

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

G. Thomas Cooper, Circuit Court Judge
Jocelyn Newman, Circuit Judge

APPELLATE CASE NO. 2018-000948
CASE NO. 2015-CP-40-5598

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SC Court of Appeals

Modesta Brinkman, David
Brinkman, James Coleman,
Carl Foster, Karen Foster,
Robert Collins,

Appellants,

v.

City of Columbia, South
Carolina, North American
Pipeline Management and
Layne Inliner,

Respondents.

RECORD ON APPEAL

VOLUME II

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RECORD ON APPEAL

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1 with Layne Inliner on the project, Layne Inliner tendered
 2 to FCCI requesting coverage as an additional insured under
 3 the policy that FCCI had issued to North American Pipeline
 4 which FCCI, under a reservation of rights, accepted the
 5 tender. So FCCI is defending both its name insured, North
 6 American Pipeline and Layne Inliner as an additional
 7 insured. And so the drilling, a little more into the
 8 details, the Plaintiffs, December 16th, 2015 amended
 9 complaint and I am going to focus on the causes of action
 10 as they relate to North American Pipeline and Layne
 11 because those are the two parties that this motion most
 12 directly focuses on. The Plaintiffs causes of action as
 13 against North American Pipeline and Layne Inliner are
 14 trespass. Basically the allegation is that one or both of
 15 them did work outside of the easement. There is also a
 16 cause of action for gross negligence as against those two
 17 which is based upon an alleged breach of duty to obtain
 18 permits prior to commencing the construction. And in
 19 conjunction with that then the allegation being the
 20 permits would have identified these archeological
 21 structures that were impacted, allegedly impacted by the
 22 work. A third cause of action as against North American
 23 and Layne is nuisance. Fourth, there is a cause of action
 24 stated against them for destruction of archeological
 25 structures. And then a fifth cause of action stated as a

1 negligence per se, again, tied to the alleged failure to
2 obtain permits. Outside of the pleadings, the pleadings
3 don't directly discuss this. There have been allegations
4 that the Plaintiffs have, or at least one or two of them
5 may have sustained damage to their property in the form of
6 erosion of this hill near where the work was done. And
7 one or two of them allege issues resulting from that work,
8 damage to foundation of one of the homes and, I think, a
9 deck or patio to one of the homes. And so the, the reason
10 then that FCCI is seeking intervention under Rule 24 of
11 the South Carolina Rules of Civil Procedure and what we
12 are seeking is a limited intervention. We have not sought
13 to participate in discovery, we are not seeking to be an
14 active participant in the trial of the case. We are not
15 seeking to be named or identified during the trial of the
16 case. But what we are seeking is to be able to
17 participate in the phase of the trial before the trial
18 Judge in which, basically at the time of the charge
19 conference, for the purpose of submitting special
20 interrogatories and probably more pertinently a special
21 verdict form. And the reason for that is, is that we
22 believe that, and again it is a little hard to tell based
23 upon the pleadings and the way the evidence has or has not
24 come out during discovery. And so, I am not exactly sure
25 what these special interrogatories or the verdict form

1 would look like as we sit here today because that would
2 largely depend on what evidence the Plaintiffs put up
3 during the case. But I can talk to that in a moment as to
4 what I think that might end up looking like. But we are
5 looking to intervene pursuant to Rule 24 on that limited
6 basis because of what we believe is a dictate pursuant to
7 recent case law, most recently the Harleysville v.
8 Heritage case from last year, the final opinion coming out
9 in July of last year. And then before that the Auto
10 Owners versus Newman case. We believe both of those cases
11 stand for the proposition that a liability insurer,
12 pursuant to that case law, is under the obligation to make
13 the motion that we are making because those cases talk
14 about the insurer having a duty to seek an allocated
15 verdict. In the, both in the Newman situation and in the
16 Heritage versus Harleysville situation, what the Court was
17 dealing with was general verdicts. And then, in the,
18 subsequent to the general verdicts, in the context of
19 declaratory judgment actions concerning insurance coverage
20 the question was, well, what does a Court do with a
21 general verdict when a liability insurance carrier is
22 arguing that some of this is covered and some of it isn't.
23 And the Court said, its too late now, you are responsible
24 for payment of the entire general verdict because there
25 was no allocation between covered and non-covered damages

1 under the policies. And so what we are seeking here from
2 Your Honor is an order allowing an intervention in this
3 case such that we can avoid the situation that the
4 insurers and the other parties faced in the post-judgment
5 DJ actions that were taken up in the Harleysville v.
6 Heritage and in the Newman cases. As far as the
7 requirements under Rule 24, we believe that all four of
8 those requirements are met here as far as the legal
9 standard. As timeliness goes, we filed this motion in
10 October, the trial is in a couple of weeks. We take the
11 position that our intervening, are seeking to intervene
12 for the limited purpose of, that we are seeking will not
13 alter discovery. Again, we are not trying to be part of
14 discovery, we are not trying to be an active part of how
15 evidence is put up during the trial. And so it does not
16 affect the current parties to the case in any manner. The
17 second requirement under Rule 24 is an interest related to
18 the underlying transaction. The property that is subject
19 to the action, again that goes to what we believe the
20 discussion in both the Harleysville v. Heritage cases and
21 the Auto Owners versus Newman cases are, at the allocation
22 as to damages that would be covered potentially by the
23 Commercial General Liability Insurance policy and those
24 that are not. And per Harleysville versus Heritage, the
25 underlying trial is the time for the liability insurance

1 carrier to seek such an allocation and not after the fact
2 and any post-judgment, declaratory judgment action. And
3 similarly, Auto Owners versus Newman contains language
4 indicating the carrier has a responsibility in the
5 underlying action to seek the allocation of damages.
6 Harleysville, the Harleysville v. Heritage opinion
7 contains verbiage where it talks about the carrier and
8 having the right to control the litigation and that
9 includes the duty not to prejudice its insured. And that
10 by failing request special interrogatories, by failing to
11 seek an apportionment of damages, that is what is
12 happening. And the Court there said, the burden on
13 apportioning damages is not on the insured, its on the
14 insurance company. The third step under Rule 24, without
15 intervention would there be an impeding of the ability to
16 protect the interest. Again, we think that without
17 intervention that there could be a situation like there
18 was in Auto Owners versus Newman, like there was in
19 Harleysville v. Heritage of a general verdict with no way
20 to allocate it. And finally the fourth prong of the Rule
21 are, are the interest that we are seeking to interject on
22 behalf of FCCI Insurance Company already are represented,
23 we would submit that they are not. While FCCI has
24 retained Defense Counsel to represent its named insured
25 and to represent the additional insured, those Defense

1 attorneys are not in the position to put forth these
2 issues because their clients are North American Pipeline
3 and Layne Inliner. And so, they can't get involved in the
4 issue of allocation between potentially covered and
5 potentially non-covered damages. We also think that this
6 case is a little different than some of the other cases
7 where these types of motions have been made recently and
8 that is because the City of Columbia is a party in this
9 case which we would submit under South Carolina Code
10 15-78-100, already requires the use of a special verdict
11 form when a Municipality is a co-defendant alongside other
12 alleged tortfeasor's. That statute calls for a special
13 verdict apportioning, proportion monetary liability of
14 each Defendant. So that is the basic premise behind our
15 argument. What then we would be seeking is, is
16 essentially a verdict form and this is how we think it
17 looks at this point and time without knowing what the
18 evidence at trial actually is going to be and which causes
19 of action the Plaintiffs at trial are going to pursue and
20 which they are not. But if we are looking at it, as we
21 sit here today, based solely upon the most recent amended
22 complaint, we would envision it as looking something like
23 a special verdict form listing out each cause of action,
24 asking whether each, well, whether any Defendant is liable
25 for the cause of action. If so, which one. If so, the

1 total amount of damages assessed as to each particular
2 claim. And if so, the total amount of the damages
3 allocated under each claim to each party. If there is a
4 cause of action and evidence as to the issue of erosion
5 that, and again, we don't know where that falls under the
6 current causes of action but that seems to have been the
7 topic of some of the recent expert discovery. And it
8 would certainly, at least part of the discussion to date,
9 there might need to be a further question about if that is
10 progressive damage, when did it start, if it has seized,
11 when did it cease, and drilling down a little bit more on
12 the cost to repair those items in more specificity. Your
13 Honor, I realize that I submitted a memorandum in support
14 of the motion last week. I believe we submitted it to the
15 wrong place. I would like to hand Your Honor up--

16 THE COURT: I received it, it made its way to me.

17 MR. FLYNN: I certainly apologize for the error on
18 that. So, hopefully that gives a little more of the
19 background too. I am happy to answer any questions you
20 may have and would like the opportunity, if anything new
21 comes up to respond.

22 THE COURT: Sure. Okay, let me hear--

23 MR. DUDLEY: Your Honor, I am Tom Dudley, I represent
24 North American Pipeline Management. And we are the
25 subcontractor. So we are low man on the totem pole, boots

1 on the ground but yet we are taking lead on this. But
2 correctly so because Mr. Flynn's client is our insured,
3 our insurer, we are the insured. And I want to start our
4 argument off with this, this is not a construction defect
5 case. But that is, the implication of that I will wrap up
6 here in the end but I want to start off with that. There
7 has been no cross-claims against my client that the work
8 that they did was defective in and of itself, that it was
9 done in violation of the building codes or it was done
10 incorrectly or was prematurely failing. There's no
11 question it has to do with the location and the providence
12 of whether that work could be there or not which is
13 actually all on the City and somebody else, that is not an
14 issue that is before you, that is going to even be an
15 issue at trial about whether or not it was defectively
16 done. I think that is very critical. And just, there is
17 a snippet part that I need to address that has nothing to
18 do with the history of this case, but has everything to do
19 with what Your Honor will need to rule on. And did you
20 receive a copy of what our, the brief we had submitted
21 before Christmas. There was a response to their's, it is
22 relatively thick and I can pop one out if you don't have
23 it.

24 THE COURT: I do not have it.

25 MR. DUDLEY: I have a copy if you want mine. Do you

1 have a spare copy. Your Honor, if I could, this is the
2 memo that we submitted. We submitted with affidavits. I
3 will bring back up, the copy I have is written all over
4 it. The exhibits are pretty critical. Because they are
5 the reservation of rights letters that the insurance
6 company submitted to my client. And it is those
7 reservation of rights letters that are important to why
8 they say they are now taking this step and the implication
9 of this new Harleysville case to whether or not this is
10 the appropriate relief that they should be seeking. And
11 more importantly, the timeliness. So there are two real
12 timeliness issues. The one is and it has to do with
13 intervention, is their motion to intervene timely. And we
14 submit to you that it was not. This lawsuit, the
15 underlying lawsuit was filed in 2015. The initial, my
16 client gave them a copy within a month. They had already
17 rejected, denied coverage in February of '15. An amended
18 complaint was issued in January of '16. They did, and
19 that is in there, the first reservation of rights letter
20 was February, excuse me, was March of '15 which is an
21 attachment which I just submitted to you. That is a
22 denial of coverage. Then there was an amended complaint
23 filed in January of '16 and then they actually picked up
24 defense of the case and then they issued a reservation of
25 rights letter that is, this is magic language, cut and

1 pasted to the policy. Here is the allegations, here is
2 what the policy says, we are going to defend you, here is
3 your attorney but no analysis and no notice that they were
4 going to seek an allocation of damages, no notice that
5 they were going to seek a declaratory judgment which,
6 again, is critical, timing part. So this year in October
7 of 2017, for the first time and on the eve of trial when
8 this case was scheduled, FCCI filed this motion to
9 intervene and at the same time filed a third reservation
10 of rights letter which is the third exhibit that I handed
11 up to you. In this reservation of rights letter they go
12 through some significant analysis of whether it is Georgia
13 law or South Carolina law and then for the first time they
14 make some attempt to analyze the real, the application of
15 the policy to the allegations in the complaint which the
16 Harleysville case from 2017, this most recent Harleysville
17 case, the Heritage case says, that's exactly what the
18 insurer has to do from the outset so the insured knows
19 what its position is, what, do we need to go get separate
20 Counsel or do we need, are we good. But the idea is and
21 there is some language in the case I would like to quote,
22 from the Harleysville case. It says, you know, without
23 the knowledge of the basis which the insured might dispute
24 coverage, the insured has no reason to act to protect its
25 own rights because it is unaware of a conflict of interest

1 that may exist. And it also talks about further analysis,
2 the insurer must specify in detail any and all bases upon
3 which it might contest coverage in the future. The
4 important part, since grounds not identified in the
5 reservation of rights letter may not be asserted later by
6 the insurer. That is critical language, that is, the
7 citation of that Harleysville case is 803 SE 2d 288, it is
8 on page 297 of that decision where the Court analyzes
9 these reservation of rights letter. They talk about these
10 cut and paste, they don't tell you anything. They just
11 cite your copy of the policy. And in fact, the two
12 exhibits that are before you, the first and second
13 reservation of rights letter by FCCI, that is all they
14 did. There is no attempt to an analysis whatsoever. The
15 third one in October, that is the one where they attempt
16 to do this and I am going to say why there is another
17 timeliness issue related to that. So the very first
18 issue, the timeliness of this motion to intervene to begin
19 with is that its too late, we are on the eve of trial,
20 discovery is done, these lawyers are ready to go. And it
21 is not as if, they want to say this Heritage case, this
22 Harleysville v. Heritage case is what triggered them to do
23 this. But they also cite the Auto Owners v. Newman case
24 which is 2009 case that says, hey, insurance companies, if
25 you are going to do something don't wait until after a

1 verdict. So if anything, they should have done something
2 well before October. And so I would assume, Mr. Flynn
3 would then say, well, wait a minute. All right, you are
4 right, timeliness, two days before trial but now you have
5 had another couple of two months to contend with this
6 motion to intervene. The problem is, is they still have
7 not told us and he still has not told us today what he
8 wants. He talks, this is going to be a special verdict
9 form and the way he described it is, how they would
10 analyze each cause of action and say how it would be
11 between each Defendant which we would say, there is
12 nothing special about that, they have to do that anyway.
13 The issue here is and what they are seeking in this third
14 reservation of rights is they don't want an allocation of
15 damages. They want an allocation dealing with coverage
16 and here is the difference. Allocation of damages would
17 be, if we were the roofer and we effectively built the
18 roof and it caused property damage inside of the house,
19 allocation of damages would be highly probative to say,
20 hey, jury, how much of the damages were to fix the roof
21 that wasn't built right and how much was for the resulting
22 damage that resulted from the roof leaking. And we would
23 say it is real easy without getting insurance involved,
24 the cost affix is not covered, resulting damage is
25 covered. There is no allocation of damage, they are not

1 seeking that. Of course, we don't know that because they
2 haven't told us anything about what they want. They just
3 want a special verdict form and what they articulate at,
4 something they may be doing anyway, still that is not an
5 allocation of damages. In the reservation of rights
6 letter and that is the important part. What they sent us
7 in October, the analysis deals with coverage issues, not
8 an allocation of damages issues but coverage issues. And
9 what they talked about is, one of the cases they talk
10 about is a Georgia case where they cite that a Georgia
11 case, a timber company goes in and cuts down wood and then
12 they get sued. And this Georgia Supreme Court, the
13 Georgia District Court in that case talks about, well, it
14 was an intentional act, they meant to go and cut down the
15 wood. Just because they didn't get the intended result
16 that doesn't make it a covered issue. And actually that's
17 an incorrect statement because that case was a bank, not
18 the property owner, sued the timber company for infringing
19 on their collateral. That is an apples and oranges. But
20 the case that they did cite and I actually have copies.
21 The case that Mr. Flynn cited was the Capital City case
22 and a case that is actually discussed in the Capital City
23 case, Your Honor, is the Hathaway case where the Georgia
24 Supreme Court has adopted the same position that our
25 Supreme Court has adopted. It says, while an intentional

1 act may not be a covered issue but it is an unintended
2 result that we would say that it is and they talk
3 specifically about defective construction. That if a
4 contractor builds something defectively and it results in
5 property damages, the unintended result part is something
6 that would be covered. So Georgia and South Carolina are
7 within one accord on the application of this. And here is
8 where there, there is this specific problem with our case.
9 The idea of intentionality, did we intend to build the
10 road that was directed for us to build. Sure, that is
11 what we did. There is no question that we intended to
12 build it defectively. The issue is, did we intend to
13 build it, we did. We were told to build it. Well, they
14 want to apply this intentionality part, and a language in
15 the reservation of rights, they keep going back to that.
16 Well, if they intended to do it, that's not covered. That
17 is crazy, that is not the state of the law in this State.
18 And so that is why the application and they call it an
19 allocation of damages. They are not seeking that in the
20 reservation of rights letter, they are talking about
21 coverage issues. And the timeliness part there is, that
22 is a DJ action. Coverage issues are for Your Honor to
23 resolve, not for a jury to resolve. And so the underlying
24 issues that they put us on notice of, late, we would
25 contend are not allocation of damages issues. They are

1 coverage issues and that's, first of all, too late. And
2 it is not the appropriate way to do that, to address those
3 issues. And, again, the better part of that is that it is
4 not consistent. What they are seeking today is not even
5 consistent with the reservation of rights letter they sent
6 us in October. Again, they want to call it an allocation
7 of damages. That is not what the reservation of rights
8 letter, they are talking about in that instance, coverage
9 issues, an application of law to what the allegations are
10 in the complaint. That is a coverage issue, that is not
11 an allocation of damages issue. That is where we contend
12 that, still they are not even letting us know. And it is
13 putting us in an unfair advantage. And they talk about,
14 well, we just want to be in the end based on what the
15 Plaintiffs have proven. Well, based on the complaint now
16 they can, just as lawyers do, we prepare jury verdict
17 forms, we prepare jury charges based on what the
18 allegations are in the complaint. And then we sift
19 through the ones that get tossed out on directed verdict.
20 They can do now and say, hey, here is what we would
21 propose, would be this special verdict form. And we may
22 look at it and go, yeah, that is fine. But they haven't
23 done that. We are still at a loss to say, to look at what
24 they are proposing and say, we would agree that that is
25 acceptable or not. That is where we are still at. We are

1 now, what, two weeks away from trial. They still won't
2 tell us what they want specifically so that we can look at
3 it and say, this is fine or this is not.

4 THE COURT: Waiting until trial, if they were allowed
5 to intervene, how does that prejudice you. I mean, I
6 understand that you could discuss this now and maybe come
7 to some agreement, maybe not. But what is the difference
8 in doing that now and allowing ECGI to intervene and doing
9 that at the time of trial and allow, of course, the Court
10 to determine or make the ultimate decision as to what is
11 appropriate.

12 MR. DUDLEY: Because I think if you look at the
13 reservation of rights letter in October of '17 and this
14 allegation, say, we just want to do an allocation of
15 damages issue. It is two different things. And so to
16 jump in on us at the end of a trial and say, we want this
17 to be the verdict form and we look at that and say, that's
18 a coverage issue, it is too late at that point. And so,
19 you know, if they tell us right now, well, this is what we
20 really want. Did they intend to do the road and therefore
21 that's, you know, that's on the nuisance and trespass
22 part, was that the intentionality, was that a part of what
23 they want the jury to enlighten them on how they arrived
24 at their verdict, arrived at their award. Then we need to
25 know that now because that is a declaratory judgment.

1 action, that's not an allocation of damages special
2 verdict form. And so that's what I want to know.

3 THE COURT: But my question is, there is still, I
4 mean it may be useless but there is still a neutral party,
5 the Court is still involved in that. And so when such
6 things are proposed at the time of trial the Court may
7 say, well, it should have been a DJ action and, you know,
8 something separate and I am not going to allow that.

9 MR. DUDLEY: To me, efficiency, especially for the
10 Court would be, they need to tell us what they want now
11 and then we can address them. Again, Mr. Flynn, he may
12 give us a list and we say, this is fine, as opposed to if
13 we wait on it, there's intervention. Maybe my client
14 needs to have, in addition to their insurance assigned
15 attorney, then I have to sit through a trial just so that
16 I can be prepared to address this thing at the end when
17 they can do it now. There is no reason they can't do it
18 now. They can say, based on the complaint this is what we
19 propose and then at the end, if the Plaintiff gets tossed
20 on some cases, well then, instead of ten causes of actions
21 now there is only eight. And so that we can deal with as
22 opposed to at the end of a trial and then have my client,
23 if you allow them to intervene and we wait to the end then
24 I think there is a possibility my client is going to want
25 me to sit in for an entire trial for what may have been no

1. reason whatsoever. They can do it now just as easily as
2. they can do it then. And now we can catch the issues of,
3. is it a coverage issue or is it truly just an allocation
4. of damages issue. And then we are done, we are good. My
5. client, they go and try their case as opposed to waiting
6. to the end and then putting everyone just, they can do it
7. now. The timeliness issue is a part of a motion to
8. intervene. So, first of all, I think it is too late. And
9. I think the reservation of rights letter is very clear
10. that what they, that they are trying to undo something
11. they should have done originally. And that Harleysville
12. case is very clear about that reservation of rights
13. letter. I think waiting to the end, the eve of trial,
14. even in October was too late and they can't undo that.
15. Again, that is where our biggest issue is, is that
16. allocation of damages is not what they are seeking in this
17. reservation of rights letter. It is really, really what
18. they want is coverage issues. And I will be happy to
19. answer any other questions Your Honor has.

20. THE COURT: Okay.

21. MR. TODD: I am Monty Todd, I represent Layne
22. Inliner. I really don't have anything to add except maybe
23. give you a little more context. Layne Inliner has this
24. technology. So when pipes, when underground pipes have to
25. be replaced, instead of having to dig them up and put in

1 new pipes, they have a technology, you go in and line the
2 pipes. It is much more efficient, it is much more cost
3 effective. So the City of Columbia contracted with my
4 client, Layne Inliner, for this lining of the pipes. And
5 basically the whole project has been put on hold by this
6 lawsuit. And so my client contracted with North American
7 Pipeline to, they are involved as a number of contractors
8 involved. But North American was involved in putting the
9 road in and gaining access so that my client could line
10 the pipes. My client actually would be the general
11 contractor. So with that context, I was involved in the
12 case early on, to the Defense to North American Pipeline.
13 They accepted the Defense and so that's, I say what he
14 said.

15 THE COURT: I understand. Anything else?

16 MR. DUDLEY: No, Your Honor.

17 THE COURT: Set for trial January 16th. I am going
18 to have to take it under advisement. I will let y'all
19 know something. Are there other motions that need to be
20 heard this morning.

21 MR. DUDLEY: If they are they are not related to us,
22 so we can move.

23 THE COURT: I will let you know something very soon,
24 understanding the trial is coming.

25 MS. LISOWSKI: Your Honor, I think there are two

1 summary judgment motions that need to be heard today. One
2 is filed by the City of Columbia. The notice of motion
3 and motion for summary judgment. They City filed this
4 motion for summary judgment back in October when we were
5 scheduled for trial at the end of October. At that time
6 the motion was, was going to be heard on the eve of trial,
7 the day of trial and then the trial got pushed off now to
8 January. So I never had an opportunity to file a
9 memorandum, I did so this morning which was my earliest
10 opportunity. I have an extra copy here, would you like a
11 copy?

12 THE COURT: Yes, please.

13 MS. LISOWSKI: And I provided a copy of the
14 memorandum to all parties of record this morning. This
15 case is somewhat complex so I will try to give you a
16 little more detail than maybe you need just so you can get
17 some context and understanding. You haven't had a hand in
18 this case yet. So I will try to give you a little bit
19 more context to understand what's going on. The City's
20 motion for summary judgment is really based, both sort of
21 general principles as a matter of law. Some of these
22 causes of actions should be bumped and the City being in
23 the unique position as one of the Defendant's, we are the
24 only Governmental entity. So, of course, we have Tort
25 Claims Act immunity that we would like to argue at this

1 point. In May of 2014 the Federal Court here in Columbia
2 entered a consent decree into court between the EPA and
3 the City of Columbia. The City of Columbia had
4 experienced sanitary sewer overflows that caught the
5 attention of the EPA who came in and after initiating an
6 action against the City crafted with the City a consent
7 decree that required that the City, beginning immediately
8 and actually before the entry of the consent decree, to
9 bring into compliance the thousands and thousands of miles
10 of sewer line that the City has in the middle of this
11 region. We reach further than just the City of Columbia,
12 we have sewer service throughout the Midlands. The goal
13 being to eliminate these sanitary sewer overflows. In
14 furtherance of the consent decree the City actually began
15 it before the entry of the decree and developed and began
16 implementing a comprehensive plan of evaluating all of
17 these sewer lines, inspecting all of these sewer lines,
18 coming up with a plan for remediation, if necessary, or a
19 placement, if necessary, of these sewer lines. As you can
20 image that is a task much too large for the City of
21 Columbia. So we set out for bid to various contractors,
22 the opportunity to do the work for the City of Columbia.
23 And that is how Weston and Sampson, Layne Inliner came to
24 partner with the City in this project. And Layne Inliner
25 then hired North American Pipeline management to assist

1 with the project as well. This project included
2 everything from going in smoke testing lines, going to
3 smoke sewer lines to see if any seeped up through the
4 ground where you know there was infiltration, visual
5 inspections with close circuit cameras run through the
6 sewer lines, manhole rehabilitation, anything you can
7 think of to repair these sewer lines. We have got to stop
8 these sanitary, the overflows, they are a health hazard,
9 they are a danger and the EPA says we got to. Now the
10 Federal Court says we got to. So we began this process
11 really before May 2014 but that would be the record date
12 of the consent decree. In February of 2015, as part of
13 this big comprehensive consent decree remediation program,
14 the City began working what the City calls West Columbia
15 basin. And that includes this Castle Road area that the
16 Plaintiffs have property in. Now these sewer lines were
17 installed in Castle Road in the 1980's, the early 1980's.
18 And the area has not been maintained, it is very rough, it
19 is sloped, it is on a slope. These property owners own
20 property sort of on the banks of the Broad River that
21 slopes down to the Broad River and these sewer lines are
22 within the area between the Broad River and these homes.
23 When the sewer lines were installed in the 1980's, these
24 property owners did not own these properties, they were
25 owned by other people. The City installed the sewer lines

1 and essentially never had to go back and do anything to
2 the sewer lines since. They have maintained their
3 integrity, there were never any problems so there was
4 never any reason for the City or any contractors up for
5 the City to go back out there and tend to these sewer
6 lines. The City, at the time that we installed the sewer
7 lines in the 1980's obtained temporary construction and
8 permanent easements. This is undisputed, there are valid
9 permanent easements running across all of the Plaintiffs
10 properties. The Plaintiffs bought their properties
11 decades after the easements were obtained, the sewer lines
12 were installed. So many decades later and they all
13 concede that they knew about the easements when they
14 purchased the property. So they were aware of the fact
15 that they had a large sewer lines running through the
16 backs of their properties. And, again, this sewer line is
17 approximately 50 feet away from the Broad River. In
18 places perhaps closer, perhaps further away, depending on
19 the coastline, but in very close proximity to the Broad
20 River which makes the City sensitivity to sewer overflows
21 even greater. It would be a very bad thing for there to
22 be a problem with those sewer lines. When the City and
23 the subcontractors went out and did testing and inspection
24 of the sewer lines it was determined that rather than
25 having to dig up all of these sewer lines which, of

1 course, is a huge project, it is expensive, it is very
2 disruptive and it disturbs a lot more ground. The City
3 determined that they could do this by slip lining. These
4 sewer lines have been around since the 1980's, they need
5 some remediation. They need to be remediated before they
6 need to be replaced. And in hopes that we could do that,
7 rather than have to dig them up to replace them wholesale,
8 we hired Layne Inliner to come in and do a slip lining
9 project. Now in order to slip line a sewer line, and this
10 is just by way of background for you so you can
11 conceptualize a little better, you have to be able to have
12 access to two ends of the line being the, the sewer pipe
13 being lined. One manhole here, one manhole here and you
14 run what has been described as a sock from one manhole to
15 another and then a purging dryer is placed in the sewer
16 line that essentially expands and cures that sock to be
17 inside of the sewer pipe thereby increasing its integrity,
18 repairing and fixing any areas of degradation that have,
19 that are needing to be replaced. In order to do that the
20 City had to be able to access those manholes. The City
21 had not been nor had its contractors been out there since
22 the 1980's. So it is become extremely overgrown and the
23 area was not accessible by car or vehicle which would be
24 required to go out and perform the slip lining operations.
25 In February of 2015 the Defendants began clearing the

1 easements so that they could, and that meant removing
2 vegetation, flattening out the terrain so that the proper
3 equipment could be brought in to access the manhole, to
4 actually commence the project. However, before the
5 Defendants could even complete clearing the easements the
6 Plaintiffs started complaining that they didn't want the
7 work to be done, these historic structures that were
8 allegedly out there had been damaged and demanded that all
9 work cease and that we needed to discuss this with them.
10 And so the City ceased work and the Plaintiffs filed their
11 first complaint in September of 2015. They subsequently
12 filed two other complaints and amended the second
13 amendment. And in their complaint the Plaintiffs, seven
14 individuals, have sued eight Defendants, all corporate and
15 one independent individual who has been dismissed now,
16 asserting nine separate causes of action. They asserted
17 trespass, two causes of action for gross negligence, one
18 cause of action for nuisance, two causes of action for
19 taking, one for negligence, one for negligence per se.
20 And then here is the twist that you might not have seen
21 before. One under a South Carolina statute for the
22 destruction of archeological structures. It is one that
23 most people haven't seen before, I am not sure that it has
24 been litigated. I have, there is no case law that I have
25 found and I haven't found any evidence of it being

1 litigated in the civil context. It is a criminal statute
2 for the intentional destruction of archeological resources
3 or structures. But it does have a private cause of
4 action, a civil cause of action for landowners. As you
5 have heard this morning, this case has been set for trial
6 at least three times and we are now set for trial, first
7 for trial on January 16th. Some of the undisputed facts
8 are that six of the seven Plaintiffs are real property
9 owners on Castle Road, that is important in a moment. The
10 Plaintiffs, Modesta and David Brinkman own the property
11 and reside at 154 Castle Road. Plaintiff, James Coleman,
12 owns the property and resides at 150 Castle Road.
13 Plaintiffs, Carl and Karen Foster own the property and
14 reside at 142 Castle Road. Plaintiff, Robert Collins,
15 owns the real property located at 156 Castle Road but the
16 property is undeveloped and it is undisputed that he and
17 his wife, Ms. Collins, do not reside at 156 Castle Road.
18 It is also undisputed that Pamela Collins, who is a named
19 Plaintiff in this case does not own the property, she has
20 no record interest in 156 Castle Road. It is also
21 undisputed that the City is the operator and the owner of
22 the sewer lines of the sewer system, that we have valid
23 easements crossing all of the Plaintiffs properties, they
24 were duly reported that all of the Plaintiffs had notice
25 of these easements. And all of the easements have, if not

1 absolutely identical, very, very similar language saying
2 that the City had the right to construct, operate and
3 maintain together with the right of ingress and egress at
4 all times for the purposes of constructing, operating and
5 maintaining a sewer main and with the right to remove
6 shrubbery, trees and other growth from the right-of-way
7 and construction area provided that the property will be
8 restored as nearly as practicable to its original
9 condition upon completion of the construction and damaged
10 shrubberries and trees will be replaced with the same
11 variety of nursery stock from a practical size. That is
12 very standard, industry standard easement language. If
13 not identical in most of the City's easements, its really,
14 really, close. It is also undisputed that the City did
15 not complete this project, in fact the City didn't even
16 begin their project. The City didn't even finish clearing
17 the easement because the Plaintiffs prevented the City
18 from doing so, estopping the project and then instituting
19 this lawsuit. It is also undisputed that the City, in a
20 future date, is going to have to complete this project
21 which means we haven't been out there for the last time
22 now. They are going to have to go back out there, we are
23 going to have to perform this work because we are under a
24 Federal consent decree requiring us to do that. That is
25 the background and some of the undisputed facts that are

1 relevant to the City's summary judgment motion. And, of
2 course, I am happy to answer any questions you might have
3 at any point and time. The first argument that the City
4 would make is that Pamela Collins needs to be dismissed as
5 a Plaintiff in this action. She has no property interest
6 in the property at issue here. This is a property damages
7 case. Both under the Destruction of Archeological
8 Structures Act and under any theory of recovery for any of
9 these property damage, nuisance trespass, any of these
10 causes of action, she is not a record property owner which
11 her husband has testified to. She has not been deposed
12 and nobody has contested this. She needs to be dismissed
13 as a Plaintiff, we need to clean this up.

14 THE COURT: Okay. I hate to take your argument, here
15 might be a good stopping point for me to hear from
16 Plaintiff's counsel as to the dismissal of Pamela Collins.

17 MR. CHAMBERS: Your Honor, Pamela Collins is, this is
18 a bit of a surprise to me because the memorandum was
19 handed to me on the way in the door and it was not evident
20 that we were going to plow this ground from the motion
21 submitted to the Court. However, in response to that,
22 Pamela Collins is married to Robert Collins. She has been
23 married to Robert Collins during the timeframe in which
24 this property was owned. There is a marital interest in
25 that property, regardless of whether she is on the, you

1 know, on the deed or not. And she was named as a
2 Plaintiff.

3 THE COURT: Okay. Good enough.

4 MS. LISOWSKI: Of course, the City would argue that
5 that is insufficient to establish that she is a record
6 property owner and has a right to sue for property
7 damages. And, again, I encourage you to look at the
8 language of this Destruction of Archeological Structures
9 Act which is cited in the memorandum, cited in our, cited
10 in the complaint, every pleading in this case and read the
11 language for yourself. But I would certainly argue that
12 she has no standing under either circumstance to be a
13 Plaintiff in this case.

14 Second, the Collins' and the Foster's also claim
15 damage to archeological or historic structures on their
16 property. But it is also undisputed, in their deposition
17 testimony, that there are no archeological or historical
18 structures on their property. And I understand what was
19 done in the beginning, I want to clean this up for trial
20 purposes coming up in two weeks. It was all the
21 Plaintiffs thrown in together, throw all of the causes of
22 action against all of the Defendants. And although that
23 may work in the beginning of the case, it doesn't work
24 now, we need to clean this up. There are no historical or
25 alleged historical or archeological structures on the

1 Collins' properties, property of the Foster's property and
2 therefore those causes of action against all of the
3 Defendants should be dismissed. They don't have a cause
4 of action.

5 THE COURT: Okay. Let me hear from Mr. Chambers.

6 MR. CHAMBERS: Again, this is, again this is another
7 ambush that was not at all listed in the filed motion.
8 There are three pieces of evidence that are key here. One
9 is the deposition of Jonathan Leader. Jonathan Leader
10 listed the Collins' property as containing a roadbed that
11 led to the historical bridges over the river. The second
12 is the deposition of Robert Collins who also said that he
13 was made aware of the roadbed by his neighbor who is David
14 Brinkman. David Brinkman is an amateur archeologist that
15 got interested in this from the history of the river and
16 locating the ferry crossings and the different bridge
17 abutments along the river. And it started, actually, with
18 the confusion of what these structures were in his
19 backyard. The roadbed was actually mapped out by David
20 Brinkman and it went up the hill, across his property and
21 through the Collins' property.

22 THE COURT: Okay, you mentioned three pieces of
23 evidence. That is a Leader deposition and Robert Collins.

24 MR. CHAMBERS: The third one was David Brinkman's
25 mapping of the roadbed. And he had documentation that was

1 actually found, I believe, by the City of Columbia. He
2 had it online, they found it early on in the case. We got
3 it the first time of discovery from them as well as from
4 David Brinkman. And he mentioned it in his, he was asked
5 about it in his deposition.

6 THE COURT: Yes, ma'am.

7 MS. LISOWSKI: The testimony throughout has been the
8 discussion of historic structures in the form of historic
9 bridge abutments. You heard Mr. Kendall reference that
10 prior. The historic roadbed is something that is, a new
11 allegation, some new historic structure. I don't believe
12 that Mr. Chambers indicated that the Fosters have it on
13 their property. So to the extent that you have some
14 concern about that, it is not on the Fosters property and
15 there are no historic structures. That cause of action
16 needs to be dismissed. I would disagree that the roadbed
17 is some form of historic structure, nothing has been
18 verified or certified by any official to say that there is
19 a historic structure in the form of a roadbed. And, in
20 fact, something that is also undisputed in this case is
21 that Mr. Brinkman has presented in the past these historic
22 bridge abutments, that's how we refer to them, on two
23 properties, his and Mr. Coleman's, to the State Historic
24 Preservation Office, requesting that they and the National
25 Historic Register certify them as National Historic

1 Landmarks and they were denied. The letter that they
2 received and Mr. Brinkman admitted that in his deposition,
3 it is a simply established fact in this case that they
4 were denied recognition of a historic or archeological
5 structure by SHPO. So, again, I would say there are no
6 historic and there truly weren't any allegations in the,
7 in the complaints that there were historic structures
8 other than these historic bridge abutments. And if they
9 are not on the property they don't have a cause of action
10 for it so we would ask that the Collins' and the Foster's
11 causes of action, structures of archeological structures
12 be dismissed.

13 THE COURT: Let me hear from Mr. Chambers about the
14 Foster's.

15 MR. CHAMBERS: The Foster's do not have an
16 archeological structure on their property.

17 THE COURT: All right. So the motion is granted as
18 to the Foster's at this point. That is a very small
19 victory.

20 MS. LISOWSKI: Chip away, a little bit at a time.

21 THE COURT: And before you continue, let's take a
22 five minute break.

23 (Whereupon, a short break was taken.)

24 THE COURT: All right.

25 MS. LISOWSKI: I will try to continue. The City also

1 ask that the Court dismiss the action for Plaintiffs.
2 failure to state a cause of action for several different
3 things. The first being, interestingly, the Plaintiffs
4 don't allege cause of action for negligence against the
5 City. The only negligence action that they claim was
6 against Weston and Sampson as the engineers. Against the
7 City they claim gross negligence which would require, of
8 course, that they claim that they prove all of the
9 evidence, excuse me, prove all of the elements of
10 negligence, duty of care breach by negligence, actual
11 proximate cause and entry of damages plus gross negligence
12 is a failure to exercise even slight care, that is a
13 pretty high standard. In this case the Plaintiffs have
14 neither plead nor argued nor proved how the City has been
15 grossly negligent other than to say this, for failure to
16 obtain, "the proper permits." They have never specified
17 what permits the City has failed to obtain. They have
18 never cited the statutory authority for the permits the
19 City had to obtain. And, in fact, and I can supplement my
20 memorandum with this recent testimony of their standard of
21 care expert, Alan Abbata. Their one expert who would be
22 able to testify. What statute the City violated by
23 failing to obtain permits and what permits the City and
24 the other Defendants in fact failed to obtain thereby
25 breaching a duty to the Plaintiffs. That expert, who was

1 a special engineer, testified that he is not a permitting
2 expert and he couldn't testify to it. They have not even
3 put the City and the other Defendants on notice as to what
4 permits they were legally required to obtain and failed to
5 obtain. It seems that they are trying to allege that
6 there is just some general public duty that the City owed
7 to the Plaintiffs. The public duty rule clearly
8 establishes that statutes that create or define the duties
9 of public office do not create a duty of care towards
10 individual members of the general public. In order for
11 them to establish, in this case, was essentially
12 negligence per se for failure to obtain the proper
13 permits, they would have to prove that there is a duty of
14 care rising from the statute at issue followed by evidence
15 that the Defendant violated the statute. They have not
16 cited any statutes, they can't prove that the City has
17 violated the statute as they can't even tell us what the
18 statute is. So on that basis alone there are causes of
19 action for gross negligence should be dismissed and for
20 negligence per se for that. There is no evidence of
21 damages. At this point, two weeks from trial and all of
22 their experts have been deposed, none of them have formed
23 a final expert opinion. We have no evidence of damages.
24 One of the Plaintiff's expert expressly disclaimed that he
25 was acting as an expert when he was deposed. Another

1 expert first refused to testify and then testified but has
2 made no formal, final expert opinion. Another expert, Dr.
3 Leader that Mr. Chambers has referenced to also has not
4 formulated, as of today, a final opinion in this matter.
5 They have nothing to put the Defendants on notice of what
6 it is that they allegedly violated, what the statutes are
7 that support those permits or the alleged violations. And
8 they have another expert that was suppose to testify, he
9 has twice failed to appear for deposition and ultimately
10 withdrew from the case. So at this point and time we
11 would ask the Court to just dismiss those causes of action
12 outright. They also allege--

13 THE COURT: Let me hear from Mr. Chambers.

14 MS. LISOWSKI: Sure, certainly.

15 THE COURT: As to gross negligence and negligence per
16 se as to the City.

17 MR. CHAMBERS: Regarding gross negligence. One, yes,
18 we had some expert issues, we had two of them dropped out.
19 One of them because of an alleged conflict with another
20 case, that occurred last summer. The second one was an
21 appraiser and that appraiser got a deposition, he verbally
22 agreed to work with us. I said something about it before
23 we had the contract signed. He got a deposition notice
24 and immediately said, but I have not been retained yet. A
25 period of time went by, we got the contract signed with

1 him. Again, said, okay, he has not been retained. He got
2 a deposition notice and he said, I can't work with you.
3 That is not our choice.

4 THE COURT: Right and I am not sure where you are
5 going. You know, with all due respect, I don't need to
6 know the logistical issues as to why an expert backed out
7 but I need to know what the evidence is in this case.

8 MR. CHAMBERS: I am going to tell you what the
9 evidence is and I am going to tell you, you know, they are
10 complaining as if this is our fault, this situation is our
11 fault, it is not. It is not, it is the last place that an
12 attorney wants to be. However, as far as the evidence
13 related to a duty of care, there are two things that I
14 think she cited here. One is, is there a duty of care for
15 gross negligence. Is there some relationship that
16 provides a duty. And, yes, there is. And that duty comes
17 from a document called an easement. And the case law
18 basically says that you can have a duty of care arise in
19 several ways. One is from statute; two is from property
20 rights; three is from contract; and here we have that
21 privity due to the easements. And the City of Columbia
22 has a 15 foot wide easement across these people's property
23 for the purpose of maintaining a sewer line. What it is
24 not for, it is not for building a road. It is not for, it
25 is not for building a 50 foot wide disturbance, it is 15

1 feet. It doesn't say that you can come in and change the
2 slope of the land. And so as far as damages go, I have
3 some photographs and I am going to, John, do we have six
4 copies of this. Sometimes a picture is worth a thousand
5 words because when you see this the damages become very
6 apparent. You have people that have riverfront property,
7 they can't get down to the river. Your Honor, if I may
8 approach?

9 THE COURT: Yes, sir.

10 MR. CHAMBERS: Created a cliff in their backyards.
11 It is very difficult to traverse, these are not young
12 people. They have riverfront property and cut them off
13 from a section of their properties. It removed a lot of
14 trees, it was established by the State Archeologists
15 testimony that it did, in fact, remove archeological
16 structures. Now, I know that they like to contend that
17 these are not archeological structures because they are
18 not on the National Register of Historical places. And I
19 can enlighten the Court a little bit about that. One
20 State Archeologist said that that mainly refers to things
21 like houses or buildings that has some form of structure.
22 Some of the oldest archeological sites in the Country are
23 located not far from here on the coast, along the coast,
24 between Beaufort and the middle of Georgia. And what
25 these are, these are remnants of walls around villages

1 made of oyster shells or what they call shell remnants.
2 And I think they have identified 32 of them. Of the ones
3 that are identified only a small number were eligible for
4 the National Register of Historic places because they
5 showed a perfect geometric pattern that gave some sort of
6 architecture. And so what the State Archeologist
7 testified to was that that was related to architecture and
8 it has to show some form of architecture. At the time
9 they had a bridge abutment which was rocks put into the
10 side of a hill to stabilize the hill and they did not
11 believe that that had architecture. And they believed
12 that more work needed to be done to determine, at the time
13 that the letter was written, determine exactly what it
14 was. And so that was the reason for the denial. What the
15 State Archeologist said though was that doesn't mean that
16 it is not a historic place, that doesn't mean that it is
17 not an important cultural resource, it does not mean that
18 its not an extremely old structure. It just means that
19 its not an architectural structure. Just like most of
20 their shell rings which are the sites of the Native
21 American villages from 10 to 25,000 years ago, they don't
22 have the definitive structure to make the National
23 Register of historic places. So, what does indicate
24 whether something is considered a likely cultural resource
25 is whether or not it is going in a data base maintained by

1 the South Carolina Department of Archives and History. It
2 is called SHPO, is the name of the data base. Where they
3 are getting this, it is not on the National Register, is
4 by looking up these sites on a data base of historical or
5 culturally significant places in South Carolina. And so
6 what was stated by the archeologist was is that when you
7 do construction, a lot of times there are permits needed,
8 those permits lead to a cultural resource study, by not
9 obtaining the necessary permits and there is no dispute
10 whatsoever that they did not obtain the required permits.
11 They were cited by the Harvey Corp of Engineers and they
12 are currently under investigation for 404 Wetlands. In
13 depositions, their own employees admitted that the 4,000
14 linear feet road plan times 15 feet wide, which was their
15 original plan, exceeds one acre. And that means that it
16 does need, in square footage, and that does mean that it
17 needs a DHEC land disturbance permit which also requires a
18 cultural resources study. Another issue with those
19 permits is that, and if I may approach, an affidavit from
20 Mr. Abbata.

21 THE COURT: Yes, sir.

22 MR. CHAMBERS: Those permits define a standard of
23 care. And what is meant by that is that you have to
24 submit a plan. If you have, you have to stick to that
25 plan and part of that plan is going to be governed by, do

1 you have the permission, are you within your easement
2 because they are not going to approve a plan to dig up a
3 40 foot wide section in someone's backyard when you only
4 have a 15 foot wide easement. And then their best
5 management practices that are required for permits, for
6 compliance with permits while the construction is going on
7 that help insure that the project sticks to the plan.

8 MS. LISOWSKI: Your Honor?

9 THE COURT: Yes.

10 MS. LISOWSKI: I apologize for interrupting but Rule
11 56 requires two days notice on the affidavit, this is the
12 first we have seen it. Regardless, I think we are a
13 little bit off the topic of the argument and I am happy to
14 bring it back around if you would like for me to. But I
15 did want to get that in before I missed the opportunity.

16 THE COURT: What say you about that, Mr. Chambers,
17 the Rule does require two days for affidavits regarding a
18 motion for summary judgment.

19 MR. CHAMBERS: Again, she alleges that, she alleged
20 verbally that Mr. Abbata said in his deposition testimony
21 that he didn't, he couldn't testify about permits, he was
22 talking about a specific, the thing about permits, he then
23 went into listing the permits that were needed and
24 discussing a little about two, we deposed Mr. Parnell, Ken
25 Parnell last week. He also said that, said permits were

1 required, the best management practices and required this
2 plan and that the plan would keep it within an easement,
3 in his testimony. So those things are all pieces of
4 evidence that we, you know, I have in deposition
5 testimony. They allege part of what he said, I am
6 alleging the other part of it. The evidence is there, we
7 have a dispute as to, as to material fact over whether or
8 not these permits would have prevented the harm. We
9 strongly believe that they would and from experience
10 working in this field under environmental law, in fact
11 know that those requirements are specifically there to
12 prevent harm such as a resource study, specifically they
13 are cultural resources. Again, let's see, I have covered
14 duty that the City has. I have covered the fact that
15 there are damages. I have covered the link between
16 failure to do these particular, to get these particular
17 permits. Failure to stay in the easement and the damages
18 to the property owners.

19 THE COURT: And how does that get you to gross
20 negligence?

21 MR. CHAMBERS: That gets me to gross negligence
22 because when we deposed Gene Pierce, the message was
23 pretty clear. Gene Pierce was a, he was an engineer for
24 Weston and Sampson and he said that we knew we were
25 exceeding the easement and we did it anyway. The same

1 what Mr. Sheu who was the City's engineer and he said
2 that, yes, we knew that the easement was 15 feet and it is
3 very unfortunate that we exceeded it. However, he
4 testified that it was quite normal for the City to exceed
5 these easements. And when we look at the history, they
6 are going to tell you about an EPA consent decree that
7 requires them to fix this pipe. Well, the reason there is
8 a consent decree is because they were under threat of
9 action from the EPA for non-compliance. Two, they didn't
10 get a 404 permit. Again, bad act on this. The same with
11 this, we have the non-compliant, we have the
12 non-compliance here. So there is just this history of it
13 and there is a knowingness and it is not meant maliciously
14 but it is willful and wanton.

15 THE COURT: Where is the evidence of it, do you have
16 copies of these deposition transcripts. Do you have, you
17 are telling me that there is, but I need evidence.

18 MR. CHAMBERS: Okay. I can supply the deposition
19 transcript, Your Honor.

20 THE COURT: Okay. Let me hear from Ms. Lisowski.

21 MS. LISOWSKI: Mr. Chambers does bring up a good
22 point that I want to call to the Court's attention. And
23 that is that to the extent that the City owes the
24 Plaintiffs a duty, that it might lie in the language of
25 the easement itself, which is all undisputed and let me

1 read it to you again. Provided that the property will be
2 restored as nearly as practicable to its original
3 condition, upon completion of the construction, it is
4 undisputed for this project never even got started. To
5 the extent that the City had a duty, never had an
6 opportunity to fulfill that duty because the Plaintiffs
7 stopped them from going forward, completing the project at
8 which point and time everyone has testified. And I am
9 happy to supplement with that deposition testimony. I was
10 trying not to burden with these lengthy easement
11 documents, deposition transcripts that were this thick.
12 So I can certainly provide you with Mr. Sheu's deposition
13 testimony and others where they say, we always go back and
14 remediate because an easement requires us to. We were
15 never given the opportunity, we were prevented from doing
16 that. That actually goes to my next argument which has to
17 do with inverse condemnation or taking. They call it
18 taking. The City is the only Defendant that this would
19 apply to because they are the only one that can take
20 property. As the Court knows, it requires permit conduct
21 on part of the Government, a taking is for a public use
22 and here is the important part. The taking has a degree
23 of permanence. The City had always intended to go back,
24 once the project was completed and remediate. And in fact
25 when the City does go out to do the project, at some point

1 and time in the future, the City will remediate then. It
2 doesn't make a lot of sense to remediate now, go and do
3 this project and we will remediate again. That's somewhat
4 what the Plaintiffs are requesting here but we have not
5 even had the opportunity to do the project. There is no
6 permanent taking here. It has to be permanent, it can't
7 be temporary. We would ask that the inverse condemnation
8 or what they call taking is one and two, I believe, be
9 dismissed as against the City because there is no degree
10 of permanence to the damages that they allege. They also
11 allege nuisance. Now, this is a failure to state a cause
12 of action. They have two sentences alleging nuisance.
13 The Plaintiffs are alleging and reincorporating the
14 allegation set forth in paragraphs 1 through 43 as set
15 forth verbatim and the actions of the Defendants have
16 created a nuisance that has denied the Plaintiffs use and
17 enjoyment of their property. That's it. I would ask that
18 that be dismissed against the Defendants for failure to
19 state facts sufficient to cause, to state a cause of
20 action. If that is not enough and I will get to this in a
21 minute, nuisance is an expressed exception under the State
22 Tort Claims Act. You can't bring a cause of action for
23 nuisance against the Government.

24 THE COURT: Let me hear from the Plaintiffs about
25 those two issues, about the taking and nuisance.

1 MR. CHAMBERS: Memorandum from Michael Sheu to Robert
2 Horner and Megan, or to Michael Sheu, from Robert Horner
3 and Megan Moody. And this is relating to planning this
4 road. During the pre-rehabilitation CCT portion of the
5 project it was found a significant length of sewer main
6 along the Broad River would be inaccessible for required
7 repairs. The contractors, NAPM discussed the need to
8 create access to those areas and proposed clearing the
9 sewer easement and constructing a compacted dirt road.
10 The road would also provide an added benefit of allowing
11 for future service access to the City of Columbia staff.
12 So that was their plans, November 7, 2014, which was
13 approximately two months before they started building this
14 road. So when she says that there is no permanence we
15 disagree that the documentation prior to getting called on
16 this indicates a plan for permanence, a plan for a
17 permanent access. If you will bear with me, Your Honor, I
18 will submit that into evidence.

19 THE COURT: Well, that sounds like sort of an
20 intensivatory claim. Because what you have showed me that
21 hasn't been done is not that. I mean there is, whatever
22 digging that has been done that the City said they
23 intended to restore, they were not given the opportunity
24 to do that. You don't know at this point that there has
25 been some permanent--

1 MR. CHAMBERS: Actually we do.

2 THE COURT: -- okay.

3 MR. CHAMBERS: And this plan was for 4,000 linear
4 feet of road. And the City alleges that we stopped, we
5 are on one end of that. There is a power line easement
6 that interrupts it and there is approximately 2,000 or
7 2,000 feet on one end and 2,000 feet on the other end. If
8 we go to the other side of that power line easement there
9 is no one who has stopped this. It is a road, you can
10 walk it, it has got tire tracks down it, it has got a gate
11 on it that is always open. And it is evident that people
12 are driving down it. So, we see a model on the other side
13 of what they intended to do here. Because that side of
14 this was not stopped by our litigation, it is not
15 contingent with it, it is the other half of the project
16 nobody has complained about it. It goes back behind some
17 apartment buildings. And so if we look at that, we can
18 really kind of tell what they were going to do. Actually
19 our side looks a lot less like a road because they stopped
20 them access to it and it is actually grown up with
21 vegetation. One could not drive a car down it easily
22 without clearing it first.

23 THE COURT: Okay.

24 MR. CHAMBERS: So the current state of the two sides,
25 I think, speaks volumes as to what the City's plans were.

1 for the entirety. Because they have had all of this time
2 to, "restore the slope", and other things to that other
3 side of it or that other half of the project and they
4 never have. What they left was a road that has very clear
5 tire tracks down it and could be driven with almost any
6 vehicle.

7 THE COURT: Okay. Did you want to respond to that?

8 MS. LISOWSKI: Yes, please, Your Honor. Just a point
9 of information for you. That area that Mr. Chambers is
10 referring to is not a part of this lawsuit. The property
11 belongs to other property owners that is not at issue. I
12 certainly agree with Your Honor that his argument about a
13 plan to do something in the future is certainly not having
14 done something on a permanent basis. There really is no
15 argument to this case that the City never intended to go
16 back and remediate but was prevented to. And another
17 point of information, these pictures were taken years ago,
18 it looks nothing like this, it is impassable as Mr.
19 Chambers just admitted, it has gone almost back to its
20 original condition at this point and time. To the extent
21 there was any damage done, it is quite overgrown and back
22 to its almost needed nature. But your point, Your Honor,
23 about the permanence, it is important for the takings
24 argument, it is also sort of my point with their trespass
25 argument which it is premature. It hasn't happened yet,

1 nothing has been completed yet because we were prevented
2 from completing work which is why the City would ask that
3 these causes of actions be dismissed now. If they want
4 to, once their mediation takes place, make a complaint if
5 wasn't done to their satisfaction, that would be
6 appropriate at that point and time but not at this point
7 and time. These are arguments that would apply, in large
8 part to all of the Defendants. In some cases like the
9 condemnations or the takings of place, they only apply to
10 the City. That is the first half of my argument. The
11 second half of motion for summary judgment exclusively is
12 Tort Claims Act exceptions. I think I can run through
13 those relatively quickly, if you want to read more in
14 depth in my memo you certainly can. I bet you are already
15 familiar with them. There are 30 some exceptions in the
16 Tort Claims Act that are, by case law, required to be
17 liberally construed to limit Government liability. The
18 first is Legislative, Judicial or quasi judicial actions.
19 There is a case, Hawkins versus City of Greenville that I
20 will point you to that is very similar to this case where
21 the Court found that the City's operation and maintenance
22 of its drainage system is a quasi Judicial function and
23 therefore subject to Governmental immunity under Tort
24 Claims Act. Clearly you can see the operation of the
25 maintenance of a storm drainage system and a sewer system

1 would both be very, very similar and would constitute
2 quasi judicial function. Therefore our actions with
3 regard to the maintenance of our sewer system should be
4 subject to Governmental immunity under the Tort Claims Act
5 and that would be 15-78-60, number 1. I will not reread
6 the citations, I know you can read them yourself, I know
7 you are running very long. Administrative inaction of a,
8 action or inaction of a Legislative, Judicial or quasi
9 Judicial nature, this is very similar to the first
10 exemption. I would argue that the City is immune from
11 liability under that, that is subsection (2) under the
12 Tort Claims Act. Subsection (3), the Tort Claims Act,
13 very important, execution and enforcement are
14 implementation of any court or execution enforcement or
15 implementation, excuse me, implementation of any process.
16 Clearly, no one has disputed that the City's actions here
17 were done in fulfillment of the consent decree of the
18 Federal Court of the US District Court of South Carolina.
19 The City's actions thereunder should be exempt, under the
20 Tort Claims Act, subsection (3), as we are in the
21 fulfillment of a Federal Court order. Adoption and
22 enforcement are compliance with any law. The consent
23 decree expressly says that we must comply, the City must
24 comply with the clean water act. The South Carolina
25 Pollution Control Act and the City's NPDES permit. Thus

1 the City's works include an easement and to perform the
2 functions related to that and the sewer line maintenance
3 on the Plaintiffs properties are exempt. In our efforts
4 to enforce and comply with these specific laws and that is
5 subsection (4) of the South Carolina Tort Claims Act.
6 Subsection (5) of the South Carolina Tort Claims Act is,
7 reads that the exercise or discretion or exercise of
8 discretion or judgment by Governmental entity or employee,
9 the performance of failure to perform an act of service
10 which is in the discretion of the judgment of the
11 Governmental entity or employee, is exempt from Tort
12 liability under the Tort Claims Act. The City's decision
13 to clear the sewer line easement, which it was well within
14 its rights to do under the language of the easements
15 themselves, in order to access the manholes and it is
16 Federally mandated work, it is clearly a discretionary act
17 being performed by the Governmental body or its employee
18 and it is exempt from liability under the Tort Claims Act,
19 subsection (5). Subsection (9), we are skipping to (9)
20 now, exempts the entry upon any property where entry is
21 expressly or impliedly authorized by law. It is
22 undisputed that the City had easements, valid easements,
23 permanent easements to maintain its sewer lines and
24 therefore the City's acts here should be exempt under
25 subsection (9) of the Tort Claims Act. To the extent that

1 the Plaintiffs, and it is not entirely clear to me to be
2 honest in these complaints, if this is being alleged that
3 the City employees themselves acted with actual malice or
4 intent to harm to the extent that there is an allegation,
5 that the City or its employee intended to harm or act with
6 actual malice, the City is immune from liability under
7 subsection (17) of the Tort Claims Act. And no action has
8 been brought against the City employee individually, so
9 that should remove liability for the City as a Defendant.
10 Of course, an act or omission of a person other than a
11 City employee including but not limited to the criminal
12 acts of third parties, I don't know that a criminal act
13 has been alleged here, to the extent that the allegation
14 of the violation of the Construction of Archeological
15 Structures Act is a criminal act. The City would be
16 immune from liability under subsection (20) of the Tort
17 Claims Act. Those are the Tort Claims Act defenses.
18 There is one other thing I would like to point out to you,
19 Your Honor. Two other issues and that is under this very
20 unique destruction of Archeological Structures Act, this
21 was a criminal statute that was crafted, really with the
22 intent of if someone knows that there is a cannon ball
23 from the civil war on your property and they go and try to
24 steal the cannon ball off of your property or destroy it,
25 that the property owner, in addition to being able to

1 bring charges or have the Government bring charges against
2 the person for coming on their land and grabbing a cannon
3 ball, they can also personally bring in civil charges, a
4 civil cause of action for the person violating this
5 criminal statute. But as a criminal statute, where you
6 spend a lot of time recently, it requires intent, it
7 requires intent to discover, move, uncover, remove or
8 attempt to remove an archeological resource. It is
9 undisputed that the City and the other Defendants had no
10 notice, had no knowledge of any historic resource. There
11 were no signs out there, there was no knowledge of any of
12 these nor, even if they had the knowledge, did not create
13 this project with the intent to go out and intentionally
14 destroy, move or alter any historic resource. So, that
15 cause of action should be dismissed. Finally, and I am
16 done. There is a utility work exception to this
17 Constructional Archeological Structures Act. Section
18 16-11-780(k) states that nothing in this section shall
19 limit or interfere with the lawful acts of the utility
20 worker acting in a scope of and in the course of his
21 employment. There is an exemption for a utility worker
22 entering on somebody's property and incidentally damaging
23 an archeological resource. For all of these reasons and
24 you are welcome to read more on your own, if you want me
25 to supplement my memorandum I am happy to do so. The City

1 would ask that this case be dismissed against the City,
2 some of its causes of actions, its various Defendants.
3 Thank you for your time, Your Honor.

4 THE COURT: Absolutely. Yes, sir.

5 MR. CHAMBERS: Your Honor, I am going to submit a
6 memo. Again, what I have is a mere skeleton of what Ms.
7 Lisowski said today and I have the basic topics on many of
8 which I had to guess at what I needed to do. But let's
9 talk about a few things here. One, the case law on the
10 exemptions to liability under the Tort Claims Act, on one
11 through five, the case law on that is that it has to be,
12 it basically cannot be a ministerial thing. It has to be
13 something that they have some discretionary power over.
14 Staying within an easement, if you have a 15 foot wide
15 easement and you create something that it places, up into
16 the highest cliff, 50 feet wide, that's not, you don't
17 have a discretion to do that, it is not your property. It
18 is not something that is labeled. The archeological
19 structures were outside of that 15 foot easement were
20 destroyed. The other thing is, is that we have a 404
21 permit, that's not discretionary, its not up to the City's
22 discretion to determine, to decide, oh well, we are
23 required to have a 404 permit but, you know, for
24 efficiency we are going to break the law. So the key
25 there is what is ministerial and what's discretionary.

1 And the same case law that created or basically, or
2 basically this case law initially came from Texas
3 interestingly on the subject matter which has a very
4 similar Tort Claims Act in that, in the Texas case I think
5 was City of Tyler versus Likes. In that case they get
6 into this and what it was is, they said, well the overall
7 planning of your sewer system is discretionary. But when
8 you get down to building it and you mess up something
9 that's ministerial. And so the same thing that they rely
10 on there, South Carolina borrowed that case law, what we
11 have here is ministerial duties, they don't have a
12 discretion on knowing on whether or not they follow the
13 property laws and whether or not they build this thing
14 where they have the right to build it. So, one through
15 five do not apply and do not protect the City on 15-78-60,
16 one through five. I agree that nuisance is barred. I
17 have a hard time with that because what they did is they
18 created a very dangerous condition, essentially a cliff in
19 peoples backyards and they did it where they had no right
20 to be, they were outside of their easement where they did
21 it. But creating a nuisance, there is no case law in
22 South Carolina that I could find that was on point as to
23 that and the statute says creating a nuisance is barred as
24 far as the City goes. There are a number of different
25 statutes and ordinances that allow certain people to go

1 onto your property. The person reading the electric
2 meters, the building inspector for the City. All of these
3 people have some sort of immunity to trespass. But the
4 key and when we look at the archeological statute, the key
5 is the word, lawfully. They didn't anticipate these
6 people coming onto the property where they had a right to
7 basically maintain a sewer line within 15 feet of it.
8 They didn't anticipate them coming in, absolutely changing
9 the slope and the character of the land, going well
10 outside the easement and creating a situation where people
11 can't get to sections of their backyards in the aftermath
12 of this. So the key word is, lawfully present. And when
13 you are outside the easement and the construction, you are
14 not lawfully present. And you know you are outside the
15 easement you are not lawfully present and you are
16 willfully and wantonly doing it. So that really kind of
17 takes care of nine and the last one was just
18 16-11-780(k)(3) which is the archeological statute where,
19 again, it says that the person has to be lawfully present.
20 So that doesn't apply. 15-78-17 says that if you have
21 somebody who intends to be malicious or intends to harm
22 somebody then, you know, basically that is not a function
23 of Government and that person is acting on their own
24 outside of that and so there is protection against, I
25 guess, under the Tort Claims Act. The difference here is,

1 what we have alleged doesn't require being malicious, it
2 doesn't require intending to harm these people. All it
3 requires is, okay, that is the most efficient way to do
4 it, we know that we are not suppose to do that but we are
5 going to do it anyway and we know that it is against the
6 law. That motive for that, the motive can easily and most
7 likely was efficiency. We didn't frame anyone into these
8 depositions and have them say, oh, we don't like the
9 Brinkman's or we don't like the Foster's so we did this to
10 them. There was none of that. These people didn't know
11 each other beforehand. There was actually no contact
12 before the road was being built through these people's
13 backyards, between the people building this road and the
14 people designing the road and the City's officials. So
15 this is not something that was done with malice, it was
16 not something that was done with an intent to harm these
17 people. Specifically section 20 of that same section,
18 okay, this was a group of people acting together, they had
19 progress meetings, they were all there together. The
20 City's inspector, Alan Cockrell, was accredited as being
21 one of the people who helped develop this road and layed
22 it out. He was also at the meeting and I believe I turned
23 in the minutes for that. He was also at the meeting where
24 they discussed the fact that there was a 15 foot easement
25 back in, I guess, September of 2014. And he was there

1 when this road was under construction and could easily see
2 that it was well beyond the bounds of 15 feet. He was
3 working together with the other Defendants, with other
4 City employees. The City had a guy there and the City had
5 a guy there that should have seen it, should have stopped
6 it, should have protected these people's property. And so
7 it is not the City hired a contractor and the contractor
8 went off the reservation. That's not what happened here.
9 They knew and I am going to ask for leave to supplement
10 the record and I will say, again, that I received a motion
11 with bullet points, a lot of these I had to absolutely
12 guess as to where opposing Counsel was going. There were
13 a number of things that she introduced today that were not
14 on here, such as a, on those bullet points such as a road
15 through, you know, basically the Collins and the Fosters
16 and those issues. I walked in today and I was handed a
17 book at the start of the motion, I have obviously not had
18 time to review this. I am going to ask the Court for
19 leave to review this and write a memo that is responsive
20 to Plaintiffs, to Defendants memo.

21 THE COURT: Okay, I will give you until Monday, the
22 8th, to get that to me.

23 MR. CHAMBERS: Thank you, Your Honor.

24 THE COURT: And I will let y'all know something.

25 MS. LISOWSKI: Thank you, Your Honor.

1 THE COURT: Are there other motions in this case.

2 MR. BOINEAU: Judge, can I say one thing in response?

3 THE COURT: Yes, sir.

4 MR. BOINEAU: The Plaintiffs had agreed that the
5 cause of action, the nuisance, but the Fosters claim for
6 destruction of archeological structures was being
7 dismissed.

8 THE COURT: Yes.

9 MR. BOINEAU: For purposes of judicial economy, can
10 we agree that that is dismissed as to all parties, all
11 Defendants in the case otherwise you are going to get the
12 same motion, as you might imagine, over and over again.

13 THE COURT: Okay.

14 MR. BOINEAU: I wanted to address that. Thank you,
15 Your Honor.

16 THE COURT: Tell me your name first.

17 MS. WOOTEN: Amy Wooten, Your Honor.

18 THE COURT: And you have a motion for summary
19 judgment as well?

20 MS. WOOTEN: Yes, Your Honor, I do.

21 THE COURT: Weston and Sampson?

22 MS. WOOTEN: Yes, Your Honor, I represent all of the
23 Weston and Sampson Corporate entities that are named in
24 this case.

25 THE COURT: Okay. All right. I don't want to hamper

1 your argument in any way but we are very behind on time.

2 MS. WOOTEN: I will try to be as expeditiously as
3 possible. I did submit a brief in support of my motion,
4 that was submitted back in October. We did submit a
5 memorandum of law back in October of this year.

6 THE COURT: This very big book.

7 MS. WOOTEN: And that is very proud work, Your Honor,
8 and that appears to be it, yes. In the interest of time
9 to expedite some of the arguments, Your Honor, I would
10 like to incorporate by reference the arguments that would
11 be applicable to my clients that Ms. Lisowski made rather
12 than replotting that ground. Your Honor, I want to start
13 by giving you a couple of additional facts that I believe
14 to be relevant specifically to my clients in this
15 particular case. And before jumping too far into that, I
16 think it is important and one of our primary arguments on
17 summary judgment that you will hear today that I believe
18 is important to cleaning up this case before trial, as Ms.
19 Lisowski said, is that the Plaintiffs have named a number
20 of Corporate entities, a number of Corporate Weston and
21 Sampson entities in this suit. They have Weston and
22 Sampson, Incorporated; Weston and Sampson Engineers,
23 Incorporated; Weston and Sampson Services, Incorporated;
24 and Weston and Sampson CMR, Incorporated. Your Honor, the
25 evidence in the case, the actual competent evidence that

1 is before Your Honor on summary judgment does not support
2 a claim for anything against any Weston and Sampson entity
3 other than possibly Weston and Sampson Engineers,
4 Incorporated. That is the only entity that was involved
5 in this project in terms of Weston and Sampson entity.
6 The other Corporate entities did not have a contract with
7 the City, did not perform any engineering services on the
8 project, did not receive any compensation in connection
9 with this project. In support of this claim, Your Honor,
10 we have submitted with your summary judgment brief an
11 affidavit from Michael Scipione, Mr. Scipione is the CEO
12 of Defendant, Weston and Sampson, Incorporated. And he
13 has set forth in his affidavit the facts that I have just
14 set forth for you regarding the lack of involvement on the
15 part of Weston and Sampson, Incorporated in this case.
16 Give me a second, I should be able to tell you, Mr.
17 Scipione's affidavit is an exhibit 10 to the brief, Your
18 Honor. In addition to Mr. Scipione's affidavit, produced
19 in discovery were copies of the invoices that were
20 submitted by Weston and Sampson Engineers, Inc., to Mr.
21 Joey Jacob, he is the City engineer for the City of
22 Columbia pursuant to the contract that Weston and Sampson
23 Engineers had with the City for this particular project.
24 A copy of that, a copy of one of the invoices, there were
25 a number, you might imagine, was supplied as exhibit 12 to

1 the memorandum. And it is clear in looking at the invoice
2 that it says to make the check payable to Weston and
3 Sampson Engineers, Incorporated. The invoice does not
4 request or seek payment on behalf of any other Weston and
5 Sampson Corporate entities. And there have been no
6 documents in the case or no testimony to support that
7 Weston and Sampson, Inc. Services, or CMR, again, were in
8 any way involved. The contract between the City and
9 Weston and Sampson Engineers, Inc., may be the source of
10 confusion for the Plaintiffs in that its a little informal
11 in its text. It says the contract between the City of
12 Columbia and Weston and Sampson Consultant Engineer, it
13 does not have the full corporate name on the first page
14 and I believe that may be the source of their confusion.
15 A copy of the contract is exhibit 7 to my memorandum.
16 However, the signature page for the contract shows that
17 the contract binding Weston and Sampson Engineers,
18 Incorporated to an agreement with the City was executed by
19 a licensee by the name of Patrick J. Connelly, Mr.
20 Connelly's signature appears on page nine of the contract
21 just under the signature of the City Manager. Mr.
22 Connelly, if one did a search on his licensure, which is
23 publicly available through the Board of Engineers and Land
24 Surveyors, shows that Mr. Connelly's place of business,
25 where he works, is Weston and Sampson Engineers,

1 Incorporated. Services, CMR and just Weston and Sampson,
2 Incorporated are in no way identified or affiliated with
3 Mr. Connelly. The only individual in this case affiliated
4 with Weston and Sampson that has been deposed is Gene
5 Pierce. You heard counsel, Plaintiff's Counsel make
6 reference to Mr. Pierce on the City's motion and I will
7 clarify some inaccuracies related to his testimony when we
8 get to those arguments. But Mr. Pierce is the only
9 individual from Weston and Sampson who has been deposed in
10 this case. There is no testimony to support anything
11 other than the fact that Mr. Pierce, who was involved in
12 the project, was employed by and worked for Weston and
13 Sampson Engineers, Incorporated. Weston and Sampson
14 Engineers, Incorporated has maintained in its written
15 discovery responses that it was the entity involved in the
16 project and that it contracted with the City. None of the
17 other Weston and Sampson entities have taken that, in fact
18 denied that and none of those entities have been deposed
19 and there is therefore no contradictory testimony to that
20 effect. When the Plaintiffs were deposed in this case and
21 I believe, when the Plaintiffs were deposed in this case,
22 Your Honor, none of them knew who Weston and Sampson were
23 at all, they didn't know which Corporate entity might have
24 been involved, they didn't know which engineers might have
25 been involved. They only sort of knew that maybe Weston

1 and Sampson was involved generally because their attorneys
2 told them so. So there is no evidence that the Plaintiffs
3 have supplied, in their testimony, to support or warrant
4 keeping in this case through trial the Weston and Sampson
5 entities at all, in that regard. And the City folks that
6 have been deposed, Mr. Cockrell and Mr. Sheu, their
7 testimony does not contradict or dispute that the contract
8 between the City and Weston and Sampson was with Weston
9 and Sampson Engineers, Incorporated. It is not enough at
10 this stage in the litigation for the Plaintiffs to come
11 forth and point to the first page of the contract or the
12 fact that the Weston and Sampson entities might share a
13 website has anything more than a scintilla of evidence to
14 keep these other Corporate entities at issue in this case.
15 Based on the fact that there is no evidence, we have moved
16 for summary judgment as to all of the Weston and Sampson
17 Corporate entities other than Weston and Sampson
18 Engineers, Inc. And let me clarify, we are moving for
19 summary judgment on other grounds for that entity of
20 course, but not on the ground that they had no
21 involvement. And for those reasons, Your Honor, we would
22 ask that the Court move forward as their genuine issue of
23 material fact to justify keeping in Weston and Sampson,
24 Incorporated; Weston and Sampson Services, Incorporated;
25 and Weston and Sampson, CMR, Incorporated. And now may be

1 a good time for me to let Mr. Chambers address that issue.

2 THE COURT: All right, Mr. Chambers, any evidence
3 that any of these other Weston and Sampson entities is
4 involved in this matter at all.

5 MR. CHAMBERS: I think she presented it in the sense
6 that they act one in the same. I never saw any evidence
7 that Weston and Sampson, CMR, or Weston and Sampson
8 Services were a part of this. I saw conflicting evidence
9 on Gene Pierce's office is listed as Weston and Sampson,
10 Incorporated. Likewise, whenever these people are
11 entering or sending emails, putting together memorandums,
12 their letterhead just says Weston and Sampson and it
13 doesn't really seem to matter what subsidiary they are
14 with. That being said, in looking up the engineering
15 licenses of the people involved, it says Weston and
16 Sampson Engineers. That is probably the biggest piece of
17 evidence is to, who they actually work for along with and
18 send checks to Weston and Sampson Engineers. So, I have
19 no issue with letting out the entities other than the
20 engineers.

21 THE COURT: Fabulous. That is taken care of.

22 MS. WOOTEN: Thank you, Your Honor. The next issue
23 that we have raised in our memorandum focuses on the
24 standard of care applicable in this particular case and
25 what evidence has been introduced in support of the

1 standard of care. For purposes of my clients, Your Honor,
2 it is an engineering company that has been sued.
3 Obviously corporations can only act through their
4 employers, or excuse me, employees and agents and
5 therefore the underlying negligence at issue that we would
6 be looking at to the extent it exists would be what did
7 Weston and Sampson Engineers, Incorporated employees do or
8 fail to do. And in order to evaluate that, particularly
9 if the issues presented by Plaintiffs here relate to a
10 negligence design, alleged failures with respect to the
11 supervision of other engineering services that were
12 provided. On the project, this is going to require expert
13 testimony to establish what the standard of care is, was
14 the standard of care breached and not only was it
15 breached, Your Honor, but is there a causal connection
16 between the alleged breach and the resulting damage.

17 THE COURT: Pause right there. Okay. Don't continue
18 quite yet.

19 (Whereupon, the Court calls a roster for the
20 remaining civil cases for the day.)

21 THE COURT: Okay.

22 MS. WOOTEN: Your Honor, I would like to resume with
23 the professional negligence issue real quick. The
24 affidavit that we received this morning, I actually didn't
25 make a copy, it was provided to all Defense Counsel, I did

1 snag a copy from Ms. Lisowski. Mr. Abbata was presented
2 late in this case as a possible standard of care expert,
3 when it was actually identified it was only on the issue
4 of stabilization of the damages expert. We found out
5 right after the deposition that he was going to include
6 standard of care issues. Despite that late notice Mr.
7 Abbata's deposition, was very thorough. And Mr. Abbata
8 was asked to confirm that he had given full, frank and
9 fair opinions as they existed at that time, with the
10 understanding that this case was going to trial and go
11 forward. It was understanding of Counsel, Defense
12 Counsel, at the conclusion of that deposition, with the
13 exception of the very few areas where he said he had not
14 completed his work, that his opinions were full and final.
15 The substance of this affidavit would fall within the
16 category of full and final at the time of his deposition.
17 So, just, I know I incorporated Ms. Lisowski's arguments
18 but I would renew my objection and specifically ask that
19 this affidavit. But I do want to focus briefly on why I
20 believe the testimony that Mr. Abbata did give in his
21 deposition is not enough to create a genuine issue of
22 material fact as to a breach of a standard of care as to
23 my clients in this case. And just to expedite them, there
24 is a couple of things I will run through, specifically his
25 testimony. Mr. Abbata testified in giving his testimony

1 that he didn't think it was clear if the engineer followed
2 proper procedures on an engineering standard of care. Mr.
3 Abbata had been provided with written discovery,
4 deposition transcripts, documents related to the project
5 itself. Despite having reviewed that or purporting to
6 having reviewed that Mr. Abbata was not able to clearly
7 and cogently say anywhere in his transcript, to an
8 engineering degree of professional certainty, that my
9 client, Weston and Sampson Engineers, Incorporated
10 breached the standard of care, what that standard of care
11 was, whether it was breached. And he said on the record
12 that, we will focus on the permit, he said with respect to
13 the permits, he agreed with me, Your Honor, that there was
14 no permit that could have been acquired in connection with
15 the access work that would have resulted in the access he
16 constructed within the easement. What he was saying there
17 is, there is no causal connection between pulling the
18 permits and whether the work is done within 15 feet, 12
19 feet or 20 feet. The permits deal with that, the permits
20 deal with issues like, where you are going to have side
21 casts, certain materials and land disturbance. No causal
22 connection between the damages complained here and getting
23 or not getting permits. That's their own expert's
24 testimony. It has occurred to me it might be helpful to
25 compartmentalize the standard of care issues just to

1 streamline. So, the issues that we are focusing on with
2 respect to standard of care from their prospective is
3 permits, design, GO technical studies and supervision. So
4 I will take them each and see if that might help simplify
5 things. With respects to the permits we just covered, the
6 testimony regarding Mr. Abbata on that, there is no causal
7 connection between getting a permit and not getting a
8 permit and they complained of damage. We also have the
9 testimony of Mr. Abbata that was taken while Defense
10 Counsel was present where he essentially conceded he is
11 not an expert on permits. In addition, so--

12 THE COURT: Is there an excerpt of that in your memo,
13 I can't find it.

14 MS. WOOTEN: Mr. Abbata's deposition was taken on, so
15 the summary judgment motion memorandum were submitted
16 prior to the last--

17 THE COURT: Okay.

18 MS. WOOTEN: --I can provide a copy of his
19 transcript, Your Honor.

20 THE COURT: I just wanted to make sure I wasn't
21 missing something. Go ahead.

22 MS. WOOTEN: He was deposed on December 13th in the
23 case.

24 MR. CHAMBERS: Your Honor, I request the ability to
25 acquire copies of her experts as well.

1 MS. WOOTEN: Well, I would just supply the whole
2 transcript, Your Honor.

3 THE COURT: Just give me condensed transcript and
4 that is fine, the entire thing.

5 MS. WOOTEN: Yes, Your Honor, that will be perfectly
6 fine. Now, on the issue of design, Mr. Abbata could not
7 say and conceded that in looking at the actual amendment
8 to the contract, between the City and Weston and Sampson
9 Engineers, Inc. there is no addition to Weston and
10 Sampson's contract for design work in relation to the
11 access. The actual contract between my client and the
12 City is executed in 2012. Access work wasn't a topic
13 until sometime in 2014, 2015, years after this document
14 was executed. So if it was going to exist as an
15 obligation anywhere to design the access, if these are a
16 contract amendment, and there is no evidence in the case
17 to show that the contract was ever amended to include
18 that. And as Your Honor noted earlier, with respect to
19 anticipatory issues, you can't rely on a proposal that was
20 presented, you have to look at how the contract actually
21 amended. Mr. Abbata can see that, there is no addition to
22 that contract that would require Weston and Sampson
23 Engineers, Inc. to design the access. So I think that's
24 dispatches with the issue of design. On the matter of
25 letter, not a GO technical study was required, Mr. Abbata.

1 can see that he didn't know if that was part of my
2 client's scope of work or not and that that would be
3 important to his opinions as to whether there was a
4 standard of care violation. Finally, on the issue of
5 supervision, Mr. Abbata cannot testify whether there was
6 standard of care violation for Weston and Sampson
7 Engineers to perform its supervisory duties at other sites
8 on the project at the same time that work was going on on
9 the access. So to put in, this project is huge, it covers
10 a substantial portion of the City of Columbia and as Ms.
11 Lisowski pointed out, areas on into the Midlands. My
12 clients contractual obligations with respect to
13 supervision ran to the whole project. The addition of
14 change order that was added to the contract, related to
15 extending the project does have some supervision attached
16 to it. But that is extending my client's obligations for
17 supervision to the project as a whole. There has been no
18 testimony, no documents, no evidence in this case to
19 support that Weston and Sampson Engineers, Inc. had a
20 supervisory obligation to be watching the work done on
21 Castle Road which only took about a day to accomplish, as
22 much as it was allowed to be accomplished. And there is
23 testimony in the case from Gene Pierce that, and this is
24 where I want to make a clarification, Counsel said that
25 Mr. Pierce, said, "we knew we were exceeding the

1 easement." That is not accurate and it is certainly out
2 of context. What Mr. Pierce said in his testimony was
3 applied in connection with, that it is found, exhibit 16,
4 is that everybody involved in the project was aware of the
5 scope of the easement, that it was 15 feet. Mr. Pierce
6 said that he was not out there at the time the work on the
7 access was being performed and when he arrived
8 construction on the access had ceased. Mr. Cockrell, who
9 was the City inspector, was present and obviously has seen
10 that of which the Plaintiffs complained and therefore was
11 aware of their complaints. So with respect to the
12 supervisory aspect, their own expert has not been able to
13 offer testimony to a professional degree of engineering
14 certainty that Weston and Sampson Engineers, Inc. had an
15 obligation to be present on Castle Road while the work was
16 being done as opposed to performing their supervisory
17 obligations at other locations on the project which were
18 simultaneously being worked on or that there is some
19 actual alleged connection between that failure and the
20 damages complained of here. So I believe that really
21 dispatches of the professional negligence claims, Your
22 Honor, that are pending against Weston and Sampson
23 Engineers. So just no expert testimony to support that.
24 Now, I heard Mr. Chambers make reference to the deposition
25 of Mr. Parnell and he made a comment that Mr. Parnell said

1 that they had an obligation to get a land permit. Mr.
2 Parnell's deposition transcripts is not part of the
3 record. I understand Counsel has asked to supplement. I
4 think what is important to focus on in looking at Mr.
5 Parnell's transcript, Your Honor, is what Mr. Parnell says
6 related to causation, that just like Mr. Abbata's
7 testimony, defeats their claims here on professional
8 negligence. Mr. Parnell testified that, just like Mr.
9 Abbata, there is no permit that could have been gotten
10 that would have lead the work to be done or resulted in
11 the work being done within the scope of the easements.
12 There is just no connection, that's not what those permits
13 are for, that is not what they are going to direct or
14 having anything to do with. And so I think those are
15 dispositive on that issue. I want to move on, in the
16 interest of time, to the issue as to whether or not my
17 client's owe duty to the Plaintiffs in this case. Mr.
18 Chambers properly noted that a legal duty can be created
19 by statute, common law or contract, those are your forces.
20 It is undisputed in this case a contract between Weston
21 and Sampson and the City is very clear that there are no
22 intended or incentive beneficiaries to this contract. It
23 is expressly stated that the only parties to benefit from
24 this contract are the actual parties to the contract, the
25 City and my client. The Plaintiffs do not have any right

1 and or standing to pursue any alleged breach of contract
2 against my client or anything related to the contract.
3 And I think it bears mentioning that the one party that
4 would have a right to raise a breach of contract argument
5 in this case, the City has not done so. Now, with respect
6 to statute, Your Honor, I am not aware of any statutes
7 that the Plaintiffs have come forward in this case and
8 said Weston and Sampson Engineers, Inc. had a statutory
9 obligation and failed to meet that obligation. What they
10 said is that there are these various permits out there,
11 that about causation issues. Those permits do not say an
12 engineer is obligated to go out and get this permit. What
13 those permits say is the property owner, the person doing
14 the work. Now, that is distinct, the letter, not the
15 contract might give the City an argument against Weston to
16 get permits. And I would submit that that dispatches the
17 issue of whether or not my clients owed a duty to the
18 plaintiffs. Ms. Lisowski did a good job of explaining why
19 the public duty in this case so I won't retread that. I
20 think that issue is also dispositive on the negligence per
21 se claim against my client because we are talking about
22 the same statute, it is not a duty you don't need to get
23 further down the chain on that cause. We have already
24 addressed the lack of proximate cause connected to the
25 permitting issues so I will move on from there. With

1 respect to the nuisance we would reincorporate arguments
2 again that Ms. Lisowski made, focus on that. The final
3 claim that I feel like we really haven't addressed or
4 touched on just yet in the oral argument through any party
5 is that of a claim that my clients were derelict in their
6 engineering duties in supervising the work of an engineer
7 by the name of Megan Moody. At the time of the project
8 Ms. Moody was an engineer in training. She is now a
9 licensed, that is beside the point, Ms. Moody has not been
10 deposed in the case, the Plaintiffs have not taken a
11 corporate deposition of Weston and Sampson Engineers, Inc.
12 And really the only person in the case who has offered any
13 testimony about Ms. Moody is Gene Pierce. And Mr. Pierce
14 has testified that Ms. Moody was on maturity leave when
15 the access work was being completed. There is a
16 memorandum that Plaintiffs Counsel, I believe, supplied
17 earlier to Your Honor that is from Mr. Horner and it is
18 also signed off by Ms. Moody. That is the one from
19 November of 2014. That memorandum appears to be the
20 argument that Ms. Moody was running rogue and unsupervised
21 in recommending that this access be added to the project.
22 Nothing could be further from the truth. That November
23 7th memorandum has identified and I believe that's
24 exhibit, should be exhibit 13 on our memorandum of law.
25 On that memo it bears the name of the, Robert Horner who

1 is the licensed engineer. He was the EOR for this
2 particular project and it bears Ms. Moody's name. Mr.
3 Horner has his initials on that document along with Ms.
4 Moody's. There has never been any testimony, nothing
5 other than conjecture in this case that Mr. Horner was not
6 aware of or did not sign that memorandum and that he did
7 not adapt or, you know, condone the subject matter
8 therein. There has never been any suggestion that Megan
9 Moody came up with the idea to add the access herself. In
10 fact, the language of that memorandum makes it clear that
11 the contractor brought up the need for this access to be
12 added to the project and that what Weston and Sampson was
13 doing in that memorandum was memorializing a proposal
14 presented by the contractor for the City's consideration
15 and approval. Because in order to amend the contract
16 between the City and the contractor that process had to be
17 followed. There is nothing in there to suggest that Megan
18 Moody was in any way, shape or form not supervised in
19 doing that. There is just no credible evidence to support
20 that. I know we are pressed for time so I will wrap up
21 with that. Thank you, Your Honor.

22 THE COURT: All right. Yes, sir.

23 MR. CHAMBERS: I think I can handle this in a couple
24 of minutes, Your Honor.

25 THE COURT: Okay.

1 MR. CHAMBERS: Your Honor, if I may approach?

2 THE COURT: Yes, sir.

3 MR. CHAMBERS: All right. So one of the things that
4 was brought up earlier in this case is, is that you need
5 to have an affidavit to, before you bring a professional
6 negligence claim against an engineer. What the Court
7 found when we heard this is that it is against an
8 individual, it is not against an organization or an
9 engineering firm, the statute doesn't apply that. But we
10 did have an affidavit, the affidavit was signed by Andy
11 Tollison, Andy Tollison confirmed that it was, in fact,
12 his affidavit at his deposition. And in that affidavit it
13 did state that there was sufficient evidence to bring a
14 claim for professional negligence.

15 THE COURT: One moment, yes ma'am.

16 MS. WOOTEN: Your Honor, I think we can dispatch with
17 this argument in short order. The statute he is talking
18 about is a predicate to filing a lawsuit. We are not
19 talking about that, what I am talking about is you need a
20 standard of care opinion, an expert who can testify at
21 trial. And that is not, that's what's not been addressed.

22 THE COURT: Okay. So fast forward essentially,
23 beyond that we are beyond filing the lawsuit obviously.
24 He is talking about testimony at trial, with some evidence
25 of a breach of a standard of care.

1 MR. CHAMBERS: We have two. And with what is come up
2 here today, I would like to supplement the record with
3 some deposition testimony from those two. They allege
4 that, they are taking snippets out of Mr. Abbata's
5 deposition testimony. Mr. Abbata was in deposition for
6 over eight hours. By the end of it he had testified
7 thoroughly on a tremendous number of things. I had
8 listened to him misspeak on several things, towards the
9 end of it and then come back and then address those same
10 things when asked about it slightly different. So as far
11 as having an expert who can address the professional
12 negligence, we do have it, I will supplement this with his
13 deposition testimony. A lot of what we have here is a
14 situation where, you know, Hearst versus Sandy which is
15 494 SE 847, talks about how an engineer winds up with a
16 duty to a third party property owner that they don't have
17 a contract with. And the Court's answer to that is that
18 they do have a duty and that duty comes into play when
19 they are through contract taking over the obligations of
20 another party that does have a direct duty. The City has
21 an absolute duty due to those easements, to the property
22 owners, there is privity there. Part of what Weston and
23 Sampson was suppose to do via contract was to prepare
24 required easement plats to the City, make sure that, you
25 know, that the City had a plat for obtaining every

1 easement that they needed. And the contract goes through
2 and it basically says the property, the project or
3 basically that it is the engineers job to assist in
4 obtaining such approvals and permits on behalf of the City
5 prior to commencement of construction of the project as
6 further provided in section eight. And basically with
7 that it goes into discussing easements, right below that.
8 You will see that on, basically the second page of the
9 contract where it says, see final designed page. That is
10 the contract between the City and Weston and Sampson. It
11 absolutely does, they allege that, oh, there is some other
12 contract that says we don't have to do that. Well, that
13 is not what Michael Sheu said, that is not what the City
14 said. Michael Sheu said, no, Weston and Sampson needed to
15 do these things. And Weston and Sampson says, no. So
16 what we have got is we have got two people pointing
17 fingers at each other. But the contract, I think, sorts
18 that out, it makes it absolutely clear to us that there is
19 sufficient evidence that they had a duty or basically they
20 had an obligation there. They took that obligation on
21 from the City pursuant to Hearst versus Sandy and that
22 basically creates the situation where there is a nexus
23 between the engineer and the property owner.

24 THE COURT: Yes, ma'am.

25 MS. WOOTEN: Your Honor, if I may address. There is

1 not a dispute of fact about, between the City and Weston
2 from what the contract requires. What we are saying is,
3 the Plaintiffs have no standing to argue that they are
4 owed a duty under the contract. The case law that is
5 referenced in the memorandum that I just received does not
6 support the claims made. On page, I am not sure, the page
7 that talks about Hearst versus Sandy and the cases that
8 follow establishes, claims to establish, a duty of care,
9 for a contractor to a property owner. The quoted cases,
10 if you look at the cases actually cited here say a
11 builder, a duty of care for a construction company. My
12 client is an engineer, these cases do not support a duty
13 extending from the construction company's duty, whatever
14 that may be, to the engineer here and I have not seen any
15 case law to support a duty owed to my clients. Thank you,
16 Your Honor.

17 THE COURT: Mr. Chambers.

18 MR. CHAMBERS: Sandy, licensed civil engineer
19 possessed the seal bearing words, California Registered
20 Professional Engineer employed in Sandy. This seal was
21 placed on the plans. Though he testified that he did not
22 personally stamp the plans. It was fairly established by
23 the pleadings and depositions that William stamped the
24 plans and then submitted them to the financing company.
25 Although the plans contained a California seal the

1 financing company accepted the stamp and granted the loan.
2 Basically the Hearst's have no idea that he was not a
3 licensed South Carolina engineer. That is the case where
4 it goes into and then it talks about this third party,
5 whether the, an engineer, Mr. Sandy was an engineer or
6 whether it be a contractor or whether it be somebody else.
7 There are two ways to bring them in. One is the duty
8 arising from the statute. The second, which is a duty
9 that arises from one's own volition in taking on a duty
10 that another party owes to the person. And so in
11 designing this house, as this California engineer did, he
12 was taking that duty, a contractor does not necessarily
13 need the engineer to design the house in South Carolina
14 below a certain size. But by taking on that duty, what he
15 did was he took on a duty that the contractor has to the
16 contractor's client to make sure that basically the design
17 was not going to have certain clause in it. So, what the
18 Court basically says is that, the record shows that
19 William Sandy assumed the contractual duty to draft and
20 design plans and it also showed that Sandy reviewed the
21 plans prepared by William for building codes compliance,
22 general bearing capacity, the soils, setbacks for zoning
23 requirements and legal standards for Sumter County for
24 foundations. Viewing the light in the evidence most
25 favorable to the Hearst we find a genuine issue of fact

1 exist as to whether Floyd Sandy owed a duty to the Hearst
2 and whether he is subject to liability for any harm in
3 performing the services in connection with the design of
4 the Hearst home. Accordingly, we reverse and grant
5 summary judgment or grant, reverse the grant of summary
6 judgment. So, you know, what they say it is a duty
7 arising from an undertaking. At common law there is no
8 duty to act but an act is voluntarily undertaken. The
9 actor assumes a duty to use, to care. So, in this case
10 what we have is Weston and Sampson assumes the duty via
11 this contract to check for these permits, check for these
12 easements, to determine whether these things are in line.
13 And that is how they are linked, through the City and
14 through the property road. And there is also statutory,
15 there is also statutory link too. Under South Carolina
16 Law of Regulations 49-301, it places the responsibility of
17 a licensed engineer and an engineering firm to protect the
18 public. And the regulations specifically states, the
19 engineer shall hold paramount the safety, health and
20 welfare of the public in the performance of his
21 professional duties. The engineer shall at all times
22 recognize his primary obligation is to protect the safe,
23 health, welfare, or property and welfare of the public.
24 So by failing to adhere to this easement, if you were the
25 construction inspector to be there to stop something or

1 knowing, as Gene Pierce said, that the easement was
2 exceeded and everyone knew it. There is a breach of duty
3 there and there is a breach of duty to, you know,
4 basically the public in the sense of protecting one,
5 cultural resources; and two, you know, protecting these
6 peoples property. And on Megan Moody, that is very
7 simple. She was at the meeting where they discussed this
8 15 foot easement, September 18th, item four talks about
9 the 15 foot easement. She is listed as being there and
10 Megan Moody of Weston and Sampson. On January 5th she is
11 winding up a surveyor to stake out the path in this, of
12 this project and rather than staking out the easement she,
13 she writes to the surveyor, they need staking between the
14 manholes over the sewer centerline at 20 foot offsets.
15 Well, 20 foot offset is, if the center is here, they have
16 to stake 20 foot there and 20 foot there, that is 40 feet
17 wide. They only have 15 feet in which they can work in.
18 With heavy equipment rolling down the road, digging this
19 thing as fast as they allege that it happened, you are not
20 measuring off those stakes to keep this thing in the
21 easement with that happening. That's not a way to keep
22 this thing on track. And the Joe Eelman, the surveyor
23 confirms this and he says the contractor needs this cover
24 line from manhole to manhole and then placed 20 foot
25 offset stakes every 100 feet. Do they need grades getting

1 it done and in the next two weeks should not be a problem.
2 So he really kind of, he really kind of nails down exactly
3 what they are doing there with that. They are not, she is
4 not sending out an email saying, hey, stake off this
5 easement, this is the barriers where you need to keep
6 these people in. She is basically having the guy, the 15
7 foot easement is out the window. The interesting thing on
8 this is, is that Megan Moody sends this email to Robert
9 Horner who never says anything about it. And it should
10 have been an alarm bell, it would seem to be an alarm bell
11 if you are staking out a 40 foot wide path on a 15 foot
12 easement. Because they don't even have the right to go
13 stand over here and put the stake in the ground, it is not
14 their place. And that is the key that is missing here in
15 all of this, is they have the right to be on this 15 foot
16 wide path for certain specific things, not building a road
17 but for maintaining a sewer line. And what they did was,
18 instead of taking this 15 foot wide path, they made
19 something as wide as this room. And when they are outside
20 of that 15 foot none of them have the right to be there
21 doing something that is destructive. That's all.

22 MS. WOOTEN: Just one point on that, Your Honor.
23 There is lots of problems with the argument we just heard
24 regarding Megan Moody. But I think it can be distilled
25 down to two very simple things. We heard Counsel say

1 earlier today and I don't think he would dispute this,
2 that everybody knew that the easement was 15 feet. So
3 this 40 foot nonsense is a side issue. There has never
4 been any testimony, the second part of that, there has
5 never been any testimony, the parties were unclear if the
6 easement was 15 feet and there has never been any
7 testimony from the contractors to suggest that the
8 easement was staked at 40 feet. There have been testimony
9 by Mr. Pierce that the easement was actually staked a long
10 time. That doesn't really matter. What you have to focus
11 on is their admission, their use of evidence in this case
12 to support that everybody knew before the work was done,
13 that the easement was 15 feet. So this email is a side
14 issue, it is a red herring, Your Honor. Thank you.

15 THE COURT: Okay. I assume that, Mr. Chambers, you
16 would like to supplement that argument in writing as well.

17 MR. CHAMBERS: Yes, Your Honor.

18 THE COURT: Get that to me by Monday.

19 MR. CHAMBERS: Yes, Your Honor.

20 THE COURT: And if necessary you and Ms. Lisowski
21 will have a brief opportunity to respond if necessary.
22 Okay. And I will let y'all know.

23 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

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CERTIFICATE OF REPORTER

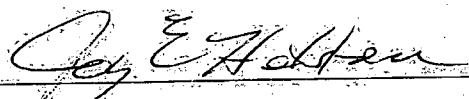
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State of South Carolina)
)
County of Newberry)

I, Joy E. Holston, Official Court Reporter for the Eighth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the County of Richland, Columbia, South Carolina on the 3rd day of January, 2018.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

July 19, 2018



Joy E. Holston, Court Reporter

My Commission expires: May 2, 2026

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

COURT OF COMMON PLEAS

MODESTA BRINKMAN, DAVID)
BRINKMAN, JAMES COLEMAN)
CARL FOSTER, KAREN FOSTER)
ROBERT COLLINS, PAMELA)
COLLINS,)

PLAINTIFFS,)

v.)

TRANSCRIPT OF RECORD
15-CP-40-5598

WESTON & SAMPSON ENGINEER,)
INC., CITY OF COLUMBIA, SC)
NAPM, LAYNE INLINER,)

DEFENDANTS.)

May 8, 2018
Columbia, South Carolina

B E F O R E :

THE HONORABLE G. THOMAS COOPER, JR., JUDGE

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(There were no exhibits submitted.)

1 THE COURT: I want to go ahead and have a
2 — basically because my schedule has changed
3 somewhat, try to address any dispositive motions
4 prior to the June 4th trial, is that correct, and
5 address any motions in limine if there are any at
6 this point in time. I have in front of me only two
7 motions: One, Layne Inliner's motion for summary
8 judgment, as well as North American Pipeline
9 Management's motion for summary judgment. Are there
10 any other issues?

11 MR. KENDALL: Your Honor, if I may, Rhett
12 Kendall — and I'm just gonna provide this, our
13 list — I represent Layne Inliner. And you had
14 asked us if I'd list, we tried to consolidate a list
15 for you so you'll be prepared where, because what
16 has happened in this case is that we had a hearing.
17 We've had two other judges who we thought were trial
18 judges, things have changed —

19 THE COURT: I'd prefer if they'd try the
20 case.

21 MR. KENDALL: —for us, who were trial
22 judges, but we thought we were assigned to us. But
23 Judge Newman took up two motions and that have not
24 been, for which he has not issued rulings and we, so
25 that's the first block of things we put there,

1 Weston & Sampson's motions and the City of
2 Columbia's motions. There ---

3 THE COURT: Summary judgment motions?

4 MR. KENDALL: Yes, Your Honor. There
5 were, in the last hearing we had with Judge Lee
6 there were a couple of dispositive type motions that
7 were argued and have also not been ruled on. One,
8 plaintiff's motion for summary judgment as to
9 trespass, and against 59(e) motions for
10 reconsideration for prior order. That one actually
11 wasn't argued, that was just filed, so she has not
12 heard from us but that's an open motion. That had
13 to do with findings of privilege or non-privilege,
14 if you will, on an expert's file so it's not really
15 dispositive, but it's an open issue.

16 And then, Your Honor, you correctly listed
17 that there are two summary judgment motions open or
18 pending for today that have not been heard and
19 they're ripe for yearning. And we went ahead and
20 listed for you the motions in limine that were
21 filed, and some have been talked about. Rulings may
22 have been suggested; but given the nature of the
23 motions in limine, I don't think that there's any
24 binding, binding decisions or rulings from the court
25 on any motion in limine. So to the extent the Court

1 wants to take those up today either in fact or sort
2 of in a preview format we'll be glad to entertain
3 that. So I hope that's helpful, Your Honor.

4 THE COURT: Very helpful.

5 MR. KENDALL: I'm sorry, we just threw
6 this together this morning for Your Honor.

7 MR. TODD: Your Honor, Monty Todd. I
8 represent Layne Inliner on the motion for
9 intervention by FCCI, which is National Pipeline
10 insurance company, and Judge Newman granted the
11 motion for intervention. And basically the motion
12 of intervention was to, they wanted to intervene so
13 they could submit special interrogatory verdict, it
14 had to do with insurance coverage.

15 THE COURT: All right.

16 MR. TODD: So what we would request, of
17 course, if Layne's motion for summary judgment is
18 granted, then my request is moot. But what, is if
19 it's not granted, we would just ask for FCCI to say
20 what special interrogatory verdicts they want so we
21 can say yes, no, or —

22 THE COURT: Who represents FCCI?

23 MR. TODD: Well, the lawyer's not here so
24 it'll be something to take up at a later date. He
25 wrote, he sent an email —

1 MR. KENDALL: He's in trial, Your Honor,
2 in Charleston County I think.

3 THE COURT: Okay.

4 MR. TODD: Yeah.

5 MR. DUDLEY: Your Honor, I'm Todd Dudley,
6 I'm the personal attorney for North American
7 Pipeline, the same thing as Mr. Todd. That's, I
8 just, what he said.

9 THE COURT: And how does — FCCI, is that?

10 MR. DUDLEY: Yes, sir, that's the
11 insurance company. That's my client's insurance
12 company for which Layne Inliner is an additional
13 insured.

14 THE COURT: How does it affect your
15 client?

16 MR. DUDLEY: Because then I'm in the same
17 boat. The idea they want to ask special
18 interrogatories and we just said, great, tell us
19 what they are; and Judge Newman granted their motion
20 to intervene, to have the special interrogatories,
21 we're just waiting for them. We've asked them in
22 court to tell us what they are, we promptly made
23 agreement, so we're just asking them to actually
24 provide that to us now so we can knock it out
25 before.

1 THE COURT: Okay. Haven't heard from
2 them?

3 MR. DUDLEY: No, sir.

4 THE COURT: All right, anything else?

5 MR. KENDALL: That's it by way of status
6 of what we're here to do today, Your Honor.

7 THE COURT: And these motions, these
8 outstanding motions, how long have they been
9 pending?

10 MR. KENDALL: The ones that have been
11 argued?

12 THE COURT: Yeah.

13 MR. KENDALL: I believe that first set was
14 argued in January and with Judge Lee and, or Judge
15 Newman was in January.

16 THE COURT: So ---

17 MR. KENDALL: That was in January. And
18 the ones with Judge Lee I believe were in early
19 February or late January. It's been several months
20 in any event. I'm sorry I don't have those dates.

21 THE COURT: That's all right. Well,
22 obviously what's, prior schedule is somewhat of a ---
23 all right, let me look at this. Well, let's go
24 forward then on the motions that we have in front of
25 us today. I'll look over the motions in limine. It

1 matters not to me -- we can proceed. I would like,
2 let me ask the plaintiff. Can somebody give a
3 depiction in some form as to what happened.

4 MR. HODGE: I'm happy to do it. In my
5 motion, Your Honor, I'm happy to give you the
6 background.

7 THE COURT: I've read it, but it doesn't
8 make a lot of sense to me. Where is this property
9 at and --

10 MR. HODGE: Your Honor, I'm John Hodge for
11 the plaintiffs. I'm happy to give you an expose,
12 and I think the defendants --

13 THE COURT: Somebody got a diagram?

14 MR. DUDLEY: I have pictures.

15 THE COURT: And I'll do any kind of
16 schematic.

17 MR. DUDLEY: Schematic and an aerial. And
18 if you don't mind I'll tell you what they are so
19 that you --

20 THE COURT: Sure.

21 MR. DUDLEY: This is just a plat. It
22 shows the lot lines that we're dealing with with the
23 structures. Two of those four have structures on
24 them.

25 THE COURT: Wait a minute now. Okay.

1 That's the river.

2 MR. HODGE: And here's an aerial of that
3 same area.

4 THE COURT: And which side of the ---

5 MR. DUDLEY: This is on the west side of
6 the Broad River. If you walk down ---

7 THE COURT: The left side.

8 MR. DUDLEY: If you were to walk down the
9 river walk, about the time you get to the place
10 where the big power lines pass and you looked across
11 the water, at that point you would see this
12 property.

13 THE COURT: Okay. And ---

14 MR. DUDLEY: And here's a more closeup
15 view that gives you an idea of the specific area
16 where the allegations of the digging and the
17 historic abutments were located.

18 THE COURT: And what happened to the
19 abutments?

20 MR. HODGE: Your Honor, I'm happy to give
21 a factual overview.

22 THE COURT: All right, please go ahead.

23 MR. HODGE: We represent four home owners
24 that have property on the Broad River. There are
25 actually three homes and one vacant lot. Back in

1 the Fall of 2014 the City of Columbia as part of a
2 sewer rehabilitation project engaged the
3 defendants -- this was the City -- for the purposes
4 of rehabilitating a sewer line, and there was a
5 15-foot wide easement there for maintenance of the
6 sewer line. Unbeknownst to our clients ---

7 THE COURT: This ---

8 MR. HODGE: ---they started planning in
9 September to build this road. And there were ---

10 THE COURT: Wait, hold on. This
11 depiction, the dotted line apparently is the sewer?

12 MR. HODGE: We can supply you with a
13 number of pictures as well as some plats and other
14 diagrams so.

15 THE COURT: Is that the sewer line?

16 MR. HODGE: This is the sewer line, this
17 dotted line right here.

18 THE COURT: All right.

19 MR. HODGE: And we represent Foster,
20 Brinkman, Coleman, and then, let's see, there's...

21 THE COURT: Okay. That's ---

22 MR. HODGE: Another one up here, Collins,
23 so, yes, Your Honor.

24 THE COURT: Okay.

25 MR. HODGE: So, the City -- let me turn

1 around. So they were planning these monthly and
2 they've discussed building a road using rock,
3 removing rock from the site and that sort of thing,
4 never notified our clients of anything. Low and
5 behold, in early February the contractors come
6 through and there was the engineering that was
7 supposed to be planning this. There were the
8 contractor, subcontractor which is basically NAPM
9 and North American Pipeline,
10 contractor/subcontractor, and there was the City
11 project and had their numerous big, thick contracts
12 and bid documents and that sort of thing. Well,
13 they came in early February and basically bulldozed
14 the road right through our people's backyards.

15 THE COURT: And how could your property
16 owners sit still while that happened?

17 MR. HODGE: Well, they didn't know it was
18 gonna happen. They woke up one morning. They hear
19 some noise. They thought they were putting an SCEG
20 easement down the way down the river. The next
21 thing you know that there's vehicles in the backyard
22 and there are people, and there's —

23 THE COURT: Why didn't they do anything to
24 try to halt it at that point?

25 MR. HODGE: Well, they did eventually, but

1 it took a couple of days to figure out what was
2 going on. At first they thought that they were just
3 clearing the sewer easement, but what we had was
4 basically in places a 55, 50-foot wide spot of
5 destruction through their backyards with about a 18
6 to 20 foot sheer cliff on one side. There is —

7 THE COURT: How wide is, how wide is that
8 sewer easement?

9 MR. HODGE: This easement is 15 feet,
10 7-and-a-half feet either side of the center line of
11 the manholes. So it's been pretty much admitted,
12 and I think we've got a summary judgment motion
13 before Judge Lee on trespass, they admitted that
14 everybody knew they went outside the easement. So,
15 that's part of it. In doing so, creating these
16 cliffs they have affected the stability of the
17 property in two of our client's homes. In addition
18 to that, two of the oldest standing structures in
19 the midlands that date back to the time when George
20 Washington was president were destroyed. There were
21 two bridge abutments that were identified, one on
22 Doctor Coleman's property and one on Mr. Brinkman's
23 property.

24 THE COURT: Did Coleman and Brinkman know
25 that?

1 MR. HODGE: Say again, Your Honor?

2 THE COURT: Did they know they had some
3 sort of historical?

4 MR. HODGE: Oh, they — our clients did.
5 Our clients did. In fact, Mr. Brinkman is in
6 addition to being a computer engineer is also quite
7 an archeologist in his spare time and has been
8 recognized as such; and he had first identified this
9 and contacted the South Carolina Institute of
10 Archeology and they basically validated what these
11 structures were. And so most structures were
12 outside the easement and in one case that after
13 Brinkman's abutment was already destroyed and that
14 was actually, the material was thrown down into a
15 jurisdictional wetland, they were, — and by the
16 way, we, I think it's been pretty well established,
17 undisputed, there were no permits for this project
18 either. They go down towards Doctor Coleman's and
19 Coleman comes down to this deputy. He yells at
20 these guys, "this is a historic structure, don't
21 touch it," and he comes back up to his house and he
22 comes back and they destroyed his abutment as well.
23 And eventually our ran up —

24 THE COURT: Ran over these people.

25 MR. HODGE: Excuse me?

1 THE COURT: The City and their contractors
2 just ran over these people?

3 MR. HODGE: Absolutely. They had big
4 earth moving equipment and they were knocking down
5 the rocks. It was a standing about a 14 to 18-foot
6 high structure and they basically knocked it down.
7 And the remains, we've got good imagery showing the
8 remains of these abutments basically at this point
9 looks like a pile of large rocks; and unfortunately
10 for the City, is one of those piles of large rocks
11 went to a jurisdictional wetland and the Corp of
12 Engineers has gotten involved because there were no
13 permits for this as well.

14 So, by the time they get down to Mr.
15 Foster's property he pretty much stops and there
16 were calls to the City from some of our clients as
17 well as some neighbors, and at that point the City
18 stopped the project and then there were discussions
19 after the fact and then eventually this action
20 ensued. So those are the general facts of what took
21 place, and I think that I've tried, I've tried to
22 give you what I would call the undisputed facts for
23 this. And of course, the defendants may have a
24 little different spin or interpretation, but that's
25 basically what occurred.

1 THE COURT: All right. And I haven't
2 heard -- that construction halted?

3 MR. HODGE: Yes, Your Honor. The
4 construction's been stopped and basically until
5 recently in light of that, the area that was
6 affected there's been slumping, there's been
7 erosion. Our clients basically let the grass and
8 let the weeds grow trying to stabilize the site as
9 best they could. I know that the City has expressed
10 interest in going back in and trying to finish this
11 work at some point and really that --

12 THE COURT: So this road is access--

13 MR. HODGE: It is a road. Now they may
14 dispute it's a road, --

15 THE COURT: What's the road for?

16 MR. HODGE: --but the documents that they
17 have starting in September talk about building a
18 road; and the easement that existed was for
19 maintenance of the sewer line, not for building a
20 road. It is --

21 THE COURT: What is the function of the
22 road?

23 MR. HODGE: Your Honor, it's a dirt road.

24 THE COURT: It's a road.

25 MR. DUDLEY: Why did they build the road?

1 MR. HODGE: Well, Your Honor, the Layne
2 Inliner apparently has some equipment that they
3 needed to employ into the manholes to basically put
4 in some rubber lining in the sewer pipes; and so,
5 ostensibly, that the nature, the purpose for the
6 road was to deploy these vehicles that would perform
7 this work.

8 THE COURT: Okay.

9 MR. HODGE: Well, there was certainly
10 permanent access for the, they wanted permanent
11 access in the future. So what their documents say
12 is that the road was built not only for this
13 project, but for work in the future, and certainly
14 the nature of the land disturbance is permanent with
15 the cliffs and the road. And you heard argument to
16 restore this property to its former condition at
17 this point.

18 THE COURT: Okay. All right, it'd give me
19 a little background.

20 MR. HODGE: Yes.

21 MR. HAMLET: Your Honor, I'm Mike Hamlet,
22 I represent the City of Columbia. I'm with the City
23 attorney's office, and I don't purport to know the
24 facts as much as all the other lawyers. I've been
25 on this case for about a week. Gene Laskowski who

1 you may know as the general counsel of vocational
2 rehab for the State. However, the idea that those
3 facts are the undisputed facts, I'm not sure anyone
4 one of this side would agree that they're
5 undisputed. I'd like to provide the Court a little
6 context of the environment as to where this began.

7 Back in the '80s a sewer pipe was placed
8 on these properties and easements were granted to
9 the City of Columbia for that purpose. There is a
10 15-foot permanent easement and there was a 50-foot
11 temporary construction maintenance easement that was
12 put on those properties. One of the properties that
13 easement, that extended easement expired six months
14 after the construction of the pipe, the other ones
15 do not expire.

16 Several years ago the EPA started looking
17 at the water systems in South Carolina because many
18 of the water systems had been in the ground for a
19 long time, as this pipe had been in the ground for a
20 long time. And the City of Columbia along with
21 other water systems, although we are the largest
22 water system in the state, entered into a consent
23 decree to do work on our property. This pipe is
24 part of that project. And we contracted, the water
25 system contracted Weston & Sampson and engineers for

1 this project and also contracted Layne Inliner to do
2 work on this project who hired a subcontractor,
3 North American Pipeline. This pipe has been in the
4 ground for a long time, and as you can imagine,
5 sewer pipe can corrode from the inside. At the time
6 of this project it wasn't clear that this pipe
7 wasn't corroding, but it was worth it under the
8 consent decree to undertake a process that would
9 basically line the pipe to give it several more
10 decades of life.

11 But this property, this line, there are
12 manholes, and this line was on a wooded area under a
13 slope and the equipment to get to the manholes,
14 which is all we would need to dig up -- we wouldn't
15 need to dig up the pipe, we just need to dig up the
16 manholes -- had to be leveled out for the trucks to
17 get to the manholes. That process was under way
18 when the plaintiffs objected to the work. The --

19 THE COURT: What do you mean when you say
20 under way?

21 MR. HAMLET: I'm sorry?

22 THE COURT: What do you mean when you say
23 it was under way?

24 MR. HAMLET: The -- there was a, the slope
25 was leveled so that the trucks can get out there and

1 the brush was clear. This was not landscaped
2 property. This was wild property that was basically
3 brush on the river side.

4 THE COURT: But it belonged to somebody
5 else.

6 MR. HAMLET: It did. The slope was
7 leveled out for the trucks not as a permanent road.
8 It was leveled out just for this repair.

9 THE COURT: Were the homeowners even
10 notified that this was about to occur?

11 MR. HAMLET: Your Honor, I have to, I have
12 to beg the Court's patience, I may need to differ to
13 my cocounsel who were involved in all the discovery.

14 THE COURT: Do you even know?

15 MR. HAMLET: I don't know, Your Honor. I
16 don't know the answer to that.

17 THE COURT: Seemed the prudent thing to
18 do.

19 MR. HAMLET: I agree, I agree. It would
20 be certainly the practice of the City. This, the
21 road was never intended to remain there. This
22 property was never remediated. In the easements and
23 it's the practice of the City that we would
24 remediate any property we agree to do, where we
25 would do work. In fact, an easement itself, except

1 when you remediate the property back to the
2 condition it was, not build a road. The work
3 stopped and this case ensued. The reason I want to
4 bring that up is that while it's characterized as
5 the City doing it and taking advantage of property
6 owners, this was actually really important work.
7 It's an actual sewer pipe 50-feet from the Broad
8 River Road that needs to be maintained. The
9 catastrophic cost of that pipe not being maintained
10 and having a breach is incalculable.

11 So I, for my portion, I want to convey to
12 the Court that while plaintiffs' counsel has
13 characterized this as undisputed and certainly told
14 their version of the story and argument to the
15 Court, there's context here that's more important.
16 This is work that we do all over the Midlands. It's
17 work that we do atoningly, and it was done
18 according to our practice and according to the law.
19 I don't know if any other cocounsel would want
20 to contribute.

21 THE COURT: All right. Mr. Boineau,
22 they're not gonna let you say anything.

23 MR. BOINEAU: Sir?

24 THE COURT: I said do you wish to proceed
25 at this time?

1 MR. BOINEAU: Yes, sir, I'm happy to argue
2 my motion.

3 THE COURT: All right.

4 MR. BOINEAU: Your Honor, if I may
5 approach the Bench.

6 THE COURT: Yes, sir.

7 MR. BOINEAU: I've got a notebook that may
8 help you lead and follow along on our motion. Our
9 motion is specific to one cause of action that's
10 asserted against the defendants in the case. The
11 motion is practice, it's just as my motion. Your
12 Honor, if the Court's inclined to grant it, it would
13 apply to all the other defendants as well. I
14 believe —

15 THE COURT: Which cause of action?

16 MR. BOINEAU: It is the cause of action
17 for the destruction of archeological structures.

18 THE COURT: All right, I've got it.

19 MR. BOINEAU: —in which plaintiffs —

20 THE COURT: Fifth, fifth cause of action.

21 MR. BOINEAU: That is correct, Your Honor.
22 Your Honor, just briefly, I think you pretty much
23 have the facts. One thing I want, I think that the
24 Court needs to know is that this sewer line was
25 constructed with a 50-foot wide easement and that is

1 somewhat important to my motion, maybe not
2 completely. One of the easements that was granted
3 had a sunset provision in it with a 50-foot easement
4 for maintenance to expire and the other ones did not
5 have such a —

6 THE COURT: You said the maintenance, was
7 that 50-foot, I thought it was for construction.

8 MR. BOINEAU: I believe if you read the
9 easement itself, Your Honor, they've been filed in a
10 previous memorandum up here, and I want to quote it
11 indirectly, I believe it says construction and
12 maintenance; and if I'm incorrect I'll ask Mr.
13 Kendall who may have one here. But I'm not, that
14 is not the basis of my motion, Your Honor, I don't
15 want to get bogged down. The other thing I do want
16 the Court to know is that the last property owner,
17 one of the last property owners here as this project
18 is going through is Mr. Foster. Mr. Foster comes
19 out and says, hey guys, wait, wait, don't use that
20 machine to cut these trees down, it'll mess up my
21 property, use a chainsaw. My guys go, well, we
22 don't have a chainsaw. He goes, well, I'll run to
23 my house and get you one. And so the homeowners
24 provide them — so it's not like, the story sounds
25 great when it's told that way to a jury and, oh, we

1 wake up one morning and all of a sudden our property
2 is destroyed by these people. The fact is, is that
3 there was an order, an consent agreement, requiring
4 the sewer lines be maintained. You cannot maintain
5 them without getting to them; and so to get to them,
6 they have to clear property to get there.

7 Your Honor, to the extent they went
8 outside the 15-foot easement, whether or not it was
9 a 15 or 50-foot easement, I'm here to argue that
10 today. It has nothing to do with my argument, but I
11 just did want to clarify those couple of things.

12 Your Honor, the basis of my motion is very
13 simple. It's solely on that one cause of action.
14 That apparently, at the beginning of this case I
15 didn't realize that was gonna be quite the hangup
16 for this case, but it apparently has become one. I
17 learned that last mediation, thus, the delay. If
18 the Court would wonder why I haven't filed it
19 sooner, that is the reason for that and I'm happy to
20 explain if the Court needs any further information.

21 Your Honor, South Carolina code section
22 16-11-780 which includes the notebook that's in
23 front of you, Your Honor, has a copy of that statute
24 in there. That —

25 THE COURT: I've got it.

1 MR. BOINEAU: Thank you, Your Honor. That
2 particular statute is a, under the criminal code,
3 and we've argued about that statute one time before
4 for purposes of the employment of the State
5 archeologist as a expert witness in this case and
6 Judge Lee declined to appoint him as the State's
7 representative in this case based upon the criminal
8 nature of the statute, that this was in fact a civil
9 action. That order is also part of my memorandum
10 which is filed in support of my motion which is in
11 my notebook which I shared with the plaintiffs.

12 Your Honor, if you read the statute
13 itself, particularly section C, it says: It is
14 unlawful for a person to willfully, knowingly, or
15 maliciously, enter upon the lands of another on the
16 posted lands of the State and disturb or excavate a
17 prehistoric or historic site for the purpose of
18 discovering, uncovering, moving, removing, or
19 attempting to remove an archeological resource. If
20 you read on it goes down and it does grant a
21 property owner a private right of action in cases
22 where this applies. The prob—

23 THE COURT: What section is that?

24 MR. BOINEAU: Your Honor, in here the
25 private right of action is, I think it's "I", Your

1 Honor. It is, "I."

2 THE COURT: It is.

3 MR. BOINEAU: Sorry, I had to flip to the
4 fourth page, page 4 of 5 of what I've handed to the
5 Court. It says the landowner in the case of private
6 lands or the state, in the case of state lands, may
7 bring a civil action for a violation of this section
8 to recover the greater of the archeological
9 resources, archeological value, or commercial value
10 and the cost of restoration and repair of the site
11 when the archeological resource was located, plus
12 attorneys fees and costs. Biggest ham in this case
13 is that last sentence, Your Honor, quite frankly.

14 What we have here is that the plaintiff,
15 this statute is put in place if, for instance, if
16 Mr. Kendall and I decide that we don't like one of
17 the statutes that the State has or one of the
18 statues that might be in somebody's front yard that
19 has been deemed historical and Mr. Kendall and I go
20 over there and we decide we're gonna deface that
21 particular statute, we have intent to destroy or
22 deface that particular object, that homeowner may
23 sue us in a private right of action to recover the
24 cost to restore it. This statute, if you read the
25 code, only applies when you have to willfully go on

1 to the property doesn't happen. Our people, for
2 purpose of this argument, they could have known, we
3 could have all admitted which has not been done, we
4 could have all admitted, yep, we knew we were going
5 on their property; but the problem is, for this
6 statute to apply, they had to know they were going
7 on their property to destroy some archeological
8 structure. That is just the way it reads. It's
9 under the criminal code and our memorandum, Your
10 Honor, that we provided supports that.

11 Now, even if the Court says, well, I'm
12 gonna get past that, I'm gonna somehow determine
13 that these people were on there to destroy
14 archeological structures, the first thing I think
15 the Court needs to take in mind is the fact that
16 when this was built it was built for a 50-foot wide
17 easement. To the extent that archeological
18 structure was there, how do we know what condition
19 it was in? We don't. And whether or not it was the
20 same condition as when it was originally
21 constructed. So their basis is they moved some
22 rocks around here. There was blasting done during
23 the original construction, but I don't want to get
24 off base on that too much, Your Honor.

25 If you keep going through the statute, the

1 end of the statute, section K says, nothing
2 contained in this statute shall limit or interfere
3 with, number three, the lawful acts of utility
4 worker acting in the scope and of and in the course
5 of his employment. The problem with, even if the
6 Court got through all this and said I'm gonna figure
7 out what we're gonna help them and say it doesn't
8 require intentional act for the purpose of
9 destroying an archeological structure, it only
10 requires an intentional act and then an
11 archeological structure was destroyed, the problem
12 is that when you get to K(3), these people who's
13 admitted during when you asked them — I'm so glad
14 you asked them what the purpose of that road was
15 because they said it was for purposes of fixing a
16 utility line, and I was hoping that's what they were
17 gonna say and they did. So section K(3) eliminates
18 the possibility; and even if you got past the
19 beginning part, they can win on that cause of
20 action, there's a specific exception. So even if
21 the Court was so inclined to say, get past one, the
22 exception would apply and they can't get past two.

23 Your Honor, there are two more interesting
24 points that I want to make to the Court, and they
25 are in your notebook. And the first one is this, we

1 are here today arguing about archeological
2 structure. And in your notebook, Your Honor,
3 there's a letter from the South Carolina Archives
4 and History to Mr. David Brinkman who they described
5 as a good archeologist, but that's not what he does.
6 He's not an archeologist. He dabbles in that quite
7 frequently. Mr. Brinkman, when he bought this
8 property testified he had no idea there was anything
9 historic on it. He said he did some research as a
10 part-time archeologist, and he thought that this
11 pile of rocks were the Conktee bridge. First he
12 thought there was something else and eventually he
13 came to this conclusion they were the Conktee
14 bridge. And so he did as he knows how to do, what
15 the statute requires you to do if you and I find
16 something that we think is historical in nature.
17 You apply to have it registered as historical, and
18 so he went through the process and he submitted an
19 application. And on May 30th of 2008 the South
20 Carolina Archives and History, the Department of
21 Archives and History wrote him a letter. And what
22 they said was, unfortunately — and I'll read it to,
23 Your Honor. It's in there. I hate to read it to
24 you 'cause I know Your Honor can see it for yourself
25 but. "We appreciate your interest in history and

1 historic preservation and all the thorough work
2 input into the PIF for this resource. We also
3 appreciate you allowing several of my colleagues and
4 me to visit your property on May 13th. It was also
5 good to see Al Roberson of the Confederate Relic
6 Room and Warner Montgomery of the Columbia Star
7 there. Our staff committee on National Register
8 eligibility reviewed your application and proposal
9 when it met earlier this week and agrees with the
10 conclusion we made on site that a great deal more
11 research and archeological investigation and
12 assessment will be necessary before a positive
13 determination of eligibility could be made. Based
14 on the information that we now have in hand, we do
15 not believe the site is eligible for the National
16 Register and cannot recommend that a formal
17 nomination be prepared."

18 So, plaintiff said, uh, oh, that's not
19 good, they said it doesn't count, it's not even a
20 historically significant place, which according to
21 the statute it has to be to qualify. So they said,
22 we'll go hire Doctor Leader and we'll get Doctor
23 Leader to testify that somehow this is, these rocks
24 were historical. And Your Honor, if you look at our
25 memorandum we've cited a number of pages from Doctor

1 Leader's testimony. And essentially, and I won't
2 read every one for Your Honor, but what Mr., Doctor
3 Leader has testified to is these might be, it is
4 very possible in his opinion that these could be
5 archeologically significant structures.

6 THE COURT: Were the structures still
7 intact when this action took place? In other words,
8 was there a bridge abutment sitting there?

9 MR. BOINEAU: No. Your Honor, I've asked
10 for a million pictures. I haven't found one picture
11 of anything. There was, there are rocks all over
12 this place. I mean, you're talking about the Broad
13 River. Think about me riding over that bridge.
14 There are rocks everywhere.

15 THE COURT: I understand.

16 MR. BOINEAU: I have -- there is no
17 picture that these plaintiffs will be able to
18 produce to you today that show something where
19 you'll look at and go, man, that's a bridge
20 abutment. Absolutely not.

21 THE COURT: So it's a pile of rocks
22 according to you?

23 MR. BOINEAU: Absolutely. There's no
24 question it's a pile of rocks. They would admit
25 it's a pile of rocks. They just think it's a

1 historical pile of rocks or an archeologically
2 significant pile of rocks, but it is a pile of rocks
3 and there are piles of rocks everywhere around that
4 area.

5 THE COURT: Was it a bridge over there?

6 MR. BOINEAU: Your Honor, I think if there
7 was a bridge there the Department of Archives and
8 History would have said it's historical. I mean, if
9 somebody had built a bridge out of stones going
10 across the Broad River in the 1700s as they
11 proposed, I can't imagine the better group to submit
12 it that would say, guys, this is historical; but
13 they declined to find that it had any historical
14 value.

15 THE COURT: All right.

16 MR. BOINEAU: And so they hired this
17 Doctor Leader. And Doctor Leader is a very nice guy
18 and he was deposed, the first time — he was
19 deposed, I think, three times. And the first time I
20 think he said basically, I don't really want to get
21 involved. Second time, well, maybe it's a, you
22 know, I'm not gonna say anything unless the State
23 appoints me as the archeologist, not saying
24 anything, offering any testimony. Finally we get to
25 the third time and he basically, Your Honor, his

1 testimony comes across, — and it's cited in my
2 memorandum — but that it is possible that these
3 rocks were archeologically significant, but to make
4 a final determination a lot more work would have to
5 be done. Now the standard of an expert is not it is
6 possible that a lot more work needs to be done; that
7 simply does not work. And that, his overall
8 overriding testimony is just that. In places he
9 thinks, yes, I think this is archeologically
10 significant, I'm sure that he does; but if you read
11 the overriding final testimony, he says that while
12 Mr. Brinkman's research is impressive there still
13 remains significant work to do to verify his
14 ultimate conclusions regarding the historical nature
15 of the property. And that is essentially the
16 conclusion that he comes to.

17 So Your Honor, I don't want to take a
18 whole lot more of the Court's time. I think that
19 what we have covered is — and I'll go back in
20 reverse order. Mr. Brinkman applied for this, these
21 piles of rocks to be deemed archeologically or
22 historically significant to the entity in South
23 Carolina that controls whether or not something is
24 deemed just that. In May of 2008 they sent a letter
25 declining to find any historical significance, said

1 a great deal more research would have to be done
2 before it could even be reconsidered. It has never
3 been reconsidered.

4 And in February of 2015 the City has to
5 maintain its sewer lines pursuant to a consent
6 decree. They go out there in order to get these
7 sewer lines. It's on very steep slope. They have
8 to get the equipment in. They cut the slope to get
9 to it. These people are out there to repair sewer
10 lines. They're utility workers under the meaning of
11 the statute. They, at some point it's alleged that
12 they move a pile of rocks. Unfortunately, Your
13 Honor, moving a pile of rocks itself does not —

14 THE COURT: How many pile of rocks?

15 MR. BOINEAU: Your Honor, one, two, I
16 don't even know how many they allege they moved.

17 MR. KENDALL: We would object to that
18 characterization, but I'll reserve, Your Honor.

19 THE COURT: I'll hear from you.

20 MR. BOINEAU: In any respect, Your Honor,
21 what we call a pile of rocks or a proposed
22 historical abutment, the problem is under the
23 statute to prevail under this statute which allows
24 you to recover attorneys fees and costs — I'm not
25 saying you can't prevail under negligence cause of

1 action, you might can. You cannot prevail under
2 this statute.

3 THE COURT: All right.

4 MR. BOINEAU: So this cause of action
5 should be dismissed.

6 THE COURT: All right. Let me hear from
7 Mr. Hodge.

8 MR. HODGE: Your Honor, while we
9 understand the City may have responsibilities under
10 its consent decree, the issue here really is the
11 City's following its rules; but I'm gonna cover a
12 couple of things before I get to the meat of
13 Trippett's motion and his argument. First off,
14 Judge Lee considered the issue of the temporary
15 versus permanent easement in our motion for summary
16 judgment that's pending so there's some overlap
17 here, and I just want to alert you that your ruling
18 could overlap into what she may rule on so that's

19 —

20 THE COURT: As in?

21 MR. HODGE: —discussion —

22 THE COURT: As regard to this particular
23 statute?

24 MR. HODGE: As far as whether the easement
25 was exceeded. Now, but this summary judgment motion

1 really deals with archeological structures, but I
2 think it's been pretty much undisputed that those
3 were outside the 15-foot easement. So, let me just
4 jump right into it. First off, you know, I think
5 the defendants, NAPM totally misrepresents the
6 nature of these historical structures in their
7 argument, and I would draw you first to what I would
8 call, it's exhibit C in our package. And what the
9 statute that you got in front of you says, and this
10 is important, that — I'm gonna walk you through in
11 detail 16-11-780(c) that Trippett had talked about;
12 but what it deals with is excavation or disturbing a
13 prehistoric or historic site. It doesn't say a site
14 that's on the National Register of historic places.
15 It says a prehistoric or historic site.

16 MR. BOINEAU: I'm sorry to interrupt. I
17 would never interrupt, Your Honor. I just don't
18 have exhibit C so I don't know what we're referring
19 to in the packet that was given. This is the first
20 time I've seen the memo so.

21 MR. HODGE: You've seen this in
22 deposition. I'll given you my copy if necessary.

23 THE COURT: Let me just say my — what you
24 handed up, I have exhibit A and it skips to exhibit
25 D.

1 MR. BOINEAU: Okay. Well, I apologize,
2 let me just ---

3 THE COURT: So B and C are not in here.

4 MR. BOINEAU: I didn't meant to interrupt,
5 I just...

6 MR. HODGE: Okay. I'll make copies.
7 Trippet, you've seen this. I apologize, it must not
8 have copied through my machine, but you've seen this
9 before. This is the polygon. I apologize.

10 THE COURT: And what is that? B or C?

11 MR. HODGE: This is C.

12 THE COURT: All right.

13 MR. HODGE: And I will make sure that we
14 file these exhibits and get you clean copies. So
15 Your Honor, what the statute talks about is
16 disturbing a historic or prehistoric site. Now all
17 these defendants had to do -- it took me when I was
18 told about this about two minutes to find the
19 documents in front of you. You go to the South
20 Carolina Department of Archives and History and the
21 South Carolina History of Archeology together have a
22 cite called Art Site and, ARTSEARCH, excuse me. And
23 basically what you do, and it's in our, the link to
24 that is in our brief. What you do is you put a link
25 in there and put in, you put in the plaintiff's

1 address and what you see is this polygon and the
2 polygon says that these are historic bridge
3 abutments and it says that they, they from 1790
4 until 1900. That Doctor Leader has looked at these
5 and says, yes, they were built around 1790, but then
6 they were modified. And let me just go into why
7 they're historic.

8 This was the first crossing of the Broad
9 River with a bridge, and there were two abutments
10 that were built. Floods eventually washed out the
11 bridges and a cable was placed across the river and
12 there was a ferry that went across so it says Broad
13 River Bridge and ferry site. That's what it refers
14 to. This is from the South Carolina Department of
15 Archives and History website, and this is available
16 to the public. And in our memo, we have given you
17 the link how to find that. And all they had to do
18 was to go to that site and it would identify the
19 plaintiff's property as a historic site. So that's
20 the first thing. It is basically undisputed, I
21 think, that this is, that this is a historic site.

22 Doctor Leader, and this is exhibit D, in
23 his testimony and he has several depositions. This
24 is in his first deposition. And he's asked: You
25 testified earlier that the bridge abutment has been

1 determined to be a historic site pursuant to the
2 State file, the State files, correct? His answer:
3 "Pursuant to the Office of the State archeologist it
4 is a historical site. And when would that have
5 been? 2007. Yeah, as soon as it was found on
6 private property it was protected, or we thought or
7 believed at the time, and since it was a historical
8 structure with materials demonstrating from a
9 historic period, we considered it to be a historic
10 site from that period of time on private property."
11 Now I don't know what's more direct that those two,
12 Doctor Leader's testimony in Exhibit D and what
13 you've got in exhibit C with the map, the screen
14 shot showing that that's historical location.

15 So what is interesting in this case, Your
16 Honor, is that it's also undisputed that none of
17 these defendants did any kind of helpful resources
18 investigation prior to doing this work, and so
19 they're coming here now saying oh, this isn't, this
20 is a pile of rocks, this isn't on the National
21 Registry. Well, let me give you the context.
22 Mr. Brinkman was looking initially and he thought
23 this was the bridge that General Sherman had crossed
24 going into Columbia. He did research and identified
25 that bridge as being north of this location. He

1 actually appeared on the history detective show on
2 TV and presented these results from his historical
3 research. And Doctor Leader who's been very
4 complimentary in the fact that he pulled together
5 that this was a property owned by a gentleman named
6 John Homptkee (ph), a friend, engineer who built
7 these bridges. They are historic structures. Now
8 at this point, yes, it was a pile of rocks because
9 these defendants knocked them down. But there's no
10 doubt in terms of, you know, and you rule on summary
11 judgment, the first thing is there's no doubt that
12 these are, these are historical sites. And the
13 statute does not require one to have a site be on
14 the National Register to be, for a person to be
15 liable under the statute.

16 So let me just walk you through the
17 statute and we'll hit the high points with that as
18 well. The -- but I do want to emphasize the
19 liability does not depend on being on the National
20 Register. And it's clear under the record that
21 NAPM, the moving party here, violated section
22 16-11-780. The first portion of the statute says
23 that one must knowingly or willfully enter upon the
24 lands of another. Well, if you go to exhibits A and
25 if you got B, -- I'll supply it to you if you don't.

1 But if you go to exhibit A starting back in
2 September 2014, there was a meeting and NAPM is
3 there. It says, encoder (ph), Don Robinson, and
4 NAPM and it talks about discussing proposed access
5 road, clear 15-foot easement, engrave for a 12-foot
6 access road, Layne to provide pricing by the linear
7 foot, give City flexibility with budget, concern for
8 rock formations bending along the route, pricing
9 will include the cost of excavating rock. And they
10 came up with an approximate budget of
11 550,000-dollars.

12 Then in exhibit B in November, there was
13 all, basically from Weston & Sampson to the City,
14 there was a proposed budget which talked about
15 clearing, the road building, and the rock excavation
16 of rocks so there's no question that they intended
17 and knowingly entered upon our client's property.
18 Now it goes beyond that. While there was a 15-foot
19 easement they went outside that easement,
20 substantially outside that easement, so I think the
21 first test is pretty straight forward. They knew
22 they were going on to our property. And when you
23 read the testimony of a couple of the witnesses,
24 their witnesses, they basically testify that they
25 all went out, they looked outside the easement. On

1 exhibit E, Gene Pierce who works for Weston and
2 Sampson, when he was asked he says, you know, did it
3 look to you like it was wider than the 15-foot
4 easement? Yes. And then on page 93 of Gene
5 Pierce's exhibit, that's the second page of exhibit
6 D, you know, Mr. Pierce says, I mean, the easement
7 was exceeded. So it's pretty clear. Then on page
8 194 it appears his deposition, same exhibit, he
9 says, I think we were all aware that the easement
10 was being exceeded. Then you go to Michael Shoe
11 from the City, and he basically also says that the
12 easement was being exceeded. And on page 77, the
13 second page of exhibit F, he says it's unfortunate
14 did, that the operation did exceed the 15-feet. So
15 I want to make it very clear that they knew they
16 went to the property. They knew that they had
17 essentially gone on for the purposes of doing this
18 work so they willfully went there, okay.

19 Now they deliberately excavated the
20 historic site. Again, this is the second part of C.
21 They deliberately excavated the site. They had a
22 budget to remove rock. They talked about removing
23 rock. Had they come to our clients and said, hey,
24 this is what we want to do, our clients would have
25 said don't touch it, it's an historical structure.

1 Doctor Coleman, when he saw the destruction in
2 progress, told them to stop, and they continued
3 anyway so that's also a willful and knowing, you
4 know, act; but nonetheless, that they contended to
5 do land clearing activities at the site.

6 And then what was the purpose? The
7 purpose was to uncover, remove, you know, the rocks,
8 which unbeknownst to them was archeological
9 structure. But when Doctor Leader was asked, he was
10 very clear on this — and this is on exhibit I —
11 that one does not have to know when they disturb
12 something that this is an archeological resource.
13 And Doctor Leader was involved when this, when this
14 statute was enacted. He worked with the legislature
15 on it; and he said the, if I can use the phrase, the
16 poster child for it was over in Kershaw County. It
17 was a guy on a four wheeler who was going up and
18 down some old Indian Native American mounds and
19 destroyed them. Of course he didn't know. He just
20 thought it was a hill. He didn't know it was a
21 Native American mound, and that was really the
22 impetus to get this legislation passed.

23 And the important thing and I want to
24 emphasize this very carefully, is that what the
25 statute says is that, you know, it says to enter the

1 lands of another and disturb. It doesn't say to
2 enter the lands of another to disturb, and I think
3 Trippet would have liked the statute to say they
4 enter on the lands to disturb an archeological
5 structure; but what it says is you enter the lands
6 and disturb an historical site. And that's what's
7 really important. And it doesn't, this statute
8 is — a private right of action here does not depend
9 upon any kind of criminal prosecution, and that's a
10 red herring. Judge Lee in her order said that our
11 clients have a private right of action to pursue the
12 claim for the destruction of the historical
13 structure.

14 THE COURT: Where is that?

15 MR. DUDLEY: I've got a copy of it, Your
16 Honor.

17 MR. BOINEAU: If you'll look, Judge, in my
18 notebook under tab number three, exhibit C.

19 THE COURT: All right.

20 MR. BOINEAU: And Your Honor, you will
21 note that there's not an exhibit B in there and the
22 reason why that is, is that the affidavit of Shandon
23 Herfer which was included as an exhibit to the
24 original motion for summary judgment which the Court
25 has so I did not want to duplicate efforts. I

1 didn't know if you needed two.

2 THE COURT: That's fine.

3 MR. HODGE: Well, Your Honor, to us it's
4 very important because even though Judge Lee
5 declined to appoint Doctor Leader as a Court's
6 expert, she certainly left it free for him to
7 testify on our behalf. And I have to disagree with
8 Mr. Boineau's, his characterization we've hired him.
9 He's a State employee. We did not hire him, but he
10 has interest in the archeology, anthropology,
11 antiquities of the State, and he took this upon his
12 duty as State archeologist to investigate this and
13 he actually wrote about a 15 page report documenting
14 under this statute the basically archeological
15 resource, that this was an archeological resource,
16 what the archeological value was, what the
17 commercial value was, what the cost of restoration
18 and repair work under the statute and that's
19 certainly something that these defendants have had
20 and Doctor Leader was examined all that extensively.
21 I've got a copy of the deposition right here, and
22 then there's extensive testimony just about that.
23 So now it's, I think it's important to realize that
24 he without a doubt is defined that there's been
25 archeological damage out here.

1 And the other thing is, it was
2 characterized that Mr. Brinkman is not an
3 archeologist or a part-time archeologist. Let me
4 say that Mr. Brinkman last year was given an award
5 by the South Carolina Association of Professional
6 Archeologists as the archeologist of the year, and
7 just because he earns a living as a computer
8 engineer doesn't make any difference. He was
9 recognized because he has done extensive work in the
10 Midlands documenting our history and documenting not
11 only this site, but other sites. And when Doctor
12 Leader was asked, he basically has testified that
13 Mr. Brinkman's conclusions about these historic
14 sites accepted under the professional archeological
15 community.

16 But getting back to the interpretation of
17 the statute, I just want to make it very clear that
18 what did NAPM do? They intended to enter our
19 client's property. In fact, they did enter our
20 client's property. They went outside the easement.
21 They intended to construct land disturbing
22 activities that included the removal of rocks. They
23 knew they were excavating. They knew they were
24 moving, removing, attempting to remove those rocks
25 and so out of their soils, and they should have

1 known that they would destruct structures. Had they
2 gone to the internet two minutes or so they could
3 have gotten the same polygon or image I gave you.
4 Had the other defendants or NAPM performed, you
5 know, exercised due diligence, they would have seen
6 that the presence of this site as it being
7 historical was easily ascertainable. And even after
8 NAPM was told not to excavate and uncover and remove
9 the structure, it destroyed it anyway. So I want to
10 make it very clear that section 16-11-780 does not
11 require that a party who damages a historical site
12 know that the site is historical at the time the
13 destruction takes place. And Doctor Leader
14 certainly has opined that in his, in his opinion.
15 He basically says they do not have to know — and
16 this is, this refers really to that example of the
17 four wheeler. He says to be liable under the act.
18 He says, given the discussion that occurred with the
19 folks at the legislature when they were putting this
20 act together the specific case which kicked the
21 whole thing off, the answer is no. As far as the
22 question he was asked was, do you have an opinion
23 whether a party who willfully entered someone's land
24 has to know that the object that they might impact
25 would be an historical or archeological structure?

1 Doctor Leader says the answer is no. This is the
2 "I". He says they, "All they have to do or have
3 done is cause the damage. They do not have to know
4 what hill they were going up and down was a mound.
5 They do not have to know that the thing was a
6 burial. They simply have to cause the damage." So
7 it's pretty straight forward that NAPM met the
8 elements of this statute, and I think you can see
9 from the discussion that they're genuine issues of
10 material fact that would compel you to deny their
11 motion for summary judgment based upon the facts
12 that are there.

13 So in summary, yes, it is an historic
14 structure, that's well documented, and simply
15 looking at those elements that they did
16 intentionally, willfully enter the lands of another,
17 the lands of our clients. They disturbed an
18 historic structure, and the purpose of that
19 disturbance was to move and remove rocks. And that
20 was, their actions, and as far as the issue about
21 sewer or utility employees, their actions outside
22 the easement were not lawful, and that's the other
23 point. They had no right, no permission to be out
24 there, so there's no refuge in the last part of the
25 statute that says lawful acts of a utility worker

1 acting in the scope of in the course of his
2 employment. And simply by going outside the
3 easement, not only were they outside where they had
4 unlawful permission, but they were well outside the
5 scope in the course of their employment as well. So
6 there's no way one can describe knocking down these
7 abutments going outside, trespassing outside an
8 easement as being a lawful act.

9 THE COURT: All right. Anything else?

10 MR. BOINEAU: If I might just two minutes,
11 Your Honor, just to clarify a couple of things.

12 THE COURT: Sure.

13 MR. BOINEAU: Your Honor, you asked about
14 the order of Judge Lee, and I mean, Judge Lee said
15 there exactly what the statute says, that it allows
16 private cause of action. There's nothing
17 dispositive. I can assure you I was at that hearing
18 and she never intended at all to make a decision as
19 to whether or not they had a viable cause of action
20 underneath that statute.

21 Your Honor, the next point that I want to
22 make I think was interesting is, is actually when
23 they, when the argument started for the plaintiff
24 they talked about the fact that we should have gone
25 to this site and found out that it was historical in

1 nature, therefore admitting that nobody knew that it
2 was. And what they are missing in this statute is
3 the -- what they don't want to see and actually they
4 just said at the end was, he said for the purpose of
5 moving rocks. Well, unfortunately for them the
6 statute says for the purpose of discovering,
7 uncovering, moving, removing, or attempting to
8 remove an archeological resource so. Exhibit A to
9 my, exhibit B to my memorandum, exhibit A to my
10 motion is an affidavit from Shandon Herfer who is a
11 representative of NAPM in this case. He
12 specifically says NAPM had no knowledge of anything
13 out there being historical. So I don't even, Judge,
14 to the extent that we can create red herrings by
15 whether it was historical, if you look at, I don't
16 even know what exhibit they handed up as B, -- I
17 don't have a copy of it. But I think at the bottom
18 of it says it's registered and it says NR, not
19 registered I believe; and I'm not positive, Your
20 Honor, I do not have it in front of me, but I think
21 that is the case. Not eligible I believe is what it
22 says. And I actually asked their expert what, the
23 engineer, what he would have done had he pulled that
24 up and he said, I would have then gone to the
25 Department of Archives and History and found this

1 letter from May of 2008 and found out, oh, it's not
2 a historical property. So Your Honor, but I don't
3 want to get too bogged down in that 'cause none of
4 that really matters. But the problem for them, what
5 they have argued is essentially a negligence cause
6 of action, and to the extent they want to say Doctor
7 Leader gets to tell us how we interpret the statute,
8 you and I read the advance sheets every week; and
9 what it says is you give the statute it's clear,
10 plain, unambiguous meaning. This statement is not
11 un— not ambiguous at all. We don't need to go to
12 Doctor Leader to find out what the legislature meant
13 when they drafted the statute. What is clear that
14 they meant is if you and I wanted to go on
15 somebody's property for the purpose of harming an
16 archeological resource or historically significant
17 artifact, then we were liable for that if it was
18 owned a by a private citizen. Unfortunately, in
19 this case that's not what happened and so —
20 trespass, they want to proceed on that, negligence,
21 proceed on. This statute does not apply in this
22 case.

23 THE COURT: All right.

24 MR. HODGE: Your Honor, can I —

25 THE COURT: Yes, sir.

1 MR. HODGE: If I might respond, let me
2 just give you an analogy. There's a number, I
3 practice in environmental law and there are a number
4 of cases about people who are basically charged with
5 illegally burying hazardous waste. One of the
6 things that they routinely say is, well, I did not
7 know this drum had been replaced. And what the
8 courts have said generally is in that situation you
9 don't have to know that it's hazardous, but you have
10 to know that you are burying something. And I think
11 by analogy this statute, and Doctor Leader is clear
12 on this, that you know, you have — what they did,
13 what NAPM did, was they intentionally basically
14 uncovered, moved, removed, they attempted to remove
15 the bridge abutments. Now whether they knew it was
16 a bridge abutment or not doesn't really give them
17 cover because most of the time when people destroy
18 things like this, they don't know. And so I think
19 it's clear that what this involves is the act of
20 moving, removing, uncovering, attempting to remove
21 the property, that abutment, and that's what it's
22 really all about. It doesn't say it's a known
23 archeological resource. The statute says that you,
24 if, you would be liable if you did this to a known
25 archeological resource, then it would be a different

1 outcome so that's the gist of my argument. And let
2 me just also say that the statute does not require a
3 criminal prosecution as a pre-requisite to a civil
4 action.

5 THE COURT: I understand. All right,
6 counsel, let me ask you this, how soon can you
7 provide me with proposed orders?

8 MR. BOINEAU: Today, Your Honor.

9 THE COURT: Mr. Hodge.

10 MR. HODGE: Your Honor, we'll prepare one
11 shortly. How soon do you want one?

12 THE COURT: Well, I'm just trying to work
13 something in keeping in mind that this case may go
14 forward on June the 4th. I don't plan to let these
15 matters sit. Once I get proposed orders I will rule
16 immediately and we'll move on. So today is Tuesday
17 the 8th, you tell me when. Mr. Boineau, he's got a
18 big firm out there that is —

19 MR. BOINEAU: How's the close of business
20 Monday, is that good? Next week?

21 THE COURT: 14th?

22 MR. BOINEAU: Yes, Your Honor.

23 THE COURT: All right. You know how to do
24 this? You got to file it electronically.

25 MR. BOINEAU: Yes, Your Honor.

1 THE COURT: You understand that?

2 MR. HODGE: Yes, sir.

3 THE COURT: You don't send me anything.

4 MR. HODGE: Right.

5 THE COURT: But you put in them in my cue.
6 Everybody got a cue?

7 MR. HODGE: And we will file these
8 documents shortly that we've provided you this
9 morning as well.

10 THE COURT: Well, that's fine. If you can
11 do it by Friday the 11th it will probably be even
12 better.

13 MR. HODGE: Okay. All right. Sounds
14 good.

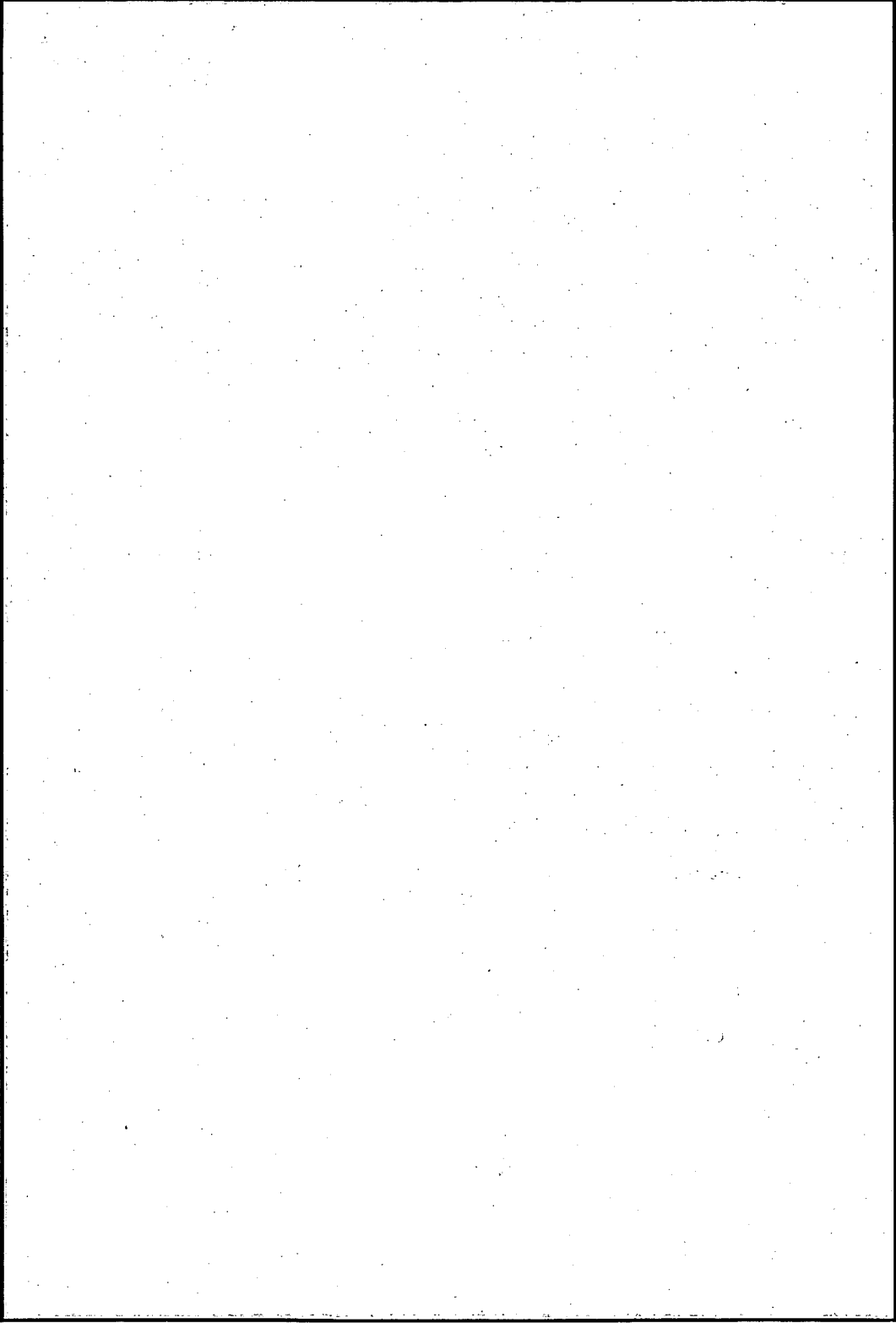
15 THE COURT: Can you do that? The 10th is
16 a holiday, but in my recollection most lawyers still
17 work on Confederate Memorial Day. Mr. Boineau might
18 not work on that day, but most lawyers do. So let's
19 just say by close of business on the 11th and file
20 them with the Court, and we'll take action as soon
21 as we can.

22 (WHEREUPON, a recess was taken from the
23 proceedings.)

24

25 * * * END OF REQUESTED TRANSCRIPT OF RECORD * * *

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C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA }
COUNTY OF FLORENCE }

I, FRANCES B. RAY, Registered Professional Reporter (RPR), court reporter for the State of South Carolina, Third Judicial Circuit, do hereby certify that the foregoing proceeding is a stenographic report and was transcribed through computer-aided transcription; that the foregoing transcript contains a true record of the proceedings.

I further certify that I am neither counsel for, nor related to nor employed by any of the parties connected to the action, nor am I financially interested in the action.

Witness my hand at Florence, South Carolina, this 1st day of August, 2018.

Frances B. Ray

FRANCES B. RAY, RPR

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF RICHLAND

C/A. No. 2015-CP-40-5598

Modesta Brinkman, David Brinkman,)
James Coleman, Carl Foster,)
Karen Foster, Robert Collins,)
Pamela Collins,)

Plaintiffs,)

vs.)

Weston & Sampson, Inc., Weston & Sampson)
Engineers, Inc., Weston & Sampson)
Services, Inc., Weston & Sampson CMR,)
Inc., City of Columbia, SC, North)
American Pipeline Management, Layne)
Inliner, and Robert Horner, PE,)

Defendants.)

DEPOSITION OF

JONATHAN M. LEADER, Ph.D.

Tuesday, March 21, 2017

10:30 a.m. - 2:25 p.m.

The deposition of JONATHAN M. LEADER, Ph.D., was taken on behalf of the Defendants at the law offices of McAngus, Goudelock & Courie, LLC, 1320 Main Street, 10th Floor, Columbia, South Carolina, on the 21st day of March, 2017 before Cassandra E. Vance, Court Reporter and Notary Public in and for the State of South Carolina, pursuant to Notice of Deposition.

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18 Inc., Weston & Sampson CMR, Inc., and Robert Horner,

19 P.E.

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1 EXHIBITS (Continued)

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3 Exhibit No. 10 141

4 (E-mail dtd 11/6/15 from Hodge to Brinkman)

5 Exhibit No. 11 143

6 ("University archaeologist to be featured on

7 History Detectives" dtd 9/1/09)

8 Exhibit No. 12 149

9 ("The Bridge to Nowhere" article dtd 8/1/09)

10 Exhibit No. 13 151

11 (The State Newspaper article dtd 2/17/07)

12 Exhibit No. 14 159

13 ("Columbia History Lost" article dtd 3/10/15)

14 STIPULATIONS

15 It is stipulated and agreed that this

16 deposition is being taken pursuant to the

17 South Carolina Rules of Civil Procedure.

18 It is stipulated by and between counsel

19 and the witness that the reading and signing

20 of the following deposition be, and the same

21 are, hereby reserved.

1 APPEARANCES (Continued)

2 George W. Lampl, III, Esquire

3 Associate General Counsel

4 Office of the General Counsel

5 University of South Carolina

6 109 Osborne Administration Building

7 Columbia, South Carolina 29208

8 Counsel for Dr. Leader

9 ALSO PRESENT

10 Michele Livingston

11

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15 Exhibit No. 8 134

16 (E-mail dtd 4/6/15 from Brinkman to Leader)

17 Exhibit No. 9 137

18 (E-mail dtd 4/7/15 from Brinkman to Leader)

1 JONATHAN M. LEADER, Ph.D., having been

2 duly sworn, deposes and testifies as

3 follows:

4 DIRECT EXAMINATION

5 BY MS. WOOTEN:

6 Q. Dr. Leader, my name is Amy Wooten and I

7 represent a host of Defendants involved in some

8 litigation on the Broad River, most notably the

9 Weston & Sampson entities. There are a couple of

10 different corporate iterations named in the

11 complaint, and a professional engineer by the

12 name of Robert Horner.

13 And we'll go through some of those entities

14 later today when I probe who you may have

15 information about and who you may not. Have you

16 ever been deposed before, sir?

17 A. I have.

18 Q. When was the last time that you were

19 deposed?

20 A. I can't give you the exact year. It was

21 federal and it would have been for Saipan.

22 Q. Okay. You think it would've been more than

23 five years ago? Less than five years ago?

24 A. Let me think about that. Probably right

25 around five.

1 Q: Okay. So just as a refresher, I'll go over
 2 a couple of things this morning just to make this
 3 a smooth process. If you need a break, please
 4 let me know. I'm happy to accommodate that. The
 5 only thing I would ask is that if I have a
 6 question pending that you answer it before we
 7 take a break.
 8 A. Sure.
 9 Q: Unfortunately my memory is not so good that
 10 I'd be able to remember my question when we came
 11 back from the break.
 12 Also, if you could give verbal yeses or nos
 13 so the court reporter can write those down, that
 14 would help us in getting a clear record for
 15 purposes later in the case.
 16 A. No problem.
 17 Q: If you answer my question, I'm going to
 18 assume that you understood it as I asked it. So
 19 if you have any question at all about what I'm
 20 asking you, please let me know. I'll be happy to
 21 rephrase or reask the question.
 22 A. Again, not a problem.
 23 Q: Okay. Generally speaking, I'm on the
 24 soft-spoken side. So if you don't hear my
 25 question, please let me know and I will be happy

1 opposed to the University of South Carolina?
 2 A. I'm sorry. One more time?
 3 Q. Sure. Does your paycheck or your method of
 4 payment come through the State Archeologist's
 5 office as opposed to through the University of
 6 South Carolina?
 7 A. The paychecks for -- come through the
 8 University of South Carolina.
 9 Q. Okay. Is the State-Archaeologist office an
 10 arm of the University or what is the relationship
 11 between the two?
 12 A. The South Carolina Institute of Archaeology
 13 and Anthropology, which includes the Office of
 14 the State Archaeology, is a agency put together
 15 by State law and located for administrative
 16 purposes at the University of South Carolina.
 17 Q. Okay. And how long have you been with the
 18 State Archaeologist office?
 19 A. I have been at the Office of the State
 20 Archaeologist for 28 years.
 21 Q. Okay. Did you work at any other -- did you
 22 work as an archaeologist in any other states
 23 prior to taking on that role in South Carolina?
 24 A. Yes.
 25 Q. Okay. Which states have you worked in?

1 to raise the volume of my voice so that you can
 2 hear the complete question.
 3 One other thing, it's very conversational
 4 for people to have an idea of where a question is
 5 going and to jump in before the question is
 6 completed. For purposes of having a clean
 7 record, if you could wait until I've asked the
 8 complete question and then give your answer, that
 9 will help us move things along today, as well.
 10 With that said, could you state your full
 11 legal name for the record, please?
 12 A. Jonathan Max Leader; J-O-N-A-T-H-A-N, middle
 13 name M-A-X, last name L-E-A-D-E-R.
 14 Q. And, Dr. Leader, are you represented by
 15 anyone at the deposition here today?
 16 A. I am represented by University Attorney
 17 George Lampl.
 18 Q. Okay. And could you please let us know
 19 where you currently are employed?
 20 A. I am employed by the State of South
 21 Carolina. I am the State Archaeologist for South
 22 Carolina and I am located at the University of
 23 South Carolina.
 24 Q. Okay. So does your paycheck, as it were,
 25 come through the State Archaeology's office as

1 A. Oh, my. I will need clarification on that.
 2 Are you talking about states where I've had
 3 consultation, states where it has been government
 4 to government, states where it's been a question
 5 of paycheck?
 6 Q: Have you held a similar position that you
 7 currently hold in any other states?
 8 A. As a State Archaeologist?
 9 Q. Yes, sir.
 10 A. As State Archaeologist, the only position
 11 I've held as State Archaeologist is in South
 12 Carolina.
 13 Q: Okay, great. And I understand from the
 14 question you were asking clarification on that
 15 you have maybe done some consultations in other
 16 states; is that correct?
 17 A. That's correct.
 18 Q. Okay. Was that done in a private capacity,
 19 like an expert or a paid consultant type of role?
 20 A. You're going to have to clarify that one; as
 21 well.
 22 Q. When you're doing your consulting work in
 23 other states, for whom are you doing that work?
 24 A. Normally, it's government to government.
 25 It's not paid.

Deposition of Jonathan Leader

1 Q. Okay. Gotcha. Have you taught any courses
2 at the University of South Carolina?

3 A. Yes.

4 Q. Okay. Can you list for me the courses that
5 you have taught?

6 A. They're extensive.

7 Q. Okay. Is there a course that you tend to
8 teach on a more regular basis than not?

9 A. That's extensive.

10 Q. Okay. Can you give me a list of some of the
11 courses that you have taught in, let's say, the
12 last five years?

13 A. In the last five years? Okay. Forensic
14 Archaeological Recovery, Cultural Analysis of
15 Terror, Anthropology of Art, Cultures of Islam,
16 Middle Eastern Cultures -- good heavens --
17 Anthropology of Religion ...

18 Q. Can you restate the forensic one? What was
19 the title for the forensic one?

20 A. Forensic Archaeological Recovery.

21 Q. Okay. And what -- can you give me -- if you
22 were to write a course description for that
23 class, how would you describe that class?

24 A. Forensic Archaeological Recovery is a course
25 that -- it was designed for people with some

1 A. Most of them bring it in one way or
2 another --

3 Q. Okay.

4 A. -- if nothing else, simply as a foil against
5 something else.

6 Q. Okay. And --

7 A. Because people are familiar with South
8 Carolina.

9 Q. Sure. Are there specific South Carolina
10 statutes that you would cover in your classes
11 that come to mind?

12 A. Good heavens. Well, the Underwater
13 Antiquities Act for South Carolina; the
14 Archaeological Act of 2010; CRM formats; Beaufort
15 and South -- and Charleston regulations; a
16 variety of things.

17 Q. Okay. What's the Archaeological Act of
18 2010? What is the purpose of that Act?

19 A. The Archaeological -- the Archaeology Act of
20 2010, which you'll find underneath "trespass,"
21 was to take the problems of land stewardship and
22 give an additional protection to land stewards,
23 landowners, and others whose lands are being put
24 upon by vandalism or malicious acts of
25 individuals who are engaged in removing

1 background to understand precisely how
2 archaeology could be used in a medical/legal
3 situation.

4 So it covers everything from the history,
5 definitions, protocols, case studies in the
6 field, and liabilities, both at the local, state,
7 regional, federal, and international levels.

8 Q. Okay. And when you say from a legal or
9 liability standpoint --

10 A. Uh-huh (affirmatively responds).

11 Q. -- can you give a little more insight into
12 what exactly you're referring to?

13 A. It's forensics. So based on materials from
14 groups such as the, for instance, Center of
15 Excellence and the National Institutes of
16 Justice, we go over the issues of what does
17 forensics means, how does it get in the situation
18 of what you're providing, the errors that can
19 creep in, the issues of adversarial, the concept
20 of operational and personal security, and the
21 statement of being an expert witness, among other
22 things.

23 Q. Do any of your courses entail review of
24 South Carolina statutes specific to
25 archaeological -- archaeological structures?

1 archaeological antiquities from their property
2 and/or damaging them.

3 Q. Okay. So would part of the purpose of that
4 Act relate more to intentional destruction or
5 looting of properties?

6 A. People appear upon your property without
7 your permission and they remove artifacts without
8 your permission, they are in violation of the
9 law. It's a three-strikes Act starting with two
10 misdemeanors and it is a felony over ten years.
11 It doesn't have to be the same area, doesn't have
12 to be the same site; just the same person.

13 Q. Okay.

14 A. And it's a confiscatory law. You show up,
15 your car or your house, your things disappear,
16 other things are taken to it.

17 Q. And do you recall if that Act has an
18 "intent" element to it?

19 A. Intent? You would have to take a look at
20 the law and see precisely how it ended up. I
21 don't have it in front of me.

22 Q. Okay. All right. And we'll come back to
23 that in a little bit later.

24 A. Sure.

25 Q. Can you tell me, Mr. Leader, what your

1. educational background is? And we'll start with
2. undergraduate, college, and any graduate programs
3. you did.

4. A. Okay. Western Michigan University was my
5. undergrad, my Master's and doctorate are from the
6. University of Florida, and I've taken courses at
7. other places at other times.

8. Q. Okay. And I understand you are a doctor.
9. What is that doctorate degree in?

10. A. It's a doctorate of philosophy, a Ph.D. in
11. anthropology. Archaeology is a subset of
12. anthropology.

13. Q. Okay. And are there any projects that
14. you're currently working on in South Carolina?

15. A. Good heavens, yes. It's part of my job, so
16. yes--

17. Q. I understand that.

18. A. -- there are quite a few.

19. Q. Okay. On your bio page with the South
20. Carolina -- or the University of South Carolina,
21. you have a couple of projects listed. What's the
22. H.L. Hunley project?

23. A. The first submarine to go into battle
24. against a -- and successfully go into battle --
25. that was a Confederate submarine, sank the

1. There's probably a couple shells located at
2. the State Museum, one of the Chester cannons at
3. the State Museum. There are some other things
4. here or there. I'd have to think about that at a
5. better --

6. Q. Okay.

7. A. -- greater ...

8. Q. The Bahamas Project?

9. A. Yeah.

10. Q. I assume that's in the Bahamas, but --

11. A. It was indeed.

12. Q. -- perhaps I'm incorrect.

13. A. The Bahamas Project included the recovery of
14. a Lucayan canoe from a Blue Hole, South Andros
15. island and taking it to the Pompey Museum --

16. Q. Okay.

17. A. -- and then conserving it there, prior to
18. their fire, unfortunately.

19. Q. Okay. And then you've got the Florence
20. Stockade. I presume that's in Florence.

21. A. The Florence Stockade is in Florence. Civil
22. War, Union prisoner-of-war camp, and that was
23. the -- that was a -- everybody knows about
24. Andersonville, which actually is Fort -- Camp
25. Sumpter, not Andersonville -- but that's where

1. USS Housatonic, which was a blockading fleet
2. ship.

3. Q. And where is that located, that project
4. located?

5. A. Charleston, South Carolina.

6. Q. Okay. And then you have one listed the
7. South Carolina Cannons project?

8. A. Yeah, that's a -- that's a floater. It
9. covers a number of different things. For some
10. reason, South Carolina seems to attract cannons.

11. Q. Okay. I take it that one is also located
12. off the coast?

13. A. No, it's located in, let's see, quite a
14. number of counties, and the most recent one is,
15. of course, the CSS Pee Dee, which would be
16. Florence.

17. Q. So it's a collection of cannons?

18. A. It's a variety of cannons --

19. Q. Okay.

20. A. -- located throughout the State, yeah.

21. Q. Any of them in Columbia?

22. A. Let me think about that. We had the Cricket
23. here, but I think that's been returned to
24. another -- to the Museum, so I don't think it's
25. actually physically here anymore.

1. it's located.

2. And the individuals who are at Andersonville
3. as that was being overrun by the Union, a number
4. of those people were brought up to Florence and
5. that's how the Florence Stockade came into
6. existence.

7. Q. Okay. The last one you have listed on your
8. bio page is the SCIAA Digitized Publication
9. project.

10. A. Yeah.

11. Q. What was that?

12. A. Well, we're taking all of our gray
13. literature and making them available online.
14. They're already available; just making them
15. online.

16. Q. Okay. And I take it when you say making it
17. available online, you mean publicly available, to
18. the public at large?

19. A. No. They're being made available to
20. professionals.

21. Q. For a paid subscription type fee?

22. A. In some instances, yes; in some instances,
23. no. It depends.

24. Q. Okay.

25. A. There are some materials that are available

1 to the general public. Groups engaged in
 2 cultural resource management or land stewardship,
 3 or COGs or whatever have access.
 4 Q. Okay.
 5 A. But, obviously, we don't want to turn over
 6 archaeological sites to the locations to anybody
 7 with a metal detector or a shovel.
 8 Q. Sure. So what do you have to do to be
 9 qualified to gain access to that material?
 10 A. Contact us and give us your bona fides.
 11 Q. Okay. And what would qualify as your bona
 12 fides for that purposes?
 13 A. Well, for instance, if it were something
 14 from the City, it would be a statement from the
 15 City that they needed information and they'd get
 16 it. If it was a group working for the City,
 17 they'd have to say they were working for the City
 18 and they'd get it.
 19 If it was a professional, they would send us
 20 their resume and they would get it. If they were
 21 a student working for somebody, they would send
 22 the materials, we'd double check, and they would
 23 get it. It's not onerous or difficult.
 24 Q. What about an archaeological enthusiast like
 25 Mr. Brinkman?

1 Q. Okay. And when did you first come to meet
 2 Mr. Hodge or Mr. Chambers?
 3 A. Gee, I met John Hodge -- you mean socially
 4 or professionally?
 5 Q. Any context?
 6 A. Okay. Socially, probably 2005 --
 7 Q. Okay.
 8 A. -- or very close to that.
 9 Q. How did you meet Mr. Hodge in a social
 10 capacity at that -- around that time?
 11 A. Through a program that we both belong to.
 12 Q. And what would that program be?
 13 A. Explorers Club.
 14 Q. Okay. And what is the Explorers Club?
 15 A. The Explorers Club is an international
 16 organization of elected fellows who are engaged
 17 in exploration. It is a cross-discipline group.
 18 Q. Okay. And what disciplines would be
 19 involved with that group?
 20 A. Everything from space exploration to deep
 21 sea and everything in between, both hard science,
 22 soft science, and -- well, that pretty much
 23 covers it.
 24 Q. Okay. And do you know what discipline
 25 Mr. Hodge would come at it from?

1 A. In Brinkman's case, he's more than an
 2 enthusiast, but he has indeed had access to
 3 things because he's actually working with a
 4 number of archaeologists in the State.
 5 Q. And are any of those archaeologists that
 6 he's working with employed by the University or
 7 works through the State Archaeologist's office?
 8 A. A number of them have over time, but just
 9 about everybody in the State who's doing
 10 archaeology will come across my desk at some
 11 point.
 12 Q. Okay. And do you know if Mr. Brinkman has
 13 any degrees or training related to the field of
 14 archaeology?
 15 A. Archaeology? Not that I'm aware of. IT and
 16 probably engineering, I believe so. I don't have
 17 his resume in front of me, either.
 18 Q. Okay. And we'll get back to Mr. Brinkman
 19 here in a couple minutes.
 20 A. Sure.
 21 Q. Have you ever had any communicate -- well,
 22 first of all, let me ask you: Do you know an
 23 attorney by the name of John Hodge or an attorney
 24 by the name of Geoffrey Chambers?
 25 A. I do.

1 A. Actually, no.
 2 Q. Okay. And aside from this social
 3 interaction with Mr. Hodge through the Explorers
 4 Club, when would you have communicated or been in
 5 contact with Mr. Hodge on a professional front?
 6 A. Professional front actually is in
 7 conjunction with this situation. He was asking
 8 about the 2010 Archaeology Act.
 9 Q. Okay. And let me go back briefly to the
 10 Explorers Club. How frequently do you interact
 11 with Mr. Hodge in the context of that club?
 12 A. Not frequently at all. For the last year or
 13 so, I haven't been going to it at all.
 14 Q. Okay. And prior to this past year, were you
 15 in attendance on a more regular basis?
 16 A. No.
 17 Q. Okay. Do you not --
 18 A. Too busy. It's Fridays. It's hard to do.
 19 Q. Okay. When do they usually meet? Fridays?
 20 A. Once a month on a Friday.
 21 Q. Okay. Is that a membership based group?
 22 The Explorers Club, is that a membership based
 23 group?
 24 A. I'm sorry?
 25 Q. Is the Explorers Club a membership based

1 group; like you have to be a member of the
 2 Explorers Club to attend?
 3 A. No.
 4 Q. Okay. Is it open to the public generally
 5 and people just show up?
 6 A. Yes and no. The core group is membership
 7 based. Guests come. It's not -- people wander
 8 in.
 9 Q. Okay. And are you still a member of the
 10 Explorers Club?
 11 A. I am a member of the Explorers --
 12 Q. Okay.
 13 A. -- at the national level. I have not paid
 14 my dues for the local.
 15 Q. Okay. So there's a national and local
 16 chapter?
 17 A. Sure.
 18 Q. Okay. Gotcha. Okay. And you indicated
 19 that your first encounter with Mr. Hodge on a
 20 professional front was in connection with the
 21 case that we're here for today; is that --
 22 A. Uh-huh (affirmatively responds).
 23 Q. -- correct? And that was in 2010?
 24 A. No.
 25 Q. The project was in 2010; is that --

1 Q. Okay. And when you sat down to talk about
 2 the Archaeology Act of 2010 --
 3 A. Uh-huh (affirmatively responds).
 4 Q. -- what do you recall about that
 5 conversation?
 6 A. We discussed the Archaeology Act. We
 7 discovered -- discussed what it meant, how it
 8 worked, what outcomes were possible from it, and
 9 my role twist as the State Archaeologist is
 10 written into the Act.
 11 Q. For purposes of establishing value and
 12 potential damages arising from --
 13 A. Correct.
 14 Q. -- violations of the Act --
 15 A. Correct.
 16 Q. -- is that correct?
 17 A. As a statement -- as a fair witness
 18 statement for the -- for the courts, correct.
 19 Q. Okay. All right. Now, with respect to
 20 those conversations, were those limited to the
 21 statute itself or was there a component of the
 22 conversations that honed in on application of
 23 that statute to any cases that Mr. Hodge was
 24 working on?
 25 A. Well, he did say that there was a situation

1 A. I'm sorry?
 2 Q. I thought you mentioned 2010. I must
 3 have --
 4 A. No.
 5 Q. -- misheard.
 6 A. No, no. I was -- I became an elected fellow
 7 national at 2005.
 8 Q. Okay.
 9 A. But the involvement with John actually was
 10 November of 2015, 2016 -- I'd have to double
 11 check that -- and was specifically asked about
 12 the Archaeology Act of 2010.
 13 Q. Okay. And how did Mr. Hodge contact you to
 14 make that inquiry? Do you recall if it was --
 15 A. Phone call.
 16 Q. It was a phone call? Okay. What do you
 17 recall about the substance of that phone
 18 conversation?
 19 A. He said, "Can we get together to talk about
 20 the Archaeology Act of 2010?" And I said,
 21 "Sure." Then he said, "Where would you like to
 22 do it?" And I said, "Well, I'm here, there, or
 23 the other place." I said, "Why don't we meet,
 24 you know, at another location and sit down and
 25 talk about it." He said, "Sure," so we did.

1 that they needed to deal with and he wanted to
 2 know if it would be covered and I said it
 3 probably would. And he wanted to know how the
 4 Act worked, so I explained how the Act would
 5 work.
 6 And then he said, "Well, how do we get you
 7 involved with the Act?" And I said, "Well, you
 8 have to ask and it would be best if it came
 9 through the courts."
 10 Q. And to your knowledge, has that happened in
 11 this case?
 12 A. Which?
 13 Q. The request of the courts that you be
 14 involved.
 15 A. Not yet, no. Huh-uh (negatively responds).
 16 Q. Okay. Are you aware if that's something
 17 that is in the process or going to be done?
 18 A. My understanding is, it's something that
 19 they would like to have done, but until such time
 20 as the Court has actually asked me, I don't
 21 speculate.
 22 Q. Okay. Have you formed any opinions as to
 23 whether the Act that you discussed with Mr. Hodge
 24 is, in fact, applicable to the properties along
 25 Castle Road that are at issue in this litigation?

1 A. My understanding is that the -- it would be,
 2 yes.
 3 Q. All right. And we will come back to that in
 4 a little bit. Tell me how you first met
 5 Mr. Chambers.
 6 A. Actually, I can't remember if Chambers was
 7 with Hodges at that meeting or not. He did have
 8 an associate at the meeting. It may have been
 9 Chambers.
 10 Q. Okay.
 11 A. But that's it. That would be the one time.
 12 Q. Okay. If you saw Mr. Chambers, would you
 13 recognize him?
 14 A. Probably not.
 15 Q. Okay.
 16 A. I did --
 17 Q. He's sitting down there --
 18 A. Yeah.
 19 Q. -- in the blue shirt. But you don't
 20 remember him from before, I take it?
 21 A. Not really, no.
 22 Q. Okay.
 23 THE WITNESS: Which -- I mean, I
 24 apologize.
 25 MS. WOOTEN: Sorry, Geoffrey.

1 Brinkmans?
 2 A. David called me up to specifically discuss
 3 his work on the bridges and ferries across the
 4 river.
 5 Q. And that would have been around 2007, 2008?
 6 A. That's correct.
 7 Q. And I take it at that time you were with the
 8 State Archaeology's office?
 9 A. I was indeed. I was still the State
 10 Archaeologist, even at that time.
 11 Q. Okay. What do you recall about the first
 12 conversation that you and David had in relation
 13 to his work on the project?
 14 A. Oh, he --
 15 Q. Or, excuse me, the property.
 16 A. -- impressed the heck out of me. He had
 17 done -- already done significant archival
 18 research and he had materials on his property he
 19 wanted me to take a look at to see if they might
 20 or might not be something that could go together
 21 with bridge construction.
 22 Q. Okay. Do you have a recollection as to what
 23 his initial theory was in terms of what structure
 24 the property may have housed at one point in
 25 time?

1 THE WITNESS: John was doing the
 2 talking.
 3 MS. WOOTEN: Fair point, okay.
 4 BY MS. WOOTEN:
 5 Q. I want to spend a few minutes going over the
 6 people that are involved in this litigation --
 7 A. Sure.
 8 Q. -- to see what, if anything, you may know
 9 about them. And, obviously, if you don't recall,
 10 it's certainly fine; just let me know that's the
 11 case.
 12 A. All right.
 13 Q. Do you recognize or have you met a person by
 14 the name of Modesta Brinkman?
 15 A. Yes.
 16 Q. Okay. Tell me about your interactions with
 17 Ms. Brinkman as best you can recall.
 18 A. Well, we talked about the Philippines.
 19 She's from the Philippines and I have lots of
 20 good recipes from the Philippines, so we share
 21 recipes from time to time.
 22 Q. When did you first meet Ms. Brinkman?
 23 A. Same time when I met David, which would have
 24 been 2007 or eight, one or the other.
 25 Q. Okay. And how did you come to meet the

1 A. The abutment to a bridge.
 2 Q. Okay. Any particular bridge that he
 3 speculated?
 4 A. He was working on several different bridges.
 5 He wasn't sure precisely at the time which bridge
 6 it was, but he figured it was early and he was
 7 hopeful, which is not uncommon. He was doing the
 8 research, he was early days and the rest. And I
 9 was not the only group involved. The State
 10 Historic Preservation Office was involved and
 11 some other people were involved.
 12 Q. Okay. You mentioned the State Historic
 13 Preservation Office.
 14 A. That's correct. It's a separate agency.
 15 It's Archives & History.
 16 Q. Sure. Do you -- is the -- do they house the
 17 ArchSites website?
 18 A. No, we do.
 19 Q. You guys host that, okay.
 20 A. They are part of it, however. It's a team
 21 group.
 22 Q. Okay. And are there any other specific
 23 groups in addition to SHPO that was out there on
 24 the property, to the best of your recollection?
 25 A. Well, those -- those are -- that's the one

1 that I primarily remember. I think there was a
 2 reporter who showed up, as well, from The State
 3 newspaper, because they ran a story about it.
 4 Q. Okay. But in terms of organizations,
 5 historical or preservation based organizations.
 6 A. I believe there was one or two independent
 7 archaeologists that appeared, as well --
 8 Q. Okay.
 9 A. -- but I'm not sure about that.
 10 Q. Okay.
 11 A. My recollection of that is pretty dim.
 12 Q. All-right. When's the first time that you
 13 went out to --
 14 A. 2007.
 15 Q. -- the Brinkman property?
 16 A. 2007, 2008. When he called me, we went out
 17 there and took a look at it.
 18 Q. Okay. And what did you see when you went
 19 out there?
 20 A. I saw a bridge abutment with tool marks and
 21 other materials commensurate with late 17, early
 22 1800s.
 23 Q. And where were those -- where -- was it --
 24 I'm sorry. Just to clarify, was it one bridge
 25 abutment on his piece of property or were there

1 Q. Okay. And what did you do -- did you look
 2 at any real property records before you went to
 3 his house?
 4 A. I asked him where his property went, what
 5 was going on with his property, and what was the
 6 area of his property.
 7 Q. Okay. But you didn't actually look at the
 8 real-estate records or any easements?
 9 A. I did not look at real estate records at
 10 that time.
 11 Q. Okay. And what did Mr. Brinkman tell you in
 12 response to your question?
 13 A. He told me about how excited he was since I
 14 had identified the chisel marks and some of the
 15 other materials that were going there as being
 16 appropriate to the time period, that it looked
 17 like he had a bridge abutment. He wasn't sure
 18 which one at that point, but he was hopeful about
 19 a couple on his property. He thought that was
 20 great.
 21 Q. Okay. What did the -- what was the grade of
 22 the slope like behind his house at that point in
 23 time?
 24 A. I didn't measure it.
 25 Q. Okay. Would you say that it was -- did you

1 multiple on his piece of property?
 2 A. As I recall at the time, what we were
 3 looking at was a single set of stonework on his
 4 property. There was other stonework on adjacent
 5 property. I do not think that at that point we
 6 took a look at those, but he was taking a look at
 7 the things clearly on his property under his
 8 control.
 9 Q. Sure. Okay. And we'll get to the other
 10 properties later. I just wanted to make sure
 11 there was only actually one set on his property.
 12 A. Yeah, one set on his property, yeah.
 13 Q. All right. And where were those -- where
 14 was that bridge abutment located on his property?
 15 A. Downslope from the -- from his house and --
 16 I want to say downslope from his house.
 17 Q. Closer to the river?
 18 A. It was up from the river. It was not on the
 19 area of pipeline or anything else of that nature.
 20 It was on his property.
 21 Q. Well, doesn't his property go all the way
 22 down to the river?
 23 A. It does, but it wasn't nowhere near an
 24 easement or anything of that nature, because if
 25 it had been, I would have been concerned.

1 have any difficulty getting down to the rocks --
 2 A. No.
 3 Q. -- in terms of the grade?
 4 A. No.
 5 Q. Okay.
 6 A. Huh-uh (negatively responds). No, actually
 7 that was nice. I'm not a goat and it was not
 8 that hard to get down there.
 9 Q. What kind of level of foliage was growing in
 10 that area at that time?
 11 A. It was -- there were portions of it that
 12 were dense, there were portions of it that were
 13 less dense, but the materials we needed to see
 14 were visible.
 15 Q. Okay. And when you observed the abutment --
 16 A. Uh-huh (affirmatively responds).
 17 Q. -- can you describe what you saw in 2007?
 18 A. I saw a variety of cut stones with tool
 19 marks, with drill marks, with black powder
 20 blasting marks, with other individual marks upon
 21 them demonstrating they had been quarried, they
 22 were not from the area, and they had been moved
 23 there specifically for the purposes of making a
 24 bridge abutment.
 25 Q. Okay. And how were they physically laid out

1 in connection to each other or in relation to
 2 each other?
 3 A. They were stacked. Some of them were
 4 stacked in place, some of them were stacked
 5 slightly out of place, and some of them were out
 6 of place.
 7 Q. When you say some were stacked out of
 8 place --
 9 A. Uh-huh (affirmatively responds).
 10 Q. -- that would connote to me that they were
 11 intentionally stacked but not in place.
 12 A. No. What you have going on, there was a
 13 series of bridges that were swept away by a
 14 flood, and so some of the materials were intact,
 15 some of the materials were nearly intact, and
 16 some of the materials had been displaced.
 17 Q. I see. Are you -- how long have you been in
 18 Columbia?
 19 A. Twenty-eight years.
 20 Q. Okay. Did -- so then did you move here to
 21 take the job with the State Archaeologist's
 22 office?
 23 A. Yep.
 24 Q. Okay. Were -- I take it, then, you were not
 25 in Columbia when the sewer system at issue in

1 A. Correct.
 2 Q. -- it was someone's bridge --
 3 A. Uh-huh (affirmatively responds).
 4 Q. -- theoretically. Did you form any opinion
 5 as to whose bridge it originally was?
 6 A. My question is to time period. You're
 7 asking me at the time when I first visited or are
 8 you asking me in subsequent years? Are you ...
 9 Q. I see. So your opinion may have changed as
 10 to whose bridge that was?
 11 A. My opinion did not change as to whose bridge
 12 it was. My opinion changed as to -- actually, my
 13 opinion didn't change. My opinion was added to
 14 in terms of additional information done by
 15 additional research. There's a large difference
 16 there.
 17 Q. Okay. Whose -- in your opinion following
 18 that initial visit --
 19 A. Uh-huh (affirmatively responds).
 20 Q. -- what did you conclude regarding whose
 21 bridge that was?
 22 A. My initial statement to David was that the
 23 bridge abutment was commensurate with the time
 24 periods that he had interest in. As to which of
 25 the three bridges he was looking at, we would

1 this case was originally constructed?
 2 A. I have no idea if that's the case or not.
 3 Q. Okay. I'll represent to you that was done
 4 in the late seventies, early eighties, as I --
 5 A. In which case --
 6 Q. -- understand it.
 7 A. -- I was not here.
 8 Q. Okay. All right. Then so you don't have
 9 any insider knowledge as to the level of clearing
 10 or blasting that was done along the Broad River
 11 to accommodate installation of that sewer system,
 12 is that fair?
 13 A. That's true.
 14 Q. Okay. Following the initial visit to the
 15 Brinkman property, did you form any conclusions
 16 as to what that structure actually was?
 17 A. Yes.
 18 Q. And what was that opinion?
 19 A. An early bridge abutment.
 20 Q. Let me rephrase the question. Did you form
 21 an opinion as to what specific bridge abutment
 22 that might have been?
 23 A. Okay. At what time period?
 24 Q. Well, I mean, the bridge abutment is what it
 25 is, right? I mean --

1 have to do more information, more research, and
 2 he said he was excited to do that. I said,
 3 "Great, keep me informed," which is exactly what
 4 he did.
 5 Q. Okay. Following --
 6 A. Which, by the way, is a standard statement I
 7 do to all of the people who volunteer to work on
 8 projects, which is "keep me informed."
 9 Q. Sure. All right. Following that visit --
 10 A. Yeah.
 11 Q. -- when's the next time that you went out to
 12 the property?
 13 A. Several times. Probably within a year,
 14 probably within a year after that, a couple times
 15 in between. And I'd have to double check for the
 16 time period for the History Detectives episode on
 17 the bridges, but at that time, clearly, so
 18 several times.
 19 Q. Was your involvement with that particular
 20 television program gratis?
 21 A. What do you mean by "gratis"?
 22 Q. Done for free.
 23 A. Everything I do is for free. I'm paid by
 24 the taxpayers. I don't take money from any other
 25 group.

1 Q. Do you know if Mr. Brinkman was compensated
 2 for his --
 3 A. I have absolutely --
 4 Q. -- appearance on that show?
 5 A. -- no idea.
 6 Q. Okay. When's the last time that you were
 7 out at the Brinkman site?
 8 A. Probably November of 2016 -- no, 2015.
 9 2016? I'd have to double check. It was in
 10 November.
 11 Q. Okay. And for what purpose were you out
 12 there at that time?
 13 A. To explain the 2010 Archaeology Act.
 14 Q. Was -- who was present at that visit?
 15 A. John Hodge.
 16 Q. Okay. So when we were talking earlier today
 17 about your meeting with Mr. Hodge who --
 18 A. Uh-huh (affirmatively responds).
 19 Q. -- explained that Act, that happened on
 20 Mr. Brinkman's property?
 21 A. It did.
 22 Q. Okay. And who besides Mr. Hodge and
 23 possibly Mr. Chambers were present for that
 24 meeting?
 25 A. David was there, as well. Uh-huh

1 case or not. I really thought it was the
 2 Christmas party, but I could be wrong on that.
 3 Q. Okay. And that was through the Explorers
 4 Club?
 5 A. Yeah.
 6 Q. Okay.
 7 A. Uh-huh (affirmatively responds).
 8 Q. I take it, then, that Mr. Brinkman is a
 9 member of the Explorers Club?
 10 A. He is a member national of the Explorers
 11 Club, elected member.
 12 THE COURT REPORTER: I'm sorry?
 13 THE WITNESS: He's an elected member
 14 national of the Explorers Club.
 15 BY MS. WOOTEN:
 16 Q. Do you know if his wife is also a member of
 17 that club?
 18 A. No idea.
 19 Q. Don't recall seeing her at any of the
 20 meetings?
 21 A. I just don't know.
 22 (Off the Record)
 23 (Exhibit No. 1 was marked for identification
 24 purposes.)
 25 Q. Mr. Leader, I'm going to -- Dr. Leader, I'm

1 (affirmative response).
 2 Q. Was Ms. Modesta -- or, excuse me,
 3 Ms. Brinkman present?
 4 A. Probably. I don't recall.
 5 Q. Okay. All right. And other than the
 6 November 2015 visit and the initial visit that
 7 you had on the Brinkman property, approximately
 8 how many other times would you say you've been
 9 out on their property to view the rocks in
 10 question?
 11 A. Probably six times; that's a guess. I'd
 12 have to double check.
 13 Q. In addition to the two?
 14 A. No, inclusive.
 15 Q. Inclusive, okay. Okay. Have you ever been
 16 to the Brinkman property for a social visit
 17 unrelated to your work with Mr. Brinkman related
 18 to the rocks?
 19 A. Yes, one time. They had a -- a social
 20 gathering of the Explorers Club at the Brinkman
 21 residence.
 22 Q. Was that for the purpose of watching the
 23 television show covering the story related to the
 24 rocks?
 25 A. You know, I can't remember if that was the

1 going to hand you a copy of what we're going to
 2 mark as Exhibit 1, if you'll give me --
 3 A. Okay.
 4 Q. You're free to flip through those. If you
 5 give me a second, I will pass copies out to --
 6 A. Sure.
 7 Q. -- other counsel, as well.
 8 (Off the Record)
 9 Q. Dr. Leader, do you recognize any of the
 10 photographs that are in Exhibit 1?
 11 A. Yeah.
 12 Q. Okay. And if you could walk through the
 13 photographs on page -- the first page of the
 14 collection that you've been handed.
 15 And just for the record, the photographs
 16 that you have been provided -- let me read out
 17 those Bates numbers for the record, just so it's
 18 easier for us to identify them later. They are
 19 marked 02-000008, 02-000040, 02-000002,
 20 02-000018, and finally, 02-000015.
 21 If you could take a look at the photograph
 22 on page one --
 23 A. Uh-huh (affirmatively responds).
 24 Q. -- and describe for me what this photograph
 25 shows to you.

1 A. Well, what I think we're looking at here
 2 based on your photograph is a partial drill bit
 3 incursion into the face of the stone.
 4 Q. Okay. And of the stones that -- well, let
 5 me back up: The stones that you saw on the
 6 bridge abutment --
 7 A. Uh-huh (affirmatively responds).
 8 Q. -- located on Mr. Brinkman's property --
 9 A. Correct.
 10 Q. -- how many of the stones had similar
 11 markings as the one you see in page one of
 12 Exhibit 1?
 13 A. You'll have to define "similar" more. This
 14 is a partial set done by a unfulfilled drill
 15 mark.
 16 Q. Okay. What would be the purpose of this
 17 drill mark for this rock?
 18 A. It would be for putting in, most likely,
 19 initially a powder charge and/or putting in a
 20 attachment for a engineering set.
 21 Q. Okay. And would the powder, for example,
 22 the blasting that you might do on this rock --
 23 A. Uh-huh (affirmatively responds).
 24 Q. -- for what purpose would that be done? To
 25 make it a smaller --

1 Q. What are we looking at in page three, if you
 2 know?
 3 A. This would appear -- I don't think I
 4 actually have seen this photo before, but the --
 5 what I believe that I'm seeing here is the upper
 6 level of the abutment where the bridge would have
 7 come off, if I'm correct. This is a step cut and
 8 then the support set. So I think what we're
 9 looking at here is a portion of a -- the bridge.
 10 Q. Okay. Can you tell from this photograph if
 11 the rocks that we're looking at are on
 12 Mr. Brinkman's property?
 13 A. No, I cannot tell you. I'd have to
 14 physically be there to make sure of this photo.
 15 Q. Okay. Do you see in the upper left-hand
 16 portion of the photograph what appears to be a
 17 manmade structure of some sort? Maybe a deck or
 18 part of a house?
 19 A. Yeah, it looks like a house with a deck.
 20 Looking through the tangle, it's hard to tell.
 21 Q. Okay. But you don't recognize this
 22 photograph as something that you saw on the
 23 Brinkman property?
 24 A. No, this angle is off for me. The step
 25 looks very familiar. You know, I --

1 A. If --
 2 Q. -- set of rocks?
 3 A. If it were a situation where it was for
 4 blasting versus for an attachment, the standard
 5 statement would be to split the rock.
 6 Q. And if you could take a look at page two in
 7 the collection of photographs there.
 8 A. Is this page two for you?
 9 Q. Yes.
 10 A. Okay.
 11 Q. Page two of Exhibit 1, excuse me.
 12 A. (Witness complies.)
 13 Q. Okay. What are we looking at on this
 14 photograph?
 15 A. This one I'm less familiar with. I think
 16 this is from the opposite side of the river. I
 17 don't have -- this is -- if this is from the
 18 opposite of the river, I've never visited the
 19 opposite side of the river.
 20 Q. Okay. So any connections that may or may
 21 not exist on that side, you're not familiar with?
 22 A. Not in -- not personally familiar with.
 23 Q. Okay. Let's turn to page three of the
 24 exhibit -- of Exhibit 1 there.
 25 A. (Witness complies.)

1 Q. When you say --
 2 A. -- suspect that it may be on the Brinkman
 3 property, but I'd have to go double check it to
 4 be absolutely clear. This is not my photograph.
 5 Q. Sure. When you say the "step," can you
 6 point that out to me so I know what you're
 7 talking about?
 8 A. (Indicating.)
 9 Q. Okay. So in this picture, the rocks that we
 10 are seeing, would you describe these as stacked,
 11 slightly off the stacked placement, or not in
 12 place?
 13 A. This is not my favorite photograph. I would
 14 prefer to go back and double check, then I could
 15 give you an accurate statement. But I suspect
 16 that what we're looking at is something which is
 17 more intact than not intact.
 18 Q. Okay. And then if you could turn to the
 19 next page and describe what we are looking at in
 20 this photograph.
 21 A. Would that be -- I don't see a number on
 22 this one.
 23 Q. Just the next page. It has -- looks like
 24 some iron --
 25 A. Okay.

1 Q. -- or some sort of metal --
 2 A. Well, that's exactly --
 3 Q. -- piece.
 4 A. -- what it is.
 5 Q. Okay.
 6 A. You're looking at iron in between the
 7 crevices of a rock.
 8 Q. Okay.
 9 A. It could easily be -- this -- if I remember
 10 correctly, this is out in the -- out in the water
 11 itself. Again, I did not physically go to this
 12 one.
 13 Q. Okay.
 14 A. But my -- my speculation -- no, I won't
 15 speculate. I would think that it's part of a --
 16 again, this could easily be part of an attachment
 17 to help support and tie down a bridge across the
 18 area. But having not physically stood on top of
 19 it, I can't say that for a fact.
 20 Q. Were there any portions of the rock
 21 formations on Mr. Brinkman's property -- not out
 22 on the water, not across, but actually on his
 23 property that you did not look at, to your
 24 knowledge?
 25 A. There are probably any number of portions of

1 by hand or if it was done by equipment.
 2 Q. Okay.
 3 A. The ones that I saw on his property were
 4 done by hand and they were the appropriate
 5 circumference for black powder.
 6 Q. Okay. All right. Let -- before I get too
 7 far into the questions, let me go back and ask
 8 you about the other parties that are involved
 9 before I forget that and what you may or may not
 10 know, because obviously you know a fair bit about
 11 the Brinkmans. James Coleman, is that a name
 12 that rings a bell for you?
 13 A. I've heard the name. I don't know James
 14 Coleman.
 15 Q. To your knowledge, never met Mr. Coleman?
 16 A. As far as I know.
 17 Q. Okay. What about Carl Foster?
 18 A. Nope.
 19 Q. Karen Foster?
 20 A. Nope.
 21 Q. Robert Collins?
 22 A. Nope.
 23 Q. Pamela Collins?
 24 A. Nope.
 25 Q. Okay. Weston & Sampson, Incorporated?

1 things on his property, I have not seen.
 2 Q. Well, I'm talking about the bridge abutment
 3 that he claims exists. Were there any portions
 4 of that structure that you did not review?
 5 A. Given the time periods I was there and given
 6 the vegetation that was there at various times,
 7 one would have to accurately say there are
 8 undoubtedly portions of the bridge abutment that
 9 I did not see.
 10 Q. And then on the last photograph there, is
 11 this similar in terms of what we were looking at
 12 on the first page of --
 13 A. Without having the scale, and it's hard to
 14 determine the precise size that would've been
 15 involved of the hole, generally speaking, a hole
 16 of this nature would have been a drill set --
 17 Q. Okay.
 18 A. -- again, going in. The difference in
 19 circumference -- diameter/circumference -- often
 20 is one of the things that determines whether it's
 21 an early or later use.
 22 And, of course, from this photograph, one
 23 can't actually take a look at the striations
 24 interior to the hole to determine whether it was
 25 done by -- from this picture whether it was done

1 A. Who?
 2 Q. Weston & Sampson, Incorporated?
 3 A. (Shakes head negatively.)
 4 Q. Can you give a verbal "no" because the court
 5 reporter --
 6 A. Sorry. No.
 7 Q. Thank you. Weston & Sampson Engineers,
 8 Incorporated?
 9 A. That name I have heard and actually I may
 10 have heard it from you when we were talking on
 11 the phone as to who you were representing.
 12 Q. Sure.
 13 A. Okay. In that case, that's where I heard
 14 it.
 15 Q. Okay.
 16 A. But other than that, I have no knowledge of
 17 them.
 18 Q. Thank you. That's fair enough. Weston &
 19 Sampson Services, Incorporated?
 20 A. I think they're on the document that was --
 21 I was served with. Again, I don't know any of
 22 these people personally.
 23 Q. Okay. Weston & Sampson, CMR, Incorporated?
 24 A. No.
 25 Q. Okay. And I take it none of those Weston &

1 Sampson entities came up in your discussion with
2 Mr. Hodge out on the Brinkman property regarding
3 the applicability of the South Carolina Act; to
4 your recollection?

5 A. Not to my knowledge, no.

6 Q. Okay. And in any of your subsequent
7 discussions with either Mr. Hodge or
8 Mr. Brinkman, based on your answers, I would
9 understand that those entities did not come up in
10 those discussions either; is that fair?

11 A. It is fair. I think that when we were
12 talking most recently about the 2010 Archaeology
13 Act, he might have, but I don't recall it as a
14 fact, no.

15 Q. Who is "he"?

16 A. John Hodge.

17 Q. Okay. City of Columbia?

18 A. Oh, definitely.

19 Q. Certainly. I would expect that you've heard
20 of them --

21 A. I've more than --

22 Q. -- and have knowledge about.

23 A. -- heard of them. They actually called me
24 about this at one point to specifically ask me
25 about David Brinkman, whether or not his

1 Q. Okay. Let's see. And that you said was --

2 A. But that's a guess. I don't have --
3 actually have a note from then. Again, my
4 expectation was they were calling me back.

5 Q. Okay. And you indicated you said "yes" to
6 all of the questions --

7 A. You bet.

8 Q. -- that they were -- asked.

9 A. Yep.

10 Q. Okay. Did you give them any information
11 beyond a simple "yes"? Did y'all have a
12 substantive discussion?

13 A. Oh, I suggested they could come down, take a
14 look at the site files, and take a look through
15 the raw materials.

16 I pointed them at the newspaper article and
17 I suggested they go on to the History Detectives
18 website and take a look at the Confederate bridge
19 one episode since it had partial discussion of
20 that, as well as to how we got to the point of
21 the Confederate bridge.

22 Q. Okay. What about North American Pipeline
23 Management?

24 A. No idea.

25 Q. Okay. What about a company by the name of

1 materials were accurate, whether or not he was a
2 legitimate researcher, and whether or not there
3 was a problem with what they had done at the
4 area, and I said "yes" to all of the above.

5 Q. Do you recall who contacted you --

6 A. No.

7 Q. -- from the City?

8 A. Because they told me they'd get back to me
9 and we'd have a meeting to go over it in detail.
10 They never got back to me, I'm assuming at the
11 request of counsel, but it's speculation on my
12 part.

13 Q. Sure. Was that contact via e-mail or phone;
14 do you recall?

15 A. Telephone.

16 Q. Telephone? Okay.

17 A. An e-mail I would have provided it to you.

18 Q. Okay. Were you responsible for gathering
19 the documents in response to my FOIA request?

20 A. Yep.

21 Q. All right. And do you have a recollection
22 of roughly when that telephone call was?

23 A. It was prior to John Hodge's request about
24 the 2010 Archaeology Act; probably almost by six
25 months.

1 Layne Inliner?

2 A. Never heard of them.

3 Q. Okay. Robert Horner, PE?

4 A. Never heard of him.

5 Q. Wouldn't know Mr. Horner if he walked in the
6 room?

7 A. Afraid not.

8 Q. South Carolina Archives & History Center?

9 A. Oh, definitely.

10 Q. Tell me a little bit about that particular
11 group. What's their purpose and what do they
12 tend to do?

13 A. The South Carolina Department of Archives &
14 History is set up to take care of the National
15 Historic Preservation Act. They are a State
16 agency, partially funded by federal monies, and
17 they sit on Section 106, among other portions of
18 the National Historic Preservation Act.

19 Q. Okay.

20 A. And, of course, they are also the archives
21 for the State, so they're holding onto additional
22 archival materials.

23 Q. Okay. Have you worked with Mr. Hodge or
24 Mr. Chambers on any other litigation matters --

25 A. No.

1 Q: --aside from this case?
 2 A: (Shakes head negatively.)
 3 MS. WOOTEN: Okay. If we could go off
 4 the record for just a minute.
 5 (Off the Record)
 6 (Exhibit No. 2 was marked for
 7 identification purposes.)
 8 BY MS. WOOTEN:
 9 Q: All right. Dr. Leader, I'm going to hand
 10 you what's been marked as Exhibit 2.
 11 A: Thank you.
 12 Q: Okay. Do you recognize any of the
 13 photographs in Exhibit 2?
 14 A: I do.
 15 Q: Okay. And tell me what we're looking at in
 16 the first photograph on the left-hand side.
 17 A: These are from the other side of the river
 18 where I have not personally gone. These are
 19 photographs that were provided to me as part of a
 20 discussion as to what was being seen or not seen
 21 and, therefore, I can't comment.
 22 Q: I'm sorry. You can't comment on what?
 23 A: Well, the second -- let's see. The first
 24 four -- (reading) the river -- (reading) -- hang
 25 on. The bottom show the 1.5 found on the other

1 Q. Okay. In your opinion, has that assessment
 2 been definitively determined, that these remains
 3 are, in fact, part of the first bridge by John
 4 Compty?
 5 A. Given the location of the abutment on the
 6 Brinkman property, given the overlay of the maps,
 7 which I have yet to see, but the maps showing the
 8 location in-line going across, given the
 9 information provided me to the materials
 10 inside -- interior to the river itself in line
 11 going across, my professional assessment is that
 12 they are indeed part and parcel of a bridge,
 13 okay, of the appropriate time period.
 14 The ordering of the bridge of 1791 versus
 15 after it was removed to the bridge of 1793 or
 16 four, and then the later bridge, which is the
 17 third bridge further up river close to the other
 18 areas, is based on materials from court cases.
 19 As such, again, professionally, I entertain that
 20 those are likely to be accurate pending final
 21 disposition, which would have been the
 22 archaeological analysis of those additional
 23 locations.
 24 In other words, the infrastructure that he
 25 had provided to support his thesis going across

1 side of the river from this abutment.
 2 Let me be clear. Any photograph or
 3 information coming from the opposite side of the
 4 river from where David Brinkman's property was,
 5 which is where I have been, I have not been on
 6 the opposite side of the river. And, therefore,
 7 discussing them, I have not physically been
 8 there.
 9 Q: Right. I understand that. Okay.
 10 A: Okay.
 11 Q: And just to make sure, when this says, "The
 12 first four photos were taken from the river," do
 13 you -- do you have an understanding as to whether
 14 that means Mr. Brinkman's taking the photographs
 15 of his property from the river or taking from the
 16 river photographs across the river to property he
 17 does not own? Can you tell that from these
 18 photographs?
 19 A: No, I can't.
 20 Q: Okay. And this -- the last sentence on this
 21 page says, "These are" -- it has a typo, but --
 22 "possibly remains of the first bridge across the
 23 Broad River made by John Compty in 1791." Do you
 24 see that sentence?
 25 A: I do.

1 the river at those three locations was very
 2 strong, it was apparently accurate in terms of
 3 the data provided, and sufficient to give a
 4 recommendation that those were indeed the bridges
 5 in place as suggested.
 6 Obviously, in science, you're never done and
 7 you have to go for the next step, which would
 8 have been the next step.
 9 Q: I'm sorry. What would have been the next
 10 step?
 11 A: Additional excavation, additional checking
 12 on the other properties. Again, I have not been
 13 on those other properties.
 14 Q: Okay. And, I'm sorry, when you said the
 15 recommendation, can you rephrase that part again?
 16 THE WITNESS: Can you read that back to
 17 me?
 18 THE COURT REPORTER: "In other words,
 19 the infrastructure that he had provided to
 20 support his thesis going across the river at
 21 those three locations was very strong, it
 22 was apparently accurate in terms of the data
 23 provided, and sufficient to give a
 24 recommendation that those were indeed the
 25 bridges in place as suggested."

1 THE WITNESS: Okay. Is that what we're
 2 referencing?
 3 MS. WOOTEN: Yes.
 4 BY MS. WOOTEN:
 5 Q. Sufficient for who to give a recommendation?
 6 THE COURT REPORTER: Hold on.
 7 A. For my office --
 8 MS. WOOTEN: Sorry. Wait. We're
 9 getting ahead of the court reporter. Sorry.
 10 Sorry, Madam Court Reporter.
 11 THE WITNESS: We good?
 12 BY MS. WOOTEN:
 13 Q. So going back --
 14 A. Okay.
 15 Q. -- to my question then: Sufficient for who
 16 to make a recommendation?
 17 A. Me.
 18 Q. Okay. And what was the recommendation?
 19 That they were --
 20 A. Yes.
 21 Q. -- a bridge, but we're not sure which one?
 22 A. No. My recommendation was that given the
 23 overlay of the maps from the appropriate time
 24 period, the court cases that were involved that
 25 referenced those maps and materials, the other

1 Q. Gotcha, okay.
 2 (Exhibit No. 3 was marked for identification
 3 purposes.)
 4 Q. Hand you what's been marked as Exhibit 3.
 5 A. Am I done with this?
 6 Q. Yes, you're done with that.
 7 A. Yeah. Yep.
 8 Q. And what are the photographs that we are
 9 looking at here?
 10 A. We're looking at boulders and other
 11 materials that were not -- as stated, are not
 12 directly in line with the -- with the abutment,
 13 but more or less in the pathway, suggesting that
 14 they were portions of the -- the construction and
 15 potentially anchor points.
 16 Q. Are these, to your recollection, located on
 17 the Brinkman property?
 18 A. They would -- if I saw them, they would've
 19 had to been on the Brinkman property. I did not
 20 go across the river. I was not in another part
 21 of the river, so they're on the Brinkman
 22 property, but I --
 23 Q. Okay.
 24 A. So yes.
 25 Q. And there's a statement on here that

1 supporting documentation as to locations that
 2 gave survey statements, that they were indeed the
 3 Comptly bridges.
 4 Q. But you're not sure which one?
 5 A. No. Given the statements as to the
 6 elevations of the bridges -- again, the thesis
 7 which has been put forward which was, as they
 8 were swept away by freshets coming -- floods
 9 coming down the river, that they were moving them
 10 to higher ground to try to avoid it the next time
 11 around.
 12 Q. Uh-huh (affirmatively responds).
 13 A. It made perfect sense that they were in the
 14 order as suggested by David. And my suggestion
 15 based on that was additional research and
 16 additional analysis and additional fieldwork.
 17 Q. Okay. And, sorry, what was the ordering
 18 suggested by Mr. Brinkman?
 19 A. The ordering that was suggested by
 20 Mr. Brinkman in his research was that they
 21 started off at a lower elevation and then moved
 22 up to higher elevations on the side of the river
 23 that he was at in an effect -- attempt to avoid
 24 being wiped out by a flood in the future, which
 25 made perfect sense.

1 references that the State Archaeologist
 2 identified these as quarry stones.
 3 A. That's correct, that there were chisel marks
 4 and other material suggesting that they had been
 5 removed partially from a quarry, yes.
 6 Q. Okay. And if I'm recalling correctly from
 7 your testimony earlier -- well, let me -- let me
 8 back up. I want to be clear. Have you ever
 9 looked at the easement that is located across the
 10 Brinkman property?
 11 A. I have not.
 12 Q. Okay. So you don't know where the easement
 13 is, would be a fair statement?
 14 A. That would be correct.
 15 Q. Okay. And, therefore, you don't know if
 16 these rocks that we're looking at in any of these
 17 photographs fall within or with -- outside the
 18 parameters of that easement, is that correct?
 19 A. Not having looked specifically at the
 20 footprint of the easement, I cannot reference it;
 21 you're right.
 22 Q. Did Mr. Brinkman ever make any
 23 representations to you with respect to whether
 24 the rocks were inside or outside of an easement
 25 on his property?

1 A. He did. He said they were outside.
 2 Q. Okay.
 3 A. Actually, let me qualify that. He said the
 4 abutment was. I do not recall him specifically
 5 referencing loose stones being in or out.
 6 Q. That brings up a good point. If you were
 7 explaining to a jury, a lay jury, what an
 8 "abutment" is, how would you define that as
 9 opposed to maybe some of the stones that are
 10 loose and surrounding that structure?
 11 A. Abutments are part of a construction that
 12 support another structure from erosion, from
 13 fall-down, from any number of stresses.
 14 So when you're talking about a bridge, the
 15 abutment normally comes up to the side supporting
 16 the roadway coming across it from the area of the
 17 road, coming off of it into open space. So
 18 abutments tend to be up against bluffs, you know,
 19 cliffs, side points.
 20 Q. Okay. This first one is a better color, so
 21 I'm going to use it.
 22 A. Are we done with this one or should I ...
 23 Q. Yes, you can sit it right there.
 24 A. Okay.
 25 (Exhibit No. 4 was marked for identification)

1 Q. What does that mean, "partially slumped"?
 2 A. In other words, there are some things in the
 3 back that are still in position, there are
 4 materials in the front that are not in position,
 5 and you have a mix.
 6 Q. Okay. If you could -- I think it would be
 7 helpful for the record if you could point out to
 8 me the rocks that you would describe as being
 9 slumped and the ones that you would point out as
 10 being --
 11 A. I would point --
 12 Q. -- in place.
 13 A. -- to the ones that are the two on the top,
 14 center top (indicating). I would look to the one
 15 to the right of that, which has fallen forward
 16 onto its face.
 17 Q. Let me interrupt you because my question was
 18 a little compound. So I'm not sure when you're
 19 pointing to them if you're pointing to the ones
 20 slumped or in place, so that was a bad question.
 21 Let me start over with that. Can you point to me
 22 the ones that are in place in your opinion in
 23 this photograph?
 24 A. I would point to the two at the top as being
 25 primarily in place.

1 purposes.)
 2 Q. Hand you what's been marked as Exhibit 4.
 3 A. Yeah, this is his composite.
 4 Q. I'm sorry. Could you say that again?
 5 A. Nope. That's okay. I'll wait.
 6 Q. All right. Dr. Leader, do you recognize
 7 what you're looking at in that what appears to be
 8 patchwork or compilation of different photographs
 9 strung together?
 10 A. I have indeed seen this patchwork before.
 11 Q. And what was the context in which you saw
 12 that?
 13 A. It was provided to me by David Brinkman.
 14 Q. And when was it provided?
 15 A. I can't give you a specific date.
 16 Q. Do you recall if it was before or after the
 17 meeting on his property to discuss the Act
 18 statute that we talked about earlier?
 19 A. I'm pretty sure it was before.
 20 Q. Okay. Do you recall for what purpose it was
 21 provided?
 22 A. Well, he thought I'd find it interesting.
 23 Q. What are we looking at in this photograph?
 24 A. We are looking at a collection of stonework
 25 which has been partially slumped.

1 Q. Okay. If you could take this blue pen and
 2 draw a circle around the ones that are --
 3 A. Sure.
 4 Q. -- in place for me.
 5 A. (Witness complies.) I'll give you arrows
 6 instead.
 7 Q. That's fine. Arrows, that'll work. And
 8 then just write "in place" at the top.
 9 A. (Witness complies.)
 10 Q. And can you identify for the court reporter
 11 the note that you put up there, just so it's
 12 clear.
 13 A. I marked it as "more likely in place." The
 14 final determination of being in place or not in
 15 place would require excavation and additional
 16 work.
 17 Q. Okay. So based on your years of experience,
 18 you believe more likely than not those rocks
 19 would qualify as being labeled "in place," but an
 20 actual determination of that would be pending,
 21 essentially?
 22 A. Right.
 23 Q. Okay. And are those the only two that you
 24 would describe as being more likely in place?
 25 A. No -- well, in place, yes.

1 Q: Okay. And with -- is it --
 2 A: Let me -- let me qualify that.
 3 Q: Sure.
 4 A: There are additional materials that may or
 5 may not be in place under them. Can't see them
 6 from this photograph.
 7 Q: Fair point.
 8 A: Require additional research.
 9 Q: From the visual of the -- that you're able
 10 to see in the photograph, those are the only two
 11 you would identify?
 12 A: Given the location of this photograph, those
 13 seem to be the best ones for that statement.
 14 Q: Okay. And just so I'm clear and the record
 15 is clear, the remaining rocks that you can
 16 visually detect in this photograph in Exhibit 4
 17 you would describe as either slumped or not in
 18 place; is that fair?
 19 A: Not completely. There are additional stones
 20 at the base which are likely to be in place, but
 21 because of the materials on top of them, they
 22 cannot be determined at this time. So calling
 23 them slumped or out of place would not be
 24 accurate.
 25 Q: Okay. But you're not -- you wouldn't put

1 rocks that you feel --
 2 THE WITNESS: You're going to have to
 3 read that one back to me.
 4 MS. WOOTEN: Well --
 5 THE COURT REPORTER: I didn't know what
 6 you said. Situ?
 7 THE WITNESS: In situ.
 8 MS. WOOTEN: S-I-T-U.
 9 THE COURT REPORTER: In-situ? Okay.
 10 Because I wouldn't know what that is.
 11 THE WITNESS: I-N-S-I-T-U.
 12 THE COURT REPORTER: Thank you.
 13 You said, "I would reference them as
 14 base rocks apparently in situ requiring
 15 additional" --
 16 THE WITNESS: I'm sorry. I can't quite
 17 hear you.
 18 THE COURT REPORTER: I'm not sure if
 19 I'm supposed to be reading that --
 20 MS. WOOTEN: You were reading the right
 21 part.
 22 THE COURT REPORTER: Okay. "I would
 23 reference them as base rocks apparently
 24 still in situ requiring additional rock."
 25 MS. WOOTEN: Requiring additional work?

1 them in the "more likely than not" category to be
 2 in place?
 3 A: They are likely to be in place. I cannot
 4 say more likely or not likely without additional
 5 research.
 6 Q: Okay. Can you point to me the ones that
 7 you're not sure -- you don't need to mark them
 8 yet, but can you just point to me the ones you're
 9 not sure at the bottom that you're talking about?
 10 A: (Indicating.)
 11 Q: Okay.
 12 A: Yep.
 13 Q: Just that one rock?
 14 A: And the series that are next to it, yeah,
 15 seem to be the better statement.
 16 Q: How would you feel comfortable -- if you
 17 were asked to label this photograph with respect
 18 to those rocks that we just -- you just pointed
 19 out, how would you label them?
 20 A: The ones I just pointed out?
 21 Q: Yes, sir.
 22 A: I would reference them as base rocks
 23 apparently still in situ requiring additional
 24 work.
 25 Q: Okay. Why don't we make that label on the

1 THE COURT REPORTER: Work?
 2 THE WITNESS: Uh-huh (affirmatively.
 3 responds).
 4 MS. WOOTEN: Yes, I think that was the
 5 word.
 6 BY MS. WOOTEN:
 7 Q: And can you draw arrows to all of the ones
 8 that you would classify with that label? I think
 9 you said maybe some of the ones surrounding that
 10 one you drew.
 11 A: (Witness complies.)
 12 Q: Okay. May I see that for just a moment?
 13 A: Of course you can.
 14 Q: Okay. So would that include -- I'm not
 15 going to draw, but would that include all of
 16 these (indicating)?
 17 A: More or less, yeah.
 18 Q: Okay. Can you draw a circle around those
 19 just so -- what I'm trying to do is walk away
 20 with an exhibit where I know exactly which rocks
 21 you would qualify in what capacity.
 22 A: Understanding, again, that what we're
 23 looking at is from one location, one photograph,
 24 and not actually having done the additional work
 25 required.

1 Q. I understand it's not definitive. It's
 2 based on --
 3 A. Okay.
 4 Q. -- your best judgment and experience. And
 5 I'm only asking about these rocks, not -- I'm not
 6 going to take this photograph and say, "All the
 7 rocks that look like this in other
 8 photographs" --
 9 A. Well, even --
 10 Q. -- "are to be labeled that way."
 11 A. -- even in the instance of this, what we're
 12 looking at is a flat set from one perspective --
 13 Q. Sure.
 14 A. -- that does not provide additional
 15 information, which may or may not improve it from
 16 other directions.
 17 Q. I understand that. Okay. And so the rocks
 18 that are not already labeled on this exhibit --
 19 A. Uh-huh (affirmatively responds).
 20 Q. -- would it be fair to say that the
 21 remainder that have not been identified you would
 22 classify as more likely slumped?
 23 A. I would.
 24 Q. Okay. And can you remind me what you said
 25 "slumped" is supposed to convey?

1 if I had been taking the photos.
 2 Q. Did you take any photographs on the site?
 3 A. Actually, I left that to the other
 4 individuals who were there because at that time
 5 the University had not provided me with a decent
 6 camera.
 7 Q. Okay. Have you since taken any photographs
 8 of the site?
 9 A. Not recently, no.
 10 Q. Have you ever taken any photographs at the
 11 site?
 12 A. I did.
 13 Q. Okay. I don't...
 14 A. That's because they're on a drive that went
 15 blue on me. In other words, they no longer
 16 exist. They were digital photos.
 17 Q. Are you aware of -- well, let me ask it this
 18 way.
 19 A. Sure.
 20 Q. Since the original flood that impacted the
 21 bridge that would have covered or spanned over
 22 the abutment that's --
 23 A. Uh-huh (affirmatively responds).
 24 Q. -- at issue on these properties, have there
 25 been any other major floods in or around that

1 A. What we have here is a situation of a bridge
 2 that was hit by a flood. The likelihood of
 3 things staying exactly where they were in all
 4 instances is unlikely. So you end up with is a
 5 bit like a -- like a disaster set.
 6 Q. Uh-huh (affirmatively responds).
 7 A. So what you have are rocks that have been
 8 partially displaced, you have some smaller rocks
 9 that are probably totally displaced, and the
 10 final statement as to any of the above requires
 11 additional work.
 12 Q. Okay.
 13 A. That does not in any way shift it from being
 14 a bridge abutment, nor does it shift it from the
 15 time period, nor does it shift it from being
 16 important. What it means is additional work.
 17 Q. I understand that.
 18 A. Okay. As long as we're clear.
 19 Q. The label on this photograph is "abutment
 20 base that faces river." Is it your understanding
 21 that the rocks depicted in this photograph are
 22 part of the actual abutment or would it be a part
 23 of the series of rocks surrounding the abutment?
 24 A. Again, it's not a very good locational
 25 photo. This is not the photo I would have taken

1 area?
 2 A. There have been several floods through that
 3 area.
 4 Q. Okay.
 5 A. You bet.
 6 Q. And when would have been the last one, if
 7 you have a general knowledge or recollection?
 8 A. The last flood was the one that inundated
 9 Columbia.
 10 Q. So within a couple years ago?
 11 A. Within a --
 12 Q. Maybe even a year ago, right?
 13 A. Within a year, yeah.
 14 Q. Yeah. Okay. And so there was flooding in
 15 that area?
 16 A. There was flooding all up and down that
 17 area.
 18 Q. Okay. Are you aware of whether any of the
 19 flooding that happened in that area in any way
 20 unsettled or disturbed the rocks on the Brinkman
 21 property?
 22 A. Okay. I'm going to need clarification on
 23 that one. I'm not following you.
 24 Q. Okay. I'm asking -- you indicated there was
 25 a flood in Columbia, correct?

1 A. Correct.
 2 Q. Do you know if the flood impacted the Broad
 3 River as opposed to, say, just the Congaree
 4 River?
 5 A. You're talking about the current -- the
 6 current flood?
 7 Q. Yeah, the one that happened within a year
 8 ago.
 9 A. Okay. My understanding, it was pretty much
 10 everybody in sight.
 11 Q. Okay. And my --
 12 A. But that's not my area of expertise, but
 13 that's my understanding. I was an island. I
 14 couldn't tell you.
 15 Q. Okay.
 16 A. I didn't get out for weeks.
 17 Q. My question is: Have you -- well, have you
 18 been out to the Brinkman property since that
 19 flood occurred?
 20 A. No.
 21 Q. Okay. So you're not aware as to whether or
 22 not that flood disturbed or impacted or moved the
 23 rocks in any way?
 24 A. No idea.
 25 Q. Okay. Do you know if any other floods have

1 to the time that you went out to visit the site
 2 the first time, and where you've set as a marker,
 3 are you aware of how any subsequent flooding in
 4 that window of time might have impacted, moved,
 5 and/or shifted/disturbed any of those structures?
 6 MR. HODGE: I'm going to object to the
 7 form, but go ahead and answer the question.
 8 Q. You either -- you either know or you don't
 9 know. I can rephrase the question, if you --
 10 A. Well, it -- actually it's a two-parter.
 11 Q. Okay.
 12 A. Because on the one hand, what you have is
 13 damage to the area that was done by the removal
 14 of the actual bridge.
 15 Q. In -- with the original flood?
 16 A. In the original flood.
 17 Q. Correct.
 18 A. Once that bridge was gone, the forces that
 19 were causing damage to it were not to the same
 20 level.
 21 So determining whether or not that anything
 22 that came after that from other areas caused
 23 anything that would be considered significant
 24 damage to that area would require additional
 25 work.

1 impacted the location of the rocks from the time
 2 that the bridge abutment -- or, excuse me, the
 3 bridge was swept away to the time that you went
 4 out and looked at the abutment?
 5 A. My understanding of the bridges that were
 6 put in the area that were swept away, there was
 7 significant water that went through the area.
 8 Again, that's not my area of expertise. I'm not
 9 a hydrologist.
 10 Q. And you're not aware of any subsequent --
 11 how any subsequent flooding might have impacted
 12 that site; is that fair?
 13 A. Could you rephrase that question?
 14 Q. Sure. So there would have been the original
 15 flood --
 16 A. Yes.
 17 Q. -- where the bridge was there.
 18 A. Right.
 19 Q. And then following the flood, the bridge was
 20 not there.
 21 A. Correct.
 22 Q. There were remnants of the abutments and
 23 some rock structure surrounding that, correct?
 24 A. Right.
 25 Q. Okay. My question is: Following that flood

1 Q. I think you're -- well, let me rephrase
 2 this. My question is simply: You have the
 3 flood, right? You have the original flood.
 4 A. Yes.
 5 Q. It sweeps away the bridge structure.
 6 A. Right.
 7 Q. Right? My point is that there were other
 8 floods --
 9 A. Yes.
 10 Q. -- following that flood --
 11 A. Yes.
 12 MR. HODGE: Objection to the form.
 13 MS. WOOTEN: I haven't even asked my
 14 question. Would you please --
 15 MR. HODGE: Okay.
 16 MS. WOOTEN: -- let me get it out?
 17 BY MS. WOOTEN:
 18 Q. So you have the original flood, correct?
 19 A. Uh-huh (affirmatively responds).
 20 Q. Okay. Are there other floods from the time
 21 of the original flood -- which when I say
 22 original, I'm talking about the one that swept
 23 away the bridge structure.
 24 A. Okay.
 25 Q. From that point in time to when you first

1 went out on the property to look at the
 2 abutments ...
 3 A. There were additional floods.
 4 Q. Okay. My question is: You cannot say
 5 you're not aware how, if at all, those floods
 6 moved or impacted the bridge abutment structure;
 7 is that fair to say?
 8 MR. HODGE: Objection to the form.
 9 A. My impression given the location of
 10 materials that were in line with the maps that
 11 were not moved was that if there was damage
 12 caused by any additional flood, it was not
 13 sufficient to cause damage to the site in terms
 14 of the archaeology.
 15 Q. But it could have been enough to move rocks
 16 in or further away from the place --
 17 MR. HODGE: Objection.
 18 Q. -- they originally set?
 19 A. I can't say that one way or the other.
 20 Q. You don't know?
 21 A. That would require additional work.
 22 MS. WOOTEN: Why don't we take a quick
 23 break. We've been going for a little over
 24 an hour.
 25 (Off the record from 11:39 a.m. to 11:52 a.m.)

1 National Register of Historic Places materials
 2 are on it and archaeological sites are on it, as
 3 are additional information --
 4 Q. What's some of the --
 5 A. -- from that.
 6 Q. I'm sorry. I didn't mean to interrupt you.
 7 A. No, that's okay.
 8 Q. What's some of the additional information
 9 that would not --
 10 A. Depending -- depending on any given -- I'm
 11 sorry. I cut you off. I should let you finish.
 12 Q. That's okay.
 13 THE COURT REPORTER: You did cut her
 14 off.
 15 MS. WOOTEN: That's okay.
 16 THE COURT REPORTER: It's kind of hard
 17 because she trails off. I'm sorry.
 18 THE WITNESS: No, it's my own fault.
 19 BY MS. WOOTEN:
 20 Q. What additional information would be on
 21 there that you would not expect to see with the
 22 information paired with the National Registry or
 23 the -- what was the other one you said?
 24 Archaeological sites?
 25 A. Archaeology sites --

1 (Exhibit No. 5 was marked for
 2 identification purposes.)
 3 BY MS. WOOTEN:
 4 Q. Dr. Leader, I want to move on after our
 5 break to look at a couple of documents.
 6 A. Sure.
 7 Q. I've marked a group as Exhibit 5.
 8 MS. WOOTEN: I'll hand some copies out.
 9 MR. HODGE: Thank you.
 10 A. (Reading.) Uh-huh (affirmative response).
 11 Q. Okay. Having had a chance to look at the
 12 documents in Exhibit 5, do you recognize anything
 13 about that collection of documents?
 14 A. I've seen them before.
 15 Q. Okay. And what's the -- what's the first
 16 page from? Can you tell what website that
 17 document comes from or --
 18 A. That's from what's referred --
 19 Q. -- it would be generated from?
 20 A. -- to as ArchSites.
 21 Q. Okay. And what is ArchSites? Is it an
 22 online archival of historical sites?
 23 A. Yes and no. ArchSites is a multi-agency
 24 website that allows access to the built and
 25 archaeological resources databases. So the

1 Q. Archaeology sites, yes.
 2 A. -- database, yes.
 3 Q. Okay. So what type of additional
 4 information will you --
 5 A. Depends on the site. It depends on the
 6 specific materials. One of the things we're
 7 doing is uploading all the -- all of the gray
 8 literatures, I think I mentioned once before, and
 9 linking to that material.
 10 Some sites have more information than others
 11 simply because more information was provided by
 12 the researchers working on those sites. So it
 13 could be somewhat variable.
 14 National Register of properties are listed
 15 as such, but that's National Register underneath
 16 Archives & History, not underneath the Institute.
 17 So that's outside of my specific control.
 18 Q. Okay. What -- what is required for
 19 something to be listed on the National Register
 20 or the National Registry?
 21 A. Well, first it has to meet the -- one of the
 22 four criterion that the National Register in its
 23 wisdom decided were important. And if you happen
 24 to meet it and have the documentation to follow
 25 it, you're on, and if you don't happen to meet

1 it, whether you have documentation of importance
 2 or not, you're not. The National Register is an
 3 interesting group, but it's not the beginning of
 4 the end all of importance or information.
 5 Q. Sure. But the -- okay. So they have the
 6 National Registry part and then you said the
 7 archaeological sites part.
 8 A. Right.
 9 Q. The website that we're looking at on page
 10 one, we've got a page generated from that
 11 website.
 12 A. Uh-huh (affirmatively responds).
 13 Q. Is there any way through the program or
 14 through the website to take a historical look at
 15 the information that would be in the website?
 16 And so what I mean by that would be, it
 17 sounds from your description that information is
 18 always being added. If there's new information
 19 particular to a site, it's getting added to the
 20 website for that property.
 21 A. Uh-huh (affirmatively responds).
 22 Q. So the information that might be affiliated
 23 with a particular property in 2016 might not have
 24 been available on the website in 2008, for
 25 example; is that -- as a possibility, correct?

1 not being that, and anybody relied upon that was
 2 inaccurate.
 3 Q. I think you read into something in my
 4 question that wasn't there. My question was
 5 simply: It wasn't there in 2008; that's --
 6 A. Perhaps, but --
 7 Q. -- the question that I had.
 8 A. -- I was trying to make sure you understood
 9 where this document exists in this landscape.
 10 Q. I do. Thank you. Now, the requirements for
 11 due diligence and Section 106, we'll get to that
 12 in a second. The photograph and -- or the
 13 printout on page one of Exhibit --
 14 A. Uh-huh (affirmatively responds).
 15 Q. -- 5, if you look in the upper right corner,
 16 it says, "Welcome, David Brinkman." Do you see
 17 that on there?
 18 A. My eyesight's not that good but, yes, I
 19 can -- I think that's it right up here. It's
 20 pretty blurry, but yes.
 21 Q. Okay. And as I understand it, Mr. Brinkman
 22 was a person who was given access to this
 23 website?
 24 A. He was.
 25 Q. And this is one of the websites we were

1 A. There's always possibilities, yeah.
 2 Q. Okay.
 3 A. Sure.
 4 Q. All right. Well, let me -- let me be a
 5 little clearer, then. If you have information
 6 about a particular piece of property that comes
 7 to light in 2016 --
 8 A. Uh-huh (affirmative response).
 9 Q. -- and it's added in 2016 --
 10 A. Uh-huh (affirmatively responds).
 11 Q. -- fair to say it wasn't there in 2008?
 12 A. No, actually, it's not fair. What you have
 13 here is a value-added website that is
 14 specifically stated on the first page, which is
 15 not included with us, that it does not take the
 16 place of actually coming to the actual databases
 17 and the files themselves and checking.
 18 Anybody who relied on any of this data as a
 19 single point of entry is in point of fact not
 20 fulfilling any of the requirements for due
 21 diligence or for cultural resource management or
 22 underneath the Section 106 or any other format.
 23 So if the statement that we're looking at
 24 here is that ArchSites is a beginning and an end,
 25 it was never designed for that, it is stated as

1 talking about that -- well, let me make sure I'm
 2 not assuming something here. Is this log-on this
 3 website here something that is secure, that the
 4 general public cannot access on page one?
 5 A. That is correct.
 6 Q. All right. And what are we looking at on
 7 this -- on page one of Exhibit 5? What is --
 8 what is being depicted in this particular
 9 printout?
 10 A. This is a map rendering of the area of the
 11 Columbia Canal and near Castle Road and other
 12 areas.
 13 Q. Okay. And over to the side, there's an area
 14 that says "layers"?
 15 A. Uh-huh (affirmative response).
 16 Q. And there appears to be a -- basically a --
 17 I'm losing the word right now, but there is an
 18 area that shows you what is checked off or not
 19 checked off.
 20 A. Uh-huh (affirmatively responds).
 21 Q. A "legend" is the word I'm looking for here
 22 of what this map is. And the National Register
 23 is checked off, correct?
 24 A. That's correct.
 25 Q. And what is that signifying?

1 A. That would be looking for the data as to
2 whether something on the map was -- or any of the
3 maps. It's a general statement. You can search
4 any part of the State, not something that's one
5 location.

6 But if you mark "National Register," if you
7 came down to a demarked cultural property, you
8 could tell whether or not it was on the National
9 Register, assuming that that information has been
10 uploaded.

11 Q. Okay. So this checkmark here is not
12 indicating that this property is on the National
13 Register?

14 A. No.

15 Q. It's indicating a search of the National
16 Register has been conducted?

17 A. That is correct.

18 Q. And that would be the same for the other
19 checkmarks that we see here?

20 A. Sure.

21 Q. Okay. What is the portion down in the lower
22 part that refers to "Quads by Period"? What is
23 that referring to?

24 A. You're looking at topographic quad maps;

25 Q. Okay. And what would those show?

1 to track the shape that we saw on page one of
2 Exhibit 5?

3 A. It does.

4 Q. Okay. And there's a pop-up note here that
5 indicates that the resource name is the Broad
6 River Ferry and Bridge Site, correct?

7 A. That's correct.

8 Q. And there's an eligibility determination or
9 place to mark that and it says "not eligible or
10 requires evaluation;" is that correct?

11 A. That's what it says.

12 Q. Okay. The date of resource is listed as
13 1791 to 1900. Who's responsible for determining
14 or uploading the information that would be
15 generated in this type of a pop-up note?

16 A. The information would be provided to us, we
17 would verify it, and we would put it up through
18 one of our staff members --

19 Q. Okay.

20 A. -- who is the ArchSite admin person.

21 Q. All right. How is the determination
22 regarding the date of the resource typically
23 arrived at?

24 A. I'm sorry. I can't hear you.

25 Q. Sorry. How is the date of resource

1 A. That would be your USGS topographic quad
2 map. It's a specific type of map.

3 Q. And there is an area off of Castle Road that
4 appears to be demarcated in sort of a
5 purplish-pink color.

6 A. Apparently so.

7 Q. Okay. Do you know what that's referring to
8 from looking at this particular page?

9 A. From this particular page? No.

10 Q. Okay. If we could turn to the next page of
11 Exhibit 5.

12 A. (Witness complies.)

13 Q. Do you recognize this website?

14 A. Yes.

15 Q. And what is this website?

16 A. It's still the same website; it's ArchSite.

17 Q. Okay. And is this also something that would
18 not be available to the general public?

19 A. That's correct.

20 Q. Okay. And we appear to still be looking at
21 this Castle Road area; is that correct?

22 A. It's been white -- it's a very poor
23 printout, but yes.

24 Q. Okay. And you see the -- does the shape
25 that shows up in a pinkish-purplish color appear

1 typically determined for a particular location?
2 I mean, 1791 to 1900 is a fairly broad time
3 period.

4 A. The researcher provides the information. It
5 goes through checks with the site file people and
6 it goes up through the admin person to ArchSites.

7 Q. Okay. And do you agree with that range for
8 that location?

9 A. Do I agree with that range for that
10 location? I don't have sufficient information
11 based on this one map to determine precisely what
12 is or is not included within it.

13 Q. Okay.

14 A. But I would -- but I would say at least the
15 first portion of the 1791 statement does appear
16 to be correct based on -- based on the first map
17 (indicating), if they are indeed accurate --

18 Q. Okay.

19 A. -- which they should be.

20 Q. And if you look at the next page of
21 Exhibit 5, the one that has the layers listed --

22 A. Uh-huh (affirmative response).

23 Q. -- in the legend, it shows that the National
24 Register points, polygon, historic structures,
25 and historic areas are checked. And if I

1 followed you correctly earlier, that means that a
 2 search for these items were -- was run to
 3 generate this image; is that correct?
 4 A. No.
 5 Q. Okay.
 6 A. Not -- not fully, correct. The decision of
 7 which layers to turn on -- this is a GIS site.
 8 So the determination of which layers you turn on
 9 simply turns on those layers.
 10 So wherever you went in the area of wherever
 11 you're searching, if those layers are turned on,
 12 you will see those layers.
 13 Q. I think we're saying the same thing. What
 14 I'm -- what I was saying is the fact that these
 15 are checked means that a search for these points
 16 was run.
 17 MR. HODGE: Objection.
 18 Q. Is that correct?
 19 A. The -- if the points are turned on, the --
 20 the GIS layer is designed to provide that
 21 information.
 22 Q. Okay. So, for example, in what you're
 23 looking at on Exhibit 5, there's a check beside
 24 the National Register points, correct?
 25 A. That's correct.

1 that. So if you'll please let me finish my
 2 question, then you can lodge your objection.
 3 I'm sure the witness will give you time to
 4 do that.
 5 MR. HODGE: Proceed.
 6 BY MS. WOOTEN:
 7 Q. The question that I was asking, Dr. Leader,
 8 is --
 9 A. Sure.
 10 Q. -- we have a checkmark on this exhibit that
 11 shows that the National Register points was
 12 searched, correct?
 13 A. Correct.
 14 Q. Okay. If, in fact, a listing on the
 15 National Register for this property existed and
 16 had been input into the website --
 17 A. Uh-huh (affirmatively responds).
 18 Q. -- you would expect that that information
 19 would be generated based on the fact that the
 20 check was there to search that, correct?
 21 MR. CHAMBERS: Object to the form.
 22 MR. HODGE: Objection.
 23 A. I need to clarify something with you on
 24 this.
 25 Q. Please do.

1 Q. And in the photograph that is generated by
 2 that search, there's no reference to the National
 3 Register --
 4 MR. HODGE: Objection.
 5 Q. -- correct?
 6 A. On this particular set, there is not.
 7 Q. Okay. And if there was a equivalent listing
 8 of that property on the National Register, based
 9 on that checkmark being there, you would expect
 10 that information --
 11 A. Not necessarily.
 12 Q. -- assuming it's been input --
 13 MR. HODGE: Objection.
 14 Q. -- to generate in the system?
 15 A. Okay. I'm sorry. One more time.
 16 Q. Sure.
 17 MS. WOOTEN: And if you will please
 18 hold your objection until I get my whole
 19 question so he can hear it and I don't have
 20 to keep repeating it, I'd appreciate it.
 21 All right.
 22 MR. HODGE: Well, I think you were
 23 pretty well finished with your question.
 24 MS. WOOTEN: I was not finished with my
 25 question and I think the record reflects

1 A. Simply marking the side set makes that data
 2 layer available does not necessarily make it
 3 visible. If you wish to have it visible, you
 4 have to click on the area and then it pops up.
 5 If we can reverse -- so on this one, where this
 6 shows up --
 7 Q. Uh-huh (affirmatively responds).
 8 A. -- this has been clicked upon --
 9 Q. Okay.
 10 A. -- showing that.
 11 MS. HAM: I'm sorry. When you say
 12 "this one," can you --
 13 THE WITNESS: On this page
 14 (indicating).
 15 MS. HAM: Okay. Second page on
 16 Exhibit 5.
 17 THE WITNESS: And this is the page I'm
 18 showing (indicating).
 19 On this page, what you have is a
 20 polygon. Just because you have things
 21 marked off on the side set does not mean
 22 that they're automatically visible.
 23 Sometimes they are; sometimes they are not.
 24 To have this appear, you have to
 25 specifically highlight and open the polygon

1 whereupon the attendant file appears with
 2 it, okay?
 3 So on the next page, the one in
 4 question, where you have it and you do not
 5 have that box open, it does not mean the
 6 information was not available. It simply
 7 means the box was not -- the polygon was not
 8 clicked. It was not opened.
 9 In other words, simply because you have
 10 marked things on the side does not guarantee they
 11 are visible unless you have opened them.
 12 BY MS. WOOTEN:
 13 Q. Well, there's a legend side, too, correct?
 14 A. I'm sorry?
 15 Q. To the website, there is a -- there's a
 16 legend tab, a search tab, and a layers tab,
 17 correct?
 18 A. Sure.
 19 Q. And the page that we were looking at was the
 20 layers tab that shows what's been searched, what
 21 layers have been searched, correct?
 22 A. It shows which layers have been marked. The
 23 search is automatic and this is a standard
 24 statement where it opens up pretty much to this
 25 one as default.

1 language that says "not eligible or requires
 2 evaluation"? What color would you call that?
 3 A. Oh, okay. I wasn't sure what we were
 4 looking at. Is that -- is that fuchsia
 5 (indicating)? I'm looking at sort of like a
 6 pink. Is that fuchsia?
 7 Q. I'm under the "historic sites" part --
 8 A. Yeah. No, that's --
 9 Q. -- down --
 10 A. -- where I'm looking at. The dot, is that
 11 what you're calling fuchsia?
 12 Q. No, you're looking at historic structures.
 13 I'm looking at the historic areas --
 14 A. Oh.
 15 Q. -- down at the bottom. I'm sorry.
 16 A. Too far down. Oh, okay.
 17 Q. Okay. So how would you describe that first
 18 color listed there that says "not eligible or
 19 requires evaluation"?
 20 A. I'd probably call it pink.
 21 Q. Okay. Well, then we'll use your term
 22 "pink;" that's fine.
 23 A. Sorry about that.
 24 Q. No, no, that's fine. I appreciate your
 25 clarification. All right. So the pink area,

1 Q. Right. And if you look at the legend tab,
 2 which is depicted on the last page of
 3 Exhibit 5 --
 4 A. Let me go to it. Legend tab, yes. Okay.
 5 Got it.
 6 Q. Okay. That shows that items marked in the
 7 purplish-pink color --
 8 A. Uh-huh (affirmatively responds).
 9 Q. -- means that it's not eligible or requires
 10 evaluation, correct?
 11 A. No. What it says is that -- it doesn't say
 12 any -- any of that. Can you rephrase that in
 13 a --
 14 Q. There is a color that's in the legend.
 15 A. Yeah.
 16 Q. There's one that's a dark maroon --
 17 A. Okay.
 18 Q. -- and there's one that's a lighter -- we'll
 19 call it fuchsia --
 20 A. Okay.
 21 Q. -- color, correct?
 22 A. I don't know what fuchsia is, but I'll --
 23 I'll take your word for it.
 24 Q. Well, how would you describe the color that
 25 is associated with the tab that's -- or the

1 right?
 2 A. Sure.
 3 Q. That is what's shown on this page for the
 4 area surrounding Castle Road.
 5 A. Right.
 6 Q. Okay. So that means that this historic area
 7 as shown on South Carolina ArchSites is
 8 identified as "not eligible or requires
 9 evaluation," correct?
 10 A. That is what is shown.
 11 MR. HODGE: Objection.
 12 Q. Okay. And what is the significance, as you
 13 understand it, of that label in relation to this
 14 website?
 15 A. Okay. And I think this goes -- takes me
 16 back to my initial statement when you said I was
 17 answering too much of your question or more
 18 questions that you were looking for. So let
 19 me -- let me -- let me put this into perspective
 20 for you.
 21 One of the things I've stated several times
 22 today, and which I stand on, is you have an
 23 archaeological site which is important and which
 24 required additional work, okay? So "requires
 25 evaluation" comes underneath the general rubric

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1 of additional work. I could have used those
 2 terms. I could've said, "Required additional
 3 evaluation, more work needed to be done," okay?
 4 Q. Sure.
 5 A. Doesn't mean it's not important. The "not
 6 eligible" side of things references underneath
 7 the criteria specifically to the National, you
 8 know, Register, which is a very specific tool,
 9 which only covers very specific things, and which
 10 does not cover the, you know, reality of most
 11 archaeology.
 12 The National Registry was not designed
 13 initially for archaeology. It was designed for
 14 built environments, for houses and architecture.
 15 Q. Uh-huh (affirmatively responds).
 16 A. We kind of got snuck into the corner of it,
 17 which means that if people look only to the
 18 National Register for information as to what
 19 they're doing, not infrequently they miss the
 20 boat.
 21 Now, I don't know if that's the case here or
 22 not. I am not going there. I'm just giving you
 23 background.
 24 Q. Uh-huh (affirmatively responds).
 25 A. So what we're looking at here is a Arch --

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1 is a location which, to my knowledge, does
 2 include Brinkman's set, other materials there --
 3 as I've said, I have not been standing on, but I
 4 have been informed by the materials that have
 5 been turned in that there are additional
 6 materials there, that this is a buffered
 7 statement as to location, and that there was
 8 additional information available through the site
 9 files as to what was available for this above and
 10 beyond the materials at ArchSite.
 11 Q. Okay. Other --
 12 A. Did that help?
 13 Q. Sure.
 14 A. Okay. Good.
 15 Q. Other than the National Register, where are
 16 archaeological sites identified and recognized
 17 by --
 18 A. In every state site file.
 19 Q. Okay. And is there a State file -- State
 20 site file in South Carolina that recognizes the
 21 bridge abutments on the Brinkman property?
 22 A. There are materials in the State site file
 23 that South Carolina -- that recognize the
 24 location of those materials, yes.
 25 Q. Where can I find that?

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1 A. At the Archaeological -- at the Institute.
 2 Q. Okay. Not publicly available?
 3 A. Of course not. It's an archaeological site.
 4 We have to keep them safe.
 5 Let me point out, every cultural resource
 6 management group, every certified local
 7 government, every group working for those groups
 8 has access to those materials.
 9 Q. Okay. And on that site, how is that site
 10 identified?
 11 A. It's identified as the materials that have
 12 been put forward with the maps and everything
 13 else as a historic site attached to the Compt
 14 materials.
 15 Q. Okay. And it's definitively been determined
 16 to be a historic site according to the State?
 17 A. Yes.
 18 Q. Okay. I want to take a moment to look at
 19 the website. I've got it on my computer because
 20 I just realized that part of the note was not
 21 printed out, so we're going to look at it online.
 22 And I want to cover with you some areas that
 23 are in the notes field. You indicated if you
 24 click on the polygon, it brings up additional --
 25 it can bring up additional information; is that

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1 correct?
 2 A. Depending where you are and what's been
 3 uploaded to it, yes.
 4 Q. All right. Well -- so this is the same --
 5 essentially the same thing that you're looking at
 6 in paper, but we're going to bring up on here the
 7 note that goes with this polygon.
 8 A. Okay.
 9 Q. Okay? So I'm going to click on that. Oops.
 10 Let me zoom back out.
 11 A. Yeah, that's not infrequent. That's not an
 12 uncommon problem.
 13 Q. Let me zoom back out. Let's not go that
 14 big. All right. So here is the note that goes
 15 with this polygon.
 16 A. Okay.
 17 Q. And I'm going to start it up here. When
 18 you're ready to scroll so you can see more, let
 19 me know, I'll be happy to scroll it down.
 20 A. Okay.
 21 Q. And if you could just read out for me what's
 22 on that note as you can see it.
 23 A. Historic Areas: Broad River Ferry and
 24 Bridge Site. County code. Site number.
 25 Resource: Bridge River Ferry and Bridge Site.

1 Not eligible; requires evaluation. Date: 1791
 2 to 1900.
 3 THE COURT REPORTER: Can you slow down,
 4 please?
 5 THE WITNESS: I'm sorry.
 6 THE COURT REPORTER: People read faster
 7 than they speak. Thank you.
 8 THE WITNESS: No problem. Would you
 9 like me to start again from "Bridge River
 10 Ferry"?
 11 THE COURT REPORTER: That's fine.
 12 THE WITNESS: Okay. Resource name:
 13 Bridge River Ferry and Bridge Site.
 14 National Register Eligibility: Not
 15 eligible; requires evaluation. The date of
 16 resource is 1791 to 1900. Address is 154
 17 Castle Road, Columbia, is the city. County
 18 is Richland.
 19 Notes: Site visit necessary; on hold
 20 Awaiting site visit; site visit made:
 21 5/13/08; eGG considered 5/28/08; letter
 22 mailed 5/30/08. Yeah, okay.
 23 BY MS. WOOTEN:
 24 Q. Okay. What letter is being referred to
 25 there; do you know?

1 BY MS. WOOTEN:
 2 Q. Okay. Having read Exhibit 6 -- let me write
 3 that down -- 6, yeah. Does this appear to be the
 4 May 30th letter that was referenced --
 5 A. No idea.
 6 Q. -- on the website? Okay. Do you know who
 7 Andrew Chandler is?
 8 A. Andrew Chandler; yes.
 9 Q. Okay. Who is Mr. Chandler?
 10 A. He's with the State Historic Preservation
 11 Office or he used to be. I'm not sure he still
 12 is. He may have retired at this point.
 13 Q. Okay. And what is his role with that
 14 organization as you understand it to be?
 15 A. He's a historian, architectural.
 16 Q. Okay. All right. And does he have any
 17 archaeological experience --
 18 A. Not that I'm --
 19 Q. -- to your knowledge?
 20 A. -- aware of. I have no idea.
 21 Q. Do you know why he would be sending this
 22 letter to Mr. Brinkman?
 23 A. According to his signature block, because he
 24 is the National Register Co-Coordinator for State
 25 Historic Preservation Office and, therefore, the

1 A. Actually, I'm not. I'd have to go back and
 2 double check. I'm not aware of it.
 3 Q. Okay. Well, I've got a letter dated 5/30/08
 4 and I'll show it to you and we'll see if you
 5 think it's the one that would be referred --
 6 A. Okay.
 7 Q. -- to there.
 8 (Exhibit No. 6 was marked for identification
 9 purposes.)
 10 MR. STEWART: This is Exhibit 6?
 11 MS. WOOTEN: Yes, this is Exhibit 6.
 12 THE WITNESS: Okay. Thank you.
 13 BY MS. WOOTEN:
 14 Q. Feel free to take the time to read the whole
 15 letter, if you'd like. I'll point you to a
 16 couple specific locations.
 17 A. Oh, okay. Yep.
 18 MS. WOOTEN: Are we missing one? Let
 19 me see. Oh, I gave you two. I'm sorry,
 20 Dr. Leader. Can I get the second copy
 21 there?
 22 THE WITNESS: Oh, I'm sorry.
 23 MS. WOOTEN: They were stuck together.
 24 Thank you.
 25 THE WITNESS: (Reading.) Okay.

1 person National Register requests go through.
 2 Q. Okay. And so he's making a determination
 3 and relaying that information to Mr. Brinkman in
 4 this letter as you understand it?
 5 A. The determination of the National Register
 6 is done through the federal office. The
 7 gatekeeper that sends things to the federal
 8 office is from the State. So he is not making
 9 a -- he is making a statement prior to a final
 10 determination, which only comes through the --
 11 through the ACHP, Advisory Council on Historic
 12 Preservation.
 13 Q. Okay. So if I'm following you correctly,
 14 this organization, the South Carolina Archives &
 15 History Center -- or, excuse me, the State
 16 Historic Preservation Office essentially acts as
 17 a gatekeeper to determine what application should
 18 be sent on to the National --
 19 A. They are --
 20 Q. -- Registry?
 21 A. -- underneath the National Historic
 22 Preservation Act; I am not.
 23 Q. Okay. And in the second paragraph of this
 24 letter, Mr. Chandler relays to Mr. Brinkman that
 25 the staff committee on National Register

1 eligibility reviewed his application and proposal
2 and has concluded essentially that the
3 site -- they do not believe the site is eligible
4 for the National Register and cannot recommend a
5 formal nomination be prepared. Are you familiar
6 with that?

7 A. I am not familiar with that, but it does
8 appear to be what the letter says.

9 Q. Okay. Are you aware of whether or not the
10 bridge abutment on the Brinkman property is, in
11 fact, listed on the National Register sitting
12 here today?

13 A. My understanding is it's not.

14 Q. Okay. Are you aware of the structure being
15 identified on any other governmental sites aside
16 from the site in South Carolina that you referred
17 to earlier?

18 A. I'm not sure. I understand that question.

19 Q. Okay. I thought earlier you said that the
20 property was listed on the State website as a
21 historical structure.

22 A. It is listed within the site files and it is
23 apparently, as you've shown me, on the ArchSite,
24 yes.

25 Q. Well, on the ArchSite it's listed as "needs

1 bridge abutments themselves are indeed listed.

2 Q. Okay. And what's the significance to you of
3 them being listed on the site files?

4 A. That a -- that the information regarding a,
5 historic site has been provided to the State for
6 access, for additional information, for
7 coordination, for support.

8 Q. Let me ask you this. You made it very clear
9 that governmental entities could access those
10 materials through some type of a request; is that
11 correct?

12 A. Sure.

13 Q. Okay.

14 A. Do it all the time.

15 Q. The general public is not available to do --
16 or not able to do that, correct?

17 A. The general public without vetting cannot.

18 Q. So if a contractor on a project --

19 A. Uh-huh (affirmatively responds).

20 Q. -- wanted that information --

21 A. Uh-huh (affirmatively responds).

22 Q. -- how do they get it?

23 A. They ask.

24 Q. Okay. And you can decide whether or not to
25 give it to them?

1 additional information."

2 A. Correct.

3 Q. Correct? Right. Is it listed anywhere as
4 definitively "This is what this property" -- or,
5 excuse me, "This is what this bridge abutment
6 is"?

7 A. In other words, are you saying that there --
8 I'm not sure -- you're ...

9 Q. I'll rephrase the question.

10 A. Please do.

11 Q. On the site web -- the State website --

12 A. Right.

13 Q. -- the site files --

14 A. Uh-huh (affirmatively responds).

15 Q. -- what are the site files? Let's start
16 there.

17 A. The site files are the record of
18 archaeological sites that have been identified
19 and/or have had work done on them in the State of
20 South Carolina. Every state has a state site
21 file.

22 Q. Okay. And the bridge abutment is identified
23 or has had work done and, therefore, is listed on
24 the site files?

25 A. The area of the bridge abutments and the

1 A. Let me -- actually, I can, but we don't. If
2 a person who is working -- if a contractor --

3 Q. Uh-huh (affirmatively responds).

4 A. -- is working for the City on a City
5 project, they will have access.

6 Q. Okay.

7 A. We are not even a speed bump. We have never
8 been a speed bump. If a contractor on private
9 property wishes to have access, and the landowner
10 agrees that the people are working for them, they
11 have access.

12 In other words, if you're a landowner,
13 you're almost on your site -- you know, on your
14 property. If that includes the site, it includes
15 the site.

16 Q. Sure.

17 A. The only time there is a concern is if
18 somebody simply pops up mushroom-like and says,
19 "I want to have access to all of the ..." fill in
20 the blank for the State; whereupon, we're likely
21 to go, "Hmm, not a good choice."

22 But if a person is doing research and
23 they're an independent researcher and they
24 provide sufficient information that supports that
25 they are indeed a legitimate researcher, they

1 will have access, as well.
2 Q: Okay. Are there any physical markers at the
3 bridge abutment? Like, for example, you'll see
4 at a lot of historic sites: "This is the
5 whatever-whatever," and here's a brief paragraph
6 about the site.

7 A: Not to my knowledge, no. But that's
8 actually extraordinarily infrequent because you
9 don't want to mark archaeological sites because
10 then you have the problem for looters, especially
11 in an area off of a river which is in constant
12 use by people going up and down it, kayaks and
13 everything else. It would be counter-productive.

14 Q: And that's different than you see with a lot
15 of historical structures where you have
16 markers --

17 A: Actually --

18 Q: -- like historic houses?

19 A: Well, historic -- the historic marker
20 program is a State program, which is actually run
21 by Archives & History. It has specific vettings,
22 requires input, and at the end of it, if you go
23 through those hoop and hurdles, at some point you
24 end up with a marker which is then put up.

25 But just -- I know it's not part of this,

1 Register?

2 A: Given the present information, no.

3 Q: Okay. And the -- there are a couple of
4 photo -- folks cc'd on the letter that
5 Mr. Chandler sent to Mr. Brinkman. I'm just
6 curious if you know any of them. Do you know any
7 of the individuals identified in the cc line of
8 this letter?

9 A: I know all of them.

10 Q: Okay. Mr. Allen Roberson [ROBERSON], in
11 what context do you --

12 A: Roberson [ROBERSON].

13 Q: Oh, I'm sorry, Roberson [ROBERSON]. What
14 context do you know Mr. Roberson?

15 A: Mr. Roberson is the executive director of
16 the Confederate Relic Room and Museum.

17 THE COURT REPORTER: Confederate what?

18 THE WITNESS: Relic Room -- Relic Room
19 and Museum.

20 THE COURT REPORTER: Okay. Thank you.

21 BY MS. WOOTEN:

22 Q: Okay.

23 A: Yeah.

24 Q: Do you have any idea why Mr. Roberson would
25 be copied on the letter?

1 but you need to understand that part of the
2 problem with that is when you put up a historic
3 marker in this day and age, not infrequently
4 you're asking for vandalism, as well.

5 Q: Okay.

6 A: So markers are actually not common and there
7 are any number of historic places in South
8 Carolina if you ask them to put up a marker,
9 they're likely to escort you off the property.

10 Q: Okay. On the second page of Mr. Chandler's
11 letter, the letter indicates that the National
12 Register criteria is objective and strict federal
13 standards --

14 A: Yeah.

15 Q: -- are essentially in place for that
16 determination.

17 A: Sure.

18 Q: It sounds like you may be generally familiar
19 with what those standards are; would that be fair
20 to say?

21 A: Generally, yes. Again, it's not something I
22 usually worry about, particularly.

23 Q: All right. Based on what you know about
24 those standards, do you think that the bridge
25 abutments should be listed on the National

1 A: Probably because the letter is covering a
2 multitude of things. It's not simply a question
3 of the -- of the bridge, but I suspect that what
4 was going on was -- see, what you have here is
5 the Broad River Ferry and Bridge Site.

6 All right. So I suspect that he was
7 suggesting that Roberson, in his conjunction of
8 being a Museum director, might have within his
9 holdings additional maps or information that
10 might be of use to David. But that's
11 speculation. I have no idea.

12 Q: Sure.

13 A: You'd have to ask him.

14 Q: Okay. What about -- is it Mr. Warner
15 Montgomery?

16 A: Yeah, Montgomery. Uh-huh (affirmatively
17 responds).

18 Q: Okay. And it looks like he works for a
19 newspaper or --

20 A: Well, actually --

21 Q: -- publication?

22 A: -- his family owns that newspaper. It's a
23 local.

24 Q: Okay.

25 A: And Warner has a strong background and

1 interest in everything Columbia and history.
 2 So I suspect that that was, again, simply to
 3 go through the possibilities of his research --
 4 he's written a number of books -- or through his
 5 holdings as a newspaper director/editor as to
 6 what might be within their sets for additional
 7 information.
 8 Q. Okay. And then there are two individuals
 9 listed with the SCIAA, Mr. Smith --
 10 A. South Carolina --
 11 Q. -- and Legg.
 12 A. -- Institute of Archaeology and
 13 Anthropology.
 14 Q. Okay. Do you know either Mr. Smith or
 15 Mr. Legg?
 16 A. I know them both.
 17 Q. Okay. And do you know them through their
 18 capacity with the SCIAA?
 19 A. I do.
 20 Q. Any other capacities in which you know them?
 21 A. No.
 22 Q. Okay. And, let's see, the last person here
 23 is Ms. Robin Waites --
 24 A. Yep.
 25 Q. -- Executive Director, Historic Columbia

1 A. Oh, Tracy Power? Tracy is mister.
 2 Q. Okay. Mr. Power or Mr. McCawley?
 3 A. I'm trying to remember. I know he was in
 4 contact with them, because when I get together
 5 with Archives & History, they tell me what
 6 they're up to.
 7 Whether it came from both directions, I'm
 8 not sure, but I am aware that they -- he was
 9 indeed in contact with people at Archives &
 10 History for additional materials in the archives.
 11 Q. Okay. If memory serves, there was a point
 12 in time at which Mr. Brinkman thought the bridge
 13 on his property -- or the bridge abutment on his
 14 property might have been part of a Confederate
 15 bridge.
 16 A. Yes.
 17 Q. Do you recall that?
 18 A. I do.
 19 Q. The determination -- well, let me strike
 20 that. Has there been a determination
 21 definitively that the bridge abutment on his
 22 property would not align with the time period of
 23 the Civil War?
 24 A. Absolutely.
 25 Q. Okay.

1 Foundation.
 2 A. Yep.
 3 Q. Okay. And do you know Ms. Waites outside of
 4 a professional context?
 5 A. Nope.
 6 Q. Okay. On the first page of the letter,
 7 Mr. Chandler also suggests that Mr. Brinkman
 8 contact Tracy Power and Patrick McCawley.
 9 A. Uh-huh (affirmatively responds).
 10 Q. Do you know either of those individuals?
 11 A. I do.
 12 Q. Okay. And is that limited to a professional
 13 context?
 14 A. It is.
 15 Q. Okay. And do either of them have
 16 archaeological experience?
 17 A. No.
 18 Q. Okay. What's their area of expertise?
 19 A. They're archivists and historians at
 20 Archives & History.
 21 Q. Did Mr. Brinkman ever discuss with you any
 22 contact he may have had with Ms. -- is it
 23 Mr. Power or Ms. Power?
 24 A. Miss.
 25 Q. Ms. Power?

1 A. Without a doubt.
 2 Q. So not a Civil War bridge --
 3 A. No.
 4 Q. -- abutment?
 5 A. The actual bridge that he was looking for
 6 was discovered; that abutment is still in place.
 7 It's been protected by DOT. The pontoon bridge
 8 going across the river has been discovered, as
 9 well; that is in place and protected. So no.
 10 Q. Okay. When you say that it's protected --
 11 A. Yeah.
 12 Q. -- can you tell me what you mean by that?
 13 A. The -- there are easements and other
 14 materials that have been put in place to make
 15 sure that they are not damaged.
 16 Q. Okay. And who put the easements in place?
 17 A. My understanding was the DOT.
 18 Q. Okay. There were a couple of e-mails that
 19 Mr. Brinkman sent to you that were supplied in
 20 response to the FOIA request that our office sent
 21 sometime ago.
 22 A. Uh-huh (affirmatively responds).
 23 Q. And a number of the e-mails did not have
 24 written responses produced in the file.
 25 A. Uh-huh (affirmatively responds).

1 Q. Was it common or uncommon for you to
 2 communicate with Mr. Brinkman via e-mail?
 3 A. Not that common. I prefer to meet with him
 4 or talk to him on the phone.
 5 Q. Okay. So to the extent that there are not
 6 responsive e-mails, there's a very good chance
 7 that you may have just had a conversation or met
 8 with Mr. Brinkman?
 9 A. Very likely.
 10 Q. Okay.
 11 A. I really don't like e-mails.
 12 Q. You and me both. Okay. I want to talk to
 13 you about one of those e-mails. Give me just a
 14 second and I'll mark it.
 15 And it's very small. I'm sorry. This is
 16 the way it was produced to us. So if we need to
 17 assist with reading it, I'd be happy to have your
 18 counsel do that so you don't have to take my word
 19 for what it says.
 20 A. I appreciate that.
 21 (Exhibit No. 7 was marked for identification
 22 purposes.)
 23 Q. I'm going to hand you what's been marked as
 24 Exhibit 7. Again, I do apologize. It is very
 25 small, but this --

1 when he references it as the "first abutment"
 2 there?
 3 A. Yes, and I think so, which is to say that
 4 David can be a bit obtuse. But based on the map
 5 that was produced showing the end points, the
 6 overlay, and the locations coming across with the
 7 materials in the river, where you ended up with
 8 was a vector across the river from two different
 9 locations on our end and a single location on the
 10 other end. So I suspect that that's what that's
 11 referencing to.
 12 Q. Okay. And he makes reference to the west
 13 side was in his neighbor's yard.
 14 A. That's what he says here, yeah.
 15 Q. Okay.
 16 A. I have not been in his neighbor's side -- in
 17 his neighbor's yard. I wouldn't know.
 18 Q. Okay. And we talked a little bit about the
 19 fact that there was potentially an abutment, at
 20 least as identified by Mr. Brinkman, on one of
 21 his neighbor's piece of property.
 22 A. To the best of my knowledge, that's correct,
 23 yeah.
 24 Q. Okay. But just to make sure I'm
 25 understanding clearly --

1 A. Holy cow.
 2 Q. -- is the format in which it was produced to
 3 us.
 4 A. (Reading.) Uh-huh (affirmative response).
 5 Okay.
 6 Q. Do you remember this correspondence from
 7 Mr. Brinkman, generally speaking?
 8 A. Not until actually I made a copy of it and
 9 sent it to you.
 10 Q. Okay. Having read it, does it refresh your
 11 recollection in any way about --
 12 A. Yeah.
 13 Q. -- receiving this information?
 14 A. Yeah. Uh-huh (affirmatively responds).
 15 Q. Okay. Do you remember if you responded to
 16 Mr. Brinkman?
 17 A. Yeah. I told him to go ahead, do the work,
 18 and I'd take a look at the video. Yeah.
 19 Q. Okay. And you believe that would have
 20 happened in a phonecall or a meeting of some
 21 sort?
 22 A. I suspect it probably did.
 23 Q. Okay. Mr. Brinkman references that he found
 24 what he thought was the east side of the first
 25 abutment. Do you know what he's referring to

1 A. Uh-huh (affirmatively responds).
 2 Q. -- you've never been on that piece of
 3 property and have not evaluated across --
 4 A. Best of my knowledge, I have not been on his
 5 neighbor's property, nor have I been across the
 6 river to take a look at the things on the other
 7 side of the river.
 8 Q. Okay. And having not been -- just so the
 9 record is clear, having not been on his
 10 neighbor's property, you would agree with me you
 11 cannot identify what condition that property was
 12 or anything on that property either prior to or
 13 post construction related to the sewer project?
 14 A. Prior to, I would agree since I wasn't
 15 there. Post would require me to go visit it and
 16 then we could have the conversation.
 17 Q. Well, I'm asking you, sitting here today,
 18 you have -- you just testified you've never been
 19 on --
 20 A. I have not been --
 21 Q. -- the property.
 22 A. -- on the property, correct.
 23 Q. So, naturally, my questions to you are up to
 24 this point in time.
 25 A. That wasn't clear to me, I'm sorry.

1 Q. Okay. Well, I apologize.
 2 A. It sounded like a blanket statement, which
 3 would have been incorrect. Currently, I have not
 4 been on the property, so I cannot discuss the
 5 property.
 6 Q. Okay. Well -- and since you've never been
 7 on the property, even if you went out there
 8 today, you wouldn't be able to comment on how it
 9 has changed following the work on the sewer
 10 project because you don't know what its
 11 preexisting condition is; is that fair?
 12 A. No.
 13 MR. HODGE: Objection.
 14 Q. Okay. Why is that not fair?
 15 A. Because the -- having not been there.
 16 However, going on, taking a look at it and doing
 17 measurements, looking for erosional sets, looking
 18 for materials that would have been clearly left
 19 behind from the use of heavy equipment, looking
 20 at debris fields by potential people moving
 21 things about, it is possible to reconstruct to an
 22 earlier point.
 23 Does that take you to the original point?
 24 No, it does not. But it does take you to a point
 25 where you can actually assess to a fair degree

1 A. As of today.
 2 Q. And you were asked to comment on the Act and
 3 how all those properties might be evaluated --
 4 A. Sure.
 5 Q. -- under that Act --
 6 A. Sure.
 7 Q. -- possibly in November of 2016, maybe
 8 November 2015. You're not sure.
 9 A. I'd have to --
 10 MR. HODGE: Is this a question?
 11 MS. WOOTEN: Yes, it is.
 12 MR. HODGE: All right.
 13 MS. WOOTEN: And if you'd let me finish
 14 it, you'd know that it was a question.
 15 MR. HODGE: Okay.
 16 BY MS. WOOTEN:
 17 Q. So, in any event --
 18 A. Sure.
 19 Q. -- the -- the date that we were talking
 20 about was, you weren't sure if it was November of
 21 2016 or November 2015 when that discussion
 22 occurred, correct?
 23 MR. HODGE: Objection.
 24 Q. Is that correct?
 25 A. That is correct.

1 subsequent damage done to the area caused by.
 2 Q. Okay. So there's some information you might
 3 be able to give.
 4 A. There is likely, not having been there, some
 5 information that could be gotten.
 6 Q. Have you been asked to go out there?
 7 A. Yes. That was the whole discussion of the
 8 2010 Archaeology Act.
 9 Q. To go on the neighbor's property?
 10 A. My understanding was, I was asked to --
 11 underneath that Act to assess basically the
 12 entire thing. Did that include the neighbor's
 13 property? I don't recall that being specifically
 14 stated. I think I probably assumed that if it
 15 was an -- being asked to look at an archeological
 16 site --
 17 Q. Uh-huh (affirmatively responds).
 18 A. -- I was being asked to look at the entire
 19 area of the site, which would have included the
 20 polygon.
 21 Q. Okay. Well, let's talk about that for a
 22 minute --
 23 A. Sure.
 24 Q. -- because you haven't been out there as of
 25 today.

1 Q. Okay. Thank you. All right. That being
 2 the case, the -- what work have you done
 3 following that conversation to evaluate the
 4 historical structures in light of that statute?
 5 A. I have put together my materials, but I have
 6 not evaluated it. I will not evaluate it until
 7 such time as I'm asked to evaluate it.
 8 Q. Okay. I'm a little confused because I
 9 thought that you testified that you were asked to
 10 do that.
 11 A. My evaluation is as a fair witness. My
 12 evaluation is not for either the Plaintiff or the
 13 Defense.
 14 Q. Well, I understand that, but you were asked
 15 to evaluate it, so.
 16 A. I would prefer to be asked by the Court.
 17 Q. So, if I'm understanding you correctly,
 18 you're holding off on conducting your evaluation
 19 until the Court essentially appoints or instructs
 20 you to make that evaluation?
 21 A. One of two things: Either a consensus of
 22 this group or the Court.
 23 Q. And to your knowledge, no efforts have been
 24 made to secure the appointment from the Court?
 25 A. I have no idea.

1 Q. And is it your testimony that you do not
 2 intend to go out onto the neighbor's property
 3 until such time as the Court or a consensus of
 4 the group decides that you should be the person
 5 to do that under the statute?
 6 A. I can't really answer that question as a
 7 "yes" or "no." What we're looking at is, my job
 8 as State Archaeologist is to be responsive to
 9 both landowners, other client base, stakeholders,
 10 Legislature. If someone specifically requests me
 11 to come out and look at materials on their
 12 property, I will go out and take a look on their
 13 property because that's what I do.
 14 Q. Okay. So if you get a request from that
 15 property owner to come out and look at their pile
 16 of rocks on their property, you will do that
 17 separate and apart from whatever evaluation you
 18 may do --
 19 A. Sure.
 20 Q. -- under the statute?
 21 A. Absolutely.
 22 Q. Okay. So I take it that since you have not
 23 gone out there, you have not received that
 24 request?
 25 A. I have not.

1 civil code?
 2 A. I am not an attorney. I have no opinion.
 3 Q. Okay. So getting back to my original
 4 question, then, if I'm following you correctly --
 5 A. Uh-huh (affirmatively responds).
 6 Q. -- you have not done, sitting here today,
 7 any type of evaluation under the statute that was
 8 enacted in 2010 that we've been talking about
 9 today specific to the properties along Castle
 10 Road; is that correct?
 11 A. That's correct.
 12 Q. So you can't answer any questions that I may
 13 have today about an evaluation you might perform
 14 regarding those sites; is that fair?
 15 A. I think that's probably correct.
 16 MS. WOOTEN: And, John, to the extent
 17 that you all move to have Mr. Leader
 18 appointed in some capacity to comment on
 19 that, we'll discuss with you later arranging
 20 a follow-up deposition to address any
 21 evaluation he may provide to you in relation
 22 to that or in relation to that issue; is
 23 that --
 24 MR. HODGE: You have a copy of what
 25 you've got --

1 Q. Okay. I want to be clear about something in
 2 relation to your evaluation under the statute.
 3 If I followed you correctly, you have not made an
 4 evaluation under that statute because you --
 5 A. Underneath 2010?
 6 Q. Yes. And just so we're clear, make sure
 7 we're talking about the same thing, when you say
 8 under 2010, are you referring to South Carolina
 9 Code Annotated 16-11-780, Prohibition on Entering
 10 Certain Lands?
 11 A. Yep.
 12 Q. Okay.
 13 A. It was passed in 2010 and it's referenced
 14 generally as the Archaeology Act of 2010.
 15 Q. And as I understand that, you mentioned
 16 "trespass." Obviously, there is civil trespass
 17 and there's criminal trespass.
 18 A. Sure.
 19 Q. If I'm correct in my reading of the statute,
 20 that is a statutory provision that shows up in
 21 South Carolina's criminal code; is that correct?
 22 Is that your understanding?
 23 A. I'm not sure what the question is.
 24 Q. Is it your understanding that the statute is
 25 part of South Carolina's criminal as opposed to

1 MS. WOOTEN: Yeah, I've got a copy of
 2 the statute, if you want to take a look at
 3 it.
 4 MR. HODGE: Okay. Let me see. So tell
 5 me your question again.
 6 MS. HAM: It was just a statement.
 7 MS. WOOTEN: You've indicated that
 8 Mr. Leader -- you might request the Court to
 9 essentially certify or appoint, whatever the
 10 correct --
 11 MR. HODGE: Right.
 12 MS. WOOTEN: -- term might be,
 13 Mr. Leader pursuant to this statute.
 14 MR. HODGE: It's Dr. Leader, please.
 15 MS. WOOTEN: Dr. Leader, excuse me --
 16 to comment on the valuation of the bridge
 17 structures.
 18 MR. HODGE: Sure, sure.
 19 MS. WOOTEN: Right, right. So my point
 20 is, he's sitting here telling me he hasn't
 21 done an evaluation of that yet, and I can
 22 understand why.
 23 My concern is getting to a trial and
 24 hearing for the first time what Dr. Leader's
 25 evaluation is. And so my point on the

1 record is to clarify that to the extent --
 2 MR. HODGE: Okay.
 3 MS. WOOTEN: -- you go through that
 4 process and have him appointed, we're going
 5 to want to retake Dr. Leader's deposition to
 6 cover what that evaluation is.
 7 MR. HODGE: Well, we'll certainly
 8 reserve, I guess, our position on that when
 9 the time comes.
 10 MS. WOOTEN: Okay. Just wanted it
 11 noted on the record, that's my position.
 12 And I won't speak for the other parties, but
 13 I'd be shocked if it wasn't theirs.
 14 MR. HODGE: Normally you get one shot,
 15 so.
 16 MS. WOOTEN: Well, he hasn't been
 17 appointed as anything in this case. So to
 18 the extent that he is, we would have the
 19 right to talk to him about those opinions.
 20 MS. HAM: I agree with that.
 21 MR. HODGE: We'll cross that bridge
 22 when we come to it.
 23 MS. WOOTEN: All right. Well --
 24 MR. STEWART: I think that the rules
 25 would allow the deposition to be reconvened

1 MS. WOOTEN: So just so that's clear on
 2 the record today, it's not a surprise later
 3 when we let you know.
 4 MR. HODGE: We'll cross that bridge
 5 when we come to it.
 6 BY MS. WOOTEN:
 7 Q. All right. Dr. Leader, getting back to
 8 Exhibit 7 --
 9 A. Sure.
 10 Q. -- if we may, there's a reference in here
 11 about from -- this is from David Brinkman
 12 indicating that "It was pretty hard to get to" --
 13 he's talking about the abutment -- "with all the
 14 brush and that SCE&G recently cleared the entire
 15 easement area." Do you see that in the -- I
 16 think it's the second sentence there of the
 17 e-mail?
 18 A. "I found what I thought was the east side of
 19 the first abutment. It was pretty hard to get
 20 to." That's that -- I'm assuming he's talking
 21 about the area on his neighbor's land.
 22 Q. Okay. Well, he says the east side of the
 23 first abutment "whose west side was in my
 24 neighbor's yard," correct?
 25 A. Yeah.

1 to discuss any subsequent opinions that
 2 Dr. Leader may have in any reports that he
 3 may issue.
 4 MR. GOTTSCHALL: That's right.
 5 MS. HAM: I agree.
 6 MR. HODGE: Well, he's not our witness,
 7 for one thing.
 8 THE WITNESS: No.
 9 MR. STEWART: You've identified him as
 10 a witness in your discovery responses.
 11 MR. HODGE: I'll just say we were
 12 reserving our rights, so we'll make -- we'll
 13 cross that bridge when we come to it.
 14 If you want to make an objection later
 15 or you want to notice a deposition later,
 16 then we want to object and we can do that.
 17 But for the time being, I suggest we just
 18 proceed and see what happens.
 19 MS. WOOTEN: Well, I understand that.
 20 I'm just giving you --
 21 MR. HODGE: Okay.
 22 MS. WOOTEN: -- a heads-up that based
 23 on what you've represented to us, that's
 24 likely the course that we will be taking.
 25 MR. HODGE: Sure.

1 Q. Okay. But he talks about SCE&G recently
 2 clearing the entire easement area. Do you have
 3 an idea of what the entire easement area is
 4 referred -- referring to there?
 5 A. Given the -- no.
 6 Q. Okay.
 7 A. There's no -- there is insufficient
 8 information in e-mail to -- to suggest precisely
 9 what he's referencing.
 10 Q. Okay. And did Mr. Brinkman ever discuss
 11 with you the work that was done on his property
 12 in relation to the sewer project?
 13 A. The -- oh, in terms of the sewer project?
 14 He did attempt several times and I pointed out to
 15 him I really didn't want to hear it.
 16 Q. Okay. And why was that the response that
 17 was given?
 18 A. Because I pointed out to him that if they
 19 decided to go with the Archaeology Act of 2010,
 20 I'd like to take a look at it with clean eyes,
 21 not having him tell me what he thought was going
 22 on.
 23 Q. Okay. So you didn't interact with him in
 24 those discussions?
 25 A. I refused. That's one of the reasons I

1 haven't been at the Explorers Club for over a
 2 year.
 3 Q. Okay. All right. Have you been out to the
 4 site since the project work was done on his
 5 property?
 6 A. I suspect that when I met with them at his
 7 house, it would have been after the work had been
 8 done.
 9 Q. Okay.
 10 A. But we were in the house.
 11 Q. Okay. So you didn't go out to the backyard?
 12 A. I did not go out to the backyard.
 13 Q. Okay. All right. Moving on to ...
 14 (Exhibit No. 8 was marked for identification
 15 purposes.)
 16 Q. I'm going to give you what's been marked as
 17 Exhibit 8.
 18 A. Sure.
 19 Q. And, again, I apologize that they're so
 20 small, but ...
 21 A. (Reading.) Yeah, okay.
 22 Q. Okay. Do you have a general recollection or
 23 does this e-mail refresh your recollection--
 24 A. Uh-huh (affirmatively responds).
 25 Q. -- of this correspondence from Mr. Brinkman?

1 Q. Okay. All right. So you don't know when
 2 the change in the property might have occurred?
 3 A. Huh-uh (negatively responds).
 4 Q. Okay. You just know that you were asked to
 5 go out in November of either 2015 or 2016 to talk
 6 about the Act--
 7 A. Uh-huh (affirmatively responds).
 8 Q. -- and after that time, you indicated you
 9 didn't want to interact with Mr. Brinkman
 10 regarding the issue surrounding his property?
 11 A. That's correct.
 12 Q. Okay. So, to the best of your recollection,
 13 anything postdating whether it was the 2015 or
 14 2016, that November meeting--
 15 A. Uh-huh (affirmatively responds).
 16 Q. -- you did not interact with Mr. Brinkman to
 17 discuss --
 18 A. No.
 19 Q. -- the property?
 20 A. Except probably to tell him not to discuss
 21 it with me.
 22 Q. Sure. Okay. Oh, he mentions in that
 23 e-mail, that he made a second trip to the canal
 24 embankment area. Do you know what that's
 25 referring to, what part of the property he might

1 A. Yep.
 2 Q. Okay. And do you recall if you responded to
 3 him in response to this e-mail?
 4 A. It would not have been by an e-mail, no.
 5 Q. Okay. What about via a telephone call? Do
 6 you have a recollection of responding to this?
 7 A. Actually, I'm not sure I even responded
 8 by -- by telephone. I think I simply left it be.
 9 Q. Okay.
 10 A. My recollection on that is pretty fuzzy. I
 11 do recall the discussion of it not being
 12 perpendicular, because I had made that point out
 13 to him, that not everything goes in a straight
 14 line. The path of least resistance was pretty
 15 common.
 16 Q. Okay.
 17 A. But that was an earlier conversation, much
 18 earlier, his work. So I don't know. If I
 19 responded, it was probably by telephone.
 20 Q. Okay. Do you know when the work was
 21 completed on the property?
 22 A. Which work?
 23 Q. The -- excuse me. The work related to the
 24 sewer maintenance.
 25 A. Absolutely not, no.

1 be referring to when he talks about the canal
 2 embankment area?
 3 A. (Reading.) Not directly from this, no.
 4 Q. Okay. Well, let's see, what's the date on
 5 this e-mail? April 6, 2015.
 6 A. Uh-huh (affirmatively responds).
 7 (Exhibit No. 9 was marked for identification
 8 purposes.)
 9 Q. Okay. Hand you what's been marked as
 10 Exhibit 9.
 11 A. Thank you. (Reading.) Okay. April 7th,
 12 okay.
 13 Q. Okay. Do you generally recall this
 14 exchange? Well, it's not really an -- well,
 15 there is an e-mail from you back in the middle
 16 here.
 17 A. Uh-huh (affirmatively responds).
 18 Q. Okay. I want to draw your attention to the
 19 e-mail from David Brinkman dated April 7, 2015,
 20 12:29 a.m., and it's in the bottom third portion
 21 of the first page of--
 22 A. Sure.
 23 Q. -- Exhibit 8 (sic), okay?
 24 A. Yep.
 25 Q. Okay. Mr. Brinkman starts out: "Jon, I'm

1 not really asking for anything here." Do you
 2 remember -- or why would he say that? Do you
 3 know what that's referring to?
 4 A: Yes, because I told him that if they were
 5 going to be involved with me under the 2010 Act,
 6 he should stop contacting me.
 7 Q: Okay. But this is in April of 2015, so
 8 that --
 9 A: So -- yeah, so he was coming to me
 10 to -- well, okay. Yes, thank you. I appreciate
 11 that. Let me restate that.
 12 Q: Okay.
 13 A: All right. So my response to him back when
 14 he raised an issue that something had happened
 15 was, "Have you talked to the U.S. Army Corps of
 16 Engineers? And, if so, do you have a card or a
 17 name so I could double check with them?"
 18 Q: Okay.
 19 A: Right.
 20 Q: Okay.
 21 A: That's just fact-finding.
 22 Q: Sure.
 23 A: All right. Then he's saying, "I'm not
 24 really asking for anything here. More or less,
 25 I'm just stating what I believe are the facts."

1 A: I did not.
 2 Q: -- Kristin Andrade and Les Parker?
 3 A: I'm sorry?
 4 Q: In the first e-mail there on page one of
 5 Exhibit --
 6 A: Gosh, I can't read it.
 7 Q: I'm sorry. Exhibit 9 is what it is. I said
 8 Exhibit 8.
 9 A: Where is it?
 10 Q: The first e-mail up here, the very, very
 11 top.
 12 A: Okay.
 13 Q: It says, "Jon, yes. Kristin Andrade" --
 14 A-N-D-R-A-D-E -- "and Les Parker" -- Les Parker,
 15 excuse me.
 16 A: Hmm.
 17 Q: And he's providing the U.S. Army Corp
 18 contact information for them. I think the way
 19 the e-mails generally work is oldest starts at
 20 with the --
 21 A: Yeah, it's from the top from the bottom. I
 22 should have looked at that. I do not recall
 23 having a conversation with either individual;
 24 although, I've had I think a conversation with
 25 Kristin on other things.

1 Then he goes through his statement about the Army
 2 Corps of Engineers, so -- okay.
 3 Q: Okay. And he -- he indicates that the
 4 people from the Army Corps of Engineers did a
 5 site inspection --
 6 A: Uh-huh (affirmatively responds).
 7 Q: -- and tried to tell him that they were --
 8 they were a pile of rocks that pop up every now
 9 and then along the river.
 10 What's the purpose of the Army Corps of
 11 Engineers going out to the property? What's
 12 their purview, if you -- if you have an
 13 understanding of that?
 14 A: I would assume that the Army Corps of
 15 Engineers was there to look at possible
 16 violations for wastewater erosional features or
 17 something of that nature going into a waterway.
 18 But since I did not talk to the Army Corps of
 19 Engineers and I did not have correspondence with
 20 the Army Corps of Engineers, I do not know
 21 precisely that is the case.
 22 Q: Okay. Then I think you just answered my
 23 next question, but I take it, then, you didn't
 24 follow-up with the individuals identified in
 25 Mr. Brinkman's e-mail --

1 Q: Okay.
 2 A: She sounds familiar.
 3 Q: But --
 4 A: But I don't know -- I can't remember why she
 5 sounds familiar.
 6 Q: Okay. You don't recall following up with
 7 her specific to the Brinkman property?
 8 A: No, no. I think I decided that that was
 9 outside of my purview and wasn't something I
 10 really needed to handle. I was just curious if
 11 he had done it.
 12 Q: Okay. I think I might have something that
 13 will help us lock down whether it was November
 14 2015 or 2016.
 15 A: Oh, good.
 16 Q: We'll give it a shot, anyways.
 17 (Exhibit No. 10 was marked for
 18 identification purposes.)
 19 Q: Hand you what's been marked as Exhibit 10.
 20 A: Thank you. (Reading.) Oh, okay. Good,
 21 that helps. Yep.
 22 Q: Okay. What is Exhibit 10? Do you recognize
 23 Exhibit 10?
 24 A: I do, at this point. Yeah, it's -- it's
 25 talking about my coming out to see them at the

1 house to discuss the 2010 Act and it's marked
 2 November 6, 2015.
 3 Q. Okay. So just to make sure the record is
 4 clear, it's your recollection that since that
 5 meeting in November of 2015, to the extent
 6 Mr. Brinkman has attempted to communicate with
 7 you about the bridge abutments on his property,
 8 you have declined to engage with him on that
 9 subject?
 10 A. Very difficult to do with David, but yes.
 11 Q. Okay. I want to run through a couple of
 12 articles that have been generated in relation to
 13 the sites.
 14 A. Are we ...
 15 Q. Yes, you're done with those.
 16 A. Okay.
 17 MS. WOOTEN: Thank you, Dr. Leader.
 18 And just looking at the clock, it's around
 19 1:00 o'clock now. If you need a break, I'm
 20 happy to take one.
 21 THE WITNESS: I don't want to starve
 22 anybody, but I can live off the fat of the
 23 land.
 24 MS. WOOTEN: I'm happy to take a break.
 25 (Off the Record)

1 from the University when the University puts
 2 their name on it. I did not have sign-off on
 3 this. It simply went out.
 4 Q. Okay. Is there anything in here
 5 specifically that you disagree with or would find
 6 to be factually inaccurate?
 7 A. Well, the quote is not actually something I
 8 would have said.
 9 Q. Can you refer to ...
 10 A. First quote:
 11 Q. The "archives and overlays"?
 12 A. "...do not a proof make. Science isn't only
 13 about how well things fit, but how well they
 14 test." I wouldn't have said that.
 15 Q. Okay.
 16 A. I'm sure they cleaned that up, because I
 17 would've more likely have said something similar
 18 to, you know, archives and overlays are a really
 19 good basis for, you know, continuing testing, but
 20 science can only be based upon, you know, the
 21 final statements of additional work.
 22 Q. Okay.
 23 A. They probably looked at it and said, "Geez,
 24 that's not English," and they came up with
 25 something better.

1 (Exhibit No. 11 was marked for
 2 identification purposes.)
 3 BY MS. WOOTEN:
 4 Q. Okay. I'm going to hand you what's been
 5 marked as Exhibit 11.
 6 A. Uh-huh (affirmative response). Yep.
 7 Q. Okay. I take it from your "uh-huh" that you
 8 recall this article?
 9 A. I do, only too well.
 10 Q. Did you -- did you author this article?
 11 A. I did not.
 12 Q. You did not, okay. Do you know who wrote
 13 it?
 14 A. Yeah, the -- oh, I don't know precisely who
 15 did it, but it was probably a member of the
 16 University's public relations team.
 17 Q. Okay.
 18 A. In fact, I'm sure they did. I didn't write
 19 this at all.
 20 Q. All right. I'd like you to tell me if
 21 there's anything in the article that you disagree
 22 with since you did not author it and take as much
 23 time as you need to review it.
 24 A. (Reading.) Well, they're giving me too much
 25 credit, but they tend to do that with anybody

1 Q. Okay. They reference -- sorry, let me not
 2 interrupt you there.
 3 A. No, that's all right.
 4 Q. Is there anything else that you might take
 5 issue with the way it's presented in the article?
 6 A. (Reading.) Well, as is typical for the
 7 History Detectives -- I'm pretty sure it was the
 8 History Detectives that required it -- they put
 9 more emphasis on the gee-whiz factor and the
 10 final discovery versus the actual work that led
 11 up to it.
 12 In other words, History Detectives never
 13 show up anywhere unless they know it's a
 14 slam-dunk deal. They don't come to places to
 15 fail. So the work that had to be done prior to
 16 that had to prove location and everything else
 17 before they would actually --
 18 Q. Uh-huh (affirmatively responds).
 19 A. -- come, but that was the requirement that
 20 they put on it.
 21 Q. Sure.
 22 A. So, you know, again, what you have here is a
 23 puff piece designed to get people to tune into
 24 PBS -- they could use all the money they can get
 25 these days -- and, you know, look at a --

1 actually, a pretty cool project. So, yeah,
 2 that's fine.
 3 Q. Okay. Do you have a copy in your office or
 4 anywhere of the episode of the History Detectives
 5 that --
 6 A. It's online.
 7 Q. -- aired?
 8 A. It's still online. It was probably the most
 9 downloaded and visible episode for a number of
 10 years by PBS. They loved it. They went nuts,
 11 over it.
 12 Q. Okay. I --
 13 A. Factually speaking, it was great.
 14 Q. And who starred in that episode with you?
 15 A. Starred?
 16 Q. Well, who was featured in the article -- or
 17 episode --
 18 A. Well, the only star was Elyse Luray, but in
 19 terms of who was involved: Allen Roberson was
 20 involved; I was involved; a bunch of my students
 21 were involved, but I don't think they were on
 22 screen; Brinkman obviously was involved; gosh,
 23 maybe Tracy Powers or someone from Archives &
 24 History was involved; probably a couple people
 25 from Archives & History; a bunch of people.

1 Q. Okay. So the History Detectives article --
 2 or, excuse me, television show, the series,
 3 covering this particular bridge, is not located
 4 on Mr. Brinkman's property?
 5 A. No.
 6 Q. Okay. And it is, in fact, related to the
 7 Civil War bridge that was found --
 8 A. Correct.
 9 Q. Would it be upstream or on a completely
 10 different location?
 11 A. Upstream.
 12 Q. Upstream, okay.
 13 A. Considerably.
 14 Q. Okay. All right. Have -- to your
 15 knowledge, have there been any -- and I'm not
 16 talking about news coverage, but --
 17 A. Uh-huh (affirmatively responds).
 18 Q. -- any actual television shows going out
 19 there to the Brinkman property to cover the
 20 bridge abutments located on that?
 21 A. Well, actually, this one does have a segment
 22 where they're standing on his back porch, talking
 23 about how he got involved with bridges, where
 24 things were located on his property, and then
 25 segueing off to the Confederate, so.

1 Q. Okay.
 2 A. Again, if you go to IMDb and look up the
 3 episode, they'll give you a complete listing. I
 4 can't give you precisely who was there.
 5 Q. Okay. And the first or the -- excuse me,
 6 the second paragraph talks about --
 7 A. Yeah.
 8 Q. -- application of scientific
 9 instrumentation, et cetera --
 10 A. Yes.
 11 Q. -- related to arriving at a conclusion
 12 regarding whether the bridge --
 13 A. Yep.
 14 Q. -- was related to General Sherman's advance.
 15 A. Yep.
 16 Q. And as I understand from your earlier
 17 testimony, the conclusion was that it was not?
 18 A. No, this is a different bridge.
 19 Q. This is a different bridge, okay. Which
 20 bridge are we talking about in the --
 21 A. You're talking about --
 22 Q. -- History Detectives article?
 23 A. -- the Confederate bridge. You're not
 24 talking about any of the bridges in the area that
 25 you're -- that you're interested in.

1 Q. But it's not -- it's not an evaluation of
 2 the abutment on his property?
 3 A. It is not an evaluation of the abutment on
 4 his property. His -- the Comptly bridges and the
 5 rest are a collateral to this program. They are
 6 not central.
 7 Q. Okay. There's an article that shows up in
 8 the University of South Carolina --
 9 A. Are we done with this one?
 10 Q. Yes, we are. Thank you.
 11 A. Oh, okay.
 12 Q. South Carolina Scholar Commons titled: "The
 13 Bridge to Nowhere: History Detectives" --
 14 A. Oh, yeah.
 15 Q. -- "and the Office of the State
 16 Archaeologist Team Up to Solve a Mystery."
 17 A. Yes.
 18 Q. It appears this one was authored by you; is
 19 that your recollection?
 20 A. I'd have to look at it.
 21 Q. Okay. I can do that.
 22 (Exhibit No. 12 was marked for
 23 identification purposes.)
 24 Q. Hand you what's been marked as Exhibit 12.
 25 A. Thank you. Oh, yeah. Okay. This is --

1 again, this is the Confederate bridge.
 2 Q. And did you author this article?
 3 A. I did. I'd forgotten but, yes, I did.
 4 Cool.
 5 Q. And just so the record is clear, nothing in
 6 this article is related to or concerns the bridge
 7 abutments on the Brinkman property?
 8 A. Well, hang on a second. Let me reread it to
 9 make sure.
 10 Q. Okay.
 11 A. (Reading:) Oh, okay. Okay. Yep, that's
 12 good. Yep. (Reading:) Yeah, fine, okay.
 13 Q. Okay. So that's related to the -- to the
 14 Civil War bridge, is that correct?
 15 A. That is correct.
 16 Q. Okay. Great. That's all. We're done with
 17 that one. I just wanted to make sure --
 18 A. Oh, okay.
 19 Q. -- I wasn't missing anything on that one.
 20 A. Thank you. I'd forgotten about that.
 21 Q. Yeah. No, no problem. There is an article
 22 that shows up in The State newspaper --
 23 A. Uh-huh (affirmatively responds).
 24 Q. -- from February of 2007 and I want to see
 25 if you think it can help us nail down a date at

1 things based on science and whatever the data
 2 will support. And, unfortunately, I can't read
 3 that very well.
 4 (Off the record from 1:03 p.m. to 1:05 p.m.)
 5 (Ms. Lisowski exits at 1:05 p.m.)
 6 BY MS. WOOTEN:
 7 Q. Let's see. We're going to have to do this
 8 in several tries, but I can make the first
 9 section of that article bigger and I can take --
 10 A. Oh, good. Thank you.
 11 Q. -- other photographs if you need. This is
 12 the first part there, if you want to look at it.
 13 This is a copy of mine, so it does have some
 14 highlighting, but --
 15 Just so everybody knows, the part that's
 16 highlighted is the paragraph that starts --
 17 A. Oh, okay.
 18 Q. -- "last month."
 19 A. Well, that's cool. Yeah, that sounds like
 20 something I would have said, for once. Who is
 21 the --
 22 MS. HAM: Which paragraph?
 23 MS. WOOTEN: The one that starts "last
 24 month" --
 25 MS. HAM: Gotcha.

1 which you would have possibly first gone out to
 2 the -- to the Brinkman property.
 3 A. Sure.
 4 (Exhibit No. 13 was marked for
 5 identification purposes.)
 6 Q. I'm going to hand you what's been marked as
 7 Exhibit 13.
 8 A. Thank you. Oh, good heavens.
 9 Q. And it's down in the bottom left corner
 10 there.
 11 A. I was going to say, it's not Obama or just
 12 Columbia crowd, clearly.
 13 Q. And then the article is continued on the
 14 second page, as well.
 15 A. Uh-huh (affirmative response). Yeah, this
 16 is where David was still thinking he was dealing
 17 with the Confederate since we had to dissuade him
 18 of that.
 19 Q. All right. Was he a hard man to convince?
 20 A. Nope. Once we took a look and pointed
 21 things out to him, he moved right along with his
 22 research.
 23 Q. Gotcha. Okay.
 24 A. Oh, no, David is -- one of the things one
 25 can say about Brinkman is that he does try to do

1 MS. WOOTEN: "State Archaeologist ..."
 2 THE WITNESS: Yep, okay.
 3 BY MS. WOOTEN:
 4 Q. Okay. And it says -- the paragraph that is
 5 highlighted there says, "Last month, State
 6 Archaeologist Jon Leader examined a pile of rocks
 7 in Brinkman's backyard" --
 8 A. Uh-huh (affirmatively responds).
 9 Q. -- "and unequivocally said,
 10 'Congratulations, you're the proud owner of a
 11 bridge abutment.'"
 12 A. Yep.
 13 Q. And the date of the article is Saturday,
 14 February 17th, 2007, and you can see that at the
 15 top. I think it's a little bigger here --
 16 A. In that case, that works.
 17 Q. So is it your recollection that sometime in
 18 or around January of 2007 would have been the
 19 first time you went out to the Brinkman property?
 20 A. I -- my recollection doesn't exist, but
 21 given what's said there, it looks likely.
 22 Q. Okay. You don't have any reason to dispute
 23 that --
 24 A. I have no reason --
 25 Q. -- as the time period?

1. A. -- to dispute it. I just can't prove it.
 2. Q. All right. The second page of the article,
 3. which is a little bit larger --
 4. A. Oh, good.
 5. Q. -- printed out better, there's a reference
 6. to, "The two agreed to get together for a test
 7. dig near the piled rock."
 8. A. I'm sorry. Where's this?
 9. Q. It is in the second column --
 10. A. Oh, okay.
 11. Q. -- towards the top there.
 12. A. Yes, okay.
 13. Q. Tell me about your plans to get together
 14. with Mr. Brinkman --
 15. A. Well, this is --
 16. Q. -- to do a test dig.
 17. A. This is slightly overstated. What I pointed
 18. out to him was that if he was looking for
 19. additional information, probably the best way to
 20. do it would be to have an excavation.
 21. Not infrequently when you have, you know,
 22. workmen out on a site putting in an abutment or
 23. anything else, they're going to leave things in
 24. the ground. There should be a trash pit,
 25. perhaps, with artifacts or other materials in

1. the -- or the Civil War bridge that was
 2. discovered off of his property?
 3. A. You'd have to ask him what his hours were.
 4. Q. Okay.
 5. A. My statement based on my knowledge of what
 6. it takes to do research was that there --
 7. MR. STEWART: (Tendering.)
 8. THE WITNESS: Oh, thank you very much.
 9. Cool. It's got mice on it.
 10. My understanding of research, archival
 11. research and the rest that would have been
 12. necessary is, it takes a significant amount
 13. of time. It takes hours upon hours upon
 14. hours.
 15. It's not something which is quick or
 16. easy, especially -- I won't say especially
 17. in this State, but pick any state. Stuff
 18. goes to archives and basically become dead
 19. letter.
 20. BY MS. WOOTEN:
 21. Q. Okay. The article says that, "They plan to
 22. check the other side of the river for signs of
 23. the east end of the bridge."
 24. A. Where is this?
 25. Q. It's in that same paragraph we were reading

1. which would be demonstrable to a specific time
 2. period.
 3. Q. Okay. And so your recommendation was he
 4. should --
 5. A. Additional work.
 6. Q. -- do an excavation? Yes, okay.
 7. And this article was written in 2007. Are
 8. you aware of Mr. Brinkman ever doing an
 9. excavation on the property?
 10. A. No. To the best of my knowledge, he did not
 11. do an excavation on the -- on the property, but
 12. that's the best of my recollection.
 13. Q. Okay. And that's all I'm asking for.
 14. A. Sure.
 15. Q. Would you say that when Mr. Brinkman --
 16. well, was Mr. Brinkman involved in discovering
 17. the Civil War bridge upstream?
 18. A. Yes, he was.
 19. Q. Okay. Would you say that that -- based on
 20. your interactions with him in relation to that
 21. discovery, was that something that seemed to
 22. operate or -- occupy, excuse me, a significant
 23. amount of his time?
 24. A. I'm not following the question very well.
 25. Q. Okay. How involved was Mr. Brinkman with

1. from --
 2. A. Let me find it.
 3. Q. -- in the second column.
 4. A. Oh, yes. Okay.
 5. Q. "They also plan to check the other side of
 6. the river for signs of the east end of the bridge
 7. along what now is the Canal Embankment portion of
 8. the Three Rivers Greenway."
 9. A. Okay.
 10. Q. What plans did you have to go to the other
 11. side of the river?
 12. A. They actually weren't plans.
 13. Q. Okay.
 14. A. What you have there is a statement of my
 15. telling David, "If you have one end of a bridge,
 16. go find the other end of the bridge."
 17. Q. Okay.
 18. A. So assigning --
 19. Q. But you didn't have a plan like, "Okay,
 20. David, we're going to go out together to the
 21. property -- or the other side of the ..."
 22. A. (Shakes head negatively.)
 23. Q. Okay. Okay. And --
 24. MS. HAM: Is that a "no"?
 25. THE WITNESS: That was a "no."

1 MS. HAM: I'm sorry.
 2 MS. WOOTEN: Thank you.
 3 THE WITNESS: Sorry. My head only
 4 rattles so hard.
 5 The answer is "no." What we were
 6 discussing was the -- what's needed as
 7 additional in follow-up.
 8 BY MS. WOOTEN:
 9 Q. Okay. And there's a reference at the end of
 10 that second column there that says, "The visible
 11 rocks, along with cables and large timbers found
 12 nearby, appear to have been put there closer to
 13 the turn of the 20th century, Leader said."
 14 What are -- what are we referring to there
 15 when we're talking about the "visible rocks and
 16 the cables and timbers"?
 17 A. If I -- if -- if recollection -- memory
 18 serves, there were some additional materials,
 19 which were debris that were in the area, yeah.
 20 And I am not sure when he's saying "visible
 21 rocks, along with cables and large timbers."
 22 Cables and large timbers. There were some
 23 materials that were out there, but they were
 24 clearly from other projects that were simply put
 25 there.

1 Q. I'm going to hand you what's been marked as
 2 Exhibit 14.
 3 A. Thank you. Oh, boy. I'm assuming it's on
 4 the second page?
 5 Q. The quote is on the second page.
 6 A. Good.
 7 Q. Let me get you the paragraph here. Let's
 8 see. It's in the second column --
 9 A. The second column.
 10 Q. -- towards the top and it's under the
 11 article "Lost."
 12 A. Oh, yes.
 13 Q. Yeah.
 14 A. Sure.
 15 Q. It says --
 16 A. "And they didn't ask us" --
 17 Q. Uh-huh (affirmatively responds).
 18 A. -- "Leader said"?
 19 Q. "...of the city and its contractors," yes.
 20 A. Yeah.
 21 Q. "As far as we know, they didn't ask
 22 anybody." Were you interviewed for this article?
 23 A. They called me up on the phone and they
 24 said, "Has the City been in contact with you on
 25 this prior to the work that was out there?" And

1 Q. That weren't affiliated with the
 2 abutments --
 3 A. No.
 4 Q. -- that you looked at? Okay.
 5 A. No, no, no, they weren't. Neither were they
 6 affiliated, nor, if I remember correctly, were
 7 they actually on top of or really that close.
 8 Q. Okay.
 9 A. I think they were simply pointing at and
 10 said, "What about these?" And the response was
 11 (indicating sound).
 12 Q. Okay. If you were dating the abutments that
 13 you saw on Mr. Brinkman's property, would those
 14 in your opinion date to the 19th century?
 15 A. Late -- late 18th/early 19th is what I told
 16 him. I told him that they were not the
 17 Confederate bridge.
 18 Q. Okay. I want to ask you about a quote that
 19 is attributed to you in an article from --
 20 A. So we're done with this?
 21 Q. Yes, sir -- from The State dated March 10th,
 22 2015.
 23 A. Oh, okay.
 24 (Exhibit No. 14 was marked for
 25 identification purposes.)

1 I said, "To the best of my knowledge, no."
 2 Q. Okay. So given the date on this article of
 3 March 2015, you believe that would have predated
 4 the call you got from the City that you disclosed
 5 earlier today?
 6 A. Hmm. Yes.
 7 Q. Okay.
 8 A. Actually, I like that bracket said "thank
 9 you."
 10 Q. You're very welcome. Okay. Let me see
 11 here. What was your -- well, let me strike this.
 12 Did --
 13 A. Actually, let me rephrase that.
 14 Q. Okay.
 15 A. What I'm saying here is, we were not
 16 contacted prior to the work out there being done.
 17 I cannot guarantee that the phone call saying "We
 18 seem to have a problem" did not occur either
 19 before or after this.
 20 Q. Okay.
 21 A. But in terms of contact, the contact would
 22 have been a group engaged in either engineering
 23 or cultural resource management or of that nature,
 24 saying, "We're in an area. What do you know
 25 about the area? Can we look at your site files?"

1 Q. Okay.
 2 A. And the answer to that is: We were not
 3 contacted to look at the site files.
 4 Q. When you say "we," who is "we"?
 5 A. The Institute.
 6 Q. The Institute.
 7 A. My office.
 8 Q. Okay. All right. And what is your
 9 expectation for any given project that you will
 10 be contacted by anyone, whether it's the City or
 11 a contractor?
 12 A. It is an extremely well-worn path --
 13 Q. What is?
 14 A. -- that we are always contacted by people
 15 who are engaged in research, unless they don't
 16 contact us. Which is to say that the vast
 17 majority of people who engage in engineering in
 18 any state, not simply South Carolina --
 19 Q. Uh-huh (affirmatively responds).
 20 A. -- are well-aware that they need to be in
 21 contact with the state site files. It's a given.
 22 I mean, literally, it is a given. It is an
 23 expected part of doing business.
 24 Q. Okay. And who would you expect to contact
 25 you in relation to a given project? Do you have

1 A. Which one?
 2 Q. It's in the fourth column on the second
 3 page, last paragraph.
 4 A. (Reading:) Oh, okay. "Don't worry about
 5 it. It's not going anywhere." Not really.
 6 I recall discussing with him that it's great
 7 it was on his property and therefore protected,
 8 that it seemed to be out of the way of things and
 9 therefore also protected.
 10 It wasn't something one would expect to be
 11 impacted upon, not immediately or anything of
 12 that nature. So I suspect that's some form of
 13 paraphrase, but I don't think I actually said it.
 14 Q. When you say "protected," what do you mean?
 15 A. Well, he owns it. It's on his property.
 16 The only thing you'd expect to be damaging to it
 17 would be something he did. And since he had no
 18 intent of doing it, it demonstrated that he
 19 was -- you know, was interested in protecting it,
 20 you know, perpetuity.
 21 Q. Uh-huh (affirmatively responds).
 22 A. Didn't look like it was a problem.
 23 Q. Okay. But you hadn't evaluated whether the
 24 government had a right to be on that property
 25 subject to an easement?.

1 anybody specific --
 2 A. No, it could be --
 3 Q. -- in mind that you would expect?
 4 A. It could have been anybody from the -- the
 5 subcontractor up to somebody at the City.
 6 Q. Okay.
 7 A. And not infrequently more than one. You
 8 know, either leaning for clarification or wanting
 9 to double check something or wanting to make sure
 10 that something is coming in terms of the
 11 information.
 12 Q. Okay. Have you done any analysis to
 13 determine whether or not the bridge abutment on
 14 the Brinkman property is covered by or would
 15 qualify under any federal statutes for any type
 16 of protection?
 17 A. I don't work in the federal and, therefore,
 18 I have not bothered to determine whether it's
 19 under federal statutes or not.
 20 Q. Okay. And then in the -- the fourth column
 21 of the article, last paragraph there,
 22 Mr. Brinkman attributes a quote to you that "Jon
 23 Leader told me, 'Don't worry about it. That's
 24 not going anywhere.'" Do you recall making that
 25 statement to Mr. Brinkman?

1 A. No.
 2 Q. Have you formulated any opinions as to who
 3 is responsible for any of the alleged damage
 4 related to the --
 5 A. I haven't done the analysis of it to
 6 determine the extent of the damage. I don't have
 7 an opinion.
 8 Q. Well, I'm not asking if you've done an
 9 evaluation of what the damage is. I'm just
 10 asking in this question if you've made any
 11 opinions or done anything to determine who you
 12 believe is responsible for the alleged damage.
 13 A. My impression is that determining who's
 14 responsible is a legal decision. I am not an
 15 attorney.
 16 Q. I'm not asking you for a legal opinion. I'm
 17 asking whether you have any factual opinion as to
 18 who should have done what out there. If you
 19 don't, that's fine. I'm just asking if you have
 20 made any factual opinions about the City or the
 21 contractor or the XYZ --
 22 A. I would have to go --
 23 Q. -- is to blame.
 24 A. That would be part of my analysis. Only to
 25 the extent of determining such things as what was

1 the original easement, how far did the original
2 easement come over, were any of the materials
3 that were damaged that were under concern were
4 within an easement, you know, it's -- it's more
5 involved than that.

6 MS. WOOTEN: Okay. Let's take a
7 couple-minute break, if you don't mind.

8 THE WITNESS: Or outside the easement,
9 for that matter.

10 (Off the record from 1:18 p.m. to 1:30 p.m.)

11 MS. WOOTEN: Dr. Leader, my esteemed
12 colleagues have been greatly patient with us
13 today.

14 THE WITNESS: They have.

15 MS. WOOTEN: I'm going to -- as have
16 you, and I appreciate that, sir. I'm going
17 to wrap up my questions now. I may have a
18 couple follow-ups depending on what they
19 ask, but I'm going to turn it over to them
20 at this time. Thank you for your time.

21 THE WITNESS: Sure. No problem. Happy
22 to do it.

23 CROSS-EXAMINATION

24 BY MR. GOTTSCHALL:

25 Q. Dr. Leader, my name is Brandon Gottschall.

1 Q. Okay.

2 A. I don't have any real, immediate
3 recollection of the date on that. Sorry.

4 Q. So not -- even socially, no significant
5 contact with him prior to the contact regarding
6 the bridge?

7 A. Not to my knowledge, no.

8 MR. GOTTSCHALL: Okay. That's all I
9 have. Thank you so much for being here
10 today.

11 THE WITNESS: Sure.

12 CROSS-EXAMINATION

13 BY MS. HAM:

14 Q. Dr. Leader, my name is Natalie Ham. I
15 represent the City of Columbia. I've got a few
16 questions and they're going to kind of be all
17 over the place because I'm piggybacking off of a
18 few things that Ms. Wooten brought up.

19 The first question is with regards to the
20 initial conversation that you had with a
21 representative from the City of Columbia.

22 A. Yes.

23 Q. Can you, just for the record, just tell me
24 again what that conversation was about?

25 A. I was put under the impression by a

1 I represent Defendant Layne Inliner in this
2 matter. Just a couple of brief questions.

3 A. Uh-huh (affirmatively responds).

4 Q. Just to clarify, I believe you are not being
5 paid for your role by any parties in this case at
6 this time, is that correct?

7 A. That is exactly correct.

8 Q. And going forward, is there a scenario where
9 you would be paid by a party in the case or would
10 you always --

11 A. No, I am paid by the State and what I'm
12 doing here is part of my State responsibilities.

13 Q. Thank you. And just another clarification
14 point, when was the first time that you met
15 Mr. Brinkman?

16 A. Well, that's -- that's a difficult
17 statement. I'd like to say 2007. It's possible
18 it was into 2006. I'm not a hundred percent
19 sure. I may have bumped into him and not
20 recognized what's going on. In terms of having
21 interactions with him, that would have been when
22 he called me up to deal with the bridge.

23 Q. And that would have been?

24 A. Well, according to the news article, that
25 would have been 2007.

1 individual, whose name I do not recall from the
2 City --

3 Q. Right.

4 A. -- that they had a problem --

5 Q. Okay.

6 A. -- and they were look -- dealing -- or
7 seeking information. They wanted to know whether
8 I was aware of a bridge abutment in the location
9 we've been talking about and my response to that
10 was "yes."

11 Q. Okay.

12 A. They wanted to know if the person who was
13 engaged in the work on that a David Brinkman was
14 a researcher, an archaeologist, what he was, and
15 I told them what he was, which was a dedicated
16 avocationalist who had done a great deal of work
17 on, we considered him to be very reliable.

18 Q. Okay.

19 A. They said "great." They asked about whether
20 their information was available. I told them
21 "yes." I asked them have they been here, you
22 know, to the office. I do not recall if they
23 said "yes" or "no," but to my knowledge, the
24 answer would have been "no." And we left it that
25 they were going to talk to some other people,

1 they wanted to know if they could call me back,
2 and they would set up a time to meet and I said,
3 "Of course."

4 Q. Did they request any additional information
5 at that time?

6 A. No.

7 Q. I would assume that would be the site files
8 or the -- yeah.

9 A. It would have been the site files, I would
10 assume. They did not state it as such.

11 Q. Okay.

12 A. But, you know, if they were going to get
13 back to me, I figured at that time they would
14 tell me what they were up to.

15 Q. Do you recall if the person you spoke with
16 was male or female?

17 A. Male.

18 Q. Would it have been Michael Shue? Does that
19 name sound familiar?

20 A. Well, the name sounds familiar, but I can't
21 tie it to that conversation.

22 Q. Okay.

23 A. I've probably heard it from other things.

24 Q. I don't know if we got into this, but do you
25 recall when that conversation took place or to

1 kind of patchy.

2 Q. Okay.

3 A. For instance, when the work was being done
4 on the Arsenal Hill, which was the -- which is
5 now a Tony apartment complex overlooking the park
6 that was on top of not only a Native American
7 village, but on top of a school, which was
8 seconded to the Citadel, and on top of a few
9 other things, and the work had not been done to
10 determine that.

11 When I found out about it, it was too late.
12 The HUD funds had already been, you know, brought
13 into play. We went to court. I was in court
14 with the City. And the judge said, you know, "I
15 came out of the Citadel, so this is near and dear
16 to my heart, but it's too late in the process,"
17 so. But that's qualitative, not quantitative.

18 Q. Well --

19 A. So "yes" and "no," I would guess.

20 Q. Right. Can you think of a situation where
21 the request for the site files was done by the
22 City?

23 A. Offhand? No. Doesn't mean it wasn't done,
24 but I'd have to double check the logs.

25 Q. Okay. I just wanted to see if you could

1 the best of your recollection?

2 A. No, I did not make a note of it simply
3 because I was under the impression they would get
4 back to me. If they got back to me, they'd get
5 back to me.

6 Q. Okay. And to your recollection, no one ever
7 got back to you?

8 A. Nobody got back to me.

9 Q. Okay. Let me ask you this. With regards to
10 any work, not specifically this particular bridge
11 abutment case --

12 A. Okay.

13 Q. -- but where the City of Columbia has
14 projects going on --

15 A. Uh-huh (affirmatively responds).

16 Q. -- has your office gotten calls from the
17 City requesting site files?

18 A. To answer that correctly, I'd have to go
19 back through our records and see what our logs
20 were like for who called and when for which
21 projects.

22 Q. Okay.

23 A. I can't answer that one directly. I will
24 say, from my knowledge, which in this case would
25 be qualitative not quantitative, that it's been

1 recall who --

2 A. Not immediately.

3 Q. -- might have made a request.

4 A. Sorry.

5 Q. Okay. Okay. You earlier testified that the
6 bridge abutment has been determined to be a
7 historical site pursuant to the State file -- the
8 State site files, correct?

9 A. Pursuant to the Office of the State
10 Archaeologist, it is a historic site.

11 Q. Okay. When -- when was that determined?

12 A. Basically when we first got to it. It's
13 been considered a historic site from day one.

14 Q. Would that have been in 2007?

15 A. Yeah. As soon as it was found on private
16 property, it was protected -- we thought or
17 believed at that time. And since it was a
18 historic structure with materials demonstrating
19 from a historic period, we considered it to be a
20 historic site from that time period on private
21 property.

22 Q. Okay. So that would not have occurred until
23 after your initial meeting with Mr. Brinkman?

24 A. Immediately after.

25 Q. Okay. Regarding the State site files --

1 A. Yes.
 2 Q. -- what -- what is included in those files?
 3 I'm a little bit confused as to what the file is
 4 made of.
 5 A. Okay. The State site files can be made up
 6 of a number of things. Initially, you have
 7 a -- let me give you the -- let me give you the
 8 process for something which is just straight --
 9 Q. Okay.
 10 A. -- which would be: There would be a site --
 11 State site form -- which, by the way, is
 12 available online -- that gets filled out. It
 13 gets turn in.
 14 Q. Okay.
 15 A. Additional maps, documents, photographs,
 16 monographs, articles, whatever, may or may not be
 17 included at any given time. That's the straight
 18 set.
 19 With other groups, with other things, may be
 20 put into an on-hold file because additional
 21 information's coming, but that's still
 22 accessible.
 23 Q. Okay.
 24 A. Or it may be put in a non-locatable file.
 25 There are sites out there where people have

1 can be a historian who's found something in the
 2 course of their work. It can be a staff member
 3 who is in assistance to. It could be -- there
 4 are any number of people who can author.
 5 Q. Okay. So basically anyone can start a State
 6 file?
 7 A. Correct.
 8 Q. And that is how the file is started, by the
 9 form --
 10 A. The ...
 11 Q. -- usually?
 12 A. Under most circumstances, that's how it's
 13 formed.
 14 Q. Okay. And I -- this is to try and rephrase
 15 the earlier question.
 16 A. Sure.
 17 Q. The same people who may or may not complete
 18 that form, which is obviously anyone --
 19 A. Uh-huh (affirmatively responds).
 20 Q. -- can those same people also submit
 21 additional documents to the file?
 22 A. Yes.
 23 Q. The maps, the articles, the documents?
 24 A. Not infrequently, people who are working on
 25 a site may choose -- they're not required to --

1 provided us information which you cannot go back
 2 and reverify because there's something wrong and,
 3 not infrequently -- this is like from the
 4 sixties, you know, '63 or whatever, when we
 5 started it -- and we can't talk to them. They've
 6 passed.
 7 Q. Right.
 8 A. So we note that there was something in this
 9 location, but we also note that it may not be
 10 verifiable at this time, but it's a heads-up
 11 warning. So it all depends.
 12 Q. Okay. Who decides what goes in the file?
 13 Or does everything submitted to your office just
 14 automatically go into a file for that particular
 15 site? Does that question make sense? Would you
 16 like for me to rephrase it?
 17 A. Please.
 18 Q. I will.
 19 A. Sorry about that.
 20 Q. I will. That's okay. I guess my question
 21 is: Who completes the form, the form that you
 22 indicated that is available online, the site file
 23 form?
 24 A. It can be practically anybody. It could be
 25 the landowner. It could be an archaeologist. It

1 may choose to provide additional information
 2 specifically for that folder.
 3 Q. Okay.
 4 A. In other instances where additional people
 5 are working on the same site -- let's say this is
 6 a cultural resource management thing where you
 7 have a person who comes in for what's referred to
 8 as "phase-one work." Well, you don't hire that
 9 people -- those people back for phase two for the
 10 actual excavation.
 11 At that time, you may have more than one
 12 group providing documents in terms of the initial
 13 versus a revisit and both groups can provide,
 14 obviously, additional information.
 15 For that matter, historians and other people
 16 who have an interest can provide additional
 17 information if they are doing research.
 18 Obviously, if they come in and are looking at
 19 something and they've done something more, we
 20 would like to have at our hands, you know, a copy
 21 of what they've done, so that we could fill out
 22 the information for additional groups. But,
 23 again, that's yes, no, and sometimes.
 24 Q. Okay. Does anyone from your office or from
 25 the historical registry's office -- I'm not sure

1 if I'm labeling that correctly, but-- do you.
 2 guys ever go out and, you know, collect
 3 information to put into this State file or is it
 4 usually just information that you gather from
 5 outside your office?
 6 A. It's both.
 7 Q. Okay.
 8 A. Sometimes the researchers at the Institute
 9 are out doing work or collaborating with other
 10 groups on work and then it comes through them.
 11 Sometimes it's just from the outside. It could
 12 be from both.
 13 Q. Okay. Sitting here today, are you aware of
 14 the documents that are available in the State
 15 file for -- for the area that we're discussing in
 16 this case?
 17 A. The materials have been presented, yeah.
 18 Q. The materials have been provided?
 19 A. Oh, I'm sorry. I misstated that. Hmm.
 20 Yes, I am aware of the materials that are in
 21 there, yes.
 22 Q. Can you generally state for me pursuant to
 23 your recollection what documents are available in
 24 that file?
 25 A. It should be the materials that have been

1 Q. -- to access the State files?
 2 A. Absolutely. Sure.
 3 Q. Who-- who else would that be?
 4 A. Keith Derting is the site file manager.
 5 Q. Okay.
 6 A. And Tamara Wilson is the ArchSite admin-
 7 person. They tend to back each other up.
 8 Q. Okay.
 9 A. So if one is not available, one can usually
 10 go through the other. If both of them are not
 11 available, a third fallback tends to be our
 12 curator.
 13 Q. Okay. Whose name is?
 14 A. Sharon Pekrul.
 15 Q. Okay.
 16 MR. GOTTSCHALL: Can you spell Keith's
 17 last name?
 18 THE WITNESS: I'm sorry?
 19 MR. GOTTSCHALL: Can you spell Keith's
 20 last name?
 21 THE WITNESS: Derting, D-E-R-T-I-N-G.
 22 MR. GOTTSCHALL: Thank you.
 23 THE WITNESS: Actually, I expected you
 24 to ask me how to spell Pekrul, but never
 25 mind.

1 provided in terms of maps and other materials,
 2 with a recommendation for additional work.
 3 Q. You've provided that information to whom?
 4 A. (Indicating.) This is the information that
 5 was provided through. This is from my file.
 6 Q. Okay. With regards to requesting the State
 7 file, although you've indicated that the
 8 information has been provided, I just want to
 9 generally explore how you go about requesting the
 10 information. If we requested your file on a
 11 particular site, would that also include the
 12 State file?
 13 A. It depends. But the general answer to that
 14 would be "yes."
 15 Q. Okay.
 16 A. It depends who's making the request.
 17 Q. Okay. And we've gone over that
 18 previously--
 19 A. Right.
 20 Q. -- and how that's vetted.
 21 A. Yes.
 22 Q. Okay. Does the request -- is there any --
 23 is there anyone else other than yourself that the
 24 request can be made to --
 25 A. Yes.

1 MS. HAM: I think I got that or at
 2 least phonetically.
 3 Okay. Give me one second, please.
 4 THE WITNESS: Sure.
 5 MS. HAM: Actually, I -- I think that's
 6 it. I had a couple other questions, but
 7 through our dialogue, I think we've answered
 8 them.
 9 THE WITNESS: Oh, okay. That's good.
 10 CROSS EXAMINATION
 11 BY MR. STEWART:
 12 Q. Dr. Leader, can you hear me?
 13 A. Yeah, I can. Thank you.
 14 Q. My name is Heath Stewart. I represent North
 15 American Pipeline Management or NAPM --
 16 A. Sure.
 17 Q. -- in this case. I hope not to retread any
 18 previous ground, but bear with me.
 19 A. Okay.
 20 Q. The documents that you produced in response
 21 to the FOIA request that was --
 22 A. Right.
 23 Q. -- sent to your office, where do those
 24 documents come from?
 25 A. They came from me. They came from my

1 office.
 2 Q. Is it your personal file, is it the State
 3 Archaeologist's file, or is it the site file, or
 4 is it all of the above?
 5 A. It's my file.
 6 Q. Okay. So this would be your personal file
 7 as it relates to Mr. Brinkman and his property?
 8 A. That's correct.
 9 Q. Okay. Would there be one or more separate
 10 files maintained by the -- by your office
 11 regarding Mr. Brinkman's property?
 12 A. That's a good question. I'll be happy to
 13 double check that for you.
 14 Q. Okay. Do you get what I'm saying?
 15 A. No, I do.
 16 Q. Okay. And what I'm looking for is any other
 17 documents that you or your office may have that
 18 has anything to do with --
 19 A. Sure.
 20 Q. -- Mr. Brinkman's property.
 21 A. Yep. For the record, let me state, if there
 22 is any other file that you're interested in, it's
 23 transparent; you're welcome to it.
 24 Q. Sure. I appreciate it. You used a term
 25 very early in your deposition that I wanted to

1 where it starts, "Jon, I'm not really asking for
 2 anything here," did we ever figure out what you
 3 believed was asked of you?
 4 A. I don't think we asked that question and I'm
 5 not sure at this late date I can answer it. I
 6 think that he was simply being apologetic for
 7 contacting me. He does tend to do that. "I hate
 8 to bother you," you know. So I don't know.
 9 Q. Okay.
 10 A. Let me -- nope, that's it. Don't know.
 11 Q. All right. So we -- sitting here today, we
 12 don't know really what that means or you don't
 13 remember what it may refer to?
 14 A. Not off the bat, no.
 15 Q. Okay. And you said per your office, the
 16 Brinkman site has been designated as a historical
 17 site --
 18 A. I told him that he had a historic site on
 19 his property and that we were listing it as a
 20 historic site.
 21 Q. Okay. Would that designation as a
 22 historical site be listed anywhere that others
 23 may find it?
 24 A. It would have been available to people who
 25 came into the office to check. It may not have

1 ask you about. What is a "land steward"?
 2 A. It's a person who is entrusted with the
 3 upkeep and the protection of the land who is not
 4 the actual owner.
 5 Q. Okay.
 6 A. That's how we use that term.
 7 Q. And give me an example of who may be
 8 considered a land steward.
 9 A. Department of Natural Resources. It's owned
 10 by the State. They're required or tasked to take
 11 care of it. It could be an overseer to a
 12 plantation; a person who is in charge of a -- of
 13 the property for a holiday house, something of
 14 that nature.
 15 Q. Or a caretaker?
 16 A. A caretaker.
 17 Q. All right. Do you have the exhibits in
 18 front of you?
 19 A. I guess so, yes. Some of them, anyway.
 20 Q. All right. If you would, flip to Exhibit
 21 No. 9, please, sir.
 22 A. (Witness complies.) Got it.
 23 Q. All right. And, again, I don't want to
 24 replot ground too much, but I was confused. If
 25 you look at the bottom portion of the e-mails

1 been available other places; especially at the
 2 initial points because additional work was
 3 necessary, but it would have been available had
 4 people come in to discuss a location.
 5 Q. So -- and what I'm understanding you to say
 6 is, as to the general public, that historical
 7 designation may not be available. But general
 8 public or otherwise, those persons that come to
 9 your office may be able to see that historical
 10 designation?
 11 A. I need to clarify that.
 12 Q. Sure.
 13 A. Groups that have a legitimate, definable
 14 reason for access are checked to make sure of the
 15 above and then are given access to the -- what
 16 they need. In general, the public does not have
 17 access to these materials because of the question
 18 of sensitivity. So I don't know if that answers
 19 your question or not.
 20 Q. It does to a degree. And I guess what I'm
 21 getting at is, if somebody is granted access to
 22 your office's information --
 23 A. Uh-huh (affirmative response).
 24 Q. -- and then does access that information --
 25 A. Uh-huh (affirmatively responds).

1 Q. -- they would then have to maybe dig a
 2 little bit and -- excuse the pun -- to get to the
 3 historical designation, is that right?
 4 A. If people had access to it and were, you
 5 know -- which would require them to explain what
 6 they were doing, the information covering that
 7 would have been made available.
 8 Q. Including the historical designation?
 9 A. Including the historical.
 10 Q. The research and things that you've been
 11 provided by Mr. Brinkman --
 12 A. Yeah.
 13 Q. -- you said earlier you were impressed with
 14 his research. Do you recall saying that?
 15 A. I do.
 16 Q. Okay. What did you mean when you said you
 17 were impressed with it?
 18 A. I was impressed by his willingness to take
 19 the time to engage in a project that many people
 20 would not do. There was no monetary payoff for
 21 this. It's not as if he was hired by someone on
 22 an hourly wage to be doing research. He was not
 23 seeking grants, as far as I am aware of, that
 24 would have paid for things.
 25 He was self-funding himself to do historical

1 History that they were impressed with his work,
 2 that he was, you know, covering it. The work
 3 that was done with Allen Roberson, I know that
 4 Roberson was impressed, so that's more than just
 5 me.
 6 Probably the thing that would answer your
 7 question the best was that he was designated
 8 recently as the Distinguished Archaeologist for
 9 the year by the Archaeological Society of South
 10 Carolina for his work, not simply on this
 11 project, but several other projects, including
 12 Granby, the Confederate bridge, a whole series of
 13 things.
 14 That determination was not done by me;
 15 although, I do end up being one of the
 16 signatories to his, you know, piece of wall
 17 candy, but I did not push it, for obvious
 18 reasons. I was not involved in that
 19 determination.
 20 The statement was done by a cultural
 21 resource management firm that had worked with him
 22 at historic Granby, among other places, having
 23 been very much impressed with his abilities,
 24 his -- with his archaeology on a property he
 25 purchased to determine whether or not historic

1 and archaeological research because of a
 2 deep-seated interest in what was going on, so
 3 that impresses me.
 4 His ability with computers -- he is an IT
 5 guy -- was above and beyond most anything I had
 6 ever seen in the sense of his ability to
 7 manipulate GIS data layers and other information
 8 to provide areas for testing, that was very
 9 impressive. And, again, that takes time and
 10 effort, skill. So for all those reasons, yeah,
 11 he's impressive.
 12 Q. And so when you use the word "impressive,"
 13 it goes to the level and the breadth of his
 14 efforts, not necessarily the substance of his
 15 research, is that right?
 16 A. No, both. No, it goes to both.
 17 Q. Okay. Have you or anyone else to your
 18 knowledge subjected his research to any type of
 19 peer review, academic review, anything that would
 20 prove or disprove his ultimate theory?
 21 A. Well, as I said, there's additional work
 22 that needs to be done, so it's not a done deal.
 23 But within your actual question, his
 24 research into the maps and the rest at Archives &
 25 History, I heard from the folks at Archives &

1 Granby was in the location, which he proved
 2 before he found Fort Congaree II, among other
 3 things.
 4 And based on that, they put forward to the
 5 Executive Committee of the Archaeological
 6 Society, which covers avocational and
 7 professionals for the entire State, and they
 8 determined that he was the person to determine --
 9 they determined to be archaeologist of the year.
 10 So I would think that based on that, one
 11 could probably make the, you know, statement that
 12 he was indeed an impressive person beyond simply
 13 the question of, you know, whatever. It's both.
 14 And that's not simply my opinion. That's the
 15 opinion of the membership of a State
 16 organization.
 17 Q. And I appreciate all that and I understand
 18 what you're saying, but I guess by way of an
 19 example --
 20 A. Sure.
 21 Q. -- I can submit a 50-page brief that looks
 22 very good, that sounds very good, that has all
 23 kinds of legal arguments --
 24 A. Yep.
 25 Q. -- but ultimately it's determined to be

1 wrong. So on the one hand, it can be impressive
 2 in breath and scope --
 3 A. Uh-huh (affirmatively responds).
 4 Q. -- but could be wrong in its ultimate
 5 conclusion.
 6 A. (Nods head affirmatively.)
 7 Q. In this case, other than being impressed
 8 with the breath, scope, and effort of
 9 Mr. Brinkman's research --
 10 A. Uh-huh (affirmatively responds).
 11 Q. -- has anybody to your knowledge endeavored
 12 to backtrack and see if it actually is accurate?
 13 A. Yes.
 14 Q. Who did that and when?
 15 A. Both the cultural resource management firms
 16 who were working with him on the question of
 17 Granby, on the Fort Congaree II, based on his map
 18 research and the rest, we came down directly on
 19 the bastion of it in a 1960's housing development
 20 in the front and backyard of a standing house and
 21 partially underneath the road, which was taken
 22 into account by the South Carolina Department of
 23 Transportation since they were working on that
 24 road.
 25 The work that he had done initially on the

1 Q. Okay.
 2 A. Part the first, the location of the abutment
 3 is a lynchpin for everything else that was
 4 determined to be accurate. Okay? It is not a
 5 standalone. It wasn't, "Gee, I got interested in
 6 crayons and I'll go on a different page to
 7 crayon."
 8 The work that was done at the bridge
 9 specifically led to everything else in tandem, in
 10 connection to a specific location for a
 11 Confederate bridge that had been misidentified
 12 for its location, okay, which was then
 13 demonstrated to be in the proper location based
 14 on that research.
 15 So that answer to that is, if that was not
 16 an abutment, it would not have led to those other
 17 things which would have led to that position,
 18 which is demonstrable.
 19 Q. I gotcha.
 20 A. So that covers that. Now, the question of
 21 the bridge itself and everything else, that
 22 abutment --
 23 Q. Uh-huh (affirmative response).
 24 A. -- my personal feeling on it is that
 25 additional work needed to be done. And while he

1 bridge in question led him to doing the work that
 2 identified the Confederate bridge, which was
 3 misidentified by the State as to its location.
 4 So did he re-identified the location of that
 5 bridge based on the work here, which then put
 6 everything else into perspective, and was signed
 7 off by Archives & History when they moved the
 8 marker from its erroneous location to its current
 9 location based on the connected dots from the
 10 work he was doing on the Comptly bridges, all the
 11 way up that line to the Confederate bridge. So,
 12 yeah, I would say that it's been peer reviewed.
 13 Q. And my question was more specific to the --
 14 the abutments that are at issue in this case.
 15 A. Uh-huh (affirmatively responds).
 16 Q. And what I'm hearing you say is maybe that
 17 that research has led to confirmation on other
 18 sites or structures, but I'm not sure that I've
 19 gotten an answer to the abutments at issue in
 20 this case. Has the research regarding the
 21 abutments at issue in this case --
 22 A. Okay.
 23 Q. -- ever been fact-checked or determined
 24 conclusively to be accurate?
 25 A. Okay. Two-part answer.

1 did a significant amount of additional work going
 2 across the -- you know, the water or whatever,
 3 doing other things, there were still things that
 4 had to be answered in the ground at that location
 5 that have yet to be done.
 6 Q. I understand. That answers my question.
 7 A. Okay.
 8 Q. So -- and going off of that, I have heard
 9 from your testimony, and correct me if I'm wrong,
 10 that based on everything that we have seen,
 11 you've been provided, all we know is that this --
 12 this structure on his property is a bridge
 13 abutment that is from the 18th century; is that
 14 right?
 15 MR. HODGE: Objection to the form.
 16 A. Well, we have to my -- hmm. It doesn't
 17 stand alone. It stands as a statement for that
 18 abutment to another abutment I have not seen, to
 19 be honest, to a third situation further upstream,
 20 and to the Confederate bridge.
 21 So what I have seen is the first abutment.
 22 It's clearly a bridge abutment. Okay? It fits
 23 within the pattern for that time period. It fits
 24 within the historic documentation for it being
 25 the Comptly bridge. Okay?

1 A working hypothesis for science would be,
 2 then, given the other things that have been done,
 3 which are demonstrable, is that it is the Compt
 4 bridge abutment. And to nail it to the final
 5 statement for, you know, full review, et cetera,
 6 et cetera -- which, by the way, might, might,
 7 might, just by the way, change the National
 8 Register a little after the fact -- but if you
 9 could tie it in that tightly, it could actually
 10 kick it into the criteria. Okay? That still has
 11 yet to be done.
 12 Q. And that additional work would be excavation
 13 and --
 14 A. I want to see additional excavation. I want
 15 to see if we could find the trash pit with
 16 appropriate time period materials in it,
 17 et cetera, et cetera, et cetera, which one may or
 18 may not find.
 19 Would still not change it being a historic
 20 site, would still not change it being of
 21 importance to that sequence, but it would have
 22 been nice to have the additional information.
 23 Q. And, again, you don't know what role or
 24 involvement my client or any of the other
 25 Defendants in this case had in the work that was

1 Q. With regards to a historical designation by
 2 your office --
 3 A. Yes.
 4 Q. -- what does that entail? Is it a letter or
 5 a certificate? How -- what does that -- what
 6 does the designation entail? How do you -- if
 7 one goes to your office, do you have to audibly
 8 tell them?
 9 A. There's usually a file folder that has
 10 materials in it with a statement. It may or may
 11 not include the complete site file with a number,
 12 because additional work may be necessary.
 13 Q. Okay.
 14 A. But it is searchable by that county,
 15 normally.
 16 Q. Okay.
 17 A. In terms of what's going on with a person,
 18 we aren't the Historic Preservation Office, which
 19 occasionally -- not -- I don't know if ours does
 20 or not, but some states, they'll give you a --
 21 again, a frame-able thing that says, "This is an
 22 important place."
 23 Q. Okay.
 24 A. What we're really talking about is
 25 impressing upon the landowner, if it's not owned

1 done at the Brinkman property?
 2 A. I would say the fact that you're listed as
 3 Defendants and are being deposed with you folks
 4 in tow, not really.
 5 Now, obviously the phone call, for what it's
 6 worth, from the City did kind of give me a
 7 heads-up, at least that the City was involved and
 8 some roles were involved with that. But as term
 9 as -- in terms of what each and -- of you folks
 10 were doing, I have no idea, not individually, for
 11 sure.
 12 Q. And as we sit here today, you have not
 13 endeavored to quantify the damages that
 14 Mr. Brinkman or the other named Plaintiffs in
 15 this case may have sustained as it -- as it
 16 relates to the Archaeological Act of 2010?
 17 A. That's correct.
 18 Q. And that remains to be done?
 19 A. That remains to be done.
 20 MR. STEWART: All right. Those are all
 21 my questions. I appreciate your time.
 22 THE WITNESS: Sure.
 23 MS. HAM: I have one quick question.
 24 RE-CROSS-EXAMINATION
 25 BY MS. HAM:

1 by the State -- and doubly if it is owned by the
 2 State -- that what they have is something
 3 important, it is a historical site, and please
 4 protect it and keep us in the loop.
 5 Q. And that statement would be a written
 6 document in the file?
 7 A. Depends. Sometimes, yes. Sometimes the
 8 landowner doesn't want it in the file. It all
 9 depends.
 10 Q. Is that -- does that statement exist in the
 11 file for this area?
 12 A. I'm trying to remember. I'll have to double
 13 check. I don't -- I don't know. I'm pulling a
 14 blank.
 15 Q. Do you recall Mr. Brinkman asking you not to
 16 include --
 17 A. No. No, he never asked for it not to be
 18 listed anywhere. He was actually pretty excited
 19 about the whole thing.
 20 Q. That's what I would assume.
 21 A. Yeah, he was -- he was thrilled.
 22 MS. HAM: Okay. That's it. I know
 23 that one question turned into three. I
 24 apologize.
 25 THE WITNESS: No, no. That's okay. I

1 don't mind. I'm easy.
 2 MR. HODGE: Dr. Leader, I just have a
 3 few questions.
 4 You guys -- everybody all done?
 5 MS. WOOTEN: I have one more, but I'll
 6 wait my turn. You can go ahead.
 7 MR. HODGE: Okay.

CROSS-EXAMINATION

BY MR. HODGE:

10 Q. Okay. Dr. Leader, are your authorities and
11 duties set by State statute?

12 A. Yes.

13 Q. And can you describe just for the Court what
14 those duties are?

15 A. I am required by the enabling act of 1963 to
16 oversee the curation of the Institute, the site
17 files of the Institute, to assist the State
18 Historic Preservation Office, to engage in
19 research, and from other things outside of that
20 act, second to the state law enforcement to
21 assist on forensics, and to assist the
22 Legislature on questions when they ask.

23 Q. And do you also oversee archaeological
24 research in the State?

25 A. I do in some circumstances, which is to say

1 A. I am willing to be appointed. Does that
 2 count?
 3 Q. Okay. So is it -- are you the one that
 4 actually made the determination -- the final
 5 determination that the bridge abutments on the
 6 Coleman and Brinkman properties were the Compt
 7 abutments?

8 MS. WOOTEN: Object to the form.

9 MR. STEWART: Object to the form.

10 A. The only bridge abutment I have seen is the
11 one on David Brinkman's property.

12 Q. Okay.

13 A. My determination was that it was a historic
14 abutment from the appropriate time period and
15 that given the additional research attached to
16 it, it was likely to be the Compt bridge
17 abutment.

18 Q. Okay. And just in general terms, can you
19 describe what the significance of the John Compt
20 abutments are?

21 A. Well, the bridges coming into Columbia were
22 the lifeblood of Columbia. I mean, you had the
23 river, obviously, and people did take vessels up
24 and down it from earliest times, Native Americans
25 through, but having roads to the interior -- and

1 that I am not in charge of all of the research in
2 the State by any stretch of the imagination, but
3 I have the ability to comment on research in the
4 State.

5 Q. Okay. Does State law grant you the
6 authority to testify in a court of law to assist
7 in determining, calculating, or computing
8 archaeological value, commercial value, or the
9 cost of restoration and repair of an
10 archaeological resource?

11 A. Yes.

12 MS. WOOTEN: Object to the form.

13 THE WITNESS: I'm sorry?

14 MS. WOOTEN: I was just lodging an
15 objection to the form just for Madam Court
16 Reporter. You can still answer the
17 question.

18 THE WITNESS: Okay. Thank you.

19 A. The answer is "yes."

20 Q. Okay. And do you believe that you could
21 help the Court in this matter with such a
22 valuation and testimony?

23 A. Yes.

24 Q. Okay. Are you seeking to be appointed for
25 that purpose?

1 Columbia was the interior at that time -- and
2 having bridges that were available regardless of
3 whether -- although, given what happened with the
4 flood, perhaps not -- but the concept of doing
5 that was instrumental for the -- for the history
6 of Columbia as a city.

7 Had there not been those bridges in place,
8 Columbia's growth would have been stunted, the
9 people coming into Columbia would have then had a
10 serious obstacle. The history of Columbia would
11 have been quite different.

12 So I would put the bridges, any one or all
13 of them, into the category of being of very
14 serious importance to South Carolina and to the
15 history of the State.

16 Q. Were the Compt bridge abutments the first
17 bridges -- are the Compt bridges the very first
18 bridges over the Broad River?

19 A. Yeah. You had ferries, but the Compt
20 bridges were the first two.

21 Q. Now, you have testified based upon I believe
22 what's been identified as Exhibit 5 --

23 A. 5?

24 Q. This is a series -- appears to be a series
25 of graphics from a website. I will turn you to

1 the second page.
 2 A. Hang on. Let me get to it.
 3 Q. Okay.
 4 A. (Witness complies.) Got it, okay. Second
 5 page?
 6 Q. Second page.
 7 A. Okay.
 8 Q. If one were to go to the ArchSite website
 9 and see basically what is depicted on the second
 10 page, would that trigger -- or should that, in
 11 your opinion, trigger an additional review of
 12 data regarding historical resources?
 13 MR. GOTTSCHALL: Object to the form.
 14 MS. HAM: Object to the form.
 15 A. If a person was going through ArchSites and
 16 they came across something in an area that they
 17 had interest and they had insufficient
 18 information from the ArchSite document to make
 19 sense, I would expect them to make a request for
 20 additional information.
 21 Q. Okay. And what agencies and who -- I think
 22 you've testified to this, but I just want to put
 23 it in one package. What agencies -- who should
 24 they contact for additional information?
 25 A. Well, that would be the Institute. Since

1 MS. HAM: Object to the form.
 2 MR. GOTTSCHALL: Object to the form.
 3 A. I am of the opinion that anybody who is
 4 doing work anywhere needs to be in contact with
 5 whichever groups they can think of to make sure
 6 they don't cause problems. I'm a firm believer
 7 of the "call before you dig." I like my lights
 8 to be up. I don't see any difference when it
 9 comes to archaeology.
 10 I can't -- to the best of my knowledge, the
 11 City was not in contact with the Institute. The
 12 decisions as to why they were not in contact with
 13 the Institute is something I cannot answer
 14 because I did not make that decision.
 15 If the question to me is that it would have
 16 been good had they been in contact with me, I
 17 think the appropriate answer to that is: Yeah,
 18 they should have been in contact with me.
 19 Q. Okay. And you're quoted in The State
 20 newspaper in Exhibit 14.
 21 A. I have to tell you that when it comes to
 22 newspaper articles, I don't live by newspaper
 23 articles.
 24 Q. If you'd go to the second page.
 25 A. Let me see if I can find it. I know it's in

1 the Archives & history is also listed, because
 2 they are a partner in this, I would expect them
 3 to contact Archives & history.
 4 But in instances where it was archaeology
 5 specifically involved, normally that would be
 6 devolved to the Institute.
 7 We don't stand and make determinations on
 8 architecture, unless it's burned, you know,
 9 underground. And for the most part, the
 10 expectation would be Archives & History would
 11 say, "If you're interested in a archaeology
 12 situation not on the National Register, talk to
 13 the Institute."
 14 Q. Okay. So has your office been involved in
 15 this State in reviewing archaeological or
 16 historic cultural resources in the vicinity of
 17 sewer projects?
 18 A. Yeah, I'm sure we have. Roads, sewers,
 19 power lines, not infrequently we are contacted on
 20 those points. Yeah, sure.
 21 Q. In your opinion, should the City of Columbia
 22 or its contractors have conducted a cultural
 23 resources survey prior to commencing this
 24 project?
 25 MS. WOOTEN: Object to the form.

1 here someplace. This one (indicating)?
 2 Q. It's the one that's got the Gamecock on the
 3 cover.
 4 A. Got it. Okay. Second page?
 5 Q. Second page, second paragraph.
 6 A. Second page, second paragraph.
 7 Q. Second column, excuse me.
 8 A. Second column, okay.
 9 Q. Then second paragraph.
 10 A. All right.
 11 Q. There's a quote that's attributed to you.
 12 It says, "They didn't ask us, Leader said of the
 13 City" --
 14 A. Uh-huh (affirmatively responds).
 15 Q. -- "and its contractors. As far as we know,
 16 they didn't ask anybody."
 17 A. I have no knowledge if they asked anybody
 18 outside of the Institute or not. All I can
 19 reference is, I do not recall any information
 20 that they were in contact with us.
 21 Q. Okay. So your testimony now basically, you
 22 know, corrects or supplements this quote from the
 23 newspaper; is that correct?
 24 A. Yeah, it's a newspaper quote.
 25 Q. Okay. So I just want to make sure it's

1 clear on the record. You weren't contacted by
 2 the City of Columbia; is that correct?
 3 A. Not at that time prior to the work.
 4 Q. Okay. After the damage had occurred, you
 5 were contacted?
 6 A. To the best of my knowledge --
 7 MS. WOOTEN: Object to the form.
 8 MS. HAM: Object to the form.
 9 A. To the best of my knowledge, I was not
 10 contacted by the City until, as I've referenced,
 11 I had a phone call from a person who had some
 12 concerns --
 13 Q. Okay.
 14 A. -- apparently after the fact.
 15 Q. And were you contacted by someone from
 16 Weston & Sampson Engineers regarding this
 17 project?
 18 A. I would have to check the log, but I'm not
 19 under the impression -- you know, I don't know
 20 any of the groups that were listed here, as I've
 21 already stated, so I would have to go back
 22 through. But under -- my impression is that we
 23 were not contacted by any of the groups involved.
 24 Q. Okay. You have no recollection that Weston
 25 & Sampson contacted you?

1 of factors. The most common one for the majority
 2 of sites is by county.
 3 Q. Okay. So if somebody wanted to find out
 4 what may or may not exist at, let's say,
 5 154 Castle Road --
 6 A. Yes.
 7 Q. -- what do they have to ask you to get that
 8 information?
 9 A. Actually, that would do it.
 10 Q. So you can -- you can pull -- well, let me
 11 back up. My question is: How does the -- how
 12 does the organization maintain those files such
 13 that if you wanted to get everything related to
 14 154 --
 15 A. Uh-huh (affirmatively responds).
 16 Q. Is the file listed or identified or
 17 maintained by address?
 18 A. It is not normally maintained by address,
 19 but if you give us an address, we can normally
 20 take care of it.
 21 Q. So you have to -- if somebody gives you an
 22 address, you have to go through a compilation of
 23 records to pull everything that's affiliated with
 24 that address?
 25 A. What we would do is probably -- one of the

1 A. Nope, but I will double check if people
 2 would like.
 3 Q. Do you have any recollection as to whether
 4 Layne Inliner contacted you?
 5 A. No, not that I'm aware of.
 6 Q. Do you have any recollection whether North
 7 American Pipeline Management contacted your
 8 office?
 9 A. Not to the best of my knowledge.
 10 MR. HODGE: Okay. Anything else?
 11 MR. CHAMBERS: (Shakes head
 12 negatively.)
 13 MR. HODGE: Okay. That's all. Thank
 14 you very much. Appreciate it.
 15 REDIRECT EXAMINATION
 16 BY MS. WOOTEN:
 17 Q. Dr. Leader, I have a follow-up question.
 18 A. Feel free.
 19 Q. When you were talking about the site files
 20 earlier --
 21 A. Yes.
 22 Q. -- how are those maintained? Are they
 23 maintained by address of property or some other
 24 designation?
 25 A. They are maintained by a -- by a combination

1 reasons we produced ArchSite was to allow us to
 2 type things like that in, see which topo was on,
 3 determine from that where we needed to go, and
 4 then go look for ancillary information.
 5 Q. Okay. So somebody has to essentially
 6 compile. If somebody sends a request via address
 7 as the identifier --
 8 A. Yeah.
 9 Q. -- that's not something that exists in a
 10 file that you go and say, "Okay, this is 154
 11 Castle Road."
 12 A. Chance is very good --
 13 Q. You have to compile.
 14 A. -- that is the case; it is not.
 15 Q. Okay.
 16 A. Right.
 17 MS. WOOTEN: That's all I had. Thank
 18 you very much.
 19 THE WITNESS: Sure.
 20 RECROSS-EXAMINATION
 21 BY MR. GOTTSCHALL:
 22 Q. Dr. Leader, I do have a couple follow-ups.
 23 A. Okay.
 24 Q. And this is also about site files. You
 25 mentioned a form that can be filled out.

1 A. Yes.
 2 Q. What is that form called?
 3 A. Site file form. We're not exactly creative
 4 with names.
 5 Q. Tells you what you need to know.
 6 A. Sure.
 7 Q. And how can you get a copy of that form?
 8 A. It's online. You can pick up both the
 9 document and the handbook. They come as a
 10 package. Well, they are found on the same page
 11 and you can download both.
 12 Q. And then once --
 13 A. They don't automatically download both, but
 14 you can download both, if you wish.
 15 Q. Okay, cool. Once that -- that form is
 16 submitted --
 17 A. Yes.
 18 Q. -- a site file is created; is that correct?
 19 A. Once that form is submitted, it goes into
 20 cue for vetting to determine that locations do
 21 not go across another known site or that it's --
 22 which has happened from time to time.
 23 The other part, which is when people first
 24 discover GPS, not infrequently we'd end up with
 25 it in the middle of the Gulf of Mexico.

1 Probably the largest group that provides us
 2 with these requests are groups like the Forest
 3 Service. In that instance, their materials are
 4 under constant use.
 5 People are constantly coming in to use them
 6 and we find out very quickly if there's a problem
 7 from other people are going in the field. So the
 8 answer is: Sometimes yes; sometimes no.
 9 Q. Okay.
 10 A. I'm not sure if that was clear enough for
 11 you. Was it?
 12 Q. I mean, that works.
 13 A. Okay.
 14 Q. Are there any requirements as to age of
 15 material? So if I -- if I've got something I
 16 think is of historic --
 17 A. Uh-huh (affirmative response).
 18 Q. -- importance --
 19 A. Uh-huh (affirmatively responds).
 20 Q. -- I mean, what is the age? When does
 21 something become of historic importance? Is
 22 there a requirement on that form?
 23 A. The standard rule of thumb that's used by
 24 archaeologists pretty much across the United
 25 States is anything 50 years and older becomes --

1 So we go back through and do a basic vet to
 2 make sure it's not on something known, nor is it
 3 in a different state. And then, yeah, we go from
 4 there and run it through. And if there's
 5 additional information necessary, we contact the
 6 person submitting it. We go, you know,
 7 (indicating sound).
 8 And at the end of the whole process, which
 9 can take some time -- first in, first out -- you
 10 get a number. You get a statement which says,
 11 "You're now in and you're done."
 12 Q. That vetting that you talked about, does
 13 that involve -- that doesn't involve a visit to
 14 the site?
 15 A. It can. It is not necessary.
 16 Q. Okay.
 17 A. Necessarily the case, is what I mean.
 18 Sometimes yes; sometimes no. It depends.
 19 Q. Is there any type of kind of peer review to
 20 verify the information on the form beyond kind of
 21 the location and stuff that you talked about just
 22 now?
 23 A. Direct peer review? The answer would be
 24 "no." Indirect peer review, the answer would be
 25 "more often than not."

1 if it's in the ground -- is an archaeological
 2 object. Which means, don't cover me with sand at
 3 the beach.
 4 Q. Okay. And are there tiers of kind of
 5 historical designation? Is there like a, you
 6 know, tier of importance, like once something --
 7 or is there only just historical designation
 8 versus non-historical designation?
 9 A. The -- the site files permit you to tie a
 10 site, if you have the information, to time
 11 periods --
 12 Q. Okay.
 13 A. -- so that people can do a search, say, on,
 14 you know, the oldest possible humans here in
 15 North America, okay, or on the time of the
 16 Spanish Entrada, or on, you know, antebellum or
 17 postbellum or whatever. I mean, there are time
 18 periods which one can go back on that.
 19 Q. Beyond that, there's no other tier?
 20 A. No.
 21 Q. Okay.
 22 A. A site is a site is a site.
 23 Q. Kind of switching gears a little bit, you
 24 talked about how you thought it would be good to
 25 have been contacted on this site. But you're not

1 aware of any requirements that anybody contact
 2 the Archaeological Institute before working on
 3 this site, are you?
 4 A. Standard cultural resource management under
 5 Section 106 would require people be in contact
 6 with us.
 7 Q. Okay. And what was that section again?
 8 A. Section 106 of the National Historic
 9 Preservation Act. There are also things that
 10 would trigger underneath EPA, at least currently
 11 until those things are rewritten, apparently.
 12 Q. And are you aware of the circumstances under
 13 that Act where someone must contact you?
 14 A. I'd have to go back through and double check
 15 the regulations and the rest. Some of them have
 16 changed over time, but the normal -- the normal
 17 pace of doing business is, if you're going to an
 18 area, you do do this.
 19 It is -- it is simply -- I can't think of
 20 any major group currently, engineering, that has
 21 not done a site file search on a project.
 22 Now, having said that, undoubtedly there
 23 would have to be some out there, but I'm not
 24 aware of any.
 25 Q. All right. But sitting here today, are

1 Q. Okay. So you -- just to get it clear on the
 2 record, your response is that you do not know
 3 whether this project was -- those acting in
 4 regards to this project were required to contact
 5 your office with regards to this project under
 6 these statutes?
 7 A. I have not seen the scope of work for this
 8 project. I have, therefore -- I can therefore
 9 not reference whether or not they would or would
 10 not have been required for that project. The
 11 final determination of the requirement would have
 12 been through the SHPO.
 13 I am, by law, a person who provides
 14 additional information to the SHPO on these types
 15 of topics and had the project come across my desk
 16 and come across their desk, my phonecall to them
 17 would have been requiring that they do the
 18 research.
 19 Since as far as I can tell none of that
 20 happened, from my endpoint of the -- of the
 21 telescope, I cannot actually reference it.
 22 MR. GOTTSCHALL: Okay. I think that is
 23 all the questions I have. Thank you so
 24 much.
 25 THE WITNESS: Sure.

1 you -- you're not able to say for certain whether
 2 Section 106 or any of the requirements apply to
 3 the project that is at issue in this case?
 4 A. Section 106 and the rest would be coming
 5 under the National Historic Preservation Act,
 6 which would be primarily underneath the
 7 Department of Archives & History as the holder of
 8 that, the State Historic Preservation Office.
 9 That would be a statement you'd have to -- I
 10 would encourage being placed to them.
 11 Q. Okay. But you don't know yourself sitting
 12 here today?
 13 A. If they were to ask me, the response would
 14 be "yes." But if you're looking for a specific
 15 statement as to the requirement under the
 16 regulation, I would encourage you to talk to HPO.
 17 Q. Okay. And I understand that. I appreciate
 18 that response. But I just -- I need to know
 19 whether sitting here today you know for certain
 20 whether that Act -- and I understand that there
 21 may be further inquiry needed to confirm that,
 22 which is fine if that's your response. I just --
 23 I'm wondering if that is your response. It
 24 sounds like it is.
 25 A. It's my response.

1 (There being no further questions, the
 2 deposition concluded at 2:25 p.m.)
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1 CERTIFICATE OF REPORTER
 2 I, Cassandra E. Vance, Court Reporter
 3 and Notary Public in and for the State of
 4 South Carolina, do hereby certify that I
 5 reported the deposition of JONATHAN M.
 6 LEADER, Ph.D., on the 21st day of March,
 7 2017; that the witness was first duly sworn
 8 by me, and that the foregoing 216 pages
 9 constitute a true and correct transcription
 10 of the said deposition.
 11 I further certify that I am neither
 12 attorney nor counsel for, nor related to or
 13 employed by, any of the parties connected
 14 with this action, nor am I financially
 15 interested in said cause.
 16 I further certify that the original of
 17 said transcript shall be hereafter sealed
 18 and delivered to Amy H. Wooten, Esquire,
 19 Brown Law, LLP, 4130 Parklake Avenue, Suite
 20 130, Raleigh, North Carolina 27612. This
 21 sealed original transcript shall be retained
 22 by the above party, who shall be responsible
 23 for filing same with the Court prior to
 24 trial or any hearing which might result in a
 25 final order on any issue.

IN WITNESS WHEREOF, I have hereunto set
 my hand and seal this 30th day of March,
 2017.

Cassandra E. Vance, Court Reporter
 Notary Public for South Carolina

My commission expires: 2-26-2018

1 ERRATA PAGE
 2
 3 Page # Line # Change/Correction (and Explanation)
 4 _____
 5 _____
 6 _____
 7 _____
 8 _____
 9 _____
 10 _____
 11 _____
 12 _____
 13 _____
 14 _____
 15 The above changes were noted by me on
 16 this errata page before signing the attached
 17 Verification of Deponent. I have retained a
 18 copy of this errata page for my records, and
 19 the court reporter is to attach this page
 20 and my verification to the original
 21 transcript.
 22
 23 Dated: _____
 24
 25

1 Verification of Deponent
 2
 3 I, JONATHAN M. LEADER, Ph.D., have read
 4 the foregoing deposition testimony, which
 5 was reported by Cassandra E. Vance, Court
 6 Reporter and Notary Public in and for the
 7 State of South Carolina, on March 21st,
 8 2017.
 9 I find the transcript of the deposition
 10 to be a true and accurate transcript
 11 according to my testimony on that date, with
 12 the exception of _____ corrections as
 13 listed on the attached errata page, which
 14 was filled in by me.
 15
 16
 17
 18
 19 JONATHAN M. LEADER, Ph.D.
 20 _____
 21 20
 22
 23
 24
 25

A				
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1 long as we kind of all have conversations out
 2 here in the open, everybody's happy. Do you
 3 understand those rules?
 4 A: I do.
 5 Q: Okay. Great. If in the course of the day
 6 you need to take a break for any reason, please
 7 let me know. I'll be glad to do that. And
 8 that's -- and that's the time frame when that
 9 admonition I just gave you will really apply is
 10 when -- when perhaps you've left the room. And
 11 if you'll just avoid the consultations.
 12 So -- and you've given a deposition before,
 13 so you're generally familiar with what helps us
 14 to keep things going, but I would just remind you
 15 that the court reporter is trying to make a
 16 record of conversations.
 17 So if you'll just attempt to wait for me to
 18 finish asking the question before you start to
 19 answer, I'll try to return that courtesy;
 20 sometimes I stumble in that. Okay?
 21 A: (Nods head affirmatively).
 22 Q: And say "yes" and "no" when that's what you
 23 mean. You understand those instructions?
 24 A: I do.
 25 Q: Very good. You have been identified as

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1 someone who will give opinion testimony in this
 2 case and I'm a little bit confused about the
 3 capacity -- in what capacity you're doing that.
 4 So let me start there. Is it -- do you
 5 understand that you have been identified as a
 6 witness to give opinion testimony?
 7 A: Define for me "opinion testimony."
 8 Q: "Opinion" is something that's not fact.
 9 Will you be giving opinion testimony?
 10 A: I will be giving opinion testimony and
 11 factual testimony, but they will be based on my
 12 experience and understanding and, therefore, they
 13 are more than simply something that wanders
 14 across the face of the earth.
 15 Q: Well, I wasn't suggesting that you might
 16 guess. An opinion is something that is a
 17 reasonable inference that's drawn from facts
 18 informed by science.
 19 A: In that case, we're in agreement.
 20 Q: Okay. That's what you will be doing?
 21 A: Yes.
 22 Q: All right. And so you have -- you have
 23 assembled facts that you'll -- that you're
 24 relying on?
 25 A: Of course.

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1 Q: And you'll be applying to it some
 2 methodology that is accepted in the
 3 archaeological profession or vocation?
 4 A: Yes.
 5 Q: Very good. And tell me about your
 6 engagement in this matter. Have you been engaged
 7 by Mr. Brinkman or any of the Plaintiffs to serve
 8 as an expert witness in this case?
 9 A: As you know from the original deposition, I
 10 was originally asked underneath the South
 11 Carolina Code of Laws, South Carolina Archaeology
 12 Act of 2010, to provide my expertise as an expert
 13 witness to the Court based on that Act. So, yes,
 14 I've been asked to do that.
 15 I've also been asked after the rulings on
 16 that by the Court to provide the same course of
 17 testimony on behalf of the Court by the
 18 Plaintiff.
 19 Q: All right. Was that a "yes" to my question?
 20 A: It was an explanation because the question's
 21 more nuanced than a "yes."
 22 Q: Okay. My question was: Have you been
 23 engaged by the Plaintiff to provide expert
 24 testimony?
 25 A: Define "engaged."

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1 Q: Have you been hired to give expert
 2 testimony?
 3 A: I have received no funds.
 4 Q: All right. Have you been asked to give
 5 expert testimony in this case?
 6 A: I have been asked to do my job, yes.
 7 Q: Okay. Now, we'll get to what your job is,
 8 but perhaps we can just -- you can tell me what
 9 it is specifically that you were asked to do.
 10 A: I was asked to follow the code of laws and
 11 provide information towards the damage assessment
 12 of two archaeological sites located on the river,
 13 which are the -- part of the -- as I understand
 14 it part of a larger court case dealing with your
 15 clients.
 16 Q: So what I heard you say is that you're to
 17 give the damage assessment --
 18 A: Correct.
 19 Q: -- for those two sites, correct?
 20 A: That is correct.
 21 Q: Are you rendering an opinion as to whether
 22 or not these are, in fact, archaeological sites
 23 that are protected under the Act?
 24 A: All archaeological sites are protected under
 25 the Act.

1 Q: All right. So, no, they're not. It applies
2 to sites that are over a hundred years old,
3 doesn't it?

4 A: It -- the statement as to -- yes, I'm sorry.
5 As an archaeologist, I tend to think of a hundred
6 years as being yesterday. But we are talking
7 about sites that are at least that old, yes.

8 Q: So -- so have you formed an opinion as to
9 whether or not this is an archaeological site
10 that even qualifies under that statute?

11 A: I have indeed formed an opinion that both
12 sites do indeed fall underneath the Act.

13 Q: All right. That's what I need to know.

14 Are you offering any opinions regarding the
15 work that was performed by any of the parties to
16 this case in the sense of whether or not it was
17 performed consistent with the contracts?

18 A: I have not seen your contract.

19 Q: All right. So the answer is "no"?

20 A: So the answer would be "no," not in terms of
21 the contract.

22 Q: Are you going to be offering opinions
23 regarding the work performed by any of the
24 Defendants in this case in terms of compliance
25 with industry standards?

1 that has the damage assessment stuff in it?

2 A: Yes.

3 Q: Okay. I just want a way --

4 A: No, that's okay.

5 Q: -- we can refer to that. What can we call
6 this?

7 A: I call it the South Carolina Archaeology Act
8 of 2010, as was called by the Legislature when
9 they had the meetings on it and the rest, yes.

10 Q: Okay. I'm just looking for a shorthand
11 label.

12 A: South Carolina Code -- South Carolina
13 Archaeology Act 2010.

14 Q: Okay. Now, will you be testifying that any
15 of the Defendants in this case violated any
16 statute other than the South Carolina Archaeology
17 Act of 2010?

18 A: I will be referencing as a statement leading
19 into those actions which occurred outside of
20 areas of easement or area of expected effect
21 which caused damaged to an archaeological or two
22 archaeological sites. The precise codes that
23 will be involved with that are still in process.

24 Q: All right. So you do not have a final
25 opinion today regarding codes or statutes or --

1 A: I am unfamiliar with the industry standards
2 of their occupations, so the answer would be
3 "no."

4 Q: Is there any aspect of the work performed by
5 the Defendants in this case on which you will be
6 testifying?

7 A: Okay. The answer to that would be the
8 damage assessment to two archaeological sites.

9 Q: Okay. So -- and you're -- in other words,
10 you'll be testifying regarding the consequence of
11 their work, but not the manner in which it was
12 performed, is that correct?

13 A: I will be dealing with the consequences of
14 the work, that's correct.

15 Q: Okay. And not the manner in which it was
16 performed?

17 A: I can't guarantee that, no.

18 Q: Okay. Will you be testifying concerning any
19 violations of codes or regulations other than the
20 historical artifacts -- give me a short title for
21 that. What's a short title for the code that you
22 are going to testify regarding?

23 A: I'm not sure I understand the question.

24 Q: All right. South Carolina Code of Laws
25 16-11-780, you understand that that's the code

1 A: I have an opinion.

2 Q: Let me finish the question, please.

3 A: Sure. Go ahead.

4 Q: Do you -- as you -- as we sit here today, do
5 you have final opinions regarding violations of
6 code or regulations by any of the Defendants here
7 other than the South Carolina Archaeology Act of
8 2010?

9 A: I am -- you'll have to say that one again,
10 I missed part of it.

11 MR. KENDALL: Can you please read it
12 back?

13 THE WITNESS: Sure.

14 MR. KENDALL: She'll do that.

15 THE WITNESS: I'm just agreeing with
16 you.

17 THE COURT REPORTER: "As we sit here
18 today, do you have final opinions regarding
19 violations of code or regulations by any of
20 the Defendants here other than South
21 Carolina Archaeology Act of 2010?"

22 THE WITNESS: Okay. Thank you.

23 Final? No.

24 BY MR. KENDALL:

25 Q: Preliminary opinions?

1 A. Yes.

2 Q. Okay. All right. Anything else that I

3 haven't specifically asked about on which you

4 expect to give opinion testimony?

5 A. That is too broad a question for me to

6 answer.

7 Q. All right. Now, when you were -- so when

8 you were retained by -- or when you were

9 engaged -- we'll use the consistent language.

10 When you were engaged by the Plaintiffs in this

11 case, did -- is there a document that outlined

12 what it was you were agreeing to do for them?

13 A. Not that I have, no.

14 Q. And how did -- did you memorialize your

15 conversation or agreement in any specific way?

16 A. The materials that you have from the prior

17 deposition go over those conversations.

18 Q. I'm asking you today and I'm going to ask

19 you to answer my question. Do you have a

20 memorialization of what you were asked to do?

21 A. I have a verbal conversation.

22 Q. All right. And other than the items that

23 you've listed, the damage assessment on two

24 archaeological sites --

25 A. Uh-huh (affirmatively responds).

1 for a moment.

2 Q. Have you -- and how long have you been the

3 State Archaeologist?

4 A. Twenty-eight years.

5 Q. And have you ever issued a citation to

6 anyone for a code or regulatory violation?

7 A. Ah, so the question is citation.

8 Q. That's the question I just asked you.

9 A. Well, it was not clear to me.

10 Q. All right. I'm asking it -- is the

11 question -- okay. I'm asking you this question:

12 In your -- in your capacity as the State

13 Archaeologist, have you ever issued a citation to

14 any person or company for a violation of a code

15 or a regulation?

16 A. The answer is "no."

17 Q. Okay. And, in fact, the statute does not

18 authorize you to do so, does it?

19 A. The statute does not authorize me to put out

20 citations, correct.

21 Q. Right. So while you may give advice to

22 other agencies, your office does not have

23 authority to cite people for violations, correct?

24 A. I do not cite people.

25 Q. Right. You don't have the authority to do

1 Q. -- the site -- that the sites do, in fact,

2 fall under the Act, testimony -- opinions

3 regarding the manner of work performed by these

4 Defendants, and opinions regarding violations of

5 codes or other regulations, is there anything

6 else that you agreed to do for the Plaintiffs?

7 A. Not that I'm aware of, no.

8 Q. Okay. Early on, you -- you indicated that

9 you would be testifying consistent with your

10 job --

11 A. Uh-huh (affirmatively responds).

12 Q. -- what you do on your -- for your job, is

13 that correct?

14 A. That's correct.

15 Q. Other than the South Carolina Archeology Act

16 of 2010, is there -- do you have code enforcement

17 responsibility in South Carolina?

18 A. Code enforcement responsibility? I have

19 advisory, but not code. In other words, I advise

20 groups that are engaged in determination of code

21 and provide expert advice to them as to their

22 final statement.

23 Q. But you do not have code enforcement

24 authority as the State Archaeologist, correct?

25 A. I'm going to have to think about that one

1 so.

2 A. I have the authority to advise other people

3 to provide citations. I do not cite people on my

4 own.

5 Q. Right. Because you don't have code

6 enforcement authority, do you?

7 A. I do not provide citations, correct.

8 Q. That wasn't my question. You do not have

9 code enforcement authority, do you?

10 A. I'm not sure what that means. If you're

11 asking me if I'm doing citations, the answer is

12 "no."

13 Q. No, I didn't ask you that. I asked you if

14 you have code enforcement authority.

15 A. Uh-huh (affirmatively responds).

16 Q. Do you know?

17 A. The answer is, I do not engage in citations.

18 I assist other groups in code enforcement. It's

19 not clear to me which you're preferring to hear.

20 Q. An answer to my question is what I'm asking

21 for --

22 A. I think I answered it.

23 Q. -- which is: Do you have the authority to

24 enforce code?

25 A. I do not enforce code.

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1 Q. Thank you. And you're familiar with the act
 2 that authorizes your office; correct?
 3 A. Sure.
 4 Q. Code Sections 30 -- excuse me, 60-13-210?
 5 A. Correct, the 1963 Enabling Act.
 6 Q. And is there any other code that defines the
 7 scope of your job?
 8 A. Outside of the Archaeology Act?
 9 Q. Right. That's a specific application, but
 10 in terms of the authorization of what your office
 11 does, is there any other code?
 12 A. There are Memorandum of Agreement with other
 13 state agencies and other groups.
 14 Q. Okay. And are those codified in terms of --
 15 has the Legislature codified those or that's just
 16 interagency cooperation stuff?
 17 A. Interagency.
 18 Q. Okay. And just, if you can, just so I
 19 understand the difference between that and these
 20 statutory things, how -- sir, what's the
 21 functional effect of those memorandums?
 22 A. It depends. The --
 23 Q. Does it just mean that there are certain
 24 tasks that you all at the state -- South Carolina
 25 Institute of Archaeology and Anthropology have

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1 agreed to assist other agencies?
 2 A. It's an understanding between other agencies
 3 and my office and other offices to assist them in
 4 coming to conclusions based on their ability to
 5 engage in code enforcements, among other things,
 6 yes.
 7 Q. Okay. For example, is there a memorandum
 8 with the Department of Transportation?
 9 A. There was. I'm not sure if it's still in
 10 effect. I'd have to double check. There is one
 11 that's currently in effect with Archives &
 12 History.
 13 Q. All right. And does Archives & History have
 14 code enforcement authority?
 15 A. Archives & History has enforcement
 16 underneath the State Historic Preservation Act,
 17 yes, federal.
 18 MR. KENDALL: Okay. Let's mark this.
 19 (EXHIBIT 15 MARKED FOR IDENTIFICATION:
 20 PURPOSES (2 pages) -- Code 1976, 60-13-210)
 21 BY MR. KENDALL:
 22 Q. And we've picked up on the numberings from
 23 the last deposition; so this has been marked
 24 Exhibit 15 and this is just a printout of the
 25 code. You're familiar with 60-13-210, right?

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1 A. Yes, I am.
 2 Q. All right. And in subsection --
 3 MR. CHAMBERS: I just want to stop here
 4 a minute.
 5 MR. KENDALL: Is there an objection to
 6 form?
 7 MR. CHAMBERS: It's an objection to
 8 scope because we're --
 9 MR. KENDALL: All right.
 10 MR. CHAMBERS: -- sitting for a second
 11 deposition for the purpose of moving forward
 12 to what he's done since. This is a -- this
 13 is all -- like, you've gotten into a line of
 14 questioning here that's a rehashing of what
 15 we covered in the last deposition.
 16 MR. KENDALL: All right. Take it up
 17 with the Judge. I'm going to ask my
 18 questions.
 19 BY MR. KENDALL:
 20 Q. The -- you're familiar with this statute,
 21 correct?
 22 A. I am.
 23 Q. All right. The -- under subsection C, it
 24 defines the scope of the State Archaeologist;
 25 does it not?

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1 MR. CHAMBERS: Dr. Leader, we'll take
 2 this up with the Judge.
 3 MR. KENDALL: So are you telling him
 4 not to answer the question?
 5 MR. CHAMBERS: Yes.
 6 MR. KENDALL: All right.
 7 BY MR. KENDALL:
 8 Q. When you entered -- when you were engaged by
 9 the Plaintiffs to do the four things that you've
 10 listed, did you discuss or come to an agreement
 11 as to the terms of your engagement? Are you
 12 being paid to do this work?
 13 A. I am not being paid.
 14 Q. All right. Did you provide -- or did you
 15 agree upon a time frame by which you would
 16 complete this work?
 17 A. Basically the end of the year, yes.
 18 Q. Did you agree that you would produce a
 19 written report?
 20 A. I did.
 21 Q. Have you produced a written report?
 22 A. It's in process.
 23 Q. Is it in a draft form?
 24 A. It is not complete. It's in process.
 25 Q. So it's in draft form?

1 A. Draft, yes.

2 Q. Is that what you mean by that, by not in --

3 "in process" means it's in draft?

4 A. When I look at a draft, the only -- when I

5 use the term "draft," my expectation is the only

6 thing that's left is the grammar and the

7 spelling.

8 Q. Okay. So --

9 A. So it's in process.

10 Q. Okay. That's fair, if that's how you use

11 the term. And when do you expect to have that

12 completed?

13 A. By the end of the year.

14 Q. And is it in electronic format now? Is

15 there something in your computer that is what

16 you -- is in process?

17 A. Yes.

18 Q. And when was that document or that -- I

19 guess it's a document. It's like a Word

20 document?

21 A. It is indeed a Word document.

22 Q. All right. And when did you start that

23 document?

24 A. After the Plaintiffs came to me and asked me

25 to assist them.

1 (Off the Record)

2 (EXHIBIT 16 MARKED FOR IDENTIFICATION

3 PURPOSES (6 pages) - Subpoena)

4 BY MR. KENDALL:

5 Q. Show you what's been marked as Exhibit 16.

6 Have you seen this subpoena?

7 A. (Perusing.) Yes, I believe I have. They

8 all look the same to me, honestly, but I think I

9 have.

10 Q. If you will then turn to the next to the --

11 I have a blank page as my last page, but

12 Exhibit A, that's what I want you to see, where

13 your finger is now.

14 A. (Witness complies.)

15 Q. Have you seen this list of documents?

16 A. I -- hang on a second. Let me go through

17 it. (Reading.) Okay. Yes.

18 Q. All right. And have you produced everything

19 that's requested on this list?

20 A. I have.

21 Q. All right. So are there any e-mails from

22 you to anyone or to you from anyone regarding

23 this -- regarding this project?

24 A. The only materials that exist are the

25 materials that were from the original deposition.

1 Q. And when was that?

2 A. After the court case where the Judge said

3 that I was not acting on behalf of the Court.

4 Q. Okay. Do you know when that order was

5 issued?

6 A. I'd have to look at it to be sure. I can't

7 give you the date.

8 Q. And it was sometime late summer, early

9 fall-ish.

10 A. It would have been -- actually, no, it would

11 have been late fall-ish before I got started on

12 it.

13 Q. Okay. But the order was in the late summer.

14 A. That's true.

15 Q. Right. And so when were you -- when did you

16 reach this agreement with the Plaintiffs to do

17 this work for them?

18 A. I think we discussed whether I would do it

19 October and I think I actually got started on it

20 pretty much end of October/November.

21 Q. Okay. Did you receive a subpoena for

22 documents in this case?

23 A. I did.

24 Q. Do you remember when you received that?

25 A. I'd have to check.

1 Everything else has been done verbally.

2 Q. All right. So how about just answer my

3 question: Are there any e-mails to you or from

4 you regarding this project?

5 A. There are e-mails between me and attorneys

6 specifically to make sure that I was here today.

7 Q. Okay.

8 A. I don't know if you need those or not, but

9 you're welcome to them. And I have e-mail

10 between the attorney at the university and

11 myself, which I believe are privileged.

12 Q. Yes, I will agree give -- I will agree with

13 you on that, but have you had any e-mail

14 correspondence with Mr. Brinkman?

15 A. Mr. Brinkman has invited to me an Explorer

16 Club meeting from a colleague of mine giving a

17 talk and I accepted and went and listened to my

18 colleague, but that has nothing to do with this.

19 Q. Correct. How about anything that does have

20 to do with this?

21 A. Not that I am aware of, no.

22 Q. All right. Did -- when he provided you --

23 has he provided you information regarding this

24 case?

25 A. He did. It was covered by the earlier

1 deposition.

2 Q. Right. I'm not going to rehash all that,

3 but -- and when he gave you that, did he give you

4 that in paper form or send it to you by e-mail?

5 A. He gave it to me actually on a disk and I'd

6 have to go back and double-check precisely where

7 it came from, anything else. If it was a -- if

8 it was, which it may not have been a digital, if

9 would have been printed out.

10 Q. Have you been provided -- or have you had

11 any e-mail -- excuse me, any e-mail exchange with

12 Attorney Jeff Chambers?

13 A. Not that I'm aware of, no.

14 Q. Any e-mail communications with John Hodge?

15 A. Outside of making sure that I show up, not

16 that I'm aware of.

17 Q. Okay. And this document was dated

18 November 28th and it asked for production to be

19 completed by December 11th. As of December 11th,

20 did you have any portion of your report in your

21 computer?

22 A. I had a title page and the other materials,

23 which I have printed out to you. I don't know if

24 you need the title page, as such, but that's it.

25 Everything else is in my head.

1 never have.

2 Q. And do you advise the director as to what

3 projects you're working on in general terms?

4 A. In general terms, yes.

5 Q. Do you have like a -- like a -- is there a

6 report inside the -- inside your office that

7 says, "We are -- the State Archaeologist Office

8 is currently working on the following issues"?

9 A. No.

10 Q. No? How do you tell the director what

11 you're working on?

12 A. Over coffee.

13 Q. Okay. What's your best estimate of when you

14 were engaged by the Plaintiff after the Court's

15 opinion? I think you said late fall, is that

16 fair?

17 A. I would say very late fall because, frankly,

18 I had to consider it.

19 Q. Okay. Well, since "late fall" can mean a

20 lot to a lot of people because it's not yet

21 winter, so today is late fall --

22 A. Does it ever get to be winter here?

23 Q. When is -- when -- was it in October that

24 you were engaged?

25 A. I would think that would probably be

1 Q. Okay. So that -- when you said it's "in

2 process," as far as it's gotten is you have a

3 title page?

4 A. At this point, it's beyond that, but at the

5 time of the 11th, it was in my head.

6 Q. All right. Do you keep track of your time?

7 A. No.

8 Q. And do you -- who is your -- I don't want to

9 use the word "boss." Who do you answer to?

10 Who's your -- who's over you?

11 A. The director.

12 Q. Okay. And do you have to give an account to

13 him for how you spend time? Do you have to track

14 it in any capacity?

15 A. No, I'm a salaried employee doing my job,

16 so --

17 Q. Right.

18 A. -- no.

19 Q. But I don't know how your interoffice

20 politics work, but you don't -- you don't have to

21 account for "I'm working on this project" versus

22 "I'm working on that project," or anything like

23 that?

24 A. As long as I'm working on the projects of

25 the Institute, I don't think they mind. They

1 accurate.

2 Q. Okay. Tell me everything you've done in

3 this case since late October. Or let me just use

4 it broadly. Since you were engaged by --

5 (Off the Record)

6 Q. Tell me everything you've done since you

7 were engaged.

8 A. I reread the Act. I reread the materials

9 from the Society for American Archaeology. I

10 read the -- the Technical Brief from the

11 Department of Justice. I started assembling

12 materials from the Bureau of Labor Statistics. I

13 gave some consideration to the ethics of what was

14 going on and what it might mean for anything in

15 the future. I discussed with the attorneys. I

16 didn't actually start writing until very

17 recently.

18 Q. Okay. The Act that you reread is the South

19 Carolina Archaeology Act of 2010?

20 A. The Act of 2010 and then the Department of

21 Justice -- Department of Interior, excuse me,

22 Technical Brief and the rest, which was included

23 in your materials.

24 Q. Okay. If you'll let me just take these one

25 at a time, I'd appreciate it.

1 A. Sure.

2 Q. I asked you did you -- when you said you

3 reread the Act, you mean the South Carolina

4 Archaeology Act of 2010?

5 A. That is correct.

6 Q. Okay. And how many times have you testified

7 in court under this Act?

8 A. Actually, we haven't. Other groups have

9 used it to go into court, but we have never found

10 it necessary. Usually by the time we get to

11 that, people settle out of court, my

12 understanding.

13 Q. And how many -- well, part of the statute

14 contains criminal penalties, correct?

15 A. Yeah. Uh-huh! (affirmatively responds).

16 Q. And who prosecutes that?

17 A. That would be district attorneys; the

18 individual if it's a Magistrate's court. Depends

19 on which level it's being done on. There are two

20 different levels.

21 Q. Okay. I'm talking about on the criminal

22 side.

23 A. Two different levels.

24 Q. What are the two levels?

25 A. One is -- is a court case brought by the

1 were the felony case, it'll probably be not

2 local. But I -- I am not an attorney. That's

3 not my --

4 Q. Right.

5 A. -- decision-making process.

6 Q. Have you ever been consulted by a

7 prosecutor's office regarding violations of this

8 statute?

9 A. I have been contacted before, yes.

10 Q. Okay. And do you recall what office it was,

11 which prosecutor office contacted you?

12 A. It was a court case dealing with the

13 Department of Natural Resources, which they then

14 took and ran with them on their own. I was

15 assuming that would have been Wilson's office.

16 Q. Okay.

17 A. In other words, they told me but I don't

18 remember.

19 Q. Right. Now, on the civil side, have

20 you -- have you been engaged by a private

21 landowner in any other civil action under this

22 statute?

23 A. Under that statute, no.

24 Q. All right. So, what you're doing here for

25 these plaintiffs you've not done before, in the

1 plaintiff, who may or may not be an attorney, the

2 landowner or steward, and the other part, once it

3 gets to felony, I'm assuming it would be a

4 district attorney.

5 Q. Okay. You believe that a private landowner

6 has the ability to make a criminal prosecution?

7 A. I believe a private landowner has the

8 ability to -- no, no. I'm sorry. I

9 misunderstood what you're saying. Obviously a

10 prosecutor does that.

11 Q. Right.

12 A. But a criminal case can be brought to a

13 prosecutor for their consideration.

14 Q. Right, right, right. I understand there are

15 criminal aspects to this and there are civil. I

16 get that. So my question --

17 A. Yeah.

18 Q. -- is: You said in terms of who prosecutes.

19 In your experience, who prosecutes?

20 A. Oh, a prosecutor.

21 Q. From the State Attorney General's Office or

22 from the -- from the Richland County Solicitor's

23 Office? Who does that?

24 A. My expectation would be that if it's

25 Magistrate's court, it'll be local, and if it

1 context of a civil action?

2 A. In the context of that specific law?

3 Q. Yes.

4 A. The answer is "yes," that's correct.

5 Q. Okay.

6 A. No, wait a second. I'm sorry. I may have

7 misstated that. Are you asking -- are you asking

8 if I have gone to court on behalf of or if I've

9 been asked to explain the Act to other

10 individuals who then went on their own and did

11 things?

12 Q. No, I'm -- here, this is not just -- as I

13 understand, you were not just used as a Q-and-A

14 source. You weren't just called up and said,

15 "What do you think about this?" This -- you've

16 been engaged to go to court and testify, correct?

17 A. By whom? I'm sorry. I'm not following.

18 Q. By the Plaintiffs in this case.

19 A. In this case, yes.

20 Q. Right.

21 A. Correct.

22 Q. And I'm asking, have you ever done that

23 before?

24 A. I have not been asked to go to court on --

25 by other individuals who've requested.

1 information, correct;

2 Q: That's what I'm asking. Thank you.

3 A: Okay.

4 Q: Other than in this lawsuit, have you given

5 deposition testimony regarding violations of this

6 Act, of the South Carolina Archaeology Act of

7 2010?

8 A: I have not been deposed on the Act.

9 Q: You said that you reviewed materials from

10 the American Society --

11 A: Society American, SAA.

12 Q: Society American. Tell me what that has to

13 do with this case.

14 A: The Society for American Archaeology is one

15 of the largest organizations dealing with

16 archaeology in the United States. They took a

17 strong interest in having these acts put in place

18 and dealing with the Department of Interiors act

19 and provide additional information.

20 Q: Okay. What -- is there something specific

21 within their publications that you reviewed?

22 A: I simply read it.

23 Q: Like everything they've ever published?

24 A: No, no, as specific to the question of

25 archaeological site damages --

1 Q: All right. Did you -- do you have that

2 material in your office?

3 A: No, I do not.

4 Q: Is it online?

5 A: It is.

6 Q: Okay. And so if I search for it, I'm going

7 to search for the 2007 publication that

8 references damaged archaeological sites?

9 A: Uh-huh (affirmatively responds).

10 Q: Okay. Thank you. And was there -- was

11 there specific data that you obtained from them

12 that you've relied on?

13 A: Not specific compared to the other things;

14 from the 2010. It was -- it's pretty much all

15 the same.

16 Q: Okay. So it's the same as the 2010 Act?

17 A: No, the 2010 Act is specific to South

18 Carolina. The technological -- excuse me, tech

19 brief from the Department of Interior and the SAA

20 are closely related.

21 Q: So tell me what the tech brief is. First of

22 all, who published it?

23 A: The National Park Service, Department of

24 Interior.

25 Q: Okay. And what is that? What is the tech

1 Q: Okay.

2 A: -- and assessments.

3 Q: And is there -- is there a citation that you

4 can assist me with?

5 A: Publication 2007.

6 Q: Okay. And what information did you obtain

7 from that publication that you rely on for this

8 testimony?

9 A: Discussion of what determination of costs

10 for artifacts; for doing the work, or for the

11 restoration and repair.

12 Q: And I'm going to show you a set of documents

13 that we received from -- I think it was through

14 Mr. Lampl's office; but we were told that this

15 was supplemental document production response to

16 the subpoena.

17 A: Uh-huh (affirmatively responds).

18 (EXHIBIT 17 MARKED FOR IDENTIFICATION

19 PURPOSES (75 pages) -- Occupational Employment

20 Statistics)

21 (Off the Record)

22 BY MR. KENDALL:

23 Q: Does this contain anything from the American

24 Society for American Archaeology?

25 A: No, it does not.

1 brief that you're referring to?

2 A: The tech brief is the process by where you

3 determine damage to archaeological sites.

4 Q: All right. So it's a -- they publish a

5 methodology --

6 A: Uh-huh (affirmatively responds).

7 Q: -- for determining damage?

8 A: They did.

9 Q: Okay. And did you print -- is that

10 contained in Exhibit 17?

11 A: I'm not sure if it is or not.

12 Q: Okay.

13 A: I remember downloading it, maybe. If it

14 did, it's here; if it's not, it's still on

15 online.

16 Q: All right. Would you mind just confirming

17 that it's not in there?

18 A: Sure. (Perusing.) No, it's not. So

19 obviously I did not download it. It's still

20 online.

21 Q: And a quick search has indicated -- I see a

22 document titled "Technical Brief 20"?

23 A: Uh-huh (affirmatively responds).

24 Q: Is that the one you referred to?

25 A: It's the rest of the title.

1 Q. Archaeological Resource Damage Assessment:
 2 Legal Basis and Methods?
 3 A. Yep, that would be it.
 4 Q. By Martin McAllister?
 5 A. That would be correct.
 6 Q. Okay. Did you follow that methodology?
 7 A. I followed the methodology in the
 8 Archaeology Act, which does indeed encompass some
 9 of the methodology from the 2010 (sic) brief.
 10 Q. Okay. So --
 11 A. Or I should say in the process. I'm not
 12 obviously done, but yes.
 13 Q. Okay. Said you reviewed statistics from the
 14 Bureau of Labor. Is that the stuff that is in
 15 Exhibit 17?
 16 A. Yes.
 17 Q. Okay. And what was the purpose of reviewing
 18 that -- those statistics?
 19 A. Part of the assessment will be based on
 20 people engaged in work. Since it's not clear
 21 where the people doing the work would be from, it
 22 was important to get a appropriate statement for
 23 mean costs, neither the top nor the bottom, but
 24 what things might actually cost per hour for the
 25 various occupations required to do the work.

1 accept no money or emolument either from this or
 2 any future work from this.
 3 Q. Uh-huh (affirmative response).
 4 A. So whatever happens with this, I will not
 5 obviously be one of the people bidding on
 6 anything that may or may not come out of it.
 7 Q. Uh-huh (affirmative responds).
 8 A. In terms of providing the information, the
 9 information that I would come up with would be as
 10 accurate as possible and available to anybody who
 11 asked it; that if there was a question of a
 12 nondisclosure, I would not sign one --
 13 Q. Okay.
 14 A. -- because it's paid by taxpayers.
 15 Q. All right. Is -- was it -- is it important
 16 to you in this -- in this ethical construct to be
 17 nonbiased towards any of the parties involved?
 18 A. That is correct.
 19 Q. All right. And to -- because you want to
 20 render opinions that are as neutral and
 21 subjective as possible?
 22 A. That is also correct.
 23 Q. Okay. Is that -- was that important to
 24 you -- being able to -- was being able to do that
 25 important to you in making a decision to go

1 properly.
 2 Q. Okay. And is the data that is in here data
 3 that you intend to rely upon?
 4 A. Yes.
 5 Q. Okay. You said you considered ethics and I
 6 was writing as fact as I could, so I might not
 7 have gotten that whole sentence. What -- tell me
 8 what you mean. What ethics were involved in your
 9 considerations?
 10 A. The primary ethical concern had to deal with
 11 the issue of working specifically for a plaintiff
 12 versus the court.
 13 Q. Okay. Is there something that you read
 14 about to make that determination -- make a
 15 determination?
 16 A. Not really, no. It's just something I
 17 considered heavily for a period of time.
 18 Q. Okay. And did you resolve any concerns or
 19 conflicts that you had?
 20 A. Yes.
 21 Q. And how have you resolved it? Well, you're
 22 here today, so I'm going to assume you must have
 23 decided this was okay.
 24 A. I did and, yes, I am. What I decided was,
 25 that since I am paid by the taxpayer, I could

1 forward as an expert in this case?
 2 A. Yes.
 3 Q. If you could not be unbiased, would you
 4 withdraw?
 5 A. I'm not quite following you. Are you saying
 6 if there was a conflict in that -- that I was
 7 clear that it was a question of bias, would I
 8 withdraw?
 9 Q. Yeah.
 10 A. Yeah. The answer is "yes," of course.
 11 Q. Okay. And the last thing you mentioned was
 12 that you -- let me ask you this. Did you seek
 13 any opinions from other agencies of the State in
 14 order -- on this ethics issue?
 15 A. Not directly at this time, no. Many of the
 16 questions as to -- that was running through my
 17 head have already been answered in the past by
 18 the Ethics Commission, South Carolina Ethics
 19 Commission.
 20 Q. Okay. But you didn't -- you didn't write to
 21 them and ask for them --
 22 A. I did not.
 23 Q. And did -- was there any -- were there any
 24 particular opinions of theirs that you did
 25 review?

1 A. Not directly, no. I simply went through
 2 back to the things that were called.
 3 Q. Okay. And then the last thing you mentioned
 4 in the work you performed is that you've
 5 discussed this with attorneys. Now, I don't want
 6 to know about your conversations with George
 7 Lampl.
 8 A. Uh-huh (affirmative response).
 9 Q. He's the attorney for the university, so --
 10 but other attorneys include who?
 11 A. Well, obviously, John Hodge had been in
 12 contact with me to see if I would do it, so John
 13 Hodge, sure.
 14 Q. Okay.
 15 A. And, clearly, the gentleman next to me at
 16 this point.
 17 Q. Okay. His name?
 18 THE WITNESS: You'll forgive me?
 19 MR. CHAMBERS: Geoffrey Chambers.
 20 BY MR. KENDALL:
 21 Q. All right. Now, have you -- other than
 22 asking you the question of would you do this
 23 work, have you had other conversations with them
 24 regarding the work that you have done?
 25 A. Primarily to ask me when I would be done

1 A. No.
 2 Q. -- to get to your final opinions?
 3 A. They did not.
 4 Q. All right. Did they tell you anything
 5 regarding the impact of your findings would be on
 6 this case?
 7 A. No.
 8 Q. Did you all discuss your deposition
 9 testimony for -- that you're giving today?
 10 A. No.
 11 Q. Have you ever met with them to prepare for
 12 your deposition?
 13 A. No.
 14 Q. Have they told -- so they haven't talked to
 15 you at all about how you might respond to
 16 questions or how the process would go?
 17 A. Well, last night, the -- Mr. Chambers here
 18 suggested we come a little bit early so he could
 19 tell me that we're going to be going through this
 20 and that he would be more concerned about my
 21 dealing with the current versus the previous, but
 22 I think that's obviously on the record at this
 23 point.
 24 Q. Are there any other attorneys with whom
 25 you've spoken?

1 with it.
 2 Q. Have you discussed your findings with them?
 3 A. I have discussed preliminary discussions
 4 where I'm going with it, yes.
 5 Q. Okay. I don't want to pick at you, because
 6 I -- but I heard a little different thing. You
 7 discussed where you're going. Have you discussed
 8 your findings?
 9 A. I have not discussed my final findings.
 10 Q. Because you haven't gotten there yet?
 11 A. That's correct.
 12 Q. Okay. Have you given them any preliminary
 13 opinions about what you think you're going to --
 14 are going to be your final opinions?
 15 A. I have given them -- yes.
 16 Q. All right. And in what form?
 17 A. Verbal.
 18 Q. Have you met with Mr. Hodges or Mr. Chambers
 19 since October of this year?
 20 A. John did come to my office at one point to
 21 ask me how -- you know, whether I would and how I
 22 would do things and whether I'd move forward and,
 23 you know, that type of thing, so yes.
 24 Q. Did they suggest to you a process that you
 25 would use to --

1 A. No. Oh, actually, that's not true. I think
 2 Mr. McAllister may be an attorney.
 3 Q. You're talking about the McAllister of --
 4 that wrote that article?
 5 A. Yeah.
 6 Q. Did you call him about this case?
 7 A. I did.
 8 Q. All right. And did you keep any notes or
 9 records of your conversation with him?
 10 A. It's in there (indicating).
 11 Q. Would you mind just flipping to a
 12 document -- it'll be the penultimate page. It's
 13 marked 74?
 14 A. (Witness complies.) Yes.
 15 Q. Is that the note you were referring to?
 16 A. It is.
 17 Q. Okay. Let me -- so there's his contact
 18 information. You spoke to him on December 5th,
 19 2017?
 20 A. That is correct.
 21 Q. Is that what that means?
 22 A. Uh-huh (affirmatively responds).
 23 Q. What does 1500 mean?
 24 A. 3:00 o'clock in the afternoon.
 25 Q. All right. "Consultation on damage

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1 assessments sections 1, 2, 4, and 6," what does
 2 that refer to?
 3 A. He told me that he found in his practice
 4 that focusing on Sections 1, 2, 4, and 6 of the
 5 Technical Brief is where he went with it. So I
 6 made a note of that, but I haven't actually
 7 looked at them yet; not in the respect that he
 8 was suggesting.
 9 Q. Okay. "Intended for both criminal and civil
 10 use. Has been used for both."
 11 A. Correct.
 12 Q. Those were -- was that his statement?
 13 A. Yes.
 14 Q. All right. And what did it mean to you?
 15 A. Well, I asked him. I point -- you know, he
 16 asked me how it was going here and we had a chat
 17 and I told him that the Judge had been asked to
 18 not have me as a witness to the Court because it
 19 was not a criminal proceeding and he was
 20 surprised by that because it was specifically
 21 designed -- when he was dealing with and what we
 22 thought we were dealing with was designed for
 23 both, for both criminal and civil, and that he
 24 had used it for both criminal and civil. And I
 25 said, "Well, that's good," and I made a note.

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1 Q. Okay. Then the statement, "Restoration
 2 stabilization are often large costs."
 3 A. Based on his experience.
 4 Q. Okay. So that's not a specific to this --
 5 that's not his assessment of this specific site,
 6 correct?
 7 A. No.
 8 Q. While we're -- while we're (sic) got this
 9 document open, let me just -- let me clarify
 10 what's in it, if you don't mind. We'll just kind
 11 of walk through the sections of it.
 12 It looks like to me -- and I don't want to
 13 assume too much; I just want to speed this
 14 along -- that the first page through what's been
 15 marked as Leader 72 are all from the -- of your
 16 Labor Statistics.
 17 A. Not going through them each time, I suspect
 18 that that is correct.
 19 Q. Well, they'll kind of speak for themselves,
 20 but they all kind of have -- they all have a
 21 website header --
 22 A. Yes --
 23 Q. -- on them.
 24 A. -- in which case that's probably correct.
 25 Q. Okay. The next page, 73, tell me what that

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1 is.
 2 A. One of the questions I had to myself was how
 3 one determines the actual price of a site. So I
 4 asked that I be provided with what it took for
 5 Mr. Brinkman to come up with the assessment that
 6 he did. And I asked him to make sure it was
 7 notarized and accurate. He was not to pad it.
 8 He was not to understate it. It was to be as
 9 accurate as he possibly could make it.
 10 Q. Okay.
 11 A. And that's exactly what this is.
 12 Q. All right. And the date of October 26,
 13 2017, that's when you received it or thereabout?
 14 A. That's when it was dropped off to me, yes.
 15 Q. Okay. And have you -- have you done
 16 anything to verify the information that's
 17 contained here?
 18 A. I have not.
 19 Q. And so 74 is your notes. How about going
 20 over to 75? What is -- what is that document?
 21 A. Again, going to the same question of what is
 22 an archaeological site worth, I'm not a real
 23 estate agent. This is a residential property.
 24 So the question I had was, huh, how would a real
 25 estate agent look at having an archaeological

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1 site on the property? Is it something that's
 2 value added? Is it some that's value negative?
 3 Is it value neutral?
 4 So I picked three individuals who had high
 5 local recommendations, 106 years of combined
 6 experience, which meant that they were not new to
 7 it, and I asked them the question. And two were
 8 clear that it was positive, as long as the site
 9 was not in a location which precluded use of the
 10 property, and one was, well, it depends on who
 11 you get, but, again, if it's not in a place where
 12 it's going to be a problem, then it's either
 13 neutral or better.
 14 Q. All right. And so the -- when you write
 15 here, Q. "Are archaeological sites located on
 16 residential properties..."
 17 A. The next part is the same part of the same
 18 statement: "Are they negative, neutral, or
 19 positive?"
 20 Q. Okay. Very good. Thank you. There's the
 21 line that says, "Size of property is a factor."
 22 A. Yes.
 23 Q. Do each -- and that looks like it's under
 24 each person's name. Did -- all three of them
 25 told you that it depends on how big the property

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1 is?

2 A. That is correct.

3 Q. Okay. Did any of them tell -- give -- put a

4 value? Did they quantify what the impact of it

5 is?

6 A. No, unfortunately not.

7 Q. Okay. And you're not -- you're not

8 qualified to do that.

9 A. I would not do that.

10 Q. And did you discuss the specific site with

11 them or just generically the effect of an

12 archaeological site?

13 A. I discussed with them a archaeological site,

14 historic archaeological site on a residential

15 property, not an impact to the house or use of

16 the property.

17 Q. So you didn't describe it as a bridge

18 abutment or as an early 1800's structure or

19 anything of that nature?

20 A. I simply discussed it as a historical

21 archaeological site.

22 Q. Okay. That's the entirety of the documents

23 that we were provided in response to the

24 subpoena. Are you -- can you think of anything

25 else that you may have in your files that isn't

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1 part of this production?

2 A. No.

3 Q. You had previously produced some documents

4 in response to a FOIA request, so I'm assuming

5 that's still in your file --

6 A. Yes.

7 Q. -- Correct? And nothing more had been added

8 to it in terms of historical information,

9 photographs, site surveys, any of that --

10 anything of that nature?

11 A. Not that I am aware of, no.

12 Q. Okay. I did not recopy that here, so we

13 don't -- I don't have that.

14 A. Uh-huh (affirmative response).

15 MR. KENDALL: All right. And we've

16 been going just about an hour, so let's take

17 just a quick comfort break and we'll be

18 back.

19 (Off the record from 10:42 a.m. to 10:48 a.m.)

20 BY MR. KENDALL:

21 Q. For time sake, I'm not going to repeat all

22 my -- all the questions that's been asked to you

23 about the investigation that you did prior to

24 October of 2017, but let me try to do it in a

25 little bit of a summary fashion just for context.

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1 Have you -- you've interviewed Mr. Brinkman,

2 correct, or talked to him?

3 A. I have talked to Mr. Brinkman in the

4 requests for information, yes.

5 Q. Have you spoken to Mr. Brinkman -- other

6 than asking him for that wage statement, have you

7 talked to him since October?

8 A. When he invited me to the Explorers Club to

9 listen to one of my colleagues.

10 Q. Regarding -- regarding this -- the issues

11 at -- of this lawsuit?

12 A. Not to the best of my knowledge, no.

13 Q. So you haven't obtained anything new -- new

14 information from him about the site?

15 A. No.

16 Q. You've been on the site, correct?

17 A. Yes.

18 Q. And those are -- those were discussed

19 before. Have -- but I recall that perhaps you

20 had not been to the other side of the river.

21 Have you been since --

22 A. To --

23 Q. -- to look at -- there was a discussion

24 about the artifacts located in different parts of

25 the --

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1 A. No, I have not --

2 Q. -- site.

3 A. -- been to the other side of the river.

4 (Mr. Stewart enters at 10:50 a.m.)

5 Q. Okay. When was the last time you recall

6 being on the site?

7 A. Not a hundred percent sure.

8 Q. Was it before the sewer work was done?

9 A. Oh, yes, I had been there before the sewer

10 work.

11 Q. Is it -- was it -- was the last time -- let

12 me ask it differently. Have you been there since

13 the sewer work was done?

14 A. Yes.

15 Q. Okay. And had any -- at any time, did you

16 ever do any -- any excavation work at all?

17 A. No.

18 Q. Have you -- did you ever go down the bank

19 from -- after the sewer work is done, did you --

20 did you go to the -- to the bridge abutment?

21 A. I went to the bridge abutment, yes.

22 Q. Okay. Have you done any sort of an

23 inventory of the -- of the artifacts that are

24 located on this site?

25 A. No.

1 Q: And I may use language that doesn't fit in
 2 your world, so you help me out, if you can. But
 3 what I just intended to ask you was, have you
 4 counted the rocks?
 5 A: I have not counted the rocks.
 6 Q: Okay. And is the word -- did I use the word
 7 "artifacts" correctly?
 8 A: Not really, but I understood what you meant.
 9 Q: All right. Tell me how to use a better
 10 word. What should I say when I'm talking about
 11 the pieces and parts that may be located on this
 12 site that are of historical interest?
 13 A: Oh, okay. In that regard, you're correct.
 14 You can use it as artifacts, that's fine.
 15 Q: Okay. And so when I asked you about
 16 counting the rocks, I don't mean just random
 17 rocks. I mean the stones, the materials that are
 18 allegedly part of the -- of the historical -- of
 19 this bridge abutment. Have you inventoried
 20 those?
 21 A: I have not.
 22 Q: If you were to do an inventory, what kind of
 23 information would you record?
 24 A: Well, that's actually part of the damage
 25 assessment.

1 engaged in actual exploration of a damaging sort;
 2 in other words, excavation work.
 3 If it's underneath a -- in an area which is
 4 protected underneath someone's care, simply
 5 noting that it exists may be sufficient. It may
 6 not be necessary to make a full inventory. Full
 7 inventories cost money.
 8 Q: For purposes of -- just for archival
 9 purposes within your office, do you --
 10 A: Uh-huh (affirmatively responds).
 11 Q: -- not -- you don't -- standard -- let me
 12 start the sentence over.
 13 Within your office for archival purposes, do
 14 you routinely do inventories of these
 15 archaeological artifacts?
 16 A: I don't like to use the term "routine." It
 17 depends.
 18 Q: Okay. And do you do it other than when a
 19 site may be under threat or there's some risk
 20 that it will be destroyed?
 21 A: That guarantees it. Underneath under
 22 circumstances, it may include the need to have
 23 the information taking care of for some
 24 stewardship activity.
 25 Q: Either before or since October of 2017, did

1 Q: Okay. To do an inventory?
 2 A: Absolutely.
 3 Q: All right. What kind of information would
 4 you record if you were doing that?
 5 A: That would require a accurate survey of each
 6 and every element, which is, in your terms, the
 7 rocks. Each and every element, their current
 8 location. It would require photography, drawing,
 9 other graphic representations, a numbering
 10 system, and the production of a -- of a master
 11 list.
 12 Q: Okay. So you said you would do that as part
 13 of the damage assessment. Do you ever do that as
 14 part of -- of sites that aren't allegedly
 15 damaged?
 16 A: Yes.
 17 Q: In other words, when you come upon or when
 18 you're told about an archaeological site, you do
 19 an inventory of it?
 20 A: Yes and no.
 21 Q: Okay. Help me. What's the distinction?
 22 A: It depends.
 23 Q: All right.
 24 A: The statement for "yes" is if you're -- you
 25 know, if it's under threat or if it's about to be

1 you -- have you done any research of historical
 2 documentation about this site?
 3 A: I have not.
 4 Q: Did you photograph the site?
 5 A: I did not.
 6 Q: Have you surveyed the site?
 7 A: I have not.
 8 Q: Have you independently collected any
 9 information, any data about this -- this
 10 property?
 11 A: No.
 12 Q: Has everything that you've obtained about
 13 the property itself come from Mr. Brinkman?
 14 A: Yes.
 15 Q: Have you independently verified any of his
 16 data?
 17 A: I believe more information needs to be
 18 independently verified.
 19 Q: All right. So if he provided you a copy of
 20 a map --
 21 A: Uh-huh (affirmatively responds).
 22 Q: -- and said, "This is a map of X" --
 23 A: Uh-huh (affirmatively responds).
 24 Q: -- have you verified the accuracy or
 25 authenticity of his map?

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1 A. If it's a historic map from Archives &
 2 History, I have indeed gone back to double check
 3 to see if it's listed as such. Have I pulled it?
 4 No.
 5 If the question is whether or not the maps
 6 produced by Brinkman himself? That was part and
 7 parcel of walking -- pun intended -- walking
 8 across the property.
 9 Q: Okay. I mean -- I'm asking about the
 10 historical documents.
 11 A. Okay.
 12 Q. The archive -- the things that may be
 13 archived documents or courthouse documents, those
 14 kinds of things. Have you independently verified
 15 the authenticity of the documents he provided
 16 you?
 17 A: No.
 18 Q: Is there -- is there a catalog of those
 19 documents that -- in other words, if you -- if
 20 you wanted to verify that there are archived
 21 documents, would -- is there a process that you
 22 could use to do that?
 23 A. Yes.
 24 Q. And would the other kinds of maps that you
 25 referred to are things that he did on his

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1 computer or generated from site surveys and those
 2 things?
 3 A. Correct.
 4 Q: Okay. And you've also not independently
 5 verified their accuracy, is that correct?
 6 A. No, I have not.
 7 Q: Have you reviewed any site surveys?
 8 A: Yes.
 9 Q: Okay. Let me ask you a better -- there was
 10 one that was done recently by Mr. Chao. Have you
 11 seen that survey?
 12 A. I have not.
 13 Q: Okay. What's the most recent site survey
 14 that you've seen in terms of when it was created?
 15 A. I need more information. Precisely compared
 16 to what?
 17 Q: Well, I don't have a full list of
 18 everything, but my idea is, if you didn't see
 19 Mr. Chao's, maybe you saw one that was created in
 20 the 1980's when the original sewer work was done.
 21 Have you seen the site survey from that period?
 22 A: Ah, you're talking about engineering
 23 surveys.
 24 Q: Yeah, yeah, yeah, that's what I -- I mean a
 25 real topographic done by a surveyor kind of

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1 surveys.
 2 A: Unless it was attached to the materials, I
 3 have not gone seeking them, no.
 4 Q: Okay. Have you independently verified the
 5 property lines?
 6 A: No.
 7 Q: Have you reviewed the legal description of
 8 the easement?
 9 A: I have not.
 10 Q: Independent of what somebody may have
 11 specifically told you as to easement location,
 12 have you -- do you have any knowledge of where
 13 the easement is located?
 14 A: I do not.
 15 Q: When you were on site, were there stakes on
 16 the site that indicated where the easement's
 17 located?
 18 A: Initially or the second time?
 19 Q: At any time.
 20 A: There were stakes on the site the last time
 21 I was there, yes.
 22 Q: And when was that last time?
 23 A: Earlier this year. I'd have to go back and
 24 double check.
 25 Q: Prior to your last deposition?

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1 A: I can't remember when the last deposition
 2 was. I'd have to go double check. Sorry.
 3 Q: And where would you -- where would you
 4 check?
 5 A: I'd have to go back looking to see where I
 6 was. The -- in other words, I have to get some
 7 consideration. I'm pulling a blank at the
 8 moment.
 9 Q: Okay. That's fair. You -- your last
 10 deposition was March 21st of this year.
 11 A: March 21st. It would have been after that.
 12 It probably would have been summer that I was out
 13 there.
 14 Q: Okay. And did you -- did you do anything to
 15 measure?
 16 A: No.
 17 Q: Have you ever taken any measurements on
 18 site?
 19 A: I have not.
 20 Q: Is the bridge abutment that we're talking
 21 about above or below the road cut, in terms of
 22 topography, above or below?
 23 A: Well, portions of it are now in several
 24 different locations. I'd have to go back and
 25 double check to see precisely where it is.

1 Q. It's an overhead view. This came from a
 2 photograph that's produced at some point during
 3 this case. I think it actually came out from
 4 your prior FOIA response. Just ask if you
 5 recognize the contents of that photo.
 6 A. (Witness complies.) Is this --
 7 which -- which -- which -- is this 150 or 154?
 8 Q. That's my question to you. Do you recognize
 9 the contents of this photo?
 10 A. I believe this is the -- the -- it's very
 11 difficult for me to tell from here. I have it
 12 marked elsewhere. But I think this is -- I
 13 believe that's one (indicating). That's one over
 14 here and this is the one over here, so it's down
 15 there (indicating). Yeah, more or less. Uh-huh
 16 (affirmatively responds).
 17 Q. Do you know whose house is in the picture?
 18 A. I do not. Not immediately, no.
 19 Q. All right. And do you recognize the road
 20 cut?
 21 A. Well, it's pixilated but, yes, I think so.
 22 And I believe that's the addition set down at the
 23 side there.
 24 Q. Can you point out on this map where either
 25 of the two bridge abutments are located?

1 A. Well, the -- the one that I was familiar
 2 with is behind the Brinkman house, which should
 3 be ...
 4 You know, I apologize, but I'm having a real
 5 problem with this photo today. I mean, I've seen
 6 it a half dozen times --
 7 Q. Sure.
 8 A. -- but it's driving me nuts.
 9 Q. If you were to turn it over, would --
 10 sometimes -- and look at it from the opposite
 11 direction, I don't know if that helps. Now
 12 you're looking downhill instead of uphill.
 13 A. (Witness complies.) That's not helping me
 14 at the moment at all. I'm sorry.
 15 Q. Okay. So you're looking at that photo,
 16 you're not able to show me where the bridge
 17 abutment is located?
 18 A. At the moment, I can't. I'm not sure why
 19 that's the case.
 20 MR. KENDALL: Okay. Let me go ahead
 21 and get that picture marked, please.
 22 (EXHIBIT 18 MARKED FOR IDENTIFICATION
 23 PURPOSES (1 page) - Aerial color photo)
 24 (Off the Record)
 25 THE WITNESS: I believe that's part of

1 it there (indicating). And that should
 2 be -- man, this is really driving me nuts.
 3 I'm not sure why.
 4 BY MR. KENDALL:
 5 Q. Okay. Now, we -- is there any other
 6 fieldwork that you've -- is there any fieldwork
 7 that you've done that we've not talked about?
 8 A. At this site?
 9 Q. At this site, yeah. When I ask a question
 10 like that, I do -- I am only referring to the
 11 site. I don't care about what you --
 12 A. Okay.
 13 Q. -- may have done in another part of the
 14 state or as a part --
 15 A. The answer is "no."
 16 Q. Okay. And have you done any -- is there any
 17 other document, study, historical records, or
 18 those types of things that you've done that we
 19 haven't talked about?
 20 A. For this site?
 21 Q. Yes.
 22 A. The answer is "no."
 23 Q. And have you interviewed anyone other than
 24 Mr. Brinkman with respect to this site?
 25 A. I have not.

1 Q. And we talked about this in a different
 2 context, but you haven't looked at the contracts
 3 by any of -- for any of the construction work
 4 that was done?
 5 A. No.
 6 Q. And have you looked at any of the permits
 7 that were obtained?
 8 A. No.
 9 Q. Have you met with anybody on this site other
 10 than Mr. Brinkman?
 11 A. At any given time when I've been out there,
 12 there have always been additional people on site,
 13 but I don't have their names.
 14 Q. Has anybody else from your office been out
 15 there, to your knowledge?
 16 A. From my office? My direct office? The
 17 answer would be "no."
 18 Q. All right. How about from the Institute of
 19 Archaeology and Anthropology?
 20 A. I would be very surprised if there had not
 21 been additional people who have been through that
 22 property or that area from that -- from the
 23 Institute.
 24 Q. Okay. Do you -- are you aware of others
 25 from the Institute of Archaeology and

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1 Anthropology being on site?
 2 A. No.
 3 Q. Have you -- and so there's not any
 4 information that you've obtained from anybody
 5 else that has been on that site from that office?
 6 A. Directly to that site, the answer is "no."
 7 Q. Okay. When I've said "your office," how
 8 have you understood that?
 9 A. Office of the State Archaeologist.
 10 Q. Okay. And your office is within the South
 11 Carolina Institute of Archaeology and
 12 Anthropology?
 13 A. Correct.
 14 Q. Okay. When you said director, the director
 15 is actually the director of that institute?
 16 A. That is correct.
 17 Q. Are there other archaeologists in the State
 18 Archaeologist's Office?
 19 A. Yes.
 20 Q. And who are they?
 21 A. Keith Derting and our curator, Sharon
 22 Pekrul.
 23 Q. All right. Have you consulted with either
 24 of them about this site?
 25 A. Keith in question of site files, yes.

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1 Q. Site what?
 2 A. The site files. In other words --
 3 Q. Files?
 4 A. Yes.
 5 Q. Okay. Was there a site file for this -- for
 6 this property? And by "this," I'm going to mean
 7 all of this area that encompasses these bridge
 8 abutments. Was there a site file prior to 2005?
 9 A. I'd have to go back and double check the
 10 dates.
 11 Q. How does a site file get created?
 12 A. The individual who is doing the work fills
 13 out the form, produces the documentation with it,
 14 and submits it.
 15 Q. And is there a way that we can -- if we want
 16 that form, where do we get the form?
 17 A. From me.
 18 Q. All right. And when you responded to a FOIA
 19 request, do you know whether that was part of
 20 your production?
 21 A. I believe it was part of the original one.
 22 Q. All right. Does that come from the -- okay.
 23 So that came from your office as a response. It
 24 would -- there's a form that -- who completed?
 25 Mr. Brinkman completed?

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1 A. Yes.
 2 Q. Okay. And do you know whether you, in fact,
 3 did get a form from Mr. Brinkman?
 4 A. I'm pretty sure that we did, yes.
 5 Q. And when you -- do you know whether that was
 6 the first form of that kind that you obtained
 7 from anyone regarding this property?
 8 A. I'd have to go back and double check, but I
 9 believe that is probably the case.
 10 Q. So when you spoke to Keith -- did you say
 11 his name was Keith?
 12 A. Derting.
 13 Q. When you spoke to him about the site file,
 14 is that the file -- Mr. Brinkman's file? Is that
 15 who you --
 16 A. That's correct.
 17 Q. -- that you're referring to, the one that he
 18 established?
 19 A. That is correct.
 20 Q. Can anyone create a file on a piece of
 21 property, a site file?
 22 A. Yes and no. We accept materials in from
 23 avocationalists and from professionals and then
 24 it goes through a vetting process in terms of the
 25 internal coherency of the documents.

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1 In other words, if they say that they are
 2 here and their, you know, documentation that they
 3 provided says they're in the Gulf of Mexico,
 4 obviously we don't accept it.
 5 Q. Okay.
 6 A. It's a question of quality and quantity and
 7 that's done by Derting.
 8 Q. And you determine -- I want to make sure the
 9 court reporter caught it. I think you said
 10 "avocational"?
 11 A. Yes.
 12 Q. Okay. Meaning somebody like Mr. Brinkman?
 13 A. Someone who is not paid as an archaeologist,
 14 correct.
 15 Q. Okay. So when -- when someone like an
 16 avocationalist like Mr. Brinkman submits a site
 17 file form, Mr. -- say his last name again?
 18 A. Derting.
 19 Q. Derting?
 20 A. Derting, yes.
 21 Q. That would be Derting? He does some level
 22 of quality control, if you will --
 23 A. Yes.
 24 Q. -- to make sure it's worth having, is that
 25 correct?

1 A. Correct.

2 Q. Okay. And is there -- is there a criteria

3 checklist of some kind that he uses to decide

4 whether to keep it or reject it?

5 A. The materials for how to fill out the list

6 and what we do is online at the institute

7 underneath the office. It's a PDF.

8 Q. All right. Do you -- do you check behind

9 Mr. Darting?

10 A. No, not normally.

11 Q. All right. Does -- does Mr. Darting's

12 review -- if he -- if he accepts a site file --

13 A. Uh-huh, (affirmatively responds).

14 Q. -- submission, does that -- is that

15 equivalent of a certification that the site is,

16 in fact, an archaeological site or just that he

17 did the form correctly?

18 A. It's a statement that the materials provided

19 for the form are sufficient to be entered into

20 the log of the State as a archaeological site and

21 to be given a specific and unique number so that

22 other individuals can continue to do research or

23 work on that area.

24 Q. Okay. Do you know what the number for

25 Mr. Brinkman's site is?

1 you've seen this form from Mr. -- submitted by

2 Mr. Brinkman?

3 A. I can say for a fact I've seen obviously the

4 materials which have been given to you. And I'd

5 have to double check to -- on the form.

6 Q. Okay.

7 A. Let me -- let me -- let me clarify that. I

8 have seen the -- on ArchSite, I have seen the

9 location marked for as a historic statement and I

10 believe that the numbers for it as a site are

11 there, which would lead me to suspect that

12 everything else had indeed been done. But,

13 again, I'd have to double check that. I believe

14 that's in the original deposition.

15 Q. Right. I went on the site today --

16 A. Oh, good.

17 Q. -- just to see if there had been any

18 changes. And I only printed one of these, but is

19 this a -- is that the kind of map that you're

20 referring to?

21 A. In this regard, yes, the polygon, right.

22 Q. All right. And can you tell from looking at

23 what you're looking at whether that incorporates

24 the Castle Road area that we're talking about?

25 A. It should, yes.

1 A. I'd have to double check.

2 Q. Okay. And that should be in that FOIA

3 request file?

4 A. I'm sorry?

5 Q. The documents --

6 A. Yes.

7 Q. -- that you were speaking of --

8 A. Yes, yes, the original -- right.

9 Q. Okay. That should be in there?

10 A. Should be.

11 Q. Okay. If you -- if a document -- if a site

12 form submission is rejected --

13 A. Uh-huh (affirmative response).

14 Q. -- what happens to the -- to the submission?

15 Does it get thrown away?

16 A. We don't keep it.

17 Q. All right. And does the -- does the person

18 who submitted -- made the submission get a

19 rejection letter from you?

20 A. Sometimes it's a letter. Sometimes it's a

21 personal phone call, the explanation of what the

22 problems are and ask if they wish to make

23 corrections, bring it up to snuff.

24 Q. As to this site, can you say for certain

25 you've seen this form or you're not sure whether

1 Q. And do you -- this site is maintained by

2 your office, correct?

3 A. This site is a collaborative effort between

4 my office, Archives & History, and the Department

5 of Transportation, yes.

6 Q. And so I'm asking you, can you tell me that

7 this --

8 A. Yes.

9 Q. If I printed -- if I printed it without

10 making the alterations, is it accurate?

11 A. Yes.

12 MR. KENDALL: Okay. Let's mark that as

13 the next exhibit.

14 (Off the Record)

15 (EXHIBIT 19 MARKED FOR IDENTIFICATION

16 PURPOSES (1 page) - SC ArchSite map)

17 BY MR. KENDALL:

18 Q. Tell me again how the ArchSite relates to

19 the form.

20 A. ArchSite is the digital access to the paper

21 site files.

22 Q. So once somebody -- if somebody submits a

23 site file and it's approved or -- and it's

24 accepted into the system, it gets noted here?

25 A. At some point.

1 Q: At some point. And so does the fact that
 2 there's a site at all located here indicate to
 3 you that a form was submitted and approved?
 4 A: Yes.
 5 Q: All right. Is there any more information
 6 that you can glean about that site file from --
 7 from the ArchSite?
 8 A: Perhaps; perhaps not. The intent, based on
 9 funding, is to have all the documents that would
 10 normally attach to a site available as a
 11 drill-down series of cascading points from
 12 whatever is on the site here for those
 13 individuals who are authorized to view it.
 14 Obviously, it's a -- that's also in process.
 15 So I'm not sure precisely how many other
 16 documents or any are attached to this one at the
 17 current time.
 18 Q: Okay. Does the color code mean anything?
 19 A: Yes. It usually means either requires
 20 additional evaluation or has been determined not
 21 to be eligible to the National Register.
 22 Q: All right. And what does the -- so that
 23 color there means one of those two things, that
 24 it's not eligible or that it needs further
 25 evaluation?

1 ArchSite 2.0;
 2 A: Yes.
 3 Q: Does that have any meaningful difference for
 4 us today? Is the information on them the same
 5 for our purposes?
 6 A: I can't answer that. I -- the 2.0 was a
 7 question of additional information, connectivity,
 8 and access; speeds and things of that nature. So
 9 it may or may not. I'm not sure precisely your
 10 needs.
 11 Q: Who is John Compt?y?
 12 A: John Compt?y is a historic figure related to
 13 the bridge and the ferry and a couple of other
 14 things in the area.
 15 Q: Do you know whether there was any
 16 information about John Compt?y in the archive
 17 records of the State of South Carolina prior to
 18 2005?
 19 A: Archives?
 20 Q: Yeah.
 21 A: I don't have access -- I mean; I -- let me
 22 rephrase that. I'm not in control of the
 23 archives of the State of South Carolina.
 24 Q: I'm just asking do you know whether it was
 25 in there?

1 A: That is correct.
 2 Q: And who decides whether it's not eligible?
 3 A: That was covered in our original deposition.
 4 Q: Yeah, I'm not going to go back through the
 5 nuts and bolts. Just generally, who decides?
 6 A: Archives & History and the Advisory Council
 7 for Historic Places in Washington, D.C. It's a
 8 federal determination.
 9 Q: And who decides whether it needs further
 10 evaluation?
 11 A: All of us. Basically that's a statement
 12 that can be put on it either by the individual
 13 submitting the form or our office or Archives or
 14 practically anybody.
 15 Q: And can you -- can you -- can you, as the
 16 State's Archaeologist, tell me whether that color
 17 is chosen here for either of those two reasons or
 18 which of the two reasons?
 19 A: Well, as I stated in my original deposition,
 20 I consider the sites to require additional
 21 evaluation. So from my point of view, since I
 22 don't make the other determination, that's the
 23 one I would go with.
 24 (Off the Record)
 25 Q: I noticed there was an ArchSite 1.0 and an

1 A: I didn't check.
 2 Q: Okay. Do you know whether John Compt?y's
 3 name appears in any of the records of the State
 4 Archaeologist prior to 2005?
 5 A: I'd have to go back through and see all the
 6 other possible site files and site materials up
 7 and down that river and I have not done that.
 8 Q: Okay. Are you aware of any other
 9 archaeological site in the State of South
 10 Carolina that involves John Compt?y other than the
 11 Castle Road sites?
 12 A: Immediately, no.
 13 Q: Okay. Was John Compt?y known to you before
 14 Mr. Brinkman brought information to you?
 15 A: I'm not a hundred percent sure. We've spent
 16 so much time going over Compt?y and the records
 17 that have been provided to me. I'm not sure at
 18 this point whether or not I was aware of him
 19 prior to Brinkman or not.
 20 Q: Other than -- Mr. Brinkman has testified and
 21 I've seen some documents that indicate Mr. Compt?y
 22 owned a portion of the property that's out here,
 23 all or a portion of it, and may or may not have
 24 obtained some permits over time.
 25 Outside of this specific location, do you

1 know of any other place in South Carolina that
 2 involves Mr. Compty?
 3 A. At this time, I'd have to say "no."
 4 Q. Okay. Other than -- and other than the
 5 records that have been given to you by
 6 Mr. Brinkman, are you aware of any other records
 7 that involve Mr. Compty?
 8 A. I have not gone looking for them, so the
 9 answer at the current time would be "no."
 10 Q. All right. We're going to spend a few
 11 minutes in Exhibit 15, so if you don't mind just
 12 getting that in front of you.
 13 A. (Witness complies.) Yes.
 14 Q. And just to remind ourselves, this is the
 15 South Carolina Archaeology Act of 2010. And I
 16 believe one of the areas of testimony you were
 17 going to give was, A, that this site falls in
 18 this -- under this Act and that you've done some
 19 sort of a damage assessment as described in this
 20 Act, is that correct?
 21 A. That is correct.
 22 Q. Are you also going to testify that there has
 23 been a violation of this Act?
 24 A. I think the answer to that would be "yes."
 25 Q. All right. I'm not going to ask you to be a

1 A. Well, you said 15, so --
 2 Q. Oh, I'm sorry. I mismarked mine.
 3 (Off the record from 11:20 a.m. to 11:33 a.m.)
 4 (EXHIBIT 20 MARKED FOR IDENTIFICATION
 5 PURPOSES (2 pages) -- SC Code 16-11-780)
 6 BY MR. KENDALL:
 7 Q. All right. Now, I've put in front of you
 8 Exhibit 20, now that we've gotten that
 9 straightened out. The South Carolina Archaeology
 10 Act of 2010 and I wanted to look at the
 11 definition of "archaeological resource" and ask
 12 you: Is it your opinion that the bridge
 13 abutments -- first of all, how many bridge
 14 abutments are we talking about, just so I'm not
 15 assuming too much?
 16 A. We're referencing two archaeological sites,
 17 one of which has a bridge abutment that I'm aware
 18 of, and the other one has a bridge abutment next
 19 door, yes.
 20 Q. Okay. Now, the map that we looked at, does
 21 it have both archaeological sites or just one of
 22 them?
 23 A. Well, the -- oh, the map. It's supposed
 24 to --
 25 Q. Exhibit 19.

1 lawyer. I'm just going to have -- be asking you
 2 for your understanding of this Act to the extent
 3 that you're giving opinions on it. Are your
 4 opinions final, by the way, on this issue? On
 5 whether or not there's -- the bridge -- whether
 6 the artifacts on this site qualify under the
 7 statute, is that opinion final?
 8 A. Yes.
 9 Q. Do you have a final opinion as to whether or
 10 not there's been a violation of the Act?
 11 A. Yes.
 12 Q. And do you have an opinion as to whether --
 13 as to the damage assessment under this Act?
 14 A. In process.
 15 Q. Okay. Let's talk about the first two parts,
 16 then.
 17 A. Okay.
 18 Q. First of all, that this site qualifies under
 19 this Act as an archaeological site --
 20 A. Uh-huh (affirmatively responds).
 21 Q. -- let's look at the definition of an
 22 "archaeological resource," which is Section A-1.
 23 A. I'm sorry.
 24 Q. First page of the Act, first paragraph
 25 (indicating). Which one are you looking at?

1 A. It's supposed to have both and it should
 2 have both.
 3 Q. You think that encompasses the one on
 4 Brinkman and on Coleman?
 5 A. It should, yes.
 6 Q. Okay. And have you seen both of them
 7 yourself?
 8 A. I have seen the one on Brinkman's. I had
 9 the other one pointed out to me, but I spent no
 10 real time on it --
 11 Q. All right. Have you seen --
 12 A. -- at least not yet.
 13 Q. And have you seen photographs of the one on
 14 Coleman?
 15 A. Yes.
 16 Q. All right. Now, you -- you've described
 17 them as an archaeological site. Have you
 18 determined whether or not either or both of those
 19 bridge abutments are archaeological resources?
 20 A. I would -- I would characterize both
 21 archaeological sites as archaeological resources,
 22 yes.
 23 Q. Is the site broader/bigger than the bridge
 24 abutment?
 25 A. Yes.

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1 Q: How big is the site?
 2 A: To be determined.
 3 Q: All right. How will we know how big the
 4 site is? And when -- what will you be looking at
 5 to make that assessment?
 6 A: That would require the excavation of the
 7 area and that has not been done yet.
 8 Q: Okay. And so assuming you're doing that
 9 excavation, how will you know when you get to the
 10 end of the site?
 11 A: One -- one is putting in the subsurface test
 12 pits or other means -- because it can be
 13 geophysical; it doesn't necessarily have to be a
 14 pit immediately -- the determination of the
 15 boundary edge is not always clear.
 16 The area that you're talking about has been
 17 in human occupation or use for a considerable
 18 period of time. So the bounding of the two
 19 sites, for the purposes of this, is based on the
 20 actual footprint of the two lots. Because it's
 21 not -- not impossible that the archaeological
 22 sites may actually go beyond the two lots.
 23 Q: All right. And so -- and the lot goes from
 24 the river to the street?
 25 A: The lot goes from the easement from the

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1 river to the street, correct.
 2 Q: Okay. And -- but the only artifacts that
 3 you're aware of are located in proximity to where
 4 Mr. Brinkman has said that there's a bridge
 5 abutment?
 6 A: No.
 7 Q: All right. Where are the artifacts located?
 8 A: The artifacts are -- could be located within
 9 that area and -- well, are undoubtedly within
 10 that area; but also going beyond that area.
 11 Again, the boundary is based on the lot size;
 12 in this instance. Obviously, we're not going
 13 onto other people's property.
 14 Q: Right. Is the -- so is it your opinion that
 15 Mr. Brinkman's entire lot is an archaeological
 16 resource?
 17 A: I would be very surprised if Mr. Brinkman's
 18 site was not -- lot was not an archaeological
 19 resource.
 20 Q: All right. Let me -- let's -- let me recast
 21 the question or repeat the question because I
 22 think you're answering a different question.
 23 A: Okay.
 24 Q: Is it your opinion to a reasonable degree of
 25 archaeological certainty that the --

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1 Mr. Brinkman's entire lot is an archaeological
 2 resource?
 3 A: I can't do certainty because the final
 4 evaluation of that lot has not been done.
 5 Q: Okay. Is there any portion of that lot
 6 which you can say with a reasonable degree of
 7 archaeological certainty is an archaeological
 8 resource?
 9 A: Is:
 10 Q: Yes.
 11 A: Okay.
 12 Q: Not might be. Is:
 13 A: Okay. I would state that the area that
 14 includes the remnants of the -- the bridge, the
 15 remnants of the historic road, and other
 16 materials attached to that area would definitely
 17 qualify underneath archaeological site, yes.
 18 Q: Okay. Is the historic roadbed --
 19 A: Uh-huh (affirmative response).
 20 Q: -- is it visible or --
 21 A: Uh-huh (affirmative response).
 22 Q: Yes?
 23 A: Yeah, it has been when I've been out there,
 24 yes.
 25 Q: Okay. You've -- and you've evaluated

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1 whether or not it's historical?
 2 A: Yes.
 3 Q: Okay. And the -- and you've distinguished
 4 that from the access road for -- that was done
 5 for the sewer, correct?
 6 A: Yes, I -- I have for the current one; yes.
 7 Q: Is that road -- the historic road, is
 8 it -- does it go all the way from the river to
 9 the -- or from the bridge abutment back to what's
 10 now Castle Road?
 11 A: It comes from the side, goes across the hill
 12 at an angle, and comes down. I'd have to go back
 13 and double check to see if it actually connects
 14 to the road at this point. Portions of it are
 15 gone.
 16 Q: And how -- how did you assess -- how did you
 17 determine where the road -- that historic road
 18 was located?
 19 A: By walking it.
 20 Q: Okay. Did you -- how did you determine the
 21 age of the road?
 22 A: The final age of the road from its beginning
 23 to end will depend on the archaeological
 24 excavations and work.
 25 Q: Okay. If there is a tree in that roadbed

1 that's more than a -- that's -- well, let me
 2 strike that. So at this point all you've done is
 3 walk the property and you saw what looked like --
 4 it was a historic roadbed, correct?
 5 A. I have walked the property, seen what looks
 6 like a historic road, taken a look at aerial
 7 photos going back a ways, and there was a road in
 8 the same area. So, yes, to me, that's a historic
 9 road.
 10 Q. Okay. You mean --
 11 A. The final --
 12 Q. -- it's more than a hundred years old?
 13 A. That's a separate question. Historic road,
 14 the final statement on it is yet to be
 15 determined. My expectation is it will be well
 16 over a hundred years old.
 17 Q. Okay. Let's make sure we don't get in cross
 18 purposes in our conversation. Because I --
 19 A. Sure.
 20 Q. -- asked you if you have a final opinion
 21 about this property being an archaeological
 22 resource.
 23 A. Yes.
 24 Q. And you said you do have a final opinion.
 25 A. I do.

1 A. Ah. The answer to that would be "no," not
 2 currently.
 3 Q. How about the -- other than the -- what
 4 looked like a roadbed, there was what
 5 Mr. Brinkman has identified as a bridge abutment.
 6 A. Yes.
 7 Q. And what is the substance of the materials
 8 that are associated with this abutment?
 9 A. Stone?
 10 Q. I've called them rocks, but -- okay.
 11 Stones?
 12 A. No, stone. Yes --
 13 Q. Okay.
 14 A. -- that's fine. Rocks is a good statement.
 15 Q. Is there any -- any wood frame timbers or
 16 wood timbers that are associated with this --
 17 A. I am not aware --
 18 Q. -- bridge abutment?
 19 A. -- of any wood at this point that's with it.
 20 Q. Okay. How about any steel?
 21 A. There is some iron that was visible in a
 22 couple locations, yes.
 23 Q. Okay. And is it embedded into the stone?
 24 A. Yes.
 25 Q. All right. So there's not an independent

1 Q. I asked you what portion of the property is
 2 an archaeological resource and you included the
 3 road in that.
 4 A. I did.
 5 Q. Correct? The definition of an
 6 archaeological resource, does it include being
 7 over a hundred years old?
 8 A. The -- for the Act, yes.
 9 Q. Okay. For your purposes, are you also
 10 limiting it to only things that over a hundred
 11 years old?
 12 A. For the purposes of the Act, the answer
 13 would be "yes."
 14 Q. All right. And so have you determined to a
 15 reasonable degree of archaeological certainty
 16 that what you observed as a road on the Brinkman
 17 property is more than a hundred years old?
 18 A. I cannot guarantee it being more than a
 19 hundred years old. My expectation from what I
 20 know of it at the current time is that it should
 21 meet prior to 1917, which would be a hundred
 22 years from this current date.
 23 Q. That's your expectation, but you have not
 24 established that to a reasonable degree of
 25 archaeological certainty, have you?

1 steal structure or steel artifacts?
 2 A. Not that I am aware of at the current time.
 3 Q. Any other types of building materials? How
 4 about like mortar? Any mortar there?
 5 A. Not to -- I have not seen any mortar.
 6 Q. Okay. And I don't know what else to ask you
 7 about, so help me out. Is there any other
 8 building materials that are associated with this
 9 abutment other than stones and whatever metal may
 10 be embedded in those stones?
 11 A. In terms of specifically for construction?
 12 No, I think that's probably a fairly good
 13 summation.
 14 Q. Okay.
 15 A. I'm sure I'll think of something later, but
 16 at the current time, I'm not.
 17 Q. Okay. When was the first time you saw those
 18 stones? Just -- this is just for point of
 19 reference. I'm not going to replot.
 20 A. Oh, good heavens.
 21 Q. Was it in the 2005-2006 time frame?
 22 A. Something of that nature. May have actually
 23 been slightly earlier but, yes, that's about
 24 right.
 25 Q. Okay. And did you -- was that bridge

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1 abutment intact when you saw it the first time?

2 A. Completely intact, no.

3 Q. So there were rocks that were displaced?

4 A. Yes.

5 Q. Or building materials? I'll try to be a

6 little more --

7 A. No, that's all right.

8 Q. -- a little more precise. Building

9 materials that were displaced from their original

10 location?

11 A. There were materials that were displaced on

12 the location, yes.

13 Q. When a building material such as a stone is

14 displaced from its original location, does it

15 maintain its quality as a archaeological

16 resource?

17 A. Yes.

18 Q. Does the ground on which it sits now become

19 an archaeological resource?

20 A. Yes.

21 Q. So even though the ground on which that

22 dislocated stone is located is not -- was not

23 previously an archaeological resource, once it --

24 once that stone is located on it, it becomes a

25 resource?

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1 A. That's a -- that's not an accurate

2 statement.

3 Q. Okay. Help me out.

4 A. It's not clear whether or not the ground

5 that the rock is now sitting on was not an

6 archaeological resource. It may have been an

7 archaeological resource in its own right that now

8 has a rock from another archaeological resource

9 or the same archaeological resource sitting on

10 top of it.

11 Q. Okay. If I took a piece of -- if I were

12 to -- if Mr. Brinkman were to give me a piece of

13 that bridge abutment --

14 A. Uh-huh (affirmatively responds).

15 Q. -- one of those rocks --

16 A. Uh-huh (affirmatively responds).

17 Q. -- and I carried it and set it in my front

18 yard --

19 A. Uh-huh (affirmatively responds).

20 Q. -- which is located over behind the VA --

21 A. Uh-huh (affirmatively responds).

22 Q. -- is my front yard an archaeological

23 resource?

24 A. No.

25 Q. Okay. That's because it has no connection

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1 to the --

2 A. Correct.

3 Q. -- value of that rock?

4 A. Now, it may be that your property in its own

5 right is an archaeological resource, now gifted

6 with a rock.

7 Q. Right.

8 A. And if you're behind the VA, I would

9 guarantee it.

10 Q. But it's not -- it doesn't gain that quality

11 because the rock was moved over there. It has

12 to --

13 A. Not necessarily. Now, if the rock were

14 moved there for a commemorative event and was

15 being used as a -- you know, a --

16 Q. Talking about, I took it over there because

17 Mr. Brinkman gave it to me and I put it in my

18 front yard.

19 A. Generally speaking, the answer is "no."

20 Q. Okay. Now, how big a square footage is --

21 than does the -- do the bridge abutment building

22 materials occupy on this property?

23 A. Actually, that's one of the things I have to

24 go back through and determine before I finish the

25 report.

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1 Q. Okay. So we -- so as we sit here today, we

2 do not know the square footage of the

3 archaeological resource associated with that

4 bridge abutment, correct?

5 A. Not currently.

6 Q. All right.

7 A. Except that I would generically state that

8 it's clearly the width of the property. Other

9 than that, I can't answer it.

10 Q. All right. So the entire span width-wise,

11 river front linear footage of that property, is

12 in the archaeological resource?

13 A. Is likely to be within the archaeological

14 resource and would need to be determined, yes.

15 Q. How -- how is it -- if -- how big was -- how

16 big -- in its original construction, how big was

17 the bridge abutment?

18 A. I'd have to go back and double check.

19 Q. Okay. For purposes of this, I'm not -- I'm

20 just going to ask for an estimate. I'm not

21 asking for an opinion, not going to lock you into

22 it. I just need a point of reference. Is it --

23 was this like 15-by-15 structure?

24 A. The normal width of these bridges was

25 roughly a cart or a cart and a half to allow

1 people to go through. I'd have to double check
 2 to be absolutely clear.
 3 Q. All right. I'm going to use a broad number.
 4 We'll say 25-foot wide.
 5 A. I can't go with any number at the current
 6 time --
 7 Q. All right.
 8 A. -- until I double-check it.
 9 Q. Why -- why would the archaeological resource
 10 extend beyond the footer of that bridge?
 11 A. Because the people working on the bridge,
 12 the setup of the people working on the bridge,
 13 the workmen working on the bridge, the support
 14 staff of the workmen working on the bridge were
 15 outside of the footprint of the bridge or they're
 16 still underneath it.
 17 Q. Okay. So if -- if I picked up a rock in
 18 Newberry, South Carolina, in 1800 --
 19 A. Uh-huh. (affirmatively responds).
 20 Q. -- and it got shipped down to this site and
 21 used on this bridge abutment, was that quarry
 22 site -- is that -- does that make that quarry
 23 site part of this natural -- part of this
 24 archaeological resource?
 25 A. It could --

1 Q. Okay.
 2 A. -- in the sense of a connection to it, but
 3 not a direct -- it would have a separate number.
 4 Q. Right.
 5 A. It would have a separate place.
 6 Q. Okay.
 7 A. But the connectivity between the two would
 8 actually be noted, yes.
 9 Q. Okay. How do you know the age of the rocks
 10 or -- and the iron in those rocks that you were
 11 told was a bridge abutment?
 12 A. I am not a geologist. The metal for
 13 the -- for the metal that I saw initially was
 14 commensurate with other metal used in other
 15 historic bridges that I had seen both on that
 16 river and other places and, therefore, was tagged
 17 as, again, likely, probably, more research. In
 18 terms of the other work on it was a combination
 19 of effects including the tool marks.
 20 Q. Okay. So the age of the -- I mean,
 21 obviously, this rock is probably millions of
 22 years old.
 23 A. Oh, yeah.
 24 Q. Right. So that's not what -- that's not the
 25 age we use.

1 A. Right.
 2 Q. When does the counting for a hundred years
 3 start?
 4 A. In terms of going backwards from --
 5 Q. What qualifies it? In other words, for
 6 example, is it when it's quarried? Is that when
 7 it -- is that the date that matters? Is it the
 8 date that it's moved to the location? Is it the
 9 date that somebody chisels it to make it fit at
 10 that location? When -- when do we use the
 11 hundred-year point?
 12 A. That depends. It's not that simple. It
 13 depends. If the question is a structure, then
 14 the normal statement is the structure itself. If
 15 the question is materials used for the structure
 16 and where they were warehoused or whatever, then
 17 the materials themselves become the issue.
 18 Q. Okay. So when it's -- so for your purposes
 19 of determining that this was an archaeological
 20 resource --
 21 A. Right.
 22 Q. -- what date did you use?
 23 A. I took a look going back to see if it was,
 24 you know, over a hundred years old as an
 25 archaeological site. And since the materials

1 that were commensurate with that -- it is a
 2 multi-component site, so there are other
 3 additional materials that people in the
 4 neighborhood have picked up which demonstrated an
 5 earlier time period. It was clearly an
 6 archaeological site.
 7 The actual statement on the bridge was based
 8 on Brinkman's work, with the understanding that
 9 additional work would be necessary to take it to
 10 a higher level.
 11 Q. Is there a map that shows this bridge
 12 crossing the river?
 13 A. I believe that there is. Again, I can't put
 14 my fingers on it immediately, yeah.
 15 Q. Okay. So you've seen a map that shows this
 16 bridge?
 17 A. I have seen maps showing location for a
 18 bridge. I've seen Brinkman's map showing where
 19 he put the bridge across based on additional
 20 information. Honestly, I'd have to go back
 21 through and probably take a look at the archives
 22 again to make sure about a period map showing
 23 that bridge.
 24 Q. Okay.
 25 A. I'm not aware of one at the moment, but that

1 doesn't mean it doesn't exist or that I haven't
 2 seen it. I just don't remember.
 3 Q. So in terms of dating the bridge, first we
 4 have to know that there was, in fact, a bridge.
 5 A. In terms of dating the archaeological site,
 6 which includes a bridge abutment, the need is to
 7 identify it as an archaeological site that falls
 8 within a previous time period which is a hundred
 9 years or older. And the area there falls within
 10 that definition.
 11 The archaeological site, which includes a
 12 bridge abutment, if the bridge abutment is
 13 indeed -- which very likely is because I've said
 14 all along, from the original deposition to now,
 15 additional work needs to be done -- the original
 16 bridge going across and the Comptey bridge, that
 17 is value added, but it does not either -- it does
 18 not detract from the fact that what you're
 19 talking about in that area is indeed an
 20 archaeological site.
 21 Q. Okay. Let me see if I'm conflating a couple
 22 things. Maybe I'm assuming that is -- is this
 23 property an archaeological site irrespective of
 24 the presence of this pile of rocks that we're
 25 calling a bridge abutment?

1 Q. Right. And you believe that they were set;
 2 at this location at an earlier date?
 3 A. The information I have currently suggests
 4 that that is the case.
 5 Q. By that I mean -- by earlier date, I mean
 6 more than a hundred years ago, by the way.
 7 A. The information I have suggests that that is
 8 indeed the case. Additional work, as I've said
 9 repeatedly, needs to be done.
 10 Q. All right. When you -- when you give that
 11 qualifier, I just want to know what the -- what
 12 the scientific or the archaeological significance
 13 of that is.
 14 A. Okay.
 15 Q. Because the standard that we're going to use
 16 in the court, just -- I know you haven't been --
 17 done this in a courtroom before, so I want to
 18 make sure you know -- is that you -- you're going
 19 to have to testify to a reasonable degree of
 20 archaeological certainty?
 21 A. Uh-huh (affirmatively responds).
 22 Q. Okay. That's the buzzword. So when you say
 23 "more work needs to be done," does that mean that
 24 you have not yet established a reasonable degree
 25 of archaeological certainty?

1 A. Yes.
 2 Q. Okay. So it is not the bridge abutment that
 3 gives it its archaeological resource character?
 4 A. The bridge abutment assists in giving it its
 5 archaeological character. It is not the only
 6 thing that gives it its archaeological character.
 7 Q. Do you -- is it your opinion that the rocks
 8 that Mr. Brinkman calls a Comptey bridge
 9 abutment --
 10 A. Uh-huh (affirmatively responds).
 11 Q. -- is a structure that existed more than
 12 100 years ago?
 13 A. It is my opinion that the rocks that David
 14 has identified as the Comptey bridge include
 15 materials from over a hundred years ago, yes.
 16 Q. Well, of course the rocks are more than a
 17 hundred years old.
 18 A. Not talking about the age of the rocks.
 19 Q. Okay. What are you talking about?
 20 A. I'm talking about the actual materials
 21 themselves.
 22 Q. All right. So they were fabricated more
 23 than -- then the fabrication of those rocks?
 24 A. Some of the rocks that are there clearly
 25 were fabricated at an earlier date, yes.

1 A. No. What it means is that I would like to
 2 see additional actual archaeological excavation
 3 done, hopefully to locate the materials left
 4 behind by the workmen and other materials.
 5 Q. Okay.
 6 A. I would have liked to have had the materials
 7 in their more or less as-found condition so I
 8 could go back and take a look at some more of the
 9 tool markings.
 10 Q. All right.
 11 A. But that apparently is going to be difficult
 12 to do because they've been spread hither and yon.
 13 Q. Now, the -- so the rocks that are associated
 14 with this bridge abutment are -- you believe were
 15 chiseled and put on this location more than a
 16 hundred years ago?
 17 A. There are materials that I have seen on
 18 there, which are the rocks --
 19 Q. Okay.
 20 A. Not all the rocks; some of the rocks --
 21 which demonstrate that that is indeed the case.
 22 MR. CHAMBERS: Rett, this is -- or;
 23 Rett, this is sounding really, really,
 24 really familiar. Do you have somewhere
 25 you're going with this?

1 MR. KENDALL: Yeah, I'm asking him --

2 MR. CHAMBERS: Are you asking him new

3 stuff?

4 MR. KENDALL: I'm asking him questions

5 about his opinions; that's where I'm going.

6 BY MR. KENDALL:

7 Q. The -- so for purposes of your damage

8 assessment --

9 A. Yes.

10 Q. -- I'm trying to understand which

11 archaeological resources fall into the scope of

12 the damage assessment that you're doing. Does --

13 are you -- have you -- are you working on a

14 damage assessment for the bridge abutment

15 materials?

16 A. Uh-huh (affirmative response).

17 Q. Is that "yes"?

18 A. That's a "yes." Uh-huh (affirmatively

19 responds).

20 Q. Okay. How about beyond the bridge abutment

21 materials?

22 A. Yes.

23 Q. The whole property, in other words?

24 A. No, the area that has been damaged by

25 the -- the alleged, you know, construction,

1 activities going through it.

2 Q. Okay. So your -- your damage assessment is

3 going to be limited to the road cut and the

4 spill-off that may have occurred during that

5 construction?

6 A. Primarily.

7 Q. Okay.

8 A. To make sense out of it, there will be a

9 need to go beyond that to a reasonable extent to

10 the area which was not damaged to get a -- you

11 know, a baseline as to other materials.

12 In other words, I'll make this clearer for

13 you. If you're looking at a house, -- this is not

14 a house, but we're looking at a house. And the

15 house has a terracotta floor and someone runs a

16 bulldozer and takes off half the house. And you

17 look at the area the bulldozer's taken off the

18 floor: Do you know there was ever a floor there?

19 So you look at the area which has been

20 damaged. You then go away from the area to a

21 reasonably -- you don't take the entire house.

22 You don't go up the slope. You don't go to the

23 road.

24 You come off of that area and take a good

25 look at the additional materials next to it and

1 you go, "You know what? Son of a gun. There was

2 a terracotta floor which extended from here and

3 it's now hanging in space because a bulldozer

4 went through the middle of it." That is part of

5 the assessment.

6 Q. All right. So -- and I'm just -- I don't

7 mean to replot this, but I just want to make -- I

8 think my understanding is clear. There are --

9 you're confident that there is an archaeological

10 resource here. What its metes and bounds are,

11 we're not entirely sure.

12 A. Correct.

13 Q. Okay. What all are the artifacts that are

14 contained within that archaeological resource are

15 not currently known.

16 A. That is also correct.

17 Q. Okay. But you do -- it is your opinion that

18 the rocks that have been chiseled and tooled are

19 part of the archaeological resource.

20 A. Some of them clearly are.

21 Q. Okay. Are there tooled rocks that are not

22 part of the archaeological resource?

23 A. Potentially.

24 Q. All right. And that's where the further

25 evaluation needs to be done to know which is

1 which?

2 A. That is correct.

3 Q. All right. Have you -- so have you

4 determined that there's been a violation of -- I

5 think you've already said this. It's your

6 opinion that there's been a violation of the

7 statute with respect to that -- these -- this

8 archaeological resource?

9 A. Yes.

10 Q. Okay. I think -- you can help me -- that

11 the wrongful activities that are prohibited are

12 located in subsection C. Seems to me that's the

13 part that deals with what's legal and what's not

14 legal. So it's on the second -- on mine it's on

15 the second page. Do you see a subsection C?

16 A. I'm getting there.

17 Q. No, you're past it. It will be at the

18 bottom of that first page, yeah.

19 A. "It is unlawful...?"

20 Q. Yes.

21 A. Okay.

22 Q. That's the only part of it I can find where

23 it uses that kind of language. So is this what

24 you say -- has this -- is this the thing that you

25 say has been violated?

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1 A. Yeah.

2 Q. All right. So it is unlawful for a person

3 to willfully, knowingly, or maliciously enter

4 upon the lands of another or the posted lands of

5 the State and disturb or excavate a pre-historic

6 site or a historic site for the purposes of

7 discovering, uncovering, moving, removing, or

8 attempting to remove an archaeological resource."

9 Let's just pause there since there's a

10 period. Do you -- is it your belief that someone

11 knowingly entered Mr. Brinkman's property for the

12 purpose of removing an archaeological resource?

13 A. (Reading.) Yes.

14 Q. Who would -- who did that?

15 A. That's alleged and under consideration. I

16 am not the Court. That will have to be

17 determined in the court.

18 Q. Okay. What the identity of the person?

19 A. Yeah.

20 Q. Okay. Now -- so we'll figure out who it

21 was, who the person was. And what act is it that

22 that person did? If you don't know who -- the

23 name of the person, what act did they do that's

24 illegal?

25 A. Well, they uncovered, moved, removed

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1 negligent act which damaged an archaeological

2 resource.

3 Q. Okay.

4 A. And as such, as far as I am concerned, this

5 falls underneath this Act.

6 Q. Now, let's -- just to be clear, you're not

7 qualified to give legal interpretation, correct?

8 A. I'm not an attorney.

9 Q. Right.

10 A. I'm an archaeologist.

11 Q. So what this law means as far as what the

12 Court will enforce is not -- that's for the

13 Judge. You would agree with that?

14 A. I would of course agree with that.

15 Q. All right. So I'm asking about facts, about

16 what the people did, why they did it, how they

17 did it. We'll let the Judge decide what that

18 means legally, okay? So you said -- I asked you

19 the question --

20 A. Uh-huh (affirmatively responds).

21 Q. -- do you have data that shows that whoever

22 the person it is that went on this property and

23 moved the rocks intended to cause harm to an

24 archaeological resource? Do you have facts about

25 that?

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1 portions of an archaeological resource.

2 Q. Okay.

3 A. And the next part is "act of disturbance" --

4 yeah, so never mind. So yes. Uh-huh

5 (affirmatively responds).

6 Q. Okay. So they -- you -- you believe that

7 they -- that they uncovered an archaeological

8 resource?

9 A. I believe that they did indeed damage an

10 archaeological resource.

11 Q. Okay. What knowledge or information do you

12 have that that person did it on purpose?

13 A. I think there are two things that go to

14 that, which I have yet to receive information on:

15 So one is information specific to a individual

16 who was engaged in the act who said that they

17 knowingly went beyond and did the damage.

18 Whether they knew that they were in the

19 process of destroying the archaeological site or

20 not, to me, is immaterial. Once they willfully

21 chose to violate other laws, strictures,

22 regulations to go on to the property, if indeed

23 that was the case as alleged, then they --

24 whether they knew specifically there was an

25 archaeological resource or not, they engaged in a

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1 A. I do not currently have in my possession

2 facts about that.

3 Q. Okay. Now, have you -- do you know whether

4 the rocks -- was more -- was the damage done to

5 any of the archaeological resources other than

6 the rocks?

7 A. By the removal of the dirt from the area,

8 yes.

9 Q. Okay.

10 A. Sure.

11 Q. So the displacement -- everywhere dirt was

12 displaced counts as damage?

13 A. That's correct.

14 Q. And how -- like -- or what about a tree

15 getting cut down, does that count?

16 A. It depends how they cut it down.

17 Q. They took a bulldozer and pushed it over.

18 A. Then the answer is "yes."

19 Q. Okay. What if they took a chainsaw and cut

20 it off?

21 A. If they cut it off, left the stump, and took

22 the other part away with soft tires, the answer

23 would be "no."

24 Q. Okay. If they drove across it and left a

25 tire print in the dirt, does that count as

1 damage?
 2 A. It would depend on the resource underneath.
 3 Q. Okay. Did they -- did they do that kind of
 4 damage here?
 5 A. Which?
 6 Q. The tire print damage.
 7 A. I suspect they did all the above that we're
 8 talking about.
 9 Q. All right. Did they do any of that outside
 10 the easement?
 11 A. I have not seen a direct statement of the
 12 easement.
 13 Q. Okay. So you don't know whether the rocks,
 14 the trees that were removed, or the dirt that was
 15 displaced were within the easement or not, do?
 16 A. Currently, I do not.
 17 Q. Okay. Now --
 18 A. Let me rephrase that. I have been told that
 19 it was done outside the easement. I am waiting
 20 for the document.
 21 Q. All right. And you have -- you can't
 22 independently verify that?
 23 A. Not at the moment.
 24 Q. All right. Have you determined the
 25 archaeological value of the archaeological

1 resource is?
 2 A. The commercial value is negligible.
 3 Q. Okay.
 4 A. Nobody buys these.
 5 Q. And have you determined, then -- it also
 6 goes on to say, "And the cost of restoration and
 7 repair of the site where the archaeological
 8 resource was located." Do you know that?
 9 A. That's also in process. I have a number
 10 that is being truthed. There are a couple more
 11 information I need from individuals.
 12 Q. Okay. Outside of this case, does your
 13 office investigate sites for their archaeological
 14 significance?
 15 A. Yes.
 16 Q. And is there a methodology that you use to
 17 do that?
 18 A. Yes.
 19 Q. Is it published?
 20 A. Yes.
 21 Q. And what's that publication called?
 22 A. Well, the primary publication is the Joint
 23 Handbook for Archaeological Research, which is,
 24 again, our webpage, on Archives & History
 25 webpage, and a couple other webpages.

1 resource that was damaged?
 2 A. That's the data you're referencing. That's
 3 A-2?
 4 Q. That's the definition. Under this cause of
 5 action thing, which is subsection I, it says that
 6 "a landowner in the case of private lands or the
 7 State in the case of State lands." In this case
 8 it's private lands, correct?
 9 A. Okay.
 10 Q. Do you -- is that your understanding, this
 11 is private land?
 12 A. Private, yes. Right.
 13 Q. "May bring a civil action for violation of
 14 the section" -- which we talked about what you
 15 believe that was -- "to recover the greater of
 16 the archaeological resources archaeological
 17 value." My question is: Have you determined
 18 what the archaeological value of the
 19 archaeological resource is?
 20 A. I have -- it's in process.
 21 Q. Okay.
 22 A. I have a draft number which I'm working on
 23 to truth.
 24 Q. Okay. How about have you determined what
 25 the commercial value of the archaeological

1 Q. Did you -- did you follow that handbook here
 2 to determine whether or not this is an
 3 archaeological resource?
 4 A. Yes.
 5 Q. Okay. And did you -- did you vary from it
 6 in any material respect?
 7 A. Well, we haven't done everything that's
 8 required in terms of making a determination based
 9 on excavation which is, again, why additional
 10 research is required.
 11 Q. All right. Prior to this -- you talked
 12 about this being an archaeological resource,
 13 but -- and that's been marked here. But that
 14 mark -- that mark didn't appear on this web -- on
 15 the ArchSite until Mr. Brinkman put it on there,
 16 correct, that polygon?
 17 A. I believe that's correct, yeah.
 18 Q. All right. So there is -- your office --
 19 A. Well, he didn't -- let me rephrase that. He
 20 did not physically put that there. He submitted
 21 it. Okay.
 22 Q. He submitted it. But he -- there's not
 23 been -- your office has not done any assessment
 24 to determine that this is an archaeological
 25 resource, apart from what you've done in

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1 connection with this lawsuit, correct?

2 A: That's correct. Well, actually, that's not

3 correct. The -- the original determination was

4 done prior to damage to the site and the lawsuit.

5 Q: And how -- where is that recorded, the work

6 that was done --

7 A: It was --

8 Q: -- by your office?

9 A: It was a consultation and, therefore, we

10 showed up with other individuals from Archives &

11 History and from other, you know, interested

12 archaeologists to look at the materials. We had

13 a conversation. We agreed that it was indeed

14 what David thought it was. We shook his hand,

15 told him as the private landowner take proper

16 care of it and let's us know, you know, at some

17 point if we could assist him in the future.

18 Q: Why didn't you mark it on that map?

19 A: Because as a private landowner and this is a

20 red state, we allow people who have their own

21 property make a determination as to what they

22 want to have known in the public sphere.

23 Q: By "red state," that -- you're talking about

24 the political --

25 A: Yes!

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1 Q: -- label "red state"?

2 A: Yes! Not as a pejorative; simply as a

3 statement of fact.

4 Q: In other words, we respect private property

5 owner rights?

6 A: Absolutely.

7 Q: Right. That's what I thought. Was

8 there -- did your office do any map or

9 documentary research prior to going out in the

10 field?

11 MR. CHAMBERS: Dr. Leader, all this has

12 been covered in prior deposition and we can

13 take this up with the Court.

14 MR. KENDALL: So are you instructing

15 him not to answer my questions?

16 MR. CHAMBERS: Yes.

17 BY MR. KENDALL:

18 Q: Okay. So -- but you don't have any numbers

19 you can give me today as to what the damage

20 assessment was, correct?

21 A: No.

22 Q: All right. You indicated you would testify

23 regarding that you -- you've recently been

24 engaged to testify regarding the manner in which

25 the work was performed. What are your opinions

Page 115

1 in that respect?

2 A: Manner of whose work?

3 Q: I don't know. Contractor's work? I -- you

4 gave me that category. Do you have opinions

5 regarding the manner in which the Defendants

6 performed work on this site?

7 A: My opinion is, whoever did the work on this

8 site did a pretty good job of damaging the site.

9 Q: Okay. So your opinions are tied entirely

10 to the results of the work, the damage that was

11 caused. Do you have opinions as to how they did

12 their work?

13 A: I didn't see how they did their work. I

14 wasn't physically there.

15 Q: Do you have opinions as to whether the work

16 was done in conformance with industry standards?

17 A: One, I am unfamiliar with the specific

18 industry standards that would have been required

19 to run a piece of equipment through an

20 archaeological site. And, two, I am not a

21 construction engineer and, therefore, that's not

22 material within my purview.

23 Q: Where's that sign -- is there a sign out

24 there that says this is an archaeological site?

25 A: No.

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1 Q: All right. We've talked about you had

2 preliminary opinions regarding other codes and

3 regulations. We've talked about the South

4 Carolina Archaeology Act of 2010.

5 A: Sure.

6 Q: What other codes or regulations do you

7 believe were violated by these Defendants, if

8 any?

9 A: I'm going to have to think back now.

10 There are some federal regulations that I

11 would suspect were violated by the activities on

12 this site. I am not, as you have asked me

13 before, a person who would cite on those in terms

14 of finding people guilty or not guilty or

15 whatever, but I think it would be appropriate to

16 list those as materials that were not done. So

17 that's a question that would need to be done

18 in -- you know, in consultation with groups like

19 the Army Corp of Engineers and other groups of

20 that nature.

21 Q: Okay. Are you going to express an opinion

22 that these Defendants, any one of them or all of

23 them, violated any statute or regulation other

24 than the South Carolina Archaeology Act of 2010?

25 A: Possibly.

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1 Q. When will you know the answer to that
2 question?

3 A. When I have the report done.

4 Q. By the end of the year?

5 A. By the end of the year.

6 (EXHIBIT 21 MARKED FOR IDENTIFICATION
7 PURPOSES (49 pages) - SC Standards and Guidelines
8 for Archaeological Investigations)

9 THE WITNESS: Thank you.

10 BY MR. KENDALL:

11 Q. I can't ask you about the workings of that
12 document. I just want to ask you what that
13 document is.

14 MR. KENDALL: And we've marked it what
15 exhibit?

16 THE COURT REPORTER: 21.

17 MR. KENDALL: 21.

18 BY MR. KENDALL:

19 Q. What is that document?

20 A. This is the 2005 version of the South
21 Carolina Standards and Guidelines for
22 Archaeological Investigations.

23 Q. Is that the -- is that the handbook that you
24 referred to a minute ago?

25 A. This is the handbook I was referring to a

Page 118

1 minute ago, yeah.

2 Q. Okay. And is the 2005 the most current
3 version of it?

4 A. It is.

5 Q. And is that the document under which you
6 performed your work on this site?

7 A. Yes.

8 Q. Okay. I don't get to ask you what work you
9 did, so we'll skip to the next question.

10 (EXHIBIT 22 MARKED FOR IDENTIFICATION
11 PURPOSES (16 pages) - Handbook to the Site
12 Inventory Record)

13 (Off the Record)

14 BY MR. KENDALL:

15 Q. I'll show you what's been marked Exhibit 22.
16 What is that document, if you know?

17 A. This is the Site Inventory Record Handbook,
18 which is June 30th of 2015.

19 Q. And what does it -- I mean, I could read
20 that title, but what does it mean? What do we do
21 with this document?

22 A. The handbook is designed to assist
23 researchers who are producing the site records,
24 the site file --

25 Q. Okay.

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1 A. -- to make sure that they do indeed fill it
2 out accurately and correctly so that we can
3 integrate it into the State's site files.

4 Q. In other words, is this a document that
5 would be assist -- would assist somebody like
6 Mr. Brinkman when he's filling out his site
7 information form --

8 A. Yes.

9 Q. -- to create the file?

10 A. Yes, that is correct.

11 Q. Are you -- were there material changes made
12 to the 2015 edition?

13 A. Recently?

14 Q. This says 2015, I'm just wondering how
15 different is it from, say, what was in effect in
16 2007?

17 A. I'd have to pull them out and put them side
18 by side.

19 (EXHIBIT 23 MARKED FOR IDENTIFICATION
20 PURPOSES (3 pages) - SC Institute of Archaeology
21 and Anthropology Site Inventory Record)

22 THE WITNESS: Thank you.

23 BY MR. KENDALL:

24 Q. Can you tell me what Exhibit 23 is?

25 A. Exhibit 23 is the paper copy of the paper

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1 version of a site file form.

2 Q. All right. Is this the -- is this the
3 document we were talking about before that you
4 believe Mr. Brinkman submitted at some point?

5 A. Well, this is the 2015 version, so yes.

6 Q. But same concept?

7 A. Same concept.

8 Q. All right. Now, you've had a chance to go
9 through the documents we showed you that we
10 represented to you were the FOIA response. And
11 just for the record, these bear a Bates label of
12 08-000001 through 000097, came under a cover
13 letter from Mr. Lampl's office on July 22nd,
14 2016. You had a chance to look through that
15 stack --

16 A. I have.

17 Q. -- just a moment ago? Okay. Is
18 Mr. Brinkman's Site Inventory Record in this
19 form?

20 A. Apparently not.

21 Q. In this -- okay. If he did not submit a
22 report, an inventory -- Site Inventory Record,
23 how could he be on the ArchSite?

24 A. I'm not quite following you. Are you -- run
25 that one by me again.

1 Q. Is there any way his property got on that
 2 ArchSite unless he submitted a Site Inventory
 3 Form?
 4 A. There is a possibility that he could have
 5 provided information in the preparation of the
 6 site form and was considered to be sufficiently
 7 of importance to be put on, yes.
 8 Q. All right.
 9 A. Understand that the ArchSite does not hold
 10 the same weight as the site files.
 11 Q. Okay.
 12 A. You look at the ArchSite and then you come
 13 back to the site files.
 14 Q. Okay. Because the ArchSite is just very
 15 broad, general information, correct?
 16 A. It sometimes has more specific, but
 17 generally the case, yes.--
 18 Q. And it --
 19 A. -- currently.
 20 Q. It's not considered reliable by an
 21 archaeologist. It's just a point of reference?
 22 A. It is -- it is considered reliable in the
 23 sense of the information it contains. It is not
 24 considered to be complete.
 25 Q. Complete, okay. That's a good way to say

1 questions for you, so I'm going to --
 2 THE WITNESS: Okay.
 3 MR. KENDALL: -- turn the floor over.
 4 MR. STEWART: Can we go off the record
 5 real quick?
 6 MR. KENDALL: Sure.
 7 (Off the record from 12:18 p.m. to 12:30 p.m.)
 8 CROSS-EXAMINATION
 9 BY MS. WOOTEN:
 10 Q. Dr. Leader, my name is Amy Wooten. We've
 11 met before in connection with this case. Just as
 12 a reminder, I represent a couple of entities in
 13 the case; Weston & Sampson Engineers,
 14 Incorporated; and some other Weston affiliates.
 15 Same rules that Mr. Kendall gave you this
 16 morning are applicable now as we continue.
 17 A. (Nods head affirmatively.)
 18 Q. If you need a break, just let me know. I'm
 19 happy to accommodate that. I apologize in
 20 advance. I'm going to be skipping around in an
 21 effort to not rehash materials already covered,
 22 so please do bear with me.
 23 If you could take a look at Exhibit 17 and
 24 specifically want to call your attention to the
 25 page that is Bates numbered 17-000073. So it

1 it. Are you familiar with the phrase -- what's
 2 it called -- the "seven aspects of integrity"?
 3 Is that a phrase -- a phrase that you're familiar
 4 with?
 5 A. You're going to the -- yes.
 6 Q. It's published by the National Parks --
 7 National Park Service?
 8 A. Uh-huh (affirmatively responds).
 9 Q. Are you familiar with that phrase?
 10 A. Yes.
 11 Q. Okay. And have you applied the seven
 12 aspects of integrity in your evaluation?
 13 A. Consciously with tick-offs? No.
 14 Q. Okay. Would you normally when you're
 15 assessing an archaeological site?
 16 A. If I were doing the work myself, the answer
 17 would be "yes."
 18 Q. Okay.
 19 A. If I'm not doing the work myself, the answer
 20 would not necessarily be "yes."
 21 Q. And in this case, you haven't done the work
 22 yourself, correct?
 23 A. I have not; no.
 24 MR. KENDALL: Okay. That's all I have
 25 at this point. Other lawyers may have

1 should be very close to the back of that stack.
 2 A. (Witness complies.) Yes, okay.
 3 Q. Okay. And you told Mr. Kendall that this
 4 was a document you had asked Mr. Brinkman to
 5 prepare, correct?
 6 A. I did, yes.
 7 Q. Okay. And the document has identified an
 8 estimate of hours..
 9 A. Uh-huh (affirmatively responds).
 10 Q. The document does not have applied to that
 11 any type of hourly rate. Is it your intention in
 12 the report that you are preparing to ascribe some
 13 sort of an hourly rate to the hours identified in
 14 this document?
 15 A. My original intent was to see precisely how
 16 much time Mr. Brinkman had put into doing the
 17 research that provided the information and to
 18 determine whether or not those were recoupable
 19 hours with a price tag attached, yes.
 20 Q. Okay. And have you formulated any opinions
 21 as to whether or not those would, in fact, be
 22 recoverable under the Act?
 23 A. Yes, I have.
 24 Q. Okay. And what is that opinion?
 25 A. The answer is "no," they are not

1 recoverable.

2 Q. Okay. And what's the basis for that

3 opinion?

4 A. That the discussion of the archaeological --

5 the -- the -- the discussion of the costs of

6 the -- or the price of an archaeological site is

7 not directly attached to the amount of research

8 that has or has not been done on it; that was one

9 avenue of interest.

10 The other avenue of interest was to the

11 second point, which is if additional --

12 additional research needed to be done, then what

13 would be looking at in terms of coming up with a

14 parallel statement based on a individual not

15 directly involved with the site.

16 Q. Okay. Have you seen a copy -- well, strike

17 that. What's your understanding of the Court's

18 ruling with respect to your non-appointment in

19 this case?

20 A. My understanding from that was that the

21 discussion went to the question of civil versus

22 criminal.

23 Q. Okay.

24 A. And this was a civil proceeding.

25 Q. All right. Did you ever get copy of that

1 A. Boy. I have heard a determination. I'm

2 trying to remember if it was a discussion with

3 them or if it was secondhand and I can't state

4 that it was firsthand.

5 Q. Okay. You have prepared in connection with

6 your efforts on this case since your March

7 deposition -- I shouldn't say prepared. You've

8 gathered, rather, a number of documents that

9 would qualify as Occupational Employment

10 Statistics; is that correct?

11 A. That is correct.

12 Q. Okay. And they have been produced to us

13 for -- I'll just list out the categories. If you

14 could let me know if I've missed -- you think

15 I've missed any one that you've identified. I've

16 got surveyors. I've got anthropology and

17 archeology. I've got historians.

18 A. Okay.

19 Q. I've got landscaping.

20 A. Yes.

21 Q. I've got stone masons, construction

22 laborers --

23 A. Uh-huh (affirmatively responds).

24 Q. -- equipment operators, and crane and tower

25 operators. From that list, is there anything in

1 order?

2 A. I did.

3 Q. Okay. Have you ever worked with George --

4 or, excuse me, have you ever worked with John

5 Hodge or Geoffrey Chambers before this case?

6 A. Work? No.

7 Q. Okay. We've covered your social

8 interactions with some of the folks involved in

9 the case. Mr. Hodge and --

10 A. Uh-huh (affirmatively responds).

11 Q. -- Mr. Brinkman in your prior deposition,

12 correct?

13 A. Yes.

14 Q. Is there anything other than the invitation

15 that you talked about today change regarding

16 those social relationships since you were deposed

17 in March?

18 A. Nope; with the exception of being invited to

19 the Explorer Club discussion by Joanna Casey

20 (phonetic) on Ghana; which I did attend. It was

21 very interesting.

22 Q. Have you ever spoken with the South Carolina

23 Archives & History regarding any determination

24 it's made regarding the sites on either the

25 Brinkman or Coleman properties?

1 your mind missing?

2 A. I'm working my way through. I think that

3 that is correct to the current, yes.

4 Q. Were there any occupational employment

5 statistics that you intended to gather that you

6 have not done at this time?

7 A. No, I don't believe so.

8 Q. All right. And you've mentioned the report

9 that you are working on at this time. Have you

10 been asked to provide drafts of that report to

11 anyone prior to its production --

12 A. No.

13 Q. -- in this case? Do you have any intentions

14 of providing any drafts to anyone prior to

15 production?

16 A. I haven't particularly considered it, no.

17 Q. You are of the opinion, as I understand it,

18 that both the bridge abutments on the Brinkman

19 and Coleman properties fall under what I'll call

20 the Act, referring to 16-11-780.

21 What is the basis for your opinion that the

22 site on the Coleman property falls under the Act

23 given your testimony that you've spent no real

24 time observing that site?

25 A. When I first walked through the area, there

1. were scattered pieces of historic property from
2. the early mid-1800's on the area which was --
3. references historic road. There was reference by
4. people in the area to finding Civil War artifacts
5. and relics in that area. There were other
6. materials available.
7. Q. Does the historical road extend onto the
8. Coleman property?
9. A. I have to take a look at the extent of
10. the -- of the property lines. I can't answer
11. that question at the current time.
12. Q. Okay. Other than the portions of the
13. historical road you believe you have observed on
14. the Brinkman property, sitting here today, can
15. you tell me what other properties it may span
16. onto?
17. A. My understanding is it extends into the
18. neighbor.
19. Q. Do you know -- do you know the name of --
20. A. Which 150 and 154 of that road, Castle Road.
21. Q. Okay.
22. A. Uh-huh. (affirmatively responds).
23. Q. Did you enter those properties to view the
24. road?
25. A. I have not. I will be, but I have not done

1. historical and may have historic relics on it, is
2. that correct?
3. A. It is possible, yes.
4. Q. Okay. If that is, in fact, the case, based
5. on your discussions with the realtors that you
6. reached out to, would that generate a situation
7. where it could result in negative value added to
8. the property?
9. A. Anything is possible.
10. Q. Is that something you're going to be looking
11. at in preparing your report?
12. A. No.
13. Q. Why not?
14. A. Because I'm looking at a damage assessment,
15. not looking at the entire property.
16. Q. Okay. And can you clarify again for me,
17. just because it wasn't -- it wasn't clear sitting
18. down there, what portion qualifies under your
19. damage assessment?
20. A. The damage assessment area would include the
21. area of major impact and the immediate area next
22. to that impact. It would not extend up the hill
23. to the house. It would not extend to the road.
24. It would not extend to the sides of the house.
25. Q. Okay. All right. I want to ask you a

1. so.
2. Q. When will you be doing that?
3. A. As soon as possible.
4. Q. Have you coordinated with either the
5. plaintiffs or their counsel to arrange a date and
6. time for that visit at this time?
7. A. I have not at the current time.
8. Q. You talked about some real estate -- or
9. realtors, excuse me, that you talked to --
10. A. Yeah.
11. Q. -- in connection with this matter, I
12. believe that would be in Exhibit 17 at 75. It's
13. that big stack right there, (indicating),
14. Exhibit 17.
15. A. Oh, 17 -- 75, oh, yes. I'm sorry.
16. Q. I'm sorry. The Bates number would be 75.
17. A. You're right.
18. Q. I apologize.
19. A. Page 75?
20. Q. Yes, sir.
21. A. 74 -- yes, okay.
22. Q. I just want to make sure I'm clear in my
23. understanding of your testimony with respect to
24. the -- it being possible that the entire property
25. lot for the Brinkmans, for example, may be

1. question about the Act and your understanding of
2. to whom liability extends under the Act. If
3. there is a violation of the Act --
4. A. Uh-huh (affirmatively responds).
5. Q. -- who in your mind, in your understanding,
6. is liable for that violation? Is it the person
7. that does the work or the moving or the
8. uncovering, for example?
9. A. My understanding, not being an attorney, is
10. that underneath the Act, it would be the group
11. that required the work to be done, it would be
12. the group that did the work, and it would be the
13. individual or individuals who actually did the
14. work.
15. Q. Okay. What role did you play in drafting
16. the statute or supplying language for the
17. statute?
18. A. I was part of the team that wrote it.
19. Q. Okay.
20. A. I think we went over that last time.
21. Q. And it's your understanding that the person
22. who -- can you restate the first part of that?
23. The person who required the work is what you
24. said?
25. A. The person who required the work, the person

1 who oversaw the work; and the person who did the
 2 work.
 3 Q. And it doesn't matter in your mind whether
 4 those persons entered the lands or not?
 5 A. It does matter, undoubtedly. Again, I am
 6 not an attorney. The final determination of that
 7 will be done by the Courts.
 8 Q. Okay. You're not an engineer, correct?
 9 A. I'm sorry?
 10 Q. You're not an engineer, correct?
 11 A. I am not an engineer, no.
 12 Q. Do you have any engineering experience?
 13 A. I have a background in archaeo-metallurgy.
 14 I guess that's engineering.
 15 Q. Are you licensed in the State of South
 16 Carolina to perform --
 17 A. I am not.
 18 Q. -- any engineering work?
 19 A. I am not an engineer.
 20 Q. All right. Would you feel comfortable
 21 offering criticisms against an engineer from --
 22 in terms of a standard of care?
 23 A. I would be comfortable expressing my opinion
 24 as to what an engineer did or did not do in terms
 25 of my discipline.

1 not I would do that.
 2 Q. Okay.
 3 A. If it was outside of my area of
 4 understanding or expertise, I would not do that.
 5 Q. Okay. All right. Other than going back out
 6 to the site -- well, strike that. Sitting here
 7 today, have you asked for anything specific to my
 8 clients that you have not received?
 9 A. From your clients?
 10 Q. Not asking of -- from my clients, asking my
 11 client to give you, but have you asked, for
 12 example, from the plaintiffs any documents
 13 relevant to or related to my clients that you
 14 have not received?
 15 A. Yes.
 16 Q. And what would those documents be?
 17 A. Depositions.
 18 Q. Okay. Have you --
 19 A. I'm sorry.
 20 Q. I'm sorry. Go ahead.
 21 A. Depositions, easement statements,
 22 engineering maps.
 23 Q. Okay. Anything else you've asked for that,
 24 you have not received?
 25 A. Nope.

1 Q. Your discipline being archaeology?
 2 A. Correct.
 3 Q. Okay. So in terms of whether an engineer
 4 met his standard of care as an engineer, you
 5 would not feel comfortable offering those
 6 opinions, correct?
 7 A. No.
 8 Q. No, that's not correct?
 9 A. Oh, I'm sorry. I'm agreeing with you that,
 10 no, I would not do that.
 11 Q. Okay. Thank you. Okay. And sitting here
 12 today, have you formulated any opinions that you
 13 can specifically attribute to or apply to Weston
 14 & Sampson Engineers, Incorporated?
 15 A. I have made no determination as to who
 16 precisely did what to whom.
 17 Q. Okay.
 18 A. I figure that's up to the Courts.
 19 Q. And you've not been asked to do that?
 20 A. I have not been asked to do that.
 21 Q. If you're asked to do that, would you take
 22 on that assignment?
 23 A. If I were to be asked to do that, it would
 24 depend on what information I had that applied to
 25 my area of expertise and understanding whether or

1 Q. Okay. When did you make that request?
 2 A. Actually, I made the request for the
 3 deposition when I was receiving the materials
 4 from Brinkman, from Hodge, to let them know that
 5 I would be interested when they were available to
 6 have a copy.
 7 Q. Okay. Just so I'm clear in my time line, is
 8 this a request that postdated your March
 9 deposition?
 10 A. It was a verbal conversation at the -- when
 11 I received the (indicating) -- the hours. So
 12 that was 10/26.
 13 Q. Okay. And did you get a response to that
 14 request?
 15 A. I was told that I would receive it at some
 16 point.
 17 Q. Okay. Who told you that? Was it
 18 Plaintiffs' counsel?
 19 A. Plaintiff counsel.
 20 Q. Okay. And as of the deposition today, that
 21 is material that has not been supplied to you?
 22 A. That is correct.
 23 Q. Okay. And just so the record is clear, did
 24 you ask for any depositions in the case or
 25 specific depositions?

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1 A: I asked for the depositions.
 2 Q: Okay. And your understanding of that is all
 3 the depositions that were taken in the case?
 4 A: That would be my understanding.
 5 Q: All right. Was the request for the
 6 engineering maps and the easement statements made
 7 contemporaneously with the request for the
 8 depositions?
 9 A: All that was done contemporaneously.
 10 Q: Okay. And was the response regarding the
 11 provision of engineering maps and easement
 12 statements the same, that those would be provided
 13 to you?
 14 A: They were not itemized how. I simply asked
 15 for the things I've said. I would get them at
 16 some future point.
 17 Q: Okay. All right. Understand. And just so
 18 my understanding is clear, when you say "easement
 19 statements," are you referring to the legal
 20 document that sets forth and contains the
 21 easement affixed to that property or that goes
 22 with that property?
 23 A: That is correct.
 24 MS. WOOTEN: All right. I think those
 25 are all my questions. Thank you.

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1 THE WITNESS: Okay. Well, thank you
 2 very much.
 3 (There being no further questions, the
 4 deposition concluded at 12:46 p.m.)
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1 (Off the Record)
 2 CROSS-EXAMINATION
 3 BY MS. LISOWSKI:
 4 Q: Dr. Leader, we met before. My name is
 5 Jeanne Lisowski. I represent the City of
 6 Columbia in this case.
 7 A: Uh-huh (affirmatively responds).
 8 Q: I think I really only have one set of
 9 questions for you which is: At this point in
 10 time, have you formulated any professional
 11 opinions with regard to the City of Columbia in
 12 this case?
 13 A: I have not made any final determinations
 14 about the City of Columbia at this time.
 15 Q: Okay. But you intend to include that in
 16 your report when it's complete?
 17 A: Potentially.
 18 Q: Potentially, okay.
 19 MS. LISOWSKI: That's all I have.
 20 MR. STEWART: I don't have any
 21 questions.
 22 MR. KENDALL: Geoff, anything?
 23 MR. CHAMBERS: I'm good.
 24 MR. KENDALL: All right. We have no
 25 further questions. Thank you.

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1 CERTIFICATE OF REPORTER
 2 I, Cassandra E. Vance, Court Reporter
 3 and Notary Public in and for the State of
 4 South Carolina, do hereby certify that I
 5 reported the deposition of JONATHAN M.
 6 LEADER, Ph.D., on the 18th day of December,
 7 2017, that the witness was first duly sworn
 8 by me, and that the foregoing 139 pages
 9 constitute a true and correct transcription
 10 of the said deposition.
 11 I further certify that I am neither
 12 attorney nor counsel for, nor related to or
 13 employed by, any of the parties connected
 14 with this action, nor am I financially
 15 interested in said cause.
 16 I further certify that the original of
 17 said transcript shall be hereafter sealed
 18 and delivered to Everett A. Kendall, II,
 19 Esquire, Sweeny, Wingate & Barrow, P.A.,
 20 1515 Lady Street, Columbia, South Carolina
 21 29201. This sealed original transcript
 22 shall be retained by the above party, who
 23 shall be responsible for filing same with
 24 the Court prior to trial or any hearing
 25 which might result in a final order on any
 issue.
 IN WITNESS WHEREOF, I have hereunto set
 my hand and seal this 19th day of December,
 2017.
 Cassandra E. Vance, Court Reporter
 Notary Public for South Carolina
 My commission expires: 2-26-2018

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Page 4

1 JONATHAN M. LEADER
 2 being first duly sworn, testified as follows:
 3 (PLF EXH. 24, Report, Leader Subpoena
 4 Response 000018-000029, was marked for
 5 identification.)
 6 MR. KENDALL: I have marked a document
 7 Exhibit 24. It had been Bates labeled leader
 8 response subpoena response 18 through 29, and it is
 9 a report dated January 12, 2018.
 10 EXAMINATION:
 11 BY MR. KENDALL:
 12 Q. Good morning, Dr. Leader.
 13 A. Good morning.
 14 Q. We're here again to resume your
 15 deposition again today and so -- but the same rules
 16 from previous depositions apply, but I think I
 17 still have to tell you what they are.
 18 A. That's fine.
 19 Q. During the course of the deposition
 20 today, if you have any questions about what I ask
 21 you or about our procedure, please direct your
 22 questions to me. During the course of today, if we
 23 take a break, you're directed that you should not
 24 have conversations about the substance of the
 25 deposition with any party including the attorneys.

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1 Do you understand those instructions?
 2 A. Sure.
 3 Q. There may be exceptions to those rules,
 4 but you're not represented here today by counsel,
 5 are you?
 6 A. I'm not represented here today by
 7 counsel.
 8 Q. So any attorney-client privileges that
 9 sometimes get associated won't apply here, but just
 10 know that when we take breaks, you should not
 11 engage in those substantive conversations. Any
 12 questions about that?
 13 A. Actually, I did have a question. When
 14 I was saying that, it was actually -- there should
 15 have been a question mark at the end it.
 16 Q. Okay.
 17 A. I'm not sure. Am I represented by
 18 counsel here or not?
 19 Q. I understand that Mister --
 20 A. Lampl?
 21 Q. Lampl from the university is who we
 22 have been engaging with.
 23 A. Okay.
 24 Q. And that he would be your attorney. I
 25 don't think plaintiff's counsel is your attorney.



Page 6

1 per se. Do you have a different believe about
2 that?
3 A. I'm not an attorney. I wasn't sure.
4 Q. That's fine.
5 MR. HODGE: Let me just state for the
6 record that Mr. Lampl did sort of delegate to me if
7 there's anything that I need to handle on
8 Dr. Leader's behalf to go ahead and do that, so.
9 MR. KENDALL: Okay.
10 MR. HODGE: Though technically, you
11 know, I'm not his attorney, there's certainly been
12 a verbal delegation.
13 MR. KENDALL: Sure. Then I will leave
14 it to Mr. Hodge to exercise his delegated authority
15 appropriately.
16 A. Fair enough, sure.
17 Q. But the easiest thing to do is if you
18 have questions, put them out here on the table
19 while we're all sitting around it, and we'll go
20 from there.
21 A. Sure.
22 Q. The reason we resumed your deposition
23 is because we were provided a report dated January
24 12, 2018, which I provided, I think I provided you
25 a copy of it, Exhibit 24. Do you have that.

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1 you were trying to tell me. Is Exhibit 24 your
2 complete report.
3 A. Exhibit 24 is a report that I produced
4 that included documentation of an indirect cost
5 based on the University, which was not factored
6 into the final costs per section. It was strictly
7 for my own interest and a statement of
8 completeness. Since I was asked to be complete for
9 work notes and the rest, it was included. The
10 actual report that was provided that was supposed
11 to be used for this discussion does not include the
12 IDC documentation. Because in the report itself,
13 it says that IDC, overhead indirect cost is often
14 proprietary. And since I do not have access to
15 whomever at some later or date may or may not be
16 receiving funds to do the work, I do not have
17 access that would be accurate to their overheard or
18 IDC. And therefore, it should not have been put in
19 there. So, no, this is not the correct report.
20 This is a report that's simply a note. The other
21 one that does not have the IDC is the correct
22 report.
23 Q. Then I'm going to go get the right one.
24 A. No problem.
25 (A brief recess was taken.)

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1 A. Well, this is my copy, but it should be
2 your copy.
3 Q. I just want you to confirm the record
4 copy.
5 A. Fair enough. We'll use yours.
6 Q. Is that correct?
7 A. Well, looking at the title page, it
8 looks correct. You have better formatting than I
9 do. You seem to go front and back, I went single
10 page, but that's okay.
11 Q. Saving trees.
12 A. Yeah, okay. This is the copy, there
13 are two copies of the report that were provided to
14 you. There was a copy with a statement of indirect
15 cost, which was really a thing that was simply for
16 my own personal interest. And then there was a
17 copy which had the indirect cost, IDC left off.
18 The one that you've marked as 24 and handed me
19 includes the indirect cost. It should be noted
20 that that indirect cost is a statement of the
21 University of South Carolina and was simply for my
22 own interest and has not been computed into the
23 actual costs of the report.
24 Q. All right. We're going to get into the
25 substance. So let me make sure I understood what

Page 9

1 (PLF, EXH. 25, Archaeological Damage
2 Assessment Report, was marked for identification.)
3 BY MR. KENDALL:
4 Q. I've now handed you a document marked
5 as Exhibit 25, Leader subpoena response 30 through
6 41 and I'll just to confirm. Is this your report?
7 A. Let me take another look. Yeah, this
8 looks accurate. I believe indeed it is. This one
9 has my electronic signature, which is the 4/54/
10 Q. Okay.
11 A. Yeah, uh-huh.
12 Q. All right.
13 A. Sorry for the confusion.
14 Q. That's okay. I didn't do a page by
15 page comparison to avoid that. I assumed it was a
16 duplicate. But if I understand what you were
17 telling me as far as the differences?
18 A. Uh-huh.
19 Q. Exhibit 24 contains a table, which is
20 on -- is it the table that's on Page 25 -- I'm
21 looking at the Bates labeled pages -- page numbers
22 25 and carries over to 26, is that the portion that
23 you referred to as potentially proprietary?
24 A. I'm looking at 30, 31, 32, 33, 34, 35,
25 36.



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1 Q. I'm sorry. Let's --
 2 A. Oh, oh, oh, the other one.
 3 Q. I'm trying to figure out what it is you
 4 took out of --
 5 A. Okay. I'm sorry, back to the other one.
 6 then?
 7 Q. Yes.
 8 A. You said 25, let's see. Yeah, yeah.
 9 On the Exhibit 24, I guess it is, on Page 25, which
 10 is the Table 1, archeological value of damages,
 11 there is at the end of that table, which is
 12 actually, on Page 26, there is a total of the costs
 13 as determined by the table, and then next it, to
 14 the right-hand side, there is an open parenthesis,
 15 end parenthesis, that says "(USC IDC)," and then
 16 number and that is indeed the University of South
 17 Carolina's public published statement of indirect
 18 cost. That was simply there for my personal
 19 edification about what additional funds might or
 20 might not be accruing to the table, but it is not,
 21 I'll say that again, it is not included in your No.
 22 25.
 23 Q. All right.
 24 A. Because again, No. 25 is the report.
 25 This was simply a document that I worked up just to

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1 A. I read depositions and I produced the
 2 report. Oh, I also visited the site, took a look
 3 at other materials that have been collected from
 4 the site or the surrounding area by the residence
 5 of the area. And as of today, I have looked at a
 6 thousand-plus pot sherds from two different time
 7 periods, which were recovered not very far from the
 8 area which we're talking about.
 9 Q. All right. So you read the
 10 depositions, and I saw two deposition transcripts
 11 in your file, one of Mr. Pierce and one of
 12 Mr. Sheu.
 13 A. That's correct.
 14 Q. Any others that you've reviewed?
 15 A. I also have a statement from Alan
 16 Abbata, which is an affidavit then I have some
 17 personal correspondence and letters.
 18 Q. Okay.
 19 A. Oh, and I've also taken a look at that
 20 tidewater post effect request for an Army Corps of
 21 Engineers Clean Water Act permit in response to the
 22 cease and desist CWA 404 violations.
 23 Q. Much of what you have just described
 24 was contained in the documents that were produced
 25 to us was everything that was in as part of that

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1 get a better handle on what might or might not be
 2 out there. And again, the USC IDC is not in it is
 3 we are not going to be doing any of the work. The
 4 work that we're doing on this is strictly for the
 5 report and other people's overhead is other
 6 people's overhead. It is usually proprietary and
 7 as such, I don't have access to it, don't want to
 8 have access to it and did not include it.
 9 Q. And just so the record is clear: What
 10 it is that you deleted is simply that reference USC
 11 IDC 6558:26?
 12 A. That is correct. Both are Table 1 and
 13 Table 2.
 14 Q. The tables themselves are the same?
 15 A. The tables themselves are indeed the
 16 same.
 17 Q. Okay. That would explain why I thought
 18 they were duplicate. I didn't look at it quite
 19 that granularly. Great. Thank you. You recall
 20 that we took your deposition last on December 18,
 21 2017?
 22 A. Yeah.
 23 Q. Would you please tell me what you've
 24 done in terms of -- what work did you between
 25 December 18, 2017, and January 12, 2018?

Page 13

1 production that you've given me on a thumb drive
 2 today, that's all information you've obtained since
 3 your last deposition?
 4 A. Yes, everything that's on there is
 5 brand new. You have everything else. The
 6 tidewater is not on that, because, honestly, it's
 7 yours. So this is just a copy for me, but I
 8 figured you already had it.
 9 Q. Okay. May I just look at it to make
 10 sure.
 11 A. Of course, of course, please do.
 12 Q. Mister --
 13 A. This came with it, but I think it's
 14 actually included in there. I'm not sure what's
 15 going on with that.
 16 Q. I think that was e-mailed to us later
 17 than yesterday.
 18 A. Okay. Good.
 19 Q. I'll let my colleagues confirm that.
 20 A. It was supposed to be anyway.
 21 (Discussion off the record.)
 22 BY MR. KENDALL:
 23 Q. Tell me about your visit to the site.
 24 When did you go to the site?
 25 A. It was -- if I pull it, the photographs



Page 14

1 which are in the thumb drive are date-stamped, and
 2 unfortunately, for the life of me, I can't remember
 3 what the date of it was.
 4 **Q. I did not print all of them. I**
 5 **printed --**
 6 A. Well, actually --
 7 **Q. I printed one just for that purpose.**
 8 A. There should be a date stamp in the
 9 corner.
 10 **Q. That's why I printed this one.**
 11 A. Yeah, that was on January 5, 2016,
 12 according to my camera any way.
 13 (PLF, EXH. 26, Photograph, was marked
 14 for identification.)
 15 BY MR. KENDALL:
 16 **Q. So this picture was taken your camera?**
 17 A. It was taken with my camera. I was
 18 physically standing there taking the photograph,
 19 yeah.
 20 **Q. Other than taking a handful of pictures**
 21 **on that date, did you do any other work on that**
 22 **date?**
 23 A. Yeah, I scrambled up and down the
 24 hillside looking for materials.
 25 **Q. What materials?**

Page 16

1 A. Okay.
 2 **Q. What I am curious about though is the**
 3 **finding of these things. You found -- so is this**
 4 **the pottery that you referred to a moment ago,**
 5 **these are pottery remnants?**
 6 A. Well, it's yes and no. On this
 7 particular site, there were a series of different
 8 potteries that were visible at the time I was first
 9 there. The prehistoric pottery was visible when I
 10 was there. A pottery which is defined between the
 11 time period of late 1700s and very early 1800s was
 12 visible, as well.
 13 Other pottery has been found in the
 14 area on adjoining properties, and the thousand-plus
 15 that I've seen recently were collected in the
 16 surrounding area, but not directly from either the
 17 Coleman property or from the Brinkman property, so.
 18 But they all match. In other words, Deptford
 19 Linear A was on this property. Deptford Linear A
 20 was found by the folks farther down. Deptford
 21 Linear A was the second most common pottery in the
 22 assemblage I've just seen that also included --
 23 pretty, I might add -- Mississippian pottery, which
 24 is later in time period and tends to intrude on top
 25 of the historic period, when we actually started

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1 A. That I recalled from my earlier visit
 2 which are no longer visible. But then again,
 3 there's also a great deal of vegetation. So it's
 4 possible some of things were simply obscured by
 5 vegetation.
 6 **Q. What materials were you looking for?**
 7 A. Last time, I was there first time when
 8 -- the first time I was invited there, Brinkman was
 9 very excited about his bridge abutment, but the
 10 archeological sites in South Carolina tend to the
 11 multicomponent. So I'm looking for other things.
 12 So that included anything plantation, tenant/farm,
 13 agricultural, prehistoric. And in point of fact,
 14 there were several things that were found. One
 15 thing which was very clear, were a series of pot
 16 sherds which were Deptford Linear A. It's a very
 17 specific form of middle early woodland period
 18 pottery. It's defined by horizontal bars with
 19 vertical bars going through it of not the same
 20 width or dimension. In other words, it's not your
 21 simple check. You have bars that are very clear,
 22 and then you have a lighter barring perpendicular
 23 between the two. I could draw that for you, if
 24 you'd like.
 25 **Q. I don't. I mean, I'm not that curious.**

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1 showing up as Europeans.
 2 Since those were picked up by
 3 collectors, my expectation is they were picking up
 4 the things that were pretty, because they wanted
 5 them in their collection. That doesn't mean that
 6 there aren't other versions of pottery out there
 7 from the time periods. I expect that there are.
 8 It's been a great place to live for a very long
 9 period of time, and given the river and it's
 10 importance, I expect that whole area, the entire
 11 bank, from one -- you know, from all the way
 12 upstream, all the way downstream to be basically a
 13 series of, if not continuous, a series of sites,
 14 consecutive.
 15 **Q. Did you document the location of the**
 16 **pot sherd that you found?**
 17 A. Since I was on private property, I
 18 pointed them out to David. I showed him where they
 19 were. He was interested in the bridge, and I
 20 simply left it at that.
 21 **Q. Okay. This was in your -- I'm taking**
 22 **about January 5, 2018?**
 23 A. Oh, January 5, 2018, unfortunately, the
 24 work that's been going on out there, I think they
 25 scraped a good chunk of the stuff that I saw off

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1 and then pushed it into the swamp, and/or, because
 2 as you can see, there is vegetation here. It is
 3 possible, quite possible, that there are additional
 4 deposits underneath vegetation, which are not
 5 visible unless I take a shovel to it. And again,
 6 I'm not going to take a shovel there. I'm not
 7 doing the work there in that regard.
 8 Q. I may have misunderstood you, I thought
 9 that you had indicated that you saw pot sherds when
 10 you were on site on January 5, 2018?
 11 A. Well, I went looking -- the 2018, no.
 12 What happened was I went looking for the same areas
 13 of the pot sherds I had seen previously to my
 14 previous time on the site.
 15 Q. Okay.
 16 A. And at the time that I was there at
 17 2018, January 5th, they were no longer visible to
 18 me in the same areas, which does not mean they're
 19 not there.
 20 Q. Okay.
 21 A. It simply means that they are either
 22 displaced or whatever or covered by vegetation at
 23 this point.
 24 Q. So you have no documentation of pot
 25 sherds on the Brinkman or any of the plaintiff's

Page 19

1 properties from your own observations to where you
 2 have seen it in place?
 3 A. I have seen the -- no, that's not true.
 4 Q. Okay.
 5 A. I have seen a series of pottery, both
 6 prehistoric and historic on the Brinkman property
 7 from my first time there.
 8 Q. My question was: Do you have
 9 documentation of that?
 10 A. I am giving you the documentation that
 11 I saw that there. And since I am under oath, that
 12 is my documentation.
 13 Q. Okay.
 14 A. It was not necessary for me to be
 15 taking photographs at that time. It was on private
 16 property, protected by the landowner, brought to
 17 their attention. This is a private property
 18 statement.
 19 Q. And there is no cause to be defensive,
 20 I'm simply asking what's available to us and what's
 21 not. And what I heard you say you saw it, and now
 22 I'm asking if you documented it in any way? Do we
 23 have photographs, a map, anything that shows where
 24 it was that you saw it?
 25 A. I did not take photographs at the time.

Page 20

1 Q. Okay.
 2 A. And I did not document it at the time.
 3 On the other hand, there are additional materials
 4 in the locations that were under easement and under
 5 work by the City on other properties including a
 6 gentleman who does have his collection, and will be
 7 happy to tell people precisely where they came from
 8 and refused to allow the workers onto his property.
 9 So if your question is, is the area an
 10 archaeological site? The answer is yes. If the
 11 question is, are there additional materials out
 12 there to be pointed at? The answer is yes. Are
 13 there additional things to be dealt with here?
 14 Yes.
 15 Q. If you have any other questions you
 16 want to ask yourself, we'll wait.
 17 A. That's fine.
 18 Q. My question was simply: Had you
 19 documented what you saw in respect to pot sherds?
 20 And you said "no."
 21 A. That is correct, at the time.
 22 Q. That's the answer I needed.
 23 A. Okay.
 24 Q. Okay. Very good. On January 5, 2018,
 25 other than -- I was asking you sort of what you did

Page 21

1 that day?
 2 A. Right.
 3 Q. And what you were looking for?
 4 A. Right.
 5 Q. You mentioned that you were looking for
 6 where you had seen the pot sherds, but due to
 7 changes in the topography?
 8 A. Correct.
 9 Q. And the vegetation, it wasn't visible
 10 to you?
 11 A. That is correct.
 12 Q. All right. What else were you looking
 13 for or did you observe that day?
 14 A. I was trying to take a hard look at the
 15 topography of the area as I recalled it to looking
 16 at the survey stakes that had been put out there by
 17 the City and it's dependents, which I did indeed
 18 see. I took a look and did some measurements
 19 across those areas to determine what the stated
 20 easement was be the stakes and in the area beyond
 21 that, which had clearly been impacted.
 22 Q. Okay. Now, in the photograph I've
 23 shown you, Exhibit 26. Just so I understand which
 24 I'm seeing in the photograph, I see like a footpath
 25 that runs sort of the right third of the page



Page 22

1 towards the observation deck. Is that sort of what
 2 that looks like? Is that what that is?
 3 A. I wouldn't call it a footpath. It is
 4 an area that includes the easement by the sewer
 5 pipe or whatever that pipe is, the sewer pipe going
 6 through. You can see the red stakes that were put
 7 out by the surveyor. There are additional stakes,
 8 which you can't see -- actually, you can see, if
 9 you take a look to the hard left, in the middle of
 10 the page, you'll see another red marked stake.
 11 Q. Okay. I do see those.
 12 A. And then if you take a look to the left
 13 and upslope, what you'll see is areas that have
 14 been gouged, among other things.
 15 Q. Now, what I want to ask you about those
 16 stakes is I see -- I know this wasn't intended to
 17 be a footpath, but I just see an area that looks
 18 like people have walked on it enough, but I see one
 19 pink, and then another pink further away going
 20 towards the observation deck and then the one that
 21 you just pointed out to the left. Is it your
 22 understanding that those were original stakes, or
 23 have they been put in since the work was performed?
 24 A. My understanding is that they were put
 25 in by the City. And there's also a blue stake

Page 24

1 through that was left there by whoever had done an
 2 initial work on the sewer pipes at an earlier date.
 3 Q. Describe -- what is a drag through?
 4 A. It's an item form declogging pipes.
 5 It's a version that I'm not particularly familiar
 6 with. So that's a speculation, but it's modern
 7 versus prehistoric or historic.
 8 Q. Okay. So it's sort of a snaking-type
 9 device that you pull through?
 10 A. Yeah, a snaking device with -- with
 11 basically a rotor set.
 12 Q. And that was sort of laid aside at some
 13 point and left on the site?
 14 A. Yeah, it was apparently left, I would
 15 guess. It was laid to the side, yeah. Been there
 16 for a while.
 17 Q. Did you document the bricks that you
 18 observed by photograph or inventory or anything?
 19 A. I noted them. I didn't bother to
 20 photograph them.
 21 Q. "Noted" means in your head?
 22 A. I noted them in my head. Noted where
 23 they were on the property, pointed them out to
 24 Brinkman.
 25 Q. Again, I'm just looking for --

Page 23

1 that's part way up --
 2 Q. I'm going to ask you about that in a
 3 minute, but go ahead.
 4 A. That's part way up the slope.
 5 Q. I see it. Your understanding is those
 6 were put in before the work was performed?
 7 A. I do not know if they were put in
 8 before the work was performed. I know -- I've been
 9 told that they were put in by the City and its
 10 contractors versus the landowners.
 11 Q. Great. Thank you. Are there any --
 12 other than that pot sherds and the bridge
 13 abutments, I thought I understood you to say there
 14 were other artifacts on this site?
 15 A. Uh-huh.
 16 Q. Have you observed other artifacts on
 17 this site?
 18 A. Yes, there are bricks showing early
 19 manufacture. There are bits and pieces of farming
 20 equipment that are there -- this is the typical
 21 nuts, bolts, and bits that are left over from, you
 22 know, harrows, plows, things that fall apart.
 23 There were -- golly, what else? I think there was
 24 actually something left there from the previous
 25 work on the pipes. I think there was a drag

Page 25

1 A. That's okay.
 2 Q. To know how we've preserved what we've
 3 seen.
 4 A. Sure.
 5 Q. Ad the farming equipment, the same?
 6 A. Same thing.
 7 Q. Okay. And no -- at any time, have you
 8 done any excavation work or dirt removal?
 9 A. I have done no excavation or dirt
 10 removal of the area.
 11 Q. Other than the visit on January 5,
 12 2018, have you been there any other time since
 13 December 18, 2017?
 14 A. If you'll take a look at the artifact,
 15 is there -- check the date on the artifact. Is it
 16 the same date?
 17 Q. This one?
 18 A. Yeah.
 19 Q. Okay. I was going to ask you who took
 20 these pictures. No, this was January 8th. Did you
 21 take these pictures also?
 22 A. Yes, I did.
 23 Q. Oh, great. Very good. Let's see.
 24 (PLF. EXH. 27; Photograph, was marked
 25 for identification.)

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1 MR. KENDALL: Very good. So this is
2 27?
3 THE COURT: Yes, sir.
4 BY MR. KENDALL:
5 Q. I'm showing you Exhibit 27. I just
6 printed one of several that were in your thing. So
7 I'll just notes here that there were several
8 photographs of similar objects, and I assumed that
9 they were all taken by the same person at the same
10 time. But this is also a photograph that you took?
11 A. It is.
12 Q. And these -- in very layman's terms,
13 are these pot sherds?
14 A. These are pot sherds. They are
15 prehistoric and they are the Deptford Linear A.
16 Q. Was -- where were these when you
17 photographed them?
18 A. These were on a kitchen table of the
19 neighbors to Mr. Coleman, whose properties are also
20 impacted by the City.
21 Q. Okay. Do you know when these pieces
22 were collected?
23 A. They were collected within tenure of
24 the people living there. Precisely, when they
25 picked them up, I did not ask, they did not tell

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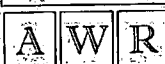
1 double-check.
2 Q. One of the folks who is not a litigant
3 in this complaint?
4 A. As far as I know, he's not a litigant
5 in this particular complaint, no.
6 Q. Okay. And apparently, you must have
7 spoken to him?
8 A. I did.
9 Q. Directly?
10 A. Yes. One of the things, I know this is
11 not a question you've asked, but I'll give you
12 information anyways.
13 Q. Thank you.
14 A. Oh, you're welcome, because it's not a
15 secret. One of things you're doing if you're doing
16 archaeology is you always talk to the neighbors.
17 You talk to the people who are there. You find out
18 who the collectors are in the neighborhood, and you
19 double-check. It's standard operating procedure.
20 Q. Yeah.
21 A. So in this case, these were the people
22 who knew the area, were living in the area, were
23 surrounding the area, and this is a what they had
24 an interest in doing. So you ask.
25 Q. That's goods to know. Thank you.

Page 27

1 me.
2 Q. I thought it was unusual they were on
3 paper towel. Had they just been recently cleaned
4 and were drying?
5 A. No, no. I understand the question,
6 but, no, actually, they're were on a nice wood
7 table, I think. So the idea was to keep them from
8 scratching the table.
9 Q. Okay.
10 A. Besides, the fact that it's easier to
11 see definition if it's against a more or less white
12 background than it is brown against brown.
13 Q. All right. Do you know or were you
14 shown the specific place where these pot sherds
15 were found?
16 A. No. I asked them if they could do
17 that, they said, yes, I said, great. And I left it
18 at that.
19 Q. These and all of the photographs you
20 took of pot sherds were in the possession of the
21 Coleman's?
22 A. They were in the possession a
23 neighbor's to the Colemans.
24 Q. Do you recall the name?
25 A. I'm going to say Carr, but I'd have to

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1 Okay. So, you pointed me to these photograph in
2 response to a question that I asked which was: Had
3 there been other site visits? Obviously, you were
4 at the Carr's house. We're going to call them the
5 Carrs. Maybe we're right, maybe we're wrong, but
6 we'll at least know who we're talking about.
7 A. Right.
8 Q. You took these pictures at the Carr's
9 residence on January 8th, did you go out into the
10 hillside that day and do anything else, or just go
11 to see these?
12 A. No, I walked the area just to take a
13 look around, get an idea of where they were living
14 and where they were approximately to everybody
15 else.
16 Q. And just as a reminder, they were
17 neighbors, next-door neighbors of the Colemans?
18 A. That is correct.
19 Q. Okay. Great. Any other observations
20 that you made on January 8th that were material?
21 A. Besides the pottery and the artifacts
22 they collected? Actually, there was one piece of
23 pottery in their collection I had not seen on the
24 other sites, which I found interesting, and that
25 was a was likely to be a piece of Colonoware.



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1 Colonoware is a specific pottery which is connected
 2 to both the African American population and the
 3 Indians. In other words, people who had a
 4 background in making pottery were making pottery in
 5 a European fashion, but they were not your European
 6 pottery. There was a sherd that I think is quite
 7 likely to be Colonoware. I have not put it through
 8 full analysis, which is why it's not in anything
 9 like a report, but finding Colonoware anywhere
 10 actually is quite significant and important. So to
 11 me, that's interesting, but it's not necessarily
 12 germane to the actual court case at the moment.
 13 Q. Okay.
 14 A. Fuel for further analysis.
 15 Q. Sure. Did any of these folks who have
 16 collected or seen these pot sherds tell you that
 17 they had found it within the boundaries of the
 18 City's easement?
 19 A. Huh, no.
 20 Q. Did any of them tell you they had found
 21 it within the width of the work that had been done
 22 in 2015?
 23 A. I believe that some pieces were indeed
 24 found lost rang the I believe that some paces were
 25 indeed found within the width, but not necessarily

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1 easement, but I can't stipulate to that.
 2 Q. Okay. So what I was trying encompass
 3 was including the part that had been maybe pushed
 4 down the hill or cut back from the bank?
 5 A. Yes.
 6 Q. And none of these folks told you that
 7 these artifacts or others like it were found inside
 8 that width?
 9 A. I don't recall that, no.
 10 BY MR. KENDALL:
 11 Q. To your knowledge, has anybody gone
 12 through the side cast from this project to
 13 determine whether there are any pot sherds in that
 14 side cast?
 15 A. I'm not sure what you're referencing.
 16 Q. When the dirt is moved and it gets
 17 pushed off to the side, we're going to call that
 18 side cast.
 19 A. Uh-huh.
 20 Q. Has anybody kind of sifted through that
 21 to see if in fact there are pot sherds in it?
 22 A. Not to my knowledge, no. Clearly, they
 23 should. Oh, there is something that I did leave
 24 out that I probably should not have thinking back
 25 to it, when you were asking about the original

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1 where things were found?
 2 Q. Yes.
 3 A. There was a Deptford Linear A pot sherd
 4 found by Brinkman himself, which he showed me --
 5 after I showed him -- further down the slope. In
 6 other words, cut in down, and he found it somewhere
 7 down slope towards the river.
 8 Q. Okay. You had mentioned that you
 9 suspected that some of this kind of artifact had
 10 been pushed into the swamp, I believe was the word
 11 you had used?
 12 A. That's correct.
 13 Q. But you've not confirmed that in fact
 14 to be the case?
 15 A. Well, actually that kind of gets to the
 16 stuff I was just looking at. A good chunk of the
 17 materials that are currently spread along that
 18 table at least this large are from the river and
 19 downstream and they are not eroded. In other
 20 words, they were not in the water tumbled, they are
 21 fresh. So the question then becomes: How long
 22 have they been there? Are they specifically from
 23 this property?
 24 I can't say they're specifically from
 25 this property, but they're downstream from this

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1 property, and there's an ton of them. So that's --
 2 that raises interesting questions. I don't have
 3 the full answers for that, and that is why, again,
 4 it's not in this specific report. But again, it's
 5 something that I will be looking at for future
 6 information.
 7 Q. And the sure transport of these
 8 materials, granted their not eroded?
 9 A. Right.
 10 Q. But what's sort of the window of time
 11 for --
 12 A. I don't think they were in the water
 13 very long at all. The thing is when you break
 14 pottery, especially -- now, this is low-fired,
 15 understand? This is not like porcelain.
 16 Q. I get it.
 17 A. Okay. Good. Well, not everybody does,
 18 unfortunately, but I'm glad you do. So what you
 19 have is low-fired pottery. It breaks, gives a
 20 sharp break, it's low-fired pottery, water starts
 21 to dissolve it. These are not dissolved. The
 22 designs are fresh and crisp. The edges of the
 23 breakage are fresh, for the most part, and crisp.
 24 They have not been in the water for a huge amount
 25 of time.

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1 Q. Right. But when we're talking in terms
2 of the life of these, 10,000 years, 5,000 years,
3 what you say is a large amount of time might be
4 different than what I think. How long is a large
5 amount of time, a year, two years?
6 A. Well, these are much more recent than
7 that. We're talking 800 stuff to 1400s, so -- for
8 the Mississippian pottery. So again, in the
9 ground, it could be very stable and protected.
10 Q. Sure.
11 A. In a water environment, no. In a water
12 environment, especially one with the river we're
13 talking about, the floods that have gone through,
14 the other materials that have gone through, what
15 happens in that river, the expectation of them
16 surviving for a long period of time, pristine or
17 pristine-like, very close to, not so much.
18 Q. All right. And I'm not picking at you,
19 I'm just trying to get. When you say long period
20 of time?
21 A. Yes.
22 Q. What does that mean to you?
23 A. To me --
24 Q. In terms of months and years?
25 A. Okay. Let me think about that. See if

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1 collection; they were in the water less than a
2 year.
3 Q. And when were they collected?
4 A. I'm still trying to get that
5 information. That's another reason I'm trying
6 to -- when you're talking to collectors, they
7 collect.
8 Q. Sure. And there are multiple forces
9 that could have -- I mean there are -- how they got
10 moved down the river whether -- I mean obviously
11 water pushes them down the river?
12 A. Right.
13 Q. But there have been number of high
14 water or flood stage events that could also account
15 for these things being added to the water?
16 A. It's possible, yeah.
17 Q. Okay. All right. So other than
18 what -- any other visits. You all got to January
19 5th and January 8th, any time else?
20 A. No.
21 Q. All right.
22 A. Not recently, no.
23 Q. I have -- I saw in the documents that
24 we got some photographs and e-mails that I wanted
25 to ask you about.

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1 I can give you a -- again, you're right, we're
2 archaeologists, we think in larger frames of time.
3 Q. Archaeologists and Charlestonian?
4 A. I would expect -- I would expect on a
5 low-fired pottery of this nature, to lose your edge
6 set in a year or so.
7 Q. Okay.
8 A. You still have the design, it would
9 start to degrade. The body of the pottery --
10 because as it's fired, you know, you've got
11 different temperatures going to the center, you're
12 going to have things that could easily survive for
13 a considerable period of time. A considerable
14 period of time would be decades. But when you're
15 talking about clean breaks, that's ephemeral. And
16 I think that's in the usual use of the term
17 ephemeral. It's not something that's going to
18 survive for a great deal of time.
19 Q. So the sherds that you found or had
20 seen or are aware of recently, you said downstream
21 of this site?
22 A. Yes.
23 Q. They were -- your best estimate is:
24 they've been in the water less than a year?
25 A. I think that at the point of

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1 A. Sure.
2 Q. Now, because of the way things were
3 provided to us, I can't be sure what all exactly
4 went together. So let me be a little bit sloppy,
5 for a moment?
6 A. Take your time, I'm not going anywhere.
7 (PLF: EXH. 28, E-mail, Castle Road
8 Sewer Abutments, was marked for identification.)
9 BY MR. KENDALL:
10 Q. 28.
11 A. Yes, okay.
12 Q. This is Leader subpoena response 723.
13 It appears to be an e-mail from REHolder@AOL.com to
14 Dr. Leader, January 11, 2018.
15 A. Okay.
16 Q. My question is: He references
17 photographs?
18 A. Uh-huh.
19 Q. And I also -- they weren't sequential
20 in what we got on the disc. So I wanted to make
21 sure if these are the photograph that were in fact
22 attached to that e-mail. And if it is, I'm going
23 to put them all together.
24 A. I believe that's correct.
25 Q. Okay. So let's make this one exhibit.



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1 And it's going to be Exhibit 28. The top document
 2 in the exhibit will be Leader subpoena response
 3 723. And the attached photographs are labeled
 4 Leader response 47, 48, 49, and 50.
 5 Now, just ask you about these
 6 photographs. Have you seen ---
 7 A. These aren't marked yet.
 8 Q. They're going to be included with the
 9 e-mail. That would be one exhibit.
 10 A. Oh, oh, okay, okay.
 11 Q. Looking at 47 through 50, have you seen
 12 the objects with your own eyes that are captured in
 13 these photographs?
 14 A. I did walk the area and, yes, I have
 15 seen this, yeah.
 16 Q. Okay. So this photograph that -- let's
 17 start with 47 and I apologize --
 18 A. Which one is 47.
 19 Q. They're very dark print in the bottom,
 20 right corner.
 21 A. Oh, okay. Got it.
 22 Q. It looks like this.
 23 A. Okay.
 24 Q. Do you have 47.
 25 A. Yeah, yeah, I found that. Thanks for

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1 pointing it out.
 2 Q. It points to abutment Part 1?
 3 A. Yes.
 4 Q. And have you seen that object?
 5 A. I believe I have, yes..
 6 Q. Okay. And did you see that -- when
 7 have you seen that object?
 8 A. That would have been on the -- was it
 9 the 5th?
 10 Q. January 5th?
 11 A. Yeah.
 12 Q. Okay. Because these photographs,
 13 unlike your photographs are not dated. So I'm
 14 trying to get a sense of when these pictures were
 15 taken.
 16 A. I did not take these photographs.
 17 These came with the e-mail, but, yes, on the 5th, I
 18 did the walkthrough, yeah.
 19 Q. And you saw that -- you saw -- what is
 20 that object?
 21 A. It is a stone that's been placed in
 22 that location, which according to the research
 23 that's been made available by David Brinkman, based
 24 on the maps and area photographs and satellite
 25 sets, corresponds with a bridge abutment.

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1 Q. I don't know who put the label abutment
 2 Part 1 on there?
 3 A. That would have been --
 4 Q. Not you?
 5 A. Not me..
 6 Q. It came to you that way?
 7 A. Correct.
 8 Q. But is it your opinion that that is a
 9 bridge abutment?
 10 A. It is the opinion it's a location shown
 11 to be a bridge abutment.
 12 Q. That's a different answer than the
 13 question I asked. Is this object it's pointing to,
 14 what looks to me like a rock or some kind of stone
 15 piece, is that a bridge abutment?
 16 A. I believe it is a bridge abutment --
 17 that it is a bridge abutment, yes.
 18 Q. Thank you. Do you have an opinion as
 19 to when that rock or stone or whatever you want to
 20 call it was placed in this location?
 21 A. I do not have direct knowledge of
 22 precisely when it was placed there.
 23 Q. Okay.
 24 A. I have no photographs of it being
 25 placed there.

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1 Q. Of course not, but -- and because I
 2 wasn't asking about your direct knowledge, because
 3 you're not old enough to give direct knowledge.
 4 A. Thank you.
 5 Q. Do you have an opinion as to when this
 6 rock was put there?
 7 A. Given information which shows this to
 8 be the location for a bridge abutment, seeing a
 9 stone which was appropriate and similar to other
 10 locations where bridge abutments have been of a
 11 similar format, I do indeed believe it was placed
 12 there for the bridge.
 13 Q. All right. Do you know approximately
 14 when, what year, what decade?
 15 A. It would have been the late 17s very
 16 early 18s, I would think.
 17 Q. Between 1790 and 1810, maybe?
 18 A. 1810, perhaps a little bit later, but
 19 not by much.
 20 Q. Have you done any sort of testing of
 21 any kind other than just eyeball on this rock?
 22 A. I have not.
 23 Q. Okay. In other words, you said it was
 24 placed here. Do you know where it originated?
 25 A. I do not.



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1 Q. Did you observe tool markings of any
2 kind on this rock?
3 A. Outside of the what's visible in the
4 photograph and by standing on it, I did not do a
5 surface analysis to look for additional tool marks.
6 Q. Okay. Are there tool marks we can
7 observe in this photograph?
8 A. If you take a look at the straight sets
9 on it, you know, straight lines in nature are a
10 problem. Although, I suppose if one was doing a
11 full fire set, we could probably get cleavage in
12 granite. I suspect it is a dressed or personally
13 dressed stone, based on what I saw in the
14 photograph.
15 Q. Okay. But is there -- so what
16 you're -- if I can put that into layman's terms,
17 you're talking about that sharp corner that we see
18 going up from left to right?
19 A. Both left to right and behind and the
20 corners, yeah.
21 Q. Okay. And that is indicative of a
22 stone that is not in its natural condition?
23 A. It tends to be indicative of stone not
24 in its natural condition, correct.
25 Q. So the inference being it was tooled?

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1 would tell you whether this was cut with a
2 pneumatic cutter or a steam cutter?
3 A. I didn't see anything that looked like
4 a rotary sets or anything of that nature that
5 would've suggested steam or pneumatic.
6 Q. So we just can't tell from looking at
7 the rock?
8 A. Looking at the photo, you can't tell.
9 Looking at the rock, I suspect that you can if you
10 do the full analysis.
11 Q. All right. Now Holder house that's
12 arrowed that's on there, this came from Mr. Holder.
13 So obviously, he was trying to show us which
14 direction?
15 A. Right.
16 Q. Do you -- the Holders are not litigants
17 in this case?
18 A. No, they sold out to Coleman.
19 Q. Okay. I was going to ask you if you
20 knew whose it was. Mr. Coleman -- or I guess it's
21 Dr. Coleman, so is this abutment on the Coleman
22 property or on the Brinkman property?
23 A. This particular set is on the Coleman
24 property.
25 Q. Okay. Let's just go to Photograph 48.

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1 A. The inference being that it is person
2 made and placed.
3 Q. So my next -- so can you tell from
4 looking at that the types of tools that were used
5 to make those -- that cut?
6 A. Immediately, no.
7 Q. Okay. And is there a difference that's
8 is observable between the cuts made by tools that
9 were available, say, around 1800 versus tools that
10 were available, say, 1870; post civil war?
11 A. There were -- there was a major shift
12 in tools between things that were hand set or hand
13 assisted versus team set or pneumatic by the time
14 you get into the 1800s, early 19s, you're moving
15 into the pneumatic tools. Pneumatic tools leave a
16 distinctive set of marks. Steam tools, depending
17 how they were attached to the tool end, may or may
18 not, but not infrequently, the groups that produced
19 the steam tools made their own tool elements, which
20 was another way to get some more money from the
21 people who were buying their tools. So, yes, no,
22 and sort of.
23 Q. So looking at this, is there anything
24 you can look at on that rock, whether from your
25 memory of seeing it or from this photograph, that

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1 It looks like this. It's got a silt fence.
2 A. Yeah, this one, right?
3 Q. Yes.
4 A. Okay. I think so. I think so. I'll
5 just double-check.
6 Q. Yeah.
7 A. That's 49. Oh this is 48, I'm sorry.
8 Go ahead.
9 Q. Okay. This one also -- this one has an
10 abutment Part 2 arrow on it and -- but maybe it's
11 the photocopy process, but I can't really see where
12 the end of that arrow is. Are you familiar with
13 that location?
14 A. I've walked that location, yes.
15 Q. Why don't we flip to 49, because it
16 seemed to show both Part 1 and Part 2. Do you see
17 49, or it's got arrows for those?
18 A. I seen Part 2 on 40 -- oh it's 50,
19 sorry. Yes, yes, sorry, here we go.
20 Q. All right.
21 A. Right.
22 Q. Can you tell me what we're looking at
23 where it says abutment Part 2?
24 A. You're looking at an area closer
25 towards the property between the Brinkman house and

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1 the Coleman house.
 2 Q. All right. So this is north of
 3 abutment 1?
 4 A. That is correct. North, yes, I guess
 5 it's north.
 6 Q. Are these two different abutments or
 7 are these part of the same structure?
 8 A. Actually, that's something that would
 9 need to be determined. They're in the appropriate
 10 location. It's not uncommon for people to work one
 11 abutment and work another one or attach between the
 12 two. I can't answer that one directly. It would
 13 be an area for further research.
 14 Q. Have you formed an opinion as to
 15 whether what he is calling abutment Part 2 is in
 16 fact part of an abutment?
 17 A. I believe that it is. Again, based on
 18 the research showing the placement of the bridges
 19 and going across, I think it is, probably. I would
 20 agree that it is, yeah.
 21 Q. Could you make that same conclusion
 22 from the materials on-site, from the artifacts? In
 23 other words, looking at that, can you tell that
 24 that is consistent with a bridge abutment?
 25 A. I'm not sure, I'm following the

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1 Q. But do you recall, did it show similar
 2 characteristics of having been cut?
 3 A. No, I can't say that I do.
 4 Q. All right.
 5 A. Not on that one, no.
 6 Q. Very good. Now let's look at the
 7 contents of this e-mail?
 8 A. Okay.
 9 Q. First of all, do you know why he sent
 10 you this e-mail?
 11 A. I was hold there was a previous person
 12 who had lived in the house who had information and
 13 I requested contact.
 14 Q. All right. So this e-mail is -- to
 15 your knowledge, was solicited by Mr. Brinkman, but
 16 at you're suggestion?
 17 A. I was told there was a person who had
 18 owned the area before Coleman, and I said, we're
 19 talking about a bridge abutment, if this bridge
 20 abutment was there when he was there, I need to
 21 know whether it was something that was in place by
 22 the City or moved by the City or whatever by the
 23 original work, get me a person -- you know, get me
 24 the information for this guy and have him contact
 25 me, and he contacted me.

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1 question.
 2 Q. Do you have to know from a map that
 3 there's a bridge abutment, and then you said, yeah,
 4 that looks like a abutment, or do you look at the
 5 rock and say, yeah, that looks like a bridge
 6 abutment?
 7 A. That is an interesting question. I
 8 think that it's probably a combination of the two.
 9 You're talking about a technique of bridge
 10 building, which isn't actually used anymore. So
 11 for most people, if they're coming in on a truly
 12 historical bridge area, they may or may not
 13 recognize what they're looking at as a bridge.
 14 Having something that is, you know, I don't want to
 15 use the term out of phase, but something that has
 16 interest to it, doing the historical research on it
 17 and then determining, in this location, there was
 18 the bridge, does indeed color the final
 19 determination of what's there. Does it color it to
 20 the point of taking it away, no. It simply adds
 21 additional information to something which is one of
 22 these things is not like the other.
 23 Q. Okay. When you looked at this, and the
 24 pictures aren't as good of this.
 25 A. No, it's not.

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1 Q. All right. Now, you mentioned this was
 2 Dr. Coleman's property, but, in fact, it says here
 3 that they resided adjacent to the Coleman's
 4 property? Does that ring a bell to you?
 5 A. Huh, I'm reading that, and that's what
 6 it does indeed say. I resided on the property
 7 adjacent to J. Coleman's.
 8 Q. And it even goes forward that his
 9 parents own that until 2017?
 10 A. In that case, I'm misremembering it. I
 11 remembered that he was actually living on the same
 12 property.
 13 Q. Okay. So these places that are marked
 14 abutments 1 and 2?
 15 A. Yes.
 16 Q. Do you recall whether they were on the
 17 Holder property or on the --
 18 A. No, they're on the Coleman property.
 19 Q. They are on the Coleman?
 20 A. That's why I assumed he was referencing
 21 he lived in the house, because they're now the
 22 Coleman property.
 23 Q. And he indicates that the structures
 24 remained unchanged from '64 until -- and he doesn't
 25 say until when?



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1 A. Uh-huh.

2 Q. Or he doesn't say that they were

3 changed?

4 A. My understanding of that is he's

5 referencing the large stones, which have not been

6 moved, but not the smaller materials that were

7 around it and were pushed down and are visible in

8 the photographs at the base of the hill.

9 Q. Okay. You don't happen to know him,

10 know how old he is or anything like that?

11 A. I haven't got a clue. I never met him.

12 Q. Okay. That's fine. I also, in the

13 materials that we got -- I'm going to let her mark

14 them and give them to you.

15 (PLF, EXH. 29, Letter, 1-1-18, was

16 marked for identification.)

17 BY MR. KENDALL:

18 Q. Exhibit 29, which is Leader subpoena

19 response 543?

20 A. Yep.

21 Q. And so this is a letter you received

22 from Dr. Coleman. Did you ask him to send you this

23 letter?

24 A. I did. I asked him to provide me with

25 additional information.

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1 A. Well, in the process of preparing the

2 report and looking at how these things go about,

3 there are some questions that need to be answered.

4 So indeed, I did look at those, yeah.

5 Q. Okay.

6 A. They're not necessarily in the report.

7 I don't point fingers at anybody, I figure that's

8 up to the Court to do, but, yeah, I have indeed

9 prepared, in my own head at least, a statement that

10 to that effect, yeah, sure.

11 Q. Okay. And when I'm talking about a

12 standard of care for the contractor, I am referring

13 to the manner of conduct that is expected and

14 reasonable in the industry. And you're prepared --

15 you are prepared to give opinions as to whether or

16 not -- first, what that standard is and whether or

17 not it was violated in this case?

18 A. I am willing to give a statement of

19 opinion as to several points of that, yes.

20 Q. Okay. And in that was -- the question

21 was triggered by the comment of the not giving

22 notice. So we'll come back to -- that's why I

23 triggered that, but are there other opinion

24 subjects, other than what is in your report on

25 which you are prepared to give testimony?

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1 Q. Okay. Is there any specific

2 information here that is material to your report?

3 A. Yes.

4 Q. What?

5 A. The statement that he confronted the

6 workmen, and specifically requested that they not

7 damage what he identified to them as historic river

8 bridge abutment.

9 Q. Okay.

10 A. And the other point being, when I was

11 in a conversation with him, the statement that he

12 was not informed by the City that work was going to

13 be done nor was any contact with him made. I found

14 that quite interesting, as well.

15 Q. Now are you giving an opinion on the

16 standard of care to be -- for the contractors in

17 this case?

18 A. Yes. Based on the depositions, and the

19 statements from both the City engineer and Weston's

20 engineer and the concept going down through Inliner

21 down to National Pipe. Yeah, I would be happy to

22 do that, if you request it.

23 Q. I'm not requesting any opinions except

24 those for which you've already been asked to

25 prepare opinions.

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1 A. Yes.

2 Q. Okay. So let's -- one is the standard

3 of care for a -- standard of care for a sewer

4 contractor. Is that an area you're giving opinions

5 in?

6 A. Yes.

7 Q. Okay. And what other subjects and

8 we'll get to the substance of it, but just subject,

9 what are the subjects you're giving testimony on?

10 A. Permitting.

11 Q. All right. What else?

12 A. Use of both the archives and the

13 institute's database. And severe concerns about

14 the question of oversight.

15 Q. Does that come under the standard of

16 care or does that come up to the engineer level?

17 A. It basically is a thread that works its

18 way through several things.

19 Q. Oversight by whom?

20 A. Oversight by everybody, the City,

21 Weston, Inliner, National Pipe.

22 Q. Okay. What else?

23 A. That's enough I think, don't you?

24 Q. Okay. No. I need to know everything

25 you're pointing to.

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1 A. I wasn't trying to be flip. I just
2 figured that's enough.
3 Q. My job here today is to find out all of
4 the opinions that I can expect to here from you in
5 trial?
6 A. Uh-huh.
7 Q. And I need know -- so I'm -- just to
8 sort of give you a road map, I want to know what
9 they are. I want to know why you're qualified to
10 give them. I want to know what the basis of them
11 are.
12 A. Okay.
13 Q. So that's where we're going to be
14 spending time.
15 A. That's fine.
16 Q. Now, the other information that you
17 have reviewed is cited, I believe -- in the back of
18 your report, there's a sources list. Is there
19 anything that we haven't discussed that is part of
20 the basis or the materials on which you have relied
21 specifically in preparing this report?
22 A. In the preparation of this report, no.
23 Q. Okay.
24 A. There -- however there was the use of
25 Google Earth Pro and is mapping program simply to

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1 Q. Okay.
2 A. And I need say that I am not a
3 professional surveyor.
4 Q. Understood.
5 A. Okay.
6 Q. But for purposes of the calculations
7 you've done, all of the measurements on which you
8 relied are reflected in your report?
9 A. That is correct.
10 Q. Tell me what is your opinion regarding
11 the standard of care for a sewer contractor?
12 A. My understanding of the standard of
13 care for sewer contractor is limited. I will be
14 upfront about that. However there are some common
15 sense statements that can be made, which is you
16 stay within the easement. You don't go outside of
17 it. I would think that, since in the depositions,
18 it was stated that the standard for the City and
19 other is to contact the landowners and give them a
20 heads up that they were going to do work on the
21 easement, which was in purview of the group,
22 honestly, if we had colored between the lines, we
23 wouldn't be here today. But we did not. The
24 people who I've been in contact, who are the
25 landowners, and in the depositions it's not clear

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1 double-check length of the area against statements
2 from the City as to where people's boundaries were,
3 in other words, in the determination of the square
4 footage. I don't list that there because it was
5 simply a backup set. But you should know that it
6 was indeed a combination of onsite with standard
7 tape measures and then, you know, using map sets.
8 Basically an inexpensive form of GIS.
9 Q. I did not print this information, but I
10 did note, and maybe you recall in your file some
11 recording of measurements?
12 A. Yeah.
13 Q. It looked to me like they were sent to
14 you by Mr. Brinkman?
15 A. Personally, yes?
16 Q. So in addition to the measurements he
17 provided you, you also obtained your own
18 measurement?
19 A. I did, and then I double-checked
20 against his using the -- as I said the basic
21 version of GIS.
22 Q. So the measurements that are contained
23 in your report reflect your professional opinion
24 or -- as to what those measurements are?
25 A. Yes.

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1 In fact, it is clear, at least to me, that they
2 were not contacted, which is unfortunate. And had
3 they stayed within the area of the easements, it
4 would have been unfortunate, but we would have
5 moved on. They did not stay within the area of the
6 easement. They were not in contact with them.
7 That's unfortunate, and it's inappropriate.
8 Q. Okay. Now let's talk about the two.
9 Are you qualified to give an opinion, independent
10 of anything you've read, could you independently
11 form an opinion as to where the easement was?
12 A. Based on the drawings provided by the
13 City as to where the easements were supposed to be,
14 yeah, we could go back there and do that, and I
15 did. I actually sat there with a tape measure,
16 went across the sites and tried to figure out where
17 it was. Used of manhole, which is directly on top
18 of the sewer itself as a center point and did in
19 fact determine where they were and that they were
20 outside of the boundaries, that work had occurred
21 outside.
22 Q. That kind of work is typically
23 performed by a surveyor, correct?
24 A. That type of work is -- in terms of
25 marking it out, is normal done by a surveyor.

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1 Q. Well, you didn't leave a mark?
 2 A. Of course not.
 3 Q. But you measured from a manhole cover
 4 to some other place and determined --
 5 A. Archeologist routinely engage in survey
 6 techniques as part of their job.
 7 Q. Sure.
 8 A. Determining where easements are as
 9 we're doing the work is not an uncommon portion for
 10 any archeologist, whether they're with the state or
 11 private practice. Doing the work that I did there
 12 is something which is standard, which I've done
 13 before, and undoubtedly, I'll do again in the
 14 future.
 15 Q. When you -- how did you know what width
 16 to measure?
 17 A. I used the City's statement. I
 18 simply -- I mean, it's in the set. There is a
 19 showing of the property boundaries and the easement
 20 and the width of the easement. It's very
 21 straightforward.
 22 Q. That's what I wanted to know: Did you
 23 look at the easement?
 24 A. Absolutely.
 25 Q. In other words, the document that

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1 A. The easement was marked by stakes.
 2 Q. Okay.
 3 A. Coming off of that from the other side,
 4 you know, coming off of it from the set,
 5 demonstrated that it was indeed in the center
 6 between the two stakes that were there on either
 7 side of it.
 8 Q. Okay. So that's not an independent
 9 professional's opinion that you've reached, you've
 10 looked and said, it's in the middle of those two
 11 stakes?
 12 A. What I did is looked at what's already
 13 marked on the ground and confirmed that it was
 14 indeed what was marked on the ground.
 15 Q. Okay. So your assessment that the City
 16 or the workers did not stay in the easement is
 17 based in large part on the stakes that you
 18 observed?
 19 A. The -- the placement of the stakes,
 20 which I've been told was done by the City and/or
 21 its contractors demonstrates the actual statement
 22 on the ground of the easement.
 23 Q. Okay.
 24 A. And based on that, I made my
 25 determination; that's correct.

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1 granted the easement?
 2 A. That is correct.
 3 Q. And you're aware that there was a
 4 construction easement and a permanent easement
 5 described, correct?
 6 A. I only have the document showing the
 7 easement. I don't have anything else.
 8 Q. All right. So what was the width from
 9 the manhole cover that you relied on?
 10 A. I would have to double-check in the
 11 form. I don't have that memorized. Sorry.
 12 Q. Okay. And how do you know that the
 13 manhole was in the middle?
 14 A. Manholes tend to be on top of the pipe.
 15 The manhole set included the stakes on either side
 16 of it, and all I did was confirm it using across
 17 and the stakes that were put in by the City.
 18 Q. All right. You're assuming they were
 19 put in by the City. My question was --
 20 A. I had been told they were put in by the
 21 City.
 22 Q. All right. So you -- but my question
 23 to you was: How do you know that the sewer line as
 24 reflected by the manhole cover is in the center of
 25 the easement?

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1 Q. Very good. That's what I wanted to
 2 know: And your indication was, had they stayed
 3 within the easement, we wouldn't be here, correct?
 4 A. Correct.
 5 Q. Because you agreed that within the
 6 easement, the City had the right to move whatever
 7 dirt they wanted to move, move whatever rocks they
 8 wanted to move, dig up whatever pot sherds they
 9 wanted to dig up?
 10 A. Within the easement itself?
 11 Q. Yes.
 12 A. They had a number of rights. I would
 13 have to argue about the question on the moving of
 14 the pot sherds, because there was another statement
 15 attached to it, which is the question of permit.
 16 Q. All right. Now did the easement -- did
 17 the easement have a depth to it? I know it's
 18 horizontal, but does it also tell you how deep the
 19 City easement extends?
 20 A. I don't recall a statement on depth.
 21 I'm sure it's there, but I don't recall it.
 22 Q. So you would agree with me that if they
 23 wanted to dig a hole 20 feet deep within their
 24 easement, and along the way, they came across
 25 pottery, they can remove it?



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1 A. Yes and no. The question becomes one
2 of whether or not the removal of the materials
3 within the easement was protected or unprotected by
4 additional regulations besides the question of the
5 easement.
6 Q. I'm only asking it in the light of the
7 easement?
8 A. If all you're talking about is the
9 easement and all things being equal and nothing
10 else applying but the easement, the materials are
11 within the easement, yes, they could've done what
12 they wanted to.
13 Q. Because what I asked you -- what you
14 said was, if they stayed in the easement, we
15 wouldn't be here?
16 A. What I said was -- there were a couple
17 of things, but, yes, part of it was, had they
18 stayed in easement then probably we would not have
19 been here.
20 Q. Okay.
21 A. But there is an additional point to
22 this, which I'm sure you'll get to.
23 Q. Go ahead, you're doing good with
24 helping me with that. What's the additional point?
25 A. Okay. The additional point was the

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1 you foreshadowing for us though. Now, the other
2 statement on the standard of care was that the
3 contractor or somebody did not contact the
4 homeowners, correct?
5 A. Sure.
6 Q. And your -- what is the basis for
7 stating that that is the standard of care?
8 A. Again, my understanding of how a sewer
9 people work is limited. I don't normally work in
10 sewers. However, when I do work as an archeologist
11 and it's on an easement, I always contact the
12 people who are the landowners. I let them know who
13 I am. I don't leave things on their door or
14 pretend to leave things on their door. I knock on
15 their door. I make a face-to-face contact. I
16 explain to them who I am. I introduce the crew and
17 we do work. It's a question of civility.
18 Q. Let's distinguish exactly what that's
19 based on. It's commonsense, common curtsy, or
20 civility?
21 A. Correct.
22 Q. Not regulation?
23 A. Nobody is going to put them in cuffs
24 and drag them away for it.
25 Q. Right.

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1 question of whether or not a permit was necessary
2 under the Clean Water Act.
3 Q. Okay.
4 A. And it's very clear from the deposition
5 of Mr. Sheu that he wasn't sure if it was or was
6 not.
7 Q. All right.
8 A. And instead of doing what most people
9 who are, I consider within my own group, if there's
10 a question of permitting, you round up and get a
11 permit. He finessed and rounded down.
12 Q. Okay.
13 A. Then he had to come later and beg
14 forgiveness and ask for a permit. So had that been
15 done up front, and as professionally and ethically
16 from my format, not being an engineer, they should
17 have gotten the permit, which would have triggered
18 cultural resource management, which would've done
19 all of these other things, and we would not be
20 having this conversation. So that's the full
21 statement.
22 Q. Now, since you have given permitting as
23 a separate item, I will --
24 A. That's fine.
25 Q. We'll come back to that. I appreciate

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1 A. On the other hand, let me put it on the
2 record that the failure to do that kind of goes to
3 arrogance, indifference, or sloth.
4 Q. Right.
5 A. That's a personal and professional
6 opinion.
7 Q. Oh, well, do you really want to stick
8 with a professional part of that? I'm going to ask
9 you about that.
10 A. No, no, I'll go with personal.
11 Q. Okay. Thank you.
12 A. But I do want to make sure that people
13 understand that if there are people that would
14 normally do this, and it is a policy of the City to
15 do it, they need to be doing sufficient oversight
16 to make sure they're actually doing it.
17 Q. Now, when you went out to the site and
18 did the measurements on these easements, which of
19 those visits was that?
20 A. The first one.
21 Q. The January 5, 2018?
22 A. Correct.
23 Q. And how much time were you out there?
24 A. Roughly, three hours.
25 Q. During the day?



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1 A: During the day, full day.
 2 Q. Weekday?
 3 A: Yeah. Well, I believe that's a
 4 weekday, yes.
 5 Q. All right. And again, just to -- I
 6 think we agree that your opinion regarding not
 7 contacting neighbors, that's a personal opinion?
 8 A: It's a personal opinion.
 9 Q. Very good.
 10 A: It's one of those things which goes up
 11 people's backs and pisses them off.
 12 Q. I get it, I get it. But there's a --
 13 it's not illegal to be rude?
 14 A: No, it's not.
 15 Q. Very good.
 16 A: We seem to be doing a better job of it
 17 these days in society, generally.
 18 Q. And on permitting, you have already
 19 said a little bit about that. You believe a 404
 20 permit was required?
 21 A: Yeah, I do. I think that it's clear
 22 from the affidavit of Abbata that it's not simply
 23 my opinion. And he is an engineer, I am not. Nor
 24 is it clearly the opinion, after the fact, when one
 25 was actually looked for. So, yeah, I think it was

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1 Q. Right. And the Clean Water Act does
 2 not fall under the state archaeology --
 3 A: No, it doesn't.
 4 Q. I've got to finish my question.
 5 A: It's all right. Go ahead.
 6 Q. The Clean Water Act does not fall under
 7 the purview of the state archaeologist, correct?
 8 A: It does not, thankfully.
 9 Q. So any thoughts or comments about 404
 10 permitting requirements are being stated outside of
 11 your role as the State's archaeologist, correct?
 12 A: No. Because I interact with the U.S.
 13 Army Corps of Engineers both Charleston and
 14 Savannah. They routinely request information from
 15 my office as to things that are going on. We are
 16 engaged in a series of agreements as to assisting
 17 each other in protection of cultural resources and
 18 materials. So, no, it is part of my normal job. I
 19 am consulted by this group. I have familiarity
 20 with the group, and the permit should have been
 21 done.
 22 Q. Well, have they -- do they ever send
 23 you a permit application and ask you to sign off on
 24 it?
 25 A: I do not have a signatory statement to

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1 pretty clear that it should have been done
 2 initially. They rolled their dice, which happens
 3 all the time, and they ended up short. But again,
 4 had they rolled up and not down, then they would
 5 have done the permit, done the research, verified,
 6 not verified, stayed within the easement, and
 7 again, we would not be here today or for the last
 8 couple of years, for that matter.
 9 Q. Well, let me just make sure we're all
 10 on the same sheet of music about the 404 permit:
 11 A: Sure.
 12 Q. Who issues that permit?
 13 A: The 404 permit is U.S. Army Corps of
 14 Engineers.
 15 Q. And that is a permit that protects
 16 what?
 17 A: Clean Water Act.
 18 Q. And?
 19 A: Runoff, damage, erosion, et cetera,
 20 into the waterways, which the river, of course, is.
 21 Q. And to whom do you make the
 22 application?
 23 A: Army Corps of Engineers.
 24 Q. And who has enforcement authority?
 25 A: Army Corps of Engineers.

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1 it. I have a consulting statement to it.
 2 Q. And can you show me -- is that -- is
 3 there something in the statute that authorizes you
 4 to consult with the U.S. Army Corps of Engineers on
 5 404 permits.
 6 A: There is not something specific that
 7 says 404 permit, but it is part of my standard job.
 8 It's been the standard job from 1963 of Bob
 9 Stevenson was the first state archaeologist. Bruce
 10 Rippeteau was the second state archaeologist and
 11 now me as the third state archaeologist to assist
 12 on federal agencies and issues of this nature. So
 13 the U.S. Army Corps of Engineers, U.S. Forest
 14 Service, U.S.G.S., pick your alphabet soup, this is
 15 a 40-something year level of continuation and act
 16 of practice.
 17 Q. And what you have done -- what you do
 18 in that is you, from the state archaeologist's
 19 perspective, provide them information?
 20 A: Correct.
 21 Q. You don't review information they give
 22 you?
 23 A: I have reviewed information they give
 24 me on various topics.
 25 Q. Okay.



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1 A. It has not been specifically on this
2 particular one.

3 Q. Okay.

4 A. Although, I think in the future, it
5 probably will be.

6 Q. And nobody within any state agency,
7 much less the archaeology office -- office of the
8 state archaeologist has the ability to provide or
9 deny a 404 permit?

10 A. We do not provide or deny a 404 permit;
11 that is correct.

12 Q. Okay. Thank you. You used -- you
13 mentioned the topic use of the archives and
14 institute data base?

15 A. Yes.

16 Q. Just describe for me what your opinions
17 are within that subject?

18 A. Do you have a copy of the tidewater
19 permit?

20 Q. I think that's here. Is that what
21 you're referring to?

22 A. Yes.

23 Q. And is that -- do I need print another
24 copy?

25 A. Probably. This is my copy, but if you

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1 Kristin Andrade, who I don't think is actually
2 involved with it anymore. I think that she's moved
3 on to another version. The work was done by a John
4 Collum of Tidewater Environmental Services, Inc.
5 My understanding is that Tidewater Environmental
6 Services, Inc., no longer exists. Although, I
7 could be incorrect on that. I've been informed
8 that they've been taken over by another group.

9 So what we have is the permit to deal
10 with the cease and desist letter that came to the
11 city based on 404 violations of the Clean Water
12 Act. This is the attempt get a permit after the
13 fact. I'm going to -- I'm not sure what page
14 they're not paginated, so.

15 Q. Right.

16 A. Starting from the top, one, two, three,
17 four, five, sixth page in. Sixth page in has a
18 couple sentences at the top and then it goes to the
19 statement of historic properties. Are we there?

20 Q. I am.

21 A. Okay. So it says, "An image from the
22 online ArchSite database maintained by the South
23 Carolina Department of Archives and History."

24 Q. Dr. Leader, she's going to try to write
25 down what you say.

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1 need another copy, feel free. I mean, it's your
2 document, but, I mean -- let me rephrase that. This
3 is my personal document from my file, but it's
4 based on information that your clients produced.

5 Q. All right. I'm going to -- we've been
6 going a little bit longer than I thought anyway.
7 Let's just take quick moment, I'll make photocopy.
8 (A brief recess was taken.)
9 (PLF, EXH. 30, Tidewater Document, was
10 marked for identification.)
11 BY MR. KENDALL:

12 Q. I'm showing you a document marked
13 Exhibit 30?

14 A. Uh-huh.

15 Q. And this was that tidewater document
16 you had referred to a few moments ago. So I
17 believe it relates to your use of archives and
18 institutes data base segment of your opinion. So
19 tell us how it relates?

20 A. Well, what I have here in front of me,
21 which is Exhibit 30, is the cover letter and
22 documentation for a request after the fact of an
23 Army Corps of Engineers permit dealing with the
24 Clean Water Act. It was originally sent to a
25 Ms. Andrade, I think is how her name is pronounced,

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1 A. Oh, God, I'm sorry. I will slow down.
2 COURT REPORTER: Thank you.
3 THE WITNESS: I'm so sorry. "An image
4 from the online ArchSite database maintained by the
5 South Carolina Department of Archives and History
6 (SCDAH) is included as Sheet 8. A preliminary
7 information form was submitted by others and a site
8 visit appears to have been conducted SHPO in May
9 2008 in regards to the Broad River Ferry and bridge
10 site. A convenience copy of the referenced letter
11 from the SHPO is included the applicant believes
12 there will be no effect to cultural historical
13 resources."

14 Okay. Couple things. First thing is
15 it's a misuse of the ArchSite database. ArchSite
16 database cannot be used for this purpose. It can
17 only be used for a purpose for pointing at
18 something which then has to be verified in the hard
19 copy of the site files. To date, Tidewater has not
20 appeared at the institute, which unlike the
21 statement here is the maintainer of the ArchSite
22 database and the sites files, not Archives and
23 History.

24 So Tidewater, in effect, misused the
25 database, never showed up at the proper database,



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1 and then filled out this report. Secondly, the
 2 statement dealing from 2008, does not take into
 3 account any additional work or other materials, and
 4 I think has made an erroneous statement, separate
 5 from the other two occurrences. An erroneous
 6 statement as to no effect to cultural historical
 7 resources. I think it's pretty clear, at least
 8 from my point of view, the cultural and historic
 9 resources have indeed been impacted.
 10 So what I'm looking at here is, from my
 11 point of view, a failure to get the permit up front
 12 and a failure to put in the appropriate information
 13 after the second attempt to get a -- well, first
 14 attempt really, but after the effect permit was put
 15 forward to the Army Corps of Engineers.
 16 Q. Right. And so the misuse of the
 17 archived data base was done by Mr. Collum, that was
 18 his misuse?
 19 A. Mr. Collum is a
 20 contractor/subcontractor of this organization, your
 21 clients, that is correct.
 22 Q. Okay. I don't represent Tidewater?
 23 A. Neither do I.
 24 Q. So -- but I just want to clarify,
 25 Mr. Collum -- the criticism that you have about the

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1 Q. Okay.
 2 A. Now let me just make another quick
 3 reference here. The site files are available to
 4 the City. They don't have to pay anything. We
 5 have a system where the certified local government,
 6 cities, whatever, they need something, they do it.
 7 All they had to do was ask. They could've called
 8 me at any time, which apparently Mr. Sheu, I
 9 believe it was Mr. Sheu, did, where I told him
 10 there was indeed a historic site there, which was
 11 then told they would get back to me, which they
 12 never did. At any time this could have been done.
 13 By the time of 2015 and Tidewater, you
 14 folks were already engaged in a dog fight. And by
 15 "you," I mean everybody in this room, I'm not
 16 picking on plaintiff or defendant. I'm just saying
 17 everybody here was apparently in a dog fight.
 18 Q. Right.
 19 A. So it would have been due diligence, at
 20 least archaeologically speaking, if not from the
 21 question of oversight, to make sure that the
 22 contractor, which is Tidewater, actually did a
 23 proper job of it, which they did not.
 24 Q. Now, I understand what you're
 25 indicating. His reliance on the May 2008 SHPO work

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1 use of the archive's data base is in reference to
 2 work done by Mr. Collum?
 3 A. Correct.
 4 Q. And work that was done in September or
 5 represented in September of 2015?
 6 A. That is correct.
 7 Q. Which is after the work is performed?
 8 A. Which is after the, yes, work was
 9 performed.
 10 Q. Okay. And I didn't quite follow the
 11 reference on the SHPO of May 2008. Go back to that
 12 for me.
 13 A. This is back on Page 6, again?
 14 Q. Yeah, that's what you read, but
 15 where -- tell me what it is that was done wrong in
 16 May of 2008?
 17 A. Oh, by SHPO? That's a separate
 18 statement. The first statement has to do with
 19 Archives and History.
 20 Q. Understood.
 21 A. Okay. The statement on the SHPO was
 22 that additional work had been done by the landowner
 23 that the SHPO did not have in their set. And had
 24 the Tidewater in 2015 come to the institute, they
 25 would have had the information available to them.

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1 was misplaced. He should not have done that?
 2 A. That portion of it was obsolete and
 3 misplaced, correct.
 4 Q. And the time when that reliance was
 5 done was in this September 14, 2014 submission?
 6 A. Correct.
 7 Q. Okay. I'm just trying to find out who
 8 did the bad stuff, and when did they do it. And on
 9 both of those issues, misuse of your database,
 10 reliance on SHPO letters was by Mr. Collum in or
 11 around September 2015?
 12 A. Correct.
 13 Q. Very good. And the fourth subject that
 14 you had on your list was supervision. I'm assuming
 15 you mean project supervision was deficient. Tell
 16 me what that opinion is?
 17 A. Again, I am not an engineer. I am not
 18 a sewer person, and I certainly don't work for the
 19 city. However, I am a supervisor. And when I take
 20 people in the field, I actually supervise them,
 21 which means I am there. I take -- you know, I
 22 check them out. I am on site. I double-check what
 23 they do at the end of the day. I check them during
 24 the day. I don't wait weeks or days more months.
 25 I am there pretty much continuously. In fact, for

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1 me, it's almost always continuously. I prefer to
 2 be in the field than the office. And I don't see
 3 that in this project. What I see is a series of
 4 unsupervised issues that snowballed. And I think
 5 that's very unfortunate.
 6 Q. Now, so the qualification that you
 7 bring on this subject is that of your years of
 8 being supervisor of archeological projects?
 9 A. Correct.
 10 Q. And the State archives, correct? Or
 11 not --
 12 A. Archaeologists.
 13 Q. Archaeologists?
 14 A. Yes, that is correct. Fieldwork
 15 supervision, yes, right.
 16 Q. Now in terms of what the standard of
 17 care of a contractor in the field is -- and I mean
 18 an excavation sewer maintenance contractor -- is
 19 that -- you don't having any personal experience as
 20 that supervisor?
 21 A. I have never been a supervisor in that
 22 specific area.
 23 Q. Okay.
 24 A. I have worked with people in tandem as
 25 a team dealing with people who were doing that.

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1 A. That's fine.
 2 Q. Is it your opinion -- do you have an
 3 opinion about National or North American Pipe, the
 4 supervision that they had on site?
 5 A. Yes.
 6 Q. Okay. And what should have been done
 7 that was not done?
 8 A. They should have been stayed in the
 9 easement and people should have been on them
 10 constantly to make sure that they were actually
 11 where they needed to be.
 12 Q. So that assumes here that they're --
 13 you said people should have been on them. Let's
 14 talk about who that is. You've got a guy on a
 15 piece of equipment?
 16 A. Who has a supervisor who should be on
 17 site because he is on a piece of equipment,
 18 correct.
 19 Q. All right. So there's a -- and this is
 20 your just your experience, or is there some manual
 21 we can look at, or what?
 22 A. It's my experience.
 23 Q. Okay.
 24 A. It's -- you know, when I was out in the
 25 Pacific out in Guam, and I was dealing with people

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1 Q. Sure.
 2 A. So I have observed it, but I have not
 3 been a team leader of that particular area, no.
 4 Q. And what was the name of the person who
 5 failed to exercise proper supervision, or the
 6 title, if you have to give it that way?
 7 A. Well, there's a reason why I list the
 8 depositions:
 9 Q. So I'm aware of Mr. Sheu's deposition.
 10 A. Okay.
 11 Q. And Mister --
 12 A. Pierce.
 13 Q. -- Pierce's deposition?
 14 A. Yeah both of them, and then through
 15 inliner, I don't have a name for that individual,
 16 down to the pipes, National Pipe.
 17 Q. Okay.
 18 A. Or I may have that reversed, but, yeah,
 19 I believe that's the appropriate sequence. I would
 20 have to double-check.
 21 Q. So is it your opinion that -- and I'm
 22 going to start from the person who actually moved
 23 dirt.
 24 A. Sure.
 25 Q. And we'll go all the way up.

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1 who were indeed engineers. They were military,
 2 they were Naval. There was a person, a noncom, who
 3 kept track of the idiot on the DG.
 4 Q. So the NAPM idiot on the equipment --
 5 A. Well, let's not call him an idiot. I
 6 don't know if he's an idiot or not.
 7 MR. STEWART: Object to the form.
 8 BY MR. KENDALL:
 9 Q. I thought that's what you meant. So --
 10 because you don't know anything about the
 11 qualification for that guy driving the equipment?
 12 A. I have no idea if he's qualified to
 13 drive it or not.
 14 Q. Right. And so NAPM should have also,
 15 had another guy standing on the site to watch to
 16 make sure the guy driving the equipment was staying
 17 on line, correct?
 18 A. There should have been a person who was
 19 in charge of the site as the work was being done to
 20 make sure they were doing the work to spec, yes.
 21 Q. Did that require that person to be
 22 physically present watching the piece of equipment
 23 throughout its entire work?
 24 A. My personal opinion is "yes."
 25 Q. That's what I'm here -- well, really



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1 what I want is your professional opinion?
 2 A. My professional opinion is any time you
 3 have a person who is doing -- and this is from my
 4 experience.
 5 Q. Yes.
 6 A. If someone removing overburden on an
 7 archaeological site and they're using heavy
 8 equipment, there will be somebody there watching
 9 them take that off by millimeters to make sure they
 10 don't go where they don't belong and the rest. So
 11 professionally, the answer to that as far as I'm
 12 concerned, is "yes."
 13 Q. Now that assumes that it is a known
 14 archaeological site to the person --
 15 A. Doesn't matter if it's --
 16 Q. I have to finish my question.
 17 A. Oh, I'm sorry. Go ahead.
 18 Q. Your statement was an example based a
 19 known archaeological site, correct?
 20 A. No. My statement was based on work on
 21 an area where there was suspected to be
 22 archaeological sites.
 23 Q. Okay. Then now in the ordinary course?
 24 A. Yes.
 25 Q. Of sewer line construction, where there

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1 That is my professional opinion.
 2 Q. Okay. The second level up from NAPM is
 3 Layne Inliner. Do you have is it your opinion
 4 Layne Inliner should've also had somebody standing
 5 on these tracts of land as the excavation was
 6 taking place?
 7 A. If you had the first group under close
 8 supervision, the second group could have been under
 9 looser supervision, but should've been in close
 10 contact and questions should've been asked.
 11 Q. Okay.
 12 A. So do they have to be specifically on
 13 site, not necessarily.
 14 Q. Okay.
 15 A. Should they have been on site a lot,
 16 the answer is "yes."
 17 Q. How often?
 18 A. Again, from my personal experience, not
 19 being a heavy construction person or running pipes,
 20 I'd have people there all the time. If I have a
 21 subcontractor coming in, I don't simply say, I want
 22 this done and I'll see you in a week. I am there
 23 watching them, having a cup of coffee watching the
 24 guy do it and making sure it's done right, because
 25 I'm paying for it. They're my subcontractor.

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1 is no suspicion of an archeological site, do you
 2 have to have a person from the same company
 3 watching the guy operating the equipment?
 4 A. Okay. I'm going to have to answer that
 5 in two parts. Part, the first, is that if you
 6 simply strip everything away and you put it in the
 7 middle of space floating, and you have a person who
 8 is running a piece of equipment in an unknown area,
 9 do you have to have somebody standing over their
 10 shoulder and watching them for everything, the
 11 answer is probably "no." But that's not the answer
 12 here. The answer here is: You're talking about
 13 the river alliance which the City is signatory to.
 14 You're talking 90 miles of history up that river.
 15 You're talking a canal district across the river.
 16 You're talking archaeological materials known to
 17 the City up and down that river. And you've got
 18 people running across that area unsupervised, as
 19 far as I can tell. And as far as the depositions
 20 seem to suggest, they were not being properly
 21 supervised.
 22 So they are not working in a black box.
 23 This is not to question of, we didn't know. There
 24 is a question that they should've known or
 25 should've suspected, and they should've supervised.

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1 Q. All right. Does he have to stand
 2 within site of the equipment the entire time the
 3 equipment is being operated?
 4 A. Entire time, probably not.
 5 Q. 80 percent of the time?
 6 A. I would say 70 to 80 percent, yeah.
 7 Q. That's what I need to know.
 8 A. I would think so.
 9 Q. So your opinion is Layne Inliner should
 10 have been within eyesight of the equipment
 11 80 percent of the time it was being operated?
 12 A. I'll go to 70.
 13 Q. 70 percent of the time? Thank you.
 14 A. You bet.
 15 Q. Now, the next level up is the City?
 16 A. Is that the next level up?
 17 Q. Yes.
 18 A. Westin's not involved at that point.
 19 Q. Contractually?
 20 A. Oh, contractually, I'm sorry. Go
 21 ahead.
 22 Q. I put Weston out on a branch.
 23 A. I've got you.
 24 MS. WOOTEN: Take us out of the room.
 25 MR. KENDALL: Actually, you're on a



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1 ledge.
2 MS. WOOTEN: Oh, thank you.
3 THE WITNESS: Don't push them over, but
4 go ahead.
5 BY MR. KENDALL:
6 Q. So the City?
7 A. Yes.
8 Q. Is it your opinion that the City
9 should've had an employee watching the work as it
10 was being performed by North American?
11 A. Continuously, no.
12 Q. What percentage of the time?
13 A. I would be out there, if I were the
14 City contracted through a second group, where I
15 knew that they were contracting to a subset, I
16 would determine what their -- the middle group, how
17 many -- you know, what their expectation from their
18 point of view that were going to be on the
19 property, I would negotiate with them to make sure
20 it was 80 percent, and then I probably would be out
21 there somewhere between 30 and 50 percent to make
22 sure about them.
23 Q. Okay.
24 A. In other words, my level of trust, when
25 it comes to construction projects or dealing with

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1 responsibility you want for yourself, but --
2 A. No, ethically and professionally the
3 buck stops with me. I do not know what the
4 profession of engineers would be on this.
5 Q. Right.
6 A. But as far as I'm concerned, again,
7 from my point of view from my profession.
8 Q. Uh-huh.
9 A. If they're able to duck that
10 responsibility, then there's a problem. There's a
11 loophole. There's a weasel out. Now, again, that
12 is not necessarily illegal, and that's up to the
13 courts, and I'm not an attorney.
14 Q. Right.
15 A. But if you're asking me how we work it
16 from our thing, if I have somebody working in the
17 field and they have subcontracted, and they screw
18 up, yeah, they screwed up, but I have to take the
19 responsibility for it as a professional.
20 Q. Okay. And I honestly could care less
21 about what y'all do at your office. What I'm
22 asking you for is what the industry standard is?
23 A. This is the industry standard for
24 archaeologists, not my office.
25 Q. Great. And you actually don't have any

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1 people you've subcontracted to is that people tend
2 to finesse and cut corners. They're always --
3 people look to ask forgiveness rather than do the
4 job correctly. And that's unfortunate, but that's
5 my personal experience. It's also unfortunately
6 some of my professional experience.
7 Q. Okay.
8 A. So in my case, the City 30 to 50, the
9 other group in between, and the other group
10 constantly.
11 Q. Okay.
12 A. But they're all responsible.
13 Understand, they do not lose responsibility simply
14 because they moved up the line.
15 Q. Well, now you've gotten into a legal
16 opinion? Responsibility is legal, right?
17 A. Well, I'm not -- no -- yes -- I mean --
18 let me -- first, I'm not an attorney.
19 Q. Right.
20 A. But, but, the buck stops here. As far
21 as I'm concerned, if I'm professional archaeologist
22 and I have subcontractors working on my site, I
23 don't beg off, because they screwed up. It's on my
24 head.
25 Q. Well, you can accept whatever

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1 relevant experience as a sewer contractor, do you?
2 A. No. Thank goodness.
3 Q. Right. So what the standards are
4 there, you've got no idea?
5 A. Right.
6 Q. That's what I thought.
7 A. Except for commonsense, the pools will
8 probably need to be filled by other people at
9 another time.
10 Q. Right. Now, you've given -- you've
11 told me what the benchmarks -- let's go ahead to
12 Weston & Sampson. Tell me what percentage of the
13 time should they have been watching the equipment
14 move?
15 A. I would put them pretty much at the
16 same level as the City, because the City was
17 clearly from the deposition, relying on them to run
18 the project.
19 Q. And your opinion as to whether or not
20 those levels of eyewitness watching occurred is
21 based on the testimony of Sheu and?
22 A. Pence.
23 Q. Pierce?
24 A. Pierce. Excuse me.
25 Q. Okay.

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1 A. I shouldn't pick on Pence. He is
2 picked on enough.
3 Q. What percentage of the time did Layne
4 Inliner stand in the track watching the equipment?
5 A. I'd have to go back through the
6 deposition and see what it says.
7 Q. If it doesn't speak to it, then you
8 have no idea?
9 A. If it's not in the deposition, I cannot
10 speak to it directly, no.
11 Q. Same thing North American, if it
12 doesn't say, if it's not in there, you don't know?
13 A. That's correct. Except that I am
14 recalling there was a discussion of how much time
15 they were, and whether it was one day a week or
16 whatever. So we could go back through and find
17 those relative points if you'd like.
18 Q. No, I can read.
19 A. Good. So can I.
20 Q. I want to know if there was a source
21 other than those depositions?
22 A. The only source are the depositions.
23 Q. Very good. I want to look at the
24 report, which is Exhibit 25 for a moment, please?
25 A. Let me find it. Got it.

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1 in this report." Correct?
2 A. Correct.
3 Q. All right. Now, all of this assumes
4 that there is an archeological site, correct?
5 A. Yes.
6 Q. All right. And we have -- I think that
7 was covered in previous depositions, and -- is
8 there anything that's not contained in this report
9 regarding your conclusion that this is an
10 archeological site?
11 A. That's a good question.
12 Q. Or is there enough here, I should say?
13 A. Well, I'm trying to remember back to
14 all the -- I mean, we have the other the
15 depositions here, but I'm trying to remember.
16 Q. Let me be fair to you, as I've tried to
17 do throughout, but in your deposition of December
18 and the previous deposition, you stated that you
19 had already concluded this was an archaeological
20 site, correct?
21 A. That's correct, I have. Still have.
22 Q. What you had not done at that point was
23 determine the archeological or commercial values or
24 the cost of repair?
25 A. Also, correct.

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1 Q. I want to look at the abstract?
2 A. Abstract. Got it.
3 Q. Third line, middle of it has this
4 sentence, "The facts are yet to be established."
5 Just -- I don't want to create a trap where there
6 shouldn't be one.
7 A. Sure.
8 Q. What facts have not been established?
9 A. The final determination of who was
10 responsible, by the Courts, have yet to be
11 established. In other words, the thing you just
12 asked me, going up and down the chain of command,
13 who's actually responsible for the damage is yet to
14 be determined by the Court. The fact that the
15 archeological sites have been damaged and the area
16 has been whatever is not in dispute, as far as I'm
17 concerned.
18 Q. And that's what I wanted to give you
19 the opportunity to make sure I understood.
20 A. Right.
21 Q. So the next sentence is, "The
22 commercial value of archeological site?"
23 A. Uh-huh.
24 Q. "The archaeological value and the cost
25 for restoration and repair of the site are assessed

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1 Q. So really this report is intended to
2 provide that information; is that a fair
3 characterization?
4 A. It is.
5 Q. Okay. Have you done work since
6 December 18th that was specifically intended to
7 confirm or affirm your opinion that this is an
8 archeological site?
9 A. Outside of the site visit and going
10 back through the documentation that was both
11 provided specific to these sites to the ferry
12 crossings and then using this location based on the
13 historic documentation of what should have been
14 here, looking to other known sites both up and down
15 the river, which demonstrated that they were in the
16 same locations as the historic references, based on
17 this as being the location of bridge, other than
18 that which I think I've already covered in the
19 previous depositions, the answer is "no."
20 Q. Okay. Now, one of the -- I just want
21 to -- just to make sure I haven't left a window
22 open: Previously, you had indicated, I believe,
23 that in terms of archival information?
24 A. Uh-huh.
25 Q. As opposed artifact?



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1 A. Sure.

2 Q. Documents, maps, those types of things?

3 A. Yep.

4 Q. Everything that you had seen, you had

5 obtained from Mr. Brinkman, is that --

6 A. Everything that at that point, I had

7 seen, I had obtain from Mr. Brinkman, correct.

8 Q. And again, I'm referring to documents

9 not artifacts.

10 A. Okay.

11 Q. Have there been any other documents

12 that you have reviewed since then that relate to

13 this as an archeological site?

14 A. That is a complicated question, and I'm

15 not trying to be difficult here, but you have to

16 understand that -- or maybe you don't have to

17 understand. I would like you to understand that:

18 when you're talking about the location for this

19 bridge, think of a protractor. In other words, you

20 put the pin there, and then you do measurements out

21 to other locations and you go back through the

22 historic record, and you see if they match. Okay?

23 Q. Uh-huh.

24 A. And it does. Not only does it match to

25 this bridge, but to the ferry crossings, but to a

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1 in the handling of the historic documents. His

2 ability to do the GIS and the map work put a point

3 here, which then located three additional sites in

4 that area, which have been accepted and

5 peer-reviewed. In fact, one of them was the most

6 popular episode on history detectives. So the

7 question is whether or not I think this is an

8 archaeological site. There is absolutely no

9 question in my mind that this is an archaeological

10 site.

11 Is it sufficiently done, because it's

12 multicomponent. Unfortunately, David tends to be

13 very focused on bridges, not Deptford Linear A, not

14 on the other stuff, and he should be.

15 Q. I don't think you actually heard my

16 first questions.

17 A. All right.

18 Q. I wanted to know if you had reviewed

19 documents other than the documents he provided to

20 you?

21 A. I reviewed the documents that were

22 depended from the work of this set, which

23 identified three additional clearly identifiable

24 sites.

25 Q. Okay. You continued to defend the

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1 bridge that was destroyed during the civil war

2 farther up, which corrected, by the way, an

3 understanding by Archives and History on which side

4 of the road the bridge was on and had an abutment

5 attached to that similar to the abutment you have

6 down here. Now, that was done prior to the Civil

7 War, destroyed when Sherman came through. Okay?

8 You wheel the other direction and you go

9 downstream, it was used for determination of

10 historic Granby, which is a known site, which has

11 been used by not only, I believe the Department of

12 Transportation as a collaboration with the City of

13 Cayce, but it could be West Columbia -- I'm always

14 getting those two mixed up -- where the mayor came

15 out and thanked them for the work, and the rest.

16 And was used by New South, a cultural resource

17 management firm, for their activities in that area,

18 which then also more or less within probably a

19 quarter to a half a mile found the hitherto unknown

20 site of the second fort -- oh, hell -- Fort

21 Congaree II, versus Fort Congaree I. Fort Congaree

22 I, which was found by a colleague of mine at the

23 Institute. We didn't know that Fort Congaree II

24 existed.

25 David's work on this bridge is acumen

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1 voracity of the documents. I'm not asking for

2 that:

3 A. Okay.

4 Q. I'm asking you for the source where

5 they were provided to you, were they all from

6 Mr. Brinkman?

7 A. The source of the original

8 information --

9 Q. Yes.

10 A. Which I have worked from, from this

11 bridge was from Mr. Brinkman.

12 Q. That --

13 A. I have gone online to some of the

14 materials that he used to double-check them at a

15 later date because I was doing something else, but

16 it was not because I was specifically interested in

17 this site.

18 Q. So if I understand what you're saying,

19 if he had provided you a map of something, you may

20 have on another project gone and looked at that

21 same map?

22 A. Correct.

23 Q. But in terms of going out into the

24 universe of information and looking for documents

25 that relate to this site, you haven't done that

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1 yourself?

2 A. I have not.

3 Q. Okay. That was -- could have had a

4 real short question and answer there, but thank you

5 for your other explanation. And in terms of

6 verifying or authenticating those documents that

7 you have been provided, I don't even know what your

8 process would be, but has there been a process of

9 verifying or authenticating the documents that he

10 gave you?

11 A. The documents that he has provided from

12 Archives and History are available from Archives

13 and History and they verify them.

14 Q. Okay. That's what I wanted to know. I

15 didn't know whether he had he attained from other

16 sources other than Archives and History?

17 A. Some of materials he has. In those

18 instances, he had tended to Xerox, you know, make

19 available with the book cover or whatever.

20 Q. Okay.

21 A. So yes.

22 Q. Okay. Now when we get -- but nothing

23 new has been added to that data set since December?

24 A. He did send me an additional statement

25 of going back through and double-checking some of

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1 A. No.

2 Q. Are we done as of this report?

3 A. We are done as of this report.

4 Q. So when get to trial in June, this is

5 what I'm going to hear about, correct?

6 A. Correct.

7 Q. This document?

8 A. Yeah.

9 Q. Okay. And you appreciate, because

10 you're an academic and scholarly, you've cited

11 everything that I think that I need to understand

12 in terms of the -- for example, the rate hours

13 and -- let me ask you about the column where it

14 says rate hours. Where did you get rate hours

15 from?

16 A. Bureau of Labor Statistics. That is a

17 previous deposition.

18 Q. And the number of hours, quantity of

19 hours, where did you get that?

20 A. That was based on my own experience of

21 what it would take to do the job.

22 Q. Okay. Same thing under restoration?

23 A. Correct.

24 Q. Now, if I recall, let's see, you were

25 not able to assess a commercial value for the

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1 his -- which is included in the thing, where he

2 went back through and double-checked the distances

3 between some of materials just to make sure he had

4 gotten them correct.

5 Q. Just a measurement?

6 A. Yeah.

7 Q. That's not archival documentary

8 evidence?

9 A. No, that's GIS.

10 Q. And --

11 A. Well, actually, GIS based on the

12 archival statements that he was collaborating

13 against.

14 Q. All right. Now, your work here, I saw

15 that you had referenced the National Park Service

16 methodology?

17 A. Yeah.

18 Q. And you followed that, correct?

19 A. I did.

20 Q. And you referenced that in your

21 previous deposition, as well?

22 A. Yep.

23 Q. Is there any work in terms of

24 establishing commercial value, archeological value,

25 or cost of repair that is ongoing?

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1 property, correct?

2 A. Yeah, that's correct.

3 Q. And that would have been true for its

4 commercial value pre-sewer work or post-sewer work?

5 A. That is also correct.

6 Q. Yeah, what the statute might entitle

7 them to would be Delta, correct?

8 A. Correct.

9 Q. And archaeological value is not

10 actually the value of the archaeology artifacts,

11 it's actually a value of the archaeological work?

12 A. It's research.

13 Q. Right. So is it your opinion that no

14 research can be done, because of what the -- the

15 sewer line work?

16 A. No, that's not my opinion. My opinion

17 is that to do the archeological research, to

18 determine precisely what has been done and to put

19 the rest of that into perspective is what's there.

20 That's what it would have cost to do the researcher

21 at this point.

22 Q. Okay. How is that different from what

23 it would've cost in 2014?

24 A. In 2014, there would have been

25 potentially been more laboratory work that would



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1 have been available. There would have been.
 2 additional costs for-- gosh, I mean, part of the
 3 problem is that if the materials are indeed
 4 displaced, they're still important. They're still
 5 a research based, but they have now been damaged in
 6 the sense of the information that you would have
 7 from in situ. So while you would have the ability
 8 to have additional research based on the actual
 9 location of the materials found as they were in
 10 place, because of the work of the heavy equipment,
 11 these are now displaced, which means the amount of
 12 work that can be done on them has been lessened.
 13 So the amount of work that could have been done
 14 prior to this work would have been at some quantity
 15 more, and at the current time, that's my best
 16 estimate of what it's worth at the current time to
 17 do the work there.
 18 Q. And this is a lack of understanding on
 19 my part. So what we're -- if I understood what you
 20 just said, it's less expensive now than it would
 21 have been before?
 22 A. Yes.
 23 Q. And that is -- but you can still do
 24 work and get valuable information?
 25 A. I believe there is considerably more

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1 information to be done there, yeah.
 2 Q. And the fact -- because there -- you
 3 can't quantify the value of the archaeology, so to
 4 speak. The information itself is not what you're
 5 quantifying here?
 6 A. I'm quantifying the research?
 7 Q. Right. And -- okay. And I think you
 8 have sort of given that definition here right at
 9 the beginning on what I've mark as Bates label 35,
 10 it specifically refers to the costs of retrieving
 11 archeological information from the site that would
 12 have been obtainable prior to the damage to the
 13 site?
 14 A. That's correct.
 15 Q. I think that's sort of a statutorily
 16 defined term?
 17 A. That's correct.
 18 Q. Okay.
 19 A. In my case, with the number that I came
 20 up with, since things have been displaced, I took
 21 that into account. I probably could've upped the
 22 amount, but I was trying to be as fair as possible.
 23 Q. Okay. All right. And cost of repair,
 24 the source of those costs was what?
 25 A. A combination of the Bureau of Labor

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1 Statistics and my, you know, professional opinion.
 2 Q. On the unit costs?
 3 A. Yeah.
 4 Q. So -- okay.
 5 A. The unit costs are BLS.
 6 Q. The rates?
 7 A. Yeah, yeah, the rates, right.
 8 Q. And then the quantity is your
 9 experience and opinion?
 10 A. Yeah, uh-huh.
 11 Q. Okay. So no outside sources such as a
 12 local contractor, local stone mason, none of that?
 13 A. I considered contacting local people
 14 for that. On the other hand, if this goes out for
 15 an RFP, I want it to be clean.
 16 Q. Okay.
 17 A. And understand, I will not be an RFP.
 18 Nobody in my organization will be an RFP on any of
 19 this.
 20 Q. Yes.
 21 A. So the numbers are not to my benefit as
 22 such.
 23 Q. Okay. When we talked in December, you
 24 were not being compensated by the plaintiffs; is
 25 that still correct?

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1 A. Absolutely correct.
 2 Q. And you have no written agreement with
 3 them as to what you would do for them or the scope
 4 of your work?
 5 A. There was a verbal agreement that I
 6 produce this report. There was no written
 7 documentation for anything beyond that. I didn't
 8 think it was particularly necessary. There was no
 9 money involved. It was simply, you know, I came up
 10 with what I came up with. Either they liked it or
 11 they didn't. Either you folks would like it and
 12 come up with -- or not -- come up with your own
 13 version, whatever. It was fine by me.
 14 Q. And as far as you are concerned, are
 15 you done, until you get called to testify at trial?
 16 A. Pretty much, yeah.
 17 Q. Okay. All right. Well, I am done,
 18 too.
 19 A. Oh, okay.
 20 Q. And others may -- I know others will
 21 have some questions. So I'm going to leave time
 22 for them to do that. So let's go off the record
 23 for just a moment.
 24 (A lunch recess was taken.)
 25 EXAMINATION



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1 BY MS. WOOTEN:
 2 Q. Dr. Leader, my name is Amy Wooten. We
 3 have met before?
 4 A. We have.
 5 Q. The good news is I cut down some of the
 6 stuff I need to ask you, we'll clip right along
 7 here.
 8 A. Okay.
 9 Q. Dr. Leader, you were deposed the fall
 10 end of 2017; is that correct, in this case?
 11 A. December, yes.
 12 Q. Yes. And am I correct in understanding
 13 that you stand by the testimony that you gave under
 14 oath at that deposition?
 15 A. Sure.
 16 Q. Is there anything about the transcript
 17 or your testimony that you believe you need to
 18 change?
 19 A. Actually, I haven't -- I mean, I got a
 20 copy, but I haven't read it. So as far as I know
 21 what I said was accurate, I have no idea if the
 22 transcript is.
 23 Q. In giving your testimony, you gave
 24 truthful testimony at that deposition, correct?
 25 A. Yes.

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1 that you reviewed in this case. Are you aware
 2 Mr. Abbata has been deposed since your deposition
 3 in December in the case?
 4 A. I do not have a deposition. I just
 5 have the affidavit.
 6 Q. You never read Mr. Abbata's first
 7 deposition; is that correct?
 8 A. No.
 9 Q. So the only thing that you have from
 10 Mr. Abbata is the affidavit?
 11 A. Correct.
 12 Q. To your recollection, does that
 13 affidavit discuss anything other than permitting
 14 relative to this case?
 15 A. I would have to pull and look at it
 16 again.
 17 Q. Okay.
 18 A. I think he also goes into the question
 19 of how people would act due diligence, things of
 20 that nature, but I would have to look at it again.
 21 Q. Sitting here today, you don't have an
 22 independent recollection of the affidavit beyond
 23 the permitting?
 24 A. I have a recollection of -- no, that's
 25 not true. I have a recollection of him talking

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1 Q. I want to spend a couple of minutes
 2 talking about the materials that you received after
 3 that December deposition and today?
 4 A. Okay.
 5 Q. I understand that you received a
 6 transcript from Gene Pierce and one from Michael
 7 Sheu, and you mentioned I believe it was the
 8 Tidewater documents that we talked about earlier
 9 today?
 10 A. Uh-huh.
 11 Q. Were there any other documents that you
 12 received from plaintiff's counsel in the case
 13 between December and today?
 14 A. Okay. So I received it had Alan Abbata
 15 affidavit. I received the Sheu, I received the
 16 pierce, I have the letters which I already
 17 referenced, but that was at my request and that
 18 came through Brinkman and the people themselves.
 19 The tide water materials from counsel, I am not
 20 thinking of anything other than that. I'm not
 21 sure.
 22 Q. Okay.
 23 A. I think so.
 24 Q. Are you aware that Mr. Abbata, you
 25 referenced him a minute ago, he has an affidavit

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1 about the permitting. I have a recollection
 2 talking about, I believe, if I remember correctly,
 3 his statement on contact with the land owners. I
 4 know there are a few other things in there. But
 5 again, I haven't reviewed it recently. I would
 6 have to review it to be absolutely clear.
 7 Q. And to the extent that you wanted to
 8 rely on the opinions of Mr. Abbata as the basis for
 9 your own, wouldn't you feel it necessary to review
 10 his actual full testimony of those topics?
 11 A. I certainly wouldn't mind reading his
 12 deposition.
 13 Q. Just to clarify, you have not done that
 14 to date?
 15 A. I have not seen a deposition, just the
 16 affidavit.
 17 Q. You have not been provided his
 18 depositions; either one?
 19 A. I have not.
 20 Q. Okay. So anything that he says in
 21 those, you have no factual or other basis sitting
 22 here today to either agree or disagree as you don't
 23 know what the content is, correct?
 24 A. Correct.
 25 Q. Tell me about the contract between



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1 Weston & Samson and the city in this case?
 2 A: I have not seen the contract.
 3 Q: Okay. Have you been provided the
 4 contract and not read it or have you never received
 5 it?
 6 A: I have not been provided the contract.
 7 Q: Tell me about the memorandums that the
 8 engineer Weston & Samson had sent to the city in
 9 this case or in connection with this case?
 10 A: Only in terms of the deposition and the
 11 references in the deposition.
 12 Q: Okay. So you have not actually seen
 13 the memorandums themselves?
 14 A: I have not.
 15 Q: Would the same be true for any memos
 16 sent by Weston & Samson to the city?
 17 A: The only information I have from those
 18 groups is the depositions.
 19 Q: So you don't actually have any project
 20 file documents relative to this case, correct?
 21 A: That's correct.
 22 Q: Okay. And as you have not reviewed or
 23 received any of those materials, is it fair to say
 24 you cannot tell me, sitting here today, what
 25 obligations, if any, Weston & Samson had under its

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1 A: Tolleson, that name sounds familiar.
 2 I'm not placing it.
 3 Q: Okay. So fair to say if he has given
 4 testimony in this case or an affidavit, you have
 5 not received either of those?
 6 A: To the best of my knowledge, I have
 7 not.
 8 Q: All right. Let's go then to Exhibit 25
 9 and I want to talk to you briefly about the
 10 abstract which I think was on the second page of
 11 report?
 12 A: Yes, okay.
 13 Q: Second page of text?
 14 A: Actually it's the first page of the
 15 proper, but this one is the second page, yeah.
 16 Okay.
 17 Q: In the abstract there you have two
 18 addresses referenced in this report, the 150 and
 19 154 Castle Road, correct?
 20 A: Correct.
 21 Q: Were there any other sites in
 22 connection with the plaintiffs properties in this
 23 case that you actually investigated that you did
 24 not include in the report?
 25 A: The one in between which was -- you

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1 contracts relative to this project?
 2 A: I can only reference the discussions in
 3 the depositions to those cases.
 4 Q: I understand. But you don't have any
 5 basis from actual review of those documents.
 6 You're relying on what someone else has said?
 7 A: No, I'm relying on the deposition of
 8 Sheu and Pierce as to what they were responsible
 9 for, what they knew and what they did.
 10 Q: Perhaps my question was not clear.
 11 Relying on what someone else said Mr. Pierce and
 12 Mr. Sheu, correct?
 13 A: Okay. I misunderstood what you were
 14 saying. I thought you were talking about third
 15 person. As far as I'm concerned Sheu and Pierce
 16 were directly involved and I'm relying on what they
 17 said.
 18 Q: All right. Let's switch over to your
 19 report briefly if we may. I believe that has been
 20 marked as Exhibit 25?
 21 A: 25. Okay.
 22 Q: Okay. And before I get there, let me
 23 just make sure I'm clear on the record, too. Are
 24 you familiar with a gentlemen by the name of Andrew
 25 Tolleson?

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1 can't go to one without going across other.
 2 Q: Sure.
 3 A: Right.
 4 Q: Was that the Holder property or which
 5 property was that?
 6 A: Well, assuming that it is indeed the
 7 one that was adjacent to Coleman and not Coleman
 8 itself, I'm still not clear about that, that it
 9 would have been previous Holder property.
 10 Q: Okay.
 11 A: At least for the purpose of today we'll
 12 call it the Holder property. It is the property
 13 between the Brinkman property and the Coleman
 14 property. It is the one, the lot, that's currently
 15 empty in the middle.
 16 Q: Based on your review and analysis of
 17 the properties of the plaintiffs in this case,
 18 where, if anywhere, have you established there to
 19 be an old roadbed?
 20 A: The old roadbed appears in both the GIS
 21 and documents. It comes off the side up to going
 22 north. It more or less follows the current right
 23 of way and makes a doglet (ph.) off to the left and
 24 goes across to the main road. It seems to me to be
 25 reuse. It is referenced as a means to get to the

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1 ferries and to the other areas, but other than that
 2 I have done no research on it.
 3 Q. And none of the numbers contained in
 4 this report are relative to the old roadbed; is
 5 that correct?
 6 A. The old roadbed part of Brinkman
 7 property sure.
 8 Q. Is it part of the Coleman property?
 9 A. It actually does appear to go across to
 10 the Coleman property. I do not know if it goes
 11 beyond that, I did not look beyond that.
 12 Q. So to the extent it covers any of the
 13 other plaintiffs' properties in this case, that is
 14 not something you have determined?
 15 A. Any other areas I haven't looked at.
 16 Q. Okay. You mentioned that it was,
 17 quote, a reuse. Can you explain what you were
 18 referring to?
 19 A. Well, yeah. You can see for frontage
 20 road, frontage roads tend to be useful and they get
 21 reused. In this case it would appear that a
 22 portion of it was reused for the sewer pipeline. I
 23 mean, if you have a natural, in this case not
 24 natural, but what would appear to be a natural
 25 shelf, then one would use it. Why would you build

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1 A. Okay.
 2 Q. Does that paragraph accurately reflect
 3 the scope of services for which you were engaged on
 4 this case?
 5 A. Yes.
 6 Q. Anything above that would be something
 7 extra you have taken on yourself?
 8 A. I'm not sure what the question is.
 9 Q. Well, the paragraph says that you were
 10 requested to assess the damage to the archeological
 11 sites and determine value, correct?
 12 A. Actually it says pursuant to his
 13 legally define functions to assess and then it goes
 14 into question of damage. So it's not simply the
 15 damage archeological or commercial, it's also
 16 pursuant to other functions which include those
 17 things, but, yes, that is correct.
 18 Q. Sure. I'm not asking you what the
 19 basis for your doing this is.
 20 A. Okay.
 21 Q. What I'm trying to get at is the way
 22 this was phrased would suggest that you were
 23 requested to do a couple of things, right?
 24 A. That's correct.
 25 Q. Actually, really one thing. To assess

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1 a shelf if you didn't need to build a shelf, so
 2 yeah, sure.
 3 Q. Have you done anything to analyze what
 4 part of the old roadbed, if any, is within the
 5 city's easement?
 6 A. No, I haven't gone to that extent.
 7 Q. From your visual view, have you been
 8 able to determine if part of it is in fact inside
 9 of the easement?
 10 A. I suspect that part of it is indeed in
 11 part of the easement, correct.
 12 Q. But you wouldn't be able to tell us
 13 which parts are or which parts are not?
 14 A. Not directly, no. That would be
 15 additional analysis.
 16 Q. On the section that covers the
 17 introduction of the report, the paragraph that
 18 begins, the plaintiffs requested?
 19 A. Yes.
 20 Q. Do you see that paragraph?
 21 A. I do.
 22 Q. Have you had a chance to review that
 23 paragraph today?
 24 A. I am doing it now, but yes.
 25 Q. All right.

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1 the damage and translate that to value. We'll call
 2 it to.
 3 A. I'm not sure I would phrase it that
 4 way, but I'll accept it.
 5 Q. Were you asked to do anything other
 6 than to assess the damage of the historical sites
 7 and assign some value to that damage?
 8 A. In that response I would say that was
 9 correct.
 10 Q. That you were not asked to do anything
 11 other than those two things?
 12 A. No.
 13 Q. All right. So to the extent that he
 14 has given opinions relative to the standard of
 15 care?
 16 A. Uh-huh.
 17 Q. Or any of those things, those are in
 18 fact extra things you have opined on here today?
 19 A. No. They are part and parcel
 20 determination of the set up for doing the
 21 archaeological site value and restoration and the
 22 rest. In other words, they are part and parcel of
 23 the analysis that ended up being those opinions.
 24 Q. All right. Expound on that for me.
 25 What relative to someone's standard of care has to



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1 do with the figures that you compute in determining
 2: what the actual numbers are?
 3 A. I'm sorry. You have rephrase that
 4 again. I can't hear you very well. I'm sorry:
 5 Q: Sure. What I'm trying to figure out us
 6: what part of standard of care analysis actually
 7 went into the numbers that you computed in this
 8 report?
 9 A. Well, the question of standard of care
 10 went to the question of whether or not there should
 11 probably have been a criminal proceeding versus a
 12 civil proceeding based on the South Carolina code
 13 of law, based on the act. In terms of
 14 determination of what actually was damaged,
 15 probably not very much, and the value probably not
 16 very much and the restoration is the restoration:
 17 But it was something that was done part and parcel.
 18 Whether it appears in table 1 or table 2 as a
 19 separate statement does not in any way remove the
 20 production of an opinion.
 21 Q. All right. In your review and in your
 22 conclusion, did you determine that any of the
 23 defendants named in this case should be criminally
 24 prosecuted under the act?
 25 A. I am under the opinion having read the:

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1 property for the purpose of destroying something?
 2 A. If you're entering the property of
 3 another and you do not have an easement, you're
 4 engaged in trespass. If you're going in there and
 5 you're damaging archaeological sites, you're
 6 falling underneath that law whether it's criminal
 7 or civil. If you're asking me whether or not a
 8 person who just chooses to come in underneath an
 9 easement has the right to enter their easement.
 10 The answer, of course they have a right to enter
 11 their easement.
 12 Q. Okay.
 13 BY MS. WOOTEN:
 14 Q. On the section of the report, bear with
 15 me, it doesn't have page numbers.
 16 A. Yeah.
 17 Q. Archeological value section of the
 18 report?
 19 A. Wait for it. I have seen commercial
 20 value that is page 24. Yeah, archeological value,
 21 35, yes.
 22 Q. Let's go to the section on the next
 23 page under that heading where you're talking about
 24 the Brinkman and Coleman properties in those two
 25 paragraphs?

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1 depositions, so based on the depositions the
 2 statements, that there were probably sufficient
 3 cause for case to be brought, not by me, but by the
 4 plaintiff to a magistrate and asked for a criminal
 5 statement of prosecution. Obviously, they chose
 6 not to do that. That is their choice, and but that
 7 is the whole point of the law is they make that
 8 decision, I do not. But since you have asked me
 9 what I would have done had I been asked, I would
 10 have suggested to them that they go to a magistrate
 11 and ask for prosecution.
 12 Q. Based on what facts?
 13 A. Based on again, on the information from
 14 the depositions, the choice not to go for the
 15 permit, the decision of question of oversight, the
 16 damage to the area, the failure to be involved with
 17 people. It strikes me if you were talking about
 18 willful and the rest and everything else, again,
 19 I'm not an attorney, I'm not a prosecutor, I'm not
 20 a judge. But I would have suggested you need to go
 21 take a look at this and see if anybody else would
 22 agree. They have chosen not to look at this or
 23 to see if anyone else agrees, so there it is.
 24 Q. Do you draw a distinction in your mind
 25 between failing to look at something and entering

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1 A. Starting with there are two areas to be
 2 subjected?
 3 Q. Correct?
 4 A. Okay.
 5 Q. And there is square footage in both of
 6 those paragraphs.
 7 A. I'm sorry?
 8 Q. There are square footage figures
 9 referenced in both of those paragraphs?
 10 A. Yes.
 11 Q. How did you calculate those?
 12 A. It was a combination of effects. Some
 13 of numbers I did myself. Some of the numbers,
 14 because they were down slope and I'm on blood
 15 thinners, which I asked David to do, and then I
 16 went back and double checked the number which he
 17 gave me which are included in the thing from today.
 18 Using the GIS set to make sure that they were
 19 within appropriate -- that it was not being padded.
 20 Q. Uh-huh.
 21 A. Based on that, looks good to me and
 22 that's why I went with these numbers, based on my
 23 work at the end, yes.
 24 Q. Did you observe Mr. Brinkman make those
 25 measurements?

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1 A. I'm sorry?

2 Q. Did you observe Mr. Brinkman take those

3 measures?

4 A. No, he did not.

5 Q. You were not overseeing that?

6 A. I was not overseeing that. I was

7 double checking that.

8 Q. How did you take the measurements that

9 you actually did?

10 A. I actually positioned Brinkman in one

11 area, pulled it through to the other area. In some

12 cases I attached it to the stakes to pull it across

13 the stakes. In other areas I attached it to

14 vegetation and pulled it across.

15 Q. What is "it"?

16 A. A tape measure.

17 Q. All right. When did that occur?

18 A. That was on the whatever that first day

19 was, the 5th? Yeah.

20 Q. Of January?

21 A. Of yeah.

22 Q. Okay. Just making sure I have got the

23 right month.

24 A. The 8th was the other, so 5th, yeah.

25 Q. Okay. Did you do on the Coleman

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1 Q. Have you done that?

2 A. Something -- no, I have not done

3 anything about stability.

4 Q. Okay. And you would agree you're not

5 qualified to do that, correct?

6 A. No desire. You're absolutely correct.

7 Q. Okay. There is a note at the bottom of

8 the same page we're on just above the table one

9 marking there. Do you see that paragraph that

10 starts, it's also important?

11 A. Yes.

12 Q. Okay. What is the basis or what is the

13 reason for including this in the report?

14 A. The reason for that is that the -- that

15 the payment for the archeological research does not

16 necessarily require the person to actually engage

17 in the archeological research.

18 Q. Uh-huh. So if --

19 A. And that is based on the original

20 author of the documentation of the understanding --

21 of the National Park Service Act. Which I had a

22 conversation with about which is also in there.

23 Also, based on the SAA statement and followed

24 through with conversations with the house of

25 representatives individual who offered the bill

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1 property, did Mr. Brinkman --

2 A. Mr. Brinkman did not assist me on the

3 Coleman property.

4 Q. Who assisted you on that one?

5 A. Me.

6 Q. You did that completely by yourself?

7 A. That's correct.

8 Q. In terms of the actual bridge abutments

9 that you have identified in connection with this

10 case?

11 A. Uh-huh.

12 Q. Taking into account the Brinkman and

13 Coleman properties and the differences between

14 those two, which of the two properties has more

15 material related to the bridge abutments, if

16 either?

17 A. At the moment I would say that they're

18 relatively equal the Brinkman property has

19 additional materials which were clear for

20 prehistoric and historic beyond the bridge.

21 Q. We have already established that you

22 were not asked to -- well, maybe I shouldn't

23 assume. Have you been asked to perform an analysis

24 regarding slope stability in the case?

25 A. No, no, I have not.

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1 here in South Carolina.

2 Q. Okay. So to the extent that the

3 plaintiffs were to recover the 25 some odd thousand

4 dollars that you have assigned to this particular

5 category of report?

6 A. Uh-huh.

7 Q. They're not required to actually use it

8 for restoring the site? They can go by a car if

9 they want?

10 A. The money is theirs. They are private

11 owners of the land. I would encourage them to do

12 that, but the final decision is with the land owner

13 or land steward.

14 Q. Uh-huh. Okay. On the next page of the

15 report under the cost of repair and restoration

16 section?

17 A. Uh-huh.

18 Q. There is a reference in the paragraph

19 that starts in this instance?

20 A. Yep.

21 Q. To the erosion of the landscape and

22 then it goes on to reference there appearing to be

23 significant stability issues. Do you see that?

24 A. Yes, yes.

25 Q. We have already clarified you're not



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1 offering any expert opinions regarding stability,
 2 actual stability of the slope, correct?
 3 A. I am not offering an engineering
 4 statement of stability. What I'm offering here was
 5 the perspective of I'm not standing on that slope. I
 6 don't want to go over my head.
 7 Q. All right. And with respect to the
 8 cost of restoration repair, there are, let's see.
 9 There is a section. Actually, it's in the table
 10 before. Hold on a second. In the table on the
 11 section related to the archeological value of
 12 damage?
 13 A. I'm sorry. I'm trying to find out
 14 where we are here.
 15 Q. We're a page before the
 16 archeological --
 17 A. Okay.
 18 Q. -- value damages section?
 19 A. Yes.
 20 Q. You have a section in here in this
 21 table for report preparation?
 22 A. Yes.
 23 Q. What report are we talking about?
 24 A. The, if you're hiring somebody to do
 25 this as an RFP, request for proposal to actually do

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1 this type of thing, it's on personal property, it's
 2 an important site, you should be aware of it. He
 3 said, great, I will be in contact with you. Now
 4 I'm paraphrasing that. I did not take an audio
 5 clip of it.
 6 Q. Uh-huh.
 7 A. But basically I was left with the
 8 impression that he would be getting right back to
 9 me. I didn't worry about it, I figured he would
 10 get right back to me. Nobody ever got back to me.
 11 Q. Do you know if that was before or after
 12 the work was done?
 13 A. That, I don't know. I'm going to
 14 suspect that it was after -- I hate to use the term
 15 balloon went up, but I suspect it was after a
 16 complaint was filed.
 17 Q. Okay.
 18 A. In other words, I think it was somebody
 19 checking to double see is this real or not versus
 20 calling me beforehand. Because again, if you call
 21 me beforehand and you're from the city, the
 22 statement is send us some material, we will be
 23 happy to double check it for you against our site
 24 files. We will be happy to provide you with
 25 information. I have been offering that since the

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1 the research.
 2 Q. Uh-huh.
 3 A. Then at the point, because it is now
 4 beyond simply the statement of the individual,
 5 there would be a professional report compiled,
 6 edited, et cetera.
 7 Q. For what purpose?
 8 A. For the documentation of the site.
 9 What you have here is a legal proceeding against
 10 the damage to a site, and one would expect if work
 11 were being done then a report could be produced.
 12 Q. Okay. You mentioned to Mr. Kendall
 13 when he was asking you questions that you told
 14 Mr. Sheu that that was historical site on the
 15 Plaintiffs' properties; is that correct?
 16 A. No. I got a phone call from the city
 17 from a person who unfortunately I cannot remember
 18 how they identified themselves, but I suspect it
 19 may have been Mr. Sheu, but I cannot state that as
 20 accurate. Who said, you know, what are you
 21 familiar with the situation over here on the
 22 historic bridge abutment on this river. I said,
 23 well, yeah that would be and I explained I said
 24 it's the Brinkman property. He said is it real, I
 25 said it is real. Brinkman is doing good work on

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1 1990s, the city hasn't been taking me up on it mind
 2 you, but I have been doing that ever since the
 3 Aristotle Hill (ph:) situation and for whatever
 4 they're not required to, there is no gun to their
 5 head, but it's an offer and in the situation of the
 6 latter part actually nobody has asked this, but the
 7 reality is anybody could ask me to do this. It
 8 didn't have to be the plaintiff.
 9 If somebody screwed up and they wanted
 10 to know what the potential damages were, they
 11 could've asked me to produce this report for them.
 12 I would have done it. It's the type of thing I
 13 would have done before that law was in place. The
 14 law says may, it doesn't say have to or excluded.
 15 If they were smart, they would have
 16 asked me to produce it and they would have had one
 17 of their experts in the same room with me so we
 18 could have a conversation. That's how I prefer
 19 these things. That's why in the law itself, I
 20 prefer to have it through the courts. I try to
 21 take the antagonisms out, the aggression and simply
 22 say, look, what are the facts, what can we do,
 23 where are we, what does it look like, and get to
 24 the end. So that's where that is. Probably more
 25 information than you asked, you asked and I figured



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1 you should hear it at least once. There you go.
 2 So continue.
 3 Q. We have already established that you
 4 didn't receive any of project files?
 5 A. Nope.
 6 Q. On this familiar matter. I just want
 7 to make sure you and I have the same definition of
 8 what that would include. We've covered that you
 9 didn't have my client's contract with the city. Is
 10 it fair to say you also did not have Layne
 11 Inliner's contract with the city?
 12 A. I have received no contracts from any
 13 of the groups involved.
 14 Q. Okay. That being okay -- well, strike
 15 that. Any you have not spoken with any of the
 16 defendants in the case, is that fair?
 17 A. I'm sorry?
 18 Q. You have not spoken with any of the
 19 defendants in the case, correct?
 20 A. Outside of you folks as the attorneys,
 21 to the best of my knowledge the answer is no.
 22 Q. Okay. And sitting here today, can you
 23 tell me the name of the project engineer for this
 24 case?
 25 A. I'm thinking it's Sheu.

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1 damages tables are set out?
 2 A. Sure.
 3 Q. Is it fair for me to assume that each
 4 bold heading is an overall scope of work then it's
 5 broken down into different line items?
 6 A. Yes, I think that would be a fair way
 7 to put it, uh-huh.
 8 Q. All right. And then if you look at the
 9 first table that is the archeological value of
 10 damages?
 11 A. Yes.
 12 Q. The total given is \$25,224.06?
 13 A. Correct.
 14 Q. Is that a gross number? In other
 15 words, does that account for all archeological
 16 damages to all of these plaintiff's properties?
 17 A. Well, the answer to that would be yes.
 18 Q. Okay. Is there any way for you to
 19 parse out from that overall \$25,000 number an
 20 amount attributable to each property?
 21 A. I haven't done that. But if you wanted
 22 me to, I probably could, but again, I have been
 23 asked by previous counsel whether or not this is
 24 done and I'm done and I said that I was. This
 25 would now be opening up for me to try to parse

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1 Q. Okay. And can you tell me the names of
 2 any of the other engineers that worked on this case
 3 other than Mr. Pierce?
 4 A. Outside of Mr. Pierce, no, these are
 5 the depositions I have in hand.
 6 Q. Okay.
 7 A. Other people were mentioned I believe
 8 in inside of that, but I don't remember them.
 9 Q. Those are all the questions I have.
 10 Thank you.
 11 A. Sure.
 12 EXAMINATION
 13 BY MR. STEWART:
 14 Q. Dr. Leader, my name is Heath Stewart we
 15 met before.
 16 A. Oh, yes.
 17 Q. I represent North American Pipeline
 18 Management.
 19 A. Okay.
 20 Q. I have a -- I don't want to say a
 21 couple because that is always a lie, a few
 22 questions for you?
 23 A. Fair enough.
 24 Q. All right. Looking at your report,
 25 just so I understand how these tables, these

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1 things out.
 2 Q. I don't want you to do any more work,
 3 but that is a task that could be done?
 4 A. It is a task that could be done sure.
 5 Q. And if you turn to the restoration and
 6 repair cost table the overall number is \$31,701.92?
 7 A. Correct.
 8 Q. Again, that is a gross number that
 9 includes all of the affected properties?
 10 A. That's correct.
 11 Q. Okay. All right if you turn to the --
 12 the section before the actual restoration and
 13 repair cost table under the heading cost?
 14 A. Okay.
 15 Q. Of reparation and repair?
 16 A. Got it.
 17 Q. The last paragraph is a bold sentence
 18 that says the sum of \$15,000 per property being
 19 considered sufficient to cover this work.
 20 A. Yes.
 21 Q. This work being stabilizing of the
 22 archeological portions of the property.
 23 A. That's correct. Stabilizing immediate
 24 archeological landscape replacement stones to
 25 original positions, yes.



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1 Q: Okay. And if we flip over to the
2 table, the last item?
3 A: Which table? I'm sorry.
4 Q: For the restoration and repair costs.
5 A: Okay.
6 Q: The last item references that
7 stabilization?
8 A: Yes.
9 Q: And there is a cost of \$15,000 and it's
10 multiplied times two?
11 A: In that regard, it is multiplied by two
12 because that's what I figure it is going to take to
13 do for each one individually.
14 Q: Each one what?
15 A: Each property.
16 Q: Which two properties are included in
17 that figure?
18 A: That would be Coleman and Brinkman.
19 Q: Okay.
20 A: Everything else, everything above that
21 covers both. That is the one -- the one thing on
22 any of the tables which actually is individual.
23 Q: Got you. Dr. Leader, that was more
24 than a couple of questions.
25 A: That is fine.

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1 questions though that are interesting to me.
2 You're the state archaeologist, right?
3 A: I am the state archaeologist.
4 Q: How were you appointed?
5 A: I was appointed by the director of the
6 institute pursuant to law.
7 Q: The current director?
8 A: No, I was brought in by the previous.
9 Q: Who is that?
10 A: Bruce Rippeteau.
11 Q: Who is the current director?
12 A: Steve Smith.
13 Q: Is the current director also on the
14 commission?
15 A: I'm sorry?
16 Q: What is his job title?
17 A: He is the director of the institute.
18 Q: Okay. As the state archaeologist, do
19 you have a term of office?
20 A: No.
21 Q: And what body of law governs your
22 employment as the state archaeologist?
23 A: I'm not sure I'm following the
24 question.
25 Q: Okay. Let me change the subject.

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1 Q: But those are all that I have. Thank
2 you.
3 A: Sure.
4 EXAMINATION
5 BY MR. HEMLEPP:
6 Q: Thank you. Dr. Leader, we have not met
7 before. My name is Mike Hemlepp, I'm an attorney
8 with the city and my -- you have probably met Jean
9 Lisowski who is the primary lawyer for the city on
10 this case.
11 A: Uh-huh.
12 Q: She is in Texas with her daughter so
13 she was unable to come to the deposition.
14 A: Is that a good thing?
15 Q: It is a good thing, a cheerleading
16 competition?
17 A: Okay. Good for her.
18 Q: I am assisting on this case. My
19 primary job for the city is as counsel to the
20 Columbia police department and also the fire
21 department. But because of that, I don't -- I
22 don't plan on asking you any questions about your
23 report.
24 A: Okay.
25 Q: I want to ask you some background

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1 A: All right.
2 Q: You're also a research professor?
3 A: I am.
4 Q: And it's a requirement as a state
5 archaeologist that you be an employee of the USC?
6 A: Yes, it is.
7 Q: Okay. And you make a salary from USC?
8 A: Right.
9 Q: As a research professor, and that is a
10 public amount?
11 A: Correct.
12 Q: Do you also make a salary as the state
13 archaeologist?
14 A: They're considered one and the same.
15 The state archaeologist position is the position of
16 research professors at the university.
17 Q: Part of the job description of the
18 state archaeologist is that you run the office --
19 how is that termed? The office of the state
20 archaeologist?
21 A: That's correct.
22 Q: Do you have employees?
23 A: I do.
24 Q: How many employees do you have?
25 A: I have two full-time core employees and



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1 then we have other people who come in as
 2 temporaries or assist or subcontract.
 3 Q. Okay. So does state archaeologist,
 4 does that have a band classification with the State
 5 of South Carolina?
 6 A. Probably. I have no idea what it is.
 7 You would have to ask HR.
 8 Q. So are you licensed as an
 9 archaeologist?
 10 A. Archeologists don't come under
 11 licensure.
 12 Q. Okay. I know they don't come under
 13 state licensure. They have no federal licensure?
 14 A. No.
 15 Q. Well, I know you belong to the Council
 16 of South Carolina Professional Archeologists?
 17 A. That's correct.
 18 Q. And you run you're the chairman of
 19 their political action committee?
 20 A. I am the chairman of the political
 21 action committee, that's correct.
 22 Q. And from time to time, do you go to the
 23 statehouse to consult on legislation?
 24 A. Let's be clear. I am, as part of my
 25 normal job, not part of the COSCPA, but as part of

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1 leave to be here?
 2 A. I did not.
 3 Q. Do you consider this to be part of your
 4 employment?
 5 A. I do.
 6 Q. Okay. You used the term ethically?
 7 A. Uh-huh.
 8 Q. Several times.
 9 A. Uh-huh.
 10 Q. You understand that this is a
 11 deposition for lawsuit?
 12 A. Yes.
 13 Q. For a courtroom?
 14 A. Right.
 15 Q. Lawyers believe we may not be
 16 scientifically accurate, but we are linguistically
 17 accurate. Words have meaning.
 18 A. Okay.
 19 Q. When you talk about ethically, to what
 20 are you referring?
 21 A. It would depend on which of the
 22 contexts I used it I would guess.
 23 Q. Let me help you out. Are you referring
 24 to the State Ethics Act?
 25 A. Sure.

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1 my normal job I am required to respond to a variety
 2 of people including state legislature if they ask.
 3 I am a state person so I not lobby, and cannot
 4 lobby, and will not lobby. So from time to time,
 5 the people in the statehouse have, indeed,
 6 contacted me, asked me to assist constituents, ask
 7 me to respond, ask me to sit on task forces or team
 8 sets, and my response is always yes.
 9 Q. Okay.
 10 A. And since you're with the police
 11 department you should also know that is also for
 12 the police department. I'm a forensic
 13 archaeologist. When the legislature gave me the
 14 materials to allow me to do my forensic work, it
 15 was specifically the understanding that not only
 16 would I be helping the citizenry, the taxpayer, the
 17 public agencies, but specifically law enforcement.
 18 Q. Do you have a supervisor?
 19 A. Do I have a supervisor, yeah, sure, the
 20 director.
 21 Q. Okay. Does he know that you're here?
 22 A. Yes, he does.
 23 Q. Okay. Are you working today?
 24 A. Of course I am.
 25 Q. Okay. So you didn't take any annual

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1 Q. Okay.
 2 A. But in general, referring to the
 3 standard five forms of determining whether or not
 4 something is ethical.
 5 Q. We're going back to the State Ethics
 6 Act?
 7 A. Fine.
 8 Q. That would certainly-- you're the
 9 state employee?
 10 A. I am.
 11 Q. So you are subject to State Ethics Act?
 12 A. Yes, I am.
 13 Q. Do you believe that controls your
 14 behavior you're here today?
 15 A. Sure.
 16 Q. USC also has a statement of ethics,
 17 does it not?
 18 A. It does.
 19 Q. And are you familiar with that?
 20 A. Which one are you talking about the
 21 Carolinian Creed or what?
 22 Q. No. I'm talking about the actual
 23 policy for USC employees.
 24 A. Okay. Not immediately, but, yes, I'm
 25 sure I have read it.



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1 Q. You're here in your role as the state
2 archaeologist and it's a requirement by statute
3 that the state archaeologist be employee of USC.
4 So do you believe that today you would be governed
5 by the ethics of employees of USC?
6 A. Sure.
7 Q. Okay. I think you were asked earlier
8 whether you have received any compensation?
9 A. Uh-huh.
10 Q. For this?
11 A. I have.
12 Q. Okay. And you indicated in the
13 negative you have not gotten any money for this?
14 A. That's correct.
15 Q. Has anybody reimbursed you for
16 expenses?
17 A. Outside of buying me lunch at the Crepe
18 and Croissant, no.
19 Q. When did that happen?
20 A. Today for lunch.
21 Q. Okay. Under the State Ethics Act, what
22 does the term anything of value mean as a state
23 employee?
24 A. I would have to look up the definition
25 to be accurate.

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1 question.
2 MR. HEMLEPP: Well, I don't want him to
3 get into attorney-client privilege.
4 BY MR. HEMLEPP:
5 Q. I don't want you to understand, you
6 don't have to tell me what he said to you. I just
7 want to know if you consulted with someone?
8 A. Yes.
9 Q. Okay. You brought a piece of paper
10 that I think you have a copy of. It's February 15,
11 2018; and it's a 1557 Honorable Representative
12 Laurie Slade Funderburk?
13 A. Yes.
14 Q. You brought this, what is that?
15 A. It's a telephone conversation. I was
16 asked to produce, you know, everything that I have
17 and it was a telephone conversation.
18 Q. Okay. So these are notes of a
19 telephone conversation?
20 A. That's correct.
21 Q. I would like to mark this as an
22 exhibit, but I don't know what number the city was
23 on?
24 MR. KENDALL: We are all on the same.
25 THE COURT REPORTER: 31.

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1 Q. Would it be surprising to you that
2 lunch means anything -- that lunch would fall under
3 anything of value?
4 A. It would not surprise me at all. It
5 would surprise me at all to find out that John
6 Hodge bought lunch for everybody who went to him
7 for lunch, which means I was included, not as a
8 specific individual but as a person eating lunch
9 with him. As such, I am allowed to have lunch. So
10 under those circumstances --
11 Q. You understand you're a state
12 archaeologist and you're here on a deposition and
13 that was a break of your deposition. You're not
14 just anybody, you're a state employee under the
15 State Ethics Act. You understand that, right?
16 A. I am. I also understand we talked
17 about France and nothing to do with anything to
18 deal with this.
19 Q. That is fine. Have you consulted an
20 attorney prior to coming here about any of your
21 testimony?
22 A. University attorney George Lampl. I
23 asked him if I could act as a --
24 Q. I well --
25 MR. HODGE: Let him answer the

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1 (PLF EXH. 31, Notes, were marked for
2 identification.)
3 BY MR. HEMLEPP:
4 Q. So why, tell me, what was that
5 conversation about?
6 A. Well, it had occurred to me as she was
7 the author of the bill, which then became law, it
8 would be a good idea to touch base and have a
9 conversation about the law and what it did and did
10 not cover, and what it did and did not mean in
11 terms of my acting as a state archaeologist in
12 situations similar to this. So I was asking her
13 opinion as the author of the legislation I had been
14 operating under in this instance as to whether or
15 not, you know, what was actually going on with it
16 and that was the notes from that conversation.
17 Q. Okay. So you were not consulting her
18 as an attorney?
19 A. I was not consulting her as an
20 attorney.
21 Q. You don't have an attorney-client
22 relationship with her?
23 A. Not that I'm aware of, no.
24 Q. Okay. So you were asking her her
25 general opinion as a member of the general



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1 assembly?
 2 A. I was asking her opinion as a person
 3 who authored the law, her intent for the authoring
 4 of the law, and what it mean in terms of what I was
 5 doing.
 6 Q. So when this law was authored, it was
 7 introduced by Representative Funderburk?
 8 A. That's correct.
 9 Q. Okay. And it was passed and eventually
 10 signed by the governor?
 11 A. That's correct.
 12 Q. Was it amended at all in between those
 13 two periods?
 14 A. I would have to go back and double
 15 check.
 16 Q. Okay. So the law as it's stands right
 17 now is actual the law of the entire general
 18 assembly, not the law of Ms. Funderburk?
 19 A. That is true, yes.
 20 Q. Her opinion, do you consider her
 21 opinion to be a legal opinion?
 22 A. I consider her opinion to be of value.
 23 I am not sure. I would have to ask George whether
 24 it's a legal opinion or not. I'm not an attorney.
 25 I don't know.

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1 sure it worked for both criminal and civil cases,
 2 that her original reason to have me involved with
 3 it was because she saw it as a value added on
 4 behalf of the public as taxpayers, that the law
 5 itself did not exclude me from acting as an expert
 6 witness or filing an amicus brief, and that she
 7 really wanted me to be involved, you know, because
 8 she wanted to make sure that land owners and
 9 stewards in terms of the archaeology got the best
 10 possible advice in terms of any damage that
 11 occurred to their properties.
 12 Q. And for the record, I agree with all of
 13 that.
 14 A. Okay.
 15 Q. You specifically asked for the
 16 inclusion of the state archaeologist under B as
 17 being able to act as an expert witness?
 18 A. I'm sorry. I'm not sure what the
 19 question is.
 20 Q. No. 1 says, "The inclusion of the state
 21 archaeologist under B is a may and not exclusionary
 22 from other action. The state archaeologist can act
 23 as an expert witness."
 24 A. Correct that's what it says, yes.
 25 Q. Have you read B?

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1 Q. Did you consult with USC prior to
 2 calling Representative Funderburk, the general
 3 counsel, again, don't tell me what they said. Did
 4 you consult with a lawyer prior to calling
 5 Representative Funderburk?
 6 A. No.
 7 Q. Representative Funderburk is on the
 8 house legislative oversight committee which job is
 9 in part to look at all state agencies to determine
 10 whether they're operating and functioning properly.
 11 The chairman of that is Representative Newman. Did
 12 you ever call Representative Newman?
 13 A. No.
 14 Q. Okay. General counsel is Charles
 15 Appleby. Did you ever call him?
 16 A. No.
 17 Q. Okay. I take it that the opinion that
 18 you -- well, I don't want to put words in your
 19 mouth. What does this piece of paper mean to you?
 20 What do you think it tells you?
 21 A. What do I think it tells me, well, huh,
 22 I think it tells me that that intent that she had
 23 down with the purchase of the -- purchase -- good
 24 job, John. Could you strike that? Purchase,
 25 doesn't exist. The writing of the law was to make

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1 A. Recently, yes. I don't have it in
 2 front of me.
 3 Q. I have it in front of me.
 4 A. Okay.
 5 Q. This is what it says, "The Court may
 6 call upon the office of the state archaeologist to
 7 provide evidence to assist in determining,
 8 calculating, or computing archeological value,
 9 commercial value, or the cost of restoration and
 10 repair of an archaeological resource."
 11 A. Uh-huh.
 12 Q. That is taken directly from the
 13 legislature's website.
 14 A. Sure.
 15 Q. And that is the entirety of B. Would
 16 you agree with that?
 17 A. I would, yes.
 18 Q. That comports with your recollection of
 19 what this says?
 20 A. It does.
 21 Q. When it says the Court may?
 22 A. Yes.
 23 Q. Have you applied to have the Court to
 24 be an expert witness for the Court in this action?
 25 A. We did.



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1 Q. Do you have a court order?
 2 A. I do not.
 3 Q. Is there any court order on that in
 4 this action?
 5 A. My understanding is that the Court
 6 declined to have me signed to the Court.
 7 Q. Okay. So why are you here?
 8 A. Why am I here? Because I would be
 9 doing here this regardless of whether the Court
 10 wanted me or not. Assisting people --
 11 Q. So when you got an opinion about B from
 12 Representative Funderburk?
 13 MR. HODGE: Let him answer the
 14 question, please. Mike, let him answer the
 15 question. You interrupted him.
 16 THE WITNESS: May, on behalf of the
 17 Court, is a decision by the Court. The protection
 18 of archaeological resources and the providing of
 19 information about archaeology is what state
 20 archaeologists do. It's what state archaeologists
 21 have done in the state for 45 years. Simply
 22 because the Court says, we don't need that,
 23 necessarily doesn't mean that me, myself, or other
 24 state archeologists do not think it's important for
 25 the information to be presented.

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1 since '63, I would be happy to meet with them and
 2 tell them. It's what I do. If somebody wants to
 3 know what I think that it would take to take care
 4 of it, I will be happy to provide them with that. I
 5 don't charge them business. I am taxpayer supported.
 6 I don't want to be paid. I am paid to do my job,
 7 and yes, I'm at the university.
 8 We were moved there from the governor's
 9 office to the University because they thought it
 10 would be better for us to have this type of
 11 information available to students and to assist
 12 from the research side of things rather than being
 13 a political environment. I am not political. I am
 14 not engaged in any of that stuff. I have no dog in
 15 this fight except to make sure that archaeology is
 16 properly identified, properly listed, and properly
 17 recompensed in the sense of what I think it might
 18 be.
 19 Q. You mentioned that these are tax
 20 dollars being spent and not provide money?
 21 A. That's correct. At least for me, yes.
 22 Q. Who gets to decide how that money is
 23 spent? As the state archaeologist, would that be
 24 you?
 25 A. In terms of the budget?

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1 When I talked to the University
 2 attorney about this when the original deposition,
 3 when he was sitting here and part of that was
 4 actually raised on the way back, and I will tell
 5 you this. He said you have nothing to stop you in
 6 this to be a witness. It does not stop you from
 7 being an expert witness. So I am an expert
 8 witness.
 9 Now, if I'm not an expert witness for a
 10 group who is not my attorney who has not paid me,
 11 what I am doing is providing value to this
 12 undertaking to make sure you have the information
 13 necessary in front of the Court to come to a
 14 legitimate end point. I have no dog in the fight
 15 whether or not Mr. Brinkman gets money or not.
 16 Whether Mr. Brinkman wanted more money or less
 17 money, this is this best that I came up with. If
 18 other people come up with something different, then
 19 it's a question of consent between the two of you
 20 to negotiate on your own. I don't really care who
 21 wins. It's not my point.
 22 If anybody else needed to know the
 23 information of damage, whether an archaeological
 24 site damaged, as part and parcel of what state
 25 archaeologist in the state done from the beginning

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1 Q. In terms of the state is paying for you
 2 right now?
 3 A. Correct.
 4 Q. Who gets to decide whether you do that
 5 or not?
 6 A. A combination of me and the director.
 7 Q. Do you have anything in writing from
 8 the director?
 9 A. This is --
 10 Q. About your testimony in this case?
 11 A. I have kept him informed. I have kept
 12 the university informed and none of them have a
 13 problem with it.
 14 Q. Do you have anything in writing?
 15 A. I do not have anything in writing.
 16 Q. Okay.
 17 A. It hasn't been necessary.
 18 Q. Okay. What is the budget of the state
 19 office of the State Office of the State Institute
 20 of Archaeology and Anthropology?
 21 A. Basically, the -- given all the take
 22 backs from the state and the rest and the
 23 diminishment of the other core members that used to
 24 be part of my group, basically the salaries of
 25 individuals involved.



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1 Q. Okay. And I'm not asking you --
 2 A. That's okay.
 3 Q. This is isn't a got-you, but about what
 4 is that for your office?
 5 A. For my office, a total, actually you
 6 know what, I would have to double check with HR
 7 because I missed the -- can't do it. It's
 8 considerably less than it would be if I were
 9 private. That I can state for fact.
 10 Q. Have you reviewed -- never mind. I
 11 will withdraw that. I have nothing further. Thank
 12 you.
 13 A. You're welcome.
 14 EXAMINATION
 15 BY MR. HODGE:
 16 Q. Dr. Leader, I will have a few questions
 17 for you. I just want to make sure the record is
 18 clear as part of your normal job duties doing
 19 damage assessments under Statute 16-11-780.
 20 A. Yes.
 21 Q. And about how many damage assessments
 22 have you done since that law was passed? Do you
 23 have any idea?
 24 A. The ones that have gone to trial, this
 25 will be the first one. Other ones where I have

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1 Q. Okay. But you have done this as normal
 2 course of business?
 3 A. It is considered a normal course of my
 4 business to assist people and determine whether or
 5 not damage has been done to their sites. In terms
 6 of finishing a report and getting to the point of
 7 being deposed, currently this is the only one.
 8 Q. Okay. So the document that has been
 9 identified as Exhibit 31 that I think you testified
 10 summarizes your conversation with Representative
 11 Funderburk, do you believe that that is her
 12 interpretation of the statute that she authored?
 13 A. Yes, I think it is her interpretation,
 14 yeah, sure.
 15 Q. She was the author of that bill?
 16 A. She was the original author of that
 17 bill.
 18 Q. Okay. Do you have any doubt whatsoever
 19 that the location of your report that is exhibit --
 20 I believe it's 24 and 25, I believe that that site
 21 is an archeological site?
 22 MR. KENDALL: Object to the form.
 23 THE WITNESS: I'm sorry?
 24 MR. KENDALL: I just objected to the
 25 form. You can answer the question if you know the

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1 assisted other people on DNR I think went to trial,
 2 but they chose to do it on their own.
 3 Q. How many total assessments have you
 4 actually done whether they went to trial or not?
 5 A. For the state or for federal.
 6 Q. Just under the state law, under the
 7 16-11-780?
 8 A. I have done some, but they have never
 9 actually gone anywhere. In other words, I produced
 10 information to request. I don't know. I don't
 11 keep track of it honestly. Somebody brings me to
 12 the site. We talk about it, explain the process
 13 that they could go through if they so desire. They
 14 say ballpark, I work out a little bit, I tell them
 15 the number. If it goes anywhere, I keep it. If it
 16 doesn't go anywhere I DC it. I don't keep it.
 17 Q. Okay.
 18 A. It's just another piece of clutter.
 19 Q. Are you doing other damage assessments
 20 even now?
 21 A. No, I'm not.
 22 Q. About how many are you doing?
 23 A. No, I'm not.
 24 Q. Not?
 25 A. This is currently the only one.

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1 answer.
 2 THE WITNESS: As far as I'm concerned
 3 there are archeological sites throughout that area
 4 including those two places, yes.
 5 BY MR. HODGE:
 6 Q. Just summarize for the record why you
 7 believe that this is an archeological site?
 8 MS. WOOTEN: Object to the form.
 9 THE WITNESS: I'm sorry?
 10 MS. WOOTEN: You can answer.
 11 BY MR. HODGE:
 12 Q. Just summarize again why you believe
 13 that the location identified in Exhibits 24 and 25
 14 is an archaeological site?
 15 A. I believe that the area is an
 16 archeological site based on the identification of
 17 artifacts on the site that are prehistoric and of
 18 historic nature. In both cases primarily pottery
 19 plus additional information dealing with the
 20 placement of bridge abutments which are based on
 21 historic documents, maps, and GIS and remnants of
 22 what I have identified as bridge abutments.
 23 Q. Okay. Do you recall seeing some holes
 24 drilled into the abutments?
 25 A. I do.

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1 Q: Can you explain the significance of
2 those holes?
3 A: Well, there are a couple of different
4 holes that were seen by me additionally. When you
5 are moving large stones, you have to have
6 attachments to move them. When you are anchoring a
7 bridge which is a wooden structure in those days,
8 you would have to have tie-downs that would allow
9 an area to be, you know, structure to be brought
10 in, and the drill holes themselves are holes in
11 some instances themselves were of two different
12 types. One was commensurate with what is referred
13 to as a star drill which is piece of iron roughly
14 that long (indicating) about foot, two foot,
15 usually two foot, with veins around it in the shape
16 of a star. It's held by hand and it's either hit
17 by the same person or another individual. And it's
18 strike, rotate partially, strike, rotate, strike
19 rotate, strike rotate. And basically what you do
20 is impacting a hole into the structure and so there
21 was one similar to that.
22 Another version of that is what is
23 known as a tap and drill which is a spring-loaded
24 pole which allows additional force to be done by
25 leverage. So whether or not the initial one that I

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1 point where people were no longer hunter, fishers,
2 forages, but moved to small hamlets, horticulture,
3 and sedentary life. So what you're talking about
4 is the potential for a Native American hamlet in
5 the area. It could be other things there as well.
6 And basically, Columbia is a good place to live and
7 people have been living there for millennia is what
8 it comes down to. So it is of importance.
9 The other thing to keep in mind
10 especially when it comes to Woodland period hamlets
11 and the rest, and not infrequently the burials are
12 in the buildings themselves. So potentially there
13 were burials in the area. I didn't see any
14 burials, but as an anthropologist, specifically as
15 an archaeologist, it will be something that I would
16 have on my tick off sheet to keep track of.
17 Q: Moving on to Mr. Brinkman's work, do
18 you have any reason to doubt the conclusions that
19 Mr. Brinkman came up regarding those abutments
20 named John Conti's Bridges?
21 A: No. I think that he has done a
22 tremendous amount of work. I think that his GIS
23 work is very, very good. My only concern is it's a
24 multicomponent site. There are other components
25 need to be dealt with.

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1 saw back in 2005, I guess it was, was a handheld or
2 a tap and drill I can't say. There are some other
3 ones which appear to be rotary drill. That would
4 tie into the later formats, although you do have
5 some rotary drills which were done by animals and
6 the rest. The ones I saw, the lines were too fine
7 together to most likely be animal done, but most
8 likely steam power of pneumatic.
9 Q: What time periods are those different
10 technologies suggested of?
11 A: The earliest one, handheld, goes all
12 the way back. I mean, it's ancient. The Egyptians
13 used it among others. They also used the animal
14 drill sets. When you get to pneumatics and to the
15 steam, the steam and the pneumatic, that is the
16 proper format. That is early 1800s through, you
17 know, by mid 1800s everybody who can afford it is
18 moving over towards the other and then it continues
19 on its merry way from there.
20 Q: What is the significance of this site
21 to the Native American artifacts that you
22 apparently have identified?
23 A: Well, I think it's significant. You're
24 dealing with at least in this location is a
25 Deptford site which is early Woodland which is that

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1 Q: Okay. Does the professional
2 archeological community in South Carolina accept
3 Mr. Brinkman's work?
4 A: They have, yes.
5 Q: Okay.
6 A: Sure. As has Archives in History and
7 the Confederate Museum when we were doing the work
8 on the bridge. And other people working down at
9 Granby and the rest. And it's all based on this.
10 People are aware of it. It is out there. He has
11 published it on his blog. It's been covered in the
12 newspapers a couple of -- several times.
13 He has given multiple talks on the
14 topic to mixed audiences of professionals -- as I
15 understand, I was not there. But I have been told
16 that he gave mixed talks and he listed it on his
17 hours. When I asked him how much time he had
18 spent, mixed talks to both professional,
19 advocationalists, and private citizens. I have
20 heard no complaint, no disagreement as to his
21 findings up until this point.
22 Q: Okay. So have there been any
23 disagreements with his findings, you say up until
24 this point, what do you mean by that?
25 A: Well, I mean, I'm being asked whether

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1 or not it's a site, whether or not it's important,
 2 et cetera, et cetera, but that is from counsel, not
 3 from the archaeological community.
 4 Q. Okay. Now you talked a little bit
 5 about the standard of care earlier. Do you
 6 remember your testimony?
 7 A. I do.
 8 Q. Okay. And you rendered an opinion I
 9 believe that one should contact the landowners
 10 prior to doing work on their property. Do you
 11 remember that?
 12 A. I do.
 13 Q. I just want to see if we can clarify
 14 something. Whether that at one point you said
 15 whether that was a personal opinion or a
 16 professional opinion. Any time you're doing any
 17 work on someone else's property, whether there is
 18 an easement or not, should you contact the land
 19 owner?
 20 A. Speaking from the position of the
 21 profession of archaeology, any time you go on a
 22 private landowner's property you're in contact with
 23 a landowner or the landowner's steward, but you are
 24 in direct contact. You do not leave it to chance.
 25 Q. Okay. Do you believe that would

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1 Q. Okay. Going back to Exhibit I believe
 2 it's 30, that was the Tidewater documents. You
 3 have those in front of you.
 4 A. Let me find it. Here it is.
 5 Q. I'm going to ask you to go to the third
 6 page of -- that is Exhibit 30, correct?
 7 THE COURT REPORTER: Uh-huh.
 8 BY MR. HODGE:
 9 Q. Go to the third page and look down at
 10 the bottom. Now, you see a signature that says
 11 agent signature?
 12 A. Yes.
 13 Q. Do you know who that might be?
 14 A. I can't read it.
 15 Q. Okay. Go up to the next page and look
 16 at block 11.
 17 A. 11, block 11.
 18 Q. Sorry. Block 11 and 12. This is the
 19 second page of that document.
 20 A. Okay.
 21 Q. You have got. Let's see.
 22 A. Am I at the right place?
 23 Q. The previous page. Go flip over to the
 24 previous page. There we go. Look at block 11 and
 25 12, who was the agent?

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1 transpose over into other types of field work such
 2 as construction activities?
 3 MR. KENDALL: Objection.
 4 THE WITNESS: I can't speak for
 5 construction activities. Common sense would
 6 suggest that it is, but I have no idea what the
 7 standard of care for the other people is.
 8 BY MR. HODGE:
 9 Q. Okay.
 10 A. What they would do.
 11 Q. When you were talking too about your
 12 knowledge of whether the easement was exceeded, do
 13 you remember any testimony from either Mr. Sheu's
 14 deposition or Mr. Pierce's deposition about that?
 15 A. Yes.
 16 Q. What do you recall they said?
 17 A. I recall an apology from I believe it
 18 was Sheu. I would have to double check that they
 19 had -- he acknowledged that they had indeed gone
 20 out of the easement.
 21 Q. Do you recall any testimony from
 22 Mr. Pierce of the same thing?
 23 A. I believe so. Again, I would have to,
 24 I'm a little frazzled at the moment. I would
 25 literally have to look it up.

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1 A. Oh, Collum. Yeah okay. All right.
 2 Yeah, in order words, the gentleman from Tidewater
 3 Environmental Services acting as agent, yes.
 4 Q. What is his name?
 5 A. John Collum.
 6 Q. Who was the applicant for this after
 7 the fact permit?
 8 A. Higgins, Dana Higgins.
 9 Q. Is there a company name for the
 10 applicant?
 11 A. Yes. City of Columbia utilities and
 12 engineering department.
 13 Q. Okay. So you were asked questions
 14 about who Mr. Collum was working for in your
 15 deposition. Does reviewing this page of the
 16 application help you determine who Mr. Collum was
 17 working for?
 18 A. Apparently, for the City of Columbia if
 19 he was acting as agent.
 20 Q. Thank you. I want you to explain
 21 something to us regarding your report. You
 22 testified I believe about the archaeological value
 23 that now that the site had been disturbed, do you
 24 remember testifying that it was going to be less
 25 expensive to assess the archaeology there?



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1 A. Well, yes, I did.

2 Q. Can you explain that?

3 A. Well, I probably can. What we have got

4 here is additional damage to the site. At one end

5 it requires more work to try figure out what has

6 happened there. So that becomes a greater expense.

7 At the other end, you have the problem of the how

8 do you integrate the archaeology, the artifacts,

9 and the materials which are likely to be down slope

10 and put them back into perspective.

11 In terms of their value over time,

12 there is a difference between something that is in

13 situ and something which ends up give, trade, and

14 loan. That is flippant. I apologize. So in that

15 regard, it is less.

16 In terms of actually doing the

17 archaeology, it is what it is and I stand by the

18 number. The number is accurate. I may have

19 misstated that, but the 25,224.06 is what I think

20 it would cost to do the work regardless.

21 Q. Okay. And if there was any difference

22 in cost you say it's the same no matter what, is

23 that true?

24 A. Yeah. Uh-huh.

25 Q. So that is a little different than the

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1 Q. Do you see where you talked about

2 reconstructing ground contours and stabilizing its

3 surface?

4 A. Yes.

5 Q. Okay. So in your budget, did you put

6 in the funds for a civil engineer?

7 A. I did.

8 Q. Okay. Is that something you would

9 expect a civil engineer to perform?

10 A. Absolutely.

11 Q. Okay. As you have studied this case,

12 do you -- as you have studied this case, do you

13 have any belief whether the four parties, the city,

14 Weston & Samson, Layne Inliner, North American

15 Pipeline, whether they were working sort of in

16 concert together or working separately on the

17 project?

18 MS. WOOTEN: Object to the form.

19 MR. STEWART: Same objection.

20 THE WITNESS: The only thing I could go

21 on in terms of that is the depositions. The

22 depositions for Sheu and for Pierce are clear that

23 there were meetings held for discussion of the

24 project and other materials of that nature. So

25 again, not having the contract or anything else in

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1 opinion you gave a little while ago; is that right?

2 A. It is, and I apologize for the

3 confusion. What I was sparking on, if I can use

4 that term, was the benefit to the record of the

5 displaced artifacts would be less than the benefit

6 and worth of artifacts which were not displaced.

7 Q. Is that because you have lost the

8 context in which they were deposited?

9 MS. WOOTEN: Object to the form.

10 THE WITNESS: In part. I mean, the

11 context is still in the slope. But in general, the

12 exact context would be harder to come by.

13 BY MR. HODGE:

14 Q. I want to clarify something else in

15 your report, Dr. Leader. It's on again Exhibit 25

16 and it's the page that has the Bates stamp of page

17 28?

18 A. Got it.

19 Q. Do you remember being asked questions

20 about slope stability, whether you had an opinion

21 about slope stability?

22 A. Yes.

23 Q. And I think you put up here the cost of

24 restoration and repair?

25 A. Yes.

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1 front of me, but based only on the information from

2 the deposition that I have in hand, I would say

3 that they were working together.

4 BY MR. HODGE:

5 Q. Okay. Do you have any doubt that

6 section 16-11-780 of the state code would apply to

7 this situation in this case?

8 A. No, I believe it does.

9 Q. I want you to walk me through, and I'm

10 just going to give you the section of this. This

11 is actually 16-11-780C and I'm going to read it to

12 you and I want you to comment on it. It says, "It

13 is unlawful for a person no wilfully, knowingly, or

14 maliciously enter upon the lands of another or the

15 posted lands of the state and disturb or excavate a

16 historic or prehistoric site for the purpose

17 discovering, uncovering, moving, removing, or

18 attempting to remove an archeological resource.

19 Each unlawful entry and act of disturbance or

20 excavation of a prehistoric site constitutes a

21 separate and distinct offense."

22 Can you kind of walk us through why you

23 believe that the defendants here would be liable

24 under that section of the code?

25 MS. WOOTEN: Object to the form.

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1 THE WITNESS: I am not an attorney. I
 2 am not a prosecuting attorney. I am not a judge.
 3 Being involved with that law and understanding what
 4 the intent of passing that law was for, which
 5 included by the way a gentlemen in Camden on his
 6 own property being attacked by people on ATVs who
 7 had trespassed on his property and gone up and down
 8 mounds. They just thought they were hills. And it
 9 was based on that that the representative kicked
 10 this into gear to deal the issue because the
 11 trespass laws had no teeth sufficient to deal with
 12 it.
 13 Okay. Based on my understanding, what
 14 you have is a -- is a violation of the easement, a
 15 discussion of the violation of the easement, an
 16 understanding of the violation of the easement,
 17 deconstruction to archeological resources that were
 18 in that location. (Phone rings.) Sorry. I'll let
 19 that go. In the area so as far as I'm concerned,
 20 that is indeed met.
 21 Now, I guess the question of malicious,
 22 that is a little bit more difficult, but I have to
 23 ask myself no permit was done at the beginning,
 24 They should have known that there were things in
 25 the area simply because of the signatory too the

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1 use and misuse of this case of the database raises
 2 serious concerns to me. The final determination of
 3 whether it was in truth a violation of that law or
 4 not is a matter for the Court and I am more than
 5 willing to leave it in the hands of the Court. But
 6 as far as I am concerned, again, had I been asked,
 7 I would have said go talk to a prosecuting
 8 attorney, go find a magistrate, file a complaint,
 9 not civil, file criminal, and you know, have them
 10 make the final determination because they're
 11 attorneys and I am not. That is as close as I can
 12 get to an answer on that one.
 13 Q. Do you have an opinion as to whether a
 14 party that wilfully entered someone else's land has
 15 to know that an object that they might impact would
 16 be an archaeological structure --
 17 MR. KENDALL: Object to the form.
 18 MS. WOOTEN: Object to the form.
 19 MR. STEWART: Same objection.
 20 BY MR. HODGE:
 21 Q. To be liable under this act?
 22 A. Given the discussion that occurred at
 23 -- with the folks at the legislature when they were
 24 putting the act together, and the specific case
 25 which kicked the whole thing off, the answer is no.

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1 river alliance and everything else and being across
 2 the river from a canal district which is on the
 3 historic register. They should've known that there
 4 are possibilities. Okay, fine. Should've known.
 5 That's life.
 6 What you have is a destruction of
 7 archeological sites. You have a landowner going to
 8 at least one of the individuals involved in this
 9 case in terms of a business and in his letter to me
 10 asserting that he met the people there and told
 11 them, don't do that, it is a historic site. Okay.
 12 And they did it.
 13 And at that point, they were informed.
 14 The landowner told them. I have seen nothing,
 15 maybe it exists, I don't know, of them checking up
 16 the chain of command. I have seen nothing where a
 17 supervisor was called and damage and destruction
 18 occurred. So as far as I'm concerned, yeah, that
 19 portion of that law is indeed met. I didn't know
 20 about that you know to the full situation until
 21 very late. Basically, at this point of the
 22 deposition, because frankly I was never told there
 23 was an after-the-fact attempt to get a permit.
 24 The inaccuracies embraced by the permit
 25 in terms of archives and history, in terms of the

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1 All they have to do or have done was caused the
 2 damage. They do not have to know that the hill
 3 they were going up and down was a mound. They do
 4 not have to know that the thing was a burial, they
 5 simply have had to cause the damage.
 6 Q. Just to headache sure our record is
 7 clear today, performing damage assessments under
 8 section 16-11-780 is a part of your normal job
 9 duties as state archaeologist?
 10 A. As far as I'm concerned it is. Whether
 11 if I'm asked by anybody I will be happy to do it.
 12 Q. Okay.
 13 A. It doesn't have to be the defense of
 14 the plaintiff. If I'm asked, it will be produced.
 15 Q. Okay.
 16 A. At no cost.
 17 Q. So Dr. Leader, what was the cost of
 18 putting together your report that is Exhibit 25?
 19 Was there a cost of that?
 20 A. I did not parse out any cost because
 21 I'm not billing anybody.
 22 Q. Okay.
 23 A. I didn't get paid any extra for my
 24 salary. It's simply, as far as I'm concerned, once
 25 the law was passed, it simply was an extra thing I



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1 took on. The same thing with the forensic work. I
 2 don't get paid for my forensic work, I simply do
 3 it. It's expected.
 4 **Q. Have you done damage assessment reports**
 5 **for federal agencies or under federal statutes?**
 6 A. Actually, the fun thing about that was
 7 the government; yeah, I did one federal out on the
 8 island of Saipan, which is not here. So that was
 9 very different circumstances, and in that regard I
 10 did it on behalf of the defense who actually had
 11 run a bulldozer through a Latte stone structure and
 12 engaged himself in the loss of a medicine mortar of
 13 significant size.
 14 So in that case, because I had been
 15 part of the territorial office at one point they
 16 contacted me as an outside person to produce a
 17 report, which I did, which basically took a look at
 18 what the construction company had done in terms of
 19 the damage, figured out the cost for that, pointed
 20 out to them that it would be what it would be, that
 21 I wasn't going to pad it in either direction. They
 22 were simply going to accept it, whatever I came up,
 23 and if they weren't willing to, I wouldn't work
 24 with them. And I did, and I turned it over to them
 25 and off they went. And my understanding is they

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1 you have a deep history or in this case prehistory.
 2 The earliest pottery in the United States is South
 3 Carolina and Georgia. You know, some of largest
 4 quantities of the earliest human produced artifacts
 5 are South Carolina. I mean, people talk about
 6 Clovis, New Mexico, but it's South Carolina.
 7 **Q. Uh-huh.**
 8 A. Okay. So we have a tremendous time
 9 scale. Our understanding of the people, societies,
 10 cultures that went before us, in many instances,
 11 especially if there is no writing that we are aware
 12 of, are definable only by the archeological record,
 13 the sites, the taphonomy of the site, the formation
 14 in other words. The artifacts, their location on
 15 the geographic grid, if you will, the landscape.
 16 That is only thing we know about these people.
 17 Lots of Native American groups for
 18 instance in South Carolina ended up out west. The
 19 groups that people think were the western groups
 20 because of the really bad westerns on TV, many of
 21 them actually started in South Carolina. The
 22 Santee of Nebraska are the Santee of the Santee
 23 Mounds. The Shoshone are out there. Other groups
 24 are out there.
 25 So the archaeology is in a very real

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1 settled out of court so I never got the chance to
 2 go back to Saipan and say hello to anybody which
 3 sucked, but that is life.
 4 **Q. Did you use a similar methodology that**
 5 **you used to this case?**
 6 A. Everybody uses a methodology that has
 7 been devised by the Department of Interior National
 8 Park Service. Everybody uses the same process.
 9 It's the same process.
 10 **Q. Dr. Leader, would you explain to me how**
 11 **the conservation and preservation of archeological**
 12 **resources whether it is a public benefit in your**
 13 **opinion?**
 14 MR. KENDALL: Object to the form.
 15 MS. WOOTEN: Object to the form.
 16 THE WITNESS: Absolutely it's a public
 17 benefit.
 18 BY MR. HODGE:
 19 **Q. Let me rephrase the question. Can you**
 20 **explain to me whether you believe that the**
 21 **conservation of archeological resources artifacts**
 22 **is a public benefit?**
 23 A. Yes. Of the -- for a very large
 24 portion of the population in South Carolina and
 25 other states, you have two things going on. One,

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1 sense the only tag we have for a large portion of
 2 what ends up being our cultural history. The same
 3 thing is true for the enslaved African American
 4 population. Who built the bridge? I'll give you a
 5 hint. It was most likely African slaves. Okay.
 6 So what we're talking about here again is the
 7 preservation of a marginalized community primarily
 8 written out of the state history books, and the
 9 only thing you can tag them to are the sites on the
 10 ground for that early history. And in that
 11 respect, it's priceless, it's irreplaceable. And
 12 going through them without serious due
 13 consideration and work is a serious error in
 14 judgment. At least in my judgment, it's a serious
 15 error in judgment.
 16 **Q. Does it matter whether that such**
 17 **artifacts would be found on public land or private**
 18 **land?**
 19 A. Not a bit. As far as I'm concerned, as
 20 far as every state archaeologist before me, it made
 21 absolute no difference. And in point of fact,
 22 until the United States Forest Service started
 23 sending us 500-600 sites per year from their
 24 properties, the majority of archeological sites.
 25 There are roughly 33 to 36,000 sites in South



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1 Carolina that are part of my site files were all on
2 private land.

3 **Q. Uh-huh.**

4 **A.** The most important sites in the state,
5 which including the one I was just referencing with
6 is Cofitachequi. Which is where De Soto came
7 through, met the lady of Cofitachequi, who was is
8 the female ruler of an Indian nation and dragged
9 her off to the Mississippi is on private.

10 Other sites of importance,
11 battlefields, plantations, you name it, private
12 land. So you know, it's always been the case that
13 we, it's been recognized and always has been the
14 case that state archeologists will work and do work
15 and must work with private landowners for the
16 protection of their sites on their property if they
17 the landowner or steward are willing to be
18 landowners and stewards.

19 So expending effort, working with doing
20 assessments is part and parcel of what we do and
21 have done at one level or another for better than
22 45 years.

23 **Q. Okay. In your opinion is there a**
24 **public benefit to the work that you did in creating**
25 **Exhibit 25, your archeological damage assessment?**

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1 the damage to it is done. Which is why the
2 research as far as I'm concerned needs to be done
3 and why I came up with the number I did on the
4 research evaluation on the archeological research
5 statement. It needs to be done.

6 Understand that that also needs to be
7 done prior to the next part which is the
8 restoration. To do the restoration properly, you
9 need to do the first one so you can put them
10 together and understand which the interdigitate.
11 It's not one or the other. It's combined, it's
12 both. At least so far as I'm concerned. So, yeah,
13 it's public benefit. It's absolutely public
14 benefit.

15 **Q. No further questions. Thank you,**
16 **Dr. Leader?**

17 **A.** Great I may make class yet.

18 **EXAMINATION**

19 **BY MR. KENDALL:**

20 **Q. Is Saipan in the United States?**

21 **A.** Saipan is part of the United States.
22 It's kind of off the Northern Marianas.

23 **Q. Okay. Thank you.**

24 **EXAMINATION**

25 **BY MS. WOOTEN:**

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1 **MS. WOOTEN:** Object to the form.
2 **MR. KENDALL:** Object to the form.
3 **THE WITNESS:** Yes. I think it's public
4 benefit. It's the reason I did it.
5 **BY MR. HODGE:**

6 **Q. Can you explain why you think there is**
7 **a public benefits to your work, Exhibit 25?**

8 **A.** Because what you have is a private
9 citizen protecting his private archeological site
10 on his private property which was damaged through
11 no fault of his own and against his wishes. That
12 is number one.

13 Number two, it's a multicomponent site
14 with interesting materials to it which should be
15 and should have been and hopefully will still be
16 entered fully into research and to the
17 archeological record for other people to build off
18 of.

19 And for three, it's attached to too
20 many other sites up and down that river set in
21 terms of the research that was done by the
22 landowner and it's hinged. If it's gone then part
23 of the review process by other researchers using
24 his work is now missing. You'll have his pictures,
25 they'll have his set; they'll have his maps, but

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1 **Q. I have one question, Dr. Leader. The**
2 **homeowner letter that you referenced as giving**
3 **notice about the archaeological structures?**

4 **A.** Right.

5 **Q. That letter was not to my client Weston**
6 **& Sampson, correct?**

7 **A.** The letter was to me, correct.

8 **Q. No, no, I mean, you mention a strike**
9 **that. That was a bad question. Who did the**
10 **homeowner tell you he relayed that information to?**

11 **A.** The workmen who were at the site doing
12 the actual work.

13 **Q. Okay. So somebody who was actually**
14 **engaged in construction activity on the site.**

15 **A.** That is correct.

16 **Q. All right. So that would not be a**
17 **basis to include some sort of malicious willful**
18 **active to the engineer who was not provided that**
19 **information, correct?**

20 **A.** Not necessarily. The question then
21 becomes the one of supervision and oversight and
22 who is actually talking to whom at which meetings.
23 Based on the depositions, there were conversations
24 on this type of thing. I do not have the minutes
25 of those conversations. That would be a

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1 determination of the Court, but at its face I would
 2 not say no. I would say it is connected.
 3 Q. You would also say you don't have
 4 enough information to get an actual opinion on
 5 that, correct?
 6 A. I would say I do not have sufficient
 7 information to give the final determination on
 8 that. But based on the deposition, I have more
 9 than a strong opinion that it likely was connected.
 10 Q. All right. Thank you.
 11 EXAMINATION
 12 BY MR. STEWART:
 13 Q. Dr. Leader, real quick. Do you know if
 14 whether or not before that particular homeowner
 15 confronted the construction workers, with the
 16 notion that it was something that there
 17 archaeologically significant?
 18 A. Yeah.
 19 Q. They knew that that was there?
 20 A. I have no idea whatsoever.
 21 Q. Do you know if whether or not those
 22 workers, when told of the archeological resource on
 23 the property, continued their work or not?
 24 A. That is what is in the letter.
 25 Q. What does it say?

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1 Q. How do you come that understanding?
 2 A. From the question of depositions.
 3 Q. Okay. Those are all my questions.
 4 Thank you.
 5 A. Sure.
 6 (The witness, after having been advised
 7 of his right to read and sign this transcript, does
 8 not waive that right.)
 9 (The deposition was concluded at 2:58
 10 p.m.)
 11
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1 A. Where is the letter?
 2 Q. Sorry. I don't have it in front of me.
 3 MR. KENDALL: It's what I believe is
 4 Exhibit 29.
 5 THE WITNESS: In the letter, in the
 6 bottom portion, "There were two men below, one of
 7 whom was standing in the road below and the other
 8 driving the equipment. I yelled loudly at the men
 9 to stop the clearing and pushing these stones down
 10 the hill indicating that it was a historic Columbia
 11 structure. When I returned to the site that day
 12 Thursday, the road was more smoothed out and
 13 incredulously, additional stones had been pushed
 14 down the hill. It was a time of great sense of
 15 loss." That is the information I have.
 16 Q. That is all the information you have?
 17 A. That is all the information I have.
 18 Q. Okay. And sitting here today you can't
 19 tell us who these men that are referenced in this
 20 letter were affiliated with?
 21 A. My understanding is that it was
 22 National Pike.
 23 Q. Okay.
 24 A. I don't have that - but I have that as
 25 secondhand information.


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1 SIGNATURE OF DEPONENT
 2 DEPONENT: JONATHAN M. LEADER, PH.D.
 3 DEPOSITION DATE: February 16, 2018
 4 REPORTER: JULIE L. BONOMO
 5 AWR JOB NO.: 15713
 6 CASE CAPTION: MODESTA BRINKMAN, DAVID BRINKMAN,
 7 JAMES COLEMAN, CARL FOSTER, KAREN FOSTER, ROBERT
 8 COLLINS, PAMELA COLLINS vs. WESTON & SAMSON, INC.,
 9 WEST & SAMPSON ENGINEERS, INC., WEST & SAMPSON
 10 SERVICES, INC., WESTON & SAMPSON, CMR, INC., et al.
 11 (Please return both Signature of Deponent pages)
 12
 13 I, the undersigned, JONATHAN M. LEADER,
 14 PH.D., do hereby certify that I have read the
 15 foregoing deposition and find it to be a true and
 16 accurate transcription of my testimony, with the
 17 following corrections, if any:
 18 PAGE LINE CHANGE REASON
 19
 20
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1 SIGNATURE OF DEPONENT (CONTINUED)
2 DEPOSITION DATE: February 16, 2018
3 REPORTER: JULIE L. BONOMO
4 CASE CAPTION: MODESTA BRINKMAN, DAVID BRINKMAN,
5 JAMES COLEMAN, CARL FOSTER, KAREN FOSTER, ROBERT
6 COLLINS, PAMELA COLLINS vs. WESTON & SAMSON, INC.,
7 WEST & SAMPSON ENGINEERS, INC., WEST & SAMPSON
8 SERVICES, INC., WESTON & SAMPSON, CMR, INC., et al.
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14 JONATHAN M. LEADER, PH.D. Date
15 I, Julie L. Bonomo, Notary Public for the
16 State of South Carolina at Large, do hereby certify
17 that the deponent was advised of his or her right
18 to read and sign said deposition both verbally and
19 in writing. If the deponent fails to execute and
20 return foregoing Signature of Deponent pages within
21 the thirty (30) days allowed pursuant to the Rules
22 of Civil Procedure, the original transcript may be
23 filed with the court.
24
25




Julie L. Bonomo

Julie L. Bonomo
My Commission expires
July 28, 2027

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1 CERTIFICATE OF REPORTER
2
3 I, Julie L. Bonomo, Court Reporter and
4 Notary Public for the State of South Carolina at
5 Large, do hereby certify that the foregoing
6 transcript is a true, accurate, and complete
7 record.
8 I further certify that I am neither
9 related to nor counsel for any party to the cause
10 pending or interested in the events thereof.
11 Witness my hand, I have hereunto
12 affixed my official seal this 2nd day of March,
13 2018, at Charleston, Charleston County, South
14 Carolina.
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Julie L. Bonomo

Julie L. Bonomo
Court Reporter
My Commission expires
July 28, 2027

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SHERMAN'S CROSSING?

Rocks might mark site where bridge was burned in 1865

By JOEY BOLLEMAN
jbolleman@charlotte.com

David Brinkman bought a lot on the Broad River in 2004 because he liked the location overlooking a rocky shoal.

Early bridge builders and Union Gen. William T. Sherman might have felt the same way.

Last month, state archaeologist Jon Leader examined a pile of rocks in Brinkman's back yard and unequivocally said: "Congratulations, you're the proud owner of a bridge abutment."

That's a long way from an official confirmation, but it could mean a significant find for Civil War buffs — the place where Confederate soldiers burned a bridge to slow Sherman's march to Columbia. His troops had to build a temporary pontoon bridge to cross the river Feb. 17, 1865.

Historians have assumed the 1865 bridge was near the current Broad River Road. The findings in Brinkman's yard could prompt reconsideration. Leader's assessment intensified Brinkman's quest to find out more about his yard's past.

"I was afraid you'd come out here and say it's just a natural rock formation," Brinkman said.



David Brinkman examines a pile of rocks in the yard of his home off the Broad River.

ON PAGE A10

See a lot of wood and even more.

CRUISE: SAVE COLUMBIA An interactive game that tests your knowledge of the Union search on the city in 1865. Go to www.charlotte.com.

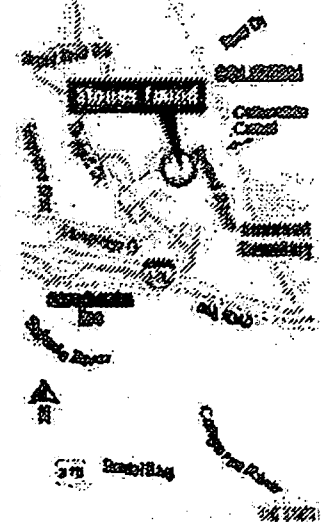
Don't worry, Leader said. "Nature doesn't work with chains."

Brinkman, a computer software engineer who grew up in Irmo, bought the property just south of Broad River Road to get closer to work after a job change.

While clearing a portion of the back yard, workers uncovered large rocks. That's not unusual in the area, but these rocks have flat sides, holes and indentations indicating they were manipulated by man.

HISTORIC BRIDGE?

A pile of rocks uncovered on the banks of the Broad River could be the remains of an historic bridge.



Intrigued, Brinkman began researching the history of the riverfront. The more he uncovered in libraries and archives, the more he suspected the old Broad River

SEE BRIDGE PAGE A10



WEATHER
steady clouds
and breezy
high 65, low 55
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FROM PAGE ONE

BRIDGE

FROM PAGE A1

bridge might have been anchored in his yard.

That would mean thousands of people trooped through his yard on the way to a ferry crossing dating to the Revolutionary War period and several subsequent bridges destroyed by floods or fires.

More intriguing, the Harper's Weekly artist who sketched Sherman's troops building the pontoon bridge across the river could have been standing in Brinkman's yard.

"The markers around the Broad River bridge give you the impression that's where all these things happened," Brinkman said.

But if the measurements on the map of Columbia in the 1825 Mills Atlas can be trusted, a ferry crossing and bridge at that time was south of the current bridge. Brinkman used modern technology to measure the distance between two current landmarks on the old map — the Gervais Street bridge and Crane Creek.

Based on the 1825 map scale, the ferry crossed 2.13 miles north of the Gervais Street bridge. That puts the ferry crossing about halfway between the current Broad River Road bridge and Brinkman's property. Also, geography hints that the ferry crossing was south of the current bridge, where the slope of the river bluff is less steep.

Brinkman wants to find accurate maps showing the various expansions of the Columbia Canal. The bridge was unlikely to span the canal.

tour. Leader agreed the site was worth further examination.

The two agreed to get together for a test dig near the rock pile. They also plan to check the other side of the river for signs of the east end of the bridge along what now is the Canal Embankment portion of the Three Rivers Greenway.

While there's no doubt some sort of bridge-like structure began in Brinkman's yard, he might not be able to prove the 1865 bridge started there. The visible rocks,

along with cables and large timbers found nearby, appear to have been put there closer to the turn of the 20th century, Leader said.

Regardless of the findings, Brinkman has no plan to profit from the property's history. He and his wife love their house overlooking the river and have no plans to sell it. He just thinks it would be fun to say they own a piece of history.

Reach Holleman
at (803) 771-8366.



David Brinkman shows where the bridge might have spanned the Broad River.

PHOTOGRAPH BY
TIMOTHY W. WOOD
THE STATE PRESS

Later maps, based on the 1825 map, show a bridge at the ferry crossing. A postcard of flooding at the Broad River bridge in 1908 shows men standing on the bridge's stone abutment. Brinkman suspects that was the last incarnation of bridges on this site before bridge-builders moved north to the current location.

Based on historic records of the 1908 flood, the river would have risen to the level of the rocks in Brinkman's yard. Could the men in the postcard be standing on those rocks?

Brinkman invited Leader, director of the S.C. Institute for Archaeology and Anthropology at USC, to look at the site and consider his hypothesis. After a quick

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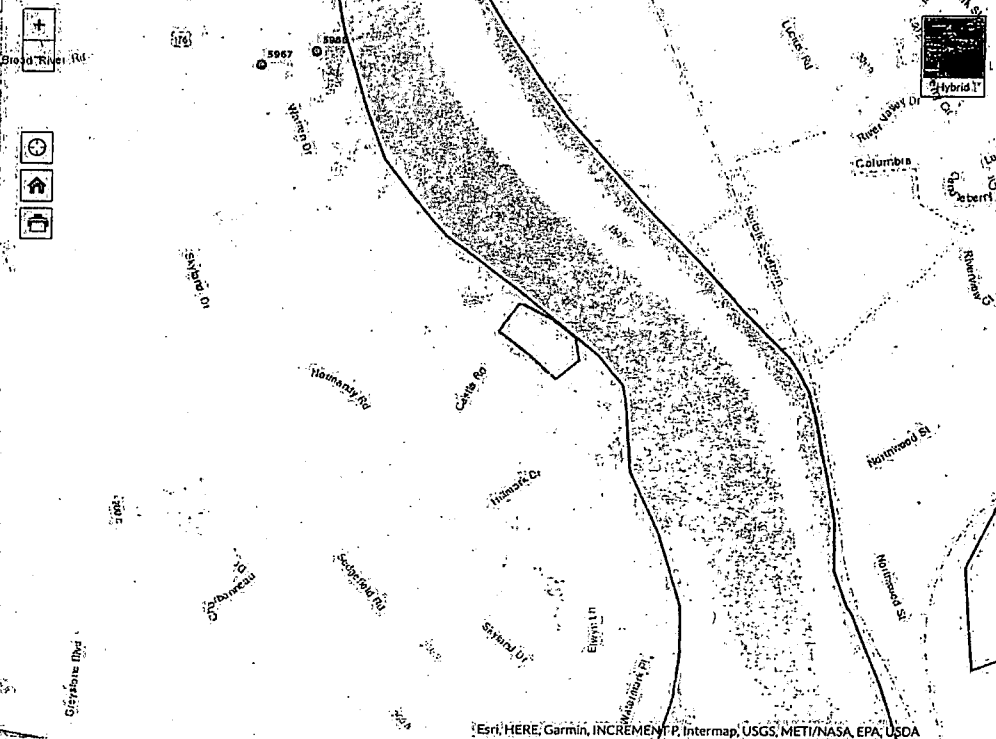


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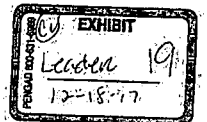
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**Archaeological Damage Assessment Report
For Brinkman, et al. v. Weston & Sampson, Inc. et. al.,
Case number 2015-CP-40-5598**

Prepared By

**Jonathan M. Leader, PhD.
SC State Archaeologist
South Carolina Institute of Archaeology and Anthropology
University of South Carolina
1321 Pendleton Street
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January 12, 2018



Leader Subpoena Response 000018

Abstract

This report contains an assessment of damages sustained to archaeological sites located at 150 Castle Road and 154 Castle Road, Columbia, SC. The damages are said to have resulted from the wrongful acts of Weston & Sampson, Inc., et. al., in a Civil Case. The facts are yet to be established. The commercial value of the archaeological site, archaeological value, and the cost for restoration and repair of the site are assessed in this report. The sites are multi-component and identified through both prehistoric and historic period materials.

Archaeological Damage Assessment Report

For *Brinkman, et al. v. Weston & Sampson, Inc. et. al.*

Case number 2015-CP-40-5598 3:2016CV00169

Introduction

A Civil Court case has resulted from the damage to two archaeological sites located at 154 Castle Road and 150 Castle Road Columbia, SC. The owners of the properties (David Brinkman and Modesta Brinkman and James Coleman), allege that damage has been done to archaeological and historic materials located on their properties by Weston & Sampson, Inc. et. al and several named and yet to be named individuals involved with those businesses (c.f., Civil Case No. 2015-CP-40-5598) during construction of a road allegedly related to maintenance of a sewer line.

The plaintiffs requested the services of Dr. Jonathan Leader, State Archaeologist, pursuant to his legally defined functions to assess the damage to the archaeological sites and determine the commercial value of the archaeological sites, archaeological values, and the cost for restoration and repair of the sites.

This study follows the procedures for determining values as put forth by the National Park Service, Department of Interior, *Technical Brief 20: Archeological Resource Damage Assessment: Legal Basis and Methods* (Washington, DC, February 2007.) and the *Society for American Archaeology Professional Standards for the Determination of Archaeological Value 2003* (Washington, DC, December 2003) and Section 16-11-780 of the South Carolina Code of Laws, as amended. The use of National Park Service guidelines is both preferred and routine in archaeology that is done at the state and local level. This ensures a level of consistency nationwide that might otherwise be lacking. The Society for American Archaeology is an international professional organization dedicated to the research, interpretation, and protection of the archaeological heritage of the Americas. It has over 6,800 members and routinely acts as an NGO spokesperson for the archaeology and historic preservation professions before state, federal and international agencies and the United States Congress.

It is important to note that this report only addresses the issues of archaeology as they impact values. It does not address current non-archaeological business values or future earnings, real or perceived.

The testimony, exhibits and maps provided by the plaintiff, plaintiff witnesses and plaintiff experts were utilized in the course of this assessment, as were the statements, reports, and documents provided by the National Park Service, Society for American Archaeology outside researchers, and defendant's statements. The plaintiff's complaint contains assertions of fact that have been put forth in this case. These are carefully considered only in terms of the archaeology on site. Their value in terms of other areas of the complaint are not considered.

The archaeological site on the Brinkman property is defined by a series of archaeological materials from several time periods. The oldest artifacts include Native American pottery sherds and some lithic flakes. The pottery is distinctive and identified as Deptford Linear A check stamp from the Early/Middle Woodland period and having an accepted date of 600 BCE to 500 CE (Anderson 1996; DePratter 1979). The lithic flakes are indeterminate in age but commensurate with Native American use and most likely prehistoric. Creamware pottery fragments found on the property are historic European materials with an accepted date of use from 1762 to 1800 (C.A.R.T. Archaeology 2017). Although Ivor Noel Hume suggests (1978) that creamware dates from 1760 to 1820. The bridge abutment and other stones are a mix of late 18th through 19th century materials. Several of the stones show drill marks produced by mechanical drills and at least one seen in 2007 showed the more "ragged" outlines of what may have been either a spring pole drill or a hand-held star drill also known as the hammer and tap technique. Star drills have a long use being the predominate technique from antiquity (e.g., Agricola 1556 reprinted 1950) though the 1840's when the advent of the steam hammer (1843) and Brunton's use of compressed air to power the "wind hammer" designed specifically for rock (1844) started the shift away from manual techniques. It took J. W. Fowle's US patent (1849) to usher in the modern age of rock drilling. Although it should be noted that it was Bartlett's 1855 successful test at the Mont Cenis tunnel that put paid to the earlier manual and mechanical techniques at major projects. Major innovations followed and Ingersoll's (1871) considerably more flexible drilling machine became an industry standard (The National Mining Hall of Fame & Museum 1992; Manufacturer and Builder Magazine 1879 excerpted 2008).

The archaeology of the property owned by Mr. James Coleman is mainly defined by the bridge abutment that is again a mix of stones exhibiting differing time periods. Mr. Robert Holder, whose family owned the property before Mr. Coleman, confirmed to the author that the abutment was in place prior to the construction of the original sewer line (Holder correspondence 2018). Mr. Coleman has stated that he confronted the workers on his property and specifically told them not to harm the abutment (Coleman letter 2018). His request was apparently not followed.

Prehistoric materials, specifically the Deptford Linear A check stamp pottery, have been found on several properties on both sides of the Coleman land. That said, prehistoric pottery has not been recovered by Mr. Coleman or others to the knowledge of the author on his property although its presence is very likely. Similarly, creamware pottery has not been recovered.

Other structures and items not of an archaeological nature alleged by the plaintiff to have been damaged or destroyed by *Weston & Sampson, Inc. et. al.*, do not fall within the scope of this report.

The depositions of Mr. Michael Sheu and Mr. Gene Pierce are important to this report in that they discuss what was and what wasn't done from their perspective as engineers on the project (Sheu 2017; Pierce 2017). Some of the points follow:

1. There was no contact prior to complaint with either the State Historic Preservation Office or the Office of the State Archaeologist's State Site Files to determine what was known to be in the project area or what was suspected to be in the project area.
2. There is no clear indication that the landowners were contacted prior to the projects start.
3. Permitting that would have required the identification of cultural materials was considered unnecessary and therefore not obtained.
4. That had a permit been required it would have been applied for after the fact.
5. The easement was not adhered to and additional property outside the easement was impacted.
6. The United States Army Corps of Engineers found the work to be in violation of the Clean Water Act and sent a cease and desist letter.

The assessment report is split into three main areas. They are Commercial Value, Archaeological Value and Cost of Reparation and Repair. Each is dealt with successively below. This is followed by a discussion and summary of this report's findings.

Commercial Value:

The term commercial value when referring to an archaeological site can be confusing. It refers to the fair market value of the archaeological resource prior to damage. Fair market is commonly accepted to mean the price that a seller is willing to accept and a buyer willing to pay on the open market (Garner 2005:12944 quoted in National Park Service 2007:10). This is a direct effect of collector interest and market forces. In the absence of either, this valuation cannot be completed (National Park Service 2007:9). The absence of a cash transaction, on the other hand, does not preclude the determination of commercial value. The exchange of services or goods through barter can be quantified.

Normally, this kind of determination is straightforward. In most instances where commercial value is assessed the objects involved are the focus of intense collector interest. There is a tremendous cottage industry in collector's guides, auction newsletters and annual reports all designed to provide the collector/trader with up-to-date and accurate commercial values. An example of this can be seen with the collection and trade in the ubiquitous projectile point or "arrowhead." Overstreet's Identification and Price Guide (2015) runs to 1392 pages and is encyclopedic in its approach to identification, grading and values of projectile points. So much so, that it is the standard for commercial valuation of those archaeological sites comprised of this cultural component when they are damaged.

Unfortunately, no such guide exists for historic bridge abutments. These are not collectibles per se and are not normally traded based on market forces. There is no current collector interest in or market for these items as artifacts. However, archaeological sites on residential properties where they do not impact the use of the property by the owner can be seen as an enhancement to property value. (Real Estate personal communications: Danny Hood, Caldwell Banker 11/22/2017; Andy Walker, Bollin Ligon Walker Realtors 11/29/2017; Peggy Gainey, RE/MAX ADVANTAGE GROUP 12/05/2017 = combined real estate experience = 106 years). An historic early American bridge would be reasonably expected to add value, but the amount of value is not currently ascertainable.

In a similar vein damage to Native American prehistoric sites can be quantified when the artifacts known to be included in a site go missing, are vandalized or are recovered after looting. However, Mr. Brinkman's focus on the bridge component of the multi-component archaeological site to the exclusion of other facets does not provide sufficient information for quantification under this heading. This is the case for the non-bridge historic archaeology component as well.

Mr. Coleman's site is also hampered by the same situation and therefore no determination under this heading can be made:

Archaeological Value

Archaeological value is pretty direct. It specifically refers to the costs of retrieving archaeological information from the site that would have been obtainable prior to the damage to the site. The standard activities of any field project apply, such as preparing the research design, conducting the fieldwork, accomplishing laboratory analyses, and preparing reports. Other specialty or appropriate analyses or work specifically tied to the site may also be included within this framework.

In this instance, the nature of the multi-component site lends itself well to this section. The presence of an Early/Middle Woodland period occupation and the later historic uses of the Brinkman property are sufficient in and of themselves to make this site a candidate for basic fieldwork. The surrounding prehistoric and historic materials found on adjacent properties coupled with the bridge abutment on the Coleman property are sufficient in and of themselves to make this site a candidate for basic fieldwork. The allegation that a large portion of the sites have been impacted is the current trigger. No one is disputing that a portion of the sites have been modified. This has included the use of heavy equipment and the discernable loss of some features. These impacted areas become the delineators of the sites for the purposes of this section.

It should be noted that the affidavit of Alan A. Abbata, P.E. (2018) specifically contradicts the previously stated opinions of the defendants that a permit was not necessary and that the area under impact was less than an acre. An archaeological cultural resource management project would have been required under the permit. The irony that this activity is now being sought after the fact at what will certainly be an added expense due to the need for the litigation is not lost.

There are two areas to be subjected to this process. The Brinkman property, 154 Castle Road, is defined for this section as the area under direct impact plus 10 feet up the slope as a boundary to the impact area and downslope to the base of the hill. The area 5 feet from the base of the hill and leading to the water is excluded from this area. Calculation of the area was difficult due to vegetation and obstacles however an area of 11,158sq feet was determined.

The Coleman property, 150 Castle Road, is defined for this section as the area under direct impact as a boundary to the impact area and downslope to the base of the hill. The area 5 feet from the base of the hill and leading to the water is excluded from this area. Calculation of the area was difficult due to vegetation, obstacles and the seemingly precarious nature of the slope. This latter issue precluded the upslope boundary as being unsafe for subsurface testing. However, if at a later date this should be determined safe by a qualified expert than the 10-foot upslope area should be returned to the project area. That said, an area of 8,575.8sq feet was determined for this property.

It normally takes two field archaeologists two days to excavate, record finds and back fill a two-meter by two-meter square. The cost of the archaeological value presented here reflects an accepted pricing schedule based on the Bureau of Labor Statistics. The median salaries/hourly wages have been used in every instance. It is the author's experience that some groups charge less, others more than the median. The use of the median is intended to cut the difference and is quite conservative. The information is current through 2016. It should be explicitly noted that no one from the Office of the State Archaeologist nor from the Institute that houses the office will seek or be hired to accomplish the work detailed here.

There are some standard features of field archaeology that are not included in the following table. These include overhead, travel costs, per diem, supplies, vehicle mileage and housing costs for the field crew. These tend to be proprietary knowledge used to gain an edge in the market. Therefore, the specifics are not known and not included.

It is also important to understand that the archaeological value is not an actual payment for archaeological field research. This is the determination of what value has been lost by the alleged damage. Payment of this sum does not obligate the landowner to engage in archaeology.

Table 1. Archaeological Value of Damages.

Activity	Rate/Hours	Hours	Amount
Consultation with SCDAH			
Principal Investigator	\$30.38	4	\$121.52
Consultation with SCIAA			
Principal Investigator	\$30.38	4	\$121.52
Research Design			
Background Research and Design			
Principal Investigator	\$30.38	8	\$243.04
Field Supervisor	\$30.38	16	\$394.94
Archaeological Fieldwork:			
Survey excavation Grid and Site Contour Map			
Field Supervisor	\$30.38	8	\$243.04
Archaeologist	\$30.38	16	\$486.08
Archaeologist	\$30.38	16	\$486.08
Excavation test units/record finds/backfill			
2 weeks (75 hours) per property			
Principal Investigator	\$30.38	75	\$2,278.50
Field Supervisor	\$30.38	150	\$4,557
Archaeologist	\$30.38	150	\$4,557
Archaeologist	\$30.38	150	\$4,557
Laboratory Work			
Artifact Cleaning/Analysis/Curation			
Principal Investigator	\$30.38	8	\$243.04
Archaeologist	\$30.38	24	\$729.12
Archaeologist	\$30.38	24	\$729.12
Archaeologist	\$30.38	384	\$729.12
Report Preparation			
Compiling, writing, editing			

Principal Investigator	\$30.38	16	\$486.08
Field Supervisor	\$30.38	80	\$2,430.40
Graphics Specialist	\$22.90	80	\$1,832

\$ 25,224.06 (USC IDC 6558.26)

Cost of Reparation and Repair

The cost of reparation and repair is a function of the sum of the costs incurred for emergency restoration or repair work, plus the projected costs necessary to complete any restoration or repair (National Park Service 2007:17). This can include, but isn't limited to reconstruction of the archaeological resource; stabilization of the archaeological resource; reconstructing the ground contours and stabilizing its surface; the research necessary to carry out the reconstruction and stabilization; purchase and/or placement of physical barriers or other protective devices to protect the archaeological resource; examination and analysis of the archaeological resource including recording surviving information in order to salvage that which cannot be conserved; reinternment of human remains and associated artifacts; and, preparation of reports for any of the above activities. (National Park Service 2007:17-18).

The one thing that cannot be done is to duplicate costs between this section and the previous one. Each action item must only be referenced once in a single section. Overlaps are not permitted.

In this instance, the emergency aspect is not moot. The erosion of the landscape is easily seen. There appear to be significant stability issues. Portions of the historic abutments have been pushed downslope and their original landscape altered. These activities in their current state appear to constitute issues of health and safety. Funds for stabilizing the archaeological portions of the properties should be sought immediately. The sum of \$15,000.00 per property being considered sufficient to cover this work. Please note that this does not cover or imply coverage of other non-archaeological damages and areas that may need stabilization.

Table 2. Restoration and Repair Cost.

Activity	Rate/Hour	Hours	Amount
Emergency restoration and repair			

Consultation			
Consultation with SCIAA			
Principal Investigator	30.38	2	\$60.76
Civil Engineer	40.16	8	\$321.28
Consultation with SCDAAH			
Principal Investigator	30.38	2	\$60.76
Civil Engineer	40.16	8	\$321.28
Restoration			
Civil Engineer	40.16	8	\$321.28
Stone Mason	19.13	12	\$229.56
Landscapers x2	12.90	15	\$387
Stabilizing immediate archaeological landscape; Replacement of stones to original positions			\$15,000.00 X2

31,701.92 (USC IDC 8242.50)

Replacement cost in this instance would mean the manufacture of an accurate facsimile of what had been on the properties prior to the damages. While the damage is not insignificant sufficient portions of the sites are thought to remain. Repairing and stabilizing the landscape is covered in the previous determination of restoration. This makes, in the consideration of the author, replacement unnecessary.

Signed: _____ /s/

Jonathan M. Leader, PhD
Archaeologist

Date: _____ 12 January 2017

REFERENCES CITED

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January 11, 2018

Dr. Jonathon M. Leader
State Archaeologist
South Carolina Institute of Archeology and Anthropology
University of South Carolina
Office of the State Archeologist
1321 Pendleton St., 1st Floor, Suite 16

Dear Dr. Leader,

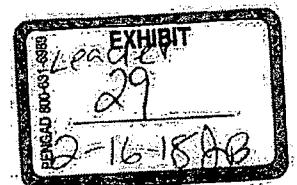
Please note that this letter refers to incidences occurring relative to an attempt to build an access road on the property of 150 Castle Rd., Columbia SC 29210 (my residence) on Wednesday February 11, 2015. When I came home in the afternoon I heard some loud machinery coming from behind the house on the frontage of the Broad River. I walked down to the deck area and from the overlook was able to see a heavy piece of machinery below which had paved a primitive road and was moving a large block of granite which was previously identified as part of the first Broad River bridge abutment. There were other prepared blocks of granite already pushed down the hill. I was shocked and horrified because I knew of the historic significance and importance of this structure. There were two men below, one of whom was standing in the road below and the other driving the equipment. I yelled loudly at the men to stop the clearing and pushing these stones down the hill indicating that this was an historic Columbia structure. When I returned to the site midday Thursday the road was more smoothed out, and incredibly, additional stones had been pushed down the hill. It was a time of great sense of loss.

Thank you very much for your attention.

Sincerely,

James R. (Jay) Coleman

James R. Coleman, Ph.D.



Leader Subpoena Response 000543

February 15, 2018 15:57

Hon. Representative Laurie Slade Funderburk

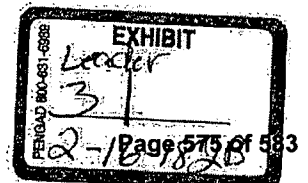
422C Blatt Building

Columbia, SC 29201

1(803)734-3044

Telephone conversation concerning SCCL Section 16-11-780

- 1.) The inclusion of the State Archaeologist under B is a may and not exclusionary from other action. The State Archaeologist can act as an expert witness or file amicus brief.
- 2.) The use of the State Archaeologist was for both criminal and civil cases.
- 3.) The inclusion of the State Archaeologist was based on professional expertise and in recognition of ongoing assistance to archaeological site owners and stewards already being provided.
- 4.) Providing assistance to archaeological site owners and stewards whether public or private is held as in the public interest.
- 5.) This includes determining damage and assessments. There is nothing to stop others from producing their own reports.

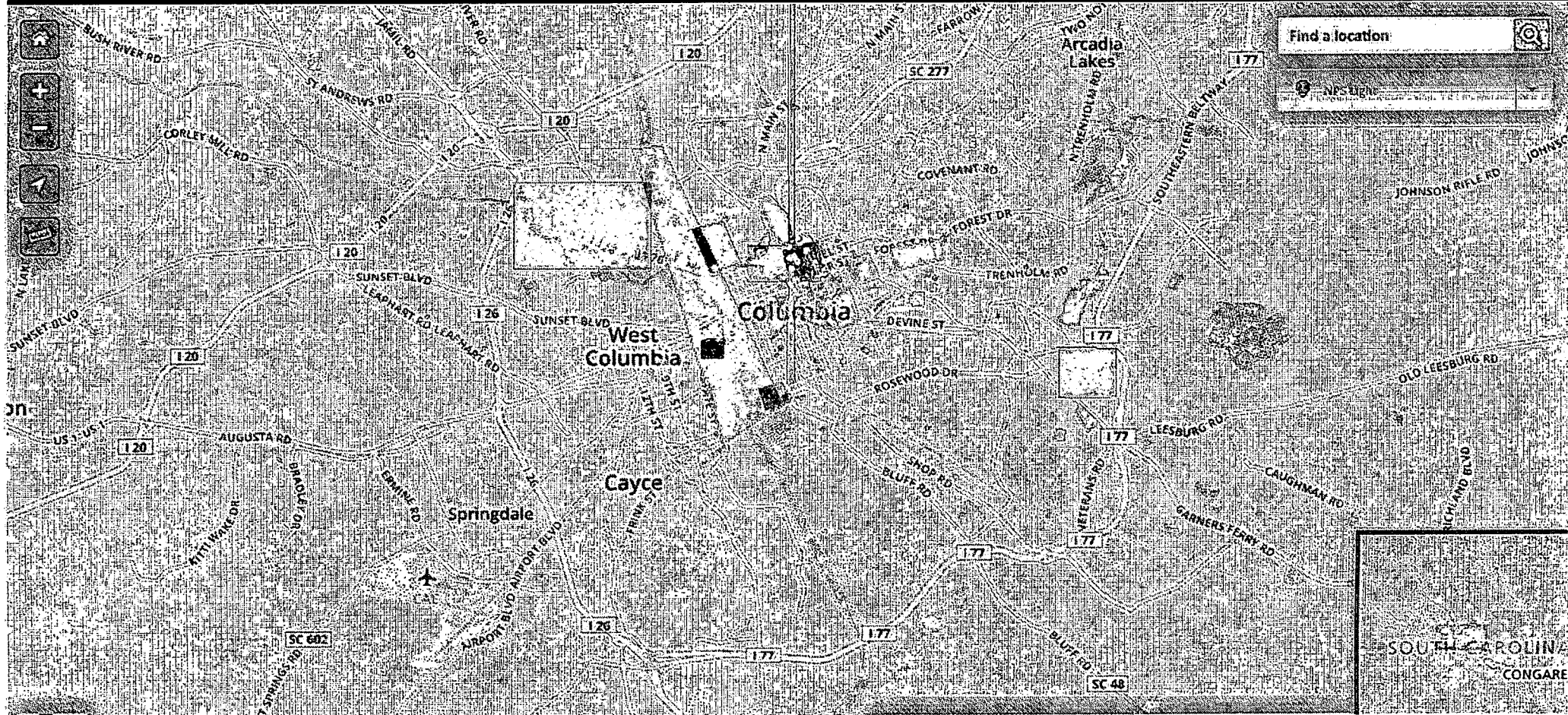


National Register of Historic Places

National Park Service
U.S. Department of the Interior



Public, non-restricted data depicting National Register spatial data processed by the Cultural Resources GIS facility. Data last updated in April,...



National Register of Historic Places

National Park Service
U.S. Department of the Interior



Public, non-restricted data depicting National Register spatial data processed by the Cultural Resources GIS facility. Data last updated in April,...



From: Andrade, Kristin B SAC <Kristin.B.Andrade@usace.army.mil>
Sent: Thursday, March 19, 2015 9:57 AM
To: Higgins, Dana R
Cc: McKoy, Peter (Brice) SAC; Parker, Les L SAC
Subject: SAC-2015-00309 Castle Drive (UNCLASSIFIED)

Classification: UNCLASSIFIED
Caveats: NONE

Dana,
Les Parker and I investigated the Castle Drive sewer line project yesterday and there are several 404 violations out there. We would advise that you stop all work with the project. We will be sending a cease and desist letter to the City. Can you send me the name and contact information for the contractor? We will be sending them one also. If you have any questions or would like to meet to discuss this, let me know.
Thanks,

Kristin Andrade
1835 Assembly St. Room 865 B-1
Columbia, SC 29201
Office: 803-253-3903
Fax: 803-253-3446

***Please note my email address has changed to Kristin.B.Andrade@usace.army.mil.

Classification: UNCLASSIFIED
Caveats: NONE



REPLY TO
ATTENTION OF:

DEPARTMENT OF THE ARMY
CHARLESTON DISTRICT, CORPS OF ENGINEERS
1835 Assembly Street, Room 865B-1
COLUMBIA, SOUTH CAROLINA 29201

RECEIVED

4-30-2015

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Regulatory Division

APR 24 2015

Shannon Herford
Layne
2090 Tucker Industrial Road, Suite A-1
Tucker, GA 30084

SUBJECT: SAC 2015-00309-6F

Dear Mr. Herford:

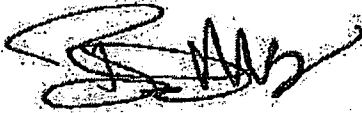
A recent inspection by a member of my staff revealed that fill material had been placed in wetlands adjacent to the Broad River and tributaries that flow directly into the Broad River behind Castle Drive, Richland County, South Carolina. The specific area of concern to this office is shown on the enclosed sketches dated March 24, 2015. Information available to this office indicates that you are a party responsible for the work described above, either as property owner or the person performing or causing the performance of this work, and that this work has been performed in waters of the United States (which includes wetlands), and is thus subject to Department of the Army regulatory authority.

This is to inform you of the current permit provisions of the Clean Water Act as they relate to this activity. In particular, your attention is called to Section 404 of this Act (33 USC 1344) which authorizes the Secretary of the Army, acting through the Chief of Engineers, to issue permits for the discharge of dredged or fill material into all waters of the United States, which includes all wetland areas.

At this juncture, this office is continuing to gather information relative to this matter in order to decide on a course of action. Please take this opportunity to provide this office with any information you feel is pertinent in this case when you provide your written agreement to comply with this directive. I trust you will find that your immediate attention to the resolution of this matter is in your best interest, as well as being of benefit to the affected resource. Please contact our office for a meeting to discuss this violation and a plan for resolving the issue. If you fail to respond, this matter will be referred through our Office of Counsel to the Department of Justice or the U.S. Environmental Protection Agency.

If you have any questions regarding this matter, please contact Kristin Andrade at 803-269-3903.

Respectfully,



Brice McKoy
Chief, Northwest Branch

Enclosure:
Drawings dated March 24, 2015

Copy Furnished:

U.S. Environmental Protection Agency
Region IV, Wetlands Protection Section
61 Forsyth Street
Atlanta, Georgia 30303

South Carolina Department of
Health and Environmental Control
Attn: Mr. Chuck Hightower
Bureau of Water
2800 Bull Street
Columbia, South Carolina 29201



REPLY TO
ATTENTION OF:

DEPARTMENT OF THE ARMY
CHARLESTON DISTRICT, CORPS OF ENGINEERS
1835 Assembly Street, Room 865B-1
COLUMBIA, SOUTH CAROLINA 29201

APR 24 2015

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Regulatory Division

Dana Higgins
City of Columbia
Utilities & Engineering Department
P.O. Box 147
Columbia, SC 29217

SUBJECT: SAC 2015-00309-6F

Dear Ms. Higgins:

A recent inspection by a member of my staff revealed that fill material had been placed in wetlands adjacent to the Broad River and tributaries that flow directly into the Broad River behind Castle Drive, Richland County, South Carolina. The specific area of concern to this office is shown on the enclosed sketches dated March 24, 2015. Information available to this office indicates that you are a party responsible for the work described above, either as property owner or the person performing or causing the performance of this work, and that this work has been performed in waters of the United States (which includes wetlands), and is thus subject to Department of the Army regulatory authority.

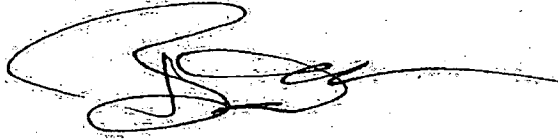
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City of Columbia 000135

If you have any questions regarding this matter, please contact Kristin Andrade at 803-253-3903.

Respectfully,

A handwritten signature in black ink, appearing to read 'Brice McKoy', with a long horizontal flourish extending to the right.

Brice McKoy
Chief, Northwest Branch

Enclosure:
Drawings dated March 24, 2015

Copy Furnished:

U.S. Environmental Protection Agency
Region IV, Wetlands Protection Section
61 Forsyth Street
Atlanta, Georgia 30303

South Carolina Department of
Health and Environmental Control
Attn: Mr. Chuck Hightower
Bureau of Water
2600 Bull Street
Columbia, South Carolina 29201

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

G. Thomas Cooper, Circuit Court Judge
Jocelyn Newman, Circuit Judge

APPELLATE CASE NO. 2018-000948
CASE NO. 2015-CP-40-5598

RECEIVED

MAR 26 2019

SC Court of Appeals

Modesta Brinkman, David
Brinkman, James Coleman,
Carl Foster, Karen Foster,
Robert Collins,

Appellants,

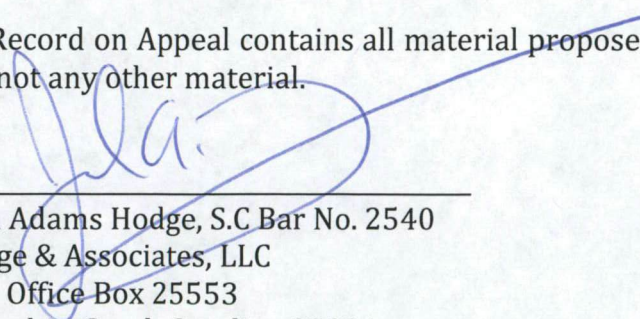
v.

City of Columbia, South
Carolina, North American
Pipeline Management and
Layne Inliner,

Respondents.

CERTIFICATE OF COUNSEL

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



John Adams Hodge, S.C Bar No. 2540
Hodge & Associates, LLC
Post Office Box 25553
Columbia, South Carolina 29224
(803) 386-1504
Counsel for Appellants

March 26, 2019
Columbia, SC