

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

Case No. DAR-_____

**Timothy Haydock and Barbara Moss,
Defendants-Appellants,**

v.

**Margaret Reichenbach and John Reichenbach,
Plaintiffs-Appellees.**

On Appeal from Judgment of the
Bristol County Superior Court, Case No. 1573CV00938

Appeals Court No. 2025-P-0392

Application for Direct Appellate Review

April 17, 2025

Melissa C. Allison (BBO #657470)
mallison@andersonkreiger.com
Jonathan Elder (BBO #654411)
jelder@andersonkreiger.com
Sean Grammel (BBO #688388)
sgrammel@andersonkreiger.com
ANDERSON & KREIGER LLP
50 Milk, 21st Floor
Boston, MA 02109
617.621.6523

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Request for Direct Appellate Review

The defendants-appellants Timothy Haydock and Barbara Moss request that the Supreme Judicial Court accept direct appellate review because this appeal involves two novel, important questions of law.

The first question focuses on the application of the Massachusetts Civil Rights Act, G.L. c. 12, § 11I (the “MCRA”), in the land use context. Neighbors often disagree about development, with countless appeals filed each year in local Planning Boards and Zoning Boards of Appeals. These disputes involve competing constitutional rights: the developer has a right to use and enjoy their property, while the abutter has a corresponding right to protect their property and to voice concerns through petitioning activity. The Court should provide guidance about how to balance these competing rights in the land use context, particularly after the Court’s decision regarding application of the anti-SLAPP statute in Bristol Asphalt Co. v. Rochester Bituminous Prods., Inc., 493 Mass. 539 (2024). The Court in Bristol noted that defendants’ petitioning rights would be “fully analyzed based on a more complete record, not special motions to dismiss.” Id. at 554. This appeal presents

the opportunity for the SJC to explain how to balance those rights, based on a complete record at trial.

The second question focuses on whether a plaintiff must show non-performance of a contract to establish liability for intentional interference with contractual relations. It is black letter law that a plaintiff must prove a breach where a defendant allegedly interferes with the performance of the third-party to a contract. United Truck Leasing Corp. v. Geltman, 406 Mass. 811, 816 (1990). This Court previously suggested that a breach was also required when the alleged interference is aimed at the plaintiff's performance. Shafir v. Steele, 431 Mass. 365, 369 (2000). But the Superior Court allowed the plaintiffs-appellees Margaret and John Reichenbach to base their intentional interference claim on an allegation that their performance was only made “more expensive or burdensome.” The Court should clarify the elements necessary for intentional interference with contractual relations.

Both these issues are novel and important questions of law that hold such public interest that justice requires a final determination by

this Court. Mass. R.A.P. 11(a). Dr. Haydock and Ms. Moss therefore request that this Court accept direct appellate review.

Statement of Prior Proceedings

The Reichenbachs filed their Complaint against Dr. Haydock and Ms. Moss on October 1, 2015. Addendum (“Add”):37. That Complaint had three claims that were later tried to a jury: violation of the MCRA, trespass, and intentional interference with contractual relations. Add:102.

Dr. Haydock and Ms. Moss filed a special motion to dismiss the Complaint under G.L. c. 231, § 59H (the “anti-SLAPP statute”), which was ultimately denied by the Superior Court on June 20, 2016. Add:40. Dr. Haydock and Ms. Moss appealed that denial to the Appeals Court, which affirmed the denial (on different grounds) on December 21, 2017. Reichenbach v. Haydock, 92 Mass. App. Ct. 567 (2017). The parties then proceeded through discovery; no party sought summary judgment for any claim.

A jury trial began on February 2, 2023, in Bristol County Superior Court, and ran for fifteen non-consecutive days, ending on March 3, 2023. Add:37. The jury found for the Reichenbachs on all three counts

and awarded damages for each claim: \$1.5 million for violation of the MCRA (\$1 million against Ms. Moss and \$500,000 against Dr. Haydock); \$200,000 for trespass (\$150,000 against Ms. Moss and \$50,000 against Dr. Haydock); and \$2 million for intentional interference with contractual relations (\$1 million each against Dr. Haydock and Ms. Moss). Add:428-429.

Post-trial briefing ensued, including requests by the Reichenbachs for permanent injunctive relief and attorney fees. Add:74. The trial judge held a hearing on the request for attorney fees on September 21, 2023, Add:75, and held an evidentiary hearing on the request for permanent injunctive relief on December 18, 2023, Add:75. The trial judge granted both requests on May 2, 2024. Add:76.

On May 3, 2024, the Superior Court entered judgment against Dr. Haydock in the amount of \$5,533,924.24 and Ms. Moss in the amount of \$6,753,168.04 (these amounts include the totals awarded by the jury, prejudgment interest, and attorney fees and costs). Add:300; 302. Dr. Haydock and Ms. Moss served timely motions for judgment notwithstanding the verdict and for a new trial, Add:76-77, which were denied on January 2, 2025. Add:80.

Dr. Haydock and Ms. Moss filed a timely Notice of Appeal on January 16, 2025. Add:80. The Appeals Court entered this case on the docket on March 27, 2025. Appeals Court Case No. 2025-P-0392, Dkt. No. 2. Dr. Haydock and Ms. Moss now file this Application for Direct Appellate Review.

Summary of the Facts

This case presents a neighbor dispute between two married couples who own abutting parcels of oceanfront land in Dartmouth, Massachusetts. The dispute arose from the Reichenbachs' construction of a large vacation home and its associated permitting process, which implicated significant environmental and other sensitive land use issues. Throughout the development, Dr. Haydock and Ms. Moss sought to assert their own free speech and property rights, which ultimately led to their liability under the MCRA and for intentional interference with contractual relations.

The Reichenbachs' Initial Permit Applications. In 2008, the Reichenbachs bought a parcel of land overlooking Buzzards Bay from a member of Dr. Haydock's extended family, and they sought to build a new summer home there. Add:104. Dr. Haydock and Ms. Moss have

lived in an abutting house for decades, and they welcomed the Reichenbachs to the neighborhood. Add:104; 171-173. Ms. Moss and Mr. Reichenbach soon began to work together on a permit application that the Reichenbachs needed to submit before beginning construction. Add:142-149; 173-184. Ms. Moss helped to coordinate concerns from various neighbors and abutters, and proposed solutions for the Reichenbachs to consider. Add:149; 185. This culminated in the Reichenbachs obtaining the necessary permit from the Dartmouth Conservation Commission in early 2010. Add:206. Ms. Moss attended that Conservation Commission meeting and expressly told the board that she supported the Reichenbachs' plans. Add:150.

Later in 2010, the Reichenbachs changed their construction plans in ways that would impact various abutters, including (but not limited to) Dr. Haydock and Ms. Moss. Add:208; 186-188. The neighbors' primary concern was the scale of a large development on a narrow piece of oceanfront land that previously contained a much smaller home. The changes to the Reichenbachs' plans would affect not only the sensitive environmental resources on the coast but would also exacerbate water and runoff issues on abutting properties. Add:190-191; 199-200. Dr.

Haydock, Ms. Moss, and a group of other neighbors opposed the Reichenbachs' changes and hired a lawyer. Add:189.

The Conservation Commission met again in January 2011 and approved the Reichenbachs' changes. Add:233. The neighborhood group voiced concerns about the plans to various Dartmouth town boards, including through written objections or appeals. Add:209; 228; 233; 235. Different configurations of the neighborhood group filed appeals: Dr. Haydock and Ms. Moss did not join all these appeals, some included only Dr. Haydock but not Ms. Moss, and some were from the entire group of ten abutters.

As commonly happens with neighbor disputes, tensions rose. The Reichenbachs each claim that Ms. Moss remarked that she would cost them "time and money" and "ruin" their reputation in Dartmouth if they did not make changes to their construction plans. Add:135; 166. Ms. Moss testified that Mrs. Reichenbach made a comment about using her immense resources to obtain the permits, Add:183, and that Mr. Reichenbach threatened to cut down Ms. Moss's trees with a chainsaw. Add:187. Ms. Moss wrote in a hyperbolic email to her neighbor (who

also opposed the plans) that she was going to “torture” the Reichenbachs. Add:277.

The neighborhood group appealed various of the Reichenbachs’ permits over the course of 2011, but all permits were eventually upheld. Add:195. The last appeal was decided in November 2011 and the Reichenbachs started construction on their home about a week later. Add:152.

The Reichenbachs’ Construction. The Reichenbachs built a nearly 10,000-square foot home at the end of a long, narrow, dead-end private way, on a parcel only 1.5 acres in size; it was a large project on a small lot that contained environmentally sensitive coastal wetlands. Add:104; 133. Given the space constraints, construction was tight and caused issues for the neighbors. Dr. Haydock was largely absent during construction because he worked long hours as an emergency room physician in New York state. Add:193; 197-200. When he did travel to his home in Dartmouth, he often could not access, or leave from, his own property because the construction workers’ vehicles were blocking the road. Add:202. Frustrations boiled over a handful of times, with Dr. Haydock speaking to the workers about their vehicles blocking him

in. Add:202-205. The Reichenbachs did not testify about any direct interaction with Dr. Haydock during the construction of their home.

Ms. Moss was at their Dartmouth home more often and sought to ensure that her concerns about construction impacts did not come to fruition. She would speak to the Reichenbachs' workers, photographed aspects of the project that concerned her, and continued to voice concerns to town officials. Add:137; 154. The Reichenbachs' workers and town officials testified that she was polite and professional. Add:160-164. Like Dr. Haydock, she did not interact with the Reichenbachs during construction of the home.

The Reichenbachs' home was weathertight—on schedule—by May 2012. Add:156-157. Mr. Reichenbach and his contractor both agreed that they fully performed the construction contract, with no party breaching or failing to perform their contractual obligations. Add:151; 158.

Reichenbachs' Second Set of Changes. After the house was weathertight, the Reichenbachs sought to install an electrical transformer and water irrigation system in the regulated floodplain. Add:219. In keeping with their worries about water and runoff, Dr.

Haydock and Ms. Moss voiced concerns about these systems to town officials. Add:196. In response, Dartmouth town officials required the Reichenbachs to file their plans so that the Conservation Commission could review them in the summer of 2013. Add:120. The Reichenbachs did so and obtained the Conservation Commission's approval. Add:226. Dr. Haydock and Ms. Moss appealed the Conservation Commission's determination to the Department of Environmental Protection and Superior Court, but were unsuccessful. Add:241-275; 278. The Reichenbachs did not testify that Dr. Haydock or Ms. Moss spoke to them directly during this second round of petitioning or construction either.

Before the appeals concerning the electrical and irrigation systems were exhausted, the Reichenbachs sued Dr. Haydock and Ms. Moss for alleged delays and increased costs of their project, leading to the instant appeal.

Statement of the Issues, Including Preservation

1. How should trial courts balance competing constitutional rights in a land use-based MCRA claim, particularly given that more claims may proceed to trial after Bristol?

2. Does the tort of intentional interference with contractual relations require proof of non-performance of the underlying contract?

Dr. Haydock and Ms. Moss preserved their arguments that the evidence at trial could not support liability under the MCRA or intentional interference with contractual relations through motions for directed verdict at the close of the Reichenbachs' evidence, the close of all evidence, and on motions for judgment notwithstanding the verdict.

Argument

I. The Court should provide guidance about how to balance rights in land use-based MCRA cases.

The Court should provide guidance on the application of the MCRA to property development disputes where all parties have competing constitutional rights. After Bristol, more cases involving petitioning are likely to survive until trial. This case, which has a trial record, allows the Court to explain how to balance competing rights.

The MCRA was passed to counter “formidable, sometimes violent, pressure” brought against “racial minorities seeking to exercise equal rights under the law.” Buster v. George W. Moore, Inc., 438 Mass. 635, 645 (2003). To establish a violation of the MCRA, a plaintiff must show that (1) the plaintiff was engaged in the exercise of rights secured by

the Massachusetts or United States Constitution, (2) the defendant interfered, or tried to interfere, with that right, and (3) the interference was carried out through threats, intimidation, or coercion. Glovsky v. Roche Bros. Supermarkets, Inc., 469 Mass. 752, 762 (2014). The requirement of threats, intimidation, or coercion is meant to prevent the MCRA from becoming a “vast constitutional tort.” See George W. Moore, 438 Mass. at 645.

Courts have specifically defined “threats, intimidation, or coercion” under the MCRA. Glovsky, 469 Mass. at 762 (repeating these definitions). Relevant here, a party’s exercise of free speech rights cannot, on its own, violate the MCRA. Bell v. Mazza, 394 Mass. 176, 183 (1985); see Haufler v. Zotos, 446 Mass. 489, 506 (2006) (the MCRA allows individuals “to use lawful means” to voice concerns about development).

Despite the MCRA’s original purpose as a tool to combat racial discrimination and violence, it has morphed into a tool for land developers. See, e.g., Kennie v. Natural Resources Dep’t of Dennis, 451 Mass. 754 (2008); George W. Moore, 438 Mass. at 635; Swanset Dev. Corp. v. City of Taunton, 423 Mass. 390 (1996); Bell v. Mazza, 394

Mass. 176 (1985); Ayasli v. Armstrong, 56 Mass. App. Ct. 740 (2002).

The Court has not provided guidance about the MCRA in a neighbor dispute like this in decades.

The most recent neighbor dispute in this Court involving the MCRA is Haufler v. Zotos, 446 Mass. 489 (2006), which had starkly different facts. There, the defendant repeatedly trespassed and engaged in “threatening belligerence and unprovoked hostility.” Id. at 508. Dr. Haydock and Ms. Moss engaged in no such “persistent and antagonistic” behavior. Dr. Haydock had zero interaction with the Reichenbachs, but voiced frustrations to workers when they blocked the road. Ms. Moss was uniformly polite during her alleged “interference” with the Reichenbachs’ workers and town officials.

Two developments since Haufler make this case appropriate for direct appellate review. First, much of the Court’s recent jurisprudence on the MCRA has come after a dispositive motion. See Barron v. Kolenda, 491 Mass. 408 (2023) (finding that trial court erred by granting Rule 12(c) judgment on the pleadings in favor of municipal officials charged with violating free speech rights); Glovsky, 469 Mass. at 764-65 (affirming Rule 12(b)(6) dismissal of MCRA claim based on

free speech rights); Currier v. Nat'l Bd. of Medical Examiners, 462 Mass. 1, 14 (2012) (affirming summary judgment dismissing MCRA claim for refusal to allow plaintiff to express breast milk during medical board exams). These cases have helped shape pleading and summary judgment standards, but how a factfinder should balance competing constitutional rights remains far less developed.

That trial standard is more important after Bristol, where the Court noted that mixed claims—based on both petitioning and other “substantial conduct”—inevitably “involve an inquiry into both sides’ legitimate petitioning rights,” which cannot happen on an anti-SLAPP special motion to dismiss. Id. at 554. Rather, parties can defend their petitioning rights later, “in the ordinary course of litigation.” Id. at 556.

The MCRA claim here relied heavily on petitioning. Much of the trial focused on the appeals filed by Dr. Haydock and Ms. Moss (and other neighbors), in addition to Ms. Moss asking questions of governmental officials. Dr. Haydock and Ms. Moss did so to defend their property, for which they have their own constitutional rights.

This Court should explain how factfinders should weigh these competing considerations, particularly in the land-use context.

The second development since Haufler has been this Court's hesitation about what qualifies as a "threat" in a neighbor dispute. The Appeals Court considered this in Ayasli, which has become a seminal land use/MCRA case and was often cited by the trial court (and Reichenbachs) below. But this Court has twice cited to the dissent in Ayasli and, in particular, found that a "certain amount of verbal 'posturing' and 'huffing and puffing' is 'not uncommon during neighborhood disputes, especially those wending their ways through town hall en route to further litigation.'" Kennie, 451 Mass. at 765 (quoting Ayasli, 56 Mass. App. Ct. at 761 (Rapoza, J., dissenting)); Glovsky, 469 Mass. at 764 (same). This Court emphasized that not "every intemperate exclamation rises to the level of threats, intimidation, or coercion." Kennie, 451 Mass. at 765.

The Reichenbachs focused their case against Ms. Moss on an "intemperate exclamation," namely her "threat" to cost them time and money, and ruin their reputation in Dartmouth. Ms. Moss hotly disputes whether she uttered these words, but the Court should find

them insufficient as a matter of law. They are mere “huffing and puffing,” and do not carry a risk of physical violence, like threats usually do under the MCRA. Kennie, 451 Mass. at 763 (“Both threats and intimidation often rely on an element of actual or threatened physical force.”); see Glovsky, 469 Mass. at 763-64 (collecting cases to affirm dismissal of threat-based MCRA claim).

Other than this intemperate (and time-barred¹) remark, the Reichenbachs merely showed that Ms. Moss asserted her own rights. She observed construction, asked workers what was going on, and ensured that development did not affect her own property. She occasionally took pictures and asked people to move their vehicles so she could access her own property. And throughout all this, she was polite and professional.

The Reichenbachs’ MCRA case against Dr. Haydock revolved around a distinct set of facts that is even weaker. His involvement in the Reichenbachs’ development was limited to 1) petitioning, and 2)

¹ The Reichenbachs allege that Ms. Moss said this in January 2011, yet they waited until October 2015 to file their Complaint. Dr. Haydock and Ms. Moss unsuccessfully argued that the trial court should not admit this evidence, which fell outside the statute of limitations.

talking to workers when they blocked the road. The trial judge noted midtrial that Dr. Haydock’s motion for directed verdict at the close of the Reichenbachs’ evidence was a “close case” because of the paucity of evidence against him. Add:310. Never has this Court—or any court—found liability under the MCRA when there was zero interaction between the parties that could qualify as “threats, intimidation, or coercion.” And even if Dr. Haydock voiced frustrations to third-party workers, that was due to interference with his own rights—getting to and from his property.

The MCRA has strayed from its original purpose of protecting victims of racial discrimination. But the claims against Dr. Haydock and Ms. Moss are particularly novel extensions of liability. The Court should provide guidance about how to balance competing rights under the MCRA, especially after Bristol.

II. The Court should clarify the elements of intentional interference with contractual relations.

The trial court allowed the Reichenbachs to assert a claim for intentional interference with contractual relations despite the undisputed fact that no breach occurred. The Superior Court allowed this under Restatement (Second) of Torts § 766A, which provides that

“one who intentionally and improperly interferes with the performance of a contract...between another and a third person, by preventing the other from performing the contract or causing his performance to be more expensive or burdensome” is subject to liability. This Court has adopted a form of § 766A in Shafir, but noted in that case that Massachusetts law requires a breach to state a claim for intentional interference. See Shafir, 431 Mass. at 369.

In Shafir, the Court recognized that § 766A created a claim based on interference with a plaintiff's contract performance. This was an extension of § 766, which focuses on interference with the third party's contractual performance. Other than the party to whom the interference is directed, this Court viewed the torts as identical: “The only difference between the torts described in § 766 and § 766A is that, under § 766, the tortious conduct causes the third person not to perform, whereas § 766A involves interference preventing the plaintiff from performing his own part of the contract.” Shafir, 431 Mass. at 369 (citation omitted) (emphases added). This Court thus required, under § 766A, that the defendant prevented the plaintiff from performing under the contract. And the plaintiff in Shafir did just that—having

“decided that the defendant’s harassment was not going to stop,” she abandoned her obligation to close on the purchase of the property at issue. Id. at 367-68 & n.6.

This Court emphasized the need for non-performance by discussing its prior decision affirming the dismissal of an intentional interference claim in Anzalone v. Mass. Bay Trans. Auth., 403 Mass. 119, 123 (1988), where the plaintiff alleged interference with “the plaintiff’s own performance of his employment contract.” Shafir, 431 Mass. at 370. As the Court explained in Shafir, they affirmed dismissal in Anzalone because “the plaintiff was still employed and did not allege loss of any advantage.” Id.; Anzalone, 403 Mass. at 123. In both cases, the lack of breach proved fatal. See also Psy-Ed Corp. v. Klein, 459 Mass. 697, 716-17 (2011) (requiring, after Shafir, that defendant “caused one or more parties to that contract to ‘break’ (i.e., breach) it” for intentional interference claim).

Until this case, the Superior Court largely followed this analysis. For instance, Judge Salinger applied Shafir and Anzalone to reject an intentional interference claim when the plaintiff acknowledged lack of breach but claimed the defendant made the contract “more expensive

and more burdensome.” CareOne Mgmt., LLC v. Navisite, Inc., 34 Mass. L. Rptr. 278, 2017 WL 2803060, at *11 (Mass. Super. Ct. 2017); see Baldwin v. Connor, Case No. 1984CV03396BLS2, 2020 WL 2521268, at *1, n.1 (Mass. Super. Ct. Mar. 24, 2020) (same). Judge Karp likewise required a breach for a claim of intentional interference. See Manning v. Christensen, Case No. 1777CV00715, at *16-20 (Mass. Super. Ct. Jan. 17, 2020) (included in the Addendum at page 280) (“[T]he ‘breaking’ of the contract is an essential element of the tort of interference.”).

The Appeals Court, in a footnote, treated Shafir differently. See Resolute Mgmt., Inc. v. Transatlantic Reins. Co., 87 Mass. App. Ct. 296, 299 n.5 (2015). The Appeals Court, in a single sentence, commented that this Court adopted § 766A, but failed to analyze (or even mention) the limitations explained by this Court in Shafir. This appears to be the only other authority construing Shafir in this way.

The Superior Court allowed the Reichenbachs to assert intentional interference without a breach. Not only was this inconsistent with Massachusetts law, it created a speculative theory of liability. Many jurisdictions refuse to adopt § 766A at all because of

the speculative nature of the claim. See e.g., Price v. Sorrell, 784 P.2d 614, 616 (Wyo. 1989) (“[Section] 766A requires, not a breach or non-performance, but only that performance became more expensive and burdensome. We are convinced that such an element of proof is too speculative and subject to abuse to provide a meaningful basis for a cause of action.”); Anderson v. Wachovia Mortg. Corp., 621 F.3d 261, 281 (3d Cir. 2010) (holding Delaware would not adopt § 766A due to the same reasoning as Price).

The Court should clarify the elements for intentional interference, specifically whether non-performance is required.

Statement of Reasons Why DAR is Appropriate

This case presents two novel and important questions of law for the Court, either of which would be sufficient for direct appellate review.

The MCRA has become a vast constitutional tort. In this case, it led to a jury awarding significant damages against Dr. Haydock even though he was barely around the Reichenbachs’ construction project and the evidence against him was limited to petitioning and understandable frustrations toward third parties when they blocked the

road. The Court should decide whether the MCRA countenances such an unnerving extension of liability. Similarly, the evidence against Ms. Moss is that she persistently, but politely, asserted her own petitioning and property rights. The exercise of those rights may have delayed the Reichenbachs' project and ensured that they did everything by the book, but did not violate the MCRA. The Court should accept direct appellate review to consider the scope of the MCRA in the land use context where there are competing constitutional rights, particularly after Bristol.

The Court should also accept direct appellate review to define the elements of intentional interference with contractual relations. Parties and trial courts should know whether breach is an element of that tort, regardless of which party allegedly suffered interference. This Court has already suggested the answer to this question in Shafir, but the Appeals Court provided a contrary ruling in Resolute Management. Judges in the Superior Court have largely followed Shafir until this case, where the trial judge adhered to the footnote in Resolute Management. The Court should accept direct appellate review to resolve any confusion.

April 17, 2025

Respectfully submitted,

Timothy Haydock and Barbara Moss,

By their attorneys,

/s/ *Melissa C. Allison*

Melissa C. Allison (BBO #657470)

mallison@andersonkreiger.com

Jonathan Elder (BBO #654411)

jelder@andersonkreiger.com

Sean Grammel (BBO #688388)

sgrammel@andersonkreiger.com

ANDERSON & KREIGER LLP

50 Milk, 21st Floor

Boston, MA 02109

617.621.6523

Rule 16 Certificate

I, Sean Grammel, hereby certify, pursuant to Mass. R. App. P. 16(k), that this Application complies with all relevant court rules, including but not limited to Mass. R. App. P. 11, 16, 18, 20, and 21.

Font: Century Schoolbook, 14-point

Number of Non-Excluded Words in the Brief Argument, as defined by Mass. R. Civ. P. 11(b)(5): 1,963

Name and Version of Program: Microsoft Word 2016

/s/ Sean Grammel
Sean Grammel

Certificate of Service

Pursuant to Mass. R.A.P. 13(d), I hereby certify, under penalties of perjury, that on this 17th day of April 2025, I have made service of a copy of this Application upon the attorney of record for each party by eFileMA, on behalf of the defendants-appellants, Timothy Haydock and Barbara Moss.

April 17, 2025

/s/ Sean Grammel

Sean Grammel, BBO #688388
ANDERSON & KREIGER LLP

50 Milk Street, 21st Floor

Boston, MA 02109

617-621-6523

sgrammel@andersonkreiger.com

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1573CV00938 Reichenbach, Margaret J. et al vs. Haydock, Timothy G. et al

Case Type:
Torts

Case Status:
Open

File Date
10/01/2015

DCM Track:
A - Average

Initiating Action:
Civil Rights Act, G.L. c. 12 § 11H

Status Date:
10/01/2015

Case Judge:

Next Event:
04/29/2025

[All Information](#) [Party](#) [Judgment](#) [Event](#) [Tickler](#) [Docket](#) [Disposition](#)

Party Information

Reichenbach, Margaret J.
- Plaintiff

Alias

Party Attorney

Attorney
Bonnet-Hebert, Esq., Heather Marie
Bar Code
660534

Address
Feingold Bonnet-Hebert, P.C.
25 Elm St
Suite 201
New Bedford, MA 02740
Phone Number
(508)999-1119

Attorney
Feingold, Esq., Robert B
Bar Code
161520

Address
Feingold Bonnet-Hebert, P.C.
25 Elm St
Suite 201
New Bedford, MA 02740
Phone Number
(508)999-1119

Attorney
Fielding, Esq., Brian A
Bar Code
680100

Address
Adler Cohen Harvey Wakeman Guekquezian
One Turks Head Place
Suite 600
Providence, RI 02903
Phone Number
(401)521-6100

[More Party Information](#)

Reichenbach, John
- Plaintiff

Alias

Party Attorney

Attorney
Bonnet-Hebert, Esq., Heather Marie
Bar Code
660534

Address
Feingold Bonnet-Hebert, P.C.
25 Elm St

4/8/25, 3:48 PM

Case Details – Massachusetts Trial Court N6

Suite 201
New Bedford, MA 02740
Phone Number
(508)999-1119
Attorney
Feingold, Esq., Robert B
Bar Code
161520
Address
Feingold Bonnet-Hebert, P.C.
25 Elm St
Suite 201
New Bedford, MA 02740
Phone Number
(508)999-1119
Attorney
Fielding, Esq., Brian A
Bar Code
680100
Address
Adler Cohen Harvey Wakeman Guekguezian
One Turks Head Place
Suite 600
Providence, RI 02903
Phone Number
(401)521-6100

Haydock, Timothy G.
- Defendant

Alias

[More Party Information](#)

Party Attorney

Attorney
Allison, Esq., Melissa Cook
Bar Code
657470
Address
Anderson and Kreiger LLP
Anderson and Kreiger LLP
50 Milk Street 21st Floor
Boston, MA 02109
Phone Number
(617)621-6512
Attorney
Elder, Esq., Jonathan Thomas
Bar Code
654411
Address
Anderson and Kreiger LLP
50 Milk St
21st Floor
Boston, MA 02109
Phone Number
(617)621-6509
Attorney
Grammel, Esq., Sean
Bar Code
688388
Address
Anderson and Kreiger
50 Milk St 21st Floor
Boston, MA 02109
Phone Number
(617)621-6523

[More Party Information](#)

Moss, Barbara
- Defendant

Alias

Party Attorney

Attorney
Allison, Esq., Melissa Cook
Bar Code
657470
Address
Anderson and Kreiger LLP
Anderson and Kreiger LLP
50 Milk Street 21st Floor
Boston, MA 02109
Phone Number
(617)621-6512

Attorney
 Elder, Esq., Jonathan Thomas
 Bar Code
 654411
 Address
 Anderson and Kreiger LLP
 50 Mi k St
 21st Floor
 Boston, MA 02109
 Phone Number
 (617)621-6509
 Attorney
 Grammel, Esq., Sean
 Bar Code
 688388
 Address
 Anderson and Kreiger
 50 Mi k St 21st Floor
 Boston, MA 02109
 Phone Number
 (617)621-6523

[More Party Information](#)

Certain Underwriters at Lloyd's, London
 - Defendant-Intervenor

Alias

Party Attorney

Attorney
 Austin, Esq., Tanya Thu
 Bar Code
 664478
 Address
 Wilson Elser Moskowitz Edelman and Dicker, LLP
 260 Franklin St
 14th Floor
 Boston, MA 02110
 Phone Number
 (617)422-5328
 Attorney
 Flanagan, Esq., Christopher P
 Bar Code
 567075
 Address
 Wilson, Elser, Moskowitz, Edelman and Dicker LLP
 260 Franklin St 14th Floor
 Boston, MA 02110-3112
 Phone Number
 (617)422-5306

[More Party Information](#)

Automobile Insurance Company of Hartford, Connecticut (Travelers)
 - Defendant-Intervenor

Alias

Party Attorney

Attorney
 Carducci, Esq., Logan A
 Bar Code
 688630
 Address
 Usery and Associates
 PO Box 2996
 Hartford, CT 06104
 Phone Number
 (917)778-6680
 Attorney
 O'Connor, Esq., Kevin John
 Bar Code
 555249
 Address
 Clyde and Co US LLP
 265 Franklin St
 Suite 802
 Boston, MA 02110
 Phone Number
 (617)210-7730

[More Party Information](#)

O'Reilly's, Michael
 - Other interested party

Alias

Party Attorney

Attorney
Savastano, Esq., Anthony C
Bar Code
548788
Address
Attorney at Law PC
PO Box 80022
South Dartmouth, MA 02748
Phone Number
(508)992-7000

[More Party Information](#)

Usery, Esq., Brent S.
- Other interested party

Alias

Party Attorney[More Party Information](#)**Judgments**

Date	Type	Method	For	Against
05/03/2024	Judgment After Finding	After Jury Verdict	Reichenbach, John	Haydock, Timothy G.
05/03/2024	Judgment on Jury Verdict	After Jury Verdict	Reichenbach, John	Moss, Barbara

Events

Date	Session	Location	Type	Event Judge	Result
01/14/2016 02:00 PM	Civil B (New Bedford)		Rule 12 Hearing		Held as Scheduled
07/28/2016 02:00 PM	Civil B (New Bedford)	Upper Courtroom	Hearing on Motion for Attachment	Kane, Hon. Robert J	Rescheduled
07/28/2016 02:00 PM	Civil B (New Bedford)	Upper Courtroom	Hearing on Equity Issue	Kane, Hon. Robert J	Rescheduled
08/09/2016 02:00 PM	Civil B (New Bedford)	Upper Courtroom	Hearing on Motion for Attachment	Kane, Hon. Robert J	Rescheduled
08/11/2016 12:00 PM	Civil B (New Bedford)	Upper Courtroom	Hearing on Motion for Attachment	Kane, Hon. Robert J	Held as Scheduled
04/06/2017 02:00 PM	Civil B (New Bedford)		Hearing on Withdrawal of Attorney	Hopkins, Hon. Merita A	Canceled
09/26/2017 02:00 PM	Civil B (New Bedford)	Upper Courtroom	Motion Hearing	Donatelle, Hon. Sharon	Held as Scheduled
10/25/2017 02:00 PM	Civil B (New Bedford)	Upper Courtroom	Conference to Review Status	Yessayan, Hon. Raffi N	Rescheduled
11/20/2017 02:00 PM	Civil B (New Bedford)	Upper Courtroom	Conference to Review Status	Yessayan, Hon. Raffi N	Held as Scheduled
07/12/2018 02:00 PM	Civil B (New Bedford)	Upper Courtroom	Motion Hearing	Dupuis, Hon. Renee P	Rescheduled
07/19/2018 02:00 PM	Civil B (New Bedford)	Upper Courtroom	Motion Hearing	Dupuis, Hon. Renee P	Held - Under advisement
12/03/2018 02:00 PM	Civil B (New Bedford)	Upper Courtroom	Final Pre-Trial Conference	Connolly, Hon. Rosemary	Canceled
01/22/2019 02:00 PM	Civil B (New Bedford)	Upper Courtroom	Motion Hearing	Perrino, Hon. Thomas J	Rescheduled
02/04/2019 02:00 PM	Civil B (New Bedford)	Upper Courtroom	Final Trial Conference		Canceled
02/12/2019 02:00 PM	Civil B (New Bedford)	Upper Courtroom	Motion Hearing	Perrino, Hon. Thomas J	Held - Under advisement
03/04/2019 09:00 AM	Civil B (New Bedford)	Upper Courtroom	Jury Trial		Canceled
04/02/2019 02:00 PM	Civil A (New Bedford)	Lower Courtroom	Rule 16 Conference	Yessayan, Hon. Raffi N	Rescheduled

Date	Session	Location	Type	Event Judge	Result
04/18/2019 02:00 PM	Civil A (New Bedford)	Lower Courtroom	Rule 16 Conference	Yessayan, Hon. Raffi N	Rescheduled
04/30/2019 02:00 PM	Civil A (New Bedford)	Lower Courtroom	Rule 16 Conference	Yessayan, Hon. Raffi N	Rescheduled
05/21/2019 02:00 PM	Civil A (New Bedford)	Lower Courtroom	Rule 16 Conference	Yessayan, Hon. Raffi N	Held as Scheduled
06/03/2019 02:00 PM	Civil A (New Bedford)	Lower Courtroom	Conference to Review Status	Yessayan, Hon. Raffi N	Rescheduled
06/11/2019 02:00 PM	Civil A (New Bedford)	Lower Courtroom	Conference to Review Status	Yessayan, Hon. Raffi N	Held as Scheduled
06/12/2019 02:00 PM	Civil A (New Bedford)	Lower Courtroom	Conference to Review Status	Yessayan, Hon. Raffi N	Rescheduled
06/19/2019 02:00 PM	Civil A (New Bedford)	Lower Courtroom	Conference to Review Status	Yessayan, Hon. Raffi N	Held as Scheduled
07/17/2019 02:00 PM	Civil A (New Bedford)	Lower Courtroom	Conference to Review Status	Yessayan, Hon. Raffi N	Held as Scheduled
08/27/2019 02:00 PM	Civil A (New Bedford)	Lower Courtroom	Hearing RE: Discovery Motion(s)	Yessayan, Hon. Raffi N	Rescheduled
09/04/2019 02:00 PM	Civil A (New Bedford)	Lower Courtroom	Hearing RE: Discovery Motion(s)	Yessayan, Hon. Raffi N	Held as Scheduled
09/04/2019 02:00 PM	Civil B (New Bedford)	Upper Courtroom	Hearing RE: Discovery Motion(s)	Dupuis, Hon. Renee P	Rescheduled
09/25/2019 11:00 AM	Civil A (New Bedford)	Lower Courtroom	Hearing RE: Discovery Motion(s)	Yessayan, Hon. Raffi N	Rescheduled
10/07/2019 03:00 PM	Civil A (New Bedford)	Lower Courtroom	Hearing RE: Discovery Motion(s)	Ricciuti, Hon. Michael D	Not Held
02/19/2020 02:00 PM	Civil B (New Bedford)	Upper Courtroom	Motion Hearing to Compel	Buckley, Hon. Elaine M	Held - Under advisement
07/16/2020 11:00 AM	Civil A (New Bedford)	Lower Courtroom	Hearing for Protective Order	Yessayan, Hon. Raffi N	Held via Video/Phone
01/12/2021 02:00 PM	Civil A (New Bedford)		Motion Hearing to Compel	McGuire, Jr., Hon. Thomas F	Rescheduled
02/18/2021 11:00 AM	Civil A (New Bedford)	Lower Courtroom	Motion Hearing to Compel	McGuire, Jr., Hon. Thomas F	Held - Under advisement
07/27/2021 10:00 AM	Civil B (New Bedford)	Upper Courtroom	Hearing: Strike	White, Jr., Hon. William M	Rescheduled
08/17/2021 10:00 AM	Civil B (New Bedford)	Upper Courtroom	Hearing: Strike	White, Jr., Hon. William M	Held as Scheduled
12/06/2021 02:00 PM	Civil B (New Bedford)	Upper Courtroom	Final Pre-Trial Conference	Cowin, Hon. Jackie	Rescheduled
12/16/2021 02:00 PM	Civil B (New Bedford)	Upper Courtroom	Final Pre-Trial Conference	Cowin, Hon. Jackie	Held as Scheduled
04/21/2022 02:00 PM	Civil B (New Bedford)	Upper Courtroom	Final Trial Conference	Yessayan, Hon. Raffi N	Rescheduled
04/28/2022 02:00 PM	Civil B (New Bedford)	Lower Courtroom	Final Trial Conference	Yessayan, Hon. Raffi N	Rescheduled
04/28/2022 02:00 PM	Civil A (New Bedford)	Lower Courtroom	Trial Assignment Conference	Yessayan, Hon. Raffi N	Held as Scheduled
05/23/2022 09:00 AM	Civil B (New Bedford)	Upper Courtroom	Jury Trial	Yessayan, Hon. Raffi N	Rescheduled
07/11/2022 02:00 PM	Civil C (Taunton)	Main Courtroom	Hearing on Motion to Continue	Sullivan, Hon. Susan E	Rescheduled
07/26/2022 02:00 PM	Civil C (Taunton)	Main Courtroom	Hearing on Motion to Continue	Sullivan, Hon. Susan E	Held as Scheduled
09/06/2022 09:00 AM	Civil C (Taunton)	Main Courtroom	Jury Trial	Sullivan, Hon. Susan E	Rescheduled
01/12/2023 02:00 PM	Civil C (Taunton)	Main Courtroom	Hearing on Motion(s) in Limine	Perrino, Hon. Thomas J	Held as Scheduled





Date	Session	Location	Type	Event Judge	Result
01/13/2023 12:00 PM	Civil C (Taunton)	Main Courtroom	Hearing on Motion(s) in Limine	Perrino, Hon. Thomas J	Held as Scheduled
01/13/2023 02:00 PM	Civil C (Taunton)	Main Courtroom	Hearing on Motion(s) in Limine	Perrino, Hon. Thomas J	Rescheduled
02/01/2023 02:00 PM	Civil C (Taunton)	Main Courtroom	Final Trial Conference	Perrino, Hon. Thomas J	Held as Scheduled
02/06/2023 09:00 AM	Civil C (Taunton)	Main Courtroom	Jury Trial	Perrino, Hon. Thomas J	Held as Scheduled
02/07/2023 09:00 AM	Civil C (Taunton)	Main Courtroom	Jury Trial	Perrino, Hon. Thomas J	Held as Scheduled
02/08/2023 09:00 AM	Civil C (Taunton)	Main Courtroom	Jury Trial	Perrino, Hon. Thomas J	Held as Scheduled
02/09/2023 09:00 AM	Civil C (Taunton)	Main Courtroom	Jury Trial	Perrino, Hon. Thomas J	Held as Scheduled
02/10/2023 09:00 AM	Civil C (Taunton)	Main Courtroom	Jury Trial	Perrino, Hon. Thomas J	Held as Scheduled
02/13/2023 09:00 AM	Civil C (Taunton)	Main Courtroom	Jury Trial	Perrino, Hon. Thomas J	Held as Scheduled
02/14/2023 09:00 AM	Civil C (Taunton)	Main Courtroom	Jury Trial	Perrino, Hon. Thomas J	Held as Scheduled
02/15/2023 09:00 AM	Civil C (Taunton)	Main Courtroom	Jury Trial	Perrino, Hon. Thomas J	Held as Scheduled
02/16/2023 09:00 AM	Civil C (Taunton)	Main Courtroom	Jury Trial	Perrino, Hon. Thomas J	Held as Scheduled
02/17/2023 09:00 AM	Civil C (Taunton)	Main Courtroom	Jury Trial	Perrino, Hon. Thomas J	Held as Scheduled
02/24/2023 09:00 AM	Civil C (Taunton)	Main Courtroom	Motion Hearing	Perrino, Hon. Thomas J	Held as Scheduled
02/27/2023 09:00 AM	Civil C (Taunton)	Main Courtroom	Jury Trial	Perrino, Hon. Thomas J	Held as Scheduled
02/28/2023 09:00 AM	Civil C (Taunton)	Main Courtroom	Jury Trial	Perrino, Hon. Thomas J	Held as Scheduled
03/01/2023 09:00 AM	Civil C (Taunton)	Main Courtroom	Jury Trial	Perrino, Hon. Thomas J	Held as Scheduled
03/02/2023 09:00 AM	Civil C (Taunton)	Main Courtroom	Jury Trial	Perrino, Hon. Thomas J	Held as Scheduled
03/03/2023 09:00 AM	Civil C (Taunton)	Main Courtroom	Jury Trial	Perrino, Hon. Thomas J	Held as Scheduled
05/08/2023 02:00 PM	Civil C (Taunton)	Main Courtroom	Motion Hearing	Perrino, Hon. Thomas J	Not Held
09/21/2023 02:00 PM	Criminal 3 (Fall River)	Courtroom 6	Motion Hearing	Perrino, Hon. Thomas J	Held - Under advisement
12/18/2023 10:00 AM	Civil C (Taunton)	Main Courtroom	Motion Hearing	White, Jr., Hon. William M	Held - Under advisement
09/23/2024 10:00 AM	Criminal 1 (Fall River)	Courtroom 9	Motion Hearing	Perrino, Hon. Thomas J	Held - Under advisement
09/23/2024 02:00 PM	Criminal 1 (Fall River)	Courtroom 9	Motion Hearing	Perrino, Hon. Thomas J	Rescheduled
04/29/2025 02:00 PM	Civil C (Taunton)	Main Courtroom	Motion Hearing to Compel	Gildea, Hon. Mark	

Ticklers

Tickler	Start Date	Due Date	Days Due	Completed Date
Service	10/01/2015	12/30/2015	90	10/23/2015
Answer	10/01/2015	01/29/2016	120	10/26/2015
Rule 12/19/20 Served By	10/01/2015	01/29/2016	120	12/16/2021

Tickler	Start Date	Due Date	Days Due	Completed Date
Rule 12/19/20 Filed By	10/01/2015	02/29/2016	151	12/16/2021
Rule 12/19/20 Heard By	10/01/2015	03/29/2016	180	12/16/2021
Rule 15 Served By	10/01/2015	11/25/2016	421	12/16/2021
Rule 15 Filed By	10/01/2015	12/26/2016	452	12/16/2021
Rule 15 Heard By	10/01/2015	12/26/2016	452	12/16/2021
Discovery	10/01/2015	03/11/2019	1257	05/03/2024
Rule 56 Served By	10/01/2015	01/08/2021	1926	12/16/2021
Rule 56 Filed By	10/01/2015	02/19/2021	1968	12/16/2021
Final Pre-Trial Conference	10/01/2015	04/15/2021	2023	12/16/2021
Judgment	10/01/2015	10/01/2018	1096	05/03/2024
Under Advisement	08/11/2016	09/10/2016	30	09/19/2016
Under Advisement	09/26/2017	10/26/2017	30	09/29/2017
Under Advisement	02/12/2019	03/14/2019	30	02/13/2019
Under Advisement	02/19/2020	03/20/2020	30	02/21/2020
Under Advisement	02/18/2021	03/20/2021	30	06/21/2021
Status Review	08/16/2023	09/07/2023	22	08/30/2023
Under Advisement	09/21/2023	10/21/2023	30	11/06/2023
Under Advisement	12/18/2023	01/17/2024	30	05/02/2024
Under Advisement	09/23/2024	10/23/2024	30	01/02/2025
Review Appeals Filed	01/17/2025	07/16/2025	180	02/04/2025

Docket Information

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
10/01/2015	Appearance entered On this date Robert B Feingold, Esq. added as Private Counsel for Plaintiff Margaret J. Reichenbach		
10/01/2015	Appearance entered On this date Robert B Feingold, Esq. added as Private Counsel for Plaintiff John Reichenbach		
10/01/2015	Case assigned to: DCM Track A - Average was added on 10/01/2015		
10/01/2015	Original civil complaint filed.	1	
10/01/2015	Civil action cover sheet filed.	2	Image
10/01/2015	Margaret J Reichenbach, John Reichenbach's MOTION for appointment of Special Process Server. Latimer & Moniz	3	
10/02/2015	Endorsement on Motion for Appointment of Special Process Server (#3.0): ALLOWED		
10/23/2015	Service Returned for Defendant Haydock, Timothy G.: Service made in hand;	4	
10/23/2015	Service Returned for Defendant Moss, Barbara: Service made in hand;	5	
10/26/2015	Appearance entered On this date Pro Se added for Defendant Timothy G. Haydock		
10/26/2015	Received from Defendants: Answer with claim for trial by jury; Applies To: Haydock, Timothy G (Defendant); Moss, Barbara (Defendant)	6	
10/26/2015	Appearance entered On this date Pro Se added for Defendant Barbara Moss		
10/26/2015	Defendant's Notice of intent to file motion to Dismiss Anti-Slapp Motion Applies To: Haydock, Timothy G (Defendant); Moss, Barbara (Defendant)	7	

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
10/27/2015	General correspondence regarding case sent to New Bedford		
11/24/2015	Defendant Timothy G Haydock, Barbara Moss's Motion to dismiss all counts Anti-SLAPP G.L.c. 231, s. 59H	8	
11/24/2015	Opposition to paper #8.0 Defendants' Special Motion to Dismiss filed by Margaret J Reichenbach, John Reichenbach	8.1	
11/24/2015	Affidavit of John Reichenbach Verifying Complaint	8.2	
11/24/2015	Affidavit of Margaret J. Reichenbach	8.3	
11/24/2015	Affidavit of Thomas W. Hardman	8.4	
11/24/2015	Affidavit of Lars V. Olson	8.5	
11/24/2015	Affidavit of Andrew R. Dearden	8.6	
11/24/2015	Affidavit of Dana Diggle	8.7	
11/24/2015	Certificate of service of attorney or Pro Se: Robert B Feingold, Esq.	8.8	
11/24/2015	Defendant Timothy G Haydock, Barbara Moss's Motion for Leave to File Affidavits in Support of Special Motion to Dismiss	9	
11/27/2015	The following form was generated: Notice to Appear Sent On: 11/27/2015 10:26:11		
12/04/2015	Opposition to paper #9.0 Defendants' Motion to File Affidavits Late filed by John Reichenbach, Margaret J Reichenbach	10	
12/04/2015	Plaintiff Margaret J Reichenbach, John Reichenbach's Motion for a more definitive statement	11	
12/04/2015	Opposition to paper #11.0 Plaintiffs' Motion for More Definitive Statement filed by Timothy G Haydock, Barbara Moss	11.1	
12/08/2015	Endorsement on Motion for a more definite Answer Pursuant to Rule 12(e) of Mass. Rules of Civil Procedure (#11.0): ALLOWED		
12/14/2015	Affidavit of John F. Shea, Esq.	12	
12/18/2015	ORDER: on Plaintiffs' Motion for a More Definitive Answer	13	
01/07/2016	Amended Answer for defendant Applies To: Haydock, Timothy G (Defendant); Moss, Barbara (Defendant)	14	Image
01/14/2016	Plaintiff's Notice of intent to file motion to Strike Pursuant to Rule 12(f) Applies To: Reichenbach, Margaret J (Plaintiff); Reichenbach, John (Plaintiff)	15	
01/14/2016	Event Result: The following event: Rule 12 Hearing scheduled for 01/14/2016 02:00 PM has been resulted as follows: Result: Held as Scheduled		
01/25/2016	Plaintiff Margaret J Reichenbach, John Reichenbach's Request for Due Date for Defendants' Further Right to Respond to Plaintiffs' Submissions.	16	
01/26/2016	Plaintiff Margaret J Reichenbach, John Reichenbach's Motion to strike Pursuant to Rule 12(f) of Mass. Rules of Civil Procedure	17	
01/26/2016	Opposition to paper #17.0 Plaintiffs' Motion to Strike Pursuant to Rule 12(f) of Mass. Rules of Civil Procedure filed by	17.1	
02/02/2016	Plaintiff Margaret J Reichenbach, John Reichenbach's EMERGENCY Motion for Reconsideration of Procedural Order of January 14, 2016 Pursuant to Superior Court Rule 9D and Rule 9A(e)(1)	18	
02/03/2016	General correspondence regarding Defendants' Procedure Order Paragraphs Subject to the Anti SLAPP Motion by subject matter	19	
02/10/2016	ORDER: Reconsideration to Procedural Order of January 14, 2016	20	
02/10/2016	Opposition to paper #18.0 to Plaintiffs Emergency Motion for Reconsideration of Procedural Order of January 14, 2016 filed by Timothy G Haydock, Barbara Moss	21	Image
02/11/2016	Margaret J Reichenbach, John Reichenbach's Reply Memorandum to Defendants' Opposition to Plaintiffs' Emergency Motion	22	

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
02/17/2016	ORDER: Court's Response to Motion to Strike Based on the foregoing, this court declines to make any further order for defendants to provide further answers.	23	 Image
03/07/2016	ORDER: Rulings and Order on Defendant's Threshold BurdenBased on the foregoing, plaintiffs shall now meet their burden of proof. Such a submission shall be filed within twenty one (21) days.	24	 Image
03/28/2016	Plaintiff Margaret J Reichenbach, John Reichenbach's Response to Demonstrate that the Defendants Engaged in Sham Petitioning and are Not Entitled to the Protection of the Anti-SLAPP Statute	25	 Image
03/28/2016	Affidavit of John Reichenbach	26	
03/28/2016	Affidavit of Margaret J. Reichenbach	27	
03/28/2016	Affidavit of Bryan N. Jones	28	
03/28/2016	Affidavit of Thomas W. Hardman	29	
03/28/2016	Affidavit of Paul Murphy	30	
03/28/2016	Affidavit of Michael E. Russell	31	
03/28/2016	Affidavit of Steven Pontes	32	
03/28/2016	Affidavit of John F. Shea, Esq.	33	
04/07/2016	ORDER: Instructions	34	 Image
04/19/2016	Plaintiff Margaret J Reichenbach, John Reichenbach's Notice of Service of Plaintiffs' Motion for Reconsideration	35	 Image
04/28/2016	Plaintiff, Defendant Margaret J Reichenbach, John Reichenbach, Timothy G Haydock, Barbara Moss's Submission in Accordance with Court Order dated January 14, 2016, as Amended, Court Order dated March 7, 2016 and Court Order dated April 7, 2016	36	
04/28/2016	Plaintiff Margaret J Reichenbach, John Reichenbach's Motion for Reconsideration of Rulings and Order on Defendants' Threshold Burden	37	
04/28/2016	Opposition to paper #37.0 Plaintiffs' Motion for Reconsideration filed by Timothy G Haydock, Barbara Moss	37.1	
05/06/2016	Brief filed: Reply to Defendants' Submissions Pursuant to Court Order Dated January 14, 2016 as Amended, Court Order Dated March 7, 2016 and Court Order Dated April 7, 2016 Applies To: Reichenbach, Margaret J (Plaintiff); Reichenbach, John (Plaintiff)	38	
05/06/2016	Affidavit of Thomas W. Hardman	39	
05/06/2016	Affidavit of Michael E. Russell	40	
05/11/2016	Affidavit of Timothy Haydock	41	
05/11/2016	Affidavit of Barbara Moss	42	
06/20/2016	MEMORANDUM & ORDER: AND ORDER ON G.L. c. 231, Sec. 59H Motion to Dismiss; Based on the foregoing, this court DENIES in full defendants' Motion to Strike.	43	 Image
07/12/2016	Plaintiff(s) John Reichenbach, Margaret J Reichenbach's EX PARTE Motion for a Real Estate Attachment	44	
07/12/2016	Margaret J Reichenbach, John Reichenbach's Memorandum in support of Ex Parte Motion for Real Estate Attachment	44.1	
07/12/2016	General correspondence regarding Hon. Merita A. Hopkins shown pleading #44 filed this morning, recuses herself as she personally knows the Defendants; file sent to FR Superior Court for review by Judge Dupuis for assignment to another justice (Hopkins, J. only civil judge sitting in NB)		
07/15/2016	Notice of appeal filed as to the decision and order denying their special motion to dismiss under G.L.c231, sec 59H entered on or about June 20, 2016 Applies To: Haydock, Timothy G (Defendant); Moss, Barbara (Defendant)	45	
07/18/2016	Endorsement on Motion for Plaintiffs' ex parte motion for attachment of real property of Defendant, Timothy Haydock (#44.0): Summons and Order of Notice to issue After review of the pleadings, an Order of Notice for real estate attachment to issue returnable @ New Bedford Superior Court in the Civil "B" Session on 7/28/2016 @ 2:00 PM.		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
07/19/2016	Event Result: The following event: Hearing on Ex Parte Motion for Attachment or real property scheduled for 07/28/2016 02:00 PM has been resulted as follows: Result: Rescheduled Reason: By Court prior to date		
07/19/2016	Notice ORDER issued, returnable 07/28/2016 02:00 PM Hearing on Motion for Attachment to show cause why a Real Estate Attachment shall not be issued.		
07/20/2016	On 07/15/2016, Defendants' Timothy G. Haydock, and Barbara Moss filed a Notice to Appeal from the Final Judgment which was entered on 06/20/2016. Copy of Notice of Appeal mailed to Atty. Robert Feingold.	46	
07/25/2016	Attorney appearance On this date Daniel C Perry, Esq. added as Private Counsel for Defendant Timothy G. Haydock	47	
07/25/2016	Attorney appearance On this date Daniel C Perry, Esq. added as Private Counsel for Defendant Barbara Moss		
07/25/2016	Defendants Timothy G Haydock, Barbara Moss's EX PARTE Motion to continue / reschedule an event 07/28/2016 02:00 PM Hearing on Equity Issue	48	
07/25/2016	Certificate of service of attorney or Pro Se: Robert B Feingold, Esq.	49	
07/25/2016	Attorney appearance On this date Neil Smola, Esq. added for Defendant Timothy G. Haydock		
07/25/2016	Attorney appearance On this date Neil Smola, Esq. added for Defendant Barbara Moss		
07/27/2016	Defendants Timothy G Haydock, Barbara Moss's Motion for Reconsideration of Memorandum of Decision and Order on G.L.c. 231, s.59H Motion to Dismiss	50	
07/27/2016	Opposition to #50 Defendants' Motion for Reconsideration filed by Margaret J Reichenbach, John Reichenbach	50.1	
07/27/2016	Affidavit of compliance with Superior Court Rule 9A Applies To: Perry, Esq., Daniel C (Attorney) on behalf of Haydock, Timothy G, Moss, Barbara (Defendant)	50.2	
07/27/2016	Event Result: The following event: Hearing on Motion for Attachment scheduled for 07/28/2016 02:00 PM has been resulted as follows: Result: Rescheduled Reason: By Court prior to date		
08/01/2016	Objection to to Defendant's Request for leave to file a Reply Brief in Response to Plaintiffs' Opposition to Defendants' Motion for Reconsideration filed by Margaret J Reichenbach, John Reichenbach	51	
08/01/2016	Endorsement on Motion for Reconsideration of Memorandum of Decision and Order on G.L.c. 231 s.59H Motion to Dismiss (#50.0): DENIED The Motion for Reconsideration is Denied. The court adds one comment which is probably evident, the section on the "Complaint" served as it stated as "Background".		
08/09/2016	Plaintiffs Margaret J Reichenbach, John Reichenbach's Assented to Motion to continue / reschedule an event 08/09/2016 02:00 PM Hearing on Motion for Attachment	52	
08/09/2016	Event Result: The following event: Hearing on Motion for Attachment scheduled for 08/09/2016 02:00 PM has been resulted as follows: Result: Rescheduled Reason: Joint request of parties		
08/09/2016	Endorsement on Motion to continue / reschedule an event (#52.0): ALLOWED		
08/09/2016	Timothy G Haydock, Barbara Moss's Memorandum in opposition to Plaintiffs' Motion for Real Estate Attachment	53	
08/09/2016	Affidavit of Defendant Timothy G. Haydock	54	
08/09/2016	Affidavit of of Defendant Barbar Moss	55	
08/09/2016	Affidavit of Samuel Haydock	56	
08/10/2016	Affidavit of Ann E. Sinton	57	
08/10/2016	Affidavit of Thomas W. Hardman	58	
08/10/2016	Affidavit of John Reichenbach in Support of Plaintiffs' Motion to Attach Second Affidavit	59	

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
08/11/2016	Matter taken under advisement The following event: Hearing on Motion for Attachment scheduled for 08/11/2016 12:00 PM has been resulted as follows: Result: Held - Under advisement Appeared: Attorney Perry, Esq., Daniel C Attorney Feingold, Esq., Robert B		
08/17/2016	Affidavit of Thomas W. Hardman, Registered Professional Land surveyor	60	
08/17/2016	Party(s) file Stipulation Defendant Timothy G. Haydock, hereby agrees not to encumber, transfer, assign or in any way convey his interest in any real estate in Bristol County MA in which he has an ownership interest, until two business days after thte Court has notified the parties of its decision on said Plaintiffs' Motion for Real Property Attachment Applies To: Perry, Esq., Daniel C (Attorney) on behalf of Haydock, Timothy G. (Defendant); Feingold, Esq., Robert B (Attorney) on behalf of Reichenbach, Margaret J. (Plaintiff)	61	 Image
08/19/2016	Defendants Timothy G Haydock, Barbara Moss's EMERGENCY Motion to Stay Discovery	62	
08/19/2016	Timothy G Haydock, Barbara Moss's Memorandum in support of Emergency Motion to Stay Discovery	62.1	
08/19/2016	Affidavit of compliance with Superior Court Rule 9C Applies To: Perry, Esq., Daniel C (Attorney) on behalf of Haydock, Timothy G (Defendant)	62.2	
08/22/2016	Opposition to to Defendant's/Appellants' Emergency Motion to Stay Discovery filed by Margaret J Reichenbach, John Reichenbach	63	
08/22/2016	Endorsement on Motion to Stay Discovery (#62.0): Other action taken The deposition is stayed and plaintiff has till 8/30/16 to file an opposition.		
08/24/2016	Appeal: Party's Letter received re: no transcript on appeal Applies To: Perry, Esq., Daniel C (Attorney) on behalf of Haydock, Timothy G (Defendant)	64	
09/18/2016	Endorsement on Motion to Stay Discovery (#62.0): DENIED After review and del beration the Motion to Stay Discovery is Denied.		
09/19/2016	MEMORANDUM & ORDER: on Plaintiffs' Motion to Attach Property.....For the foregoing reasons, it is therefore ORDERED that plaintiffs' motion to attach is to be DENIED.	65	 Image
09/29/2016	Plaintiffs Margaret J Reichenbach, John Reichenbach's EMERGENCY Motion for Reconsideration of Denial of Plaintiffs' Motion for Real Estate Attachment Pursuant to Superior Court Rule 9D and Rule 9A(e)(1)	66	
09/29/2016	Margaret J Reichenbach, John Reichenbach's Memorandum in support of Motion for Reconsideration	66.1	
09/29/2016	Affidavit of John Reichenbach in Support	66.2	
09/30/2016	Endorsement on Motion for Reconsideration of Denial of Plaintiffs' Motion for Real Estate Attachment Pursuant to Superior Court Rule 9D and Rule 9A(e)(1) (#66.0): DENIED upon Review		
10/08/2016	Court received Copies of Defendants' Motion to Single Justice to Stay Proceedins in the Superior Court pending Appeal, Memorandum in Support and Record Appendix filed at Appeals Court related to appeal		
10/13/2016	Appeal: Statement of the Case on Appeal (Cover Sheet).	67	
10/13/2016	Appeal: notice of assembly of record sent to Counsel	68	
10/13/2016	Notice to Clerk of the Appeals Court of Assembly of Record	69	
10/17/2016	Court received Appellants' Motion to Stay Deposition of Matthew Swimm related to appeal		
10/17/2016	Court received Plaintiffs' Memorandum in Opposition to Defendants' Motion to Single Justice to Stay Proceedings related to appeal		 Image
10/19/2016	Notice of docket entry received from Appeals Court On October 14, 2016, the following order was entered on the docket of the above-referenced case: RE#1: Denied. (Neyman, J.) *Notice/Attest/Kane, J.	70	 Image
10/26/2016	Appeal entered in Appeals Court on 10/24/2016 docket number 2016-P-1427	71	 Image

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
01/10/2017	Attorney Daniel C Perry, Esq., Neil Smola, Esq.'s motion to withdraw as counsel of record for party Applies To: Haydock, Timothy G (Defendant); Moss, Barbara (Defendant)	72	
01/10/2017	Opposition to to Defendants' Attorneys' Daniel C. Perry and Neil B. Smola to withdraw filed by Margaret J Reichenbach, John Reichenbach	72.1	
01/10/2017	Affidavit of compliance with Superior Court Rule 9A Applies To: Perry, Esq., Daniel C (Attorney) on behalf of Haydock, Timothy G, Moss, Barbara (Defendant); Smola, Esq., Neil (Attorney) on behalf of Haydock, Timothy G, Moss, Barbara (Defendant)	73	
01/23/2017	The following form was generated: Notice to Appear Sent On: 01/23/2017 10:33:38		
04/03/2017	Event Result: The following event: Hearing on Withdrawal of Attorney scheduled for 04/06/2017 02:00 PM has been resulted as follows: Result: Canceled Reason: Request of Defendant		
04/03/2017	Motion to withdraw/ waive paper #72.0 Motion of Daniel C. Perry and Neil B. Smola to Withdraw as Counsel Applies To: Smola, Esq., Neil (Attorney) on behalf of Haydock, Timothy G., Moss, Barbara (Defendant)	74	
05/12/2017	Defendant Timothy G. Haydock, Barbara Moss's Motion for Protective Order to Limit the Scope, Method and Number of Discovery	75	
05/12/2017	Opposition to Defendant's Motion for Protective Order to Limit Discovery filed by	75.1	
05/12/2017	Affidavit of compliance with Superior Court Rule 9A Applies To: Perry, Esq., Daniel C (Attorney) on behalf of Haydock, Timothy G. (Defendant)	75.2	
05/19/2017	ORDER: on Defendants' Motion for Protective Order	76	
05/26/2017	Defendant Timothy G. Haydock's Statement in Response to Order on Defendants' Motion for Protective Order	77	
06/02/2017	Plaintiff Margaret J. Reichenbach's Response to Court's Order on Defendants' Motion for Protective Order dated May 19, 2017	78	
07/24/2017	Plaintiffs Margaret J. Reichenbach, John Reichenbach's Request for Hearing on Defendant's Motion for Protective Order	79	
08/18/2017	The following form was generated: Notice to Appear Sent On: 08/18/2017 09:56:59		
09/26/2017	Matter taken under advisement The following event: Motion Hearing scheduled for 09/26/2017 02:00 PM has been resulted as follows: Result: Held - Under advisement Appeared: Attorney Smola, Esq., Neil Attorney Feingold, Esq., Robert B Staff Appeared: Court Reporter Digital Recording Device Bris CV B Assistant Clerk Magistrate Fregault, Garrett		
09/26/2017	The following form was generated: Notice to Appear Sent On: 09/26/2017 14:58:00		
09/29/2017	Endorsement on motion for protective order (#75.0): DENIED After review of the statements of the parties as to the current status and proposed further discovery and after hearing, the defendants' motion for protective order to limit the scope, method and number of discovery is DENIED. The court finds that the plaintiffs' further discovery as outlined is reasonably calculated to lead to the discovery of admissible evidence. It is further ordered, based on representations by the plaintiffs during the aforementioned hearing, that the plaintiff will depose either Anthony Frothingham or Tom Swift. Judge: Donatelle, Hon. Sharon		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
10/04/2017	The following form was generated: Notice to Appear Sent On: 10/04/2017 09:43:53		
10/04/2017	The following form was generated: Notice to Appear Sent On: 10/04/2017 09:44:36		
10/04/2017	The following form was generated: Notice to Appear Sent On: 10/04/2017 09:45:56		
10/16/2017	General correspondence regarding case sent to New Bedford		
10/24/2017	Plaintiffs Margaret J. Reichenbach, John Reichenbach's Assented to Motion to continue / reschedule an event 10/25/2017 02:00 PM Conference to Review Status	80	
10/25/2017	Endorsement on Motion to continue / reschedule an event Review Status Conference (#80.0): ALLOWED Judge: Fregault, Garrett R		 Image
10/25/2017	Event Result: Judge: Fregault, Garrett R The following event: Conference to Review Status scheduled for 10/25/2017 02:00 PM has been resulted as follows: Result: Rescheduled Reason: Joint request of parties		
10/25/2017	The following form was generated: Notice to Appear Sent On: 10/25/2017 09:23:45		
11/20/2017	Event Result: Judge: Yessayan, Hon. Raffi N The following event: Conference to Review Status scheduled for 11/20/2017 02:00 PM has been resulted as follows: Result: Held as Scheduled Appeared: Attorney Perry, Esq., Daniel C Attorney Feingold, Esq., Robert B Staff Appeared: Court Reporter Digital Recording Device Bris CV B Assistant Clerk Magistrate Fregault, Garrett		
11/22/2017	The following form was generated: Notice to Appear for Final Pre-Trial Conference Sent On: 11/22/2017 14:56:59		
01/08/2018	Notice of docket entry received from Appeals Court Please take note that, with respect to the PETITION for Rehearing filed for Timothy G. Haydock and Barbara Moss by Attorney Daniel Perry. (Paper #28), on January 8, 2018, the following order was entered on the docket: RE#28: The petition for rehearing having been considered, it is ordered that the petition be, and the same hereby is, denied. (Wolohojian, Agnes, Wendlandt, JJ.)	81	 Image
01/10/2018	Notice of docket entry received from Supreme Judicial Court On January 10, 2018, the following application for further appellate review was filed in the above-referenced case: FAR APPLICATION filed for Timothy G. Haydock and Barbara Moss by Attorney Daniel Perry.	82	 Image
03/01/2018	Notice of docket entry received from Supreme Judicial Court NOTICE OF DENIAL OF F.A.R. APPLICATION Please take note that on March 2, 2018, the above - captioned Application for Further Appellate Review was denied.	83	 Image
03/07/2018	Rescript received from Appeals Court; judgment AFFIRMED . Order denying special motion to dismiss affirmed.	84	 Image
06/21/2018	Victim Margaret J. Reichenbach, John Reichenbach's Motion to Allow Plaintiffs to Conduct Additional Discovery	85	 Image
06/21/2018	Opposition to Motion to Allow Plaintiffs to Conduct Additional Discovery filed by Timothy G. Haydock, Barbara Moss	85.1	 Image

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
06/21/2018	Plaintiffs Margaret J. Reichenbach, John Reichenbach's Reply to Opposition to Plaintiffs' Motion to Allow Additional Discovery	85.2	 Image
06/21/2018	Certificate of Compliance Superior Court Rule 9C	85.3	
06/21/2018	The following form was generated: Notice to Appear Sent On: 06/21/2018 11:05:00		
06/29/2018	Plaintiffs Margaret J. Reichenbach, John Reichenbach's Assented to Motion to continue / reschedule an event 07/12/2018 02:00 PM Motion Hearing	86	
07/02/2018	Endorsement on Motion to continue / reschedule an event (#86.0): ALLOWED by agreement. Judge: Fregault, Garrett R		 Image
07/02/2018	Event Result:: Motion Hearing scheduled on: 07/12/2018 02:00 PM Has been: Rescheduled For the following reason: Joint request of parties Hon. Renee P Dupuis, Presiding Judge: Dupuis, Hon. Renee P		
07/02/2018	The following form was generated: Notice to Appear Sent On: 07/02/2018 11:21:01		
07/19/2018	Matter taken under advisement: Motion Hearing scheduled on: 07/19/2018 02:00 PM Has been: Held - Under advisement Hon. Renee P Dupuis, Presiding Appeared: Plaintiff Robert B Feingold, Esq., Private Counsel Defendant Neil Smola, Esq., Staff: Erin Tierney, Assistant Clerk Magistrate Digital Recording Device Bris CV B, Court Reporter 07/19/2018 02:00 PM Judge: Dupuis, Hon. Renee P Judge: Dupuis, Hon. Renee P		
07/20/2018	Endorsement on Motion to Allow Plaintiffs to Conduct Additional Discovery (#85.0): ALLOWED After hearing, motion to conduct additional discovery is ALLOWED. Judge: Dupuis, Hon. Renee P		 Image
09/17/2018	Defendants Timothy G. Haydock, Barbara Moss's Assented to Motion to Extend Discovery Deadline	87	
09/18/2018	Endorsement on Motion to Extend Discovery Deadline (#87.0): ALLOWED by agreement. Case taken off the trial list. Judge: Dupuis, Hon. Renee P		 Image
09/19/2018	Event Result:: Final Trial Conference scheduled on: 02/04/2019 02:00 PM Has been: Canceled For the following reason: Joint request of parties Hon. Renee P Dupuis, Presiding Judge: Dupuis, Hon. Renee P		
09/19/2018	Event Result:: Jury Trial scheduled on: 03/04/2019 09:00 AM Has been: Canceled For the following reason: Joint request of parties Hon. Renee P Dupuis, Presiding Judge: Dupuis, Hon. Renee P		
09/19/2018	The following form was generated: Amended Tracking Order Sent On: 09/19/2018 08:43:47		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
12/17/2018	Defendants Timothy G. Haydock, Barbara Moss's Submission of Opposition to Plaintiffs' Objection to Interrogatories Propounded by Defendants and Defendants' Motion for Leave of Court to Serve Interrogatories	88	 Image
12/18/2018	Endorsement on Submission of Opposition to Plaintiff's Objection to Interrogatories Propounded by Defendants and Defendants' Motion for Leave of Court to Serve Interrogatories (#88.0): No Action Taken No action taken at this time as the instant motion was not served and filed pursuant to Sup. Ct. R. 9A. Judge: Fregault, Garrett R		 Image
12/18/2018	Plaintiffs Margaret J. Reichenbach, John Reichenbach's Motion to Strike Objections and Compel Further Responses to Requests for Production from Defendants Timothy Haydock and Barbara Moss	89	 Image
12/18/2018	Margaret J. Reichenbach's Memorandum in support of Motion to Strike Objections and Compel Further Responses to Requests for Production of Documents from Defendants Timothy Haydock and Barbara Moss	89.1	 Image
12/18/2018	Opposition to Plaintiff's Motion to Strike Objections and Compel Further Responses to Requests for Production of Documents From Defendants Timothy Haydock and Barbara Moss filed by Timothy G. Haydock, Barbara Moss	89.2	 Image
12/18/2018	Plaintiffs Margaret J. Reichenbach, John Reichenbach's Reply to Defendants' Opposition to Plaintiffs' Motion to Strike Objections and Compel Further Responses to Requests for Production of Documents from Defendants Timothy Haydock and Barbara Moss	89.3	 Image
12/18/2018	Certificate of Compliance Superior Court Rule 9C	89.4	
12/18/2018	Attorney appearance On this date Heather Marie Bonnet-Hebert, Esq. added as Private Counsel for Plaintiff Margaret J. Reichenbach		
12/18/2018	Attorney appearance On this date Heather Marie Bonnet-Hebert, Esq. added as Private Counsel for Plaintiff John Reichenbach		
12/19/2018	The following form was generated: Notice to Appear Sent On: 12/19/2018 15:30:07		
01/18/2019	Plaintiffs Margaret J. Reichenbach, John Reichenbach's Assented to Motion to continue / reschedule an event 01/22/2019 02:00 PM Motion Hearing	90	
01/22/2019	Endorsement on Motion to Reschedule Hearing on Plaintiffs' Motion to Strike Objections and Compel Further Responses to Requests for Production of Documents (#90.0): ALLOWED Judge: Perrino, Hon. Thomas J		 Image
01/22/2019	Event Result:: Motion Hearing scheduled on: 01/22/2019 02:00 PM Has been: Rescheduled For the following reason: Joint request of parties Hon. Thomas J Perrino, Presiding Appeared: Staff: Garrett Fregault, Assistant Clerk Magistrate Digital Recording Device Bris CV B, Court Reporter		
01/22/2019	The following form was generated: Notice to Appear Sent On: 01/22/2019 09:06:07		
02/06/2019	Opposition to (#88) to Plaintiffs' Objection to Interrogatories Propounded by Defendants and Defendants' Motion for Leave of Court to Serve Interrogatories filed by Timothy G. Haydock, Barbara Moss	91	 Image
02/06/2019	Opposition to (#91) to Defendants' Opposition to Plaintiffs' Objection to Interrogatories Propounded by Defendants and Defendants' Motion for Leave of Court to Serve Interrogatories filed by Margaret J. Reichenbach, John Reichenbach	92	 Image
02/12/2019	Matter taken under advisement: Motion Hearing scheduled on: 02/12/2019 02:00 PM Has been: Held - Under advisement Hon. Thomas J Perrino, Presiding Appeared: Plaintiff Robert B Feingold, Esq., Private Counsel Heather Marie Bonnet-Hebert, Esq., Private Counsel Defendant Daniel C Perry, Esq., Private Counsel Staff: Garrett Fregault, Assistant Clerk Magistrate		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
	02/12/2019 02:00 PM Digital Recording Device Bris CV B, Court Reporter 02/12/2019 02:00 PM		
02/13/2019	Endorsement on Motion for Leave of Court to Serve Interrogatories (#91.0): ALLOWED Judge: Perrino, Hon. Thomas J		 Image
02/13/2019	ORDER: on the Plaintiffs' Motion to Strike Objections and to Compel Judge: Perrino, Hon. Thomas J	93	 Image
03/18/2019	Plaintiffs Margaret J. Reichenbach, John Reichenbach's Assented to, Joint Motion to extend tracking deadline(s)	94	
03/20/2019	The following form was generated: Notice to Appear Sent On: 03/20/2019 14:13:28		
03/28/2019	Plaintiffs Margaret J. Reichenbach, John Reichenbach's Request for Rule 16 Conference Addressing Discovery of Electronically Stored Information	95	 Image
03/28/2019	The following form was generated: Notice to Appear Sent On: 03/28/2019 15:05:50		
03/28/2019	Event Result:: Rule 16 Conference scheduled on: 04/02/2019 02:00 PM Has been: Rescheduled For the following reason: Joint request of parties Hon. Raffi N Yessayan, Presiding Appeared: Staff: Jennifer A Sullivan, Assistant Clerk Magistrate Digital Recording Device Bris CV A, Court Reporter		
04/16/2019	Event Result:: Rule 16 Conference scheduled on: 04/18/2019 02:00 PM Has been: Rescheduled For the following reason: By Court prior to date Hon. Raffi N Yessayan, Presiding		
04/16/2019	The following form was generated: Notice to Appear Sent On: 04/16/2019 15:08:23		
04/17/2019	Opposition to #95 Plaintiffs' Request for a Conference Regarding Electronically Stored Information filed by Timothy G. Haydock, Barbara Moss	96	 Image
04/24/2019	Plaintiffs Margaret J. Reichenbach, John Reichenbach's Assented to Motion to continue / reschedule an event 04/30/2019 02:00 PM Rule 16 Conference	97	
04/24/2019	Endorsement on Motion to continue / reschedule an event (#97.0): ALLOWED by agreement as requested. Judge: Yessayan, Hon. Raffi N		 Image
04/24/2019	Event Result:: Rule 16 Conference scheduled on: 04/30/2019 02:00 PM Has been: Rescheduled For the following reason: Joint request of parties Hon. Raffi N Yessayan, Presiding Staff: Jennifer A Sullivan, Assistant Clerk Magistrate Digital Recording Device Bris CV A, Court Reporter		
04/25/2019	The following form was generated: Notice to Appear Sent On: 04/25/2019 10:36:03		
05/20/2019	Plaintiffs Margaret J. Reichenbach, John Reichenbach's Reply to Defendants' Objection to Plaintiffs' Request for a Rule 16 Conference	98	 Image
05/21/2019	Plaintiff Margaret J. Reichenbach, John Reichenbach's Submission of ESI Protocol.	99	 Image
05/21/2019	Event Result:: Rule 16 Conference scheduled on: 05/21/2019 02:00 PM Has been: Held as Scheduled Hon. Raffi N Yessayan, Presiding Staff:		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
	Jennifer A Sullivan, Assistant Clerk Magistrate Digital Recording Device Bris CV A, Court Reporter		
05/21/2019	The following form was generated: Notice to Appear Sent On: 05/21/2019 15:36:43		
05/21/2019	Plaintiffs Margaret J. Reichenbach, John Reichenbach's Submission of Proposed Revised Scheduling Order	100	
05/22/2019	The following form was generated: Notice to Appear Sent On: 05/22/2019 10:26:49		
06/03/2019	Event Result:: Conference to Review Status scheduled on: 06/03/2019 02:00 PM Has been: Rescheduled For the following reason: Request of Defendant Hon. Raffi N Yessayan, Presiding Staff: Garrett Fregault, Assistant Clerk Magistrate Digital Recording Device Bris CV A, Court Reporter		
06/04/2019	Event Result:: Conference to Review Status scheduled on: 06/12/2019 02:00 PM Has been: Rescheduled For the following reason: Joint request of parties Hon. Raffi N Yessayan, Presiding Staff: Jennifer A Sullivan, Assistant Clerk Magistrate Digital Recording Device Bris CV A, Court Reporter		
06/11/2019	Event Result:: Conference to Review Status scheduled on: 06/11/2019 02:00 PM Has been: Held as Scheduled Hon. Raffi N Yessayan, Presiding Appeared: Plaintiff Robert B Feingold, Esq., Private Counsel Heather Marie Bonnet-Hebert, Esq., Private Counsel Defendant Neil Smola, Esq., Staff: Jennifer A Sullivan, Assistant Clerk Magistrate Digital Recording Device Bris CV A, Court Reporter		
06/19/2019	Event Result:: Conference to Review Status scheduled on: 06/19/2019 02:00 PM Has been: Held as Scheduled Hon. Raffi N Yessayan, Presiding Appeared: Plaintiff Heather Marie Bonnet-Hebert, Esq., Private Counsel Robert B Feingold, Esq., Private Counsel Defendant Neil Smola, Esq., Staff: Jennifer A Sullivan, Assistant Clerk Magistrate Digital Recording Device Bris CV A, Court Reporter		
06/19/2019	The following form was generated: Notice to Appear Sent On: 06/19/2019 15:26:02		
07/11/2019	Plaintiffs Margaret J. Reichenbach's EMERGENCY Motion to Shorten Time for Defendants to Answer Interrogatories	101	
07/11/2019	Margaret J. Reichenbach's Memorandum in support of Motion to Shorten Time for Defendants to Answer Interrogatories	101.1	
07/17/2019	Event Result:: Conference to Review Status scheduled on: 07/17/2019 02:00 PM Has been: Held as Scheduled Comments: ORDER FOR PRESERVATION OF ALL ELECTRONIC DEVICES MADE ON THE RECORD ON THIS DATE (Yessayan, J.) Hon. Raffi N Yessayan, Presiding Staff: Jennifer A Sullivan, Assistant Clerk Magistrate Digital Recording Device Bris CV A, Court Reporter		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
07/17/2019	The following form was generated: Notice to Appear Sent On: 07/17/2019 14:49:32		
07/17/2019	The following form was generated: Notice to Appear Sent On: 07/17/2019 15:17:45		
07/22/2019	Plaintiffs Margaret J. Reichenbach, John Reichenbach's Motion for Leave to Take Depositions of Gregor I. McGregor, Esq. and Luke H. Legere, Esq.	102	 Image
07/22/2019	Margaret J. Reichenbach, John Reichenbach's Memorandum in support of Motion for Leave to Take Depositions	102.1	 Image
07/22/2019	Opposition to #102 Plaintiffs' Motion for Leave to Take Depositions filed by Timothy G. Haydock, Barbara Moss	102.2	 Image
07/22/2019	Certificate of Compliance Superior Court Rule 9C Applies To: Feingold, Esq., Robert B (Attorney) on behalf of Reichenbach, John, Reichenbach, Margaret J. (Plaintiff)	102.3	 Image
07/24/2019	Attorney appearance On this date Melissa Cook Allison, Esq. added as Private Counsel for Defendant Timothy G. Haydock	103	 Image
07/24/2019	Attorney appearance On this date Samuel Dinning, Esq. added as Private Counsel for Defendant Timothy G. Haydock		
07/24/2019	Attorney appearance On this date Melissa Cook Allison, Esq. added as Private Counsel for Defendant Barbara Moss		
07/24/2019	Attorney appearance On this date Samuel Dinning, Esq. added as Private Counsel for Defendant Barbara Moss		
07/25/2019	Attorney appearance On this date Neil Smola, Esq. dismissed/withdrawn for Defendant Timothy G. Haydock	104	 Image
07/25/2019	Attorney appearance On this date Daniel C Perry, Esq. dismissed/withdrawn as Private Counsel for Defendant Timothy G. Haydock		
07/25/2019	Attorney appearance On this date Neil Smola, Esq. dismissed/withdrawn for Defendant Barbara Moss		
07/25/2019	Attorney appearance On this date Daniel C Perry, Esq. dismissed/withdrawn as Private Counsel for Defendant Barbara Moss		
08/26/2019	Defendants Timothy G. Haydock's Motion to Adopt Defendants' Protocol for ESI Discovery	105	 Image
08/26/2019	Timothy G. Haydock's Memorandum in support of Motion to Adopt Defendants' Protocol for ESI Discovery	105.1	 Image
08/26/2019	Opposition to Defendants' Motion to Adopt Defendants' Protocol for ESI Discovery filed by Margaret J. Reichenbach	105.2	 Image
08/26/2019	Defendants Timothy G. Haydock's Reply to Plaintiffs' Opposition to Motion to Adopt Protocol for ESI Discovery	105.3	 Image
08/26/2019	Defendant Barbara Moss's Response to Plaintiffs' First Set of Interrogatories Propounded on Defendant, Barbara Moss	105.4	 Image
08/26/2019	Defendant Timothy G. Haydock's Response to Plaintiffs' First Set of Interrogatories Propounded on Defendant, Timothy Haydock	105.5	 Image
08/26/2019	Certificate of Compliance Superior Court Rule 9C	105.6	 Image
08/26/2019	Plaintiffs Margaret J. Reichenbach's Assented to Motion to continue / reschedule an event 08/27/2019 02:00 PM Hearing RE: Discovery Motion(s)	106	 Image
08/26/2019	Endorsement on Motion to continue / reschedule an event (#106.0): ALLOWED Motion Allowed Judge: Yessayan, Hon. Raffi N		 Image  Image
08/26/2019	Event Result: Hearing RE: Discovery Motion(s) scheduled on: 08/27/2019 02:00 PM Has been: Rescheduled For the following reason: Joint request of parties Hon. Raffi N Yessayan, Presiding		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
08/26/2019	The following form was generated: Notice to Appear Sent On: 08/26/2019 11:27:31		
08/26/2019	Event Result: Hearing RE: Discovery Motion(s) scheduled on: 09/04/2019 02:00 PM Has been: Rescheduled For the following reason: Transferred to another session Hon. Raffi N Yessayan, Presiding		
09/04/2019	Event Result: Hearing RE: Discovery Motion(s) scheduled on: 09/04/2019 02:00 PM Has been: Held as Scheduled Hon. Raffi N Yessayan, Presiding Appeared: Plaintiff Robert B Feingold, Esq., Private Counsel Heather Marie Bonnet-Hebert, Esq., Private Counsel Defendant Melissa Cook Allison, Esq., Private Counsel Staff: Jennifer A Sullivan, Assistant Clerk Magistrate Dina Swanson, Assistant Clerk Magistrate Digital Recording Device Bris CV A, Court Reporter		
09/25/2019	Event Result: Hearing RE: Discovery Motion(s) scheduled on: 09/25/2019 11:00 AM Has been: Rescheduled For the following reason: Joint request of parties Hon. Raffi N Yessayan, Presiding Staff: Jennifer A Sullivan, Assistant Clerk Magistrate Dina Swanson, Assistant Clerk Magistrate Digital Recording Device Bris CV A, Court Reporter		
09/25/2019	The following form was generated: Notice to Appear Sent On: 09/25/2019 11:09:15		
10/07/2019	Event Result: Hearing RE: Discovery Motion(s) scheduled on: 10/07/2019 03:00 PM Has been: Not Held For the following reason: Joint request of parties Hon. Raffi N Yessayan, Presiding Staff: Jennifer A Sullivan, Assistant Clerk Magistrate Digital Recording Device Bris CV A, Court Reporter		
10/07/2019	Plaintiffs Margaret J. Reichenbach, John Reichenbach's Joint Submission of Proposed Order Regarding ESI Discovery	107	 Image
10/29/2019	Endorsement on Submission of Joint Proposed Order Regarding ESI Discovery (#107.0): ALLOWED See Revised Scheduling Order. Judge: Yessayan, Hon. Raffi N		 Image
10/29/2019	ORDER: Revised Scheduling Order Judge: Yessayan, Hon. Raffi N	108	 Image
12/19/2019	Plaintiffs(s) Margaret J. Reichenbach, John Reichenbach motion filed to compel Further Answers to Interrogatories from Defendant Haydock and Moss	109	 Image
12/19/2019	Margaret J. Reichenbach, John Reichenbach's Memorandum in support of Motion to Compel Further Answers	109.1	 Image
12/19/2019	Opposition to #109 Plaintiffs' Motion to Compel Further Answers filed by Timothy G. Haydock, Barbara Moss	109.2	 Image
12/19/2019	Plaintiffs Margaret J. Reichenbach, John Reichenbach's Reply to Defendants' Opposition	109.3	 Image
12/19/2019	Certificate of Compliance Superior Court Rule 9C Applies To: Bonnet-Hebert, Esq., Heather Marie (Attorney) on behalf of Reichenbach, John, Reichenbach, Margaret J. (Plaintiff)	109.4	 Image
01/06/2020	The following form was generated: Notice to Appear on February 19, 2020 for #19 Plaintiff's Motion to Compel Further Answers to Interrogatories from Defendants Haydock and Moss		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
	Sent to: Sent On: 01/06/2020 12:46:50		
	Applies To: Bonnet-Hebert, Esq., Heather Marie (Attorney) on behalf of Reichenbach, Margaret J. (Plaintiff); Allison, Esq., Melissa Cook (Attorney) on behalf of Haydock, Timothy G. (Defendant); Feingold, Esq., Robert B (Attorney) on behalf of Reichenbach, Margaret J. (Plaintiff); Dinning, Esq., Samuel (Attorney) on behalf of Haydock, Timothy G. (Defendant)		
01/27/2020	Attorney appearance On this date Heidi A Nadel, Esq. added as Private Counsel for Plaintiff Margaret J. Reichenbach	110	 Image
01/27/2020	Attorney appearance On this date Heidi A Nadel, Esq. added as Private Counsel for Plaintiff John Reichenbach		
02/18/2020	General correspondence regarding objection to advancing the oral argument on February 19, 2020.	111	 Image
02/19/2020	Defendants Timothy G. Haydock's Motion to Compel Responses to First Set of Interrogatories Propounded by Defendants on Plaintiffs Margaret J. Reichenbach and John Reichenbach	112	 Image
02/19/2020	Timothy G. Haydock's Memorandum in support of Motion to Compel Responses to the First Set of Interrogatories Propounded by Defendants on Plaintiffs Margaret J. Reichenbach and John Reichenbach	112.1	 Image
02/19/2020	Opposition to Motion to Compel filed by Margaret J. Reichenbach	112.2	 Image
02/19/2020	Matter taken under advisement: Motion Hearing to Compel scheduled on: 02/19/2020 02:00 PM Has been: Held - Under advisement Hon. Elaine M Buckley, Presiding Appeared: Plaintiff Robert B Feingold, Esq., Private Counsel Heather Marie Bonnet-Hebert, Esq., Private Counsel Defendant Samuel Dinning, Esq., Private Counsel Staff: Jennifer A Sullivan, Assistant Clerk Magistrate Digital Recording Device Bris CV B, Court Reporter		
02/20/2020	Endorsement on Motion to Compel Further Answers to Interrogatories from Defendants Haydock and Moss (#109.0): ALLOWED After hearing and upon review of the motion and memorandum the Court allows the motion. The Court finds that this evidence is discoverable and is relevant to the subject matter involved in the pending litigation. The Defendant to bear the cost of providing the information. Defendant shall have until 3/20/2020 to produce the documents requested. Judge: Buckley, Hon. Elaine M		 Image
02/20/2020	Endorsement on Motion to Compel Responses to First Set of Interrogatories Propounded by Defendants on Plaintiffs (#112.0): ALLOWED After hearing, Allowed. See FTR for oral ruling. Judge: Buckley, Hon. Elaine M		 Image
02/21/2020	ORDER: Procedural Order	113	 Image
02/28/2020	Plaintiffs Margaret J. Reichenbach, John Reichenbach's Joint Motion to revise scheduling order	114	 Image
03/02/2020	Endorsement on Motion to Revise Scheduling Order (#114.0): ALLOWED by agreement. Judge: Buckley, Hon. Elaine M		 Image
05/04/2020	Witness Michael O'Reilly's Assented to Motion to Plaintiffs' Motion for Protective Order to Prevent Defendants from retaking the completed Deposition of Michael O'Reilly and other Previously-Completed Depositions	115	 Image
05/06/2020	Attorney appearance On this date Anthony C Savastano, Esq. added for Other interested party Michael O'Reilly's		
05/20/2020	Plaintiffs(s) Margaret J. Reichenbach, John Reichenbach motion filed for protective order to Prevent Defendants from Retaking Completed Deposition of Michael O'Reilly and Other Previously-Completed Depositions	116	 Image
05/20/2020	Margaret J. Reichenbach, John Reichenbach's Memorandum in support of Motion for Protective Order	116.1	 Image

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
05/20/2020	Other Interested Party Michael O'Reilly's's Submission of Assent to Plaintiffs' Motion for Protective Order	116.2	 Image
05/20/2020	Opposition to #116 Plaintiffs' Motion for Protective Order filed by Barbara Moss, Timothy G. Haydock	116.3	 Image
05/20/2020	Plaintiffs Margaret J. Reichenbach, John Reichenbach's Reply in Support of Motion for Protective Order	116.4	 Image
05/20/2020	Certificate of Compliance Superior Court Rule 9C	116.5	 Image
	Applies To: Feingold, Esq., Robert B (Attorney) on behalf of Reichenbach, John, Reichenbach, Margaret J. (Plaintiff)		
05/26/2020	Request for hearing filed	117	 Image
	Applies To: Feingold, Esq., Robert B (Attorney) on behalf of Reichenbach, John, Reichenbach, Margaret J. (Plaintiff); Dinning, Esq., Samuel (Attorney) on behalf of Haydock, Timothy G., Moss, Barbara (Defendant)		
07/16/2020	Event Result:: Hearing for Protective Order scheduled on: 07/16/2020 11:00 AM Has been: Held via Video Conference Hon. Raffi N Yessayan, Presiding Appeared: Plaintiff Robert B Feingold, Esq., Private Counsel Heidi A Nadel, Esq., Private Counsel Defendant Samuel Dinning, Esq., Private Counsel Other interested party Anthony C Savastano, Esq., Staff: Jennifer A Sullivan, Assistant Clerk Magistrate Digital Recording Device Bris CV A, Court Reporter		
07/16/2020	Endorsement on Motion for Protective Order to prevent defendants from retaking the completed deposition of Michael O'Reilly and other previous completed depositions (#116.0): ALLOWED After hearing, the motion is allowed, for the reasons stated on the record and in plaintiff's memorandum Judge: Yessayan, Hon. Raffi N		 Image
10/09/2020	Plaintiffs Margaret J. Reichenbach, John Reichenbach's Motion to extend tracking deadline(s)	118	 Image
10/09/2020	Endorsement on Motion to extend tracking deadline(s) (#118.0): ALLOWED Scheduling order shall be amended as proposed herein. Judge: Dupuis, Hon. Renee P		 Image
11/16/2020	Defendants(s) Timothy G. Haydock, Barbara Moss motion filed to compel Production of Documents Wrongly Withheld as Work Product	119	 Image
11/16/2020	Timothy G. Haydock, Barbara Moss's Memorandum in support of Motion to Compel	119.1	 Image
11/16/2020	Opposition to #119 Defendants' Motion to Compel filed by Margaret J. Reichenbach, John Reichenbach	119.2	 Image
11/16/2020	Defendants Timothy G. Haydock, Barbara Moss's Reply in Support of Motion to Compel	119.3	 Image
11/16/2020	Certificate of Compliance Superior Court Rule 9C	119.4	 Image
	Applies To: Dinning, Esq., Samuel (Attorney) on behalf of Haydock, Timothy G., Moss, Barbara (Defendant)		
11/20/2020	The following form was generated: Notice to Appear Sent On: 11/20/2020 15:26:59 Notice Sent To: Robert B Feingold, Esq. Robert B. Feingold & Associates, P.C. 700 Pleasant St 5th Floor, New Bedford, MA 02742-6254 Notice Sent To: Heather Marie Bonnet-Hebert, Esq. Robert B. Feingold & Associates, P.C. 700 Pleasant St Suite 520, New Bedford, MA 02740 Notice Sent To: Heidi A Nadel, Esq. Holland & Knight LLP 601 SW Second Ave Suite 1800, Portland, OR 97204 Notice Sent To: Melissa Cook Allison, Esq. Anderson & Kreiger LLP Anderson and Kreiger LLP 50 Milk Street 21st Floor, Boston, MA 02109 Notice Sent To: Samuel Dinning, Esq. Anderson & Kreiger LLP 50 Milk St 21st Floor, Boston, MA 02109		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
11/20/2020	The following form was generated: Notice to Appear Sent On: 11/20/2020 15:28:31 Notice Sent To: Robert B Feingold, Esq. Robert B. Feingold & Associates, P.C. 700 Pleasant St 5th Floor, New Bedford, MA 02742-6254 Notice Sent To: Heather Marie Bonnet-Hebert, Esq. Robert B. Feingold & Associates, P.C. 700 Pleasant St Suite 520, New Bedford, MA 02740 Notice Sent To: Heidi A Nadel, Esq. Holland & Knight LLP 601 SW Second Ave Suite 1800, Portland, OR 97204 Notice Sent To: Melissa Cook Allison, Esq. Anderson & Kreiger LLP Anderson and Kreiger LLP 50 Milk Street 21st Floor, Boston, MA 02109 Notice Sent To: Samuel Dinning, Esq. Anderson & Kreiger LLP 50 Milk St 21st Floor, Boston, MA 02109		
01/11/2021	Plaintiffs Margaret J. Reichenbach, John Reichenbach's EMERGENCY Motion to continue / reschedule an event 01/12/2021 02:00 PM Motion Hearing to Compel	120	 Image
01/11/2021	Endorsement on Motion to continue / reschedule an event (#120.0): ALLOWED Next available date after January 18, 2021 shall identified and the matter rescheduled Judge: McGuire, Jr., Hon. Thomas F		 Image
01/12/2021	Event Result:: Motion Hearing to Compel scheduled on: 01/12/2021 02:00 PM Has been: Rescheduled For the following reason: Request of Plaintiff Hon. Thomas F McGuire, Jr., Presiding Staff: Jennifer A Sullivan, Assistant Clerk Magistrate Digital Recording Device Bris CV A, Court Reporter		
01/13/2021	The following form was generated: Notice to Appear Sent On: 01/13/2021 14:37:14 Notice Sent To: Robert B Feingold, Esq. Robert B. Feingold & Associates, P.C. 700 Pleasant St 5th Floor, New Bedford, MA 02742-6254 Notice Sent To: Heather Marie Bonnet-Hebert, Esq. Robert B. Feingold & Associates, P.C. 700 Pleasant St Suite 520, New Bedford, MA 02740 Notice Sent To: Heidi A Nadel, Esq. Holland & Knight LLP 601 SW Second Ave Suite 1800, Portland, OR 97204 Notice Sent To: Melissa Cook Allison, Esq. Anderson & Kreiger LLP Anderson and Kreiger LLP 50 Milk Street 21st Floor, Boston, MA 02109 Notice Sent To: Samuel Dinning, Esq. Anderson & Kreiger LLP 50 Milk St 21st Floor, Boston, MA 02109 Notice Sent To: Anthony C Savastano, Esq. Attorney at Law PC 404 County St, New Bedford, MA 02740		
01/21/2021	Plaintiffs(s) Margaret J. Reichenbach, John Reichenbach motion filed to compel further production of documents from Defendants Timothy Haydock and Barbara Moss	121	 Image
01/21/2021	Margaret J. Reichenbach, John Reichenbach's Memorandum in support of their motion to compel further production of documents from Defendants Timothy Haydock and Barbara Moss	121.1	 Image
01/21/2021	Opposition to (#121) to Plaintiffs' motion to compel further production of documents and request for fees filed by Timothy G. Haydock, Barbara Moss	121.2	 Image
01/21/2021	Plaintiffs Margaret J. Reichenbach, John Reichenbach's Reply to Defendants' opposition to Plaintiffs' motion to compel further production of documents and request for fees	121.3	 Image
01/21/2021	Defendants Timothy G. Haydock, Barbara Moss's Motion to strike Plaintiffs' motion to compel further production of documents as untimely	121.4	 Image
01/21/2021	Opposition to (#121.4) Defendants' motion to strike Plaintiffs' motion to compel further production of documents as untimely filed by Margaret J. Reichenbach, John Reichenbach	121.5	 Image
01/21/2021	Certificate of Compliance Superior Court Rule 9A Applies To: Feingold, Esq., Robert B (Attorney) on behalf of Reichenbach, Margaret J. (Plaintiff)	121.6	 Image
01/21/2021	Certificate of Compliance Superior Court Rule 9C Applies To: Feingold, Esq., Robert B (Attorney) on behalf of Reichenbach, Margaret J. (Plaintiff)	121.7	 Image
02/08/2021	The following form was generated: Notice to Appear Sent On: 02/08/2021 09:32:40 Notice Sent To: Robert B Feingold, Esq. Robert B. Feingold & Associates, P.C. 700 Pleasant St 5th Floor, New Bedford, MA 02742-6254 Notice Sent To: Heather Marie Bonnet-Hebert, Esq. Robert B. Feingold & Associates, P.C. 700 Pleasant St Suite 520, New Bedford, MA 02740		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
	<p>Notice Sent To: Heidi A Nadel, Esq. Holland & Knight LLP 601 SW Second Ave Suite 1800, Portland, OR 97204</p> <p>Notice Sent To: Melissa Cook Allison, Esq. Anderson & Kreiger LLP Anderson and Kreiger LLP 50 Milk Street 21st Floor, Boston, MA 02109</p> <p>Notice Sent To: Samuel Dinning, Esq. Anderson & Kreiger LLP 50 Milk St 21st Floor, Boston, MA 02109</p>		
02/18/2021	<p>Matter taken under advisement: Motion Hearing to Compel scheduled on: 02/18/2021 11:00 AM</p> <p>Has been: Held - Under advisement</p> <p>Hon. Thomas F McGuire, Jr., Presiding</p> <p>Appeared:</p> <p>Plaintiff</p> <p>Robert B Feingold, Esq., Private Counsel</p> <p>Heather Marie Bonnet-Hebert, Esq., Private Counsel</p> <p>Defendant</p> <p>Melissa Cook Allison, Esq., Private Counsel</p> <p>Samuel Dinning, Esq., Private Counsel</p> <p>Staff:</p> <p>Jennifer A Sullivan, Assistant Clerk Magistrate</p> <p>Digital Recording Device Bris CV A, Court Reporter</p>		
04/20/2021	Plaintiffs Margaret J. Reichenbach, John Reichenbach's Motion to strike Jury Demands	122	
04/20/2021	Margaret J. Reichenbach, John Reichenbach's Memorandum in support of Motion to Strike Jury Demands	122.1	
04/20/2021	Opposition to #122 Plaintiffs' Motion to Strike Jury Demands filed by Timothy G. Haydock, Barbara Moss	122.2	
04/20/2021	Plaintiffs Margaret J. Reichenbach, John Reichenbach's Reply to Defendants' Opposition	122.3	
04/20/2021	Certificate of Compliance Superior Court Rule 9C	122.4	
	Applies To: Feingold, Esq., Robert B (Attorney) on behalf of Reichenbach, John, Reichenbach, Margaret J. (Plaintiff)		
05/12/2021	<p>The following form was generated:</p> <p>Notice to Appear</p> <p>Sent On: 05/12/2021 09:23:59</p> <p>Notice Sent To: Robert B Feingold, Esq. Robert B. Feingold and Associates, P.C. 700 Pleasant St 5th Floor, New Bedford, MA 02742-6254</p> <p>Notice Sent To: Heather Marie Bonnet-Hebert, Esq. Robert B. Feingold and Associates, P.C. 700 Pleasant St Suite 520, New Bedford, MA 02740</p> <p>Notice Sent To: Heidi A Nadel, Esq. Holland and Knight LLP 601 SW Second Ave Suite 1800, Portland, OR 97204</p> <p>Notice Sent To: Melissa Cook Allison, Esq. Anderson and Kreiger LLP Anderson and Kreiger LLP 50 Milk Street 21st Floor, Boston, MA 02109</p> <p>Notice Sent To: Samuel Dinning, Esq. Anderson and Kreiger LLP 50 Milk St 21st Floor, Boston, MA 02109</p> <p>Notice Sent To: Anthony C Savastano, Esq. Attorney at Law PC 404 County St, New Bedford, MA 02740</p>		
06/14/2021	<p>Attorney appearance</p> <p>On this date Heidi A Nadel, Esq. dismissed/withdrawn as Private Counsel for Plaintiff Margaret J. Reichenbach</p>	123	
06/14/2021	<p>Attorney appearance</p> <p>On this date Heidi A Nadel, Esq. dismissed/withdrawn as Private Counsel for Plaintiff John Reichenbach</p>	123	
06/21/2021	<p>MEMORANDUM & ORDER:</p> <p>on Plaintiffs' Motion to Compel Production of Documents...The plaintiffs' motion to compel production of the disputed twenty-eight emails from the defendants (Paper #121) is ALLOWED. The defendants shall produce the emails within thirty days. The defendants' request for attorney's fees (Paper #121.2) is DENIED.</p> <p>Judge: McGuire, Jr., Hon. Thomas F</p>	124	
06/21/2021	<p>MEMORANDUM & ORDER:</p> <p>on Defendants' Motion to Compel Production of Documents...The defendants' motion to compel production of emails (Paper #119) is ALLOWED IN PART. The plaintiffs shall produce the following emails, as listed on Exhibit C-3 attached to the defendants' memorandum of law, within thirty days....</p> <p>Judge: McGuire, Jr., Hon. Thomas F</p>	125	

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
06/21/2021	ORDER: on Defendants' Motion to Strike Plaintiffs' Motion to Compel Production of Documents Judge: McGuire, Jr., Hon. Thomas F	126	 Image
06/22/2021	Event Result:: Hearing: Strike scheduled on: 07/27/2021 10:00 AM Has been: Rescheduled For the following reason: Joint request of parties Hon. William M White, Jr., Presiding Staff: Dina Swanson, Assistant Clerk Magistrate Digital Recording Device Bris CV B, Court Reporter		
06/22/2021	The following form was generated: Notice to Appear Sent On: 06/22/2021 11:31:07 Notice Sent To: Robert B Feingold, Esq. Robert B. Feingold and Associates, P.C. 700 Pleasant St 5th Floor, New Bedford, MA 02742-6254 Notice Sent To: Heather Marie Bonnet-Hebert, Esq. Robert B. Feingold and Associates, P.C. 700 Pleasant St Suite 520, New Bedford, MA 02740 Notice Sent To: Melissa Cook Allison, Esq. Anderson and Kreiger LLP Anderson and Kreiger LLP 50 Milk Street 21st Floor, Boston, MA 02109 Notice Sent To: Samuel Dinning, Esq. Anderson and Kreiger LLP 50 Milk St 21st Floor, Boston, MA 02109 Notice Sent To: Anthony C Savastano, Esq. Attorney at Law PC 404 County St, New Bedford, MA 02740		
07/09/2021	Defendants Timothy G. Haydock, Barbara Moss's Motion to Stay Order Requiring Production of Documents	127	 Image
07/09/2021	Affidavit of compliance with Superior Court Rule 9A Applies To: Dinning, Esq., Samuel (Attorney) on behalf of Haydock, Timothy G., Moss, Barbara (Defendant)	127.1	 Image
07/13/2021	Endorsement on Motion to Stay Order Requiring Production of Documents (#127.0): No Action Taken failure to comply with Superior Court Rule 9A. Judge: White, Jr., Hon. William M		 Image
07/16/2021	Defendants Timothy G. Haydock, Barbara Moss's Motion to Stay Order Requiring Production of Documents	128	 Image
07/16/2021	Affidavit of Heather M. Bonnet-Hebert	128.1	 Image
07/16/2021	Affidavit of Compliance with Superior Court Rule 9A	128.2	 Image
07/20/2021	Endorsement on Motion to Stay Order Requiring Production of Documents (#128.0): ALLOWED Upon review and without opposition, ALLOWED. The Production of Documents is stayed for a period of thirty (30) days. Judge: White, Jr., Hon. William M		 Image
07/22/2021	Notice of docket entry received from Appeals Court Please take note that on July 21, 2021, the following entry was made on the docket of the above-referenced case: Petition pursuant to G.L. c. 231, s. 118 filed for Timothy G. Haydock and Barbara Moss by Attorney Samuel Dinning.	129	 Image
07/23/2021	Notice of docket entry received from Appeals Court Please take note that, with respect to the Petition pursuant to G.L. c. 231, s. 118 filed for Timothy G. Haydock and Barbara Moss by Attorney Samuel Dinning. (Paper #1), on July 23, 2021, the following order was entered on the docket of the above-referenced case: RE#1: Proceedings on the defendants' petition are stayed pending the outcome of the defendants' motion for reconsideration in the Superior Court. A status report is due on or before 08/22/2021 regarding the disposition of the motion for reconsideration. *Notice/Attest/McGuire, J.	130	 Image
07/23/2021	Defendants Barbara Moss, Timothy G. Haydock's Motion for Reconsideration of the Court's Orders with Respect to the Parties' Motions to Compel	131	 Image
07/23/2021	Timothy G. Haydock, Barbara Moss's Memorandum of Law in Support of Defendants' Motion for Reconsideration	131.1	 Image
07/23/2021	Opposition to (#131) to Defendants' Motion for Reconsideration of the Court's Orders with Respect to the Parties' Motions to Compel filed by Margaret J. Reichenbach, John Reichenbach	131.2	 Image

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
07/23/2021	Reply/Sur-reply Defendants' Reply in Support of Motion for Reconsideration Applies To: Haydock, Timothy G. (Defendant); Moss, Barbara (Defendant)	131.3	 Image
07/23/2021	Defendants Timothy G. Haydock, Barbara Moss's Certificate of Notice of Filing	131.4	 Image
07/23/2021	Court received Defendants' Petition for Single Justice Review related to appeal	132	 Image
07/27/2021	Endorsement on Motion for reconsideration of the Court's orders with respect to the parties' motions to compel (#131.0): DENIED Judge: McGuire, Jr., Hon. Thomas F		 Image
08/02/2021	Court received Plaintiffs' Response to Defendants' Petition for Interlocutory Review related to appeal	133	 Image
08/17/2021	Event Result: Hearing: Strike scheduled on: 08/17/2021 10:00 AM Has been: Held as Scheduled Hon. William M White, Jr., Presiding Appeared: Plaintiff Robert B Feingold, Esq., Private Counsel Heather Marie Bonnet-Hebert, Esq., Private Counsel Defendant Melissa Cook Allison, Esq., Private Counsel Samuel Dinning, Esq., Private Counsel Staff: Dina Swanson, Assistant Clerk Magistrate 08/17/2021 10:00 AM Digital Recording Device Bris CV B, Court Reporter 08/17/2021 10:00 AM		
08/17/2021	Endorsement on Motion to Strike Jury Demands (#122.0): DENIED After hearing and review, DENIED WITHOUT PREJUDICE. Motion may be renewed before the trial judge. Judge: White, Jr., Hon. William M		 Image
08/17/2021	ORDER: on Plaintiffs' Motion to Strike Jury Demands Judge: White, Jr., Hon. William M	134	 Image
08/18/2021	The following form was generated: Notice to Appear for Final Pre-Trial Conference Sent On: 08/18/2021 11:48:31 Notice Sent To: Robert B Feingold, Esq. Robert B. Feingold and Associates, P.C. 700 Pleasant St 5th Floor, New Bedford, MA 02742-6254 Notice Sent To: Heather Marie Bonnet-Hebert, Esq. Robert B. Feingold and Associates, P.C. 700 Pleasant St Suite 520, New Bedford, MA 02740 Notice Sent To: Melissa Cook Allison, Esq. Anderson and Kreiger LLP Anderson and Kreiger LLP 50 Milk Street 21st Floor, Boston, MA 02109 Notice Sent To: Samuel Dinning, Esq. Anderson and Kreiger LLP 50 Milk St 21st Floor, Boston, MA 02109		
08/18/2021	Scheduled: Event: Jury Trial Date: 05/23/2022 Time: 09:00 AM Result: Rescheduled		
08/20/2021	Notice of docket entry received from Appeals Court Please take note that, with respect to the Petition pursuant to G.L. c. 231, s. 118 filed for Timothy G. Haydock and Barbara Moss by Attorney Samuel Dinning. (Paper #1), on August 20, 2021, the following order was entered on the docket of the above-referenced case: RE#1 (Revised): The defendants have filed a petition, pursuant to G. L. c. 231, s. 118, first para. seeking interlocutory review of two orders entered in the Superior Court. One order allowed the plaintiff's motion to compel production of emails withheld by the defendants under the work product doctrine. The other order mostly denied the defendants' motion to compel production of emails withheld by the plaintiffs also pursuant to the work product doctrine. Having carefully reviewed, the defendants' petition and supporting materials as well as the response filed by the plaintiffs, I discern no clear error of law or abuse of the judge's discretion in either order. See Jet-Line Services, Inc. v. Board of Selectmen of Stoughton, 25 Mass. App. Ct. 645, 646 (1988) (To obtain relief, petitioner must ordinarily demonstrate that the	135	 Image

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
	challenged order was the product of a clear error of law or an abuse of the motion judge's discretion.) Consequently, the defendant's petition is denied.		
09/03/2021	Defendants Timothy G. Haydock, Barbara Moss's Motion to Withdraw Appearance of Samuel B. Dinning	136	
09/03/2021	Endorsement on Motion to withdraw appearance of Samuel B. Dinning (#136.0): ALLOWED Judge: Yessayan, Hon. Raffi N		 
09/03/2021	Attorney appearance On this date Samuel Dinning, Esq. dismissed/withdrawn as Private Counsel for Defendant Timothy G. Haydock		
09/03/2021	Attorney appearance On this date Samuel Dinning, Esq. dismissed/withdrawn as Private Counsel for Defendant Barbara Moss		
12/01/2021	Plaintiffs Margaret J. Reichenbach, John Reichenbach's Joint, Assented to Motion to Continue Pre-trial Conference	137	
12/02/2021	Event Result: Final Pre-Trial Conference scheduled on: 12/06/2021 02:00 PM Has been: Rescheduled For the following reason: Joint request of parties Hon. Jackie Cowin, Presiding Staff: Dina Swanson, Assistant Clerk Magistrate Digital Recording Device Bris CV B, Court Reporter		
12/02/2021	Endorsement on Motion to continue pre-trial conference (#137.0): ALLOWED Judge: Cowin, Hon. Jackie		
12/03/2021	The following form was generated: Notice to Appear for Final Pre-Trial Conference Sent On: 12/03/2021 09:14:12 Notice Sent To: Heather Marie Bonnet-Hebert, Esq. Robert B. Feingold and Associates, P.C. 700 Pleasant St Suite 520, New Bedford, MA 02740 Notice Sent To: Melissa Cook Allison, Esq. Anderson and Kreiger LLP Anderson and Kreiger LLP 50 Milk Street 21st Floor, Boston, MA 02109		
12/06/2021	Attorney appearance On this date Jonathan Thomas Elder, Esq. added as Private Counsel for Defendants Timothy G. Haydock and Barbara Moss	138	
12/06/2021	Attorney appearance On this date Sean Grammel, Esq. added as Private Counsel for Defendants Timothy G. Haydock and Barbara Moss	139	
12/13/2021	Joint Pre-Trial Memorandum filed:	140	
12/16/2021	Event Result: Final Pre-Trial Conference scheduled on: 12/16/2021 02:00 PM Has been: Held as Scheduled Hon. Jackie Cowin, Presiding Appeared: Plaintiff Robert B Feingold, Esq., Private Counsel Heather Marie Bonnet-Hebert, Esq., Private Counsel Defendant Melissa Cook Allison, Esq., Private Counsel Jonathan Thomas Elder, Esq., Private Counsel Staff: Jennifer A Sullivan, Assistant Clerk Magistrate Dina Swanson, Assistant Clerk Magistrate Digital Recording Device Bris CV B, Court Reporter		
12/16/2021	ORDER: after Pre-Trial Conference Judge: Cowin, Hon. Jackie	141	
02/08/2022	Attorney appearance electronically filed.		
02/08/2022	Attorney appearance On this date Brian A Fielding, Esq. added as Private Counsel for Plaintiffs Applies To: Reichenbach, Margaret J. (Plaintiff); Reichenbach, John (Plaintiff)	142	 

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
02/14/2022	Plaintiffs Margaret J. Reichenbach, John Reichenbach's Assented to Motion to continue / reschedule an event 04/21/2022 02:00 PM Final Trial Conference	143	 Image
02/16/2022	Endorsement on Motion to continue / reschedule an event Final Trial Conference (#143.0): ALLOWED by agreement Judge: Swanson, Dina		 Image
02/16/2022	Event Result:: Final Trial Conference scheduled on: 04/21/2022 02:00 PM Has been: Rescheduled For the following reason: Joint request of parties Hon. Raffi N Yessayan, Presiding Staff: Dina Swanson, Assistant Clerk Magistrate Digital Recording Device Bris CV B, Court Reporter		
02/28/2022	Defendants Timothy G. Haydock's Motion in limine to Preclude Expert Testimony	144	 Image
02/28/2022	Timothy G. Haydock's Memorandum in support of Motion in Limine to Preclude Expert Testimony	144.1	 Image
02/28/2022	Affidavit of Sean M. Grammel In Support of Defendants' Motion in Limine to Preclude Expert Testimony	144.2	 Image
02/28/2022	Opposition to Defendants' Motion in Limine to Preclude Expert Testimony filed by Margaret J. Reichenbach	144.3	 Image
02/28/2022	Reply/Sur-reply Defendants' Reply to Plaintiffs Margaret and John Reichenbach's Opposition to Defendants' Motion in Limine to Preclude Expert Testimony	144.4	 Image
02/28/2022	Plaintiffs Margaret J. Reichenbach's Motion to Preclude Defendants' Expert, Gary Jentzen, PE, JD, LEED AP	145	 Image
02/28/2022	Margaret J. Reichenbach's Memorandum in support of Motion to Preclude Defendants' Expert, Gary Jentzen, PE, JD, LEED AP	145.1	 Image
02/28/2022	Opposition to Plaintiffs' Motion to Preclude Defendants' Expert, Gary Jentzen, PE, JD, LEED AP filed by Timothy G. Haydock	145.2	 Image
02/28/2022	Affidavit of Sean M. Grammel In Support of Defendants' Opposition to Plaintiffs's Motion to Preclude Defendants' Expert, Gary Jentzen, PE, JD, LEED AP	145.3	 Image
02/28/2022	Reply/Sur-reply Plaintiffs' Reply to Defendants' Opposition to Plaintiffs' Motion to Preclude Defendants' Expert, Gary Jentzen, PE, JD, LEED AP	145.3	 Image
03/16/2022	Defendants Timothy G. Haydock, Barbara Moss's Joint Motion to Continue Deadline for Filing Motions in Limine	146	 Image
03/17/2022	Endorsement on Motion to continue deadline for filing motions in Limine (#146.0): ALLOWED by agreement. Judge: Swanson, Dina		 Image
04/08/2022	Defendants Timothy G. Haydock, Barbara Moss's Motion in limine to Exclude Irrelevant and Unduly Prejudicial Testimony.	147	 Image
04/08/2022	Opposition to Exclude Irrelevant and Unduly Prejudicial Testimony. filed by Margaret J. Reichenbach, John Reichenbach	147.1	 Image
04/08/2022	Defendants Timothy G. Haydock, Barbara Moss's Motion in limine to Exclude Testimony Regarding Damages for "Mental Anguish,; Lost Use of Property, Trespass, Interference with Contractual Relations, and Property Carrying Costs.	148	 Image
04/08/2022	Objection to Exclude Testimony Regarding Damages for "Mental Anguish,; Lost Use of Property, Trespass, Interference with Contractual Relations, and Property Carrying Costs. filed by Margaret J. Reichenbach, John Reichenbach	148.1	 Image
04/08/2022	Defendants Timothy G. Haydock, Barbara Moss's Motion in limine to Exclude Evidence of Liability and Damages Barred by the Statute of Limitations.	149	 Image
04/08/2022	Opposition to Exclude Evidence of Liability and Damages Barred by the Statute of Limitations. filed by Margaret J. Reichenbach, John Reichenbach	149.1	 Image
04/11/2022	Plaintiffs Margaret J. Reichenbach, John Reichenbach's Joint Motion to Continue Deadline for Filing Requests for Jury Voir Dire.	150	 Image

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
04/12/2022	Plaintiffs Margaret J. Reichenbach, John Reichenbach's Motion in limine to Preclude Defendants' from Relitigating through Argument, Reference, Evidence or Testimony Issues Determined in Prior Adjudicatory Proceedings.	151	 Image
04/12/2022	Robert B Feingold, Esq., Brian A Fielding, Esq.'s Memorandum in support of Motion in Limine to Preclude Defendants' from Relitigating through Argument, Reference, Evidence or Testimony Issues Determined in Prior Adjudicatory Proceedings.	151.1	 Image
04/12/2022	Opposition to Motion in Limine to Preclude Defendants' from Relitigating through Argument, Reference, Evidence or Testimony Issues Determined in Prior Adjudicatory Proceedings. filed by Timothy G. Haydock, Barbara Moss	151.2	 Image
04/12/2022	Plaintiffs Margaret J. Reichenbach, John Reichenbach's Motion in limine to Request Sanctions in Relation to Defendants Spoliation of Evidence.	152	 Image
04/12/2022	Robert B Feingold, Esq., Robert B Feingold, Esq.'s Memorandum in support of Plaintiffs' Request Sanctions in Relation to Defendants Spoliation of Evidence.	152.1	 Image
04/12/2022	Opposition to Plaintiffs Request Sanctions in Relation to Defendants Spoliation of Evidence. filed by Timothy G. Haydock, Barbara Moss	152.2	 Image
04/13/2022	Plaintiffs Margaret J. Reichenbach, John Reichenbach's Joint Motion to extend time for Filing Joint Witness and Exh bit Lists, Joint Statement of Case, and Requests for Leave to Introduce Lay Witness A-V Testimony.	153	 Image
04/21/2022	Defendants Timothy G. Haydock, Barbara Moss's EMERGENCY Assented to Motion to Continue.	154	 Image
04/21/2022	Defendants Timothy G. Haydock, Barbara Moss's Memorandum in Support of Defendants' Assented to Emergency Motion to Continue.	154.1	 Image
04/21/2022	Affidavit of Barbara Moss.	154.2	 Image
04/21/2022	Plaintiffs Margaret J. Reichenbach, John Reichenbach's Joint Statement of the case.	154.3	 Image
04/25/2022	Plaintiffs Margaret J. Reichenbach, John Reichenbach's Response to Defendants' Emergency Assented to Motion to Continue.	155	 Image
04/26/2022	Defendants Timothy G. Haydock, Barbara Moss's Motion for a View.	156	 Image
04/26/2022	Sean Grammel, Esq.'s Memorandum in support of Defendants' Motion for View.	156.1	 Image
04/26/2022	Opposition to Defendants' Motion for View. filed by Margaret J. Reichenbach, John Reichenbach	156.2	 Image
04/27/2022	Event Result:: Final Trial Conference scheduled on: 04/28/2022 02:00 PM Has been: Rescheduled For the following reason: Joint request of parties Hon. Raffi N Yessayan, Presiding Staff: Jennifer A Sullivan, Assistant Clerk Magistrate Dina Swanson, Assistant Clerk Magistrate Digital Recording Device Bris CV B, Court Reporter		
04/28/2022	Event Result:: Trial Assignment Conference scheduled on: 04/28/2022 02:00 PM Has been: Held as Scheduled Hon. Raffi N Yessayan, Presiding Appeared: Plaintiff Heather Marie Bonnet-Hebert, Esq., Private Counsel Robert B Feingold, Esq., Private Counsel Brian A Fielding, Esq., Private Counsel Defendant Melissa Cook Allison, Esq., Private Counsel Sean Grammel, Esq., Private Counsel Staff: Jennifer A Sullivan, Assistant Clerk Magistrate Digital Recording Device Bris CV A, Court Reporter		
04/28/2022	Event Result:: Jury Trial scheduled on: 05/23/2022 09:00 AM Has been: Rescheduled For the following reason: Joint request of parties Hon. Raffi N Yessayan, Presiding Staff: Jennifer A Sullivan, Assistant Clerk Magistrate Dina Swanson, Assistant Clerk Magistrate Digital Recording Device Bris CV B, Court Reporter		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
04/28/2022	Scheduled: Judge: Sullivan, Hon. Susan E Event: Jury Trial Date: 09/06/2022 Time: 09:00 AM Result: Rescheduled		
04/28/2022	Endorsement on Motion to continue / reschedule an event trial date (#154.0): ALLOWED The case will be heard in the "C" session Judge: Yessayan, Hon. Raffi N		 Image
04/28/2022	Case sent to Bristol County - TAUNTON Location.		
06/14/2022	Plaintiffs Margaret J. Reichenbach, John Reichenbach's Motion to Continue Trial and to Schedule Status Conference	157	 Image
06/14/2022	Plaintiffs Margaret J. Reichenbach, John Reichenbach's Certificate of Compliance with Superior Court Rule 9C	157.1	 Image
06/15/2022	Opposition to (#157) Plaintiffs' Emergency Motion to Continue and to Schedule Status Conference filed by Timothy G. Haydock, Barbara Moss	158	 Image
06/17/2022	Reply/Sur-reply Plaintiffs' Reply to Defendants' Opposition to Emergency Motion to Continue Trial and to Schedule Status Conference	159	 Image
06/22/2022	The following form was generated: Notice to Appear Sent On: 06/22/2022 09:58:04		
07/08/2022	Event Result:: Hearing on Motion to Continue scheduled on: 07/11/2022 02:00 PM Has been: Rescheduled For the following reason: Joint request of parties Hon. Susan E. Sullivan, Presiding Staff: Garrett Fregault, Assistant Clerk Magistrate Digital Recording Device Bris CV C, Court Reporter		
07/08/2022	The following form was generated: Notice to Appear Sent On: 07/08/2022 10:56:57		
07/26/2022	Scheduled: Event: Jury Trial Date: 02/06/2023 Time: 09:00 AM Result: Held as Scheduled		
07/26/2022	Event Result:: Hearing on Motion to Continue scheduled on: 07/26/2022 02:00 PM Has been: Held as Scheduled Hon. Susan E. Sullivan, Presiding Appeared: Plaintiff Heather Marie Bonnet-Hebert, Esq., Private Counsel Robert B Feingold, Esq., Private Counsel Brian A Fielding, Esq., Private Counsel Defendant Melissa Cook Allison, Esq., Private Counsel Sean Grammel, Esq., Private Counsel Staff: Garrett Fregault, Assistant Clerk Magistrate 07/26/2022 02:00 PM Digital Recording Device Bris CV C, Court Reporter 07/26/2022 02:00 PM		
07/26/2022	Endorsement on Motion to continue trial and to schedule status conference (#157.0): ALLOWED After hearing, ALLOWED. Trial continued to February 6, 2023 Judge: Sullivan, Hon. Susan E		 Image
07/27/2022	Event Result:: Jury Trial scheduled on: 09/06/2022 09:00 AM Has been: Rescheduled For the following reason: Joint request of parties Hon. Susan E. Sullivan, Presiding Staff: Garrett Fregault, Assistant Clerk Magistrate Digital Recording Device Bris CV C, Court Reporter		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
07/27/2022	The following form was generated: Notice to Appear Sent On: 07/27/2022 09:12:51		
10/14/2022	Plaintiffs Margaret J. Reichenbach, John Reichenbach's Motion for Leave to Allow Audiovisual Deposition Testimony of John Murdock, a Newly Identified Witness, at Trial	160	 Image
10/14/2022	Opposition to (#160) Plaintiffs' Motion to Reopen Discovery filed by Timothy G. Haydock, Barbara Moss	160.1	 Image
10/14/2022	Affidavit of Sean Grammel in Support of Defendants' Opposition to Plaintiffs' Motion to Reopen Discovery	160.2	 Image
10/14/2022	Reply/Sur-reply Plaintiffs' Reply to Defendants' Opposition to Plaintiffs' Motion for Leave to Allow Audiovisual Deposition Testimony of John Murdock, a Newly-Identified Witness, at Trial	160.3	 Image
10/14/2022	Affidavit of Robert B. Feingold	160.4	 Image
10/14/2022	Certificate of Compliance Superior Court Rule 9C Applies To: Feingold, Esq., Robert B (Attorney) on behalf of Reichenbach, Margaret J. (Plaintiff)	160.5	 Image
11/02/2022	Endorsement on Motion for leave to allow audiovisual deposition testimony of John Murdock, a newly-identified witness, at trial (#160.0): DENIED Judge: White, Jr., Hon. William M		 Image
12/02/2022	Plaintiffs Margaret J. Reichenbach, John Reichenbach's Notice of Supplemental Authority	161	 Image
01/06/2023	Event Result:: Final Trial Conference scheduled on: 02/01/2023 02:00 PM Has been: Rescheduled For the following reason: By Court prior to date Hon. Thomas J Perrino, Presiding Staff: Garrett Fregault, Assistant Clerk Magistrate Digital Recording Device Bris CV C, Court Reporter		
01/11/2023	Attorney appearance On this date Christopher P Flanagan, Esq. added as Private Counsel for Other interested party Certain Underwriters at Lloyd's, London		
01/11/2023	Attorney appearance On this date Thomas M Bergeron, Esq. added as Private Counsel for Other interested party Certain Underwriters at Lloyd's, London		
01/11/2023	MOTION to Intervene as Defendant-Intervenor filed by Certain Underwriters at Lloyd's, London	162	 Image
01/11/2023	Certain Underwriters at Lloyd's, London's Memorandum of Law in Support of the Motion to Intervene for Limited Purposes	162.1	 Image
01/11/2023	Certificate of Compliance Superior Court Rule 9C Applies To: Flanagan, Esq., Christopher P (Attorney) on behalf of Certain Underwriters at Lloyd's, London (Defendant-Intervenor)	162.2	 Image
01/11/2023	Objection to (#162) Motions to Intervene of [1] Underwriters at Lloyd's, London, as well as [p2] the Automobile Insurance Company of Hartford, Connecticut filed by Margaret J. Reichenbach, John Reichenbach	162.3	 Image
01/11/2023	General correspondence regarding Defendants' Consolidated Response to Insurers' Motions to Intervene Applies To: Haydock, Timothy G. (Defendant); Moss, Barbara (Defendant)	162.4	 Image
01/11/2023	Request for hearing filed Applies To: Flanagan, Esq., Christopher P (Attorney) on behalf of Certain Underwriters at Lloyd's, London (Defendant-Intervenor)	162.5	 Image
01/11/2023	Certificate of Compliance Superior Court Rule 9A Applies To: Flanagan, Esq., Christopher P (Attorney) on behalf of Certain Underwriters at Lloyd's, London (Defendant-Intervenor)	162.6	 Image
01/11/2023	Attorney appearance On this date Logan A Carducci, Esq. added as Private Counsel for Defendant-Intervenor Automobile Insurance Company of Hartford, Connecticut (Travelers)		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
01/11/2023	Defendant-Intervenor Automobile Insurance Company of Hartford, Connecticut (Travelers)'s Motion to intervene for a limited purpose.	163	 Image
01/11/2023	Automobile Insurance Company of Hartford, Connecticut (Travelers)'s Memorandum in support of Motion to Intervene for a Limited Purpose.	163.1	 Image
01/11/2023	Plaintiffs Margaret J. Reichenbach, John Reichenbach's Objection to Motion to Intervene for a Limited Purpose.	163.2	 Image
01/11/2023	Defendants Timothy G. Haydock, Barbara Moss's Response to (Consolidated) Motion to Intervene for a Limited Purpose.	163.3	 Image
01/11/2023	Affidavit Applies To: Allison, Esq., Melissa Cook (Attorney) on behalf of Haydock, Timothy G. (Defendant)	163.4	 Image
01/11/2023	Certificate of service of attorney or Pro Se: Automobile Insurance Company of Hartford, Connecticut (Travelers)	163.5	 Image
01/11/2023	Certificate of Compliance Superior Court Rule 9A Applies To: Carducci, Esq., Logan A (Attorney) on behalf of Automobile Insurance Company of Hartford, Connecticut (Travelers) (Defendant-Intervenor)	163.6	 Image
01/11/2023	Defendant-Intervenor Automobile Insurance Company of Hartford, Connecticut (Travelers)'s Motion for Pro Hac Vice Admission of Brent S. Usery, Esq.	164	 Image
01/11/2023	Other Interested Party Brent S. Usery, Esq.'s Notice of Certification of Motion for Pro Hac Vice Admission	164.1	 Image
01/11/2023	Opposition to Motion for Pro Hac Vice Admission of Brent S. Usery, Esq. filed by Margaret J. Reichenbach, John Reichenbach	164.2	 Image
01/11/2023	Certificate of Compliance Superior Court Rule 9A Applies To: Carducci, Esq., Logan A (Attorney) on behalf of Automobile Insurance Company of Hartford, Connecticut (Travelers) (Defendant-Intervenor)	164.3	 Image
01/11/2023	Certificate of service of attorney or Pro Se: Automobile Insurance Company of Hartford, Connecticut (Travelers) Applies To: Carducci, Esq., Logan A (Attorney) on behalf of Automobile Insurance Company of Hartford, Connecticut (Travelers) (Defendant-Intervenor)	164.4	 Image
01/11/2023	Attorney appearance electronically filed.		 Image
01/11/2023	Attorney appearance On this date Kevin John O'Connor, Esq. added as Private Counsel for Defendant-Intervenor Automobile Insurance Company of Hartford, Connecticut (Travelers)	165	 Image
01/12/2023	Event Result:: Hearing on Motion(s) in Limine scheduled on: 01/12/2023 02:00 PM Has been: Held as Scheduled Hon. Thomas J Perrino, Presiding Appeared: Plaintiff Robert B Feingold, Esq., Private Counsel Heather Marie Bonnet-Hebert, Esq., Private Counsel Brian A Fielding, Esq., Private Counsel Defendant Melissa Cook Allison, Esq., Private Counsel Jonathan Thomas Elder, Esq., Private Counsel Sean Grammel, Esq., Private Counsel Staff: Garrett Fregault, Assistant Clerk Magistrate 01/12/2023 02:00 PM Digital Recording Device Bris CV C, Court Reporter 01/12/2023 02:00 PM		
01/13/2023	Event Result:: Hearing on Motion(s) in Limine scheduled on: 01/13/2023 02:00 PM Has been: Rescheduled For the following reason: By Court prior to date Hon. Thomas J Perrino, Presiding Staff: Garrett Fregault, Assistant Clerk Magistrate Digital Recording Device Bris CV C, Court Reporter		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
01/13/2023	Event Result: Hearing on Motion(s) in Limine scheduled on: 01/13/2023 12:00 PM Has been: Held as Scheduled Hon. Thomas J Perrino, Presiding Appeared: Plaintiff Robert B Feingold, Esq., Private Counsel Heather Marie Bonnet-Hebert, Esq., Private Counsel Brian A Fielding, Esq., Private Counsel Defendant Melissa Cook Allison, Esq., Private Counsel Jonathan Thomas Elder, Esq., Private Counsel Sean Grammel, Esq., Private Counsel Staff: Garrett Fregault, Assistant Clerk Magistrate 01/13/2023 12:00 PM Digital Recording Device Bris CV C, Court Reporter 01/13/2023 12:00 PM		
01/17/2023	Plaintiffs Margaret J. Reichenbach, John Reichenbach's Notice of Withdrawal of Plaintiffs' Motion to Strike Jury Demands	166	 Image
01/17/2023	Defendants Timothy G. Haydock, Barbara Moss's Response to Notice of Withdrawal of Plaintiffs' Motion to Strike Jury Demands	167	 Image
01/17/2023	Plaintiffs Margaret J. Reichenbach, John Reichenbach's Reply to Defendants' Response to Notice of Withdrawal of Plaintiffs' Motion to Strike Jury Demands	168	 Image
01/20/2023	Endorsement on Motion in limine requesting sanctions in relation to Defendants' spoliation of evidence (#152.0): DENIED After hearing argument and on consideration of the motion, which requests as a sanction the entry of default against the defendants, the motion is DENIED. The plaintiffs have not identified evidence that was intentionally or negligently destroyed nor have they demonstrated unfair prejudice resulting from the conduct or the alleged missing evidence, photographs which may have been taken during a particular time period. Judge: Perrino, Hon. Thomas J		 Image
01/23/2023	ORDER: DECISION AND ORDER ON THE DEFENDANTS' MOTION IN LIMINE TO PRECLUDE EXPERT TESTIMONY: For the above reasons, the Defendants' Motion in Limine to Preclude Expert Testimony is ALLOWED Judge: Perrino, Hon. Thomas J	169	 Image
01/23/2023	ORDER: ORDER ON PLAINTIFFS' MOTION TO PRECLUDE EXPERT TESTIMONY: For the above stated reasons, the plaintiffs' motion to preclude the defendants' expert witness from testifying is ALLOWED. Judge: Perrino, Hon. Thomas J	170	 Image
01/25/2023	Endorsement on Motion in limine to exclude (#147.0): ALLOWED (Garrett R. Fregault, Asst. Clerk/Magistrate)		 Image
01/25/2023	Endorsement on Motion in limine to exclude (#148.0): Testimony regarding Damages for "Mental Anguish," Other action taken As to mental Anguish, apprehension, duress, and trespass, plaintiffs may not testify to any specific number for damages. As to carrying costs, upon proper foundation and subsection to trial objections, plaintiffs may testify as to specific number for damages. Contractual relations damages - deferred until trial. Judge: Perrino, Hon. Thomas J		 Image
01/25/2023	Endorsement on Motion in limine to exclude (#149.0): Evidence of Liability and Damages Bared by the Statute of Limitations Other action taken Reserved until trial on both the date of the Statute of Limitations and the applicable damages. (Garrett R. Fregault, Asst. Clerk/Magistrate)		 Image
01/25/2023	Endorsement on Motion in limine to preclude (#151.0): Defendants' from Relitigating through argument, reference, evidence or testimony issues determined in prior adjudicatory proceedings Other action taken Agency decisions are admissible, upon proper authentication, and conclusive evidence as to the validity of the permits. Defendants are precluded from arguing whether the permits should have been issued. Defendant may offer evidence as to intent concerning the challenges to the permits. Judge: Perrino, Hon. Thomas J		 Image
01/27/2023	Plaintiffs Margaret J. Reichenbach, John Reichenbach's PROPOSED Notice for Jury Questionnaire.	171	 Image
01/27/2023	Proposed Filings/Orders	172	 Image

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
	Verdict Form		
	Applies To: Reichenbach, Margaret J. (Plaintiff); Reichenbach, John (Plaintiff)		
01/27/2023	Plaintiffs Margaret J. Reichenbach, John Reichenbach's Motion in limine for Seeking Determination as to Witness Unavailability.	173	 Image
01/27/2023	Affidavit in support of Plaintiffs' Motion in Limine Seeking Determination as to Witness Unavailability.	173.1	 Image
	Applies To: Bonnet-Hebert, Esq., Heather Marie (Attorney) on behalf of Reichenbach, John (Plaintiff)		
01/27/2023	Opposition to Plaintiffs' Motion in Limine Seeking Determination as to Witness Unavailability. filed by Barbara Moss	173.2	 Image
01/27/2023	Reply/Sur-reply	173.3	 Image
	to Defendants' Opposition to Plaintiff's Motion in Limine Seeking Determination as to Witness Unavailability.		
	Applies To: Feingold, Esq., Robert B (Attorney) on behalf of Reichenbach, Margaret J. (Plaintiff)		
01/27/2023	Affidavit in support of Plaintiffs' Motion in Limine Seeking Determination as to Witness Unavailability.	173.4	 Image
	Applies To: Feingold, Esq., Robert B (Attorney) on behalf of Reichenbach, Margaret J. (Plaintiff)		
01/27/2023	Plaintiffs Margaret J. Reichenbach, John Reichenbach's Certificate of Compliance with Rule 9C.	173.5	 Image
01/27/2023	Plaintiffs Margaret J. Reichenbach, John Reichenbach's Motion to Witness List.	174	 Image
01/27/2023	Opposition to to Plaintiffs' Motion to Add a New Witness filed by Timothy G. Haydock, Barbara Moss	174.1	 Image
01/27/2023	Plaintiffs Margaret J. Reichenbach, John Reichenbach's Reply to Defendants' Opposition to Plaintiffs' Motion to Amend Witness List.	174.2	 Image
01/27/2023	Request for Jury instructions filed by Defendants Timothy G. Haydock, Barbara Moss (Proposed)	175	 Image
01/27/2023	Defendants Timothy G. Haydock, Barbara Moss's Request for Voir Questions	176	 Image
01/27/2023	Defendants Timothy G. Haydock, Barbara Moss's Notice for Proposed Juror Questionnaire.	177	 Image
01/27/2023	Defendants Timothy G. Haydock, Barbara Moss's PROPOSED Notice for Verdict Form.	178	 Image
01/27/2023	Request for Jury instructions filed by Plaintiffs Margaret J. Reichenbach, John Reichenbach	178.1	 Image
01/30/2023	Defendants Timothy G. Haydock, Barbara Moss's PROPOSED Request for Verdict Form.	179	 Image
02/01/2023	Event Result:: Final Trial Conference scheduled on: 02/01/2023 02:00 PM Has been: Held as Scheduled Hon. Thomas J Perrino, Presiding Appeared: Plaintiff Robert B Feingold, Esq., Private Counsel Heather Marie Bonnet-Hebert, Esq., Private Counsel Brian A Fielding, Esq., Private Counsel Defendant Melissa Cook Allison, Esq., Private Counsel Jonathan Thomas Elder, Esq., Private Counsel Sean Grammel, Esq., Private Counsel Defendant-Intervenor Kevin John O'Connor, Esq., Private Counsel Logan A Carducci, Esq., Private Counsel Staff: Garrett Fregault, Assistant Clerk Magistrate 02/01/2023 02:00 PM Digital Recording Device Bris CV C, Court Reporter 02/01/2023 02:00 PM		
02/01/2023	Scheduled: Judge: Perrino, Hon. Thomas J Event: Jury Trial Date: 02/07/2023 Time: 09:00 AM Result: Held as Scheduled		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
02/01/2023	Scheduled: Judge: Perrino, Hon. Thomas J Event: Jury Trial Date: 02/08/2023 Time: 09:00 AM Result: Held as Scheduled		
02/01/2023	Scheduled: Judge: Perrino, Hon. Thomas J Event: Jury Trial Date: 02/09/2023 Time: 09:00 AM Result: Held as Scheduled		
02/01/2023	Endorsement on Memorandum in support (Defendants' Motion for View) (#156.1): ALLOWED After hearing, ALLOWED, see record. (Garrett R. Fregault, Asst. Clerk/Magistrate) Judge: Perrino, Hon. Thomas J		 Image
02/02/2023	Second Affidavit in support of Plaintiff's Motion in Limine seeking determination as to witness unavailability. Applies To: Feingold, Esq., Robert B (Attorney) on behalf of Reichenbach, John (Plaintiff)	180	 Image
02/03/2023	ORDER: on Motions to Intervene; Allowed pursuant to Rule 24(b), subject to further orders of the court if necessary or otherwise deemed appropriate. The insurers may intervene as an interested party for the limited purpose of drafting, with input as appropriate from the existing party's and approval from the court, a supplemental verdict slip consisting of special questions to be submitted to the jury after a verdict on the main case is returned, reported, and recorded in open court.	181	 Image
02/03/2023	Endorsement on Motion for Pro Hac Vice Admission of Brent S. Usery, Esq. (#164.0): ALLOWED Judge: Perrino, Hon. Thomas J		 Image
02/03/2023	Defendants Timothy G. Haydock, Barbara Moss's Joint Motion to Appoint Stenographer.	182	 Image
02/06/2023	Docket Note: Darlene Coppola, DMC Court Reporting, Inc. 401-286-7221 - designated as the official court reporter for the entire trial. FTR will be run as back up, but official reporter will be kept by Ms. Coppola		
02/06/2023	Event Result: Jury Trial scheduled on: 02/06/2023 09:00 AM Has been: Held as Scheduled Comments: Darlene Coppola, appointed as official court reporter. 401-286-7221. FTR run only as backup. Hon. Thomas J Perrino, Presiding Appeared: Plaintiff Robert B Feingold, Esq., Private Counsel Heather Marie Bonnet-Hebert, Esq., Private Counsel Brian A Fielding, Esq., Private Counsel Defendant Melissa Cook Allison, Esq., Private Counsel Jonathan Thomas Elder, Esq., Private Counsel Sean Grammel, Esq., Private Counsel Staff: Garrett Fregault, Assistant Clerk Magistrate 02/06/2023 09:00 AM Digital Recording Device Bris CV C, Court Reporter		
02/06/2023	Witness list (Joint) Applies To: Bonnet-Hebert, Esq., Heather Marie (Attorney) on behalf of Reichenbach, Margaret J. (Plaintiff); Fielding, Esq., Brian A (Attorney) on behalf of Reichenbach, John (Plaintiff); Grammel, Esq., Sean (Attorney) on behalf of Haydock, Timothy G. (Defendant)	182.1	 Image
02/06/2023	List of exh bits	182.2	 Image
02/06/2023	Endorsement on Motion to Appoint Stenographer (#182.0): ALLOWED		 Image
02/07/2023	Docket Note: Darlene Coppola, appointed as official court reporter. 401-286-7221. FTR run only as backup. 10 Jurors empaneled and sworn (GRF/ACM) Preliminary Charge given Opening statemens		 Image

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
02/07/2023	<p>Event Result: Jury Trial scheduled on: 02/07/2023 09:00 AM</p> <p>Has been: Held as Scheduled</p> <p>Comments: FTR for back up only</p> <p>Hon. Thomas J Perrino, Presiding</p> <p>Appeared:</p> <p>Plaintiff</p> <p>Robert B Feingold, Esq., Private Counsel</p> <p>Heather Marie Bonnet-Hebert, Esq., Private Counsel</p> <p>Brian A Fielding, Esq., Private Counsel</p> <p>Defendant</p> <p>Jonathan Thomas Elder, Esq., Private Counsel</p> <p>Sean Grammel, Esq., Private Counsel</p> <p>Neil Smola, Esq.,</p> <p>Staff:</p> <p>Garrett Fregault, Assistant Clerk Magistrate</p> <p>02/07/2023 09:00 AM</p> <p>Digital Recording Device Bris CV C, Court Reporter</p> <p>02/07/2023 09:00 AM</p>		
02/07/2023	Plaintiffs Margaret J. Reichenbach, John Reichenbach's Motion for Reconsideration of Endorsement on Plaintiffs' Motion in Limine Requesting Sanctions in Relation to Defendants' Spoliation of Evidence, for Reconsideration of Endorsement on Defendants' Motion in Limine to Exclude Irrelevant and Unduly Prejudicial Testimony, or, in the Alternative, for Lesser Sanctions	183	 Image
02/07/2023	Margaret J. Reichenbach, John Reichenbach's Memorandum in support of Plaintiffs' Omnibus Motion for Reconsideration of Endorsement on Plaintiffs' Motion in Limine Requesting Sanctions in Relation to Defendants' Spoliation of Evidence, for Reconsideration of Endorsement on Defendants' Motion in Limine to Exclude Irrelevant and Unduly Prejudicial Testimony, or, in the Alternative, for Lesser Sanctions	183.1	 Image
02/08/2023	<p>Docket Note:</p> <p>Darlene Coppola, appointed as official court reporter. 401-286-7221. FTR run only as backup.</p> <p>View of the properties occurred today</p>		
02/08/2023	<p>Event Result: Jury Trial scheduled on: 02/08/2023 09:00 AM</p> <p>Has been: Held as Scheduled</p> <p>Comments: FTR was run a back up</p> <p>Hon. Thomas J Perrino, Presiding</p> <p>Appeared:</p> <p>Plaintiff</p> <p>Robert B Feingold, Esq., Private Counsel</p> <p>Heather Marie Bonnet-Hebert, Esq., Private Counsel</p> <p>Brian A Fielding, Esq., Private Counsel</p> <p>Defendant</p> <p>Melissa Cook Allison, Esq., Private Counsel</p> <p>Jonathan Thomas Elder, Esq., Private Counsel</p> <p>Sean Grammel, Esq., Private Counsel</p> <p>Staff:</p> <p>Garrett Fregault, Assistant Clerk Magistrate</p> <p>02/08/2023 09:00 AM</p> <p>Digital Recording Device Bris CV C, Court Reporter</p>		
02/08/2023	Jury Trial Juror Excused. Juror #17 in seat 5		
02/09/2023	<p>Docket Note:</p> <p>Darlene Coppola, appointed as official court reporter. 401-286-7221. FTR run only as backup.</p>		
02/09/2023	<p>Scheduled:</p> <p>Judge: Perrino, Hon. Thomas J</p> <p>Event: Jury Trial</p> <p>Date: 02/10/2023 Time: 09:00 AM</p> <p>Result: Held as Scheduled</p>		
02/09/2023	<p>Event Result: Jury Trial scheduled on: 02/09/2023 09:00 AM</p> <p>Has been: Held as Scheduled</p> <p>Hon. Thomas J Perrino, Presiding</p> <p>Appeared:</p> <p>Plaintiff</p> <p>Robert B Feingold, Esq., Private Counsel</p> <p>Heather Marie Bonnet-Hebert, Esq., Private Counsel</p> <p>Brian A Fielding, Esq., Private Counsel</p> <p>Defendant</p> <p>Melissa Cook Allison, Esq., Private Counsel</p>		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
	Jonathan Thomas Elder, Esq., Private Counsel Sean Grammel, Esq., Private Counsel		
	Staff: Garrett Fregault, Assistant Clerk Magistrate 02/09/2023 09:00 AM Digital Recording Device Bris CV C, Court Reporter		
02/10/2023	Docket Note: Darlene Coppola, appointed as official court reporter. 401-286-7221. FTR run only as backup.		
02/10/2023	Scheduled: Judge: Perrino, Hon. Thomas J Event: Jury Trial Date: 02/13/2023 Time: 09:00 AM Result: Held as Scheduled		
02/10/2023	Scheduled: Judge: Perrino, Hon. Thomas J Event: Jury Trial Date: 02/14/2023 Time: 09:00 AM Result: Held as Scheduled		
02/10/2023	Event Result: Jury Trial scheduled on: 02/10/2023 09:00 AM Has been: Held as Scheduled Comments: FTR is back up Hon. Thomas J Perrino, Presiding Appeared: Plaintiff Robert B Feingold, Esq., Private Counsel Heather Marie Bonnet-Hebert, Esq., Private Counsel Brian A Fielding, Esq., Private Counsel Defendant Melissa Cook Allison, Esq., Private Counsel Jonathan Thomas Elder, Esq., Private Counsel Sean Grammel, Esq., Private Counsel Staff: Garrett Fregault, Assistant Clerk Magistrate 02/10/2023 09:00 AM Digital Recording Device Bris CV C, Court Reporter		
02/13/2023	Docket Note: Darlene Coppola, appointed as official court reporter. 401-286-7221. FTR run only as backup.		
02/13/2023	Event Result: Jury Trial scheduled on: 02/13/2023 09:00 AM Has been: Held as Scheduled Comments: FTR run as back up Hon. Thomas J Perrino, Presiding Appeared: Plaintiff Robert B Feingold, Esq., Private Counsel Heather Marie Bonnet-Hebert, Esq., Private Counsel Brian A Fielding, Esq., Private Counsel Defendant Melissa Cook Allison, Esq., Private Counsel Jonathan Thomas Elder, Esq., Private Counsel Sean Grammel, Esq., Private Counsel Staff: Garrett Fregault, Assistant Clerk Magistrate 02/13/2023 09:00 AM Digital Recording Device Bris CV C, Court Reporter		
02/14/2023	Docket Note: Darlene Coppola, appointed as official court reporter. 401-286-7221. FTR run only as backup.		
02/14/2023	Scheduled: Judge: Perrino, Hon. Thomas J Event: Jury Trial Date: 02/15/2023 Time: 09:00 AM Result: Held as Scheduled		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
02/14/2023	Scheduled: Judge: Perrino, Hon. Thomas J Event: Jury Trial Date: 02/16/2023 Time: 09:00 AM Result: Held as Scheduled		
02/14/2023	Event Result:: Jury Trial scheduled on: 02/14/2023 09:00 AM Has been: Held as Scheduled Comments: FTR is back up only Hon. Thomas J Perrino, Presiding Appeared: Plaintiff Robert B Feingold, Esq., Private Counsel Heather Marie Bonnet-Hebert, Esq., Private Counsel Brian A Fielding, Esq., Private Counsel Defendant Melissa Cook Allison, Esq., Private Counsel Jonathan Thomas Elder, Esq., Private Counsel Sean Grammel, Esq., Private Counsel Staff: Garrett Fregault, Assistant Clerk Magistrate 02/14/2023 09:00 AM Digital Recording Device Bris CV C, Court Reporter		
02/15/2023	Docket Note: Darlene Coppola, appointed as official court reporter. 401-286-7221. FTR run only as backup.		
02/15/2023	Event Result:: Jury Trial scheduled on: 02/15/2023 09:00 AM Has been: Held as Scheduled Comments: FTR is back up Hon. Thomas J Perrino, Presiding Appeared: Plaintiff Robert B Feingold, Esq., Private Counsel Heather Marie Bonnet-Hebert, Esq., Private Counsel Brian A Fielding, Esq., Private Counsel Defendant Melissa Cook Allison, Esq., Private Counsel Jonathan Thomas Elder, Esq., Private Counsel Sean Grammel, Esq., Private Counsel Staff: Garrett Fregault, Assistant Clerk Magistrate 02/15/2023 09:00 AM Digital Recording Device Bris CV C, Court Reporter		
02/15/2023	Opposition to to Plaintiffs' Motion for Reconsideration filed by Timothy G. Haydock, Barbara Moss	184	

Image

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Case Disposition

Disposition	Date	Case Judge
Judgment after Jury Verdict	05/03/2024	

1573CV00938 Reichenbach, Margaret J. et al vs. Haydock, Timothy G. et al

Case Type:

Torts

Case Status:

Open

File Date

10/01/2015

DCM Track:

A - Average

Initiating Action:

Civil Rights Act, G.L. c. 12 § 11H

Status Date:

10/01/2015

Case Judge:

Next Event:

04/29/2025

[All Information](#) [Party](#) [Judgment](#) [Event](#) [Tickler](#) [Docket](#) [Disposition](#)

Docket Information

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02/16/2023	Scheduled: Judge: Perrino, Hon. Thomas J Event: Jury Trial Date: 02/17/2023 Time: 09:00 AM Result: Held as Scheduled		
02/16/2023	Scheduled: Judge: Perrino, Hon. Thomas J Event: Jury Trial Date: 02/27/2023 Time: 09:00 AM Result: Held as Scheduled		
02/16/2023	Scheduled: Judge: Perrino, Hon. Thomas J Event: Jury Trial Date: 02/28/2023 Time: 09:00 AM Result: Held as Scheduled		
02/16/2023	Docket Note: Darlene Coppola, appointed as official court reporter. 401-286-7221. FTR run only as backup.		
02/16/2023	Event Result:: Jury Trial scheduled on: 02/16/2023 09:00 AM Has been: Held as Scheduled Comments: FTR is backup Hon. Thomas J Perrino, Presiding Staff: Garrett Fregault, Assistant Clerk Magistrate 02/16/2023 09:00 AM Digital Recording Device Bris CV C, Court Reporter		
02/17/2023	Event Result:: Jury Trial scheduled on: 02/17/2023 09:00 AM Has been: Held as Scheduled Comments: Plaintiffs rest their case Hon. Thomas J Perrino, Presiding Appeared: Plaintiff Robert B Feingold, Esq., Private Counsel Heather Marie Bonnet-Hebert, Esq., Private Counsel Brian A Fielding, Esq., Private Counsel Defendant Melissa Cook Allison, Esq., Private Counsel Jonathan Thomas Elder, Esq., Private Counsel Sean Grammel, Esq., Private Counsel Staff:		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
	Garrett Fregault, Assistant Clerk Magistrate 02/17/2023 09:00 AM Digital Recording Device Bris CV C, Court Reporter		
02/17/2023	Docket Note: Darlene Coppola, appointed as official court reporter. 401-286-7221. FTR run only as backup.		
02/21/2023	Plaintiffs Margaret J. Reichenbach, John Reichenbach's Motion for Reconsideration of Ruling on Plaintiffs' Proposed Verdict Form and Jury Instructions Concerning Trespass.	185	 Image
02/21/2023	Margaret J. Reichenbach, John Reichenbach's Memorandum in support of Plaintiffs' Motion for Reconsideration of Ruling on Plaintiffs' Proposed Verdict form and Jury Instructions Concerning Trespass.	185.1	 Image
02/21/2023	Defendants Timothy G. Haydock, Barbara Moss's Motion for Directed Verdict on Claim for Trespass.	186	 Image
02/21/2023	Timothy G. Haydock, Barbara Moss's Memorandum in support of Motion for Directed Verdict on Trespass Claim.	186.1	 Image
02/21/2023	Affidavit of Sean Grammel in support of Defendants' Motion for directed Verdict on Claim for Trespass.	186.2	 Image
02/21/2023	Defendants Timothy G. Haydock, Barbara Moss's Motion for Directed Verdict on Claim for Intentional Interference with Contractual Relations.	187	 Image
02/21/2023	Timothy G. Haydock, Barbara Moss's Memorandum in support of Motion for Directed Verdict on Claim for Intentional Interference with Contractual Relations.	187.1	 Image
02/21/2023	Affidavit in support of Motion for Directed Verdict on Claim for Intentional Interference with Contractual Relations.	187.2	 Image
	Applies To: Grammel, Esq., Sean (Attorney) on behalf of Haydock, Timothy G. (Defendant)		
02/21/2023	Defendants Timothy G. Haydock, Barbara Moss's Motion for Clarification.	188	 Image
02/21/2023	Defendant Timothy G. Haydock's Motion for Directed Verdict on Massachusetts Civil Rights Act Claim.	189	 Image
02/21/2023	Defendant Timothy G. Haydock's Memorandum in support of Motion for Directed Verdict on Massachusetts Civil Rights Act Claim.	189.1	 Image
02/21/2023	Affidavit in support of Defendant, Dr. Haydock's Motion for Directed Verdict on Massachusetts Civil Rights Act Claim.	189.2	 Image
	Applies To: Grammel, Esq., Sean (Attorney) on behalf of Haydock, Timothy G. (Defendant)		
02/22/2023	Opposition to Defendants' Motions for Directed Verdict on (1) Claim for Trespass, (2) Claim for Intentional Interference with Contractual Relations, and (3) Defendant, Haydock's Motion for Directed Verdict on Massachusetts Civil Rights Act Claim. filed by Margaret J. Reichenbach, John Reichenbach (Omnibus)	190	 Image
02/23/2023	Reply/Sur-reply in support of Motion for Directed Verdict Applies To: Haydock, Timothy G. (Defendant); Moss, Barbara (Defendant)	191	 Image
02/23/2023	Opposition to to Plaintiffs' Motion for Reconsideration on Trespass filed by Timothy G. Haydock, Barbara Moss	192	 Image
02/24/2023	Event Result:: Motion Hearing scheduled on: 02/24/2023 09:00 AM Has been: Held as Scheduled Comments: Motions taken U/A. FTR is back up Hon. Thomas J Perrino, Presiding Appeared: Plaintiff Robert B Feingold, Esq., Private Counsel Heather Marie Bonnet-Hebert, Esq., Private Counsel Brian A Fielding, Esq., Private Counsel Defendant Melissa Cook Allison, Esq., Private Counsel Sean Grammel, Esq., Private Counsel Staff: Garrett Fregault, Assistant Clerk Magistrate 02/24/2023 09:00 AM Digital Recording Device Bris CV C, Court Reporter		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
02/24/2023	Docket Note: Darlene Coppola, appointed as official court reporter. 401-286-7221. FTR run only as backup.		
02/24/2023	ORDER: Order the Defendant's Motion for Directed Verdict on the Plaintiffs Claim for Intentional Interference with Contractual Relationship. Judge: Perrino, Hon. Thomas J	193	 Image
02/27/2023	Jury Trial Juror Excused. in seat 2		
02/27/2023	Scheduled: Judge: Perrino, Hon. Thomas J Event: Jury Trial Date: 03/01/2023 Time: 09:00 AM Result: Held as Scheduled		
02/27/2023	Docket Note: Darlene Coppola, appointed as official court reporter. 401-286-7221. FTR run only as backup.		
02/27/2023	Event Result: Jury Trial scheduled on: 02/27/2023 09:00 AM Has been: Held as Scheduled Comments: FTR run as backup Hon. Thomas J Perrino, Presiding Appeared: Plaintiff Robert B Feingold, Esq., Private Counsel Heather Marie Bonnet-Hebert, Esq., Private Counsel Brian A Fielding, Esq., Private Counsel Defendant Melissa Cook Allison, Esq., Private Counsel Jonathan Thomas Elder, Esq., Private Counsel Sean Grammel, Esq., Private Counsel Staff: Garrett Fregault, Assistant Clerk Magistrate 02/27/2023 09:00 AM Digital Recording Device Bris CV C, Court Reporter		
02/28/2023	Plaintiffs Margaret J. Reichenbach, John Reichenbach's Submission for Trial Bench Memorandum.	194	 Image
02/28/2023	Event Result: Jury Trial scheduled on: 02/28/2023 09:00 AM Has been: Held as Scheduled Comments: FTR is back up only Hon. Thomas J Perrino, Presiding Appeared: Plaintiff Robert B Feingold, Esq., Private Counsel Heather Marie Bonnet-Hebert, Esq., Private Counsel Brian A Fielding, Esq., Private Counsel Defendant Melissa Cook Allison, Esq., Private Counsel Jonathan Thomas Elder, Esq., Private Counsel Sean Grammel, Esq., Private Counsel Staff: Garrett Fregault, Assistant Clerk Magistrate 02/28/2023 09:00 AM Digital Recording Device Bris CV C, Court Reporter		
03/01/2023	Docket Note: Darlene Coppola, appointed as official court reporter. 401-286-7221. FTR run only as backup.		
03/01/2023	Scheduled: Judge: Perrino, Hon. Thomas J Event: Jury Trial Date: 03/02/2023 Time: 09:00 AM Result: Held as Scheduled		
03/01/2023	Event Result: Jury Trial scheduled on: 03/01/2023 09:00 AM Has been: Held as Scheduled Comments: FTR is back up Hon. Thomas J Perrino, Presiding Appeared: Plaintiff		




Docket Date	Docket Text	File Ref Nbr.	Image Avail.
	Robert B Feingold, Esq., Private Counsel Heather Marie Bonnet-Hebert, Esq., Private Counsel Brian A Fielding, Esq., Private Counsel Defendant Melissa Cook Allison, Esq., Private Counsel Jonathan Thomas Elder, Esq., Private Counsel Sean Grammel, Esq., Private Counsel Staff: Garrett Fregault, Assistant Clerk Magistrate 03/01/2023 09:00 AM Digital Recording Device Bris CV C, Court Reporter		
03/02/2023	Plaintiffs Margaret J. Reichenbach, John Reichenbach's Request for Supplemental Jury Instruction Concerning Spoliation.	195	
03/02/2023	Plaintiffs Margaret J. Reichenbach, John Reichenbach's Request for Supplemental Jury Instruction Concerning No Second Guessing.	196	
03/02/2023	Verdict of jury for party (Proposed) Applies To: Reichenbach, Margaret J. (Plaintiff); Reichenbach, John (Plaintiff)	197	
03/02/2023	Verdict of jury for party (Proposed) Applies To: Haydock, Timothy G. (Defendant); Moss, Barbara (Defendant)	198	
03/02/2023	Docket Note: Darlene Coppola, appointed as official court reporter. 401-286-7221. FTR run only as backup.		
03/02/2023	Docket Note: Defendants rest. Evidence is closed (10:39 AM)		
03/02/2023	Defendants Timothy G. Haydock, Barbara Moss's Motion in limine on Claim for Intentional Interference with Contractual Relations. (Renewed)	199	
03/02/2023	Sean Grammel, Esq.'s Memorandum in support of Defendants Timothy G. Haydock, Barbara Moss's Motion in limine on Claim for Intentional Interference with Contractual Relations. (Renewed)	199.1	
03/02/2023	Affidavit Applies To: Grammel, Esq., Sean (Attorney) on behalf of Haydock, Timothy G. (Defendant)	199.2	
03/02/2023	Defendants Timothy G. Haydock, Barbara Moss's Motion for Directed Verdict filed (Renewed) Massachusetts Civil Rights Act Claim.	200	
03/02/2023	Timothy G. Haydock, Barbara Moss's Memorandum in support of Renewed Motion for directed Verdict on MCRA Claim.	200.1	
03/02/2023	Affidavit Applies To: Grammel, Esq., Sean (Attorney) on behalf of Haydock, Timothy G. (Defendant)	200.2	
03/02/2023	Defendants Timothy G. Haydock, Barbara Moss's Motion for Directed Verdict filed for Claim for Trespass.	201	
03/02/2023	Timothy G. Haydock, Barbara Moss's Memorandum in support of Motion for Directed Verdict on Trespass Claim.	201.1	
03/02/2023	Affidavit in support of Defendants' Motion for Directed Verdict on Claim for Trespass. Applies To: Grammel, Esq., Sean (Attorney) on behalf of Haydock, Timothy G. (Defendant)	201.2	
03/02/2023	Docket Note: Closing arguments and jury charged. Jury sent out for deliberations at 2:25 p.m.		
03/02/2023	Endorsement on Motion for Directed Verdict filed (#187.0): DENIED for the reasons stated on the record. (Garrett R. Fregault, Asst. Clerk/Magistrate)		
03/02/2023	General correspondence regarding Joint Proposed Special Interrogatories to Jury of Non-Party Intervenor, Certain Underwriters at Lloyd's London Subscribing to Policy Numbers APH01000606, APH02000606, APH03000606, APH04000606 and APH05000606, and the Automobile Insurance Company of Hartford, Connecticut.	202	

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
03/02/2023	General correspondence regarding ***Revised Special Interrogatories to the Jury.	202.1	
03/02/2023	Endorsement on Motion for Directed Verdict filed (#200.0): (Renewed) DENIED for the reasons stated on the record. (Garrett R. Fregault, Asst. Clerk/Magistrate)		
03/02/2023	Endorsement on Motion for Directed Verdict filed (#201.0): on Claim for Trespass: DENIED for the reasons stated on the record. (Garrett R. Fregault, Asst. Clerk/Magistrate)		
	Judge: Perrino, Hon. Thomas J		
03/02/2023	Event Result:: Jury Trial scheduled on: 03/02/2023 09:00 AM Has been: Held as Scheduled Comments: FTR Backup only Hon. Thomas J Perrino, Presiding Appeared: Plaintiff Robert B Feingold, Esq., Private Counsel Heather Marie Bonnet-Hebert, Esq., Private Counsel Brian A Fielding, Esq., Private Counsel Defendant Melissa Cook Allison, Esq., Private Counsel Jonathan Thomas Elder, Esq., Private Counsel Sean Grammel, Esq., Private Counsel Staff: Garrett Fregault, Assistant Clerk Magistrate 03/02/2023 09:00 AM Digital Recording Device Bris CV C, Court Reporter		
03/03/2023	Scheduled: Judge: Perrino, Hon. Thomas J Event: Jury Trial Date: 03/03/2023 Time: 09:00 AM Result: Held as Scheduled		
03/03/2023	General correspondence regarding Revised Joint Proposed Special Interrogatories to Jury of Non-Party Intervenor, Certain Underwriters at Lloyd's London Subscribing to Policy Numbers APH01000606, APH02000606, APH03000606, APH04000606 and APH05000606, and the Automobile Insurance Company of Hartford, Connecticut.	203	
03/03/2023	General correspondence regarding Special Interrogatories to the Jury	203.1	
03/03/2023	Docket Note: Darlene Coppola, appointed as official court reporter. 401-286-7221. FTR run only as backup.		
03/03/2023	Docket Note: Jury is greeted and sent back to continue deliberations (8:40 a.m.)		
03/03/2023	Verdict of jury for party Applies To: Reichenbach, Margaret J. (Plaintiff); Reichenbach, John (Plaintiff)	204	
03/03/2023	Verdict of jury for party on special interrogatories posed to the jury	204.1	
03/03/2023	Event Result:: Jury Trial scheduled on: 03/03/2023 09:00 AM Has been: Held as Scheduled Hon. Thomas J Perrino, Presiding Staff: Garrett Fregault, Assistant Clerk Magistrate Digital Recording Device Bris CV C, Court Reporter		
03/13/2023	Plaintiffs Margaret J. Reichenbach, John Reichenbach's Request for Interest on Jury Verdict.	205	
03/22/2023	Defendants Timothy G. Haydock, Barbara Moss's EMERGENCY Motion for Stay of Briefing or, in the Alternative, a Briefing Schedule.	206	
03/23/2023	Opposition to (#206) to Defendants' Emergency Motion for Stay of Briefing filed by Margaret J. Reichenbach, John Reichenbach	207	

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
03/24/2023	Endorsement on Motion to Stay of Briefing or, in the Alternative, a Briefing Schedule (#206.0): DENIED The Post-Trial motion contemplated by the defendants pursuant to R. 50(b) and R. 59(b) may be filed after entry of judgment. In this case entry of judgment is not appropriate until the plaintiffs motion for Injunctive relief is adjudicated. As such, the motion is DENIED. However the defendant's opposition to the plaintiffs' motion for permanent injunction may be served on or before March 31, 2023.		 Image
04/10/2023	Plaintiffs(s) Margaret J. Reichenbach, John Reichenbach's Motion for Permanent Injunctive Relief.	208	 Image
04/10/2023	Robert B Feingold, Esq., Heather Marie Bonnet-Hebert, Esq.'s Memorandum in support of Motion for Permanent Injunctive Relief.	208.1	 Image
04/10/2023	Affidavit of John A. Murdock in support of Plaintiffs' Motion for Permanent Injunction.	208.2	 Image
04/10/2023	Affidavit of Donald Horton in support of Plaintiffs' Motion for Permanent Injunction.	208.3	 Image
04/10/2023	Opposition to (#208) Plaintiffs' Motion for Permanent Injunction. filed by Timothy G. Haydock, Barbara Moss	208.4	 Image
04/10/2023	Affidavit of Sean Grammel in support of Defendants' opposition to Plaintiffs' Motion for Permanent Injunction..	208.5	 Image
04/10/2023	Defendants Timothy G. Haydock, Barbara Moss's Cross Motion to strike Affidavits.	209	 Image
04/10/2023	Reply/Sur-reply to Defendants' Opposition to Plaintiffs' Motion for Permanent Injunctive Relief and Opposition to Defendants' Cross-Motion to Strike Affidavits. Applies To: Reichenbach, Margaret J. (Plaintiff); Reichenbach, John (Plaintiff)	209.1	 Image
05/05/2023	Plaintiffs Margaret J. Reichenbach, John Reichenbach's Joint, Assented to Motion to continue / reschedule an event 05/08/2023 02:00 PM Motion Hearing	210	 Image
05/08/2023	Endorsement on Motion to continue / reschedule an event (#210.0): ALLOWED The Clerk's Office will reschedule. (Garrett R. Fregault, Asst. Clerk/Magistrate)		 Image
05/08/2023	Event Result: Motion Hearing scheduled on: 05/08/2023 02:00 PM Has been: Not Held For the following reason: Joint request of parties Hon. Thomas J Perrino, Presiding Staff: Garrett Fregault, Assistant Clerk Magistrate Digital Recording Device Bris CV C, Court Reporter		 Image
08/14/2023	Plaintiffs Margaret J. Reichenbach, John Reichenbach's Petition for Award of Attorney Fees and Costs.	211	 Image
08/14/2023	Affidavit in support of Plaintiffs' Petition for Attorneys' fees and Expenses. Applies To: Feingold, Esq., Robert B (Attorney) on behalf of Reichenbach, John (Plaintiff)	211.1	 Image
08/14/2023	Affidavit of Reasonable Attorney's Fees Applies To: Feingold, Esq., Robert B (Attorney) on behalf of Reichenbach, John (Plaintiff)	211.2	 Image
08/14/2023	Opposition to Plaintiffs' Petition for Award of Attorney Fees and Costs filed by Timothy G. Haydock, Barbara Moss	211.3	 Image
08/14/2023	Affidavit Applies To: Allison, Esq., Melissa Cook (Attorney) on behalf of Haydock, Timothy G. (Defendant)	211.4	 Image
08/14/2023	Affidavit of Daniel P. Dain.	211.5	 Image
08/14/2023	Reply/Sur-reply to Defendants' Opposition to Plaintiffs' Petition for Attorneys' Fees and Expenses. Applies To: Bonnet-Hebert, Esq., Heather Marie (Attorney) on behalf of Reichenbach, John (Plaintiff); Feingold, Esq., Robert B (Attorney) on behalf of Reichenbach, John (Plaintiff)	211.6	 Image
08/15/2023	Flash drive containing exhibits of Pleading #216.1 Affidavit of Robert Feingold in support Plaintiffs' Petition for Attorneys Fees and Expenses.	212	
08/30/2023	Case sent to Bristol County - FALL RIVER Location. Three jackets sent to Fall River		
09/21/2023	Matter taken under advisement: Motion Hearing scheduled on: 09/21/2023 02:00 PM		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
	<p>Has been: Held - Under advisement Hon. Thomas J Perrino, Presiding</p> <p>Appeared:</p> <p>Plaintiff Robert B Feingold, Esq., Private Counsel Heather Marie Bonnet-Hebert, Esq., Private Counsel Brian A Fielding, Esq., Private Counsel</p> <p>Defendant Melissa Cook Allison, Esq., Private Counsel Sean Grammel, Esq., Private Counsel</p> <p>Staff: Lori R Saulnier, Assistant Clerk Magistrate Court Reporter Elena Mercurio (official record, per order of the Court)</p>		
11/06/2023	ORDER: INTERIM ORDER ON PLAINTIFFS' MOTION FOR PERMANENT INJUNCTIVE RELIEF AND DEFENDANTS' CROSS-MOTION TO STRIKE AFFIDAVITS: It is hereby ORDERED that the defendants' cross-motion to strike affidavits is ALLOWED, and the parties shall appear for an evidentiary hearing on the plaintiffs' motion for permanent injunction, to be limited in scope as set out above. The Clerk's office is directed to schedule a hearing as soon as practicable.	213	 Image
11/07/2023	Attorney appearance electronically filed.		 Image
11/07/2023	Attorney appearance On this date Thomas M Bergeron, Esq. dismissed/withdrawn as Private Counsel for Defendant-Intervenor Certain Underwriters at Lloyd's, London	214	 Image
12/11/2023	Defendants Timothy G. Haydock, Barbara Moss's Motion for Reconsideration on Burden of Proof	215	 Image
12/11/2023	Opposition to (#215) Defendants' Motion for Reconsideration on Burden of Proof filed by Margaret J. Reichenbach, John Reichenbach	215.1	 Image
12/11/2023	Reply/Sur-reply Defendants' Reply in Support of Motion for Reconsideration on Burden of Proof	215.2	 Image
12/15/2023	Endorsement on Motion for Reconsideration on Burden of Proof (#215.0): ALLOWED for the reasons stated in the Defendants motion. (Garrett R. Fregault, Asst. Clerk/Magistrate) Judge: Perrino, Hon. Thomas J		 Image
12/18/2023	<p>Matter taken under advisement: Motion Hearing scheduled on: 12/18/2023 10:00 AM</p> <p>Has been: Held - Under advisement</p> <p>Comments: Elena Mercurio, court reporter was present (617) 267-3434. FTR C also run</p> <p>Hon. Thomas J Perrino, Presiding</p> <p>Appeared:</p> <p>Plaintiff Margaret J. Reichenbach Robert B Feingold, Esq., Private Counsel Heather Marie Bonnet-Hebert, Esq., Private Counsel Brian A Fielding, Esq., Private Counsel</p> <p>Plaintiff John Reichenbach</p> <p>Defendant Timothy G. Haydock Melissa Cook Allison, Esq., Private Counsel Sean Grammel, Esq., Private Counsel</p> <p>Defendant Barbara Moss</p> <p>Staff: Garrett Fregault, Assistant Clerk Magistrate 12/18/2023 10:00 AM Digital Recording Device Bris CV C, Court Reporter 12/18/2023 10:00 AM</p>		
03/21/2024	Plaintiffs Margaret J. Reichenbach, John Reichenbach's Motion for Attachment of Real Property of Defendant Timothy G. Haydock and Barbara Moss	216	 Image
03/21/2024	Margaret J. Reichenbach, John Reichenbach's Memorandum in support of their motion for real estate attachment	216.1	 Image
03/21/2024	Opposition to Plaintiff's Motion for attachment of Real Property filed by Timothy G. Haydock, Barbara Moss	216.2	 Image
03/21/2024	Affidavit of Melissa C. Allison	216.3	 Image
03/21/2024	Plaintiffs Margaret J. Reichenbach, John Reichenbach's Reply to Defendants opposition to Plaintiffs motion for attachment of real property of Defendants Timothy G. Haydock and Barbara Moss	216.4	 Image
03/21/2024	Docket Note: Pleadings #216-216.4 sent via EMAIL to Judge Thomas J. Perrino		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
05/02/2024	Endorsement on Motion for a Real Estate Attachment (#216.0): No Action Taken at this time.		
05/02/2024	ORDER: on Plaintiffs' Motion for Permanent Injunction Relief and Defendants' Cross-Motion to Strike Affidavits.	217	
05/02/2024	MEMORANDUM & ORDER: ON PLAINTIFFS' PETITION FOR AWARD OF ATTORNEYS' FEES AND COSTS Judge: Perrino, Hon. Thomas J	218	  
05/03/2024	JUDGMENT entered on this date.: Judgment After Finding After Jury Verdict Presiding: Hon. Thomas J Perrino Judgment For: Margaret J. Reichenbach John Reichenbach Judgment Against: Timothy G. Haydock Terms of Judgment: Interest Begins: 10/01/2015 Jdgmnt Date: 05/03/2024 Interest Rate: .12 Daily Interest Rate: .000329 Damages: Damage Amt: 1550000.00 Filing Fees: 275.00 Costs Pd to Court: 120.00 Crt Ord Atty Fee: 2383816.09 Judgment Total: 5,533,924.24 Further Orders: It is further ORDERED that a permanent injunction is to enter: the defendants, their agents, servants, and employees are permanently enjoined from threatening, harassing, intimidating, photographing, or coercing, surveilling the plaintiffs, their immediate family members, employees, tenants, contractors, vendors and others lawfully on the property, and further are permanently enjoined from conduct which an objectively reasonable person would conclude has the effect of interfering with the plaintiffs' use and enjoyment of their property located at 29 Mattarest Lane, South Dartmouth, MA 02748. NOTE: The judgment as it pertains to the award of \$2,383,816.09 in attorney's fees and costs as well as the \$395.00 and statutory costs are to be born jointly and severally defendant Timothy Haydock and defendant Barbara Moss. The single damages on the damage are to be born severally by the defendant.	219	 
05/03/2024	JUDGMENT entered on this date.: Judgment on Jury Verdict After Jury Verdict Presiding: Hon. Thomas J Perrino Judgment For: Margaret J. Reichenbach John Reichenbach Judgment Against: Barbara Moss Terms of Judgment: Interest Begins: 10/01/2015 Jdgmnt Date: 05/03/2024 Interest Rate: .12 Daily Interest Rate: .000329 Damages: Damage Amt: 2150000.00 Filing Fees: 275.00 Costs Pd to Court: 120.00 Crt Ord Atty Fee: 2383816.09 Judgment Total: 6,753,168.04 Further Orders: It is further ORDERED that a permanent injunction is to enter: the defendants, their agents, servants, and employees are permanently enjoined from threatening, harassing, intimidating, photographing, or coercing, surveilling the plaintiffs, their immediate family members, employees, tenants, contractors, vendors and others lawfully on the property, and further are permanently enjoined from conduct which an objectively reasonable person would conclude has the effect of interfering with the plaintiffs' use and enjoyment of their property located at 29 Mattarest Lane, South Dartmouth, MA 02748. NOTE: The judgment as it pertains to the award of \$2,383,816.09 in attorneys fees and costs as well as the \$395.00 and statutory costs are to be born jointly and severally defendant Timothy Haydock and defendant Barbara Moss. The single damages on the damage are to be born severally by the defendant.	220	 
05/06/2024	Defendants Timothy G. Haydock, Barbara Moss's EMERGENCY Motion to Enlarge Page Limits.	221	
05/07/2024	Endorsement on Motion to Enlarge Page Limits (#221.0): ALLOWED		
05/07/2024	Plaintiffs Margaret J. Reichenbach, John Reichenbach's Request for an exemplified copy of each judgment.	222	 
05/10/2024	Defendants Timothy G. Haydock, Barbara Moss's Notice of Motion for Stay of Injunction Pending appeal Under Rule 62.	223	 
05/10/2024	Defendants Timothy G. Haydock, Barbara Moss's Notice of Motion for Judgment on Notwithstanding the Verdict under Rule 50.	224	 
05/10/2024	Defendants Timothy G. Haydock, Barbara Moss's Notice of Motion for New Trial Under Rule 59.	225	 

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
05/13/2024	Plaintiffs Margaret J. Reichenbach, John Reichenbach's Notice of Rule 9E Motion to Alter or Amend Judgment.	226	 Image
05/14/2024	Attorney appearance electronically filed.		 Image
05/14/2024	Attorney appearance On this date Tanya Thu Austin, Esq. added for Defendant-Intervenor Certain Underwriters at Lloyd's, London	227	 Image
07/01/2024	Defendants Timothy G. Haydock, Barbara Moss's Assented to Motion to Enlarge Page Limits.	228	 Image
07/02/2024	Endorsement on Motion to Enlarge Page Limits (#228.0): ALLOWED by agreement. Judge: Fregault, Garrett R		 Image
07/12/2024	Defendants Timothy G. Haydock, Barbara Moss's Motion for a New Trial.	229	 Image
07/12/2024	Timothy G. Haydock, Barbara Moss's Memorandum in support of Motion for a New Trial.	229.1	 Image
07/12/2024	Affidavit in support of Motion for a New Trial. Applies To: Grammel, Esq., Sean (Attorney) on behalf of Haydock, Timothy G. (Defendant)	229.2	 Image
07/12/2024	Opposition to Motion for a New Trial. filed by Margaret J. Reichenbach, John Reichenbach	229.3	 Image
07/12/2024	Reply/Sur-reply in support of Motion for a New Trial. Applies To: Haydock, Timothy G. (Defendant); Moss, Barbara (Defendant)	229.4	 Image
07/12/2024	Affidavit in support of Defendants' Reply in support of their Motion for a New Trial or Remittitur. Applies To: Grammel, Esq., Sean (Attorney) on behalf of Haydock, Timothy G. (Defendant)	229.5	 Image
07/12/2024	Defendants Timothy G. Haydock, Barbara Moss's Notice of Filing and Rule 9A(b)(2) List of Documents Filed.	229.6	 Image
07/12/2024	Defendants Timothy G. Haydock, Barbara Moss's Motion to Stay Permanent Injunction.	230	 Image
07/12/2024	Timothy G. Haydock, Barbara Moss's Memorandum in support of Motion to Stay Permanent Injunction.	230.1	 Image
07/12/2024	Opposition to to Defendants' Motion to Stay Injunction filed by Margaret J. Reichenbach, John Reichenbach	230.2	 Image
07/12/2024	Reply/Sur-reply in support of Defendants' Motion to Stay Permanent Injunction.	230.3	 Image
07/12/2024	Defendants Timothy G. Haydock, Barbara Moss's Notice of Filing and Rule 9A(b)(2) List of Documents Filed.	230.4	 Image
07/12/2024	Defendants Timothy G. Haydock, Barbara Moss's Motion for Judgment Notwithstanding the Verdict.	231	 Image
07/12/2024	Timothy G. Haydock, Barbara Moss's Memorandum in support of Defendants' Motion for Judgment Notwithstanding the Verdict.	231.1	 Image
07/12/2024	Affidavit in support of Defendants' Motion for Judgment Notwithstanding the Verdict. Applies To: Grammel, Esq., Sean (Attorney) on behalf of Haydock, Timothy G. (Defendant)	231.2	 Image
07/12/2024	Opposition to Defendants' Motion for Judgment Notwithstanding the Verdict. filed by Margaret J. Reichenbach, John Reichenbach	231.3	 Image
07/12/2024	Exhibits/Appendix	231.3	 Image
07/12/2024	Exhibits/Appendix	231.3	 Image
07/12/2024	Exhibits/Appendix	231.3	 Image
07/12/2024	Exhibits/Appendix	231.3	 Image

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07/12/2024	Exhibits/Appendix	231.3	
07/12/2024	Exhibits/Appendix	231.3	
07/12/2024	Reply/Sur-reply	231.4	
	Defendants' Motion for Judgment Notwithstanding the Verdict.		
	Applies To: Haydock, Timothy G. (Defendant); Moss, Barbara (Defendant)		
07/12/2024	Affidavit in support of Defendants' Reply in support of Defendants' Motion for Judgment Notwithstanding the Verdict.	231.5	
	Applies To: Grammel, Esq., Sean (Attorney) on behalf of Haydock, Timothy G. (Defendant)		
07/12/2024	Defendants Timothy G. Haydock, Barbara Moss's Notice of Filing and Rule 9A(b)(2) List of Documents Filed.	231.6	
07/12/2024	Plaintiffs Margaret J. Reichenbach, John Reichenbach's Motion to amend the or Alter Judgment.	232	
07/12/2024	Margaret J. Reichenbach, John Reichenbach's Memorandum in support of Plaintiffs' Rule 59(e) Motion to Alter or Amend Judgments.	232.1	
07/12/2024	Opposition to Plaintiffs' Rule 59(e) Motion to Alter or Amend Judgments. filed by Timothy G. Haydock, Barbara Moss	232.2	
07/12/2024	Affidavit in support of Defendants' Opposition to Plaintiffs' Motion to Alter or Amend Judgments.	232.3	
	Applies To: Grammel, Esq., Sean (Attorney) on behalf of Haydock, Timothy G. (Defendant)		
07/12/2024	Reply/Sur-reply	232.4	
	in support of Plaintiffs' Rule 59(e) Motion to Alter or Amend Judgments.		
	Applies To: Reichenbach, Margaret J. (Plaintiff); Reichenbach, John (Plaintiff)		
07/12/2024	Plaintiffs Margaret J. Reichenbach, John Reichenbach's Notice of Rule 9A of Filing and List of Documents Filed.	232.5	
07/26/2024	Plaintiffs Margaret J. Reichenbach, John Reichenbach's Request for Leave to File Brief Sur-Reply to Defendants' Motions for New Trial and Motion for Judgment Notwithstanding the Verdict.	233	
07/29/2024	Case sent to Bristol County - FALL RIVER Location. (last 2 jackets #212 on, sent to Judge Perrino)		
08/12/2024	Endorsement on Request for leave to file brief sur-reply to defendants' motions for new trial and motion for judgment notwithstanding the verdict (#233.0): ALLOWED proposed pleading shall be docketed.		
	Judge: Perrino, Hon. Thomas J		
08/12/2024	Reply/Sur-reply	234	
	Plaintiffs' Sur-Reply in Opposition to Defendants' Motion for a New Trial		
08/28/2024	Event Result:: Motion Hearing scheduled on: 09/23/2024 02:00 PM Has been: Rescheduled For the following reason: Request of Plaintiff Hon. Thomas J Perrino, Presiding Staff: Aaron T Strojny, Assistant Clerk Magistrate Erin J Tierney, Assistant Clerk Magistrate Digital Recording Device Bris CR 1, Court Reporter		
09/23/2024	Matter taken under advisement: Motion Hearing scheduled on: 09/23/2024 10:00 AM Has been: Held - Under advisement Hon. Thomas J Perrino, Presiding Appeared: Plaintiff Robert B Feingold, Esq., Private Counsel Brian A Fielding, Esq., Private Counsel Heather Bonnet-Hebert, Esq., Private Counsel Defendant Melissa Cook Allison, Esq., Private Counsel Sean Grammel, Esq., Private Counsel Jonathan Elder, Esq., Private Counsel		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
	Staff: Aaron J Strojny, Assistant Clerk Magistrate Erin J Tierney, Assistant Clerk Magistrate Digital Recording Device Bris CR 1, Court Reporter		
10/16/2024	Plaintiffs Margaret J. Reichenbach, John Reichenbach's Joint Motion for Entry of Protective Order.	235	 Image
10/16/2024	Docket Note: Paper #235 referred to Judge Perrino		
10/22/2024	Endorsement on Motion for Entry of Protective Order (#235.0): ALLOWED (GRF/ACM) Judge: Perrino, Hon. Thomas J		 Image
10/22/2024	Party(s) file Stipulation and Protective Order Regarding Confidential Information. Applies To: Reichenbach, Margaret J. (Plaintiff); Reichenbach, John (Plaintiff)	236	
10/29/2024	Plaintiffs(s) Margaret J. Reichenbach, John Reichenbach's EMERGENCY Motion to Enjoin Defendant Barbara Moss from Dissipating or Alienating any Surplus Foreclosure Sale Proceeds. (Judge Perrino notified by email on 10/30/2024).	237	 Image
10/29/2024	Margaret J. Reichenbach, John Reichenbach's Memorandum in support of Enjoin Defendant Barbara Moss from Dissipating or Alienating any Surplus Foreclosure Sale Proceeds.	237.1	 Image
10/29/2024	Affidavit of Robert B. Feingold in support of Plaintiffs' Emergency Motion to Enjoin Defendant Barbara Moss from Dissipating or Alienating any Surplus Foreclosure Sale Proceeds and Requiring an Escrow of Sale Proceeds	237.2	 Image
10/30/2024	Defendants(s) Timothy G. Haydock, Barbara Moss's Motion for Attachment of Real Property.	238	 Image
10/30/2024	Margaret J. Reichenbach, John Reichenbach's Memorandum in support of Plaintiffs' Motion for Attachment of Real Property of Defendants' Timothy G. Haydock and Barbara Moss.	238.1	 Image
10/30/2024	Affidavit Applies To: Feingold, Esq., Robert B (Attorney) on behalf of Reichenbach, Margaret J. (Plaintiff)	238.2	 Image
10/30/2024	Opposition to to Plaintiffs' Motion for Real Estate of Real Property filed by Timothy G. Haydock, Barbara Moss	238.3	 Image
10/30/2024	Victim Margaret J. Reichenbach, John Reichenbach's Notice of Rule 9A of Filing and List of Documents Filed.	238.4	 Image
11/01/2024	Opposition to to Plaintiffs' "Emergency" Motion to Enjoin Defendant Barbara Moss from Dissipating or Alienating any Surplus Foreclosure Sale Proceedings filed by Timothy G. Haydock, Barbara Moss	239	 Image
11/01/2024	Affidavit Applies To: Allison, Esq., Melissa Cook (Attorney) on behalf of Haydock, Timothy G. (Defendant)	239.1	 Image
11/01/2024	Affidavit Applies To: Moss, Barbara (Defendant)	239.2	 Image
11/05/2024	Defendants Timothy G. Haydock, Barbara Moss's EMERGENCY Motion for Protective Order Regarding Depositions Scheduled for November 12, 2024	240	 Image
11/05/2024	Timothy G. Haydock, Barbara Moss's Memorandum in support of Emergency Motion for Protective Order	240.1	 Image
11/05/2024	Affidavit of Barbara Moss	240.2	 Image
11/05/2024	Affidavit of Melissa C. Allison, Esq.	240.3	 Image
11/05/2024	Docket Note: #240 emailed to Judge Perrino		
11/06/2024	Opposition to Defendants' Emergency Motion for Protective Order Regarding Depositions Scheduled for November 12, 2024 filed by Plaintiffs	241	 Image
11/06/2024	Reply/Sur-reply Plaintiffs' Reply to Defendants' Opposition to Plaintiffs' Emergency Motion to Enjoin Defendant Barbara Moss from Dissipating or Alienating Any Surplus Foreclosure Sale Proceeds	242	 Image
11/07/2024	Docket Note: #241 & #242 emailed to Judge Perrino		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
11/07/2024	Endorsement on Motion to Enjoin Defendant Barbara Moss from Dissipating or alienating any Surplus Foreclosure Sale Proceeds (#237.0): DENIED as an Emergency Motion, without prejudice, and may be refiled if necessary in the event of a sale by foreclosure or otherwise of the subject real property. (GRF/ACM)		 Image
11/07/2024	ORDER: the Defendant's Motion for Attachment of Real Property. The plaintiff's previously filed motion for real estate attachment was reviewed and on May 2, 2024 was endorsed no action taken at that time. The instant motion for attachment of real property, (P. #238), is based in part on G.L. 223, Sec. 86A. However, this not an action to "reach and apply" and an equitable attachment of the type authorized by that statute is not warranted. As such the motion is DENIED. (copies to counsel) (GRF/ACM)	243	 Image
11/07/2024	Endorsement on Motion for Protective Order Regarding Depositions Scheduled for November 12, 2024 (#240.0): ALLOWED After review and careful consideration of the circumstances presented, and for good cause shown, ALLOWED. The deposition of Timothy Haydock is not to be had and the deposition of Barbara Moss is postponed to a mutually convenient date no earlier than January 2025. (GRF/ACM)		 Image
12/09/2024	Court received Petition Seeking Relief Pursuant to G.L. c. 231, §118, ¶ 1 related to appeal	244	 Image
12/09/2024	Notice of docket entry received from Appeals Court Please take note that on December 9, 2024, the following entry was made on the docket of the above-referenced case: Petition pursuant to G.L. c. 231, s. 118 filed for Margaret J Reichenbach and John Reichenbach by Attorney Kevin Powers.	245	 Image  Image
12/18/2024	Court received Defendants' Opposition to Plaintiffs' Petition related to appeal	246	 Image
12/17/2024	Notice of docket entry received from Appeals Court Please take note that on December 17, 2024, the following entry was made on the docket of the above-referenced case: RE#1: The plaintiffs have filed a single justice petition, pursuant to G.L. c. 231, s. 118, first par., seeking interlocutory review of two orders of the Superior Court (Perrino, J.) denying the plaintiffs' post-judgment motion for attachment of real property and post-judgment emergency motion for an injunction. As the docket reflects final judgments entered in this case on 5/3/24, the single justice does not have the authority to review these orders. See Gibbs Ford, Inc. v. United Truck Leasing Corp., 399 Mass. 8, 10 (1987) ("[I]f a final judgment has been entered . . . relief under the first paragraph of G.L. c. 231, s. 118, is not available."). Even if the petition was proper for review under G.L. c. 231, s. 118, I would deny the petition as the petitioners have not demonstrated that the trial court judge made a clear error of law or abused his discretion in denying the motions for real estate attachment and for injunctive relief. See Jet-Line Services, Inc. v. Board of Selectmen of Stoughton, 25 Mass. App. Ct. 645, 646 (1988). Single justice relief is reserved for truly exceptional circumstances and should "be exercised in a stinting manner with suitable respect for the principle that the exercise of judicial discretion circumscribes the scope of available relief." Edwin Sage Co. v. Foley, 12 Mass. App. Ct. 20, 25 (1981). Moreover, the trial judge stated that the plaintiffs could refile if circumstances changed, for example, if a foreclosure sale was imminent. Accordingly, the petition is denied. (Neyman, J.). *Notice/attest/Perrino, J	247	 Image  Image
01/02/2025	MEMORANDUM & ORDER: ON DEFENDANTS' MOTIONS TO STAY THE PERMANENT INJUNCTION, FOR NEW TRIAL, AND FOR JUDGMENT NOT WITHSTANDING THE VERDICT, AND PLAINTIFFS' MOTION TO ALTER JUDGMENT; ORDER: It is hereby ORDERED that the defendants' motion for new trial (Paper 229), motion to stay the permanent injunction (Paper 230), and motion for judgment notwithstanding the verdict (Paper 231), and the plaintiffs' motion to alter or amend the judgment (Paper 232), be DENIED. Judge: Perrino, Hon. Thomas J (Copies mailed to counsel on 1/3/2025)	248	 Image
01/18/2025	Notice of appeal filed. Applies To: Haydock, Timothy G. (Defendant); Moss, Barbara (Defendant)	249	 Image
01/17/2025	Notice of Filing Notice of Appeal sent to Counsel	250	 Image
01/17/2025	CD of Transcript of 12/18/2023 10:00 AM Motion Hearing received from Elena Mercurio, CVR.	251	 Image
01/21/2025	CD of Transcript of 02/06/2023 09:00 AM Jury Trial, 02/07/2023 09:00 AM Jury Trial, 02/08/2023 09:00 AM Jury Trial, 02/09/2023 09:00 AM Jury Trial, 02/10/2023 09:00 AM Jury Trial, 02/13/2023 09:00 AM Jury Trial, 02/14/2023 09:00 AM Jury Trial, 02/15/2023 09:00 AM Jury Trial, 02/16/2023 09:00 AM Jury Trial, 02/17/2023 09:00 AM Jury Trial, 02/27/2023 09:00 AM Jury Trial, 02/28/2023 09:00 AM Jury Trial, 03/01/2023 09:00 AM Jury Trial, 03/02/2023 09:00 AM Jury Trial, 03/03/2023 09:00 AM Jury Trial received from Darlene M. Coppola, Registered Merit Reporter, Certified Realtime Reporters.	252	
01/22/2025	Defendants Timothy G. Haydock, Barbara Moss's Submission of Certification Under Mass. R. App. 8 Regarding Transcripts	253	 Image

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
01/29/2025	Notice of appeal filed. Applies To: Reichenbach, Margaret J. (Plaintiff); Reichenbach, John (Plaintiff)	254	 Image
02/04/2025	Plaintiffs Margaret J. Reichenbach, John Reichenbach's Submission of Certification Under Mass. R. App. P. 8 Regarding Transcripts	255	 Image
02/05/2025	CD of Transcript of 02/24/2023 09:00 AM Motion Hearing, 09/23/2024 10:00 AM Motion Hearing, 09/21/2023 02:00 PM Motion Hearing received from Darlene M. Coppola, RPR, RMR, CRR.	256	
02/05/2025	Certification/Copy of Letter of transcript ordered from Court Reporter 01/12/2023 02:00 PM Hearing on Motion(s) in Limine, 01/13/2023 12:00 PM Hearing on Motion(s) in Limine, 02/01/2023 02:00 PM Final Trial Conference	257	 Image
02/07/2025	Plaintiffs(s) Margaret J. Reichenbach, John Reichenbach's Motion for Attachment of Real Property of Defendant Timothy G. Haydock	258	 Image
02/07/2025	Margaret J. Reichenbach, John Reichenbach's Memorandum in support of Plaintiffs' Motion for Attachment of Real Property of Defendant Timothy G. Haydock	258.1	 Image
02/07/2025	Affidavit of Robert B. Feingold in Support of Plaintiffs' Motion for Attachment of Real Property of Defendant Timothy G. Haydock	258.2	 Image
02/07/2025	Opposition to (#258) Plaintiffs' Third Post-Trial Motion for Attachment of Real Property filed by Timothy G. Haydock, Barbara Moss	258.3	 Image
02/07/2025	Reply/Sur-reply Plaintiffs' Reply to Defendants' Opposition to Plaintiffs' Motion for Attachment of Real Property of Defendant Timothy G. Haydock	258.4	 Image
02/11/2025	Docket Note: 9A package regarding #258 emailed to Judge Perrino		
02/12/2025	Defendants Timothy G. Haydock, Barbara Moss's Assented to Motion for Leave to File a Sur-Reply	259	 Image
02/13/2025	Endorsement on Motion for Leave to File a Sur-Reply (#259.0): ALLOWED Judge: Perrino, Hon. Thomas J		 Image
02/13/2025	Brief filed: Surreply in Opposition to Plaintiffs' Third Motion for Attachment Applies To: Haydock, Timothy G. (Defendant); Moss, Barbara (Defendant)	260	 Image
02/19/2025	CD of Transcript of 01/12/2023 02:00 PM Hearing on Motion(s) in Limine, 01/13/2023 12:00 PM Hearing on Motion(s) in Limine, 02/01/2023 02:00 PM Final Trial Conference received from Jennifer Ferris, Approved Court Transcriber.	261	
02/28/2025	Endorsement on Motion for attachment of Real Property of Defendant Timothy G. Haydock (#258.0): ALLOWED Judgment in favor of the Plaintiff's having entered, the Plaintiffs post judgment real estate attachment is ALLOWED in the amount of \$5,500,000.00. The plaintiffs have demonstrated post judgment security is reasonably necessary to provide security and satisfaction of the judgment entered in their favor where limited insurance proceeds and personal assets potentially available. (GRF/ACM) Judge: Perrino, Hon. Thomas J		 Image
02/28/2025	Findings and Order for Approval of Plaintiff(s) Margaret J. Reichenbach, John Reichenbach's Motion (#258.0) for a Real Estate Attachment as to Defendant Timothy G. Haydock in the amount of \$5,500,000.00. Judge: Perrino, Hon. Thomas J	262	 Image
03/04/2025	Writ of attachment issued approved in amount of \$5,500,000.00 Applies To: Haydock, Timothy G. (Defendant)		 Image
03/13/2025	Appeal: Statement of the Case on Appeal (Cover Sheet), by e-filing to the Appeals Court. Applies To: Reichenbach, Margaret J. (Plaintiff); Reichenbach, John (Plaintiff)	263	 Image
03/13/2025	Appeal: Statement of the Case on Appeal (Cover Sheet), by e-filing to the Appeals Court. Applies To: Haydock, Timothy G. (Defendant); Moss, Barbara (Defendant)	264	 Image
03/13/2025	Notice of assembly of record sent to Counsel Applies To: Bonnet-Hebert, Esq., Heather Marie (Attorney) on behalf of Reichenbach, Margaret J. (Plaintiff); O'Connor, Esq., Kevin John (Attorney) on behalf of Automobile Insurance Company of Hartford, Connecticut (Travelers) (Defendant-Intervenor); Allison, Esq., Melissa Cook (Attorney) on behalf of Moss, Barbara (Defendant); Elder, Esq., Jonathan Thomas (Attorney) on behalf of Moss, Barbara (Defendant);	265	 Image

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
	Feingold, Esq., Robert B (Attorney) on behalf of Reichenbach, Margaret J. (Plaintiff); Austin, Esq., Tanya Thu (Attorney) on behalf of Certain Underwriters at Lloyd's, London (Defendant-Intervenor); Fielding, Esq., Brian A (Attorney) on behalf of Reichenbach, Margaret J. (Plaintiff); Grammel, Esq., Sean (Attorney) on behalf of Moss, Barbara (Defendant); Carducci, Esq., Logan A (Attorney) on behalf of Automobile Insurance Company of Hartford, Connecticut (Travelers) (Defendant-Intervenor)		
03/13/2025	Notice to Clerk of the Appeals Court of Assembly of Record, by e-filing to the Appeals Court.	266	 Image
03/13/2025	General correspondence regarding Assembly of Appeal sent to the Appeals Court, by e-filing to Appeals Court.	266.1	 Image
03/21/2025	Plaintiffs Margaret J. Reichenbach, John Reichenbach's Motion to Compel Defendant Barbara Moss to Produce Tax Documents and Execute IRS and State of New York Authorization Forms to Allow Plaintiffs to Obtain Copies of Defendant's Tax Returns and other Tax Documents	267	 Image
03/21/2025	Margaret J. Reichenbach, John Reichenbach's Memorandum in support of Plaintiffs' Motion to Compel Defendant Barbara Moss to Produce Tax Documents and Execute IRS and State of New York Authorization Forms to Allow Plaintiffs to Obtain Copies of Defendant's Tax Returns and Other Tax Documents	267.1	 Image
03/21/2025	Plaintiffs Margaret J. Reichenbach, John Reichenbach's Motion to Compel Defendant Timothy Haydock to Produce Tax Documents and Execute IRS and State of New York Authorization Forms to Allow Plaintiffs Obtain Copies of Defendant's Tax Returns and Other Tax Documents	268	 Image
03/21/2025	Margaret J. Reichenbach, John Reichenbach's Memorandum in support of Motion to Compel Defendant Timothy Haydock to Produce Tax Documents and Execute IRS and State of New York Authorization Forms to Allow Plaintiffs to Obtain Copies of Defendant's Tax Returns and Other Tax Documents	268.1	 Image
03/21/2025	Opposition to (#267 & 268) Plaintiffs' Motions to Compel filed by Timothy G. Haydock, Barbara Moss	269	 Image
03/21/2025	Reply/Sur-reply	270	 Image
	Plaintiffs' Reply to Defendants' Opposition to Plaintiffs' Motions to Compel		 Image
03/21/2025	Plaintiffs Margaret J. Reichenbach, John Reichenbach's Submission of Rule 9A Notice of Filing & List of Documents Filed	271	 Image
	Applies To: Feingold, Esq., Robert B (Attorney) on behalf of Reichenbach, Margaret J. (Plaintiff)		
04/01/2025	Appeal entered in Appeals Court on 03/27/2025 docket number 2025-P-0392	272	 Image

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#248.

BRISTOL SS SUPERIOR COURT
FILED
COMMONWEALTH OF MASSACHUSETTS
JAN -2 2025

BRISTOL, ss.

JENNIFER A. SULLIVAN, ESQ
CLERK / MAGISTRATE

SUPERIOR COURT
CIVIL ACTION
NO. 2015-00938

MARGARET REICHENBACH & another¹

vs.

TIMOTHY HAYDOCK & another²

**MEMORANDUM OF DECISION AND ORDER ON DEFENDANTS'
MOTIONS TO STAY THE PERMANENT INJUNCTION, FOR NEW TRIAL, AND FOR
JUDGMENT NOT WITHSTANDING THE VERDICT, AND PLAINTIFFS' MOTION
TO ALTER JUDGMENT**

The defendants, Timothy Haydock and Barbara Moss, bring three post-trial motions as follows: to stay the permanent injunction issued by this court during the pendency of appellate proceedings; for a new trial, on the grounds of multiple legal and procedural errors; and for judgment notwithstanding the jury's verdict on multiple counts. The plaintiffs, Margaret and John Reichenbach, oppose those motions and for their part, move to alter or amend the judgment seeking entry of an order that the defendants are jointly and severally liable for all damages awarded by the jury. For the reasons that follow, the parties' motions are **DENIED** in their entirety.

DISCUSSION

A. Motion to Stay the Permanent Injunction

The defendants seek under Mass. R. Civ. P. 62 (c) a stay of the permanent injunction issued in this case during the pendency of their appeal of the judgment. Mass. R. Civ. P. 62 (c)

¹ John Reichenbach

² Barbara Moss

(where party appeals from “final judgment granting . . . an injunction, the court in its discretion may suspend [or] modify [the] injunction during the pendency of the appeal upon such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party”).

“An appellant seeking a stay pending appeal must ordinarily meet four tests: (1) the likelihood of appellant’s success on the merits; (2) the likelihood of irreparable harm to appellant if the court denies the stay; (3) the absence of substantial harm to other parties if the stay issues; and (4) the absence of harm to the public interest from granting the stay.” *C.E. v. J.E.*, 472 Mass. 1016, 1017 (2015), quoting J.W. Smith & H.B. Zobel, *Rules Practice* § 62.3 at 409 (2d ed. 2007).

The defendants argue a likelihood to success on the merits of their appeal as to the injunction, on the basis that the injunction is unconstitutionally vague and overbroad. The defendants further argue that they have a significant likelihood of irreparable harm from remaining subject to the assertedly vague and overbroad injunction during the appeal, where, according to the defendants, as here there is no risk of substantial harm to the plaintiffs or the public interest if such stay is granted, and where the defendants have not engaged in acts of harassment for some period of time.

Upon review of the injunction in light of the defendants’ arguments and the plaintiffs’ arguments in opposition, the defendants have not demonstrated a likelihood of success on the merits of their appeal sufficient to warrant a stay. See *C.E.*, 472 Mass. at 1017. The words of the injunction are sufficiently clear and cabined within the restrictions necessary to protect the plaintiffs from further harassment, particularly when considered in the context of the protracted and committed course of unlawful conduct as found by the jury to have been undertaken by the defendants in this case. See *Planned Parenthood League of Mass., Inc. v. Bell*, 424 Mass. 573, 585 (1997) (injunction properly considered full extent of defendants’ unprotected conduct); *Planned Parenthood League of Mass., Inc. v. Blake*, 417 Mass. 467, 480-481 (1994) (order

enjoining parties from “aiding or abetting directly or indirectly” sufficiently clear); *Commonwealth v. Adams*, 416 Mass. 558, 567 (1993) (order enjoining use of excessive force not overbroad in light of intentional misconduct).

That deficiency alone is sufficient to deny the defendants’ motion. However, it is also observed that there is minimal, if any, support for the defendants’ claims that there is a “high likelihood” they will suffer irreparable harm from a denial of the stay due potential weaponization of the injunction by the plaintiffs in response to “innocuous conduct” by the defendants, their neighbors. See *C.E.*, 472 Mass. at 1017. The defendants have not offered evidence of any past abuse of civil process by the plaintiffs, and it would be pure speculation to assert that any such conduct would now occur during the pendency of the appeal. To the contrary, a basis for this court’s issuance of the injunction, i.e., the defendants’ protracted and extensive use of multiple avenues of regulatory and direct harassment of the plaintiffs, demonstrates why the defendants are unable to establish the third factor, that there is little likelihood of harm to the plaintiffs from a stay of that injunction. *Id.*

Accordingly, the defendants’ motion for a stay must be **DENIED** and the permanent injunction shall remain in place during the pendency of the appellate proceedings.

B. Motion for New Trial

“[A] new trial should be granted only when ‘on a survey of the whole case, it appears to the judge that otherwise a miscarriage of justice would result.’” *Fitzpatrick v. Wendy’s Old Fashioned Hamburgers of New York, Inc.*, 487 Mass. 507, 514 (2021), quoting *Wojicki v. Caragher*, 447 Mass. 200, 216 (2006). See Mass. R. Civ. P. 59. A judge should exercise discretion to set aside a jury verdict only when the verdict “is so greatly against the weight of the evidence as to induce in [the judge’s] mind the strong belief that it was not due to a careful

consideration of the evidence, but that it was the product of bias, misapprehension or prejudice” (internal quotations omitted). *Turnpike Motors, Inc. v. Newbury Group, Inc.*, 413 Mass. 119, 127 (1992). A jury’s damages award must stand unless “the damage awarded were greatly disproportionate to the injury proven or represented a miscarriage of justice,” *Labonte v. Hutchins & Wheeler*, 424 Mass. 813, 824 (1997), quoting *doCanto v. Ametek, Inc.*, 367 Mass. 776, 787 (1975), or “are ‘so great . . . that it may reasonably be presumed that the jury, in assessing them, did not exercise a sound discretion, but were influenced by passion, partiality, prejudice or corruption.’” *Reckis v. Johnson & Johnson*, 471 Mass. 272, 299 (2015), quoting *Bartley v. Phillips*, 317 Mass. 35, 41 (1944).

Here, the defendants offer a variety of arguments in support of their motion for new trial. First, they argue that the jury’s verdict goes against the weight of the evidence as to the date of accrual of the plaintiffs’ civil rights claim (Count I) and intentional interference claim (Count III). Second, they argue that the damages awarded as to the civil rights, intentional interference, and trespass claims are excessive and unsupported by the evidence at trial. Third, they argue that they were prejudiced by misconduct of plaintiffs’ counsel and various legal errors in the rulings of this court during the trial, including its ruling regarding alleged spoliation of evidence potentially existing on Moss’ digital devices. The court will address each of these arguments in turn.

1. *Accrual of Claims*

At trial and in their motion, the defendants argue that the plaintiffs’ civil rights and intentional interference claims accrued at the latest during the summer of 2011, and thus that such claims fell outside the statute of limitations period. In returning verdicts in favor of the plaintiffs, the jury inferentially determined that such claims accrued on or after October 1, 2012.

The defendants argue that this is clear error and against the weight of the trial evidence, the plaintiffs oppose and point to conflicting evidence on this issue.

The accrual of a cause of action is a question of fact which here was properly submitted to the jury on both the civil rights and intentional interference claims. The jury was properly instructed and after due deliberation found that the plaintiffs' cause of action arrived on or after October 1, 2012. The record reflects that sufficient evidence supported the jury's deliberation. The evidence at trial included the testimony of Mrs. Reichenbach that she believed Moss was threatening the plaintiffs by January 2011 at the latest, and Mr. Reichenbach that he felt coerced and harassed by Moss' threats in the period leading up to June 2011. However, the evidence also included Moss' denial of the existence and intent of such threats, as well as the defendants' second round of petitioning activity starting in the summer of 2013. Likewise, the record reflects extensive evidence of delays to the construction project and cost increases that occurred prior to October 2012, but also included evidence of subsequent incidents including Haydock's berating of the plaintiffs' contractor and Moss' nighttime trespass.

Considering this conflicting evidence as a whole, the defendants have not demonstrated that the weight of the evidence conflicts with the jury's determination that the plaintiffs' causes of action accrued after October 1, 2012, particularly as to when the plaintiffs became aware that the defendants' actions were intentionally coercive and/or improper in motive or means. Accordingly, a new trial is not warranted on the basis of the date of accrual of either the civil rights or intentional interference claims.

2. Proof of Damages

The defendants further argue that the damages awarded by the jury for the civil rights, intentional interference, and trespass claims were clearly excessive, and thus require a new trial

or a reduction on remittitur. The plaintiffs argue that the damages were amply proven, and the jury's awards reasonable given the weight of the evidence.

When a jury's award exceeds what is reasonable, remittitur serves "the beneficial goal of 'securing substantial justice between the parties without the burdensome costs, delays and harassments of new trials.'" *Boudanza v. Comcast of Massachusetts I, Inc.*, 454 Mass. 622, 626-627 (2009), quoting *Freeman v. Wood*, 379 Mass. 777, 782 (1980). However, a court must carefully consider the reasonability of such award in light of the whole case, and only countermand a jury's decision if the award is "*greatly* disproportionate to the injury proven" (emphasis added) or otherwise represented a miscarriage of justice. See *Labonte*, 424 Mass. at 824.

a. Intentional Interference with Contractual Relations

First, as to the defendants' arguments regarding the award of damages for the intentional interference with contractual relations, the court finds that there was ample evidence which supported the jury's award. The verdict slip contained a special question as to each defendant, querying whether each defendant intentionally and improperly interfered with the plaintiffs' contract by preventing them from performing or by causing their performance under the contract to be more expensive or burdensome. The jury answered yes as to both defendants and determined damages totaling two million dollars for this claim.

There was ample evidence that the project was delayed by periods accruing to a total of several years due to conduct attributed to the defendants. As to damages, the evidence was varied if not conflicting. The jury heard all the evidence as to the expenses and cost and, based on that evidence, assessed damages. The award is supported by evidence which the jury could find credible. It was not speculative and not excessive in the context of the whole case, particularly the size, scope, and specifications for the construction project. Simply put, there was

evidence the jury could find credible that the initial cost estimates were between four and six million dollars, and that as a result of the delays arising from the defendants' intentional interference, the final amount paid by the plaintiffs was in excess of ten million dollars. In light of this evidence, this court cannot conclude that the jury's award of two million dollars in damages was disproportionate, let alone *greatly* disproportionate, to the damages proven at trial. See *Labonte*, 424 Mass. at 824.

Neither a new trial nor remittitur is warranted as to the intentional interference award.

b. Massachusetts Civil Rights Act

Next, the defendants argue that the damages awarded for the defendants' violations of the plaintiffs' civil rights was unreasonable and also should be reduced under remittitur or subject to a new trial.

In its verdict on this claim, the jury found that each defendant used threats, intimidation, or coercion to interfere with or attempt to interfere with the plaintiff's constitutional rights to use, enjoy and improve their property. The evidence of the defendant's conduct supports the finding by the jury that the defendants interfered with the plaintiff's property rights. There was evidence which the jury could find credible that defendant Moss, with defendant Haydock's knowledge, engaged in a campaign to prevent the plaintiffs from building the home per approved plans. This course of conduct included numerous permitting appeals and repeatedly contacting town regulators, i.e. the conservation agent, to demand site inspections for minimal discrepancies and concerns over the project. Additionally, the defendant's constant presence around the site while contractors were working and while the plaintiffs were at home provides sufficient evidence to support the jury's determination.

The jury awarded damages in the amount of \$1.5 million as compensation for the violation of the plaintiff's civil rights. The jury were properly instructed regarding damages

generally and in particular as to this claim. For instance, the jury was instructed that “you must not speculate, engage in conjecture, or guess in awarding damages . . .” and that any award “should be based on just and reasonable inferences.” As to this claim the jury were instructed on categories of damages to consider, such as emotional distress, that is mental pain and suffering, meaning “nervous shock, anxiety, embarrassment or mental anguish resulting from violation of civil rights.” Additionally, the jury was instructed as to loss of use and enjoyment of the property, compensation for “the diminution of the enjoyment of the use of their property.” The jury was also instructed that it could consider out of pocket costs. The jury were instructed that if they awarded damages for categories, that they were to add them up to arrive at a total award.

Besides out of pocket costs discussed above, the jury received testimony from both plaintiffs regarding their mental anguish and anxiety while present and attempting to use and enjoy their property. Emotional distress damages are “inherently difficult to prove with certainty, to rebut, and to evaluate.” *Labonte*, 424 Mass. at 825, quoting *Keohane v. Stewart*, 882 P.2d 1293, 1305 (Colo. 1994), cert. denied., 513 U.S. 1127 (1995). Here, the weight of the evidence, considered in total and in a light most favorable to the plaintiffs, demonstrated that the defendants’ extreme and protracted attempts to interfere with the plaintiffs’ ability to build their new home and enjoy their property caused significant distress to the plaintiffs. It was for the jury to assess and weigh that evidence. This court cannot conclude that the jury’s award is *greatly* disproportionate to that distress, or that the award was otherwise based on conjecture, speculation, or guessing. *Id.* at 824. Neither a new trial nor remittitur is warranted as to the civil rights award.

c. Trespass

Last, the court considers the defendants’ arguments that the damages awarded for the defendants’ physical trespass on the plaintiffs’ property were unreasonable such that a new trial

or remittitur should be ordered. Specifically, the defendants argue that because there was no evidence of physical property damage from the trespasses, the damage award could only have been based on emotional distress, and such compensation for emotional distress was excessive and duplicative of that awarded for the civil rights claim. As above, this court concludes that the defendants have failed to meet their burden to demonstrate that the damages award was *greatly* disproportionate to the evidence of the emotional distress suffered by the plaintiffs as a result of the trespass, or otherwise duplicative of the damages awarded on the civil rights claim.

On the detailed verdict slip, the jury found that both defendants trespassed on the plaintiff's property and awarded \$200,000.00 in damages. Of that total, the jury attributed \$150,000 to Moss' conduct and \$50,000 to Haydock's conduct. Prior to reaching that verdict, the jury was instructed that damages awards should not be duplicative; that trespass damages are compensatory, not punishment; and that damages also could be awarded for damage to the property. The jury was also instructed as to emotional distress damages caused by the trespass, including consideration of the nature and type of the alleged harm; the severity or extent of harm; and the length of time the plaintiffs suffered and reasonably expect to suffer.

The jury received the following evidence regarding trespass upon which it could have based its verdict and damages award. Moss was observed walking in the darkness by a witness who thought Moss was on the plaintiffs' property. In another incident, Haydock entered on the plaintiffs' property, proceeded to the pool area, and engaged in a verbal altercation with the plaintiffs' building contractor. Additionally, the jury received circumstantial evidence from which it reasonably could infer that one or both of the defendants had been physically present, but unobserved by witnesses, on the plaintiffs' property at other times throughout the parties' period of conflict. Such circumstantial evidence included a glass door which had been discovered to be broken without any explanation, a hole cut in a security fence, the appearance of

a lobster pot buoy in the plaintiffs' pool, and the repeated removal of survey stakes from the ground on the plaintiffs' property by unknown persons. The jury's consideration of the weight of this evidence is consistent with a finding that the defendants physically trespassed on the plaintiffs' property in a manner which resulted in emotional distress, physical damage to the plaintiffs' property, or both these harms.

The defendants have offered no more than speculation to support their assertion that the trespass damages award is duplicative of the award for emotional distress arising from the civil rights claim. The verdict slip was detailed and completed by the jury in a manner that provides no indication that it treated the civil rights and trespass claims as a single entity, including the assignment of two entirely distinct sums for the damages indicated for each claim. On this record, there is no basis to abandon the legal presumption that the jury followed the extensive instructions it received as to damages and non-duplication. See *Van Liew v. Eliopoulos*, 92 Mass. App. Ct. 114, 128, rev. denied, 478 Mass. 1105 (2017) (jury presumed to have followed instructions).

Further, even assuming that the defendants are correct that the jury's damages award was based solely on emotional distress (and therefore excluded any costs of repairing the door, fence, and stakes), emotional distress damages are inherently difficult to quantify and therefore inherently difficult to rebut or evaluate. *Labonte*, 424 Mass. at 825. In view of all the evidence presented, this court concludes that there is no apparent miscarriage of justice where the jury could reasonably have assigned separate emotional distress damages for the defendants' physical trespass in reflection of the unique and heightened emotional injury to a sense of safety that occurs when a hostile individual intentionally enters a person's exclusive residential property (particularly at night), rather than merely engages in a campaign harassment from public spaces or through regulatory channels. See e.g. *R.C. v. R.K.*, 98 Mass. App. Ct. 1106, at *1-2, *5 (2020)

(unpub.) (remittitur not warranted for award of \$50,000 in emotional distress damages from defendant neighbors' trespass on plaintiffs' property; trespass damages were independent of damages for abuse of process by filing false police report and invasion of privacy through installation of cameras watching plaintiffs' backyard).

The defendants have not met their burden to demonstrate that a new trial on or remittitur of trespass damages is warranted on the basis that such damages are excessive or duplicative.

3. Spoliation

The defendants argue that a new trial is warranted where the court erred in permitting the plaintiffs to inquire about Moss' destruction or discarding of a computer and/or other digital storage devices which the plaintiffs alleged may have contained photographs taken by Moss of the plaintiffs' property during the pendency of the conduct at issue in this case, despite this court's finding that the plaintiffs had not demonstrated any spoliation had occurred where the alleged photographs were not known to actually have existed. The plaintiffs oppose, asserting that the court's decision to decline to give an adverse-inference instruction, but permit inquiry into the underlying subject of the computer and potential photographs, was proper.

The court's decision on spoliation was read into the record during the trial, after the plaintiffs' motion to reconsider the court's original order. The decision is reproduced in its entirety in the margin.³

³ The court's decision was read into the record on February 17, 2023, as follows:

"As to spoliation, the plaintiffs assert that Mrs. Moss, while aware that discovery was ongoing and after she was advised by her then attorney preserve electronic devices, including the Lenovo laptop at issue, she lost or otherwise disposed of the laptop. The discovery sought by the plaintiffs included photographs taken while Mrs. Moss was at or about the subject property while work was being performed. The plaintiffs claim that evidence demonstrates that Moss was present at the site constantly or all the time while work was performed, walking or standing generally and always or frequently taking pictures, particularly the time period that the motion focuses on is October of 2011 through March of 2013. The plaintiffs assert that based on that evidence, such pictures should exist and none were provided during that time over October 2011 to March 2013, although there were a couple in early October and one later in March, so I'm not sure of the particular dates. The plaintiffs essentially argue that because witnesses will or have testified that Mrs. Moss was present taking pictures often while those witnesses were on site working during that time period, the pictures must exist and these pictures must have been stored on the

destroyed or discarded laptop and other electronic devices if that's the case, I believe there was some reference to flash drives or thumb drives.

The plaintiffs [sic] argue Mrs. Moss was not around as often as the plaintiff's witnesses contend, specifically during the time from October 2011 to March 2013 and that numerous pictures were in fact produced. Mrs. Moss concedes the laptop was discarded because it was not working properly and that she removed material from the laptop to other devices.

By way of a motion in limine, the plaintiffs raised this issue and after hearing argument on the motion, the motion was denied as follows: 'After hearing argument and on consideration of the motion, which presents as a sanction the entry of default against these defendants, the motion is DENIED. The plaintiffs have not identified evidence that was intentionally or negligently destroyed, nor have they demonstrated unfair prejudice resulting from the conduct or the alleged missing evidence, photographs which may have been taken during a particular time period.'

The plaintiffs now seek reconsideration of that decision. The plaintiffs argue error in applying an incorrect standard and improperly imposing a burden of proof on the plaintiffs. As to the motion for reconsideration, the plaintiffs have the burden of showing a demonstrable error in the original ruling.

A party to litigation has a duty to preserve evidence once that party reasonably should know that the evidence might be relevant to the action. *Fletcher v. Dorchester Mut. Ins. Co.*, 437 Mass. 544, 550 (2002). Here, Mrs. Moss, as a party to the litigation, had a duty to preserve evidence. Additionally, she had some awareness that discovery was ongoing and that the plaintiffs were seeking photographs and were interested in an analysis of electronic devices where photographs might be stored. Also, her then attorney represented to plaintiffs' counsel that he would be receiving the laptop, in essence that it would be preserved. Mrs. Moss claims that photographs and other information from the laptop were transferred to a 'flashdrive' and that numerous photographs were produced in discovery. She also claims that she was not around the property as frequently during that time period.

Unlike many of the Massachusetts reported cases where a particular item is or was known to exist and was either lost, destroyed or otherwise altered, the plaintiffs here cannot identify photographs known to exist that now does [sic] not. The plaintiffs have a threshold burden on that issue as it is fundamental to spoliation that the moving party must show that there is evidence that was been spoiled. *Scott v. Garfield*, 454 Mass. 700 (2009). However, even assuming the laptop contained evidence that might be relevant, it must be evidence which effects adversely the plaintiffs' ability to prosecute their claim, in other words the plaintiffs must be prejudiced by the missing evidence. *Fletcher v. Dorchester Mut. Ins. Co.*, 437 Mass. 544, 550 (2002). Here the plaintiffs claim that photographs taken by Moss will corroborate testimony of other witnesses, the plaintiffs, Mr. Olson, and others working on site who have or will testify that Mrs. Moss was present the entire time and when she was, she always, frequently, or often had a camera or cell phone. For instance, Mr. Olson testified that during the six year or so project, he estimated a portion of which she was there every day, he saw Moss about 300 times. Other witnesses have or will testify in the same general manner. Thus, the photographs which the plaintiffs claim must exist are important to them to corroborate other evidence, to perhaps undermine Mrs. Moss's credibility, and to corroborate other evidence of her attempts to deprive the plaintiffs of their civil rights and interfere with their contract with their building contractor, Olson.

The plaintiffs' ability to prosecute their claims are not prejudiced by the lack of photographs during the asserted time period. The plaintiffs' witnesses have or will testify as to when Mrs. Moss was present and what she was doing when those observations were made. Additionally, the plaintiffs are not prohibited from examining Mrs. Moss on this issue. Here, through other evidence the plaintiffs can still show Mrs. Moss's presence and activities during the specific time period, October 2011 to March 2013. As such, the lack of photographs during that time period does not prevent or prejudice the plaintiffs from offering evidence in support of their claims. *Fletcher* at 551 (court noting that where the contents or salient characteristics of the original item can still be shown, there is no damage from any spoliation).

So to the extent the plaintiffs' motion seeks reconsideration, it is denied. And likewise for the additional relief requested, as the plaintiff do have an initial burden which they have not satisfied and as such they did not show clear or demonstrable error. However, again, nothing prevents the plaintiffs from inquiring and eliciting evidence concerning the topic, including but not limited to Moss's presence during the time period at issue, her activities, whether she took photographs, and where and when and how the photographs were stored. Additionally, the plaintiffs may inquire about the laptop and the reasons and circumstances as to why it was disposed of or otherwise discarded."

“Under the doctrine of spoliation, a judge can impose sanctions against a litigant who ‘negligently or intentionally loses or destroys evidence that the litigant . . . knows or reasonably should know might be relevant to a possible action, even when the spoliation occurs before an action has been commenced.’” *Santiago v. Rich Prods. Corp.*, 92 Mass. App. Ct. 577, 580-581 (2017), quoting *Scott v. Garfield*, 454 Mass. 790, 798 (2009). However, even if a party is a spoliator, spoliation principles do not properly act to bar an *opposing* party, who did not themselves cause the spoliation, from using testimony of the spoliating party as to the item or evidence spoiled. See *Kippenhan v. Chaulk Services, Inc.*, 428 Mass. 124, 128 (1998) (even if ambulance company ultimately determined to have spoiled evidence of defective stretcher, it was error for judge to bar personal injury plaintiffs who did not cause disappearance of stretcher from using testimony of ambulance attendants concerning pre-accident condition of stretcher). Moreover, where a party claiming spoliation has not demonstrated prejudice from the allegedly lost evidence, and thus is not entitled to an adverse-inference instruction, the party may nevertheless explore at trial the facts underlying the allegedly lost items. See *Santiago*, 92 Mass. App. Ct. at 582 (where plaintiffs had not shown that loss of documents occurred after accident at issue, nor how alleged spoliation prejudiced plaintiffs, judge did not err in allowing plaintiffs “to make use of the fact that the documents were lost,” including cross-examination of defendants’ employees “at length about the missing documents”).

In light of these principles, the defendants’ position that the plaintiffs should have been barred from making any mention of Moss’ computer and digital storage at trial, simply because the plaintiffs were not able to demonstrate that pictures of their property were actually contained on the computer and digital storage discarded by Moss while she was aware that such items should be preserved, and thus had not established spoliation that would permit this court to exercise its discretion to give an adverse-inference instruction is not persuasive. In short, the

defendants attempt to use the spoliation threshold as a shield for themselves, rather than complain that the plaintiffs did not meet the requirements to use a spoliation remedy as a sword. The defendants are not entitled to a new trial on this basis.

4. Remaining Claims

The defendants' remaining claims that a new trial is warranted on the basis of various admitted and excluded evidence, conduct of counsel, and closing arguments were amply addressed during the trial proceedings and raise no new meritorious arguments here. Such claims are not sufficient to demonstrate the defendants' entitlement to a new trial, remittitur, or a new trial on damages. The defendants' motion is therefore, **DENIED**.

C. Motion for Judgment Not Withstanding the Verdict

Rule 50 (b) of the Massachusetts Rules of Civil Procedure governs motions for judgment notwithstanding the verdict. Judgment notwithstanding the verdict "should be granted cautiously and sparingly, and should only be granted if the trial judge is satisfied that the jury 'failed to exercise an honest and reasonable judgment in accordance with the controlling principles of law'" (internal citation omitted). *Netherwood v. American Fed'n of State, County and Mun. Employees, Local 1725*, 53 Mass. App. Ct. 11, 20 (2001), quoting *Turnpike Motors, Inc. v. Newbury Group Inc.*, 413 Mass. 119, 127 (1992). "[T]he judge's task, 'taking into account all the evidence in its aspect most favorable to the [non-movant], [is] to determine whether, without weighing the credibility of the witnesses or otherwise considering the weight of the evidence, the jury reasonably could return a verdict for the [nonmovant].'" *Cambridgeport Savings Bank v. Boersner*, 413 Mass. 432, 438 (1992), quoting *Tosti v. Ayik*, 394 Mass. 482, 494 (1985). Stated differently, the court must determine whether "anywhere in the evidence, from whatever source derived, any combination of circumstances could be found from which a reasonable inference

could be made in favor of the [nonmovant].” *O’Brien v. Pearson*, 449 Mass. 377, 383 (2007), quoting *Turnpike Motors, Inc. v. Newbury Group, Inc.*, 413 Mass. 119, 121 (1992). Importantly, “a judge has no right to set aside a verdict merely because [the judge personally] would have assessed the damages in a different amount.” *Hastings Assocs., Inc. v. Local 369 Bldg. Fund, Inc.*, 42 Mass. App Ct. 162, 171 n.13 (1997), quoting *Solimene v. B. Grauel & Co., K.G.*, 399 Mass. 790, 803 (1987).

1. Massachusetts Civil Rights Violations

The defendants argue that the evidence at trial did not establish a civil rights violation by either Moss or Haydock. To prevail on an MCRA claim, a plaintiff must show that (1) the plaintiff was engaged in the exercise or enjoyment of rights secured by the State or Federal constitutions, (2) the defendant interfered, or tried to interfere, with that secured right, and (3) the interference was carried out through threats, intimidation, or coercion. *Glovsky v. Roche Bros. Supermarkets, Inc.*, 469 Mass. 752, 762 (2014).

Here, it is undisputed that the plaintiffs were engaging in the exercise of their right to inhabit and construct a home on their real property. Thus, the issue before the court is whether there was sufficient evidence at trial, taken in the light most favorable to the plaintiffs as the non-moving parties, that both defendants interfered or tried to interfere with this right and did so through threats, intimidation, or coercion.

There is ample evidence that both defendants attempted to stop the plaintiffs from enjoying their property by at least delaying or increasing the difficulty of using the property to construct a residence: the defendants challenged the plaintiffs’ building plans before the conservation commission on several occasions; appealed the plaintiffs’ building permit; sought multiple adjudicatory hearings with the Massachusetts Department of Environmental Protection; sought board of health hearings on the plaintiffs’ septic plans; caused the removal of the

plaintiffs' property line survey stakes multiple times; and interrogated, berated, and harassed the plaintiffs' project workers from the defendants' property line or public areas on multiple occasions. There was additional evidence of Moss' interference: she attempted to stop the plaintiffs' workers from fixing a security fence by accusing them of trespassing, and yelled at the plaintiff's utility workers and attempted to stop the installation of an electrical transformer.

The defendants nevertheless argue that these actions were not "threats, intimidation, or coercion," and thus cannot constitute evidence of a civil rights violation by either defendant. This does not comport with case law interpreting coercion to include a combination of physical interactions and use of regulatory obstruction methods to interfere with property development. See e.g. *Bell v. Mazza*, 394 Mass. 176, 179-180, 184 (1985) (plaintiffs sufficiently stated civil rights claim where defendant neighbors warned plaintiff they "would do 'anything,' 'at any cost'" to prevent construction of tennis court, then wrote letters, called police and fire departments, formed association to prevent construction, threatened to sue construction contractor, attempted to interfere with utility company's providing of electrical service to plaintiffs, and in one instance physically blocked plaintiff's movements); *Ayasli v. Armstrong*, 56 Mass. App. Ct. 740, 753 (2002) (sufficient evidence of civil rights claim where plaintiffs testified they felt "threatened and intimidated" by defendants statements that "they would do everything they could to stop any further work" on plaintiffs' house, pursuit of regulatory conditions that "would have severely limited [plaintiffs'] use of the renovated house, placement of a camera directed at plaintiffs' home during renovation, berating of plaintiffs' contractor as "a dupe" and appeal of building permit, occasional allowance of defendants' dogs across plaintiffs' property line, and hitting of golf balls across plaintiffs' property at times).

Accordingly, there is ample evidence, taken in a light most favorable to the plaintiffs as the non-moving party, that both defendants' actions met the second and third elements of a civil rights claim. As such the defendants' motion must be **DENIED** as to this claim.

2. *Trespass*

The defendants also argue that there was insufficient evidence to prove that either Moss or Haydock trespassed on the plaintiffs' property. As discussed in detail above with respect to the defendants' motion for new trial, there was sufficient evidence, taken in a light most favorable to the plaintiffs, for the jury to find that Haydock had entered the property to confront a contractor by the pool without any permission from the plaintiffs or their contractor, and that Moss had been observed walking out of an area of the property at night in a manner that permitted the jury to infer she had been intentionally physically present on the property moments earlier without permission. Additionally, there was circumstantial evidence of property damage on the premises which, taken in a light most favorable to the plaintiffs, the jury could have credited to infer that one or both defendants entered or directed others to enter the property to effectuate (including the repeated removal of survey stakes, damage to a door, a hole in a fence, and a float placed in the pool). The jury was entitled to credit the plaintiffs' testimony regarding the physical and psychological impact of these intrusions, and find that the trespass had resulted in harm.

In short, there was ample evidence, taken in a light most favorable to the plaintiffs, establishing that each defendant had trespassed on at least one occasion. The defendants' motion must be **DENIED** as to this claim.

3. *Intentional Interference with Contractual Relations*

The defendants argue that the plaintiffs failed to prove that the defendants' conduct intentionally interfered with the plaintiffs' contractual relations in building their home, because the plaintiffs did not show that their contractor breached his contract, that the defendants prevented the plaintiffs from performing or caused them to breach, or that the defendants caused the plaintiffs' performance to be more burdensome or expensive.

As discussed above with respect to the defendants' motion for new trial, there is ample evidence, taken in a light most favorable to the plaintiffs, that the contract cost to complete the construction project increased from between four and six million dollars to in excess of ten million dollars largely as a result of the defendants' intentional interference. This is sufficient to establish that the plaintiffs' performance became more expensive, and thus sufficient to prove that element of the claim.⁴ See *Shafir v. Steele*, 431 Mass. 365, 368-369 (2000). Further, there is ample evidence, taken in a light most favorable to the plaintiffs, that the defendants had improper means and motive for their interference (including their repeated regulatory obstructionism, berating of workers on site, and other conduct detailed above), and that such interference was directed at the plaintiffs themselves due to personal animus (including, *inter alia*, Moss' statement that she planned to "torture" the plaintiffs). For those reasons, the defendants' motion must be **DENIED** as to this claim.

D. Motion to Alter or Amend the Judgment

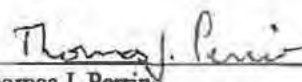
⁴ The defendants argue in their motion for new trial that the plaintiffs' theory of intentional interference with contractual relations changed during the course of trial and that rulings made on this claim significantly prejudicial the defendants. However, at the argument on the defendant's motion for a direct verdict, the issues of the nature of the claim were squarely presented. The court's written decision denying the defendants motion for directed verdict outlines that the plaintiff's complaint set forth facts for the claim, defendants' characterization of the claim notwithstanding. While the complaint does not use the phrase "more expensive or burdensome," the complaint does plainly allege the plaintiffs suffered economic harm by delays, additional work performed by their contractor, and significant additional costs to the project. Accordingly, this basis alone is sufficient to conclude that the plaintiffs met their burden to prove intentional interference with contractual relations.

The plaintiffs move pursuant to Mass. R. Civ. P. 59 (e) to alter or amend the judgments entered at trial, such that the single damages awarded against each defendant are entered as jointly and severally, rather than merely severally. The plaintiffs argue that the several damages award arose from the alterations of the verdict slip in response to the intervention of the insurance carriers with regards to coverage apportionment, and that it was legal error to award several damages only where the jury found both defendants liable on each claim. The court credits the defendants' argument that the harm from the defendants' conduct could be and was separated by the jury, and also that the plaintiffs submitted their own verdict slip with an allocation of damages for each defendant, and did not object to the inclusion of same on the defendants' verdict slip.⁵ Accordingly, the plaintiffs' motion must be **DENIED**.

ORDER

It is hereby **ORDERED** that the defendants' motion for new trial (Paper 229), motion to stay the permanent injunction (Paper 230), and motion for judgment notwithstanding the verdict (Paper 231), and the plaintiffs' motion to alter or amend the judgment (Paper 232), be **DENIED**.

So ordered,


Thomas J. Perrin
Justice of the Superior Court

DATE: January 2, 2025

⁵ The court does not reach the plaintiffs' additional argument, raised for the first time in a reply memorandum, that the defendants engaged in a common enterprise and are vicariously liable for their spouse's wrongdoing that they knew or reasonable should have known about.

#1

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, SS.

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO. *B15-938*

MARGARET J. REICHENBACH)
and JOHN REICHENBACH)
Plaintiff)

v)

TIMOTHY G. HAYDOCK)
and BARBARA MOSS)
Defendants)

BRISTOL DISTRICT COURT
CLERK

OCT - 1 2015

MASS. CIVIL RIGHTS
COMMISSION

COMPLAINT

INTRODUCTION

This Complaint alleges violations of the Massachusetts Civil Rights Act, M.G.L. c. 12, Section 11I and violations of Articles I, X and XII of the Massachusetts Declaration of Rights, trespass, and tortious interference with contractual/advantageous relationships. Plaintiffs Margaret J. Reichenbach and her husband, John Reichenbach, allege that Defendants Timothy G. Haydock and Barbara Moss have by threats, intimidation and coercion interfered with the Reichenbachs' right to use, improve and enjoy their land and new home. The Defendants have undertaken a relentless campaign to hinder and/or delay the Plaintiffs from building a new home on their land. Defendants have threatened to damage their reputation and finances; trespassed; barred the Plaintiffs from using the only existing access to their property; attempted to prevent them from constructing an alternate access; falsely imprisoned Plaintiffs' vendors and contractors; engaged in abusive conduct and language directed toward contractors and others working at the site; monitored the Plaintiffs' Property with cameras; interrupted construction by talking at and to workers; attempted to force the Town of Dartmouth to require Plaintiffs to obtain a soil removal

permit which is only required of gravel pits; interfered in the Plaintiffs' FEMA LOMR process; and have commenced and maintained a constant stream of legal challenges which lacked any reasonable factual support and/or any arguable basis in law.

THE PARTIES

1. The Plaintiffs, Margaret J. Reichenbach and John Reichenbach (the "Reichenbachs"), husband and wife, reside at 256 Highland Street, West Newton, MA 02465. They own a new home which was built for them at 29 Mattarest Lane, South Dartmouth, MA 02748.
2. Defendants Timothy G. Haydock and Barbara Moss reside at 28 Mattarest Lane, South Dartmouth, MA 02748, which property is owned by Defendant Haydock.
3. Defendant Haydock has a partial ownership interest in 30 Mattarest Lane, South Dartmouth, MA 02748 which abuts the Reichenbachs' property at 29 Mattarest Lane. (See, Paragraph 6 below.) At all times material hereto, Defendant Moss has acted in concert with Mr. Haydock.

FACTUAL BACKGROUND (CHRONOLOGICAL)

Property Interests

4. Clara Frothingham owned a 17 acre parcel of land on the waterfront in the Nonquitt Community of South Dartmouth, MA, between 1921 and 1976. Nonquitt is located on the shores of Buzzards Bay and the homes in Nonquitt serve mostly as vacation homes. A site plan depicting the 17-acre Frothingham parcel is attached hereto and incorporated herein by reference as Exhibit A. This land was subdivided into eight lots by her Estate in 1979. The various lots were conveyed to members of Clara Frothingham's family (the "Frothingham Family Compound"). The subdivision plan depicting the Frothingham

Family Compound is attached hereto and incorporated herein by reference as Exhibit B.

5. The Reichenbachs purchased the property located at 29 Mattarest Lane, Dartmouth, MA (hereinafter, the "Reichenbach Property") from Sheila S. Frothingham, Surviving Trustee of the Frothingham Family Holding Trust, on September 5, 2008 by deed recorded with the Bristol County (S.D.) Registry of Deeds (the "Registry of Deeds") in Book 9136, Page 224. The Reichenbach Property consists of approximately 1.5 acres fronting on Buzzards Bay and Mattarest Lane. At the time the Reichenbachs acquired the Reichenbach Property, various improvements, including a home and tennis court, were located on the Property. It has a rocky beach. The Reichenbachs purchased the property with the intention of building a new seasonal home for their family. Mr. Reichenbach had been living in Nonquitt during the summers since he was a young man. The Reichenbachs own and have lived at property located at 12 Mattarest Lane during the summers and holidays since 2007. The new house was intended to replace the property at 12 Mattarest Lane for their family's seasonal, weekend and holiday use.
6. Defendant Haydock, owns property located at 28 Mattarest Lane, Dartmouth, MA (the "Haydock Property") which he acquired from William Rotch Frothingham by deed dated June 10, 1991, recorded in the Registry of Deeds in Book 2650, Page 254. The Haydock Property is one of the eight lots in the Frothingham Family Compound created by the subdivision in 1979, as described in Paragraph 4 hereinabove. Haydock and his companion, Defendant Moss, have resided at the Haydock Property for many years. Until recently, Defendant Haydock worked part time in New Bedford, Massachusetts. Defendant Moss has no recorded legal ownership interest in the Haydock Property. The Haydock Property is near, but not adjacent to, the Reichenbach Property.
7. Defendant Haydock has a one-sixth ownership interest in the waterfront property located at 30 Mattarest Lane, South Dartmouth, MA (the "Haydock Family Property"). The Haydock Family Property is immediately to the east of the Haydock Property, abuts

Buzzards Bay and is immediately to the north of and is adjacent to the Reichenbach Property. Defendant Moss has no recorded legal ownership interest in the Haydock Family Property. The Haydock Family Property is occasionally used by family members for vacation and is occasionally rented to third parties. It is used almost exclusively during the summer months. A site plan depicting the three properties is attached hereto and incorporated herein by reference as Exhibit C.

8. On information and belief, although Haydock, as a family member, had at least an oral right of first refusal on the Reichenbach property, he did not exercise it before the Reichenbachs purchased the Reichenbach Property. Haydock and/or Moss unsuccessfully attempted to prevent Frothingham from selling the Property to the Reichenbachs and urged that the Property be “kept in the family.” Haydock has always regarded the Reichenbach Property as part of his “family compound”, and part of his backyard.
9. When the Reichenbach Property was owned by a member of the Frothingham family, family members, including Defendants Haydock and Moss, had permission to use the tennis court and to access the beach on the ocean via a stairway located on the Reichenbach Property. After the Reichenbachs acquired the property from Frothingham, those family members were no longer permitted to freely access the beach via the stairway or to freely use the tennis court once construction commenced. The Defendants still had alternate access to the beach through an easement through the Reichenbach Property and the Haydock Family Property (the “Ocean Access Easement”) and also by means of a separate entrance through the Haydock Family Property.
10. Prior to the Reichenbachs’ acquisition, the previous owners of the Reichenbach Property benefitted from an easement to use the driveway passing through the Haydock Family Property to the Reichenbach Property (the “Driveway Easement”). The Driveway Easement was the only access to the Reichenbach Property before the Reichenbachs

purchased the property. The Driveway Easement is recorded in the Registry of Deeds in Book 1820, Page 740, and was granted only to William Frothingham and his heirs. A copy of the Driveway Easement is attached hereto and incorporated herein by reference as Exhibit D1. A site plan showing the Driveway Easement is attached hereto and incorporated by reference as Exhibit D2. The Driveway Easement did not, by right, benefit the Reichenbachs as they were not heirs of William Frothingham. In his attempt to block the sale to the Reichenbachs, Defendant Haydock refused to grant a driveway easement to the Reichenbachs when the Reichenbachs were negotiating to purchase the Property.

11. On or about June 13, 2009, Haydock and the other owners of the Haydock Family Property executed a Grant of (temporary) License, enabling the Reichenbachs to use the driveway on the Haydock Family Property to access the Reichenbach Property. A copy of said Grant of License is attached hereto and incorporated herein by reference as Exhibit E. Said Grant of License was terminable on thirty days' notice, which Haydock terminated on January 25, 2011, when the Reichenbachs obtained a building permit to commence initial preparations to construct their new home, as detailed in Paragraph 24 below.
12. Shortly after Defendants revoked the License, they attempted to stop the Reichenbachs from building an alternate driveway by requesting an order from the MassDEP preventing its construction. The request was baseless as the property involved was completely out of the areas over which Mass DEP and the Dartmouth Conservation Commission had jurisdiction. Had the Defendants been successful, they would have landlocked the Reichenbach's property. (See, Letter of Luke Legere dated May 11, 2011 together with Petitioner's Motion Requesting an Order Prohibiting Work Approved by the permit under Appeal attached hereto and incorporated herein by reference as Exhibit F. The Decision of Mass DEP denying the requested stop work order dated May 17, 2011 is attached hereto and incorporated herein by reference as Exhibit G.

Conservation Commission Hearings, Decisions and Appeals Therefrom

13. On August 13, 2009, the Reichenbachs filed a Request for Determination of Applicability under the Wetlands Protection Act (the "Act") and the Dartmouth Wetlands Protection Bylaw (the "Bylaw") with the Dartmouth Conservation Commission seeking approval of the delineation of Coastal Bank and the Coastal Floodplain.
14. The Conservation Commission issued a positive Determination of Applicability approving the delineations of the Coastal Bank and Coastal Floodplain on September 3, 2009.
15. Commencing in the summer of 2009, the Reichenbachs discussed their plans and their future neighbors' questions for several months in great detail and in good faith.
16. On September 25, 2009, the Reichenbachs filed a Notice of Intent with the Dartmouth Conservation Commission seeking permission to demolish the existing house on the Reichenbach Property and to construct a new home, swimming pool, retaining walls, and associated grading and landscaping.
17. Several Conservation Commission hearings were held at which Defendants Haydock and Moss voiced their objections to the Reichenbachs' home building plans. Hearing dates were postponed in order to evaluate Defendants' objections and to incorporate changes in the site plan to accommodate neighbors' concerns in the hope of securing the Defendants' support and the approval of the Conservation Commission. See, Minutes of the Conservation Committee meetings attached hereto and incorporated hereby by reference as Exhibit H. These changes included locating the house 15 feet further away (west) from the water, lowering the retaining walls, lowering the proposed elevation of the house, and enhanced drainage facilities. The changes were not required by law.

18. Also during that time, the Reichenbachs negotiated with the Defendants for the right to continue to use the Driveway Easement. The plan the Reichenbachs submitted as consideration would have solved chronic water flow problems impacting the Haydock Family Property at substantial engineering and construction costs to the Reichenbachs. The plan would also have spared fifteen trees. The Defendants and the Haydock Family rejected these plans because they insisted on receiving \$180,000 which the Reichenbachs were not willing to pay in addition to their solving the Defendants' separate water problems and regrading the property.
19. On April 29, 2010, the Dartmouth Conservation Commission issued an Order of Conditions which permitted the construction, *inter alia*, of the Reichenbach house. A copy of said Order of Conditions is attached hereto and incorporated herein by reference as Exhibit I. The Defendants opposed the issuance of the Order of Conditions, notwithstanding the changes the Reichenbachs made at Defendants' request. The Order of Conditions was not appealed to the Massachusetts Department of Environmental Protection ("MassDEP") under the Act or to the Superior Court under the local Bylaw.
20. On October 26, 2010, the Reichenbachs filed an application for an Amended Order of Conditions with the Dartmouth Conservation Commission to add an aesthetic curve to the retaining wall and other minor changes.
21. The Conservation Commission held two hearings on the request for Amended Order of Conditions between October 26, 2010 and January 11, 2011. Defendants Haydock and Moss objected in person and in writing to the changes and repeatedly attempted to raise time-barred issues relating to the Coastal Bank adopted in the Original Order of Conditions, as was approved in the Determination of Applicability issued by the Dartmouth Conservation Commission on September 3, 2009.

22. After a meeting with the Dartmouth Conservation Commission on January 11, 2011, Defendant Moss said to Mrs. Reichenbach that she was going to ruin the Reichenbachs' reputation in the Nonquitt community and cost them an enormous amount of money because "they" (the Defendants) were not going to drop this matter. Defendant Moss repeated this threat to Mr. Reichenbach several times thereafter. Defendant Haydock also threatened Mr. Reichenbach by saying that he was going to plant a row of trees along the border shared by the Reichenbach and Haydock Family Properties which would block the Reichenbachs' water view to the North. The Reichenbach Property had no water view impacts on the Haydock Property or Haydock Family Property. These threats were the Defendants' first direct articulations of their scheme to coerce, intimidate and harass the Reichenbachs to prevent or delay them from building their house and enjoying their property in violation of Massachusetts law.
23. The Dartmouth Conservation Commission summarily dismissed the Defendants' objections by a unanimous vote. On January 13, 2011, an Amended Order of Conditions was issued by the Dartmouth Conservation Commission.
24. On January 25, 2011, Paul Murphy, Director of Inspectional Services for the Town of Dartmouth (the "Director of Inspectional Services"), issued a Building Permit to the Reichenbachs to construct a retaining wall around a portion of the Reichenbach land which was needed to prepare the site for construction. A copy of said Building Permit is attached hereto and incorporated herein by reference as Exhibit J.
25. Also, on January 25, 2011, Samuel Haydock, one of the owners of the Haydock Family Property, the brother of Defendant Haydock and who for a short time served as Defendant Haydock's representative, appealed the issuance of the Amended Order of Conditions to MassDEP on behalf of the Defendants and other residents on the grounds, *inter alia*, that the requested changes would have a detrimental impact on the Coastal Bank (the "First DEP Appeal"). A copy of Samuel Haydock's Request for a Superseding

Amended Order of Conditions is attached hereto and incorporated herein by reference as Exhibit K. The Defendants and other residents did not appeal the Amended Order of Conditions under the local Bylaw to the Superior Court.

26. On January 25, 2011, Attorney John C. Bentley, on behalf Defendant Haydock and the other owners of the Haydock Family Property, sent a letter to Reichenbach revoking the Grant of License to use the driveway located on the Haydock Family Property. Said letter also demanded that the Reichenbachs “surrender all use of the driveway, utility pole, overhead utilities and underground utilities....” A copy of Attorney Bentley’s letter is attached hereto and incorporated herein as Exhibit L. A Revocation and Termination of License was recorded with the Registry of Deeds on March 11, 2011 in Book 10013, Page 78. A copy of said Revocation is attached hereto and incorporated herein by reference as Exhibit M.
27. As a result, Reichenbachs, their family, contractors, subcontractors and vendors had no access to the Reichenbach Property. As a result of the License termination, the Reichenbachs were forced to remove numerous trees and construct a parallel driveway less than 15 feet from the Haydock Family Property driveway to provide access to their Property, at a significant cost which would have otherwise been unnecessary. They were also required to move utilities at additional otherwise unnecessary expense.
28. On February 23, 2011, the MassDEP conducted an on-site meeting and inspection of the Reichenbach Property as part of the appeal process of the Amended Order of Conditions. At that meeting, Thomas W. Hardman, Reichenbachs’ land surveyor, drew the attention of the MassDEP Senior Wetlands Analyst, Richard Keller, P.E., to the fact that the Defendants Haydock and Moss and his siblings had caused the installation of a permanent stair system in the Coastal Bank on the Haydock Family Property and had cleared away a large area of vegetation partly on the Reichenbach Property. After the meeting, Defendant Moss admitted to Mr. Reichenbach that she knew they should not

have done it. This was destruction of the very same Coastal Bank the Defendants purported to be protecting in their objections to the Dartmouth Conservation Commission and in the First DEP Appeal.

29. The Dartmouth Conservation Commission commenced an investigation into the Defendants' destruction of the Coastal Bank. The Conservation Commission determined that excavation of the Coastal Bank had occurred and that a concrete, stone and wooden stair system was installed in the Coastal Bank by Defendant Haydock and vegetation removed in the summer of 2010 without the legally required filing a Notice of Intent. See, Enforcement Order issued by the Dartmouth Conservation Commission dated March 24, 2011, requiring the filing of a Notice of Intent for full restoration attached hereto and incorporated herein by reference as Exhibit N, and photographs of the stair system that was the subject of the Conservation Commission's Enforcement Order against the owners of the Haydock Family Property, including Defendant Haydock, attached hereto and incorporated herein by reference as Exhibit O.
30. Defendant Haydock's destruction of the Coastal Bank occurred at approximately the same time as he and Defendant Moss were using the same Coastal Bank in their attempts to stop the Reichenbachs' home from being built. In the process of constructing the stair system in the Coastal Bank, Defendants trespassed on the Reichenbach Property and damaged their vegetation. To this date, Defendant Haydock and his siblings have not complied with the Order of Conditions. Neither the Order of Conditions nor a Certificate of Compliance have been filed or recorded, as required by law. The Coastal Bank has not been restored. (See, Photographs taken on September 29, 2015, attached hereto and incorporated herein by reference as Exhibit P.)
31. On February 24, 2011, Defendant Haydock appealed the issuance of the Building Permit for the construction of the retaining wall to the Dartmouth Zoning Board of Appeals.

32. In February 2011, Defendant Moss told Mr. Reichenbach, *inter alia*, that the development was “too much for this community;” that the swimming pool was a hazard to Buzzards Bay and the Coastal Bank; and that she had spent thousands of hours on this project “without being paid”. Mr. Reichenbach understood the reference to “without being paid” as an offer to withdraw her opposition in exchange for money, especially since she had repeatedly asked to be the Reichenbachs’ interior decorator, which requests the Reichenbachs repeatedly refused. At about the same time, Defendant Haydock also made the statement that he would not like the view of the Reichenbachs’ new home from his boat.
33. On March 24, 2011, the MassDEP issued a Superseding Amended Order of Conditions - Affirmation in the Reichenbachs’ favor on the First DEP Appeal. See, Superseding Amended Order of Conditions dated March 24, 2011 attached hereto and incorporated herein as Exhibit Q.
34. In the late winter or early spring of 2011, at the request of the Reichenbachs, their land surveyor, Thomas W. Hardman, installed wooden stakes along the boundary lines of the Reichenbach Property. On information and belief, the Defendants removed the wooden stakes along the boundary line between the Reichenbach Property and the Haydock Family Property shortly after they were installed. This process of installation and removal occurred several times. The Reichenbachs then had Mr. Hardman install ten concrete boundary posts at the cost of \$400 each. None of the remaining wooden stakes were removed after the concrete posts were installed.
35. After the wooden stakes were installed, the Defendants installed their own metal stakes in the middle of the Ocean Access Easement along the boundary line between the Reichenbach Property and the Haydock Family Property and attached a line of rope along each stake. See, Photographs of the stakes and rope attached hereto and incorporated herein by reference as Exhibit R. A copy of said ocean access easement is attached

hereto and incorporated by reference as Exhibit S. By installing the stakes and ropes, the Defendants effectively forced anyone who has the right to use the Ocean Access Easement to use only the five feet on the Reichenbach Property.

36. On April 7, 2011, Defendant Haydock and others filed a Notice of Claim for Adjudicatory Hearing appealing the issuance of the Superseding Amended Order of Conditions on March 24, 2011. See, Notice of Claim attached hereto and incorporated herein by reference as Exhibit T. Said appeal by Defendants was devoid of any reasonable factual support or any arguable basis in law.
37. As part of the home construction project, Oliver Tree Service was hired by the Reichenbachs' landscape designer, Nan Sinton, to remove several trees on the Reichenbach Property. On April 14, 2011, Oliver Tree Service had left a vehicle parked outside the Reichenbach Property on Mattarest Lane with the prior permission of Defendant Moss for whom Oliver had done other work. The truck was not blocking access to any of the properties on Mattarest Lane. Defendant Haydock called Mr. Oliver on the telephone late at night to complain about the Oliver truck. Nan Sinton agreed to meet with Defendant Haydock and Mr. Oliver at 6:00 a.m. on April 15, 2011 at Mattarest Lane. Prior to the meeting, Defendant Haydock blocked Mattarest Lane with his vehicle, thereby preventing the Oliver truck from leaving Mattarest Lane. (See, Email of Nan Sinton of 4/25/2011 together with photographs attached thereto and incorporated herein by reference as Exhibit U.) During the meeting, Defendants Haydock and Moss verbally abused Oliver about the truck.
38. On April 26, 2011, the Dartmouth Zoning Board of Appeals unanimously voted to uphold the Director of Inspectional Services' issuance of the building permit to construct the retaining wall. See, Zoning Board of Appeals Decision dated April 26, 2011, a copy of which is attached hereto and incorporated herein by reference as Exhibit V. Said Appeal by Defendants was devoid of any reasonable factual support and/or any arguable

basis in law.

39. Work on the retaining wall began in September 2011, after the Decision of the Zoning Board of Appeals in favor of the Reichenbachs became final.
40. From the beginning of the project, the Reichenbach Property was surrounded by a security fence. Also, from the beginning of the project to the end, there were "NO TRESPASS", "PRIVATE PROPERTY – DO NOT ENTER" and "DANGER – CONSTRUCTION SITE – DO NOT GO BEYOND THIS FENCE" signs in place on the fence in various prominent locations. Defendant Moss was repeatedly denied access to the work area on the Reichenbach Property. See, photographs of the fence and signs attached hereto and incorporated herein by reference as Exhibit W.
41. During the construction of the retaining walls, Defendant Moss made a practice of standing on the Sullivan property along the south side of the Reichenbach Property, often all day long, interrogating the workers, taking pictures, and offering her opinion that they were doing the work incorrectly or illegally. Defendant Moss threatened workers that they would be in trouble for doing their jobs. See, Photographs attached hereto and incorporated herein as Exhibit X. Neither Defendants Haydock nor Moss had a legal interest in the Sullivan Property.
42. Much of Defendants' abusive behavior related to the alleged blocking of access to the Haydock Family Property. The driveway to the Haydock Family Property is on the north side of the circle in Mattarest Lane. Access to the Haydock Family Property does not go through the circle. Further, construction workers sometimes parked on the south side of the circle which did not block access to the Haydock Family Property. No one occupied the Haydock Family Property during the construction process because it was used in the summer and construction was not allowed during the summer months in Nonquitt, except for painting and light interior work. Even if a vehicle parked in the road to the Haydock

Family Property, it would not have interfered with anyone as no one occupied the Haydock Family Property at that time. The Reichenbachs had and have a legal interest in that land on which the circle and road are located. The only purpose for the Defendants' difficult and abusive behavior regarding access was to harass the Reichenbachs' contractors, employees, and the Reichenbachs through them. There was always access for fire and emergency vehicles. They did not need to pass through the Mattarest Lane Circle to access the Haydock Family Property. (See photograph attached hereto and incorporated herein by reference as Exhibit Y.)

43. On or about April 25, 2011, Defendants Haydock and Moss filed a Petition with the Dartmouth Conservation Commission to revoke the Original Order of Conditions issued on April 29, 2010. The Petition was the fourth time Haydock and Moss objected to Plaintiffs' plans on the grounds that the Coastal Bank was incorrectly delineated. The Reichenbachs established that there was no error in the delineation of the Coastal Bank as alleged and that the Commission's Original Order of Conditions was binding for a three-year period absent a showing by the Defendants of fraud or a mutual mistake, which Defendants repeatedly failed even to attempt to do. The Dartmouth Conservation Commission summarily dismissed the Defendants Petition. See, Reichenbach's Opposition to Petition attached hereto and incorporated herein by reference as Exhibit Z, and the Minutes of the Dartmouth Conservation Commission meeting held on May 20, 2011 at which the Board voted against revoking the Original Order of Conditions attached hereto and incorporated herein by reference as Exhibit AA. Defendant's Petition to Revoke the Original Order of Conditions was devoid of any reasonable factual support or any arguable basis in law.
44. Prior to September, 2011, the Defendants prevailed upon the Dartmouth Board of Health to turn the Reichenbachs' new septic system approval process into a full Board meeting with opportunity for public participation. The septic system approval process in Dartmouth for new construction is normally an administrative matter to which abutters

and others are neither noticed nor invited to comment or object. At that meeting, the Defendants alleged there was too much ledge in the area and that the submitted percolation tests were incorrectly performed. The Reichenbachs had further percolation tests performed which results were identical to the previous results, which tests were witnessed by Board of Health staff in both instances.

45. Notwithstanding the facts that the original septic system designed for the Reichenbach Property did not require a waiver or variance and complied with all applicable local and state regulations, Defendant Haydock and a professional he retained filed written objections to the approval of the design.
46. The Board found that the system was designed in full compliance with state and local regulations and unanimously approved the Reichenbachs' septic system. (See, Copy of Board of Health Decision attached hereto and incorporated herein as Exhibit BB.) The Defendants' opposition to the septic system was devoid of any reasonable factual support or any arguable basis in law.
47. On September 21, 2011, the Defendants demanded that the Director of Inspectional Services and Christopher Michaud, the Health and Sanitary Inspector for the Town of Dartmouth, require the Reichenbachs to get a soil removal permit which to date Dartmouth had only required for gravel pit operations. This demand was rejected by the Town authorities.
48. On October 2, 2011, heavy rains and winds probably caused a small section of the security construction fence along the southern boundary between the Reichenbach and Sullivan properties to bend over in a southerly direction. The Reichenbachs had installed the security fence to prevent trespass onto their property and to prevent any accidental trespassing onto the Sullivan Property by construction workers. This land was not adjacent or even close to the Haydock Property or the Haydock Family Property. The

Haydock Family Property is on the Reichenbachs' northerly boundary. Upon arrival for work that day, Reichenbachs' contractor's employees noticed the leaning fence. Without leaving the Reichenbach Property, the construction crew attempted to pull the fence upright. Defendant Moss insisted they not touch it and that they were trespassing on Sullivan's property. Defendant Moss has no ownership interest in the Sullivan Property or the fence. She "ordered" them to stop the process of correcting the angle of the fence.

49. That morning, Defendant Moss called Michael O'Reilly, the Dartmouth Conservation Commission's Environmental Affairs Coordinator to protest the work. Mr. O'Reilly came to the Reichenbach Property to inspect the situation and declared that "everything was fine" and there was no trespass. Defendant Moss also called and complained to Lars Olson, the principal of the Reichenbachs' construction manager, Lars V. Olson Fine Home Building, Inc. (hereinafter referred to as "Olson"). Defendant Moss spent the entire day on the Sullivan property line taking pictures and directing workers to stop all work, and to stop repairing the fence. Defendant Haydock wrote a letter to the Conservation Commission asking for a stop work order. Haydock complained and asked for compensation for damages to vegetation on the Sullivan Property which he did not own. This fence repair did not involve the Haydock Property or the Haydock Family Property. The Director of Inspectional Services also visited the site and confirmed that proper procedures were being employed and that the retaining wall was being installed correctly.
50. On October 4, 2011, Defendant Moss called Richard Keller, P.E., Senior Environmental Analyst at the MassDEP Southeast Regional Office, and complained about "blatant destruction of coastal banks." Mr. Keller asked Mr. O'Reilly to inspect the property. Mr. O'Reilly confirmed that the work was in compliance with regulations after an inspection. When Mr. Keller told Defendant Moss that compliance was confirmed by the Dartmouth Conservation Commission, she said to Mr. Keller that she was going to "call her Congressman" to force MassDEP to stop the "blatant destruction of coastal banks." This

complaint by Defendant Moss was after the Defendants had caused very serious permanent destruction of this same Coastal Bank during the Summer of 2010. The Defendants' concern about the Coastal Bank was a disingenuous tactic in their overall strategy to stop or delay the Reichenbachs' home from being built. See, Email from Rebecca Cutting, Senior Counsel/Litigation of the MassDEP, dated October 5, 2011, attached hereto and incorporated herein by reference as Exhibit CC.

51. After a lengthy adjudicatory proceeding, on October 20, 2011, the Presiding Officer issued a Recommended Final Decision, adopted by the MassDEP Commissioner as the Final Decision on November 2, 2011, affirming the Superseding Amended Order of Conditions in favor of the Reichenbachs and rejecting all of the Defendants' claims. The Defendants, as in their unsuccessful April 25, 2011 petition to the Conservation Commission to revoke the Original Order of Conditions adopting the delineation of the Coastal Bank (described in Paragraph 43 above), failed in another collateral attack on an unappealed Order of Conditions as a matter of law. The claim that a new Notice of Intent was required instead of an Amended Order of Conditions was denied as "lacking sufficient evidentiary bases." The Presiding Officer ruled that the Defendants "failed to meet their burden of going forward, warranting the allowance of MassDEP's motion for directed verdict." The claim that the work would affect the stability of the Coastal Bank or affect the interests of flood control and storm damage prevention for work in Land Subject to Coastal Storm Flowage "warranted denial under a directed decision because the Defendants failed to provide evidence from a credible source and failed to provide competent evidence as its witnesses' testimony consisted of factually unsupported opinions and speculation." See, Recommended Final Decision and Final Decision attached hereto and incorporated herein by reference as Exhibit DD. The Decisions are evidence that the First DEP Appeal was devoid of any reasonable factual support or any arguable basis in law.
52. On a Saturday morning in the late winter or early spring of 2012 Dana Diggle, a driver

for Pontes Excavating, came to the Reichenbachs' property at 12 Mattarest Lane to remove a piece of equipment. Defendant Haydock blocked his path with his pickup truck. Defendant Haydock got out of his vehicle and lectured Mr. Diggle for approximately 20 minutes, complaining about Mr. Diggle's employers. Defendant Haydock prevented him from leaving and from doing his job. Mr. Diggle also repeatedly told Defendant Haydock that if he would move his vehicle, he would be on his way.

53. In March and April 2013, Defendant Moss complained to the Dartmouth Conservation Commission that the Reichenbachs had cut down without any permits their own trees on the Reichenbach Property. Mr. O'Reilly conducted a site visit and in an April 16, 2012 email to Defendant Moss explained that the cutting of the trees in question was allowed. (See, Email of Michael O'Reilly to Barbara Moss dated April 16, 2012, attached hereto and incorporated herein by reference as Exhibit EE.)
54. On or about May 2, 2013, Defendants Haydock and Moss began to store their garbage cans and recycling bins on the property line between the Haydock Family Property and the Reichenbach Property close to and within plain view of the Reichenbach home and all who lived in or visited the Reichenbach home. Prior thereto, the Defendants stored their garbage out of sight either adjacent to or in the Haydock Family Property garage. The garbage cans and recycling bins were and are moved back to the Haydock Family Property house where they can be more easily used, only when someone is in residence there. As recently as September 29, 2015, Defendants placed their trash containers partly on Plaintiffs' property at the boundary line. See, Photograph attached hereto and incorporated herein by reference as Exhibit FF.
55. On or about May 3, 2013, Defendant Haydock confronted Olson, coming onto the Reichenbach Property, yelling and swearing in front of several other workers about a vehicle parked on Mattarest Lane.

56. On May 3, 2013, Defendant Moss used her body to stop an L&S Industries concrete mixer truck from delivering to the construction site on the Reichenbach Property.
57. In June 2013, the Defendants engaged in a campaign of personal visits and complaints to the Dartmouth Conservation Commission about work at the Reichenbach Property not shown in detail on their Application for an Amended Order of Conditions. In an attempt to curtail the complaints and resolve the allegations with finality, the Commission required the Reichenbachs to file a Request for Determination of Applicability relating to work done at the Reichenbach home to decide whether a new Notice of Intent was needed. The work items were minor in nature, were considered “field adjustments,” which would be reported to the Conservation Commission when applying for a Certificate of Compliance at the conclusion of construction, as is the custom and practice in the industry. A copy of the Request for Determination of Applicability is attached hereto and incorporated hereby by reference as Exhibit GG.
58. On July 31, 2013, by unanimous vote, the Dartmouth Conservation Commission issued a Negative Determination of Applicability (“DOA”) concluding that the field work performed was part of and allowed under the Original and Superseding Amended Orders of Conditions and did not require the filing of a new Notice of Intent, as was demanded by Defendants. See copy of the July 13, 2013 Decision attached hereto and incorporated herein by reference as Exhibit HH.
59. On August 11, 2013, Defendant Haydock filed a Request for a Superseding DOA with the MassDEP (the “Second DEP Appeal”). The Defendant did not appeal the DOA under the local Wetlands Protection Bylaw to the Superior Court. Defendant Moss acted as Defendant Haydock’s representative and sole witness.
60. On October 2, 2013, MassDEP conducted a meeting on the Reichenbach Property as part of its evaluation of Defendant Haydock’s appeal of the Negative DOA. During the

meeting, Defendant Moss stated that she herself had performed a test pit on the Haydock Family Property immediately adjacent to the Reichenbach Property to attempt to demonstrate that a dry well approved and installed on the Reichenbach Property was installed in groundwater. Defendant Moss is not an approved soil evaluator under the MassDEP regulations. On information and belief, Defendants Haydock and Moss never caused a test pit to be dug at the location at that time or any time prior thereto. The Defendants did not produce any data. This false testimony was intended to halt or further delay the construction of the Reichenbach home.

61. On October 18, 2013, Defendant Moss wrote to MassDEP alleging that a grate for the catch basin that was installed in the driveway of the Reichenbach Property was supposed to be a 24 inch square and was only a 12 inch square "at best." The Reichenbachs' land surveyor, Thomas W. Hardman, measured and confirmed that the grate was a 24 inch square. The catch basin is located on the Reichenbach Property out of the Conservation Commission's jurisdiction.
62. In late October 2013, for two hours, Defendant Moss stopped Nstar workers from installing an essential electric transformer on the Reichenbach Property until a supervisor came to the site to listen to her challenge. She confronted the NStar supervisor, but he refused her stop work demand.
63. On December 12, 2013, MassDEP issued a Superseding Negative DOA affirming the DOA by the Conservation Commission in favor of the Reichenbachs. See, Superseding Determination of Applicability issued by Tena Davies of the MassDEP - Southeast Regional Office dated December 13, 2013, attached hereto and incorporated herein by reference as Exhibit II.
64. On January 2, 2014, Defendant Haydock filed a Notice of Claim for Adjudicatory Hearing appealing the December 12, 2013 Superseding DOA. See Notice of Claim

attached hereto and incorporated herein by reference as Exhibit JJ. The appeal was filed by Defendant Haydock. Defendant Moss filed an appearance in this matter and acted as Defendant Haydock's representative. She is not an attorney. Nor is she an environmental professional.

65. After a pre-hearing telephone conference held on February 6, 2014 with the MassDEP Presiding Officer, the Presiding Officer concluded that only two issues were properly before the DEP for adjudication: (1) whether the DEP properly determined that the proposed work for the installation of the irrigation pump chamber would not fill, remove, dredge or alter land subject to coastal storm flowage and, therefore, no Notice of Intent was required, and (2) whether Haydock had standing.
66. On February 19, 2014, Defendants Haydock and Moss were apprehended trespassing at night on the Reichenbach Property by a Nonquitt security guard. (See, Statement of John Honohan attached hereto and incorporated herein by reference as Exhibit KK. See Statement of Constable Richard Moniz attached hereto and incorporated herein by reference as Exhibit LL.) Also, see Photograph of area of trespass attached hereto and incorporated herein by reference as Exhibit MM. Defendant Moss trespassed upon the Reichenbach Property on multiple additional occasions.
67. In April 2014, a Frades Disposal truck driver had mistakenly driven down the Haydock Family Property Driveway. As he attempted to leave the Haydock Family Property Driveway, Defendant Moss stood in front of his truck with outstretched arms preventing him from leaving. Andrew Dearden, an employee of Olson, was present and spoke with Defendant Moss, who continued yelling at him and at the truck driver. Defendant Moss called the police and would not let the truck leave until the police came and took a report.
68. In the summer of 2014, Marc Leclair, who was a painter for Olson, was driving along Mattarest Lane to go to work at the Reichenbach Property. Defendant Haydock blocked

Leclair's car with his truck, preventing Leclair from going to work. Haydock told Leclair that Andrew Dearden "must be on drugs" and that Olson was "useless".

69. During the summer of 2014, Defendants Haydock and Moss caused the Nonquitt Association to require the Reichenbachs to stop work during the summer months, even though the nature and extent of the work being performed at that time was permitted by the Nonquitt Association informal rules and regulations.
70. After reviewing all the written pre-filed testimony and Motions for Directed Decision, in a Recommended Final Decision issued on June 20, 2014, the Presiding Officer held that Haydock did not present any credible evidence from a competent source and could imagine no evidence that could be presented that would show that the underground pump chamber in question could in any way affect wave action or the Coastal Bank. The Presiding Officer also ruled that Defendant Haydock had no legal standing in this matter because he did not provide factual support that he was aggrieved. See, Recommended Final Decision dated June 20, 2014, attached hereto and incorporated herein by reference as Exhibit NN. The Haydock Second DEP Appeal was devoid of any reasonable factual support or any arguable basis in law.
71. On June 26, 2014, the MassDEP Commissioner issued a Final Decision adopting the Recommended Final Decision of the Presiding Officer. A copy of the Final Decision is attached hereto and incorporated herein by reference as Exhibit OO.
72. On July 7, 2014, Defendant Haydock by Defendant Moss filed a Request for Reconsideration of the Final Decision, which was opposed by Mrs. Reichenbach and the MassDEP.
73. On September 30, 2014, the Presiding Officer issued a Recommended Final Decision on Reconsideration. She recommended denial of the motion for reiterating arguments

covered in the Final Decision, and addressed and rejected other “non-compliant” issues alleged by Defendant Haydock. A copy of the Recommended Final Decision on Reconsideration is attached hereto and incorporated herein by reference as Exhibit PP.

74. The Request for Reconsideration was yet another attempt to frustrate and impose additional costs on the Reichenbach home building project and interfered with the Reichenbachs’ right to use, improve and enjoy their property. Defendant Haydock’s Request for Reconsideration was devoid of any reasonable factual support or any arguable basis in law.
75. On October 24, 2014, Andrew Dearden, an employee of Olson, was abused by Defendant Haydock who was screaming, yelling and swearing at him and accusing somebody of having broken a tree branch, which in fact came down in a violent storm the preceding evening.
76. On October 28, 2014, David W. Cash, Commissioner of the Boston Office of Appeals and Dispute Resolution of the DEP issued a final Decision denying Haydock’s Request for Reconsideration of the DEP’s June 26, 2014 Final Decision. See, DEP Denial attached hereto and incorporated herein by reference as Exhibit QQ. The Request for Reconsideration was yet another attempt to frustrate and impose additional costs on the Reichenbach home building project and interfered with the Reichenbachs’ right to use, improve and enjoy their property. Haydock’s Request for Reconsideration was devoid of any reasonable factual support or any arguable basis in law.
77. On November 11, 2014, Defendant Haydock filed a pro se Complaint with the Bristol County Superior Court appealing the MassDEP Commissioner’s Final Decision on the Superseding DOA. See, Copy of Complaint filed by Haydock attached hereto and incorporated herein by reference as Exhibit RR. This Superior Court appeal was and is devoid of any reasonable factual support or any arguable basis in law. It constitutes yet

another attempt to intimidate, threaten or coerce the Reichenbachs so that they cannot improve, use or enjoy their Property and to impose costs on the Reichenbach home building project.

78. On January 28, 2015, after a large evening snow storm, an employee of Olson noticed footprints going between the Haydock Family Property onto the Reichenbach Property and back. (See, photographs attached hereto and incorporated herein by reference as Exhibit SS.) No one was living at the Haydock Family Property at the time, but Defendants Haydock and Moss were caring for the Haydock Family Property at the time. Nonquitt is a gated community. The Reichenbach and Haydock Properties are two miles from the entrance gate on Smith Neck Road. Very few people live in Nonquitt in the winter months.
79. Throughout the entire project, Defendant Moss was a constant presence and would lurk on the property lines separating the Haydock Family Property and the Reichenbach Property and Sullivan Property/Reichenbach Properties taking photographs and/or videos, talking on the phone, demanding information of workers and town employees on site, telling the workers they were acting illegally, ordering them to stop work and casting insults about their employers or co-workers. Defendant Moss created a hostile work environment for project workers and town employees and made them extremely uneasy, demeaned them and made to feel as though their privacy was invaded. Her behavior caused substantial delays in the performance of their work. Her behavior caused strains in the relations between Olson and some of his employees and subcontractors' employees.
80. Matt Swimm, an employee of Olson, was uncomfortable with the constant presence of Moss and by the Defendants' behaviors. The constant questioning by Defendant Moss took Mr. Swimm from his duties and he would fall behind and feel pressured that he was not getting his work done. Defendant Moss would repeatedly come onto the Reichenbach Property to lodge complaints to or ask questions of Mr. Swimm. Mr. Swimm would ask

her to leave because she was not allowed on the Reichenbach Property. The behavior of the Defendants which created the uncomfortable work conditions was a contributing factor when Mr. Swimm sought and obtained employment elsewhere.

81. In April of 2014, Andrew Dearden was driving into work. As he was coming around the bend on Mattarest Lane, Defendants Haydock and Moss were walking in the road. Mr. Dearden slowed down. The Defendants Haydock and Moss stood in the middle of the road and stopped Mr. Dearden from continuing. Both Defendants yelled at him stating that this was "their road" and that he was going too fast.
82. The Reichenbachs received approvals in the Original Order of Conditions and the Superseding Amended Order of Conditions to conduct minor regrading, filling and sodding work along the northern foundation. This work was completed to an approved elevation in 2014. On February 27, 2014, the Reichenbachs filed an Application for a Letter of Map Revision ("LOMR") with the Federal Emergency Management Agency ("FEMA") to incorporate the finished elevation into a revised floodplain map. Without notice to the Reichenbachs, the Defendants repeatedly interfered with and delayed FEMA from issuing the LOMR to the Reichenbachs. The LOMR procedure is an engineering review process in which the Defendants had no legal standing to participate. In the communications with FEMA, its review engineer, and the local Environmental Affairs Coordinator and the Director of Inspectional Services, the Defendants made false factual allegations and assertions that unreasonably delayed the LOMR review process. According to FEMA, the normal processing time for a LOMR is four to six weeks. Ten months after the application, on December 9, 2014, FEMA issued a LOMR to the Reichenbachs. The Defendants communications with FEMA and others were devoid of any reasonable factual support or any arguable basis in law and were intended to interfere with the Reichenbachs' rights to develop and enjoy their property.
83. The Reichenbachs received a temporary Certificate of Occupancy on January 22, 2014

and a final Certificate of Occupancy on June 6, 2014.

COUNT I

CIVIL RIGHTS

Violation of M.G.L., Chapter 12 section H and I and
Articles I, X and XII of the Massachusetts Declaration of Rights

84. Plaintiffs repeat and reallege the averments stated in Paragraphs 1 through 83 hereinabove, as if fully set forth herein.
85. Plaintiffs have the right to possess, build on, use and enjoy their real property guaranteed to them as well as all Massachusetts citizens by Articles I, X and XII of the Massachusetts Declaration of Rights and M.G.L. Chapter 12 Sections 11H and 11I.
86. Defendants Haydock and Moss have violated the Reichenbachs' rights to build on, use and enjoy their real property in violation of the laws cited above by:
 - A. attempting to intimidate, threaten, abuse, harass and coerce the Reichenbachs, their contractor, vendors and delivery personnel;
 - B. executing as a joint venture a plan to make the Reichenbachs feel coerced, uncomfortable and unwelcome, and to believe that they would always face hostile actions which are expensive to defend against, such that they would abandon their plan to build, use and enjoy their home on Mattarest Lane and to prevent the Plaintiffs from enjoying their home and to cause them continual apprehension; and
 - C. instituting a succession of legal challenges to the Reichenbachs' home building plans that were devoid of any reasonable factual support and/or any arguable basis

in law for the purpose of preventing and delaying the Reichenbachs' home building plans.

87. Defendants' conduct has damaged the Reichenbachs by:
- A. delaying their home building project thereby depriving them of the use and enjoyment of their home;
 - B. causing them to incur increased construction costs;
 - C. causing them mental anguish and apprehension; and
 - D. causing them to incur significant and otherwise unnecessary legal and engineering fees.

COUNT II

TRESPASS

88. Plaintiffs repeat and reallege the averments stated in Paragraphs 1-12, 30, 34, 40, 61, 66, 78 and 80 hereinabove, as if fully set forth herein
89. Defendants Haydock and Moss have trespassed on the Reichenbach Property and in so doing have caused the Reichenbachs mental anguish, apprehension and damage.

COUNT III

TORTIOUS INTERFERENCE WITH CONTRACTUAL ADVANTAGEOUS RELATIONSHIPS

90. Plaintiffs repeat and reallege the averments stated in Paragraphs 1-12, 22, 27, 37, 41, 42, 43, 48, 49, 52, 55, 56, 61, 62, 67, 68, 69, 75, 79, 80 and 81 hereinabove, as if fully set forth herein.

91. Plaintiffs had a contract and business relationship with Lars V. Olson Fine Home Building, Inc, a third party, for the construction of a new home on their property at 29 Mattarest Lane, South Dartmouth, Massachusetts.
92. The Defendants knew of this contractual relationship.
93. The Defendants interfered with the relationship through improper motive and means, by:
 - A. their abuse of Lars Olson and his employees and contractors, suppliers and independent contractors to the project;
 - B. their harassment, false imprisonment, constant interruptions and surveillance of Lars Olson and his employees and contractors;
 - C. trespassing on the Reichenbach Property; and
 - D. through their ill will demonstrated by threats, statements and actions of the Defendants.
94. The Plaintiffs suffered economic harm as a direct result of the Defendants' conduct, including without limitation demonstrated by:
 - A. significant delays in the project;
 - B. additional work hours and expenses incurred by Lars Olson and his employees and associates spent dealing with the Defendants; and
 - C. significant additional costs to the project.

WHEREFORE, Plaintiffs hereby request that this Court:

- A. Award judgment to the Plaintiffs against Defendants, jointly and severally, on all counts of their Complaint in amounts which this Court feels just and proper.

- B. Enter judgment to the Plaintiffs against Defendants, jointly and severally, for such amount to be determined for:
- (1) legal, engineering, and construction costs incurred as a result of Defendants' wrongful conduct;
 - (2) loss of use and enjoyment of their home; and
 - (3) compensation for the mental anguish and apprehension Defendants have caused Mr. Reichenbach and Mrs. Reichenbach.
- C. Enter Judgment to the Plaintiffs against Defendants, jointly and severally, for damages resulting from Defendants' trespass on Plaintiffs' property, including security expenses and compensation for mental distress and apprehension.
- D. Judgment for damages sustained as a result of Defendants' interference with Plaintiffs' contractual relations with Lars V. Olson Fine Home Builders.
- E. Award Plaintiffs their costs and attorneys' fees incurred in bringing and prosecuting this action.
- F. Issue a permanent injunction ordering the Defendants to refrain from:
- i. Continuing to violate the Reichenbachs' civil rights;
 - ii. Trespassing on the Reichenbachs' Property;
 - iii. Harassing Plaintiffs, their family members, guests, employees, independent contractors and delivery people regarding access and parking, except when someone is interfering with direct access to the property in which they reside or own;
 - iv. Restraining the liberty and free movement of persons; and
 - v. Crossing over the beach on the Reichenbach Property.
- G. Grant Plaintiffs a real estate attachment on the Haydock Property to secure the Judgment awarded.
- H. Grant such other relief, including equitable relief, as the Court deems just and proper.

PLAINTIFF claims trial by jury on all issues so triable.

Plaintiffs, John Reichenbach and
Margaret Reichenbach

By their attorneys

Robert B. Feingold & Associates, P.C.

By: 
Robert B. Feingold, Esq. BBO# 161520
700 Pleasant Street, Suite 520
New Bedford, MA 02740
Tel. No. 508-999-1119
Email: bfeingold@rbflaw.net

Dated: October 1, 2015

In the Matter of:

John Reichenbach, et al. vs

Timothy Haydock, et al.

Trial Day 2

February 07, 2023

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1 Q. You did a project for a \$4 million
2 renovation in Wellesley, and that was the next
3 biggest you ever did?
4 A. Correct.
5 Q. And this project was -- ended up the
6 Reichenbachs' project ended up being 8.6
7 million, or thereabouts, correct?
8 A. But it wasn't planned to
9 Q. But was it \$8.6 million project at the
10 end?
11 A. It might have been at the end, yes.
12 Q. Do you have any reason to believe it
13 wasn't?
14 A. We weren't planning on having this
15 project when I was hired, I
16 Q. I'm just asking if you have an
17 understanding as to what the final
18 construction cost was of the project?
19 A. More or less.
20 Q. 8.6 million?
21 A. Could be.
22 Q. Close to 10,000 square feet of living
23 space; is that right?
24 A. That would be including the

1 A. That's what obviously transpired.
2 Q. So this and this was an
3 environmentally sensitive project; is that
4 safe to say?
5 A. I wouldn't
6 MS. BONNET HEBERT: Objection.
7 It calls for her to make
8
9 (Parties speaking simultaneously.)
10
11 THE COURT: Hang on.
12 MS. BONNET HEBERT: Objection,
13 Your Honor. It calls for her to
14 THE COURT: Overruled.
15
16 (Parties speaking simultaneously.)
17
18 MS. BONNET HEBERT: on
19 environmental issues.
20 A. I'm not qualified to answer the
21 question.
22 BY MR. ELDER:
23 Q. So you're not qualified to determine
24 whether this project would be considered

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1 basement.
2 MS. BONNET HEBERT: Objection.
3 BY MR. ELDER:
4 Q. And so that's much bigger than the
5 next largest project that you had ever had
6 experience with to that point, correct?
7 A. Close, but not I wouldn't say that
8 much larger.
9 Q. So were you aware that Lars Olson had
10 provided were you aware of Lars
11 Olson's first the amount of the first
12 estimate that he had provided to the
13 Plaintiffs?
14 A. We didn't I didn't see the first
15 estimate
16 Q. If I told you
17 A. until much later.
18 Q. If I told it was about \$4.2 million
19 A. That sounds about right
20 Q. Right, right, right.
21 A. Right.
22 Q. So Lars Olson's own estimate ended up
23 the house ended up being more than twice as
24 much; is that right?

1 environmentally sensitive from a design
2 standpoint?
3 A. That the question should be asked
4 to the engineer.
5 Q. So you're not qualified to answer
6 that? Okay.
7 You signed a contract with the
8 Reichenbachs, correct?
9 A. Yes.
10 Q. For design services?
11 A. Yes.
12 Q. Okay. And you were paid by the hour,
13 I think you testified?
14 A. Yes.
15 Q. And you never provided the
16 Reichenbachs with an estimate of anticipated
17 timetable for your services; is that
18 correct?
19 A. The understanding of the discussions
20 that we had initially were describing a
21 project, that it would the time of
22 construction would elapse two seasons of work
23 that's allowed in Nonquitt with breaks during
24 the summer.

In the Matter of:
John Reichenbach, et al. vs
Timothy Haydock, et al.

Trial Day 3
February 08, 2023

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1 not offering the testimony of a party
2 opponent. He's offering the testimony of his
3 wife.
4 THE COURT: What's the purpose
5 it's being offered for, Attorney Feingold?
6 MR. FEINGOLD: It's pivotal to
7 this case, Your Honor.
8 THE COURT: I know that. What
9 is it being offered for? If it's offered for
10 the truth of the matter, it's hearsay. If
11 it's offered for some other purpose, I need to
12 know.
13 MR. FEINGOLD: To show her
14 emotional state.
15 MS. ALLISON: It's not -- that's
16 not an exception, Your Honor.
17 THE COURT: Sustained.
18 BY MR. FEINGOLD:
19 **Q. Was your wife agitated?**
20 THE COURT: You can describe
21 your observations of your communication -- of
22 your wife.
23 A. My wife was very agitated.
24

1 BY MR. FEINGOLD:
2 **Q. Did Barbara Moss ever threaten you?**
3 A. Yes.
4 **Q. How many times?**
5 A. Five to six.
6 **Q. What did she say and when?**
7 A. The first time was in December 2010.
8 **Q. And where was that conversation?**
9 A. It would have been in Nonquitt or on
10 the phone.
11 **Q. And what do you remember?**
12 A. She basically said that if we did not
13 change our project, that it would cost us a
14 lot of money, that they would not give up, and
15 they would ruin our reputation in Nonquitt.
16 **Q. And were there other conversations**
17 **along those lines?**
18 A. Yes.
19 **Q. What do you recall? What's the next**
20 **one you recall?**
21 A. I don't recall specifically the next
22 one, but it was a -- it was not frequent, but
23 I was talking to Barbara Moss, you know, three
24 to six times a month.

1 **Q. And?**
2 A. And it was repeated on the order of
3 four or five times between then and when I
4 stopped talking to her in approximately June
5 2011.
6 **Q. What was repeated?**
7 A. That we had to change our project or
8 they were going to -- it was -- it was going
9 to cost us a lot of money. It was going to
10 take us a lot of time and that they would
11 basically impact our reputation in Nonquitt
12 negatively.
13 THE COURT: I'm sorry, sir.
14 What time period? When did you stop talking
15 to her?
16 THE WITNESS: I stopped talking
17 to her in about June 2011.
18 THE COURT: Thank you.
19 BY MR. FEINGOLD:
20 **Q. What did the Defendants do to oppose**
21 **your project after that night?**
22 MS. ALLISON: Objection.
23 Foundation.
24 THE COURT: Rephrase the

1 question, please.
2 BY MR. FEINGOLD:
3 **Q. After that night, January 11, 2011,**
4 **did the Defendants do anything to oppose your**
5 **project?**
6 A. Yes.
7 **Q. What did they do?**
8 A. They appealed the Amended Order of
9 Conditions. They sent us a letter to --
10 notifying us that the temporary driveway
11 easement was being withdrawn.
12 That letter also contained a demand
13 that we remove the underground utilities.
14 Those underground utilities were utility
15 easements. They were not our easements. And
16 they attempted to stop us from building our
17 own driveway, I think, six times with --
18 through the town and the state.
19 **Q. What else did they do, if anything?**
20 A. They kept -- I mean, they kept
21 appealing. I mean, we had the first appeal
22 -- we drove -- created. There was an on-site visit.
23 I mean, that happened, I think, in February
24 2011. And there -- there was a -- there were

In the Matter of:

John Reichenbach, et al. vs

Timothy Haydock, et al.

Trial Day 4

February 09, 2023

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1 put in the retaining wall, get a flat surface,
2 then put in the pool and foundation for the
3 house at the same time and then start building
4 the house.
5 We did it in that order because it
6 was -- we were uncertain with the state of the
7 appeals whether we could replace a house if we
8 tore it down and we were uncertain until we
9 got past certain states of the appeals whether
10 we could do certain things. But we did do
11 everything that we were advised that we could
12 do within a week after -- we started it within
13 a week after permission to go.
14 **Q. Did the Defendants take actions**
15 **against you at your project or the workers**
16 **other than in legal proceedings?**
17 A. Yes.
18 **Q. What did they do?**
19 A. They stood on our property -- on
20 our -- in the easement on our property or on
21 Ulla Sullivan's property at least 200 and
22 perhaps as many as 300 days, taking photos,
23 talking to our workers, telling them to stop
24 work, telling them that what they were doing

1 was illegal, telling them they were going to
2 get in trouble. And I heard this from every
3 single -- I can't think of a single worker on
4 the --
5 MS. ALLISON: Objection. He's
6 testifying to hearsay.
7 THE COURT: Overruled.
8 MR. FEINGOLD: He's not
9 testifying what was said.
10 THE COURT: Overruled.
11 You can answer.
12 A. I can't think of a single worker on
13 the job site who did not describe difficulties
14 that he had with -- primarily with Barbara
15 Moss during the construction project.
16 BY MR. FEINGOLD:
17 **Q. Going back a little. You mentioned a**
18 **construction fence, a site fence. Would you**
19 **describe it.**
20 A. The upslope portion of the
21 construction fence was the construction -- was
22 the fence that had formerly surrounded the
23 tennis court except at one corner of the
24 tennis court where we had chopped off a

1 portion in order to put in the temporary
2 driveway.
3 Downslope, it was a temporary rented
4 construction fence. My guess I mean, it
5 was seven to eight feet high, and it had signs
6 on it that said "Construction project.
7 Private property. No trespassing." It also
8 had the number of the environmental permit
9 from the DEP. And there were two or three of
10 those signs the project.
11 **Q. Approximately, when did that site**
12 **the construction fence go on the site?**
13 A. It went on in the end of 2011.
14 **Q. And it did it stay there**
15 **continuously?**
16 A. The construction fence stayed there
17 continuously until probably the end of 2014.
18 There was no construction fence when we did
19 the final work in 2016.
20 **Q. So you testified that Barbara Moss was**
21 **on the site 2 to 300 days; is that correct?**
22 A. Yes.
23 **Q. Do you know whether she was also on**
24 **the site outside of the easement?**

1 A. Yes, she -- she was on the site
2 outside of the easement. During the initial
3 construction period, she went basically
4 went into the project site and talked to
5 primarily to Lars Olson and Matt Swimm. Matt
6 Swimm was the superintendent at the beginning
7 of the project.
8 And I was not at any of those
9 discussions, but, you know, it was reported
10 that it was complaining about things and
11 trying to find out what was next.
12 **Q. When you say "what was next," do you**
13 **mean the work?**
14 A. What work was next.
15 **Q. When did she start taking pictures, if**
16 **you know?**
17 A. She started taking pictures in 2011
18 when we started putting in the retaining wall.
19 **Q. Do you know what the impact of her**
20 **surveillance was on the workers?**
21 A. The --
22 MS. ALLISON: Objection.
23 Speculation.
24 BY MR. FEINGOLD:

1 Q. If you know.
2 THE COURT: Sustained. Rephrase
3 the question.
4 BY MR. FEINGOLD:
5 Q. Do you know how her behavior -- the
6 photography impacted the workers?
7 MS. ALLISON: Same objection.
8 Speculation.
9 THE COURT: Well, it's a
10 yes or no answer.
11 Do you know?
12 A. Yes.
13 BY MR. FEINGOLD:
14 Q. What do you know?
15 MS. ALLISON: Objection. It can
16 only be based on speculation.
17 THE COURT: A little more
18 foundation, Counsel. Objection sustained.
19 BY MR. FEINGOLD:
20 Q. Did you have any discussions with any
21 of your workers about the impact of her
22 photography?
23 A. Yes.
24 Q. With whom?

1 A. I talked to
2 MS. ALLISON: Objection. He's
3 testifying to hearsay.
4 THE COURT: Well, he's not
5 saying what they said. He's just saying who
6 he talked to right now.
7 You can answer.
8 A. I talked to Paul Burke. I talked to
9 Lars Olson. I talked to Louis Bronco
10 (phonetic). I talked to Andrew Dearden. I
11 talked to Matt Swimm. I talked to Mark
12 LeClair. I talked to Mark LeClair's
13 assistant. I talked to Larry. I don't
14 remember his last name. of Patriot Masonry.
15 I talked to the people who put in the video
16 system. I talked to the three or four
17 carpenters, some were employees and some were
18 subs of Lars Olson.
19 I think I talked to everyone on the
20 job site. My wife and I were there
21 approximately once or twice a week throughout
22 the entire construction project.
23 BY MR. FEINGOLD:
24 Q. And did they tell you did any of

1 them tell you how they reacted to the
2 surveillance?
3 A. Yes.
4 Q. Who?
5 A. Everyone I mentioned told me how they
6 reacted to the surveillance.
7 Q. And what was their reaction?
8 A. Their reaction was they felt like they
9 were being in a were in a zoo constantly
10 being surveilled and photographed and
11 interfered with.
12 Q. How long did she Barbara Moss
13 continue to take photographs of your project
14 and the men and women working at the project,
15 if you know?
16 A. Throughout the entire process.
17 Q. Did it continue unabated all the way
18 to 2016?
19 A. In 2015 and 2016, it happened less
20 often.
21 Q. To your knowledge, was there an
22 interval in the year 2012 when she was not
23 there?
24 A. In 2012, she was not there. She was

1 there less often. She was there. She was
2 there less often in 2012.
3 Q. Did you receive any other reports
4 about interference at the project by the
5 either of the Defendants?
6 A. Yes.
7 Q. And who made those reports?
8 A. They were made either directly by the
9 workers, but most of them were through Lars
10 Olson.
11 Q. And what did Lars Olson say?
12 MS. ALLISON: Objection. Calls
13 for hearsay.
14 THE COURT: Sustained.
15 BY MR. FEINGOLD:
16 Q. Was there an incident with Oliver Tree
17 Service?
18 A. Yes.
19 Q. Could you describe
20 MS. ALLISON: Objection. Calls
21 for speculation.
22 THE COURT: That was a yes or no
23 question. What's the next question?
24 BY MR. FEINGOLD:

1 **Q. What what do you know about that**
2 **incident?**
3 MS. ALLISON: Objection. Calls
4 for speculation. Hasn't laid a foundation.
5 THE COURT: Do you know anything
6 about that event, sir?
7 THE WITNESS: Yes.
8 THE COURT: Next question.
9 BY MR. FEINGOLD:
10 **Q. When did it occur?**
11 A. It would have occurred in April or
12 May, 2011.
13 **Q. And what occurred, to your knowledge?**
14 A. We had hired Oliver Tree to cut down
15 trees to put in the temporary driveway. I was
16 told that Oliver Tree requested -- he needed
17 to leave the truck overnight.
18 MS. ALLISON: Objection. He's
19 testifying to hearsay.
20 THE COURT: Overruled.
21 A. I was told that he -- well, that he
22 needed to leave the truck overnight, that he
23 had asked Barbara Moss if he could park the
24 truck in their -- it's not really a driveway,

1 but a place that they park vehicles. He told
2 me he was told that he could.
3 Later on that evening, I got an e-mail
4 from Dr. Haydock saying that he couldn't
5 understand how this could possibly have
6 happened, Barbara would never have given
7 permission for Oliver Tree to park his truck
8 there, and that he needed to see someone the
9 next morning before -- before 7:00 a.m. when
10 he had to go to work.
11 I basically reached out to Nan
12 Sinton.
13 THE COURT: All right. Next.
14 Next question.
15 MS. ALLISON: Your Honor, I --
16 BY MR. FEINGOLD:
17 **Q. What did you do vault?**
18 MS. ALLISON: I move to strike
19 the entire answer regarding what Oliver Tree
20 told him, again on the basis of hearsay.
21 THE COURT: Sustained. That
22 will be stricken. The jury is not to consider
23 that evidence from this witness.
24 BY MR. FEINGOLD:

1 **Q. What happened next?**
2 A. I had to arrange a meeting between Nan
3 Sinton, Oliver Tree, and Dr. Haydock [sic]
4 excuse me Haydock for 6:00 a.m. the next
5 morning.
6 **Q. To your knowledge, did that meeting**
7 **occur?**
8 A. Yes.
9 **Q. Do you know what happened?**
10 MS. ALLISON: Objection. Calls
11 for speculation. He just testified he wasn't
12 there.
13 THE COURT: Sustained.
14 BY MR. FEINGOLD:
15 **Q. Do you know of any other incidents of**
16 **interference by either of the Defendants?**
17 A. Yes.
18 **Q. And could you describe one of them?**
19 A. A concrete truck was leaving our
20 property.
21 MS. ALLISON: Objection.
22 Speculation. Hasn't established a
23 foundation.
24 THE COURT: Overruled.

1 BY MR. FEINGOLD:
2 **Q. Continue.**
3 A. A concrete truck was leaving our
4 property. Barbara Moss stood in front of the
5 concrete truck with her hands up like this
6 (witness indicating), and stopped it. And
7 there was some discussion. And eventually,
8 the concrete truck was able to go on its way.
9 **Q. Do you know of any other incidents of**
10 **interference?**
11 A. Yes.
12 **Q. Which is the next one?**
13 A. Dana Diggie was moving some sort of
14 piece of digging equipment.
15 MS. ALLISON: Same objection,
16 Your Honor. He hasn't laid a foundation that
17 this isn't pure speculation.
18 THE COURT: Sustained.
19 BY MR. FEINGOLD:
20 **Q. Did you receive a report about Dana**
21 **Diggie being affected by either of the**
22 **Defendants?**
23 A. Yes.
24 **Q. From whom?**

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1 A. Lars Olson.
2 **Q. What was the report?**
3 MS. ALLISON: Objection. Calls
4 for hearsay. His testimony is based entirely
5 on hearsay.
6 THE COURT: Sustained.
7 BY MR. FEINGOLD:
8 **Q. Did you speak to Dana Diggle about it?**
9 A. No.
10 **Q. Do you remember any other incidents**
11 **of interference?**
12 A. Yes.
13 **Q. Please describe the next one.**
14 A. Andrew Swimm, I
15 MS. ALLISON: Objection, Your
16 Honor. Once again, he hasn't laid a
17 foundation that this witness was present.
18 THE COURT: Overruled. Next
19 question.
20 BY MR. FEINGOLD:
21 **Q. What did Andrew Swimm what occurred**
22 **in that incident?**
23 MS. ALLISON: Objection. Calls
24 for hearsay.

1 THE COURT: Hang on.
2 MS. ALLISON: "I was told."
3 THE COURT: Overruled. He
4 hasn't said what he was told yet, but that
5 would be hearsay.
6 MS. ALLISON: Your Honor, just
7 to clarify. I move to strike the "I was told
8 there was interference by Steve Pontes" as the
9 hearsay.
10 THE COURT: Overruled as to
11 that.
12 BY MR. FEINGOLD:
13 **Q. Is Steve Pontes alive?**
14 A. No.
15 **Q. What did he say to you?**
16 A. Steve Pontes
17 MS. ALLISON: Objection.
18 Hearsay. It's not an exception.
19 MR. FEINGOLD: I believe there's
20 an exception to the hearsay.
21 THE COURT: Counsel at sidebar.
22
23 -----
24 (BEGINNING OF SIDEBAR CONFERENCE.)

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1 THE COURT: Overruled. But
2 establish what his basis of knowledge is.
3 BY MR. FEINGOLD:
4 **Q. What is your basis of knowledge?**
5 A. Lars Olson reported to me that Andrew
6 Dearden was stopped.
7 **Q. By?**
8 A. By Barbara Moss and Timothy Haydock.
9 MS. ALLISON: Your Honor, move
10 to strike the last two answers. It's based on
11 hearsay. Based on the report of Lars Olson.
12 THE COURT: Sustained.
13 BY MR. FEINGOLD:
14 **Q. Was there to your knowledge, was**
15 **there any interference with excavation?**
16 A. Yes.
17 **Q. And how do you know that?**
18 A. I was told there was interference by
19 Steve Pontes.
20 **Q. Why is he not here today?**
21 MS. ALLISON: Move to strike.
22 He's testifying to hearsay.
23 BY MR. FEINGOLD:
24 **Q. Is Steve Pontes**

1 (Mr. Feingold, Ms. Allison present.)
2
3 THE COURT: I think it works
4 better with the microphone. We tested it out.
5 MR. FEINGOLD: I believe there's
6 an exception to the hearsay rule when the
7 declarant is deceased.
8 THE COURT: Sure. If it's a
9 dying declaration and things of that sort, but
10 that's not what we have here.
11 What's the basis for your objection?
12 MS. ALLISON: That it's hearsay
13 and that there's no exception.
14 MR. FEINGOLD: I think it's
15 broader than just a dying declaration.
16 MS. ALLISON: I disagree.
17 THE COURT: I can get my book
18 and check, but I don't think so. But in any
19 event -- in any event --
20 MR. FEINGOLD: Your Honor,
21 they're all --
22 THE COURT: They're all coming
23 in to testify.
24 MR. FEINGOLD: Pontes isn't

1 A. The concrete weighed over 100 pounds.
2 **Q. Were there incidents of trespass on**
3 **your property?**
4 A. Yes.
5 **Q. Would you describe them, please.**
6 MS. ALLISON: Objection, hasn't
7 laid a foundation.
8 THE COURT: Sustained.
9 BY MR. FEINGOLD:
10 **Q. Did anything happen when is the**
11 **first time you learned of a trespass?**
12 MS. ALLISON: Same objection.
13 No foundation.
14 THE COURT: Overruled.
15 A. The first, what I would call
16 significant trespass, occurred when Officer
17 Honohan, who was a Nonquitt security guard and
18 he goes on basically goes around and drives
19 through Nonquitt several times every day, and
20 one evening he found that Dr. Haydock
21 MS. ALLISON: Objection, Your
22 Honor. This can only be based on hearsay. He
23 has not laid the basis for any personal
24 knowledge.

1 THE COURT: Sustained. The
2 question was answered. Next question.
3 BY MR. FEINGOLD:
4 **Q. What do you know about what happened?**
5 A. I have a report from Don Horton who
6 was the general manager of Nonquitt. I also
7 have an affidavit from Officer Honohan.
8 **Q. And as a result of those reports and**
9 **the contents thereof, did you take any action?**
10 A. Yes. We served both Dr. Haydock and
11 Barbara Moss with no trespass notices.
12 **Q. Was -- do you know if there are any**
13 **other instances of trespass?**
14 A. Yes.
15 MS. ALLISON: Objection. Same
16 objection. He hasn't laid a foundation of
17 knowledge.
18 THE COURT: Overruled.
19 BY MR. FEINGOLD:
20 **Q. You may answer.**
21 THE COURT: Well, he did. Next
22 question.
23 BY MR. FEINGOLD:
24 **Q. Could you describe it.**

1 A. Yes.
2 **Q. Please do.**
3 A. During the period of construction --
4 MS. ALLISON: Your Honor,
5 objection. He's asked -- been asked to
6 describe the basis for his knowledge.
7 THE COURT: I think the question
8 is describing the incidents of trespass. Is
9 that -- because it reverted back to the prior
10 question, but why don't you ask -- ask the
11 question a little more directly.
12 BY MR. FEINGOLD:
13 **Q. What other incidents of trespass are**
14 **you aware of?**
15 A. I was aware of Barbara Moss --
16 MS. ALLISON: Objection, Your
17 Honor. He has not laid a basis for any
18 personal knowledge or any admissible
19 knowledge.
20 MR. FEINGOLD: He will if he has
21 an opportunity to answer a question.
22 THE COURT: Sustained. If you
23 ask the question, he can answer it.
24 BY MR. FEINGOLD:

1 **Q. Did you receive any reports of other**
2 **trespass?**
3 MS. ALLISON: Objection. Same
4 objection, Your Honor.
5 THE COURT: Overruled.
6 MS. ALLISON: Calls for hearsay.
7 THE COURT: It's a yes-or-no
8 question. Did you receive any other reports?
9 A. Yes.
10 BY MR. FEINGOLD:
11 **Q. From whom?**
12 A. Lars Olson.
13 **Q. And did he describe what happened?**
14 A. He described Dr. Haydock coming
15 upon --
16 MS. ALLISON: Objection, he's
17 testifying to hearsay. It's a yes-or-no
18 question.
19 THE COURT: Can you describe
20 what happened? Yes or no?
21 A. Yes.
22 THE COURT: Next question.
23 BY MR. FEINGOLD:
24 **Q. And as and what did he tell you?**

1 MR. FEINGOLD: That's a very
2 fine line, Your Honor.
3 THE COURT: You'll remind me if
4 we cross it, I'm sure, and please do.
5 MR. FEINGOLD: I hope I don't be
6 repetitive but --
7 MS. ALLISON: This is almost a
8 year before the appeals. I would point that
9 out.
10 THE COURT: Right, but we're not
11 going to get into whether the Conservation
12 Commission was correct in issuing the permit
13 or from the Haddocks' perspective denying
14 their request, whatever they might be. I
15 don't think we're going there, and I don't
16 think we're there yet. But if we get there,
17 let me know. And I know --
18 MR. FEINGOLD: That's a very
19 thin line. It's like cheesecloth.
20 THE COURT: I don't know if
21 we're quite there yet. But I am mindful of
22 your objection, and I know Attorney Cook is
23 mindful of the rulings and the nature of the
24 evidence.

1 MS. ALLISON: And I -- I just
2 want to note for --
3 THE COURT: I'm sure she'll try
4 to keep in line with that.
5 MS. ALLISON: Of course. And I
6 just want to note for the record that the
7 central issue is the basis -- the reasons for
8 my clients' concerns, and whether they were
9 genuine with respect to the MCRA. And so, of
10 course, we have to offer evidence of what
11 their concerns were.
12 THE COURT: Right.
13 MS. ALLISON: How they were
14 affected by acts of the Conservation
15 Commission. All of this goes to their
16 concerns and their motivations.
17 THE COURT: Sure. And by the
18 way, I should point out my memory also is that
19 you brought up similar testimony of them
20 trying to meet with neighbors to appease
21 their -- or to get their understanding of the
22 concerns, and I think this is along the lines
23 of that. If I'm wrong about that, let me
24 know.

1 MR. FEINGOLD: Okay.
2 THE COURT: Or if we get too
3 close to that, let me know.
4 MR. FEINGOLD: Thank you.
5 THE COURT: All right.
6
7 (END OF SIDEBAR CONFERENCE.)
8 -----
9
10 THE COURT: Back to questions.
11 Attorney Feingold, was there an
12 objection to this particular document?
13 MR. FEINGOLD: No.
14 THE COURT: It may be
15 admitted.
16 THE CLERK: Judge, it will be
17 marked as Exhibit 141.
18 THE COURT: Thank you.
19
20 (Exhibit No. 141 admitted as a full
21 exhibit.)
22
23 BY MS. ALLISON:
24 Q. All right. Mr. Reichenbach, so we're

1 looking back at what is now Exhibit 141? 141.
2 And am I right, Mr. Reichenbach, that
3 you say in this exhibit, and this is an e mail
4 to stepping back for a minute, it's an
5 e mail it's directed to my client, Barbara
6 Moss, though it's to Timothy Haydock's e mail
7 address, correct?
8 A. Yes.
9 Q. And you say at the beginning of this
10 e-mail that you just talked to Tom Hardman,
11 your engineer, and that he has met with the
12 Conservation Commission agent for the Town of
13 Dartmouth, right?
14 A. Yes.
15 Q. And that the agent has asked for
16 several more things. "An additional test pit
17 and a few tweaks to the site plan."
18 Do you see that?
19 A. Yes.
20 Q. Does that refresh your recollection
21 that the Conservation Commission agent at this
22 time asked for some additional changes to the
23 site plan?
24 A. Yes.

1 Q. And as a result of those additional
2 changes, you you proposed that Tom Hardman
3 on your behalf and the town had agreed to an
4 additional two-week continuance, right?
5 A. Yes.
6 Q. So that takes us into that
7 additional continuance, into the middle of
8 November 2009, right?
9 A. Yes.
10 Q. Now, do you recall that that hearing
11 at the middle of November 2009 was also
12 postponed?
13 A. Many were postponed.
14 Q. I'm asking you about one. I'll
15 A. No, I don't recall.
16 Q. So you don't recall that this that
17 a particular meeting in the middle of November
18 2009 was postponed?
19 A. Correct.
20 Q. Would it refresh your recollection if
21 I told you that the neighbors had asked to
22 receive plans five days before the hearing as
23 required by the Con Comm?
24 A. No.

1 the plans, right?
2 A. Yes, she said her neighbor that
3 Ulla felt that way.
4 Q. So and let's scroll up to your
5 response at the top of the e mail. And you
6 say, "Given that none of us have time to
7 review the information that he has prepared, I
8 think your request to have the hearing
9 continued again is entirely appropriate."
10 Do you see that?
11 A. Yes.
12 Q. And that's an e mail from
13 mid November November 14th, right?
14 A. Yes.
15 Q. And so as a result, you agreed that
16 the hearing would be postponed for another two
17 weeks, right?
18 A. Yes.
19 Q. Now, around this time in November of
20 2009, you and Miss Moss were also trying to
21 find time to meet in person to discuss your
22 plans; is that right?
23 A. Yes.
24 Q. And do you recall telling Miss Moss

1 Q. That doesn't refresh your
2 recollection?
3 A. (Witness nodding.)
4 Q. All right. Well, let's look at the
5 document. I'm going to show you a document
6 that we've marked as D9. Oh, I'm sorry, it's
7 actually a joint exhibit. Joint Exhibit 58.
8 And let's let's start with the
9 first e mail in the chain, please. If we
10 could scroll down.
11 And this is an e mail. It's from
12 Timothy Haydock's e mail address to you, but
13 it's signed by Barbara Moss.
14 Do you see that?
15 A. Yes.
16 Q. And she says in the second paragraph,
17 "We would prefer that the hearing be postponed
18 since we didn't receive the information this
19 week."
20 Do you see that?
21 A. Yes.
22 Q. She also says that her neighbor, Ulla,
23 your neighbor on the south, felt the same way
24 and wanted to be sure that she could review

1 that you would prefer to meet with her
2 one on one, without a large crowd of
3 interested parties overseeing your
4 conversation at the hearing?
5 A. I I don't recall saying that
6 specifically, no.
7 Q. If I showed you a document, would it
8 perhaps refresh your recollection?
9 A. Perhaps.
10 MS. ALLISON: Let's look at
11 Joint Exhibit 118.
12 BY MS. ALLISON:
13 Q. So this is an e mail from you. Again,
14 it's to Tim Haydock's e mail address, but you
15 direct it to Barbara.
16 Do you see that?
17 A. Yes.
18 Q. And you say you're talking about a
19 meeting and you propose that you could do it
20 the following Friday or Saturday although that
21 is only a few days before the next hearing
22 date.
23 Do you see that?
24 A. Yes.

1 Q. And you go on to say, "I think it
2 would be good for us to meet so that we can
3 discuss all the options without a large crowd
4 of interested parties overseeing the
5 conversation."
6 Does that refresh your recollection?
7 A. Yes, I wrote that.
8 Q. You wrote that. And did you, in fact,
9 want to meet with Barbara Moss one on one to
10 avoid having to discuss it in front of the
11 large group, at least at the outset?
12 A. Yes.
13 Q. So that mid November meeting that we
14 saw referenced in the last exhibit was moved
15 to early December as a result of the two week
16 continuance, right?
17 A. Yes.
18 Q. Okay. And that at that early
19 December, or before that early December
20 meeting, the Con Comm agent again requested a
21 couple of additional changes to the plan; is
22 that right?
23 A. I can't answer the question the way
24 you phrased it.

1 Q. Well, if I showed you a document
2 regarding that, would it help you answer the
3 question?
4 A. You already did.
5 Q. No, I haven't no
6 A. It's
7 Q. No, I haven't
8 A. It flashed.
9 Q. I'm not seeing it now. Are you?
10 A. No.
11 Q. Okay. Well, let's wait until we can
12 both see it.
13 MS. ALLISON: This is Joint
14 Exhibit 119, so it can be published.
15 BY MS. ALLISON:
16 Q. So you see this e-mail,
17 Mr. Reichenbach, from December 9th, 2009 from
18 you to Tim Haydock, Ulla Sullivan, and some
19 others are copied, correct?
20 A. It's actually addressed to Barbara and
21 Ulla.
22 Q. Right. Again, it's Tim Haydock's
23 e mail address, but the text is addressed to
24 Barbara Moss, right? Right?

1 A. Yes.
2 Q. You say there that you received
3 another call from Tom Hardman and that he
4 talked to Mike, the Conservation Commission
5 agent, this morning and Mike suggested two
6 additional changes in response to a letter
7 from Ulla's engineer.
8 Do you see that?
9 A. Yes.
10 Q. And you go on to say, "Because you're
11 making those changes, that means we won't meet
12 the five day notice requirement, so the
13 hearing will be continued to later in
14 December." Is that right?
15 A. Yes.
16 Q. And the just for context, the
17 five day notice requirement is also part of
18 the wetland regulations that requires giving
19 abutters notification of plans five days
20 before the scheduled hearing, right?
21 A. I can't answer that question.
22 Q. Okay. Well, maybe I can show you a
23 document to refresh your recollection as
24 after we get through this.

1 The -- now, so this hearing scheduled
2 on December 22nd, do you recall that that was
3 moved again?
4 A. Not off the top of my head.
5 Q. Would it refresh your memory if I said
6 that there was a request to move it after the
7 holidays because no one was going to be around
8 on December 22nd?
9 A. That that sounds plausible, but I
10 don't know.
11 Q. You just have no independent
12 recollection of that right here today?
13 A. There were many meetings that were
14 continued.
15 Q. I'm asking about a meeting that was
16 scheduled three days before Christmas. Do you
17 remember that being moved until after the
18 holidays?
19 A. I don't remember any specific meeting,
20 there were so many.
21 Q. So ultimately, after the holidays, in
22 January of 2010, a meeting was held during
23 which the Conservation Commission evaluated
24 your new plans, right?

1 A. Yes.
2 Q. So you submitted the plans with the
3 various changes that we've seen reference to,
4 to the Conservation Commission in January of
5 2010, right?
6 A. We submitted the plans. It would have
7 been in the beginning of the year. I don't
8 know if it specifically was in January 2010
9 unless you show it to me.
10 Q. But you remember that it was the
11 beginning of the year, beginning of 2010?
12 A. Yes.
13 Q. Now, in advance of a January 2010
14 conservation committee meeting, isn't it true
15 that Sam Haydock, one of owners of the Haydock
16 family property, wrote a letter to the
17 Conservation Commission, copying you,
18 outlining his concerns with your new plans?
19 A. If you show me the letter, I can tell
20 you whether I received it.
21 Q. I'm going to show you what's been
22 marked as D 13.
23 We're starting at the top.
24 Apparently oh, strike that.

1 This is an e mail from Tom Hardman to
2 you, and if you scroll down to the attachment,
3 it's a letter from
4 THE COURT: Ask him if he
5 recognizes it. Are you trying to refresh his
6 memory about something?
7 MS. ALLISON: We'll have to
8 I'm trying to see if he recalls receiving a
9 copy of this letter, yes.
10 BY MS. ALLISON:
11 Q. So do you see
12 THE COURT: Look at it. Do you
13 recall receiving it?
14 MS. ALLISON: And I would
15 you're copied on it at the end, if that would
16 help.
17 A. (Witness reviews document.)
18 I'm I recall receiving it.
19 BY MS. ALLISON:
20 Q. Okay.
21 A. But I don't know whether I received it
22 electronically or by mail.
23 Q. But you recall seeing this letter in
24 January 2010?

1 A. Yes.
2 Q. Okay.
3 MS. ALLISON: I would like to
4 admit that as the next exhibit.
5 THE COURT: Is there objection?
6 MR. FEINGOLD: Object.
7 Your Honor, it's the same objection.
8 THE COURT: As we talked about?
9 Overruled.
10 THE CLERK: Just one moment,
11 please.
12
13 (Exhibit No. 142 admitted as a full
14 exhibit.)
15
16 THE CLERK: It will be
17 Exhibit admitted and marked as Exhibit 142,
18 your Honor.
19 THE COURT: Thank you.
20 THE CLERK: You're welcome.
21 BY MS. ALLISON:
22 Q. All right. So we see here on the
23 screen the letter from Sam Haydock to the
24 Conservation Commission agent copying you.

1 I won't put anyone through reading
2 most of this letter, but let's just hit the
3 highlights.
4 So Mr. Haydock begins by well, he
5 lists several concerns in this letter,
6 correct, Mr. Reichenbach?
7 A. Can I see the whole exhibit?
8 Q. Of course, yes. We'll scroll down.
9 A. All the way at the top, too.
10 (Witness reviews document.)
11 Above the letter, I mean, the context
12 that this letter came in.
13 THE COURT: All the way up to
14 the top.
15 A. (Witness reviews document.)
16 Can you stop there?
17 BY MS. ALLISON:
18 Q. So actually on - I'm pausing here.
19 So this is a letter that's apparently
20 forwarded from Michael O'Reilly, the
21 Conservation Commission agent, right?
22 A. Yes.
23 Q. To Thomas Hardman, who is your project
24 manager, right?

1 A. Yes.
2 Q. And he's forwarding this -- Mike
3 O'Reilly is forwarding the letter he received
4 from Sam Haydock, correct?
5 A. Yes.
6 Q. And Michael O'Reilly says he's
7 insulted by the letter, right?
8 MR. FEINGOLD: Objection, Your
9 Honor.
10 THE COURT: Overruled. Is it
11 your same objection?
12 MR. FEINGOLD: No. My client
13 said he needed to see the letter. He didn't
14 say he needed to see the e mail that
15 THE COURT: Well, he said wanted
16 to go to the very top, and it's all an exhibit
17 anyway so it's fair game.
18 BY MS. ALLISON:
19 Q. Do you have any idea why Michael
20 O'Reilly was insulted by a letter from Sam
21 Haydock?
22 A. No.
23 Q. And Thomas Hardman forwards it to you
24 and says, you know, "Hi, John, I just

1 received" this one -- "this letter," right?
2 A. Yes.
3 Q. Okay. So that's the context. Is that
4 can we move down?
5 A. Yes.
6 Q. Okay. So we're going to move down to
7 the letter.
8 And this is Sam Haydock's letter with
9 bullet point concerns.
10 And we don't need to walk through
11 these. They're now an exhibit. But as you
12 said, you did -- and as we can see here, you
13 received a copy of this letter in advance of
14 that January 2010 meeting, right?
15 A. Yes.
16 Q. Okay. So at that January 2010
17 meeting, the Conservation Commission took up
18 and discussed the new plans, right, for the
19 project?
20 MS. ALLISON: We can take that
21 downnow.
22 A. Yes, they -- they -- every one of the
23 Conservation Commission meetings that was
24 held, they discussed the plans.

1 BY MS. ALLISON:
2 Q. That was the purpose of the meetings,
3 right?
4 A. Yes.
5 Q. Was to discuss the plans and hear any
6 comment on them, right?
7 A. Yes.
8 Q. So do you recall that at that
9 Conservation Commission meeting in January of
10 2010, the Conservation Commission did hear
11 some additional concerns from the attendees
12 about the plans? Is that right?
13 A. There were concerns at every one of
14 the conservation committee meetings expressed
15 by abutters, but typically Barbara Moss.
16 Q. Well, so far we've seen one meeting in
17 October of 2009, right? Right?
18 A. Yes.
19 Q. And then a series of continuances for
20 the reasons that we just discussed, right?
21 A. Yes.
22 Q. And now we're at the second meeting in
23 January of 2010, correct?
24 A. Yes.

1 Q. And the abutters and others who
2 attended the meeting have seen your new plans
3 for the first time in January of 2010,
4 correct?
5 A. Yes.
6 Q. And so at the conclusion of that
7 meeting, the Conservation Commission continues
8 the matter for a further hearing, right, for a
9 further hearing to take place in February,
10 right?
11 A. Yes.
12 Q. And one of the reasons that they did
13 that was because individuals asked for an
14 opportunity to submit concerns to the
15 Conservation Commission, correct?
16 A. That's consistent with my memory, but
17 I cannot say absolutely that happened without
18 seeing a document.
19 Q. I know. This was a long time ago.
20 But it is consistent with your memory, right?
21 Yes?
22 A. Yes.
23 Q. All right. So do you recall that the
24 following month in February 2010, Samuel

1 Haydock, Tim Haydock's brother, part owner of
2 the family property, submitted another letter
3 to the Conservation Commission about his
4 concerns?

5 A. I don't recall that specific letter
6 right now.

7 Q. Okay. I'm going to ask you to look at
8 a document marked as D 15.

9 Have you

10 MS. ALLISON: Scroll down to the
11 letter, please, and to the signature line.

12 BY MS. ALLISON:

13 Q. Have you seen this document before,
14 Mr. Reichenbach, that you're copied on?

15 A. Yes.

16 Q. It refreshes your memory that you
17 received this letter from Sam Haydock in
18 February of 2010, right?

19 A. I did receive this letter in February
20 of 2010.

21 Q. Okay.

22 MS. ALLISON: I would like to
23 admit this as the next exhibit.

24 THE COURT: Is there objection?

1 basis of their -- the genuineness of their
2 concerns, other people shared them.

3 THE COURT: Other people shared.
4 Okay. But we're concerned about the conduct
5 of these Defendants.

6 MS. ALLISON: Right. But I
7 think it's highly relevant to their -- highly
8 relevant to whether or not their concerns were
9 genuine if other owners of the property shared
10 their concerns, owners of the Haydock
11 property, and were raising these concerns with
12 the Conservation Commission.

13 THE COURT: All right. So I'll
14 admit it as an exhibit. But if that's the
15 purpose for which it's admitted, then I
16 presume in your case or at some point we'll
17 hear evidence that these Defendants shared
18 those same concerns.

19 MS. ALLISON: Uh-huh.

20 THE COURT: And I think that's
21 what you're trying to articulate.

22 MS. ALLISON: Yes. Not just the
23 Defendants, but that their concerns were
24 shared by others, I think is the case, and

1 MR. FEINGOLD: Yes. Your Honor,
2 can we have sidebar on this?

3 THE COURT: Yes, please.

4

5

6 (BEGINNING OF SIDEBAR CONFERENCE.)
7 (All Counsel Present.)

8

9 MR. FEINGOLD: My objection to
10 this is that at the bottom of the letter, it
11 cites that he's an environmental engineer or
12 something, and he's not going to be an expert
13 in this case but it's a suggestion that he is.

14 THE COURT: Well, I don't know,
15 if that's the basis of your objection. But I
16 have a question.

17 What's the purpose of this?

18 MS. ALLISON: The purpose is to
19 show that other members of the Haydock family
20 were raising concerns. This wasn't just Tim
21 Haydock and Barbara Moss. And we will
22 establish through their testimony and our
23 clients' testimony that their concerns were
24 similar. And it goes to the it goes to the

1 we're going to hear evidence from the other
2 owners, Ulla Sullivan and Sam Haydock, they
3 had the same concerns, which goes to the
4 genuineness.

5 THE COURT: It's the conduct of
6 these two Defendants that are primarily at
7 issue.

8 MS. ALLISON: Of course. Well,
9 they're the only Defendants in the case --

10 THE COURT: Yes.

11 MS. ALLISON: -- obviously. But
12 I think that the fact that others shared the
13 concerns, we believe, you know, is central to
14 the question of whether those concerns were
15 reasonable genuine.

16 THE COURT: Yes. All right.

17 MR. FEINGOLD: Your Honor, we
18 would like an instruction that he's not an
19 expert in this case, notwithstanding how he
20 signs his name.

21 MS. ALLISON: I have not offered
22 him for that.

23 THE COURT: I'm not going to do
24 that right now for a couple of reasons. One,

1 I understand your objection, but it's not
2 being offered for any expert opinion. It's
3 being offered --
4 MR. FEINGOLD: It says it right
5 at the bottom, that's the problem. It's the
6 impression --
7 THE COURT: No, he's not -- if
8 he testifies, you know, he's not going to be
9 testifying as an expert, and I don't think
10 because -- it's sort of begs the question of
11 now we need evidence as to what he actually
12 does. And sometimes if I highlight that for
13 the jury, it gets them thinking and it sort of
14 has the counter effect to what you -- to what
15 you're trying to prevent.
16 MS. ALLISON: At this point,
17 Your Honor, I'm just offering it to show that
18 Mr. Reichenbach received this and that it
19 stated concerns --
20 THE COURT: I don't know that
21 it's going to -- is he listed as an exhibit --
22 I mean, as a witness?
23 MS. ALLISON: Yes, he is going
24 to be a witness.

1 THE COURT: He's going to be a
2 witness, but he's he not going to offer expert
3 opinion evidence --
4 MS. ALLISON: No.
5 THE COURT: -- as to anything
6 that has to do with this letter or any of the
7 project and I -- you know the facts better
8 than I. But, you know, the fact that he may
9 have some ability to raise or articulate
10 concerns better than others, that's just the
11 nature of it, but it's not anything that is
12 going to be --
13 MR. FEINGOLD: Your Honor.
14 THE COURT: -- as an expert.
15 MR. FEINGOLD: As far as
16 allowing other people to testify as to their
17 concerns, if they're witnesses, I have no
18 problem with it. But if they're not
19 witnesses, I do have a problem with it.
20 THE COURT: Sure. And so I'm
21 not going to say like that is sort of the
22 de bene evidence, but I think your purpose
23 here is to show that these two Defendants and
24 others had some concerns.

1 MS. ALLISON: Yes.
2 THE COURT: And so maybe
3 there's so I'll allow it, but subject to
4 that evidence coming in
5 MS. ALLISON: Yes.
6 THE COURT: because that will
7 clarify the document. And be mindful of I
8 saw that signature line, too, but that doesn't
9 give him any any greater opinion or we're
10 not going to put any expert associated with
11 that.
12 MR. FEINGOLD: Thank you, Your
13 Honor.
14 MS. ALLISON: Thank you, Your
15 Honor.
16 -----
17 (END OF SIDEBAR CONFERENCE.)
18
19 THE COURT: Objection is
20 overruled. That may be admitted as the next
21 exhibit.
22 THE CLERK: Judge, marked as
23 Exhibit 143.
24 THE COURT: Thank you.

1
2
3 (Exhibit No. 143 admitted as a full
4 exhibit.)
5
6 BY MS. ALLISON:
7 Q. All right. So, Mr. Reichenbach, we've
8 marked this as the next exhibit. Again, if we
9 scroll to the bottom of this letter from Sam
10 Haydock to the Conservation Commission, you
11 can see there that you were copied on that
12 letter, correct?
13 A. Yes.
14 Q. So you received it at the time, right?
15 A. I'm sure I received it at the time.
16 I've seen this letter.
17 Q. You've seen you recall this letter?
18 A. Yes.
19 Q. And in this letter, Sam Haydock is
20 summarizing his concerns with the with the
21 new plans received in January, correct?
22 A. Yes, he's summarizing his concerns.
23 Q. And he spends some time in this letter
24 addressing that pre and post water drainage

1 analysis that was performed, correct?

2 A. If you show me that, I can say
3 correct.

4 Q. I believe it's further up in the
5 letter. We can scroll up.

6 And do you see the Paragraph 1?

7 A. Yes.

8 Q. And that's a discussion of the pre
9 and post-development analysis, correct, the
10 water analysis?

11 A. It's a discussion of two topics.

12 Q. I'm sorry. I didn't hear you.

13 A. It's a discussion of two topics.

14 Q. And one of those are issues with
15 respect to the predevelopment and
16 post development water shed plan, right?

17 A. There are no issues with the
18 discussion of the pre and post --
19 pre-development and post-development water
20 plan. That's topic 1.

21 Q. That's topic 1 in this letter?

22 A. Yes.

23 Q. Correct. So I'm going to scroll down
24 to the bottom of the letter, the last

1 issues, but if we didn't resolve the issues,
2 they threatened to appeal.

3 Q. Well, as a property owner, he had the
4 right to exercise an appeal to the DEP, right?

5 A. Yes.

6 Q. And he's saying here it would be
7 better if we could reach agreement, right?

8 A. Yes.

9 Q. So we saw earlier an exhibit where you
10 and Barbara Moss were trying to find a time to
11 meet one-on one.

12 Do you remember that?

13 A. I remember the exhibit.

14 Q. And between January 2010, these
15 Conservation Commission meetings we're talking
16 about, and April 2010, you had several
17 meetings with Ms. Moss about your plans,
18 right?

19 A. Yes.

20 Q. And when you had those meetings with
21 Miss Moss, did you understand that she was
22 conveying her own concerns, but also the
23 concerns of Sam Haydock and the Haydock family
24 and Ulla Sullivan?

1 paragraph.

2 And Mr. Haydock says this is Sam
3 Haydock, again one of the owners of the
4 Haydock property says here that "If the
5 hearing is closed this evening without giving
6 us the opportunity to complete these
7 additional studies, it would be our intention
8 to appeal to the Massachusetts Department of
9 Environmental Protection."

10 Do you see that?

11 A. Yes.

12 Q. He goes on to say at the end of that
13 paragraph, "It's my opinion that it would be
14 better for all parties involved to resolve the
15 issues prior to the decision by the
16 Conservation Commission."

17 Do you see that?

18 A. Yes.

19 Q. And did you understand that it was Sam
20 Haydock's view that you should try to resolve
21 these issues and avoid any appeals down the
22 road? Is that how you read this letter?

23 A. I recall reading this letter basically
24 saying that he would like us to resolve the

1 A. I understood that she was I mean,
2 expressing her own concerns and the concerns
3 of Sam Haydock and the other members of the
4 Haydock family, Ulla Sullivan, and perhaps
5 others.

6 Q. And so in these discussions with
7 Barbara Moss in this first part of 2010, you
8 were discussing issues that could affect both
9 the Haydock family property in their view and
10 also the Sullivan property in the Sullivans'
11 view; is that right?

12 A. I don't know about the second part.

13 Q. Well, I thought you just said that you
14 were discussing with Barbara Moss some of the
15 Sullivans' concerns as well.

16 A. I was discussing with Barbara Moss
17 what she told me the Sullivans' concerns were.
18 I don't know what the Sullivans' real concerns
19 were.

20 Q. Well, you met with Ulla Sullivan a
21 couple of times yourself, right?

22 A. I met with her at the site meeting
23 not the site meeting. I met with her when she
24 showed them the plans, and I walked the

1 A. That's incorrect.
2 Q. Isn't it true that in April of 2010,
3 Barbara Moss stood up at the meeting and said
4 she would support your project?
5 A. Yes.
6 Q. And no other neighbor in April of 2010
7 stood up and said they were going to challenge
8 the project?
9 A. No other neighbor stood up and said
10 they were going to challenge the project.
11 Q. And in fact, no one did challenge the
12 project at that point in time? No one
13 appealed it, right?
14 A. I think the first part of your
15 sentence is incorrect?
16 Q. All right. Well then let's be clear,
17 no one appealed the project -- strike that.
18 No one appealed the permit that was
19 issued to you in April of 2010, right?
20 A. That's correct.
21 Q. And so at that point you had a final
22 permit from the Conservation Commission to
23 build your project, correct?
24 A. After the appeal period was over, yes.

1 Q. And the appeal period was over and no
2 one had objected, no one had appealed, right?
3 A. Correct.
4 Q. Now, when -- when Barbara Moss raised
5 these concerns with you about your plans in
6 this early 2010 period, at that time you
7 believed her concerns were genuine, didn't
8 you?
9 A. Very on -- very early on, I thought
10 her concerns were sincere and unfounded.
11 Q. Sincere but unfounded, is that what
12 you said?
13 A. Yes.
14 Q. So you believed that she was sincere
15 in her concerns, you just didn't agree with
16 them; is that right?
17 A. I would say I didn't agree and
18 eventually no one else did either.
19 Q. I'm asking about what you understood
20 as -- as to her concerns in this, what you've
21 called the early period before you received
22 your initial permit from the Conservation
23 Commission. Right?
24 A. It became apparent the further we

1 entered -- went into this period that they
2 would use every possible objection to delay
3 our project as a pretext.
4 Q. Let me ask you the question again,
5 because I -- it sounds as if you're answering
6 something different.
7 My question was: That prior to April
8 of 2010 when that initial permit was issued,
9 you believed that Barbara Moss' concerns were
10 sincere as she had expressed them to you?
11 A. No.
12 Q. You just testified that early in the
13 process, you believed that Barbara Moss'
14 concerns were sincere.
15 A. Early in the process does not extend
16 to April --
17 Q. Okay.
18 A. -- of 2010.
19 Q. Okay. And she didn't -- and she
20 didn't appeal your project in April 2010, did
21 she?
22 A. She did not.
23 Q. And no one else did, right?
24 A. Nobody else did.

1 Q. Okay. So I'm going to move from --
2 you have your permit now, April of 2010 you
3 have your permit now.
4 I would like to move to the summer of
5 2010.
6 Through the summer of 2010, you were
7 negotiating the rights to the driveway with
8 Sam Haydock; is that right?
9 A. Yes.
10 Q. And initially you spoke with Sam
11 Haydock about the concept of receiving a
12 permanent easement giving you the right to use
13 the shared driveway; is that right?
14 A. Yes.
15 Q. And you discussed what price you would
16 pay for that permanent right to use the
17 driveway, right?
18 A. I don't think there was a price in our
19 initial discussions but...
20 Q. Ultimately, you got to the discussion
21 of a price, right?
22 A. Yes.
23 Q. And negotiations always do, right?
24 So at some point the Haydocks proposed

1 ground.
2 Q. Right. Right. And this happened
3 during the construction process, right?
4 A. Yeah, it happened two days after the
5 door was installed.
6 Q. So there was construction going on all
7 around the property at the time?
8 A. Yes.
9 Q. You also testified that you often
10 when were you there, and I think let me be
11 clear.
12 You said you were there maybe about
13 once a week for site meetings at the
14 construction site?
15 A. We were there once or twice a week.
16 Q. So it would vary week to week?
17 A. And in the summers, we were there
18 nearly every day.
19 Q. But there was no construction in the
20 summers in Nonquitt, right?
21 A. There was no major construction
22 Q. Right.
23 A. in the summers.
24 Q. When construction was going on, you

1 A. I do now. I did not then.
2 Q. You know now how often Miss Moss
3 visits the beach when she's at her home?
4 A. I
5 Q. How would you know that?
6 A. If she uses the if she uses the
7 easement, it's covered by our surveillance
8 cameras.
9 Q. So you're surveilling her while she
10 walks to the beach?
11 A. I'm not surveilling her. They're just
12 cameras that are mounted on the house and they
13 basically capture any activity around our
14 house.
15 Q. So it surveils anybody who is walking
16 to the beach on that easement?
17 A. It surveils anyone walking to the
18 beach on that easement. It surveils anyone in
19 the pool. It surveils anyone between the
20 house and the water. It surveils anyone in
21 the driveway. It surveils anyone in front of
22 the shed, anyone near the swings.
23 Q. Okay. So I think you also testified
24 to some alleged trespasses on your property.

1 were there once or twice a week depending on
2 the week?
3 A. Yes.
4 Q. And I believe you said you would see
5 Barbara Moss on the easement, right?
6 A. She was on either the easement or Ulla
7 Sullivan's property on the south side.
8 Q. And so now, of course, Barbara Moss
9 has the right to use the easement to go to the
10 beach, right? That's the purpose of the
11 easement.
12 A. She has the right to use the easement
13 to go to and from the beach.
14 Q. Right. And we're talking about
15 well, many of us here walked it yesterday, the
16 path between your property and the Haydock
17 property down to the beach, right?
18 A. It's a five foot wide path.
19 Q. It's not far not far down to the
20 beach at all?
21 A. It's about 300 feet.
22 Q. Right. So I mean, you have no idea
23 how often Barbara Moss walks to and from the
24 beach on a given day, do you?

1 Again, you never saw Barbara Moss or Tim
2 Haydock trespass onto your property, right?
3 A. No.
4 Q. Now, I'd like to turn to some of the
5 questions you were asked about alleged costs
6 that you incurred. Well, actually before I do
7 that, let me just I want to get one thing
8 clear.
9 So you're not claiming that Lars Olson
10 violated your contract with him, right?
11 A. I don't understand the question.
12 Q. Do you claim that Lars Olson breached
13 any provision of his contract with you, that
14 he did not carry out his obligations under
15 your contract?
16 A. No. We paid every bill he sent us.
17 Q. He did what you expected him to do
18 under the contract, right?
19 A. He did what I expected. He managed
20 the construction site and the building and
21 built it as fast as he could.
22 Q. And so he as far as you're
23 concerned, he performed all of his obligations
24 under that contract?

1 considered abandoning it. And we did not
2 have a -- we basically could not abandon it
3 because given all of the sort of, I guess
4 contentious disagreement with what we planned,
5 it was basically -- it would have become an
6 unbuildable lot.
7 BY MR. FEINGOLD:
8 **Q. You mentioned that this had an impact**
9 **on you and your wife emotionally. Could you**
10 **elaborate, please.**
11 A. Yes.
12 **Q. Please do.**
13 A. My wife had nightmares for about four
14 years. They were severe nightmares. She
15 described to me --
16 MS. ALLISON: Objection. That's
17 hearsay.
18 THE COURT: Overruled.
19 A. I had insomnia.
20 BY MR. FEINGOLD:
21 **Q. The judge said that could you tell**
22 **THE COURT: Well, he did. He**
23 **said she described them to me, and then he**
24 **went on to that he had insomnia. Right?**

1 THE WITNESS: But I didn't know
2 you I didn't know you overruled. I mean,
3 you --
4 THE COURT: He needs to ask you
5 some questions.
6 THE WITNESS: Okay.
7 BY MR. FEINGOLD:
8 **Q. Can you describe the nightmares?**
9 MS. ALLISON: Objection.
10 A. Yes.
11 MS. ALLISON: Your Honor, that
12 clearly calls for hearsay. It's also in that
13 he could only have heard this from his wife,
14 and it's also outside the scope of cross.
15 THE COURT: Well, it probably is
16 that, but I'll give him some leeway and he can
17 testify as to what he learned about his wife's
18 condition. She's going to testify, too,
19 right?
20 MR. FEINGOLD: Yes, she is.
21 THE COURT: All right.
22 A. She had regular nightmares where she
23 was inside the front door of our house. It
24 was burning. And Barbara Moss was outside the

1 front door holding the door shut. The house
2 was burning.
3 BY MR. FEINGOLD:
4 **Q. And was that nightmare always the**
5 **same?**
6 A. Yes.
7 **Q. And how long did it go on?**
8 A. Three or four years.
9 **Q. What other impacts did this have on**
10 **you and your wife?**
11 A. I had insomnia. I was trying -- I
12 mean, I basically was spending time not -- I
13 was not able to go to sleep, and I used time
14 while I was not able to go to sleep trying to
15 figure out a way out of the predicament we
16 were in where we had spent a lot of money and
17 were in a position where we couldn't complete
18 the project and couldn't retreat from the
19 project, and there didn't seem to be any way
20 of resolving it. So we continued.
21 MR. FEINGOLD: I have no further
22 questions, Your Honor.
23 Thank you, Mr. Reichenbach.
24 THE COURT: Anything further?

1 MS. ALLISON: Very short.
2 THE COURT: Please.
3
4 RE CROSS EXAMINATION
5 BY MS. ALLISON:
6 **Q. Mr. Reichenbach, you did not abandon**
7 **your project, did you?**
8 A. No, we did not abandon the project.
9 **Q. We saw it yesterday. And you started**
10 **construction on that home in November 2011,**
11 **right?**
12 A. Yes.
13 **Q. And you had your temporary certificate**
14 **of occupancy to use that home by January 2013,**
15 **right?**
16 A. No.
17 **Q. January 2014, right?**
18 A. Yes, it was not complete then. But we
19 got a temporary certificate.
20 **Q. You had your temporary certificate of**
21 **occupancy by January 2014, right?**
22 A. Yes.
23 MS. ALLISON: No further
24 questions.

In the Matter of:

John Reichenbach, et al. vs

Timothy Haydock, et al.

Trial Day 8

February 15, 2023

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1 Nonquitt down to the circle where they could
2 work?
3 A. Correct.
4 Q. How many times a day would people have
5 to be shuttled like that? I mean, is it just
6 morning and evening, or is it...
7 A. Many times. We had to do it more than
8 once each way.
9 Q. Mr. Olson, during your time as a
10 project manager at the work site, how often
11 were you personally at the work site?
12 A. Every day.
13 Q. Did you ever have sick days when you
14 weren't there?
15 A. Rarely, but yes.
16 Q. And in the time that you were there as
17 a project manager, did you ever see Miss Moss
18 or Dr. Haydock taking pictures of the
19 Reichenbach site?
20 A. I did.
21 Q. Did you see them taking pictures of
22 the workers at the site?
23 A. I did.
24 Q. Was it both of them doing this or

1 various subcontractors. I know she there
2 were some instances when deliveries were being
3 made and she stopped the tried to stop the
4 trucks from making the deliveries and various
5 things like that.
6 Q. How did she try to stop the trucks?
7 A. Well, one in particular was a Frades
8 Disposal truck, and she stood in front of the
9 truck and wouldn't let the truck leave.
10 Q. Do you have any understanding of why
11 she did that?
12 A. I do.
13 Q. What's your understanding?
14 A. The truck went down the wrong
15 driveway, and it went down into the Haydock
16 family driveway, turned around, and was coming
17 back out to get where it was supposed to go,
18 and she stopped the truck.
19 Q. Did you ever understand gain an
20 understanding of why the Frades truck did
21 that?
22 A. It's -- it was a very congested site,
23 and most likely, one of my guys was not in
24 circle, you know, directing traffic at the

1 one one or the other?
2 A. Only Miss Moss.
3 Q. And how many times did you personally
4 witness Miss Moss taking photos of the
5 Reichenbach site, the workers at the
6 Reichenbach site, anything of that nature?
7 A. Miss Moss didn't always have her
8 camera with her, but I would I would
9 safe to say that Miss Moss was on site during
10 the course of construction 300 times or more.
11 Q. Is that on 300 different days of the
12 construction?
13 A. Yes.
14 Q. When you witnessed Miss Moss on the
15 site, was she interacting with your workers at
16 all?
17 A. Yes.
18 Q. And could you tell us about that.
19 A. Generally, she would be trying to get
20 the attention of one of my -- either Matt
21 Swimm or Andrew Dearden and -- who were my
22 site my assistants and try to find out what
23 was going on for the day or what we were
24 doing. I know she spoke with different

1 time.
2 Q. So it was just an accident?
3 A. It was an accident.
4 Q. Do you know how that interaction was
5 resolved?
6 A. That wasn't the only interaction, but
7 I know at one point Miss Moss called the
8 police. And I don't know if it was that one.
9 There was also another interaction, I
10 believe, with -- it was with the concrete
11 truck.
12 Q. Can you tell us about the interaction
13 with the concrete truck and Miss Moss.
14 A. I think it was the same thing. She
15 got in front of it and -- or didn't -- again,
16 it might have happened again -- I'm not
17 sure -- or if it was going around the circle,
18 but she, you know, stopped it.
19 Q. How long did she have it stopped
20 there?
21 A. I think as long as it took to -- I
22 can't recall exactly if the police showed up
23 or not, but it was a few minutes. It was a
24 while.

1 having somebody standing there on the property
2 watching us.

3 **Q. Did you receive any complaints from**
4 **the workers on your site relative to**
5 **Ms. Moss's presence?**

6 A. They were annoyed by it, yes.

7 **Q. Did you ever experience anyone being**
8 **taken off task and having to get back on task**
9 **by the interruptions?**

10 A. Yes.

11 **Q. And did you do anything about that to**
12 **to try to stop that interference?**

13 A. Everybody that worked for us knew we
14 were we instructed them all to be as polite
15 as possible and to try to talk as little as
16 possible to Ms. Moss.

17 **Q. Did people as you understand it,**
18 **did they follow those instructions?**

19 A. Yes, for the most part.

20 **Q. So do you have any understanding of**
21 **whether Ms. Moss ever threatened any of the**
22 **workers on your site?**

23 A. I don't recall at this time.

24 **Q. Do you ever recall her speaking to**

1 **workers or try to tell them how to do their**
2 **job?**

3 MR. ELDER: Asked and answered,
4 Your Honor. Objection.

5 MS. BONNET HEBERT: Your Honor,
6 I'm asking something a little different.

7 THE COURT: Overruled.

8 A. Now that you I had a moment to
9 think about it, yes.

10 Ms. Moss was constantly telling my
11 employees how to manage the circle and manage
12 parking on the circle and keeping people off
13 the you know, going down the wrong side of
14 the circle. And she was constantly, you know,
15 telling my people, you know or complaining
16 about things and making sure you know,
17 trying to make sure that she was happy.

18 BY MS. BONNET HEBERT:

19 **Q. Did your crew and subcontractors, to**
20 **your knowledge, enjoy working on this project?**

21 MR. ELDER: Objection, Your
22 Honor.

23 THE COURT: Sustained.

24 BY MS. BONNET HEBERT:

1 **workers on your site about calling regulatory**
2 **authorities?**

3 A. Yes.

4 **Q. Could you tell us about that.**

5 A. For instance, when we had the instance
6 with the with the fence that it leaned over
7 into Miss Sullivan's property, she said that
8 she was going to reach out to that. And I
9 know there were some other instances with the
10 silt fence where she would reached out to
11 people and

12 **Q. When you say she "reached out to**
13 **people"**

14 A. Mike O'Reilly would show up.

15 **Q. And I think you already testified**
16 **when he showed up, did he find anything wrong**
17 **at your worksite?**

18 A. As I said before, only that one time.

19 **Q. Did you ever observe Ms. Moss giving**
20 **orders or instructions to your workers about**
21 **how to do their job?**

22 A. No.

23 **Q. Do you have any understanding that she**
24 **did, in fact, give instructions to your**

1 **Q. Do you understand do you have an**
2 **understanding - strike that.**

3 **Did the interference that you've**
4 **described by Ms. Moss with the workers, did**
5 **that impact the atmosphere on the worksite,**
6 **the work atmosphere?**

7 MR. ELDER: Objection, Your
8 Honor.

9 THE COURT: Sustained.

10 BY MS. BONNET HEBERT:

11 **Q. Turning back to when you first were**
12 **engaged by the Reichenbachs to do I believe**
13 **it was the retaining walls, you said, at 29**
14 **Mattarest Lane, correct?**

15 A. Correct.

16 **Q. Did you have a contract with them for**
17 **that work, for the retaining wall work?**

18 A. A verbal contract, yes.

19 **Q. And at some point, you mentioned you**
20 **got you got the contract to do the house as**
21 **well; is that true?**

22 A. Yes, it was. Yes, it is.

23 **Q. At the outset, was that a verbal**
24 **contract as well?**

1 Mrs. Reichenbach?

2 A. It is.

3 Q. At some time before that, were you
4 able to put together a cost to date sheet
5 first time that would show a more fulsome
6 budget?

7 A. Yes, we were.

8 MR. ELDER: Objection.

9 Foundation.

10 THE COURT: Overruled.

11 MS. BONNET-HEBERT: Tim, could
12 you pull up I believe it's Exhibit 135 and
13 Requisition 12.

14 BY MS. BONNET-HEBERT:

15 Q. And, Mr. Olson, while we're waiting
16 for this to come up, when you first started
17 testifying I think we were waiting for a
18 picture to come up or something -- you told us
19 sort of the volume of your billing. You said
20 it was 5,000 pages' worth or thereabouts?

21 A. That was just the billing for this
22 project.

23 Q. So again, I'm not going to go through
24 5,000 pages of billing with you or put anyone

1 house as far excuse me as far along as
2 you could at that point?

3 A. We were hoping to have the house tight
4 to the weather and the trim on so we could be
5 having painters on the outside of the house
6 and having trades on the inside doing quiet
7 summer work that was allowed.

8 Q. So what was your deadline to get it to
9 that point?

10 A. I believe it's the end of June.

11 MS. BONNET-HEBERT: So if we
12 could, scroll down to the next page, please,
13 Tim.

14 BY MS. BONNET-HEBERT:

15 Q. Could you tell us what this page is,
16 Mr. Olson?

17 A. Thank you.

18 This is our -- this goes with each and
19 every contract. This is a cost-to-date -- a
20 cost-to-date sheet, which on the left
21 column -- not the left column but the column
22 that says "Estimated Cost," that would be the
23 original budget that we came up with. That's
24 how we -- if you add those numbers up, that

1 else through that today, but I would like to
2 take a look at a couple of things.

3 Do you recognize what you're looking
4 at here?

5 THE WITNESS: Can you blow it
6 up, please.

7 A. I do.

8 BY MS. BONNET-HEBERT:

9 Q. Could you tell us what this is.

10 A. This would be the cover sheet for
11 Requisition No. 12 dated May 21, 2012.

12 Q. And at that point, you still didn't
13 have a signed contract, correct?

14 A. That's correct.

15 Q. In the interim, between the September
16 2011 time, when you broke ground, and where
17 you are here in May 2012, had you been working
18 to get together the budget you would need for
19 the signed contract?

20 A. There wasn't a lot of time to work on
21 putting together a budget. We were so busy
22 trying to get the house as far along as we
23 could.

24 Q. Why was it so important to get the

1 would be our initial control estimate.

2 And then if you go all the way to the
3 right, it's Req 12 totals. That's the work
4 that was -- or the dollar value that was
5 carried or was accumulated during this period,
6 and then it all totals up to the total to date
7 in the middle.

8 Q. So you're saying it totals for each
9 category of work? Is that what you're
10 saying?

11 A. Yes, yes.

12 Q. So, for example, I'm I see 2,000,
13 and it says "site work," and that carries over
14 and has some numbers there. I guess that
15 Is that the total of the estimate?

16 A. Right. So the estimated the
17 estimated total is 633,161. And if you go to
18 the right a little bit more, we've totaled and
19 stored to date 390,581.

20 Q. What is it all the way to the right?

21 A. That would be the amount billed for
22 this in this period, 4,550.

23 Q. So just on this bill?

24 A. Just on this bill.

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1 Q. You testified on direct, I believe,
2 that you believed these appeals these
3 various wetland and other permit appeals
4 delayed your ability to sign the contract,
5 correct?
6 A. Correct.
7 Q. But once you started demolition in
8 November of 2011, construction proceeded
9 smoothly through June 2012, correct?
10 A. Correct.
11 Q. And the house was weathertight by June
12 2012, right?
13 A. Correct.
14 Q. That means all the windows are in, and
15 it can rain, and you feel good about it if
16 you're not there, correct?
17 A. Correct.
18 Q. You can do some interior work,
19 correct?
20 A. That was the plan.
21 Q. So a lot of work had been done between
22 November 2011 and October 2012, when you
23 finally signed a contract, correct?
24 A. Correct.

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1 Q. And I believe, just for clarification,
2 you testified on direct that this little
3 neighborhood that they call Nonquitt had a
4 prohibition on doing so called heavy
5 construction work during the summer months,
6 correct?
7 A. Yes.
8 Q. And then again, I know the Bevilacqua
9 house this is the last time I'll ask about
10 it, I promise, but they didn't have they
11 didn't have a summer restriction on heavy
12 construction, did they?
13 A. That is correct.
14 Q. So you talked a bunch about
15 Mr. O'Reilly and complaints that you believe
16 my clients had made to him.
17 Do you remember that?
18 A. I do.
19 Q. But it's true that those so called
20 complaints, or what I would call concerns,
21 being raised to Mr. O'Reilly didn't
22 significantly delay your work, correct?
23 A. I didn't say they delayed the work.
24 Q. So is that a no, they didn't delay

1 your work, sir?
2 A. It only -- only if we were waiting for
3 Mr. O'Reilly to show up on the site, it would
4 have delayed what we were doing.
5 Q. As you sit here today, do you know
6 whether or to what extent those visits delayed
7 your work?
8 A. It probably less than a day.
9 Q. You talked about Ms. Moss and seeing
10 her on the site.
11 Do you remember that?
12 A. I do.
13 Q. I think you said you saw her you
14 personally observed her there 300 days or
15 more?
16 A. No. I said 300 times or more.
17 Q. Okay. That's a helpful clarification.
18 So 300 times, that means it could have been
19 multiple times in a day?
20 A. Correct.
21 Q. So do you know how many days you might
22 have seen her?
23 A. I can't answer that question.
24 Q. Could it have been less than 100, for

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1 example?
2 A. I doubt it was less than 100.
3 Q. And you also testified when you
4 were testifying about that, you put it in the
5 context of through the way you put it was
6 throughout the duration of the project.
7 Can you help me understand what you
8 mean by the duration of the project in terms
9 of time?
10 A. To the best of my recollection, it
11 seems like Ms. Moss was there constantly
12 throughout until the summer that the
13 Reichenbachs moved in, and then it slowed
14 right down. But then we started doing work on
15 the drainage system, and then she was around
16 quite often.
17 Q. So but with respect -- I have a
18 different question than that, sir. Mine is
19 with regard to this 300 times that you saw
20 her, is that from, for example, when you
21 started in 2010 to the day that you said you
22 walked away in June 2016?
23 A. I would think that I personally walked
24 away from the job on a full time basis in

1 of those costs to my clients, correct?

2 A. Yes.

3 Q. And it could have been any two year
4 period, though, under your methodology,
5 correct?

6 MS. BONNET HEBERT: Objection.

7 BY MR. ELDER:

8 Q. Why not why not November 2011 to
9 November 2013 or '14?

10 A. This wasn't any deep analytical, you
11 know, but it was something that seemed to me
12 to make the most sense.

13 We expect we had a schedule. We
14 expected to be done in the summer of 2013. We
15 weren't. We lost roughly ten or seven months
16 because of delays caused by your client. It
17 pushed us into another full another season of
18 building, and that from so I lost
19 another full year. And then we didn't move
20 the clients in until 2014.

21 So that's how I came up with that
22 figure is the time from 2013 onward.

23 Q. But you didn't use 2013 and 2014 when
24 they moved in, for example?

1 Mr. and Mrs. Reichenbach

2 MS. BONNET HEBERT: Objection.

3 Asked and answered.

4 THE COURT: Overruled.

5 BY MR. ELDER:

6 Q. I here's notice of my
7 anticipated delays. Here's what I think
8 they're going to be going forward. Just want
9 you to know?

10 A. It wasn't so I didn't give them
11 cost for the delays, but it was the basis of
12 the contract was the cost of the cost of
13 the work plus a fee.

14 Q. But the contract has provisions for
15 submitting claims, correct?

16 A. None were submitted.

17 Q. None were submitted by you?

18 A. Correct.

19 Q. You performed all of your obligations
20 under your contract with the Reichenbachs,
21 correct?

22 A. I did.

23 Q. You never broke your contract with the
24 Reichenbachs, correct?

1 A. I used 2000 to now I'm getting

2 confused. I'm getting a little tired. Sorry.

3 Q. Is it fair to say, sir I get it.

4 The numbers have changed.

5 Is it fair to say this is just your
6 best guess?

7 MS. BONNET HEBERT: Objection,

8 Your Honor. He's badgering the witness.

9 THE COURT: Overruled. But I'm

10 going sustain the objection for different
11 grounds. Next question.

12 BY MR. ELDER:

13 Q. Is it fair to say that the number that
14 you've testified to is your best guess?

15 A. With the information that I reviewed,
16 yes.

17 Q. As far as those those extra costs
18 that we're talking about, Mr. Olson, is it
19 true you never requested a change order from
20 the Reichenbachs for those costs?

21 A. No, because the Reichenbachs were
22 paying those costs.

23 Q. But you never submitted any kind of
24 claim under your contract documents or, Hey,

1 A. I did not.

2 Q. Neither one of my clients ever asked
3 you to break your contract with the
4 Reichenbachs, correct?

5 A. That's correct.

6 MR. ELDER: Nothing further from
7 me.

8 Thank you, Mr. Olson. I appreciate
9 it.

10 THE COURT: Redirect.

11

12 REDIRECT EXAMINATION

13 BY MS. BONNET-HEBERT:

14 Q. Good afternoon, Mr. Olson.

15 A. Good afternoon.

16 Q. You've testified here today and I
17 believe they brought out your deposition
18 that you have estimated the excess costs
19 attributable to the defendants as 700 to
20 800,000, in that range, correct?

21 A. Correct.

22 Q. And previously, you testified that you
23 had done at least two different kinds of
24 calculations, correct?

In the Matter of:

John Reichenbach, et al. vs

Timothy Haydock, et al.

Trial Day 9

February 16, 2023

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1 Q. Did you ever park your vehicle
2 strike that.
3 Are you familiar with a property to
4 the north of the property line at the
5 Reichenbach home called we've referred to
6 as the Haydock family property. Are you
7 familiar with that property?
8 A. Yes.
9 Q. Have you ever parked in a way that
10 would block the driveway to the Haydock family
11 property?
12 A. I don't believe so.
13 Q. At the end of your work at the
14 Reichenbach home, did your work have a final
15 inspection by the Town of Dartmouth?
16 A. Yes.
17 Q. And were any problems identified with
18 the work you performed?
19 A. No.
20 Q. And it was signed off on by the
21 inspector of wiring?
22 A. Correct.
23 MS. BONNET HEBERT: No further
24 questions.

1 THE COURT: Cross examination,
2 if you wish.
3
4 CROSS EXAMINATION
5
6 BY MR. GRAMMEL:
7 Q. Hi, Mr. Burke.
8 A. How are you?
9 Q. I'm Sean Grammel. I represent Timothy
10 Haydock and Barbara Moss.
11 So it's accurate to say that in the
12 several years that you worked at 29 Mattarest
13 Lane you talked to Barbara Moss once during
14 the installation of the wiring for the
15 transformer, correct?
16 A. Installation of a conduit for the
17 transformer pad.
18 Q. Thank you.
19 That work was done on the day that it
20 was scheduled to be done, correct? If you
21 remember?
22 A. The day it was scheduled to be done?
23 Q. Let me ask it a different way.
24 In that one conversation with Barbara
Moss, you thought that her demeanor was fine,

1 correct?
2 A. Correct.
3 Q. And did she raise her voice at you?
4 A. No.
5 Q. Did that one conversation you had with
6 Barbara Moss delay any work that you did for
7 the Reichenbachs?
8 A. Not for me.
9 Q. Did that one conversation delay any
10 work that your employees were doing for the
11 Reichenbachs?
12 A. No.
13 MR. GRAMMEL: No further
14 questions, Your Honor. Thank you.
15 THE COURT: Very good.
16 MS. BONNET HEBERT: No further
17 questions.
18 THE COURT: Thank you, sir.
19 You're excused.
20 Further evidence on behalf of
21 Plaintiff.
22 MR. FIELDING: Your Honor, the
23 Plaintiffs call Paul Murphy to the stand.
24 COURT OFFICER: Watch your step.

1 You want to face the clerk and he'll swear you
2 in.
3
4 PAUL MURPHY,
5 a witness called for examination by
6 counsel for the Plaintiffs, being first duly
7 sworn, was examined and testified as follows:
8
9 THE WITNESS: I do.
10 THE CLERK: Thank you, sir. As
11 I said earlier, please speak into the
12 microphone, it amplifies.
13
14 DIRECT EXAMINATION
15 BY MR. FIELDING:
16 Q. Good morning, Mr. Murphy.
17 A. Good morning.
18 Q. Just state your full name for the
19 record, please.
20 A. Paul Michael Murphy.
21 Q. And your address, don't need the
22 street address, but where do you live?
23 A. Falmouth, Massachusetts.
24 Q. And what is your profession?

1 A. No.
2 Q. What about anything that Dr. Haydock
3 said to you?
4 A. No.
5 Q. Okay. Did you ever ask the
6 Reichenbachs to stop construction because some
7 documents were missing from the file in town
8 hall?
9 A. No.
10 Q. Did you ever ask Miss Moss if maybe
11 she took them by accident?
12 A. No.
13 Q. And you don't know if she took them in
14 the first place, right?
15 A. No.
16 Q. And I believe you testified on direct
17 that Miss Moss or the question was whether
18 she would go around you and talk to your
19 staff. She's allowed to ask questions of your
20 staff, right?
21 A. Yes.
22 Q. Okay. And you're a public official or
23 you were strike that.
24 You were a public official for the

1 A. No, that I recall. Not that I recall.
2 MR. GRAMMEL: No further
3 questions, Your Honor. Thank you.
4 THE WITNESS: Thank you.
5 THE COURT: You're excused,
6 sir.
7 THE WITNESS: Thank you.
8 THE COURT: You had nothing
9 further?
10 MR. FIELDING: No questions,
11 Your Honor.
12 THE COURT: All right. Further
13 evidence on behalf of the Plaintiff?
14 MR. FEINGOLD: We were going to
15 call Matt Swimm. He was supposed to be here.
16 THE COURT: Do we have another
17 witness?
18 (Brief pause.)
19 THE COURT: We'll take our
20 morning recess a little early today and
21 continue with further evidence.
22 COURT OFFICER: All rise for the
23 jury.
24

1 Town of Dartmouth, right?
2 A. Yes.
3 Q. And that's where Miss Moss lives?
4 A. Yes.
5 Q. And when she would speak with you, her
6 demeanor was professional?
7 A. Yes.
8 Q. Were you upset that the Reichenbachs'
9 retaining wall permit was appealed?
10 A. No.
11 Q. It didn't bother you?
12 A. No.
13 Q. Do you remember who appealed that
14 permit?
15 A. No.
16 Q. Did she ever talk to you the
17 Reichenbachs' contractor, Lars Olson?
18 A. Could you repeat the question.
19 Q. Did she ever talk to you about him as
20 a person rather than him in rather than
21 construction?
22 A. No.
23 Q. Did she ever complain about any of the
24 individual construction workers on the site?

1 (Jury exits the courtroom.)
2
3 THE COURT: All right, we're in
4 recess.
5
6 (The Judge exits the courtroom.)
7
8 (Recess taken from 10:45 a.m.
9 to 11:14 a.m.)
10
11 COURT OFFICER: Court. All
12 rise.
13
14 (The Judge enters the courtroom.)
15
16 COURT OFFICER: Court is now in
17 session. You may be seated.
18
19 THE COURT: All right. We have
20 some evidence, something to do anyway.
21 MR. FEINGOLD: What we're going
22 to do, we're going to read in and then he'll
23 be here shortly.
24 THE COURT: That's fine.

1 talk to Barbara and discuss if some things
2 were on site, any kind of issues like that.
3 **Q. Was there ever a point where you were**
4 **instructed not to talk to her?**
5 A. No.
6 **Q. Describe your interactions with Moss,**
7 **Barbara Moss?**
8 A. For me, they were generally very nice.
9 I mean, other than dealing with the complaints
10 as far as what's on the site, and that's just
11 kind of why I think I ended up dealing with
12 her mostly was because it wasn't her yelling
13 or screaming to me. She had problems with the
14 job. I would try to address them in the most
15 professional manner I could. So I felt like
16 it was fine because I didn't let anything
17 bother me like that. It's not my job to react
18 to people's emotions. It's my job to react to
19 the situation and address that situation. So
20 I did it as professional as I could.
21 **Q. How often would you see her?**
22 A. Quite often.
23 **Q. In the time that you worked there**
24 **excuse me would you repeat when you started**

1 pictures of?
2 A. The job site, for sure.
3 **Q. The house and**
4 A. The house, yes. I'm sorry. Yes, the
5 house.
6 **Q. Was she he ever on the south side of**
7 **the property of the Sullivans' property line,**
8 **near the pool?**
9 A. I don't recall seeing her over there.
10 **Q. How often was she taking pictures?**
11 A. It was fairly -- I mean, when she was
12 there, it was fairly often. To put a number
13 on it it would be hard to guess. But probably
14 closer -- most of the time that I saw her she
15 had taken a picture or had something like
16 that.
17 **Q. Did you know there was an easement on**
18 **the north side of the property?**
19 A. I did.
20 **Q. And can you describe the easement,**
21 **where it was?**
22 A. So it was probably -- it was along the
23 fence line of the project but we -- we had
24 adjusted for that, there's a small pathway

1 **29 and when you left?**
2 A. I started 29, so then that would have
3 been 2012. I was at 12 Mattarest and I was
4 kind of back and forth on 29 and 12 in the
5 beginning stages of the project.
6 **Q. And when did you leave 29?**
7 A. 2013.
8 **Q. Would you did you see Barbara Moss**
9 **continuously during 2012?**
10 A. 2012, mostly and then less in 2013.
11 **Q. And approximately how many times did**
12 **you interact with her?**
13 A. Being eleven years ago now, I would
14 say at least -- at least 50 to 100 times, I
15 would generalize that.
16 **Q. Did she ever did she ever have a**
17 **camera?**
18 A. Yes.
19 **Q. And did she ever use her phone to take**
20 **pictures?**
21 A. I believe so.
22 **Q. Did you see her taking pictures?**
23 A. Yes.
24 **Q. Could you tell what she was taking**

1 that went right along the fence. And from
2 that pathway we moved the fence probably 3
3 feet, I believe it was, off of that. So it
4 allowed no obstructions, you were able to go
5 use the easement as much as you would like.
6 **Q. And did you ever see her outside of**
7 **the easement on the Reichenbach property?**
8 A. On the pathway in the easement or in
9 that area?
10 **Q. Outside the easement. In other words,**
11 **was she ever on the Reichenbach property but**
12 **not in the easement?**
13 A. Yes.
14 **Q. Where was she?**
15 A. The driveway.
16 **Q. How many times was she there?**
17 A. I saw her once there.
18 **Q. Did she sometimes use her cell phone**
19 **while she was on the property on the easement?**
20 A. I don't recall, to be honest.
21 **Q. Did you ever see her on the beach in**
22 **front of the Reichenbach property?**
23 A. I don't recall.
24 **Q. How much time would you speak with her**

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1 framed.
2 **Q. And she was continuously there during**
3 **your tenure?**
4 A. Yes, it slowed down pretty frequently.
5 It slowed down greatly in 2013, the summer
6 of the spring to summer when they
7 usually when we shut down and everyone comes
8 in for the summer.
9 **Q. Do you recall an incident involving**
10 **the Frades recycling truck?**
11 A. I don't recall, to be honest.
12 **Q. Do you recall an incident involving a**
13 **cement truck?**
14 A. Yes.
15 **Q. Could you tell us about that?**
16 A. I remember there being an incident. I
17 don't recall exactly what happened, to be
18 honest with you. I remember it happening, I
19 just don't remember what how it played out.
20 **Q. Do you know Timothy Haydock?**
21 A. I don't know him. I don't believe
22 I believe I talked maybe I don't know him,
23 no.
24 **Q. Have you never talked to him?**

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1 A. It's eleven years ago. I don't -- I
2 believe most of my interactions were with
3 Barbara. I don't remember if I talked to him
4 or not.
5 **Q. Do you think you saw him?**
6 A. Yes.
7 **Q. Did you do anything regarding parking**
8 **construction vehicles at the site?**
9 A. Yes.
10 **Q. What was your responsibility?**
11 A. Daily I would -- a lot of people, we
12 would have park at 12 Mattarest and then if
13 they had tools and stuff like that, we would
14 either have to drive them down I would
15 drive them down and drop them off on 29 or
16 they would walk.
17 **Q. Did you have a particular objective or**
18 **goal with respect to parking in that area?**
19 A. To make sure that Barbara was happy
20 and wasn't blocking the Haydocks' driveways.
21 **Q. Was there ever a situation where**
22 **people were shuttled from another location**
23 **other than 12 to the job site? Do you recall**
24 **that?**

1 A. I don't recall.
2 **Q. In your time there, did you see cars**
3 **blocking the Haydock family property driveway?**
4 A. Yes.
5 **Q. How many times?**
6 A. Maybe a handful, maybe five, six.
7 **Q. And what did you do about it?**
8 A. I would immediately have them moved.
9 **Q. Was there how much of a time delay**
10 **was there?**
11 A. As fast as I could get from the house
12 to the car.
13 **Q. And did you do that even if she wasn't**
14 **complaining?**
15 A. Yes.
16 **Q. Did any of the other neighbors come to**
17 **the job site that you're aware of?**
18 A. No.
19 **Q. Did any other neighbors complain to**
20 **you about anything about the job site?**
21 A. No.
22 **Q. Did you ever meet Ulla Sullivan or her**
23 **husband?**
24 A. I don't recall. I don't know them.

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1 **Q. Did you ever meet Mr. or Mrs. Cook?**
2 A. The name sounds familiar but I
3 haven't I don't recall meeting them.
4 **Q. Did you ever meet Sam Haydock?**
5 A. I don't recall him either.
6 **Q. Did you ever meet Bob Frothingham?**
7 A. No.
8 **Q. And when did you quit?**
9 A. 2013, so September ish, probably a
10 little bit later than that, September,
11 October.
12 MR. FEINGOLD: I have no further
13 questions, Your Honor.
14 THE COURT: Cross examination.
15
16 CROSS EXAMINATION
17 BY MR. GRAMMEL:
18 **Q. Hi, Mr. Swimm.**
19 A. How are you?
20 **Q. I'm Sean Grammel. I represent Barbara**
21 **Moss and Timothy Haydock.**
22 I just want to clarify, you said that
23 your interactions with Miss Moss were very
24 nice, right? And you said "that I felt like

1 it was fine," on direct?
2 A. The conversation, as far as not being
3 hostile towards me. Towards me personally.
4 Q. So you never felt threatened by
5 Miss Moss, correct?
6 A. No.
7 Q. And you never felt afraid of her?
8 A. No.
9 Q. And when Miss Moss understood that she
10 could ask you questions, did she just talk to
11 you?
12 A. Yes.
13 Q. Okay.
14 A. Unless she couldn't find me. Unless I
15 couldn't be found, then she would try to find
16 someone else and most of the time it was
17 she would ask try to find anyone else, but
18 no one else would talk to her other than me.
19 So...
20 Q. I'm sorry, you said no one else -
21 A. No one else would interact more than
22 like, one minute, Barbara, I'll go get Matt.
23 Something like that.
24 Q. You said you were the main point

1 Q. Because there were some times when
2 they were blocking the Haydock family
3 property, right?
4 A. Like I said, you know, as long as I
5 could get to the person, find the person, get
6 it moved, yes.
7 Q. You said it was a handful of times
8 during your tenure there?
9 A. Yeah.
10 Q. And when you worked at 29 Mattarest,
11 you would follow Lars Olson's instructions,
12 right?
13 A. Correct.
14 Q. He was your boss?
15 A. Uh huh.
16 Q. You wouldn't have followed Miss Moss'
17 instructions because she wasn't your boss,
18 right?
19 A. No.
20 Q. You mentioned the installation of the
21 transformer. And you said that Miss Moss was
22 talking to some of the workers who came to
23 install it; is that correct?
24 A. Correct.

1 person for talking to Barbara?
2 A. I was the main point person on the job
3 site and talking to her, yeah.
4 Q. Got it. And you testified that you
5 could appreciate some concerns. I just want
6 to clarify. When you said that, did you mean
7 you could appreciate, what, living next door
8 to a construction site?
9 A. Correct.
10 Q. And you said that you would be
11 aggravated by that?
12 A. I would be aggravated if someone
13 didn't - wasn't attentive to the problems
14 going on there.
15 Q. Okay.
16 A. Which was not the case.
17 Q. Okay. One of the issues with living
18 next door to a construction site could be
19 traffic with the construction vehicles for
20 instance?
21 A. Uh-huh.
22 Q. And is that why you would try to move
23 cars as fast as you could?
24 A. Yeah.

1 Q. And you were you were there while
2 that happened?
3 A. Yes.
4 Q. And you said it might have delayed
5 things by half of the morning.
6 A. We yeah, we weren't able to start
7 until I would say 10:00 to 11:00, 12:00,
8 instead of starting at 7:00 when we were...
9 Q. So it was scheduled to be installed on
10 a certain day, whatever day it was?
11 A. Yeah.
12 Q. And it was actually installed that
13 day?
14 A. I don't recall if it finished if
15 they finished that day, but I would imagine if
16 they started, they probably finished.
17 Q. And do you know where the property
18 line is between Mattarest Circle and the
19 beginning of the Reichenbachs' property?
20 A. Can you ask that again.
21 Q. So you mentioned you saw Miss Moss
22 standing on the driveway.
23 Do you know where the property line is
24 on that driveway?

In the Matter of:

John Reichenbach, et al. vs

Timothy Haydock, et al.

Trial Day 10

February 17, 2023

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1 Q. Why did you ask the Conservation
2 Commission to amend your Order of Conditions?

3 A. Our landscape designer, Nan Sinton,
4 was helping us, and she pointed out that it
5 looked very much like a box, the wall, before.
6 And she thought it would be much more
7 esthetically pleasing to bump out a little on
8 the northeast corner and a little bit over
9 where it met the house on the north side.

10 Q. When you say "bump out," do you mean
11 curve it?

12 A. Just a curve, yeah. It was -- it was
13 more graceful.

14 Q. Were there other changes in the
15 Amended Order of Conditions?

16 A. The stairs, I believe, were angled a
17 little differently.

18 Q. Anything else that you remember?

19 A. I mean, there were other things on the
20 plans, but they were not -- I mean, I think
21 the septic was on it. But it wasn't about the
22 septic. It was about the wall.

23 Q. On January 11, were there -- was there
24 opposition?

1 A. Yes.

2 Q. By whom?

3 A. I believe -- I believe Sam Haydock
4 wrote a letter, and Barbara Moss did not
5 was not happy with it.

6 Q. Did you have any warning that Barbara
7 Moss and Tim Haydock would oppose the Amended
8 Order of Conditions?

9 A. She had said at the end of the
10 original Order of Conditions that she was
11 happy with the plan, so we didn't think,
12 because these were smaller adjustments, that
13 there should be any opposition.

14 THE COURT: Attorney Feingold,
15 I'm sorry. What year was that?

16 MR. FEINGOLD: 2011.

17 THE COURT: 2011. January 11,
18 2011. Thank you.

19 BY MR. FEINGOLD:

20 Q. What do you remember about the
21 January 11, 2011 Conservation Commission
22 hearing on your Amended Order of Conditions?

23 A. The committee or commission -- I'm not
24 sure which is the right term -- voted to

1 approve our Amended Order of Conditions.

2 Q. What happened after the meeting?

3 A. Well, we left the meeting, and we met
4 outside in the hall. And we were -- we were
5 excited. We were looking forward to getting
6 started. And we obviously were making too
7 much noise because one of the members -- I
8 don't know who -- came out and asked us to
9 move down the hall. We were making too much
10 noise and disturbing the proceedings inside.

11 So we did, and it was kind of
12 wonderful because at the other end of the hall
13 there was this enormous cardboard box, and we
14 took our plans and laid them out on it. I
15 don't know exactly why. Probably just to see,
16 okay. We've got this. What's next?

17 But, you know, we were chatting, and
18 Barbara Moss came up to me and indicated that
19 she wanted to speak with me. And so we sort
20 of moved off to the side, and we were talking
21 And one of the very first things she brought
22 up was that we still had a lot of things we
23 needed to change about our proposed house.

24 She wanted us -- she had a list. When

1 she got to the pool, I told her that the pool
2 was nonnegotiable. I -- I like to swim. It's
3 very good for my back and my hip, which have
4 given me a lot of issues over time.

5 When -- when I told her that, it was
6 like -- it was like someone changed the
7 channel. She just snapped, and she lowered
8 her voice, and she stared at me intently to
9 make sure that I was going to get every single
10 word, and she told me that she was going to --
11 if I didn't do what she was suggesting I do
12 very strongly, that she was going to cost us a
13 great deal of money. She was going to delay
14 us, cost us a lot of time, and she was going
15 to ruin our reputation in Nonquitt.

16 I was totally shocked, you know, just
17 unnerved. And I hadn't been threatened like
18 that, and I didn't want things to get worse,
19 so I told her that I needed to go home, I
20 hadn't made dinner yet and that it was a long
21 drive. And I walked away.

22 And I remember tapping my husband and
23 telling him I would meet him in the car. And
24 he followed out a little while later, and we

1 of looking at Ned. And ultimately, he left,
2 and then we went into the house.
3 Q. Was he staring at Ned the whole time?
4 A. Yes.
5 Q. Did he have any implements in his
6 hands?
7 A. No. I couldn't figure out why he was
8 there other than I felt threatened for my son.
9 Q. Was there anything else that Tim
10 Haydock did that frightened you?
11 A. There have been reports. They're not
12 things that I have physically been threatened
13 by, but there are reports of him going to
14 MS. ALLISON: Objection, Your
15 Honor. This is hearsay.
16 THE COURT: Sustained.
17 Anything that you know of or observed.
18 A. When someone who experienced it tells
19 me that, is that
20 THE COURT: No. That's
21 anything that you observed.
22 A. Okay.
23 BY MR. FEINGOLD:
24 Q. Did you learn about trespass on your

1 property?
2 A. Oh, yes. I did. John Honohan who is
3 the
4 MS. ALLISON: Objection, Your
5 Honor. Hearsay.
6 THE COURT: Overruled for now.
7 A. John Honohan.
8 BY MR. FEINGOLD:
9 Q. Let me ask it another way.
10 A. Okay.
11 Q. Did you hear John Honohan's testimony
12 in this trial?
13 A. I did.
14 MS. ALLISON: Mr. Feingold, I
15 can't hear you. Please speak up.
16 BY MR. FEINGOLD:
17 Q. Did you hear John Honohan's testimony
18 in this trial?
19 A. I did.
20 Q. And was it consistent with the reports
21 that you received before?
22 A. It was.
23 MS. ALLISON: Objection,
24 Your Honor. Hearsay.

1 THE COURT: Overruled.
2 BY MR. FEINGOLD:
3 Q. And as a result of your receiving that
4 report, did you and your husband take any
5 action against Tim Haydock and Barbara Moss?
6 A. We did.
7 Q. And what was that?
8 A. We served them with no trespass.
9 Q. Did you receive reports from any of
10 your workers about things that frightened
11 you?
12 MS. ALLISON: Objection, Your
13 Honor. Hearsay.
14 THE COURT: Well, it's yes or
15 no, but the characterization is a little
16 argumentative.
17 So any reports from any of the workers
18 regarding Mr. Haydock's conduct, did you get
19 any?
20 THE WITNESS: Yes.
21 THE COURT: Next question.
22 BY MR. FEINGOLD:
23 Q. Did you receive reports about
24 Dr. Haydock's conduct?

1 A. Yes.
2 Q. What can you describe them.
3 MS. ALLISON: Objection, Your
4 Honor. Hearsay. Asking for reports from
5 other people.
6 THE COURT: Attorney Feingold, a
7 little a few more questions for foundation.
8 BY MR. FEINGOLD:
9 Q. How often did you go to the property
10 during the construction phase?
11 A. During the construction phase, we were
12 there about once a week, sometimes an extra
13 visit but normally once a week.
14 Q. And did any of the workers and Lars
15 talk to you?
16 A. Yes.
17 Q. And what was the nature of any reports
18 you got involving Dr. Haydock?
19 MS. ALLISON: Objection.
20 Hearsay.
21 THE COURT: Overruled.
22 A. Lars told me
23 THE COURT: Not what people
24 said, just the nature of the report.

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1 A. I'm sorry. That Tim had come on the
2 property and screamed.
3 BY MR. FEINGOLD:
4 Q. At who?
5 MS. ALLISON: Motion to strike.
6 Hearsay.
7 THE COURT: Overruled.
8 A. Screamed at Lars.
9 BY MR. FEINGOLD:
10 Q. Did you hear Lars Olson's testimony in
11 this trial?
12 A. I did.
13 Q. Was it is that what you learned?
14 A. That's what I heard, although he did
15 not tell me what Tim had actually said.
16 Q. What did he tell you?
17 A. He told me that
18 MS. ALLISON: Objection.
19 Hearsay.
20 THE COURT: Sustained. In terms
21 of her recounting what other people have said,
22 you need to be careful with that.
23 MR. FEINGOLD: Okay.
24 THE COURT: Particularly the

1 A. Yes.
2 Q. Did you observe any surveillance?
3 A. Yes.
4 Q. So you were on the property once a
5 week at least?
6 A. Uh-huh.
7 Q. Did you ever see Barbara Moss on the
8 property?
9 A. Yes.
10 Q. How often?
11 A. Often.
12 Q. What percentage of the time, if you
13 can?
14 A. About 80 percent of the time.
15 Q. And did you observe her taking
16 photographs?
17 A. Yes.
18 Q. Do you know what could you tell
19 what she was photographing?
20 A. Somewhat.
21 Q. Please --
22 A. Mostly the house, but I -- I mean, I
23 made a remark to one of the workers when she
24 was doing it that maybe we should take

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1 testimony. I mean, her recounting what she
2 heard in the courtroom, you need to be careful
3 with that.
4 BY MR. FEINGOLD:
5 Q. Did you hear any reports from Dana
6 Diggle?
7 A. Dana made a report.
8 Q. And did you hear any reports from
9 Andrew Dearden?
10 A. Yes.
11 Q. That frightened you?
12 A. Yes.
13 Q. Did you hear a report about a cement
14 truck incident that frightened you?
15 A. Yes.
16 MS. ALLISON: Objection.
17 Leading.
18 THE COURT: Overruled.
19 BY MR. FEINGOLD:
20 Q. Did you hear a report about a Frades
21 recycling truck incident that frightened you?
22 A. Yes.
23 Q. Did you -- did you hear any reports
24 about surveillance?

1 pictures of her.
2 Q. Did you get any reports from your
3 workers about their feelings and reaction to
4 her conduct?
5 MS. ALLISON: Objection, Your
6 Honor. Leading.
7 THE COURT: Sustained.
8 BY MR. FEINGOLD:
9 Q. When you saw her, Barbara Moss, taking
10 pictures, where was she? The I'm sure she
11 wasn't in one spot the whole time.
12 A. No.
13 Q. So where was she?
14 A. She was always just on the other side
15 of the fence, which is our property because we
16 had the easement, but everywhere around we had
17 a there was room that was ours.
18 Q. So is it your testimony that that
19 security fence was at the edge of the easement
20 on your property?
21 A. On the north side more or less. I
22 think it was -- actually gave room so -- yeah.
23 Q. So in other words, there was a space
24 between the security fence and your property

1 Q. All right. So Tim -- Tim Haydock
2 never threatened you, right?
3 A. No.
4 Q. Did you tell anybody else about this
5 alleged threat on January 11, 2011?
6 A. It happened on January 11, or did I
7 tell them on January 11?
8 Q. Did you tell them at any time about
9 the threat that happened?
10 A. So I did tell my husband the night of
11 in the car. And then over time, I shared it
12 with Lars, Anna, Nan, Tom Hardman, my
13 children, my parents, my siblings, and
14 friends.
15 Q. So we've seen a lot of documents
16 produced in this case.
17 Have you ever seen a document that
18 mentions that alleged threat?
19 A. That I wrote or someone else wrote?
20 Q. That anybody wrote --
21 A. No.
22 Q. -- other than the complaint in this
23 lawsuit.
24 A. No.

1 Q. No.
2 So do you recall any public meeting in
3 which you met people out in the hall
4 afterwards and you got angry?
5 A. No, not to my knowledge. Maybe you
6 can refresh it. I don't have one.
7 Q. I know it was a while ago. I'll
8 I'll ask you some questions about it.
9 A. Certainly.
10 Q. So you attended -- do you recall there
11 was a meeting on January 12, 2010 with the Con
12 Comm, public meeting about the pre and
13 post development water drainage study that
14 your engineers had prepared for the Con Comm?
15 A. Okay.
16 Q. Do you remember that meeting?
17 A. Specifically, no, but we did do a lot
18 of plans.
19 Q. You remember that some new site plans
20 were prepared as a result of that study, and
21 they were submitted to the Con Comm.
22 A. Yes, we made many attempts to make
23 them happy about the water situation for the
24 Haydocks.

1 Q. And you'll recall there was a Con Comm
2 meeting at which the Conservation Commission
3 addressed the new plans after that study was
4 done, right?
5 A. It sounds right. I don't know.
6 Q. And I have I'm sure that you can't
7 remember the specific date of the meeting
8 right now, but
9 A. No idea.
10 Q. Is it consistent with your
11 recollection that that was at the beginning of
12 2010?
13 A. I have no idea.
14 Q. Do you have dates aside, because,
15 again, I know it was a very long time ago, do
16 you have a memory of being at a Con Comm
17 meeting where the Conservation Commission was
18 addressing the new plans after the drainage
19 study was done?
20 A. Possibly.
21 Q. Do you have a memory of that?
22 A. Not clear right now.
23 Q. Okay. And the neighbors had received
24 a copy of those new plans just right before,

1 shortly before the hearing?
2 A. Anything's possible.
3 Q. Well, they were required to have a
4 copy, right?
5 A. But you're asking me if I recall it.
6 Q. Okay. And, well, maybe this will help
7 you recall it. At that January 12, 2010
8 meeting, Sam Haydock asked for some additional
9 time to review the new plans so that he could
10 evaluate the engineer's study.
11 Do you remember that?
12 A. No, but that doesn't sound out of
13 order.
14 Q. And as a result of that, the
15 commission continued the hearing to a later
16 date?
17 A. Okay.
18 Q. And after that meeting, there were a
19 group of folks in the hall reviewing the new
20 plans that you had just submitted to the
21 neighbors.
22 Do you remember that?
23 A. No.
24 Q. And you became angry in the hallway.

In the Matter of:

John Reichenbach, et al. vs

Timothy Haydock, et al.

Trial Day 11

February 27, 2023

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1 Q. And have you worked both in New York
2 and Massachusetts as a landscape designer?

3 A. Yes.

4 Q. And

5 A. And other places as well.

6 Q. Have you done work in Nonquitt as a
7 landscape designer?

8 A. Yes.

9 Q. And in other areas of South Dartmouth?

10 A. Yes.

11 Q. So just could you briefly describe
12 what landscape design work involves.

13 A. It really depends on the project.
14 Sometimes I can be hired to do the interior
15 design of the house and the landscape, so I'm
16 really responsible for everything inside and,
17 hence, everything that's outside on the
18 property that's purchased. Sometimes it can
19 be just designing gardens. So there's a wide
20 range of what my responsibilities might be in
21 a project.

22 Q. So the landscape design part, that
23 would be designing the gardens, the outdoor
24 space?

1 A. Yes, in a general way, not not
2 detailed, but in a general way, yes.

3 Q. And in general, what is your
4 understanding of the general purpose of the
5 Wetlands Protection Act?

6 A. It's to you know, there are
7 sensitive resource areas that need to be
8 protected where work in those areas is more
9 restricted and limited and, you know, with an
10 eye for how this impacts the whole coastline.
11 You can have resource areas near a river.
12 So, you know, if I'm for example,
13 if I'm hired to come in and cut down a lot of
14 trees on a property, I just need to know where
15 the wetlands might be on that property and how
16 any work might be impacted by the resource
17 area.

18 Q. I see. And the town the Town of
19 Dartmouth has its own wetlands law and
20 regulation also, right?

21 A. Yes.

22 Q. And as part of your work, did you
23 become familiar with that?

24 A. Yes.

1 A. Yes. Parts -- say, retaining walls
2 sometimes, planting trees, removing trees.
3 Really, anything that might happen on the
4 property.

5 Q. So what some of us might think of as
6 landscaping, that sort of thing?

7 A. Yes. And then typically, the other
8 thing that I like to do is real garden
9 design. And sometimes I'm even just doing
10 planters on a you know, a property for a
11 client. So it really varies.

12 Q. As part of your landscape design work,
13 are there rules and regulations that you need
14 to be familiar with?

15 A. Yes, in a general way. I for
16 example, even working in New York where the
17 regulations are a little different, any
18 wetlands regulations are very important to
19 know. So whatever state I'm working in, I try
20 to have, you know, an idea of what's required
21 for working on a site.

22 Q. So as part of your work in
23 Massachusetts, did you become familiar with
24 the Wetlands Protection Act?

1 Q. And as part of your work, did you gain
2 any familiarity with the Town of Dartmouth's
3 Conservation Commission?

4 A. Yes. I had some awareness, and then I
5 think when the permitting for 29 Mattarest
6 started, I became more familiar with who was
7 there.

8 Q. And what is your understanding of the
9 role of the Conservation Commission in
10 Dartmouth?

11 A. You know, again, it's to uphold the
12 Wetlands Protection Act. It's sort of the
13 first local permitting authority if you're in
14 a protected area.

15 Q. So I'm going to -- I'm going to turn
16 now and ask you a little bit about the times
17 that the time that you spent in Nonquitt
18 over the years.

19 A. Okay.

20 Q. So when did you begin residing in
21 Nonquitt?

22 A. Well, I think I met Tim in maybe 1994,
23 and that was about the same time that he -- a
24 little bit after the time he had finished work

1 on his house. He purchased it and then added
2 an addition to the house to really live in.
3 And it was shortly after that. And I would
4 probably come in the summer and on weekends.
5 **Q. So that was about the mid '90s?**
6 A. Yes.
7 **Q. And back in the years 2010 2010**
8 **through 2016, how much time did you typically**
9 **spend in Nonquitt?**
10 A. It varied year by year, depending on
11 how much work I had there.
12 **Q. By "work," you mean your landscape and**
13 **interior design work?**
14 A. Both. So the interior I didn't do
15 a lot of landscape design in the middle of the
16 winter, but I did do interior design work and
17 or just decorating, you know, finding
18 furniture for clients. So it varied year by
19 year.
20 **Q. And again, understanding that it**
21 **varied, over those years 2010 through 2016,**
22 **are you able to give an estimate of how much**
23 **time you would typically spend in Nonquitt**
24 **during those years?**

1 A. I could do it -- I could try to go
2 back year by year and give a
3 **Q. Just your best estimate.**
4 A. Right. Because sometimes I might have
5 a project in the fall, you know, for a year,
6 it might be how much over the course of the
7 year again it could be. If I had a project
8 that took two months in January and February,
9 I would be there more than I would be in the
10 March and April.
11 But in general, I lived in New York
12 and my business was based in New York, my
13 suppliers, if I was doing interior design,
14 they were in Connecticut and New York. So I
15 would come up to Nonquitt for work, so it was
16 very limited. And then I would usually just
17 return after a day or two back to New York.
18 So in 2010, I would probably come up
19 once a week during the sort of the season. I
20 would get busier in the fall I mean, fall
21 and spring when I had more landscape work to
22 do.
23 **Q. When you got busier in the fall and**
24 **spring, how often would you typically spend in**

1 **Nonquitt?**
2 A. It still wasn't usually more than two
3 or -- you know, two days --
4 **Q. Okay.**
5 A. -- just because there was so much that
6 I really -- you know, again, I had work in
7 New York, I had -- upstate New York. I had
8 work in Connecticut and Florida. I mean, I
9 just had other jobs as well.
10 **Q. Was that typically I think you were**
11 **talking about 2010, but**
12 A. Right.
13 **Q. 2010 through 2016, was what you**
14 **just described typical, you know, one to two**
15 **days a week, depending on the jobs?**
16 A. It was. There were exceptions. In
17 2011, I spent less time there because my son
18 was diagnosed with a very difficult cancer and
19 he was in Colorado. So from the fall of 2011
20 through the -- he passed away in July, the
21 following year, in 2012.
22 And I -- during that time, I came up
23 one day a week for a job that I was working
24 on, but I spent a lot of time in Denver with

1 him that year. So that was really that
2 year, it was really pretty much one day a
3 week.
4 **Q. All right.**
5 A. And then after he passed away, there
6 were things that we had to take care of
7 related to his estate and medical expenses.
8 So even in the fall of that year, I don't
9 think I was there frequently. It was one day
10 a week.
11 **Q. So and then following 2012, so 2013**
12 **through 2016, would your one to two day a week**
13 **estimate still apply depending on the job?**
14 A. That's right. And in 2013 and 2014, I
15 had a couple of jobs where I might be
16 again, for a period of a month or two, I might
17 be two to three days for a cabinet
18 installation or something that was ongoing,
19 but it wasn't every week. It it just it
20 varied depending on how much I needed to be
21 there to supervise work.
22 **Q. Okay. And so in the years 2010**
23 **through 2016, how much time did Dr. Haydock**
24 **spend in Nonquitt?**

1 discussions about -- that you had discussions
2 about that with Uncle Billy's family?
3 A. Well, I think members of Haydock
4 family did, yes.
5 Q. Did now, did Tim have a right of
6 first refusal on that property?
7 A. Yes.
8 Q. But he didn't exercise it?
9 A. No.
10 Q. All right. So did you know
11 the did you know the Reichenbachs before
12 that time, before you were -- in 2008 when you
13 learned they were planning to purchase the
14 property?
15 A. I didn't know them. I can say that I
16 had seen them, but I isn't know them.
17 Q. Seen them around Nonquitt, you mean?
18 A. Yes.
19 Q. When was your first meeting with the
20 Reichenbachs?
21 A. I think in the summer of 2008.
22 Q. So this was before they purchased the
23 property?
24 A. I think so.

1 Q. How did that meeting come to pass?
2 A. I think they it's hard to remember.
3 I think we literally just ran into them at the
4 property and introduced ourselves and invited
5 them back to our house just to, you know, have
6 a glass of wine and talk to them and just be
7 friendly to our new neighbors. It was just
8 I can't remember exactly how it happened, but
9 I do remember we got -- we all got together
10 that day.
11 Q. So that wasn't a planned meeting?
12 A. No, I don't think.
13 Q. By happenstance?
14 A. I think so.
15 Q. Do you recall anything about that
16 meeting besides having a glass of wine and
17 introducing yourselves?
18 A. No. It was just very normal, you
19 know. I I spoke more to Lynn, and I think
20 Tim was talking to John. And we I mean, we
21 had -- we talked about where we liked to buy
22 antiques, and we probably talked about it
23 was just a very normal conversation and
24 pleasant.

1 Q. So at that point, no discussion about
2 sort of their plans for the house or the
3 property?
4 A. I only know what I talked to Lynn
5 about because I really spent most of the time
6 with Lynn, so not to me.
7 Q. So when was your next meeting with the
8 Reichenbachs?
9 A. I don't recall really seeing them
10 until the following maybe June.
11 Q. The following June of 2009?
12 A. Yes. I mean, obviously, we can always
13 pass them on the road. I don't recall really
14 meeting them until the following year.
15 Q. So that was after they purchased the
16 property?
17 A. Yes.
18 Q. And who -- who suggested that meeting?
19 A. I think John contacted us maybe in
20 June and said he wanted to talk to us about
21 his plans for his -- you know, for redoing the
22 house.
23 Q. So you understood that to be the
24 purpose of the meeting?

1 A. Yes.
2 Q. So he wanted to talk about the plans.
3 Did he -- anything else that he wanted to talk
4 about?
5 A. There was always, you know, a
6 conversation, ongoing conversation about
7 driveway access.
8 Q. This is the access issue that you just
9 described, the limitation to the Haydock
10 family?
11 A. Yes. And that had been ongoing, but
12 not with me. I mean, I had not been
13 discussing it with them, but I think other
14 members of the family had.
15 Q. But at this June 2009 meeting, you
16 understood that he wanted to talk about that,
17 too?
18 A. Probably, because it was usually part
19 of the conversation. It -- you know, I wasn't
20 an owner. It wasn't -- it didn't directly
21 involve me, but it usually -- it did come up.
22 I mean, there was discussion. And I think, if
23 it's 2009, I think there had been
24 discussion -- I think the family gave the

1 Reichenbachs the right to temporarily use the
2 driveway, too, around that same time.
3 Q. So this is around the time of this
4 meeting, the family had given the Reichenbachs
5 the temporary right to use the driveway?
6 A. I think there was discussion around
7 that time, approximately.
8 Q. Okay. So what do you what do you
9 recall about the meeting?
10 A. So I think I'm not sure if I saw
11 plans before the actual meeting. But during
12 the meeting, John did most of the talking and
13 he showed sort of schematics or drawings of
14 the house. I don't remember seeing an actual
15 site plan that, you know, shows elevations or
16 floodplains or any of that detail.
17 It was Anna Surma had drawn the
18 plans. They looked very nice. It was just a
19 rendering. This is what the north elevation
20 of the house would look like. These are
21 trees. This is how our house would look from
22 your house next door, the family property.
23 Q. When you say "north elevation of the
24 house" and its "a rendering," do you

1 on the basement for the house.
2 Q. What what was your reaction to
3 that?
4 A. It was I thought it was a little
5 I thought it was a little odd to be focused on
6 your basement when you have a nice, big
7 beautiful house, but that was something very
8 important to him was his basement.
9 Q. At that time when he's is talking
10 about the changes to the flood zones and so
11 forth, did you have any understanding of what
12 that was all about?
13 A. I didn't know that the flood the
14 flood map had changed that summer and
15 Q. I'm sorry. Did you not know that?
16 A. Did I not know that yet, no. I don't
17 think I had any reason to go in and, you know,
18 update anything for you know, I don't think
19 it pertained to any of my work at that point.
20 So he said there was no longer a
21 velocity zone, that this was great, a great
22 stroke of luck for them. It would allow them
23 to have retaining walls and the basement. He
24 was very proud of his house. He said more

1 mean this is for people that aren't as
2 familiar with
3 A. Right.
4 Q. architecture.
5 A. Right.
6 Q. Is it just sort of like a drawn
7 picture of what the house would look like?
8 A. Right. It was a drawing of the side
9 of the Reichenbach house facing the Haydock
10 family house.
11 Q. I see. So he shared those drawings.
12 Do you remember anything that you talked about
13 during that meeting?
14 A. Yes. I mean, John I think we
15 listened for the most part and John Lynn
16 was there. I don't recall her saying that
17 much about the details of the house, but I do
18 remember a few things.
19 He said that the flood maps had
20 changed, and they were no longer going to be
21 in a velocity zone on the new flood map, which
22 was really good luck for them because it would
23 allow them to have a very full basement and a
24 very tall basement, too. He was very focused

1 than once "we're going to build the most
2 impressive house in Nonquitt."
3 And he also described that they were
4 hiring Tom Hardman to and described him as
5 the engineer. And Tom Hardman worked also for
6 the Town, and he said Tom "we've been told
7 that Tom Hardman can help get anything through
8 the Town for permitting, and he's going to be
9 our man."
10 Q. All right.
11 A. And...
12 Q. Is there anything else that you
13 remember about these early discussions?
14 A. Oh, at the let me think for a
15 second.
16 Q. If not, I mean, that's fine. I know
17 it was a long time ago.
18 A. I think there is something else that
19 I'm forgetting right now. The floodplain, the
20 basement, "he's building the most impressive
21 house," Tom Hardman.
22 Q. Those are the things that stick in
23 your mind?
24 A. Those are the things that stick out

1 right now. I could be forgetting something.
2 **Q. Then did later in time, did**
3 **Mr. Reichenbach share site plans with you and**
4 **Dr. Haydock?**
5 A. I don't remember if we saw site plans
6 during the summer.
7 **Q. During that summer. So let's**
8 **sticking with the summer for a moment, did you**
9 **have any other any other discussions with**
10 **John or Lynn Reichenbach about their project**
11 **during that summer of 2009?**
12 A. I think there was at least some sort
13 of a brief second meeting during, and that
14 meeting, he talked about wanting to build a
15 dock.
16 **Q. A dock?**
17 A. A dock.
18 **Q. Okay.**
19 A. Yeah.
20 **Q. That's all you remember about that**
21 **brief second meeting?**
22 A. I think he showed us an image of a
23 very long dock, and that's yeah, there was
24 just a very quick meeting. I can't remember

1 the reason for it.
2 **Q. Okay. During**
3 A. Sorry. But there was still probably
4 continuing discussion about the driveway.
5 **Q. Right.**
6 A. Yeah.
7 **Q. Right. So during these discussions in**
8 **the summer of 2009, did John Reichenbach or**
9 **Lynn Reichenbach tell you that they would be**
10 **submitting a request for determination of**
11 **applicability with the Conservation Commission**
12 **in August to determine the location of the**
13 **coastal bank?**
14 A. No.
15 **Q. So at some point later in time, you**
16 **learned that the Reichenbachs had filed for**
17 **their permit with the Conservation Commission,**
18 **right?**
19 A. Yes.
20 **Q. And was that in the fall of 2009?**
21 A. It was late September, I think.
22 **Q. Late September. Okay.**
23 A. Oh, when they filed it or when they
24 when they filed it?

1 **Q. Let's say**
2 A. Yes.
3 **Q. When did you learn that they would**
4 **be filing their request for a permit with the**
5 **Conservation Commission?**
6 A. I think it was later in September.
7 **Q. Okay. And that's -- that's called a**
8 **Notice of Intent, right?**
9 A. Yes.
10 **Q. And at that time, did you receive more**
11 **detailed plans for the house from John**
12 **Reichenbach?**
13 A. I think we received one of Tim's
14 siblings received the notice in the mail as an
15 abutter, that this was being filed, and I do
16 think that John sent us plans, copies of the
17 plans.
18 **Q. I'm going to show you a previously**
19 **marked exhibit, No. 140.**
20 **And I will ask Mr. Grammel just to**
21 **scroll down through the document so you're**
22 **able to see what it is.**
23 A. (Witness reviews document.)
24 **Q. And then we'll go back up to the top**

1 **when that's -- when that's done.**
2 A. (Witness reviews document.)
3 **Q. So is this, again, to the best of your**
4 **recollection, a copy of the plans that you and**
5 **Dr. Haydock received copies of in September of**
6 **2009?**
7 A. Yes.
8 **Q. Now, at that time, did you have an**
9 **understanding of why the Reichenbachs' project**
10 **needed Conservation Commission approval?**
11 A. Yes, I did.
12 **Q. And we see in this document**
13 **Mr. Reichenbach informs you and Dr. Haydock**
14 **that your project that his project needs to**
15 **go before the Conservation Committee, he says,**
16 **but Commission, because portions of it are**
17 **within**
18 MS. BONNET HEBERT: Objection,
19 Your Honor. The document speaks for itself.
20 THE COURT: Overruled. She can
21 ask questions about it.
22 BY MS. ALLISON:
23 **Q. Because portions of it are within 100**
24 **feet of the coastal bank.**

1 Do you see that?
2 A. Yes.
3 Q. And is that consistent with your
4 understanding of one of the reasons that it
5 would have to go before the Conservation
6 Commission?
7 A. That's one of the reasons, yes.
8 Q. I mean, are there other reasons, to
9 your knowledge to your understanding, that
10 the project would need to go before the
11 Conservation Commission?
12 A. Yes.
13 Q. And what are what's the other
14 reasons?
15 A. If there are regulations for
16 something called land subject to coastal storm
17 flowage. And that's the resource area, the
18 floodplain. That's separate from the 100 foot
19 buffer.
20 Q. The Conservation Commission also
21 evaluates projects in that area?
22 A. Yes.
23 Q. Towards the bottom of John
24 Reichenbach's e-mail, he says, "We also need

1 A. Yes.
2 Q. And the south is the Sullivans, to be
3 clear, right?
4 A. Yes.
5 Q. And the north is the Haydock family
6 property?
7 A. Yes.
8 Q. So I'm sorry. You talked about the
9 proximity to the neighbors and the work in the
10 protected areas.
11 Anything else that concerned you about
12 the project?
13 A. Well, there were two things, if I'm
14 looking at this now, that we could start to
15 talk about, which is the drainage. I could
16 see, judging by this, there would be impacts
17 on the Haydock family property from the
18 drainage that was proposed here.
19 Q. And how is it what about the site
20 plans raised that concern?
21 A. You can see can I indicate where
22 I'm talking about?
23 Q. Well, it's hard because you're
24 speaking. I mean, just, you know

1 to figure out the driveway issues."
2 Do you see that?
3 A. Yes.
4 Q. So, again, at this time, that was
5 still under discussion? It was your
6 understanding?
7 A. Yes.
8 Q. So when you reviewed these initial
9 plans, Miss Moss, and we can actually --
10 actually we can scroll down to the site plan,
11 if you would like to take a look.
12 But my question is is simply when you
13 reviewed these initial plans, did you have any
14 concerns about the project?
15 A. Yes.
16 Q. And describe those concerns for us.
17 A. The majority of the development
18 proposed for the house, which includes the
19 house, retaining walls, a pool structure, and
20 terrace, most of that was in the buffer zone.
21 It was also very close to the abutters'
22 properties.
23 Q. Very close to the abutters' properties
24 on the south and the north?

1 A. Okay.
2 Q. just describe your concern.
3 A. There's some -- there's some lines on
4 the north side of the house going to the
5 Haydock family property that indicate
6 slopes --
7 Q. I see.
8 A. -- which indicate where the water will
9 be coursing, and it was directed toward the
10 Haydock family property.
11 (Witness indicating.)
12 Q. I see.
13 A. The second thing -- I'm sorry.
14 Q. Go ahead. I'm sorry. I didn't know
15 you were I thought you were finished.
16 A. And the second thing that we noticed
17 is this was their formal Notice of Intent, but
18 they were showing access through their --
19 legal access through the Haydock family
20 property.
21 Q. I see. They were showing their access
22 on the Haydock family driveway?
23 A. Right.
24 Q. But that had not been resolved yet?

1 A. That's right.
2 **Q. Are there any easements on the**
3 **Reichenbach property that benefit you and**
4 **Dr. Haydock?**
5 A. Yes.
6 **Q. Are those easements shown on this**
7 **plan?**
8 A. No.
9 **Q. Did that raise any concern?**
10 A. That did as well, yes.
11 **Q. And just very briefly describe what**
12 **those easements are and where they are.**
13 A. And should I approach or just
14 describe?
15 **Q. Describe.**
16 A. Okay.
17 **Q. Just so we can hear you.**
18 A. Okay. On the property line, the
19 Reichenbach-Haydock family property line,
20 there is a walking right-of-way that is
21 connected to our property at 28 Mattarest.
22 And it comes from the Mattarest Circle, and it
23 goes 5 feet entirely on the Reichenbachs'
24 property, over the coastal bank, down to the

1 to the Reichenbachs before the October 6
2 hearing.
3 **Q. So do you -- you have a -- do you have**
4 **a good recollection of when that first hearing**
5 **was?**
6 A. It was my brother's birthday,
7 October 6, yeah.
8 **Q. So it's a little bit over a week after**
9 **you received those plans?**
10 A. That's right.
11 **Q. And that -- you understood that to be**
12 **the first Conservation Commission hearing on**
13 **those plans?**
14 A. Yes.
15 **Q. Who attended that hearing, again, to**
16 **the best of your recollection?**
17 A. Tim was there. I was there. Ulla
18 Sullivan was there, Sam Haydock, Bob
19 Frothingham. I think another cousin of Tim's,
20 Tally Garfield, was also there. I mean, there
21 could have been others, but those are the ones
22 that I remember.
23 **Q. And I take it I take it the**
24 **Reichenbachs were there?**

1 beach. And that's entirely on the
2 Reichenbachs' property.
3 There is another boating easement that
4 is meant for Frothingham family members who
5 still own parcels in the subdivision. And
6 that's generally straddles the property
7 line, so it's 5 feet on the Reichenbachs'
8 and 5 feet on the Haydock family property
9 until you get to that sharp corner, and then
10 it sort of juts across a little bit. And that
11 goes, again, from the Mattarest Circle all the
12 way down to the beach.
13 **Q. And, again, those easement rights are**
14 **not shown on this plan?**
15 A. No. And the boating -- the easement
16 for the Frothingham family members was to
17 trailer a boat to the water.
18 **Q. Understood.**
19 A. Yeah, okay.
20 **Q. So after you saw these plans near the**
21 **end of September 2009, what was the first**
22 **occasion on which you shared your concerns**
23 **with the Reichenbachs about the plans?**
24 A. I think we -- I don't think we spoke

1 A. Yes.
2 **Q. And with their -- did they have any**
3 **professionals with them?**
4 A. I think Tom Hardman was the only
5 person I remember being there.
6 **Q. And what were the -- again, sort of**
7 **the topics of conversation during that**
8 **hearing?**
9 A. Well, in general, the amount of
10 disturbance in the buffer zone because there
11 was -- it's a very -- it's a narrow piece of
12 land in that location, and the development
13 went very far to the north property and was
14 within feet of the south property line so that
15 it was -- you know, the majority of the
16 development was in a very sensitive area.
17 We were concerned about wave impacts
18 on the walls that were shown. General
19 drainage, there are three different ways that
20 drainage might be an issue.
21 MS. BONNET-HEBERT: Objection,
22 Your Honor. I think this is getting into
23 areas that were subject to a motion in limine
24 on relitigation.

1 THE COURT: Well, no. The
2 question was just what were the general
3 discussions at the initial meeting? So I'll
4 allow it. Thank you.
5 Overruled. Next question.
6 BY MS. ALLISON:
7 **Q. Had you finished describing the topics**
8 **of discussion at the meeting?**
9 A. No. There were a couple others. I
10 mean, drainage, impacts on the wall.
11 There were -- there was an issue with
12 the driveway. It was -- they were showing
13 access from the Haydock family property, and
14 that was not the access that they had at that
15 point.
16 There was also discussion at some
17 point about a -- they had left remnants of the
18 first floodplain -- first flood map on the
19 plan. There was discussion about taking that
20 off the plan --
21 **Q. So**
22 A. -- references to an earlier flood map.
23 **Q. You mentioned various people that**
24 **attended that meeting.**

1 **Who raised those various issues during**
2 **the meeting?**
3 A. So I think that
4 MS. BONNET HEBERT: Objection.
5 This calls for hearsay.
6 THE COURT: Overruled.
7 A. I think Ulla Sullivan had made
8 comments about the pool. I think Sam Haydock
9 raised questions about drainage. I think Bob
10 Frothingham expressed something possibly even
11 about the right-of-way not being shown.
12 Tim asked a question about their
13 access that's being shown, that it was through
14 the Haydock family property at that time,
15 which they didn't have. I think Tally
16 Garfield's comments were about the access too.
17 I'm not sure if I said something. I
18 might have raised a question.
19 BY MS. ALLISON:
20 **Q. Okay. So as a result of that meeting,**
21 **were the Reichenbachs required to make any**
22 **changes to their plans by the Conservation**
23 **Commission?**
24 A. Yes.

1 **Q. And, again, generally to the extent**
2 **you can remember, what were those changes?**
3 MS. BONNET HEBERT: Objection,
4 Your Honor. I believe this is subject to the
5 motion in limine on relitigation.
6 THE COURT: Overruled.
7 A. They asked the -- they asked the
8 Reichenbachs to perform a pre and
9 post development study to address water.
10 It
11 BY MS. ALLISON:
12 **Q. At the time, did you understand what**
13 **that involved?**
14 A. No.
15 **Q. Oh, okay.**
16 A. No.
17 **Q. Okay.**
18 A. And I didn't know what water. I mean,
19 it was just -- it was something that was asked
20 by the Commission of the Reichenbachs.
21 They -- I think Mike O'Reilly had
22 mentioned something to Tom Hardman about
23 taking out the reference to a velocity zone.
24 I think they asked -- I think at that hearing

1 they asked permission to go on to the
2 neighbors' properties to do more detailed
3 analysis of the elevations.
4 **Q. For the study?**
5 A. For the study.
6 And there might have been something
7 about a dry well. I mean, I think there
8 were -- there were things that happened in
9 that meeting, and then there were things that
10 happened after that meeting.
11 **Q. Okay. So following that initial**
12 **meeting you described what happened in the**
13 **meeting. Following that initial meeting, did**
14 **the Conservation Commission ask the**
15 **Reichenbachs to make additional changes to**
16 **their plans?**
17 A. Yes.
18 **Q. Do you have a kind of a**
19 **recollection of the nature of that -- those**
20 **additional changes?**
21 A. Again, I can't recall the exact
22 timeline. It might have happened a little
23 later. There had been a letter received from
24 Ulla Sullivan's engineer about some aspects of

1 Now they're going to hear it from Miss Moss
2 and perhaps not Dr. Haydock. But the flip
3 side is I'm sure you're going to ask them were
4 any of these concerns not legitimate, but, you
5 know, did you win any of your appeals, which
6 is already in evidence as well. And I think
7 that's fair game too.

8 MS. ALLISON: Well, that's not
9 contested, Your Honor.

10 THE COURT: I understand that.

11 MS. ALLISON: Yes.

12 THE COURT: But I think that's
13 fair game. I don't think it goes to
14 relitigating.

15 In other words, we're not going to go
16 back in and second-guess Conservation
17 Commission or DEP. It's just the outcomes is
18 admissible, not their underlying reason and
19 not the challenge to those decisions. Express
20 your concerns, what happened after that. And
21 I think that's where you're going.

22 MS. ALLISON: That's exactly
23 what we're doing.

24 MS. BONNET-HEBERT: I

1 the jury to second guess those concerns.

2 THE COURT: I don't think you're
3 close

4 MS. ALLISON: Your Honor, I
5 don't think we're near the gray area.

6 THE COURT: You can object and
7 I'll take that up.

8 MS. ALLISON: Thank you,
9 Your Honor.

10 MS. BONNET-HEBERT: Thank you.

11 THE COURT: Thank you.

12

13

14 (END OF SIDEBAR CONFERENCE.)

15

16 THE COURT: All right. Next
17 question, please.

18 BY MS. ALLISON:

19 Q. So we were talking about requirements
20 imposed by the Conservation Commission
21 following that initial meeting. And you
22 had you said you recalled some, but not
23 necessarily the timing of them, right?

24 A. It was in the fall, yeah.

1 understand. I don't think --

2

3 (Parties speaking simultaneously.)

4

5 THE COURT: Continue to object,
6 if you think necessary. I'm just trying to --

7 MS. ALLISON: I was hopeful we
8 could quicken things by not --

9 THE COURT: I'm trying to figure
10 out where that line is going to be drawn, and
11 I think we have an understanding on it.

12 MS. BONNET-HEBERT: That's
13 exactly what I was going to say.

14 THE COURT: I did it before, I
15 think, with Attorney Fielding in terms of his
16 objections to -- or your objections or
17 somebody's, but I just want to add the
18 discussion. Continue to object, and you let
19 me know if you feel it's gone over that.

20 MS. BONNET-HEBERT: I think
21 maybe there is a bit of a gray area, and we're
22 trying to find that line. I'm concerned we
23 were getting close to that edge where it's
24 really trying to get into details of asking

1 Q. Okay. So I'm going to show you a
2 document previously marked as Exhibit 141.

3 Are you able to see that document on
4 your screen, Miss Moss?

5 A. Yes.

6 Q. So this is from October 30, 2009,
7 right?

8 A. Yes.

9 Q. So a few weeks after that hearing you
10 were telling us about?

11 A. Yes.

12 Q. And this is from John Reichenbach
13 to it's to Dr. Haydock's e mail account,
14 but directed to you?

15 A. Yes.

16 Q. And here, John Reichenbach mentions a
17 couple other changes that the Conservation
18 Commission asked for.

19 Do you see that?

20 A. Yes.

21 Q. So does that is that consistent
22 with your recollection that there were other
23 changes requested following that October
24 meeting?

1 A. Yes. Lowering the house one foot was
2 another one. That absolutely, yeah.
3 Q. Mr. Reichenbach also says, towards the
4 bottom of this e mail, that "One of the three
5 driveway alternatives will be shown on an
6 upcoming plan subject to discussion with the
7 Haydocks."
8 Do you see that?
9 A. Yes.
10 Q. And again, was it is it consistent
11 with your recollection that John Reichenbach
12 was still sharing driveway alternatives and
13 discussing the driveway issue with the
14 Haydocks at this time?
15 A. Yes.
16 Q. I'm going to show you a document
17 previously marked as 116.
18 So are you able to see that,
19 Miss Moss?
20 A. Yes.
21 Q. So you'll see this is an e mail from
22 John Reichenbach a couple of days before that
23 last exhibit that we just saw.
24 A. Right.

1 Q. And in which he forwards three
2 driveway alternatives?
3 A. Yes.
4 Q. And is that, again, consistent with
5 your recollection that those driveway those
6 three alternatives were still under
7 discussion?
8 A. Yes. With the exception that when it
9 says "continue using the existing driveway," I
10 think they were actually going to be making
11 changes to that existing access, but, in
12 general, yes, those are the three locations.
13 Q. I see. So using that access, but
14 altering it?
15 A. That's right.
16 Q. Okay. So on the earlier exhibit we
17 just saw, Exhibit 141, which we can
18 MS. ALLISON: We can pull that
19 up again, briefly.
20 BY MS. ALLISON:
21 Q. Towards the at the very end there,
22 John Reichenbach refers to meeting meeting
23 to talk this weekend.
24 Do you see that?

1 A. I do.
2 Q. And perhaps meeting with Ulla, as
3 well?
4 A. Yes.
5 Q. What what were you discussing,
6 again, if you can recall, with John
7 Reichenbach and Ulla around that time?
8 A. I don't know that I had discussions
9 with Ulla at that point in time, but I I
10 started having conversations with John
11 meetings with John.
12 Q. About the plans?
13 A. About the plans, and I think the early
14 conversations also included Lynn.
15 Q. So in this Exhibit 141, John
16 Reichenbach mentions an upcoming meeting in
17 mid November.
18 Do you recall if you received plans
19 new plans in mid November of that year, 2010?
20 A. I think and I think that this was
21 the I think we didn't get something in
22 no one got plans in time to review them for
23 that meeting. So I think it had to be
24 continued.

1 Q. So you --
2 A. I think there was a continuance.
3 Q. Okay. Let me show you --
4 A. I think.
5 Q. Exhibit let me show you Exhibit
6 58 to see if that is consistent with your
7 recollection.
8 A. (Witness reviews document.)
9 Q. So this thread begins with an e mail
10 from you about following up on the plans, and
11 you say that "the Town had received the plans,
12 but no one else had."
13 Is that is that what you're
14 recalling from mid November?
15 A. Yes.
16 Q. And then John Reichenbach responds to
17 you, at the top of the thread, saying that
18 your request is entirely appropriate.
19 Do you see that?
20 A. Yes.
21 Q. And so there was, in fact, another
22 continuance of the Conservation Commission's
23 evaluation of the application at that time?
24 MS. BONNET HEBERT: Objection.

1 Counsel is testifying.
2 THE COURT: Just -- yes, that's
3 sustained. Ask her some questions.
4 BY MS. ALLISON:
5 Q. So what happened as a result of this
6 e mail?
7 A. The hearing was continued.
8 Q. You say John Reichenbach, in this
9 e mail, says he's going to try to call you on
10 Sunday.
11 Do you see that?
12 A. Yes.
13 Q. So were you having, again, meetings
14 with John Reichenbach outside of the hearings
15 at this point?
16 A. Yes.
17 Q. And why -- why were you having
18 meetings? Why did you decide that you would
19 have meetings with John Reichenbach outside of
20 the hearings or why did the two of you decide
21 to do that?
22 A. I think actually it was possibly
23 John's -- his idea first to have -- to try to
24 work on these things -- actually, just I

1 think just if John and I could work on them
2 and not have -- have this happen in a public
3 hearing where there were so many people, it's
4 taking the Commission's time, and there are a
5 lot of details to work out.
6 It was his suggestion that just the
7 two of us work on these things together
8 directly.
9 Q. All right. Miss Moss, I'm going to
10 show you a document -- an exhibit previously
11 marked as Exhibit 118.
12 A. (Witness reviews document.)
13 Q. And this top e-mail from November
14 29 -- sorry, November 23, 2009 is from John
15 Reichenbach addressed to you.
16 And he says, in the second paragraph
17 there, "I think it would be good for us to
18 meet so that we can discuss the options
19 without with a large crowd."
20 Do you see that?
21 A. Yes.
22 Q. So is that consistent with your
23 recollection of that, reasons for the
24 meetings?

1 A. Yes.
2 Q. I want to ask you. John Reichenbach
3 we've seen several e mails that he directs
4 to you, but they go to Dr. Haydock's e mail
5 account.
6 Do you -- do you have any
7 understanding of why that was the case?
8 A. I don't -- I don't know why he did
9 that. And at some point, probably shortly
10 after this I asked him to use my own e mail,
11 but it might be because that was in the phone
12 book for Nonquitt.
13 Q. The Nonquitt phone book had e mail
14 addresses?
15 A. Yes.
16 Q. Oh, okay. So he says in this -- in
17 Exhibit 118, the second to the last paragraph,
18 John Reichenbach says -- tells you that "We
19 can also change something later if it makes
20 sense to all the parties. Depending upon what
21 it is, it may require an amended set of terms
22 and conditions."
23 Do you see that?
24 A. Yes.

1 Q. Did you have any understanding of what
2 John Reichenbach was proposing there?
3 A. Yes.
4 Q. And what was your understanding of
5 that?
6 A. I think that -- that John wanted to
7 get a permit and so that he had a permit to
8 move forward on, and then if it needed to be
9 changed or amended as we made further
10 discussions and narrowed down options for
11 further things, we could do that with an
12 amended order, is what I took that to mean.
13 Q. Understood. So after you received
14 plans from John Reichenbach in late November,
15 do you -- well, I should say, do you remember
16 receiving plans from John Reichenbach in late
17 November?
18 A. I don't know if I got plans before
19 sometime in December.
20 Q. Okay. Okay. Do you -- earlier, you
21 mentioned that some of -- some additional
22 changes that needed to be made as a result of
23 a request by Ulla Sullivan; is that right?
24 A. Yes.

1 Q. Did that also happen around this time,
2 this fall 2009?
3 A. Yes, I actually saw a line in that
4 about how Ferreira was her engineer. So I
5 think his changes were incorporated in
6 whatever came in December.
7 Q. Okay. So I'm going to show you a
8 document previously marked as Exhibit 119.
9 You'll see this refers to a
10 conversation with - between Tom Hardman and
11 the Conservation Commission agent regarding
12 two changes in response to Ulla's engineer.
13 Do you see that?
14 A. Yes.
15 Q. Is that consistent with your
16 recollection, what you were just telling us
17 that?
18 A. Yes.
19 Q. Mr. Reichenbach says, in the last
20 paragraph here, to "Please keep in mind if
21 it's approved, we would still be willing to
22 consider additional changes."
23 Do you see that?
24 A. Yes.

1 Q. Again, what did you understand him to
2 be suggesting there?
3 A. He's again suggesting because he
4 says it actually in that paragraph going
5 back to the Conservation Commission for an
6 Amended Order of Conditions.
7 Q. If something needs to change down the
8 road?
9 A. Right.
10 Q. So this e mail refers to a hearing
11 being continued for another two weeks until
12 December 22.
13 Do you see that?
14 A. Yes.
15 Q. Did that hearing occur on December 22,
16 to the best of your memory?
17 A. No.
18 Q. And why not?
19 A. I think I asked John if it could be
20 continued to the next - you know, the next
21 meeting because no one was available. It was
22 right before the holiday. And people were
23 that needed to be there wouldn't weren't
24 going to be there. The Sullivans couldn't be

1 there and someone else.
2 Q. Did the meeting then get moved until
3 after the holidays?
4 A. That's right, yes.
5 Q. In January; is that right?
6 A. Yes.
7 Q. Okay. So do you recall if there were
8 two meetings in January?
9 A. Yes, there were.
10 Q. So the first meeting in January
11 following the holidays, what do you remember
12 about that meeting?
13 A. It's a little hard to keep them
14 separate because a lot happened in the month
15 of January, but I think we saw we got
16 the pre and post development study was
17 presented to us, and there was discussion
18 about that.
19 A lot of discussion about drainage.
20 There were some of the corrections that were
21 put on the plan related to the things related
22 to Sullivan property. Those were put on the
23 plan.
24 I think the biggest issue I the

1 topic was really - a lot of it was about
2 drainage.
3 Q. Was this the first meeting that was
4 held after the abutters had received those new
5 plans?
6 A. Yes.
7 Q. And those new plans incorporated this
8 result of this study?
9 A. That's right. That's right.
10 Q. So your recollection was that was the
11 primary topic of this meeting in January?
12 A. It was. And it was sort of specific
13 to overall issues with drainage. Then we had
14 to direct the water on the north and the south
15 sides of the property and how that might be
16 done with swales or with berms.
17 Q. I'm sorry. Swales are what?
18 A. So a swale is like a ditch. It's
19 something that would retain the water. A berm
20 is just the opposite. It's like a - you
21 know, a small mound of soil. There were
22 rights of way that couldn't be interfered
23 with, and it's a very narrow space. So there
24 was a lot - there was a lot that had to be

1 taken into consideration.

2 **Q. So that was the topic at this meeting**
3 **largely?**

4 A. Largely, yes.

5 **Q. Who spoke up at this meeting, to the**
6 **best of your memory?**

7 A. I think a lot of it was Sam Haydock.

8 **Q. Okay. Do do you recall anything**
9 **that happened after that meeting on January**
10 **12th or I don't know if you testified to**
11 **the exact date actually, but that first**
12 **meeting in January, do you recall that**
13 **anything happened after that meeting?**

14 A. Yes.

15 **Q. What do you remember?**

16 A. I remember we were in the hallway, and
17 Lynn Reichenbach was very upset, and I
18 approached her. I walked towards her because
19 I could see that she was upset. And she --
20 she said, If you delay me for a year, I'm only
21 going to have more money in a year.

22 And I didn't know what she was really
23 referring to, but I wanted to tell her, Nobody
24 wants to delay you for a year. We're just

1 working on these issues collaboratively
2 together, resolve things, and I hope that you
3 could just -- you know, we had to raise the
4 concerns that we had last night, but if we
5 could just keep moving forward with trying to
6 work together with you.

7 **Q. I'm going to show you an e mail that**
8 **was previously marked as an exhibit, Miss**
9 **Moss. It's Exhibit 120.**

10 A. (Witness reviews document.)

11 MS. ALLISON: And if we could, scroll
12 down, please, to the first e-mail in the
13 thread.

14 BY MS. ALLISON:

15 **Q. You'll see, Miss Moss, the first**
16 **e mail in the thread is from you to it's**
17 **addressed to John and Lynn.**

18 **Do you see that?**

19 A. Yes.

20 **Q. Is is this the e mail that you were**
21 **just recalling that you reached out with the**
22 **next day?**

23 A. Yes.

24 **Q. All right. So you say after after**

1 trying to get the you know, the drainage
2 settled.

3 But she had really, you know,
4 expressed she was upset that the that
5 she had not received her permit that night.

6 **Q. Did you did you have any further**
7 **discussion with Miss Reichenbach that evening?**

8 A. I didn't. I didn't really have a
9 discussion that she was upset, and I I
10 didn't think that I could really do much at
11 that point.

12 **Q. Following that evening, did you try to**
13 **have some further discussion with**
14 **Mrs. Reichenbach?**

15 A. Yes.

16 **Q. And what did you do in an effort to do**
17 **that?**

18 A. Because I really quickly wanted to try
19 to turn this around and, you know, get on a
20 more positive track, I think the next morning
21 I wrote John and Lynn an e mail and just said,
22 you know, We had to address the things that we
23 addressed last night, but I'd like to keep
24 moving forward. It's very important to keep

1 saying what you've just described to us, you
2 say towards the end of the e mail that you're
3 going to talk with Sam over the next couple of
4 days and also with Ulla over the weekend.

5 **Do you see that?**

6 MS. BONNET HEBERT: Objection.

7 A. Yes.

8 THE COURT: I'm sorry.

9 MS. BONNET HEBERT: I said
10 objection. Counsel is again reading from it,
11 testifying.

12 THE COURT: Not quite yet, but
13 try to ask questions.

14 BY MS. ALLISON:

15 **Q. You see what I'm I'm pointing to**
16 **that last paragraph.**

17 A. Yes.

18 **Q. Do you see that?**

19 A. Yes.

20 **Q. What what issues were you talking**
21 **with Sam and Ulla about at this time? Just**
22 **the general topics of discussion.**

23 A. Well, with Sam, it would be the
24 impacts of the walls and drainage and swales

1 or whatever is going to happen on the north
2 side.
3 And with Ulla, it was the same. There
4 was there were different options proposed
5 for what they were putting in as a swale on
6 the south side as well.
7 **Q. That was a drainage issue, the swale;
8 is that what you're saying?**
9 A. Yes, yes. And I also think that I had
10 other I mean, I had some other thoughts
11 that I I don't know if I put it in this
12 e mail.
13 **Q. Okay.**
14 A. Other thoughts about the south
15 about options for the south property line.
16 **Q. So I think you said there was another
17 meeting in January of 2010 later in the month?**
18 A. Yes.
19 **Q. And you attended that meeting?**
20 A. Yes.
21 **Q. Again, what, if anything, do you
22 remember about the topics raised at that
23 meeting?**
24 A. I'm assuming it was drainage again

1 because the -- we were really on that topic
2 and --
3 **Q. That's what you recall from January
4 2010?**
5 A. Yes.
6 **Q. Okay.**
7 A. And I think that Sam had done a very
8 complete and thoughtful analysis of their pre-
9 and post-development study and had very
10 specific comments.
11 **Q. Did he submit that in writing to the
12 Conservation Commission?**
13 A. Yes. I think he submitted two pretty
14 detailed letters in the month of January,
15 yeah.
16 **Q. Okay. Let's actually, let me show
17 you Exhibit 142.**
18 MS. ALLISON: Let's scroll down
19 to the letter first rather than the e-mail
20 it's attached to.
21 BY MS. ALLISON:
22 **Q. This is the e mail this is the
23 letter is this the letter from Sam Haydock
24 or one of the letters**

1 A. Yes.
2 **Q. that you recall?**
3 A. I think this is the second one. I
4 think he -- this --
5 **Q. You know, you're Miss Moss, I'm
6 going to it's a long letter, so I'm going
7 to just -- I'll give you a copy so that you
8 can take a brief look. I even brought a
9 stapler.**
10 MS. ALLISON: May I approach,
11 Your Honor?
12 THE COURT: You may.
13 BY MS. ALLISON:
14 **Q. My question, Miss Moss, is just
15 whether you agreed with the concerns that
16 Mr. Haydock raised in this letter.**
17 A. I did.
18 **Q. Okay. The let's scroll back to the
19 cover e-mail to this letter.**
20 **I take it at the time that you saw Sam
21 Haydock's letter you did not see this cover
22 e mail?**
23 A. No.
24 **Q. Right. Is the comment that**

1 **Mr. O'Reilly makes in this e mail consistent
2 with his treatment of Dr. Haydock I'm
3 sorry Sam Haydock?**
4 MS. BONNET HEBERT: Objection,
5 Your Honor. Calls for speculation.
6 THE COURT: Sustained.
7 BY MS. ALLISON:
8 **Q. In any event, you didn't see this
9 e mail at the time?**
10 A. Not at the time, no.
11 **Q. Well, what was -- what was the
12 Conservation Commission's reaction to
13 Dr. Haydock's sorry Samuel Haydock's
14 letter?**
15 MS. BONNET HEBERT: Objection,
16 Your Honor. It calls for speculation as to
17 what she thinks the Conservation Commission
18 thought about something.
19 THE COURT: I think -- sustained
20 as to that point.
21 Is there did they discuss it at a
22 hearing or
23 MS. ALLISON: I'm asking for
24 THE COURT: Her personal

1 driveway?

2 A. I think still the drainage. There
3 was I don't think there was any drainage
4 shown on the Order of Conditions

5 Q. Was that

6 A. at all on the north side.

7 Q. Was that was that part of the
8 driveway issue?

9 A. It was related to it, yes.

10 Q. So in we've sort of walked through
11 this late 2009, early 2010 period of
12 discussions with John Reichenbach.

13 How many how many discussions would
14 you say you had with him about the various
15 issues over that time?

16 A. It's hard to remember how many were
17 actual meetings in person. So I would think
18 maybe we had 18 meetings. You know, it could
19 be 20. But we had conversations on the phone
20 that were sometimes extensive. So
21 conversations, whether in person or over the
22 phone, was probably about 30. It was a lot of
23 work.

24 Q. Why did you put so much time into

1 with Lynn Reichenbach on these issues?

2 A. Probably not more than four.

3 Q. Okay.

4 A. Three, four.

5 Q. Now, you mentioned the driveway
6 discussions had not been resolved.

7 Do you were you involved in so
8 following the issuance of the original Order
9 of Conditions in April, were you involved in
10 the negotiations over the driveway issue?

11 A. No, not not with the real
12 negotiations. I would sometimes see a
13 proposed plan for what John wanted to do with
14 the Haydock land the Haydock family land,
15 and I might comment on, again, drainage
16 aspects or implications for that, but the
17 actual discussion really was handled by Sam
18 Haydock.

19 Q. Do you have an understanding of when
20 those discussions about the driveway came to a
21 conclusion?

22 A. I think -- I think September 2011 --
23 2010 September. I mean, there was another
24 approach afterwards, but it really, I think,

1 trying to work this out?

2 A. Because I felt this was very important
3 for these three properties to try to to
4 allow the Reichenbachs to build their house
5 was important, but to protect the neighboring
6 properties and the resource areas, considering
7 the extensive hundreds of feet of retaining
8 wall, that was -- that was a difficult issue.
9 And I was always hoping that there could be an
10 option that would actually be workable and
11 better for everyone.

12 Q. You mentioned your meetings with John
13 Reichenbach. We've heard a lot about that.

14 Were you having any meetings with Lynn
15 Reichenbach about the plans?

16 A. Initially, she was at the meetings.
17 And I think that the tempo of the discussion
18 was, you know, we were not moving things I
19 think she wanted she wasn't as interested
20 in the details of what John and I were
21 discussing. She just wanted the permit, and I
22 think she decided to let John handle it.

23 Q. So how many times are you you said
24 early on. How many times do you think you met

1 ended in September 2010.

2 Q. And that was, again, Sam Haydock that
3 was having those discussions?

4 A. Yes.

5 Q. When did you next have discussions
6 with either of the Reichenbachs about their
7 project?

8 A. I think I only I only remember one
9 discussion with John over the summer. He had
10 constructed this a mock up of what the
11 retaining wall would look like along the
12 Sullivan property to help Ulla visualize this
13 is the height that the our lawn would be;
14 this is the height of the retaining wall; this
15 is the height of the pool fence. So it was
16 some of it was 10 feet tall.

17 Q. What do you mean a "mock up"? Like,
18 on paper?

19 A. No, no. It was a wooden structure,
20 like a trellis that was probably about 80 feet
21 long.

22 Q. Oh, it was built. This wooden
23 structure was built.

24 A. Yes.

1 And we were talking about it because
2 he felt if Ulla could see what this would look
3 like against her property, she might be able
4 to envision this is what the retaining wall
5 would look like. If we filled the gully, this
6 is what a nice stone wall would look like
7 instead.
8 So he was still I think Nan Sinton
9 had been talking to Ulla over the summer about
10 still filling the gully. And John and I spoke
11 about that.
12 Q. Okay. And following the construction
13 of that wooden structure near the property,
14 that didn't change any decisions with respect
15 to the gully?
16 A. No, I don't think so.
17 Q. All right. So after summer, when did
18 you next have discussions with the
19 Reichenbachs about their about their
20 project?
21 A. I saw John at the Mattarest circle
22 probably toward the end of September.
23 Q. And you had a conversation with him
24 about the project at that time?

1 A. Yes.
2 Q. What do you recall about that
3 conversation?
4 A. His whole sort of demeanor toward me
5 was very different. He was he was upset.
6 I was standing at the circle. I guess he was
7 at the end of his driveway, and he approached
8 me and told me that they were going to make
9 changes to their plans.
10 Q. Did he say anything about the nature
11 of the changes to the plans at that time?
12 A. I think he generally said they were
13 going to be changing the wall, the shape of
14 the wall, the retaining walls. He said that
15 Tom Hardman didn't like the soils up by the
16 Mattarest circle, so they were going to be
17 moving the septic system back down by the
18 house again. He conveyed he was talking
19 about the Haydocks not allowing him driveway
20 access through their property, and that was
21 upsetting to him. And he was upset with Ulla
22 for not filling the gully.
23 So it was it was a complete change.
24 It wasn't, Oh, we're going to do this

1 together, as we said, or We can get an Amended
2 Order of Conditions together. It was
3 I'm doing this my it was kind of going to
4 be my way or the highway, not
5 Q. That was your impression?
6 A. That was my impression.
7 MS. BONNET HEBERT: Objection.
8 The question called for "Did he say anything
9 about the nature of the changes to the plans
10 at that time?"
11 I would move to strike everything
12 about her impressions of that.
13 THE COURT: Allowed.
14 The jury will disregard her
15 impressions of Mr. Reichenbach's mind set.
16 Next question, please.
17 BY MS. ALLISON:
18 Q. So with respect to the changes that
19 Mr. Reichenbach described to you, just I
20 think you summarized those as the changes to
21 the wall configuration, the and the septic.
22 Does that cover the changes that he
23 described at that time?
24 A. Yes.

1 Q. Okay. And what was your reaction to
2 that?
3 A. I was I talked to him about moving
4 the septic because that was one of the most
5 important things we had from my opinion,
6 that we had talked about in the original Order
7 of Conditions. And he said, This is what Tom
8 Hardman wants to do, so Tom is moving it.
9 And then he also, as we were standing
10 in the circle, he said, The Haydock family
11 gets too much benefit of the common land for
12 the circle. You know, it's I would like to
13 move the paved portion of the circle to the
14 center of the easement area.
15 And I said, But the Mattarest this
16 is where the Mattarest circle has always been.
17 And he said, Well, you get the benefit
18 of more of the land on your side.
19 And when I, again, just started to
20 say, But this is where the driveway has always
21 been, John said, I could take a chainsaw and
22 cut down every one of your trees if I felt
23 like it in the common land.
24 MS. BONNET HEBERT: Objection,

1 Your Honor. This is not responsive to the
2 question "What was your reaction to that?"
3 THE COURT: Sustained.
4 MS. BONNET HEBERT: I would move
5 to strike that testimony.
6 THE COURT: Anything regarding
7 that is stricken.
8 The jury is to disregard it.
9 BY MS. ALLISON:
10 Q. Following the discussions of the
11 changes with Mr. Reichenbach, did he say
12 anything else to you during that meeting?
13 A. Yes, he did.
14 Q. What did he say?
15 A. He said that he was unhappy with where
16 the Mattarest circle was located, and he said
17 that he would be entitled to take a chainsaw
18 and take down all the trees in the common land
19 in front of our house.
20 Q. How -- how did you feel after this
21 discussion?
22 A. I was shaken by that. I had never
23 seen him talk like that.
24 Q. We we've heard reference in

1 kind of begin in earnest in September of 2010?
2 A. Yes.
3 Q. And did you become aware of any
4 concerns or I should say did you or any of
5 the other neighbors have concerns about sort
6 of the start of construction?
7 A. There one of our neighbors had
8 general concerns about construction
9 beginning.
10 MS. BONNET HEBERT: Objection.
11 Calls for hearsay.
12 THE COURT: She hasn't said what
13 it is yet.
14 BY MS. ALLISON:
15 Q. I'm just asking you for your
16 understanding of concerns. So you don't have
17 to please you don't have to testify to
18 any particular discussion.
19 A. Okay.
20 Q. All right?
21 A. Okay.
22 There were generalized general
23 concerns.
24 Q. What were the nature of the concerns

1 questions that Plaintiffs' counsel tried to
2 ask of you last week about e mails that you
3 sent, heated e mails.
4 How were you feeling at the time that
5 you sent those e mails?
6 A. This this conversation
7 MS. BONNET HEBERT: Objection.
8 A. was
9 MS. BONNETHEBERT: Your Honor.
10 THE COURT: Well, overruled.
11 Just try to answer the question
12 directly as you can.
13 How were you feeling at the time you
14 sent those e mails?
15 A. I was feeling very upset after this
16 conversation with John Reichenbach.
17 BY MS. ALLISON:
18 Q. So this we're talking about I
19 think you said around the end of September
20 2010, right?
21 A. Yes.
22 Q. So before the Reichenbachs decided to
23 make these changes to their plans, was it your
24 understanding that construction was going to

1 about the impending construction?
2 A. There had been this is a very
3 difficult area to work in, and there had been
4 experience in the past
5 Q. What do you mean by "This is a
6 very" what area are we talking about?
7 A. Mattarest Lane.
8 Q. Okay.
9 A. This narrow area of Mattarest Lane.
10 And in the past, there had been
11 difficulty during construction with damage to
12 properties. And one of the neighbors wanted
13 to hire an attorney to represent the group
14 just to make sure that the neighboring
15 properties would all be protected, you know,
16 during, you know, mostly about the in the
17 beginning, there was no real scope of work.
18 It was just we need to make sure our
19 properties will be protected.
20 Q. And when you say "represent the
21 group," you mean any neighbors who shared this
22 concern
23 A. That's right.
24 Q. about the construction?

1 A. That's right.
2 Q. So later that fall, did you did you
3 learn more about the changes any more
4 specifics about the changes that the
5 Reichenbachs were planning to make?
6 A. Yes. And I can't remember exactly
7 when I got a copy of their Amended Order of
8 Conditions plan. It was in October I think.
9 Q. And it was when you received a copy of
10 this new plan that you understood more about
11 the nature of the changes they were going to
12 make?
13 A. Yes.
14 Q. And when you well, let me show you,
15 actually, exhibit previously marked Exhibit
16 17.
17 We're showing you a copy of a
18 document an e mail from John Reichenbach to
19 several individuals, and you're you're on
20 here as well, from November 2, 2010
21 A. Yes.
22 Q. with an attachment?
23 A. Yes.
24 Q. Is this when you received the plans,

1 different because of the septic now being
2 located in the drive the area of the
3 driveway, and there were other modifications
4 to things like terraces.
5 Q. So on the driveway, we had seen in
6 earlier exhibits three different potential
7 alternatives.
8 Did this new plan show any of those
9 three alternatives?
10 A. No. It was different. The elevations
11 were different. There were drainage was
12 going to be different. So this was a
13 different version. I'm sorry. Those were the
14 main things. There were smaller smaller
15 changes, too. These were the most
16 significant.
17 Q. Okay. Understood.
18 So after receiving this more
19 information about these plans, did you did
20 you get gain any understanding of when the
21 Reichenbachs were proposing to build the
22 retaining walls?
23 A. Probably not the first week of
24 November. I did later on.

1 the new plans?
2 A. Yes, this is.
3 Q. And was this e mail the first time
4 that you had a more detailed description of
5 what those plans might involve?
6 A. Yes.
7 Q. So what did you generally, what did
8 you understand the changes to the plan to
9 include at that time?
10 A. There were changes to the shape of the
11 retaining walls, the proximity to the south
12 property line. It was, you know, very, very
13 close to the Sullivan property now. The
14 septic system had been moved from the --
15 closer to the Mattarest Circle back toward the
16 house and closer to the resource area again.
17 Q. So I just want to be sure I understood
18 that.
19 It had been moved it had been
20 closer to the Mattarest Circle originally, but
21 it was moved closer to the house?
22 A. Right by the front of the house, yes.
23 Q. Okay.
24 A. And there were -- the driveway was

1 Q. Later on. Okay. So let's talk about
2 so what happened after receiving these
3 plans with the changes, what did you do next?
4 A. I tried to arrange a meeting with
5 neighbors and family members, the people who
6 were who would be interested in attending
7 the meeting. And it was I think it was
8 just here in the e mail, but I think John said
9 this is going to be heard on November 9th, and
10 he wanted a list of all of our concerns before
11 that time.
12 I didn't have enough time to set up
13 that meeting. It was people weren't
14 available. I was available, but, you know,
15 Ulla was not. I don't think Sam was. So I
16 conveyed that information to John.
17 Q. So Mr. Reichenbach asked you for a
18 list of all concerns, and you were trying to
19 pull everyone's concerns together; is that
20 right?
21 A. Yes.
22 Q. Okay.
23 A. Yes.
24 Q. And the I'm going to show you a

1 THE COURT: You can answer
2 that.
3 BY MS. ALLISON:
4 Q. So in that third paragraph down where
5 Mr. Reichenbach is describing the negotiations
6 about the Sullivans' gully, is that consistent
7 with what happened with respect to the
8 Sullivans' gully?
9 A. No, it's not -- it's not accurate.
10 Q. And in what way is it inaccurate?
11 A. Well, we -- first of all, John
12 Reichenbach originally showed the retaining
13 walls for his permits for his Notice of
14 Intent. There was always in the beginning a
15 retaining wall.
16 And it -- we began discussion about
17 filling the gully as an option in January
18 January, maybe early February. And we had
19 several meetings with Ulla Sullivan, but they
20 were not forced to go the retaining wall route
21 because of what the Sullivans did. It was --
22 they had always used the retaining walls in
23 the beginning, and it was probably I
24 approached John about filling the gully in

1 January.
2 Q. And again, this -- this is an issue as
3 to whether the Sullivans wanted to give them
4 access to the Sullivans' property, right?
5 A. That's correct.
6 Q. Then let's just turn the page. Very
7 top of the next page, Mr. Reichenbach says
8 that "Tom Hardman found that and Attorney John
9 Bentley had been engaged by Tim Haydock and
10 Barbara Moss."
11 Do you see that?
12 A. I see that.
13 Q. Is that accurate?
14 A. No. Actually, John Bentley was hired
15 by Jim Fitzgibbons for people who lived on the
16 street, on Mattarest Lane, for a group of
17 people, but we did not hire John Bentley.
18 Q. And John Bentley was hired in
19 connection with what -- what issues initially?
20 A. Protecting the properties from impacts
21 of construction.
22 Q. Which you described a few minutes
23 ago?
24 A. That's right. Initially, that was his

1 scope of work in the beginning.
2 Q. A couple of paragraphs down,
3 Mr. Reichenbach refers to a coastal bank
4 delineation approved by the Conservation
5 Commission in 2009.
6 Do you see that?
7 A. Yes.
8 Q. As of the date of this e mail,
9 November 2010, had you ever seen a copy of the
10 site plan that the Reichenbachs had submitted
11 to the Conservation Commission at that -- in
12 that 2009 submission?
13 MS. BONNET HEBERT: Objection.
14 A. I never
15 MS. BONNET HEBERT: Objection,
16 Your Honor. This is getting into relitigation
17 issues again.
18 THE COURT: Overruled. The
19 question was: Had you seen the plan.
20 A. No.
21 BY MS. ALLISON:
22 Q. So you -- we saw at the beginning of
23 this e mail that you were making an effort to
24 set up a meeting with the neighbors.

1 Did that ever happen?
2 A. Yes.
3 Q. When did that happen, again, to the
4 best of your memory?
5 A. Mid-November of '15, or something like
6 that. Actually, I don't remember the date.
7 Q. There might be a reference in the
8 e mail, but it was shortly after this
9 e mail
10 A. Maybe --
11 Q. -- there was a meeting?
12 A. -- a week or ten days afterwards,
13 yeah.
14 Q. And who attended that meeting, the
15 neighbor meeting?
16 A. Well, John Bentley was there, and Ulla
17 Sullivan. I think actually Arthur Huguely
18 attended that hearing. Jim Fitzgibbons. I
19 was there. John Reichenbach. Did I say Ulla?
20 And I'm not sure if Sam -- I'm not sure if Sam
21 Haydock was there for that one.
22 Q. Okay. And what was the -- what was
23 the topic of that meeting with the neighbors
24 and the Reichenbachs?

1 A. The Amended Order of Conditions plan.
2 **Q. Did you share the concerns that you**
3 **described for us here?**
4 A. Yes, in more detail.
5 **Q. And were there other than the**
6 **concerns that you've already described, did**
7 **you discuss anything else during that meeting**
8 **with the neighbors?**
9 A. Not that I recall right now.
10 **Q. At some point, did you receive more**
11 **detailed plans of showing the construction of**
12 **the retaining walls themselves?**
13 A. I did, and actually there was
14 something that was let me think for a
15 second.
16 **Q. Just to be clear. After the meeting**
17 **with the neighbors, you received a plan of the**
18 **construction of the retaining walls**
19 **themselves?**
20 A. Right, but that that actually I
21 recall now that I asked John Reichenbach
22 during that we were talking about the south
23 retaining wall specifically in the beginning,
24 and I asked him how thick the veneer the

1 inches or more of stone. I mean, boulders on
2 the side of the wall.
3 The reason I was upset is you have so
4 little space, but now you're expanding these
5 walls in all direction. And I just felt like
6 John Reichenbach hadn't been truthful. I
7 mean, he looked me right in the eye and told
8 me it was going to be a six or eight inch
9 veneer, and it wasn't.
10 **Q. All right. So following was there**
11 **a Conservation committee -- Conservation**
12 **Commission hearing set up to evaluate the**
13 **Amended Order of Conditions around that time?**
14 A. In the beginning of December, yes.
15 **Q. And did you -- did you attend that**
16 **hearing?**
17 A. Yes.
18 **Q. And in what was the topics that**
19 **were raised during that hearing with respect**
20 **to the request for an Amended Order of**
21 **Conditions?**
22 A. So we were looking at the again,
23 drainage, because that was always part of the
24 issue. Some of the things I you know, I

1 stone veneer was going to be on the walls.
2 And he John was sitting next to me, Tom
3 Hardman was sitting I guess I should of
4 said Tom Hardman was at the meeting, too.
5 And Tom Hardman was sitting next to
6 him. And they said "The veneer," which is the
7 stone face on the wall, "would be about six or
8 eight inches." And they said that they would
9 provide "they were going to provide the
10 engineering plans now for their walls to us."
11 **Q. And that's what you received later**
12 **after the meeting?**
13 A. Yes, I think we received them about a
14 week later.
15 **Q. And when you received those**
16 **engineering plans for the wall, did you have**
17 **any further concerns about it?**
18 A. Yes, I was upset.
19 **Q. What what were you upset about when**
20 **you received those plans?**
21 A. Well, John told me in the meeting with
22 Tom Hardman that the veneer they were only
23 going to put six or eight inches of stone on
24 the face of the wall, and their plan showed 24

1 didn't go into the other details of all the
2 other smaller changes there had been, that
3 they were making changes to the swale, the
4 location of the pipe that was conveying
5 **Q. These are drainage issues?**
6 A. These are drainage issues.
7 **Q. Okay.**
8 A. They were changing, you know, erosion
9 control methods. So these were the these
10 were the lesser changes. They had all
11 impacts, but they were the lesser changes.
12 And that's what we talked about during that
13 hearing.
14 We talked about the fact now that the
15 wall was coming it appeared to be within a
16 foot of Ulla Sullivan's property, and we
17 wanted to know how the swale was going to work
18 with that sort of obstruction to where the
19 swale was originally supposed to go. So we
20 had a lot of questions about the south wall,
21 with using these you know, these large
22 stones, everything was expanding, the whole --
23 rather than getting smaller, all of this was
24 expanding.

1 And I the Reichenbachs, I think at
2 that hearing for the first time, said that
3 there were going to be -- oh, I think
4 trying to think if they...
5 I don't think they I'm sorry.
6 There was there was more discussion the
7 following month.
8 **Q. So that hearing was continued to a**
9 **later hearing**
10 A. It was.
11 **Q. for further discussion?**
12 A. There was discussion about drainage on
13 the north side. I think the Conservation
14 Commission wanted a dry well to handle runoff.
15 They also wanted piped drainage now going out
16 toward the coastal bank. Mike O'Reilly wanted
17 that.
18 **Q. And so, if the hearing was continued**
19 **until to when, to have further discussion**
20 **on these issues?**
21 A. January.
22 **Q. The following month?**
23 A. That's right.
24 **Q. And is that a hearing that took place**

1 on January 11, 2011?
2 A. Yes.
3 **Q. And who who attended that hearing**
4 **for the neighbors, for the abutters, that you**
5 **can recall?**
6 A. John and Lynn were there. They had --
7 Attorney Feingold was there.
8 **Q. So this is okay. I had asked you**
9 **about the abutters, but that's fine.**
10 A. Oh, I'm sorry.
11 **Q. We can start with the Reichenbachs.**
12 A. Oh, oh.
13 **Q. Who attended for the Reichenbachs?**
14 A. For the Reichenbachs,
15 Attorney Feingold was there. Lynn and John
16 were there. Their builder, Lars Olson, was
17 there. And I don't know if there was anyone
18 else.
19 **Q. For the neighbors, who attended?**
20 A. So the neighbors, John Bentley was
21 there. I was there. Sam, Ulla Sullivan, and
22 Jim Fitzgibbons may -- may or may not have
23 been there.
24 **Q. Dr. Haydock wasn't at that meeting?**

1 A. No.
2 **Q. What topics were discussed at that**
3 **meeting?**
4 A. Again, you know, the impacts and the
5 drainage. And I think Sam, at that meeting,
6 said we had hired John Queen, a structural
7 engineer, to look at these walls and the
8 impacts of the walls. And he asked for time
9 to have you know, after the Christmas break
10 he had asked for, you know, a two week period
11 so that John Queen could actually evaluate the
12 new wall design.
13 **Q. And did the did the Commission**
14 **grant him that time?**
15 A. No.
16 **Q. So what what happened? How did**
17 **that how was that meeting resolved?**
18 A. They granted their Amended Order of
19 Conditions.
20 **Q. The Commission granted the amended**
21 **order to the Reichenbachs at that meeting?**
22 A. Yes.
23 **Q. So what did you what did you do**
24 **after that meeting was over?**

1 A. John Bentley, Ulla, Sam, and I walked
2 out into the hallway. We walked over to the
3 side to not be next to, you know, the
4 Reichenbachs and their sort of team. We
5 walked over to the side and discussed what had
6 happened and what our steps might be to
7 address the fact that the Commission didn't
8 listen to our concerns and had just issued a
9 permit without giving us extra time to look at
10 it.
11 **Q. Did you speak to Lynn Reichenbach**
12 **after that meeting?**
13 A. No.
14 **Q. Did you speak to anyone who was there**
15 **with the Reichenbachs after that meeting?**
16 A. No.
17 **Q. Did after you you said you were**
18 **standing with Sam and Ulla and others.**
19 **So what did you do after you finished**
20 **your discussion with your group?**
21 A. Well, we were discussing I mean, I
22 remember I was standing next to John Bentley,
23 and I think Sam was on the other side of him.
24 We were sort of in a line, and the

In the Matter of:

John Reichenbach, et al. vs

Timothy Haydock, et al.

Trial Day 12

February 28, 2023

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1
2 (Brief pause.)
3
4 COURT OFFICER: All rise for the
5 jury.
6
7 (Jury enters the courtroom.)
8
9 COURT OFFICER: All the jurors
10 are present. Court is now in session. You
11 may be seated.
12 THE COURT: All right. Further
13 cross examination of Miss Moss.
14 COURT OFFICER: Watch your step.
15 THE CLERK: Ma'am, you
16 understand you're still under oath from
17 yesterday?
18 THE WITNESS: Yes.
19 THE CLERK: Just do your best to
20 speak in the microphone.
21 THE WITNESS: Yes, thanks.
22 THE CLERK: Thank you.
23 THE COURT: Please.
24 MS. BONNET HEBERT: Can you hear

1 me okay?
2 THE WITNESS: Yes, I can.
3
4 BARBARA MOSS,
5 witness called on behalf the Defendants,
6 having been previously sworn, testifies and
7 states as follows:
8
9 CONTINUED CROSS EXAMINATION
10 BY MS. BONNET HEBERT:
11 Q. Good afternoon, Miss Moss.
12 A. Good afternoon.
13 Q. I believe you testified yesterday that
14 Dr. Haydock was working full time as director
15 of an emergency medicine department at a
16 hospital in New York up to about 2014; is that
17 correct?
18 A. 2013 or '14. I can't remember when he
19 went from one hospital to a different
20 hospital.
21 Q. And was he also doing consulting work
22 at that time that was based in New York?
23 A. Yes.
24 Q. And so I think you said he would be in

1 Nonquitt during that time period two or three
2 weekends per month; is that correct?
3 A. And that time period means...
4 Q. Through
5 A. Through 2013 and '14.
6 Q. 2000 let's say 2010 to 2013, '14.
7 A. It really did vary because sometimes
8 he came in the early years he came up to
9 work at St. Luke's Hospital in the emergency
10 department in New Bedford, and I think that
11 was twice a month. And then we would try to
12 come and spend weekends and not be working.
13 So it would vary. I think we spent a little
14 more time as it was 2014, we were there more
15 often.
16 Q. I think you also testified that you
17 would be in Nonquitt much more routinely or
18 frequently than Dr. Haydock, correct?
19 A. Yes, it varied again for me as well.
20 Q. And the 28 Mattarest Lane, you
21 consider that your home, true?
22 A. Yes.
23 Q. And you, I believe, heard
24 Miss Sullivan testify today that you're --

1 you're always there for her helping her out,
2 yes?
3 A. Yes.
4 Q. And you spent many days there to walk
5 down to the Haydock family property to the
6 beach in front of that property, correct?
7 A. Yes, many days, yes, I -- I don't know
8 how many, "many" days are, but I'm there.
9 Q. And you watch over the Haydock family
10 property, true?
11 A. I yes, I do.
12 Q. And you also spent time helping to
13 maintain that property? Because I think you
14 said it's a hundred year old building so
15 there's always things that need to be done,
16 true?
17 A. Yes. I mean, just even getting some
18 deliveries. I'm --
19 Q. I think you said light fixtures,
20 plumbing repairs, decorating work, general
21 maintenance, letting workers in for the
22 furnace, making deliveries, things like that;
23 does that sound right?
24 A. Yes.

In the Matter of:

John Reichenbach, et al. vs

Timothy Haydock, et al.

Trial Day 13

March 01, 2023

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1 A. That's right.
2 Q. And so is it your testimony that you
3 had no idea what the impact would be on the
4 Reichenbachs' project if you revoked their
5 original Order of Conditions which would be
6 the primary thing they needed to start any
7 construction on their home?
8 A. I don't think we had had a
9 conversation about that, no. It was just
10 about getting the permitting correct was the
11 only information I had at this point in time.
12 Q. You were trying to get the permitting
13 revoked, correct?
14 A. The resource area delineation.
15 Q. You were trying to get the permit, the
16 original Order of Conditions revoked, correct?
17 A. To show the correct delineation, yes.
18 Yes, that's right.
19 Q. Which would have the effect of
20 stopping any construction of the Reichenbachs'
21 home, correct?
22 A. Yes, I guess so. Again, the when I
23 wrote this
24 MS. BONNET HEBERT: I move to

1 Between the time that that Amended
2 Order of Conditions was finally approved and
3 they could move forward and early 2013, the
4 Reichenbachs did, in fact, begin construction
5 on their house, correct?
6 A. They actually began it before the
7 Amended Order of Conditions was issued.
8 Q. Under the valid building permit for
9 the retaining walls that had been upheld by
10 the ZBA in the spring of 2011, correct?
11 A. Yes.
12 Q. Okay. And so they began that and
13 shortly thereafter began construction of their
14 home, correct?
15 A. That's right.
16 Q. And it continued throughout 2012,
17 correct?
18 A. That's right.
19 Q. And at some point in 2013, you went to
20 Mike O'Reilly to complain about what you
21 considered to be unpermitted changes on the
22 plan; isn't that correct?
23 A. I think when you say "went to
24 O'Reilly," do you think I wrote to him?

1 strike everything after "yes."
2 A. Okay.
3 THE COURT: Overruled. Next
4 question.
5 BY MS. BONNET HEBERT:
6 Q. At some point, the appeals process for
7 the Amended Order of Conditions was resolved
8 favorably to the Reichenbachs, correct?
9 A. Yes.
10 Q. It went through the adjudicatory
11 appeal process up to the commissioner of the
12 DEP, and they issued a final decision in the
13 fall of 2011, correct?
14 A. That's right.
15 Q. And that decision upheld essentially
16 the Reichenbachs' Amended Order of Conditions,
17 correct?
18 A. That's right.
19 Q. And that would allow them to move
20 forward with building their house at that
21 point finally, correct?
22 A. Yes, building under the amended order.
23 That's correct.
24 Q. And so I want to jump forward a bit.

1 Called? I mean, just
2 Q. You contacted
3 A. Contacted
4 Q. You contacted the Conservation agent,
5 Mike O'Reilly, to complain that, in your
6 belief, you had concerns that there were
7 unpermitted activities, unpermitted work
8 happening on the Reichenbachs' site over the
9 period of 2012 and into early 2013, correct?
10 A. Yes. I can't recall if I was the
11 first person to contact him, but I was one of
12 probably three people. I don't recall that I
13 was the first.
14 Q. But as of that time, you did have an
15 understanding that with almost a hundred
16 percent certainty, there would be changes on
17 any construction site that would not be
18 expressly depicted on a plan, correct?
19 A. Yes.
20 Q. So changes, variations, adjustments
21 for unforeseen circumstances, you understood
22 that to be true, correct?
23 A. That can be true, that's correct.
24 Q. And you understood that most often

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1 A. Well, that appeal was
2 Q. Is that correct?
3 A. No, not entirely. That's not my
4 understanding. Can I just give you a
5 THE COURT: Just answer the
6 question.
7 A. I can't answer that question that way,
8 then.
9 BY MS. BONNET HEBERT:
10 Q. So while this appeal was ongoing,
11 there were certain aspects of the
12 Reichenbachs' project that could not be
13 completed, correct?
14 A. The irrigation system.
15 Q. And that deals with drainage issues,
16 correct?
17 A. It can, yes.
18 Q. You understood that it would deal with
19 drainage issues and help mitigate runoff of
20 the roof, then off of the previous surfaces on
21 the Reichenbach property, correct?
22 A. I had never seen a plan. It was never
23 shown to us, so I had no idea what it was
24 doing.

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1 Q. So in that appeal to the Superior
2 Court, ultimately they found that your appeal
3 had no merit, that's correct?
4 A. I think what they determined is that
5 Tim we did not have standing. I don't
6 recall the no merit. I recall the standing.
7 Q. And at each of these appeals, you were
8 the only witness, correct?
9 A. Yes. You don't need a witness for
10 this.
11 Q. And during this process, you were
12 serving as Dr. Haydock's representative or
13 agent to present this case to the DEP and then
14 to the Superior Court, true?
15 MS. ALLISON: Objection. Form.
16 THE COURT: Sustained.
17 BY MS. BONNET HEBERT:
18 Q. This appeals process that began, that
19 you and Dr. Haydock initiated in 2013, it
20 didn't end until your appeal period ended in
21 2016, isn't that true?
22 A. I think the decision was in November
23 2015. I don't know what the appeal period
24 would have been. I don't know.

1 Q. But it's true that the Reichenbachs
2 could not finish their home during that period
3 without the risk of having to tear it all out
4 if the decision came down unfavorably,
5 correct?
6 A. The only thing that this concerned was
7 the irrigation. There was nothing else in
8 that RDA that - when it went to the Superior
9 Court, it was about irrigation at that point.
10 Q. And so you do understand that that
11 unfinished work that was pending for three
12 years included the very large cisterns that
13 have been shown in photographs before the
14 Court in this trial, that were then put
15 underneath where the tennis court was,
16 correct?
17 A. We never saw any images of that
18 beforehand. I didn't know that in 2000 I
19 did not know that when we appealed. It was
20 never shown to us. That's what we asked for.
21 We didn't get it.
22 Q. Okay. So those cisterns that were
23 intended to be put in the ground to capture
24 water and the dry wells that were on the plans

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1 and the underground pump chamber that was
2 going to be pumping that water into the
3 cisterns, all of those things were there to
4 mitigate the drainage issues that you had been
5 complaining about all along, correct?
6 MS. ALLISON: Objection.
7 A. We complained about
8 THE COURT: Ma'am, there's been
9 an objection. I need to make a ruling.
10 THE WITNESS: Oh, I'm sorry.
11 THE COURT: Sustained. Rephrase.
12 the question, please.
13 BY MS. BONNET HEBERT:
14 Q. The outstanding work that needed to be
15 completed on the Reichenbachs' house after the
16 appeal expired on the last decision before
17 Superior Court, that outstanding work was to
18 complete the drainage and irrigation system
19 that would ultimately mitigate the drainage
20 issues that you had been complaining about all
21 along, correct?
22 A. I couldn't tell you. I never saw a
23 copy of any plan. I couldn't tell you what it
24 involved.

1 Q. What was that?
2 A. I'm an emergency medical. I'm a
3 I'm just see, this is what I'm doing.
4 Q. Emergency medicine, is that what you
5 refer to?
6 A. Yes. Emergency medicine, yes.
7 Q. And about how long did you practice
8 emergency medicine?
9 A. About 45 years.
10 Q. And during that time, where was your
11 practice located?
12 A. Mainly New York and somewhat in
13 Massachusetts.
14 Q. Do you recall over that period of time
15 how much of your practice was in New York
16 versus Massachusetts?
17 A. Very much mostly in New York.
18 Q. So your parents at one time owned 28
19 Mattarest Lane, right?
20 A. My grand my grandmother,
21 grandfather.
22 Q. Did before you before you owned
23 it, did anybody else in your family own it?
24 A. My Uncle Billy owned 28.

1 Q. Okay. And did you spend time there as
2 a kid?
3 A. Not so much there. I would be more
4 down in at 30, but I would go up there
5 some.
6 Q. Well, okay. So sometimes I confuse
7 these two properties as well.
8 So 30 is the Haydock family property,
9 right?
10 A. Right.
11 Q. And 28 is where you reside when you go
12 to Nonquitt now, next door, right?
13 A. Yes.
14 Q. So as a kid, you went to 30?
15 A. Yes, I did.
16 Q. And let's just sort of jump ahead.
17 You and Barbara Moss recently were
18 married, right?
19 A. That's correct.
20 Q. But you have children from a previous
21 marriage; is that right?
22 A. That's correct.
23 Q. So we talked about you being an
24 emergency medicine physician. I want to talk

1 about a little bit about your work history
2 during relevant times.
3 Can you describe what your work looked
4 like from the period 2008 to 2010.
5 A. Yes, I think I could. That particular
6 sequence in that time?
7 Q. What you were doing for work.
8 A. Working in emergency rooms mainly.
9 Q. Whereabouts?
10 A. In New York.
11 Q. Do you remember what hospital?
12 A. Yes. It's the White Plains it was
13 White Plains Hospital.
14 Q. And you were working in the emergency
15 room there?
16 A. I ran the ER there, yes.
17 Q. Did you have any other work
18 obligations during those two to three years?
19 A. I did.
20 Q. What were they?
21 A. I worked at other emergency rooms
22 part time in the Westchester area and
23 sometimes in the lower Bronx for other work or
24 just to do it and teach, things like that.

1 But that those are the main things.
2 Q. Did you do anything outside of the
3 hospital for your profession, like for a state
4 board or anything?
5 A. Yes. I was the director or not the
6 director. I should say I was I was running
7 the I'm blanking on the main thing, the
8 the entity that managed the West the
9 emergency services in New York State, and I
10 was I ran that personally for four to six
11 years.
12 Q. Where was that located in terms of
13 your obligations?
14 A. I would go up to Albany, you know,
15 usually a couple of times a month and go up
16 and run the department.
17 Q. So during this period of 2008 to 2010,
18 do you recall about how many hours per week
19 you were devoting to all of these
20 responsibilities?
21 A. I mean, around 100 hours.
22 Q. That's a lot. Why would you want to
23 work that much?
24 A. That's a good question. Sometimes you

1 start, and you get excited, and you do it.
2 You teach. You do other things, and you
3 expand your practice, and you enjoy it. And
4 that's, I guess, what happened. And I even
5 came and worked in here in Massachusetts.
6 **Q. Whereabouts?**
7 A. St. Luke's. For those of you that
8 have been to that hospital, I did that for, I
9 think, 17 years.
10 **Q. So let's move ahead to the next two**
11 **years.**
12 **From, say, 2010 to 2012, what did your**
13 **work situation look like then?**
14 A. Pretty much the same at that point.
15 **Q. Were you still running the emergency**
16 **room at Westchester?**
17 A. I --
18 **Q. I'm sorry. White Plains.**
19 A. Yes.
20 **Q. Were you still working at the**
21 **Westchester hospital, too?**
22 A. Yes.
23 **Q. Were you still on that New York State**
24 **board in Albany that you just described?**

1 A. Yes.
2 **Q. Did you work at St. Luke's during that**
3 **time?**
4 A. I think by then I what was the year
5 again? It was '8 to '12.
6 **Q. Now I'm talking about 2010 to 2012.**
7 A. Yeah, so maybe getting I stopped
8 slowly to stop doing that.
9 **Q. So how did your weekly hours during**
10 **this two year period compare to the previous**
11 **two year period?**
12 A. Not very much, I've got to say,
13 because that that was one of the smaller
14 things I was doing.
15 **Q. I'm sorry. Do you mean not very much**
16 **different or**
17 A. Not I mean, when I when I
18 went stopped from going to St. Luke's, I
19 only was doing that two days or three days a
20 month.
21 **Q. So I'm asking you, Tim, about your**
22 **overall hours worked per week during the years**
23 **2010 to 2012.**
24 A. I would still say it's about 100

1 hours.
2 **Q. So it looked a lot like the years 2008**
3 **to 2010?**
4 A. Yes.
5 **Q. How about the next two years? No, I**
6 **will not be going for two years up until**
7 **today. But for 2013 to 2014, what did your**
8 **workload look like then?**
9 A. I started to slow down. I was no
10 longer running ERs. I was leaving -- I think
11 I got a little -- a few years later, I was --
12 I stopped that, what I was doing up in Albany,
13 and I was teaching in some -- another hospital
14 in Westchester County during that time as I
15 got out of the other hospital in White Plains.
16 So I was still working and -- but not as much.
17 So I would say -- I would say I was down to
18 about 60 hours a week.
19 **Q. Were you still on that state board in**
20 **Albany during that time?**
21 A. I was just getting out of that by
22 then.
23 **Q. So let's start focus a little bit**
24 **more on the specifics of this case.**

1 **Do you recall -- before the**
2 **Reichenbachs bought the property at 29**
3 **Mattarest, did you know who John Reichenbach**
4 **was?**
5 A. Yes.
6 **Q. And how did you know him?**
7 A. Through Nonquitt. As a you know, a
8 small place, everybody sort of knows
9 everybody.
10 **Q. Is that because Mr. Reichenbach had**
11 **been coming to Nonquitt before that?**
12 A. He was there. I'm not sure when he
13 but he I think he he had a father there,
14 and I assumed they were he was part of that
15 family.
16 **Q. Did you know Mr. Reichenbach well?**
17 A. No.
18 **Q. At the time Mr. Reichenbach bought the**
19 **property well, the Reichenbachs bought the**
20 **property at 29 Mattarest in 2008.**
21 **Did you have any opinion of Mr. or**
22 **Mrs. Reichenbach?**
23 A. No. I knew who they were, and I
24 they seemed like normal people.

1 Q. So after they bought the property at
2 29, but before they started building anything,
3 do you recall meeting Mr. Reichenbach?

4 A. Yes. He I think I really met him
5 when he came with his wife over to our house
6 at 28 in Nonquitt, and they came by and sat
7 with us. And as they were getting the house
8 from my Uncle Billy when he died and the rest
9 of the family left, I they came by to meet
10 with us and possibly help with them to getting
11 to their own home.

12 Q. Do you recall what you discussed with
13 them at that meeting?

14 A. Mainly just getting to know them a
15 little bit, and Margaret and I think Barbara
16 did some going around the house and other
17 had some things they were looking at while I
18 was with with John. And I think we were
19 together about an hour, maybe an hour and a
20 half.

21 Q. Did either Mr. or Mrs. Reichenbach
22 speak to you about any plans for the new home?

23 A. Somewhat. A little bit. They were
24 just you know, they were interested

1 obviously in finding out a little bit more
2 about perhaps the neighborhood where we were
3 or we are, and so that that's that's
4 what happened.

5 And then we met with them again, I
6 think mainly with John with his he brought
7 some things with it had the whatever you
8 call them, you would know, when the the
9 paper that has the picture.

10 Q. Plans?

11 A. The plans, yes. Okay. And basically,
12 that was beginning of their, I think plan to
13 build and get their thing going.

14 Q. Does anything about either of those
15 meetings stand out to you in your memory?

16 A. Not particularly. I do one quote from
17 John that he wanted to have, you know, the
18 biggest home in Nonquitt.

19 Q. I'm sorry?

20 A. Impressive, I should say.

21 Q. Do you recall Mr. Reichenbach ever
22 mentioning anything about using the Haydock
23 Family property driveway?

24 A. Yes. There was talk about the

1 driveway, and the driveway which was it's
2 is a small driveway, which was being used not
3 just by 30, the other that's the other
4 the main house that was my grandmother
5 built. But anyway, so that was right down
6 right down the right hand side of the of
7 Number 30. And so it was right up against the
8 property where their house was going to be and
9 where the the tennis court was.

10 Q. Do you recall Mr. Reichenbach
11 discussing that when you first met with them?

12 A. And what my my Uncle Billy, who was
13 in 29, that house, my mother had made a deal
14 that he could go and use a little appendage to
15 the hospital to

16 Q. I understand. I'm just going to stop
17 you right here.

18 A. Yeah.

19 Q. Just because you're absolutely
20 everything you said, I think we've established
21 before. So

22 A. Uh huh.

23 Q. just to save ourselves some time
24 about what the easement is, what that previous

1 driveway easement was.

2 My question is: Did Mr. Reichenbach,
3 when you met with him, ask about that
4 driveway?

5 A. Yes, he did.

6 Q. Do you recall him asking about it
7 after that meeting?

8 A. Yes.

9 Q. Did he ask about it a lot?

10 A. Yes.

11 Q. We can get back to that after. I want
12 to talk about issues that you may have been
13 concerned about with regard to the
14 construction of the Reichenbach home, and I
15 know it was a long time ago.

16 But after you became aware of their
17 plans to construct the house, do you recall
18 having concerns about their proposed plan?

19 A. I was willing to have an open open
20 idea or first and see how it was going to
21 go and I was willing to to work with them.

22 Q. Do you recall -- as the plans
23 proceeded, do you recall having concerns about
24 certain aspects of the plans?

1 A. Well, I, you know, like I think
2 it's -- it is true that it's a tight area
3 where we -- where we are, of course, not as
4 well, there are smaller places in Nonquitt.
5 But it was -- it was a tight area, and the
6 issues were -- there were some issues.
7 **Q. Were you ever concerned about the**
8 **proposed elevation of the project?**
9 A. Well, I was concerned if things got
10 too large in their -- the scale and -- and
11 sort of exposed -- you know, just it inter-
12 it got tight around -- between that house, 30,
13 and Ulla, very tight.
14 **Q. Were you concerned about the coastal**
15 **bank at all?**
16 A. Yes.
17 **Q. And how so?**
18 A. Well, I mean, it's just something that
19 you want to have that's in the area that gets
20 sort of -- sort of keeps the -- the area solid
21 and doesn't get damaged by too much work being
22 done, too much stuff going around and -- and,
23 you know, and being -- getting very hard to
24 work in smaller to the -- the ways.

1 **Q. And there's been a lot of testimony**
2 **about this retaining wall. Are you familiar**
3 **with the retaining wall?**
4 A. Which one?
5 **Q. The retaining wall at 29 Mattarest.**
6 A. Well, the one that goes around the --
7 (Witness indicating.)
8 **Q. Correct.**
9 A. Okay. So that was --
10 **Q. Did you have any concerns about the**
11 **retaining wall?**
12 A. Yes.
13 **Q. What were those concerns?**
14 A. Well, they were very large. I was --
15 of course, since 30 was my main interest
16 really other than 28, but the -- that
17 particular area on the north side was very big
18 and moving, seemed to get -- be moving closer
19 to 30 and getting tighter and tighter in the
20 beginning for a while.
21 **Q. And why is that a concern?**
22 A. Because it takes away the space and
23 is -- I think my brother talked about the --
24 what's it called? The -- the resource area

1 and there was -- and we had some concerns
2 about how that was being used.
3 **Q. What about drainage? Did you have**
4 **concerns about drainage?**
5 A. Yes.
6 **Q. And what were those concerns?**
7 A. Lots of -- lots of water -- excuse me,
8 My ears.
9 It's -- that -- there was -- that side
10 of the -- at least for us on our side, there
11 was a lot more water coming down into our
12 house and down our driveway once -- it used to
13 go both sides of my uncle's house, but this
14 time it -- that got elevated in the middle and
15 it just, you know, it squeezed us -- the water
16 right down into basically almost our garage.
17 **Q. Were those -- were the concerns you**
18 **just described, was that -- did you believe**
19 **that was impacted or related to the retaining**
20 **wall in any way?**
21 A. Well, yes, it was squeezing things to
22 the north and there was -- there were other
23 issues in there that -- very important, which
24 I can never remember the names of because I

1 don't really -- I was not nearly as active as
2 my brothers were because I was so busy in
3 New York. But -- but there was clearly issues
4 in that tight area.
5 And then you have the easements that I
6 think you just heard about today that were
7 going down that same spot and just -- and then
8 it was just very tight.
9 **Q. Do you recall after construction**
10 **started having any additional concerns?**
11 A. I -- in the beginning, I -- I
12 didn't -- I wasn't around that much. Maybe a
13 little bit more in the summer.
14 **Q. Is that because you were working so**
15 **much?**
16 A. Yeah. And I was working -- I was in
17 ERs that I was running, so I was basically
18 doing that full time. So I would get up there
19 for an occasional weekend or whatever, Barbara
20 and I could go up. But I just couldn't spend
21 that much time up there.
22 **Q. Specifically, though, during**
23 **construction, do you recall having concerns**
24 **about the transformer?**

In the Matter of:

John Reichenbach, et al. vs

Timothy Haydock, et al.

Trial Day 14

March 02, 2023

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1 particularly going on with initially the
2 the access for the Reichenbachs.
3 And they were using our -- we allowed them to
4 use our -- our driveway during that -- a
5 year -- I think about two years so that
6 until they got situated with their own
7 driveway.
8 Q. But the driveway you allowed them
9 to use the driveway until construction
10 started, right?
11 A. Yes.
12 Q. So I'm talking about after
13 construction started.
14 Let me give you an example. Did
15 equipment ever drive on to the Haydock family
16 property during construction?
17 A. I would say very -- yeah, quite
18 quite a bit.
19 Q. And did that ever affect the Haydock
20 family property in any way that you observed?
21 A. Yes.
22 Q. How so?
23 A. Well, there were people coming in all
24 the time, especially in the beginning, or if

1 meeting with Ray Oliver.
2 Do you remember testimony about that?
3 A. Yes.
4 Q. And that was Nan Sinton who testified
5 about that.
6 Were you here when she testified about
7 that?
8 A. I was, yes.
9 Q. And she described a meeting -- an
10 early morning meeting between you and Ray
11 Oliver that she was at.
12 Do you recall that?
13 A. Yes.
14 Q. And do you recall that meeting?
15 A. Yes. I mean, I do for the most part,
16 yes.
17 Q. What -- what happened at that meeting?
18 A. Well, I, as I think I mentioned, that
19 I was -- actually had a -- I was off and going
20 to the -- to go and work at the hospital. So
21 there was an early morning day that I went in
22 there, and there had been a big truck that was
23 blocked in the circle by Ray, and it was -- it
24 was blocking that particular circle, although

1 we weren't there, they -- we would have cars
2 in our -- in our -- in our house
3 down on 30 quite a bit.
4 Q. Did -- so did contractors park on
5 Mattarest Circle a lot?
6 A. I think sometimes that's true, yes.
7 Q. And was that ever a problem for you?
8 A. It was -- it was -- it was tight, and
9 I think it was a problem.
10 Q. And how was that a problem?
11 A. Just traffic, and if the -- if the
12 circle would block and we would get blocked at
13 30, and even in 28, we would get blocked.
14 There were so many cars or trucks or whatever
15 on some days, you could never get out or in.
16 Q. So are you saying -- so were you
17 were you or anybody that was visiting or
18 working for you ever blocked from coming out?
19 A. Absolutely. And I would say
20 frequently if I was there.
21 Q. I want to talk about just some
22 specific allegations that we heard about from
23 other people testifying at this trial. Okay?
24 And I want to start with this supposed

1 not our access.
2 But we tried to -- so but anyway, so I
3 did call Ray up and ask him what he -- if he
4 was planning to block -- I mean get that out
5 of the circle.
6 Q. So did you ask to meet him?
7 A. Yes.
8 Q. And you met with him in the morning?
9 A. Yep, we did.
10 Q. And what did you guys talk about?
11 A. We talked about what we were going to
12 do with his truck and what he wanted to do and
13 what he would be -- maybe he was hoping he
14 could get -- where we would like him to not be
15 working if he didn't have to.
16 Q. Was there ever an issue with his
17 trucks leaving ruts on your property?
18 A. Yes.
19 Q. And did you talk about that that day,
20 too?
21 A. Yeah.
22 Q. Did he apologize?
23 A. Yes, he was very nice. And we had no
24 problem with it, and he understood, and he

1 went about his day.
2 **Q. Do you have any impression, based on**
3 **that discussion, of how Ray felt about that**
4 **meeting?**
5 A. He was very pleasant. We we
6 were it was about, I think, 6:30 or
7 something in the morning or maybe 7:00, and he
8 was we he was very pleasant, very nice,
9 and agreed.
10 And he, you know, we had actually
11 initially offered to give a place for him to
12 park when he had his his truck on one of
13 our spots. That was before he came in. But
14 anyway, so, yeah, so we had no problem with
15 Ray.
16 **Q. So he seemed okay with everything?**
17 A. Yeah, as far as we know. He was
18 pleasant. And then we still had he worked
19 with us and still we still like him. He's
20 our buddy.
21 **Q. Got it. So let's move on to this**
22 **testimony we heard about a supposed**
23 **interaction with you and Lars Olson one day.**
24 **Do you remember that testimony?**

1 there was a blockage on 30, the house there.
2 And we turned out, it was the work one
3 of the workers who had been working on our
4 property, which, because he normally does that
5 and he and they could not get out of our
6 of 30 and apparently they and they were
7 stuck for 45 minutes plus. And just there was
8 so many cars and stuff, things that were going
9 on, and nobody was around and to move there
10 was at least one or two they were, I think,
11 trucks that were in our property that were
12 blocking above where they were.
13 So we had to get them moved out, but
14 we we couldn't find anyone to move the
15 trucks out because nobody was in them. So
16 we I went in while there were other people
17 there, and one one of the workers came up
18 said, Well, why don't you just go ask Lars if
19 he knows who the trucks are?
20 **Q. Okay. So you went up to Lars after**
21 **that?**
22 A. After he yeah, I said, Go ahead.
23 And Lars's right there. I didn't even
24 know who he was at that point.

1 A. I do.
2 **Q. You know who Lars Olson is?**
3 A. Yes, I do.
4 **Q. And I'm referring to testimony that**
5 **by Mr. Olson that you approached him one day**
6 **while he was working and started talking to**
7 **him.**
8 **Are you familiar with that incident?**
9 A. Yes. I believe I yes.
10 **Q. And so do you remember approaching him**
11 **and talking to him while he was working?**
12 MR. FIELDING: Objection.
13 Leading.
14 THE COURT: Overruled.
15 A. Yes.
16 BY MR. ELDER:
17 **Q. So first of all, why did you want to**
18 **talk to him?**
19 A. Well, on that particular day, now, I
20 had never met Ray not Ray, but I Lars, I
21 had never met before.
22 But anyway, this is a day, it was very
23 busy on the circle and on the road. And I got
24 notified I'm not sure who told me, but

1 **Q. And what did you say to Lars?**
2 A. I asked him if he could help us clear
3 the -- clear the area around the circle.
4 **Q. Where did that conversation take**
5 **place?**
6 A. Right -- I think pretty much on -- a
7 little bit on the -- on the tennis court.
8 **Q. So the**
9 A. He was standing on the court.
10 **Q. The tennis court that used to be**
11 **there?**
12 A. That used to be there, yes.
13 **Q. And so it wasn't near the pool?**
14 A. No, not at all.
15 **Q. Did you raise your voice at all during**
16 **that conversation?**
17 A. I could have a little bit, but that's
18 nothing really.
19 And I talked to him, you know, and he
20 agreed, and he got the truck moved.
21 **Q. Were you frustrated during that**
22 **conversation?**
23 A. Not particularly, no.
24 **Q. And I was going to ask you how did**

1 Lars react to what you said to him?
2 MR. FIELDING: Objection.
3 THE COURT: Overruled. Based on
4 his observations.
5 A. I would say that he was -- just went
6 on it -- went about it and got -- found the
7 people and moved them out, and that was it.
8 BY MR. ELDER:
9 Q. Problem solved.
10 A. Yep.
11 Q. And you mentioned before -- so before
12 you actually walked up to Lars to talk to him,
13 did you ask one of his workers or another
14 worker what to do?
15 A. As I just said, he -- someone came and
16 said to me that, If you want to get that,
17 maybe go to that gentleman right there.
18 That's Lars Olson.
19 And I said, Oh, okay.
20 So I went up. He was standing on the
21 court.
22 Q. So based on that, did you feel like
23 you had permission to walk up to Lars and talk
24 to him where he was working?

1 A. Yes. It seemed reasonable, especially
2 since the road was being blocked.
3 Q. Another story we heard or allegation
4 we heard involves somebody name LeClair.
5 Do you remember that person?
6 A. No.
7 Q. Do you have any recollection of trying
8 to stop Mr. LeClair from entering the
9 Reichenbachs' property ever?
10 A. Not to my knowledge. I'm not sure.
11 There are a lot -- a lot of traffic.
12 Q. Do you remember somebody named Andrew
13 Dearden?
14 A. Yes.
15 Q. Do you know who he is?
16 A. Yes.
17 Q. Who is he?
18 A. He's one of the guys that works. He,
19 I think, later in the course of this -- of
20 the -- of the issue, he came in later, I think
21 around -- I'd say -- I think the house was
22 almost done by the time he came in. And so he
23 was working, managing the people in the -- and
24 stuff in that area.

1 Q. He was a manager or a supervisor, you
2 think?
3 A. Yes, yes. He was...
4 Q. Did you ever interact with him
5 A. Yes.
6 Q. During construction?
7 A. Yes.
8 Q. All right. Do any of those
9 interactions stand out in your memory?
10 A. There were -- there were a couple.
11 Q. Did one involve his driving?
12 A. One of them did.
13 Q. Can you describe that.
14 A. Yes. Barbara and I were walking. I
15 think -- I don't know, I think it was just
16 sort of midday or maybe earlier in the
17 morning, and we were walking down our little
18 driveway, and right where the -- right where
19 the curve is, the bend, we were just walking
20 down, and we had gone around -- gone around
21 that bend and -- and which -- which
22 essentially blocks the view of anyone going
23 around that corner.
24 And so we heard a loud sound of a car

1 coming down the road. And I'd say he was
2 going about 50 miles an hour.
3 Q. This is Mr. Dearden?
4 A. Yeah. And we knew who he was, and he
5 had -- he was working there for a short
6 period. And he -- we jumped into the bushes,
7 into the nice, sharp bushes.
8 Q. You did that to avoid his vehicle?
9 A. Yes, we did. Yeah, we would have been
10 run over for sure.
11 Q. And --
12 A. And so he -- I did yell at him. I
13 said, Stop. Slow down. He stopped. I walked
14 down. He -- I talked to him. And he -- he,
15 you know, he didn't -- he was actually --
16 he -- I think he was trying to deal with a
17 some type of alarm down at the other -- down
18 at 29.
19 Q. Do you remember generally what year
20 this was other than at a time when you were
21 spy enough to jump in the bushes?
22 A. It was, you know, 2013 maybe,
23 something like that.
24 And he was very pleasant. He -- we

1 talked it out, and he we told him we
2 didn't said we wouldn't talk to his bosses,
3 and he left.
4 **Q. Okay. And did you get hurt?**
5 A. No, no. Well just from the pricklers a
6 little bit, but I'm used to that. That's
7 it's a very it grows well down there.
8 **Q. So a different allegation is -- you**
9 **know who Mr. Honohan is, right?**
10 A. Yes.
11 **Q. And you heard testimony about**
12 **Mr. Honohan supposedly witnessing a trespass**
13 **by Barbara at some point.**
14 **Do you recall that?**
15 A. Yes.
16 **Q. Did you recall that incident, that**
17 **event that Mr. Honohan described?**
18 A. Yes.
19 **Q. What happened?**
20 A. Well, I'm not quite sure what we were
21 doing, but we were we were in a vehicle.
22 I'm not sure if it was my truck or my my
23 BMW, but we were just I think Barbara
24 thought that she had we were we were

1 feet.
2 **Q. And where were you parked?**
3 A. On the edge of the circle right
4 toward almost at the at our going
5 down to 30.
6 **Q. Were you parked at all on the**
7 **Reichenbachs' property?**
8 A. I was on the dirt of the easement.
9 **Q. Got it.**
10 A. And well on the easement.
11 **Q. Were the Reichenbachs there?**
12 A. I don't I don't think they were
13 there.
14 **Q. Did you see them at any time during**
15 **this?**
16 A. No, I was just sitting there and then
17 Honohan drove in and parked next to me. I was
18 on the dirt and the circle. He was on the
19 tarmac right next to me. And and he just
20 was he came over and started talking to me.
21 **Q. And from your observation, was Barbara**
22 **ever on the Reichenbachs' property?**
23 A. Not that I saw, no, clearly not.
24 **Q. So let's now let's talk about the**

1 going out, I think, maybe to have dinner or
2 something, or I'm not sure what we were going
3 to do, but we were going to go out. And she
4 felt that she heard a sound of alarm or
5 something. And being that she really -- with
6 her long history of -- as starting at the age
7 of about four, she was -- she would fall. She
8 loved to go to things and make sure people
9 weren't burning up or anything, and she would
10 like to go and see -- make sure that nothing
11 bad was happening down the road or down the
12 driveway.
13 And so anyway I was -- I sort of
14 backed -- I really just wanted to go eat, but
15 she was -- she was -- wanted to make sure
16 there wasn't any kind of an event going on.
17 So she got out of the car and walked a short
18 period on a very, very dark night. It was
19 very night -- very dark. Couldn't really see
20 much.
21 **Q. How far from the truck did Barbara**
22 **walk?**
23 A. I'd say, if you want, maybe -- I
24 couldn't really see her but maybe 10 to 15

1 stairs. Okay?
2 A. Yes.
3 **Q. You know what I mean by "the stairs"?**
4 A. Yes.
5 **Q. The beach stairs?**
6 A. The beach stairs.
7 **Q. Do you recall hiring someone to build**
8 **stairs to the beach on the Haydock family**
9 **property?**
10 A. I was never sure exactly who the
11 one that did it, because I wasn't there.
12 **Q. Were you working?**
13 A. I no. I was down in Florida having
14 a nice time. So he was there someone was
15 there, and they and it could have been a
16 couple of people.
17 **Q. But I guess to my point, you hired**
18 **somebody to**
19 A. There were a couple
20 **Q. to install stairs?**
21 A. Yes, yes.
22 **Q. Where were those stairs located?**
23 A. To the north. I'm not quite sure
24 exactly. It could have been maybe four

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Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands
WPA Form 5 - Order of Conditions
Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

Provided by MassDEP:
MassDEP File #:015-2058
eDEP Transaction #:295458
City/Town:DARTMOUTH

And the Dartmouth Wetlands
Protection Bylaw

A. General Information

1. Conservation Commission DARTMOUTH

2. Issuance a. ☒ OOC b. ☐ Amended OOC

3. Applicant Details

a. First Name JOHN/MARGARET b. Last Name REICHENBACH
c. Organization
d. Mailing Address 256 HIGHLAND ST.
e. City/Town WEST NEWTON f. State MA g. Zip Code 02465

4. Property Owner

a. First Name JOHN/MARGARET b. Last Name REICHENBACH
c. Organization
d. Mailing Address 256 HIGHLAND ST.
e. City/Town WEST NEWTON f. State MA g. Zip Code 02465

5. Project Location

a. Street Address 29 MATTAX REST LANE
b. City/Town DARTMOUTH c. Zip Code
d. Assessors Map/Plat# 94 e. Parcel/Lot# 25
f. Latitude 41.54680N g. Longitude 70.93516W

6. Property recorded at the Registry of Deed for:

a. County	b. Certificate	c. Book	d. Page
SOUTHERN BRISTOL		6073	68

7. Dates

a. Date NOI Filed : 9/25/2009 b. Date Public Hearing Closed: 4/27/2010 c. Date Of Issuance: 4/29/2010

8. Final Approved Plans and Other Documents

a. Plan Title:	b. Plan Prepared by:	c. Plan Signed/Stamped by:	d. Revised Final Date:	e. Scale:
SITE PLAN	CULLINAN ENGINEERING CO., INC.	KENNETH W HODGSON, JR.	4/20/2010	1"=20'

B. Findings

1. Findings pursuant to the Massachusetts Wetlands Protection Act

Page 1 of 12 * ELECTRONIC COPY



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands
WPA Form 5 - Order of Conditions
 Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

Provided by MassDEP:
 MassDEP File #:015-2058
 eDEP Transaction #:295458
 City/Town:DARTMOUTH

E. Signatures

And the Dartmouth Wetlands
 Protection By/Law

4/29/2010

This Order is valid for three years from the date of issuance, unless otherwise specified according to General Condition #4. If this is an Amended Order of Conditions, the Amended Order expires on the same date as the original Order of Conditions.

1. Date of Original Order
 3

Please indicate the number of members who will sign this form. This Order must be signed by a majority of the Conservation Commission.

2. Number of Signers

The Order must be mailed by certified mail (return receipt requested) or hand delivered to the applicant. A copy also must be mailed or hand delivered at the same time to the appropriate Department of Environmental Protection Regional Office, if not filing electronically, and the property owner, if different from applicant.

Signatures:

☐ by hand delivery on

☒ by certified mail, return receipt requested, on

April 29, 2010

Date

Date

F. Appeals

The applicant, the owner, any person aggrieved by this Order, any owner of land abutting the land subject to this Order, or any ten residents of the city or town in which such land is located, are hereby notified of their right to request the appropriate MassDEP Regional Office to issue a Superseding Order of Conditions. The request must be made by certified mail or hand delivery to the Department, with the appropriate filing fee and a completed Request for Departmental Action Fee Transmittal Form, as provided in 310 CMR 10.03(7) within ten business days from the date of issuance of this Order. A copy of the request shall at the same time be sent by certified mail or hand delivery to the Conservation Commission and to the applicant, if he/she is not the appellant.

Any appellants seeking to appeal the Department's Superseding Order associated with this appeal will be required to demonstrate prior participation in the review of this project. Previous participation in the permit proceeding means the submission of written information to the Conservation Commission prior to the close of the public hearing, requesting a Superseding Order, or providing written information to the Department prior to issuance of a Superseding Order.

The request shall state clearly and concisely the objections to the Order which is being appealed and how the Order does not contribute to the protection of the interests identified in the Massachusetts Wetlands Protection Act (M.G.L. c. 131, § 40), and is inconsistent with the wetlands regulations (310 CMR 10.00). To the extent that the Order is based on a municipal ordinance or by-law, and not on the Massachusetts Wetlands Protection Act or regulations, the Department has no appellate jurisdiction.



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October 26, 2010
CE# 20830040

Dartmouth Conservation Commission
400 Slocum Road
Dartmouth, MA 02747



**Subject: 29 Mattarest Lane, DEP File # 15-2058
Request for an Amended Order of Conditions
Dartmouth, Massachusetts**

Dear Members of the Commission:

On behalf of John and Margaret Reichenbach (Applicant) we hereby request an Amended Order of Conditions for this project. This request is necessitated due to minor revisions to the type of siltation barrier proposed as well as minor revisions to the shape and location of the retaining walls. These revisions have developed over time in working to finalize plans with the landscape designer.

Enclosed please find the required filing fee, advertising fee and five copies of the revised plan. We have notified the abutters and look forward to discussing this request at your next available meeting. If you should have any questions or need any additional information, please do not hesitate to call me at (508) 946-9911.

Very truly yours,
Cullinan Engineering Co., Inc.

A handwritten signature in black ink, appearing to read 'Thomas W. Hardman'.

Thomas W. Hardman, PLS
Southeast Regional Manager

Enclosures

Copy to: John and Margaret Reichenbach
DEP Southeast Regional Office

Lakeville Corporate Park
10 Riverside Drive, Lakeville, MA 02347
P: 508-946-9911 F: 508-946-9955

www.cullinaneng.com

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THBM_009529

McGREGOR & ASSOCIATES

ATTORNEYS AT LAW, P.C.

15 COURT SQUARE - SUITE 500
BOSTON, MASSACHUSETTS 02108
(617) 338-6464
FAX (617) 338-0737

Luke H. Legere
E-mail: legere@mcgregorlaw.com
(617) 338-6464 ext. 126

VIA HAND DELIVERY

April 7, 2011

Anne Hartley, Case Administrator
Office of Appeals and Dispute Resolution
Massachusetts Department of Environmental Protection
One Winter Street Second Floor
Boston, MA 02108

RE: Request for Adjudicatory Hearing
DEP File No. SE 15-2058
Applicant: John B. & Margaret Reichenbach
Location: 29 Mattarest Lane, Dartmouth, MA
Our File No. 2563

Dear Ms. Hartley:

Please find enclosed in the above-captioned matter a Notice of Claim for Adjudicatory Hearing, filed on behalf of ten residents of the Town of Dartmouth, which includes a copy of the Request for Adjudicatory Hearing Fee Transmittal Form and the \$100 check for the filing fee, both of which are sent forthwith to the Department's "lock box."

Thank you for your attention to this matter.

Sincerely,



Luke H. Legere

Enclosures

cc: Dartmouth Conservation Commission (via certified mail)
Mr. and Mrs. John Reichenbach (via certified mail)
Robert B. Feingold, Esq. (via certified mail)
Tena Davies, DEP-SERO (via certified mail)



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**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
OFFICE OF APPEALS AND DISPUTE RESOLUTION**

In the Matter of

**John B. and Margaret
Reichenbach**

**Docket No.
DEP File No. SE 15-2058
Dartmouth**

NOTICE OF CLAIM FOR ADJUDICATORY HEARING

I. INTRODUCTION

1. Ten residents of Dartmouth, MA (collectively, the "Petitioners") hereby claim an Adjudicatory Hearing to appeal a Superseding Amended Order of Conditions (the "SAOC") issued on March 24, 2011 by the Department of Environmental Protection's Southeast Regional Office (the "Department") approving amendments to an Order of Conditions for a proposed single-family residential development at 29 Mattarest Lane in Dartmouth (the "Property").¹ Several of the Petitioners are abutters and all are aggrieved.² Petitioners participated in writing and orally in the public hearings on the original Notices of Intent and the request to amend the Order of Conditions, filed a Request for Superseding Order of Conditions with the Department, and filed written comments with the Department prior to issuance of the SAOC.

2. John B. and Margaret Reichenbach (collectively, the "Applicant") propose to construct a residence, swimming pool, retaining wall, fill, landscaping, and associated features (the "Project") at the Property, which consists of less than 1.5 acres. The Property contains Coastal Bank, Land Subject to Coastal Storm Flowage ("LSCSF"), and associated Buffer Zone.

¹ Petitioners are Timothy Haydock and Barbara Moss of 28 Mattarest Lane in Dartmouth, MA; Samuel Haydock and George Haydock of 30 Mattarest Lane in Dartmouth, MA (Timothy Haydock is also a partial owner of 30 Mattarest Lane); Sacket and Mary Cook of 25 Mattarest Lane in Dartmouth, MA; Paul and Ulla Sullivan of 27 Mattarest Lane in Dartmouth, MA; and James and Janet Fitzgibbons of 26 Mattarest Lane in Dartmouth, MA.

² Mr. and Mrs. Sullivan, Samuel Haydock, Timothy Haydock, and George Haydock are abutters to the Property.

3. The Applicant filed a Notice of Intent (the "NOI") for the Project with the Dartmouth Conservation Commission (the "Commission") on or about September 25, 2009. The public hearing was closed on April 27, 2010 and the original Order of Conditions ("OOC") was issued on April 29, 2010.

4. The Applicant subsequently sought to amend the OOC by filing with the Commission a letter request dated October 26, 2010. The Commission issued an Amended Order of Conditions ("AOOC") approving the revised Project on January 13, 2011.

5. Petitioner Samuel Haydock filed a Request for Superseding Amended Order of Conditions on January 25, 2011. The SAOC was issued on March 24, 2011. A copy of the SAOC is attached hereto as Exhibit A.

6. The Commission issued an AOOC and the Department issued an SAOC that would allow the Applicant to perform work (with more impacts and more adverse effects on more Resource Areas and Buffer Zone) associated with the construction of a large residence, swimming pool, retaining wall, landscaping, and associated features. The work would be performed on Coastal Bank, within LSCSF, and within the 100-foot Buffer Zone to Coastal Bank. This includes three (3) Coastal Banks on and immediately adjacent to the Property that are not depicted on the plans approved as part of the SAOC. The Project as approved would directly alter at least two of these Coastal Banks, and would involve significant work in very close proximity to the third (namely, a large retaining wall for the pool).

7. The Department issued an SAOC approving a Project that fails to protect the interests of the state Wetlands Protection Act (the "Act") and its Regulations and should have been denied, or at least significantly downsized and properly mitigated. In issuing the SAOC, the Department ignored numerous, significant revisions that would harm the interests of the Act.

8. The request for AOOC understated and omitted significant changes (and jurisdictional Resource Areas altered by them) in the required narrative of changes. The proposed revisions should be rejected, and the Applicant required to file a new Notice of Intent.

9. This Project was designed without regard for environmental impacts. Rather than studying the site first and designing the Project to fit the Property's carrying capacity, resource areas and other natural constraints (consistent with modern principles of low impact, environmentally sensitive site design), the Applicant has shoehorned this Project onto the Property.

10. This notice is timely filed in accordance with 310 CMR § 1.01(6)(a) and 310 CMR § 10.05(7)(j) as it is filed within 10 business days of the date on which the Department issued its SAOC.

11. The Petitioners have standing as ten residents of Dartmouth, and as persons aggrieved, to file this appeal as parties to this Adjudicatory Proceeding. The Petitioners are prior participants in the proceeding, having submitted written information and oral testimony to the Commission prior to the close of the public hearing on the original NOI and the request to amend the OOC, having requested the SAOC, and having submitted written information to the Department prior to the issuance of the SAOC.

12. The filing fee and Fee Transmittal Form have been sent to the Department's "Lock Box"; copies of both are attached hereto as Exhibit B. A copy of this claim is being sent via certified mail to the Dartmouth Conservation Commission, the Applicant, the Applicant's attorney, and the Department's Southeast Regional Office.

II. FACTS

13. The Applicant owns the Property, which contains LSCSF and Coastal Bank.

14. The Applicant filed an NOI for the Project under the Act and the Dartmouth Wetlands Protection Bylaw with the Commission on or about September 25, 2009. The public hearing was closed on April 27, 2010.

15. The Commission issued the original OOC approving the Project under the Act and the Dartmouth Wetlands Protection Bylaw on April 29, 2010.

16. The Applicant subsequently sought to amend the OOC by filing with the Commission a letter request dated October 26, 2010. That request described the changes as "minor revisions to the type of siltation barrier proposed as well as minor revisions to the shape and location of the retaining walls." This description barely scratches the surface of the changes that were actually proposed (and ultimately approved), and fails to comply with the procedures recommended by the Department's Amended Orders Policy. *Wetlands Program Policy 85-4: Amended Orders*.³

17. In fact, the Project plans that were ultimately approved as a result of the Applicant's request changed numerous major components of the Project's design, including:

- a. Location and configuration of the proposed porch;
- b. Location, configuration, and elevation of the proposed seaward facing terrace;
- c. Configuration, and elevation of the proposed seaward facing lawn area;
- d. Location and configuration of retaining walls and related drainage facilities;
- e. The proposed grading of the property, including swales, slopes, and finished grades;
- f. Inclusion of one additional drywell;
- g. Location and configuration of the driveway and related drainage facilities;
- h. Location and configuration of the septic system;
- i. Quantity, configuration, and elevation of drainage piping;
- j. Design and configuration of the swimming pool; and
- k. The nature and locations of erosion control devices.

18. In light of these major differences between the plans approved by the OOC and those submitted with the request to amend the OOC, the Commission should have required the filing of a

³ That policy calls for an applicant seeking to amend an order of conditions to produce, among other things, "a narrative description of what changes have been proposed" The Applicant's narrative was wholly inadequate, failing not only to disclose numerous major changes in the plans, but to depict Coastal Banks upon which the work would be performed.

new Notice of Intent, pursuant to the Department's Amended Orders Policy. *Wetlands Program Policy 85-4: Amended Orders*. The Commission did not.

19. The Commission issued the AOOC approving the revised Project on January 13, 2011.

20. Petitioner Samuel Haydock filed a Request for Superseding Amended Order of Conditions on January 25, 2011.

21. In response to the Request for Superseding Amended Order of Conditions, Richard W. Keller, P.E., conducted a site visit of the Property on behalf of the Department on February 23, 2011.

22. Kenneth R. Teebagy, P.E. and John W. Queen, P.E. (Petitioners' engineers) identified a host of problems with the Project, which they expressed to the Department in writing.

23. The Department issued the SAOC approving the Project on March 24, 2011. The Department found the resource areas on the Property to be significant to the following interests of the Act: public water supply, private water supply, groundwater supply, fisheries, storm damage prevention, prevention of pollution, protection of wildlife habitat, and flood control (see Exhibit A).

24. The SAOC is based on the Department's erroneous findings that the Project as proposed and conditioned will adequately protect the interest of the Act. In fact, the SAOC fails to impose adequate conditions to protect the interests listed above.

25. The SAOC ignores the adverse impacts that the Project will have on Resource Areas, harming the interests of the Act. Specifically, the Project would have adverse impacts on the interests of storm damage prevention and flood control because:

- (a) The Project proposes work on Coastal Bank that is a vertical buffer to storm waters without meeting the performance standards for such work. 310 CMR 10.30.

- (b) The Project proposes work within 100 feet of Coastal Bank that is a vertical buffer to storm waters without meeting the performance standards for such work. 310 CMR 10.30. The Department failed to properly employ its authority under 310 CMR 10.24(1) to regulate work in the Buffer Zone which will have adverse impacts upon adjacent Resource Areas.
- (c) The Project would alter at least 12,970 square feet of LSCSF, without mitigation or conditions sufficient to protect the interests of public water supply, private water supply, groundwater supply, fisheries, storm damage prevention, prevention of pollution, protection of wildlife habitat, and flood control. 310 CMR 10.04; 310 CMR 10.24(1).
- (d) The proposed septic system's soil absorption system (which was relocated and reconfigured by the AOOC and SAOC) would be constructed within fifty (50) feet of a Coastal Bank located along the Property's southern boundary. Thus, the Project is not entitled to the presumption (found at 310 CMR 10.03(3)) that the septic system would protect the interests of the Act.

26. The Department disregarded the fact that the Project plans do not depict three (3) Coastal Banks (one on the northern portion of the Property, and two along the Property's southern boundary) which would be altered by revised portions of the Project. The plans approved by the SAOC fail to show any of these Coastal Banks. The Project revisions approved by the SAOC would directly alter at least two of those banks.

27. The Department should have required the Applicant to identify these Coastal Banks on its plans, and disapproved work affecting them.

28. The Project revisions would also harm neighboring properties (particularly the abutting properties owned by Petitioners Paul and Ulla Sullivan, Samuel Haydock, Timothy Haydock, and George Haydock) by increasing stormwater runoff onto those properties and constructing a large retaining wall directly on the southern property line, disturbing and undermining soils on that neighboring parcel.

III. ALLEGATIONS OF ERROR

29. The SAOC fails to protect the interests of the Act by allowing work that would alter Resource Areas without requiring proper mitigation, and without conditions adequate to protect the interests associated with them.

(a) The Project would directly alter at least 12, 970 square feet of LSCSF without mitigation or conditions sufficient to protect the interests of public water supply, private water supply, groundwater supply, fisheries, storm damage prevention, prevention of pollution, protection of wildlife habitat, and flood control (the Department found the resource areas on the Property to be significant to those interests). 310 CMR 10.24(1).

(b) The Project would directly alter at least two Coastal Banks on the Property without meeting the performance standards for such work. 310 CMR 10.30.

30. The SAOC fails to protect the interests of the Act by allowing significant work that would alter Buffer Zone within 30 feet of Coastal Bank on the Property without meeting the performance standards for such work. 310 CMR 10.30.

31. The SAOC fails to protect the interests of the Act by allowing the proposed septic system's soil absorption system to be relocated and reconfigured so that it would be constructed within fifty (50) feet of a Coastal Bank located along the Property's southern boundary, meaning that it cannot be presumed to protect the interests of the Act. 310 CMR 10.03(3)

32. The SAOC fails to protect the interests of the Act by approving a plan that does not properly identify all Resource Areas on the Property.

33. The SAOC fails to protect the interests of the Act by approving plans that differ significantly from those approved by the original OOC and warranted the filing of a new Notice of Intent. *Wetlands Program Policy 85-4: Amended Orders.*

III. RELIEF REQUESTED

Wherefore, the Petitioners seek the following relief from the Department:

1. Issue a Final Decision and/or Final Amended Order of Conditions denying this Project.
2. Order such other relief as may be necessary and just.

Respectfully submitted by,

Petitioners

By Their Attorneys,



Gregor K. McGregor, BBO # 334680

Luke H. Legere, BBO #664286

McGregor & Associates, P.C.

15 Court Square, Suite 500

Boston, MA 02108


(617) 338-6464

(617) 338-0737 (FAX)

Dated: April 7, 2011

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing document was served by certified mail on April 7, 2011 upon the parties listed below.



Luke H. Ledere
McGregor & Associates, P.C.
15 Court Square, Suite 500
Boston, MA 02108
(617) 338-6464

1. Dartmouth Conservation Commission
400 Slocum Road
Dartmouth, MA 02747
2. John B. and Margaret Reichenbach
256 Highland Street
West Newton, MA 02465
3. Robert B. Feingold, Esq., Counsel for Applicant
Robert B. Feingold & Associates, P.C.
700 Pleasant Street, Suite 510
P.O. Box 7822
New Bedford, MA 02742-7822
4. Tena J. Davies
Bureau of Resource Protection
Massachusetts Department of Environmental Protection
Southeast Regional Office
20 Riverside Drive
Lakeville, MA 02347

P:\data\doc\03101010 - Addendum to the 03101010 - Final - 4.7.11.doc



SITE DESIGN ENGINEERING, LLC

11 Cushman Street, Middleboro, MA 02346

Direct: 508-219-0202 P: 508-967-0673 F: 508-967-0674

REQUEST FOR DETERMINATION OF APPLICABILITY

**Minor Site Revisions within Previously Altered and
Approved Portions of Land Subject to Coastal Storm
Flowage and the 100-Foot Coastal Bank Buffer Zone**

**29 Mattarest Lane
Dartmouth, MA
Map 94 Parcel 25**

Prepared for:

**Margaret J. Reichenbach
256 Highland Street
West Newton, MA 02456**

Prepared By:

**Site Design Engineering, LLC
11 Cushman Street
Middleboro, MA 02346**

June 26, 2013

THBM_002358

PROJECT DESCRIPTION

29 Mattarest Lane
DARTMOUTH, MASSACHUSETTS

June 26, 2013

INTRODUCTION

The purpose of this Request for Determination of Applicability (RDA) is to request approval from the Dartmouth Conservation Commission (Commission) under the Massachusetts Wetlands Protection Act (WPA), its implementing regulations (CMR), and the Town of Dartmouth Wetlands Protection Bylaw (Bylaw) for work within the buffer zones to a coastal wetland and within Land Subject to Coastal Storm Flowage (LSCSF) at 29 Mattarest Lane in Dartmouth (Subject Property). The work includes the installation of additional drain lines, an irrigation pump chamber, a transformer pad, four A/C condensers, two recirculation tanks for the pool and a drain through the southerly retaining wall. All proposed alterations are located entirely within the previously approved alteration footprint, are entirely within buffer zones or LSCSF, and will not result in any new alteration to previously undisturbed areas. These additions are a result of minor site changes and adjustments which could not have been for seen during the original filing for the project due to their minute level of detail.

This RDA application is presented by the following property owners:

Margaret J. Reichenbach
(Map 94 Lot 25)
256 Highland Street
West Newton, MA 02465

SITE OVERVIEW & EXISTING CONDITIONS

The Subject Property consists of an approximately 64,800 square foot (1.49 acre) parcel located east of Mattarest Lane (see Figures 1 through 3). To the east the Subject Property is bordered by Buzzard's Bay. To the north and south the Subject Property is bordered by residentially developed properties. To the west the Subject Property is bordered by Mattarest Lane, a paved way.

The portion of the Subject Property bordering Buzzard's Bay is comprised of a cobble beach backed by a steep well-vegetated Coastal Bank.

Resource Delineation

The Coastal Wetland Resource areas found on the Subject Property (Coastal Bank and LSCSF) were previously delineated and approved as part of a previous filing (SOC SE15-2058 Issued March 24, 2011). The resource area delineation made under SE15-2058 is still valid at the time of this RDA application.

Land Subject to Coastal Storm Flowage (LSCSF)

Portions of the Subject Property are located within the 100-year flood zones AE (EL 18) and AE (EL 16) as determined from the Town of Dartmouth Flood Insurance Rate Map Number 25005C0491F (Effective Date July 7, 2009) and Digital FEMA Q3 Flood Maps available from MassGIS (see Figure 6 and Site Plan) and therefore a portion of the Subject Property is within Land Subject to Coastal Storm Flowage (LSCSF). Portions of the Proposed Project will occur within previously altered portions of LSCSF.

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Existing Development

The Subject Property is currently under construction and is the site of a single family residence (SFR), driveway, pool, and associated landscaping (See Figures 2, 3 and Site Plan). The existing SFR was approved under a previous Superseding Order of Conditions (SOC) SE15-2058 (Issued March 24, 2011). The Applicant is proposing additional minor alterations and additions within previously approved altered portions of the 100-foot Coastal Bank buffer zone and previously approved altered portions of LSCSF. All proposed minor alterations are located within the previously approved alteration footprint.

PROPOSED ACTIVITIES

All activities proposed as part of the RDA are minor in nature and consist of modifications necessary for the final installation of assorted utilities on the Subject Property. All modifications included in this RDA are located within the previously approved alteration footprint and will not result in any new or additional adverse impacts to the coastal resource areas or associated buffer zones.

Irrigation Pump Chamber

The Applicant is proposing to install an irrigation pump chamber along the northern portion of the Subject Property (see Site Plan). The proposed irrigation pump chamber will be used in the capture and storage of site runoff for irrigation purposes. The proposed irrigation pump chamber will be located within LSCSF but will be entirely outside of the 100-foot Coastal Bank buffer zone. The proposed irrigation pump chamber will be located within a portion of the Subject Property previously approved for landscaping and site alterations and will not result in any additional adverse impacts to the resource areas or associated buffer zones. In fact, the proposed irrigation pump chamber, in conjunction with other drainage improvements proposed in this RDA, will allow for the storage of on-site runoff for use in irrigation of the Subject Property.

A/C Condensers

The Applicant has installed four AC condenser units on a concrete pad along the northern portion of the Subject Property adjacent to the previously approved SFR (see Site Plan). The proposed AC condensers are located within LSCSF but are entirely outside of the 100-foot Coastal Bank buffer zone. The proposed AC condensers are located within a portion of the Subject Property previously approved for landscaping, grading and site alterations and will not result in any additional adverse impacts to the resource areas or associated buffer zones.

Transformer

NSTAR has installed a transformer along the northern portion of the Subject Property between the proposed irrigation pump chamber and an existing dry well (see Site Plan). The transformer is located within LSCSF and is entirely outside of the 100-foot Coastal Bank buffer zone. The transformer is located within a portion of the Subject Property previously approved for landscaping, grading and site alterations and will not result in any additional adverse impacts to the resource areas or associated buffer zones. The original location for the transformer was proposed by the electrician and the builder to be adjacent to Mattarest Lane but this location was not approved by NSTAR due to its distance from the house.

Drainage Lines

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The Applicant has installed additional drain lines connecting the existing dry wells located on the eastern side of the SFR with the proposed irrigation pump chamber. The drain lines will allow for the storage of site runoff for irrigation purposes. This level of detail was not shown on the original site plan and furthermore, this level of detail is rarely shown on a site plan for a SFH. The drain lines are located within the previously approved development footprint underlawn and landscaped portions of the Subject Property (see Site Plan). The drain lines are located partially within LSCSF and partially within the 100-foot Coastal Bank buffer zone. The drain lines are located within a portion of the Subject Property previously approved for landscaping, grading and site alterations and will not result in any additional adverse impacts to the resource areas or associated buffer zones. In fact, the drain lines, in conjunction with other drainage improvements will allow for the storage of on-site runoff for use in irrigation of the Subject Property.

Pool Recirculation Tanks

The Applicant has installed two pool recirculation tanks adjacent to the pool appurtenant to the construction of the pool. These were not known to be required when the original site plan was prepared. The recirculation tanks are located adjacent to the northeast corner of the pool within existing lawn area (see Site Plan). The recirculation tanks are located within LSCSF and within the 100-foot Coastal Bank buffer zone. The recirculation tanks are located within a portion of the Subject Property previously approved for landscaping, grading and site alterations and will not result in any additional adverse impacts to the resource areas or associated buffer zones.

Drain Through South Retaining Wall

The Applicant has installed a 4" PVC drain through the south retaining wall (see Site Plan). This drains a small area adjacent to the spa. The drain discharges what little water it receives into the previously approved stone trench installed adjacent to the south retaining wall. More than sufficient capacity exists in the trench to accommodate this additional drain. The drain is located within LSCSF and is entirely outside of the 100-foot Coastal Bank buffer zone. The drain is located within a portion of the Subject Property previously approved for landscaping, grading and site alterations and will not result in any additional adverse impacts to the resource areas or associated buffer zones.

NHESP / MESA

The Subject Property is located entirely outside of mapped Estimated or Priority Habitat of Rare and Endangered Species as indicated on the 2008 Natural Heritage Endangered Species Program (NHESP) Atlas available through MassGIS (see Figure 5).

EROSION / SEDIMENTATION CONTROL & CONSTRUCTION PROTOCOL

Work under a previous approval (SE15-2058) is still ongoing on the Subject Property. As part of that work, the Applicant installed erosion control measures along the periphery of the work area (see Site Plan). These erosion control measures have been meticulously maintained throughout the construction process and will continue as such until the work proposed in this RDA, as well as all other site work approved under SE15-2058 is completed.

WETLAND RESOURCE AREAS

The Proposed Project is a buffer zone and LSCSF project. All work associated with the Proposed Project will be located in the following wetland resource area buffer zones subject to the jurisdiction of the Dartmouth Conservation Commission under the State Wetlands Protection Act (WPA) and 310 CMR (CMR); as well as the Dartmouth Wetlands Protection Bylaw (Bylaw):

- 100-foot Coastal Bank Buffer Zone (Figure 4 and Site Plan); and

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THBM_002367

- Land Subject to Coastal Storm Flowage (LSCSF)

COMPLIANCE WITH STATE AND LOCAL PERFORMANCE STANDARDS

The Proposed Project includes minor modifications associated with a previously approved Project on the Subject Property. The proposed modifications include the construction of an irrigation pump chamber, four AC condensers, a transformer, drainage lines, two pool recirculation tanks, and a 4" PVC drain through the south retaining wall, all located partially within the 100-foot buffer zone to the top of the Coastal Bank and partially within LSCSF. All work will be performed within the previously approved alteration footprint as conditioned under File SE15-2058. No additional alterations of previously undisturbed resource areas or associated buffer zones are proposed as part of this RDA. Although the proposed site modifications are extremely minor in scope, are located within the previously approved alteration footprint, and are being submitted as minor site alterations under an RDA, a discussion of the WPA performance standards for work within the resource areas and associated buffer zones is provided below to demonstrate how the proposed site modifications are in compliance with these performance standards.

State Wetlands Performance Standards

Land Subject to Coastal Storm Flowage (LSCSF)

LSCSF is an overlay resource area under the WPA and does not include any specific performance standards. All work within LSCSF will be performed in compliance with state and local building codes for work within the flood zone.

Coastal Banks

"WHEN A COASTAL BANK IS DETERMINED TO BE SIGNIFICANT TO STORM DAMAGE PREVENTION OR FLOOD CONTROL BECAUSE IT SUPPLIES SEDIMENT TO COASTAL BEACHES, COASTAL DUNES, OR BARRIER BEACHES, 310 CMR 10.30(3) through (5) SHALL APPLY:"

310 CMR 10.30(3)

"No new bulkhead, revetment, seawall, groin, or other coastal engineering structure shall be permitted on such a coastal bank except that such a coastal engineering structure shall be permitted when required to prevent storm damage to buildings constructed prior to the effective date of 310 CMR 10.21 through 10.37 or constructed pursuant to a Notice of Intent filed prior to the effective date of 310 CMR 10.21 through 10.37 (August 10, 1978), including reconstructions of such buildings subsequent to the effective date of 310 CMR 10.21 through 10.37, provided that the following requirements are met:

- (a) a coastal engineering structure or a modification thereto shall be designed and constructed so as to minimize, using best available measures, adverse effects on adjacent or nearby coastal beaches due to changes in wave action, and*

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(b) the applicant demonstrates that no method of protecting the building other than the proposed coastal engineering structure is feasible.

(c) protective plantings designed to reduce erosion may be permitted."

This standard is not applicable. The Proposed Project does not include the construction of any coastal engineering structures on the Coastal Bank. The Proposed Project includes the installation of minor site construction changes within previously approved altered portions of the Subject Property located within the 100-foot Coastal Bank buffer zone.

310 CMR 10.30(4)

"Any project on a coastal bank or within 100 feet landward of the top of a coastal bank, other than a structure permitted by 310 CMR 10.3(3), shall not have an adverse effect due to wave action on the movement of sediment from the coastal bank to coastal beaches or land subject to tidal action."

This standard is not applicable. The Proposed Project includes the installation of minor site construction changes within previously approved altered portions of the Subject Property located within the 100-foot Coastal Bank buffer zone.

310 CMR 10.30(5)

"The Order of Conditions and the Certificate of Compliance for any new building within 100 feet landward of the top of a coastal bank permitted by issuing authority under M.G.L. c. 131, § 40 shall contain the specific condition : 310 CMR 10.30(3), promulgated under M.G.L. c. 131, § 40, requires that no coastal engineering structure, such as a bulkhead, revetment, or seawall shall be permitted on an eroding bank at any time in the future to protect the project allowed by this Order of Conditions."

This standard is not applicable. The Proposed Project does not include the construction of any new buildings or coastal engineering structures on the Coastal Bank.

"WHEN A COASTAL BANK IS DETERMINED TO BE SIGNIFICANT TO STORM DAMAGE PREVENTION OR FLOOD CONTROL BECAUSE IT IS A VERTICAL BUFFER TO STORM WATERS, 310 CMR 10.20(6) through (8) SHALL APPLY:"

310 CMR 10.30(6)

"Any project on such a coastal bank or within 100 feet landward of the top of such a coastal bank shall have no adverse effects on the stability of the coastal bank."

The Proposed Project includes the installation of minor site construction changes not foreseen during the original project design. All work will occur within portions of the Subject Property previously approved for alteration. The construction modifications will enhance the stability of the Coastal Bank by better managing and storing storm runoff.

310 CMR 10.30(7)

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"Bulkheads, revetments, seawalls, groins or other coastal engineering structures may be permitted on such a coastal bank except when such bank is significant to storm damage prevention or flood control because it supplies sediment to coastal beaches, coastal dunes, and barrier beaches."

This standard is not applicable. The Proposed Project does not include the construction of any bulkheads, revetments, seawalls, groins, or other coastal engineering structures.

310 CMR 10.30(8)

Notwithstanding the provisions of 310 CMR 10.30(3) through (7), no project may be permitted which will have any adverse effect on specified habitat sites of rare vertebrate or in vertebrate species, as identified by procedures established under 310 CMR 10.37."

This standard is not applicable. The Subject Property is located entirely outside of mapped Estimated or Priority Habitat of Rare and Endangered Species as indicated on the 2008 Natural Heritage Endangered Species Program (NHESP) Atlas available through MassGIS (see Figure 5).

Local Wetlands Performance Standards

There are no local wetlands performance standards specific to the work proposed as part of this RDA. As described above, all work will be performed in compliance with State WPA standards applicable to work within the LSCSF and the Coastal Bank buffer zone.

CONCLUSION

The minor work described under this RDA includes the installation of an irrigation pump chamber, the installation of four AC condenser units, the installation of a transformer, the installation of two pool recirculation tanks, the installation of a 4" PVC drain through the south wall, and the installation of additional drain lines for the purposes of stormwater management. All of the other drainage components approved under the original plan have been installed as approved. Portions of the proposed work will occur within LSCSF and the 100-foot Coastal Bank buffer zone. All activities will occur within portions of the Subject Property previously approved for site alteration as part of an existing SOC (SE15-2058). The proposed site alterations have been designed to minimize or avoid any impacts to coastal resource areas or associated buffer zones. Therefore, the Applicant respectfully requests that the Commission grant permission to perform the minor site modifications proposed under this RDA.

In summary, the additions proposed under this RDA are minor construction field additions and adjustments to accommodate situations that could not have been anticipated during the preparation of the original site plan. Minor construction changes such as these are made all the time in the field as part of the construction process and normally do not require the filing of an RDA, especially when these field adjustments do not constitute additional structural footprint and are completely contained within areas already approved for construction. Although the Applicant strenuously rejects the characterization of these modifications as "unpermitted work", she is submitting this RDA at the request of the Commission for the purpose of complete transparency and sincerely requests the Commission's approval.

SITE DESIGN ENGINEERING, LLC.

11 Cushman Street, Middleboro, MA 02346
P: 508-967-0673 F: 508-967 0674

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Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands

Margaret J.
Reichenbach

WPA Form 2 – Determination of Applicability

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40
And the Dartmouth Wetlands Protection Bylaw

A. General Information

Important:
When filling out
forms on the
computer, use
only the tab
key to move
your cursor -
do not use the
return key.



From:

The Dartmouth Conservation Commission
Conservation Commission

To: Applicant

Margaret J. Reichenbach

Name

256 Highland Street

Mailing Address

West Newton

MA
State

02456
Zip Code

City/Town

Property Owner (if different from applicant):

Name

Mailing Address

City/Town

State

Zip Code

1. Title and Date (or Revised Date if applicable) of Final Plans and Other Documents:

Site Plan

Title

06/21/2013

Date

Title

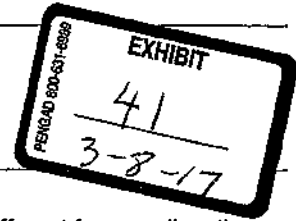
Date

Title

Date

2. Date Request Filed:

June 27, 2013



B. Determination

Pursuant to the authority of M.G.L. c. 131, § 40, the Conservation Commission considered your Request for Determination of Applicability, with its supporting documentation, and made the following Determination.

Project Description (if applicable):

The applicant proposes to work within the buffer zones to a coastal wetland and with land subject to

Coastal Storm Flowage. The work includes the installation of additional drain lines, an irrigation

Pump chamber, a transformer pad, four A/C condensers, two recirculation tanks for the pool and a

Drain through the southerly retaining wall.

Project Location:

25 Mattarest Lane

Street Address

Map 94

Assessors Map/Plat Number

Dartmouth

City/Town

Lot 25

Parcel/Lot Number



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands

Margaret J.
Reichenbach

WPA Form 2 – Determination of Applicability

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40
And the Dartmouth Wetlands Protection Bylaw

B. Determination (cont.)

- ☐ 5. The area described in the Request is subject to protection under the Act. Since the work described therein meets the requirements for the following exemption, as specified in the Act and the regulations, no Notice of Intent is required:

Exempt Activity (site applicable statutory/regulatory provisions)

- ☐ 6. The area and/or work described in the Request is not subject to review and approval by:

Dartmouth Conservation Commission

Name of Municipality

Pursuant to a municipal wetlands ordinance or bylaw.

the Dartmouth Wetlands Protection Bylaw

Name

Ordinance or Bylaw Citation

C. Authorization

This Determination is issued to the applicant and delivered as follows:

- ☒ by hand delivery on

- ☐ by certified mail, return receipt requested on

7/31/2013

Date

Date

This Determination is valid for **three years** from the date of issuance (except Determinations for Vegetation Management Plans which are valid for the duration of the Plan). This Determination does not relieve the applicant from complying with all other applicable federal, state, or local statutes, ordinances, bylaws, or regulations.

This Determination must be signed by a majority of the Conservation Commission. A copy must be sent to the appropriate DEP Regional Office (see <http://www.mass.gov/dep/about/region.findyour.htm>) and the property owner (if different from the applicant).

Signatures:

Michael A Kehoe, Chair

Patricia H Sweriduk

Jennifer Brindisi

Kyle Ross

Jacquelyn E McDonald, Vice-Chair

Richard T. Mallen

Richard F Golen

7/30/2013

Date

McGREGOR & ASSOCIATES

ATTORNEYS AT LAW, P.C.

15 COURT SQUARE - SUITE 500
BOSTON, MASSACHUSETTS 02108
(617) 338-6464
FAX (617) 338-0737

GREGOR I. MCGREGOR
E-mail: gimcg@mcgregorlaw.com
(617) 338-6464 ext. 123

VIA EMAIL & MAIL

April 25, 2011

Jacquelyn McDonald, Chair
Dartmouth Conservation Commission
400 Slocum Road
PO Box 79399
South Dartmouth, MA 02748

**RE: 29 Mattarest Lane, South Dartmouth, MA
Request to Revoke Order of Conditions**

Dear Chairperson McDonald and Members of the Commission:

This Firm represents a group of residents of the Town of Dartmouth with respect to the proposed residential development at 29 Mattarest Lane in Dartmouth (the "Property"). As you know, John and Margaret Reichenbach (collectively, the "Applicant") propose to construct a residence, swimming pool, retaining wall, fill, landscaping, and associated features (the "Project") at the Property, which consists of less than 1.5 acres. The Property contains Coastal Bank, Land Subject to Coastal Storm Flowage ("LSCSF"), and associated Buffer Zone.

The Applicant filed a Request for Determination of Applicability with the Dartmouth Conservation Commission (the "Commission") on August 13, 2009, and a Determination of Applicability ("DOA") was issued on September 3, 2009. The Applicant then filed a Notice of Intent (the "NOI") for the Project on September 25, 2009, and the original Order of Conditions ("OOC") was issued on April 29, 2010.¹

We respectfully request that the Commission revoke the original OOC issued on April 29, 2010. As you know, the first step in this process is to schedule a "show cause" hearing.

As a result of a mutual mistake by the Applicant and the Commission, the Project plans approved by the original OOC fail to depict three (3) Coastal Banks on and immediately adjacent to the Property.² The Project as approved by the original OOC would allow the proposed house

¹ The Applicant subsequently sought to amend the OOC and received an Amended Order of Conditions ("AOOC") approving the revised Project on January 13, 2011. Following an appeal Superseding Amended Order of Conditions ("SAOC") was issued on March 24, 2011. The SAOC has been further appealed within DEP, and an adjudicatory hearing is scheduled for August 4, 2011.

² The error resulted from the fact that the plans approved by the DOA and the OOC relied upon an outdated FEMA Flood Insurance Rate Map ("FIRM") as a basis for identifying only one Coastal Bank on the Property.



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and swimming pool to directly alter two of these Coastal Banks, and a large retaining wall less than twenty (20) feet from the third.

This request is urgent, as we understand that the Applicant's representatives have stated publicly their intention to proceed with construction of the Project under the original OOC, despite a pending appeal to DEP of the SAOC.

THE ORDER OF CONDITIONS ALLOWS DIRECT ALTERATION OF COASTAL BANKS BECAUSE THE PLANS FAIL TO IDENTIFY ALL OF THE RESOURCE AREAS ON THE PROPERTY

The plans approved by the Commission as part of the original OOC do not accurately delineate all Resource Areas on the Property. Stan Humphries, a Senior Coastal Geologist with LEC Environmental Consultants, Inc. ("LEC"), has reached this conclusion after carefully reviewing a number of documents pertaining to Resource Area delineation for the Property, including the plans approved by the DOA and the OOC. LEC's report is being submitted contemporaneously with this request.

In summary, the Resource Area delineation endorsed by the DOA and approved by the OOC was based on outdated information. The current FIRM for the Property has an effective date of July 7, 2009. However, the plans approved by the DOA and the OOC (as well as the plans approved by the AOOC and the SAOC) relied upon the FIRM map dated July 2, 1992 to delineate Coastal Bank.³

Had the proper FIRM been used, three (3) additional Coastal Banks would have been identified on or in close proximity to the Property. Specifically, two banks exist on the Property and one bank exists south of the site, within 100 feet of the Project. In other words, had the plans submitted with the DOA and the OOC employed the current FEMA FIRM map, which was available and in effect at the time of those filings, a total of four Coastal Banks would have been identified on or in the vicinity of the site based on use of the updated maps.

Exhibit 4 to the LEC report makes clear that, as approved by the OOC, the proposed house and swimming pool would be built on top of two different Coastal Banks on the Property, and substantial work would take place within the 100-foot Buffer Zone to a Coastal Bank just south of the Property.

³ The Request for Determination of Applicability was filed on August 13, 2009, more than a month after the current FIRM became effective. The plans approved by the DOA were dated July 31, 2009, more than three weeks after the current FIRM became effective. Although the current FIRM was apparently filed with the NOI on September 25, 2009, the plans approved by the original OOC (dated April 20, 2010) were not updated to identify the Coastal Banks reflected on the 2009 FIRM.



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This means that the Commission unwittingly approved work that will directly alter Coastal Bank when it issued the OOC.

THE BYLAW AUTHORIZES THE COMMISSION TO REVOKE THE ORDER OF CONDITIONS ISSUED FOR THIS PROJECT

The Dartmouth Wetlands Protection Bylaw empowers the Commission to revoke an order of conditions for good cause. *Dartmouth Wetlands Protection Bylaw, § 7(A)*. The Commission may do so on its own initiative, by giving notice to the Applicant, posting notice to the public, and holding a public hearing. *Dartmouth Wetlands Protection Bylaw, § 7(A)*.

Good cause for revocation of the OOC would certainly include inaccurate or incomplete delineation of Resource Areas at the Property. See *Adams v. Town of Orleans Conservation Commission*, 2004 WL 3120665 (Mass. Super. 2004) (Orleans Conservation Commission revoked of an Order of Conditions allowing construction of a house after learning that wetlands were actually more extensive than depicted on the approved plans).

There is a sound policy argument supporting the revocation process established by the Bylaw. The Commission must have the autonomy to schedule hearings when it learns that it has issued a permit based upon errors, misrepresentations, mistakes, or outdated information. This is the same principle under which the Commission is granted the power to issue an Enforcement Order when it learns that a landowner is altering Resource Areas without a permit. Without the power to unilaterally schedule hearings under these circumstances, the Commission would lack any real authority to prevent alterations to Resource Areas, to stop alterations already taking place, or to remedy alterations after they have occurred.

The plans approved by the Commission as part of the OOC do not accurately depict all of the Resource Areas on the Property. As a result, the OOC approved work that will directly alter Coastal Banks. Therefore, the Commission can and should revoke the OOC.

THE DETERMINATION OF APPLICABILITY ISSUED FOR THE PROPERTY IS NOT BINDING AND MAY BE REVISED TO ACCURATELY DEPICT RESOURCE AREAS ON AND NEAR THE PROPERTY

The Commissioner of DEP has concluded that determinations of applicability are not binding for three years in all situations. DEP Commissioner David B. Struhs decided that "determinations of applicability, although normally valid for three years, can be revised in certain instances where fraud or mutual mistake is proved." *Matter of Kenwood Development Corporation*, Final Decision, Docket No. 97-022, 5 DEPR 92 (June 15, 1998) (citing *Matter of Kenwood Development Corporation*, Ruling and Order, Docket No. 97-022, 5 DEPR 5 (January 23, 1998)).



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Kenwood stemmed from the Reading Conservation Commission's attempt to alter a determination of applicability, which it had previously issued to Kenwood Development Corporation. Kenwood appealed the Commission's revised, or "corrected," determination, and DEP determined that the Commission's revisions to the original determination were void (based on the understanding that determinations of applicability are said to be valid for three years under its Regulations). The Commission requested an adjudicatory hearing, in which Administrative Law Judge Kristin M. Palace ruled as an initial matter that "310 CMR 10.05(3)(b)1 cannot be read to prohibit all modifications to a determination of applicability during its three-year term," and "that exceptions for fraud and mutual mistake must be recognized in appropriate circumstances." *Matter of Kenwood Development Corporation*, Ruling and Order, Docket No. 97-022, 5 DEPR 5, 10 (January 23, 1998).⁴ This initial ruling was incorporated into the commissioner's Final Decision on the matter. *Kenwood*, Final Decision, 5 DEPR 92.⁵

In the present case, the DOA and OOC approved a delineation of Resource Areas that was based on outdated and inaccurate information. The plans submitted by the Applicant should have relied upon the current FIRM for the Property, which became effective date on July 7, 2009. If the proper FIRM been used, three additional Coastal Banks would have been identified.

This is not an insubstantial or harmless error. Surely, the Commission would have endorsed these additional three Coastal Banks in the DOA had they been delineated based upon the current FIRM. The OOC approves the construction of a house and swimming pool directly on top of two of the unidentified Coastal Banks, and construction of a large retaining wall less than twenty feet from the third. Surely, the Commission would have at least imposed conditions in the OOC to address these alterations, as it is obligated to do by the Wetlands Protection Act, had they been depicted in the NOI.

CONCLUSION

In summary, the plans approved as part of the original OOC fail to depict three Coastal Banks on and near the Property, and as a result, those Resource Areas will be destroyed or altered. The Commission has the authority under local and state law to revoke the permit of its own volition, based upon this error. The correct and proper thing for the Commission to do is revoke the permit because the approved plans fail to depict Resource Areas that will be directly altered by the Project.

⁴ A subsequent Motion for Reconsideration of that ruling was denied. *In the Matter of Kenwood Development Corporation*, Motion Decision, Docket No. 97-022, 5 DEPR 29 (February 11, 1998).

⁵ The Commissioner ultimately determined that although "determinations of applicability can be revised in certain cases of fraud or mutual mistake," the Reading Conservation Commission failed to present any evidence to support a claim on either of those grounds. *Kenwood*, 5 DEPR 92.



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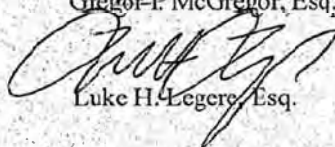
McGREGOR & ASSOCIATES

We thank you for your attention in this matter.

Sincerely,



Gregor I. McGregor, Esq.



Luke H. Legere, Esq.

cc: Robert B. Feingold, Esq.
Dartmouth Board of Selectmen
Anthony C. Savastano, Esq.
Rebecca Cutting, Esq.

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THBM_008910

January 25, 2011

Massachusetts Department of Environmental Protection
Southeast Regional Office
20 Riverside Drive
Lakeville, MA 02347

Re: Appeal of Order of Conditions
29 Mattarest Lane, South Dartmouth
MADEP File #015 2058

To Whom It May Concern,

I am one of the owners of property at 30 Mattarest Lane in South Dartmouth, Massachusetts. My property abuts 29 Mattarest Lane, for which an Order of Conditions was issued by the Dartmouth Conservation Commission on January 13, 2011. The purpose of this letter is to appeal the Conservation Commission's Order of Conditions for 29 Mattarest Lane and request a Superseding Order of Conditions from the Massachusetts Department of Environmental Protection (MADEP). The Request for Departmental Action Fee Transmittal Form under Massachusetts Wetlands Protection ACT M.G.L. c. 131, §40 and the approved Site Plan for the improvements at 29 Mattarest Lane are attached.

The proposed redevelopment at 29 Mattarest Lane involves the demolition of an existing single family residence and the construction of a new residence and associated retaining walls, patios, driveways, and in-ground pool. The majority of the construction will occur within the 100-foot buffer zone for the Coastal Bank to Buzzards Bay. Our objections to the project are as follows:

- The entire buffer zone will be disturbed during construction and permanently altered by construction.
- There is a tremendous amount of grading and filling within the buffer zone.
- Associated drainage and storm water run-off during construction and once the improvements have been completed has not been adequately studied and evaluated, will likely cause adverse impacts to abutting properties both north and south, and will likely cause adverse impacts (erosion and sedimentation) to the coastal resource.
- Drainage and/or run-off from the Infinity-edge pool has the potential to impact the coastal resource with chlorinated pool water and has not been addressed.
- The short-term and long-term impact of the construction of the proposed retaining walls to the stability of the coastal bank was not evaluated.

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- The impact of the proposed retaining walls and associated filling has not been evaluated with respect to storm surges, wave action, and coastal flooding associated with major storm event and hurricanes. It is a known fact that tidal surges have inundated this land during past storms.
- Construction of the large house (over three stories and 8,500 square feet) and extensive walls adjacent to the coastal bank will have an adverse impact to the coastal resource from the stand point of aesthetics and light pollution.
- The impact of an armored, vertical structure on the edge of the V zone and/or in the AE zone has not been evaluated. There is concern as to its impact on the beach area and on the abutting properties.

We respectfully request your review of this Order of Conditions. I can be reached at 203-314-7369 to discuss these concerns or to schedule a site walk. My email is shaydock@blcompanies.com.

Sincerely,



Sam Haydock
11 Mafre Drive
Guilford, Connecticut 06437

Cc: John Reichenbach
Tom Hardman
Dartmouth Conservation Commission
Tim Haydock

THBM_003210

May 10, 2011

DARTMOUTH, MASSACHUSETTS
ADMINISTRATIVE APPEAL CASE NUMBER 2011-12
29 MATTAPOST LANE, DARTMOUTH, MA
Petitioner: Timothy Haydock, Sam Haydock, and Lila Sullivan
Owner: Margaret J. Reichenbach
MAP: 94 LOT: 25
BOOK: 9136 PAGE: 249

I, Lynn M. Medeiros, Town Clerk of the Town of Dartmouth, hereby certify that the attached pages are true and exact photocopies of a decision of the Dartmouth Board of Appeals concerning an Administrative Appeal for property located at 29 Mattapost Lane, Dartmouth, MA and filed in the office of the Town Clerk on May 10, 2011.

Further, I certify that twenty days have elapsed since the decision was filed in this office, and that no appeal has been filed in accordance with Section 11 and 17 of Chapter 40A of the Massachusetts General Laws.

Petitioner has been advised that they must provide the office of the Town Clerk with the book and page in which this decision was recorded at the Registry of Deeds.

APR 12 2011
TOWN CLERK


LYNN M. MEDEIROS
TOWN CLERK OF DARTMOUTH

DARTMOUTH



MASSACHUSETTS

OFFICE OF THE ZONING BOARD OF APPEALS

400 Slocum Road • P. O. Box 79399

Dartmouth, MA 02747-0399

TEL: (508) 910-1836 • FAX: (508) 910-1838

Decision to Board of Appeals Case #2011-12

ADMINISTRATIVE APPEAL DECISION FOR PETITIONERS
TIMOTHY HAYDOCK, SAM HAYDOCK, AND ULLA SULLIVAN
Property Located at: 29 Mattarest Lane, Dartmouth, MA 02748
Owned by: Margaret J. Reichenbach
Map: 94 Lot: 25
Book: 9136 Page: 249

There was a Board of Appeals meeting open to the public and held at 7:30 P.M. on April 12, 2011 in Meeting Room #304, Town Office Building, 400 Slocum Road, Dartmouth, MA. The petitioners, Timothy Haydock, Sam Haydock, and Ulla Sullivan were seeking an Administrative Appeal under M.G.L., Chapter 40A, Section 15. The Petitioners were appealing the Building Inspector's decision to issue a building permit for the construction of concrete walls at 29 Mattarest Lane, South Dartmouth, the property owned by Margaret J. Reichenbach. The Petitioners stated that such structures violate Dartmouth Zoning By-Laws Section 4B.100 - Purpose of Single Residence B Districts and Section 4B.404- Setbacks.

MAP: 94 LOT: 25

Present were Chairman Michael Travers, Jacqueline Figueroa, and Greg DeMeo

Also Present:

Alternate Board member Stanley Mickelson

Paul Murphy - Town of Dartmouth Building Inspector/Director of Inspectional Services

John C. Bentley Jr., Esq. - Representing Appellants

Sam Haydock - 30 Mattarest Lane

Ulla Sullivan - 27 Mattarest Lane

Jones Fitzgibbon - 36 Mattarest Lane

Robert B. Feingold, Esq. - Representing Margaret Reichenbach

Ann Sorma - Architect (Wise Sorma Jones Architects)

Robert Desrosiers, PE - Structural Engineer (ASAP Engineering)

Thomas Hardman - Land Surveyor (Cullinan Engineering)

Kevin Mulken - Aquaknot Pools, Inc.

Lars Olson - Constructive, Supervisor for 29 Mattarest Lane

This meeting was continued to April 26, 2011 at 7:00 p.m.

Present on April 26, 2011 were Chairman Michael Travers, Jacqueline Figueiredo, and Greg DeMelo

Also Present:

Alternate Board members Stanley Mickelson and Edlin Choubah

Paul Murphy - Town of Dartmouth Building Inspector/Director of Inspectional Services

John C. Bentley Jr., Esq. Representing Appellants

Robert B. Veingold, Esq. Representing Margaret J. Reichenbach

John Reichenbach (29 Mancrest Lane)

Anna Summa - Architect (Wise Summa Jones Architects)

Lynn Reichenbach (256 Highland Street, W. Newton, MA 02465)

Lars Olson - Construction Supervisor for 29 Mancrest Lane

Nan Sinton (77 Elm Street)

Thomas Hoedman - Land Surveyor (Cullinan Engineering)

CORRESPONDENCE RECEIVED:

- Brief submitted and attached to the application (John C. Bentley, Jr., Esq.)
- Order of Conditions (Dept. of Environmental Protection dated March 24, 2011)
- Memorandum in opposition of the petitioner's appeal dated April 11, 2011 (Robert B. Veingold, Esq.)
- Planning Director's review dated April 7, 2011 signed by Donald Perry, AICP
- Plans:

Site plan drawn by Cullinan Engineering and dated November 19, 2010 with a 12/09/10 revise date per Conservation Commission prepared for Margaret J. Reichenbach

Retaining Wall Details dated 12/10/2010 by Wise Summa Jones Architects Pages F-1 and F-2

- Appellants memorandum signed by John C. Bentley Jr., Esq. and dated April 12, 2011 (7 pages with Exhibits A, B and C)
- Building permit dated 12/15/10 signed by David Brunette date of Zoning Review stamped Jan 05 2011
- Building permit dated 1/25/11 signed by Paul Murphy (Building Inspector/Director of Inspectional Services/ZDO)
- Retaining wall details dated 7-21-2010 by Wise Summa Jones Architects Pages F-1 and F-2 entitled Retaining Wall Details

Plans of Record

(Plans used by Paul Murphy in determining the structure is a retaining wall)

Site Plan - 79 Mattacust Lane, Dartmouth, MA drawn by Cullinan Engineering and dated September 21, 2009 with revision dates 12/09/09, 12/09/09, 1/13/10, 2/03/10, and 4/26/10. Project Number 20030040-20-010 prepared for Margaret J. Reichenbach and stamped by Kenneth W. Hodges, Jr. PE (Sheet 1 of 1)

Retaining Wall Details dated 7-21-2010 drawn by Wise Susan Jones Architects Drawing Number F-1 and F-2 stamped by Anna Suma

DECISION

It was the unanimous decision of the Board of Appeals to UPHOLD the decision of the Building Inspector, Paul Murphy, to issue a building permit for the construction of concrete walls at 29 Mattacust Lane, South Dartmouth, MA for property owned by Margaret J. Reichenbach.

The subject property is located at 29 Mattacust Lane, Dartmouth, MA in the Single Residence B District Town of Dartmouth's Assessor's Map: 94 and Lot: 25. The subject property is owned by Margaret J. Reichenbach.

A building permit to allow the construction of a retaining wall for the subject property was issued on January 25, 2011.

Petitioners Timothy Haydock, Sam Haydock and Ulla Sullivan appealed the decision of the Building Inspector granting the application submitted to construct a concrete wall along the southerly and easterly boundary of the subject property and the issuance of the building permit.

Through a letter and testimony by the petitioners and their attorney, John C. Bentley Jr., they maintained that such structures violated Dartmouth's Zoning By-laws Section 4B 100 – Purpose of Single Residence B Districts and Section 4B 404 – Setbacks.

The Board of Appeals determined the following:

1. The petitioners alleged that the construction of the proposed concrete wall would cause disturbance and possibly undermine the soil at the adjacent property.

2. The Board found that the construction of the wall does not violate 4B.100 since the intent of this by-law is to set a purpose for the Single Residence B Districts. Furthermore, the "nuisance" described in 4B.100 refers to use of the property and not to construction.
3. Through the brief and testimony of the subject property owner's Attorney, Robert B. Feingold, Esq., and the affidavit of Lars Olson, the Licensed Construction Supervisor for this project, the Board found that no such disturbance or undermining of soil will occur since the excavation will be shored up.
4. The Board found that the affidavits from the project's Architect Anna Surma, Civil Engineer Kenneth Hodgson Jr., Structural Engineer Robert Desrosiers, Construction Supervisor Lars Olson's drawing of the wall detail, the site plan of 9/21/09 and the detailed wall plans F-1 and F-2 of 7/21/10 adequately addressed the petitioner's concerns with respect to slope, footings and drainage.
5. The petitioners stated that the proposed wall is not a retaining wall, and as such does not qualify for a setback exemption under 4B.404. They also stated that the proposed wall should be considered a structurally integral part of support for the owner's proposed pool on the subject property.
6. The Board found that the wall is a retaining wall as determined by Paul Murphy in accordance with the site plan of 9/21/09 and the retaining wall detail plans F-1 and F-2 of 7/21/10 that were submitted with the building permit application and qualifies for the setback exemption under 4B.404.
7. The Board found that the affidavits from Architect Anna Surma, Structural Engineer Robert Desrosiers, and Construction Supervisor Lars Olson support the determination that the wall is a retaining wall with a sole purpose of holding back soil, and that it has no structural purpose for the proposed pool.
8. The Board found that if the proposed pool is constructed, the affidavit from Kevin Molkera aptly determined that the pool will have ample structural integrity on its own.
9. The Board found that the retaining wall does qualify for the setback exemption of 4B.404 since it is to be under 6' in height as determined by the "AS BUILT" requirement of the building permit, which will require confirmation from a professional land surveyor that the wall is under 6' high.
10. The Board found that the required height for the exemption is further supported by the retaining wall detail plans F-1 and F-2 of 7/21/10 that were submitted with the building permit, the Exhibit A detailed drawing attached to Construction Supervisor Olson's affidavit, and Architect Surma's affidavit.

Copies of the minutes of this hearing are available, upon request, at the office of the Board of Appeals.

BOARD OF APPEALS, TOWN OF DARTMOUTH

By 
Michael Travers, Chairman





Commonwealth of Massachusetts
Executive Office of Energy & Environmental Affairs

Department of Environmental Protection

Southeast Regional Office • 20 Riverside Drive, Lakeville MA 02347 • 508-946-2700

DEVAL L. PATRICK
Governor

RICHARD K. SULLIVAN JR.
Secretary

KENNETH L. KIMMEL
Commissioner

DEC 12 2013

Timothy Haydock
84 Croton Lake Road
Katonah, New York 10536

RE: DARTMOUTH--Wetlands
Superseding Determination of Applicability
29 Mattarest Lane

Dear Mr. Haydock:

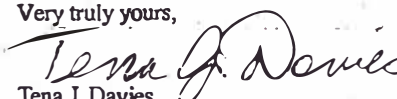
Following an on-site inspection and an in-depth review of the above-referenced file and in accordance with Massachusetts General Laws, Chapter 131, Section 40, the Department of Environmental Protection has issued the enclosed Negative Superseding Determination of Applicability for the proposed activity at the subject location.

The Department has determined that the activity, consisting of the installation of additional drain lines, an irrigation pump chamber, a transformer pad, four A/C condensers, two circulation tanks for the pool, and a drain through the southerly retaining wall at a single-family residence, is located within areas subject to protection under the Wetlands Protection Act, and will not alter areas subject to protection under the Act, provided that the activity is conducted as depicted on the plans and documents.

In the opinion of the Department, the reasons given here are sufficient to justify this Superseding Determination of Applicability. However, the Department reserves the right, should there be further proceedings in this matter, to raise additional issues and present further evidence as may be appropriate.

Should you have any questions please contact Richard Keller at (508) 946-2815.

Very truly yours,


Tena J. Davies
Bureau of Resource Protection

TD/rwk

cc: Dartmouth Conservation Commission

Margaret J. Reichenbach
256 Highland Street
West Newton, MA 02465
CERTIFIED MAIL #7012 1640 0001 4831 0088

This information is available in alternate format. Call Michelle Waters-Ekanem, Diversity Director, at 617-292-6751. TDD# 1-866-639-7622 or 1-617-574-6868
MassDEP Website: www.mass.gov/dep

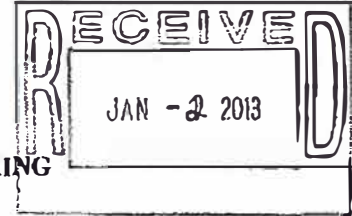
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Commonwealth of Massachusetts
Department of Environmental Protection
Office of Appeals and Dispute Resolution

WET 2014 - 001

In the matter of:

Margaret Reichenbach
DEP File No. SE 15-2058
Dartmouth



NOTICE OF CLAIM FOR ADJUDICATORY HEARING

I. Introduction

1. I, Timothy Haydock (the "petitioner"), hereby request an Adjudicatory Hearing to appeal a Superseding Determination of Applicability ("SDA") issued on December 12, 2013 by the Department of Environmental Protection's Southeast Regional Office (the "Department") approving work in the 100 ft. buffer zone and Land Subject to Coastal Storm Flowage ("LSCSF"). I have participated in writing and orally in the public hearings on the Original Notice of Intent, amending the Order of Conditions and the Superseding Order of Conditions. I am an abutter at 30 Mattarest Lane and have written comments to the Dartmouth Conservation Commission and MA DEP relating to damage to our property and noncompliance with the Final Order of Conditions which resulted in the Dartmouth Conservation Commission's asking the applicant to file a Request for Determination of Applicability after-the-fact for those unpermitted changes for work in the resource area.

2. Margaret Reichenbach (the "Applicant") constructed a single family residence with swimming pool, extensive retaining walls (the "project") on a property of less than 1.5 acres. The property contains Coastal Bank, Land Subject to Coastal Storm Flowage ("LSCSF") and associated buffer zone.

3. The applicant filed a Notice of Intent for the project on or about September 25, 2009 the public hearing was closed on April 27, 2010 and the Original Order of Conditions (“OOC”) was issued on April 29, 2010. The applicant subsequently sought to amend the OOC by filing with the Commission on October 26, 2010. The Commission issued an Amended Order of Conditions (“AOOC”) on January 13, 2011.

4. Petitioner Samuel Haydock filed a Request for a Superseding Amended Order of Conditions on January 25, 2011 and the SAOC was issued on March 24, 2011. A group of ten residents appealed the SAOC and requested an Adjudicatory hearing. A Final Amended Order of Conditions was issued on October 21, 2011 approving the SAOC issued by MA DEP.

5. A Building permit was issued for the project on September 20, 2011 and construction began.

II. The Facts

6. In early May 2013 work that was not included in and therefore not permitted in the FAOC began and we, as abutters, brought this fact to the attention of the Conservation Officer in Dartmouth. The Conservation Officer asked the project manager for a site plan showing the changes but he allowed the unpermitted work to continue. By June there was still no site plan and after rainstorms nearly 2000 ft. of muddy runoff and sediment was deposited on the property at 30 Mattarest. The enforcement officer did not visit 30 Mattarest to view this damage despite repeated requests from the abutters.

7. At the time of the excavation for this unpermitted work there was insufficient or missing erosion controls (no filter mitts or haybales were in place) and the excavation mounded the soils in the resource area and changed the grades. Then rainstorms in May and June deposited inches

of sludge, mud and runoff onto the property at 30 Mattarest. Haybales were finally placed along the north property lines and reduced the amount of mud that was carried onto our property but they did not reduce the ponding of muddy water. Residue remained on the vegetation for weeks.

8. A plan was finally produced for the unpermitted work at 29 Mattarest with the RDA application (more than 6 weeks after it was first requested by the Conservation Commission) on June 26, 2013. Most of the work had been done by that point for new drainage pipes, a transformer, AC units and an irrigation pump chamber in the floodzone as well as changes to the drainage in the south retaining wall. By the time the application for a RDA was received most of the changes in drainage and contours had been completed (with the exception of the irrigation pump chamber which has not been detailed on any plan) and all the drainage pipes had been buried. This plan produced by the RDA did not reflect the accurate location of these drainage pipes as they were in fact installed nor the resultant changes to grades. The plan did not show the function of an irrigation system with any overflow. It did not show the new storm water management system that would operate in the seven months of the year when the irrigation would not be in use. It appeared that discharge from the new drainage from the areas out of jurisdiction would now directly empty into the resource area 18 ft. from the coastal bank. Since the plans did not show changes in contours, grading or outflows for runoff accurately, it was not possible to determine the continued damage over time to the resource area.

9. A public meeting of the Conservation Commission was held and a field report by the Conservation Officer provided the information for the Commission's vote. The project manager was allowed to make his presentation to the Commission but the abutters were not allowed to ask any questions and were told this was "not a hearing." The enforcement officer told the commission he felt there would be no negative impact on the resource area from the activities

outlined in the request. The Commission granted a negative determination on the RDA on July 31, 2013. We appealed that decision to MA DEP on August 11, 2013. We felt a RDA should not have been issued when there was a valid FAOC in effect and permitting work for this project and that the *Wetlands Amended Order Policy 85-4* should have been used for any changes. There were changes to drainage, increased runoff onto neighboring properties, grading and contours, and utilities were being installed in the floodplain in violation of state building codes for the construction in the floodplain that were not approved by the existing Final Order of Conditions and were therefore in violation of the FAOC that was in effect. The activities in question involved excavating, filling, altering drainage in the regulated area, and installing electrical utilities in a floodplain while are all regulated activities that would require a permit before work began. To permit these changes after-the-fact (activities which *violate Special Conditions Order #22, 23, 24, 25, 27, and 34 of the FAOC*) and permit them with SDA constitutes a Collateral Attack on the FAOC. This would allow two permits be in effect and valid for the same property and project and the same resource area.

10. We appealed the RDA to MA DEP Southeast Office for a SDA. Richard Keller from the Department met with the applicants, their representatives and the abutters. Even though many of the issues to be addressed involved work and utilities in the floodplain (and the floodplain delineation itself was a factor), the floodplain was not staked by the project manager as requested by MA DEP, and spot elevations for the utilities in the floodplain were not provided.

11. The Department issued a negative determination and granted a SDA on December 12, 2013 stating the work proposed would not “alter” the resource area, and stipulated that “no Notice of Intent was required provided all local permits were obtained prior to any construction.” The work has already been done, in large measure, and this is already in violation of the SDA

from the start. The drainage was not installed as shown on the site plan. The project manager did not delineate the floodplain to determine the location of the utilities being permitted by the Department. The Department allowed information provided by the applicant's attorney (John F. Shea letter dated October 18, 2013) to document what should have been determined and provided by the engineer or surveyor, and signed and/or stamped accordingly by them. This sets a very disturbing and questionable precedent for compliance.

III. Allegations of Error

12. The decision by MA DEP to uphold that negative determination on their SDA, determining that the work described in the Request is within an area subject to protection under the Act but will not remove, fill, dredge or alter that area, fails to protect the interests of the "Wetlands Protection Act (the "Act"). Clearly the work as described is regulated activity (excavating, filling, changing drainage, changing stormwater runoff) in the resource area. Clearly these are activities that alter the resource area. This should have been given a positive determination on RDA if a RDA application to permit this work was even appropriate with a valid FAOC in place to permit all work. The condition given on SDA that "the work does not require the filing of a Notice of Intent, provided that all local permits are obtained prior to any construction" is invalid as a condition for work as the construction has already occurred and without any local permits for work in a floodplain. The floodzone delineation submitted by the project manager to the Building Department on two site plans *does not show the correct floodplain for this project*. Using the delineation provided to the Building Department there is no floodplain on the north side of the residence as the AE 18 zone was the delineation provided to that department for the floodplain delineation, not the AE 16 zone. This does not protect the interests of the Wetlands Protection Act as utilities (which are a hazard to life and property as

well as the regulated area due to flooding, pollution, fire and contamination) are installed and operating in violation of the FAOC and the state building codes. Since the Base Flood Elevation (plus 1 foot freeboard) has not been represented on the Building Department Plans and certifications for construction in the floodplain have not been complied with there are additional issues which should not be permitted by the SDA. A SDA is a de novo appeal.

13. The Department issued a SDA approving work with a negative determination that alters a resource area, allows unpermitted work that is not compliant with state regulations for work in the floodplain and is not compliant with its own Special Conditions on the FAOC. The special conditions attached to an Order of Conditions are put in place specifically to protect the interests of the Act. We can find no precedent for allowing a FAOC to be amended without complying with the Department's Amended Order Policy, *Wetlands Program Policy 85-4: Amended Orders*. That policy allows two options only for changes: an amended order of conditions (when there is no increase in scope or impact and to be submitted to the issuing authority) or a new Notice of Intent.

15. The issuing authority for the FAOC was the MA DEP southeast office not the Dartmouth Conservation Commission. The Conservation Commission, with their actions, circumvented a valid FAOC and permitted work in an area under protection which not only violated an existing FAOC but specifically permitted work that violated the FAOC Special Conditions, by giving it a negative determination. It has to be emphasized that the work has already been done without a permit, this is a permit after the fact for activities (*defined as discharging, excavating, filling, grading, changing of runoff characteristics, installation of drainage and destruction of plant life... 310 CMR 10.04*) that violated an existing FAOC and it has "altered" (*changing pre-*

existing drainage patterns, sedimentation patterns, flow patterns and flood retention, the destruction of vegetation 310 CMR 10.04) the resource area.

16. The floodplain was never staked before the permitting by the Conservation Commission or MA DEP even though at issue from the beginning was the very location of the floodplain and the compliance of electrical utilities that were installed and functioning in the floodplain. Additionally, the highlighted delineation of the floodzone that was submitted to the Dartmouth Building Department for the permits for this property is not the same as that shown on the FEMA FIRM for this property or any of the site plans submitted to the Conservation Commission, including the site plan submitted with the RDA (which shows utilities in the floodplain). There has been no attempt to date to confirm what is most basic. If staking the floodplain would have been useful to the project manager he would have complied with this repeated request. A RDA to Dartmouth Conservation Commission requires that the local Building Department, Board of Health, Zoning Board of Appeals and Planning Board also receive a copy of the Request and site plan two weeks prior to a hearing for their comments to the Conservation Commission. If provided, it would have shown the discrepancy between the floodplain delineation for the Conservation Commission and MA DEP as differing from the plans submitted to the Building Department for the permitting of this structure. The RDA site plans were not provided to these departments prior to the meeting in July 2013.

17. Details for the proposed changes were not submitted in any detail to permit such changes and should not have been approved without regard for environmental impacts. There is no accurate detail changes to the stormwater system, including drainage outflows, changes to drywells, changes to contours and changes in grades provided on the site plan submitted and are changes that have now been approved by the RDA and which violate Special Conditions #22, 23,

24 and 27. These special conditions were deemed important enough to protect the interests of the Act and compliance should not be optional. There are changes to a swale on the south property line that depart from the FAOC and should not have been modified by a RDA. The RDA ignores the negative impacts that this activity will have on the Resource areas, harming the interests of the Act. Specifically, the work would have adverse impacts on the interests of storm damage prevention and flood control with the installation of electrical utilities in the floodplain and discharge of stormwater in the velocity zone 18 ft. from the coastal bank.

18. The project would alter LSCSF without mitigation or conditions sufficient to protect public water supply, private water supply, groundwater supply, storm damage prevention, prevention of pollution, protection of wildlife habitat and flood control. 310 CMR 10.04; 310 CMR 10.24(1)

19. In light of these major changes, the noncompliance with the valid FAOC special conditions and the permitting of work already regulated under a FAOC with a new SDA would constitute a collateral attack on the Final Order of Conditions. On that basis alone it is clear that this RDA should be appealed. The condition on the SDA that a Notice of Intent does not need to be filed "provided all local permits are obtained prior to any construction" is a moot point as local permits were not obtained, construction is nearly complete and this work is non-compliant with state codes for work in a floodplain (780 CMR 120.G.501, 780 CMR 120.G.501.7 and 780 CMR 120G.501.8) In addition the correct delineation of the floodplain has not been accurately represented to the Building Department for this purpose. We feel the FAOC should stand as the valid permit and any amendment should follow the Wetlands own amended order policy 85-4.

III. Relief Requested

I would seek the following relief from the Department:

1. Issue a Final Determination of Applicability denying the changes to this project without a Notice of Intent.

2. Not allowing a RDA to invalidate a FAOC issued by the Department.

3. Correctly identify the Floodplain for this property and ensure that all code requirements for building in the Floodplain be adhered to.

4. Order such other relief as may be necessary and just.

Respectfully submitted by,



Timothy G. Haydock

84 Croton Lake Road

Katonah, NY 10536

914 232 9482

914 232 4884 (fax)

tghaydock@aol.com

Certificate of Service:

I hereby certify that a copy of the foregoing document was served by certified mail on December 27, 2013 to the following:

COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
ONE WINTER STREET, BOSTON, MA 02108 617 292 5500

THE OFFICE OF APPEALS AND DISPUTE RESOLUTION

June 20, 2014

In the Matter of

Margaret Reichenbach

Docket No. WET-2014-001

File No. SE 15-2058

Dartmouth

RECOMMENDED FINAL DECISION

Timothy Haydock ("Petitioner") filed this appeal of a negative Superseding Determination of Applicability ("SDA") issued by the Massachusetts Department of Environmental Protection ("Department") related to work on land owned by Margaret Reichenbach (the "Applicant") at 29 Mattarest Lane in Dartmouth. The project is subject to jurisdiction under the Massachusetts Wetlands Protection Act, G.L. c. 131, § 40 and the Wetlands Regulations, 310 CMR 10.00. The Dartmouth Conservation Commission ("Commission") had also issued a negative Determination of Applicability. After the filing of testimony, the Applicant and the Department filed motions for directed decision for failure to sustain the case and lack of standing, which the Petitioner opposed. This proceeding follows a prior appeal of a permit amendment involving the same project. I recommend that the Department's Commissioner issue a Final Decision that dismisses the Petitioner's appeal for failure to sustain his case based on a directed decision in favor of the Applicant and the Department and, on alternate grounds, for lack of standing. Dismissal would allow the additional work to proceed under the Department's SDA.

BACKGROUND

On April 29, 2010, the Applicant received an Order of Conditions from the Commission to demolish an existing single family house and construct a new one with landscaping, a retaining wall, and a swimming pool on 1.49 acres of land. The lot is bordered by Mattarest Lane, Buzzards Bay, and other residential property including the Petitioner's. The site contains two wetlands resource areas: Coastal Bank and Land Subject to Coastal Storm Flowage ("LSCSF"), which is land inundated by coastal flooding up to the 100-year storm event or storm of record. 310 CMR 10.04. The Order of Conditions for the initial construction was not appealed. On October 26, 2010, the Applicant filed a request for an Amended Order of Conditions to allow certain relatively minor revisions to the project, including a change in the curvature of the retaining wall, the angle and width of a stairway, and the management of drainage at the site. The Commission issued an Amended Order of Conditions allowing this work. Samuel R. Haydock, an abutter at 30 Mattarest Lane, requested review by the Department of the Commission's Amended Order of Conditions.

The Department's Southeast Regional Office issued a Superseding Amended Order of Conditions to allow the requested revisions to the project. A ten residents group, which included Timothy Haydock, the sole Petitioner in this matter and an abutter at 30 Mattarest Lane, filed an appeal of the Superseding Amended Order of Conditions.¹ The Petitioners claimed that the Department should have required a new application rather than amending the permit and that the work did not comply with the requirements for work in buffer zone to Coastal Bank and LSCSF. The claims in this prior appeal were dismissed for failure to sustain the case and alternately a

¹ A ten residents group may request a Superseding Determination of Applicability or a Superseding Order of Conditions from the Department's regional office, and may also appeal to an adjudicatory proceeding. 310 CMR 10.05(7)(a)(5) and 310 CMR 10.05(7)(i)(2)(a).

conclusion that the Petitioners had not met their burden of proof based on a consideration of all the evidence. Matter of John and Margaret Reichenbach, OADR Docket No. WET-2011-012, Recommended Final Decision (October 20, 2011), adopted by Final Decision (November 2, 2011).

After resolution of the appeal and with construction underway, the Petitioner raised concerns with the Commission about erosion and certain work at the site which he alleged was outside the scope of the Superseding Amended Order of Conditions. The Applicant was instructed by the Commission to file a Request for Determination of Applicability ("RDA"), a procedure to resolve whether further review is warranted. 310 CMR 10.05(3)(a). The RDA contained a relatively extensive narrative description of the work in addition to the plan and completed RDA form. RDA Narrative, June 21, 2013; Site Plan, RDA/29 Mattarest Lane, June 21, 2013. The RDA narrative explained that the boundaries of the resource areas, as well as the house construction and related work, were approved under the Superseding Amended Order of Conditions issued by Department and sustained in the adjudicatory hearing. The additional work was described as minor project revisions related to utility installation within areas that had been previously approved for alteration to LSCSF or the buffer zone to Coastal Bank.

Six separate activities were described in the RDA: the installation of an irrigation pump chamber, A/C condensers, an NSTAR transformer, drainage lines, pool circulation tanks, and a drain through a retaining wall. Only the work to install the irrigation pump chamber had not been completed when the RDA was filed. The Commission issued a negative Determination of Applicability, concluding that while the work was within an area subject to protection, it would not alter a resource area and therefore a Notice of Intent was not required. The Petitioner requested review by the Department. The Department issued a negative SDA, on the same

grounds as the Commission. The Petitioner filed an appeal, commencing this proceeding with claims somewhat similar to the prior proceeding.

ISSUES FOR ADJUDICATION

The discussion at the Pre-Hearing Conference focused on various aspects of the Petitioner's objections to the Department's action, primarily: 1) whether the Department should have amended the Final Order of Conditions issued for the project as opposed to issuing its SDA; 2) whether addressing the work that had been completed was a matter for permitting or enforcement; and 3) whether the Department has jurisdiction over compliance with the building code and similar requirements.² The Applicant challenged the Petitioner's standing to pursue the appeal, because although an abutter, he had not shown that he was aggrieved as required by the regulations. 310 CMR 10.05(7)(j)(2)(a). Claims seeking enforcement and compliance with laws the Department does not administer cannot be litigated in this forum for reasons explained below. The two issues for adjudication were:

1. Whether the Department properly determined that the proposed work for the installation of the irrigation pump chambers will not fill, remove, dredge or alter land subject to coastal storm flowage and therefore no notice of intent is required?
2. Whether the Petitioner has standing to pursue this appeal as a person aggrieved?

The Petitioner had the burden of going forward and of proving his direct case under 310 CMR 10.05(7)(j)3.b. The Petitioner was required to demonstrate that he had standing pursuant to 310 CMR 10.05(7)(j)2.b.iii.

²The Pre Hearing Conference was held by telephone on February 6, 2014, after a postponement from the preceding day due to a snowstorm and a prior postponement due to the unavailability of all parties. The Petitioner was represented by Barbara Moss, who resides at 28 Mattarest Lane. Ms. Moss had been a member of the Residents group that appealed the Superseding Amended Order of Conditions. She also served as the Petitioner's witness in this matter. Although Ms. Moss stated in an opposition to the motions for dismissal that there had been a disconnection during the Pre hearing Conference call, this problem was not identified at the time, nor is there any indication that the Petitioner was prejudiced by the lapse and Ms. Moss stated that she redialed and continued to participate in the call.

The Petitioner raised procedural questions that stemmed in part from the Commission's request that the Applicant file an RDA for the work. The Commission had issued a negative Determination of Applicability, in response to the RDA filed by the Applicant as instructed by the Commission. The Petitioner argued that the Department should have amended the Superseding Amended Order of Conditions issued for the project or required a new Notice of Intent as opposed to an SDA. While the Commission could have asked the Applicant to request an amendment, it did not. The Department's SDA was responsive to the Petitioner's request for action and the appropriate next step in the procedures established for Determinations of Applicability. See 310 CMR 10.05(3) and 10.05(7). Contrary to the Petitioner's position, nothing in the Department's Amended Order Policy requires a Commission or an applicant to use an Amended Order. Wetlands Program Policy 85-4: Amended Orders, September 17, 1985, revised March 1, 1995. The Amended Order Policy does not even suggest that the Department should amend an existing order in response to a request for action on a Determination of Applicability. *Id.* Importantly, the Petitioner was not prejudiced by the RDA procedure. Indeed, the Petitioner could pursue an appeal under either the amendment or the RDA procedure, and the Petitioner has now participated in appeals under both procedures.

The Petitioner raised claims related to work described in the RDA that had already been completed by the Applicant at the site. The Department, like the Commission, was not inclined to pursue an enforcement action for work already completed. Moreover, both concluded that the work generally would not alter LSCSF and did not warrant further review. Even if the work described in the RDA were determined to be a violation of the regulations, the exercise of enforcement discretion lies solely with the Department, and cannot be compelled through an administrative appeal. Therefore, any relief as to work already completed could not be granted

in this forum. See, e.g., Matter of Marette & Sons, Inc./Mark Rioux, Docket No. WET-2010-015, Recommended Final Decision (September 17, 2010), adopted by Final Decision (October 15, 2010); Matter of Bourne Community Boating, Docket No. WET-2009-031, Recommended Final Decision, (November 19, 2009), adopted by Final Decision (December 18, 2009), Matter of Christina Pesce, Docket No. 99-044, Final Decision (April 14, 2000); Matter of Town of Lexington, Docket No. 2006-184, Recommended Final Decision (March 19, 2007), adopted by Final Decision (March 23, 2007); Thomas M. Diccico v. DEP, 64 Mass. App. Ct. 423 (2005).

The Petitioner raised claims related to the status of the proposed work under the state building code. Compliance with codes or regulations administered by other governmental entities is not within the Department's jurisdiction. Any such claims must be dismissed based on lack of subject matter jurisdiction; the relief sought cannot be granted by this forum. See e.g. Matter of Northpoint Realty Development Corp., Docket No. 2001-064, Ruling on Motion to Dismiss Issues Summary (February 27, 2002) (claims of violations of FEMA regulations, unsafe conditions due to contaminated flood water, alteration of hydrology from hazardous chemicals moving toward existing homes, and unsafe conditions of project and impacts on Town's emergency departments dismissed for failure to state a claim upon which relief may be granted). The Department's SDA finding that the work will not alter a resource area so that a Notice of Intent is not required continues, "provided that all local permits are obtained prior to any construction." Department's SDA (December 12, 2013). This statement, however, does not extend jurisdiction for the Department to resolve claims arising under locally administered state laws or local bylaws.

The Petitioner also sought another delineation of the floodplain at the site. LSCSF boundaries are typically obtained from FEMA maps. The boundary of LSCSF was established

by the 2010 Order of Conditions, which remains in effect due to the Permit Extension Act. The Applicant's RDA did not seek a determination as to the jurisdictional areas or boundaries at the site, and therefore the SDA properly refrained from making any determination as to geographic jurisdiction. Thus, the LSCSF boundary set by the 2010 Order of Conditions governs work under this SDA as well. For this reason, the extent of LSCSF cannot be challenged in this appeal. Further, nothing in the record points to a material error in the LSCSF boundary. Any discrepancy that might result from grading, as suggested by the Petitioners, would not affect the outcome of this proceeding, as LSCSF has no regulatory performance standards. The location and minor nature of the proposed work relative to the LSCSF boundary would not warrant a map revision by FEMA, even if it were within the Department's power to require one.

Motions to strike testimony of the Petitioner were filed by the Applicant and the Department. Briefly, testimony related to issues not identified for adjudication is properly stricken. Testimony related to work that has been completed is inadmissible because enforcement relief, for the reasons stated, cannot be compelled in an administrative hearing. Similarly, testimony in support of claims related to noncompliance with codes or regulations administered by other governmental entities and outside the Department's jurisdiction may not be allowed.

WHETHER THE PROPOSED WORK FOR INSTALLATION OF THE IRRIGATION PUMP CHAMBER WILL NOT ALTER LSCSF SO THAT A NOTICE OF INTENT IS NOT REQUIRED

The Petitioner filed testimony of his representative, Barbara Moss, a witness with no stated expert qualifications regarding LSCSF or the proposed work. She raised many questions about the proposed work and speculated about its consequences, but was not able to provide credible factual support for the position taken due to her lack of expertise. Petitioner witnesses

sometimes question the sufficiency of information filed about a project. See *Matter of Kenneth Leavitt/Phoeny's Island*, Docket No. WET-2012-024, Recommended Final Decision (March 28, 2013), adopted by Final Decision (April 2, 2013). A Commission or the Department may deny a project for lack of sufficient information, however, after an appeal, the burden shifts to the Petitioner to show that proposed work does not comply with the applicable regulations. *Id.* Because Ms. Moss is not competent to provide expert opinion testimony on the impacts of the proposed work, her opinions are not reliable and may be disregarded. *Matter of Siegrist*, Docket No. 2002-132, Recommended Final Decision (April 30, 2003), adopted by Final Decision (May 9, 2003); *Matter of Scott Cheney*, Docket No. 98-096, Final Decision (October 26, 1999). Ms. Moss was familiar with the regulations and offered textual argument in an attempt to refute the Department's conclusion that a Notice of Intent was not required. The Petitioner claimed that the work to install the irrigation pump chamber was an "activity" that would "alter," within the meaning of that term in the regulations, a resource area, LSCSF, and therefore requires a Notice of Intent rather than an RDA. Despite the lack of qualifications, I reviewed her testimony for any support for this argument. Neither the evidence nor argument presented by the Petitioner is sufficient to sustain his case.

The Petitioner is correct that the work described in the RDA is an activity, with a definition that includes excavation and grading, within a resource area, LSCSF.³ The definition of alter, a key jurisdictional trigger in the regulations, is:

Alter means to change the condition of any Area Subject to Protection Under M.G.L. c. 131, § 40. Examples of alterations include, but are not limited to, the following:

³⁴Activity means any form of draining, dumping, dredging, clamming, discharging, excavating, filling or grading; the erection, reconstruction or expansion of any buildings or structures; the driving of pilings; the construction or improvement of roads and other ways; the changing of run-off characteristics; the intercepting or diverging of ground or surface water; the installation of drainage, sewage and water systems; the discharging of pollutants; the destruction of plant life; and any other changing of the physical characteristics of land." 310 CMR 10.04.

- (a) the changing of pre-existing drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns and flood retention areas;
- (b) the lowering of the water level or water table;
- (c) the destruction of vegetation;
- (d) the changing of water temperature, biochemical oxygen demand (BOD), and other physical, biological or chemical characteristics of the receiving water.

The Petitioner failed to marshal facts to support the position that the work proposed in the RDA will alter LSCSF in any material way, given that the area has already been approved for alteration and the “condition” of the resource area LSCSF is not “changed” by the installation of minor subsurface drainage structures or a structure of a few square feet in size on the surface of the ground, as proposed here.

In her testimony, Ms. Moss asserted that the installation of the irrigation pump chamber would involve excavation which would “alter” the resource area. Moss PFDT, para. 18. Drainage pipes lead from the downspouts from the roof of the house to the pump chamber in addition to dry wells approved under the Superseding Amended Order of Conditions. *Id.* During the summer months, the runoff would be pumped to storage tanks and available for irrigation, but Ms. Moss stated that there is no information as to how the runoff will be handled during the winter months. She stated that there could be additional discharge to floodwater in a storm, and “recent storms have continued to erode the coastal banks along the property coastline.” Moss PFDT, paras. 19-20. Ms. Moss testified that without additional information about the irrigation pump chamber, it is “impossible to determine its impact on the resource area” and a Notice of Intent should be required to provide the additional information.

Ms. Moss further testified that it had not been established that the additional discharge would have no impact on the coastal bank. Moss PFDT, paras. 21-22. In rebuttal to the Applicant’s explanation that the irrigation system would revert to discharge to the prior approved dry wells except for the summer months, Ms. Moss again cited a lack of detail and stated there

would be a direct discharge to the velocity zone at VE 24. Moss Reb. paras. 6,9-11, 13-14. In response to the Department's witness Mr. Keller's testimony that the irrigation pump chamber is a subsurface structure in an area already approved for fill and regrading, Ms. Moss stated that previously permitted work is not relevant to work under the de novo appeal of the RDA, where "no additional impact" is not an acceptable standard. Moss Reb. paras. 16-18.

Fundamentally, the Petitioner is incorrect that the prior permitting of this matter is irrelevant to this appeal. This project has both an Order of Conditions for the original work of demolishing the existing house and construction of a new house, and a Superseding Amended Order of Conditions after an adjudicatory hearing which allowed relatively minor project revisions. In the RDA submitted at the Commission's request, the Applicant stated:

The existing SFR [Single family residence] was approved under a previous Superseding Order of Conditions (SOC) SE 15-2058 (Issued March 24, 2011). The Applicant is proposing additional minor alterations and additions *within previously approved altered portions of LSCSF. All proposed minor alterations are located within the previously approved alteration footprint.*

RDA Project Description (June 26, 2013) (emphasis added). As to the proposed activity of the irrigation pump chamber, the Applicant stated:

The proposed irrigation pump chamber will be located within LSCSF but will be entirely outside of the 100-foot Coastal Bank buffer zone. The proposed irrigation pump chamber will be located within a portion of the Subject Property *previously approved for landscaping and site alterations* and will not result in any additional impacts to the resource areas or associated buffer zones.

Id. (Emphasis added). The Petitioner offered no testimony to refute this assertion and the location of the structures on the plan reveals that they are within the previously approved area in close proximity to the house. Thus, the Applicant had approval to "alter" the area under the prior approval originally obtained through the filing of a Notice of Intent.

As the Applicant and the Department emphasized, LSCSF functions to provide flood control and prevent storm damage only by receiving coastal flood waters. Unlike other resource areas, such as Coastal Banks or Coastal Dunes that may move or erode and serve as a barrier to storm surges, LSCSF as generally understood is inert and has only a surficial dimension. Coastal flood waters spread laterally inland over LSCSF. Unlike Bordering Land Subject to Flooding along rivers, LSCSF is often entirely unconfined so that the displacement of floodwaters by structures is highly unlikely to impact the LSCSF. See 310 CMR 10.57. Although coastal flooding can unquestionably damage structures, the Wetlands Protection Act protects wetlands not structures - for the functions they provide. The Petitioner has offered no evidence that the installation of the irrigation pump chamber, which is underground, will have any impact of any kind on the ability of the few square feet of LSCSF on the surface above to support and convey flood waters. Under these circumstances, the Department may properly find that the LSCSF is subject to protection but that the Act does not apply to work which will not alter the resource area in any material way beyond the alteration already permitted in the prior approval.

Contrary to the references in the Petitioner's testimony to work in the velocity zone ("V zone"), the work proposed in the RDA is within the AE zone area of LSCSF. The distinction is important. LSCSF includes all land within the 100-year coastal floodplain, but within the V zone immediately adjacent to the ocean waves during storms exceed 3 feet while areas of the AE zone experience smaller waves or still water flooding. See Matter of John and Margaret Reichenbach, OADR Docket No. WET-2011-012, Recommended Final Decision (October 20, 2011) at n. 4, adopted by Final Decision (November 2, 2011). Work within the higher hazard area of the V zone has typically, and appropriately, been regulated more closely than work

within LSCSF outside the V Zone.⁴ The project is located in a wide open area adjacent to the ocean, a situation where the Department has consistently found no need for mitigation, compensatory storage, or other special conditions as the lateral spread of any displaced coastal floodwaters within the LSCSF would be de minimis. *Id.* See *Matter of the Meadows at Marina Bay*, Docket No. 98-006, Final Decision (February 18, 1999), Reconsideration Denied (March 23, 1999), *aff'd sub nomine Neponset River Watershed Association v. The Meadows at Marina Bay, LLC*, Civ. No. 99-642, Memorandum of Decision and Order on Cross Motions for Judgment on the Pleadings (Norfolk Super. Ct., December 23, 1999), *aff'd* pursuant to Rule 1:28 (Mass. App. Ct., November 6, 2000). As the Applicant and the Department correctly emphasize, there are no regulatory performance standards for LSCSF. Additional review would serve no purpose.

Although the Petitioner raised many questions about the irrigation pump chamber, the prefiled direct and rebuttal testimony contain no factual assertions that the proposed work is outside an already approved area or that the work will have any impact at all on the ability of the LSCSF to provide the functions of flood control and storm damage prevention. There has been no showing that the project will have any impact on flooding from the ocean during coastal storms. The storage capacity of the irrigation system may reduce any potential for runoff from precipitation at the site, and may reduce overall water use at the site, but these environmental benefits are not related to the LSCSF. Impacts from proposed work on the LSCSF are typically limited to deflection of water from one structure to another nearby or large scale changes in elevation. Impacts would not normally occur if there is no change in the elevation, because

⁴ The V zone often falls within another coastal resource area, such as a Coastal Dune or Coastal Bank, resource areas where strict performance standards apply. 310 CMR 10.28 and 310 CMR 10.30. The distinction between LSCSF and Coastal Bank, the resource areas in this appeal, is illustrated in Wetlands Program Policy 92-1: Coastal Banks (March 3, 1992).

water will move across land subject to coastal storm flowage as if there had been no work performed at all. Indeed, for that reason, the use of an RDA to review work in LSCSF is not uncommon, provided it is outside other resource areas and outside the V Zone.⁵

In sum, the Petitioner has not sustained his direct case. The burden of going forward in a wetlands case is placed upon the person contesting the Department's position and must include credible evidence from a competent source in support of the position taken. 310 CMR 10.03(2); 310 CMR 10.05(7)(j)3.c. A competent source is a witness who has sufficient expertise through education, training, or experience to render testimony on the factual issues on appeal. *Matter of City of Pittsfield Airport Commission*, OADR Docket No. 2010-041, Recommended Final Decision (August 11, 2010), adopted by Final Decision (August 19, 2010). The Wetlands Regulations require that a Petitioner's direct case establish the legal and factual basis for its position on each issue. 310 CMR 10.05(7)j.3.c. Under 310 CMR 1.01(11)(e), a directed decision may be granted against a party for failure to sustain a direct case where its pre-filed testimony and exhibits do not meet its burden of going forward with credible evidence from a competent source in support of its position or show no right to relief on its claims as a matter of law.⁶ Where a direct case is insufficient to prevail, dismissal is appropriate. See *Matter of Oxford Housing Authority*, Docket Nos. 92-026, 93-008, Final Decision (January 21, 1994), Reconsideration denied (February 22, 1994), *aff'd* in part (as to availability of a directed decision and dismissal for failure to sustain the direct case) *sub nomine* *Widen v. Oxford Housing*

⁵ Practices may vary among Commissions. The Department has recently stated its intent to clarify the regulations related to LSCSF. All applicants should consider whether and how a local bylaw addresses LSCSF and proceed in compliance with local requirements.

⁶ See e.g., *Matter of Trammell Crow Residential*, Docket No. WET-2010-037, Recommended Final Decision (April 1, 2011), adopted by Final Decision (April 21, 2011), citing, *Matter of Town of Truro*, Docket No. 94-066, Final Decision (August 21, 1995), *aff'd sub nom.*, *Worthington v. Town of Truro*, Memorandum of Decision and Order on Plaintiff's Complaint for Judicial Review (Suffolk Super. Ct., May 30, 1996)). See *Matter of Walden Woods, LLC*, Docket Nos. DEP-04-363 and DEP 04-364, Recommended Final Decision (September 6, 2006), Final Decision (December 8, 2006).

Authority, Civ. No. WOCV94-004130, Memorandum and Order on Defendant's Motions to Dismiss (Worcester Super. Ct., October 20, 1994).

As prior decisions have explained, dismissal for failure to sustain a direct case does not deprive the Petitioner of his "day in court." See, e.g., *Matter of Lawrence Borins, Trustee, Noon Hill Realty Trust*, Docket No. 98-140, Final Decision, July 22, 1999 and Decision on Motion for Reconsideration, August 19, 1999. The Petitioners' direct case must provide credible evidence relevant to the governing legal standard. See *Matter of the Meadows at Marina Bay*, Docket No. 98-006. Petitioner witnesses sometimes question the sufficiency of information filed about a project. See *Matter of Kenneth Leavitt/Pheeny's Island*, Docket No. WET-2012-024, Recommended Final Decision (March 28, 2013), adopted by Final Decision (April 2, 2013). Although a Commission or the Department may deny a project for lack of sufficient information, after an appeal is filed, the burden shifts to the Petitioner to show that proposed work violates regulatory performance standards. *Id.* The work proposed in the RDA was properly reviewed and will contribute to the interests of the Act.

WHETHER THE PETITIONER HAS STANDING

The Applicant and the Department moved to dismiss the Petitioner's appeal for lack of standing because there was no showing that the Petitioner was aggrieved by the Department's SDA. Under the Department's regulations, an abutter may request a Superseding Order of Conditions but may not file an appeal unless aggrieved by the Department's action. A "person aggrieved," as defined in the wetlands regulations, is "any person who, because of an act or failure to act by the issuing authority, may suffer an injury in fact which is different either in kind or magnitude from that suffered by the general public and which is within the scope of the

interests identified in M.G.L. c. 131, s. 40.” 310 CMR 10.04, 310 CMR 10.05(7)(a)4. In this appeal, the Petitioner did not articulate grounds for standing.

For purposes of ruling on a Motion to Dismiss for lack of standing, the Petitioner’s factual allegations in the notice of claim are taken as true. *Matter of Covanta Pittsfield*, Docket No. 2010-002, Recommended Final Decision (June 30, 2010), adopted by Final Decision (July 30, 2010). The sufficiency of the factual showing is satisfied where the allegations of a person claiming to be aggrieved demonstrate at least the possibility that the alleged injury would result if the activity were allowed. *Matter of Lepore*, Docket No. 2003-092 and 2003-093, Recommended Final Decision (September 2, 2004), adopted by Final Decision (December 3, 2004); *Matter of Whouley*, Docket No. 99-087, Final Decision (May 16, 2000).⁷ An allegation of abstract, conjectural, or hypothetical injury is not sufficient. *Matter of Martin and Kathleen Crane*, Docket No. 2008-100, Recommended Final Decision (March 30, 2009), adopted by Final Decision (March 30, 2009); *Matter of Charles Doe*, Docket No. 97-097, Final Decision (April 15, 1998); see *Ginther v. Commissioner of Insurance*, 427 Mass. 319 (1998); *Group Insurance Commission v. Labor Relations Commission*, 381 Mass. 199 (1980); *Duato v. Commissioner of Pub. Welfare*, 359 Mass. 635 (1971).

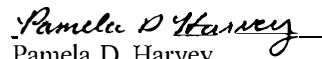
The Petitioner did not provide factual support for a conclusion he is aggrieved due to impacts on his property from the work allowed under the SDA to install the irrigation pump chamber. Instead, the Petitioner claimed that it was not possible to assess impacts due to a lack of documentation about the project. The Applicant, however, filed considerable detail with the Request for Determination, and provided additional information in the form of direct testimony.

⁷A person claiming aggrievement is not required to prove the injury would actually occur at the preliminary stage of a proceeding. *Butler v. Waltham*, 63 Mass. App. Ct. 435, 441 (2005). “Rather, the plaintiff must put forth credible evidence to substantiate his allegations. In this context, standing becomes, then, essentially a question of fact for the trial judge.” *Marashlian v. Zoning Bd. of Appeals of Newburyport*, 421 Mass. 719, 721 (1996); see also *Matter of Town of Hull*, Docket No. 88-022, Decision on Motion for Reconsideration of Dismissal (July 19, 1988).

The claim of lack of information seems in part intended to support a claim that a Notice of Intent should be filed. But the amount of information in the record as to the pump chamber is equivalent, perhaps greater than would typically be expected with a Notice of Intent, particularly where the work is not within the buffer zone. In any event, the burden falls on the Petitioner to demonstrate that he has standing pursuant to 310 CMR 10.05(7)(j)2.b.iii. The Petitioner has not demonstrated standing, and therefore, the appeal may be dismissed on this alternate ground.

CONCLUSION

The Petitioner offered no support for a conclusion that the proposed work related to the pump chamber would alter LSCSF so as to affect its capacity for flood control and storm damage prevention. The project does not warrant further review and the appeal should be dismissed for failure to sustain the case. As an alternate ground for dismissal, the Petitioner has not demonstrated standing to pursue this appeal. I recommend that the Department's Commissioner dismiss this appeal for failure to sustain the case and lack of standing, and make final the Department's SDA.


Pamela D. Harvey
Presiding Officer

NOTICE- RECOMMENDED FINAL DECISION

This decision is a Recommended Final Decision of the Presiding Officer. It has been transmitted to the Commissioner for his Final Decision in this matter. This decision is therefore not a Final Decision subject to reconsideration under 310 CMR 1.01(14)(d), and may not be

appealed to Superior Court pursuant to M.G.L. c. 30A. The Commissioner's Final Decision is subject to rights of reconsideration and court appeal and will contain a notice to that effect.

Because this matter has now been transmitted to the Commissioner, no party shall file a motion to renew or reargue this Recommended Final Decision or any part of it, and no party shall communicate with the Commissioner's office regarding this decision unless the Commissioner, in his sole discretion, directs otherwise.



Commonwealth of Massachusetts
Executive Office of Energy & Environmental Affairs

Department of Environmental Protection

One Winter Street Boston, MA 02108 • 617-292-5500

DEVAL L. PATRICK
Governor

MAEVE VALLEY BARTLETT
Secretary

DAVID W. CASH
Commissioner

In the Matter of
Margaret Reichenbach

June 26, 2014

Docket No. WET-2014-001
File No. SE 15-2058
Dartmouth

FINAL DECISION

I adopt the Recommended Final Decision of the Presiding Officer. The parties to this proceeding are notified of their right to file a motion for reconsideration of this decision, pursuant to 310 CMR 1.01(14)(d). The motion must be filed with the Case Administrator and served on all parties within seven business days of the postmark date of this decision. A person who has the right to seek judicial review may appeal this decision to the Superior Court pursuant to M.G.L. c. 30A, §14(1). The complaint must be filed in the Court within thirty days of receipt of this decision.


David W. Cash
Commissioner

**COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
ONE WINTER STREET, BOSTON, MA 02108 617-292-5500**

THE OFFICE OF APPEALS AND DISPUTE RESOLUTION

September 30, 2014

In the Matter of

Margaret Reichenbach

Docket No. WET-2014-001
File No. SE 15-2058
Dartmouth

RECOMMENDED FINAL DECISION ON RECONSIDERATION

In this appeal, Timothy Haydock ("Petitioner") challenged a negative Superseding Determination of Applicability ("SDA") issued by the Massachusetts Department of Environmental Protection ("Department") related to work on land owned by Margaret Reichenbach (the "Applicant") at 29 Mattarest Lane in Dartmouth. The project is subject to jurisdiction under the Massachusetts Wetlands Protection Act, G.L. c. 131, § 40 and the Wetlands Regulations, 310 CMR 10.00. The Dartmouth Conservation Commission ("Commission") had also issued a negative Determination of Applicability. After the filing of testimony, the Applicant and the Department filed motions for directed decision for failure to sustain the case and lack of standing, which the Petitioner opposed. After a Recommended Final Decision, the Department's Commissioner issued a Final Decision that dismissed the Petitioner's appeal for failure to sustain his case based on a directed decision in favor of the Applicant and the Department and, on alternate grounds, for lack of standing. The Petitioner filed a motion for reconsideration of the Final Decision. A motion for reconsideration may be granted only where the Final Decision is based upon a finding of fact or conclusion of law that is clearly erroneous.

THBM_001736

310 CMR 1.01(14)(d). I recommend that the motion for reconsideration be denied. Because the motion reiterates arguments raised at the hearing that were adequately covered in the Final Decision, I address only the main points raised by the Petitioner.

First, there are not “many ‘non-compliant’ issues remaining” for this project as alleged by the Petitioner. The Applicant received an Order of Conditions from the Commission to demolish an existing single family house and construct a new one with landscaping, a retaining wall, and a swimming pool in April of 2010. The Order of Conditions for the initial construction was not appealed. The Applicant filed a request for an Amended Order of Conditions to allow certain relatively minor revisions to the project, including a change in the curvature of the retaining wall, the angle and width of a stairway, and the management of drainage at the site in October of 2010. The Commission issued an Amended Order of Conditions allowing this work. The Petitioner appealed the Commission’s Amended Order. The Department’s Southeast Regional Office issued a Superseding Amended Order of Conditions to allow the requested revisions to the project. A ten residents group, which included the Petitioner in this appeal, filed an appeal of the Superseding Amended Order of Conditions. The Petitioners’ claims were dismissed for failure to sustain the case and because the Petitioners had not met their burden of proof based on a consideration of all the evidence. Matter of John and Margaret Reichenbach, OADR Docket No. WET-2011-012, Recommended Final Decision (October 20, 2011), adopted by Final Decision (November 2, 2011).

Apparently in response to concerns raised by the Petitioner to the Commission about erosion and certain work at the site, and multiple visits by the Commission agent, the Commission asked the Applicant to file a request for Determination of Applicability. The Petitioner then requested an SDA, the Department issued an SDA, and this appeal ensued.

Where work at a site has already been approved, subsequent appeals do not create an opportunity to re-visit the same issues. Contrary to the allegations of the Petitioners, there is no loophole for future applicants, nor has there been inattention to the work proposed or conducted at this site. This proceeding has fully and fairly considered the issues that are properly within the scope of this appeal.

The Petitioner characterized as inaccurate statements in the Recommended Final Decision related to the Petitioner's position on the delineation of the flood plain. Specifically, the Petitioner claims that it was the Applicant, not the Petitioner, who disputed the floodplain delineation. The reference in the Recommended Final Decision to the Petitioner's seeking another delineation of the floodplain at the site was drawn directly from his notice of claim, which stated that "at issue from the beginning was the very location of the floodplain" and pointed to a "discrepancy" between the floodplain delineation provided to the Conservation Commission and to the Building Department. Notice of Claim, para. 16. Secondly, the Petitioner objected to the reference in the Recommended Final Decision to the Petitioner's having suggested that discrepancies from grading could affect elevations shown on the plans. I was referring to the Petitioner's statement that "the site plan does not reflect changes to grades and drainage as a result of work done . . . and does not reflect the correct location and grading changes." Petitioner's Pre-hearing Conference Statement, para. 4. Neither of these statements in the Recommended Final Decision constitutes errors of fact, but instead each attempted to incorporate the claims raised by the Petitioner. The question raised as to the Applicant's application to FEMA for a "LOMR-F" related to the basement of the house, apparently filed after the Final Decision was issued, is not within the scope of this appeal both as to timing and

because the house was approved in the original, unappealed Order of Conditions and cannot be raised here.

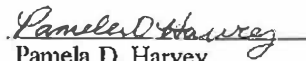
The Petitioner renewed his argument that the Department should have followed the Amended Order Policy and amended the Superseding Amended Order of Conditions that was sustained after the prior appeal was dismissed for failure to sustain the case rather than issue the SDA. As stated in the Recommended Final Decision, the Amended Order Policy applies to situations where an applicant requests an amendment. Here, the Dartmouth Conservation Commission asked the Applicant to file a Request for Determination of Applicability, and the Department adhered to the regulations by issuing the SDA. Although the Petitioner characterizes this process as a “loophole” and “discriminatory,” in part because the statute and regulations governing Determinations provide for a public meeting rather than a public hearing, the Determination of Applicability procedures have been used for decades as specified in the regulations, 310 CMR 10.05(3). There are no regulatory procedures for the amendment of an order of conditions. The Department’s issuance of an SDA in light of the Commission’s Determination of Applicability in response to the Applicant’s Request for Determination of Applicability was not only not an error of law, it fully conformed to the regulations. *Id.*

The Petitioner claims that his failure to demonstrate standing is due to the failure of the Commission or the Department to visit his property, and asserts that in contrast the Commission agent made weekly visits to the Applicant’s property. Demonstration of standing, however, falls squarely on the person filing a notice of claim. 310 CMR 10.05(7)(i)(2)(b)iii. The Petitioner is correct that either the Commission or the Department could have taken enforcement action if either believed there was a violation of the regulations. The Petitioner, however, cannot seek enforcement action by the Department through an administrative appeal. Despite the Petitioner’s

objections, it is settled law that the exercise of enforcement discretion lies with the Department, and cannot be compelled through administrative adjudication. See, e.g., Matter of Marete & Sons, Inc./Mark Rioux, Docket No. WET-2010-015, Recommended Final Decision (September 17, 2010), adopted by Final Decision (October 15, 2010); Matter of Bourne Community Boating, Docket No. WET-2009-031, Recommended Final Decision, (November 19, 2009), adopted by Final Decision (December 18, 2009), Matter of Christina Pesce, Docket No. 99-044, Final Decision (April 14, 2000); Matter of Town of Lexington, Docket No. 2006-184, Recommended Final Decision (March 19, 2007), adopted by Final Decision (March 23, 2007); Thomas M. Diccico v. DEP, 64 Mass. App. Ct. 423 (2005). The Petitioner has not identified an error of law, nor has the Petitioner been denied due process as evidenced by the repeated visits to the site by the Commission, the Commission's review through the Request for Determination, the Department's SDA as requested by the Petitioner, and this adjudicatory proceeding, also requested by the Petitioner.

CONCLUSION

I recommend that the Department's Commissioner decline to reconsider the Final Decision in this matter.


Pamela D. Harvey
Presiding Officer

NOTICE- RECOMMENDED FINAL DECISION ON RECONSIDERATION

This decision is a Recommended Final Decision on Reconsideration of the Presiding Officer. It has been transmitted to the Commissioner for his Final Decision in this matter. This

THBM_001740

decision is therefore not a Final Decision subject to reconsideration under 310 CMR 1.01(14)(c), and may not be appealed to Superior Court pursuant to M.G.L. c. 30A. The Commissioner's Final Decision may be appealed and will contain a notice to that effect.



Commonwealth of Massachusetts
Executive Office of Energy & Environmental Affairs

Department of Environmental Protection

One Winter Street Boston, MA 02108 • 617-292-5500

DEVAL L. PATRICK
Governor

MAEVE VALLEY BASILETT
Secretary


DAVID W. CASH
Commissioner

In the Matter of
Margaret Reichenbach

October 28, 2014
Docket No. WET-2014-001
File No. SE 15-2058
Dartmouth

FINAL DECISION ON RECONSIDERATION

I adopt the Recommended Decision on Reconsideration of the Presiding Officer. Any party may appeal this Decision to the Superior Court pursuant M.G.L. c. 30A, §14(I). The complaint must be filed in the Court within thirty days of receipt of this Decision.



David W. Cash
Commissioner

From: Barbara Moss[brmossdesign@aol.com]
To: ullansullivan@yahoo.com[ullansullivan@yahoo.com]
Subject: Re: gulle
Date: Tue, 26 Oct 2010 2:10:10 PM (UTC)

To: ullansullivan@yahoo.com[ullansullivan@yahoo.com]
From: Barbara Moss[brmossdesign@aol.com]
Sent: Tue 10/26/2010 10:10:10 AM Eastern Standard Time
Subject: Re: gulle

name of the deer stuff is thiram (spelling?) it is a powder. You mix it with Clear Spray Defense.

Tree guy is Ted Booth

jag mar bra men jag har massor att gora och ingen tid. sa ar det... vi ses over helgen i all fall. Reichen drama borja igjen. vad synd.

B.

●Original Message

From: ulla sullivan <ullansullivan@yahoo.com>
To: brmossdesign <brmossdesign@aol.com>
Sent: Mon, Oct 25, 2010 8:47 am
Subject: Re: gulle

Hi Barbara

I saw Tim had sprayed the bushes and trees for deer. again my braincells neglect
me, what is the name of the spray? any chance you can give me the number of the tree guys?

No word from nasty Nan.

I am going down wednesday and staying thru Friday, the weather is going to be mild, and I have 1000 things to do.

Er du bra?

Ulla

--- On Tue, 10/5/10, brmossdesign@aol.com <brmossdesign@aol.com> wrote:

From: brmossdesign@aol.com <brmossdesign@aol.com>
Subject: Re: gulle
To: "ulla sullivan" <ullansullivan@yahoo.com>
Date: Tuesday, October 5, 2010, 3:09 PM

I asked Mary Cook to keep her eyes open. I think Bentley will write something sooner rather than later to give them notice. We may have found an additional right of way. They all help.

B.

Sent via BlackBerry by AT&T

THBM_005174

From: ulla sullivan <ullansullivan@yahoo.com>
Date: Tue, 5 Oct 2010 04:20:16 -0700 (PDT)
To: <brmosdesign@aol.com>
Subject: Re: gulle

Hi Barbara

I am not down in Nonquit yet, do you think they will start the driveway this week ?

Ulla

--- On Mon, 10/4/10, brmosdesign@aol.com <brmosdesign@aol.com> wrote:

From: brmosdesign@aol.com <brmosdesign@aol.com>
Subject: Re: gulle
To: "ulla sullivan" <ullansullivan@yahoo.com>
Date: Monday, October 4, 2010, 10:12 PM

We are going to torture them! Just you wait and see... As long as they don't start building that driveway tomorrow! Uff da.

Vi ses over helgen.

Sent via BlackBerry by AT&T

From: ulla sullivan <ullansullivan@yahoo.com>
Date: Sat, 2 Oct 2010 18:00:43 -0700 (PDT)
To: <brmosdesign@aol.com>
Subject: Re: gulle

Hi Barbara

I cant tell you how I yelled out loud when I read Bentley's e mail, if I could frink I would have celebrated with champagne,no seriously I think it all sounds like there is hope, I think you are so fantastik, you could run for office.

I was so jealous when I read you were in Hadley, ...

We just came home, I am totally done in, going to take a shower and go to bed.

I will talk to you pa morgen.

Ulla

On Sat, 10/2/10, brmosdesign@aol.com <brmosdesign@aol.com> wrote:

From: brmosdesign@aol.com <brmosdesign@aol.com>
Subject: Re: gulle

THBM_005175



COMMONWEALTH OF MASSACHUSETTS
BRISTOL COUNTY
Docket Report

1473CV01185

Haydock, Timothy vs. Department of Environmental Protection Commissioner David Cash

CASE TYPE:	Administrative Civil Actions	FILE DATE:	11/26/2014
ACTION CODE:	E02	CASE TRACK:	X - Accelerated
DESCRIPTION:	Appeal from Administrative Agency G.L. c. 30A		
CASE DISPOSITION DATE		CASE STATUS:	Open
CASE DISPOSITION:	Pending	STATUS DATE :	11/26/2014
CASE JUDGE:		CASE SESSION:	

LINKED CASE

DCM TRACK

Tickler Description	Due Date	Completion Date
Service	02/24/2015	
Judgment	11/27/2015	

PARTIES

Plaintiff Haydock, Timothy 28 Maltarest Lane South Dartmouth, MA 02748 Defendant Department of Environmental Protection Commissioner David Cash One Winter Street Boston, MA 02108	Attorney . Pro Se Massachusetts Bar Added Date: 11/26/2014 PROPER
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#1

Commonwealth of Massachusetts
Trial Court of the Commonwealth
Superior Court Department

Bristol, ss.

Civil Action # C14-1185
BRISTOL, SS SUPERIOR COURT
FILED

NOV 26 2014

Timothy Haydock
[Plaintiff(s)]

VS. Department of Environmental Protection
Commissioner David Cash
[Defendant(s)]

MARC J. SANTOS COMPLAINT
CLERK/MAGISTRATE

(1) The Plaintiff(s), Timothy Haydock, reside(s) at
28 Mattavest Lane S. Dartmouth MA 02748

(2) The Defendant(s), Massachusetts Dept. of Environmental Protection, reside(s) at
Commissioner David Cash, One Winter Street Boston MA 02108

(3) Please describe in detail the incidents and/or actions performed by the Defendant(s) which you allege have caused you injury, and the dates on which they occurred.

Plaintiff appealed a Request for Determination of Applicability to permit work at abutter property not permitted under a valid Final Order of Conditions. Adjudicatory appeal process did not address multiple errors of law, fact, unlawful procedure and resulted in additional errors of fact and law with Final Decision. Final Decision was unsupported by substantial evidence, based on multiple errors of fact and law.

(4) Please describe the physical and/or emotional injuries that you allegedly suffered, or monetary damages allegedly sustained, as a result of the defendant(s) actions.

Negative impact to the resource area and abutter property as a result of Mass DEP not following their own regulations, procedures and laws relating to the permitting of additional work not permitted under an existing Final Order of Conditions. The abutter was denied due process with his right to a public hearing and a site plan shown in all work corrected and accurately in order to assess impact on resource area and abutter's property.

(5) Please specify in detail the relief that you are requesting from the Court.

vacate or reverse the mass DEP final decision and require that a new Notice of Intent be filed for all work not permitted under the Final Order of Conditions. We request that all violations laws procedures and not follow be followed in a manner that is fair and without bias due to the rights of the abutter.

I hereby certify under the pains and penalties of perjury that the above statements are true to the best of my knowledge, information and belief.

Plaintiff's Signature:

Street Address:

City, State and Zip Code:

Telephone:

Timothy Haydock
28 Mattavest Lane
S. Dartmouth MA 02748
508 993 3586

15

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss.

**SUPERIOR COURT
CIVIL ACTION
No. 1777CV00715**

THOMAS J. MANNING

vs.

**ANDREW G. CHRISTENSEN, in his personal capacity
and as Trustee Of The Manning Family Trust**

**MEMORANDUM OF DECISION AND ORDER ON DEFENDANT ANDREW
CHRISTENSEN'S MOTION FOR SUMMARY JUDGMENT (Paper No. 12)**

In this action, plaintiff Thomas J. Manning ("Thomas")¹ seeks to recover from defendant Andrew G. Christensen ("Christensen") for action Christensen took (or failed to take) as successor trustee of the Manning Family Trust ("MFT") during 2015 to 2017. Generally speaking, Thomas alleges that Christensen breached his fiduciary duties as successor trustee; committed fraud; was negligent in performing his trustee duties; interfered with a durable power of attorney granted to Thomas by his mother, Mary Manning ("Mary"); and, violated G.L. c. 93A, § 9.²

On December 12, 2019, the Court conducted a hearing on Defendant Andrew Christensen's Motion For Summary Judgment (Paper No. 12) ("Motion"). As is fully explained below, the Motion is **DENIED** in part and **ALLOWED** in part.

¹ Given that Thomas Manning shares a last name with other persons involved in the events at issue in this action, the Court will refer to members of the Manning family by their first names.

² As is discussed below, Thomas brings certain of the claims against Christensen in his personal and trustee capacities.

BACKGROUND

The following facts are taken from the parties' statements of undisputed material facts and the summary judgment record.^{3, 4}

Mary had four children: Thomas, James Manning ("James"), Diane Blackmore ("Blackmore"), and Ann Marie (Manning) Greenleaf ("Ann Marie"). On July 22, 1991, Mary executed the MFT Declaration of Trust ("MFT Instrument"), naming each of her four children equal (i.e., 25%) beneficiaries. Ex. 8. The MFT's sole asset was Mary's home located at 17 Grayland Rd., Lynnfield, MA ("Mary's Home"). Further, Mary's estate plan apparently nominated Thomas to serve in various fiduciary capacities, such as Mary's power of attorney, healthcare proxy, personal representative, and guardian. In fact, Mary appointed Thomas her power of attorney in January 2014 by way of a written Durable Power Of Attorney ("DPOA").

³ Additional relevant facts are discussed, *infra*, in the Court's Discussion section.

⁴ As will be discussed, this action was preceded by extensive litigation in the Essex Probate and Family Court ("Probate Court"). Although the parties' Statement Of Material Facts ("Statement") (Paper No. 12.2) describes events related to the litigation, it fails, in many instances, to set forth facts that are material and relevant to the Court's decision. For example, Christensen's conduct regarding the sale of Mary's Home (defined below) is the subject of many Counts of the Complaint. Yet, the Statement fails to set forth any facts regarding the sale other than that the house needed to be sold to meet Mary's needs, Christensen oversaw the sale, and that "concessions" were made for the sale. Thomas's "Disputed Statement Of Facts (SOF) Items" set forth in his memorandum in opposition is likewise bereft of relevant facts. (See Paper No. 12.3). Moreover, the Statement spends significant time describing events (i.e., the probating of Mary's estate) that are not material to the issues on summary judgment.

The Statement is required by Superior Court Rule 9A(b)(5), which "is an 'anti-ferreting' rule designed to assist a trial judge in the all-too typical situation in which the parties throw a foot-high mass of undifferentiated material at the judge." Dziamba v. Warner & Stackpole LLP, 56 Mass. App. Ct. 397, 399 (2002) (citing A.M. Capen's Co. v. American Trading & Prod. Corp., 202 F.3d 469, 471 n.2 (1st Cir. 2000)). The spirit of the anti-ferreting goal of the Rule was not met here.

On March 16, 2015, Ann Marie filed petitions in the Probate Court seeking the appointment of a guardian and conservator on behalf of Mary. Mary was 90 years-old and residing in an assisted living facility. Lengthy litigation ensued therein, apparently pitting Thomas against the three other Manning siblings. During the litigation, Thomas and his siblings agreed to the appointment of Christensen, a practicing attorney, as successor trustee of the MFT.

On June 25, 2015, the Probate Court formally appointed Christensen successor trustee of the MFT. At the time, Mary's Home needed to be sold to ensure that Mary's needs would be met. Consequently, Christensen oversaw the marketing and sale of the house.

On October 13, 2015, Thomas, like the three other Manning siblings, executed a beneficiary certificate in which he granted Christensen, as trustee, authority to sell Mary's Home for \$448,500.

On October 21, 2015, Mary died. She left a Will dated January 12, 2006. On November 24, 2015, Thomas filed a petition in the Probate Court for formal probate of Mary's estate. Exhibit 14. Ann Marie objected to the appointment of Thomas as personal representative and extensive litigation ensued. On May 26, 2016, the Probate Court appointed Christensen as special personal representative ("SPR") of Mary's estate. This prompted more litigation regarding Thomas's efforts to remove Christensen as the SPR. Because of the litigation, Christensen apparently served as the SPR of Mary's estate for only a short period.

Meanwhile, in approximately June 2017, Christensen filed the First and Final Trust Account ("Trust Account") on behalf of the MFT in the Probate Court. Exhibit 11. The Trust Account states that the MFT received \$462,779.23 from the sale of Mary's Home. The Trust Account further reflects expenditures and distributions of trust assets from the MFT, including partial distributions to the Manning children, payments to Christensen for his services as trustee, and an expenditure related to the repair of the septic system at Mary's Home.

On July 21, 2017, Christensen filed a General Trust Petition ("Petition") in the Probate Court seeking a decree allowing the Trust Account, authorizing distribution of the MFT trust assets to the beneficiaries, termination of the MFT, and his discharge as trustee. Exhibit 11.

On February 20, 2018, the Probate Court conducted a hearing regarding the Petition. Exhibit 38. Christensen and Thomas were present for the hearing. The Probate Court found that Thomas "failed to present sufficient evidence concerning his objection to the Petition." Exhibit 13. The Probate Court allowed the Trust Account, authorized the final distribution to the Manning siblings of the assets held by the MFT, and issued a Decree And Order Of General Trust Petition ("Decree"). However, the Probate Court specifically and explicitly did not discharge Christensen from his duties as trustee of the MFT.

THE COMPLAINT

A thorough discussion of the allegations in Thomas's Complaint is warranted under the circumstances.

Although the Complaint mentions Christensen's role as SPR of Mary's estate, the causes of action in the Complaint relate solely to Christensen's service as successor trustee of the MFT. The causes of action are directed at conduct that occurred before and after Christensen's appointment as trustee.

With respect to Christensen's conduct occurring before his appointment as successor trustee of the MFT, the Complaint alleges that Christensen misrepresented his experience and knowledge of real estate conveyancing and the fiduciary responsibilities of trustees. The Complaint further alleges that the misrepresentations induced Thomas to assent to Christensen's appointment as successor trustee of MFT. Further, the Complaint alleges that Christensen charged the MFT for work he performed prior to appointment as trustee and failed to disclose that he made certain edits to a settlement agreement that the Manning siblings eventually executed during the Probate Court litigation.

With respect to Christensen's conduct after appointment as trustee, the Complaint sets forth myriad allegations regarding Christensen's role in the marketing and sale of Mary's Home, such as failing to secure a line of credit to use to cover costs incurred in readying the house for sale, failing to ensure that the home was insured, and failing to timely disclose to prospective buyers that the septic system and roof were in need of significant repairs. The Complaint further alleges that, after entering into a purchase and sale agreement with prospective buyers in which the parties thereto

agreed the house would be sold "as is," Christensen misrepresented to Thomas that a discount of \$47,575 from the agreed upon sales price was "ordinary," rather than due to Christensen's purported failure to disclose the defective conditions prior to entering into the purchase and sale agreement. The Complaint also alleges that Christensen engaged in conduct that favored Thomas's siblings and communicated privately with the siblings about MFT matters, thus allegedly breaching his obligation of impartiality toward all the beneficiaries of the MFT.

Count I of the Complaint asserts a cause of action for negligence solely against Christensen in his fiduciary (trustee) capacity. More specifically, Count I alleges that Christensen was negligent for, *inter alia*, failing to secure the aforementioned line of credit, billing the MFT for work performed prior to appointment as trustee, failing to disclose the defective conditions at Mary's Home to prospective buyers, and engaging in an "errant tax approach."

Count II of the Complaint, which is asserted against Christensen in his personal and fiduciary capacities, is entitled "Willful Breach Of The Implied Covenant Of Good Faith And Fair Dealing." The Court views this Count as a claim for willful breach of fiduciary duty under common law. On the other hand, Count VI of the Complaint sets forth a statutory breach of fiduciary claim brought pursuant to the Massachusetts Uniform Trust Code at G.L. c. 203E, § 101, et seq. ("MUTC"), against Christensen solely in his capacity as trustee of the MFT.

Count III of the Complaint sets forth a claim against Christensen solely in his capacity as trustee for the intentional interference with contractual relations. The Complaint claims that Christensen interfered with Thomas's obligations under the DPOA, allegedly causing Thomas's performance in that role "to be more expensive and burdensome," and resulting in Thomas incurring legal fees and other unnamed expenses.

Count IV of the Complaint alleges that Christensen, in his personal and fiduciary capacities, engaged in fraud prior to his appointment as trustee by misrepresenting his experience and knowledge of real estate conveyancing and the fiduciary responsibilities of trustees, and stating that he would act impartially when administering the MFT. The Complaint further alleges that Christensen's aforementioned conduct related to the reduction in the sales price of Mary's Home was fraudulent.

Finally, Count V of the Complaint alleges that Christensen's fraudulent conduct violated G.L. c. 93A, § 9. That claim is brought against Christensen in his personal and fiduciary capacities.

DISCUSSION

A. SUMMARY JUDGMENT STANDARD

A motion for summary judgment may be granted "if the pleadings, depositions, answers to interrogatories, and responses to requests for admission under Rule 36, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Mass. R. Civ. P. 56(c). "The moving party has the burden of demonstrating affirmatively the absence of a genuine issue of material fact on every relevant issue, regardless of who

would have the burden on that issue at trial.” Arcidi v. NAGE, Inc., 447 Mass. 616, 619 (2006). The party opposing summary judgment must respond and allege specific facts establishing the existence of a genuine issue of material fact for trial. Polaroid Corp. v. Rollins Envtl. Servs. (N.J.), Inc., 416 Mass. 684, 696 (1993). Moreover, “[i]n deciding a motion for summary judgment, the motion judge must consider all factual allegations, and draw all reasonable inferences therefrom, in favor of the nonmoving party.” Godfrey v. Globe Newspaper Co., Inc., 457 Mass. 113, 119 (2010); see also Willits v. Roman Catholic Archbishop of Boston, 411 Mass. 202, 202 (1991) (any conflicts in the supporting materials are answered in favor of the non-movant). However, although the Court views the evidence in the light most favorable to the non-moving party, it does not weigh evidence, assess credibility, or find facts. Drakopoulos v. United States Bank Nat’l Ass’n, 465 Mass. 775, 788 (2013), quoting O’Connor v. Redstone, 452 Mass. 537, 550 (2008).

B. THE LEGAL EFFECT OF THE DECREE ON THOMAS’S CLAIMS

Christensen argues that an award of damages to Thomas is precluded by the Decree issued by the Probate Court approving the Trust Account in essence, Christensen argues that the damages Thomas seeks relate to Christensen’s receipt and disbursement of trust funds that were approved by the Probate Court in the Decree. In so approving the Trust Account, the Probate Court necessarily found that Christensen’s actions in administering the MFT and items reflected on the Trust Account were proper. See generally Kinion v. Riley, 310 Mass. 338, 340, 341 (1941) (in seeking the allowance of an Account, the fiduciary must show he discharged his duties with reasonable skill, prudence, and sound judgment); In re E.P., 2017 Mass. App. Unpub. LEXIS 940, *2

(October 26, 2017) (in a proceeding regarding approval of an Account, "the burden of proof 'is on the accountant, . . . to prove that [s]he has disposed properly of the amount for which [s]he is accountable, and to show what that amount is.") (citations omitted). Christensen, therefore, argues that there is no reasonable likelihood that Thomas will recover any damages in this matter and summary judgment should enter on his behalf on all counts of the Complaint.

More specifically, citing the case of Jackson v. United States Trust Co., 361 Mass. 333 (1972); Christensen argues that, given the Decree entered after a hearing in the Probate Court, Thomas is precluded from attacking the propriety of the receipts and disbursements set forth in the Trust Account. However, Christensen's reliance on Jackson is somewhat misplaced because that case applied G.L. c. 206, § 24, which has since been repealed. Section 24 made decrees allowing Accounts unimpeachable "except for fraud or manifest error." Jackson, 361 Mass. at 339 (quoting G.L. c. 206, § 24).

Supplemental Probate and Family Court Rule 72 now governs the procedure for the allowance of Trust Accounts. Rule 72 states, in pertinent part, that:

A Decree and Order entered after hearing shall be subject to the provisions of Rule 60 of the Supplemental Rules of the Probate and Family Court (except that the standard governing any relief under Rule 60(b) shall be fraud or manifest error and Rule 60(b)(3) shall not apply).

Supplemental Probate and Family Court Rule 72(c)(6) (emphasis added).⁵

⁵ Supplemental Probate and Family Court Rule 60 provides, in pertinent part, that "motions for relief from judgment or order shall be governed by Mass. R. Civ. P. 60."

Therefore, Thomas is not entitled to recover damages in this action related to Christensen's conduct in generating the receipts and expenditures set forth in the Trust Account. He must pursue those damages under Rule 60 in the Probate Court. To decide otherwise would permit an impermissible collateral attack on the Decree. See Tompkins v. Tompkins, 65 Mass. App. Ct. 487, 493 (2006) (citing Pavlik v. Dmytryck, 6 Mass. App. Ct. 915, 916 (1978) (action in Land Court was impermissible collateral attack on Probate Court judgment; even assuming Probate Court lacked authority for order, where judgment has entered, parties are limited to timely appeal or other direct challenge to Probate Court judgment)).⁶

The question remains whether the record shows that Thomas has a reasonable likelihood of recovering damages in this matter related to Christensen's actions (and inaction) that were not the subject of receipts and expenditures approved by the Probate Court in the Trust Account. For his part, Thomas argues that he has suffered

⁶ During the Probate Court hearing on February 20, 2018, the judge stated, "In terms of discharge of the trustee, you're discharged on the account – but it doesn't have any impact on the Superior Court action . . . and then whatever is going on in the Superior Court, is going on in the Superior Court . . ." (Exhibit 38). Thomas argues that this statement by the judge shows she intended to ensure that the Decree would not have preclusive effect in this action. The Court disagrees. The judge was simply acknowledging that the Decree would not discharge Christensen from his duties as trustee of the MFT, something she explicitly ensured by striking Order No. 3 on the Decree, which would have discharged Christensen from his duties. This Court's reasoning is further supported by the judge's finding in the Decree that Thomas failed to present sufficient evidencing concerning his objections to the Petition. At bottom, the time for Thomas to dispute, for e.g., the adequacy of the sales price of Mary's Home was when he objected to the allowance of the Trust Account and prior to the issuance of the Decree.

damages "related to the discounted sale of [Mary's Home]," fees charged by Christensen as SPR, and "personal loss of the position willed to him by his mother,"^{7, 8}

At bottom, given the legal effect of the Decree, Thomas is not entitled to recover damages in this action for any conduct Christensen engaged in as trustee related to the items set forth in the Trust Account. Thus, as is discussed below, the Court will closely examine the record evidence of the damages Thomas claims he suffered in this action. However, as is also discussed below, the Decree is not dispositive of the issue of damages because Thomas alleges certain conduct Christensen engaged in before he was appointed trustee caused him harm (i.e., conduct that is not reflected in the items listed on the Trust Account).

C. THE MASSACHUSETTS UNIFORM TRUST CODE

The next legal issue the Court must address is whether the MUTC applies to the conduct and events at issue in this case. The Court concludes that the MUTC does apply.

"The [MUTC] was passed as an emergency act on July 8, 2012, effective the same date, and applies to 'all trusts created before, on or after the effective date' and to 'all judicial proceedings concerning trusts commenced on or after the effective date.'"

Passero v. Fitzsimmons, 92 Mass. App. Ct. 76, 79 n.7 (2017) (quoting St. 2012, c. 140,

⁷ Thomas alleges he suffered the following damages: "Unnecessary Trustee Fees" of \$1230; "Excessive Trustee Fees" of \$1015; "Trustee Mismanagement/Misrepresentation/Other" of \$14,409; "Expenses Due To SPR Misrepresentations/Other" of \$6284; "Car Storage Costs" of \$1200; and, "Loss Of Executor Position: Personal And Financial Loss" of \$29,822. Exhibit 31, p. 15. However, his description of the damages is vague and hard to decipher.

⁸ Thomas's citation to his affidavit at Exhibit 56 regarding the damages he has sustained is not helpful to the Court because, although the affidavit states that Thomas has prepared "a detailed, itemized spreadsheet of actual and estimated damages," he failed to include the spreadsheet in the summary judgment record.

§ 66)). This action was commenced in 2017. Thus, "[t]here [should be] no dispute that the code governs this [consolidated] action." Id.

D. THE CAUSES OF ACTION FOR BREACH OF FIDUCIARY DUTY (COUNTS II AND VI)

As stated, Counts II and VI of the Complaint assert claims for breach of fiduciary duty. "To establish a breach of fiduciary duty, there must be a duty owed to the plaintiff by the defendant and injury to the plaintiff proximately caused by the breach." Estate of Moulton v. Puopolo, 467 Mass. 478, 493 (2014) (citing Zimmerman v. Bogoff, 402 Mass. 650, 660 (1988)). Thus, "the plaintiff[] must show (1) the existence of a fiduciary duty; (2) breach of that duty; (3) damages; and (4) a causal connection between breach of the duty and the damages." Baker v. Wilmer Cutler Pickering Hale & Dorr LLP, 91 Mass. App. Ct. 835, 842 (2017) (citation omitted).

1. Duties Of Christensen As Trustee

Christensen argues that summary judgment on Counts I (negligence), II (common law breach of fiduciary duty), and VI (statutory breach of fiduciary duty) of the Complaint should enter on his behalf because Thomas has failed to present expert evidence regarding "the standards applicable to a [t]rustee . . . which are not matters within the knowledge of a lay person." Defendant Andrew Christensen's Memorandum Of Law In Support Of His Motion For Summary Judgment (Paper No. 12.1) ("Memorandum Of Law"), p. 15, ¶ 2. However, this argument is misplaced because the duties owed by a trustee to beneficiaries are explicitly set forth in the law and are easily understood in the circumstances of this case.

In general, under the MUTC, "the trustee shall administer the trust in good faith, in accordance with its terms and purposes and the interests of the beneficiaries and in

accordance with [the MUTC]." G.L. c. 203E, § 801. Moreover, "[u]nder the [MUTC], a trustee has a duty 'to administer the trust as a prudent person would, considering the purposes, terms and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill and caution.' G.L. c. 203E, § 804. A trustee must at all times 'administer the trust solely in the interests of the beneficiaries.' *Id.* § 802(a)." Passero v. Fitzsimmons, 92 Mass. App. Ct. 76, 79 - 80 (2017). Also, "[i]f a trust has 2 or more beneficiaries, the trustee shall act impartially in investing, managing and distributing the trust property, giving due regard to the beneficiaries' respective interests." G.L. c. 203E, § 803. Furthermore, the trustee has duties to inform and report certain information to the beneficiaries, G.L. c. 203E, § 813, and to "exercise a discretionary power in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries." G.L. c. 203E, § 814(a).⁹

At bottom, "[a] violation by a trustee of a duty the trustee owes to a beneficiary shall be a breach of trust." *Id.* § 1001(a)." Passero, 92 Mass. App. Ct. at 80. Unlike the examples argued by Christensen such as the standard of care required of an engineer

⁹ Although the MUTC controls, "[t]he common law of trusts and principles of equity shall supplement this chapter, except to the extent modified by [the MUTC] or any other general or special law." G.L. c. 203E, § 106. The common law fiduciary duties of a trustee are similar to those set forth in the MUTC. See Restatement Third, Trusts, §§ 76 - 79 (setting forth the duties of prudence, loyalty, impartiality, and the duty to administer a trust in accordance with its terms and applicable law).

or attorney, the duties required of a trustee are clearly expressed in the law and do not involve issues of fact that are beyond the ordinary understanding of laypersons.^{10, 11}

2. Application Of The Exculpatory Clause In The MFT Instrument

Christensen argues that he is shielded from liability to Thomas under the following exculpatory clause in the MFT Instrument: "*No Trustee shall be required to give bond nor be liable except for his own willful breach of trust.*" Exhibit 8, ¶ 4 (emphasis added).

"The [MUTC] renders a trustee exculpatory clause 'unenforceable to the extent that it ... relieves the trustee of liability for breach of trust committed in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries.'" Passero, 92 Mass. App. Ct. at 81 (quoting G.L. c. 203E, § 1008(a)(1)).¹² "In addition, the case law has long defined the phrase 'willful default' to include acts committed 'with reckless indifference to the interest of the beneficiary.'" Id. (quoting New England Trust Co. v. Paine, 317 Mass. 542, 548, 550 (1945)).

¹⁰ Christensen erroneously conflates the standard of care of an attorney required in a legal malpractice action and the standard of care of an attorney serving as a trustee. Moreover, he has failed to cite any law that supports his proposition that expert testimony is needed to establish a breach of duty by a trustee.

¹¹ Christensen's argument that expert testimony is required in support of Thomas's claim for violation of Chapter 93A (Count V) and fraud (Count IV) fails for the same reasons.

¹² According to the MUTC:

(a) A term of a trust relieving a trustee of liability for breach of trust shall be unenforceable to the extent that it:

(1) relieves the trustee of liability for breach of trust committed in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries; or

(2) was inserted as the result of an abuse by the trustee of a fiduciary or confidential relationship to the settlor.

G.L. c. 203E, § 1008.

Thus, with respect to Counts II (common law breach of fiduciary duty) and VI (statutory breach of fiduciary duty) of the Complaint, the issue before the Court on summary judgment related to the exculpatory clause is whether there is record evidence, weighed in the light most favorable to Thomas, that Christensen acted in bad faith or with reckless indifference.

Christensen's argument on summary judgment on this point is conclusory and unhelpful. In fact, after setting forth the law regarding the application of trust exculpatory clauses, Christensen simply states there is no record evidence that he intended to cause loss, or acted in bad faith or with reckless indifference. See Memorandum Of Law, p. 14, last ¶. At bottom, this argument is woefully deficient, conclusory, and lacking in citation to the record. It is the moving party's burden to demonstrate an absence of material fact on this issue. Christensen has failed to carry his burden. See NG Brothers Construction, Inc. v. Cranney, 436 Mass. 638, 644 (2002) ("The moving party bears the burden of affirmatively demonstrating that there is no triable issue of fact."); Kourouvacilis v. General Motors Corp., 410 Mass. 706, 716 (1991) (party moving for summary judgment on claim where opposing party has burden of proof at trial bears burden of affirmatively presenting set of undisputed facts that entitle him to judgment as matter of law or demonstrating that opposing party has no reasonable expectation of proving essential element of claim).

However, as stated above, the Court must also determine whether the record reflects that, in light of the Decree, Thomas has a reasonable expectation of recovering damages due to Christensen's alleged breach of fiduciary duties. The Court concludes that the record evidence does not show Thomas has such an expectation. For example,

Thomas argues that Christensen breached his fiduciary duty by not maximizing the sales price of Mary's Home and by engaging in "an errant tax approach." However, the Decree has established the propriety of the amounts received by the MFT for the sale of the house and the taxes paid by it.

As such, so much of the Motion requesting summary judgment on Christensen's behalf on Counts II and VI is ALLOWED.

E. THE CAUSE OF ACTION FOR NEGLIGENCE (COUNT I)

As stated, Count I of the Complaint asserts a claim for negligence against Christensen solely in his capacity as trustee of the MFT. Thomas alleges that Christensen acted negligently in performing his duties as trustee. However, under common law and the MUTC at G.L. c. 203E, § 1008, the exculpatory clause shields Christensen from liability for negligence because "[p]roof of negligence would not be proof of wilful misconduct." Second Bank-State Street Trust Co. v. Linsley, 341 Mass. 113, 118 (1960) (citing Paine, 317 Mass. at 548 – 550).

As such, so much of the Motion requesting summary judgment on Christensen's behalf on Count 1 of the Complaint is ALLOWED.¹³

F. THE CAUSE OF ACTION FOR INTEFERENCE WITH CONTRACTUAL RELATIONS (COUNT III)

As stated, Count III of the Complaint alleges that Christensen (solely in his capacity as trustee) intentionally interfered with Thomas's performance of his obligations under the DPOA. Thomas alleges that this conduct caused his performance under the DPOA "to be more expensive and burdensome." Christensen argues that

¹³ Also, for the same reasons as stated above, the record does not contain evidence to show that Thomas has a reasonable expectation of recovering damages for the negligence claim.

summary judgment must enter on his behalf on this claim because Thomas has no reasonable expectation of proving that "he was prevented from performing under the DPOA." Memorandum Of Law, p. 19. In essence, Christensen argues that a claim for intentional interference with contractual relations requires evidence that Christensen's conduct caused a party to the DPOA to not perform his or her contractual obligations. The Court agrees.

"To prevail on a claim of tortious interference with a contract, a plaintiff must establish that '(1) he had a contract with a third party; (2) the defendant knowingly induced the third party to break that contract; (3) the defendant's interference, in addition to being intentional, was improper in motive or means; and (4) the plaintiff was harmed by the defendant's actions.'" Weiler v. PortfolioScope, Inc., 469 Mass. 75, 84 (2014) (citations omitted) (emphasis added); see also Draghetti v. Chmielewski, 416 Mass. 808, 816 (1994) (same). On its face, Thomas's allegations may appear to be sufficient. See Shafir v. Steele, 431 Mass. 365, 369 (2000) ("One who intentionally and improperly interferes with the performance of a contract . . . between another and a third person, by preventing the other from performing the contract or causing his performance to be more expensive or burdensome, is subject to liability to the other for the pecuniary loss resulting to him.") (quoting and adopting Restatement (Second) of Torts § 766A) (emphasis added). However, the "breaking" of the contract is an essential element of the tort of interference and Thomas concedes that, notwithstanding Christensen's purported interference, he was able to perform his "contractual"

obligations under the DPOA.¹⁴ Moreover, Thomas does not point to any record evidence showing damages he actually suffered from the alleged interference.

As such, so much of the Motion requesting summary judgment on Christensen's behalf on Count III of the Complaint is ALLOWED.

G. THE CAUSES OF ACTION FOR FRAUD AND VIOLATION OF CHAPTER 93A (COUNTS IV AND V)

As stated, Count IV of the Complaint alleges that Christensen, in his personal and fiduciary capacities, engaged in fraud prior to and during his service as trustee. Count V alleges that Christensen's fraudulent conduct violated G.L. c. 93A, § 9.

Christensen argues he is entitled to summary judgment on the causes of action set forth in Counts IV and V because Thomas has not presented expert testimony in support thereof, the MTF Instrument granted him "broad powers" as trustee that somehow insulate him against liability for fraud, and Thomas has no reasonable expectation of proving he was damaged as a result of the fraudulent conduct. However, as stated, expert testimony is not required under the circumstances and the exculpatory clause in the MFT Instrument does not shield Christensen from liability for fraud.

As for Christensen's argument regarding Thomas's damages, the Court agrees that, for the reasons stated above, the Decree precludes Thomas from recovering damages in this action for conduct that is the subject of the items approved in the Trust Account (such as conduct related to the reduction in the sale price of Mary's Home).

¹⁴ "A durable power of attorney is a power of attorney by which a principal designates another his attorney in fact in writing and the writing contains [certain] words." G.L. c. 190B, § 5-501(a). Based on this definition, it is doubtful that a DPOA is a "contract" that would support a claim for tortious interference.

The Decree does not preclude Thomas from recovering damages for Counts IV and V of the Complaint resulting from acts and omissions that preceded Christensen's appointment as trustee. However, it is doubtful that at trial Thomas will be able to establish he suffered any legally cognizable damages due to Christensen's pre-appointment conduct given the preclusive effect of the Decree. For example, Thomas argues that he would not have agreed to Christensen's appointment had Christensen had not misrepresented his real estate conveyancing experience. However, the Decree had the effect of finding that Christensen acted with due care and skill, thus, negating any harm allegedly suffered by Thomas due to the alleged pre-appointment misrepresentation.¹⁵ Notwithstanding this, given the lack of clarity in the record, the Court is constrained to deny so much of the Motion that relates to allegations in Counts IV and V regarding Christensen's conduct prior to his appointment as trustee of the MFT.

As such, so much of the Motion requesting summary judgment on Christensen's behalf on Counts IV and V of the Complaint is **DENIED** as it relates to allegations regarding Christensen's conduct prior to his appointment as trustee of the MFT, and **ALLOWED** as it relates to allegations regarding Christensen's conduct after his appointment as trustee of the MFT.

Finally, given the lack of clarity in the record of the nature and amount of the damages allegedly suffered by Thomas due to Christensen's alleged pre-appointment

¹⁵ Furthermore, it is doubtful that Thomas will succeed at trial on his Chapter 93A claim given the absence of record evidence that he suffered a cognizable injury under the statute. See Bellermand v. Fitchburg Gas and Electric Light Company, 475 Mass. 67, 73 (2016) (citations omitted).

fraudulent conduct, the Court will order Thomas to file an amendment to the pretrial memorandum setting forth that information.

ORDER

For the above reasons:

1. Defendant Andrew Christensen's Motion For Summary Judgment (Paper No. 12) is **ALLOWED** as to Counts I, II, III, and VI of the Complaint; and, Counts I, II, III, and VI of the Complaint are **HEREBY DISMISSED**.

2. Defendant Andrew Christensen's Motion For Summary Judgment (Paper No. 12) is **DENIED** as to Counts IV and V of the Complaint, insofar as these counts relate to allegations regarding defendant Christensen's conduct prior to his appointment as trustee of the MFT, and **ALLOWED** insofar as the counts relate to allegations regarding defendant Christensen's conduct after his appointment as trustee of the MFT. So much of Counts IV and V of the Complaint that relate to allegations regarding defendant Christensen's conduct after his appointment as trustee of the MFT are **HEREBY DISMISSED**.

3. The sole claims remaining for trial are so much of Counts IV and V of the Complaint that relate to allegations regarding defendant Christensen's conduct prior to his appointment as trustee of the Manning Family Trust.

4. Within 14 days hereof, plaintiff Thomas Manning shall file a supplement to his pretrial memorandum setting forth an itemization and explanation of the damages he expects to seek at trial (i.e., damages solely on so much of Counts IV and V of the Complaint that relate to allegations regarding defendant Christensen's conduct before his appointment as trustee of the Manning Family Trust). In the event that Thomas fails to do so, the Complaint shall be dismissed in its entirety.



Jeffrey T. Karp
Associate Justice, Superior Court
Dated: January 17, 2020

219

BRISTOL COUNTY SUPERIOR COURT

FILED

JUDGMENT ON FINDING OF THE COURT

MAY - 3 2024

1573CV00133

JENNIFER A. SULLIVAN, Clerk of Court
Bristol County

JENNIFER A. SULLIVAN, Clerk of Court
Bristol County Superior Court - Taunton
9 Court Street, Rm 13
Taunton, MA 02780

Reichenbach, Margaret J. et al
vs.
Haydock, Timothy G. et al

JUDGMENT FOR THE FOLLOWING PARTY(IES)
Margaret J. Reichenbach
John Reichenbach

JUDGMENT AGAINST THE FOLLOWING PARTY(IES)
Timothy G. Haydock

This action came on before the Court, Hon. Thomas J Perrino, presiding, and upon consideration thereof,

After Jury Verdict, it is **ORDERED AND ADJUDGED:**

That judgment enter as outlined below, Severally
with interest thereon as provided by law, and the statutory costs of action.

1. Date of Breach, Demand or Complaint	10/01/2015
2. Date Judgment Entered	05/03/2024
3. Number of Days of Prejudgment Interest (line 2 - Line 1)	3137
4. Annual Interest Rate of 0.12/365.25 = Daily Interest rate	.000329
5. Single Damages	\$1,550,000.00
6. Prejudgment Interest (lines 3x4x5)	\$1,599,713.15
7. Double or Treble Damages Awarded by Court (where authorized by law)	\$
8. Statutory Costs	\$395.00
9. Attorney Fees Awarded by Court (where authorized by law)	\$2,383,818.09
10. JUDGMENT TOTAL PAYABLE TO PLAINTIFF(S) (Lines 5+6+7+8+9)	\$5,533,924.24


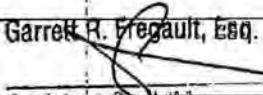
SEE PAGE 2 FOR FURTHER ORDERS

DATE JUDGMENT ENTERED 05/03/2024	CLERK OF COURTS/ASST. CLERK X
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Carrett, Freddault, Esq.
Assistant Clerk/Magistrate

Date/Time Printed: 05-03-2024 11:39:05

SCV087:09/2018

JUDGMENT ON FINDING OF THE COURT	DOCKET NUMBER 1573CV00938	Trial Court of Massachusetts The Superior Court 
FURTHER ORDERS OF THE COURT: <p>It is further ORDERED that a permanent injunction is to enter: the defendants, their agents, servants, and employees are permanently enjoined from threatening, harassing, intimidating, photographing, or coercing, surveilling the plaintiffs, their immediate family members, employees, tenants, contractors, vendors and others lawfully on the property, and further are permanently enjoined from conduct which an objectively reasonable person would conclude has the effect of interfering with the plaintiffs' use and enjoyment of their property located at 29 Mattarest Lane, South Dartmouth, MA 02748.</p> <p>NOTE: The judgment as it pertains to the award of \$2,383,816.09 in attorney's fees and costs as well as the \$395.00 and statutory costs are to be born jointly and severally defendant Timothy Haydock and defendant Barbara Moss. The single damages on the damage are to be born severally by the defendant.</p>		
DATE JUDGMENT ENTERED 05/03/2024	CLERK OF COURTS/ASST. CLERK X	Garrett R. Fregault, Esq.  Assistant Clerk

Date/Time Entered: 05/03/2024 11:30:05

SCVD087: 08/2011

JUDGMENT ON JURY VERDICT		FILED MAY - 8 2024	Bristol, SS Superior Court The Court of Massachusetts The Superior Court
DOCKET NUMBER 1573CV00938		JENNIFER A. SULLIVAN, Clerk of Court Bristol County	
CASE NAME Reichenbach, Margaret J. et al vs. Haydock, Timothy G. et al		JENNIFER A. SULLIVAN, Clerk of Court CLERK / MAGISTRATE Bristol County Superior Court - Taunton 9 Court Street, Rm 13 Taunton, MA 02780	
JUDGMENT FOR THE FOLLOWING PLAINTIFF(S) Margaret J. Reichenbach John Reichenbach			
JUDGMENT AGAINST THE FOLLOWING DEFENDANT(S) Barbara Moss			
<p>This action came on for trial before the Court, Hon. Thomas J Perrino, presiding, the issues having been duly tried and the jury having rendered its verdict,</p> <p>After Jury Verdict, it is ORDERED AND ADJUDGED:</p> <p>That the plaintiff(s) named above recover of the defendant(s) named above, Severally the "Judgment Total" with interest thereon as outlined below as provided by law, and the statutory costs of action.</p>			
1. Date of Breach, Demand or Complaint		10/01/2015	
2. Date Judgment Entered		05/03/2024	
3. Number of Days of Prejudgment Interest (line 2 - Line1)		3137	
4. Annual Interest Rate of 0.12/365.25 = Daily Interest rate		.000329	
5. Single Damages		\$2,150,000.00	
6. Prejudgment Interest (lines 3x4x5)		\$2,218,956.95	
7. Double or Treble Damages Awarded by Court (where authorized by law)		\$	
8. Statutory Costs		\$395.00	
9. Attorney Fees Awarded by Court (where authorized by law)		\$2,383,816.09	
10. JUDGMENT TOTAL PAYABLE TO PLAINTIFF(S) (Lines 5+6+7+8+9)		\$6,753,168.04	
SEE PAGE 2 FOR FURTHER ORDERS			
DATE JUDGMENT ENTERED 05/03/2024	CLERK OF COURTS/ ASST. CLERK X	Garrett P. Prigault, Esq. Assistant Clerk/Magistrate	

Date/Time Printed: 05-03-2024 11:45:41

Assistant Clerk/Magistrate

SCV084: 04/2017

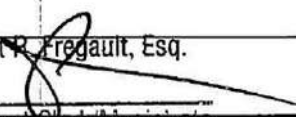
JUDGMENT ON JURY VERDICT	DOCKET NUMBER 1573CV00938	Trial Court of Massachusetts The Superior Court
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FURTHER ORDERS OF THE COURT:

It is further ORDERED that a permanent injunction is to enter: the defendants, their agents, servants, and employees are permanently enjoined from threatening, harassing, intimidating, photographing, or coercing, surveilling the plaintiffs, their immediate family members, employees, tenants, contractors, vendors and others lawfully on the property, and further are permanently enjoined from conduct which an objectively reasonable person would conclude has the effect of interfering with the plaintiffs' use and enjoyment of their property located at 29 Mattarest Lane, South Dartmouth, MA 02748.

NOTE: The judgment as it pertains to the award of \$2,383,816.09 in attorneys fees and costs as well as the \$395.00 and statutory costs are to be born jointly and severally defendant Timothy Haydock and defendant Barbara Moss. The single damages on the damage are to be born severally by the defendant.

DATE JUDGMENT ENTERED 05/03/2024	CLERK OF COURTS/ASST. CLERK X	Garrett R. Fregault, Esq.  Assistant Clerk/Magistrate
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Date/Time Printed: 05-03-2024 11:45:41

SCV084: 04/2017

204.

ORIGINAL

BRISTOL SS SUPERIOR COURT
COMMONWEALTH OF MASSACHUSETTS
FILED

Bristol, ss.

MAR - 3 2023

Superior Court Department
Docket No. 1573CV00938

JENNIFER A. SULLIVAN, ESQ.

CLERK/MAGISTRATE

MARGARET J. REICHENBACH
and JOHN REICHENBACH,

Plaintiffs,

v.

TIMOTHY G. HAYDOCK
and BARBARA MOSS,

Defendants.

Verdict Form

We, the jury, return the following verdict on each Count:

A. Count I: Massachusetts Civil Rights Act ("MCRA")

1. Did Timothy Haydock use threats, intimidation, or coercion to interfere with, or to attempt to interfere with, the Reichenbachs' constitutional rights to use, enjoy, and improve their property?

YES X NO _____

If you answered "NO," your verdict is for Timothy Haydock on Count I and you may proceed to Question 2. If you answered "YES," please answer Question 1(a).

1(a). Please indicate with an "X" when the Reichenbachs first knew, or reasonably should have known, that they were harmed by Timothy Haydock's conduct?

_____ before October 1, 2012

OR

X on or after October 1, 2012

2. Did Barbara Moss use threats, intimidation, or coercion to interfere with, or to attempt to interfere with, the Reichenbachs' constitutional rights to use, enjoy, and improve their property?

YES X NO _____

3/13/23 - Verdict read in open court help not

If you answered "NO," your verdict is for Barbara Moss on Count I and you may proceed to Question 3. If you answered "YES," please answer Question 2(a).

2(a). Please indicate with an "X" when the Reichenbachs first knew, or reasonably should have known, that they were harmed by Barbara Moss's conduct?

_____ before October 1, 2012

OR

☒ on or after October 1, 2012

If you answered YES to Question 1 or 2, then you must consider whether to award damages for Count I, as part of Question 7.

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B. Count II: Trespass

3. Did Timothy Haydock trespass on the Reichenbachs' property?

YES X NO _____

If you answered "NO," your verdict is for Timothy Haydock on Count II and you may proceed to Question 4. If you answered "YES," please answer Question 3(a).

3(a). Please indicate with an "X" when the Reichenbachs first knew, or reasonably should have known, that Timothy Haydock trespassed?

_____ before October 1, 2012

OR

X on or after October 1, 2012

4. Did Barbara Moss trespass on the Reichenbachs' property?

YES X NO _____

If you answered "NO," your verdict is for Barbara Moss on Count II and you may proceed to Question 5. If you answered "YES," please answer Question 4(a).

4(a). Please indicate with an "X" when the Reichenbachs first knew, or reasonably should have known, that Barbara Moss trespassed?

_____ before October 1, 2012

OR

X on or after October 1, 2012

If you answered YES to Question 3 or 4, then you must consider whether to award damages for Count II, as part of Question 8.

C. Count III: Intentional Interference with Contractual Relations

5. Did Timothy Haydock intentionally and improperly interfere with the plaintiffs' contract by preventing the Reichenbachs from performing, or by causing the Reichenbach's performance to be more expensive or burdensome?

YES X NO _____

If you answered "NO," your verdict is for Timothy Haydock on Count III and you may proceed to Question 7 (if necessary). If you answered "YES," please answer Question 5(a).

5(a). Please indicate with an "X" when the Reichenbachs first knew, or reasonably should have known, that Timothy Haydock intentionally and improperly interfered with the plaintiffs' contract by preventing the Reichenbachs from performing, or by causing the Reichenbach's performance to be more expensive or burdensome?

_____ before October 1, 2012

OR

X on or after October 1, 2012

6. Did Barbara Moss intentionally and improperly with the plaintiffs' contract by preventing the Reichenbachs from performing, or by causing the Reichenbach's performance to be more expensive or burdensome?

YES X NO _____

If you answered "NO," your verdict is for Barbara Moss on Count III and you may proceed to Question 7 (if necessary). If you answered "YES," please answer Question 6(a).

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6(a). Please indicate with an "X" when the Reichenbachs first knew, or reasonably should have known, that Barbara Moss intentionally interfered by preventing the Reichenbachs from performing, or by causing the Reichenbachs' performance to be more expensive or burdensome, of their contract with Lars Olson?

_____ before October 1, 2012

OR

X on or after October 1, 2012

If you answered YES to Question 5 or 6, then you must consider whether to award damages for Count III, as part of Question 9.

D. Damages

7. What total amount of money will fully and fairly compensate the Reichenbachs for their damages resulting from Count I, violation of the Massachusetts Civil Rights Act?

\$1,500,000.⁰⁰ - one million five hundred thousand dollars and ⁰⁰/₁₀₀ cents

- a. Of the amount listed in Question 7, what amount, if any, do you attribute to Timothy Haydock?

\$500,000.⁰⁰ - five hundred thousand dollars and ⁰⁰/₁₀₀ cents

- b. Of the amount listed in Question 7, what amount, if any, do you attribute to Barbara Moss?

\$1,000,000.⁰⁰ - one million dollars and ⁰⁰/₁₀₀ cents

8. What total amount of money will fully and fairly compensate the Reichenbachs for their damages resulting from Count II, trespass?

\$200,000.⁰⁰ - two hundred thousand dollars and ⁰⁰/₁₀₀ cents

- a. Of the amount listed in Question 8, what amount, if any, do you attribute to Timothy Haydock?

\$50,000.⁰⁰ - fifty thousand dollars and ⁰⁰/₁₀₀ cents

b. Of the amount listed in Question 8, what amount, if any, do you attribute to Barbara Moss?

\$150,000.00 - one hundred fifty thousand dollars and 0/100 cents

9. What total amount of money will fully and fairly compensate the Reichenbachs for their damages resulting from Count III, intentional interference with contractual relations?

\$2,000,000.00 - two million dollars and 0/100 cents

a. Of the amount listed in Question 9, what amount, if any, do you attribute to Timothy Haydock?

\$1,000,000.00 - one million dollars and 0/100 cents

b. Of the amount listed in Question 9, what amount, if any, do you attribute to Barbara Moss?

\$1,000,000.00 - one million dollars and 0/100 cents

I hereby certify that the foregoing answers constitute the answers of at least seven (7) out of the eight (8) deliberating jurors.

Robert A. Duest
Foreperson

Dated: 3-3-73

1 but the problem with all -- problem with all
2 of that, whether it's being near the property
3 line a lot -- again, that's not what we heard
4 from Lars Olson with respect to Dr. Haydock.

5 Lars Olson testified over a five-year
6 period he saw Dr. Haydock 10 to 15 times. But
7 even if it's being on the property line, when
8 you live next door or being along the
9 sullivans' land, when your son is on his
10 swing, the -- you have to prove that the other
11 conduct was done -- was done to interfere with
12 their development of their property, and none
13 of those activities even suggest that they
14 were done to interfere with the development of
15 the property in any way.

16 so again, for all of those reasons and
17 for the cases we've discussed, we would seek
18 the directed verdict for Dr. Haydock.

19 THE COURT: This is -- we can
20 debate this. It's interesting as points of
21 law and parsing out the cases. It's a great
22 exercise to go through, but I have to make a
23 decision, and it's -- I think it's a close
24 case as to Dr. Haydock, but I have to

1 respectfully deny your motion.

2 we may be revisiting it because I
3 think the jury verdict breaks down the conduct
4 of each party. I think it asks separate
5 questions that I've seen.

6 But I'm -- the instruction in
7 Armstrong, reading Armstrong and Bell versus
8 Mazza makes relatively straightforward that
9 there's no single point that's determined.
10 It's the aggregate of facts that create the
11 jury question as to whether the conduct as a
12 whole, and that creates the jury question.

13 It's a close case because, as we've
14 articulated here, we've parsed out
15 Dr. Haydock's conduct. The Armstrong case
16 doesn't -- it seems to mesh the conduct
17 together, and perhaps the jury will be able to
18 sort out on the fact whose conduct is
19 attributable to who and make their
20 determinations on that.

21 But it's -- the evidence is sufficient
22 based on the standard that I am governed by,
23 which is light most favorable to the
24 plaintiff. It's sufficient to go to the jury