

STATE OF MAINE

LINCOLN, ss.
DOCKET NO. WISSC-CV-2022-32

SUPERIOR COURT
Civil Action

TIMOTHY L. HARRINGTON,
in his capacity as
Trustee of the GFG 401K
Trust,

Plaintiff,

vs.

S.R. GRIFFIN
CONSTRUCTION, INC.,

Defendant.

DEPOSITION OF:

MICHAEL R. HUGHES

Taken before Lynne M. Morrison, Notary
Public in and for the State of Maine, pursuant
to notice, at the offices of Bopp & Guecia,
121 Main Street, Yarmouth, Maine, on
April 25, 2024, commencing at 1:05 p.m.

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13 Also Present:

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15
16
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- - - - -

1 (The oath was administered by the
2 reporter.)

3 * * * * *

4 S T I P U L A T I O N

5 It is hereby agreed by and between the
6 parties that signature is not waived.

7 * * * * *

8 T R A N S C R I P T O F T E S T I M O N Y

9 * * * * *

10 MICHAEL R. HUGHES, having been duly sworn by the
11 Notary Public, was deposed and testified as
12 follows:

13 E X A M I N A T I O N

14 BY MR. BOPP:

15 Q. Good morning, Mr. Hughes.

16 A. Good morning.

17 Q. My name is Fred Bopp, and I represent the
18 plaintiff in this matter, Timothy Harrington
19 as Trustee of the GFG 401K Trust. And
20 Mr. Harrington is here with us today.

21 Can you please state your name for the
22 record and spell your last name.

23 A. Michael Raymond Hughes, H-U-G-H-E-S.

24 Q. Thank you.

25 So in this deposition, I'm going to be

1 asking you questions, which you'll be
2 answering under oath.

3 You understand that's how that works?

4 A. Mm-hmm.

5 Q. So what we'll need is verbal responses, like a
6 yes or no.

7 A. Yes.

8 Q. Because she's taking down a transcript.

9 And the other thing -- I'll go over some
10 of the ground rules, but the other thing is we
11 should both be careful to wait until we finish
12 speaking before answering or asking a
13 question. That way, she has a nice clean
14 transcript.

15 Is that all right?

16 A. Gotcha, yes.

17 Q. Have you ever been deposed before?

18 A. Yes.

19 Q. How many times?

20 A. In the past, but it was in Colorado -- with my
21 business in Colorado.

22 Q. So just one time before?

23 A. I believe it was one time, yeah.

24 Q. And that was a situation where you were a
25 party to a dispute?

1 A. That was a tree issue involving the state
2 expanding a road, and I was deposed on the --
3 by the -- on the side of the -- representing
4 the state in their case for a road widening
5 project.

6 **Q. So were you an expert in that matter?**

7 A. Yes; mm-hmm.

8 **Q. An expert on behalf of the State of Colorado?**

9 A. Yes, mm-hmm.

10 **Q. And what were the issues, generally, that you**
11 **testified about?**

12 A. Um, it was regarding the value of a line of
13 trees that were required to remove to expand
14 an intersection in Boulder, Colorado.

15 **Q. And was this in state court or federal court?**

16 A. That was in state court, I believe.

17 **Q. Did it ever wind up going to trial?**

18 A. Yes, it did.

19 **Q. So after the deposition, if you're able to**
20 **track down the docket number and the year for**
21 **that matter, that would be great.**

22 A. Yes.

23 **Q. Thanks.**

24 So we've already started asking a few
25 questions, but I wanted to go over some of the

1 ground rules today to make sure we are on the
2 same page. And as you can see, there's a
3 court reporter here who is transcribing
4 everything that we say, and so the ground
5 rules really are as follows: We already
6 covered one of them, which is finishing
7 questions and answers before either one of us
8 speaks again.

9 And you're fine with that, right?

10 A. Yes.

11 Q. Next one we've covered as well, is to provide
12 clear verbal responses out loud, rather than
13 nodding or saying mm-hmm.

14 And you're okay with that as well, right?

15 A. Yes.

16 Q. If there's a question that you don't
17 understand or you need it to be clarified,
18 please let me know. If you don't let me know,
19 then I'll assume that you understand the
20 question, and it doesn't need to be clarified.

21 Is that fair?

22 A. Yes.

23 Q. If you need a break at any point, just let me
24 know. I'm happy to accommodate breaks. The
25 only proviso there would be if we have a

1 question that's pending, if we can finish the
2 question before we take a break.

3 Does that sound fine?

4 A. Yes.

5 Q. So you've been sworn in by the court reporter.

6 You understand that you're under oath,
7 and the deposition is being taken under the
8 penalty of perjury; is that correct?

9 A. Yes.

10 Q. Is there any reason that would limit you from
11 providing truthful answers to my questions
12 today?

13 A. No.

14 Q. You're not under any sort of stress or
15 physical or mental condition or taking any
16 medications or anything like that?

17 A. No.

18 Q. Is that fair to say?

19 A. Yes, that's fair to say. And, no, I am not.

20 Q. Okay. Thank you.

21 Okay. So just for the record, you're
22 being deposed as a testifying expert witness
23 of the defendant, and the defendant is SR
24 Griffin Construction, Inc.; is that correct?

25 A. Yes.

1 **Q.** And it's in connection with the case of
2 Timothy L. Harrington, in his capacity as
3 Trustee of the GFG 401K Trust versus S.R.
4 Griffin Construction, Inc., Civil Action,
5 Docket number WISSC-CV-22-23, which is pending
6 in the Lincoln County Superior Court.

7 Is that your understanding as well?

8 **A.** Yes.

9 **Q.** And did you bring any documents with you here
10 today?

11 **A.** Just anything that has been provided by you
12 and any e-mails that you've already got in
13 your possession.

14 **Q.** So you have a folder there in front of you?

15 **A.** Mm-hmm. This is mostly everything that we
16 have to this point. So it's information
17 provided by Jon Liberman, and I believe you
18 have everything here.

19 **Q.** Okay.

20 **A.** This is a very thin file.

21 **Q.** All right. So there's a yellow manila folder
22 inside of a green hanging folder.

23 **A.** Mm-hmm.

24 **Q.** And then there are some additional items
25 outside of the yellow folder; is that fair to

1 say?

2 A. Yes, this is everything that was sent to you.

3 Q. Okay. All right. So let me hand you what
4 I've marked as Exhibit A.

5 MR. BOPP: And just a little sideline on
6 the numbering.

7 MR. LIBERMAN: Thank you?

8 MR. BOPP: Welcome. There are other
9 exhibits, and they're all numbered. And since
10 this one is the first one, I'm just calling it
11 Exhibit A, and then we'll go to numbers after
12 that.

13 BY MR. BOPP:

14 Q. So I'll ask you to review Exhibit A, and let
15 me know if you can identify that.

16 A. Yes, I do. This is --

17 Q. And what is that?

18 A. This is the document that was sent to me -- a
19 copy of the document sent to me; the 12-item
20 document, yes, on February 9; yup. Yes, I do
21 recognize it.

22 Q. You have seen that before?

23 A. I have seen that.

24 Q. And that is the Notice to Take Deposition of
25 Michael R. Hughes; is that right?

1 A. Correct.

2 Q. And as you pointed out, it's dated February 9,
3 2024; is that right?

4 A. Correct.

5 Q. Did you review the list of requested
6 documents, 1 through 12, in preparation for
7 this deposition?

8 A. Yes.

9 Q. And your attorney produced documents to me in
10 response to this notice; is that right?

11 A. Yes.

12 Q. Okay. Are you -- are you familiar with the
13 documents that were produced in response to
14 this notice?

15 A. Yes, I believe we did talk about that.

16 Q. Okay. And so is it fair to say that you
17 reviewed this notice -- I'm not asking you for
18 the substance of any conversations you had
19 with your attorney, but you reviewed this
20 notice and then coordinated with your attorney
21 as far as responsive documents that you had in
22 response to these numbers 1 through 12?

23 A. Yes.

24 Q. Okay. Who has retained you to be an expert
25 witness in this matter, Mr. Hughes?

1 A. Attorney Jon Liberman.

2 **Q. And have you issued a bill for your services**
3 **to date?**

4 A. I have not, no.

5 **Q. Have you been paid anything for your services**
6 **to date?**

7 A. At this point, no.

8 **Q. So we'll need --**

9 MR. BOPP: I need one for you, right?
10 Can you guys share one -- either way. Tell me
11 where you want these. Not a ton of room.

12 So do you want to manage those? I'm
13 going to grab a stapler. All right. Yeah,
14 just Exhibit 1; just those first three pages.

15 MR. HARRINGTON: Okay.

16 MR. BOPP: Just those first three. Do
17 you want that to be part of 1? All right.
18 We'll make that part of 1. That's fine.

19 BY MR. BOPP:

20 **Q. Okay. Mr. Hughes, I'm handing you what has**
21 **been marked as Exhibit 1. I'm going to ask**
22 **you to please review that, and let me know if**
23 **you can identify it.**

24 A. Okay. And your question was?

25 **Q. Have you seen that before?**

1 A. I -- this --

2 THE DEPONENT: Did we have this at our
3 meeting? Was this at the meeting?

4 A. Okay. Yeah, correct. I have seen it before
5 at our meeting.

6 BY MR. BOPP:

7 Q. And again, I'm not asking you for the
8 substance of any communications that you've
9 had with Attorney Liberman.

10 So you met with him to review this; is
11 that fair to say?

12 A. Yes; mm-hmm.

13 Q. Just one time?

14 A. Just one time in his office. One time on
15 site. One time in his office.

16 Q. So let me just peel that apart.

17 One time on site. Are you referring to
18 the site visit where you looked at the tree
19 that's at issue in this lawsuit?

20 A. Correct.

21 Q. At that time, did you review -- let's just
22 call Exhibit 1 Expert Witness Designation, if
23 that's okay.

24 Is that all right?

25 A. Okay.

1 Q. At the site visit, did you review the Expert
2 Witness Designation?

3 A. During the site visit, no, we did not review
4 any paperwork on site that day.

5 Q. Okay. So was it at a subsequent meeting that
6 you reviewed the Expert Witness Designation --

7 A. Yes.

8 Q. -- with Attorney Liberman?

9 A. Yes.

10 Q. And there was just the one meeting?

11 A. Yes.

12 Q. Was there any back and forth after that about
13 here's a draft, here's an update, what's your
14 input?

15 MR. LIBERMAN: Hold on. I'm just going
16 to object to the extent that you're talking
17 about communications between me and the
18 expert. So I'm going to object and instruct
19 him not to answer that specific question.

20 MR. BOPP: Okay.

21 BY MR. BOPP:

22 Q. So I'm not asking for the content of any
23 communications. What I'm asking is whether
24 there were -- whether there was any time after
25 the meeting that you provided input about the

1 Expert Witness Designation.

2 A. Input about my being an expert witness?

3 Q. **No, the input -- thank you for clarifying.**

4 **Input about the contents of what is in**
5 **this Exhibit 1.**

6 A. Had we spoken about it; about the contents of
7 this paragraph right here?

8 Q. **Sure. Let's do that.**

9 A. What I will testify?

10 Q. **Right.**

11 A. Um, I believe so, yes. I believe we -- we
12 would have had a discussion about that, yeah.

13 Q. **Okay. At the meeting and just at the meeting?**

14 A. We may have had a phone conversation about it.
15 Actually, to tell you the truth, if we had had
16 this deposition at the end of March, I would
17 have been a little bit clearer on that. It's
18 a little bit farther in the wake of things
19 here at this point. Everything is.

20 Q. **Do you recall whether at the meeting you were**
21 **handed a draft of this designation or -- well,**
22 **let me just stop there.**

23 A. I -- I -- um, I -- I do not know if I was
24 handed a draft of this at that meeting. Um,
25 because I believe I would have it in here, and

1 I don't believe I have it in here in my -- in
2 the folders that I have in front of me.

3 **Q. Do you have any clarifications, corrections,**
4 **supplements or additions to this designation**
5 **or is it complete and accurate as is?**

6 A. Is it complete? It is a framework. It is a
7 framework. It's a summary.

8 **Q. Let me just ask each one.**

9 **Do you have any clarifications to it as**
10 **we sit here today?**

11 A. I could, potentially, yeah. These are just --
12 these are his digestion of what I had
13 provided. Um, they're his own words, as he
14 says here. As he covers here, they're the
15 words of the counsel. So they're within the
16 framework of what we had discussed -- of what
17 had been discussed.

18 **Q. Does anything in here need to be corrected?**

19 A. I think one thing that needs to be clarified,
20 just so we're on the -- you know, on the same
21 page, is that Mr. Hughes will also testify
22 that he observed land surrounding the tree on
23 the same date. Any observations were made
24 from -- strictly from the location of the tree
25 itself.

1 So no -- no further walking analysis was
2 done, aside from distance observations. I
3 don't want to -- for it to sound as if I -- I
4 was very cautious to -- I did not want to
5 trespass without Tim being there. So any
6 observations were made from a distance. They
7 were cursory.

8 **Q. Observations of the land?**

9 A. Of the land, yes.

10 **Q. All right. And you have not prepared an**
11 **expert report; is that correct?**

12 A. Correct.

13 **Q. Do you intend to prepare a report?**

14 A. That would be at the -- if the counsel, Jon
15 Liberman, requested it. What I would probably
16 want to do would be another site visit. That
17 would be very important. You can't really do
18 this type of thing without being up to date
19 with the conditions as they exist on this
20 date. I can't speak to December with a report
21 now very well. I'd want to refresh.

22 **Q. So you're saying that it would be important to**
23 **go back and do a site visit and look at the**
24 **tree again?**

25 A. It would be essential.

1 **Q. And why would it be essential?**

2 A. Again, because I'd be working -- at this point
3 in May -- almost May, I would be trying to
4 recall what I -- what was observed on December
5 19, which would be difficult. And I'd want to
6 refresh what I was seeing -- not from
7 photographs but from a site visit. That's the
8 way I work. I like to see things. I like to
9 be able to have them in front of me.

10 MR. BOPP: I'd like to go off the record
11 for a minute.

12 (Off the record.)

13 BY MR. BOPP:

14 **Q. Mr. Hughes, I'm just looking to clarify the**
15 **conversation that we just had.**

16 And would it be fair to say that if you
17 were asked to prepare a report in this matter,
18 then you would want to go back and do another
19 site visit and look at the tree again; is that
20 fair to say?

21 A. Correct, yes.

22 **Q. And is it --**

23 (Cell phone vibrating.)

24 A. Sorry.

25 **Q. It's all right.**

1 Is it also fair to say that you are
2 prepared, if this matter goes to trial, to
3 testify on behalf of the defendant without
4 doing another site visit?

5 A. Say that again. Restate that, please.

6 Q. Sure.

7 If this matter goes to trial, are you
8 prepared to provide your testimony on behalf
9 of the defendant without doing another site
10 visit?

11 A. Um, I would say that's a tough question, but
12 since we had not discussed doing another site
13 visit, I suppose I would be out of line to
14 request one without moving forward. So up to
15 this point. So I would say yes.

16 Q. Okay. In that other matter where you were an
17 expert witness in Colorado, did you prepare a
18 report in that matter?

19 A. Yes.

20 Q. And does it really just depend on what the
21 attorney requests that you do whether you
22 prepare a report or not?

23 A. Yes.

24 Q. Did you reach any conclusions or form any
25 opinions in connection with this matter that

1 **are not listed in the expert designation?**

2 A. Since that time, did I reach any conclusions
3 that I had reached at the time of our meeting?
4 I would -- no; no, I did not reach --
5 conclusions is a tough word because it's
6 definitive, and this particular case is not
7 very definitive.

8 **Q. And why do you say that?**

9 A. We have very limited information available as
10 to tree history, very limited information
11 available as to site activities, times and
12 dates, equipment used to conduct those site
13 activities, maintenance of wires, site
14 activities therein, whereby utilities were
15 maintained. It's very -- weather activities
16 that have happened while the tree has been
17 there. It's very fluid. It's a very, very
18 fluid situation.

19 **Q. And does that make it challenging, then, for**
20 **you to do your work?**

21 A. It makes it very difficult, yes.

22 **Q. And is it fair to say that that makes it**
23 **difficult, then, for you to conclude why the**
24 **tree is in the condition that it's in?**

25 A. Yes.

1 Q. And that's based on a combination of factors,
2 including the prior history of the tree?

3 A. Yes.

4 Q. So referring still to Exhibit 1 in the
5 subsection A, Subject Matter of Testimony, it
6 states, Mr. Hughes will testify that he
7 observed the tree that is the subject of
8 Plaintiff's Complaint during a site visit on
9 December 19, 2023.

10 Is that accurate? It's the first
11 sentence of the second paragraph.

12 A. Yes.

13 Q. So you were there on December 19, 2023, for a
14 site visit, correct?

15 A. Yes, I believe that was the date, yes.

16 Q. And that was the one and only site visit that
17 you undertook with respect to the tree?

18 A. Yes.

19 Q. And then it says, Mr. Hughes will also testify
20 that he observed land surrounding the tree on
21 the same date.

22 Is that accurate?

23 A. Yes.

24 Q. At what time of day did you observe the -- I'm
25 going to call it sometimes the legacy oak

1 tree. Just if we can agree that that's the
2 tree that is the subject --

3 A. The subject, mm-hmm.

4 Q. -- of this action.

5 We can agree that legacy oak tree or the
6 tree refers to that?

7 Yes?

8 A. Yes. That is what I've heard it's been
9 called, so I'll go with that for
10 identification purposes.

11 Q. Great. Thank you.

12 At what time of day did you observe the
13 legacy oak tree and land surrounding the tree?

14 A. It would have been approximately in the
15 morning hours. 10:00 in the morning,
16 approximately.

17 Q. And how long was your site visit in total?

18 A. Um, it was -- it was the morning. It was
19 taken to -- let me see here. It would have
20 been the -- total time portal to portal for me
21 was the morning hours.

22 Q. So maybe a couple of hours then?

23 A. Yeah, we were on site approximately --
24 probably about two hours.

25 Q. Did you take some pictures while you were on

1 **site?**

2 A. Yes.

3 **Q. How many pictures were taken?**

4 A. Um, approximately -- I believe you guys --
5 they were sent to you -- your office through
6 Jon, but I believe -- I will say 10.

7 **Q. 10.**

8 **And of what were the pictures taken?**

9 A. The pictures were taken of the tree from
10 various angles, limited to the camera used,
11 which was a phone camera.

12 **Q. Your phone?**

13 A. Yes.

14 So I think an important thing to point
15 out also is that I was not familiar with the
16 tree prior to seeing it for the first time for
17 the site visit. I've never driven down the
18 road. I'm not familiar with the road. So I
19 had never seen it in any other time of year in
20 any condition. So I didn't have the benefit,
21 I suppose, of seeing it, say, going to see
22 other people in the area or driving past.

23 So I didn't have that benefit of any
24 other experience with the tree. I don't know
25 if you were going to ask that question at some

1 point, but I wanted to clarify that.

2 Q. So, for example, were there any leaves on the
3 tree at that time of year?

4 A. No.

5 Q. And are you the only one who took pictures
6 during the site visit?

7 A. Hmm. I -- I believe I'm the only one who took
8 pictures. I believe I am. I was not paying
9 attention to other people with their phones.

10 Q. And the pictures that you took, you said you
11 used your phone to take them?

12 A. Yes.

13 Q. And what make and model is your phone?

14 A. It's an iPhone 7.

15 Q. And are the images that you took that day
16 still on your phone?

17 A. Yes.

18 Q. How many people were on site during the site
19 visit?

20 A. Um, Attorney Jon Liberman, and I believe
21 Mr. Griffeth -- Griffin.

22 MR. LIBERMAN: Scott Griffin.

23 A. Scott Griffin, yes.

24 BY MR. BOPP:

25 Q. So the three of you?

1 A. Yes.

2 **Q. What was the weather like the day of your site**
3 **visit?**

4 A. It was sunny, clear, good conditions -- good
5 visual conditions, no wind to speak of. It
6 was a very good December day; very nice
7 December day.

8 **Q. Do you recall whether there was snow on the**
9 **ground?**

10 A. I don't believe there was snow on the ground.
11 I can refer to the photographs to clarify
12 that, but I do not believe there was snow on
13 the ground. We could look at the photographs
14 as well that have been sent.

15 **Q. And do you recall what the weather was like**
16 **the day before the site visit?**

17 A. That, I'm unsure, but it must have been clear.
18 There must have been no snow or rain the day
19 before.

20 **Q. Do you recall on the day of the site visit**
21 **whether things were very muddy and wet?**

22 A. Um, I don't believe so. And the reason I
23 don't -- I don't believe so because there was
24 a van parked under the tree at the time, and
25 it was -- I don't think it was sinking into

1 mud.

2 **Q. Do you know whose van that was?**

3 A. I have no idea whose van it was. It was a
4 white panel van.

5 **Q. What was your overall impression of the tree**
6 **during your site visit?**

7 A. Um, my overall impression of the tree was -- I
8 thought about, you know -- or Tim had
9 mentioned it was a legacy tree, which, to me,
10 says it's an important tree to somebody; and I
11 noted that upon my initial assessment, that it
12 stood out from the other trees in the
13 surrounding area for its size. It seemed to
14 be larger than the forest surrounding it.

15 As I got closer, I noted that the -- it
16 had a pronounced dieback showing up in the top
17 of the tree; dieback meaning that there would
18 be no foliage coming on that at any point in
19 time. So it had been declining for some time.

20 As I got closer to the tree, I was able
21 to observe damage to the trunk of the tree on
22 the -- how will I say this -- the approach
23 road in, no damage on the far side of the road
24 where I suppose there's a turn-around coming
25 back.

1 THE DEPONENT: Is that correct, Tim?

2 MR. HARRINGTON: Can I say anything? Am
3 I allowed to say anything?

4 THE DEPONENT: I'm just wondering if it's
5 a through road. I just want to speak
6 correctly.

7 BY MR. BOPP:

8 Q. He's saying south side.

9 A. Okay; okay. So the south side being the
10 approach side. That's the far side.

11 Okay. So I approached, I would say, from
12 the north. Didn't observe trunk damage, that
13 I can recall, until I moved over to the south
14 side of the tree. And at that point, I
15 observed, um -- well, if you'd like to take
16 the questioning from here, you're welcome.

17 Q. It's fine for you to keep going.

18 What did you observe at that point?

19 A. There was pronounced damage to the south side
20 of the tree that was attempting to heal for
21 quite some time. And so it appeared to me, in
22 general -- I'm speaking in generalities
23 here -- from overall look, that this was a
24 tree that was attempting to fight back, so to
25 speak, to recover from injury and had a lot on

1 its plate, so to speak.

2 **Q.** Okay. And so when we're talking about the
3 south side, is that -- if you were to come off
4 of the road and go back behind the tree,
5 that's the south side that we're talking
6 about?

7 **A.** Um, if I understand -- I want to be clear
8 because I came off --

9 MR. LIBERMAN: If you want to draw on
10 something, maybe he can give you a piece --

11 MR. HARRINGTON: Can we take a break off
12 the record? Can we take a break off the
13 record?

14 MR. BOPP: Let him just finish this
15 question.

16 MR. HARRINGTON: All right.

17 **A.** Again, I'm kind of working from memory here,
18 guys. The main road is over here. I'm just
19 going to say main road. I don't know what
20 road I came off of onto the road with the
21 tree. But I remember the road came up and
22 then turned away and the oak being right about
23 here. So I'm going to -- and, of course, this
24 is the access, access, and the wires.

25 But anyway, I'm referring to, I suppose,

1 from what Tim Harrington had indicated, that
2 this is north. This is the south side. This
3 area in here was the area showing trunk damage
4 on that side. The van -- for your previous
5 question -- at the time, was located right
6 here; right around there.

7 So our observations -- everything that we
8 did was located -- so that's an access road.
9 I'm not sure if it goes out there or not or if
10 it just goes around the tree. I can't
11 remember. I believe it just went around. I
12 do not believe there's a driveway up there. I
13 can't remember that part; if there's a
14 driveway heading into the woods here.

15 But nonetheless, at this point here, this
16 is the only area where we -- where I pretty
17 much had any kind of observations of the
18 surroundings. I was parked down here when I
19 first arrived.

20 MR. BOPP: So why don't we -- yeah, label
21 that Exhibit 1-A, if that's all right.

22 Did you want to take a break?

23 MR. HARRINGTON: No, we got the north/
24 south straight. That's all I want to make
25 sure. That's it, north/south. That's

1 perfect.

2 A. Again, I want to be clear that it's easy
3 enough to clarify what is north, south, east,
4 west. So I'm going off of, you know, what is
5 being said here in the room. But this road
6 coming in here, I'm assuming, we were coming
7 -- approaching from the north to the south.

8 So --

9 BY MR. BOPP:

10 **Q. So you --**

11 A. That's an assumption that's easy enough to
12 check on Google Earth or whatever to confirm
13 that.

14 **Q. All right. So let's go with the directions**
15 **that you have on your drawing there. We'll**
16 **assume they're correct.**

17 And you parked, then, below the tree, got
18 out of your vehicle, and walked towards it; is
19 that fair to say?

20 A. Yes.

21 **Q. And walking towards it, you didn't see any**
22 **damage or injury to the tree at that point?**

23 A. Um, I think the important point here is that
24 in the morning light -- the morning light was
25 affording us a better opportunity at that

1 point in time. It would have been -- north,
2 south, east. So the sun was right about --
3 giving me an opportunity from that angle, and
4 it's easy enough to see in the photographs.

5 This was probably the best vantage point
6 for the upper part of the tree in this area
7 here where some of the photographs were taken
8 because the light was illuminating the top of
9 the tree, which is still up there 60 feet or
10 so.

11 This side I can make observations as
12 well, as far as dead wood dieback. But this
13 is probably where we spent a good amount of
14 time looking at that side of the tree.

15 **Q. So over near where the van was parked?**

16 A. Correct.

17 **Q. And you had described the tree as having been**
18 **damaged or injured and attempting to recover**
19 **from that?**

20 A. From what?

21 **Q. The damage or the injury.**

22 A. It's -- well, what we were looking at with the
23 tree is -- what appears to me we were looking
24 at with the tree is contributing factors.

25 Whether the damage to the trunk was the result

1 of, um, this damage -- I'm sorry. Let me
2 reclarify that statement.

3 The dieback within the crown of the tree
4 would be contributed to by a combination of
5 factors; everything from potentially lightning
6 to this damage on the trunk -- which,
7 potentially, could have been caused by a
8 number of things -- compaction activities;
9 just a slew of things that this legacy oak was
10 having to deal with. It was having to deal
11 with a lot.

12 **Q. And the damage that you saw was bark had come**
13 **off of the tree or how would you describe the**
14 **damage?**

15 A. Um, bark was off the tree in that area. And
16 as I -- I'm trying to remember a little bit
17 here. I can refer to photographs.

18 THE DEPONENT: Do you have any of these
19 photographs?

20 MR. LIBERMAN: I didn't bring anything
21 with me.

22 A. Do you have any photographs?

23 BY MR. BOPP:

24 **Q. I do. We'll look at those.**

25 A. Okay. Because I don't want to misspeak.

1 Again, I'm drawing on December 19 on April 25.

2 But the damage was pronounced on that side of
3 the tree.

4 **Q. Okay. Would you agree that the tree is**
5 **comprised of a dominant oak and a lesser oak?**

6 A. The tree was comprised of a dominant oak and a
7 lesser oak? I normally never used that
8 terminology. I couldn't address that. That's
9 not terminology I would use.

10 **Q. Okay; fair enough. I'm trying to describe it,**
11 **but you're the expert.**

12 **Are there two trunks that make up the**
13 **tree; is that fair to say?**

14 A. Again, on memory here, there's -- I believe,
15 yeah, the tree did go up and have co-dominant
16 stems going up.

17 **Q. Okay. Meaning, that there were two, right?**

18 A. Again, I can -- with the photographs in front
19 of me, I'd feel more comfortable making
20 statements. I don't want to be taken as
21 misspeaking.

22 **Q. Fair enough.**

23 **Did you take any measurements of any of**
24 **the trunks of the tree?**

25 A. Not to my knowledge; no, I did not.

1 **Q. Did you observe the canopy size of the tree?**

2 A. Just from -- I did not use any analytical
3 tools to determine exactly what the height of
4 the tree was. I used my judgment to, you
5 know, put it up there somewhere in the height
6 that I had mentioned here of approximately 60
7 feet.

8 **Q. And did you observe that the canopy size was**
9 **balanced with the root structure?**

10 A. That would be impossible to assess because the
11 roots were not -- were, of course, not
12 visible; and whatever root structure is
13 potentially dinged or damaged, the tree could
14 be surviving on little or very little at this
15 point.

16 So to say whether the root crown balance
17 is adequate would be impossible to assess at
18 this point right now.

19 **Q. Is there a way to conduct some other tests**
20 **that you could assess the root crown balance?**

21 A. No, not really. The reason I say that is that
22 there's a -- there's an attempt to find such
23 technology with sonic this and that that can
24 get into roots and understand what we are able
25 to understand up above to see below. But to

1 my knowledge, there's nothing right now that
2 does that.

3 **Q. Did you observe any holes or ruts in the**
4 **ground near the tree?**

5 A. Um, there were tire tracks, some -- a lot of
6 activity out there, including, you know,
7 unfortunately the van had -- you know, had its
8 own, you know, spots where you could tell
9 where the van had been.

10 So everything makes -- it's December, and
11 so it's difficult to say -- it was not deeply
12 rutted. I will say that, as far as what I
13 remember. Again, photographs -- photographs
14 were taken, which will more clarify that for
15 me.

16 **Q. And do you recall that those ruts or tire**
17 **tracks were on any particular side of the**
18 **tree?**

19 A. Um, there were ruts on this side, as I
20 remember. We're going to be talking here
21 about the north side of the tree; again,
22 assuming this is north. As I remember,
23 there's a road that has road base material,
24 seems like, in here. Off to the edge, we have
25 power lines running here, and the power lines

1 are maintained, I suppose, by CMP.

2 But right along this edge, there was a
3 soft edge in here with oaks -- surrounding
4 oaks right through here, and it looked to me
5 like some tires went off the road here. I
6 believe I pointed that out to Jon at the time.

7 On the south side, it was more
8 generalized just movement. You could tell
9 that the ground -- my recollection was -- had
10 been -- you know, it was malleable, I suppose.

11 **Q. So, um, back to Exhibit 1-A. I'm just going**
12 **to read from that. The next sentence is --**

13 MR. LIBERMAN: Fred, you said Exhibit
14 1-A. Are you reading from Exhibit 1?

15 MR. BOPP: Exhibit 1, yeah. Sorry.
16 Thank you. 1-A is the hand-drawn map.

17 BY MR. BOPP:

18 **Q. He will testify that, more likely than not,**
19 **the tree was already significantly damaged**
20 **before August of 2022 and was dying before**
21 **August of 2022.**

22 Is that accurate?

23 A. Yes.

24 **Q. And what is the significance of August of**
25 **2022?**

1 A. That was the date which was given to me at the
2 time when the activity by Griffin occurred, I
3 believe.

4 **Q. And -- yeah, go ahead.**

5 A. That was the only date given to me at that
6 time.

7 **Q. And when you say "given to you" --**

8 A. By Jon Liberman.

9 **Q. Verbally or in an e-mail or --**

10 A. I'm going to say it was probably in an e-mail.
11 So let's look.

12 I'm not seeing it in an e-mail, but it's
13 going to be a verbal relation of information.

14 **Q. Okay.**

15 A. That may have come up at the point of the site
16 visit. Let me see. One moment here. Here we
17 are.

18 Okay. All right. I was told on the 12th
19 of March of this year that there was a
20 correction. Because at the time of the site
21 visit, it was told to me --

22 MR. LIBERMAN: Hold on a second. Hold
23 on. I'm not sure how far you're going to go,
24 but what I don't want is you launching into a
25 number of communications that you and I have

1 had because there are -- so perhaps you can
2 narrow your question down. But what I don't
3 want is him having an unlimited discussion of
4 communications that he and I have had.

5 So I don't know if you can narrow your
6 question for the witness.

7 MR. BOPP: Sure. Happy to do that.

8 MR. LIBERMAN: Thank you.

9 MR. BOPP: Sure.

10 BY MR. BOPP:

11 **Q. Was it your understanding that part of your**
12 **task was to determine, if you could, whether**
13 **events that happened in August of 2022**
14 **negatively impacted the health of the tree?**

15 A. My assignment, as it was, was to determine if
16 the -- the condition of the tree -- basically,
17 to understand -- provide an understanding what
18 the condition of this tree was and potentially
19 if activity by Griffin could have impacted it
20 further.

21 **Q. And what was your understanding of the**
22 **activity by Griffin?**

23 A. My understanding was the project was happening
24 on the road, of which they were providing
25 materials for site construction nearby, and my

1 understanding was they were -- upon unloading
2 or coming in loaded -- I'm not sure -- came
3 down and used the area around the tree as a
4 turnaround to exit the road.

5 **Q. "They" being Mr. Griffin or his employees?**

6 A. Correct.

7 **Q. And do you recall whether Mr. Griffin told you**
8 **that?**

9 A. Um, that would have been Jon Liberman.

10 **Q. So during the site visit, you mentioned**
11 **Mr. Griffin was there, right?**

12 A. Mm-hmm.

13 **Q. Yes?**

14 A. Yes. Correct, yes.

15 **Q. Was there any conversation at that time with**
16 **him where he said, Well, our trucks use this**
17 **area as a turnaround?**

18 A. Um, Scott Griffin, as I recall, did not really
19 contribute much information at that time. He
20 was -- he allowed me to look at the situation
21 and do my own analysis, and he didn't approach
22 me or attempt to, you know, feed information
23 to me. Any conversations -- as I recall -- he
24 had were with Attorney Jon Liberman.

25 **Q. And did you have any understanding as to the**

1 types of trucks or other vehicles that had
2 used that area as a turnaround?

3 A. That belonged to Griffin Construction?

4 Q. Yes. Thank you for that.

5 A. I had asked him or Jon that question, and I
6 was told empty tri-axle trucks as the trucks.
7 That would be the only vehicle that I was made
8 aware of that would have used that as a
9 turnaround, if, in fact, it happened.

10 Q. And was there any understanding that you had
11 of how many times that area was used as a
12 turnaround by vehicles belonging to the
13 defendant?

14 A. To my knowledge, I don't have a definitive
15 number of times that it -- that -- from 0 to
16 5. I have no idea.

17 Q. So in the statement that we read from the
18 designation, it says that the tree was already
19 negatively impacted.

20 Do you -- what's your understanding of
21 the meaning of negatively impacted?

22 A. Um -- excuse me for saying um. This is a tree
23 that's been on site for a number of years.
24 It's hard to say exactly how many. That could
25 be found out, but it has had a lot of activity

1 around it up to the date of August of '22.

2 As far as exactly what that damage was
3 that occurred, it's probably cumulative over
4 time, and I think -- I believe that the tree
5 was probably a pretty hardy tree to be able to
6 put up with it all.

7 **Q. Is it fair to say that the phrase "negatively**
8 **impacted" means that the tree was injured or**
9 **damaged in some way?**

10 A. Correct.

11 **Q. And how could you tell the tree had been**
12 **negatively impacted?**

13 A. The dieback in the crown was a big indicator
14 of negative impacts -- to use your term and
15 mine -- indicating that the tree had been
16 either struck by lightning in the past, it had
17 suffered root loss, surface area loss of
18 useable root crown where it's able to absorb
19 what it needs to survive; vehicles,
20 potentially, up against it damaging it.

21 All of these things -- roads being paved
22 over the top of it, equipment that was used to
23 pave the roads moving about. In fact, all of
24 these things of which -- I just simply don't
25 know the history of the tree enough to address

1 all of those. I'd be really reaching to do
2 that, and I don't really care for that.

3 Q. So I'm trying to draw a distinction between
4 two things, both of which I think you covered
5 with your last answer. One is, looking at the
6 tree, what about what you saw could tell you
7 that it had been negatively impacted. That's
8 one question.

9 The other is, what were the events that
10 negatively impacted it, and I think -- excuse
11 me -- you covered the events in your last
12 answer by listing a number of things that
13 could have impacted it, and you don't know for
14 sure what impacted it.

15 Is that fair to say, in terms of the
16 events?

17 A. Yes. It would be hard to be definitive as to
18 exactly what impacted it.

19 Q. Okay. So going back to the first part; in
20 other words, looking at the tree, how could
21 you tell it had been negatively impacted.

22 You mentioned the dieback of the crown;
23 is that fair?

24 A. That's fair.

25 Q. What else about the tree itself, looking at

1 it, told you that it had been negatively
2 impacted?

3 A. The loss of the cambium around the tree -- the
4 water-conducting tissues -- the scar at the
5 base of the tree. That is an obvious sign of
6 something, whether it be a bolt of lightning
7 coming down the trunk of the tree or a
8 snowplow hitting it, who knows; something
9 scrubbing up against it.

10 And at that point, we enter into this
11 very gray -- what caused it, I don't know.
12 That's impossible to know, at that point.

13 Q. And just to go back because I'm not sure I
14 understood the word.

15 You said the loss of cambium or --

16 A. So to clarify -- and I apologize.

17 Q. That's all right.

18 A. The tree -- on a tree such as this tree here,
19 the legacy oak, we have a pretty thin layer of
20 growing tissue right at the edge, and that's
21 where the tree conducts its water. It
22 translocates its nutrients from the top to the
23 bottom, conducts its water from the bottom to
24 the top; and once that gets crushed or damaged
25 or dinged, it loses that pathway, that highway

1 of -- for water to be translocated, for
2 nutrients to be translocated down from the top
3 of the tree. So cambium is just underneath
4 the bark.

5 **Q. Was there any way for you to tell definitively**
6 **that the tree was dying before August of 2022?**

7 A. I believe -- the key question here is, we have
8 dieback in the crown of the tree. And, again,
9 if we were standing there and looking at this
10 or at least had more up-to-date information to
11 work with, it'd be great. But dieback could
12 have occurred in the last 20 years, in the
13 last three years. It can be accumulation of
14 dieback in the crown of the tree. Some of the
15 deadwood that was up there, to be clear, had
16 been up there for some time. Some of it may
17 have been more recent.

18 And I believe in my notes there that I
19 mention response growth that had occurred in
20 the tree. So the more recent dieback was
21 showing some attempt of the tree to push back;
22 to reestablish some foliage, to my eye. Some
23 of the -- some of the other old dieback had
24 been there a long time.

25 **Q. And when you say the more recent dieback, do**

1 **you have a sense of when that had occurred?**

2 A. As I said, it could have occurred -- it could
3 be -- dieback from compaction, from trunk
4 damage, it's ongoing. It's going to happen
5 again this spring. It was occurring in a tree
6 such as this over time. So it's hard to say,
7 Well, what part occurred from 2022 -- August
8 of 2022.

9 So we're talking -- what is that -- 12
10 months in '23. So we're talking four months
11 in '22. So 16 months, roughly, from the time
12 that I looked at it -- 16 months prior. It
13 would have been difficult to say that part of
14 the deadwood was caused by, um, the situation,
15 say, that we're talking about.

16 **Q. And you didn't -- go ahead.**

17 A. There are ways to do a closer assessment. I
18 want to make that clear. There's ways to
19 assess this tree up close with aerial lift.
20 It will more definitively tell us when certain
21 dieback occurred.

22 The tree, because it is a living tree --
23 it is alive -- the information is there on the
24 tree to indicate, you know, when some of this
25 stuff happened.

1 **Q. And those tests aren't tests that you**
2 **performed, right?**

3 **A. No. I did not do anything invasive with the**
4 **tree.**

5 **Q. And this was the only time that you looked at**
6 **the tree, right; the December 19, 2023, visit?**

7 **A. Yes. I haven't seen it since.**

8 **Q. Were you provided with any pictures or videos**
9 **or anything else that would show you the**
10 **condition of the tree in August of 2022?**

11 **A. Um, I was provided a picture I believe**
12 **somebody took of the tree that had leaves on**
13 **it, when it had leaves on it. I don't know**
14 **the date of that photograph. To my knowledge,**
15 **I don't have a date on that photograph. It**
16 **could have been 10 years ago. It could have**
17 **been three years ago. I have no way of**
18 **knowing.**

19 **Q. Is that the only photograph that you recall**
20 **receiving of the prior condition of the tree?**

21 **A. Yes.**

22 **Q. Prior to being engaged as an expert for the**
23 **defendant, did you know Scott Griffin?**

24 **A. I knew of the company. I didn't know Scott.**

25 **Q. Have you ever done any work or performed any**

1 **services for S.R. Griffin Construction?**

2 A. No, not to my knowledge.

3 **Q. When you looked at the tree in December of**
4 **2023 --**

5 MR. HARRINGTON: Oh, my bad. I need a
6 break.

7 MR. BOPP: Yeah.

8 BY MR. BOPP:

9 **Q. -- did it appear to you at that time that the**
10 **tree was dying?**

11 A. Yes, I would say it was in decline. And
12 that's probably the key word there that I
13 would prefer to use in the next couple
14 statements; was declining, over dying.

15 **Q. So the health of the tree was declining?**

16 A. In decline, correct.

17 **Q. Do trees that have been damaged manage to**
18 **repair themselves?**

19 A. Are we talking broad or are we talking about
20 the subject tree?

21 **Q. Broad; broadly speaking.**

22 A. "Do" would be the wrong word. Can, depending
23 upon the level of damage and the species and
24 the ongoing care. Can they? They can
25 sometimes recover.

1 **Q. How about roots that are damaged.**

2 **Can they some types recover from that**
3 **damage?**

4 A. That is probably more difficult, especially
5 given oak. It's not quite so easy.

6 **Q. Not quite so easy for this tree or all oaks?**

7 A. Again, now we're really -- we have to limit
8 the scope to what we're talking about.
9 Because if we're going to talk about Maryland
10 oaks versus Maine oaks versus -- we'd have to
11 get into a whole discussion of what the care
12 and maintenance of the tree is, and there's
13 just -- this is a very fluid thing, and I hate
14 to put myself in a corner here discussing tree
15 physiology and pathology when we're talking
16 about -- I'd rather stick to the subject tree.

17 **Q. Notwithstanding that, as a general matter, is**
18 **it fair to say that if the roots of a tree are**
19 **damaged, that in some situations, the tree is**
20 **able to repair that damage?**

21 A. Not generally.

22 **Q. Okay.**

23 A. Your key word in that last part -- what you
24 had just said, and I want point out for
25 clarification -- was "repair."

1 Q. And why is that key?

2 A. That's key because your -- if you have a -- in
3 this case, you guys are interested in crushed
4 roots or compaction, whatever. Attempting to
5 repair something that's been crushed is not
6 something that a tree is going to do to
7 survive.

8 What it's going to do is basically
9 produce other roots to make up for that loss,
10 but actually repairing roots is difficult for
11 a tree.

12 Q. Okay. You mentioned that some of the bark had
13 fallen off of the tree.

14 Could you tell what the tree was
15 attempting to do as a response to that?

16 A. There was indications, yeah -- yes, that the
17 tree had attempted to, um, recover from the
18 damage to the trunk.

19 Q. How was it attempting to recover?

20 A. There was response growth around the wound
21 that was callusing in to attempt to cover some
22 of those areas that were damaged.

23 Q. Were you able to tell how old the tree is?

24 A. The age of the tree?

25 Q. Yes.

1 A. Too difficult to assess with just from -- if
2 you would like my guesstimate, I can guess.
3 But, again, a tree that -- an oak of that
4 size, um, under some circumstances can be half
5 the age and same size as the oak that's there.
6 So it's difficult to say until you actually
7 test the tree to get an increment boring or
8 something similar to see. Then you can tell
9 exactly how old the tree was.

10 If I was to guess at it -- again,
11 December 19th is a long time ago -- but I'm
12 going to put the age of that tree at, say, 74
13 years.

14 **Q. And you had mentioned -- I'm sorry -- doing**
15 **what to definitively determine the age?**

16 A. You would have to do an invasive boring into
17 the tree, and then you can extract the actual
18 growth rings. Involves putting a hole in the
19 tree, but then you'll be able to see the
20 growth rings. It would have to be very
21 relevant to do that; um, to wound the tree in
22 that way. So typically, it's not something
23 that's done very often because it's damage.

24 **Q. Is there a way to determine the age simply by**
25 **measuring the diameter of the trunk?**

1 A. Um, as I mentioned, an oak can be half the age
2 of this current tree and be of that size. If
3 it's under ideal growing conditions, it can be
4 that rapid.

5 But my guess is, again, if I had to -- if
6 I had to guess, I would say 74 years. It
7 could be as old as -- you know, if it's been
8 under tough growing conditions that whole
9 time, it can be 100 years. It's tough to say.

10 MR. BOPP: I'm going to take a break
11 here. I need to use the men's room.

12 (A break was taken.)

13 BY MR. BOPP:

14 **Q. So sticking with Exhibit 1. Reading the next**
15 **line here -- I'll give you a chance to get**
16 **that -- Mr. Hughes will testify that he**
17 **observed response growth on the tree,**
18 **indicating injury 15 to 18 years ago, as well**
19 **as other signs of damage approximately 18 to**
20 **20 years ago.**

21 **Is that accurate?**

22 A. Yes.

23 **Q. And what is response growth?**

24 A. Response growth is the -- let's call it the
25 activation of the tree's attempts to recover.

1 So it's going to be pushing new water sprouts,
2 sucker sprouts, foliage up in the upper part
3 of the tree. It's going to be responding to
4 injury with callus tissue that I had spoken
5 about rolling over old wounds.

6 In the case -- I believe in the response
7 growth that I had mentioned there would be in
8 the upper canopy of the tree where I was
9 seeing some attempts of the tree to push out
10 small branches, releasing buds and sending new
11 growth out trying to recover.

12 **Q. And did you observe any other types of**
13 **response growth on the tree?**

14 A. Wound wood response on the aforementioned
15 trunk damage.

16 **Q. So you said "wound wood"; wood, W-O-O-D?**

17 A. W-O-U-N-D W-O-O-D.

18 **Q. And how were you able to determine that it**
19 **indicated injury 15 to 18 years ago?**

20 A. The wound wood that was rolling in is able to
21 give indications of how long it's been at it,
22 so to speak; how many years it has been
23 attempting to roll in. So there's a way to
24 look at that and determine when that happened.

25 So it's able to annually commit only so

1 many resources to covering a wound. Each time
2 it will leave a definitive mark to say this is
3 as far as I could go this year. Next year, it
4 comes a little bit farther; comes a little bit
5 farther.

6 The decay of the trunk of the tree is
7 less reliable because that can occur much
8 quicker. The decay that was there was pretty
9 punky at the time and kind of like charcoaled,
10 and that doesn't give you a whole lot of
11 information. That can occur fairly quickly.
12 But more of the wound wood response helped me
13 out in that regard; letting me know what was
14 going on.

15 **Q. And was that based entirely on visual**
16 **observations?**

17 A. That was, yes. There was no -- no attempt to
18 poke holes in the tree.

19 **Q. Did you study the root system to help you come**
20 **to that determination?**

21 A. The root system, um, was unobservable. That
22 was outside of what was able to be assessed
23 under any circumstances. There are ways to do
24 it; but, again, it would be pretty invasive.
25 We could talk about it if you want to. I

1 don't know if you want me to go into all those
2 details.

3 MR. LIBERMAN: If he asks you about them,
4 you can discuss it.

5 BY MR. BOPP:

6 **Q. Are you familiar with air spading?**

7 A. That is the one of the methods I was just
8 going to talk about, yes. So, yes, I have an
9 air spade myself, yeah.

10 **Q. And you're qualified to perform air spading?**

11 A. Correct.

12 **Q. And is it fair to say, generally speaking, air**
13 **spading involves directing pressurized air at**
14 **the soil around the roots to uncover the**
15 **roots?**

16 A. Correct.

17 **Q. And you did not perform any air spading on the**
18 **root system of this tree, right?**

19 A. No.

20 **Q. Would air spading help or allow you to**
21 **determine with greater accuracy the date or**
22 **dates of injury to the tree?**

23 A. I would say, no, it wouldn't offer me that
24 benefit. It would benefit the tree if you
25 were talking about -- if we're talking about

1 plant health care, how can we help this tree
2 out, absolutely; absolutely.

3 In a tree in this situation, to attempt
4 to use -- to use an air spade would probably
5 be the best thing that you could possibly do
6 for the tree to relieve compaction and so on
7 and so forth.

8 As far as analyzing, you would expose
9 roots; and in exposing the roots, you would --
10 you'd be showing, Okay. Well, here's the
11 roots that have been damaged whenever. As far
12 as being able to date that would be difficult.
13 To really timestamp it would be very difficult
14 to do.

15 The reason for that is you're not going
16 to get the wound wood response that you're
17 seeing on the trunk down in the root system.
18 The tree is simply going to basically
19 abandon -- as I mentioned before -- the root
20 that was damaged. That decay moves on.
21 There's no indicator of, Oh, I was hurt on
22 this date, and I was damaged at this time. It
23 wouldn't help to determine that,
24 unfortunately.

25 **Q. Would air spading allow you to determine that**

1 the roots had been damaged?

2 A. If you're able to spend significant time
3 clearing off the area, um, you could determine
4 that the roots had been damaged, certainly.
5 And to really understand -- I would say to
6 really understand -- if your goal was to
7 analyze roots, then you'd want to go all the
8 way around the tree and expose everything;
9 really get in there and find out what was
10 damaged.

11 You know, of course, you have the road
12 here, so you can't do that, but certainly on
13 three-quarters of the tree. If you're going
14 to do one side, I would do it all; get in
15 there and see how many roots have been dinged
16 and damaged, if possible; if you can get that
17 deep. If it's too heavily compacted, it gets
18 pretty tedious to try and bore down into that.

19 Q. So what's the major benefit, then, of
20 conducting air spading?

21 A. Boy, I don't really see a heck of a lot of
22 benefit for the time cost involved of that.
23 Because, again, if you're going to do one
24 side, you need to do it all. But it's a
25 potential, but I don't think it's going to

1 yield enough information definitive to August
2 of '22.

3 **Q. So it would allow you to see which roots had**
4 **been damaged; is that fair to say?**

5 A. It should allow you to, if you can, again, get
6 deep enough in there; which, with road basing
7 situations, it can get like concrete down
8 there. So it's pretty tough to move that
9 stuff.

10 **Q. Would it allow you to determine how the roots**
11 **had been damaged?**

12 A. By what type of -- whether it be a bulldozer
13 or paving equipment or a dump truck, what type
14 of dump truck, loaded, unloaded? Boy, I don't
15 believe it would give that kind of information
16 to you. You'd see damaged roots, you know.
17 You would not get much more from it than that.

18 **Q. If the roots had been damaged due to**
19 **compaction of the soil, would the air spading**
20 **allow you to see that type of damage?**

21 A. That type of damage? Um, probably. It would
22 help you to see the lack of small fibrous
23 roots in a given area. And I would imagine in
24 that case, in my professional judgment, you're
25 going to -- you're going to find that to be

1 widespread on that particular tree. So --

2 **Q. Widespread compaction damage?**

3 A. I believe that you'd find -- you know, one
4 more useful tool, without going through all of
5 the -- all of the effort of air spading, would
6 be prior to air spading is using the
7 compaction tester, which is going to indicate
8 compacted soils.

9 It's a probe that goes in, and it has a
10 meter, and it will indicate that the soils
11 have been compacted on any place you put it.
12 It's a general guide for doing -- you really
13 need to air spade on a given tree. That would
14 be a far more efficient way of indicating
15 compacted soils.

16 **Q. So you mentioned the reasons that led you to**
17 **conclude that the tree indicated injury 15 to**
18 **18 years ago.**

19 What led you to conclude that there were
20 other signs of damage approximately 18 to 20
21 years ago?

22 A. That statement there, I'm not clear on that at
23 all, to tell you the truth; the 15 to 18, then
24 18 to 20. I don't -- that would probably be
25 one that I'm not in favor of.

1 **Q. Okay.**

2 A. I don't understand that.

3 **Q. So just to clarify.**

4 **You're comfortable with the 15 to 18, but**
5 **not with the 18 to 20?**

6 A. Yes, I would say so. And, again, any time
7 you're talking about something so specific --
8 even there, I'm getting rather specific saying
9 15 to 18. That was in my observations of that
10 day. There's things you cannot see that
11 you're having to extrapolate a bit.

12 With any kind of wound wood, there's some
13 that you're not going to see. There's some --
14 that might be where that came from in
15 conversation, but you're not going to see the
16 helpful little rings coming forward. Some
17 might be still below the bark that you didn't
18 get to see in the first year. So --

19 **Q. All set with your answer?**

20 A. Yes.

21 **Q. Okay. So continuing on, it says, Mr. Hughes**
22 **will testify that the area surrounding the**
23 **tree indicates activity which would likely**
24 **have damaged the tree well before August of**
25 **2022, including but not limited to logging**

1 activity, installation of road basing, gravel
2 and paving of a road in the immediate vicinity
3 of the tree.

4 Is that accurate?

5 A. Yes.

6 Q. And what evidence do you have to support any
7 of those indicated activities?

8 A. The information that the road was paved from
9 gravel in 2011 was something that was provided
10 to me -- and, again, this is information
11 provided to me -- that McGee Logging had done
12 some logging in the area. I do not know what
13 area; whether it be on this side of the road
14 or that side of the road, but that some
15 logging activities had happened; that the road
16 had been realigned.

17 The presence of what appeared to me to be
18 road base going around the tree -- in order to
19 provide what, I don't know. Maybe it was for
20 personal use or whether it be for CMP to be
21 able to not get stuck when they needed to work
22 their power lines, I have no idea -- but there
23 appeared to be road base placed in the area
24 around the tree on those access points.

25 No analysis was ever done to prove

1 whether or not that was road base from a pit.

2 But it appeared that there was an attempt to
3 firm up that road around the tree. It's
4 normal. Nothing unusual about that.

5 **Q. And do you know when each of these activities**
6 **occurred?**

7 A. I have no idea.

8 **Q. And the road basing referring back to the**
9 **picture that you drew or the -- I guess we'll**
10 **call it a picture -- or your drawing --**

11 A. A sketch.

12 **Q. Sketch -- that's even better -- Exhibit 1-A,**
13 **where on that sketch did you see evidence of**
14 **installation of road basing?**

15 A. It would have been I believe what you're
16 calling the north side of the tree to the west
17 side -- let me make this a little bit
18 easier -- and then from the west heading
19 south. It appeared -- it appeared that this
20 contained some materials that, in the past,
21 had been laid down to make it a drivable
22 surface.

23 **Q. And was any of the road basing done in the**
24 **area where you saw injury to the tree bark or**
25 **I should say -- strike that -- to the tree**

1 **trunk?**

2 A. I'm unclear on that. I don't know if the base
3 came very close to the trunk. I can -- if we
4 pull photographs out. As I recall, I believe
5 it was a little bit away from the trunk of the
6 tree. Um --

7 **Q. So we have logging activity by -- you think by**
8 **McGee Logging, but you're not sure when that**
9 **happened; is that correct?**

10 A. Correct.

11 **Q. And we've talked about the installation of**
12 **road basing.**

13 How about the gravel and paving of a
14 road; is that different than from the road
15 basing that we talked about?

16 A. To my understanding, the road was realigned --
17 well, I have a road realignment. I do not
18 know -- Tim would know this. I do not -- when
19 the road was realigned from wrapping around
20 the tree to passing on the east side of the
21 tree.

22 So the realignment the east side of the
23 tree, I do not know when that happened.

24 **Q. Okay.**

25 A. But to my understanding -- this is purely my

1 understanding -- was the road was paved from
2 being a gravel road in 2011. So at that
3 point -- but it does not mean that it was
4 realigned at the same time. It means it was
5 paved from gravel in 2011.

6 Again, not my information. That was
7 gathered by calling the road department. This
8 is information provided to me, just as far as,
9 you know, can you tell me something about
10 what's going on here around this tree. So
11 that was provided.

12 I did mention that -- again, not wanting
13 to trespass -- that if the woods had been
14 logged, if they had been cleared, potentially,
15 you could do an assessment of the age of the
16 new trees to narrow the -- narrow the
17 information there a little bit to say, Okay,
18 well, these trees are 22 years old so in,
19 whatever, 2000, this area was logged off or 32
20 years ago; whenever. Within the lifetime of
21 the tree.

22 My guess is within the lifetime of the
23 tree of 74, 84, 94 years, that area has been
24 logged off, as the forest is pretty young
25 around it. Again, that's only saying the area

1 had been logged. Whether or not they used any
2 of that area for their purposes, I, of course,
3 can't answer that.

4 **Q. So on the sketch that you drew, the road that**
5 **you have labeled as main, M-A-I-N, do you know**
6 **what the name of that road is?**

7 A. Um, I could look, if you'd like.

8 MR. HARRINGTON: River Road.

9 BY MR. BOPP:

10 **Q. Would you agree that's River Road?**

11 A. I believe so. That sounds right.

12 **Q. And the road that you turned onto where you**
13 **said your car was parked --**

14 MR. HARRINGTON: Merry Island Road.

15 BY MR. BOPP:

16 **Q. Is that the Merry Island Road or can we agree**
17 **that's the Merry Island Road?**

18 A. I'll agree to that.

19 **Q. So the Merry Island Road, is that the one that**
20 **you received information had been a gravel**
21 **road that was paved in 2011?**

22 A. To my understanding, that was -- that was what
23 was given to me, yes.

24 **Q. So you're not talking about the other areas**
25 **where you indicated roads going around the**

1 tree as those being paved, right?

2 A. Um, correct.

3 **Q. That's mostly dirt and grass there; is that**
4 **fair to say?**

5 A. Is it okay for me to ask the question, have
6 you been on the site?

7 **Q. I haven't.**

8 A. Okay. I'm sorry. The reason I'm asking is
9 just to see if you had -- had any
10 understanding of the layout. So, no --

11 **Q. From pictures.**

12 A. -- these are simply -- it appears to me -- and
13 again, I don't recall if the road extends into
14 the woods here as an access road in and out or
15 if this was simply a maintenance of CMP lines
16 that run here and here.

17 So my understanding of it, at the time of
18 the meeting, was the road used to wind around
19 the tree and was realigned. Whether or not
20 that occurred, I have no idea.

21 MR. HARRINGTON: I've got to take a break
22 and go to the bathroom. Sorry. It's old man
23 stuff.

24 MR. BOPP: No, I know. Just --

25 A. As it exists -- do you want to stop right

1 there?

2 MR. LIBERMAN: Why don't we wait until he
3 gets back.

4 MR. BOPP: Yeah, we'll wait until he gets
5 back.

6 (A break was taken.)

7 A. It's not exact. This is not advanced Google
8 Earth, but I want to make sure -- we're
9 referring to directions, which makes me
10 nervous. I'd like to really -- really have a
11 better understanding of -- this is an exhibit,
12 and this is half-assed to be -- we need to
13 know exactly where north, south, east, west
14 is; and from my understanding of looking at
15 this, north is over here. North. This is,
16 again, not exact, but --

17 So it would be -- any time that I've
18 mentioned the south side of the tree from
19 looking at Google Maps, it appears that that
20 is actually the east side of the tree. And so
21 my approach was more from the west on. But,
22 you know, we're -- we can assess this.

23 I just want to make sure if we keep
24 referring to directions and if it's showing up
25 in the transcript, we want to be closer. That

1 can all be done more efficiently on site or
2 through advanced Google Earth you can really
3 get it. But that appears it turns in a little
4 bit; a little bit.

5 BY MR. BOPP:

6 **Q. Okay. You're all set with that?**

7 A. I am; I am.

8 **Q. So then the final sentence on the last**
9 **paragraph on page 1 of Exhibit 1 says,**
10 **Mr. Hughes will also testify that, based on**
11 **the information provided to him, it is not**
12 **possible to determine, on a more likely than**
13 **not basis, that activity in August of 2022**
14 **accelerated the decline of the tree or to what**
15 **degree such activity impacted the health of**
16 **the tree.**

17 **Is that accurate?**

18 A. I would -- I would prefer that it say
19 Mr. Hughes will also testify that, based on
20 the information provided to him, it is not
21 possible to determine, on a more likely than
22 not basis, that activity in August of 2022 --
23 to what degree such activity impacted the
24 health of the tree, striking accelerated the
25 decline of the tree.

1 **Q. And what is your reason for making that**
2 **change?**

3 A. It's very difficult to say what will
4 accelerate decline. Um, in that -- in the
5 given situation of the subject tree, it's not
6 always impossible to do so if we're talking
7 about a healthy tree that suddenly is impacted
8 by construction.

9 Certainly, you can discuss whether or not
10 it accelerated decline, so it's not -- it's
11 more in the case of a tree that's already in
12 tough shape. Um, whether or not -- I don't
13 like the word "accelerated." Whether it
14 contributed, I can live with that. But
15 accelerated is tough to demonstrate or to
16 pinpoint.

17 **Q. So would you agree that, based on the**
18 **information provided to you, that activity in**
19 **August of 2022 contributed to the decline of**
20 **the tree?**

21 MR. LIBERMAN: Object to form. You can
22 answer.

23 A. I do not know -- since I do not know exactly
24 what the method of impact or the number of
25 impacts, I do not have any information

1 regarding that, I can't answer that.

2 BY MR. BOPP:

3 **Q. Well, let's peel that apart a little bit. It**
4 **says, Based on the information provided to**
5 **him.**

6 **So what does that refer to?**

7 A. Based on that, um -- at the time when I met on
8 site, Scott Griffin was unsure if they had
9 used that as a turnaround at all. At the time
10 we met, he did not emphasize it. He didn't go
11 overboard with it, but he was not sure if --
12 he had not spoken to his drivers yet who were
13 there on that site.

14 So I was simply looking at general impact
15 of the tree from any number of vehicles,
16 including the van sitting there, on the tree.
17 Everything contributes to compaction;
18 everything.

19 **Q. Was any information provided to you other than**
20 **what was provided to you during the site**
21 **visit?**

22 A. Since that time?

23 **Q. No, prior to.**

24 A. Oh, prior to my site visit?

25 **Q. Right. To start with, prior to.**

1 MR. LIBERMAN: Are you including in that
2 the documents that you had been provided as
3 part of his file?

4 MR. BOPP: Correct, right.

5 BY MR. BOPP:

6 Q. I'm just trying to pin down -- based on the
7 information provided to him, just trying to
8 pin down what information -- what that means.
9 What information was provided to you either
10 prior to your site visit, during the site
11 visit, after the site visit.

12 A. Sure.

13 Q. Prior to this being written -- this being the
14 expert designation.

15 A. As I recall, there was concern that if Griffin
16 Construction had used it as a turnaround, that
17 could this, would this, did this impact the
18 health of the tree.

19 Q. And if they had used it as a turnaround, is it
20 fair to say that doing so would have
21 contributed to the decline of the tree?

22 A. Anything that -- anything that this tree is
23 currently going through and did go through
24 would contribute to decline, certainly. To
25 that end, I did ask if you were to turn a

1 truck in this area, where would you turn it,
2 given the road, and I did -- was able to get
3 an answer on that.

4 And so when -- the key word here is
5 "turning around," since the road wraps around
6 the tree, you would -- it sounds a bit like
7 you're driving around the tree. He answered
8 definitively that he would have only used --
9 if they have had done it, only what would be
10 now -- what we're looking at here is more the
11 east side of the tree because the road angles
12 away, and he'd back in go -- if he were to do
13 it -- I don't know why they would do it. I
14 don't -- but this would be the only way it
15 would be done because of the angles. The
16 angles were all wrong to be able to get a
17 truck around the tree.

18 **Q. And if a tree -- strike that.**

19 If a truck had backed in near the tree on
20 the east side, as you have it in your sketch,
21 and then pulled back out to head down Merry
22 Island Road in the other direction, would that
23 have compacted the soil around the tree?

24 **A. Yes.**

25 **Q. And given -- strike that.**

1 Do you have any understanding as to the
2 general size or weight of the trucks that
3 Griffin was using for that particular project?

4 A. I did ask that question because I wanted to
5 know, and since the trucks would be -- have
6 already, um -- he answered empty tri-axle,
7 which is a Dugas-style, you know, dump truck;
8 empty -- an empty weight tri-axle. I'm not
9 sure exactly what they weigh. That would be a
10 better question for Scott Dugas, or somebody
11 like that, to gain that information.

12 Q. Was there any discussion that the tri-axle
13 would come loaded with whatever it was
14 carrying, turn up Merry Island Road, go to the
15 project, which was located further down Merry
16 Island Road from the tree, drop off whatever
17 materials it was using, and then come back
18 somehow, and that's why it would be empty?
19 Maybe I packed too much into that.

20 MR. LIBERMAN: I'm going to object to
21 form because I'm not sure what further down --
22 what direction we're talking about.

23 A. My understanding was off of River Road, the
24 project was in this direction from the tree.

25 BY MR. BOPP:

1 **Q. In this direction on your sketch, being**
2 **northwest?**

3 A. From where my vehicle was parked, my
4 understanding is the project was -- this is, I
5 believe, again, a turnaround up here or
6 something down at this end. So the project
7 was on the -- to the west/northwest side of --
8 west side of the tree down this way.

9 So I don't -- I don't know. These are
10 outside my scope.

11 MR. LIBERMAN: Are you saying the project
12 was closer to River Road?

13 THE DEPONENT: That was my understanding
14 at the time that it was up here. After all,
15 this is the direction of access. If the
16 project were out here, why would you be doing
17 any turning right here?

18 Again, this is outside my scope, but --

19 BY MR. BOPP:

20 **Q. So your understanding, just using the updated**
21 **directions on your sketch, is that a truck --**
22 **a tri-axle loaded would come down River Road**
23 **going from north to west, would pass Merry**
24 **Island Road, and that the project it was going**
25 **to was located further down -- further down**

1 **river road?**

2 A. Your client would know that. He knows what --

3 MR. HARRINGTON: That's not right.

4 A. I don't want to muddy this whole thing up.

5 BY MR. BOPP:

6 **Q. All right. We'll move along.**

7 So assuming that a tri-axle backed in
8 near the tree, um, and that compacted the
9 soil, is it also fair to assume that that
10 would damage the tree roots?

11 A. I think it's important to -- to look at if it
12 is -- what is the composition of the material
13 that's going around the tree, first of all.
14 Is it a driving surface that was put in there.
15 That's why I pointed out over here where I
16 have no idea who, but tires went off the road.
17 As soon as they went off the edge of the road
18 base -- what appears to be road base -- on
19 this side of the tree, the west side, they
20 sank. They were sunk in. There were tire
21 tracks sunk in over here well away from the
22 area we're talking about.

23 So, yes, I'm going to assume that there
24 is a road basing material there that would --
25 is designed to support vehicles. As soon as

1 you leave road base and you get onto ground
2 here in Maine, yes, you're going to crush.
3 You're going to impact roots, more than
4 likely.

5 **Q. Okay. So the statement that we read from --**
6 **that I read from the designation included the**
7 **phrase "on a more likely than not basis,"**
8 **correct?**

9 A. That was words that Jon Liberman placed in
10 there.

11 **Q. Okay. And when you make determinations in**
12 **your area of expertise, do you typically make**
13 **them on a more likely than not basis?**

14 A. That's not language that I typically use.

15 **Q. What language would you typically use?**

16 A. I stay away from -- typically, I don't want to
17 -- on a more likely than not is rather kind of
18 a pedestrian way of approaching things; but in
19 a summary, it's, I guess, acceptable. But
20 it's not -- I don't ever say, Well, on a more
21 likely than not basis, I can tell you what's
22 wrong with this tree. On any given situation,
23 I don't normally say that. That's moving
24 towards being very definitive. That's being
25 very sure of, you know, your findings.

1 At least given the time I had to assess
2 this tree -- the time we spent, I should say,
3 assessing the tree, I couldn't be definitive
4 on what -- on what is here.

5 **Q. So is it fair to say you couldn't be**
6 **definitive one way or the other?**

7 A. On --

8 MR. LIBERMAN: Object to form.

9 A. Yeah, I'm getting twisted up in this a little
10 bit. Because as I have stated already, the
11 tree is there. It's providing the
12 information, and the tree has given
13 information to indicate when various damages,
14 at least spatially over time, has occurred to
15 it. The site gives you information as far as,
16 well, what has been done on the site over a
17 space of time. That's -- that's what we have
18 to work with. That's what's more definitive.

19 Yes, the road went in not in 2011. Maybe
20 it went in in 2009. That's definitive. When
21 was road base put in; was road base in?
22 That's definitive. Those are definitive
23 things, of which we don't have any information
24 on.

25 So when was the site logged; where did

1 those guys park their equipment? I don't
2 know. But it would be definitive to know some
3 of that information. But aside from that, the
4 tree does give me an indication of when some
5 of the activities occurred.

6 BY MR. BOPP:

7 Q. So is it fair to say that using the phrase
8 that's in there, "activity in August of 2022"
9 -- is it fair to say that the activity in
10 August of 2022 may have contributed to the
11 decline of the tree?

12 Is it fair to say that?

13 A. No.

14 MR. LIBERMAN: Object to form. Answer,
15 if you can.

16 A. No.

17 BY MR. BOPP:

18 Q. So what you're saying is there's no possible
19 way that the activity in August of 2022
20 contributed to the decline of the tree?

21 A. Because I don't know -- I don't have
22 definitive information of what happened in
23 August of 2022. I have no -- no -- again,
24 this is a very busy area of the road, very
25 busy area that's had a lot of activity on it.

1 So I was kind of working from a disadvantage
2 that I know no history.

3 So if it were a tree on Main Street in
4 Yarmouth here where definitely trucks backed
5 on in August of 2022, that's definitive.
6 Could I answer definitively to that? You bet.

7 In this situation here, I don't know, A,
8 if they had backed trucks in. There's no
9 information to that effect. Um, and then who
10 may have been backing into the tree a month
11 before that or a month after that or a day
12 after that. That's the limitations. That's
13 the limiting conditions of which I'm working;
14 assumptions and limiting conditions.

15 So I'm on really -- as we get into these
16 types of questions, I'm on thin ice because I
17 don't have enough definitive information
18 leading to the actual August of '22.

19 **Q. So is it fair to say you can't determine**
20 **either way then whether activities in August**
21 **of 2022 contributed to a decline in the health**
22 **of the tree?**

23 **A. Correct.**

24 **Q. So at the top of page 2 of Exhibit 1, I'll**
25 **read what it says there. Mr. Hughes reserves**

1 the right to provide additional opinions
2 following the receipt of additional material.

3 Do you see that?

4 A. Mm-hmm. Yes.

5 Q. And that's accurate?

6 A. Yes.

7 Q. After the date of this designation, which is
8 December 27, 2023, did you receive any
9 additional material?

10 A. I do not believe I did.

11 Q. Okay. And so it would follow that you have
12 not provided any additional opinions; is that
13 right?

14 A. Correct.

15 Q. In the final paragraph on that page, it
16 indicates that counsel reserves for Mr. Hughes
17 the right to correct, clarify or expound upon
18 the subject matter on which he will testify
19 and/or the substance of the facts and opinions
20 to which he is expected to testify, as
21 identified herein.

22 Is that accurate?

23 MR. LIBERMAN: Just objection to form. I
24 think you had read, Counsel reserves the right
25 to correct, amend or alter, and what's on the

1 exhibit is supplement, amend or alter, if I'm
2 looking at the right part.

3 MR. BOPP: I was one sentence ahead of
4 that or just before that. Counsel reserves
5 for Mr. Hughes the right to correct, clarify
6 or expound.

7 MR. LIBERMAN: I see it.

8 BY MR. BOPP:

9 Q. Do you see that sentence?

10 A. Yes; yes.

11 Q. And I read that accurately?

12 A. Yes.

13 Q. Since the date of this designation, have you
14 corrected, clarified or expounded upon
15 anything in this designation?

16 A. Not to my knowledge.

17 Q. And the final sentence says, Counsel further
18 reserves for Mr. Hughes the right to
19 supplement, amend or alter his opinions as
20 identified herein upon receipt of additional
21 information in the course of discovery or
22 otherwise.

23 Is that accurate?

24 A. Where's that?

25 Q. The final sentence.

1 A. Oh, I'm sorry. You turned the page.

2 Q. Yeah, sorry.

3 A. Yes, that's accurate.

4 Q. And I think we already covered this, but just
5 for completeness sake.

6 Have you received any additional
7 information along the lines that this sentence
8 refers to?

9 A. No, not that I know of.

10 Q. So you haven't then supplemented, amended or
11 altered your opinions as identified --

12 A. Correct.

13 Q. -- herein?

14 A. Correct.

15 Q. Other than, I guess we should say, the one
16 change that you made that we talked about
17 earlier?

18 A. Yes.

19 Q. So I guess just turning to the final page of
20 Exhibit 1, which is -- looks like your fee
21 schedule?

22 A. Mm-hmm.

23 Q. And that is your fee schedule?

24 A. Mm-hmm. Yes, it is.

25 Q. Okay. Thanks?

1 A. Sorry about that.

2 Q. No worries.

3 I guess why don't we call it -- it
4 includes your fee schedule, but it looks like
5 it's a Proposal; is that fair to say?

6 A. Yes.

7 Q. And prior to this Proposal, how many tree
8 valuations had you performed?

9 A. Over 36 years, that's hard to say,
10 unfortunately. A lot, yeah.

11 Q. And is there a difference between a tree
12 valuation and a tree appraisal?

13 A. A tree appraisal is -- you're attempting to
14 place a value -- a dollar value on a given
15 situation in an appraisal. An evaluation
16 you're normally -- it can be any number of
17 things that people wish to extrapolate or
18 extract, rather, from the tree or the site.

19 Q. And have you performed a number of tree
20 appraisals as well?

21 A. Yes, I do tree appraisals.

22 Q. Up towards the top of this proposal, one of
23 your qualifications says Board-Certified
24 Master Arborist, in parentheses ISA.

25 Do you see that?

1 A. Correct.

2 **Q. What does ISA stand for?**

3 A. International Society of Arboriculture.

4 **Q. Are you familiar with the ISA Tree Risk**
5 **Assessment?**

6 A. Yes.

7 **Q. And on how many trees have you performed that**
8 **risk assessment?**

9 A. That specific risk assessment?

10 **Q. Right.**

11 A. Utilizing the ISA form?

12 **Q. Right.**

13 A. That's the key. A dozen, utilizing the form.

14 **Q. So you're familiar with the ISA Basic Tree**
15 **Risk Assessment Form?**

16 A. Yeah, I've been re-qualified three times in
17 that. I was among the first to be tree risk
18 assessment qualified. So it's my third
19 go-round with that.

20 **Q. And that's listed as one of your**
21 **qualifications in the upper right-hand corner**
22 **on the proposal, right?**

23 A. Correct.

24 **Q. And when did you first earn your ISA -- is it**
25 **called TRAQ credential or T-R-A-Q? I don't**

1 **know how you pronounce that?**

2 A. I believe that was 2008.

3 **Q. Is it TRAQ or T-R-A-Q?**

4 A. TRAQ.

5 **Q. 2008?**

6 A. Yeah.

7 **Q. So you have to renew it every so often?**

8 A. Let me just think about this. So five years
9 per -- I take that back. That was the -- TRAQ
10 was -- this is the third, so it would be 10
11 years prior.

12 I apologize. 2014 is when TRAQ started.

13 **Q. And that has to be renewed every five years?**

14 A. Every five years. Because I just renewed
15 again; so, yes. And that's moving forward
16 another five years. That's why I was going
17 backwards.

18 **Q. Okay. Did you use the ISA Basic Tree Risk**
19 **Assessment Form in evaluating this tree in**
20 **this matter?**

21 A. No.

22 **Q. And why did you not use that?**

23 A. Because that was outside the scope of what I
24 was -- my assignment. It was a tree health
25 evaluation. I evaluate the health of the

1 tree, determine whether or not impact
2 occurred, blah, blah, blah.

3 This was not a tree risk assessment, per
4 se, which is quite often the case with, you
5 know, using the TRAQ form -- and it is a
6 form -- it is about the site risk, so --

7 **Q. And what is the -- if you use the form, what**
8 **are the results of that -- of using the form?**

9 **What do they tell you about the tree?**

10 A. Um, the Tree Risk Assessment Form will tell
11 you given -- given the site and the use of the
12 site and the occupancy of the site, what is
13 the risk of the tree to that site, given
14 different situations such as the road, the
15 pedestrian traffic, whatever.

16 So what it will give you is a very kind
17 of vanilla matrix formula that you wash it
18 through; and it will say, What's the
19 possibility of this tree -- what are the
20 likelihood, I should say, is the key word --
21 of the tree failing in the crown, in the
22 roots, in the trunk, given the occupancy of
23 that site.

24 So you get an answer back, and it would
25 say, Somewhat probable, somewhat possible,

1 imminent; this type of thing.

2 **Q. So it's a way to evaluate the health of the**
3 **tree; is that fair to say?**

4 A. You're giving -- yes, you're giving an overall
5 -- you're really approaching the tree more
6 from a risk assessment. You're identifying
7 potential risk. So -- okay.

8 So to give you an example, if I was to
9 walk in there thinking tree risk assessment,
10 so the dead wood that's up in the top of the
11 tree -- the big decline, the big limbs that
12 are hanging over the road that are dead, those
13 would be jumping out as this tree has high
14 potential for risk. Then you wash it through
15 to, Well, how often do people walk up this
16 road; how often do they bike; do they camp
17 underneath this tree; how often do cars pass
18 by.

19 And quite often, in the risk assessment,
20 what -- the occupancy has a large effect on
21 what that end result is going to be. So you
22 might say, Oh, my goodness. This tree is very
23 -- it's very likely to fail. Boy, there's
24 some scary stuff up here. If we're talking
25 about where the kids walk down from Yarmouth

1 High School, the tree is rating very high for
2 risk. If you're talking about Merry Island
3 Road in the middle of Edgecomb, all of a
4 sudden, the tree risk can become very vanilla;
5 likely to cause -- you know, cause damage to
6 persons, vehicles relatively low because
7 there's relatively few people out there.

8 So that's where the tree risk assessment
9 -- the newer ones with the TRAQ form take into
10 account not what's the tree showing you, but
11 how could it impact the surrounding
12 environment of kids, cars, pedestrians,
13 buildings.

14 And so out there on Merry Island Road,
15 it's -- the tree suddenly becomes less of a
16 risk factor than sitting over here on Elm
17 Street.

18 **Q. So is it fair to say that the risk that is**
19 **involved in that assessment form is the risk**
20 **of the tree impacting people, vehicles, other**
21 **things around it; is that fair to say?**

22 **A.** Where -- okay. Again, I'm not going to state
23 ISA language exactly correct, but risk is
24 purely -- they had to -- in forming the TRAQ
25 program, they had to do away with the previous

1 older ways of doing risk, which was a number
2 system, and they moved into more of a -- they
3 had to look at what the American Standards
4 Institute and places like that say there's no
5 risk if there's no damage. There's no risk if
6 there's no people involved. There's no risk
7 if there's no cars involved or there's low
8 risk if there's only occasional cars or people
9 or buildings involved.

10 So, again, with the new program, that is
11 what -- the tree out on Merry Island Road,
12 whatever. It's an old declining oak, but
13 there's very few few people around or they
14 pass by while taking their morning walk at 10
15 in the morning, and nobody else is on the road
16 for the rest of the day; this type of thing.

17 So occupancy is everything with the TRAQ
18 program.

19 **Q. And so for my mind, what I'm trying to**
20 **distinguish between -- and I may not be**
21 **phrasing this right -- is external versus**
22 **internal risk.**

23 And what I mean by that is, this
24 assessment form is not a measure of the risk
25 that the tree itself is failing, dying, in

1 **poor health.**

2 A. Correct.

3 **Q. That's fair to say?**

4 A. Yes.

5 **Q. Okay.**

6 A. But to point that out, a tree risk assessment
7 can always be done. That can always be done.
8 And if you'd like to have it done, it can be
9 done. But really, a tree health evaluation
10 approaches the tree from, you know, what has
11 happened to you, what information can you give
12 me to help me determine what condition you're
13 in; not whether or not you're going to hurt
14 somebody. It's about the tree's health and
15 how it's been impacted. And that's a key
16 differentiation.

17 Once you get into the tree risk
18 assessment, it kind of goes, you know what;
19 it's out in the middle of a country road;
20 whatever.

21 MR. HARRINGTON: Okay. Can we move on?
22 I mean, we're on Exhibit 1, okay; and, you
23 know, we're talking -- you know, we got 38
24 exhibits. I'm hungry now. I mean, come on.
25 Can we move on? We don't need Exhibit 2.

1 We've answered everything in Exhibit 2, so we
2 got to move forward.

3 MR. BOPP: Yes, we will.

4 MR. HARRINGTON: I mean, do you guys
5 agree; everybody?

6 MR. BOPP: So the way it works is, I'm
7 conducting the deposition.

8 MR. HARRINGTON: That's correct, but I'm
9 getting hungry.

10 MR. BOPP: I get it. We're going to move
11 on to a lunch break in a little bit. If you
12 could be patient, that would be great.

13 BY MR. BOPP:

14 Q. I just want to circle back to what you said.

15 Were you drawing a distinction between a
16 different type of assessment of the tree
17 versus this ISA Tree Risk Assessment? Because
18 you said something along the lines -- we could
19 read it back, but maybe you remember what you
20 said -- something along the lines of
21 performing an assessment of the health of the
22 tree.

23 A. That is purely professional assessment, at
24 that point. It goes to experience. It goes
25 to your qualifications. But, no, there's no

1 form that you fill out for a tree health
2 evaluation. There's no set ISA form that you
3 follow. That is where the ISA says, Hey, this
4 is where your qualifications come into play.
5 Are you a normal certified arborist; are you
6 not a certified arborist; are you a -- board
7 certified, there's -- ISA, within -- there are
8 certified arborists, of which I became one
9 back in the early '90s. My number is 0108, so
10 I was among the first. There's now 35,000 in
11 the world; somewhere in that neighborhood.

12 But then they created board
13 certification, of which two percent of
14 certified arborists are actually board
15 certified. So that was back in 2008 that I --
16 I believe 2008 I got the board certification.
17 Then there's consulting arborist end of
18 things.

19 **Q. In this particular situation, were you asked**
20 **to perform a valuation or an appraisal of the**
21 **tree?**

22 A. An evaluation.

23 **Q. Okay. So I said an valuation -- I'm sorry;**
24 **not an-- a valuation or appraisal.**

25 A. No.

1 **Q. No?**

2 **A. I was not asked to provide a valuation of the**
3 **tree or an appraisal or the tree.**

4 **Q. You were asked to provide an evaluation of the**
5 **health of the tree; is that fair to say?**

6 **A. Correct.**

7 **Q. Okay. All right. Let's take a look at**
8 **Exhibit 2, which we have referred to**
9 **previously.**

10 **And you've seen Exhibit 2 before,**
11 **correct?**

12 **A. Yes; mm-hmm.**

13 **Q. And what is Exhibit 2?**

14 **A. Those are my notes that were taken at the time**
15 **of our meeting.**

16 **Q. And the phone number at the top, what does**
17 **that represent?**

18 **THE DEPONENT: Can you help me out?**

19 **MR. LIBERMAN: If you don't mind me**
20 **chiming in, that's my phone number.**

21 **MR. BOPP: Okay. Good enough.**

22 **BY MR. BOPP:**

23 **Q. How about the time, 9:00 to 11:15?**

24 **A. On site time, right there.**

25 **Q. I guess -- so this is in your handwriting?**

1 A. It is.

2 **Q. And when were these notes taken?**

3 A. While -- right there in the moment in that --
4 during -- between 9 and 11:15 a.m.

5 **Q. So these notes were taken during the site**
6 **visit?**

7 A. Correct.

8 **Q. In December of 2023?**

9 A. Correct.

10 **Q. All right. And August '21 project, you had**
11 **referred to that as turning the gravel road**
12 **into a paved road.**

13 **Am I right on that?**

14 A. No. That was given to me as the time of the
15 -- of when the incident occurred, and it was
16 later amended to August of '22, of which we're
17 talking.

18 **Q. Okay.**

19 A. That was when they said initially was August
20 of '21. They said, Oh, we made a mistake. It
21 was August of '22 is when the project
22 occurred.

23 **Q. And when were you updated to the August of '22**
24 **date?**

25 A. That was on the 12th of March this year, 2024.

1 **Q. Okay. So you have another version of Exhibit**
2 **2 in your folder?**

3 A. I believe that was post when you asked for
4 your information.

5 **Q. Okay; fair enough.**

6 And empty tri-axle, can you just quickly
7 tell us what that referred to again.

8 A. Yeah, that is the -- asking what trucks were
9 operating during this project; what would be
10 the typical truck that was operating. It
11 would be a tri-axle dump truck that he -- I
12 believe that was from Scott Griffin.

13 **Q. Okay.**

14 A. And Tim Harrington is jotted down there as the
15 owner of the tree.

16 **Q. How about CMP easement for 35 years?**

17 A. That is information that was given to me,
18 again, on site that CMP had an easement to
19 manage their lines that still followed the old
20 road.

21 So once the road -- to my knowledge, once
22 the road was realigned to be straight,
23 basically cutting off two sides of a triangle,
24 CMP maintained their lines still in a
25 triangular form around the tree. So that

1 allows them access to have an easement, which
2 gives them access to maintain the -- you know,
3 their stuff; their transformers and things.

4 Q. And does that tie into your final note there,
5 road realignment?

6 A. I don't -- I do not know. I do not know. No
7 date was given to me as when all that
8 occurred. The road was paved. It looked --
9 pretty decent shape, but they said 2011 it had
10 been paved from gravel. But, again, this was
11 not -- I asked the question. I'm throwing the
12 question at them, and they did their best to
13 answer me. It could be a different date, but
14 I was asking them these questions.

15 This was not presented to me like we've
16 already found this information out. It's them
17 doing their best to say, Well, you know, 2011.
18 I believe somebody actually drove by during
19 that time and were wondering what we're all
20 looking at, and they might have actually said,
21 Oh, yeah, it was paved in 2011.

22 Q. And then McGee Logging -- we talked about at
23 some point in the past, McGee Logging had
24 performed some logging operations in that
25 area?

1 A. Again, information given to me. I would hate
2 to say -- I wrote it down because it was said
3 to me. They believed it was McGee Logging.
4 It could be some other logging outfit. I
5 don't want to cause somebody some headaches,
6 but they believed it was McGee Logging.

7 **Q. And at the time that you did the site visit in**
8 **December of 2023, your understanding was the**
9 **project and activity that we've been talking**
10 **about that the defendant was working on in the**
11 **area happened in August of 2021?**

12 A. Correct, yes.

13 MR. BOPP: Um, okay. Any objection to
14 taking a copy of this and then making this
15 Exhibit 2-A?

16 MR. LIBERMAN: No problem.

17 MR. BOPP: Okay. All right. Any
18 objection to taking a break to get a quick
19 sandwich or something?

20 MR. LIBERMAN: No objection.

21 MR. BOPP: Okay. All right. Good
22 enough. Let's do that.

23 (A break was taken.)

24 BY MR. BOPP:

25 **Q. So, Mr. Hughes, I just want to hand you back**

1 **your notes.**

2 A. Thank you.

3 **Q. You're welcome. Thank you. And then we made**
4 **copies of them. Just put Exhibit 2-A on. So**
5 **there's a copy. And then there's this one**
6 **here.**

7 (Off the record.)

8 MR. BOPP: I just wanted to put on the
9 record that we made a copy of Mr. Hughes's
10 notes, and we called that Exhibit 2-A. I
11 thought we had a 1-A also.

12 MR. HARRINGTON: We did have a 1-A. It
13 was his drawing.

14 (Off the record.)

15 MR. BOPP: Okay. So do you want to hand
16 out the other--

17 MR. HARRINGTON: Exhibit 3.

18 BY MR. HUGHES:

19 **Q. All right. Mr. Hughes, I'm handing you what's**
20 **been marked as Exhibit 3. Ask you to take a**
21 **look at that, please.**

22 MR. LIBERMAN: Could I take a look at
23 that one, and then once we need to hand it
24 over --

25 MR. BOPP: Yes, absolutely.

1 MR. LIBERMAN: Thanks.

2 A. By the way, just for the record, I did check
3 exactly how many photographs I took, and there
4 were 12 total.

5 BY MR. BOPP:

6 **Q. Okay.**

7 A. So I believe all of the ones that were clear
8 at least were submitted. But there's a grand
9 total of 12 that were taken.

10 **Q. And some of them were just too fuzzy to be**
11 **useful?**

12 A. I'd be glad to -- every single one -- I'll
13 create a composite sheet of all of them; and
14 some you will already have, but I'll just send
15 them to you.

16 **Q. Yeah.**

17 A. That way, you have everything that's -- that
18 was taken.

19 **Q. Okay. Yeah, that would be fine.**

20 A. Okay.

21 **Q. You've had a chance to look at Exhibit 3?**

22 A. Yes, I have; mm-hmm.

23 **Q. Have you seen that picture before?**

24 A. I have not.

25 **Q. And what -- can you tell what that is a**

1 **picture of?**

2 A. It looks like a picture of the -- again, let's
3 call it the southeast side of the tree and the
4 area surrounding it.

5 **Q. So this is the legacy oak tree that's at issue**
6 **in this case?**

7 A. Yes.

8 **Q. Okay. Do you know when the picture was taken?**

9 A. Do I know when?

10 **Q. Right.**

11 A. I have no idea when this was taken.

12 **Q. Okay.**

13 A. I looked for a time stamp on the back, but I
14 didn't see one.

15 **Q. And I'm sorry. Did you say you have never**
16 **seen it before?**

17 A. I have not seen this picture before.

18 **Q. The road that's to the right of the tree, is**
19 **that the Merry Island Road?**

20 A. Yes, I believe so. That would be Merry Island
21 Road.

22 **Q. In the sketch that you made, the areas that**
23 **you were talking about, the CMP lines running**
24 **down, are those behind the tree and then in**
25 **front of the tree in the foreground?**

1 A. Yes.

2 **Q. Okay. And those areas are not paved or**
3 **graveled; is that right?**

4 A. I do not know. I can't speak to that.

5 **Q. From looking at this picture, do you see any**
6 **pavement or gravel in those areas?**

7 A. This would be too close in here, I believe,
8 for it to have been graveled. The road base,
9 as we've been terming it, on the back side,
10 that area in there seemed to have something
11 put down at some point in time.

12 **Q. And do you see any tire marks in this picture?**

13 A. It does look like there's tire marks right
14 here, yeah. I'm sorry. Right here, meaning
15 in the foreground of the photograph.

16 **Q. Can you tell what direction the vehicle would**
17 **have been traveling that made those marks?**

18 A. He would have been heading up -- meaning
19 northbound -- on Merry Island Road.

20 **Q. And can you tell where the tire marks are**
21 **coming from?**

22 A. That's not quite so easy to tell. I can't --
23 I cannot. It looks to me like all of them are
24 turning out to head northbound on Merry Island
25 Road.

1 **Q. And on the day of your site visit, did you see**
2 **any tire marks like these at the property?**

3 A. Um, can I refer to my photographs and my phone
4 if you guys don't have those photographs?

5 **Q. I think that's fine.**

6 A. Do you have photographs?

7 **Q. We have some, but I don't know if we have the**
8 **ones that --**

9 MR. HARRINGTON: We don't.

10 A. It would just take me a moment. Because I
11 just had them open. So let me just see.

12 Yeah, it appears there's tire marks in
13 this photograph taken on December 19 of last
14 year, at least from a perspective of -- it
15 looks like ground indentations right here
16 behind the white van.

17 BY MR. BOPP:

18 **Q. Okay.**

19 A. So it does appear that's a popular pull-in
20 spot or -- it's hard to tell, but there
21 appears that there's -- let me see if we can
22 -- unfortunately, the point when I was there,
23 there was heavy leaf matter down on
24 everything. I'm trying to see if there's
25 anything rather clear.

1 **Q. That's all right.**

2 **Is it fair to say -- so you're looking at**
3 **a picture on your phone of the tree, and**
4 **there's a white van next to it; is that right?**

5 **A. Correct.**

6 **Q. Okay. That was taken on the day of your site**
7 **visit, right?**

8 **A. Correct.**

9 **Q. And that will be provided to us sometime after**
10 **this deposition?**

11 **A. Correct.**

12 **Q. Are you saying that the leaf cover in that**
13 **picture and on that day is heavier than the**
14 **leaf cover in Exhibit 3?**

15 **A. Yeah. Yes, I would say so because I believe**
16 **all the leaves on the surrounding trees and**
17 **this tree had fallen down. So there was quite**
18 **a bit of leaf cover out there.**

19 **Q. Looking at these tire marks on Exhibit 3, can**
20 **it reasonably be assumed that whatever vehicle**
21 **made these marks, that doing so impacted the**
22 **root system of the oak tree?**

23 **A. I would say potentially, yeah. If it has been**
24 **run over once, twice, 300 times, each one has**
25 **an impact.**

1 **Q. Okay. And is it fair to say that the root**
2 **system of this particular tree would extend**
3 **out to and past these tire marks?**

4 **A. Yes.**

5 **Q. How far under the ground are the roots?**

6 **Is there any way to tell, generally?**

7 **A. Typically, on a red oak, most of your roots**
8 **are going to be located within the first 18**
9 **inches of soil.**

10 **Q. And is there what's known as a woody section**
11 **of the root system?**

12 **A. Yeah -- yes. Sorry. Supporting your main --**
13 **your main root plate is your -- the part that**
14 **-- to make this visual -- is what you see a**
15 **root plate generally gets lifted out of the**
16 **ground like after the last storm where we see**
17 **trees over sideways. So that is going to be**
18 **your very woody roots that are supporting**
19 **roots. So those will be within the first --**
20 **on a tree this size, generally within the**
21 **first 8 feet of the trunk.**

22 **So, yes, to answer your question. Those**
23 **would be more woody roots.**

24 **Q. And these tire tracks would be above the woody**
25 **roots?**

1 A. I would say so, yes.

2 **Q. And do the woody roots provide most of the**
3 **support for the tree?**

4 A. The root plate, as it is, with the woody --
5 the woodier larger roots, yes; it's a support
6 system for stability. The fine fibrous roots
7 are equally important. They're going to be
8 farther out from the trunk.

9 And if it helps just to clarify --
10 because you'll get these photographs -- but I
11 did put some cones that will appear in the
12 photographs out that day to outline where the
13 edge of that root system -- not the exact
14 edge, but where that root system was in
15 relation to things on site. So that will show
16 up in your photograph well out over here.
17 There'll be a series of cones showing,
18 basically, what the root system is in the
19 area. And it really is underneath all of that
20 area that you can see road or access around a
21 tree. That typically would be all part of a
22 healthy tree's root system.

23 **Q. Exhibit 4.**

24 MR. LIBERMAN: Are you going to provide
25 us with Exhibit 4?

1 MR. HARRINGTON: I was caught off guard.

2 I had three pages of questions with that,

3 Fred, and you shrunk it down.

4 MR. BOPP: Imagine that.

5 BY MR. BOPP:

6 **Q. Ask you to review Exhibit 4, please.**

7 A. Mm-hmm.

8 **Q. That's your resume; is that right?**

9 A. Yes; mm-hmm.

10 **Q. And is this all current as of today?**

11 A. Yes, it is; mm-hmm.

12 **Q. And do you have to take continuing education**
13 **to maintain some of your qualifications?**

14 A. Yes. Certifications and qualifications, yes.

15 **Q. And we already talked about your TRAQ**
16 **certification is subject to renewal; is that**
17 **right?**

18 A. It is. TRAQ is a qualification.

19 **Q. I'm sorry.**

20 A. So it has to be retested out of every five
21 years -- within five years.

22 **Q. Are any of your other certifications or**
23 **qualifications subject to being retested?**

24 A. Not retested, no. You have to -- the board
25 certified has to -- has a 60 CEU every --

1 every three years, I believe. So it's 60 CEUs
2 per three years, I believe.

3 **Q. Okay.**

4 A. And the ISA is similar. I bunt and do them
5 both at the same time.

6 **Q. We're going to hand you Exhibit 5, two pages.**
7 **I'm just going to staple them together.**

8 **I'll ask you to review that and let me**
9 **know if you're familiar with it.**

10 A. Yeah. Yes, I am.

11 **Q. What is Exhibit 5?**

12 A. This is ISA Basic Tree Risk Assessment Form.

13 MR. LIBERMAN: Could we have the witness
14 just give her his copies after he's done
15 testifying so I can follow along?

16 MR. BOPP: Sure. No worries.

17 BY MR. BOPP:

18 **Q. And we talked about this form a little earlier**
19 **today, right?**

20 A. Mm-hmm. Yes, we did.

21 **Q. And you indicated that completing this form**
22 **was outside the scope of what you had been**
23 **asked to do for your assignment in this case;**
24 **is that fair?**

25 A. Yes, it was outside of what was the requested

1 assignment, yes. It was not part of the -- it
2 was not -- I'll say not part of the request
3 for the assignment.

4 **Q. And as far as you know, is this the complete**
5 **form; the two pages?**

6 A. Yes, it is; mm-hmm.

7 **Q. And you are familiar with how to complete it**
8 **and have completed this on numerous occasions**
9 **before?**

10 A. Yes; mm-hmm.

11 **Q. Exhibit 6. Look at us.**

12 MR. HARRINGTON: You're throwing me off.

13 MR. BOPP: Good.

14 BY MR. BOPP:

15 **Q. So I'm handing you Exhibit 6. If I can ask**
16 **you to take a look at that picture.**

17 A. Okay.

18 **Q. I take it this is not a picture that you took;**
19 **is that right?**

20 A. It was not a picture I took.

21 **Q. Okay. Um, do you recognize the tree on the**
22 **left side of the picture?**

23 A. It appears to be the subject tree.

24 **Q. I'll represent to you that it is, and that**
25 **that road then would be the Merry Island Road,**

1 I believe, if that's correct.

2 Does that sound right to you?

3 A. It appears right. Correct, yeah.

4 Q. Do you see the bark at the base of the tree in
5 Exhibit 6?

6 A. Yes.

7 Q. What -- what does that indicate?

8 A. That it fell off the tree.

9 Is that what you're speaking of; what's
10 on the ground?

11 Q. Yeah. No, that's a fair answer.

12 Can you tell why it fell off the tree?

13 A. Not at all.

14 Q. No?

15 A. No.

16 Q. Can you tell what's happening to the tree
17 based on the condition in this picture?

18 A. No.

19 Q. It's obviously not healthy, right?

20 A. No, it's -- it's -- this is what I had
21 discussed earlier. So, no.

22 Q. So something is -- is the tree rotting or
23 what's happening here on the left where the
24 bark is falling off and you see the under --
25 under the bark surface?

1 A. It's damage that had occurred at some point in
2 time, and the tree -- the tree is attempting
3 to close it from the sides. It's going to
4 probably decay before it ever gets a chance to
5 do that. So the damage is widespread. It
6 covers a large percentage of the caliper of
7 the tree, and it's not something that a tree
8 of this type or any tree could recover from.

9 **Q. Can you -- based on what you see in this**
10 **picture, would this have -- would this then be**
11 **a picture of the tree later in time after your**
12 **site visit in December of 2023?**

13 A. I don't understand that question.

14 **Q. So was the -- was the tree in this condition**
15 **when you saw it in December of 2023?**

16 A. It was similar to this, yes.

17 **Q. Okay. Can you tell if this is worse than when**
18 **you saw it?**

19 A. Um, that's almost impossible to tell. I'd
20 have to -- I'd have to do a side by side of my
21 photographs. But I would guess not. I would
22 guess that it's going to be very similar if
23 this photograph was taken in February of this
24 year or March of this year.

25 **Q. When you saw the tree in December of 2023, did**

1 you think that the tree would be able to
2 recover or that ultimately it would die?

3 A. Um, I do not think that the tree would be able
4 to recover from this type of injury. Um,
5 whether or not the tree dies, it can take a
6 very long time to occur. The tree can go
7 through a number of different phases.

8 You know, there's examples of trees in
9 Europe that are hundreds of years old that are
10 hollow. Not a situation you want in this kind
11 of -- you know, around a road and all that,
12 for sure. But I wouldn't say that the tree
13 was going to die in the next -- I couldn't
14 forecast that. That would be very difficult
15 to say.

16 Q. You see the cracks at the edge of the road --

17 A. Yes.

18 Q. -- in Exhibit 6?

19 A. Mm-hmm.

20 Q. Can you make any judgment as to how those
21 cracks might have been made?

22 A. I'm not a road expert, and I don't want to
23 speak outside, you know, what I'm here for.
24 It looks like heavy -- heavy equipment or
25 something heavy drove up and the side

1 collapsed; whether it be a plow truck or dump
2 truck or whatever. It looks like -- to me,
3 like it collapsed under the weight of
4 something.

5 **Q. In looking at the tree trunk, is there**
6 **somewhere that you could point to that shows a**
7 **root coming off of the tree?**

8 A. Not that I can see.

9 **Q. Let's move on to Exhibit 7.**

10 MR. LIBERMAN: Thank you.

11 BY MR. BOPP:

12 **Q. So looking at Exhibit 7, would you say that**
13 **appears to be a close-up of the cracked**
14 **pavement from Exhibit 6?**

15 THE DEPONENT: Can I grab this back?

16 THE REPORTER: Sure. Help yourself.

17 A. It does look the same, yes.

18 MR. LIBERMAN: I think he's done with
19 that.

20 THE DEPONENT: All done?

21 MR. BOPP: Yeah.

22 MR. LIBERMAN: Thank you.

23 BY MR. BOPP:

24 **Q. I'll ask you to take a look at Exhibit 8. Let**
25 **me know when you've had a chance to look at**

1 it.

2 A. I'm sorry. I'm trying to read through the
3 overstamp here -- website overstamp.

4 Q. I don't think you need to worry about that.

5 A. Okay.

6 Q. The two sources that are in parentheses there,
7 are you familiar with Zimmerman and Brown,
8 1971, and Kozlowski and Winget, 1963?

9 A. Yes.

10 Q. Both of those you are?

11 A. Yes.

12 Q. So are --

13 A. Is this relevant information; is that what you
14 wanted to ask me?

15 Q. Sure. Let's go with that.

16 A. I would say that much has been done since this
17 time, but this is still relevant information.

18 Q. Okay.

19 A. It's relevant to what should be common
20 knowledge for somebody who has experience or
21 education. So, yes, this is a relevant sheet
22 of paper here.

23 Q. Would you agree with the statement in here
24 that says, Death or damage to the roots of
25 trees with such restricted, one-sided plumbing

1 systems usually results in the death of the
2 corresponding branches?

3 A. Yes, I would agree with that.

4 Q. And are these authors that are authorities, if
5 you will, in the field of --

6 A. Trees physiology? Yeah, they're early -- you
7 know, 1971, 1963. It's all relative, you
8 know, to -- over time, like I said, a lot of
9 work has been done, and so -- but this is --
10 this is a foundational knowledge, and it's
11 good and it's relevant. I have no problem
12 with what's written here.

13 Q. Okay, great. Thank you. Move on and ask you
14 to look at Exhibit 9. Just let me know when
15 you've had a chance to review --

16 A. Yeah, I'm ready.

17 Q. So the bottom picture on Exhibit 9, I don't
18 remember the technical term that you used, but
19 is that an example of what you had described?

20 Was it root plate; is that what you said?

21 A. Yes; mm-hmm.

22 Q. So is this an example of a root plate?

23 A. Yeah. That's a good photograph, yeah.

24 Q. And can you tell, is that an oak tree?

25 A. It looks like an oak or an ash, yeah.

1 **Q. And is there a term -- a specialized term in**
2 **your field used to describe these types of**
3 **roots?**

4 A. Yeah, these larger roots right here right up
5 near the trunk are buttress roots. As we move
6 out into the fibrous root system is going to
7 be extending well beyond what we're seeing
8 here. They will be in and among the buttress
9 roots, which is critical.

10 It used to be thought that everything was
11 way out at the drip line and all the fine
12 fibrous roots were -- what you can see
13 dangling down here -- were out at the drip
14 line. But generally, this whole root plate
15 area has quite a bit of it in there. So,
16 yeah.

17 **Q. And is it fair to say that, um, the root**
18 **system closer to the tree is also closer to**
19 **the surface?**

20 A. No; no. I guess right up near the trunk where
21 it's entering the ground, to crush those would
22 not be a good idea, for obvious reasons. I'll
23 explain that a little bit better. In damaging
24 one of these large buttress roots, you're
25 going to be damaging the fan of roots that

1 extends out from it. So if you picture like a
2 fan you fan yourself with, those are going to
3 extend away, and each -- this oak here in
4 question has, you know, five buttress roots
5 showing on this side. So loss of a buttress
6 root means loss of all those fibrous roots
7 that are attached to it. So once decay gets
8 in, it's not a good thing.

9 Did I answer your question?

10 **Q. Yes. Yeah.**

11 A. But as far as -- I'm sorry. Your question was
12 depth. Are they higher than other roots, and
13 I would say no, to the effect of they're all
14 important. So they're all -- especially in
15 Maine, they're going to be in the upper
16 surface of the soil, and your fibrous roots
17 that I mentioned are going to be equally
18 shallow out here.

19 So you're not diving down -- the old
20 pictures of showing root systems diving down
21 deep to the center of the earth almost is --
22 especially in Maine, is not the case. They
23 are up on the upper 18 inches of soil -- if
24 there's 18 inches of soil to be had.

25 **Q. Okay. Thank you. I'll show you Exhibit 10.**

1 MR. LIBERMAN: Thank you.

2 BY MR. BOPP:

3 Q. Let me know when you've had a chance to review
4 that.

5 A. Yes; mm-hmm.

6 Q. I'll represent to you that that is the oak
7 tree that's at issue in this case.

8 And right in the middle of the picture,
9 if you will, is that an example of what you
10 just described as a buttress root coming out
11 of the oak tree?

12 A. You know, I don't believe that is. What I
13 believe that is, though, is the tree really --
14 this is the part of the tree's attempt to
15 recover -- recover from the damage to the
16 trunk roots, and it's actually quite a bit of
17 aggressive rolling in development of wound
18 tissue in. Either way, if the tree lost,
19 through any of this damage, crushed roots
20 right here, it's substantial. So I'm not
21 taking anything away from that.

22 But to this piece right here that
23 appeared in your other photograph on Exhibit
24 -- I think it was 7, it looks to me like
25 that's an aggressive rolling in of -- to

1 attempt to heal either the base of the tree or
2 still connected to a root. It has to be
3 connected in some way to a root at that low.

4 So it looks to me like an attempt of a
5 wound wood development right there. I have a
6 feeling that if it were a buttress root that
7 had been crushed on that side, we'd be seeing
8 more evidence of -- on the back side of it
9 seemed pretty healthy like it was rolling,
10 like a ram's horn rolling; whereas, we'd see
11 this really ugly decay if it were a buttress
12 root.

13 Typically, they'll just decay out, and
14 this was more of a rolling. Either way, it's
15 a response. It's a response of the tree to do
16 something; to try to attempt to recover,
17 either through the root. And, again, to your
18 point of air spading, there's ways to see
19 that. There's ways to chase that out and
20 really find out, is that a damaged root that's
21 responding or the trunk of the tree
22 responding.

23 **Q. So it may be what you described earlier as**
24 **response growth; is that fair?**

25 **A.** Yeah. Um, and it's not -- obviously, the tree

1 is going to have major roots on that side.

2 It's going -- that tree has stood up to a lot
3 of wind in its time. When all those other
4 woods were cleared away, that tree stood kind
5 of sentinel like out there. So it has serious
6 support roots on it to be able to put up with
7 that.

8 **Q. I'll hand you Exhibit 11; ask you to take a**
9 **look at that.**

10 A. Okay.

11 **Q. Does this look like the legacy oak or is this**
12 **a different tree?**

13 MR. HARRINGTON: That's a different tree.

14 A. I didn't look at this tree.

15 BY MR. BOPP:

16 **Q. So you see that it has an arrow drawn.**

17 **Is there an arrow drawn on the bottom of**
18 **yours sort of in black or no?**

19 A. No, not that I can see.

20 **Q. It must be on mine then only.**

21 MR. HARRINGTON: Oh, my God.

22 MR. BOPP: It's all right.

23 MR. HARRINGTON: I made a mistake.

24 MR. BOPP: We'll all be able to write in
25 our diaries tonight.

1 BY MR. BOPP:

2 Q. So question here: If there was a root
3 directly in front of this tree -- so at the
4 bottom of the picture -- was crushed, where
5 would you see damage on the tree?

6 A. I can't answer that. That's -- I can only
7 answer to the subject tree. I won't answer to
8 these other ones -- random trees. That's
9 outside my scope. I can only handle -- I can
10 talk about the subject tree. I'm not going to
11 talk about random trees.

12 Q. I get it. And I don't want to make a big deal
13 of this. I am allowed to ask you
14 hypotheticals because you're an expert. And
15 it's not a trick question. And maybe the
16 answer is it can occur anywhere on the tree.

17 But that's all I'm trying to get, is if a
18 root is crushed in front of the tree, does
19 that mean it's either damaged right there on
20 this side or could it be on the other side or
21 could it be anywhere? That's the nature of
22 your question.

23 A. To your exhibit, depending upon the species of
24 tree, it could occur elsewhere on the tree.
25 It could -- we're not talking about, you know,

1 a specific species; and even if you were
2 talking a specific species, given the site
3 conditions, given the growing conditions over
4 time, even a red oak that's a straight vessel
5 tree, the damage can occur on the opposite
6 side of the tree. It's unusual, but it's --

7 MR. HARRINGTON: Impossible.

8 MR. BOPP: Shh.

9 A. You're talking about -- we can have trees that
10 on the Maine water shores here -- you know,
11 right up on Westport Island and Yarmouth that
12 are growing, and literally they will not go
13 through a wood splitter because the grain is
14 going like this. They've been fighting wind
15 for so long. It's unusual, but not too
16 different than what you see up on the top of
17 the mountains where pines are twisted. So
18 oaks can be twisted.

19 If you want to talk generalities, I don't
20 see the point to it, honestly.

21 BY MR. BOPP:

22 Q. Take a look at Exhibit 12. Ask you to take a
23 look at that, and let me know if you've seen
24 it before.

25 A. I have not seen this before.

1 Q. Okay. Before we set that aside, let me just
2 ask this. I know you said you haven't seen it
3 before.

4 Is it possible that this is one of the
5 items that was provided to you before you
6 started your assignment in this case by
7 defendant's counsel?

8 A. Everything -- everything I've received is
9 right here.

10 Q. Okay.

11 A. So if it was -- I will say this. If it was in
12 an e-mail, in an icon that somehow I missed,
13 then I'm unaware of it.

14 Q. That's fine.

15 A. Okay. Maps are great. Maps are always
16 helpful to have, and so I would have welcomed
17 something like this.

18 Q. Okay. All right. I mean, I'm just wondering
19 --

20 MR. HARRINGTON: Fred, we're cruising
21 here. Don't break the momentum.

22 MR. BOPP: No, but I'm thinking that --
23 well, I guess we'll do them one at a time.

24 MR. HARRINGTON: Oh, I see. You want to
25 clump it?

1 MR. BOPP: Probably hand him 13 through
2 17.

3 BY MR. BOPP:

4 **Q. And I'll ask the same question. If you can**
5 **look at Exhibits 13 through 17, whether you've**
6 **seen any of those before.**

7 A. Excuse me. Can I say something?

8 **Q. Yes.**

9 A. I won't be rushed through a deposition. I
10 won't be made to feel like I'm being pushed to
11 complete this assignment. This is too
12 important. And if this takes two or three
13 days, I'm fine with that.

14 **Q. Okay.**

15 A. But I don't want to feel rushed during any
16 part of the three days.

17 **Q. Let me know if you think I'm rushing you**
18 **because that's not my intent at all. I was**
19 **just trying to move things along a little**
20 **quicker for everyone's benefit, but I'm not**
21 **trying to rush you.**

22 A. Don't do it for my benefit. Because the
23 answers that I provide you I want to be
24 helpful and clear, and that's my only goal. I
25 have no dog in the fight.

1 Q. Okay; understood. I appreciate you saying
2 that.

3 A. Okay.

4 Q. Have you seen Exhibit 13 before?

5 A. No.

6 Q. All right. Moving on to Exhibit 14. I'll ask
7 you to review that, please.

8 A. No, I have not seen this.

9 Q. Have not seen Exhibit 14?

10 A. I have not, no.

11 Q. And Exhibit 15. Ask you to review that; let
12 me know if you've seen that before.

13 A. I have not.

14 Q. All right. Exhibit 16. Please review it; let
15 let me know if you've seen that before.

16 A. No.

17 Q. All right. Exhibit 17. Please review that;
18 let me know if you've seen that before.

19 A. No, I have not seen this sheet of closing
20 statement.

21 Q. All right. So Exhibit 18.

22 MR. HARRINGTON: Is big.

23 BY MR. BOPP:

24 Q. So you've been handed Exhibit 18, which is a
25 multipage exhibit.

1 MR. BOPP: Trade you with that. Staple
2 that one.

3 MR. LIBERMAN: All right. Thanks.

4 BY MR. BOPP:

5 Q. I'll ask you to review that, and let me know
6 if you've seen that before.

7 A. There was something in here from CMP. I think
8 it was just the -- yeah, here it is.

9 No, I have not seen this.

10 Q. Um, with respect to Exhibit 18, it's a Witness
11 Subpoena for Central Maine Power Company on
12 the first page.

13 Do you agree with that?

14 A. Yes, I see that it's a Witness Subpoena.

15 Q. And it's directed to Central Maine Power
16 Company?

17 A. Yes.

18 Q. Do you recall ever being provided with any
19 documents that Central Maine Power Company
20 produced in response to this subpoena?

21 A. I'd have to check this. This is the only info
22 I have from CMP that I am aware of. It was on
23 the 4th -- 5th of January of this year,
24 indicating a note section of vehicle weights,
25 times that their vehicles have been on the

1 site in the past. That was just quick one
2 line things. But nothing as extensive as
3 this, that I have in my possession.

4 **Q. All right.**

5 MR. BOPP: Can you hang onto that. I'm
6 just going a put a staple in that one to hold
7 the pages together. Thanks.

8 BY MR. BOPP:

9 **Q. All right. Let me hand you what I've marked**
10 **Exhibit 18-A; ask you to take a look at that.**

11 A. Okay.

12 **Q. Is your e-mail address the e-mail address**
13 **that's in the To line on that exhibit?**

14 A. Yes.

15 **Q. So that's an e-mail that was sent to you by**
16 **Greg Patient --**

17 A. Mm-hmm.

18 **Q. -- on January 4, right?**

19 A. It looks like it, yes.

20 **Q. And he's an attorney that works with Attorney**
21 **Liberman, right -- or do you know Greg**
22 **Patient?**

23 A. I don't know Greg Patient, no.

24 **Q. Okay. You see on the cc line Jonathan**
25 **Liberman is copied, right?**

1 A. Yes.

2 Q. Do you recall receiving this e-mail?

3 A. Specific to these vehicles, no.

4 Q. It says, Mike, please find attached for your
5 file materials we received from Central Maine
6 Power in response to the attached subpoena.

7 Do you see where it says that?

8 A. Yes; mm-hmm.

9 Q. Do you recall what materials came along with
10 this e-mail?

11 A. No.

12 Q. And this isn't a rhetorical question, but
13 whatever the materials were, they did not
14 impact or affect any of the conclusions or
15 opinions in your expert designation; is that
16 correct?

17 A. In my expert --

18 Q. Yeah, that we reviewed earlier; Exhibit 1,
19 expert designation.

20 A. They did not affect my --

21 Q. Conclusions or opinions in that designation.

22 A. In which way? In that they're acknowledging
23 that they've had vehicles in there or that
24 they have the right to put vehicles in there?

25 Q. Let me ask it a different way.

1 So in your designation, there are certain
2 statements about your conclusions and opinions
3 in the designation.

4 A. Mm-hmm.

5 Q. Yes, right?

6 A. Correct.

7 Q. You just said "mm-hmm." That's why I asked
8 you.

9 A. Oh, I'm sorry. Yes, absolutely.

10 Q. No problem.

11 And that was in December of 2023 your
12 designation was dated, right?

13 A. Mm-hmm; yes.

14 Q. This comes after that. It's January 4, 2024,
15 right?

16 A. Yes.

17 Q. So my question is, really: Did anything you
18 received here impact or affect in any way what
19 was already stated in your designation?

20 In other words, did this cause you to
21 change anything in your designation?

22 A. No, it did not.

23 Q. Let's take a look at Exhibit 19, please. I'm
24 going to ask you to review that, and if you
25 can tell me what's pictured there.

1 A. It looks like a CMP telephone pole, CMP
2 Company number -- hard to see what that says
3 -- 168 or 160 something, 190 something. The 6
4 dropped upsidedown, so it's a 160 -- I don't
5 know.

6 **Q. Something?**

7 A. Something, yeah.

8 **Q. And there's a CMP designation up above the**
9 **number, right?**

10 A. Yes; mm-hmm.

11 **Q. Do you know where this pole is located?**

12 A. I do not.

13 MR. BOPP: We're going to staple together
14 20 because it is multi pages.

15 MR. HARRINGTON: We are, are we?

16 MR. BOPP: Yeah, that's this one. You're
17 ahead of yourself.

18 BY MR. BOPP:

19 **Q. I'm handing you what's been labeled Exhibit**
20 **20.**

21 MR. HARRINGTON: How many pages is that?
22 What? Five?

23 MR. BOPP: I've got five.

24 MR. LIBERMAN: Thanks.

25 MR. BOPP: Yeah.

1 BY MR. BOPP:

2 **Q. Have you seen these before?**

3 A. I have not. No, I have not seen these.

4 **Q. Okay. Move on to Exhibit 21.**

5 MR. BOPP: Do you have 21?

6 MR. HARRINGTON: Are you pressuring me?

7 Jeez.

8 MR. BOPP: I'm pressuring everybody.

9 Jon, do you feel pressured?

10 MR. LIBERMAN: No; no.

11 MR. BOPP: Good.

12 MR. HARRINGTON: Are you making fun of
13 me?

14 MR. BOPP: Of course not.

15 BY MR. BOPP:

16 **Q. I'm going to hand you Exhibit 21, which is**
17 **actually two pages, but we're not going to**
18 **staple them together. I'll ask you to take a**
19 **look at that, and let me know if you can**
20 **identify it.**

21 A. Yeah. Yes, I can identify this.

22 **Q. And what is it, please?**

23 A. It looks like the photograph that I took of my
24 phone on December 19.

25 **Q. And is this a picture of the oak tree at**

1 issue?

2 A. It is. It's the picture of the subject tree.

3 Q. And why did you take this picture?

4 A. Why did I take the picture? The picture was
5 taken in order to -- help me to have something
6 to go back to as far as looking at some of
7 that wound wood response that I had talked
8 about.

9 Q. And what section of the tree is this picture
10 of?

11 A. This is the lower trunk on the southeast side.
12 So the morning sun is on it, so between 9 and
13 11 in the morning. So probably half way
14 through. It was probably around 10:30 in the
15 morning, approximately.

16 Q. And are there shadows on the tree or is that
17 just coloration?

18 A. It looks like a shadow over here in this lower
19 left-hand corner. But, no, the rest of it is
20 -- that is not shadow.

21 Q. And so this is to show both the injury and the
22 recovery growth; is that fair?

23 A. Yes; mm-hmm.

24 Q. And then the second page provides
25 information -- for example, on the device that

1 took the picture, it says Device Info, Apple
2 iPhone 7.

3 Your phone is an Apple iPhone 7?

4 A. Yes. That was with my phone, yes.

5 Q. All right. Let's move on to Exhibit 22, which
6 is also two pages, but we're not going to
7 staple them together; ask you to take a look
8 at that and whether you recognize that photo.

9 A. Yes, I do. I recognize that photo.

10 Q. Is that a photo that you took during your site
11 visit?

12 A. Correct.

13 Q. And for the same purpose as Exhibit 21?

14 A. Exactly, yes.

15 Q. And is that your hand holding a pen?

16 A. Yes, it is.

17 Q. Is it the pen you brought with you today?

18 A. It's one of many Bath Savings pens that they
19 --

20 Q. I happened to notice it was the same kind of
21 pen.

22 And so what is it that you were pointing
23 at there in the picture?

24 A. That is pointing at one of the growth rings
25 that we discussed earlier.

1 **Q. And the growth ring being the yellowish part**
2 **of the picture?**

3 A. That being the -- the spring wood and summer
4 wood and the growth; basically, saying the
5 annual -- annual return, if you will, between
6 the growth rings. So I'm pointing at a growth
7 ring, so that's all wood that was added in the
8 last year of time between the white streaks.

9 **Q. So that was since December of 2022?**

10 A. That would have been, if I can count back --
11 it's a little bit harder in this fuzzy
12 photograph, but -- that would have been since
13 about -- from this piece of -- this piece that
14 we're looking at right here, that would be
15 from approximately 2011.

16 **Q. And "the piece," does that mean the whole**
17 **yellow strip there, if you will?**

18 A. Yes, from what we can see right here in this
19 section of the trunk. Because, again, you
20 know, it's going to be rolling in from
21 different areas, but it's going to be hidden
22 sometimes by bark; and sometimes all of this
23 area was hidden by bark at one time if it's
24 crushed -- crushed into place, whether it be a
25 lightning strike that's gone down and zapped

1 all that cambial area or something is managing
2 to crush or bang into it.

3 Quite often, the bark will stay on the
4 tree hiding activity for a number of years,
5 and then the bark starts to slough off. It's
6 like, Oh, my gosh. You're like, Wow. It's
7 much more apparent now.

8 **Q. And so what was important about examining that**
9 **part of the tree for purposes of your**
10 **assignment?**

11 A. Gaining just a -- some background of potential
12 things that have occurred to the tree in the
13 past.

14 **Q. Like the actual events or the time when they**
15 **happened or both?**

16 A. It's more of the timing of an injury of when
17 it would have happened.

18 **Q. And from this, were you able to determine**
19 **rough timing?**

20 A. Of this event?

21 **Q. Well, in any event.**

22 A. That was what was put on to the summary right;
23 that probably my guesstimate -- best
24 guesstimate, it would be 15 to 20 years ago.
25 That wound has been in recovery for 15 to 20

1 years.

2 Q. Okay. Is it fair to say that compaction of
3 the soil around the tree leading to damage to
4 roots would negatively impact the ability of
5 the tree to recover from damage like this?

6 A. Absolutely.

7 Q. Yeah. Let's take a look at Exhibit 23. It's
8 also two pages.

9 MR. HARRINGTON: Mm-hmm.

10 MR. BOPP: I guess --

11 MR. HARRINGTON: It is.

12 BY MR. BOPP:

13 Q. I'm sorry. Before we get to 23, if I didn't
14 mention it, on 22, the second page is the same
15 type of page as for 21, with just detailed
16 information about the image itself; is that
17 right?

18 A. That is correct, yes.

19 Q. I'll ask you to take a look at Exhibit 23.
20 Let me know if you've seen that before.

21 A. I'm not sure if I have or not -- if I've seen
22 this exact image. I'm not sure if I have.
23 It's similar to some of the photographs that I
24 took. I'm not sure if it's one of my
25 photographs or another photograph in the file.

1 I can't answer that. It looks very similar.

2 Q. Okay. Can you tell if it is a picture of the
3 top of the tree that's at issue here.

4 A. I can't, no. I can't, no. I cannot tell if
5 that's an oak tree standing in Yarmouth or
6 here.

7 Q. Okay.

8 MR. HARRINGTON: You don't likely-likely?

9 MR. BOPP: That's fine.

10 BY MR. BOPP:

11 Q. Let's move to Exhibit 24. I shouldn't keep
12 doing this, but Exhibit 23 -- I'm sorry -- the
13 second page had information about the image
14 similar to the second pages for 21 and 22; is
15 that right?

16 A. It did have information off to the side. I
17 don't know what it meant.

18 Q. Thanks.

19 We'll hand you Exhibit 24, which is also
20 two pages. Same question, if you recognize
21 that photo.

22 A. This one I do recognize, yeah.

23 Q. And what is that a photo of?

24 A. That is a photo of the subject tree.

25 Q. With a vehicle next to it?

1 A. Yes, vehicle -- white van parked on top of the
2 root system, and in the distance is my truck
3 parked on the road.

4 Q. And then there are two individuals in the
5 picture as well?

6 A. Yes.

7 Q. Are you able to identify who those are?

8 A. I'm going to estimate that's Scott Griffin and
9 Jon Liberman.

10 Q. While you have Exhibit 24 -- and we'll just
11 clarify. The second page of Exhibit 24 is
12 information about the image similar to the
13 last few exhibits that we saw; is that
14 correct?

15 A. Yes.

16 Q. Let me hand you also Exhibit 25 so you can
17 look at them side by side, actually.

18 A. Okay.

19 Q. And I'll represent to you that Exhibit 25 is a
20 blowup, if you will, of Exhibit 24.

21 Does that sound like a fair
22 representation?

23 A. Yes; mm-hmm.

24 Q. Okay. And so I don't know if that helps you
25 identify the other two people to the right

1 there any better or not.

2 A. I recognize -- more back over here, I believe
3 that was Scott Griffin by his truck. I can
4 see the truck in this photograph. Because he
5 pretty much stayed on the road. He did not
6 step around the tree at all.

7 Q. And then the other individual?

8 A. I don't recognize who that may have been.

9 MR. LIBERMAN: It's me.

10 A. It's Jon, yeah.

11 BY MR. BOPP:

12 Q. All right. Thought so.

13 A. We did have occasionally a car stop, and
14 people were walking, also, down the road.

15 Q. Okay.

16 A. So that's why I'm being a little cautious to
17 make sure I didn't miss somebody walking
18 around here.

19 Q. No problem.

20 And so on the left-hand side of Exhibit
21 25, the white vehicle there all the way to the
22 edge, that's your truck?

23 A. That is my truck.

24 Q. And so the tree that's right in the middle of
25 this picture, that's the oak tree we've been

1 **talking about?**

2 A. That appears to be the oak tree we're talking
3 about, yes.

4 Q. Well, I'm not trying to be a jerk or anything.

5 But it is the oak tree, right? I mean,
6 you said "appears." I'm just being looking --

7 A. Yeah. There's no identifying feature on it,
8 but it is centered in my photograph; and since
9 I appear to take the photograph, I'm going to
10 say, yes, it is.

11 Q. Okay. No worries.

12 Is that a power line that I see in the
13 blowup there across, um -- kind of near -- I
14 can't tell depth-wise, but it runs across the
15 branches. What I'm referring to is that line.

16 A. Correct.

17 Q. Okay. So that's a power line?

18 A. That is -- yeah, and it leads to a pole right
19 here and then leads back out to the road. So
20 it's a triangle of wires; triangle coming here
21 then extending back out to the road -- a vee,
22 I should say, of wires.

23 Q. And this picture pretty accurately shows --
24 this was taken on the day of the site visit,
25 right?

1 A. Yes, it was.

2 Q. And this -- you had described the fact that
3 the ground was pretty heavily covered with
4 leaves, and this picture -- by this picture, I
5 mean Exhibit 25 -- confirms that?

6 A. Yes, it does; mm-hmm.

7 Q. I think that's all I have for those.

8 Look at Exhibit 26. I'll ask if you've
9 seen that picture before.

10 A. Can I refer to my phone for a second?

11 Q. Sure.

12 A. I apologize. I took different photographs
13 from different angles here, and I don't
14 remember that one, to tell you the truth. I
15 do not recognize that photograph. It's not
16 one that I took.

17 Q. All right. We'll move on to Exhibit 27. Ask
18 you to take a look at that; ask if you've ever
19 seen that before.

20 A. No, I have not.

21 Q. Um, do you know what a Moultrie Mobile is?

22 A. I do not.

23 Q. And this -- can you tell from this picture if
24 that is the legacy oak in the middle there?

25 A. It appears -- from the limb laying on the

1 ground in the same spot and the wound on that
2 side of the tree and the fact that this was
3 taken at 12 noon, the lighting of the day, it
4 appears to be -- it appears to be the tree.
5 It appears to be the tree.

6 **Q. And you had just described -- did you say the**
7 **wound on the tree?**

8 A. It looked like there's something here. But,
9 again, now I'm commenting on something that
10 could be taken in Iowa of a tree in the woods.
11 I'm not comfortable with it at all since it's
12 not my own work product. I've never seen this
13 photograph before. And it could be the tree.
14 It might not be the tree.

15 **Q. I'll represent to you that it is the tree.**

16 A. Okay. Thank you.

17 **Q. Yeah, no problem. I'm just trying to -- and I**
18 **appreciate that.**

19 The wound, is that on the right-hand
20 side? Am I looking in the right area for that
21 or is that --

22 A. Right about -- on the right-hand side of the
23 tree on the southeast -- south, southeast side
24 of the tree.

25 **Q. Okay. Down towards the base --**

1 A. Yes.

2 Q. Where it's maybe a little darker in color?

3 A. Correct.

4 Q. Okay. Thanks.

5 Okay. We'll go on to Exhibit 28.

6 A. Thank you. Okay.

7 Q. Ask if you've seen that picture before.

8 A. Yes, I believe I've seen this picture before.

9 Q. And do you know what it's a picture of?

10 A. It's a picture of the subject tree.

11 Q. This is the side of the tree that has the
12 large wound on it?

13 A. Yes, it is.

14 Q. Do you know when the picture was taken?

15 A. I do not.

16 Q. Can you see the start of a lateral root
17 anywhere on the picture?

18 A. Aside from the spot we had mentioned earlier,
19 down here at the lower -- lower right center
20 of the tree, that area that flares out, that
21 could be the remains of something or it could
22 be wound wood development down there. That
23 would require -- that would require testing to
24 find that out. If you want to find it out, we
25 can find it out. There's ways to do it.

1 But, yes. I see it with the sunshine on
2 it right there, yes.

3 **Q. All right. Take a look at Exhibit 29, please.**
4 **I'll ask you if you recognize that picture.**

5 A. I do not.

6 **Q. Are you able to tell whether that is the oak**
7 **tree that we've been talking about?**

8 A. Um, no, I'm not able to -- the reason I say
9 that -- I don't want to seem stupid -- but I
10 don't remember these big rocks being
11 over here. Were they over here? Did I miss
12 that?

13 It appears that the road would be right
14 here. So I'm not trying to be difficult, but
15 I don't remember those rocks being right
16 there, and I don't remember that rock being
17 right here. But it does look familiar. It
18 does look like that same response growth down
19 low. So it looks similar -- it looks right.

20 But I didn't take the photograph; and,
21 again, without some identifying features,
22 again -- it's definitely a picture of a tree
23 that's suffered some damage.

24 **Q. Okay. So let me ask you to -- do you still**
25 **have 28? Maybe can you grab 28.**

1 MR. LIBERMAN: Can you grab 28?

2 THE DEPONENT: Yes.

3 BY MR. BOPP:

4 **Q. If you compare those side by side.**

5 A. Mm-hmm.

6 **Q. And I'll represent to you that 29 is a picture**
7 **of the legacy oak tree.**

8 Do you -- are you willing to accept my
9 representation that that's the legacy oak tree
10 in 29?

11 A. This is really interesting, but it appears,
12 from here, that this is -- this is the more
13 recent picture.

14 **Q. Meaning 29?**

15 A. 29 was a recent picture. This picture here
16 was probably taken at a time in the past.
17 Because this bark here has since failed, where
18 it's not failed in the picture in 28.

19 **Q. Right.**

20 Meaning in 29, the bark -- I'm sorry.
21 Because nobody -- they're just going to see
22 the transcript. They won't know what you mean
23 by "bark here." So I'm just trying to --

24 A. I'm sorry. The bark on page 29 has collapsed;
25 has been removed from the tree.

1 Q. On the right trunk, right?

2 A. Yes, it has shed, and there is bark on the
3 ground down here. Whereas, in Exhibit 28, the
4 bark has not yet sloughed off, which is what I
5 had mentioned earlier that will slowly
6 decompose and fall off.

7 So, yeah, it would appear that they're
8 the same tree.

9 Q. And so 29, um, is a later picture showing more
10 decay -- if that's the right word -- or what
11 is the right word if that's not?

12 A. It's showing -- it's showing -- it's showing
13 whether the damage could be already here -- on
14 Exhibit 28, it could already be there in the
15 tree or advancing vertically up the trunk of
16 the tree and now bark is continuing to slough.

17 So to your point, Fred, in another two
18 years, it could be another two feet higher.
19 Yes, it can advance, and it will continue to
20 advance more than likely until the tree --
21 there's nothing left of it. Because vertical
22 spread of decay is rapid; is very rapid.

23 Q. And that's what this is; vertical spread of
24 decay?

25 A. It is vertical. It's a reflection of the

1 damage initiated low. To me -- to me, it does
2 not mean that, say, a snowplow came in high
3 and hit the tree from here to here. It does
4 not mean that. It means that it suffered
5 damage down in this area down here, maybe even
6 right down here, and since now is moving.
7 It's moving vertically.

8 **Q. So, again, just for purposes of the**
9 **transcript, when you said down here --**

10 A. Down at the base of the tree. The damage
11 could have occurred low -- near the base of
12 the tree. If this is crushing or impact
13 damage, it could have occurred anywhere from
14 -- anywhere from three or four feet up the
15 tree to the ground line. It could have
16 occurred. Because you will get decay moving
17 down as well as up, but up is always much
18 quicker because that's just where the tree is
19 more vulnerable, especially in an open vessel
20 tree like a red oak.

21 **Q. And what does that mean, "open vessel tree"?**

22 A. It means the water-conducting tissues in an
23 oak are very similar to hooking straws
24 together. So they're open. They move so
25 decay moves through them fairly rapidly.

1 **Q.** So is it fair to say that there was some sort
2 of an injury to this tree in August of 2022;
3 in other words, that some of the injuries that
4 you saw on the site visit predated August of
5 2022?

6 Are you fairly confident in saying that?

7 MR. LIBERMAN: I'm just going to object
8 because I think the first part of your
9 question asked whether there was damage caused
10 in August of '22, and then I think the second
11 part suggested before August '22, and I wasn't
12 sure --

13 MR. BOPP: Why don't I rephrase it
14 because it isn't what I intended. So sorry if
15 that -- try to take it in some smaller bites.

16 BY MR. BOPP:

17 **Q.** Are you comfortable saying that there already
18 existed some damage to the tree in August of
19 2022 based on an event or events that happened
20 prior to that time?

21 A. Yes.

22 **Q.** Okay. Now, let's say hypothetically that in
23 August of 2022, some heavy vehicles --
24 construction vehicles, perhaps tri-axle dump
25 trucks, went over the roots of the tree and

1 compacted the ground above the roots of the
2 tree. Let's just assume that happened.

3 A. Mm-hmm.

4 Q. Could this -- what's happening here in this
5 picture in Exhibit 29 -- be a result of that
6 type of activity?

7 MR. LIBERMAN: Object to form and
8 foundation. You can answer.

9 A. No, I would say less than likely in that case.
10 My big concern -- let me be straight. Just as
11 far as the tree goes, the way I approached
12 this tree was we were looking at two different
13 scenarios. One was something -- something
14 occurred here in the past. That being said,
15 the -- something was occurring for the tree
16 all the time. On a daily or weekly or monthly
17 basis was the compaction -- the general
18 compaction of the tree.

19 This, in and of itself, it does occur for
20 trees. They get scuffed. They get banged up.
21 Compaction over the entire root zone, just the
22 overall conditions, and whether tri-axles are
23 part of that, that's entirely whatever -- part
24 of the impacts. But that's going to be seen
25 up high.

1 So to your point, would it cause an
2 expansion of -- a rapid expansion of a
3 pre-existing wound? I doubt it, but it will
4 cause -- big trucks will cause the dieback in
5 the crown. That's where the tree is saying,
6 Hey, I'm losing roots. I'm losing them here,
7 here, here, here, here.

8 And to Tim's point, generally speaking,
9 what's happening on this side of the tree, in
10 oaks, it is a reflection of what's going on on
11 that side of the tree. So that being said --
12 and then the body language of this tree
13 suggests that it does not have a twisting
14 grain. It's not -- these roots here are not
15 servicing this side of the tree. This tree is
16 going to stand pretty much to form, to me.
17 It's going to have a fan root system that's
18 moving out. So impact here means impact on
19 this side of the tree; on the same side of the
20 tree.

21 But as far as -- just to be clear, I
22 don't think crushing roots right here is going
23 to -- it's certainly not going to help this.
24 It's going to -- it's going to impact the
25 wound response on that side of the tree.

1 So in a perfect world, if the tree
2 suffered damage when it did suffer damage back
3 when it said it was damaged roughly in, say,
4 2010 or whatever, if every effort had been
5 made at that point in time to protect it from
6 any other damage, then the tree had a chance
7 to regain some vigor.

8 Damage like this, it's not great, but the
9 tree can move on past it. It can -- the tree
10 looked like it had better days. So it would
11 have the potential to health-wise recover, but
12 with all the other impact, not so much.

13 BY MR. BOPP:

14 Q. Okay.

15 MR. HARRINGTON: Can I take a break to
16 pee? I mean, guys, we're doing good; we're
17 doing good. I can see the light, but I gotta
18 go. We're killing it. We're good. Thanks.

19 MR. BOPP: We'll take a break.

20 (A break was taken.)

21 BY MR. BOPP:

22 Q. So I'm sorry. I did want to go back to 28 and
23 29 and just pick up on a thread that we were
24 talking about.

25 And so if I heard you correctly, the tree

1 had suffered an injury and was attempting to
2 recover from it, in general terms; is that
3 fair?

4 A. Yes; mm-hmm.

5 Q. And that it may well have had a fighting
6 chance to overcome the injury if there was
7 also not significant compaction around the
8 tree; is that fair?

9 MR. LIBERMAN: Object to form. You can
10 answer.

11 A. Yeah. No, that's incorrect. You mistook what
12 I was saying. Given the site -- given the
13 overall site impacts, which have been
14 occurring probably well before this injury
15 ever happened to the tree in -- let's just say
16 2010, 2019, whenever -- the tree was already
17 probably in a fairly weak state -- weaker. It
18 does not mean it cannot have foliage on the
19 tree. They'll have foliage, but it's
20 predisposed at that point, to any other
21 injuries to come along -- this included -- to
22 only diminish the tree's ability to then
23 respond to damage.

24 So that's pre this damage during the time
25 of this damage. And then to the point of the

1 time period we're talking about, it's -- yeah,
2 you do not want anything -- I'm not an
3 advocate of anything going on around trees
4 that have been damaged. I'll go on the record
5 as saying that. You want no activity in here
6 around this tree at any point in time.

7 But it was definitely -- it's amazing in
8 that the tree was attempting still to heal,
9 but the amount of dieback in the top of the
10 tree is really the story here more so than the
11 more obvious wound down low. You hate to see
12 that, but the dieback up above is the part
13 that makes you go, Ooh, she's lost roots all
14 over the place. That's the hard part.

15 When certain things happened, if certain
16 things happened, that goes to the details.
17 But that's the story of the wound wood
18 response, to me -- in my opinion.

19 BY MR. BOPP:

20 **Q. And as you had said earlier, the dieback --**
21 **the dieback in the -- you just call it dieback**
22 **or was it dieback in the canopy or --**

23 A. Decline. Yeah, decline, dieback -- decline --
24 general decline of the canopy.

25 **Q. That's tied to damage to the roots?**

1 A. That's tied to damage to the roots and/or --
2 well, in this case, and a loss of permeable
3 surfaces; the road being paved, potentially
4 being treated with -- and, again, this is
5 purely -- but quite often before they pave a
6 road down, they will -- they'll be spraying a
7 herbicide down to keep weeds from coming up
8 through the road.

9 I do not know if this was the case on
10 Merry Meeting Road. Who knows. Likely, the
11 State of Maine, they just went for it and just
12 paved it. But either way, they're losing
13 permeable surfaces. Even a gravel road is a
14 permeable surface. Once it's paved, now that
15 is, in the case of that tree, covering about
16 40 percent of its root system out there. So
17 that, in and of itself, is the last thing the
18 tree needed at that stage of its life.

19 So, um, that's my take on that.

20 Q. Okay. Would it be fair to say that a tree in
21 the condition that this tree was in or around
22 August of 2022, if construction equipment --
23 for example, tri-axle dump trucks -- were
24 pulling in and out around the tree over the
25 root system, that would have a negative impact

1 on the health of the tree.

2 That's fair to say?

3 A. Yes, that's fair to say.

4 **Q. All right. Go to Exhibit 30.**

5 MR. HARRINGTON: It's not that long.

6 It's not that long. Four pages -- three
7 pages.

8 MR. BOPP: Don't you have four? Okay.
9 I'm going to staple these.

10 BY MR. BOPP:

11 **Q. I hand you what's been marked as Exhibit 30**
12 **and ask you to review that.**

13 MR. LIBERMAN: Thank you.

14 A. Okay.

15 BY MR. BOPP:

16 **Q. Do you generally agree with the message of**
17 **this article?**

18 MR. LIBERMAN: I'm just going to object
19 to the foundation in that I don't know that
20 he's had the opportunity to read the entire
21 article.

22 MR. HARRINGTON: Well, we'll read it.

23 MR. LIBERMAN: Are you asking him to read
24 the entire article?

25 MR. BOPP: Oh, I thought he was.

1 MR. LIBERMAN: He probably will if you
2 want him to, but if you have more targeted
3 questions about it, then --

4 MR. BOPP: That's the only question I
5 have.

6 MR. LIBERMAN: His copy has -- it looks
7 like it's broken down into sections; like
8 numbers, one, two, three, four.

9 MR. BOPP: Oh, I see. I don't know.
10 This is useful to just -- they don't mean
11 anything, but --
12 A. Okay. So how would you like to approach this?
13 There's a lot of information in here.

14 BY MR. BOPP:

15 **Q. Right.**

16 A. And it's a basic summary for homeowners to
17 avoid -- Preserving trees during construction
18 processes.

19 What would you like to figure out about
20 it?

21 **Q. Well, let me just ask you one question.**

22 **Have you ever seen this article before?**

23 A. I have never seen this one in particular, no.

24 **Q. That's all right. We can move on.**

25 MR. BOPP: Let me take one more quick

1 break, if that's all right.

2 MR. LIBERMAN: Sure.

3 (A break was taken.)

4 BY MR. BOPP:

5 Q. Mr. Hughes, let me show you what's been
6 labeled as Exhibit 31.

7 MR. BOPP: You're not helping anymore?

8 BY MR. BOPP:

9 Q. Ask you to take a look at that.

10 A. Okay.

11 Q. Do you recognize the tree in that photo?

12 A. That appears to be the subject tree, yes;
13 mm-hmm.

14 Q. I'll represent to you that it is a picture of
15 the legacy oak that we've been talking about.
16 Let me ask you this about this photo. You can
17 see in the foreground at the bottom of the
18 photo is a picture of road; is that right?

19 A. Yes.

20 Q. I'll represent to you that that's the Merry
21 Island Road. And you had mentioned earlier
22 about the consequences of paving the road,
23 the impact that would have on -- I'm not
24 trying to put words in your mouth, so correct
25 me -- the impact that would have on the root

1 system of the road because the surface was no
2 longer permeable; is that fair to say?

3 A. Yes; mm-hmm.

4 Q. And how would you -- how would that impact
5 evidence itself in the tree?

6 A. How would that impact visually within the
7 tree?

8 Q. Right.

9 Like, what would you see on the tree to
10 say, Oh, yeah, the fact they paved over a
11 portion of its roots caused that to happen?

12 A. It would, more than likely, be -- again, in
13 the case of this tree, as far as root
14 distribution, where are the roots that are on
15 a given side of a tree. It probably would be
16 showing up on the road side of the tree.

17 Q. On the --

18 A. On --

19 Q. On the bark -- or on the trunk, I should say?

20 A. In the crown; the top of the tree. It would
21 be showing up up there.

22 Q. Okay. And is that when you had talked about
23 dieback?

24 A. Dieback, yes; decline, yes.

25 Q. So it wouldn't show up in the picture of the

1 trunk that we have here; is that fair to say?

2 A. It would not show up at that area right there,
3 no. That's highly unlikely it would show up
4 there.

5 Q. Do you see running up and down the trunk there
6 are some vertical lines, if you will?

7 A. Mm-hmm.

8 Q. You just have to say yes. Sorry.

9 A. Yes, I do see that.

10 Q. No worries.

11 What do those represent?

12 A. Likely, those -- if you look really closely at
13 that photograph, about four foot above the
14 ground right about right in here.

15 Q. Okay.

16 A. In that area, there's a crease that goes
17 across the tree right there.

18 Q. Yeah, right here?

19 A. Yes. So it looks to me on that side -- and,
20 again, if we were on site, it's easier to
21 really go over this stuff. But -- and it's
22 been a while since I've looked at this in
23 person, but it looks to me like that is an
24 area where something bumped the tree at one
25 time, which would also cause that bark to

1 create that -- those kind of ridges right
2 there; that compression. It looks like
3 something -- there's an interruption of bark
4 right here, of the plating, like something
5 just dinged it, bumped it, backed into it.
6 And that would contribute to this bark here
7 similar to down low on the other side.

8 But here -- and I can't say that I made a
9 big note of that at the time, but it is there.
10 It's part of the overall abuse, you know, the
11 tree has had to put up with over time. But
12 whether or not something backed into it and
13 bumped it, it's possible.

14 But certainly, to your question, that
15 dark line going up indicates that the tree --
16 as the tree torsions this way and that way
17 twisting, that could end up becoming an area
18 over time that looks like the other side of
19 the tree where the bark is starting to slough
20 off.

21 **Q. So those lines going up and down -- I mean,**
22 **there are other lines going up and down the**
23 **tree as well, right?**

24 **A. Yes, those are normal bark fissures. But that**
25 **darker line right there and above the -- I'll**

1 call it the impact site, but, again, no
2 history -- those darker purplish lines moving
3 away indicate that that might be wood that, at
4 this point, is starting to decline within.

5 **Q. And when you talk about the darker lines**
6 **moving away, do you mean moving away from the**
7 **black dot that's in the middle?**

8 **A. Exactly, yeah.**

9 **Q. All right. Let's take a look at Exhibit 32;**
10 **ask you to take a look at that and whether you**
11 **can identify it.**

12 **A. It looks like the opposite -- the back side of**
13 **the legacy oak.**

14 **Q. So the side opposite from where the scar --**
15 **the wound -- where the wound is? That's**
16 **right?**

17 **A. Yes, correct.**

18 **Q. What is that material that's kind of right in**
19 **the wedge there of the two trunks; can you**
20 **tell?**

21 **A. It looks like a piece of bark falling down in**
22 **there in the upper part of the photograph --**
23 **wedged in between. But throughout, what we**
24 **have -- what this -- this tree is basically an**
25 **old stump sprout so it grew from a stump. So**

1 when the land was possibly harvested in, say,
2 1940, um, you have a series of sprouts that
3 will grow around a stump, and this is -- these
4 are the last two survivors of what were
5 probably a dozen or two dozen sprouts coming
6 up, as you'll see in cutover conditions, and
7 these are the survivors. That's why most of
8 Maine is consisting of stump-sprouted trees at
9 this point. They're all multi-stem. Even
10 through town here you see it.

11 So that being said, somewhere down in
12 there is an old decayed stump. So the trees
13 basically have formed two trees that are now
14 mashing together. And as I'll explain it
15 sometimes to people is that if this were a
16 healthy tree, in about five years, you would
17 not see that bark or that bark. It would be
18 crushed in between the two stems.

19 So it's what's known as included bark
20 because it's included into the stem of the
21 tree. There is no binding. There's no fusion
22 of that wood. So we're looking at two trunks
23 coming down competing for the same space, is
24 what it comes down to; two, basically, trees
25 competing for the same space.

1 **Q. And what are the looks like growths on the**
2 **left-hand side in the upper left-hand corner?**

3 A. That's a concern. That is a fungi that is
4 located right in the outer surfaces of the
5 wood, and that is not a good sign. That is a
6 sign of a tree that's losing all of that area
7 of conduction of water up the stem. Whether
8 it came from the -- the impact we saw over
9 here, it's hard to say or if it's just general
10 decline at this point. But it is located just
11 right in the sapwood of the tree, so it
12 reduces the strength of that wood
13 substantially and quickly. So that is a
14 concern.

15 **Q. Do you know if the fungi was present during**
16 **your site visit?**

17 A. I can't recall if it was present because these
18 are -- it's potential that it was. There's
19 potential that it was. My guess is that it
20 would be, if this photograph -- I'm going to
21 say that it was, yes.

22 **Q. As we sit here today, you don't have a**
23 **specific recollection of seeing fungi on the**
24 **tree during the site visit?**

25 A. Of the -- of all of the things that the tree

1 was representing and showing, this is one of
2 the lesser -- lesser concerns. But it's
3 certainly a concern, without a doubt. But
4 given that the tree is in such radical decline
5 at such a high rate of speed at this point,
6 it's another one of the damning factors
7 involved. So --

8 **Q. And what would cause a fungi like that to grow**
9 **on the side of the tree?**

10 A. Most of the time, this is going to correlate
11 -- the sapwood rot is going to correlate with
12 some root decline.

13 **Q. And is it fair to say that it would be roots**
14 **that were damaged on the same side of the tree**
15 **that the fungi appears?**

16 A. More than likely, yeah. Because, again, we're
17 talking about contributing roots. And here
18 it's a little bit more obvious on this side of
19 the tree. We have one, two, three buttress
20 roots coming up. So this buttress root that
21 is located right above is closest to the road.
22 And so that would be probably the root mass,
23 if you will, that's out there that has the
24 most compromise in it -- compromised the most,
25 and so we're seeing the fungi starting to

1 spring up on that side.

2 Q. So let's just say, hypothetically, a heavy
3 vehicle were to come up the road towards the
4 tree and then turn right before the tree, um,
5 and the vehicle would move from the paved road
6 to the unpaved earth surface next to the tree.

7 Which is going to cause more compaction
8 of the earth in the surface above the roots;
9 the vehicle moving on the road or the vehicle
10 coming off and going onto the unpaved portion
11 that's near the tree?

12 A. Well, the main problem with the road is the
13 imperviousness of it. So you have roots that
14 were just basically taken out of existence,
15 number one; not to mention if they had to
16 excavate ahead of putting the road in, which
17 more than likely -- again, I say more than
18 likely -- they can end up doing is first
19 grading doing their job to get the road
20 prepared, potentially putting down any kind of
21 weed control, herbicides, then paving.

22 But certainly, to leave a road -- to
23 leave a hard surface and come onto a soft
24 surface is going to have more impact given a
25 situation like this where there's an existing

1 road already. Any roots that were over there
2 probably have been compromised for a while.

3 So if a vehicle were to come in around
4 this tree right now, pressure-wise it's going
5 to be harder on the tree once it's off the
6 road.

7 **Q. Okay. In Exhibit 32, we don't see any bark**
8 **peeling off the tree on this side of the tree;**
9 **is that right?**

10 A. It does not appear there's any bark, at this
11 point, falling off.

12 **Q. How does the bark look, generally, in this**
13 **picture, absent -- we've talked about the**
14 **fungi, but the rest of the bark.**

15 Are there issues that you see with the
16 rest of the bark?

17 A. I believe that this side of the tree is
18 probably among the more -- the healthier sides
19 of the tree, on this stem at least. This stem
20 here, I'd have to go --

21 **Q. I'm sorry. The right stem?**

22 A. The right stem appears to be the healthier of
23 the two. The roadside stem appears to be the
24 less healthy. And I'd certainly say between
25 the sapwood decay and the damage on the front

1 side, you're kind of running out of live
2 tissue on this stem here.

3 **Q. Being the left-hand stem?**

4 A. Yeah. And again, testing would flush that out
5 a bit and tell you how much live is there.
6 But from here, the healthier bark appears to
7 be on the stem farther away from the street.

8 **Q. Let's take a look at Exhibit 33; ask you to**
9 **take a look at that. And I'll represent to**
10 **you that that's another picture of the legacy**
11 **oak tree. I think this would be moving -- if**
12 **I've got my bearings right -- moving counter-**
13 **clockwise around the tree, as compared to 32?**

14 MR. HARRINGTON: Correct. That would be
15 the west side.

16 MR. BOPP: Okay. All right. Easy.

17 MR. HARRINGTON: I know. I'm just
18 saying. I had to think it over. I thought
19 you were talking to me.

20 MR. BOPP: No.

21 MR. HARRINGTON: Oh.

22 BY MR. BOPP:

23 **Q. Does that appear to be correct that we're**
24 **moving counterclockwise from --**

25 A. Yes, mm-hmm.

1 **Q. Anything of note in this picture, Exhibit 33?**

2 A. Yeah. Yes, there is.

3 **Q. Okay. Please elaborate.**

4 A. So we're looking at the tree 180 degrees away
5 from the road on the opposite side of the
6 tree. And I think what this side is showing
7 us here that the tree is compromised in other
8 areas of the trunk, and it is adding muscle,
9 if you will, structure wood, on the existing
10 buttress root here. And that would take time
11 to do that, but it has an increased buttress
12 root here on this side and over here.

13 **Q. I'm sorry. I'm just going to pause you.**

14 **When you said the increased buttress root**
15 **on this side, you were pointing to the right**
16 **side of the picture?**

17 A. It is in the lower right-hand part of the
18 photograph to the right of that little bottle.
19 And that seam -- rather pronounced seam up
20 between those buttress roots, that's an
21 indication, to me -- again, to me, of a tree
22 that's -- it's got a little bit of movement.
23 It's got a little bit of -- starting to run
24 into some problems with stability. It's got
25 -- again, we have to assume on the inside we

1 have an old rotted stump down in there
2 somewhere. Trees are growing over that stump.
3 They're kind of hugging around what was there.
4 And now with this -- potentially, with this
5 damage that occurred on the large scar we had
6 talked about, in the case of this stem, which
7 is the 180 degree away from the road stem,
8 it's adding -- it's adding muscle, if you
9 will; adding wood to this side in a response.

10 The response growth is obvious around the
11 wound over here, but it's adding wood
12 everywhere. It's adding wood in order to
13 support itself to make up for loss over here
14 and potentially -- this is interesting here;
15 this area right in here. Because it looks
16 almost to me like in the past if -- this area
17 in here is really interesting to me, which I
18 go back here just a moment. Maybe it's just
19 the angle. Yeah, it was more just the angle.

20 **Q. I'm sorry. Just describe, for transcript**
21 **purposes.**

22 A. I'm going to go back to Exhibit 32 just to get
23 a better look on the --

24 THE DEPONENT: What would -- what was
25 this side, you said?

1 MR. HARRINGTON: That is the south side

2 -- no, that's the north side.

3 THE DEPONENT: I was going to say.

4 MR. HARRINGTON: Sorry. That is the
5 north side.

6 A. I honestly think that we should avoid using
7 directions at this point because somewhere
8 it's probably right in between, and it's
9 southwest or northwest, and it'll get awful
10 confusing transcript-wise, you know, to -- and
11 I'm -- you know, but I'll try and refer to it
12 in relation to the road.

13 BY MR. BOPP:

14 **Q. Mm-hmm.**

15 A. That on the area 90 degrees from the road
16 surface on the northerly side, we have some
17 buttress roots that are showing up in this
18 photograph that don't show up in the Exhibit
19 33 that do show up in Exhibit 32. But the
20 tree definitely has added wood on these
21 buttress roots; pronounced development, to
22 make up for strength loss.

23 It has done it as well on a couple of
24 these others; on Exhibit 32 on the roadside
25 stem, but they're probably starting to slow

1 down. So, yeah, it's interesting.

2 MR. HARRINGTON: Aah. Sorry. It's
3 getting late.

4 MR. BOPP: I'm not going to use that.

5 MR. HARRINGTON: Okay.

6 MR. BOPP: I'm not sure how many pages
7 this is.

8 MR. HARRINGTON: 35, right?

9 MR. BOPP: Yeah. Is that part of it,
10 though?

11 MR. HARRINGTON: Why it's not in right
12 order?

13 MR. BOPP: No.

14 MR. HARRINGTON: I think I dropped that
15 one. But this is in the right order. This is
16 just a general, you know --

17 MR. BOPP: That's your last page?

18 MR. HARRINGTON: Yeah, it's just a
19 general -- you do some research, you learn
20 about these things.

21 BY MR. BOPP:

22 Q. I'm going to hand you what's been marked as
23 Exhibit 35. I'm not going to ask you to read
24 it all, but I will ask you if you have ever
25 seen or read this article before?

1 A. I have not, no.

2 **Q. Okay.**

3 A. Let me see when it was written here; see if it
4 has any information. Doesn't really say.
5 1960 until he retired in 1976.

6 Let's see what he covers in here. I'd
7 like to read this.

8 **Q. We'll let you take a copy home with you.**

9 A. It looks great; it really does. You know,
10 it's interesting because some of the older --
11 the older information is very direct and very
12 more to the point, and it stands up today, a
13 lot of it. But the way it's written -- that's
14 where these photographs came from -- it's
15 really good stuff. So I'd be happy to look at
16 that.

17 Well, this is your exhibit so --

18 MR. LIBERMAN: I can give you a copy
19 later on, Mike.

20 THE DEPONENT: Okay. That would be good.
21 Because if he's going to refer to it in the
22 future, then I'd want to go through it.

23 BY MR. BOPP:

24 **Q. So we'll move to 36. Ask you to review**
25 **Exhibit 36, please.**

1 A. Okay.

2 Q. You've had a chance to review Exhibit 36; is
3 that right?

4 A. I have, yes.

5 Q. Thank you.

6 And is this a typical third order lateral
7 system of a red oak -- I guess I should say
8 root system?

9 A. In Maine? It's impossible to say, you know
10 because -- you know, what this doesn't -- here
11 he does go into variations of soil conditions,
12 and I'm sure this is an extensive article.
13 Yeah, he's just starting to say something
14 really important there where the paper runs
15 out of room.

16 But, no -- could it be? It could be. Is
17 it representative of the legacy oak? Could.
18 We don't know anything about the soil geology
19 or what the profiles look like down underneath
20 there.

21 But the point being is the key -- the key
22 thing to remember is what we've already
23 covered; is between what he says of 12 inch
24 and 18 inches, most of the roots are existing
25 in Maine between there. It's pretty accepted.

1 It's rare to see them to a depth of 33 feet or
2 more in Maine. We just don't have that type
3 of soil as often.

4 It can happen up in Brunswick where you
5 have a very sandy soil. Those roots can be
6 just going very deep. Around Yarmouth, we're
7 going to be looking at 12 to 18. And up in
8 Edgecomb, it's going to be over the top of a
9 lot of ledge since there's so much ledge up
10 there.

11 So I would assume, for that oak, that
12 most of the roots were up pretty close to the
13 surface.

14 Q. Okay.

15 A. Deep enough to hold the tree up against a lot
16 of wind, but --

**17 Q. And if damage occurred to this root system at
18 either points 1, 2, 3 or 4, at which of those
19 points would damage have most impact on the
20 health of the tree?**

21 A. Um, depends on the soil conditions. The
22 reason I say that is this. Okay. So in the
23 case of our tree, we know when were those --
24 how long ago was the triangle of access paths,
25 whatever you want to call them, put in. And

1 if the tree was vigorous and healthy back in,
2 say, 1960, and then they put those paths in,
3 well, the primary damage then is out at 3 and
4 4. Because the tree is like, Oh, boy. I've
5 been impacted badly out there. But I'm a
6 young vigorous tree. I'm going to make up for
7 that. So now I'm going to move my root system
8 where available soil is, 2000 -- or rather
9 they decide to move the road at another point
10 in time, whatever that might be. I have no
11 idea. Suddenly, the road goes in.

12 Well, now they've capped off 1 and 2 --
13 or 2, primarily, in that case. Now the
14 greatest damage is on 2. So now it's lost 3
15 and 4 on the outside, 2 on the roadside, and
16 now we get to where we're talking about. So
17 now the tree is boxed in. It's got its roots
18 way in here, its only surviving roots. And
19 then perhaps we have something -- a series of
20 things or one thing -- I have no idea -- going
21 in and taking up roots in zone 1. So that's
22 devastating. So they're all devastating. I
23 shouldn't say devastating, but they're all
24 hard hitting to the tree.

25 But that's what generally occurs. The

1 tree is able for a while, back in 1960, to
2 make adjustments, say, to the outer damage;
3 and it does. It's a young tree, and it's able
4 to rebuild its root system in here. And any
5 subsequent nicking, chewing away at that is
6 equally devastating to the tree because now
7 it's lost pervious surfaces or major roots
8 here get crushed, in the case of this legacy
9 oak.

10 In the case of this elm out front sitting
11 on the lawn, it's readjusted to Main Street
12 being paved years and years and years ago. So
13 if suddenly you guys want to put a driveway
14 straight into your place to get more parking,
15 then any one of these would be devastating to
16 the tree.

17 So that's why again -- that's why you go
18 back to this term this is a very fluid
19 situation that's been happening for a while.

20 **Q. If an event happened that seriously impacted**
21 **the tree root at point 1 such that the root**
22 **was compromised, would that automatically mean**
23 **that the rest of the root going out away from**
24 **that point would also be compromised, if that**
25 **makes sense?**

1 A. The issue with damage in that close to the
2 tree, um -- what I generally tell people here
3 in town when people ask that question is that
4 from the time you damage a big root, um,
5 you're going to have -- the builders are gone.
6 They've moved on to other jobs. It's about
7 five to seven years after the builder is gone
8 that you're going to get -- you're going to
9 get your decay starting to move into the base
10 of the tree where stability starts to become a
11 problem.

12 So to your point, yes, anything that's
13 connected to that root, that's gone. That's
14 that fan that I talked about earlier. That
15 fan is gone. It's taken out of action. So
16 bit by bit, this tree has lost percentages of
17 its root system in different areas.

18 **Q. All right. Let's take a look at Exhibit 37,**
19 **please.**

20 A. Thank you.

21 MR. HARRINGTON: What? I'm trying to
22 keep the old man out but, it's hard.

23 MR. BOPP: Yes, it is.

24 BY MR. BOPP:

25 **Q. So on Exhibit 37, I just want to focus your**

1 attention on part B, and that's a root system
2 there with three pathways around. Let's just
3 say the tree is in the center.

4 Does that all make sense?

5 A. I'm working on it.

6 Q. Okay.

7 A. So who added the arrows?

8 Q. Someone other than the author of the article.

9 A. I was going to say. So we have an
10 interpretation of an article; is that what
11 this is?

12 Q. Well, the question -- I'm just trying to set
13 up the scenario for the question. So really,
14 what's important is there's a diagram of a
15 tree root system there.

16 A. Mm-hmm.

17 Q. And what -- the point of the question is, if a
18 heavy truck were to take paths 1 versus 2
19 versus 3 around the tree, which pathway would
20 cause more damage to the root system of the
21 tree; taking path 1, path 2 or path 3?

22 A. Depends. It depends. It depends on the soil
23 conditions. Um, your fine -- your fine, fine
24 roots are going to be -- your fine roots -- if
25 you pick up a tree, and you stick it

1 upsidedown in the ground, its crown is
2 reflecting generally what's underground. It's
3 flatten it out. So your fine, fine branches
4 on your tree are way out at the tips. You
5 can't afford to lose those fine limbs; all the
6 fine buds.

7 So if we think of it that way, and we
8 picture a root system as that elm tree out
9 front, splayed out in the ground, those fine
10 tips are way out on the edge. So crushing
11 over the top of those is devastating. Yet, if
12 a truck passes very close to a trunk, it
13 potentially has the potential to crush the
14 roots that -- crush the major roots that
15 service the outer roots anyway. So
16 potentially one could be more devastating.

17 And let's look at it another way. So
18 let's -- for the purposes of this drawing, if
19 we have -- we have the tree, and we look at it
20 as a wagon wheel --

21 MR. LIBERMAN: Before you get too far
22 along, if you're going to draw on something,
23 make sure it's on something that you wouldn't
24 mind making part of the exhibit. So if you
25 want to do it on a fresh piece of paper.

1 THE DEPONENT: Okay. That's fine.

2 A. So we'll just make this simple. Let's look at
3 the tree. So we've established already that,
4 um, the road is in. The road went in. Here's
5 the road; Merrymeeting Road. So that is
6 taking 40 percent off, let's just say.

7 So to make this relevant to this picture
8 right here of what we're talking about, is
9 that if we're talking about an area, say,
10 right over here, and let's say the vehicles
11 back in this far. They back in right here.
12 So now we've lost that percentage of the root
13 system, okay.

14 If they -- so depending how far vehicles
15 back in over here is going to be more of a
16 percentage. If they're in tight here, though,
17 and they go in the same distance, potentially,
18 they're going to be as this drawing has it.

19 What's wrong about this drawing is that
20 -- well, I can't say it's wrong about it, but
21 the percentage of root system in close is
22 going to be greater than the percentage of
23 root system farther out. So if we're coming
24 in here, we're going to affect all of the
25 roots in this entire area here.

1 So I would say -- to answer your
2 question -- 1 is going to be more damning than
3 3 in that given situation.

4 BY MR. BOPP:

5 **Q. Do you mind if we make that drawing 37-A?**

6 It's going to help -- for someone reading the
7 transcript, they'll know what you were working
8 on.

9 MR. HARRINGTON: 37-A?

10 MR. BOPP: Right?

11 MR. LIBERMAN: Yeah, I think that's
12 right.

13 MR. BOPP: And then we'll do the same
14 with this; have just her keep it, and then
15 we'll all get copies that way?

16 MR. LIBERMAN: That works for me.

17 BY MR. BOPP:

18 **Q. All right. Let's turn to Exhibit 38. I'll**
19 ask you to review that, and let me know if
20 you're familiar with it.

21 A. Yes.

22 **Q. And what is this form used for?**

23 A. This is used for breaking down the cost of
24 replacing a tree using an interest compounding
25 method whereby you -- you're going to grow the

1 tree to equal size to what it is and what it
2 costs to grow that tree, a 2-inch sapling, to
3 a legacy oak; to a 36-inch oak or whatever.

4 So what it does is, instead of trying to
5 figure out the value of the big tree, you're
6 saying what's reasonable to do -- you're
7 bringing in a small tree. Then how many years
8 to parity, and then you're factoring an
9 interest rate in there and the cost of the
10 maintenance and the cost of the installations,
11 and all of that goes into building a tree out.
12 It's a good technique.

13 **Q. You didn't use it with respect to this tree?**

14 A. I was not asked to provide a valuation.

15 **Q. Okay. Can you tell me -- how does line 10**
16 **work, the interest rate; how is that**
17 **calculated?**

18 A. It's based on, um, whatever interest rate, 6
19 or 7 percent, that is more -- it doesn't have
20 to be 6 or 7 percent, but it can be what the
21 going interest rate is, and it's just simply
22 -- all that is doing is compounding that cost.
23 So if your money were spent elsewhere or
24 invested elsewhere --

25 MR. HARRINGTON: Oh.

1 A. It's a way of growing the tree over time but
2 compounding that interest rate to show that
3 you're not losing money waiting for a small
4 tree to grow to a large size.

5 BY MR. BOPP:

6 **Q. So is it similar to a time value of money**
7 **concept?**

8 A. Pretty similar, yes.

9 **Q. So to -- I mean, would you put an interest**
10 **rate in there that would be equivalent to**
11 **where you could safely invest your money over**
12 **the same period of time; something like that?**

13 A. Yeah. I think the last time I did it a few
14 months back, I think I had six and a half
15 percent or so in that slot. But that's
16 variable. So you can say -- you know, the
17 people can receive the report and go, Well,
18 should we get -- shouldn't we have seven and a
19 half percent in there? It's like, that's
20 fine, and it will solve that. You know, the
21 bank can make that adjustment or whatever, but
22 --

23 **Q. And in what types of scenarios would you use**
24 **this form?**

25 A. Um, this form is really ideal for when you --

1 when you cannot find a -- when you need --
2 when you need a solution for returning a
3 landscape to its previous condition, but it
4 can utilize different ways of going about it.
5 You're not just -- I use it quite often where
6 you lost screening, say, between two houses,
7 and four old trees were taken down by accident
8 or whatever and putting a replacement screen
9 in; what's the value of that screen and then
10 growing that screen to achieve the same
11 objectives. That's the key where this helps
12 you out.

13 So if you have two -- like Brunswick
14 situation actually happened like this -- but
15 two houses where they don't want them to look
16 at each other; and, really, the value is
17 gained greatest when the trees gain 25 foot
18 height. It doesn't really matter after that
19 point too much.

20 So cost compounding can utilize different
21 landscape plans, grow them, what's the cost,
22 what's the interest, what's the years to
23 parity, what's the maintenance cost. And it's
24 very flexible and offers a nice -- nice way to
25 go to -- it helps people to understand, also,

1 from the standpoint of making a judgment call,
2 and is this fair and reasonable compared to
3 the trunk formula method, which is going to
4 heavily depreciate the tree. It's going to
5 take into account all of the negatives,
6 species, condition of the tree. You're
7 hammering away at all these things and then
8 placing a value, and that value can be
9 sometimes highly challenged. Whereas, really
10 the point is, we'd just like a screen back.

11 So instead of tearing apart the existing
12 tree and, you know, beating it to death,
13 you're just saying, Hey, a value is lost here;
14 how can we get value back. So this tends to
15 be more palatable, I think.

16 Q. So let's say you had two property owners, and
17 there was a screen of trees in between them
18 that provided privacy so you couldn't see
19 through -- each side had privacy. And one of
20 the owners, either mistakenly or otherwise,
21 clearcut the screen; so clearcut all the trees
22 down.

23 This could be used as a way of
24 determining the compensation owed to the other
25 owner for that?

1 A. Yes, it's -- it's -- basically, it's called
2 cost of cure to cure the situation. So it's
3 -- you're not trying to do a one for one. You
4 don't have to do the replacement value. Okay,
5 I lost a 14-foot arborvitae. I need to find a
6 14-foot arborvitae, which can get very
7 expensive and unreasonable because now we're
8 going to ship -- we found one in Indiana.
9 We're going to have it specially shipped on
10 the back of a truck to replace that one tree
11 and on and on and on.

12 And you can have a situation like you
13 described costing a million dollars. The cost
14 compounding method simply says it's a
15 reproduction method -- that's your key word --
16 to reproduce the situation; and how long will
17 it take, what is our money being out of
18 circulation worth -- but the value is
19 returned.

20 **Q. So if the screen -- let's say the screen was**
21 **composed of all mature trees, they got clear**
22 **cut, and now we can't find mature trees of**
23 **that age, size, et cetera.**

24 A. Mm-hmm.

25 **Q. So we're going to replant now younger trees.**

1 Let's say -- I don't know -- what are we at?
2 15-year-old trees there before or let's say 20
3 year-old-trees. Now we're going to replant
4 2-year-old trees.

5 This is a way to figure out the value
6 that's been lost by having to replant
7 2-year-old trees to replace the 20-year-old
8 trees; is that fair?

9 A. Okay. Well -- and this is a little bit
10 different than what we're talking about here
11 with this tree. But to your point, somebody
12 mistakenly goes in and cuts them down, and you
13 have nothing but stumps or even stump grinding
14 in some cases. So you have no way of really
15 doing an assessment of, Well, what was here.
16 Oh, they were gorgeous. They were a beautiful
17 screen. We loved the shade. But the trees
18 aren't there, so you can't -- you don't know
19 --

20 So trunk formula goes out the window.
21 Replacement value goes out the window. You're
22 looking to cure a situation, which is what
23 this -- what were the benefits? Well, we
24 didn't want to see each other. You know, yes,
25 they were great big trees, but we don't know.

1 They're not here anymore. How tall were they?

2 I don't know. They were big.

3 So really, you're actually, in those
4 cases, forced to go to this, even though it's
5 a good way to go because you have nothing to
6 go off of. There's no other -- you can't
7 assume that these other trees were 100 percent
8 value. No trees are. So really, you don't
9 have those to go by.

10 And it's kind of an unhappy medium
11 sometimes because people say, Well, my trees
12 were huge, and I loved them; but you had no
13 way of assessing that. So when the trees are
14 completely gone, this becomes the go-to method
15 because then you can just regrow a screen.

16 Q. I'm trying to wrap my mind around how it
17 works.

18 So in my example, you replace -- we know
19 that they were 20-year-old trees, and we know
20 the size and the kind of the trees, and we're
21 replacing them with 2-year-old saplings, if
22 that's even the right term for 2-year-old
23 trees.

24 A. 2-inch caliper trees.

25 Q. Okay. 2-inch caliper trees.

1 And so we know the cost of the 2-inch
2 trees.

3 A. Yes.

4 Q. But now we want to somehow figure out -- to
5 take us from 2 inch to 20 inch -- or I said 20
6 years.

7 This formula allows us to do that?

8 A. This does, yes.

9 Q. Like, conceptually, how does it do that?

10 I mean, I'm trying to think of it in my
11 mind. Is it because -- I guess are you able
12 to just explain to me how it does that?

13 Like, we know the cost to put in these
14 2-inch trees.

15 A. Mm-hmm.

16 Q. How does it then calculate the 20-inch or the
17 20-year trees using this?

18 A. Well, you're going to have years to parity
19 first. You have your installation -- first
20 you're going to establish, Well, how many
21 trees are we putting in. Okay. We're going
22 to put in a 2-inch tree. Then what are the --
23 what is the installed cost, getting that grand
24 total. It's a spreadsheet. I can't really
25 describe it just sitting here. It's an Excel

1 spreadsheet.

2 But then your key is, how many years is
3 it going to take to grow a silver maple or red
4 oak -- those are both going to be radically
5 different -- to that 20-inch size. So
6 supposing you say it's going to take 20 years
7 to grow. Well, that cost is compounding --
8 your installed cost is compounding to alter in
9 that time.

10 **Q. Based on the interest rate?**

11 A. Yes. And the values will come up very, very
12 close to where you would be otherwise if you
13 go through different methods. But it gives a
14 more tangible way of approaching it that
15 people say, Oh, that makes sense to me because
16 I can see a 2-inch growing to this 20-inch
17 tree.

18 And it could be argued, Well, why did you
19 choose 20 years? Okay. What would you like;
20 25, 17? So you try and use your professional
21 judgment. And then you have your maintenance
22 costs on top of that; your delivery costs, the
23 cost to grind out the stumps if they're still
24 there, and all those other costs, and that
25 goes into a bottom line item.

1 Q. Right.

2 So it looks like, from the form, there's
3 the subject tree, which you put down the
4 information on the subject tree.

5 A. Mm-hmm, if it exists.

6 Q. The one that's either missing or maybe it's a
7 tree that needs to be replaced.

8 A. Mm-hmm.

9 Q. Then the replacement tree is what you're going
10 to be obviously replacing it with.

11 A. Mm-hmm.

12 Q. And then the calculations, 9 is what you were
13 talking about, right; the years to parity?

14 A. Mm-hmm.

15 Q. You need to say yes. Sorry.

16 A. Yes.

17 Q. And so in this -- let's apply this roughly to
18 the legacy oak.

19 So the legacy oak would be the subject
20 tree, right?

21 A. Yes.

22 Q. If we were using this?

23 A. Yes.

24 Q. So what would be the replacement tree? It'd
25 be another oak, presumably?

1 A. It's easiest if you go with a similar species.
2 It's not necessary, but it's easiest if you
3 do.

4 **Q. And so what -- let's say this tree was going**
5 **to be replaced. What would it be replaced**
6 **with; what size tree?**

7 Is that up to the owner or is that
8 something that is recommended by the arborist?

9 A. Again, depending upon the method used, you can
10 go to the largest reasonably available
11 transplantable tree.

12 **Q. Okay.**

13 A. So you can get a red oak hauled out of
14 Maryland, all the trucking costs and
15 everything else that goes into it, and that is
16 going to be X number of dollars, or you can
17 grow a tree.

18 **Q. Okay. And then the years to parity, you have**
19 **to figure out -- whatever tree you select for**
20 **your replacement tree, you have to figure out**
21 **how many years that needs to grow to be the**
22 **same age or size --**

23 A. Correct.

24 **Q. -- as the tree you're replacing?**

25 A. Correct.

1 **Q. And is it age or size or a combination of**
2 **both?**

3 A. No, it's going to be more of the -- it's not
4 the age. It would be more the size.

5 **Q. The size?**

6 A. To the size.

7 **Q. Okay.**

8 A. So the reason I say that it's best to stick
9 close to your species is that if somebody were
10 to say, Well, we'll give you a poplar, which
11 can grow to 20-inch in, you know, eight years.
12 But it's like that's, you know -- so anyway,
13 that's splitting hairs. But generally, you go
14 type for type.

15 **Q. Got it.**

16 **So this technique could be used to figure**
17 **out the replacement cost of the oak tree at**
18 **issue in this case; is that fair to say?**

19 A. It could; it could.

20 **Q. Okay. Turn to Exhibit 39.**

21 MR. HARRINGTON: 39.

22 MR. BOPP: No, that's 40.

23 MR. HARRINGTON: 39.

24 BY MR. BOPP:

25 **Q. I'll ask you if you've ever seen this before.**

1 A. I have not seen this photograph, no.

2 **Q. Do you have any idea whose truck that is in**
3 **the picture?**

4 A. I do not. I do not know whose truck that is,
5 no.

6 **Q. I will represent to you that that is one of**
7 **the defendant's trucks.**

8 Do you know whether that is a so-called
9 **tri-axle?**

10 A. It doesn't appear to be, but I can't see all
11 the -- the body is in the way. I can only see
12 two of the axles. You can't see a third axle
13 there, but --

14 **Q. I'm not even --**

15 A. Tri-axle, meaning three sets of wheels across
16 the back end.

17 **Q. Okay. If this truck were to be driven near or**
18 **around the legacy oak tree, I think it's fair**
19 **to say that it would seriously compact the**
20 **soil and damage the root system of the tree;**
21 **is that fair?**

22 MR. LIBERMAN: Object to form. You can
23 answer.

24 A. Yeah. Actually, that's something that I
25 pointed out when I first looked at the tree;

1 was what's interesting is that, obviously, you
2 don't want any vehicle driving over the root
3 systems of your trees. It's kind of an out of
4 sight, out of mind. Roots are down there
5 somewhere so people think, Oh, my car is
6 certainly not hurting anything.

7 But cars with narrow wheels, a van --
8 which I'm sure was just there momentarily --
9 but narrow wheels quite often drive in deeper
10 than wide wheels since they're dual. The
11 weight of the vehicle may be such, but spread
12 over a platform of tires is dispersing weight.

13 So, for example, I was told -- I was told
14 by somebody like -- an excavator, I'll just
15 say, that a bulldozer -- a full-size bulldozer
16 causes less impact than a Bobcat over the root
17 system of a tree, and it was news to me. But
18 he said the pounds per square inch applied is
19 so uniformly spread out that it causes less
20 impact than our own like Bobcat equipment.

21 And so I can't answer that question
22 accurately. It's not my specialty. That can
23 be answered by somebody, I'm sure, to say that
24 versus a van or a pickup truck or other
25 vehicles, what is the pound per square inch

1 applied underneath each wheel. That would be
2 the real question, and I don't know what that
3 is with wheels.

4 BY MR. BOPP:

5 Q. Okay.

6 MR. HARRINGTON: I do.

7 MR. BOPP: Thank you.

8 BY MR. BOPP:

9 Q. Let's take a look at Exhibit 40, please. I'm
10 going to ask you to take a look at that.

11 A. Okay. Yes, I recognize that as the subject
12 tree.

13 Q. Okay. Would you say that appears to be the
14 most recent picture that we've seen of the
15 tree given what's happening with it?

16 A. It appears to be, yes. It appears to be.

17 Q. And what do you note of significance about
18 this picture of the tree?

19 A. Well, it looks like more bark is sloughing
20 off. So there's greater height over here.

21 Q. On the right side?

22 A. On the right side; on the roadside stem. And
23 yet it is remarkable the amount of vigor that
24 this tree is showing for everything it's gone
25 through with this wound wood rolling in,

1 callus tissue.

2 **Q. And where do you see the wound wood rolling**
3 **in?**

4 A. It would be right in between the two stems as
5 they almost come in contact, like a couple of
6 snakes or ropes coming down. So it is still
7 showing signs of vigor. But certainly, more
8 bark has sloughed off, and the decay is moving
9 up -- up the stem.

10 **Q. How about on the left-hand side? I'm just**
11 **wondering about the area where the bark is**
12 **sloughing off. All the way to the left, it**
13 **almost looks like sort of just bare wood under**
14 **there, if you see where I'm talking about.**

15 A. Yeah, I'm looking at that, and I'm trying to
16 see -- I can't make out what -- perhaps was a
17 piece of bark pulled off right there just to
18 check on the tree? I'm not pointing fingers
19 or anything, but sometimes people will just go
20 up and flip bark to see what's going on. And
21 it looks like a piece of bark was snapped off
22 there or maybe it just sloughed off. It looks
23 like maybe -- I don't know, but that is tough
24 to make out if that's tissue rolling in or if
25 it's just suddenly opened up to air right

1 there.

2 Yeah, I can't make it out in this
3 photograph. It's a little bit too far away --
4 unless you have a close-up.

5 **Q. I don't, of that one.**

6 Do you remember the picture that you took
7 where you were pointing the pen at like a
8 whitish-yellowish area?

9 A. Yes; mm-hmm.

10 **Q. Was that the same side of the tree as we're**
11 **looking at now?**

12 A. Yeah, that would have been that area in
13 between the two stems. I believe it was right
14 there.

15 MR. LIBERMAN: You're referring to
16 Exhibit 22; this one?

17 MR. BOPP: Yes, thank you.

18 A. It would have been right in this -- so I don't
19 have my pen tip out, but it's that area right
20 there that I took a photograph of, I believe.
21 I want to say right in there.

22 BY MR. BOPP:

23 **Q. So has that area changed colors then?**

24 A. That was bright sunlight hitting that early in
25 the morning. Now the sun is -- this must be

1 an afternoon shot here. But actually, in a
2 way, this shot is a better shot, even from a
3 distance because of the shade that's now
4 hitting it. It exemplifies those annual
5 attempts at rolling in because of the light/
6 dark. It also shows this a little bit better
7 down here, too, at the bottom of the picture
8 where we discussed is it a root; is it
9 response growth. Um, this piece down here.
10 But down low on the left side, also, there's
11 some response growth coming in right there.

12 **Q. When you say "right there," where are you**
13 **pointing at?**

14 A. I was referring to that knee, so to speak, and
15 that little knee coming in right there.

16 **Q. Oh, I see.**

17 A. You know, what's weird about it is that it
18 makes me wonder a little bit, given that, you
19 know, we're talking about -- we're talking
20 about two independent stems right here, and it
21 would be interesting to have seen, in the
22 past, what was in this spot; what was there.
23 Were there two small buttress roots, which
24 would make most sense because they're two
25 separate stems.

1 So this is a really interesting area down
2 here because it's trying to see what may have
3 been in that location. Well, the other
4 pictures are varied. But let me just -- 32.

5 This is kind of typical. You have two
6 stems competing, and they tend to -- the
7 buttress roots tend to go, you're there; I'm
8 going to go here. So they kind of flare away
9 from each other. There's not really enough
10 room in this area here for -- it wouldn't be
11 one big buttress root. It may have been two
12 small ones kind of flaring away from each
13 other right in that spot.

14 Be cool to see an old photograph of the
15 tree and see what was in that spot. But it
16 was a long time ago when that -- whatever it
17 was -- looked like that.

18 **Q. Mm-hmm.**

19 **Okay. I have some more general questions**
20 **for you here, Mr. Hughes. Have you ever**
21 **lectured on or written about the issues that**
22 **we've talked about today?**

23 **A.** Have I ever lectured on them? No. I have
24 gone and taught classes up at U of Maine just
25 to talk to the horticulture and Southern Maine

1 Community College, but I'm not -- I'm not a --
2 I'm not a published book arborist.

3 **Q. Or any articles? Have you written any**
4 **articles?**

5 A. I've written articles in -- for the -- for The
6 Forecaster, that type of thing, that were in
7 weekly while it was in business.

8 **Q. That's about it for The Forecaster?**

9 A. What's the other one that's here? The Notes--
10 the Yarmouth Notes, before COVID took them
11 away.

12 **Q. In the prior case that we talked about at the**
13 **start of the deposition, you had your**
14 **deposition taken -- that was in Colorado you**
15 **had your deposition taken?**

16 A. Mm-hmm.

17 **Q. I'm sorry. I can't remember.**

18 Did you wind up saying you did testify at
19 trial?

20 A. Yes.

21 **Q. I don't know that I asked you this.**

22 What year was that, approximately?

23 A. That would have been probably 2003.

24 **Q. And was that a tree valuation case; is that**
25 **what your role was?**

1 A. My role -- my role in that was to, um -- I was
2 subcontracted by property valuers to provide
3 a value of the trees that would have to come
4 out. They were very, very large trees that
5 would have to come out to make way for an
6 expanded intersection. So it was to be added
7 to their property valuation for the whole
8 site. That was my role.

9 **Q. Was it akin to a condemnation proceeding?**

10 A. It was -- they were not fighting the -- as I
11 remember, the property owner -- they were
12 directly at a very busy intersection. They
13 were not fighting the loss of the trees so
14 much as, um, trying to establish value for
15 their entire site and how that would diminish
16 their value, both in land -- you know, this is
17 Boulder, Colorado; very high dollar land --
18 the loss of land, compensatory for that, and
19 then the loss of the trees for compensation
20 for that.

21 **Q. And do you know if the other side had a**
22 **competing expert?**

23 A. Yes, they did.

24 **Q. And was there a decision that was issued after**
25 **the trial?**

1 A. Yes; mm-hmm.

2 **Q. Do you know how it came out on the tree**
3 **valuation issues?**

4 A. It was -- the tree -- the property valuation
5 really was a left field -- came out of left
6 field because the property wasn't -- it was a
7 residential property. Both had a large
8 residence on it, but what the site was could
9 be assumed to be highest and best use, which
10 could be a hotel.

11 So the value went from -- we were valuing
12 a house -- not me -- not the house, but the
13 trees. So our valuation was here, and it came
14 in sky high as if it were, you know, Embassy
15 Suites. And then, of course, you know, the
16 value of the trees shot through the roof.

17 So that was -- it was a surprise to the
18 property valuator, but it's something -- the
19 highest and best use can be done, so they got
20 it. As far as I know, it happened.

21 **Q. Yeah. And you were on the state's side?**

22 A. I was representing -- yes, Maine -- the
23 Colorado DOT; CDOT.

24 **Q. And their general goal was to try to get as**
25 **low a value -- low defensible value as they**

1 could; is that fair?

2 A. Yes, they -- they were shocked because I --
3 you know, they assumed that trees -- these
4 trees were old and not worth, you know,
5 anything. And I came back with, you know, a
6 value that was quite a bit more than that, and
7 they only found out later that they're worth
8 even more than that. So it was a lesson all
9 the way around for everybody involved.

10 Q. Yeah, it sounds like it.

11 Have any of your licenses or
12 certifications ever been suspended or revoked?

13 A. No.

14 Q. What percentage of your work time is spent
15 being an expert witness?

16 A. An expert witness?

17 Q. Right.

18 A. Well, expert witness would mean in court?

19 Q. Yeah, involved in litigation like this.

20 A. Well, as far as in situations that could go to
21 court but get resolved, I would say at this
22 point, probably two to four percent.

23 Q. So what's the other 96 to 98 percent of your
24 work time spent doing?

25 A. My other 90 -- or another probably 60 percent

1 of mine is in plant health care; so in the
2 treatments and management of insects and
3 diseases.

4 Q. And then the balance?

5 A. That would be in the general tree work and
6 landscape as well. Landscape is probably
7 another 20 percent. So general tree work is
8 probably about 15 percent at this point in my
9 life, for obvious reasons.

10 Q. By landscape, do you mean landscape design?

11 A. Design and installation, yeah. Yes.

**12 Q. Have you relied upon any written materials
13 such as a treatise or other publication in
14 support of your conclusions or opinions that
15 you would consider to be authoritative on the
16 subject matter about which you're testifying?**

17 A. Probably the information that I go to most
18 often is authored by Alex Shigo.

19 Q. S-H-I-G-O?

20 A. Yes.

21 Q. And do you know his credentials?

22 A. He's no longer with us, but he was kind of
23 termed, you know, the father of true
24 arboriculture. He published his books from
25 his research in the '80s and '90s and was

1 speaking, you know, all over the country. His
2 stuff -- his materials still hold up very
3 well.

4 **Q. Are there any titles that you can recall of**
5 **works that he's written?**

6 A. Um, two books. One is called Touching Trees.
7 Another is the Arboriculture -- I think it's
8 basically called Arboriculture. But I can
9 pull them up or give you the references on
10 that.

11 **Q. Have you worked with Attorney Liberman before?**

12 A. No, I have not.

13 **Q. And, again, not trying to get into any**
14 **specifics of the contents of communications**
15 **that you've had with Attorney Liberman, but**
16 **did you -- what did you do to prepare for your**
17 **deposition today?**

18 A. The main thing I tried to do today was -- I
19 was kind of torn because as this kind of
20 dragged on -- the dating this thing -- I was
21 kind of torn because I had wanted to almost go
22 back out and do another visit to the site. I
23 don't spend a lot of time up in Edgecomb. But
24 I didn't want to do so without going with Jon,
25 and I didn't feel like that would be

1 appropriate.

2 But it would have -- so what I tried to
3 do -- to answer your question -- was just
4 mentally put myself back there and remember
5 every bit that I could about the tree and --
6 from the 12 photographs that I had -- to get a
7 feel for my first impressions of the tree.
8 Because that -- quite often -- for me
9 anyway -- my first impressions are important
10 before I discuss things and before other
11 things kind of muddy the waters a little bit.

12 So I tried to recall that as best I
13 could. As you could see, I didn't have -- I
14 didn't take a bunch of notes on this case. I
15 wanted it -- it was more of a verbal meeting
16 that we had, and so I didn't have a report to
17 go off of.

18 **Q. Did you meet with Attorney Liberman to prepare**
19 **for this deposition?**

20 A. Yes, mm-hmm.

21 **Q. How many times?**

22 A. One time, at his office.

23 **Q. And how long was that?**

24 A. One and a half hour.

25 **Q. Was anyone else there or just the two of you?**

1 A. It was just he and I.

2 **Q. Did you review any documents during those**
3 **sessions?**

4 A. No. We more or less talked -- talked and
5 discussed the deposition and discussed the
6 tree, discussed the case; but we did not go
7 into pulling out photographs and all of that.

8 **Q. Did you discuss potential questions you might**
9 **be asked during this deposition?**

10 MR. LIBERMAN: I object because now we're
11 getting into the content of my communications
12 with him.

13 MR. BOPP: Fair enough. If we can take
14 just a two-minute break.

15 (A break was taken.)

16 MR. BOPP: I am done with my questions.
17 Thank you, Mr. Hughes.

18 THE DEPONENT: Okay.

19 MR. LIBERMAN: Thank you. I have no
20 questions. We can read and sign.

21 (The deponent will read and sign.)

22 (The deposition concluded at 4:15 p.m.)

23 * * * * *

24

25

1 STATE OF MAINE

2

3 I, Lynne M. Morrison, a Notary Public in
4 and for the State of Maine, do hereby certify that
5 pursuant to notice there came before me on April
6 25, 2024, the following-named person to wit:
7 MICHAEL R. HUGHES, who was duly sworn to testify
8 to the truth and nothing but the truth; that he
9 was thereupon carefully examined upon his oath and
10 his examination reduced to writing under my
11 supervision; that this deposition is a true record
12 of the testimony given by the witness.

13 I further certify that I am neither
14 attorney nor counsel for, nor related to, nor
15 employed by any of the parties to the action in
16 which this deposition is taken, and further, that
17 I am not a relative or employee of any attorney or
18 counsel employed by the parties hereto, or
19 financially interested in this action.

20 IN WITNESS WHEREOF, I have hereunto set my
21 hand this 14th day of May, 2024.

22

23



Lynne M. Morrison

24

25 My Commission Expires
April 4, 2026

1 CHANGES AND SIGNATURE

2 WITNESS NAME: Michael R. Hughes, 04/25/2024

3 PAGE LINE CHANGE REASON

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19 _____

20 I, Michael R. Hughes, have read the foregoing
21 transcript and hereby affix my signature that same is
22 true and correct, except as noted above.

23

24 _____

25 Michael R. Hughes

Date

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