 covered [2] - 5:11, 151:16 covers [2] - 150:25, 177:13 Coy [2] - 311:23, 395:1 Crader [12] - 65:14, 66:4, 66:23, 118:9, 123:17, 123:19, 123:23, 242:7, 242:14, 310:3, 327:1, 329:24 Craters [1] - 241:24 Craters' [2] - 322:24, 358:20 crawl [2] - 124:23, 125:4 create [9] - 36:4, 49:23, 144:7, 144:9, 177:22, 179:25, 196:18, 196:19, 230:1 created [5] - 152:24, 160:14, 309:7, 343:15, 410:24 creates [1] - 268:7 credibility [6] - 26:5, 26:6, 26:11, 407:6, 407:8, 408:4 credit [1] - 397:9 crest [2] - 151:9, 198:17 crew [6] - 356:5, 356:24, 357:4, 357:7, 357:19, 391:17 crime [4] - 21:11,

21:24, 22:1, 23:9 criminal [8] - 20:24, 21:9, 21:20, 21:23, 23:5, 23:15, 23:16 critical [2] - 167:8, 226:5 crooked [1] - 174:12 Crooked [4] - 93:1, 207:7, 322:19, 370:8 CROSS [10] - 2:2, 38:10, 90:2, 129:6, 183:10, 230:25, 250:22, 341:1, 371:16, 377:9 Cross [2] - 110:18, 371:15 cross [11] - 25:5, 25:6, 25:7, 25:8, 89:11, 129:4, 183:8, 209:25, 230:23, 250:20, 340:25 CROSS- EXAMINATION [9] - 38:10, 90:2, 129:6, 183:10, 230:25, 250:22, 341:1, 371:16, 377:9 cross-examination [2] - 25:5, 209:25 crossed [1] - 367:4 crosses [4] - 75:6, 99:4, 122:11, 253:3 CRR [2] - 1:19, 424:2 crushed [1] - 319:3 culvert [37] - 97:21, 147:6, 147:12, 147:15, 147:19, 148:10, 148:14, 149:17, 149:20, 150:7, 151:11, 152:9, 154:15, 156:3, 156:5, 156:6, 156:20, 163:24, 164:1, 164:3, 169:7, 169:9, 169:10, 169:15, 169:18, 170:5, 174:16, 177:22, 178:17, 179:2, 179:3, 189:5, 189:6, 189:10, 190:11, 196:10, 197:4 culvert's [1] - 198:4 culverts [5] - 45:24, 149:17, 151:14, 187:22, 204:22 cumbersome [1] - 43:19 cup [1] - 188:21 cups [7] - 149:18, 188:4, 188:11, 210:24, 338:17,	397:10 cure [8] - 221:22, 227:21, 228:1, 228:4, 229:15, 229:16, 229:17 current [2] - 101:13, 133:3 Curry [1] - 13:24 cut [4] - 169:18, 179:13, 315:18, 405:3 cutter [1] - 124:9 cutting [1] - 115:24 CV [2] - 3:16, 143:5 D dab [1] - 215:10 dad [2] - 303:24 Dale [1] - 66:5 Dallas [1] - 267:19 damage [24] - 85:17, 85:20, 85:23, 226:19, 227:22, 229:13, 232:20, 238:25, 240:15, 266:20, 267:4, 271:8, 274:23, 292:9, 294:15, 391:15, 391:18, 392:2, 392:4, 405:16, 412:5, 412:23, 412:25, 413:22 damages [70] - 26:19, 216:4, 216:13, 221:22, 265:8, 265:14, 265:15, 266:2, 266:24, 267:3, 267:6, 267:23, 272:22, 273:1, 273:20, 274:12, 274:14, 274:16, 274:18, 275:9, 275:23, 276:5, 276:11, 277:3, 277:5, 277:17, 277:18, 278:1, 278:10, 281:15, 282:17, 283:24, 287:14, 288:5, 294:5, 294:17, 294:21, 295:6, 295:7, 296:6, 380:3, 380:19, 383:20, 391:21, 399:20, 399:23, 403:16, 412:14, 412:16, 412:17, 412:18, 412:19, 412:22, 412:24, 413:7, 413:14, 413:18, 413:21, 413:24, 413:25, 414:2, 414:5, 414:6,	414:10, 414:12, 415:2, 415:4, 415:9, 420:1 damming [1] - 116:13 damn [1] - 138:16 dams [1] - 127:22 Dan [1] - 295:21 Dana [3] - 1:14, 6:18, 29:12 Dariene [1] - 8:20 date [17] - 49:14, 50:10, 50:13, 50:15, 51:13, 51:15, 67:7, 68:12, 68:14, 74:14, 74:23, 76:12, 205:16, 300:15, 357:15, 415:6, 415:11 dated [21] - 3:8, 3:9, 3:10, 3:11, 3:12, 3:13, 3:14, 3:20, 3:21, 3:25, 4:3, 4:7, 41:4, 50:13, 66:19, 92:7, 261:5, 311:21, 312:24, 343:23, 348:20 dates [1] - 321:4 dating [1] - 298:20 daughter [1] - 302:7 David [1] - 399:3 Davidson [6] - 251:6, 251:8, 306:7, 306:8, 326:5, 356:18 Davis [2] - 7:16, 269:7 day-to-day [2] - 143:22, 217:20 days [22] - 20:6, 55:19, 77:8, 82:19, 104:21, 104:24, 123:12, 123:14, 135:25, 237:25, 251:11, 251:12, 357:13, 360:8, 360:11, 375:3, 388:25, 399:1, 399:15, 399:17, 399:21, 423:9 DC-9 [1] - 111:3 de [1] - 150:13 dead [1] - 109:24 deal [15] - 101:2, 124:8, 128:17, 130:6, 193:7, 204:15, 265:22, 322:3, 332:6, 333:16, 354:4, 390:19, 390:22, 401:16, 418:15 dealing [8] - 140:22, 248:19, 266:12, 324:6, 371:7, 375:7,	376:4, 394:17 dealings [1] - 375:15 deals [3] - 181:22, 389:3, 403:23 dealt [5] - 46:11, 198:24, 327:23, 362:12, 366:9 dear [1] - 131:4 dearly [1] - 190:14 death [1] - 109:24 December [25] - 37:3, 74:15, 74:24, 76:13, 77:7, 77:12, 100:7, 104:5, 123:15, 123:16, 136:7, 237:16, 253:24, 256:19, 256:20, 265:19, 271:9, 332:2, 332:3, 332:24, 332:25, 352:4, 352:5, 352:24, 399:14 decide [16] - 26:3, 26:4, 26:10, 26:12, 26:17, 29:4, 40:1, 52:3, 55:23, 78:24, 140:8, 145:25, 221:8, 380:23, 402:20, 407:25 decided [13] - 56:9, 137:22, 219:5, 261:25, 268:11, 300:7, 300:13, 303:9, 309:6, 310:16, 350:23, 398:4, 405:1 deciding [1] - 301:12 decision [15] - 14:21, 27:11, 27:14, 28:12, 79:2, 262:9, 277:9, 290:25, 313:2, 368:5, 373:5, 417:19, 418:22, 419:8, 420:21 decisions [1] - 52:14 deck [11] - 112:15, 112:18, 112:22, 112:24, 113:1, 113:3, 113:7, 113:8, 171:14, 376:19 declaration [1] - 411:3 declare [1] - 418:17 declared [1] - 366:7 decorated [4] - 35:17, 136:25, 395:24, 402:23 decoration [1] - 110:20 decrease [4] - 202:21, 202:24, 203:7, 208:18 decreased [2] -	174:5, 203:8 decreases [1] - 203:8 dedicated [4] - 42:5, 52:9, 279:10, 279:14 dedicating [1] - 284:19 dedication [1] - 44:18 deduction [1] - 409:8 deed [59] - 33:10, 33:13, 40:16, 41:2, 41:3, 41:4, 41:12, 41:13, 41:18, 42:8, 42:13, 42:19, 44:10, 44:14, 45:18, 46:6, 46:25, 47:1, 47:9, 47:12, 47:24, 48:5, 50:12, 50:23, 51:2, 51:3, 51:14, 51:15, 51:25, 53:19, 53:22, 54:6, 54:7, 54:15, 54:17, 54:20, 54:22, 132:15, 269:25, 270:1, 270:4, 288:14, 289:1, 289:3, 306:21, 343:11, 343:15, 345:13, 345:18, 347:10, 347:18, 349:21, 350:18, 351:3, 358:5, 387:11, 410:7, 410:8, 410:10 deeds [11] - 31:19, 31:20, 32:23, 33:12, 44:11, 45:17, 50:20, 288:11, 349:10, 349:11, 386:14, deemed [2] - 270:4, 410:14 deep [4] - 79:15, 79:17, 340:10, 388:18 deeper [2] - 79:12, 127:16 deer [1] - 111:25 defects [1] - 390:10 defend [1] - 343:6 defendant [39] - 11:17, 11:19, 11:24, 12:1, 12:5, 12:7, 12:10, 12:18, 12:20, 13:3, 21:6, 21:7, 21:10, 22:14, 23:2, 154:5, 239:2, 251:25, 281:18, 360:5, 383:20, 383:21, 391:11, 408:20, 411:14, 411:19, 411:25, 412:2, 412:4, 412:5, 412:10, 412:19, 412:21,

413:18, 414:6, 414:20, 415:2, 415:10, 419:25 defendant's [3] - 251:24, 277:4, 358:12 Defendant's [27] - 3:23, 3:24, 4:3, 4:4, 4:5, 4:6, 4:7, 18:17, 18:23, 92:1, 132:11, 134:1, 139:1, 252:6, 254:4, 254:8, 254:25, 255:2, 311:18, 312:18, 319:11, 321:14, 334:14, 337:14, 342:4, 368:13, 370:3 Defendants [2] - 1:8, 1:17 defendants [32] - 6:3, 6:25, 8:2, 23:17, 30:9, 47:24, 157:8, 223:4, 238:11, 238:13, 238:18, 240:3, 240:5, 240:10, 262:12, 291:1, 292:16, 360:18, 361:8, 386:3, 387:1, 388:4, 388:12, 389:22, 391:25, 392:2, 403:20, 404:1, 404:8, 404:9, 404:17, 413:17 defendants' [17] - 238:24, 240:14, 294:9, 360:15, 361:5, 379:23, 381:17, 385:14, 385:24, 386:7, 388:13, 389:19, 391:22, 404:20, 405:21, 411:19, 412:15 defending [1] - 21:12 defense [11] - 9:8, 9:24, 11:4, 13:15, 23:3, 25:11, 268:20, 269:2, 297:14, 378:10, 416:15 defense's [2] - 290:4, 403:17 defenses [1] - 265:18 defined [3] - 133:5, 224:21, 238:3 defines [1] - 198:5 definitely [1] - 145:19 definition [2] - 232:4, 417:22 definitions [1] - 232:6	degradation [2] - 93:9, 323:11 degree [10] - 142:13, 142:20, 172:10, 183:5, 185:8, 197:15, 197:24, 300:3, 300:19, 301:23 degrees [2] - 182:13, 212:3 delayed [1] - 352:12 delete [1] - 115:22 deleted [1] - 128:18 deliberate [2] - 415:24, 417:1 deliberations [21] - 25:18, 72:3, 141:18, 190:20, 260:24, 264:2, 296:18, 332:13, 379:2, 379:5, 384:5, 384:10, 384:13, 406:10, 414:21, 415:21, 415:24, 416:3, 416:9, 416:25, 419:9 demeanor [2] - 105:13, 407:24 demolition [3] - 360:15, 361:6, 404:13 demonstrate [5] - 61:4, 163:4, 163:19, 188:4, 188:21, 227:20 demonstrated [3] - 208:1, 292:1, 402:9 demonstrates [1] - 272:23 demonstrating [1] - 242:23 demonstrative [1] - 338:17 denied [9] - 16:10, 271:15, 271:16, 271:18, 293:15, 293:16, 294:1, 382:18, 383:4 DENNIS [2] - 236:13, 297:21 Dennis [1] - 47:11 denomination [3] - 298:17, 298:19, 299:14 dense [1] - 151:24 density [4] - 92:25, 322:18, 370:6, 370:8 deny [2] - 380:23, 381:16 denying [1] - 382:25 depict [2] - 80:12, 158:25 depicted [4] - 270:2, 270:5, 346:25, 350:17	depiction [2] - 345:23, 346:3 depictions [3] - 152:22, 152:23, 346:19 depicts [1] - 146:24 Deposition [1] - 4:8 deposition [11] - 35:12, 35:20, 90:12, 90:16, 91:7, 94:15, 95:8, 361:15, 378:7, 378:17, 396:8 depositions [2] - 90:24, 378:15 depreciation [1] - 412:22 depression [3] - 164:10, 164:12, 209:6 depressions [1] - 173:23 derivation [1] - 52:2 describe [14] - 64:8, 70:14, 70:20, 75:24, 80:1, 81:13, 81:14, 113:17, 127:20, 136:16, 160:25, 163:10, 175:23, 376:14 described [5] - 52:6, 196:13, 348:10, 349:25, 395:25 describes [2] - 41:12, 410:8 describing [3] - 73:20, 136:15, 202:13 description [7] - 45:19, 47:16, 48:13, 51:11, 185:23, 345:3, 348:13 DESCRIPTION [2] - 3:2, 4:2 descriptive [1] - 50:23 deserves [2] - 408:8, 409:21 design [14] - 42:25, 154:23, 158:15, 178:4, 178:7, 210:3, 210:9, 245:25, 246:15, 255:17, 311:12, 339:1, 394:12 designated [5] - 30:3, 155:24, 345:7, 348:19, 350:3 designation [3] - 217:25, 220:20, 220:23 designations [1] - 16:25 designed [6] -	152:12, 199:17, 331:5, 338:22, 355:2, 389:5 desirable [1] - 248:13 desire [1] - 237:13 desist [1] - 104:4 desk [2] - 44:25, 389:2 desktop [1] - 44:12 despite [2] - 354:15, 354:16 destroy [4] - 115:25, 238:15, 240:7, 410:23 destroyed [2] - 122:25, 277:15 destruction [1] - 240:14 detail [2] - 160:5, 326:11 detailed [2] - 232:11, 316:21 details [2] - 161:9, 328:6 detain [2] - 167:13, 174:9 detention [5] - 167:10, 173:23, 208:5, 208:6, 208:9, 208:13 determine [16] - 27:24, 44:8, 45:6, 45:10, 93:7, 144:15, 224:7, 229:16, 323:9, 323:16, 390:6, 407:2, 407:3, 407:6, 407:10, 412:13 determined [4] - 30:24, 150:7, 409:2, 409:3 determining [3] - 44:6, 407:11, 410:25 detrimet [2] - 129:12, 155:7 detrimental [1] - 175:17 devalue [1] - 85:22 devalued [3] - 391:9, 391:24, 400:8 develop [3] - 197:25, 299:6, 300:25 developed [13] - 52:10, 92:20, 102:17, 151:13, 185:11, 195:5, 201:7, 208:3, 209:1, 301:8, 322:12, 365:20 developer [2] - 49:2, 102:17 developers [1] -	195:8 developing [5] - 93:2, 174:1, 203:11, 300:24, 323:4, 387:13 development [5] - 41:19, 49:4, 144:16, 201:19, 301:7 developments [1] - 389:6 diameter [1] - 156:21 died [2] - 219:13, 301:16 difference [7] - 48:22, 125:17, 128:6, 128:8, 173:15, 249:4, 412:25 different [20] - 21:21, 79:11, 140:20, 144:11, 144:12, 144:24, 145:7, 172:23, 173:20, 279:24, 300:21, 316:5, 382:4, 387:2, 392:14, 405:2, 405:9, 421:25 differently [1] - 316:9 difficult [5] - 5:25, 276:2, 370:14, 420:10, 420:16 difficulties [1] - 19:7 dig [20] - 30:13, 30:24, 121:5, 211:9, 211:11, 236:24, 237:7, 237:13, 239:24, 241:16, 260:6, 281:3, 281:9, 289:7, 353:22, 356:5, 356:25, 357:4, 357:7, 357:19 Digest [1] - 24:19 digging [5] - 155:5, 211:8, 214:2, 258:18, 270:20, 354:10 diligence [2] - 392:7, 414:4 dime [2] - 325:6, 400:19 dimensional [4] - 144:6, 144:7, 210:9, 210:10 diminishing [1] - 238:25 diminution [14] - 221:17, 234:8, 275:10, 276:5, 276:11, 277:25, 278:8, 278:11, 282:17, 287:1, 400:13, 400:18,

400:19, 405:17 Dina [5] - 92:7, 111:19, 122:2, 124:1, 128:11 dire [3] - 38:3, 38:5, 38:7 DIRECT [10] - 2:2, 36:15, 55:9, 106:6, 142:6, 217:7, 236:16, 297:24, 362:2, 374:6 direct [11] - 25:3, 25:5, 25:7, 73:17, 171:25, 237:2, 356:1, 380:2, 409:6, 409:7, 412:14 directed [16] - 16:15, 16:21, 264:6, 265:7, 268:1, 293:2, 293:8, 294:2, 301:2, 379:10, 380:24, 381:2, 381:16, 381:17, 382:18, 383:1 direction [6] - 71:8, 71:11, 165:3, 225:6, 327:12, 356:9 directly [2] - 14:10, 409:7 director [5] - 58:12, 76:21, 115:3, 124:2, 239:14, 362:9 directors [1] - 368:4 dirt [1] - 396:19 disagree [1] - 288:25 disagreement [2] - 5:21, 223:19 disappear [1] - 114:7 disappeared [1] - 98:24 discharge [4] - 150:11, 156:20, 172:21, 416:25 discharged [3] - 110:15, 110:16, 417:2 discharging [1] - 416:19 disclose [7] - 87:17, 229:24, 229:25, 230:2, 275:25, 390:10, 391:8 disclosure [1] - 229:25 discomfort [1] - 266:19 discontinuity [2] - 177:22, 190:1 discontinuous [1] - 152:9 discount [4] - 230:8, 282:23, 283:2, 390:19 discovery [1] -	191:11 discrepancies [2] - 26:2, 26:4 discuss [7] - 105:12, 156:12, 296:8, 306:3, 306:8, 310:9, 396:16 discussed [4] - 208:23, 398:6, 402:9, 402:10 discussing [1] - 277:14 discussion [5] - 134:12, 179:3, 246:22, 313:17, 327:25 discussions [27] - 72:3, 74:25, 94:22, 97:13, 141:18, 159:21, 190:20, 209:9, 260:25, 264:2, 296:18, 304:20, 305:18, 324:20, 332:14, 333:14, 336:2, 336:19, 337:24, 342:18, 368:25, 369:2, 369:7, 369:10, 376:5, 379:6, 384:10 disdainful [1] - 191:17 dismiss [2] - 263:25, 293:12 dismissal [1] - 251:16 dismissed [17] - 16:8, 104:20, 104:24, 135:24, 136:11, 136:12, 237:25, 251:11, 254:19, 255:7, 257:25, 258:2, 261:12, 266:7, 333:7, 399:5, 423:7 disposition [2] - 290:21, 292:4 dispute [12] - 8:23, 9:1, 17:6, 29:22, 42:12, 234:17, 376:24, 377:2, 385:19, 392:2, 392:11, 406:21 disputed [5] - 273:12, 287:8, 289:12, 291:15, 295:1 disputes [3] - 26:12, 420:13, 422:7 disqualified [1] - 421:8 disregard [5] - 28:8, 175:14, 272:24, 273:16, 274:7, 409:24	disrespect [2] - 324:2, 327:3 dissipate [3] - 57:16, 57:21, 58:1 distant [1] - 171:8 distress [7] - 266:18, 267:15, 287:6, 287:12, 294:5, 294:8, 294:15 disturbed [1] - 396:19 ditch [5] - 171:24, 171:25, 172:2, 194:11, 195:15 diverted [1] - 147:9 divested [1] - 410:15 divulge [2] - 43:18, 85:21 Dixie [1] - 397:9 DMZ [2] - 108:13 doctor [4] - 67:5, 185:12, 266:20, 327:2 document [38] - 53:5, 53:7, 65:23, 66:3, 67:7, 131:2, 132:22, 132:25, 133:7, 134:2, 134:6, 134:8, 134:20, 134:21, 160:14, 164:5, 223:22, 253:11, 253:13, 253:17, 254:11, 254:12, 258:4, 284:19, 305:5, 305:7, 305:15, 311:19, 312:19, 312:22, 313:1, 313:24, 314:14, 334:16, 334:19, 341:25, 344:2, 404:16 documents [5] - 23:22, 24:8, 241:3, 253:10, 404:4, 406:9 dollar [7] - 180:7, 282:20, 282:24, 283:6, 412:20, 415:5 dollar-wise [1] - 180:7 done [59] - 15:22, 21:15, 22:24, 35:3, 35:1, 36:4, 36:23, 37:5, 37:13, 47:3, 47:18, 55:25, 73:23, 83:14, 97:6, 97:15, 98:1, 109:4, 127:7, 129:1, 143:25, 144:19, 145:3, 172:7, 174:10, 175:12, 195:8, 199:13, 201:21, 202:18,	215:6, 219:10, 220:7, 220:24, 221:1, 227:12, 230:14, 233:3, 234:23, 265:20, 265:21, 286:2, 280:17, 304:25, 311:7, 321:6, 334:11, 340:21, 340:22, 371:7, 390:2, 392:4, 399:16, 401:24, 403:3, 403:4, 420:22, 421:4 door [12] - 30:10, 44:13, 86:4, 114:9, 221:23, 242:7, 242:8, 309:10, 309:11, 309:19, 310:2, 394:3 door's [1] - 261:22 Dorchester [1] - 37:9 dotied [1] - 159:12 double [1] - 166:6 doubt [9] - 23:7, 23:8, 23:11, 136:10, 191:6, 234:21, 250:24, 268:21, 289:1 down [114] - 5:9, 16:16, 41:9, 44:25, 48:16, 54:2, 55:1, 55:23, 56:13, 87:11, 107:12, 108:13, 108:14, 109:14, 110:24, 111:22, 116:6, 117:4, 118:11, 120:21, 120:22, 126:10, 141:15, 147:9, 149:20, 150:10, 151:10, 151:17, 154:16, 154:22, 156:8, 162:19, 163:12, 163:13, 163:23, 165:1, 165:11, 168:2, 169:23, 170:5, 170:6, 170:20, 170:21, 170:22, 170:25, 171:1, 174:24, 181:22, 187:18, 194:12, 198:4, 203:7, 204:17, 205:5, 211:9, 212:2, 218:6, 225:5, 228:9, 236:4, 247:6, 247:7, 285:19, 286:6, 289:24, 296:1, 301:10, 302:21, 303:10, 304:4, 307:24, 309:4, 309:21, 309:23, 311:5, 315:1, 315:3, 316:20, 317:15, 317:19, 319:4, 319:5,	319:7, 320:9, 320:23, 320:24, 321:2, 323:1, 324:21, 326:20, 339:18, 339:19, 339:24, 340:12, 345:3, 352:13, 361:18, 365:2, 369:24, 369:25, 370:21, 370:22, 371:4, 372:5, 372:10, 373:20, 376:11, 377:13, 378:3, 394:8, 394:9, 400:25, 420:7 downloaded [1] - 19:14 downstairs [1] - 17:9 downstream [24] - 31:1, 44:5, 71:9, 116:24, 117:13, 117:15, 172:21, 175:13, 177:23, 181:3, 183:2, 189:20, 189:21, 213:2, 214:4, 225:7, 225:8, 238:9, 238:21, 239:1, 241:12, 241:18, 353:15, 373:14 downtown [3] - 154:21, 203:11, 321:24 dozens [1] - 145:7 Dr [9] - 8:13, 67:6, 118:11, 118:15, 137:5, 137:7, 241:24, 243:19, 243:25 drafted [1] - 107:7 drain [59] - 65:4, 79:13, 82:11, 82:18, 83:1, 83:3, 83:22, 103:4, 150:3, 150:14, 151:15, 151:25, 152:10, 177:7, 177:20, 178:18, 179:19, 179:25, 180:5, 180:11, 187:17, 193:20, 198:1, 198:2, 198:10, 199:1, 199:6, 199:7, 199:9, 200:4, 201:3, 208:14, 317:17, 317:20, 317:23, 318:2, 318:6, 321:20, 322:16, 323:17, 323:20, 367:24, 369:22, 372:7, 377:23, 388:23, 388:24, 388:25, 389:10, 389:17, 389:22, 397:4 drain's [1] - 180:6

drainage [226] - 9:2, 30:1, 30:14, 31:12, 31:14, 33:3, 33:5, 35:5, 45:23, 46:5, 46:21, 52:7, 53:1, 53:24, 57:15, 58:18, 59:2, 61:25, 62:22, 63:14, 63:15, 63:22, 65:5, 65:8, 69:13, 70:9, 71:16, 76:24, 83:7, 83:15, 85:7, 85:14, 92:24, 92:25, 93:4, 94:23, 96:25, 102:19, 103:2, 103:11, 105:3, 105:4, 112:4, 112:17, 112:21, 122:19, 125:18, 127:13, 130:18, 131:6, 132:7, 133:5, 139:20, 144:8, 144:21, 145:12, 145:21, 148:3, 148:7, 148:13, 149:7, 149:15, 151:2, 165:15, 165:17, 169:13, 170:6, 170:10, 172:14, 172:19, 174:3, 175:14, 177:5, 177:15, 180:23, 182:24, 183:1, 187:18, 189:1, 198:3, 202:24, 207:8, 207:15, 209:10, 209:18, 209:22, 211:17, 213:18, 214:3, 214:17, 214:18, 224:22, 224:23, 225:1, 225:3, 225:4, 225:9, 226:5, 228:4, 228:7, 228:10, 236:25, 237:8, 238:5, 238:6, 238:7, 238:8, 238:15, 238:16, 238:19, 238:25, 239:1, 239:8, 239:24, 240:7, 240:8, 240:11, 240:15, 240:17, 241:16, 250:4, 250:8, 252:1, 252:2, 252:3, 252:17, 252:18, 252:19, 252:22, 253:2, 260:6, 270:9, 271:10, 272:16, 272:19, 279:20, 282:9, 284:3, 284:20, 284:22, 286:15, 286:16, 286:19, 312:5, 312:6, 312:9, 312:12, 318:10, 322:14, 322:17,	322:21, 323:6, 325:2, 332:6, 333:11, 333:17, 335:11, 341:5, 342:8, 342:12, 346:11, 346:24, 347:1, 349:5, 354:6, 355:3, 355:4, 358:19, 358:22, 359:1, 360:19, 361:9, 362:13, 362:21, 364:14, 364:15, 364:20, 366:20, 369:3, 369:8, 369:14, 369:18, 372:21, 372:24, 373:1, 373:12, 373:14, 385:22, 385:23, 386:18, 386:19, 387:22, 388:9, 388:12, 388:13, 388:21, 389:3, 389:5, 389:11, 389:16, 390:23, 391:1, 391:4, 391:8, 395:15, 396:16, 396:25, 397:1, 397:2, 401:7, 401:20, 401:24, 402:10, 403:18, 403:19, 403:23, 404:22, 405:20 drainages [1] - 366:25 drained [10] - 57:1, 152:11, 198:23, 210:19, 319:5, 388:8, 388:14, 397:14 draining [4] - 207:16, 207:19, 238:17, 240:9 drains [34] - 101:21, 102:1, 147:7, 174:11, 174:14, 192:15, 192:20, 192:25, 193:23, 195:25, 199:9, 199:14, 203:15, 204:21, 214:10, 316:23, 317:5, 317:12, 317:13, 318:18, 324:3, 335:15, 335:17, 335:20, 335:22, 335:24, 335:25, 362:16, 367:4, 371:6, 395:11, 395:12, 399:9 draw [6] - 6:10, 10:7, 10:9, 10:15, 11:8 drawing [12] - 158:15, 158:19, 158:22, 159:2, 161:12, 162:4, 162:5,	163:20, 164:18, 168:12, 209:12 drawings [11] - 147:17, 158:9, 158:13, 185:5, 191:2, 191:12, 199:15, 199:16, 207:14, 246:21, 395:17 drawn [3] - 47:4, 50:14, 352:13 drew [2] - 52:9, 155:11 drive [1] - 374:11 Drive [46] - 32:19, 35:8, 55:15, 56:13, 69:5, 69:7, 92:23, 108:12, 146:17, 147:7, 147:8, 147:9, 150:10, 182:7, 185:20, 186:8, 187:17, 198:8, 198:10, 198:11, 198:16, 204:9, 204:20, 255:12, 279:20, 298:3, 304:2, 305:9, 315:11, 325:23, 333:11, 363:11, 363:14, 364:13, 365:23, 368:2, 369:15, 372:7, 386:1, 386:24, 396:17, 397:5, 401:24, 402:6, 404:22 driver [1] - 124:22 drives [1] - 286:10 driveway [25] - 77:13, 164:2, 164:23, 165:1, 165:20, 166:14, 173:16, 201:20, 214:13, 214:21, 248:19, 255:23, 312:6, 317:15, 317:18, 317:19, 318:7, 318:8, 318:24, 319:1, 319:4, 319:7, 320:10, 320:11, 358:20 driveway's [1] - 161:5 driveways [3] - 161:9, 173:12, 202:15 driving [1] - 286:11 drop [10] - 109:14, 149:24, 151:1, 165:10, 165:21, 177:12, 180:5, 202:8, 402:9 drops [3] - 163:23, 186:17 drove [1] - 326:20	dual [1] - 370:15 due [3] - 17:17, 392:6, 410:16 dues [3] - 308:15, 308:18, 308:25 dug [14] - 31:6, 31:12, 150:16, 157:7, 282:9, 287:4, 357:13, 360:11, 388:12, 388:20, 391:14, 398:16, 405:12 duly [12] - 20:9, 36:13, 55:7, 99:14, 106:4, 142:4, 217:5, 236:14, 297:22, 350:13, 361:25, 374:4 dump [4] - 127:18, 127:20, 127:21, 127:24 dumped [1] - 225:12 dune [25] - 35:9, 35:10, 116:6, 131:17, 131:22, 151:6, 151:7, 151:9, 151:17, 163:22, 177:25, 178:2, 185:22, 186:7, 186:15, 196:13, 196:14, 197:3, 198:12, 198:17, 198:18, 198:21, 318:19 dunes [5] - 185:21, 208:4, 318:15, 362:25, 396:22 duplicate [1] - 48:18 duration [1] - 144:12 during [37] - 15:3, 15:10, 24:13, 26:24, 78:19, 78:21, 90:11, 93:10, 101:21, 125:20, 128:20, 131:5, 142:25, 156:11, 160:1, 167:16, 175:20, 175:24, 195:4, 209:25, 245:19, 246:1, 246:2, 246:22, 283:17, 319:23, 339:21, 339:23, 377:17, 399:20, 406:5, 406:24, 409:5, 413:9, 415:17, 416:3 duties [4] - 405:25, 406:1, 421:4 duty [10] - 238:18, 240:10, 406:11, 406:13, 407:3, 407:9, 413:23, 421:5, 422:2, 422:4	E e-mail [81] - 3:8, 3:9, 3:10, 3:11, 3:12, 3:13, 3:14, 3:20, 3:21, 59:18, 59:21, 59:22, 60:6, 60:9, 60:10, 61:15, 62:1, 64:9, 64:17, 65:13, 65:18, 66:4, 66:19, 66:24, 67:1, 67:4, 67:10, 67:18, 67:20, 68:21, 69:2, 69:4, 69:9, 69:23, 70:1, 74:12, 74:13, 74:14, 74:16, 74:23, 74:25, 75:19, 75:21, 76:2, 76:12, 76:14, 76:16, 98:10, 99:6, 121:20, 121:21, 122:7, 122:14, 122:23, 123:15, 126:25, 133:20, 133:21, 133:22, 148:21, 149:1, 149:5, 153:10, 153:13, 164:7, 209:9, 242:4, 242:6, 242:10, 242:13, 242:16, 243:9, 243:18, 243:21, 243:23, 244:12, 309:7, 310:3, 317:4, 357:16 E-mail [1] - 4:7 e-mailed [2] - 296:6, 296:7 e-mails [15] - 31:3, 65:11, 66:9, 121:6, 133:18, 159:8, 164:7, 242:1, 273:7, 334:23, 335:3, 335:20, 337:4, 353:14, 357:12 E.M. [7] - 151:11, 343:23, 344:10, 345:7, 345:11, 348:20, 350:4 eager [1] - 398:14 early [11] - 56:2, 160:3, 187:7, 196:24, 218:24, 263:22, 281:2, 304:3, 363:20, 384:9, 393:25 earned [1] - 300:19 earshot [1] - 27:21 earth [1] - 423:3 earth's [1] - 159:15 easel [1] - 47:23 easement [28] - 9:2, 33:3, 33:5, 33:8, 33:15, 34:11, 42:4,

42:10, 42:20, 43:13, 43:15, 43:22, 43:23, 44:16, 45:9, 46:11, 46:12, 46:17, 48:2, 48:12, 48:20, 52:6, 52:7, 52:20, 52:25, 53:1, 53:10, 53:20, 53:24, 53:25, 54:5, 54:9, 56:21, 61:25, 63:14, 70:24, 71:2, 75:7, 88:23, 88:24, 88:25, 93:4, 93:5, 93:15, 95:3, 95:5, 95:7, 95:10, 95:13, 95:21, 95:23, 96:5, 96:7, 96:9, 96:10, 96:12, 99:9, 99:16, 103:9, 112:2, 112:20, 112:24, 112:25, 115:4, 116:5, 116:6, 117:23, 117:24, 122:13, 126:13, 129:13, 131:6, 133:5, 134:15, 134:18, 137:23, 138:3, 138:5, 139:5, 139:25, 140:22, 147:5, 147:12, 147:14, 147:24, 147:25, 148:3, 148:10, 148:23, 149:15, 154:14, 155:19, 155:22, 156:8, 163:12, 163:13, 163:25, 164:1, 166:3, 166:5, 169:24, 171:13, 171:14, 175:2, 175:14, 180:20, 180:25, 181:7, 181:12, 181:16, 182:3, 182:7, 182:10, 182:12, 182:13, 182:16, 186:20, 187:6, 187:9, 187:11, 187:16, 190:12, 196:11, 198:5, 198:8, 198:19, 204:8, 204:17, 204:19, 205:8, 205:9, 205:13, 205:18, 205:21, 206:10, 206:21, 212:4, 224:22, 225:4, 225:9, 228:18, 236:25, 237:8, 238:4, 238:16, 239:1, 239:24, 240:8, 244:24, 246:3, 246:12, 246:24, 252:19, 252:22, 253:3, 255:11, 260:2, 260:17, 266:13,	270:1, 270:5, 270:8, 270:12, 270:21, 272:1, 279:11, 279:20, 279:24, 280:1, 280:2, 280:3, 280:11, 281:1, 281:7, 282:1, 284:12, 284:20, 284:22, 285:16, 287:4, 288:21, 289:7, 296:2, 305:19, 306:3, 306:10, 306:25, 307:5, 310:9, 312:2, 312:6, 312:7, 312:9, 312:12, 313:3, 313:19, 313:22, 322:5, 322:8, 323:8, 325:12, 325:14, 325:17, 325:19, 326:15, 329:10, 330:25, 331:2, 333:17, 340:18, 342:9, 342:12, 344:15, 345:20, 346:11, 346:24, 347:1, 354:2, 354:6, 354:22, 358:9, 358:20, 358:22, 359:1, 359:4, 360:19, 361:9, 364:14, 364:15, 364:24, 365:2, 365:24, 368:7, 371:10, 371:19, 371:23, 372:1, 372:3, 372:10, 379:14, 379:22, 379:25, 380:10, 380:17, 382:19, 385:22, 386:19, 386:21, 386:22, 386:23, 387:4, 387:6, 387:8, 387:9, 387:15, 387:17, 387:22, 388:9, 393:5, 393:12, 393:16, 393:20, 395:4, 397:21, 397:22, 398:23, 401:10, 401:15, 410:4, 410:12, 410:14, 410:24, 411:1, 411:3, 411:9 easement/driveway [2] - 252:2, 252:18 easements [3] - 33:4, 40:14, 42:22, 42:24, 42:25, 43:1, 44:17, 44:18, 45:20, 46:1, 46:4, 46:15, 47:6, 47:19, 47:20, 47:21, 48:9, 48:13, 65:9, 155:4, 156:4,	180:22, 286:15, 286:17, 286:19, 288:16, 323:6, 343:4, 343:13, 350:12, 350:17, 350:21, 366:25, 367:13, 367:18, 382:21 easter [5] - 50:6, 50:11, 92:4, 162:22, 418:4, 418:5 easily [1] - 184:12 Easling [3] - 124:11, 124:20, 124:21 East [1] - 233:14 east [1] - 417:17 easy [5] - 10:6, 45:8, 79:2, 88:11, 282:19, 417:20 eat [1] - 416:3 eating [1] - 416:4 economics [1] - 218:8 ED [2] - 343:25, 344:11 Ed [1] - 116:17 edge [5] - 165:19, 169:19, 208:8, 209:15, 370:22 education [5] - 39:14, 106:16, 142:12, 409:16, 409:22 educational [3] - 205:25, 299:2, 300:1 EF [1] - 50:16 effect [2] - 31:1, 59:12, 163:5, 168:13, 172:11, 175:17, 183:2, 224:15, 224:16, 224:17, 224:24, 226:14, 228:23, 229:19, 241:12, 241:18, 246:21, 249:25, 356:2, 407:3 effective [1] - 299:8 effectively [3] - 152:10, 178:15, 202:25 effectiveness [1] - 148:7 effects [3] - 272:24, 391:21, 399:11 effort [5] - 34:9, 84:12, 89:17, 123:3, 123:10, 393:12, 405:19, 414:12 efforts [1] - 413:23 egg [1] - 181:15 egress [2] - 156:6,	182:11 eight [15] - 13:7, 79:20, 81:24, 117:11, 164:15, 164:16, 165:8, 170:14, 170:15, 218:22, 388:18, 396:3, 399:15, 399:17, 399:21 eight-foot [2] - 165:8, 170:14 eighteen [3] - 399:15, 399:17, 399:21 either [15] - 8:1, 9:7, 9:23, 73:1, 109:20, 144:14, 154:19, 205:17, 229:8, 277:17, 282:16, 323:23, 351:25, 381:13, 411:9 elaborate [1] - 166:18 Elaine [1] - 32:25 elderly [1] - 301:4 electrical [2] - 364:2, 401:8 element [1] - 270:16 elements [5] - 264:16, 264:17, 269:22, 381:25, 382:2 elevate [1] - 199:3 elevated [1] - 199:6 elevation [5] - 153:3, 164:13, 167:15, 167:19, 186:14, 315:17, 315:20 elevations [2] - 196:9 eleventh [3] - 199:12, 199:19, 212:6 eliminate [5] - 93:3, 93:8, 131:7, 323:6, 364:20 eliminated [3] - 46:13, 48:1, 48:2 eliminates [1] - 48:12 eliminating [2] - 93:5, 323:7 Elizabeth [1] - 13:23 emergency [2] - 100:3, 108:24 emotion [1] - 414:14 emotional [10] - 266:18, 266:21, 267:15, 276:7, 287:6, 287:12, 294:5, 294:8, 294:15, 294:17 empirical [1] - 210:3	employed [2] - 249:5, 362:5 employment [1] - 249:7 empties [1] - 279:22 empty [1] - 34:18 emptying [2] - 203:6, 397:7 enclosure [1] - 264:20 encounter [1] - 375:18 encroaching [1] - 156:9 end [27] - 20:3, 22:23, 22:25, 26:14, 33:4, 71:17, 119:17, 124:9, 131:5, 173:4, 173:7, 173:9, 174:3, 179:11, 179:12, 181:22, 182:15, 200:15, 293:4, 293:5, 314:25, 320:10, 328:18, 329:7, 365:4, 394:9, 397:17 ends [2] - 188:6, 188:17 enemy [5] - 172:18, 172:19, 193:4, 193:5, 193:6, 193:15 enforceable [1] - 46:19 engineer [3] - 83:13, 110:25, 116:5, 127:7, 142:10, 143:1, 143:9, 143:21, 151:13, 161:3, 163:1, 164:18, 166:15, 185:13, 186:15, 197:4, 199:17, 203:17, 206:13, 210:16, 210:17, 221:21, 229:16, 234:11, 234:13, 272:9, 272:17, 324:3, 364:2, 389:15, 389:23, 401:8, 403:23 engineer's [1] - 197:15 engineering [20] - 59:8, 142:13, 142:18, 142:21, 145:13, 145:14, 145:16, 145:20, 160:19, 166:11, 172:11, 175:23, 183:5, 190:7, 207:22, 208:6, 215:13, 225:16, 276:19, 285:24 Engineering [14] -

47:5, 47:18, 50:7, 50:9, 51:7, 51:18, 51:22, 51:24, 72:15, 132:16, 343:16, 344:10, 358:6, 393:4 Engineers [1] - 142:11 engineers [11] - 143:23, 143:24, 144:23, 178:5, 192:1, 196:22, 197:10, 197:17, 210:1, 210:12, 228:6 English [2] - 209:16, 213:10 Engstrom [11] - 305:25 enjoy [6] - 16:6, 248:10, 301:18, 384:10, 384:16, 421:12 enjoyed [1] - 212:16 enjoyment [4] - 412:24, 413:7, 413:9, 413:11 ensure [2] - 13:5, 65:8 enter [1] - 192:10 entered [9] - 240:22, 264:19, 281:19, 281:23, 348:6, 369:10, 382:7, 386:3, 411:20 entire [9] - 91:22, 101:8, 155:4, 283:17, 290:19, 292:1, 386:22, 421:3 entirely [4] - 94:1, 246:8, 246:15, 409:24 entirety [2] - 407:15, 407:16 entities [2] - 45:7, 370:17 entitled [16] - 22:24, 23:3, 29:1, 134:4, 216:13, 265:6, 268:1, 273:1, 408:22, 410:3, 410:15, 412:18, 413:13, 414:1, 415:4, 415:9 entitles [1] - 19:15 entity [1] - 366:15 entrance [2] - 281:20, 365:3 entry [5] - 264:17, 382:7, 411:23, 411:25, 412:7 environmental [1] - 143:23 equipment [7] -	45:22, 46:4, 46:14, 77:14, 123:18, 124:4, 124:7 equitable [2] - 43:7, 43:17 Eric [5] - 251:6, 306:7, 326:4, 326:5, 356:18 erosion [1] - 362:13 error [1] - 28:19 escape [1] - 52:3 especially [3] - 196:6, 301:9, 421:17 Esquire [3] - 1:14, 1:15, 1:16 essence [1] - 380:1 essentially [5] - 34:17, 40:24, 43:11, 175:8, 397:15 establish [2] - 32:13, 381:1 established [2] - 49:2, 333:3 establishing [2] - 66:15, 93:24 estate [40] - 18:11, 31:9, 36:24, 36:25, 37:4, 37:6, 37:23, 38:1, 39:21, 40:21, 52:11, 56:16, 87:5, 87:7, 217:21, 217:22, 219:2, 219:15, 219:23, 220:17, 221:4, 226:16, 227:1, 227:12, 304:5, 305:8, 305:18, 307:17, 325:15, 342:25, 349:16, 351:22, 358:5, 367:8, 367:21, 390:3, 390:13, 392:1, 410:18 Estate [4] - 3:3, 3:5, 3:22, 306:2 estates [1] - 298:25 estimate [5] - 85:17, 224:9, 229:13, 229:21, 282:21 estimation [3] - 61:14, 78:13, 391:1 estoppel [7] - 266:8, 268:4, 268:19, 269:2, 269:13, 283:16, 284:9 et [6] - 1:4, 1:7, 40:14, 279:22, 299:3, 311:7 EUGENIA [1] - 55:6 Eugenia [7] - 2:4, 4:8, 6:4, 6:12, 6:16, 41:3, 55:10 evacuations [2] -	108:24, 108:25 evaluate [8] - 144:14, 144:21, 145:1, 146:8, 148:7, 148:9, 224:2, 407:9 evaluated [2] - 150:7, 226:14 evaluation [3] - 150:6, 224:9, 227:25 evapotranspiration [1] - 176:13 evasive [1] - 259:22 eve [1] - 366:6 evening [2] - 384:11, 384:16 event [4] - 167:16, 176:4, 265:23 events [3] - 144:11, 152:17, 152:19 eventual [1] - 320:10 eventually [7] - 34:4, 135:9, 150:17, 204:7, 256:3, 304:11, 393:13 Everett [1] - 299:23 everyday [1] - 20:15 everywhere [1] - 191:22 evidence [113] - 14:21, 18:24, 22:4, 22:5, 22:16, 22:19, 23:7, 23:20, 23:25, 24:2, 24:6, 24:11, 24:12, 24:22, 24:25, 25:11, 25:16, 25:19, 25:20, 27:4, 27:6, 27:7, 34:19, 35:7, 35:16, 36:2, 36:6, 39:11, 39:25, 40:2, 61:12, 65:19, 67:12, 81:9, 143:17, 146:1, 158:3, 162:12, 221:10, 223:7, 241:5, 243:16, 244:16, 254:9, 254:25, 255:3, 261:13, 267:3, 267:17, 267:24, 269:22, 273:23, 274:15, 274:17, 274:18, 274:24, 275:4, 275:9, 275:11, 275:13, 278:14, 278:17, 289:11, 293:4, 294:11, 294:23, 296:2, 337:9, 337:15, 348:6, 378:21, 384:8, 384:12, 385:3, 385:4, 385:7, 392:23, 394:25, 400:5, 400:10, 400:11,	406:3, 406:4, 406:6, 406:9, 407:4, 407:9, 407:10, 408:12, 408:13, 408:14, 408:18, 409:1, 409:4, 409:5, 409:6, 409:7, 409:9, 409:13, 409:24, 411:13, 411:17, 413:15, 413:20, 415:15, 415:19, 416:21, 418:21, 420:19, 420:24, 424:6 exacerbated [1] - 402:7 exact [9] - 47:22, 48:18, 52:14, 205:16, 246:11, 316:19, 323:17, 418:21, 418:22 exactly [13] - 72:25, 102:21, 119:25, 150:25, 195:16, 208:1, 257:1, 278:5, 291:8, 291:20, 326:10, 382:10, 382:12 EXAMINATION [32] - 36:15, 38:10, 40:6, 49:11, 53:16, 54:13, 55:9, 90:2, 102:11, 104:18, 106:6, 129:6, 138:23, 142:6, 183:10, 206:3, 214:8, 217:7, 230:25, 235:4, 236:16, 250:22, 256:12, 260:13, 297:24, 341:1, 358:3, 359:23, 362:2, 371:16, 374:6, 377:9 examination [6] - 25:3, 25:5, 40:11, 40:12, 73:17, 209:25 examinations [1] - 276:19 examine [2] - 40:8, 59:11 examined [14] - 36:14, 40:10, 45:13, 53:11, 55:8, 106:5, 142:5, 217:6, 236:15, 297:23, 362:1, 374:5, 389:8 examining [1] - 386:14 example [8] - 87:8, 151:4, 151:21, 160:18, 173:3, 286:8, 299:10, 408:16 exceeding [1] -	152:17 excellent [3] - 210:16, 318:25, 423:18 except [10] - 35:4, 63:22, 114:15, 205:4, 258:2, 291:14, 352:25, 364:8, 364:10, 410:16 exception [2] - 217:16, 409:13 exceptions [1] - 297:5 excerpts [3] - 90:24, 378:7, 378:17 exchanges [1] - 209:9 excluded [1] - 400:4 exclusively [2] - 329:15, 398:11 excuse [15] - 23:7, 25:18, 38:13, 153:12, 162:1, 164:2, 187:9, 189:24, 204:14, 206:6, 220:21, 221:22, 222:16, 253:22, 347:5 execute [1] - 54:19 executive [7] - 99:14, 115:3, 124:1, 149:6, 149:9, 239:14, 421:23 exemption [2] - 421:10, 421:11 exercise [1] - 421:11 exercising [1] - 375:21 exert [1] - 414:11 exhibit [19] - 60:14, 63:1, 80:19, 98:7, 99:10, 99:19, 105:1, 132:11, 132:20, 132:21, 149:18, 163:25, 166:7, 186:2, 186:9, 204:14, 210:24, 240:22, 335:9 Exhibit [64] - 18:10, 18:19, 18:22, 18:23, 40:20, 47:9, 47:17, 47:21, 56:16, 61:10, 61:11, 64:8, 68:17, 68:18, 74:9, 81:8, 91:3, 92:2, 98:5, 98:25, 100:23, 121:22, 130:12, 132:11, 132:21, 134:2, 139:1, 143:13, 143:16, 143:19, 146:16, 148:19, 157:25, 158:2,

160:12, 162:11, 187:9, 222:14, 241:4, 243:11, 243:15, 244:12, 244:15, 252:5, 252:6, 252:10, 252:14, 254:8, 255:2, 279:21, 305:4, 306:13, 311:19, 312:17, 312:18, 319:11, 321:14, 328:14, 334:14, 334:22, 337:9, 337:14, 342:4, 342:23, 343:19, 344:2, 344:24, 345:11, 346:16, 348:1, 348:5, 348:23, 349:21, 360:1, 364:12, 365:22, 368:13, 370:4, 370:20, 395:17, 401:22, 401:23, 419:10 exhibited [1] - 407:22 Exhibits [3] - 18:15, 18:18, 47:7 exhibits [3] - 17:3, 17:5, 18:4, 18:19, 176:24, 383:22, 399:3, 403:8, 404:6 exist [3] - 179:2, 179:15, 336:22 existed [2] - 145:2, 229:8 existence [3] - 409:8, 409:10, 411:10 existing [16] - 133:4, 144:8, 144:14, 146:11, 152:15, 161:6, 172:3, 178:17, 180:4, 189:10, 208:3, 238:6, 238:8, 238:20, 240:12, 372:7 exists [5] - 144:10, 169:10, 230:4, 230:5, 279:24, 413:10 expand [3] - 93:6, 299:11, 323:9 expect [2] - 199:22, 417:18 expense [3] - 317:9, 318:12, 331:2 expenses [1] - 414:12 experience [10] - 15:1, 15:9, 27:17, 39:13, 82:17, 143:9, 300:17, 409:15, 409:22, 421:14	experiences [1] - 210:3 experiencing [1] - 31:15 expert [46] - 37:14, 37:17, 37:20, 37:25, 38:14, 38:22, 39:4, 39:16, 39:21, 39:23, 50:20, 85:1, 145:5, 145:6, 145:11, 145:19, 145:22, 145:23, 161:20, 175:22, 203:21, 206:12, 219:23, 220:2, 220:16, 220:19, 220:25, 221:3, 221:6, 221:8, 225:16, 227:6, 362:23, 372:15, 372:20, 386:16, 387:7, 387:18, 389:15, 389:23, 391:24, 391:25, 393:18, 403:17, 409:14 expert's [3] - 409:19, 409:22, 410:1 expertise [4] - 38:19, 39:14, 39:16, 286:3 experts [3] - 265:8, 406:7, 409:15 explain [12] - 20:22, 33:3, 35:24, 134:25, 136:5, 200:10, 200:12, 231:19, 319:17, 327:15, 395:23, 400:15 explained [3] - 204:6, 408:8, 409:11 explaining [3] - 31:19, 42:17, 332:22 explore [1] - 309:23 express [2] - 119:7, 411:3 expressed [4] - 69:23, 117:20, 250:3, 250:11 extend [5] - 113:5, 113:12, 346:4, 346:5, 352:17, 352:18 extended [1] - 387:23 extends [1] - 113:7 extensive [3] - 148:12, 148:14, 267:22 extent [3] - 308:2, 310:7, 413:24 exterior [2] - 311:6, 334:10	extinguish [2] - 53:20, 286:7 extinguished [1] - 286:1 extinguishment [1] - 54:8 extra [1] - 20:2 extras [1] - 10:12 eyes [1] - 47:21 F F-28 [1] - 111:3 face [5] - 197:10, 307:15, 316:3 face-to-face [2] - 197:10, 316:3 Facebook [1] - 15:5 faces [1] - 171:6 facilitate [1] - 369:20 facing [1] - 225:2 fact [5] - 21:9, 75:14, 85:23, 91:18, 92:19, 99:18, 100:18, 104:10, 115:23, 120:7, 121:5, 177:6, 207:14, 209:22, 213:4, 218:16, 237:12, 252:12, 256:6, 270:3, 270:7, 270:10, 271:6, 271:25, 272:4, 272:13, 288:14, 288:19, 290:13, 291:15, 291:24, 291:25, 292:5, 294:9, 363:3, 377:4, 379:13, 379:17, 379:24, 380:8, 380:14, 380:22, 381:12, 402:1, 408:1, 408:15, 409:8, 409:10, 410:22, 414:24, 420:3 facto [1] - 150:13 factors [1] - 267:22 facts [11] - 5:23, 17:6, 26:1, 93:24, 231:13, 406:21, 406:23, 407:1, 409:9, 411:4 factual [2] - 26:4, 26:12 factually [1] - 294:10 failed [5] - 397:12, 402:15, 408:21, 413:18, 413:25 failing [1] - 402:16 failure [2] - 190:3, 265:18, 271:13,	272:7, 414:5 fair [26] - 5:17, 7:25, 9:6, 9:22, 14:19, 26:21, 61:14, 63:25, 69:22, 72:17, 80:14, 80:24, 81:3, 136:15, 143:8, 157:19, 176:25, 246:5, 248:7, 250:7, 250:10, 257:20, 258:25, 413:1, 413:4, 423:16 fairly [4] - 93:11, 311:2, 316:21, 340:10 Fairway [1] - 204:22 fairway [7] - 82:3, 146:12, 146:14, 199:12, 199:19, 207:17, 212:6 fairways [1] - 199:5 faith [2] - 202:24, 203:5 fall [4] - 95:15, 173:22, 331:15, 332:23 falling [1] - 202:2 falls [1] - 202:2 familiar [17] - 130:4, 146:21, 146:22, 157:19, 226:3, 232:13, 343:16, 349:7, 362:20, 362:22, 363:10, 363:23, 364:15, 364:17, 365:9, 365:14, 372:19 families [1] - 392:10 family [3] - 126:12, 299:25 fancy [1] - 21:6 far [15] - 17:21, 210:1, 212:10, 216:16, 222:17, 222:24, 262:1, 271:13, 276:18, 286:22, 303:22, 352:14, 362:23, 372:3, 375:12 fascinating [1] - 31:20 fast [4] - 20:18, 114:17, 115:16, 297:9 faster [1] - 200:7 fatal [1] - 393:9 father [3] - 36:25, 117:6, 210:15 fault [1] - 403:22 favor [15] - 22:18, 22:21, 22:23, 23:2, 23:10, 36:8, 52:7, 52:21, 271:4, 386:9,	391:20, 403:10, 405:15, 408:20, 408:23 favorably [2] - 134:12, 313:16 favoring [1] - 27:1 February [3] - 157:22, 162:3, 176:16 fee [3] - 231:11, 277:23, 277:24 feedback [1] - 422:22 feeding [1] - 369:24 feeds [1] - 318:7 feelings [1] - 423:13 fees [2] - 89:23, 360:22 feet [17] - 112:23, 112:24, 113:7, 113:16, 113:19, 113:23, 125:1, 188:3, 209:7, 212:9, 212:11, 212:14, 315:7, 362:13, 365:3, 369:22 Fellers [3] - 323:23, 330:3, 330:4 fellow [7] - 32:24, 304:19, 306:7, 325:7, 326:1, 342:21, 368:9 fellow's [1] - 418:6 Fellows [1] - 327:7 felt [12] - 23:25, 24:7, 39:10, 94:15, 151:3, 151:19, 152:7, 154:16, 301:16, 327:23, 406:7, 423:16 fence [2] - 219:3 few [21] - 5:13, 10:12, 28:2, 30:8, 35:18, 39:7, 49:25, 94:5, 96:9, 98:7, 131:15, 174:10, 193:22, 236:18, 263:8, 282:16, 296:15, 357:12, 367:9, 377:11, 379:4 field [5] - 38:1, 39:14, 39:16, 164:19, 301:24, 409:16 fight [1] - 109:12 fighter [1] - 35:17 figure [14] - 259:21, 262:23, 263:9, 263:18, 263:23, 282:20, 282:24, 283:6, 286:23, 381:15, 395:15, 400:20, 418:14, 420:17 figured [1] - 332:7

file [1] - 19:14, 99:24, 100:2, 100:10, 103:24, 222:19, 223:1, 223:3, 239:8, 266:14, 423:9 filed [2] - 21:14, 94:9, 103:22, 104:4, 104:5, 104:7, 135:23, 136:8, 141:4, 237:16, 246:6, 253:20, 253:24, 254:12, 254:20, 256:15, 257:8, 257:10, 268:6, 269:19, 273:25, 287:2, 291:1, 360:3, 371:22, 404:6 filling [1] - 254:19, 257:6, 258:7, 269:17, 269:18, 333:4, 361:12 fill [10] - 116:11, 116:12, 127:17, 127:18, 127:21, 129:12, 173:24, 179:22, 199:3, 208:7 filled [3] - 129:9, 168:1, 209:4 final [12] - 172:6, 191:5, 191:9, 194:5, 195:6, 214:25, 222:20, 222:21, 223:1, 329:4, 379:1, 384:22 finalized [1] - 325:18 finally [1] - 31:8 financed [1] - 352:7 financial [4] - 32:14, 75:17, 76:6, 76:9 financing [5] - 127:12, 247:15, 247:23, 331:24, 351:25 findings [4] - 149:14, 154:2, 214:1, 214:2 fine [10] - 65:2, 73:12, 135:1, 162:7, 186:11, 297:2, 310:1, 352:12, 422:23, 423:1 finger [1] - 401:22 fingers [1] - 188:16 finish [5] - 96:24, 129:18, 269:5, 295:22, 326:18 finished [10] - 37:3, 44:19, 89:13, 111:5, 111:6, 160:8, 260:20, 379:19, 400:4, 421:6 finishing [1] - 301:23 finite [5] - 229:13, 232:4, 232:6, 232:7, 234:7	fire [1] - 230:18 firm [8] - 7:7, 7:9, 7:12, 7:15, 7:22, 185:13, 196:25, 219:12 firmly [1] - 23:13 first [7] - 6:7, 8:10, 11:13, 12:14, 12:23, 14:2, 17:23, 19:10, 19:12, 19:14, 20:6, 23:20, 25:1, 25:2, 25:3, 28:5, 29:14, 33:12, 36:10, 36:13, 36:16, 55:7, 57:10, 58:2, 58:3, 58:23, 65:12, 80:1, 83:12, 99:2, 106:4, 114:3, 114:18, 114:23, 126:14, 142:4, 146:6, 166:18, 176:16, 181:14, 217:5, 218:16, 218:17, 218:22, 236:14, 238:16, 240:8, 261:8, 269:14, 269:22, 297:14, 306:17, 307:23, 321:18, 322:9, 344:3, 350:8, 361:25, 368:12, 374:4, 385:2, 385:12, 385:13, 386:12, 396:18, 396:19, 414:25, 415:15, 417:13, 420:11 firsthand [1] - 327:13 fish [1] - 199:8 fit [1] - 369:21 fitness [3] - 375:20, 375:21, 376:3 fits [1] - 294:10 five [12] - 11:15, 11:16, 24:23, 37:1, 38:16, 109:3, 111:10, 114:18, 232:22, 234:14, 315:7, 423:9 five-man [1] - 109:3 fix [33] - 96:15, 97:4, 97:11, 121:12, 121:13, 223:20, 227:22, 286:24, 337:6, 340:15, 341:3, 341:4, 341:16, 341:21, 354:18, 354:21, 396:16, 398:2, 398:3, 398:10, 398:12, 399:16, 401:24, 402:18, 402:19, 403:5, 403:15, 403:19,	403:22, 403:24 fixed [3] - 84:1, 107:17, 109:5 fixes [4] - 94:23, 331:16, 369:8, 369:14 flat [5] - 166:11, 188:14, 198:17, 201:2, 209:15 flatten [1] - 208:12 flesh [1] - 19:8 flew [12] - 35:17, 107:25, 108:3, 108:10, 108:16, 110:10, 111:2, 111:13, 111:14, 136:23, 395:25 flexible [1] - 352:11 flight [4] - 107:12, 108:12, 110:8, 110:25 floats [1] - 151:24 flood [8] - 152:19, 153:2, 167:15, 210:10, 282:10, 339:8 flooded [2] - 282:12, 363:4 flooding [2] - 31:11, 35:14, 125:21, 128:10, 128:13, 152:16, 178:2, 203:18, 226:6, 235:17, 275:20, 275:22, 275:24, 276:24, 283:4, 284:4, 339:6, 363:7, 376:9, 402:6, 402:7 floods [1] - 203:12 floor [1] - 10:20 Florida [1] - 185:12 flow [14] - 27:5, 71:8, 71:11, 117:3, 165:17, 167:14, 168:14, 179:25, 197:21, 199:23, 200:7, 211:2, 211:4, 367:8 flowed [1] - 317:16 flowing [8] - 115:15, 115:16, 211:10, 211:12, 211:15 flows [8] - 168:20, 169:2, 173:2, 200:22, 318:1 fly [7] - 107:12, 107:13, 107:15, 107:17, 107:22, 108:5, 109:3 flying [5] - 107:16, 110:3, 110:5, 111:5, 111:12, 111:14 focus [1] - 300:20 Fokker [1] - 111:3	fold [2] - 26:13, 298:23 follage [1] - 311:9 folks [30] - 5:3, 8:23, 9:1, 10:2, 15:19, 15:22, 17:8, 20:4, 20:12, 29:4, 39:7, 105:9, 105:24, 141:16, 141:23, 215:9, 216:24, 221:5, 260:22, 263:16, 297:13, 378:20, 384:2, 384:21, 397:19, 405:23, 418:21, 420:7, 420:20, 423:8 folks' [1] - 28:23 follow [8] - 13:6, 25:6, 27:3, 29:3, 68:12, 232:2, 299:16, 412:3 follow-up [2] - 25:6, 68:12 followed [3] - 134:13, 313:17, 317:3 following [2] - 71:20, 333:15 follows [11] - 36:14, 55:8, 93:2, 106:5, 134:9, 142:5, 217:6, 236:15, 297:23, 362:1, 374:5 Folly [4] - 151:4, 151:8, 196:13, 196:16 foot [11] - 112:19, 113:2, 164:13, 164:15, 164:17, 165:8, 167:16, 168:7, 170:14, 196:10 forced [2] - 75:14, 352:9 forces [1] - 196:21 foregoing [1] - 424:4 foreman [5] - 20:1, 118:13, 124:11, 137:3, 414:20 Foreman [1] - 419:17 FOREPERSON [4] - 19:25, 419:19, 419:21, 420:2 forest [1] - 201:3 forested [2] - 201:1, 204:2 forever [3] - 288:18, 343:6, 352:18 forget [1] - 406:17 forgive [1] - 59:19 form [9] - 27:7, 39:22, 163:22, 254:24, 273:7,	383:18, 414:22, 415:14, 415:19 Form [1] - 4:6 formal [3] - 38:13, 142:18, 171:24 formality [1] - 415:18 formed [2] - 366:17, 366:19 former [8] - 34:6, 99:14, 183:23, 242:8, 246:3, 246:12, 246:24, 321:22 formerly [3] - 34:18, 132:13, 265:22 forms [1] - 410:20 Forsberg [17] - 47:5, 47:18, 50:6, 50:9, 51:7, 51:18, 51:21, 51:24, 53:19, 72:14, 132:16, 132:22, 285:23, 343:16, 344:9, 358:6, 393:3 forth [8] - 34:3, 158:17, 264:12, 265:12, 267:10, 350:13, 374:22, 380:19 fortunate [1] - 64:24 forty [2] - 302:5 forty-one [1] - 302:5 forty-two [1] - 302:5 forward [19] - 36:7, 75:5, 76:4, 99:3, 114:17, 122:11, 245:23, 292:22, 295:4, 309:6, 322:7, 330:3, 330:5, 331:17, 352:25, 356:10, 356:14, 357:2, 421:13 foster [1] - 253:9 Foster [4] - 66:5, 122:2, 311:23, 395:1 Fosters [1] - 74:17 foundation [4] - 32:11, 125:21, 249:9, 298:15 Foundation [4] - 32:12, 298:12, 300:18, 301:15 founder [1] - 7:15 founding [1] - 299:18 Four [1] - 4:6 four [22] - 11:6, 11:12, 13:7, 18:19, 33:17, 38:16, 77:10, 106:17, 111:22, 114:18, 123:12, 123:14, 125:3, 143:25, 177:11,

192:5, 266:15, 315:6, 315:25, 319:12, 343:22, 366:2 Fourth [1] - 267:20 Fowler [4] - 255:15, 255:16, 260:4, 327:5 frame [1] - 205:23 frankly [2] - 283:25, 400:18 Franz [1] - 14:2 free [7] - 9:17, 15:14, 236:6, 373:24, 422:14, 423:5, 423:21 freedom [5] - 93:6, 323:8, 324:13, 324:16, 324:21 French [8] - 150:14, 177:19, 179:18, 179:19, 179:25, 180:11, 335:24, 335:25 frequency [3] - 144:12, 152:17, 176:9 fresh [2] - 53:12, 384:6 freshman [1] - 218:5 freshwater [3] - 151:22, 151:23 friendly [1] - 118:17 friends [3] - 91:19, 123:17, 295:19 front [49] - 50:5, 50:8, 146:14, 163:11, 163:14, 164:10, 164:11, 164:22, 165:10, 165:18, 165:23, 165:25, 166:12, 166:16, 167:1, 168:23, 169:24, 170:4, 170:19, 174:13, 176:21, 178:3, 186:16, 193:19, 195:21, 196:7, 196:9, 198:14, 198:16, 208:24, 209:5, 212:1, 212:3, 220:13, 225:2, 248:21, 254:11, 263:7, 271:3, 305:15, 315:15, 317:16, 319:14, 319:21, 321:8, 376:18, 400:14, 407:7 fronted [1] - 146:12 fruit [3] - 277:14, 278:8, 278:9 frustrated [2] - 245:10, 326:13 full [6] - 36:16, 99:2, 179:22, 302:21,	374:20, 376:19 fully [1] - 204:6 function [8] - 56:24, 57:6, 59:3, 63:16, 115:7, 115:21, 127:3, 196:21, 339:20 functional [4] - 150:4, 150:9, 151:3, 152:5 functioned [2] - 59:7, 150:9 functioning [4] - 115:8, 118:1, 189:13, 189:15 functions [2] - 117:25, 144:25 fundraising [1] - 301:7 funny [1] - 301:20 fuss [1] - 210:21 future [10] - 93:7, 93:8, 131:7, 250:8, 276:3, 308:2, 323:9, 323:10, 323:19, 422:21	171:25, 191:23, 196:22, 233:16, 352:6, 380:7, 409:4 genesis [1] - 321:25 gentleman [2] - 185:12, 364:19 gentlemen [4] - 13:18, 31:25, 400:15, 403:7 genuine [3] - 288:1, 291:15, 292:20 geology [1] - 197:12 GEORGE [1] - 142:3 George [106] - 2:6, 3:16, 7:6, 8:12, 30:19, 30:23, 61:5, 62:23, 63:3, 69:11, 69:12, 83:10, 83:11, 83:14, 83:17, 83:21, 84:12, 89:17, 94:23, 96:24, 114:16, 116:18, 118:24, 119:2, 142:2, 142:8, 142:11, 143:21, 144:20, 145:11, 146:5, 155:15, 157:17, 158:24, 162:15, 163:1, 165:23, 171:3, 172:10, 182:18, 183:12, 187:12, 204:24, 205:24, 206:5, 215:5, 221:24, 231:15, 231:16, 231:17, 241:9, 241:11, 265:13, 272:17, 273:8, 276:18, 349:16, 280:20, 286:25, 314:18, 315:10, 317:21, 318:14, 318:25, 325:22, 327:8, 328:5, 328:16, 329:12, 329:23, 331:3, 338:12, 340:18, 354:21, 354:24, 355:12, 362:23, 365:7, 369:6, 369:14, 372:12, 372:16, 373:4, 373:11, 389:1, 389:2, 389:13, 389:20, 389:25, 393:18, 394:16, 395:12, 395:16, 396:15, 397:9, 397:25, 398:2, 399:10, 402:5, 402:8, 403:14, 403:16, 405:19 George's [11] - 61:17, 96:15, 112:10,	143:12, 143:20, 160:18, 277:23, 277:24, 317:14, 318:22, 396:21 Georgia [4] - 197:1, 218:16, 218:18, 396:24 gesture [1] - 354:23 gifts [3] - 298:24, 299:1 girls [1] - 300:15 gist [2] - 242:13, 243:5 Giuffreda [11] - 134:9, 134:11, 134:18, 313:8, 313:9, 313:13, 313:16, 313:22, 314:11, 368:12, 368:14 given [17] - 18:3, 32:23, 155:18, 183:4, 195:16, 199:18, 202:25, 205:19, 234:7, 267:12, 278:20, 279:25, 301:24, 307:8, 307:15, 357:20, 404:11 glad [2] - 29:19, 423:14 glass [6] - 173:3, 173:11, 200:14, 200:16, 201:6, 201:11 go-to [2] - 401:5, 401:9 goal [2] - 277:10, 328:23 goals [3] - 93:2, 323:3, 323:4 Golf [1] - 55:21 golf [8] - 35:8, 93:1, 112:16, 113:10, 113:11, 113:13, 113:19, 114:1, 115:10, 116:7, 117:7, 120:6, 120:9, 120:22, 123:16, 124:4, 131:19, 138:12, 150:11, 155:19, 155:20, 156:20, 156:21, 163:15, 164:11, 166:13, 169:14, 171:6, 171:9, 174:14, 178:18, 178:19, 180:9, 185:22, 186:8, 186:18, 198:20, 198:23, 198:25, 199:4, 199:10, 199:13, 199:19,	199:22, 199:25, 200:6, 200:8, 204:20, 207:3, 207:9, 207:18, 207:23, 228:7, 248:14, 248:24, 249:2, 249:3, 279:22, 303:16, 303:17, 315:4, 315:5, 315:8, 315:13, 315:20, 315:22, 322:19, 322:21, 322:24, 322:25, 323:1, 330:1, 338:7, 341:5, 341:7, 354:25, 355:23, 355:25, 356:2, 363:19, 363:20, 365:4, 366:20, 369:23, 370:9, 370:22, 397:7, 402:7 golfer [1] - 56:8 goodness [1] - 247:14 goodwill [1] - 354:23 Google [1] - 196:17 governing [1] - 231:24 government [4] - 421:19, 421:20, 421:22, 421:25 grabbed [1] - 397:9 grabs [1] - 286:10 grade [1] - 180:5 graded [4] - 166:11, 166:12, 166:23, 200:2 gradient [7] - 169:4, 169:21, 193:25, 194:1, 194:2, 194:3, 201:2 grading [12] - 159:8, 159:9, 159:15, 162:4, 172:7, 194:5, 194:14, 195:7, 207:13, 252:21, 312:11, 358:24 gradual [1] - 166:12 graduate [7] - 106:17, 106:21, 142:14, 142:16, 300:5, 300:22, 301:22 graduated [6] - 106:23, 107:5, 218:7, 300:4, 300:16, 300:22 grandchild [2] - 302:15, 375:2 grandchildren [1] - 302:12 grant [12] - 52:25, 53:2, 156:24, 157:1, 157:2, 271:14, 288:4, 293:1, 294:7, 340:17,

G

Gallantry [1] - 110:19

Gamble [1] - 267:21

Gantz [14] - 32:25, 47:10, 304:19, 304:20, 305:12, 347:7, 347:8, 347:9, 347:19, 349:16, 367:11, 367:16, 368:1

Gantz's [1] - 347:21

Gantzes [11] - 32:24, 33:1, 33:6, 51:14, 54:15, 54:17, 54:20, 132:13, 393:1, 401:13

Gantzes' [2] - 51:15, 393:12

garage [12] - 84:22, 125:15, 164:2, 164:4, 165:20, 165:25, 166:1, 166:6, 166:21, 171:12, 171:14

Garcia [1] - 7:17

Gardner [1] - 14:1

gather [1] - 13:19

gathering [1] - 9:14

general [7] - 20:25, 118:20, 118:22, 196:8, 331:21, 331:23, 383:19

generally [8] - 109:15, 133:20,

353:18, 354:22 granted [14] - 34:6, 37:16, 37:17, 239:7, 270:14, 277:17, 289:8, 291:16, 291:21, 291:22, 292:7, 293:13, 294:4, 294:8 grantees [1] - 343:7 granting [3] - 141:6, 284:20, 291:13 grantor [1] - 288:17 grantors [1] - 343:4 graphics [1] - 185:4 grasped [1] - 22:7 grass [13] - 81:17, 166:23, 167:12, 199:1, 200:5, 200:6, 200:7, 202:17, 315:18, 317:21, 317:24, 317:25 grassed [2] - 167:6, 169:21 Gray [1] - 7:15 gray [1] - 168:19 great [4] - 109:13, 155:15, 220:11, 231:15 greater [12] - 22:4, 22:15, 22:19, 39:24, 172:25, 174:6, 196:21, 408:13, 409:3, 411:17, 413:15, 413:19 Green [1] - 321:22 green [3] - 81:17, 166:24, 170:15, 203:13, 212:6 greens [1] - 199:6 grew [2] - 154:20, 299:22 ground [13] - 78:3, 167:12, 167:23, 173:13, 257:21, 258:1, 289:18, 295:15, 362:24, 365:11, 375:12, 401:5 grounds [3] - 66:5, 83:18, 242:16 groundwater [3] - 151:2, 152:3, 167:13, 176:12, 176:15, 176:19, 189:4, 208:11 group [4] - 219:12, 298:20, 299:2, 366:11 Group [2] - 3:15, 4:4 grow [3] - 55:14, 245:10, 299:20 Guardia [1] - 111:9 guess [25] - 19:14,	42:17, 90:9, 128:5, 229:20, 229:21, 273:20, 273:22, 275:8, 290:4, 300:15, 301:5, 309:4, 311:2, 320:10, 322:2, 327:11, 329:21, 329:22, 330:1, 344:12, 344:15, 346:2, 354:11, 363:20 guessing [1] - 155:16 guests [1] - 213:23 guidance [1] - 302:20 guidelines [5] - 223:11, 231:24, 232:2, 232:7, 232:14 guilt [2] - 23:11, 23:13 gun [1] - 352:23 gutters [1] - 174:11 guy [1] - 118:16, 210:22, 295:15, 391:12, 401:5, 401:7, 401:9 guys [2] - 21:3, 227:1 gym [1] - 402:24	329:19, 330:2, 331:16, 331:18, 420:7 hang [1] - 423:12 hangs [2] - 248:18, 331:12 happily [1] - 30:8 happy [5] - 55:17, 79:7, 309:23, 317:8, 357:10 hard [14] - 50:17, 84:9, 148:2, 173:11, 173:16, 203:23, 208:20, 279:19, 323:1, 394:19, 404:17, 417:20, 417:21, 420:17 Hardee [1] - 277:8 harm [7] - 264:25, 267:9, 282:4, 282:6, 386:7, 398:25, 405:7 harrowing [1] - 396:1 haughtiness [1] - 128:25 Hays [1] - 13:25 hays [1] - 19:24 hazard [3] - 150:12, 189:18, 212:5 Head [1] - 220:13 head [6] - 49:17, 192:17, 313:9, 395:3, 398:19 headache [1] - 383:24 headquartered [1] - 298:18 health [2] - 303:20, 303:23 healthier [1] - 197:20 healthy [2] - 197:23, 300:24 hear [39] - 14:22, 24:13, 24:21, 26:2, 27:14, 27:23, 27:25, 28:6, 28:7, 28:13, 28:24, 29:22, 30:7, 30:11, 30:16, 30:17, 30:18, 30:23, 31:2, 31:8, 39:25, 40:1, 40:3, 146:2, 263:23, 285:11, 324:8, 327:13, 378:21, 384:11, 385:12, 385:13, 385:14, 393:7, 399:23, 400:22, 400:24, 409:5, 417:18 heard [65] - 23:24, 24:7, 25:15, 25:19, 39:9, 58:19, 58:23,	101:22, 108:15, 116:1, 130:10, 131:1, 139:16, 160:15, 220:1, 221:10, 241:14, 245:9, 250:3, 263:16, 265:9, 265:10, 265:19, 266:4, 266:24, 269:24, 273:3, 324:9, 330:8, 330:21, 353:11, 353:12, 353:14, 376:8, 378:20, 380:9, 380:15, 384:8, 385:5, 386:12, 387:19, 389:1, 389:25, 390:1, 391:10, 391:23, 393:16, 393:18, 393:20, 394:4, 394:5, 394:6, 394:22, 395:7, 396:21, 398:13, 399:5, 400:24, 401:3, 401:17, 401:19, 406:3, 406:5, 406:7 hearing [4] - 17:18, 28:5, 293:8, 353:9 hearsay [2] - 60:21, 61:1, 61:8, 66:6, 69:19, 83:18, 86:18, 123:23, 124:17, 126:20, 160:15, 160:21, 223:21, 227:4, 227:7, 239:19, 240:25, 242:17, 244:3, 336:13, 336:16 heart [3] - 29:20, 29:21, 303:24 heaven [1] - 301:16 heavily [1] - 186:19 heavy [17] - 45:22, 46:4, 46:14, 57:20, 57:22, 57:24, 79:17, 80:13, 80:16, 81:23, 82:9, 103:4, 319:23, 321:2, 321:5, 388:7, 389:4 heck [1] - 119:25 Heerden [12] - 8:13, 67:4, 67:6, 118:11, 118:15, 137:5, 137:7, 153:15, 241:24, 243:19, 244:1, 327:2 HEERDEN [1] - 8:13 height [3] - 225:12, 311:4, 315:5 heirs [4] - 288:18, 343:5, 343:7, 343:8 held [3] - 44:20, 61:23, 93:4, 118:18, 241:7, 265:25,	312:25, 323:7, 402:8 helicopter [5] - 107:22, 108:4, 109:18, 109:19, 136:22 helicopters [3] - 107:20, 107:24, 108:5 helix [2] - 188:7, 188:9 hell [1] - 109:11 hallo [2] - 114:14, 142:8 help [18] - 5:22, 14:17, 17:7, 17:8, 26:17, 83:15, 130:13, 177:6, 177:9, 187:17, 298:24, 299:1, 299:5, 299:9, 302:14, 327:22, 336:25, 420:21 helped [1] - 57:16 helpful [3] - 17:3, 327:24, 418:11 helping [2] - 189:10, 375:2 helps [8] - 22:9, 24:21, 32:12, 32:14, 90:16, 177:9, 417:7, 422:20 Hemsley [3] - 191:3, 191:6, 191:10, 215:1, 255:21, 316:13, 316:15, 334:24 hence [1] - 64:23 Henry [2] - 13:23, 323:23 hereby [3] - 288:17, 343:5, 424:3 herein [2] - 42:9, 60:23 hereto [1] - 424:11 herringbone [1] - 199:8 hes [1] - 120:16 hi [1] - 310:11 hide [1] - 28:16 Hiers [1] - 13:22 High [1] - 218:5 high [22] - 21:22, 23:15, 92:25, 150:4, 150:20, 151:9, 151:16, 152:3, 165:8, 168:11, 176:12, 176:18, 178:1, 179:21, 179:24, 180:3, 181:20, 199:2, 300:4, 322:18, 370:6, 370:8 high-density [2] - 370:6, 370:8

higher [10] - 23:14, 172:22, 175:8, 175:9, 198:23, 199:19, 200:3, 315:7, 315:17, 315:20 highest [1] - 176:17 highlighted [1] - 149:2 highway [1] - 144:17 Hilton [1] - 220:13 himself [5] - 135:1, 264:23, 264:24, 309:11, 378:13, 391:11, 394:2, 414:11 hire [3] - 44:9, 310:16, 331:21 hired [13] - 30:19, 33:19, 83:5, 83:13, 144:20, 148:4, 184:11, 218:25, 265:11, 272:9, 299:18, 394:20 history [5] - 56:6, 218:9, 290:19, 292:2, 374:12 hit [2] - 81:23, 150:17 hits [1] - 173:18 hold [14] - 19:17, 43:17, 81:11, 81:13, 167:13, 174:8, 190:17, 206:15, 208:7, 213:6, 234:12, 319:17, 336:11, 367:12 holders [2] - 43:17, 46:24 holding [5] - 22:12, 132:25, 152:22, 188:16, 201:17, 293:19 holds [1] - 363:13 hole [10] - 109:19, 150:16, 150:17, 150:18, 175:10, 211:9, 211:11, 211:14, 211:15, 211:16 holes [4] - 150:25, 177:11, 208:10, 211:8 home [32] - 28:2, 29:24, 30:2, 30:5, 30:7, 30:8, 35:21, 35:22, 44:12, 75:7, 75:12, 76:5, 77:18, 87:19, 99:5, 122:12, 124:1, 124:3, 124:4, 126:11, 128:9, 128:14, 172:12, 181:7, 209:3, 212:20,	248:12, 256:23, 301:3, 304:14, 308:2, 384:10 homebound [1] - 300:24 homeowner [1] - 140:25 homeowners [5] - 284:13, 285:7, 289:8, 290:1, 333:11 homeowners' [1] - 133:14 homes [2] - 301:1, 311:5 hometown [1] - 299:22 honestly [1] - 154:13 honor [2] - 91:18, 142:14 Honor [201] - 7:14, 12:10, 13:14, 14:5, 16:23, 17:8, 17:15, 18:1, 18:7, 18:13, 18:17, 29:10, 38:4, 38:9, 39:2, 42:14, 49:13, 54:12, 55:4, 60:12, 60:20, 61:2, 62:25, 65:15, 65:22, 66:2, 66:7, 66:13, 69:17, 70:16, 73:5, 75:22, 80:18, 80:25, 83:16, 84:24, 85:8, 86:11, 87:21, 88:13, 90:19, 90:23, 92:3, 93:19, 93:23, 94:3, 98:23, 102:9, 102:22, 104:17, 106:1, 118:25, 119:13, 119:19, 120:10, 124:15, 126:19, 129:5, 134:25, 138:19, 140:10, 141:9, 141:14, 142:1, 143:14, 145:10, 145:15, 155:14, 160:14, 160:24, 162:9, 162:13, 164:9, 183:9, 207:1, 212:22, 216:2, 216:16, 219:25, 220:15, 220:18, 222:15, 223:6, 223:15, 225:14, 225:17, 225:21, 227:3, 229:1, 230:22, 230:24, 235:2, 235:18, 236:10, 237:1, 237:23, 239:18, 239:22, 240:24, 242:15, 243:13,	244:2, 244:14, 247:2, 249:11, 254:7, 254:23, 258:12, 259:3, 260:12, 263:3, 263:13, 264:9, 264:15, 265:6, 265:14, 265:17, 266:8, 266:11, 266:16, 266:23, 267:4, 267:16, 267:20, 267:25, 268:5, 268:16, 268:20, 268:25, 269:7, 269:12, 271:20, 273:6, 277:13, 278:1, 278:3, 278:4, 278:16, 278:18, 279:17, 279:23, 280:14, 280:23, 281:1, 281:10, 281:22, 282:7, 282:16, 283:5, 283:14, 284:1, 285:21, 286:21, 288:6, 289:17, 291:6, 291:8, 291:11, 291:20, 292:8, 293:15, 293:16, 294:3, 294:19, 295:8, 295:16, 295:25, 296:5, 296:12, 297:8, 297:16, 320:14, 332:19, 336:10, 336:15, 337:8, 337:13, 347:13, 350:22, 351:5, 358:2, 359:21, 361:21, 373:17, 373:19, 374:1, 378:6, 379:9, 380:6, 380:13, 380:22, 381:20, 382:15, 382:24, 383:14, 385:17, 403:12, 416:14, 416:17, 419:19, 419:21 Honor's [5] - 268:18, 278:5, 380:18, 380:25, 381:3, 381:6 honorable [1] - 183:23 Honorable [1] - 1:12 honorably [1] - 110:15 hook [3] - 109:25, 405:2, 405:9 hooks [1] - 109:25 hoop [1] - 170:23 hoops [2] - 394:16, 395:8	hope [7] - 16:5, 64:1, 183:19, 268:17, 421:12, 422:5, 423:16 hopeful [2] - 64:3 hopefully [4] - 15:13, 71:23, 304:12, 423:15 hoping [1] - 216:15 horizontal [4] - 41:23, 42:11, 44:17, 46:12 horse [1] - 359:2 horses [1] - 98:11 hostile [1] - 237:5 Hotel [1] - 55:22 hour [6] - 45:3, 45:5, 231:11, 296:19, 384:4, 416:2 hourly [1] - 49:20 hours [4] - 49:18, 49:19, 176:7, 384:4 house [227] - 7:23, 30:10, 30:12, 30:14, 30:25, 31:6, 31:10, 34:5, 34:13, 35:3, 35:4, 54:2, 56:12, 56:19, 57:10, 58:20, 58:25, 76:25, 77:20, 78:14, 78:16, 82:21, 82:25, 83:24, 84:4, 84:19, 84:22, 85:21, 85:23, 86:1, 86:6, 86:9, 86:17, 86:21, 87:8, 87:9, 87:13, 88:7, 88:10, 88:15, 89:19, 88:25, 89:4, 98:16, 100:15, 101:16, 102:14, 111:20, 112:3, 112:12, 113:25, 114:4, 114:5, 114:13, 117:19, 125:11, 125:14, 125:19, 126:1, 127:14, 130:1, 132:1, 135:19, 140:15, 140:23, 155:21, 157:8, 160:3, 160:6, 161:5, 163:24, 164:11, 164:22, 165:2, 165:4, 165:5, 165:24, 166:19, 166:20, 169:8, 171:3, 171:4, 171:10, 173:11, 174:11, 174:14, 175:10, 175:20, 194:21, 201:18, 201:20, 207:4, 207:11, 208:24, 213:1, 224:23, 225:11, 228:3, 230:11,	230:12, 236:20, 238:13, 240:5, 241:17, 244:23, 245:13, 245:17, 245:18, 245:22, 245:25, 246:3, 246:11, 246:20, 246:23, 247:1, 247:8, 247:10, 247:13, 248:7, 248:10, 248:13, 248:16, 248:20, 250:6, 250:12, 251:1, 255:18, 255:23, 256:4, 258:5, 259:17, 261:19, 267:1, 268:8, 269:3, 269:5, 270:12, 270:15, 270:21, 270:25, 272:15, 275:10, 283:17, 283:22, 289:6, 302:25, 303:2, 303:3, 304:11, 304:13, 308:21, 309:5, 309:15, 309:19, 310:2, 310:23, 311:1, 311:8, 311:21, 312:8, 314:24, 315:2, 315:24, 316:5, 316:8, 317:18, 318:6, 319:16, 322:23, 322:24, 324:18, 325:25, 326:8, 327:22, 328:24, 329:10, 329:11, 330:6, 331:4, 331:9, 331:14, 332:5, 333:19, 333:23, 334:2, 334:9, 334:10, 334:11, 335:6, 337:18, 351:2, 353:2, 353:4, 356:11, 357:2, 362:8, 376:14, 379:25, 386:4, 386:18, 386:20, 387:1, 387:2, 387:10, 387:21, 388:2, 388:21, 391:3, 391:5, 391:14, 391:17, 394:12, 395:9, 398:11, 398:24, 399:6, 399:7, 399:8, 400:2, 400:23, 400:25, 404:3, 405:3 House [1] - 375:21 housekeeping [1] - 416:17 houses [10] - 84:5, 87:1, 120:6, 151:10, 203:14, 233:9, 233:11, 248:24,

259:13, 363:5 housing [1] - 248:5 Houston [1] - 111:10 HOWARD [1] - 36:12 Howard [2] - 2:3, 8:10, 31:18, 36:17, 139:17, 269:24, 386:13 Hueys [1] - 108:2 huge [4] - 124:22, 124:23, 125:4 hugger [5] - 188:9, 188:13, 188:19, 211:17, 212:8 Hugo [1] - 366:6 humble [1] - 91:17 humorous [1] - 194:12 Hunt [1] - 13:22 hurricane [3] - 339:8, 339:20, 339:23 Hurricane [4] - 339:12, 339:21, 366:6 hurry [1] - 391:14 husband [2] - 6:8, 55:15, 56:1, 56:5, 59:6, 63:9, 72:14, 74:1, 76:16, 77:18, 78:6, 79:5, 80:3, 96:4, 97:7, 97:25, 98:10, 101:25, 102:14, 374:12, 376:15, 377:4 husband's [3] - 56:8, 375:8, 376:8 hydraulic [1] - 144:2 hydraulically [1] - 146:9 hydraulics [1] - 143:24 hydrology [2] - 143:24, 225:16	Identify [4] - 65:16, 311:19, 323:17, 344:1 Idly [1] - 283:18 Ill [1] - 1:16 Image [1] - 113:6 Imagine [15] - 22:11, 173:4, 176:11, 176:18, 177:4, 211:13, 216:20, 235:8, 404:17, 404:19, 404:22, 405:1, 405:4, 405:8, 405:11 Immature [3] - 172:2, 194:11, 195:15 Immediately [6] - 115:6, 256:24, 307:20, 352:20, 413:1, 413:3 Impact [22] - 30:21, 31:10, 87:18, 89:3, 128:14, 128:24, 148:9, 152:6, 193:9, 193:10, 213:2, 213:4, 225:25, 229:6, 230:3, 240:16, 250:4, 273:10, 275:22, 276:1, 330:9, 330:10 Impacted [2] - 46:20, 175:19 Impacts [2] - 154:16, 209:11 Impartial [5] - 5:17, 7:25, 9:6, 9:22, 72:18 Impasse [1] - 417:23 Impatient [1] - 405:12 Impeach [1] - 90:21 Impeachment [1] - 90:25 Impermeable [2] - 173:15, 173:16 Impervious [5] - 173:17, 201:10, 201:15, 201:22, 214:14 Implemented [6] - 157:5, 186:22, 330:13, 354:19, 355:18, 355:19 Implication [2] - 52:1, 175:5 Implications [1] - 182:24 Implied [1] - 134:11 Important [13] - 24:1, 24:15, 28:25, 34:8, 62:22, 70:25, 148:24, 298:25, 303:21, 393:7, 395:14,	396:14, 396:17 Importantly [2] - 393:18, 422:17 Imposed [1] - 253:5 Imposing [1] - 341:21 Impossible [1] - 400:20 Impression [6] - 118:23, 119:4, 119:6, 119:9, 120:17, 128:22 Improve [1] - 209:10 Improved [1] - 248:24 Improvements [1] - 65:7 Imputed [1] - 288:10 Imputes [1] - 410:17 inch [2] - 57:24, 176:2 Inches [16] - 35:18, 79:20, 81:25, 125:1, 125:2, 125:3, 176:3, 176:7, 176:8, 176:10, 176:20, 200:16, 282:16, 338:11, 388:18, 396:3 Include [7] - 70:3, 89:23, 341:16, 342:14, 375:15, 412:22, 413:8 Included [16] - 30:13, 45:18, 47:20, 47:21, 49:8, 52:2, 60:6, 62:1, 64:17, 68:24, 101:16, 242:9, 316:18, 354:18, 369:12, 382:2 Including [17] - 14:15, 24:14, 62:4, 62:6, 152:8, 191:12, 215:17, 220:9, 227:11, 265:18, 272:10, 273:9, 274:8, 277:18, 285:17, 286:24, 289:2 Income [1] - 216:11 Incomplete [4] - 222:3, 223:13, 223:16, 223:21 Inconsistencies [1] - 258:4 Inconsistent [2] - 294:1, 411:10 Inconvenience [5] - 16:6, 93:10, 131:7, 323:12, 392:9 Incorporate [1] - 270:1 Incorporated [7] -	41:22, 41:24, 42:9, 47:1, 47:3, 51:10, 297:4 Increase [12] - 152:16, 200:10, 203:1, 203:24, 203:25, 208:19, 208:20, 233:18, 233:22, 233:25, 234:5, 299:6 Increased [7] - 174:6, 201:21, 203:10, 208:25, 233:16, 233:20, 248:3 Increases [1] - 203:9 Increasing [1] - 203:23 Increasingly [1] - 175:16 Incur [3] - 127:11, 294:12, 414:11 Incurred [1] - 413:24 Indeed [2] - 242:17, 290:21 Indicate [4] - 292:2, 332:11, 409:10, 420:4 Indicated [4] - 72:2, 147:10, 238:14, 240:6 Indicates [2] - 209:12, 290:19 Indicating [1] - 411:8 Indication [3] - 221:25, 234:10, 287:9 Individual [4] - 139:22, 195:10, 259:14, 299:4 Inevitable [2] - 93:9, 323:11 Inferred [2] - 411:4, 411:5 Infiltrating [2] - 211:21, 211:22 Infliction [5] - 266:18, 287:5, 287:12, 294:5, 294:8, 294:14 Influenced [2] - 202:19 Influences [1] - 14:19 Inform [4] - 58:13, 58:14, 92:20, 322:11 Informal [1] - 177:19 Information [9] - 123:24, 222:18, 222:20, 222:25, 224:6, 227:11, 326:12, 329:4, 386:11 Informed [5] - 238:11, 238:23,	240:3, 240:13, 251:9 Ingress [2] - 156:6, 182:11 Inherent [2] - 197:18, 408:3 Inherited [2] - 366:19, 366:24 Injunction [11] - 100:2, 135:17, 135:20, 135:21, 136:2, 136:6, 136:8, 141:4, 257:8, 266:5, 283:24 Injunctive [3] - 258:14, 404:8 Injured [3] - 277:10, 414:8, 414:10 Injury [7] - 235:7, 277:12, 412:23, 412:25, 413:9, 413:22 Inlet [1] - 177:12 Inlets [2] - 149:25, 151:1 Inn [1] - 56:4 Inner [1] - 301:4 Input [1] - 327:25 Inquiry [1] - 411:2 Inserted [1] - 223:1 Inside [4] - 112:25, 150:6, 177:14, 334:10 Insistent [1] - 316:4 Insofar [1] - 346:19 Inspect [1] - 224:5 Inspected [1] - 181:23 Inspection [1] - 334:3 Instagram [1] - 15:5 Install [2] - 102:3, 317:5, 317:12, 329:11, 331:3, 335:15, 340:18, 395:11 Installed [10] - 93:1, 101:20, 317:17, 317:20, 318:12, 322:18, 322:21, 328:12, 329:17, 370:8 Installing [5] - 97:12, 238:7, 238:16, 240:8, 341:11 Instance [2] - 190:10, 391:13 Instead [4] - 205:19, 319:3, 404:22, 409:3 Institute [1] - 219:19 Institutions [1] - 299:2 Instruction [2] - 14:14, 221:6

Instructions [4] - 14:24, 15:21, 145:22, 215:15 Instrument [3] - 43:14, 410:7, 410:19 Instruments [1] - 350:13 Insufficient [2] - 53:19, 155:18 Intend [1] - 412:6 Intended [9] - 152:11, 155:11, 166:25, 167:8, 281:6, 322:4, 322:6, 327:12, 357:3 Intending [2] - 322:7, 412:5 Intends [2] - 238:15, 240:7 Intensity [5] - 144:13, 203:1, 203:8, 203:9, 208:21 Intensive [1] - 5:13 Intent [22] - 119:17, 119:18, 119:21, 165:16, 167:15, 167:23, 167:25, 174:8, 190:6, 209:12, 278:17, 280:16, 281:11, 371:5, 371:9, 371:19, 380:14, 380:15, 393:15, 393:17, 411:9, 412:1 Intention [3] - 339:1, 411:1, 411:2 Intentional [12] - 266:18, 267:9, 280:16, 287:5, 287:12, 292:25, 294:4, 294:7, 294:14, 411:21, 412:1, 412:12 Intentionally [1] - 294:24 Intents [3] - 51:1, 394:8, 396:10 Interaction [2] - 290:19, 292:2 Intercepted [2] - 147:7, 167:24 Interconnected [1] - 185:10 Interest [43] - 26:8, 26:22, 26:24, 42:4, 42:7, 42:10, 42:24, 43:1, 43:3, 43:4, 43:5, 43:6, 43:7, 43:9, 43:10, 43:13, 43:18, 52:17, 52:23, 54:4, 77:19, 184:13, 184:17, 184:19,	195:14, 248:10, 270:5, 280:9, 282:1, 284:16, 286:14, 286:16, 288:22, 352:13, 372:1, 372:2, 379:22, 386:21, 407:22, 410:4, 424:11 Interested [1] - 44:6 Interests [4] - 44:20, 45:7, 52:13 Interference [5] - 411:21, 411:23, 411:25, 412:8, 412:12 Interior [1] - 334:9 Internet [1] - 14:16 Internet [3] - 197:8, 197:9, 422:16 Internship [2] - 301:21, 301:22 Interpretation [2] - 186:14, 341:18 Interrupt [4] - 64:15, 124:6, 179:6, 222:1 Interrupted [1] - 178:8 Interrupting [1] - 367:7 Intersections [1] - 340:7 Intimidate [1] - 327:19 Intimidating [4] - 118:14, 118:16, 137:3, 137:5 Intricacies [1] - 22:8 Introduce [3] - 5:14, 66:11, 264:22 Introduced [9] - 32:2, 32:7, 56:1, 309:11, 394:1, 424:6 Introducing [1] - 264:24 Invade [1] - 264:19 Invasion [4] - 264:24, 265:4, 267:8, 267:9 Invested [2] - 299:15, 421:19 Investment [2] - 299:13, 307:24 Invited [2] - 213:23, 219:7 Involve [1] - 392:11 Involved [2] - 20:2, 30:17, 40:12, 61:24, 90:11, 90:15, 91:12, 91:15, 91:17, 137:10, 145:1, 146:6, 196:24, 206:12, 285:18, 369:6, 392:17, 396:6,	396:9, 421:18 Involves [2] - 26:15, 225:2 Involving [1] - 94:22 Iron [1] - 177:10 Irrefutable [1] - 99:18 Irreparable [2] - 238:24, 398:25 Irreversibly [1] - 240:16 Island [142] - 8:15, 8:17, 8:18, 9:3, 29:24, 30:17, 30:19, 32:9, 33:2, 33:21, 33:23, 34:7, 34:21, 35:9, 42:21, 52:8, 52:21, 53:8, 56:8, 58:9, 58:12, 59:11, 74:3, 83:13, 90:5, 90:7, 91:11, 92:16, 92:21, 96:3, 101:5, 102:18, 103:24, 104:6, 106:12, 111:8, 111:11, 111:21, 129:14, 130:5, 130:8, 133:9, 133:16, 139:2, 139:21, 139:23, 140:7, 140:16, 141:1, 141:5, 144:23, 146:17, 151:20, 153:9, 156:12, 178:5, 181:11, 184:6, 195:8, 196:5, 196:23, 196:24, 197:1, 213:16, 220:13, 226:3, 227:1, 233:24, 234:1, 234:3, 237:17, 239:4, 241:8, 245:5, 245:15, 246:6, 248:3, 250:25, 251:16, 253:1, 256:14, 256:21, 259:4, 260:1, 261:7, 261:11, 261:14, 261:17, 262:3, 269:16, 298:4, 303:7, 306:2, 307:2, 307:13, 312:23, 322:12, 324:1, 340:8, 340:9, 345:5, 348:18, 350:2, 354:16, 358:25, 360:3, 360:7, 360:12, 360:25, 361:4, 361:10, 362:6, 362:7, 362:21, 363:8, 363:17, 363:22, 363:23, 364:12, 365:19, 366:3, 366:5, 366:9, 366:12, 366:16, 366:17,	366:23, 374:20, 374:24, 380:12, 387:13, 391:6, 393:5, 393:14, 393:23, 394:14, 395:2, 396:24, 401:6, 404:14 Island [25] - 35:10, 79:7, 101:8, 149:22, 151:5, 177:25, 196:14, 209:24, 275:16, 303:15, 303:18, 304:7, 309:13, 339:11, 339:24, 340:4, 363:1, 363:2, 365:21, 366:14, 369:4, 375:20, 396:22 Islands [10] - 144:1, 151:6, 151:21, 186:13, 196:15, 196:25, 197:2, 199:4, 318:15, 396:23 Issue [30] - 31:17, 35:5, 76:7, 89:21, 93:20, 114:22, 126:4, 174:16, 224:13, 224:15, 224:18, 224:20, 225:18, 268:7, 268:10, 268:12, 268:19, 269:13, 271:22, 272:7, 273:20, 275:20, 288:1, 291:15, 292:9, 292:20, 303:19, 318:24, 322:3, 328:8, 332:6, 335:11, 373:6, 379:11, 380:7, 381:3, 381:18, 421:2 Issues [22] - 35:14, 87:14, 87:17, 128:13, 129:10, 248:15, 273:2, 303:23, 303:24, 325:22, 326:3, 326:10, 327:22, 333:12, 333:17, 353:7, 364:25, 369:3, 381:7, 381:9, 389:3, 396:25 Iterations [2] - 219:11, 219:18 Itself [6] - 112:20, 112:24, 112:25, 121:8, 230:1, 329:20	110:6, 176:15, 215:23, 254:12, 254:20, 384:19, 424:9 Jason [1] - 14:1 Jeanne [1] - 13:22 Jefferson [4] - 5:4, 5:20, 106:19, 392:7 Jerk [2] - 375:23, 375:24 Job [10] - 26:12, 26:20, 27:2, 28:18, 69:15, 124:11, 142:9, 155:1, 217:19, 298:23, 301:14, 301:18, 364:1, 370:15, 401:9, 414:21, 420:23, 421:4, 422:21 John [43] - 2:10, 8:14, 9:20, 58:9, 58:11, 59:13, 59:19, 59:23, 60:23, 64:10, 66:4, 67:6, 76:19, 76:20, 77:24, 95:14, 114:22, 115:2, 115:6, 117:21, 118:11, 118:15, 124:2, 130:16, 148:21, 239:12, 239:13, 243:19, 251:18, 305:25, 323:23, 324:2, 325:4, 327:7, 328:14, 335:1, 361:21, 368:10, 394:22, 395:3, 398:19 JOHN [1] - 361:24 Johns [2] - 298:4, 340:9 Johnson [3] - 14:2, 73:11, 93:12 Join [6] - 43:13, 43:19, 43:22, 107:7, 219:7, 327:10 Joined [3] - 106:25, 107:5, 107:8 Joining [1] - 188:5 Joint [5] - 47:11, 188:3, 212:15, 365:8, 397:12 Joints [14] - 149:23, 150:12, 150:24, 177:17, 177:18, 181:24, 188:1, 211:3, 211:4, 212:8, 212:12, 338:19, 339:1, 365:12 Jonathan [1] - 8:13 Jones [1] - 334:24 Joseph [2] - 7:17, 36:16 JOSEPH [1] - 36:12

Josey [1] - 7:16 Journeys [1] - 56:10 Jr [4] - 343:23, 345:8, 348:20, 350:4 Judge [15] - 11:12, 26:6, 26:13, 26:25, 27:8, 28:11, 33:3, 37:19, 165:15, 271:23, 277:9, 277:15, 284:8, 400:15, 406:1, 406:22 Judge [30] - 1:12, 5:4, 5:19, 16:15, 27:11, 32:1, 32:6, 35:23, 93:21, 94:1, 254:24, 261:5, 271:4, 272:3, 272:11, 289:19, 290:11, 290:14, 291:6, 291:16, 292:7, 292:8, 292:13, 293:19, 293:22, 293:25, 382:17, 392:7, 399:18, 402:1 Judgement [1] - 291:7 Judges [5] - 16:18, 25:25, 26:1, 37:18, 406:20, 421:24 Judgment [17] - 16:9, 16:13, 254:16, 254:17, 261:6, 271:14, 271:15, 271:17, 271:19, 271:22, 289:18, 290:10, 291:13, 292:6, 292:7, 293:2 Judicial [2] - 421:23 Judicial [1] - 424:2 Julia [1] - 215:1 Julie [5] - 191:3, 191:6, 255:21, 316:13, 317:22, 334:24 July [2] - 352:1, 424:12 Jump [3] - 191:20, 394:15, 395:8 Junction [2] - 149:25, 150:1 June [22] - 58:5, 58:18, 92:13, 93:12, 93:17, 93:25, 95:18, 107:5, 130:11, 130:20, 247:21, 249:15, 267:13, 317:2, 317:11, 321:13, 325:25, 326:9, 331:24, 335:3, 351:25, 395:2	Jungle [5] - 109:3, 109:6, 109:13, 109:15, 118:2, 394:8, 398:9 Junior [1] - 36:17 Juries [1] - 417:24 JUROR [10] - 7:20, 7:22, 8:3, 8:20, 8:24, 9:10, 9:13, 9:17, 9:20, 9:25 Juror [19] - 5:18, 9:6, 13:20, 13:21, 13:22, 13:23, 13:24, 13:25, 14:1, 14:2, 14:3, 14:4, 15:1, 15:21, 73:10 Jurors [12] - 10:9, 18:2, 20:11, 190:18, 406:13, 406:20, 407:3, 407:6, 407:9, 416:18, 417:2, 420:6 Jury [165] - 5:5, 6:11, 6:14, 6:20, 7:2, 7:8, 8:16, 10:15, 10:25, 13:17, 13:20, 14:5, 14:15, 15:1, 15:9, 15:12, 15:17, 17:5, 17:7, 17:12, 17:14, 19:21, 19:22, 20:1, 20:9, 20:14, 20:16, 23:12, 25:25, 27:22, 28:20, 29:18, 31:25, 41:15, 50:10, 51:13, 72:1, 72:5, 72:12, 72:21, 73:15, 81:14, 105:12, 105:19, 105:23, 137:1, 141:22, 153:7, 190:23, 200:13, 201:25, 215:18, 215:24, 216:3, 216:23, 231:20, 251:23, 252:25, 253:12, 254:14, 261:2, 262:8, 262:24, 263:5, 263:6, 263:9, 263:10, 263:20, 264:3, 276:9, 276:10, 282:25, 284:11, 285:3, 286:25, 287:19, 289:14, 292:22, 293:9, 294:18, 295:19, 295:21, 296:1, 296:8, 296:11, 296:13, 296:16, 296:23, 296:25, 297:1, 297:12, 298:1, 298:10, 300:1, 300:17, 305:7, 306:17, 310:25,	312:1, 312:21, 313:4, 314:21, 319:13, 320:3, 320:15, 321:17, 322:10, 332:16, 332:22, 334:19, 334:21, 335:10, 336:19, 337:21, 340:13, 350:24, 362:5, 378:22, 379:7, 380:3, 380:23, 381:11, 381:15, 381:21, 381:25, 383:16, 383:25, 384:1, 384:14, 384:20, 393:3, 398:22, 401:19, 415:1, 415:10, 415:13, 415:17, 415:20, 415:25, 416:8, 416:11, 417:1, 417:4, 417:8, 418:18, 419:9, 419:12, 419:14, 419:16, 419:18, 419:24, 420:11, 421:12, 421:18, 422:4, 422:5 Jury [5] - 1:12, 4:9, 4:10, 16:8, 423:7 Jury's [2] - 174:20, 292:17 Justice [2] - 22:11	kids [3] - 109:6, 109:10, 211:8 kin [1] - 424:10 kind [30] - 5:24, 24:18, 27:10, 42:17, 109:2, 110:1, 118:14, 120:22, 124:6, 124:8, 127:12, 153:5, 153:15, 210:21, 226:19, 235:24, 248:5, 311:5, 311:6, 317:16, 317:25, 318:24, 331:12, 331:13, 332:7, 332:9, 376:1, 390:22 kinds [1] - 311:9 Knight [2] - 108:3, 108:4 knocked [1] - 309:10 knowing [6] - 69:5, 160:19, 195:16, 294:24, 301:24, 309:19 knowledge [24] - 44:17, 87:13, 93:14, 103:21, 103:23, 104:2, 116:23, 153:21, 157:2, 159:20, 186:24, 192:13, 240:19, 248:25, 288:10, 289:19, 289:23, 333:6, 356:2, 364:23, 371:9, 371:18, 371:25, 373:7 known [5] - 20:24, 20:25, 197:14, 288:12, 345:6, 348:19, 350:3, 399:12, 412:3 knows [7] - 5:16, 77:17, 155:15, 389:4, 389:20, 389:21, 390:4 Kristy [2] - 14:2, 73:11	31:25, 400:14, 403:7 lady [5] - 22:11, 32:25, 72:20, 72:25, 73:2 Lal [1] - 108:14 laid [2] - 285:19, 328:8 lake [3] - 151:22, 152:1 Lake [1] - 375:21 Land [1] - 52:12 land [33] - 37:15, 38:21, 41:14, 41:24, 71:18, 145:16, 145:20, 155:21, 160:18, 161:3, 163:4, 163:22, 165:21, 202:8, 264:17, 264:19, 267:8, 275:18, 285:11, 304:9, 304:11, 345:4, 348:17, 350:1, 351:11, 351:12, 367:8, 410:4, 410:6, 410:8, 410:11 landscape [5] - 158:15, 191:2, 194:5, 215:1, 255:20, 316:12, 316:18, 318:23, 323:18 landscaping [5] - 172:7, 201:16, 225:11, 309:22, 311:7 language [11] - 20:15, 53:18, 131:6, 131:10, 200:21, 252:9, 252:10, 252:14, 289:1, 343:11, 361:15 large [5] - 28:3, 29:4, 77:14, 132:20, 187:10, 207:24, 210:13, 211:20, 301:2 Large [4] - 3:4, 3:6, 3:7, 3:18 larger [3] - 92:3, 130:12, 179:2 last [16] - 6:8, 28:3, 38:17, 143:25, 152:14, 227:12, 234:11, 268:25, 299:12, 304:12, 320:8, 320:9, 385:12, 389:25, 391:10, 417:14 late [2] - 56:2, 147:16 latent [5] - 173:23, 208:5, 208:6, 208:9, 208:13 law [73] - 5:24, 7:7,

K

keep [10] - 24:12,
119:6, 136:12,
168:18, 168:22,
189:4, 189:11,
262:25, 381:1, 402:17
keeping [3] - 257:18,
330:24, 340:19
keeps [4] - 150:18,
211:10, 396:5
Kelley [1] - 281:5
Kelly [1] - 424:1
kept [3] - 40:14,
109:9, 328:9
kettle [1] - 154:19
key [3] - 179:15,
226:17, 282:17
keys [1] - 286:10
Khe [2] - 108:14,
108:15
Klawah [5] - 33:23,
41:19, 55:21, 56:4,
151:20, 196:16,
196:23, 196:24,
303:13
Kid [1] - 150:16

L

L-1 [2] - 158:15,
159:11
L-421 [1] - 47:13
labelled [2] - 147:13,
148:1
lack [5] - 131:20,
185:15, 185:22,
190:4, 191:25,
231:23, 267:5, 375:11
ladder [2] - 109:23
ladies [4] - 13:18,

7:9, 14:22, 23:12, 25:22, 26:13, 26:14, 26:16, 26:23, 31:20, 33:4, 33:13, 35:23, 35:25, 37:1, 37:2, 37:4, 37:6, 37:21, 39:12, 39:21, 44:17, 97:8, 97:13, 190:2, 190:4, 229:23, 261:24, 263:21, 267:6, 268:9, 268:10, 268:16, 269:24, 271:24, 272:2, 274:19, 276:25, 277:2, 279:2, 281:16, 284:18, 284:22, 285:6, 285:10, 285:12, 286:9, 288:9, 288:20, 289:5, 379:2, 379:13, 379:23, 384:12, 384:24, 386:17, 387:8, 387:19, 390:11, 399:18, 400:16, 406:12, 406:13, 406:15, 406:18, 406:25, 410:16, 410:17, 418:22, 420:20 lawfully [3] - 292:21, 292:23, 343:9 lawn [3] - 77:15, 166:24, 173:19 laws [1] - 45:9 lawsuit [73] - 6:1, 21:7, 21:12, 21:17, 21:19, 26:9, 26:23, 94:9, 99:24, 103:22, 103:25, 104:5, 104:7, 104:10, 104:21, 104:24, 135:24, 136:3, 136:10, 136:13, 141:4, 237:15, 237:18, 237:20, 237:24, 239:2, 239:8, 239:12, 246:7, 251:3, 251:4, 251:9, 251:11, 251:16, 251:19, 256:15, 256:21, 257:20, 257:22, 257:24, 258:23, 260:16, 262:11, 262:14, 262:16, 266:7, 266:8, 268:6, 268:9, 269:17, 269:18, 272:10, 273:24, 284:6, 287:2, 287:6, 291:1, 294:13, 333:4, 333:6, 333:21, 351:13, 351:16,	351:18, 356:19, 360:3, 360:8, 360:10, 360:24, 361:12, 399:1, 404:6, 404:9 lawyer [10] - 8:11, 24:10, 27:9, 36:21, 44:23, 62:14, 97:13, 118:12, 126:11, 206:5, 206:7, 258:16, 289:4, 327:11, 329:25, 385:13, 385:14, 385:15, 398:7 lawyers [20] - 5:8, 5:14, 6:19, 10:13, 24:2, 24:14, 24:16, 25:19, 27:19, 29:7, 126:12, 289:2, 371:22, 384:23, 385:3, 415:16, 422:18, 423:17, 423:18, 423:20 lay [1] - 139:1 layer [1] - 162:2 layman [1] - 147:19 layman's [5] - 144:3, 149:13, 169:12, 172:16, 172:20, 349:15 laymen [1] - 196:3 layout [2] - 42:25, 314:22 lead [2] - 32:17, 237:5 leading [3] - 73:20, 237:1, 237:3 leak [6] - 112:11, 177:13, 177:14, 211:3, 211:4, 211:18 leaked [5] - 149:24, 150:1, 188:1, 188:23, 188:24, 189:15 leaking [5] - 150:13, 150:24, 188:25, 189:1, 189:17 leaks [4] - 177:16, 338:14, 338:18, 365:8 leaky [4] - 212:15, 338:19, 339:1, 365:12 leap [2] - 202:24, 203:4 learn [8] - 31:4, 58:4, 107:12, 107:17, 210:4, 325:14, 372:23, 422:22 learned [7] - 30:12, 58:3, 58:24, 107:13, 107:15, 114:19, 309:12 learner [1] - 22:10 learners [1] - 22:9	learning [1] - 117:18 least [13] - 28:21, 43:20, 43:21, 46:23, 96:21, 128:18, 283:13, 284:18, 316:2, 321:3, 321:4, 372:8, 412:18 leave [10] - 10:20, 15:20, 64:21, 77:20, 77:25, 213:18, 215:15, 354:11, 383:21, 404:19 leaving [2] - 215:16, 290:23 led [5] - 95:4, 95:6, 95:9, 95:12, 111:11 left [23] - 11:7, 11:12, 64:1, 78:6, 117:8, 118:15, 165:21, 166:23, 169:16, 170:22, 171:19, 171:20, 182:9, 190:25, 225:2, 225:3, 330:7, 332:4, 363:18, 368:21, 376:2, 399:11, 401:23 left-hand [1] - 363:18 legal [27] - 43:3, 43:6, 45:19, 47:16, 48:12, 98:1, 103:8, 126:7, 141:10, 180:25, 205:10, 205:11, 206:10, 206:20, 206:25, 225:5, 225:9, 256:22, 263:8, 263:18, 281:17, 286:3, 326:2, 368:5, 369:11, 378:25, 411:18 legality [1] - 206:25 legally [2] - 156:9, 193:12 legend [1] - 161:10 legislative [1] - 421:22 legitimate [1] - 290:3 length [2] - 376:14, 376:19 less [5] - 88:5, 151:23, 176:1, 196:10, 319:6 lessen [1] - 128:15 lesser [1] - 308:20 Letter [2] - 3:24, 4:3 letter [50] - 34:20, 34:21, 34:22, 58:7, 58:8, 58:17, 60:25, 92:2, 92:5, 92:10, 92:11, 92:12, 92:15, 92:19, 92:20, 93:12,	93:16, 93:25, 95:17, 96:11, 99:12, 105:2, 114:21, 115:1, 123:7, 123:8, 130:11, 130:13, 130:16, 130:20, 131:11, 164:7, 246:21, 266:9, 311:20, 312:2, 321:15, 321:17, 321:25, 322:11, 324:5, 324:10, 324:12, 328:14, 342:4, 358:13, 394:25, 395:2, 401:18 letters [5] - 91:21, 133:18, 244:1, 394:24, 395:3 letting [1] - 292:22 level [6] - 21:25, 39:14, 153:4, 189:4, 288:4, 295:5 liability [1] - 265:3 licensed [1] - 137:16 life [7] - 29:16, 50:6, 92:4, 217:18, 300:6, 357:17, 392:22 lifted [2] - 115:11, 252:15 light [5] - 79:17, 364:18, 404:18, 408:6, 410:2 lights [1] - 311:6 Ligustrum [1] - 194:21 likelihood [1] - 152:16 likely [3] - 22:6, 152:15, 408:16 limb [1] - 396:18 limbo [2] - 290:23, 332:4 limbs [2] - 201:4, 202:10 limit [1] - 323:10 limitations [13] - 261:10, 267:11, 268:11, 270:23, 271:5, 271:3, 271:11, 287:1, 293:12, 293:17, 293:22, 350:11, 367:23 limited [1] - 354:10 line [46] - 15:21, 35:9, 54:1, 79:14, 81:22, 116:6, 131:17, 131:22, 155:20, 156:19, 164:10, 165:12, 166:5, 168:3, 168:10, 169:18, 169:24, 171:2,	185:22, 186:7, 187:18, 188:15, 194:24, 194:25, 195:17, 198:5, 198:18, 211:21, 212:2, 252:1, 252:17, 312:5, 321:19, 327:4, 342:8, 348:18, 358:19, 369:22, 371:5, 385:20, 404:23, 405:2, 405:3, 405:13 line's [1] - 170:15 linear [1] - 211:14 Linebach [1] - 219:7 lines [12] - 35:10, 91:10, 159:13, 159:14, 164:14, 228:9, 252:20, 312:10, 350:9, 358:23, 369:19, 405:10 link [2] - 41:1, 410:20 list [10] - 10:11, 10:14, 40:24, 45:14, 88:10, 88:15, 139:7, 139:10, 229:3, 358:15 listed [8] - 87:10, 87:11, 101:10, 235:20, 366:1, 366:3, 368:13, 380:12 listen [8] - 5:8, 5:23, 36:5, 404:3, 417:17, 418:12, 418:21, 420:18 listening [1] - 420:15 litigate [1] - 351:17 litigated [1] - 268:10 litigation [1] - 220:14 litter [1] - 173:21 live [12] - 8:21, 29:5, 55:15, 91:18, 298:2, 298:3, 298:7, 302:8, 303:12, 363:19, 367:2 lived [15] - 8:16, 30:8, 32:10, 57:10, 90:7, 91:11, 91:22, 217:14, 217:16, 217:18, 298:8, 376:21, 394:3, 394:7, 404:24 living [5] - 109:24, 118:2, 227:9, 298:10, 339:3 lo [3] - 266:1, 302:1, 398:4 loan [11] - 247:20, 325:24, 326:7, 328:21, 351:24, 352:13, 352:15,

352:25, 353:1, 353:2, 398:14 loans [1] - 352:6 local [1] - 299:16 locals [1] - 98:11 locate [1] - 177:1 located [9] - 125:14, 147:24, 151:11, 198:4, 204:22, 252:20, 312:11, 358:23 location [15] - 161:4, 161:5, 161:6, 161:8, 245:23, 245:24, 246:2, 246:11, 250:14, 316:20, 323:17, 331:12, 331:13, 356:12 locations [1] - 233:23 locked [1] - 417:5 logistically [1] - 44:24 longstanding [1] - 336:3 look [55] - 15:8, 26:7, 36:7, 44:10, 44:11, 44:14, 44:25, 45:6, 45:9, 46:6, 48:16, 65:11, 79:23, 91:10, 128:16, 134:2, 147:2, 157:17, 163:4, 163:20, 165:7, 166:14, 167:4, 171:8, 171:17, 181:24, 186:2, 186:7, 186:13, 191:18, 208:3, 209:4, 222:2, 232:15, 259:19, 297:6, 309:21, 329:22, 346:17, 347:16, 347:20, 348:12, 370:4, 376:12, 377:14, 381:22, 382:6, 395:14, 395:21, 399:4, 420:25, 421:13, 422:5, 422:15 looked [15] - 47:1, 81:4, 150:6, 159:8, 162:17, 175:25, 177:13, 177:17, 179:1, 194:1, 228:6, 233:1, 304:17, 390:5 looking [56] - 41:23, 44:15, 65:16, 65:17, 65:21, 113:9, 115:10, 117:7, 164:6, 165:2, 165:11, 165:14, 165:15, 165:16,	165:25, 166:8, 166:10, 166:19, 166:20, 166:21, 167:5, 167:7, 168:2, 168:6, 168:18, 168:21, 168:23, 169:1, 169:6, 169:12, 169:14, 169:23, 169:24, 170:3, 170:4, 170:6, 170:7, 170:11, 170:18, 170:19, 170:20, 170:25, 171:12, 174:25, 224:13, 229:15, 252:23, 259:20, 279:20, 303:11, 320:9, 334:22, 347:18, 370:20, 390:19 looks [12] - 15:22, 77:16, 80:15, 82:7, 109:14, 111:3, 124:8, 168:18, 199:8, 319:21, 320:2, 382:10 loose [1] - 109:11 Lorraine [1] - 47:10 lose [3] - 86:3, 250:5, 405:6 loss [4] - 412:23, 413:7, 413:8, 413:11 lost [2] - 85:25, 410:25 lot's [1] - 35:7 louder [1] - 404:5 Louis [1] - 300:20 lovely [1] - 56:6 loves [1] - 56:5 low [8] - 35:11, 98:13, 101:4, 102:15, 116:9, 116:10, 116:15, 125:23, 151:25, 168:7, 170:13, 196:6, 315:6, 317:24, 318:4, 318:20, 340:7, 402:6 low-lying [1] - 340:7 Lowcountry [5] - 56:5, 321:11, 321:12, 389:4, 403:18 lower [15] - 112:10, 115:22, 151:10, 165:10, 165:17, 170:22, 171:19, 177:20, 180:2, 189:5, 189:11, 196:1, 314:24, 314:25, 338:20 lowered [1] - 151:1 lowering [1] - 207:16 LS [3] - 345:8,	348:20, 350:4 luck [1] - 35:1 lunch [12] - 9:14, 105:11, 105:14, 125:8, 263:22, 264:1, 295:18, 295:20, 295:22, 296:14, 296:15, 415:25 Luther [1] - 298:20 lying [5] - 102:15, 196:6, 340:7, 345:5, 350:2 M ma'am [81] - 90:14, 91:9, 91:13, 92:9, 96:18, 97:11, 98:13, 98:23, 99:6, 99:19, 100:21, 101:11, 105:7, 143:2, 143:7, 143:10, 145:4, 145:8, 146:18, 146:23, 147:21, 148:6, 149:12, 152:23, 153:25, 155:6, 156:15, 156:25, 157:1, 157:3, 157:6, 157:12, 157:21, 160:4, 170:7, 171:5, 171:8, 171:15, 172:9, 172:15, 174:22, 175:13, 175:21, 178:6, 178:10, 178:14, 179:11, 180:13, 181:8, 181:18, 182:4, 182:21, 182:25, 183:3, 183:6, 206:12, 209:21, 209:25, 210:25, 211:5, 239:3, 241:10, 242:11, 243:20, 243:22, 246:18, 249:6, 250:17, 343:17, 344:12, 344:18, 346:6, 346:9, 346:12, 346:14, 349:4, 349:6, 350:19, 356:6, 375:16 MacIlwaine [1] - 9:20 MacLaughlins [1] - 19:19 mad [1] - 34:17 Madeleine [1] - 14:3 Madison [1] - 267:19 madness [1] - 20:21 MAI [7] - 217:22, 217:24, 217:25, 219:8, 219:20, 220:21, 220:23	mail [83] - 3:8, 3:9, 3:10, 3:11, 3:12, 3:13, 3:14, 3:20, 3:21, 4:7, 59:18, 59:21, 59:22, 60:6, 60:9, 60:10, 61:15, 62:1, 64:9, 64:17, 65:13, 65:18, 66:4, 66:19, 66:24, 67:1, 67:4, 67:10, 67:18, 67:20, 68:21, 69:2, 69:4, 69:9, 69:23, 70:1, 74:12, 74:13, 74:14, 74:16, 74:23, 74:25, 75:19, 75:21, 76:2, 76:12, 76:14, 76:16, 98:10, 99:6, 121:20, 121:21, 122:7, 122:14, 122:23, 123:15, 126:25, 133:20, 133:21, 133:22, 148:21, 149:1, 149:5, 153:10, 153:13, 164:7, 209:9, 242:4, 242:6, 242:10, 242:13, 242:16, 243:9, 243:18, 243:21, 243:23, 244:12, 309:7, 310:3, 317:4, 357:16 mailed [2] - 296:6, 296:7 mails [15] - 31:3, 65:11, 66:9, 121:6, 133:18, 159:8, 164:7, 242:1, 273:7, 334:23, 335:3, 335:20, 337:4, 353:14, 357:12 main [2] - 28:21, 340:8 maintain [24] - 45:23, 62:21, 63:15, 103:14, 147:5, 156:2, 156:5, 156:6, 180:11, 180:14, 180:15, 181:1, 181:4, 181:16, 182:2, 182:4, 182:11, 205:1, 228:14, 228:21, 272:17, 272:19, 355:5, 365:1 maintained [9] - 42:20, 179:15, 179:16, 179:17, 179:18, 203:16, 225:10, 279:19 maintaining [2] - 181:9, 364:23 maintains [4] - 238:5, 238:20, 240:12, 287:22	maintenance [9] - 134:5, 181:7, 279:17, 362:10, 362:11, 362:14, 364:4, 364:9, 365:6 MAIs [1] - 226:23 major [9] - 167:16, 209:6, 209:16, 213:10, 218:8, 218:9, 230:3, 369:17, 373:1 majority [3] - 117:10, 418:3, 418:7 majority's [1] - 418:10 malevolently [1] - 288:3 malice [1] - 412:4 malpractice [1] - 356:19 man [6] - 109:3, 325:2, 368:14, 389:4, 395:20, 421:15 manage [2] - 299:13, 299:15 management [3] - 14:17, 146:10, 154:23 manager [1] - 219:1 managing [3] - 58:12, 76:21, 219:9 manhole [7] - 97:22, 115:9, 115:11, 126:9, 126:16, 126:17, 137:10 manicured [1] - 173:19 manifestation [2] - 270:22, 271:6 manmade [2] - 195:2, 195:3 manner [6] - 105:13, 135:14, 238:5, 238:7, 238:20, 240:12 map [5] - 116:18, 410:9, 410:13, 410:22 maps [2] - 389:8, 410:12 Marble [1] - 108:18 marbles [2] - 150:21, 179:23 March [6] - 18:11, 41:4, 142:22, 142:24, 176:16 Marine [6] - 107:1, 107:5, 110:24, 136:20, 183:24, 395:24 Marines [3] - 107:9, 107:13, 110:23 mark [6] - 17:2, 18:5, 61:9, 80:19, 143:12,

160:12, 162:10, 241:2 MARKED [2] - 3:2, 4:2 marked [39] - 18:11, 18:23, 56:16, 61:11, 64:7, 68:17, 74:8, 81:8, 91:3, 92:1, 121:21, 134:1, 143:16, 143:19, 146:16, 148:18, 158:2, 162:11, 241:4, 243:10, 243:15, 244:15, 254:8, 255:2, 311:18, 319:10, 328:13, 334:13, 337:14, 342:3, 342:23, 343:18, 344:2, 345:11, 348:5, 349:21, 360:1, 370:3, 419:10 market [12] - 86:4, 86:10, 229:24, 230:4, 233:19, 234:1, 235:12, 248:4, 248:6, 390:23, 413:1, 413:4 marketplace [1] - 234:11 marriage [5] - 6:15, 6:21, 7:3, 7:8, 8:9 married [1] - 302:4 marsh [1] - 363:17 mask [1] - 192:14 Massachusetts [1] - 299:23 master's [3] - 37:10, 142:14, 300:19 material [2] - 271:25, 291:23 math [3] - 209:17, 218:8, 282:25 matter [18] - 29:1, 42:12, 60:22, 60:23, 61:3, 66:11, 239:21, 271:24, 290:25, 355:15, 369:11, 375:13, 379:23, 392:16, 394:21, 398:6, 407:2, 416:17 matters [4] - 48:10, 263:8, 263:18, 263:21 Matthew [4] - 339:13, 339:21, 339:22, 363:3 McClintick [1] - 269:7 McLaughlin [128] - 1:7, 2:9, 2:11, 7:1, 7:4, 32:7, 32:8, 32:11, 32:15, 47:11, 53:19, 62:6, 62:12, 63:12,	64:15, 68:23, 69:8, 70:5, 70:10, 71:2, 74:11, 75:3, 75:10, 76:23, 77:14, 78:9, 96:21, 114:14, 115:8, 117:12, 117:15, 118:10, 118:12, 119:24, 120:18, 121:6, 121:17, 121:20, 121:22, 122:7, 122:10, 122:15, 127:5, 127:9, 128:20, 128:23, 131:5, 138:17, 141:6, 153:12, 154:5, 159:11, 178:8, 212:25, 213:15, 216:8, 228:18, 236:11, 236:13, 236:18, 237:15, 237:18, 242:22, 243:18, 244:18, 246:25, 249:5, 249:18, 250:24, 256:10, 256:14, 258:13, 259:9, 261:19, 262:4, 264:21, 266:25, 273:4, 273:9, 288:20, 295:14, 297:17, 297:21, 298:1, 299:21, 301:19, 307:10, 320:20, 321:21, 332:10, 332:21, 336:14, 340:13, 341:3, 347:5, 351:2, 351:6, 351:13, 356:4, 358:14, 359:2, 359:25, 362:15, 374:2, 374:3, 374:8, 374:16, 375:5, 376:23, 377:7, 377:11, 391:5, 391:11, 392:18, 392:21, 393:24, 400:23, 401:6, 402:4, 404:10 McLaughlin's [22] - 70:14, 70:20, 71:7, 71:15, 77:9, 84:7, 116:10, 116:15, 116:23, 117:7, 117:18, 119:10, 128:1, 165:5, 178:8, 239:23, 242:19, 242:24, 272:23, 288:14, 295:12 McLaughlins [73] - 7:2, 30:9, 30:24, 31:5, 32:18, 33:6, 33:16, 33:19, 46:2, 46:7,	47:4, 54:16, 54:18, 54:19, 57:12, 58:2, 60:7, 61:4, 62:11, 67:24, 68:8, 70:4, 74:2, 78:25, 82:20, 82:25, 83:23, 84:19, 84:21, 92:3, 92:8, 92:9, 96:14, 98:16, 114:4, 114:8, 114:12, 123:20, 125:10, 128:7, 132:1, 146:7, 158:18, 159:5, 172:12, 174:23, 175:12, 181:6, 182:10, 191:3, 192:20, 196:18, 207:4, 225:11, 228:2, 261:8, 262:17, 270:11, 270:15, 271:10, 272:1, 290:20, 290:22, 291:3, 291:24, 292:3, 363:19, 386:25, 388:20, 392:16, 395:4, 395:11, 404:7 McLaughlins' [91] - 30:12, 30:21, 31:4, 31:12, 40:11, 45:11, 48:15, 50:12, 57:19, 58:19, 58:23, 60:4, 63:9, 67:25, 69:24, 73:21, 74:6, 78:13, 78:19, 79:11, 81:17, 84:4, 102:14, 103:23, 103:25, 104:8, 104:11, 114:19, 120:21, 125:19, 127:14, 159:24, 163:5, 163:16, 165:24, 166:20, 167:10, 168:15, 168:24, 169:2, 169:21, 170:4, 170:12, 171:4, 171:5, 171:18, 173:1, 174:11, 175:9, 175:18, 179:13, 180:20, 180:22, 182:1, 182:14, 186:17, 192:11, 192:15, 193:19, 193:23, 194:21, 195:23, 195:25, 198:15, 199:20, 207:11, 207:22, 208:2, 208:16, 208:24, 209:2, 211:24, 212:10, 232:25, 261:10, 269:19, 270:21, 270:24, 271:16,	272:13, 276:15, 276:21, 278:1, 290:17, 290:25, 372:25, 388:20, 389:11, 389:18, 391:2, 404:12 mean [27] - 28:2, 37:16, 46:18, 49:5, 84:2, 112:8, 117:21, 127:15, 144:4, 149:8, 156:25, 203:13, 258:12, 259:12, 261:22, 276:9, 286:23, 289:20, 293:6, 293:21, 294:11, 321:10, 327:3, 340:5, 349:9, 353:3, 357:16 Mean [4] - 40:13, 44:13, 45:1, 47:15 meaning [1] - 324:2 means [12] - 21:11, 22:16, 26:25, 49:6, 110:8, 210:7, 258:9, 324:18, 349:10, 407:8, 408:12, 422:1 measure [2] - 81:22, 229:13 measured [3] - 80:20, 81:24, 413:10 measurements [1] - 389:9 Medal [1] - 110:18 Medevacs [1] - 108:23 media [4] - 14:25, 215:19, 296:19, 422:16 medical [1] - 294:12 meet [7] - 111:18, 114:12, 301:19, 304:23, 309:2, 310:11, 315:23, 383:9, 408:21 meeting [33] - 61:6, 61:20, 61:22, 62:1, 62:8, 62:9, 62:11, 62:17, 62:20, 63:2, 63:6, 63:8, 63:18, 63:19, 64:1, 67:22, 67:24, 68:6, 68:9, 68:12, 68:16, 70:2, 70:3, 70:6, 70:10, 71:20, 83:12, 118:7, 118:8, 118:17, 118:18, 119:5, 119:24, 120:3, 135:5, 137:2, 139:3, 139:12, 139:14, 153:22, 154:1, 154:10,	154:11, 158:11, 182:19, 182:22, 212:25, 213:15, 241:7, 241:15, 241:22, 244:20, 312:24, 312:25, 318:23, 326:15, 326:19, 326:20, 326:21, 326:22, 326:25, 327:20, 328:4, 328:19, 329:7, 329:9, 329:14, 329:20, 330:7, 330:17, 330:19, 330:20, 332:4, 338:24, 353:11, 354:22, 355:22, 393:14, 396:15, 397:16, 397:18 Meeting [1] - 3:23 meetings [25] - 31:3, 74:5, 75:1, 95:14, 95:15, 96:19, 96:22, 96:23, 114:16, 118:3, 121:14, 121:16, 123:6, 128:20, 133:14, 135:2, 140:18, 140:21, 154:9, 246:16, 273:8, 315:25, 316:3, 333:10, 376:23 member [10] - 6:14, 6:20, 7:2, 7:8, 8:16, 8:17, 56:7, 90:4, 90:9, 105:12, 129:14, 129:16, 129:17, 129:23, 129:25, 313:22 members [12] - 7:12, 14:15, 63:19, 121:7, 133:17, 139:7, 215:17, 268:21, 268:22, 268:23, 313:14, 314:7 membership [1] - 129:25 memory [2] - 62:16, 68:3, 117:18 memos [1] - 334:23 mention [4] - 52:12, 72:21, 72:25, 393:8 mentioned [3] - 52:11, 120:5, 130:11, 161:7, 185:20, 190:2, 317:22, 335:15, 376:11 mentioning [1] - 190:6 merely [1] - 258:23 merit [2] - 418:9,

418:10 mess [2] - 339:24, 358:12 message [3] - 16:4, 78:6, 309:14 messes [1] - 331:13 messing [1] - 356:8 met [13] - 5:4, 23:3, 26:17, 33:7, 74:2, 111:19, 114:15, 375:17, 396:13, 408:24, 415:3, 415:8 metal [9] - 92:24, 109:16, 147:15, 149:17, 149:19, 170:23, 322:16, 323:11, 365:10 metaphor [1] - 200:8 method [2] - 20:21, 224:9 methods [1] - 308:5 Meyers [1] - 7:16 MIA [2] - 220:20, 220:22 Michael [1] - 37:19 Mickey [2] - 210:13, 210:14 mid [2] - 70:7, 363:20 mid-'70s [1] - 217:23 mid-October [1] - 70:7 middle [5] - 32:17, 170:16, 215:11, 302:20, 313:2 Midway [1] - 111:4 might [21] - 8:7, 45:6, 57:24, 76:10, 153:7, 175:1, 256:25, 285:3, 295:23, 305:15, 323:19, 352:12, 356:13, 390:16, 390:17, 390:20, 391:9, 398:25, 414:2, 421:9, 422:18 Mike [5] - 15:18, 151:12, 152:12, 155:12, 210:14 miles [2] - 108:14, 362:12 million [7] - 87:12, 220:14, 248:8, 299:15, 391:6, 400:23, 400:25 mind [14] - 24:12, 155:7, 186:10, 211:13, 216:11, 230:1, 244:21, 246:19, 276:1,	292:21, 315:17, 357:20, 366:24, 422:19 minds [1] - 181:16 Mineo [5] - 134:9, 134:15, 313:13, 313:19 Mineo's [2] - 134:12, 313:17 minimize [3] - 93:10, 323:12, 413:24 minimized [1] - 413:25 minimizing [1] - 131:7 minimum [2] - 43:12, 229:14 minister [1] - 300:10 ministries [4] - 32:13, 249:8, 298:25, 301:13 Ministries [2] - 298:11, 301:15 Ministry [1] - 32:12 minor [2] - 218:8 minority [2] - 418:3, 418:9 minority's [1] - 418:8 minute [16] - 34:14, 69:1, 141:17, 165:23, 170:1, 180:10, 190:19, 242:12, 279:4, 332:13, 346:17, 347:20, 378:22, 416:8, 416:20, 417:12 minutes [30] - 10:13, 10:17, 10:21, 20:19, 20:20, 24:23, 39:7, 45:3, 50:1, 53:9, 72:4, 72:10, 91:20, 96:9, 98:8, 131:15, 134:23, 139:2, 139:7, 141:20, 190:21, 193:22, 261:1, 312:23, 332:14, 367:9, 379:4, 383:7, 383:8, 393:13 Minutes [1] - 3:23 mischaracterize [1] - 95:7 misconception [1] - 406:18 missed [1] - 382:9 missing [1] - 74:22 mission [1] - 299:1 missions [12] - 108:10, 108:22, 108:23, 108:25, 109:7, 110:1, 110:4, 110:7, 110:9, 110:10,	136:23, 395:25 misspoke [1] - 415:16 mistaken [8] - 281:13, 287:18, 289:10, 289:11, 289:15, 290:6 mistrial [1] - 418:17 mitigate [20] - 178:15, 178:20, 178:21, 178:22, 178:24, 209:11, 265:18, 266:2, 271:13, 272:7, 272:8, 272:20, 276:13, 276:14, 399:22, 403:16, 413:18, 414:5, 414:10, 414:12 mitigating [1] - 186:23 mitigation [5] - 274:12, 274:14, 286:22, 296:6, 399:20 mixed [1] - 423:13 model [6] - 152:18, 152:25, 153:1, 210:7, 210:10 modelled [1] - 152:18 modelling [1] - 144:2, 197:5, 201:9 models [6] - 144:11, 152:24, 185:4, 185:15, 185:18, 210:9 moderate [3] - 79:19, 82:8, 82:9 modified [3] - 186:19, 188:15, 198:21 modify [8] - 188:15, 197:18, 197:24, 199:3, 208:12, 209:10 mom [1] - 303:25 moment [5] - 59:18, 157:17, 179:6, 222:1, 414:22 moments [3] - 29:20, 94:5, 109:23 monastery [1] - 300:12 Moncks [1] - 300:11 Monday [5] - 64:23, 312:24, 340:8, 392:7, 421:9 money [15] - 178:21, 178:23, 178:24, 180:8, 235:24, 258:22, 258:24, 277:11, 299:10, 307:23, 328:22,	328:23, 366:13, 403:15, 415:9 monk [1] - 392:20 month [3] - 399:15, 399:17, 399:21 months [7] - 108:10, 152:2, 245:8, 352:17, 353:6, 353:8, 356:8 Moravian [8] - 32:12, 32:13, 249:8, 298:11, 298:16, 298:17, 300:18, 301:15 Moravians [1] - 32:14 morning [36] - 6:6, 14:9, 14:20, 15:11, 15:16, 15:25, 16:11, 17:1, 29:11, 29:15, 29:18, 55:12, 77:12, 80:10, 82:2, 109:2, 116:1, 139:16, 215:20, 217:12, 217:13, 236:18, 257:12, 260:23, 295:24, 312:4, 331:11, 361:22, 379:1, 383:10, 383:11, 383:24, 384:7, 384:11, 384:17, 421:9 morphology [4] - 177:24, 186:13, 197:3, 209:24 mortgage [2] - 43:17, 46:23 mortgages [2] - 40:13, 43:16 mosquitoes [1] - 85:24 most [18] - 5:5, 46:20, 82:2, 121:12, 198:15, 199:5, 202:8, 220:12, 224:11, 233:9, 233:11, 299:25, 338:3, 365:10, 375:3, 377:4, 402:11, 421:14, 422:17 mostly [3] - 108:3, 109:7, 220:24 mother [1] - 303:23 Motion [1] - 4:5 motion [31] - 16:12, 16:15, 94:1, 134:15, 134:18, 253:18, 264:6, 271:17, 271:19, 271:22, 283:15, 288:4, 290:10, 291:7, 291:17, 291:21,	291:23, 292:6, 293:3, 293:8, 293:11, 293:13, 294:1, 313:19, 313:23, 379:10, 380:23, 381:4, 381:17, 383:1 motions [8] - 16:9, 261:6, 263:23, 264:4, 379:8, 380:24, 381:18, 423:9 motive [2] - 407:22, 412:3 mounded [1] - 164:20 Mountain [1] - 108:18 move [25] - 24:25, 25:8, 55:23, 58:2, 75:5, 99:3, 122:11, 227:23, 245:23, 246:23, 254:3, 254:24, 304:10, 309:5, 316:10, 322:7, 328:24, 330:3, 337:9, 352:25, 356:10, 356:14, 357:2, 382:18 moved [11] - 55:16, 56:13, 57:10, 111:7, 114:3, 244:23, 289:18, 295:4, 299:24, 374:20, 401:8 moves [1] - 10:22 movies [1] - 20:17 moving [8] - 34:25, 84:21, 115:16, 250:6, 262:25, 330:5, 359:3, 381:2 MR [238] - 7:11, 7:14, 9:12, 11:5, 11:17, 11:24, 12:5, 12:10, 12:18, 13:2, 13:11, 13:16, 16:12, 16:17, 16:23, 17:4, 17:15, 17:21, 17:24, 17:25, 18:6, 18:13, 18:17, 19:3, 19:6, 19:10, 19:12, 31:24, 36:11, 36:18, 37:25, 38:4, 38:9, 38:11, 39:1, 39:5, 40:5, 40:7, 42:14, 49:10, 49:12, 53:13, 53:15, 53:17, 54:10, 54:11, 54:14, 54:25, 60:12, 60:17, 60:20, 62:25, 65:15, 65:20, 66:2, 66:13, 67:9, 69:17, 70:16, 72:20, 72:24, 73:7, 75:22, 80:23, 83:16, 84:24, 85:8, 86:11,

86:16, 87:21, 88:13, 90:3, 90:19, 90:22, 90:25, 91:5, 93:23, 94:3, 94:4, 102:8, 102:22, 104:17, 104:19, 105:7, 116:19, 118:25, 119:13, 119:19, 120:10, 123:22, 124:15, 126:19, 129:5, 129:7, 134:24, 135:4, 138:19, 140:2, 140:10, 141:9, 141:14, 143:14, 145:15, 155:14, 160:13, 161:23, 162:23, 183:9, 183:11, 190:24, 205:24, 212:22, 213:5, 213:9, 214:9, 215:5, 215:7, 216:15, 219:25, 220:18, 220:23, 223:6, 225:14, 225:20, 227:3, 229:1, 230:24, 231:1, 235:1, 235:18, 236:3, 237:1, 237:23, 239:18, 240:24, 242:15, 243:12, 244:2, 244:14, 247:2, 249:11, 250:21, 250:23, 254:3, 254:7, 254:10, 254:23, 255:4, 256:10, 259:3, 260:12, 260:14, 260:19, 261:24, 263:3, 264:5, 268:5, 271:18, 278:4, 278:24, 279:1, 279:8, 279:12, 279:15, 280:6, 280:14, 281:10, 281:22, 282:3, 282:7, 282:11, 282:15, 283:5, 283:14, 283:25, 285:21, 286:21, 289:17, 290:9, 291:6, 291:16, 291:19, 291:21, 292:8, 292:15, 292:24, 293:3, 293:11, 293:15, 293:19, 294:3, 294:19, 295:8, 295:11, 295:18, 295:25, 296:4, 297:2, 297:16, 297:25, 320:14, 320:17, 320:19, 332:10, 332:19, 332:20, 336:14, 336:18, 337:8, 337:13,	337:16, 340:23, 347:13, 348:3, 350:22, 351:5, 358:2, 358:4, 359:21, 361:21, 362:3, 371:13, 373:19, 373:21, 374:1, 374:7, 377:7, 378:2, 378:6, 378:16, 380:6, 381:20, 382:17, 382:24, 383:13, 383:16, 392:6, 416:16 MS [209] - 11:3, 11:14, 11:20, 12:2, 12:8, 12:15, 12:24, 13:12, 13:14, 18:3, 18:10, 18:15, 19:16, 29:10, 55:4, 55:11, 60:15, 60:19, 61:2, 61:9, 61:13, 63:5, 65:18, 66:1, 66:7, 66:18, 67:14, 67:17, 69:21, 70:19, 72:23, 73:5, 73:18, 76:1, 80:18, 81:6, 81:10, 83:20, 85:2, 85:5, 85:12, 86:13, 86:19, 86:20, 87:23, 88:2, 88:17, 89:10, 89:12, 89:14, 89:15, 89:25, 90:23, 91:2, 93:19, 102:12, 103:1, 104:14, 106:1, 106:7, 116:22, 119:3, 119:15, 120:2, 120:14, 124:25, 126:22, 129:2, 138:24, 140:6, 140:13, 141:13, 142:1, 142:7, 143:11, 143:18, 145:10, 145:14, 146:4, 155:25, 157:24, 158:4, 160:11, 162:9, 162:14, 163:3, 183:7, 206:4, 206:18, 207:1, 207:2, 212:24, 213:8, 213:10, 213:14, 214:6, 216:2, 216:8, 216:10, 216:18, 216:21, 217:2, 217:11, 219:22, 220:3, 220:15, 221:12, 222:13, 222:22, 223:15, 223:25, 225:17, 225:23, 227:14, 229:4, 230:21, 235:5, 235:25, 236:10, 236:17, 237:6, 239:22, 240:1,	240:21, 241:2, 241:6, 242:19, 242:22, 243:3, 243:9, 243:17, 244:9, 244:11, 244:17, 247:9, 249:17, 250:18, 254:2, 254:22, 256:13, 259:8, 260:11, 260:21, 261:3, 261:16, 281:21, 262:5, 262:8, 262:15, 262:20, 263:2, 263:13, 269:12, 269:16, 271:16, 271:21, 273:6, 273:15, 273:22, 274:11, 274:13, 274:17, 275:1, 275:6, 275:13, 276:6, 276:10, 276:17, 277:2, 277:24, 278:3, 288:6, 288:9, 291:22, 296:12, 297:8, 303:25, 336:10, 336:12, 337:11, 341:2, 347:15, 347:17, 347:25, 348:7, 351:1, 351:9, 357:24, 359:24, 361:16, 371:17, 373:16, 377:10, 377:25, 378:12, 378:18, 379:9, 379:20, 380:4, 381:24, 382:5, 382:8, 382:12, 382:15, 383:14, 385:17, 403:12, 416:14, 416:22 multiple [2] - 52:10, 386:23 multiply [1] - 49:17 murder [1] - 420:12 must [16] - 43:6, 252:20, 261:12, 281:17, 312:10, 358:23, 382:8, 407:6, 411:12, 411:16, 412:1, 412:6, 412:13, 413:18, 414:16, 414:17 mutual [1] - 64:24 N name [18] - 5:3, 7:11, 7:19, 8:10, 8:19, 9:9, 9:19, 13:19, 29:11, 32:1, 36:16, 97:20,	139:10, 191:4, 217:8, 217:9, 304:19, 325:7 named [8] - 32:25, 66:4, 191:3, 255:20, 306:7, 368:9, 399:3 namely [1] - 5:13 names [5] - 8:6, 8:8, 10:11, 74:18, 74:19 naming [1] - 121:7 Nang [2] - 108:12, 108:20 natural [4] - 173:20, 197:21, 209:23, 363:13 naturally [7] - 172:3, 194:2, 194:17, 196:12, 198:2, 200:4, 209:19 nature [5] - 197:11, 197:18, 210:7, 316:6, 411:6 Naval [9] - 142:16, 142:17, 183:23, 183:25, 364:3 navy [1] - 107:12 near [3] - 108:17, 317:18 nearly [2] - 176:20, 277:10 neat [1] - 181:22 necessarily [7] - 196:8, 213:3, 213:24, 228:14, 292:20, 371:7, 408:2 necessary [8] - 45:2, 53:2, 65:9, 134:17, 238:4, 272:16, 313:21, 373:12 necessity [1] - 276:13 need [42] - 10:15, 14:17, 16:11, 17:1, 17:13, 20:6, 28:8, 38:4, 44:9, 64:23, 65:7, 65:24, 71:25, 72:2, 90:20, 132:10, 140:16, 156:24, 162:19, 198:23, 215:13, 216:6, 237:2, 263:4, 268:13, 276:22, 299:11, 352:6, 359:8, 378:8, 378:25, 381:5, 381:11, 381:15, 383:16, 386:8, 397:22, 411:3, 415:22, 416:17, 423:6 needed [3] - 322:3, 327:13, 327:14 needs [5] - 107:18,	107:19, 190:18, 270:18, 332:11 negative [8] - 31:1, 183:2, 213:2, 213:4, 214:3, 241:17, 273:10, 276:1 neglected [1] - 240:22 negotiation [1] - 368:3 neighbor [10] - 118:9, 118:10, 123:20, 123:25, 175:9, 193:11, 242:7, 242:8, 242:20, 342:20 neighborhood [4] - 87:2, 87:9, 230:20, 326:15 neighboring [2] - 29:22, 353:15 neighbors [47] - 30:22, 31:1, 32:20, 34:13, 111:24, 117:5, 117:8, 117:10, 118:17, 129:12, 213:2, 214:4, 241:18, 241:20, 241:23, 242:1, 242:24, 245:2, 245:7, 245:12, 250:16, 250:17, 273:8, 274:3, 309:2, 309:7, 324:21, 324:25, 328:20, 330:16, 330:22, 331:17, 333:10, 333:15, 336:2, 336:25, 342:21, 353:10, 355:9, 355:20, 357:8, 357:18, 385:20, 391:15, 391:18, 392:11, 396:14 neighbors' [8] - 65:8, 221:23, 244:19, 249:19, 250:2, 354:15 never [45] - 19:4, 35:3, 98:2, 101:10, 105:5, 105:6, 120:8, 121:1, 121:4, 121:8, 121:11, 130:6, 130:10, 135:6, 136:2, 138:6, 138:9, 138:17, 221:24, 223:9, 229:3, 229:8, 234:7, 245:14, 245:16, 246:1, 246:13, 250:3, 270:14, 304:22, 353:20, 353:23, 353:25, 359:17, 359:18, 364:25,

375:17, 376:7, 377:3, 387:17, 400:4, 421:1 new [12] - 32:13, 75:18, 105:4, 144:16, 156:21, 329:10, 331:1, 354:22, 369:3, 397:21, 397:22, 410:22 New [1] - 111:9 Newark [1] - 111:9 next [60] - 6:10, 20:5, 25:8, 30:9, 44:13, 55:3, 86:4, 105:25, 112:15, 114:9, 141:17, 141:25, 164:24, 164:25, 165:2, 165:5, 165:11, 165:12-165:13, 165:22, 166:5, 166:8, 166:9, 166:13, 166:17, 167:2, 167:7, 168:2, 168:5, 168:10, 168:16, 168:17, 168:20, 168:25, 169:19, 169:23, 169:25, 170:25, 174:17, 197:16, 200:12, 206:16, 216:1, 216:17, 216:20, 217:1, 221:23, 236:9, 242:7, 242:8, 254:11, 262:19, 304:12, 309:19, 310:2, 320:3, 323:14, 361:20, 394:3, 398:8 nice [5] - 230:7, 310:11, 331:12, 375:6, 391:12 Nicholson [1] - 254:24 Nick [8] - 8:12, 31:8, 216:21, 217:3, 217:9, 275:14, 390:1 nickname [1] - 217:10 nicknames [1] - 108:2 night [3] - 6:8, 28:3, 109:1 nilly [1] - 52:3 nine [5] - 13:7, 81:25, 108:10, 176:2, 374:17 nine-tenths [1] - 176:2 Ninth [1] - 424:2 no-build [101] - 30:3, 30:14, 34:6, 34:10, 34:24, 45:21, 45:25,	46:2, 46:3, 46:4, 46:13, 48:1, 48:21, 52:16, 53:20, 56:21, 57:5, 57:7, 58:25, 78:16, 84:23, 89:1, 89:2, 89:3, 102:20, 103:3, 103:7, 103:11, 103:15, 112:6, 112:13, 112:14, 113:1, 113:2, 113:12, 113:13, 113:21, 113:24, 125:13, 125:16, 128:2, 128:3, 133:4, 134:10, 139:20, 140:22, 147:13, 152:7, 155:8, 155:9, 155:10, 155:24, 169:8, 169:9, 171:11, 172:13, 180:23, 182:2, 187:11, 200:4, 209:3, 209:19, 236:21, 241:17, 246:3, 246:13, 266:12, 270:9, 272:15, 306:25, 307:14, 310:9, 312:2, 313:15, 331:5, 344:20, 344:21, 345:25, 346:4, 346:8, 346:24, 347:2, 349:2, 358:8, 359:5, 364:14, 364:15, 365:24, 373:13, 382:21, 385:23, 386:19, 387:22, 388:3, 388:22, 391:17, 393:6, 395:6, 404:3 no-building [1] - 31:7 nobody [5] - 28:19, 111:24, 229:8, 284:21, 421:1 nominal [4] - 412:16, 412:18, 412:19, 420:1 non [2] - 17:16, 237:3 non-leading [1] - 237:3 non-party [1] - 17:16 none [10] - 6:17, 6:23, 7:5, 7:18, 8:11, 8:12, 8:13, 9:4, 373:19 nonetheless [11] - 31:4, 75:13, 84:15, 89:8, 222:10, 223:16, 250:12, 274:6, 342:17, 355:7, 397:14 nonparty [2] - 17:18,	17:22 nonprofit [1] - 392:19 normally [5] - 10:3, 26:6, 26:10, 39:10, 201:7 North [9] - 32:10, 32:16, 197:1, 257:16, 298:8, 298:12, 303:11, 321:22, 396:24 north [2] - 33:5, 48:22 northeast [1] - 174:18 Nos [3] - 18:22, 18:23, 419:10 notation [1] - 365:18 note [4] - 159:18, 190:18, 366:1, 417:9 Note [2] - 4:9, 4:10 noted [4] - 226:21, 277:15, 277:16, 278:18 notes [3] - 139:4, 185:2, 423:6 nothing [18] - 33:22, 63:21, 105:8, 117:21, 122:21, 156:6, 266:2, 324:8, 326:9, 340:23, 354:25, 378:18, 378:19, 395:13, 396:11, 399:16, 401:2, 403:5 nothing's [2] - 340:21, 340:22 notice [15] - 6:10, 61:4, 63:2, 66:12, 92:17, 101:5, 101:8, 166:6, 266:11, 266:15, 267:12, 340:1, 340:3, 410:18, 421:15 notices [2] - 91:21, 333:20 November [4] - 71:21, 118:4, 256:15, 332:2 nowadays [1] - 15:6 nowhere [1] - 177:23 NUMBER [2] - 3:2, 4:2 number [85] - 8:19, 9:9, 9:19, 11:14, 11:16, 11:17, 11:19, 11:20, 11:22, 11:24, 12:1, 12:2, 12:4, 12:5, 12:7, 12:8, 12:11, 12:15, 12:17, 12:18, 12:20, 12:24, 13:1,	13:2, 13:3, 13:6, 13:7, 13:8, 13:9, 13:20, 13:21, 13:22, 13:23, 13:24, 13:25, 14:1, 14:2, 14:3, 14:4, 15:23, 16:2, 28:24, 73:2, 73:9, 93:3, 93:7, 93:9, 117:12, 154:24, 226:22, 228:12, 234:7, 234:13, 237:22, 239:17, 242:9, 252:16, 253:1, 259:10, 259:17, 259:18, 265:12, 265:13, 283:11, 303:8, 308:3, 309:13, 321:2, 344:21, 345:21, 346:5, 358:13, 358:18, 358:21, 358:23, 360:2, 366:1, 408:1, 409:2 numbered [1] - 358:16 numbers [9] - 10:5, 10:10, 11:7, 11:11, 12:13, 12:21, 121:7, 259:21, 358:17 numerically [1] - 418:2 numerous [8] - 136:25, 226:22, 272:10, 275:15, 316:1, 353:14, 369:2, 378:6 nursing [1] - 301:1 nutshell [2] - 182:23, 386:8 NVA [2] - 109:7	38:11, 39:1, 39:5, 42:14, 49:12, 53:13, 54:11, 54:14, 54:25, 60:12, 60:17, 60:20, 62:25, 65:15, 65:20, 66:2, 66:13, 67:9, 69:17, 70:16, 72:20, 72:24, 73:7, 75:22, 80:23, 83:16, 84:24, 85:8, 86:11, 86:16, 87:21, 88:13, 90:3, 90:19, 90:22, 90:25, 91:5, 93:23, 94:3, 94:4, 102:8, 102:22, 104:17, 104:19, 105:7, 116:19, 118:25, 119:13, 119:19, 120:10, 123:22, 124:15, 126:19, 129:5, 129:7, 134:24, 135:4, 138:19, 140:2, 140:10, 141:9, 141:14, 143:14, 145:15, 155:14, 160:13, 161:23, 162:23, 183:9, 183:11, 190:24, 205:24, 212:22, 213:5, 213:9, 214:9, 215:5, 215:7, 216:15, 219:25, 220:18, 220:23, 223:6, 225:14, 225:20, 227:3, 229:1, 230:24, 231:1, 235:1, 235:18, 236:3, 237:1, 237:23, 239:18, 240:24, 242:15, 243:12, 244:2, 244:14, 247:2, 249:11, 250:21, 250:23, 254:3, 254:7, 254:10, 254:23, 255:4, 256:10, 259:3, 260:12, 260:14, 260:19, 263:3, 264:5, 268:5, 271:18, 278:4, 278:24, 279:1, 279:8, 279:12, 279:16, 280:6, 280:14, 281:10, 281:22, 282:3, 282:7, 282:11, 282:15, 283:5, 283:14, 283:25, 285:21, 286:21, 291:6, 291:16, 291:19, 292:8, 292:15, 293:15, 294:3, 294:19, 295:8, 295:11, 295:18, 295:25, 296:4, 297:2,

297:16, 297:25, 320:14, 320:17, 320:19, 332:10, 332:19, 332:20, 336:14, 336:18, 337:8, 337:13, 337:16, 340:23, 347:13, 348:3, 350:22, 351:5, 358:2, 358:4, 359:21, 361:21, 362:3, 371:13, 373:19, 373:21, 374:1, 374:7, 377:7, 378:2, 378:6, 378:16, 380:6, 381:20, 382:24, 383:13, 383:16, 392:6, 416:16 O'KELLY [2] - 12:18, 18:6 O'Kelly [1] - 1:16 oak [9] - 248:16, 248:17, 248:18, 248:22, 255:23, 256:7, 331:11, 395:10 Oaks [4] - 93:1, 207:7, 322:19, 370:9 oaks [1] - 248:19 oath [7] - 14:20, 20:7, 23:23, 295:13, 297:19, 395:13, 406:17 object [45] - 60:21, 63:1, 63:2, 63:8, 63:9, 66:3, 67:13, 69:18, 70:17, 73:24, 75:23, 78:20, 83:17, 84:25, 85:9, 87:22, 88:14, 93:19, 102:22, 116:19, 119:1, 119:14, 119:20, 120:11, 123:22, 124:16, 126:20, 138:20, 140:2, 145:16, 155:14, 220:24, 223:6, 223:11, 225:15, 227:4, 229:2, 237:24, 239:19, 240:24, 242:16, 261:16, 336:10, 350:22, 351:6 objected [14] - 30:16, 31:2, 74:5, 137:13, 137:15, 242:24, 330:16, 330:22, 340:19, 355:20, 357:9, 398:5, 405:4, 405:5 objecting [8] - 34:14, 63:13, 239:23,	242:14, 243:5, 243:7, 245:2, 357:8 objection [30] - 18:14, 18:16, 18:18, 27:10, 27:18, 27:19, 27:21, 38:2, 39:3, 67:10, 67:12, 80:22, 140:10, 143:14, 161:23, 184:25, 213:5, 220:18, 243:12, 244:3, 244:13, 247:2, 249:11, 254:2, 254:22, 262:5, 337:10, 337:11, 348:2, 394:25 objections [12] - 59:4, 69:23, 143:11, 160:11, 160:13, 242:2, 244:19, 249:19, 249:22, 249:23, 353:9, 354:15 objective [2] - 28:21, 185:9 obligation [3] - 28:10, 238:19, 240:11 obligations [2] - 48:7, 350:12 observation [2] - 195:22 observations [1] - 39:17 observing [1] - 337:22 obtained [2] - 158:9, 158:13 obvious [1] - 282:5 obviously [12] - 85:20, 287:7, 287:17, 294:13, 297:10, 315:1, 321:5, 328:20, 417:13, 417:21, 420:9, 421:3 occasionally [1] - 115:11 occasions [8] - 37:20, 145:8, 157:14, 321:2, 321:4, 376:12 occupancy [1] - 334:6 occur [3] - 208:21, 210:7, 226:7 occurred [6] - 72:24, 194:2, 194:17, 205:15, 227:18, 277:12 occurrence [2] - 221:16, 230:15 occurring [2] - 196:12, 209:20	occurs [2] - 31:11, 136:15 ocean [1] - 303:10 OCS [1] - 107:10 October [20] - 32:21, 47:14, 47:15, 51:15, 51:17, 66:19, 67:8, 68:12, 68:13, 70:7, 91:8, 115:2, 118:3, 118:6, 123:5, 246:16, 339:4, 339:12, 353:12, 357:10 OF [4] - 1:1, 1:2, 1:5 offered [5] - 42:5, 63:1, 67:11, 67:12, 156:17 offering [5] - 61:3, 67:14, 239:20, 239:22, 327:25 office [26] - 37:10, 40:13, 44:13, 45:1, 47:15, 58:10, 59:6, 76:17, 76:18, 87:6, 160:20, 197:7, 218:21, 218:23, 219:17, 220:8, 233:7, 302:1, 302:2, 304:5, 343:25, 345:9, 348:21, 350:6, 422:19, 423:5 officer [1] - 107:10 officers [1] - 359:7 official [1] - 374:25 often [3] - 24:13, 28:15, 320:24 old [30] - 19:14, 35:9, 36:19, 56:3, 93:9, 106:9, 131:22, 146:10, 148:23, 149:16, 149:20, 173:5, 176:1, 185:21, 185:22, 186:7, 187:5, 187:22, 188:13, 196:10, 198:18, 201:4, 210:16, 210:17, 211:17, 212:4, 269:7, 301:11, 323:11 older [4] - 92:23, 196:23, 300:21, 322:16 oldest [1] - 298:19 once [26] - 25:10, 25:19, 36:5, 45:1, 70:8, 76:16, 78:14, 109:5, 109:10, 111:14, 122:24, 125:22, 171:11, 181:7, 236:20, 236:24, 237:8, 256:4,	259:1, 261:22, 284:10, 286:4, 304:10, 403:8, 415:17, 416:5 one [158] - 11:8, 12:13, 12:22, 13:6, 19:6, 19:13, 19:15, 25:6, 26:13, 27:1, 28:19, 28:22, 36:3, 37:22, 42:13, 42:17, 43:22, 50:8, 52:18, 53:15, 54:11, 60:16, 65:20, 72:1, 72:8, 72:13, 80:9, 80:11, 80:23, 82:1, 87:11, 88:16, 92:7, 93:3, 96:17, 96:21, 97:10, 105:6, 118:10, 120:17, 129:11, 130:7, 132:10, 133:24, 137:10, 144:1, 148:14, 154:9, 154:24, 156:17, 158:14, 159:18, 169:19, 165:23, 168:17, 170:1, 172:1, 173:4, 180:3, 186:18, 187:13, 188:10, 190:18, 192:1, 194:18, 198:23, 201:21, 202:3, 204:19, 204:21, 214:2, 217:17, 219:2, 222:1, 224:13, 228:12, 229:7, 229:12, 229:22, 233:8, 250:5, 252:16, 257:22, 258:12, 268:25, 285:8, 289:17, 296:6, 298:23, 299:1, 299:5, 300:6, 300:23, 302:5, 302:7, 302:13, 309:4, 312:4, 312:6, 313:14, 319:18, 326:10, 327:6, 334:5, 334:6, 337:20, 338:3, 338:21, 342:6, 356:12, 358:15, 358:18, 358:20, 363:16, 364:25, 367:20, 368:6, 368:8, 368:9, 370:17, 374:1, 375:11, 375:17, 376:15, 382:17, 382:18, 383:19, 387:4, 387:5, 388:18, 390:15, 392:20, 397:23, 399:15, 399:17, 399:19, 399:21, 399:23,	400:17, 400:19, 400:22, 405:1, 407:12, 407:13, 414:2, 414:24, 416:22, 417:20, 417:21, 418:4, 419:3, 419:6, 420:17, 422:18 One [2] - 44:19, 150:9 ones [4] - 15:6, 51:23, 328:1, 367:1 online [1] - 44:11 open [33] - 10:25, 15:17, 17:12, 19:22, 45:2, 72:5, 72:12, 73:15, 90:18, 105:23, 109:16, 135:3, 135:5, 141:22, 190:23, 215:24, 216:23, 261:2, 261:22, 263:10, 264:3, 296:13, 296:23, 297:12, 332:16, 379:7, 384:1, 384:20, 416:11, 417:4, 417:8, 419:12, 419:16 opening [6] - 20:13, 24:17, 29:7, 29:8, 109:22, 367:22 operation [1] - 362:12 operations [3] - 134:4, 362:10, 364:5 opine [2] - 38:20, 206:24 opinion [51] - 26:24, 39:11, 39:19, 39:22, 45:21, 46:16, 46:19, 49:23, 54:9, 70:17, 75:23, 84:25, 85:9, 87:16, 119:7, 127:17, 140:3, 140:4, 140:7, 141:10, 145:24, 145:25, 161:20, 189:9, 190:14, 193:18, 194:4, 194:24, 198:6, 198:22, 208:22, 208:25, 221:6, 223:24, 225:21, 227:8, 231:3, 233:15, 235:15, 274:20, 282:22, 406:23, 406:25, 407:1, 409:12, 409:17, 409:18, 409:19, 409:24, 410:1 opinions [5] - 38:5, 39:18, 183:4, 406:8, 409:23

opportunity [7] - 25:12, 37:14, 193:20, 224:2, 301:10, 415:16, 418:13 opposed [1] - 207:24 opposing [1] - 237:4 opposite [4] - 27:13, 225:6, 290:20, 292:3 options [2] - 331:14, 332:8 oranges [1] - 345:15 order [31] - 10:11, 15:7, 26:17, 27:24, 45:23, 65:8, 104:4, 135:17, 253:19, 254:24, 261:4, 262:13, 264:19, 269:15, 271:7, 272:11, 284:7, 290:15, 291:13, 292:13, 306:12, 359:18, 360:14, 360:21, 361:5, 379:15, 387:8, 387:9, 387:15, 404:12, 411:15 ordered [3] - 254:13, 254:15, 415:25 ordinarily [1] - 409:12 ordinary [3] - 413:6, 413:11, 414:8 organization [1] - 298:13 original [11] - 42:17, 48:19, 91:7, 113:25, 116:4, 178:5, 229:13, 230:13, 333:21, 344:15, 356:10 originally [9] - 116:11, 262:16, 301:25, 303:12, 304:9, 316:7, 347:19, 365:20, 381:25 otherwise [3] - 6:12, 286:4, 314:6 ought [3] - 375:24, 392:3, 406:15 ourselves [1] - 74:17 out-of-court [1] - 239:20 outcome [4] - 26:22, 29:4, 423:14, 423:19 outfall [7] - 150:11, 174:4, 177:9, 179:5, 179:14, 202:4, 202:9 outside [6] - 14:19, 27:21, 108:12, 171:13, 263:4, 299:23 outweighed [1] -	409:23 overall [2] - 89:20, 128:22 overdevelopment [1] - 203:22 overland [1] - 208:14 overrule [1] - 27:18 overruled [16] - 61:8, 70:18, 88:1, 94:2, 124:18, 225:22, 227:8, 235:21, 238:2, 239:25, 243:1, 243:14, 244:4, 247:4, 249:13, 336:17 oversaw [1] - 311:24 oversees [1] - 311:24 OWENS [1] - 217:4 Owens [2] - 2:7, 217:8 own [21] - 32:8, 32:18, 54:23, 56:11, 96:12, 117:23, 142:21, 142:22, 207:19, 278:25, 290:22, 302:1, 303:6, 304:16, 314:4, 351:12, 368:4, 389:23, 391:25, 403:17, 404:4 owned [28] - 40:9, 42:22, 95:3, 95:5, 95:6, 95:10, 95:12, 95:21, 95:22, 96:5, 96:8, 96:10, 103:7, 103:9, 103:10, 129:20, 132:13, 253:8, 255:14, 304:16, 304:17, 367:10, 367:20, 376:21, 385:21, 386:2, 394:5, 394:6, 410:5 Owner [1] - 358:21 owner [41] - 40:25, 63:19, 86:13, 86:15, 87:24, 91:17, 99:13, 118:13, 129:23, 133:9, 134:16, 134:17, 139:22, 175:11, 191:24, 193:8, 224:21, 229:23, 252:16, 252:18, 274:18, 312:4, 312:8, 313:21, 323:7, 342:7, 342:11, 358:18, 365:14, 365:19, 366:1, 369:4, 380:13, 387:3, 387:5, 387:9, 387:11,	387:13, 405:11, 411:1, 411:6 owner's [3] - 181:3, 286:16, 411:2 owners [106] - 29:22, 33:7, 33:15, 33:24, 34:10, 40:24, 42:6, 43:24, 44:7, 45:14, 46:22, 59:15, 60:1, 61:16, 61:23, 62:2, 64:21, 68:21, 68:22, 70:2, 70:3, 74:20, 74:21, 75:1, 90:8, 90:11, 91:21, 94:12, 94:16, 103:18, 117:12, 122:5, 126:15, 126:23, 129:24, 135:8, 135:13, 139:5, 140:15, 148:5, 153:18, 153:23, 153:24, 154:17, 156:2, 180:17, 182:19, 184:2, 184:9, 195:10, 204:7, 204:8, 213:22, 213:24, 239:15, 242:23, 253:3, 253:6, 253:21, 253:23, 260:6, 268:21, 270:3, 274:8, 279:14, 284:13, 284:15, 284:21, 285:5, 286:13, 286:17, 287:10, 288:22, 292:17, 307:13, 308:15, 313:10, 313:20, 316:16, 322:4, 327:6, 331:2, 334:3, 336:24, 348:9, 353:15, 353:16, 354:3, 355:8, 360:7, 362:8, 364:22, 366:11, 366:18, 367:18, 368:2, 379:15, 379:17, 381:13, 382:20, 382:23, 397:20, 397:21, 398:19, 405:1, 405:4 Owners [61] - 8:15, 8:18, 30:18, 30:20, 33:2, 33:22, 34:7, 34:22, 52:8, 52:21, 53:9, 58:10, 59:11, 74:3, 90:5, 92:16, 92:21, 96:3, 103:24, 104:7, 129:15, 133:17, 139:3, 139:21, 139:24, 140:8, 141:1, 141:5, 156:12, 184:6,	213:16, 237:17, 239:5, 241:8, 245:5, 245:15, 246:6, 253:1, 256:14, 256:22, 260:1, 261:7, 261:11, 261:14, 261:18, 269:17, 312:24, 322:13, 354:17, 359:1, 360:3, 360:12, 360:25, 361:4, 361:11, 362:6, 366:23, 393:5, 393:15, 393:23, 404:15 owners's [1] - 172:22 ownership [6] - 38:21, 224:7, 269:23, 282:1, 350:21, 386:20 P p.m [3] - 417:4, 419:9, 419:16 PA [1] - 106:15 pad [3] - 201:18, 202:3, 402:8 page [26] - 41:7, 41:25, 47:13, 47:22, 50:17, 91:9, 91:10, 95:8, 99:2, 134:5, 134:6, 271:7, 288:15, 305:15, 313:1, 313:2, 343:25, 344:6, 344:11, 345:8, 345:13, 348:22, 348:24, 348:25, 350:5 paid [22] - 49:14, 89:17, 101:14, 183:12, 183:15, 183:17, 183:20, 184:2, 231:2, 231:4, 231:7, 231:8, 231:10, 308:24, 393:19, 395:20, 400:1, 402:16, 403:14, 403:21, 405:19 pain [1] - 266:20 pair [1] - 81:21 panel [6] - 6:14, 6:20, 7:2, 7:8, 8:16, 10:25, 16:8, 215:18 paper [7] - 59:17, 59:20, 188:12, 188:21, 210:24, 338:18, 397:11 papers [2] - 28:2, 152:22 parabolic [1] - 171:25	paradise [1] - 398:9 paragraph [28] - 19:18, 65:3, 75:10, 99:2, 122:8, 149:2, 237:22, 238:10, 238:22, 239:17, 251:22, 252:24, 264:13, 313:5, 313:7, 313:8, 322:9, 342:6, 342:10, 343:2, 343:21, 348:16, 358:13, 358:16, 360:2, 360:6, 361:3 paragraphs [3] - 258:17, 264:14, 313:6 paralegal [1] - 36:25 parallel [5] - 92:25, 312:7, 318:7, 322:17, 322:21, 358:20 parameters [1] - 39:19 parcel [3] - 345:4, 348:17, 350:1 parcels [1] - 234:3 part [47] - 10:6, 20:15, 26:19, 26:20, 50:23, 51:2, 51:10, 58:24, 84:22, 108:15, 140:18, 176:16, 188:1, 194:4, 194:14, 195:6, 196:5, 196:12, 198:13, 199:5, 220:14, 226:21, 238:19, 240:11, 267:18, 309:4, 316:17, 331:4, 343:10, 354:23, 363:14, 364:8, 368:3, 369:11, 386:4, 386:21, 391:17, 399:3, 406:1, 407:16, 407:17, 407:18, 407:19, 410:10, 410:14, 412:4 partial [1] - 214:16 partially [1] - 187:22 participated [1] - 422:9 participating [1] - 342:18 particular [13] - 145:1, 154:10, 159:18, 159:23, 224:11, 309:17, 313:10, 316:19, 353:3, 365:1, 367:19, 386:1, 391:13 particularly [5] - 42:3, 46:12, 52:16, 226:11, 350:13, 352:7

parties [13] - 5:14, 10:4, 21:4, 22:13, 26:2, 73:12, 124:17, 222:19, 253:7, 262:15, 272:10, 422:10, 423:9 partner [3] - 219:9, 326:4 party [19] - 17:16, 22:5, 22:16, 237:4, 261:10, 262:10, 262:14, 262:16, 277:10, 277:17, 291:4, 291:8, 292:11, 411:11, 413:21, 414:1, 414:8, 414:10, 424:11 pass [1] - 167:19 passed [4] - 30:11, 134:18, 151:12, 313:23 passion [1] - 414:14 past [9] - 6:22, 80:7, 82:13, 175:25, 210:4, 210:5, 339:12, 339:25, 389:2 path [1] - 208:14 patience [1] - 215:21 patient [1] - 162:24 patiently [2] - 361:22, 374:8 Patriot's [3] - 108:1 Paul [11] - 2:9, 6:25, 7:4, 32:7, 47:10, 64:13, 64:15, 74:11, 92:7, 153:12 PAUL [3] - 1:7, 236:13, 297:21 pause [1] - 158:21 paved [1] - 147:8 pay [19] - 9:16, 20:2, 134:17, 187:4, 230:18, 231:5, 231:6, 290:18, 305:13, 308:15, 310:22, 313:21, 392:4, 413:5, 420:19 paying [3] - 101:9, 420:25, 421:2 payment [1] - 277:11 pedalled [1] - 245:20 peek [1] - 416:22 peers [2] - 226:23, 227:11 pending [5] - 42:15, 134:25, 264:7, 400:14, 402:21 penetrators [1] - 109:13 Pennsylvania [6] -	55:17, 97:14, 106:20, 298:19, 300:23, 301:6 Pensacola [1] - 107:12 people [69] - 5:20, 5:21, 5:23, 6:2, 6:9, 8:7, 20:14, 23:22, 24:6, 34:15, 42:22, 43:16, 43:21, 44:21, 50:20, 53:23, 60:24, 69:14, 92:4, 107:19, 109:4, 121:4, 122:4, 127:24, 148:23, 153:16, 154:7, 183:23, 213:18, 227:4, 227:10, 242:9, 265:24, 265:25, 280:9, 280:10, 287:7, 298:24, 300:21, 300:25, 301:4, 301:11, 316:1, 324:18, 327:4, 327:20, 327:21, 339:16, 356:22, 365:20, 369:21, 370:18, 375:6, 397:25, 401:14, 403:6, 404:3, 404:24, 406:6, 409:15, 417:15, 417:16, 418:20, 421:14, 422:1, 422:7 people's [1] - 285:2 per [3] - 218:12, 254:19, 308:5 perceive [4] - 125:17, 354:17, 372:14, 372:20 perceived [1] - 373:11 percent [17] - 173:17, 200:17, 200:19, 201:12, 229:14, 229:18, 229:22, 230:9, 282:24, 283:2, 283:13, 390:22, 391:10, 400:8, 400:9, 405:17 percentage [1] - 201:22 perceptive [1] - 297:11 perfect [1] - 116:5 perfectly [1] - 422:23 perform [2] - 405:25 performed [1] - 144:24 perhaps [10] - 6:21, 41:9, 64:25, 89:12,	244:22, 257:2, 275:17, 276:2, 381:14, 418:7 period [5] - 160:6, 300:21, 309:16, 332:25, 418:25 periodically [3] - 307:25, 352:7, 376:12 permanent [2] - 284:11, 298:5 permeability [1] - 150:20 permeable [1] - 173:15 permissible [2] - 162:18, 319:2 permission [36] - 37:16, 130:8, 138:2, 140:16, 140:25, 141:6, 156:24, 157:1, 178:19, 239:7, 245:18, 270:15, 270:17, 278:19, 278:20, 281:21, 317:11, 318:9, 341:8, 352:21, 352:22, 353:18, 353:21, 353:24, 354:1, 355:3, 357:20, 357:21, 357:22, 359:8, 359:11, 386:6, 393:8, 404:2, 404:18, 411:24 permit [2] - 26:23, 359:14 permits [1] - 359:17 person [29] - 6:1, 17:17, 17:22, 21:7, 21:8, 21:10, 21:11, 21:17, 22:2, 26:6, 27:12, 43:22, 44:6, 44:22, 52:18, 80:4, 137:25, 140:3, 239:20, 326:22, 327:5, 327:7, 327:8, 334:7, 387:4, 402:12, 410:5, 413:11, 414:9 person's [2] - 23:13, 418:13 personal [3] - 105:6, 110:20, 356:2 personally [2] - 157:21, 330:19 persons [1] - 343:8 perspective [5] - 45:8, 207:22, 330:25, 354:2, 392:15 persuade [2] - 25:21, 385:8 pertinent [1] - 224:6 pervious [2] -	214:14, 214:15 phase [1] - 384:22 Philadelphia [7] - 55:17, 97:9, 97:14, 106:15, 111:2, 111:8, 398:7 phone [5] - 16:2, 124:20, 210:21, 316:2, 330:16 photo [5] - 81:2, 168:10, 169:20, 169:23, 170:25 photograph [36] - 80:4, 81:16, 163:17, 164:24, 165:1, 165:2, 165:6, 165:7, 165:11, 165:12, 165:13, 165:14, 165:22, 166:5, 166:8, 166:9, 166:13, 166:17, 166:22, 167:2, 167:7, 168:2, 168:5, 168:16, 168:21, 168:24, 169:1, 169:19, 169:25, 170:23, 171:4, 171:9, 171:20, 177:2, 194:19, 195:16, 248:18 Photographs [2] - 3:15, 4:4 photographs [23] - 3:17, 23:22, 24:8, 79:21, 79:23, 80:2, 80:12, 80:19, 81:12, 82:6, 157:15, 157:18, 157:25, 161:18, 163:3, 163:11, 164:22, 168:4, 176:22, 192:5, 194:18, 208:23, 406:9 photos [5] - 18:19, 157:18, 158:5, 162:17, 177:1 phrase [1] - 40:23 phrased [1] - 379:12 physical [7] - 224:6, 266:19, 266:20, 270:19, 270:22, 271:6, 411:21 physics [1] - 218:8 pick [2] - 109:20, 210:20 picked [1] - 168:8 picking [3] - 12:12, 12:21, 418:4 picture [14] - 81:20, 146:20, 319:18, 319:24, 319:25, 320:1, 320:4, 320:5, 320:8, 320:9, 346:7,	346:10, 346:23 pictures [12] - 80:6, 80:8, 100:23, 163:2, 192:11, 192:14, 314:23, 319:10, 319:12, 319:13, 320:12, 388:17 piece [16] - 77:14, 174:1, 188:14, 200:14, 280:10, 280:13, 283:3, 284:23, 286:4, 289:3, 330:11, 345:4, 348:17, 349:12, 350:1, 396:19 pieces [2] - 188:4, 285:2 pilot [5] - 35:17, 136:21, 136:22, 309:12, 395:24, 402:23 pipe [26] - 29:25, 30:1, 30:3, 30:14, 30:24, 31:6, 31:12, 34:25, 46:5, 56:21, 56:25, 57:15, 58:18, 59:2, 59:3, 59:7, 59:12, 61:25, 62:22, 62:24, 63:14, 63:15, 83:23, 65:4, 65:6, 69:6, 69:13, 70:9, 71:16, 71:24, 75:6, 75:18, 76:24, 76:25, 77:3, 77:4, 77:6, 77:11, 77:17, 77:22, 78:2, 78:7, 78:8, 78:14, 84:5, 84:6, 84:8, 85:15, 85:18, 93:9, 99:4, 102:19, 103:3, 103:7, 103:11, 103:14, 103:15, 104:22, 112:4, 112:17, 112:21, 112:25, 114:22, 114:23, 115:4, 115:7, 115:21, 115:24, 118:3, 118:24, 119:6, 120:6, 120:21, 122:11, 122:23, 122:24, 123:11, 123:25, 124:2, 124:10, 124:22, 124:23, 125:5, 125:10, 125:22, 126:2, 126:4, 126:6, 126:13, 127:6, 127:9, 129:13, 132:7, 136:1, 136:6, 136:8, 136:13, 136:15, 136:16, 136:17, 136:19,

138:1, 139:20, 140:22, 147:20, 147:21, 147:22, 147:23, 147:24, 148:8, 149:19, 149:22, 150:24, 151:3, 155:4, 155:5, 156:3, 156:14, 156:18, 156:21, 157:7, 169:13, 170:6, 172:12, 175:2, 175:7, 175:8, 175:15, 177:6, 179:7, 179:14, 180:12, 180:14, 180:24, 181:4, 181:9, 181:12, 181:17, 182:24, 183:2, 188:5, 188:14, 188:18, 209:18, 209:22, 211:16, 211:19, 211:23, 211:24, 212:7, 213:19, 214:3, 228:19, 228:21, 236:24, 237:8, 237:13, 238:15, 239:8, 240:7, 240:15, 241:16, 244:5, 244:8, 246:23, 250:6, 252:20, 257:3, 257:9, 257:13, 257:21, 257:25, 258:19, 260:6, 265:19, 270:9, 270:20, 271:2, 271:10, 272:16, 272:19, 281:4, 282:9, 283:19, 284:3, 287:4, 290:17, 290:18, 290:21, 290:24, 291:1, 291:2, 292:4, 312:10, 318:7, 318:9, 318:10, 318:11, 322:16, 322:23, 323:11, 323:17, 323:20, 325:5, 326:3, 328:8, 328:12, 330:9, 330:24, 333:1, 338:22, 340:19, 341:8, 341:15, 341:21, 342:1, 342:12, 346:2, 346:3, 346:13, 349:5, 353:22, 354:7, 354:13, 355:24, 356:5, 356:25, 357:4, 357:7, 357:13, 357:19, 357:23, 358:23, 360:11, 362:13, 365:1, 365:3, 365:4, 365:8, 370:5, 372:24, 373:13, 385:23, 386:18,	388:9, 388:12, 388:13, 388:21, 389:11, 391:15, 395:5, 397:15, 398:16, 399:13, 402:15, 404:2, 404:22, pipe's [1] - 127:17 pipeline [1] - 369:24 pipes [14] - 45:23, 97:12, 187:5, 318:10, 330:25, 338:13, 364:24, 365:10, 397:3, 397:4, 401:11, 402:16 piping [7] - 93:1, 250:4, 322:18, 370:6, 370:7, 370:8, 370:13 pitcher [2] - 173:7, 203:6 Pittsburgh [1] 301:25 place [25] - 56:7, 63:24, 67:23, 85:16, 116:5, 119:6, 189:7, 197:14, 203:14, 203:19, 213:19, 246:20, 284:5, 284:10, 303:20, 304:12, 317:23, 318:2, 321:10, 324:19, 339:24, 340:5, 340:6, 371:24, 374:22 placed [2] - 360:18, 361:8 placement [2] - 248:15, 311:7 placements [1] - 301:24 places [4] - 33:23, 192:25, 303:21, 340:4 placing [1] - 331:14 plain [1] - 166:14 Plaintiff [2] - 12:15, 360:14 plaintiff [63] - 11:1, 11:13, 11:16, 11:20, 11:22, 12:2, 12:4, 12:8, 12:14, 12:17, 12:23, 12:24, 13:1, 13:13, 21:5, 21:6, 21:18, 22:13, 22:17, 23:2, 23:16, 145:10, 219:22, 220:16, 238:3, 238:11, 238:14, 238:23, 239:4, 240:3, 240:6, 240:13, 253:16, 262:20, 263:11, 263:13, 270:17,	281:17, 347:25, 360:4, 360:11, 360:17, 360:21, 360:22, 361:7, 383:19, 404:7, 408:9, 408:20, 408:24, 408:25, 411:14, 411:16, 411:18, 412:14, 412:17, 412:21, 413:13, 414:7, 414:19, 415:1, 419:25 plaintiffs [5] - 18:10, 281:19, 281:20, 414:5, 415:3 Plaintiffs [68] - 3:3, 3:4, 3:5, 3:6, 3:7, 3:8, 3:9, 3:10, 3:11, 3:12, 3:13, 3:14, 3:15, 3:16, 3:17, 3:18, 3:19, 3:20, 3:21, 3:22, 18:15, 18:22, 40:20, 56:16, 61:10, 61:11, 64:8, 68:17, 74:9, 81:8, 98:5, 98:22, 98:25, 100:23, 121:22, 143:12, 143:16, 143:19, 146:16, 148:19, 157:25, 158:2, 160:12, 162:10, 162:11, 222:14, 241:4, 243:11, 243:15, 244:12, 244:15, 306:13, 328:13, 342:23, 343:19, 344:2, 344:24, 345:11, 346:16, 348:1, 348:5, 348:23, 349:21, 360:1, 365:22, 370:20, 395:17 Plaintiffs [2] - 1:5, 1:15 plaintiffs [49] - 6:2, 6:3, 6:12, 8:1, 9:7, 9:23, 11:14, 22:22, 23:19, 25:1, 25:2, 25:10, 29:13, 36:9, 105:25, 106:2, 141:24, 142:2, 157:24, 162:10, 216:25, 217:2, 236:10, 262:12, 264:25, 269:11, 271:21, 278:21, 360:24, 379:9, 385:11, 385:21, 386:1, 386:5, 386:7, 386:9, 387:16, 387:20, 391:20,	393:19, 398:18, 401:25, 403:14, 403:21, 405:16, 413:17, 413:20, 415:8, 416:13 plaintiffs' [24] - 240:17, 263:17, 271:12, 271:19, 281:23, 281:25, 286:14, 286:18, 381:16, 385:13, 385:15, 386:5, 392:3, 393:8, 403:20, 404:20, 411:15, 411:20, 411:21, 411:24, 412:7, 412:8, 412:11, 412:12 plan [42] - 30:13, 34:23, 42:23, 58:20, 64:14, 64:20, 66:10, 92:20, 159:9, 159:12, 159:15, 161:2, 161:4, 162:5, 165:16, 168:1, 194:5, 195:7, 215:1, 215:3, 238:14, 239:23, 240:6, 240:16, 246:20, 276:9, 276:10, 304:13, 311:1, 316:7, 316:17, 316:18, 322:12, 324:7, 328:10, 328:15, 330:5, 330:13, 330:23, 334:4, 384:15 planned [5] - 30:25, 58:24, 165:18, 298:24, 301:9 planning [5] - 32:15, 102:18, 309:5, 309:6, 323:15 plans [61] - 30:13, 30:21, 31:4, 31:5, 33:20, 33:21, 34:4, 58:4, 63:9, 68:8, 69:24, 70:12, 70:15, 70:21, 73:24, 74:6, 76:23, 99:22, 114:19, 114:20, 117:19, 135:9, 191:2, 191:5, 191:9, 191:24, 242:2, 242:25, 243:6, 244:19, 244:23, 245:7, 246:8, 246:9, 251:24, 255:17, 255:21, 256:1, 256:7, 256:24, 270:24, 280:22, 290:1, 308:11, 309:22, 310:22, 311:20, 315:24, 328:2, 329:2,	329:3, 329:4, 329:5, 332:8, 334:12, 353:10, 361:12, 368:22, 398:24 planted [1] - 165:12 plastic [3] - 92:25, 322:18, 370:8 plat [134] - 33:11, 33:14, 41:6, 41:8, 41:11, 41:22, 41:23, 41:25, 42:9, 44:14, 46:6, 46:10, 47:2, 47:3, 47:17, 47:18, 47:20, 47:21, 47:23, 48:5, 48:11, 48:14, 48:18, 48:19, 48:24, 50:4, 50:7, 50:9, 50:16, 50:23, 51:1, 51:2, 51:8, 51:10, 51:18, 51:22, 51:24, 52:7, 52:15, 52:24, 53:3, 53:6, 53:19, 132:15, 132:22, 133:3, 146:17, 146:21, 146:22, 146:24, 146:25, 147:3, 147:4, 147:10, 147:22, 147:23, 147:25, 155:11, 186:3, 187:10, 187:12, 212:13, 269:25, 270:3, 270:4, 270:6, 279:16, 284:22, 285:7, 285:15, 285:16, 285:19, 285:22, 285:24, 288:23, 306:14, 306:15, 306:18, 306:20, 306:23, 307:2, 343:15, 343:16, 343:23, 343:25, 344:3, 344:5, 344:9, 344:10, 344:11, 344:13, 345:7, 345:8, 345:11, 345:12, 345:13, 345:17, 346:7, 346:10, 346:22, 346:24, 346:25, 348:20, 348:22, 348:24, 349:2, 350:4, 350:5, 350:17, 358:6, 358:8, 364:12, 365:15, 370:13, 387:2, 387:12, 387:14, 393:2, 393:3, 393:4, 393:11, 410:9, 410:13, 410:22 Plat [4] - 3:4, 3:6, 3:7, 3:18

plate [1] - 209:15 plats [15] - 31:19, 31:21, 33:12, 48:23, 49:2, 50:1, 50:21, 52:5, 205:16, 288:12, 364:11, 380:10, 380:13, 386:14, 410:12 platted [2] - 279:11, 279:12 play [4] - 56:9, 249:3, 303:16, 303:17 played [1] - 207:7 playing [1] - 123:16 pleading [1] - 268:6 PLEAS [1] - 1:1 pleas [2] - 20:25, 21:2 pleasure [1] - 392:15 pled [1] - 289:13 plenty [1] - 232:22 plot [1] - 378:23 pluck [1] - 109:17 plus [2] - 222:25, 315:25 POA [202] - 33:7, 34:24, 34:25, 63:19, 68:9, 71:23, 76:17, 76:18, 77:15, 95:3, 95:4, 95:6, 95:9, 95:11, 95:12, 95:21, 95:22, 96:5, 96:14, 97:7, 97:12, 99:14, 99:16, 99:21, 100:7, 103:6, 103:10, 103:13, 104:20, 104:24, 105:3, 115:2, 116:14, 117:20, 118:19, 118:20, 124:2, 126:7, 126:8, 130:17, 135:2, 136:5, 138:3, 144:24, 144:25, 146:8, 148:5, 148:22, 149:14, 150:4, 153:9, 153:11, 154:3, 156:23, 158:10, 160:2, 175:3, 178:14, 180:15, 180:18, 181:1, 181:11, 181:19, 182:10, 184:14, 184:20, 184:23, 184:24, 185:16, 187:6, 192:24, 199:18, 204:15, 204:25, 205:20, 206:10, 206:13, 206:20, 211:19, 213:20, 214:23, 228:5, 237:10,	237:12, 239:23, 246:19, 250:13, 250:25, 251:16, 255:10, 255:22, 258:3, 258:6, 258:7, 259:4, 260:17, 261:6, 266:6, 266:7, 266:13, 266:25, 268:7, 268:8, 272:11, 272:15, 272:18, 273:25, 274:2, 278:20, 278:21, 279:6, 279:11, 279:18, 279:19, 280:4, 280:20, 280:21, 290:10, 291:17, 291:18, 291:19, 292:1, 292:2, 292:10, 292:15, 295:15, 311:13, 313:3, 315:24, 316:4, 316:22, 318:9, 318:18, 324:1, 324:4, 324:12, 325:18, 327:7, 329:5, 329:9, 329:13, 329:14, 330:11, 331:1, 331:9, 331:18, 333:3, 333:20, 333:24, 334:20, 334:25, 335:14, 337:5, 340:17, 341:9, 341:10, 341:20, 355:2, 359:7, 359:12, 359:19, 363:22, 364:19, 367:13, 367:17, 367:25, 368:9, 368:19, 368:23, 369:19, 370:16, 371:25, 375:7, 379:14, 380:10, 382:19, 389:20, 393:21, 394:21, 394:22, 394:23, 395:3, 396:7, 396:9, 398:11, 398:15, 399:9, 401:15, 401:20, 401:24, 403:4, 404:1, 404:2, 404:7, 404:10, 404:11 POA's [12] - 191:14, 206:25, 225:9, 256:3, 291:22, 291:25, 292:5, 325:22, 355:3, 371:9, 371:19, 399:7 POAs [2] - 191:21, 255:25 pockets [2] - 173:22, 208:4 point [54] - 5:16,	24:13, 28:5, 28:10, 28:17, 30:11, 66:16, 111:7, 115:5, 118:24, 136:18, 138:21, 147:4, 157:3, 159:6, 160:4, 160:9, 165:8, 165:15, 172:1, 172:5, 172:23, 172:24, 174:2, 179:14, 202:3, 202:8, 219:8, 221:24, 222:17, 222:25, 233:9, 247:23, 255:5, 263:17, 268:12, 273:21, 278:6, 278:7, 281:1, 284:4, 289:5, 293:7, 300:6, 301:12, 318:25, 329:1, 331:21, 352:16, 355:9, 368:8, 370:12, 392:20 Point [1] - 108:1 pointed [2] - 41:14, 163:20 pointing [4] - 293:21, 345:18, 345:20, 370:23 points [3] - 312:3, 339:11, 371:6 policies [1] - 219:6 Pond [1] - 185:11 pond [6] - 117:14, 132:2, 225:5, 226:13, 323:2, 376:14 ponding [20] - 80:13, 81:18, 81:24, 82:11, 86:8, 86:22, 87:13, 87:17, 88:8, 112:11, 115:23, 127:15, 127:16, 226:15, 265:23, 310:10, 319:24, 319:25, 339:6, 339:13, 339:15, 363:1, 363:7, 370:1, 376:17 ponds [1] - 338:9 pooled [1] - 366:13 pools [6] - 79:13, 320:7, 340:11, 388:16, 388:18, 388:23 poor [1] - 211:17 popped [1] - 177:13 porch [1] - 321:7 portfolio [1] - 299:13 portion [16] - 65:6, 78:17, 113:22, 152:14, 171:6, 171:10, 220:11, 236:22, 246:12, 253:2, 316:8, 348:15,	388:12, 388:21, 389:10 posing [1] - 14:25 position [7] - 109:9, 184:24, 277:12, 277:19, 323:25, 362:18, 330:19 positive [1] - 224:16 possess [1] - 411:22 possessed [1] - 270:8 possession [6] - 269:23, 281:17, 411:18, 411:22, 412:9, 412:13 possibility [1] - 156:13 possible [10] - 84:17, 180:11, 207:23, 235:11, 275:22, 277:11, 391:5, 414:18, 414:23, 414:25 possibly [4] - 65:5, 81:13, 230:17, 367:22 post [7] - 15:2, 15:7, 209:1, 215:19, 296:18, 422:16, 423:9 post-developed [1] - 209:1 post-trial [1] - 423:9 pot [1] - 150:21 potential [7] - 94:23, 96:15, 96:25, 137:9, 202:2, 369:8, 396:16 potentially [1] - 226:6 pour [1] - 173:7 power [12] - 54:1, 73:24, 404:23, 405:2, 405:3, 405:6, 405:9, 405:11, 405:13 powerless [1] - 405:14 Powers [10] - 154:7, 158:17, 159:3, 159:4, 164:6, 209:8, 255:17, 310:18, 310:20, 394:11 powers [2] - 159:21, 304:25, 305:2, 327:9, 331:5 powwow [1] - 64:23 Practice [1] - 231:22 practice [2] - 7:15, 231:24 practiced [5] - 37:4, 37:7, 37:8, 37:10, 37:21 practicing [1] -	142:25 prayer [2] - 180:9, 235:23 pre [3] - 201:7, 209:1, 298:20 pre-dating [1] - 298:20 pre-developed [2] - 201:7, 209:1 preceded [1] - 313:11 precipitate [1] - 190:12 preclusion [1] - 268:7 predecessor [1] - 195:14 predevelopment [5] - 172:23, 172:24, 172:25, 173:6, 173:21 predominant [1] - 197:3 preexisting [1] - 209:5 prefer [1] - 328:9 preference [1] - 330:24 prejudice [1] - 26:9, 261:12, 407:22, 414:14 prejudicial [2] - 17:17, 223:23 preliminary [1] - 20:4 premarked [4] - 18:6, 60:13, 60:17, 254:5 premises [1] - 343:6 preparation [2] - 238:12, 240:4 prepare [5] - 143:6, 149:11, 185:15, 222:15, 422:20 prepared [11] - 99:12, 147:4, 161:16, 161:17, 161:24, 162:2, 221:18, 222:3, 222:7, 308:14, 387:12 preponderance [2] - 22:3, 22:15, 22:19, 23:6, 296:2, 408:12, 409:1, 411:17, 413:19 presence [4] - 263:4, 270:20, 272:14, 330:2 present [51] - 10:25, 15:17, 17:12, 17:19, 17:22, 19:22, 35:12, 35:16, 35:20, 35:23, 40:15, 45:14, 72:5, 72:12, 73:15, 80:8,

80:24, 105:23, 118:8, 139:8, 139:12, 141:22, 153:22, 154:5, 158:22, 182:19, 182:23, 190:23, 207:10, 213:16, 215:24, 216:23, 261:2, 263:10, 264:3, 296:13, 296:23, 297:12, 314:8, 332:16, 369:11, 379:7, 384:1, 384:20, 411:9, 411:22, 416:11, 417:4, 417:8, 419:12, 419:16 presentation [4] - 35:24, 241:9, 317:14, 318:22 presented [13] - 14:22, 41:2, 70:12, 154:2, 269:21, 273:7, 273:23, 316:7, 328:10, 347:14, 392:23, 407:5, 408:18 presenting [4] - 36:8, 213:21, 213:25, 311:12 preserve [2] - 67:9, 381:5 preside [2] - 26:20, 406:1 president [3] - 99:14, 142:10, 249:8, 298:11, 299:18, 301:6, 327:7, 334:25, 335:1 pressure [2] - 150:5, 181:20 presume [2] - 341:11, 357:10 presumed [2] - 270:1, 288:12 presumes [1] - 288:20 pretty [39] - 10:8, 10:22, 27:4, 29:20, 98:13, 113:21, 122:17, 149:24, 162:23, 168:25, 169:1, 169:18, 170:4, 170:7, 171:16, 172:7, 172:8, 173:25, 176:19, 181:25, 183:22, 184:16, 185:7, 186:15, 186:19, 194:12, 194:25, 198:16, 198:18, 206:17, 232:9, 232:11,	279:17, 282:5, 295:12, 299:8, 330:7, 352:11, 370:14 prevail [1] - 291:4 prevent [5] - 180:23, 181:9, 246:7, 256:23, 257:21 prevented [3] - 113:24, 127:8, 272:14 prevents [2] - 182:5, 272:15 previous [5] - 99:13, 209:18, 261:4, 262:9, 348:8, 387:3 previously [8] - 176:23, 177:1, 182:2, 243:10, 297:22, 323:2, 349:12, 410:24 price [3] - 87:19, 88:4, 413:4 prices [1] - 233:16 priest [1] - 300:10 primarily [2] - 37:5, 217:22 primary [2] - 300:20, 411:2 print [3] - 59:25, 65:1, 65:2 privacy [1] - 309:19 private [3] - 42:20, 124:14, 309:16 privately [1] - 181:2 privilege [3] - 285:16, 410:12, 422:4 probability [3] - 230:4, 230:5, 408:4 probable [1] - 235:12 probate [1] - 37:6 probative [1] - 223:23 problem [45] - 31:14, 70:12, 84:13, 85:7, 85:14, 89:18, 116:12, 128:22, 174:17, 178:12, 178:16, 178:20, 178:25, 189:25, 203:21, 226:25, 227:18, 229:10, 229:25, 230:7, 230:8, 230:12, 234:22, 244:22, 245:6, 248:20, 272:13, 272:20, 276:13, 276:14, 276:20, 286:20, 286:24, 287:14, 326:11, 373:9, 373:10, 389:14, 390:24, 391:1, 391:2, 391:4, 391:8, 397:1,	403:19, 405:20 problems [15] - 83:7, 83:15, 93:8, 97:4, 131:7, 189:22, 198:25, 229:23, 244:7, 244:8, 250:8, 284:4, 323:10, 336:3, 373:1, 373:14, 402:14, 403:2 procedurally [1] - 27:4 procedure [2] - 27:3, 385:10 procedures [1] - 420:24 proceed [8] - 75:6, 99:4, 122:12, 122:15, 125:11, 272:6, 300:13, 331:22 proceeded [3] - 35:2, 75:11, 325:16 proceeding [2] - 75:15, 76:23 proceedings [2] - 423:23, 424:5 process [28] - 5:6, 5:12, 17:7, 43:20, 73:20, 130:5, 138:15, 140:19, 191:14, 217:24, 224:5, 245:19, 246:1, 246:2, 246:22, 309:5, 310:15, 310:25, 311:11, 311:25, 325:3, 328:2, 332:22, 333:15, 334:7, 394:13, 394:15, 394:19, 410:16 processing [1] - 34:12 produce [2] - 197:15, 223:3 produced [1] - 160:15 produces [2] - 408:1, 409:3 profession [3] - 159:16, 190:7, 218:22 Professional [1] - 231:21 professional [10] - 161:3, 186:15, 190:14, 193:11, 193:17, 198:6, 208:22, 229:5, 229:20, 231:24 professionally [1] - 195:22 professionals [2] - 227:12, 227:16	proffer [3] - 145:11, 219:23, 220:16 profit [1] - 370:18 Program [1] - 185:11 program [1] - 299:8 programs [2] - 299:3, 299:6 project [11] - 93:2, 93:10, 142:10, 144:18, 145:1, 210:19, 316:12, 323:4, 323:12, 323:14, 323:15 project [1] - 131:5 projects [1] - 299:10 prominent [1] - 363:2 promise [1] - 215:12 promised [2] - 124:1, 183:20 promptly [1] - 215:14 pronounced [1] - 170:21 proof [24] - 21:18, 21:20, 21:22, 22:3, 22:17, 23:3, 23:6, 23:14, 23:17, 23:20, 25:14, 63:1, 266:17, 267:5, 282:18, 385:11, 408:10, 408:11, 408:21, 408:25, 409:9, 411:12, 415:4, 415:8 prop [2] - 173:4, 200:15 proper [4] - 27:13, 27:25, 205:19, 277:4 properly [8] - 127:5, 127:6, 179:15, 179:16, 179:18, 199:6, 307:16, 410:19 properties [14] - 43:17, 157:11, 220:9, 220:12, 225:3, 226:18, 259:14, 260:9, 304:8, 338:23, 340:6, 363:10, 364:13, 389:6 Property [52] - 8:15, 8:18, 30:17, 30:20, 33:2, 33:22, 34:7, 34:22, 44:19, 52:8, 52:21, 53:8, 58:9, 59:11, 74:3, 90:5, 92:16, 92:21, 96:3, 103:24, 104:7, 129:15, 133:17, 139:3, 139:21, 139:24, 140:8, 141:1,	141:5, 156:12, 184:6, 213:16, 237:17, 239:4, 241:8, 245:5, 245:15, 246:6, 253:1, 256:14, 256:22, 260:1, 261:7, 261:11, 261:14, 261:18, 269:16, 312:23, 322:12, 354:16, 358:25, 360:3, 360:12, 360:25, 361:4, 361:11, 362:6, 366:23, 393:5, 393:14, 393:23, 404:14 property [544] - 29:21, 29:22, 31:13, 31:14, 31:21, 32:8, 32:18, 32:21, 32:22, 32:24, 33:1, 33:5, 33:7, 33:9, 33:13, 33:14, 33:24, 34:10, 35:6, 35:11, 35:14, 35:15, 36:1, 36:3, 38:23, 40:9, 40:10, 40:11, 42:4, 42:6, 42:7, 42:10, 42:23, 43:5, 43:13, 43:18, 43:24, 44:7, 44:23, 45:12, 45:19, 46:7, 48:15, 51:6, 51:11, 52:13, 52:17, 54:4, 54:23, 56:17, 59:15, 61:15, 61:23, 64:21, 68:22, 70:2, 70:3, 71:12, 71:17, 74:20, 74:21, 75:1, 79:8, 79:10, 79:14, 81:18, 82:20, 82:22, 83:23, 84:1, 84:8, 84:18, 85:18, 85:22, 86:13, 86:14, 86:15, 87:23, 87:25, 90:8, 90:11, 91:17, 91:21, 92:22, 93:4, 93:6, 94:6, 94:12, 94:16, 94:24, 96:16, 97:1, 97:4, 97:16, 97:22, 98:3, 98:13, 98:16, 98:18, 99:13, 99:16, 99:25, 100:4, 100:8, 100:12, 101:10, 101:13, 101:18, 101:21, 102:1, 113:13, 113:20, 115:10, 116:10, 116:12, 120:21, 120:22, 121:5, 122:5, 124:13, 124:14, 124:20, 125:22, 125:23, 126:2, 126:6, 126:9,

126:15, 126:16, 126:23, 126:24, 127:10, 128:16, 128:24, 129:9, 129:20, 129:23, 129:24, 131:16, 131:17, 131:19, 132:8, 132:12, 133:9, 134:16, 134:17, 135:8, 135:13, 137:11, 137:22, 137:23, 137:25, 138:3, 139:5, 140:15, 148:5, 153:23, 154:17, 155:20, 156:2, 156:10, 157:20, 163:6, 163:13, 163:14, 163:16, 167:10, 167:22, 167:25, 168:5, 168:6, 168:15, 168:19, 168:20, 168:23, 169:3, 169:7, 169:10, 169:13, 169:15, 169:22, 169:25, 170:10, 170:17, 170:20, 171:1, 171:2, 172:21, 173:6, 174:1, 174:15, 175:17, 177:6, 177:7, 178:13, 178:17, 179:9, 179:10, 179:13, 180:16, 180:20, 181:3, 181:4, 181:5, 182:14, 182:19, 184:2, 184:8, 189:7, 189:10, 191:23, 192:16, 192:21, 192:25, 193:8, 193:19, 193:21, 193:24, 194:7, 194:13, 194:22, 194:24, 195:17, 195:24, 199:13, 199:23, 203:11, 204:7, 205:21, 211:24, 212:3, 212:10, 212:13, 213:21, 213:24, 214:11, 215:2, 216:11, 219:1, 220:13, 221:14, 223:18, 223:20, 224:3, 224:5, 224:7, 224:10, 224:16, 224:19, 224:21, 224:22, 224:25, 225:3, 225:13, 225:18, 226:1, 226:2, 226:3, 226:15, 227:24, 228:1, 228:9,	228:24, 228:25, 229:3, 229:6, 229:9, 229:19, 229:23, 230:7, 232:20, 232:25, 233:6, 233:16, 233:20, 234:2, 234:9, 234:16, 234:20, 235:7, 235:8, 235:14, 235:16, 235:19, 236:21, 238:13, 239:15, 240:5, 240:6, 247:24, 248:2, 248:23, 249:25, 250:1, 250:2, 252:20, 253:6, 253:21, 253:23, 264:22, 264:23, 265:5, 265:10, 265:22, 266:4, 268:14, 268:21, 268:23, 269:23, 270:3, 270:5, 271:2, 271:9, 274:7, 274:18, 274:21, 274:23, 275:20, 276:3, 277:15, 277:25, 278:13, 278:14, 279:14, 279:25, 280:1, 280:3, 280:4, 280:10, 280:13, 280:25, 281:18, 281:19, 281:24, 281:25, 282:2, 282:10, 282:12, 282:21, 282:23, 283:4, 283:12, 284:12, 284:13, 284:15, 284:20, 284:23, 285:2, 285:4, 286:4, 286:13, 286:16, 286:17, 287:10, 288:12, 288:15, 288:21, 289:4, 292:17, 303:6, 304:2, 304:16, 304:21, 305:9, 305:11, 305:17, 306:25, 307:10, 307:13, 307:19, 308:4, 308:15, 312:10, 313:10, 313:20, 313:21, 314:4, 314:18, 315:14, 316:16, 316:18, 316:23, 317:6, 317:7, 317:10, 317:13, 318:5, 319:15, 319:20, 319:22, 319:23, 320:1, 320:2, 320:5, 320:6, 320:7, 322:4,	322:14, 323:7, 323:9, 325:12, 325:17, 325:19, 327:6, 329:15, 329:18, 330:1, 330:11, 331:2, 333:9, 333:25, 334:2, 334:8, 336:24, 339:3, 341:19, 343:12, 345:23, 347:6, 347:19, 347:21, 348:9, 348:10, 349:12, 349:17, 349:22, 349:24, 350:15, 350:16, 353:15, 353:16, 355:8, 357:23, 358:23, 360:7, 360:16, 362:7, 363:23, 364:22, 365:15, 365:19, 366:18, 366:21, 367:4, 368:2, 369:19, 370:1, 371:10, 371:20, 372:6, 372:25, 373:2, 376:6, 376:9, 376:20, 381:13, 382:7, 385:19, 385:21, 385:22, 386:2, 386:3, 386:5, 386:15, 386:17, 387:7, 387:19, 388:14, 389:7, 389:10, 389:12, 389:17, 389:22, 390:5, 390:7, 390:9, 390:10, 390:16, 390:21, 390:23, 391:9, 391:23, 392:2, 392:3, 392:24, 392:25, 393:1, 393:12, 394:1, 394:5, 394:6, 395:11, 395:14, 395:19, 396:20, 397:3, 397:20, 397:21, 398:19, 399:13, 399:25, 400:8, 400:11, 401:14, 402:25, 403:2, 403:20, 404:13, 405:4, 405:11, 405:17, 410:14, 410:20, 410:23, 411:6, 411:15, 411:18, 411:20, 411:22, 412:8, 412:11, 412:13, 412:23, 412:24, 412:25, 413:1, 413:2, 413:7, 413:9, 413:10 proposal [s] - 120:7,	120:20, 134:12, 313:17, 354:20, 354:25 proposals [1] - 290:24 propose [1] - 383:9 proposed [14] - 75:14, 144:8, 154:14, 157:4, 159:14, 161:6, 162:5, 286:3, 329:12, 331:3, 340:18, 355:12, 355:21, 410:21 proposes [1] - 410:17 PROSPECTIVE [10] - 7:20, 7:22, 8:3, 8:20, 8:24, 9:10, 9:13, 9:17, 9:20, 9:25 protect [1] - 331:10 protection [1] - 161:10 protects [1] - 42:24 Protestant [3] - 298:17, 298:19, 298:20 proud [2] - 81:21, 197:14 prove [15] - 21:19, 22:2, 22:6, 22:18, 23:10, 23:18, 36:2, 265:15, 278:10, 280:16, 281:17, 411:11, 411:16, 412:5, 413:19 proved [2] - 408:15, 413:14 proven [5] - 264:16, 267:2, 267:23, 400:19, 412:1 proves [1] - 409:7 provide [8] - 34:22, 46:5, 93:5, 153:11, 208:13, 323:8, 338:25, 385:10 provided [9] - 60:22, 151:2, 153:8, 159:2, 159:23, 182:6, 189:1, 301:3, 397:12 providing [1] - 92:17 province [1] - 406:22 proving [1] - 26:18 provision [1] - 49:1 provisions [1] - 49:1 proximate [1] - 412:15 proximately [3] - 276:14, 277:3, 413:15 proximity [1] - 189:5 prudent [1] - 414:9	psychiatrist [1] - 294:12 public [1] - 392:22 publish [2] - 320:14, 378:16 published [1] - 378:17 publishing [1] - 378:14 puddle [4] - 98:19, 114:6, 132:3, 320:6 puddles [11] - 57:14, 57:16, 98:18, 207:24, 340:11, 376:13, 388:6, 388:7, 388:8, 388:15 puddling [5] - 185:1, 265:22, 339:14, 363:1, 363:8 pull [2] - 180:1, 212:13 pulled [1] - 396:7 pulling [2] - 108:24, 176:14 pump [1] - 136:17 punished [1] - 287:23 punitive [20] - 216:4, 216:13, 266:24, 267:3, 267:4, 267:6, 267:23, 272:22, 273:1, 273:20, 278:1, 281:15, 287:14, 288:5, 292:9, 294:5, 294:21, 295:6, 380:18 punitives [2] - 291:11, 294:19 purchase [4] - 42:22, 285:20, 347:5, 347:6 purchased [24] - 29:24, 30:2, 30:9, 32:22, 42:3, 42:6, 45:20, 47:2, 52:24, 56:13, 57:13, 58:3, 79:9, 99:17, 114:9, 114:12, 132:12, 341:19, 346:4, 351:2, 351:12, 387:1, 387:10, 392:25 purchaser [7] - 88:11, 228:25, 288:10, 410:11, 410:15, 410:16, 410:17 purchasers [1] - 285:14 purchasing [1] - 42:8 purpose [26] - 59:3, 59:9, 61:8, 62:24,

63:11, 63:15, 63:23, 67:24, 69:16, 92:19, 102:19, 103:2, 103:4, 151:11, 155:8, 156:1, 167:9, 242:23, 290:9, 322:11, 353:1, 353:3, 353:4, 353:5, 410:7, 411:10 purposely [1] - 151:14 purposes [5] - 50:24, 51:1, 91:1, 394:8, 396:10 pursuant [1] - 95:17 pursue [1] - 300:7 push [3] - 10:5, 10:10, 154:22 put [5] - 15:8, 23:20, 23:23, 25:10, 49:2, 84:18, 85:15, 86:10, 97:18, 97:19, 97:22, 105:3, 120:20, 126:15, 126:24, 128:2, 137:10, 138:3, 151:13, 151:14, 151:16, 151:17, 155:21, 158:5, 162:2, 173:10, 179:18, 180:5, 183:21, 188:18, 192:15, 192:20, 192:24, 195:15, 197:22, 198:8, 199:7, 199:10, 201:18, 201:20, 209:22, 209:23, 210:10, 214:11, 214:14, 228:1, 229:24, 230:7, 244:5, 247:5, 248:21, 252:15, 268:6, 277:19, 278:21, 282:24, 283:4, 292:18, 295:12, 297:3, 311:6, 316:22, 317:23, 318:18, 318:24, 319:1, 319:3, 335:23, 335:25, 363:20, 367:24, 369:14, 369:21, 369:23, 371:5, 388:21, 391:25, 392:21, 394:12, 395:16, 397:4, 397:10, 399:9, 401:20, 414:24, 418:5, 418:7, 418:9, 420:6 putting [6] - 16:4, 23:21, 127:9, 150:21, 158:7, 200:6	Q qualification [1] - 72:21 qualifications [1] - 38:8 qualified [14] - 5:5, 39:4, 39:20, 50:19, 85:1, 119:21, 140:4, 163:1, 221:5, 221:7, 225:15, 232:12, 394:23, 402:12 qualifies [1] - 221:2 qualify [2] - 162:1, 221:3 quality [1] - 17:17 Quantico [2] - 107:10, 107:11 quantity [1] - 172:25 quasi [1] - 118:2 quasi-jungle [1] - 118:2 questioning [2] - 114:23, 332:18 questionnaire [1] - 5:9 questions [46] - 5:13, 10:2, 10:4, 25:3, 25:4, 26:5, 39:1, 66:8, 66:14, 89:10, 90:1, 98:6, 98:7, 104:14, 114:24, 129:3, 131:1, 135:12, 137:9, 138:21, 141:13, 183:7, 185:3, 187:10, 187:12, 214:6, 216:5, 216:10, 222:4, 230:21, 236:1, 236:19, 237:2, 250:19, 260:9, 260:11, 262:6, 309:21, 313:18, 323:21, 357:25, 361:17, 369:5, 373:16, 377:11, 378:1 questions/ comments [1] - 134:13 quick [3] - 10:22, 54:11, 188:15 quicker [5] - 58:1, 173:13, 174:7, 202:23, 388:25 quickly [7] - 56:4, 56:12, 150:21, 164:22, 208:15, 347:13, 377:22 quilt [1] - 184:8 quite [5] - 23:10,	148:14, 221:19, 257:7, 376:13 quote [2] - 324:13, 369:8	R R-a-l-p-h [1] - 55:10 rain [39] - 35:19, 57:3, 57:4, 57:14, 57:20, 57:22, 57:24, 57:25, 79:17, 79:19, 80:13, 80:16, 81:23, 82:4, 82:8, 82:13, 82:22, 82:24, 98:17, 101:2, 114:4, 115:17, 132:2, 132:4, 132:5, 173:17, 175:20, 175:24, 176:20, 203:1, 319:4, 321:3, 321:5, 339:20, 339:25, 388:5, 388:7, 388:15 raindrop [1] - 202:22 rained [3] - 57:11, 282:10, 320:21 rainfall [3] - 152:4, 176:6, 208:21 rains [6] - 103:5, 226:12, 336:8, 338:5, 338:10, 389:4 rainstorm [1] - 319:23 rainwater [2] - 226:4, 317:25 raise [3] - 20:8, 59:4, 299:10 raised [3] - 246:2, 353:7, 420:6 raising [2] - 202:20, 420:4 Ralph [103] - 2:4, 2:5, 4:8, 6:4, 6:5, 6:12, 6:16, 29:13, 35:13, 35:16, 40:9, 41:3, 55:5, 55:10, 55:12, 63:3, 66:8, 66:19, 67:22, 69:18, 73:19, 74:2, 79:22, 81:11, 83:17, 85:13, 86:21, 89:16, 90:4, 94:5, 95:2, 98:6, 98:25, 102:13, 104:20, 106:2, 106:8, 111:18, 116:20, 119:1, 119:20, 120:11, 122:2, 123:22, 129:8, 130:1, 130:13, 132:20, 135:22, 136:20, 137:20,	138:7, 138:25, 140:14, 168:23, 177:2, 178:11, 183:23, 219:7, 229:2, 234:16, 235:6, 235:16, 257:2, 257:13, 265:9, 265:20, 266:5, 266:10, 274:21, 309:3, 314:17, 324:10, 327:1, 327:16, 329:19, 329:23, 330:2, 331:16, 337:19, 337:24, 345:13, 347:4, 353:18, 353:21, 375:18, 375:22, 376:5, 376:6, 388:17, 390:25, 394:2, 394:4, 394:5, 394:7, 395:24, 396:4, 402:23, 403:6 RALPH [3] - 1:4, 55:6, 106:3 Ralph's [6] - 169:15, 309:10, 339:17, 390:21, 397:18, 398:6 Ralphs [112] - 18:12, 29:23, 30:11, 31:2, 32:20, 34:14, 34:16, 34:20, 35:3, 40:16, 41:17, 44:4, 46:3, 47:2, 146:7, 152:8, 158:12, 174:21, 174:25, 175:13, 175:19, 183:13, 183:22, 184:11, 184:14, 184:20, 184:23, 184:25, 186:22, 191:12, 195:14, 196:1, 196:19, 207:24, 226:8, 231:5, 231:7, 231:14, 240:19, 241:24, 259:17, 260:5, 262:17, 264:19, 265:8, 267:12, 268:21, 269:2, 269:19, 270:8, 270:13, 270:14, 270:23, 271:13, 272:2, 272:8, 274:8, 275:19, 276:12, 276:22, 283:18, 309:9, 315:10, 320:22, 321:8, 329:18, 337:18, 340:15, 346:23, 350:20, 375:7, 375:15, 375:17, 376:24, 377:2,	379:16, 379:21, 385:21, 386:17, 387:16, 387:20, 388:3, 388:6, 388:11, 388:19, 388:22, 394:3, 395:20, 395:22, 395:23, 396:13, 396:19, 397:1, 397:13, 398:5, 398:6, 398:8, 398:12, 399:12, 399:16, 399:21, 399:25, 400:11, 400:12, 400:19, 400:24, 402:5, 402:19, 402:23, 402:25, 403:2, 403:4 Ralphs' [97] - 31:10, 31:14, 36:1, 36:3, 40:10, 162:25, 163:6, 163:13, 163:15, 167:21, 167:25, 168:5, 168:6, 168:15, 168:19, 169:3, 169:6, 169:13, 169:22, 169:25, 170:10, 170:11, 170:17, 170:20, 171:2, 171:18, 172:13, 174:15, 174:19, 175:10, 175:17, 175:20, 175:24, 177:6, 178:3, 179:9, 179:10, 189:7, 189:10, 193:21, 194:7, 194:13, 194:15, 194:17, 194:22, 195:14, 198:15, 199:20, 200:1, 207:10, 221:14, 224:2, 224:19, 224:25, 225:12, 225:18, 226:1, 226:15, 228:1, 228:24, 229:19, 232:20, 232:25, 234:9, 261:9, 264:22, 265:4, 279:25, 280:1, 280:25, 314:22, 317:7, 318:6, 319:22, 320:6, 321:7, 329:11, 339:7, 344:25, 345:3, 345:18, 345:21, 346:19, 349:22, 349:24, 350:15, 350:16, 373:1, 376:9, 377:19, 388:14, 389:7, 389:9, 389:17, 390:5, 390:7, 390:16 Ralphs's [1] - 230:11 ran [9] - 30:1,

167:24, 287:3, 288:21, 376:19, 385:23, 385:24, 385:25, 401:22 ratchets [1] - 180:7 rate [9] - 49:20, 150:20, 172:22, 172:23, 172:24, 172:25, 200:21, 203:24, 308:20 rather [12] - 61:4, 66:12, 87:9, 119:16, 185:3, 229:18, 264:8, 275:24, 290:18, 327:14, 367:23, 422:25 ratio [2] - 179:21, 200:23 rational [1] - 201:9 re [1] - 188:6 re-roll [1] - 188:6 reach [3] - 64:25, 328:23, 417:10 reached [14] - 64:2, 68:4, 68:5, 84:15, 96:13, 122:19, 123:1, 266:24, 355:11, 415:6, 415:11, 416:5, 416:6, 419:18 reaction [5] - 58:20, 59:1, 75:24, 76:2, 126:14 read [74] - 18:7, 18:13, 50:10, 50:11, 50:17, 60:9, 60:11, 64:11, 65:3, 69:11, 74:17, 74:19, 75:3, 75:9, 75:16, 121:24, 121:25, 122:8, 131:4, 131:10, 134:9, 134:20, 148:2, 148:25, 149:3, 153:10, 237:22, 238:10, 238:22, 239:11, 239:16, 242:12, 243:2, 243:4, 243:25, 244:3, 251:22, 252:14, 252:24, 253:14, 253:17, 254:13, 254:14, 254:18, 258:3, 258:18, 262:13, 262:22, 279:19, 289:3, 289:4, 312:3, 313:4, 313:5, 322:9, 342:6, 342:10, 343:2, 343:21, 344:3, 345:2, 345:3, 348:9, 348:13, 349:24, 350:7, 350:8, 350:16,	360:2, 360:6, 360:13, 361:3, 365:17, 398:18 reader [1] - 297:9 Reader's [1] - 24:18 reading [4] - 19:1, 27:1, 112:9, 281:16 reads [1] - 242:15 ready [11] - 5:2, 5:6, 15:13, 19:21, 27:12, 109:5, 141:17, 215:25, 331:25, 385:16, 398:2 Real [4] - 3:3, 3:5, 3:22, 306:2 real [52] - 18:11, 31:9, 36:23, 36:25, 37:4, 37:5, 37:23, 38:1, 39:21, 40:21, 43:18, 52:10, 56:16, 87:5, 87:7, 164:22, 176:3, 188:15, 198:25, 202:10, 210:8, 217:21, 217:22, 219:1, 219:15, 219:23, 220:17, 221:4, 226:16, 226:25, 227:11, 230:5, 271:9, 304:5, 305:8, 305:18, 307:17, 325:15, 342:25, 349:16, 351:22, 358:5, 362:25, 367:8, 367:21, 386:16, 387:7, 390:3, 390:13, 391:25, 410:18, 420:10 reality [1] - 144:10 realize [2] - 151:8, 301:8 realized [2] - 240:21, 366:12 really [47] - 14:12, 28:17, 28:18, 28:21, 29:17, 57:25, 59:9, 63:21, 65:1, 69:4, 77:19, 81:19, 81:20, 87:20, 88:4, 97:24, 114:15, 117:21, 127:16, 128:5, 130:6, 154:24, 169:3, 176:17, 177:19, 193:2, 203:15, 223:13, 283:12, 303:16, 303:21, 326:9, 326:11, 326:12, 327:15, 328:1, 328:20, 332:9, 338:13, 356:9, 370:25, 372:5, 375:8,	375:17, 376:14, 422:8 realtor [1] - 86:25 Reality [3] - 50:25, 52:11, 285:10 rear [1] - 316:8 reargue [1] - 381:5 rearranging [1] - 29:16 reason [30] - 9:5, 24:12, 45:24, 88:21, 136:10, 151:18, 151:23, 158:8, 158:18, 161:17, 162:3, 164:5, 191:6, 228:16, 229:22, 234:17, 234:21, 244:6, 273:23, 283:15, 301:9, 321:12, 338:19, 367:5, 388:8, 397:2, 397:14, 398:3, 403:14, 418:19 reasonable [11] - 23:7, 23:8, 23:11, 172:10, 183:5, 261:13, 265:24, 265:25, 413:23, 414:3, 418:25 reasonably [3] - 291:24, 413:12, 414:7 reasons [8] - 120:9, 127:16, 127:17, 257:22, 267:25, 291:3, 390:16, 409:17 reattach [1] - 228:10 receive [7] - 110:17, 121:20, 130:20, 142:18, 191:13, 313:24, 333:20 received [22] - 34:20, 76:3, 76:14, 93:25, 136:25, 223:9, 237:10, 250:25, 258:5, 314:1, 314:6, 317:3, 317:11, 318:12, 321:18, 324:10, 325:25, 326:5, 326:14, 329:4, 351:3, 359:18 receiving [5] - 67:1, 75:19, 91:20, 99:6, 266:10 recent [1] - 220:12 recently [3] - 32:15, 82:2, 357:12 Recess [8] - 10:24, 72:11, 105:21, 141:21, 215:22, 296:21, 332:15, 384:18	recess [11] - 190:22 recharge [1] - 415:19 recitals [1] - 410:18 reckless [3] - 272:24, 273:16, 274:7 recklessly [1] - 287:16 recklessness [1] - 273:19 recognize [7] - 67:20, 79:24, 222:10, 237:18, 265:2, 305:5, 334:16 recognized [1] - 37:19 recollection [3] - 62:8, 97:23, 123:14 recommend [2] - 134:11, 313:16 recommendation [2] - 96:15, 154:13 recommendations [5] - 149:10, 149:14, 154:12, 232:3, 335:23 recommended [2] - 97:7, 152:13 recon [2] - 108:25, 109:9 reconnect [1] - 156:18 reconvene [1] - 260:24 RECORD [1] - 1:5 record [19] - 20:10, 48:10, 67:9, 73:8, 73:12, 188:11, 188:20, 290:13, 290:15, 292:1, 297:3, 350:12, 381:1, 381:6, 381:10, 381:14, 414:15, 420:5, 424:5 recorded [21] - 41:5, 41:25, 47:13, 47:14, 48:11, 50:16, 51:17, 51:19, 54:22, 99:15, 285:23, 307:16, 344:5, 344:16, 345:8, 345:13, 348:21, 349:12, 350:5, 350:14, 410:19 recording [1] - 50:15 records [1] - 40:12 recover [5] - 408:22, 411:16, 413:13, 414:1, 414:2 recovery [2] - 360:22, 413:8 recreate [1] - 228:11 RECROSS [7] - 2:2, 49:11, 54:13, 104:18,	214:8, 260:13, 359:23 recross [6] - 25:7, 25:8, 104:16, 214:7, 236:2, 359:22 rectangular [1] - 41:14 red [1] - 164:14 red's [1] - 170:15 redirect [12] - 25:7, 25:8, 53:14, 102:10, 138:22, 141:14, 206:2, 235:3, 256:11, 358:1, 373:18, 378:2 REDIRECT [9] - 2:2, 40:6, 53:16, 102:11, 138:23, 208:3, 235:4, 256:12, 358:3 reduce [1] - 413:21 reduced [1] - 31:13 Reed [1] - 327:6 refer [3] - 121:15, 186:9, 194:18 reference [15] - 33:11, 41:22, 47:2, 47:3, 48:3, 51:7, 269:9, 284:23, 285:15, 313:2, 343:23, 368:14, 370:7, 410:9, 410:11 referenced [14] - 41:21, 47:16, 48:19, 50:4, 51:25, 306:20, 344:9, 345:12, 345:17, 346:25, 349:11, 350:18, 387:2, 395:22 references [5] - 132:15, 269:25, 270:4, 343:15, 358:5 referencing [1] - 380:10 referred [5] - 43:5, 47:17, 190:10, 207:14, 209:14 referring [5] - 60:13, 210:8, 276:6, 276:8, 370:5 refers [2] - 285:17, 344:10 refinance [1] - 352:10 refinanced [2] - 247:19, 352:6 reflect [4] - 20:10, 73:12, 321:15, 420:5 refresh [1] - 97:23 refused [2] - 238:18, 240:10 refute [1] - 401:25 regard [2] - 250:3,

299:9 regarding [7] - 130:17, 234:2, 248:15, 267:6, 290:17, 313:3, 315:24 regards [1] - 149:14 Register [4] - 40:12, 44:12, 45:1, 47:14 registered [6] - 145:16, 145:20, 160:18, 161:3, 310:21, 374:24 regret [1] - 367:2 regulate [1] - 334:9 regulations [1] - 41:20 reinstallation [1] - 258:21 reiterate [1] - 249:18 reject [3] - 407:15, 407:17, 407:18 rejected [3] - 290:24, 355:14, 355:15 related [5] - 6:15, 6:20, 7:3, 7:8, 8:8, 162:25, 252:3, 336:23, 360:22 relates [2] - 54:8, 313:7 relating [3] - 253:11, 261:17, 267:22 relation [5] - 78:14, 112:17, 113:11, 125:13, 195:17, 211:24, 351:21, 370:13 relationship [1] - 315:13 relative [3] - 203:7, 203:9, 424:7 relatively [1] - 201:2 released [2] - 236:5, 373:22 relevance [3] - 162:24, 238:1, 247:3 relevant [2] - 163:7, 249:12 reliable [1] - 27:8 reliance [1] - 261:13 relied [7] - 280:12, 307:17, 327:21, 394:23, 395:4, 398:11, 404:1 relief [5] - 21:15, 100:3, 135:17, 258:14, 258:18, 283:21, 404:8 religious [3] - 298:14, 300:7, 300:9 relinquish [1] - 411:9	relinquished [2] - 181:11, 181:15 relinquishing [1] - 180:21 relocated [2] - 238:17, 240:9 reluctant [1] - 197:23 rely [5] - 280:19, 285:22, 291:25, 292:11, 393:21 relying [1] - 266:25 remain [1] - 316:21 remainder [1] - 392:13 remained [1] - 408:19 remaining [4] - 13:5, 13:6, 238:20, 407:19 remarkably [1] - 48:8 remarks [2] - 20:5, 20:13 remedy [1] - 328:10 remember [60] - 20:6, 24:1, 24:15, 62:20, 67:1, 68:14, 72:20, 75:19, 90:10, 90:14, 91:7, 91:13, 92:5, 94:9, 94:24, 97:1, 98:7, 125:7, 126:23, 133:15, 148:15, 154:1, 154:4, 154:6, 154:8, 160:5, 169:7, 187:8, 187:12, 191:4, 194:7, 220:10, 241:11, 242:3, 243:21, 255:14, 257:1, 301:23, 304:4, 314:1, 317:14, 318:3, 318:21, 325:5, 338:3, 357:15, 367:21, 371:2, 385:2, 385:18, 386:12, 393:25, 396:7, 397:6, 397:17, 401:4, 403:5, 403:6, 405:24, 421:9 remind [1] - 297:18 remote [3] - 181:21, 202:8, 202:22 remotely [1] - 249:12 remotest [1] - 174:2 removal [7] - 65:4, 290:23, 341:15, 341:20, 341:25, 372:24, 373:12 remove [16] - 99:18, 134:17, 156:7, 208:13, 238:4, 238:15, 240:7, 284:25, 290:18, 291:1, 313:21,	323:20, 338:13, 354:4, 393:12, 395:5 removed [17] - 85:18, 126:14, 154:15, 156:14, 257:3, 257:5, 257:9, 257:14, 257:19, 265:19, 271:10, 283:18, 328:12, 338:14, 354:14, 372:8, 399:13 removing [5] - 65:6, 75:6, 99:3, 122:11, 152:14, 182:24, 183:1, 257:21, 291:2 render [3] - 25:21, 385:8, 408:3 renew [5] - 16:12, 16:15, 16:17, 293:3, 380:24, 381:4 renewed [1] - 381:17 rent [1] - 56:5 rentals [1] - 224:8 renting [1] - 56:3 reoccurs [1] - 176:6 repair [2] - 156:7, 277:18 repeat [4] - 95:25, 97:10, 265:21, 378:13 rephrase [4] - 85:4, 86:19, 155:17, 213:12 replace [1] - 299:11 replicate [2] - 144:9, 144:11 replied [1] - 264:11 replies [1] - 384:5 reply [7] - 278:5, 378:11, 378:19, 382:24, 385:15, 402:2, 403:11 report [34] - 14:8, 15:24, 16:1, 16:2, 59:8, 61:18, 69:11, 69:12, 69:16, 105:17, 112:10, 149:7, 152:20, 152:21, 153:5, 153:8, 154:2, 221:18, 222:2, 222:3, 222:7, 222:11, 222:14, 222:16, 222:21, 222:23, 223:2, 339:6, 339:13, 400:3, 400:4, 400:5 reported [1] - 344:4 Reporter [3] - 1:19, 424:2, 424:16 reports [2] - 38:5, 176:1 represent [14] - 29:12, 93:11, 133:12,	158:11, 159:13, 159:14, 173:10, 173:11, 234:19, 259:15, 319:13, 319:14, 392:16 representation [15] - 41:24, 80:15, 80:25, 81:3, 82:7, 143:9, 144:6, 157:20, 159:1, 176:25, 290:16, 291:25, 393:22, 393:23, 423:18 representations [7] - 95:11, 95:20, 95:21, 261:14, 261:17, 262:3, 307:8 representative [1] - 8:14 representatives [1] - 213:22 represented [5] - 6:18, 6:22, 7:6, 184:25, 191:5, 234:15, 255:6, 260:16 represents [3] - 49:16, 49:19, 365:23 request [7] - 17:15, 40:8, 154:3, 253:3, 272:3, 364:20, 382:1 requested [2] - 253:5, 367:19 requests [1] - 382:16 require [9] - 197:7, 255:22, 264:17, 285:15, 316:22, 316:25, 319:20, 409:8 required [20] - 25:13, 39:23, 140:25, 192:20, 192:22, 192:24, 232:2, 267:3, 316:15, 317:12, 318:18, 341:4, 382:22, 395:9, 395:10, 399:9, 412:4, 413:6, 414:8, 414:11 requirement [2] - 45:19, 270:18 requirements [5] - 41:18, 252:4, 311:4, 360:17, 361:7 requires [2] - 29:15, 267:21 requiring [1] - 331:9 rescinded [3] - 246:13, 356:12, 359:17 research [4] - 199:14, 223:17, 224:6, 226:21 researching [1] -	285:10 residence [5] - 78:9, 159:12, 163:5, 173:2, 180:22, 374:25 resident [1] - 144:23 residential [11] - 192:1, 219:15, 220:2, 220:5, 220:9, 220:12, 220:25, 221:4, 233:11, 234:2, 390:3 residents [1] - 389:5 resolution [7] - 64:1, 68:4, 68:5, 70:11, 355:7, 355:9, 355:11 resolve [5] - 5:22, 14:18, 20:19, 26:4, 26:12, 89:21, 290:24, 418:11 resolved [4] - 63:18, 63:21, 295:3, 420:14 Resort [1] - 55:21 resort [1] - 143:25 respect [7] - 29:2, 29:3, 89:6, 193:7, 197:20, 197:23, 423:1 respond [2] - 269:10, 380:5 response [2] - 310:3, 356:9 responsibilities [3] - 192:2, 252:1, 312:9 responsibility [26] - 34:25, 75:17, 76:7, 76:10, 252:17, 252:19, 290:17, 290:21, 292:4, 312:5, 337:5, 341:11, 341:15, 342:7, 342:11, 342:14, 354:4, 354:6, 354:9, 354:12, 354:18, 355:5, 355:6, 358:18, 358:21, 422:3 responsible [3] - 341:14, 341:25, 362:15 rest [15] - 10:20, 15:14, 16:6, 72:2, 72:7, 119:25, 190:18, 219:13, 263:7, 263:19, 263:24, 315:21, 322:6, 322:8, 421:8 restate [2] - 184:15, 383:4 restated [1] - 383:3 resting [2] - 263:1, 304:12 restore [1] - 277:10 restraining [2] -

135:17, 253:18 restrictions [3] - 41:18, 48:9, 350:11 restrictive [4] - 53:22, 288:16, 343:3, 343:12 rests [2] - 263:14, 378:10 result [11] - 159:21, 221:23, 238:24, 264:24, 277:25, 282:4, 339:7, 386:6, 412:3, 412:15, 413:16 resulted [2] - 31:11, 372:25 resulting [1] - 267:9 results [1] - 153:11 resume [15] - 40:4, 73:16, 105:19, 105:24, 141:24, 143:5, 143:6, 143:12, 143:20, 215:14, 216:25, 264:1, 296:10, 297:14, 332:17 resumes [1] - 419:9 retail [2] - 396:4, 396:5 retain [4] - 167:9, 167:11, 174:9, 309:18 retained [5] - 158:11, 167:22, 213:20, 221:15, 221:20 retainer [1] - 184:5 retention [3] - 167:10, 167:11, 325:22 retire [4] - 25:16, 25:23, 299:19, 384:24 retired [15] - 32:15, 32:16, 55:18, 302:17, 302:19, 302:21, 362:8, 362:11, 368:21, 374:18, 392:21, 396:4, 396:10, 401:8, 417:1 retirement [4] - 301:6, 303:20, 304:14, 368:20 retiring [1] - 249:15 retry [1] - 28:20 return [8] - 36:6, 215:11, 386:9, 403:9, 405:15, 408:25 returned [1] - 78:2 review [18] - 25:20, 34:1, 34:3, 53:8, 69:1, 130:4, 130:9, 140:17, 190:16, 191:9, 287:11, 289:9, 290:2,	308:9, 311:24, 385:4, 394:13, 403:8 reviewed [2] - 50:1, 382:13 reviewing [1] - 297:8 revised [4] - 158:16, 159:18, 159:20, 159:21 revocable [1] - 305:12 rework [2] - 238:19, 240:11 reworking [1] - 238:5 Reynolds [1] - 375:24 ribbon [1] - 110:19 RICHARD [2] - 1:4, 106:3 Richard [5] - 2:5, 6:4, 6:16, 41:3, 106:2 rid [3] - 117:25, 203:23, 387:8 ride [3] - 98:11, 151:8, 259:19 Ridge [4] - 50:25, 52:11, 285:10, 285:14 ridge [3] - 164:8, 164:14, 185:25, 186:15, 186:18, 198:13, 198:14, 199:10, 315:7 right-hand [3] - 168:24, 168:25, 363:18 right-of-way [7] - 212:2, 228:12, 228:17, 252:21, 288:17, 358:24, 358:25 right-of-ways [2] - 312:11, 343:4 rights [13] - 48:10, 269:4, 272:25, 273:16, 274:7, 285:12, 285:13, 286:19, 295:5, 296:2, 343:13, 379:14, 382:20 rights-of-ways [2] - 48:10, 343:13 rip [1] - 115:24 rise [4] - 65:7, 131:20, 294:14, 294:23 rises [3] - 39:14, 295:5, 417:17 rising [1] - 198:13 risk [1] - 260:5 riverbank [1] - 109:21	riveting [1] - 215:13 RMC [4] - 343:25, 345:9, 348:21, 350:6 road [6] - 111:25, 210:18, 280:11, 286:6, 362:12, 367:3 Road [3] - 204:21, 340:8, 398:9 roads [13] - 49:3, 49:8, 52:15, 151:8, 151:9, 151:15, 210:19, 325:2, 362:16, 362:20, 363:5, 366:20, 401:7 roadway [4] - 152:16, 156:8, 198:3, 228:10 roadways [2] - 198:2, 202:15 ROBERT [1] - 142:3 Robert [7] - 2:6, 3:16, 8:11, 13:21, 142:2, 142:11, 389:1 Robin [1] - 122:2 rock [2] - 165:12, 319:3 rocking [1] - 330:6 rocks [1] - 319:6 Rode [1] - 47:11 Roebuck [1] - 218:25 Roger [2] - 1:12, 5:3 roles [1] - 25:24 roll [1] - 188:6 romance [1] - 302:2 Ron [1] - 326:1 roof [5] - 173:17, 174:10, 201:10, 202:14, 299:11, 311:5 roofs [2] - 201:15, 203:14 room [22] - 10:20, 15:12, 27:22, 72:2, 72:7, 86:2, 105:19, 118:15, 125:15, 154:7, 190:18, 263:21, 289:2, 295:19, 296:17, 378:22, 384:14, 393:3, 398:22, 401:19, 415:25, 416:8 rough [1] - 202:10 roughly [1] - 416:2 round [5] - 25:6, 177:10, 188:8 routes [1] - 209:11 Routing [1] - 185:11 RPR [2] - 1:19, 424:1 rule [5] - 172:18, 197:7, 292:12, 380:3, 381:11, 406:2	ruled [11] - 93:21, 271:4, 272:3, 277:9, 289:19, 290:11, 290:12, 291:7, 291:11, 293:22, 382:25 rules [10] - 27:3, 27:6, 29:3, 41:20, 197:6, 214:24, 311:2, 385:10, 423:2 ruling [10] - 261:6, 262:1, 271:23, 272:5, 292:9, 296:1, 380:18, 380:25, 381:4, 381:7 rulings [2] - 261:8, 294:1 Run [1] - 204:23 run [32] - 87:7, 112:22, 144:10, 150:22, 163:9, 163:10, 169:15, 173:12, 173:18, 173:24, 176:23, 177:15, 185:2, 200:13, 200:24, 201:23, 202:9, 202:11, 202:22, 228:9, 267:11, 268:11, 271:5, 271:11, 293:13, 293:18, 293:23, 318:11, 319:4, 344:17, 352:16, 370:18 rung [1] - 109:23 rungs [1] - 109:25 running [7] - 56:21, 120:5, 164:21, 171:19, 176:18, 236:24, 270:23 runoff [25] - 147:8, 167:24, 173:14, 193:18, 200:10, 200:11, 200:16, 200:21, 201:5, 201:8, 201:10, 201:13, 201:19, 202:20, 203:10, 203:18, 203:25, 207:9, 207:23, 208:19, 208:22, 208:23, 317:6, 369:25 runs [18] - 32:11, 164:25, 170:22, 171:1, 174:15, 176:8, 189:18, 202:21, 204:19, 279:21, 285:1, 312:7, 317:25, 318:7, 319:7, 322:23, 322:24, 322:25	S S.E [2] - 267:10, 269:8 sad [1] - 109:23 safe [3] - 109:10, 210:17, 287:2 sake [2] - 174:20, 179:3 salary [1] - 249:10 sale [14] - 87:2, 87:18, 88:11, 101:10, 230:18, 235:20, 247:6, 275:17, 275:22, 275:25, 390:8, 390:15, 391:9, 413:6 Salem [10] - 32:10, 257:16, 298:8, 298:12, 298:18, 298:22, 301:15, 302:21, 321:22, 330:20 sales [14] - 224:8, 226:18, 226:25, 227:17, 227:20, 229:7, 232:15, 232:18, 232:19, 232:21, 232:22, 232:24, 367:8, 367:21 salt [3] - 151:24, 365:11 Sam [1] - 327:6 Sanctuary [1] - 55:21 sand [8] - 150:17, 150:19, 151:7, 177:18, 211:8, 211:20, 362:25 sandy [2] - 150:15, 180:2 Sanh [2] - 108:14, 108:15 sat [4] - 10:4, 394:16, 400:6, 401:21 satisfaction [2] - 295:3, 295:4 satisfactory [1] - 356:9 satisfy [2] - 64:20, 120:23 Saturday [1] - 377:20 saucer [2] - 208:7, 209:14 save [5] - 18:5, 109:3, 255:22, 395:10, 404:4 saved [1] - 256:6 saw [21] - 23:24, 24:7, 39:9, 46:10,

77:13, 125:5, 125:6, 135:6, 161:13, 177:1, 248:18, 256:21, 258:4, 306:17, 306:19, 314:23, 332:10, 376:13, 376:15, 385:5, 388:17 scale [2] - 22:11, 161:10 scales [10] - 22:14, 22:17, 22:20, 22:22, 23:1, 23:10, 408:17, 408:19, 408:23 scanned [1] - 160:20 Scarborough [1] - 37:19 School [1] - 218:5 school [10] - 31:20, 32:17, 37:1, 37:2, 107:11, 107:12, 217:17, 218:1, 218:4, 218:10, 218:12, 285:12, 300:4, 300:22, 302:20, 326:21, 374:15, 375:10 schoolteacher [1] - 32:16 science [3] - 142:20, 154:19, 209:17 scientific [2] - 389:8, 402:11 Scott [2] - 334:25 screen [2] - 158:5, 158:7 se [1] - 218:12 Sea [4] - 108:3, 108:4, 108:19, 364:3 Seabrook [10] - 8:15, 8:17, 8:21, 9:3, 29:24, 30:17, 30:19, 32:9, 33:2, 33:21, 33:23, 34:7, 34:21, 35:9, 41:3, 41:19, 42:21, 52:8, 52:21, 53:8, 55:16, 55:18, 56:5, 56:7, 56:8, 58:9, 58:12, 59:11, 74:2, 79:6, 83:13, 90:4, 90:7, 91:11, 92:16, 92:21, 98:3, 101:5, 102:18, 103:24, 104:6, 106:12, 111:7, 111:11, 111:20, 116:4, 129:11, 129:14, 129:20, 129:24, 130:5, 130:8, 133:9, 133:16, 139:2, 139:21, 139:23, 140:7, 140:16, 141:1,	141:5, 144:23, 146:17, 151:12, 151:13, 152:1, 152:12, 153:9, 155:12, 156:12, 178:4, 181:11, 184:6, 191:20, 195:8, 196:5, 196:15, 210:13, 213:16, 226:2, 226:3, 226:4, 227:1, 232:18, 232:21, 233:24, 233:25, 234:1, 234:3, 237:17, 239:4, 241:8, 245:5, 245:15, 246:6, 248:3, 250:25, 251:15, 252:3, 253:1, 256:14, 256:21, 259:4, 259:25, 261:7, 261:11, 261:13, 261:17, 262:3, 269:16, 302:25, 303:6, 303:13, 304:1, 306:2, 307:2, 307:12, 308:6, 311:1, 312:12, 312:23, 314:4, 318:15, 320:25, 322:12, 323:7, 323:25, 339:16, 340:8, 343:23, 344:11, 345:5, 345:8, 345:12, 348:18, 348:20, 348:24, 350:2, 350:4, 354:16, 358:25, 359:12, 360:3, 360:7, 360:12, 360:25, 361:4, 361:10, 362:6, 362:7, 362:21, 363:8, 363:17, 363:22, 363:23, 364:7, 364:12, 365:19, 366:3, 366:4, 366:9, 366:12, 366:15, 366:16, 366:17, 366:23, 372:17, 374:20, 374:24, 380:12, 387:12, 387:13, 391:6, 392:25, 393:5, 393:14, 393:23, 394:14, 395:2, 396:21, 401:6, 401:9, 404:14 seal [2] - 127:5, 127:6 sealing [1] - 127:9 search [1] - 40:14 Sears [3] - 218:25, 219:6, 233:8 seasonal [2] -	176:17, 176:18 seasoned [1] - 136:20 seat [2] - 13:17, 13:20 seated [7] - 5:2, 6:24, 8:5, 14:6, 15:18, 19:23, 420:7 seats [4] - 10:21, 20:11, 109:16 second [10] - 12:21, 14:4, 19:15, 70:3, 70:6, 71:20, 132:10, 134:6, 248:5, 288:15, 299:4, 299:9, 313:1, 317:20, 367:12, 368:11, 370:4, 380:15, 415:9 seconded [2] - 134:18, 313:23 section [4] - 126:6, 134:4, 178:16, 244:8 sections [2] - 126:5, 188:5 security [1] - 49:3 sediment [1] - 156:7 see [10] - 6:13, 10:23, 15:11, 15:16, 16:4, 16:9, 17:22, 21:1, 22:10, 22:11, 24:3, 24:9, 30:20, 32:23, 33:10, 40:25, 41:15, 45:9, 53:6, 57:17, 72:4, 72:10, 81:14, 81:16, 82:5, 92:18, 100:14, 105:20, 113:9, 115:11, 115:16, 115:17, 130:15, 131:6, 131:9, 133:11, 140:25, 141:19, 146:19, 147:22, 156:24, 158:19, 161:17, 162:4, 163:21, 164:18, 164:19, 164:20, 165:7, 165:13, 165:21, 166:10, 166:15, 166:22, 167:6, 168:3, 168:19, 169:17, 170:9, 170:21, 171:3, 171:17, 171:18, 177:17, 181:6, 190:20, 191:2, 196:17, 211:11, 214:25, 215:19, 216:16, 219:4, 237:25, 240:2, 249:12, 257:1,	258:13, 259:18, 260:25, 266:20, 266:21, 287:5, 294:12, 295:24, 296:9, 296:10, 296:16, 296:19, 332:14, 334:22, 335:22, 336:16, 341:24, 344:13, 344:19, 345:18, 347:14, 347:23, 349:2, 349:5, 377:19, 377:22, 384:16, 395:21, 399:2, 404:6, 417:7 seeing [5] - 92:5, 92:10, 92:11, 243:21, 376:16 seek [4] - 98:1, 126:7, 266:2, 283:21 seeking [0] - 21:16, 216:4, 256:22, 260:4, 277:17, 404:12 seeks [3] - 360:14, 360:21, 361:4 seem [1] - 177:3 sees [1] - 402:23 select [1] - 308:13 selected [1] - 14:5 self [1] - 54:7 self-serving [1] - 54:7 selfish [1] - 337:23 sell [0] - 85:20, 86:10, 247:8, 282:24, 390:9, 400:11 sellable [3] - 275:18, 390:17, 390:18 seller [2] - 390:9, 413:5 sellers [1] - 393:22 selling [2] - 248:10, 364:19 semester [1] - 33:12 semi [2] - 214:15, 214:16 semi-pervious [1] - 214:15 send [17] - 14:7, 27:22, 28:12, 68:23, 133:18, 242:1, 263:7, 263:20, 263:21, 295:20, 378:22, 379:2, 415:13, 415:15, 415:19, 416:9 sending [1] - 296:14 senior [4] - 106:25, 142:10, 219:8 sense [0] - 26:7, 90:13, 151:16,	207:21, 257:24, 258:17 sent [10] - 65:13, 68:21, 70:1, 74:16, 114:21, 123:15, 153:12, 242:6, 357:12, 357:16 sentence [1] - 75:16 separate [4] - 53:5, 53:7, 156:22, 370:16 separating [1] - 155:20 September [2] - 50:16, 61:23, 67:23, 68:16, 83:12, 94:10, 118:5, 118:6, 118:8, 123:5, 153:22, 182:20, 182:22, 241:7, 246:16, 326:16, 326:17, 326:18, 328:15, 338:24, 341:10, 343:24, 348:21, 353:11, 354:22, 369:7, 396:15, 396:17, 397:16 sequence [1] - 257:8 Series [1] - 3:17 series [11] - 146:10, 146:11, 155:4, 157:15, 157:25, 159:7, 161:18, 218:12, 241:3, 334:23, 411:8 serious [3] - 29:1, 339:13, 420:19 seriously [2] - 240:16, 421:4 Sermonto [1] - 7:20 serve [13] - 29:18, 32:3, 44:8, 62:24, 63:15, 63:23, 69:16, 103:4, 108:6, 167:8, 197:13, 422:3, 422:5 served [11] - 20:14, 59:3, 136:6, 148:14, 156:1, 237:20, 237:21, 251:4, 251:8, 256:18, 256:20 serves [1] - 115:7 service [25] - 36:7, 73:13, 83:25, 84:3, 84:5, 84:6, 84:8, 103:14, 107:9, 107:18, 107:19, 108:8, 110:12, 111:13, 362:9, 363:25, 364:1, 364:8, 392:22, 420:9, 420:11, 421:5, 421:8,

421:12, 423:4 served [2] - 85:16, 85:19 serving [2] - 54:7, 59:9 sessions [1] - 20:25 set [3] - 10:22, 36:3, 97:17, 264:12, 265:11, 267:9, 350:13, 380:19 setback [1] - 311:4 setbacks [1] - 155:18 sets [2] - 199:16, 207:14 settled [2] - 298:21, 304:1 seven [12] - 11:21, 11:23, 46:22, 46:23, 49:18, 49:19, 164:13, 164:16, 170:14, 170:15, 271:7, 301:5 seven-foot [1] - 164:13 seventy [1] - 106:10 seventy-three [1] - 106:10 sever [1] - 71:16 several [20] - 30:11, 37:20, 56:9, 82:19, 144:24, 145:7, 148:23, 153:1, 153:15, 157:14, 159:7, 161:16, 193:13, 212:12, 234:3, 376:12, 407:12, 407:13, 409:14 severe [2] - 226:6, 267:15 Sewanee [1] - 218:5 Shadowmoss [1] - 203:20 shag [3] - 173:5, 173:9, 200:5, 200:9, 202:12, 202:15, 204:3, 204:4, 402:9 shake [2] - 329:19, 331:16 shape [3] - 63:23, 181:25, 244:6 share [1] - 64:23 sheaf [2] - 152:22, 158:22 sheath [1] - 188:14 sheet [1] - 159:11 shell [1] - 109:14 shepherding [1] - 328:1 ships [1] - 364:10	shoes [3] - 418:6, 418:8, 418:10 shook [2] - 330:2, 397:18 short [3] - 6:9, 17:6, 295:12 shorten [1] - 375:6 shorter [1] - 5:7 shortly [2] - 256:18, 399:19 shot [6] - 82:1, 148:17, 165:6, 168:17, 417:25, 419:3 shouting [1] - 375:22 show [72] - 14:8, 14:11, 15:15, 34:16, 34:19, 35:7, 35:16, 36:2, 47:7, 56:15, 59:17, 59:18, 59:21, 64:7, 65:24, 65:25, 66:12, 67:3, 68:17, 72:8, 74:8, 79:21, 79:22, 90:16, 92:1, 133:3, 134:1, 138:25, 146:16, 147:3, 148:18, 153:2, 158:22, 164:23, 185:5, 192:3, 192:4, 192:5, 210:2, 226:19, 237:15, 239:23, 242:4, 243:18, 251:21, 253:10, 261:12, 278:11, 282:3, 284:19, 305:4, 306:13, 311:18, 312:17, 319:10, 328:13, 334:13, 342:22, 343:18, 344:24, 345:10, 346:15, 348:23, 349:20, 359:25, 364:11, 365:17, 365:22, 370:3, 393:15, 401:23, 422:1 showed [3] - 33:14, 115:9, 304:8, 317:15, 396:15, 397:11 shower [1] - 167:16 showing [3] - 16:5, 169:20, 194:20, 285:24, 321:14, 365:24, 412:1, 422:12 shown [14] - 41:6, 42:20, 47:17, 47:20, 66:3, 147:23, 147:25, 243:10, 267:8, 277:21, 285:16, 347:15, 410:13, 411:12 shows [17] - 50:4,	163:25, 166:7, 168:8, 187:11, 194:20, 204:14, 279:18, 284:22, 302:2, 306:23, 306:24, 393:4, 393:11, 395:18, 408:15 shrubbery [2] - 316:19 shrubs [1] - 323:18 shut [1] - 261:23 side [54] - 11:6, 11:8, 11:12, 12:13, 12:22, 21:15, 25:4, 27:1, 33:5, 48:22, 48:24, 84:6, 86:1, 109:20, 111:25, 115:9, 118:10, 123:20, 155:19, 163:15, 164:25, 168:24, 168:25, 169:6, 170:21, 171:5, 171:13, 171:17, 171:20, 174:18, 182:9, 194:20, 205:5, 219:3, 248:22, 317:17, 318:6, 318:11, 319:22, 361:8, 363:16, 363:18, 370:1, 370:21, 401:22, 401:23, 408:1, 409:2, 418:4, 418:8, 418:10 sideline [2] - 204:17, 204:19 sides [5] - 18:14, 26:21, 211:12, 340:10, 423:18 sidewalk [2] - 165:13, 166:5 sieve [4] - 188:23, 188:24, 189:16, 211:18 sieves [1] - 150:1 sieving [1] - 190:4 sign [4] - 256:3, 319:20, 415:5, 415:11 signed [7] - 47:13, 99:13, 222:8, 254:24, 256:6, 307:2, 331:23 significance [1] - 414:23 significant [2] - 88:8, 323:18 significantly [1] - 208:25 similar [3] - 87:1, 150:19, 206:13, 346:18, 364:7, 396:24, 396:25,	413:12, 414:9 Simons [2] - 197:1, 396:24 simple [5] - 29:20, 29:21, 367:4, 385:19, 392:1 simply [12] - 21:6, 27:6, 27:10, 291:3, 303:13, 309:20, 319:5, 338:25, 383:18, 385:7, 407:8, 408:12 sincerely [1] - 422:10 single [2] - 387:9, 387:11 singular [1] - 343:6 Sinkler [17] - 1:14, 6:18, 9:10, 18:25, 29:12, 40:4, 40:22, 49:22, 53:21, 158:11, 173:8, 184:23, 200:15, 231:5, 231:14, 264:10, 264:11 SINKLER [25] - 9:12, 16:12, 16:17, 16:23, 17:24, 19:3, 19:10, 36:11, 36:18, 37:25, 40:5, 40:7, 49:10, 53:15, 53:17, 54:10, 261:24, 269:17, 290:9, 291:21, 292:24, 293:3, 293:11, 293:19, 382:17 SIPOA [5] - 93:4, 290:16, 290:19, 290:22, 291:2, 291:4 SIPOA's [1] - 290:24 sit [9] - 78:14, 81:24, 94:18, 204:10, 265:25, 301:10, 309:21, 309:23, 314:24 site [19] - 50:3, 67:25, 144:18, 159:9, 159:12, 159:15, 161:2, 161:4, 165:16, 166:22, 167:9, 172:6, 173:21, 238:12, 240:4, 319:15, 324:7, 331:9, 360:18 sited [5] - 245:19, 246:11, 246:20, 250:15, 258:5 sites [1] - 215:19 siting [2] - 248:20, 255:23 sits [3] - 79:13,	131:16, 314:24 sitting [3] - 71:18, 84:7, 85:24, 270:12, 327:24, 328:21, 353:2, 374:8 situate [3] - 345:5, 348:18, 350:2 situated [4] - 34:6, 102:15, 236:20, 315:11 situation [13] - 61:24, 120:23, 146:6, 221:19, 226:9, 229:8, 230:5, 230:18, 249:2, 277:18, 376:4, 403:5, 411:6 slx [15] - 11:25, 12:1, 37:1, 117:13, 117:15, 168:7, 170:16, 196:10, 200:15, 209:7, 245:8, 301:5, 353:6, 353:8, 356:8 six-foot [1] - 168:7 sixty [1] - 113:16 size [2] - 140:24, 179:20 skill [1] - 301:8 skin [1] - 404:4 slide [3] - 192:4, 197:6, 197:7 slightly [4] - 22:17, 22:20, 408:20, 408:23 slope [1] - 166:12 slowly [1] - 379:21 smack [1] - 215:10 small [7] - 56:11, 65:1, 79:7, 81:12, 183:25, 203:15, 298:17 smaller [3] - 132:19, 179:1, 199:9 smart [1] - 199:10 smelt [4] - 23:25, 24:8, 39:10, 406:7 smoke [1] - 415:23 snow [1] - 267:10 soak [3] - 167:11, 167:23, 208:11 SOB [1] - 337:23 Socia [1] - 14:3 social [4] - 14:25, 215:19, 296:19, 422:16 software's [1] - 185:9 soil [3] - 150:15, 180:2, 319:5 sold [3] - 87:7, 226:17, 226:19, 278:13, 305:11,

349:17, 393:1, 393:2, 401:14 solely [1] - 407:2 solid [1] - 159:13 solution [4] - 71:22, 83:6, 83:22, 84:10, 84:13, 84:15, 84:17, 85:6, 85:15, 89:17, 96:25, 97:2, 120:17, 122:19, 123:1, 123:4, 123:10, 128:21, 137:19, 137:21, 138:4, 156:13, 157:4, 178:12, 186:22, 186:23, 230:3, 245:6, 272:12, 272:14, 272:18, 276:20, 276:24, 340:15, 342:14, 342:19, 373:9, 373:11, 389:14, 405:20 solutions [5] - 85:11, 85:14, 94:23, 137:10, 156:17 solve [1] - 373:10 solved [1] - 244:21 someone [7] - 83:6, 175:6, 189:21, 193:12, 212:19, 266:21, 367:10 sometime [3] 95:17, 96:14, 130:20, 205:22, 303:1, 311:16, 314:2, 335:3 sometimes [24] - 10:7, 16:3, 20:14, 22:10, 25:14, 25:15, 27:9, 27:16, 27:19, 27:21, 28:15, 69:6, 79:16, 79:17, 152:3, 388:5, 388:6, 417:16, 417:17, 417:19, 418:5, 418:11, 420:13, 422:17 somewhat [4] - 20:18, 120:23, 150:13, 199:6 somewhere [12] - 6:22, 97:14, 125:9, 201:13, 201:14, 229:21, 230:20, 251:15, 341:24, 370:25, 371:4, 400:9 son [1] - 402:24 Sons [1] - 277:8 soon [3] - 55:25, 61:6, 264:23, 384:15, 393:25, 421:14 sorry [30] - 51:16, 58:22, 59:24, 62:18,	65:2, 66:1, 67:6, 68:14, 86:6, 89:14, 95:19, 95:24, 152:24, 165:4, 166:15, 167:3, 213:8, 258:12, 319:8, 319:19, 327:3, 335:14, 337:2, 343:2, 345:2, 358:17, 378:12, 379:20, 382:8 sort [48] - 23:22, 30:6, 31:16, 70:11, 71:21, 82:6, 82:10, 82:22, 82:24, 83:1, 100:2, 102:6, 103:22, 103:24, 107:16, 107:24, 116:2, 120:3, 122:18, 123:3, 123:9, 128:21, 145:3, 156:13, 167:4, 177:19, 185:4, 213:10, 223:20, 225:16, 230:18, 234:8, 245:20, 265:2, 270:19, 272:12, 276:23, 317:15, 319:21, 327:21, 352:23, 354:18, 363:15, 372:21, 390:18, 390:20, 405:20 sorts [3] - 110:4, 319:20, 402:11 sought [2] - 367:1, 408:15 sound [4] - 96:11, 150:2, 235:9, 409:23 sounds [2] - 145:19, 383:2 south [4] - 108:13, 108:19, 220:11, 233:11 SOUTH [1] - 1:1 South [30] - 1:7, 50:21, 106:13, 108:19, 137:17, 176:16, 226:24, 265:2, 269:24, 272:2, 274:19, 277:8, 288:9, 298:4, 303:11, 345:6, 348:19, 350:3, 364:13, 386:15, 387:19, 390:4, 390:9, 390:14, 394:18, 402:12, 403:18, 422:11, 424:3, 424:8 space [2] - 179:20, 203:13 spaced [2] - 72:22, 72:23 speaking [4] - 97:8,	196:22, 403:13, 409:5 special [10] - 42:3, 42:7, 42:9, 42:23, 43:5, 43:12, 52:13, 52:17, 54:4, 422:9 specialize [1] - 143:24 specialized [2] 39:13, 409:16 specialties [1] - 144:1 specialty [1] - 145:21 specific [7] - 38:24, 127:23, 161:8, 190:10, 232:9, 382:1, 410:7 specifically [19] - 51:25, 58:13, 58:14, 71:14, 134:3, 144:22, 147:1, 149:21, 158:14, 158:25, 172:16, 175:19, 180:21, 184:21, 271:7, 288:15, 325:1, 353:25, 379:21 spectacular [1] - 303:16 speculate [1] - 248:9 speculating [1] - 278:12 speculation [10] - 88:12, 87:22, 88:14, 102:24, 120:13, 212:23, 229:2, 235:19, 259:4, 400:7 speedy [1] - 136:7 spelled [1] - 19:8 spending [1] - 286:24 spent [2] - 89:20, 303:10 spill [1] - 208:8 split [1] - 10:11 spoken [3] - 226:8, 275:15, 326:5 spot [1] - 170:13 spots [1] - 101:4 spread [1] - 127:21 spring [1] - 304:3 squirting [1] - 177:18 Sr [1] - 1:12 St [3] - 197:1, 300:19, 396:23 stabilize [1] - 323:19 stable [1] - 248:5 stack [1] - 149:18 staff [4] - 313:9, 327:7, 327:8, 334:7 stage [1] - 16:22	stamp [2] - 160:19, 161:11 stamped [1] - 160:17 stand [26] - 6:13, 6:17, 6:23, 7:1, 7:5, 7:10, 8:10, 20:8, 24:7, 27:9, 48:16, 55:5, 72:6, 72:9, 113:8, 167:4, 217:3, 295:13, 297:17, 315:6, 361:23, 374:2, 396:1, 400:6, 401:21, 407:25 stand-back [1] - 167:4 standard [4] - 14:14, 231:11, 265:24, 266:23 Standards [1] - 231:21 standing [22] - 6:19, 35:19, 69:6, 98:11, 98:15, 98:19, 98:20, 101:4, 132:4, 165:19, 166:9, 170:1, 177:2, 207:25, 210:20, 245:21, 257:18, 338:5, 340:1, 340:2, 340:3, 388:17 standpoint [2] - 146:10, 193:8, 208:17 stands [2] - 112:1, 315:5 Stanek [1] - 8:20 start [12] - 6:11, 15:12, 24:16, 31:16, 31:17, 31:22, 159:1, 201:11, 211:25, 331:25, 332:23, 384:15 started [24] - 20:22, 21:13, 34:14, 56:3, 56:4, 97:3, 111:14, 111:17, 114:23, 135:7, 142:22, 179:11, 217:24, 219:17, 264:9, 296:17, 311:16, 332:3, 332:24, 337:17, 337:19, 337:25, 338:1, 398:15 starts [3] - 117:12, 165:9, 165:10 state [16] - 59:9, 92:19, 94:15, 99:8, 99:12, 119:21, 145:25, 161:3, 214:25, 216:11, 226:23, 229:23, 265:9, 350:3, 406:14, 409:17	State [6] - 21:23, 23:8, 23:9, 137:17, 345:6, 424:3 STATE [1] - 1:1 statement [6] - 60:22, 152:14, 223:13, 250:10, 254:15, 254:17 statements [5] - 24:17, 29:7, 29:8, 124:16, 406:24 States [3] - 142:16, 395:24, 421:21 states [7] - 69:4, 98:10, 105:5, 134:8, 219:1, 358:8, 358:13 stating [1] - 43:14 stationed [1] - 108:12 statute [11] - 261:9, 267:11, 268:11, 270:22, 271:5, 271:7, 271:11, 287:1, 293:12, 293:17, 293:22 stay [7] - 17:16, 63:23, 118:24, 236:8, 303:12, 307:25, 320:25 staying [1] - 56:3 steel [3] - 187:25, 188:2 steep [1] - 116:8 step [7] - 55:1, 141:15, 162:19, 236:4, 361:18, 373:20, 378:3 steps [4] - 126:10, 321:7, 334:6, 376:16 Steven [1] - 13:25 Stevenson [1] - 267:21 stewardship [1] - 299:6 stick [2] - 285:13, 377:22 still [45] - 15:8, 23:1, 23:16, 33:16, 42:17, 78:2, 82:12, 91:15, 111:12, 123:9, 126:6, 132:7, 150:9, 169:8, 169:10, 169:11, 179:4, 179:7, 184:5, 189:6, 197:13, 211:21, 223:24, 245:21, 263:22, 279:24, 280:1, 280:3, 280:4, 281:14, 287:22, 287:25, 290:8, 295:13, 297:8,

297:18, 299:25, 332:8, 357:10, 366:3, 374:22, 384:9, 396:5, 405:10, 407:19 stolen [1] - 286:12 stone [1] - 179:19 stood [3] - 213:17, 269:2, 283:18 stop [3] - 99:24, 100:3, 100:11, 103:22, 103:25, 104:7, 104:10, 135:18, 136:3, 146:15, 239:9, 256:24, 258:18, 258:23, 266:6, 268:8, 268:14, 269:18, 273:25, 274:4, 284:8, 291:2, 333:20, 333:24, 359:18, 398:24, 398:25, 399:1, 404:8, 404:12, 416:4 stopped [1] - 114:14, 181:23, 256:25, 304:5, 332:7, 340:15, 370:25, 371:3, 371:4, 398:10, 398:12 stories [1] - 301:12 storm [5] - 92:22, 130:17, 144:2, 144:8, 144:10, 144:11, 144:21, 145:2, 145:8, 145:11, 145:21, 146:10, 147:6, 147:7, 150:3, 152:17, 152:19, 152:20, 154:18, 154:23, 172:19, 172:20, 173:2, 176:3, 176:5, 176:8, 178:18, 185:1, 185:5, 187:18, 190:14, 201:9, 202:24, 203:15, 212:17, 321:20, 322:13, 362:13, 363:3, 364:20, 366:20, 367:3, 367:24, 369:3, 369:17, 372:20, 373:1, 389:3, 389:5, 389:15, 399:9, 403:17, 403:23 straightforward [2] - 184:16, 184:18 strategic [1] - 331:13 strategically [1] - 317:22 Streamline [1] -	185:13 street [13] - 87:11, 111:24, 147:8, 166:2, 174:24, 225:6, 289:24, 315:1, 319:19, 322:25, 386:1, 387:25, 400:25 Street [3] - 233:10, 233:12, 321:22 streets [5] - 42:19, 203:14, 285:18, 324:3, 340:6 Streisel [1] - 13:21 stress [1] - 294:13 stretched [1] - 386:23 strict [1] - 265:3 strictly [1] - 140:21 strike [7] - 11:9, 11:14, 12:13, 12:22, 13:2, 110:8, 267:4 strikes [2] - 11:7, 11:12, 11:13, 11:16, 11:17, 11:19, 11:20, 11:22, 11:24, 12:1, 12:2, 12:4, 12:5, 12:7, 12:8, 12:11, 12:14, 12:15, 12:17, 12:18, 12:20, 12:23, 12:24, 13:1, 13:3 strip [1] - 155:21 struck [1] - 183:22 structure [5] - 147:11, 155:22, 155:23, 170:23, 197:2, 198:17 structures [4] - 149:24, 149:25, 150:1, 180:6 struggling [2] - 299:7, 417:21 stuck [2] - 332:9, 397:18 students [1] - 197:12 studied [3] - 193:12, 234:1, 235:12 studies [3] - 230:14, 276:19, 276:23 Studio [1] - 310:18 study [14] - 10:14, 30:20, 30:23, 61:5, 148:11, 148:12, 148:15, 153:11, 185:8, 218:1, 218:2, 218:10, 218:19, 230:14 stuff [8] - 197:6, 319:6, 319:21, 327:15, 328:6, 328:7, 364:10, 389:20, 390:4	stumbled [2] - 56:12, 303:13 style [1] - 311:4 sub [1] - 208:18 sub-surface [1] - 208:18 subdivided [1] - 195:5 subdivision [5] - 49:4, 144:17, 198:1, 203:19, 285:15, 405:5 subject [28] - 31:20, 41:17, 42:11, 45:20, 48:13, 49:7, 50:21, 51:21, 51:23, 52:4, 52:19, 148:23, 226:4, 240:15, 251:24, 253:4, 284:24, 288:12, 288:16, 289:5, 321:19, 321:20, 343:3, 343:12, 350:10, 350:16, 388:2 subjective [2] - 48:8, 79:16 submit [2] - 308:11, 316:17 submitted [5] - 33:21, 368:23, 378:7, 381:25, 394:24 subpoena [3] - 295:15, 373:21, 373:22 subpoenas [1] - 223:8 subsequent [1] - 286:6 subsequently [1] - 353:13 substance [1] - 283:6 substantial [5] - 113:22, 128:8, 222:20, 226:4, 414:12 substantially [1] - 346:18 substitute [2] - 238:17, 240:9 subsurface [1] - 177:10, 177:15, 189:2, 189:3, 189:11, 214:18, 338:14 subterranean [1] - 365:13 suburbs [1] - 299:24 success [1] - 289:14 successors [1] - 42:21 sucking [1] - 176:13 sudden [2] - 211:9,	332:7 sue [13] - 78:25, 79:1, 79:6, 94:12, 94:19, 100:18, 135:13, 135:16, 206:5, 356:22, 375:24, 398:16, 403:6 sued [10] - 6:2, 21:8, 21:11, 100:18, 262:17, 268:7, 351:21, 351:23, 398:17 suffer [3] - 190:14, 294:11, 413:13 suffered [5] - 232:19, 386:7, 412:14, 412:21, 413:21 suffers [1] - 232:20 sufficient [2] - 155:12, 409:21 Suffolk [1] - 300:3 suggest [4] - 16:19, 183:1, 226:20, 247:12 suggested [3] - 83:14, 120:20, 246:23 suggesting [1] - 175:4 suing [1] - 129:8 suit [1] - 266:14 sum [1] - 412:20 summarize [2] - 69:2, 335:9 summary [22] - 16:9, 16:13, 61:14, 61:17, 149:6, 149:9, 149:10, 261:6, 267:7, 271:14, 271:15, 271:17, 271:19, 271:22, 289:18, 290:10, 291:7, 291:12, 291:13, 292:6, 293:2 summer [2] - 303:4, 304:4 summons [2] - 19:1, 21:14 sun [1] - 417:17 Sunday [8] - 80:7, 82:2, 100:25, 377:20 Sundays [1] - 299:7 supervise [1] - 259:14 supervising [1] - 257:17 supervisor [2] - 218:23, 218:24 supplied [1] - 404:23 support [2] - 164:7, 301:13 supportive [1] - 70:22	supposed [4] - 28:7, 77:2, 77:17, 403:3 Supreme [1] - 277:9 surety [3] - 49:1, 49:3, 49:7 surface [50] - 101:20, 101:25, 112:11, 115:23, 144:7, 151:2, 153:3, 153:4, 159:15, 167:24, 169:2, 169:20, 172:1, 173:11, 174:10, 174:15, 176:19, 177:10, 177:14, 177:21, 178:2, 192:15, 192:20, 192:25, 193:18, 193:20, 193:23, 193:25, 194:2, 194:3, 195:20, 200:19, 200:24, 201:11, 202:10, 207:9, 208:12, 208:14, 208:17, 208:18, 208:20, 214:10, 214:14, 317:5, 335:25, 339:2, 373:13 surfaces [4] - 173:15, 177:11, 201:16, 203:24 surmise [2] - 155:10, 187:2 surmising [1] - 155:15 surprise [2] - 193:1, 372:23 surprised [1] - 373:4 surprisingly [4] - 149:16, 149:23, 181:25, 188:10 surrender [2] - 139:24, 140:9 survey [5] - 69:13, 69:15, 69:18, 144:5, 145:16 surveying [3] - 145:20, 323:16, 324:6 surveyor [5] - 100:21, 155:11, 160:18, 161:4, 329:22, 387:5 surveys [1] - 168:9 survive [1] - 109:12 survivorship [1] - 47:12 SUSAN [1] - 374:3 Susan [8] - 2:11, 7:1, 7:4, 32:8, 47:11, 301:21, 302:16, 374:2 Susan's [1] - 303:24

suspect [1] - 378:24 sustain [2] - 27:18, 88:16 sustained [1] - 63:4, 69:20, 83:19, 102:25, 126:21, 138:22, 140:5, 140:12, 141:12, 259:6, 350:25 swale [2] - 164:24, 170:22, 171:1, 171:19, 171:22, 171:24, 172:2, 172:5, 194:6, 194:9, 194:13, 194:16, 194:20, 194:25, 195:2, 195:18, 195:20, 318:3, 318:4 swales [1] - 314:25 swings [1] - 400:7 sworn [1] - 20:9, 36:13, 55:7, 106:4, 142:4, 217:5, 236:14, 297:22, 361:25, 374:4 sympathy [1] - 414:14 system [39] - 14:17, 92:22, 92:24, 92:25, 105:3, 105:4, 115:25, 130:18, 144:8, 144:15, 145:2, 151:16, 152:12, 152:15, 207:19, 224:23, 225:1, 226:5, 226:6, 227:22, 228:5, 228:10, 228:11, 238:9, 238:17, 238:20, 240:9, 240:12, 300:25, 321:20, 322:14, 322:17, 322:21, 355:4, 355:5, 355:6, 362:21, 364:20 Systems [1] - 364:3 systems [3] - 144:9, 240:17, 389:5	338:20 tails [2] - 315:8, 317:15 Tammy [1] - 14:4 tank [1] - 124:10 taught [1] - 374:15 tax [1] - 219:2 Taylor [2] - 7:7, 7:16 teach [1] - 232:12 teacher [1] - 392:21 teaching [1] - 375:10 teams [3] - 108:25, 109:4, 109:9 tear [3] - 175:15, 239:7, 404:2 tearing [1] - 172:12 technical [2] - 153:6, 188:6 Technologies [1] - 185:14 tees [1] - 199:5 telephone [1] - 15:23 temerity [1] - 398:16 temporary [3] - 100:2, 135:16, 253:18 ten [17] - 13:7, 24:23, 72:4, 72:10, 112:23, 133:23, 141:17, 141:19, 152:17, 190:19, 190:21, 219:1, 332:13, 332:14, 365:11, 368:6, 371:24 ten-minute [3] - 141:17, 190:19, 332:13 ten-year [1] - 152:17 tenants [1] - 47:12 tend [1] - 10:8 tended [1] - 189:4 tender [1] - 37:25 tends [1] - 177:20 Tennessee [1] - 217:17 tennis [1] - 56:9 tenth [1] - 176:2 term [14] - 40:22, 41:21, 131:20, 171:23, 188:6, 190:4, 191:25, 193:5, 208:18, 231:19, 231:23, 349:7, 352:8, 375:12 terminal [7] - 126:9, 126:16, 126:24, 127:4, 137:21, 137:24, 197:15 terminate [2] - 46:17, 126:8 terminated [4] -	46:11, 46:15, 47:5, 47:19 termination [1] - 368:8 terms [19] - 20:15, 30:6, 85:17, 144:3, 149:13, 166:11, 169:12, 172:17, 185:1, 193:10, 248:20, 309:22, 311:3, 324:5, 336:22, 349:15, 352:11, 375:6, 418:3 terrain [1] - 116:3 terrible [2] - 192:17, 203:20 terribly [1] - 116:8 territorial [1] - 218:25 territory [1] - 108:13 testified [9] - 35:20, 36:14, 49:25, 55:8, 89:16, 91:10, 94:21, 99:1, 106:5, 131:24, 142:5, 145:5, 145:8, 186:21, 187:20, 188:23, 192:10, 193:3, 193:13, 193:16, 193:22, 194:6, 198:14, 198:20, 200:5, 209:8, 209:25, 211:19, 217:6, 220:19, 229:2, 229:17, 231:17, 234:16, 234:19, 235:6, 236:15, 251:4, 257:3, 257:13, 259:9, 275:19, 275:21, 275:23, 276:17, 276:21, 295:12, 297:23, 314:18, 316:13, 318:14, 327:16, 338:12, 341:3, 351:6, 351:24, 354:24, 362:1, 365:8, 367:9, 372:23, 374:5, 377:12, 388:19, 388:22, 390:21, 391:5, 392:18, 393:25, 394:10, 394:14, 394:16, 394:21, 395:13, 396:6, 397:17, 397:24, 397:25, 398:1, 401:4, 401:7, 401:10, 401:13, 402:4, 402:5, 402:6, 405:18, 407:7, 407:11 testify [29] - 30:12, 31:13, 34:2, 39:8,	39:15, 39:22, 86:13, 87:24, 145:17, 184:22, 193:14, 206:9, 206:19, 206:23, 214:21, 227:7, 259:24, 266:25, 274:19, 274:22, 393:16, 394:4, 394:6, 394:7, 398:13, 399:5, 399:10, 399:12, 409:14 testifying [1] - 23:23, 24:22, 69:18, 90:10, 90:15, 96:18, 120:11, 138:20, 185:2, 361:10, 406:6 testimony [103] - 17:18, 29:23, 30:7, 30:18, 31:2, 31:8, 31:18, 34:8, 34:16, 37:15, 39:24, 39:25, 40:2, 60:21, 88:15, 91:13, 94:5, 94:24, 95:8, 96:9, 97:1, 97:21, 100:17, 119:1, 130:23, 131:15, 131:25, 137:4, 139:16, 139:19, 146:1, 187:14, 187:16, 188:25, 189:21, 189:24, 194:7, 194:14, 196:8, 204:24, 209:18, 213:17, 215:13, 221:9, 225:15, 230:17, 231:12, 232:17, 233:8, 235:19, 237:24, 261:16, 264:18, 264:21, 265:1, 265:7, 266:19, 267:15, 269:24, 272:23, 273:3, 273:7, 275:14, 278:18, 279:18, 280:20, 280:23, 280:24, 281:23, 282:11, 282:14, 282:15, 291:9, 324:9, 326:19, 331:8, 338:4, 339:17, 341:13, 341:23, 342:13, 376:8, 380:9, 396:8, 396:12, 396:21, 397:7, 398:5, 399:15, 402:1, 403:1, 403:9, 407:14, 407:15, 407:17, 407:18, 407:20, 408:2, 408:4, 408:5, 409:20, 410:2, 420:15	Texas [2] - 110:25, 111:10 THE [344] - 5:2, 7:13, 7:18, 7:21, 7:24, 8:4, 8:22, 8:25, 9:16, 9:19, 9:21, 10:1, 11:1, 11:4, 11:6, 11:11, 11:16, 11:19, 11:22, 12:1, 12:4, 12:7, 12:12, 12:17, 12:20, 13:1, 13:3, 13:10, 13:13, 13:15, 13:17, 13:18, 14:7, 15:20, 15:22, 16:14, 16:20, 16:24, 17:10, 17:13, 17:20, 17:23, 18:2, 18:9, 18:21, 19:4, 19:13, 19:20, 19:23, 19:25, 20:1, 20:10, 20:12, 36:9, 36:16, 38:2, 38:7, 39:3, 39:6, 42:16, 42:19, 53:14, 55:1, 55:2, 55:3, 55:10, 60:16, 61:7, 63:4, 65:23, 66:15, 67:16, 69:20, 70:18, 71:25, 72:6, 72:13, 73:2, 73:4, 73:6, 73:8, 73:10, 73:11, 73:16, 75:24, 80:20, 80:22, 81:1, 81:5, 81:7, 83:19, 85:3, 85:10, 86:15, 88:1, 88:16, 89:11, 89:13, 90:18, 90:20, 94:2, 102:10, 102:24, 104:16, 105:9, 105:24, 119:22, 119:23, 120:13, 123:24, 124:18, 124:19, 126:21, 129:4, 135:2, 138:22, 140:5, 140:12, 141:11, 141:12, 141:15, 141:23, 143:15, 145:13, 145:18, 155:17, 160:22, 160:24, 161:1, 161:2, 161:13, 161:14, 161:15, 161:16, 161:19, 161:21, 161:22, 162:1, 162:7, 162:8, 162:13, 162:19, 162:20, 162:21, 162:22, 163:7, 163:9, 183:8, 190:17, 206:1, 206:2, 206:15, 206:17, 206:24, 213:6, 213:12, 214:7, 215:6, 215:8, 215:25, 216:7,
T	table [25] - 112:11, 115:22, 151:2, 152:3, 167:13, 173:3, 173:5, 173:20, 174:3, 174:4, 176:12, 176:15, 176:18, 176:19, 177:20, 178:1, 189:11, 200:14, 201:6, 207:17, 208:11, 211:10, 304:23, 327:24,			

216:9, 216:12, 216:17, 216:19, 216:22, 216:24, 217:8, 220:21, 221:1, 222:16, 223:21, 225:22, 227:6, 227:9, 230:23, 235:3, 235:21, 235:22, 236:2, 236:4, 236:5, 236:6, 236:7, 236:8, 236:12, 237:4, 238:2, 238:3, 239:25, 241:1, 242:18, 242:21, 243:1, 243:2, 243:14, 244:4, 244:5, 244:13, 247:4, 247:5, 249:13, 249:14, 250:20, 254:6, 255:1, 256:11, 259:6, 259:7, 260:20, 260:22, 261:15, 261:20, 261:22, 262:1, 262:7, 262:10, 262:18, 262:22, 263:6, 263:15, 264:4, 268:3, 269:10, 269:15, 271:14, 273:3, 273:11, 273:17, 274:9, 274:12, 274:15, 274:24, 275:3, 275:8, 276:4, 276:8, 276:16, 276:25, 277:21, 278:2, 278:23, 278:25, 279:2, 279:10, 279:13, 280:2, 280:8, 281:3, 281:6, 281:13, 281:25, 282:5, 282:9, 282:13, 282:19, 283:9, 283:23, 284:2, 285:25, 286:22, 288:8, 288:25, 289:22, 291:12, 291:18, 292:13, 292:16, 293:1, 293:7, 293:17, 293:25, 294:7, 294:21, 295:9, 295:17, 295:20, 296:3, 296:9, 296:14, 296:24, 297:6, 297:10, 297:13, 297:18, 297:20, 320:16, 320:18, 332:12, 332:17, 336:11, 336:17, 337:10, 337:12, 340:25, 348:2, 348:4, 350:25, 351:8, 358:1, 359:22, 361:18, 361:19, 361:20, 371:15, 373:18,	373:20, 373:24, 378:3, 378:10, 378:14, 378:19, 379:8, 379:19, 380:1, 380:5, 381:9, 381:22, 382:4, 382:6, 382:10, 382:14, 383:2, 383:15, 383:18, 384:2, 384:21, 403:11, 405:23, 416:12, 416:15, 416:19, 416:23, 417:5, 417:9, 419:13, 419:17, 419:19, 419:20, 419:21, 419:22, 420:2, 420:3, 423:8 theirs [3] - 152:8, 168:6, 380:11 themselves [3] - 288:18, 343:5, 343:8 theory [9] - 24:24, 268:3, 268:17, 268:18, 273:19, 283:10, 285:4, 287:1, 289:13 there'll [1] - 152:1 thereabouts [1] - 81:4 thereafter [1] - 256:18 therefore [4] - 272:25, 288:23, 369:12, 379:23 thereof [1] - 343:10 they've [2] - 26:17, 48:20, 140:18, 166:6, 212:12, 226:11, 228:5, 228:12, 228:16, 229:24, 229:25, 266:2, 272:8, 272:9, 272:11, 272:19, 272:20, 311:3, 376:20, 394:4, 394:6, 406:6 theys [1] - 120:16 thick [2] - 152:25, 173:5 thinking [6] - 102:23, 115:3, 304:9, 379:19, 379:20, 417:25 thinks [1] - 390:15 third [9] - 99:2, 261:10, 262:10, 270:14, 270:16, 291:4, 291:8, 292:11, 318:2 third-party [1] - 262:10 thirty [2] - 37:22,	125:3 thirty-four [1] - 125:3 thirty-one [1] - 37:22 Thomas [1] - 7:14 THOMPSON [1] - 217:4 Thompson [79] - 2:8, 8:12, 31:9, 58:9, 58:11, 59:13, 59:19, 59:23, 60:24, 61:19, 64:10, 66:5, 76:19, 76:20, 77:1, 77:24, 92:16, 95:14, 96:2, 114:22, 115:2, 115:6, 117:22, 124:2, 130:17, 131:8, 148:21, 149:5, 216:21, 217:3, 217:9, 217:12, 217:14, 219:21, 219:23, 220:4, 220:16, 221:13, 223:9, 223:17, 224:1, 225:24, 227:5, 231:2, 239:12, 239:13, 239:14, 239:19, 251:18, 252:15, 260:15, 265:11, 275:23, 278:12, 283:9, 313:11, 317:4, 321:13, 323:3, 327:8, 335:2, 368:10, 358:17, 368:19, 390:1, 390:2, 390:12, 390:15, 390:17, 390:21, 391:7, 391:24, 395:3, 398:19, 398:20, 400:3, 400:6, 405:18 Thompson's [9] - 251:21, 251:22, 252:9, 252:24, 255:10, 275:14, 278:22, 282:22, 283:7 thoroughfare [1] - 340:9 thoughts [1] - 216:14 thousand [1] - 339:8 Three [1] - 3:15 three [51] - 13:6, 38:18, 56:10, 93:9, 104:21, 104:24, 106:10, 111:22, 118:11, 123:17, 126:11, 134:5, 135:25, 144:7, 202:19, 210:9, 210:10, 217:16, 218:17, 218:18,	237:25, 251:11, 251:13, 271:9, 283:19, 284:5, 287:3, 295:16, 296:1, 298:16, 298:23, 302:24, 312:3, 313:5, 313:7, 315:25, 316:2, 317:13, 321:4, 335:25, 358:15, 358:23, 360:8, 360:11, 374:18, 395:11, 395:12, 399:1, 399:8, 421:10, 421:22 three-dimensional [3] - 144:7, 210:9, 210:10 three-fold [1] - 298:23 threw [1] - 331:18 thrilled [1] - 401:16 throughout [8] - 40:3, 128:3, 128:4, 146:2, 221:10, 363:1, 363:2, 407:5 throw [3] - 178:22, 178:23, 180:7 thumbs [1] - 124:21 thunderstorm [1] - 203:5 tie [4] - 120:18, 178:16, 178:18, 355:1 tied [2] - 341:5, 341:8 Tiffany [1] - 7:16 TILLMAN [208] - 11:3, 11:14, 11:20, 12:2, 12:8, 12:15, 12:24, 13:12, 13:14, 18:3, 18:10, 18:15, 19:16, 29:10, 55:4, 55:11, 60:15, 60:19, 61:2, 61:9, 61:13, 63:5, 65:18, 66:1, 66:7, 66:18, 67:14, 67:17, 69:21, 70:19, 72:23, 73:5, 73:18, 76:1, 80:18, 81:6, 81:10, 83:20, 85:2, 85:5, 85:12, 86:13, 86:19, 86:20, 87:23, 88:2, 88:17, 89:10, 89:12, 89:14, 89:15, 89:25, 90:23, 91:2, 93:19, 102:12, 103:1, 104:14, 106:1, 106:7, 116:22, 119:3, 119:15, 120:2, 120:14, 124:25, 126:22, 129:2,	138:24, 140:6, 140:13, 141:13, 142:1, 142:7, 143:11, 143:18, 145:10, 145:14, 146:4, 155:25, 157:24, 158:4, 160:11, 162:9, 162:14, 163:3, 183:7, 206:4, 206:18, 207:1, 207:2, 212:24, 213:8, 213:10, 213:14, 214:6, 216:2, 216:8, 216:10, 216:18, 216:21, 217:2, 217:11, 219:22, 220:3, 220:15, 221:12, 222:13, 222:22, 223:15, 223:25, 225:17, 225:23, 227:14, 229:4, 230:21, 235:5, 235:25, 236:10, 236:17, 237:6, 239:22, 240:1, 240:21, 241:2, 241:6, 242:19, 242:22, 243:3, 243:9, 243:17, 244:9, 244:11, 244:17, 247:9, 249:17, 250:18, 254:2, 254:22, 256:13, 259:8, 260:11, 260:21, 261:3, 261:16, 261:21, 262:5, 262:8, 262:15, 262:20, 263:2, 263:13, 269:12, 269:16, 271:16, 271:21, 273:6, 273:15, 273:22, 274:11, 274:13, 274:17, 275:1, 275:6, 275:13, 276:6, 276:10, 276:17, 277:2, 277:24, 278:3, 288:6, 288:9, 291:22, 296:12, 297:8, 336:10, 336:12, 337:11, 341:2, 347:15, 347:17, 347:25, 348:7, 351:1, 351:9, 357:24, 359:24, 361:16, 371:17, 373:16, 377:10, 377:25, 378:12, 378:18, 379:9, 379:20, 380:4, 381:24, 382:5, 382:8, 382:12, 382:15, 383:14, 385:17,

403:12, 416:14, 416:22 tillman [1] - 1:15 Tillman [18] - 6:18, 18:6, 18:25, 29:8, 29:11, 33:11, 49:22, 98:24, 99:1, 131:15, 194:9, 231:6, 278:6, 298:9, 392:10, 392:14, 395:22, 402:2 Tillman's [1] - 192:4 timeline [1] - 111:12 tiny [3] - 59:25, 171:24, 182:23 tip [5] - 22:22, 23:2, 23:10, 408:19, 408:23 tipping [1] - 22:20 tips [1] - 22:17 tired [1] - 405:11 title [52] - 18:11, 33:9, 33:10, 33:14, 40:8, 40:10, 40:11, 40:18, 40:21, 40:23, 40:24, 45:11, 45:13, 45:14, 45:18, 47:9, 50:1, 51:6, 51:7, 51:21, 51:23, 56:17, 76:21, 142:9, 159:10, 253:17, 284:24, 284:25, 286:2, 286:5, 288:11, 288:13, 305:8, 305:9, 342:25, 344:25, 346:23, 347:10, 347:21, 348:8, 349:8, 349:10, 349:16, 349:18, 349:24, 350:21, 351:10, 358:5, 362:11, 410:18, 410:20 Title [3] - 3:3, 3:5, 3:22 titled [1] - 146:25 titles [1] - 386:14 today [46] - 15:23, 18:4, 21:3, 29:23, 31:16, 31:17, 31:23, 32:6, 32:21, 33:13, 36:8, 82:15, 91:16, 94:18, 96:5, 100:11, 100:19, 101:5, 101:18, 137:7, 161:13, 161:15, 183:4, 183:13, 183:18, 183:20, 185:18, 189:7, 189:13, 193:14, 204:10, 215:10, 231:8, 231:10, 232:17, 265:10,	272:23, 295:23, 305:20, 326:19, 331:8, 338:4, 362:4, 367:2, 380:16, 396:2 toe [1] - 36:3 together [11] - 188:16, 188:17, 188:18, 366:13, 374:13, 383:23, 397:10, 398:3, 405:9, 416:20, 417:15 token [2] - 285:22, 412:20 tomorrow [12] - 6:6, 6:11, 14:20, 15:16, 15:24, 15:25, 16:11, 215:12, 215:20, 383:9, 384:11, 384:17 tone [1] - 75:21 Tony [1] - 122:3 took [44] - 20:11, 33:9, 33:10, 33:14, 51:6, 51:7, 51:21, 51:23, 52:4, 67:23, 73:19, 80:1, 80:8, 152:9, 157:21, 163:11, 175:7, 181:18, 181:20, 192:5, 192:11, 202:3, 210:17, 218:15, 218:17, 225:8, 269:3, 284:5, 284:10, 300:5, 301:14, 304:8, 307:15, 311:15, 314:8, 320:12, 332:21, 333:3, 346:23, 347:1, 353:1, 401:21, 406:17, 421:3 tools [1] - 210:11 top [6] - 139:7, 153:17, 162:2, 163:21, 173:4 topographical [3] - 116:18, 144:5, 168:9 topographically [1] - 116:9 topography [11] - 185:20, 186:17, 208:3, 208:4, 209:5, 314:21, 315:2, 336:5, 336:22, 396:25 tops [2] - 177:3, 177:10 tore [2] - 224:23, 228:19 torn [2] - 124:24, 271:2 tort [1] - 280:16 tossed [1] - 267:16 total [6] - 201:13,	201:22, 202:20, 203:10, 203:25, 319:12 totally [2] - 72:22, 416:4 toto [1] - 18:20 touch [1] - 304:7 touched [4] - 23:24, 24:7, 39:9, 406:7 tours [1] - 35:17 toward [10] - 71:22, 109:21, 112:16, 115:10, 117:7, 117:13, 185:22, 186:7, 186:8, 315:4 towards [4] - 131:19, 174:14, 304:3, 338:7 towel [2] - 210:24, 338:18 towels [3] - 188:12, 188:21, 397:11 Town [1] - 359:12 town [10] - 8:11, 252:3, 253:20, 285:23, 307:1, 307:13, 308:6, 320:25, 359:18, 372:17 track [2] - 124:9, 257:18 tracks [2] - 124:9, 252:10 tract [2] - 41:24, 52:10 traffic [1] - 215:11 trained [3] - 107:22, 108:5, 110:25 training [5] - 39:13, 142:16, 142:17, 142:19, 409:16 trains [1] - 107:13 TRANSCRIPT [1] - 1:5 transcript [2] - 4:8, 424:5 transferred [1] - 218:6 transfers [2] - 31:21, 386:15 transitional [1] - 160:6 transmission [2] - 136:16, 136:19 transpire [1] - 61:6 transport [1] - 150:10 transports [1] - 195:20 trapped [1] - 227:24 Trappist [1] - 300:12	trauma [1] - 266:21 Tread [1] - 7:16 tree [13] - 85:25, 161:9, 171:21, 248:17, 248:18, 248:22, 255:23, 256:7, 331:11, 339:18, 339:19, 395:10, 396:18 trees [20] - 85:25, 86:3, 161:8, 176:12, 176:14, 201:4, 202:10, 248:16, 248:17, 277:14, 278:8, 278:9, 309:18, 311:8, 316:20, 323:18, 324:6, 331:10, 339:24 tremendously [1] - 128:15 trench [3] - 211:14, 211:15 trenches [1] - 227:2 trespass [67] - 19:3, 19:19, 26:15, 26:16, 26:18, 35:25, 36:4, 38:23, 264:12, 264:15, 264:16, 265:5, 267:7, 269:17, 269:20, 269:22, 270:16, 270:19, 271:8, 271:12, 271:22, 271:24, 273:17, 274:5, 275:9, 277:1, 277:2, 277:4, 277:13, 277:17, 278:17, 280:15, 280:17, 281:1, 281:11, 281:14, 281:16, 283:21, 284:2, 284:5, 284:10, 284:11, 289:13, 290:5, 290:8, 293:10, 294:16, 379:24, 380:2, 380:8, 380:14, 381:3, 381:7, 381:12, 381:18, 382:1, 382:2, 400:15, 400:16, 402:22, 411:16, 412:19, 413:2, 413:3, 413:16 trespassed [6] - 35:6, 270:11, 271:2, 272:1, 287:3, 411:15 trespassing [2] - 265:3, 287:20 trial [45] - 5:10, 15:2, 15:3, 15:6, 15:7, 15:10, 17:5, 20:3, 22:14, 22:23, 22:25,	24:13, 24:16, 24:19, 26:14, 26:20, 26:21, 26:24, 27:5, 40:3, 146:2, 183:17, 187:3, 221:10, 263:17, 291:14, 374:9, 378:21, 384:22, 385:18, 405:24, 406:1, 406:2, 406:5, 406:24, 407:5, 407:12, 408:9, 408:17, 409:6, 420:23, 423:9, 423:16, 424:6 trials [3] - 28:15, 385:2, 422:21 trick [1] - 390:8 trickle [1] - 154:16 tried [13] - 83:5, 84:9, 88:15, 229:3, 247:8, 268:14, 272:19, 367:10, 367:12, 369:20, 376:2, 389:16, 400:11 triple [1] - 109:15 troops [2] - 108:24, 109:21 trouble [2] - 191:25, 302:3 trough [24] - 151:6, 151:7, 151:17, 151:21, 178:3, 178:4, 185:25, 186:19, 196:10, 196:13, 196:14, 197:3, 197:25, 198:4, 198:9, 198:12, 198:18, 199:11, 209:20, 318:19, 318:20 troughs [5] - 151:14, 151:25, 318:15, 396:22 truck [1] - 127:24 truck's [1] - 127:18 truckloads [1] - 116:11 trucks [2] - 127:20, 127:21 true [17] - 22:6, 32:18, 173:25, 180:5, 207:12, 222:23, 222:24, 224:11, 230:2, 261:21, 279:5, 344:12, 357:16, 400:12, 400:13, 408:16, 424:4 truly [1] - 177:12 trust [1] - 305:12 truth [7] - 26:8, 60:23, 61:3, 66:11,

239:20, 407:4, 407:10 try [3] - 14:15, 15:11, 20:21, 28:22, 70:22, 83:6, 105:4, 105:15, 105:16, 105:19, 109:3, 156:18, 167:23, 174:8, 209:9, 215:18, 246:17, 262:23, 276:23, 307:12, 309:17, 327:14, 328:23, 342:18, 375:5, 403:15, 418:18, 418:22, 418:24, 419:3, 419:5, 419:6, 420:21 trying [3] - 5:22, 22:6, 28:16, 28:18, 62:21, 89:20, 95:7, 99:24, 100:11, 102:23, 128:21, 132:18, 164:8, 176:24, 181:14, 213:6, 220:10, 259:21, 272:8, 272:12, 273:25, 274:4, 286:23, 300:9, 300:25, 326:12, 327:19, 342:20, 353:6, 353:8, 374:11, 403:16, 403:21 Tuesday [2] - 82:15, 82:16 turf [3] - 199:1, 200:6, 202:17 turn [4] - 29:6, 91:6, 91:9, 181:24 turned [3] - 16:16, 109:6, 170:3, 182:13 turning [2] - 169:24, 397:7 turns [1] - 212:2 TV [8] - 20:17, 20:19, 21:2, 150:6, 177:16, 181:21 twenty [2] - 125:3, 374:17 twenty-nine [1] - 374:17 twenty-two [1] - 125:3 twice [1] - 117:22 twitter [1] - 15:5 two [74] - 5:10, 6:19, 9:1, 10:9, 11:8, 11:18, 11:19, 20:23, 21:4, 22:13, 26:13, 45:20, 48:23, 50:5, 65:3, 93:7, 109:23, 110:2, 114:15, 117:12,	120:9, 121:13, 121:15, 125:3, 127:16, 127:17, 129:10, 129:12, 140:21, 144:6, 150:9, 151:1, 152:19, 154:25, 167:17, 170:14, 176:20, 188:3, 188:5, 188:17, 197:13, 199:16, 207:14, 210:24, 218:16, 218:19, 224:12, 229:7, 251:12, 253:10, 261:8, 295:16, 299:5, 302:5, 302:24, 315:11, 318:10, 338:21, 342:10, 350:8, 358:13, 358:15, 358:21, 363:5, 364:11, 370:16, 374:18, 384:4, 394:24, 397:9, 397:10, 409:5, 414:18, 414:22 Two [1] - 44:20 two-dimensional [1] - 144:6 two-fold [1] - 26:13 two-rung [1] - 109:23 two-year [1] - 152:19 type [10] - 92:24, 185:5, 189:6, 199:14, 309:18, 364:5, 376:17, 408:11, 421:25 types [5] - 20:23, 299:12, 316:5, 316:19, 409:5 typical [2] - 82:7, 149:22	134:19, 414:16, 416:5, 417:10, 417:19, 418:16, 418:24, 419:20 unanimously [1] - 313:23 unartful [2] - 131:20, 185:3 unauthorized [1] - 412:11 uncompleted [1] - 223:8 uncontradicted [1] - 408:5 uncontroverted [2] - 392:24, 396:12 under [35] - 16:21, 23:23, 28:9, 33:13, 48:25, 52:10, 160:4, 160:9, 199:7, 207:16, 223:11, 232:14, 268:10, 268:16, 272:2, 274:19, 286:6, 287:18, 288:9, 292:11, 294:16, 295:13, 295:14, 297:19, 335:6, 352:14, 352:23, 372:18, 373:21, 395:13, 399:13, 406:17, 413:12, 413:23, 414:9 under-draining [1] - 207:16 undergraduate [1] - 301:21 underground [5] - 252:1, 252:17, 312:5, 338:13, 342:8, 358:19 undermine [1] - 238:8 undermines [1] - 361:15 underneath [5] - 58:22, 112:19, 112:22, 164:1, 210:11 undersigned [1] - 424:1 understood [10] - 23:24, 30:2, 30:6, 197:11, 197:13, 249:22, 309:14, 341:14, 388:1 undertake [1] - 276:22 undertaken [1] - 276:12 underwater [1] - 363:6 undeveloped [1] -	208:2 undisputed [1] - 408:3 undulating [1] - 362:24 unequivocal [1] - 411:13 unfinished [1] - 223:18 unfolded [1] - 327:25 unfortunately [4] - 70:13, 81:12, 153:5, 168:1 uniform [2] - 169:4, 179:20 Uniform [1] - 231:21 uniformly [1] - 200:2 unilateral [3] - 54:7, 238:24, 290:25 unilaterally [1] - 43:23, 46:10, 46:15, 47:4, 47:5, 47:19, 52:18, 53:21, 140:8, 387:3, 387:6 unimproved [1] - 308:21 unintended [14] - 154:20, 155:2, 155:3, 190:2, 190:5, 190:9, 190:12, 190:25, 197:19, 212:16, 212:21, 213:3, 213:4, 397:13 unique [2] - 221:19, 233:19 United [3] - 142:16, 395:24, 421:21 universally [2] - 174:1, 185:10 University [5] - 9:11, 185:12, 218:16, 218:17, 300:3, 300:20 unless [9] - 16:1, 33:24, 130:8, 194:23, 284:18, 290:5, 291:13, 293:23, 382:5 unmistakable [1] - 411:7 unquote [2] - 324:13, 369:8 unreasonably [1] - 414:11 unrefutable [1] - 402:3 unsigned [2] - 222:14, 223:7 unwarranted [1] - 412:7 unwilling [1] - 70:22 up [268] - 5:11, 5:24,	6:10, 13:19, 15:8, 16:3, 16:5, 16:11, 17:1, 17:14, 23:20, 23:23, 24:17, 25:6, 25:20, 26:3, 27:9, 27:19, 30:13, 30:24, 31:6, 31:12, 33:20, 35:8, 39:10, 45:2, 55:14, 59:2, 68:12, 70:9, 71:24, 72:19, 73:21, 76:24, 77:2, 77:4, 77:6, 77:11, 77:17, 77:21, 77:22, 78:7, 78:8, 81:12, 81:13, 83:5, 83:6, 83:22, 84:10, 84:13, 86:24, 89:17, 96:25, 97:2, 104:22, 109:16, 109:17, 109:20, 111:5, 111:6, 111:7, 113:1, 113:21, 113:23, 115:9, 115:11, 115:24, 116:7, 116:8, 116:13, 120:4, 120:15, 121:5, 122:24, 122:25, 123:3, 123:11, 123:17, 123:19, 123:21, 123:25, 124:3, 124:10, 124:21, 124:22, 124:24, 125:5, 125:6, 125:10, 125:21, 125:22, 125:23, 126:3, 126:5, 127:17, 127:22, 129:13, 131:19, 136:1, 136:7, 136:8, 136:14, 137:23, 138:1, 149:20, 154:20, 154:22, 155:5, 157:7, 164:9, 166:9, 166:14, 167:19, 168:8, 169:1, 170:12, 170:23, 171:16, 171:20, 172:12, 173:5, 173:24, 175:15, 176:1, 176:13, 176:14, 177:2, 178:12, 180:7, 180:10, 186:22, 187:11, 197:1, 199:13, 200:15, 201:17, 208:7, 210:21, 212:14, 212:17, 213:17, 214:2, 224:23, 226:22, 229:14, 230:7, 232:22, 233:1, 236:24, 237:8, 237:13, 239:7,

177:2, 177:7, 177:14, 177:18, 177:20, 177:21, 177:24, 178:1, 178:13, 179:25, 180:1, 181:20, 183:2, 185:1, 185:5, 188:11, 189:11, 189:17, 189:18, 190:15, 193:4, 193:5, 193:15, 193:17, 193:18, 195:20, 195:23, 199:22, 200:1, 200:7, 200:18, 200:21, 200:23, 201:9, 201:23, 202:1, 202:8, 202:11, 202:21, 203:2, 203:15, 203:18, 204:22, 207:9, 207:17, 207:25, 208:7, 208:11, 208:14, 208:17, 208:18, 210:20, 211:1, 211:4, 211:6, 211:10, 211:12, 211:15, 211:18, 212:5, 212:17, 214:16, 214:17, 225:12, 227:23, 228:9, 235:17, 275:12, 317:6, 317:16, 317:18, 318:5, 319:7, 319:24, 319:25, 320:7, 320:22, 321:6, 321:8, 321:10, 321:20, 322:13, 336:1, 336:6, 336:7, 338:5, 338:9, 338:14, 338:20, 338:22, 338:25, 339:2, 339:10, 339:15, 340:1, 340:2, 340:3, 340:5, 340:9, 340:11, 363:13, 365:11, 365:12, 369:19, 372:21, 373:1, 373:13, 376:13, 376:16, 376:20, 377:19, 388:16, 388:18, 388:23, 389:3, 389:5, 389:15, 396:3, 396:20, 397:5, 402:9, 403:18, 403:23 waterbed [1] - 154:21 wave [1] - 151:7 ways [4] - 48:10, 150:9, 299:5, 300:21, 312:11, 333:16, 343:4, 343:13	wayside [1] - 291:11 weather [2] - 176:1, 321:1 wedge [1] - 374:11 week [16] - 55:19, 234:11, 330:17, 330:18, 377:17, 392:7, 407:7, 420:15, 421:6, 421:16, 421:24, 422:9, 422:12, 422:13, 423:21 weekend [9] - 82:13, 100:24, 101:2, 175:25, 339:25, 377:13 weekends [1] - 303:3 weeks [4] - 5:10, 71:20, 110:2, 218:19 weight [18] - 22:4, 22:15, 22:19, 39:24, 40:1, 146:1, 221:9, 407:4, 408:7, 408:13, 409:4, 409:20, 410:3, 411:17, 413:15, 413:19 welcome [8] - 5:3, 141:24, 216:24, 236:8, 297:13, 337:1, 337:6, 384:21 well-manicured [1] - 173:19 Wells [10] - 2:10, 8:14, 323:23, 328:14, 361:21, 362:4, 366:22, 389:20, 394:22, 401:3 wells [15] - 184:22, 295:14, 370:23, 371:13, 371:18, 373:21, 380:9, 393:16, 397:24, 401:4, 401:7, 401:17, 401:19, 401:21, 402:4 WELLS [1] - 361:24 Wells' [2] - 323:24, 323:25 wet [1] - 180:2 wetlands [1] - 203:23 Wheeler [1] - 399:3 whereas [1] - 186:6 wherewithal [1] - 33:18 whichever [1] - 43:7 Whitney [13] - 154:7, 154:8, 158:17, 159:3, 159:4, 164:6, 209:8, 255:16, 310:18, 310:20, 329:24,	334:24, 394:11 whole [10] - 148:25, 167:5, 167:6, 202:23, 223:5, 246:1, 313:5, 371:5, 408:14, 423:3 wide [4] - 93:3, 147:5, 147:25, 212:13 wife [14] - 128:11, 131:24, 135:12, 137:9, 301:21, 302:14, 302:17, 307:19, 311:11, 326:21, 339:3, 339:13, 375:23 wife's [1] - 130:23 wild [1] - 400:6 Wilders [1] - 13:21 willful [1] - 274:6 willfully [1] - 287:16 willfulness [1] - 288:24 Williamson [1] - 52:12 willig [10] - 18:5, 28:17, 70:11, 88:6, 230:6, 283:3, 317:5, 329:17, 413:4, 413:5 willingness [2] - 31:23, 32:2 wills [1] - 298:24 willy [1] - 52:3 wind [1] - 339:20 wing [2] - 107:17, 109:5 wings [2] - 107:14, 107:16 Winston [13] - 32:10, 257:16, 298:8, 298:12, 298:18, 298:22, 301:15, 302:21, 303:9, 321:22, 330:20, 374:23, 375:10 Winston-Salem [10] - 32:10, 257:16, 298:8, 298:12, 298:18, 298:22, 301:15, 302:21, 321:22, 330:20 wiped [1] - 284:3 wise [3] - 180:7, 295:10, 295:11 wish [1] - 38:2 wishes [1] - 316:11 withdraw [3] - 51:5, 67:11, 161:23 withdrawal [3] - 253:12, 253:18, 399:2 Withdrawal [1] - 4:5 withdrawing [2] -	258:10, 329:5 withdrawn [4] - 268:15, 360:8, 360:10, 399:2 withdrew [1] - 268:9 witness [52] - 6:7, 17:16, 17:23, 24:7, 24:10, 25:2, 25:9, 27:23, 36:10, 37:20, 38:14, 39:20, 49:10, 50:20, 55:3, 65:25, 66:10, 72:9, 73:17, 105:13, 105:25, 116:21, 141:18, 141:25, 145:5, 145:6, 145:23, 203:21, 216:1, 216:17, 216:20, 217:1, 221:8, 236:9, 237:5, 262:19, 295:10, 295:11, 297:15, 332:18, 361:20, 389:19, 391:24, 407:12, 407:14, 407:15, 407:17, 407:18, 407:21, 407:24 WITNESS [42] - 2:2, 36:16, 42:19, 55:2, 55:10, 80:20, 81:5, 119:23, 123:24, 124:19, 135:2, 141:11, 155:17, 160:24, 161:2, 161:14, 161:16, 161:21, 162:1, 162:8, 162:13, 162:20, 162:22, 163:9, 206:1, 206:17, 217:8, 220:21, 222:16, 227:9, 235:22, 236:5, 236:7, 238:3, 243:2, 244:5, 247:5, 249:14, 259:7, 297:20, 351:8, 361:19 witness's [2] - 40:2, 407:19 witness-wise [2] - 295:10, 295:11 witnessed [1] - 190:7 witnesses [25] - 5:15, 8:7, 23:21, 25:1, 25:12, 39:8, 39:10, 39:23, 145:23, 221:7, 262:21, 263:12, 295:16, 296:15, 373:25, 378:5, 407:7, 407:11, 407:13, 408:1, 408:4, 409:2, 409:12, 409:14	woefully [1] - 81:12 woman [1] - 72:13 wonder [3] - 399:11, 420:12, 423:11 wooded [1] - 201:3 word [9] - 21:6, 27:10, 147:20, 185:16, 205:19, 399:23, 399:24, 400:22, 416:9 worded [1] - 258:20 words [16] - 24:19, 40:23, 52:14, 53:18, 81:14, 90:14, 122:6, 131:10, 136:16, 137:19, 194:15, 404:5, 404:16, 409:25, 414:2, 414:16 works [1] - 396:5 world [11] - 108:16, 210:8, 230:5, 299:1, 370:11, 391:13, 392:19, 418:19, 421:21, 422:6, 422:8 worried [2] - 76:10, 128:23 worry [1] - 77:21 worrying [1] - 76:5 worse [1] - 282:14 worst [1] - 108:25 worth [23] - 86:17, 86:21, 94:6, 101:18, 127:18, 128:14, 128:18, 234:16, 234:20, 247:13, 248:8, 265:10, 274:25, 275:5, 275:11, 278:15, 282:21, 282:23, 391:3, 391:4, 391:6, 400:23 wrapped [1] - 188:21 wrapping [1] - 375:10 wreck [1] - 6:8 write [5] - 20:3, 226:22, 229:14, 232:22, 415:4 write-up [3] - 226:22, 229:14, 232:22 writing [1] - 410:19 written [12] - 38:12, 48:23, 52:25, 53:2, 99:10, 121:6, 221:24, 234:13, 246:10, 309:7, 321:21, 410:7 wrongdoing [3] - 21:25, 267:1, 267:18 wrongful [1] - 277:12 wrote [3] - 93:12,

194:12, 321:13	218:5, 247:18, 249:15, 299:19, 300:5, 308:18, 311:15, 335:1, 339:8, 421:8	60:6, 62:4, 157:10, 231:25, 418:6, 418:7, 418:9
Y	Z	
y'all [ɪ] - 7:1, 10:17, 16:10, 16:24, 97:12, 105:18, 215:25, 303:3, 383:21, 418:14, 418:16 Y-a-t-e-s [ɪ] - 36:17 yard [ɹ] - 29:25, 35:19, 53:24, 53:25, 56:20, 57:2, 57:12, 57:15, 57:18, 79:18, 80:15, 81:16, 81:20, 82:3, 82:7, 85:7, 86:9, 86:22, 87:14, 87:17, 88:8, 127:13, 128:10, 128:14, 132:2, 132:4, 175:15, 175:24, 176:21, 178:3, 190:15, 207:10, 226:12, 226:13, 226:15, 235:17, 236:25, 237:9, 255:21, 257:3, 275:21, 275:24, 276:24, 318:11, 319:7, 320:22, 321:7, 321:8, 321:9, 336:3, 337:22, 338:5, 338:9, 339:7, 340:1, 340:2, 345:24, 347:2, 354:13, 358:20, 372:25, 376:17, 385:24, 385:25, 386:22, 387:23, 388:6, 388:10, 388:13, 388:22, 396:3, 404:20, 405:21 yards [ɹ] - 111:24, 385:25, 404:21 YATES [ɪ] - 36:12 Yates [ɹ] - 2:3, 8:10, 17:21, 17:24, 31:18, 36:11, 36:17, 36:19, 38:12, 38:15, 38:17, 49:13, 50:6, 50:19, 53:13, 53:18, 54:15, 139:17, 140:3, 269:24, 279:18, 386:13, 386:25, 387:4, 387:7, 387:18 year [ɹ] - 56:11, 100:7, 106:21, 106:25, 107:2, 110:5, 142:23, 148:15, 152:2, 152:17, 152:19, 176:7, 176:9, 176:10, 217:17,	years [ɹ] - 9:14, 28:24, 30:8, 30:11, 32:10, 33:17, 37:1, 37:21, 38:18, 55:16, 91:11, 106:17, 110:3, 111:10, 111:22, 114:18, 115:8, 118:1, 133:23, 143:25, 159:7, 161:16, 176:6, 176:9, 184:10, 184:12, 210:6, 217:16, 218:22, 219:14, 219:17, 219:19, 219:20, 220:4, 220:7, 227:13, 232:12, 234:14, 264:22, 266:1, 266:15, 271:9, 283:19, 284:5, 287:3, 295:2, 298:20, 299:18, 301:5, 301:17, 302:23, 302:24, 303:8, 303:10, 308:3, 363:8, 365:11, 370:12, 374:15, 374:18, 386:13, 389:3, 394:18, 394:22, 394:23, 399:15, 399:17, 399:21, 401:6, 402:13, 421:10 yelling [ɪ] - 337:19 yesterday [ɹ] - 32:2, 32:7, 86:25, 229:3, 229:17, 231:16, 234:15, 234:19, 234:20, 235:6, 235:14, 241:14, 254:5, 265:8, 268:22, 314:17, 314:23, 315:10, 317:14, 318:3, 318:14, 318:22, 326:19, 327:16, 328:6, 328:11, 338:12, 362:23, 365:7, 372:24, 393:17, 394:22, 401:3 yesterdays [ɪ] - 248:18 York [ɪ] - 111:9 Young [ɹ] - 1:12, 5:4, 32:1, 32:7, 35:23, 399:18, 402:1 yourself [ɹ] - 55:13,	zero [ɪ] - 265:1 zone [z] - 45:21, 45:25, 46:2, 46:3, 46:4, 46:13, 48:1, 48:21, 53:20, 134:10, 147:13, 152:7, 155:24, 169:8, 169:9, 200:4, 236:21, 246:3, 246:13, 306:25, 307:14, 313:15, 345:25, 382:22 zoning [ɪ] - 224:8