

1 STATE OF SOUTH CAROLINA)
 2) IN THE COURT OF
 3 COUNTY OF COLLETON) COMMON PLEAS
 4
 5 TIFFANY N. PROVENCE, as)
 6 Special Administrator for)
 7 the Estate of Jose Larios)
 8 Plaintiff,)
 9 Vs.) CASE NO. 2017-CP-15-00423
 10 SCE&G Company; PENSCO Trust)
 11 Company LLC; and EDISTO SALES)
 12 & RENTALS REALTY, LLC,)
 13 Defendants.)

14 SEPTEMBER 24-27, 2019
 15 WALTERBORO, SOUTH CAROLINA

16
 17 HONORABLE THOMAS A. RUSSO, JUDGE

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1 THE COURT: Guys, I got a note here that juror
2 number 169, Holdan Smoak, he was one of the alternates.
3 He was the one that made the comment that -- remember he
4 wanted to get the phone number because his girlfriend
5 was due. Well, she went in labor last night about 4:30
6 in the morning and he's at the hospital. So, Mr. Smoak,
7 he was the alternate, but he will not be with us this
8 week. He's over at the hospital.

9 All right. Mr. Pugh?

10 MR. PUGH: Yes, sir. Judge, can I move right to
11 there?

12 THE COURT: Sure.

13 MR. PUGH: May I start with the easy ones first?

14 THE COURT: And that would be fine.

15 MR. PUGH: Your Honor, as to our motion --

16 THE COURT: Aren't they all supposed to be easy
17 though? Come on.

18 MR. PUGH: Agreed.

19 THE COURT: I'm just kidding.

20 MR. PUGH: As to our motion to publish pleadings.
21 We've agreed that that one would be deferred. We may or
22 may not have to bring that up later, but for now we can
23 set that one aside.

24 THE COURT: All right.

25 MR. PUGH: The same with regard to our motion to

1 exclude reference to out-of-state litigation. We're
2 deferring at this time in setting that one to the side.

3 THE COURT: Okay.

4 MR. BUCKNER: Which one was that, Steve?

5 MR. PUGH: Motion to exclude out-of-state
6 litigation. Then we have, Your Honor, that leaves us
7 with the omnibus motion and we've made some progress on
8 that. If Your Honor has that in front of you.

9 THE COURT: Yeah. Let me get that in front of me
10 before we go.

11 MR. PUGH: Your Honor, beginning on page 3, we have
12 numbers 5 and 7. And as to number 5, it's my
13 understanding that certainly the plaintiff is going to
14 talk about the Dominion or South Carolina Electric and
15 Gas Company is the largest provider, utility provider in
16 the State of South Carolina and things like that. No
17 numbers; correct?

18 MR. BUCKNER: No numbers.

19 MR. PUGH: And they're also going to talk -- and
20 this ties in with number 7. They're going to talk about
21 the fact that Mr. Larios was employed. The incident to
22 his employment, he was paying bills at his house, and
23 sending some money back to relatives in Mexico.

24 And I understand that there won't be blackboarding
25 or -- because there's not enough time in this case,

1 we're not talking about black boarding here's what his
2 loss wages were, future loss of earnings, none of that
3 business. It's just in the ballpark of what I said.

4 MR. BUCKNER: Yeah. There will be no suggestion
5 that we're entitled to those economic damages. But we
6 do want to talk about in the context of Mr. Larios, that
7 this is part of his story about what he did, he was a
8 hard working guy that sent money back. That's just, you
9 know, this is his story. Presentation we're going to
10 give to the jury about his background. Again, we don't
11 intend to talk about the man -- well, the defendant in
12 that regard or get into the jury needs to compensate us
13 for that. We just want to be able to say it as part of
14 the story. And I think we got an agreement on that.

15 MR. PUGH: Number 8, Your Honor, is and we talked
16 about this and in fairness to all counsel, I think we
17 believe that there's a little bit of a cultural issue
18 here. And let me highlight it very quickly for you the
19 testimony. So when I deposed the brother, Gaspar and we
20 asked how did your brother's death affect you and other
21 family members. A standard question. He said three
22 things that are listed here in the motion. One, my
23 father in Mexico was so upset about the death of my
24 brother that he never worked again. Number one.

25 MR. APPLGATE: I think he stopped working.

1 MR. PUGH: Stopped working. Okay. I didn't mean to
2 take it too far. Stopped working.

3 Number two, was that the grandmother who was
4 obviously an older lady, became ill and died six months
5 or so later.

6 And, number three, that the niece who is a witness
7 in this case that because of Mr. Larios' death that he
8 was kind of her protector, he was her favorite uncle and
9 that because of his death that she at age 12 became
10 impregnated by someone who was then sent to prison for,
11 you know, statutory rape or whatever the case may be.

12 I don't know how to un-ring that, Judge. I mean, I
13 don't know how you can, one, the causation of those
14 three things. But particularly with a child witness who
15 says because my uncle died I became pregnant by someone
16 in a statutory rape scenario. And I don't know how you
17 un-ring that once it happens. Nor do I think it's part
18 of the damages in this case. You know, the niece is not
19 a beneficiary. The beneficiaries are mother/father back
20 in Mexico.

21 I think it's fair game certainly for family members
22 to talk about, hey, my brother's death, I'll never
23 forget it. My uncle's death has affected me forever.
24 Indeed it would. But to go the extra steps that are so
25 prejudicial that can't be undone even by a curative

1 instruction from Your Honor.

2 MR. STEGMAIER: And, sir, just for purposes of
3 clarity for the record, PENSCO is going that particular
4 part of the motion.

5 MR. KENNEDY: As Edisto Realty as well.

6 THE COURT: All right.

7 MR. PUGH: So our position on that is those three
8 things are not relative to the plaintiffs claims or
9 damages and they are clearly for or at least our
10 position is unfairly prejudicial under Rule 403.

11 MR. APPELATE: Your Honor, I'm stuck in a situation
12 where Mr. Pugh and counsel have asked about the damages
13 or the affect on this family. Again, and they were
14 given certain answers about how it affected the family
15 and I don't know what to do other than this is what's
16 ultimate and this is how they believe it's affected
17 them. Whether that's, you know, whether he believes
18 that's credible or wouldn't have happened to him that
19 way or somebody experiences it a different way, I don't
20 know how you say it's not relevant and they are the
21 family. I mean, quite frankly, you know how this works.
22 I mean, it's technically the parents are beneficiaries
23 that when -- that assume they die tomorrow, anything
24 that would count from this goes directly -- would go to
25 Gaspar and daughters. I mean, to say they're not

1 beneficiaries, they are the family. They are the people
2 who are expressing the damages and loss in this case
3 especially under these unique circumstances that we know
4 are in as they are the local residence. She's the
5 American niece.

6 So, you know, I appreciate the confidence and I
7 don't know how to preclude important damage witnesses
8 from saying what they want. Now, I just don't know how
9 to do that. And I don't know that's fair to tell them
10 they can't tell their story.

11 THE COURT: Well --

12 MR. BUCKNER: Your Honor, we would concede that none
13 of these witnesses would be permitted to say that these
14 things occurred because of. But they do want to say
15 that this happened and then this happened. I mean,
16 obviously, I think they're entitled to say after his
17 death my father stopped working. I mean, and then
18 Mr. Pugh can say, are you some sort of a psychologist?
19 Can you -- do you have training in that?

20 MR. APPLGATE: I think -- I'm sorry -- we take a
21 different side. I mean, I think that's the contention
22 is that what his testimony is aside, for example, he
23 said, my dad was really upset by this and it caused him
24 to stop working.

25 THE COURT: Let me ask you this, on the grandmother

1 passing away a couple of months later, what was the
2 situation surrounding that? I mean, I don't know what
3 it was, but it's kind of, you know, it's completely
4 irrelevant if you know four months after this happened
5 grandma got run over by a drunk driver.

6 MR. APPLGATE: A reindeer.

7 THE COURT: Or a drunk reindeer, I don't know. But,
8 you know, what I'm saying, in other words, if there's no
9 connection --

10 MR. APPLGATE: I think in that regard if I can't
11 say that I'm personally of the same ill, Your Honor.
12 So, you know, what I can tell you that was explained to
13 me initially by my cocounsel.

14 THE COURT: She died of grief.

15 MR. APPLGATE: Yes. That was what was explained to
16 me from family and that's their -- that's sort of --
17 that's where I told Steve, it's a cultural thing that's
18 explained to me. That is a real term. People talk
19 about it all the time. It's probably akin to as we see
20 couples, husband dies, the wife dies right after that.
21 I mean, it's that kind of thing. It's very engrained in
22 their cultural and their idea. I'm just saying, that's
23 their prospective on it that she was very close and it
24 sent her into a tailspin and she died right after.

25 THE COURT: Did she live here?

1 MR. APPLGATE: No.

2 MR. PUGH: I believe the testimony also from the
3 brother was that as to the grandmother she was 100 when
4 she passed away.

5 THE COURT: She did well. I mean, you know, I mean,
6 you can certainly cross examine on that. I mean, I'm
7 not sure what you're asking me to limit. How --

8 MR. PUGH: I'm asking -- I didn't mean to talk over
9 you.

10 THE COURT: That's okay. You're asking me in some
11 fashion limit someone who's testifying as to about how
12 this death affected them. I don't know that I can do
13 that.

14 MR. PUGH: Well here's -- I'll take those two in
15 order. Dad quitting work. We have no idea why dad quit
16 work. We don't know when he went back to work. We
17 don't know what he was making. We don't know how long
18 he was out of work. In fact, back to number 5 and 7, we
19 don't and they're not going to black board what exactly
20 the amount of money going back to Mexico was.

21 So I understand you can cross examine about that,
22 but once it's out there of this, you know, because they
23 can't control how their witness is going to say it, if
24 we got this cultural problem he says because of my
25 brother's death, my dad quit work because of. There's

1 no evidence of that. That happened afterward. Did the
2 dad get sick? Did the dad's job -- did he get fired?
3 Did the dad's job get eliminated? I have no idea.
4 We've not deposed the father. He's not been made a
5 witness available. He's not going to testify in this
6 case. We don't have any of the perimeters around that.
7 That's as to the dad.

8 As to the grandmother, yes, we can cross examine and
9 say she was 100 years old, lived a great life. But
10 that's built in that we've got some causation element
11 that it's related to the death.

12 THE COURT: Why -- well, you raise a good point.
13 Why do we have other people testifying to what other
14 people felt? I mean --

15 MR. APPLGATE: Excuse me.

16 THE COURT: You've got a witness testifying about
17 how other family members were affected. How is that
18 appropriate?

19 MR. APPLGATE: I think Mr. Pugh --

20 THE COURT: Can't he testify about how it affected
21 him?

22 MR. APPLGATE: Yeah, I think he can for sure. And,
23 Your Honor, this has developed because Mr. Pugh asked
24 him how -- what affect it's had on his family? What
25 affect is the question from Mr. Pugh? What affect did

1 this happen on your parents? Well, my dad was so
2 affected he stopped working. That's -- I mean, that's
3 evidence in and of itself. It's the testimony of what
4 happened. I mean, and the idea that there was
5 definitely never an attempt to depose any of these
6 people or any of that. So neither here nor there, but I
7 don't understand how that would not be again it's a
8 perfect example for cross. And I say the point of this,
9 Your Honor, where I don't want get in is that do I want
10 my client to get up on the stand and say this about a
11 hundred year old grandmother. No, I don't. If I get up
12 on the stand, I don't want you, you know, and he says
13 it, Steve can cross him on it. And I don't want you
14 jumping up and coming down my throat because my client
15 did this, you know. And so I just don't think I need to
16 be precluded from it. I can't say it's a strategic --
17 from a strategy prospective that would be a great idea
18 for me because I think that Steve would have to do cross
19 examination. But it seems a matter of cross
20 examination. And if I put something forward that is not
21 credible --

22 THE COURT: Okay. And what about -- well, let's
23 talk because the thing that astounds me is the 12-year
24 old that her uncle dies and so she goes off and gets
25 pregnant. That's a result of her uncle dying?

1 MR. APPLGATE: That's their prospective.

2 THE COURT: You know, Mr. Pugh, I don't know why
3 you're objecting so strenuously about it coming in. I
4 think it goes to their credibility. I think you could
5 use that to really damage their credibility.

6 MR. PUGH: I appreciate that distinction, Your
7 Honor. And I can tell you, I haven't done it without
8 thinking about it, as William doesn't want to be have
9 been about if they say it what do I do. I understand
10 your position, but think about it this way. Then I am
11 up here cross examining a 13-year old girl who had a
12 child by a statutory rape of someone who lived, my
13 understanding, lived in the home with them who's now in
14 prison as a result of it. And that jury goes, look at
15 this guy. This girl lost her uncle. She thinks this
16 happened to her and now he's cross examining her about
17 it because her uncle wasn't here to protect her. Well,
18 her daddy is still in the home. But, you see the
19 nuisances of that as to me. Once that bomb goes off, it
20 drops in my lap and what do I do with it? Do I just let
21 it go? I mean, that's my raise of fear, Your Honor. It
22 seems to me it's so extraneous, it's so out-of-bounds,
23 it's so irrelevant under 402 and so prejudicial under
24 403 that I appreciate the cultural issue, but certainly
25 plaintiff's counsel who can limit that on his direct

1 exam did not illicit that or attempt, attempt to limit
2 that on his direct to not illicit that type of
3 testimony.

4 I mean, Mr. Licona is a bright fellow. I mean, if
5 he's told, don't get up there and say that, you can talk
6 about your brother's death, your sadness, and the ripple
7 affect of your family members, but then to take it to
8 those specifics, and my dad quit work for however long
9 and my grandmother died as a result of it and my
10 daughter got pregnant.

11 THE COURT: That's where I'm kind of wondering
12 exactly what has he said. I mean, is he going to get up
13 there and say that because of my brother's death that
14 killed my grandmother?

15 MR. PUGH: Yes.

16 THE COURT: And, I mean, there's no basis, there's
17 no basis and fact of that. It's his opinion. How is
18 that relevant? I think that it caused my grandmother to
19 lose her hair. And it caused my aunt to develop cancer.
20 I mean, that's how outrageous it all goes.

21 I'm not going to allow him to testify that his
22 brother's death caused these reactions in these other
23 family members because that's just his opinion. He can
24 talk about his sadness. Now here's the issue when it
25 comes to that 13-year old. I don't know, they all live

1 in the same house, I'm guessing, the family?

2 MR. APPLGATE: The family lives together. Yes.

3 THE COURT: The 13-year old and the deceased

4 Mr. Larios and all?

5 MR. APPLGATE: Yes, sir.

6 MR. PUGH: Correct.

7 THE COURT: You know, I mean, she can testify, you
8 know, once he was gone the way things changed at the
9 house. Things she observed. What happened, you know.
10 I mean, and apparently one of the other family members
11 obviously had sex with her.

12 MR. PUGH: I don't mean to interrupt, I don't think
13 it was a family member. He lived in the home, but not a
14 family member.

15 THE COURT: Okay. But in any sense, I think there
16 are issues with regards to testifying that my dad quit
17 his job or my dad stopped working because he was so
18 grief stricken he couldn't continue his work. My
19 grandmother passed away because of her grief over him
20 and caused her death. He can't testify to that stuff.
21 That's inappropriate.

22 I mean, he can testify as to how it affected him and
23 the things that he observed as far as their relationship
24 in that home. And, again, but when it comes to the
25 13-year old, I mean, it sounds to me like she's

1 testifying to things that are how it affected her and
2 how things changed in her living environment which I
3 think she's entitled to do.

4 MR. PUGH: And to be clear, Your Honor, she had not
5 been deposed and testimony about she became pregnant and
6 all came from her dad. Just so you understand that.
7 So, you know, we didn't take her deposition. She's a
8 child.

9 THE COURT: Yeah.

10 MR. PUGH: So we didn't take her deposition, so
11 exactly the scope and breath of what she's going to say,
12 you know, we'll deal with that as it comes up. But as a
13 preview we know what her dad said, so that bled over
14 into her.

15 THE COURT: Yeah. I'll allow witnesses to testify
16 as to how this affected them.

17 MR. APPLGATE: Your Honor, I guess I beg for your
18 ruling as it relates to Gaspar being asked the question
19 under the circumstances, I just find it in a death case
20 for the only living child, the brother, to be limited to
21 any testimony about how it affected his parents. That
22 seems like a little bit going a little bit too far and
23 limiting him completely. I don't think there's much
24 testimony about it.

25 THE COURT: He can -- he can testify to the things

1 he observed. Like, for example, you know, my dad, you
2 know, stopped working.

3 MR. APPLGATE: Okay. I thought you were ruling
4 that he couldn't tell that fact.

5 THE COURT: Well, he can observe that. He observed
6 that.

7 MR. APPLGATE: Right.

8 THE COURT: Now, if on cross, you know, and I don't
9 know how far you want to go on cross or if you even want
10 to deal with it. But there could be any number of
11 reasons his dad stopped working.

12 MR. APPLGATE: There could be. I get it.

13 THE COURT: And my point is, I don't think he could
14 testify that it was because of my brother's death that
15 my dad was so grief stricken he could no longer continue
16 his employment.

17 MR. APPLGATE: Okay.

18 THE COURT: My grandmother was fine even though she
19 was elderly, she was fine. And then once he passed away
20 that was the end of her life and she couldn't handle it
21 and she passed away. I mean, those are the things that
22 I think are going too far. And saying that my
23 grandmother passed away three months or four months
24 after this happened, I don't think that would be
25 permissible because there is nothing in here nothing in

1 the record that would indicate that having any cause or
2 connection to this.

3 MR. APPLGATE: Thank you, Your Honor.

4 MR. PUGH: Okay. Judge, the next one is number 10.
5 We have a separate motion as to Dr. Presnell as to
6 Mr. Brill. We're deferring that to if and when he comes
7 in.

8 14, I just want to be clear, we've got an agreement,
9 I think, that counsel is going to reference certainly,
10 you know, a couple of days after the incident when
11 notified by the coroner that SCE&G went out to the scene
12 and did certain things and this that and the other.
13 What we're not going to do, you tell me if I'm wrong,
14 was that, you know, I think Mr. Applegate said, I'm not
15 going to testify or have witnesses talk about what was
16 done, what was reported, what was generated as a claim
17 file internally, all those kind of things because that
18 has already been ruled upon by Judge Murphy in response
19 to a motion to compel saying those matters are not in
20 this case as part of the investigation, anticipation of
21 the litigation, blah, blah, blah, blah, blah.

22 MR. APPLGATE: Your Honor, the ruling was that he
23 was able to keep this information privileged. Obviously
24 and that as Mr. Pugh agreed to after that ruling, he
25 said, I'll provide you -- obviously, the facts are not

1 protected. The facts of what we found are not
2 protected. I'll provide you three or four witnesses who
3 went and took the measurements, who did these things.
4 So we went and tried to depose these witnesses. They
5 all say they don't know anything about it. They don't
6 have the measurements. They don't have any of that
7 information. So as we sit here today in a case that
8 Mr. Pugh has made entirely about Mr. Larios' proximity
9 to a power line. The only person and this -- the only
10 people who have the information about the investigation
11 that was done it includes all the measurements taken in
12 this case between the power lines and the tree is
13 Mr. Pugh. His expert doesn't have it. My expert
14 doesn't have it. The OSHA investigators don't have it.
15 No one has --

16 THE COURT: I'm sure you didn't climb up a ladder
17 and take the measurements. Where did you get the
18 measurements?

19 MR. APPLGATE: They had a bucket truck --

20 MR. PUGH: -- and they talk about separation between
21 the trees and the power lines and they were examined
22 about all that. My expert, as his expert, by the time
23 they were retained and went out to the scene, the tree
24 had been cut down and moved, but measurements were able
25 to be taken from where the tree was over to where the

1 power lines were. So we have those measurements and
2 they are in the record through my expert.

3 THE COURT: So what measurements are you talking
4 about?

5 MR. APPLGATE: He's saying that there is a one
6 measurement that goes from 28, 30-foot tree. Now
7 there's a measurement from the base of the tree to his
8 client -- I mean, his expert stands under the lines and
9 says, okay, that distance is this. No distance in the
10 height of the tree. No distance between the top of the
11 tree and the primary power line, the neutral power line.
12 We can see a picture they're all touching. But that's
13 neither here nor there.

14 The actual measurements in which he's relying on to
15 put on his whole defense into chair, those aren't taken.
16 And they have the information. And so all I want to be
17 able to do, Your Honor, is just simply state that they
18 did an investigation. It's undisputed. It's in the
19 record. They did an investigation and we weren't
20 provided the materials of the investigation. That's it.
21 That's all I want to be able to talk about. And that's
22 the end of it. And that's actually the fact because the
23 expert has stated, his own expert in deposition said, we
24 said, did SCE&G give you the measurements they took
25 during their investigation, no.

1 In response to interrogatories which I intend to
2 introduce into evidence, you know, what are the
3 measurements that we claim are privileged. So I get it,
4 it's privileged. That's the law of the case. That he
5 can keep that information privilege. But the fact that
6 he did an investigation and they're not producing that
7 information, that's not privileged and that's relevant
8 and germane to this case specifically.

9 MR. PUGH: Well, I think it can come out in the way
10 it already has in the deposition testimony. If the
11 people that went out there, did you do this? Yes, I
12 did. What were the measurements? I don't recall. I
13 told -- I called them out, I didn't write them down.
14 All that's in the record. What we can do is go back and
15 reargue their motion to compel which I have a copy of in
16 their memorandum brief and a copy of Judge Murphy's
17 order finding that all of those things that are in here
18 that they want to talk about are privileged in that she
19 was not going to allow it to occur. That order has been
20 -- that order was entered in January.

21 THE COURT: And you want to come in and argue in
22 this case that they didn't turn over privileged
23 information?

24 MR. PUGH: Right.

25 MR. APPLGATE: No, Your Honor. I want to argue

1 that they did an investigation and they admitted to
2 taking measurements from the tree to the line. That's
3 it.

4 THE COURT: Was it ruled by the Court, Judge Murphy
5 that that's privileged information?

6 MR. APPELATE: The measurements were not
7 privileged, the report. Their internal report of their
8 opinion was about the measurements and that kind of
9 thing. That's what was privileged. Just the report.
10 That's what they have determined, internal after
11 litigation, you know, report was privileged. Not the
12 fact that they took measurements in what those
13 measurements were. Just the report itself. It's not --
14 I'm not in anyway trying to do something that's in
15 contradiction over any prior order, Your Honor.

16 Again, we asked for that information and we weren't
17 provided the -- just the factual information what is --
18 what was the distance. And they didn't provide it to
19 their expert. That's a part of the testimony. We asked
20 -- we attempted to get the witnesses to give us this
21 information and they didn't claim privilege. They just
22 didn't provide this information.

23 MR. PUGH: They said they didn't recall.

24 MR. APPELATE: They didn't remember.

25 MR. PUGH: That's the testimony.

1 THE COURT: All right.

2 MR. PUGH: And, no, I didn't waive anything after
3 this order by giving it, for example, to my expert, here
4 it is. I didn't do any of that because we had this
5 order in violent. And so the suggestion, and I think
6 it's -- clearly it's fair game, did you go out there?
7 Did you go up in the bucket, what did you see? What did
8 you do? Did you take measurements? What were they?
9 Whatever the answer is, it is. But to then go so far as
10 to say and somebody has those measurements and they
11 didn't give them to us, that's the problem. That's
12 where you cross the line.

13 MR. APPLGATE: The coroner who's going to testify
14 this morning hopefully and there's witnesses who were --
15 they were there. They called SCE&G and watched. That's
16 testimony. They watched them do an investigation.

17 THE COURT: And you can go into all of that. And
18 you can go into what were those measurements and they're
19 going to tell you they don't know.

20 MR. APPLGATE: That's all. I just want to be able
21 to say that. I don't think --

22 MR. PUGH: Right.

23 MR. APPLGATE: -- maybe there's not a dispute. I'm
24 just simply saying there was an investigation done.

25 THE COURT: I was under the impression, I mean, you

1 wanted to make an issue or an argument to the jury that
2 they didn't turn that over to you?

3 MR. PUGH: Correct.

4 THE COURT: I mean, is that what -- you're just
5 wanting to be able to ask these witnesses what were
6 those measurements and they're going to tell you they
7 don't know what they are? And you're going to be able
8 to say, well, somebody did take measurements; right?
9 Yes. And you don't know where they are or who has them?
10 No. I mean, you can ask those questions.

11 MR. APPELATE: And, I'm sorry, Your Honor, I'm not
12 trying to split hairs. I'm not understanding the
13 distinction that you're suggesting. We -- they did an
14 investigation, that's a fact. That's coming in the
15 record. And they did -- and they didn't provide their
16 expert with those -- with that data. So he does an
17 analysis. He tries to give opinions. To go to the
18 distance between the tree and the line. Okay. He's
19 giving opinions as to this. And he was not provided
20 that information by -- by the person who hired him. I
21 just want to talk about that fact. I just want the
22 facts in the record. That's it.

23 THE COURT: And you can ask those. You can ask --if
24 the expert's on the stand, you know. How did you form
25 your opinion with no measurements? I don't know how he

1 did it, but apparently he did.

2 MR. APPLGATE: Right. And that's what I want to be
3 able to talk about. That's what I want to ask about.
4 That's it.

5 THE COURT: Okay. I think he can do that.

6 MR. PUGH: He just can't go to the -- and they
7 didn't give them to you and you knew they had them. I
8 mean, you see what I mean? That is a step too far.
9 That's all I was suggesting because we had a prior order
10 about that.

11 MR. APPLGATE: Again, the prior order, Your Honor,
12 is not --

13 THE COURT: There's a lot of splitting hairs here
14 that y'all are doing. Y'all are in terror and fear
15 about every little nuisance that might come up. He can
16 ask the expert.

17 MR. PUGH: Okay.

18 THE COURT: Did you have the measurements? No, sir.
19 Well --

20 MR. PUGH: What did you do? Right.

21 THE COURT: I mean, did you ask him for the
22 measurements? I did. Did they give them to you? No.
23 I mean, you can go into all of that. That's not a
24 problem. I don't know what you're wanting more. What
25 more are you wanting, Mr. Applegate? I'm sorry.

1 MR. APPLGATE: I feel like Mr. Pugh keeps asking
2 for some sort of limitation. Again, that's all --

3 THE COURT: I tell you what, here's what we're going
4 to do. We're going to get this trial started, if you've
5 got objections during the testimony, I'll deal with the
6 objections. Okay. Because we can't protect everybody
7 pretrial about everything that's going to come up during
8 a trial.

9 MR. APPLGATE: Thank you, Your Honor.

10 THE COURT: Okay. What's next?

11 MR. PUGH: With that instruction, Your Honor, I
12 think we can agree we've got -- we had a question,
13 again, I understand and we'll deal through experts and
14 others about a mark on a chainsaw which is going to be a
15 huge issue in this case. And 30 seconds, the chainsaw,
16 there's a whole history of what happened to the
17 chainsaw.

18 THE COURT: Right.

19 MR. PUGH: There's no question in anybody's mind or
20 anybody that that chainsaw is gone. Nobody ever had the
21 ability to examine it. No expert ever saw it. No metal
22 artist, no nothing.

23 THE COURT: Right.

24 MR. PUGH: So, you know, then because nobody got to
25 see it can lay witnesses in particular say what that

1 quote, "mark is"?

2 THE COURT: No. Tell me -- give me an argument of
3 how somebody can tell -- can testify that there was an
4 electrical ark on a chainsaw when no one had an
5 opportunity to look at it?

6 MR. APPELEGATE: The coroners already testified, they
7 looked at it and they saw the burn mark.

8 THE COURT: They saw what?

9 MR. APPELEGATE: They saw the ark burn after they had
10 led them to do their investigation and determine this
11 was a shock.

12 THE COURT: A coroner?

13 MR. APPELEGATE: The coroner.

14 MR. DUFFY: And the OSHA investigator. People saw
15 the chainsaw. It's not that nobody saw it. The
16 investigators on the scene looked at the chainsaw in
17 person.

18 MR. APPELEGATE: We just don't have it in the room.
19 We can't bring it in here today.

20 THE COURT: Right.

21 MR. APPELEGATE: The experts didn't get to look at it
22 -- the paid experts. The -- at the real experts, the
23 independent experts all looked at it.

24 THE COURT: I mean, I'm not trying to be difficult,
25 but I don't know that a coroner can testify that a mark

1 on a chainsaw was caused by an electrical burn.

2 MR. APPLGATE: Importantly, Your Honor, and the
3 point is that he's going to testify in his
4 investigation, he looked at this, that led him to the
5 burn palm fronds. That led him to the burn lot mark on
6 the power line from SCE&G. That led him to -- it was
7 one thing after another. It's a culmination of facts
8 that are essential to his opinion.

9 THE COURT: He can testify to the things that he
10 observed as he did his investigation.

11 MR. APPLGATE: That's what we're talking about.

12 MR. PUGH: Let me just put this fine point on it.
13 His testimony in his deposition, this is the coroner,
14 okay. First of all, he did his investigation, there was
15 no reference anywhere about electricity. None. Okay.
16 A couple of days later, the family came and said, hey,
17 look at this mark. This is after he had the chainsaw
18 for two days or he had the ability to look at the
19 chainsaw. I'll deal with that on cross. This is the
20 point, Your Honor. Do you know whether there was any
21 testing done on that chainsaw to determine if in fact it
22 was an ark? Answer, no, sir. So I don't want him up
23 there as a layperson coroner saying that's an ark burn
24 on that chainsaw because there was no testing.

25 THE COURT: I don't think he can testify to that.

1 He can testify to what he observed.

2 MR. APPLGATE: But he thought and that's what he
3 testified to that it's a perfect cost. Your Honor, this
4 is again what we're just talking about. He said, I
5 thought it was an arc burn and so I went and
6 investigated and we found all these other things. Then
7 he can cross him, did you do any testing? No. Do you
8 know for a fact that that's an arc burn? No.

9 THE COURT: Exactly. And that's the facts.

10 MR. APPLGATE: That's the facts. I don't know what
11 we're arguing about.

12 THE COURT: I don't know either.

13 MR. PUGH: Okay. I'll move on. Quickly.

14 THE COURT: Okay.

15 MR. PUGH: Ladder, same issue. They claim there's a
16 mark on this ladder. Well, back to the chainsaw for a
17 second. The chainsaw is gone forever and nobody ever
18 saw it. But the ladder, they're saying there's some
19 discoloration on the ladder, they take the position it's
20 burnt rubber from the bottom of the shoes --

21 THE COURT: Never tested?

22 MR. PUGH: Hands, feet, socks, shoes, perfectly
23 intact. The ladder never tested. Their own expert says
24 electricity never went through the ladder.

25 THE COURT: Okay, so what's the problem?

1 MR. APPLGATE: It's cross examination, Your Honor.
2 I didn't do it, this is the coroner's report.

3 MR. PUGH: Here's --

4 MR. APPLGATE: We didn't make it up.

5 MR. PUGH: Here's the issue and that's tied to my
6 motion as to Dr. Presnell if you want to take that up
7 before she's put on --

8 THE COURT: Go ahead.

9 MR. PUGH: -- we can do that. Dr. Presnell, I'll do
10 this in a minute or less. Dr. Presnell gets Mr. Larios'
11 body, checks him all over.

12 THE COURT: Right.

13 MR. PUGH: There's no entrance, no exit, no nothing.

14 THE COURT: Nothing. I read all that.

15 MR. PUGH: Okay. And then she calls back to the
16 coroner's office and says nothing. And he says, hey,
17 wait a minute. Upon further investigation, two things.
18 Number one, Mr. Larios' chainsaw contacted the primary.
19 The electrical wire, number one.

20 Number two, there's rubber from the shoes of his --
21 or from his shoes on the ladder. Those are the two
22 facts she realize upon to issue a supplemental report.

23 THE COURT: Right.

24 MR. PUGH: That says, yes, indeed electrical contact
25 contributed to his fall. Both of those things that we

1 just talked about are incorrect. So I don't want her up
2 here talking about things that we all know are
3 incorrect. And, frankly, I don't know that she knows at
4 this point that those have been determined to be
5 incorrect.

6 MR. APPEGATE: Again, we're talking again about
7 cross examination. It's cross.

8 THE COURT: Exactly. I mean, every bit of that is
9 just great cross for you and you don't seem to want to
10 do it.

11 MR. PUGH: I do want to do it. I don't want to do
12 it if I don't have to after the fact. But I understand
13 Your Honor's position. Frankly, I'm sorry, I took 45
14 minutes.

15 THE COURT: No, it's okay. Listen, I want everybody
16 heard and -- but, the thing is, I think a lot of this
17 stuff we'll deal with as we go through the testimony.

18 MR. PUGH: Understood, Your Honor.

19 THE COURT: But if we can clear it up ahead of time,
20 I'm all for it.

21 Anything else then?

22 MR. STEGMAIER: I think we got clarity, but I want
23 to make double sure. We did have our first motion in
24 limine that was related to the IRA compliance and any
25 sort of reference to the same. We just wanted clarity

1 that -- about the Court's position/order concerning any
2 sort of reference to noncompliance with the rules. The
3 laws relating to self-directed IRA's.

4 My understanding Your Honor yesterday listened to
5 argument, but it wasn't relevant and I think
6 alternatively from a 403 prospectively was overly
7 prejudicial. I just wanted to make sure that we were on
8 the same page as far as that goes.

9 THE COURT: I think so.

10 MR. DUFFY: Judge, all we got are, you know,
11 potential exhibits which are just printouts from their
12 website related to various issues. I mean, we can take
13 that up as we go.

14 THE COURT: Sure.

15 MR. STEGMAIER: I don't know what you're going to
16 say, I just wanted to make sure --

17 MR. DUFFY: You know, I don't know that they would
18 have -- if they have the same objection --

19 MR. APPLGATE: I was just going to say that trust
20 is a self-funded IRA.

21 MR. PUGH: Your Honor?

22 THE COURT: Yes, sir.

23 MR. PUGH: I'm sorry. There was one other motion
24 that we filed and I guess we'll deal with that if and
25 when it comes up and that is in regard to this exclusive

1 jurisdiction of the public services, you got the motion,
2 I'll stand on it his papers. We don't need to belabor
3 that point.

4 THE COURT: Okay. Which one is that now?

5 MR. PUGH: It's a motion in limine with regard to
6 the South Carolina Public Service Commission. In that
7 my client is a regulated utility. My position on that
8 is the following. They can talk all day long about
9 here's SCE&G policies and procedures limitation
10 management program, blah, blah, blah, blah. Here's what
11 it says, you didn't do it, you violated it. All that.
12 That's fair game.

13 But what I don't want them doing and I know
14 intention to do is to suggest to the Colleton County
15 jury who we take is without jurisdiction to deal with
16 that issue that these vegetation management policies and
17 procedures, these are wrong. These are incorrect and
18 you should change them for me. That's the PSC that gets
19 to do that. I'm a regulated entity.

20 MR. BUCKNER: Judge, the argument is that it's a
21 jurisdictional argument. This doctrine that they're
22 relying on primary jurisdiction argument is a subject
23 matter of jurisdiction argument. No case has been cited
24 that brief has anything to do with the rules of
25 evidence.

1 The law in South Carolina that applies to utility
2 companies is they have to provide electricity and power
3 lines and in a safe, reasonably safe manner. Your Honor
4 has tried many, many cases where there's a public agency
5 that oversees the defendant. And the way it works is
6 that's a minimum standard of care. They're entitled to
7 say, you know what, just because we didn't meet those
8 standards, we're still not negligent and we're entitled
9 to say just because you met them, you still might be --
10 this is basically a motion for directed verdict. He is
11 trying to limit us from talking about what the common
12 law in South Carolina says the duties of an electrical
13 carrier are. He cannot limit us from going there.
14 Again, it's cross examination. He can bring it up and
15 say I did this or didn't do that. And you're going to
16 charge the law at the end of the case, but he cannot
17 come into this courtroom and say you're not allowed to
18 try your case in accordance with the common law of South
19 Carolina and you're only confined to what the PSC says
20 about this.

21 And just so Your Honor is aware, this whole doctrine
22 he's talking about on the standards is a pilot program
23 regarding vegetation. So it's far from chapter and
24 verse.

25 MR. PUGH: Incorrect. It started out as a pilot

1 program in 2008. It is the law with the Public Service
2 Commission. And that's my regulator. My regulator gets
3 to tell me --

4 THE COURT: And you can put up evidence that you
5 complied with the law.

6 MR. PUGH: Correct.

7 MR. BUCKNER: Every day of the week he can do that.
8 And we can say, that's -- they got other duties and
9 that's not good enough.

10 MR. PUGH: I disagree with that. My only point that
11 the point I was putting on it is you can't then turn to
12 this jury and say, and you need to change these policies
13 because you need to rewrite them. They don't get to
14 rewrite them. That's the Public Service Commission.
15 That's all I'm saying.

16 THE COURT: And that's correct. That would be an
17 argument to tell this jury that they have to rewrite the
18 law.

19 MR. BUCKNER: We were going to say that they've got
20 to do what they've got to do to prevent this from
21 happening. But we're not going to say that in the
22 context that they have to change their policies for that
23 reason. But certainly we can attack the legitimacy of
24 the policy itself. But just not on the grounds that
25 it's not the law. If that makes any sense.

1 MR. APPLGATE: It's not a law. It's just what he
2 says is a minimum standard that they submitted to, you
3 know, they submitted minimum standard they've got the
4 minimum proof of some states to three, some states do
5 seven. They sent it in, PSC said, okay, that's fine,
6 that's what your experience is. Good to go. That
7 doesn't mean, you know, that if it doesn't work that
8 you're exempt from any liability. Has nothing to do
9 with the civil -- with our civil system. It has nothing
10 to do with negligence. If in fact, for example, they go
11 out and they do it on five years and at two years they
12 see that the trees are all grown in the power lines and
13 the standards that they have are required to meet which
14 is 10 feet from the primary and the neutral are not met,
15 yeah, they've got to go in and fix it even though
16 they've complied with the five year standard.

17 THE COURT: Right. All right. We'll deal with it
18 then. Listen, we've got to deal with something else.
19 Juror number 35, Phillip Cole. I'll just read verbatim
20 and then I'll make it a Court's Exhibit.

21 Phillip Cole sends out a note. It says, "My
22 youngest son works for a tree trimming service under
23 Dominion Energy. I don't know if this matters or not.
24 I also have some years of trimming and I've always
25 worked in some form of wood procurement. Just to be

1 fair to the lawyers and to everyone involved. Sorry for
2 any inconvenience."

3 I can bring him out and voir dire him a little more
4 in debt as to whether or not this would have any affect
5 on his ability to be fair and impartial. But in any
6 case, let me --

7 MR. APPLEGATE: Your Honor, I would request to move
8 to the alternate. I know that's an unfortunate since we
9 have already one alternate step back out of the case.
10 The problem is is that we've interviewed and taken
11 depositions of multiple different linemen of these
12 outside services that work for Dominion and what is
13 clear from those depositions is that they do have a bias
14 and standard and there's going to be clear bias to the
15 plaintiff for someone in that position.

16 THE COURT: You've got to understand now, he's not a
17 lineman. It's his son. His youngest son works in that
18 field.

19 MR. PUGH: I think, Your Honor --

20 MR. APPLEGATE: It mattered to him enough to bring
21 it up to Your Honor to suggest that he didn't think he
22 would be fair and impartial. I would attest --

23 THE COURT: Ho, ho, ho. Ho. No, don't misconstrue
24 his note. That's why I handed it to Perry. If y'all
25 want to read it yourself because I just read it the

1 plain language on the note. He wasn't saying that. But
2 that's why I wanted to bring him out the question him as
3 to that.

4 MR. STEGMAIER: And I don't believe that's the basis
5 for any sort of automatic disqualification. I think the
6 Court contemplates that the judicial review of voir
7 dire.

8 MR. KENNEDY: Your Honor, I believe he did suggest
9 during voir dire, we asked if anyone had done tree
10 trimming themselves, I believe he was one of the folks
11 that stood up.

12 THE COURT: No, I think he stood up and mentioned
13 it. He said he had knowledge of -- I asked the question
14 about any special knowledge on power lines and stuff.
15 He indicated that he did in the fact that his father was
16 a lineman. And he said that during the original
17 qualifications that that didn't have any affect on his
18 ability. But he did send this note out --

19 MR. KENNEDY: That was a different juror.

20 THE COURT: That was juror number 35.

21 MR. BUCKNER: But this is a different subject
22 matter. This is not about his father, this is about his
23 son --

24 THE COURT: Yeah, this is different.

25 MR. BUCKNER: -- working for a potential party

1 defendant. So obviously we would think that at a
2 minimum some additional voir dire from Your Honor would
3 be appropriate.

4 THE COURT: Right. I agree. All right.

5 MR. PUGH: Just for Your Honor's edification before
6 we begin that. The witness that Mr. Applegate is
7 referring to worked for a company called Lewis Tree
8 Service. If you hear that name, that's what we're
9 talking about.

10 THE COURT: Okay. Well, let's bring him out and --
11 let's bring Mr. Cole.

12 (Mr. Cole came into the courtroom)

13 THE COURT: Mr. Cole, if you would, I'm going to get
14 you to stand there because I want everyone to hear your
15 responses.

16 Where did the note go that Mr. Cole sent me?

17 Can I have that, please, just so I can refer to it.
18 Okay. Mr. Cole, you mentioned that, I believe, that you
19 indicated that your youngest son works for a tree
20 trimming service that's under Dominion Energy?

21 MR. COLE: He does.

22 THE COURT: Do you know the name of the company he
23 works for?

24 MR. COLE: Lewis Tree Service.

25 THE COURT: All right. He works for Lewis Tree

1 Service?

2 MR. COLE: Yes, sir.

3 THE COURT: Okay. And then you've done some tree
4 trimming yourself?

5 MR. COLE: Yeah, I've been in some form of that all
6 my life.

7 THE COURT: Yeah. Okay. Well, obviously, that in
8 and of itself would not prevent someone from serving,
9 but I do -- would like to know though that based upon
10 your son's relationship with one of the party defendants
11 in this case, would that have any affect on your ability
12 to give all parties a fair and just trial?

13 MR. COLE: No, I just -- it was weighing on my mind
14 and I heard you ask some of those questions yesterday
15 and when I went home --

16 THE COURT: And I think you stood when I asked the
17 question about --

18 MR. COLE: I did.

19 THE COURT: -- who did some tree trimming, but you
20 didn't mention your youngest son.

21 MR. COLE: My oldest boy is a deputy, too. Anyway,
22 I just thought it would be fair to everybody involved if
23 they knew it.

24 THE COURT: All right.

25 MR. COLE: And they can make the decision whether or

1 not they want me here or not.

2 THE COURT: I understand. But regardless of what
3 you've written here, you can listen to the testimony
4 fairly and impartially and rule for or against whatever
5 side you felt the evidence supported?

6 MR. COLE: I was letting you know that I probably
7 got more knowledge about that tree thing than what I
8 said. So I just wanted everybody to know that. That's
9 all I'm saying.

10 THE COURT: All right. Thank you, sir.

11 MR. COLE: You're welcome.

12 (Mr. Cole left the courtroom)

13 THE COURT: One of y'all mentioned -- apparently he
14 does work for Lewis Tree Service.

15 MR. PUGH: Correct. And two witnesses in this case
16 that they intend to call. But you specifically voir
17 dired their names yesterday, Your Honor, and he didn't
18 know anyone of them apparently.

19 THE COURT: Well, I don't know how big a tree
20 service it is. I mean, if they're all over the state.

21 MR. PUGH: Actually, Your Honor, they're out of the
22 State of New York. They're enormous. They do work all
23 over. At least the eastern seaboard if not even further
24 out into Texas and places like that.

25 MR. APPLEGATE: It's the -- as I understand it, it's

1 the primary contract. I mean, there's a -- it's between
2 SCE&G and Lewis Tree, so it's basically as if you work
3 for Dominion. That's what they do full time.

4 THE COURT: They basically SCE&G because they're
5 power people. This is the company they use to do their
6 trimming?

7 MR. PUGH: If I can clarify or add to that. The
8 testimony from the two Lewis Tree trimmers in this case
9 Landis Bunton and Allen Frasier, they both were asked
10 about who else do you do tree trimming for. Duke
11 Energy, a hand full probably half a dozen co-ops.

12 THE COURT: No, I'm sure that SCE&G is not their
13 only client.

14 MR. PUGH: Correct. They do it for all the co-ops.
15 They do it for Duke. They do it for Dominion.

16 THE COURT: Yeah.

17 MR. APPLGATE: The reason, again, Your Honor, is
18 that they are the exclusive trimmers on Edisto Island.
19 We did have his testimony in this case and their work
20 and whether that work was done or not done at the
21 direction of SCE&G will become a question of fact in
22 this case. So you're going to have someone who has an
23 intimate -- has a direct bias of credibility towards
24 this party defendant to make a determination about
25 whether those guys have, you know, whether telling the

1 truth or not telling the truth he's going to immediately
2 biased towards Dominion because his son works for
3 domestic --

4 THE COURT: Hold on. That's what you're telling me,
5 but when I asked him point blank, do you have any bias
6 or would it in anyway affect your ability to give both
7 sides a fair, he tells me, no.

8 MR. APPELATE: Well, I think, Your Honor, to be,
9 you know, again, when the question's asked in that
10 direction, you know, exactly the question asked is will
11 you -- can you be fair and honest no matter what all
12 these different things are? It's a, you know --

13 THE COURT: I have people all the time tell me, no,
14 I can't.

15 MR. APPELATE: That's it.

16 THE COURT: I excuse -- I had people in this case.
17 That lady stood up back there and said, you know, she
18 couldn't be fair and impartial and I excused her. So I
19 get it a lot. But here's the thing. It would be
20 different at least for me in evaluating your request to
21 remove him is if he was the one that worked for that
22 company, it's his youngest son that does that. He
23 indicates that it would not have any affect on his
24 ability to be fair and impartial.

25 Now, I realize that people can question that. And

1 question his motive. But one of the reasons and maybe
2 this is a false way to look at it on my part, but I
3 think that if he had an agenda, he wouldn't have sent
4 this note out. If he had an agenda that, you know, I'm
5 going to help my son's company out on this case or
6 whatever, he wouldn't have revealed this. I think he
7 revealed it just like he said, it kind of weighed on his
8 mind that I've asked the question and he forgot to
9 mention his son and so he sends the note out.

10 If he wanted to be off the jury, he would have said,
11 I can't be fair and impartial. You know, I think he's
12 got a lot of credibility at least in my eyes that he's
13 just being honest.

14 MR. APPLEGATE: And, Your Honor, the problem I have
15 is beyond what I think is obvious bias is that I've been
16 removed the opportunity to strike him. I definitely had
17 a strike if I had known. Lewis Tree has been a part of
18 this case. I put up Lewis Tree documents in my case.
19 Their standards, everything -- I mean, Lewis Tree is
20 going to be a big part of the case. And so if I had
21 known that someone who had disclosed they had a
22 connection with Lewis Tree, it's the same to me as
23 Dominion. I definitely would have stricken him over
24 someone else that I struck. Okay. Because of other
25 less important contacts to this case.

1 So it seems like we had an opportunity to have a
2 clean jury that doesn't have these things with all the
3 information known to the lawyers and the fair
4 opportunities for us to have clean jury where we don't
5 have this potential bias. I believe with what you said
6 about, you know, that does appear that way, you know,
7 from his -- that he's an honest man and he wanted to
8 make sure we knew. It was just that that kind of
9 happens a little late in the game for us to make that
10 determination.

11 THE COURT: Yeah. I a -- go ahead.

12 MR. STEGMAIER: The only thing I would say is in the
13 voir dire, I don't believe Lewis Tree -- was Lewis Tree
14 Service specifically named?

15 MR. BUCKNER: Yeah. Yes. And we struck someone who
16 worked for the company for that reason. And then
17 weren't provide it, had opportunity to do the same here.

18 THE COURT: Right.

19 MR. BUCKNER: And would have accordingly adjusted
20 our strikes. That's the prejudice.

21 THE COURT: And -- go ahead, Mr. Pugh.

22 MR. PUGH: Quickly. Just for the record. I would
23 agree with Your Honor. I mean, we have a gentleman
24 Mr. Cole who sat through two and a half, three hours
25 yesterday and saw plenty of people condition him on how

1 to get off this jury if he wanted to get off. And I
2 think --

3 THE COURT: Yeah, I don't think that's his
4 motivation.

5 MR. PUGH: Agreed. And I think the gentleman was
6 very credible when he came in and the easiest thing for
7 him to tell Your Honor is, no, the fact that my son
8 works for that company, I can't be fair and impartial.
9 I can't set that aside. And he said -- and he said he
10 could and, therefore, I don't think there's a basis to
11 remove him from the jury.

12 MR. BUCKNER: Your Honor, that is not the standard.
13 Whether he's credible or not if he wants to get off the
14 jury. The question is under South Carolina law, I've
15 had this in prior cases, I don't have the case law right
16 now.

17 THE COURT: I don't mean to interrupt you.

18 MR. BUCKNER: Go ahead. I'm sorry.

19 THE COURT: I'm going to grant your motion.

20 MR. BUCKNER: Okay.

21 THE COURT: And I'm going to grant the motion for
22 this reason. It was information that should have been
23 made available. And I'm not faulting Mr. Cole. He
24 forgot and as soon as he remembered, but it was
25 information that had counsel had it, they would have

1 been able to use one of their strikes and eliminate that
2 potential issue. They didn't get that opportunity and I
3 think -- now, but here's the thing. And so let's
4 discuss it and hopefully we won't ever have to see it
5 again. We have no alternates at this point. And if
6 anything were to occur, there would have to be some
7 discussion as to whether or not the parties would be
8 willing to go forward with less than 12. Because we
9 don't have an option after this. Either we would end up
10 with a mistrial or we would end up in an agreement that
11 we go with less than 12.

12 MR. APPLGATE: I would assume based on that ruling
13 I would imagine counsel is going to argue that we ended
14 up having 11 jurors we wouldn't go forward.

15 MR. STEGMAIER: No, we wouldn't agree with that. My
16 particular law firm, we have a protocol about 12 jurors.
17 So, I mean, I guess what I would say is this, let's
18 cross that bridge if and when we come to it.

19 THE COURT: Hopefully it won't. I just thought we
20 might as well put it out there because that's what we're
21 going to be facing. But I think based upon your
22 position regarding your inability to use a strike where
23 you would have had that, I'm going to grant your motion.
24 So Candice McAlhaney will now be in the main panel as
25 well as we've lost Mr. Smoak because he just -- is at

1 the hospital, so.

2 All right. We got 12. All right. Anything else?
3 And I'll bring Mr. Cole out in just a minute before we
4 get started.

5 MR. STEGMAIER: The only think is we had a motion to
6 view, but we can take that up in the defendant's case in
7 chief.

8 THE COURT: Okay. All right. Let's get Mr. Cole
9 back out. I'm going to bring Mr. Cole in and then we'll
10 -- if there's anything we need to take up before we
11 bring the jury out I'll give you that opportunity.

12 (Mr. Cole came back in the courtroom)

13 THE COURT: Mr. Cole, thank you for your patience,
14 sir. Listen, let me -- I'm going to just start out by
15 telling you that I'm going to excuse you from service on
16 this matter. But I want to tell you straight up, I
17 appreciate your candor and you didn't do anything wrong.
18 Don't think that at all.

19 MR. COLE: I appreciate that.

20 THE COURT: I just -- I really appreciate your
21 honesty and your candor. And when you tell me that it
22 would not affect your ability to be fair and impartial,
23 I believe that 100 percent. It's just the fact that
24 apparently the service that the company your son works
25 for, apparently they are the exclusive providers for

1 that service for Dominion as well as other companies,
2 too. And because Dominion is in this matter, we just
3 think it's probably best not to put you in that
4 situation. So, I'm going to excuse you from any further
5 involvement here. But I want to thank you for your
6 service.

7 MR. COLE: Thank you.

8 THE COURT: Okay. Now, do you need any -- did you
9 leave anything in the jury room? Do you need to go back
10 in there and get anything?

11 MR. COLE: No, sir. You're thinking the same thing
12 I was. I didn't want biased. And if I was to have to
13 make judgement on something, I wouldn't want that
14 reflected on my son because he loves his job and I love
15 him having that job.

16 THE COURT: Sure, absolutely. No question. Well,
17 thank you, though very much. You have a blessed week.

18 THE COURT: I didn't mean to waste nobody's time.

19 (Mr. Cole left the courtroom)

20 THE COURT: All right. We'll mark that a Court's
21 Exhibit, please.

22 (WHEREUPON, Court's Exhibit Number 1 was marked and
23 entered)

24 THE COURT: So, before we bring the jury out,
25 anything we need to take up?

1 MR. PUGH: May we have a five minute break?

2 THE COURT: Yeah. Go ahead. Let's do that and
3 we'll get started in a few minutes.

4 (There was a short break taken)

5 THE COURT: All right. Anything we need to take up
6 then before we get started? Anything from the
7 plaintiff? Anything?

8 MR. APPELATE: We might finally be ready.

9 THE COURT: Anything from the defense?

10 MR. PUGH: I wasn't even looking.

11 THE COURT: Anything before we bring the jury out?

12 MR. PUGH: I don't think so.

13 MR. STEGMAIER: No, Your Honor.

14 MR. PUGH: I know you love hearing that.

15 THE COURT: All right. Let's go ahead and bring the
16 jury out, please.

17 (The jury entered the courtroom at 10:17 a.m.)

18 THE COURT: All right. Thank you, folks, please
19 have a seat. I'm sorry, we got more coming in. Thank
20 you, ladies and gentlemen.

21 Before we get started, obviously, you've noticed
22 that you're down in numbers a little bit. Hopefully,
23 everything has been -- gone very well. Mr. Smoak, I
24 think he said it was his finance', anyway, she went into
25 labor and he's at the hospital for the birth of their

1 child. And I had to excuse Mr. Cole. And, so,
2 Ms. McAlhane, you are part of the starting line up,
3 okay.

4 MS. MCALHANEY: Yes, sir.

5 THE COURT: So, ladies and gentlemen, we are ready
6 to proceed. I have a few things I want to share with
7 you before I turn it over to the attorneys. But before
8 I do that, I'm going to ask you, if you would, give
9 madam clerk your attention. And she's going to place
10 you under your oath for your role as jurors in this
11 case.

12 THE CLERK: Please stand and raise your right hand.

13 (WHEREUPON, the jurors were sworn in)

14 THE CLERK: Thank you. You may be seated.

15 THE COURT: Folks, it's very important throughout
16 the case that you hear and are able to see everything
17 that goes on. So, if at any time during the course of
18 this trial you can't hear a witness or you can't hear
19 one of the attorneys or the Court, don't hesitate to get
20 my attention and let me know and I'll have them repeat
21 their response and we'll have them either talk slower or
22 a little more clearer. Okay. But it's very important
23 that you hear everything and see everything.

24 Also, let me tell you now that during the course of
25 this trial it is important that you are comfortable to

1 the extent, I think the temperature, we're going to try
2 to keep it pretty good. We got it set and hopefully it
3 will maintain a comfortable temperature. But if at
4 anytime during the course of the trial anyone of you
5 needs to take a break, don't hesitate to get my
6 attention and let me know that. We can stop and take a
7 break at any time.

8 You know, I don't know if there's really a delicate
9 way to put this, but sometimes mother nature calls and
10 she calls at inopportune times. If we are in the middle
11 of a witness's testimony or whatever and you need a
12 break, don't hesitate to let me know that. We can
13 always stop and pick up where we left off. That's not a
14 problem. But I would rather you do that and let's take
15 that break and we can pick up where we left off rather
16 than you sit there and wait in hopes that the witness's
17 testimony is almost over and if it's not then you start
18 sitting in there and you're dealing with your thought
19 processes more of when are they going to finish verses
20 what are they saying. I'm more interested that you
21 listen to what it is they're saying. Okay. And so it's
22 very important that you let me know if you need a break.

23 I don't know if any of you have actually -- I think
24 maybe one or two of you may have, but most folks don't
25 have an opportunity to sit on a jury trial such as

1 you're doing this week. Most people experience a trial
2 simply through television, the movies, or through books.
3 And, of course, we know that those trials are always
4 full of high drama and intense action and riveting
5 circumstances because that's Hollywood's efforts to
6 entertain us.

7 Now, this trial is not meant for your entertainment.
8 This trial is a fundamental part of our democracy.
9 During the course of this trial, while any one of those
10 things may occur, the important thing to understand is
11 that this is a trial that is not Hollywood. This is
12 real life here in Colleton County. And this trial, it
13 may be fast, it may be slow, it may be very deliberate,
14 maybe repetitive. In other words, it's very different
15 from Hollywood and the movies.

16 This courtroom is a place of honor that is dedicated
17 to the protection and to the preservation of citizen's
18 rights through what most many folks who have considered
19 the greatest system of justice ever created. The
20 attorneys that appear before you, they are advocates for
21 the parties that they represent. But first and
22 foremost, they are officers of the court, sworn to
23 uphold the integrity and the fairness of our judicial
24 system. You should expect them to be professional,
25 reasonable, and ethical in the performance of their

1 duties.

2 Now, you have just taken an oath to try this case
3 and to reach a fair and just verdict and so you are also
4 expected to be professional, reasonable, and ethical in
5 the performance of your duties. I have absolutely no
6 doubt you will do that and I want to thank you for your
7 service on this case.

8 Now, I'm going to share a few things with you.
9 This is not a charge on the law. I will give you the
10 law applicable to this case at the close of the
11 evidence. But right now, I just want to give you a few
12 things basically to help you. I'm going to explain the
13 procedures we're going to follow so you can better, you
14 know, follow along with what we're doing.

15 You've been selected as fair and impartial jurors
16 whose purpose and is to determine the facts of this
17 case. I told you that yesterday. You are the judges of
18 the facts. If at anytime I make any comment regarding
19 the facts or the evidence, you must disregard those
20 comments because only you can jury are allowed to decide
21 the facts of this case. You determine those facts from
22 the testimony that you hear and any other evidence that
23 may be presented during the course of this trial.

24 You should not be influenced by any opinions or
25 statements that you may have heard outside this

1 courtroom. It is especially important that you perform
2 your duty of determining the facts diligently and
3 conscientiously. Because ordinarily there's no way that
4 the Court can correct an erroneous determination of
5 facts by a jury.

6 Now, on the other hand, but with equal emphasis, the
7 same law that makes you the judges of the facts, makes
8 me the judge of the law. The law is given by this Court
9 is the only law that you may consider and you must
10 follow it and you must accept it even though you may
11 disagree with it. I'm not allowed to tell you what I
12 think about the facts of the case. And you're not
13 allowed to disagree with me about what the law is or
14 what you think the law should be. Your duty is to take
15 the law as I give it to you and apply it to the facts as
16 you find the facts from the testimony of the witnesses
17 and any other evidence that is presented during the
18 course of this trial.

19 Now, it's very important and I shared this with you
20 yesterday before you left, that throughout the course of
21 this trial, it's very important that you do not have any
22 conversation with anybody about the case, that you don't
23 discuss the case back in the jury room until I tell you
24 it is appropriate to do so.

25 It is extremely important that throughout this case

1 you keep an open mind and that you do not decide any
2 issue until all of the facts and the evidence has been
3 presented, the attorneys have addressed you with their
4 closing remarks, and I've given you the charge on the
5 law. Only then would it be appropriate for you to have
6 any conversation about this case.

7 Now, in just a moment, I'm going to recognize the
8 attorneys for their opening statements. I would
9 recognize the plaintiff first. I have no idea what the
10 attorneys are going to share with you in their opening
11 statements, but typically what you'll hear is what they
12 believe the evidence in this case will show. It is very
13 important that you understand that what the attorneys
14 share with you during their opening statements is not
15 evidence. They are not under oath. They're not
16 testifying. What they're going to share with you more
17 than likely is what they believe the evidence in this
18 case will show. What their contention is that the
19 evidence will show.

20 The evidence in this case is going to be presented
21 to you through the testimony of witnesses who are placed
22 under oath and testify from this witness stand and then
23 any other exhibits that come in during the course of the
24 trial.

25 During the trial, folks, you may hear from time to

1 time one of the attorneys say something along these
2 lines, "Judge, we have a matter of law we need to take
3 up with the Court" or "May we approach the bench." If I
4 can resolve the matter up here at the bench and allow
5 you to remain where you're at, I will do that. But some
6 times a question of law may arise and it may require me
7 to go a little bit more in depth into the -- into the
8 matter and I may ask you to step back into your jury
9 room. If I do that, the only reason I would do that is
10 simply this, sometimes in dealing with a matter of law,
11 it requires me to make some comment about the testimony
12 or the evidence that is in connection with that issue of
13 law.

14 And as I told you earlier, I'm not to have any
15 influence over you regarding the facts. So in an effort
16 to resolve that issue of law, I may ask you to step back
17 into the jury room and let me resolve that matter and
18 then I'll bring you back out and we'll pick up where we
19 left off.

20 It is extremely important, ladies and gentlemen,
21 that in determining the facts of this case, you are
22 going to have to decide whether or not the testimony of
23 a witness is believable. It's going to be my job as a
24 matter of law to rule whether certain testimony is
25 allowed into this record. But once testimony is allowed

1 into this record, whether or not you believe it, is
2 solely up for you to decide.

3 In deciding whether to believe a witness, you have
4 the right to consider whether the witness has any
5 interest in the result of the trial, whether the witness
6 has been biased toward one side or the other. The
7 opportunity for the witness to have seen things in the
8 matters about which they testify. You have a right to
9 consider anything in this record that will help you to
10 evaluate the credibility and the believability of the
11 witnesses.

12 So that means it's important that you listen
13 carefully to the witnesses, observe the witnesses,
14 listen carefully to the counsel as well as to the Court.
15 Please try not to let your thoughts wonder, but pay
16 strict attention to all of the testimony and the
17 evidence. So that at the close of the evidence after
18 the attorneys have addressed you with their closing
19 remarks and I have given you the law, you will then be
20 in a position to go back and begin your deliberations in
21 deciding this case. Okay.

22 So those are just some preliminary remarks. But
23 before I turn it over to the attorneys, let me first
24 inquire from the plaintiff, are there any objections or
25 exceptions to the Court's opening remarks?

OPENING STATEMENT BY MR. APPELEGATE

1 MR. APPELEGATE: No, Your Honor.

2 THE COURT: Anything from the defendants?

3 MR. PUGH: None, Your Honor.

4 MR. STEGMAIER: No, sir.

5 MR. KENNEDY: No, sir.

6 THE COURT: All right. Thank you, folks. Ladies
7 and gentlemen, if you would please now give the
8 attorneys your undivided attention as they address you
9 with their opening statements.

10 MR. APPELEGATE: Thank you, Your Honor.

11 Ladies and gentlemen, my name is William Applegate,
12 I know we somewhat met yesterday. I along with Liam
13 Duffy from my office and Perry Buckner represent the
14 Estate of Jose Larios. Ms. Tiffany Provence is here,
15 she is the Special Administrator for the Estate and
16 Mr. Larios' brother, Gaspar is here as well.

17 In the event that you guys know who we're here
18 talking about today, this is a picture who we have of
19 Jose Larios who's taken a little bit of time before he
20 passed away, we'll see more pictures of him to know a
21 little bit more about him over the course of the week.

22 A power company has a duty to protect to the public
23 from the high voltage power lines it has put to run
24 through our communities. To do this, a power company
25 must keep its power lines free and clear from any and

1 all vegetation, trees that are growing into the power
2 lines. If they fail to do this and someone is hurt or
3 killed, they are responsible for the harm.

4 This rule exists because the danger of electricity
5 is very well known in the power industry. This danger
6 and what it can cause, the fact that it will cause
7 serious injury and death is known in the power industry.
8 According to the National Bureau of Labor an American
9 worker is killed every three days from a power line
10 shock or electrocution.

11 A landowner must inspect its property to discover if
12 there are any latent dangers on their property and
13 either eliminate those dangers or warn about them. If a
14 landowner hires a property manager to manage their
15 property and that property manager takes control of the
16 property, they also must inspect and discover any latent
17 dangers on that property and either eliminate them or
18 warn invitees about those hazards. If they do not do
19 this and someone is hurt or killed, they are responsible
20 for the harm. These are not my rules. This is nothing
21 that I came up. This is what you'll hear are the
22 standards. This is what the law is.

23 Let me tell you about what happened in this case.
24 November 29, 2015, my client, Jose Larios, who lives
25 over on Highway 174 headed out towards Edisto Beach.

1 He's a landscaper. It's a Sunday. He generally works
2 six or seven days a week. He wakes up 5:30 in the
3 morning, he begins his morning task. He takes a shower.
4 He gets dressed. He goes out has a cup of coffee with
5 his brother Gaspar and they talk about the jobs they're
6 doing that day.

7 He works for a landscaping company out on Edisto and
8 he's got work to do. Gaspar works for a different
9 company. They actually have a friend in town, an old
10 friend from home, Pedro Abraham. Pedro is staying with
11 them and because one of Jose's coworkers is called in
12 said he couldn't make it to work that day, he's asked
13 Pedro to come along and help him. He's got a tree
14 trimming job he's got to go do. He's got to cut a bunch
15 -- trim up a bunch of palm trees and he's asked Pedro to
16 come along and help pick up the branches and kind of get
17 the job site ready to go.

18 They get in the car. They head out towards Edisto
19 Island, they stop and get some breakfast along the way.
20 Takes some snacks over to the site and they get there
21 pretty early that morning. They head to 3402 Myrtle.
22 Okay. This is right down in the heart of Edisto Island.
23 Far down -- once you get on the island you're gonna kind
24 of travel far down on the other end of the island.
25 Right smack dab in the middle of the island. It's not

1 on the front beach, it's not on the back. It's sort of
2 right smack dab in the middle of Edisto Island.

3 They head to that property. Before they get there
4 they stop off, they get a truck from Jose's boss. They
5 get a ladder, the extension ladder he needs for the job
6 and they get all the tools they need and they head to
7 the job site. They arrive at 3402 Myrtle Street and
8 this is a side view so you get some protective. We'll
9 show you some more pictures over time. This is sort of
10 walking in from this -- to the side of the property.

11 Okay. This is sort of their entry path. You can see
12 there's quite a few palm trees on this property.

13 There's actually 35 different palm trees located around
14 this one property. And that's their task for the day.

15 They get the tools or pretty much the chainsaw, he's
16 got the extension ladder, Mr. Larios has a rope that he
17 uses to tie himself around the tree to make sure that
18 he's safe when he's up there. And they begin their
19 process of going around and trimming these trees.

20 Gaspar -- sorry. I mean Jose and Pedro set the
21 ladder up, make sure it's safe and then they proceed up
22 the ladder. Jose proceeds up the ladder, ties himself
23 off with his rope at the top and then uses his chainsaw
24 the cut all the lower fruit pods and all the branches
25 that are dead and dying -- limb the tree up. We've all

1 see people limb up a palm tree. We get it nice and
2 cleaned up. They do eight trees.

3 You'll hear testimony that after about every three
4 trees, Pedro would inspect the chainsaw, add some gas,
5 make sure everything in the chain was tightened, looking
6 good, and then Jose would claim up -- back up and go do
7 the next tree. On the ninth tree, they set up the
8 ladder. Jose goes to the top. He ties himself off and
9 he's cutting and Pedro is walking around underneath
10 picking up limbs to take out to the street so they can
11 be picked up and discarded.

12 As he's sitting there picking up limbs, all of a
13 sudden he hears ah! And he looks up, Jose's screaming.
14 He looks -- he describes it as he looks as if he's lost
15 the strength in his body. His head goes down. He
16 unbuckles the rope, and then he proceeds to fall over 25
17 feet off the top of the ladder down to the base on the
18 ground landing on his back.

19 Pedro runs over and grabs his friend, lifts his
20 head, says, are you okay? He says, I'm okay. Pedro
21 knows -- does not believe that that's the case. He
22 immediately picks up his phone, he calls 911. He tries
23 to call 911, he doesn't have service. He runs out on
24 the street, he tries to find someone. Luckily a woman
25 is out walking, he flags her down, he tells her, hey, I

1 need help, will you please do something, she calls 911.
2 We ultimately get rescue. Ambulance come, they try to
3 revive him. By the time he comes back on the property,
4 Jose's not talking anymore. He's not saying anything.
5 He's lifted up his head and he can't get him to
6 communicate with him. EMS comes, they try to revive
7 him. This happened at about 9:40 and ultimately
8 Colleton County Medical Center, he's determined to be
9 deceased at around 11:45.

10 Over the course of the next few days everyone's
11 scratching their head about what happened. The first
12 thing is the Colleton County coroner, Richard Carter,
13 gets a call. There's been a fatality, can you do an
14 investigation? He -- the first thing he does, he calls
15 his deputy coroner. He's headed to the hospital. He
16 calls deputy coroner Marion Whaley and he says,
17 Mr. Whaley, you need to go out to the property to see
18 what happened. Go check the scene, and secure the
19 scene.

20 So Mr. Carter, he heads off to the hospital to see
21 what's going on with Mr. Larios. And Mr. Whaley the
22 deputy coroner heads to 3402 Myrtle. He gets there, he
23 tapes off the area, he does an inspection, he takes a
24 bunch of pictures, he determines -- he spends hours
25 there taking pictures and examining the situation and

1 then he leaves.

2 The next day, he communicates with a federal agency
3 to come who generally does inspections on workplace
4 accidents. So he calls the OSHA investigation and says,
5 come, do an inspection, an investigation on this thing
6 and the OSHA investigators on that Monday come to
7 Charleston -- I mean, come to Edisto.

8 On Tuesday morning, Mr. Whaley is called over to a
9 meeting at a law firm to meet with the witness. The one
10 sole eyewitness, Mr. Pedro Abraham who was there. They
11 are have translator there. They're talking about
12 exactly what happened. Pedro tells them the story.
13 They hear about the scream. They also look at the
14 chainsaw and they find that the chainsaw has a burn mark
15 on it or what appears to be a burn mark on it. All of a
16 sudden the light goes off. Marion Whaley goes back to
17 the scene. Mr. Carter says, you need to figure out what
18 happened here. Was there something that caused him to
19 fall from this ladder?

20 They go back to the scene. They start to
21 investigate. They find burnt palm fronds. They find --
22 they look up in the tree and, again, there's burnt palm
23 fronds and then they look and they finally see that
24 hidden in the trees are power lines. They see they're
25 touching the power line.

1 Over the course of this investigation, now
2 Mr. Whaley, Mr. Carter communicate with the coroner's
3 office -- I mean, with the pathologist at MUSC who's
4 doing the autopsy. She goes and examines the body and
5 she finds that there's a burn mark consistent with an
6 electric shock on his abdomen. So they put together
7 this whole set of facts. They've got a scream. We've
8 got burn marks in the tree ultimately which you'll find
9 out is that Mr. Whaley called SCE&G and said, look,
10 there's power lines involved here, you need to do an
11 inspection.

12 He states that SCE&G came. They went up in a bucket
13 truck. They did an investigation. They looked and one
14 of the things they told him is there was a burn mark on
15 the power line. So armed with this information, they
16 communicate with the pathologist who looks at
17 Mr. Larios, finds the burn mark on his abdomen, and she
18 makes a determination about his death. He died as a
19 result of blunt force trauma from the fall that was as a
20 result of the shock that caused him to fall off the
21 ladder. And that is how he died.

22 So who are we suing and why? First, we're seeing
23 SCE&G, the power company who put these lines in place
24 was in charge of maintaining this property. We know
25 that they violated this rule that requires them to keep

1 their power lines free and clear. Because, again, we've
2 talked to the investigators. We've looked at the
3 pictures. We've examined the scene. We know what
4 happened as far as this electrocution. We know that the
5 power lines were not as SCE&G is required to do by their
6 own policies and procedures 10 feet away from any and
7 all vegetation. So, again, these trees were growing
8 into the power lines.

9 You'll also hear about the National Electric Safety
10 Code and ANSI's standards. You'll hear multiple codes
11 that all enforce the same principle. Is that the
12 company -- the power company must ensure the power lines
13 are free and clear from the vegetation. And that's
14 their duty. We've all scene this. We've all
15 experienced what is it when SCE&G in this area comes
16 through and cleans out the trees. They come in and make
17 a wide swath and they do that for that reason because it
18 is dangerous and if they don't, people get hurt.

19 It's not a difficult task for them to do this. As
20 you know they're in the best position to do it. They
21 know where the power lines are. They are the maps and
22 they have a process in place. They have tree companies
23 that come and do this process for them on a regular
24 basis. So they come in and make sure this is done. But
25 that is their job. Because as we know, it's a very

1 lucrative business for them to be in. This is a very
2 large company that serves over 720,000 people in the
3 state of electricity, another 368,000 people with gas in
4 the state. Okay. This is a major company. And what
5 comes along again with this privilege is if they
6 maintain these lines.

7 There are two other parties in this case. PENSICO
8 Trust and Edisto Realty. Let me explain to you a little
9 bit about that. So 3402 Myrtle Street is a vacation
10 rental property. A man by the name of Ray Jackson is
11 the beneficiary owner of this property. He put this
12 property into what we call self-directed IRA for some
13 tax benefit to help him in retirement. The property is
14 owned, therefore, technically by this trust company.
15 Okay. Mr. Jackson though is the beneficiary of this
16 trust.

17 All right. What you're going to hear in this case
18 and the reason why we sued them is that PENSICO Trust as
19 the owner and Mr. Jackson as the owner, they have this
20 duty. They have a duty to make sure that they inspect
21 the property, discover any hazards about it on the
22 property and then either eliminate it or warn about it.
23 They have a duty to make sure that if they are aware of
24 this and they inspect it and find this, then they call
25 SCE&G, say, come, clean these power lines, they're in

1 contact before they invite someone onto the property and
2 send them up into the trees with chainsaws.

3 The other Edisto Realty defendant has the same duty.
4 But Mr. Jackson and PENSCO Trust, they hired Edisto
5 Realty to manage this property and they gave them
6 control over the property. And they -- Edisto Realty
7 took over obligations and responsibilities as it relates
8 to that property as far as maintaining it, keeping it
9 safe, running the bills, paying all the service
10 providers, having people come clean it, and prepare it
11 on a weekly basis so they can be -- they could get rent
12 and they take a nice fee for that service.

13 So what you will see here in this case is a little
14 bit of finger pointing in between these two parties.
15 Because each of them are maybe claiming that the other
16 person may have this responsibility. Okay. And you'll
17 need to listen to that. But either way, what you will
18 find in this case, what you need to listen to is, again,
19 the law which is there's a requirement if you own
20 property that you go and discover these dangers and you
21 eliminate or warn about them.

22 And what you will hear in this case is that no one
23 from PENSCO Trust Company ever inspected this property.
24 No one from PENSCO Trust ever did anything to go and
25 look around this property to see whether it was safe,

1 whether there were any dangers, and they definitely
2 didn't do anything to warn anyone about it.

3 You will hear that Mr. Jackson likewise did not do
4 anything as it relates to this property. Took really no
5 responsibility for anything related to this property and
6 definitely didn't inspect as the law requires. Didn't
7 discover any hazards and didn't warn anybody about it
8 even though he was the one who hired Mr. Larios' company
9 and sent them up in those trees.

10 Likewise, Edisto in the same boat. Edisto Realty
11 did not do any inspection. They did not do anything to
12 warn or eliminate this hazard. That's the law and those
13 are the facts that you will hear over the course of this
14 week.

15 Now, over the course of the last two and half years
16 that we've been litigating this case, the defendants
17 have come up with a large number of excuses. They are
18 denying liability completely. Not taking any
19 responsibility for Mr. Larios' death in this situation.
20 First they're going to tell you and they've hired an
21 expert to tell you this, an engineer come in and looked
22 at the same facts the coroner looked at, the OSHA
23 investigator looked at, the pathologist at MUSC looked
24 at, and they're going to tell you, it didn't happen. He
25 was not shocked. So despite what these investigators

1 say, he was not shocked. Why did he fall? No real
2 explanation for that, but he's going to tell you he was
3 not shocked.

4 So disregard the chainsaw. Disregard the burn mark
5 on his chest. And here you see behind me is one of the
6 pictures you'll see throughout this case is one of the
7 burn marks that appeared on this chainsaw at the time of
8 this event. Burn mark on the power line and the trees
9 coming in contact. Well, here's the burn mark on
10 Mr. Larios. The burnt seed pods in the tree. That line
11 right there, ladies and gentlemen, you can see what's
12 obviously a palm frond and what we see throughout all
13 these trees is these long fruit pods, you know.

14 And so we'll make sure you're understanding what
15 we're talking about a lot during this case. So this is
16 an example of one of these fruit pods that sticks out of
17 this tree. But this is what we talked about by the
18 experts, about the witnesses in this case is this is a
19 fruit pod or a fruit stalk, everyone seems to call it
20 something a little bit different.

21 So despite all of this evidence including this
22 scream from Jose that's unexplained by anything else and
23 the pictures of the power lines running in and around
24 the trees, he's going to tell you it just didn't happen.
25 And what I'll ask you is just listen very carefully to

1 his -- what he has. What is his evidence? What was his
2 methodology? What he did do when he comes up here and
3 tries to tell you that.

4 But, look, when that doesn't work, they're going to
5 come in and say, well, okay, wait. But if in fact he
6 was shocked, wasn't our fault because we followed these
7 standards that we have for ourselves. We even adopted a
8 standard that says, we trim these trees every five
9 years. And if we trim these every five years, then
10 we're okay and the expert says, I think five years is
11 fine. So irregardless of being out on an island in
12 South Carolina in the middle of a forest, they take the
13 position, hey, that's fine, so it's not our fault.

14 Then the engineer is going to tell you that it was
15 Jose's fault. If that defense doesn't work, it was
16 Jose's fault. Jose should have inspected the property
17 and seen these power lines. It was open and obvious.
18 You can't claim that we did something wrong when it's
19 right there. Clearly you don't walk up to a power line
20 and get near it whether you're 10 feet or 20 feet away.
21 You see a power line you're supposed to stop everything
22 and get away, call the power company.

23 But I want you to listen carefully as we go through
24 the trial of this case because you have to listen to the
25 evidence. Is it reasonable to think that Mr. Larios

1 would see this power line? You're going to hear from
2 the coroner, Marion Whaley who was out there
3 investigating the scene as an investigator, as a coroner
4 who is there for the purpose of determining what
5 happened. He didn't see the power line. It wasn't
6 until days later and they figured out all these other
7 different facts that he came back and saw the power
8 line. You're going to hear from Pedro Abraham who was
9 the only eyewitness on the scene who was out there with
10 him that day. We looked around, surveyed the area, we
11 didn't see any power line. Clearly we wouldn't have
12 gone up in there if we had. That doesn't make any
13 sense.

14 You're going the hear from another coworker of
15 Mr. Larios who had worked on the property before who's
16 going to tell you what the property looked like. It was
17 a jungle back there. You couldn't see the power lines.
18 We didn't know they were there. You're going to hear
19 from an OSHA investigator who came and investigated the
20 scene. He's going to say they went out and spent hours
21 and didn't know there were powers lines there. Another
22 individual who's hired for the purpose of trying to
23 figure out what happened. They don't see the power
24 lines. So you're going to need to question, is it open
25 and obvious? Is it fair to blame Jose who's not here to

1 defend himself this morning for not seeing this power
2 line?

3 You're also going to hear from Mr. Jackson, the
4 PENSCO Trust entity that beneficially owns this vacation
5 rental property. Mr. Jackson is going to tell you, he's
6 owned this property for over 30 years. He didn't know
7 the power lines were there. He did not know. So you're
8 going to have to question, is it reasonable for them to
9 say it's open and obvious condition.

10 Then they're going to spend a lot of time, ladies
11 and gentlemen, they got to get another hurdle. Okay.
12 Then they're going to go into, okay, what if it wasn't
13 Jose's fault, you don't believe the first four things on
14 our list that keep us from having any responsibility in
15 this matter, and then it was Jose's bosses fault. He's
16 got a landscaping company out there. He works. Jose
17 works for him. Surely his boss should have known these
18 things. The boss should have told him how to see the
19 power line. Should have trained him better to see that
20 power line. Maybe the boss knew about it. Maybe he
21 should be told about it. No one else knew about it, but
22 maybe the boss did. And so you need to look at that.

23 And they're going to look at different regulations,
24 citations about, okay, was he not wearing a helmet, he
25 was not wearing eye protective gear, wasn't wearing leg

1 straps. And tell you those were all things that his
2 boss should have had him do. But known of those have
3 any bearing on why he died if he had been wearing any of
4 that stuff. He still would have died.

5 So you need to listen to that. Importantly, again,
6 it sort of reminds me of my 11-year old boy when I find
7 him doing something wrong. And, again, it's one excuse
8 after another. Listen to the defense, listen to the
9 evidence most importantly.

10 At the end of this case you're going to be asked to
11 consider damages. What are damages in this case? One
12 of the damages is what we call a survival damage and the
13 judge will explain this to you. But it's just a damage
14 that's associated with that experience of being shocked,
15 being sent to the ground, in that time period the fear,
16 the anxiety, the thought process that's going through
17 your head as you die. So whatever that two hours of
18 period of time that he went through suffering, what is
19 that worth?

20 You're going to be asked and you are the deciders.
21 You are the people who have been chosen to make a
22 decision about this and at the end of the week you're
23 going to have to put something on a verdict form to
24 explain what is the value of that? What is that worth?

25 The other damage is for the harms and losses to the

1 family. You need to think about the impact on Jose's
2 parents. How has this impacted them? The reality of
3 the loss of Jose's society, of his companionship, the
4 mental anguish for them to suffer on a daily basis
5 knowing that with the simplest of acts, the simplest
6 precautions, this could have been avoided. Had SCE&G
7 just had done what their guidelines tell them to do Jose
8 would still be here. If the owners of the property just
9 had told him, hey, there's power lines up in here, don't
10 go up in that tree, Jose would still be here today,
11 working, enjoying his life. You're going to see the
12 affect on his brother, his only sibling and how that's
13 changed his life. And you need to think about the value
14 of that. What is the value of Jose Larios worth?

15 Now, you'll hear over the course of this week, but I
16 want to tell you a little bit about Jose Larios. Jose
17 Larios was 41 years old when he died. At 29 he left a
18 small town in Mexico to come to the United States. He
19 had heard like many of our ancestors before us about the
20 land of opportunity. He had followed that same beacon
21 of hope that people have for generations to see if he
22 could find a better life for himself because opportunity
23 was not abundant for him.

24 His brother had come here and formed a life. Gaspar
25 had jobs, had work, had family, had friends, and was

1 acclimated in the community in Edisto, so he followed
2 the path. Made it up to Edisto through a little bit of
3 a journey and started his life here 12 years
4 approximately before he died. Started off in Florida.
5 He picked oranges. He and some of his other buddies had
6 done, they picked oranges seven days a week for pickins.
7 He did that for a couple of years and then he made his
8 way up to Edisto.

9 He lived with his brother Gaspar and his niece Wendy
10 and their family and they lived together. You know, he
11 came here and he didn't have this experience to start
12 off landscaping. And after a short period of time, this
13 sort of tree trimming, he just happened to have the
14 knack for climbing these trees and getting up in there.
15 So that's sort of ended up being his specialty after
16 dealing with sort of all the other low and blow and
17 different aspects, that's what he was doing. That is
18 what he loved to do.

19 Over the course of this week you're going to see all
20 the pictures about how much this guy loved his job.
21 There are tons of pictures of him just happy. He loved
22 to work. And he was out there doing his best and he
23 worked like I said six or seven days a week.

24 When he wasn't working, he loved being with his
25 family. He loved animals and you could never keep him

1 from going up, picking up a stray cat or dog, bringing
2 him home. He become passionate about the local history.
3 He was learning English and studying the English.
4 You'll hear testimony about how much he was reading, how
5 much he was enjoying learning about the local history
6 here on Edisto Island and the surrounding areas. You're
7 going to hear that this was a young man who was bright
8 and capable. Who had a lot of dreams and a lot of hopes
9 to live his life in this area.

10 And, again, at the end of this, I'm going to ask you
11 to make a decision. I'm going to have you consider the
12 conduct of which you'll hear through the witnesses,
13 through the evidence I introduce to you, I want you to
14 consider the conduct of SCE&G, the conduct of these
15 homeowners, and the fact that here we sit almost four
16 years after his death, and these companies, these
17 individuals have refused to take any responsibility.
18 I'm going to ask you to make a decision and to put a
19 number on the value of his life.

20 The last thing I will leave you with is a little bit
21 of the law, but I want you to think about it. The judge
22 will charge you on the law, but this again, most juries,
23 you need to understand, this is not a criminal case. So
24 you guys have all watched TV and you hear about beyond a
25 reasonable doubt. That is a criminal case. And, yes,

1 the prosecution of a state must prove beyond a
2 reasonable doubt. Okay. That somebody is guilty.

3 In the civil world, and this is a civil case, this
4 is a case about money damages. Somebody is negligent.
5 They do something wrong and then they have to pay
6 damages as I explained to you earlier. In that case, we
7 call it the preponderance of the evidence. What does
8 that mean? That's kind of a hard legal term.

9 Preponderance of the evidence is if you look at the
10 scales, you have a scale, you put a feather on one and a
11 rock on the other one. If it leans in one direction, if
12 it leans a little bit more in one direction than the
13 other. If you put one feather on one side and two
14 feathers on the other, if it's the two feathers, that's
15 a finding for the plaintiff.

16 People in football season like the analogy of the 50
17 yard line. You got to throw that ball, you got to get
18 to the 51 yard line. If at the end of the trial you're
19 looking at it and you say, now the plaintiff's are at
20 the 51 yard line, you find for the plaintiff.

21 You're going to hear a little bit about this case,
22 ladies and gentlemen, about different parties as I told
23 you about. Hear about SCE&G. You're going to hear
24 about PENSCO Trust, and you're going to hear about
25 Edisto Realty and all their involvement in this thing.

1 Okay. But the defendants are also, as I explained to
2 you, they're going to try to make this about a person
3 who's not in the case. They're trying to make this
4 about Jose Larios' boss, suggested his fault.

5 I'll tell you at the end of the case, he will not be
6 on the verdict form. You will not be asked to assess
7 what his level was in determining what percentage of
8 fault he has. So don't get too distracted by this
9 sideshow about the employer and what his involvement is
10 in this case. We have three defendants here, you need
11 to be listening to is the plaintiff proving the case?
12 For example, against SCE&G. Did they have a duty to the
13 plaintiff, to the public, to keep these lines clear?
14 Did they keep the lines clear? If, no, they breached
15 that duty. And did that breach cause damages? And if
16 we prove those four things, then you have a finding for
17 the plaintiff. And that goes for the same thing for
18 Edisto Realty and the same thing for PENSCO Trust. If
19 you find that they are the owners or the managers of the
20 property and if they did not inspect the property to
21 find these dangers and then either eliminate them or try
22 to eliminate them or warn about them, findings for the
23 plaintiff. And then we can go talk about the damages
24 that you'll hear about over the course of this trial.

25 Thank you very much.

1 THE COURT: Thank you, Mr. Applegate. Mr. Pugh?

2 MR. PUGH: May it please the Court.

3 THE COURT: Yes, sir.

4 MR. PUGH: Good morning. My name is Steve Pugh and
5 I represent a company now known as Dominion Energy South
6 Carolina. They were formally known as South Carolina
7 Electric and Gas Company. With me to try this case are
8 Megan White who will be helping me and you will see her
9 throughout this case. Also I have Mark Branham who is
10 an employee of Dominion Energy.

11 Ladies and gentlemen, there is no dispute, none,
12 that Mr. Larios tragically fell 25 feet to his death.
13 There is also no dispute that his family no doubt feels
14 a tremendous loss. And, frankly, I think everyone is
15 sympathetic with that. The Court will tell you at the
16 end of the case that we all come into the courtroom with
17 different life experiences and different thoughts,
18 families, considerations, things that have happened to
19 us or those we love and know.

20 The Court will also tell you that as jurors in this
21 case that can't come into play in this way. You cannot
22 have bias or sympathy or prejudice toward anybody
23 whether it's some company or the family. But this case
24 isn't about that. This case is about why. Why did
25 Mr. Larios fall? The plaintiff has told you their

1 theory is that he was somehow shocked by coming into
2 contact with an overhead primary.

3 The plaintiff, their theory is that somehow
4 Mr. Larios and, I guess, others have not noticed or
5 could not have seen the overhead power lines that are
6 in the right-of-way behind this property. Those power
7 lines have been there for, I believe, approximately 40
8 years. They're on the bike path out on Edisto in a
9 right-of-way.

10 After the incident as Mr. Applegate told you, there
11 were a number of folks that came out and investigated.
12 The coroner's office, OSHA, and others. And incident to
13 those investigations, a lot of photographs were taken.
14 So let me show you a couple of photographs. This is a
15 photograph taken when Mr. Larios had fallen. Here's the
16 ladder up against the tree cut off here at the top.
17 And, I believe, if you look at this photograph and you
18 look at this line, see this straight line running across
19 here?

20 Let me show you another photograph. This is with
21 the ladder down on the ground, but nothing -- no further
22 trimming had been done. This time we've got a wire at
23 the bottom and we've got a wire at the top.

24 The evidence in this case will show that November
25 29, 2015 was not Mr. Larios' first time to this

1 property. Unlike his friend that he took with him,
2 Mr. Larios had been doing work at this property for
3 approximately eight years. His employer Mr. Stevens,
4 Will Stevens with Stevens Irrigation have been doing
5 work at this property for 12 years. There were many,
6 many opportunities during the many times being out there
7 for anybody at the property had looked to see these
8 lines. If you can photograph it, you can see it.

9 No one, not plaintiff's counsel, and not Dominion
10 Energy is suggesting that Mr. Larios meant to touch a
11 power line. No one is suggesting that Mr. Larios, who
12 by all counts, was a bright educated fellow. That he
13 didn't know not to get near or touch power lines. No
14 one is arguing that Mr. Larios doesn't have a
15 responsibility as we all do for our own safety.
16 Instead, the plaintiff's theory is that of why Dominion
17 is responsible for Mr. Larios falling from the ladder is
18 simply that he could not have seen those lines, those
19 power overhead lines in the right-of-way. That somehow
20 the lines were invisible.

21 I want to talk to you very briefly about the fact
22 that there are two wires. There's a top wire as you can
23 see here. That top wire is called the primary. This
24 top wire carries electricity. That's an energized line
25 and it's higher up on the poles that run back here in

1 the right-of-way. This bottom wire is called the
2 neutral. The neutral is that, it doesn't carry
3 electricity.

4 What's very much in dispute in this case is why did
5 Mr. Larios fall. Dominion submits that there is no
6 credible evidence. And you'll hear all the evidence and
7 there's no credible evidence to support the plaintiff's
8 theory that in fact he received an electrical shock
9 which caused -- or before he fell. And as you consider
10 the testimony that you'll hear in this case and we
11 believe the testimony you'll hear, in part, would be the
12 following:

13 Mr. Larios had no entry or exit wounds which were
14 indicative of electrical contact.

15 Mr. Larios' hands and feet didn't have a mark on
16 him.

17 His clothing which included two shirts, socks, and
18 shoes didn't have a mark on them. And yet the
19 plaintiff's theory is that the mark on his abdomen or
20 stomach was somehow caused by electricity.

21 In this case you will hear from, it was mentioned of
22 a gentleman named Pedro Abraham who was his first day of
23 ever going out to 3402 Myrtle Street to help his friend
24 clean up the vegetation that was cut. Mr. Abraham will
25 tell you that he has no tree trimming experience. He

1 had never been trained in anything with regard to tree
2 trimming. Wasn't familiar with the OSHA laws. Had no
3 medical training, et cetera.

4 Unlike Mr. Larios who had been there many, many
5 times, and as they told you a moment ago, this was
6 Mr. Abraham's first day of going to 3402 Myrtle Street.
7 Mr. Abraham is going to tell you that those lines that I
8 just showed you, these two wires visible in the
9 photograph, he will tell you they weren't invisible.
10 Could not be seen.

11 You will hear Mr. Abraham also tell us two further
12 things. He was interviewed by OSHA, that was the
13 meeting at the lawyer's office a few days later that
14 Mr. Applegate mentioned. And in that OSHA interview
15 about what happened to his friend, how did he fall?
16 What were the circumstances of the fall? Mr. Larios --
17 excuse me. Mr. Abraham did not tell OSHA two things.
18 Number one, he didn't tell OSHA that when they went out
19 there before they began this eight or nine trees or tree
20 trimming at 3402 Myrtle Street, he didn't tell OSHA,
21 yes, we looked all around the property for potential
22 hazards.

23 The second thing he didn't tell OSHA that he told us
24 when he testified was when my friend yelled and I looked
25 up, I saw my friend smoking. I saw the tree smoking.

1 Never told OSHA that. Never told the investigator
2 trying to figure out what in the world had occurred.

3 The plaintiff is also enchanting as you've heard to
4 provide testimony of someone named Dr. Erin Presnell.
5 Dr. Presnell is a pathologist that performs autopsies at
6 the Medical University of South Carolina. Dr. Presnell
7 performed the autopsy on Mr. Larios on the Monday
8 following his death. Dr. Presnell's original
9 conclusions in her preliminary report were that
10 Mr. Larios had died from blunt force trauma as a result
11 of a 25-foot fall from a ladder. That he had fractured
12 seven ribs on each side. He had four vertebrae broken
13 in his back, sustained multiple lacerations to his liver
14 and both kidneys, and she concluded that those were
15 caused by blunt force trauma. There is no mention of
16 electricity in that preliminary report.

17 You will hear that a few days later, she had a
18 telephone call with Mr. Carter, Richard Carter of the
19 Colleton County Coroner's Office who you'll hear from, I
20 believe, at some point perhaps today. And you'll hear
21 what Mr. Carter will tell you about his discussion with
22 Dr. Presnell.

23 After that discussion with Mr. Carter, Dr. Presnell
24 had Mr. Larios' body brought back up for a visual
25 inspection. Because the first time she looked at his

1 body, she made no reference to any marks possibly being
2 caused by electrical contact. And after being told a
3 couple of things, and we will hear that from Mr. Carter,
4 she then says -- about -- makes a reference to this
5 mark, single mark on his abdomen as having some
6 indication of being potentially caused by electricity.
7 And you'll hear her testimony.

8 Now, the plaintiff's theory of how Mr. Larios was
9 shocked will come in through a gentleman named Edward
10 Brill, an expert that they retained. And Mr. Brill's
11 testimony, we believe will be, you saw this seed pod, an
12 example art that was held up, this long dead looking
13 object. Mr. Brill's testimony will be that it is his
14 opinion that there was one of those coming up out of the
15 center of the top of the tree and that somehow that seed
16 pod while Mr. Larios was up there doing his work was
17 moved over to the energized primary. The top wire we
18 talked about and that is what caused him to receive a
19 shock or a tingle, whatever the case may be.

20 Mr. Brill will also tell us a couple of things. He
21 will tell us that in doing the work that he was doing on
22 the day in question, Mr. Larios was an unqualified
23 worker as that term is defined by OSHA. I will explain
24 to you in a moment what that distinction is. Mr. Brill
25 will tell you that as an unqualified worker, Mr. Larios

1 was not permitted to place any conductive object within
2 10 feet of an energized primary.

3 In fact, Mr. Larios we believe -- excuse me,
4 Mr. Brill we believe will confirm that Mr. Larios could
5 only have received a shock if he violated those OSHA
6 laws. And Mr. Brill will not have an opinion, we
7 believe, with regard to this mark on Mr. Larios'
8 abdomen.

9 In discussing Mr. Brill's testimony, I
10 referenced OSHA safety laws. And Mr. Applegate touched
11 on it in his opening as well. To borrow a phrase, the
12 OSHA safety laws, those are not my rules. They are the
13 law. They're not excuses. They are the law. The OSHA
14 laws require us all to have some role in our own safety.
15 And they require our employer to provide us with a safe
16 workplace. To provide us with methods, training, tools,
17 experience on how to do our job safely.

18 You will hear that in this case, Mr. Larios'
19 employer Will Stevens, a gentleman who had been at this
20 property some 12 years, as a result of that OSHA
21 investigation received multiple serious citations from
22 OSHA. And one of them reads like this:

23 "Stevens knew or should have known that Mr. Larios,
24 his employee, trimming trees in close proximity within
25 10 feet to energized power lines was exposed to the

1 hazard conduct to energized lines."

2 MR. APPLGATE: Your Honor?

3 (Bench conference)

4 MR. PUGH: Thank you, Your Honor.

5 In relation to the lines that are in the
6 right-of-way behind 3402 Myrtle Street, those overhead
7 power lines, the two wires we looked at. We believe
8 that there will be no evidence in this case that there
9 were repetitive outages. That there were electric
10 service issues. That there was anything to do with
11 trees or vegetation being reported or causing problems
12 or issues with regard to those lines before this
13 incident. No one requested that SCE&G or Dominion
14 Energy come out and de-energize or make those lines not
15 carry electricity anymore. That no one asked that they
16 be insulated. No one asked that they be moved. Not in
17 the many, many times that Mr. Stevens or Mr. Larios had
18 performed their work at 3402 Myrtle Street.

19 I told you a moment ago this distinction about
20 qualified and unqualified. Let me just tell you, you're
21 going to hear from a couple of witnesses in this case.
22 Landis Bunton and Allen Frasier, they work for Lewis
23 Tree Service, a contractor who does tree trimming along
24 the right-of-ways for Dominion Energy or SCE&G at the
25 time.

1 And they're going to talk about their experience and
2 training and what they -- the equipment they use and how
3 they do it because they are qualified. Meaning they are
4 permitted to get within a certain distance of power
5 lines while they're energized and they'll talk to you
6 about that further.

7 As to this property, 3402 Myrtle Street, what you
8 won't hear is, and I want this to be clear, that that
9 property, the tree that we're talking about is in the
10 backyard of the property owned by either PENSICO or
11 Mr. Ray Jackson. That Mr. Jackson and/or PENSICO is the
12 one who originally hired Will Stevens and Stevens
13 Irrigation to do the landscape work out there. That
14 Mr. Stevens had that -- excuse me. Mr. Jackson and/or
15 PENSICO had that relationship. And that work had been
16 done by Stevens and Mr. Larios as I had suggested, for
17 eight years for Mr. Larios, perhaps 12 for Mr. Stevens.
18 And all the while during all of that work there is no
19 notice, none to Dominion Energy or SCE&G of that work to
20 be done. No one said we're coming out and we're going
21 to do this work. No one asked anything with regard to
22 those power lines that you see in the photograph.

23 Mr. Applegate talked about overhead right-of-way
24 line-clearance and tree trimming and keeping vegetation
25 clear and he referenced things like ANSI, those are

1 standards that talk about everything from microwaves to
2 tree trimming to a lot of things. But he also mentioned
3 something called the National Electric Safety Code.
4 That is another standard that deals with a number of
5 things in the industry. But one of them is it deals
6 with power lines. It deals with vegetation and you'll
7 hear some testimony about what the consensus is with
8 regard to vegetation management according to the NESC
9 and ANSI as to the right-of-ways.

10 You will hear that SCE&G or Dominion performs
11 vegetation along its rights of ways. And you will hear
12 that it does that on a five year trimming cycle. Now,
13 let me make sure we're all clear about what that means.
14 Five year trim cycle isn't like your high school
15 reunion. It happens every five years. Five year trim
16 cycle is a continuous thing. There are tree trimmers,
17 in fact, I assume when Mr. Frasier or Mr. Bunton come in
18 here and testify, they'll tell you they had just come
19 from somewhere wherever that somewhere is where they
20 were trimming. Whether it be for Dominion or some co-op
21 or somebody else. And that is just a continuous
22 trimming with the goal being if they trim, and the
23 testimony in this case will be or evidence in this case
24 will be, in 2008, trimming was done along this
25 right-of-way behind 3402 Myrtle Street and again in

1 February of 2013. Keep in mind, the incident occurred
2 in November of 2015. And they will talk to you about
3 how that's done every five years and with the goal being
4 that approximately every five years you're back at the
5 same place again. That's the way it's scheduled.
6 That's how five year trim cycles work.

7 And you will hear from a couple of foresters from
8 Dominion, a retired fellow named Lou Ehinger and the
9 gentleman that's here with me, Mark Branham talk about
10 how and why and what Dominion Energy is doing with
11 regard to their vegetation management program.

12 Apparently the plaintiff's theory in this case is
13 that Dominion or SCE&G has a duty at all times to
14 maintain a 10-foot as he said swath of land cleared out
15 all day every day add infinite forever.

16 We submit to you, ladies and gentlemen, that that
17 will not be the evidence in this case. As I stated
18 earlier that work was typically done on a five year trim
19 cycle. And you will hear some testimony in this case
20 about something called midcycle trimming. And we'll
21 hear more about that as witnesses talk to you.

22 Dominion Energy monitors its overhead lines in
23 various ways. It has people, you see the trucks, people
24 out in the field all the time on any given day in
25 Dominion service territory. There are hundreds and

1 hundreds of people out in the field working. I'm not
2 talking about people in -- sitting in offices behind
3 computers. I'm talking about people out in the field
4 working on overhead right-of-ways or lines.

5 They also monitor their overhead lines in the
6 operation of them through a computer system. We live in
7 digital age. I mean, we got, I guess, we have doorbells
8 now that you can see who's at your front door if you're
9 1,000 miles away. They have something called SCADA data
10 and that is simply a way that they can monitor all of
11 their various overhead distribution wires that we saw
12 the two in this right-of-way. And they can determine
13 whether there were any outages, any services, any faults
14 that occurred on those lines and determine why and where
15 they occurred. As I told you a moment ago, there won't
16 be any evidence in this case, we don't believe, that
17 there were repetitive outages or service issues at this
18 location that we're talking about.

19 Mr. Applegate mentioned in his opening that it
20 wasn't until a couple of days later that SCE&G was even
21 contacted. Several days had gone by, no one thought
22 this had anything to do with electricity. But when they
23 finally contacted SCE&G, they came out the same day.
24 And you'll hear from those witnesses. And you will hear
25 that these linemen went out, they walked down the bike

1 path and looked up. They also backed a bucket truck
2 down the bike path and one gentleman, Cameron Luden put
3 himself in that bucket and went up in between the two
4 wires that we talked about. Mr. Luden is going to tell
5 you he put himself -- the bike path is here, as you can
6 see up here, and he put the bucket with himself in it
7 right between these two lines. And he will tell you
8 that he was looking for things like was there vegetation
9 growing into these lines? Were there burn marks? Were
10 there pitting? Was there any indication that something
11 had occurred two days earlier? And he will tell you his
12 observations based upon his putting himself up there.
13 And we believe his testimony will inform or tell you
14 that he saw nothing.

15 Now, you're going to see a bunch of photographs. As
16 y'all may know, if you photograph something from
17 different angles depending on where you're standing,
18 depending on what you're looking at, depending on how
19 the camera's zoomed in, what the lighting looks like,
20 things look a little different. And you will hear
21 Mr. Luden and his coworker lineman, a gentleman named
22 Rodney Walker tell you that they -- as I said, they
23 walked down the bike path and they looked up over their
24 head to see what there was. And they will tell you that
25 there was separation between those two -- between the

1 two wires and any vegetation. Okay.

2 And they will tell you, these are a couple more
3 photographs. Let me show you. So let me help you get
4 oriented. This is the photograph we've been looking at.
5 Here's this gazebo right here. Now, this is taken --
6 this photograph is taken looking down the bike path.
7 Here's the gazebo right here. Okay. Here are the
8 wires. Here are the trees. Again, the gazebo is down
9 here. Here are the wires. Here are the trees, the
10 separation.

11 So, on December 2nd, another SCE&G or Dominion
12 employee went out to where this circuit terminates out
13 on Palmetto Boulevard on Edisto Beach. And up on the
14 pole, there's a fuse, and they pulled that fuse on
15 December 2nd to look at it and see if it was blown or
16 showed any activity of anything having occurred or fault
17 occurred on the line. And you will hear the evidence
18 and testimony in this case that that fuse was not in
19 anyway blown or showed any signs of fault on the line.

20 Mr. Applegate told you that there are three
21 defendants in this case. There's Dominion Energy, there
22 is PENSCO, Mr. Jack -- Ray Jackson, and then there's
23 Edisto Realty. I'll let the lawyers or expect the
24 lawyers for those other defendants will talk to you more
25 about the landowner or property owner who hires someone

1 to do a job on their property. What their role is or is
2 not. And I'll let their -- let those lawyers talk about
3 that.

4 But you heard Mr. Applegate touch upon it that
5 Mr. Larios having been hired to go out there on to that
6 property to do some work was an invitee, a business
7 invitee. And the Court will give you the law at the end
8 of the case about what that means. We don't believe
9 that you will hear anyone tell you that it was legal for
10 Mr. Larios to come either with something he's holding or
11 otherwise within 10 feet of that energized overhead
12 primary in the right-of-way behind the property. As for
13 that, there are different laws that the Court will give
14 you.

15 Ladies and gentlemen, I don't think there is anyone
16 whoever wants someone to be injured. There is no
17 argument about that. As I started with you, I said this
18 family has had a tremendous loss. There's no argument
19 about that. The argument in this case is why did
20 Mr. Larios fall and if there's any credible evidence
21 which we submit there's not that he sustained some
22 electrical shock then you have to look to his own
23 conduct. The conduct of the people that hired his
24 employer who sent him out there. His employer who had
25 been out there 12 years. His employer who apparently

1 didn't train him or provide him with appropriate
2 knowledge and tools to do his job. Because if
3 Mr. Larios received a shock as the plaintiffs allege it
4 was because he violated those OSHA work rules that I
5 talked to you about. That 10-foot rule with regard to
6 an energized line.

7 Ladies and gentlemen, I thank you for your attention
8 and I appreciate your jury service this week. Thank you
9 very much.

10 THE COURT: Mr. Stegmaier?

11 MR. STEGMAIER: Thank you, Your Honor. Could we
12 take a break for just five minutes?

13 THE COURT: Yeah. Folks, if you need anything while
14 you're back there, let me know. Okay. And, please, no
15 conversation about the case and we'll bring you back out
16 shortly.

17 (The jury left the courtroom at 11:40 a.m.)

18 (There was a short break)

19 THE COURT: Let's bring the jury in, please.

20 (The jury entered the courtroom at 11:52 a.m.)

21 THE COURT: Thank you, folks. Please have a seat.

22 All right. Mr. Stegmaier, are you ready to proceed?

23 MR. STEGMAIER: Yes, sir.

24 I was telling the Judge, I appreciate the
25 accommodation. And I'll be very candid with y'all, I

1 was kind of dying right there towards the end and I
2 needed to take a break. So I appreciate y'all's
3 accommodation as far as it goes.

4 And when I first started practicing, I worked with a
5 retired circuit judge and one of the things he told me
6 when I get up for opening statements is get to the point
7 and keep it short. And because we've got a lot of work
8 to do. But I do kind of want to outline what our
9 position in this case is.

10 And, so I give you carte blanche. I see
11 Mr. Robinson's wearing his watch, I give you carte
12 blanche to look at your watch and if we get to about the
13 10 minute mark, if you want to waive and say, hey, we're
14 good Stegmaier. I promise that's going to be okay.
15 Because what I'm going to try to do is put up our
16 position here in the next 10 minutes as far as this
17 goes.

18 I'm Christian Stegmaier, I'm from Collins and Lacy
19 and we're from Columbia. Kelsey Brudvig is my partner
20 and she's here and she's going to help me try this case.
21 So from time to time you'll see Kelsey get up, I want to
22 make sure you know who she is, too, as well.

23 I had the honor of serving as a captain of the State
24 Guard and I heard a lot of discussion yesterday during
25 the juror qualification about the concern that folks

1 have down here about hurricanes and trees blowing down
2 and all of the trouble that causes. You know, anytime a
3 storm comes up, you're worried obviously about your
4 life. You're worried about your families' life. You're
5 worried about the house. You're worried about your car,
6 but you're also worried about your trees.

7 And I know we spent the first week in September
8 worried about that with Hurricane Dorian. I spent most
9 of that week on active duty in uniform waiting to come
10 down here if something happened and I was thankful that
11 that didn't happen. But one of the things that happens
12 when we have these storms is all these trees get blown
13 over and we have to deal with it. Just because of the
14 whether we've got, vegetation grows and it needs to be
15 cut and it's just something that we need to maintain.

16 What I want to share with you is this, that as we
17 talk about vegetation, Mr. Jackson is in the same place.
18 And so before we get into talking a little bit more
19 about Mr. Ray Jackson, you might be saying
20 Mr. Stegmaier, I haven't seen Jackson yet -- Mr. Jackson
21 yet. Where is Mr. Jackson? Well, Mr. Jackson lives in
22 western North Carolina and he's well into his 80's. And
23 so he's elderly, but he is going to be here.

24 The reason why he's not here today is he had a
25 cardiologist appointment that just couldn't be changed.

1 And as you all know, if you ever deal with a specialist,
2 man, you don't want to cancel appointments with
3 specialists. And he's just in a situation where he
4 needed to see his cardiologist, but he will be here. If
5 we go all the way to Thursday when the defendant has its
6 opportunity to put up its case, he will be here to
7 testify about his experience in his home.

8 Mr. Applegate talked about it. He's owned this home
9 for 30 years. He placed it into the self directed IRA
10 which is just an investment vehicle. The legal owner of
11 the house is in the Colleton County records which is
12 right downstairs is PENSCO Trust Company FBO which is
13 for the benefit of J. Ray Jackson. Mr. J. Ray Jackson
14 bought this house. This is his house. It's his
15 property and he is the landowner in this equation.

16 Mr. Jackson is just like any other homeowner in
17 Colleton County as it relates to vegetation and having
18 to maintain it. But as I said, he's in his 80's, so
19 Mr. Jackson isn't getting on ladders. Mr. Jackson isn't
20 getting in bucket trucks and we're going to talk a lot
21 of bucket trucks. He doesn't even live here full time.
22 He's got this house that is a vacation property that he
23 rents out. That's not unlike a lot of other houses down
24 at Edisto Beach and so he's reliant on among other folks
25 the contractors that come on to his property to help

1 him.

2 You know, he rents out this house. So from week to
3 week when the house turns over, he's got to have it
4 cleaned up. And I know we heard something yesterday
5 about a cleaning company on Edisto Beach, well, there
6 are many companies that do that. They come in and help
7 homeowners clean up.

8 Well, as far as all these palm trees that were on
9 the property, again, Mr. Jackson's old, he's not going
10 to be getting on ladders. He's not going to be getting
11 in bucket trucks. He doesn't own a bucket truck. So
12 he's going to be dependent upon folks like Stevens
13 Landscaping to do the job. And that's where Mr. Larios
14 comes in as far as this goes.

15 Now, Mr. Applegate when he got up, he talked to you
16 about what he said the standard or the law or the rules
17 were. And I want to tell you a little bit more about
18 the standard or the law or the rules. I've got a friend
19 who is a Green Beret and he has a saying that's called,
20 "The standard is the standard." And what that means is
21 the rules are the rules.

22 And so Mr. Applegate's given you kind of his version
23 of what he says the law is and he's not wrong. What he
24 articulated to you is not wrong. But as Paul Harvey
25 used to say on the radio, now you get the rest of the

1 story.

2 A landowner is not an insurer of the wellbeing of
3 its invitees. They take the position that Mr. Larios is
4 an invitee. We've also heard through the opening
5 statements today that landscaping was Mr. Larios'
6 specialty. So I construe that and hopefully during the
7 course of the trial if we're talking about specialties
8 that makes Mr. Larios a specialist. So he's not any
9 sort of just any old invitee like you or me coming on to
10 a property, he's a specialist. If this is his
11 specialty, we should assume that he knows what he's
12 doing. And is generally not required as a matter of law
13 to protect invitees against open and obvious conditions.
14 That's the law. That's the standard. The standard is
15 the standard.

16 A landowner is entitled or expect that invitees
17 would exercise ordinary perception, intelligence, and
18 judgement to discover open and obvious conditions,
19 appreciate the risk that they present and take minimal
20 steps necessary to protect themselves. And
21 Mr. Applegate talked about that today in his opening.
22 He made reference to the simplest of precautions. I
23 completely agree. And when we say here minimal steps,
24 we literally mean minimal steps.

25 Mr. Pugh introduced this during the course of his

1 opening statements where he talks about these power
2 lines being open and obvious. And you're going to see a
3 lot of pictures. Everybody's got their own set of
4 pictures they want you to see and you can take from that
5 however you want to construe that.

6 Different advantage points. Different times of day.
7 Different elevations. But the reality is literally if
8 Mr. Larios had taken a minimal number of steps, he would
9 have seen the power lines. And as Mr. Pugh had related
10 in his opening statement, you know, Mr. Larios wasn't
11 some casual stranger to this property. He had been
12 there dozens and dozens and dozens and dozens of times.
13 So when we get back to appreciating the risks that they
14 present, he had ample opportunity to do that.

15 And my suggestion is he probably knew if not
16 absolutely knew about those power lines. One of the
17 things you're going to hear during the course of this
18 week is how Stevens Landscaping ordinarily did its work
19 at this property. And one of the ways that ordinarily
20 did its work at this property is they used bucket
21 trucks. And what you're going to hear from the
22 witnesses among others, the power company, from Lewis
23 Tree Company, is how do they do their business? How do
24 they do it the right way? The standard is the standard.
25 And when you're getting up in 30 or 35-foot trees,

1 you're not putting up some ladder against it. You're
2 using bucket trucks.

3 And the testimony will reveal that Stevens
4 ordinarily did that. There is a rail fence, the back
5 part of this property, a wooden rail fence, and the
6 evidence will reveal that from time to time, and
7 Mr. Jackson will testify to this, they would dismantle
8 part of that fence to back the bucket truck in there to
9 cut the palm trees down.

10 So like Mr. Pugh, and I know like Mr. Kennedy will
11 state, this is a tremendous tragedy. That can't be --
12 that can't be said enough. But it is the product of
13 taking shortcuts, not appreciating the risks that have
14 been presented through dozens and dozens and dozens and
15 dozens of times on this property.

16 I was telling you a little bit about my guard
17 service and our unit right now is doing a little bit in
18 the way of small arms training. And I don't know what
19 you know or don't know about using firearms. But it
20 probably is within the bounds of common sense even
21 though if you're not an expert in firearms, you know
22 that one of the rules of using firearms is, you know
23 what you're aiming at and what's the part B to that?
24 You know what's behind the target. You know what's
25 behind the target.

1 So you will see all these pictures from different
2 camera angles saying we can't see the wires. We don't
3 know where the wires are. That's not good enough.
4 That's not good enough. If we see the tree from one
5 direction, if Mr. Larios is the specialist that the
6 plaintiffs say he is, the minimal steps and you'll see
7 from these photographs among other things if only
8 minimal steps had been taken.

9 In addition to all the experience from the dozens
10 and dozens and dozens of times he had been there from
11 the use of the bucket truck, the power lines are right
12 there. The power lines are right there, just look up.
13 When they talk about taking branches out to the street,
14 look up you see the power lines.

15 The last thing I want to talk about is this. We
16 talked a little bit about open and obvious in this case.
17 But there's another doctrine -- there's another
18 consideration in premises liability law, it's called
19 known and expected condition. Known and expected
20 condition. So the argument could be made and maybe
21 using other witnesses will they say, you know, I never
22 saw the wires. I never saw -- never saw -- never saw
23 anything about it.

24 If Mr. Larios is an expert like they say he is, he's
25 a specialist like they say he is, what is a known and

1 expected condition if you're getting up in tall trees.
2 What is a known and expected condition if you're getting
3 up in tall trees? The possibility of coming into
4 contact with power lines. That's the fact of the
5 matter.

6 So I want to leave you with this. I want to stick
7 with my 10 minute mark. During the course of this week,
8 what we from our -- from the defendant's standpoint, now
9 keep in mind when we talk about burdens of proof, we
10 don't have to prove anything. But what we want to
11 relate to you during the course of this week is this,
12 just like Mr. Pugh said, the bottom power line was not
13 energized. It was never energized. And that picture
14 you saw today of the fruit stalk and the power line,
15 that was the bottom line and Mr. Pugh's folks will
16 testify to that. So that line you saw with the fruit
17 stalk, that wasn't energized.

18 The power line was an open and obvious condition.
19 We've talked about that. The power line was a known and
20 expected condition. We've talked about that. The power
21 line was easily seen and discoverable. Minimal steps.
22 A simple walk around the tree was all that was needed.
23 Mr. Larios had as much or more knowledge of the power
24 line. He worked for Stevens Landscaping for years and
25 had worked on the Jackson property, too, which included

1 cutting palm trees. It can't be denied. Mr. Larios
2 knew the proper way to do the job which included using a
3 bucket truck. Mr. Stevens and his crew had used bucket
4 trucks traditionally there and he put himself in danger
5 because he took a shortcut.

6 Mr. Jackson as I related to you did not live at the
7 house on Myrtle Street. And one of this things you're
8 going to find out is as what was related to you in the
9 opening, this was Sunday morning. Nobody told
10 Mr. Jackson anybody was coming on to his property that
11 Sunday morning, but they did anyway. Mr. Jackson paid
12 Stevens Landscaping to do the landscaping work for him.
13 Stevens Landscaping and Larios did the work at the
14 Jackson house for years including palm trees. There
15 were never any accidents by Stevens Landscaping or
16 Larios at the Jackson house that was reported to
17 Mr. Jackson. Mr. Jackson, he would get this bill and
18 you'll hear about this bill from the Edisto Realty
19 folks, but nobody ever reported to him any sort of
20 problems. The work just got done. It's just think
21 about all the folks that are in Colleton County who were
22 doing work similar to this, work just got done.

23 Mr. Jackson had the right to rely on the workers he
24 paid who had been working on his property for years to,
25 number one, discover open and obvious and/or known

1 expected conditions which would affect their work. To
2 know how to do their jobs correctly and safely which
3 included using the correct safety equipment. This rope
4 business that Mr. Applegate told you about, you're going
5 to find out that was the wrong way to do the job in
6 addition to using this ladder. But Mr. Larios and
7 Mr. Stevens knew how to do it correctly and with a
8 bucket truck.

9 We're not being unreasonable. We're relying on the
10 law. The standard is the standard.

11 I appreciate your time thus far. Appreciate your
12 attention of this morning. Thank you very much.

13 THE COURT: Thank you, sir. Mr. Kennedy?

14 (Bench conference)

15 THE COURT: All right. Mr. Kennedy?

16 MR. KENNEDY: Thank you, Your Honor. May it please
17 the Court.

18 Let me be the first to say good afternoon. And like
19 Mr. Stegmaier, I promise I will be brief because I know
20 I'm getting hungry and I'm sure y'all are the same.

21 My name is Bob Kennedy and I represent Edisto Sales
22 & Rentals Realty LLC. It's a long name and it's --
23 everyone has said Edisto Realty and I think that's what
24 we call ourselves, so, please, let's go with Edisto
25 Realty this week. With me today is Matthew Kizer, he is

1 the owner of Edisto Realty. He's a lifelong county
2 resident. He's owned the company for, I think, 13 years
3 now. With him is Jane Smoak, she is an employee of the
4 company. She's been with the company for 30 something
5 years. You're going to get to hear from her. Edisto
6 Realty is a vacation rental manager.

7 Now, rather than starting off by telling you what a
8 vacation rental manager does. What Edisto Realty does,
9 I'm going to do something a little different. I'm going
10 to tell you what work they didn't do. And this is
11 perhaps the most important thing I want you to take out
12 of this opening statement and when you're paying
13 attention to the evidence this week what you can -- what
14 you pull with regard to Edisto Realty.

15 Edisto Realty did not hire Will Stevens. Didn't
16 hire Jose Larios. They didn't hire Stevens Landscaping
17 to perform work on this property. They didn't tell Will
18 Stevens, they didn't tell Jose Larios, they didn't tell
19 Stevens Landscaping what work to do. They didn't say
20 trim that tree, mow this grass, spread that straw, none
21 of that. They had no role whatsoever in supervising or
22 managing the work of Will Stevens, Jose Larios, Stevens
23 Landscaping. In fact, no one at Edisto Realty had any
24 idea when Will Stevens, Jose Larios, or anyone from
25 Stevens Landscaping was out on the property because they

1 had nothing to do with hiring them, managing,
2 supervising the work, directing the work, nothing,
3 including on November 29, 2015. So that's what they
4 didn't do.

5 So what does Edisto Realty do? Well, the name is
6 Edisto Sales and Rentals which is the rentals aspect of
7 it. They help homeowners down in Edisto Beach rent out
8 their homes usually to vacation tenants. They're a
9 couple of longer term tenants, but mostly vacationers
10 who are coming down looking to spend a week or two at
11 the beach. If you've been down there you may have seen
12 their yellow signs, they're all over the place. They
13 have about 400 homes that they work with down on the
14 beach.

15 Each year they tend to a contract with each one of
16 those homeowners. Now this is not some 50 page contract
17 that people don't read and don't understand. This is a
18 simple two page agreement. And this two page agreement
19 lays out the duties and responsibilities of Edisto
20 Realty and of the homeowner.

21 Now, under this agreement, Edisto Realty, they get
22 20 percent commission on all rentals. So when someone
23 comes in and rents a house for a week, Edisto Realty gets
24 20 percent. Twenty percent of the pie. And what do
25 they do for that 20 percent? The first thing --

1 MR. APPLGATE: I'm sorry. Can we do a side bar?

2 (Bench conference)

3 THE COURT: Mr. Kennedy, you may proceed.

4 MR. KENNEDY: Thank you, Your Honor. Thank you
5 members of the jury for allowing us that brief moment.

6 So for that 20 percent, Edisto, they find tenants
7 for the property. They fill phone calls from tenants.
8 They hire cleaners to come in after the tenants leave
9 the property to make sure that, you know, the toilets
10 are clean and the refrigerator is empty, the trash is
11 empty so when the next tenants come in they find a nice
12 clean vacation house.

13 The owner for his 80 percent is responsible for
14 safety, maintenance, and upkeep and now that's how the
15 relationship actually is played out. Edisto Realty
16 started managing this property in 2012. The owner had
17 previously used another management company on the
18 island, but he said that they charged too much, so he
19 switched to Edisto Realty in 2012. And in that year
20 they signed that exclusive agency agreement that all
21 homeowners sign. And it had the same general terms, the
22 same division of labor, the same division of
23 responsibilities.

24 So what I want you to be clear about as we enter
25 into the evidentiary stage of this trial is that Edisto

1 Realty is not the owner of this property and it's not
2 the owner of the power lines. They're a nonowner. And
3 as Mr. Applegate said during his opening statement that
4 the judge will instruct you on the law. But
5 Mr. Applegate was correct for a nonowner to be held
6 responsible in this case, the question is whether they
7 had sufficient control over the property. And that's
8 what you have to consider with respect to Edisto Realty
9 is whether they had sufficient control over this
10 responsibility -- over this property to be held as
11 responsible as say the homeowner.

12 And I will say that this division of labor is not
13 just in the contract. The contract alone is not the
14 only evidence that you're going to hear about who agreed
15 to do what. They were actually separate conversations
16 between my client and Mr. Jackson. Both my client and
17 Mr. Jackson are going to verify that, yeah, we had a
18 conversation where he said, Mr. Jackson, you're
19 ultimately the homeowner. You're ultimately responsible
20 for the safety and upkeep of this property.

21 So that's how this relationship played out for three
22 years prior to this incident. And, you know, the owner
23 was generally responsible for safety and maintenance and
24 upkeep. Consistent with that, consistent with what
25 you've heard already today, Mr. Jackson hired Will

1 Stevens and Stevens Landscaping about 12 years before
2 this incident. Sometime in the early 2000's when the
3 property was still being managed by that other entity.
4 And Will Stevens, Stevens Landscaping and Jose Larios,
5 they just continued on the property when we started to
6 take over the property in 2012. The owner coordinated
7 all work with Stevens Landscaping directly. The owner
8 was the one who was responsible for telling Stevens
9 Landscaping what work he wanted to be done on the
10 property.

11 The owner was the one from -- who had to make sure
12 that he was happy with the work that was being
13 performed. Edisto Realty had no knowledge whatsoever at
14 any point in time, November 29, 2015 or any other date
15 that Stevens Landscaping was going to be out on the
16 property. The only thing that Edisto Realty did with
17 respect to landscaping was help pay the bills. And this
18 is spelled out in the contract. One thing that Edisto
19 Realty does for its homeowners is when a bill comes in
20 whether it's cable, electricity, internet, you know,
21 landscaping, they'll help process the bills. The
22 landscaper actually comes in to Edisto Realty after the
23 work has been performed, you know, 30th of the month,
24 drops off the invoice and Edisto Realty pays that
25 invoice. Now, they don't pay it out of their money,

1 they pay it out of the homeowner's money. So
2 essentially they're paying the service provider with the
3 owner's money. That's the only involvement that Edisto
4 Realty had whatsoever with Stevens Landscaping, paying
5 him with the owner's money. That's the only time
6 Stevens Landscaping entered the universe of Edisto
7 Realty.

8 Now, this is not a case of finger pointing as
9 Mr. Applegate indicated this would be. Mr. Jackson, the
10 homeowner says, he'll tell you flat out, yeah, I was
11 responsible for the landscaping. Edisto Realty had
12 nothing to do with landscaping. There's not going to be
13 any evidence whatsoever in this case about Edisto Realty
14 doing anything more about landscaping other than paying
15 those bills on the back end. That's what you're going
16 to hear about Edisto Realty in this case.

17 There's going to be a lot of other evidence. We're
18 going to talk about seed pods, five year cycles, 10-foot
19 clearances, qualified workers. You're going to see
20 pictures and you're going to have to decide is this
21 condition open and obvious. I would say consistent with
22 what Mr. Pugh said, if you can take a picture of
23 something, you can see it.

24 And if you listen carefully to all the evidence and
25 all the people who went out there and saw this in

1 person, I think what you will find is every person who
2 went out there specifically to look for a power line
3 like a landscaper should be doing, saw those power
4 lines. It was only the people who weren't out there
5 looking for a power line who didn't see them. Whenever
6 someone specifically goes out to this property and says,
7 are there any power lines back there, you can spot them.
8 And that will consistent with every witness you hear
9 this week.

10 You're going to hear a lot about Will Stevens the
11 time he landscaped on this property, how many times he's
12 walked the yard, how many times he's been in that tree.
13 We'll hear a lot about his training or quite frankly
14 lack thereof. The poor equipment he provided to his
15 employees. You'll hear about Jose Larios, how long and
16 how experienced he was working for Mr. Stevens. We'll
17 talk about, you know, his experience trimming trees and
18 based on that experience what he should have done on the
19 property.

20 But, again, what you will not hear today or any
21 point this week is anything about Edisto Realty hiring
22 Will Stevens, Stevens Landscape, and Jose Larios. You
23 will not hear anything about Edisto Realty directing
24 them to come out to the property to do any work or
25 Edisto Realty even knowing at any point whatsoever

1 particularly on November 29, 2015 that Will Stevens,
2 Jose Larios, or anyone from Stevens Landscaping was
3 going to be on the property.

4 After hearing all the evidence, we're going to ask
5 you for a verdict in favor of Edisto Realty.

6 With that, I thank you for your time, I thank you
7 for attention, and I thank you for your service.

8 THE COURT: Thank you, Mr. Kennedy. I think at this
9 time we're going to break for -- take a lunch break.

10 Ladies and gentlemen, we're going to break for lunch
11 at this time and then upon your return we'll call the
12 first witness. During the lunch break, please don't
13 allow anyone to talk with you about the case, don't talk
14 with anyone about the case. Just use this time to eat
15 and let your mind rest a little bit, but be ready for
16 this afternoon's session.

17 I'm going to ask you if you would, 2 o'clock. That
18 gives you about an hour and 35 minutes, something like
19 that. So if you would please be back in the jury room
20 at 2 o'clock ready to go. If everyone else would please
21 remain seated, members of the jury, you are excused and
22 I'll see you back here at 2 o'clock.

23 (The jury left the courtroom at 12:25 p.m.)

24 THE COURT: Okay. Anything we need to take up
25 before we break for lunch?

1 MR. APPLGATE: I don't think so, Your Honor.

2 THE COURT: All right. Well, we'll start back at 2
3 then.

4 MR. APPLGATE: Thank you.

5 (Lunch break)

6 THE COURT: Go ahead.

7 MR. PUGH: So my understanding, we're back to one
8 issue, I'm just making you aware of it so you can
9 consider it and take it for what it is. The next, I
10 think, two witnesses are from the coroner's office.
11 They have, I don't know, less than 20ish photographs,
12 doesn't matter what the number is, but we're back to
13 that issue of if there's a photograph that has some
14 extraneous marks on it, they were put on there through a
15 computer program. They're not the native of the
16 photographs so to speak and my concern is you have these
17 yellow arrows and then you have a heading over the top
18 that says, arc burn, and we're back to the issue about
19 the chainsaw. Now, I understand -- I mean if you can
20 see the photograph maybe --

21 MR. BUCKNER: Your Honor, we just want to be able to
22 put these in through the coroner, the chief deputy.
23 And, of course, Mr. Pugh's certainly entitled to
24 recognize the marks that say that it says, arc burn and
25 all that and we're not going to make a fuss about that.

1 We just don't think that the fact that someone else
2 wrote on it makes it otherwise inadmissible. It's a
3 coroner's file. I mean, it's an official file.

4 MR. PUGH: It's part of its file and the rest of it,
5 are we putting that in, too?

6 THE COURT: So your concern is that it's listed here
7 as arc burn?

8 MR. PUGH: Yeah. It's extraneous highlighting where
9 you've got pointing to it in a big red pen indicating
10 arc burn as we've talked ad nauseam, me, sorry, talked
11 ad nauseam about it. There's won't be any evidence in
12 this case that that was ever determined.

13 MR. APPLGATE: Didn't you rule it's appropriate for
14 cross?

15 MR. PUGH: But why are we sticking it in front of
16 them and then I have to cross it back out of the case?

17 MR. BUCKNER: That's how you cross.

18 THE COURT: Is there not a picture that doesn't have
19 all of this on it?

20 MR. PUGH: There are photographs that don't have
21 that on it.

22 MR. APPLGATE: This is, you know, again, this is
23 what's in the official file, so we've never taken the
24 deposition to get the file. This is how they keep their
25 files.

1 THE COURT: Yeah, I don't care how they keep their
2 files, but do we have pictures of the saw without all of
3 that --

4 MR. PUGH: Yes.

5 THE COURT: -- extraneous stuff on there?

6 MR. PUGH: Yes. And I'm fine to use their theory,
7 use a photograph and say, you saw that, you know, what
8 did you make of that. But to highlight it this way when
9 and that's -- and there are multiple other photographs
10 that don't have that on there.

11 THE COURT: Yeah. I mean, you can use the
12 photograph that's not all marked up arc burn on it.

13 MR. BUCKNER: Well, he can?

14 THE COURT: No. I said y'all can with your witness.

15 MR. BUCKNER: So if there are any pictures within
16 here we mark them and we need to pull them out?

17 THE COURT: No, that's not what I said. I said that
18 picture.

19 MR. BUCKNER: Okay.

20 MR. PUGH: Your Honor, this one's got something on
21 it, but I'm fine with that. That is helping them figure
22 out what he's talking about without commentary. Thank
23 you.

24 THE COURT: Yeah.

25 (WHEREUPON, Plaintiff's Exhibit Number 1 was marked

1 for identification))

2 THE COURT: Are we ready? Y'all about ready?

3 MR. BUCKNER: Your Honor, we're ready.

4 MR. APPLGATE: Yes, Your Honor.

5 THE COURT: Is defense ready?

6 MR. STEGMAIER: Yes, sir.

7 MR. KENNEDY: Yes, sir.

8 THE COURT: Let's ask the members of the jury to
9 join us, please.

10 (The jury entered the courtroom at 2:12 p.m.)

11 THE COURT: Have a seat, folks. All right. Folks,
12 if you recall when we broke for lunch, the attorneys had
13 addressed you with regards to their opening statements,
14 their opening remarks, and so now we're ready to
15 proceed. I recognize Mr. Buckner for the plaintiff's
16 first witness.

17 MR. BUCKNER: Thank you, Your Honor. First up for
18 the plaintiff is going to call Mr. Richard Carter.
19 Chief deputy coroner here in Colleton County.

20 THE COURT: Mr. Carter, if you'd please come around
21 and be sworn, sir.

22 RICHARD CARTER,
23 being first duly sworn, was examined and testified as
24 follows:

25 DIRECT EXAMINATION BY MR. BUCKNER:

1 Q Mr. Carter, how are you today?

2 A I'm good. How are you?

3 Q I'm doing well. If you could before we get
4 started, I want to make sure because this jury is over
5 here to your right that you direct your testimony to
6 them.

7 A Yes, sir.

8 Q You can feel free to ignore me in that sentence.
9 Okay?

10 A Okay.

11 Q Could you please introduce yourself to the jury
12 your full name, sir?

13 A Richard Phillip Carter.

14 Q And, Mr. Carter, could you tell the jury what you
15 do for a living?

16 A I work with the Colleton County Coroner's Office.
17 I'm the chief deputy coroner.

18 Q And how long have you been in that position?

19 A I've worked there probably about -- I been there 25
20 years.

21 Q Okay. And how long have you been chief deputy
22 coroner?

23 A Probably ten.

24 Q Could you tell the ladies and gentlemen of the jury
25 what chief deputy coroner in Colleton County does?

1 A Sort of like the assistant coroner and do whatever
2 the coroner wants me to do. I'm in charge when he's
3 gone.

4 Q And what areas do you cover? Obviously this case
5 that we're going to be talking about Edisto Beach, what
6 areas do you cover?

7 A We work homicides, suicides, and accidents, and
8 naturals.

9 Q Okay. And is there any part geographically of
10 Colleton County that you don't work on those incidents
11 with them?

12 A I normally don't work Edisto Beach. We have Deputy
13 Coroner Marion Whaley down at Edisto Beach. And he
14 usually handles everything down on that end unless he
15 needs assistance and then he can ask me and I'll be down
16 to help him.

17 Q Okay. And where do you live in Colleton County?

18 A I live in Lodge.

19 Q And, obviously, in this case you were involved down
20 in Edisto Beach the incident regarding Mr. Larios;
21 right?

22 A Yes.

23 Q Okay. And tell me what you remember about that and
24 how you became to be involved.

25 A I was involved in the ER, emergency room when they

1 received him there. He was deceased. I think when he
2 left Edisto Beach he was in the ambulance and they
3 worked the call, so the speak, trying to resuscitate him
4 and he died in transit and they brought him on to the
5 emergency room and that's when they called me.

6 Q Okay. And as chief deputy coroner, what is your
7 first order of business, so to speak?

8 A We investigate all deaths and we're mainly looking
9 for the cause of death. That's our first
10 responsibility. We want to know why the person died.

11 Q And initially in this case, what information were
12 you provided?

13 A Well, to first start off with, I was provided with
14 -- that they had a deceased person in the ER, needed me
15 to come down. So I went down, some of his family was
16 there. I started asking questions and then I called
17 Marion down at the beach and he went out to see what was
18 going on.

19 Q What did you tell -- I'm assuming when you say
20 Marion, you talking about Mr. Marion Whaley who's behind
21 me in the courtroom?

22 A Correct.

23 Q What did you tell Mr. Whaley to do?

24 A I told Mr. Whaley to go out and look at the scene
25 and see what was going on and to call me back.

1 Q Okay. And did he do that?

2 A He did.

3 Q And after you talked with Marion, what did you
4 learn?

5 A Well, when he called me back, he said -- he told me
6 what they had told him that had happened. That the man
7 was up on a ladder. And he had some kind of a safety
8 rope holding him up and he unsnapped it, hollered, and
9 fell backwards.

10 Q Okay.

11 A And then I asked Marion, I said, well, why did he
12 fall? He said, I don't know. I said, well, it's going
13 to be a reason why he fell and we need to know exactly
14 what caused him to fall backwards off that ladder. And
15 he says, well, I don't know. And I said, let me talk
16 with the family, I'll get back with you. So that's what
17 I did.

18 Q Okay. And did you instruct Mr. Whaley to take a
19 lot of pictures?

20 A I did. When I got back with him, I said, Marion, I
21 want you to go back out there and look and take as many
22 pictures as you can take even if they're not important,
23 take them anyway. I said, I'm still wanting to know why
24 he fell off that ladder. I said, he was experienced in
25 going up and down ladders, I just don't think he would

1 have fell without some reason. And he said, okay, I'll
2 go back. So he went back out there and took more
3 pictures.

4 Q Okay.

5 A Matter of fact, I believe I told him to go back
6 maybe two or three times or more. Because after as many
7 areas as I did it's just kind of suspicious of and just
8 kind of feel like there's something there that you can't
9 put your finger on.

10 Q Okay. And did you talk with the family?

11 A I did.

12 Q What did you find out from them?

13 A Well, I couldn't find out a whole lot because I
14 don't know Spanish. But I talked with them as best I
15 could and they were working for some tree company, some
16 person in the midlands that goes around cutting trees.
17 And I told them -- I tried to explain to them I'm going
18 to be doing an autopsy because I need that cause of
19 death. When you do a death certificate, the question
20 is, what caused the death. You have to have a cause of
21 death. So I said I'm going to do an autopsy so I could
22 find out what the cause of death is.

23 Q Now, you had testified that you directed Mr. Whaley
24 to go back out to the scene and take a number of
25 pictures, do you know how many times Mr. Whaley went to

1 the scene at 3402 Myrtle to take pictures?

2 A I sent him probably three times and he may have
3 went more. He does a thorough job and I'm sure that he
4 wanted to make sure that everything was taken he could
5 take.

6 MR. BUCKNER: Your Honor, at this time, I'd like to
7 put into evidence what's been stipulated as Plaintiff's
8 Exhibit One which is the photos from the coroner's file
9 discussed it with defense counsel and I'll hand them up
10 to the witness so he can look at them.

11 THE COURT: All right.

12 Q Mr. Carter, I know it's going to take you a little
13 bit to go through those photos. But those photos that
14 are now in front of you that has been marked as
15 Plaintiff's Exhibit One, are those the photos we were
16 just talking about that Mr. Whaley took? And you can
17 take your time, sir.

18 A So far, yes. Yes, that's photos that he had took.

19 Q Mr. Carter, you had testified that Mr. Whaley been
20 out there two or three times and took what has to be at
21 least 20 to 25 photos that are marked into evidence and
22 what I want to know is, after Mr. Whaley had been out
23 there taking all these pictures that had been at the
24 scene, were you told by him that there were any power
25 lines at 3402 Myrtle?

1 A No, I asked him. I said, Marion, did you see any
2 power lines? He said, nope. No power lines. I said,
3 do you see anything on that ladder or in that tree would
4 cause him to holler and fall? He says, no. I said,
5 well, there's something. I said, we're going to do an
6 autopsy and get to the bottom of it and see if we can
7 find out. So a couple of days later, he -- I took -- I
8 also told him, I said, look, you got eight hours that
9 this boss man is supposed to report it to OSHA. He's
10 got eight hours. I said, time's a clicking away. They
11 will fine him if he doesn't report it. He said, well,
12 I'll go tell him.

13 So when he got back with me, he said he told him.
14 And he said he said he would report it, which he did.
15 Because the OSHA man came, but he came like two or three
16 days later. And Marion called me and he said, look
17 here, there's power wires in that tree. And I said,
18 what you mean? I said, were they in there the other
19 day? He said, I didn't see them. He said all the limbs
20 and everything I couldn't see them.

21 Q And is it your understanding, Mr. Carter, that
22 Mr. Whaley walked the entire premises?

23 A He did. We searched -- he searched it really well
24 because I kept calling him and telling him, go back out
25 there.

1 MR. PUGH: Excuse me, Your Honor. Object to
2 speculation about what Mr. Whaley did or didn't do.

3 THE COURT: Sustained as to the speculation.

4 Q How long has Mr. Whaley been at the Colleton County
5 coroner's office?

6 A I think he worked for a good many years, like six
7 or eight years maybe and then he took a break and then
8 he came back. But he's -- I trust him.

9 Q He knows what he's doing?

10 A Yeah, he knows what he's doing, but I trust him.
11 He was also a paramedic a lot of years.

12 Q And prior to that conversation that you talked
13 about OSHA, had there been any mention of power lines at
14 3402 Myrtle?

15 A No.

16 Q Do you know what hospital Mr. Larios was taken to?

17 A Colleton County. Colleton Medical Center.

18 Q Did he stay there?

19 A No, I sent him down the Charleston for an autopsy.

20 Q All right. You had mentioned that previously. Can
21 you explain to the jury kind of how that process works
22 and why you would send him there?

23 A Yep. Well, when we have someone that we cannot
24 find a cause of death on, we need to know that. So what
25 we'll do is we'll send the body down to MUSC pathology

1 lab. Dr. Erin Presnell, is head of pathology. She's
2 got years and years of experience. And the lady before
3 her had years and years. They worked together. But I
4 trust her. Now, whatever she says, I've never caught
5 her in a mistake. I've never seen her wrong.

6 MR. PUGH: Objection, Your Honor. I don't think
7 this question has been asked.

8 THE COURT: Sustained as to that answer. Go ahead.

9 A So we settled down --

10 MR. PUGH: Excuse me, Your Honor. I don't know what
11 question he's answering at this point.

12 MR. BUCKNER: I'm asking him to explain the process
13 of how the body goes to Charleston. I think it's
14 responsive.

15 THE COURT: Yeah.

16 A So we send them down there and Dr. Presnell, she's
17 got a team of forensic pathologists and they do an
18 autopsy. And then when the autopsy is complete, they do
19 a complete toxicology test which goes to another group
20 of doctors and explains what kind of fluids he had and
21 what kind of -- any narcotics or anything in his blood
22 like that. Well, when the toxicology gets through, then
23 it comes back to Dr. Presnell and they make a
24 determination on what the cause of death is. Then they
25 send it to me, then I do a -- I do a death certificate

1 when the person dies, but we do a supplemental death
2 certificate. It's not a legitimate thing. We get the
3 answer to the cause of death, we do the real death
4 certificate and it's done.

5 Q And did you have any conversations with Dr.
6 Presnell about a potential electrocution?

7 A I did.

8 Q All right. What were those conversations?

9 A Well, I have to back up a little bit to do that.
10 Marion says that those power -- the OSHA man came, he
11 found the power wires and the trigger, so Marion called
12 me and said, hey, there's power lines. So I called Dr.
13 Presnell and I said, look, we've got a problem. I said,
14 there's power wires in that tree, he could have been
15 electrocuted. And she says, well, why didn't you see
16 them before? We just couldn't see them. There was too
17 many limbs or something. I don't know, we couldn't see
18 them.

19 So -- and Marion also said that the -- I think he
20 said the fire department came there and removed the
21 chainsaw when he fell backwards, he sat the chainsaw
22 down in the top of the Palmetto tree. And the fire
23 department came and they didn't see no power wires.
24 Because I certainly wouldn't have let them go up in
25 there if there was.

1 So, Dr. Presnell said, I tell you what I'll do,
2 I'll send down for the body in the morgue, bring it back
3 upstairs, put it on the autopsy table, and we will
4 inspect it again. She said, I could have missed
5 something. I said, you be absolutely sure that he was
6 not electrocuted.

7 So she brought him back upstairs, she called me and
8 she says, I did see a burn mark. Said I saw a lesion
9 where power wire could have touched him. So then we got
10 to looking at the chainsaw and we saw a burn mark on the
11 blade. So I think she had put the cause of death was
12 electrocution and secondary blunt force trauma when he
13 fell and hit, you know.

14 Q Now, Mr. Carter, did you ever look at the burn
15 marks on Mr. Larios' body?

16 A I did.

17 Q All right. Tell the jury about that. What did you
18 observe?

19 A Well, I looked because she looked and I wanted to
20 see what she was seeing. I wanted to be sure and I
21 looked and sure enough there was a burn mark.

22 Q And other than that circumstance, did you have any
23 further conversations with Dr. Presnell?

24 A I probable did. I probably talked to her about
25 this thing two or three, four times. Because we wanted

1 to be sure of what we were doing. And she said she was
2 convinced that he was electrocution or electricity ran
3 through his body caused him to scream. And he was
4 trying to get away from it is the way we were looking at
5 it. Taking loose the rope and fell backwards.

6 MR. BUCKNER: Your Honor, at this time, I'd like to
7 publish these pictures to the jury.

8 THE COURT: All right, sir.

9 MR. BUCKNER: That are marked as Plaintiff's Exhibit
10 One.

11 THE COURT: Are they marked?

12 MR. BUCKNER: They were all marked collectively as
13 one. Mr. Pugh had an opportunity to go through them.

14 THE COURT: No objection to these photographs from
15 the defendant?

16 MR. PUGH: None.

17 THE COURT: All right.

18 (WHEREUPON, Plaintiff's Exhibit Number 1 was
19 entered)

20 (The jury is looking at the photographs)

21 Q Mr. Carter, I got good news, I don't think I have
22 anymore questions for you.

23 A Great news.

24 Q Feel free to answer any questions the defense
25 counsel might have.

1 MR. PUGH: May I proceed?

2 THE COURT: Sure.

3 CROSS EXAMINATION BY MR. PUGH:

4 Q Mr. Carter, good afternoon.

5 A Hey, how you doing?

6 Q Nice to see you again.

7 A Good to see you.

8 Q Thank you for coming over today.

9 A No problem. Glad to help.

10 Q Now, after the incident -- after being made aware
11 of the incident, you went to the hospital; correct?

12 A That's correct.

13 Q Okay. And at the hospital, the Colleton County
14 Medical Center, no one there told you anything about an
15 electrical burn; correct?

16 A That's correct.

17 Q No one told you anything about marks on Mr. Larios'
18 body?

19 A No one there checked his body. I did that.

20 Q I'm sorry.

21 A No one checked his body.

22 Q So Colleton County Medical Center didn't check his
23 body?

24 A No, he was dead. They don't usually check a dead
25 person.

1 Q And he died on the way to the hospital?

2 A Yeah.

3 Q Okay. And you saw Mr. Larios' brother there;
4 correct?

5 A I reckon. It's been four years, but there was some
6 people there.

7 Q Okay. Do you remember who was there?

8 A I can't remember any names. I remember it was like
9 three or four.

10 Q Okay. Because it's been four years; right?

11 A Yeah.

12 Q And you don't speak Spanish?

13 A I don't.

14 Q And there wasn't an interpreter there?

15 A No. Well, there was one trying to, but I don't
16 think she knew a whole lot.

17 Q Okay. And you didn't understand really what they
18 were saying and vice versa?

19 A Well, we were making a lot of motions with our
20 hands. After 25 years, I've got to where I can talk
21 with them pretty good using my hands.

22 Q But not words?

23 A I shouldn't have stayed home from school when they
24 was taking Spanish.

25 Q Understood. So you never went to the scene at 3402

1 Myrtle; correct?

2 A Never did.

3 Q You never saw the chainsaw?

4 A Uh --

5 Q I'm not talking about a photograph, I'm talking
6 about the chainsaw?

7 A Well, I'm thinking. I told Marion to take the
8 chainsaw, the ladder, and all the evidence he could get
9 and lock it up. Because one day we will need it. He
10 sent me the rope that he was fastened off with. I put
11 it in the evidence locker at the Sheriff's Office.

12 Q The rope?

13 A The rope. Now the Sheriff's office now says they
14 don't have it.

15 Q Did you ever see the ladder?

16 A I did not. I saw pictures.

17 Q Okay. You never saw Mr. Larios or looked and
18 inspected his clothing, did you?

19 A Yeah. I looked at it at the ER.

20 Q Okay. And you noticed that his clothing did not
21 have any marks on it; correct?

22 A Well, no, I didn't. I can't say he had marks on
23 his clothing, but at that time, I had no idea that it
24 was electrical wire in the tree.

25 Q Right. I understand. But my question is, do you

1 know of any document whether it's yours, Colleton County
2 Coroner's Office, the Colleton County Medical Center or
3 the Medical University of South Carolina that references
4 burn marks on Mr. Larios' clothing or shoes?

5 A No. Not until we looked again and found out what
6 we did.

7 Q Let me make sure that I'm asking you this and we're
8 both on the same sheet of music. Are you aware as you
9 sit here today of any document from the Colleton County
10 Medical Center, the Colleton County Coroner's Office, or
11 the Medical University of South Carolina that references
12 burn marks on Mr. Larios' clothing or shoes?

13 A Not until we found out there was power wires.

14 Q No, sir. I'm sorry we're missing -- are you aware
15 of any document anywhere at anytime that says that?

16 A No.

17 Q No?

18 A Later on.

19 Q What document later on references that?

20 A Later on when we found out that there was power
21 wires in the tree. Then we saw things that didn't look
22 right.

23 Q I'm asking you about clothing or shoes.

24 MR. PUGH: I'm sorry, I turned my back, Your Honor.

25 I apologize, Your Honor.

1 THE COURT: It's okay.

2 MR. PUGH: I made a heck of a mess over here.

3 Q Mr. Carter, do you remember when I took your
4 deposition -- or we took your deposition on January 23
5 of 2018 in this case?

6 A Pretty well. Vaguely. But my memory is not as
7 great as it once was.

8 Q I understand. And I --

9 A I wish I could get younger.

10 Q I asked you this question on page 24.

11 "Are you aware of any document whether it's yours,
12 the Colleton County Medical Center, or MUSC that
13 references burn marks on Mr. Larios' clothing or shoes?"

14 And your response was:

15 "I do not."

16 Do you remember telling me that?

17 A No. But if you say I do, I do.

18 Q Thank you, sir.

19 A I would like to say, when we send a body for an
20 autopsy, we don't disturb anything. We don't go digging
21 through the clothing or the shoes and we don't try, you
22 know, we let them do that.

23 Q "Them" being MUSC?

24 A MUSC forensic pathologist.

25 Q And -- so MUSC's records which -- did you get a

1 copy of the reports from Dr. Presnell?

2 A I'm sure I did. I got a lot of reports.

3 Q Okay. And that question I asked you and you
4 answered, I do not, included MUSC records; right? And
5 MUSC records don't indicate any burn marks on clothing
6 or shoes; correct?

7 A Not at that time.

8 Q Not at anytime?

9 A I don't know how to answer that.

10 Q Okay. Let me ask you this, you never talked to the
11 OSHA investigator; correct?

12 A I don't think I did.

13 Q You weren't present for any of the witness
14 interviews by the OSHA investigator?

15 A No.

16 Q And you were the person that originally contacted
17 the Medical University and requested that an autopsy be
18 performed; correct?

19 A Correct.

20 Q And that autopsy was originally performed -- or the
21 autopsy, excuse me, was performed on Monday, November
22 30th of 2015, do you recall that? The next day?

23 A Yeah.

24 Q And do you recall receiving a copy of the autopsy
25 preliminary report from Dr. Presnell?

1 A Yes.

2 Q And do you recall Dr. Presnell telling you that the
3 cause of death was blunt force trauma to torso due to
4 fall from height?

5 A Yes.

6 Q Do you recall when that November 30, 2015 report
7 from the Medical University that there is no reference
8 anywhere to electricity or an electrical burn?

9 A No.

10 Q You don't remember?

11 A No, I don't. I don't recall that.

12 Q Okay. So let me make sure we're understanding each
13 other. So Mr. Whaley, unlike you, went to this scene
14 two or three times?

15 A At least.

16 Q Okay. And it's your testimony, we'll hear from
17 Mr. Whaley, but your testimony is the first couple of
18 times or so that he went he missed the wires that were
19 in the right-of-way behind the property; correct?

20 A Yes.

21 Q Okay. And it's your testimony that Dr. Presnell in
22 that first preliminary autopsy report that you received
23 a copy of, missed a burn mark on Mr. Larios' body;
24 correct?

25 A Yes.

1 Q And so then, two things -- so then something
2 happens. OSHA gets involved; right?

3 A Right.

4 Q And as a result of an OSHA investigation, and
5 you're the only guy talking to MUSC; right? From the
6 coroner's office?

7 A Yes.

8 Q And Mr. Whaley's not talking to Dr. Presnell?

9 A I don't think he did.

10 Q Okay. And so you're the spokesperson from the
11 coroner's office talking to MUSC about the autopsy of
12 Mr. Larios; correct?

13 A That's correct.

14 Q And as a result of the OSHA investigation, do you
15 recall that you called Dr. Presnell back?

16 A Correct.

17 Q Okay. And you told Dr. Presnell, and correct me if
18 I'm wrong, you told Dr. Presnell that, two things, and
19 I'm going to read this to you.

20 "Further investigation revealed the chainsaw had
21 contacted an overhead power wire."

22 Did you tell Dr. Presnell that?

23 A A good possibility.

24 Q Second.

25 "Rubber like material from the decedent, that's

1 Mr. Larios' shoes was noted on a ladder rung."

2 Did you tell Dr. Presnell that?

3 A I did.

4 Q Okay. Is it your testimony that the chainsaw being
5 used by Mr. Larios made direct contact with the primary?

6 A I did.

7 Q Okay. Do you know if that's physically possible?

8 A Yes.

9 Q It is? Yes?

10 A Yes.

11 Q Did you tell Dr. Presnell that indeed there was
12 rubber like material from Mr. Larios' shoes noted on a
13 ladder rung?

14 A Yes. But now I was communicating with Deputy
15 Coroner Marion Whaley which he was explaining to me what
16 he found. And he says, there's some rubber on the
17 ladder rung, you know. Common sense is telling me it
18 must have burnt the shoes.

19 Q I understand. Using your common sense, you
20 interpreted Mr. Whaley telling you that there was rubber
21 on a rung of the ladder as that having been caused by
22 this chainsaw making direct contact with the energized
23 primary; correct?

24 A That's the way we figured it.

25 Q Yes, sir. And just to be clear, you then relayed

1 that information, those two things, chainsaw contacted
2 the overhead primary, number one; and, number two, that
3 there was rubber from the decedent Mr. Larios' shoes on
4 the ladder, that's what you told Dr. Presnell?

5 A Yes.

6 Q And you said, Doctor, these two things, please look
7 at the body again?

8 A Yes.

9 Q And at that time, Dr. Presnell brought the body
10 back and looked and noted a lesion as she called it on
11 his abdomen; correct?

12 A Yes.

13 Q Okay. Did you do anything to confirm that the
14 chainsaw made direct contact with the energized primary?

15 A No.

16 Q Did you do anything to --

17 A The only thing I did was looked at Marion's
18 pictures.

19 Q Okay. Did you do anything to confirm that the
20 aluminium ladder had residue from Mr. Larios' shoes on
21 one of the rungs?

22 A I never actually looked at the ladder.

23 Q Okay.

24 A I saw a picture somewhere that had it.

25 Q Yes, sir. Okay. And, Mr. -- to be clear and be

1 fair, Mr. Whaley was at the scene, saw the ladder, saw
2 the chainsaw, that's your understanding; right?

3 A That's right.

4 Q And we can ask him about that. Okay.

5 A Yes, we can ask him.

6 Q All right. Mr. Carter, I appreciate you coming
7 over today. Thank you very much. These other lawyers
8 may have a couple of questions for you.

9 CROSS EXAMINATION BY MS. BRUDVIG:

10 Q Mr. Carter, were you acquainted with the fact that
11 the power line that Marion Whaley said he observed was
12 not on Mr. Jackson's property?

13 A I don't know.

14 Q That's all the questions I have. Thank you.

15 THE COURT: Anything, Mr. Kennedy?

16 MR. KENNEDY: Mr. Carter, I do not have any
17 questions. Cocounsel asked my questions for me. Thank
18 you.

19 THE COURT: Anything on redirect?

20 MR. BUCKNER: I don't think we have any, Your Honor.
21 Thank you very much, Mr. Carter.

22 THE COURT: Sir, thank you so much.

23 MR. CARTER: Thank you.

24 MR. APPLGATE: Your Honor, we call Marion Whaley to
25 the stand.

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MARION WHALEY,

being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION BY MR. APPLGATE:

Q Good afternoon, Mr. Whaley. Will you please state your full name for the jury.

A Marion Hampton Whaley, Jr.

Q Okay. Can you tell the jury what it is that you do?

A I'm deputy coroner. I've worked for approximately 10 years as a paramedic in this county. Then took a break for a while and was asked to come back. A while later up until the time of this case I probably had 14 years of experience.

Q Do you do that full time, sir?

A No. No. I actually run a landscaping company and I'm a certified arborist.

Q Okay. And so about how much time per week do you do your services as the deputy coroner?

A I think we have a case about every six months.

Q All right. So you focus on those investigations when they come up?

A When they come up I'm called.

Q Okay. Now, were you deputy coroner back in November of 2015?

1 A Yes, I was.

2 Q Okay. And do you remember -- I know you've been
3 sitting here, Mr. Whaley, do you remember the case of
4 Jose Larios?

5 A Yes.

6 Q Okay. Can you tell me how you first got involved
7 in that case?

8 A Coming back from church that morning, I got a text
9 from Chief Deputy Coroner Richard Carter asking me if I
10 knew anything about somebody falling out of a palm tree.
11 And I said, no. About that time, a deputy is on the
12 main boulevard, stops me, and says, hey, we got this
13 thing down here, do I need to go down there? And I
14 said, yes, we need to go find out what's going on with
15 this since they transported him actively trying to
16 resuscitate him. We went down and I had him put up tape
17 around the scene until we could determine what we
18 thought was going on.

19 Q When you arrived at the scene, who was there?

20 A When I arrived there it was just -- he arrived back
21 there with me. Everybody was gone. I mean, it was --
22 what I remember it was just me all of a sudden and him.

23 Q Okay. And what time approximately did you arrive?

24 A Around 12:30, I think.

25 Q Okay. So what was the purpose, I guess, of your

1 initial visit there? What did you do in that first day,
2 I guess, investigating the scene?

3 A The main thing is we had a body up here. Okay. We
4 weren't sure exactly what happened. This guy falls off
5 the ladder, falls out of a tree, I have no witnesses, I
6 have nobody to talk to. So I get what little bit I can
7 from going back and talking to the firemen and talking
8 to the deputy, Deputy Seyle who was there and he kind of
9 filled me in on a few things. And looked all around the
10 scene as best I could and started to take just photos of
11 whatever I could there.

12 Now, I probably spent a good two or three hours
13 there making a determination of what might have
14 happened. In other words, were there bees in the tree?
15 Were there, you know, anything, a snake? What would
16 make this guy fall? Next thing's going to be is when he
17 gets there it's off to MUSC with the body and that's
18 going to tell us toxicology and internal injuries and
19 things like that.

20 Q In the three hours you spent there on that Sunday,
21 did you make any final determination about what had
22 happened?

23 A I pretty much had come to the conclusion that he
24 fell, but didn't know why. And from what I remember
25 Mr. Carter, when we were talking, and he did decipher a

1 little bit from the brother and the other person who
2 evidently was at the hospital that was with this guy.
3 He was on the ground when it happened. That I heard a
4 yell. He took chainsaw, stuck it up, it was still
5 running. Untethered himself because he's tied off,
6 untethered himself and started down the ladder and got
7 three steps and fell.

8 Q Okay.

9 A So I'm assuming that we got blunt force trauma.
10 For whatever reason, something scared this guy to death
11 and he had to get out of there or whether or not he was
12 stung or something, we just didn't know.

13 Q Was that the end of your investigation or did it
14 continue past that?

15 A It continued on. Because at this point OSHA's got
16 to be involved. I had the fire department come down,
17 also, and retrieve the chainsaw. They had already been
18 up and shut it off because it was left running. So they
19 brought it down to me. I had no clue of anything else
20 that could be wrong.

21 And so then, I finally get the owner of the
22 business to come over and he's coming to collect his
23 truck while I'm still there and his trailer. And I had
24 no reason to believe the chainsaw would be part of
25 evidence, so I handed it to him. The ladder, yes. The

1 ropes, yes. Mistake on my part, basically.

2 And then it was -- we left the scene pretty much
3 cord on off and then we had -- when Mr. Dennison who's
4 with OSHA came down, he came down -- this was on Sunday,
5 he came down, I believe, it was Tuesday. He went to the
6 scene with me and he took a lot of photographs, also.
7 We looked around. We saw different things. Then we
8 tried to get the family and the other -- the brother and
9 the other guy that worked with him together. And,
10 honestly it was a little bit hard to get together. A
11 little bit worried about some aspects.

12 But we did through a local attorney down there got
13 him -- got them into his office. Got an interpreter who
14 knew these people. And Mr. Dennison performed the --
15 performed the whole interview. I just listened and took
16 notes. And when I wanted to ask a question, I asked
17 Mr. Dennison to ask the question.

18 And it was at that point that through the
19 interpreter there were some things that we had not heard
20 about or known. And one of them was that they saw a
21 flash. The boy on the ground saw a flash. Larios
22 yelled or screamed or however it was. There again, and
23 he repeated exactly what he had told Mr. Carter at some
24 point where he put the chainsaw down, left it running,
25 untethered himself, and proceeded down the ladder and

1 got down to the third approximately, okay, approximately
2 the third rung on his step down and fell.

3 At that point, I left the meeting. I figured,
4 okay, there's a flash. We've got something else that
5 may have happened. And so I went back down, resecured
6 that whole scene and started looking around. And as I
7 looked around more and more, you had the wires that were
8 up going down the right-of-way on a bike path behind it.
9 The live wires are pretty high up from where he's at.
10 Okay. But the lower wire which is not energized was a
11 little more visible, but it was in some of the branches.

12 At that point, I called Mr. Carter and I told him
13 we need to call back to MUSC, bring the body back out,
14 and reexamine him and tell them that we possibly have
15 some type of incident with electricity.

16 Q Did you resecure the chainsaw at that time?

17 A Mr. -- this is when we saw this picture was in that
18 meeting and that was the other thing that just blew my
19 mind.

20 Q What picture is that, sir?

21 A The picture of the chainsaw with the -- with what
22 appears to be a burn mark on it. And Mr. Larios'
23 brother had been given the chainsaw by owner of the
24 company. Because evidently it was his. And he took it
25 home and took a photo of it like that. And then showed

1 it during that interview. I asked him at that point if
2 he would be so kind as to bring that chainsaw back to
3 me. Which he did.

4 Q Okay. At that time, again, did you have, I guess,
5 additional interactions with Mr. Carter related to your
6 investigation?

7 A Just mainly basically what I said is just, hey, we
8 need to go and make sure that body is brought back out.
9 In which at some point in time he came back and told me
10 that, yeah, they did go back in and examine the body.

11 Q Did you ever make any contact with SCE&G?

12 A Yes. Yes.

13 Q Can you tell me about that? Explain to the jury
14 what you did.

15 A Yes. I made contact with several people and one
16 was the homeowner because their property was involved in
17 this and they needed to know that there was an incident
18 on that issue. I made contact with Edisto Sales and
19 Realty to get the information to be able to call those
20 people. That was earlier. When we found out this was,
21 I wasn't sure what we had to do. And so I wasn't
22 allowing anybody around that ladder or anything else
23 until we knew more.

24 And so called SCE&G to come down and inspect and
25 also to secure, this is obviously has something to do

1 with a possible -- some type of burn mark. So,
2 therefore, they need to be involved. They need to make
3 sure that this place is safe and that and do whatever
4 investigation they need to do.

5 Q Now, did SCE&G come to the site and do an
6 investigation?

7 A Yes.

8 Q Were you there for any part of that?

9 A Oh, every bit of it. About five or six hours
10 waiting on them and then into the night.

11 Q Okay. And are you aware of any additional evidence
12 that was found by SCE&G?

13 A SCE&G had a photographer with them and they sent a
14 photographer up in one of the bucket trucks with all
15 there proper safety precautions doing it. And they took
16 a series of photos from different angles. They
17 photographed the ladder while it was still there and the
18 surroundings.

19 Q So they took photos sort of in the area between the
20 tree and the power lines?

21 A They took a lot of photos. I'm not sure exactly
22 what and how many they took, but they took a lot doing
23 it. And they -- there were two or three that
24 individuals beside just the line crew that came in to
25 check those.

1 Q And was besides them taking pictures, did they give
2 you any information about any findings they had about
3 the power line?

4 A There was one mark up on the top wire that was
5 appeared to be notched or like something hit it and
6 burnt it. And I'm assuming -- they had pictures of
7 these things, the only thing I did was ask them whatever
8 they had, please, you know, share it with our office and
9 that we would share our information with them. And
10 other than that, then it goes to Mr. Carter and
11 Mr. Harvey up here.

12 Q Did they ever give you or send you the pictures of
13 the burn mark on the power line?

14 A Not me. If anyone would have gotten them it would
15 have been the office.

16 Q Are you aware as we sit here today they've ever
17 sent you any of the pictures with the burn mark on the
18 power line either to you or your office?

19 A I do not know.

20 Q And in reviewing the file -- well, I know we had to
21 take your deposition within the last year or two, but do
22 you recall in reviewing the file ever seeing the picture
23 that SCE&G took of the burn mark on the power line?

24 A I don't remember.

25 Q And, again, I think you said they were there for

1 many hours into the night; is that correct?

2 A Yeah. And I did, I asked them -- in fact, they
3 wanted to leave the ladder up and come back until
4 tomorrow morning and I said, no. Because either that or
5 they were going to have to leave somebody there to make
6 sure that nobody went up that ladder and hurt
7 themselves. So we agreed to take the ladder down and
8 secure it with a chain to the side of the house.

9 Q Did they make any alterations to anything on the
10 property?

11 A Say again?

12 Q Did they make any changes to the property or to the
13 tree?

14 A Not at that point.

15 Q Okay. And so I don't know if I asked you this, but
16 what day was this investigation that SCE&G did?

17 A That would have been the Tuesday, I think. That
18 when -- as soon as all this happened in Mr. Dennison's
19 report and interview, then a lot of things were set into
20 motion to secure what is a definite investigator, what
21 may have changed a little bit.

22 Q Did they ever ask you about whether they could make
23 any alterations to the tree or cut the tree down?

24 A Yes.

25 Q And can you tell me about that?

1 A They basically --

2 MR. STEGMAIER: I don't mean to interrupt. I
3 apologize. He keeps saying, "they." I'm losing track
4 of who "they" are.

5 MR. APPLGATE: SCE&G, sorry.

6 Q While SCE&G was doing the investigation, did SCE&G
7 ask you about cutting the tree down?

8 A Yes.

9 Q And can you explain to us sort of the circumstances
10 of that.

11 A That tree is -- appears to be because of the fence,
12 appears to be on private property. So, therefore, even
13 though the foliage may be over on to it, they would have
14 the right to cut that foliage off on that side. But I
15 can't give anybody permission to go on somebody's
16 property and cut it.

17 Q Okay. Did they cut anything on the tree at that
18 time?

19 A Not at that time.

20 Q Okay. Did they ever cut anything on that tree?

21 A Within a day or two that tree was cut down to the
22 point of where it would never grow again.

23 Q Did they notify you before they cut the tree?

24 A No. SCE&G did not.

25 Q Did you ever get any notification from Edisto Sales

1 and Realty, I think earlier you testified that you
2 notified them about the event, did anyone from Edisto
3 ever call you back?

4 A Well, I notified them and I actually talked to Jane
5 Smoak one of the ladies that's in charge there. I asked
6 her what it was and what I needed. And I needed the
7 phone number and address to the homeowner to contact
8 him.

9 Q Were you able to contact the homeowner?

10 A Yes.

11 Q And what was the purpose of that call?

12 A Two things. One was to advise them there was an
13 incident on their property and that they needed to call
14 their real estate agent and just kind of go through it
15 with them. If they had anymore questions about it, they
16 could obviously call me.

17 The other reason was to ask who Mr. Stevens was
18 working for. And the man, basically the homeowner told
19 me that he was -- that Mr. Stevens was working for him.

20 Q Okay. Mr. Whaley, I think with counsel's agreement
21 we will mark what will be Plaintiff's Two.

22 (WHEREUPON, Plaintiff's Exhibit Number 2 was marked
23 for identification)

24 Q Are you familiar with that document?

25 A With what?

1 Q Are you familiar with that? And take your time.

2 A This is my report.

3 Q Is this the only report you issued in this case?

4 A Yes.

5 Q Okay.

6 A May I clarify something there?

7 Q Yes, sir.

8 A Okay. Mr. Dennison with OSHA, when he did his
9 interview, I didn't need to see a need to duplicate
10 that. And I had already written this and had basically
11 turned it in. So I didn't want to alter this document.

12 Q All right. Well, again, this is your report;
13 correct?

14 A Yes, sir.

15 Q All right. And did you have any assistance in
16 preparing this report?

17 A No, sir.

18 MR. APPELATE: I'd like to move his report into
19 evidence if I may.

20 MR. STEGMAIER: No objection, sir.

21 MR. KENNEDY: No objection.

22 THE COURT: That's Plaintiff's Two?

23 MR. APPELATE: Plaintiff's Two, yes, sir.

24 THE COURT: Without objection.

25 (WHEREUPON, Plaintiff's Exhibit Number 2 was

1 entered)

2 Q Mr. Whaley, I'd like to go back to a couple of
3 things and just try to understand to make sure I have
4 the list. I know we talked about this again in your
5 initial deposition, but to my understanding, that you
6 found something suspicious about the chainsaw; is that
7 correct?

8 A Correct.

9 Q Okay. And did I understand your testimony it was
10 some type of what appeared to be a burn mark?

11 A Correct.

12 Q Okay. And I understand that -- did you guys ever
13 find anything, any traces of some type of burn in the
14 tree?

15 A When we went back, Mr. Dennison and I both went
16 around and looked at a lot of the branches that were on
17 the ground and different things like that for any sign
18 of burning. It appeared that there was a tip end of
19 some of the fronds that appeared to be burnt and there
20 was a seed pod that was -- appeared to be burnt and had
21 caught fire. And, I believe, Mr. Larios' brother said
22 that something had caught fire.

23 Q Okay. Was there any other -- based on your
24 experience and training, was there any other explanation
25 for that -- those burn marks that you had found in the

1 tree?

2 A Ask that question again.

3 Q Did you know what that -- what those burn marks
4 were from?

5 MR. PUGH: Object, Your Honor. Foundation. Calls
6 for speculation.

7 THE COURT: What marks are you talking about?

8 MR. APPLGATE: The marks he just described he said
9 he found burnt seed pod and two palm fronds had burnt he
10 noticed them next to the power line.

11 THE COURT: And your question is?

12 MR. APPLGATE: Did he know where those came from?

13 MR. STEGMAIER: I think the question was, based on
14 your experience and is there's some other explanation,
15 something along those lines. Mr. Pugh's objection was
16 there's no foundation for eliciting that response.

17 THE COURT: Well, you can ask -- he testified that
18 he found those items or saw those items and you can ask
19 him if he knows where they came from.

20 MR. APPLGATE: Okay.

21 Q Do you know where they came from?

22 A I'm pretty sure they came from the seed pod, the
23 chainsaw going into the seed pod, and the seed pod
24 coming across and hitting the line that you couldn't
25 really tell that high wire was there. Okay. But that

1 would have been the one, not the one running through the
2 tree, and it would have hit that and then grounded and
3 formed the flash. A small flash fire. And if those
4 seed pods are dry, they'll catch a little bit of fire to
5 them. If the palms are dry they'll catch a little bit.
6 The green ones will just kind of burn and the seed pods
7 itself if they were wet and green, they will basically
8 -- you'll find a burn mark on them, but they're not
9 necessarily going to catch fire. I can think of no
10 other reason.

11 Q So, again -- sorry, let me go back to just I
12 understand we talk about the chainsaw, the burnt spot,
13 again, you found a burnt spot or informed by SCE&G of a
14 burnt mark on the power line; correct?

15 A (Nodded)

16 Q And then there was the burnt palm branches or seed
17 pods. Was there any information that you had collected
18 related to a ladder?

19 A No.

20 Q Okay. Did you ever review any pictures of any
21 substance on a ladder?

22 A Yes.

23 Q Okay. Did you make any determinations about what
24 that was?

25 A I couldn't tell what it was.

1 Q Okay. Did you ever -- in your position, did you
2 ever look at the pictures of Mr. Larios' burning
3 markings on Mr. Larios' body?

4 A I've never seen any photos of Mr. Larios.

5 Q And was that -- we just had this testimony of
6 Mr. Carter, was that sort of Mr. Carter's -- part of the
7 investigation?

8 A Correct.

9 Q I guess, lastly, just to clarify. I think just to
10 make it clear in your testimony, Mr. Whaley, but we
11 talked about you visiting this property on the Sunday,
12 November 29, 2015, and doing your initial investigation;
13 correct?

14 A Correct.

15 Q And that I think you testified you spent
16 approximately three hours there. At that time, did you
17 see any of the power lines running along the side of
18 that property?

19 A Probably the only one I saw was the bottom line
20 that was running next to it. And, there again, at this
21 point, didn't think, shame on me, that there could have
22 been anything else other than I fell, blunt force
23 trauma, you know, these small signs that we saw later
24 they're small. They're not real obvious. You would
25 have to really look.

1 Q Okay. Thank you, Mr. Whaley.

2 A Yes, sir.

3 THE COURT: Cross?

4 MR. PUGH: Thank you, Your Honor. Your Honor, can
5 we take a bathroom break?

6 THE COURT: Yeah. We're going to take a short
7 break. All right. Folks, please, during the break,
8 have no conversation about the case. And we'll bring
9 you back out shortly.

10 (The jury left the courtroom at 3:19 p.m.)

11 (There was a short break)

12 THE COURT: All right. Let's go ahead and bring the
13 jury back in, please.

14 (The jury entered the courtroom at 3:36 p.m.)

15 THE COURT: All right. Be seated, folks. All
16 right. Ladies and gentlemen, when we took that break we
17 were recognizing Mr. Pugh for his cross examination.
18 And so we'll pick up with that.

19 MR. PUGH: Thank you, Your Honor.

20 CROSS EXAMINATION BY MR. PUGH:

21 Q Good afternoon, Mr. Whaley. Good to see you again.

22 A Yes, sir. Same.

23 Q Thanks for coming over. You are what, 40-year
24 arborist, been doing it a long time; right?

25 A No. I've been in landscaping for about 40 -- 34

1 years. But arborist, I took that examination probably
2 10 or 11 years ago.

3 Q Gotcha. Thank you for clarifying that. And you
4 told us you took an exam. You actually have to study
5 some materials to be a licensed or certified arborist;
6 correct?

7 A Yes, sir.

8 Q Okay. And that exam, they talk about all kind of
9 stuff, tree health, tree trimming, everything; correct?

10 A Yes, sir.

11 Q And one of the things they talk about are doing
12 your work safely as a tree trimmer; correct?

13 A Correct.

14 Q One of the things they talk about are the OSHA
15 rules that apply to tree trimming; right?

16 A Right.

17 Q There's a whole chapter on that; right?

18 A Not in that book. Not OSHA. There are safety --

19 Q Right. And there's, I think you told us when we
20 talked earlier in your deposition that part of what you
21 studied was the need to walk around your work area
22 before you begin work; correct?

23 A Correct.

24 Q Okay. And that's what you do; correct?

25 A Yeah, before I trim. Absolutely.

1 Q Right. So I want to make sure that I understand
2 this. So around 12:30 on Sunday, November 29th is when
3 you received a text?

4 A Correct.

5 Q And you told us what you did. And one of the
6 things you did is you went to the scene; right?

7 A (Nodded)

8 Q Yes?

9 A Yes.

10 Q You looked around?

11 A Yes, sir.

12 Q And chainsaw up in the tree?

13 A Yes, sir.

14 Q And you took a photograph of that, didn't you? The
15 chainsaw up in the tree?

16 A Yes, sir.

17 Q Ladder still up against the tree?

18 A Yes, sir.

19 Q Rope on the ground?

20 A Yes, sir.

21 Q Palm fronds and some other vegetation lying around
22 the base of the ladder or the base of the tree; is that
23 correct?

24 A Correct.

25 Q Okay. And you, at some point while you were doing

1 your initial investigation, you made contact with
2 Mr. Will Stevens; correct?

3 A Yeah, later on that day.

4 Q Later on that day. And was it your understanding
5 that Mr. Larios was working for Will Stevens?

6 A Yes.

7 Q Did you know Mr. Larios? Had you seen him around
8 the island?

9 A You know, I never knew what his name was, but we
10 always smiled and said, hey.

11 Q Great. Did you know him from working on the
12 island?

13 A Yes.

14 Q Okay. Doing landscaping and tree trimming work?

15 A Yes, sir.

16 Q Okay. Do you know how long he worked for
17 Mr. Stevens?

18 A No, sir.

19 Q Do you know how long Mr. Stevens had done work at
20 3402 Myrtle Street?

21 A No, sir.

22 Q Do you know how long Mr. Larios -- how many times
23 he had done work at that address?

24 A Don't know.

25 Q The power lines that we're talking about, they run

1 -- is it a fair statement to say they run kind of along
2 the bike path back there?

3 A Yes, sir. Keep one thing in mind that that's a --
4 that roughly was designed to be an old road years ago
5 and that bike path does not run down the center. It
6 meanders.

7 Q Okay. I understood through kind of the forest back
8 there?

9 A Through the forest on the right-of-way. That
10 right-of-way.

11 Q And the right-of-way -- and you've been around
12 Edisto Beach and the island your whole life; is that a
13 fair statement?

14 A Yes, sir.

15 Q Okay. And what that -- what used to be a street,
16 what are we talking about, 50 years ago?

17 A It never really was a street. It was designed to
18 be a street. I don't even know if on an old map whether
19 it had a name to it.

20 Q Okay. The power lines, they've been out there how
21 long?

22 A Gosh, I couldn't tell you. It's been a long time
23 though. I mean, some of those houses that's how they
24 got the power to them when they were built.

25 Q I think when we last were together, I think you

1 told me you thought probably 40 years or more?

2 A That probably would be a good guess.

3 Q Okay. And do you agree that if someone who was
4 intending to trim trees at that location on Sunday,
5 November 29, 2015 had walked around and looked, they
6 would have seen the overhead wires, do you agree with
7 that?

8 A They would have seen the bottom wire had they
9 walked around the trees.

10 Q Correct. And how about if you're standing in the
11 yard looking back toward the bike path, can we agree
12 that you would see the wires there?

13 A I can't actually say whether you could or couldn't
14 because the wire if they had already done X amount of
15 trimming in there.

16 Q I'm sorry.

17 A Which they had already done a lot of trimming.
18 That tree was the one that they had -- that there was a
19 problem at.

20 Q Okay. And that tree was --

21 A So I don't know what it looked like prior to that.

22 Q When you got there, let's say when you got there,
23 Sunday, November 29, when you got there standing in the
24 yard looking toward the bike path you could see the
25 wires; correct?

1 A Yes, sir. Yes, sir.

2 Q And did you -- if you walked down the bike path and
3 looked up you could see the wires; correct?

4 A Yes, sir.

5 Q Let me show you --

6 MR. PUGH: Your Honor, I'm going to mark this as
7 Defendant's One for identification.

8 THE COURT: All right, sir.

9 (WHEREUPON, Defendant's Exhibit Number 1 and 2 were
10 marked for identification)

11 MR. PUGH: Your Honor, it's my understanding
12 Defendant's Exhibits One and Two may be admitted without
13 objection.

14 THE COURT: Any objection to Defendant's One and
15 Two?

16 MR. DUFFY: No objection, Your Honor.

17 (WHEREUPON, Defendant's Exhibits 1 and 2 were
18 entered)

19 Q Mr. Whaley, let me show you first, take a little
20 bit out of order. What I've marked as Exhibit Number
21 Two, do you recognize what's depicted in this photograph
22 as being the backyard or some of the backyard of 34 --

23 A Correct.

24 Q And we see the gazebo; correct?

25 A Correct.

1 Q See the ladder up against the palm tree; correct?

2 A Correct.

3 Q The vegetation down below --

4 A Correct.

5 Q -- on the ground? And this -- does this reasonably
6 depict what will the scene looked like when you got
7 there around 12:30?

8 A Yes, sir.

9 Q Yes, sir?

10 A Yes, sir.

11 Q Okay. And if we look and it's a little far away,
12 maybe your eyes are better. Can you see this wire
13 running here behind the tree, do you see that?

14 A Not from there. If I could step down I will. I
15 will be glad to.

16 Q Sure. Do you see the wire here we're talking
17 about?

18 A Yes, sir.

19 Q And over here?

20 A Yes, sir.

21 Q Okay. So to the right and left of the tree you see
22 that?

23 A Yes.

24 Q And you told us earlier that you called at some
25 point after OSHA got involved, you made contact with

1 SCE&G; correct?

2 A Correct.

3 Q Okay. And, in fact, one of the things you asked
4 was that SCE&G take down the ladder; correct?

5 A Yes. Because by the time they finished, it was
6 late at night and they wanted to leave it up and I said,
7 no, it's got to come down for safety purposes.

8 Q So let me show you what I've marked as Defendant's
9 Exhibit Number One and this is, as you can see, caution
10 tape. Can we agree this 3402 Myrtle?

11 A Yes, sir.

12 Q And we've got the ladder lying on the ground, do
13 you see that?

14 A Yes.

15 Q Some orange stakes?

16 A Yes, sir.

17 Q You were there when the stakes were put in the
18 ground?

19 A Yes.

20 Q Okay. So this fairly and accurately depicts what
21 you saw after the ladder had been taken down; correct?

22 A Yes.

23 Q Okay. And you were out there that day?

24 A Yes.

25 Q Again, let me come a little closer and let's look,

1 if you don't mind, do you see two wires, see the bottom
2 wire here; correct?

3 A Correct.

4 Q And we see the top wire here?

5 A Yes, sir.

6 Q And you, I think, described for us that -- and do
7 you understand that no -- or is it your belief and
8 testimony that no trimming had occurred between these
9 two photographs I just showed you?

10 A No.

11 Q So what this is, there's no further trimming that
12 occurred; correct?

13 A That's correct.

14 Q Okay. And no further trimming you can see both
15 wires; correct?

16 A Yes.

17 Q Okay. Did you walk down the bike path?

18 A Did I walk down the bike path?

19 Q Yes, sir, or look down the bike path?

20 A I did not initially.

21 Q Okay. How about after?

22 A After SCE&G and everything, yes, we looked down the
23 bike path.

24 Q Let me show you what I'm marking for identification
25 as Defendant's Exhibit Numbers Three and Four.

1 (WHEREUPON, Defendant's Exhibits 3 and 4 were marked
2 for identification)

3 Q Mr. Whaley, let me show you what I've marked as
4 Defendant's Exhibits Three and Four for identification.
5 Number Three, sir, you see gazebo in the bottom right
6 corner?

7 A Yes, sir.

8 Q You recognize this is looking down the bike path?

9 A Yes.

10 Q And this is you see two wires up above; correct?

11 A Correct.

12 Q And take a look at Number Four for identification,
13 please. Again, do you see two wires up above the bike
14 path?

15 A Yes.

16 Q Do Defendant's Exhibits Three and Four reasonably
17 and accurately depict what you saw when you were out at
18 3402 Myrtle Street looking down the bike path?

19 A Yes.

20 Q Okay.

21 MR. PUGH: Your Honor, we'd move for admission of
22 Defendant's Exhibits Three and Four.

23 THE COURT: Any objections as to Defendant's Three
24 and Four?

25 MR. DUFFY: No objection.

1 THE COURT: All right. Without objection.

2 (WHEREUPON, Defendant's Exhibits 3 and 4 were
3 entered)

4 Q So, Mr. Whaley, I'm going to show you larger
5 versions so we can look at them of Exhibits Three -- of
6 Defendant's Exhibits Three and Four. Look at Three
7 first.

8 You see the gazebo that we looked at earlier in
9 Exhibits One and Two down here in the bottom right
10 corner?

11 A Yes, sir.

12 Q And this is looking down the bike path behind the
13 property; correct?

14 A Yes, sir.

15 Q Down the right-of-way?

16 A (Nodded)

17 Q Yes?

18 A Correct.

19 Q Where the power lines run?

20 A (Nodded)

21 Q Yes?

22 A Yes.

23 Q And you see the two wires up here?

24 A Yes.

25 Q Okay. And on Exhibit Four, again, we looked at

1 this. This is just another angle of the same view down
2 the bike path; correct?

3 A Yes.

4 Q And that's what it looked like when you were out
5 there at 3402 Myrtle after the incident before any
6 additional trimming had taken place?

7 A Yes.

8 Q Mr. Whaley, I think you said earlier -- let me make
9 sure. Do you agree that it was physically impossible
10 for Mr. Larios being up on the ladder to have made
11 direct contact with the primary?

12 A I agree.

13 Q Impossible?

14 A I agree.

15 Q We talked earlier and you outlined for us and I'm
16 not picking on you at all.

17 A That's okay.

18 Q The chainsaw when you first went out there, it was
19 there in the tree; right?

20 A Right.

21 Q Ladder up the tree?

22 A (No response)

23 Q You called the fire department -- well, actually
24 you had to call them back out?

25 A Correct.

1 Q Because it's your understanding that the chainsaw
2 is still running in the tree?

3 A No. The chainsaw was not running when I got there.

4 Q Right. Thank you. Is it -- do you -- have you
5 been advised that the chainsaw was still running in the
6 tree after Mr. Larios fell?

7 A Yes.

8 Q And the chainsaw was running and someone from the
9 fire department went up the ladder and turned it off?

10 A Correct.

11 Q And left the chainsaw up the tree?

12 A Correct.

13 Q So someone from the fire department went up the
14 aluminium ladder, turned off the chainsaw where it was
15 sat down in the tree?

16 A Correct.

17 Q Came back down the ladder?

18 A Correct.

19 Q And when you get there the chainsaw is up there;
20 right?

21 A (Nodded)

22 Q Yes?

23 A Yes.

24 Q I'm sorry. She's taking --

25 A That's okay. I'm tired.

1 Q I understand. And so then you called the fire
2 department to come back and retrieve the chainsaw from
3 up in the tree?

4 A Correct.

5 Q So someone went back up the ladder, got the
6 chainsaw and brought it back down?

7 A (Nodded)

8 Q Yes?

9 A Correct.

10 Q And at that point you photographed the chainsaw?

11 A Yes.

12 Q And the photographs you took don't have any
13 reference to any marks on the chainsaw; correct?

14 A Not the ones I took at that point.

15 Q And so you photographed the chainsaw and in your
16 report before OSHA got involved, there's no reference in
17 your report that some arc burn on the chainsaw; correct?

18 A No.

19 Q And you gave the chainsaw to Will Stevens?

20 A Correct.

21 Q Mr. Stevens I think you said came to the scene to
22 retrieve his stuff?

23 A Yes.

24 Q Come get his truck, his trailer, chainsaw, other
25 things; right?

1 A Yes, sir.

2 Q Mr. Stevens did not come to the scene to assist
3 with your investigation, did he?

4 A No.

5 Q Did he assist with your investigation?

6 A Absolutely not.

7 Q Not at any time?

8 A No.

9 Q Did you request his assistance?

10 A In the investigation?

11 Q Yes, sir.

12 A No.

13 Q Did OSHA request his assistance?

14 A To --

15 MR. APPLGATE: Your Honor, objection. I don't know
16 the foundation for how he knows.

17 THE COURT: The question is, did OSHA, he either
18 knows or he doesn't. He can answer if he knows.

19 MR. DUFFY: He knows what OSHA --

20 A Can I back up for one minute.

21 THE COURT: Hold on for a minute. The question is
22 as I understood it is, do you know if OSHA asked
23 Mr. Stevens to assist.

24 MR. APPLGATE: I still don't think he can speak on
25 behalf of OSHA, Your Honor. I don't think he can speak

1 on behalf of OSHA, Your Honor. Objection. Speculation.

2 THE COURT: Well, overruled. If he knows he can say
3 that. If he doesn't, he doesn't.

4 Q Do you remember my question, sir?

5 A I remember both questions. Okay. One directed to
6 me. The one thing I asked Mr. Stevens as part of my
7 investigation, okay, was what -- who -- who was working
8 for who. Okay.

9 Q Yes, sir.

10 A Which he stated they were working as a side job for
11 me. Meaning Mr. Stevens. And my response there was,
12 I'm in landscaping, I don't understand what that means.
13 Who were they working for? And he goes, I guess they
14 were working for me and I said, okay. That's the only
15 involvement.

16 Q Thank you for that.

17 A Yes, sir.

18 Q You did participate in some work -- strike that.
19 Were you with Mr. Dennison from OSHA when he conducted
20 any interviews?

21 A Yes, sir.

22 Q Were you with Mr. Dennison from OSHA when he
23 conducted an interview of Will Stevens?

24 A No.

25 Q Were you with Mr. Dennison of OSHA when he

1 conducted an interview of Beverly O'Brien?

2 A No.

3 Q Okay. Mr. Whaley, to finish what we were talking
4 about, about the chainsaw. Once the chainsaw comes
5 down, you take photographs, you give it to Will Stevens;
6 correct?

7 A Correct.

8 Q And then do you know what Mr. Stevens did with it?

9 A He gave it to Mr. Larios' brother.

10 Q Do you know when that occurred?

11 A I don't.

12 Q Do you know if the chainsaw was used between Sunday
13 and -- when did you get it back, Wednesday?

14 A Tuesday.

15 Q Tuesday. Do you know in the chainsaw was used
16 between that period of time?

17 A I don't know.

18 Q Don't know one way or the other?

19 A (No response)

20 Q And to clear this up, the chainsaw, the physical
21 chainsaw is gone; correct?

22 A Correct.

23 Q And the chainsaw, when did the chainsaw go missing?

24 A We had two hurricanes. One Matthew and then Irma.
25 I went to go check on it right before or right after

1 Irma and it was unhooked from the ladder because it had
2 been tagged as evidence. It was unhooked from the
3 ladder and it was gone. The firemen there advised me
4 that they had not seen that up there since after
5 Matthew.

6 Q So somehow the chainsaw after Hurricane Matthew
7 came to Edisto Beach went missing?

8 A Yes. We didn't have anywhere to keep something
9 like that in our evidence up here. And so the ladder
10 and the chainsaw were there and the fire department kept
11 it there in good faith.

12 Q Yes, sir.

13 A I'm assuming somebody needed a chainsaw that was
14 down there helping.

15 Q Helped themselves to it?

16 A Unfortunately. Just threw the tag away and said,
17 hey, we're going to use it.

18 Q Yes, sir. Mr. Whaley, is it correct that you never
19 had that chainsaw analyzed to determine what this mark
20 was?

21 A I never did.

22 Q The ladder that Mr. Larios was standing on, is it
23 correct to say that you never had a mark on the ladder
24 analyzed to determine what it was?

25 A Never did.

1 Q As you sit here today, you don't know what, if
2 anything, the residue on a ladder rung had to do with
3 this incident; is that a fair statement?

4 A Yes.

5 Q Do you know in your participation of interviews of
6 witnesses, is it correct that Mr. Larios was, according
7 to witnesses, standing on or about the third rung of the
8 ladder?

9 A That's what we've basically been told.

10 Q He was standing on the third rung of the ladder?

11 A I know he took three steps down. Whether he was
12 standing on the third rung or not, I don't know. When
13 you go up a tree and you're on a ladder and you tie
14 yourself in, sometimes you tie yourself above that to
15 get in. But usually it's somewhere right around in
16 there where you can make your way around a tree. But he
17 couldn't have done that with what he was doing. Because
18 he didn't have a harness. He couldn't have walked his
19 way around the tree.

20 Q Yes, sir. What he had was a rope?

21 A Yeah.

22 Q You chuckled. Let me figure out, I think I know
23 why. Because in your opinion, it wasn't much of a rope?

24 A It wasn't -- it never held him. If he was tethered
25 off with it, but if he had fell and not undone it, it

1 would have never held him.

2 Q Okay. Let me show you what I'm marking for
3 identification as Defendant's Exhibit Number Five.

4 (WHEREUPON, Defendant's Exhibit Number 5 was marked
5 for identification)

6 Q Mr. Whaley, you were present, I think you told us a
7 few hours when SCE&G came out the night of December 1st
8 or evening and then into the night of December 1st to do
9 a look around the scene, take some photographs, things
10 like that; correct?

11 A Yes, sir.

12 Q And does this look like the scene as it was with
13 the ladder stuck up there in the tree?

14 A Yes, sir.

15 Q Okay. And you see to the left there of the tree,
16 you see two wires?

17 A Yes, sir.

18 Q Okay. And what I really want to ask you about is,
19 see that third rung on the ladder?

20 A Yes, sir.

21 Q You see some dark spot on it?

22 A Yes, sir.

23 Q Let me show you what I'm marking as Exhibit Number
24 Six for identification --

25 MR. PUGH: Oh, Your Honor, I would move for the

1 introduction of Defendant's Exhibit Number Five.

2 THE COURT: Any objection?

3 MR. DUFFY: No objection.

4 THE COURT: No objection to Defendant's Five.

5 (WHEREUPON, Defendant's Exhibit Number 5 was
6 entered)

7 (WHEREUPON, Defendant's Exhibit Number 6 was marked
8 for identification)

9 MR. PUGH: May I approach?

10 THE COURT: Yes, sir.

11 Q Mr. Whaley, let me show you what I've marked as
12 Defendant's Exhibit Number Six for identification. I
13 will represent to you this is a daylight photo, a little
14 closer up of what we just looked at. Does that appear
15 to be a reasonable description of what we're looking at?

16 A Yes, sir.

17 Q Okay. This is what it looked like the next day out
18 there with the ladder still up in the tree; correct?

19 A The ladder never was moved.

20 Q Right. Until SCE&G took it down at your request?

21 A Correct. Correct.

22 Q Got it. Okay.

23 MR. PUGH: Your Honor, I'd move for the introduction
24 of Defendant's Exhibit Number Six.

25 THE COURT: Any objection to Defendant's Six?

1 MR. BUCKNER: No objection.

2 THE COURT: Without objection.

3 (WHEREUPON, Defendant's Exhibit Number 6 was
4 entered)

5 Q Mr. Whaley, let me look at this with you. Here we
6 are looking up the ladder up the tree and we've got a
7 close-up of this dark discoloration on rung number
8 three; correct?

9 A Correct.

10 Q Okay. Now, the ladder was taken down by SCE&G at
11 your request; right?

12 A Correct.

13 Q And when it was down on the ground photographs were
14 taken?

15 A Yes, sir.

16 Q Okay. And can we agree that the ladder had a
17 number of warning labels on them?

18 A Yes, sir.

19 Q Let me show you what I'm marking as Defendant's
20 Exhibit Number Seven for identification purposes.

21 (WHEREUPON, Defendant's Exhibit Number 7 was marked
22 for identification)

23 MR. PUGH: May I approach?

24 THE COURT: Yes, sir.

25 Q Mr. Whaley, Defendant's Exhibit Number Seven for

1 identification purposes, does that fairly and reasonably
2 depict the ladder lying on the ground once it was taken
3 down from the tree?

4 A Yes, sir.

5 Q Do you see there the rung we've been talking about,
6 number three?

7 A Yes, sir.

8 MR. PUGH: Your Honor, I'd move the admission of
9 Defendant's Exhibit Number Seven.

10 THE COURT: Any objection?

11 MR. APPELATE: Nope.

12 THE COURT: Without objection.

13 (WHEREUPON, Defendant's Exhibit Number 7 was
14 entered)

15 Q Mr. Whaley, so here we have top of the ladder;
16 correct?

17 A Yes, sir.

18 Q And one rung, two rungs, we see a label there with
19 an arrow and then we see rung number three that has this
20 smudge mark on it; correct?

21 A Yes, sir.

22 Q Mr. Whaley, let me show you what I'm marking for
23 identification purposes as Defendant's Exhibit Number
24 Eight.

25 (WHEREUPON, Defendant's Exhibit Number 8 was marked

1 for identification)

2 MR. PUGH: May I approach.

3 THE COURT: Yes, sir.

4 Q Mr. Whaley, let me show you this photograph,
5 represent to you that's a close-up of the label you were
6 looking at moments ago. Does that appear to fairly and
7 accurately depict what you saw that day?

8 A Yes, sir.

9 MR. PUGH: Your Honor, I'd move for the admission of
10 Defendant's Exhibit Number Eight.

11 THE COURT: Any objection?

12 MR. DUFFY: We haven't seen it, Your Honor.

13 THE COURT: I'm sorry.

14 MR. DUFFY: We haven't seen it, Your Honor.

15 (Looking at the photo)

16 MR. DUFFY: No objection, Your Honor.

17 THE COURT: All right. Without objection.

18 (WHEREUPON, Defendant's Exhibit Number 8 was
19 entered)

20 Q Mr. Whaley, Defendant's Exhibit Number Eight is a
21 close-up of the label we looked at from the previous
22 photograph that you will recall was pointing to rung
23 number three; correct?

24 A Yes, sir.

25 Q And this label says, "DANGER DO NOT STAND ON OR

1 ABOVE THIS RUNG YOU CAN LOSE YOUR BALANCE," do you see
2 that?

3 A Yes.

4 Q That's the English version. Below it, do you
5 recognize that language in Spanish?

6 A Yes, sir.

7 Q Mr. Whaley, let me show you what I'm marking as
8 Defendant's Exhibit Nine for identification.

9 (WHEREUPON, Defendant's Exhibit Number 9 was marked
10 for identification)

11 MR. PUGH: May I approach?

12 THE COURT: Yes, sir.

13 Q Mr. Whaley, Defendant's Exhibit Number Nine, I'll
14 represent to you is another label that was photographed
15 of the ladder. In fact, if you look to the left of the
16 ladder there in the background you see the gazebo?

17 A Yes, sir.

18 Q Does this Defendant's Exhibit Nine for
19 identification fairly and accurately depict one of the
20 other labels you saw on the ladder that day you were out
21 there?

22 A Yes, sir.

23 MR. PUGH: Your Honor, I'd move for the admission of
24 Defendant's Exhibit Nine.

25 THE COURT: Any objection?

1 MR. APPLGATE: No objection.

2 THE COURT: Without objection.

3 (WHEREUPON, Defendant's Exhibit Number 9 was
4 entered)

5 Q Mr. Whaley, this is another warning label on the
6 ladder Mr. Larios was using and it says, "DANGER FAILURE
7 TO READ AND FOLLOW INSTRUCTIONS ON THIS LADDER MAY
8 RESULT IN INJURY OR DEATH." Do you see that?

9 A Yes, sir.

10 Q And below it is Spanish?

11 A Yes, sir.

12 Q And below it we have a figure depicted as falling
13 from a ladder; correct?

14 A Correct.

15 Q When you went out to 3402 Whaley -- excuse me. I'm
16 sorry. 3402 Myrtle on November 29, 2015, you did not
17 suspect that electricity had anything to do with
18 Mr. Larios' fall; right?

19 A No, sir.

20 Q And you didn't have a suspicion that electricity
21 had anything to do with Mr. Larios' fall for a couple of
22 days; correct?

23 A Correct.

24 Q And it wasn't until a meeting with the family, in
25 particular the coworker and Mr. Dennison, that that

1 suspicious was aroused; correct?

2 A Correct.

3 Q And we don't have any testing of the chainsaw to
4 determine whether or not the burn mark on the chainsaw
5 was caused by electricity; correct?

6 A Correct.

7 Q We have your testimony that it was a physical
8 impossibility for Mr. Larios to have made contact with
9 the chainsaw and the primary; correct?

10 A Rephrase that.

11 Q Yes, sir. We have your testimony that it was a
12 physical impossibility for Mr. Larios to reach with the
13 chainsaw to the primary and make direct contact?

14 A Correct.

15 Q And we don't have any confirmation of what this
16 substance was on rung number three of the ladder that
17 we've been looking at; correct?

18 A Correct.

19 Q Thank you, Mr. Whaley. That's all I have.

20 A Yes, sir.

21 CROSS EXAMINATION BY MR. STEGMAIER:

22 Q Mr. Whaley, good afternoon.

23 A How are you?

24 Q I'm well. I confess to you I got a 16-year old
25 daughter at home who loves Taylor Swift. And she was

1 showing me this video about 75 questions with Taylor
2 Swift. But I promise, we're not going to do 75
3 questions. I'm going to try to keep it to about 15. If
4 that's okay with you and I'm sure it's okay with the
5 jury as far as this goes.

6 So, same question that Ms. Brudvig had asked
7 Mr. Carter, were you acquainted with the fact that the
8 power line in question is not on Mr. Jackson's property?

9 A It appears not. It appears to be not on his
10 property.

11 Q And I know that you've seen a bunch of photographs
12 that Mr. Pugh had showed you including some that had
13 been taken by the coroner's office and from what I
14 understand you were taking these photographs; correct?

15 A I've taken a good bit of the photographs.
16 Mr. Dennison took a good bit of photographs. Some of
17 these are from him. Some of are from SCE&G and some of
18 them from me.

19 Q Yes, sir. So I'll represent to you that we had
20 sent a subpoena to the coroner's office and this is
21 Bates marked Colleton County Coroner Number 13. And by
22 virtue of the fact it came to the coroner's office, I'm
23 suspecting it came to you.

24 MR. STEGMAIER: May I approach, sir?

25 THE COURT: Yes.

1 Q Will you take a look at that photograph. Does that
2 appear to be one of the photographs you would have taken
3 just by virtue of the fact that this is what was
4 produced to us by the coroner's office?

5 A It could be. I can't say it's one of mine or not.
6 We get records of all these other photographs in here.
7 They bring them in. It may not necessarily be mine.

8 Q Okay. Well, that's fine. Mr. Pugh's already asked
9 you a bunch. I just wondered if you knew. And if you
10 don't know, we'll press on.

11 So, you know, we've listened hard to what
12 Mr. Carter had to say and we've listened hard to your
13 testimony about this contact with the primary line. The
14 top line --

15 A Correct.

16 Q -- out of the two of them. Now, you've been
17 working with the coroner for many years; correct?

18 A Correct.

19 Q Have you ever seen a body in any of this years that
20 you've been working with the coroner's office where that
21 body has made contact where they were holding something
22 that he or she had been holding that had made contact
23 with a primary line?

24 A Say it again.

25 Q Sure. If I didn't put it right, I apologize. You

1 got the primary line. Essentially, an electrocution
2 death where somebody either made contact with a primary
3 line however that would have happened or they were
4 holding something or in contact with something that made
5 contact with the primary line. Are you tracking --

6 A I've never seen a death from that.

7 Q All right. Do you know anything about the power
8 that runs through the primary line?

9 A No.

10 Q Now, Mr. Pugh had asked you a bunch of questions
11 about the fire department coming and getting the --
12 getting the chainsaw that was still running in the tree.
13 Do you remember those questions?

14 A Yes, sir.

15 Q And from what I understand there were at least two
16 trips up and down the ladder to collect everything?

17 A Correct.

18 Q Nobody got electrocuted doing that, did they?

19 A No, sir.

20 Q Now, with regard to your job working for the
21 coroner's office, do you carry a firearm?

22 A On a concealed.

23 Q Okay. Is it part of your job to carry a firearm?

24 A Only as a concealed.

25 Q All right. So you obviously have the requisite

1 permits to carry a concealed firearm?

2 A Correct.

3 Q So, is there ever a point in time where you take
4 target practice or do anything to keep your
5 certification up?

6 A Yes, sir.

7 Q Okay. When you are at target practice when you are
8 firing a firearm, you want to know what the target is,
9 don't you?

10 A Absolutely.

11 Q All right. And you also want to know what's behind
12 that target, don't you?

13 A What's beyond it, yes.

14 Q That's an important thing, isn't it? That's one of
15 the rules of safe firearm; correct?

16 A Correct.

17 Q All right. Now, with regard to the questions that
18 you had with the landscaper during your investigation, I
19 heard something about the side job business. Do you
20 remember that testimony?

21 A Yes.

22 Q What do you construe or do you have any sort of
23 interpretation what that meant?

24 A Well, in our business, a lot of times the guys will
25 want to go out and do something. Okay. And they'll ask

1 if they can borrow something to go do it. Now, I
2 personally don't loan chainsaws. But sometimes they
3 will take hedge trimmers or stuff and it's okay. I
4 don't have anything to do with it. They're gone, their
5 own stuff, their own extra side money for it. Okay.
6 The key to this one was when he said, I'm working --
7 they're working on a side job for me.

8 Q Right.

9 A That didn't make any sense to me. So I asked him
10 to clarify it and then he said, well, yeah, I guess
11 they're working for me.

12 Q And we were acquainted with the fact that
13 Mr. Jackson had no idea they were coming out there that
14 Sunday?

15 MR. APPLGATE: Objection.

16 MR. STEGMAIER: Whether he knows or not.

17 MR. APPLGATE: I don't know how -- Your Honor,
18 objection. I don't know how he can understand the
19 mindset of Mr. Jackson. I don't know if there's any
20 foundation he ever met Mr. Jackson in his life.

21 MR. STEGMAIER: My understanding is that he knew --

22 Q You communicated with Mr. Jackson after this
23 accident?

24 A I did.

25 Q Okay. Was that any part of your conversation?

1 A Yes.

2 Q Were you acquainted with the fact that Mr. Jackson
3 didn't have any idea they were coming out that day?

4 A I asked Mr. Jackson specifically who was doing the
5 work for him.

6 Q Okay.

7 A Okay. And he said, Mr. Stevens.

8 Q Correct. But as it related to that particular day
9 in November, are you acquainted with the fact that
10 Mr. Jackson didn't know they were coming at all?

11 MR. APPLEGATE: Objection as to foundation, Your
12 Honor.

13 THE COURT: Sustained as to the form of the
14 question. You can ask him does he know, that's okay.
15 Does he have any knowledge as to whether Mr. Stevens or
16 --

17 MR. STEGMAIER: I got you.

18 THE COURT: Go ahead.

19 Q Do you know if Mr. Jackson knew that this team of
20 workers was in fact coming to their property on that
21 Sunday morning?

22 A No.

23 Q Now, let's take off your coroner hat for just a
24 second and put on your landscaper hat. And I know we
25 had the opportunity to do that when we met back for your

1 deposition.

2 A Basically remember a little bit about that.

3 Q Yes, sir. So one of the things I shared with the
4 jury today during the opening statement was the fact
5 that:

6 "A landowner is entitled to expect that invitees
7 will exercise ordinary perception, intelligence, and
8 judgement to discover open and obvious conditions,
9 appreciate the risks they present and take only the
10 minimal steps necessary to protect themselves."

11 MR. APPLEGATE: Your Honor, objection to this whole
12 line of questioning. I don't understand his reading the
13 jury charge to the coroner.

14 THE COURT: He's going to ask him a question with
15 regard to that charge.

16 MR. STEGMAIER: Right.

17 THE COURT: So overrule. He can ask him.

18 MR. APPLEGATE: Is he familiar with that charge? Is
19 there a foundation?

20 MR. STEGMAIER: It's the law.

21 THE COURT: Overruled. You can ask.

22 Q So I read to you what we understand to be the
23 standard that an estate concerning invitees that come on
24 the property and --

25 A Would you read it again, please?

1 Q Yes, sir, I will be glad to.

2 "The landowner is entitled to expect that invitees
3 will exercise ordinary perceptions, intelligence, and
4 judgement to discover open and obvious conditions,
5 appreciate the risk they present and take the minimal
6 steps necessary to protect themselves." So as a
7 landscaper, you have customers, don't you?

8 A Yes, sir.

9 Q So you come on to their property, don't you?

10 A Yes, sir.

11 Q So in your business, do you use your perception,
12 intelligence, and judgement to discover open and obvious
13 conditions?

14 A Yes, sir.

15 Q Do you use your perception, intelligence, and
16 judgement to appreciate the risks that these conditions
17 might present?

18 A Yes, sir.

19 Q Okay. And do you take the minimal steps necessary
20 to protect yourself when you see a condition that might
21 injury you?

22 A Yes, sir.

23 Q All right. So in -- you had mentioned in the
24 course of the examination by Mr. Applegate the fact that
25 the power company had come out to investigate and you

1 used the term "proper safety precautions." Do you
2 remember using that term?

3 A Sure.

4 Q What did that mean? Can you elaborate just a
5 little bit?

6 A While they were going up in the bucket to check
7 things, a lot of times they'll put a type of rubber
8 cloth or things if they have to go in between the lines,
9 they'll put one across the live line. And if they have
10 to go underneath it or over it. Just different things
11 that linemen do to make sure that they don't physically
12 come in contact.

13 Q Now, when you and I first visited with one another
14 during your deposition, I asked you about your
15 experience with regard to doing aerial work. Are there
16 points in time where you're faced with a customer that
17 has aerial work needs like cutting palm trees?

18 A Sure.

19 Q And I think you mentioned something about the
20 Murdaugh's Tree Company?

21 A If we have things that are close to high power
22 electrical lines then I generally get Murdaugh's Tree
23 Service to come do it.

24 Q That's one --

25 A Or a tree service that I know is licensed.

1 Q When you have a circumstance like that, that's a
2 minimal step that you take to protect you and the
3 workers that work with you?

4 A Yes.

5 Q Edisto Beach is obviously power, there's
6 electricity on Edisto Beach, that's clear, it's crystal
7 clear; right?

8 A Yes.

9 Q So there's power lines everywhere, aren't there?

10 A Yes, sir.

11 Q And if you're doing landscaping work that's
12 something you have to be mindful of, isn't it?

13 A (Nodded)

14 Q Is that a 0?

15 A Yes, sir.

16 Q It's a knowing and expected condition, isn't it?

17 A Yes, sir.

18 Q Last question as far as this goes. During the
19 course of the opening statements there was some
20 reference to a seed pod that was made. And I think
21 plaintiff was helpful in bringing an example as far as
22 these seed pods. Now, do you recognize something like
23 this?

24 A Yes, sir.

25 Q Sometime they're called a fruit stalk, too, as

1 well?

2 A That's correct.

3 Q So I remember in the course of your examination by
4 Mr. Applegate you said something about the fact that
5 this could touch a line and possibly burn. Do you
6 remember that?

7 A Yes, sir.

8 Q So two questions about that. If that's in fact the
9 case, is that a hazard condition that you should be on
10 the watch out for if you're doing landscaping?

11 A Yes, sir.

12 Q And irrespective of whether there's a power line or
13 not, when you are doing work for somebody that has a
14 palm tree that needs to be cut back, is that something
15 that you would typically survey for when you're doing
16 work?

17 A Yes, sir.

18 Q And that maybe would entail walking around a tree,
19 making sure what the conditions are before you just haul
20 off and do it, that's fair, isn't it?

21 A Yes, sir.

22 Q That's reasonable, isn't it?

23 A Yes, sir.

24 MR. STEGMAIER: Your Honor, if I could approach for
25 just one second.

1 (Bench conference)

2 Q Sir, I've been appreciative of your time. That's
3 all the questions I have for you. Thank you, sir.

4 THE COURT: All right. Mr. Kennedy?

5 MR. KENNEDY: Yes.

6 CROSS EXAMINATION BY MR. KENNEDY:

7 Q Good afternoon, Mr. Whaley. It's good to see you
8 again?

9 A Yes, sir.

10 Q I promise I will be even briefer than everyone else
11 perhaps. Maybe I have five questions if that.

12 Just to clarify the timing of all this. By the
13 time you arrived at the scene on Sunday, November 29,
14 Mr. Larios had already been transported to the hospital;
15 is that correct?

16 A Yes, sir.

17 Q So did you ever see his body?

18 A No, sir.

19 Q And in the course of your investigation, you
20 mentioned seeing and, again, the knowing electric
21 berries by either burned palm fronds or burned tip ends
22 on one of them; is that correct?

23 A Yes, sir.

24 Q And I understand you saw it under the power line?

25 A Yes.

1 Q Now, when you say, "under the power line," are you
2 referring to the top line, the primary line, or the
3 bottom line, the neutral line?

4 A It was under the primary line. It was cut and
5 hanging.

6 Q Cut and hanging --

7 A Cut and hanging under the primary.

8 Q Okay. And over the neutral? Above the --

9 A I couldn't tell you whether it was over the neutral
10 line or not.

11 Q And in the course of your investigation, you
12 indicated these -- both Mr. Jackson the property owner
13 and Jane Smoak at Edisto Realty; is that right?

14 A That's correct.

15 Q And then based on that conversation, it was your
16 understanding that the property owner hired Will
17 Stevens; is that right?

18 A Correct.

19 Q And now I'm going to ask you to take off your
20 coroner hat and put on your landscaper hat. Hopefully
21 just one more question.

22 As a landscaper, if you're running a chainsaw, do
23 you typically wear eye protection?

24 A You're supposed to. I wouldn't say that we always
25 do.

1 Q And is the reason you're supposed to wear eye
2 protection is the concern that material from the
3 chainsaw bits of leaves, foliage, plants, or whatnot
4 could get into your face and into your eyes?

5 A Yes, sir.

6 Q I think that is all the questions I have. Thank
7 you for your time.

8 THE COURT: Thank you, sir. Anything on redirect?

9 MR. APPELEGATE: Yes, Your Honor.

10 THE COURT: All right.

11 REDIRECT EXAMINATION BY MR. APPELEGATE:

12 Q Mr. Whaley, I want to start by just going back a
13 little bit to your testimony. We talked about earlier,
14 we talking about a method in which somebody made this
15 whole thing could have happened. You kind of explained
16 in your view how this kind of thing happens. And I want
17 to show you a poster board that has a picture. That was
18 -- now is this -- this is a picture, can you describe
19 this picture for me?

20 A That line is clear in that direction.

21 THE COURT: If you need to step down, that's fine.
22 Just keep your voice up so the court reporter can hear
23 you.

24 A We'll do.

25 Q If you wouldn't mind so the jury can see this

1 picture.

2 Again, as we understand, that's the set up that was
3 there and the ladder from which Mr. Larios fell;
4 correct?

5 A Correct.

6 Q So where's your understanding that he was? He was
7 somewhere up here on the ladder, is that the idea?

8 A Yes, sir.

9 Q Okay. And so his view looking forward, again as I
10 understand it, I think you took a picture. This gives a
11 little different perspective. As I understand, he was
12 up here looking forward; correct?

13 A Yes, sir.

14 Q Okay.

15 A He was looking that way.

16 Q And as we understand it, as we know here today
17 looking 20/20, we know the power lines are the neutral
18 is running somewhere in through here behind the tree;
19 correct?

20 A This way. (Indicating)

21 Q And we know that the primary power line is running
22 somewhere up in here; correct?

23 A Well, just above it.

24 Q Just above it?

25 A Both running in the same direction.

1 Q But as far as where this ladder is, the power
2 line's on the other side of the tree; is that correct?

3 A Correct.

4 Q So where he's standing on the tree of the ladder --

5 A There it is right there. Here's the bottom.

6 (Indicating)

7 Q That's the bottom line?

8 A The top one is going to be somewhere --

9 Q Top one is right in -- much closer to it. Okay.
10 So from this vantage point, the view is obstructed; is
11 that correct?

12 MR. STEGMAIER: Objection, Your Honor. That calls
13 for speculation.

14 MR. APPELATE: I'm just looking at the picture.

15 Q Can you tell whether his view was obstructed if you
16 stand here on the --

17 THE COURT: I'm going to sustain your objection, but
18 he can testify to what he sees on the photograph.

19 MR. STEGMAIER: Yeah. So, I mean, I want to make it
20 crystal clear that it's what we think Mr. Larios would
21 have seen which would be whatever --

22 THE COURT: He can testify to what he sees on the
23 photograph.

24 MR. STEGMAIER: I understand.

25 Q If you were standing on the ladder at the top of

1 this ladder, is your view to the other side obstructed
2 by the palm tree?

3 A It could be.

4 Q Okay. I mean, and my question is the power lines
5 were on the other side of this tree. I'm trying to
6 orientate the jury.

7 And the idea is that Mr. Larios and just make sure
8 we understand now we have a little bit of a prop to
9 understand. Mr. Larios makes contact with the chainsaw;
10 is that correct?

11 A Yes.

12 Q And the chainsaw, we have a contact between the
13 power line and through the fruit stalk into Mr. Larios;
14 is that correct?

15 A Correct.

16 Q Now, I would like to go back if I can and ask you
17 to look at what was marked as Exhibit One which is the
18 photos that you took. We have those up here, if I may.
19 If you'll look at that first photo.

20 MR. PUGH: Which one is it, Counsel?

21 MR. APPLGATE: It's part of the exhibit of the
22 coroner photos.

23 Q As I understand it, Mr. Whaley, those are the
24 pictures that you took when you investigated the scene
25 on the first day; correct?

1 A Yes, sir, I believe these are.

2 MR. APPLGATE: If I may, Your Honor, I want to
3 publish these same pictures while we're doing this.
4 These are just demonstratives.

5 THE COURT: Of what's already in evidence?

6 MR. APPLGATE: Yes.

7 THE COURT: Okay. For the jury, these are some of
8 the same pictures.

9 Q If you'll look at that very first picture and tell
10 me, do you see, Mr. Whaley, a power line in that
11 picture?

12 A No, sir.

13 Q And if we can switch to the next picture related to
14 the trees. This is a close-up at the top of the tree
15 that you took that day. Is there any vision of the
16 power line in that picture?

17 A No, sir.

18 Q I want to show you another one that has a view of
19 the chainsaw and ask you if there's any ability to see,
20 this is from the prospective of Mr. Larios, any ability
21 to see power lines from that prospective?

22 A There would be no way to see.

23 Q Now, there's another picture that you took, it's
24 looking from the down below, but if you'll look at that
25 picture, this is kind of looking up. If you look at

1 that picture, do you see the power lines in that?

2 A No, sir.

3 Q Okay. As I understand it, if you look through
4 these pictures and I know we've done this exercise
5 before, but in your pictures, the powers lines aren't
6 visible; is that correct?

7 A Correct.

8 Q Okay. And as we talked about and we had a
9 discussion with Mr. Carter earlier and your testimony
10 earlier as you and I spoke, when you were out there that
11 first day you didn't see the power lines; correct?

12 A No, I wasn't really looking for the power lines
13 either at that point. Because -- I mean, I looked up,
14 but, no, and I didn't walk to the other side.

15 Q And I think Mr. Pugh showed you the picture and,
16 again, do you know where this picture -- or who took
17 this picture?

18 A SCE&G, I think.

19 Q Okay. So this is -- and do you know where this
20 picture is taken from?

21 A Let me bring it closer.

22 Q Yes, sir.

23 A I'd need to see the old picture he showed me.
24 Because one has the gazebo in it and there's a palm back
25 in there that can be identified by that gazebo.

1 Q Is it this one?

2 A May I step down, please?

3 THE COURT: Yes, sir.

4 A No, it wasn't that one. Here you go.

5 THE COURT: Keep your voice up, please.

6 A Okay. Look carefully. The gazebo tells me that
7 the tree it would have been trimmed in here somewhere.

8 Okay. Maybe hidden by the branches. This picture, see
9 that palm, that's the same palm. You just can't see the
10 gazebo. It's taken high up. You want me to show you?

11 Q This is from the prospective of Louise Street?

12 A From Louise Street down the bike path going --

13 Q Behind the property?

14 A Northwest.

15 Q Okay.

16 A Did you see what I was talking about?

17 MR. PUGH: I did.

18 A Okay.

19 Q All right. Thank you. Again, you didn't take any
20 pictures from that prospective, did you?

21 A No, sir.

22 Q And when you did your investigation trying to
23 figure out the cause of Mr. Larios' fall from the
24 ladder, you didn't go over to this area and look from
25 that prospective, did you?

1 A No, sir.

2 Q In this picture along with the other pictures we
3 discussed of the burn marks on the primary line was not
4 produced to you in the coroner's file; is that correct?

5 A I don't know whether they were or not.

6 Q Okay. While you were out there, I just want to
7 make it clear, did you see anything that indicated --
8 were there any warnings as you surveyed the property or
9 looked at in any pictures, were there any warnings or
10 indicators around the property warnings that there were
11 power lines running through this area?

12 A Not necessarily.

13 Q Okay. And I think as Mr. Pugh mentioned to you
14 that this area, that used to with be a roadway sometime
15 ago. I think he said it's sort of a forest that runs
16 behind this house?

17 A It never became an actual road. It was always
18 grown up. It was never a road as far as I have ever
19 known. It was just designated on paper to be a road.
20 And then the town decided to turn it into a meandering
21 bike path by one of our local retired architects to
22 design it for something nice and not turn it into a
23 road.

24 Q I know a minute ago, Mr. Whaley, that counsel was
25 asking you about sort of the law as he perpetrated to

1 you as it relates to the homeowner and I wanted to ask
2 you about that. Are you aware that Mr. Jackson, the
3 homeowner, or that Edisto Realty or that PENSCO Trust,
4 anybody who owned this property ever did any kind of
5 inspection to walk this area to determine whether the
6 trees and the power lines were causing any dangers or
7 problems?

8 A Say that again.

9 Q When you did your investigation, did you ever find
10 any information to suggest that the homeowner
11 Mr. Jackson or Edisto Realty had done any inspection on
12 this property to determine if those power lines were
13 there and warned anyone about them?

14 MR. STEGMAIER: Objection. Foundation. I think --
15 I think the question should be asked before this one is,
16 did he ever ask Mr. Jackson or Edisto about any sort of
17 warnings.

18 THE COURT: I guess -- I assume that's what you
19 meant when you asked him did he know?

20 MR. APPLGATE: I was trying to get the results of
21 his investigation if he made a determination, yes, Your
22 Honor.

23 THE COURT: Okay.

24 A Whether either one of those agencies would have
25 inspected the property for that?

1 Q Had any of them inspected the property and warned
2 Mr. Larios about those power lines?

3 A No.

4 THE COURT: Is that a, no, or you don't know?

5 A I don't know.

6 Q And as it relates to the power lines, Mr. Whaley,
7 are you aware of the law that requires and the rules
8 that require SCE&G to keep their power lines clear from
9 any and all vegetation?

10 A I'm not.

11 Q And you didn't do anything to analyze what that
12 was?

13 A No, sir.

14 Q Okay. Do you know why SCE&G came in as you
15 described earlier and cut the top of that tree off?

16 MR. PUGH: Object to the form. Foundation.
17 Speculation.

18 THE COURT: You can ask him if he knows.

19 Q You can answer it.

20 A Better ask the question again.

21 Q Okay. Do you know why SCE&G came in there and cut
22 the top of that tree off?

23 A Not specifically. Um --

24 MR. PUGH: Your Honor, object to anything beyond
25 that.

1 THE COURT: I'm going to sustain any objection to
2 speculation. If he knows, he knows. If he's guessing
3 --

4 MR. APPELATE: I understand that. He earlier
5 testified that he had had some conversations with them
6 about it, so I just was trying to follow-up and find out
7 whether he was given any explanation why they cut the
8 top of the tree off.

9 THE COURT: Right. And you can ask that.

10 A You would cut the top of the tree off because it's
11 created injury and you don't want it to create anymore.

12 MR. APPELATE: That's all the questions I have,
13 Your Honor. Thanks. Thank you, Mr. Whaley.

14 A Yes, sir.

15 THE COURT: Mr. Pugh?

16 MR. PUGH: Briefly, Your Honor.

17 RECROSS EXAMINATION BY MR. PUGH:

18 Q Mr. Whaley, when you went to the scene of this
19 incident on November 29th, I think you just told us you
20 weren't looking for power lines; right?

21 A Correct.

22 Q You went out there because you were told a man fell
23 off the ladder and died; correct?

24 A Correct.

25 Q If you went out there and you were looking at all

1 for power lines you would have seen them; right?

2 A If I was looking at the power lines, I would have
3 seen them. I would have searched them out.

4 Q And you told us earlier if you would have been
5 doing tree trimming at this location you would have
6 looked to see if there were any power lines before you
7 wind up and began trimming that tree; correct?

8 A Yes, sir.

9 Q And that's required of you, isn't it?

10 A It's something you need to do.

11 Q Of course. You need to look around and see what
12 you're doing; correct?

13 A Yes.

14 Q And when you were out there the night when SCE&G
15 was out there, can we agree that one of the photographs
16 we looked at earlier at night you can see two power
17 lines; right?

18 A Yes, sir.

19 Q So you can see them at night; right?

20 A Yes, sir.

21 Q See them during the day; right?

22 A (Nodded)

23 Q Yes?

24 A Yes.

25 Q You saw them during the day; right?

1 A I did. They're a little hard to see sometimes with
2 the tone of light and different things like that.

3 Q Right. And we've seen some photographs that the
4 lines are clearly depicted in there; correct?

5 A Yes, sir.

6 Q And we've seen some photographs where it's a little
7 more difficult if not hard to tell where the line is;
8 correct?

9 A Yes, sir.

10 Q And that's what you're talking about with the
11 photographs?

12 A Yes, sir.

13 Q Sometimes you can see things, sometimes it's a
14 little more difficult; right?

15 A Correct.

16 Q But it's not your testimony that between the time
17 Mr. Larios was injured and when you went out there that
18 someone went out and made the power lines disappear;
19 right?

20 A No.

21 Q They weren't invisible, were they?

22 A No.

23 Q If you were looking for them you could see them?

24 A If you were looking for them.

25 Q And if you can take a photograph of them you can

1 see them?

2 MR. APPLGATE: Your Honor, can we do a side bar?

3 (Bench conference)

4 MR. PUGH: May I proceed, Your Honor?

5 THE COURT: Yes, sir.

6 Q Thank you for your patience, Mr. Whaley.

7 Mr. Whaley, you were asked some questions by

8 Mr. Applegate and he had the fruit stalk, seed pod,

9 whatever we're calling it, remember that?

10 A Yes, sir.

11 Q You -- I just want to be clear, you don't know of
12 your own knowledge what it was, if anything, Mr. Larios
13 was cutting at the time he yelled out; correct?

14 A Correct.

15 Q You don't know where that was on the tree; correct?

16 A Correct.

17 Q You don't know what piece of vegetation, if any, he
18 was cutting; correct?

19 A Correct.

20 Q You don't know what happened to it at the time that
21 he yelled out; correct?

22 A Correct.

23 Q Thank you, Mr. Whaley. Appreciate it.

24 RECROSS EXAMINATION BY MR. STEGMAIER:

25 Q Mr. Whaley, it'S a yes or no answer. When you're

1 standing at the split rail fence at the back of the
2 Jackson property and you're looking straight up, you can
3 see the power lines, can't you?

4 A Yes, sir.

5 Q During the course of your investigation or
6 Mr. Carter's investigation, did you ever learn or find
7 out how many times Mr. Larios had been to the property
8 before this date?

9 A I have no idea.

10 Q Okay. Last question. When you have to refer an
11 aerial matter out to the Murdaugh's, who gets paid, the
12 Murdaugh's or Mr. Whaley?

13 A Sometimes it's me, sometimes it's straight to
14 Mr. Murdaugh. Depends on the situation.

15 Q Okay. Thank you.

16 A Yes, sir.

17 MR. KENNEDY: I have no further questions.

18 THE COURT: Thank you very much, sir. You may step
19 down.

20 Let me ask y'all something real quick.

21 (Bench conference)

22 THE COURT: All right. Ladies and gentlemen, let me
23 get you to step back into the jury room for just a few
24 minutes. I'm going to take up an issue with law with
25 the attorneys. Please don't have any conversation about

1 the case. Okay.

2 (The jury left the courtroom at 4:51 p.m.)

3 THE COURT: Yes, sir.

4 MR. APPLGATE: Just as a matter, I'd be happy if
5 you'd educate me on what I should probably do. Like I
6 said, I made this error in identifying verses pushing
7 this in. And so obviously it was not what I meant to do
8 and it was in contravention of your ruling earlier.
9 Obviously, in my favor. I just want to, I guess, redact
10 Plaintiff's Exhibit Two.

11 THE COURT: Or withdraw the exhibit?

12 MR. APPLGATE: Withdraw the exhibit.

13 THE COURT: And if I recall that exhibit, even
14 though it was moved in, no one testified to its contents
15 and it hasn't been published to the jury?

16 MR. APPLGATE: Correct.

17 MR. STEGMAIER: Your Honor, I would have been glad
18 to cross examine on the contents --

19 (Laughter)

20 MR. STEGMAIER: -- but I do bring it to the Court's
21 attention before I did this.

22 MR. PUGH: While you're up here, these were not
23 marked by the court reporter as coming in. They still
24 had the ID, but they're in.

25 THE COURT: Three and Four, they are in. I got One

1 through Nine as being in without objection.

2 MR. PUGH: Yes, sir.

3 THE COURT: And then so the record is clear, that
4 was Plaintiff's Exhibit Two, that's Two; right?

5 MR. BUCKNER: Yes, sir. One is in and Two has been
6 withdrawn.

7 THE COURT: Okay.

8 MR. PUGH: Your Honor, for the matter we need to
9 take -- do you want to do it right now?

10 THE COURT: Do y'all want a short break and then do
11 it?

12 MR. PUGH: I can do it and then take -- let's do it
13 now and take a quick --

14 THE COURT: Yeah.

15 MR. PUGH: Can I make a suggestion? Dr. Presnell is
16 here, so I'd rather not do my motion in front of her.

17 THE COURT: Okay. Did Dr. Presnell get situated?

18 MR. BUCKNER: She's with William outside the
19 courtroom.

20 THE COURT: Okay.

21 MR. BUCKNER: Which I think is what Mr. Pugh wanted.

22 THE COURT: All right.

23 MR. PUGH: I'll make this very brief. I understand
24 she's a physician. And, Your Honor, we filed our motion
25 to exclude certain opinions of Dr. Presnell. We filed

1 it on September 20, 2019. The Court was kind enough to
2 allow us to defer it until she showed up for trial which
3 is now.

4 Frankly, Your Honor, I'm fine to stand on our papers
5 with the following: We have just had the testimony of
6 Richard Carter of the coroner's office along with
7 Mr. Whaley. Primarily, I'm rely on the testimony of
8 Richard Carter that -- so the chronology very briefly is
9 we had Mr. Larios going for an autopsy. On November 30,
10 autopsy performed by Dr. Presnell. Complete autopsy,
11 view of the body, and she issues a preliminary report
12 and says blunt force trauma. Not a single reference to
13 electricity.

14 Then a few days later when she has a telephone call
15 with Mr. Carter and tells her the results of that
16 preliminary report, he tells her two things that, quote,
17 "have come up on further investigation" and those two
18 things were, one, that Mr. Larios made direct contact
19 with the overhead primary; and, number two, that there
20 was rubber from Mr. Larios' shoes on the ladder.

21 As Your Honor has heard, no one has ever tested the
22 now missing chainsaw. If anything, the mark was caused
23 by after we have this series of passing around the
24 chainsaw between folks. And on top of that, we have
25 Mr. Whaley telling us that it was a physical

1 impossibility for that chainsaw for Mr. Larios to make
2 contact with the aluminum ladder.

3 Number two, as to the ladder, we have no one ever
4 testing this residue on the ladder to determine what if
5 anything it came from. And those are the two things
6 that Dr. Presnell relies upon in issuing her
7 supplemental report that includes a reference to
8 electrical contact.

9 MR. DUFFY: Your Honor, quickly in response just for
10 the record. You know, I don't think there's any dispute
11 that Mr. Carter's phone call to Dr. Presnell was
12 certainly the impetus for her reexamining the body.
13 That's not disputed. But what Mr. Pugh seems to suggest
14 is that she got this information from Dr. Carter, didn't
15 look at the body again and just all of a sudden changed
16 her report based on that information.

17 The testimony she's given in deposition is that she,
18 using her experience as a pathologist, in performing
19 autopsies looked at, examined the body, and determined
20 that there was a point on Mr. Larios' abdomen. A
21 slippage of the dermis from the epidermis the layers of
22 skin and that is something associated with an electrical
23 contact injury.

24 So he can cross examine her all day long on that.
25 That's his, you know, prerogative, but to say that she's

1 not qualified to testify regarding what she found on the
2 body --

3 THE COURT: He's not -- that's not his argument.
4 His argument is that her results are due to
5 misinformation. And so therefore -- now, I know what
6 you're saying. Still as a forensic pathologist, she can
7 testify to what that mark on his stomach indicated to
8 her.

9 MR. DUFFY: Correct. Her results are based on her
10 observation --

11 THE COURT: Her results are based on her viewing the
12 body.

13 MR. DUFFY: Correct.

14 THE COURT: And as to why she didn't reference that
15 at all in her original is certainly open to cross
16 examination. And let me because I have not seen the
17 supplemental report, does she give the opinion that the
18 electrical -- I'm just looking at the motion. It says
19 here that the electrical shock contributed to his fall.
20 She doesn't testify as to what contributed to the fall,
21 does she?

22 MR. DUFFY: Your Honor, she makes a finding that as
23 a contributory cause in her autopsy report electrical
24 contact is noted as contributory. That's the finding.

25 THE COURT: Okay.

1 MR. PUGH: Your Honor, it's on page 2. It's
2 attached.

3 THE COURT: Oh, it is attached.

4 MR. PUGH: It's attached under --

5 MR. DUFFY: That was my understanding.

6 MR. PUGH: You know what, if it's not, can I
7 approach?

8 THE COURT: I got it. It is attached. What page
9 did you say it was?

10 MR. PUGH: It's page 2 of 5.

11 THE COURT: Okay.

12 MR. PUGH: And if you look there at the top, "Cause
13 of Death **Blunt trauma to torso** *Due to* **Fall from height**
14 **(ladder)**." Then she adds below it "*Contributory:*
15 *Electrical contact with power line.*"

16 That's the new part so to speak. And then if you go
17 down, Your Honor, under the Case History, that next
18 paragraph. Look at the last sentence: "Further
19 investigation revealed the chainsaw had contacted an
20 overhead power wire." We know that's not true.
21 "Rubber-like material from decedent's shoes was noted on
22 a ladder rung." Unconfirmed. So that's the issue.

23 MR. DUFFY: Your Honor, those are perfectly
24 appropriate issues for cross examination. Our
25 understanding was that was Your Honor's ruling. I don't

1 know -- I mean --

2 THE COURT: Well, and that's my point is that -- I
3 don't know what her testimony is going to be as to the,
4 number one, why it was not significant enough of an
5 injury to be noted in her original report. I mean,
6 because I would think even if you don't know what caused
7 it, it would be noted and it wasn't.

8 But, again, that's farther for cross, I think. Then
9 she receives the information. Bogus or not causes her
10 to go back and to do a reexamination. And then I'm
11 assuming her -- again, I shouldn't assume maybe, but
12 that her report as it relates to that mark by -- to a
13 degree of medical certainty is consistent -- I don't
14 know if she says that or not is contestant with
15 electrical injury.

16 MR. APPELATE: That is her opinion.

17 MR. PUGH: You bring --

18 MR. APPELATE: Again, Your Honor, these issues I
19 think I know we've been doing this continuously, this is
20 exactly textbook cross examination. The issue of the
21 case.

22 THE COURT: I agree.

23 MR. APPELATE: He says that all this evidence that
24 we've put forth is not evidence of contact. We say it
25 is evidence of contact and then that's sort of the issue

1 of the case.

2 MR. PUGH: If I might and I'll be done.

3 THE COURT: Yes, sir.

4 MR. PUGH: I promise you. Page 10 of my motion,
5 Your Honor -- or my memo. It touches on exactly what
6 you just brought up. Mr. Applegate asked her:

7 "I understand your comments. Just a moment ago your
8 testimony was that this was consistent with an
9 electrical contact. I'm going to ask you a further
10 question, can you give that opinion to a reasonable
11 degree of medical certainty?"

12 Answer: "I don't know what that means."

13 MR. DUFFY: Would you read the next line?

14 MR. PUGH: Of course I will.

15 "Okay."

16 Then she says: "I mean, it's my opinion that this
17 is an electrical contact." This is the part:

18 "Take away the complete circumstances and that maybe
19 he's decomposing," blah, blah, blah.

20 Then she says: "We see with something besides an
21 electrical contact. I mean, you know, it's a 51
22 percent" -- I mean, I don't have to read it to you, you
23 see it. But the very end:

24 "It's likely it was electrical contact in light of
25 the circumstances and the scenario."

1 The circumstances and the scenario is the
2 misinformation you just noted.

3 THE COURT: Right. And I think you can light her up
4 on cross examination and say, so then, Doctor, if that
5 information you got was completely bogus --

6 MR. PUGH: I understand.

7 THE COURT: -- more than likely your opinion here is
8 that that injury was caused by decompensation.

9 MR. PUGH: I understand.

10 THE COURT: Or whatever. I don't think it precludes
11 her from being able to testify on that.

12 So I note your exception, but I'm going to allow the
13 testimony and then I'll give you all the lead way you
14 need on cross.

15 MR. PUGH: Appreciate it, Your Honor.

16 THE COURT: Let me ask y'all this, though. I don't
17 need to ask you. We need to put her up, she's here from
18 Columbia, let's put her up.

19 MR. STEGMAIER: Charleston.

20 THE COURT: I apologize. Charleston. All right.
21 Are we ready?

22 All right. Now, I'm going to take your suggestion,
23 Mr. Pugh, let's take a few minutes. If anybody needs to
24 go and use the restroom or get a drink and then we'll
25 get started.

1 MR. PUGH: I appreciate the indulgence.

2 THE COURT: Sure.

3 (There was a short break taken)

4 THE COURT: All right. Are we ready? Let's bring
5 the jury back in, please.

6 (The jury entered the courtroom at 5:15 p.m.)

7 THE COURT: All right. Thank y'all. Please have a
8 seat. Folks, we have one more witness this afternoon
9 and we recognize the plaintiff for your next witness.

10 MR. APPELLEGATE: Your Honor, thank you. Your Honor,
11 we call Dr. Presnell.

12 THE COURT: Dr. Presnell, if you'd please come
13 around and be sworn, please, ma'am.

14 ERIN PRESNELL,
15 being first duly sworn, was examined and testified as
16 follows:

17 THE CLERK: Please have a seat on the witness stand
18 and state your name for the record.

19 A Hi, my name is Susan Erin Presnell,
20 P-R-E-S-N-E-L-L.

21 DIRECT EXAMINATION BY MR. APPELLEGATE:

22 Q Dr. Presnell, where do you reside?

23 A Excuse me.

24 Q Where do you live?

25 A Charleston, South Carolina.

1 Q What is your occupation?

2 A I'm a forensic pathologist at the Medical
3 University of South Carolina.

4 Q Can you give me briefly your educational
5 background?

6 A Yes. So I went the Clemson and I graduated with --
7 in microbiology. Then I went to medical school at MUSC
8 which is the Medical University. Finished medical
9 school, I chose pathology as my field of medicine.
10 Stayed at MUSC to do my training there. And then after
11 that, I continued to stay there to do my subspecialty
12 training in forensic pathology. And then they hired me
13 as faculty. So I've been there since 1999. So for 20
14 years.

15 Q See how good and quick she is. We're going faster.
16 (Laughter)

17 Can you tell the jury what you do on a daily basis
18 with forensic pathology?

19 A Well, so we do medical and forensic autopsies at
20 MUSC. But the primary -- most of what we do are
21 forensic autopsies. And those are autopsies on someone
22 that has passed from either a natural cause of death or
23 an unexpected cause of death. And the way that we get
24 the cases, South Carolina is a coroner death
25 investigation system. Is that each of the counties in

1 South Carolina have their own elected coroner and their
2 deputies. The coroners respond to death scenes and they
3 decide who would get or who they're going to authorize a
4 forensic autopsy on. And then they send that person to
5 us to do the autopsy at MUSC.

6 Q So in forming your conclusions as to cause of death
7 in an autopsy, do forensic pathologists like yourself in
8 your field normally rely on information gathered at the
9 scene by coroners?

10 A Yes.

11 Q Is it a normal practice for forensic pathologists
12 to rely on this information provided by the coroner when
13 you're conducting your autopsy?

14 A Yes. We -- often times not all of the information
15 that comes out during an investigation is going to be
16 known when we do the autopsy. But, you know, the
17 information they have, they will share with us. You
18 know, like where the person was found, what they were
19 last doing, when they were last seen alive. That kind
20 of information. So we have an approach to the autopsy.
21 Then, you know, just depending on the case there might
22 be more information that comes up during the
23 investigation which, you know, becomes a part of the
24 case.

25 I will speak louder and I'm going to try to slow

1 down.

2 (The jury, get a little bit closer so I can hear
3 you. I can't hear you over here)

4 Q Approximately how many autopsies have you
5 performed?

6 A About -- it's an estimate and I would say about
7 3,000.

8 Q Okay. Have any of those autopsies involved
9 electrical shock or burns or electrocutions?

10 A Yes. I knew you were going to ask about how many.
11 I was trying to figure about how many. I would say
12 probably maybe one a year, so about 20 for
13 electrocutions. Not thermal injury, that's a lot more
14 of those.

15 Q Let me hand you what I'll mark for identification
16 purposes your autopsy report ask you to review that.

17 (WHEREUPON, Plaintiff's Exhibit Number 3 was marked
18 for identification)

19 A So this is a copy of the final autopsy report that
20 I temporarily did at MUSC on how Mr. Jose Licona Larios.

21 Q So did you conduct a diagnostic evaluation of
22 Mr. Larios and then render the diagnosis in this report?

23 A Yes. Well, I did an autopsy on November 30, 2015.
24 And did all the different -- all the normal studies we
25 would normally do during the course of an autopsy and

1 including the cause of manner of death.

2 Q Does this autopsy report in front of you appear to
3 be a genuine and authentic copy of the original?

4 A Yes, it does.

5 MR. APPELEGATE: Can I mark that as Plaintiff's
6 Exhibit Two, Your Honor?

7 THE COURT: All right. Any objection to Plaintiff's
8 Exhibit Two.

9 MS. SPIRES: Wouldn't we go to Three?

10 THE COURT: Three.

11 MR. APPELEGATE: Okay.

12 MS. SPIRES: Because I would to refer to Two as
13 being withdrawn.

14 MR. APPELEGATE: Plaintiff's Three.

15 THE COURT: Yeah, that report's marked as -- any
16 objection to Plaintiff's Exhibit Three?

17 MR. STEGMAIER: No, sir.

18 MR. PUGH: No objection.

19 THE COURT: You may proceed, sir.

20 (WHEREUPON, Plaintiff's Exhibit Number 3 was
21 entered)

22 Q Can you -- as it relates to Jose Larios, can you
23 describe sort of the autopsy process that you engaged
24 in?

25 A It was pretty standard approach as for all

1 autopsies. So, again, I will get information from the
2 coroner, the body will arrive, we'll document the person
3 as they arrive to us so that whatever clothing they
4 still have on, et cetera. We will unclothe them, make
5 sure they're all clean so we can evaluate any lesions,
6 any injuries that they might have. We document those
7 with diagrams, but also photographs. And then we do a Y
8 incision and look at all the internal organs. We
9 dissect them. We may take pieces of them to look at
10 under a microscope depending on the type of case. We
11 also look at the brain. All of our autopsies are
12 complete autopsies.

13 Also, we get blood and urine if it's available to
14 send off to get tested for drugs and alcohol. And
15 that's the end of the first part of the autopsy. And
16 then all that information comes back to us later like
17 we'll get the toxicology results. We'll get the tissues
18 to look at under the microscope a little later. We put
19 it all together in a report and, again, generate the
20 final report. And in this case that's what we did as
21 well.

22 Q And based on your examination and autopsy of
23 Mr. Larios, what were all the factors that contributed
24 to his death?

25 A Well, let me just back up with when we received

1 Mr. Larios for autopsy, we were told that he had been on
2 a ladder and had fallen from that. And, indeed, his
3 cause of death is from the fall from the ladder. So
4 internally, he has a number of scratches and some
5 bruises on his skin. But internally, he has all of the
6 -- well, not all of them. Ribs one through seven, I
7 believe, ribs fractured on the left side. The same ribs
8 fractured on the right side. He has about 150
9 milliliters of blood in the left chest cavity. Another
10 200 in the right chest cavity. His liver is lacerated,
11 meaning it's torn. Both kidneys are lacerated or
12 they're also torn. The lower back bone, the lumbar
13 area, the processes that stick off the side are broken.
14 There is another 150 milliliters of blood in the abdomen
15 as well as a lot of soft tissue bleeding and hemorrhage
16 from trauma -- direct trauma to that. So, ultimately,
17 his cause of death is going to be from the blunt trauma
18 to -- or from the fall from hitting -- striking the
19 ground.

20 However, the other component that we did see at the
21 autopsy was this area of his abdomen. It's a little
22 bigger than an inch and a half. And it's a little red
23 area where the epidermis, so the top layer of the skin
24 has slipped off. It slid off the lower part of the skin
25 on the dermis. So it kind of looks like a media scall,

1 a burn, a -- potentially electrical contact area.

2 Now, other types of situations where you might see
3 the skin separate like that would be decomposition or
4 being found in water. Like having been in water a long
5 time. But that was not the case in Mr. Larios' death.
6 He wasn't decomposing nor was he covered in water.

7 So at the time, you know, we made a description.
8 The first part would be autopsy. We described this
9 lesion. Subsequent to that we did get information that
10 he -- we knew he had been cutting trees or tree limbs
11 with a chainsaw up in a tree, but that there's some type
12 of contact that had been made with the electrical line
13 and that before he fell he did a shout out, Woo! I
14 don't know exactly how it went, but a loud shout out.
15 Had removed his rope and then fell. And that there was
16 residue that had been on -- or what they thought was his
17 shoe residue on the rung of the ladder.

18 He did not arrive to us with shoes. He was clothed
19 except the shoes did not accompany him. So I couldn't
20 actually exam the shoes directly. However, in
21 consideration of all of the components, his actual
22 history of the shout out which is classic, a classic
23 shock type injury. Is -- or shock type history -- or
24 history that you hear during shock type injury. A yell
25 out.

1 This location in the trees with the contact made --
2 evidence of contact made, and the marks of the shoes on
3 the rung, and then finally the autopsy finding of that
4 lesion right in the middle of his abdomen made us
5 conclude that indeed that electrical contact had
6 occurred and because of that, even though I made his
7 cause of death the blunt trauma due to the fall, I made
8 contributory the electrical contact -- the electrical
9 injury. Ultimately, whether the fall or -- and/or the
10 contribution of the electrical contact, the manner of
11 death in this case would be accident.

12 Q And, I guess, as that being your opinion, as I
13 understand it, blunt force trauma due to fall and
14 contact with power line as being contributory. Do you
15 hold that opinion to a reasonable degree of medical
16 certainty?

17 A Well, this is what my opinion is based on all of
18 the history, information, and autopsy findings, yes.

19 Q Okay. Now, were you given information about there
20 being burnt palm fronds, burnt seed shoots in the tree?

21 A No. I don't have that actually in my case history
22 that I documented. I have the information the coroner
23 relayed that there had -- let's see. That there had
24 been some contact between the chainsaw and the overhead
25 power wire.

1 Q Were you given information that there was
2 appearance of an arc burn or some type of burn on the
3 chainsaw?

4 A Not from the coroner. No. Not that I have
5 documented.

6 Q Okay. Were you given any information about -- I
7 guess, any other information about the burn other than
8 what you just mentioned here today?

9 A No.

10 Q So to clarify, Doctor, is it -- again, is it your
11 opinion that electrical contact with the power line more
12 likely than not contributed to Jose's death?

13 A Yes.

14 Q Okay. Now, you didn't do any testing on the ladder
15 or any analysis on any of these -- this evidence that
16 was provided to you, did you?

17 A No. The information I had is based on what the
18 coroner provided.

19 Q Okay. And that's a standard procedure for you in
20 your field?

21 A That's a standard procedure for the coroner death
22 investigation system.

23 MR. APPLGATE: Let me mark, if I can.

24 (WHEREUPON, Plaintiff's Exhibit Number 4 was marked
25 for identification)

1 MR. APPELLEGATE: May I approach, Your Honor?

2 THE COURT: Yes, sir.

3 Q Let me show you what tend to offer as Exhibit Four,
4 and ask you if you recognize these photos?

5 A This is a copy of a photograph that we took at the
6 time of autopsy.

7 Q Okay. And --

8 A Two photographs at the point of autopsy.

9 Q Okay. And who took those pictures?

10 A Either me or my assistant.

11 Q Does that appear to be Mr. Larios at the time of
12 doing the autopsy, this appears to be an accurate
13 picture?

14 A It is. And it also has our autopsy label on it so
15 it has the right number for his autopsy.

16 MR. APPELLEGATE: If I may, can I move these pictures
17 into evidence, Your Honor? Plaintiff's --

18 THE COURT: Have they been marked yet? Just so I
19 can refer to a number for the record.

20 MR. APPELLEGATE: Four.

21 HE COURT: Four. Any objection to Plaintiff's Four
22 which are these photographs?

23 MR. STEGMAIER: No, sir.

24 MR. KENNEDY: No, Your Honor.

25 THE COURT: Mr. Pugh?

1 MR. PUGH: I'm sorry. No, Your Honor. I was
2 reading. Sorry.

3 THE COURT: Any objection to that photo?

4 MR. PUGH: No, sir.

5 THE COURT: All right. That's Plaintiff's Four.

6 (WHEREUPON, Plaintiff's Exhibit Number 4 was
7 entered)

8 MR. APPELATE: If I may, Your Honor. The jury, I
9 apologize for the sense of nature of these photos.

10 Q But, Doctor, can you show me in this picture if you
11 wouldn't mind coming down, could you please show us the
12 area that was determined to be an electric --

13 THE COURT: If we could, could I get Doctor Presnell
14 to stand facing the court reporter. And then, Doctor,
15 if you keep your voice up so make sure everything is
16 taken down.

17 A Okay. So in the middle -- I'm sorry for my
18 appearance as well. I had to rush. All right. So that
19 obvious injury between like kind of in the upper abdomen
20 chest area, that is actually from the defibrillation
21 pads, the pads that they would use. But this injury
22 lower, you can kind of see where the skin's slipped off
23 and you can see a little bit of the redness around the
24 edges. That's the mark -- that's the injury that I'm
25 talking about.

1 Q And I guess -- what about that picture -- what
2 about that injury makes it appear to be electrical
3 content?

4 MR. STEGMAIER: Objection. Asked and answered.

5 THE COURT: Overruled. She can answer that.

6 A Well, so electrocution can cause a number of
7 different appearances. A classic electrocution injury
8 actually looks like a crater with white rim with a red
9 rim. But in this instance we don't have that degree of
10 like a classic electrocution injury. What we have here
11 is this hyperemic area and the skin has slipped off.
12 Theoretically, could maybe a scalp burn do that? Yeah,
13 possibly.

14 So it doesn't -- when I look at it, I don't say
15 this is a classic electrocution. I just say that this
16 is not normal. This isn't an abrasion. This isn't a
17 laceration. It's not a contusion. It's an area where
18 the top layer of skin has slipped off from the lower
19 layer. Certainly is consistent with a contact with an
20 electrocution burn and based again on his circumstances,
21 on the shout out, on the residual material on the ladder
22 rungs, all of that together and his location, that I am
23 concluding that this is the electrical contact site.

24 Q Does it make any difference whether this is a
25 direct contact with an electric line or indirect contact

1 to make a mark like this?

2 A Well, I don't know. I mean, like I said, this
3 isn't like a high -- well, so I know that the contact --
4 the electrical contacts that he's supposed to have made
5 contact with is -- are power lines. And power lines are
6 high voltage. So you would think that if he actually
7 contacted his skin with the actual power lines there
8 would be a lot more injury. So to me this suggests that
9 there is some indirectness whether it's the chainsaw to
10 the palm fronds, seed pod that's making the contact.
11 That makes more sense.

12 Q Thank you. I guess, if you can see that from here,
13 is there anything about this photo that's actually
14 different?

15 A If that photograph you have up now is a picture of
16 him when he came to us at autopsy, remember I said we
17 take a photograph of how they arrive to us. So that's
18 all the medical intervention and the clothing that he
19 was still wearing featured there. But you can see the
20 same marks on his abdomen.

21 Q Okay. Thank you, Doctor. I think we may have
22 touched on this, Doctor, but I did want to go through a
23 couple of areas again. As part of your practice you're
24 not going and determining what level of power or
25 electricity would have been in a power line to come in

1 contact to Mr. Larios?

2 A No.

3 Q Okay. So you don't know and that's not something
4 that's part of your job to analyze what would be the --
5 what the voltage was?

6 A In a different system it would be part of my
7 investigators jobs, but we're not in that kind of
8 system, so I rely on the coroner as the investigator by
9 law.

10 Q And as it relates to your investigation as with
11 forensic pathologist, the distance between Mr. Larios
12 and the power line, is that important?

13 A I mean, as long as there was an electrical whether
14 it be an electrical contact, whether it be through an
15 arc that they contacted it and then transmitted it
16 through the chainsaw or not, I don't know that that
17 matters.

18 Q Did you find any marks on his hands or feet that
19 were consistent with an electrical burn?

20 A No.

21 Q Is that -- does that change your opinion in anyway?

22 A Well, I mean, expect if the hands were a site of
23 entry then perhaps there might be injury there. But you
24 see that the mark is on the abdomen, so you consider
25 that the site of injury. In some instances

1 electrocutions do not actually leave a mark. Lightning
2 is an extreme version of electrocution as well and there
3 are cases of those where somebody is struck by
4 lightning and they leave no marks. So it's not -- it's
5 not unusual to not be able to see, you know, perhaps say
6 an exit area.

7 Q And can you explain that because it comes up the
8 idea of entry and exit wound.

9 A Well, so electricity is going to be conducted along
10 the pathway. And I'm not the electrician, I know this
11 through the forensic pathology component of this. But
12 if we have your contact with the chainsaw and the palm
13 frond to the electrical wire or through an arc, it
14 enters the abdomen area and it would travel to where
15 he's grounded so it would go down to where his feet are
16 touching the metal ladder and exit there. So that would
17 be the pathway through him.

18 If that doesn't -- well, we don't have to get into
19 that. And then the idea that his shoes are -- some shoe
20 like residue was on the ladder rungs also supported that
21 as the pathway.

22 Q And, Doctor, if the fact someone gave an opinion
23 that there was a fruit stalk connected to the primary
24 line and a fruit stalk connected to the neutral line as
25 the ground, would that have any affect on your opinion

1 as to his electric shock?

2 A I don't know. I would have to look into the
3 neutral verses how the high voltage power lines are set
4 up.

5 Q Does it have -- you explained earlier, Doctor, that
6 you had done your initial review, got more information,
7 did a secondary review, does that have any affect on
8 your final opinion?

9 A Well, I mean, this is ongoing. It's not first
10 review verses second review. We have the initial
11 information, we do the autopsy, we document the
12 findings, we get additional information, correlate the
13 information with the autopsy findings with what we see
14 microscopically, with the toxicology, et cetera, put it
15 together with the history and then come to the
16 conclusion. And I'm sorry, I forgot what your question
17 was.

18 Q I think you answered it. So that's good for
19 forgetting. Beyond the -- your opinions, Doctor, that a
20 blunt force trauma with contribution of the electrical
21 contact, was there anything else that you saw that could
22 have possibly contributed to Mr. Larios' death based on
23 your autopsy?

24 A No. The blunt force injury was the cause of death.

25 MR. APPLGATE: And as I'm prone to do, I want to go

1 ahead, Your Honor, if I may at this time after my
2 presentation, to ask, if I may, that Dr. Presnell be
3 deemed an expert in the field of forensic pathology?

4 THE COURT: I don't -- no objection to that, is
5 there?

6 MR. STEGMAIER: No objection.

7 MR. PUGH: No.

8 MR. KENNEDY: No objection.

9 Q With that, I guess I'll give you one last
10 opportunity. With that analogy you are deemed an expert
11 in forensic pathology, are all the opinions you've given
12 here today to a reasonable degree of medical certainty?

13 A Yes, based on the information I have. Yes.

14 Q Thank you very much. I'll pass you on to defense
15 counsel.

16 CROSS EXAMINATION BY MR. PUGH:

17 Q Good after -- it's getting close to good evening.
18 Doctor, I'll try to be very brief. When Mr. Larios'
19 body came to MUSC, y'all did a thorough examination of
20 his body; correct?

21 A Of course.

22 Q And that includes looking at his clothing?

23 A Yes. What he had left.

24 Q Right. And you told us that his shoes weren't with
25 him?

1 A Correct.

2 Q And we can agree that Mr. Larios upon presentation
3 did not have any entry or exit wounds on his body;
4 correct?

5 A I'm sorry, ask again.

6 Q He did not have any entry or exit wounds in the
7 classic electrocution since; is that correct?

8 A He did not have the classic appearance of what is
9 classically described as an electrocution. But you
10 would recognize it and point to and say that's an
11 electrocution.

12 Q Right. I think you told us in your -- earlier when
13 we had an opportunity to talk to you, that if you just
14 saw Mr. Larios, you came to work one day and he's there,
15 you're to perform an autopsy, looking at him, you would
16 not have thought he was involved in an electrical
17 incident; is that correct?

18 A Correct. If we had found -- if he had been found
19 deceased in bed and had gone to bed like 11 p.m. the
20 night before and found in the morning deceased and that
21 injury was there, it would not fit anything. But I
22 wouldn't -- electrocution wouldn't immediately jump to
23 mind.

24 Q Okay. And so, Doctor, can we agree that Mr. Larios
25 did not have any marks that y'all made reference to in

1 your reports on his hands or feet?

2 A Correct.

3 Q He had no burns or burning charring discoloration
4 on any of his clothing that's noted; correct?

5 A Right. I described the shirt that he was wearing
6 as a black thermal. These had all of course been
7 previously cut by EMS, so -- and I don't have any other
8 description than that. So I will have to assume then
9 that there was no trauma injury. Although, I wouldn't
10 expect there to be based on what his mark is on his
11 abdomen.

12 Q And he actually had two shirts on; correct?

13 A Yes. A black thermal shirt and a white T-shirt.

14 Q And neither one of those had any marks on them that
15 you noticed --

16 A Not they noted. Yeah.

17 Q -- or made reference to? Okay. And nor did you
18 make any reference to anything of note with regard to
19 his socks that he was wearing; correct?

20 A Correct.

21 Q And so you on November 30, 2015 do a complete
22 examination and autopsy of Mr. Larios; correct?

23 A Yes. But we did the complete gross part of the
24 autopsy.

25 Q Right. Subject to toxicology?

1 A And microscopic slides for -- yes.

2 Q Okay. And you issue a preliminary or an autopsy
3 preliminary report; correct?

4 A Yes.

5 Q Any autopsy preliminary report that you issued in
6 this case referenced blunt trauma to torso due to fall
7 from height of ladder; correct?

8 A I don't have that in front of me, but that sounds
9 completely like my type of cause of death.

10 Q Let me show you what I'm marking at Defendant's
11 Exhibit Number 10 for identification.

12 (WHEREUPON, Defendant's Exhibit Number 10 was marked
13 for identification)

14 MR. PUGH: May I approach, Your Honor?

15 THE COURT: Yes, sir.

16 MR. PUGH: Your Honor, I'm advised this is without
17 objection, so I would move for the entry of Defendant's
18 Exhibit Number Ten.

19 THE COURT: All right. Without objection it's in
20 evidence.

21 (WHEREUPON, Defendant's Exhibit Number 10 was
22 entered)

23 MR. PUGH: May I approach?

24 THE COURT: Yes, sir.

25 Q Dr. Presnell, I'll represent -- well, you tell us,

1 is that your autopsy preliminary report from November
2 30, 2015?

3 A Yes.

4 Q Can we agree that there's not a single reference in
5 that report regarding electricity?

6 A Correct.

7 Q Okay. And then it's my understanding you have a
8 telephone call with Mr. Carter of the Colleton County
9 Coroner's Office subsequent to your autopsy; correct?

10 A Yes.

11 Q And you tell Mr. Carter your preliminary opinions
12 that Mr. Larios died of blunt force trauma; correct?

13 A Yes.

14 Q Multiple lacerations of his internal organs?

15 A Yes.

16 Q Seven broken ribs on each side?

17 A Yes.

18 Q Four broken vertebrae?

19 A Yes.

20 Q None of those were caused by electricity?

21 A Correct.

22 Q Caused by a fall?

23 A Correct.

24 Q And in that telephone call, I want to make sure
25 that I've got this straight. In that telephone call

1 with Mr. Carter who, to be fair, you say, look, we rely
2 on the coroner's office to tell us things; is that
3 right?

4 A Well, yes.

5 Q I mean, because, Doctor, you're not out doing
6 investigations at scenes and things like that?

7 A Not in the coroner system we are not.

8 Q Correct. And you have your role and they have
9 there's; right?

10 A Correct.

11 Q And you rely on them to provide you with
12 information derived from their continuing investigation;
13 correct?

14 A Yes.

15 Q And would you agree that what you're hopefully
16 getting from the coroner's office is accurate
17 information; correct?

18 A Yes.

19 Q Can we agree that if you get inaccurate information
20 from the coroner's office that can lead to inaccurate
21 results on your end; correct?

22 A It could.

23 Q And can we agree that in that subsequent telephone
24 call what Mr. Carter told you was two things. And if
25 you'll look at Plaintiff's Exhibit -- it's your final

1 report, Doctor?

2 A I have a copy.

3 Q What is the number just so we have it for the
4 record?

5 A It is Plaintiff's Exhibit Three.

6 Q Thank you. Doctor, if you'll look at page 2 for a
7 second. You have Case History?

8 A Yes.

9 Q Okay. And it says, "According to the Colleton
10 County Coroner, Mr. Richard Carter"?

11 A Yes.

12 Q And then we skipped down to the last sentence:
13 "Further investigation revealed the chainsaw had
14 contacted an overhead power wire;" correct?

15 A Yes.

16 Q And then it says, "Rubber-like material from the
17 decedent's shoes was noted on a ladder rung;" right?

18 A Yes.

19 Q So you were told that the chainsaw Mr. Larios was
20 using made contact with an overhead power wire; right?

21 A Either made contact or made contact through what he
22 was cutting.

23 Q Right. And what this says though, just reading it,
24 "chainsaw had contacted an overhead power wire," that's
25 what it says; right?

1 A Yes, it does.

2 Q And the next sentence says, "Rubber-like material
3 from the decedent's shoes was noted on a ladder rung."
4 That's what it says?

5 A Yes, it does say that.

6 Q And those two things you relied on; correct?

7 A Yes.

8 Q Okay. And you didn't certainly do anything to
9 confirm whether those were accurate or not; is that
10 correct?

11 A No, we did not. I did not. I'm not sure what else
12 I could have done.

13 Q Right. And so -- has anyone ever told you that
14 there was not rubber-like material from Mr. Larios'
15 shoes on a ladder rung?

16 A No.

17 Q Has anyone ever told you that the ladder rung or
18 whatever this discoloration was has never been tested?

19 A No.

20 Q Has anyone ever told you that it was a physical
21 impossibility for the chainsaw Mr. Larios was using to
22 have made contact with the overhead power wire?

23 A So perhaps and I'm trying to remember, it's been a
24 while. The reference to the chainsaw making contact
25 with an electrical source, even though I do say

1 electrical wire in this history, doesn't necessarily --
2 he's cutting limbs, so whether the source is through the
3 limb or not, I'm not specifying in here.

4 Although, I did specify in the sentence that it
5 makes contact with the wire. But in answer to the
6 question, no, there was no specification as to what
7 actually contacted the electrical wire.

8 Q Do you recall having your deposition taken in
9 connection with this case?

10 A I do.

11 Q Do you recall being asked a question:

12 "As a general matter, would you have wanted to be
13 provided additional information about the electrical
14 shock or evidence related to an electrical shock or is
15 that sort of beyond what your normal practice is?"

16 Do you recall being asked the question?

17 A Not specifically. But, of course, I'm always going
18 to answer that, yes, the more information the better.

19 Q Right. And in response to that question, do you
20 remember your answer?

21 A I don't recall, but I couldn't imagine not saying,
22 yes, I would want more information.

23 Q And your answer, Doctor, was:

24 "Our normal practice is to rely on whatever the
25 coroner will provide us."

1 That's what you told us today?

2 A That's true.

3 Q And then your answer continues.

4 " You know, I mean, he gave us" -- "he" being
5 Mr. Carter, "gave us the information that there's
6 evidence of a chainsaw contacting electrical lines."
7 Then you go on, "And then that there's the shoe debris
8 on the rungs coupled with his presentation of a shout
9 out and this mark on his abdomen was sufficient for me
10 to conclude that he had an electrical component that
11 there was an electrical component in the fall."

12 Do you recall that testimony?

13 A Yes. That sounds like exactly something I would
14 say, yes.

15 Q I understand. And so, if it is inaccurate that the
16 chainsaw contacted an electrical wire, that would be
17 something you would want to know?

18 A Yes. If there was no electrical wire and there was
19 no possibility or no source of electricity then I would
20 like to know that. Yes.

21 Q And I think Mr. Applegate asked you, you don't know
22 anything about distances of wires?

23 A No. Although, I do know arcing is possible. But I
24 don't have a specific distance for this scenario.

25 Q And you haven't done anything and I'm just asking,

1 you haven't done anything in an attempt to recreate what
2 the path of electricity may have been with regard to
3 Mr. Larios?

4 A No.

5 Q Okay. Nor have you tried to recreate what that
6 voltage amperage current anything would have been;
7 correct?

8 A No. I mean, you making it sound like I haven't
9 done stuff. But this isn't normally something that I
10 would -- that's my part of forensic pathologist. But
11 the answer is, no, I did not do that.

12 Q So the only thing that changed between November 30,
13 2015 your preliminary autopsy report which we've marked
14 as Defendant's Ten and the Plaintiff's Exhibit Number
15 Three which is your final autopsy report, you with me?

16 A Yes.

17 Q The only thing that's changed is in the interim you
18 had a conversation with Mr. Carter?

19 A Well, yes, information. Yes.

20 Q And the information he told you, I'm not going to
21 belabor it, but we just talked about; right?

22 A Some of it. There was also the shout out before
23 the fall actually happened, too.

24 Q Right. But the two components we just talked about
25 were chainsaw contact and the overhead power line and

1 shoe residue on the ladder rung?

2 A Well, I still don't know what the actual conclusion
3 is on that. That's -- again, that's the information
4 provided by the coroner and that's what I had to go to
5 to rely on.

6 Q Right. Fair enough. So it's fair to say you still
7 don't know as you sit here today whether those
8 statements I just referenced, chainsaw contacting the
9 overhead power line or rubber or the residue from
10 Mr. Larios' shoes on the ladder, you don't know whether
11 either one of those is accurate or not?

12 A Well, I don't know about whether the residue is
13 tested or not, so, no, I don't know that. And then I
14 don't know specifically what the contact was with the
15 electrical source.

16 Q And if you had seen Mr. Larios without that history
17 that we just talked about which is how you saw him on
18 November 30th; right, you didn't have that history?

19 A Right. Yes.

20 Q So -- and when you saw him on November 30th,
21 without that history you made no reference to an
22 electrical component; correct?

23 A Correct.

24 Q And when you got that history coupled with some
25 other things that we talked about, that's when you

1 referenced --

2 A The electrical contact.

3 Q -- an electrical component to his injury; correct
4 -- or to his fall?

5 A Yes. That is correct. But, again, it's a
6 consolation of things. I mean, the lesion was still
7 there. The abdominal lesion and the history and the
8 shout out, et cetera. And so you're putting that all
9 together it makes sense as to the sequence of events.
10 And as to what that potentially could have caused that
11 lesion.

12 But prior to that, prior on the November 30th when
13 I actually did the autopsy without the information of
14 electrical, I had no -- I didn't have an idea of what
15 actually caused the lesion on the abdomen. So that did
16 change after I spoke with the coroner who informed me of
17 the additional information that the investigation was
18 uncovering.

19 Q And when did you bring Mr. Larios or re-examine him
20 visually? When did that occur?

21 A Excuse me.

22 Q When did that occur?

23 A When did what occur?

24 Q When did you re-examine Mr. Larios visually after
25 your discussion with Mr. Carter?

1 A That wouldn't happen. He has already been
2 autopsied. So we do all these photographs and our
3 autopsy will be done on one day. Occasionally, we will
4 hold somebody that might need to be re-examined, but
5 that wouldn't have been the case with Mr. Larios.

6 Q So just to be clear, after your discussion with
7 Mr. Carter, you went back and looked at photographs, you
8 didn't go back and look at the body itself?

9 A Well, I looked at the autopsy report and, yes, we
10 always -- whenever we're proofreading the report as we
11 add more information to it we're always going to be
12 reviewing the photographs as well.

13 But there is a description of it prior. But, no,
14 we wouldn't have brought the body back to MUSC to look
15 at again.

16 Q Doctor, in both of the preliminary and final
17 autopsy report you have referenced to cuts or abrasions
18 on other parts of Mr. Larios' body; correct?

19 A Yes.

20 Q Some of those include his facial area?

21 A Yes.

22 Q Doctor, I think that's all I have for you. Thank
23 you.

24 A You're welcome.

25 CROSS EXAMINATION BY MR. STEGMAIER:

1 Q Doctor --

2 A Hello.

3 Q -- we met during your deposition and I'll be candid
4 with you, I'm sensing that, number one, we're towards
5 the end of the day and we're in the homestretch here, so
6 we appreciate your patience. But I'm sensing
7 everybody's kind of ready to hit it and get back to the
8 house, so I'm going to be quick.

9 I listened hard to your initial testimony on direct
10 and you had stated that South Carolina is a coroner
11 death investigation system?

12 A It is except for Greenville County which also has a
13 medical examiner or have a joint medical examiner
14 coroners, it's one county.

15 Q So Colleton County is one of these counties where
16 it's a coroner death investigation?

17 A All of the other counties are.

18 Q The other 45 counties?

19 A The other 45.

20 Q So with regard to your work with the Medical
21 University, do you serve all 45 counties or just
22 counties in the low country or how does that work?

23 A It's really whichever coroner wanted to send us
24 cases, so usually it's location decision on their part
25 so they'll have to transport the person. But, I mean,

1 we'll go -- we get cases from Marlboro which is like
2 three hours away, Sumter, but a lot of low country.

3 Q So with regard to the medical examiner system like
4 the one in Greenville County, they have their own
5 investigators, don't they?

6 A I assume so.

7 Q Well, I mean, you're familiar with the different
8 types of systems as it relates to autopsies, aren't you?

9 A I am.

10 Q Okay. So it's been your experience from those
11 counties where those jurisdictions that have medical
12 examiner systems rather than just a coroners, they've
13 got their own examiners, their own investigators?

14 A I've only worked in the Charleston County area or
15 at MUSC, but I will say that Charleston County actually
16 used to be a coroner medical examiner system as well up
17 until 1996. So from '94 to '96, I functioned as a
18 medical examiner. And, yes, you do have investigators
19 that accompany you to destinies.

20 Q Did you like that system? Did you like having your
21 own investigator?

22 A Well, yes. Yes, I did.

23 Q Because you were in charge of that training,
24 weren't you?

25 A Well, I wasn't in the in charge position in 1996.

1 But, no, I was in a learning position.

2 Q Certainly. But as the doctor in the equation, you
3 did have a level of supervision, didn't you?

4 A Again, I was in the training portion of that as a
5 resident.

6 Q So let's put that aside. Let's just put your
7 experience aside as far as where we have a situation or
8 circumstance where you have a medical examiner rather
9 than this coroner system and with medical examiners
10 having their own investigators. The medical examiner,
11 whoever that is, he or she, that office, they're the
12 ones typically hiring and training their own
13 investigators, aren't they?

14 A They're usually in charge of -- over the
15 investigators, yes.

16 Q So -- but I heard or listened during the course of
17 your direct examination, you said something along the
18 lines of "With regard to collecting information if I had
19 had my own investigator," do you remember that part of
20 that -- your testimony?

21 A No.

22 Q Okay. I represent to you that you said that. That
23 if I had my own investigator I could have done
24 potentially --

25 A Talked to them sooner, I can't remember. I'm

1 sorry.

2 Q Sure. Sure. Do you have -- are there criticisms
3 that you possess as it relates to the coroner death
4 investigation system?

5 A I'm sure there's criticisms for all -- for any of
6 the systems.

7 Q Well, the question I posed to you, do you have
8 criticisms as it relates to coroner death investigation
9 systems?

10 A I'm not sure how to answer that.

11 Q Well, are there things that you could fix if you
12 could or the things that you could change if you could
13 fix them?

14 MR. APPLEGATE: Your Honor, can we limit the
15 questioning to maybe this specific case?

16 THE COURT: I don't know about the relevance of this
17 line of questioning.

18 MR. STEGMAIER: All right.

19 Q So my sense --

20 THE COURT: Go ahead.

21 Q My sense is that maybe there's some criticism on
22 your part about the level of investigation, how the
23 investigation was conducted, what was communicated to
24 you as it relates to this particular case. And my
25 further sense is, if you had your own investigator maybe

1 you would have handled things differently as it related
2 to the investigation?

3 A You know, I'm not criticizing how the investigation
4 was done. Certainly to be closer in proximity to the
5 investigation, I probably would have received more
6 information. I don't have investigators, so I'm not
7 sure the quality of job they would have done. So I'm
8 not pointing fingers at the quality of the
9 investigation.

10 Q As you've stated, the more information the better;
11 correct?

12 A Always the more information the better.

13 Q All right. As it relates to the specifics of this
14 case, as it relates to Mr. Larios and him being
15 pronounced dead, that was at the scene by EMS; is that
16 correct?

17 A I thought they had transported. Let's see. He was
18 transported to the hospital and pronounced there.

19 Q Okay. And that's at 11:49 a.m.?

20 A Yes, 11:49.

21 Q Just a question or two more. With regard to high
22 powered lines or high voltage power lines, I think my
23 understanding is that you have done at least one autopsy
24 a year of electrocutions?

25 A Approximately. I had a couple this year and I

1 might not have had any last year.

2 Q Okay. And my understanding based on the questions
3 posed to you by Mr. Pugh, with regard to the injury that
4 you saw with Mr. Larios, this isn't a classic injury
5 that you would typically see as it relates to
6 electrocution or shock; correct?

7 A Correct. This is not what they call a pathognomic
8 lesion where you can look at it and say a high power
9 electrocution.

10 Q Two questions left. Do you -- in your personal
11 life, do you ever use chainsaws?

12 A No.

13 Q All right. So you probably don't have to be an
14 expert using chainsaws, but is it good habit, bad habit,
15 with regard to holding a chainsaw that's running right
16 at your stomach level?

17 A What's the -- what is the question?

18 Q As I understood your testimony that this could have
19 been indirect that somehow this could have come through
20 his chainsaw -- somehow it could have come through his
21 chainsaw and shocked him. Do you remember that?

22 A Yes.

23 Q Okay. So, my question is with regard to holding a
24 running chainsaw, good habit, bad habit, good thing, bad
25 thing as holding it close to your stomach on your chest?

1 A Well, it doesn't sound good. Although, I have
2 watched my husband before, he doesn't do that. But also
3 keep in mind, too, these contacting electrical source,
4 you know, it catches on the limb and it moves that maybe
5 that moved in to his stomach. And I'm opening up a
6 whole new thing that I know nothing about. I don't
7 know, so I would just back up and say, I don't know
8 chainsaw safety etiquette.

9 Q Do you know long this chainsaw was?

10 A No.

11 Q Thank you, ma'am. Appreciate it.

12 CROSS EXAMINATION BY MR. KENNEDY:

13 Q Dr. Presnell, I think I have four questions for
14 you. How tall is Mr. Larios?

15 A I can answer that. He is 70 inches which is 5 feet
16 10 inches.

17 Q Thank you. And beyond looking at this mark on his
18 stomach observing it, was there any further analysis of
19 the mark itself?

20 A No.

21 Q Okay. If you wanted to do further analysis, is
22 there anything else you could do?

23 A I could have possibly taken a piece of that skin
24 and looked for some -- like streaming changes that might
25 have helped finalized this discussion, but I didn't.

1 Q And was there any internal damage related to any
2 sort of electrical exposure?

3 A No, there was not.

4 Q I have no further questions.

5 MR. APPELATE: Nothing further, Your Honor.

6 THE COURT: All right. Dr. Presnell, thank you very
7 much, ma'am.

8 THE COURT: All right. Ladies and gentlemen,
9 continue to do everything within your power to maintain
10 your ability to remain fair and impartial. Don't allow
11 anyone to talk with you about the case. Just get a good
12 nights rest if you can and we'll ask you to be back,
13 ready to go at 9:30. Okay. Everyone else please remain
14 while the jury leaves.

15 (The jury left the courtroom at 6:07 p.m.)

16 THE COURT: All right. Anything which need to take
17 up?

18 MR. STEGMAIER: Two things briefly.

19 THE COURT: Yes.

20 MR. STEGMAIER: If you don't mind, just for purposes
21 of the record, I'd like to make two proffers. One is as
22 it relates to Mr. Whaley. And, you know, we understand
23 from in limine motion what the Court rule was and, of
24 course, we took a beef and asked just wanted to get
25 clarity before we asked questions about the report.

1 But I did and I would like to mark for purposes of
2 identification for the record and make these Court's
3 Exhibits.

4 THE COURT: Sure.

5 MR. STEGMAIER: Had I been permitted to, I would
6 have asked Mr. Whaley about his investigation including
7 the photographs of the beer cans, of the cooler filled
8 with beer. Of course, the Court ruled on that. So the
9 items that I would have asked on that, I wanted to get
10 into evidence was the report that he created, his two
11 page report that was formally Plaintiff's Two and that
12 was ultimately withdrawn. And then two photographs that
13 were produced to us by the coroner's office pursuant to
14 subpoena which are referenced in his report.

15 THE COURT: All right. We'll make the report
16 Court's Exhibit Two, I think, because I think we have a
17 note which is One then the photographs will be Two and
18 -- excuse me, Three and Four.

19 MR. STEGMAIER: Yes, sir. And then along those
20 lines with regard to Dr. Presnell, you know, I didn't
21 want to stop because I kind of anticipated what the
22 answer would be. As the Court well knows, the
23 defendant's take the position that we should have been
24 able to get into the matters of the prior accident in
25 July of 2015 concerning TBI and the back injury that was

1 discovered as well as the diabetes diagnosis.

2 I would have asked Dr. Presnell two questions at
3 least whether she had access to the medical system at
4 the University -- Medical University whether she had
5 access to the medical records there. And whether in
6 fact she did access them for purposes of forensic
7 investigation ultimately leading to her final
8 conclusions in this case.

9 So -- but understanding that the Court didn't want
10 us to get into that, certainly wasn't going to ask her
11 even those two questions.

12 THE COURT: All right. Well, that's certainly noted
13 for the record.

14 MR. STEGMAIER: Thank you, sir.

15 THE COURT: Anything else before we adjourn?

16 MR. APPLGATE: No, Your Honor.

17 MR. DUFFY: Not from us, Your Honor.

18 THE COURT: Okay. The jury will be here at 9:30.
19 Maybe I should have had them come a little earlier, but
20 they stayed late. I'll be here before 9:30, so if y'all
21 need anything or whatever, just let us know and we'll be
22 back here. Okay. So have a good evening and we'll see
23 everybody in the morning.

24 (WHEREUPON, Court's Exhibit Numbers 2, 3, and 4 were
25 marked and entered)

1 (Court was adjourned at 6:15 p.m.)

2 THE COURT: All right. Anything we need to take up
3 before we get started?

4 MR. APPLGATE: I don't think so, Your Honor. We're
5 ready to go.

6 THE COURT: Anything from defense?

7 MR. PUGH: No, sir.

8 THE COURT: All right. Let's bring the jury in,
9 please.

10 (The jury entered the courtroom at 11:12 a.m.)

11 THE COURT: Thank you, folks, please have a seat.
12 Ladies and gentlemen, welcome back this morning and I
13 apologize for keeping you back there, but I've been
14 working with the attorneys and we were able to get some
15 things resolved that I think in the long run is going to
16 save us more time. So, while you've been back there and
17 I know you're wondering what's going on, I can assure
18 you that the things we've been doing out here have been
19 toward making the trial a little bit more efficient
20 maybe for us to get further along. So we're going to
21 redeem that time. But I hope everyone is well rested
22 and ready to start back.

23 If you recall when we took our break yesterday, we
24 were on the plaintiff's case and we're going to pick up
25 right where we left off and we recognize the plaintiff

1 for their next witness.

2 MR. APPELATE: Your Honor, I'd call -- the
3 plaintiff's call Ed Brill.

4 THE COURT: All right. Will you please come around,
5 sir, and be sworn.

6 EDWARD BRILL,
7 being first duly sworn, was examined and testified as
8 follows:

9 DIRECT EXAMINATION BY MR. APPELATE:

10 Q Good morning, Mr. Brill. Can you please state your
11 full name for the record.

12 A Yes. Edward R. Brill.

13 Q Where do you live?

14 A Presently live in Florida. In Boynton Beach,
15 Florida.

16 Q And what is your professional title?

17 A I'm a professional engineer -- electrical engineer
18 and my title right now is senior project manager.

19 Q And where do you work?

20 A I work for a company called SEA, and it's a
21 forensic engineering firm which investigates accidents,
22 fires, shock, electrocution cases as well as many other
23 types of cases.

24 Q Can you explain to the jury a little bit about
25 further on your experience with shock and electrocution

1 cases?

2 A I've been with SEA now for about 15 years and over
3 the past 15 years I've investigated hundreds of cases
4 involving reported shock or electrocution. Typically
5 what we have with shock or electrocution cases can
6 involve many things from power lines down to outlets in
7 your house. So those shocks can vary in those
8 categories. And before I worked for is Florida Power
9 and Light -- or before I worked for SEA for 15 years, I
10 was employed with Florida Power and Light for 20 years.
11 And did also investigations for them involving
12 electrical investigations as well as basically setting
13 up distribution systems for your homes, for hospitals,
14 and for laying out the distribution lines and designing
15 them for installation behind homes and businesses.

16 Q What are, if you can help, what are distribution
17 lines?

18 A So typically distribution lines are the line you
19 will find behind your home with the transformer box as
20 the cans that hang on those poles. Those would be
21 considered distribution lines. As opposed to transition
22 lines which are the very high large lines we typically
23 see along the highways that are usually much higher and
24 much bigger and much wider than the distribution lines.

25 So, typically distribution lines are 13,000 volts

1 to maybe 23,000 volts that those are the ones that we'll
2 have running through your neighborhood and your
3 overground or underground as opposed to transmission
4 lines which can be hundreds of thousands of volts and
5 voltages basically, you know, equivalent to like
6 pressure. It's telling you how big of a pressure it's
7 capable in those lines.

8 Q And so I understand your testimony, you were
9 involved with the power company in Florida and you
10 helped design those distribution lines?

11 A That's correct.

12 Q Can you explain to the jury a little bit about your
13 educational background in Engineering?

14 A I received my undergraduate in Engineering from the
15 US Navel Academy and then I attended -- after graduation
16 I attended Florida Atlantic University and received my
17 Bachelor of Science in Electrical Engineer. And from
18 that point in time, I began my work at the power company
19 with my engineering degree and then obviously continued
20 education classes for the last 35 years in my field.

21 Q Mr. Brill, I see that you have a PE behind your
22 name, can you tell us what that is?

23 A Yes. Around the United States the term is called
24 Professional Engineer. So the term "PE" stands for
25 someone who's basically got a degree from an accreted

1 engineering school, has at least five years of
2 experience and then has passed multiday tests in their
3 field and in the state that they're in would qualify
4 them as a professional engineer. And so presently I'm
5 qualified Professional Engineer in five states including
6 South Carolina.

7 Q Beyond that certification or licensed, do you have
8 any other licenses or certifications?

9 A Yes. I'm also a certified fire and explosion
10 investigator, so part of my job has to do with
11 investigating fires as they relate to electrical items
12 that could have caused fires is also part of my
13 investigation and it deals with other areas in the
14 engineering field besides electrical shock and
15 electrocution cases.

16 Q Going back, after you, I guess, finished your
17 degrees and your education, where did you go to work?

18 A I started working for Florida Power and Light
19 immediately after graduating from college. I worked my
20 way -- at that time I had a business degree and realized
21 that I had should probably use my Engineering background
22 and then I basically worked as a co-op student with
23 Florida Power and Light for two years while I went back
24 to school and got my Electrical Engineering from Florida
25 Atlantic University.

1 Q Did you ever have any experience while working for
2 Florida Power and Light utility company with line
3 maintenance and vegetation management?

4 A Yes. There is two basically main areas where I had
5 that experience. One would be my construction services
6 engineering experience where I mentioned that I did
7 design work with the distribution system. It would be
8 like getting the equivalent of this county as my area
9 and I would be responsible for all new construction,
10 existing construction, and maintenance projects for the
11 utility company that were occurring on the utility
12 system.

13 And as part of that job, I would drive around the
14 area meeting with builders, working with electrical
15 contractors, any needs they had from the power company
16 upgrading their service or putting in a new service or
17 someone putting in a pool and wanting to put their
18 service underground or relocate their service. So I had
19 a lot of experience around also patrolling the lines and
20 looking for areas that the utility company should be
21 aware of.

22 And then also, all of us at the utility company as
23 I'm sure is the same thing in South Carolina, we're all
24 concerned about hurricanes, so we're all assigned to
25 storm duty as well. And part of that is also driving

1 lines, looking for issues that could be related that
2 could cause problems during storms. And that included
3 trees, any poles that looked like they might be rotting
4 or needing issues and we would basically turn those
5 items into our management for service work to get done.

6 Q I assume that Florida Power and Light had a
7 maintenance and vegetation plan that was developed for
8 that utility?

9 A Sure. Every utility company has a program for
10 vegetation management. Obviously, it's going to be much
11 different in Arizona as it is for a couple of people in
12 Main, but obviously, South Carolina, Georgia, Florida,
13 we have very fast growing trees, species that can be out
14 there, so vegetation management is often a much bigger
15 issue in the southeast. So basically it's setting up
16 the budget with the money you have allotted to decide
17 and layout your tree trimming program on how you're
18 going to trim the trees the most efficient way and most
19 cost effective way.

20 Q Okay. And that kind of led me to my next question
21 which is, again, how does a utility come up with that
22 maintenance and vegetation plan?

23 A Basically they have a department. Florida Power
24 and Light would have a department. South Carolina
25 Electric and Gas would have a department, a vegetation

1 management and they would basically work on budgets, get
2 approved budgets and then use the money in those budgets
3 to allot either inhouse tree trimming or hiring
4 contractors to do tree trimming on their lines to
5 minimize the impact and also minimize any safety issues.

6 Q How do they prioritize the needs within the
7 vegetation management plan?

8 A Typically it's going to be based on, you know, the
9 effective customers. If the tree could fall and take
10 out 1,000 customers, obviously, that's going to be a
11 bigger priority in the tree that could fall and take out
12 one customer. So it's going to be based on the
13 utilities experience, their knowledge, and the knowledge
14 of their system and what they have and how customers are
15 being served from those different lines.

16 Q As it relates to your, again, your experience at
17 Florida Power and Light, what is your experience with, I
18 guess, with focusing I understand that it relates to the
19 vegetation management you just discussed, but just
20 focusing on the safety requirements of a power company?

21 A There's different basically organizations that set
22 up standards or codes. And so typically for most of the
23 utility companies in the United States, they follow a
24 code called the National Electrical Safety Code. It's
25 similar to the National Electrical Code which is what's

1 used for power at your homes or your businesses. But
2 the National Electrical Safety Code is specifically
3 designed for high voltage electrical safety and it's
4 specifically geared toward power companies, telephone
5 companies, and cable TV companies.

6 Q Going back to your current employment, how many
7 investigations have you done related to electric shock
8 or electrocution?

9 A Over the past 35 years I've been involved in
10 probably 4- to 500 investigations; the past 15 years I
11 would say at least 2- to 300 investigations involving
12 electrical shock or electrocution or arc flash which is
13 associated with the other two items.

14 Q Have you ever testified in a court as an expert
15 engineer prior to today?

16 A Yes.

17 Q And do you know approximately how many times?

18 A Over 20 times.

19 Q And as you've done work, I guess, do you do
20 consulting as you're doing here in this case to analyze
21 the facts or investigate this matter in other cases?

22 A Yes. Our company, I'm the electrical engineer for
23 or particular office and I have a lot of utility
24 background. So a project can get called into our
25 company and then they would assign that project to the

1 engineer that they felt is most qualified to handle that
2 type of project. And with my background, I would get
3 obviously electrical type projects with my experience
4 and training and knowledge.

5 Q And have you, in this capacity, have you worked for
6 both people who have been injured and also for
7 representing utility companies?

8 A Yes. And for the past five years, my mix is
9 roughly 50 percent work on the plaintiff's side and 50
10 percent work on the defendant's side.

11 Q Okay. And for the non lawyers in the room, the
12 plaintiff's side is -- that's the people who are
13 injured?

14 A It can be the people who suffered a loss typically.
15 It could be insurance companies. It could be companies
16 or it could be individuals.

17 Q Have you done an investigation in this case,
18 Mr. Brill?

19 A I have.

20 MR. APPLGATE: Your Honor, I'd like to move
21 Mr. Brill or designate him as an expert in electric
22 shock and electrocutions and as to standard of care for
23 electric utilities.

24 THE COURT: Any objection to that designation or
25 would you like to voir dire the witness?

1 MR. PUGH: May I approach?

2 THE COURT: Yes, sir.

3 (Bench conference)

4 THE COURT: All right. So there are no objections
5 as to the designation as an expert in his field?

6 MR. PUGH: Correct, Your Honor. Subject to our side
7 bar and thank you for indulging us.

8 THE COURT: Yes, sir, all right. You may proceed.

9 MR. APPELEGATE: I don't know whether we -- do we do
10 a, Your Honor explain to the jury --

11 THE COURT: I have a charge that I'll give the jury.
12 But just briefly for right now, let me just -- ladies
13 and gentlemen, we have witnesses based upon their
14 education, skill, and experiences are classified or
15 qualified as what we call an expert in a particular
16 field.

17 Now, that gives a witness who is designated as an
18 expert, that gives that witness the right to talk about
19 the field in which they're an expert and with regards to
20 their investigation they're allowed to give their
21 opinion based upon their investigation to things that
22 they have investigated. Typically, lay witnesses are
23 not allowed to give opinion testimony, but an expert is
24 allowed to give an opinion as it relates to their
25 investigation and their findings.

1 I tell you that to explain to you the difference
2 between a lay witness and an expert witness. But I also
3 would tell you that you are to consider an expert
4 witnesses testimony no differently as you consider any
5 other witness. You consider the testimony in this
6 record and give it whatever weight you feel it deserves.

7 A person who is designated as an expert is not
8 automatically given any greater degree of credibility or
9 believability simply because they're considered an
10 expert. You weigh all of the testimony of each witness
11 and you give it whatever weight you think it deserves.
12 Okay.

13 MR. APPLGATE: Thank you, Your Honor.

14 Q Mr. Brill, did you investigate and analyze the
15 death of Jose Larios?

16 A I did.

17 Q Okay. And can you tell the jury a little bit about
18 your investigation and analysis of this case?

19 A In this particular case, the location where the
20 accident occurred had obviously been changed and altered
21 since the date of the incident. So part of my
22 investigation in this case was to examination
23 photographs, documents that were taken by others soon
24 after the accident. A lot of times I would get hired
25 immediately after an accident and I have the opportunity

1 to get out there and see the location firsthand. In
2 this case, I had to rely on photographs from the scene
3 taken by OSHA investigator, taken by the coroner's
4 office, and also taken by South Carolina Electric and
5 Gas. So those are photographs were part of the things I
6 analyzed.

7 I also did conduct a scene examine prior to my
8 deposition in June. When I went out to the scene to
9 kind of get an idea of where the tree in question was
10 located that was cut down so that the location of a
11 stump, the location of the fencing in the pictures, and
12 the location of the power lines, and other trees in that
13 area as they were back in June, obviously, several years
14 after the incident.

15 And then I also reviewed all the other documents
16 that were available in the case and presented to me by
17 counsel and those included many deposition transcripts
18 from anything from the coroner's office to utility
19 personnel to medical examiner and also tree service
20 people and witnesses such as the coworkers of Mr. Larios
21 and their deposition testimony and also additional
22 pictures and documents.

23 I also reviewed inhouse documents provided by South
24 Carolina Electric and Gas showing their tree trimming
25 policies and procedures, a presentation that they

1 presented on tree trimming and what their tree trimming
2 methods are and what their guidelines are. I looked at
3 standards associated with tree trimming, National
4 Standards, ANSI is the America National Standards
5 Institute. That's one agency that provides standards in
6 tree trimming that many utilities around the country
7 adopt. Also the National Electrical Safety Code as it
8 applies to the utility in this case.

9 And then I obviously investigated using other
10 documents that were presented from records from the tree
11 trimming that occurred prior to the incident by Lewis
12 Tree Service and multiple documents that were provided
13 as part of the discovery. So those were all things that
14 I used along with my experience, training, knowledge,
15 background, and education, and previous experience from
16 other cases was all weighed in in my investigation.

17 Q Okay. And based on that investigation, are you
18 able to provide opinions to a reasonable degree of
19 engineering certainty in this case?

20 A Yes, I am.

21 Q Okay. And had you come up with any central
22 opinions?

23 A Yes.

24 Q And can you please tell the jury what those are?

25 A My central opinion in this case is that the tree in

1 question where Mr. Larios was working at the time of the
2 incident did not meet the utility guidelines for tree
3 trimming specifications that South Carolina Electric and
4 Gas had adopted. Even though there's records that tree
5 trimming occurred in the area back in 2013, I found no
6 evidence from either of the photographs or the documents
7 that the particular trees in the area of the incident
8 were actually trimmed during that time.

9 I also found that the tree in question based on the
10 photographs and limited measurements that we have from
11 the OSHA investigator that the tree in question could
12 not have been within the requirements of that ANSI
13 standard of maintaining a 10-foot clearance from the
14 power line at the time that they were out there in 2013.
15 So that tree should have been trimmed or removed at the
16 time of their trimming back in 2013.

17 Also because this tree in question is on owner's
18 property, typically what we look for is evidence that,
19 you know, you don't want the utility company coming on
20 your property necessarily to cut your trees down, so
21 that's obviously an issue for the utility company. So
22 we would look for evidence of some type of an exception
23 where the utility company identified a tree on private
24 property that could not be trimmed to meet the standard.
25 And then there would be some kind of a record that the

1 homeowner was contacted about having that tree removed
2 and getting permission to the power company to remove
3 that tree and found no evidence of that record as well.

4 Q And, Mr. Brill, do you have any opinion as to what
5 caused Mr. Larios to fall off the ladder at the 3402
6 Myrtle?

7 A Yes. The opinion I have in that area is that he
8 was exposed to an electrical shock and that this
9 electrical shock caused him to basically fall back out
10 of the tree. And the shock that he received was due to
11 contact with the tree and with the branches he was
12 cutting and using a chainsaw at the time that the
13 combination of the branches, contacting the branches and
14 those branches contacting the high voltage line which is
15 the upper line, and other branches contacting the lower
16 line which is the grounded line, created a path for
17 electricity to flow from the high voltage line through
18 the vegetation through Mr. Larios and back into the tree
19 and out the grounded line for the utility company. And
20 that was because the lines were in contact in close
21 proximity to the tree at the time of the incident.

22 Q Mr. Brill, do you have demonstratives exhibit that
23 would help you explain these opinions to the jury?

24 A Yes. I tried to help prepare a diagram that would
25 kind of give an idea of what I'm talking about as far as

1 how this shock could have occurred.

2 Q Mr. Brill, I think this is the diagram.

3 MR. APPELEGATE: Can you please put that up on the
4 screen?

5 Q Here's a pointer, I think it's kind of far away,
6 Mr. Brill, but we're using high technology. This is a
7 laser pointer, so if you guys can see it, we're going to
8 put something up here.

9 MR. APPELEGATE: Your Honor, if I may just hand out
10 these pictures that they can pass around. It's the same
11 pictures. It's sort of hard to see at this distance.
12 It's the exact same thing that's up here. If somebody
13 on the jury wants to look at them I can put it out here
14 as we go through them.

15 Q Again, this initial picture, can you tell us what's
16 depicted in this picture?

17 A Yes. If we look at the OSHA photographs that were
18 taken, some of the South Carolina Electric and Gas
19 photos that were taken as well as the coroner photos
20 that were taken. This is a general depiction of the
21 backyard of the property that basically was across a
22 bike path area. I remember it was an old street, I
23 think, that was abandoned and made into a bike path.

24 So the fence here separates basically the owner's
25 property. This diagram is basically looking in from the

1 property out toward that bicycle path area. And then
2 the tree in question was right near the fence line where
3 Mr. Larios was working at the time. The pictures show a
4 ladder. The OSHA photos will show a ladder up against
5 the tree at approximately extended about 23 to 25 feet
6 in height. And then there was testimony that Mr. Larios
7 was somewhere on the top three or four rungs using a
8 chainsaw trimming the excess foliage.

9 We also see many photographs that were taken
10 showing the ground around the base of the tree and --
11 around the base of the tree there's evidence of a lot of
12 cutting that had already occurred prior to the incident.
13 So many branches and fronds had basically fallen to the
14 ground.

15 The particular tree, there's two main, I guess,
16 growths that are coming off the tree is obviously the
17 palm fronds and there's -- not being an arborist, I know
18 the proper term, we use this term seed stalk or seed
19 pods or fruit stalk. There's a lot of different names
20 that have been thrown around of what this is. But
21 coming out of the top of the tree are these growths that
22 don't like look palm fronds, but look like tall sticks
23 with berries on them.

24 And we'll see in the next photograph, I believe, is
25 more of a close-up of the top of the tree. So here we

1 can see some of these stalks. And coming off as well as
2 the palm fronds that are surrounding in basically 360
3 degrees around the tree.

4 Based on the testimony, it's also been documented
5 by the coworker, OSHA, and also the coroner's office
6 that the power lines in question here were very
7 difficult to see and were not open and obvious to be
8 seen from the area where he was working.

9 So, we'll, I guess, look at the next photograph
10 possibly gives us an idea. So we've taken some of the
11 foliage out so we can see the power lines better and get
12 a better description as there's two lines. There's an
13 upper line and a lower line. And the best way to
14 describe it is that the upper line, if you think of the
15 outlets in your house, you have three prongs. You have
16 the round prong and then you have the left and the right
17 prong. Well, the left prong which is slightly bigger is
18 called the neutral or the grounded prong. And so that
19 eventually connects to the lower wire out on the utility
20 system.

21 The upper wire is the hot or the primary voltage.
22 In this case, it's 13,800 volts if you were to measure
23 it with a meter. And then at some point in time it goes
24 through a transformer which transforms that 13,000 volts
25 down to the 120, 240 volt level you see in your home and

1 for your appliances.

2 So the upper line is the high voltage line, 13,800.
3 The lower line is basically at zero volts it's grounded.
4 So we have two lines that are running in the area close
5 to these trees. And the OSHA photographs and
6 documentation, the lower line, the neutral, there's
7 pictures showing fronds and some of these pods or stalks
8 look like they're very close to or possibly touching the
9 lower wire. And then we have the upper wire, the upper
10 shoots that were being cut that are sticking out more to
11 the top of the tree.

12 And then the next photograph will kind of show you
13 the scenario of how a shock can occur in this scenario.
14 So as this upper stalk contacts the line, possibly while
15 it's been cut with the chainsaw and it's starting to
16 fall toward the line. It basically allows it to have
17 contact with that upper line either while the chainsaw
18 is touching it or while Mr. Larios is grabbing it with
19 his hand. And then the electricity is able to basically
20 flow through that cut stalk into the chainsaw or into
21 the hand and then into the body and then it can come out
22 a part of his body that's touching the tree such as his
23 other hand or his chest and then the tree will then
24 carry that current back toward that neutral or grounded
25 wire. So we have a complete circuit that can be created

1 by this scenario. And it's my opinion that the evidence
2 supports that that type of a shock is what would have
3 been exposed to Mr. Larios. It's not a high voltage
4 13,000 volt type of an event, but it could be a much
5 lower voltage as it travels through the resistance of
6 that stalk to get to that person's body.

7 Q Can you help me understand a little bit, Mr. Brill,
8 again, this sort of the path of the electricity, what's
9 the -- how do you go in and out? Does it have to have
10 an entry and an exit?

11 A Many cases where we see high voltage contact when
12 someone obviously touched or put something metal, such
13 as a ladder or a pole, into the high voltage line, we
14 will typically have very strong evidence of entry wounds
15 where the electricity entered the person's body and then
16 also exit wounds where the electricity exited their
17 body.

18 In the case of a lower voltage shock, many times we
19 find no evidence of entry or exit wounds, but we have
20 evidence of a shock. So you can have anything from
21 entry/exit wound to no entry wound, but an exit wound or
22 you can have no exit wound, but you can have an entry
23 wound. And a lot of times that will be determined by
24 the surface area what you're contacting. So someone
25 holding a ladder with two hands may not have an entry

1 wound when the ladder comes in contact with the line,
2 but we may find holes blown out of his feet where the
3 electricity exited. And in that case you can have an
4 exit wound without an entry wound. So the lower the
5 voltage, the less likely you are to see entry or exit
6 wounds. Usually over 500 to a couple thousands volts is
7 where you'll start to see evidence of exit wounds and
8 entry wounds and then obviously at 13,000 volts. If he
9 was exposed to that level there would be a lot more
10 evidence of those type of wounds.

11 Q And, Mr. Brill, I want to follow-up with you in a
12 bit about the injuries that in what you saw as it
13 relates to that, but I guess I was just trying to make
14 sure that you had explained to us the idea of the power
15 needing to go somewhere and is it the grounded line that
16 needs to go ground?

17 A Correct. It's got -- in this case it's got
18 multiple paths it can take. It can go through the saw
19 to the body. It can go out the feet, down the ladder.
20 It can go down the tree to the ground, but it's going to
21 take the lowest path or the least resistive path. And
22 in this case, that's going to be directly back to the
23 grounded wire. So that's the shortest distance. It's
24 the lowest resistance and so the current will take that
25 path as opposed to trying to go down a ladder into the

1 ground, across, you know, hundreds of feet to the next
2 pole and then find its way back up.

3 So this case, the scenario based on my experience
4 in my opinion is that the actual path of the shock would
5 have been into his body through this branch he was
6 cutting and then out of his body through his chest or
7 through his hand into the tree and then back out to the
8 lower wire of the grounded wire.

9 Q I'm going to show you a picture that we'll mark as
10 Plaintiff's Five, I believe.

11 (WHEREUPON, Plaintiff's Exhibit Number 4-A was
12 marked and entered)

13 Q I know a moment ago, Mr. Brill, you asked about --
14 I mean, you have explained the OSHA picture that you had
15 reviewed and is that the picture that you were talking
16 about a minute ago?

17 A Yes. That's one of the photographs that I relied
18 on for that -- the opinion that those lines were very
19 close to touching and touching the line.

20 Q Okay. And, again, what is -- as far as you
21 understand, what is that one?

22 A That is the lower wire, the neutral or the grounded
23 wire.

24 Q Okay. And as I understand it, I'm going to show
25 you what was an SCE&G picture, can you tell me what's in

1 that picture?

2 A Maybe this will work. So here we can see those
3 lower basically branches. You can see one of those seed
4 type pods, whatever they are. You can't really see
5 where the neutral is, but it's somewhere. If you follow
6 this line, this is the neutral, it's going down and
7 getting into the tree here. The upper wire is that high
8 voltage line. So this angle is being taken from in the
9 bike path area looking back toward the property. So
10 it's basically the opposite side.

11 The ladder would have been on this side of the tree
12 and we're looking at the opposite side. So here we have
13 still a seed pod that had not been cut yet still
14 sticking out of the top of the tree. And then we have
15 other evidence of many of those seed pods being at the
16 base of the tree having already been cut and some
17 possibly have fallen down into the neutral wire as they
18 were being cut.

19 Q Mr. Brill, thank you for that explanation. Can you
20 go through with me and explain to the jury what evidence
21 you reviewed that was important and you coming up with
22 this opinion related to this electric shock?

23 A As I reviewed all the documents there was reports
24 that just prior to falling off the ladder, Mr. Larios
25 yelled out. There are reports from OSHA and also from

1 the coroner's office and also from the coroner's report
2 that SCE&G found a burn mark on their wire after the
3 incident. There was burned branches found on the ground
4 and there's burned branches identified up in the tree by
5 the coroner's office as well as the pictures from the
6 OSHA documents.

7 So those items along with a potential mark on a
8 chainsaw that we reviewed that possibly could be the
9 result of some type of an electrical event when the
10 chainsaw is cutting a stalk while the upper line hits
11 the line. We have evidence of a potential exit wound on
12 Mr. Larios' chest that was found by the coroner's
13 office. And then we have evidence from Mr. Abraham, the
14 coworker, who was with Mr. Larios who testified he heard
15 him scream out, he saw him fall, and then he said he
16 also, I guess, he smelled a burning smell and thought he
17 saw smoke or something coming from Mr. Larios and from
18 the tree after the incident. And that was based on his
19 deposition testimony that I reviewed.

20 So all of those items along with the photographs
21 that I reviewed brought me to that conclusion of how the
22 electrical shock had occurred.

23 Q Let me show you a photograph, Mr. Brill, and ask
24 you if you have seen this picture before?

25 A Yes. This is another one of the OSHA photographs.

1 It shows many, many cuttings directly below the tree
2 where the ladder is still up against it. And we see
3 five or six or seven of these seed pods. If I hold it
4 up this way you can see evidence of a lot of cuttings
5 that have already been on the ground at the time the
6 ladder is still up against the tree. And if I count
7 just through here, I think I counted at least seven or
8 eight of those seed pods and at least ten branches.

9 So many cuttings had occurred. Some of these could
10 have fallen off at the time of the incident, before the
11 incident. And so, again, when they ended up on the
12 ground, the fact that they found burned ones on the
13 ground means that those could have been the ones he was
14 cutting at the time of the incident. Or it could be
15 another one that was up against the line at a previous
16 time. We don't know, but we know that there was
17 multiple cuttings at the base of this particular tree
18 after the incident.

19 MR. APPELEGATE: I'd like to mark this photograph as
20 Plaintiff's Exhibit Five and publish to the jury.

21 THE COURT: All right. Any objection to Plaintiff's
22 Five?

23 MR. PUGH: I believe we already have a Five. No
24 objection.

25 THE COURT: Without objection.

1 (WHEREUPON, Plaintiff's Exhibit Number 5 was marked
2 and entered)

3 Q Mr. Brill, were you provided -- I guess you're
4 aware that SCE&G had noted that there was a burn mark on
5 the primary power line; correct?

6 A Correct. And the coroner's report, the last page
7 of the coroner's report after they went back out and
8 found the burnt branches and called the power company,
9 they said while they were out there, South Carolina
10 Electric and Gas went up and found a burn mark on their
11 wire and noted that and gave that information to the
12 coroner who -- a representative who was investigating
13 the incident. So that's where that information came
14 from.

15 Q Is that significant to you in your opinion?

16 A It goes along with, obviously, these branches were
17 long enough to have reached that upper wire either
18 during the trimming process or for -- just prior to or
19 even during the event.

20 Q Now, Mr. Brill, do you know whether there was any
21 analysis in this case about whether the fuse on the, I
22 guess, on the power pole nearest to this power line
23 event, was there any damage to the fuse that would have
24 indicated there was a problem or there was a shock
25 event?

1 A Right. So the way the fusing is done on these high
2 voltage lines is there's fuses that are put up on an
3 item called "cutout" or a "dropout" and it's basically a
4 device that this -- if the fuse blows, this device falls
5 open and allows the utility workers to see where the
6 power has been out.

7 After the incident, there's deposition testimony
8 that the power company representatives went up and
9 documented, took photographs of the fuse location.
10 Pulled the fuse out and they found no evidence of damage
11 to the fuse. Which I testified in my deposition that
12 it's something I would completely expect to be the case.
13 Because in order for that fuse to blow you have to have
14 a very high current level, much higher than somebody's
15 body can pass and usually much higher than a tree can
16 pass.

17 So usually tree problems and trees in power lines
18 very seldom below the fuses. And if you think about
19 your home when you've had storms and your lights have
20 flickered on and off but they haven't gone completely
21 off, most of the time that can be related to some tree
22 branch blowing into the line temporarily causing a
23 voltage issue, but not on the line long enough to blow
24 the fuse.

25 And I've been in cases where homes have burned to

1 the ground and the fuses haven't opened. And where
2 trees have been found laying against the line and the
3 fuses haven't opened because it's strictly a matter of
4 it has to -- the current going through the fuse has to
5 exceed the rating and for -- in order for it to open and
6 blow.

7 And many of these type of incidences don't create
8 enough of a fault current like in your house, it
9 wouldn't create enough current to trip the breaker in
10 your panel. It's not a high enough fault to cause that,
11 but it's still enough to cause your lights and the
12 voltage to drop in your homes and cause flickering
13 lights.

14 Q Mr. Brill, there's -- I wanted to ask you and see
15 if you can explain looking back at your demonstrative
16 here. And we've seen this picture of the -- when you
17 explain to me the neutral line, there was some
18 suggestion that this event couldn't take place because
19 that was a neutral line in this picture. Do you have
20 any opinion on that?

21 A The question was along those lines was, could the
22 neutral have been the source of power. In other words,
23 being a high voltage input, in other words, could
24 electricity have come from the neutral into the tree and
25 cause the injury. And in my opinion, based on my

1 experiences, we have no evidence that there was a
2 problem with the neutral at the time and that the
3 neutral was just the path through the current, the flow
4 to, not the source of the electrical current for the
5 shock.

6 Q Thank you. Is there anything that SCE&G could have
7 done to avoid this whole event to happen?

8 A Obviously, the records are that this area was
9 trimmed back in 2013 which is two years prior to the
10 incident, had this area behind this home been inspected
11 and trimmed properly, it's my opinion that this tree
12 would have either have been cut way back, been removed,
13 or would have had some kind of record that the homeowner
14 was contacted and refused to allow the utility company
15 to remove or cut that tree. And those are the three
16 things I think I would have found had, you know, had the
17 utility been back there trimming this particular tree
18 based on all the evidence that I've reviewed.

19 Q I think earlier in your testimony, Mr. Brill, you
20 talked about where these policies, rules come from. Can
21 you -- and in one of the things you said was SCE&G's own
22 policies and procedures. Can you tell me what those
23 policies and procedures are that relates to SCE&G?

24 A So, basically, the ANSI standard -- so we talked
25 about there's a National Electrical Safety Code which

1 gives general requirements for tree and vegetation
2 management as -- just very general and it applies to all
3 power companies around the country so there's no real
4 specifics. It says in there that each utility based on
5 their own experience is responsible to set up a program
6 that's appropriate for that particular utility.

7 Then we have the ANSI standard which is another
8 national standard, but it does have specific tree timing
9 guidelines on how to trim trees, how far back to trim
10 trees, and how to properly remove vegetation and make it
11 safe for power lines to pass along side through, over or
12 under particular trees.

13 And so based on the documents that I reviewed from
14 South Carolina Electric and Gas, they've adopted the
15 ANSI A300 standard as their standard. And in their
16 presentation, they talk about they trim a minimum of 10
17 feet back from the primary or the high voltage lines as
18 long -- as well as their other lines. And also 10 feet
19 below their lines and 20 feet above their lines. And
20 that's the guideline that ANSI sets up and that's the
21 guideline that was adopted according to the documents I
22 reviewed by SCE&G.

23 Q Mr. Brill, why wouldn't -- sorry. One second here.
24 Do you know what specifically those internal policies
25 are? I mean, what actual requirements do they have to

1 comply with as far as part of the ANSI standards and
2 their vegetation management?

3 A Well, usually there's minimum standards and then
4 they're going to have their own standards that apply to
5 transmission lines and they're usually going to be a lot
6 stricter with the transmission line guidelines.
7 Because, obviously, a lot more customers will be
8 affected if a tree took out a transmission line. They
9 could take out the whole town here. So they're going to
10 have different guidelines for the different lines that
11 they have. And typically the standards are usually
12 minimum standards and so the utilities, a lot of times,
13 will either go further than the standard to have even
14 stricter policies. But their policies basically are
15 adopting the ANSI standards.

16 Q So, again, specifically that standard is, if I
17 missed it, is there an amount of specific distances that
18 they need to be as far as making sure their lines are
19 free and clear from any and all vegetation?

20 A Well, it's supposed leave -- there's two things.
21 There's the 10-foot minimum requirement. And then as
22 experienced holds, so, in other words, they may have
23 some species of trees that are very slow growing, they
24 may let those get a little bit closer because they know
25 those species aren't going to be a problem for many

1 years.

2 And then there's obviously fast growing species
3 that we see especially in the southeast where we can
4 have much faster growth than 10 feet every five years.
5 And in that case, the utility might trim back to 20 feet
6 or 30 feet on those species. Because they know they're
7 going to be out there every so many years based on their
8 policy.

9 In this case, South Carolina Electric and Gas has a
10 five year trim cycle, so they go out every five years.
11 So as experience and their knowledge and training tells
12 them they can cut back minimum of 10, but they could
13 actually trim back further if they determine that a
14 particular tree would grow too far or too close to that
15 line in a five year period.

16 Q And now you kind of told us about those policies,
17 Mr. Brill, did SCE&G comply with those -- their own
18 policies and procedures or those of ANSI or A-N-S-I and
19 the National Electric Safety Code?

20 A In my opinion they did not meet those
21 qualifications based on the measurements that we have.
22 Reportedly there are measurements that were taken by
23 South Carolina Electric and Gas that I have not been
24 provided. But the measurements that OSHA took, the
25 photograph they took, I believe, you know, even with

1 just those measurements which are approximations and the
2 photographs that there's no way that this tree was
3 likely trimmed in 2013 and would not have met the
4 requirements and the standards back in 2013 when they
5 left this location after being in that area to do their
6 trimming.

7 Q Is it a -- is there any reason why SCE&G couldn't
8 inspect this property or this area to ensure that the
9 lines were free and clear from any and all vegetation?

10 MR. PUGH: Object to the form of foundation.

11 THE COURT: Sustained as to the objection. Rephrase
12 your question.

13 Q Mr. Brill, again, you've worked in the utility
14 company for many years; is that correct?

15 A Yes.

16 Q Okay. And you've had experience with vegetation
17 management programs?

18 A Yes.

19 Q Okay. And you have worked as a lineman; is that
20 correct?

21 A I was trained to be a lineman. I never -- I never
22 became one and that was back when the company decided to
23 train some engineers to be linemen in case the Union
24 went on strike. And I was one of those that was
25 selected for the training. Fortunately for me, they

1 never went on strike so I never had to do that work.

2 But, yes, I did receive training to be a lineman.

3 Q And you're familiar with the sort of a utilities
4 ability to go out and do inspections of power lines?

5 A Yes.

6 Q Okay. And, so, is there anything that you've been
7 able to tell from the evidence you reviewed in this file
8 and how SCE&G operates, is there anything that keeps
9 them from doing an inspection to the power lines to keep
10 -- to make sure that they are free and clear from any
11 and all vegetation?

12 MR. PUGH: Object to the form of foundation as to
13 what the evidence is about what SCE&G did or didn't do
14 with regard to this circuit.

15 THE COURT: Let me get y'all to step over here.

16 (Bench conference)

17 THE COURT: All right. You may proceed.

18 Q So what I'm trying to understand is that in the
19 time period -- in any time period, really -- let's go
20 back. You testified, Mr. Brill, that they do a five
21 year trim cycle; is that correct?

22 A Yes.

23 Q And so SCE&G's policy is five year trim cycle and
24 is there any evidence of when the last trim cycle would
25 have took place on Edisto Island?

1 A 2013 and 2018 according to the records.

2 Q Okay. And is there anything that would have
3 precluded someone to come and do an inspection, preclude
4 SCE&G from doing an inspection and making sure that
5 within the timeframe of 2013, 2018 that the power lines
6 remained free and clear from any and all vegetation?

7 MR. PUGH: Object to the form, Your Honor.

8 THE COURT: I'm sorry.

9 MR. PUGH: Object to the form of that question. The
10 question is between 2013 and 2018. That was the
11 question.

12 THE COURT: Right. As to whether or not there was
13 anything that would preclude them from inspecting it.

14 MR. PUGH: Right.

15 (Bench conference)

16 THE COURT: Same question, but bring it down to the
17 '15.

18 Q Sorry, Mr. Brill. Is there anything that would
19 prohibit SCE&G from inspecting the property where this
20 accident took place from their supposed trim cycle in
21 2013 and when Mr. Larios was shocked?

22 A No.

23 Q Okay. And isn't it their responsibility to make
24 sure that they inspect the property and keep the lines
25 free and clear from the vegetation?

1 A They're responsible to inspect their facilities and
2 keep them free and clear, yes.

3 Q Is there any reason why, and this has been the
4 question throughout the case, is there information that
5 SCE&G would have received or should have received that
6 would indicate that this line was too close to the
7 vegetation?

8 A Not unless someone observed it after their 2013
9 inspection cycle.

10 Q Is it surprising to you under the facts of this
11 case that there was no sort of notification that was
12 provided to SCE&G through either some type of fuse or
13 any other thing to give them some indication that this
14 would have happened?

15 A No. There would have to be somebody call in. If
16 they're not out inspecting for any other reason then it
17 would be based on a customer calling in and complaining
18 of flicking lights, that would lead them to, you know,
19 come out and inspect for some kind of a complaint.

20 Q Why can't SCE&G just rely on the homeowners?

21 A Homeowners don't have the knowledge or the
22 education or the training to know what needs to be done
23 on the power lines. That's something that the power
24 company has the superior knowledge of.

25 Q And just as general matters, does the power line or

1 the power company, do they keep maps of where the power
2 lines are located?

3 A Yes. Every utility will have some kind of a system
4 to designate location so that if a customer calls in,
5 the linemen or trouble men will be able to know exactly
6 how that customer's power is being served to their home.
7 So when he goes out, he knows where to go and how to get
8 the service back up and running in an efficient way.

9 Q And is there any documentation that's kept by a
10 utility that shows sort of where their power lines are
11 in relationship to surrounding vegetation?

12 A It doesn't show the vegetation on those maps, but
13 it shows where the lines are run on basically a street
14 view. So you can basically say whether the lines are
15 running behind homes or in front of homes, along streets
16 or between homes, and the rear easement, the maps would
17 tell them that.

18 Q So what I'm trying to understand, is the utility
19 aware that there are lines that are say running down a
20 city street that's out any vegetation as opposed to
21 lines that are running, you know, through a forest?

22 A Sure. That would be the information that they
23 would have in their records.

24 Q Is there any -- and let me start over. In this
25 case, it's SCE&G's position that it was Mr. Larios'

1 fault for not seeing this line. Do you have an opinion
2 on that?

3 A Again, I wasn't out at the scene right after the
4 incident, but from all I reviewed, including the
5 deposition testimonies of the coroner's office and also
6 his coworker Mr. Abraham, that they walked the property
7 that morning, didn't see the lines. We have the
8 coroner's office come out, they do their initial
9 investigation. They never saw any power lines in the
10 area and they took photographs and did their
11 investigation.

12 And OSHA came out sometime, I believe, on Monday
13 afternoon, they didn't see the lines. And it wasn't
14 until a meeting, I believe, on Tuesday between OSHA, the
15 coroner's office, and the coworker Abraham that they
16 found this picture with the burn or showed a picture of
17 the burn mark on the chainsaw and led them to go back
18 out an investigate. And at that point in time is when
19 they discovered the lines were near the tree. But prior
20 to that, none of those parties that were out there had
21 been able to see it.

22 So in my prospective, based on that and the
23 photographs, it's very difficult to see them in the
24 photographs as well that this was not open and obvious
25 and was fairly hidden by the growth in that area.

1 Q Mr. Brill, we've been referring in this trial to an
2 OSHA investigation. Do you know -- can you actually
3 just help us understand what OSHA is and what that is?

4 A So OSHA is a federal government agency that's
5 tasked with basically safety in the workplace. And the
6 two main functions of OSHA -- actually three is they
7 have standards for safety, they do inspections,
8 basically random inspections to determine if employers
9 are complying with OSHA standards. And then they also
10 go out and investigate accidents after the fact if
11 they're of significant -- of a significant level to
12 where they're required to be reported to OSHA.

13 So OSHA is strictly an investigative arm of the
14 government that's out there looking at employer and
15 employee relations and safety. And that's what OSHA's
16 function is. In this case, we were able to use a lot of
17 the information at OSHA obtained in their investigation
18 especially the photographs, the notes, and the
19 interviews to help assist, as a small part of all the
20 evidence we looked at, to assist in the evaluation of
21 the incident.

22 But OSHA is not tasked with determining the fault
23 or involving any other parties. They're strictly out
24 there investigating an employee and his employer and no
25 one else.

1 Q Now, that helped me a little bit understand. Now,
2 if, for example, you've seen the records that the owner
3 of this house is Mr. Ray Jackson, and if Mr. Jackson had
4 gone out and been up in this tree trimming, been
5 shocked, would there be an OSHA investigation then?

6 A No. OSHA wouldn't get involved in that because
7 there's no employee/employer relationship.

8 Q Okay. And what about if a handyman had been hired
9 by Mr. Jackson and he had come over and gone up in that
10 tree?

11 A Again, sole proprietorship, if you're just the only
12 employee of your company, I don't see OSHA investigate
13 those type of accidents either.

14 Q Now, was Mr. Larios cited for violating OSHA rules
15 in this case?

16 A Mr. Larios received no citations as he's the
17 employee. This citations were written to his employer.
18 Which all citations were written to, I believe, Steven
19 Landscape.

20 Q Okay. And did the landscape company receive any
21 citations from OSHA?

22 A Yes. The Stevens Landscape received multiple
23 citations based on OSHA's investigation.

24 Q Okay. And what were some of those citations?

25 A They included not providing a safe workplace. Not

1 providing the proper personal protective equipment that
2 the employee should have used. Allowing an employee to
3 work too closely to power lines. Along with not, I
4 guess, working from elevated position. They cited him,
5 I believe, for allowing Mr. Larios to work from an
6 elevated position on a ladder. And so those were
7 basically the general violations that I remember reading
8 -- reviewing.

9 Q Now, you mentioned the safe workplace and the
10 proximity to the power lines as being a citation. Does
11 OSHA consider in their analysis maybe a citation for the
12 employer whether the employer or the employee could in
13 fact see the power lines?

14 MR. PUGH: Object. Foundation. Speculation.

15 THE COURT: You need to lay a foundation as to his
16 knowledge of that.

17 MR. APPLGATE: Okay.

18 Q Mr. Brill, are you familiar with the OSHA?

19 A Yes. I reviewed the OSHA basically the standards
20 and sections that would have been applicable in this
21 case as well as all of the references in the OSHA report
22 and documents on their references to those particular
23 violations.

24 Q Okay. And just generally speaking, are you
25 familiar with OSHA and OSHA citations and when they

1 apply?

2 A Yes. I typically get copies of OSHA reports on
3 almost all of the shock/electrocution cases that I do if
4 there's a significant injury. So over the years, I've
5 reviewed at least 50 to 100 OSHA reports on different
6 inspections and investigations related to electrical
7 shock and electrocution.

8 Q Did you speak to any of the OSHA investigators in
9 this case?

10 A I did. I had a call to Mr. Dennison, I believe. I
11 forget his name, the OSHA investigator who was out at
12 the scene, I did speak with him.

13 Q Okay. And is there any consideration of whether
14 Mr. Larios in getting a citation that he was within too
15 close to power lines, is there any consideration given
16 in this case to whether he could or could not see the
17 power lines?

18 A No. OSHA doesn't have any differentiation. The
19 10-foot rule is the 10-foot rule. Their standards don't
20 get into whether you can or can't see or why you can or
21 can't see the lines. It's strictly if you're working
22 within 10 feet of the lines whether they're out open and
23 obvious or whether they're hidden it's still a violation
24 of that particular standard.

25 Q Had SCE&G followed their own policies and

1 procedures, could Mr. Larios or his employer ever
2 violated the 10-foot rule?

3 MR. PUGH: Object to the form. Calls for
4 speculation.

5 THE COURT: I'm going to allow it. Overruled.

6 A I'm sorry, could you repeat the question?

7 Q Yes. Had SCE&G followed their own guidelines, is
8 there anyway that Mr. Larios or his employer could have
9 violated the 10-foot rule?

10 A Had the tree been properly trimmed or removed in
11 2013 when they were last out at the scene, then there
12 wouldn't have been the ability for them to have violated
13 the 10-foot rule on this particular tree because it
14 would have either been removed or cut back significantly
15 enough to where it wouldn't have been able to contact
16 the line.

17 Q Mr. Brill, thank you for your patience. As it
18 relates back to these policies and procedures, again,
19 why are these policies and procedures so important?

20 MR. PUGH: Object to foundation. I'm not sure which
21 ones we're talking about.

22 THE COURT: What specifically are you referring to?

23 Q Why are they, SCE&G's internal policies and
24 procedures as well as the National Electric Safety Code
25 and ANSI regulations, why are they so important?

1 A They provide a baseline for safe work practices by
2 the people that are adopting those standards. So if you
3 adopt the standard you're adopting them to providing
4 safe reliable system and that's why you would adopt them
5 and follow them in your policies and procedures.

6 Q What happens if you don't follow these policies and
7 procedures?

8 A You can create problems such as safety hazards,
9 outage problems, and reliability issues for the power
10 company.

11 Q And situations like you have here?

12 A Yes.

13 MR. APPELEGATE: Your Honor, I think that's all the
14 questions I have.

15 THE COURT: Let me get y'all and ask you real quick.

16 (Bench conference)

17 THE COURT: Ladies and gentlemen, I'm going -- in
18 talk to the attorneys and trying to look at schedules of
19 folk's schedules and stuff, we're going to break at this
20 time for lunch. But what I'm going to ask you to do is,
21 typically, I give you an hour and a half, we're going to
22 trim it back a little bit today. I'm going to give you
23 an hour. Okay.

24 So if you would and we want to start back at 1:30.

25 So it's 12:29 now, that gives you an hour. Please have

1 no conversation about the case. Don't let anyone talk
2 with you and we'll see you back here at 1:30.

3 (The jury left the courtroom at 12:30 p.m.)

4 THE COURT: I just instructed Mr. Brill to not have
5 any conversation about his testimony during the break.
6 Let's get back and ready to start at 1:30. Okay.

7 MR. BUCKNER: Yes, sir. Thank you, Your Honor.

8 (Lunch break)

9 THE COURT: Anything we need to take up before we
10 start back? From the plaintiff?

11 MR. DUFFY: Nothing from us, Your Honor.

12 THE COURT: Anything from the defense? Anything we
13 need to take up before we start back?

14 MR. STEGMAIER: Your Honor, I think at the
15 conclusion of this witness we're going to cutout, so,
16 yes, sir.

17 THE COURT: Okay. What do you want to do -- maybe
18 at the conclusion of this witness we'll take a short
19 break and then we can talk about what we want to tell
20 them and everything?

21 MR. STEGMAIER: Mr. Applegate, have you seen the
22 consent order?

23 MR. APPLGATE: Yes, I --

24 THE COURT: We'll take a short break when we get
25 done with Mr. Brill's testimony.

1 All right. Let's bring the jury in, please.

2 (The jury entered the courtroom 1:35 p.m.)

3 THE COURT: All right. Thank you, folks, please
4 have a seat. Ladies and gentlemen, welcome back. I
5 want to thank y'all very much. I work with juries all
6 the time and y'all are the most punctual, on time folks
7 that I've ever worked with and I really do appreciate
8 it. Thank you for doing that.

9 But I hope you enjoyed your lunch break. And if you
10 recall when we broke at the break for lunch that
11 Mr. Applegate had completed his direct examination of
12 Mr. Brill. And so I'm going to recognize Mr. Pugh for
13 his cross.

14 MR. PUGH: Thank you, Your Honor. Please the Court.

15 THE COURT: Yes, sir.

16 CROSS EXAMINATION BY MR. PUGH:

17 Q I'm going to put that done there so I don't spill
18 it like I did yesterday. Good afternoon, sir?

19 A Good afternoon, sir.

20 Q Good to see you again, Mr. Brill.

21 A Good to see you.

22 Q Thank you for coming up.

23 A Thank you.

24 Q One of the things you looked at in connection with
25 your work in this case were photographs, reports, and

1 things like that from OSHA; correct?

2 A Correct.

3 Q Hundred and some photographs, something like that
4 from OSHA; right?

5 A Up to a hundred, yes.

6 Q It was a lot. Okay. Looking at this photograph
7 which is in evidence as Defendant's Exhibit Number One.
8 Do you recognize this as the scene where this incident
9 occurred?

10 A Yes. This is, I believe, the Tuesday or so after
11 the ladder was taken down.

12 Q Yes, sir. You can see the ladder laying on the
13 ground?

14 A Yes, sir.

15 Q And we can see the neutral?

16 A Yes.

17 Q We can see the primary?

18 A Yes.

19 Q And we can see those on both sides of the tree;
20 correct? Primary, primary, neutral, neutral running
21 over here?

22 A Yes. I can see those in the photographs, yes.

23 Q Okay. You agree with me that something that you
24 can take a photo of you can see it; right?

25 A Sure. Again, those photos were taken after a lot

1 of trimming had been completed.

2 Q Let's talk about that. Is it your understanding
3 that the trimming that was done out there was nine
4 trees?

5 A I believe he testified -- Mr. Abraham that they had
6 done nine already at the time of the incident.

7 Q Yes, sir. And in fact, this tree that we're
8 talking about was to be the last tree?

9 A I believe that's correct from the testimony.

10 Q So before the ladder was moved to this tree, a
11 bunch of trees had already been trimmed?

12 A That's my understanding, yes.

13 Q Okay. Opening up that backyard; right?

14 A Again, I don't know where all the other trees were
15 that they were working on, but they're somewhere on the
16 property.

17 Q All right. Now, let's talk about some things that
18 you have not done. Okay. You have not inspected the
19 chainsaw; correct?

20 A That's correct. It was reportedly missing from the
21 evidence storage.

22 Q Okay. And, in fact, you told me when I took your
23 deposition that --

24 MR. APPLGATE: Object, Your Honor. Improper
25 impeachment.

1 MR. PUGH: I'm not impeaching him, I'm asking him a
2 question.

3 MR. APPLGATE: He can ask the question, but he's
4 talking about reading the deposition.

5 MR. PUGH: Okay. I'll rephrase.

6 THE COURT: All right.

7 Q Mr. Brill, is it correct that you cannot say to a
8 reasonable degree of engineering certainty that the mark
9 on the chainsaw was indeed indicated or indicia of
10 electrical activity?

11 A Right. I believe I testified that without looking
12 at it personally, it would be difficult to do that from
13 the photographs.

14 Q Right. Can't say whether that mark on the chainsaw
15 came from electricity or not?

16 A Correct. And I believe there was additional
17 testimony that came in after my deposition was taken.

18 Q And what testimony is that?

19 A I believe that's Mr. Abraham's deposition where he
20 testified that he had serviced and oiled the chainsaw
21 multiple times during the day and never saw that mark
22 prior to the chainsaw being investigated after the
23 incident.

24 Q And so you still and no one has seen the chainsaw,
25 it's your understanding, since back in November of 2015;

1 correct?

2 A That's correct.

3 Q And the same with regard to the ladder that
4 Mr. Larios was standing on. Do you understand that
5 there's a discoloration on the third rung of the ladder?

6 A I read that and saw some photographs that kind of
7 tried to depict that. Yes.

8 Q And is it true that you would not state to a
9 reasonable degree of engineering certainty that that
10 discoloration on the third rung of the ladder is any
11 indication of electrical activity?

12 A I would agree I saw no evidence to support that.
13 That would have been from an electrical event.

14 Q And, in fact, so we can clear up this business
15 about the ladder, you do not believe that the ladder --
16 the aluminum ladder Mr. Larios was standing on was in
17 anyway involved in this pathway for circuit; correct?

18 A That's correct.

19 Q So it is your testimony that no electricity ever
20 went through the ladder at the time Mr. Larios was
21 cutting?

22 A I don't believe I said no electricity at all.
23 Obviously some electricity would flow through the tree
24 through the ladder, but because we have no corresponding
25 burn marks on the pads of the ladder, there's no

1 evidence that any noticeable amount of current was
2 passed down through the ladder.

3 Q And we don't have any electrical evidence of where
4 the ladder was up against the palm tree either, do we?

5 A No, I don't see any photographs of that before it
6 was cut down.

7 Q Okay. You didn't see any photographs of the ladder
8 up against the tree?

9 A No. I thought you were referring to the ladder
10 behind -- the tree behind the ladder where it was up
11 against the tree.

12 Q Yeah. That's my question. Did you not look at
13 photographs of the ladder up against the tree?

14 A No. I was referring to the tree where the ladder
15 was blocking. In other words, the area where the ladder
16 was in contact with the top of the tree. I didn't see
17 any photographs of that specific area to indicate when
18 current would have flown into the tree itself from the
19 ladder.

20 Q Are you aware of any photographs that you've seen
21 that showed any burning or electrical activity from the
22 tree?

23 A Just from the branches and the fronds that are
24 identified by the coroner's office. No, sir.

25 Q Other than that?

1 A Other than that I don't see any other marks on the
2 ladder or the tree.

3 Q Okay. Nothing on the trunk of the tree that you
4 saw?

5 A Nothing on the trunk that I saw.

6 Q Nothing on the ladder that you saw?

7 A That's correct.

8 Q Okay. And to be fair, you never had an opportunity
9 by the time you went out to the scene on June 13, 2019
10 to look at the tree while it was standing; correct?

11 A Correct. Just two photographs was the only way I
12 could look at the tree before it was cut. Because the
13 pictures show it was cut within a few days of the
14 incident.

15 Q And you know that the tree was not taken down --
16 well, let me ask you, when is it your understanding that
17 the tree was actually removed?

18 A I believe the tree -- parts -- some of the parts
19 are still there on the site. But as far as the top of
20 the tree, the pictures indicate it was removed possibly
21 on that Tuesday during the follow-up inspection by OSHA
22 and the coroner's office.

23 Q And how about -- I'm sorry. I didn't mean to talk
24 over you.

25 A And then the rest of the tree, we found, it seems

1 to be stacked up. Sections of tree trunks still stacked
2 up on the property today. I glanced and looked at them,
3 I didn't see anything that stood out to me.

4 Q Okay. You were looking to see if there was any
5 indicia of electrical activity?

6 A Yes. Just to see -- I mean, the age of them now
7 and the weathering, I didn't think there was any useful
8 information from those trunks.

9 Q And do you know that that ladder -- excuse me, that
10 that tree was taken down in 2019?

11 A I was not aware of when it was taken down.

12 Q Do you know that tree was taken down in 2019 at the
13 direction of Mr. Ray Jackson?

14 A I have no information. I'd have to agree with you
15 because I don't know any other information to say.

16 Q Did you know that tree was taken down in 2019 at
17 the direction of Mr. Jackson by a tree trimming company?

18 A I was not aware of that.

19 Q You never had the opportunity to inspect
20 Mr. Larios' clothing?

21 A That's correct.

22 Q Never saw his footwear?

23 A Just the photographs of the limited photographs
24 that we have.

25 Q We can agree that Mr. -- based on the information

1 you have, Mr. Larios has no classic entry or exit
2 wounds; correct?

3 A Correct. This is a unique type of a shock event.
4 It doesn't fit the mode of the typical entry/exit
5 wounds.

6 Q It doesn't fit particularly what you would see if
7 there was, for example, direct contact with the high
8 voltage overhead primary?

9 A Correct. We talked about that evidence would be
10 clear if that were the case.

11 Q Is it also, can we agree, that you do not intend to
12 talk about to a reasonable degree of electrical
13 engineering certainty that a mark on Mr. Larios' stomach
14 or abdomen was caused by electricity?

15 A That's correct. As a nonmedical doctor I would
16 usually defer to the doctor for that type of -- but I do
17 compare, obviously, unfortunately, my job I have to look
18 at autopsy photos a lot of times for the entry and exit
19 wounds and I couldn't say one way or the other. I can
20 definitely I say I can't rule out that that mark is an
21 electrical mark and I can't say conclusively that it is
22 an electrical mark.

23 Q Correct. What can we agree it certainly is not an
24 electrical mark from a high voltage power line direct
25 contact?

1 A Absolutely agree with that, yes.

2 Q Because if we're talking about that, the typical
3 situation with that unfortunately is catastrophic
4 injuries; correct?

5 A That's correct.

6 Q Did you look at the two different autopsy reports
7 in this case?

8 A I believe I looked at whatever was in my file when
9 I was deposed were the files that I looked at.

10 Q Do you know anything about that took place between
11 the time Dr. Presnell did her original autopsy and when
12 she finalized the report? Do you know anything about
13 that?

14 A Yes. From my recollection, the initial
15 investigation as I testified earlier none of the
16 original investigators, either the autopsy -- or the
17 coroner's office investigators or OSHA investigator
18 observed any power lines when they were out there during
19 their initial investigation. So I believe before they
20 conducted the interview and went out to look for the
21 power lines on, I believe, the Tuesday after the
22 accident, the first autopsy had, I believe, already
23 taken place with no information indicating power lines
24 were present in the area.

25 Q Okay. And are you aware that there was a

1 subsequent phone call from Mr. Carter of the coroner's
2 office to Dr. Presnell?

3 A Yes. In his deposition testimony I remember
4 reviewing that.

5 Q And you're aware of two things being told by
6 Mr. Carter to Dr. Presnell; one, that Mr. Larios'
7 chainsaw made direct contact with the overhead primary;
8 correct?

9 A I believe that was his opinion. Yes.

10 Q And, in fact, based on your investigation and
11 attempt to reconstruct this incident, you would agree
12 that is a physical impossibility?

13 A Right. With my engineering background and having
14 looked at hundreds of these cases, I have the knowledge
15 and training to be able to look at that and give it much
16 better opinion.

17 Q So the point is, Dr. Presnell being told that the
18 chainsaw made direct contact with the overhead primary,
19 you know that to be incorrect?

20 A The information that she was provided from
21 Mr. Carter appears to be incorrect from my
22 investigation.

23 Q And we talked about the discoloration -- and the
24 second piece of information that was provided by
25 Mr. Carter to Dr. Presnell was that there was this

1 residue from Mr. Larios' footwear from the third rung of
2 the ladder; correct?

3 A I recall that as well, yes.

4 Q And based on your reconstruction or attempt to
5 reconstruct this incident, that would also be incorrect?

6 A Correct. I didn't see evidence to support that the
7 ladder was the path of fall current. But obviously
8 that's a path that many of these type of accidents take.
9 So it could be an assumption that somebody made based on
10 the evidence that was present.

11 Q But based on your reconstruction, that didn't
12 occur? There's no indicia that this discoloration came
13 from electricity?

14 A Correct. With all the additional information I
15 obtained several years later that probably the coroner's
16 office didn't have at the time of their inspection. I
17 obviously have a lot more information, and experience,
18 and training to be able to evaluate all the evidence.

19 Q And you agree that what you want is accurate
20 information to try and come up with the accurate
21 conclusion, do you agree with that?

22 A Everyone likes as much information as they can to
23 make that conclusion.

24 Q And you want it to be accurate; right?

25 A Yes.

1 Q Okay. You made no attempt to calculate the
2 resistance of the palm tree trunk to earth; correct?

3 A I have not in this case made those calculations for
4 several reasons. One being the tree wasn't there to
5 take any readings or do any calculations with.

6 Q And you made no attempt to calculate the resistance
7 of the palm frond, fruit stalk, or seed pod, have you?

8 A I have not. But I obviously have compared that to
9 the other cases where I've had similar types of shock
10 and electrocution cases with the same type of scenario
11 of branches touching the line and an individual touching
12 the branch and either the ladder or the tree as the path
13 of exit. So I have seen the same scenario occur in
14 other cases involving vegetation.

15 Q And you haven't attempted to calculate the amount
16 of current based on voltage and resistance that
17 Mr. Larios may have received through your shock theory;
18 correct?

19 A I mean, I've done some rough calculations, but none
20 of those calculations would be something that I could
21 rely on from a degree of engineering certainty because
22 there's too many variables. I can't calculate now that
23 the evidence is no longer present.

24 Q Okay. Well, let's talk about variables. Okay.
25 You don't know which rung of the ladder Mr. Larios was

1 standing on; correct?

2 A We had testimony that he was on the third or fourth
3 rung from deposition of Mr. Abraham.

4 Q You don't know where he was cutting on the tree at
5 the time he yelled out; correct?

6 A No. We see the chainsaw in the pictures toward the
7 backside of the -- of the tree. But he wasn't holding
8 it at the time that he was first witnessed on top of the
9 tree by Mr. Abraham.

10 Q My question is simply, you don't know where he was
11 cutting at the time he yelled out; correct?

12 A That's correct. Nobody witnessed that actual cut.

13 Q And you don't know whether what he cut was moved
14 over into the energized primary or whether what he was
15 supposedly cutting fell onto the primary; is that
16 correct?

17 A That's correct. And I consider that in formulating
18 my opinions.

19 Q Those are two different scenarios; correct?

20 A Those are correct.

21 Q Okay. So either he's cutting something and he
22 moves it over, manipulates it into the primary or in the
23 alternative he cuts something and it falls on top of the
24 primary, two different scenarios; correct?

25 A That's correct.

1 Q You don't know how long whatever he was cutting
2 was?

3 A We don't.

4 Q You don't know if he was cutting anything, in fact,
5 before he fell, do you?

6 A We know the chainsaw was running and we have piles
7 of cuttings and debris underneath the tree where he was
8 at at the time of the incident. So --

9 Q Is it your -- I'm sorry.

10 A And --

11 Q Is it your -- were you done?

12 A I was just going to say, and they had already
13 trimmed nine trees in a similar fashion according to
14 Mr. Abraham's testimony.

15 Q Is it your understanding from reading Mr. Abraham's
16 deposition that he doesn't know what Mr. Larios was
17 cutting at the time because he wasn't looking at them
18 until he yelled; you understand that?

19 A That's correct. Yes.

20 Q Okay. And you don't know, if I heard you correctly
21 earlier, you don't know if this electricity that you
22 talked about entered Mr. Larios through his left hand or
23 through his right hand on the chainsaw; correct?

24 A Correct. And I think I also testified that he
25 didn't necessarily have to go through the chainsaw to

1 create the shock. He could be touching the stalk
2 directly.

3 Q So under your theory, just to be clear, you don't
4 know whether the electricity entered Mr. Larios through
5 his left hand or through his right hand which was on the
6 chainsaw?

7 A That's correct. And I didn't testify that I did
8 make that assumption.

9 Q And you told me a minute ago the chainsaw was still
10 running or that's your understanding?

11 A That's the testimony I believe from the coroner's
12 office that it was still running when they got there up
13 in the tree.

14 Q You don't know whether the gas powered chainsaw was
15 smoking?

16 A I don't.

17 Q For Mr. Abraham to have seen smoke coming off of
18 Mr. Larios -- well, let me ask you about that for a
19 minute. You looked at the OSHA records; correct?

20 A I did.

21 Q You didn't see any reference in the OSHA records to
22 Mr. Abraham ever telling anyone that Mr. Larios was
23 smoking after he yelled, do you?

24 A No. And, again, I review OSHA files all the time
25 and find discrepancies of not recalling everything when

1 they're being interviewed right after an accident.

2 Q Well, I appreciate that. My question was it isn't
3 in the OSHA records; right?

4 A Nothing that was written down. Whether he told the
5 OSHA this or that and didn't write it down or he didn't
6 tell them.

7 Q So that was new to you after I took your
8 deposition?

9 A Correct. That came out in Mr. Abraham's deposition
10 two months after my deposition.

11 Q Okay. And for Mr. Larios to in fact have been
12 smoking or had smoke coming off of him, according to
13 your pathway, would you agree that his shirt would have
14 caught -- his cotton shirt would have ignited, caught on
15 fire?

16 A No, unless he was exposed to 13,000 volt.

17 Q It would take 13,000 volts to ignite a cotton
18 shirt?

19 A It would take much higher voltage than 1,000 volts
20 to ignite the cotton shirt.

21 Q Would it take 13 -- and your testimony is that
22 that's not what he received?

23 A No. I believe it's somewhere below 1,000 volts
24 from my experience of looking at the incident and the
25 lack of entry/exit wounds along with all the other

1 evidence I considered.

2 Q And you understand that his clothing didn't have a
3 mark on it?

4 A Right. I don't know whether his shirt was pulled
5 up, whether his shirt was in contact with the tree, or
6 whether his belly was in contact with the tree, we don't
7 know.

8 Q Okay. Do you agree that there's nothing wrong with
9 the overhead lines as they were instructed in the
10 right-of-way behind his property, do you agree with
11 that?

12 A Based on the construction of the line itself minus
13 any other issues, that's very typical single phase line
14 that you would see behind probably most residential
15 homes.

16 Q Okay. Normal for the industry?

17 A Normal for many utilities in this country. Yes.

18 Q Normal for the utility you work for?

19 A Yes. Same type of construction was found at
20 Florida Power and Light.

21 Q And utility companies don't have a duty to warn
22 folks about properly constructed overhead lines in their
23 right-of-way, do they?

24 A No. There's code that sets up in the National
25 Electrical Safety Code handles that by telling utility

1 companies they have to put the lines so many feet above
2 the ground. And that's how they take care of the safety
3 issue which prevents them from having to do the
4 additional warning.

5 Q Okay. And so there was no additional warning
6 required with regard to these overhead lines in the
7 right-of-way?

8 A Correct. As the lines themselves are constructed I
9 would agree with that.

10 Q And you tell us you're not an arborist; correct?

11 A No, I'm not.

12 Q And you know that Mr. Larios was not a trained
13 arborist; correct?

14 A I know he was trained to do his work, but as far as
15 a licensed arborist, no, I saw no evidence of that.

16 Q Was he a trained or qualified utility lineman tree
17 trimmer?

18 A No evidence that he was trained as a utility
19 lineman.

20 Q In fact, according to both OSHA and ANSI standards,
21 Mr. Larios would have been deemed an unqualified worker;
22 correct?

23 A That's correct. Unqualified worker would mean he
24 had no training about working around power lines.

25 Q And as an unqualified worker, OSHA laws precluded

1 him from coming within 10 feet of an energized overhead
2 line; correct?

3 A Correct. The standard that's set up by OSHA says
4 if you don't know what the voltage of the line is that
5 the 10-foot rule applies and you should keep all your
6 body parts as well as anything that you're using such as
7 a tool.

8 It could even apply to you if you're a crane
9 operator and sitting in a crane, then the crane is part
10 of that 10-foot rule. So you're not supposed to bring
11 the crane within 10 feet of a line even if your physical
12 body is 30 or 40 feet away. So it applies to all those
13 industries.

14 Q Mr. Brill, do you agree that if Mr. Larios, you
15 told us two scenarios, he either manipulated something
16 and moved it into the energized primary, that's number
17 one; right?

18 A Correct. Either whatever he was cutting, when he
19 was trying to move it, he contacted the primary line
20 with that.

21 Q Or number two, that he cut something and it dropped
22 on to the line?

23 A That's correct.

24 Q Okay. Under either of those scenarios, do you
25 agree that if neither of those things happened, he

1 cannot receive a shock?

2 A If neither of those things happened by themselves,
3 you're saying?

4 Q What I'm saying is, if he doesn't either manipulate
5 something, move it over into the primary, he can't get
6 shocked? If he doesn't drop something on to the
7 primary, he can't get shocked, do you agree with that?

8 A Correct. And if the tree's not there for him to
9 cut, he can't get shocked either.

10 Q Right. I know you wanted to tell me that, so I'm
11 glad we got that out. And we're going to get to that in
12 a few minutes.

13 A Sure.

14 Q I appreciate you jumping ahead for us. Do you
15 agree that no one gave notice to Dominion Energy that
16 Mr. Larios would be out there working that day?

17 A We found no record that anyone had notified the
18 power company.

19 Q You agree that no one requested that Dominion
20 de-energize or insulate this line?

21 A I agree.

22 Q Do you agree that no one requested that Dominion
23 come out and put any type of insulation on this line
24 before the work was done?

25 A There was no record of that in the documents I

1 reviewed.

2 Q Do you agree that there's no evidence of outages,
3 history of vegetation issues, or service issues with
4 regard to this particular circuit?

5 A Again, based on the documents that were provided by
6 South Carolina Electric and Gas, I did not see any
7 service problems with that line prior to the incident.

8 Q So you agree that Mr. Larios had an obligation to
9 recognize the existence of the power line in relation to
10 the palm tree and to avoid placing himself or any object
11 that was standing in his reach within 10 feet of that
12 line; correct?

13 A Right. I believe I testified that the OSHA rules
14 would state that's what he's supposed to do. But I also
15 testified that there's no record that anybody saw those
16 lines to be able to take the steps to avoid the line in
17 the first place.

18 Q Okay. And you told me earlier when I showed you
19 the photograph you saw; correct?

20 A Yes, after the cutting had taken place.

21 Q Right. And this was after -- this is taken -- this
22 is the last tree; right? Other cutting had been done --

23 A Correct. We don't know where the other trees were
24 that were cut that day.

25 Q So your testimony, I want to make sure this is

1 clear.

2 A Sure.

3 Q Your testimony is whatever this vegetation is at
4 the base of this palm tree, is it your testimony that
5 that vegetation before it was cut made all of these
6 lines all across the back of this property invisible?

7 A I believe they testified clearly that they were not
8 seen even with all that cutting that took place before
9 OSHA and coroner's office got out there. Even with all
10 that cutting taking place, neither of those agencies saw
11 the lines until several days after the incident.

12 Q Well, you understand that Mr. Stevens received a --
13 multiple serious citations from OSHA, you told us about
14 that; right?

15 A Correct. I reviewed the OSHA documents which
16 included all the citations that were written toward his
17 employer Stevens Landscaping.

18 Q And you understand that one of those citations was
19 -- let me take a look at it. "Employer knew," you
20 understand Mr. Stevens that's the employer; right?

21 A Yes.

22 Q Okay. And you understand Mr. Stevens had worked at
23 this property for a number of years according to OSHA;
24 correct?

25 A Yes.

1 Q And you understand that Mr. Larios was a foreman
2 for Mr. Stevens; correct?

3 A Yes.

4 Q And you understand that Mr. Larios had also worked
5 at this --

6 MR. APPLGATE: Objection, Your Honor. Foundation.

7 MR. PUGH: He reviewed the OSHA report.

8 THE COURT: Is that the information in the OSHA
9 report?

10 MR. PUGH: Correct.

11 MR. APPLGATE: Lay the foundation that hasn't been
12 put into evidence.

13 THE COURT: He's asking him about his review of the
14 OSHA report.

15 MR. APPLGATE: I think he was telling him, Your
16 Honor.

17 THE COURT: Okay. You can ask him.

18 Q Did you review the OSHA report?

19 A I did. And I think in my deposition I stated that
20 I didn't spend a lot of time reviewing that report
21 except for the information that was needed for my
22 evaluation. But I did review all of the citations that
23 were issued.

24 Q You looked at the citations?

25 A I did.

1 Q You looked at the -- well, you looked at witness
2 statements; right?

3 A I did.

4 Q You looked at Mr. Stevens' statements?

5 A To OSHA, yes.

6 Q Yes. You looked at Mr. Abraham's statements?

7 A I looked at all of the statements in the OSHA
8 report.

9 Q And in reading Mr. Stevens' statement to OSHA, he
10 told the OSHA investigator that he had worked at this
11 property for 12 years; correct?

12 A Based on the notes that the OSHA investigator took
13 and put into his file, that's correct.

14 Q And Mr. Stevens also told that OSHA investigator
15 that in fact he had been at this property and trimmed
16 trees on this property three months prior?

17 MR. APPLGATE: Your Honor, objection as to the
18 hearsay testimony that's been entered by witnesses not
19 here and hadn't testified to anything.

20 MR. PUGH: He's an expert.

21 THE COURT: He's an expert and he's referring to the
22 information he was provided as an expert.

23 MR. APPLGATE: Well, again, the hearsay rule as to
24 experts not just an opening to any and all hearsay.
25 There has to be some foundation laid for generally

1 speaking.

2 THE COURT: Overruled. I'm going to allow it.

3 MR. PUGH: Thank you.

4 Q You understand from your review of the OSHA records
5 and Mr. Stevens' statement to OSHA in particular that
6 Mr. Stevens had been at this property trimming trees
7 three months before? That's what he said.

8 MR. APPLGATE: Can we have a side bar?

9 THE COURT: Yeah.

10 (Bench conference)

11 MR. PUGH: May I proceed, Judge.

12 THE COURT: Yes, sir.

13 Q So now, Mr. Brill -- sorry. Mr. Brill, we were
14 talking about one of the citations that were received by
15 Will Stevens or Stevens Irrigation as a result of the
16 incident; correct?

17 A That's correct.

18 Q And you recognize this as being a portion of one of
19 those citations; correct?

20 A Yes.

21 Q And you read this citation?

22 A Many times, yes.

23 Q Many times?

24 A In other cases as well.

25 Q Right. In other cases as well. So this is nothing

1 new to you?

2 A No.

3 Q Okay. And it's nothing new that an employer, in
4 this case, Will Stevens, knew or should have known that
5 employees, in this that's Mr. Larios and Mr. Abraham, do
6 you agree?

7 A That's correct. The two individuals that were out
8 there whether again they're both employees or not, I
9 don't know.

10 Q Okay. Well, we know Mr. Larios was from the OSHA
11 records, you agree with that?

12 A Based on the testimony Mr. Stevens, yes.

13 Q Right. Trimming trees in close proximity within 10
14 feet to energized power lines were exposed to the hazard
15 of contact with energized lines; correct?

16 A That's what it says, yes.

17 Q "A feasible and useful method to correct this
18 hazard while another thing is to insure employees
19 inspect the area to be trimmed for hazards such as but
20 not limited to energized power lines before work begins
21 to remove the hazard or protect employee from the hazard
22 prior to work beginning;" do you see that?

23 A I do.

24 Q Okay. And has it been your experience that in the
25 hundreds of times or so that you've read OSHA citations

1 that they write citations based on invisible hazards,
2 has that been your experience?

3 A No. But the hazards don't take into account
4 anything else except the letter of the law. So in other
5 words, they don't take into account other circumstances
6 and evaluating their standards.

7 Q My question is, it's not been your experience in
8 looking at hundreds of OSHA citations over the years
9 that OSHA just makes it up, that hasn't been your
10 experience?

11 A No. But there's been many times that I've
12 disagreed with the OSHA investigator's findings and many
13 times that those findings have been challenged by
14 attorneys and have been overturned.

15 Q You have no indication in this case that anything
16 occurred with regard to these serious citations being
17 overturned; correct?

18 A I don't know the status of any of those citations
19 or what was done --

20 Q Correct.

21 A -- by Mr. Stevens.

22 Q Do you know where Mr. Stevens is?

23 A I have no idea.

24 Q Let's see if we can agree on a couple other things.
25 You agree that Mr. Stevens had the duty to train

1 Mr. Larios?

2 A According to the OSHA regulations. Again, the OSHA
3 regulations in this case are strictly looking at the
4 employer/employee relationship, nothing else. They're
5 not looking at the power company. They're not looking
6 at the homeowner. They're not looking at anybody else
7 except for the employer and the employee. That's why
8 their report is strictly geared toward the employer and
9 the employee relationship.

10 Q Are you done?

11 A Yes, sir.

12 Q Do you agree that Mr. Stevens had the duty to
13 provide Mr. Larios with a safe workplace?

14 A According to the OSHA standards, yes.

15 Q Do you agree that Mr. Stevens had a duty to provide
16 Mr. Larios with personal protective equipment?

17 A According to the OSHA standards whether that
18 applied to not in this accident, yes, he has the duty
19 based on the standard.

20 Q And do you agree that because none of those things
21 occurred in this case, Mr. Stevens received multiple
22 serious citations?

23 A I disagree with that. I think I testified clearly
24 that whether or not this incident was somebody like the
25 homeowner or a single proprietor there would be no OSHA

1 violations. And my conclusions would be the same as
2 they were and testified earlier today, that it doesn't
3 make a difference in my opinion whether OSHA
4 investigated or whether he was the homeowner who had
5 been injured, my opinions would be consistent with what
6 they were this morning.

7 Q I don't think I asked you that. I got lost in your
8 answer right there. So my question to you is simply, do
9 you agree that OSHA concluded that because Mr. Stevens
10 failed to provide Mr. Larios with training, safe
11 workplace, PPE that he received multiple serious
12 citations? That's my question.

13 A No. I mean, those were the findings that the OSHA
14 investigator came up with based on his interview, his
15 photographs, and --

16 Q His investigation?

17 A His investigation of the employer and the employee
18 of that company.

19 Q And Mr. Stevens received four serious citations?
20 That's all I'm asking you.

21 A But the citations are -- the status of the
22 citations are what I testified. I don't know the status
23 of any of those citations.

24 Q Okay. All right. Have you ever told anybody that
25 it's okay to presume overhead power lines are

1 de-energized and they should just go up and get next to
2 them?

3 A Not with 35 years experience, I know better than to
4 say something like that, yes.

5 Q Have you ever authorized someone to purposely
6 contact an overhead power line just so they can test to
7 see whether it's energized or not?

8 A Of course I wouldn't do such a thing with my
9 experience.

10 Q That would also be a violation of law; correct?

11 A That would violate several aspects of my employment
12 and also my engineering background and responsibility as
13 an engineer.

14 Q And, frankly, the first law it would violate would
15 be common sense; correct?

16 A That's correct.

17 Q And then, so -- you had some training through your
18 work at Florida Power and Light, some lineman training
19 the fact you never had to put into use; correct?

20 A That's correct.

21 Q And do you have some experience with tree trimming
22 through that Florida Power and Light training; correct?

23 A That's correct.

24 Q And if you had been out at 3402 Myrtle Street at
25 9:30 a.m. on the morning of this incident and you saw

1 Mr. Larios getting ready to go up a 32-foot ladder with
2 a chainsaw, you would have told him to stop, wouldn't
3 you?

4 A Well, obviously, if I had done the inspection and
5 saw the power lines, I would have absolutely told him
6 not to do that.

7 Q Okay. And let me ask you this, is it correct your
8 investigation in this case -- I'm sorry for that
9 disjoining question. Let me start over.

10 Your investigation in this case, was that conducted
11 in accordance with something called NFPA 921?

12 A No. NFPA 921 would not apply to this case because
13 it's not a fire investigation.

14 Q So it wasn't a fire in this case; correct?

15 A No. The scientific method is what applies as an
16 engineer to a case like this.

17 Q Correct. So did you apply the scientific method to
18 your investigation in this case?

19 A I did. Yes.

20 Q And the scientific method requires you to make
21 observations?

22 A Correct.

23 Q Requires you to ask questions?

24 A Correct.

25 Q Requires you to form a hypothesis or an explanation

1 of what happened; is that correct?

2 A That is correct.

3 Q And your explanation has to be testable; correct?

4 A That's correct.

5 Q And you have to be able to use the results of that
6 testing to finalize or confirm your hypothesis; correct?

7 A And before I do that I also have to collect data
8 and analyze the data.

9 Q Right. And if you have missing data that can
10 affect the application of the scientific method;
11 correct?

12 A It can. Yes.

13 Q And in this case we know we're missing the
14 chainsaw. We're missing all the things we talked about.
15 The length of whatever Mr. Larios was cutting. We're
16 missing where it was on the tree. We're missing what
17 rung of the ladder he was on. We're missing whether he
18 was using the chainsaw and got shocked with his right
19 hand and through his left. We're missing all of that,
20 aren't we?

21 A Were missing a lot. We also have tremendous amount
22 of information to rely on to apply the scientific method
23 and come up with the conclusions that meet a reasonable
24 degree of engineering certainty.

25 Q Okay. And the scientific method application

1 requires you to eliminate other potential causes;
2 correct?

3 A That's correct.

4 Q And you've done nothing in this case to test your
5 hypothesis; correct?

6 A I disagree. I tested it many ways and cognitive
7 testing which is comparing it to other cases, looking at
8 the experience, training, knowledge, and education that
9 I have. Those are all ways of testing per the
10 scientific method as opposed to doing tests in a
11 laboratory.

12 Q Right. So you didn't do any laboratory testing in
13 this case?

14 A No. But I have in other cases and I've used that
15 knowledge and experience that I've gained to apply to
16 these cases that I investigate.

17 Q Do you agree that to be reliable, your methodology
18 must be consistent with the methods and procedures of
19 science rather than subjective or speculation; do you
20 agree with that; right?

21 A I agree. In the areas where I could not be
22 specific to reach an engineering degree -- a level of
23 engineering degree certainty, I left it open. Such as
24 the actual path of current flow of the shock. Whether
25 it was through the saw, through his body, in the tree or

1 whatever was from his hand through his body and the
2 tree. I couldn't determine which one of those two
3 scenarios were more likely. So therefore, I couldn't
4 come to the conclusion of which one was more probable,
5 but they still both lead to a shock which led me to the
6 conclusion that I came to.

7 Q So you can't to a reasonable degree of medical
8 certainty state which one is more probable than the
9 other?

10 A Well, I'm not a medical person. I think you said
11 "medical." I'm an engineer. So I don't have a degree
12 of medical certainty.

13 Q Let me start over. Thank you. To a reasonable
14 degree of engineering certainty, you can't say which one
15 of your hypotheticals is correct?

16 A I can say with a reasonable degree of certainty
17 that those are the two scenarios that are probable in
18 this case.

19 Q And they're both not correct?

20 A And they're both possible and could have occurred
21 in this case. And regardless of which one it was, that
22 leads to the same conclusion.

23 Q My point is, they're both not correct; you agree
24 with that that; right?

25 A What do you mean not correct? I don't understand.

1 Q One, under your theory it's one or the other;
2 right? It's not both occurred at the same time?

3 A Correct. I testified those are the two scenarios
4 that could have occurred in this case to lead to a
5 shock.

6 Q You agree that on November 29, 2015, Mr. Larios was
7 in charge of his own work?

8 THE COURT: I apologize. I can't get this thing to
9 turn off. (Referring to his phone) I apologize. I
10 don't know why it went off.

11 A I don't remember the question. I'm sorry.

12 Q I don't either.

13 THE COURT: I don't either.

14 MR. PUGH: Thanks, Judge. It's the first I've ever
15 gotten to say that. (Laughter)

16 Q Mr. Brill, you agree that on November 29, 2015,
17 Mr. Larios was in charge of his work; correct?

18 A I guess it depends on your definition of that.

19 Q Well, do you agree that Mr. Larios decided to use
20 an aluminum ladder?

21 A Mr. Larios was directed to do the work at the
22 location from his boss and was provided the tools by his
23 boss to do that work.

24 Q And Mr. Larios used an aluminum ladder?

25 A Correct.

1 Q Aluminum ladders conduct electricity?

2 A It can, yes.

3 Q Aluminum ladders have warnings all over them about
4 being conductive of electricity?

5 A Correct. We have no evidence that this aluminum
6 ladder played a role in this case.

7 Q Aluminum ladders also have warnings on them about
8 you can fall or lose your balance and fall if you stand
9 at a certain height on a ladder; correct?

10 A All ladders that I've looked at have those
11 warnings. Yes.

12 Q You've had cases like that in the past; correct?

13 A Yes. Many cases.

14 Q Okay. And aluminum ladders also have warning
15 labels on them that say, look up for wires; correct?

16 A Yes. There's usually warnings on them especially
17 extension ladders. Yes.

18 Q In fact, you saw that warning in this case?

19 A There's pictures taken by the investigators of
20 those labels on the ladder. Yes.

21 Q Warning and advising to look up for wires; correct?

22 A Correct. Which comes back to we have no record of
23 ever observing or finding wires prior to the accident.

24 Q I understand what you want to tell me. My question
25 just is, what -- whether the ladder had a warning on it

1 about look up for wires or not and you agree that it
2 did; right?

3 A I agree that all ladders have those warnings, yes.

4 Q Thank you. And you agree that Mr. Larios chose to
5 you a chainsaw; correct?

6 A Yes.

7 Q Give me one second, sir. Thank you. Let me ask
8 you, do you have Plaintiff's Exhibit Number Four up
9 there with you, sir?

10 A I do.

11 Q I hope y'all can see this. This is Plaintiff's
12 Exhibit Number Four. Can we agree that the wire
13 depicted in that photograph is the neutral?

14 A Yes.

15 Q And we have eliminated -- well, strike that. You
16 have eliminated the neutral in and of itself as being a
17 path of electricity from Mr. Larios; correct?

18 A No, not a path. As the source of electricity.

19 Q Right. The neutral didn't shock Mr. Larios?

20 A No. The neutral provided the path for the
21 electricity to flow.

22 Q The electricity if he got any electricity had to
23 come from him manipulating something or dropping
24 something into the primary; correct?

25 A Something would have had to contact the primary for

1 that to occur, yes. And we have evidence of burned
2 limbs in multiple reports.

3 Q I want to show you now very briefly. Do you agree,
4 Mr. Brill -- I'm sorry.

5 JUROR: Judge?

6 THE COURT: Yes, ma'am.

7 JUROR: If they're going to walk over there, could
8 you have them speak up because this gentleman is hard of
9 hearing.

10 THE COURT: They're not talking to the jury right
11 now.

12 JUROR: Well, when he has a question. He's asking
13 the question over there and he's walking. He's got to
14 speak up because this gentleman is hard of hearing.

15 THE COURT: Okay.

16 JUROR: Just keep that in mind.

17 THE COURT: Sure. Thank you.

18 JUROR: Thank you.

19 MR. PUGH: I'm sorry for the break, Your Honor. May
20 I proceed?

21 THE COURT: Yes, sir.

22 MR. PUGH: And I apologize. That's the first time
23 I've ever been told I was not too loud.

24 THE COURT: You need to be louder.

25 MR. PUGH: Not too loud, so thank you.

1 CONTINUED CROSS EXAMINATION BY MR. PUGH:

2 Q Mr. Brill, you talked earlier about ANSI and the
3 NESC; correct?

4 A Yes.

5 Q Can we agree that ANSI and the NESC are consensus
6 standards; correct?

7 A They're different. One is a code and the other is
8 a standard. One is a requirement. The other is
9 optional.

10 Q Okay. And neither one of them has a specification
11 as to a vegetation management program of how long the
12 cycle has to be; correct?

13 A Correct. Both of them leave it into the
14 responsibility of the individual utilities as we
15 discussed due to geographical differences around the
16 country.

17 Q Based upon the experience of that utility within
18 the area and the vegetation they have where they do
19 business; correct?

20 A That's correct.

21 Q And you used to work for Florida Power and Light;
22 correct?

23 A Yes.

24 Q And Florida Power and Light has a vegetation
25 management program; correct?

1 A They do. Yes.

2 Q Do you agree that the growing season in Florida is
3 longer than the growing season in South Carolina?

4 A It's obviously different on different species, but,
5 yes, it's very similar. And a little bit more in
6 certain species.

7 Q What is the distribution line-clearance cycle trim
8 period of time for Florida Power and Light where you
9 used to work?

10 A I don't know. The last time I was -- obviously,
11 it's been 15 years since I worked there and what their
12 present cycle is, I don't know. We've had three year
13 cycles and we've had five year cycles and we've had
14 seven year cycles over the years that I was there. So
15 it depends on many factors.

16 Q So it changed during the time you were there three,
17 five, seven; correct?

18 A Yes.

19 Q Okay. And you understand that Dominion Energy's
20 cycle trim is every five years; correct?

21 A From everything I reviewed, yes, it's a five year
22 cycle in this area.

23 Q Right. And its service territory?

24 A Correct. It's different for obviously -- leaves it
25 up to them if they have other issues that would cause

1 them to set different requirements in different areas.

2 Q Mr. Brill, you talked earlier about NESC and one of
3 the provisions of the NESC vegetation management is 218,
4 are you familiar with that?

5 A Again, I don't remember the number, but it was in
6 my file and I provided it during my deposition. But
7 sounds correct.

8 Q Okay. Well, are you familiar with the provision in
9 NESC 218 that says, "Vegetation that may damage
10 ungrounded supply conductors should be pruned." You're
11 familiar with that?

12 A Yes.

13 Q Okay. And you're familiar with -- well, let me ask
14 you, are you familiar with note number two to that
15 provision and we'll look at it. Do you see that? Note
16 2. Let me zoom out a little and show you up on here.
17 There's "218. Vegetation management," do you see that?

18 A Yes.

19 Q Okay. Now we're going to go in, "Note 2: It is
20 not practical to prevent all tree-conductor contacts on
21 overhead lines." Do you see that?

22 A Yes.

23 Q And that's your experience in Florida, too;
24 correct?

25 A Correct. And that comes from the fact that many

1 trees are much taller and they're outside the easement
2 area and have the tendency to be able to get into the
3 lines unexpectedly. So it can never be prevented.

4 Q Are there exceptions to distribution line-clearance
5 tree trimming specs at Florida Power and Light?

6 A I'm sure there are. Again, I'm not familiar with
7 what they're doing at this point in time.

8 Q During your time there, isn't it true that there
9 were exceptions for large limbs or trunks of trees that
10 happen to be within 10 feet of an energized overhead
11 primary, that's an exception; correct?

12 A Correct. And I think -- I'm pretty sure in the
13 deposition testimony Mr. Branham, he specifically
14 testifies to specific tree limbs and branches that would
15 he allowed to get closer to the line than the 10 feet
16 based on its growth rate or the size or the location.

17 Q And exceptions to distribution line-clearance
18 within the utility industry, exceptions are not
19 abnormal; correct? I mean, every utility has exceptions
20 in their distribution line-clearance requirements;
21 correct?

22 A That's correct. And, again, going back to the
23 testimony of Mr. Branham's deposition, he testified that
24 palm trees are not part of the exception.

25 Q Okay.

1 MR. PUGH: May I approach, Your Honor?

2 THE COURT: Yes, sir.

3 (Bench conference)

4 THE COURT: All right. You may proceed.

5 MR. PUGH: Thank you, Your Honor.

6 Q Mr. Brill, let me ask you, has your testimony ever
7 been stricken by a court who determined that you failed
8 to follow or comply with the scientific method?

9 A Not that anyone has ever told me.

10 Q Are you aware of a case called *National Surety*
11 *Corporation verses Georgia Power Company*?

12 A Not with that name. I need more information, I
13 guess.

14 Q Okay. Have you ever been retained as an expert for
15 National Surety Corporation?

16 A Not that I'm aware of because I could have been
17 retained by an attorney representing that company.

18 Q Are you familiar with a lawyer by the name of David
19 Bessho?

20 A Yes.

21 Q He's a lawyer with Cozen O'Connor in Atlanta,
22 Georgia?

23 A Yes. I've worked several cases with them.

24 Q And are you familiar with lawyers from Georgia
25 Power Company by the name of Jessie Davis or Samuel

1 Lucas?

2 A No.

3 Q How about a firm named Balch and Bingham?

4 A Doesn't ring a bell, but it's possible that they're
5 the attorneys.

6 Q Do you recall a case involving something called --
7 this is a March 17, 2015 fire at Brandreth Farms in
8 Talking Rock, Georgia?

9 A Yes. Now I'm familiar with the case.

10 Q Do you recall that your testimony in that case has
11 been stricken, the court determined that you failed to
12 follow the scientific method. Are you aware of that?

13 A Not aware of that at all.

14 Q Thank you. That's all I have. Thank you,
15 Mr. Brill.

16 MR. STEGMAIER: No questions, sir.

17 MR. KENNEDY: No questions.

18 THE COURT: All right. Anything further on
19 redirect?

20 REDIRECT EXAMINATION BY MR. APPLGATE:

21 Q Mr. Brill, are there any questions that were asked
22 by Mr. Pugh that made you question the opinions that
23 you've given to this jury today?

24 A No.

25 Q And you hold all opinions that you provided to this

1 jury earlier today regarding the standard of care of
2 SCE&G to a reasonable degree of engineering certainty?

3 A Yes, I do.

4 Q Thank you very much.

5 THE COURT: All right. Thank you very much, sir.
6 You can step down. While Mr. Brill is stepping down,
7 ladies and gentlemen, we're going to take a short break.
8 If you need anything, let us know. And we're going to
9 get started back in a few minutes. Have no conversation
10 about the case. We'll just take a short break.

11 (The jury left the courtroom at 2:40 p.m.)

12 (Break time)

13 (Mr. Stegmaier and Mr. Kennedy left the courtroom)

14 MR. BUCKNER: There were four exhibits to this
15 deposition when it was taken. Defense counsel and us
16 have agreed to the admission to three of those. There's
17 a fourth exhibit there's a dispute over, but I believe
18 we have consented to it not coming into evidence. It's
19 an OSHA card that was discussed with Mr. Abraham and he
20 said he had never seen it before. So we don't think
21 there's any sort of foundation. Mr. Pugh's going to
22 probably get it in later, so we will just take it up at
23 that time and skip all that. In this deposition was
24 Exhibit Three, we're just going to move on without it
25 today.

1 THE COURT: All right.

2 MR. PUGH: I agree with that. Have we cut out all
3 the parts where he says, yeah, I agree or I don't know
4 about that? We got it all out?

5 MR. BUCKNER: Y'all can handle that with your
6 questioning.

7 MR. YARBOROUGH: Just strike through it.

8 (Off the record)

9 THE COURT: Okay. And what I'll also do is I'm
10 going to -- David and I were just talking, I'm going to
11 explain to the jury that the next witness who was not
12 able to be here will be present with this -- is
13 appearing by way of deposition that Mr. Yarborough is
14 going to read the witness' responses and they're to give
15 this -- they're to treat this testimony as though -- and
16 who is the witness here?

17 MR. PUGH: Pedro Abraham.

18 THE COURT: Mr. Abraham. All right. They're to
19 treat this testimony as though Mr. Abraham were here
20 testifying and give it whatever weight they think it
21 deserves.

22 MR. APPLGATE: Thank you.

23 THE COURT: Are y'all ready? Let's bring the jury
24 in, please.

25 (The jury entered the courtroom at 3:10 p.m.)

1 THE COURT: All right. Ladies and gentlemen,
2 welcome back. Let me give you a couple of -- note a
3 couple of things for you before we get started. That
4 you may notice if you haven't already noticed that
5 Mr. Stegmaier and Mr. Kennedy are no longer with us.
6 They represented respectively PENSCO Trust Company and
7 Edisto Sales and Rentals Realty. Those two parties have
8 settled their claims and are no longer a part of this
9 litigation as we go forward. So that's the reason that
10 you don't see them sitting over there any longer.

11 The next witness that the plaintiff's are calling,
12 Mr. Abraham is -- was unable to be present today and so,
13 however, his deposition was taken prior to this trial
14 beginning. And a deposition is simply sworn testimony
15 taken outside of court.

16 We have with us Mr. David Yarborough here today.
17 Mr. Yarborough has been kind enough to agree to play the
18 role of Mr. Abraham. So, Mr. Buckner, as well as the
19 attorneys ask the questions from the deposition,
20 Mr. Yarborough is going to read to you Mr. Abraham's
21 responses to those questions.

22 You are to give deposition testimony which is what
23 this is, you're to give it to same weight and treat it
24 the same way as you would if Mr. Abraham was actually
25 here answering the questions himself. There's nothing

1 changed about it, it's still sworn testimony that just
2 was taken prior to the trial. You give it whatever
3 weight that you feel it deserves. Okay.

4 So, Mr. Buckner, are you ready to proceed, sir?

5 MR. BUCKNER: I am, Your Honor.

6 THE COURT: All right.

7 PEDRO ABRAHAM,

8 being first duly sworn, was examined and testified as
9 follows:

10 DIRECT EXAMINATION BY MR. BUCKNER:

11 Q Good afternoon. Can you please state your full
12 name for the record, sir.

13 A Pedro Abraham de la Cruz. Yes.

14 Q Mr. Abraham, do you know Jose Larios?

15 A Yes.

16 Q How do you know him?

17 A We were friends going back all the way to Mexico

18 Q And did you know him after he lived in the States
19 as well?

20 A After he came here, I didn't see him after that.

21 Q Okay. Do you remember where you were, sir, on
22 November 29, 2015?

23 A Yes.

24 Q Can you tell me about that day, sir? Let me make a
25 correction. I'll ask it a different way, Mr. Abraham.

1 Can you tell me a little bit about that day of
2 November 29, 2015 and where you were?

3 A Yeah. He mentioned to me -- we had spoken the
4 night before, and he had mentioned that one of his
5 helpers wasn't going to be able to go and cut the palm
6 trees with him, so he asked me if I could go and help
7 him the next day, and responded with yes.

8 Q Okay. So on that day, did you drive with Jose to
9 3402 Myrtle Street?

10 A Yes.

11 Q And what was your plan, sir?

12 A He mentioned to me that they were going to clean up
13 some palm trees.

14 Q And so, if you will, walk me through what you did
15 that day.

16 A That morning we left the house, and we stopped by a
17 store to buy something to drink and some bread, and then
18 from there we went to the office from where he -- from
19 where he works from.

20 We passed by to pick up the ladder that we were
21 going to use to trim the palms.

22 We showed up to the work site, and the first thing
23 we did was we supervised the area to make sure
24 everything was fine.

25 Q What equipment did you have with you?

1 A He -- he had the ladder with him and the chainsaw
2 and also the fasteners to tie -- to secure himself to
3 the tree.

4 Q Were you planning on doing any cutting yourself,
5 sir?

6 A He only took me so I could clean up whatever palm
7 -- palm that would fall to the floor, so I would pick
8 them up, clean that area, and I would pick them up and
9 then put them on the side of the road.

10 Q What other assistance did you provide to
11 Mr. Larios?

12 A I would also put gas in the chainsaw, I would apply
13 oil and also tighten the chains.

14 Q And whose chainsaw were you working with?

15 A I don't -- I don't know which one it would belong
16 to. I don't know if it belonged to him or the owner.

17 Q As far as you could tell, was the chainsaw working
18 properly on that day?

19 A Yes, everything was working normal. We did a total
20 of nine palms, and after three palms, I would apply gas
21 and oil, and everything was working properly.

22 Q Had you ever been to this property before that day?

23 A No.

24 Q Do you know whether Jose Larios had ever been on
25 that property before that day?

1 A No, I don't know.

2 Q Had you ever worked with Jose before?

3 A No. It was the first time.

4 Q Did you see anything on the property that made you
5 concerned that there was any danger that you would
6 encounter doing your work?

7 A No, because when we arrived, we supervised
8 everything, and everything was fine.

9 Q Did you see any power lines that were close to the
10 palm trees you were cutting?

11 A No.

12 Q Did you and Jose ever talk about power lines in the
13 area while you were on the property?

14 A No.

15 Q Can you tell me what happened or what you saw that
16 day with Jose?

17 A After we had trimmed the nine palms and we were
18 done with that, we went -- we got to the last palm, and
19 I sat the ladder in that palm, and then he went up, he
20 went the up ladder.

21 Then he tied himself around the tree around his
22 waist to make sure everything would be secure.

23 To be able to get to the top of the tree, he
24 started clearing whatever was on top of his head first
25 to be able to then -- after he can remove that, he was

1 able to get to the sides of the palm tree.

2 At that time then also while he was doing that, I
3 was picking up -- I was picking up the debris that was
4 falling, and it I was making piles of it. Then I was
5 taking and making a pile so that I could throw them on
6 my shoulder and I can go where they needed to go.

7 Then all of a sudden while I was working and doing
8 what it was doing, I heard a loud -- a loud scream, and
9 then I turned over and I stopped doing what I was doing,
10 and I looked over, and I saw a lot of smoke. I realized
11 things weren't fine.

12 Then I would yell to him to see if he was okay, and
13 then he would not respond to me at that point.

14 I noticed that he was trying to -- with one arm
15 trying -- with the left arm trying to unbuckle himself,
16 but at that point his head was kind of in a downward
17 position, and then I realized he was just -- it wasn't
18 fine at that point.

19 Then I noticed that he was at the point without
20 strength and he -- I saw -- I noticed where he was
21 unable to unbuckle himself, but then he fell backwards.

22 Q Sir, if you could continue to page 11 of line 3 and
23 continue from there, Mr. Abraham.

24 A When I was with him, I smelled a burnt -- a burning
25 -- a burnt smell.

1 With injury that I saw that he suffered, I then ran
2 to call 9-1-1, but at that point my phone in the
3 location we was didn't have a good signal.

4 And then I went out to the road and I saw a lady
5 that was exercising. She was walking down the path. I
6 asked her that -- I told her in English there's an
7 accident, and then I said -- I asked her if she could
8 call -- if she could dial 9-1-1 for me.

9 Then five to eight minutes later was when the
10 ambulance and the police arrived and noticed the body
11 was laying there.

12 Q Once the police arrived, what did you do?

13 A They were asking me -- the police arrived and they
14 were asking me what happened. They would say in
15 English, like, "What happened?" But I didn't -- I
16 didn't really understand how to explain it, at that
17 moment Gaspar showed up and I told him what had
18 happened.

19 Q And at that time, did you know why he had fallen
20 out of the tree?

21 A No.

22 Q Can you describe what you saw when Mr. Larios was
23 on the ground and you went to him?

24 A When I went to him, I lifted his head, and I asked
25 if he was okay, and he said he was fine, but I realized

1 he wasn't fine after the injury, and that's why I felt
2 like I needed to run and call 9-1-1.

3 And then after the lady dialed 9-1-1, I returned
4 back to him, and I lifted his head, and at that point he
5 wasn't responding anymore.

6 Q When you first lifted his head and he spoke to you,
7 could he move at that time?

8 A No, he wasn't moving.

9 Q Did you see any visible injuries to his body?

10 A No.

11 At that moment just because I was scared, I really
12 didn't -- I really didn't really know what to do at that
13 moment.

14 Q Then did you go to the hospital?

15 A Yes. Yes.

16 Q And how long were you at the hospital?

17 A We were there like an hour, about one hour.

18 Q And who told you that Jose had died?

19 A When -- when Gaspar showed up, he was -- he was
20 asked about him, and then one of the workers that worked
21 there in the hospital then took us, took us to where
22 Jose was, and at that point he was covered with a white
23 sheet.

24 Q Did you go back to the scene, sir, after you left
25 the hospital?

1 A Yes, we returned back to the site because we
2 weren't just -- we weren't okay with just the fact that
3 it was just a fall.

4 Q What did you see when you went back to the scene?

5 A We noticed that -- that the palm right there on
6 this -- this one was burnt on this palm right here.

7 MR. BUCKNER: And I believe that, Your Honor, we've
8 stipulated to the entry of the photograph that I think
9 will be Plaintiff's Six.

10 (WHEREUPON, Plaintiff's Exhibit Number 6 was marked
11 and entered)

12 Q Mr. Abraham, if you could point out and we can go
13 back and reread that testimony.

14 Did you -- well, what did you see when you went
15 back to the scene, sir?

16 A We noticed that the palm, the palm right there on
17 this -- this one was burnt on this palm right here.

18 Q Mr. Abraham, besides seeing a burnt mark on that
19 tree, did you see anything else while you were there on
20 the scene?

21 A Well, no, at the -- at the moment we were -- we
22 first went, we just saw the burn mark of the palm tree,
23 but then the second day when we got ahold of the
24 chainsaw, I noticed that the chainsaw had -- had the
25 burn mark where previously, when I inspected it, it did

1 not have any of the markings there.

2 And when we checked -- when I checked the burnt
3 mark, I noticed that there was the burnt mark there, and
4 previously, before that, when I was maintaining it and
5 putting gas and oil in it, that burn mark wasn't there
6 before, and we noticed that it was on there after we
7 looked at it after the accident.

8 Q Did you have a conversation with an investigator
9 after this incident?

10 A We talked to a person here when we came to the
11 office of Bubba Unger.

12 Q And there you had a conversation with the OSHA
13 investigator; is that correct?

14 A Yes.

15 Q And you gave them the information about the
16 chainsaw; correct?

17 A Yes.

18 Q And did you tell him about the burn marks you saw
19 in that tree?

20 A Yes.

21 Q Did you go back to the scene any time after that?

22 A A lot -- much time after, we returned because we
23 were all just together at the house, and we were all
24 down and we were sad, so we were all together at that
25 point.

1 Q Do you know what happened to the chainsaw?

2 A At that -- at that time we -- I don't know what
3 happened to the chainsaw, but I remember the third day
4 we noticed that the burn mark was there, and I remember
5 that mark not being there from before because I was the
6 one maintaining -- doing the maintenance on the chainsaw
7 while we were working.

8 Q Do you know where the chainsaw is today?

9 A No.

10 Q So as we sit here today, knowing all the
11 information we know, what do you think happened to the
12 Jose Larios?

13 A I felt like just seeing on when he was up there,
14 seeing the smoke that was coming off of him from where
15 he was at the moment I saw him.

16 MS. WHITE: Your Honor -- okay. Yeah, can I just --

17 THE COURT: Yeah. All right.

18 Q Mr. Abraham, I apologize. When you were here in
19 2015, were you here on a work permit?

20 A Yeah. Yeah, I was contracted to Florida, and then
21 I would come here for two or three months, and then I'd
22 go back to Mexico

23 Q Okay. Today have you come to America on another
24 work visa?

25 A Yes. I'm here, but it expired, but I have plans to

1 return in a few months.

2 Q Are you working while you're here now?

3 A Yes.

4 Q And are you working in landscaping, sir?

5 A Yes.

6 Q And you work with Gaspar?

7 A No. With another boss.

8 Q Who do you work with here?

9 A Mr. George.

10 Q Do you know his last name?

11 A George Dossett.

12 Q That's all I have, sir. Thank you.

13 CROSS EXAMINATION BY MS. WHITE:

14 Q Good afternoon.

15 A Good afternoon.

16 Q You were here today when -- and listened to

17 Mr. Gaspar Licona's deposition; correct?

18 A Yes.

19 Q And you heard the question that he -- the questions

20 that he was asked?

21 A Yes.

22 Q You heard the answers that he gave?

23 A Yes.

24 Q Have you ever given any written statements about

25 what you saw on the day of the accident?

1 A Only that time where we were at Bubba Unger office
2 that's when we -- I gave testimony there -- or gave a
3 statement there.

4 Q You took your friend to act as interpreter; right?
5 Hector Vega?

6 A Yes, Hector Vega.

7 Q And that was your request that Mr. Vega came as
8 your interpreter; correct?

9 A Yes.

10 Q And your boss was there, George Dossett?

11 A Yes.

12 Q And a man from OSHA?

13 A Yes.

14 Q Do you know what OSHA is?

15 A No.

16 Q Do you know anything about the OSHA work rules?

17 A No.

18 Q No one's ever trained you in OSHA?

19 A No.

20 Q How old were you when you first learned that you
21 shouldn't touch power lines?

22 A What? I don't understand.

23 Q Sure. As a boy, you were taught not to touch an
24 overhead power line?

25 A Yes.

1 Q That's something you've known most of your life;
2 correct?

3 A Yes.

4 Q And when you're doing your work, you try to stay
5 away from power lines; correct?

6 A Yes.

7 Q And you've been taught to stay away from power
8 lines; correct?

9 A Yes.

10 Q Do you have any medical training?

11 A No.

12 Q Okay. Have you ever heard of something called the
13 National Electric Safety Code?

14 A No.

15 Q Have you ever been involved in the analysis of
16 electrical burns?

17 A No. It was the first time something like that had
18 happened.

19 Q Do you know anything about metallurgy?

20 A No.

21 Q Have you ever viewed any ANSI, and that's A-N-S-I,
22 tree trimming standards?

23 A No.

24 Q Have you ever spoken to Mr. Applegate before?

25 MR. BUCKNER: Your Honor, if we can take a second.

1 (Off the record)

2 MS. WHITE: Sorry about that, Your Honor.

3 Q Have you ever spoken to Mr. Applegate before?

4 A Yes.

5 Q How many times?

6 A Once.

7 Q When?

8 A It was here last Wednesday.

9 Q In this office?

10 A Yes.

11 Q How long?

12 A Like an hour.

13 Q Did you look at any documents?

14 A No.

15 Q How about photographs?

16 A Some similar to these.

17 Q And what did you discuss?

18 A About the accident.

19 Q Okay. The day of the accident, November 29, 2015,
20 do you remember that day?

21 A Yes.

22 Q You were working in the morning?

23 A Yes.

24 Q Daylight?

25 A Yeah, in the day, yeah, in the morning.

1 Q It wasn't dark outside?

2 A No. It was in the morning.

3 Q The whether was clear?

4 A Yes.

5 Q No wind or rain or anything like that?

6 A No. It was like the way it is now.

7 Q Okay. This was your first day working with
8 Mr. Jose Larios?

9 A Yes.

10 Q Had never worked with him before?

11 A No.

12 Q Do you know why he asked you instead of his
13 brother?

14 A No, I don't know.

15 Q Okay. How were you being paid?

16 A In cash.

17 Q By whom?

18 A His boss.

19 Q And who was his boss? Mr. Will?

20 A Mr. Will, it's something like that. I don't know
21 his name exactly.

22 Q Do you know Mr. Will?

23 A A little bit, not very much.

24 Q Did you ever work for him before that day?

25 A No.

1 Q Have you worked for him since?

2 A No, I haven't worked for him, no.

3 Q Have you ever talked to him about the accident?

4 A No.

5 Q Have you ever tried to talk to him about the
6 accident?

7 A No.

8 Q When you went to 3402 Myrtle Street that morning,
9 you looked around; right?

10 A Yes.

11 Q Did you go into the backyard?

12 A Yeah. We supervised all -- everything around the
13 house, everything that we're going to work in that area,
14 we supervised all the way around it.

15 Q Did you see any power lines anywhere around 3402
16 Myrtle Street?

17 A No.

18 Q Did you specifically look for them?

19 A Yes, but you can't see anything because it's like a
20 jungle. Everything is covered.

21 Q Did you walk down the bike path behind the
22 property?

23 A No. It's just whatever that's inside the property
24 of the home.

25 Q Okay. So you never looked outside of the fenced

1 backyard?

2 A No.

3 Q Never went outside the fence onto the bike path?

4 A No.

5 Yeah, and we just -- we were just doing what's
6 inside. That's all we were doing.

7 Q And I'm talking to you about your pre-work looking
8 around.

9 A No. We just checked, like I said, inside the
10 property, and we checked to see if there was any danger,
11 and there wasn't any.

12 Q Because you were working inside the property you
13 didn't look for -- apologize. You didn't look about
14 anything outside of the property; correct?

15 A No.

16 Q All right. Did you ever drive down the bike path
17 behind the property?

18 A I'm sorry. My highlighted copy. Can you give me
19 the page line?

20 Q We're on page 25, line 22. And the answer?

21 A No, we never left the property. We were always
22 inside.

23 Q Always inside the fence?

24 A Yes.

25 Q Once the ladder is placed against the tree,

1 Mr. Larios climbed up the ladder?

2 A Sorry. Again, I'm out of sink. Page line?

3 Q Page 28, line 25.

4 A Read the question one more time.

5 Q Absolutely. And once the ladder is placed against
6 the tree, Mr. Larios climbed up the ladder?

7 A Yes.

8 Q He had the chainsaw in his right hand?

9 A Yes.

10 Q And once he got to the top or near the top of the
11 ladder where he wanted to be, he tied himself around the
12 tree; correct?

13 A Yes.

14 Q You told OSHA investigators that Mr. Larios was
15 standing on the fourth rung of the ladder; is that
16 correct?

17 A Yes.

18 Q And the way Mr. Larios was trimming was one hand --
19 his right happened on the chainsaw, and the left hand on
20 the tree; correct?

21 A Yes.

22 Q And as he's cutting, the vegetation is falling to
23 the ground; correct?

24 A Yes.

25 Q And your job was to pick up the cut vegetation;

1 correct?

2 A Yes, correct.

3 Q Show you what has been marked as Exhibit Two. This
4 is the vegetation that was falling on the ground?

5 A Those are, yes.

6 Q And that's what you were picking up to take to the
7 street?

8 A Yes.

9 Q And while you're picking up the cut vegetation, you
10 heard Mr. Larios yell?

11 A Yes.

12 Q Before he yelled, you weren't around him?

13 A No, because I was picking up what was laying down.

14 Q And you were then carrying it out to the street and
15 coming back; correct?

16 A Yes.

17 Q My question is: When he yelled, you didn't know
18 why?

19 A No.

20 Q And he never told you what happened, did he?

21 A No, no, no.

22 Q Okay. And the chainsaw that we looked at in
23 Exhibit One -- the chainsaw that we looked at in Exhibit
24 One, the other photograph -- now we got the right one.
25 That's where the chainsaw was when Mr. Larios yelled;

1 correct?

2 A Yes.

3 Q Okay. When he yelled, you looked up toward him?

4 A Yes.

5 Q You saw him hold onto the tree?

6 A Yeah. He was grabbing on the left hand, he was
7 trying to unbuckle himself with the right hand.

8 Q Untie the rope with his right hand; correct?

9 A Yes.

10 Q And he untied the rope?

11 A Yeah. He then tried to go down to the next step of
12 the ladder, and he didn't have anymore -- he didn't have
13 anymore strength in his body, that's when he fell
14 backwards.

15 Q Okay. Before we get to that, once you heard him
16 yell, no more vegetation fell to the ground; correct?

17 A No, no more.

18 Q All right. And you saw him untie the rope?

19 A Yes, because I went to see how -- what was going
20 on.

21 Q Where were you?

22 A I was in this part here. You could see right here.

23 Q Show me where.

24 A Says, right in the corner, lifting those palms
25 there. And this is on Exhibit Two.

1 (Pointing)

2 Q All right. And you're pointing to where you were,
3 this is Exhibit Two?

4 A I was there lifting the palms from there.

5 Q And that's where you were when he yelled?

6 A Yes.

7 Q And you saw him start to go down the ladder;
8 correct?

9 A He tried to get down, but then he couldn't.

10 Q And I can give you the statement.

11 You recall making this statement, and I'm going to
12 tell you.

13 A Okay.

14 Q Pedro Abraham saw nothing to cause Larios to fall.

15 A No. Well, you know, you're working, and I didn't
16 -- I didn't see.

17 Q So you didn't see what caused him to fall; correct?

18 A I just saw him untie himself and, like I said, I
19 saw the smoke coming out of the tree.

20 Q Okay. Let me ask you about that. Where did you
21 see the smoke?

22 A You could see the part on top -- on the top part
23 over here, you could see there was -- you could see
24 there on the top part where that -- where that was --
25 where it was coming out of.

1 Q And where you pointing, Mr. Abraham?

2 A Are you sure we're looking at the right exhibit? I
3 think we need Exhibit One.

4 (Pointing)

5 A You could see the smoke there.

6 Q Not smoke from the chainsaw.

7 A I mean, I was -- I was by myself and I was scared,
8 so I really didn't check appropriately, but...

9 Q Do you know where the smoke was coming from?

10 A No, no, no, no.

11 Q Do you know what caused the smoke?

12 A No.

13 At that moment, no, I didn't know.

14 Q Did you -- do you know why the OSHA investigator
15 that you talked to on December 1st has no mention of you
16 saying anything about the smoke?

17 A Well, I felt pressured, and then I just noticed --
18 remembered back and that day, I remembered that there
19 was smoke coming out.

20 Q Okay. So let me make sure I understand what you're
21 telling me. As you sit here today, you don't recall
22 ever telling OSHA about the smoke?

23 A No.

24 Q You didn't tell them about the smoke?

25 A No, I didn't tell them.

1 Q Okay. Did you try to call Mr. Stevens?

2 A No.

3 Q If you wanted to call Mr. Stevens, would you even
4 know how?

5 A No. I don't have his number.

6 Q Do you know how the chainsaw ended up with
7 Mr. Stevens?

8 A No.

9 Q Was it Mr. Stevens who gave the chainsaw back to
10 Gaspar?

11 A Honestly, I don't know.

12 Q Mr. Abraham, do you know anything about the
13 trimming history of the trees at the accident site
14 before you went there?

15 A No.

16 Q And Mr. Stevens never told you about the power
17 lines in the right-of-way behind the property; correct?

18 A No.

19 Q And you told us earlier that part of what you and
20 Mr. Larios did when you arrived was survey the yard
21 area; correct?

22 A Yes.

23 Q Is that something you forgot to tell OSHA?

24 A Yes.

25 Q You forgot to tell OSHA that you and Mr. Larios

1 surveyed the property before you began work?

2 A Yes.

3 Q And there are other things -- are there other
4 things you forgot to tell OSHA?

5 A No. It's just that.

6 Q And the smoking part?

7 A Yeah, and the part of the smoke.

8 Q Were you paid for your work that day?

9 A No.

10 Q Have you ever had any discussions with anyone from
11 SCE&G?

12 A No.

13 Q Do you know what that is, SCE&G?

14 A No.

15 Q Have you ever -- have you ever worked for a company
16 that trims trees along power lines?

17 A No.

18 Q Have you ever seen those companies doing their
19 work?

20 A I've just seen them, but I've never done work for
21 them.

22 Q Have you watched them get up in bucket trucks?

23 A Yes.

24 Q Do you know if Mr. Stevens owned a bucket truck in
25 November of 2015?

1 A No.

2 Q Do you know do you know if Mr. Stevens had
3 previously used a bucket truck to trim trees at this
4 location?

5 A No.

6 Q And do you remember the assistant or deputy coroner
7 Marion Whaley was present? I apologize, I missed a
8 part. Let's back up just a bit.

9 A Sure.

10 Q We're on page 39.

11 And when you met in Attorney Unger's office, that
12 was December 1st; correct, 2015?

13 A Yes.

14 Q How did that meeting come about?

15 A When I met up with this -- this guy, he took me to
16 the Unger's office, I had to explain everything that
17 happened that day.

18 Q And do you remember the assistant or the deputy
19 coroner, Marion Whaley, was present also?

20 A No.

21 Q You don't remember him being there?

22 A The lady?

23 Q No. That's a man?

24 A The firefighter? The short guy? The short little
25 guy? He's like the firefighter.

1 Q Okay. Do you remember the short guy being present?

2 A Yeah.

3 Q Okay. Do you remember at that meeting whether
4 anybody said that they thought Mr. Larios had seen a
5 snake in the tree?

6 A No.

7 Q You don't remember that?

8 A No, I don't remember that.

9 Q So we're going to look at Exhibit Number One. This
10 one. Can you show me on this photograph where
11 Mr. Larios' rope was tied around the tree?

12 (Pointing)

13 A It was at that height.

14 Q So right at the third rung of the ladder?

15 A Yes.

16 Q And he was standing on the fourth rung; right?

17 A Well, I don't remember if it was the third or the
18 fourth, but it was one of those.

19 Q Have you ever heard of something called the 10-foot
20 rule?

21 A No.

22 Q And prior to your work on November 29 of 2015, do
23 you know anyone that contacted the utility company to
24 de-energize the power line?

25 A No.

1 Q Do you know if anyone that contacted the utility
2 and asked that the lines be grounded?

3 A No.

4 Q Do you know if anyone that contacted the utility
5 company and asked that the lines be shielded or
6 insulated?

7 A No.

8 Q Neither you nor Mr. Larios were trained in utility
9 line-clearance?

10 A No, we weren't, we weren't trained.

11 Q No one ever trained you how to get up and trim
12 trees close to a power line; correct?

13 A No.

14 Q And you were not an experienced and trained line
15 -clearance tree trimmer, were you?

16 A No, not me.

17 Q And to your knowledge, Mr. Larios was not a trained
18 and experienced line-clearance tree trimmer; correct?

19 A No.

20 Q No, you don't think he was?

21 A What was the question?

22 Q To your knowledge, Mr. Larios was not a trained and
23 experienced utility line-clearance tree trimmer?

24 A No.

25 Q Did Mr. Stevens provide you or Mr. Larios with any

1 protective equipment before you began your work?

2 A No. He just took the strap that he used to tie
3 himself down.

4 Q Do you know that OSHA found that Mr. Stevens failed
5 to train you and Mr. Larios properly?

6 A No.

7 Q It's true though; right?

8 A Yes.

9 Q Were you aware that OSHA also found that
10 Mr. Stevens failed to provide you and Mr. Larios with
11 the appropriate protective equipment?

12 A No, I didn't know.

13 Q That's true, he failed to provide you with
14 protective equipment?

15 A Yes.

16 Q Were you aware that OSHA determined that
17 Mr. Stevens violated the rules by allowing work within
18 10 feet of a power line?

19 A I don't know anything about that.

20 Q Do you know that OSHA found that there was a
21 failure to conduct a hazard assessment at the location
22 before your work began?

23 A No, I didn't know.

24 Q Were you aware that OSHA found that Mr. Stevens --
25 that he knew or should have known that employees, that's

1 you and Mr. Larios, were trimming trees in close
2 proximity, within 10 feet to energized power lines?

3 A No, I didn't know.

4 Q And were exposed to the hazards of contact with
5 energized lines, were you aware of that?

6 A No, because we didn't see -- we couldn't see the
7 cables.

8 Q Okay. And I didn't ask you if you could see them.
9 I asked you if you were aware that OSHA made that
10 finding against Mr. Stevens?

11 A No, I didn't know.

12 Q Nobody ever told you about the power lines in the
13 right-of-way behind the property; correct?

14 A No.

15 Q It's your testimony that you never saw the power
16 lines before the work began?

17 A No, we never saw them.

18 Q You don't know what Mr. Larios saw; correct?

19 A No.

20 Q But you-all never talked about power lines;
21 correct?

22 A Correct.

23 Q And when you went out after the accident, you were
24 able to look up and see the power lines; correct?

25 A Yes.

1 Q Okay. I'll show you and ask you to look at Exhibit
2 Two now. And you've already shown us -- you've already
3 shown us where you were gathering up the palm fronds
4 after they were cut; correct?

5 A Yes.

6 Q And the ladder is up against the tree where you
7 placed it; correct?

8 A Yes.

9 Q And this is a photo taken from the yard where you
10 were working?

11 A Yes.

12 Q Looking towards the tree being trimmed; correct?

13 A Yes.

14 Q Let's look at this together. I'm going to come
15 over here. All right. Let's look at this together. Do
16 you see -- can everybody see? This line right here, it
17 comes out over here; right? Do you see this line right
18 here?

19 A Yeah, you can see a little bit.

20 Q Okay. You can see a wire; right?

21 A Yeah, you can see a little.

22 Q All right. So when you're looking toward a tree,
23 you can see a wire; correct?

24 A Yes.

25 Q Do you know how long that wire has been there?

1 A No.

2 Q And did you walk the entire property?

3 A I'm sorry. Page line?

4 Q Page 50, line 10.

5 A Just -- we didn't go outside, just inside the
6 property, inside the property.

7 Q Did your survey of the property include going back
8 to the fence?

9 A No, we didn't go outside the fence.

10 Q Okay. Did you stay inside the fence?

11 A Yes.

12 Q Did you walk all the way to the fence during your
13 survey?

14 A Yes.

15 Q Okay. Do you know what you would -- what you would
16 have seen if you looked up at the fence?

17 A No, I wouldn't see.

18 Q We're going to transition to page 56.

19 A All right.

20 Q So you were living with Gaspar at the time of this
21 incident in November of 2015?

22 A Yes.

23 Q How long had you been living with him at the time
24 of the incident?

25 A After the accident, I went -- I returned in

1 December.

2 Q But before the accident, how long had you been
3 living with him?

4 A I arrived here in August.

5 Q And you moved in with them immediately?

6 A Yes.

7 Q Who else was living in the house in November of
8 2015?

9 A Gaspar, his family, and his brother.

10 Q And yourself?

11 A Yes.

12 Q And so when Mr. Larios told you about this job the
13 night before November 29th, was that at the house?

14 A Yes.

15 Q But Mr. Larios knew the night before he was going
16 to 3402 Myrtle Street?

17 A Well, I mean, I didn't know. He just asked me if I
18 wanted to go to accompany him to work, and then I said
19 -- I just told him yes.

20 Q You didn't know where you were going to work?

21 A No.

22 Q And were you given instructions by anyone else
23 other than Mr. Larios?

24 A No.

25 Q About how many fronds had he trimmed off the tree

1 before he fell?

2 A Sorry. Page line?

3 Q Fifty-nine, line 25.

4 A Honestly, I don't know.

5 Q Do you know what part of the tree he was working on
6 when he yelled?

7 A He was on the back part of the tree.

8 Q And when you say back part of the tree, you mean he
9 was reaching around?

10 A Yes.

11 Q Thank you, Mr. Abraham. That's all the questions I
12 have for you.

13 A You're welcome.

14 REDIRECT EXAMINATION BY MR. BUCKNER:

15 Q Mr. Abraham, okay. On November 29, 2015, when you
16 were at the property, did anyone come and warn you about
17 the cables behind the property?

18 A No.

19 Q Did the owner of the house come out and warn you
20 about the power lines behind the property?

21 A No.

22 Q Did anyone from Edisto Sales and Realty come out an
23 warn you about the power lines behind the property?

24 A No.

25 Q Did anyone from SCE&G, the power company, come and

1 warn you about the power lines?

2 A No.

3 Q Were there any warning signs that you saw?

4 A No.

5 Q Did anyone provide you with any of these warnings,
6 tree cutting warnings, or anything of that nature?

7 A No.

8 Q Did you know that when the coroner, Marion Whaley,
9 investigated this scene, that he could not find any
10 power lines?

11 A No.

12 Q Did you know that the police and firefighters who
13 came and investigated, they didn't see any power lines
14 either?

15 A No.

16 Q Did you know that Mr. Dennison from OSHA didn't see
17 any power lines until he was shown the pictures of the
18 chainsaw and the burnt palm fronds?

19 A No, he said he didn't see anything either.

20 Q I want to go ahead and show you, Mr. Abraham,
21 what's been or we can mark now as Plaintiff's Seven.
22 And I'm going to show a picture of the same.

23 (WHEREUPON, Plaintiff's Exhibit Number 7 was marked
24 and entered)

25 Q Now, Mr. Abraham, is that the chainsaw that y'all

1 were using that day?

2 A Yes.

3 Q And can you point out for me, sir, where the marks
4 are on the chain that you saw after Jose fell out of the
5 tree?

6 (Pointing)

7 A In the chain.

8 Q Where is it again, sir?

9 (Pointing)

10 Q And that's the mark you showed the OSHA
11 investigator, sir?

12 A Yes.

13 Q And you never saw that mark on the chainsaw before
14 Mr. Larios fell out of the tree; right?

15 A It wasn't there before.

16 Q The power company's attorney marked this as Exhibit
17 One to the deposition. And so this is the picture of
18 the ladder all the way running up the tree.

19 Sir, can you tell me if you can see the power line
20 in that picture?

21 A No, you can't see it.

22 Q When you were out there that day working, did you
23 see any power lines?

24 A Yeah, correct, I didn't see them.

25 Q Thank you, sir. No further questions.

1 RECROSS EXAMINATION BY MS. WHITE:

2 Q Okay. Other than you, Mr. Larios, and Will
3 Stevens, no one knew you were going to 3402 Myrtle on
4 November 29, 2015?

5 A No.

6 Q You didn't tell anybody; right?

7 A No, I didn't tell anybody.

8 Q You didn't even know where you were going; right?

9 A I didn't know exactly the place, but I knew we were
10 going to work.

11 Q Right. You just didn't know the place?

12 A No.

13 Q Thank you.

14 And, Your Honor, we'd move to -- only thing that we
15 haven't admitted yet is Exhibit One from the deposition.

16 THE COURT: All right.

17 MS. WHITE: As Defendant's Eleven.

18 (WHEREUPON, Defendant's Exhibit Number 11 was marked
19 and entered)

20 MR. APPLGATE: Plaintiff's call Beverly O'Brien.

21 THE COURT: Ms. O'Brien, if you would please come
22 around and be sworn.

23 BEVERLY O'BRIEN,

24 being first duly sworn, was examined and testified as
25 follows:

1 DIRECT EXAMINATION BY MR. DUFFY:

2 Q Ms. O'Brien, good afternoon. If you would, for the
3 jury, please, tell us where do you live?

4 A Ladson, South Carolina.

5 Q Okay. And you live in Ladson, do you work
6 somewhere else?

7 A On Edisto Island.

8 Q You been working out there a long time?

9 A Close to 30 years.

10 Q And what is it that you do for work?

11 A Landscaping.

12 Q Landscaping?

13 A Yes.

14 Q You been doing that for 30 years?

15 A Yes.

16 Q And do you work for a company or do you own your
17 own landscaping?

18 A I own my own business now.

19 Q You own your own business, what's the name of that?

20 A Edisto Landscapes.

21 Q Do you have a number of employees in that business?

22 A I have three.

23 Q And because you've worked out on Edisto for so
24 long, did you know Jose Larios before he died,

25 Ms. O'Brien?

1 A Yes, I did. I worked with him with Will Stevens.

2 Q Tell us if you would a little bit about when you
3 first met Mr. Larios.

4 A I was working with Fox Landscaping when I meet
5 Jose. He would -- just started working for Will. He
6 worked for Will maybe a year and I quit Fox and went to
7 work with Will.

8 Q Do you recall what year that was you met Jose?

9 A 2007, 2008.

10 Q And in addition to knowing Mr. Jose from work, did
11 you also come to know his family over the years as well?

12 A Yes, I did. He had a niece, Wendy, that was his
13 pride and joy. He made sure she had anything she
14 wanted. He loved children and especially Wendy.

15 Q You've gotten to know Wendy as well?

16 A Yes.

17 Q And tell us a little bit more about your
18 observations of Jose's interactions with Wendy as you
19 said was his pride and joy.

20 A That was his pride and joy. You know, anything
21 that she wanted, anything that she, you know, she liked,
22 he would make sure that she got it. He didn't leave the
23 island much. He stayed over there on the island a lot.
24 I would go shopping for them at the flee market or if
25 Wendy needed new clothes or something, he always went to

1 Walmart or something. I would always pick up something
2 for him, whatever he wanted.

3 She wanted a Chihuahua puppy. And I looked on
4 Craig's List and found her a Chihuahua puppy. To get
5 her a Chihuahua puppy.

6 Q And was that something that Jose had approached you
7 about?

8 A Yes, he asked me to get her one because she wanted
9 one.

10 Q So Wendy told him, I want a Chihuahua puppy?

11 A She wanted a Chihuahua puppy.

12 Q And he enlisted your help?

13 A I had to find him a Chihuahua puppy. He would go
14 out of his way to get her anything.

15 Q And you talked a little bit about -- sounds like
16 you knew Jose not only from work, but personally; is
17 that correct?

18 A We worked together. We wasn't together, you know,
19 after work or nothing like that. We're just friends.

20 Q Okay. Tell us about your observations -- I mean,
21 of Jose as a coworker, what was he like?

22 A He was a very good person. He was more concerned
23 about other people than he was himself. He loved his
24 family. He was a family man. He loved his brother. He
25 loved, you know, his brother's wife, Wendy the most. He

1 would send his mother money in Mexico. He would usually
2 give me the money, I would stop at a store in Ravenel in
3 like a little Mexican store and wire his family money.

4 Q About how often were you doing something like that?

5 A Sometimes it was every couple of weeks. Sometimes
6 it was more often. He would do a lot of side jobs after
7 work. He was a workaholic. If he would have extra
8 money, he would want to send it to his mother and his
9 family in Mexico.

10 Q Do you recall how much -- how much money he was
11 sending?

12 A Sometimes it would 200, 300, 400, it all depends on
13 what he had to send.

14 Q You said Jose was a workaholic?

15 A He was constantly working. After work he would do
16 side jobs. He stayed busy.

17 Q And were you with Jose on the day that he died? It
18 was a Sunday morning.

19 A No, I was not.

20 Q Do you recall that morning?

21 A Yes, I was at the hospital. My daughter had had a
22 baby on Saturday.

23 Q Do you recall where you were when you found out
24 about his death?

25 A In the hospital room in a -- my daughter's hospital

1 room. Will had called and he was all upset and crying.

2 Just all I can say is Jose fell out of a tree. Jose

3 fell out of a tree and died.

4 Q What was your reaction to hearing that?

5 A I was in shock. I couldn't believe it. It's not
6 every day, you know, one of your coworkers just dies at
7 work. It doesn't happen all the time.

8 Q Do you remember when the last time you saw Jose
9 before he died, when that was?

10 A Friday at work.

11 Q Friday at work?

12 A Uh-huh.

13 Q Was that -- that was -- that would have been
14 November 27th; is that right?

15 A Yes.

16 Q Around Thanksgiving time?

17 A Yes. I rent a beach house for the week of
18 Thanksgiving and invite my friends down that don't have
19 family so they don't have to spend Thanksgiving by
20 themselves. That week, we would always go to the rental
21 and have lunch. I wasn't working with Jose that Friday,
22 we were doing something different and Jose had stopped
23 by there because he knew my family, he knew my daughter,
24 my son, and some of my friends that were there. So he
25 stopped by the beach house to have lunch. I seen him

1 five o'clock after work. Went back, took everything
2 back to the shop.

3 Q Did Jose, how did he come to know your family?

4 A Through -- my family comes down to go fishing and
5 crabbing and stuff. He would always meet us down there.

6 Q Do you recall anything about his relationship with
7 any other members of your family that stood out to you?

8 A They all liked him. He thought my daughter was the
9 greatest thing. She was young. She was a kid.

10 Q About how old was she when Jose died?

11 A Maybe a teenager. No, when he died, she was
12 pregnant. She was 19.

13 Q So obviously you found out about his death, was it
14 on Sunday that you found out?

15 A Yeah, Sunday morning. It was before lunch. We
16 were waiting for my daughter to be released from the
17 hospital and the baby.

18 Q Did you every go and visit the scene out at 3402
19 Myrtle Street after he died?

20 A Monday. I went down there, Marion Whaley had
21 pulled up when I was there. I tied a black ribbon
22 around the palm tree.

23 Q Why did you do that?

24 A It's something a lot of people do.

25 Q Can you elaborate a little bit? It's something

1 people -- I mean --

2 A Jose used to tell me about things that they did in
3 Mexico. Like if someone died, they kind of made like a
4 memorial for them. Especially if it was somebody dear
5 to them. I just -- I thought it would be something
6 good.

7 Q When you went out on Monday the following day, was
8 there anything about this scene, anything you found at
9 the scene?

10 A The palm fronds were still there. There was a
11 burnt palm frond. I didn't know if the family had been
12 there, I didn't want the family to see it. I walked it
13 up, threw it on the bike path. There was palm fronds
14 everywhere. None of that had been cleaned up yet.
15 There was yellow tape coming in the walkway. That was
16 it.

17 Q Okay. I want to make sure I understand correctly.
18 You -- yellow tape, was that blocking off --

19 A Wherever it was at before, it was just like a piece
20 thrown on the ground there.

21 Q And I know you've been sitting in this courtroom
22 for a number of days here and listening to the
23 testimony, you've seen the pictures of the palm fronds
24 on the ground. I want to make sure I understand your
25 testimony.

1 You said a moment ago you found a burnt palm frond?

2 A Yes.

3 Q Where was that?

4 A In between the palm tree and the split rail fence.

5 The bike path.

6 Q Is this on the back of the property?

7 A Yes.

8 Q And what did you do with the burnt palm frond that
9 you found?

10 A I picked it up and I walked it up the bike path.

11 Q What was the reason behind that?

12 A I didn't want Jose's brother or Wendy seeing a
13 burnt palm frond there. It's just -- I don't know. I
14 didn't want them to see it.

15 Q Did you think it might upset them?

16 A I'm sure it would of.

17 Q And when you went out there on Monday, at any point
18 in time, did you ever see any power lines?

19 A No. I wasn't looking for them neither.

20 Q Had you been at that home doing landscaping?

21 A I have done that yard for 20 years. I been in that
22 yard plenty of times. I've trimmed the palm trees
23 myself.

24 Q And all that time you never known there were power
25 lines --

1 A No, I did not.

2 Q How would you, Ms. O'Brien, describe the growth,
3 trees, and vegetation in that area?

4 A The palm trees seem to grow fast. I mean, we cut
5 those trees every year, every fall. Mr. Jackson wanted
6 the palm trees cut. They're always cut in the fall
7 November/December.

8 Q Is that area along the bike path, is it an
9 overgrown area?

10 A It does get growed up. Right now there's palm
11 fronds in the bottom line.

12 MR. PUGH: Objection, Your Honor. Move to strike.

13 THE COURT: I'm sorry.

14 MR. PUGH: I said I move to strike the last comment.
15 Talking about today.

16 THE COURT: All right. Sustain that. I'm going to
17 strike that last comment.

18 Q Ms. O'Brien, let me ask you this question. In
19 2015, November of 2015, at the time that Jose died, how
20 would you at that time have described the growth and
21 vegetation and palm trees in that area by the bike path?

22 A It was a jungle. It was growing up.

23 Q You've been doing landscaping I know in Edisto for
24 a long time, is it common in your experience for Edisto
25 to have overgrown trees around power lines like that?

1 A Yes.

2 Q Do you think that's a common condition out there?

3 A It does happen. They tend to grow quite fast.
4 Especially in September you get a lot of rain and stuff
5 is going to grow.

6 Q And I don't know whether you were here for the
7 earlier part of the trial, but there was some suggestion
8 that Jose had been trimming the trees at that property
9 dozens and dozens and dozens of times. Do you know
10 whether that's true or not?

11 A I don't think so. I know Larry had done the trees
12 in there a lot. Larry used to work with us, also.
13 Larry was a certified tree man. Jose learned a lot from
14 him. I don't know that Jose had ever done the trees in
15 that one yard.

16 Q You don't know if Jose had ever done the trees in
17 that --

18 A Ever trimmed the palm trees in that one yard
19 before. I know he had been in there while we were doing
20 them. I don't know that he had done them by himself in
21 there.

22 Q And at some point after Jose's death, do you know
23 whether that tree he was working on was later trimmed?

24 A It's been -- no, the tree itself, that week, later
25 on that week someone had come in and cut the top off of

1 it which eventually killed it. You can't cut the top
2 off of a palm tree and expect it to sprout out.

3 Q What's the affect of cutting the top off?

4 A It's going to kill it. It's going to die. It's
5 not trimming. It's writing a death sentence. You can't
6 cut the top off of a palm tree.

7 Q And you observed within a week of Jose's death that
8 somebody had topped the tree?

9 A It was later on that week. There was guys there.
10 We had went in to just do a cleanup. Because, I mean,
11 we left everything the way it was. I was still working
12 for Will Stevens. We left everything the way it was.
13 And it was either Thursday or Friday of that week, we
14 went to just cleanup the yard. Like, you know,
15 maintenance and there was two guys in there. They had
16 cut off the top of the palm tree in Mr. Jackson's yard
17 and left the stuff right there.

18 And on the bike path they also cut the top out of
19 one of the palm trees. Which that tree was still
20 standing there. It's dead, but it's still there.

21 Q It's dead because the top got cut off?

22 A Right.

23 Q Did you go back to work right after Jose's death?

24 A The following week.

25 Q Why didn't you go back to work right away?

1 A Well, shut the business down for a week. It was
2 too much for everybody.

3 Q What do you mean "it was too much for everybody"?

4 A One of our coworkers had just died. We were kind
5 of shook up.

6 Q And at some point after Jose's death, did you do
7 anything to try to assist his family?

8 A Yes. I put together a benefit fundraiser. We did
9 a dinner and a raffle to raise money to try to help send
10 Jose's body back to Mexico.

11 MR. DUFFY: May I approach, Your Honor?

12 THE COURT: Certainly.

13 (WHEREUPON, Plaintiff's Exhibit Number 8 was marked
14 for identification)

15 Q Ms. O'Brien, let me hand you what's been marked as
16 Plaintiff's Exhibit Eight for identification.

17 You just mentioned a moment ago you helped put
18 together a benefit fundraiser for the family?

19 A Yes, I did.

20 Q Can you tell us what this Exhibit Eight is?

21 A It's one of the fliers that we had put through the
22 island just to let people know what was going on. Those
23 that couldn't make it, they donated money. The stores
24 donated food, groceries, whatever we needed. Drinks.
25 Everybody kind of pitched in and then they came and

1 pigged out.

2 MR. DUFFY: Your Honor, if I may publish this to the
3 jury?

4 THE COURT: Yes, sir.

5 Q And that's the picture of Jose there in the middle;
6 is that right?

7 A That is. That's Jose.

8 Q So tell me, you said that the event was the
9 following week; is that right?

10 A Yeah. We gathered up stuff, had it at Will's shop.
11 A lot of people came. We had a fire. We had a local
12 that sings on the island. He came and played his guitar
13 and sang. A lot of the Mexican's that we didn't know
14 and they came. Everybody kind of supported each other.

15 Q Did you have to go out and seek people to give
16 contributions?

17 A No. People were finding us. You know, I'm all
18 over that island. I'm still all over that island. They
19 were stopping, you know, asking what do we need. They
20 wanted to donate plates, food, whatever. They kind of
21 found us. I never went begging for nothing. Everything
22 was donated because everybody liked Jose. Jose was a
23 good person.

24 Q And I want to ask you a little bit more about Jose.
25 Did you do you think Jose enjoyed being a part of the

1 Edisto community?

2 A He loved Edisto. He loved South Carolina. He was
3 into the history. He wanted to know more about the
4 parks in Columbia. The plantations. He was really
5 interested in the plantations. What they grew. When
6 they lived there and the houses that they lived in and
7 stuff like that. He was interested in it.

8 Q And I'm curious, do you speak Spanish, Ms. O'Brien?

9 A No.

10 Q I mean, I want to explain to the jury how you came
11 to know all these things about Jose and what it was that
12 he was interested in?

13 A Jose spoke good English. He was also taking
14 English classes at the school on Edisto. They had him
15 once or twice a week at Jane Edwards and he was taking
16 English classes.

17 Q He was taking English classes once or twice a week?

18 A Uh-huh.

19 Q How long had he been doing that?

20 A A while. I'm not really sure how long, but he had
21 been doing it for a while. Jose could speak good
22 English.

23 Q Jose could speak good English?

24 A He could speak good English, yeah.

25 Q And he talked to you about history, is that what

1 you were saying?

2 A Yeah. I would get him books. He would ask me to
3 find him books on this and books on that. I would find
4 him books at the flee market.

5 Q Do you know whether -- did Jose have a girlfriend
6 to your knowledge?

7 A He was seeing someone. I never met her. I didn't
8 know her. He would talk about her every now and then.
9 I didn't know her.

10 Q You talked a little bit about his relationship with
11 his niece Wendy, did you ever get a sense of, you know,
12 whether Jose wanted to have a family of his own?

13 A He did. He wanted to settle down and have a family
14 here. I can't tell you much about, you know, him and
15 his girlfriend. I didn't know her. Never met her.

16 Q Well, I'm curious what he said to you about --

17 A He wanted to settle down and have a family. He
18 wanted to have a better -- better here than in Mexico.
19 He didn't want to raise a family in Mexico and let the
20 children go through what he had to go through growing
21 up. He wanted a better life.

22 Q A better life, that's what you understood that to
23 mean?

24 A Yes.

25 Q And you mentioned, of course, earlier the support

1 that Jose was providing to his family. Did you -- how
2 about to his brother Gaspar and his niece Wendy?

3 A He was always helping out. They split rent and
4 most of them paid rent. I would get him fruit and
5 vegetables at the flee market. The flee market in
6 Ladson, they were big areas like Mexican food. I don't
7 even know what some of the stuff is. But I would always
8 get stuff for Jose. He would give me a list and I would
9 find the guy working there and I would give him a list
10 and he'd load up my truck.

11 Q You helped him run some errands and stuff like
12 that?

13 A Yes.

14 Q Do you think Jose would have made a good father?

15 A Most definitely. He loved children. He loved life
16 himself. He was a happy camper. He enjoyed living.

17 Q Is that your sense of --

18 A That's me knowing Jose.

19 Q That's --

20 A He was a happy camper.

21 MR. DUFFY: Your Honor, if I may take up something
22 real quick before --

23 (Bench conference)

24 MR. DUFFY: Your Honor, at this time, I would like
25 to move Plaintiff's Eight which is marked for

1 identification.

2 THE COURT: That was the photo you just showed me?

3 MR. DUFFY: Yes, Your Honor.

4 THE COURT: All right. Plaintiff's Eight -- I'm
5 sorry. Yeah, I think that's right. All right. Without
6 objection?

7 MR. PUGH: None.

8 THE COURT: Plaintiff's Eight without objection.

9 (WHEREUPON, Plaintiff's Exhibit Number 8 was
10 entered)

11 Q Ms. O'Brien, at some point after Jose's death, are
12 you aware of a memorial that was built in his honor?

13 A Yes. It was a concrete bench. I put it on the
14 other side of the split rail fence. I asked his brother
15 first. We put it out there for them to kind of gather
16 and leave their treasures and trinkets and stuff like
17 that when they come to pray to Jose.

18 Q And let me just go ahead and hand you what's been
19 marked as Plaintiff's Exhibit Nine.

20 (WHEREUPON, Plaintiff's Exhibit Number 9 was marked
21 for identification)

22 Q Is that what you're describing?

23 A Yes.

24 MR. DUFFY: I'd like to go ahead and move that into
25 evidence at this time, Your Honor.

1 THE COURT: That's Eight and Nine?

2 MR. PUGH: No objection.

3 THE COURT: Eight and Nine without objection.

4 (WHEREUPON, Plaintiff's Exhibit Number 9 was
5 entered)

6 Q And, Ms. O'Brien, where is that located?

7 A On the other side of the split rail fence at
8 Mr. Jackson's bike path.

9 Q Do people -- to your knowledge do people still
10 visit that site?

11 A Yes, they do.

12 Q Ms. O'Brien, I appreciate your time. Thank you.

13 THE COURT: All right. Cross examination?

14 CROSS EXAMINATION BY MR. PUGH:

15 Q Good afternoon. Ms. O'Brien, first, sorry about
16 the loss of your friend. Jose was your friend; right?

17 A Yes, he was.

18 Q And y'all worked together for a number of years,
19 you told us about that; right?

20 A Yes.

21 Q And this property, do you call it the Jackson
22 property, is that what you refer to it as?

23 A Yeah, the house belongs to Mr. Jackson. I've known
24 him for 20 years. It's just -- sometimes it was easier,
25 the guys can't remember numbers and names and stuff.

1 And sometimes names are easier than numbers to remember.

2 Q Of course.

3 A And vice versa.

4 Q And you yourself have done work in that -- or on
5 that property for how many years?

6 A Twenty something.

7 Q Okay. Always for Mr. Jackson?

8 A No. I worked for Fox Landscaping.

9 Q No. No. No. Mr. Jackson was the owner?

10 A Mr. Jackson owned the house, yes.

11 Q Right. And you worked for Fox and then you went to
12 work for Will Stevens?

13 A Right.

14 Q And now you continue to do work out on Edisto for
15 your own company; right?

16 A Right.

17 Q And how many times a year do you think that you
18 work at the Jackson property?

19 A Every other week. And we trim the palm trees once
20 a year, in the fall.

21 Q And you yourself had trimmed that -- what we're
22 talking about is this specific tree. I'll show you what
23 I've marked as Defendant's Exhibit Number One. You
24 yourself have previously trimmed this tree in the
25 center; correct?

1 A Yes, sir.

2 Q How many times have you trimmed that tree in the
3 past, over 20 years?

4 A Yes.

5 Q Do you know how long these power lines have been
6 back here in the right-of-way?

7 A I have no idea.

8 Q A long time?

9 A I imagine so.

10 Q Yes, ma'am. And so you were never injured doing
11 any work at Mr. Jackson's property, were you?

12 A No, I was not.

13 Q You were never shocked or had anything happen to
14 you when you -- 20 times or so went up in that tree;
15 correct?

16 A No.

17 Q And you said that a gentleman named Larry, what is
18 Larry's last name?

19 A Larry Simmons.

20 Q Simmons?

21 A Uh-huh.

22 Q Is that a YES?

23 A Yes.

24 Q And Larry was, I think you used the -- he was a
25 certified tree man?

1 A Right.

2 Q And Mr. Larios was not a certified tree man?

3 A No, he was not.

4 Q But he had been doing the work for a number of
5 years?

6 A Yes.

7 Q And kind of learning from Larry, is what you said?

8 A Yes.

9 Q And you just don't know one way or the other
10 whether Mr. Larios had previously trimmed this tree
11 we're talking about or not, do you?

12 A No, I do not know.

13 Q Do you know if Will Stevens had ever trimmed that
14 tree?

15 A Yes, he has.

16 Q How many times do you think Will Stevens has
17 trimmed that tree?

18 A More than I have.

19 Q All right. Have you ever -- let me ask you this.
20 I'm talking now about when Mr. Stevens' company that you
21 work for was doing the work at the Jackson property. Do
22 you know how much Mr. Stevens was charging Mr. Jackson
23 that every two weeks?

24 A Not really, no.

25 Q Okay. And that was my question. You weren't in

1 charge of that billing?

2 A No, I had nothing to do with his money.

3 Q I got you. Did you have anything to do with
4 getting those bills paid through somebody whether it's
5 Mr. Jackson or somebody else?

6 A Through Will. No, I had nothing to do with Will's
7 bookkeeping or none of that.

8 Q All right. You never contacted anybody at the
9 power company about these lines back here that we're
10 looking at in the right-of-way, did you?

11 A No, I did not.

12 Q And there are also -- this property is at the
13 corner of Louis Street and Myrtle; is that correct?

14 A Yes.

15 Q And so what we have is, if you look here you see
16 this vehicle parked right here, you see that?

17 A Yes.

18 Q Okay. That's on Louis Street; right?

19 A Correct.

20 Q It runs kind of on the other side of this gazebo --

21 A Yes.

22 Q -- across the bike path back toward the beach;
23 correct?

24 A Yes.

25 Q Okay. And then in front of the house is Myrtle

1 Street; right?

2 A Right.

3 Q And there is a power pole, a utility pole, in the
4 front yard of 3402 Myrtle Street; correct?

5 A Right.

6 Q And there are power lines that run along Louis
7 Street and tie in back here with this line that we're
8 looking at; correct?

9 A I don't know that.

10 Q You don't know whether there are lines right here
11 along Louis Street?

12 A No, I do not.

13 Q Okay. Just don't know one way or the other?

14 A No, I don't know if they are or not.

15 Q Okay. You told us, I think, I may have not written
16 it down correctly. You told us that you went out after
17 learning of your friend's death, you went out the next
18 day; correct?

19 A Yes. I was at the hospital on Sunday when I came
20 back to Edisto, Monday I went out to the yard.

21 Q Right. And I want to be clear, what you found when
22 you went out there was a burnt palm frond?

23 A Yes.

24 Q It was a palm frond?

25 A Yes.

1 Q And you said it was burnt; correct?

2 A It had a burn mark on it. The whole palm frond was
3 not burnt, just a burn mark.

4 Q Okay. Out on the edge or where was this burn mark?

5 A I'm not really sure. I don't know. It was a brown
6 frond like it could have been a bottom frond.

7 Q Like a bottom frond?

8 A Like palm fronds when they start browning out they
9 start from the bottom. You don't normally see a top one
10 brown out. They do it from the bottom.

11 Q Got it. And that's what we're talking about with
12 trimming, we're trimming from the bottom?

13 A Right.

14 Q And so this frond that you found on Monday was
15 lying between this split rail fence that we see here and
16 the bike path; correct?

17 A Right.

18 Q And you picked it up and you put it on the bike
19 path; right?

20 A Me and a friend was walking up the bike path and I
21 still had the frond in my hand and I just sat it down on
22 the other side of Louis Street behind a bed. A flower
23 bed along the backside.

24 Q Okay. So you were walking down this way toward the
25 gazebo?

1 A That way.

2 Q This way?

3 A No, that way. The bike path is this way.

4 Q Okay. So you're walking away from the gazebo down
5 the bike path; correct?

6 A No, that way.

7 Q Okay.

8 JURORS: Towards the cars.

9 A Yeah, towards the cars over there.

10 Q Thank you. Toward the cars where you're walking;
11 correct?

12 A Yes, sir.

13 Q And you put this palm frond out here at the street
14 so it would get picked up with the rubbish; correct?

15 A Right.

16 Q Do you know where that palm frond came from?

17 A No, I don't.

18 Q Okay. Do you know what happened to it?

19 A No, I don't. I never went back to see if it was
20 still there.

21 Q Do you know how long it was?

22 A How long?

23 Q Did you take any measurements of it?

24 A Nope. It was green. It was -- I mean, it was
25 brown. It was a palm frond. I don't know how long it

1 was.

2 Q I got you. Ms. O'Brien, thank you very much.

3 That's all the questions I have for you.

4 MR. PUGH: Nothing further, Your Honor.

5 MR. DUFFY: Nothing further from us, Your Honor.

6 THE COURT: Thank you. You may step down. All
7 right. Ladies and gentlemen, these gentleman wanted to
8 keep you here all night and I told them, no. (Laughter)
9 I'm just kidding. As a matter of fact, that's what we
10 were talking about and all the attorneys agree that
11 maybe break -- this might be a good breaking time for
12 today. We kept you here late a couple of nights, we're
13 going to break a little early today.

14 So, if you would, again, continue what you've been
15 doing and everything that you can do to keep yourselves,
16 you know, able to remain fair and impartial. Don't
17 allow anyone to talk with you, influence you in any
18 fashion.

19 If you be back in the morning at 9:30 we'll get
20 started once you're all are here we'll get started where
21 we left off. Ladies and gentlemen, have a good evening,
22 we'll see you in the morning.

23 (The jury left the courtroom at 4:42 p.m.)

24 THE COURT: Are we ready to put these matters on the
25 record?

1 MR. PUGH: Good morning, Your Honor.

2 THE COURT: Yes, sir.

3 MR. PUGH: Steve Pugh on behalf of the defendant
4 Dominion Energy South Carolina formally known as South
5 Carolina Electric and Gas. We have a couple of brief
6 matters to put on the -- proffers to put on the record
7 -- into the record, excuse me.

8 One is with regard to an incident, an injury, that
9 Mr. Larios had in July 2015, another tree trimming
10 incident in which the defense contends he sustained
11 serious injuries including at least two skull fractures,
12 a brain bleed, and traumatic brain injury.

13 As a result of learning about that incident within
14 perhaps a week or so of trial, the defendants jointly
15 filed a motion for continuance on that basis and others
16 that was heard by Judge Mullen and denied. Currently,
17 we have a motion for reconsideration that is still
18 pending; however, I have requested that perhaps Judge
19 Mullen issue a Form 4 order as to that pending motion.

20 We would simply renew and proffer for the record
21 that we would have liked to have put that evidence into
22 the trial of this case, but I understand the Court's
23 ruling that that is outside the bounds of this trial.
24 But for the record, the proffer would have been with
25 regard to the prior incident, the prior medical

1 treatment, subsequent medical treatment perhaps wasn't
2 sought or obtained in the potential impact of that on
3 Mr. Larios leading up to and including his fatale
4 incident on November 29, 2015.

5 That's with regard to that proffer, Your Honor.

6 THE COURT: All right, sir.

7 MR. PUGH: The other matters that we -- you were
8 kind enough to let us talk about back in chambers was
9 we, the defendant, has a pending motion for -- there was
10 a joint motion for view of the premises by the
11 defendants, that matter was filed in a motion, had an
12 incorporated brief to it. We at the beginning of the
13 trial kind of delayed it as we've gotten into the trial
14 further. We're running out of time in this trial, so to
15 speak.

16 I think the plaintiff will probably rest today. The
17 other two defendants have now been dismissed as a result
18 of settlements in these cases, and we would request that
19 the Court rule on that motion for our request for the
20 jury to view the premises to -- as outlined in detail in
21 the motion and memorandum.

22 But the essential bullet point would be that we
23 would think it's very important given the way this case
24 has been tried, given the photographs, given the
25 testimony that the jury have the opportunity to view the

1 premises for themselves in judging the evidence in this
2 case and reaching a conclusion that is fair, just,
3 reasonable, and informed. Thank you, Your Honor.

4 THE COURT: All right. Mr. Buckner?

5 MR. BUCKNER: Your Honor, just briefly with regard
6 to both of those matters. First and foremost, with Your
7 Honor's permission, we'd like to incorporate some of our
8 prior arguments. Obviously, this came up in context
9 with a motion for continuance and in the evidentiary
10 context we've already posed those, and for the record,
11 if we could have our prior arguments incorporated here
12 in response to the proffer, we'd like that.

13 Your Honor's very familiar, Judge Mullen denied the
14 request for continuance. She gave them access to these
15 medical records about this injury and after reviewing
16 those records, she said no further discovery is
17 warranted, we're going to try the case. And that was
18 pretty much for the simple reason that unless the
19 defense counsel was going to allege that these doctors
20 committed malpractice and these records were in some way
21 shape or form altered, we knew everything about his
22 condition we needed to.

23 We know Mr. Larios did not have any neurological
24 impacts and we know that the hospital said avoid
25 physical contact activity for six weeks. All of that is

1 months, months, months, and months before this, so it's
2 simply not relevant and certainly, for the reasons
3 stated previously, Your Honor, under 402, 403, and
4 404(b) in addition to others is not admissible.

5 Besides, as Your Honor is very well familiar is a
6 standard of necessity necessary for justice, I think is
7 the language, it's a statutory right that in this case
8 even if we didn't have the alterations to the scene that
9 we have, I don't think anybody could suggest that it's
10 necessary given the number of photographs that everybody
11 in the jury has endured in this case and given the
12 proximity and distance that we have to go there.

13 But as Your Honor knows, the tree has been first
14 pruned down, then cut down, several other trees have
15 been removed, and more importantly than all of that, the
16 cycle trimming has occurred so that the jury would be
17 looking at something that is not the same as it was. So
18 it's unwarranted. Thank you, Your Honor.

19 MR. PUGH: And may I briefly and I'll be brief.

20 THE COURT: Yes.

21 MR. PUGH: As to the proffer with regard to the
22 prior medical records and the denial of motion for a
23 continuance by Judge Mullen, I believe, Your Honor, that
24 that was simply a Form 4 order. It doesn't have any
25 findings of facts or conclusions with regard to that

1 prior motion simply just for denying the motion for
2 continuance.

3 So I don't think there have been any findings in the
4 record about relevance, irrelevant, all those various
5 things, just a Form 4 order.

6 THE COURT: All right. Well, with regard to the
7 site visit, my concern with that -- I think this is a
8 case that I think the jury would benefit from viewing
9 the site; however, the problem here is that it is not in
10 the same condition as it was at the time of this
11 incident. And it's a little bit more than just simply
12 that that tree has been removed. But my understanding
13 is there's been quite a bit of trimming that has gone
14 on. You know, I don't know as a result of this case or
15 not or just it's just the way it works.

16 But the problem that I see with that is that we'd
17 likely be taking the jury to a site that doesn't fairly
18 and accurately represent what it was at the time the
19 incident occurred. So, I'm going to respectfully deny
20 that request to do that.

21 I had some information, juror number 200, Elaine
22 Williams has had car trouble. She called, did she give
23 any details regarding that? I know she has car trouble,
24 is she going to be able to get here?

25 BAILIFF: She's coming.

1 THE COURT: She is coming. Okay. Juror 72, Darrell
2 Gant, have we tried to reach him? Madam clerk, have we
3 tried to reach --

4 THE CLERK: I was not aware there was a --

5 THE BAILIFF: Mr. Gant we just found out.

6 THE CLERK: Okay. Do I need to go downstairs and
7 check with Sharon?

8 THE COURT: This is his number here?

9 THE BAILIFF: That's his phone number.

10 THE COURT: Let me try calling him.

11 (Calling Mr. Gant)

12 (On the phone with Mr. Gant)

13 THE COURT: He is about three minutes away he said.
14 And Ms. Williams is in route. So, we'll just be at ease
15 then, I guess, unless there's anything else we need to
16 take up? But they're going to let us wait on them now.

17 It's only fair. We can just be at ease. Y'all can
18 relax. I'm not going to go back into chambers. I'm
19 just going to hang out.

20 (Off the record)

21 THE COURT: All right. Let's bring the jury out.

22 (The jury entered the courtroom at 9:56 a.m.)

23 THE COURT: Thank you, folks, you may have a seat.
24 I just want the record to be clear, we were waiting to
25 go at 9:30. (Laughter) And let me take that back

1 because I pride myself in being an honest person. We
2 were ready to go at 9:35. Okay.

3 But, ladies and gentlemen, we are ready to continue.
4 We were on the plaintiff's case when we rested and so
5 we're going to pick up where we left off. We recognize
6 the plaintiff for their next witness.

7 MR. APPLGATE: Thank you, Your Honor. We'd call
8 SCE&G, Mark Branham.

9 THE COURT: Sir, if you'd please come around to be
10 sworn.

11 MARK BRANHAM,
12 being first duly sworn, was examined and testified as
13 follows:

14 DIRECT EXAMINATION BY MR. DUFFY:

15 Q Mr. Branham, good morning.

16 A Good morning.

17 Q Can you tell us what your occupation is?

18 A I'm a supervisor of vegetation management.

19 Q And who is your employer?

20 A Dominion Energy.

21 Q SCE&G/Dominion; right?

22 A That's correct.

23 Q And you've been here all week in trial, haven't
24 you, Mr. Branham?

25 A Yes.

1 Q You've heard all these witnesses testify; right?

2 A Yes.

3 Q And you been deposed in this case as well, haven't
4 you?

5 A I have.

6 Q You were the one, in fact, handpicked by the
7 defendant SCE&G as the voice of the company; isn't that
8 right?

9 A As a 30(b)(6) witness, yes, sir.

10 Q And all the answers you gave in your deposition,
11 those were the answers of SCE&G; right?

12 A Yes.

13 Q Everyone at SCE&G is looking to you to testify in
14 this trial as the company; right?

15 A Yes.

16 Q Mr. Branham, we've heard a lot this week about
17 vegetation management. And vegetation management,
18 that's simply the practice of clearing and trimming
19 trees or branches so that power lines -- overhead power
20 lines of SCE&G are free and clear; right?

21 A Yes. And it also involves some other aspects.

22 Q Some things like herbicide maybe and some growth
23 retardants; is that right?

24 A Herbicide maintenance, yes, sir.

25 Q And you'd agree with me, Mr. Branham, wouldn't you,

1 that SCE&G's responsibility is to provide separation
2 between its power lines and the adjacent vegetation?

3 A We do provide separation.

4 Q That's SCE&G's responsibility, isn't it?

5 A Yes.

6 Q Vegetation management is a critical component of
7 SCE&G's business, isn't it?

8 A Yes.

9 Q And, in fact, Mr. Branham, the number one purpose
10 of vegetation management is to protect the public and
11 SCE&G employees and keep them safe; right?

12 A Yes. Safety and reliability is extremely
13 important.

14 Q Safety is the number one reason, isn't it?

15 A And reliability, you know, they both can go hand in
16 hand.

17 Q And that's because, Mr. Branham, trees and limbs
18 growing near or into power lines can create a hazard;
19 right?

20 A They can create a hazard.

21 Q Vegetation growing into power lines can threaten
22 the safety of the public, can't it?

23 A It potentially could, yes, sir.

24 Q And that's because it can cause a risk of
25 electrical shock; right?

1 A You know, the risk there, you know, if an
2 unqualified person puts himself in a position within 10
3 feet of a power line, there could be a significant risk
4 there.

5 Q Mr. Branham, my question was, a risk of electrical
6 shock is a known risk by SCE&G of vegetation and trees
7 growing into power lines; is that right?

8 A There could potentially be a risk there. But just
9 because a tree is on the power line does not mean
10 there's a risk of shock there.

11 Q Mr. Branham, you recall I took your deposition in
12 this case; right?

13 A Yes.

14 Q Have you reviewed that deposition?

15 A I have.

16 Q And one of the other risks created an additional
17 electric shock is the risk of fire if vegetation grows
18 into power lines; isn't that right?

19 A Yes, sir.

20 Q Mr. Branham, certainly you'd agree with me that the
21 electricity that SCE&G/Dominion pumps through its wires
22 is incredibly dangerous; right?

23 A Yes.

24 Q It's deadly and it can kill people, can't it?

25 A It can.

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

2 THE COURT: Yes, sir.

3 (WHEREUPON, Plaintiff's Exhibit Number 10 was marked
4 for identification)

5 Q Mr. Branham, I'd like to hand you what's been
6 marked as Plaintiff's Exhibit Ten for identification
7 purposes. Could you please tell the jury what that is?

8 A This is a PowerPoint titled, "Utility Pruning of
9 Trees."

10 Q And this is a presentation you put together, isn't
11 it?

12 A Yes.

13 Q And this is a presentation that was given to the
14 Edisto Beach town counsel; right?

15 A Yes.

16 MR. DUFFY: And, Your Honor, at this time I'd like
17 to move to have Plaintiff's Exhibit Number Ten admitted
18 into evidence.

19 THE COURT: Any objection to Plaintiff's Ten?

20 MR. PUGH: None, Your Honor.

21 THE COURT: All right. Without objection
22 Plaintiff's Ten is in evidence.

23 (WHEREUPON, Plaintiff's Exhibit Number 10 was
24 entered)

25 Q And, Mr. Branham, this is SCE&G's explanation to

1 the members of the community about how SCE&G performs
2 vegetation management, isn't it?

3 A Yes.

4 Q If I could get you to look at page 3, Mr. Branham.
5 Do you see that there?

6 A Yes, sir.

7 Q And that says that SCE&G's minimum clearing specs.
8 The third row I want to point out. "Clearing
9 specs-Trees trimmed a minimum of 10 feet below, 10 feet
10 to the side, and at least 10 feet above primary lines;"
11 isn't that right?

12 A At least 20 feet above.

13 Q Excuse me. Twenty feet above. Now, those minimum
14 clearances, those apply to primary/neutral lines;
15 correct?

16 A Yes.

17 Q And if, Mr. Branham, you would, please turn to the
18 next page, page 4. And that slide is titled, "Why does
19 SCE&G prune trees;" is that right?

20 A That's correct.

21 Q The number one reason listed is:

22 "Ensure public safety-utility vegetation
23 maintenance reduces electrical hazard risk to the public
24 by:

25 Providing separation between wires and vegetation

1 to eliminate potential electrical shock;" isn't that
2 right?

3 A Yes.

4 Q Number one reason is to ensure public safety; isn't
5 it?

6 A I mean, you know, provide safety and reliable power
7 and like I said, they go hand in hand.

8 Q Number one is public safety, isn't it?

9 A Yes, sir.

10 Q Number two is reliable power?

11 A Yes, sir.

12 Q And, in fact, down below reliable power it says:

13 "Trees are among the most common cause of outages."

14 Then it goes on to say:

15 "SCE&G is proactive and prunes trees BEFORE they
16 pose a risk;" isn't that right?

17 A Yes.

18 Q Now, SCE&G trims trees on a five-year cycle; isn't
19 that right?

20 A Yes.

21 Q And if you'll turn to page 7. That's what's
22 discussed there, is it not?

23 A Yes.

24 Q Once every five years a particular area is visited;
25 right?

1 A Yes. So every project we have is on a five-year
2 cycle.

3 Q And it also says there in this presentation that
4 you gave to the Edisto town counsel that:

5 "It's possible SCE&G will conduct 'mid-cycle'
6 pruning for vegetation conditions that won't hold cycle
7 or for maintenance purposes;" isn't that right?

8 A Right.

9 Q And mid-cycle trimming you also call that "spot
10 trimming," don't you?

11 A Correct.

12 Q And "won't hold cycle," that just means that the
13 vegetation will not hold until five years comes around;
14 isn't that right?

15 A When we talk about not holding cycle, we talk
16 about, you know, a situation where it's causing outages
17 -- reoccurring outages.

18 Q So you're telling me that SCE&G only performs
19 vegetation management on vegetation if it won't hold
20 cycle if it causes an outage?

21 A Right. A lot of times we'll have a request to trim
22 a tree that's close to the line, but for spot trimming
23 and we look at outage data, but if it's not causing
24 reoccurring outages, that's not a candidate for spot
25 trimming.

1 Q You said somebody's got to call in and request,
2 there's got to be some outages; is that your testimony?

3 A Or we could have some data that shows the outage
4 history.

5 Q SCE&G's reacting to the data, is that what you're
6 telling me?

7 A I'm not sure about that.

8 Q Well, earlier --

9 A So if we have a condition that's causing
10 reoccurring outages, that would be a situation where we
11 would go do a spot trim.

12 Q And, Mr. Branham, isn't it also true that one of
13 the reasons for spot trimming or mid-cycle trimming is
14 to ensure safety?

15 A Potentially, yes, sir.

16 Q Okay. That's one of the reasons, isn't it?

17 A Yes.

18 Q Now, Mr. Branham, SCE&G has an entire forestry
19 department, doesn't it?

20 A Vegetation management, yes, sir.

21 Q Okay. And the corporation spends millions of
22 dollars every year on vegetation management; right?

23 A I don't know the exact number, but I know it's a
24 very significant amount of money.

25 Q It's in the millions, isn't it, Mr. Branham?

1 A Yes, sir.

2 Q And with all that institutional knowledge,
3 Dominion/SCE&G -- SCE&G/Dominion knows that not all
4 species of trees are going to grow at the same rate;
5 isn't that right?

6 A Yes. Some trees have different growth rates.

7 Q And yet even though SCE&G knows that, the cycle is
8 the same for a project regardless of the tree species;
9 isn't that also right?

10 A Yes. They're all on five-year cycles for
11 distribution.

12 Q Once every five years regardless of its species for
13 growth rate; right?

14 A Yes.

15 Q And that's true for Edisto Beach; isn't it?

16 A Yes.

17 Q Same thing is true for all SCE&G service area?

18 A Five-year cycle for everything, yes, sir.

19 Q And we looked earlier, Mr. Branham, SCE&G's minimum
20 clearances, minimum clearances requiring that trees and
21 vegetation be trimmed back to 10 feet or either side of
22 these power lines; right?

23 A Yes, but we also have exemptions to those
24 clearances.

25 Q Exceptions to the clearances; is that what you

1 said?

2 A Yes.

3 Q Yeah. And if there's an exception to the clearance
4 or something like that, SCE&G can't just put it's head
5 in the sand, they got to go out and talk to the
6 homeowner and rectify that problem, don't they?

7 A The problem of?

8 Q If there's some claim by SCE&G that there's an
9 exemption out applicable?

10 A (No response)

11 Q Is that a YES?

12 A I thought you -- I'm still waiting on the question.

13 Q Mr. Branham, my question is: Just because there
14 may be an exemption, that doesn't absolve SCE&G of its
15 responsibility to maintain separation between its lines
16 and vegetation, does it?

17 A No. We still maintain separation, but there is an
18 exemption to our clearances.

19 Q And if palm fronds or branches are within SCE&G's
20 clearances, those would have to be trimmed; correct?

21 A Yes.

22 Q And under these rules, we'll look at here in a
23 minute, SCE&G's own policies, palm trees are treated no
24 differently than other trees; right?

25 A Yes.

1 Q And now after being trimmed, SCE&G knows that some
2 vegetation is going to react differently to its growth
3 rates, doesn't it know that?

4 A Yes. The growth rates are different, but we know
5 that all trees after we, you know, go through on a spot
6 during our five-year cycle trim, we know that those
7 trees are going to grow back.

8 Q SCE&G knows they're going to grow back in the
9 lines?

10 A Yeah, we know that the trees do grow after we trim
11 them. That's why we're on the cycle.

12 Q And in fact, Mr. Branham, problems with trees
13 encroaching on distribution lines in the right-of-way
14 like behind 3402 Myrtle Street, those problems can
15 actually happen really fast; right?

16 A Yes. Vegetation can grow very fast.

17 Q And so some trees may not hold for whatever cycle
18 SCE&G has designated as applicable?

19 A Some trees do not.

20 Q Mr. Branham, you would agree with me that SCE&G has
21 a duty to reasonably inspect its power lines to make
22 sure they're clear, doesn't it?

23 A Yes.

24 Q But, in fact, SCE&G only inspects its lines once
25 every five years after the cycle trim is performed;

1 right?

2 A As part of the project we inspect it every five
3 years, but we always have people out in the field, you
4 know, looking at lines.

5 Q And your testimony is that linemen are out there
6 looking at lines constantly inspecting for vegetation
7 management; is that your testimony?

8 A If they see a situation out in the field, yes, they
9 address it.

10 Q Mr. Branham, you're the SCE&G handpicked witness in
11 this case, have you reviewed the testimony of other
12 witnesses from SCE&G linemen in particular?

13 A I have not reviewed linemen testimony.

14 Q Would it surprise you to learn that linemen don't
15 believe their job is to inspect for vegetation
16 management?

17 A Yes, that would surprise me. Because they're out
18 in the field and they're working on trees all the time
19 and it's a very common situation.

20 Q You testified a moment ago, Mr. Branham, that SCE&G
21 conducts its inspections after the cycle trim; right?

22 A Yeah. We have field inspections and we have final
23 inspections. So during the project, we will ride around
24 and take a look at the work and then after the
25 contractor turns a project in and after a contractor

1 rides in and says it's complete, we'll do a final
2 inspection.

3 Q You say field inspection, final inspection, those
4 are happening after the five-year cycle trim; isn't that
5 right?

6 A That's right. One is --

7 Q There is no inspection done by, Mr. Branham, six
8 months after the cycle trim; isn't that right?

9 A I mean, it could be. I mean, typically our final
10 inspection is done shortly after. But to give you an
11 exact date, I'm not sure of exact date or timeframe.

12 Q Mr. Branham, you do recall that I took your
13 deposition on Wednesday, May 22, 2019, don't you?

14 A Yes.

15 MR. DUFFY: Madam court reporter, will you unseal
16 Mr. Branham's transcript for me, please.

17 (Ms. Spires complies)

18 Q Mr. Branham, let me hand you a copy of your
19 transcript which was taken on May 22, 2019. Do you
20 recall that date?

21 A Yes, sir.

22 Q And I was there and you were there; right?

23 A Yes.

24 Q And you swore an oath to tell the truth, didn't
25 you?

1 A I did.

2 Q If I could, Mr. Branham, I'd like you to look at
3 page 53 of your deposition.

4 A Okay.

5 Q And I'm asking you at this point in time
6 inspections that SCE&G has performed. And I'd like you
7 to read, Mr. Branham, page 53, line 6 for the jury.

8 A "Doesn't happen six months later or a year later;
9 right?"

10 Q And what was your answer to that?

11 A "No."

12 Q And how about the next question?

13 A "Not two years later?"

14 Q And your answer to that?

15 A "No."

16 Q So SCE&G does not perform an inspection of its
17 lines six months later, a year later, or even two years
18 later after the cycle trim; isn't that right?

19 A Like I said, it could happen shortly after. I
20 can't give you an exact timeframe of when that occurs
21 because --

22 Q Well, Mr. Branham, your testimony --

23 A -- it depends on workload and a lot of other
24 things.

25 Q And your testimony at the time of your deposition

1 was, no, that does not happen; isn't that right?

2 A That's right. Typically it's shortly after, but a
3 contractor finishes a contract section.

4 Q And, again, you're talking about the inspection
5 associated with approval of the cycle trim; right?

6 A That's right.

7 Q Mr. Branham, are you aware -- excuse me. You're
8 not aware of any record in this case that demonstrates
9 that SCE&G ever performed an inspection of the area
10 behind 3402 Myrtle Street between February 2013 cycle
11 trim and November 29, 2015 when Mr. Larios died, are
12 you?

13 A There wouldn't have been an inspection done by a
14 forester.

15 Q Mr. Branham, again, my question is, you're not
16 aware of any record that demonstrates after the cycle
17 trim inspection was done in February of 2013 and when
18 Mr. Larios died in November, any record that
19 demonstrates an inspection was done by SCE&G in that
20 time period?

21 A We would have a record on what's called a "veg-man
22 program." That's a GIS program that basically shows the
23 completed work the contractor has done and then we use
24 that same program to go out and inspect the work.

25 Q And, Mr. Branham, maybe I'm not -- maybe we're on a

1 different waive lengths here. You're talking about the
2 inspection that's done following the five-year cycle
3 trim; is that right?

4 A Yes.

5 Q Okay. And I'm talking about after the inspection
6 to approve the work of the five-year cycle trim.

7 There's not a single record in this case that
8 demonstrates that SCE&G/Dominion ever inspected the
9 lines behind 3402 Myrtle Street, is there?

10 A Yeah, I'm not sure if we have a record like that.

11 Q You're not aware of one?

12 A I'm not.

13 Q One's not been produced in this case that you know
14 of?

15 A To my knowledge, no, sir.

16 Q And just to be clear, Mr. Branham, there's nothing
17 that would have prevented SCE&G from doing another
18 inspection behind 3402 Myrtle Street, for example, once
19 a year; right?

20 A You know, if we were having issues on that line or
21 if we had some outage data that would show an occurring
22 outages, yes, we could have done an inspection there.

23 Q My question is, there's nothing that would have
24 prevented SCE&G from inspecting this line once a year;
25 is there?

1 A Oh, no, sir.

2 Q And there's nothing that would have prevented SCE&G
3 from doing spot trimming as we see that they say they do
4 once a year out there, is there?

5 A No.

6 Q SCE&G could have done both of those things; right?

7 A If there was a need, yes, sir.

8 Q I'm talking about whether they could have done it?

9 A Yes, they could have done it.

10 (WHEREUPON, Plaintiff's Exhibit Number 11 was marked
11 for identification)

12 Q Mr. Branham, let me go ahead and hand you what's
13 been marked as Plaintiff's Exhibit Eleven.

14 Are you familiar with that document there,
15 Mr. Branham?

16 A Yes.

17 Q And this is something that we've heard about all
18 week which is ANSI; isn't that right?

19 A Yes.

20 Q ANSI is the American National Standards Institute;
21 correct?

22 A Yes.

23 Q And this is the ANSI A300 tree shrub and other
24 woody plant management document; right?

25 A Yes.

1 Q And these are guidelines and standard that
2 SEC&G/Dominion has adopted, hasn't it?

3 A Yes.

4 Q Mr. --

5 MR. DUFFY: Judge, at this time I'd like to move
6 Plaintiff's Eleven into evidence, please.

7 THE COURT: Any objection?

8 MR. PUGH: None.

9 THE COURT: Plaintiff's Eleven without objection.

10 (WHEREUPON, Plaintiff's Exhibit Number 11 was
11 entered)

12 Q And, Mr. Branham, ANSI, they publish industry wide
13 best practices for utility companies when it comes to
14 vegetation management; correct?

15 A Yes. It's an industry wide consensus.

16 Q And, if you would, Mr. Branham, I'd like to cover a
17 few -- just a few points in here with you. The first
18 one is down here at the bottom of page -- looks to be
19 marked as page 1. Do you see that, "Reasons for
20 pruning"? 2.2.

21 A Yes.

22 Q Okay. And what it says there is:

23 "The reasons for tree pruning may include, but are
24 not limited to, reducing risk, managing tree health and
25 structure, improving aesthetics, or achieving other

1 specific objectives;" right?

2 A Yeah.

3 Q The number one reason is reducing risks; isn't that
4 right?

5 A Yeah. It says:

6 "The reasons for tree pruning may include, but are
7 not limited to, reducing risk, managing tree health and
8 structure, improving aesthetics."

9 Q The first one listed is risk, isn't it?

10 A First one listed is risk.

11 Q And that would include the risk of electric shock;
12 right?

13 A I mean, that could include a lot of risks.

14 Q I'm asking you whether it includes the risk of
15 electrical shock?

16 A I think it could.

17 Q And then, Mr. Branham, if you would, look at --
18 ahead to section 8.1.

19 A Got it.

20 Q You see that there? In fact, this document here
21 has a section specifically with dealing with palm
22 pruning, doesn't it?

23 A Yes.

24 Q And the first thing listed under palm pruning is
25 that:

1 "Palm pruning should be performed when fronds,
2 fruit, or loose petioles may create a dangerous
3 condition;" right?

4 A Yes. But I also want to note this is not in the
5 utility pruning section.

6 Q Are you telling me that SCE&G has not adopted or
7 does not apply these best practices listed here about
8 palm pruning?

9 A We have.

10 Q So that would apply to SCE&G's practices; right?

11 "Palm pruning should be performed when fronds,
12 fruit, or loose petioles may create a dangerous
13 condition;" right?

14 A Mainly what applies is on 8.3 with the "Exception:
15 That palms encroaching on electric supply lines." So
16 when we come through, you know, we trim those back as
17 part of our five-year cycle.

18 Q And that 8.3 says:

19 "Live, healthy fronds above the horizontal should
20 not be removed;" right?

21 A Yes.

22 Q Is that right?

23 A Yes.

24 Q And then it goes on, it says there's an exception
25 to not removing them. And that says, when palms are

1 encroaching on electric supply lines; correct?

2 A Right. "Exception: Palms encroaching on electric
3 supply lines."

4 Q And that would include the lines that run behind
5 3402 Myrtle Street, wouldn't it?

6 A Yes.

7 (WHEREUPON, Plaintiff's Exhibit Number 12 was marked
8 for identification)

9 Q Mr. Branham, do you recall in your deposition that
10 we looked at some photographs together?

11 A Yes.

12 Q I'd like to go ahead and hand you what's been
13 marked for identification purposes as Plaintiff's
14 Exhibit Number Twelve. Have you seen that document
15 before, Mr. Branham?

16 A Yes.

17 Q Is it your understanding that that's a photograph
18 taken behind 3402 Myrtle Street?

19 A Yes.

20 MR. DUFFY: Your Honor, I'd like to move Plaintiff's
21 Twelve into evidence at this time.

22 THE COURT: Any objection?

23 MR. PUGH: None, Your Honor.

24 THE COURT: Without objection, Plaintiff's Twelve.

25 (WHEREUPON, Plaintiff's Exhibit Number 12 was

1 entered)

2 Q And I just want to ask you, Mr. Branham, the only
3 thing I want to ask you about this photograph is what I
4 asked you before at deposition which is, that photograph
5 right there, as depicted in that photograph, that
6 vegetation is nowhere near 10 feet away from SCE&G's
7 utility line depicted there, is it?

8 A Right. It appears it's closer than 10 feet.

9 Q And 10 feet is the minimum clearance SCE&G adopts;
10 isn't that right?

11 A Yes. At the time the trimming, you know, along
12 with those exceptions. But at the time of trimming we
13 require 10 feet to the side of the primary, but there
14 could be some exceptions to that rule.

15 Q And, Mr. Branham, when SCE&G has exceptions to that
16 rule, it's documented somewhere, isn't it?

17 A It is not documented.

18 Q SCE&G doesn't document when trees or vegetation are
19 growing within 10 feet of its power lines and it says it
20 can't do anything about it?

21 A No. We perform that final inspection and that's
22 when we look at all the work.

23 Q And that's the final inspection that's done after,
24 right after the five-year trim cycle; right?

25 A Yes.

1 Q Not done six months later; right?

2 A Yes.

3 Q Not a year later?

4 A No.

5 Q Not two years later?

6 A No.

7 Q Not until five years comes by again; right?

8 A No. The final inspection happens shortly after the
9 contractor turns it in as complete.

10 Q Mr. Branham, I know a lot of utilities do aerial
11 trimming with helicopters, is that something SCE&G has
12 done?

13 A We have.

14 Q Okay. And how about drones, a lot of companies are
15 using drones now for certain areas of inspection, is
16 SCE&G doing that?

17 A I'm not really sure about that. I have not been
18 involved with any drone work.

19 Q Aerial trimming, is that done with a helicopter?

20 A Yes.

21 Q SCE&G has it's own helicopter?

22 A No.

23 Q But it rents them and goes out and it drops saws
24 down from them and trims trees, doesn't it?

25 A Yes.

1 Q Mr. Branham, I just want to confirm your
2 understanding of the evidence in this case.

3 The tree that Mr. Larios was trimming which is
4 depicted here in Plaintiff's Exhibit Twelve. That tree
5 is not on an exception log or a refusal log or anything
6 of that sort at SCE&G, is it?

7 A To my knowledge, no.

8 MR. DUFFY: Court's indulgence just a moment.

9 (Pause)

10 MR. DUFFY: Your Honor, thank you.

11 THE COURT: Yes.

12 Q Now, Mr. Branham, again, going back briefly to this
13 story about inspection -- or exceptions and did you call
14 it exemptions?

15 A Yes.

16 Q At times, if there's an exemption, the only thing
17 to do is to remove the tree; isn't that right?

18 A A lot of times if there's a significant size trunk
19 located within our 10-foot clearance, we don't have to
20 remove the tree. Or cut the tree in half in that case.

21 Q Let me make sure I understand. If there's a trunk
22 that's within 10 feet of SCE&G's power line, SCE&G
23 doesn't care that it's close or growing into the power
24 line and it doesn't have to remove it or trim it or
25 anything like that?

1 A We do the side trimming, but a significant size
2 trunk within that 10-foot clearance, that can be an
3 exception.

4 Q Okay. And side trimming, you're talking about
5 pruning half the tree off and leaving the other half to
6 grow away from the utility line; isn't that correct?

7 A Yes.

8 Q And that's because you've got to direct growth away
9 from the power lines?

10 A That's just providing our separation.

11 Q Right. You have to direct the growth away from the
12 power lines to give the separation that's needed;
13 correct?

14 A Yeah. We trim the vegetation on the line side back
15 to the main trunk.

16 Q And the reason for that is because if the tree
17 branches or the limbs or the palm fronds grow into the
18 power line, it creates a hazard?

19 A It does. But we also recognize that after we trim,
20 that vegetation can grow back and that's why we have
21 these cycles.

22 Q SCE&G knows that after it comes and trims a tree,
23 some are going to grow back very quickly into the lines
24 is what you're telling; correct?

25 A Yes. We know the trees will grow back.

1 Q And that's exactly the reason or the scenario in
2 which spot trimming or mid-cycle trimming is warranted,
3 isn't it?

4 A When it's causing reoccurring outages, yes.

5 Q It's only when it stops SCE&G's meters from
6 running?

7 A If it's causing reoccurring outages.

8 Q Right. And the outages cause the meter to stop,
9 doesn't it?

10 A Yes.

11 Q Meter stops that means money stops going into SCE&G
12 from that customer; right?

13 A Right. I mean, that's how we collect. Yes.

14 Q And, Mr. Branham, we've looked at a lot of policies
15 and procedures and guidelines, standards and all these
16 things that SCE&G has in place and has adopted, and if
17 SCE&G had simply followed those policies and made sure
18 that these lines were free and clear of vegetation,
19 Mr. Larios would have never been shocked and killed;
20 right?

21 MR. PUGH: Object to the form.

22 THE COURT: Sustained.

23 A You know, we know that vegetation --

24 THE COURT: I sustained the objection.

25 Q Mr. Branham, I appreciate your time. Thank you.

1 A Thank you.

2 THE COURT: All right. Cross?

3 CROSS EXAMINATION BY MR. PUGH:

4 Q Good morning, Mr. Branham.

5 A Good morning.

6 Q Now, Mark, you're a forester; correct?

7 A Yes, sir.

8 Q Tell me about your education.

9 A I'm a graduate of Clemson University. I graduated in
10 2009.

11 Q And what did you get a degree in?

12 A Forestry Source Management.

13 Q Do you have another degree?

14 A No, sir.

15 Q Okay. So your degree is in forestry and forestry
16 management?

17 A Yes.

18 Q How long have you worked for Dominion Energy, used
19 to be SCE&G?

20 A I started co-oping right after I graduated.

21 Q So you've been there since you graduated?

22 A Yes, sir.

23 Q Always in the forestry department?

24 A Yes.

25 Q You said something earlier, I believe you talked

1 about that Dominion's vegetation management land has two
2 components; right?

3 A Yes.

4 Q What are they?

5 A Line trimming and herbicide maintenance.

6 Q And then you also talked about reliability and
7 safety; correct?

8 A Yes.

9 Q Okay. Who works on lines every day?

10 A Linemen.

11 Q And on any given day, how many folks whether they
12 work for your company or are contractors for your
13 company are out in the field working on or around power
14 lines? A ballpark figure. How many is that?

15 A I mean, systemwide, it could be in the thousands.

16 Q Okay. And those folks are out working on lines;
17 correct?

18 A Yes.

19 Q And the company has contractors who do tree
20 trimming; correct?

21 A Correct.

22 Q One of the companies, is that Lewis Tree Service?

23 A Yes.

24 Q Are there others as well?

25 A Yes.

1 Q Okay. And do you know the proximate number of
2 Lewis Tree Service or contract tree trimmers that the
3 company has out in the field on a given day? A ballpark
4 figure.

5 A Several hundred.

6 Q Several hundred on a given day?

7 A Yes.

8 Q You were asked a moment ago about reliability and
9 keeping meters running; correct?

10 A Yes.

11 Q Do you remember that? Hospitals, they have a
12 meter?

13 A Yes.

14 Q People's homes that need electricity for medical
15 equipment, do they have a meter?

16 A Yes.

17 Q I want to show you --

18 MR. PUGH: May I approach, Your Honor?

19 THE COURT: Yes, sir.

20 MR. PUGH: Actually, I don't need to.

21 Q Would you put Plaintiff's Exhibit Number Ten in
22 front of you, please. That's the PowerPoint. I want
23 you to turn -- do you see at the bottom, sir, it has a
24 number? I want you to turn to page 6. Are you there?

25 A I'm there.

1 Q And this is page 6 of the PowerPoint presentation
2 that you performed; correct?

3 A Yes.

4 Q And it says:

5 "Who will be performing work on my trees?"

6 And what does it say after that?

7 A "Only qualified utility line-clearance arborists
8 who meet OSHA qualifications are legally permitted to
9 work within 10 feet of power lines."

10 Q And what does the next line say?

11 A "Danger-Homeowners should never hire a private tree
12 contractor to work within 10 feet of power lines or
13 attempt to do the work themselves."

14 Q And what is the last line?

15 A "Contact SCE&G first."

16 Q And that's homeowners contact SCE&G instead of
17 hiring somebody who's not qualified to go up within 10
18 feet of the power line; correct?

19 A Yes.

20 Q Is it part of the safety that you were referring to
21 earlier, is that a lineman you were talking about that
22 were working on lines every day?

23 A Yes.

24 Q And that actually was a bad question because
25 linemen don't work on trees -- or excuse me, lines just

1 during the day; right?

2 A That's correct.

3 Q They have to work at night?

4 A Yes, sir.

5 Q During storms?

6 A Yes.

7 Q Tornados, hurricanes, whatever the case may be;
8 correct?

9 A Yes.

10 Q Would you get Exhibit Number Eleven, please, the
11 ANSI standard. If you'll turn to section 2, pruning
12 standards. And let me know when you're there.

13 A I'm there.

14 Q These are the pruning standards that Mr. Duffy
15 asked you about moments ago; correct?

16 A Yes.

17 Q Let's zoom in a little bit here. 2.2, Reasons for
18 pruning, and he asked you about this reduced risk;
19 right?

20 A Yes.

21 Q And then we go to 2.4. Do you see there's a
22 specific provision in here as to safety? Do you see
23 this?

24 A Yes.

25 Q Okay. And safety says -- what does 2.4.1 say?

1 A "Pruning shall be implemented by an arborist,
2 familiar with the practices and hazards of pruning and
3 the equipment used in such operations."

4 Q And 2.4.2 says?

5 A "This performance standard shall not take
6 precedence over applicable industry safe work
7 practices."

8 Q And 2.4.3 in part says?

9 A "Performance shall comply with applicable Federal
10 and State Occupational Safety and Health standards, ANSI
11 Z133.

12 Q And do you understand -- well, what do you
13 understand Occupational Safety and Health standards to
14 be? What are they known as?

15 A OSHA.

16 Q And then if we look down here, there's a reference
17 29 1910.269, electric power generation and distribution.
18 Do you see that?

19 A Yes.

20 Q And then we have 29 1910.331, electrical
21 safety-related work practices. Do you see that?

22 A Yes.

23 Q Please turn to paragraph 4, section 4.31. Are you
24 there?

25 A Yes.

1 Q 4.31 is entitled "qualified line-clearance
2 arborist." Can you tell us what that says, please?

3 A "Qualified line-clearance arborist: An individual
4 who, through related training and on-the-job experience,
5 is familiar with the equipment and hazards in the
6 clearance and has demonstrated the ability to perform
7 this special techniques involved. This individual may
8 or may not be our"...

9 Q Turn to 5.1, please?

10 A I'm sorry.

11 "This individual may or may not be currently
12 employed by a line-clearance contractor."

13 Q Thank you. Turn to 5.1, please. This section is
14 entitled, "Pruning practices, Tree inspection," do you
15 see that?

16 A Yes.

17 Q 5.1.1, what does that say?

18 A "An arborist or arborist trainee shall visually
19 inspect each tree before beginning work."

20 Q And finally, if you'll turn to section 9. This is
21 called "Utility pruning." You referenced that earlier
22 in your discussion with Mr. Duffy; correct?

23 A Yes.

24 Q And 9.1, this purpose of utility pruning, would you
25 tell us what that says, please?

1 A "The purpose of utility pruning is to prevent to
2 loss of service, comply with mandated clearance laws,
3 prevent damage to equipment, maintain access, and uphold
4 the intended usage of the facility/utility space while
5 adhering to accepted tree care performance standards."

6 Q And finally we have 9.2.1, what does that say,
7 Mr. Branham?

8 A "Only a qualified line-clearance arborist or line
9 -clearance arborist trainee shall be assigned to
10 line-clearance work in accordance with ANSI Z133."

11 Q And what we just looked at, those are ANSI
12 provisions that you were asked about being adopted by
13 your company; correct?

14 A Yes.

15 Q Are you familiar with a vegetation management
16 section of the National Electric Safety Code?

17 A Yes.

18 Q And that section specifically is section 218;
19 correct?

20 A Yes.

21 MR. PUGH: Your Honor, may I approach?

22 THE COURT: Yes, sir.

23 (WHEREUPON, Defendant's Exhibit Number 12 was marked
24 for identification)

25 Q Mark, I'm showing you what I've marked for

1 identification as Defendant's Exhibit Number Eleven,
2 (sic) are you familiar with that document?

3 A Yes.

4 Q What is it?

5 A National Electric Safety Code.

6 MR. PUGH: Your Honor, we'd move for the admission
7 of Defendant's Exhibit Number Eleven?

8 MR. DUFFY: No objection.

9 THE COURT: Without objection.

10 (WHEREUPON, Defendant's Exhibit Number 12 was
11 entered)

12 Q Turn to the second page, Mr. Branham, we have the
13 section entitled "Vegetation management;" correct?

14 A Yes.

15 Q And we have a general number 1. Would you read
16 number 1 that I'm highlighting?

17 A "Vegetation that may damage ungrounded supply
18 conductors should be pruned or removed. Vegetation
19 management should be performed as experience has shown
20 to be necessary."

21 Q And then as a Note here, Note number 2. What does
22 that say, please?

23 A "It is not practical to prevent all tree-conductor
24 contacts on overhead lines."

25 Q That's what the National Electric Safety Code says;

1 correct?

2 A Yes.

3 Q Let me show you what I'm marking as Defendant's
4 Number Twelve.

5 (WHEREUPON, Defendant's Exhibit Number 13 was marked
6 for identification)

7 MR. PUGH: I'm sorry, Thirteen. Thank you for
8 keeping me straight. May I approach, Your Honor?

9 THE COURT: Yes, sir.

10 Q Mark, are you familiar with the document I've
11 marked for identification as Exhibit Thirteen?

12 A Yes.

13 Q What is it?

14 A "South Carolina Electric and Gas Company's Lines
15 Clearing Specification For Electric Distribution
16 Right-of-Ways."

17 Q This is a document that you're familiar with?

18 A Yes.

19 MR. PUGH: Your Honor, I'd move for the admission of
20 Defendant's Thirteen.

21 THE COURT: Any objection?

22 MR. DUFFY: No objection, Your Honor.

23 THE COURT: All right. Without objection.

24 (WHEREUPON, Defendant's Exhibit Number 13 was
25 entered)

1 Q Mark, I want you to look at the second page of
2 Exhibit Number Thirteen. And do you see where it has a
3 Note here? Let's look at it together. "Note" and then
4 what does it say after that?

5 A "Conditions will exist on certain trees that will
6 preclude the above clearances."

7 Q Next line, please.

8 A "Such conditions will not be treated as Variances
9 and therefore do not have to be documented as
10 variances."

11 Q And then what is -- and -- well, let me ask you,
12 are these exceptions you were -- exemptions or
13 exceptions you were referring to in your discussion with
14 Mr. Duffy?

15 A Yes.

16 Q Okay. And this set forth in your own policies that
17 the variance if one or more of these exceptions is found
18 don't need to be documented; is that correct?

19 A That's correct.

20 Q And what is exemption number 3?

21 A "Significantly large tree trunks which are located
22 less than 10 feet from the outermost primary conductor."

23 Q And with regard to those trees, Mark, is that where
24 you're doing side trimming?

25 A Yes.

1 Q Because otherwise you would be, I think you said,
2 cutting the tree in half?

3 A Yes.

4 Q You were asked a lot of questions about mid-cycle
5 or spot trimming, do you recall those?

6 A Yes.

7 Q You can set that aside. When does Dominion or
8 formally South Carolina Electric and Gas Company do spot
9 trimming or mid-cycle trimming? What conditions?

10 A When there's reoccurring outages.

11 Q Are you aware, as you sit here today, between
12 February of 2013 and November 29, of 2015 of any service
13 issues on the circuit behind 3402 Myrtle Street, Edisto
14 Beach?

15 A No.

16 Q Are you aware of any outage issues at that location
17 in the timeframe I just talked about?

18 A No.

19 Q Are you aware of any requests to perform spot
20 trimming or mid-cycle trimming at that location?

21 A No.

22 Q Are you aware of any requests to perform spot
23 trimming or mid-cycle trimming at that location that
24 were ignored?

25 A No.

1 Q Are you aware of any SCADA or electronic monitoring
2 data that your company has with regard to service issues
3 or outages at that location?

4 A No.

5 Q Thank you, Mark. That's all I have for you.

6 A Thanks.

7 THE COURT: Redirect?

8 REDIRECT EXAMINATION BY MR. DUFFY:

9 Q Mr. Branham, you just talked a minute ago with
10 Mr. Pugh about variances and exemptions and exceptions
11 to when SCE&G has to comply with its own minimum
12 clearance requirements; right?

13 A Yes. We just discussed the exceptions.

14 Q And those are variance where SCE&G knows for a fact
15 that the trees and branches and vegetation are actually
16 closer to SCE&G's power lines than their minimum
17 clearance requirements; right?

18 A Yes.

19 Q And so those are the precise areas where additional
20 mid-cycle treatment, spot trimming inspection is needed
21 because SCE&G knows that that condition exists; right?

22 A Just because there's a limb or a trunk closer than
23 our minimum clearance does not mean we're going to have
24 a mid-cycle spot trim issue.

25 Q And that's only because SCE&G really only does spot

1 trimming when it causes the meters to stop and outages;
2 correct?

3 A No, that's not the only reason. I mean, just
4 growth habits of trees and, you know, just because a
5 trunk is located within -- less than 10 feet away from
6 that outermost primary does not mean we're going to have
7 an issue there.

8 Q And one of the other reasons you said that SCE&G is
9 supposed to do spot trimming is for safety; right?

10 A Potentially, yes.

11 Q Now, Mr. Branham, we looked at the PowerPoint and
12 that was something you put together, your language; is
13 that right?

14 A I put that PowerPoint together.

15 Q And one of the things that struck me about it was
16 your claim to the Edisto Beach town counsel and members
17 of the community that SCE&G is proactive and prunes
18 trees before they pose a risk. That's in there, isn't
19 it?

20 A Yes.

21 Q And yet here you're telling this jury that instead
22 of being proactive, SCE&G only trims trees mid-cycle if
23 it's inconvenient or causing some issue for them? In
24 other words, outages or reoccurring service problems,
25 isn't that what you're saying?

1 A Yeah. We do mid-cycle spot trimming if there's
2 recurring outages.

3 Q Right. So SCE&G is really reactive rather than
4 proactive on that front?

5 A If there's an issue there we address it.

6 Q Right. Reacting to an issue; is that right?

7 A Yes.

8 Q The opposite of proactive?

9 A We're proactive with our five-year cycle trim.

10 Q Once every five years, that's it; right?

11 A Once every five years.

12 Q No inspection after that, not six months, not one
13 year, not two years after; correct?

14 A Like I said, there's a lot of field personnel out
15 there every day looking at lines.

16 Q I want to make sure I'm clear on your testimony
17 from before, Mr. Branham. It is SCE&G's responsibility
18 to provide separations between vegetation and it's
19 lines; correct?

20 A Yes.

21 Q And trees and vegetation can contact the power
22 lines and not cause outages, can't they?

23 A Yes.

24 Q And that can still be a risk of safety to the
25 public, isn't it?

1 A Potentially, yes.

2 MR. DUFFY: No further questions, Your Honor.

3 THE COURT: Recross?

4 MR. PUGH: None.

5 THE COURT: Thank you very much, sir. You may step
6 down.

7 MR. APPLGATE: Your Honor, we're going to call
8 Mr. Ray Jackson by way of video.

9 THE COURT: All right.

10 MR. APPLGATE: And like to explain to the jury, if
11 I may. This is a video of the homeowner and we've
12 clipped it up so -- to make it shorter for you guys.
13 But it's a short clip so you guys can review the
14 evidence that would be presented.

15 THE COURT: Okay. And, folks, just as I told you
16 with a deposition, that is a sworn statement taken
17 outside of court, the video is the same. Mr. Jackson in
18 this video has been placed under oath. You may not see
19 that on the video, but he's under oath. He's answering
20 questions just as if he were sitting here in the witness
21 box. So you give that testimony whatever weight you
22 would give testimony as if it was live and whatever
23 weight you think it deserves.

24 MR. PUGH: Your Honor, may we just have a brief
25 reminder of who Mr. Jackson is.

1 THE COURT: Yeah. Mr. -- I think, Mr. Applegate --

2 MR. APPELEGATE: He is the owner of the house.

3 THE COURT: He is the owner of the property at
4 Edisto, at Myrtle Drive, I'm sorry.

5 MR. PUGH: 3402 Myrtle, yes, sir.

6 RAY JACKSON

7 **(Playing the video of Mr. Ray Jackson)**

8 MR. APPELEGATE: The plaintiff calls Gaspar Licona.

9 LUNA GAINER,

10 being first duly sworn as the interpreter for Gaspar
11 Licona.

12 GASPAR LARIOS,

13 being first duly sworn, was examined and testified as
14 follows:

15 MR. APPELEGATE: As a preliminary matter, Your Honor,
16 I'd like to just go ahead and move into evidence
17 Plaintiff's Exhibit Thirteen which is pictures of Gaspar
18 that these parties agreed to.

19 THE COURT: All right. Plaintiff's Thirteen will be
20 in evidence without objection.

21 MR. PUGH: I haven't seen them.

22 THE COURT: I'm sorry. I thought you said you had
23 seen them. I apologize. Go ahead. Any objection?

24 MR. PUGH: None.

25 THE COURT: All right. Without objection that is

1 Plaintiff's Thirteen. Mr. Applegate, you may proceed.

2 (WHEREUPON, Plaintiff's Exhibit Number 13 was marked
3 and entered)

4 MR. APPELEGATE: Thank you.

5 DIRECT EXAMINATION BY MR. APPELEGATE:

6 Q Can you introduce yourself to the jury?

7 A My name is Gaspar Licona Larios.

8 Q Good morning, Mr. Larios. Are you nervous?

9 A A little bit.

10 Q Well, that's okay. We'll go easy on you this
11 morning.

12 Can you tell the jury where you live?

13 A In Edisto.

14 Q And who do you live with?

15 A With my wife, and my girls, my children.

16 Q Can you tell me, I guess, about your whole family?

17 A We live together. We share everything together
18 over time. I work there at home. My wife takes care of
19 my girls.

20 Q Can you first start off and -- pardon me, madam
21 interpreter, can you hold it a little closer. We have a
22 couple people in the jury who have trouble hearing. So
23 actually the louder the better.

24 MS. GAINER: Okay.

25 MR. APPELEGATE: Thank you so much.

1 Q How many children do you have?

2 A I have three children. Jose is my oldest, Wendy
3 who is my daughter which is there, and my beautiful
4 daughter Flora.

5 Q And how old is your son Jose?

6 A Twenty-three years old. Wendy is 13 and my
7 beautiful little girl Flora, she's 1.

8 Q Does everyone live with you?

9 A Yes. Yes, all of us live -- we all live together.

10 Q Now, with Jose, is Jose in school or does he work?

11 A He works. He helps me with work. We work
12 together. Like we're friends.

13 Q And how about your daughter Wendy?

14 A She goes to school. She studies. And she helps
15 her mom. She prepares my coffee. We get along well. I
16 never get mad at them. I scold them, but I never get
17 mad at them.

18 Q Gaspar, I need to ask you about your brother today.

19 A Okay.

20 Q I'm going to start off, I'm going to show you some
21 pictures and let you tell the jury what these are.

22 Okay?

23 A Okay.

24 Q We're going to put them up on this board over here
25 and you can talk about them.

1 Well, the light is not great in this picture, but
2 you can tell us what this picture is?

3 A That's my brother working, trimming the palm what
4 he used to love to do. He used to love to do that kind
5 of job.

6 Q Okay.

7 MR. APPELEGATE: Can you bring it in a little bit so
8 we can maybe see it a little better?

9 (They comply)

10 Q How about this picture?

11 A He's my only brother and he's with my daughter, my
12 daughter Wendy who is right there. She was younger
13 there. She's older now. That was the admiration of my
14 brother.

15 Q How about this, do you remember this photo?

16 A Yes. He would sit there to play with the pets.
17 That's the little kitten that he had brought to my
18 daughter and gave it to her as a gift. The name of the
19 cat is Capullo.

20 Q What does that mean?

21 A It's the name of the cat. It's when a flower
22 starts blooming.

23 Q Okay.

24 MR. APPELEGATE: Can you pass on? You can scroll
25 through a couple of these.

1 (They comply)

2 Q How about this picture, Mr. Gaspar?

3 A That's my brother with my nephew. It's a nephew
4 that's in Michigan. But the little boy was here. He
5 was here with us.

6 MR. APPELATE: And next one.

7 Q I think we know what this one is, but do you
8 remember this picture?

9 A Yes. That's where my brother would always sit. He
10 would watch TV with my daughter and also play with the
11 pets.

12 MR. APPELATE: Next one.

13 Q How about this picture, what's happening here?

14 A This is just when he would get ready and we would
15 be getting ready to go to work. We would -- he would
16 become so happy that we were going to go to work.

17 Q Is that your truck?

18 A Yes.

19 Q And is that -- was he a driver of that truck or
20 were you the driver of that truck?

21 A He would be. He would be the driver.

22 Q Okay.

23 MR. APPELATE: Next photo.

24 Q Again, I guess, this picture speaks for itself. Do
25 you remember this one?

1 A Yeah. He's happy. He's working. He's always
2 carrying his line for safety.

3 MR. APPELATE: Will you pass through up to -- well,
4 just pass through a couple of them. Keep going. Okay.

5 Q Now, do you know who is in this picture?

6 A Yes. My brother with the pets, with the little
7 puppy that he had given my daughter. So he's there.
8 Those are the little two pets. And the little doggy,
9 his name is Nino. It's a small one. It's a little
10 Chihuahua. And the other one is the bigger one. His
11 name is Portos. They would play together.

12 Q Okay.

13 MR. APPELATE: And pass through.

14 Q And this picture, did you take this picture?

15 A I didn't take the picture. But there he is happy
16 working. Like no one you had seen before.

17 Q That's okay. Thank you, Gaspar. Now --

18 A It makes me happy to look at the picture of how he
19 worked. He was an example that I was going to follow.

20 Q And can you elaborate on that. Just kind of tell
21 me about your brother a little bit.

22 A When we were in Mexico, we would always play
23 together. We would never fight. We always had some
24 plan.

25 Q Was he younger or older?

1 A He's older than me.

2 Q Do you have any other siblings?

3 A No. He was my only sibling.

4 Q Do you have any other sisters?

5 A No, I have none. I'm the only one now that only
6 older in the family.

7 Q Did Jose play sports or have any other hobbies like
8 that?

9 A Yes. When we were together, we would play soccer
10 and I would be the goalie. He was the central defense.
11 We were helping each other. He was protecting me, but
12 nobody could score a goal in me.

13 Q Who was the better soccer player?

14 A He was. He was the best. They were all scared of
15 him. Because he had a very heavy leg. He would hit the
16 ball very, very hard.

17 Q I would never admit that about my brother, but it's
18 also true.

19 Tell me if you can about Jose's school, did he make
20 it far in school?

21 A Yeah. He was better student than I was. He was
22 studying a lot. When he went to the University he had a
23 scholarship. And I was a little bit dumber, I stopped
24 studying so he could continue with his school. And so I
25 started going to work to help him.

1 Q Did he do any schooling after high school or how
2 far did he go in school?

3 A He went to the University and finished his career.
4 And he graduated as an attorney. It's just that he
5 could no longer continue because of lack of money.

6 Q Did he ever practice law?

7 A No. No, because he was missing his degree. And
8 that is why he came here so he could make some money.

9 Q When you say "his degree," you mean his license?

10 A Yes, the license.

11 Q And how far did you make it in school, Gaspar?

12 A Middle school.

13 Q And how about your parents?

14 A They didn't go to school.

15 Q How old are your parents?

16 A They're older than 60 years old. They're old. I
17 mean, they're elderly.

18 Q And do you know why they're not here today?

19 A They're ill. It's not recommended that they
20 travel.

21 Q Have you ever provided some financial support for
22 your parents?

23 A Yes, I always send money.

24 Q And how about your brother?

25 A He was the one that would provide more. He was

1 providing money to the family.

2 Q And why is that?

3 A Because he was the older and the older one and I
4 have my family.

5 Q When did your brother move to Edisto?

6 A In the year of 2003, 2004, something like that or
7 before.

8 Q And where did he live and what did he do here?

9 A We've always lived together here in Edisto and he
10 was cutting yards for a living.

11 Q And where do y'all live, is it a house or an
12 apartment?

13 A We were renting a trailer.

14 Q Okay.

15 A And then I had an opportunity to purchase a house,
16 so we bought it.

17 Q And who purchased the house?

18 A Between the two of us. He was helping me. My
19 brother would help me so that the two of us could pay.
20 He would give me some money to pay the house. And the
21 house was not in my name. We placed it in my daughter's
22 name Wendy's.

23 Q Now, where did your brother work?

24 A We have worked in Florida picking oranges in
25 Georgia picking tobacco. And other places. We didn't

1 really like those jobs, but we had to do it. It was for
2 little money. Until we arrived at Edisto and my
3 brother, when we got to Edisto he said there was a lot
4 of money there. It's a small island, but there's a lot
5 of money because there's a lot of work.

6 Q And what kind of work schedule did your brother
7 have?

8 A Practically the whole day. And every day. And
9 whenever we had a chance, we would go with the family,
10 with my daughter, would play with my daughter with
11 little pets.

12 Q Gaspar, can you tell me the last time you saw your
13 brother?

14 MS. GAINER: Counsel, would you repeat the question,
15 please?

16 Q I'm sorry. Can you tell me the last time you saw
17 your brother?

18 A I saw him the day he fell. In the morning, we had
19 breakfast together. We were together right there in the
20 kitchen, in the living room. We were watching TV for a
21 little while. And until he told me that he had to leave
22 to go to work and I told him to be careful. And that is
23 when he left to go to work. And then I saw him again at
24 the hospital.

25 Q When did you find out what had happened?

1 A That day. I had not left for work yet, but I had a
2 phone call that an accident had happened. And so I left
3 to go there. I don't remember the date when the
4 accident happened. I know that it was in 2015.

5 Q Okay. After you heard about the accident, did you
6 -- what did you do?

7 A I went over there to see him. And I was praying
8 that everything was going to be okay.

9 Q Did you get to see your brother at the 3402 Myrtle?

10 A I did not see him.

11 Q Was he still there when you arrived at the house?

12 A Well, yeah, he was there. The ambulances were
13 there. The fire department was there. And one of the
14 firemen approached me and said that my brother was well.

15 Q Did you ask to see him?

16 A No.

17 Q And did you ride in the ambulance to the hospital?

18 A Didn't allow me in. I went in a different car
19 following the ambulance.

20 Q And did you get to see your brother at the
21 hospital?

22 A Well, I only -- yes, I saw him when they already
23 told me that he was gone. And from there I told my dad.

24 Q And how did your dad respond?

25 A I made the call to Mexico. My grandma picked up.

1 And so I told her to put my dad on. She put my dad on
2 and my dad only knows that my dad is a strong man. So I
3 imagined that when I made the call the entire family was
4 right there around him. And I told my dad that my
5 brother had passed away. And he started crying. And so
6 when my family saw my dad crying, they figured that
7 something serious had happened.

8 Two days later they told my mom what had happened
9 or maybe a day later they had told my mom. And so my
10 mom started dialing my brother's cell phone with the
11 hope that he would answer her. And I would pick up and
12 she would say, "Jose? Jose? Is that you, Jose?" And I
13 would say, "No, mom. It's me, Gaspar." And she would
14 start crying. And then she would keep calling me on the
15 cell phone over and over with the hope that he would
16 answer the phone.

17 Q Gaspar, did you guys have any type of funeral for
18 your brother?

19 A Yes. The entire community was helping me so that
20 my brother could be taken to the church.

21 Q And was he buried here?

22 A No, we sent him to Mexico.

23 Q Is that where your parents are?

24 A Yes.

25 Q Gaspar, I'm sorry, I know this is hard, but can you

1 let us know how this has affected your family?

2 A It's affected my family a lot in the sense that my
3 dad stopped working. He sits outside and just thinks.
4 My mom, well, she got sick and now I have to send her
5 money for her medications. The medication costs about
6 \$100. And one box of pills comes with only like eight
7 or ten pills and that is for the rest of her life.

8 Q And how about your family here, you know, you and
9 Wendy?

10 A They're okay here with me, but I cannot let myself
11 go down. I cannot do that for them. I don't want them
12 to see me cry. My daughter, look at her, she's crying
13 now. You don't know the pain that it carries. They
14 know. I always feel that, you know, I say that my
15 brother is in Mexico. That my brother is with my family
16 in Mexico and he's enjoying life there with them. So
17 that I don't let myself down and think that.

18 And I have not cried for him like a family member
19 should be cried for. My brother's in Mexico. He's with
20 my family. With my mom. With my dad. He's playing
21 there with them, but not dead.

22 Q Jose, do you know what your brother -- how old was
23 your brother when he died?

24 A Thirty-nine, 40. I really don't remember exactly,
25 but he's older than me by two years.

1 Q Did he ever tell you what he wanted to do with his
2 life?

3 A We had all kinds of dreams. He would call me Compa
4 and I would call him Compa. And we always tell each
5 other that we just didn't want to be one of like the
6 rest of the people. He always wanted to be someone big.
7 Better than anyone. Y'all have seen the pictures, he's
8 always happy working. And there are so many people that
9 go to work and they are angry. And my brother was
10 always happy. We had all kind of goals. He had a dream
11 he wanted to have his own family. He wanted to have his
12 own children. He wanted to buy property in Mexico so he
13 could build a stadium for children, for the young
14 people. And for his children whom he still didn't have
15 them yet. We never fought. We were always helping each
16 other.

17 Q Thank you, Gaspar. I don't really have anymore
18 questions. Is there anything else you would like to
19 say?

20 A Yes. I want to thank, Your Honor, for being here
21 with me listening to me. And I want to thank them, the
22 jury, because they heard me. I know now they feel what
23 I feel, also. Because some of you might be parents.
24 You have your children and I don't want anybody to go
25 through what I'm going through. He's my brother, but

1 this is -- it's very hard. Very hard for me. And thank
2 you for everything and thank you for listening to me.
3 Thank you.

4 Q Thank you, Gaspar. You need to wait, the other
5 attorneys can ask you questions. Okay?

6 A Okay.

7 THE COURT: Cross examination?

8 MR. PUGH: None, Your Honor.

9 THE COURT: All right. Thank you, sir. Thank you
10 very much, sir. You may step done. Thank you for being
11 here.

12 MR. APPELATE: Your Honor, if it's appropriate, can
13 we take a five minute recess and maybe start right back
14 or not?

15 THE COURT: Let me ask y'all something real quick.

16 (Bench conference)

17 THE COURT: Okay. We'll be at ease then. Folks,
18 we'll take a short break. Please have no conversation
19 about the case. If you need anything back there, just
20 let us know. We'll bring you back out shortly. Okay.

21 (The jury left the courtroom at 11:47 a.m.)

22 THE COURT: We'll be at ease then for a few minutes.

23 (Break time)

24 THE COURT: Anything we need to take up before we
25 bring the jury out from the plaintiff?

1 MR. APPELEGATE: No, Your Honor.

2 THE COURT: From the defense?

3 MR. PUGH: No, Your Honor.

4 THE COURT: All right. Let's bring them out.

5 (The jury entered the courtroom at 12:05 p.m.)

6 THE COURT: All right. Thank you, folks, please
7 have a seat. All right. We'll pick up with the
8 plaintiff. Recognize the plaintiff for the plaintiff's
9 next witness.

10 MR. APPELEGATE: Thank you, Your Honor. Plaintiff
11 calls Tiffany Provence to the stand.

12 THE COURT: Ma'am, if you would come around to be
13 sworn.

14 TIFFANY PROVENCE,
15 being first duly sworn, was examined and testified as
16 follows:

17 DIRECT EXAMINATION BY MR. APPELEGATE:

18 Q Good morning, Ms. Provence. Can you introduce
19 yourself to the jury?

20 A Sure. My name is Tiffany Provence. I am the
21 special administrator for the Estate of Jose Larios and,
22 therefore, the plaintiff in this case.

23 Q So over the course of the week we've heard your
24 name and I want to make sure that everyone understands
25 what your role is here. What is a special

1 administrator?

2 A So a special administrator is appointed by the
3 probate court in estates for various reasons. Which
4 include situations such as this where the beneficiaries
5 can't be present, where beneficiaries may be
6 incapacitated. Beneficiaries may be minors or
7 beneficiaries can't agree on who's going to be in charge
8 of an estate. And, therefore, the Court appoints
9 someone outside of the family to protect the estate, act
10 on behalf of the beneficiaries, and be able to speak for
11 anyone who isn't capable of being here to speak for
12 themselves.

13 Q Okay. Let me go back a little bit. Can you tell
14 us a little bit about your educational background,
15 Ms. Provence?

16 A Sure. I am a graduate of the University of Florida
17 where I got my bachelors degree. And then a graduate of
18 the University of South Carolina where I got my law
19 degree.

20 Q And do you practice law?

21 A I do. I'm an attorney in a firm of six attorneys
22 and I practice primarily in probate and probate related
23 litigation.

24 Q Okay. Do you have any other -- have you ever had
25 any other legal titles besides attorney in the world of

1 the law?

2 A Sure. So I spent about a decade of my career as a
3 probate judge in Dorchester County, South Carolina, and
4 I actually still sit as a drug court judge.

5 Q Besides what you're doing here in this case, have
6 you served in the special administrator in other cases?

7 A Sure. I've accepted numerous court appointments
8 over the past ten years in various estates to serve in
9 this capacity.

10 Q And, again, I think you've explained sort of how
11 the process works a little bit, but, I guess, and what
12 is your job when it comes to being the administrator of
13 Jose's estate?

14 A Sure. So each estate is different based on the
15 decedent and the beneficiaries. In this estate, my
16 responsibility was to essentially bring this legal
17 action, participate as the plaintiff, and to act to
18 protect the beneficiaries which would be Jose's family
19 and to make sure that their rights were protected
20 throughout this action.

21 Q Okay. Now, in doing that, have you, I guess, spent
22 time getting information and speaking with the family?

23 A Sure. When you're appointed special administrator
24 of an estate for someone that you didn't have the
25 pleasure of knowing, then you have kind of a homework

1 list of things that you're responsible for doing to
2 understand and acclimate yourself to the person to their
3 belongings, their family members, their history, how
4 they passed, why they passed. Their beneficiaries,
5 anything that I would be responsible for reporting both
6 to the probate court as well as to this court, if
7 necessary.

8 Q Okay. What did you come to learn about Jose?

9 A I've learned a lot about Jose through communicating
10 with his family and through understanding his genealogy
11 and researching his background. I've learned a lot of
12 interesting facts. A lot of things that may have
13 wrongfully assumed when learning someone was a
14 landscaper like Gaspar mentioned earlier. I was very
15 surprised when I learned that he had a law degree.

16 But I've learned that he was a dedicated family
17 man, even though he didn't have, but wanted children of
18 his own. I've learned that he was a pride and joy to
19 his parents. That he was their child that got through
20 college and had that law degree. He was an incredibly
21 hard worker. I've learned that he worked tirelessly to
22 support his family including his parents and his family
23 here. In ways I feel like I've gotten to know him
24 without ever having the honor to meet him.

25 Q And, I guess -- so, what's the universe of family

1 that Jose left behind?

2 A So Jose had his parents, his father who is also
3 named Jose, and his mother Anastacia. And then he had
4 his brother. Interestingly enough, he was one of four
5 children. These parents lost two children earlier in
6 life. So Gaspar is the last of the remaining of those
7 four children.

8 And then Gaspar's children who would be Jose's
9 nieces and nephews. He had grandparents or has a
10 grandfather and had a grandmother that he was very close
11 to. And a lot of cousins that I've learned about and
12 community connections as well. But a tight close small
13 family, but a very extended and loving larger family.

14 Q What do Jose's parents do?

15 A My understanding at this time is that his mother is
16 unable to work. She's very ill. Both with -- on
17 dialysis with failing kidneys as well as very high blood
18 pressure and other medical issues.

19 His father was out of work for a period after his
20 death. And now I don't want to offend any retirees, but
21 I'll just say, I believe he is attempting in dabbling
22 back at farming to give him something to do. But at his
23 age and with his health he's unable to really actively
24 farm in the way that he used to. That was what he did
25 prior was to work in the fields.

1 Q Have you come to learn through conferences with his
2 parents sort of what the communication, the relationship
3 between Jose and his parents?

4 A Absolutely. As I mentioned, Jose was their pride
5 and joy. He was at times sending his entire paycheck
6 home to support his parents. He was able to earn here
7 and send the money so that they could provide for their
8 needs, including medical needs. And they were
9 incredibly proud of him. And I think looking forward to
10 his opportunity to live out his dreams of being a
11 lawyer.

12 Q And pardon me, Ms. Provence. I realized I had some
13 questions I wanted to ask you that I think his brother
14 already gave us this information, so I'm trying not to
15 go back over some of the same things here.

16 Did you have any time to learn about Jose's prior
17 work background?

18 A I did. So I learned that Jose was very creative in
19 getting himself through University. He washed dishes,
20 did like odd jobs. He was a teaching assistant to help
21 him fund his education. And what I found most
22 interesting which Gaspar mentioned was that he was
23 actually paid to play soccer.

24 So I had a little bit in translation trying to get
25 through, but apparently he was so good that teams would

1 pay him to come and play on their team. And not only in
2 Mexico, but also in the US that I guess I would call
3 that a ringer. You know, he was paid to come and play.
4 So he did a lot to try to make ends meet and to make
5 sure that he was not, you know, a burden on his family,
6 was instead providing support to them.

7 Q Gaspar touched on this a little bit, but is there
8 any information you come to learn about how his parents
9 came to learn of his passing?

10 A I did. So I had heard Gaspar's story previously
11 and wanted to understand directly from the family
12 because I was a little confused about the mother
13 learning later and why that happened. So I did learn
14 that Gaspar had to, you know, call his father with the
15 news. And apparently due to his mom's health, a medical
16 decision was made to provide her medication before she
17 learned of her son's passing. Because this being the
18 third of her four children they were concerned medically
19 that it could cause her problems with her blood pressure
20 and her other issues.

21 I was also really touched to learned how about this
22 small community came together in an effort to
23 essentially bring Jose home and to honor him in the
24 community where he was a little bit of a, you know, a
25 local hero in the sense that he was so well-known for

1 his soccer and for the care that he gave his family.

2 And it was difficult to learn that the accident
3 occurring right after Thanksgiving that by the time they
4 were able to arrange this it was essentially the week
5 around Christmas when he was brought home and buried.

6 Q Again, have you had any opportunity to understand
7 again why they were unable to be present this week?

8 A Yeah. Medically I do not believe that it would be
9 recommended. I know that Jose's mother medically cannot
10 travel due to the dialysis and the kidney issues. His
11 father also has some severe spinal or lumbar issues, so
12 travel would not be recommended. Even if I think a
13 doctor would approve him to be here, I don't think
14 financially it would have been feasible for his father
15 to have gotten here and spent the time necessary to
16 attend this trial.

17 Q Can you give me an appreciation, Ms. Provence, I
18 guess, what you've learned about how this, again, what
19 the impact on his parents has been?

20 A Not only his parents, but I would also say that
21 Gaspar probably minimized what I would consider an
22 additional weight on his shoulders. I mean, as he
23 described, he and his brother were very cooperative in
24 working almost as a unit. So there were times that
25 Gaspar could cover all of their expenses here and,

1 therefore, Jose was able to send everything that he
2 earned to his parents. And then other times where he
3 would assist Gaspar with things that were going on here.

4 So this loss financially and emotionally has been
5 devastating to these parents in a way that as a parent
6 is very hard. Sorry. Just to think about. And not
7 just to those parents, but to Gaspar who now, in my
8 opinion, carries the weight of the world on his
9 shoulders trying to make up a financial difference that
10 he's not capable of making up individually. One man
11 can't undertake that responsibility.

12 Jose was a man that had sacrificed in a way that
13 I'm ashamed to admit is not my personality type. And
14 what I mean by that is that he loved other people's
15 children, but never quite had the time to have his own.
16 He supported, you know, his family. And seeing that he
17 was always putting things on hold to help others. And
18 if any of you are lucky enough to have that kind of
19 person in your life, when they're gone, I think everyone
20 suddenly realizes the role that they played. And that's
21 certainly how that family has been impacted.

22 His nephew and nieces as well I think have felt the
23 loss of, you know, the uncle that was always there. The
24 happy uncle that, you know, didn't reprimand and was
25 always there. So I would say it's been a huge loss

1 emotionally as well as financially.

2 Q That's all the questions I have. Thank you,

3 Ms. Provence?

4 MR. PUGH: May we approach?

5 (Bench conference)

6 THE COURT: Folks, let me get you to step back into

7 the jury room while I take up this matter of law. We'll

8 get you back out here shortly. Please have no

9 conversation about this case.

10 (The jury left the courtroom at 12:24 p.m.)

11 THE COURT: All right. Have a seat, folks.

12 Mr. Pugh?

13 MR. PUGH: Thank you, Your Honor. Your Honor, the
14 testimony of Ms. Provence is so improper and out of
15 bounds particularly in light of the record in this case.

16 We have served discovery from day one in this case.

17 We've asked a number of questions about Mr. Larios, his

18 family, his relationships, his medical history, his

19 prior tree trimming incidents, if any, financial

20 support, loss of earning capacity, loss wages, and

21 consistently not only in response to the discovery

22 responses, we were told none. Don't have that. Not to

23 my knowledge.

24 We then through happenstance, learned from Marion

25 Whaley telling Mr. Matt Kizer who is the principal at

1 Edisto Realty, nine days before this case was set for
2 trial about Mr. Larios' prior incident in which he
3 sustained two skull fractures and a traumatic brain
4 injury which was a result of -- which was part of the
5 basis for our motion for continuance.

6 None of this has been produced. And it's not just
7 that prior incident, it's all this business about family
8 history, support to the family. I mean, we have
9 consistently been told and counsel has represented to
10 prior court, Judge Mullen, that Ms. Provence doesn't
11 know that. She's appointed by the -- just by the
12 probate court. She stands in the shoes of these people.
13 How can she know the answers to these questions.

14 Well, now we hear clearly has a relationship about a
15 knowledge about all of these various things involving
16 the family going all the way back to Mexico. We're
17 talking about medical history. We're talking -- and I
18 brought this up before we began, and, no, I didn't
19 object during it because, of course, I didn't want to
20 enhance it even further and Your Honor had already ruled
21 about the issues. But this --

22 THE COURT: Hold on now, because what I ruled was
23 the prior injuries involving the fall some four months
24 prior to this.

25 MR. PUGH: Correct.

1 THE COURT: I ruled on that. All of this
2 information regarding the parents and their condition
3 and all that, that was never raised to me.

4 MR. PUGH: Right. Well, it wasn't. The parents --
5 and I agree with Your Honor. The parent's issue was,
6 hey, the grandmother at age 100 passed away and we had
7 that discussion.

8 THE COURT: Yeah, we had that discussion.

9 MR. PUGH: And I'm not belaboring it. But the fact
10 that we're sitting here as Mr. Applegate has
11 continuously said, we're ready to go. Two and a half
12 years, we're ready to go. We're ready to go because we
13 didn't answer discovery based on the plaintiff in this
14 case who clearly knew the information that was requested
15 of them and didn't produce it that was served over two
16 years ago. I mean, I don't know how my client can get
17 around the prejudice that we've just sustained in this
18 case.

19 THE COURT: Mr. Applegate?

20 MR. APPLGATE: Your Honor, thank you. I'm kind of
21 scratching my head because, you know, this motion or
22 whatever Mr. Pugh's -- this issue has been raised. I
23 just don't understand what the information we're even
24 talking about. The case is about Mr. Larios and all
25 we've talked about here, she -- we talked about parents

1 that met -- there was clearly no request for the medical
2 records of his parents. And I don't know anything about
3 medical records of the parents or anything like that.

4 So there's already been multiple -- there's been
5 testimony in the case about him sending money back to
6 his parents. I already stipulated that I am not putting
7 a blackboard or any information about that. Just simply
8 showing that we actually had this specific conversation
9 that we're not going to blackboard any money. That
10 we're simply going to talk about how in his life he
11 worked to support his family. So did his brother. And
12 as she testified, they shared the load.

13 I just don't even know what we're talking about,
14 Your Honor. And there's not one specific thing that
15 Mr. Pugh had raised -- that he just raised, the prior
16 brain injury, that was not discussed with her. I don't
17 even know what the objection is or what we're even
18 talking about, Your Honor.

19 THE COURT: I got the impression from and I'll let
20 Mr. Pugh speak for himself, I got the impression that
21 there was discovery asking about what Ms. Provence may
22 have known about the extended family and what testimony
23 was going to be presented.

24 MR. APPLGATE: I don't know what he's talking
25 about. Liam was just looking through discovery requests

1 again. I just don't appreciate anything he's speaking
2 of. And, again, Ms. Provence is the name on the
3 complaint in this case. That was done two and a half
4 years ago, Your Honor. She's been listed as a witness
5 in this case since we filed the case. Not one time did
6 Mr. Pugh ever request to take her deposition. He never
7 even asked.

8 Whatever information she may be doing to comply with
9 her duties as a special administrator, as a judge, he
10 did not call her. He did not ask her. He did not
11 notice her deposition. He did not request a date for
12 her deposition. I don't understand at all what he's
13 speaking about or know or understand the objection, Your
14 Honor, to be able to respond in any appropriate fashion.

15 THE COURT: Okay.

16 MR. PUGH: One of the things we specifically
17 requested, Your Honor, was, of course, what are your
18 damages? And, you know, and what are the documents to
19 support damages? We haven't been produced any of that.
20 We asked for this business about earning capacity, lost
21 wages, money being sent to support others. We asked for
22 this and we didn't get anything. And we kept being
23 told, as I represented to Your Honor, that she's just a
24 special administrator. She doesn't have access. She
25 doesn't know this information. That's what their

1 responses say.

2 THE COURT: She doesn't testify --

3 MR. PUGH: And now come in here and say about all
4 these various things and then going about into, you
5 know, I guess, now we're talking about causation of
6 dialysis. I mean, anyway. With none of this
7 information being reported or responded to in discovery,
8 I just think it's incredibly prejudicial, Your Honor.
9 Because we're told that she knows nothing. She knows
10 nothing. She's just a special administrator. She was
11 appointed by the court --

12 THE COURT: Tell me where she has testified as to
13 damages? I mean, she talked about he earned money. He
14 was a hard worker.

15 MR. PUGH: She talked about money being sent back to
16 the family in Mexico and because of that, they can't
17 afford medicine. The father is not working. I mean,
18 all these various things. I mean, I just think it's
19 ridiculous that we're sitting here on the fourth day of
20 trial and we're getting this information live from the
21 witness stand when we specifically asked for it.

22 THE COURT: Okay. And I'm assuming this is a motion
23 for a mistrial?

24 MR. PUGH: It's a motion to have a curative
25 instruction to the jury that she can't talk about. At

1 least medical conditions and things like that back in
2 Mexico that have never been responded to in response to
3 our discovery when we asked what are the damages? What
4 are the damages that plaintiffs seek? What are the
5 documents that support those damages?

6 MR. APPELATE: Your Honor, Ms. Provence -- I have
7 submitted no evidence through Ms. Provence of any
8 damages. I've not asked a number of anything. I have
9 not put in, submitted any evidence of lost wages or
10 anything through her. I didn't put any -- suggest any
11 damage to the parents except for she testified that they
12 were sad and that they were sick. What is the condition
13 of the parents and where they work? They're getting
14 old, they're sick, and they don't work anymore. I just
15 don't understand the objection.

16 THE COURT: Okay.

17 MR. APPELATE: And specifically, you know, I don't
18 know how it would be relevant that any lawyer would ever
19 ask in a death case of Mr. Larios, please provide
20 medical records of the parents. I've never heard of
21 that knowledge. But I'm pretty certain that, but I
22 could have missed it, that there was no request to know
23 the medical status of his parents.

24 And I can tell you, I would be surprised if anyone
25 else in the courtroom thought there was some suggestion

1 that we just asked or we intend to ask the jury to
2 somehow relate SCE&G's failure to do their job to the
3 health condition of Anastacia Larios. I just don't see
4 it. And I don't understand it.

5 THE COURT: All right. I'm going to respectfully
6 deny the motion for a curative instruction. I don't
7 think that Ms. Provence testified to any specific area
8 of damages. But I also -- and it's your prerogative,
9 Mr. Pugh, and I don't take any position one way or the
10 other how folks try their case, but at anytime -- every
11 bit of that could have possibly been left out or been
12 eliminated from this record if you had made the timely
13 objection. I could have ruled on it. And I don't know
14 how to rule because I'd have to then listen to the
15 objection. But there were no objections made.

16 Ms. Provence's testimony, if I recall, from the time
17 she took the oath and began answering questions until
18 she stopped answering questions, there were no
19 objections. And so, therefore, I'm simply going to deny
20 the motion for a curative instruction.

21 MR. PUGH: May I bring up one last thing? I
22 understand.

23 THE COURT: Yes, sir. Okay.

24 MR. PUGH: May I inquire of Ms. Provence with regard
25 to the prior proffer I made? And I'll do it very

1 quickly with regard to her knowledge of the prior --
2 while she's up here, her knowledge of the prior incident
3 that was not disclosed?

4 THE COURT: Sure. You can do that. You can proffer
5 that. We've already ruled that is not admissible, but
6 you can proffer.

7 MR. PUGH: I agree. And I'll do it very quickly.

8 THE COURT: Okay.

9 PROFFER TESTIMONY BY MR. PUGH:

10 Q Ms. Provence, good afternoon.

11 A Good afternoon.

12 Q Were you made aware of the discovery that was
13 served by the defendants in this case?

14 A I was.

15 Q Did you review the discovery?

16 A I did not review all of the discovery. I
17 participated only in those questions that required my
18 direct response.

19 Q And who told you which questions would require your
20 direct response?

21 A I don't know that I was told. I just followed up
22 on the questions that needed -- I don't think anybody
23 said you're not entitled to look at any of the other
24 items. But they specifically required my assistance on
25 ones that I held the unique knowledge.

1 Q Were you told --

2 MR. APPLGATE: Your Honor, again, I want Mr. Pugh
3 to ask his questions for the same time as -- instead, I
4 don't know, I'm just trying to protect myself here to
5 the extent that there is some sort of attorney/client
6 privilege problem. I don't know.

7 THE COURT: Well, if there's a question asked that
8 you need to object to, I'll certainly entertain it.

9 MR. APPLGATE: Okay.

10 Q Ms. Provence, were you made aware that the
11 defendants inquired about -- specifically about the
12 prior medical history of Mr. Jose Larios?

13 A I was not aware of that.

14 Q Were you made aware that the defendants made a
15 specific request for any prior tree trimming incident
16 before the 11/29/2015 incident involving Jose Larios?

17 A I was not aware of that.

18 Q Were you not sent the documents to review that you
19 could have educated yourself that that information was
20 being asked?

21 A It's not that I could not have educated myself, but
22 I would not have had that knowledge about the prior
23 incident.

24 Q Did you -- and you weren't even aware that the
25 questions were asked of you, the plaintiff; correct?

1 A I'm not sure if I was aware or not. But I didn't
2 have that knowledge, so I couldn't have been able to
3 assist in that answer.

4 Q Did you do anything to attempt to ascertain the
5 prior medical history of Jose Larios?

6 A I did not see that as my responsibility through the
7 probate court to try and obtain that information.

8 Q And you understand you're the plaintiff in this
9 case?

10 A I do.

11 Q And you didn't think that you had an obligation as
12 the plaintiff in this case to make an inquiry as to the
13 prior medical history of Mr. Jose Larios in response to
14 an interrogatory served upon you as the plaintiff?

15 A I'm going to have to ask you to repeat your
16 question just to make sure.

17 Q Sure. You're the plaintiff in this case; correct?

18 A Correct.

19 Q And you understand discovery was served upon you as
20 the plaintiff in this case?

21 A Correct.

22 Q And you were unaware that part of the discovery
23 served upon you was a request for Mr. Larios' prior
24 medical records or medical history; correct?

25 MR. APPLEGATE: Your Honor, just, again, side bar on

1 the issue maybe.

2 (Bench conference)

3 THE COURT: I'm going to respectfully deny the
4 motion for a curative instruction. And, anything else
5 before we bring the jury back in?

6 MR. PUGH: No, Your Honor.

7 THE COURT: Anything from the plaintiff before we
8 bring the jury back in?

9 MR. APPLGATE: Just for the record, I think we just
10 received -- my assistant processed this, but the
11 defendant's motion as it's been denied for
12 reconsideration was finally denied by Judge Mullen that
13 was entered. And now, just for the record, that was all
14 the questions we had questions about.

15 THE COURT: And we talked about that earlier.
16 Apparently, Judge Mullen's office just e-filed that
17 denial of the motion for reconsideration.

18 MR. APPLGATE: I just wanted to let the Court know.

19 THE COURT: All right. Let's bring the jury in,
20 please.

21 (The jury entered the courtroom at 12:46 p.m.)

22 THE COURT: Thank you, ladies and gentlemen. Please
23 have a seat. All right. We'll recognize Mr. Pugh for
24 his cross examination.

25 MR. PUGH: No questions, Your Honor. Thank you.

1 THE COURT: All right. Thank you, sir. Ma'am,
2 thank you very much. You may step down.

3 Unless you got a seven minute witness, I think it
4 might be lunchtime. But you might have a seven minute
5 witness, I don't know.

6 MR. APPLGATE: Your Honor, the plaintiff rests.

7 THE COURT: Well, this is a perfect time to break.
8 Ladies and gentlemen, in all cases, not particularly
9 this case, in all civil cases that we try, once the
10 plaintiff rests their case, the Court has to take up
11 matters of law before we proceed.

12 So I would be sending you back into the jury room
13 while I did that anyway. So this is a perfect time to
14 go ahead and break for lunch. While you're at lunch, I
15 will take up those matters of law, so that when you come
16 back we'll be ready to proceed. Okay.

17 I will ask you, if you would, to please be back here
18 at 2:15. Okay. And if you'll be back -- no, 2:30. I'm
19 going to let you get back at 2:30. We'll be back a
20 little bit early and take up matters of law we need to
21 take up.

22 So if you would, please, be back at 2:30. Have no
23 conversation about the case. Do not allow anyone to
24 talk with you about the case.

25 (The jury left the courtroom at 12:49 p.m.)

1 THE COURT: All right. Have a seat folks. Guys,
2 y'all want -- I'm happy to accommodate y'all. Would you
3 like to go ahead and take up the matters at the close of
4 the plaintiff's case or do you want to do that when we
5 get back from lunch? We'll come back a little early.

6 MR. PUGH: Could we maybe come back a few minutes
7 early and do it, Your Honor?

8 THE COURT: That's fine. We can do that. Why don't
9 we come back at 2. I'll give you just a little over an
10 hour and we'll then come back at 2 and take up those
11 matters.

12 (Lunch break)

13 THE COURT: Are we ready then to take up motions at
14 the close of the plaintiff's case?

15 MR. PUGH: Yes, Your Honor.

16 THE COURT: Mr. Pugh, I will be happy to hear from
17 you.

18 MR. PUGH: Your Honor, can I hand these up?

19 THE COURT: Yes, sir.

20 MR. PUGH: May I proceed?

21 THE COURT: Yes, sir.

22 MR. PUGH: Thank, Your Honor. Your Honor, on behalf
23 of defendant Dominion Energy South Carolina, formally
24 known as South Carolina Electric and Gas Company, we
25 would make our motion for a directed verdict pursuant to

1 Rule 50(a). The specific grounds are matters on which
2 we believe the motion to be granted as follows:

3 Plaintiff has failed to introduce evidence that
4 would allow the jury, the finder of fact, or find in
5 favor of the plaintiff. Specifically, plaintiff has
6 failed to establish that Mr. Larios received an
7 electrical shock or that Dominion Energy had a duty to
8 Mr. Larios in view of the fact that he was improperly
9 and unlawfully in proximity to the energized line. And
10 thus was a trespasser to whom Dominion Energy had no
11 duty.

12 There is no credible medical testimony that in fact
13 Mr. Larios received an electric shock. In fact, there's
14 a lack of testimony in that regard being based on
15 incorrect or inaccurate information.

16 Additionally, there is no credible testimony or
17 evidence regarding the pathway and mechanism of alleged
18 shock that Mr. Larios received.

19 Additionally, Dominion did not, in any event,
20 proximately cause Mr. Larios' injuries which were
21 instead proximately caused by the intervening and
22 superseding negligence of Mr. Larios, his employer
23 Stevens Irrigation and/or Will Stevens, or in concert,
24 both.

25 Dominion Energy is not liable based on the evidence

1 in that Mr. Larios was overwhelmingly negligent and
2 Mr. Larios' primary assumption of risk resulted in his
3 injuries.

4 Your Honor, we have filed a memorandum brief in
5 support. I've handed copies to counsel. I've also
6 provided copies to Your Honor and your law clerk. There
7 are as exhibits to the memorandum, there are the OSHA
8 citations for the record, and we'll -- we have -- I have
9 Mr. Anthony Wilks from OSHA and his inhouse counsel
10 Ms. Deidra Laws who are here. Mr. Wilks is here to
11 testify under a subpoena.

12 However, I believe with the agreement of plaintiff's
13 counsel, in light of Your Honor's prior rulings that the
14 citations may come in, but the extraneous matters of the
15 OSHA report including witness statements and the like.
16 We've agreed to put the citations themselves into
17 evidence through agreement.

18 MR. BUCKNER: Your Honor, the only thing further to
19 add that Mr. Pugh and I just discussed was eliminating
20 in reference to the fine amount at the bottom of each of
21 those. Some of them are zero, but some of them were not
22 and we've all agreed to take those out.

23 MR. PUGH: That's being done as we speak. They are
24 being redacted. There will be no fine amounts set forth
25 in that exhibit.

1 THE COURT: Okay.

2 MR. PUGH: And I don't -- Defendant's Fourteen will
3 be the OSHA citations that we would proffer by agreement
4 with the redaction of the penalty amount.

5 THE COURT: Yes, sir.

6 (WHEREUPON, Defendant's Exhibit Number 14 was marked
7 and entered)

8 MR. PUGH: Your Honor, briefly. As you've heard,
9 there are uncontroverted, we believe, dispositive facts
10 in this case. I'm on page 4.

11 Mr. Larios was working on a ladder at the height of
12 approximately 23 to 26 feet.

13 Contrary to OSHA law, the ladder was aluminium not
14 insulated or not conductive. No witnesses testified
15 that they witnessed Mr. Larios receive an electrical
16 shock.

17 In fact, Mr. Larios did not. It was uncontroverted
18 made direct contact with the energized primary.

19 Given Mr. Larios' height and wingspan and the type
20 of chainsaw he was using, it was physically impossible
21 for that to make contact with the primary.

22 There are no -- there's no evidence in the record of
23 service issues, outages, or other problems including
24 problems with regard to vegetation at the subject
25 resident or at the subject property. But more

1 specifically, on the power line in question. It runs in
2 the right-of-way behind 3402 Myrtle.

3 As Your Honor has heard, after the incident,
4 Dominion Energy pulled the fuse from the circuit,
5 determined it was intact.

6 Due to his lack of training with electrical
7 equipment, Mr. Larios is by uncontroverted testimony
8 characterized as an unqualified worker pursuant to the
9 OSHA standards and the National Electric Safety Code.
10 Therefore, is an unqualified worker. Mr. Larios was
11 required to stay a minimum distance of at least 10 feet
12 away from the energized primary or other energized
13 electrical equipment pursuant to the OSHA law and other
14 standards.

15 As Your Honor has seen, OSHA cited Mr. Larios'
16 employer, Stevens, specifically for the conduct of
17 Mr. Larios, that is, that he was within 10 feet of an
18 energized primary.

19 Mr. Larios was working with a chainsaw in that area.
20 And, further, the testimony is that Dominion was not
21 notified by anyone. Not the plaintiff, not Mr. Larios,
22 not PENSCO former defendant, not former defendant Edisto
23 Sales, not his employer Stevens Irrigation, or any other
24 person or entity that Mr. Larios would be working within
25 10 feet of the energized power line.

1 Unless a worker can confirm with the utility
2 pursuant to OSHA and NESC that a power line is
3 de-energized, they are required that the worker assume
4 that the line is energized and potentially dangerous.

5 No person or entity has requested for the November
6 29, 2015 incident that Dominion Energy de-energize or
7 insulate or move or otherwise modify the power line
8 running in the right-of-way prior to Mr. Larios working
9 in the vicinity of it.

10 Even if Mr. Larios did receive an electrical shock
11 other than by coming into direct contact with the
12 primary power line, such occurrence could only occur if
13 Mr. Larios violated the OSHA work rules applicable to
14 his own conduct.

15 Mr. Larios according to the OSHA general duty cause
16 had also an independent duty of his own to ensure his
17 own safe work habits.

18 Your Honor, we would make a motion for directed
19 verdict pursuant to Rule 50(a). I won't bore you with
20 the recitation, meaning the argument of authorities in
21 the memorandum brief we have filed. We believe that we
22 are entitled to a directed verdict as to the entire case
23 as I've outlined in my oral motion that I made just now
24 and as set forth in our memorandum brief that has been
25 filed.

1 Additionally, Your Honor, there is an absolute lack
2 of any clear and convincing evidence in the record upon
3 which a jury could conclude that the plaintiff is
4 entitled to even it's submission of the issue to the
5 jury of punitive damages. And we would additionally
6 move for a directed verdict under Rule 50(a).

7 This is not a punitive damages case and that that
8 issue should not be submitted to the jury. And we've
9 got that outlined, Your Honor, in our memorandum brief
10 as well.

11 THE COURT: All right.

12 MR. PUGH: I have a separate motion, but I'll allow
13 counsel to respond to this one.

14 THE COURT: Yeah.

15 MR. PUGH: Yes, sir.

16 THE COURT: Okay. Yes, sir, Mr. Applegate.

17 MR. APPLGATE: Thank you, Your Honor. The standard
18 is of the evidence as a whole it's susceptible and --
19 sorry, Your Honor. The standards is that there only
20 needs to be one reasonable inference. I mean, this
21 case, defendants have filed a motion for directed
22 verdict, what I heard. Your Honor, they suggested, one,
23 of no evidence of electric shock.

24 There was testimony from Mr. Carter the coroner,
25 Mr. Whaley the coroner, the pathologist Dr. Presnell,

1 and from an expert engineer Dr. Brill, all have given
2 evidence that there was electric shock that has been
3 furnished there.

4 The idea of intervening evidence, again, I think
5 what seems to be confused here is a motion for them to
6 be able to put on empty chair defense. There's
7 definitely been significant evidence in the record by
8 multiple witnesses that SCE&G failed to comply with
9 their own standards. And that evidence was provided not
10 only by plaintiff's witnesses, plaintiff's expert, as
11 well as SCE&G's only -- their 30(b)(6) witness corporate
12 representative Mark Branham.

13 You know, the issues raised by Mr. Pugh, proximately
14 caused contributory negligence on questions of fact for
15 a jury. And I think we put an abundant amount of
16 evidence in here over the last three days to get past
17 any motion as it relates to, again, we've put in
18 evidence of their duty. We put in significant evidence
19 of their breach of that duty. And then, again,
20 causation damages. We have put in significant damages
21 in the case and so I would ask the Court to deny the
22 motion for a directed verdict.

23 THE COURT: What about the, I'm going to call it the
24 second half of the motion even though he addressed
25 punitive damages?

1 MR. APPLGATE: As I understand it, the -- we're
2 talking about the bifurcated trial agreement?

3 THE COURT: Well, I mean, he's made a motion that
4 there hasn't been any clear and convincing evidence that
5 would rise to the level of recklessness or carelessness
6 to warrant a verdict for punitive damages.

7 MR. APPLGATE: Your Honor, we've put in evidence
8 that from -- that their standard requires them to keep
9 these lines free and clear. That there is no evidence
10 that they ever made any attempt at all to go and inspect
11 this area. From the time of their cycle trim in 2013,
12 two and a half years before this, never made one effort.
13 Had every opportunity to make that effort and they
14 didn't do anything in that regard.

15 So I think that in and of itself, Your Honor, is
16 clear evidence that they made -- that they -- reckless
17 conduct when they have superior knowledge which has been
18 admitted to by their own experts, our expert, and
19 everyone else about the electric company's duty and
20 superior knowledge about the danger of electricity.

21 They have a whole department that's all been put in
22 evidence, their whole department focused specifically on
23 this task. And they made no effort in the two years to
24 do what their own policies and procedures required them
25 to do which is to follow-up and make sure in fact that

1 there has been some sort of -- that they maintain the
2 separation.

3 So if that's not -- that's not accidental, that's
4 clearly -- they have no evidence that they made any
5 effort. And any evidence that they put in defense of
6 that is simply that they're linemen that would be
7 working, doing work, not in this area or this
8 specifically at this property, but people, you know, as
9 work of the utility happens that they may have passed by
10 there and if they had seen something, they would have
11 maybe done something. But there's actually no evidence
12 and they never -- they haven't put up one witness to
13 suggest they did one single thing.

14 I think the plaintiff has met their burden to,
15 again, suggest that their conduct was willful, wanton,
16 reckless, and much beyond just a careless conduct. So I
17 would ask the Court to deny that motion as well. And
18 we, again, as agreed, we -- assuming we get the verdict
19 that we bifurcate punitive damages trial.

20 THE COURT: Thank you, sir.

21 MR. APPLGATE: And, Your Honor, if I may. I think,
22 again, the point -- maybe I didn't make this clear of an
23 arc, the bifurcation is that, you know, we put on
24 conduct evidence. But, again, additional evidence of
25 punitive damages was supposed to be, you know, left for

1 punitive damages case that we agreed to.

2 THE COURT: Okay.

3 MR. APPLGATE: Thank you.

4 MR. PUGH: Briefly?

5 THE COURT: Yes, sir.

6 MR. PUGH: Your Honor, I won't belabor the point
7 because I've got another motion that deals with
8 Mr. Brill and his testimony that I'm asking to be
9 stricken from the record and those kind of hand in hand
10 part and partial with Rule 50(a).

11 However, as to the punitive damage issue. If you
12 look at page 20 of our brief, Your Honor, the only thing
13 that they put in is a suggestion that somehow Dominion
14 Energy didn't follow -- I don't know, ANSI or the
15 National Electric Safety Code or something along those
16 lines or perhaps even Dominion Energy which they didn't
17 introduce, I did, the distribution line-clearance
18 trimming requirements.

19 As cited there on page 20 of our brief despite the
20 flawed analysis of both Dr. Presnell and, of course,
21 Mr. Brill. At best, the plaintiff has left us arguing
22 that somehow there was some violation of the NESC or
23 ANSI with regard to tree trimming standards. That's not
24 to suggest the counterbalance of. We have the
25 uncontroverted testimony with regard to the conduct of

1 Mr. Larios and his violation of the OSHA work rules that
2 apply to him.

3 Now, what's more important there is, while there's
4 national standards are admitted for the jury to consider
5 as potential evidence of simple negligence, they are not
6 in violation of those standards. Is not evidence of
7 negligence, per se, willful misconduct, or any basis for
8 punitive damages to go to a jury in this case, Your
9 Honor. Thank you.

10 MR. BUCKNER: Your Honor, if I could, I don't know
11 if there's a point of confusion here. But at the
12 beginning of this case, we agreed by consent upon the
13 joint defense motion under 15-32-510 to try a bifurcated
14 case. Which means, our hands were kind of tied on what
15 punitive evidence we would have loved to have put up on
16 punitive evidence in this case, but the statute is very
17 clear. The legislative directive is very clear, if we
18 win this trial, we get to go put that punitive case on.

19 And so I'm a little surprised that after we agreed
20 to not put up that case, that consent is being used
21 against us for a directed verdict. We haven't had an
22 opportunity to do that yet. That's what bifurcation is.
23 We're trying liability and compensatory damages and no
24 matter what the verdict is, we will then, if we get a
25 verdict, have a right to go to that next phase.

1 So the idea that we should be precluded from doing
2 that which we can't otherwise do, is nonsensical under
3 the statutory code.

4 MR. PUGH: Actually, that wasn't what --

5 MR. BUCKNER: And in addition to what the evidence
6 has been which we think had we agreed to put on the --
7 both phases in this case, we would still be entitled to
8 defeat the motion.

9 MR. PUGH: Your Honor, briefly. I know -- the issue
10 of the bifurcation was that there wouldn't be evidence
11 of net worth and those kind of things in the plaintiff's
12 case in chief.

13 Your Honor, had that, you know, set aside this issue
14 that they were somehow precluded from putting on
15 evidence that would be clear and convincing evidence as
16 to potential -- the potential issue of punitive damages
17 going to the jury is simply incorrect. I mean, they had
18 their expert on the stand, he testified for several
19 hours yesterday, and their entire case has gone in at
20 this point. And simply there is no evidence, clear and
21 convincing evidence which Your Honor is well aware is
22 the standard, that they would be entitled to have the
23 issue of punitive damages go to the jury.

24 THE COURT: Okay. I'm going to respectfully deny
25 your motion for a directed verdict as to the negligence

1 as well as the punitive damage question.

2 I think these -- I think it's a factual issue
3 depending -- I think there's evidence in the record
4 depending on how the jury views it. And I don't think
5 it would be appropriate to -- for the Court to step into
6 the jury's role in evaluating that evidence.

7 I think it's -- I think there is evidence in the
8 record depending on how the jury views it whether they
9 find either way. So I think it's a factual issue that
10 the jury is going to have to resolve.

11 Do you have another motion?

12 MR. PUGH: Thank you, Your Honor, I'll make it
13 brief.

14 THE COURT: Yes, sir.

15 MR. PUGH: A motion to strike Mr. Brill's testimony
16 from the record, Your Honor. I won't recite all the
17 various rules there. Frankly, Your Honor heard the
18 testimony, Mr. Brill has more questions than answers.
19 Mr. Brill has no credible testimony of how this alleged
20 shock occurred. In fact, he has admitted unequivocally,
21 several issues with regard to his opinions, critical
22 assumptions, and speculation which he made which is too
23 great of a leap.

24 His opinions are not based to a reasonable degree of
25 electrical engineering certainty, instead they're

1 guesses because of all the things that Mr. Brill said
2 that he did not know. He didn't -- and you heard the
3 testimony, Judge, and it's outlined on page 7 and 8 of
4 the brief -- or in the motion and incorporated
5 memorandum to strike Mr. Brill.

6 But, quickly, Mr. Brill admitted that he did not
7 know vertical measurements between the primary and earth
8 and ground, the vertical measurements between neutral
9 and earth and ground. The horizontal lateral
10 measurements, the horizontal and diagonal measurements
11 between the neutral, the primary, or the tree trunk. He
12 didn't know the distance between primary and any palm
13 branch, palm fronds, or seed pods that he claims existed
14 at the time Mr. Larios allegedly received a shock. He
15 didn't have any horizontal or lateral or diagonal
16 measurements that he relied upon.

17 In fact, he said that the aluminum ladder, it was a
18 violation of the OSHA rules. The work by Mr. Larios was
19 in violation of those rules. That Mr. Larios' hands,
20 feet, clothing, shoes didn't have a mark on them. And
21 he didn't know where, if at all, the seed pod or palm
22 frond he is relying upon that either -- because if you
23 recall, he had two different alternative theories. He
24 said, well, he either manipulated something over into
25 the primary or he cut it and it fell onto the primary.

1 The issue with that is, he didn't know either way where
2 those items were up on the tree and didn't know how far
3 away it was from the primary.

4 So, therefore, Mr. Brill did not use reliable
5 methodology because his opinions are based on
6 speculation rather than scientific methodology or the
7 scientific theory. And he didn't rule out alternative
8 causes such as Mr. Larios simply fell from the third
9 rung of the ladder which the ladder has specific
10 warnings on it telling you not to do that.

11 In fact, as we learned at the end of his testimony,
12 Mr. Brill's similar opinions in another matter were
13 disqualified last week in Georgia for those exact
14 reasons. The Court described Mr. Brill's opinions in
15 that case as being too great of a leap. The Court said
16 that Mr. Brill, one, did not rely on sufficient facts
17 and data. Two, could not rule out alternative causes.
18 And, three, his theory of causation rests on critical
19 assumptions that he did not support with data. That is
20 precisely where we are in this case. And that is the
21 *National Surety Court verses Georgia Power Company* case
22 that's cited on page 9 of our brief.

23 In that case, Your Honor, which is a direct -- it's
24 on all fours with this case. We simply have too great
25 of a leap, too many unknowns, and, frankly, we just have

1 speculation rather than science by Mr. Brill in
2 rendering his alterative theories. As Your Honor is
3 well aware, South Carolina is not a res ipsa state and
4 so Mr. Brill can't be saved like that.

5 Mr. Brill didn't do any testing to see if his theory
6 was possible. Mr. Brill connects his opinions to this
7 case only by his own ideas and not by scientific
8 evidence or analysis. So we would respectfully request
9 that Mr. Brill's entire testimony be stricken from the
10 record. It's unreliable as being inadmissible under the
11 Rules 401, 402, and 403(7) and 273. And, if indeed, Mr.
12 Brill's testimony is stricken, we would renew the motion
13 under Rule 50(a) as well. Thank you, Your Honor.

14 THE COURT: Thank you, sir.

15 MR. BUCKNER: Your Honor, I will try to be very
16 brief so we can get the case back going. This is a
17 first for me. The plaintiff and the defendants
18 obviously filed a Daubert motion which Your Honor heard
19 and respectfully denied. There was no renewed objection
20 during the course of Mr. Brill's testimony about this.
21 He has testified. It has been put into evidence into
22 the record, and now we have a motion to remove that
23 testimony from the record entirely as if it's a renewed
24 Daubert motion. I'm not sure I understand that.

25 I think that the proper way would have been for Your

1 Honor to have considered it, possibly exclude it, which
2 you did not do. And then at the end of our case, you
3 would be entitled to a directed verdict. There's no
4 real procedural mechanism under the Rules of Civil
5 Procedure in South Carolina to lose a Daubert motion,
6 have the case go forward, we rest, and then strike it.
7 But, if they were to address the substance, this is, you
8 know, classic credibility of the witness, weight of the
9 evidence type stuff.

10 Mr. Pugh talked about this in cross examination.
11 Your Honor permitted Mr. Brill to reach all of these
12 opinions. And he said that every opinion he reached in
13 this case was to a reasonable degree of engineering
14 certainty. And then there's this idea that last week,
15 although, I do not think it was put into evidence when a
16 prior opinion may or may not have been excluded, that's
17 just bootstrapping another case with completely
18 different facts, completely different issues. I have no
19 idea what that case is about. Mr. Brill didn't even
20 know about it.

21 A prior exclusion of his testimony is obviously not
22 grounds for a per se granting of a motion to strike in
23 this case. He addressed all of these issues thoroughly.
24 He gave them the proper standard and we ask the Court to
25 respectfully deny this motion as well, Your Honor.

1 THE COURT: All right. Thank you.

2 MR. PUGH: Your Honor, frankly, I apologize. I
3 should have argued those in the reverse because the
4 Brill motion was more of a leading into 50(a). But the
5 jury is -- I should have done it that way and I
6 apologize. We don't have the jury here, so.

7 THE COURT: I can consider it that way. That's not
8 a problem. I'm just going to take a couple of minutes
9 to go back and look over what was submitted here and
10 then I'll have a decision.

11 (Off the record)

12 THE COURT: All right.

13 MR. APPELATE: Your Honor, sorry. I just want to
14 make sure that I said what I needed to say on the record
15 here based on this last motion if I may have just one
16 more minute.

17 THE COURT: Yes, sir.

18 MR. APPELATE: I just wanted to make sure that I
19 say what I needed to say on the record here. Again, a
20 couple of factors, that Mr. Brill's testimony was
21 provided in the trial in this matter was the same
22 testimony he gave in his deposition prior to trial.
23 Defendants filed a motion, Daubert type motion. We
24 heard that motion. Denied. He gave that same exact
25 testimony. And in that pretrial motion it was raised

1 and ruled upon.

2 I think the only thing that subsequently changed
3 that he raised and did not explore was that at sometime
4 the history Mr. Brill had potentially been doubted and
5 his opinion had been stricken from a prior hearing in
6 another case. Brill subsequently qualified as an expert
7 in this case, crossed, and we believe his testimony must
8 be weighed by the jury.

9 You remember, there was one point that Mr. Pugh
10 raised was that there was certain evidence or
11 measurements that potentially Mr. Brill didn't have in
12 making his opinion. He was questioned about that. And
13 if he had sufficient evidence he was able to do
14 calculations based on the evidence he had give his
15 opinion, he said, yes, I was able to do it based on sort
16 of a multitude of evidence that exists as it relates to
17 this accident. However, to the extent there was
18 anything that he did not have.

19 What has been established in the trial of this case
20 is that SCE&G came into this property, chopped the top
21 of this tree off right after the accident. Also, did an
22 investigation where they took some specific measurements
23 of which they refused to provide to not only plaintiff's
24 counsel, but to defense counsel based on some sort of
25 motion -- I mean, to defense expert based on some motion

1 of privilege and then choose to use this as a sword
2 against the plaintiff in a motion that Mr. Brill lacks
3 some aspect of information.

4 Again, I think he survived -- I mean, he testified
5 about that. He suggested that he had sufficient
6 information to give his opinions to a reasonable degree
7 of engineering certainty. He gave his opinions, they
8 were accepted and it's something that should clearly go
9 to the jury. Thank you, Your Honor.

10 THE COURT: All right. I'm going to -- I'm going to
11 deny the motion to exclude the testimony. If I recall
12 the testimony from Dr. Brill, he went through all the
13 factors that he considered. He did -- now I will say,
14 he did boil it down to there being two possible
15 occurrences here. And he did indicate he did not know
16 which one would have occurred. However, he did indicate
17 that it was one or the other and that in each of those
18 it resulted in electrical occurrence.

19 I am going to charge the jury when that time comes
20 that they have the right to consider an expert witness'
21 testimony and give it whatever credibility they believe
22 it deserves. They have the right to consider whether or
23 not an expert's testimony is based on sufficient facts
24 of science. And if they find that it has not been, they
25 can disregard that testimony in its entirety. And

1 they're going to be charged that.

2 So I think it's a factual issue and certainly open
3 to argument by counsel that it did rise to the level
4 that the jury should consider it. But it is and I am
5 going to deny the motion to exclude the testimony.

6 All right. Mr. Pugh, anything else? Any other
7 motions?

8 MR. PUGH: Not at this time, Your Honor.

9 THE COURT: Can you give me some idea as far as the
10 defenses case and do you know how many witnesses?

11 MR. PUGH: I don't mean to have my head down.

12 THE COURT: I'm okay with you working. I know you
13 can hear while you do that. That's fine. But I just
14 didn't know if -- and I'm not going to hold you to
15 anything. If you tell me one or two witnesses and you
16 got four, that's fine. But, I guess, I'm trying to get
17 an idea. It's three o'clock now, is there -- what are
18 our chances of concluding the testimony today and
19 arguing charge tomorrow or do we need to go into
20 tomorrow with testimony, do you think?

21 MR. PUGH: Uh --

22 THE COURT: And if we do, that's fine. I'm just
23 asking. It's hard to guess because you don't know what
24 they're going do on cross, so.

25 MR. PUGH: May I?

1 THE COURT: Yeah.

2 (Mr. Pugh is talking to plaintiff's counsel)

3 MR. PUGH: It's three o'clock, what are you
4 thinking, Judge, 5:30?

5 THE COURT: We can go to 5:30, 6:00.

6 MR. PUGH: I will do my level best that we will be
7 done with testimony today.

8 (Off the record)

9 THE COURT: Are we ready to proceed with your first
10 witness?

11 MR. PUGH: We are, Your Honor. And before we do
12 that, Your Honor, I may be asking Mr. Jackson a little
13 bit about these OSHA citations. I know that's a
14 sensitive thing asking somebody about something that's
15 not into evidence. And I will try to see if they can
16 correct it while I'm talking to them.

17 THE COURT: We've -- I mean, we've agreed that those
18 are in.

19 MR. PUGH: Correct. This is a Scrivener's error.
20 That's all this is.

21 THE COURT: Okay. All right. Well, let's bring the
22 jury in, please.

23 MR. PUGH: I need to -- Defendant's Fourteen is in
24 by agreement.

25 THE COURT: All right. Defendant's Fourteen is in

1 without objection. And, are we ready to bring the jury
2 out?

3 MR. PUGH: I think so.

4 THE COURT: Is the plaintiff ready?

5 MR. DUFFY: Yes, Your Honor.

6 THE COURT: Okay. Let's bring them in, please.

7 (The jury entered the courtroom at 3:12 p.m.)

8 THE COURT: Okay. Folks, I did what I told you that
9 I would do during the lunch break and we have taken up
10 the matters of law that I needed to take up at the close
11 of the plaintiff's case. And so at this time, I'm going
12 to recognize Mr. Pugh on behalf of the defense for the
13 defenses first witness.

14 Mr. Pugh, you may call your first witness.

15 MR. PUGH: We would call Eric Jackson.

16 THE COURT: All right. Mr. Jackson, would you
17 please come around to be sworn, sir.

18 ERIC JACKSON,
19 being first duly sworn, was examined and testified as
20 follows:

21 THE CLERK: Please have a seat in the witness stand
22 and state your name for the record.

23 MR. JACKSON: My name is Eric C. Jackson.

24 DIRECT EXAMINATION BY MR. PUGH:

25 Q Good afternoon, Mr. Jackson.

1 A Good afternoon.

2 Q To be clear, are you related to Ray Jackson?

3 A No. I don't believe so.

4 Q We've heard about Ray Jackson in this case who was
5 the homeowner.

6 A All right.

7 Q Now, where do you currently reside?

8 A In Jacksonville, Florida.

9 Q Okay. What do you do?

10 A I'm a consultant in forensic engineer.

11 Q And are you employed by someone?

12 A Yes. It's a corporation, Brooks, Jackson & Little.

13 I was one of the cofounders in '92 and we've added a
14 partner since then.

15 Q So you said you're employed with a company that
16 you're a named member of and you do forensic
17 engineering. What does that mean?

18 A Forensic engineering is distinguished from what I
19 do primarily now as opposed to say consulting project
20 engineering. Earlier in my career I designed
21 substations, worked in generation plants, worked --
22 designed distribution transmission lines, protective
23 relaying systems. I worked in industrial plants,
24 hospitals, kemplants, various types of project work from
25 design to fieldwork startup working with electricians

1 and modifying equipment.

2 Q Now, so you are a licensed engineer; correct?

3 A Yes, sir.

4 Q And in licensed in what type of engineering?

5 A Licensed in electrical engineering in multiple
6 states. And then I have another license in control
7 systems engineering in Louisiana.

8 Q And where did you obtain your education?

9 A LSU.

10 Q The other tigers?

11 A Correct. If my tigers don't win, I'm -- I kind of
12 like tigers.

13 Q And did you have any particular focus in your
14 undergraduate degree?

15 A Yes. In the field of electric engineering it's
16 very broad. You can have computers, you can have
17 communication systems, software, a multidiscipline
18 opportunity in the field of electrical engineering.
19 Mine is in power and control systems option.

20 Q And you said you're licensed as an electrical
21 engineer in several states; is that correct?

22 A Yes.

23 Q How many states?

24 A I believe it's six. In the southeast. Yes.

25 Q And do you -- you told us about forensic

1 consulting, do you do nonforensic safety type consulting
2 work?

3 A Occasionally that kind of work comes in. The vast
4 majority of my work is the in forensic area. But I have
5 a client that is products that they like me to test even
6 though UL has tested them. They like me to abuse them
7 and just double check UL to see if there is anything
8 they missed as it relates to fire and electric shock, or
9 their equipment, their plug-in air fresheners.

10 I've worked in, you know, kemplants where they've
11 got a problem with a chlorine sale, that chlorine is
12 very volatile. It's leaking. Go in there and figure
13 out how it's leaking, why it's leaking, how to fix it.
14 I've worked in hospitals fixing various types of
15 generation reliability issues. It comes up
16 periodically. It's just not the vast majority of my
17 work anymore.

18 Q Have you ever testified in court before today?

19 A Yes, sir.

20 Q Approximately how many times?

21 A I don't have an exact count, but I got put on the
22 witness stand around 30. And if I average -- I'm 61, so
23 I average two to three a year, over that period it's
24 somewhere between 60 and 90 times probably. Be my best
25 estimate.

1 Q In those 60 or 90 times that you have testified,
2 has it always been as an expert witness when you've
3 testified in court?

4 A Yes.

5 Q In the 60 or 90 times that you've testified as an
6 expert witness, has your opinion or testimony ever been
7 stricken?

8 A No. Not to my knowledge.

9 Q What are the areas of the electrical engineering
10 field have you been tendered and qualified as an expert
11 in other cases?

12 A Well, it depends on what kind of case it involves.
13 For instance, if it's a fire case or something like
14 that, it would be electric engineering. It could be the
15 National Electrical Code which involves the wiring in
16 systems on a building sign system. It could be the
17 National Electric Safety Code as well and fire cards in
18 origin.

19 Then you move into other areas like the contact
20 injuries, fatalities, things of that nature, anything
21 that deals with electric utility systems issues dealing
22 with application interpretation of National Electric
23 Safety Code which that's the code that governs utilities
24 as opposed to your homes and businesses. The design
25 operation and maintenance of electric utility systems as

1 well.

2 Q What is your experience with electrical or electric
3 utilities?

4 A Well, I started in 1980 and I began doing various
5 types of coordination work for the overcurrent
6 protective devices. A simple explanation to that is you
7 have circuit breakers in your home, but on the utility
8 systems it's much more complex and you have to deal from
9 the substation all the way out to the last feeder that's
10 on a line. It could be 15 miles long.

11 So I design protective systems. I worked on
12 starting up substations, brand new equipment. Design
13 the transmission distribution lines, the transmission
14 that feeds the substation and distribution lines feed
15 the homes and businesses. Lightening studies, power
16 quality studies, a variety of things all the way from
17 generation to usage of electricity by the consumer.

18 Q And you understand in this case what we're talking
19 about are distribution -- overhead distribution lines;
20 correct?

21 A Correct. That would be -- that would be a line
22 that emanates from a substation. A substation is the
23 areas you see with big transformers in the fences. And
24 then goes on the poles behind your houses and down the
25 roads and things of that nature. That would be

1 considered the distribution line.

2 Q And do you have any prior experience with regard to
3 distribution lines?

4 A I design systems like that. Yes, sir.

5 Q Have you previously been tendered and qualified as
6 an expert in the field of electrical engineering?

7 A Yes. That's the broad field for -- generally any
8 case I get involved in.

9 Q The design, operation, maintenance of electric
10 utility systems?

11 A Yes.

12 Q Vegetation management?

13 A I'm sorry.

14 Q NESC, vegetation management issues, ANSI, things
15 like that?

16 A I've dealt with a lot of them. I've never been
17 tendered specifically in that area, but it comes up
18 frequently.

19 Q And you're familiar with National Electric Safety
20 Code?

21 A Yes. And as it relates to vegetation that's Rule
22 218 is the part of the code that deals with that.

23 Q And you understand that's one of the issues
24 involved in this case?

25 A Yes, sir.

1 Q And you have previously been qualified as an expert
2 on the National Electric Safety Code; correct?

3 A Yes, sir.

4 MR. PUGH: Your Honor, at this time, we would
5 proffer Mr. Jackson as an expert in the National
6 Electric Safety Code, distribution right-of-way
7 clearance maintenance, operation electrical theory, and
8 electrical -- let me back up for a second.

9 Q Have you ever been -- in your work, line of work,
10 have you done work where you have examined or considered
11 electrical shock cases?

12 A Oh, frequently. Yes, sir.

13 Q How often does that occur?

14 A Well, you know, the phone rings and you go see it.
15 But I've been involved with many, many, many of them.
16 And all the way from say low voltage shock, someone
17 being shocked. Let's say you're using a metal drill on
18 the side of a pontoon boat to fix a bowl kit that shorts
19 out and you may have a low voltage electrical engineer
20 fatality at that point in time to all the way up to high
21 voltage. The highest I've had is 69,000 volts for a
22 concrete finisher where he stuck an aluminum pole in
23 there.

24 So in each case there's different things that you
25 look for as it relates to low voltage injuries verses

1 high voltage injuries.

2 MR. PUGH: Your Honor, at this time the defendant
3 Dominion Energy would tender Mr. Jackson as an expert in
4 National Electric Safety Code, distribution right-of-way
5 clearance, electrical theory, distribution line
6 construction, maintenance operation, and electrical
7 injury shock or mechanisms of injury.

8 THE COURT: Any objection?

9 MR. APPELATE: No, Your Honor.

10 THE COURT: All right. You may proceed.

11 Q Mr. Jackson, the jury in this case has heard
12 testimony about a potential electrical shock injury that
13 occurred, are you familiar with this case?

14 A Yes. Mr. Larios.

15 Q Okay. And I want you to start out by explaining to
16 us in the most basic terms how an electric utility like
17 Dominion provides electric service all the way at the
18 end into someone's home. How does that happen?

19 A Well, in technical terms, you start off with a
20 generation plant, typically those are out in rural areas
21 that you don't see them very often. And then you have
22 from there to get to what we call bolt power, you go
23 with transmission lines and those are the big steel
24 towers you'll see running through clearing areas.
25 That's very high voltage and bulk power. And it's from

1 Point A to Point B and gets to a substation and then
2 gets stepped down or changed to a different voltage
3 that's usable.

4 Then from there you have the distribution stations
5 and it goes out with feeders out to the various lines.
6 And then you have individual transformers on the poles
7 that step it down to 120/240 that comes out of your
8 electric sockets.

9 Now, in nontechnical terms you could think of it as
10 maybe as a tree and you've got the trunk. And so the
11 generator pumps the power into the trunk and the trunk
12 is a big transmission line with bulk power and then it
13 starts branching out and that's where the bulk power
14 gets broken down into distribution substations and then
15 you get smaller branches and smaller branches.

16 So within the category of distribution lines,
17 you'll see some lines that have a horizontal cross arm
18 running down the street and there's three wires on top,
19 one on the bottom and the top. And then when you get
20 the lighter loads, the smaller loads, you'll see the
21 little single poles where the line on top and a line on
22 the bottom, and those would be called tap lines or
23 laterals designed to feed a specific area of homes or
24 businesses.

25 Q Mr. Jackson, you might want to come around here and

1 look at this. This is Defendant's Exhibit Number One, a
2 large photograph. And I want to ask you, you see these
3 two wires back here behind the trees here in the
4 right-of-way?

5 A Yes. There's a pole supporting them over here
6 across the road. And then there's another pole to the
7 right. The top wire is what's known as the primary and
8 that would be the hot wire. And about 8,000 volts. The
9 bottom wire is known as the neutral and it runs at zero
10 volts.

11 Q Okay. Now, explain something because ladies and
12 gentlemen of the jury have heard some mention that that
13 top wire that you're calling the energized primary that
14 that was 13,800 volts and you just used a different
15 figure. Explain to the -- how that --

16 A Well, when I said -- remember there's three lines
17 running down the street. There's such a thing known as
18 phase to phase voltage and then phase to ground voltage.
19 So each one of the three wires has a voltage to ground.
20 Each one. And then has a voltage between each other.
21 It's known as the 13/8 volt system, but when you refer
22 to how much voltage is the ground, you have to divide by
23 the square root of three. And so that's what's being
24 the actual voltage magnitude between the primary and
25 earth or the primary and the neutral.

1 Q The photograph we're looking at, Defendant's
2 Exhibit One, do you recognize this area?

3 A Yes. This is the home where Mr. Larios had his
4 accident.

5 Q Did you go to this site and look around?

6 A I did.

7 Q What did you do?

8 A I took some pictures. I examined the line. In
9 particular, I was interested in a horizontal
10 measurement, so I took a picture of around the scene.
11 And I couldn't figure out exactly how far it was, so I
12 made a horizontal measurement between the remaining
13 stump of the palm tree out to looking up where the line
14 was just to get an approximate location of, you know,
15 horizontal separation between the two.

16 Q So let me make sure I understand this. So the tree
17 we're talking about is this one; correct?

18 A Yes.

19 Q And you understand that this tree by the time you
20 went out to the scene had been removed; correct?

21 A That's correct. It appeared to me that they had
22 left a bunch of logs on the other side.

23 Q And the stump remained; is that right?

24 A Yes. About that tall, I think.

25 Q And where are the wires that we're looking at in

1 relation to where the stump was?

2 A They run vertically. So they're about the same,
3 you know, in the center plane running like that. And so
4 they're about nine feet behind the palm tree.

5 Q And when you say they're running vertically, let me
6 show you what has previously been marked -- this what
7 you're talking about?

8 A Yes. This would be a different angle. We were
9 looking at from over this direction. Now we're looking
10 at it more looking down the ally way.

11 Q Okay. And the neutral and the primary, are they --
12 one is just directly -- I mean, above the other
13 separated by how far?

14 A I don't know the exact SCE&G construction standard,
15 but it's typically four feet.

16 Q Okay. And this -- what you saw out there as far as
17 this distribution line, was that anything abnormal about
18 the construction of that distribution line?

19 A No. It's a vanilla lateral tap feeder.

20 Q Okay. Why are there -- you can have a seat back up
21 there. Why are there two wires, Mr. Jackson?

22 A Electricity because it's very abstract, you can't
23 see it, you can't -- well, if you touch it, you don't
24 like it. But you can think of it as maybe a bicycle
25 chain. From where it comes it has to come back. It's a

1 zero some gain. So it has to make a circle. So that
2 when electricity goes out on that primary, it's going to
3 feed a transformer, it's going to get in that
4 transformer, it's going to turn a sprocket and then it's
5 going to come back to the substation.

6 So you think of it as -- if you want to think of it
7 breaking it down to electrons for every link on the
8 chain, it goes up the sprocket, another one's coming up.
9 So it's constantly circling. Well, in this case, you
10 think of the primary and it's sending the power out and
11 the neutral's bring the power back home to the
12 substation.

13 Q Okay. And so if the ladies and gentlemen of the
14 jury have heard testimony in this case that that bottom
15 wire is not energized, explain that.

16 A That's correct. When you look at the way this is
17 set up, in a substation, you have your hot wires coming
18 out and you have the place for it to return. And it
19 comes in and it goes to a point that's connected -- it's
20 the zero reference point. If you're going to make a
21 measurement and you know what your line is, that's what
22 you call zero.

23 And it just so happens in the substation, the
24 entire substation has a bunch of copper in the
25 substation yard. And so that neutral is tied to the

1 earth. So now the neutral and the earth are virtually
2 the same place.

3 And as that line runs out, poles have individual
4 copper wires running down the side of them and they're
5 tied to earth. So the neutral as a return path, it's
6 tied to earth in a bunch of different places which keeps
7 it from being elevated and potential above the earth
8 ground.

9 Q Now, the testimony in this case is with regard to a
10 potential electrical shock, you understand that?

11 A Yes, sir.

12 Q Can you explain or describe in very simple manner,
13 the mechanism of how an electrical shock injury can
14 occur?

15 A Well, you have to -- your body has to be a
16 component of a circuit more or less.

17 Q And are there three relevant terms with regard to a
18 shock?

19 A Certainly.

20 Q What are they?

21 A There's voltage. And you can think a voltage in a
22 water system. And if I can make a water system analogy
23 as the pressure in a water system. It's the push.

24 Q Okay.

25 A Then you've got -- you've got the resistance to the

1 push which would be size of the hose or how wide you
2 turn your spigot open. You turn it wide open, you get a
3 lot of water you keep it cocked and you've got a lot of
4 resistance you're resisting the flow of water so you
5 just get a drip.

6 So there's a relationship between a voltage, the
7 current that flows is the water, and the resistance
8 which is anything that's in a circuit. And so there are
9 sometimes we call them wires, but likely call them
10 conductors. And the reason being is they conduct well.
11 They have very little resistance to the flow of
12 electricity. Hence, copper, and aluminum wire. And you
13 want it to be very efficient in what it does. Okay.

14 Then you have insulators and that's to be the
15 rubber around your wires in your house or an extension
16 cord. There's live power in it, but it's insulated. It
17 doesn't conduct worth a darn. Okay. So, and then
18 there's things in between that can conduct, but not very
19 good.

20 Q Okay. So let me ask you this, you said voltage
21 current resistance; correct?

22 A Correct.

23 Q Is there one of those components as opposed to the
24 other two which is the component that can harm a human
25 body?

1 A Yes. And that would be current flow through the
2 body. Hence, the reasons that birds can roost on live
3 power wires. They're exposed to the voltage, but
4 they're not in a circuit. Now, if they have a big wing
5 they get between the neutral and a live wire. Or a
6 squirrel does that. You know, jumps off to ground,
7 makes that bridge, and then current flows, burns the
8 squirrel, and he dies.

9 Q And have you had an opportunity to consider and
10 determine based upon the evidence in this case and
11 things that you reviewed whether Mr. Larios received an
12 electric shock injury?

13 A Yes. As a matter of practice, when you're looking
14 at situations like this, the classic signs as it relates
15 to both exposure to voltage and a pathway that allows
16 the current that's trying to push to go through the
17 human body, it has to go in some place which is
18 typically known in our world of forensics as an entry
19 wound or entry location and it has to come out of the
20 body some place. That, therefore, you become part of a
21 circuit.

22 So it has to be a way for the current to get in the
23 body and then has to flow back out of the body and
24 you're looking for those two situations because it tells
25 you for me in my business, a lot of what the person was

1 doing at the very time that they suffered an injury.

2 Q And in some of the cases you've been involved in in
3 the past when we're talking about high voltage, for
4 example, electrical incidents, is there much to do about
5 entry verses exit?

6 A I didn't hear you.

7 Q It's not hard to figure out with high voltage
8 incidents direct contact where the entry point is and
9 the exit typically is; correct?

10 A Typically not. And when you say high voltage, I
11 mean, it goes all the way up to extremely high voltage
12 maybe 40,000 volts to ground. And, of course, the
13 higher the voltage the more of the push usually the
14 worse the injury in those cases.

15 Q And what did you do or what have you reviewed in
16 connection with your work in this case?

17 A Well, I've looked at, you know, the OSHA
18 photographs which were taken of the scene. The OSHA
19 records in general. I read a variety of depositions
20 that you supplied to me. I made a site examination.
21 Let's see, I've looked at some various other discovery
22 documents from -- in South Carolina Electric and Gas
23 about their engineering and vegetation, I believe it
24 was. Those were the ones I primarily remember having
25 reviewed.

1 Q Do you recall reviewing the medical examiner
2 autopsy report?

3 A Yes. And that, too, as well and the photographs
4 associated with the autopsy.

5 Q And you went to the scene you told us about that;
6 correct?

7 A Correct.

8 Q What observation did you make to rule in or rule
9 out that Mr. Larios received an electrical shock?

10 A Well, I try to approach it this way, as you go look
11 and say, okay, this is what is being said. But you say,
12 well, maybe so, maybe not. Let's go see. So the first
13 thing I look at from an electrical standpoint is, is a
14 possible circuit there and if there is, what is that
15 circuit and how would it affect the human body.

16 So then you start looking at, well, if there was a
17 shock, let's look at the human body and let's see what
18 that is. And, of course, along the way you gather
19 information about what was the activity in terms of to
20 the extent it's known that everybody remembers occurring
21 and you put all these pieces of puzzle in forensically
22 to derive at a hypothesis as to what you think happened
23 or didn't happen.

24 Q And based on your review of the evidence that you
25 told us about, what did you determine with regard to

1 whether or not Mr. Larios was involved in a circuit as
2 you describe it?

3 A Well, in my opinion, based on all the evidence I
4 reviewed, I don't see a possible way for him to be
5 involved in the primary. As far as we know from other
6 witnesses, he was on a ladder, three or four rungs from
7 the top, I believe it was said. We know the power line
8 is above him and out nine feet, from what I can tell,
9 there's no way he would be cutting anything. There was
10 nothing found laying into the primary after his
11 accident. So, I found -- I didn't find a possible
12 pathway for it to occur. And I didn't find the
13 requisite corresponding burns for had it occurred.

14 Q So tell me about that, you didn't find the
15 requisite corresponding burns if there had been a
16 pathway. Describe that for the jury.

17 A Well, after I think the second round of looking at
18 things with the coroner's office, I forgot all the
19 names, it was thought that maybe a dark mark of a wound
20 on Mr. Larios' abdomen represented some electrical
21 injury. And it didn't appear to be one to me based on
22 looking at hundreds maybe of electrical accidents over
23 my years.

24 And so I also looked at the autopsy report and
25 said, well, if it is an electrical injury bad enough to

1 pass enough current to cause that kind of a burn in the
2 abdomen, it has to be some place for electricity to get
3 out of his body. And a typical -- what you typically
4 see is you'll see the electricity exit out the sides of
5 someone's boots or something and it will poke some
6 little holes and bust out. Kind of like, you know when
7 you leave the hose out in the sun too long and it gets
8 hot and all of a sudden it pops a little squirt out of
9 there. That's what it looks like. And you'll see it
10 either through the soles or through the sides of his
11 feet.

12 And everything I read and looked at, there was no
13 indication of an exit wound. And autopsy report didn't
14 report any internal organ injuries that would be
15 corresponding to the abdomen location where the mark
16 was. So I wasn't able to find the corresponding
17 electrical evidence.

18 Q What would you, if Mr. Larios had been involved in
19 a circuit that's been described by others, what would
20 you have expected to find? What observations would you
21 have expected that you could look at and say, okay?

22 A Well, based on geometry of where the palm tree is,
23 where the seed pod goes up, my route of measurements,
24 I'm not saying it's exactly nine feet, but it's give or
25 take nine feet, basically stop where that seed pod was.

1 That's the only -- when you look at the photographs all
2 the ones taken by OSHA, you can tell that's the only
3 portion of the palm tree that approaches the same height
4 or near the same height as the primary line. There's
5 other palm branches you'll see in the neutral, but
6 that's not of concern for looking at an electrical
7 injury like this.

8 So I look at that and I know the distance and I
9 think, well, if something happened to it, it would be
10 burned, you know, or laying in the primary or gone.
11 Either one. Because when vegetation falls into a line,
12 it's -- if it's grounded and it's still connected to a
13 tree, it's going to burn up. It's going to pass that
14 much current.

15 So there was no picture I found that I saw that the
16 seed pod had been cut, leaning into the line. Looked
17 like it was still sitting straight up in the
18 photographs. So I couldn't find a geometric
19 relationship that worked for an electric shock.

20 Q What about of this business that there was a
21 circuit created by Mr. Larios dropping something into
22 the energized primary?

23 A When you say "something," I'm assuming -- I mean,
24 he was cutting fronds, so are you -- is the "something"
25 a frond that you're referring to?

1 Q That's correct.

2 A Well, when I looked at the photographs of the -- by
3 the -- taken by the OSHA investigator and knowing how
4 you cut palm trees, you cut them from the bottom up
5 because they're kind of thorny if you get too far up in
6 there, so you normally cut the dead ones and pull what
7 you can off and move up.

8 And there was -- in a photograph there was one palm
9 frond that was cut probably 90 percent or maybe 90, it
10 was hanging off of it, and it looked like maybe that was
11 the last frond he was attempting to cut which is well
12 below the primary. It's well below there. It's not
13 anywhere near where he could be involved. And it was --
14 if you're looking at the power line behind the tree, it
15 was sticking out to the side, not to the back.

16 MR. PUGH: May I approach, Your Honor?

17 THE COURT: Yes, sir.

18 Q Let me show you what I'm marking as Exhibit Number
19 -- Defendant's Exhibit Fourteen --

20 MS. SPIRES: Fifteen.

21 MR. PUGH: Thank you. And ask Mr. Jackson maybe he
22 come down, Your Honor. Your Honor, may he come down?

23 THE COURT: Yes, sir.

24 MR. PUGH: Thank you.

25 (WHEREUPON, Defendant's Exhibit Number 15 was marked

1 for identification)

2 Q Are you familiar with what's depicted in
3 Defendant's Exhibit Fifteen?

4 A Yeah. That appears to be one of the OSHA
5 investigator's photos.

6 MR. PUGH: Your Honor, we would move for the
7 introduction of Defendant's Fifteen.

8 THE COURT: Any objection?

9 MR. DUFFY: No objection, Your Honor.

10 THE COURT: All right. Defendant's Fifteen is in
11 without objection.

12 (WHEREUPON, Defendant's Exhibit Number 15 was
13 entered)

14 Q Now, Mr. Jackson, you mentioned earlier something
15 about a central seed pod going up vertically. Can you
16 show the ladies and gentlemen of the jury what you're
17 talking about?

18 A Yes. Here's the one, that one right up there and
19 you can tell, it's a very deceiving angle the way it's
20 taken. And that's what I wanted -- that's why I went
21 out and measured because the photographs don't
22 necessarily tell you exactly what that distance is and
23 it's a little bit deceiving especially with such a
24 bright sky in the background.

25 But that was the seed pod I was looking at. And

1 then he was standing on this ladder and the palm frond i
2 saw seemed to be the one he was cutting was off to the
3 backside hanging down.

4 And down here is the neutral here, so the closest
5 thing to him is the neutral and the primary much higher
6 than that.

7 Q Let me show you what I'm marking as Exhibit Number
8 Sixteen.

9 (WHEREUPON, Defendant's Exhibit Number 16 was marked
10 for identification)

11 MR. DUFFY: No objection, Your Honor.

12 THE COURT: Without objection. Sixteen is in
13 evidence.

14 (WHEREUPON, Defendant's Exhibit Number 16 was
15 entered)

16 Q Mr. Jackson, come down again, please. Do you
17 recognize the photograph that's been admitted as
18 Defendant's Exhibit Number Sixteen?

19 A Yes.

20 Q Okay. Orient the jury as to what we're looking at.

21 A Now we're looking on the other side of the palm
22 tree, so you can see the power line on the foreground
23 and you see the palm tree in the background. So that's
24 just another view of how the palm tree was oriented and
25 where these fronds were located.

1 Q And out here at the end of this seed pod, this is
2 the same one that we looked at in Exhibit Fifteen going
3 up vertically?

4 A Correct.

5 Q Okay. Do you recognize anything about the end of
6 that seed pod which is of interest or informative of
7 your opinions in this case?

8 A Well, based on the way the seed pod appears to
9 grow, at the time it only grows coming out, it has one
10 at the very top has not burnt off. So that would be the
11 smallest and vulnerable thing to height wise touch would
12 be burn off. So I didn't see from these photographs
13 evidence of a contact.

14 Q Thank you, sir. Mr. Jackson -- Eric Jackson, did
15 you take into consideration any of the conduct of
16 Mr. Larios after he supposedly received an electric
17 shock as being informative to your opinions?

18 A Yes. Based on my experience of eyewitnesses
19 dealing with individuals that have received a high
20 voltage shock, they don't have time conscious awareness
21 to react rationally. And the testimony I understood
22 was, he did scream, but he had time to secure his
23 chainsaw in the palm tree and then release his rope that
24 he was using. His safety mechanism of sorts and then he
25 began claiming down before he lost his balance and fell

1 off the ladder.

2 Q How was that -- those things you just outlined, the
3 putting the chainsaw up in the tree after he yelled out,
4 untying the rope, starting down the ladder, how is that
5 informative of your opinions?

6 A Well, it's just inconsistent based on my experience
7 with what a person does if they have an electrical
8 contact injury that's bad enough to actually pierce your
9 abdomen consistent with what that mark was and still
10 have a conscious awareness to be able to do the things
11 he did. Just -- it's totally inconsistent with my
12 experience. Not my personal experience. My experience
13 of reading witness statements and people who have been
14 around someone who has been injured.

15 Q Now, by considering what elements of electrical --
16 strike that. How did you -- walk us through the steps
17 that you took to confirm for yourself that Mr. Larios
18 did not receive an electrical shock. Tell me about
19 that.

20 A Okay. Again, if you don't have an eyewitness to
21 say, I saw such and such. Once you don't have an
22 eyewitness, now you're using your forensic efforts, you
23 know. What is the physical evidence? What are the
24 surroundings? What are the vulnerabilities for an
25 electrical accident to happen in any form or fashion?

1 What was the individual utilizing at the time to extend
2 their reach? In this case it was a chainsaw. In other
3 cases it might be -- I've had them to where they use a
4 pole saw. Instead of climbing the tree you use a pole
5 saw which is a really long saw. And if you lose control
6 and it could get in the line. Then you look for a burn
7 on the pole saw.

8 So you look at all the geometry, you look at -- you
9 listen to witness' statements to the extent that you
10 have them if there's someone there to give you that.
11 You look at the injuries to an individual. The nature
12 of them, where they are. So I look at everything and
13 try to put it all together and develop a hypothesis of
14 either it did happen or it didn't happen. And if it did
15 happen, then I say this is what my thought is that --
16 the way it happened.

17 So it's just a collection. It's like solving a
18 puzzle to me is you collect all your evidence and see if
19 the puzzle makes sense. And sometimes you get a puzzle,
20 I did puzzles as a kid and you start with all the edges
21 and if someone's been in there and lost a bunch of the
22 pieces, you might say, well, it's got four hooves. It's
23 got a tail. It could be a donkey or a horse. But I
24 can't tell. There's not enough left in there for me to
25 tell. So sometimes it comes in undetermined. You can't

1 say with absolute scientific certainty.

2 Q And in this case to a reasonable degree of
3 engineering certainty, do you believe Mr. Larios
4 received an electrical shock?

5 A In my opinion, I don't know. I can't say that why
6 he fell off the ladder, but I find absolutely no
7 evidence that he received an electric shock.

8 Q Have all of your opinions that you've expressed
9 here to us this afternoon been to a reasonable degree of
10 engineering certainty?

11 A Yes, sir.

12 Q Thank you. Please answer any questions counsel
13 has.

14 A Yes, sir.

15 THE COURT: Cross?

16 CROSS EXAMINATION BY MR. APPLGATE:

17 Q Mr. Jackson, good afternoon.

18 A Good afternoon.

19 Q My name is William Applegate. I know we haven't
20 met --

21 A Applegate?

22 Q Yes, sir.

23 A Yes, sir. Okay.

24 Q We hadn't meet before?

25 A No, sir.

1 Q Thank you for coming. Mr. Jackson, how many times
2 have you worked as an expert for Mr. Pugh?

3 A I couldn't say exactly, but I'm thinking a few
4 cases coming to mind that I've investigated matters.
5 Three, four, five, maybe. I don't remember. It could
6 be over 20 something year period, so I just really
7 honestly don't remember the quantity.

8 Q Okay. Were those always for, I think in your
9 deposition you said five or so, but have those contracts
10 always been for SCE&G?

11 A I believe -- yeah, I believe so. Yes, sir.

12 Q All right. And what is your hourly rate for
13 providing that expert consultant?

14 A The company bills my time at three and a quarter an
15 hour.

16 Q Okay. And then don't you have an increased for
17 some work you do 475?

18 A Sir?

19 Q For some of your work it's increased to 475 an
20 hour?

21 A Video depositions we have a company policy for
22 that. Yes, sir.

23 Q Okay. And how much are trial testimony?

24 A No, just same rate.

25 Q Okay. Now, as I understand you, this forensic

1 consulting work testifying for utility companies on a
2 regular basis; is that correct?

3 A I get called frequently, yes, sir. Again, we don't
4 advertise, it's just how the phone rings. I mean, I
5 work for utility companies across the country.

6 Q And 90 percent of your work is actually for utility
7 companies doing sort of defense expert consulting;
8 correct?

9 A No. Ninety percent of my work is forensic. And
10 it's divided up between equipment manufacturers, you
11 know, it could be utilities. It could be looking at a
12 panel box in a fire. Any number of things. But it's
13 not 90 percent because I have a variety of different
14 callouts.

15 Q Okay. Thank you, sir. Now, so I can understand
16 your background you gave some testimony before, now,
17 you're not a medical doctor; correct?

18 A No, sir.

19 Q You're not a pathologist?

20 A No, sir.

21 Q You're not a coroner, had any training as a
22 coroner?

23 A No, sir.

24 Q No medical training in general?

25 A No. Not in particular, no. I mean, I -- to the

1 extent I have knowledge of the subject matters today, I
2 have an extensive library on the subject of electric
3 shock, but etiology of electric shock and pathology of
4 electric shock, so I'm self read, but I don't claim to
5 have an MD or anything like that.

6 Q You personally witnessed two incidents of
7 electrocutions of humans in your lifetime?

8 A Yes. I've been present. Yes.

9 Q Been present. You're not an expert in
10 biomechanics; correct?

11 A No.

12 Q You're not an expert in human factors; correct?

13 A Well, I'm not sure I know what human factors is,
14 but I don't think so. No.

15 Q Okay. You're not an arborist; correct?

16 A That's correct.

17 Q You're not expert in forestry?

18 A That's correct.

19 Q Okay. You have no experience as a professional
20 landscaper?

21 A As a professional, no. I've done enough in my yard
22 work.

23 Q You have never been employed by a power company in
24 your life?

25 A Directly, no. Only on consulting basis.

1 Q I know they pay you to come to court. I'm saying
2 have you ever been employed and worked for a power
3 company?

4 A That's what I'm saying. I started in consulting
5 engineering business in 1981. I've been in consulting
6 engineering business. I've never worked as an employee,
7 is that what you're asking, as a directed employee?

8 Q Yes.

9 A Okay. No, sir, I have not.

10 Q And you've never been a part of a power company's
11 vegetation management team, have you?

12 A No, sir.

13 Q As I think I understand or let me make sure that I
14 do understand. I think your testimony here is that this
15 thing didn't happen; is that correct? That he was not
16 shocked; is that correct?

17 A That's correct. I cannot find a way for that to
18 occur.

19 Q Okay. And I think you talked about a pathway;
20 correct?

21 A About what, sir?

22 Q The pathway. You have to have a circuit?

23 A That's correct.

24 Q Okay. So as part of this case, let me show you
25 what I'll mark as Plaintiff's --

1 (WHEREUPON, Plaintiff's Exhibit Number 14 was marked
2 and entered)

3 A Do you want me to come to you or are you coming to
4 me?

5 Q I'm going to bring it to you.

6 A Okay.

7 Q Mr. Jackson, you remember that Lewis Tree Company
8 is the contractor that SCE&G pays to go out and do all
9 the work for them to make sure they have to comply with
10 their vegetation management program; correct?

11 A That's I believe their primary vegetation
12 maintenance contractor, yes, sir.

13 Q And they're sort of experts in going out and doing
14 this work as far as we understand it; is that right?

15 A Should be. That's their business, yes, sir.

16 Q I hope so. So they're hired by the power company
17 to do this and there's some documents that we've
18 reviewed in this case and then testified in this case
19 and I think you stated earlier you reviewed all the
20 depositions in this case?

21 A At some point in time, yes. Sometime ago.

22 Q And you reviewed documents in this case; correct?

23 A Yes, sometime ago. Yes, sir. I'm not intimately
24 familiar with every document, I'm not going to pretend
25 to be.

1 Q Okay. Well, hopefully you're a bit familiar with
2 this one because it was talked about and important to
3 your opinions. So let's look at this document and just
4 remind me, this is a document you've looked at before;
5 correct?

6 A I've seen this, yes, sir.

7 Q Okay. Let's turn to page 3 on that document if you
8 will and I'm going to put it up here on the overhead so
9 you explain to the jury what it is.

10 Does that look like -- what do you see in that
11 picture, Mr. Jackson?

12 A I see pretty much what I described before. In this
13 case it appears as though the arborist, cutter,
14 individual, has cut a limb and dropped it on the line.
15 That's one of the things I was looking for. I didn't
16 see any evidence of that in this case. He has direct
17 grasp on a limb that's contacting one phase and remember
18 in this diagram there's three phases, so this would be
19 phase to phase bridging.

20 And he also has direct contact with his left hand
21 with another limb that has pushed down into a line. I
22 don't know if he's pushing it in or I don't know what it
23 represents, but he's got both branches into different
24 phases.

25 Q What if just -- hypothetically, what if in this

1 picture let's say his right hand glove was met, just a
2 metal glove. And in his left hand was a chainsaw. They
3 were both touching --

4 A A metal glove?

5 Q Yeah. He had a metal glove on?

6 A I've never had a metal glove.

7 Q Or a metal bar in his hand he's holding and
8 touching one of the branches. He's got a metal bar in
9 his hand touching the other branch. What would that do?
10 Would that still work, that circuit?

11 A If you're phase to phase with direct contact, yeah,
12 it's probably going to -- you're probably going to lose
13 both arms in that case.

14 Q In this case actually you have -- one of this is a
15 primary and one of those is a neutral; correct?

16 A No. The way this is depicted, again, like I said,
17 you see the three lines going laterally equal to one
18 another. Those are three phase wires. So that would be
19 phase to phase voltage. In our case that would be 13/8
20 as opposed to the AKB.

21 Q Now, you see an entry and exit; correct?

22 A Correct.

23 Q So you're saying it's entering one?

24 A Correct.

25 Q And it's exiting the other?

1 A Right. In this case he would have burns on both
2 his hands. An entry wound and an exit wound. Assuming
3 his bucket is insulated that would be the extent of it.

4 Q Now, Doctor -- I mean --

5 A I appreciate that.

6 Q Sorry, Mr. Jackson. I'm thinking doctor. There
7 was a doctor that testified in this case, Dr. Presnell.

8 A I just thought I impressed you that much.

9 Q Who works in a field of -- that does autopsy and
10 has done hundreds of investigations on people who have
11 suffered electric shock. And her testimony in this case
12 is that there are multiple times when people actually
13 get shocked either direct or indirect contact and you
14 kind find any wounds on their body. Would you defer to
15 her on whether in fact if you get shocked you would or
16 wouldn't have signs of some type of burn?

17 A Well, that's entirely possible because I do a lot
18 with local shock. As a matter of fact, 120 volts coming
19 out of your household current, statistically is -- kills
20 more people than any other voltage, believe it or not.
21 And it's low voltage. But the reason being is it
22 happens to be right in that range when you get into it
23 passes the right amount of current through the body
24 while not producing a burn, puts your heart in
25 ventricular fibulation which is a fluttering and you

1 lose consciousness immediately.

2 Q So on a low voltage shock you might not see any
3 marks at all?

4 A You might not. But the thing you look for --

5 Q Even in your experience as a nonmedical person?

6 MR. PUGH: Excuse me. May he --

7 A But there is --

8 THE COURT: Hold on. Guys, hold on. Allow the
9 witness to finish his answer before you ask the next
10 question.

11 MR. APPLGATE: Thank you, sir.

12 A Now, because you said no evidence and I just want
13 to be clear on this. There is something that I've
14 learned that doctors do, there's an enzyme and I can't
15 remember the name of it that will be elevated if you
16 suffered an electric shock. They test it right away and
17 you may catch an enzyme. So while there may not be any
18 physical evidence at 120 volts, you could have evidence
19 is all I'm saying. I wanted to make sure I was clear on
20 that.

21 Q Or you could not?

22 A Well, depends on the duration of it, probably. But
23 I don't know. I just know that I've had cases where
24 there was evidence of elevated enzymes and they say,
25 yes, that confirms electric shock.

1 Q Okay. And I'm just asking you questions.

2 Mr. Jackson, if in fact the doctor, pathologist in this
3 case testified and said there are cases where someone
4 might get struck by lightening and I see no marks. And
5 she says, you may not see marks in a case where there's
6 an electrical shock, would you defer to the doctor or do
7 you want to tell her that she's wrong?

8 A No, I'm agreeing. I've seen a lot of cases where
9 there's no physical evidence. That was my whole point
10 is that at low voltage you just might not. Now,
11 sometimes you do, you don't always because there's such
12 a thing that maybe everybody's heard of this is
13 involuntary grasp on something it's called "no let go"
14 and if you can't get off of it, you could still have the
15 same voltage and have a burn because you were there
16 longer than a momentary shock. Just enough to send you
17 into V-fib.

18 Q Now, Mr. Jackson, you visited the scene a couple of
19 months ago; is that correct?

20 A Yes, sir. Sounds right.

21 Q So when you got to the scene, the tree had been --
22 the top of the tree had been cut off; correct?

23 A Well, all of it, not just the top. I mean, it was
24 cut down to about -- I think it was cut down to a stump
25 about that high.

1 Q So none of the evidence is there when you go out;
2 is that correct? I mean, the tree is not there?

3 A Well the evidence I was looking for was. I wanted
4 to have an accurate measurement of the horizontal
5 separation. That was the purpose. I didn't expect to
6 find the tree there. I knew the tree was gone.

7 Q Now, you took a measurement, as I understand it,
8 from the base of the tree; right?

9 A Correct.

10 Q Bottom of the tree, then you went and you stood
11 under the power line and you determined that was nine
12 feet; correct?

13 A Well, I laid a tape measure out.

14 Q A tape measure on the ground then you --

15 A And that's --

16 Q How about under that crease right there, the
17 ceiling --

18 A That's why I say approximately. I'm not claiming
19 it's exactly nine. That's why I said approximately.

20 Q Okay. And you -- but you didn't measure the height
21 of the line, did you?

22 A No.

23 Q So as far as the height of the line and the height
24 of the tree, you don't know that; correct?

25 A The tree wasn't there, I couldn't have.

1 Q So you don't have that?

2 A No.

3 Q All right. Because it would be different if let's
4 say, your head is the top of the tree and the power line
5 is right here. And if your head is the top of the tree
6 and the power line is at my foot; right? That would be
7 a different distance?

8 A Well, yeah. And I was confused because it looked
9 like you were intentionally grasping a power line. I
10 didn't know if that's what --

11 Q The power line is right here. My fist is the power
12 line, okay.

13 A Okay.

14 Q Different distance if the power line is right here
15 or if the power line is at my foot; correct? That's a
16 longer distance down to my foot. Sort of simple math
17 stuff, you get that?

18 A Yeah.

19 Q Is it a longer distance from your head to my foot
20 or your head to my head?

21 A Well, the hypotonies would be down to your foot.

22 Q Okay. Longer distance; right?

23 A Correct.

24 Q What is the distance you think between this fruit
25 stalk, you understand that this is the OSHA picture

1 which is the fruit stalks in the tree at question in
2 this case, this is our case?

3 A Yes, sir.

4 Q Okay. What in your expert opinion is the distance?
5 What would you -- based on your measurements, the
6 distance between this one and this neutral line?

7 A You can't tell in that photo.

8 Q Can't tell in that photo?

9 A No.

10 Q Let's just ballpark. What's your expert opinion on
11 that?

12 A At that angle, I would hazard to guess. But that's
13 the problem with taking photographs from the bottom. If
14 you're looking -- trying to place a distance looking
15 this way between two things, you know, you need to be on
16 the side of it. If you were looking at it this way you
17 would know. But there's no way I can make an accurate
18 -- I can't be accurate about it from this advantage
19 point.

20 Q So if in fact the investigators looked at that and
21 said, look, these lines are touching, would you
22 understand you would defer to them and say, that looks
23 like they may be touching?

24 A It could be. Like I said, I can't tell from this
25 angle.

1 Q I think you testified that -- so this is -- let's
2 -- and I'll just help you out here and tell you, this
3 is, in case you don't know, this is the neutral?

4 A That's correct.

5 Q And I think you testified that the primary is four
6 feet above the neutral?

7 A I said I don't know what SCE&G's construction
8 standards are, but they're usually about four feet in
9 separation on vertical construction.

10 Q Let's assume that's the testimony in this case.
11 Have you been provided anything different?

12 A No, I haven't.

13 Q As an expert in this case trying to figure out what
14 happened, are you telling me you just don't know what or
15 never asked SCE&G what the difference between their
16 primary and their neutral are as far as distance?

17 A No. It's not important. I mean, it's a fairly
18 standard practice. That's all I'm saying.

19 Q But, again, as to the path entry/exit whether this
20 is possible, that wasn't important to you?

21 A Say that again.

22 Q As to the pathway could there be a circuit, it
23 wasn't important to you to know distance between the
24 neutral and the primary?

25 A No. That's not relevant. I mean, what's important

1 is because you kind of skipping a step there. What's
2 important is what's the distance between something that
3 can contact the primary, that's the first step before
4 you get into anything else. That's the real important
5 measurement.

6 Q So here we have part of the tree. Okay. Extending
7 over -- way over --

8 A The neutral.

9 Q -- the neutral. This is four feet away; right?
10 Four feet away we know is the primary from where it is
11 in that picture?

12 A Correct.

13 Q So let's do a little quick analysis and try to see
14 if you can help me work on a little demonstration.
15 Okay. You hold this. Okay. Let's assume that we've
16 got these fruit stalks coming out of the top of this
17 palm tree; right? You hold yours here.

18 A Am I top or bottom.

19 Q We know they're out to the side right because you
20 have nine feet out this way; right? Top of the tree --
21 the top of the tree is 26 feet --

22 A That looks like a seed pod going almost directly
23 out to the side. So one is this way and one is that
24 way.

25 Q I'm going to be right over here over the court

1 reporter. All right.

2 A So which one are you? Are you the one in the
3 picture? Are you the one in the picture?

4 Q Yeah. I'm the one in the picture.

5 A Okay.

6 Q All right. So I put my chainsaw right here.

7 A On where? On this one?

8 Q Right here. I cut right in here.

9 A Uh-huh.

10 Q No circuit?

11 A So you're dropping it on the neutral.

12 Q This one goes on the primary, this one goes on the
13 neutral.

14 A How does that happen?

15 Q How does that happen?

16 A Yeah. This guy is growing out the top and if
17 you're cutting that one and dropping it in the neutral,
18 this guy is still standing right up. Am I missing
19 something? How can you --

20 Q They both get cut; right?

21 A They're coming out of different parts of the tree.

22 Q They're coming out of the same part of the tree.

23 A They're coming out of the trunk of the tree.

24 Q Do you have any evidence of that?

25 A Just my review of the photos.

1 Q Did you look at the pictures that the OSHA
2 investigator relied on?

3 A Yes.

4 Q Doctor, that showed all of the branches at the
5 bottom of the tree?

6 A Yes, sir. You called me doctor again.

7 Q Good. I'll call you doctor. You can be a doctor
8 for the day.

9 A All right.

10 Q How long do you think that is? Three feet? Four
11 feet long?

12 A That whole stalk?

13 Q Yeah.

14 A I don't know. Probably --

15 Q Would it surprise you if it was 10 feet?

16 A Well, I don't know, stand it next to you. How tall
17 are you? 5'11"?

18 Q About that.

19 A I would say about seven feet, eight feet.

20 Q One foot taller than me?

21 A About that. Okay. I'll give you that, it's
22 curved.

23 Q All right. Take a look at that picture and tell me
24 if you have seen that picture before?

25 A What do I see in it? I see a variety of --

1 Q No. Have you ever seen that picture before?

2 A Yes. It's one of the many pictures I think taken
3 by OSHA is where I think it came from.

4 Q And what do you see at the bottom of that tree?

5 A I see a collection of green fronds that have been
6 cut and I see one dead frond and I see what appears to
7 be a dead cut fruit stalk.

8 Q You only see one fruit stalk?

9 A Well, I'm looking. Hold on. Let me study this
10 picture. I see another one kind of leaning up against
11 the fence so that looks like he was cutting some fruit
12 stalks on the way up.

13 Q Okay. You have seen this picture as a part of your
14 --

15 A Yes. And it conforms with the testimony that
16 Mr. Larios was cutting and he had a groundsman that was
17 collecting.

18 MR. APPLGATE: Let me mark what will be Plaintiff's
19 Fifteen and ask to move that into evidence.

20 (WHEREUPON, Plaintiff's Exhibit Number 15 was marked
21 and entered)

22 MR. APPLGATE: And if I may, Your Honor, may I
23 publish this to the jury?

24 THE COURT: Any objection to Plaintiff's Fifteen.

25 MR. PUGH: None.

1 THE COURT: All right.

2 Q I'm going to pass this around.

3 A Is that the same one we're looking at? Okay.

4 Q Mr. Jackson, do you see two fruit stalks there?

5 A I see one in the background and I see -- I see one
6 leaning up against the fence and it looks like there's
7 maybe one across the fence as well. Oh, wait. Off to
8 the left there's another kind of a green one. There's
9 multiple fruit stalks. Some look like they've been dead
10 for a while, others that look semi-green.

11 Q And you understand that Mr. Larios was out cutting
12 that tree and those tree stalks that day and those are
13 the ones that fell from this job?

14 A Right. He was naturally cutting and he goes up and
15 he cuts from the bottom up and goes around, however he
16 rotates his ladder or doesn't rotate his ladder. But
17 you just start from the bottom and you move up and
18 however how the customer wants it cut.

19 Q Did you consider the coroner's investigation when
20 you did your analysis and determine that there had been
21 no electric shock?

22 A Yes. They said that -- there was a back and forth
23 about it and thought, well, that could be -- now they
24 figured out there was a power line and then concluded.
25 But they -- the coroner's testimony or the lady Presnell

1 originally said, well, it doesn't exhibit the classic
2 signs of an entry wound. I agree with that based on my
3 experience. So, yes, I reviewed it, but I don't see
4 where it's -- and they also agree that there's no exit
5 wound. So, yeah, I reviewed it and I agree with the
6 fact that there's no exit wound.

7 Q And you heard the testimony of Dr. Presnell that
8 said there doesn't need to be an entry and exit wound?

9 A Well, that's for low voltage. But if you've got a
10 high enough voltage to pierce your epidermis you're
11 going to have an exit wound. You can't have it both
12 ways. Either it's low voltage and does nothing or high
13 voltage and you have entrance and exit. But you don't
14 go halfway in between. I think that's what you're
15 asking.

16 Q And that's your opinion as a medical doctor; right?

17 A No. It's my opinion after seeing a lot of electric
18 shock injuries and fatalities.

19 Q Okay. So deciding yet again the opinions of a
20 doctor in this case, you've said that is entirely
21 consistent and that she has seen that, you would say
22 that that's not possible?

23 A From an electrical engineering scientific
24 perspective that's correct.

25 Q Now, earlier you testified, Mr. Jackson, that you

1 need to in your field look through the culmination of
2 that evidence; right? Look at all the different factors
3 because you weren't there; correct?

4 A Correct. You try to identify things that are
5 useful to making an analysis of the scene.

6 Q Okay. So in doing that, you've got to look at all
7 the different evidence that you do have; right? Because
8 you got to rebuild -- well, recreate the scene; is that
9 correct?

10 A Well, sometimes you do get to recreate the scene.
11 In this instance you don't. You have to look at what's
12 available.

13 Q And going back to these measurements just to make
14 clear, you understand that SCE&G did an investigation of
15 this scene?

16 A There was -- yes, I understand that. Yes, sir.

17 Q You understand they brought in a bucket truck and
18 you saw the depositions, they brought in a bucket truck,
19 took measurements -- the measurements from the top of
20 the tree to the line, they did all this work, you
21 understand that; correct?

22 A Well, they made some measurements, but not -- they
23 didn't never indicate a measurement was made from the
24 seed pod directly over the line, horizontal separation.

25 Q That information was not provided to you?

1 A No. The way I read the deposition, it wasn't done.

2 Q That information, all the measurements that they
3 took was not provided to you; correct?

4 A That's correct.

5 Q Let's just talk about maybe some of the evidence
6 that may exist and just tell me, what did you consider
7 about the scream?

8 A Well, I thought -- I did review the coroner's
9 report. I saw that they did a craniotomy so I didn't
10 find an aneurism or anything in his head that I
11 reviewed. There was no indication of a heart attack.
12 So either -- something happened to him. He could have
13 pulled a muscle. Could have been a snake. Could have
14 got stung by a bug. I mean, I don't know. There's
15 possibilities, but I looked at the coroner's report and
16 saw no evidence of an aneurism or a heart attack as well
17 as no exit wound.

18 Q Okay. So maybe a snake or a bee sting. All right.
19 So you --

20 A Could have pulled a muscle, too, if he's up
21 reaching. I mean, he could have pulled a muscle.

22 Q Okay. Burn mark on abdomen. We can look at those
23 pictures if that would be helpful for you. Any
24 consideration of the burn mark on the abdomen?

25 A Yes, I looked at that.

1 Q And then included with that the pathologist's
2 conclusion that in her experience as a pathologist doing
3 autopsies, that was consistent with a burn mark, an
4 electric shock event?

5 A Well, it wasn't totally consistent. It didn't have
6 the classic etiology of it the way she described it. I
7 think that's what she said.

8 Q And we discussed that. There's times when people
9 get burned, have no marks and sometimes when people get
10 burned they have one mark. That's what she described.

11 A Well, she did describe it that sometimes you don't
12 get a mark. That's correct. On low voltage injuries
13 that's correct. When I looked at it, it -- I've never
14 seen a burn mark that has a distinct line in the center
15 of it. That's not the way electricity pierces the
16 epidermis. After looking at bunches and bunches of
17 electric injuries like this case. I mean, you're
18 looking at high voltage line. So are we talking low
19 voltage or high voltage here?

20 Q Okay. So again, your explanation just doing your
21 analysis as an expert in the field -- your explanation
22 for the burnt mark on the abdomen is?

23 A It's not a burn mark. Or at least it didn't happen
24 that day. It didn't happen with this event because
25 there's no exit mark.

1 Q You just don't know what it is?

2 A I can't be certain, no. I wasn't in the autopsy.
3 But I'm not saying it couldn't be electrical, it just
4 didn't happen that day.

5 Q Okay. The burnt seed pods that were found by the
6 OSHA investigators and the coroner and testified to by
7 the family and other witnesses, explanations for the
8 burnt seed pods?

9 A Which burnt seed pods are you talking about? I saw
10 some that were dead, but I didn't see any burned.

11 Q You reviewed the OSHA reports; right?

12 A They talked about seed pods that they thought was
13 burned on the neutral, I believe is what it said, didn't
14 it?

15 Q And you saw --

16 A Was it seed pod or pods? I believe they talked
17 about one on the neutral looked burnt. I believe that's
18 what it said.

19 Q Okay. You're the expert here. I'm sure you read
20 the deposition of Mr. Whaley.

21 A At some point in time, yes.

22 Q And you're coming here to testify now to tell this
23 jury what you think. Did you read the deposition before
24 you came here today?

25 A Yes, sometime ago, absolutely. But I don't

1 remember it word for word. I mean --

2 Q Okay. Could be important. Now, burnt seed pods,
3 what's your explanation for those?

4 A I didn't see any burnt seed pods. I see dead seed
5 pods. I see seed pods that I have on my palm tree
6 behind my house right now. That's all I see is seed
7 pods that look like my palm tree that needs to be cut.

8 Q Okay. So, again, you're not aware -- are you
9 telling me or telling this court that you're not aware
10 of evidence of burnt seed pods?

11 A That's correct. I didn't see any burned seed pods.

12 Q Okay. That's good. Let's go to the next thing.
13 How about the burn mark, chainsaw?

14 A That's never been confirmed as a burn mark. And I
15 think me and -- Mr. Brill and I both agree that just
16 can't be determined to be a burn mark. It's consistent
17 with an older chainsaw that has marks all along the
18 chain guide.

19 Q Okay. Well, so, again, could have been something
20 else; right?

21 A Well, I've looked at a bunch of old chainsaws in
22 preparation for this and you'll see marks like that all
23 over them, discolorations on the chain guide.

24 Q Did you bring any of those with us?

25 A No. I just looked online.

1 Q Looked online?

2 A Yeah, you can go online and look up Craig's List
3 and find them all over the place.

4 Q Did you consider the testimony of Mr. Abraham who
5 testified specifically that he -- that that mark on the
6 chainsaw wasn't there prior to this event?

7 A Now, was that his groundsman, Mr. Abraham, you
8 talking about?

9 Q He was the sole eyewitness. Do you remember
10 anything about him?

11 A I just can't remember his name.

12 Q Okay. Did you ever read the deposition of the sole
13 eyewitness in this case?

14 A That was his -- the groundsman. He was picking up
15 the fronds and oiling the chain and that. I just don't
16 remember his name. The gentleman's name. And he did
17 testify. He said, well, I looked at it and I didn't see
18 it before the last time I maintained it.

19 Q Okay. So you didn't consider that evidence because
20 you just found a picture online --

21 A Well, I did, but I also noticed -- I also observed
22 the marks on the top of the chainsaw. So that would
23 mean you're trying to cut up and normally -- well, the
24 safe way to use a chainsaw is to cut out away from you
25 and down rather than bringing it towards you to cut. So

1 it was on the top rail not the bottom rail. And the
2 last thing we see being cut on that tree, would -- was
3 being cut from the top down. That one palm frond that's
4 hanging off.

5 Q Talked about trying to remember all the different
6 things you considered here, how about the burn mark on
7 the power line, the primary power line that was found by
8 SCE&G. What do you think about the burn mark on the
9 power line? Did you consider that in giving your
10 opinion?

11 A Well, I didn't see any burns on the power lines
12 from the photos I saw. Burn marks are on power lines a
13 lot from lightening. So there may have been one there
14 that doesn't mean it happened on this occasion. Because
15 lightening strikes power lines all the time.

16 Q Okay. Maybe it could have been a lightening
17 strike. But you know that when the OSHA investigators
18 and when the coroner were doing their investigation,
19 asked that SCE&G to come down and look at these power
20 lines?

21 A I believe that was the sequence of events. Yes.

22 Q What did SCE&G do? They told -- they said, there's
23 a burn mark on the power line right here where this
24 happened.

25 A Someone said that, I believe. I don't even

1 remember the specific testimony.

2 Q How about the smoke that was testified to by
3 Mr. Abraham when he looked up after the scream?

4 A I did consider that. I found that interesting
5 because most chainsaws are two cycle engines and they
6 smoke when they're running. As I understand, it was
7 still running in the tree. But beyond that, you go back
8 to the autopsy that if there's smoke there's fire.
9 Something's caught on fire. There's no evidence of
10 burning on his person from his clothes being on fire or
11 anything like that, so we had no evidence of anything
12 burning. So the smoke does not indicate he's on fire.
13 If that's the implication you're drawing here.

14 Q Or the burnt palm fronds -- I mean, the burnt fruit
15 pods, they were burning. It was testified to in this
16 case there was various different ones. So did you
17 consider those being burnt up having any impact on your
18 decisions?

19 A Were they -- no one testified that the fronds were
20 burning at this time that kind of counts for the smoke.
21 You're saying they were dead palm fronds, but are you
22 suggesting they were burning at this point in time the
23 fronds were on fire at this time?

24 Q No testimony there was fire.

25 A Okay. That's my point. Is if he saw smoke, at

1 that very moment there needed to be something on fire.

2 And there's no evidence there was anything on fire

3 around Mr. Larios at that point in time.

4 Q So you don't believe that had anything to do with
5 anything?

6 A Well, if he said he saw smoke it could be the
7 chainsaw. I don't know.

8 Q How about the burnt smell coming from Mr. Larios?

9 A I don't know how he would know a burnt smell, but
10 another thing about that, if you're trying to tie that
11 into the wound in his abdomen, we have no evidence that
12 it with a similar burn through on his shirt. There's no
13 evidence of that at all. It's not mentioned in the
14 coroner's report. Not mentioned by his groundsman. So
15 which would be a requisite part of this. To get to the
16 epidermis you've got to go through his shirt.

17 Q All right. So, again, in your investigation, your
18 analysis you did, this -- visited all the pictures, and
19 looked at all the supporting documentation, you looked
20 at the coroner's report, the OSHA investigation, and you
21 looked at all these factors, in your opinion, there's
22 just -- it's not possible and it didn't happen; correct?

23 A Correct. There's no evidence that there is a seed
24 pod high enough and close enough to the primary to start
25 that chain of events. That's the first thing you got to

1 look for.

2 Q Okay. If you give me one second here?

3 A Yes, sir.

4 Q If you will look back at the Lewis Tree exhibit
5 that I provided you a moment ago.

6 A Yes, sir.

7 Q That's kind of hard to look at the bottom here.
8 Can you read to me --

9 A Which page are we on, still 3?

10 Q Still on page 3.

11 A Yes, sir.

12 Q If you will read to me what's the highlighted
13 portion of this document.

14 A It says, "Low-current shocks cause involuntary
15 muscle contractions that result in falls, collisions,
16 and other accidents. These have caused injuries ranging
17 from falls and bruises to bone fractures and death."

18 Q Okay. Involuntary muscle contractions, isn't that
19 consistent, Mr. Jackson with the description Mr. Abraham
20 gave about how he fell?

21 A No. Because that is very true. And I don't know
22 if you've ever been shocked, but I've been shocked a
23 bunch working and you do get involuntary, but it's
24 immediate. It's not as though you get shocked and then
25 you stop and you put your chainsaw up and then you undo

1 your rope and then you begin climbing down. That's not
2 what they're talking about. They're talking about an
3 involuntary muscle contraction maybe your legs, your
4 hands, pushing yourself, falling off a ladder
5 immediately upon receiving the shock. Been involved in
6 cases like that as well.

7 Q Mr. Jackson, do you know why SCE&G cut the tree
8 down right after this accident?

9 MR. PUGH: Object. Foundation. Speculation. No
10 evidence of that.

11 Q Hasn't your client and you guys have discussed this
12 operation this morning, do you know why they cut the top
13 of the tree off?

14 THE COURT: Hold on. First of all, you need to ask
15 him does he even know that. Does he even know that it
16 was done.

17 MR. APPLGATE: He already testified to it.

18 MR. PUGH: No, sir.

19 THE COURT: No.

20 Q Okay. Are you aware from the OSHA investigation
21 and the other photos provided in this case that SCE&G
22 cut the top of the tree off?

23 A Well, I do remember seeing one -- not cut the top
24 off, but they balded it kind of. Just got rid of all
25 the fronds. I remember seeing a photo like that. I

1 wasn't aware that SCE&G did that. But I do remember
2 seeing a photo.

3 Q Did you read the coroner's report where Mr. Whaley
4 said they cut the top of the tree off?

5 A Well, he may have said that, yes. I'm just saying
6 I remember a photograph and it was all the fronds gone
7 and then later on it was cut down completely based on my
8 understanding of the sequence of events.

9 Q Okay. Do you know why SCE&G did that?

10 A No. I'm assuming there was a decision the palm
11 tree had gotten too big since the last trimming cycle.

12 Q Okay. Thank you very much, Mr. Jackson.

13 A Your welcome, sir.

14 THE COURT: Anything on redirect?

15 MR. PUGH: Briefly.

16 REDIRECT EXAMINATION BY MR. PUGH:

17 Q Mr. Jackson --

18 A Yes, sir.

19 Q -- how many measurements are you aware that
20 Mr. Brill took?

21 A I don't believe he took any.

22 Q Are you aware of an exit wound anywhere on
23 Mr. Larios?

24 A No, sir.

25 Q You read the -- you were asked earlier about low

1 voltage shock that doesn't involve a burn, do you
2 remember that?

3 A Yes, sir.

4 Q Okay. And you, I think, made the point you can't
5 have it both ways; right?

6 A Right. You don't get one exit wound that's classic
7 high voltage if that's what people think that mark is
8 and not have an exit wound. It's got to go some place.

9 Q And I think you said that the typical situation is
10 with low voltage shock without a mark on the body that
11 involves the heart stopping; correct?

12 A Correct. It's usually ventricular fibrillation
13 otherwise known as V-fib.

14 Q And you reviewed Dr. Presnell's two different
15 autopsy reports; correct?

16 A Right. And I didn't see any evidence of that.

17 Q No evidence of the heart involved in this case?

18 A Correct.

19 Q And while we're talking about Dr. Presnell's
20 report, you are aware that there was an initial autopsy
21 report; correct?

22 A I believe so, yes.

23 Q And in that initial autopsy report it was blunt
24 force trauma from a fall at least 25 feet; correct?

25 A Correct.

1 Q Are you aware that after she wrote that report she
2 had a conversation with Mr. Carter of the coroner's
3 office?

4 A Correct. And he said, by the way there's a power
5 line out there or something to that effect.

6 Q And are you aware that he told her two things;
7 number one, that Mr. Larios using the chainsaw made
8 direct contact with the primary; correct?

9 A Correct. Which is not possible.

10 Q So that's not possible; right?

11 A Correct.

12 Q Number two, that there was rubber or some substance
13 from Mr. Larios' footwear on the third rung of the
14 ladder. Do you remember that?

15 A Yes.

16 Q Is that possible?

17 A Well, where -- it's something black. I don't -- no
18 one got to see the ladder. I don't think I got to see
19 it. Mr. Brill didn't get to see it since the ladder's
20 gone. But if you look at it it's on the face of one of
21 the rails as opposed to it's burning out of shoes it
22 would be on the top where you're standing.

23 Q And if you had burning through someone's shoes to
24 cause a mark on a ladder, what would their feet look
25 like?

1 A Do be evidence of it. Because, I mean, if you've
2 got enough current or enough time to melt rubber off
3 your shoes, you're going to have your sox burned and
4 some parts of the inner part of your shoe burned, the
5 sole.

6 Q You were asked about this Lewis Tree document here
7 and I want to ask you something. You said this figure
8 number 10, that's not similar to the scene at 3402
9 Myrtle Street; correct?

10 A That's correct.

11 Q This is three phase wire?

12 A Correct. And he's got two limbs involved in two
13 phases in this pictorial for the purpose of discussion.

14 Q So when we're looking at three wires, how many of
15 them are hot?

16 A In that picture three.

17 Q All three of them are hot?

18 A Yes. That would be atypical what I described as a
19 horizontal crossarm, you've got three across the top,
20 and you get one on the bottom and one above it. It's
21 either way.

22 Q So this is three energized wires; correct?

23 A Correct.

24 Q And as we go to the bottom of this same document, I
25 want to ask you about this. You see where it says,

1 "NEVER WORK NEAR ANY ELECTRICAL CONDUCTOR UNLESS:," you
2 see that?

3 A Yes.

4 Q "You understand *exactly* what you are to do;" right?
5 You see that?

6 A Yes.

7 Q "You have taken measures to reduce or protect
8 yourself from the electric hazards"?

9 A Correct.

10 Q And "You're *sure* that the job can be completed
11 safely," do you see that?

12 A That's right.

13 Q And in this case, that would apply to Mr. Larios;
14 right?

15 A Yes. It should. He should do a job safety review
16 and identify potential hazards. Any kind of job like
17 that you first go out an identify potential hazards.

18 Q As a result of counsel's questions to you, have any
19 of the opinions that you've rendered during my direct
20 examination to a reasonable degree of electrical
21 engineering certainty changed?

22 A No, sir.

23 Q Thank you, Mr. Jackson.

24 A You're welcome.

25 MR. PUGH: May he be excused, Your Honor?

1 THE COURT: Any objection to Mr. Jackson being
2 excused?

3 MR. APPELATE: No, I have no further questions.

4 THE COURT: Thank you very much, sir. You may step
5 down.

6 Ladies and gentlemen, let me get you to step back in
7 the jury room. We're just taking a break right now.
8 We're going to -- we're going to take a short break.
9 Please don't discuss the case. And if you need
10 anything, let the bailiffs know. Okay.

11 (The jury left the courtroom at 4:37 p.m.)

12 THE COURT: All right. Let's bring back the jury.

13 (The jury entered the courtroom at 4:51 p.m.)

14 MR. PUGH: Dominion Energy calls Rodney Walker.

15 THE COURT: Mr. Walker, if you would please come
16 around and be sworn.

17 RODNEY WALKER,
18 being first duly sworn, was examined and testified as
19 follows:

20 THE CLERK: Have a seat up there on the witness
21 stand and state your name for the record.

22 DIRECT EXAMINATION BY MR. PUGH:

23 Q Sir, can you please state your name for the record?

24 A Rodney Walker.

25 Q And, Mr. Walker, Rodney, how are you employed?

1 A Dominion --

2 Q Who do you work for?

3 A Dominion Energy.

4 Q How long you been with Dominion Energy?

5 A Thirty-one years.

6 Q Well, been with SCE&G and then now Dominion?

7 A Changed over to Dominion. Yes.

8 Q What do you do for Dominion Energy?

9 A I am a linemen/serviceman.

10 Q And are you -- have you received training over the
11 years to be a linemen?

12 A Yes, I have.

13 Q And what kind of training have you received? Just
14 briefly tell us the training you received.

15 A Basically to protect myself as I turn the power
16 back on more or less.

17 Q Safety training?

18 A Safety training, yes.

19 Q How to approach energized power lines in a safe
20 manner?

21 A That's correct.

22 Q And y'all have -- do y'all have special equipment
23 that you use?

24 A Yes, sir. We have what we call our PPE's, personal
25 protective equipment.

1 Q What kind of things do you use?

2 A We use rubber gloves, hardhat, safety glasses.

3 Q How about the trucks or pieces of equipment that
4 you use to reach up to power lines, what do y'all --
5 what's special about them, if anything?

6 A We have certain sticks that we use. Also covering
7 up with special type of rubber, rubber goods we put on
8 the lines.

9 Q What's the purpose of these special sticks or
10 rubber that you put on lines?

11 A It's to protect you as you proceed doing the work.

12 Q Are the sticks conductive or nonconductive?

13 A Nonconductive.

14 Q Okay. You went through an apprentice lineman
15 program?

16 A Yes, sir.

17 Q How long is that program?

18 A Four years.

19 Q Let's be clear, you're not a right-of-way -- a
20 utility line-clearance right-of-way tree trimmer; right?

21 A No, I'm not.

22 Q You deal with lines not trees; correct?

23 A Correct.

24 Q But from time to time you have to deal with trees;
25 right?

1 A That's right.

2 Q Storm work?

3 A Yes, sir.

4 Q Trouble calls?

5 A Yes, sir.

6 Q It's awful warm for September --

7 A Uh-huh.

8 Q -- you're wearing a pretty thick long sleeve shirt,
9 why is that?

10 A This is a flame retardant shirt that we are
11 required to wear working near energized conductors,
12 anything that's energized pretty much is why we need to
13 wear this long sleeve shirt.

14 Q So that shirt you're wearing says "FR" on the
15 sleeve, that's flame retardant?

16 A Yes, sir.

17 Q Hopefully that shirt is designed that you won't
18 catch on fire if you get into an energized line;
19 correct?

20 A Correct.

21 Q Are you aware that Dominion Energy has folks to go
22 out and trim right-of-ways?

23 A Yes, sir, I do.

24 Q And contract tree trim folks?

25 A Yes, sir.

1 Q Now, it's my understanding that you were working on
2 December 1, 2015, that was a Tuesday. Do you remember
3 that day?

4 A Yes, sir.

5 Q Okay. Do you remember receiving a call about being
6 asked to go out to Edisto Island?

7 A That's right.

8 Q What were you asked to do?

9 A I was asked to come out because they may have been
10 a possible contact case.

11 Q When you say, "contact," explain what that means in
12 linemen's speak?

13 A "Contact" meaning someone has become energized with
14 our power line. Made contact with our power line.

15 Q By making contact with the power line?

16 A Yes, sir.

17 Q And who went with you?

18 A Cameron Luden.

19 Q And y'all were in a bucket truck?

20 A Yes, sir, we was.

21 Q What time of day do you think it was that you got
22 the call to go out there?

23 A Probably around 4:30, 5:00, 5:30, somewhere around
24 in there.

25 Q In the afternoon?

1 A Yes, sir.

2 Q And what time do you think you arrived out at this
3 property, 3402 Myrtle Street?

4 A I would say probably 6:30, 7:00.

5 Q I'm assuming 6:30 or 7:00 p.m. December it's dark?

6 A Yes.

7 Q Did you look around when you were there? Did you
8 look around the property?

9 A Yes, we did.

10 Q What did you look at?

11 A Basically, the trees, the ladder, our line -- power
12 line pretty much.

13 Q So let me show you a couple of photographs. This
14 is a photograph that's been marked Defendant's Exhibit
15 Number Two. And when you arrived at 3402 Myrtle, did
16 you go in the backyard?

17 A Yes, we did.

18 Q And did you see a ladder up against a palm tree?

19 A Yes, we did.

20 Q And Exhibit Two, that's what it looked like?

21 A That's right.

22 Q Okay. And you understand back here behind the
23 property is the right-of-way; correct?

24 A That's right.

25 Q There's a bike path back there?

1 A Yes, sir, it is.

2 Q And where are the SCE&G lines in relation to this
3 property?

4 A Right -- parallel with the bike path.

5 Q Parallel with the bike path?

6 A Yes.

7 Q So they run up above the bike path?

8 A Yes.

9 Q And what do we have out there -- come down here for
10 a second, Mr. Walker.

11 (He complies)

12 Q I'm going to show you what we got as Exhibit Number
13 One. And this is the ladder has been taken down, do you
14 see it?

15 A Yes.

16 Q Do you see -- do you see any wires behind the
17 property?

18 A Yes, I do.

19 Q Point to the wires, please.

20 A Here and here. (Pointing)

21 Q And what is the bottom wire?

22 A The bottom is the neutral.

23 Q What's the top one?

24 A It's the primary.

25 Q Which one is hot?

1 A The primary.

2 Q The top?

3 A The top one, yes.

4 Q And stay there for a minute, please.

5 Mr. Walker, did you ever -- you told me you went
6 and looked in the backyard, did you do anything else
7 when you were out there?

8 A No, sir.

9 Q Okay. Did you walk anywhere else outside of the
10 property and look at anything?

11 A Yes, sir. I went down the bike path.

12 Q You walked down the bike path?

13 A Yes, sir.

14 Q What were you doing walking down the bike path?

15 A Just looking up to see if I see anything visual as
16 far as a contact or anything on the wire.

17 Q It's dark, did you have lights?

18 A Yes, we got lights on the bucket truck. Flashlight
19 -- hand flashlight.

20 Q Okay. And then also -- let me show you what has
21 previously been marked as Exhibit -- I'm not sure --
22 this is in, but it's a -- this is looking down the
23 right-of-way?

24 A Yes, it is.

25 Q Okay. And you recognize the property over here to

1 the right?

2 A Yes, sir.

3 Q What are we seeing up here at the top?

4 A The primary and neutral.

5 Q Okay. And this is a visual in the daytime of what
6 you saw that night; correct?

7 A Yes, sir, it is.

8 Q Do you see in this photograph the neutral and
9 primary?

10 A Yes, sir, I do.

11 Q Okay. You can have a seat.

12 When you walked down the bike path and lit up the
13 wires with lights, did you see any trees or vegetation
14 touching the primary?

15 A No, I didn't.

16 Q Did you see any trees or vegetation touching the
17 neutral?

18 A No, I didn't.

19 Q Mr. Walker, there have been some photographs in
20 this case that look like vegetation is touching the
21 neutral, have you seen those?

22 A Yes, sir.

23 Q How do you explain that to the jury?

24 A Different angles. If you walk around different
25 angles in looking up it does seem to appear like the

1 trees are something that's of -- a vegetation is in the
2 wire until you walk around the other way then you can
3 see it clearly that there's nothing there. But on some
4 situation if you walk in different areas you would see
5 it looks like trees are touching the primary.

6 Q Did you do anything else out there other than, you
7 talk about you went in the backyard and then you walked
8 down the bike path, did you -- and you and/or Mr. Luden
9 do anything else out there?

10 A Yes, we did.

11 Q What did you do?

12 A We backed the bucket truck down the bike path. And
13 Mr. Luden who is the other journeyman, he went into the
14 bucket to get a closer visual look at anything up there
15 to see if there was any type of contact or anything
16 there is what we did next.

17 Q And Mr. Luden went up in the bucket because he's
18 the younger guy; right?

19 A That's right.

20 Q You're the older guy, so you sent him up in the
21 bucket; correct?

22 A That's right.

23 Q Thirty-one years -- or at that time 28, you get
24 that privilege?

25 A Yes.

1 Q Okay. Before Mr. Luden went up in the bucket
2 truck, did he have to put on any kind of gear?

3 A Yes, sir. He had to put on his PPE's and we had to
4 ground the truck and rubber gloves, hardhats, and safety
5 glasses, yes.

6 Q And what are you doing when he's going up in the
7 bucket truck?

8 A Putting the cones out, putting the wheel charts out
9 and getting the light adjusted for him.

10 Q And what is your job? Are you a spotter? Are you
11 doing anything for him?

12 A I'm a spotter. Pretty much to make sure he's not
13 putting himself in any type of danger. That's what the
14 ground man does. Yes.

15 Q And where did you see Mr. Luden when he went up in
16 the bucket? Where did he position the bucket?

17 A When he went up there, he took what we call a hose,
18 a rubber hose and that's for his protection so we put
19 that on the neutral where he can get up above the
20 neutral. And he went up above the neutral in between
21 the primary and the neutral and take a visual.

22 Q The bucket that Mr. Luden was in, do you know how
23 big the physical bucket he's standing in, how tall it
24 is?

25 A That bucket is about four feet.

1 Q Okay. And was -- I'm trying to understand, was the
2 bucket with Mr. Luden in it actually placed between the
3 lower wire which is the neutral and the top wire the
4 primary?

5 A Yes.

6 Q So do you know the distance between the primary and
7 the neutral on this line?

8 A It's six feet. Should be about six feet. Yes.

9 Q Six feet. The primary is six feet higher than the
10 neutral?

11 A That's right.

12 Q What did Mr. Luden tell you he saw when he was up
13 there?

14 A He didn't see anything. From what he told me that
15 he didn't see anything. Nothing was on the primary.
16 Nothing was on the neutral is what he told me.

17 Q How about damage to the primary?

18 A No damage to the primary.

19 Q Marks on the primary?

20 A No marks.

21 Q Burns on the primary?

22 A Nothing.

23 Q Rodney, I appreciate you coming in. I know this
24 isn't what you do every day. Thank you very much.

25 Please answer any questions counsel may have.

1 CROSS EXAMINATION BY MR. DUFFY:

2 Q Mr. Walker, good afternoon.

3 A Good afternoon.

4 Q You work for Dominion/SCE&G; is that right?

5 A Yes, sir.

6 Q And, Mr. Walker, you've worked there for 31 years;
7 is that right?

8 A That's right.

9 Q A company man through and through; right?

10 A That's right.

11 Q Whole life you've been with them?

12 A That's right.

13 Q And the power company you work for, they know where
14 all of their power lines are located, don't they?

15 A Yes, sir.

16 Q And when you go out to work whether it's a day or a
17 night, you know that you're going to be going and
18 working near power lines; right?

19 A That's right.

20 Q You know that they're there and you know where
21 you're going to see them; right?

22 A That's right.

23 Q You're trained to work on power lines; right?

24 A Right.

25 Q And as a result, you know, Mr. Walker, that

1 SCE&G/Dominion's power lines are extremely dangerous;
2 right?

3 A Yes.

4 Q They're deadly, will kill people; right?

5 A Not necessarily.

6 Q Voltage from a 13,800 voltage power line doesn't
7 have the potential to injure or kill someone?

8 A Only if direct contact.

9 Q So your testimony is that indirect contact with a
10 13,800 voltage power line, that can't injure you?

11 A No.

12 Q Okay. And, Mr. Walker, I know I took your
13 deposition in this case, but you would agree with me
14 that it's SCE&G's responsibility to maintain clearances
15 on its power lines; right?

16 A That's right.

17 Q That's not the homeowner's responsibility, not the
18 business owner's responsibility, that's the power
19 company's job; right?

20 A That's right.

21 Q And isn't it also true that the only way for SCE&G
22 to know whether its lines are in fact clear of
23 vegetation and trees is to do inspections?

24 A That's right.

25 Q Mr. Walker, there's been some testimony in the case

1 that linemen are out doing all kinds of inspections
2 every day, every night, they're inspecting all the
3 lines. Those are inspectors. But I want to ask you
4 something. You're not tasked with doing inspections for
5 tree trimming or clearance issues, are you?

6 A No.

7 Q And you don't know anything about SCE&G's utility
8 pruning practices, do you?

9 A No, I don't.

10 Q And you've never been asked, Mr. Walker, to keep
11 any kind of inspection records or anything else related
12 to vegetation as a lineman, have you?

13 A No.

14 Q And when you first went out to this scene,
15 Mr. Walker, you were told you needed to go and
16 investigate a contact case; right?

17 A A possible contact case.

18 Q And this was your first time investigating a
19 contact case; right?

20 A Yes.

21 Q And, Mr. Walker, are you familiar with what
22 SCE&G/Dominion's minimum stated vegetation management
23 clearances are?

24 A Sure. It's a 10/10, I think. Ten on each side.

25 Q Ten feet on either side; right?

1 A Yes, sir.

2 Q And that's the same for the primary and the
3 neutral; right?

4 A Yes, sir.

5 Q And you told Mr. Pugh a moment ago that when you
6 went out to this scene, you didn't see any contact, any
7 encroachment between SCE&G's primary or neutral; is that
8 your testimony?

9 A That's right.

10 Q We looked at some photographs in your deposition,
11 do you recall that?

12 A That's right.

13 Q And one of the photographs is this one here, do you
14 see that?

15 A Yes, sir.

16 Q Now, this jury has seen this photograph a number of
17 angles and I know we've said about photographs and how
18 different angles can depict various things. Is your
19 testimony that that, sitting here today, your testimony
20 is that that photograph with the burnt seed pod power
21 line contact, that's just Bologna or what is your
22 testimony about that?

23 A There was nothing on that neutral or primary. It
24 was nothing there.

25 Q Okay. So that's just not there. That's just a

1 fabrication?

2 A That's just a different look -- a different angle
3 of looking at it.

4 Q A picture is worth 1,000 words, isn't it,
5 Mr. Walker?

6 A Yes.

7 Q And, in fact, when I asked you about this
8 photograph in your deposition, you would agree with me
9 now that this photograph shows encroachment on the
10 lines, doesn't it?

11 A I said it looks like it.

12 Q Now, Mr. Walker, you have no idea what the trimming
13 history surrounding vegetation where this line is
14 located, you have no idea what that trimming history is,
15 do you?

16 A No, sir, I don't.

17 Q And you've never done an inspection out there to
18 determine whether SCE&G's lines are in fact clear of
19 vegetation, have you?

20 A No, sir.

21 Q That's is not the job of a lineman, is it?

22 A No, sir.

23 Q Mr. Walker, one last question. Can you think of
24 anything that would have physically presented SCE&G from
25 cutting this tree back away from the lines prior to this

1 incident?

2 A No.

3 Q No further questions. Thank you.

4 MR. PUGH: Briefly.

5 THE COURT: Redirect?

6 REDIRECT EXAMINATION BY MR. PUGH:

7 Q Mr. Walker, the tree that you saw when you went to
8 3402 Myrtle Street, this tree right here, which is in
9 Defendant's Exhibit One, is that in somebody's yard?

10 A Yes, sir, it is.

11 Q Inside of a fence?

12 A Yes.

13 Q Outside of the right-of-way?

14 A Yes.

15 Q Let me ask you this, I'm not talking about this
16 case, I'm talking about life itself. What would you
17 rather do, would you rather go out and see something for
18 yourself or would you rather look at a photograph?

19 A Go out and see it myself.

20 Q Thank you, Mr. Walker. Nothing further.

21 THE COURT: All right. Thank you very much.

22 MR. PUGH: May he be excused.

23 THE COURT: Any objection to Mr. Walker being
24 excused?

25 MR. DUFFY: No, Your Honor.

1 THE COURT: Thank you very much, Mr. Walker. All
2 right. You may call your next witness.

3 MR. PUGH: They're catching her right now. Your
4 Honor, Dominion Energy calls Ms. Jane Smoak.

5 THE COURT: All right. Ms. Smoak, if you would
6 please come around and be sworn in.

7 JANE SMOAK,
8 being first duly sworn, was examined and testified as
9 follows:

10 THE CLERK: Please have a seat in the witness stand
11 and state your name for the record.

12 A Jane Hatley Smoak.

13 DIRECT EXAMINATION BY MR. PUGH:

14 Q Ms. Smoak, my name is Steve Pugh, I'm a lawyer for
15 Dominion Energy. I assume you're familiar, you've been
16 with us a little bit this week?

17 A Yes, sir.

18 Q In fact, thank you for coming back over. Where do
19 you live?

20 A I live on Edisto Island.

21 Q And how long have you been out on Edisto Island?

22 A I moved there in 1980, so I've lived there for 39
23 years.

24 Q Are you married?

25 A Yes, I am.

1 Q I'm envious because I know the answer, what does
2 your husband do for a living?

3 A He's a self-employed commercial fisherman. We own
4 the trawlers there, J&B Shrimps for a living.

5 Q He's a shrimper for a living?

6 A He is a shrimper for a living.

7 Q Can we agree that shrimp is better than being a
8 lawyer?

9 A I would say so on most days, yes.

10 Q Who do you work for?

11 A I work for Edisto Sales and Rentals Realty.

12 Q How long have you been with them?

13 A I started working for them in the early 1980's. We
14 can never remember if it was '81 or '82, but early
15 '80's.

16 Q And to be clear, Edisto Realty at the time of this
17 incident, November 29, 2015 had the what's called the
18 Jackson House in a rental program; is that correct?

19 A That is correct, yes, sir.

20 Q This was one of a number of properties that Edisto
21 Realty was renting to vacationers; correct?

22 A That is correct.

23 Q And how long -- and you're familiar with the
24 Jackson House; correct?

25 A Yes, I am.

1 Q When I say, "Jackson House," you understand I'm
2 talking 3402 Myrtle Street?

3 A Yes, sir.

4 Q Is that how you refer to it the Jackson House?

5 A Yes, sir.

6 Q And so you've been with Edisto Realty since 1980,
7 81, what do you do?

8 A I'm the property manager and I also serve as the
9 office manager. I wear a couple of hats.

10 Q You pay bills?

11 A I do pay bills, yes, sir.

12 Q And do you pay bills of people who perform services
13 at rental properties managed by Edisto Realty?

14 A Yes, I do. Venders submit bills for me to pay on
15 the owner's behalf.

16 Q It might be a guy who fixed the dishwasher or
17 somebody who does something else; correct?

18 A Correct. Yes, sir.

19 Q And do you recall that the person performing
20 landscape services for a period of time at the Jackson
21 House was Will Stevens with Stevens Irrigation?

22 A That's correct. Yes, sir.

23 Q And you processed and paid his bills?

24 A That is correct. Yes, I did.

25 Q Let me show you what I'm going to mark as

1 Defendant's Exhibit Number Sixteen -- Seventeen.

2 (WHEREUPON, Defendant's Exhibit Number 17 was marked
3 for identification)

4 MR. PUGH: Your Honor, may I approach?

5 THE COURT: Yes, sir.

6 Q Ms. Smoak, what I've marked as Defendant's Exhibit
7 Seventeen for identification, do you recognize that?

8 A I do. I actually produced the report when it was
9 requested.

10 Q Okay. And that's --

11 MR. PUGH: Your Honor, I'd move for the admission of
12 Defendant's Seventeen into evidence.

13 MR. DUFFY: Without objection, Your Honor.

14 THE COURT: Without objection.

15 (WHEREUPON, Defendant's Exhibit Number 17 was
16 entered)

17 Q That report is a vender analysis?

18 A It is. It's a record of each payment that was made
19 to Mr. Stevens for the invoices that he submitted.

20 Q During a period of time; right?

21 A That's correct.

22 Q In a period of time when this documents runs from
23 what to what?

24 A January 1, 2012 to September 20, 2017.

25 Q Okay. And is it fair to say that the charges in

1 there, they're not uniform, it's not \$10 a week every
2 week forever; right?

3 A That's correct.

4 Q They vary?

5 A They vary. Yes, sir.

6 Q And do you know in your job at Edisto Realty why
7 one week it would be \$500 and two weeks later it would
8 be 100?

9 A I don't. I pay the bills, but I don't -- we don't
10 order the work that's done by the vendors. The
11 homeowner does that and the invoices are submitted for
12 us to pay.

13 Q Now, back to what you do at Edisto Realty. I
14 understand you're the property manager, you told us you
15 paid bills. We looked at a vendor analysis for bills
16 you pay. Do you also from time to time visit rental
17 properties?

18 A Yes, I do.

19 Q Do you also unfortunately receive phone calls from
20 people in rental properties who are complaining?

21 A Yes, I do.

22 Q Okay. And that requires you to do certain things
23 to make them not complain anymore; right?

24 A That's correct.

25 Q Okay. Have you ever gone out or visited the

1 Jackson House over the years?

2 A Yes, I have.

3 Q How many times have you been to the Jackson House?

4 A It's hard to even venture a guess on that. It's
5 certainly not on a weekly basis, but I have been there
6 as needed many times.

7 Q There are -- strike that. Have you visited the
8 Jackson House or had you visited the Jackson House
9 before Mr. Larios fell on November 29th of 2015?

10 A Yes, I have.

11 Q And during any of those visits to the Jackson House
12 before Mr. Larios fell, were you able or did you see any
13 power lines around that property?

14 A Yes. You see them every time you go to the
15 property.

16 Q And where are the power lines at that property?

17 A The power lines boarding two of the property -- two
18 sides of Mr. Jackson's property. There's a power pole
19 at the corner of Myrtle and Louis Street. That is --
20 it's a fairly large pole and includes a transformer that
21 runs from Myrtle Street towards Palmetto Boulevard and
22 intersects the bike path where the other power line
23 crosses.

24 Q And when you -- in the times that you visited the
25 Jackson House when you went out there, were you going to

1 that property to look for power lines?

2 A No, I was not.

3 Q You were going there for some other reason?

4 A That's correct.

5 Q I asked you earlier about tenant complaint calls,
6 do you remember that?

7 A Yes.

8 Q Do you in your work for Edisto Realty, do you
9 recall ever receiving repetitive calls from tenants
10 renting the Jackson House about electrical service
11 issues, power outages, things like that?

12 A I never remembered that. And as a matter of fact,
13 I reviewed the work orders in our reservation software
14 system just to be sure and there are no work orders for
15 the Jackson House for power outages from 2012 to the end
16 of 2018.

17 Q Ms. Smoak, I think that's all the questions I have
18 for you. Thank you very much. Sorry it's late in the
19 day.

20 A That's okay. Thank you.

21 THE COURT: All right. Cross?

22 MR. BUCKNER: Yes, Your Honor, briefly.

23 CROSS EXAMINATION BY MR. BUCKNER:

24 Q Ms. Smoak, good afternoon.

25 A Hello.

1 Q You said that you had visited the property of 3402
2 Myrtle many times. Would you say that's dozens of times
3 probably?

4 A Probably more than dozens of times.

5 Q Would you say it's close to 100 times?

6 A It has not been 100 times.

7 Q As a property manager, one of your jobs is when you
8 get calls from folks that are renting you got to come
9 down and do all kinds of different stuff; right?

10 A That's correct. Yes.

11 Q All right. And in the dozens of times that you've
12 been there you've said that you knew about these power
13 lines back behind the property; right?

14 A I saw the power lines.

15 Q Do you know how many times Jose Larios had been to
16 the property at 3402 Myrtle Street?

17 A I do not know how many times he personally had. I
18 know Mr. Stevens had a contract with Mr. Jackson that
19 they were there regularly.

20 Q Okay. Just specific to Mr. Larios, you don't know
21 how many times he had ever been to 3402 Myrtle?

22 A I do not, no.

23 Q And did you know that Marion Whaley went out to the
24 scene on November 29, 2015, he didn't see any power
25 lines?

1 A Yes, sir.

2 Q And did you know that OSHA conducted an
3 investigation two days after Mr. Larios' tragic death
4 and they didn't find any power lines?

5 A Yes, sir.

6 Q And did you know that Mr. Larios and his friend
7 Pedro Abraham inspected the property at 3402 Myrtle
8 before they began their job on Sunday, November 29th and
9 they didn't see any power lines?

10 MR. PUGH: Objection. Speculation as to what
11 Mr. Larios saw or didn't see.

12 THE COURT: She can testify if she knows. I mean,
13 if she doesn't know, she doesn't know.

14 A Could you repeat the question, please?

15 Q Sure. Did you know or do you know that Mr. Larios
16 and Mr. Pedro Abraham inspected the premises of 3402
17 Myrtle Street before they began their work on November
18 29, 2015 and they didn't see any power lines?

19 MR. PUGH: Same objection. Speculation.

20 THE COURT: Overruled.

21 A I don't have anyway of knowing if they inspected
22 for -- the property before they began work.

23 Q Ma'am, do you have any records, Mr. Pugh asked you
24 some questions about the -- this property being rented
25 and whether there were any reported outages. Do you

1 have any documents that you can show the jury here today
2 to confirm whether this property was in fact being
3 rented the week of November 29, 2015?

4 A I don't have those reports with me, no, sir.

5 Q Do you have any reports with you here today that
6 you can show the jury to confirm that this property was
7 even being rented in October of 2015?

8 A As a matter of fact, Hurricane Matthew passed
9 through the middle of October 2015. And I was actually
10 at the property on numerous occasions following that.
11 Mr. Jackson's house has a ground level bedroom that had
12 about -- substantial water and mud damage and
13 Mr. Jackson did ask me to go on his behalf on several
14 occasions to meet with the folks that were working on
15 the restoration of that room. And I believe that was
16 just a couple of weeks before this accident occurred.

17 Q Hurricane Matthew in October of 2015?

18 A That's correct.

19 Q Okay. But for the first week, second week, third
20 week, and the fourth week of November of 2015, is there
21 anything you can show the jury to confirm that anybody
22 was renting the Jackson property at 3402 Myrtle?

23 A If I had access to my computer I certainly could
24 pull up the reservation software system and look.

25 Q All right. Have you done that throughout this

1 case?

2 A No, I have not.

3 MR. BUCKNER: No further questions, Your Honor.

4 THE COURT: Anything further?

5 REDIRECT EXAMINATION BY MR. PUGH:

6 Q Ms. Smoak, when you went to the Jackson property in
7 October of 2015, did you see power lines?

8 A Yes, I did. We parked directly underneath the
9 power line when you pull into the driveway of the house.

10 Q Could you see power line behind the property in the
11 right-of-way?

12 A Yes, I could.

13 Q Thank you, Ms. Smoak, no further questions.

14 A Thank you.

15 THE COURT: Thank you very much, ma'am.

16 MR. BUCKNER: Your Honor, just briefly.

17 THE COURT: I'm sorry.

18 RECROSS EXAMINATION BY MR. BUCKNER:

19 Q Ms. Smoak, you had referenced Hurricane Matthew
20 coming to Edisto?

21 A Correct.

22 Q Are you sure that that wasn't a different storm?

23 A I'm completely sure it was Hurricane Matthew.

24 Q Do you remember the renters that you spoke with in
25 October of 2015 at the Jackson property?

1 A No, I do not.

2 Q Okay. No further questions.

3 THE COURT: Thank you very much, ma'am. You may
4 step down. All right. We're going to break at this
5 time. Ladies and gentlemen, tell your family, friends,
6 and loved ones to hang in there. You still can't talk
7 about it, but I'm just going to give you my -- don't
8 hold me to this because I anticipate you'll have this
9 case for your consideration tomorrow. And so just ask
10 them to be patient one more day.

11 Because as I told you before when we started, when
12 this case is over you can talk about it all you want.
13 You can share with them whatever they want to know. But
14 until that time, just continue at least one more evening
15 to do everything you can to protect your ability to be
16 fair and impartial. Try to get a goodnight's rest.

17 I'm going to ask you if you would, I'm going to give
18 you a little bit of a break in the morning as far as --
19 I'm going to ask you to be here at 10 o'clock. Okay.
20 So if y'all will get here at 10 o'clock we will get
21 started once everybody's present. Everyone else, please
22 remain where you are and members of the jury, we'll see
23 you tomorrow at 10 o'clock.

24 (The jury left the courtroom at 5:28 p.m.)

25 THE COURT: Is there anything that we need to take

1 up? Now, what I was going to do, I had them come in at
2 10. Mr. Pugh, you're going to decide on in the evening
3 whether or not you have any additional witnesses?

4 MR. PUGH: Not the weekend, Judge, tonight.

5 THE COURT: What did I say, weekend? This evening
6 to see if you have anything additional.

7 MR. PUGH: I will.

8 THE COURT: If you do, of course, we'll do that. If
9 you don't, then -- so I'd -- but I'd like for us
10 regardless of whether you have another witness or not to
11 come at 9 so we can talk about the charge to make sure
12 that everything is like it needs to be.

13 And then if you have another witness, we'll put them
14 up. If you don't, then we'll take up motions at the
15 close of the evidence. Once we bring the jury out, I'll
16 recognize you for your next witness. Let you rest on
17 the record and then we'll move in.

18 Can y'all give me some -- not lawyer time, but like
19 real people time, how long you think you might need to
20 close?

21 MR. APPLGATE: Before I forget and I'll answer that
22 question. But I don't need how many people it is, but
23 if I can ask to get some idea just so we can consider
24 any rebuttal witness, just an indication we've got some
25 idea are you putting up witnesses or not and then we'll

1 know when people might need to be here. Just so I know
2 if I got to put somebody up, maybe we can know tonight
3 if you're going to put up a case, additional witnesses.
4 I don't need to know who, but just say we got additional
5 witnesses, that would be great.

6 And then as to that question, I don't want to get in
7 trouble, 40 minutes would be probably -- hopefully I
8 won't go that long.

9 THE COURT: Does that sound reasonable?

10 MR. PUGH: Sure. Yes, sir.

11 THE COURT: And then, of course you'll get some
12 rebuttal time there.

13 MR. APPLGATE: An hour.

14 THE COURT: I think we might not want to do that. I
15 don't think these folks will be very happy.

16 MR. APPLGATE: I won't do that.

17 THE COURT: That sounds good. All right. Now, let
18 me tell you what -- y'all all have at your respective
19 places where you are this evening have access to your
20 e-mails right? JD is probably going to send you a draft
21 of a charge if you want to look at it. It is just a
22 draft.

23 I will tell you that it's greatly pared down from a
24 lot of the stuff that was submitted. Because a lot of
25 the stuff that was submitted, it's all good law, but it

1 came out of Judge -- a lot of it came out of Judge
2 Anderson's book which is wonderful. It's just, you
3 know, Judge Anderson loved to take what would typically
4 take a 1,000 words to explain, he liked to use 2500. So
5 we've taken those requests and we've kind of pared it
6 down to -- and I don't want it to be too brief.

7 I mean, I want to get the stuff in that y'all want
8 in, but I think we've got the law in here. But, anyway,
9 just we wanted to send that to you just give you an idea
10 to kind of look at it ahead of time. And then, of
11 course, we'll talk about it in more detail tomorrow.

12 Is there anything else that we need to deal with
13 this afternoon?

14 MR. APPLGATE: (Nodded)

15 THE COURT: Okay. We'll -- if you would, guys, let
16 us start at 9. Okay. So we're going to start at 9 and
17 as far as the jury -- going over the jury instructions
18 and that kind of stuff and then with the jury we'll
19 start at 10. And if Mr. Pugh has additional witnesses,
20 we'll start there. If not, we'll start with closing
21 arguments. All right.

22 (Court was adjourned at 5:34 p.m.)

23 THE COURT: Y'all, please correct me if I've missed
24 something or left something out. The Machin charge
25 which wasn't in there and that will be in there and that

1 will be in there verbatim from the case. Okay?

2 MR. BUCKNER: Yes, Your Honor.

3 THE COURT: So I'll use that language. The life
4 expectancy table and the charge regarding that, that
5 will be put in there.

6 All right. Then this -- these three charges with
7 regards to the pain and suffering, the survival damages,
8 and then, of course, the life expectancy table which we
9 just discussed will -- that will be in there. We will
10 add that in there. We're going to add back in there
11 which was my fault it came out, but just the language
12 charging the jury that about whether the definitions of
13 whether the actions were reckless, willful, and wanton,
14 and the law as it relates to that.

15 Under that OSHA grouping, we're going to take out
16 that first paragraph, but leave the second paragraph as
17 it relates to employee. We're going to add -- go ahead.

18 MR. BUCKNER: I think, Your Honor, we also agreed
19 that we would move that.

20 THE COURT: Correct. Move that down to the -- down
21 in that negligence area where all that stuff is.

22 MR. BUCKNER: Yeah. Just after the elements of the
23 duty of power companies and the rest of the elements of
24 our causes of action. I'm not particularly concerned
25 with where, we just wanted it moved back until the end

1 where the rest of more affirmative evidence type stuff
2 is placed -- affirmative defense. Sorry.

3 THE COURT: Right. Okay. To the direct and
4 circumstantial evidence charge, I'll give you an example
5 of the, you know, if you look outside your window and
6 it's snowing, you can see it snowing. And if it's clear
7 and you go to bed and you wake up and there's snow and
8 all that stuff.

9 I'm going to add the language regarding who are
10 lawfully and foreseeably working in proximity of the
11 lines. And I'm going to add the charge about the
12 ignorance of the law that we discussed.

13 Now, I just kind of went over broadly the things we
14 discussed. If there's -- oh, and I'm not going to
15 charge the assumption of risk language that was in
16 there. So -- and I know that there's -- so there's
17 probably some objections or exceptions that y'all might
18 want to put on the record. If there are, let's go ahead
19 and do that while we're waiting for the other juror.
20 Okay. Well, he just arrived. Let's see, we've got to
21 do it anyway.

22 MR. BUCKNER: All right. Your Honor, plaintiff did
23 object during the charge conference to the inclusion of
24 the OSHA charge generally. I know Your Honor has --

25 THE COURT: Okay.

1 MR. BUCKNER: -- the OSHA general duty charge. I
2 know Your Honor has moved that charge and removed the
3 first paragraph. However, we do not think it should be
4 in the Court's charge to this jury at all. We think
5 that all of these issues are subsumed within the Machin
6 charge itself. Obviously, we have an empty chair
7 defense in this case and we think that any inclusion of
8 a specific federal regulatory standard that applies to
9 employers not employees should not be charged the jury
10 particularly in this case where there's evidence that
11 Mr. Larios personally violated nor could he any OSHA
12 standards.

13 We obviously think that if the Court were to permit
14 that the plaintiff would like to have charge to the jury
15 specific standards from ANSI and other federal
16 regulatory things. But just for purposes of the record
17 and preservation, we think that should be subsumed
18 within Machin.

19 THE COURT: All right. Anything further from the
20 plaintiff then on the charge?

21 MR. BUCKNER: And, Your Honor --

22 THE COURT: Yes.

23 MR. BUCKNER: -- the inclusion that Mr. Pugh argued
24 for about being lawfully and foreseeably present within
25 the power lines, we had noted an objection to that, the

1 use of the term lawfully and foreseeably as it lies to
2 Mr. Larios. Obviously, there's no language that he's a
3 trespasser, but the argument there we think the only way
4 that charge would be appropriate is if Mr. Larios --
5 some evidence that Mr. Larios had actual knowledge of
6 the lines. Obviously, we have evidence that he wasn't
7 aware and evidence that he should have been aware. But
8 without evidence that he actually was or any indication
9 there should be no argument that he was not lawfully and
10 foreseeably present.

11 And just in summary, there's no evidence that he was
12 not or lawfully there on. We think that confuses the
13 issue of coming onto the premises itself.

14 THE COURT: Okay. We certainly note those
15 exceptions. From the defense then?

16 MR. PUGH: I apologize.

17 THE COURT: It's all right.

18 MR. PUGH: Briefly, Your Honor. We have submitted
19 charges weeping defendant Dominion Energy South Carolina
20 had submitted charges on the assumption of risk.
21 Secondary imply to assumption of risk and trespass. And
22 it is our understanding Your Honor does not give those.
23 We would simply take exception to that.

24 THE COURT: All right, sir.

25 MR. PUGH: And I think the rest is okay.

1 THE COURT: All right. We'll certainly note that
2 objection and exception for the record. Mr. Buckner?

3 MR. BUCKNER: One last thing, Your Honor, that we
4 just wanted to place on the record that we think is by
5 consent and agreement is that defense counsel has
6 represented that he will not be going into Mr. Brill's
7 prior exclusion from the case in Georgia under a Daubert
8 motion. He's certainly entitled to talk about arguments
9 that were reliability and methodology specific to this
10 case. But I think we have a stipulation that he's not
11 going into other cases or what happened in a prior case
12 regarding Mr. Brill.

13 THE COURT: I think that's correct. Do you agree
14 with that, Mr. Pugh, that we discussed?

15 MR. PUGH: I do.

16 THE COURT: All right. Okay. Are we set up? Do
17 y'all need any -- I don't know if you're going to use it
18 that's fine, but if you're not, we can maybe get rid of
19 that tripod there? You may need that though if you're
20 going to use your demonstrative evidence.

21 MR. APPLGATE: It might be helpful if I'm saying
22 something. I don't know.

23 THE COURT: Yeah. All right. Now, Mr. Pugh, if I'm
24 understanding Dominion's position is that you don't have
25 any further witnesses?

1 MR. PUGH: Correct, Your Honor.

2 THE COURT: All right. So Dominion would be
3 resting; is that correct?

4 MR. PUGH: Correct.

5 THE COURT: Well, at this point before we bring the
6 jury out, let's go ahead and take up the motions at the
7 close of the evidence. And, Mr. Applegate, my
8 understanding is there's no rebuttal testimony from the
9 plaintiff?

10 MR. APPLGATE: Correct, Your Honor.

11 THE COURT: Okay. So let's take up -- then the
12 evidence is closed, let's take up the motions at the
13 close of the evidence.

14 MR. PUGH: Thank you, Your Honor. May I proceed?

15 THE COURT: Yes, sir.

16 MR. PUGH: Your Honor, we would renew -- defendant
17 Dominion Energy South Carolina would renew its motion
18 for directed verdict pursuant to Rule 58. I outlined
19 the grounds for that in detail I believe yesterday.
20 They're all running together, Judge, I apologize.

21 THE COURT: Yes, sir.

22 MR. PUGH: And I won't bore you with all the details
23 of that again, but briefly, it is the position of the
24 defendant that plaintiff has failed to establish that
25 plaintiff received or that Mr. Larios received an

1 electrical shock or that Dominion Energy had the duty to
2 Mr. Larios in view of the fact that he was improperly
3 and unlawfully in proximity to the energized line and,
4 therefore, Dominion had no duty to him. It is a contact
5 designed unforeseeable to Dominion. Dominion did not in
6 any event proximately cause Mr. Larios' injuries, which
7 were instead proximately caused by the intervening and
8 superseding negligence of Mr. Larios, his employer
9 Stevens, or both. Dominion Energy is not liable based
10 on the evidence of Larios' overwhelming negligence and
11 Larios' primary assumption of risk.

12 That Dominion would also -- part of the plaintiff's
13 case was that there was a failure of a duty to warn in
14 this case while Your Honor's is not charging as a
15 standard cause of action, Mr. Brill conceded from the
16 witness stand that there is no duty to warn with regard
17 to the distribution lines that were constructed in the
18 right-of-way. There was no separate duty to warn those.

19 Additionally, Dominion would take the position that
20 there is no credible evidence with regard to the
21 survival cause of action, conscious pain and suffering.
22 I believe -- I think we handled this, but let me just
23 put it in the record that there is no evidence with
24 regard to funeral and medical expenses and, therefore,
25 that should not be charged to the jury in anyway.

1 Your Honor with regard to the matters upon which we
2 rely, we had filed a memorandum brief in support of our
3 motion for directed verdict. We would rely on that with
4 the supplemental submission and argument that I've made
5 this morning.

6 THE COURT: All right, sir. Now, I'm going -- I
7 think we did mention --

8 MR. PUGH: Oh, I'm sorry.

9 THE COURT: Go ahead.

10 MR. PUGH: Your Honor, we also submit that there is
11 no clear and convincing evidence with regard to the
12 issue of punitive damages even being submitted to the
13 jury let alone consideration of those potential damages.

14 THE COURT: All right, sir. I think when we talked
15 back in chambers I agreed with you and I don't intend to
16 charge funeral expenses and those items where there's no
17 evidence --

18 MR. PUGH: Funeral and medical, yes, sir.

19 THE COURT: -- in support of that. The other
20 matters I'm going to respectfully deny. I think the
21 jury issues in factual issues that the jury needs to
22 resolve.

23 Mr. Applegate, anything from the plaintiff?

24 MR. APPELATE: No, Your Honor.

25 MR. PUGH: Your Honor, before we bring the jury out,

1 I know this is silly talk, but I think we need to, if
2 you didn't already do it, I think we need to do it in
3 the record that you have denied the defendants at that
4 time was a joint motion for view of the premises?

5 THE COURT: Correct. Yeah. I thought we may have
6 done that, but we might not have. There was a motion --
7 a joint motion from the defendants at the time that the
8 case began to have the jury go and to view the premises.
9 The concern both, I think the plaintiff expressed as
10 well as the Court is concern that it does appear that
11 the premises is not in the same condition as it was at
12 the time of the incident four years ago -- four or five
13 years ago. That trees have been removed. Vegetation
14 has been cut. And so the concern and the issue was that
15 with the premises not being in the same condition as it
16 was at the time of the incident that it would be
17 prejudicial for the jury to view a scene that doesn't
18 fairly and accurately represent the property as it was
19 at the time of the incident.

20 So I respectfully deny that motion to send the jury
21 to the scene.

22 MR. PUGH: I think that's all the housekeeping
23 matters, I think.

24 THE COURT: Is everybody ready then?

25 MR. APPLEGATE: Yes, Your Honor.

1 THE COURT: Bring the jury in, please.

2 (The jury entered the courtroom at 11:02 a.m.)

3 THE COURT: Ms. McAlhaney, if I could get you to
4 step around here and sit on the end here because I am
5 going to appoint you as the forelady of the jury. All
6 right. So if you would do that.

7 Let me explain to you folks just briefly. Thank
8 you, ladies and gentlemen, y'all may have a seat.
9 Anytime we gather, have a group of folks that gather
10 together as you are here in the jury, we have found that
11 it is just more efficient to deal with one person on
12 behalf of the jury as a whole. And so, in other words,
13 Ms. McAlhaney, your role as the forelady would be to be
14 the communicator between the jury panel and the Court.
15 So if anytime during your deliberations if you have any
16 questions at all, you'll give that to Ms. McAlhaney,
17 she'll write it out and send it to me. Depending on the
18 question, I may just write my response back and send it
19 back to you or I may bring you out as a panel and
20 respond to you. But that's the main role of the
21 foreperson.

22 I will tell you this, when we get to that point,
23 your verdict in this case, in all cases, tried in this
24 court, your verdict must be unanimous. In other words,
25 you must all agree on the verdict whatever it is. And I

1 tell you that to simply say this, because of that fact,
2 you're all equal members of the jury. The foreperson's
3 a vote, opinions, or whatever, carry no more weight than
4 that of anyone else on the jury. You are all equal
5 members of the panel. And I always encourage jurors to
6 listen carefully to each other. Do it with an open
7 mind. Be willing to hear and listen to other people's
8 thoughts and opinions and weigh that against your own
9 thoughts and opinions. But I wanted you to understand
10 that your verdict must be unanimous so that you
11 understand that you are all equal members of the jury
12 when we get to that point.

13 Now, if you'll recall when we broke yesterday we
14 were on the defenses case and so at this time I'll
15 recognize Mr. Pugh on behalf of the defense.

16 MR. PUGH: Thank you, Your Honor. May it please the
17 Court. At this time, defendant Dominion Energy South
18 Carolina would rest.

19 THE COURT: All right. Thank you very much, sir.
20 Folks, at the close of the plaintiff's case you recall I
21 had to -- we broke for the evening. It just happened to
22 break at that time and I told you that I had to take up
23 matters of law at the close of the plaintiff's case.
24 Well, I have to do the same thing at the close of the
25 defense's case.

1 Now, Mr. Pugh was kind enough to let the Court know
2 before you came out that the defense would be resting.
3 And so rather than now send you back into the jury room,
4 take up those matters of law, and bring you back out,
5 because he let me know ahead of time that the defense
6 would be resting, we've gone ahead and taken care of
7 those matters. So that's all done.

8 So we are now reached the portion of this trial
9 where the attorneys are going to have an opportunity to
10 argue to you or make their final arguments or final
11 summations. What I told you when we started this trial
12 regarding what the attorneys share with you, I told you
13 with their opening statements that what they share with
14 you is not evidence. It is their beliefs or their
15 contention as to what they believe the evidence has
16 shown.

17 The evidence in this case that you will have to
18 decide this case is the testimony from this stand and
19 any exhibits that came in during the course of the
20 trial. That's the evidence in this case that you will
21 have to decide this matter. But this is the attorneys'
22 opportunity to argue to you what they believe that
23 evidence has shown. So it's important that you listen
24 carefully to them as they present to you their closing
25 remarks.

1 Now, the plaintiff in every case that comes into
2 this court has the burden of proof and so they will go
3 first with their closing remarks. Once they've
4 concluded then the defense will have an opportunity to
5 address you with their closing argument. And then if
6 the plaintiff chooses to they can reserve time to rebut
7 or to address you one final time.

8 Once they've concluded their remarks to you, I'm
9 then going to give you the law that is applicable in
10 this case and then you will have the case for your
11 consideration. Okay. So, please listen carefully and
12 give the attorneys your undivided attention as they
13 address you with their closing remarks.

14 THE COURT: Mr. Applegate?

15 MR. APPLGATE: Thank you, Your Honor.

16 Ladies and gentlemen, good morning. Thank you for
17 being here and thank you for everything you've done this
18 week. This is an extremely important day for Mr. Larios
19 and his family. And as this case is now coming to a
20 close, my job is coming to an end. Soon the case is
21 going to be passed from me to you and the decisions will
22 be for you to make.

23 As you know, you took an oath earlier this week to
24 come here to fairly and fully listen to the evidence, to
25 hear everything we had to say to judge it and to make a

1 decision. And today you will get to finally get in that
2 room and sit down and talk about this and flush this out
3 and make a decision about what is right. About what the
4 evidence showed. Did the plaintiff meet their burden of
5 proof? Did the plaintiff demonstrate the damages to
6 this family? That will be a decision for you to make.

7 Now, I think earlier in the week Judge Russo told
8 you as he explained to you a little bit about the law.
9 That this was not like what you see on TV. This was not
10 like some sort of legal drama. I'd submit to you that
11 over the course of this week, it's been a very dramatic
12 situation that we have been together, we have
13 investigated the life and death of Jose Larios. We've
14 gone through this very intensive scene analysis to
15 determine exactly what happened on this day. We've
16 laughed together. We've had some fun with some props
17 and we've cried together. And now we're faced with the
18 most serious of conditions. The most dramatic of any
19 type of legal situations that you can be a part of.

20 So I'd ask you as we go through this time, I only
21 have a few minutes to make these last remarks. Bear
22 with me. Be laser focused. Because the job now is
23 yours. You have been patient. You've been listening
24 and we've been watching you. Paying attention.
25 Writing, taking notes some of you. Looking, analyzing

1 the evidence. And that's what Mr. Larios wanted you to
2 do.

3 And so now it's the time for you to actually listen
4 to the evidence and think about it. And my job in this
5 last segment of my job is to help a little bit go back
6 through and remind us of what we did for three days of
7 evidence. What did we hear. And make sure when you go
8 back into that jury room you have the opportunity to
9 think, oh, yes, I remember that. Oh, yes, I remember
10 this. So you're able to do your job because your job is
11 such a significant one. It is a significant privilege
12 that we have as American's to sit in this panel. And it
13 is a very significant burden because you are the
14 conscious of the community. You are going to be the
15 ones to decide what is right and what is wrong.

16 Judge Russo is going to tell you what the law is.
17 He is going to explain to you all the different facets
18 of the law. And then your job is to sit there and apply
19 the law to these facts. And that is the hard part.
20 That is the difficult aspect of this job.

21 So, again, I'd ask you to be focused. The beginning
22 of the week I told you that we were going to put on a
23 case. That we were going to prove that SCE&G had a duty
24 and that they breached that duty and that that caused
25 the death of Jose Larios. And I told you I'd put on

1 evidence to prove all of these things. I believe I have
2 met my burden. I believe that my team has come and
3 shown you with all the evidence we've presented that
4 this case is clear. That there is nothing to decide
5 here today accept for the damages and the amount that we
6 need to provide to this family and that's the decision
7 that you need to be focused on.

8 But, we know that SCE&G is going to come in here and
9 they're going to sit here and have their opportunity to
10 talk and they're going to do what they've been doing all
11 week which is to not put in evidence, but to cloud your
12 mind. To give you distractions. To put a little smoke,
13 little mirrors here. Maybe this, maybe that. Maybe
14 it's a bee sting, maybe it's a lightening, who knows
15 what it is.

16 I want you to focus on the evidence. Let me talk
17 about that for a moment. Remember the rules that we
18 talked about at the beginning of the week. And
19 importantly remember these are not my rules. I did not
20 make them up. This is what you will understand the law
21 to be. SCE&G must keep the public safe from their high
22 voltage power lines. SCE&G must keep the power lines
23 clear of the trees and vegetation through routine
24 inspections and trimming.

25 You heard this from the mouth of SCE&G. Mark

1 Branham came in here and testified. We have superior
2 knowledge. We know that these electric lines are
3 extremely dangerous. We're in a unique position. Okay.
4 This is a company that makes incredible amounts of money
5 focused on this one privilege that they have. And
6 because of that unique special knowledge they have in
7 training, they have a very large responsibility and they
8 must comply with this. Because as we know if they don't
9 comply with these rules, they don't follow these rules,
10 what happens? People die.

11 We even saw some of their own witnesses get up to
12 talk about when they're trained by their own employer
13 when that's their job to go climb up on a power line.
14 They're trained about how dangerous. Those people get
15 hurt. Those people get hurt and that's why again their
16 burden is so large and their responsibility is so
17 significant.

18 We all remember the scene of the accident. I think
19 we remember and I've gone through this and we've looked
20 at these pictures over and over again and you're going
21 to be able to take these pictures back with you in the
22 jury room and be able to consider all the evidence that
23 we've put forth.

24 Now, again, remember these rules very clear. This
25 is from their own PowerPoint. Remember you'll have this

1 PowerPoint. This is not a PowerPoint that I made, this
2 is a PowerPoint that SCE&G created for themselves to
3 provide to Edisto Island. They provide this to
4 everyone. That they provided to this community
5 specifically and they laid out specifically what their
6 responsibility is.

7 You also can see their responsibility to follow-up,
8 to do some work, to inspect, to continue -- it's a
9 continuous duty. This is something they must continue
10 to do. They can't as they suggested just go in 2013 and
11 2018, 2023 do their trimming and walk away. That's not
12 complying with the law. That's not meeting their
13 responsibility. They must continue to make sure.
14 Because as soon as they stop inspecting, as soon as they
15 stop making sure, then we have a problem.

16 You seen the American National Standards Institute
17 records and specifically as we recall:

18 "Trees directly under and growing into utility
19 spaces should be removed or pruned."

20 What we know in this case, there was no attempt to
21 remove this tree or prune this tree so this accident
22 happened. The only evidence we have is that after
23 Mr. Larios died, after he was shocked, that SCE&G came
24 in and chopped the top of the tree off. That's the only
25 removal we've seen after Mr. Larios was shocked and fell

1 to his death.

2 SCE&G did nothing. After this 2013 cycle trim, they
3 did nothing. Zero mid-cycle trimming. Zero
4 inspections. Zero effort that they can demonstrate to
5 us at all.

6 We talked a lot about the mechanism of injury and
7 you were able to hear Mr. Brill come and tell you how
8 this worked. How this service works from the primary to
9 the neutral coming from the line through his body and
10 out the other side. Okay. He was -- this is an
11 electrical engineer who's looked at hundreds and
12 hundreds of these events. He explained very clearly.
13 We saw Lewis Tree documents which showed the same
14 circuitry. This is exactly the kind of thing that SCE&G
15 knows and is aware that can happen. And this is exactly
16 the problem they're supposed to make sure doesn't
17 happen. There's no question.

18 We've listened to the OSHA investigators, from the
19 coroner's office these are people who are especially
20 trained to investigate accidents. The independent
21 people, the OSHA investigators, the coroners, they don't
22 work for SCE&G. They don't know the Larios family.
23 These are the people who go out and do the
24 investigations and make the decisions.

25 You've heard from the pathologist who works at MUSC

1 who has no participation in this event. She has said
2 after hundreds and hundreds and hundreds of autopsies,
3 she is very firm on her opinion. Autopsy final report.
4 That the electric shock caused Mr. Larios to fall. I
5 want to remind you it's important because a reminder of
6 that evidence that she raised in her testimony here's to
7 put it up. What happened to him when he fell? I want
8 y'all to be thinking about this today. Seven broken
9 ribs, laceration to the liver and kidneys, back broken
10 in four places, 15 hundred milliliters of internal blood
11 loss. We'll talk more about that later when we start
12 talking about damages.

13 But, again, I want you to think about the electric
14 shock. The defendants had every opportunity to bring in
15 someone. A pathologist, a doctor, someone to tell you
16 something different than the one person, who is a
17 doctor, who actually investigated this seen who came and
18 told you, this is a shock. This is consistent with
19 everything I've seen. There are cases and you have the
20 engineering experts who say, ladies and gentlemen, we
21 have classic cases of electrocution where there's an
22 entry and exit wound. But we also heard the testimony
23 that, yeah, we have cases where people are struck by
24 lightning and you cannot even tell. We have cases
25 where there's an entry wound or an exit wound, one or

1 the other.

2 So when you go back into the jury someone asks you
3 this question just remember the evidence. Remember the
4 evidence that we put forth and remember the defendants
5 did not bring anyone credible to dispute the evidence
6 that was in the record. The evidence of the
7 investigation of this accident.

8 The defendants, again, and I want to remind you of
9 this in their case. They're going to bring up various
10 things and I want when you go back there and you think
11 about these things. This cloud. This smoke. I want
12 you to think about it. The OSHA investigation. They've
13 talked about OSHA all week. I hesitate to even bring it
14 back up. I think we heard a lot about it. What made
15 the employer responsibility may be.

16 Now, where was the OSHA investigators? Where are
17 the people who made these claims? Why weren't they
18 here? Ask yourself why the defense did not bring these
19 people here. Why did the defendants not bring the
20 employer here to testify for you? That's a question you
21 need to ask and you need to think about that as you
22 deliberate in this case.

23 Quite frankly, after two and a half years of
24 litigating this case, four years after the death of Jose
25 Larios, we have been fighting and litigating this case

1 and SCE&G has refused to take any responsibility despite
2 overwhelming evidence of exactly what happened. Despite
3 what is very clear about their own obligations and
4 responsibilities and their violations.

5 Were those power lines near by? That's not --
6 that's not an issue of question. These are just the
7 facts. I was a little disappointed when we saw what the
8 defendant did. That they just rested this morning. I
9 was somewhat surprised. The defendants brought three
10 witnesses. They brought an expert, Mr. Eric Jackson.
11 When Mr. Jackson came in here and again opined that this
12 event did not take place. And we went through each and
13 every single element of the facts in this case asking
14 him what he considered and how he based his opinion and
15 we heard things about snakes and bee stings.

16 He said it didn't happen. But if you look back
17 again when y'all are looking at it, I want to remind you
18 and you'll hear it again from the Judge, but remember
19 what I told you on Tuesday morning, preponderance of
20 evidence. In this civil case we're supposed to decide
21 did the plaintiff make it to the 51 yard line.

22 If you looked at the scales of justice and we put
23 some weight on one side and some weight on the other, if
24 the scales tilt ever so slightly, that's what the Judge
25 will charge you. Ever so slightly for the plaintiff,

1 then you have a finding for the plaintiff Mr. Jose
2 Larios. Okay. Look at the sales as it relates to this
3 one issue. You have evidence of electrical shock. You
4 heard from Mr. Brill. You heard from the pathologist
5 herself. You heard from Marion Whaley, the coroner who
6 investigated this accident. You heard from Richard
7 Carter, chief deputy coroner. You heard from the only
8 eyewitness in the whole case, Pedro Abraham. And you
9 heard evidence from Beverly O'Brien about what she found
10 on the ground, about the burn marks in the burnt fruit
11 pods.

12 And here we go, we have this one witness who we know
13 was paid to come in here who works for utility companies
14 and tell you that he ignored all the evidence. He wants
15 you to be blindfolded. Again, what does SCE&G want you
16 to ignore? What did Mr. Jackson ignore? We went
17 through that. We went through that with him in detail
18 yesterday. Again, the scream. He has no explanation or
19 credible explanation for that. The burnt palm frond and
20 the seed pod they were talked about all of the different
21 witnesses who investigated the scene. He wasn't aware
22 of it. The burn on the chainsaw. He looked on Google.
23 In his opinion based on his -- Craig's List, he
24 determined that, no, I don't think the chainsaw had
25 anything to do with it. He ignored the evidence that

1 was presented in the case. The electrical burn on the
2 abdomen. He's not a doctor. But he's going to tell you
3 that he's seen some shock cases and that that's not it.
4 It doesn't meet his criteria.

5 Again, remember the confusion about direct
6 contact/indirect contact. Plaintiff hasn't put on a
7 case that this is a direct contact case. Plaintiff
8 never suggested that Mr. Larios laid the chainsaw onto
9 the primary power line. That has been very clear.
10 Marion Whaley, the second witness in the case came up
11 and Marion Whaley told you how he in his investigation
12 determined that fruit pod, he cut on a fruit pod and it
13 electrocuted him. That was at the very beginning of the
14 case. The witness who has no affiliation to any party
15 to the case.

16 The burn mark on the power line. Coincidence?
17 You'll need to decide. You'll need to consider whether
18 that is just a great coincidence. Or the fact that
19 SCE&G found it important to remark specifically to the
20 investigators of this case, there is a burn mark on the
21 primary power line. What does that indicate? It
22 indicates something. Smoke in the tree. The burnt
23 smell on his flesh. The ark flash testified to.
24 There's overwhelming evidence.

25 I want you to remember things that defense counsel

1 suggested in their opening as you go back. They said
2 some things. They said you're going to hear evidence
3 about the many, many times that Mr. Larios was on this
4 property. We didn't hear evidence about that. We heard
5 a few people say, I don't know whether he might have
6 been on that property before. I'm not really sure. He
7 may have been on that property before. But, again, we
8 heard them say he was on this property dozens and dozens
9 and dozens and dozens of times. Okay. Think about that
10 when you're thinking about the credibility of these
11 different witnesses.

12 If you're thinking back about Mr. Brill, I want you
13 to remember that during this case, defense counsel
14 suggested to Mr. Brill, and he gave you his testimony
15 about the clear violations of this industry standard of
16 care. He worked for a utility for 15 years. This is
17 the standard of care. It is important to be followed
18 because if you don't, people get killed. They suggested
19 that in making his opinions maybe he's not credible,
20 maybe he didn't do all the work he's supposed to do.
21 And they suggested, hey, you didn't have certain
22 measurements. He told you he had the measurements he
23 needed to make. He had enough pictures, he had enough
24 clear evidence to make the opinions that he needed to
25 make. But think about how interesting that is.

1 We also saw testimony and heard testimony that SCE&G
2 came and did an investigation two days after this. We
3 already talked about the fact they chopped the top of
4 the tree off. But before that they did that, they took
5 measurements. They did an analysis. Why did SCE&G not
6 give those measurements and that analysis, the data, why
7 would they not give that to their own expert who's
8 coming in and testifying that this didn't happen? You
9 need to think about that. That's important evidence in
10 this case.

11 Again, I want you to remember about the defense
12 case. We talked about Mr. Jackson, witness number one.
13 Okay. We talked about the issues you need to think
14 about in his opinion. And then we put -- they put up a
15 codefendant, defendant who's already left the case,
16 let's think about what she testified to. One, she's a
17 codefendant so you need to think, is that credible?
18 Whatever the codefendant would say, is that credible?
19 That's for you to decide. For you to judge.

20 But I remind you about the interesting questions
21 that Mr. Buckner asked her about how she was so certain
22 that she had been over there during Hurricane Matthew.
23 She had checked that property. Yet I'm absolutely
24 certain, I was over there in weeks before checking that
25 property and I didn't see any issues. There were no

1 power outages. I'm certain. He asked her a second
2 time, are you sure? Yeah, I'm certain. I was over
3 there, I inspected that property weeks before.

4 I would just have you consider, ladies and
5 gentlemen, using your own memory. But I can attest to
6 you, this electric shock event that caused Mr. Larios'
7 death took place on November 29, 2015. Hurricane
8 Matthew was in 2016. That's just the facts. So let's
9 just think about that when you think about the
10 credibility of this witness.

11 And then finally we have Mr. Walker. A company
12 employee for 30 years. Not exactly sure what testimony
13 he added to this case except for the fact that he wears
14 protective gear as he works on utility lines climbing up
15 and down in utility lines every day. He also testified
16 interestingly enough, this is the defendant's case that
17 as a lineman, a position the defense has relied on this
18 whole case that they have hundreds, Mr. Pugh said in his
19 opening, hundreds and hundreds and hundreds of employees
20 on the ground inspecting the area at all times.

21 Linemen. This was the lineman they put up in the case.
22 And he told you that's not my responsibility. I do not
23 inspect lines. I have no idea about vegetation. So you
24 need to think about that when you're thinking about the
25 credibility of the evidence that was put forth by the

1 defendants.

2 Hopefully you have enough evidence and I have given
3 you enough for you to consider as you go back into this
4 room. I would ask you again, spend that time, go back
5 through the witnesses. You are the judge. It is for
6 you to decide who was credible, who was not credible,
7 what weight to give to this evidence and make a
8 decision. And I would submit to you as I've said before
9 that we have not just gotten to the 51 yard line. We
10 have not just leaned the scales a little bit. We have
11 getting a touchdown. We have proved that the scales are
12 almost broken in favor of the plaintiff. That is what's
13 clear if we had been sitting in the courtroom this week.
14 And what the defense did with those three witnesses
15 after four years.

16 And now we talk of money. The jury could right now
17 waive a magic wand and bring Mr. Larios back to life
18 there would be nothing but joy and excitement in this
19 side of the room. And they would walk out of this
20 courtroom as jubilant as they've ever been in their
21 lives. This now broken family would be back together
22 and we would all be gone. It would be over. But the
23 problem is, is that you don't have that power. The
24 problem is that that is not reality. And so we talk of
25 money.

1 We talked of money because that's kind of the reason
2 that we're here. Because the money it might cost to
3 inspect these lines. To send people out and do constant
4 follow-up inspection and do mid-cycle pruning. That was
5 being discussed before. Now we have to look at
6 Mr. Larios' life. We have to deal with the reality that
7 we're faced.

8 So what is the loss of a son? What is the loss of a
9 brother? What is the loss of an uncle? What is it to
10 lose that coffee in the morning before you go to work?
11 What is it to lose that phone call that you get in
12 passing through the day? What is it to lose that
13 ability just to see that smiling face over the holiday?
14 What is it to lose that loving uncle that is there to
15 shepherd you through your life? What is it to never be
16 able to hear your son's voice again? We know that Jose
17 Senior will never get another call from his son. We
18 know that his mother will never make that phone call and
19 have Jose pick up again.

20 There is no magic in our justice system so we speak
21 of money. You will need to decide whether the standard
22 of safety applied by SCE&G in this case is what we'll
23 tolerate here in Colleton County in the State of South
24 Carolina. Is that okay here? Is that how we want to
25 live? Or is this reprehensible conduct of which we need

1 to find and make clear that we do not accept. That's
2 going to be your decision.

3 I will tell you as you think about this and the
4 Judge will instruct you, the family does not want
5 sympathy. This is not about sympathy. Okay. It's four
6 years post. They have gotten the sympathy that they
7 need. This is about justice. And today we're about
8 justice and we're about seeking a full measure of
9 damages. And that goes the same, there's no sympathy
10 for the family, there's no sympathy for SCE&G. Okay.
11 We're going to be looking for a full measure damages as
12 I told you on Tuesday. Things that you have to
13 consider. The reality of the loss of Jose, the loss of
14 his company, the mental anguish the family has and will
15 always have knowing that with the simplest measure Jose
16 could still be here had SCE&G done the simplest thing
17 that Jose would still be here.

18 The reality that Jose will never live out his
19 dreams. He will never become an attorney. That he will
20 never be able to do the many things that his brother
21 told us that he wanted to do. He will never have a
22 family. He will never have children. He will never
23 build that soccer stadium. The idea that that was being
24 taken away, the feelings that this family has to go
25 through, that broken family. Because the family that

1 was there is no longer there.

2 Wendy has to go through life knowing that her uncle
3 won't be there when she graduates from high school. Her
4 uncle won't be there with her when she gets married.
5 She won't have him in the meantime to come sit on the
6 couch and watch movies with her or take care of her or
7 buy her new puppies on her birthday. These are the
8 things you have to consider. This is challenging stuff.
9 This is very difficult stuff.

10 You're going to be given a verdict form at the end
11 of this case. This is what you'll take back with you in
12 the jury room. As far away as you, you probably can't
13 read it. What we have is, the very first question is:

14 "Did the plaintiff prove, by a preponderance of the
15 evidence, that the defendant SCE&G/Dominion Energy
16 breached its duty of care and, if so, was that breach a
17 proximate cause of Jose Larios' injuries and death."

18 I submit to Your Honor -- you, ladies and gentlemen
19 of the jury, you must answer, YES. As we just
20 discussed, we've listened to the evidence, the answer is
21 a clear, YES.

22 "Did the defendant SCE&G/Dominion Energy prove, by a
23 preponderance of evidence, that it was Jose Larios'
24 fault and that caused his death?"

25 I would submit to you, ladies and gentlemen, that

1 despite the smoking mirrors, the answer to that question
2 is a clear, NO.

3 Then once you pass that you're going to be asked to
4 answer two questions.

5 (1) State the total amount of damages for the
6 Estate of Jose Larios for any conscious pain and
7 suffering that he experienced prior to his death.

8 And you need to go through the process and think
9 about it, ladies and gentlemen. Think about what it is.
10 What it was for Mr. Larios when he hit the ground. When
11 he was struggling and grasping for his last moments of
12 life in those two hours that he lived, the fear that
13 went through his mind, the pain he felt in his body and
14 you need to put a value on what is that worth. What
15 would it take to be there.

16 Then you need to go and ask the next question:

17 (2) The total amount of damages for the wrongful
18 death of Jose Larios including grief, sorrow, mental
19 shock, suffering, and the loss of a companionship.

20 You will hear the Judge talk about other things.
21 Loss of enjoyment of life. You have to look at the
22 whole universe of damages and what is the value of life.

23 So, ladies and gentlemen, how do you value the life?
24 If Jose Refugio Larios saw an ad in the paper and the ad
25 in the paper said:

1 "If you sacrifice your son Jose Larios, we'll give
2 you \$20,000,000. Wanted, someone to sacrifice their son
3 for \$20,000,000."

4 Would Jose Larios' parents answer that ad? Would
5 they even consider it for one single second?

6 If there was another ad that was placed today that
7 said:

8 "We can bring your son back to life for
9 \$20,000,000."

10 They don't have that kind of money. But I can
11 guarantee you, Mr. and Mrs. Larios would do everything
12 in their power, that whole family would work day and
13 night and utilize every resource in the world to figure
14 out how to come up with that money.

15 In this day and time as we consider the value of a
16 life, a value of a life, god's greatest creation. We
17 know that the football coach in South Carolina gets paid
18 \$10,000,000 to go one season. You hear about paintings
19 go for sale for \$50,000,000. What is the value of a
20 life? That's the incredible burden and task that you
21 have today, ladies and gentlemen. You have to consider
22 this family and what they've gone through and understand
23 and try to put pen on this agony and you need to do it
24 in the context of being complete with your full level of
25 justice. Full and complete verdict is one that is just.

1 There are no big verdicts. There are no small verdicts.
2 There are verdicts that are unjust and there are just
3 verdicts. That's how it works.

4 So you need to go in there and whether you guys
5 decide at the end of the day after looking at all the
6 evidence and thinking about the damages in this case, is
7 the value \$5,000,000? Is it \$10,000,000? Is it
8 \$20,000,000? That is for you to decide. That's the
9 province of the jury.

10 For me as an attorney, I have to deal in this world.
11 I have ideas. This is your case. I have carried this
12 burden with me for the better part of three years. And
13 it's been a tough one, but my time is over. And I'm
14 taking this responsibility off my shoulders. I pass the
15 mantle on to you. And it's your job now. It's your
16 responsibility. And I hope, ladies and gentlemen, when
17 you go home today and your family asks you, how did it
18 go today? What did you do? That you can say with
19 honest heart, we made this world and this state and this
20 place a safer place. We showed the community that we
21 value human life. And that is what is important. And
22 we did the right thing. We gave justice.

23 This family appreciates your time more than
24 anything. This has consumed their life. And quite
25 frankly, Gaspar is extremely appreciative as he may have

1 told you that this was a great moment for him to finally
2 be able to feel he could talk. And talk a little bit
3 about his story and his time. So he appreciates and we
4 appreciate everything that you've done. Thank you.

5 THE COURT: Thank you, Mr. Applegate. All right.
6 Mr. Pugh? Yes, sir.

7 MR. PUGH: May it please the Court.

8 THE COURT: Yes, sir.

9 MR. PUGH: Ladies and gentlemen of the jury, good
10 morning. Losing a loved one, a friend, a beloved
11 coworker, it is a loss all of us experience. It's
12 difficult. It's tragic. And in this case, the loss of
13 Mr. Larios is tragic. And our sincere condolences go to
14 this family. But that's not what this case is about.
15 But it doesn't change the fact that his death was no
16 less tragic.

17 This lawsuit was brought by Ms. Provence as a
18 Special Administrator of the Estate. She sued multiple
19 people including Dominion Energy. My colleague Megan
20 White and I have done our best this week to try and
21 provide you with information and evidence that we
22 believe will help you reach the conclusion that Dominion
23 is not responsible for Mr. Larios' work related death.
24 This does not, does not, in anyway suggest that
25 Mr. Larios was not a beloved man. That he wasn't a hard

1 worker. That he wasn't a good person. That's not what
2 this is about.

3 Dominion Energy/South Carolina Electric and Gas
4 employs thousands of people. And you heard some
5 testimony about what they do. They provide safe
6 reliable electric service to our homes, schools
7 hospitals, and other things. You heard from Mr. Walker
8 yesterday. And I tried to be respectful of your time.
9 We've been here all week. And to be criticized for the
10 fact that I didn't call a dozen witnesses and I didn't
11 have them up there for half a day each. I tried to get
12 to the point and get for you, the fact finders, what you
13 needed to know to make a decision in this case.

14 We heard from Rodney Walker who testified about his
15 work as a lineman. Out every day. Day/night, storms,
16 days like today. We heard from Mark Branham who's here
17 in the courtroom tell you about why and how SCE&G does
18 vegetation management to ensure that safe and reliable
19 delivery of service.

20 Now, before I forget, this is my one opportunity to
21 speak to you. Those are the rules we have. When I sit
22 down, I'm done. It's not a tennis match. I hit the
23 ball back over the net and Mr. Applegate hits it back to
24 me. Now, he'll get back up. That's the rule. He gets
25 to talk to you again when I'm done. I don't. So this

1 is my one opportunity to speak to you. And, frankly,
2 ladies and gentlemen, it's been a long week. Let's say
3 it, it's been a long week and I appreciate the obvious
4 attention and work that you all have put into this and
5 are about to put some more into this case.

6 There's been a lot of testimony in this case and I'm
7 going to be quick to try and go through it and provide
8 you with that information that you need to consider the
9 facts and determine an outcome or verdict in this case.

10 Mr. Larios' death was tragic. Mr. Larios' death was
11 not the result of an electrical shock. There is nothing
12 that Dominion did or didn't do that resulted in his
13 death. Or more importantly there's nothing that
14 Dominion did or didn't do that would have prevented his
15 death. Because you see, as we've heard, Mr. Larios
16 unfortunately put himself on an aluminum ladder up a
17 palm tree within 10 feet of an energized primary and
18 fell off the ladder or according to the plaintiff,
19 received some level of a shock, but then he fell
20 backwards after he did a few things that we'll talk
21 about.

22 We've looked at this photograph multiple times with
23 multiple witnesses. There's no question that there are
24 two wires visible. This is the day after the incident.
25 You see the ladder is still on the ground a day or two

1 after the incident, but no further trimming had been
2 done with regard to this tree. Even if your inclined to
3 believe that Mr. Larios received a unique shock as
4 Mr. Brill termed it, I want you to consider and remember
5 that Mr. Larios was an educated person. As we heard, he
6 was attempting to become fluent in multiple languages,
7 English and Spanish. He was a lawyer in Mexico. And
8 unfortunately on the day he died, he was trimming trees
9 in violation of the OSHA laws that were specifically in
10 place to protect him. That's the purpose of the OSHA
11 laws to protect him. Whether it's his employer or in
12 this case, himself being responsible for working safely
13 and not putting himself in a position where he violates
14 the law and is injured.

15 The plaintiff's theory in this case is interesting
16 in that it appears that they take the position that once
17 SCE&G or any other utility trims the right-of-way that
18 they have to come back every day and measure that
19 right-of-way away from the energized primary. And trim
20 every tree every day to maintain that 10-foot clearance.
21 SCE&G/Dominion Energy has 18,000 miles of overhead
22 distribution line. That's the same distance if we left
23 this courthouse, got in a car, if you could do it and
24 drove to Australia and back.

25 And the plaintiff's theory is you got to do that

1 every day, but you don't get to just drive there, you
2 got to drive along the right-of-way and every tree you
3 see you got to stop, got to get out, and you got to
4 measure, you got to make sure that 10-foot clearance is
5 maintained at all times. That is not the industry
6 standard. That is impractical. As you heard Mr. Brill
7 the plaintiff's own paid expert say, it has to be
8 reasonable, practical, and economical. His words, not
9 mine. And more importantly, they're not the law. Their
10 theory is not the law.

11 I want to talk to you about the physical evidence in
12 this case. The tree. We've heard a lot about the tree.
13 The tree is gone. It belonged to Ray Jackson, he was a
14 defendant in this case up until a couple of days ago.
15 The tree was inside his fence in his backyard and there
16 is zero testimony about who ultimately removed it or
17 when. But the simple fact remains, it was gone before
18 Mr. Brill. It was gone before Mr. Brill or Eric Jackson
19 went to the scene to investigate this incident. So the
20 tree is gone.

21 The chainsaw. We've heard a lot about the chainsaw.
22 I'm not sure where we are on the chainsaw. What we know
23 is apparently everybody agrees the chainsaw never
24 contacted the overhead energized primary. And we'll get
25 to that more in a moment. But like the tree, again, the

1 chainsaw is gone. The chainsaw went through a bunch of
2 different people's hand and then ultimately was taken
3 out of some evidence room and I think the Edisto Beach
4 Fire Department and nobody ever tested it or analyzed
5 it. So another piece of the physical evidence in this
6 case is gone.

7 We heard testimony from Beverly O'Brien the other
8 day, the first time that testimony had been heard.
9 Didn't tell anybody else that she went to the scene a
10 day after she learned of her friend's fall out of a tree
11 as she said, Will Stevens the boss called her at the
12 hospital when her daughter was giving birth to the
13 grandchild. Will Stevens said Mr. Larios fell out of a
14 tree. She was devastated. Her friend had died.

15 She went to the scene, 3402 Myrtle Street, looked
16 around. Told us she found on the outside of the fence,
17 between the fence and the bike path of the right-of-way,
18 a burnt palm frond that Monday, the next day after she
19 had learned of his fall. And what did she do? She told
20 you she picked up that palm frond because she didn't
21 want the family to see it and she took it down the bike
22 path, up Louise Street and put it in someone's trash
23 pile for the rubbish folks to haul away. Didn't tell
24 OSHA about it. Didn't tell the coroner's office about
25 it. Didn't tell Mr. Stevens about it, apparently.

1 Didn't tell Dominion Energy about it. Didn't tell
2 anybody who was ever investigating this incident what
3 she had supposedly found. So the palm frond that we're
4 talking about is gone.

5 We heard some testimony about clothing and shoes and
6 what wasn't on the clothing or shoes which is more
7 important than what was. The clothing and shoes, keep
8 in mind, Mr. Larios had two shirts on. They want to
9 show you a photograph of a round spot on his stomach or
10 abdomen, but yet his shirts don't have a mark on them.
11 Not the outer one. Not the inner one. Nothing.

12 The shoes, again, and then the clothing goes to MUSC
13 and it's gone with no burns noted. Now the shoes, the
14 shoes don't even make it to MUSC and Dr. Presnell.
15 They're gone. So we've got the shoes.

16 The ladder, this case was filed in 2017. From the
17 day this case was filed until today, the plaintiff has
18 never analyzed that ladder yet wants to come in here and
19 tell you about some discoloration, a smug on the third
20 rung of the ladder. Do you think they would do that if
21 they thought that it proved their electrical shock
22 theory? Because that ladder is still in the evidence
23 room. And they've done nothing to have it analyzed. So
24 the ladder is of no use in your consideration of
25 physical evidence in this case.

1 The rope, same deal. Nobody's ever seen it. We've
2 seen some photos of it. So what is left of physical
3 evidence? What's left is the overhead lines in the
4 right-of-way behind 3402 Myrtle Street. Two wires that
5 are still there today have been there for 40 years,
6 normal construction, normal build, everything about them
7 is normal. After the incident, no repairs made to them
8 because they didn't need any. The fuse on this circuit
9 didn't even blow. Nothing.

10 There is no evidence in this case. Zero from any
11 witness you heard from that at any time there were ever
12 any service issues at this location. Service issues,
13 outages, vegetation issues, trees on line along this
14 circuit. Nothing.

15 The medical testimony was interesting. And I don't
16 believe Dr. Presnell and I hope you don't think that I
17 do. I tried to tell her that I didn't. Dr. Presnell is
18 in a laboratory in Charleston that does hundreds of
19 autopsies. And Dr. Presnell unfortunately in this case
20 as we know received bad information. When she did her
21 original autopsy, she found that Mr. Larios died of
22 blunt force trauma and the plaintiff's counsel showed
23 you what the injuries were. And here we have her
24 original report, blunt force trauma, the blunt trauma of
25 the torso due to fall from height.

1 Then she has a conversation with Mr. Carter the
2 coroner's office and he tells her two things that are
3 obviously incorrect. One, the chainsaw, back to the
4 chainsaw again, contacted the energized primary.
5 Incorrect. No witness says that.

6 Number two, we're back to the ladder again. That
7 there is some discoloration from Mr. Larios' shoes on
8 the third rung of the ladder. Both of those are
9 demonstrably incorrect. And because of both of those,
10 in fact, Dr. Presnell's report says:

11 "Upon further investigation, those two things were
12 relayed to her by Mr. Carter."

13 And she comes up with this, same thing, fall from
14 blunt force death falls from ladder, but adds
15 contributory electrical contact with power line. She
16 got incorrect information and ended up with an incorrect
17 result.

18 So that puts us back to the original report as she
19 did when she performed her autopsy. Dr. Presnell agreed
20 when I asked her:

21 "Do you agree, Doctor, that if you receive incorrect
22 information that that will lead you to an incorrect
23 result?"

24 Of course, she said, YES.

25 "Therefore, this red mark on Mr. Larios' abdomen is

1 at best unexplained?"

2 She doesn't know if the spot on his abdomen told us
3 is where the electricity entered, exited, but if it did,
4 it came in the same place, went out the same place. But
5 as you heard, actually it was the lawyer from Edisto
6 Realty asked her the question earlier this week:

7 "So, Doctor, isn't it true that if this electrical
8 circuit went into Mr. Larios' body it had to go in and
9 out the same hole without doing any internal damage?
10 There was nothing internal? No burns? No evidence of
11 electricity anywhere in his abdomen?"

12 And she said, YES.

13 We also know that nobody ever called Dominion
14 Energy, ever, with regard to this property and any
15 outage issues, any service issues, anything with regard
16 to this residence. Mr. Whaley you heard him testify
17 that he went out to the scene the day of Mr. Larios'
18 fall. That the EMT's came out to the scene as well.
19 There's no evidence that anybody ever observed the tree
20 on fire, Burns on Mr. Larios' clothing, the smell of
21 smoke from the tree, or evidence of the tree on fire.

22 It's interesting Mr. Abraham who you heard his
23 deposition testimony being read in, he said two things
24 in his deposition that he never told OSHA two days after
25 his lifelong friend had fallen and died. Number one,

1 that despite the fact that it was Mr. Abraham's first
2 time ever doing this work, he was -- he didn't do tree
3 trimming. He went along with his friend to help.
4 Despite that, he told us that when they first got to
5 3402 Myrtle Street, they looked around and they did a
6 complete hazard inspection and they didn't see any
7 wires. In fact, he used the term "they were invisible."

8 The second thing that he never told OSHA was this
9 business about smoking. Smoking from the tree. Smoking
10 from his friend. Those seemed like pretty important
11 things. This seem like the most important things that
12 you would tell the independent OSHA investigator who's
13 trying to figure out what happened. You would tell them
14 those things.

15 The ladder that Mr. Larios was on was a conductive
16 ladder. Aluminum, 32 feet long, had a number of warning
17 labels on it, we looked at it. We know that Mr. Larios
18 at one point, the testimony is that he was up at the
19 third rung of the ladder when he was doing this cutting.
20 And this is the label that points to the third rung of
21 the ladder. English and Spanish and said:

22 "Do not stand on or above you could lose your
23 balance."

24 And then we have a picture of someone falling from
25 the ladder. Keep in mind that after Mr. Larios fell,

1 the ladder we heard plenty of testimony and we can see
2 in this photograph the ladder is still up against the
3 tree. We've heard that the chainsaw was still running
4 when Mr. Larios sat it down, untied his rope, took a
5 couple of steps or so down the ladder and fell
6 backwards. So the chainsaw is up in the tree still
7 running. Someone from the fire department climbs up
8 this aluminum ladder and turns it off, then climbs back
9 down. And then when Mr. Whaley gets there he says, hey,
10 somebody needs to go up and get that chainsaw. So
11 again, someone from the fire department goes up this
12 ladder, gets the chainsaw, comes back down. So we've
13 got four trips up a ladder without any incident. Ladder
14 is not energized.

15 Ladies and gentlemen, the power lines in this case
16 running in the right-of-way were anything but invisible.
17 Particularly to someone who was required to look for
18 them. Because if you're going to put yourself up in a
19 tree to do tree trimming, you heard Mr. Whaley tell us,
20 if you're doing tree trimming, you need to look around.
21 But it's not just Mr. Whaley telling us that. The
22 independent OSHA investigator applying the OSHA laws
23 that are in place to protect Mr. Larios himself, that's
24 what they found.

25 The question was, I listened and it was interesting

1 that Mr. Applegate suggested that Jane Smoak, the lady
2 who came in yesterday late afternoon and testified that
3 somehow she was lying or not credible. Ladies and
4 gentlemen, she doesn't work for me. She's a
5 codefendant. In fact, think about it, if you're the
6 person running the property or managing the property and
7 doing that work on behalf of the guy that owns the
8 property and this plaintiff sues you claiming you didn't
9 do certain things, certain things specifically with
10 regard to Dominion Energy's power lines, why would she
11 not come in here and say nothing. Or come in here and
12 say, you can't see them. I never saw them. Because
13 that would not be truthful. And she was truthful. And
14 she had gone to this property not to look at trees to do
15 trimming. She's been to this property many times to
16 deal with issues with regard to renters, flooding,
17 damage, repairs. She's not there to trim trees. She's
18 not a tree trimmer, an arborist, or somebody is looking
19 to do landscaping. What did she tell us? There's not
20 these lines in the right-of-way. There are two sets.
21 Remember she said there's a big pole in the front yard
22 with a transformer on it. And those lines run down this
23 side street of Louise and tie into this set of lines in
24 the bike path. She said, in fact, when you go out there
25 you have to park under them. Hardly invisible. Hardly

1 difficult to see.

2 She also told us that not only did she take
3 complaint calls and that's what takes her sometimes to
4 these properties including the Jackson house, but she
5 told us she pays bills. And some of the bills that she
6 paid in this case were Mr. Stevens' company for the work
7 that he did, there we go. And he and his employees did
8 at 3402 Myrtle Street. And these bills that we have
9 they go, this is just running from sometime in 2012 to
10 whatever they had. And you'll see the number of times
11 just in those period of years.

12 And we heard from Ms. O'Brien say that she and
13 Mr. Stevens had been out to this property numerous
14 times, every two weeks I think she said. And she also
15 said that Mr. Larios had worked for Mr. Stevens for a
16 number of years. And, frankly, I don't remember exactly
17 what it was. I think it was six or seven, might have
18 even been eight, but in that range that Mr. Larios had
19 worked for Mr. Stevens in that period of time. Then we
20 heard the testimony from Mr. Larios' brother Mr. Licona
21 say that his brother loved to do his job. And I believe
22 that. And he loved to trim palm trees. And I believe
23 that. Because in fact they put two photographs in, in a
24 packet of materials that you will have that show him up
25 on a palm tree on an aluminum ladder with a chainsaw in

1 his left hand.

2 Now, you've heard a lot of testimony about these
3 lines back here in the bike path, visible/invisible,
4 could you see them, could you not. You heard the
5 testimony of Rodney Walker. Because if you remember, it
6 was several days until Marion Whaley the deputy coroner
7 called Dominion Energy. Because for several days no one
8 thought that electricity had anything to do with
9 Mr. Larios' fall.

10 Dominion gets the call, they come out the same day.
11 They send a bucket truck crew of Rodney Walker who came
12 in here and talked to us yesterday and his younger
13 partner, Cameron Luden. And he told us what they did.
14 They first walked into the backyard and they see the
15 ladder up the tree. Well, Mr. Walker, I can't speak for
16 -- I'll speak just for what he told us. He saw the
17 ladder up the tree and he saw the overhead wires back in
18 -- along the bike path. But he didn't stop there. He
19 then went outside of that split rail fencing, walked
20 down the bike path, looking up at the lines above his
21 head. Two stacked lines. Neutral on the bottom, six
22 feet higher an energized primary.

23 But he didn't stop there. And we have a photograph
24 to show what it would have looked like, what it did look
25 like out there days after Mr. Larios' fall. And

1 Mr. Walker told us about, hey, I specifically asked, I
2 said, Mr. Walker, there have been photographs in this
3 case. This photograph, you remember this one? And I
4 said, Mr. Walker, how do you explain to these folks, you
5 say there are separation. He says, I went out there not
6 only did I look with my own two eyes and there was
7 separation as we see in this photograph up on this big
8 board, what else? They backed a bucket truck down the
9 bike path. And they set out the outriggers and they
10 grounded the truck, and Cameron Luden put on his
11 protective gear and Rodney Walker is wearing FR, a fire
12 resistant t-shirt gear, long sleeve shirt here in
13 September when it's 90 degrees outside. But they geared
14 up with their protective gear. Rodney on the ground
15 with lights, Cameron in the bucket, and he goes up. And
16 he goes up there looking to see, one, is there anything
17 touching or near the primary or the neutral?

18 Number two, is there any mark? Is there any damage?
19 Is there any burn? Ark burn, you know, on this
20 energized primary? And to do that, Cameron has to go up
21 in the bucket truck and put it between the two
22 conductors. So he's up there in this bucket truck close
23 enough to touch it. And looked at it and he sees
24 nothing. And you can't put that bucket between the
25 neutral and primary if it's covered with all kind of

1 vegetation. You can if there's that separation that we
2 see in this photograph.

3 Let me try to make some sense of the alphabet soup
4 we have in this case. We've got the NESC, we've got
5 ANSI, we've got OSHA. You've heard all those acronyms
6 this week. We heard the testimony of Mark Branham, the
7 forester who's here with us to talk about why and how
8 SCE&G does right-of-way, distribution, clearance. Why
9 do they do it? And he told us they do it for safety and
10 reliability. And he told us they studied it. And they
11 determined what is the cycle in the industry. What is
12 the cycle in South Carolina.

13 The cycle in South Carolina for cycle trimming long
14 distribution right-of-ways is five years. Not just
15 SCE&G or Dominion Energy. Duke, Electric Co-ops, five
16 year cycle. And he told us and you saw some bullet
17 points, but before we get to that, he told us about how
18 many employees on a daily basis Dominion has working out
19 working on right-of-ways and lines. A couple hundred
20 contract tree trimming crews. Twelve hundred total
21 employees. That includes linemen's. That includes
22 foresters. That includes these contract tree trimming
23 crews. Twelve hundred people. Daily. I think that's
24 about double or more of the number of highway patrolmen
25 in this state.

1 He also told us and we talked about you've seen a
2 slide of this PowerPoint that he put on. And he said
3 why the PowerPoint was done and what went into that
4 PowerPoint. This is a part the plaintiff's counsel
5 didn't show. I showed it to you earlier and I'll show
6 it to you again.

7 "Only qualified utility line-clearance arborist's
8 meet OSHA qualifications are legally permitted to work
9 with 10 feet of power lines."

10 And the next thing is a warning.

11 "Danger, homeowners, Ray Jackson, should never hire
12 a private tree contractor, Will Stevens, Mr. Larios to
13 work within 10 feet of power lines or attempt to do work
14 themselves. Contact SCE&G for information first."

15 The National Electric Safety Code that applies to
16 the construction of these overhead wires that we've been
17 looking at has a specific vegetation management
18 provision. And this is what it says, kind of hard to
19 see, so I'll read it for you:

20 "Vegetation that may damage ungrounded supply
21 conductor should be pruned or removed. Vegetation
22 management should be performed as experienced as shown
23 to be necessary."

24 Now, doesn't say 10 feet. Doesn't say 20 feet.
25 Doesn't say 15 feet. But it also has a note. This is

1 in the National Electric Safety Code and it says:

2 "Note Two, It is not practical to prevent all tree
3 conductor contacts on overhead lines."

4 That's what the National Electric Safety Code
5 recognizes as the reality as the practicality of the
6 utility industry. And then we have some ANSI issues
7 and/or provisions in this case and we went through there
8 just the other day.

9 And then you heard a bunch of testimony about what
10 is SCE&G's right-of-way, distribution right-of-way
11 line-clearance provisions. And the plaintiff's lawyer
12 talked to you about that in his opening and he talked to
13 you about it with witnesses, talked to you about it
14 through Mr. Brill. But do you find it interesting? I'm
15 the guy who put that in. He didn't put that into
16 evidence, I did. And what does it say? It says, you
17 heard this business about there are no exceptions and
18 you got to get permission if you're going to do various
19 things. That's just not correct. It says right here:

20 "Note, conditions will exist on certain trees that
21 will preclude the above clearances."

22 And then the last exception says:

23 "Significantly large tree trunks which are located
24 less than 10 feet from the outer most conductor."

25 That's an exception recognized in the provision.

1 Right there in black and white. But they want to talk
2 to you about violation of all this, that, and the other.
3 But they don't even put this in because they didn't want
4 you to read what it says.

5 Unlike the Dominion Energy or SCE&G distribution
6 line-clearance trimming standards, we have OSHA. OSHA
7 applies to employers. OSHA applies to employees.
8 Unlike the National Electric Safety Code that I showed
9 you a minute ago and unlike the provision that I just
10 showed you from the Dominion Energy or SCE&G
11 line-clearance standards, there are no exceptions to
12 OSHA. Why not? There are no exceptions for personal
13 safety. There are no exceptions to how one needs to
14 conduct themselves. There are no exceptions to the laws
15 that are in place to protect the employee. Not just
16 from his employer, but from himself in how he should
17 govern himself.

18 And we heard Mr. Applegate tell us a few moments ago
19 that OSHA, and I wrote it down:

20 "OSHA is independent."

21 OSHA is not SCE&G or Dominion. OSHA is not -- they
22 don't work for SCE&G. They don't work for Larios'
23 family. They're independent. I agree, they are
24 independent. And a moment ago he suggested to you why
25 didn't I bring in an OSHA person. Why didn't he bring

1 in an OSHA person? Why didn't he bring in this
2 independent person. This independent agency who's out
3 to protect all workers.

4 If they're independent and they don't work for me
5 and they don't work for other parties in this case, seem
6 like a pretty good person if you're the plaintiff to
7 come in here and say what really happened.

8 So what did OSHA find? The other thing -- so we
9 have the OSHA citations in this case. And if you'll
10 indulge me for a moment. An employer Stevens knew or
11 should have known that employees, Mr. Larios, trimming
12 trees in close proximity within 10 feet to energized
13 power lines were exposed to the hazard of contact with
14 energized lines. That's what OSHA found. They go on to
15 say:

16 Quote, "A feasible and useful method to correct this
17 hazard among other methods is to ensure employees,
18 that's Mr. Larios, inspect the area to be trimmed for
19 hazards such as but not limited to energized power lines
20 before work begins. To remove the hazard and to protect
21 Mr. Larios from the hazard prior to work beginning,"
22 unquote.

23 When Mr. Applegate was talking to you moments ago
24 about OSHA and its independents and about the
25 application of OSHA and about the OSHA work rules. He

1 also said something else when he was talking about
2 Dominion Energy. He said, and I quote:

3 "If they don't follow rules, people die."

4 Well, that would most certainly apply with regard to
5 the OSHA rules that were in place to protect Mr. Larios.

6 Ladies and gentlemen, what happened to Mr. Larios
7 was tragic. What happened to him should haven't
8 happened. What happened to him happened when he put an
9 aluminum ladder up a palm tree with a chainsaw within 10
10 feet of an energized line. Whether he received a shock.
11 Whether he got scared. Whatever the reason. We know
12 we've heard there was a yell, he sat down the chainsaw,
13 he undid his rope, he started down the ladder, and he
14 fell. It doesn't particularly matter which of these
15 scenarios of Mr. Brill. Because you heard me ask him,
16 you have two theories and you can't tell us which one is
17 more likely than the other. And we have a number of
18 issues with Mr. Brill's testimony of what happened.
19 What does he know? What does he not know?

20 Here's what Mr. Brill knows. Mr. Larios violated
21 the OSHA 10-foot rule and, therefore, contributed to his
22 fall.

23 "The missing chainsaw did not contact the overhead
24 primary. The discoloration on the third rung of the
25 ladder did not come from Mr. Larios' shoes. The

1 aluminum ladder may or may not have been energized.
2 There's no evidence of service calls or outages on this
3 overhead line. And the bottom wire that we've seen
4 multiple times, the neutral was not energized."

5 That's what we know that Mr. Brill knows.

6 Now, what do we know that he doesn't? We know he
7 didn't take any measurements of anything involved in his
8 two different shock theories. He doesn't know what
9 Mr. Larios was cutting. He doesn't know where it was on
10 the tree. Whether he cut a frond or dropped it in the
11 energized primary or whether he moved it over into the
12 energized primary. But we know that Mr. Larios even
13 according to Mr. Brill was injured because he violated
14 the OSHA 10-foot work rule that applied to him. And we
15 have the OSHA citation to look at as well.

16 His Honor is going to charge you on a number of
17 things. And I'm not going to go through the whole thing
18 with you. You're going to be asked to determine what
19 caused this incident. You're going to be asked to
20 determine who was negligent. Was it Mr. Larios? Was it
21 Dominion Energy? And you're going to be given a bunch
22 of different ways to look at things. And His Honor will
23 give you the law that will help you do that.

24 But His Honor will charge you on a couple of things
25 that I want to talk to you briefly about. The South

1 Carolina OSHA regulations require employees like
2 Mr. Larios to comply with OSHA rules and regulations
3 under South Carolina law. He will also charge you that
4 Mr. that Mr. -- excuse me, Dominion Energy, that you can
5 determine or you will be asked to consider that utility
6 companies like Dominion Energy owe a duty only to those
7 who are lawfully and foreseeably working in proximity to
8 the overhead wires.

9 There is no question that Mr. Larios does not meet
10 that category. That unfortunately on November 29, 2015,
11 he put himself on an aluminum ladder with a chainsaw
12 within 10 feet of an energized primary. Fell and
13 unfortunately passed away.

14 Ladies and gentlemen, I appreciate your time this
15 week. And I appreciate your attention. And on behalf
16 of my client Dominion Energy, I thank you for your jury
17 service and look forward to your verdict in this case.
18 Thank you very much.

19 THE COURT: All right. Thank you. Sir.
20 Mr. Applegate?

21 MR. APPLGATE: I promise you I will be brief. Just
22 a few things.

23 The Judge is going to charge you, ladies and
24 gentlemen, I show you the verdict form. That's the
25 verdict form you will take back with you. You remember,

1 on that verdict form, you will not see Edisto Realty,
2 you will not see PENSCO Trust, you will not see Stevens
3 as the employer. Okay. That is not part of this case.
4 They are not on the verdict form.

5 So, again, as I told you earlier, smoke, mirrors,
6 distractions, that's what this defense is about. Okay.
7 And that's what it's been about all week.
8 Misrepresenting the plaintiff's case. Mr. Pugh just
9 said that our position was that the power company didn't
10 go out and trim every tree every day. And then he said
11 again, William says that you have to trim every tree
12 every day. That's not been the contention in this case.

13 We said they had to comply with the law. We put the
14 law up in front of you. We put the rules -- their own
15 rules up in front of you. They have to keep 10, 10, and
16 20. Ten feet away from the power lines. What we know,
17 again, ladies and gentlemen, besides all these
18 extraneous little facts, he wants to talk about Jose.
19 Jose should have known this. Jose should have known
20 that.

21 What we know is that the pertinent company, the
22 defendant, is in the best position to solve this
23 problem. If they follow the rules and there is a
24 separation between the lines, there's not a circumstance
25 where this happens. But instead in this case, the

1 defendant's going to come in here and say, oh, yeah, the
2 landscaping guy, it was his fault. I mean, the big
3 company who's got more employees than the South Carolina
4 State Police Department. We don't have anything to do
5 with it. Thousands of employees, we can't do anything
6 about that. It's this yard guy, it's his fault. He
7 should have seen it.

8 I want to remind you because he brought this back
9 up. I don't think I showed you this before. But just,
10 again, it's a reminder as we go back to this whole thing
11 about did you see it, did you not see it. Look who said
12 we didn't see the lines. Look who said they did see the
13 lines.

14 Remember the burden of proof. Think about that as
15 you go back there. Smoking mirrors. I put up a list
16 for you a minute ago, I came out here and I told you
17 what was the evidence that we considered? What was the
18 evidence that was important to the plaintiffs in this
19 case to prove our case? There's the list. There's no
20 ladder on the list. We didn't talk about the ladder.
21 Mr. Pugh comes out here and says, oh, their whole case
22 hinges on the ladder. I didn't talk about the ladder.
23 The ladder wasn't tested. We didn't think the ladder
24 had anything to do with the case.

25 I don't want to go tit for tat on this. You've

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1 heard it. I know you understand it. And you have
2 enough information to make your decisions about the
3 credibility in this case.

4 What I would tell you is at the time for SCE&G to
5 make excuses is over. Now it's time that you make your
6 decisions and then you do what's right. It's time to go
7 and sort of lights out on SCE&G as this is not okay.
8 This conduct is not okay. And their failure to take
9 responsibility is not okay. Again, thank you for your
10 time.

11 THE COURT: Thank you, sir. Ladies and gentlemen,
12 I'm now going to charge you on the law. Before I do
13 that, let me just ask you, do y'all need a short break
14 before I charge on the law or are you ready to hear it?

15 (Jury said they were ready to hear it)

16 THE COURT: All right. Folks, during the course of
17 this trial, I told you during the trial that you are the
18 judges of the facts. And throughout the course of the
19 trial, the attorneys have been providing you the
20 evidence in the case. It's been appropriate for me to
21 be up on the bench and out of the way so that -- so that
22 they could do that. So they could present the facts to
23 you.

24 We have now reached the portion of this case where
25 you and I are in this together. You as the judges of

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1 the facts and me as the judge of the law. So I think it
2 is appropriate that I come down and be with you when I
3 charge you on the law.

4 Now, I'm going to -- I'm going to read this to you
5 pretty much verbatim. I don't want to leave anything
6 out or misquote anything.

7 But, madam forelady and members of the jury, you
8 have heard all of the evidence and arguments of both
9 parties. I'm now going to explain to you the law which
10 applies to this action.

11 The plaintiff claims that he has been injured or
12 damaged by the actions of the defendant. In bringing
13 this lawsuit, the plaintiff claims that the defendant
14 should compensate him for his injuries or damages.

15 I remind you that, during this trial, you and I have
16 certain duties to perform. As the trial judge, it is my
17 responsibility to preside over the trial of this case,
18 and I also had the duty to rule on the admissibility of
19 the evidence offered during this trial. You are to
20 consider only the competent evidence that is before you.
21 You are to consider the testimony which has been
22 presented from the witness stand and any exhibits which
23 have been made a part of the record in this case.

24 I have the additional duty to charge you the law
25 that is applicable to this case. As the presiding

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1 judge, I am the sole judge of the law of the case, and
2 it is your duty as jurors to accept and to apply the law
3 as I now state it to you. If you already have any ideas
4 as to what the law is or what you think the law ought to
5 be and it does not agree with what I now tell you the
6 law is, you must abandon your idea because you are sworn
7 to accept the law and apply it exactly as I state it to
8 you.

9 In every case tried in this court before a jury, the
10 jury is the sole and the exclusive judge of the facts.
11 The law does not allow me to have an opinion about the
12 facts in this case. This is a matter solely for you,
13 the jury, to determine. As jurors, it is your duty to
14 determine the effect, value, weight, and truth of the
15 evidence presented during this trial.

16 Under our constitution and code of laws, as I said,
17 only you - the jury - can make these findings of fact.
18 To determine the facts in this case, you're going to
19 have to evaluate the credibility - or the believability
20 - of the witnesses. And credibility simply means that.
21 It means believability. It becomes your duty as jurors
22 to analyze and to evaluate the evidence and to determine
23 which evidence convinces you of its truth.

24 I've already discussed with you at the beginning of
25 this trial some of the things that you may consider as

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1 you decide whether or not to believe a witness'
2 testimony.

3 You can believe as much or as little of a witness'
4 testimony as you think is proper. You may believe the
5 testimony of a single witness against that of many
6 witnesses - or just the opposite. You may believe a
7 part of a witness' testimony and disbelieve the rest.
8 The mere fact that a witness' testimony, even an expert
9 witness' testimony, is uncontradicted, does not render
10 it undisputed.

11 You the jury should assess the credibility of each
12 of the witnesses. You may consider whether any witness
13 has exhibited to you any interest, bias, prejudice, or
14 other motive in this case. You may also consider the
15 appearance and the manner of a witness while on the
16 witness stand.

17 But you do not determine the truth merely by
18 counting the number of witnesses presented by each side.
19 You should consider all of the evidence in this case.

20 Now, when I say that you must consider all of the
21 evidence, I don't mean that you must accept all of the
22 evidence as true or accurate. You should decide whether
23 to believe what each witness has had to say, and how
24 important that testimony was. In making those
25 decisions, you may believe or disbelieve any witness, in

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1 whole or in part.

2 To decide whether to believe any witness I suggest
3 you ask yourself a few questions: Did the witness
4 impress you as one who was telling the truth? Did the
5 witness have any particular reason not to tell the
6 truth, or have any personal interest in the outcome of
7 the case? Did the witness seem to have a good memory?
8 Did the witness have an opportunity and an ability to
9 accurately observe the things he or she testified about?
10 Did the witness appear to understand the questions and
11 answer them directly?

12 But keep in mind that a simple mistake does not mean
13 that a witness was not telling the truth as he or she
14 remembers it. People naturally tend to forget some
15 things or remember them inaccurately. So, if a witness
16 misstated something, you must decide whether it was
17 because of an innocent lapse in memory or an intentional
18 deception. The significance of your decision may depend
19 on whether or not the misstatement is about an important
20 fact or an unimportant detail.

21 Now, the rules of evidence ordinarily do not allow
22 or permit witnesses to testify to opinions or
23 conclusions. There's an exception to this rule that
24 exists for witnesses that we call expert witnesses. A
25 witness who, by education and experience, has become an

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1 expert in some art, science, or profession, may give an
2 opinion as to the subject that the witness claims to be
3 an expert in, and may also give the reasons for that
4 opinion.

5 You should consider any expert opinion given by a
6 witness and, like any other evidence, give it the weight
7 that you think it deserves. If you decide an expert
8 witness' opinion is not based on sufficient education
9 and experience, or if you decide that the reasons given
10 in support of the opinion are not sound, or that the
11 opinion is outweighed by other evidence, you may
12 disregard the opinion entirely.

13 An expert witness' testimony is to be given no
14 greater weight than that of any other witnesses simply
15 because the witness is an expert, and you do not have to
16 accept an expert's opinion, even though it's
17 uncontradicted.

18 Now, when expert witness is called by either the
19 plaintiff or the defendant, he or she expects to be paid
20 and he or she should be paid. You should not take into
21 account the consider -- you should not take into
22 consideration the fact that a witness is paid unless
23 there is some evidence or circumstances appearing from
24 the evidence which would fully and reasonably convince
25 you that that testimony of the witness has been

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1 influenced because of the sum which he or she has been
2 paid.

3 Now, there are two types of evidence generally
4 presented during a trial - there's direct evidence and
5 there's circumstantial evidence. Direct evidence is the
6 testimony of a person who claims to have actual
7 knowledge of a fact, such as an eyewitness. It is
8 evidence which immediately establishes the fact to be
9 proved.

10 Circumstantial evidence is proof of a chain of facts
11 and circumstances which indicate the existence of a
12 fact. It is evidence which immediately establishes
13 collateral facts from which the main fact may be
14 inferred. Circumstantial evidence is based on inference
15 and not on personal knowledge or observation.

16 For circumstantial evidence to be sufficient to
17 warrant the finding of a fact, the circumstances must
18 lead to that fact with reasonable certainty. The facts
19 and circumstances should be considered in light of
20 ordinary experience and common sense. The existence of
21 a fact cannot be based on speculation, surmise, or
22 conjecture.

23 Now, the law makes absolutely no distinction between
24 the weight or value to be given to either direct or to
25 circumstantial evidence. Nor is there a greater degree

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1 of certainty required of circumstantial evidence than of
2 direct evidence.

3 Let me give you an example. An example of direct
4 evidence is when you look outside your window and you
5 see that it's snowing. That's direct evidence. By
6 seeing that it's snowing, you have actual knowledge that
7 it is snowing outside. In contrast, an example of
8 circumstantial evidence is when you go to sleep and
9 before you go to sleep, you look out your window, the
10 skies are clear, there's no snow on the ground, but when
11 you wake up in the morning there's a foot of snow on the
12 ground. Now even though you did not see it snow,
13 because there is snow on the ground, the circumstances
14 dictate that it must have snowed. That's an example of
15 circumstantial evidence.

16 Now, madam forelady and members of the jury, the
17 mere fact that an incident has happened, standing alone,
18 does not permit you, the jury, to conclude that the
19 incident was caused by anyone's negligence. Rather, the
20 plaintiff has the burden of proving each element of his
21 claims in this case.

22 He must meet this burden by proving his claims by
23 the preponderance, or the greater weight, of the
24 evidence. It is evidence -- the greater weight, of the
25 evidence. It is evidence which, taken as a whole, shows

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1 that the fact that is sought to be proved is more likely
2 true than not true.

3 This oftentimes is illustrated by imagining a set of
4 scales. When this case began, these scales are even.
5 After all of the evidence has been presented, if the
6 scales remain even or if they tip even slightly in favor
7 of the defendant, then the plaintiff has failed to meet
8 that burden of proof and would not be entitled to
9 recover in this case. If, on the other hand, those
10 scales tip even slightly in favor of the plaintiff, then
11 the plaintiff would have met their burden of proof and
12 you should return a verdict for the plaintiff.

13 As I said earlier, the preponderance of evidence is
14 not determined by the number of witnesses, instead it
15 must be -- it must be determined by the greater weight
16 of all the evidence.

17 Now, the plaintiff claims that the defendant was
18 negligent and should compensate the plaintiff for the
19 injuries that the plaintiff suffered as a result of the
20 defendant's negligence. In order to prove that the
21 defendant was negligent, the plaintiff must prove by a
22 preponderance, or the greater weight, of the evidence
23 four things.

24 First, the plaintiff must prove by the greater
25 weight of the evidence that the defendant owed the

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1 decedent or the plaintiff a duty of care.

2 Next, the plaintiff must prove by the greater weight
3 of the evidence that the defendant breached that duty of
4 care by a negligent act or omission.

5 Now, negligence means that a person has done
6 something that a reasonable person would not have done
7 or has failed to do something that a reasonable person
8 would have done in the same situation.

9 The plaintiff must also prove by a preponderance, or
10 greater weight, of the evidence that he suffered damages
11 as a result of the defendant's breach of that duty.

12 And, finally, the plaintiff must prove by a
13 preponderance, or greater weight, of the evidence that
14 the damages were proximately caused by the defendant's
15 breach of that duty.

16 If there is no duty, then the defendant in a
17 negligence action would not be liable.

18 Now, proximate cause is something that produces a
19 natural chain of events which, in the end, brings about
20 an injury. It is the direct cause of the injury.

21 To prove that a defendant's negligence proximately
22 caused the decedent's injury, the plaintiff must first
23 prove causation in fact. Now, this is proven by showing
24 that the injury would not have occurred but for the
25 defendant's negligence.

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1 The plaintiff must also prove legal cause. Legal
2 cause is proven by showing that the injury was
3 foreseeable. Although the plaintiff must prove the
4 injury was foreseeable, he does not have to prove that
5 the particular injury that occurred was foreseeable.
6 However, the defendant cannot be held responsible for
7 things which could not be expected to happen.

8 The touch stone of proximate cause in South Carolina
9 is foreseeability. Foreseeability of some injury from a
10 negligent act or omission is a prerequisite to it being
11 a proximate cause for the injury for which recovery is
12 sought. The standard by which foreseeability is
13 determined is that of looking to the natural and
14 probable consequences of the complained act. While it
15 is necessary that the actor must have complained or
16 could have anticipated -- excuse me. While it is
17 necessary that the actor must have contemplated or could
18 have anticipated the particular event that occurred,
19 liability could not rest on mere possibilities. The
20 actor cannot be charged with that -- with that which is
21 unpredictable or for that which could not be expected to
22 happen. In determining whether the consequence is one
23 that is a natural and probable, the actor's conduct must
24 be viewed in the light of the attendant circumstances.

25 Probable (sic) cause does not mean the only cause.

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1 The defendant's act can be a probable cause of the
2 plaintiff's injury if it was at least one of the direct,
3 or concurring causes of the injury.

4 Should you find that the plaintiff has proved that
5 the defendant was negligent but has failed to prove that
6 such negligence was the proximate cause of the injury,
7 the plaintiff would have failed to have made out his
8 case and you would be required to find for the
9 defendant. However, if the plaintiff has proved these
10 two propositions, then it would be necessary for them to
11 prove damages -- it would be necessary for the plaintiff
12 to prove damages.

13 Those operating electric wires are required to
14 exercise a very high degree of care in their
15 construction, repair, inspection, and maintenance to
16 prevent injury to others who are lawfully and
17 foreseeably working in the proximity of these lines, an
18 electric company is bound to use due diligence to
19 receive information as to the conditions of its wires,
20 and failure to use due diligence in this respect would
21 constitute negligence. They ought to take care to see
22 that their wires, which convey electric current, are
23 properly guarded, so as to prevent injuries to persons
24 and property. This duty is incumbent upon them under
25 the laws of this state.

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1 Now, the State Occupational Safety and Health
2 Administration has adopted regulations that require
3 employees to comply with occupational safety and health
4 rules and regulations promulgated under South Carolina
5 law.

6 The chain of causation between the defendant's
7 negligence and the injury may be broken by the
8 independent or intervening acts or omissions of another
9 person over whom the defendant has no control. In order
10 to decide whether an intervening act breaks the chain of
11 causation, you must determine whether the intervening
12 act or omission was reasonably foreseeable by the
13 defendant. If the intervening act or omission was a
14 probable consequence of the defendant's negligence, the
15 defendant is responsible for the plaintiff's injuries.

16 If, however, you find that the intervening act or
17 omission was not foreseeable, then the defendant is not
18 liable unless his actions alone would have caused the
19 plaintiff's injuries even without the intervening act or
20 omission.

21 Furthermore, a plaintiff in a negligence action may
22 recover damages if the defendant's negligence -- hang on
23 for a minute. The plaintiff in a negligence action may
24 recover damages if the defendant's negligence, if any,
25 is not greater than that of the defendant. If you find

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1 that the defendant was comparatively negligent to a
2 degree greater -- and let me back up. I'm going to use
3 the word "plaintiff" where it had "decedent" so that is
4 clearer. If you find that the plaintiff was
5 comparatively negligent to a degree greater than that of
6 the defendant, then the plaintiff is barred from
7 recovery.

8 Under South Carolina law, a defendant is entitled to
9 assert that other persons or entities, contributed to
10 the alleged injury or damages. The matter of the
11 others' alleged fault in causing the plaintiff's
12 injuries has been raised by the defendants, and it is
13 proper for you to consider the actions of others, but
14 only in so far as the plaintiff has met its burden of
15 proof.

16 The plaintiff, on behalf of Jose Larios was and is
17 prohibited from suing his employer in this court. At
18 the time of the injuries in question, Jose Larios was
19 employed, and the injuries occurred during the course
20 and the scope of his employment. As to the employer, a
21 claim by the Estate of Mr. Larios is governed by
22 workers' compensation laws, and an employer's
23 responsibility, if any, for the employee's injuries will
24 be determined, or has been determined, by another forum.
25 A workers' compensation claim is not before you and you

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1 shall not give it any consideration whatsoever in
2 reaching a verdict in this case. However, the matter of
3 the employer's alleged fault in causing the injury has
4 been raised by the defendants, and it is proper for you
5 to consider the employer's actions.

6 Now, in this wrongful death [and survival] action,
7 the plaintiff, as the personal representative of
8 Mr. Larios' estate, claims that Mr. Larios wrongfully
9 died as a result of the negligent act or acts of the
10 defendant.

11 Whenever the death of a person is proximately caused
12 by the wrongful act or neglect of another, the act or
13 the neglect is one which would have entitled the
14 deceased to recover damages if the deceased had not
15 died, the personal representative of the estate of the
16 deceased may bring an action for that wrongful death.
17 The personal representative has a right to recover
18 compensatory damages for that wrongful death.

19 It is not necessary to show the money value of
20 Mr. Larios' life since direct proof of the value of
21 human life is not possible. What is reasonable
22 compensation is left up to the sound discretion and
23 judgement of you the jury.

24 The damages in an action for wrongful death include:

25 (1) Pecuniary loss - that is, the loss of the

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1 deceased's ability to earn money which the plaintiff
2 might logically and reasonably have expected to share,
3 such as money for where the relationship of a parent and
4 a child exists, pecuniary loss would be presumed.

5 (2) Mental shock and suffering, is an element.

6 (3) Wounded feelings.

7 (4) Grief and sorrow.

8 (5) Loss of companionship.

9 (6) Loss of the use and comfort of the deceased's
10 society, including the loss of the deceased's
11 experience, knowledge, and judgement in managing the
12 affairs of the deceased and his or her beneficiaries.

13 It is not necessary to show the exact amount of
14 damages suffered by the beneficiaries or that the
15 beneficiaries suffered a monetary loss. In addition,
16 the person for whose benefit the action is brought does
17 not have to be dependent upon the deceased for support.

18 Now, when a person is injured by the acts of
19 another, the injured person is entitled to be fully
20 compensated for all injuries directly or proximately
21 resulting from the acts or the omissions of the
22 defendant, if any.

23 If you decide that the plaintiff is entitled to a
24 verdict, your next step would be to decide how much
25 money the defendant should be required to pay.

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1 Actual damages are to compensate the plaintiff for
2 the plaintiff's injuries or loss and to put the
3 plaintiff, as near as possible, in the same position
4 that the plaintiff were in before the incident occurred.
5 In other words, actual damages would be the actual
6 losses and expenses which the plaintiff has suffered
7 because of the defendant's negligence.

8 Pain and suffering damages compensate a plaintiff
9 for physical discomfort and emotional response to the
10 sensation of pain caused by the injury itself. There is
11 no definite standard by which to compensate the
12 plaintiff for pain and suffering. You have the
13 authority to determine the amount, if any, to be allowed
14 for pain and suffering. Using reasonable judgement to
15 ensure that the damages are just and reasonable in light
16 of the testimony and the evidence presented during this
17 case.

18 Now, Mr. Larios', his age at the time of his death
19 was 41 years of age. He had a life expectancy according
20 to South Carolina law, we have life expectancy tables in
21 our law, Mr. Larios had a -- pursuant to our tables had
22 a life expectancy of an additional 37.39 years of age.
23 The loss of enjoyment of life compensates the plaintiff
24 for limitations on the plaintiff's ability to
25 participate in, and to derive pleasure from, the normal

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1 activities of daily life.

2 Damages in a survival action include the recovery
3 for the deceased's conscious pain and suffering and
4 medical expenses.

5 While proof with mathematical certainty of the
6 amount of loss or damages is not required in order for
7 damages to be recoverable, evidence should be such as to
8 enable the jury to determine the amount thereof with
9 reasonable certainty or accuracy, and neither the
10 existence, causation, nor amount of damages can be left
11 up to guesswork, conjecture, or speculation.

12 If you find that the plaintiff is entitled to a
13 verdict for actual damages, your verdict should include
14 an amount to cover any past, present, or future damages
15 which were proximately caused by the defendant. Any
16 future damages must be reasonably certain to occur in
17 the future as a result of the defendant's acts.
18 Instead, the evidence must allow you to determine what
19 amount of damages is fair, just, and reasonable.

20 Mental suffering, apprehension, shock, fright,
21 emotional upset, humiliation, anxiety, either present or
22 expected in the future, can be considered properly as an
23 element of damages.

24 An injured party may recover for mental anguish
25 brought about by the injury and the suffering. If you

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1 find that the damaged party is entitled to recover
2 damages, you may take into account anxiety or worry
3 about the plaintiff's condition that they suffered since
4 the time of the incident. You may also consider anxiety
5 or worry about the possible future difficulties or
6 conditions resulting from the damages that the plaintiff
7 received, if you are satisfied to a reasonable degree of
8 certainty that the plaintiff has suffered such anxiety
9 and worry. The amount of damages for mental suffering
10 cannot be exactly measured but must be left to your
11 sound discretion.

12 The plaintiff alleges that the defendant's behavior
13 was reckless, willful, and wanton, which means that
14 there was a conscious failure to exercise due care or a
15 conscious indifference to the rights and the safety of
16 others. Or, in other words, a reckless disregard for
17 those things.

18 If you find that the defendant's conduct was
19 willful, wanton, or reckless, you may award the
20 plaintiff punitive damages. To support an award the
21 plaintiff for those damages, the plaintiff must prove by
22 clear and convincing evidence that the conduct
23 complained of included a consciousness of wrongdoing at
24 the time of the conduct.

25 Clear and convincing is more than just by the

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1 preponderance, or the greater weight, of the evidence,
2 which requires -- which -- that requires only proof that
3 persuades you that a party's claim is more likely true
4 than not true. On the other hand, clear and convincing
5 proof is not as high as the burden of proof in a
6 criminal case, which is proof beyond a reasonable doubt.
7 Clear and convincing proof leaves no substantial doubt
8 in your mind. It means that the evidence is not
9 ambiguous, doubtful, equivocal, or contradictory.
10 Convincing means persuading by proof or argument,
11 causing one to believe in the truth of what is asserted.
12 Clear and convincing proof establishes in your mind, not
13 only the fact that the fact is probable, but that it is
14 highly probable.

15 Now, while there is no presumption that everyone
16 knows the law, ignorance of the law excuses no one.

17 Now, in this case, your verdict cannot be based upon
18 sympathy, passion, prejudice, or some other
19 consideration that's not found in the evidence.

20 This case should be considered and decided by you as
21 an action between persons of equal standing in the
22 community. A cooperation is entitled to the same fair
23 trial at your hands as a private individual. All
24 persons, including cooperations, stand equal before the
25 law and are able to be dealt with as equals in this

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1 court of justice.

2 Now, madam forelady and ladies and gentlemen of the
3 jury, as you retire to begin your deliberations, I wish
4 to express to you the hope that each of you will be
5 mindful of the importance of your responsibility.
6 You're not called upon to serve as jurors very often,
7 and the proper performance of that duty requires each of
8 you to reach the height of freeing your mind of all
9 improper influences.

10 As the presiding judge of this court, I am vitally
11 concerned that whatever verdict you find will be the
12 result of your going into the jury room and confining
13 your consideration to the evidence and to the law that
14 you have heard in this courtroom.

15 Your verdict in this case, as I said earlier, cannot
16 be based on sympathy or emotion or some other
17 consideration that's not found in the evidence. It must
18 be based solely upon the evidence that has been
19 presented during the course of this trial.

20 Now --

21 JD, is the verdict form up there?

22 Ladies and gentlemen, I've prepared for you a
23 verdict form, and, madam forelady, it's a pretty
24 self-explanatory. The top of the verdict form is simply
25 the caption of the case. But the verdict form is set

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1 forth and it's a series of questions. And so you'll
2 just -- you'll do your deliberations and then when you
3 get to the verdict form, you'll just start with Question
4 1 and begin there.

5 And, Question 1, and I'll just go over this with you
6 briefly. And, again, as I said to you earlier in this
7 case, your verdict in this case must be unanimous, so
8 you must all agree on the answers that you give to these
9 questions. The first question is:

10 (1) Did the plaintiff prove, by a preponderance of
11 the evidence that the defendant SCE&G, also known as
12 Dominion Energy, did the defendant breach its duty of
13 care and, if so, was that breach a proximate cause of
14 Jose Larios' injuries and death?

15 You would answer either, YES or NO. And then
16 underneath the question there's a little instruction and
17 it says:

18 If your answer to Question 1 is NO, then you simply
19 sign the verdict form and end your deliberations.

20 In the verdict -- if your answer to Question 1 was
21 YES, then you go to Question 2.

22 Question two is:

23 (2) Did the defendant SCE&G, also known as Dominion
24 Energy, prove, by a preponderance of the evidence, that
25 Jose Larios was negligent and that his negligence was

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1 the proximate cause of his injuries and death?

2 You would answer either YES or NO. And then you
3 would see underneath that it says:

4 If you answered NO, go to Question 2. If you
5 answered YES, you go to Question 2 and then answer
6 Question 3. So if you answered NO, it says go to
7 Question 2 and proceed to Question 4.

8 But Question 3 which next appears, if you get to
9 Question 3, it simply is:

10 (3) What are the -- what are Jose Larios' and the
11 defendant SCE&G or Dominion Energy's respective
12 percentages of fault?

13 So the only way you would get to Question 3 is that
14 if you found that both Mr. Larios and the defendant were
15 both negligent. If you found that to be the case,
16 that's how you end up with Question 3. Question 3
17 simply asks you to put what percentage of negligence you
18 would give to the plaintiff, what percentage of
19 negligence you would give to the defendant. Keep in
20 mind, that your percentages, whatever they are, have to
21 total one hundred percent. Okay.

22 Now, if you answered previous question with a NO,
23 you would not answer Question 3 because, in other words,
24 if you answered -- if you found that Mr. Larios was not
25 negligent, then you would skip Question 3 and you would

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1 simply go to Question 4.

2 Question 4 is simply:

3 (4) State the total amount of damages for the
4 Estate of Jose Larios for any conscious pain and
5 suffering that he experienced prior to his death.

6 And there's an amount there, a blank, that you can
7 write in the amount that you find.

8 And then Question five is:

9 (5) Please state the total amount of damages for
10 the wrongful death of Jose Larios including grief,
11 sorrow, mental shock, suffering, and the loss of his
12 companionship.

13 And then there's a line there for that amount. And
14 then you would finally end up at Question 6.

15 And Question 6 is simply:

16 (6) Do you find that the defendant South Carolina
17 Electric and Gas, doing business as Dominion Energy, do
18 you find that the defendant acted in a willful, wanton,
19 or reckless manner.

20 And then you would just answer that either YES or NO
21 depending on your verdict. And then, madam forelady,
22 there's a place for you to sign and date it.

23 Now, ladies and gentlemen, what I'm going to do, I'm
24 going to get you to step back into your jury room. I
25 think your lunch is here, and, so -- and I'll let y'all

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1 deal with that how you want to. You can eat lunch and
2 then deliberate. You can eat lunch while you
3 deliberate, it's up to you. But, the thing that you
4 must understand is this, everybody must be present
5 during the deliberations. So that if anyone is excused
6 like go to restroom or something, while they're out of
7 the room, you have to stop your deliberations and wait
8 until everyone returns. Okay.

9 Now, I'm going to get you to do me a favor,
10 Ms. McAlhaney, don't start the deliberations just yet.
11 I'm going to excuse you back into the jury room. I'm
12 just going to briefly speak to the attorneys to make
13 sure I've covered everything. If there's any need for
14 me to bring you back out and cover something else, I'll
15 do that. If not, we will collect these exhibits and
16 when you get the verdict form and these exhibits, that's
17 your cue to begin the deliberations. Okay.

18 So -- and I think the lunch is here; correct?

19 THE BAILIFF: I'm not sure.

20 THE COURT: I'll find out for sure, but we'll send
21 it right in to you.

22 (The jury left the courtroom at 1:17 p.m.)

23 THE COURT: All right. Thank you, folks. Please
24 have a seat. Are there any -- I was going to say, other
25 than what we've already discussed and put on the record,

1 but I don't want to preclude anyone from putting
2 anything on the record, are there any objections or
3 exceptions to the charge from the plaintiff?

4 MR. BUCKNER: Your Honor, the only I think we failed
5 to put on the record, before, we talked about during the
6 charge conference was the charge that came in this
7 morning or last night about the duty to obey the law.

8 THE COURT: Right.

9 MR. BUCKNER: I didn't put it on the record before,
10 but as long as that's noted, nothing else, Your Honor.

11 THE COURT: All right. And we'll certainly note
12 that objection to that charge by the plaintiff.

13 Anything from the defense?

14 MR. PUGH: Very briefly, Your Honor.

15 THE COURT: Yes, sir.

16 MR. PUGH: Defendant Dominion Energy would take
17 exception to His Honor charging -- not charging the jury
18 as to trespass which was Defendant's Number 24.

19 THE COURT: Yes, sir.

20 MR. PUGH: And as to assumption of risk which was
21 Defendant's Number 25. And Your Honor's decision to
22 charge the jury with that punitive damage goes to the
23 jury, we take exception to that.

24 And one housekeeping matter. Can we look at it up
25 here?

1 THE COURT: Yes, sir.

2 MR. PUGH: It's very simple. And I don't want to
3 highlight it, and I don't think we need to do anything
4 about it other than maybe --

5 (Bench conference)

6 THE COURT: Folks, if y'all would get with Katherine
7 to make sure that all of the exhibits that are in are
8 together.

9 Something I want to mention with regards to your
10 objections. Katherine, if I may, put something back on
11 the record.

12 In reference to the defense's -- and I want to make
13 sure we note their exception to the Court not charging
14 the -- their request regarding assumption of risk. The
15 reason I didn't charge that is I didn't feel that there
16 was any evidence in the record -- there was evidence in
17 the record that the plaintiff was unaware of the
18 electrical lines being where they were and there didn't
19 seem to be any evidence to the contrary of that.

20 I felt like the issue in this case as -- the only
21 way they could find that this defendant had any
22 liability was if they were to find the electrical shock.
23 And so I didn't feel that assumption of risk was
24 appropriate without there being any evidence that he was
25 aware that the lines were in the trees.

1 And I also want to note that at the close of the
2 arguments of both plaintiff and defendant, there were no
3 exceptions to the closing arguments. There was nothing
4 contemporaneously objected to or exceptions to either
5 plaintiff or defendant's closing arguments. Okay.

6 All right. If you send all that back and tell them
7 they can begin their deliberations.

8 (The jury began deliberating at 1:34 p.m.)

9 (WHEREUPON, Court's Exhibit Numbers 5 and 6 were
10 marked and entered)

11 (The jury entered the courtroom at 2:38)

12 THE COURT: Ladies and gentlemen, I got your
13 questions. Just so record's clear:

14 "During Mr. Brill's testimony there was a PowerPoint
15 used, can we have a copy of that?"

16 Conferring with the attorneys, my understanding is
17 that the demonstrative -- the thing that they put up on
18 the board during Mr. Brill's testimony, that was not
19 entered into evidence as far as a document. It was used
20 for the demonstrative purposes. It is evidence in the
21 case and you can consider that in your deliberations,
22 but I can't give you the actual document itself because
23 it's not entered in.

24 And, so, on that, you're going to have to basically
25 go off your collective recollection of what that item

1 was. Certainly can consider it, but I can't give you
2 the item itself.

3 The second question we have is:

4 "Also, can we get a copy of Pedro Abraham's
5 deposition?"

6 Again, I can't give you the actual deposition
7 because it's not entered into evidence. But the
8 testimony as you're aware was presented through
9 Mr. Yarborough reading Mr. Abraham's responses. I can
10 play back for you either parts or all of that testimony
11 depending on what your questions are regarding that. So
12 if you have specific questions or parts that you want to
13 rehear, I can have madam court reporter play those back.
14 Or if you want to hear all of that testimony, but I
15 don't have a physical document to give you. Okay.

16 So if you would like to go back into the jury room,
17 talk about as far as what, if anything, you want me to
18 replay.

19 MS. MCALHANEY: I don't think we need to talk about
20 it. I think there was only one question that we had
21 from the testimony. We were wondering if he
22 specifically said how Jose had fell off the ladder. And
23 we couldn't remember if he had specifically stated --

24 THE COURT: That's the question?

25 MS. MCALHANEY: Correct.

1 THE COURT: I tell you what I'll do, how about this,
2 I'll get you go back into the jury room and continue
3 your deliberations. In the meantime, I'll get with
4 Katherine and we'll look at that and see if we can find
5 that in the transcript and then bring you back out and
6 play that for you. Okay.

7 MS. MCALHANEY: Okay.

8 (The jury left the courtroom at 2:41 p.m.)

9 THE COURT: Any objections or exceptions from the
10 plaintiffs with regards to my responses to the juries
11 questions?

12 MR. DUFFY: No, Your Honor.

13 THE COURT: Anything from the defense?

14 MR. PUGH: No, sir.

15 THE COURT: Now, what I'll do is -- Katherine, you
16 understand what they're looking for? I don't even know
17 if it's there.

18 (Off the record)

19 THE COURT: Let's go ahead and bring the jury in,
20 please.

21 (The jury entered the courtroom at 3:00 p.m.)

22 THE COURT: All right, folks. Thank you, folks,
23 please have a seat. If I understood your question you
24 were talking about the testimony of Pedro Abraham and
25 your question was the part of his testimony where he was

1 testifying about Mr. Larios falling off the ladder?

2 MS. MCALHANEY: Correct.

3 THE COURT: Okay. Here's what we're going to do.
4 There's two areas where he talked about that and madam
5 court reporter has found those on her machine and she is
6 going to read both the question and the response.

7 Anytime you're ready.

8 MS. SPIRES:

9 "Q Can you tell me what happened or what you
10 saw that day with Jose?

11 A After we had trimmed the nine palms and with
12 -- we were done with that, we went -- we got to the last
13 palm, and I set the ladder in the palm, then he went up,
14 he went up the ladder then.

15 He tied himself around the tree around his waist to
16 make sure everything would be secured.

17 To be able to get to the top of the tree, he started
18 clearing whatever was on top of his head first to be
19 able to then -- after he can remove that, he was to get
20 to the sides of the palm tree.

21 At that time then also while he was doing that, I
22 was picking up -- I was picking up the debris that was
23 falling, and it was -- and I was making piles of it,
24 then I was taking -- and making a pile so I could throw
25 them on my shoulder and I could go where they needed to

1 go.

2 Then all of a sudden while I was working and doing
3 what I was doing, I heard a loud -- a loud scream, and
4 then I turned over and I stopped doing what I was doing,
5 and I looked over, and I saw a lot of smoke. I realized
6 things weren't fine.

7 Then I would yell to him to see if he was okay, and
8 then he would not respond to me at that point.

9 I noticed that he was trying to -- with one arm
10 trying with the left arm trying to unbuckle himself, but
11 at that point his head was kind of in a downward
12 position, and then I realized he was just -- he wasn't
13 fine at that point.

14 Then I noticed that he was at that point without
15 strength and he -- I saw -- I noticed where he was able
16 to unbuckle himself, but then he fell backwards."

17 And then next:

18 "Q Okay. When he yelled, you looked up toward
19 him?

20 A Yes.

21 Q You saw him hold onto the tree?

22 A Yeah. He was grabbing on with the left
23 hand, he was trying to unbuckle himself with the right
24 hand.

25 Q Untie the rope with his right hand; correct?

1 A Yes.

2 Q And he untied the rope?

3 A Yeah. He then tried to go down to the next
4 step of the ladder, and he didn't have anymore -- he
5 didn't have anymore strength in his body, that's when he
6 fell backwards."

7 THE COURT: Thank you, ladies and gentlemen, you may
8 continue with your deliberations.

9 (The jury left the courtroom at 3:04 p.m.)

10 THE COURT: Okay. I think that was responsive to
11 the jurors. Is there anything further from the
12 plaintiff regarding the response to their questions?

13 MR. APPLGATE: I want you to read the whole
14 deposition in, Your Honor.

15 (Laughter)

16 THE COURT: I respectfully deny that. Anything from
17 the defense?

18 MR. PUGH: No, sir.

19 THE COURT: Okay. I did make this a Court's
20 Exhibit, so we'll put that with the other items. And
21 we'll remain at ease then while they continue to work.

22 (Off the record)

23 THE COURT: What I'll do, if you don't mind, I'll
24 read the verbatim the question and then we can discuss
25 how to respond to it. It says:

1 "Judge," and keep in mind when they -- "we need the
2 last question described to us with different verbiage to
3 make sure we answer it correctly."

4 They're referring to the last question on the
5 verdict form which is the question asking whether or not
6 they find recklessness, willfulness or whatever. So,
7 again, we need the last question described to us with
8 different verbiage to make sure we answer it correctly.
9 I don't know if they mean different verbiage of the way
10 the question is written or if they want to be recharged
11 on the definition of recklessness. I don't know.

12 MR. APPELATE: You know, I don't know. I just
13 guess, Your Honor, I don't even know that after I
14 finished law school I really understood what willful,
15 wanton, or whatever, reckless behavior. So I think it's
16 probably the question if you have the charge that would
17 probably be what they need. But I can't remember --

18 THE COURT: Just that section?

19 MR. APPELATE: I can't remember what the charge is,
20 but it seems like probably what they're trying to ask.
21 It's hard to understand --

22 THE COURT: It is.

23 MR. APPELATE: -- what those words mean.

24 THE COURT: Do you have the charge? Here's what
25 I've got. All right. Basically what I charged was."

1 "The plaintiff alleges that the defendant's behavior
2 was reckless, willful, and wanton, which means that
3 there was a conscious failure to exercise due care or a
4 conscious indifference to the rights and safety of
5 others or a reckless disregard thereof.

6 If you find the defendant's conduct was willful,
7 reckless, or wanton, you may award the plaintiff
8 punitive damages. To support an award of punitive
9 damages, the plaintiff must prove by clear and
10 convincing evidence that the conduct complained of
11 included a consciousness of wrongdoing at the time of
12 the conduct."

13 And then I got a paragraph that defines clear and
14 convincing evidence.

15 MR. APPLGATE: I mean, I don't know what's
16 confusing about that is that second part of it. I mean,
17 I would be agreeable if Steve just wants to read the
18 first part of it. Because it's kind of confusing when
19 you start talking about punitive -- in here on the
20 verdict form there's nothing about punitive's.

21 THE COURT: Well, now there is a way I could read
22 that first paragraph and then skip down to the third
23 paragraph. Because I think more than just defining
24 reckless, willful, and wanton, you know, that finding
25 has to be done by clear and convincing evidence.

1 MR. APPLGATE: But that part to me, I was thinking
2 if you read the first part by itself and that explains
3 the definition of what you're trying to get to. It's
4 not -- because the standard is the next trial. And so
5 it's about punitive damages and clear and convincing
6 evidence and that's what you would charge in the next
7 trial. Here's just the question of what is willful,
8 wanton, and reckless, you know, behavior. And so the
9 first paragraph describes what those words mean. Stop.
10 Because that's all they're asking right now; right?

11 THE COURT: Well, I don't think so. The reason I
12 say that is, I think the law says to find recklessness,
13 willfulness, and wantonness you have to be able to show
14 that by clear and convincing evidence. Which is a
15 higher standard than simply greater weight, but less
16 than --

17 MR. APPLGATE: But that's in conjunction with -- to
18 do that. To prove willful you can -- if you prove that
19 you get punitive damages and, therefore, you would have
20 to do clear and convincing. So to me, you need to show
21 all three.

22 THE COURT: You have to show recklessness,
23 willfulness, and wantonness by clear and convincing
24 evidence. So you can't just use the standard of beyond
25 -- of the preponderance of evidence to find

1 reckless, willfulness, and wantonness and then bring
2 them out and charge them that the standard is higher for
3 that. You have to do that --

4 MR. APPLGATE: And I understand. I was just
5 thinking -- I was trying to suggest maybe -- I thought
6 what he would want to be cleaner. But if you want the
7 read the whole charge, I think that's fine. And we've
8 already read the charge --

9 THE COURT: Yeah. I mean, I think that's what
10 they're asking. I don't know if they want the question
11 reworded. Because the question is pretty simple, Perry,
12 don't you have it in front of you or do you? You may
13 not.

14 MR. BUCKNER: Yes. We need the last question
15 described to us differently is what I wrote down. I
16 heard you say something about verbiage. We had this
17 conversation last night, Your Honor, I mean, this is all
18 that 15-32-510. We would be fine with just rereading
19 the charge and stop. In fairness to what we did, we
20 added a recklessness charge this morning having not had
21 it before and then, you know, it includes a discussion
22 of punitive damages which the jury is not yet
23 considering. And, so, what we -- if we cut it off right
24 there --

25 THE COURT: What I think they're asking, I'm looking

1 at the question. The last question on the verdict form
2 is, "Do you find that the defendant SCE&G/Dominion
3 Energy acted in a willful, wanton, or reckless manner."
4 And the answer is YES or NO.

5 And when they say we need the last question
6 described to us with different verbiage, I'm thinking
7 that they're asking what is willful, wanton, and
8 reckless behavior.

9 MR. BUCKNER: We agree.

10 THE COURT: I think that's what they're asking. I
11 think they want those terms defined and the only way I
12 know to do that is just to charge them with that section
13 of the charge where it defines that. But, having said
14 that, you have to find that by a greater standard that
15 being clear and convincing. So if I charge them on the
16 definition of those words, I think they have to be
17 charged that there's a different standard of proof for
18 that.

19 MR. PUGH: Your Honor, otherwise we don't know if
20 they found that by a preponderance and that would
21 support a verdict that would lead us to another
22 proceeding.

23 THE COURT: Correct.

24 MR. BUCKNER: Judge, the only thing I would say in
25 response to that is the jury had asked the question what

1 is recklessness and what is the standard for that, I
2 would agree. They've already been charged on the
3 standard. So they have to ask a question to invite
4 additional instruction from Your Honor. They've asked
5 what is recklessness and the first part of that charge
6 is what is recklessness. And to then say, oh, by the
7 way, don't forget it's different than the other
8 standard.

9 THE COURT: That's not what they're asking. They're
10 asking, we need the last question described to us with
11 different verbiage to make sure we answer it correctly.

12 MR. APPELATE: Different verbiage. That question
13 doesn't say anything about clear and convincing
14 standard. It doesn't have anything to do with that.

15 THE COURT: That's the standard under the law. I'm
16 not going to charge them and not give them the standard
17 they have to consider.

18 MR. APPELATE: Well, I was just asking Your Honor
19 if you would just charge based on the question if
20 there's any issue just charge the charge.

21 THE COURT: Well, I'll charge them the charge, but
22 the charge involves the definition of clear and
23 convincing evidence.

24 MR. APPELATE: That's fine.

25 THE COURT: Yeah. I'll do that.

1 MR. APPLGATE: I just wanted the whole charge as
2 opposed to cutting it up.

3 THE COURT: I won't do that I'll just do it whole.

4 MR. APPLGATE: Okay. Thank you.

5 THE COURT: And you know what, that is right and
6 that's probably my bad when we wrote the question.
7 Because that question on the verdict form should read:

8 "Do you find by clear and convincing evidence that
9 the defendant Dominion Energy acted in a willful..."

10 That's the way that question should have been read.

11 MR. PUGH: That's the way it should read.

12 THE COURT: Right.

13 MR. PUGH: An they're asking Your Honor for that
14 question in different verbiage. That's the confusion
15 that they're asking you to clarify.

16 THE COURT: I think the appropriate response to the
17 jury's question is to recharge them just on that section
18 of the charge.

19 MR. BUCKNER: Agree.

20 MR. PUGH: Let me ask, and you don't want to give
21 them the question in a different verbiage that it should
22 have been given in the first place because that's what
23 they're asking for?

24 THE COURT: Yeah. I mean, I think it's appropriate,
25 but I think that's what the charge does. Or I can

1 explain that. I mean, listen, they want to understand
2 the last question so that they answer it correctly.
3 That's what they're saying. Well, the last question is,
4 "Do you find by clear and convincing evidence that
5 SCE&G/Dominion Energy acted in a willful, wanton, or
6 reckless manner." And I think reading them the charge
7 does that. Just that section of the charge dealing with
8 that issue.

9 MR. BUCKNER: On behalf of the plaintiff, we're a
10 hundred percent okay. As long as it's nothing beyond
11 the charge, we would consent to that.

12 MR. PUGH: I'm not trying to overly complicate it,
13 but asking the question, can we get Question 6 in
14 different verbiage, whatever it says, so we can
15 understand something. And Your Honor agrees that what
16 they're hung up or apparently what they're hung up on is
17 that question should have read, "Do you find by clear
18 and convincing evidence that" --

19 THE COURT: Yeah. And I think that is appropriate
20 and that's what I'm going to correct.

21 MR. PUGH: Okay.

22 THE COURT: And I'll note any objection to that.
23 But here's the thing, here's the overriding thing for
24 me. If there is a, quote, Scrivener's error, that
25 shouldn't be allowed to just be ignored and go by

1 because I messed up the form. The form -- (ambulance or
2 fire truck going by) -- I'm sorry, y'all can hear me,
3 can't you?

4 (No response)

5 THE COURT: The form should have read -- the verdict
6 form, the appropriate of the law and the way the verdict
7 form should read is: "Do you find by clear and
8 convincing evidence that the defendant SCE&G/Dominion
9 Energy acted in a willful, wanton, and reckless manner."
10 That's what the form should have read.

11 MR. APPLGATE: Your Honor, we have no problem
12 consenting for you to change that or to just write in
13 there that section so they could stay with the verdict
14 form they've already started filling out. Add in "by
15 clear and convincing evidence."

16 THE COURT: What I will do because obviously I don't
17 need to see their verdict form if they started filling
18 it out, but what I would tell them is, I would make that
19 correction and then give them that charge.

20 MR. APPLGATE: Okay. Thank you.

21 THE COURT: All right. Bring the jury out, please.

22 (The jury entered the courtroom at 5:02 p.m.)

23 THE COURT: All right. Thank you, ladies and
24 gentlemen, please have a seat. I got your question:

25 "Judge, we need the last question described to us

1 with different verbiage to make sure that we answer it
2 correctly."

3 All right. And I appreciate the question and what
4 I'm going to do is, I'm going to give you my charge just
5 on the part that deals with that last question. And,
6 madam forelady, just so that I'm -- make sure I know
7 exactly, you're talking about Question 6 on the verdict
8 form; right?

9 MS. MCALHANEY: Correct.

10 THE COURT: Okay. So what I'm going to do is, I'm
11 going to read -- charge you that language that just
12 deals with that question that I charged you earlier.

13 "The plaintiff alleges that the defendant's behavior
14 was reckless, willful, and wanton, which means that
15 there was a conscious failure to exercise due care or a
16 conscious indifference to the rights and the safety of
17 others or a reckless disregard thereof.

18 If you find that the defendant's conduct was
19 willful, wanton, or reckless, you may award the
20 plaintiff punitive damages. To support an award of
21 punitive damages, the plaintiff must prove by clear and
22 convincing evidence that the conduct complained of
23 included a consciousness of wrongdoing at the time of
24 the conduct.

25 Clear and convincing is more than just a

1 preponderance, or greater weight, of the evidence, which
2 requires only proof which persuades you that a party's
3 claim is more likely true than not true. On the other
4 hand, clear and convincing proof is not as high as the
5 standard of burden or the standard of proof in a
6 criminal case, which is proof beyond a reasonable doubt.
7 Clear and convincing proof leaves no substantial doubt
8 in your mind. It means that the evidence is not
9 ambiguous, doubtful, equivocal or contradictory.
10 Convincing means persuading by proof or argument,
11 causing one to believe in the truth of what is asserted.
12 Clear and convincing proof establishes in your mind, not
13 only that the fact is probable, but that it is highly
14 probable."

15 Now, I, in sending the verdict form back to you
16 which maybe I understand your question, when I sent the
17 verdict form back to you, the way it reads as I sent it
18 to you was:

19 "Do you find that the defendant SCE&G/Dominion
20 Energy acted in a willful, wanton, or reckless manner."

21 The way that question should read is this:

22 "Do you find by clear and convincing evidence that
23 the defendant SCE&G/Dominion Energy acted in a willful,
24 wanton, or reckless manner."

25 So, and, madam forelady, I'm not going to ask you to

1 give me the verdict form so I can correct it because
2 it's none of my business what your verdict form says.
3 But, I would ask that you make that addition yourself if
4 you'd like. But that question should read:

5 "Do you find by clear and convincing evidence that
6 the defendant" --

7 -- and then it reads just as it reads. Okay?

8 MS. MCALHANEY: Okay.

9 THE COURT: All right. Thank you, ladies and
10 gentlemen.

11 (The jury left the courtroom at 5:07 p.m.)

12 THE COURT: All right. Any objections or exceptions
13 from the plaintiff to the Court's response to the jury's
14 question.

15 MR. APPLGATE: One second. No objection.

16 THE COURT: Anything from the defense?

17 MR. PUGH: None, Your Honor.

18 THE COURT: All right. I'm going to make this a
19 Court's Exhibit, whatever number we have going there.

20 (WHEREUPON, Court's Exhibit Number 7 was marked and
21 entered)

22 THE COURT: Well remain at ease then.

23 (Off the record)

24 THE COURT: Is the plaintiff ready to receive the
25 jury's verdict?

VERDICT OF THE JURY

1 MR. APPLGATE: Yes, Your Honor.

2 THE COURT: Is the defendant ready?

3 MR. PUGH: Yes, sir.

4 THE COURT: Bring the jury in.

5 (The jury entered the courtroom at 5:13 p.m.)

6 THE COURT: All right. Ms. McAlhaney, has the jury
7 reached a unanimous verdict, ma'am?

8 MS. MCALHANEY: Yes, we have, Your Honor.

9 THE COURT: If you would please pass that to madam
10 clerk. Madam clerk, if you would please publish the
11 jury's verdict.

12 THE CLERK: In Case Number 2017CP15423, Tiffany
13 Provence, Special Administrator of the Estate of Jose
14 Larios verses Dominion Energy South Carolina, f/k/a,
15 South Carolina Electric and Gas Company. The verdict
16 is:

17 "We, the jury, unanimously find:

18 (1) Did Plaintiff prove, by a preponderance of
19 evidence, that the defendant SCE&G/Dominion Energy
20 breached the duty of care and, if so, was that breach a
21 proximate cause of Jose Larios' injuries and death?

22 YES.

23 (2) The defendant SCE&G/Dominion Energy prove, by a
24 preponderance of evidence, that Jose Larios was
25 negligent and that his negligent was the proximate cause

VERDICT OF THE JURY

1 of the injuries and death?

2 YES.

3 (3) What was Jose Larios and defendant
4 SCE&G/Dominion Energy respective percentage of fault, as
5 proven by the preponderance of evidence? These
6 percentages must add up to 100%.

7 The defendant SCE&G/Dominion Energy: 90 percent.

8 Jose Larios: 10 percent.

9 (4) Please state the total amount of damages for
10 the Estate of Jose Larios for any conscious pain and
11 suffering his experienced prior to his death.

12 \$10,000,000.

13 (5) Please state the total amount of damages for
14 the wrongful death of Jose Larios including grief,
15 sorrow, mental shock, suffering, and the loss of
16 companionship.

17 \$11,000,000.

18 (6) Do you find the defendant SCE&G/Dominion Energy
19 acted in a willful, wanton, or reckless manner.

20 NO.

21 Signed by the foreperson Candice McAlhaney, 9/27/19.
22 If this is your verdict, please raise your right hand.

23 (All the jurors raised their right hand)

24 THE CLERK: Thank you. You may put them down.

25 THE COURT: Thank you, ladies and gentlemen. All

1 right. Ladies and gentlemen, I want to thank you for
2 your service this week. And, gentleman, y'all can have
3 a seat, folks.

4 Any request by the defense to poll the jury?

5 MR. PUGH: None, Your Honor.

6 THE COURT: Okay. Folks, I want to thank you for
7 your service this week. Been a long week. But I tell
8 you what I want to say to you and I don't say this to
9 every jury that I have because oftentimes I can't. But
10 throughout the trial, it was -- I mean, I'm up here
11 doing some things as well as working as the lawyers are
12 presenting their case, what was evident to me though is
13 that all of you were engaged in the case. Everybody
14 seemed to be listening intently and following along and
15 I appreciate that and I know the parties appreciate
16 that.

17 It didn't appear that anybody was losing interest or
18 letting their thoughts wonder, so I appreciate your
19 effort this week. That obviously concludes your service
20 for this week. You've earned that exception that I
21 spoke about so that if you receive a summons for jury
22 duty here in state circuit court for the balance of this
23 year, all of 2020 -- excuse me. Yes, 2020, and all of
24 2021. If you receive another summons you can exercise
25 that exception if you choose to.

1 It is just an exception, it doesn't mean you're not
2 qualified to serve. So if you get that summons and you
3 would like to serve again, I would encourage you to do
4 so. But I want to thank you for your service.

5 You got work excuses if they need that?

6 THE CLERK: (Nodded)

7 THE COURT: If you need a work excuse you can get
8 that as you go out we'll have that for you.

9 And tell them their check's in the mail?

10 (Laughter)

11 THE CLERK: Our finance department will send it to
12 you within two weeks.

13 THE COURT: Don't get offended when you get that
14 check. It's not a lot of the money. But, you know,
15 jury service, it's just that. It's a service that you
16 give to your community. It's not really a paid gig, so,
17 you know, you've done a great service to your community
18 by making yourself available for service and I want to
19 thank you again.

20 That does conclude your service, your restrictions
21 as far as discussing the case or talking about the case
22 is lifted. You are welcome to talk to anyone who wants
23 to talk with you about the case, but you're also
24 welcomed to tell them you don't want to talk about it.
25 It's up to you. But you're no longer restricted when it

1 comes to that. Okay. So, thank you, folks.

2 (The jury left the courtroom at 5:20 p.m.)

3 THE COURT: Mr. Pugh would you like ten days to
4 submit any post-trial motions or do you want to proceed
5 on that?

6 MR. PUGH: Your Honor, I would appreciate the ten
7 days.

8 THE COURT: Sure. Be happy to do that.

9 MR. PUGH: Under Rule 59(b). Thank you, Your Honor.

10 THE COURT: We'll certainly do that. Listen, to all
11 of you, I want to thank you. It always makes my job
12 easier when you got good lawyers to try a case with and
13 you guys really made my job easy this week and I
14 appreciate all your hard work. And, certainly, the
15 curtesies that you showed to us. I speak for myself and
16 JD. I want to thank you for that. We have enjoyed
17 working with everything everybody.

18 That being said, I think we're adjourned and take
19 your ten days and whatever time you need to respond to
20 whatever they submit.

21 - - -END OF REQUESTED TRANSCRIPT OF RECORD- - -

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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)

COUNTY OF COLLETON)

I, KATHERINE A. SPIRES, Registered Professional Reporter for the Fourteenth 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 the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Colleton County, South Carolina, on the 24-27th of September, 2019.

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

October 6, 2019

Katherine A. Spires

Katherine A. Spires

Registered Professional Reporter