RPPTL The Real Property, Probate & Trust Law Section of the Florida Bar

Demonstratives and Animation for Construction Cases

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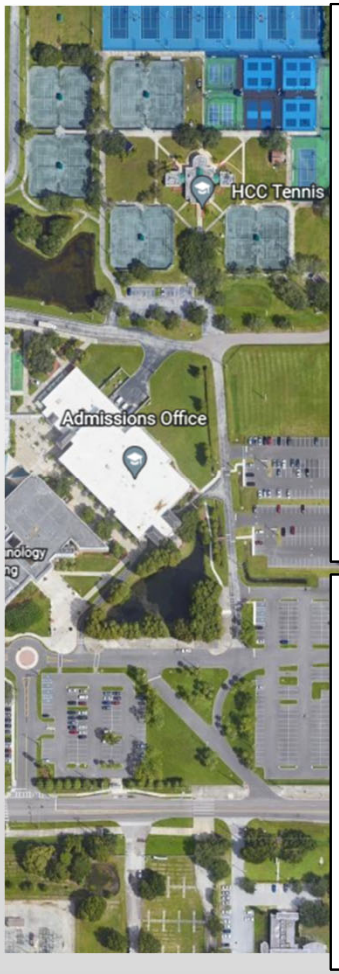
Florida Law on Demonstrative Exhibits

The demonstrative exhibit must fairly and accurately represent what it purports to depict and its admissibility would not be substantially outweighed by any danger of unfair prejudice, confusion, be misleading or is needlessly cumulative.
Section 90.403, Florida Statutes.

See also Smith v. Geico Cas. Co., 127 So. 3d 808 (Fla. 2nd DCA 2013)
Trial court did not abuse its discretion in admitting time-lapsed videos

Coddington v. Nunez, 151 So. 3d 445 (Fla. 2nd DCA 2013)
Trial court did not abuse its discretion in excluding accident reconstruction video

Legislature: Satellite Imagery
2022



90.2035 Judicial notice of information taken from web mapping services, global satellite imaging sites, or Internet mapping tools.—

(1)(a) Upon request of a party, a court may take judicial notice of an image, map, location, distance, calculation, or other information taken from a widely accepted web mapping service, global satellite imaging site, or Internet mapping tool, if such image, map, location, distance, calculation, or

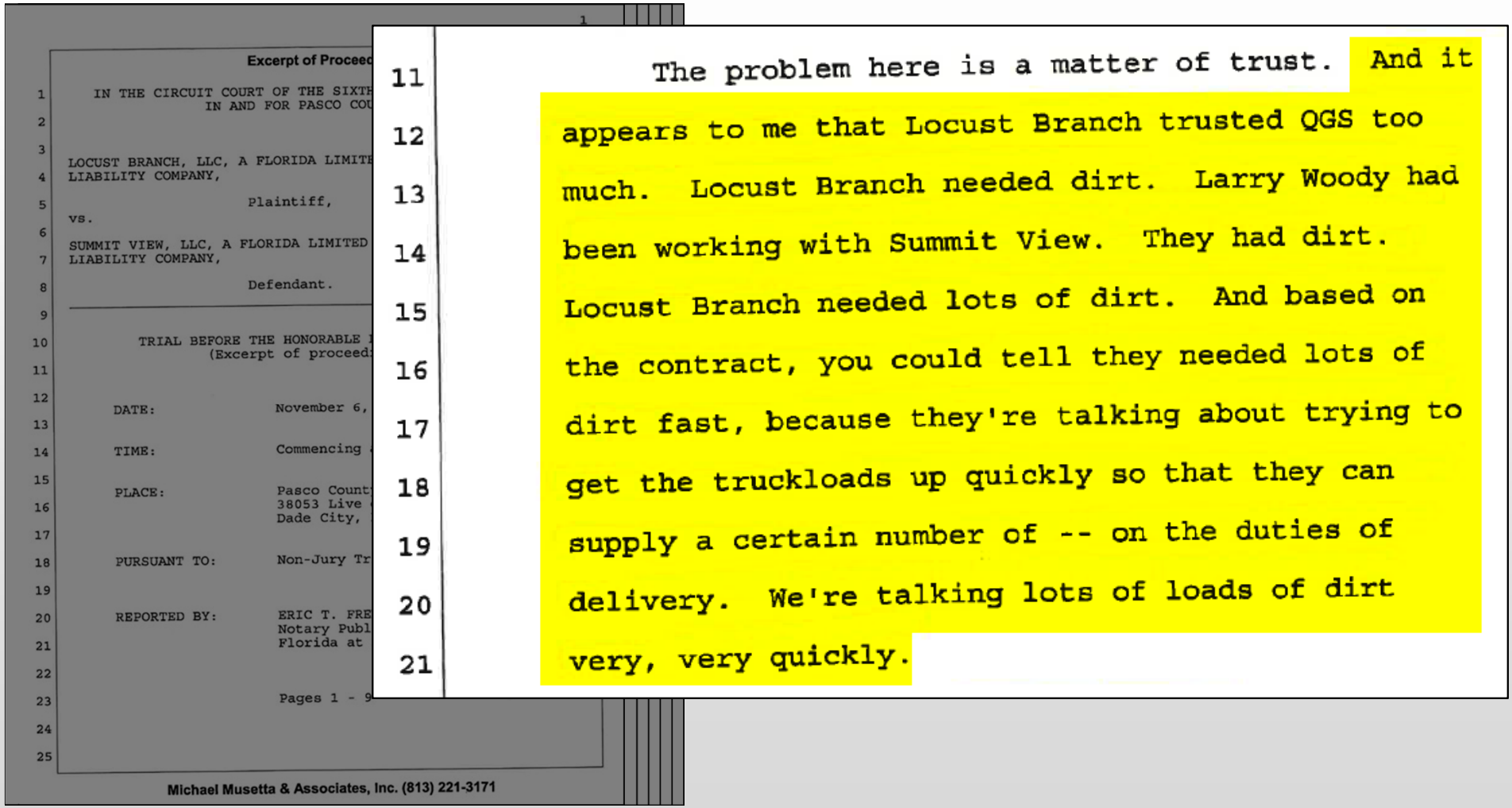
(b) A party intending to offer such information in evidence at trial or at a hearing must file notice of such intent within a reasonable time, or as defined by court order. The notice must include a copy of the information and specify the Internet address or pathway where such information may be accessed and inspected.

Legislature: Satellite Imagery
2022

(b) In civil cases, there is a rebuttable presumption that information sought to be judicially noticed under this section should be judicially noticed. The rebuttable presumption may be overcome if the court finds by the greater weight of the evidence that the information does not fairly and accurately portray what it is being offered to prove or that it otherwise should not be admitted into evidence under the Florida Evidence Code.

(c) If the court overrules the objection, the court must take judicial notice of the information and admit the information into evidence.

Excerpt of Proceedings
11/06/2017



Excerpt of Proceed

IN THE CIRCUIT COURT OF THE SIXTH
IN AND FOR PASCO COU

LOCUST BRANCH, LLC, A FLORIDA LIMITE
LIABILITY COMPANY,

Plaintiff,

vs.

SUMMIT VIEW, LLC, A FLORIDA LIMITED
LIABILITY COMPANY,

Defendant.

TRIAL BEFORE THE HONORABLE
(Excerpt of proceed

DATE: November 6,

TIME: Commencing

PLACE: Pasco Count
38053 Live
Dade City,

PURSUANT TO: Non-Jury Tr

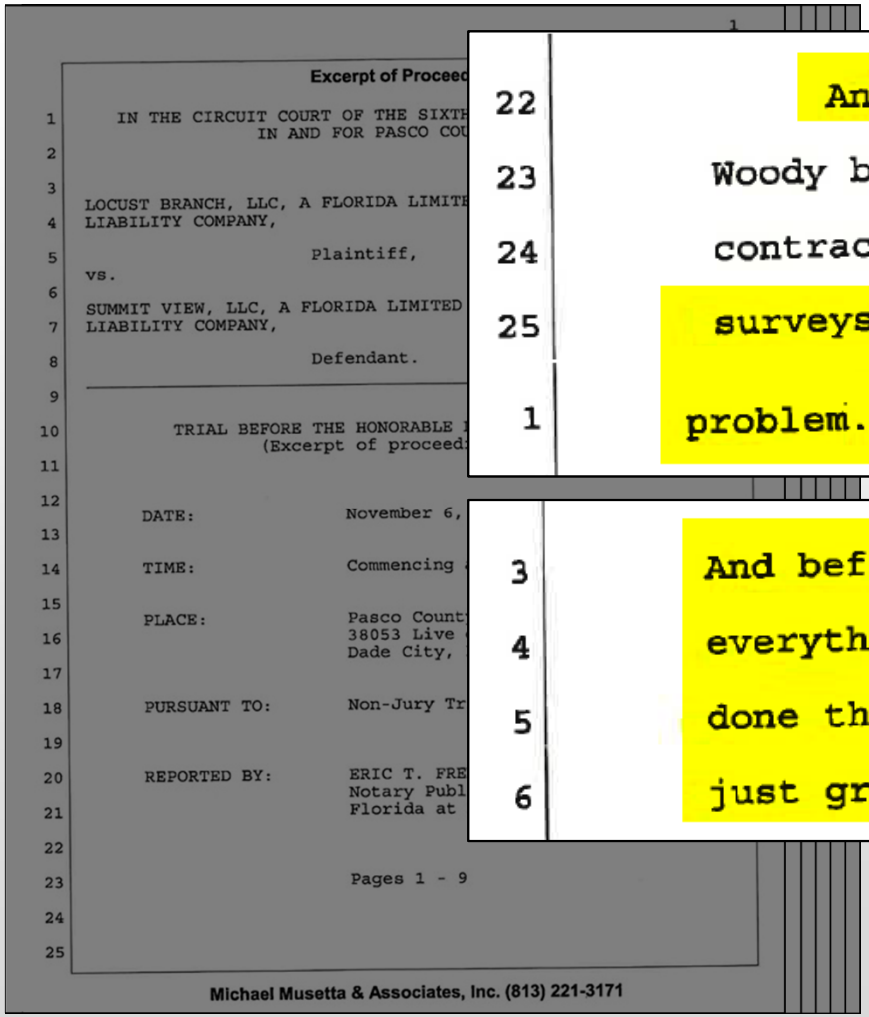
REPORTED BY: ERIC T. FRE
Notary Publ
Florida at

Pages 1 - 9

Michael Musetta & Associates, Inc. (813) 221-3171

The problem here is a matter of trust. And it appears to me that Locust Branch trusted QGS too much. Locust Branch needed dirt. Larry Woody had been working with Summit View. They had dirt. Locust Branch needed lots of dirt. And based on the contract, you could tell they needed lots of dirt fast, because they're talking about trying to get the truckloads up quickly so that they can supply a certain number of -- on the duties of delivery. We're talking lots of loads of dirt very, very quickly.

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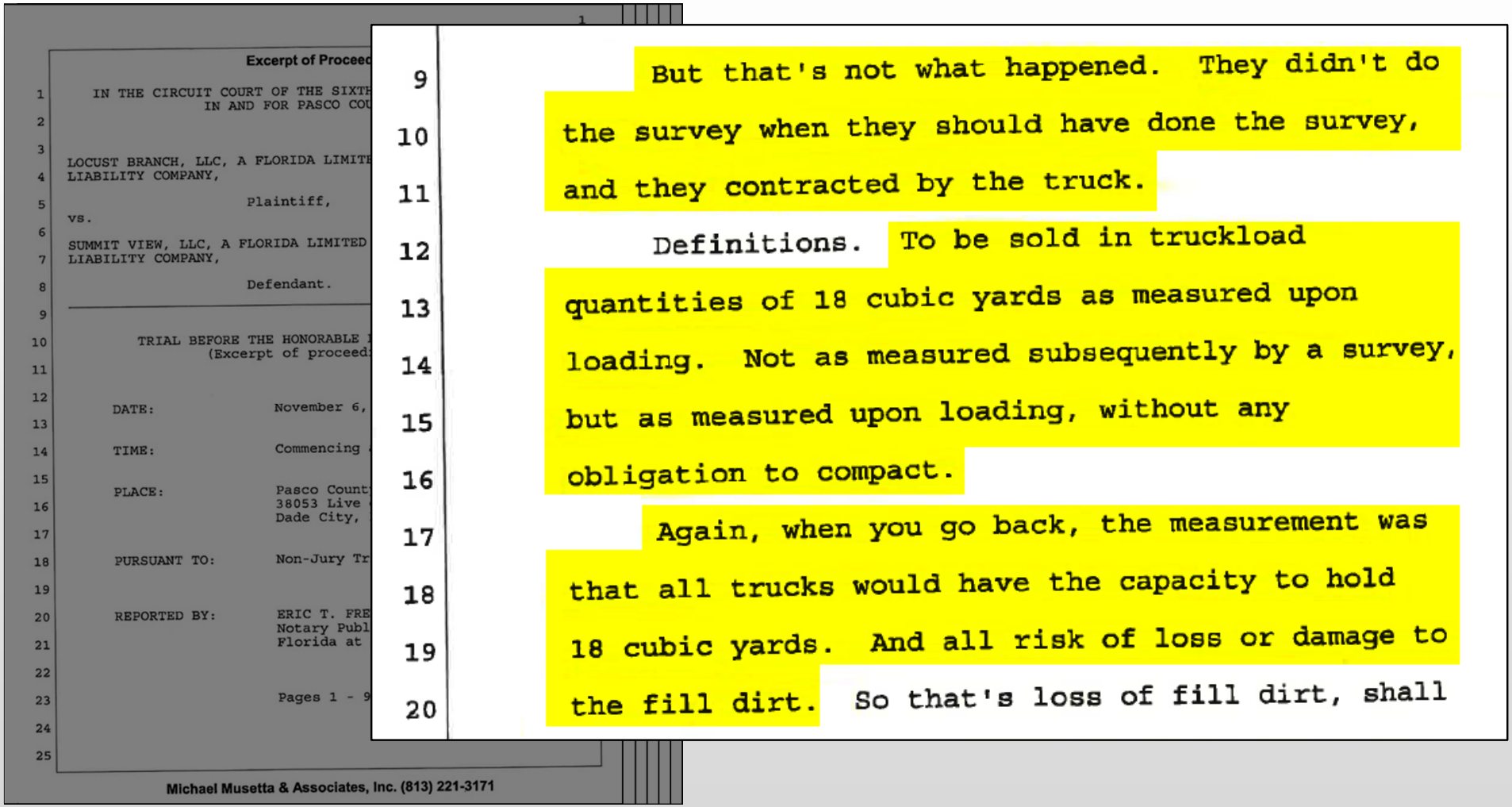
Pages 1 - 9

Michael Musetta & Associates, Inc. (813) 221-3171

22 And Summit View had the capability. And Larry
23 Woody basically negotiated this contract. And they
24 contracted. Nobody contemplated doing those
25 surveys before this contract. And that's the
1 problem. Because if you had come up with that idea

3 And before you started filling, and after you got
4 everything grubbed and scraped, then you would have
5 done the survey, or you would have agreed to do it
6 just ground level like they said in the initial.

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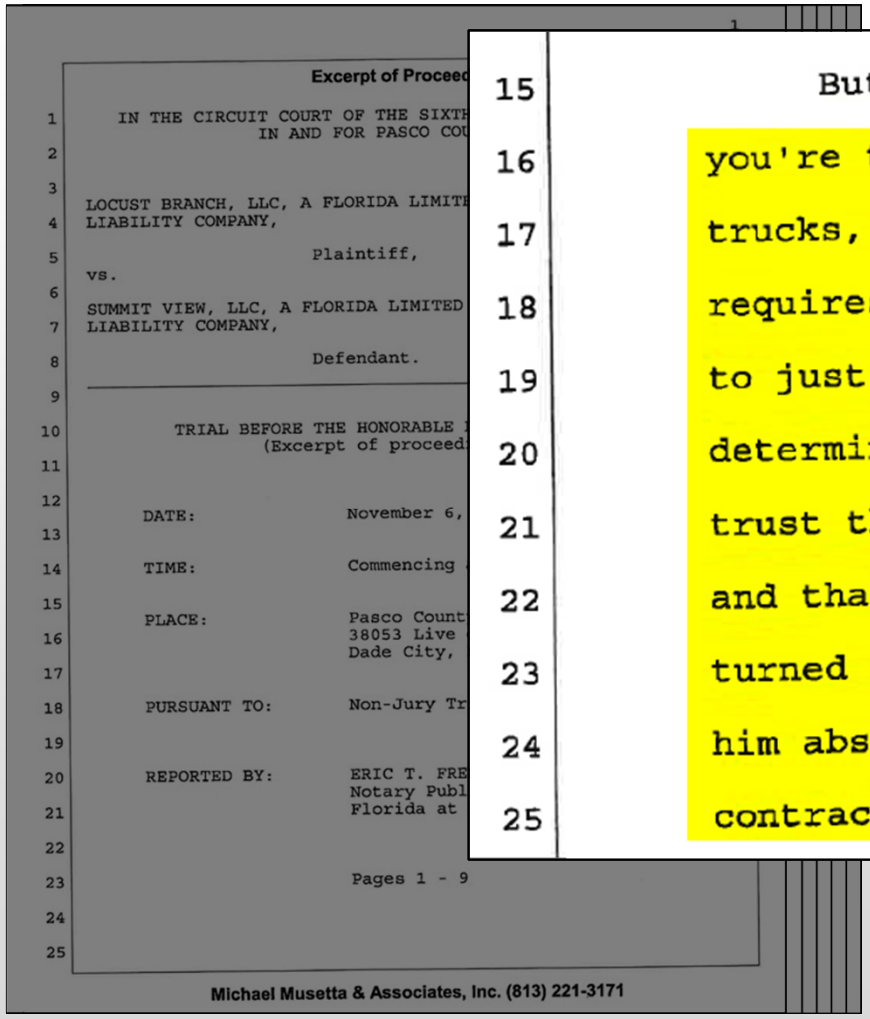
Michael Musetta & Associates, Inc. (813) 221-3171

But that's not what happened. They didn't do the survey when they should have done the survey, and they contracted by the truck.

Definitions. To be sold in truckload quantities of 18 cubic yards as measured upon loading. Not as measured subsequently by a survey, but as measured upon loading, without any obligation to compact.

Again, when you go back, the measurement was that all trucks would have the capacity to hold 18 cubic yards. And all risk of loss or damage to the fill dirt. So that's loss of fill dirt, shall

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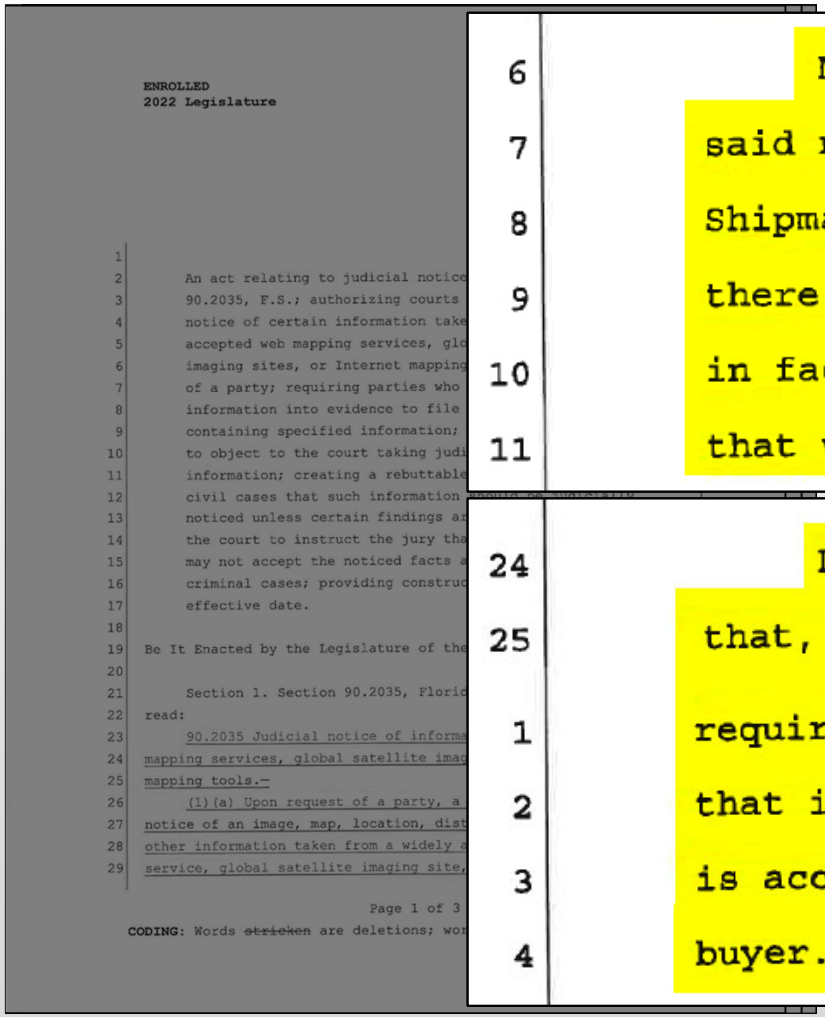
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But you didn't. You did a survey that -- you're talking about you just have to trust in his trucks, but by the way you-all did the surveys, it requires him, who didn't contract for the surveys, to just trust in the surveys, the initial survey to determine what wasn't done right. And he has to trust the second survey, that he wasn't aware of, and that you-all submitted as a pre and post, which turned out it really wasn't. So then that makes him absolutely not trusted. And it's not contracted for.

Excerpt of Proceedings
11/06/2017



ENROLLED
2022 Legislature

An act relating to judicial notice
90.2035, F.S.; authorizing courts
notice of certain information take
accepted web mapping services, glo
imaging sites, or Internet mapping
of a party; requiring parties who
information into evidence to file
containing specified information;
to object to the court taking judi
information; creating a rebuttable
civil cases that such information
noticed unless certain findings ar
the court to instruct the jury tha
may not accept the noticed facts a
criminal cases; providing construc
effective date.

Be It Enacted by the Legislature of the

Section 1. Section 90.2035, Floric
read:
90.2035 Judicial notice of informa
mapping services, global satellite imag
mapping tools.—
(1)(a) Upon request of a party, a
notice of an image, map, location, dist
other information taken from a widely a
service, global satellite imaging site,

Page 1 of 3

CODING: Words ~~stricken~~ are deletions; wor

Mr. Chandler and Mr. Woody uncategorically said no dirt was removed, but Keene, DesChamps, Shipman, and Nabozny uncategorically said that there were 18 cubic yards in the truck, that they, in fact, thought five scoops was overkill, that that was more than 5 cubic yards.

Dr. Weiland has absolutely no reason to do that, because Dr. Weiland has a contract that requires him to provide 18 cubic yard trucks, and that is the measurement. And that once that dirt is accepted, the risk for loss of dirt is on the buyer. That's in the contract.

Demonstrative Exhibits: PowerPoint



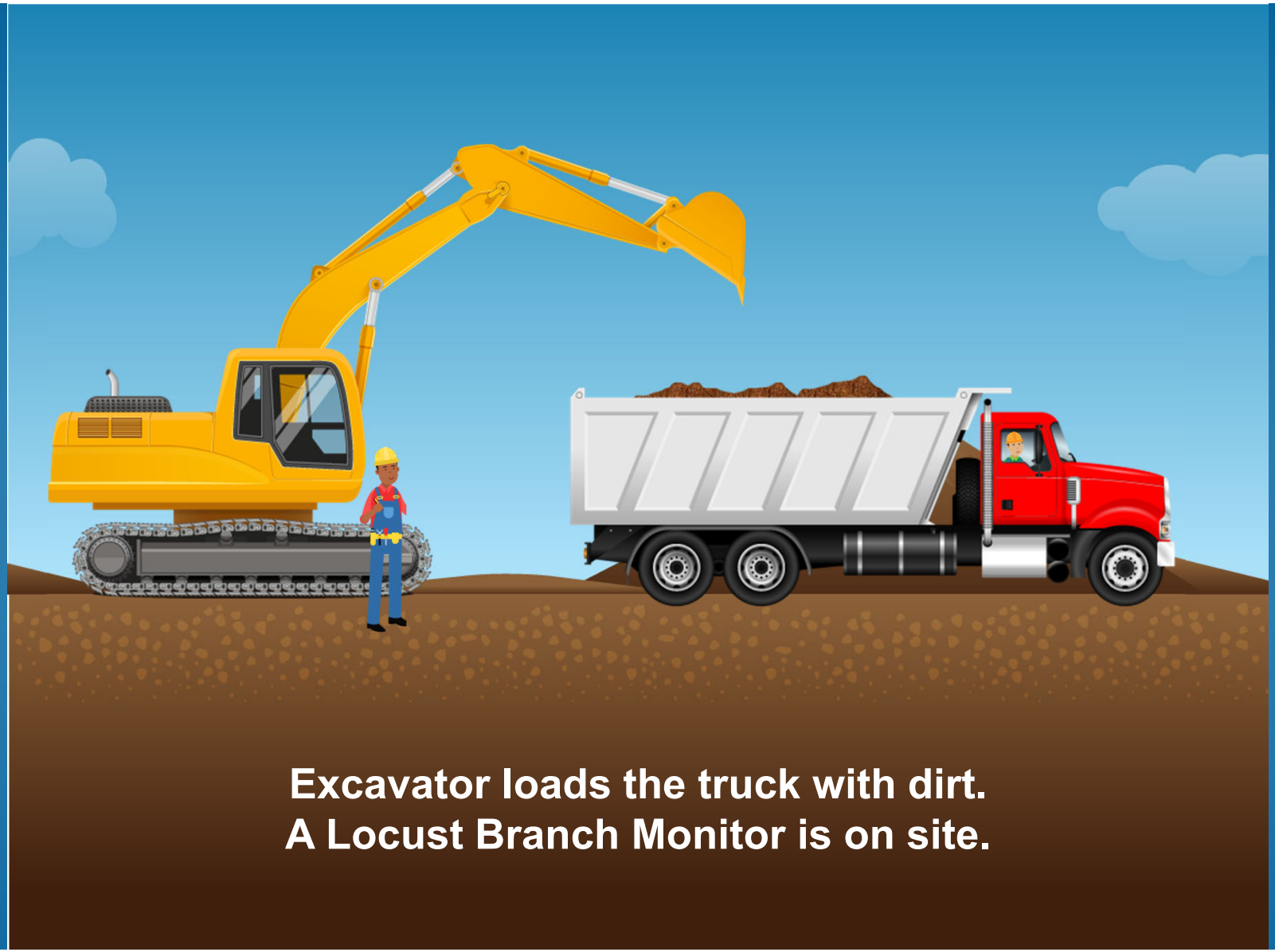
“Fill Dirt” shall mean raw earth, unsifted, unfiltered and unaltered in any fashion from its original condition as found at the time of excavation without any obligation to compact before measuring.



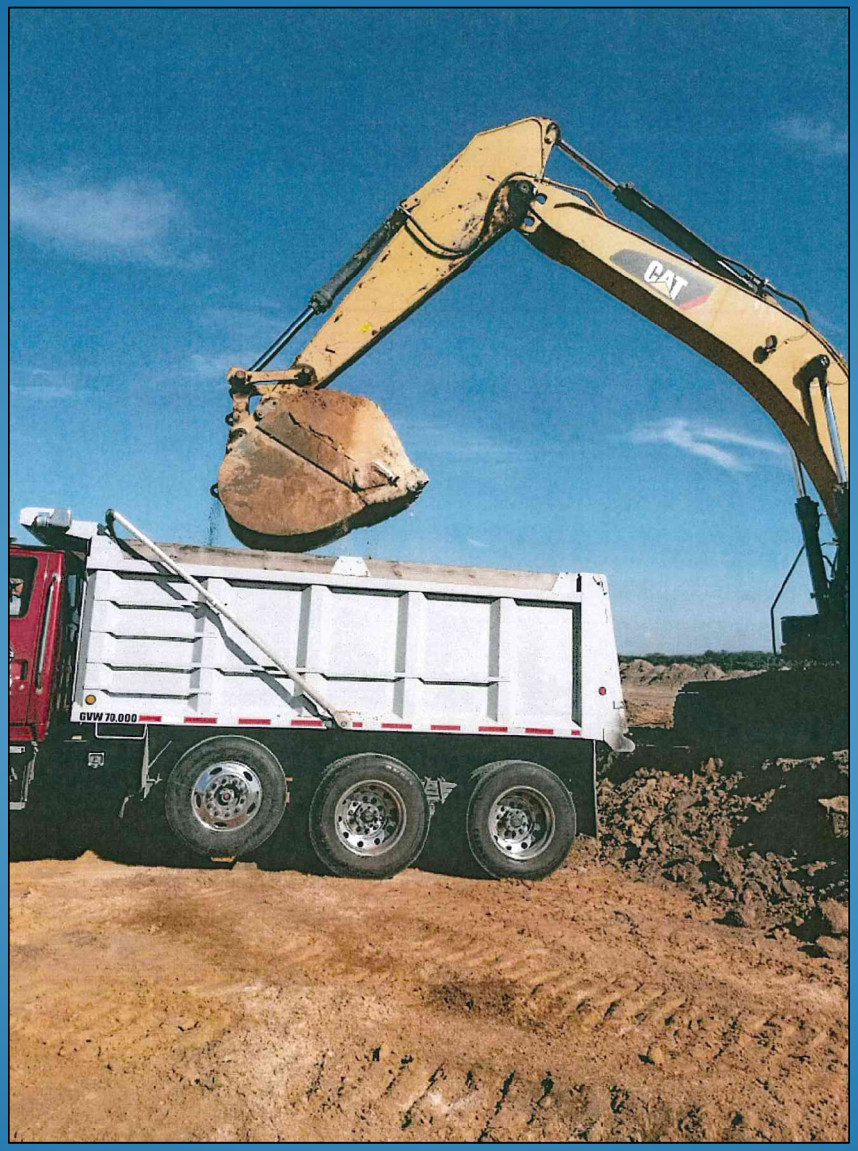
Ex. D247-023



Ex. D247-004



Excavator loads the truck with dirt.
A Locust Branch Monitor is on site.



Ex. D247-007



Still from Ex. D245

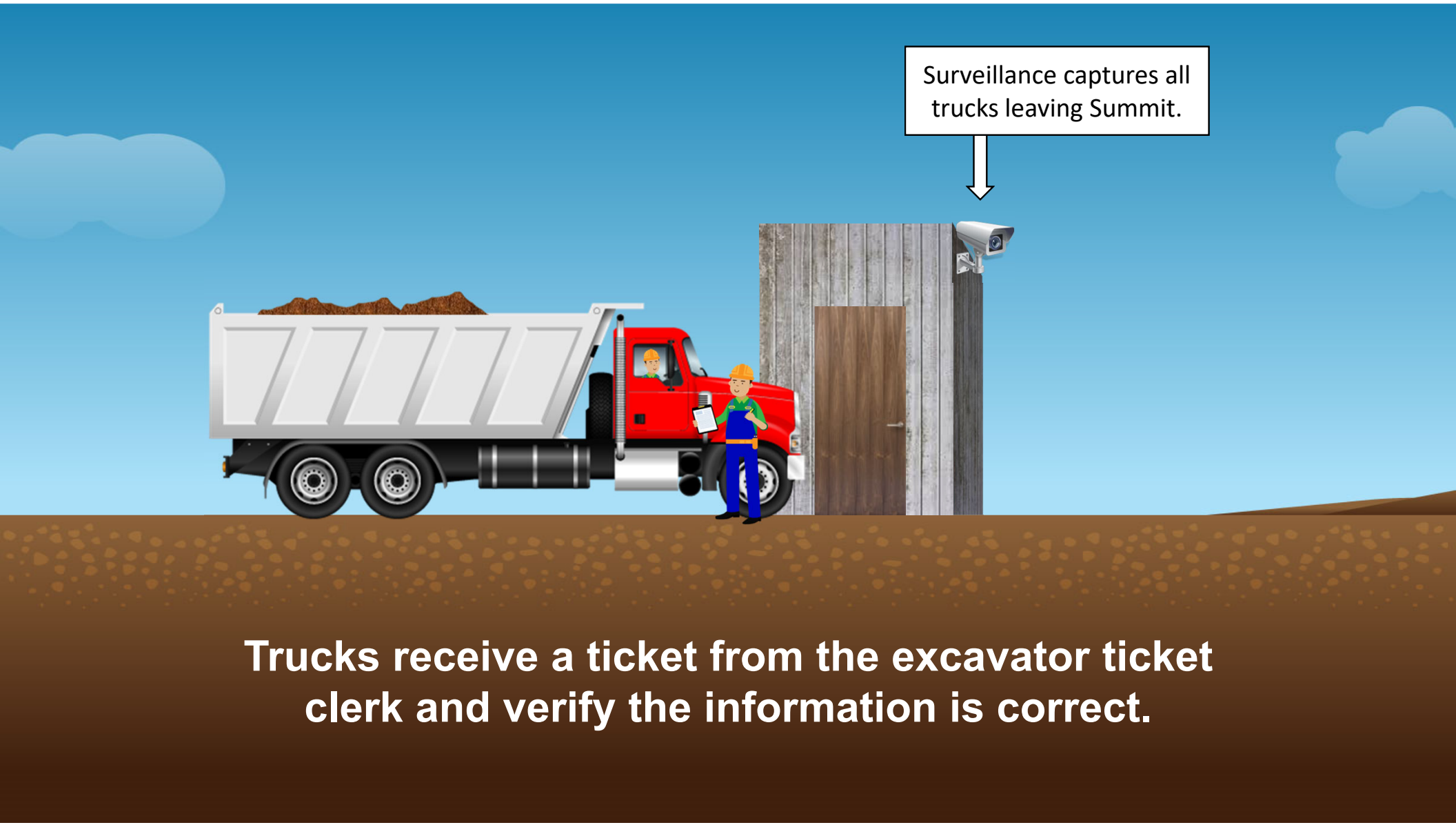


Ex. D247-059



Still from Ex. D245

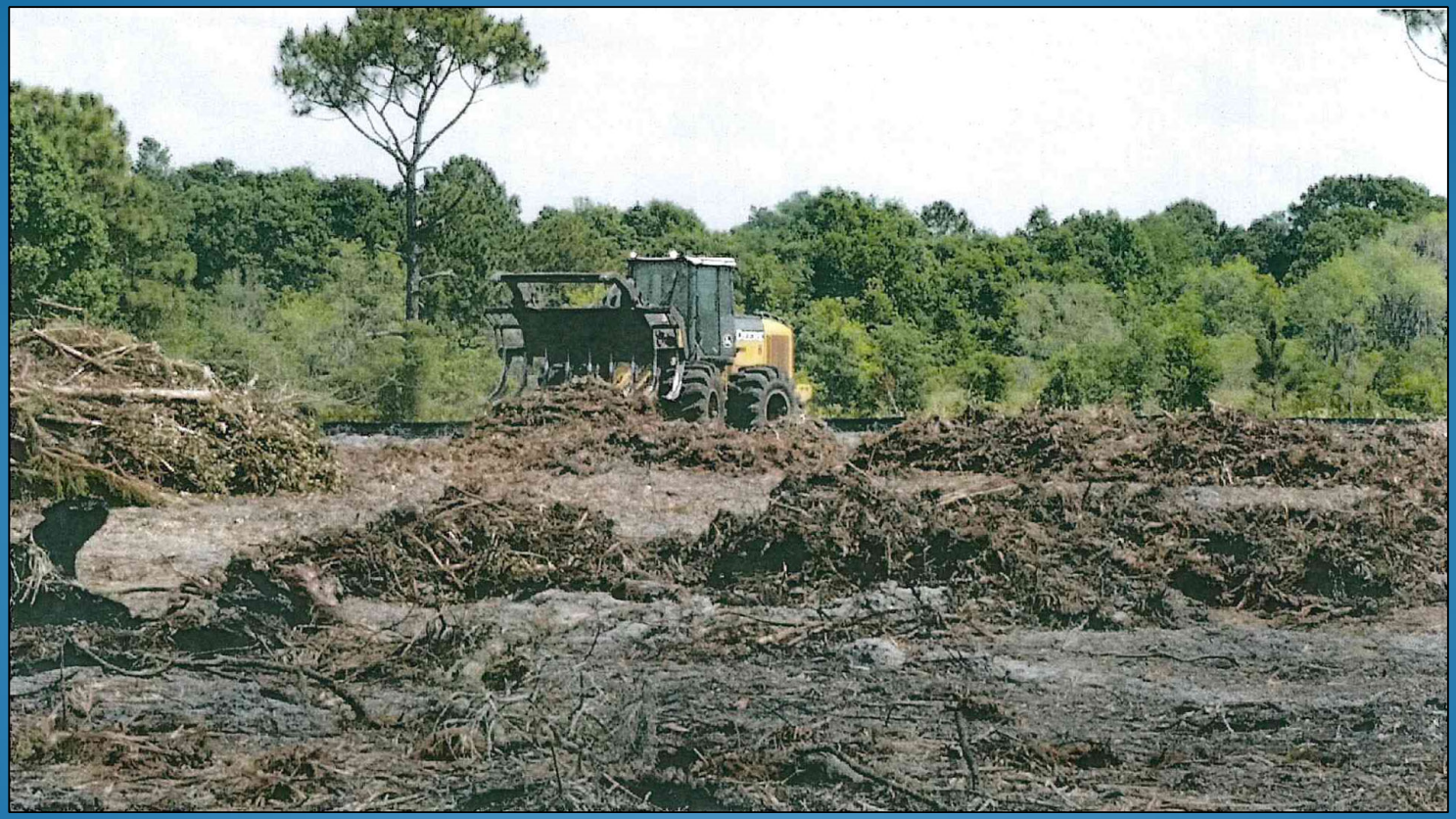




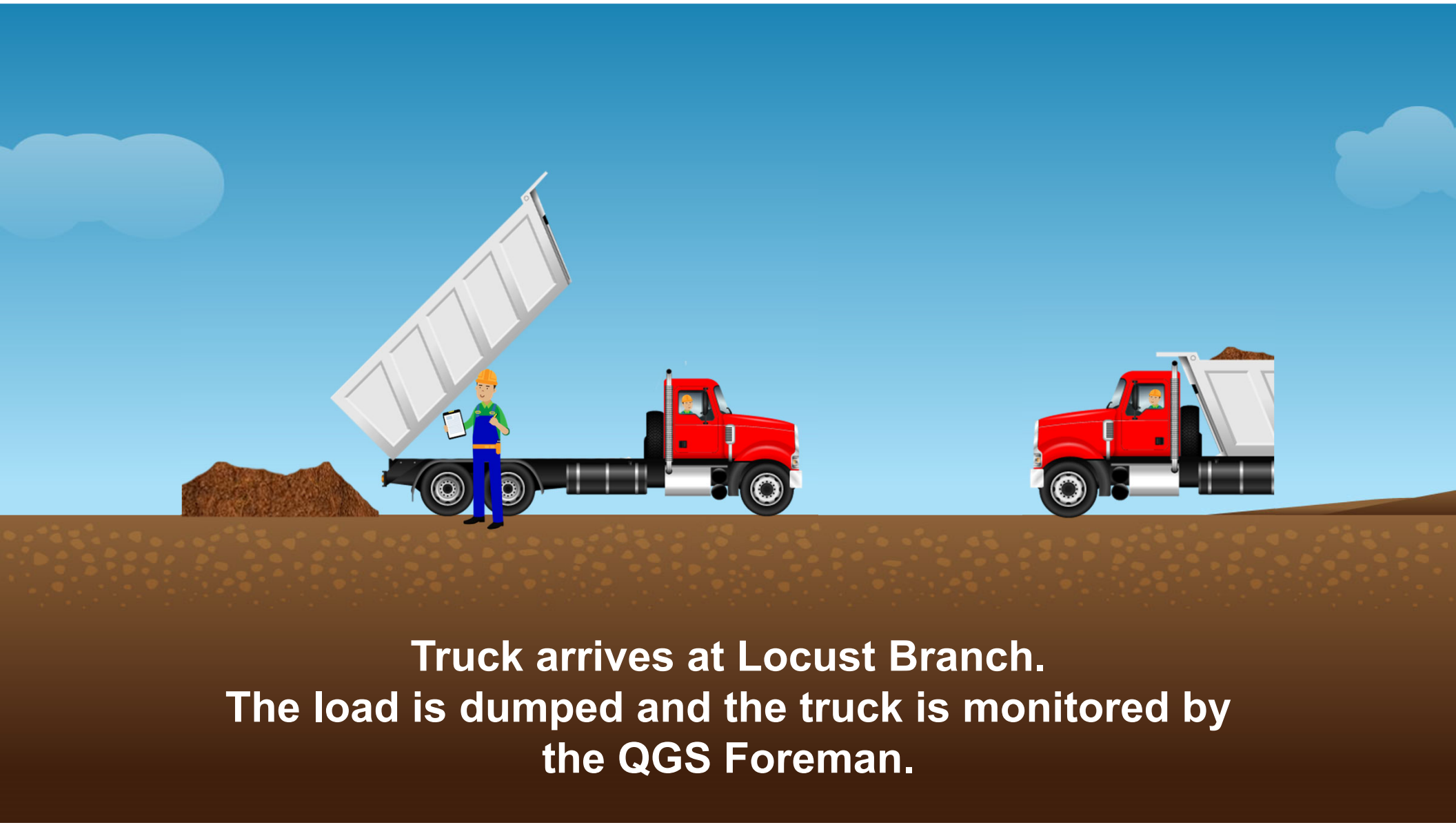
Trucks receive a ticket from the excavator ticket clerk and verify the information is correct.



Still from Ex. D290



Ex. D012-003



Truck arrives at Locust Branch.
The load is dumped and the truck is monitored by the QGS Foreman.



QGS Monitor





QGS Monitor

Ex. D012-021



QGS Monitor

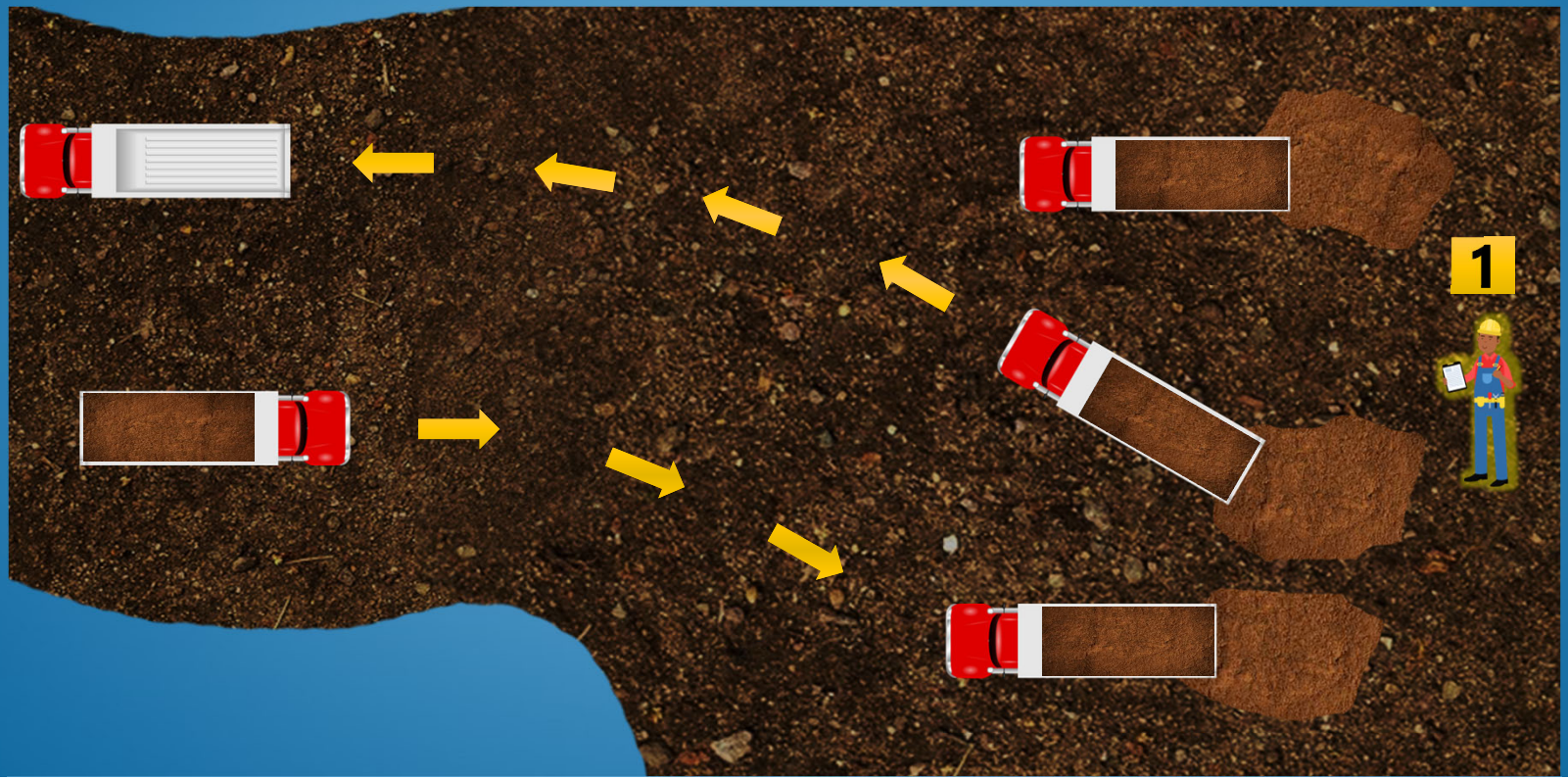
Ex. D012-020

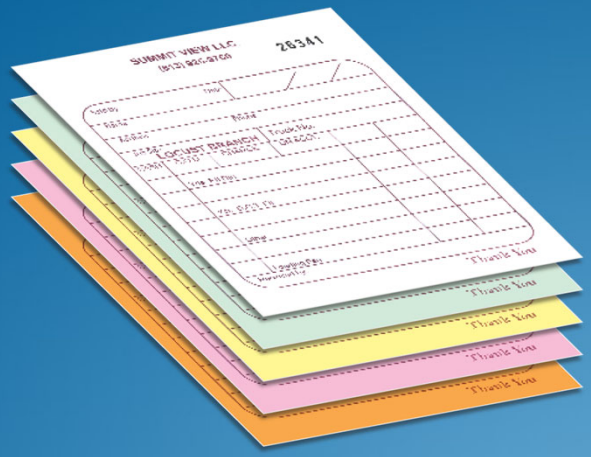
Dirt Being Rolled Into The Site


CV122
CV122
12/09/2015 09:38



The truck arrives at the Locust Branch site and is informed by the Forman of QGS, Locust's contractor/agent, where to dump the load. The Forman requires parts 3, 4 and 5 of the ticket. The load is received and the tickets are stamped "Received by QGS Development, Inc." and signed with the Forman's initials.





SUMMIT VIEW LLC.
(727) 787-6330

№ 11308

Sold by Date 6/25/

Name

Address Phone

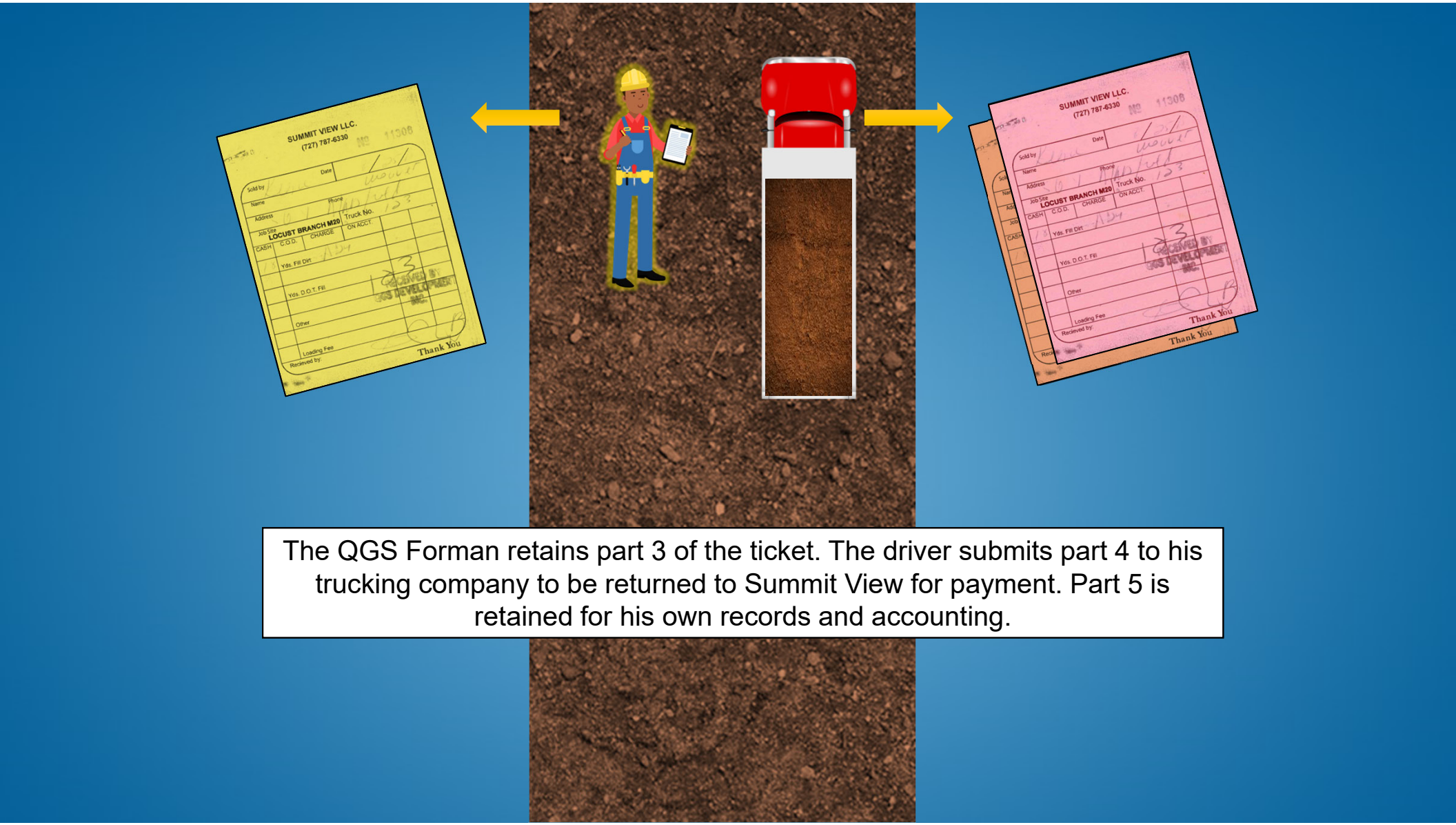
Job Site **LOCUST BRANCH M20** Truck No. 123

CASH	C.O.D.	CHARGE	ON ACCT.		
18	Yds. Fill Dirt				
	Yds. D.O.T. Fill				
	Other				
	Loading Fee				

Recieved by:

RECEIVED BY
GGS DEVELOPMENT
INC.

Thank You



The QGS Forman retains part 3 of the ticket. The driver submits part 4 to his trucking company to be returned to Summit View for payment. Part 5 is retained for his own records and accounting.

1 Creation of Ticket (5 Pages)

2 Excavator Clerk keeps pages 1 & 2

3 To Locust Branch

4 Signed by QGS (buyer/contractor agent)

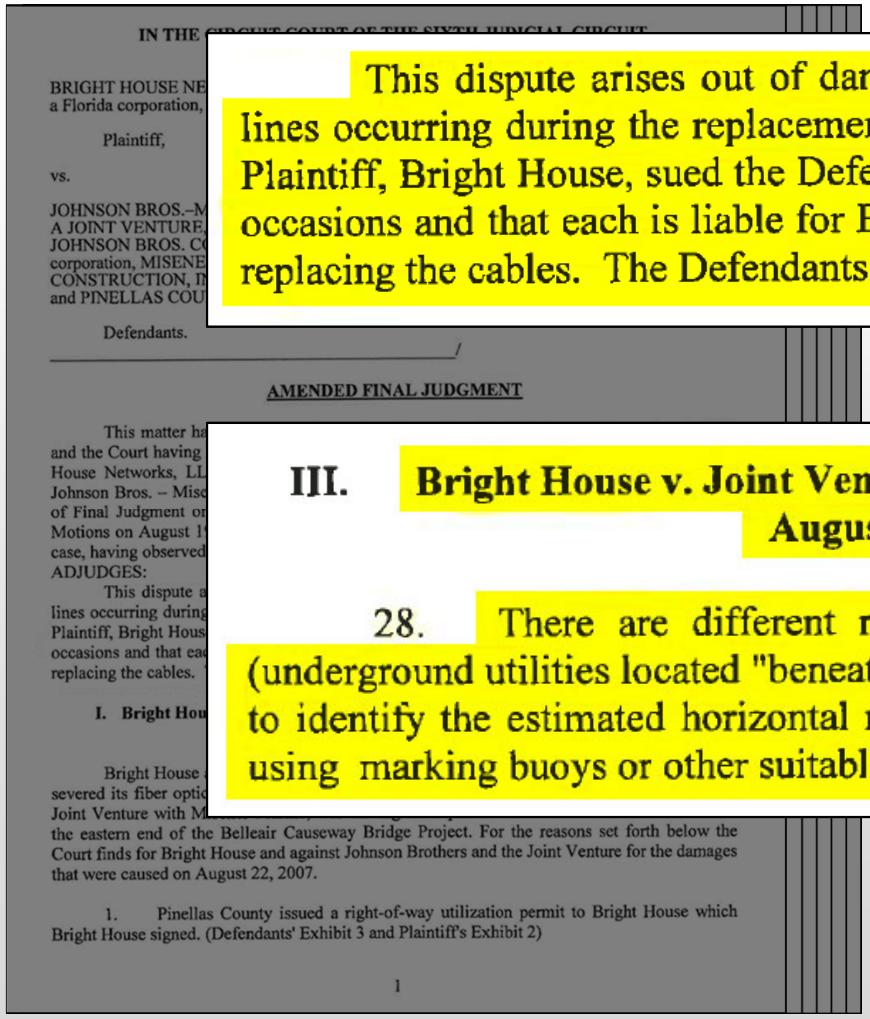
5 Reconciled Summit/QGS/Locust

6 Summit Invoice

7 Locust Acknowledgment of acceptance & Payment



Amended Final Judgement
11/28/2016



IN THE

BRIGHT HOUSE NE
a Florida corporation,

Plaintiff,

vs.

JOHNSON BROS.–M
A JOINT VENTURE,
JOHNSON BROS. C
corporation, MISENE
CONSTRUCTION, I
and PINELLAS COU

Defendants.

/

AMENDED FINAL JUDGMENT

This matter h
and the Court having
House Networks, LL
Johnson Bros. – Misc
of Final Judgment or
Motions on August 1
case, having observed
ADJUDGES:

This dispute a
lines occurring during
Plaintiff, Bright Hous
occasions and that ea
replacing the cables.

I. Bright Hou

Bright House
severed its fiber optic
Joint Venture with M
the eastern end of the Belleair Causeway Bridge Project. For the reasons set forth below the Court finds for Bright House and against Johnson Brothers and the Joint Venture for the damages that were caused on August 22, 2007.

1. Pinellas County issued a right-of-way utilization permit to Bright House which Bright House signed. (Defendants' Exhibit 3 and Plaintiff's Exhibit 2)

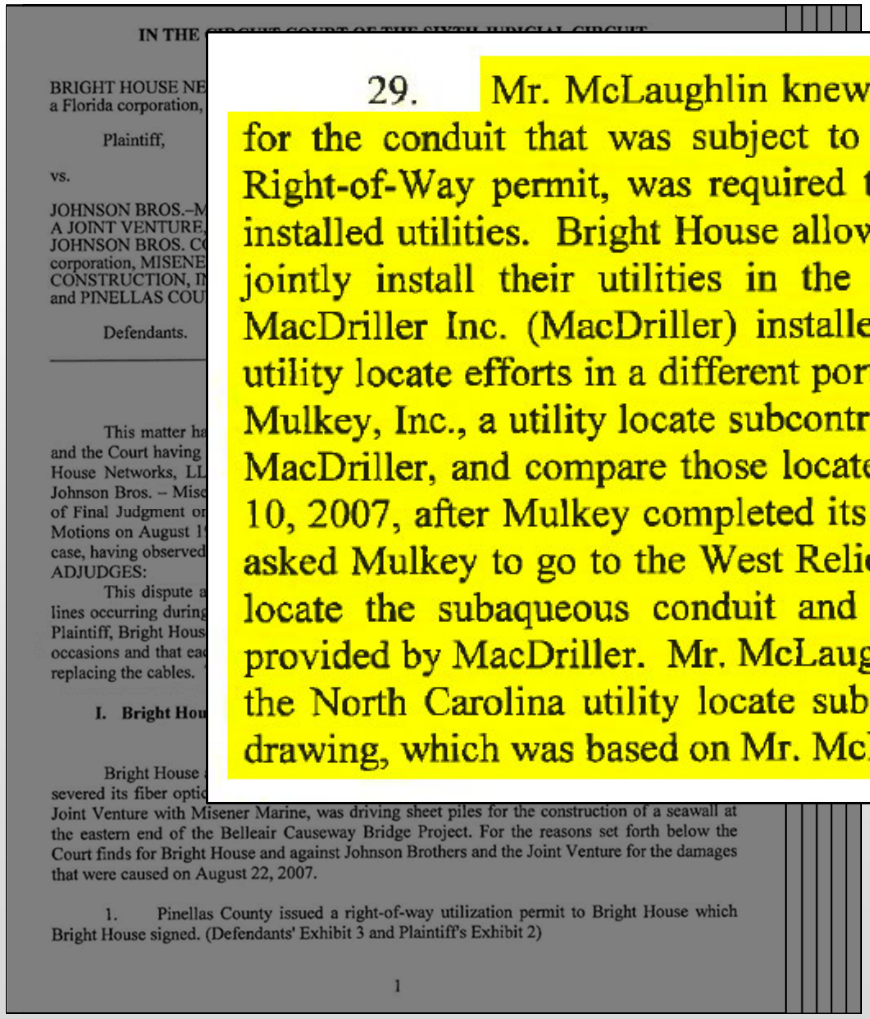
1

This dispute arises out of damage to underground and subaqueous Bright House utility lines occurring during the replacement of the Belleair Causeway Bridge in 2007 and 2008. The Plaintiff, Bright House, sued the Defendants alleging they damaged the fiber optic cables on two occasions and that each is liable for Bright House's costs in temporarily repairing and ultimately replacing the cables. The Defendants asserted various counterclaims and crossclaims.

III. Bright House v. Joint Venture between Johnson Brothers and Misener Marine - August 11, 2008 (SECOND HIT)

28. There are different rules with respect to the locate process for subaqueous (underground utilities located "beneath the waters of the state") conduits. The utility is required to identify the estimated horizontal route of the underground facility within ten business days, using marking buoys or other suitable devices.

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29. Mr. McLaughlin knew when he was installing the underground subaqueous bore for the conduit that was subject to the Second Hit and that Bright House, pursuant to the Right-of-Way permit, was required to provide "exact locations" with as-built drawings of its installed utilities. Bright House allowed Progress Energy to take the lead on their agreement to jointly install their utilities in the same directional bore. On November 10, 2007, after MacDriller Inc. (MacDriller) installed the subaqueous utility conduit and in connection with utility locate efforts in a different portion of the Project, Progress Energy and Bright House paid Mulkey, Inc., a utility locate subcontractor from North Carolina, to locate the conduits placed by MacDriller, and compare those locates with the Compass Point as-built survey. On November 10, 2007, after Mulkey completed its locates on another portion of the Project, Progress Energy asked Mulkey to go to the West Relief Channel, where the Second Hit ultimately took place, to locate the subaqueous conduit and compare its locate readings with the as-built drawings provided by MacDriller. Mr. McLaughlin and Compass Point were impressed by the accuracy of the North Carolina utility locate subcontractor and how that information matched the as-built drawing, which was based on Mr. McLaughlin's TruTracker Guidance System.

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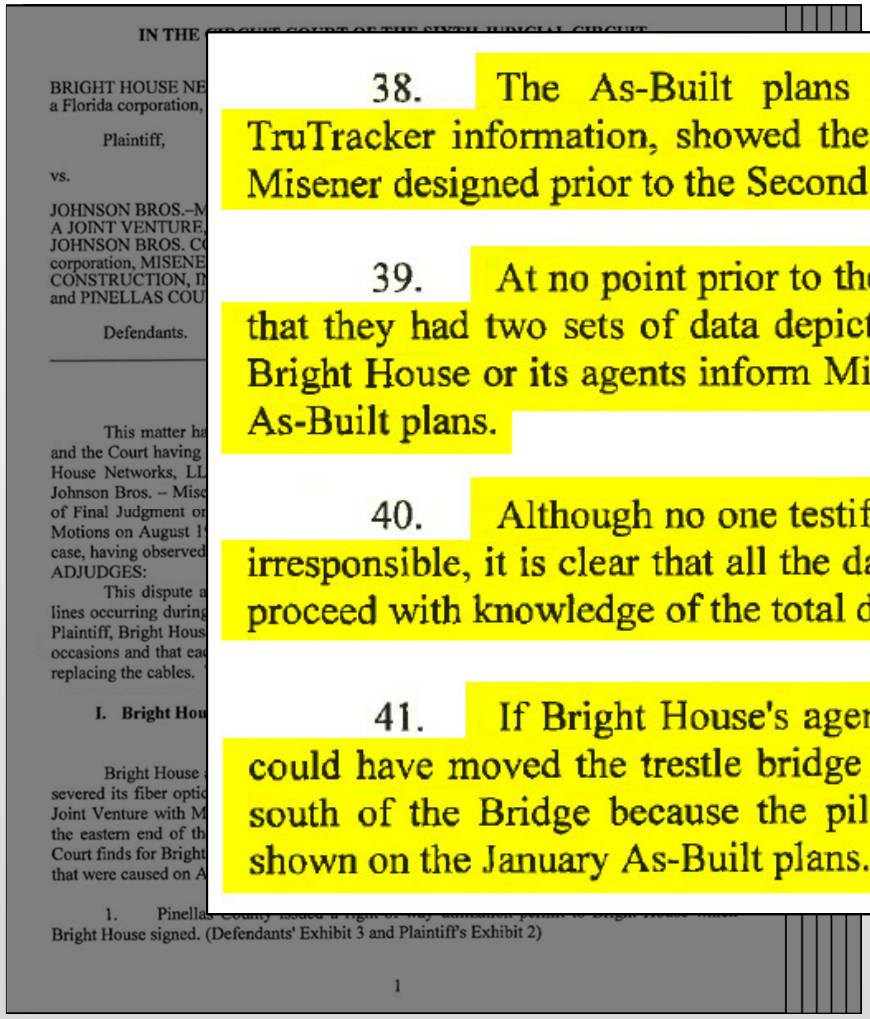
33. Despite being fully informed of Misener's trestle plan, neither Bright House nor Progress Energy objected to its installation or Misener working near the conduit.

34. Although Mr. McLaughlin repeatedly represented that the As-Built plans were accurate and were reliable, Mr. McLaughlin also stated that the contractors should stay at least 10 feet away laterally and vertically from the conduit. The Court finds no 10 foot standard applies to subaqueous utilities, as was confirmed during the testimony of Bright House's expert.

35. On the third set of pipe piles, Misener used the vibratory hammer until it reached -32 feet elevation, which was four feet below the depth of the conduit shown on the As-Built plans. It then used the impact hammer and on the third or fourth blow of the hammer, at about -33.5 feet elevation, the conduit was struck. The January As-Built plans showed the conduit's depth at -28 feet elevation. Both the conduit's lateral location and depth were inaccurately depicted on the January As-Built plans.

36. It is undisputed that Compass Point did not use Mr. McLaughlin's TruTracker data in preparing the as-built where the Second Hit took place. Mr. McLaughlin, in his deposition, testified that he only figured out what had happened after the hit. The North Carolina data, which was not the most accurate data available, was in fact used. However, the Second Hit took place at the exact location where the TruTracker data showed the line would be.

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38. The As-Built plans produced after the Second Hit, which contained the TruTracker information, showed the conduit in the exact location of the pipe pile layout that Misener designed prior to the Second Hit.

39. At no point prior to the Second Hit did Bright House or its agents inform Misener that they had two sets of data depicting the Bright House line in different locations. Nor, did Bright House or its agents inform Misener that the most accurate data was not used to create the As-Built plans.

40. Although no one testified that the use of the North Carolina data was negligent or irresponsible, it is clear that all the data gathered should have been shared so that Misener could proceed with knowledge of the total data and make adjustments or devise another plan.

41. If Bright House's agents had provided the TruTracker information to Misener, it could have moved the trestle bridge closer to the existing bridge, but Misener placed it further south of the Bridge because the pilings would have conflicted with the conduit's location as shown on the January As-Built plans.

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Defendants.

44. Based upon all the evidence, the Court finds that Plaintiff did not meet its burden to prove by a preponderance of the evidence that Misener and Johnson Bros. were legally at fault for the Second Hit.

45. The Court finds that based on all of the evidence that Misener and Johnson Bros. met their burden of proof to prove by a preponderance of evidence that Bright House was negligent for the Second Hit.

This matter having come on for trial on November 30, 2015 through December 4, 2015 and the Court having heard argument on January 15, 2016 and having heard argument on Bright House Networks, LLC's Motion for Rehearing and Reconsideration of Final Judgment and Johnson Bros. – Misener Marine – A Joint Venture's Motion for Clarification and Amendment of Final Judgment on July 1, 2016 (collectively the "Motions") and entered an Order on the Motions on August 19, 2016 and the Court being apprised of the pleadings and premises in the case, having observed the witnesses, reviewed the exhibits and case law, FINDS, ORDERS AND ADJUDGES:

This dispute arises out of damage to underground and subaqueous Bright House utility lines occurring during the replacement of the Belleair Causeway Bridge in 2007 and 2008. The Plaintiff, Bright House, sued the Defendants alleging they damaged the fiber optic cables on two occasions and that each is liable for Bright House's costs in temporarily repairing and ultimately replacing the cables. The Defendants asserted various counterclaims and crossclaims.

I. Bright House v. Joint Venture between Johnson Brothers and Misener Marine - August 22, 2007 (FIRST HIT)

Bright House asserts that the Joint Venture and specifically Johnson Brothers negligently severed its fiber optic cable on August 22, 2007. On that date, Johnson Brothers, as part of its Joint Venture with Misener Marine, was driving sheet piles for the construction of a seawall at the eastern end of the Belleair Causeway Bridge Project. For the reasons set forth below the Court finds for Bright House and against Johnson Brothers and the Joint Venture for the damages that were caused on August 22, 2007.

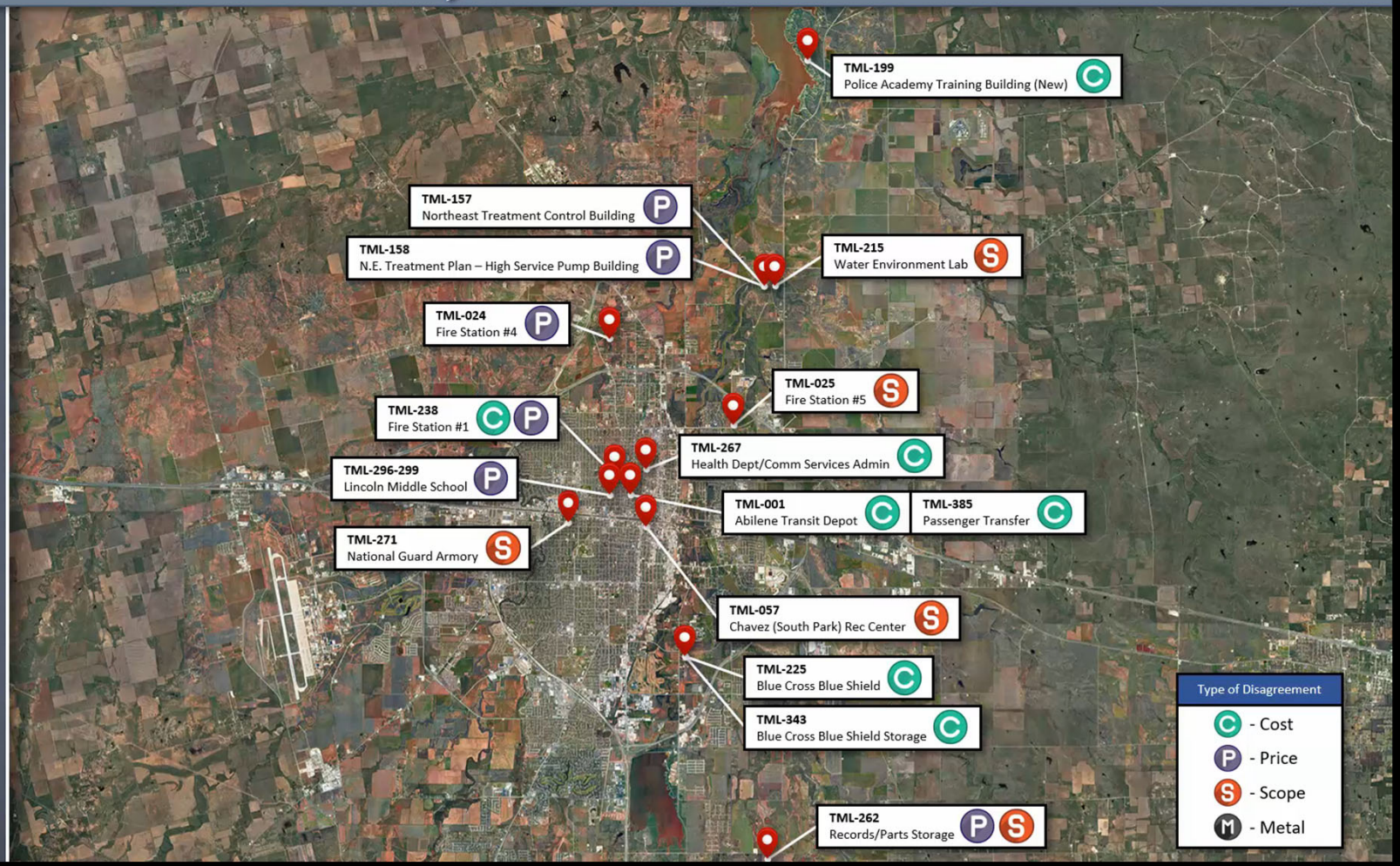
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Demonstrative Exhibits: Interactive Exhibits



City of Abilene

- TML-001
- TML-024
- TML-025
- TML-057
- TML-157
- TML-158
- TML-199
- TML-215
- TML-225
- TML-238
- TML-262
- TML-267
- TML-271
- TML-296-299
- TML-343
- TML-385



Arbitration
04/21/2022

Claim for Extra Work in the Amount of $106,730

18. the design firm for the fishing pier, referenced the FDOT Specification Section 455-5.15 for timber piles. The applicable specifications provided that the pile head at cut-off elevation could vary up to 3 inches laterally in the X or Y coordinate from the Plan position indicated in the Plans and that the Axial Alignment could vary up to ¼ inch per foot as a driving tolerance from the vertical or batter line indicated in the Plans. The final elevation of the pile head could be as much as 1 1/2 inches above, or up to 4 inches below, the elevation shown in the Plans.[8]

19. In addition, the specifications include material tolerances allowed flared ends with butt end diameters that could vary from 12 to 20 inches and straightness tolerances of one percent per foot, which on 50-foot piles could be six inches. Theses tolerances can result in banana shaped piles. (Vol. II, p.94 l.18-p. 104 l.19).

20. inspected and confirmed the timber piles met the minimum requirements (Vol. II p. 41 l. l0-13). drove the timber piles with a vibratory hammer between 45 to 50 ft. in length meeting the requirements for FDOT Section 953 (JB Ex. 1, p. B-2-2)((Vol. II, p. 76 l. 14-p. 77 l.9).

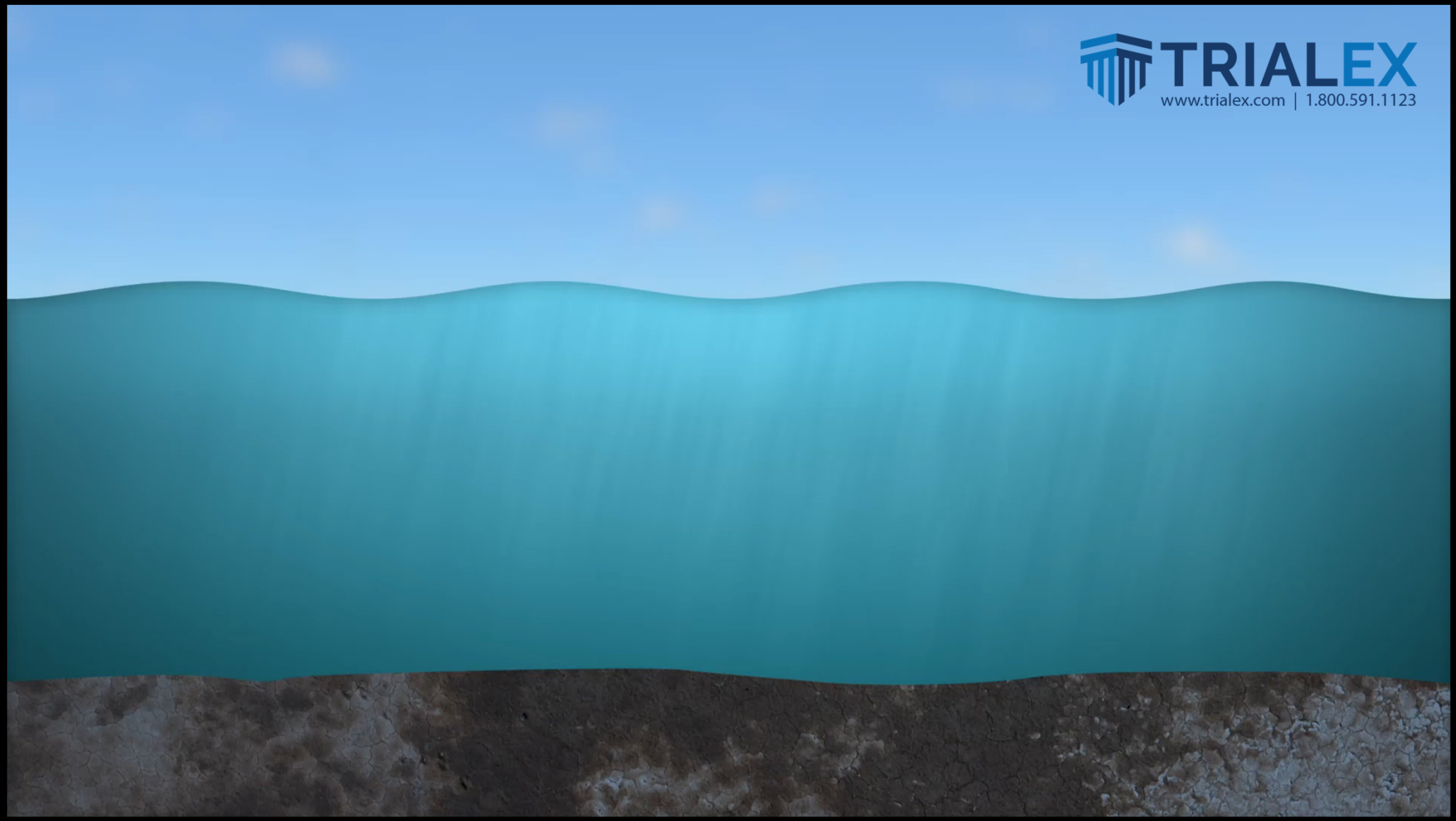
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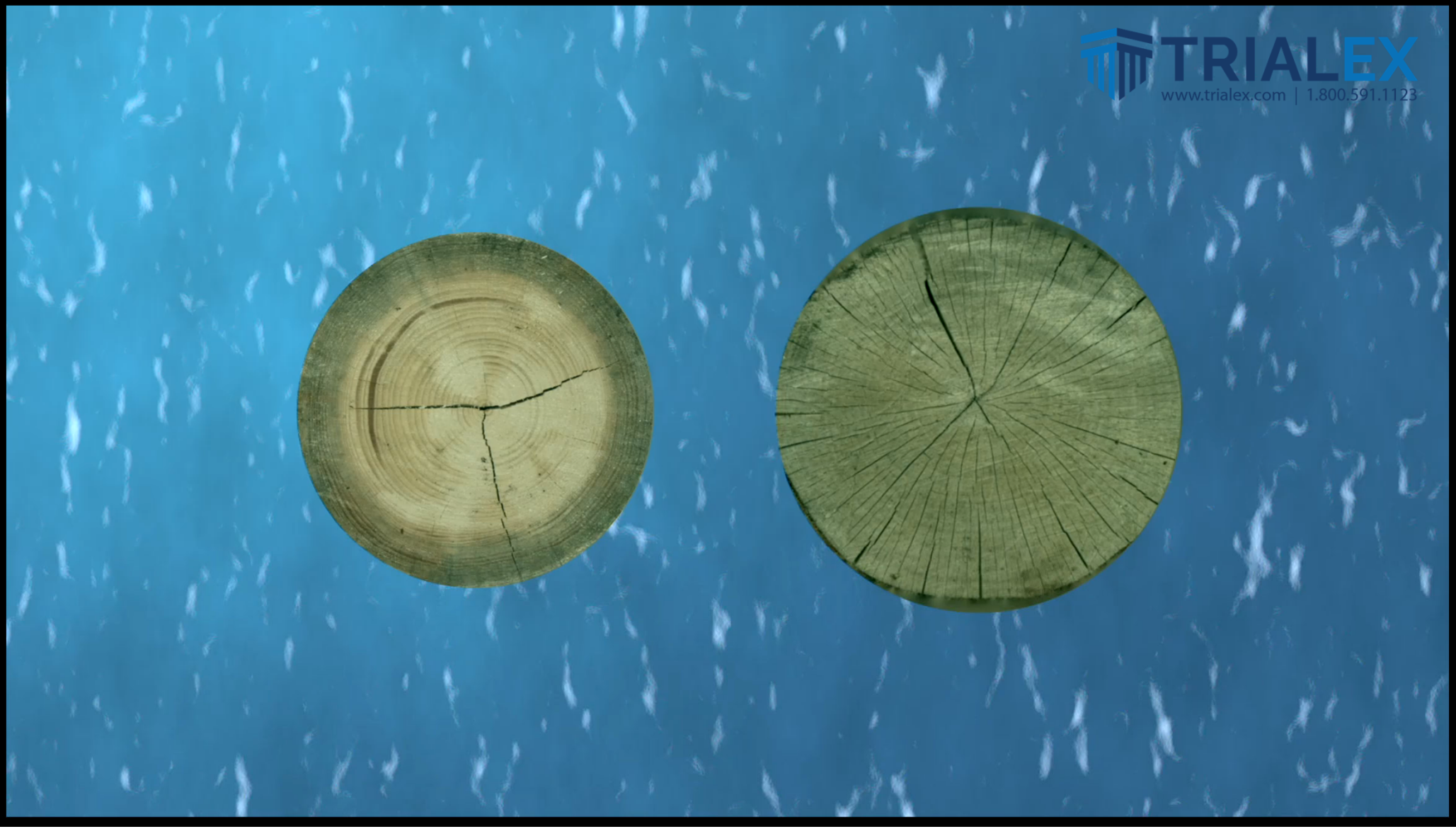
23. The work started on the East Fishing Pier. Both struggled to get the framing and handrailing in place, moving many piles which were properly placed and a few piles that were not properly placed (Vol. II, p. 75 l. 2-9).[10] As is often the case, it took a while to identify the actual cause for the difficulties both encountered on the East Fishing Pier.

24. When subsequently drove the piles for the West Fishing Pier, continued to insist that piles driven by Johnson were misaligned and/or mislocated, which, in turn, made it very difficult for to build the framing and handrailing. However, ultimately drove the piles per the plans and specifications including select piles that had to be re-driven. The issues experienced by were inherently caused by the specification of timber piles and design of the fishing piers extending the piles into pier superstructure.

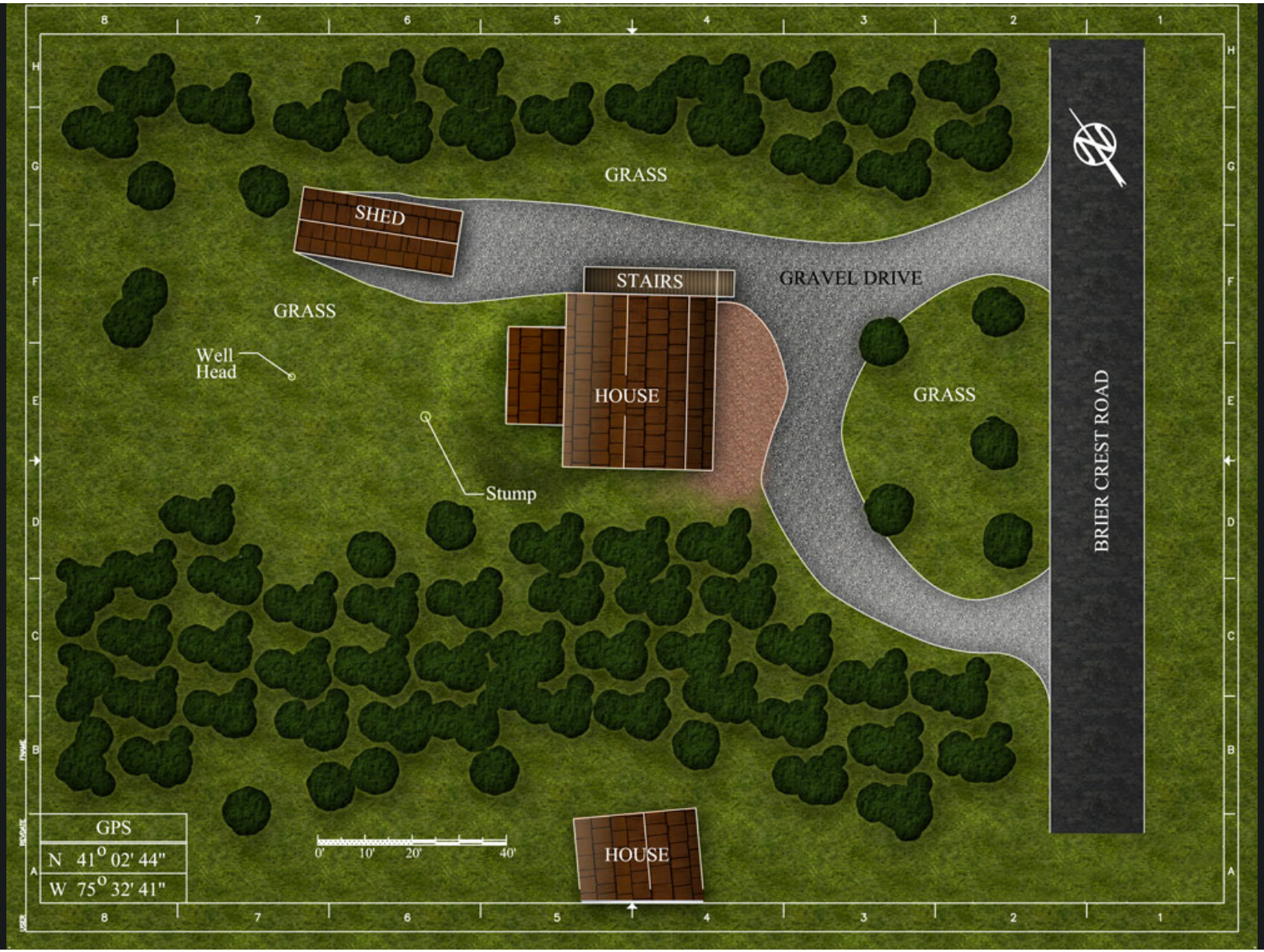
29. Ultimately, the design appears to have caused what experienced. After significant effort, constructed an acceptable pier and handrail despite all of the pile driving, material and other tolerance issues inherent in the design that were beyond the control of either party. repeatedly communicated its willingness to pass through a claim to the County for based on the additional work done, but did not submit that claim in the form required by the Subcontract and the Contract. (Vol. II, p.104 l. 20-p. 105 l. 11).

Demonstrative Exhibits: Animation

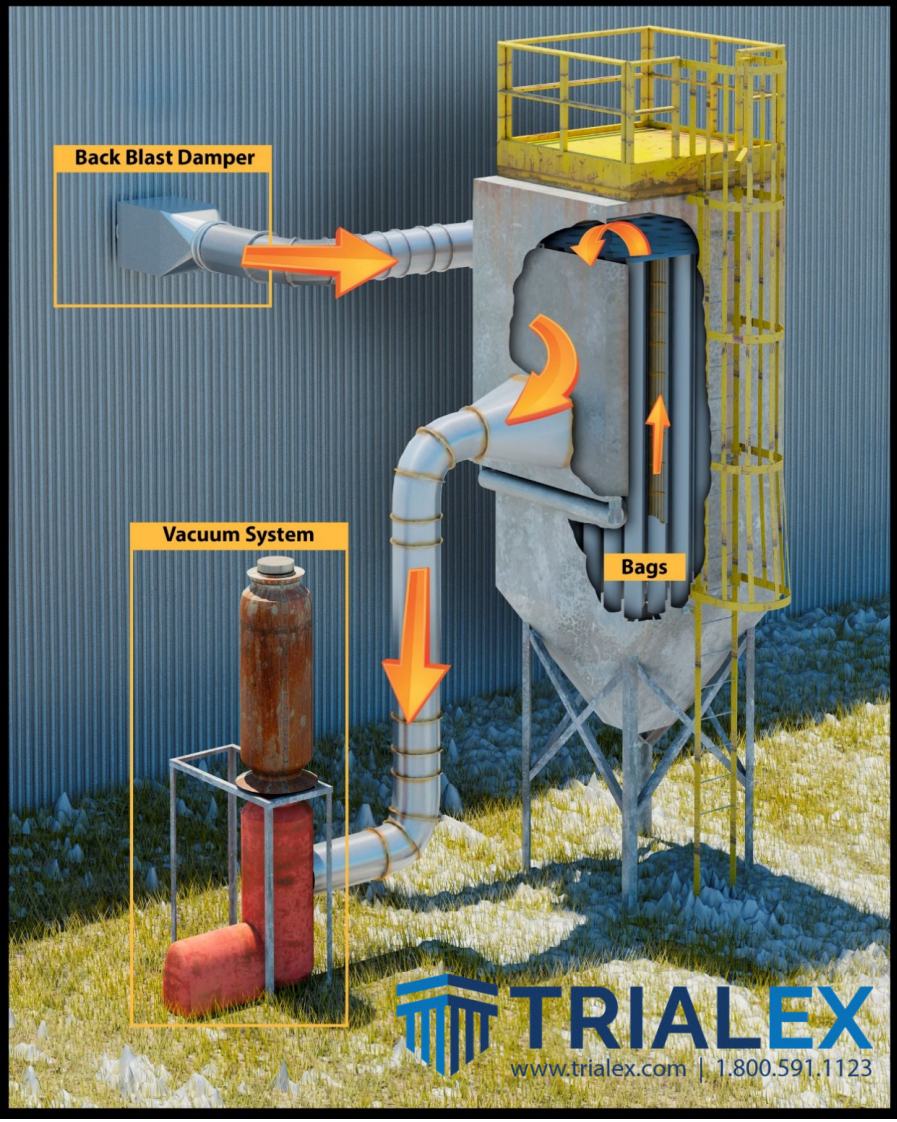

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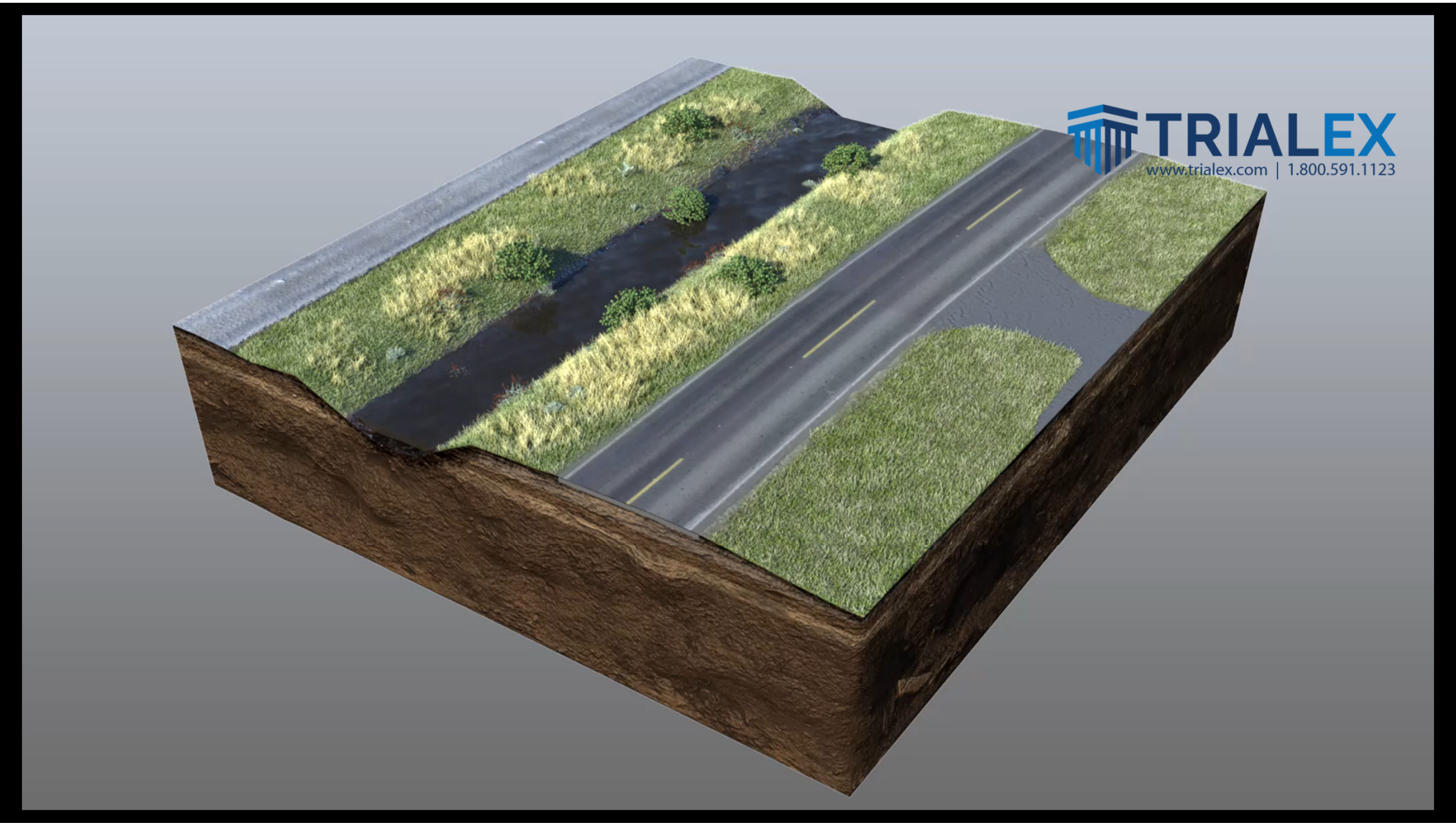

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GRASS
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Demonstratives and Animation for Construction Cases

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