

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Jennifer B. McCoy, Circuit Court Judge

Civil Action No. 2015-CP-10-00955

Appellate Case No. 2019-001790

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SC Court of Appeals

Palmetto Pointe At Peas Island Condominium Property Owners Association, Inc. And Jack Love,
Individually, and on behalf of all others similarly situated,.....Plaintiffs,

vs.

Island Pointe, LLC; Complete Building Corporation; Tri-County Roofing, Inc.; Creekside, Inc;
American Residential Services, LLC d/b/a ARS/Rescue Rooter Charleston; Andersen Windows,
Inc; Atlantic Building Construction Services, Inc., n/k/a Atlantic Construction Services, Inc.;
Builder Services Group, Inc. d/b/a Gale Contractor Services; Novus Architects, Inc., f/k/a SGM
Architects, Inc.; Tallent and Sons, Inc; W C Services, Inc.; CRG Engineering, Inc; CertainTeed
Corporation; Kelly Flooring Products, Inc, d/b/a Carpet Baggers; Cornerstone Construction and
Mark Malloy d/b/a Cornerstone Construction; Miracle Siding, LLC and Wilson Lucas Sales d/b/a
Miracle Siding, LLC; Mark Palpoint a/k/a Micah Palpoint; Elroy Alonzo Vasquez; Chris a/k/a
John Doe 61; Alderman Construction; Stanley's Vinyl Fence Designs; Cohen's Drywall Company,
Inc; Mosely Concrete; Hand A Framing Construction, LLC a/k/a H&A Framing Construction,
LLC and d/b/a H and A Framing, LLC, H&A Construction, and Hand A Construction; JMC
Construction, Inc; JMC Construction, LLC; John Doe 1—15, ... Defendants,

of which Palmetto Pointe At Peas Island Condominium Property Owners Association, Inc. and
Jack Love, individually, and on behalf of all others similarly situated are the Respondents,

and

Tri-County Roofing, Inc..... Appellant.

RECORD ON APPEAL (FINAL)

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1 two of the riser poles alongside, and then you have a
2 platform that goes on. And with your foot you can push it
3 down and it jacks that platform up so you can work on the
4 parts of the building and -- coming up and coming down.

5 Q. Now looking at that photograph, does that appear to be
6 the area that you were saying was included in your change
7 order number 5?

8 A. That is correct.

9 Q. Now, how is the pump jack attached at the top?

10 A. There is actually a wire. It's a steel reinforcement,
11 and I don't have the pointer here, so -- I don't see it
12 anywhere. So, up at the, up at the very top where you see
13 the roof line ---

14 Q. Can you come around to the other side so you're not
15 blocking the jury?

16 A. Sure. Up at the very top these, these are your riser
17 poles and up at the very top just about the roof line,
18 you'll see a little black line. That's a piece of steel
19 that goes around that riser pole and attaches it to the
20 roof area.

21 Q. Now, does the shingle that's near where you're
22 describing the poles, can you describe what that looks
23 like?

24 A. Sure. So, what they've done is where the supports are
25 being tied into the roof, they have lifted up the shingle

1 and secured the pump jack underneath the shingle.

2 Q. And why do you want to secure the pump jack underneath
3 the shingle?

4 A. You don't want to penetrate the new shingles.

5 Q. All right. That's something that you, you do out
6 there, right?

7 A. Yes, sir.

8 Q. And that's something that your sub knew about, right?

9 A. Sir? Repeat that.

10 Q. That's something your sub knew about, right?

11 A. Yes, sir.

12 Q. Okay. Were there any other buildings out there that
13 siding was removed?

14 A. Yes, sir.

15 Q. Do you know what those numbers are?

16 A. I had them documented. I think 1603, 1605, if I'm not
17 mistaken. Do you have a copy of...

18 Q. I don't have it with me, but 1603, 1605, and it was an
19 even number was the other one, right?

20 A. I believe so, yes, sir.

21 Q. Okay, and 1603, 1605, 1609. That's not an even
22 number.

23 A. No.

24 Q. You did the change order for unit 1623, correct?

25 A. That is correct.

1 Q. Did you do a change order for any other buildings out
2 there?

3 A. For removing the siding and reinstalling, no, sir, I
4 did not.

5 Q. Okay. So, if you had done the work on any other
6 buildings other than 1623 to remove some of the siding, put
7 it back on for whatever they're using that for, would you
8 have invoiced that?

9 A. Yes, sir.

10 Q. So, there are some buildings out there that there's
11 part of that siding that's not your original siding?

12 A. That is correct.

13 Q. When the siding was being reinstalled on 1623, was
14 Tri-County getting any direction on change in the way that
15 that siding was installed?

16 A. No, we were not.

17 Q. We've heard some questions talking about RFIs. What
18 is an RFI?

19 A. An RFI is a request for information.

20 Q. And when Tri-County, Tri-County was trying to get
21 information about the job, were there some RFIs that were
22 submitted?

23 A. Yes, sir.

24 Q. And were there other ways that information was
25 obtained on how to work on the property?

1 A. Sure. I mean, one of the good things about this
2 project was there were a lot of different entities
3 involved, but we all worked very well together. Like I
4 said, the obvious main goal is to give the customer a good
5 product. So, there were times in those conversations and
6 those meetings we had that it, for whatever reason, wasn't
7 deemed that there needed to be an official RFI. There was
8 a question asked and there was a question answered. There
9 were other times when it needed to pass through several
10 different hands that a formal RFI was requested.

11 Q. And who typically would the RFI be directed to when
12 you're asking that question?

13 A. It typically goes to the GC.

14 Q. And do you recall RFI number 26, dated August 15,
15 2006, and if you'll look at 473.26?

16 MR. KENDALL: Exhibit number? Exhibit number?

17 MR. COLE: 473.26.

18 BY MR. COLE:

19 A. Yes, sir.

20 Q. And do you recall, refreshing your recollection, that,
21 what RFI 26 was about?

22 A. So, this is after the time period where they indicated
23 that they needed some privacy walls between the backs of
24 the unit. I think it was spoken about before. You could
25 walk out of the back of your property and you could look

1 over, and there's your neighbor having coffee, too. So,
2 they discussed and wanted to proceed with building screen
3 walls, which were, like, basically privacy walls.

4 Q. And was Tri-County involved with any of the framing of
5 that?

6 A. No, sir.

7 Q. Was Tri-County involved with any of the location, of
8 deciding where that was going to be located?

9 A. No, sir.

10 Q. Did Tri-County have change orders for putting siding
11 on those privacy walls after they were up?

12 A. We had asked for some details on the, on the siding.

13 Q. And you asked for details. Did you get details?

14 A. I do not recall if we received details or not.

15 Q. When you were out there doing the work, were you out
16 there by yourself just making stuff up, or were people
17 assisting you?

18 A. No. No. That, that, that wouldn't happen. Once
19 again, there's, there's so many entities involved here with
20 architects, engineers, people that are way smarter than me
21 that -- I mean, we took our direction from, you know, what
22 they wanted us to do.

23 Q. And there's some conversation about how these are
24 complicated roofs and roof sections out there. What is
25 your sort of definition of what that means?

1 A. Yes, sir. Well, from looking at the different
2 pictures, you can see the different roof lines that flow
3 into the decks, into the walls, whatnot. There's a lot of
4 different -- many different transition areas where the
5 building is being transitioned from one trade to another,
6 very complex intersections.

7 Q. And do you recall discussions about the roof rakes and
8 eaves and how they intersect?

9 A. Vaguely, yes, sir.

10 Q. Okay. Would looking at the RFI 35 from September 19,
11 2006, 473.35, assist?

12 A. Yes, it would.

13 Q. All right. Can you describe to me what, what
14 Tri-County was requesting assistance on and to whom they
15 were requesting assistance with that roof piece?

16 A. This was actually to the architect, SGM, and Jim
17 McGuire with that from Complete Building.

18 Q. And what, what are you actually trying to get a
19 request -- or trying to get an explanation ---

20 A. We had requested the details during the week, the
21 meeting that we had on September 7th.

22 Q. Okay, and I think we talked about September 7th
23 earlier. Would you have received those details in order to
24 proceed with your work?

25 A. It said here that the requested response date was

1 September 19th, but once again, I, unless I saw the
2 details, I wouldn't...

3 Q. Okay. Would you look at RFI 38, which is October 5,
4 2006, 473.38, and what, what's going on in this RFI? Will
5 you explain it?

6 A. Looks like we're requesting information regarding the
7 deck finish.

8 Q. Okay, and does it look like you've got -- or, or
9 you're explaining that there's a change in the
10 waterproofing membrane?

11 A. Yes, sir. It says:

12 Pertaining to our meeting on Thursday, September
13 28th, changed to the Hydro-Stop waterproofing
14 system.

15 Q. And did you also -- when you're out there, you talk
16 about punch list stuff?

17 A. Uh-huh. Yes, sir.

18 Q. Okay. I'm going to show you the first page of Exhibit
19 305, which has the date at the bottom of April 24, 2007,
20 and I'm going to write it out so you can actually see it.
21 What does this document look like?

22 A. It looks like a punch list.

23 Q. And how would you have received a copy of this punch
24 list?

25 A. Sometimes they were physically distributed at the

1 meetings. Sometimes they were electronically. I think
2 most of the time they were electronically transferred.

3 Q. And the purpose of the punch list was to do what?

4 A. Obviously like we talked before, when you have this
5 many trades coming together, there is bound to be places
6 where the trades overlap or products, details are not where
7 they should be as far as the finished product. So, once
8 again a punch list would be developed so that each trade
9 knows what they need to address to complete that particular
10 repair, whatnot.

11 Q. And who was putting together this particular punch
12 list?

13 A. I think this, that one right there is SGM.

14 Q. And did SGM follow up after they circulated the punch
15 list?

16 A. They did. This work fell into whether we got paid or
17 not. So, if, if we did not complete the punch list items,
18 they would, they would hold back payment until those items
19 were corrected.

20 Q. So, whether or not you actually got the, the money you
21 earned on the job was dependent on whether or not you
22 satisfied the architect?

23 A. Absolutely.

24 Q. And do you believe that Complete would have released
25 the funds as well if you had not satisfied what they

1 wanted?

2 A. No, sir.

3 Q. Attached with Exhibit 305 are a series of photographs.
4 Do you get photographs with the, the punch list as well?

5 A. Yes, sir, we do.

6 Q. And this is for unit 1655, correct?

7 A. Yes, sir.

8 Q. Does this look like -- and these are just examples
9 here, but does this look like some of the photographs you
10 would have received for punch list items?

11 A. Yes, sir.

12 Q. Now, obviously there are some things here that you
13 don't have anything to deal with, like wiring or something
14 like that?

15 A. That is correct.

16 Q. But want to show things like this down here. What's
17 the, the bottom -- I guess the only photograph. What,
18 what's -- what would this, this be?

19 A. Obviously it says replace broken siding at the head of
20 the door, of a door.

21 Q. And you don't know how the siding got broken, but
22 siding would've fallen into Tri-County's and its subs'
23 scope, correct?

24 A. That is correct.

25 Q. And if that had not been fixed, would you have been

1 paid?

2 A. No, sir.

3 Q. And if it's listed on a punch list, do you believe
4 that the architect or whoever put this together would have
5 looked at it after the fact to make sure it was done?

6 A. Yes, sir.

7 Q. And that's for various components that, that might
8 fall within your scope like here, the sealant joint between
9 the trim and the overhang, correct?

10 A. That is correct.

11 Q. And when we say seal, what are we doing in this
12 location?

13 A. In this particular instance, they were looking for
14 some kind of sealant to go between the trim and the
15 overhang.

16 Q. Okay, and then around the windows and the doors are
17 trim pieces, correct?

18 A. That is correct.

19 Q. And then what's between the trim piece and, for
20 example, a window?

21 A. What's between the trim piece and ---

22 Q. Well, I'm trying to be too clever.

23 A. There's a caulk joint.

24 Q. Yeah, that's what I'm trying to get to. Thank you,
25 and so when that picture was taken, obviously the person

1 who took the picture knows what the caulk joint area looked
2 like and they wanted the caulk to be put in there?

3 A. That is correct.

4 Q. And these types of things, I don't want to belabor the
5 point, but these types of things were brought out with all
6 of the different types of work that were within
7 Tri-County's scope, correct?

8 A. Yes, sir. There were many lists.

9 Q. Do you believe that the punch lists that were provided
10 to Tri-County that included Tri-County's work, that you all
11 would have completed whatever was requested?

12 A. Absolutely.

13 Q. We talked about this a little bit before, that you
14 issued some documentation after you completed the project,
15 correct? We talked about the warranty stuff?

16 A. That's correct.

17 Q. Okay. One thing that we didn't talk about during the
18 submittals, I'm going to show you what's Exhibit 46. Do
19 you recognize what that is?

20 A. Yes, sir. This is the specifications that I submitted
21 on all the requested products.

22 Q. And I'm going to put a picture of this up. When you
23 submitted the specifications, what happens to them?

24 A. I submit to the GC and the GC in turn submits them to
25 the architect, sometimes the engineer, as reviewed. In

1 this particular case, these specs were delivered to the
2 architect, which was SGM in this case.

3 Q. And so I've just put up what you're looking at here.
4 This says CertainTeed and it looks like a shingle on there.
5 Is this the shingle part?

6 A. Yes, sir.

7 Q. And at the bottom, I think on the original document --
8 this is in color. What is this thing right here?

9 A. That is the architect's stamp of approval.

10 Q. Okay and so it says what? Approved?

11 A. Yes, sir.

12 Q. So, that means that this product information was
13 submitted sort of up the chain from you and it was
14 approved?

15 A. That's correct.

16 Q. Okay. This one, I think, says Complete Building,
17 right?

18 A. That is correct.

19 Q. And then if we go to the back of that same sheet,
20 there's another stamp and who's stamping that one?

21 A. That is SGM.

22 Q. Okay, and so that's at least on the shingle. You got
23 the shingle, and it went through that process, correct?

24 A. That is correct.

25 Q. If it -- if this has not gone through this process, do

1 you believe you would have gone forward with that
2 particular product?

3 A. I would not have.

4 Q. I'm showing you -- we get to Tri-County 882. This is
5 also CertainTeed but it says weather boards, fiber cement
6 siding?

7 A. Yes, sir.

8 Q. Did this go through the same process?

9 A. Yes, sir, it did.

10 Q. And the other components that would have been
11 installed by Tri-County would have gone through that same
12 process, correct?

13 A. That is correct.

14 MR. COLE: Your Honor, to expedite things, I didn't
15 put in some of these exhibits as we were going through
16 them, but if you will indulge me?

17 THE COURT: Sure.

18 MR. COLE: The ones we've talked about, Exhibit 46
19 that we just dealt with, Exhibit 29.

20 MR. LUCEY: Slow down.

21 MR. COLE: Okay. 46, 29, 36, 22, 157, 169, and 478 I
22 would move to put into evidence.

23 THE COURT: Any objection?

24 MR. LUCEY: May I have a moment to check my list of
25 what they covered, Your Honor?

1 THE COURT: Sure. Of course.

2 (A PAUSE.)

3 MR. LUCEY: No objection, Your Honor.

4 THE COURT: No objection from the plaintiff. Anything
5 from defendants?

6 MR. BOYD: No objection.

7 THE COURT: All right.

8 (CBC CHANGE ORDER MARKED INTO EVIDENCE AS PLAINTIFF'S
9 EXHIBIT NUMBER 22.)

10 (TRI-COUNTY CHANGE ORDER MARKED INTO EVIDENCE AS
11 PLAINTIFF'S EXHIBIT NUMBER 29.)

12 (TRI-COUNTY CHANGE ORDER MARKED INTO EVIDENCE AS
13 PLAINTIFF'S EXHIBIT NUMBER 36.)

14 (SHOP DRAWING SUBMITTAL FORM MARKED INTO EVIDENCE AS
15 PLAINTIFF'S EXHIBIT NUMBER 46.)

16 (TRI-COUNTRY CONTRACT MARKED INTO EVIDENCE AS
17 PLAINTIFF'S EXHIBIT NUMBER 157.)

18 (SEALOFLEX WARRANTY ISSUES MARKED INTO EVIDENCE AS
19 PLAINTIFF'S EXHIBIT NUMBER 169.)

20 (WARRANTY MARKED INTO EVIDENCE AS PLAINTIFF'S EXHIBIT
21 NUMBER 478.)

22 MR. COLE: All right, thank you, Mark. That's all the
23 questions I have for you. Please feel -- please answer any
24 questions anybody else has. Let me get my notebook out of
25 the way.

1 MR. BOYD: Your Honor, I'm ready for cross.

2 THE COURT: Okay. Sounds good.

3 CROSS-EXAMINATION BY MR. BOYD:

4 Q. Mr. Poyner, how are you doing today? You good to keep
5 going?

6 A. Yes, sir.

7 Q. By the way, thank you for your service to our country.
8 Appreciate it.

9 A. Thank you.

10 Q. Mr. Poyner, my name is Brent Boyd. I represent
11 Complete Building Corporation, along with Rett Kendall. We
12 had a chance to meet before the trial started.

13 I want to go into your contract in a little bit
14 greater detail. I'm going to hand you what's already been
15 marked and entered into evidence as Exhibit 9, and I'll
16 look out with my copy of the same exhibit. Can you just,
17 before we get started, just flip through this, this page
18 that I've handed you and the next couple of pages? And let
19 me know when you've had a chance to look at it, sir.

20 (A PAUSE.)

21 A. Okay.

22 Q. All right, and now, Mr. Poyner, this is your
23 subcontract in this case, is to not?

24 A. It looks like it, yes, sir.

25 Q. Okay, and you, in fact, signed that subcontract with

1 Complete Building Corporation, did you not?

2 A. I did.

3 Q. Okay, and I just want to cover some of the aspects of
4 the subcontract as we look on it together. If we look at
5 section, section 1 on the cover page -- are you there, sir?

6 A. Yes, sir.

7 Q. All right, and in that, the subcontractor -- and that
8 would be Tri-County, correct?

9 A. Yes, sir.

10 Q. You agreed to furnish, you agreed to:

11 Furnish all material and perform all work as
12 described in section 2 hereof for the
13 construction of Palmetto Pointe.

14 Correct?

15 A. Yes, sir.

16 Q. Did I read that correctly?

17 A. Yes.

18 Q. It's a little bit difficult to see on, on our boards,
19 so I may occasionally ask you if I read it correctly and
20 make sure we've being accurate.

21 A. It's very small here, too.

22 Q. Oh, is it? I have an extra pair of reading glasses if
23 you'd like. We've already had to break them out once.

24 And section 2, which we'll look at in a minute, and
25 that breaks down the scope of work of Tri-County Roofing in

1 greater detail, does it not?

2 A. Yes, sir.

3 Q. All right, and moving on in section 1, you agreed to
4 provide that material and all that work for Island Pointe,
5 LLC. Do you see that?

6 A. Yes.

7 Q. Okay, and let's talk about Island Pointe, LLC, for a
8 minute. Island Pointe, LLC, they're identified, if you
9 read on, as the owner of this project, correct?

10 A. Yes, sir.

11 Q. That's the entity to whom or for whom these buildings
12 were being constructed at that time, correct?

13 A. It appears so.

14 Q. Yes, sir, and you've heard the name Tommy Brown and
15 perhaps Chris Union? They were the men that owned Island
16 Pointe, LLC, Island Pointe, LLC, correct?

17 A. I believe so.

18 Q. And as the owner of the project, they were the ones
19 who determined what ultimately, what they wanted this
20 project to look like, correct?

21 A. I wasn't privy to that conversation.

22 Q. Let me ask you this. In your experience in the
23 construction field, is the owner typically at the top the
24 one who determines how much money is going to be spent on
25 the project and what they want the project to look like?

1 A. Not all the time.

2 Q. Okay. Does it appear that was the case in this
3 project since they're indicated that this is being done for
4 Island Pointe, LLC?

5 A. Right.

6 Q. Okay, and moving on. After the section about the
7 owner, that this work that Tri-County was to perform:

8 Is in accordance with the general conditions of
9 the contract between the owner and the
10 contractor, and is in accordance with the
11 drawings and the specifications prepared by SGM
12 Architects, hereinafter called the architect.

13 Do you see that, sir?

14 A. Yes.

15 Q. Okay, and so what that, what that is saying is that
16 your contract not only included this agreement and the
17 specifications here, but the general conditions between
18 Complete Building Corporation and, and the owner, correct?

19 A. I'm not -- I mean, I'm not a lawyer, so I don't
20 understand ---

21 Q. That's what that says.

22 A. --- a lot of the terminology.

23 Q. Were you aware of that?

24 A. Um.

25 Q. All right, and it goes on to mention that Tri-County

1 would also do its work. It's:

2 Provide its materials in accordance with the
3 specifications and the drawings prepared by SGM
4 Architects.

5 Correct?

6 A. Yes, sir.

7 Q. And you mentioned yourself earlier in your testimony
8 when you had a chance to go to the contractors' room at
9 Complete Building Corporation, you had a chance to avail
10 yourself of the plans prepared by the architect, correct?

11 A. Yes.

12 Q. And the specifications?

13 A. That's correct.

14 Q. And those document were also available on-site if your
15 sub, subcontractors had a question about anything, correct?

16 A. I don't recall if they were or not. I, I remember
17 seeing their plans, prints, yes.

18 Q. Okay, and we talked a little bit about the role of the
19 architect, and you've looked at the specifications already
20 and you -- in response to Mr. Cole's questions, correct?

21 A. Yes, sir.

22 Q. And, and it was the architect in its specifications
23 that determined the types of materials that the owner
24 wanted on this project, correct?

25 A. I would think so.

1 Q. And, in fact, the architect specified in the case of
2 the siding the size of the siding the owner wanted on this
3 project, correct?

4 A. I don't know. I was asked to submit two bids for it
5 on two different sidings, so.

6 Q. You were just shown by Mr. Cole the siding
7 specification prepared by the architect, correct?

8 A. That's correct.

9 Q. An architect called for a 9 and a quarter inch ---

10 A. That is correct.

11 Q. --- siding?

12 A. He approved that.

13 Q. And that's what you installed?

14 A. That is correct.

15 Q. Let's move on down now to section 2. I want to cover
16 your scope of work in a little bit greater detail. Section
17 2 states:

18 Scope of work. The subcontractor and the
19 contractor agree that the materials to be
20 furnished and work to be done by the
21 subcontractor are to furnish all permits,
22 material, labor, and equipment necessary to
23 complete all roofing, exterior siding, and
24 related work in accordance with the above plans
25 and specifications, including but not limited to.

1 Is that correct, sir?

2 A. That's what it says.

3 Q. So, let's look at the components to make sure we're
4 certain about your scope of work on this project. Could
5 you read subsection 1, division 6, for the jury, please?

6 A. Wood and plastics, is that the right place?

7 Q. Yes, sir. yes, sir.

8 A. Scope of work is to specifically include but not
9 limited to project specification section 06401,
10 exterior architectural woodwork. Complete as
11 pertains to exterior and standing, running trim,
12 and exterior ornamental work.

13 Q. Okay, and so Tri-County's scope of work also included
14 the trim and the coil stock on this, on these buildings,
15 correct?

16 A. Yes, sir.

17 Q. Okay. All right, and let's look at the next section,
18 section 2, division 7. If you could read that as well,
19 sir?

20 A. Thermal and moisture protection, scope of work is
21 to specifically include but not limited to
22 project specifications section 07311; asphalt
23 shingles, complete section 07450; siding,
24 complete section 07620; sheet metal flashing and
25 trim, complete as pertains to section 07311 and

1 section 07620, section 07841; firestop systems,
2 complete as pertains to section 07311 and section
3 07460 and section 07920; joint sealants, complete
4 as pertains to 07311 and section 07460.

5 Q. Thank you, sir, and, and, and, quite frankly, those
6 section references with the numbers behind them, they refer
7 to the sections of the architect specifications that detail
8 that aspect of the work, correct?

9 A. That is correct.

10 Q. So, when you entered into this contract, if there was
11 a question about what you were supposed to do, there were a
12 number of ways to handle it, and one of the ways is you
13 could look to these specifications that are referenced in
14 this subcontract agreement, correct?

15 A. That is correct.

16 Q. Okay, and let me direct your attention down to bullet
17 point 8 of this subcontract agreement, and could you read
18 that for the jury, please?

19 A. Is that the: Meet as necessary?

20 Q. Yes, sir.

21 A. Meet as necessary with the owner, contractor,
22 architect, engineer, and/or other subcontractors
23 as required to review work in places, and/or
24 coordinate the contractor's work with other
25 trades.

1 Q. So, quite simply, as part of your agreement with
2 Complete Building Corporation, you agreed to meet with any
3 of these parties listed here in an effort to, as best as
4 possible, properly coordinate the work and perform the work
5 as required, correct?

6 A. That is correct.

7 Q. And, in fact, you've talked about some of those
8 meetings, and there were a lot of meetings on-site, were
9 there not?

10 A. Yes, sir.

11 Q. Complete Building Corporation would conduct weekly
12 meetings with the trades to go over any issues that were
13 arising on the project, correct?

14 A. That's correct.

15 Q. They would talk about submittals, RFI, and change
16 orders, correct?

17 A. Yes, sir.

18 Q. All right, and you also, in fact, would have your own
19 meetings with the sub-subcontractors your hired, Miracle
20 Siding, Mr. Sales's company, and Mr. Vasquez, correct?

21 A. Yes, sir.

22 Q. Okay, and let's talk about those sub-subs for a
23 second, and that may be confusing how I'm saying it. Let,
24 let's just refer to them as your subcontractors. You hired
25 Mr. Vasquez and Miracle Siding to perform the labor that's

1 listed here in this subcontract agreement, correct?

2 A. Yes, sir.

3 Q. Okay, and so you supervised their work, correct?

4 A. That is correct.

5 Q. Okay, and, in fact, you described Mr. Vasquez as
6 meticulous and detail oriented, correct?

7 A. Yes, sir.

8 Q. You'd worked with him before? You had seen what kind
9 of work he'd done?

10 A. Yes.

11 Q. You were confident in him?

12 A. Yes.

13 Q. And Mr. Vasquez would have been the gentleman that
14 would have installed the shingles and the decks at those
15 integration points. It would have been his work on both
16 sides of that equation, correct?

17 A. That is correct.

18 Q. And if Mr. -- and because Mr. Vasquez was detail
19 oriented and meticulous as you've described, if he had a
20 question as to how to flash or waterproof those issues, you
21 would have expected him to come to you if he had any
22 question about that, would you not?

23 A. Yes, sir.

24 Q. Let's -- I'd like to go down and take a look at bullet
25 point 14 of your subcontract agreement. Could you read

1 that to the jury: Immediately?

2 A. Immediately upon discovery, all nonconforming
3 and/or deficient work to be removed, properly
4 disposed of, and replaced at no cost to Complete
5 Building Corporation.

6 Q. So, this is simply if any work that's found not to in
7 conformance with the plans and specifications is
8 discovered, it is to be redone and done correctly, correct?

9 A. That's correct.

10 Q. All right, and, in fact, you witnessed such a
11 situation with regard to the slope of the decks on this
12 project, did you not?

13 A. That is correct.

14 Q. Is it true that a gentleman named Gary Stanley was the
15 superintendent for Complete Building Corporation?

16 A. Yes, he was.

17 Q. And he was the one that was on-site most of the time
18 for Complete Building Corporation?

19 A. That and later they had brought Joe Brown as well.

20 Q. Okay, and Mr. Stanley, at least as part of his duties,
21 would also spot check and come behind each of the
22 subcontractors to look at their work, did he not?

23 A. Yes, sir.

24 Q. Okay, and isn't it true that Mr. Stanley, before the
25 waterproofing was put down, he would check the slope of the

1 decks? Isn't that, correct?

2 A. I believe so, yes, sir.

3 Q. And, in fact, you saw him use a level to look at the
4 decks to make sure they had proper slope?

5 A. I did.

6 Q. And, in fact, there was -- if a deck was discovered
7 not to have a proper slope, Mr. Stanley would make the
8 framer redo it before you put your waterproofing on the
9 deck, correct?

10 A. That's correct.

11 Q. Let me ask you or direct your attention to bullet
12 point 16 on this.

13 A. Okay.

14 Q. This is your subcontractor. Could you read that for
15 the jury, please?

16 A. Monitor quality continuously and punch out of
17 work as it progresses.

18 Q. Okay, and so you -- among other things, Complete
19 Building Corporation asked you to monitor the quality of
20 this scope of work continuously and punch out that work as
21 it progressed, correct?

22 A. Yeah. It was a joint effort.

23 Q. Okay, and you, by signing this subcontract agreement,
24 you were telling Complete Building Corporation, were you
25 not, that you would monitor quality continuously, did you

1 not?

2 A. Yes, sir.

3 Q. Okay, and, in fact, you testified earlier on at the
4 beginning of the project, you were out there pretty much
5 every day inspecting the work of your subcontractors,
6 correct?

7 A. That is correct.

8 Q. Okay, and when you went to the contractors' room at
9 Complete Building Corporation to take a look at this job to
10 see if you wanted to do it, you were qualified to supervise
11 your subcontractors to do this work, were you not?

12 A. Yes, sir.

13 Q. Okay. You didn't tell Complete Building Corporation
14 you weren't qualified to supervise your subcontractors on
15 this job, did you, sir?

16 A. No, sir, I didn't.

17 Q. And you never told Complete Building Corporation, hey,
18 by the way. I'm not going to monitor the quality of this
19 job continuously. You didn't tell them that, did you?

20 A. No, sir.

21 Q. Okay, and so Complete Building Corporation had the
22 right to rely on your promise, as indicated in this
23 subcontract agreement, that you would monitor the quality
24 of this scope of work continuously, correct?

25 A. Yes, sir.

1 Q. Sir, I want to ask you a little bit more, a few more
2 questions about Complete Building Corporation. And again
3 you, you've said that Gary Stanley was also coming behind
4 what you did to take a look at the work as well to perform
5 spot check inspections, correct?

6 A. Yes, sir among others.

7 Q. Okay, and Gary Stanley is, is now deceased?

8 A. He is.

9 Q. Are you aware of that?

10 A. Yes, sir.

11 Q. Okay, and Complete Building Corporation, my client,
12 they're not longer in business. You aware of that?

13 A. That's what I understand.

14 Q. And -- but Complete Building Corporation on this job
15 did conduct meetings with subcontractors to coordinate the
16 work?

17 A. They did.

18 Q. And they held pre-installation conferences with the
19 trades to go over their specific scope of work before they
20 started?

21 A. Yes, sir, they did.

22 Q. Okay, but it wasn't just you and it wasn't just
23 Complete Building Corporation. There were others. There
24 were a lot of eyes on this project. Isn't that true?

25 A. Yes, sir, there was.

1 Q. You've mention the architect. They were doing
2 inspections?

3 A. That's correct.

4 Q. You've mentioned the manufacturers of these products?

5 A. Yes, sir.

6 Q. CertainTeed made the shingles and the siding, correct?

7 A. That is correct.

8 Q. And the manufacturer would know their product better
9 than anyone else on this job. Would you agree with that?

10 A. They should.

11 Q. And they came out and they looked at the scope of
12 work?

13 A. Yes.

14 Q. CertainTeed did?

15 A. Yes.

16 Q. And they issued a warranty, didn't they?

17 A. They did.

18 Q. And also Hydro-Stop and Sealoflex had representatives.
19 They were there. They attended meetings and looked at the
20 work you did?

21 A. Yes, sir.

22 Q. And they issued warranties?

23 A. They did.

24 Q. And they would also know their product better than
25 anyone else on this job?

1 A. They should.

2 Q. Okay, and in your experience, if these manufacturers
3 were not satisfied with work that was performed by
4 Tri-County, would they have issued these warranties?

5 A. They would not have.

6 Q. And let's talk about the process a little bit. You
7 mentioned the, the process that happens on a construction
8 site. We talked about requests for information when
9 there's a question about something the architect has, has
10 drawn in his plans or stated in its specification, correct?

11 A. Yes.

12 Q. Change order. When some party realizes some
13 additional work needs to be done and it's going to cost
14 some more money, you need to issue a change order, correct?

15 A. Yes, sir.

16 Q. And also a submittal if -- when the products that have
17 been specified by the architect are going to be submitted
18 in installing these buildings, typically the process will
19 require a submittal showing everyone what's going to be put
20 on the building, correct?

21 A. Sometimes, yes, sir.

22 Q. Okay. Now, we talked a little bit about this chain,
23 but I want to make sure we're square on it. The way it
24 would work is -- using Tri-County's example -- if the
25 sub-subcontractor that you hired had a question or wanted

1 to make a change, or wanted to issue a submittal, it would
2 first come from them up to you, correct?

3 A. Ideally, yes.

4 Q. And then you would then take it and bring it to the
5 attention of Complete Building Corporation, correct?

6 A. Ideally.

7 Q. And then Complete Building Corporation would then send
8 it in to the architect, who is the owner's representative,
9 correct?

10 A. They should.

11 Q. Okay, and then it would be up to the architect and the
12 owner whether they, for instance, wanted to spend the money
13 for an additional change to the project, correct?

14 A. Right.

15 Q. It would also be up to the owner and the architect
16 whether they wanted to provide any additional details in
17 response to your request for information, correct?

18 A. That is correct.

19 Q. Okay.

20 MR. BOYD: Just one second.

21 (A PAUSE.)

22 MR. BOYD: Thank yes, sir. I appreciate you working
23 with me on the -- to help make the exhibit go well. Please
24 answer any questions anyone else has. Thank you.

25 THE COURT: The jury need a break? It's about 3:10.

1 You want to take a break now or wait a little bit longer,
2 or would anybody like to take a break now? Yeah, we'll
3 take a break now. Be back in about ten minutes, okay?

4 (THE JURY EXITS AT 3:07 P.M.)

5 (OFF THE RECORD.)

6 (THE JURY ENTERS AT 3:20 P.M.)

7 THE COURT: Please be seated.

8 Okay, Mr. Reeser.

9 MR. REESER: Thank you, Your Honor.

10 CROSS-EXAMINATION BY MR. REESER:

11 Q. Mr. Poyner, how many jobs does Tri-County Roofing do a
12 year?

13 A. I couldn't tell you.

14 Q. Do you recall how many jobs Tri-County Roofing did
15 back in 2006?

16 A. I do not.

17 Q. Do you recall being asked that question at your
18 deposition?

19 A. I do not remember.

20 Q. Now, you were present for your wife's examination at
21 this trial, correct?

22 A. That's correct.

23 Q. And for her deposition in this case, correct?

24 A. Yes.

25 Q. So, you wouldn't have paid Mr. Sales or Mr. Vasquez or

1 Miracle Siding if they hadn't done the work the way
2 Tri-County wanted it done, correct?

3 A. That is correct.

4 Q. The way that you wanted it done and the amount of work
5 you wanted done, correct?

6 A. Indirectly through Complete Building and...

7 Q. Indirectly through Complete Building?

8 A. Obviously they're, they're -- we did the work for
9 them, so it ultimately has to be up to their standards.

10 Q. So, Complete Building being the general contractor,
11 they've got the license to do all this. They wanted you to
12 do some of it, and then at the very bottom you've got Mr.
13 Sales and Mr. Vasquez as your labor, correct?

14 A. That is correct.

15 Q. And you, I believe you testified that you were -- not
16 you, Tri-County was using Mr. Vasquez an Mr. Sales and
17 Miracle Siding prior to you joining the company, correct?

18 A. I don't know about before I joined the company.

19 Q. Did you have any personal knowledge of any work Mr.
20 Sales, Miracle Siding, or Eloy Alonzo Vasquez had ever
21 performed before Palmetto Pointe?

22 A. Generally, yes.

23 Q. Generally? I mean specifically.

24 A. I don't know the names of those jobs.

25 Q. But you had supervised them on other jobs?

1 A. They had worked with Tri-County before.

2 Q. But what about you?

3 A. Yes, I, I had had occasion to work with them.

4 Q. And you had supervised their work?

5 A. Yes.

6 Q. And you'd been happy with it?

7 A. Yes.

8 Q. And you paid them for it?

9 A. Yes, sir.

10 Q. Do you still have Exhibit 9 in front of you?

11 A. I do.

12 Q. All right. Take a look at section 12 of Exhibit 9 and
13 if we take a look, I believe that's the Tri-County, CBC
14 contract, correct?

15 A. That is correct.

16 Q. So if we look at section 12, it appears that under
17 that section, Tri-County agreed to provide sufficient labor
18 or sufficient personnel to do this work. Is that correct?

19 A. I believe that's what it said.

20 Q. Sufficiently skilled personnel, I believe. Is that
21 correct?

22 A. That is correct.

23 Q. Was Mr. Sales and Miracle Siding and Mr. Vasquez, were
24 they sufficiently skilled personnel for Palmetto Pointe?

25 A. Yes, sir.

1 Q. And if Mr. Vasquez was still in the country, you'd use
2 him again, wouldn't you?

3 A. Yes, sir.

4 Q. And Mr. Sales and Miracle Siding, you'd use them
5 again?

6 A. Yes, sir.

7 Q. Now, Tri-County didn't perform any work on the
8 clubhouse at Palmetto Pointe, correct?

9 A. No, sir.

10 Q. So, would it be, would it be fair to assume that any
11 laborers that Tri-County had would also not have performed
12 any work at the clubhouse?

13 A. I would think so.

14 Q. How long was Tri-County on-site at Palmetto Pointe?

15 A. The length, the duration?

16 Q. Yes, sir.

17 A. We came in when the buildings were ready to be --
18 either have waterproofing, roofing, or siding. So, there
19 were a couple buildings that were being framed. We weren't
20 there for that, but when our trades started, that's when,
21 that's when we began obviously.

22 Q. So, are we talking, we talking days? Are we talking
23 weeks? Are we talking months, a year?

24 A. It was over a year.

25 Q. Over a year that Tri-County was doing work at Palmetto

1 Pointe, correct?

2 A. That's correct.

3 Q. Siding doesn't get put up in a day, right?

4 A. It does not.

5 Q. Waterproofing doesn't get laid out overnight, right?

6 A. It does not.

7 Q. You're not reroof -- you're not putting a roof on all
8 these buildings over the weekend, right?

9 A. No, sir.

10 Q. And you, I believe that you bid this project knowing
11 that you were going to be buying all the materials that
12 were going to go up on these buildings, correct?

13 A. That's correct.

14 Q. Mr. Poyner, I'm going to hand you what has been
15 circulated as proposed Defense Exhibit 3. It's Tri-County
16 Roofing 225 through 606, if you want to take it. I know
17 there's a lot of them.

18 MR. KENDALL: What was, what was that range again?

19 MR. REESER: It was Tri-County 225 through 606.

20 BY MR. REESER:

21 Q. What is that, 300 and -- it's 400 pages?

22 A. It's a lot.

23 Q. Mr. Poyner, do you recognize any of those documents?

24 A. I see some receipts here.

25 Q. All they all receipts?

1 A. They appear to be.

2 Q. Invoices?

3 A. I mean, they're receipts.

4 Q. For what?

5 A. Looks like material.

6 Q. Materials. So, aluminum siding, nails, shingles, all
7 the things that Tri-County was supposed to perform and
8 provide on this project, correct?

9 A. I believe so.

10 Q. 400 or 300 some-odd pages of it, and that's from --
11 I'm assuming you didn't use one supplier for this project,
12 correct?

13 A. No, sir.

14 Q. You used a lot, didn't you?

15 A. We did.

16 Q. And you made all those material orders, correct?

17 A. Generally, yes.

18 Q. So, if there's a material that is not at Palmetto
19 Pointe, that is not put up on these buildings, it's because
20 you didn't order it, correct?

21 A. I don't know that exactly.

22 Q. You have any reason to believe that there are, that
23 there are missing materials?

24 A. Mostly the shingles, the siding, you know, those major
25 products like that, but smaller things I ---

1 Q. Like trim? Aluminum?

2 A. Right. Yes, sir.

3 Q. Those items that we've heard about so much during this
4 during, during this trial, if you, you ordered it, then it
5 would be put up, right?

6 A. That's correct.

7 Q. Mr. Vasquez didn't order any materials, correct?

8 A. That's correct.

9 Q. Mr. Sales didn't order any materials, correct?

10 A. Not to my knowledge.

11 Q. Miracle Siding didn't order any materials, correct?

12 A. That's correct.

13 Q. They didn't get paid to do that, right?

14 A. They didn't get paid to order materials, no.

15 Q. No. Under that contract that you and Mr. Boyd looked
16 at, that was what Tri-County did, correct?

17 A. That's correct.

18 Q. All right, let's come -- we'll come back to that in a
19 moment, but as part of, as part of that work in that
20 contract, in that Exhibit 9, what was Tri-County getting
21 paid to do?

22 A. Install those products using subs.

23 Q. Using subs. That, that contract had you all being
24 paid to use subs?

25 A. On basis that Tri-County was going to install it, yes.

1 Q. And in this case, you're claiming that Mr. Sales and
2 Mr. Vasquez and Miracle Siding installed all those
3 components, correct?

4 A. That's correct.

5 Q. Well, so if they did the work, what did Tri-County get
6 paid to do?

7 A. We paid them to do it.

8 Q. Did -- I think we looked at earlier that Tri-County,
9 the amount they got paid, 1 point, almost \$1.4 million?

10 A. I believe so.

11 Q. Did Mr. Vasquez get paid \$1.4 million?

12 A. I don't think so.

13 Q. Mr. Sales get paid ---

14 A. No, sir.

15 Q. --- 1.4 million? So, there was obviously something
16 else that Tri-County was expected to do, correct?

17 A. I'm not sure what you're asking.

18 Q. Supervise the work?

19 A. Yes, sir.

20 Q. Coordinate the trades?

21 A. Yes, sir.

22 Q. That would include your subs, other trades, your
23 labor, coordinate where the work comes together, order
24 materials?

25 A. Yes, sir.

1 Q. Anything else?

2 A. Not that I can think of.

3 Q. Well, let's take -- I know you've discussed some of
4 these meeting minutes with Mr. Cole, and I believe that
5 several of those were written down by a company called SGM.
6 Is that correct?

7 A. That's correct.

8 Q. And what was SGM?

9 A. They were the architectural firm on the project.

10 Q. Now, were they the only entity that created meeting
11 minutes for Palmetto Pointe?

12 A. No, sir.

13 Q. Who else did?

14 A. I have seen meeting minutes from Complete; I've seen
15 meeting minutes from Britt Peters. Those were the majority
16 of...

17 Q. Let me hand you what's been marked as Exhibit 431.

18 Now, Mr. Poyner, can you identify Exhibit 431?

19 A. Meeting minutes from September 14, 2006, meeting.

20 Q. These are CBC meeting minutes. These aren't SGM
21 meeting minutes, correct?

22 A. Correct.

23 Q. And tell the jury. Who all is at this meeting on
24 September 14, 2006.

25 A. Seth Robertson; Britt Peters; Chris Dantlzer from DNS

1 Plumbing; Gary Stanley, CBC; Buddy Hilton; Tommy Smith,
2 SGM; myself; Johnny Hedges from Atlantic; Chris White from
3 ARS Electrical; and Kirk Richards from CRG.

4 Q. A lot of these are the same folks that were in the SGM
5 meeting minutes, correct?

6 A. That's correct.

7 Q. You got architects. You got engineers. Obviously
8 you've got CBC, the general contractor, and then you're
9 also there, correct?

10 A. That's correct.

11 Q. Do you recall what was going on in that meeting, what
12 you were doing? Looks like September 14th, you were
13 getting ready to start the deck coatings, right?

14 A. Yes, sir.

15 Q. And do you remember being asked on how to install
16 flashing components?

17 A. Yes, sir.

18 Q. And what exactly were you being asked to advise on
19 with flashing at that meeting?

20 A. Whether to nail the bottom or the side on the step
21 flashing.

22 Q. And at that meeting, were there also some discussions
23 about adding more siding crews?

24 A. I'm not seeing that.

25 Q. Look at the last page at the bottom.

1 A. Yes.

2 Q. And wasn't there a discussion about aluminum being
3 used in that particular meeting as far as a trim component,
4 aluminum coil? I believe that may have been a discussion
5 that you had.

6 A. It does refer to something: Contract V was to use
7 aluminum but Hartie will be used.

8 Q. Contract V was to use aluminum. What is contract V?
9 Do you know what that stands for?

10 A. Drawing a blank.

11 Q. Could it stand for value engineer?

12 A. It could.

13 Q. What is a value engineer?

14 A. That means to look at different materials and assess
15 the cost difference between them.

16 Q. Who's making that decision?

17 A. I don't know.

18 Q. In your experience, who makes those decisions about
19 how much money gets paid to and to what component?

20 COURT REPORTER: Repeat that, please.

21 Q. Who makes that decisions as to changing out components
22 based on cost?

23 A. Well, I believe we discussed this earlier, and it was
24 the owner.

25 Q. So, the owner is making a call on changing a component

1 out for this building, correct?

2 A. That's what that appears here, yes, sir.

3 Q. And they're having discussion with you about it,
4 correct?

5 A. Yes, sir.

6 Q. And I'm assuming they're doing that and they're
7 talking about how to install flashing and they're talking
8 about siding crews because you're the siding and trim man,
9 correct?

10 A. That is correct.

11 Q. Let's take a look at Plaintiff's Exhibit 432. I'll
12 keep that right here. These are meeting minutes from
13 September 21, 2006, so about a week later. Do you have a
14 recollection of that particular meeting?

15 A. I'm looking at the notes here.

16 Q. My apologies. Who was present at that meeting?

17 A. Eddie Capitano with ACME Doors; Alan Hudson, W.C.
18 Services; Gary Stanley, CBC; Buddy Hilton, CBC; Jim
19 McGuire, SGM; myself; Johnny Hedges with Atlantic; John
20 Brooks with Atlantic; Shelby Baker with Buck Lumber; Scott
21 Tallent with Tallent and Sons.

22 Q. So, again we've got a big list of people that I
23 believe you characterized earlier as the people who had say
24 on how the project went. Is that fair?

25 A. Yes, sir.

1 Q. And you were present at this meeting?

2 A. I was.

3 Q. And I think you were -- you discussed this with Mr.
4 Cole earlier, that you were looking at a rake and EIFS
5 details, correct?

6 A. Yes, sir.

7 Q. And were those details provided by the architect?

8 A. There was an RFI requested.

9 Q. So, there is a request for information about EIFS and
10 eaves and rakes, and you were being asked to review what
11 the architect was sending back down. Is that fair?

12 A. Yes, sir.

13 Q. Let's took a quick look at Exhibit 433, September
14 28th, about a week after that. Who all was present at that
15 meeting?

16 A. Eddie Capitano, ACME Doors; Gary Stanley, CBC; Buddy
17 Hilton, CBC; myself; Johnny Hedges, Atlantic; John Brooks,
18 Atlantic; Tommy Brown, Island Pointe; Tommy Smith, SGM; and
19 Seth Robertson from Britt Peters.

20 Q. So, we got engineers, we got architects, we got
21 general contractors, everybody at these meetings, correct?

22 A. A lot of people.

23 Q. A lot of people, and at this particular meeting, I
24 think there was a discussion about the change from
25 Sealoflex to Hydro-Stop. Is that correct?

1 A. That's what it says here, yes, sir.

2 Q. And they're having that discussion with you because
3 you're the roof guy, you're the decking guy, you're the
4 siding guy, right?

5 A. Yes, sir.

6 Q. Let's take a look at 436, stepping forward in time a
7 little bit. It's from October 19, 2006. Again, this is
8 another CBC meeting, correct?

9 A. That is correct.

10 Q. So, you're there and a bunch of people dictating how
11 this, how this project is going are all meeting together to
12 discuss things, right?

13 A. Yes, sir.

14 Q. And I believe you were discussing at this particular
15 meeting one of those RFIs that we've talked about. Is that
16 correct?

17 A. Yes, sir.

18 Q. RFI 37. Do you recall RFI 37?

19 A. Not off the top of my head.

20 Q. If you're requesting information from the architect,
21 is it because you're missing something?

22 A. A decision needs to be made, final decision.

23 Q. Somebody needs to make a call on what's ultimately
24 going to be done out there, right?

25 A. Yes, sir.

1 Q. And you need some help to do it, right?

2 A. Yes, sir.

3 Q. I'd like to show you what's been marked as Exhibit
4 473.37. Do you recognize that document?

5 A. I don't know if I remember it specifically, but I'm
6 looking at it.

7 Q. That second page, is that an email from you?

8 A. Yes.

9 Q. Is that RFI 37?

10 A. It says RFI 2.

11 Q. Let's take a look at the last exhibit, the last
12 meeting minutes where we talked about RFI 37. I believe
13 that was...

14 A. On the third page, it refers to...

15 Q. Yes. Now, let's look back at 436 briefly, those
16 meeting minutes from October 19th. Do you have it?

17 A. No, sir. Let me check. Here it is.

18 Q. RFI 37 is a detail on how you're going to flash a
19 deck, wall, and roof intersection, correct?

20 A. Yes, sir.

21 Q. So, RFI 37 is what you were requesting, at least on
22 October 19th of 2006, correct?

23 A. That is correct.

24 Q. And is that the same request that you're making in
25 exhibit 473.37?

1 A. It is.

2 Q. And what's the date of that email?

3 A. The email?

4 Q. Yes, sir.

5 A. October 3, 2006.

6 Q. So, on October 3, 2006, you were missing information
7 on how to do some of these deck, roof, wall intersections,
8 correct?

9 A. Yeah. Once again, that email has RFI 2 on it.

10 Q. Well, in either case, whether it's 37 or 2, you're
11 still asking for the same info, right?

12 A. I'm asking for 37, yes, for the details.

13 Q. All right. So, at least by that October 19, 2016,
14 meeting, you didn't have an answer to RFI 37, did you?

15 A. It did not appear so.

16 Q. Going to hand you what's been marked as Exhibit 437,
17 October 26th of 2006. Who all showed up to that meeting?

18 A. Lagree Porcher from SGM; Tommy Brown, Island Pointe,
19 LLC; Gary Stanley, CBC; Joe Brown, CBC; Buddy Hilton, CBC;
20 John Brooks, Atlantic; and myself.

21 Q. And what were you doing at that meeting?

22 A. Discussing job progression, starting on some new
23 buildings, finish coat Hydro-Stop, and still requesting
24 answer to the RFI deck finish.

25 Q. So, which RFI number is that?

1 A. It does not stipulate.

2 Q. Is there, is there a list of outstanding RFIs on those
3 notes?

4 A. Says: RFI 37 still open.

5 Q. RFI 37, and I believe at that point, there was a
6 decision made we're going to get started on some siding and
7 roof work, correct?

8 A. Yes, sir.

9 Q. So, we know back in September, middle of September
10 there was a decision to go forward with the deck
11 waterproofing, correct?

12 A. Yes, sir.

13 Q. And we, we are in late October and now we're doing the
14 siding and the roofing, correct?

15 A. Yes, sir.

16 Q. Is that how this project progressed? You do the
17 waterproofing first. Then you do the roofing. Then you do
18 the siding generally?

19 A. Yes, sir.

20 Q. Okay. Two more. Let's take a look at Exhibit 438.
21 What's the date of that meeting?

22 A. November 2, 2006.

23 Q. November 2, 2006. Do you have an answer to RFI 37
24 yet?

25 A. No, sir, I do not.

1 Q. I'm going to hand you Exhibit 441. This is a bit
2 later. What's the date of that meeting?

3 A. November 30, 2006.

4 Q. November 30th. Did you have an answer to RFI 37?

5 A. Oh. No, sir. It says it's still open.

6 Q. No. So November, end of November 2006, we're still
7 waiting on on RFI 37. Now, what is -- other people have
8 offered testimony on what a certificate of occupancy is.
9 What is, what is your understanding of certificate of
10 occupancy, Mr. Poyner?

11 A. That before a project can be turned over to an owner
12 to live in, it has to have the approval of code
13 enforcement.

14 Q. A CO means you can live there, right?

15 A. Yes, sir.

16 Q. Do you know when the OCs were issued for Palmetto
17 Pointe?

18 A. I do not.

19 Q. Let's take a look at what's already been marked -- if
20 I can find it up here -- Exhibit 789. Mr. Poyner, can you
21 identify Exhibit 789?

22 A. Cover page says: Palmetto Pointe Clubhouse
23 Certificates of Occupancy.

24 Q. Could you turn through them? Do those look like
25 certificates of occupancy as you typically see them?

1 A. I've not seen one, so I would ---

2 Q. You've never seen a certificate of occupancy?

3 A. I have not.

4 Q. Ever?

5 A. I have not.

6 Q. Tri-County couldn't have done this job, could it? You
7 couldn't have built this entire project from the ground up,
8 right?

9 A. No, sir.

10 Q. And why is that?

11 A. Because we're not involved in all those other trades.

12 Q. Do you have a general contractor's license?

13 A. No, sir.

14 Q. You need a general contractor's license to pull this
15 permit, right?

16 A. Yes, sir.

17 Q. And you need a general contractor's license to be able
18 to get these from foundation to those buildings permits,
19 right?

20 A. I would think so.

21 Q. If you want to take through the -- flip through those
22 first few pages, see if you can tell me the earliest date
23 that you see on those certificates of occupancy.

24 A. February 19, 2007, 3/1/07, 3/1/07, 2/9/07.

25 Q. Let me know if you find any that are earlier than

1 2/9/07, and some of them may be difficult to read.

2 (A PAUSE.)

3 Q. Is that still the earliest you see, early February?

4 A. I believe so, yes, sir.

5 Q. All right.

6 A. I don't see anything earlier than that.

7 Q. Well, let's assume that the first CO issued for any
8 unit was 2/9/7. So, if we go back to RFI 37, we know that
9 in November 2006, November 30, 2006, that RFI on how to
10 flash those deck and wall and roof intersections, that was
11 still outstanding, right?

12 A. Yes, sir.

13 Q. But the first COs, the first documents where a
14 building code official is saying you can live here, those
15 are being issued within what, two months of that meeting?

16 A. This is November, almost December, so February, about
17 three months.

18 Q. Why are these buildings being CO'd two months before
19 you have any of this information? Why do you not have this
20 information from the architect this late in the process?

21 A. I don't know.

22 Q. You started the waterproofing, what, two months before
23 this meeting?

24 A. Yes, sir.

25 Q. You started the roofing and the siding a month before

1 this meeting?

2 A. Right.

3 Q. But you didn't have the instructions on how to bring
4 it all together, did you?

5 A. We did not have the requested details.

6 Q. No. They weren't there, and did you pay Mr. Sales and
7 Mr. Vasquez to request details from the architect?

8 A. Not to my knowledge.

9 Q. No. Did you request them to go over submittals for
10 details or these eave details we discussed?

11 A. Not to my knowledge.

12 Q. Do you know if they could even get in contact with the
13 architect?

14 A. Well, they were out there quite frequently.

15 Q. Who was?

16 A. SGM.

17 Q. Did SGM know who they were?

18 A. I'm not sure if they did or not.

19 Q. For all you know, that's Tri-County, right?

20 A. I can't speak for them.

21 Q. You didn't pay them to get in touch with them, right?

22 A. No, sir.

23 Q. You didn't pay them to do submittals?

24 A. No, sir.

25 Q. You didn't pay them to pick materials?

1 A. I did not.

2 Q. You didn't pay them to write any RFIs?

3 A. No, sir.

4 Q. And actually I think we never saw Mr. Sales or Miracle
5 Siding or Vasquez in any of these lists of participating
6 individuals at any of these meetings, right?

7 A. Not that I can see.

8 Q. Not those, not the SGM ones that Mr. Cole went over
9 with you. Is that correct?

10 A. I don't see their name on there.

11 Q. So, these -- Mr. Sales, Mr. Vasquez, Miracle Siding --
12 these were not the people that were making decisions on
13 this project, correct?

14 A. Not at that level, no, sir.

15 Q. Not at that -- what level? What level were they
16 making decisions? They were using your nails. They were
17 using your siding. They were using your shingles. What
18 decisions did they make?

19 A. Well, obviously if there is not a detail available
20 that's been requested, whatnot, they have to use their
21 trade experience.

22 Q. Oh, you told them to start, didn't you? You told, you
23 told the deck waterproofer to start two months ago.

24 A. Through Complete, yes.

25 Q. If he said no, would you have fired him?

1 A. They wouldn't have been paid to do the job.

2 Q. Right. They wouldn't have been paid. You paid them
3 to do the job, and that's jump when you say jump, right?

4 A. Well, I wouldn't put it like that.

5 Q. Well, why is the waterproofing going down in September
6 of 2006? Is it because Complete told you to do it?

7 A. That's when the project was progressing to that point.

8 Q. Things were progressing. Things were on a schedule,
9 right, and y'all had a schedule for this whole project,
10 didn't you?

11 A. I don't know.

12 Q. Do you remember if there any delays in that schedule?

13 A. I mean, typically there's delays, rain delays and
14 whatnot.

15 Q. Because sometimes you can have construction delays?

16 A. Possibly.

17 Q. Possibly. Sometimes you can have material delays, and
18 one of the reasons you're doing the waterproofing and the
19 siding and roofing in these stages is because that's all
20 part of the schedule, isn't it?

21 A. That's the appropriate order they should be ---

22 Q. Right. It's ---

23 A. --- installed.

24 Q. --- all sticking to the schedule, and that schedule is
25 determined by who?

1 A. I would think the oversight of the, of the GC.

2 Q. So, you're, you're enforcing the GC's marching orders,
3 right? GC wants you to start waterproofing now, that's
4 when you're going to start waterproofing?

5 A. If the building's ready.

6 Q. Was the building ready for waterproofing in September
7 of 2006?

8 A. Whenever we started it, it was.

9 Q. All right, and then was the building ready for roofing
10 and siding in October of 2006?

11 A. I can't speak for the exact dates. All I know is that
12 in the progression, in the meetings, that they were ready
13 for us to begin and we were asked to begin.

14 Q. But at the least with regard to RFI 37, you were --
15 everyone was still waiting for info from the architect,
16 right?

17 A. As far as I can tell from that, there was -- still
18 waiting on the RFI.

19 Q. So, by the time you got those details, who was going
20 back behind and making sure all the work that had already
21 been done was put together the right way?

22 A. We had myself, Complete Building, SGM, Britt Peters.

23 Q. So, they were all going back and making sure it was
24 all -- it all came together, right?

25 A. There are inspection notes and lists from those.

1 Q. Let's take another quick look at Exhibit 9. We'll
2 look at section 2, number, 8 on that first page.

3 Tri-County agreed to, to: Review work in place and
4 coordinate its work with other trades. Correct?

5 A. Yes.

6 Q. Did Tri-County do that?

7 A. Yes.

8 Q. And Mr., Mr. Buckley already asked you, section 2,
9 number 14, Tri-County agreed: To remove and replace all
10 nonconforming and/or deficient work at Palmetto Pointe.
11 Correct?

12 A. That's correct.

13 Q. Did Tri-County do that?

14 A. Yes, sir.

15 Q. Did Tri-County sufficiently train Mr. Vasquez and Mr.
16 Sales and Miracle Siding to install the materials that it
17 ordered for this project?

18 A. They were already trained.

19 Q. Already trained. You didn't know them before this
20 project, did you?

21 A. We had worked with them on occasion, yes.

22 Q. Did Tri-County Roofing sufficiently supervise Mr.
23 Sales and Miracle Siding and Mr. Vasquez while they were
24 installing the materials ---

25 A. Well.

1 Q. --- you ordered?

2 A. Once again, it was a cumulative effort. I mean,
3 between all the entities involved, we watched what was
4 being done.

5 Q. Okay. Well, if everyone in this community effort had
6 all come together and properly supervised the labor doing
7 it, do you think that that supervision was sufficient?

8 A. I believe so, yes.

9 Q. If that is true, if the answers to either of those
10 questions are true, would Tri-County be here today?

11 A. I don't know the answer to that.

12 MR. REESER: I have no further questions for this
13 witness, Your Honor.

14 THE COURT: All right. Any questions, Mr. Atkins?

15 MR. ATKINS: None, Your Honor.

16 THE COURT: Okay. All right.

17 CROSS-EXAMINATION BY MR. LUCEY:

18 Q. Mr. Poyner, I think the words used with the jury when
19 Mr. Cole was asking questions was that when you saw some of
20 those pictures of the partially wrapped posts, that you
21 became concerned that your, quote, work was in jeopardy,
22 unquote. Do you recall that?

23 A. Yes, sir.

24 Q. And, and what you were saying in a very tactful way
25 is, is, if I perceived it properly, is that you were saying

1 that it concerned you that the posts had not been properly
2 wrapped because without that wrap, the water intrusion
3 wouldn't be prevented. It was a risk, right?

4 A. Yes, sir.

5 Q. It was a risk not only just -- not only to your work
6 that you said was in jeopardy. It was a risk, it was a
7 risk to all the future homeowners, correct?

8 A. Yes, sir.

9 Q. And you have pride in your company's workmanship,
10 don't you?

11 A. Yes, sir.

12 Q. Which is why when you saw me put the picture of the
13 partially wrapped post up there, you said uh-oh, that's not
14 right. Correct?

15 A. Yes, sir.

16 Q. And you've heard a lot about RFIs and who's doing this
17 and who's doing that and all these meetings and all these
18 engineers and all these architects, all this stuff. But
19 when you come right down to it, that partially wrapped
20 post, that's just plain old bad workmanship, isn't it?

21 A. Well, it depends on when the post was put in.

22 Q. Well, if a post is partially wrapped ---

23 A. That's correct.

24 Q. --- the post was in when the partial wrap occurred,
25 correct?

1 A. Yes, sir.

2 Q. So, when we have a partially wrapped post, a worker or
3 a sub simply didn't finish the job correctly, correct?

4 A. I mean, that would be an assumption, but with walls
5 being taken down and walls being put up and different
6 things being done, it, it's difficult to go back and
7 re-create the scenario. I don't know that it's as simple.

8 Q. Unless some other subcontractor of the general
9 contractor, CBC, unless some other subcontractor damaged
10 your work, a partially wrapped post would simply be
11 uncompleted work, correct?

12 A. I would not accept it.

13 Q. And everything you and I just talked about regarding
14 the work being in jeopardy and partially wrapped post,
15 everything, every question and answer you and I just had,
16 would apply equally to a post that is partially flashed,
17 too, correct?

18 A. I would think so.

19 Q. I mean, if we see a little bit of flashing of a post,
20 we know the worker or the sub knew that he needed to flash
21 that area and just didn't do a good enough job, correct,
22 unless once again ---

23 A. Right.

24 Q. --- one of the other subs damaged the work?

25 A. Exactly.

1 Q. But we actually, when we saw -- you were with us most
2 of the week, I think, when we saw partially flashed posts.
3 I don't recall ever seeing any torn metal flashing. It
4 just looked like it was either short or incomplete,
5 correct?

6 A. I...

7 Q. Did you see any torn metal flashing? I didn't see ---

8 A. I didn't.

9 Q. Okay, and likewise -- well, before we leave the
10 partially wrapped flashing, partially wrapped coating, and
11 partially -- partial flashing, before we leave that,
12 there's been a lot of conversation about people on the site
13 doing inspections. Do you recall that?

14 A. Yes, sir.

15 Q. But since you're here all week and you saw all the
16 pictures I put on the board with the engineers, you know
17 that more often than not that problem area that you and I
18 are talking about, it's eventually covered with a piece of
19 trim, correct?

20 A. On the posts?

21 Q. Sure. Let's talk about the posts first. It's covered
22 with trim, right?

23 A. Yes, sir.

24 Q. So, it would be difficult for your typical architect
25 or engineer to actually see whether or not the flashing or

1 wrap is, is complete because it's been trimmed out on all
2 sides, correct?

3 A. Not all the time.

4 Q. But, but a lot of the time. You recall that Mr.
5 Schweickhardt for two and a half years, he didn't know that
6 there was water intrusion and missing flashing until he
7 finally did destructive test cuts on August 21st and August
8 22, 2018. You recall that?

9 A. Yes, sir.

10 Q. Because he couldn't see it. Until he took it apart,
11 he couldn't tell, right?

12 A. That's what he said.

13 Q. And then when you guys moved around this neighborhood
14 one house at the time, forty, forty houses, forty
15 residences, when you moved around this neighborhood. you'd
16 finish one building, move to the next, correct?

17 A. No, sir.

18 Q. Well, you were doing two or three at a time. There
19 was a flow ---

20 A. Different stages.

21 Q. --- to it, correct?

22 A. Yes, sir.

23 Q. But these early buildings, they were getting finished.
24 The trim was getting put on and once that trim was on, you
25 couldn't tell whether the post was partially wrapped or

1 completely wrapped, correct?

2 A. Right, but there was sufficient time in between trades
3 that those decks' ---

4 Q. If ---

5 A. --- posts were inspected.

6 Q. If, if the architects and engineers had come by more
7 often, maybe they would've seen every post if they'd come
8 every day or something, right?

9 A. Possibly.

10 Q. Well, if you'd gone by more often, sir, you might've
11 seen every post, too, correct?

12 A. Possible.

13 Q. And when you and I use posts as an example of how the
14 workmanship or lack thereof got hidden -- but that would
15 occur, for instance, also at the deck-to-roof intersection
16 where the, the Sealoflex or Hydro-Stop, whichever. Let's
17 just call it one of them. The Sealoflex goes out a little
18 bit off the roof and then the shingles come a little bit
19 over the deck coating, and unless you try to pry up the
20 shingles, you really can't see how the deck coating got
21 terminated, right?

22 A. In that, in that instance, that's correct.

23 Q. That's another example of where the engineers have
24 shown some problems this week, and at a certain stage in
25 construction, you wouldn't be able to tell that there was a

1 problem area because it's covered up, right?

2 A. If they got there at that point in time.

3 Q. And that's how construction works. I mean, you start
4 with your framing, and you keep adding components to it and
5 as it completes, things get covered up, correct?

6 A. Sometimes, yes.

7 Q. And just like you and your business, admittedly your
8 visits to the jobsite slowed down and became less frequent
9 after the job got underway, correct?

10 A. Yes, sir.

11 Q. You apparently had the impression that your subs were
12 doing what they were supposed to do, and you didn't need to
13 be there so often or you would have been there, right?

14 A. Well, the system that we had going on with the
15 inspections and whatnot, daily communications, I felt very
16 comfortable that between all the entities involved that if
17 there were a problem, it would be addressed.

18 Q. But we know that the system broke, don't we? We know
19 that some post bases, some other leaks, the system broke in
20 a few places, correct?

21 A. It would appear so.

22 Q. And just like you slowed down your visits to the site
23 when things got going, Curry Engineers stopped coming to
24 the site, too, correct?

25 A. I don't know.

1 Q. You only saw them a couple times at the very
2 beginning, correct?

3 A. I, I don't know.

4 Q. Do you remember seeing them any more than a couple of
5 times at the very beginning?

6 A. At, at this stage, being so long ago, all I had was
7 the meeting minutes.

8 Q. Okay.

9 A. To go from and whatnot.

10 Q. Gotcha. Well, just like Curry Engineering, Britt
11 Peters stopped coming for almost a year. Do you remember
12 that?

13 A. I do not.

14 Q. And, and the architects SGM didn't come to the site as
15 often either, correct?

16 A. I don't know that either.

17 Q. When everybody kind of thought that they had gotten a
18 rhythm going and that things were going to work out, right?

19 A. Well, I see them a lot on the weekly meetings and
20 whatnot.

21 Q. Now, you and one of the attorneys -- I'm sorry. I
22 apologize. I don't remember which. You all looked at an
23 RFI regarding the privacy wall siding. Do you remember
24 that?

25 A. Yes, sir.

1 Q. The word flashing wasn't on that RFI, was it?

2 A. I don't recall if it was or not. I thought it was.

3 Q. And, and ultimately the size, the issue of the, of the
4 8 inch exposure siding of the privacy wall, besides that
5 issue, ultimately what the issue was, that the top of the
6 privacy walls weren't flashed, and that's where the water
7 got in?

8 A. I don't remember how those were finished off.

9 Q. You don't have any RFI in the file about how to flash
10 the top of the privacy walls that you've seen, correct?

11 A. I don't know what the, the finish was supposed to be.

12 Q. And going back to the deck RFI, the deck RFI, I wrote
13 it down here. It read, quote:

14 Now that we have done away with the knee walls,
15 please advise and supply a drawing detail on
16 finishing the roof-to-wall areas at decks.

17 End quote. Do you recall that?

18 A. I remember reading it.

19 Q. Now, the knee the walls that y'all did away with, were
20 they on the front or the outside of the decks, or were they
21 on the sides of the decks?

22 A. I don't remember them coming in contact with the deck
23 itself. I, I just don't remember the exact placement of
24 those knee walls.

25 Q. Okay. Well, the typical wall-to-deck intersection,

1 you told us earlier, would have just simply been a can't
2 strip, correct?

3 A. Say that again?

4 Q. The typical wall-to-deck, vertical-horizontal
5 intersection would simply be a can't strip, correct?

6 A. That's correct.

7 Q. And just like apparently like some of the post
8 flashing and post waterproofing that fell through the
9 cracks, you agree with us that you've seen some photographs
10 of ponding water on some decks in the last week?

11 A. Yes, sir.

12 Q. And, and that's not actually something that you would
13 ever like to really see on a, on a Tri-County deck,
14 correct?

15 A. Typically not, but you have a certain amount of time
16 for the water to dissipate.

17 Q. Yes, sir, and -- you saw the corroded base trim
18 fasteners?

19 A. I did.

20 Q. That was within Miracle Siding's -- that base trim was
21 within Miracle Siding's scope, correct?

22 A. To be honest with you, I do not -- I mean, the ones on
23 the front I know. The ones on the back, I'm not sure.

24 Q. Can you tell the jury any other trim carpenter who was
25 on the site?

1 A. I don't know.

2 Q. Okay. At any rate, you agree that the orange dots
3 that they see all over the pictures, all over the
4 buildings, those are improper flashings, correct?

5 A. That's correct.

6 Q. And the coil stock should not have been installed in
7 contact with the pressure-treated wood, correct?

8 A. That's right.

9 Q. And they should have used starter shingles, correct?

10 A. I did see starter shingles.

11 Q. You don't contest the photographs that the jury's been
12 shown this week where there are none?

13 A. I will not contest in some areas that they might've
14 been installed incorrectly.

15 Q. And they should have used the proper underlayment in
16 the low slope areas where the roof was less than 2 and 12?

17 A. If they knew that was the low slope, yes, sir.

18 Q. They, they should make it their business to know what
19 the slope is on the roof that they're applying, correct?

20 A. Once again, when you're working with architect,
21 engineers, and whatnot, and like you -- like we talked
22 about before, Mr. Stanley putting the level on there.

23 Q. Sir, you don't need a level. You're a roofer. You
24 know when you walk on, you know when you walk on a roof
25 what it is, don't you?

1 A. No, sir, not all the time. I do not.

2 Q. So, you agree that the low slope roofs should have had
3 something beside shingles?

4 A. The manufacturers called for some reinforcement.

5 Q. And the roofs between 2 and 12, 4 and 12 should have
6 had double underlayment?

7 A. If that was the pitch, sir.

8 Q. And the excessive overhang on the shingles on both the
9 eave and on the rake was improper, correct?

10 A. Well, that was primarily because the roofs went on
11 before the finished product did on the, on the eaves,
12 the ---

13 Q. Somebody ---

14 A. --- the coil stock.

15 Q. Somebody guessed the size of a fascia wrong?

16 A. I, I don't know. I just know that the, the fascia was
17 not there when the roof went on. So, we had to allow.

18 Q. And the, and the siding went on after the roof and the
19 waterproofing, correct?

20 A. Yes, sir.

21 Q. And the reps that came by, the CertainTeed rep, the
22 same rep provides both sales support and service support,
23 correct?

24 A. He does.

25 Q. Same thing with, with the deck people, Hydro-Stop and

1 CertainTeed, the salesperson also provides some technical
2 support?

3 A. That is correct.

4 Q. And that's the guy who comes out and says, okay, you
5 can issue the warranty now?

6 A. Yes, sir.

7 Q. And certainly by the time they got there, some of the
8 components that had been installed would have been covered
9 by additional components, correct?

10 A. Sometimes, yes, sir.

11 Q. Now, the jury was show a bunch of warranties when Mr.
12 Cole was asking you questions. You recall that?

13 A. Yes, sir.

14 Q. Can you name for us a single warranty in the entire
15 world that does not exclude improper installation?

16 A. Warranty that does not exclude?

17 Q. Yes, sir. The CertainTeed shingle you all put up
18 there, it excludes improper installation, doesn't it?

19 A. That particular warranty.

20 Q. Okay. The Hydro-Stop warranty y'all put up on the
21 screen, it excludes improper installation, correct?

22 A. I believe that's what it says.

23 Q. It also excludes flashing defects, correct?

24 A. I believe that's what it says.

25 Q. Now, you expected Miracle Siding as a, as a siding

1 specialty subcontractor to be familiar with the
2 manufacturer's installation instructions and, and the basic
3 building code requirements, correct?

4 A. I would think so, but I give the subs a copy of the
5 install instructions.

6 Q. Just to make sure?

7 A. Absolutely.

8 Q. And you're, you're -- the jury hasn't heard much about
9 CBC, Complete Building Corporation. That was owned by a
10 gentleman named Vic Apat?

11 A. That's what I understood.

12 Q. Okay, and he wasn't on-site too often, was he?

13 A. I don't remember seeing him too often.

14 Q. And his brother, Steve Apat, who did the estimating,
15 he wasn't on-site very often, was he?

16 A. I saw him once in a while.

17 Q. The homeowners need those leaks fixed, don't they?

18 A. Yes, sir.

19 Q. Thank you.

20 THE COURT: Keep your voices up. Make sure the court
21 reporter can hear you.

22 All right, any redirect?

23 MR. COLE: Kind of.

24 THE COURT: Okay.

25 MR. COLE: This has not yet been marked, Bates

1 numbers 21604 through 21612.

2 (A PAUSE.)

3 MR. COLE: Your Honor, we talked about this during the
4 testimony earlier, which was the Bates numbers 21604
5 through 12 and those are warranty documents.

6 REDIRECT EXAMINATION BY MR. COLE:

7 Q. I'll just to show these to you. That's the warranty
8 stuff we looked at before, correct?

9 A. Yes, sir.

10 MR. COLE: I want to put those in. Instead of having
11 that in that big set, I just want to put these is in as an
12 exhibit.

13 THE COURT: Okay.

14 MR. COLE: And Mr. Lucey does not object, and I'll get
15 him a copy of it later.

16 THE COURT: It will be marked now at this point as
17 defense exhibit?

18 MR. COLE: Whichever we're at.

19 THE COURT: 3.

20 MR. COLE: 3. All right.

21 (WARRANTIES MARKED INTO EVIDENCE AS DEFENDANT'S
22 EXHIBIT NUMBER 3.)

23 MR. COLE: That's all, Your Honor. Thank you.

24 MR. BOYD: Nothing further from us, Your Honor.

25 THE COURT: All right, anyone else? Redirect? No?

1 Okay. All right.

2 Okay, Mr. Lucey, anything else?

3 MR. LUCEY: No, Your Honor.

4 THE COURT: Okay. I didn't think so.

5 All right, you can step down, Mr. Poyner.

6 No, did you indicate you wanted to ask questions?

7 MR. ATKINS: No, no. I've got some witnesses.

8 THE COURT: Oh. Okay. I want to make sure we're not
9 jumping the gun on you, Mr. Atkins.

10 MR. ATKINS: I didn't want to be left out completely.

11 THE COURT: No, just wanted to get him off the witness
12 stand. That's all.

13 (THE WITNESS EXITS THE STAND.)

14 (A PAUSE.)

15 THE COURT: All right, Mr. Cole, do you have any other
16 witnesses you would like to call at this time?

17 MR. COLE: That was my last witness, Your Honor.

18 THE COURT: All right. Next in line is Mr. Atkins.

19 MR. ATKINS: Thank you, ma'am.

20 THE COURT: Call your first witness.

21 MR. ATKINS: Your Honor, at this time W.C. Services
22 calls Chad Christopher as a witness.

23 CHAD CHRISTOPHER, BEING DULY SWORN,
24 TESTIFIES AS FOLLOWS:

25 CLERK OF COURT: Please state your full name and spell

1 your last name for the record.

2 WITNESS: Chad Christopher, C-h-r-i-s-t-o-p-h-e-r.

3 DIRECT EXAMINATION BY MR. ATKINS:

4 Q. Mr. Christopher, where did you come from to join us
5 today?

6 A. Greenville, South Carolina.

7 Q. Is that where you live?

8 A. Yes, sir.

9 Q. How long you been living up there?

10 A. My whole life.

11 Q. Okay.

12 A. So, forty-six years.

13 Q. You go to high school up there?

14 A. Yeah.

15 Q. Where did you go?

16 A. Travelers Rest High School.

17 Q. Okay. Do you have family up there?

18 A. Yeah. I'm a single dad with two kids and my parents.

19 Q. Okay. Are they still alive and with you?

20 A. Yeah.

21 Q. Okay. Tell us a little bit about your background, a
22 little bit, particularly after you got out of high school.
23 If you could bring us forward?

24 A. Uh-huh.

25 Q. You're currently employed, correct?

1 A. Yes.

2 Q. Who you work for now?

3 A. BMW, Greenville-Spartanburg Airport.

4 Q. Okay.

5 A. Cargo division.

6 Q. Okay. Let's go back to when you got out of high
7 school. Tell us, bring us forward from high school what
8 you've, what you've done.

9 A. I took drafting in high school. Got into AutoCAD.
10 Went to ITT Technical Institute. Got into a small,
11 family-owned company called McCrary Automatic Sprinkler in
12 South Carolina, Greenville, South Carolina. Worked with
13 them for about a year and then met Bucky Chapman, the owner
14 of W.C. Services, through Bo McCrary, and that's how I met
15 Bucky.

16 Q. Okay, and Bucky Chapman, who is he?

17 A. He's the owner of W.C. Services, located in Mt.
18 Pleasant.

19 Q. Okay.

20 A. He was a friend of my boss, Bo McCrary.

21 Q. Okay, and what did you do for McCrary Auto Sprinkler
22 Company?

23 A. I was the AutoCAD draftsman.

24 Q. Okay.

25 A. The designer.

1 Q. Would you do design of water, of ---

2 A. I didn't have ---

3 Q. --- sprinkler systems?

4 A. --- my NFSA certification with them, and they would
5 bring me in and, you know, did head layout, hydraulic
6 calculations through HydroCAD, secondary program.

7 Q. Okay, but you actually did installation while you were
8 there as well?

9 A. Yeah.

10 Q. And we're talking about sprinkler systems?

11 A. Yeah.

12 Q. Fire sprinkler systems?

13 A. Yeah. Schedule 10, schedule 40.

14 Q. Okay.

15 A. You know, threaded pipe.

16 Q. The kind that -- would that be in the same category as
17 what we've got at Palmetto Pointe?

18 A. No. That was residential PVC pipe.

19 Q. Okay. All right. So, you met Bucky Chapman. You
20 were working at McCrary at that time?

21 A. Yeah.

22 Q. Is -- was that meeting what brought you down here?

23 A. Yeah. We got to know him working with a couple of
24 jobs, and he just asked if I could come down there and help
25 him out with a project or two, so.

1 Q. Okay, from the design standpoint?

2 A. Yes, sir.

3 Q. So, did you actually come on down to Charleston and,
4 and do design work for W.C. Services, Palmetto Pointe?

5 A. Yes, sir.

6 Q. Was, was your work limited to design? Did you go --
7 as far as Palmetto Pointe's concerned, you didn't do any
8 kind of bidding or anything like that with the project?

9 A. No. They just gave me the, you know, proposal
10 drawings to do the sketch, the preliminaries to get the --
11 put the bid in.

12 Q. Did you have any involvement in contract negotiations
13 or anything with CBC, the general contractor?

14 A. None at all.

15 Q. Did you have anything to do with installation?

16 A. None at all.

17 Q. Okay. Did you see the design through?

18 A. No.

19 Q. Did you see the design through to the submission to
20 the, to the authorities?

21 A. To the fire marshals, yes, I did, and the engineers.

22 Q. Did you work with anyone on the design of the fire
23 sprinkler system at Palmetto Pointe?

24 A. Just with Chris Constantine, engineer, submit our
25 sketches and our plans.

1 Q. Okay. So, tell us how that worked. How did you and
2 Chris Constantine, the engineer -- now Chris Constantine,
3 was he -- he was the engineer for some other entity that
4 was also working on Palmetto Pointe?

5 A. Yes.

6 Q. Do you happen to know what entity he was working for?

7 A. No.

8 Q. Okay.

9 A. It's been too long.

10 Q. All right. Tell us about the relationship between
11 your work as the designer with W.C. Services and Chris
12 Constantine. Who was -- who, who did what? What was the
13 back and forth?

14 A. We would get the preliminary drawings, footprints of
15 the buildings, the proposed floorplans, you know,
16 construction plans, and we would -- had to go by the NFPA
17 13 codes and standards for the industry. We would do the
18 system layout, the pipe layout where their heads would be
19 placed per codes, per those standards. The engineer would
20 give us the guidelines on what codes to follow through the
21 NFPA 13 where we needed coverage or did not need coverage
22 and such things like that.

23 Q. Okay.

24 A. So.

25 Q. Was there back and forth revisions, redrafts, that

1 type of thing, a process to get to something that was
2 finally acceptable ---

3 A. Yes.

4 Q. --- with the engineer?

5 A. There always is, yeah.

6 Q. Would the engineer dictate to you what codes, what
7 standards were applicable in your design?

8 A. Yes.

9 MR. BUCKLEY: Object to the leading, Your Honor.

10 THE COURT: Rephrase. Thank you.

11 MR. ATKINS: Okay.

12 BY MR. ATKINS:

13 Q. So far as codes and standards are concerned, what
14 guidance did you get about what to apply to your design?

15 A. He would tell us the code. NFPA 13 has different
16 things, residential D dwellings, just what dwelling, type
17 of dwelling it was, if it needed, like, attic sprinklers
18 and stuff, which it didn't, tie ins we needed, just simple
19 things like that. We had our own copy that we would go
20 through and make sure that we adhere to those codes.

21 Q. And you say he would tell you. Would that be Mr.
22 Constantine, the engineer?

23 A. Yes.

24 Q. Okay. So, when you would sit down and do your work to
25 come up with -- and you'd actually do the drawing, right?

1 A. Uh-huh.

2 Q. Is that correct?

3 A. Yes, sir.

4 Q. And you were ultimately trying to get a set of
5 drawings that Mr. Constantine would accept?

6 A. Yes.

7 Q. Okay. When you sit down and do the drawings and you'd
8 send them to Mr. Constantine periodically.

9 A. Uh-huh.

10 Q. He would give you feedback?

11 A. Yes.

12 Q. Were there -- we've got something that's been marked
13 as 705. It's about the only drawing that we've come up
14 with in this project. I want to ask you to take a look at
15 that.

16 A. Yes, sir.

17 Q. And tell me if you recognize that as the type of
18 thing, when you talk about drawing, that would be, that
19 would be done based on Mr. Constantine's input. Is that
20 the type of product you would develop for him?

21 A. Yes.

22 Q. And then he would look that over and give you his
23 feedback?

24 A. Uh-huh.

25 Q. Now, that drawing there is -- I believe it's really

1 small print. I hope you can see it. I've got glasses and
2 I'll share them if you want them.

3 A. Yeah.

4 Q. But what's the date on that drawing? Can you see it
5 in the right-hand corner?

6 A. Barely. I need glasses myself.

7 Q. There you go.

8 A. Forty years old.

9 Q. You're breaking my heart.

10 A. It says June 7, 2006.

11 Q. Okay. At that point in time, had you received --
12 obviously received guidance from Mr. Constantine as to what
13 he wanted?

14 A. Yes.

15 Q. Did that guidance include a directive that there would
16 be no sprinklers in the attic?

17 A. Yes.

18 Q. Is that reflected on 705?

19 A. Yes.

20 Q. Okay, and that would have been, that would have been
21 by the June 7th, and you're working with Mr. Constantine.
22 He was already directing you in that regard?

23 A. Uh-huh.

24 Q. Is that correct?

25 A. That's correct.

1 Q. Okay, and you continued to communicate with him over
2 the course of the back and forth we're talking with client
3 design?

4 A. Uh-huh.

5 (LETTER MARKED AS DEFENDANT'S EXHIBIT NUMBER 4 FOR
6 IDENTIFICATION.)

7 MR. ATKINS: Let me share this with the others.

8 (A PAUSE.)

9 BY MR. ATKINS:

10 Q. First, do you recognize Exhibit Number 4, Mr.
11 Christopher?

12 MR. BUCKLEY: So, we don't continue the problem, I
13 think that the last exhibit that Mr. Cole marked should
14 have actually been number 4.

15 THE COURT: I thought so, too.

16 COURT REPORTER: The 3 you referred was not moved into
17 evidence.

18 MR. BUCKLEY: Okay.

19 MR. ATKINS: Okay.

20 MR. COLE: So, wait. What? Saying the one I had was
21 not moved into evidence?

22 MR. BUCKLEY: No.

23 COURT REPORTER: There was one earlier discussed in
24 testimony. It was not moved in. This one was.

25 MR. COLE: Okay, but my 3 was?

1 COURT REPORTER: Your 3 was.

2 MR. COLE: Okay.

3 COURT REPORTER: Somebody else's 3 was not.

4 THE COURT: If we have to, go back later and mark it
5 3.A. For now, she's marked it Defense 4, Mr. Atkins.

6 MR. ATKINS: Yes, ma'am.

7 THE COURT: Okay. Please continue. At this point, is
8 it admitted without objection?

9 MR. ATKINS: It is not.

10 THE COURT: Do you want it admitted?

11 MR. BUCKLEY: No, I don't have any objection to it,
12 no.

13 MR. ATKINS: All right.

14 THE COURT: Thank you.

15 (LETTER MARKED INTO EVIDENCE AS DEFENDANT'S EXHIBIT
16 NUMBER 4.)

17 BY MR. ATKINS:

18 Q. Exhibit number 4 which is now evidence, do you
19 recognize that? Here. I don't have a copy of it. Do you
20 recognize that document?

21 A. Yes.

22 Q. Is, that, is that the type of communication that you
23 would receive from Mr. Constantine about what he wanted the
24 plans to reflect?

25 A. Yes, sir.

1 Q. And what's the date of that communication? Is it
2 direct to you?

3 A. To my attention, yeah.

4 Q. Right, and what's the date of it?

5 A. June 20, 2006.

6 Q. And there are several items listed on that. It's not
7 really an email. It's not a memo. It's not a letter.
8 It's just a list of things.

9 A. Uh-huh.

10 Q. That he wanted you to be aware of and he wanted in the
11 plans, right?

12 A. Yes, sir.

13 Q. What was item 6? Could you read that to us?

14 A. It says: Indicate on drawings the attic and garage
15 below are not required to be sprinklered.

16 Q. Okay. So, he's still consistent. June 7th, we saw in
17 705, Exhibit 705 no sprinklers in the attics, and now he's
18 telling you June 20th ---

19 A. Yes, sir.

20 Q. --- same thing?

21 A. Yes, sir.

22 Q. Okay. The ultimate goal with Mr. Christopher was
23 what? What did you want from Mr. Christopher as W.C.
24 Services so far as design is concerned?

25 A. Just to provide the drawings per the codes. Once we

1 get those done and established, then we get our certificate
2 of compliance or we don't get paid.

3 Q. Okay.

4 A. So.

5 Q. And when you say certificate of compliance, is that
6 something that has to be submitted to an authority?

7 A. Yes.

8 Q. What authority does that have to be submitted to?

9 A. The engineer signs off on it. Then we have to submit
10 it to the fire marshal, the AHJ authority having
11 jurisdiction, and the State of South Carolina fire marshal
12 for approval.

13 Q. Okay, and would that certificate -- what did you call
14 it?

15 A. The certificate of compliance.

16 Q. Compliance?

17 A. Yeah.

18 Q. Would it also include anything about the system
19 itself, specifications or anything of that nature? Would
20 that also be part of the package?

21 A. Somewhat, yeah.

22 Q. Okay, and if you did not get that, if you do not
23 receive that from the engineer, what would happen?

24 A. Nothing. We couldn't proceed with anything.

25 Q. So, you had to have that to submit to the authority?

1 A. Yeah.

2 Q. In order to get approval to go on?

3 A. To get approval, yeah, so our job could be complete.

4 (A PAUSE.)

5 MR. ATKINS: This would be number 5, and I believe it
6 is in evidence, Your Honor.

7 MR. BUCKLEY: No objection.

8 THE COURT: Defendant's 5.

9 MR. ATKINS: I think that's the next one.

10 THE COURT: No, no objection to it being admitted from
11 counsel?

12 MR. BUCKLEY: No Objection.

13 THE COURT: Is that correct?

14 MR. KENDALL: No objection.

15 THE COURT: All right. Defendant's 5 admitted without
16 objection.

17 (CERTIFICATE OF COMPLIANCE MARKED INTO EVIDENCE AS
18 DEFENDANT'S EXHIBIT NUMBER 5.)

19 BY MR. ATKINS:

20 Q. You were talking about what you, what you needed to
21 receive from Mr. Christopher -- or, I'm sorry, Mr.
22 Constantine for submission and approval. We've got Exhibit
23 Number 5, and take a look at that, if you would. Then tell
24 me if you recognize that document.

25 A. Yes.

1 Q. What is that document?

2 A. It's a fire sprinkler system certificate of
3 compliance.

4 Q. And is that sealed and signed by the engineer?

5 A. Yes, sir.

6 Q. Now, how does that work? Does he, does he do that and
7 then give it back to you and you have to submit it?

8 A. Yeah. I submit it to the state fire marshal.

9 Q. Okay.

10 A. And the local fire marshal as well.

11 Q. And it's got two sheets, and one is certificate of
12 compliance and one is certificate of whatever it is,
13 specifications or specs. Is that correct?

14 A. Yes, sir.

15 Q. So, what do the specs do? Is that basically -- what
16 is that, what is that communicating to the fire marshal's
17 office?

18 A. It's the hazard classification for which we decided
19 what guidelines and codes to use, if it's ordinary hazard,
20 extra hazard somewhat. Then we have design parameters of
21 the square footage that we're designing and we have to
22 hydraulically calculate the area with the water supply,
23 that we have enough water to suppress a fire. It has to be
24 hydraulically proven to do so. All that has to be outlined
25 and proven before the system can even be signed off on and

1 put in.

2 Q. So, that's a specification?

3 A. Uh-huh.

4 Q. And by that, the seal of the engineer for that is
5 representing that this system meets these specifications?

6 A. Yes, sir.

7 Q. Okay, and certificate of compliance, what is that
8 telling -- what is the purpose of that aspect of the
9 certification?

10 A. It's just letting the fire marshal know that we've
11 adhered to all the specifications per the engineer, per the
12 codes, and everything that we needed to do, that needed ---

13 Q. Does it reference ---

14 A. --- to be included.

15 Q. --- the specific guidelines or codes that you are
16 certifying you complied with?

17 A. Yeah. It tells the NFPA 13-D what standards we're
18 going by and that that's what we adhere to during the
19 design process.

20 Q. So, Exhibit 5 references and is sealed and certified
21 by the fire marshal that NFPA 13-D is what was, was used
22 for the design of this system?

23 A. Correct.

24 Q. Does it reference any other code or ordinance or
25 anything else?

1 A. No.

2 Q. At any point before you left -- I understand you were
3 just there for the design, correct?

4 A. Yeah. Yes, sir.

5 Q. This was pretty much at the end of your job?

6 A. Uh-huh.

7 Q. Is that correct?

8 A. Yes, sir.

9 Q. Okay. Did you ever get any, any feedback from anybody
10 that there ever arose an issue about whether sprinklers
11 should have been in these attics?

12 A. No. Not at all.

13 Q. Okay. Have you, have you heard from Bucky Chapman?

14 A. I hadn't heard about Bucky until I got word of his
15 death, so, but...

16 Q. Anybody else contact you about this project?

17 A. No, sir.

18 Q. Okay.

19 MR. ATKINS: All right, that's all I have for you.

20 Thank you, Mr. Poyner.

21 WITNESS: All right. Thank you.

22 MR. ATKINS: You can keep the glasses. You might need
23 them.

24 WITNESS: Oh, yeah. I'll give them back to you.

25 THE COURT: Go ahead. Cross-examination?

1 MR. KENDALL: Nothing from me.

2 THE COURT: Okay.

3 MR. COLE: It's not my issue. I'm not going to ask
4 anything.

5 THE COURT: Thank you.

6 MR. COLE: No questions.

7 THE COURT: I appreciate that.

8 All right, let's switch sides.

9 MR. BUCKLEY: Thank you, Your Honor.

10 THE COURT: Yes, sir.

11 MR. BUCKLEY: May it please the court?

12 CROSS-EXAMINATION BY MR. BUCKLEY:

13 Q. Mr. Christopher, you and I have never met, have we?

14 A. No, sir.

15 Q. My name's Ed Buckley, and I represent owners at
16 Palmetto Pointe.

17 A. Yes, sir.

18 Q. And among the people we're suing are W.C. Services.
19 Have you ever met Stephanie Drawdy, who's sitting right
20 there with the laptop on her lap?

21 A. No, sir.

22 Q. Do you remember that Ms. Drawdy had you served with a
23 subpoena back in May of 2018 to appear for a deposition?

24 A. Yeah.

25 Q. Did you show up?

1 A. May 18th?

2 Q. 2018.

3 A. No.

4 Q. Why didn't you show up?

5 A. Don't remember. I think it was in Greenville. My son
6 has hemophilia, so it was a misunderstanding.

7 Q. It was a misunderstanding?

8 A. Yeah. When I got this one, I just showed up, yeah.

9 Q. You got a subpoena to be here?

10 A. Yeah.

11 Q. You're aware you can't be compelled to come down here
12 from Greenville, South Carolina, by subpoena?

13 A. No.

14 Q. You weren't aware of that?

15 A. No.

16 Q. When's the first time you talked to W.C. Services's
17 attorney, Mr. Atkins?

18 A. It was several months ago.

19 Q. And you weren't aware that we were trying to take your
20 deposition since May of 2018?

21 A. No, sir.

22 Q. He never told you that?

23 A. No, sir. I just ---

24 Q. He ever ask you, did he ever ask you ---

25 MR. ATKINS: Your Honor, can we get a sidebar on this?

1 THE COURT: Sure.

2 (OFF-THE-RECORD BENCH CONFERENCE.)

3 BY MR. BUCKLEY:

4 Q. In any event, you have never met anybody in this case,
5 any lawyers in this case other than Mr. Atkins, right?

6 A. Correct.

7 Q. Okay. You, I think, testified that you were not
8 involved in the contractual matters between W.C. Services
9 and Complete Building Corporation's general contractor,
10 right?

11 A. Correct.

12 Q. Were you aware that this project was being built on
13 Folly Beach, South Carolina?

14 A. Yes.

15 Q. Were you aware that Folly Beach has its own fire
16 sprinkler ordinance that is different from an NFPA 13-D?

17 A. Yeah. We had spoke with the fire marshal, and he had
18 told us primarily the same thing.

19 Q. Okay. Let me ask you this. Look at Exhibit 705.

20 MR. BUCKLEY: Can you pull it up?

21 Q. If you look at Exhibit 705 -- I'm going to need you to
22 actually stand up, and I'll give you a pointer.

23 A. Uh-huh.

24 Q. We're going to talk about that a little bit. I'm
25 going to have you point at some things.

1 A. Okay.

2 Q. Where does the sprinkler controls go in that drawing?

3 A. It's a little hard to see from here. This is just a
4 preliminary layout from where the tie in comes in from each
5 side of the ball valves. That's just for the information
6 and to get the approval for the drawings.

7 Q. Okay. So, the, the sprinkler system would enter the
8 building on the outside wall of the left-hand unit and then
9 the outside right-hand wall of the right-hand unit?

10 A. As per this design, yes.

11 Q. Okay, and you see a faint yellow line down the middle
12 between the two units?

13 A. Yes, sir.

14 Q. You understand that's a firewall?

15 A. Uh-huh.

16 Q. And if your plan as shown on Exhibit 705 was installed
17 as drawn, there wouldn't be any sprinkler lines penetrating
18 the firewall, right?

19 A. Correct.

20 Q. That's a good idea, isn't it?

21 A. Uh-huh.

22 Q. Is that a yes?

23 A. Yes.

24 Q. Okay, and you would never install a fire sprinkler
25 system where the piping itself ran up through the firewall

1 from bottom to top, would you?

2 A. In certain circumstances you may have to, but ---

3 Q. But here you don't, right?

4 A. These, these, these were the preliminary. They're not
5 the as-built drawings.

6 Q. Okay, but here -- as far as you know, that plan never
7 changed, right?

8 A. Well, my time there it didn't, no.

9 Q. Okay, and the certificate of compliance that we --
10 that Mr. Atkins went through with you.

11 A. Uh-huh.

12 Q. To the best of your knowledge, he was certifying that
13 the plan -- the installation as shown on Exhibit 705 is
14 what he was certifying, correct?

15 A. That they'd met the codes and parameters in, in the
16 NFPA 13-D, yeah.

17 Q. Right, and if something completely different was
18 built, then his certificate of compliance would be
19 completely irrelevant, right?

20 A. No. Even if there's changes in the field due to
21 different construction parameters, it still has to be
22 inspected by the local fire marshal to get approval to make
23 sure that they meet the guidelines.

24 Q. Have you seen any -- you haven't seen any inspections
25 by the fire marshal ---

1 A. I wasn't ---

2 Q. --- for this project, have you?

3 A. --- present at any, no.

4 Q. Okay. Have you ever seen the Folly ordinance?

5 A. I may have. I don't recall. It's been so long.

6 Q. Okay, and, of course, you never saw any variance that
7 was issued by the town or the City of Folly Beach which
8 allowed all omission of sprinklers in the attics after a
9 hearing involving the fire marshal, the building code
10 official, and a person in the industry appointed by city
11 council, have you?

12 A. I'm not aware of any of that, no.

13 Q. Okay. Who made the decision that NFPA 13-D would be
14 the only requirement for this system?

15 A. We get our information from the engineers who we
16 contract through.

17 Q. Okay, and do you know whether the contract with W.C.
18 Services required that you comply with the Folly ordinance
19 as well?

20 A. I do remember Bucky Chapman meeting with the fire
21 marshal for Folly Beach, and we were given, you know, those
22 parameters, follow through the NFPA D.

23 Q. Okay.

24 A. Yeah.

25 Q. But you don't know whether there's any other

1 requirement under the Folly ordinance because you've never
2 read it, right?

3 A. No.

4 MR. BUCKLEY: That's all I have.

5 THE COURT: Any follow-up questions?

6 MR. ATKINS: Just one follow up.

7 REDIRECT EXAMINATION BY MR. ATKINS:

8 Q. Mr. Christopher, the first time you and I met, where
9 was that?

10 A. Greenville, Spartanburg, Greenville.

11 Q. The Greenville ---

12 A. Airport.

13 Q. Airport?

14 A. Uh-huh.

15 Q. Okay, and you were there because you received what?

16 A. Phone calls and notices to come, you know.

17 Q. For a deposition?

18 A. Deposition, yeah.

19 Q. Okay, and was anybody else there other than me?

20 A. No.

21 Q. Okay.

22 MR. ATKINS: Thank you.

23 RECROSS-EXAMINATION BY MR. BUCKLEY:

24 Q. Was that in May of 2018?

25 A. I'm not really sure of the dates, so.

1 Q. It was in connection with that deposition I asked you
2 about?

3 A. Yeah, I guess. He just called, told me to -- that I,
4 I may be called by him in the future.

5 MR. BUCKLEY: Thank you.

6 THE COURT: All right.

7 MR. ATKINS: No other questions, Your Honor.

8 THE COURT: Nothing else?

9 All right, you can step down, sir.

10 WITNESS: All right. Thank you.

11 THE COURT: Thank you so much.

12 (THE WITNESS EXITS THE STAND.)

13 THE COURT: Mr. Atkins, who do you have next?

14 MR. ATKINS: I have one witness. Should be pretty
15 quick.

16 THE COURT: Okay.

17 MR. ATKINS: If you'd like to.

18 THE COURT: I think we can do it.

19 MR. ATKINS: Let's do it. Thank you, Your Honor.

20 Call Chris Constantine to the stand.

21 CHRISTOPHER J. CONSTANTINE, BEING

22 DULY SWORN, TESTIFIES AS FOLLOWS:

23 CLERK OF COURT: Please state your full name and spell
24 your last name for the record.

25 WITNESS: Christopher John Constantine. It's a long

1 one, C-o-n-s-t-a-n-t-i-n-e.

2 DIRECT EXAMINATION BY MR. ATKINS:

3 Q. Greek heritage, I suppose. Let me ask you, Mr.
4 Constantine. What do you do for a living?

5 A. I'm a professional engineer in the State of South
6 Carolina.

7 Q. Okay, and do you have your own firm currently?

8 A. I do.

9 Q. And what's the name of your current firm?

10 A. Constantine Engineering Associates, LLC.

11 Q. Okay. Did you do business or did you have a different
12 firm back when Palmetto Pointe was in construction, design
13 construction?

14 A. We did. We had a partnership at that time; it was
15 named CRG Engineering.

16 Q. Okay. You've heard Mr. Christopher testifying about
17 Palmetto Pointe and talking about Constantine Engineering.
18 Are you Constantine Engineering?

19 A. I am ---

20 Q. Okay.

21 A. --- a Constantine, but yes.

22 Q. All right. Okay. Where are you from originally? Are
23 you from Charleston?

24 A. I grew up in Charleston.

25 Q. Okay. All right, and you've -- your office is still

1 here in Charleston?

2 A. In West Ashley, yes, sir.

3 Q. West Ashley?

4 A. Uh-huh.

5 Q. All right. The Palmetto Pointe project, tell us what
6 you did with regard to the design of the sprinkler systems,
7 what your input and involvement was, if you would, on that
8 project.

9 A. Sure. I'd be happy to. The, the process by which
10 fire sprinkler systems in the State of South Carolina are
11 engineered, designed, and installed come from the state
12 fire marshal's office, and they mandate a process that is
13 sort of three, three phased.

14 So, the first phase would be someone like me, a
15 registered professional engineer in the state, would
16 prepare what's called a fire sprinkler system specification
17 sheet, FSSSS for short, and that sheet would, as Mr.
18 Christopher alluded to earlier, that sheet would define the
19 applicable, applicable codes or standards. It would give
20 information with regard to available water pressure
21 on-site, and that specification sheet is just a one-page
22 document, gives the designer of the system sufficient
23 information to go about preparing his sprinkler design,
24 which I think you saw an earlier version on the screen
25 earlier.

1 Q. Okay. So, does that ultimately culminate in a cert,
2 certification authority of the final specifications?

3 A. Well, we have to be careful when we talk about
4 specifications. We didn't prepare any written
5 specifications other than that specification sheet, the
6 fire sprinkler system spec sheet that I mentioned earlier.
7 The designer then goes about the process of running his
8 hydraulic calculations, laying out his heads, laying out the
9 piping to make sure that the system functions as it should
10 in compliance with the codes that we've specified.

11 Once he finishes that, then we would take those
12 drawings, review them, and issue I think what Mr. Atkins is
13 referring to as a certificate of compliance. And again,
14 that's sort of the third step in this process whereby we
15 review the design drawings from the sprinkler installer
16 that he prepares. And then we sign and seal a certificate
17 that essentially says we believe this complies with the
18 applicable codes for this project.

19 Q. All right. Now, the fire sprinkler, FSSSS, whatever
20 it was, that document, you, you authored that document,
21 correct?

22 A. Yes.

23 Q. And in that document, you're, you're providing the
24 designer that you're referring to as W.S. Services,
25 correct, W.C. Services? Is that accurate?

1 A. Correct.

2 Q. You're, you're directing them as to what you want to
3 be applied code standardize wise to what you produce?

4 A. Yes, that's correct.

5 Q. To the, the contractor?

6 A. Yes.

7 Q. And in your FSSSS, whatever, what was the code? What
8 was the standard that you were calling out to them to
9 design?

10 A. We called for a standard NFPA, which, by the way,
11 stands for National Fire Protection Association, NFPA 13-D,
12 which is a subset standard of NFPA 13.

13 Q. And why NFPA 13-D?

14 A. Well, NFPA 13, there are actually three NFPA 13
15 standards that could be applied. 13 really applies to
16 commercial buildings. 13-R and 13-D apply to residential
17 buildings. 13-R is used more for multifamily type
18 projects. 13-D would be the standard that you apply to
19 buildings three stories or less in height and buildings
20 that would have -- I believe it's up to two, two families
21 within one buildings. So, it was really -- this project
22 was really the perfect application of NFPA 13-D.

23 Q. Okay, and was, was the call on that code and standard
24 application your call, in terms of determination, your
25 determination?

1 A. Well, I am the one that specifies which code to use,
2 but the codes within their own body and in conjunction with
3 the international building code, of which the international
4 fire code is a subset, all those really through their own
5 language dictate which one is appropriate for which use.

6 Q. Okay. All right. You've heard some talk about a, a
7 ordinance, Folly Beach ordinance?

8 A. Yes.

9 Q. Both in Mr. Christopher's testimony, and I believe
10 you've looked at some of that documentation as well. Is
11 that correct?

12 A. That's correct.

13 Q. You did not instruct Mr. Christopher to do his
14 designer work and incorporates that ordinance. Is that
15 accurate?

16 A. Yes. That's correct.

17 Q. Why is that?

18 A. Well, I think two reasons. Number one, at the outset
19 of the project, I think early on we frankly just did not
20 realize that there was a fire ordinance in the town of
21 Folly Beach. That did come up later, and through a series
22 of discussions, it was our understanding that the fire
23 chief for Folly Beach was going to allow the application of
24 13-D without the requirement for ---

25 MR. BUCKLEY: Your Honor, object to the hearsay. It

1 sounds like it double hearsay because he says it's
2 understanding through discussions.

3 MR. ATKINS: Let me rephrase.

4 THE COURT: Maybe you can just rephrase it.

5 MR. ATKINS: I will.

6 THE COURT: Thank you.

7 BY MR. ATKINS:

8 Q. Did you, did you talk, once you heard about this
9 ordinance, did you have conversations with any authorities,
10 local authorities about that topic?

11 A. It was a long time ago, but, but let me tell you what
12 I, what I think my, my recollection at this point -- the
13 best I can recall is that there were discussions between us
14 and Bucky Chapman, who was the owner of W.C. Services, and
15 I think there may have been at least one discussion between
16 us, Bucky Chapman and the fire chief.

17 Q. All right, and as a result of those conversations, did
18 you change your design criteria for the sprinklers at
19 Palmetto Pointe, or did you remain in NFPA 13-D as your
20 design standard?

21 A. No, because the consensus was that the application of
22 13-D ---

23 Q. That's all right.

24 A. --- was appropriate.

25 Q. Okay. Okay.

1 MR. BUCKLEY: Your Honor, I move to strike.

2 THE COURT: Jury, please disregard the last half
3 sentence out of the witness's mouth. Thank you so much.

4 MR. ATKINS: Okay.

5 BY MR. ATKINS:

6 Q. So, as a result of the, the work that you performed,
7 you ultimately provided W.C. Services with a sealed and
8 signed certification of compliance?

9 A. Yes.

10 Q. Okay, and you gave that back, that back to them, and
11 it was their obligation then to submit that to the fire
12 marshal's office?

13 A. That's correct.

14 Q. Okay. Do you have an understanding as far as the
15 process goes of once that is submitted what transpires, and
16 is, is that something that has to be approved? You got to
17 get approval as a contractor before you can begin work or
18 what? I mean, what's the significance of submitting that
19 to a code official?

20 A. Yes. It's, it's just like, it's just like the
21 permitting process. The drawings, my specifications, spec
22 sheet, and the certificate of compliance are all bundled by
23 -- in this case W.C. Services. They go to the authority
24 having jurisdiction, and that's sort of a broad term that
25 relates to the reviewing authority. And in this case, it

1 was the fire chief for Folly Beach. Those documents go to
2 him. He reviews them, and then he issues authorization to
3 initial construction.

4 Q. All right, and after you had completed that process,
5 after you had done your job as the engineer and certified
6 -- obeyed certification compliance and, and, and the
7 specification sheet that was submitted both under your seal
8 and your signature, from that point forward, did you have
9 any other work or do any other work, design work on the
10 fire sprinkler system at Palmetto Pointe?

11 A. No.

12 Q. Did you -- were you ever asked by anyone to make any
13 revisions of any sort?

14 A. No, not that I recall.

15 Q. Okay.

16 A. And, and just to clarify, we would not have revised
17 drawings in any event.

18 Q. Okay.

19 A. It would have been a, it would have been a repeat of
20 the certificate of compliance as part of a review process.

21 Q. Okay. You would have been involved in that review
22 process, though, correct?

23 A. We would have hoped so.

24 Q. Okay. All right, but to your knowledge, did anyone at
25 any point come back and say wait a minute. This

1 certificate of compliance is wanting; it's lacking in some
2 way or some fashion. We need something else added to this
3 from the standpoint of the standard of code.

4 A. No.

5 Q. Okay. On this project, a project of this size -- and
6 I understand you folks were hired by the architect, as a
7 consultant to them, Tommy Smith?

8 A. Are you speaking specifically about the fire
9 protection portion?

10 Q. Well, no. I thought generally you were, you were a
11 consultant to SGM.

12 A. Well, at that time CRG Engineering was engaged in
13 civil structural, mechanical, and electrical engineering.

14 Q. Okay.

15 A. And I believe that the contract really came through
16 the civil side of the business.

17 Q. Okay.

18 A. And I believe it was directly with the, with the
19 developer.

20 Q. Okay. All right.

21 A. Now, there was some other ancillary work that may, may
22 have contracted through Tommy Smith. I was not the project
23 manager in our office. So, those details ---

24 Q. Who was the project manager?

25 A. --- are a little -- Kirk Richards, who was the ---

1 Q. Okay.

2 A. --- civil principal in the firm.

3 Q. Okay, and at any point during the project -- I mean,
4 you were, you were still with CRG throughout this Palmetto
5 Pointe, correct?

6 A. Yes. yes. Correct.

7 Q. Okay, and Kirk was your contact guy on the project?

8 A. That's right.

9 Q. He was the principal guy. At any point, did you ever
10 receive any feedback of any issues or problems associated
11 with the fire sprinkler systems at Palmetto Pointe, and
12 these are the residential villas we're talking about,
13 correct?

14 A. Correct.

15 Q. At Palmetto Pointe concerning design?

16 A. No, sir.

17 Q. Okay.

18 MR. ATKINS: Thank you very much.

19 WITNESS: Yes, sir.

20 MR. KENDALL: No questions.

21 MR. BOYD: No questions.

22 MR. BUCKLEY: I assumed that.

23 CROSS-EXAMINATION BY MR. BUCKLEY:

24 Q. Mr. Constantine, you and I go back farther than
25 probably anybody else's else in this courtroom, don't we?

1 A. Yes, sir, Mr. Ed, I think we do.

2 Q. I used to drive your school bus on occasion.

3 A. You're, you're not going to tell that story, are you?

4 Q. I'm not.

5 A. Thank you.

6 Q. And you're not either? And you're not either?

7 A. No, sir.

8 Q. You mentioned a guy named Kirk Richards, right?

9 A. Yes, sir.

10 Q. And Kirk Richards is a civil engineer. You are a
11 mechanical engineer, right?

12 A. Yes, sir.

13 Q. Okay, and you met with Stephanie Drawdy and I in your
14 office probably about two weeks ago now?

15 A. That's right.

16 Q. Right, and you really, you really at that time had no
17 recollection to speak of about how this whole thing evolved
18 back in 2006 some thirteen years ago, right?

19 A. That's correct.

20 Q. And you told us that you would not have been in
21 involved in the fire sprinkler side because that was Kirk
22 Richards's bailiwick, right?

23 A. No, I don't recall saying that because I ---

24 Q. Well, you told us that we needed to go to Kirk
25 Richards about the sprinkler system, right, because that

1 would have been his job?

2 A. No, no. I think -- not to be contrary, but I think
3 that discussion had to do with who was attending regular
4 meetings with regard to the construction phase of the
5 project and the permit and the permitting phase and all
6 that. And I guess my response at that time was that Kirk
7 was really the day-to-day person on the ground from our
8 office. I didn't attend those, I didn't attend those
9 meetings ---

10 Q. Okay.

11 A. --- that were being referenced.

12 Q. So all those, all those conversations you were talking
13 about would have been with Kirk Richards from your office
14 and whomever he was talking to at W.C. Services, right?

15 A. No. I did have some conversations with Bucky Chapman,
16 I believe. Now, we worked on other projects together as
17 well, but he and I knew one another and, and I believe we
18 probably had some phone conversations. But I was never, as
19 I recall, in a meeting with, with any group to discuss
20 this.

21 MR. BUCKLEY: Okay, let's pull up 705, please.

22 Q. Let me ask you this first. Do you remember we sent
23 you a subpoena a few years ago in this case?

24 A. I do not remember.

25 Q. Do you remember you were sued in this case?

1 A. No, I don't.

2 Q. You don't remember that?

3 A. Mm-mm. I do not.

4 Q. It's funny how you forget things, isn't it?

5 A. Well, some things you'd like to forget, I imagine.

6 Q. You, you aware we dismissed you from this case?

7 A. I found that out recently from, from defendant
8 counsel.

9 Q. How in the world could you forget that but remember
10 everything about this project?

11 A. I don't remember everything about this project. It's
12 very fuzzy.

13 Q. Yeah.

14 A. Very hazy.

15 Q. I bet it is.

16 A. It is.

17 Q. Stand up, please, and would -- and there a pointer.
18 You have it in your hand?

19 A. Yes, sir.

20 Q. Show the jury where the fire sprinkler system would
21 enter the building on either side, left and right, of the
22 two units in that photograph or in that drawing.

23 A. Well, it appears this would be the general location.

24 Q. And that's ---

25 A. On this side and similar on the other side.

1 Q. And that's on the outside wall on the left side of the
2 left unit, and the outside wall on the right side of the
3 right unit, right?

4 A. That appears to be, yes, sir.

5 Q. And if that sprinkler system were drawn in accordance
6 with the plans you approved and certified, there wouldn't
7 be a single fire sprinkler pipe penetrating the fire walls
8 in the attic, correct?

9 A. Correct.

10 Q. And if, in fact, the sprinkler system is built so that
11 both systems right and left are located directly under the
12 firewall at the -- just outside the garage of these units,
13 then the firewall and the firewall used as a chase, then at
14 every floor level the, the sprinkler system would have to
15 penetrate the floor to go in both directions, right?

16 A. That's correct.

17 Q. Okay, and you never approved that system, did you?

18 A. Not that I recall. I don't ever remember seeing it.

19 Q. Okay. So, your certificate of compliance doesn't
20 certify compliance of any system that penetrates the
21 firewall, correct?

22 A. I don't believe so.

23 Q. That's right. Let's talk about some things that were
24 in your file.

25 A. Do you need me to continue standing?

1 Q. No. No. I'm sorry.

2 A. Thank you.

3 Q. When we got your file, there were several things that
4 were not in it, and one of those things that wasn't in it
5 was the contract between W.C. Services and Complete
6 Building Corporation. Do you -- you probably don't
7 remember ever reading that contract, do you?

8 A. We would not have been privy to that, I imagine.

9 Q. Okay.

10 MR. BUCKLEY: Pull up Exhibit 203, please.

11 (A PAUSE.)

12 Q. That's Exhibit 203. We've redacted some of the
13 information that's not relevant to what we're doing here.

14 MR. BUCKLEY: Go ahead and pull that up, if you would.

15 (A PAUSE.)

16 MR. BUCKLEY: Do you have another copy, Jim, that's
17 redacted?

18 MR. ATKINS: I do.

19 BY MR. BUCKLEY:

20 Q. I'm going to put this subcontract -- you see the date
21 on this subcontract that's at the very top? It's 22nd day
22 of May 2006?

23 A. Yes, sir.

24 Q. And it's between W.C. Services, Incorporated, and
25 Complete Building Corporation?

1 A. Yes.

2 Q. Okay, and if you go on down to section 2, it says:

3 Scope of work. Subcontractor and the contractor
4 agree that the materials to be furnished and the
5 work to be done by the subcontractor are to
6 furnish all material, labor, and equipment
7 necessary to complete all fire sprinkler systems
8 and related work in accordance with the City of
9 Folly Beach's fire sprinkler system requirements.
10 Copy of letter from the City of Folly Beach
11 official dated March 6, 2006, attached.

12 See that?

13 A. I do.

14 Q. And then it also says in paragraph 1 that:

15 The scope of work is to specifically include but
16 not be limited to providing and installing the
17 interior fire protection system based on NFPA
18 13-D fire sprinkler system.

19 Parenthesis complete. Right?

20 A. Yes.

21 Q. So, both the City of Folly Beach requirements as
22 reflected in the March 6, 2006, attached letter and NFPA
23 13-D were agreed to be followed by W.C. Services with
24 Complete Building Corporation, right?

25 A. It seems that way.

1 Q. But nobody told you that?

2 A. No.

3 Q. Amazing. It's amazing, and then let's look at what
4 the March 6th -- sorry about that. That's almost too
5 small. You've never seen this letter either. It's the
6 March 6th letter from Tommy H. Hall to Mr. Brown, Tom,
7 Tommy Brown, the developer?

8 A. I don't recall seeing this at the time.

9 Q. And, and you've never seen it since, have you?

10 A. The language sounds familiar to me but I -- no, I
11 can't say that I have seen this letter specifically.

12 Q. Okay. If any ---

13 A. Since then.

14 Q. If anybody showed it to you, it was probably me,
15 right?

16 A. Correct.

17 Q. Okay. It says:

18 This letter is to recap our meeting February 14,
19 2006. The meeting was scheduled by you and was
20 for clarification of the City of Folly Beach's
21 fire sprinkler system requirements. Present at
22 on -- present at this meeting was chief -- Fire
23 Chief George Tittle; Tommy Hall, building
24 official; Chris Union; and yourself. 90.a of the
25 City of Folly Beach code of ordinances covers the

1 city's requirements for fire sprinkler systems.

2 Your project requires the following.

3 And it says:

4 Number 1, that each unit will be equipped with

5 NFPA 13-D fire sprinkler systems.

6 That tells you what kind of equipment you have to

7 have, right?

8 A. Correct.

9 Q. And then paragraph 2, 90.3(c), I think we all agree
10 that really is a typo. That should be 90.08(c):

11 You may omit the garage area where there is a
12 one-hour fire rated, fire assembly separated
13 dwelling from the garage, and the clubhouse must
14 also be sprinklered in accordance with the
15 primary use, and the area around the entrance
16 gate must be widened.

17 So, they're talking bout several things here, and the
18 last thing is obviously just fire truck access, right?

19 A. Right.

20 Q. Okay. The last paragraph says:

21 I am enclosing a copy of our ordinance for your
22 reference. If I may be of further assistance,
23 call me.

24 So, there's a lot of information in that short letter,
25 isn't there?

1 A. Yes.

2 Q. And that short letter was part of the contract with
3 W.C. Services, wasn't it?

4 A. It appears to.

5 MR. ATKINS: Your Honor, I -- he doesn't know the
6 contract or the terms of the contract. He, he read words
7 in the Exhibit 203.

8 THE COURT: He can answer to the best of his ability,
9 if he knows. Thank you.

10 BY MR. BUCKLEY:

11 Q. Wasn't it?

12 A. It appears to be referenced in this cover letter, yes.

13 Q. And it says that the work is going to be:

14 Work in accordance with the City of Folly Beach's
15 fire sprinkler system requirements.

16 Right?

17 A. I'm sorry, what, what ---

18 Q. In the, in the ---

19 A. --- Paragraph are you referencing?

20 Q. In the first paragraph below section, section 2, the
21 first full paragraph before you get to the numbered
22 paragraphs.

23 A. Yes. Correct.

24 Q. Okay, and whoever had that letter that is Exhibit 679,
25 the letter from the building code official, Mr. Brown, also

1 could read that the ordinance itself had been enclosed,
2 right?

3 A. As attached to this letter.

4 Q. Yeah.

5 A. Correct.

6 MR. BUCKLEY: Pull up Exhibit 141, please.

7 Q. Have you ever read this ordinance? It's section 90.08
8 entitled Sprinkler Systems with the Town of Folly Beach?
9 Go to A first, please.

10 A. I think only in reference to this, to this case.

11 Q. And the only time you would've read it would've been
12 probably talking to me or Mr. Atkins, right?

13 A. Correct.

14 Q. Okay. Prior to you ever getting involved in, in this
15 project and at any time after this project, you've never
16 seen that ordinance, right?

17 A. I don't recall ever seeing this, no.

18 Q. Okay, and nobody ever brought your attention to the
19 fact that this ordinance had to be followed for this
20 project, did they?

21 A. I don't believe so.

22 Q. Okay, and if they had, you would've, wouldn't you?

23 A. Absolutely.

24 Q. Okay. First paragraph A says:

25 Notwithstanding any provision to the contrary and

1 the national or any other applicable code,
2 automatic fire sprinkler systems shall be
3 installed and maintained in all new commercial
4 and multifamily construction.

5 Duplexes come under that definition, right,
6 multifamily?

7 A. Yes.

8 Q. Okay.

9 A. I think that's, I think that's fair.

10 Q. And then subparagraph C:

11 Subject to the approval of the fire chief,
12 sprinklers may be omitted from buildings where
13 sprinklers are considered undesirable due to the
14 contents or the nature of the contents, or in
15 rooms or areas which are noncombustible
16 construction with noncombustible content.

17 Right?

18 A. Yes.

19 q. Next page, And there's a chart that's part of
20 paragraph C, and it says: Acceptable areas of omission.
21 And it's got a column for single family and a column for
22 two family, right?

23 A. Yes.

24 Q. And in the single family, you can omit sprinklers in
25 virtually any of those areas that has an X in them, right?

1 A. Yes, I think so.

2 Q. And then with carports and similar attached
3 structures, there's an asterisk. You see that?

4 A. Yes.

5 Q. And both single family and two family, the asterisk
6 leads you to additional information, right?

7 A. Yes.

8 Q. And that additional information says:

9 If attached structure is separated from dwelling
10 units by minimum one hour fire-rated
11 construction.

12 So, if your carport is separated by a minimum one hour
13 fire-rated construction, then just as the building code
14 official Mr. Hall stated, you can eliminate sprinklers from
15 that garage, right?

16 A. It seems correct, yes.

17 Q. Okay, and look at attics not used living, living or
18 storage. There's no exception for that whatsoever, is
19 there?

20 A. Doesn't appear to be, no.

21 Q. Okay, and go to paragraph D, please:

22 Variances to this section may be granted after a
23 hearing by the fire chief, building official, and
24 member of the building industry appointed by the
25 city council.

1 You've never seen any variance for this job, have you?

2 A. No. Not in writing, no.

3 Q. Now, you never attended any hearing?

4 A. I did not. However, I, I would make the simple
5 comment that by virtue of acceptance of the proposed
6 design, I would consider that ---

7 MR. BUCKLEY: Objection, Your Honor.

8 A. --- an inherent variance.

9 MR. BUCKLEY: Objection, Your Honor. That's
10 nonresponsive. I asked if he attended a hearing.

11 WITNESS: Well.

12 THE COURT: Well, he's answering your question. I'll
13 allow him to go on.

14 BY MR. BUCKLEY:

15 A. I apologize. I thought the question was was I aware
16 of any variance, and I was just explaining that ---

17 Q. No. The question was did you attend a hearing.

18 A. The, the ---

19 Q. And the answer is ---

20 A. The prior question?

21 Q. And the answer is what?

22 A. No, I did not ---

23 Q. Okay.

24 A. --- attend the hearing.

25 Q. And if a -- if the owners today were to add sprinklers

1 in the attics at these units, you used a term when we met
2 as to whether or not there would be sufficient what to, to
3 service that?

4 A. Density.

5 Q. Density, right.

6 A. I believe that's the term you're referring to.

7 Q. It was. It would be a complex matter to add
8 sprinklers to the attics of these units at this point in
9 time, wouldn't it?

10 A. I think it would be difficult, yes.

11 Q. Expensive, too, wouldn't it?

12 A. Likely, yes.

13 MR. BUCKLEY: That's all I have.

14 REDIRECT EXAMINATION BY MR. ATKINS:

15 Q. Mr. Constantine, you were just asked by Mr. Buckley,
16 he commented that NFPA 13-D tells you the type of equipment
17 necessary, and you said yes. It says more than that,
18 doesn't it?

19 A. Yes, it does.

20 Q. It actually has a provision on attics and whether they
21 have to or can -- should or should not be sprinkled,
22 correct?

23 A. I believe it does, yes.

24 Q. Okay. Rather than ask you to quote it for me, I'll
25 ask you to read it for me. NFPA 13-D, this is the 2002

1 edition. That would have probably been about the edition
2 applicable back in the 2006 time period maybe?

3 A. I, I think so, yes.

4 Q. Okay. 8.6.5 talks about sprinklers in attics. Would
5 you read to us what NFPA 13-D says about sprinklers in
6 attics on one and two-family dwellings?

7 A. Sprinklers shall not be required in attics,
8 crawlspaces, and other concealed spaces that
9 are not used or intended for living
10 purposes.

11 Q. Do you have any reason to believe the attics at
12 Palmetto Pointe are intended for living purposes?

13 A. No, sir.

14 Q. Okay. You were also shown a March 6, 2006, letter
15 from Tommy Hill, the code official, to Tommy Brown, the
16 developer, copied to the fire marshal and fire chief and a
17 guy named Robert Wise, and it referenced 90.8 and it
18 referenced a fire rating of one hour. If you got it
19 separation, you don't have to sprinkle. NFPA doesn't
20 require sprinkling of the garage at all, does it?

21 A. Correct. It does not.

22 Q. Okay. There is actually nothing stated in the March
23 letter about sprinkling attics, is there?

24 A. No.

25 Q. In fact, couldn't that letter just as well be the very

1 variance that we've been talking about?

2 MR. BUCKLEY: Objection.

3 Q. Documentation of it?

4 MR. BUCKLEY: He's leading him, Your Honor.

5 THE COURT: You might need to rephrase. I'm not sure
6 about -- it sounds like a speculative -- calls for a
7 speculative answer.

8 BY MR. ATKINS:

9 Q. You've, you've, you've testified that it appears to
10 have been part of a contract, W.C. Services, which you saw
11 for the first time today, correct?

12 A. Correct.

13 Q. What else could that letter represent?

14 MR. BUCKLEY: Calls for speculation, Your Honor.

15 Q. Let me rephrase it. The letter doesn't say anything
16 about putting sprinklers in attics, does it?

17 A. It does not.

18 Q. It references a one hour, if you've got a one hour
19 rating, you can delete sprinklers in the garage, correct?

20 A. That's correct.

21 Q. Which is not part of NFPA 13-D, correct?

22 A. Correct.

23 Q. Do you know if that one hour rating, if you got it,
24 you don't have to sprinkle, if that's part of the Folly
25 Beach ordinance?

1 A. I believe it is based on what Mr. Buckley showed me
2 earlier.

3 Q. Okay. So, the inclusion of that might indicate that
4 we intend to enforce that?

5 A. I would think so, yes.

6 Q. But it doesn't say anything about sprinklers in the
7 attics, does it?

8 A. It does not.

9 MR. ATKINS: Thank you.

10 RECROSS-EXAMINATION BY MR. BUCKLEY:

11 Q. NFPA 13-D is incorporated into the 2003 IRC, right?

12 A. Yes, I would think so in terms of adoption, yes.

13 Q. Okay, and the 2003 IRC is the applicability code for
14 this project, and I want you to read for the jury, publish
15 for the jury what paragraph, what section R102.2 of the
16 applicable building states about local law.

17 A. R101.2:

18 Other laws. The provisions of this code shall
19 not be deemed to nullify any provisions of local,
20 state, or federal law.

21 MR. BUCKLEY: That's all I have.

22 MR. ATKINS: No other questions, Your Honor.

23 THE COURT: You can step down from the witness stand.

24 Thank you very much.

25 (THE WITNESS EXITS THE STAND.)

1 THE COURT: Any objection to this witness being
2 released from the subpoena from the plaintiff?

3 MR. BUCKLEY: No, Your Honor.

4 THE COURT: From the defense?

5 MR. KENDALL: None, Your Honor.

6 THE COURT: All right, you are released, sir. Thank
7 you very much.

8 WITNESS: Thank you.

9 THE COURT: All right, ladies and gentlemen, it's
10 5:15. All right, so we'll resume tomorrow morning at 9:00.
11 We'll see you at 9:00 in the morning, and have a good
12 evening. Please don't discuss the case.

13 (THE JURY EXITS AT 5:13 P.M.)

14 THE COURT: Thank you. Tomorrow -- please be seated,
15 everybody. I'm sorry. Tomorrow's order of business, we'll
16 begin -- do you have any other witnesses?

17 MR. ATKINS: One more.

18 THE COURT: You have one more? Will be first up?

19 MR. ATKINS: Will be first.

20 THE COURT: He or she will be first up in the morning.

21 After that, we'll switch over to Mr. Reeser. How many
22 witnesses do you anticipate calling at this time?

23 MR. REESER: At this point, maybe none.

24 THE COURT: All right, and at that point in time, we
25 will move on to the final phase of the trial. And in that

1 vein, my clerk is getting ready to email you all just a
2 draft of some jury charges at this point in time. It's a
3 working draft. I anticipate we'll have some charging
4 conference.

5 I know some attorney says it's going to be lengthy.
6 Let's try and cut down. That's why I'm sending it to y'all
7 tonight. I really would appreciate it if you all could
8 communicate with each other as good as you possibly can at
9 this point to try and hone this down. I really don't like
10 reading seventy pages of a jury charge to a jury. Nobody
11 can really process that much information. I don't find it
12 to be useful. However, obviously I want to incorporate
13 what's pertinent and, and relevant ---

14 MR. COLE: Your Honor.

15 THE COURT: --- to claims in this trial.

16 So, yes, sir.

17 MR. COLE: Just for us, did you just take everything
18 we sent and do you put it in one big document, or did you
19 already cull that down some?

20 THE COURT: We've culled it down considerably.

21 MR. COLE: Okay.

22 THE COURT: But we have considered all submissions,
23 but that's not to say -- like I say, it's a working draft.
24 We may have left something out. I want you to look at it
25 and tell us. We'll talk about it tomorrow, okay?

1 (A PAUSE.)

2 THE COURT: Mr. Reeser's exhibit will be Defendant's
3 3.

4 BAILIFF: Order in the court.

5 THE COURT: I need a little bit of order, everybody.

6 BAILIFF: Order in the court.

7 THE COURT: I know it's been a long day. I need to be
8 able to hear what's going on up here.

9 Mr. Reeser's exhibit, I believe, was the stack of
10 invoices. That was initially what we had labeled
11 Defendant's 3 during the course of the trial. He did not
12 move at the time for those to be admitted. I think there
13 was some discussion and somebody said no objection, but
14 they were never actually moved into admission. He would
15 like to do so at this time.

16 (A PAUSE.)

17 THE COURT: All right, that will be 3.

18 (A PAUSE.)

19 (INVOICES PREVIOUSLY MARKED AS PART OF DEFENDANT'S 3
20 FOR IDENTIFICATION MARKED INTO EVIDENCE AS DEFENDANT'S
21 EXHIBIT NUMBER 3.A.)

22 THE COURT: All right, the other thing that I need to
23 discuss with you gentlemen is that we have discussed a
24 verdict form. I think we've gotten one proposed, but it
25 didn't seem to be a collective collaboration, so.

1 MR. KENDALL: We have been circulating one amongst
2 ourselves, and if you will allow us tonight to send you
3 what we agreed to?

4 THE COURT: Oh, yeah, yeah. That's fine. Just maybe
5 come tomorrow prepared with a proposed form and your
6 charges or any changes to my charge.

7 MR. ATKINS: The verdict form that I emailed to your
8 clerk.

9 THE COURT: That was before several parties were out.

10 MR. ATKINS: Yeah, that was still -- but -- and I just
11 didn't make copies because my copier wouldn't work. I was
12 doing it from home, but I did provide Mr. Kendall with a
13 copy.

14 THE COURT: That's fine. Just come tomorrow with
15 something. How's that?

16 MR. ATKINS: Okay.

17 MR. KENDALL: Come tomorrow prepared.

18 THE COURT: Come tomorrow with something. More than a
19 blank page. How's that? All right.

20 You look puzzled, Mr. Lucey. What can I do for you?

21 MR. LUCEY: I didn't know that I received a verdict
22 form from anybody else on the case.

23 THE COURT: I haven't actually seen it.

24 (COUNSELORS CONFER.)

25 THE COURT: I haven't seen it. They didn't send it

1 directly to me, so did it go to you?

2 (COUNSELORS CONFER.)

3 THE COURT: If you could both just come with whatever
4 you have tomorrow. Deal with it tomorrow.

5 (ORDINANCE PREVIOUSLY MARKED AS PLAINTIFF'S 141 FOR ID
6 MARKED INTO EVIDENCE AS COURT'S EXHIBIT NUMBER 10.)

7 (NFPA 13-D MARKED INTO EVIDENCE AS COURT'S EXHIBIT
8 NUMBER 11.)

9 (WHEREUPON, THE CASE IS AT EASE.)

10 *WEDNESDAY, MAY 15, 2019*

11 (COURT RESUMES AT 9:02 A.M.)

12 THE COURT: Thank you. Please be seated. Welcome.

13 Okay, I have received several emails from you all and
14 look forward to continuing to review those while we get
15 through the last portion of the testimony this morning, and
16 who do we have next?

17 MR. ATKINS: Mark Lazo, Your Honor.

18 THE COURT: Okay, and he's your witness?

19 MR. ATKINS: Yes, Your Honor.

20 THE COURT: Last witness?

21 MR. ATKINS: He's my last witness.

22 THE COURT: And then we'll move over to Mr. Reeser.
23 Do you expect to call anybody else at this time or anyone
24 at all?

25 MR. REESER: Maybe one.

1 THE COURT: Maybe one, okay.

2 (A PAUSE.)

3 THE COURT: Okay. Well, if the jury's all here, is
4 everybody ready?

5 MR. COLE: Yes, Your Honor.

6 MR. ATKINS: Yes, ma'am.

7 THE COURT: All right. Thank you very much. You can
8 bring them in.

9 (THE JURY ENTERS AT 9:04 A.M.)

10 THE COURT: Please be seated, everybody. Thank you
11 once again for being so prompt this morning. I believe
12 we're ready to begin.

13 Mr. Atkins, you can call your next witness.

14 MR. ATKINS: Yes, ma'am. W.C. Services calls Mark
15 Lazo to the stand.

16 MARK A. LAZO, BEING DULY SWORN,
17 TESTIFIES AS FOLLOWS:

18 THE COURT: Please have a seat. State your full name,
19 and spell your last name for the record.

20 WITNESS: Mark Anthony Lazo. It's L-a-z-o.

21 VOIR DIRE EXAMINATION BY MR. ATKINS:

22 Q. Good morning, Mr. Lazo.

23 A. Good morning.

24 Q. Let me ask you first of all that you tell us a little
25 bit about your background. You're currently employed?

1 A. Yes, I am.

2 Q. Where are you employed?

3 A. CEMS Engineering and Architecture.

4 Q. What type of -- CEMS Architecture, what type of
5 organization is that?

6 A. We're an architectural engineering firm. We do
7 facility design.

8 Q. Okay.

9 A. And consulting.

10 Q. Okay, and how long have you been working with them?

11 A. Six years, a little over six years.

12 Q. Okay. Who were you working for previously?

13 A. Prior to that, I worked for a company called O'Brien
14 and Gere Engineers.

15 Q. Okay.

16 A. They were based out of Syracuse. We had an office
17 here in Charleston.

18 Q. All right. Was that also an engineering design type
19 organization?

20 A. Yes.

21 Q. Okay.

22 A. Architectural engineering firm as well.

23 Q. We've heard during the course of trial -- and you were
24 here -- at one time you worked for ABS?

25 A. I did, yes.

1 Q. When was that?

2 A. That was back in the 2006 to 2008 timeframe.

3 Q. Okay, and as it turned out, based on project
4 documents, it appeared you were actually out at Palmetto
5 Pointe during construction?

6 A. Yes, I was. We were, we were asked by the architect
7 to come out and do a window test evaluation for, just for
8 an installed window. We did -- we set up a, a, a, a test
9 assembly and sprayed water on the window to, to determine
10 whether or not the installed construction would resist
11 water penetration.

12 Q. Was that the limits of your involvement back in the
13 2006 timeframe?

14 A. Yes.

15 Q. Okay. You didn't look at any fire sprinkler systems
16 or anything like that?

17 A. No. I didn't -- actually didn't even know at the time
18 they were putting sprinklers in the buildings.

19 Q. Okay. All right. Please continue. Where are you
20 originally from?

21 A. I'm from Maryland originally.

22 Q. Okay. Did you go to school in Maryland?

23 A. I did. Attended the University of Maryland. I got a
24 Bachelor of Science degree in fire protection engineering.

25 Q. Now, explain to me. We've got all kind of engineering

1 degrees. Mechanical, people do mechanical, civil, that
2 sort of thing. What does a fire protection engineer do?

3 A. So, a fire protection engineer applies math, science
4 principles to protect people and property from the damaging
5 effects of, of fire. Throughout my career, I, I basically,
6 I read code. I interpret code standards. I pull out
7 requirements from those standards related to fire
8 suppression systems, fire alarm systems, building life
9 safety, means of egress, making sure people can get out of
10 the building safely. I take those requirements and if I'm,
11 if I'm actually doing the design, then I take those
12 requirements and put them into my design documents, whether
13 that's drawings or specifications.

14 And then I also once, once the, the design is
15 complete, you know, in, in the case, in the -- an instance
16 of, like, fire sprinkler systems, my design documents will
17 be sent to fire -- or a fire sprinkler contractor, who will
18 then develop what they call shop drawings or construction
19 drawings which lays out -- they lay out their sprinkler
20 heads, their pipe. Then they'll submit those for us to
21 review. We review them and if it, if it meets our design
22 documents, it meets the industry standards and the
23 applicable codes, then we will indicate that we reviewed
24 it, we've accepted it, and send it back to the contractor
25 to then go through the process of getting their permits to

1 install it. Once that system is installed, we will go out
2 and, and we'll, we'll witness testing, inspections, that
3 sort of thing.

4 The sprinkler system has to undergo what's called a
5 hydrostatic test where they make sure there's no leaks in
6 the system. So, they, they will pump the system up to 200
7 pounds of pressure per square inch, and then it has to sit
8 there for two hours and no visible leaks have -- can occur,
9 and there should be no drop in pressure and ---

10 Q. Mr. Lazo.

11 A. Sorry.

12 Q. You, you've been involved in, as a fire protection
13 engineer, in the -- as far as fire protection engineer,
14 coming up with what's required for a particular
15 application?

16 A. Yes.

17 Q. Okay. You also have experience in the process of
18 coming up with what works for a given structure, what type
19 of design, design systems?

20 A. Yes.

21 Q. You've done that, and that's part of your job?

22 A. Yes.

23 Q. In designing, you have also had to account for and
24 identify applicable standards, fire standards, fire codes,
25 things of that nature?

1 back and you went into the clubhouse?

2 A. Yes.

3 Q. Okay.

4 A. That's a different occupancy.

5 Q. Like what -- did you go in the attic at the clubhouse?

6 A. I did, yes.

7 Q. What did you find in the attic at the clubhouse?

8 A. Sprinkler system.

9 Q. I thought you said NFPA 13-D didn't require attics in
10 clubhouse -- in, in attics?

11 A. It doesn't require them in attics in one and
12 two-family dwellings. The clubhouse is not a one and
13 two-family dwelling because it's an assembly occupancy.
14 So, it falls under the over -- the all encompassing NFPA
15 13-D standard for installation of sprinkler systems, and
16 that, that's for your commercial buildings and, and you can
17 actually use 13 for residential buildings as well. There's
18 just a little more stringent requirements.

19 Q. Now, NFPA 13-D applied to the clubhouse ---

20 A. It did.

21 Q. --- is what you're saying, and it's kind of a pyramid.
22 You got at the top of the pyramid NFPA 13, and then you got
23 D and different ---

24 A. That's correct.

25 Q. --- variations of that standard?

1 A. Yes. NFPA 13-D and then sub, substandard is the NFPA
2 13-D, and then that, that's for your one and two-family
3 dwellings which we're doing with here. And then you have
4 NFPA 13-R, which is for your, your multifamily residential
5 up to four stories like apartment buildings, condominiums,
6 and that sort of thing.

7 Q. So, NFPA 13 would have been the standard applicable to
8 the clubhouse?

9 A. Yes.

10 Q. Does NFPA 13-D require sprinklers in the attic in the
11 clubhouse?

12 A. Yes.

13 Q. And the reason is why?

14 A. Because of the, the type of construction.

15 Q. Okay. Is it because of its use?

16 A. And its -- well, yeah, and its use because it's again,
17 as I said, it's an assembly occupancy, so.

18 Q. It's where people gather?

19 A. Yeah, for gathering, yeah.

20 Q. Okay. All right. You also -- in looking at this
21 project for me, did you look at the photographs and
22 materials that have been generated by others showing
23 penetrations of firewalls in these attics?

24 A. I did, yes.

25 Q. Okay. Did you find or did you note whether there was

1 any evidence of any sealant that had been applied to any of
2 these penetrations?

3 A. No, I did not see any, anything in those photos.

4 Q. Were you able to -- did you look to see who -- or if
5 it was more than one, whom, I don't know -- was tasked with
6 the responsibility in this project to seal those
7 penetrations?

8 A. I, I looked through the, the project manual. I looked
9 through the W.C. Services's contract, and I didn't see, I
10 didn't see where it tells you who is responsible for
11 firestopping. I saw a spec for firestopping which tells
12 you how to do it, but I didn't see it referenced in W.C.
13 Services's contract. I didn't see it. Really I didn't see
14 anyone, anyone telling W.C. Services that you are
15 responsible for putting firestopping in.

16 Q. You see anything that referenced anyone being told to
17 do that?

18 A. No.

19 Q. Okay. You were here when the question was raised with
20 this set of plans, the only ones we were able to come up
21 with, June 7, 2006, set of plans?

22 A. Yes.

23 Q. For fire sprinklers?

24 A. Yes.

25 Q. That they were not signed or sealed or anything where

1 attic, correct?

2 A. That's correct.

3 Q. You're not, nor have you ever been, a code enforcement
4 officer, correct, under the IRC?

5 A. Under the IRC, no.

6 Q. You're not, nor have you ever been, a fire marshal,
7 correct?

8 A. That's correct.

9 Q. You know any experts in this case that have these
10 credentials?

11 A. Pardon?

12 Q. You know any experts in this case that have these
13 credentials?

14 A. I believe Mr. Smits had those at one time.

15 Q. Let's talk about the firewalls first.

16 A. Okay.

17 Q. You've been in several Palmetto Pointe attics,
18 correct?

19 A. Yes.

20 Q. And you, as you testified with Mr. Atkins, you saw a
21 number of penetrations in those attics, correct?

22 A. Yes.

23 Q. I'm going to hand you what's been marked for
24 identification purposes only as Plaintiff's Exhibit 1039, a
25 series of photographs, and if you'd just flip through those

1 for me real quick and tell, tell us. Do those look like
2 the conditions that you observed in the attic?

3 A. Yes.

4 Q. They were accurate -- they accurately represent the
5 conditions as you saw them on your site inspection where
6 you went into a number of attics, correct?

7 A. Yes.

8 MR. EVANS: Plaintiffs move 1039 into evidence.

9 THE COURT: Any objection to 1039?

10 MR. KENDALL: I, I don't have a -- I don't, I don't
11 have a copy of it.

12 THE COURT: Well, make sure everybody's got a copy and
13 knows what we're talking about first.

14 MR. KENDALL: Can I see the documents?

15 (A PAUSE.)

16 MR. KENDALL: Yeah. No, without objection.

17 THE COURT: Okay, 1039, Mr. Evans, is that what you
18 said?

19 MR. EVANS: Yes, ma'am.

20 THE COURT: All right, 1039, 1039 will admitted
21 without objection.

22 (PHOTOGRAPHS - LOWCOUNTRY HOMES MARKED INTO EVIDENCE
23 AS PLAINTIFF'S EXHIBIT NUMBER 1039.)

24 MR. EVANS: Would you put 1039 on the screen, please,
25 and photo 2, please?

1 BY MR. EVANS:

2 Q. And, Mr. Lazo, you turn -- well, there you go on the
3 screen. Is this one of those penetrations that you've seen
4 in the attic?

5 A. Yes.

6 Q. And in this instance, we've got a wood member actually
7 diving into, penetrating the firewall, correct?

8 A. If that is the firewall, yes.

9 Q. Well, are there any other instances that you, that
10 you'd see drywall in an attic other than to form a
11 firewall?

12 A. Probably not.

13 Q. Okay.

14 MR. EVANS: Photo 4, please.

15 Q. Another condition with wood penetrating the attic, but
16 here, rather than a single penetration of a 2 x 4 or a 2 x
17 6 going in, we've got wood imbedded longways in the wall,
18 correct?

19 A. That's what it appears to be, yes.

20 MR. EVANS: Photo 5, please.

21 Q. Here we've got a fire sprinkler penetrating a
22 firewall, correct?

23 A. That's correct.

24 Q. Photo ---

25 A. Can I say something?

1 Q. Sure.

2 A. So, you can also notice that the drywall is cut out
3 around that pipe at the bottom. That leaves me to believe
4 that the drywall was installed after the sprinkler pipe was
5 put in.

6 Q. Gotcha. Turn to photo 7, please. This ---

7 A. That's a bad tape job.

8 Q. Bad tape job?

9 A. Sorry.

10 Q. You're with me. Bad tape job, and we shouldn't be
11 able to see those screws, should we?

12 A. Correct.

13 MR. EVANS: Photo 28, please, and for the record, I'm
14 just referring to the last two digits of a 847 digit.

15 Q. Photo 8 -- excuse me, photo 28, we've got both
16 electrical lines and plumbing stacks intruding on the
17 firewall, correct?

18 A. That's correct.

19 Q. We also have a void at the bottom of the firewall
20 where the two pieces of lumber stop on either side of that
21 plumbing penetration, correct?

22 A. That's what that looks like, yes.

23 MR. EVANS: Photo 72, please.

24 Q. Here we're got pieces of firewall material just laid
25 up against the firewall, correct?

1 A. That's, that's what it looks like. I don't see any
2 fasteners or anything.

3 Q. No fasteners, no tape, and penetrations by truss
4 members, correct?

5 A. Correct.

6 Q. It looks like they're just leaned up against the wall,
7 at least that third one over from the left, correct?

8 A. Yes.

9 Q. You can see it leaning backwards off the wall?

10 A. It is, yes.

11 MR. EVANS: Photo 93, please.

12 Q. We've got a sprinkler pipe in the wall and all of the
13 drywall physically removed from around it, correct?

14 A. Correct.

15 Q. And, and you haven't found any evidence that a racoon
16 did that, did you?

17 A. No.

18 MR. EVANS: Photo 154, please.

19 Q. HVAC duct intruding on the firewall, correct?

20 A. Correct.

21 Q. Just about everybody that set foot in this attic, in
22 these attics at Palmetto Pointe damaged the firewalls,
23 didn't they?

24 A. I mean, other than, like, as I said, the sprinkler
25 contractor's pipe appeared to be installed already, so.

1 Q. Right. It was intruding on the firewalls. Let me,
2 let me re-ask the question. Just about everybody that set
3 foot in these attics at Palmetto Pointe intruded on the
4 firewalls?

5 A. Correct.

6 Q. Every one of those intrusions of the firewall, whether
7 it be from a HVAC duct, plumbing pipe, electrical line, or
8 HVAC line, or a sprinkler, a fire sprinkler, would be a
9 code violation, correct?

10 A. It would require firestopping to maintain the
11 integrity of the wall.

12 Q. Can you put firestopping around CPVC pipe?

13 A. You can put a firestopping system, yes.

14 Q. And what would a firestopping system be?

15 A. It would be -- they, they call it, like, a collar, a
16 collar system where the, the firestopping is what they call
17 an intumescent material: that when it heats up, it expands.
18 Plastic piping, which, which CPVC is and regular PVC is, if
19 it catches fire, it will melt away, and then that leaves
20 the, the opening of the, the pipe still passing through the
21 wall.

22 And collar-type system, you put that intumescent
23 material inside of -- it's like a metal collar that fastens
24 to the wall and goes around the pipe. And when the fire
25 impinges upon the firestopping, even if that pipe melts

1 away, the collar forces the, the firestopping material over
2 the, the pipe opening if the, if the pipe melts away.

3 Q. That sleeve or collar, it would go on the pipe before
4 the pipe was connected at either end, correct?

5 A. No. It can go on after, after installation. They're
6 designed that way.

7 Q. You've reviewed the contract with -- between W.C.
8 Services and CBC, Complete Building, correct?

9 A. I did, yes.

10 Q. And you're aware that the specific term of that
11 contract attached as, as referenced is that March 2006
12 letter, correct?

13 A. Yes.

14 Q. And that March 2006 letter, Plaintiff's Exhibit 679,
15 makes specific reference to the City of Folly Beach code of
16 ordinances, correct?

17 A. That's correct. They had to reference that.

18 Q. And, and attaches that ordinance -- a copy of this
19 ordinance is attached for your records, correct?

20 A. Yes. They had to, they had to attach that because the
21 IRC in 2003 doesn't require sprinklers in these dwellings.

22 Q. Sure, but the contract does, right?

23 A. Yes.

24 Q. And the contract includes Plaintiff's Exhibit marked
25 for identification only 141, correct?

1 THE COURT: Okay, any objection to them being admitted
2 at this point in time?

3 Has he viewed these plans?

4 MR. EVANS: Yeah.

5 THE COURT: Did you already lay a foundation?

6 MR. EVANS: Yeah.

7 THE COURT: I'm going to let them in at this point in
8 time. They will be admitted, 705.

9 (FIRE SPRINKLER DRAWINGS MARKED INTO EVIDENCE AS
10 PLAINTIFF'S EXHIBIT NUMBER 705.)

11 BY MR. EVANS:

12 Q. In fact, Mr. Lazo, the only plans you've seen have the
13 sprinkler pipes running up the exterior, correct?

14 A. Yeah, and that corresponds to what the plumbing
15 drawings show.

16 Q. Okay, but that's not what's out there.

17 A. Correct.

18 Q. Plan -- the fire sprinklers run right up through the
19 chase that forms the firewall between the units, correct?

20 A. I, I would, I -- well, I would assume so because I, I
21 haven't seen inside the wall. So, I assume it goes up that
22 direction.

23 Q. You've seen where the riser location is, and you've
24 see those pipes penetrating the attic?

25 A. Yes.

1 Q. The firewall attics?

2 A. Yes.

3 Q. And it makes sense to have the lines run up on the
4 outside rather than the inside because having them on the
5 inside naturally creates numerous locations where the
6 sprinklers have to penetrate the firewall, correct?

7 A. Yes.

8 Q. It's got to do it in between the first floor and the
9 second floor?

10 A. Yes.

11 Q. It's got to do it again in the attic, correct?

12 A. Yes.

13 Q. And each one of those locations creates a code
14 violation, correct?

15 A. Create -- yes, it's creates a penetration that needs
16 to be firestopped.

17 Q. In fact, the whole systems is a code violation because
18 it deviates from the only plans that are in existence,
19 correct?

20 A. It, it's only a code violation if it deviates from the
21 approved plans.

22 Q. And you don't have any testimony to provide us, any
23 evidence that these are not the plans that got approved,
24 correct?

25 A. I can't, I can't say whether they were the approved

1 plans or not.

2 Q. Well, you see a stamp on these plans from Mr.
3 Constantine, correct?

4 A. I see his seal on there.

5 Q. Right, and you heard testimony from Mr. Constantine
6 yesterday that he's unaware of any other plans, correct?

7 A. I did, yeah.

8 Q. And you heard testimony yesterday from Mr.
9 Christopher, the guy that actually drew the plans, that he
10 didn't prepare any other plans, correct?

11 A. Correct.

12 Q. So, the only evidence in this case is that these are
13 the final plans, right?

14 A. These are, these are plans, yeah.

15 Q. That these are the final plans. These the only plans.

16 A. I can't say whether they're final plans or not.

17 Q. You can't say that there are any others.

18 A. I can't say that there any others, correct.

19 Q. And if, in fact, these are the final plans, then the
20 entire system as installed at Palmetto Pointe is a code
21 violation, correct?

22 A. Only inasmuch as amended plans were not provided.

23 Q. And ---

24 A. Because you are allowed, you are allowed to make field
25 changes during construction that would then -- then they --

1 those field changes then get submitted again for approval.

2 Q. But you haven't seen any of those, correct?

3 A. I have not.

4 Q. And, and you mentioned earlier with Mr. Atkins that
5 you believe the riser locations are where they are because
6 of where the water tap, the main tap coming in is, correct?

7 A. Correct.

8 Q. Could an installer have run the sprinkler lines from
9 that riser location out to the perimeter and up?

10 A. They would have had to have done it underground.
11 That's -- underground work is typically not in a sprinkler
12 contractor's ---

13 Q. Is there ---

14 A. --- order.

15 Q. Is there any reason it couldn't have been run through
16 the driveunder drivers?

17 A. That would have been challenging because there's no
18 heat in the garages.

19 Q. There's no heat in the attics.

20 A. Right, but the, the -- that's what the insulation is
21 for.

22 THE COURT: Make sure you ask questions. Don't
23 statements, Mr. Evans.

24 Q. Are there any site conditions that prevented them from
25 moving the sprinkler lines to the perimeter walls, to the

1 outer perimeter walls?

2 A. I can't say. I wasn't there when they, when they got
3 on-site to do, to do the construction.

4 Q. Running sprinkler pipes up through that firewall
5 cavity creates a chimney for fire to accelerate and spread,
6 correct?

7 A. If it -- if the penetrations are not firestopped, yes.

8 Q. Have you seen evidence or heard evidence that they're
9 stopped in the garage?

10 A. I haven't, I haven't seen anything. I, I didn't hear
11 anything about the garages, though.

12 Q. If the, if the firewalls are not firestopped in the
13 garage, that's the worst-case scenario, correct, because
14 now we're got air blowing fire all the way up into the
15 attic, correct?

16 A. That's, that's potential, yes.

17 Q. And into every one of those penetrations in between
18 the floor lines, correct?

19 A. That's correct.

20 Q. And your job and the job of any, anyone involved in
21 fire sprinkler systems is to protect people and property
22 from fire, correct?

23 A. Correct.

24 Q. And as installed, you've got a lot of problems with
25 this system, correct?

1 A. Only inasmuch as the firestopping is not completed.

2 Q. And the system as designed deviates 180 degrees from
3 what was initially -- excuse me, as installed deviated 180
4 from what was initially designed, correct?

5 A. Only as far as the pipe routing goes.

6 Q. And that pipe routing, routing is what creates the
7 potential for fire problems, correct?

8 A. Correct, but it doesn't need to be changed.

9 Q. Are you aware that the W.C. Services used Rain Bird
10 lawn irrigation parts in the system?

11 A. I have not -- I did not I see any of those in anything
12 I, I've looked at.

13 Q. You didn't see photographs of lawn irrigation parts in
14 the riser cabinets?

15 A. Not on the sprinkler risers.

16 Q. Not -- excuse me?

17 A. Not on the sprinkler risers.

18 Q. That's the same stuff you might use, you or I might
19 use on our lawn, right?

20 A. Rain Bird, yeah, that's, that's a lawn sprinkler name
21 I'm familiar with.

22 Q. Yeah, and it'd be an improper use of code violation to
23 use it in a fire sprinkler system, correct?

24 A. If it's not listed and approved for sprinklers, yeah,
25 but again I didn't see any of those on -- when I did my

1 Miracle Siding, LLC, Miracle Siding, LLC, and Eloy Alonzo
2 Vasquez rest.

3 THE COURT: Thank you.

4 Okay, now the plaintiff discussed a rebuttal
5 witnesses. Is that correct?

6 MR. BUCKLEY: Correct, Your Honor.

7 THE COURT: All right. I'm happy to entertain that.
8 Who do you want to call in rebuttal and for what purpose?

9 MR. BUCKLEY: Mr. Sales by deposition. He's a party
10 opponent. Doesn't matter whether he's available or not.
11 We can call him by deposition under the rules, and Mr.
12 Poyner, on behalf of Tri-County Roofing, testified to a
13 number of things yesterday we want to rebut with Mr.
14 Sales's testimony.

15 Among those things he testified to was he provided
16 instructions for installation of materials to his
17 subcontractors, both Mr. Vasquez and Mr. Sales. Mr. Sales
18 will testify that he was no documents by Mr. Poyner at all.
19 He also testified that he supervised the work of the
20 subcontractors. Mr. Sales will testify he did not
21 supervise the work at all, that he would show up on
22 occasion to drop something off, look around, and leave.

23 Mr. Sales -- Mr. Poyner testified that he, that he
24 believed these people were competent and that it was
25 necessary for there -- for them to be competent, that they

1 be familiar with the building codes and instructions for
2 applying materials that they were applying on his behalf.
3 Mr. Sales will testify that he did not even know there was
4 a building code, that he did speak or read English. That
5 if he was did -- if he was aware of the code and had the
6 code, he could not have read it, and that he would not have
7 been able to read the instructions at that time.

8 He also testified that he now knows, having learned
9 English better and having gained more experience in the
10 field, that all of the siding he installed violates the
11 building code. That all the nails he used violate the
12 building code, and that the CertainTeed aluminum coil stock
13 that they wrapped around the treated wood beams at the
14 front entrances of these -- this property, use of that coil
15 stock in contact with that treated lumber violates the
16 building code, but he was unaware of that at the time.

17 We, we intend to use him to rebut the testimony of Mr.
18 Poyner as to how much care Tri-County Roofing exercised in
19 selecting these subs to do his work, and it's less than ten
20 minutes.

21 THE COURT: Okay. When you say deposition testimony,
22 you intend to use just portions?

23 MR. BUCKLEY: Right, right, and we gave the excerpts
24 yesterday.

25 THE COURT: Okay.

1 MR. REESER: Yes. Your Honor, Your Honor, my
2 objection to this would be under Rule 32. We were not
3 given the one day notice prior. I understand there was an
4 email sent to the court at 11 that we were not copied on; I
5 believe another one was sent at 4:30. Of course I didn't
6 open it until 5:30 since we were before Your Honor. And I
7 believe it's fairly clear 38-8-5 applies to how these are
8 being -- how depositions are to be used at trial in any
9 case.

10 For the record, I understand the deposition was a
11 30(b)(6), Miracle Siding, LLC, using Mr. Sales, Sales, but
12 that would, that would be our objection to it at this time.

13 THE COURT: Okay.

14 MR. REESER: I understand there may be other
15 objections to the, the lines and if proper, we can take up
16 at that time.

17 THE COURT: Okay. Anybody else have an objection?

18 MR. COLE: I, I mirror what Mr. Reeser was saying
19 about this, that we did not get this until much later. I
20 think it was 4, 4:27 p.m. when the email was sent to the
21 defendants, and obviously we didn't see it until we were
22 done with court, although Your Honor may have had a
23 previous exchange of it.

24 So, I forget the case law because I was looking at it
25 really, really late last night or early this morning. But

1 there is case law that says that even though the Rule
2 32(a)(2) allows you to use a 30(b)(6) deposition, if there
3 is a more specific, more strict interpretation of the use
4 of the deposition -- i.e. part 5 -- that that's what you
5 use, and we don't have the twenty-four hour notice. It we
6 get past it, I do have some individual objections to it.

7 Also, I'll state that from what I understand, part of
8 the reason for the rebuttal is that they essentially have a
9 claim for negligent hiring of Mr. Sales is the gist of what
10 I understood that Mr. Buckley was describing. But the
11 claims that right now are pending to go to the jury sound
12 in negligence, gross negligent, and breach of implied
13 warranty. And so that's not a, a claim that's applicable.

14 I'll also state that if we get into some of the
15 descriptions and the objections about some of this is it's
16 clear from the deposition transcript that Mr. Sales,
17 although he's better with English, still did not have a
18 good command of the English language. And some of the
19 parts that I'll respectfully say although he did say the
20 words, it was more like he was confirming essentially
21 testimony from plaintiffs' counsel who would offer
22 something, and he was trying to be helpful by responding to
23 it, which now we have that on the record and what he
24 testified for.

25 THE COURT: Was there an interpreter present at the

1 deposition?

2 MR. COLE: There was no interpreter.

3 THE COURT: Did the attorneys deem it necessary for an
4 interpreter to be there?

5 MR. COLE: I don't think we had an interpreter there.

6 MR. BUCKLEY: We did not, Your Honor.

7 THE COURT: Was there a concern at the outset of the
8 deposition that he didn't understand what he was getting
9 into when he ---

10 MR. COLE: He ---

11 THE COURT: --- took an oath and ---

12 MR. COLE: It was not my ---

13 THE COURT: --- swore to tell the truth?

14 MR. COLE: It was not my witness, Your Honor. I'm
15 just saying read ---

16 THE COURT: Yeah, I'm just asking. I assume you were
17 there.

18 MR. COLE: I was there. I had some questions, but
19 it's -- just reading back through it, it's clear that I
20 don't think he fully understand some of the, some of the
21 answers which ---

22 THE COURT: Well, if that was the case, that should
23 been stopped before he went on to give the deposition.

24 MR. ATKINS: I wasn't present, Your Honor.

25 THE COURT: Obviously hindsight is 2020. So, okay,

1 I'm going to allow it in for the purposes of impeachment,
2 which is the purpose that the plaintiffs stated they intend
3 to use it.

4 Mr. Kendall, do you wish to be heard of this?

5 I'm sorry, Mr. Boyd, you wish to be heard on this
6 matter?

7 MR. BOYD: Yes, ma'am. The only thing, I did look
8 back through their designations, and I provided one counter
9 designation that I've asked the plaintiffs to read.

10 THE COURT: Okay.

11 MR. BOYD: When they read the deposition.

12 THE COURT: Okay.

13 MR. BOYD: And I've provided that to the them. Would
14 the court like my reference as well?

15 THE COURT: Sure.

16 MR. BUCKLEY: We don't have any problem with that,
17 Judge.

18 THE COURT: Well, if you don't have a problem, I don't
19 need it, Mr. Boyd. That's fine. Okay.

20 MR. COLE: Your Honor, I do have some counter
21 designations to add some more of that.

22 THE COURT: Okay.

23 MR. COLE: If you want to talk about some of the lines
24 that, that I have objections to, we can go through, please.

25 THE COURT: If, if that's the case, then I need to be

1 provided with a copy of the transcript.

2 MR. COLE: Okay.

3 THE COURT: Anybody have a copy? I can use a
4 condensed, whatever. Anything. I'll give it back.

5 MR. COLE: That's, that's my only copy, my designation
6 transcript.

7 (A PAUSE.)

8 MR. REESER: Your Honor, if I may approach? This is
9 my only copy, and the court is free to use it.

10 THE COURT: Thank you, Mr. Reeser.

11 (A PAUSE.)

12 THE COURT: All right, so I have a copy. Tell me
13 what, tell me what we want -- direct me. I have a copy of
14 about a 200 almost page deposition here, a 30(b)(6)
15 deposition of Wilson Lucas Sales, which was taken on
16 October 20th of 2017 at 9:30 a.m. in this case. And would
17 the plaintiffs -- I understand these designations were sent
18 but just for the record, can you go ahead and tell me what
19 page and line designations you wish to read into the
20 record?

21 MR. BUCKLEY: The plaintiff, Your Honor?

22 THE COURT: Yes.

23 MR. BUCKLEY: Hold on just a second.

24 MR. COLE: Do you want to go in order? I, I
25 highlighted my designations and their designations.

1 MR. COLE: Okay.

2 THE COURT: All right.

3 MR. COLE: Next one is page 177, line 13 through 22.
4 That's a lead in to a designation by -- well, first by
5 plaintiffs and the add on from Complete.

6 MR. BOYD: Your Honor, if I may interject here since
7 it does concern me?

8 THE COURT: Yes. I'm not sure ---

9 MR. BOYD: I'd like to amend what I previously -- the
10 designation at 177 asked: Did Complete Building Corporation
11 inspect your work? He said no, which is why I went on to
12 counter designate the second page where Mr. Sales makes
13 clear, you know: Were any changes made to your work? And
14 he sort of clarified that: No, Complete Building would
15 speak to Mark, and then Mark would speak to me. And I
16 thought their designation was misleading, which is why I
17 added.

18 But now that I have a better appreciation for why they
19 are doing these designations, it's more to impeach Mr.
20 Poyner and to show Mr. Sales did not have this knowledge
21 apparently. But the testimony elicited from Mr. Poyner
22 yesterday is that he would supervise his sub-
23 subcontractors, and then my client would come by and spot
24 check Mr. Poyner.

25 So, I mean, that may be parsing the language. I, I, I

1 understand that, but I don't know that it really goes to
2 the issue that they're attempting to offer rebuttal
3 testimony on. So, I'd just like to preserve an objection
4 that Complete Building Corporation be taken out entirely of
5 this deposition.

6 THE COURT: You're withdrawing your counter
7 designation?

8 MR. BOYD: Yeah, it would have to be. If they take
9 out their reference, mine would have to be withdrawn, too.

10 THE COURT: All right, Mr. Buckley, do you want to
11 respond?

12 MR. BUCKLEY: What, what are you actually withdrawing?

13 THE COURT: To the extent necessary.

14 MR. BOYD: What, what I'd like to do is I'm objecting
15 to your including your line item 177, lines 23 to 25, in
16 that it doesn't go to your stated reason for the rebuttal.
17 If, if you agree and the court agrees, then that would
18 obviate, obviate the need for me to do my counter
19 designation. My client would just not be mentioned at all
20 during this.

21 MR. BUCKLEY: I, I know you would like that. I
22 understand.

23 MR. BOYD: I would. I would.

24 MR. BUCKLEY: I understand. I understand your client
25 never being mentioned is a good thing.

1 But, Judge, it also goes to impeachment of Complete
2 Building Corporation to establish that they did not
3 supervise the work of the people who were actually doing
4 the work.

5 THE COURT: Yeah. No. I mean, I find that's relevant
6 to the issue that you're using this testimony for.

7 MR. BOYD: Yes, ma'am.

8 THE COURT: So that I will, over your objection, your
9 withdrawal of your initial designation. Now that I've
10 ruled that way, I'm going to allow it in, let's discuss
11 what portion exactly needs to come in. We'll begin at line
12 -- excuse me, page 177.

13 MR. COLE: I had 13 through 22, lines 13 through 22.

14 THE COURT: You started at 13?

15 MR. COLE: Right.

16 THE COURT: Okay, which is short of the initial line
17 of questioning, okay.

18 MR. COLE: Right.

19 THE COURT: I think that's appropriate, and then we'll
20 end at page 178, line 7.

21 MR. BOYD: Yes, ma'am.

22 MR. COLE: Okay.

23 MR. BUCKLEY: Yes, ma'am.

24 THE COURT: Okay.

25 MR. COLE: And then, and then I have designation that

1 THE COURT: No. I just need to make sure that -- how,
2 how do you intend to present this deposition? You going to
3 have ---

4 MR. BUCKLEY: I was going to read the questions and
5 have Jason Daigle read the answers.

6 THE COURT: Okay. That's fine. Just make sure he has
7 an accurate delineation of these page line designations
8 that we've just discussed.

9 MR. BUCKLEY: It'll take us probably fifteen minutes
10 if that's okay, Judge.

11 THE COURT: Okay. Yeah. All right, and then what
12 else do we need to do at this point in time? I guess after
13 that we'll take up appropriate motions, okay?

14 All right. So, we'll be at ease for about fifteen
15 minutes.

16 (OFF THE RECORD.)

17 THE COURT: All right, as a matter of procedure, when
18 the jury comes back in, I'm going to allow each
19 representative of a defendant to rest before the jury.
20 After that time, I will allow the plaintiffs' rebuttal
21 witness to be called. We will take up any appropriate
22 motions that would normally be brought upon the defendants
23 resting at the next jury break. You will in no way be
24 waiving your right to be arguing those motions, but in the
25 interest of time and avoiding the jury coming in and out,

1 in and out, we're going to do it that way, okay?

2 All right, I understand we are ready. So, everybody
3 ready? Okay. All right, we can bring the jury back in.
4 Thank you.

5 (THE JURY ENTERS AT 11:22 A.M.)

6 THE COURT: Thank you. Please be seated, everybody.

7 All right, are there any other witnesses to be called
8 from the defense?

9 MR. KENDALL: Your Honor, Complete rests.

10 THE COURT: Okay.

11 MR. COLE: Your Honor, Tri-County rests.

12 THE COURT: Okay.

13 MR. ATKINS: Your Honor, W.C. Services rests.

14 THE COURT: Okay.

15 MR. REESER: Your Honor, Wilson Lucas Sales, DBA
16 Miracle Siding, LLC, Miracle Siding, LLC, and Eloy Vasquez
17 rests.

18 THE COURT: Thank you. All right.

19 All right, and any rebuttal witnesses from the
20 plaintiff at this point in time?

21 MR. BUCKLEY: Yes, Your Honor.

22 THE COURT: Okay. Please call your witness.

23 MR. BUCKLEY: Your Honor, we call Wilson Lucas Sales
24 by deposition.

25 THE COURT: All right. Ladies and gentlemen,

1 testimony is now going to be presented to you by a
2 deposition. A deposition is a document which contains
3 sworn testimony which was given by a witness outside of
4 court in the presence of lawyers for each party, who may
5 ask questions of the witness. If any objections were made
6 during the deposition, I can rule on them when the
7 deposition is read if necessary.

8 This testimony is entitled to the same consideration
9 and is to be judged as to the same credibility and weighed
10 by you in the same way as if the witness were present and
11 gave testimony which is about to be read to you from the
12 witness stand. It is then for you, the jury, to determine
13 the effect, the value, weight, and the truth of the
14 testimony given in the deposition.

15 And the way we will do this is that Mr. Buckley will
16 read the attorneys -- excuse me, read the questions that
17 were posed by attorneys during the deposition, and this
18 gentleman, Mr. Daigle, will read instead of Mr. Sales,
19 okay?

20 MR. BUCKLEY: Thank you, Your Honor. Permission to
21 open the original, Your Honor?

22 THE COURT: Yes. Thank you, and if you don't mind,
23 Mr. Buckley, at the outset just stating the day of the
24 deposition and the time it was given. Thank you.

25 MR. BUCKLEY: This is the Rule 30(b)(6) deposition of

1 Wilson Lucas Sales, taken October 20, 2008, at 9:30 in the
2 morning.

3 (WHEREUPON, THE DEPOSITION EXCERPT OF WILSON L. SALES
4 IS READ INTO THE RECORD.)

5 MR. BUCKLEY: Turn to page 9, please, line 5.

6 Q. Sir, would you state your name for the record?

7 A. Wilson Lucas Sales.

8 Q. Mr. Sales, what's your address?

9 A. It's 210 Bear Claw Drive.

10 Q. Is that in Charleston?

11 A. Goose Creek.

12 MR. BUCKLEY: Line 15.

13 Q. I'm going to show you what's been marked as
14 Plaintiff's Exhibit 504. It's a notice of deposition for
15 today. Have you seen this before?

16 A. No.

17 Q. It's a notice for you to appear or for someone to
18 appear on behalf of Miracle Siding and Wilson Lucas Sales
19 as a 30(b)(6) witness, which is a corporate representative
20 for Miracle Siding. Are you appearing today as the
21 corporate representative for Miracle Siding?

22 A. I'm Wilson, right, Wilson Sales, yeah.

23 Q. Where do you currently work?

24 A. I work with my brother.

25 Q. What's the name of the company that you work for?

1 go in the store and say give me a box of siding nails,
2 they're going to give it to you as a box. They have that
3 on 2 inches and 2 and a quarter. So, I don't know what we
4 used back then. I don't know what they purchased back
5 then.

6 Q. Do you know whether or not the nails you were given
7 for use to use at Palmetto Pointe were proper?

8 A. I don't remember, I don't remember which one it was.

9 Q. Did you care?

10 A. Tell the truth, I'm just doing labor.

11 Q. So, did you not -- so, you did not care?

12 A. I was just doing labor.

13 Q. Is that a no?

14 A. I was just doing labor. I mean, whatever they give it
15 to me, I use it.

16 Q. So, you did not care whether or not the nail that you
17 used was proper?

18 A. To tell the truth, no, because I'm not purchaser.

19 Q. Do you know what size siding you installed at Palmetto
20 Pointe?

21 A. Say that one more time.

22 Q. Do you know what size of the siding was installed?

23 A. I don't remember.

24 Q. Do you know whether or not the size of the siding was
25 proper?

1 A. It's not my business.

2 Q. Did you care?

3 A. If I care? No, because I'm just doing labor.

4 Q. Do you have any memory of the work that you did at
5 Palmetto Pointe?

6 A. Memory like what?

7 Q. Like do you remember being there?

8 A. Yeah.

9 Q. What work do you remember doing?

10 A. Siding.

11 Q. On what buildings?

12 A. On the buildings that I had the receipts, invoices
13 for.

14 Q. Should a siding installer who holds himself out as
15 knowledgeable in his trade comply with manufacturer
16 instructions with the brand of siding he's installing?

17 A. Now, today, yes, but back then I didn't know all this.

18 Q. Did you make any effort to ensure that the siding you
19 were installing at Palmetto Pointe could resist high wind
20 forces?

21 A. No, because I'm not selling anything. I was just
22 doing labor.

23 Q. Do you know what wind zone Palmetto Pointe is in?

24 A. I have no idea.

25 Q. And so those buildings, you would agree that the

1 siding that you installed, it should have stayed on during
2 any tropical storm or hurricane that's occurred in the last
3 ten years?

4 A. I can't tell. It depend on how powerful it is, you
5 know?

6 Q. And it should stay on?

7 A. I should -- it should stay on, yeah.

8 Q. At the time of Palmetto Pointe, you did not know you
9 were supposed to use roofing nails?

10 A. No.

11 Q. And you did not, you did not use rooting nails on any
12 of the buildings you worked on at Palmetto Pointe?

13 A. Not that I remember, no.

14 Q. And that is a violation of the manufacturer
15 instructions at that time?

16 A. I didn't know.

17 Q. You know now that it's a violation?

18 A. Yeah, I know now, yes.

19 Q. Do you know what spacing what supposed to be used for
20 the fasteners?

21 A. They need to be hit on the studs, right? We used to
22 use, like, a pattern. Just see your arm, you know.

23 Q. And did you install into the studs? Can you explain
24 what hand language you just used?

25 A. Hand language? 1 foot x 1 foot or 16, 16 inches.

1 Q. What effort did you make to determine that you were
2 installing 16 inches with fasteners?

3 A. How did I determine? Just as you be doing. You got,
4 you got to get used to. I got used to it, you know. We
5 just go with the gun. I mean, we don't pull a tape and all
6 that.

7 Q. So, you made no effort to ensure that you installed
8 into the studs?

9 A. No, no tape.

10 Q. So, you did not use any measuring tape to determine
11 where the fastener should go?

12 A. No.

13 Q. You guessed?

14 A. Uh-huh.

15 Q. Is that a yes?

16 A. Yes.

17 Q. Do you know whether or not aluminum coil trim should
18 be installed against pressure-treated lumber?

19 A. They change that as the years. I don't know back then
20 if it was or not, but today you can't put it. You can't
21 install it treated.

22 Q. Now you know that when you installed aluminum trim at
23 Palmetto Pointe, it was incompatible with the
24 pressure-treated wood that you put?

25 A. Yes.

1 beams with aluminum and Hardie, the scope of work like
2 that.

3 Q. But he didn't tell you what to do or how to do it?

4 A. No.

5 Q. What kind of training, and I may have asked you this
6 before, but what kind of training did you give the crew
7 that you had at Palmetto Pointe?

8 A. Those guys came to work as know how to install. So,
9 we didn't give, you know, training.

10 Q. And if that's true -- if it's true that -- you now
11 know that the 9 and a quarter siding that you installed
12 with .22 siding nails at Palmetto Pointe is a manufacturing
13 violation for all the siding that you installed there?

14 A. Yes. Now, yes.

15 Q. And that's a code violation?

16 A. Yes.

17 Q. What's your education?

18 A. Education? I went to high school.

19 Q. Where did you go to high school?

20 A. I went to Miami and, you know, I never finished but...

21 Q. What grade did you go up to?

22 A. To eleventh.

23 Q. Have you done any other kind of educational program
24 since then?

25 A. I tried but I had to work. My daddy can't support

1 different but as over here, the Hispanic community is so
2 big so as you talk and listen, talk and listen, you learn a
3 lot of stuff. So, that's the way I learn.

4 Q. So, this was the first condominium?

5 A. Yes, that I remember.

6 Q. Who was the main person that you would talk to to get
7 instructions at Palmetto Pointe?

8 A. Mark, that's the guy.

9 Q. Was Mark ever on-site when you and your, your crew
10 were installing siding?

11 A. He comes, you know, but he not stay over there. He
12 comes and whatever, deliver something, nails or something.
13 He just come in, watch a little bit, and go.

14 Q. So, Mark Poyner never told you that the siding you
15 were using was the wrong siding?

16 A. No.

17 Q. And Mark Poyner never told you that the fasteners you
18 were using were the wrong fasteners?

19 A. No.

20 Q. And Mark Poyner never told you that the slope on your
21 base flashing was incorrect?

22 A. No.

23 Q. And Mark Poyner never told you that overdriven nails
24 were unacceptable on this job?

25 A. No.

1 Q. And he never gave you any instructions about any kind
2 of installation for the siding that you were putting on at
3 Palmetto Pointe?

4 A. No.

5 Q. I have a question for you. You learned how to install
6 siding and fascia, things like that, while on the job for
7 prior for jobs, correct?

8 A. Yeah.

9 Q. So, you were working for somebody else, and they
10 taught you how to install siding and trim, things like
11 that?

12 A. Yeah. It's no secret.

13 Q. And when you were, and when you were starting your
14 work at Palmetto Pointe, you'd been installing siding and
15 trim like that under your own company name for at least a
16 little bit?

17 A. Vinyl yes, not Hardie.

18 Q. Do you have any idea how many houses you've actually
19 installed the Hardie-type siding on?

20 A. To now?

21 Q. Yeah.

22 A. Lot, a lot of house.

23 Q. A lot, is that more than a hundred?

24 A. Yeah.

25 Q. And when you were first installing the cementation

1 A. No. Nobody gave me nothing.

2 Q. Did Mark give your any documents?

3 A. No, sir.

4 MR. BUCKLEY: Thank you.

5 THE COURT: All right, any other witnesses from the
6 plaintiff?

7 MR. LUCEY: No, Your Honor. Plaintiff rests.

8 THE COURT: Any other from the defense?

9 MR. KENDALL: Nothing, Your Honor.

10 THE COURT: Okay.

11 MR. COLE: No, Your Honor.

12 THE COURT: All right, ladies and gentlemen, at this
13 point in time we're going to break for lunch. I think it's
14 going to be in about fifteen minutes. This will likely be
15 a full-length lunch break. There are several matters of
16 law that I need to take up at this point in time with the
17 attorneys at this phase of the trial, and I'm trying to
18 guess what time.

19 I think we'll probably resume about 1:15. So, I would
20 ask that if you do leave, which you are welcome to do, that
21 you return by 1:15. Again, we've ordered lunch for you.
22 You can wait around for that for a few minutes and it will
23 come. Other than that, apart from that, feel free to come
24 and go as you please, but plan on being back at 1:15. Do
25 not discuss case. Thank you very much.

1 (THE JURY EXITS AT 11:46 A.M.)

2 THE COURT: Thank you very much. Please be seated.
3 Okay, heard all the evidence the attorneys are going to
4 present in this case, and the defendants rested prior to
5 the rebuttal witness which was called from the plaintiff.
6 I'm happy to entertain any motions from any parties at this
7 point in time.

8 MR. LUCEY: Yes, Your Honor. The plaintiff moves for
9 a directed verdict on both its causes of action for
10 negligence and for implied warranty against all defendants.
11 I'm putting up for the court to see Plaintiff's Exhibit
12 826, which is a lengthy list of code violations, of breach
13 of industry standards, and breach of manufactures'
14 installation instructions which all experts agreed are,
15 again, a breach in the building code because the code
16 requires you to follow the manufacturers' installation
17 instruction.

18 To a man, every witness in this courtroom has conceded
19 the defects, and they haven't just conceded negligence
20 defects. They've conceded defects where there is an
21 absence of any care whatsoever. For instance, flashing
22 locations where the problem is not that the flashing is
23 short. The problem is the flashing doesn't exist. And,
24 Your Honor, this, these defects have been pervasive, and
25 all the experts conceded proximate cause as to the water

1 intrusion and the damage, the building code violation, and
2 dealing, dealing with -- the court will recall, of course,
3 this was undisputed from the first hour of this trial. We
4 called the defense expert as our, as our witness, and
5 conceded these violations in the first hour. And then
6 repeatedly, time after time after time, every expert, every
7 witness, even Mr. Poyner, the only defendant that took the
8 stand, so to speak -- he's not really a defendant; his
9 company is -- but the only defendant that took the stand.
10 And he conceded the violations -- the gaps, the missing
11 flashing, and the damage -- and the need to fix the leaks.
12 It's just overwhelming; it's just undisputed.

13 What they did in their defense, they got up here, and
14 they put up some fancy rulers and tried to show that the
15 roof was 3 and a half and 12 instead of 3 and 12 or
16 something like that. They didn't link anything up to any
17 defects; no witness up there denied the defects. They
18 didn't try -- they, they pointed fingers, but nobody,
19 nobody denied it.

20 And what's interesting, Your Honor, is they never even
21 put up a picture of a properly flashed post. They didn't
22 contest that a lot of posts aren't flashed or are badly
23 flashed or are only half wrapped. They didn't contest
24 that. They never even put up one picture to show it was
25 done right anywhere on the property, a total absence of

1 correct application.

2 And, Your Honor, then the motion for a directed
3 verdict applies equally to the self-described oddball
4 defendant W.C. Services. Clearly they violated the
5 building code and the ordinance, and they can't explain it
6 away. Mr. Lazo today, he wants to take a letter that
7 predates the job and say this is a variance on the building
8 code. No. The letter, by its very terms, says this is how
9 you need to design your system. Here's what you got to pay
10 attention to, and here's our ordinance, and you got to do
11 everything.

12 And all the witnesses, all the expert witnesses that
13 testified on that fire issue agreed that IRC provides two
14 things that are really important here. One, in the event
15 there is a local ordinance, the building code does not
16 supersede it. The building code yields to the more
17 stringent standard and to the local ordinance. So, for two
18 reasons it yields to that ordinance.

19 Additionally, Your Honor, the building code, it
20 clearly provides that the issuance of a certificate of
21 occupancy is not an approval and cannot be construed as an
22 approval of a nonconforming condition. That is why when
23 you have exceptions to the building code, the code itself
24 requires -- you must call those exceptions out to the
25 building official. If you don't call them out, there's no

1 way for anybody to know whether the building official
2 actually ever saw the violation or he was focused on
3 something else.

4 Nowhere in any evidence in this courtroom is there
5 any, any evidence of any kind that the self-described
6 oddball defendant called out their intent to violate the
7 Folly Beach ordinance to the fire marshal or to the
8 building official. So, we ask for a directed verdict, Your
9 Honor, against all defendants on both the implied warranty
10 and on the negligence, and obviously my argument has
11 focused more on the negligence. Everything that we allege
12 is negligent is also a breach of the implied warranty. And
13 numerous witnesses admitted that the workmanship was
14 pathetic. There were violations of industry standards.

15 And the court will probably -- is probably more aware
16 than I am. The only difference between the two causes of
17 action, the only practical difference in this context is
18 that the implied warranty does not require a sharing of
19 fault. Either you flashed it or you didn't; either your
20 construction job worked or it didn't. Clearly there's no
21 evidence that the job worked here, and so we're entitled to
22 a directed verdict on both those causes of action against
23 all defendants.

24 And I would also remind the court that Mr. Constantine
25 was apparently the design engineer on the fire system. He

1 was never shown the W.C. Services's contract which required
2 them to comply with local ordinances. That was never
3 brought to his attention. Nobody was able to testify that
4 they had a variance from a properly convened Folly Beach
5 committee meeting to put in a fire system that did not
6 comply with the building code. Even to the extent that
7 there remains any question whatsoever about the sprinklers
8 in the attic being a violation of the ordinance, the only
9 plans in evidence show separate fire systems that do not
10 violate the fire separation assembly between these units.

11 The uncontroverted testimony is is that W.C. Services
12 did not comply with the only plans in evidence, I believe
13 is Exhibit 705. They instead inserted their, their riser
14 pipes up through the fire separation assembly, creating a
15 chimney chase, a, a hot -- heightened risk of fire in the
16 middle of all these units. And we know -- we got Mr. Al
17 Schweickhardt on day one to tell us that he had looked for
18 the firestopping at the base of this wall and never found
19 it. And the evidence is is that because they ran this up
20 through the center, they then violated the fire assembly in
21 every unit they went by. So, even if there remains a
22 question about the Folly Beach ordinance, W.C. Services
23 violated the plaintiffs anyway and they violated the, the
24 assembly, they violate UL 341 which was specified for this
25 job by the architect. And, and Constantine said he did not

1 do any other plans. So, the only plan is the best evidence
2 we have the plaintiffs were violated.

3 THE COURT: Thank you very much.

4 Who would like to respond?

5 MR. KENDALL: I'll start, Your Honor. Thank you.

6 Rett Kendall for Complete Building.

7 We, we need to just bring focus to what it is we're
8 talking about in the negligence claim. This is not strict
9 liability. It's not -- *res ipsa loquitur* is not allowed to
10 be used as a substitute for proof of fault. So, we can't
11 just look at the situation as it has been presented at the
12 end of what's going on here without also considering how it
13 got there.

14 Now, the how it got there is the question that is in
15 dispute in this case. There has been because of -- for a
16 lot of reasons, there's a, a -- there is limited evidence
17 but there is evidence that the general contractor engaged
18 in a manner of conducting this job that could be construed
19 by this jury as having been appropriate levels of
20 supervision and oversight. There are numbers of -- the
21 meetings that were held, the consults with the architect,
22 the, the RFI process. All of those things indicate that
23 the general contractor in performing the job function
24 responsibilities that it has did carry on those
25 obligations.

1 One of the things we also have to be sure, this is
2 also not vicarious liability. The general contractor is
3 not liable as a matter of law for the negligent acts of its
4 subcontractors. They are independent. These are delegable
5 duties, and so it goes to what -- no one has actually
6 testified what the standard of care for a general
7 contractor is in specifics -- I think it's been implied in
8 a number of ways -- to meet the building code in those
9 things. But why we didn't meet the building code has not
10 been an answered questioned.

11 And so, Your Honor, there is sufficient evidence to
12 suggest here that we did perform the supervision oversight
13 coordination, quality control activities. That this jury
14 should have the chance to decide that question. And we
15 also had protective provisions within our contracts that
16 said our subcontractors were to monitor continuously their
17 own work on the job.

18 As to the -- what's in dispute in the case, I go back
19 again as to the items. Mr. Lucey has lumped everything as
20 though it's one pile, and it is not. We have multiple
21 issues that are being contested in this case. The, the
22 sprinkler contractor has put up a defense to -- a very
23 clear defense to its issues. The roof -- and expert
24 testimony was presented that the roof, the manner in which
25 the roof was attached over the field of the roof was not

1 negligent and it was, it was permissible. The deck
2 coatings shown -- we were shown diagrams of deck coatings
3 and how those were -- the manufacturers directed that those
4 be installed, and that there was actually -- the evidence
5 was that it was, it was, in fact, installed that way.

6 And then the railings that have been raised in this
7 case, there has been no evidence as to what those nailing
8 -- why those railings have -- the base has cracked. There
9 has been -- there was some evidence, there was some
10 suggestion the screws that were used not holding to the
11 wall. There was some talk, testimony about manufacturing
12 defect, but there's no -- there was certainly not clear
13 testimony that any negligence on the part of the general
14 contractor caused that to occur, certainly not enough
15 evidence to take it out of the hands of the jury to decide
16 these issues.

17 I'm certain that I have not listed all of the elements
18 that have been raised in the case but, Your Honor, this --
19 I don't think the judge -- that, that you will be able to
20 later -- maybe, maybe you can craft this, but it would be
21 very challenging to say you could direct a verdict on this
22 issue but not on this issue, this issue and not on that
23 issue when it comes to the pieces and parts of this case.
24 And so, Your Honor, all of this should go to the jury to be
25 considered by them. Thank you.

1 MR. COLE: Your Honor, for Tri-County, reiterate with,
2 you know, obviously a slightly different perspective for us
3 from Complete Building, and we'd just state what Rett said
4 for us as well because we're in sort of the hybrid
5 situation where we're both the person who's in charge, and
6 we also have subs underneath us to, to deal with that.

7 I just want to hit some highlights off of that, first
8 with saying that I'm not conceding that their contract
9 creates any liability for me. We'll deal with that
10 separately. But then also just from the suggestion that if
11 the defendants didn't put up a single photograph that
12 showed that something was right, that then that means we're
13 essentially admitting that everything is wrong is
14 incorrect. To me, I believe that's an attempt to try to
15 shift the burden of proof from the plaintiffs, who have to
16 prove their case and have to prove all of the different
17 elements instead of relying on, you know, us not proving
18 his case for him. And so I, I would just raise that.

19 And that, you know, from the position, you know, we
20 have not doubted that there is a resulting issue. It's not
21 entirely clear as to what exactly those initial causes
22 were, but we're still missing that big chasm in the middle
23 of where do you go from point A to point D with the
24 negligence and with the breach of warranty. That it's
25 convenient and it's easier, it might be easy to deal with,

1 but we're not here for convenience or being easy. We're
2 here to try to make sure that we get the law correctly and
3 make sure that the jury has everything that is before them
4 that they can deliberate on. So, I would use that as my
5 sort of support for the statements by Mr. Kendall and
6 against the plaintiffs.

7 MR. ATKINS: May it please the court? Your Honor, on
8 each of the elements mentioned by counsel for plaintiff,
9 ordinance, Folly Beach ordinance, plan variance, attic fire
10 wall penetrations, every one of those are hotly contested.
11 There's been more evidence presented in contradiction to
12 those assertions in the direct case and then in the case --
13 testimony of Mr. Constantine, Mr. Christopher, and Mr. Lazo
14 that each of those, there is, there is no responsibility,
15 no liability. There was nothing done by my client that was
16 wrong with respect to any of those elements. It is not
17 undisputed. It is hotly contested. So, I bring that to
18 the court's attention.

19 THE COURT: All right.

20 MR. REESER: Your Honor, at this point we would join
21 in with Mr. Kendall's arguments and Mr. Cole's argument. I
22 think it's pretty clear, based on the testimony presented,
23 there are certain issues as to causation. For example, if
24 the siding comes off, is it because it was the wrong
25 siding? Does it matter whether the nails were -- how they

1 were installed? All that is, is debatable in this case.
2 The caulk around the windows, we've heard it is a code
3 violation. What are the damages? Your Honor, for all
4 these, all these need to go to the jury for the jury to
5 make a determination on this claim as a whole, and not just
6 as to the negligence claim but as to the breach of warranty
7 claim -- breach of implied warranty claim, Your Honor.

8 MR. LUCEY: Your Honor, almost all the defendants'
9 arguments go to the amount of our damages, not whether or
10 not there was negligence on the property site by every
11 defendant, not whether or not there was a breach of implied
12 warranty on this property site by every defendant. We've
13 shown every defendant violated their duties. How bad and
14 extensive those violations are go to the damages. We did
15 not move directed verdict on the amount of damages. That's
16 obviously been reserved for the jury.

17 Your Honor, for the general contractor to stand before
18 you and say that they're not responsible for the
19 subcontractors is disingenuous. Any party can assume a
20 duty, even it was not already imposed upon them by law,
21 which the building code is imposed upon everybody. Anybody
22 can assume a duty by contract.

23 The court heard the engineer Schweickhardt, I believe
24 it was, read into the record the requirements of the
25 agreement in the general contractor's contract and the

1 general conditions where he agreed to be responsible for
2 every act and omission of every one of his subcontractors.
3 He can't now argue that doesn't hold so for him.

4 As to the master sub, as, as to Mr. Cole's client,
5 what, what is in evidence but the court may not have heard
6 much about is that the master sub-subcontract in evidence,
7 Exhibit Number 9, and this project specifications that is
8 in evidence, Exhibit Number 340, they both also incorporate
9 by reference the general conditions that Al Schweickhardt
10 read to the jury from the CBC contract. They incorporate
11 that obligation to be responsible for every act and
12 omission of his subcontractors, and that he is not allowed
13 to rely upon any design problem in, in -- for -- to -- for
14 -- to relieve himself of responsibility for any defective
15 work that he did, that he takes responsible --
16 responsibility for everything he does. And again, Al
17 Schweickhardt read both of those provisions to the jury.

18 The counsel for the second-tier subs raises allocation
19 questions in opposition to a directed verdict. That
20 doesn't change the fact that his witness admitted on the
21 witness stand, his client admitted on the witness stand
22 under oath that he violated the building code, that he
23 didn't do anything right. It doesn't matter that, that the
24 damages for replacement siding might be both because he
25 nailed it wrong and because it's the wrong size. He nailed

1 it, nailed it wrong. It's negligence and it's a breach of
2 his implied warranty, and he doesn't -- he conceded that in
3 his deposition.

4 And lastly, Your Honor, we mentioned briefly the
5 building code. There's been no precedent shown to this
6 court by any defendant that they can delegate their
7 obligations under the building. To the contrary, every
8 expert up there said everybody has to comply with the
9 building code.

10 I asked Mr. Elkin. Stand up, please, sir, and show
11 the jury where in the building code it says that the master
12 sub doesn't have to comply with it. He says you know that
13 doesn't exist. I did the same thing with the alleged
14 second-tier subs later on. He says you know that doesn't
15 exist. You cannot delegate your obligation to comply with
16 the building code, and so that's, that's not an argument
17 the court should entertain. Thank you, ma'am.

18 THE COURT: All right.

19 MR. KENDALL: There was one new, sort of new thing
20 raised there I want to comment on is the terms of the
21 contract. The contract that's been just mentioned just now
22 was the contract between the developer, Island Pointe, and
23 CBC. Those duties were created between them, and there's
24 no third-party beneficiary status that's been suggested or
25 proven that would make it flow to others.

1 So, the duties that he's alleged here are negligence.
2 They're not contract. They're breach -- implied warranties
3 and so the analysis of the liability and the fault, it, it
4 prevails -- I mean, it stands. And, and we would cite the
5 court to the case of *Fields vs. Haynes Waters Builders* --
6 excuse me, J. Haynes Waters Builders, that is 376 South
7 Carolina 545 2008 decision from the Supreme Court that says
8 that: Fields argued that in South Carolina, a general
9 contractor is automatically responsible for the negligence
10 of the subcontractor. And the Supreme Court says we
11 disagree.

12 THE COURT: All right. Well, I've heard the arguments
13 of counsel. I've obviously heard the evidence that was
14 presented during the trial. It's probably as close a call
15 of a directed verdict I've seen in a while, but I am not
16 going to direct a verdict. I think there is still an issue
17 that is properly before the jury as to causation.

18 Ultimately, that's the largest issue that I think the
19 jury is going to have to determine: did, in fact, these
20 alleged acts of negligence and breach of warranty cause the
21 damages that the plaintiffs allege. And that's ultimately
22 the main reason I am going to respectfully decline your
23 motion for directed verdict at this point in time, Mr.
24 Lucey.

25 So, we'll move on to any other motions the attorneys

1 need to bring before the court at this time.

2 MR. LUCEY: Yes, Your Honor. Referring to plaintiff's
3 email to the court last night, plaintiff is dismissing
4 their claims against Island Pointe, LLC, and we will not
5 need to charge the jury.

6 THE COURT: Okay.

7 MR. KENDALL: Your Honor, we filed a cross-claim
8 against Island Pointe. They did answer, and so we do not
9 think it's appropriate to remove them from the verdict from
10 at this point. We will -- we'd also make at the
11 appropriate time, we'll make a motion for default to be
12 entered against them, but they are, they are not --
13 plaintiff should not be able just to throw them out of the
14 case. We're saying Rule 41 requires consent. Of course,
15 the court can order around that, but just to state we're
16 objecting to their dismissal.

17 THE COURT: Okay.

18 MR. BOYD: In addition, Your Honor, there has been
19 evidence presented from which a jury could conclude that
20 the developer contributed. They were at the head of the
21 chain. They had the -- they held the financing. They
22 determined what they wanted. They were the ones, in
23 conjunction with the architect, that had to answer the
24 RFIs, the change orders. The plaintiffs testified that
25 they ran the HOA. There's no evidence the developer

1 maintained the buildings, and there's also no evidence that
2 the developer told these homeowners about these conditions
3 or did anything to try to discover them.

4 MR. LUCEY: In case my motion was misunderstood, I
5 didn't dismiss their claims. We dismissed the plaintiffs'
6 claims. They don't have any standing to object to our
7 dismissal, our claim against Island Pointe. And to the
8 extent that it matters, it's our understanding that they
9 never did answer the second amended complaint, and they did
10 not answer the second amended cross-claims, be that as it
11 may.

12 THE COURT: Okay. Well, they said they'd address the
13 default at a different time. If you're dismissing them,
14 you're dismissing them. That's within your prerogative,
15 frankly, as the plaintiff. So, obviously I'm not going to
16 put Island Pointe, LLC, as a potential defendant on the
17 verdict form and with regards to damages the plaintiffs are
18 seeking in this case.

19 So moving on, are there any other motions at this
20 point in time? Let's not get into the jury charges and
21 verdict form just yet. Let me hear if there are any other
22 motions.

23 MR. LUCEY: Yes, Your Honor. Plaintiff moves for a
24 directed verdict as to all the affirmative defenses in this
25 case. I have a list of them if you'd like to go through

1 MR. BOYD: Nothing further from me, Your Honor.

2 THE COURT: I will grant your directed verdict motion
3 as to comparative negligence. I don't find that the record
4 supports that affirmative defense. I think that the
5 initial homeowner's testimony regarding the roof shingles
6 showed that he immediately brought it to the attention of
7 the people he needed to do that with. I don't find there's
8 been any, any inference to be drawn that the plaintiffs had
9 any negligence whatsoever in maintaining the premises.
10 Contrarily, I actually think there's been substantial
11 evidence presented that these repairs have been going since
12 they were discovered, and I think that's actually part of
13 CBC's defense in general is that we've, we've been on this.
14 As soon as we knew about it, we're on it, and so I don't
15 find that the evidence supports comparative negligence.

16 I will, however, charge the standard failure to
17 mitigate as part of the damages portion of my jury charge.
18 So, that will be incorporated per your request from CBC,
19 but I'm not going to charge comparative negligence, and I
20 will not include it on the verdict form. I don't think
21 it's appropriate. All right.

22 MR. LUCEY: Thank you, Your Honor.

23 THE COURT: Okay.

24 MR. LUCEY: Plaintiff moves for directed verdict on
25 intervening negligence of third parties. There has been a

1 complete absence of proof on that ground, but we did hear
2 somebody. I think Mr. Reeser asserted that a few minutes
3 ago.

4 THE COURT: Yeah, Mr. Reeser, you want to flesh that
5 out a little bit more?

6 MR. REESER: Your Honor, I think...

7 THE COURT: Is there evidence in the record to support
8 that there was an intervening actor?

9 MR. REESER: Your Honor, I think there's certainly
10 evidence that there was as to many of the issues the
11 plaintiff has described and put up in his case, that the
12 source of the negligence was not or may not, from which a
13 jury may conclude, may not have been the actions of one of
14 the parties here.

15 There are, there are many reference in the record
16 again to these meetings, these architects, these engineers,
17 the -- is the issue the selection? Is it the installation?
18 There are numerous factors from which a jury can determine
19 that there is intervening negligence, superseding
20 negligence, or that the sole negligence of a third party,
21 i.e. choosing the siding is what caused the damage claimed
22 by plaintiffs in this suit. And, Your Honor, I, I think
23 there's plenty of evidence presented about how these
24 buildings were constructed, what the process was, through
25 which a jury could come back and question.

1 THE COURT: Okay.

2 MR. BOYD: Your Honor, CBC would also join and adopt
3 and incorporate those arguments. Also some other things
4 that came into evidence.

5 Tri-County requested a detail that came from the
6 architect on some flashing that had gone up to CBC. CBC
7 had sent it up to the architect, and there's no indication
8 that the architect ever would give any detail to the
9 construction parties. There's plenty of evidence about the
10 developers' role. They control the project. They control
11 financing. They control what to approve or not to approve.
12 So, I would just add that to Mr. Reeser's arguments.

13 THE COURT: All right.

14 MR. ATKINS: Your Honor, I've also submitted
15 intervening, superseding negligence cause on the, on the
16 front end of this case. W.C. Services, I think it's fairly
17 clear that there's evidence that there was no obligation
18 for assignment of responsibility concerning the ceiling
19 penetrations of any type, much less sprinkler pipes. So,
20 the failure to do that is itself intervening cause. We
21 didn't have any responsibility. Who was and why didn't
22 they do it?

23 The other thing with the penetrations also is
24 notoriously in unit 1635 there was a section, horizontal
25 drywall gypsum that was torn. Mr. Mease concluded because

1 it was about the same length of pipe as, as the tear, that
2 it must have been the installer. He says -- I said do you
3 have any other opinions on this? He says no. It could
4 well have been vermin. Yeah, as far as I know. Who knows.
5 But he had no other evidence. So, there is intervening,
6 superseding cause of some type, at least at that location.

7 So, I think with the penetrations in particular, I
8 still have evidence to which I could argue to the jury that
9 there are superseding and intervening causes of negligence
10 for firewall penetrations.

11 THE COURT: Okay.

12 MR. LUCEY: Your Honor.

13 Oh. Please.

14 MR. COLE: I'll just join in what's said before, and
15 I'll just add specifically with the decks, we have
16 testimony that the decks were recoated. And, you know, the
17 only testimony that, that the defense got out of Dr. Love
18 was that they only had it recoated once. Whether or not
19 they had it recoated once or more times, the evidence that
20 the plaintiffs are saying is that the decks are incorrect
21 today, and so we have somebody that the jury knows went out
22 there in 2014, 2015 to fix these decks. And if the decks
23 are not right today, then we have that person who didn't do
24 it right in that time period who shares in some of this
25 responsibility. And they are clearly a party that would be

1 one of our, you know, third parties that are possibly part
2 of the negligence.

3 MR. LUCEY: Your Honor, I think that the, the
4 responses are all mixing three concepts. Plaintiff's not
5 moving for directed verdict on proximate cause. We still
6 have that burden; we get that. Secondly, you can't just
7 throw out the fact that architect's out there and say,
8 okay, he might have done something. That's speculative.
9 They all had experts up here. They could have had an
10 expert say that architect was negligent, and that's what
11 caused the problem. They didn't do that. I even talked
12 about it with Mr. Elkin. I said you're getting awfully
13 close to design issues here. You, you have some testimony
14 to give us on that? He was not going to criticize the
15 designer; Al Schweickhardt was not going to criticize the
16 designer.

17 In fact -- you can't just say, oh, it was the
18 architect on the job. You got to show some breach of duty
19 or negligence, and you've got to show some proximate cause.
20 They haven't shown any of that.

21 The -- what they're also missing is that the
22 affirmative defense of intervening acts of third parties
23 doesn't contemplate joint tortfeasors. It truly
24 contemplates third parties, people not involved. So, if
25 the developer made a bad decision with them, he's a joint

1 tortfeasor and that, that's a different issue. It's not an
2 issue that supports an intervening act of third parties.

3 There's absolutely not a shred of evidence that the
4 repair of the decks caused a problem. You can't just throw
5 out, oh, there was a repair. Maybe something happened.
6 That's pure speculation. That does not support a charge of
7 intervening acts of third parties. They must show
8 proximate cause. It is, it is an affirmative defense.
9 They have not met that burden to even raise the issue, let
10 alone to get past the 50 yard line on it. Thank you.

11 THE COURT: Anyone respond?

12 MR. BOYD: Nothing further from me, Your Honor.

13 MR. LUCEY: And I neglected to, to address the
14 argument on behalf of W.C. Services with regards to ---

15 THE COURT: You're welcome to.

16 MR. LUCEY: --- the racoon.

17 THE COURT: A little bit different.

18 MR. LUCEY: The racoon on that, on that one void in
19 the wall. That would be a prime example of an issue that,
20 that intervening acts of third party doesn't contemplate.
21 If there's another subcontractor up there causing damage,
22 that's a joint tortfeasor. That doesn't get you the
23 intervening act of third party. What that gets you is any
24 joint tortfeasor could be held liable for the entirety of
25 plaintiffs' damages. Thank you, ma'am.

1 THE COURT: All right, I would agree. I'm going to
2 grant directed verdict as to intervening, superseding
3 causes. I don't think there's really been evidence,
4 sufficient evidence presented in the record to support that
5 affirmative defense. So, that will be granted to all
6 defendants remaining.

7 Any other motions at this point in time?

8 MR. LUCEY: No, Your Honor.

9 MR. KENDALL: Your Honor, Rett Kendall on behalf of
10 Complete. We would like to move at this time for a
11 directed verdict on our cross-claims against Tri-County and
12 W.C. Services.

13 THE COURT: And that remaining cross-claim is what?

14 MR. KENDALL: It's the contractual indemnity claim.
15 It arises under the subcontracts. Those subcontracts have
16 been put into evidence. Your Honor has already sustained
17 those contracts as -- through the motion for summary
18 judgments that were previously filed.

19 There's been no testimony offered that there is
20 anything -- any reason to void those contracts or to
21 interpret them any differently than what's on their plain
22 face. There's been no suggestions of ambiguity,
23 overreaching, of, of anything that would limit the way that
24 they're written.

25 So, the way that they're written, it says that, that

1 confuse the jury with their initial deliberations. And
2 then we come back and we have I guess our, our -- we test
3 the way the, the, the statutes and the system works.

4 THE COURT: I'd rather not bifurcate. I'd rather give
5 the whole thing to the jury and let them make a decision.

6 MR. KENDALL: Your Honor, this is, this is related to,
7 just since we're talking about that process -- I think it
8 all kind of works together -- is the idea of the, under the
9 allocation statute, it also contemplates a bifurcated
10 proceeding upon the motion of the parties. Allow the
11 jurors to apportion fault among joint tortfeasors. And so
12 just to -- I put it out there. We're making ---

13 THE COURT: Well, that can be ---

14 MR. KENDALL: We are making a motion to ---

15 THE COURT: --- effected by having a special verdict
16 form which I've allowed you all to submit, and that's the
17 purpose for having these verdict forms is so that we don't
18 have to bifurcate and have them keep ---

19 MR. KENDALL: Right.

20 THE COURT: --- coming back.

21 MR. KENDALL: I'm not insisting on that bifurcation.

22 THE COURT: Right.

23 MR. KENDALL: I simply say that that's out there. We
24 do want an allocated verdict and that -- under the
25 negligence and the joint tortfeasor portion of the

1 analysis. And then it rolls into a separate analysis,
2 which is the contractual analysis. One is based on
3 percentages, and the other is based on dollar amounts. So,
4 yes, this is not straightforward. It will take some
5 explanations. I agree with you.

6 THE COURT: Okay. Someone else stood up.

7 MR. LUCEY: Plaintiffs were unable to follow that.
8 Are they making a motion for an allocation phase or is it
9 -- or not? We need to know that before we argue to the
10 jury.

11 THE COURT: The court would prefer -- the court would
12 state that we need to give them a verdict form that
13 allocates. I don't want them to come back. I don't want
14 the jury to keep coming back and forth. I think that gets
15 very confusing and can lead to inconsistent verdicts very
16 quickly and more questions.

17 And so what we need to do is -- what was your initial
18 motion?

19 MR. KENDALL: I moved for directed verdict on the
20 issue of liability under the contractual indemnity
21 provision, with damages to be the question presented to the
22 jury.

23 THE COURT: That's denied.

24 MR. KENDALL: Thank you.

25 THE COURT: Thank you.

1 MR. COLE: And just so it's on the record, we join
2 obviously.

3 THE COURT: Noted for the record. Mr. Cole and Mr.
4 Reeser are joining those.

5 MR. REESER: And, Your Honor, we would like to renew
6 our motions for directed verdict as to plaintiffs'
7 negligence and breach of warranty claim -- breach of
8 implied warranty claim, our motion for, motion for partial
9 summary judgment argued at the directed motion stage, and
10 then the motion for mistrial.

11 THE COURT: All right. Raised and denied.

12 MR. COLE: And same thing, renew our directed motions
13 -- directed verdict motions for the negligence and the
14 breach of warranty for the same reasons we had before, that
15 we think there's insufficient evidence for it to go
16 forward.

17 Also, I would like to raise a directed verdict to not
18 allow the, the -- or to prevent the plaintiffs from putting
19 up their testimony of loss to use as one of their
20 components of damages. We known how they're going to get
21 to that number. They're going to take the, the numbers
22 that we heard the plaintiffs say on the stand and kind of
23 quizzical sounds of, of what they think the rental value
24 is, which they have no basis to, to provide, and then
25 they're just going to do math.

1 I don't disagree that math is something that people
2 can do, but I think the starting out numbers from them just
3 saying this is what I think the rental value is with no
4 real basis for it, that is something that I don't believe
5 that the, the -- let me back up.

6 The case law talks about that somebody can talk about
7 the value of their property, but we're talking about the
8 rental value of their unit. But we have no basis for a
9 veterinarian and lady works who works -- that she works in
10 video production, have any knowledge of renting the
11 properties because these units they say are ones that they
12 really can't rent. And so, you know, it starts from a
13 premise of these are not the typical type of units.
14 Therefore, we don't have a good measure to say what it is.
15 So, we're just going to toss a number out there, which is a
16 speculative number. And if that's the basis for it, then
17 they can't say that's the basis for the lost use because
18 they can do the math for it.

19 MR. BOYD: Your Honor, Complete Building Corporation.
20 I join in that motion. But let me add something I think
21 may even be a more important argument to that point is that
22 is an individualized inquiry. There's been no class-action
23 certified. So, that information cannot be given in a
24 representative capacity. It would require an
25 individualized testimony from each plaintiff. Each one is

1 going to have a different circumstance.

2 Some, some when we deposed them had multiple homes in
3 the area. Some have, I mean, some may have more knowledge
4 about rental rates they may have rented. Others did not.
5 Neither one of these people I recall -- because I believe I
6 asked that question, whether they had actually rented their
7 properties. To Ms. Fitch, I know I asked that, had you
8 actually rented your property, and she said no.

9 So, they're not brokers; they're not realtors.
10 They've never rented. It's a different analysis than just
11 giving a bald-faced opinion as to what I think my home is
12 worth. It's a more specialized inquiry, and it's not a
13 representative testimony. It has to be an individualized
14 inquiry from each plaintiff because no class was ever
15 certified in this matter.

16 MR. ATKINS: Your Honor, I would join that, and the
17 other thing I would point out is absent a class, absent
18 some structure where you take one number and apply it to
19 some other unit, the law is pretty clear that an individual
20 can give an opinion of the value of their own property.
21 They can give a value of what they think the market value
22 is, and arguably they can give an opinion about the rental
23 value of their property. But that doesn't extrapolate and
24 become someone else's property. That individual's got to
25 give that opinion. There's nothing -- there's no basis

1 here to take that number and extrapolate to thirty-nine
2 other units.

3 THE COURT: Okay.

4 MR. REESER: For the record, I would just join in his
5 motion and the arguments, incorporate the arguments of
6 counsel made before the court.

7 THE COURT: Thank you, Mr. Reeser.

8 Plaintiffs may respond.

9 MR. LUCEY: Yes, Your Honor. Thank you. Your Honor,
10 what they're -- I can't believe we're at the close of trial
11 and somebody's bringing up deposition testimony. That's
12 just completely improper.

13 There's been a record made in this case. The rental
14 value came into evidence. There is assignments. There's
15 forty assignments in evidence. All the rights are assigned
16 to the homeowners association. The overwhelming evidence
17 in this case is that there are forty nearly identical
18 tenant houses in this. There is no evidence that they did
19 not share similar rental values. In fact, the evidence is
20 they do because the two homeowners that talked about it
21 gave the exact same rental value, which was 3 to \$3,000 per
22 month.

23 The mention about them not being able to rent the
24 houses, they misconstrue the testimony. The testimony was
25 that the master deed prohibits short-term rentals of less

1 than three months. Happens to be Handegan says they need
2 to be out of their units for three months. So, that
3 coincides. The minimum rental in this place is the amount
4 of time Handegan needs to do the construction on these.

5 They're, what they're trying to do now is they're
6 trying to move to strike testimony after the trial. He
7 can't do that. These objections are not timely made. The
8 evidence came in. Plaintiff has laid foundation for the
9 loss of use claim, and a motion for a partial directed
10 verdict on the damages is an improper motion. Thank you,
11 ma'am.

12 THE COURT: That motion is denied but your -- over
13 your objections, are made clear for the record, counsel.

14 Anything else by way or motions now that the jury is
15 finished with their lunch?

16 MR. REESER: Your Honor, very briefly. Was there a
17 ruling on my directed, my directed verdict motion as to ---

18 THE COURT: Yes, I'm sorry. It was denied once again.

19 MR. REESER: Thank you, Your Honor.

20 THE COURT: We'll make that more clear for the record.
21 I appreciate that, Mr. Reeser. Certainly want to make
22 everybody's arguments clear and my rulings as well.

23 Okay. Well, let's do this. Let's take a break,
24 everybody, for about...

25 (A PAUSE.)

1 THE COURT: All right, we'll take a break until 2:00,
2 everybody, and I'll inform the jury they're free to roam
3 around until 2:00. Actually, wait a minute. We're going
4 to have to get into charges.

5 We've crafted a jury charge; we've been working on it
6 with all of your input through emails and so forth. So, I
7 don't think it's going to take that long. I think the
8 longest thing is going to be getting all your objections on
9 the record. So.

10 MR. COLE: Your Honor, can I just ask just to maybe
11 figure out timing of it? We got the one that was drafted
12 that I think you sent last night.

13 THE COURT: Yeah.

14 MR. COLE: Or this morning or something.

15 THE COURT: Yeah. Yeah.

16 MR. COLE: Have you revised that ---

17 THE COURT: Yes.

18 MR. COLE: --- further?

19 THE COURT: Yes. Yes.

20 MR. COLE: Okay.

21 THE COURT: Yes.

22 MR. COLE: All right.

23 THE COURT: Yes.

24 MR. COLE: Okay.

25 THE COURT: So.

1 MR. COLE: Then we probably ---

2 THE COURT: We'll send you this most recent draft now.
3 Well, in the next few minutes we'll send it, and you can be
4 looking over it while you eat, and we'll come back at 2:00
5 and discuss that and have the jurors on standby, okay?

6 MR. COLE: Your Honor, can we also -- just I know that
7 court personnel, they can't leave if we're in here. So, I
8 know it might take at least fifteen minutes to -- let's
9 make sure that's in our timing of it if we have to leave.

10 THE COURT: Work it out with them however you like.

11 (TRANSCRIPT MARKED INTO EVIDENCE AS COURT'S EXHIBIT
12 NUMBER 12.)

13 (OFF THE RECORD.)

14 THE COURT: All right. So, you're probably all
15 reviewing the charge that my clerk just sent, and we
16 received another verdict form from the plaintiffs a little
17 while ago. It's the best one I've seen submitted thus far.
18 Let's talk about the charge first.

19 MR. KENDALL: Your Honor, by the way, I haven't seen
20 that verdict form, the newest version. Do you have another
21 copy of it?

22 (A PAUSE.)

23 THE COURT: Okay, so we have tried to do our best to
24 accommodate most, if not all, of the suggestions and
25 objections made by all counsel to the charge that was

1 emailed out yesterday afternoon.

2 Let's see, the credibility that the plaintiff
3 requested separately is incorporated into my standing
4 beginning charge. I discuss that credibility means
5 believability, and I discuss all the factors the jurors can
6 consider in assessing credibility of witnesses. So, we did
7 not -- we thought it was cumulative to put that charge in
8 there twice.

9 Pattern evidence we didn't believe was an issue really
10 brought before the jury. I know we discussed that at the
11 outset of the trial. There was a motion *in limine* with
12 regards to how the defense thought the plaintiffs were
13 going to present pattern evidence. It simply just didn't
14 come in in this case. So, we're not charging pattern
15 either.

16 And then the specific residential property condition
17 disclosure statement, I haven't heard any evidence that
18 would support that being charged, I don't believe, in this
19 case. Do you have anything to argue with that, Mr. Lucey?

20 MR. LUCEY: Yes. Mr. Schweickhardt doesn't consider
21 some of the defects to be a defect or a code violation to
22 be a defect unless it results in consequential damages.
23 Truth of the matter is the homeowners are damaged whether
24 the defect has consequential damage or not because any
25 known defect has to be disclosed when they try to sell a

1 residence. So, regardless of whatever the extent of the
2 consequential damages, the homeowners have to fix the
3 defect no matter what.

4 (A PAUSE.)

5 THE COURT: We've made all the other requested changes
6 by the plaintiff in these jury charges.

7 MR. LUCEY: Thank you, ma'am.

8 THE COURT: Move over where I'm pulling up the
9 residential property condition disclosure statement charge
10 that you proposed now to review the language. Do y'all
11 have an extra copy of that? This was your proposed charge
12 36 from the plaintiffs. Thank you.

13 (A PAUSE.)

14 THE COURT: Okay, we'll add it. I don't, I don't
15 mind. I have no problem adding plaintiffs' request to
16 charge number 36.

17 MR. LUCEY: They, ma'am.

18 MR. COLE: Your Honor, I haven't had the benefit of
19 reading request to charge number 36.

20 MR. LUCEY: It was included in what we served last
21 week with ---

22 MR. COLE: What is it?

23 THE COURT: Residential property condition disclosure
24 statement.

25 MR. BOYD: Oh, okay, that argument.

1 THE COURT: Relatively short. It just started, that
2 the:

3 South Carolina law requires an owner of real
4 property to provide a purchaser with a written
5 disclosure statement, which must include the
6 following characteristics and conditions of the
7 property. List three specific portions that must
8 be disclosed pursuant to South Carolina Code
9 127-50-40.

10 MR. BOYD: I, I, I think that some of this is somewhat
11 confusing in that Columbia Electrical Heating and Cooling
12 Mechanical are not in the case.

13 THE COURT: Okay.

14 MR. BOYD: I, I still think the charge as a whole is,
15 is rather confusing because this seems to go toward what
16 duties the seller has to put purchasers on, on notice of
17 conditions they're aware of so that the purchaser can make
18 a complete and, and knowing purchase. I don't really think
19 we had a lot of testimony on that really.

20 THE COURT: I guess, Mr. Lucey, is this kind of going
21 towards your diminution of value argument essentially, the
22 property? You said Mr. Schweickhardt testified regarding
23 the seller's duty to disclose.

24 MR. LUCEY: No. He testified that a defect without
25 consequential damage doesn't need to be fixed if there's no

1 damage. This shows there is damage as a matter of law. We
2 don't object to deleting paragraph 3, just charging
3 paragraph 2 and 4.

4 THE COURT: It is a little odd in this context. I
5 mean, normally this is something that would be charged in a
6 different context.

7 MR. BOYD: I don't think they give up anything by the
8 other charges to argue negligence and damages by not having
9 this in here. I, you know, I think it's confusing.

10 MR. COLE: They, they start out, Your Honor, by saying
11 we want to fix this and we're going to have to move out and
12 be reimbursed for that, and they didn't say anything about
13 this in ---

14 THE COURT: Yeah, I don't know that there's evidence
15 in the record to really support it in this context. While,
16 I mean, I agree with you that's the law, I'm not sure that
17 it's really applicable to the causes of action, negligence
18 and breach of implied warranty.

19 MR. LUCEY: In the interest of moving on, Your Honor.

20 THE COURT: We'll just forget that one. Is that all
21 right?

22 MR. LUCEY: We'll withdraw it, yes, ma'am.

23 THE COURT: Thank you, Mr. Lucey.

24 All right. So other than that, I believe we've
25 addressed all the concerns or additions proposed from the

1 plaintiffs, and then we'll move over to the defense. We
2 tried to change things and word them as you requested, but
3 I'll start with CBC. Anything sticking out to you?

4 MR. BOYD: Yes, ma'am. The first charge I would like
5 to object to is that portion of the -- it's found in the
6 nondelegable duty charge. First, I think nondelegable
7 duties under the law and in the cases cited in the
8 plaintiffs' charge really dealt with things like hospitals
9 and that sort of thing, and that's where that was drawn
10 from. So, I don't think the law applies, nondelegable, to
11 this situation.

12 Secondly, the title itself is misleading. It says
13 nondelegable duty, and then it goes on to say: Builders and
14 subcontractors may delegate the duties imposed upon them.

15 Finally, I think it's objectionable and we ask that
16 the statement: The builder remains liable for the negligent
17 act of its subcontractors. And just renew all the prior
18 arguments we made at the directed verdict stage at the
19 close of all evidence under the case of *Fields vs. Jay*
20 *Haynes*. The court was dealing with jury charges in that
21 case.

22 Under the standard care of a general contractor, the
23 plaintiff attempted to get in a jury charge that
24 essentially would have told the jury or, or inferred to the
25 -- made the jury infer that in South Carolina, general

1 contractor's automatically responsible for the negligence
2 of a subcontractor, and the court overturned that charge.
3 And so I think, I think that statement there is, is not in
4 tune with the law and ask that it be taken out.

5 MR. LUCEY: In the interest of time, Your Honor, we'll
6 withdraw the paragraph that says therefore, but we do
7 believe that the first paragraph is appropriate statement
8 of the law.

9 MR. BOYD: I'd be fine with that, Your Honor, as long
10 as we change the title to delegable and nondelegable
11 duties.

12 MR. LUCEY: Is the court planning on reading titles?
13 A lot of times ---

14 THE COURT: No, but I am giving them a copy of the
15 charge. So for that reason, we will change -- yeah, take
16 that paragraph out. We'll change it to
17 delegable/nondelegable duties. How's that, Mr. Boyd?

18 MR. BOYD: Yes, ma'am.

19 THE COURT: All right.

20 MR. BOYD: That would be great.

21 THE COURT: Next comment.

22 MR. BOYD: The next one is an objection under
23 negligence per se, specifically under the portion that
24 talks about proof of violation of statute, ordinance, or
25 regulation is -- constitutes negligence per se, and I think

1 the paragraph I'm -- let me get to it, Your Honor:

2 Municipalities in South Carolina are charged by
3 statute with adopting and implementing building
4 codes. If a building code has been adopted as a
5 statute, any violation of that building code
6 constitutes negligence per se. If you find that
7 the defendants violated.

8 And it goes on to say what it says, that you find that
9 it violated those adopted statutes and it proximately
10 caused, you know, then you can find negligence per se.

11 The objection there is while we heard a ton of
12 testimony on the, on building code violations, what we did
13 not hear at all was that the local, applicable governing
14 authority had adopted any codes except specifically for
15 some fire codes. That was put into evidence.

16 The -- as to all the other building code violations,
17 the experts admitted that there were building code
18 violations, but that is inadequate. Under the case of
19 *Kincaid vs. The Landing Development Corporation*, 289 South
20 Carolina 89 1986 344 S.E. 2d 869, this was a case where
21 homeowners had brought a negligence, a breach of warranty
22 claim against a developer, contractor, and others. One of
23 the issues was the charge, and court in that case held
24 that:

25 Local ordinances are not subject to judicial

1 notice, and absent proof that standard building
2 code was adopted by local authority, violation of
3 building code was not negligence per se.

4 We've heard no testimony that I recall that, that the
5 City of Folly Beach had adopted all of these building codes
6 that were referenced by plaintiff. There were -- we
7 concede numerous testimony that building code violations
8 existed and that certain types of construction were, in
9 fact, building code violations. But except for the fire
10 ordinances that were discussed, there was no evidence from
11 anybody on the witness stand that the City of Folly Beach
12 has, in fact, adopted this building code that has been
13 violated by any of these defendants.

14 In fact, the court went on to say that it was:

15 An erroneous charge that violation of alleged
16 standard building code was negligence per se.

17 They only found it was not reversible error where the
18 trial court had previously directed verdict for homeowners
19 on the question of liability, which is not the case here:

20 And where the trial court carefully instructed
21 the jury that violation of alleged building code
22 was not recklessness, willfulness, or wantonness
23 per se.

24 Again, we move to strike that portion of ---

25 THE COURT: That paragraph that begins municipalities?

1 MR. BOYD: Yes, ma'am.

2 THE COURT: Okay. Mr. Lucey.

3 MR. LUCEY: Yes, Your Honor. The court just heard
4 counsel reference the standard building code. The reason
5 that's significant is because the *Kincaid* case they're
6 relying on is clearly outdated. The standard building code
7 hasn't been in effect in this case since before the year
8 2000. Back then, codes were local and you had to prove
9 them locally. In approximately the year 2000, the State of
10 South Carolina enacted a statute mandating every
11 jurisdiction adopt the international codes. Since that is
12 now a state code, it's entitled to judicial recognition.
13 You do not need to prove it locally. And every expert on
14 that witness stand, specifically including defense expert
15 Elkin, confirmed that the blue book that I carried around
16 in the courtroom, the *International Residential Building*
17 *Code*, 2003, was, in fact, the building code that was
18 applicable to the construction of Peas Island and that it
19 had the force of law.

20 THE COURT: I recall that as well, so that's why it's
21 in there. We're going to leave it in there over the
22 objection of defendant counsel.

23 What's next, Mr. Boyd?

24 MR. BOYD: Bear me, ma'am, just a minute, please. I
25 haven't had a chance to compare your current revised charge

1 with the prior charge. There was a statement in, in the
2 section on damages that the repair cost could include the
3 expense necessary to perform the repairs to existing
4 building codes. Was that, was that brought current?

5 MR. KENDALL: I don't see it now.

6 MR. BOYD: You don't see it? Okay, if that's not in
7 there ---

8 THE COURT: We took it out. Yeah, we took that out.

9 MR. BOYD: Okay.

10 THE COURT: No, wait a minute. It's not out:

11 In this case, the general measure of damages
12 alleged by the plaintiff ---

13 This is on page 22.

14 --- is the cost of repair to include the expense
15 necessary to perform the repairs to existing
16 building codes and future loss of use.

17 MR. BOYD: That, that charge, I think, is designed to
18 deal with a situation where we're talking about ---

19 MR. LUCEY: May I can shortcut, maybe I can shortcut
20 this. We're okay with that sentence being dropped because
21 variance in building codes is not really an issue in this
22 case.

23 THE COURT: Okay. We'll just take out that sentence.

24 MR. BOYD: Thank you.

25 THE COURT: Taken out. Stricken. Thank you, Mr.

1 Lucey.

2 MR. BOYD: And I'm fine with plaintiff helping with
3 this one, too, if they've had a chance to look at it, is
4 the issue regarding to total loss versus partial loss of
5 the building removed.

6 THE COURT: That we took out.

7 MR. BOYD: Okay. Thank you.

8 THE COURT: Yeah, they consented to that as well.

9 MR. KENDALL: Sorry. We're still working through
10 this. Sorry for the confusion.

11 MR. BOYD: At this time, I have no further objections.

12 THE COURT: Anybody else?

13 (COUNSELORS CONFER.)

14 MR. COLE: Your Honor, I'm just reading through your
15 thing now if you'll give me a second.

16 MR. BOYD: Your Honor, one other, one other matter.
17 There's nothing here in the, the instructions on
18 apportionment allocation among the defendants. How do you
19 plan to deal with that because Mr. Kendall didn't move for
20 allocation among the defendants in the case. And I thought
21 I heard Your Honor to say that you did not want to use the
22 two-step process referred to in that statute but just to
23 send it all back ---

24 THE COURT: We've done it on the verdict form. I
25 believe we've taken care of that.

1 MR. ATKINS: Your Honor, addressing that issue on the
2 verdict form and then the concurrent causes of joint
3 tortfeasors, that's where I have some confusion at best
4 about how -- the language you're using, joint tortfeasors,
5 how that fits and comports with the allocation statute, and
6 which I assume the charge is based upon -- I mean, the
7 verdict form is based upon.

8 MR. LUCEY: Defendants are not entitled to an
9 allocation if there's a finding of gross negligence.
10 They've got to get past the gross negligence question
11 before it becomes relevant.

12 MR. ATKINS: I think, if I recall, the statute says in
13 tort, if two or more are concurrently caused and they
14 determine one is less than 50 percent, they're entitled to
15 allocation.

16 (A PAUSE.)

17 THE COURT: Mr. Kendall, you sent a proposed form that
18 did not seek to allocate damages. Is that correct?

19 MR. KENDALL: No, ma'am, mine does. It has one point
20 in there. I can't -- let me see if I've got my draft.

21 THE COURT: The plaintiffs' proposed verdict form
22 allocates only as to punitive damages. Is that correct,
23 Mr. Lucey?

24 MR. LUCEY: Yes, ma'am.

25 THE COURT: And not as to the two causes of action.

1 Defendants are seeking to have the two causes of action
2 allocated as well. Is that correct, Mr. Atkins? What is
3 it you're asking me to do?

4 MR. ATKINS: What I'm asking is the charge seems to be
5 consistent with what you're going to be charging -- or, or
6 the verdict form ---

7 THE COURT: The verdict form.

8 MR. ATKINS: --- the jury is going to see.

9 THE COURT: Okay.

10 MR. ATKINS: I mean, you're talking about joint
11 liability as if it's a joint and several liability.
12 There's no, no language at all about to what extent, if
13 any, there -- to the two concurrently causes of injury are
14 liable ---

15 THE COURT: So, the fact that I'm even allowing them
16 to choose who was negligent you think is inconsistent with
17 the charge?

18 MR. ATKINS: My, my recollection of, of the allocation
19 statute is that -- and it's in tort. It speaks in terms of
20 tort is my recollection, for what that's worth. And it
21 says if in determining that two or more concurrently cause
22 a singular accident or injury, damage, and they determine
23 one or more are less than 50 percent, then that individual
24 is entitled to some kind of an allocation under the
25 statute. And I don't know how to -- I don't know how it

1 fits, but it certainly is consistent with joint and
2 several. If you got to be in for a penny, you're in for a
3 pound.

4 MR. LUCEY: Your Honor, I have a copy of the statute,
5 if it pleases the court.

6 THE COURT: Sure.

7 MR. LUCEY: I'd be happy to hand it up. The final
8 paragraph of the anti-joint and several liability statute,
9 as we referred to it, paragraph F says:

10 This section does not apply to a defendant whose
11 conduct is determined to be willful, wanton,
12 reckless, grossly negligent, or intentional; or
13 conduct involving the use, sale, possession of
14 alcohol; or illegal use, sale, or possession of
15 drugs.

16 So, unless they get past the gross negligence question
17 on the verdict form, they're not entitled to allocation. I
18 can hand this up to the court.

19 Now the allocation is unnecessary as the plaintiff has
20 proposed the jury verdict form now because the only
21 incident question is is Mr. Kendall's client entitled to
22 any recovery on its cross-claims, and we've put questions
23 in there as to that and that amount.

24 MR. KENDALL: Your Honor, I didn't know we, we were
25 ready to switch over to the verdict form. You asked me a

1 question ---

2 THE COURT: Well, they go hand-in-hand.

3 MR. KENDALL: They do. They do, certainly. The --
4 we, on page -- on the first page of the little template
5 that we provided does have an allocation in terms of the
6 defendants.

7 In response to Mr. Lucey, I believe that he has read
8 this correctly. We do -- if there is a finding of gross
9 negligence against us, we would not be entitled to
10 apportionment. However, because we are seeking to
11 streamline this process, I would suggest that if -- that --
12 allow them to consider all of this. And if they find gross
13 negligence, then Your Honor will just disregard the
14 apportionment aspect of it. I think it just would fit the
15 process that you're trying -- streamline the process you're
16 trying to engage in.

17 THE COURT: I can do that even -- if I find the
18 verdict to be inconsistent, I can...

19 MR. KENDALL: I think you can just do it as a matter
20 of law and ---

21 THE COURT: Essentially, right.

22 MR. KENDALL: --- strike that.

23 THE COURT: As a matter of law, I can make it
24 consistent, so that's how I'll deal with that, to answer
25 that question. So, essentially the verdict form is still

1 going to say -- it's going to give them the option of
2 finding the various defendants on their own negligent, not
3 negligent, in breach or not in breach. We're not going to
4 get to the apportionment of damages yet unless, unless it's
5 necessary. Essentially if they ---

6 MR. BOYD: So, are you going to charge ---

7 THE COURT: --- do not find gross negligence -- what
8 now?

9 MR. KENDALL: Are you going to charge joint and
10 several liability?

11 THE COURT: What's in there now?

12 MR. BOYD: It's just joint and several liability.

13 THE COURT: Let's see.

14 MR. ATKINS: If you, if you read it, if two or more --
15 one's in for a penny, is in for the full amount.

16 MR. BOYD: Yeah, but that would seem to be premature,
17 too, until we know whether it's any one or all defendants
18 are grossly negligent or not.

19 (A PAUSE.)

20 THE COURT: Does anybody object to me just taking the
21 joint tortfeasors section out of the jury charge?

22 MR. BOYD: What page is that, Your Honor?

23 THE COURT: I have in on my 16. It's entitled joint
24 tortfeasors.

25 MR. LUCEY: As long as concurrent causes stays in,

1 plaintiffs acquiescence to that, Your Honor.

2 (A PAUSE.)

3 THE COURT: In my understanding, what's the, what's
4 the problem? Say it again, Mr. Atkins. I don't know that
5 I understand your argument. So if I leave these in, you
6 think it's contradictory to put in a verdict form where
7 they're allowed to ---

8 MR. ATKINS: Well, it's ---

9 THE COURT: --- choose between ---

10 MR. ATKINS: --- contradictory ---

11 THE COURT: --- the defendants?

12 MR. ATKINS: --- to the allocation statute. Under
13 allocation, do an allocation. Attempting to comply with,
14 with the fact these, these buildings were post-2005 when
15 the allocation statute applies, not 2007. And that's what
16 we're trying to do in the verdict form. And I'm thinking
17 that these charges are contrary to that intent.

18 It just seems inconsistent to say, look, if you got
19 two that cause a single injury, both are liable to 100
20 percent regardless of, of, of how much either one
21 contributed to the, to the injury. The allocation statute
22 says otherwise.

23 MR. LUCEY: The allocation statute deals with parties
24 that are in the case. The joint tortfeasor charge applies
25 equally to the parties that are out of the case.

1 They have spent a lot of this case trying to say
2 various inspectors were on-site. They should have caught
3 it; it was their fault. It's not my guy's fault. All my
4 guy did was provide the labor. The joint -- excuse me, the
5 joint tortfeasor instruction addresses that situation.

6 MR. ATKINS: I don't -- I didn't recall anybody trying
7 to say that they should allocate blame on a code official
8 or anything like that.

9 MR. LUCEY: They blame the other trade for failure to
10 seal their penetrations in the drywall in the fire assembly
11 in the attic.

12 THE COURT: I'm leaving it. I'm leaving it in there.
13 I think it's appropriate. I'm leaving it in there, and I'm
14 going to leave the verdict form.

15 MR. REESER: Your Honor, if I may just for the record?

16 THE COURT: Please. Go ahead.

17 MR. REESER: I have -- there were, there were two
18 thoughts, maybe not quite objections, but in the negligence
19 section of the charge, there is reference made to
20 recklessness and gross negligence. I understand that's a
21 separate charge. I believe it's in numbers 2 and 3. I
22 don't necessarily think that needs to be there, but I
23 wanted to see if the court had any reason for putting that
24 in.

25 THE COURT: I'm sorry, are you looking at the one we

1 just sent or the one ---

2 MR. REESER: Yes, Your Honor, the one -- because in
3 that, it has the numbers 1, 2, 3, 4 for the elements.

4 THE COURT: Yes.

5 MR. REESER: And then discuss recklessness. We've,
6 we've got a separate gross negligence charge. I'm just
7 wondering why that's in there.

8 THE COURT: You're wondering why what's in the gross
9 negligence charge?

10 MR. REESER: Is that ---

11 MR. BOYD: Are you saying it's confusing to have
12 recklessness discussed in the negligence ---

13 MR. REESER: Yes.

14 THE COURT: --- paragraph?

15 MR. REESER: Right there, number 2:

16 For the defendants' involvement, construction was
17 negligent or careless, grossly negligent, or
18 reckless, willful, and wanton.

19 And we have a separate gross negligence charge.

20 THE COURT: Okay, let me look at that.

21 MR. REESER: And then the same with, with number 3.

22 THE COURT: Wait a minute.

23 MR. BOYD: What page?

24 THE COURT: It's page 10 as I have it right now under
25 the heading negligence.

1 (A PAUSE.)

2 THE COURT: I'm going to leave it as is. All right,
3 what's next?

4 MR. REESER: And, Your Honor, I noticed there was a
5 charge on workmanship and implied warranty of workmanlike
6 service. It appears to be duplicate information. I
7 wanted to see if the judge, if the, if the court has a
8 reason for ---

9 THE COURT: I think one defines workmanship and the
10 other one goes into what it means in terms of the actual
11 cause of action.

12 MR. REESER: As, as I understand it, the court's not
13 going to be reading captions. The jury will just see --
14 the jury will just hear one going into the other. There
15 are not going to be headings.

16 MR. COLE: You said you're giving the jury your -- the
17 copy of the charge though.

18 THE COURT: Yeah.

19 MR. COLE: Okay. Well, that's another objection.

20 THE COURT: Yeah. I am.

21 MR. COLE: So, note that as well. I join the other
22 objections he's raised.

23 THE COURT: No problem.

24 MR. BOYD: Complete Building joins in his objections
25 as well.

1 MR. REESER: Your Honor.

2 THE COURT: Noted.

3 MR. REESER: And we would as well, and my last
4 objection is similar to Mr. Atkins's in that we object to
5 the concurrent cause and the joint tortfeasor and the
6 entitlement to full recovery from tortfeasor charges in
7 this case.

8 Your Honor we contend this case has been tried -- this
9 case has not been tried as an indivisible injury. This is,
10 this is not a car wreck case.

11 THE COURT: Right.

12 MR. REESER: This is not one incident. It might be
13 one project, but the jury has heard testimony and evidence
14 about windows and about removing HVAC ducts.

15 THE COURT: Right.

16 MR. REESER: And, no offense to Mr. Atkins, they've
17 heard a lot about sprinklers.

18 THE COURT: Yeah.

19 MR. REESER: In the past few days, and my client
20 certainly had nothing to do with that.

21 I believe the proposed verdict form Your Honor was
22 referencing earlier was mine. And I, I, I had no
23 allocation and, and I think our position is that each
24 defendant should have a separate verdict on damages, not
25 just negligence but also damages because this is not an

1 indivisible injury case where this would apply.

2 The allocation statute in the first paragraph says
3 this, this applies to indivisible injuries. And, Your
4 Honor, you could -- for those reasons, I don't think any of
5 those should be charged in this case. It's not like...

6 THE COURT: Well, I think that, you know, we have
7 water intrusion. We have all sorts of different people
8 saying what the cause is. But I think evidence presented
9 is is that it's the result of all of these convening acts
10 of alleged negligence that have caused this water
11 intrusion. Could you separate it out? You know. Go
12 ahead.

13 MR. REESER: Well, and then, Your Honor, there's been
14 water intrusion at these posts. And I would agree that if
15 we were all general contractors, if, if we were five
16 general contractors and we all had duties to oversee this
17 project and be responsible for this project, then okay, but
18 that's not the case that was presented to the jury.

19 THE COURT: Okay.

20 MR. REESER: And if this was a water intrusion at post
21 case, okay, but it is not and that's not how it's been
22 tried. And, Your Honor, for those reasons, we would, we
23 would object to all those charges going in to the jury, and
24 of course those objections stand as far as the verdict
25 form.

1 MR. LUCEY: Just so the record's clear, the defendants
2 presented a single repair estimate; they all adopted that
3 repair estimator and estimate. They, themselves, have
4 treated this as a single damage case.

5 THE COURT: Yeah, and I didn't mean to minimize it to
6 a water intrusion. I know there's a lot more than water
7 intrusion issues at stake. It's negligent construction
8 overall, so yes.

9 MR. ATKINS: The, the comparison of the defense has
10 nothing to do with water sprinklers. It's got nothing to
11 do with sprinklers, and I would join the arguments that Mr.
12 Reeser has put on the record as well.

13 THE COURT: All right.

14 MR. REESER: And, Your Honor, if I, if I may?
15 Actually there was a case filed, 2017-CP-10-4940. There
16 was a reference made in Mr. Mease's examination as to an
17 affidavit that had been filed in that case. That case is
18 still pending, and that case is the same plaintiffs against
19 Curry Engineers. They're seeking the same damages, the
20 same problems that there are in this case. We don't have
21 everybody here, Your Honor. So, I think that, you know, we
22 can't have it if you have all these multiple cases for the
23 same thing and then, and then plaintiffs put this one large
24 number that includes all these various things that
25 defendants may or may not have worked on.

1 So, Your Honor, I think, I think that goes to our
2 arguments to why the joint tortfeasors allocation simply
3 does not apply in this case because this is indeed not an
4 indivisible, indivisible injury.

5 THE COURT: Okay. What, Mr. Cole?

6 MR. COLE: All right, first I just join in the
7 arguments that have, that have come before. And then I, I
8 want to raise as an additional issue that we've discussed a
9 little bit already with regard to parties that have either
10 settled out or were dismissed without settlement from the
11 case.

12 We talked about Island Pointe, LLC, who was
13 technically sitting in the courtroom with us the entire
14 time until this morning, and that I believe that is -- it
15 is incumbent on the court to allow us to allocate to these
16 nonpresent defendants, that we should be able to put them
17 on the jury verdict form. It's a due-process violation to
18 not have these people on, on the verdict form who have
19 shared in the responsibilities that, that have been
20 discussed in the case here. And so I, I would raise that.

21 And I can go through some case law and things like,
22 like the *Smith vs. Tiffany* case and some others about --
23 that the court, when it talked whether or not you should
24 try a case with an empty chair but didn't say that you were
25 not able to actually put the nonparty -- or, excuse me, the

1 nonpresent defendants on the jury verdict form because
2 that's what the statute allocates.

3 Now, if plaintiffs can prove the gross negligence and
4 that changes the, the, the makeup of the jury verdict form
5 somewhat, but barring that, which they have not
6 demonstrated right now because the jury hasn't made that
7 decision, we do have these other parties that have shared
8 in the overall joint responsibility for the construction of
9 Palmetto Pointe. That, you know, we've got the architect.
10 We've got the engineers. We have the other case that was
11 brought up of another engineer who participated in this.

12 We have -- in fact, there were a total of thirty-five
13 named defendants that have been involved in this lawsuit,
14 from a first-tier party down to a sub, sub, sub, sub, sub,
15 however many we have in that, that have played some role in
16 this entire process. That goes to both the total damages
17 the plaintiffs are seeking, as well as to the cross-claim
18 damages, because for all of those thirty-five parties that
19 were involved in it, at least to some point when we talk
20 about the claimed damages and the claimed attorneys fees,
21 et cetera, that Complete Building is putting up, there is
22 some component of each of those that -- for example, in the
23 cross-claims, they spent time defending against claims for
24 these other people that then should not be tied on to me.
25 So, I bring that up.

1 MR. REESER: And, Your Honor, I join in Mr. Cole's
2 motion, and state on the record that if, if a party hasn't
3 received a nonsuit, they're still parties in this case
4 under the rule, and there's no reason why they shouldn't be
5 on the, on the verdict form.

6 MR. BOYD: Complete Building joins.

7 MR. ATKINS: Likewise, Your Honor, for W.C. Services.

8 THE COURT: Thank you. All right, your motion to have
9 all parties on the verdict form is denied. All right.

10 MR. COLE: I have, I have one more, Your Honor.

11 THE COURT: Okay.

12 MR. COLE: If we go to the cross-claim section in the
13 jury charge.

14 THE COURT: Yes.

15 MR. COLE: I would like to, on behalf of Tri-County,
16 formally withdraw my cross-claim for equitable indemnity
17 against Vasquez and Mr. Sales. And so I would like to have
18 those portions of that cross-claim that reference that I
19 have an equitable indemnity cross-claim against them
20 withdrawn.

21 MR. LUCEY: It's not on ours, Your Honor. I didn't
22 see that.

23 THE COURT: I didn't see anything about that.

24 MR. COLE: The one I pulled up has that on there, so.

25 THE COURT: Is it on there?

1 MR. COLE: It says that: In this case, cross-claims
2 have been against general contractor. And then it says ---

3 THE COURT: You know what page it's on, Mr. Cole?

4 MR. COLE: I'm on page 18.

5 THE COURT: 18.

6 MR. COLE: It's the second sentence. It says: A
7 cross-claim has also been filed by Tri-County.

8 THE COURT: You want that sentence removed?

9 MR. COLE: I, I, like I said, I want to withdraw my
10 equitable claim ---

11 THE COURT: Great.

12 MR. COLE: --- against Vasquez and Sales.

13 THE COURT: All right.

14 MR. LUCEY: No objection.

15 THE COURT: I think it's in one more spot, too. Is
16 that right?

17 MR. COLE: I, I don't remember. That's where I saw
18 it. I think just delete that second sentence there.

19 THE COURT: That's it right there. It was also under
20 burden of proof, so we'll remove it both places.

21 MR. COLE: Okay. Thank you.

22 All right, what else?

23 MR. REESER: We still on charges?

24 THE COURT: We're on it all.

25 MR. REESER: Is there a -- can, can ---

1 THE COURT: Got about five minutes, everybody. Then
2 I'm bringing the jury back in.

3 MR. REESER: Yes, Your Honor. Is there a, is there a
4 verdict form that we can see that the court is inclined to
5 adopt at this time?

6 THE COURT: Yeah, the one that was most recently
7 submitted by the plaintiff.

8 MR. KENDALL: Your Honor, I just want to make
9 exceptions to that, if I may?

10 THE COURT: Sure.

11 MR. KENDALL: First of all, I did think it should
12 include the apportionment under the negligence statute.
13 And again, Your Honor can correct if it turns out they're
14 not entitled to that. You can just mark that off.

15 Number, item number 4, I would ask that -- a couple
16 changes in, in that item.

17 THE COURT: All right, wait a minute.

18 MR. KENDALL: I'm sorry.

19 THE COURT: Number 4, okay.

20 MR. KENDALL: I would just ask that because there are
21 different standards of proof, that they be reminded here of
22 that and just state if you find through clear and
23 convincing evidence.

24 THE COURT: Sure. I have no problem adding that.

25 MR. KENDALL: And then when one deletion after you --

1 when you're ready.

2 (A PAUSE.)

3 THE COURT: Okay, I've got the ---

4 MR. KENDALL: And then I would ---

5 THE COURT: --- clear and convincing language in.

6 What's next?

7 MR. KENDALL: Recommend removing: The truth or so

8 that ---

9 THE COURT: Oh yeah, yeah. I agree with that, yeah.

10 Okay.

11 MR. KENDALL: So it just reads: Disregard for

12 plaintiffs' rights.

13 THE COURT: Yeah. I agree with that. I'll take that

14 out.

15 MR. KENDALL: Thank you, Your Honor.

16 THE COURT: All right.

17 (A PAUSE.)

18 MR. REESER: Your Honor, I would just restate our

19 objection earlier as to number 3. Again, our claim is that

20 this is not an indivisible injury. Because of that, we'd

21 request that the jury be asked to make a damage award,

22 actual damages as to each defendant.

23 THE COURT: All right, objection noted for the record.

24 MR. REESER: Thank you, Your Honor.

25 THE COURT: I think we have you all numerous times on

1 this joint tortfeasor issue, so you are well protected for
2 purposes of the record on that issue. Everybody is.

3 MR. COLE: That's just -- I'm jointly joining in
4 the ---

5 THE COURT: Yes.

6 MR. COLE: --- joint tortfeasor thing, Your Honor.

7 THE COURT: Absolutely.

8 All right, who's delivering closing arguments this
9 afternoon?

10 MR. LUCEY: I'll do the opening and closing, and Mr.
11 Buckley will do the closing.

12 THE COURT: Okay.

13 MR. KENDALL: Does that mean in reply? You're going
14 to close in full?

15 MR. LUCEY: Close in full and then reply.

16 THE COURT: Mr. Buckley is going to do the reply.

17 MR. BUCKLEY: Understood. I'll be closing for
18 plaintiff completely.

19 THE COURT: And I assume we're going to be going in
20 the same order: Mr. Kendall, Mr. Cole, Mr. Reeser, Mr.
21 Atkins, or who ---

22 MR. ATKINS: Mr. Atkins.

23 THE COURT: Mr. Atkins, Mr. Reeser.

24 MR. ATKINS: Yes, ma'am.

25 THE COURT: Got it. Okay, great. We are printing

1 this verdict form off now, and we will be printing my
2 charge.

3 (A PAUSE.)

4 MR. REESER: Your Honor, for the record, I did not
5 join in the objection regarding Your Honor's giving the
6 charges back to the jury. I just wanted to put the
7 objection on the record.

8 THE COURT: Yeah, I'm sorry. I thought everybody did,
9 but yes, Mr. Reeser, I will note that objection to the
10 charge going back to the jury.

11 (A PAUSE.)

12 THE COURT: Are we ready for the jury?

13 MR. LUCEY: Yes, ma'am.

14 THE COURT: Please bring them in.

15 We will likely -- and the court reporter asked me to
16 -- and just for y'all's planning purposes, we will be
17 taking a, probably a little brief recess between your
18 closings and the court's charge because I'm sure those
19 arguments might be lengthy, and everybody will need a
20 little break. So, we will plan on taking one at that time.

21 (THE JURY ENTERS AT 2:54 P.M.)

22 THE COURT: Ladies and gentlemen, the parties have
23 presented their evidence in this case. It's now time for
24 these attorneys to make their closing arguments to you.
25 The arguments of the attorneys are not evidence in this

1 case. Their statements and arguments are meant to help you
2 understand the evidence and apply the law to the evidence.
3 You should disregard any remark, statement, or argument
4 which is not supported by the evidence presented during the
5 trial or the law that I will explain to you after the
6 arguments are given. With that, please turn your attention
7 to the attorneys. Thank you very much.

8 Mr. Lucey.

9 MR. LUCEY: May it please the court?

10 THE COURT: Yes.

11 MR. LUCEY: The defendants messed up these buildings.
12 They're trying to tell you what should be fixed and what
13 shouldn't be fixed. What have they done to earn your trust
14 or credibility for you to rely on what they showed you this
15 week, what little they showed you this week? What have
16 they done? What have they done to undo the lack of
17 credibility clearly established by the thousands and
18 thousands of code violations and building defects that the
19 plaintiffs have showed you? What have they done to change
20 that?

21 In my opening, I mentioned to you the judge would
22 charge you on the law at the close of the case, and that
23 remains, that remains the case. But we have a sense of
24 what she'll charge you so that we can talk about it. One
25 thing that she'll talk to you about is credibility and

1 common sense, common sense. In fact, when you hear her
2 charge on the law to you, while you'll get that there's
3 some legalese in it, you're going to say to yourselves that
4 kind of makes sense.

5 For instance, you do something wrong, and you pay to
6 get it fixed, right? Common sense. You screw up, you pay
7 the consequences, right? Common sense. You screw up 2,000
8 times on a the development, you better do something to earn
9 somebody's confidence back. You better do something to
10 establish your credibility if you're going to come in and
11 tell them, okay, this is how you're going to fix my screw
12 up.

13 Well, they didn't do that. You didn't hear from a
14 single defendant, not one. Not one defendant came to court
15 to explain to you that he didn't do what the expert said.
16 He didn't do it wrong or there was some other reason you
17 shouldn't hold him accountable, not one defendant.

18 Now, in your opening, the attorney for the developer,
19 Complete Building Corporation, he told you, told you his,
20 his corporation was defunct, and he told you that the
21 owner, Vic Apat, was retired, but as the judge told you at
22 the beginning, counsels' statements aren't evidence. He
23 never put any evidence in that the reason CBC is defunct
24 because Vic Apat retired, did he? No. No evidence. And
25 he also told you during opening because these other people

1 were retired and what have you, that he was going to call
2 the project manager to testify, to tell y'all what
3 happened. Never saw that project manager get on the
4 witness stand, did you? Never happened. They made a
5 representation to you, another representation to you that
6 turned out to be false, false. So, instead of earning some
7 credibility, they slid backwards.

8 Now, you say Justin's wrong because one defendant did
9 take the witness stand. Tri-County, right? No. No.
10 During the opening, Tri-County counsel told you all that
11 Tri-County's longtime owner and president and mastermind,
12 Dale Hawkins, was going to come in here and tell y'all how
13 he's been doing this for thirty years, and that you should
14 believe them, and they do good work. Mr. Hawkins was in
15 the courtroom, but he never took the witness stand.

16 The second defendant misrepresented to you in the
17 opening the evidence you would hear in this case. No, they
18 sent the kids. They put the kids on the witness stand, the
19 kids that were new to the business, the kids that had come
20 down from the cleaning business in Myrtle Beach in 2003,
21 and this was the largest job they had ever done in 2006.
22 They threw the kids under the bus for the sympathy factor.
23 Did the Tri-County owner or president get up and talk to
24 you? Didn't hear from him.

25 Ultimately, the only defendant you heard from is

1 Miracle Siding because at the end of the case, the
2 plaintiffs put somebody up there to read the guy's
3 deposition to you because he didn't show up either.

4 What did the defendants do to get their credibility
5 back? Nothing. They only came to court through their
6 lawyers. None of them sat at counsel table, none of them
7 got on the witness stand, and they sent, they sent some
8 engineers. They sent some engineers to talk to us.

9 Let's look at who we talked to. Every expert sent by
10 defendants came out of a firm called ABS. Who's ABS?
11 Well, they're the same firm -- I see y'all look up here.
12 They're the same firm that are a consultant to the
13 architect during the construction of Peas Island. They
14 were there. None of us were there. They were there.
15 Every defense expert was either currently employed by that
16 firm or formerly employed by that firm, and they were all
17 employed by that firm back in 2007 when Peas Island was
18 constructed.

19 But be that as it may, we didn't, plaintiffs didn't
20 want you all to have to take our word for the defects.
21 Everybody says when you have a dispute, there's two sides
22 to the story. So, rather than y'all hearing one side of
23 the story and having to sit around and wait a week to hear
24 the other side of the story, what did plaintiffs do?
25 Plaintiffs called Al Schweickhardt, the defense expert, as

1 their first witness. We wanted you to hear from the
2 defense expert. We didn't want there to be any problem of
3 credibility when somebody sat on the witness stand and said
4 to you this wasn't done right.

5 Now, what did we talk about with Mr. Schweickhardt?
6 We talked about Plaintiff's Exhibit 826, the list of
7 defects and code violations that he readily told you had
8 been compiled from his first deposition and had been
9 confirmed in his second deposition. Thirty-some odds items
10 -- code defects, building defects -- and this is all before
11 Mr. Schweickhardt found in his file the missing Mease
12 report, Exhibit 148, that said hey, by the way. There's
13 also front porches that are leaking. This is when Mr.
14 Schweickhardt thought only the back of the residences were
15 leaking. So, he goes back out in August of 2018, two and a
16 half years after he's been hired, and what does he find?
17 More leaks, more damages, but he only found them because of
18 Mr. Mease.

19 And he finally said to you on the witness stand, you
20 heard from Mr. Schweickhardt back -- twice. He came back
21 later in the week. You finally heard from him on the
22 witness stand that his investigation vindicated Mr. Mease's
23 findings, vindicated. Those were the words, vindicated.

24 He also showed you that this August 21, 2018, test cut
25 by him on this porch of 1623 was on a porch that he had

1 inspected two years earlier. He's missed all that damage,
2 and we showed that to you with several other residences,
3 too. Mr. Schweickhardt admitted that half-dozen of these
4 townhomes has what he would call extreme damage. He
5 admitted that there are at least nine internal leaks in
6 seven residences. He admitted additional violations that
7 weren't even on Plaintiff's Exhibit 826.

8 He also showed you locations like every other expert
9 in this case. He showed you locations where there wasn't
10 the absence of some care, but there was a complete lack of
11 care, locations where there was missing flashing, locations
12 where they had started to wrap a column. You see and you
13 know that they know how to wrap a column, but they stopped
14 halfway and they left a hole. And he confirmed for you
15 that during the entire time this litigation has been
16 pending from 2015 through today May 2019 -- you may recall
17 there was just some damage, new damage documented last
18 week. During this entire time, new damages have continued
19 to manifest and come to light, and the damages have
20 expanded. He documented building code violations. He
21 showed you -- he finally looked underneath these edges and
22 found the rotten wood, found the leaks to the interiors,
23 found the missing flashing, and to do all that, he had to
24 do destructive testing.

25 And this is an example of the really bad, bad

1 workmanship. This is the green fabric, supposed to wrap
2 that post next to the deck. So, they know they're supposed
3 to wrap the post, but they leave a gap between the deck and
4 the post that they're wrapping. Same thing on the other
5 side. They know they're supposed to wrap the post. They
6 leave a gap. The water goes in anyway. They partially
7 install this product and stop. The angle of the roofs and
8 the type of materials that were put on the roofs, as
9 confirmed by Mr. Schweickhardt: code violation, building
10 code violation, not done properly, no starter shingles, no
11 shingles at the base of this shingle application to keep
12 the shingles from flying off in storms, building code
13 violation.

14 The -- right here again, let's talk about due care
15 versus no care. This is in -- underneath the house.
16 You've heard about this a little bit, but we hadn't focused
17 on very many of these pictures. Under the house, not at
18 the joint common wall, but everywhere else under the house.
19 The ceiling, as you heard, is simply a fire assembly. You
20 have to separate. You drive under from residential
21 quarters. Building code. You see here the orange fire
22 caulk. They knew to do it. You see here they just
23 stopped; they just leave gaps. They just stopped. He
24 concluded by telling you the damages were hidden. That
25 even though he was on-site far fewer times than Mease, he

1 was able to confirm substantially all of Mease's findings.

2 So, it was only after Mr. Schweickhardt got called
3 that you heard from Engineer Mease. He documented to you
4 all with this photograph and his testimony that he had been
5 on the property forty days. He exhaustively documented the
6 defects. He showed you how the defects occurred where the
7 trades intersected and were not properly prepared. It was
8 the integration in the field that caused these problems.
9 And he talked to y'all about the documentation he'd done of
10 all the blow-offs over the last five years since litigation
11 began, since he got hired in the spring of 2015. And he
12 told you all, he put into evidence those photos, but he
13 told you all he did a photo log on every one of those
14 storms. Why? Because blow-offs are a measure of
15 performance. Performance is a measure of the quality of
16 installation. That's something that Engineer Elkin
17 completely missed.

18 And we'll see Mr. Elkin again in a moment, but as
19 you'll recall, Mr. Elkin was an expert hired by the second-
20 tier subcontractors Miracle Siding and the roofer, Vasquez,
21 but he was called as an expert by the general contractor.
22 He was the first witness they called, and y'all might
23 remember he sat up up here. He took an oath like anybody
24 else. He sat up here and I asked him. Well, did you look
25 at the blow-offs? He said no. Said did you factor them in

1 your, in your opinion? Did you factor that in? No.

2 Objective experts are supposed to factor in things
3 that matter. Before he admitted that, he had just told you
4 that performance was an excellent measure of the quality of
5 the installation, but he ignored performance in his
6 analysis, completely ignored it.

7 Mr. Mease documented the water intrusion inside the
8 residences and the water intrusions coming into the
9 structural parts under the decks that are still outside.
10 The penetrations in the firewalls, the pervasive improper
11 deck slopes, the code violations which even Mr. Elkin, Mr.
12 Polk, and Mr. Schweickhardt admitted in their testimony
13 where the decks are ponding. The negatively sloped z-
14 flashing at the base of the walls is another code
15 violation. The coil stock in contact with the
16 pressure-treated wood, another code violation, the trim
17 abutting the windows, and the inadequate mechanical access
18 in, in the attics to service the mechanicals that are
19 there.

20 But most of all, he tried to explain why to the jury
21 why piecemeal repairs would not be fair to the homeowners.
22 Why it wouldn't work, why it wouldn't solve the problems,
23 why the homeowners would be right back where they were now
24 in a few years if that's what they tried to do.

25 Mr. Smits, he was one of the next witnesses. I've

1 skipped one of the homeowners, but I'm going to come back
2 to that. Mr. Smits, thirty-eight years as a building code
3 official, twenty-six years as the head building code
4 official for the City of Charleston. I mean, let's talk
5 about the qualifications. Plaintiffs didn't just bring any
6 Joe in here to talk to you all. We brought in extremely
7 qualified experts.

8 Mr. Smits told you had never seen a fire assembly with
9 more violations than what he saw at Peas Island. More,
10 more compromise, had never seen it. He explained to you
11 that in part, one, that the lack of a fire sprinkler system
12 in the attic was, in fact, a code violation. They'd missed
13 it. They'd missed the fact that the City of Folly Beach
14 required in two-family residences -- which these are
15 duplexes -- City of Folly Beach required that you sprinkler
16 the attic. They missed it.

17 They also -- they kept referring to the NFPA, the fire
18 protocol for the system which the international building
19 code specifically provided. If there's a conflict between
20 the general protocol or the building code and the local
21 ordinance, the local ordinance prevails. So, they missed
22 that, and they designed a system that was not in compliance
23 with the Folly Beach ordinance.

24 But it got worse than that. The only plan that's in
25 evidence for the fire system -- and this is Mr. Smits

1 talking to you. I wouldn't know this from Adam. He's the
2 one that came and explained to you. The only plans in
3 evidence, in existence as far as anybody here this week
4 could tell you, the only plans show the fire suppression
5 system on the sides of the building, coming up the sides to
6 the attic and coming in the outside of the attic, never
7 compromising the common wall between the two residences.

8 They took a shortcut. W.C. Services, the fire
9 suppression defendant, and the general contractor, they
10 took a shortcut. They brought the fire suppression system
11 right up the middle and created what's called a chimney, a
12 chase. A chase is, for those in the know apparently, a
13 chase creates a suction with the heat where if you get a
14 fire, it will just suck the fire right up through the
15 middle of the building. They created a chase. They ran
16 the pipes up through the center. Because the pipes are now
17 in the center of the separation wall, they have to violate
18 that wall at every floor to get into the residence to
19 sprinkler. Not only that, they violate the wall when they
20 come through the floor when they're creating that chase.

21 And even Al Schweickhardt on day one up here, he said,
22 yes, I looked up between those beams and I couldn't find
23 any firestopper. It wasn't where it are supposed to be.
24 So, you know it's not in the first -- excuse me, the ground
25 level where you can see, and you know it's not in the attic

1 where you can see. And you heard testimony that if you
2 can't find any of it where you're supposed to see it, not
3 too likely it's there where you can't see it, and that's
4 between the floors. Doug Smits, twenty-six years with the
5 City of Charleston.

6 Mark Poyner, plaintiffs called Mark Poyner to
7 establish the scope of work of the two second-tier
8 subcontractors, Miracle Siding and Vasquez, and he
9 testified Miracle did the siding and Vasquez did the
10 roofing and the decking, end of story. He got back on the
11 stand in their case, and we briefly cross-examined him.
12 And we cross-examined him about the example of the missing
13 flashing at the corner of the post base, and he agreed.
14 That's not the absence of slight care. That's no care
15 whatsoever. They just didn't put it in there. He agreed
16 that things got missed, that the system didn't work. He
17 agreed that the homeowners were entitled to a repair.

18 Jay Handegan, currently a contractor with Trident
19 Construction, he was plaintiffs' damage estimator. He
20 talked to y'all about what it was going to cost to repair
21 these buildings. Nice guy. JR Watkins, their damage
22 estimator, was a nice guy. They're both nice guys. Love
23 them both, but we're not here to love everybody. We're
24 here to talk turkey.

25 This guy was on-site four times to familiarize himself

1 with the project and the challenges and to do a good job on
2 his estimate. JR Watkins could have been on the site more
3 than anybody in the world because his firm was hired to do
4 the defense -- excuse me, the destructive test cuts for
5 ABS, the defense experts. So, he, he was being paid to be
6 there, and he was paid to have people there during test
7 cuts. Well, what did you hear from JR? He dropped his
8 test cut crew off that morning, August 21, 2018. He spent
9 an hour on the site making sure his crew had what they
10 needed to do their work, and he left. Didn't even stop
11 back to look any of the test cuts. I said did you, did you
12 stop back and see test cuts two and three? He said no.
13 Four and five? No. Six? No. You've never seen the
14 interior of what you're proposing to repair? No. No.

15 This guy here, Jay Handegan, told you about how he
16 prepared his own estimate. Did his own takeoffs. He used
17 his own numbers. What did JR Watkins do? If you recall,
18 he's got an estimator in Boston. Doesn't live here.
19 Doesn't work here. Doesn't come here. Hadn't been here.
20 Never set foot on this property in his life.

21 Now, again, the judge is going to instruct you to use
22 your common sense. Who do you think is better able to
23 estimate the repair job, the contractor that came and
24 kicked the tires for four days, or the guy from Boston
25 who's never seen the property in his life?

1 We're going to get back to this. Mr. Handegan's
2 original estimate is in evidence as Plaintiff's Exhibit
3 677, but he revised that estimate to eliminate certain
4 items at the instructions of the attorneys, as he
5 testified, and his revised estimate is \$13.4 million, \$13.4
6 million. And he explained to you all how he got there, how
7 he did his takeoffs, and what he was going to fix for that
8 number.

9 Mr. Elkin was one of the next witnesses, and we're
10 going to come back to Mr. Handegan in just a second. We're
11 going to talk about Mr. Watkins just a little bit more.
12 Mr. Elkin, you recall, it was awfully hard to get Mr. Elkin
13 to say but he finally said it. You're right. You never
14 see surface fastening. You never see exposed fastening on
15 cementitious siding, HardiePlank or otherwise. You never
16 see it because guess what? People don't like it.
17 Architects don't like it; homeowners don't like it. And he
18 finally admitted it wasn't really right for him to sit up
19 there and tell my clients, the homeowners, that they had to
20 accept something different than what they bought back in
21 2007, 2008. That there are, in fact, two purposes to an
22 awful lot of construction products. Not just functional.
23 Not just putting it back so it works, but aesthetic.

24 And there's nothing wrong with that. That's why
25 people like their houses. That's why some people get nice

1 shingles or they get a nice door or they get a new paint
2 job. Aesthetics are important, too, and you don't want an
3 ugly house with face nail fastening because your contractor
4 screwed up to begin with.

5 And let's pause for a second on the siding. Let's
6 pause for a second. The second tier, labor-only
7 subcontractor Miracle Siding wants you all to focus on the
8 selection of the 9 inch siding with the 8 inch exposure as
9 being somebody else's responsibility. Doesn't matter he
10 committed a code violation, too, putting it up because he's
11 just a second-tier subcontractor, right? What you never
12 heard out of Mr. Elkin, his expert, or his attorney or
13 Miracle, because they didn't show up, what you never heard
14 was an explanation for why the siding was a complete code
15 violation anyway: because Miracle Siding didn't fasten into
16 the studs. It could have been 7 inch siding and it still
17 was a code violation and it still would be blowing off
18 because it's not fastened right.

19 And if you saw during the publication of his
20 deposition and you saw how he measured the studs, you know
21 why he didn't ever hit the studs when he did it: because
22 they didn't, they didn't run a chalk line. You heard that
23 testimony, and he showed you. He measures the studs by his
24 elbow to his wrist. That's not how you put in siding, and
25 that's why they didn't hit any studs.

1 And you never once heard the defendants explain why
2 that didn't matter or why that wasn't a violation.

3 Contrary, Mr. Al Schweickhardt admitted it was a code
4 violation. That's right here in 826. It's been in there
5 since June of 2018.

6 Similarly, similarly -- I know I'm out of order, but
7 let's talk about this other component: the post flashing,
8 the edge of post flashing. Not one defendant brought you a
9 picture of a properly flashed post, not one defendant.
10 They say that only some of them need repair, so their --
11 they just took a dart and they said, okay, we're going to
12 fix every other post on the property and we'll call it
13 even, right? Here's our fancy little diagram of what we're
14 going to fix, but they never showed you that any of the
15 posts were flashed properly, not once.

16 And that would bring us back to Mr. Watkins. There
17 are forty residences. Each residence has four decks, large
18 first-floor rear deck, varying front decks, and then an
19 upstairs front and back deck, 160 decks. Y'all saw from
20 the photos some of the decks might have two posts; some of
21 the decks might have ten. It runs the gambit, but it's the
22 decks that are leaking. The posts are at the decks and at
23 the roof. So, the decks are roofing -- leaking.

24 Mr. Watkins could not tell you how many decks are
25 included in his repair proposal; he had no idea. He and I

1 talked about it, and we went through other parts of the
2 proposal, and I came back fifteen or twenty minutes later.
3 I said Mr. Watkins, does any of this discussion help you
4 tell us how many decks you're fixing? No. He can't tell
5 you; he couldn't tell you what's included in his number.

6 Homeowners don't have posts. Homeowners have decks.
7 They have living rooms, bedrooms, decks, bathrooms.
8 They're not here for their posts. They want their decks
9 back. They want their structure to stop leaking.

10 Mr. Elkin did concede that it was a lack of
11 coordination, a lack of coordination between, among other
12 things, his two clients, a lack of coordination between the
13 roofer and the sider and, in fact, it was the sider who did
14 the base trim on the posts that covered up the missing
15 flashing and a single wrap. What's ironic is by the time
16 we get to Mr. Elkin -- you may recall plaintiffs did
17 openings. Everybody did openings Tuesday morning, okay,
18 last week. Plaintiffs called their last witness, Jay
19 Handegan, at 9 or 9:30 on Thursday morning, and he went for
20 forty-five minutes or less than an hour, and then
21 plaintiffs rested. Mr. Elkin was the first witness called
22 by the defendants.

23 What have you learned since the defendants called
24 their first witness in this case? Well, you learned that
25 somebody can put a roller up here in the jury bar and show

1 you what the slope with the low-slope roofs are. What's
2 that have to do with this case? There's no dispute the low
3 slope roofs are all code violations. What have you learned
4 since the defendants started putting their first witness
5 up? Not a thing.

6 We've talked about the comparative preparation and
7 knowledge between their estimator and our estimator, and
8 again don't get me wrong. They're both nice guys, but
9 there was something else that JR told you. JR told you
10 that he does both cut and paste repair jobs and complete
11 reclads. And he told you sometimes the cut and paste goes
12 well and sometimes it doesn't. And he told you one of his
13 cut and paste jobs over on Daniel Island, RLD, River
14 Landing Drive, one of his cut and paste jobs just went
15 south. That if you don't repair the entire exterior, you
16 don't get a trustworthy exterior, and you don't get any
17 manufacturer's warranty and you don't even get a
18 contractor's warranty if you get a cut and paste.

19 Now, Mr. Watkins was not the only one who discussed
20 that sometimes these cut and paste jobs work and sometimes
21 they don't. I know they like to call them targeted
22 repairs. We get that. We call them cut and paste for a
23 reason. When Mr. Al Schweickhardt took the witness stand
24 again in the second week, he admitted that sometimes they
25 work and sometimes they don't. You may recall he tried to

1 get away with a euphemism when he first responded. He
2 said, well, yes, sometimes we just do the targeted repairs,
3 and sometimes the clients move on to a more comprehensive
4 repair, and I said, I said move on. I said you mean the
5 targeted repair didn't work, right? He said yeah. Then I
6 said you're aware of a half dozen of those in Daniel Island
7 by Chamber Pro Residential where the piecemeal repairs did
8 not work and they have to, quote, move on, right? He said
9 yes.

10 Mr. Watkins also testified that almost the entirety of
11 his estimate was a per-piece estimate. He was estimating
12 ninety-eight posts per the engineer. He has no idea it was
13 ninety-eight or 210 and if it is 210, then he's estimated
14 half and you're going to double that price. He said he'd
15 sign the contract now, right? Well, he knew he wouldn't get
16 it. He never has, but he also knew he has built-in
17 protection. His scope can go up 2,000 percent. It doesn't
18 matter to Mr. Watkins how wrong the engineers are. His
19 entire estimate is built as an allowance. I'm charging you
20 this much money for this much work, and if there's more
21 work, you pay me more.

22 Mr. Polk, Mr. Polk was a roofing expert called by
23 Tri-County, again from ABS. Again, he ain't the person
24 on-site in 2007 when those buildings were being
25 constructed. What was notable about Mr. Polk? Mr. Polk

1 was the third witness -- Schweickhardt, Elkin, Polk --
2 third witness who did not deny. In fact, confirmed that
3 they had found leaks that they'd been unable to trace.
4 They couldn't find the source.

5 The roof they don't want to replace is leaking. They
6 can't find the source, and they want to homeowners just to
7 live with it. That's not right. If you have random leaks,
8 it's symptomatic of a larger problem, which is the poorly
9 installed roof.

10 He did, by the way since he's the roofing expert, or
11 alleged roofing expert, he did confirm all the code
12 violations previously testified to by Al Schweickhardt.
13 And after he wanted you all -- and when they put Exhibit
14 453, I think it is, up on the board, the Hydro-Stop detail,
15 he wanted to try and tell you all that all the decks were
16 built properly. We pulled out his own photos to show no.
17 There's ponding on the decks. They're not built properly.
18 They are also a code violation.

19 Mr. Constantine, what did he tell you, the engineer on
20 the fire system? He told you that he had never been
21 provided the contract that had the March 6, 2006, letter
22 appended to it for W.C. Services, which letter had the
23 Folly Beach ordinance appended to it which says you may not
24 omit sprinklers in two-family dwelling attics. His client
25 never gave it to him. No wonder he approved the thing

1 sight unseen. He hadn't designed any other systems out at
2 Folly. He was not otherwise aware of the Folly ordinance.
3 He didn't practice at Folly, and his client didn't give it
4 to him, didn't give him the contract, the letter, or the
5 ordinance.

6 Mr. Lazo, he couldn't seem to justify the drawings,
7 the variance between the drawings and the actual
8 installation either. He wanted you all to believe that a
9 letter, a March 6th letter written by the Town of Folly
10 Beach in advance of receiving any design from the builder
11 before a design existed, a letter which clearly on its face
12 says when you design this, you have to pay attention to
13 this ordinance, he wants you all to take that letter and
14 believe that letter was a formal waiver, a formal variance
15 meeting by the Town of Folly Beach. And that, therefore,
16 W.C. Services no longer needed to apply -- to comply with
17 the local ordinances. Not believable and not credible.

18 Plaintiffs have brought two causes of action against
19 the defendants: breach of implied warranty and negligence.
20 And while I'm going to talk to you about some of the
21 legalese, the computer's going to flash up some of the
22 interior damage and exterior damage photos of these
23 residences.

24 Breach of implied warranty, as the judge will inform
25 you in more detail, that is simply saying you represented

1 yourself to be capable of doing this work. You did the
2 work. The work's not functional; it's not correct. It's
3 not, it's not working out. It's not workmanlike. It's not
4 compliant.

5 Negligence, on the other hand, requires a degree of
6 fault. Our second cause of action is negligence.
7 Negligence is you did not use the requisite care, the
8 expected care in the performance of your obligations.

9 We've also brought an augmentation to that negligence
10 claim. It's gross negligence, and y'all may recall during
11 our opening we spoke about reckless conduct, grossly
12 negligent and reckless conduct, conduct that is indifferent
13 to the rights of others, conduct that just can't be
14 justified.

15 Why did we discuss that with you? It has legal
16 implications, significant legal implications, some of which
17 the judge will explain to you, but that is why you saw me
18 talk to some of these witnesses about the fact it wasn't
19 just -- remember Mr. Elkin, he wanted to say those were
20 challenging locations before we brought it back to reality?
21 We said, oh, well, didn't you bid that job? Didn't you see
22 the plans? What do you mean you can't do it because it's
23 challenging? That's what you bid to do.

24 We showed that it wasn't not done because of the
25 challenge. It just wasn't done at all. There was the

1 absence of any care. They didn't put the flashing. They
2 didn't put the wrap, and the judge will charge you, we
3 believe, that if you find by clear and convincing evidence
4 that the defendants acted without any care or were
5 reckless, were grossly negligent, that the plaintiff is
6 entitled to an award of punitive damages, and she'll charge
7 you as to the purpose of those. And the purpose of them
8 is not only to vindicate plaintiffs' rights, but to set an
9 example: to deter future conduct, to deter future
10 developments open such as Peas Island in this neighborhood.

11 And she'll charge you, we believe, that the burden of
12 proof for plaintiff is clear and convincing evidence that
13 these defendants were reckless and grossly negligent. And
14 plaintiffs submit to you, the jury, that we have shown that
15 to you this week. We've shown you that not only with our
16 engineer but with the defendants' engineers, and we'd ask
17 that you so find.

18 The judge will also charge you on several other
19 matters that I briefly talked to you about during the
20 opening statement. One is something called concurrent
21 causation. We're not saying these are the only defendants
22 that caused my homeowners' damages. There were other
23 parties in this suit previously, and those claims are
24 resolved. But as we understand how the judge will address
25 concurrent negligence with you is that if the combination

1 of damages by two or more parties combines to damage the
2 plaintiff, either party can be held liable for plaintiffs'
3 damages. Concurrent negligence.

4 We believe that she'll also charge you on a concept
5 called negligence per se, p-e-r s-e, and that if plaintiff
6 shows you that the defendants violated the law or the
7 building code, that in and of itself constitutes
8 negligence. In other words, that's a recognition that the
9 building code does set the minimum standard of care and if
10 we show a breach, then that's automatically negligence.

11 But it goes one step more than that. We believe that
12 she'll instruct you that you, the jury, may consider
13 negligence per se the violation of the building code as
14 evidence of reckless and grossly negligent conduct, as
15 evidence that you can include and consider when you decide
16 whether plaintiffs have shown you by clear and convincing
17 evidence that these defendants violated plaintiffs' rights.
18 That they were reckless and grossly negligent.

19 Once the court concludes its instructions on the law,
20 the court will likely give you something called a verdict
21 form, and it's going to give you the opportunity to
22 designate which defendants in this courtroom, if any, you
23 believe violated their duties to plaintiff or breached
24 their implied warranty of workmanlike service to the
25 plaintiff or both. And we ask that you find both, and we

1 ask that you find it as to every defendant in part because
2 we think we've shown it to you as to every defendant.

3 You don't have to worry about plaintiffs recovering
4 twice just because you find them guilty of both causes of
5 action. The judge it here to police things. They will --
6 she will ensure that plaintiff gets one recovery, but we
7 ask that you award the full amount of damages against every
8 defendant on both causes of action, and that you find that
9 plaintiffs have shown grossly negligent and reckless
10 conduct by clear and convincing evidence, and that you
11 award punitive damage against each and every defendant in
12 this case.

13 The verdict form also has some questions on it. We
14 expect to have some questions on it regarding cross-claims,
15 claims between the general contractor, CBC, and its master
16 sub Tri-County Roofing. They're there. They don't have
17 anything to do with plaintiff. That's why I'm not going to
18 talk to you about them. I'm just letting you know they're
19 there, and that's why I didn't talk to you about them.

20 Can we go to the damages at the end, please? Next
21 slide, please.

22 13, 4, 28. \$13,428,000, that is what Mr. Handegan
23 told you was his revised estimate. That's how he revised
24 Exhibit 677 when he testified to you at trial: 13.428.
25 26,000 of that is attributable to the clubhouse. We never

1 figured out who did the clubhouse, so we're going to just
2 knock it off the top.

3 A little less than a million of that relates to
4 windows, and the only window claim we really addressed with
5 you all much this week was the failure to properly trim
6 around the windows and to leave the caulk joint between the
7 window and the trim so that works right. That's part of
8 this case. The window product itself is not part of this
9 case. So, we're deducting that, and we're asking you to
10 return a verdict for plaintiffs of actual damages of \$12.4
11 million plus the homeowners' loss of use. The testimony is
12 that Mr. Handegan is going to be in each residence for
13 three months. There's forty residences, and the loss of
14 use of the rental value of those residences is from 3,000
15 to 3,500 per month. So, we're asking for a \$10,000 loss of
16 use award for each homeowner for a total of \$400,000.

17 And you hear me say for each homeowner. Y'all may
18 recall in evidence is an exhibit whereby each homeowner has
19 assigned their claim to the homeowners association to bring
20 and complete this action on their behalf so that they can
21 get these residences repaired properly. So, it is, in
22 fact, part of our claim in this case for the homeowners.
23 So, 12.4 and 400,00 will be \$12.8 million, and that's what
24 we'd like you to return a verdict for, \$12.8 million for
25 plaintiffs.

1 Next showing you on the screen here on the left in
2 color is Engineer Mease's repair scope and Jay Handegan's
3 repair estimate, and that is what those two propose to
4 repair at Peas Island. On the right is Mr. Al
5 Schweickhardt's repair scope and Mr. Watkins's repair
6 estimate, and that's what they propose to do this, the cut
7 and paste job. And you see all these little yellow dots
8 all throughout the side? That's where they're going to go
9 back and face nail that side and leave that code violation
10 in place. That's something else they didn't show you this
11 week. They told you that face nailing and painting would
12 be acceptable. Did they bring a picture to show you? Did
13 they bring a picture to show you what that would look like
14 after two years, after it's had thermal expansion and
15 contraction and the nails are really sticking out? No.
16 Didn't bring it.

17 The homeowners know it's been a long week for you.
18 The case should have ended Thursday of last week. There's
19 been no new information provided by the defendants since
20 then. The homeowners through me apologize for the extra
21 three and a half or four days that we've had to be here,
22 but you're the only way, you're the only way that the
23 homeowners can vindicate, can vindicate themselves.

24 And I missed their testimony when we were reviewing
25 some of this testimony, and I apologize. I probably missed

1 several things in this closing. I apologize, but I missed
2 their testimony, and the homeowners have testified. They
3 were each asked. If you had heard what Mr. Al
4 Schweickhardt had to say before buying your home, would you
5 have bought it? No. Mr. Love was on the verge of tears,
6 and why wouldn't he be? This is his residence. This was
7 supposed to be his dream home.

8 We talked about a residence. We didn't use this word,
9 but we've talked about a residence in opening as being
10 essentially your nest. It's where you make your life.
11 What we didn't talk about is for most people, it's also
12 your nest egg. It's your biggest asset, you're biggest
13 investment. It's your retirement plan. It's everything.
14 Their nest and their nest egg is severely damaged. Their
15 nest and their nest egg is severely damaged through no
16 fault of their own. Their nest and their nest egg was
17 severely damaged by a bunch of defendants who were just in
18 it for a buck, that were just cutting corners, that were
19 just trying to see how fast they could kick out forty
20 townhomes. They thought because the view was nice, nobody
21 would notice. It's up to you all to change that.

22 THE COURT: Mr. Kendall.

23 MR. KENDALL: Thank you, Your Honor. I need to take
24 moment to reconfigure.

25 THE COURT: Take your time.

1 (A PAUSE.)

2 MR. KENDALL: Good afternoon. Told you at the
3 beginning of the trial that our goal was to understand the
4 problems that were being confronted by the homeowners at
5 Palmetto Point. I told you that what we were trying to
6 accomplish was to determine what was wrong and what it
7 would take to fix it to bring it, to the place where it
8 could be used in the way it was intended, and for the
9 durability that it ought to have.

10 But during the course of this trial, I've become aware
11 we all weren't working on that same goal because we were
12 confronted in this trial with evidence that had not been
13 brought to, to anyone before it came from that witness
14 stand. And if we're working on the same goal, we would've
15 expected to know this information in advance, to know it
16 when it was first discovered in 2016. We would have
17 expected that we would have the opportunity to address the
18 issue in a thoughtful way instead of being surprised to
19 hear it on the witness stand for the first time, and I'm
20 talking particularly about the testimony of Mr. Smits.

21 You'll recall Mr. Smits was -- did two reports. His
22 first report was issued in early 2016 and his second report
23 in late 2016, and in those reports he had findings
24 regarding the attics and the garage. He was deposed at
25 some point later, actually in January of 2018, and at that

1 time testified that the repair for the firestopping issues
2 at Palmetto Peas was to add some additional drywall to the
3 gaps that were found, add mud and tape, and use fire caulk.
4 That's what he told us would solve the problem.

5 Then he got on the witness stand and he sounded the
6 alarm, and he said this is the most horrendous thing I've
7 ever seen. There are all these problems, and for the first
8 time he began to describe penetrations with items he had
9 never seen before. He described a chase running up the
10 center. He described gaps and problems that he had never
11 before revealed to anyone, including the homeowners. Mr.
12 Love told us he was hearing it for the first time and
13 really questioned whether he should stay in his home.

14 And I wondered why did that happen. Why has the
15 former code official for the City of Charleston withheld
16 this information from the homeowners and from those who
17 said we're trying to solve the problem? I can only think
18 of two reasons. One, perhaps it really isn't that bad. He
19 really doesn't believe it's all that critical because
20 certainly he didn't expose these plaintiffs, these
21 homeowners to this danger knowingly for this length of
22 time, certainly not. So, it can only then be for effect,
23 because they didn't intend to find a solution to the
24 problem. They intended to come in this courtroom and
25 create an atmosphere of fear, or indignation to cause you

1 to react in a that the judge is going to tell you is not
2 the way you're supposed to react to the evidence you hear.

3 The judge is going to tell you that the reaction to
4 the evidence that you're supposed to have is one of reason.
5 You're supposed to react without sympathy and emotion.
6 You're suppose to react in a way that brings common sense
7 to bear on the facts and the evidence that you've heard in
8 this case and not to react based on those improper and
9 incorrect methods. So, that's maybe why we are here.
10 Maybe that's why all of these issues couldn't be resolved:
11 because we weren't working to solve them.

12 I did warn you at the beginning of the case there were
13 going to be some challenges that we were going to face.
14 One of those is the fact that thirteen years have passed
15 since this construction work place, twelve years since
16 people moved in. People have gone on. in fact, there was
17 evidence from this witness stand about the status of my
18 client and my company. Mr. Poyner explained to you that he
19 is aware that that company went out of business several
20 years ago, and that, and that Mr. Gary Stanley, the project
21 superintendent, has passed away. Mr. Hilton was not able
22 to be with us, but we are -- we've had a lot of witnesses
23 that were not be -- able to be with us for one reason or
24 another. We've had documents lost. There's --
25 inexplicable sometimes. Why doesn't the City of Folly

1 Beach have the documents that we might expect them to have?
2 Why don't various people have the documents? It's just the
3 passage of time.

4 So, the challenge has been difficult, so what the --
5 but what the -- in the absence of this information, what
6 the plaintiffs have asked you to do is look at what
7 happened, what the situation is now, and make an inference
8 from that as to what happened in the past. They want you
9 just to look at an outcome, and they want you to then infer
10 from that the motive of a man's heart, the thought
11 processes that somebody was engaged in thirteen years
12 before. That's called speculation; that's called making
13 assumptions. And so what we need to do is to look at the
14 evidence that we do have regarding the past because there
15 has been some evidence that's helpful, although we don't
16 have everything we would like to have.

17 What we know is that this project was designed by an
18 architect, SGM, under the -- in collaboration with the
19 owner, the developer, Island Pointe, and together they
20 agreed on what this building, these buildings would look
21 like, what features they would have, and what it would
22 cost. They worked with engineers, a firm called Britt
23 Peters and Associates you heard the name of. They took --
24 they had other consultants they had. They had Curry
25 Engineering for the roofing -- for waterproofing. They had

1 CRG for the, for the sprinkler systems. They had -- and,
2 and, and together they designed and built a project. There
3 was a thoughtfulness. There was a planning process that
4 went into that. Later, Complete Building came in and bid
5 on the job and obtained the job, along with the
6 collaboration from its subcontractors began the work.

7 And they didn't just stop there and throw the work to
8 the field. You see in this, from the evidence you have
9 received that throughout this job, there were weekly
10 meetings held by multiple -- by -- there inspections were
11 inspections occurring on a regular basis. There were
12 product manufacturers brought in to consult on the
13 questions. There were code officials that were both
14 consulted on the front end of approvals and on the back end
15 for inspections. There were suppliers. There were
16 superintendents and, and project managers all involved in
17 this project. And the records that you were seeing, you
18 saw that those were occurring on a frequent basis, and they
19 were occurring on a systematic basis.

20 What we know also is that the end -- that the
21 manufacturers signed off on the work that was done on their
22 products, CertainTeed, both their shingles and their
23 siding. We know that the waterproofing, both Hydro-Stop
24 and Sealoflex, both came to this project. Both consulted
25 with everybody, and all signed off on it.

1 We know at the end of the project, the architect gave
2 -- using punch lists went around the project and
3 accumulated lists and refused to pay anyone who didn't
4 complete their list. We know that the inspectors had to
5 have come in and inspected because COs were issued.
6 Certificates of occupancy were issued.

7 And we know, also know that at the end of this
8 project, the owner of Complete Building Corporation was an
9 owner of one of these units. And so the idea that he built
10 for himself a situation, a, a, a building that was unsafe
11 and that was inappropriately built should be questioned.
12 Why would he have done such a thing? Because all we're --
13 if we're -- all we're looking at is pictures now, when
14 making the inference, we begin to see that the, the
15 assumption that there was bad attitudes, bad behaviors, bad
16 intentions on the part of the workers begins to fall apart
17 because it would require that all of the people I just
18 referenced -- probably about twelve or fifteen groups of
19 people -- colluded and conspired to build a building that
20 would hide its defects for ten years. And I would, I would
21 submit to you that's just not a reasonable assumption.

22 But were mistakes made? Absolutely they were made.
23 We see it all over the pictures. We've seen it. We've
24 heard about it. We know it because when we went, began
25 looking at this problem in 2015, it became evident that

1 there were problems. And it was in 2015 when this lawsuit
2 was filed that, that a number of people came to bear to
3 look at it, and that's where ultimately we have found our
4 disagreement: what needs to be done to resolve these
5 problems.

6 So, I, I hate to do this now at this point. It can
7 get tedious, but I do have to get a little bit tedious to
8 begin to help you do what you need to do, which is evaluate
9 what's wrong and what does it cost to fix it because again,
10 that's ultimately what we're here to do. The end of the
11 day, it's going to be about making a decision about how
12 much money should change hands. The best template for that
13 and the best framework that I'm aware of that's come up in
14 this trial is Mr. Handegan's estimate and Mr. Watkins's
15 estimate because that's sort of the end of the question,
16 how much, and we can work from that. We can work forward
17 to ask what. And you will need to evaluate what parts of
18 that you want to award.

19 So, I'm going to start the discussion from Mr.
20 Handegan's estimate, and I -- you will recall that Elmo did
21 not help us to see, and I haven't been able to get a copy
22 that's much bigger. So, I blew up as big as I could the
23 document that was called Exhibit 66 -- 677. Now, you'll
24 recall this, this first page just has the -- it's just the
25 cover page, but it, it's dated 12/21/17. So, on that date

1 is the date he put this together based on the information
2 then available, but you heard from the witness stand that
3 he had -- he, too, had to make a change on the fly because
4 of the new information that was, that was given by Mr.
5 Smits primarily, and also he talked about Mr.
6 Schweickhardt's findings as well. So, these are the
7 reasons that he modified this, but we don't have that
8 estimate. We'll -- so, we're just going to work on the
9 base one, which is what he worked from to find his things.

10 Now, I want to also just remind you about how the
11 estimate gets put together. Again, sometimes starting at
12 the end helps us to, to, to move forward, go, go towards --
13 back towards the beginning.

14 The last page of this estimate -- and you'll this,
15 this; you'll have this exhibit with you in the, in the jury
16 room -- was the totals and, and, and here's how it breaks
17 down. He starts with this item here, which is a total of
18 the line items, and we're going to go up and look at the
19 line items. But after he's figured out all the pieces and
20 parts, he, he comes up with a subtotal on the line items,
21 and then there are a series of markups that brings you down
22 to the bottom number. So, now, these don't -- these have
23 to be -- these are calculated on a percentage basis, so
24 we'll start with -- we're going to start by looking at the
25 line items because we've heard that some have been moved,

1 but I, I wanted to make sure that they have all been
2 removed.

3 The other, other part of this document that you'll
4 want to take a special look at is the top of the document,
5 the first set of information on the document which comes
6 under the heading of general conditions. In other words,
7 as Mr. Handegan testified, there's a certain cost
8 associated with building a project that is just getting set
9 up and running your project. It concludes -- in his
10 example, it included two workers, two cars, gas, ice and
11 cups, dumpsters, and all those things. So, he's got -- you
12 can go through this and look at this, and you get to
13 decide. Is this is a reasonable, is this a reasonable set
14 of things just to get set up, just to be able to do the
15 work?

16 One of the things, though, that is important for you
17 to consider is that this is built on a premise that this
18 project is going to take 110 weeks, two years and a little
19 bit more. Now, he told you from the stand that he changed
20 his number, that they would only have to be out of their
21 units for two months. He had reduced the amount of time it
22 was going to take. This was based on a premise that it was
23 going to take three to four months per unit. He reduced
24 that, but this number wasn't changed, and when that number
25 was -- this number goes other places. For example, it

1 feeds into how much is he paying his employees. So, it's
2 110 weeks per. \$1,900 per week is, is the number that goes
3 over to the, to the line item. So, if you reduce this
4 number, it begins to reduce a lot of other numbers. For
5 example, he's got twenty-six months in here for the rental
6 of his equipment, the trucks, the computers, the phones
7 that he's given everybody. He, he puts all of that in
8 there. The, the scaffolding is based on having it for that
9 length of time. The amount of cups and ice that, that he
10 is charging to the -- to this job, all built in based on a
11 premise that it's going to take 110 weeks.

12 Mr. Watkins told you he believes it's a shorter period
13 of time, and we can look at that. But remember that that's
14 part of the 10 million that comes in and line items down
15 there. For Mr. Handegan, he estimated that the cost of
16 setting up, being on this job for 110 weeks is \$1,680,000.
17 That's before he's done any work.

18 Now let's look at, let's look at some items that need
19 to come out. It's not quite as clean and simple because
20 you'll recall that the way Mr. Handegan puts together his
21 estimates is he takes an idea like remove and replace
22 windows and then spreads it out all over the estimate. So,
23 you have to find it. You have to go on a little goose
24 hunt, but I've done this for you. You double check me and,
25 and if you agree, then, then that will be, that will be

1 super. So, I'm just going to run through this quickly, and
2 I, and I'm going to do my best not to be boring.

3 But the first item that's on here is in the 70 --
4 1738 column, demo of windows and doors. And as you've been
5 told, this item is not part of this case any longer, and so
6 it should come out of the estimate. There's an item here
7 for -- a bit slower for removing the wood floor. There's
8 been no evidence in here of any reason why they're going to
9 take up flooring in this project. So, that's an item that
10 needs to come out of this estimate. There's a line item
11 here for finishes, finishing, removing the sheetrock in the
12 ceilings in the first floor. This is not related to the
13 water damage. This is a result -- this is related to
14 something you'll see later where -- the need to access
15 ductwork under the garage, and so that ductwork is out of
16 the case, and so this demolition here comes out of the
17 case. Here is the, here is the reference to that ductwork,
18 but it's included in another part.

19 And then as you go through here, you see they've got
20 items built in. For example, here is one for the clubhouse
21 and I will -- you can do the math, but I will tell you that
22 the clubhouse is not \$26,000. It is, in fact, quite a bit
23 more and, and you can, you can do the math on that. So,
24 that, that comes out. The dumpsters for demolition at the
25 clubhouse need to come out.

1 We go down a little further. Now we're into some
2 other items. Drainage corrections, been no discussion in
3 this trial about drainage situation. So, that needs to
4 come. The landscaping and irrigation has not been
5 described as needing any work. So, that's another item
6 that needs to come out.

7 We have an item in here for concrete slabs on grade.
8 Again, no evidence in this case. That's, that's a resolved
9 issue. We come down a little further and we'll see that we
10 have -- let me get to my notes. Next one is 6160, the
11 subfloor. Here we have removing and adding, adding
12 subfloor screws. Again, there's been no evidence in this
13 case regarding adding screws to subfloors or all that's
14 there. There's a, there's a item in here for interior
15 stair railings. That's an issue that's no longer part of
16 this case.

17 This one has to do with the clubhouse; this should
18 come out. The shoe molding on the, on the floor, on the
19 interior floors. Here we have the interior window casings
20 and interior window stools. In other words, when they take
21 the windows out, the trim around it, but the windows aren't
22 part of this case. So, that needs to come out. Then we,
23 as we move down, this is the siding and then within that,
24 there are continuous references to the clubhouse,
25 clubhouse. Again, not -- clubhouse is not part of this

1 case.

2 We continue to go down. We see here again clubhouse
3 is listed. We've got another clubhouse reference,
4 clubhouse reference, clubhouse reference. Let me put some
5 of these down before I drop them. Again, here's, here's --
6 windows are here in another place at \$538,000. We have --
7 here's where I told you about the ceilings, replace
8 existing sheetrock ceiling for ductwork. Again, that comes
9 out. It's not part of the case. Patch around the windows
10 where they took the windows out, that comes out. Here we
11 have -- we talked about flooring has not been raised as
12 part of the case. They've got flooring here: carpet, tile,
13 wood. Painting on the interior, we didn't talk about that
14 much, but it -- so, whether that -- what that exactly --
15 part of that seems to be interior paint and exterior paint
16 probably all related to the work, but to some extent
17 explained. We have HVAC plumbing is all out of the case.
18 HVAC is all out of the case and electrical is all out of
19 the case.

20 Now, I don't know whether you remember all of that,
21 but what you do is go the other way. What do you remember
22 that's been discussed? What is it they proved needs to be
23 fixed? So, you, you can go from it -- from that direction,
24 but I will tell you. Like I said, I did the math on this,
25 and the math of what I've just marked off is \$3,969,866.

1 That number comes out of the 10 million number plus any
2 reduction that you feel is appropriate for the general
3 conditions if you believe those are still overstated. Any
4 other changes, that comes out of this number. So, this
5 number, the subtotal of these numbers is actually just,
6 just about 6 and a half million dollars if I could use
7 round numbers. So, when you -- actually about 6.5. Again,
8 that's without making the reductions in the general
9 conditions based on the length of time. I'm going to let
10 y'all work that out. You'll work all these out.

11 Then to this, then to this you would add to markups to
12 come up with the total figure, but you can see that it's
13 much less than the 12,600,000. Now, that's if, that's if
14 you accept all of the other parts that I have -- that I
15 said don't automatically come out if you agree with this
16 way they're going about repairing.

17 And I would also ask you to consider this. You can
18 consider any of these but, for example, engineering fees at
19 9 percent. We've also heard that 7 and a half percent is a
20 reasonable number in these situations, and we don't have
21 any kind of proposal. It was a number that the engineers
22 put, build in there as just a line item to think about.

23 We also see that he's charged -- he has included 7
24 percent overhead and 10 percent profit. This means that
25 for every dollar that's up here, he's going to make -- or

1 for every \$100 that's in this top line, this, this
2 contractor is going to make 10 -- make \$1 -- or \$10, excuse
3 me. For every \$100, he'll make \$10. That after all of his
4 expenses out in the field and after all of his office
5 expenses are paid through the overhead charge, it is just a
6 pure profit. So, based on the numbers he was given, this
7 profit was to Mr. Handegan \$1,352,000 for 110 weeks worth
8 of work. Again, not costs associated with that, just
9 profit.

10 Now, that's how Mr. Handegan approached it, and Mr.
11 Watkins has a different format. You've got that. You'll
12 have those and you can, you can work through that and see
13 how -- what numbers does he use, how does that all add, is
14 that sensible, does it make sense to you.

15 But the issue after you've taken out is you have to
16 decide what are you going to have on this list, and I want
17 to just quickly run through the list of issues that we are
18 trying to address, we have been trying to address, and that
19 we're asking you to resolve for us.

20 So, the scope of repair and the problems that persist
21 in this case really relate to a fairly finite list of
22 issues that we, we've brought this down to. The roofing
23 shingles, what are we going to do with the roofing
24 shingles? We see the low slope roofs, the ones that are
25 really flat -- well, we'll call those flat roofs -- need to

1 have Hydro-Stop put underneath them. They need to be -- or
2 Bituthene membrane needs to be put underneath it. Mr.
3 Watkins's scope, at Mr. Schweickhardt's direction, includes
4 replacing all of those roof areas. They're all isolated.
5 They're in kind of valley areas there where you can get to
6 them. That's part of it. The other part is to look at the
7 issue of the low slope roofed where it needs an extra
8 layer. Again, those are in discrete areas that can be
9 addressed. They've said they've got all of those included
10 in their estimates.

11 The other issue, then, is the field of the roofs, the
12 big roofs, the big span. This is where the experts
13 disagree on what needs to be done. Mr., Mr. Mease's
14 opinion is if there are a few nails in there that have not
15 been properly installed, the whole roof needs to come off.
16 Now, there have been shingles that have blown off. The
17 question is why have they blown off. The evidence on that
18 is -- has been offered on two -- with two explanations.
19 One is that because they weren't nailed, they were able to
20 pull out and blow off. The other explanation has been from
21 the manufactures' material and from the scientific data is
22 that sometimes these things -- they only have a five-year
23 wind warranty anyway. Because the sealant strips begin to
24 fail when they are exposed to wind, they begin to flutter
25 until they break, and they can even be pulled out. But the

1 manufacturer only puts of five-year wind warranty on those
2 shingles. So, the question is do we need to replace all of
3 them at this time? Is that the reasonable response?

4 We also know that the plaintiffs themselves have
5 planned to replace these roofs in 2022. They have -- they
6 estimated that they would replace all twenty roofs at this
7 project for a price of \$350,000. Dr. Love testified that
8 was an analysis that the board undertook to set up, set up
9 capital reserves. So, their estimate for doing the work,
10 for replacing all these roofs in 20 -- starting in 2022 and
11 2025 was \$350,000. But you've heard experts explain other
12 alternatives.

13 The other is the siding. These are the two big ones
14 right up front. These are the two that obviously we've
15 disagreed with on the most. The siding in these, these
16 things and the -- on these homes is, is -- needs to be
17 secured. It needs to be -- make sure that it doesn't come
18 off. You've heard one solution was tear it all off and put
19 on a different product with a different reveal. So,
20 something different being put on in place of the old, but
21 what we are -- but what we have proposed is to leave what's
22 there rather than remove it all, and we've brought two
23 engineers who've looked at it from two different ways to
24 determine whether or not that's an acceptable solution.

25 One looked at it through the ESR, the reports produced

1 by the manufacturer, and determined that not only do they
2 provide for face nailing, but the schedules and the tables
3 that they have in there would allow it to be used in this
4 environment with the proper nailing pattern, and they --
5 and, and so looking at the documents there.

6 Mr. Schweickhardt took another step in that process,
7 and he actually did the engineering work to determine what
8 kind of nail, at what spacings will hold the 150
9 mile-an-hour new wind requirements. So, not just going
10 back to the old but looking at today's, today's
11 requirements of 150 miles an hour, what will it take. And
12 he determined the nail, face nailing 8 inches on center.
13 So, for every -- every other nail will be in a stud. The
14 others will be in the center. That this and siding will
15 meet the requirements of the current code for holding, and
16 it does not, does not violate any of the manufacturers'
17 instructions for how to secure nails, secure these to the
18 building. This is an issue that you will have to discuss.

19 There was -- some other issues have come up. The base
20 wall, base of the wall flashing, that's the z-flashing. In
21 our estimate, it's being -- it, it's being looked at as a
22 whole. If it needs to be done, it will be replaced and,
23 and fixed as, as they go about it. And based on Mr.
24 Mease's -- the estimate for that is not based on
25 Schweickhardt. It's based on Mr. Mease. Mr. Mease said

1 about 35 to 37 percent of the, of the base flashing needs
2 to be addressed, and that's the number. That's the linear
3 foot number that was used by Mr. Watkins in coming up with
4 his number.

5 Privacy wells have be discussed. Those are walls that
6 were, were changed during the construction at the request
7 of the developer, to move them. Turned out to be a bad
8 mistake, and so we said they've got to be fixed. They've
9 got to be moved. One of them we know has already been
10 done. We were not told how much it cost to do that, but
11 our estimate goes ahead and includes all three for, for
12 moving those privacy walls back.

13 Deck waterproofing, you've heard the, you've heard the
14 discussion there about, about that. Many of the -- many of
15 these will be done. First of all, you've seen the
16 Hydro-Stop specifications, and you've been -- explained to
17 you that the bump on the end is a natural result of
18 following their instructions. It's going to get flat at
19 the end. You're building up the product. There's going to
20 be a little raised edge. Hydro-Stop says it's going to be
21 there, and that's what is there. So, the question is what
22 do we need to do about that, and many of these decks are
23 going to be repaired in total as part of the, as part of
24 the repaired post area and reflashing of those. There are
25 some where sealant, just new sealant coats will be -- need

1 to be added to bring it back up to standards.

2 The deck post and roof intersections, you've heard
3 about this *ad nauseam*. All I can say is Al Schweickhardt,
4 using walking-around evidence, having done destructive
5 testing on enough of them to know that there are patterns
6 based on the configurations. Where these three things come
7 together, there's a problem. He has said to the best of my
8 ability, I've accounted for every one of those. You've
9 heard him say that. He took the plans out and he counted
10 them. He looked at the walls and he counted them. He put
11 them on a chart and, and tried to accomplish all of them.

12 There are other posts that do not have that same
13 figuration where the deck and the wall and the post all
14 come together. You've not see any evidence those are a
15 problem. That's a different configuration when the post
16 just comes down to the deck. It's where the post goes
17 through the deck and the roof comes in and, and the wall is
18 there. That's the problem. That's what we're trying to
19 address, and we've accounted for every one of them as best
20 we could. It's included in the estimate.

21 Railings, we don't have a number in our estimate for
22 railings because the railings have been under repair.
23 You'll recall the testimony that they were replacing the
24 brackets where the railings are deficient. We've added
25 blocking underneath to make sure that they're screwed in

1 securely. But as far as the connections to the posts, we
2 understand that was already ongoing. We haven't received
3 any information about what that is costing them. You
4 haven't received that either, but we anticipated that that
5 would be replaced. We just weren't given any, any
6 information about what that would be costing. Mr. Handegan
7 does have some information in his report about it, but it,
8 it's calling for the total replacement.

9 The firestopping, another of the big deals in the
10 case. The firestopping has evolved and even evolved in
11 this courtroom. So, what we have said at this point is
12 whatever Smits says, that's what it takes. Mr. Handegan
13 put some numbers on that. He had an original number. He
14 has added to that number, and so our position has been
15 based on what we heard here and what we had learned before,
16 whatever that takes, that's what ought to be done and let's
17 do it. It involves gypsum board replacement going in.

18 Now, Mr. Handegan wants to bring it in through the
19 roof deck instead of up the stairs, but it, it can be
20 drywall repair, mud tape, and, and the appropriate type of
21 sealant. You've heard about a number of different
22 opportunities there.

23 Sprinklers, there is no number in any of the reports
24 for the sprinkler repairs based on -- that have been done
25 to date. So, we don't know what that's going to cost to

1 repair. We got new information about the sprinklers here
2 from the witness stand, so it's an issue, an issue, but the
3 plaintiffs didn't provide us that number.

4 And then finally there were some miscellaneous items,
5 things like replacing all the coil stock that's not -- the,
6 the, the aluminum that's pitting. We said take it all
7 down, put it all back up. There was an effort to count
8 those, and that's included in the estimate and replace all
9 those bolts. There are some places where fasteners have
10 corroded because the wrong kind of metal was used. So,
11 we've said a lot of those can be replaced as we do the deck
12 post replacements, but to the extent there are others, seal
13 those up, make sure that the, the -- you neutralize the
14 corrosion, and add the appropriate fasteners to hold it
15 back, and repaint the hole. And so at the end of this
16 project, all those fasteners will be taken care of.

17 There's some hurricane strapping that needs to be
18 readjusted. As you're doing a lot of these deck repairs,
19 you'll have opportunity to refasten those. That's all
20 built in to various estimates that we've looked at.

21 Those are the things that have basically been
22 presented to you in the trial, and it's your -- it's up to
23 you now at this point to determine what will it cost to fix
24 that. After you've come up with those line items, add
25 general conditions to it. Add the markups for, for

1 overhead, taxes, and engineering fees. Add a contingency
2 fee to it. We've all said the contingency fee. Those are
3 the things. So, once you've come up with that line item
4 that said what will, what will this, what will this cost,
5 add the other stuff to it and give us that number. That's
6 the number we're looking for.

7 You've been, you've been told that you're going to be
8 asked to award punitive damages. That the punitive damages
9 -- and I want to kind of -- a couple things about that.
10 First, you've already heard clear and convincing evidence.
11 Are you clearly convinced that the guys working on this at
12 the time, with all of those people standing over them
13 watching, intended to cause this harm? Were they acting so
14 recklessly, so maliciously that it was -- it rose to the
15 level of being willful, wanton, and with a conscious
16 disregard for the rights of the owners? Is that how they
17 -- do we have that evidence, or what we have is what's
18 happened as a result of all of the complications and all of
19 the issues we've talked about? The idea is that there is
20 no care involved in what they did, but what you, in fact,
21 know is there was a lot of care given by a lot of people.
22 Doesn't mean they got it right, but a lot of people spent a
23 lot of time working on this project and trying to do
24 inspection reports, to talk to each other, to do quality
25 checks. And at the end of the day, it just simply didn't

1 go the way it should have gone. So, as you consider this
2 idea of punitive damages, consider all of these checks and
3 balances, whether or not it, it makes sense to you that
4 given all the checks and balances that were in place, these
5 people could have gotten away with acting so badly if they,
6 in fact, intended to act badly.

7 Finally, I need to talk about the verdict form for
8 just a minute, too, because there's, there's some other
9 parts that, that, that weren't addressed before, but you're
10 going to be asked to decide what are the damages. You're
11 going to be asked to decide about negligence, gross
12 negligence, punitive damage, all those things. There's
13 also in there an opportunity that, that only you can do is
14 to decide how much of this relates to which parts of it.

15 For example, in our contract with Tri-County, there is
16 a -- they agreed to undertake the work and do it a certain
17 way. And because they were the specialty contractor in
18 these areas, they also not only agreed to do it well, but
19 they agreed that if they didn't and if we got sued, then we
20 could ask them to pay for what we, what we have to pay on
21 their behalf or because of them. And it's normal in these
22 contracts to have these provisions, and the judge will have
23 -- it's called an indemnity agreement, and it was part of
24 the contract that all these people signed. In order to now
25 to give effect to that, the question becomes how much of it

1 arises out of which scopes of work.

2 For example, how much of the damages that the
3 plaintiffs have sustained is trim siding and waterproofing?
4 All we're asking you to do is give a number to that. Same
5 thing for the sprinklers. How much of the damages that you
6 assign is related to the -- to W.C. Services's scope of
7 work? There are all kinds of fault, other issues that the
8 judge will be involved in as we go forward with that, but
9 we need you to answer that question because we can't. And
10 so that will be part of the deliberation process for you.

11 Listen, you all have been -- you have, you have played
12 your role throughout the last two weeks. You have done
13 what you been asked to do. You have come every day on
14 time. You've paid attention every day. You've taken
15 notes; you've been diligent. You have performed what
16 you've been asked to do. You're going to be asked to do
17 one more thing, and that's now make a decision. You're
18 going to be asked to make that decision based on the
19 evidence that's in the case, based on your common sense,
20 based on your sensibilities, based on your values,
21 valuation of the evidence that you've received. You'll be
22 asked to do that soberly. You're going to be asked to do
23 that without emotion. You're going to be asked to do it
24 rationally.

25 In order for this system, this jury system to work,

1 you have to fulfill that role, too. You have to go in with
2 that kind of mindset. We believe -- we came to this system
3 because we believe this system is the only way we have, the
4 best way we have, in fact, to resolve this dispute that we
5 could not resolve between ourselves. So, we are turning
6 that over to you. We're asking you to play this one last
7 role in this process. We look forward to hearing your
8 response; we look forward to having this matter concluded
9 with your help. Thank you very much.

10 THE COURT: Mr. Cole.

11 MR. COLE: Ladies and gentlemen of the jury, I
12 introduced myself at the beginning, Andrew Cole. I'm here
13 for Tri-County Roofing. You've seen their ads around on
14 some billboards and some trucks, and then you saw the
15 photograph that was -- had Mark in front of it that shows
16 one of the trucks behind him. You've also seen that the
17 people for the family members, who are Tri-County Roofing,
18 have been here because they are very concerned about this
19 because they are in the job of customer service and taking
20 care of people when they call them if they have a problem
21 with their roof or siding or something like that.

22 You've seen that Dale didn't testify. In fact, he's
23 not here now. He's picking up the grandkids, but he was
24 here as long as he could before he went and got them. His
25 wife, Kim, and then Mark and Christie.

1 You heard from Mark and Christie not because they're
2 trying to slough off on the kids. It's because they were
3 the people out there doing the work. Christie was in the
4 office doing the work, and Mark was out there on the job
5 site at all those meetings.

6 Do you remember when we went through that testimony?
7 I walked through that with all those days that Mark was out
8 there trying to figure from out the architect, saying this
9 is our design, this is the siding we chose, this is the
10 siding that we want on this. In fact, you heard the
11 testimony from Mark that they asked him to give a price,
12 and what did the architect select and what did the owner
13 want? They wanted the more expensive siding, which turns
14 out to be, according to Mr. Mease, you should never put it
15 on because he knew from -- well, it wasn't very good, but
16 he -- there we go. He knew from that first second when he
17 got out there that it was a problem. Now, he's the only
18 person that knows that.

19 Now, maybe if Mr. Mease didn't just do construction
20 assistance like this for plaintiffs' counsel instead of
21 actually having the, the ability to go out and design
22 projects and do the construction administration that I
23 asked him about. Instead, he's got a really good job. He
24 comes in here and is paid to find problems. You heard him.
25 He's never found a roof he doesn't like; he's never found

1 siding he doesn't like. If he had to opine about anything
2 else, he wouldn't have liked any of that anyway. We could
3 have written his repair scope before he went out there
4 because what he does is he finds out, oh, that's the
5 address. Well, then we must have to replace everything out
6 there.

7 Now, that's a different technique than what we did
8 here where the defendants came in. And, yes, Al and Eddie
9 and the other experts did say there were some issues out
10 there because you all wouldn't believe us if we came in
11 here and said if you've got a problem, just ignore it.
12 That's not what we're doing. Instead, Al went out there
13 time after time, and Eddie went out there to assist him
14 with that to try to figure out what is the actual problem,
15 what can we do.

16 You heard a lot of testimony from the, from the, the
17 -- all the numbers of the columns and all of that out
18 there. But the reason was they didn't want to miss
19 anything when they found a problem on this column, and they
20 said let's just count up every single column out there, and
21 let's get it fixed. And that's what we're trying to do, to
22 get owners to have their property fixed.

23 You remember when I stood up here the first time, I
24 said I want to talk about perspective. I'm going to come
25 back to that because we've got the plaintiffs' number, 13

1 million, and some other money after that. Now, do you
2 remember how much the original construction of this project
3 was? This is starting from ground up. When you go out to
4 this private island, what you start with is just grass and
5 shrubs and trees, and so you've got to knock all that down.
6 After that, you've got to put in pilings. You've got to
7 put in the, the road. You've got to put in the concrete.
8 Then you're bringing it up. You're adding all the lumber.
9 You're adding all of that other material to it that -- if
10 you're familiar with construction, it's not like you just,
11 you know, spent a week and it's done. No. It takes a year
12 or two to put this entire project together, and it took
13 them about \$11 million to build it originally, and they
14 want 2 million, \$2 million more than that.

15 Now, I guess the explanation was it takes a little bit
16 more to fix something later on. But you also didn't hear
17 testimony except for what we asked the plaintiffs about of
18 what have they done to try to actually take care of this
19 project once they got it. Now, you've heard about some of
20 the blow-offs and things like that. It makes sense to take
21 care of that.

22 You also have heard that they redid the decks. Now,
23 that's important for two things. One, because that's
24 really the only thing that we got from them that they have
25 done to try to maintain this property. But you also

1 remember when I walked through those warranty documents?
2 And that was significant because it was a five-year
3 warranty for those waterproofing membranes. That's because
4 as you're out there and you're walking out on membrane,
5 it's breaking it down; it's wearing out. Day after day,
6 the elements wear it out. Walking on it wears it out, and
7 they know that, and the manufacturers know it as well, and
8 so they say if you want to keep our warranty, you have to
9 try to refurbish this every five years. Now, when did they
10 do that? In 2014, 2015.

11 Now, I've already proven I'm not the best at math.
12 That's more than five years from 2007 when all these
13 buildings were completed. So, if the plaintiffs are going
14 to come in here and say we can't get a warranty now for
15 that, for example, they didn't have one anyway. That's
16 because they didn't try to maintain it.

17 Now, you also saw the way that it was put together.
18 They're critical of the fact that you've got a lip on the
19 end of it. That was addressed a little bit ago. That's
20 because that's what the manufacturer wanted. So, the
21 plaintiffs want to blame us for installing things sometimes
22 that the manufacturer wants, but also blaming us for not
23 following the manufacture's instructions. That's good for
24 them because then I guess it makes their number get bigger
25 instead of trying to actually address the problems and fix

1 that.

2 Now going back to the perspective, in order to make
3 the repair, we've got forty units out there. Ms. Fish
4 testified that at a discount, she was able to buy her unit
5 after the lawsuit -- so she knew what was going on; it was
6 after the lawsuit -- for \$445,000. That's a half million
7 dollars for something that she already knew was in
8 litigation. She already got information about problems
9 with it out there, and now she wants to say you need to
10 give them a bunch of money to fix it. To fix it under
11 plaintiffs' number, not including their loss of use, just
12 per unit, we're talking about -- I found my number --
13 \$335,721. That's three-quarters of the value of her unit
14 that she's asking you for a fix. She basically wants a
15 brand new unit.

16 I'll submit that they have not done enough maintenance
17 out there to keep their property up, and they want you to
18 basically rebuild, to buy them a new house. That's not
19 proper. That's not right, and that's why we've got this
20 dispute.

21 Do you remember I was going through the testimony
22 with, with Mark up here, and I was trying to give that
23 perspective of it's not just each person in a bubble.
24 We're working together. That's part of what the whole
25 concept of this was. You remember the, the -- one of the

1 meetings that he was out there early on in the project was
2 August 4, 2006, and who was at that site visit? At that
3 site visit, Mark was there on behalf of Tri-County Roofing
4 trying to figure out how are we going to coordinate all
5 these different things we have to do. But also out there
6 were Billy Mentor from CertainTeed; Alan Fields from Curry
7 Engineering; Buddy Hilton from Complete Building; Gary
8 Stanley from Complete Building; Jim McGuire from -- the
9 architect; Tommy Brown, who was the owner; Tommy Smith, an
10 architect; Steve Apat from Complete Building. Again, that
11 was CertainTeed.

12 Do you remember what he testified? I said do you
13 remember what you all talked about there? He said, well,
14 we talked about the siding. What's a big issue in this
15 case is the siding, right? Well, they had CertainTeed out
16 there saying we're going to talk about the siding. Then I
17 said what else did you talk about? Oh, we talked about the
18 nails.

19 Now, we heard a little bit earlier this morning
20 through the deposition transcript from Mr. Sales, and he
21 said when I got to the store and I say I'm putting siding
22 up, what do they give him? They give him siding nails. And
23 so we've got CertainTeed there that's saying we talked
24 about blind nailing, we talked about face nailing, and the
25 decision was they're going to blind nail this pieces of

1 siding that were selected in the specifications and also
2 elsewhere by the architect.

3 Now, if the manufacturer thought there was a problem,
4 don't you think he would have told them that no, you can't
5 put it up here? I know your island is two miles away from
6 Folly Beach, but, you know, he didn't say anything. Now, I
7 guess we all could have just called the 800 number, but
8 isn't it better to have the guy that's out there at a
9 meeting discussing what we're putting up on there? He
10 could have said right there, hey, why don't I tell you
11 instead of giving you a card, saying call my 800 number if
12 you have any questions. He doesn't. The same thing when
13 you had the people out there from the, the Sealoflex and
14 from Hydro-Stop. They wouldn't give the warranties that
15 you saw unless they actually looked at it. So, we have all
16 these people working together.

17 I want to -- we've talked about generally where there
18 -- where Palmetto Pointe is. We all know it's close to
19 Folly Beach. I just want you to kind of picture this with
20 me. You're -- it's a long day here in Charleston. Bad
21 traffic, all that. You want to get away from it, so what
22 do you do? You drive out. You go down, down the 30
23 connector, cross James Island, get on Folly Road, start
24 passing that first road on the left. There's an IHOP. You
25 get past the churches and you get past the Honey and Bull

1 restaurant which I've eaten at many times because of this
2 case, and some of the others. You go down past that
3 Harris- Teeter, and it's right there on the left.

4 Now, you can't get on the island unless you know the
5 gate code. So, they get to their private island. You
6 don't hear any traffic. You don't hear anything else, and
7 you sit down in your, in your, your house, your half
8 million dollar house you get at a discount, and you're able
9 to look out there across the, the water as you look at your
10 private dock. And you're not out there looking and saying,
11 oh, I wish I didn't have face nails. You're saying I like
12 the quiet. I like being out here. I'm going to enjoy it.
13 That's what you're concerned about.

14 Briefly, I'm going to talk about what was mentioned
15 just a little bit ago about the, about the cross-claim.
16 It's a little more complicated than it was explained
17 before.

18 There was a contract, and y'all saw and it will be
19 back there, and you can see it. And the contract has small
20 type and a lot of legalese in it. And while you were all
21 back, you know, getting lunch and things like that, the
22 attorneys have been discussing what that contract means,
23 and the judge will give you a charge about what you can
24 determine from that.

25 Now, using the term indemnity, it's not just a slight

1 thing where the Complete Building is trying to say it's
2 just a small disagreement. What's actually happened --
3 happening is even though Tri-County is part of this group
4 of people trying to get it done, Complete wants you all to
5 say I don't want you to have any issues in this. I don't
6 want you to have to pay anything. Instead, I want you to
7 transfer all that risk to Tri-County.

8 I'll just submit to you that's not right, and if
9 that's what that contract meant, that we're to take off --
10 take it on the chin for everything when our contract was
11 about 1.3 million and Complete's was about 11. That's not
12 what we contend. That's not what happened. And I don't
13 think it's right that you all, you know, give them a
14 complete pass where -- we've heard it a lot that you've got
15 architects are designing it. They're selecting things.
16 We've got the engineers out there that are watching. We
17 heard about Curry Engineering was actually one of the
18 people called out there to deal with these posts that we're
19 talking about. We've got Complete Building who's
20 overseeing all that.

21 And then we've got us, Tri-County, who's here in the
22 courtroom and is concerned about this. And we heard
23 Christie talk about customer service as something that
24 we're really concerned about. That's why she was surprised
25 when she heard some of the testimony up there. She went

1 back and said I want to make sure we didn't miss something.
2 She went back and she looked and said okay, there was an
3 issue in 2008, but nobody called us after that. And then
4 we had two owners that called in 2014 that said we have a
5 repair. Repair is not a warranty. They didn't say we put
6 the roof on, and then they didn't -- one of them didn't
7 call us back and the other one said, oh, it's been fixed.
8 Don't worry about it. And then they get a lawsuit and no
9 -- none of the other owners say anything. That's not
10 right.

11 So, I ask you when you go back there and be reasonable
12 when you look at the numbers. We're not standing up here
13 saying there's no number that you should award the
14 plaintiffs. Instead, we want you to be reasonable and look
15 at, look at the actual way to fix this, not just a big
16 pie-in-the-sky number that allows the plaintiffs to go
17 build another Palmetto Pointe if they want to so they can
18 have a third home. And I ask you also to not allow
19 Complete Building to get away scott free by trying to
20 transfer their, their money that they might owe in this
21 thing to Tri-County Roofing. Thank you very much.

22 THE COURT: Mr. Atkins.

23 MR. ATKINS: May it please the court?

24 THE COURT: Yes.

25 MR. ATKINS: Ladies and gentlemen, I am so pleased to

1 be in front of you right now, and you are so pleased to be
2 hearing my voice. Let me tell you the one thing that does
3 please me is that I can come to you right now after my
4 opening statement to you and tell you I kept my promise. I
5 kept every one of the promises I made you in opening
6 statement about this case and the evidence that would be
7 presented, what it would show and what it would not show.
8 I was true to my word, and I mean to be true to my word in
9 this closing as well.

10 Fact of the matter is and simply, simply stated is
11 Mark Lazo, when I asked him to come help me, tell me what
12 my, my client did wrong, he concluded after doing all the
13 research that he did, and talking to all the code people he
14 talked to, and getting all the information, he concluded,
15 his opinion was W.C. Services did nothing wrong. Couldn't
16 find a thing that they did wrong, and I told you that in
17 the opening statement. I told you this oddball was going
18 to come back to you and he was going to ask you for a
19 defense verdict.

20 Nobody else on that side of the room is going to ask
21 you for a defense verdict because the evidence doesn't
22 justify it perhaps. But the evidence that you heard in
23 this case about the fire sprinkler systems and W.C.
24 Services's work justifies it. It warrants the return of a
25 verdict for W.C. Services. They don't owe anybody a penny

1 for what they did out there. They don't owe the plaintiffs
2 anything, and they sure don't owe -- pass the buck up on
3 the indemnity claims, cross-claims of the general
4 contractor. They don't.

5 Let's think about what we heard. I told you in the
6 opening statements, I said you will not see a bit of
7 evidence that suggests the that fire sprinklers at Palmetto
8 Pointe are contributing in any way to any moisture
9 intrusion in any buildings at that location at Peas Island.
10 You didn't hear a word, you didn't see a piece of paper
11 from anyone that said those fire sprinkler pipes are
12 contributing to water damage at the decks, at the roofs,
13 you know, at the siding, you name it, that they had
14 anything to do with that. Not one, not one shred of
15 evidence.

16 What's the other element that I told you I was going
17 to come to you with and tell you that the evidence would
18 show that W.C. Services did nothing wrong? Penetrations of
19 firewalls in attics. I told you in the opening statement
20 there would be no evidence presented in this case that W.C.
21 Services was tasked, was responsible for any sealing of any
22 penetrations, whether it be fire sprinkler pipes or
23 otherwise, and you heard no evidence. In fact, the
24 evidence is it appears nobody was given that
25 responsibility, nobody. It's not like we've got 2 x 4

1 framing that people tried to seal. There's no evidence of
2 any sealing of those gaps in those attic firewalls, and
3 there's nothing in the contract which y'all have with you
4 of W.C. Services which says you will seal penetrations for
5 fire sprinkler pipes or otherwise. You will not see a word
6 about that being with no scope of responsibility.

7 Now, what they've done is they've twisted a little bit
8 on the penetration issue by saying, well, you know, the
9 as-built condition is not per the plans and, therefore,
10 there were some penetrations created that would not have
11 been there but for if you'd stuck to the plans, right? Set
12 aside for a moment that we still don't have anything that
13 says W.C. Services is responsible for sealing any
14 penetrations. Set that aside for a moment. The evidence
15 that you have on those plans was it came from Constantine,
16 Chris Constantine. It came from Chad Christopher. They
17 came from Mark Lazo as well, but what occurred is that
18 those plans weren't sealed. They weren't stamped. They
19 weren't final. We couldn't find any of the plans. You
20 know, there's a lot of documents that couldn't be found in
21 this case, a whole bunch of documents that couldn't be
22 located, and one of them was a set of sealed plans, not
23 just for water sprinklers but civil plans, electrical
24 plans, structural plans. No sealed plans were found.

25 Now, you know, you're talking about what? Ten, twelve

1 years now. You know, that happens. Documents get lost
2 with the passage of time. People's memories fade with the
3 passage of time. People die. Buckey Chapman passed away,
4 the owner of the company, W.C. Services. That's what
5 happens when you have a long period of time between the
6 issues at hand in a, in a lawsuit and when the lawsuit's
7 actually brought. Things get stale. You lose stuff. I'm
8 sure there were documents out there at some point. Folly
9 Beach doesn't have them anymore. We couldn't get them
10 there; we couldn't get them anywhere. We couldn't find
11 them. I couldn't find them because W.C. Services doesn't
12 exist. I didn't know who I could go to to ask for
13 documents.

14 But these plans that have been put up in this case
15 were not final plans, and it's not uncommon, and you heard
16 it from Chad Christopher, you heard it from Mr.
17 Constantine, and you heard it from Lazo, people who have
18 experience in working with construction and fire protection
19 issues and the installation of fire systems that it is not
20 uncommon between the time the plans get certified to the
21 fire marshal for approval that things happen in the field,
22 and there are revisions made in the field. Now, they have
23 to be approved. They should be approved, but we couldn't
24 find any documents.

25 The only document we could find that suggests that

1 they were approved was a inspection by Tom Hall, the
2 building code official, in February of 2007. You heard Mr.
3 Lazo talk about this document. He went out to inspect
4 as-built -- because it had to be as-built -- the piping for
5 a fire sprinkler system to make sure it didn't leak, and
6 that means they've got to be right where they are now, and
7 he didn't raise a flag. He didn't raise a fuss. There was
8 nothing said about the location of those fire sprinkler
9 cabinets at the front as opposed to on the side. Something
10 happened. Something changed in the field, but it was
11 approved. Every indication was it was approved. It had to
12 be approved.

13 The only other possible explanation you've got is the
14 code officials just ignore it, just ignored it. They
15 didn't ignore it. Everybody who got off their tail and
16 went out to talk to people who were involved to find out,
17 you know, what was going on out here because the records
18 were a little thin, they had to go to the source. Everyone
19 who took that effort and made that effort talked to George
20 Tittle, the fire marshal, among others. Every one of those
21 people have not recommended -- in fact, have said fire
22 sprinklers are not required in these buildings. Even Al
23 Schweickhardt, who had that conversation, did not change
24 his scope of work, did not incorporate fire sprinklers,
25 didn't do anything. He didn't change a thing. That's what

1 you do if you want to find out the truth. You investigate,
2 and if you have to talk to people, that's what you do.

3 I told you at the beginning of the trial that contrary
4 to that, what the plaintiffs were going to bring to you,
5 what the plaintiffs' attorneys were going to bring to you
6 was a fellow who had a theory, a fellow who had interpreted
7 a letter. Kind of a twisted, convoluted interpretation to
8 get there, but it supported his theory. He didn't talk to
9 anybody that was involved in the design or construction or
10 approved the design or construction. He didn't, he didn't
11 do anything except devise a theory based on his reading of
12 the March 6, 2006, letter, and that's what he rests his
13 opinion upon, and it's Doug Smits.

14 And the judge is going to give you an instruction on
15 experts. And, you know, just because somebody is declared
16 an expert in a trial doesn't mean they know what they're
17 talking about. It's going to be your responsibility to say
18 is that opinion really based on something reliable? Does
19 that opinion show someone has gone out there and based it
20 on facts and information that is reliable and, therefore,
21 that opinion has some reliability, or is it lacking?

22 In this instance, what we've got is we have a theory
23 that's not only not supported by the facts. It is
24 contrary. It's contrary to the facts. Everyone, everyone
25 who went out and looked and talked and spoke to the people

1 who were, who were making the decisions at the time are
2 going in this direction, and the man that's sitting alone
3 over here in his chair coming up with a theory is by
4 himself. And his interpretation -- and you'll have the
5 letter back there. You'll have that March 6, 2006, letter.
6 It's Exhibit 679, and you'll be able to read it, and it's,
7 it's clear. It's not -- there's no ambiguity here. This
8 letter says -- and the operative portions -- and it was
9 read before by Mr. Buckley, and I want -- I'm sorry. It
10 says: Your project. Talking to the developer. This is
11 from the code official, building code official to the
12 developer, copied to the fire marshal, copied to the chief
13 of the fire department in Folly -- James Island, and a guy
14 named Robert Wise. Says: Your project requires the
15 following. Then it lists four things:

16 Four things that are required for your project.

17 One, each unit will be equipped with NFPA 13-D
18 fire sprinkler systems.

19 Now, we know, we know over and over again from
20 everybody it's not disputed. NFPA 13-D, the fire sprinkler
21 standard, the fire sprinkler standard used nationwide for
22 design and installation of fire systems did not require
23 sprinklers in those attics. It didn't require sprinklers
24 in the garages, which is the important point when you get
25 to number 2. Number 2 goes back to the ordinance that

1 you've been hearing about because the ordinance requires
2 sprinklers in the garages if you didn't have a one-hour
3 fire separation, in contrast to NFPA 13-D. So, that's why
4 in number 2 it says -- 90.8(c), it should be 8(c) -- you
5 may omit the garage sprinklers if you have a one-hour fire
6 separation. That's the code; that's the ordinance. That
7 differs from NFPA 13-D, so that's why it's in there. We're
8 enforcing the ordinance, and you're required to do that.

9 Then they say:

10 The third element that is required of your
11 project is that the clubhouse must be sprinklered
12 according to its primarily occupancy.

13 And you heard from Mr. Lazo, who is the only person
14 who went in the attic of the clubhouse to see what the
15 situation was, that it was -- it's categorized as a
16 assembly building, and it has to be sprinklered in the
17 attic and it is sprinklered in the attic.

18 It's incredible if you think about it. You've got
19 twenty buildings, twenty-one buildings and if you believe
20 what Mr. Smits and the plaintiffs' attorneys are telling
21 you, W.C. Services just got it right one out of twenty-one
22 times. Really? No. They knew what they were doing, and
23 they were following the instructions of those above them
24 when they did it. So, you got to sprinkler the clubhouse,
25 and then you got to widen your entrance to accommodate a

1 fire truck, and that is it. That's what's required for
2 your project, according to the code official writing the
3 folks involved who would have been involved in a variance
4 decision.

5 This is confirmation because it does not list as being
6 required the ordinance requirements for sprinklers in the
7 attics. It doesn't reference that. NFPA 13-D
8 is the, is the guiding standard in this letter for the
9 sprinklers in the attics, which are not required.

10 When we look at some of the other elements in this
11 case, now the costs that have been provided -- and Mr.
12 Kendall spent a lot of time talking about costs. I'm not
13 going to belabor that except to say that when Mr. Handegan
14 was, was talking about his estimate, you remember when it
15 came to fire sprinklers within the attics, he was relying
16 on a quote proposal from -- I think it was DSC Fire and
17 Security. They gave him a proposal dated June of 2016, I
18 believe it is, and it's an exhibit. You'll, you'll have it
19 back there to look at, and that has a quote of about
20 \$378,000, and then you got some more add ons and Mr.
21 Handegan's estimate that brings that, that figure up a
22 little higher to put sprinklers in the attics. But the DSC
23 proposal is only good for thirty days, and it says it on
24 the proposal. It's only good for thirty days, and Mr.
25 Handegan's done nothing to update it. He doesn't really

1 have a real number that he can rely on putting sprinklers
2 in those attics, which is neither here nor there because
3 W.C. Services, there was no -- there is no requirement to
4 do that. There was no requirement to do that. There was
5 nothing to require anybody to put sprinklers in those
6 attics.

7 Chris Constantine didn't require it of W.C. Services.
8 Jack Christopher in his submittals, he, in fact, told him
9 don't put sprinklers. Show the plans without sprinklers in
10 the attics. Show the plans without sprinklers in the, in
11 the garage because they were going to do one-hour
12 separation, and that's exactly what W.C. Services did.

13 The only other issue that I might want to go back to
14 is the penetrations, and this shows kind of the absurdity,
15 I think, of, of the position that you heard from the
16 plaintiffs and their experts. There was a torn section of
17 gypsum along a run, horizontal run of the sprinkler. It's
18 going to be one photograph that's back there for you. That
19 was unit 1635 to help you locate it. And Mr. Mease says,
20 well, gee. That tear is about the same length as that
21 pipe. Ergo, I suspect that the fire sprinkler installer
22 tore that gypsum. And when I suggested other possibilities
23 just as practical and just as possible, well, he didn't,
24 you know, he didn't want to go there. He didn't want to
25 give any consideration to that. That was good enough for

1 him. Mr. Smits sat in his chair reading and thinking, came
2 up with a theory that it was good enough for him.

3 It's not good enough for you. It's not good enough
4 for you as jurors. You took an oath, and you'll execute
5 your oath. You're going to listen to this evidence, and
6 you've heard this evidence, and you're going to do the
7 right thing. You're going to deliberate. You're going to
8 consider all the evidence on W.C. Services, and you will
9 return a verdict for W.C. Services.

10 There are places on the verdict form where you will
11 accomplish that. The questions say do you find for the
12 plaintiffs against any defendants on negligence, and they
13 list the defendants. One is W.C. Services. You'll circle
14 no, no. Same on breach of warranty. For the plaintiff
15 against any defendants listed, yes and no. Circle one or
16 the other for each defendant. W.C. Services, no. Do you
17 find any of the defendants were grossly negligent? Again,
18 a list of defendants on this verdict form. W.C. Services
19 will be there. Circle yes or no. No.

20 And on the cross-claim, you're not going to, you're
21 not going to tell W.C. Services that it should pick up the
22 tab for errors and omissions and misconduct on the part of
23 the general contractor. You're not going to let them pass
24 that buck, and on that question again you're going, you're
25 going to say no.

1 That's all the plaintiff and that's all the general
2 contractor should expect from you based on the evidence in
3 this case. That's all they should expect, and I'm here to
4 tell you that that's exactly what W.C. Services is asking
5 you to do. Thank you.

6 THE COURT: All right, at this point in time, ladies
7 and gentlemen -- I'm sorry, Mr. Reeser -- it's been
8 requested that we take a very brief restroom break, so we
9 will do that.

10 I will also tell you as a matter of housekeeping that
11 we have two more closing arguments that will take place,
12 and then I will charge you on the law. I would anticipate
13 my charge at least lasting about half an hour. I would ask
14 you during this break if y'all could kind of reach a
15 consensus with each other and decide if you want to press
16 on in the next few hours tonight and stay, or if you would
17 rather come back in the morning for me to read my charge on
18 the law and then come back. I'm going to leave that
19 entirely up to y'all to try to reach a consensus over this
20 break. So, we'll be at ease for about five minutes, all
21 right? Thank you so much.

22 (THE JURY EXITS AT 5:02 P.M.)

23 (OFF THE RECORD.)

24 THE COURT: Thank you. Please be seated. Over the
25 break, we received a note from the foreperson, which we

1 (A PAUSE.)

2 (THE JURY ENTERS AT 5:15 P.M.)

3 THE COURT: Thank you. Please be seated.

4 Ladies and gentlemen, what we're going to do is just
5 allow the attorneys to finish their closing arguments
6 before you, and we will come back in the morning for the
7 court's charge on the law.

8 And with that, Mr. Reeser, please ---

9 MR. REESER: Let me just get this ---

10 THE COURT: --- go ahead.

11 MR. REESER: --- out of the way before.

12 THE COURT: Thank you.

13 MR. REESER: May it please the court? Ladies and
14 gentlemen, last time I talked to you, last thing I said to
15 you is thank y'all for your attention, for being here, and
16 that's the first thing I want to say to y'all this evening.
17 Thank you for your attention. This has been a long
18 process, and it is something that we all appreciate.

19 I also told you whenever I talked to you last time
20 that the plaintiffs want to do a deal. That's true. Now,
21 what the plaintiffs have told you is that we didn't learn
22 anything this past week, that everything ended on Thursday.
23 I learned and I would say that you learned that Mark Poyner
24 would hire Eloy Alonzo Vasquez, Miracle Siding, and Wilson
25 Lucas Sales, Sales again. he would absolutely hire them

1 again. Why would he do that? It's because they did what
2 they were asked to do it with, and that is true for this
3 whole project.

4 Remember that list of people we talked about at the
5 very beginning? The architects, the engineers, code
6 officials, general contractors, manufacturers' reps,
7 Tri-County. Well, now at the bottom it wasn't just Mr.
8 Sales. It wasn't just Mr. Vasquez. There were other
9 laborers that every single building out there, siding was
10 the same. It was all put up the same. All the shingles,
11 all the deck waterproofing was put up the same way because
12 it wasn't up to the people doing the work how it was done.

13 Now, the plaintiffs want to have two sides of the same
14 coin, and Mr. Cole mentioned this with manufacturers. They
15 want to say supervision, this is your fault because you
16 didn't catch these problems. Then they want to come back
17 and they want to say well, labor, you covered it up, so the
18 people who were supervising your work couldn't, couldn't
19 see it. That's how he gets to these large numbers that he
20 puts up here on the screen for you.

21 But why did Mr. Poyner say he would hire them again?
22 Y'all have seen all these pictures this whole case. Why
23 would Mr. Poyner hire them again? Is it because he knows
24 that they didn't pick the siding that's on those buildings?
25 Is it because he knows they didn't pick the nails? Is it

1 because he know that there were people from Sealoflex
2 looking at these decks, checking them off, people from
3 Hydro-Stop checking them off? Is it because those deck
4 edges looked just like in those details that you've seen?
5 If I hire somebody to come change out spark-plugs because I
6 don't want to do it, he puts them in and he blows my
7 engine, why would I hire him again? Because he knows it's
8 somebody else's fault.

9 So, at the end of all of this, what the plaintiffs
10 have asked you to do -- and there has been some mention of
11 a yes and a no. The plaintiffs want you to circle yes.
12 They want you to find Sales, Mr. Vasquez, and Miracle
13 Siding liable for these numbers, and whether it be 13 that
14 was on the screen or 12.4 like the plaintiffs told you,
15 whatever that number is, they want you do find them liable
16 for that number. Well, what is that number? Mr. Kendall's
17 already been over that.

18 Now, what did the plaintiffs have to prove? This is
19 something that no one's mentioned to you so far. They've
20 got to prove to you what all these people did. You'll have
21 the invoices. You are the judges of the facts. You will
22 make that determination as to what Sales did, what Miracle
23 Siding did, what Vasquez did, but it wasn't the deck
24 framing. It wasn't the sprinklers. It's wasn't the HVAC.
25 It wasn't windows. It wasn't all these things in this

1 exhibit that you'll see that you've been through today.
2 But if you circle yes, that's what you're telling -- that's
3 what the plaintiff wants you -- the plaintiff wants you to
4 tell Mr. Vasquez, Mr. Sales, and Miracle Siding that that's
5 what y'all want them to pay for. Doesn't matter what they
6 did. Doesn't matter whose fault it was. They just want
7 them to pay that number.

8 Now, whenever you're back there thinking about it,
9 just remember Mark Poyner would hire them all to do it
10 again. Thank y'all for your time and attention.

11 MR. BUCKLEY: May it please the court?

12 THE COURT: Yes, sir.

13 MR. BUCKLEY: Ladies and gentlemen, Ed Buckley, and
14 I'm glad, I know y'all are glad that I'm the last lawyer
15 y'all got to listen to.

16 I want to talk first about the oddball, W.C. Services.
17 Who did we hear from with the W.C. Services situation who
18 we had actually sued in this case? CRG Engineers Chris
19 Constantine. And you heard that I used to drive his school
20 bus. The reason I mentioned that is because W.C. Services
21 threw him under the proverbial bus. Here's how they did
22 it.

23 Remember I asked him isn't it true there are three key
24 documents missing from your file that W.C. Services never
25 provided to you? You were asked to design a system that

1 complied only with NFPA 13-D. They didn't give you their
2 contract. And their contract is Exhibit 203, and the
3 contract very clearly says you have to comply with the
4 Folly ordinance and NFPA 13-D, and it attached the March 6,
5 2006, letter to it, and that letter from Tom Hall attached
6 the Folly ordinance. And he testified that if he had those
7 documents, what he approved and certified would have been
8 very different because he would have had to include
9 sprinklers in the attics.

10 This is the chart that's the law of Folly Beach. That
11 is no exception. Attics not used for living or storage,
12 you have to have sprinklers. The only way to get out from
13 under that is to have a variance after a hearing with the
14 building code official, the fire marshal, and a person in
15 the industry appointed by city council. There's no
16 evidence that happened here. Mr. Constantine testified
17 there's no evidence that happened here.

18 Mr. Constantine wrote his certification on the 22nd of
19 June 2006. The plans that were drawn by Chad Christopher
20 were dated June 7, 2006. Chad Christopher testified he
21 never drew any other plans. That's not what was built.

22 This is what was drawn. The sprinkler systems come in
23 here, run up this wall on the outside that's not a
24 firewall, run out the other side, run up the other side
25 that's not a firewall. Instead, somebody figured the, the

1 wall comes in from right here from the street. So, we can
2 save pipe and just run it right under here and go right up
3 through that firewall. Every bit of that system is a code
4 violation. Give me a break.

5 Rain Bird as your backflow preventer on a life safety
6 feature of your house, that's a code violation times forty.
7 W.C. Services built a code compliant dangerous system.
8 They created problems that the sprinkler system can't even
9 address because the sprinkler system doesn't reach inside
10 the firewall. When you enter a verdict against W.C.
11 Services, it's around \$829,000 that Mr. Handegan gave you
12 as the cost of redoing the sprinkler system. That includes
13 costs associated with moving it.

14 In addition, don't let it stop there. Send a message
15 to W.C. services and everyone who does business like this
16 that when you hire an engineer, tell him the truth. Give
17 him the full story so that when he does his job as a
18 professional engineer licensed in this state, he does it
19 right. Award punitive damages against them at least in the
20 amount of 829,000.

21 Complete Building Corporation, I got to go through
22 this just a little bit. This Exhibit 677, it wasn't
23 introduced by us. You notice that? There's a good reason
24 for that. It was modified and replaced by an estimate
25 prepared more recently. Why was the estimate prepared more

1 recently? Because Mr. Handegan already took out all those
2 items Mr. Kendall wasted your time striking through. We
3 have never come in here and told you that our damages are
4 \$15,257,000, have we? No. The estimate is the one that
5 Mr. -- the number is the one that Mr. Lucey showed you
6 which already takes those items out.

7 In the estimate they chose to show you -- so that you
8 know I'm not making it up, I actually gave you the wrong
9 number. The sprinkler's \$839,920. There is no doubt that
10 there was no care at any level by anybody to meet the
11 requirements of the minimum standard building code. The
12 judge will charge you that the building code violations
13 constitute evidence of recklessness. There are thousands
14 of building code violations in this project.

15 Mr. Smits testified that after he sat through Mr.
16 Schweickhardt's third deposition pertaining to firewall
17 repairs, which was the Thursday before we started this
18 trial -- Mr. Smits sat through that deposition. He had no
19 idea how many penetrations there were in the attics. He
20 then went and checked himself: twenty-six times two, each
21 side, times forty is 1,040 fire code violations alone in
22 the attics. Every one of these penetrations that goes
23 through the floor with the sprinkler system, more
24 violations. Coming out of the firewalls, more violations.

25 That is the type of conduct that punitive damages are

1 intended by the law to permit, and not only to permit but
2 to encourage because the reason punitive damages are
3 allowed in the law is to do two things. You compensate and
4 vindicate the rights of my clients, but you also punish and
5 make an example of the wrongdoers. And the reason you do
6 that is to make sure that, to the extent you can as plain,
7 ordinary citizens of this county, you can affect the way
8 people do business. Send a message that's loud enough that
9 it reaches the trade journals so that people who are in
10 this business understand that you can't pull this any
11 longer.

12 Mr. Smits was not only a marshal fire and building
13 code official. He was on the board, the founding board of
14 the entity that creates that building code right there,
15 ICC, the International Code Conference. He's been doing
16 this thirty-four years. He said he has never seen this in
17 his entire career. That's gross negligence, it's
18 recklessness, it's malfeasance, and it deserves punishment.

19 Mr. Sales, Miracle Siding: Did you know that you were
20 violating the code when you used the wrong nails? I don't
21 care. Did you know you were violating the code when you
22 used the wrong side siding? I don't care. Well, do you
23 know now? Yeah, I know now.

24 He's probably learned to read better. He's learned
25 obviously to speak better because that was his deposition

1 in English. And over the years he learned, but that's not
2 helping us at all. He didn't know anything. He didn't
3 even know there was a building code. He measured the way
4 to hit a stud with his arm. No wonder everything's a mess.

5 I've been doing this for thirty-five years; I've
6 handled construction cases for about twenty-five years. I
7 have never seen a case where siding, cementitious siding
8 blew off of buildings at less than 100 miles an hour, ever.
9 Imagine what these buildings will look like if they get hit
10 with 100 mile an hour winds. There will be nothing left on
11 the outside. I've never handled a case where repeated
12 shingle blow-offs occurred in new construction with minimal
13 winds. 57 miles an hour is the strongest wind that anybody
14 has documented that ever hit these buildings. That is not
15 the product failure. That is assembly failure,
16 installation failure.

17 Again, Mr. Sales and Miracle Siding need to be
18 punished for doing what they did to my clients. He
19 admitted he installed everything out there in violation of
20 the code, everything. The coil stuff that he wrapped the
21 treated beams with, he didn't know that's a code violation.
22 Didn't know it then. Know it now.

23 Again, send a message to people who do that, that you
24 have to know the law, and you have to know the code, and
25 you have to comply with the code because these codes aren't

1 there because people think it would be fun to make it more
2 difficult for builders to do their jobs. The codes are
3 there to protect people and their property. Punitive
4 damages are there to protect their rights and protect
5 others in the future from being exposed to what our clients
6 have had to live with. Thank you very much.

7 THE COURT: All right, thank you very much.

8 Ladies and gentlemen, at this point in time, per your
9 -- as you requested, we'll break for the evening, then
10 resume tomorrow morning at 9:00 for the charge on the law,
11 which will be read to you by me.

12 I'm going to ask you one more time and instruct you
13 one more time. Do not begin your deliberations. Do not
14 discuss this case with anyone. Do not conduct an
15 independent research whatsoever on any of the matters that
16 were discussed or the attorneys involved.

17 I will see you all back at 9:00 in the morning. Does
18 anybody have a problem with being here at 9:00? Okay.
19 Wonderful. I'll see you all at 9:00 in the morning. Thank
20 you very much.

21 (THE JURY EXITS AT 5:34 P.M.)

22 THE COURT: See you all at 9:00 in the morning.

23 (WHEREUPON, THE CASE IS AT EASE.)

24 *THURSDAY, MAY 16, 2019*

25 (COURT RESUMES AT 8:56 A.M.)

1 THE COURT: Good morning. How are y'all?

2 MR. LUCEY: Good morning. Yourself?

3 THE COURT: Fine. We got your email, and I made that
4 small change. Appreciate you finding that. That is a
5 correct change to make. It is referenced as or in the
6 other parts of the charge regarding punitive, so that's
7 proper to change that and to an or on page 26. So, we have
8 made that change

9 MR. LUCEY: Thank you, ma'am. One other matter.

10 THE COURT: Another one?

11 MR. LUCEY: We were double checking the exhibit list,
12 Your Honor.

13 THE COURT: Oh, okay.

14 MR. LUCEY: 739 and 705 went into evidence. 705 is
15 the fire sprinkler drawings; 739 was the attic photographs
16 that went in through Mr. Lazo.

17 MR. COLE: 1039.

18 MR. LUCEY: 1039, excuse me.

19 THE COURT: Okay.

20 MR. LUCEY: So, 705, 1039, and we just wanted to make
21 those two corrections to the exhibit list.

22 THE COURT: Okay. Any information contrary to that?
23 I think I remember those going in. Okay, you can make
24 those adjustments.

25 (A PAUSE.)

1 MR. COLE: Yes, Your Honor.

2 THE COURT: All right. That's the second change.

3 Okay. All right, ready to proceed? Plaintiffs ready?

4 MR. LUCEY: Yes, Your Honor.

5 THE COURT: Defense ready?

6 MR. KENDALL: Yes, Your Honor.

7 THE COURT: The better question is is the court ready,
8 and I'm ready. Let's get the jury in. Bring them in.

9 (THE JURY ENTERS AT 9:07 A.M.)

10 THE COURT: Good morning. Please be seated.

11 *JURY CHARGE*

12 THE COURT: Good morning, ladies and gentlemen. We
13 are now reaching the final stage of the trial. Mr.
14 Foreperson, members of the jury, you have heard the
15 testimony, the evidence, and the arguments of the
16 attorneys. I remind you that during this trial, you and I
17 have had certain duties to perform. As the trial judge,
18 it's been my responsibility to preside over the trial of
19 this case, and I also have the duty to rule on the
20 admissibility of the evidence offered during this trial.

21 You are to consider only the evidence which has been
22 before you. If there was any testimony ordered stricken
23 from the record during this trial, you must disregard that
24 testimony. You are to consider only the testimony which
25 has been presented from this witness stand, any exhibits

1 which have been made a part of the record in this case, and
2 any stipulations of counsel.

3 You should remember that the statements made by
4 counsel are not evidence. In presenting their arguments,
5 counsel often refer to the evidence. However, you should
6 base your verdict on the evidence as you remember it.
7 Therefore, if there are any conflicts between the
8 recollection of counsel about the evidence and your own
9 recollection, you should rely on your own understanding of
10 the evidence.

11 You are the judge of the facts, and I am the judge of
12 the law. You have heard me rule on objections during the
13 trial. This is a normal process during the course of a
14 trial. It is normal and proper for the attorneys to make
15 these objections, and my rulings on these objections were
16 typically in your presence. The fact that an attorney made
17 an objection or my ruling should not be considered by you.

18 In fact, this is probably the best example of how you
19 and I work together to resolve this dispute. If I had
20 ruled as a matter of law that the testimony or evidence is
21 admissible, it now shifts to you as the sole judge of the
22 facts to determine whether the evidence is credible or
23 believable, and if so, how strongly you believe the
24 evidence. If, on the other hand, I do not allow evidence
25 or testimony, you should not consider that or speculate as

1 to what the testimony would have been or why it was not
2 allowed.

3 The fact that I allowed or did not allow evidence
4 admitted should not affect you. I ruled on the evidence as
5 a matter of law and not the credibility of the evidence.
6 It is up to you to determine if the evidence has any
7 credibility whatsoever in the case.

8 I have the additional duty now to charge you the law
9 applicable to this case. It is your duty as jurors to
10 accept and apply the law as I now state it to you. If you
11 think you have any idea as to what the law is or what the
12 law ought to be and it does not agree with what I tell you
13 the law is, you must forget that idea because you are sworn
14 to accept the law and apply the law exactly as I state it
15 to you.

16 In every case tried in this court before a jury, the
17 jury becomes the sole and exclusive judge of the facts. A
18 trial judge cannot comment on or make any statement about
19 the facts in a case. Since you are the sole judges of the
20 facts, do not think by anything I have said during the
21 trial that I have any opinions about the facts in this
22 case. The law does not allow me to have an opinion about
23 the facts.

24 You are also the judges, the sole judges of the
25 credibility or the believability of the witnesses who have

1 testified and of the evidence presented in this case. You
2 may believe everything a witness says or only part of it or
3 none of it. In deciding what to believe, you may consider
4 a number of factors, including the following. Number one,
5 the opportunity and ability of a witness to see or hear or
6 know the things the witness testified to. Number two, the
7 quality of the witness's understanding and memory. Number
8 three, the manner of the witness while testifying, or how
9 they act on the witness stand. Number four, whether the
10 witness has an interest in the outcome of the case or any
11 motive, bias, or prejudice. Number five, whether the
12 witness is contradicted by anything the witness said or
13 wrote before trial or by other evidence. Number six, how
14 reasonable the witness's testimony is when considered in
15 light of other evidence that you believe. And finally
16 number seven, any other factors that bear on believability.

17 The weight of the evidence to prove a fact does not
18 necessarily depend on the number of witnesses who testify.
19 What is more important is how believable the witnesses were
20 and how much weight you think their testimony deserves.

21 You are to consider only the evidence before you. You
22 are to consider only the testimony which has been presented
23 from this witness stand, along with any exhibits which have
24 been made a part of the record, and any stipulations of
25 counsel.

1 The rules of evidence ordinarily do not permit
2 witnesses to testify to opinions or conclusions. An
3 exception to this rule exists for witnesses we call expert
4 witnesses. A witness who, by education and experience, has
5 become an expert in some art, science, or profession may
6 give an opinion as to the subject the witness claims to be
7 an expert in and may also give the reasons for the opinion.

8 You should consider any expert opinion given by a
9 witness, and like any other evidence, give it the weight
10 you think it deserves. If you decide that an expert
11 witness's opinion is not based on sufficient education and
12 experience, or if you decide that the reasons given in
13 support of the opinion are not sound, or that the opinion
14 is outweighed by other evidence, you may disregard the
15 opinion entirely.

16 An expert witness's testimony is to be given no
17 greater weight than that of any other witness's simply
18 because the witness is an expert. And you do not have to
19 accept an expert's opinion even though it is
20 uncontradicted.

21 In this case, you may have heard conflicting testimony
22 by various expert witnesses. To that end, you may weigh
23 the opinion of one expert against that of another, and you
24 consider the reasons given by one as compared with those of
25 the others. You should consider the relative credibility

1 and knowledge of the experts who have testified.

2 Thereafter, you should determine which expert testimony is
3 entitled to the greater weight.

4 Testimony was presented to you by depositions. A
5 deposition is a document containing sworn testimony given
6 by a witness outside of court in the presence of lawyers
7 for each party who may ask questions of the witness. This
8 testimony is entitled to the same consideration and is to
9 be judged as to credibility and weighed by you in the same
10 way as if the witness were present and gave the testimony
11 from the witness stand. It is then for you, the jury, to
12 determine the effect, value, weight, and truth of the
13 testimony given in depositions.

14 There are two types of evidence which are generally
15 presented during a trial: direct evidence and
16 circumstantial evidence. Direct evidence is testimony by a
17 witness about what the witness personally saw or heard or
18 did. Circumstantial evidence is indirect evidence. That
19 is proof of one or more facts from which one can find
20 another fact.

21 You are to consider both direct and circumstantial
22 evidence. The law permits you to give equal weight to
23 both, but it is for you to decide how much weight to give
24 any evidence.

25 The plaintiff claims the defendants committed acts of

1 negligence and breach of implied warranty. The defendants
2 deny each of these claims and further assert as an
3 affirmative defense that the claims of the plaintiff were
4 filed after the running of the statute of limitations.
5 Additionally, defendant Complete Building Corporation has
6 filed cross-claims against its subcontractors, Tri-County
7 Roofing and W.C. Services. The plaintiff has the burden of
8 proving its claims. The defendants have the burden of
9 proof as to any asserted defense and cross-claims.

10 The law places upon the plaintiff the burden of
11 proving its claims against the defendants by preponderance
12 of the evidence. A preponderance of the evidence simply
13 means the greater weight of the evidence. It is evidence
14 which, as a whole, shows that the fact sought to be proved
15 is more likely true than not true.

16 This can be best illustrated by imagining a set of
17 scales. When the case begins, the scales are evenly
18 balanced. After all of the evidence has been presented, if
19 the scales should remain even or if they tip even slightly
20 in favor of the defendants, then the plaintiff has failed
21 to meet this burden of proof, and your verdict would be for
22 the defendants as to each claim the plaintiff has failed to
23 prove. If, on the other hand, should the scales tip even
24 slightly in favor of the plaintiff, the plaintiff will have
25 met the burden of proof and would be entitled to recover

1 damages on any claim proven by the preponderance of the
2 evidence.

3 The preponderance of the evidence is not determined by
4 the number of witnesses. Instead, it must be determined by
5 the greater weight of the evidence. The mere fact that the
6 plaintiff has instituted this lawsuit is not evidence that
7 it is entitled to recover anything from the defendants, nor
8 does the mere bringing of a lawsuit create any presumption
9 favorable to the plaintiff. Further, the fact that the
10 plaintiff may have suffered some damages standing alone
11 does not mean that the defendants are liable in any way.

12 The plaintiff bears the burden of proving all the
13 elements of each claim against the defendants by the
14 greater weight or a preponderance of the evidence. Unless
15 you find that the plaintiff has carried its burden
16 successfully, you must return a verdict in favor of the
17 defendants.

18 There have been some stipulations entered into this
19 case. A stipulation is an agreement as to a fact. Once a
20 fact is stipulated to, that fact becomes established for
21 purposes of the case and cannot be questioned or
22 contradicted.

23 In South Carolina, no distinction is made between
24 corporations and individuals. A corporation is a person in
25 the eyes of the law. The fact that a corporation is a

1 party must not prejudice you in your deliberations or in
2 your verdict. You may not discriminate between
3 corporations and natural individuals. Both are persons in
4 the eyes of the law, and both are entitled to the same fair
5 and impartial consideration and to justice by the same
6 legal standards. Further, a corporation can only act
7 through its agents or employees. Therefore, a corporation
8 is responsible for any negligent acts or omissions of its
9 agents or employees while they are acting within the scope
10 of their employment which proximately caused injury to
11 another person.

12 A corporation may also act through another corporation
13 where the second corporation is its agent and the negligent
14 acts or omissions occur within the course and scope of the
15 agency. A limited liability company or LLC is the
16 equivalent of a corporation and can only act through its
17 employees or agents.

18 This action was brought by Palmetto Pointe at Peas
19 Island Condominium Property Owners Association and Jack
20 Love individually and on behalf of all others similarly
21 situated. This lawsuit seeks damages for repairs and
22 future loss of use, including any other related costs
23 incidental thereto.

24 The plaintiff has asserted several claims against the
25 defendants. The plaintiff alleges negligence or gross

1 negligence and breach of the implied warranty of
2 workmanlike service against all defendants.

3 The plaintiff alleges that the defendants negligently
4 constructed Palmetto Pointe at Peas Island. Negligence is
5 the failure to exercise the degree of care which a person
6 or entity of ordinary reason and prudence would exercise
7 under the same or similar circumstances as exist in this
8 case. Carelessness and negligence mean the same thing.

9 To establish negligent construction, the plaintiff
10 must prove four essential elements. Number one, that there
11 was an undertaking to construct one or more buildings by
12 the defendants. Number two, that the defendants involved
13 in the construction were negligent or careless in the
14 performance of that construction work. Or stated another
15 way, that the defendants did not perform the work in a
16 good, workmanlike manner. This would include the duty to
17 oversee the construction to make sure the construction
18 conformed to the requirements of the building code and good
19 construction practices. Number three, that the negligence
20 or carelessness of the defendants in performing that
21 construction work was the proximate cause of any damages
22 sustained by the plaintiff. And number four, the resulting
23 damages must be shown.

24 A builder has three legal duties; number one, a legal
25 duty to comply with applicable building codes; number two,

1 a legal duty to comply with industry standards; and number
2 three, a legal duty to refrain from constructing housing
3 that it knows or should know will pose serious risk of
4 harm.

5 Builders and subcontractors to may delegate the duties
6 imposed upon them by law to an independent contractor.
7 However, the liability flowing from the negligent acts of
8 that independent contractor may not be avoided just because
9 the duties were delegated.

10 I charge you that a party can create an affirmative
11 legal duty by contract. The duty of care exists
12 independently from the contract, so it does not matter
13 whether the plaintiff was a party to the contract. When an
14 act is voluntarily undertaken, the party then assumes the
15 duty to use due care in carrying it out. Where there is no
16 duty to act but an act is voluntarily undertaken, the actor
17 assumes a duty to use due care in this regard.

18 South Carolina law provides that one who undertakes
19 gratuitously or for consideration to render services to
20 another which he should recognize as necessary for the
21 protection of a third person or his things is subject to
22 liability to that third person for physical harm resulting
23 from his failure to exercise reasonable care to perform his
24 undertaking if (a) his failure to exercise reasonable care
25 increases the risk of harm, (b) he has undertaken to

1 perform a duty owed by the other to the third person, or
2 (c) harm is suffered because of reliance on the other third
3 person upon the undertaking.

4 Stated differently, when someone undertakes the
5 performance of services, he is duty bound to perform those
6 services with due care, given the kind of undertaking. It
7 is the undertaking itself that gives rise to this duty, not
8 whether there is a contract to pay for services in place.

9 A person must exercise due care in all undertakings
10 not to cause injury to another or to create a dangerous
11 situation in which injury is foreseeable. This premise
12 covers acts of omission and requires that a complete job be
13 done whenever a job is undertaken.

14 Negligence is not actionable unless it proximately
15 causes the plaintiff's damages. As such, the plaintiff
16 must prove by a preponderance or greater weight of the
17 evidence that the damages were proximately caused by the
18 negligence of a defendant.

19 Proximate cause is something that produces a natural
20 chain of events which, in the end, brings about the
21 damages. It is the direct cause of the damages. To prove
22 that the negligence of the defendant proximately caused the
23 plaintiff's damages, the plaintiff must first prove
24 causation in fact. This is proven by showing that the
25 damages would not have occurred but for a defendant's

1 negligence.

2 The plaintiff must also prove legal cause. Legal
3 cause is proven by showing that the damages were
4 foreseeable. This means that the damages occurred as a
5 natural and probable consequence of a defendant's
6 negligence. The plaintiff must prove that some damages
7 from a defendant's negligence were foreseeable but does not
8 have to prove that the particular damages that occurred
9 were foreseeable. However, a defendant cannot be
10 responsible for something which could not be expected to
11 happen.

12 Proximate cause does not mean the only cause. A
13 defendant's act can be a proximate cause of the plaintiff's
14 damages if it was at least one of the direct, concurring
15 causes of the damages.

16 Where there is a duty arising from a statute,
17 ordinance, or regulation and the plaintiff shows the
18 defendant violated the statute, ordinance, or regulation,
19 such violation is negligence per se. The violation of any
20 of the provisions of a statute, ordinance, or regulation is
21 negligence per se. That is, negligence in an of itself,
22 negligence as a matter of law. Negligence per se simply
23 means you, the jury, need not decide if a defendant acted
24 as would a reasonable person or entity under the same
25 circumstances. The statute, ordinance, or regulation fixes

1 the standard of conduct required of a defendant, leaving
2 you merely to decide whether the defendants breached the
3 statute, ordinance, or regulation.

4 If the defendants did, this failure to take due care
5 is established as a matter of law. The only issue then
6 left for you to determine is whether the defendant's
7 conduct proximately caused damage to the plaintiff.
8 According, proof of a violation of a statute, ordinance, or
9 regulation is, in fact, proof of negligence. Thus, your
10 only concern then would be whether such violation of the
11 statute, ordinance, or regulation was the proximate cause
12 of the damages to the plaintiff.

13 The violation of a statute, ordinance, or regulation
14 does not constitute recklessness, willfulness, and
15 wantonness per se, yet such violation, if shown, is
16 evidence of recklessness, willfulness, and wantonness and
17 may be considered in connection with all other facts and
18 circumstances surrounding the case.

19 In determining whether the defendants have been
20 reckless, willful, and wanton, municipalities in South
21 Carolina are charged by statute with adopting and
22 implementing building codes. If a building code has been
23 adopted as a statute, any violation of that building code
24 constitutes negligence per se. If you find that the
25 defendants violated a statute, ordinance, or regulation,

1 your verdict may support a recovery of damages if such
2 violation proximately caused or proximately contributed to
3 the damages alleged by the plaintiff.

4 There may be more than one cause of an injury, and
5 more than one person may be responsible for the injury. If
6 the negligence of two or more persons combines to cause an
7 injury, each person involved may be held responsible as if
8 that person alone caused the injury. Causes are concurrent
9 if the individual acts of negligence combine to cause the
10 injury.

11 If an injury occurs through the concurrent negligence
12 of two or more persons and would not have happened without
13 the negligence of either person, then negligence is the
14 proximate cause of the injury and both people are
15 responsible. If the acts happen one after the other but
16 were not related to each other, they would not be the
17 concurring causes. In that case, only the person whose
18 negligence actually caused the injury would be responsible.

19 If the concurrent or successive negligent acts or
20 omissions of two or more persons or entities, although
21 acting independently of each other, are in combination the
22 direct and proximate cause of a single injury to the
23 plaintiff, and it is impossible to determine in what
24 proportion each contributed to the injury, all are said to
25 be responsible for the whole injury even though one person

1 or entity's act alone might not, might not have caused the
2 entire injury. Or the same damage might have resulted from
3 the act of other tortfeasors.

4 Where an entity holds itself out as specially
5 qualified to perform work of a particular character, there
6 is an implied warranty that the work which it undertakes to
7 do shall be of proper workmanship and reasonably fitted for
8 its intended purpose. In conformity with this concept,
9 there is an implied covenant of good workmanship or
10 workmanlike service in every reconstruction project. One
11 who builds a dwelling warrants that the work will be
12 undertaken in a careful, diligent, and workmanlike manner.
13 Every contract involving the rendering of services included
14 -- includes the implied promise to perform these services
15 with reasonable care, skill, and safety.

16 Building and construction contracts contain either an
17 expressed or implied warranty that the work will be
18 sufficient for a certain purpose and will be performed in a
19 skillful, careful, diligent, and workmanlike manner. The
20 contract is not performed until the work accomplishes the
21 agreed result. The rationale supporting the imposition of
22 a liability for a breach of an implied warranty of
23 workmanlike services is that the purchaser is forced to
24 rely on the skill of the professional builder.

25 A builder and any subcontractors who contract to

1 construct a dwelling impliedly warrants that the work
2 undertaken will be performed in a careful, diligent,
3 workmanlike manner. This is known in South Carolina as the
4 implied warranty of workmanlike service. The implied
5 warranty of workmanlike service provides that in
6 constructing a home, a builder and any subcontractors
7 warrant that the home is fit for its intended use as a
8 dwelling, that the home was constructed in a workmanlike
9 manner, and that the home is free of latent defects.

10 The implied warranty of workmanlike services arises
11 from the construction or repair of a structure itself, and
12 the duty it imposes extends from the builder and any
13 subcontractors to the buyer and any subsequent buyers. To
14 establish a claim for breach of the implied warranty of
15 workmanlike services, the plaintiff must show that the
16 builder failed to perform its work in a careful, diligent,
17 and workmanlike manner.

18 In this case, a cross-claim has been filed by the
19 general contractor Complete Building Corporation against
20 its subcontractors, Tri-County Roofing and W.C. Services.
21 The only difference is that the claim is being made by one
22 defendant against another defendant or defendants. The law
23 which I have already explained to you is the same for the
24 cross-claim as for the complaint made by the plaintiff. As
25 you apply the law, keep in mind that for purposes of the

1 cross-claim, the cross-complainant is like the plaintiff
2 and the cross-defendant is like the defendant.

3 The general contractor, Complete Building Corporation,
4 has asserted cross-claims against its own subcontractors,
5 Tri-County Roofing and W.C. Services, which means that to
6 the extent you find that there are building defects
7 proximately causing injury to the plaintiff, then the
8 general contractor argues that if you find that
9 responsibility -- excuse me, responsible, then its
10 liability should be transferred to its subcontractors based
11 on indemnity provisions in the subcontract agreements in
12 which the subcontractors agreed to indemnify Complete
13 Building Corporation.

14 Indemnity is that form of compensation in which a
15 first party is liable to a second party for loss or damage
16 the second party incurs to a third party. A right to
17 indemnity may arise by contract, expressed or implied, or
18 by operation of law as a matter of equity between the first
19 and second party. Contractual indemnity involves the
20 transfer of risk for consideration, and the contract itself
21 establishes the relationship between the parties.

22 The defendants have raised the affirmative defense of
23 the statute of limitations against the plaintiffs' claims
24 in this lawsuit. South Carolina law requires that a party
25 who has a claim that could be brought in a lawsuit bring

1 those claims within a certain period of time. A three-year
2 statute of limitations applies to the claims asserted by
3 the plaintiff in this case. Under the discovery rule, the
4 applicable statute of limitations begins to run on the date
5 the plaintiff either knew or should have known of an
6 underlying injury. Thus, the statute of limitations starts
7 ticking on the date the injured party either knows or
8 should have known by the exercise of reasonable diligence
9 that a cause of action arises from the wrongful conduct.
10 This determination is subjective rather than objective. As
11 such, the question is not whether the particular plaintiff
12 in this case actually knew he had a claim. Instead, the
13 jury must decide whether the circumstances of the case
14 would put a person of common knowledge and experience on
15 notice that some right of his has been invaded, or that
16 some claim against another party much exist.

17 I charge you further than the burden of establishing a
18 statute of limitations bar lies with the party asserting
19 it, and in this case it is the defendants. And when the
20 testimony is conflicting on the question, it becomes an
21 issue for you, the jury, to decide. There is often more
22 than one reasonable inference as to when one knows or
23 should have known that he or she has a claim. Although
24 there may be evidence to support an injured party's filing
25 a claim at an earlier date, the limitations period does not

1 begin to run until the injury rises to a level substantial
2 enough so as to put the insured party on notice that they
3 are being wronged.

4 If the plaintiff has proven a cause of action, your
5 next step is to determine the amount of money to which the
6 plaintiff is entitled. We call such a monetary award
7 damages. Damages are divided into two categories: actual
8 damages and punitive damages. Actual damages are properly
9 called compensatory damages, meaning to compensate, to make
10 the damaged party whole, to put the party in the same
11 position it was, it was in prior to the damage received
12 insofar as this is monetarily possible. In other words,
13 actual or the compensation damages include compensation for
14 all damages which are naturally the proximate result of the
15 alleged conduct of the defendants.

16 Actual damages are awarded to a litigant in
17 compensation for the party's actual loss. Actual damages
18 are such as will compensate the party for losses sustained.
19 They are such damages as will simply make good or replace
20 the loss caused by the wrong. Actual damages are damages
21 in satisfaction of or in recompense for a loss or damage
22 sustained. The goal is to restore the damaged party as
23 nearly as possible through the payment of money to the same
24 position it was in had the damage not occurred.

25 The basic measure of actual damages is the amount

1 needed to compensate the plaintiff for the losses
2 proximately caused by a defendant's alleged wrong so that
3 the plaintiff will be in the same position it would have
4 been in if there had been no wrongful damage. Actual
5 damages include compensation for all damages which are
6 naturally the proximate result of the alleged wrongful
7 conduct of a defendant.

8 With regard to cost of repair, the plaintiffs are not
9 required to prove that the repairs have actually been made.
10 A competent estimate of the cost of repairs is sufficient
11 to create a factual issue for you to determine damages.

12 With regard to loss of use, if you find that the
13 plaintiff was or will be unable to use its property for a
14 period of time because of a defendant's wrongful conduct,
15 you should award the plaintiff compensation for this loss
16 of use only if you believe the loss of use was proximately
17 caused by a defendant's conduct.

18 The plaintiff bears the -- excuse me -- the burden of
19 proving by the preponderance of the evidence the nature and
20 extent of actual damages. The existence, the existence,
21 causation, or amount of damages cannot be left to
22 conjecture, guesswork, speculation, or the possibility of a
23 windfall. Your verdict should include an amount to cover
24 any damages that the evidence shows will be reasonably
25 certain to occur in the future.

1 Proof of amount of loss with absolute or mathematical
2 certainty is not required. Damages must be proven to a
3 reasonable degree of certainty. Future damages need not be
4 proven to a mathematical certainty and often must be
5 approximated. Any future damages must be reduced to its
6 present-day value. The evidence presented by the plaintiff
7 must enable you, the jury, to determine what amount is
8 fair, just, and reasonable.

9 The cost of repair or restoration is a valid measure
10 of damages for injury to a building. When determining the
11 amount of damages, if any, you may consider a competent
12 estimate of the cost to repair to a building.

13 A landowner who is familiar with his property and its
14 value is allowed to give his estimate as to the value of
15 the land and damages thereto even though he is not an
16 expert. The right of a landowner to give testimony as to
17 his property arises as a matter of law. This is true even
18 where a landowner has no real knowledge of the value of
19 surrounding properties and whose opinion as to the land's
20 worth is exactly the same as that of his realtor. A
21 landowner may also testify to his land's diminishment in
22 value and to the value of land surrounding his land.

23 If you find that the plaintiff proved its right to
24 recover on multiple causes of action, then plaintiff is
25 entitled to receive a full set of damages on each

1 individual cause of action so proven. The trial judge will
2 ensure the plaintiff does not receive a double recovery.
3 In other words, although plaintiff is entitled to receive a
4 full set of damages for each individual claim, a plaintiff
5 will only recover once.

6 In this case, the plaintiff seeks punitive damages in
7 addition to actual damages. Punitive damages, also known
8 as exemplary damages, are imposed as punishment. They are
9 not intended to compensate. Punitive damages are allowed
10 in the interest of society and the nature of punishment and
11 as a warning, an example to deter the wrongdoer and others
12 from committing like offenses in the future. Moreover,
13 they serve to vindicate a private right by requiring the
14 wrongdoer to pay money to the damaged party.

15 Punitive damages serve at least three important
16 purposes: punishment of a defendant's grossly negligent,
17 reckless, willful, wanton, or malicious conduct; deterrence
18 of similar future conduct by a defendant or others; and
19 compensation for the reckless or willful invasion of the
20 plaintiff's rights. The paramount purpose for awarding
21 punitive damages is not to compensate plaintiff but to
22 punish and set an example for others.

23 What would justify an award of punitive damages? As
24 you consider the issue of punitive damages, the highest
25 burden of proof known to the civil law is applicable.

1 Section 15-13-135 of the South Carolina code provides that
2 in any civil action where punitive damages are claimed, the
3 plaintiff has the burden of proving such damages by clear
4 and convincing evidence.

5 Clear and convincing evidence is an elevated standard
6 of proof which lies between the lesser standard of
7 preponderance of the evidence used in most civil cases and
8 the higher standard of beyond a reasonable doubt, which is
9 regarding criminal cases. Clear and convincing evidence is
10 that degree of proof which will produce in the mind of you,
11 the jury, a firm belief as to the allegations sought to be
12 established. Such measure of proof is intermediate, more
13 than a mere preponderance but less than required for proof
14 beyond a reasonable doubt. It does not mean clear and
15 unequivocal.

16 Clear and convincing evidence requires that the
17 evidence must be found to be credible. The facts to which
18 the witness, witnesses testify must be distinctly
19 remembered, the testimony must be precise and explicit, and
20 the witnesses must be lacking of confusion as to the facts
21 and the issue. The evidence must be of such weight that it
22 produces in the mind of you, the jury, a firm belief or
23 conviction and without hesitancy as to the truth of the
24 allegations sought to be established.

25 When the law places on a party a burden of proof by

1 clear and convincing evidence, the law means that the
2 evidence is not ambiguous, doubtful, equivocal, or
3 contradictory, but the evidence is pointed to the issue and
4 satisfactory in the sense that the source from which it
5 comes is one in which you, as jurors, can place credence.

6 Punitive damages can only be awarded where the
7 plaintiff proves by clear and convincing evidence that a
8 defendant's actions were willful, wanton, malicious, or in
9 reckless disregard of the plaintiff's rights, or where
10 defendant's actions were so grossly negligent as to imply a
11 willfulness or wantonness.

12 A conscious failure to exercise due care constitutes
13 willfulness. It is the present consciousness or wrongdoing
14 that justifies the assessment of punitive damages against
15 the wrongdoer. Punitive damages will be allowed even when
16 a defendant does not realize it is invading the plaintiff's
17 rights so long as the act is committed in such a manner
18 that a person of ordinary prudence would conclude it was
19 done in reckless disregard of the rights of others.

20 The plaintiff cannot recover punitive damages based on
21 negligent conduct alone. To recover punitive damages, the
22 plaintiff must prove by clear and convincing evidence that
23 the actions of a defendant were willful, wanton, or
24 reckless, so grossly negligent as to imply a willfulness or
25 wantonness.

1 The words recklessness, willfulness, or wantonness are
2 synonymous. The terms are used to describe a conscious
3 failure to exercise and observe reasonable or due care.
4 Recklessness is distinguished from negligence. Negligence
5 is the failure to use due care. Negligence is
6 carelessness. Negligence is failure by omission or
7 commission to exercise due care as a person of ordinary
8 reason and prudence would exercise in the same
9 circumstances.

10 Recklessness is a higher degree of culpability and
11 responsibility. Recklessness signifies a conscious failure
12 to exercise due care. Recklessness is a conscious
13 indifference to the rights of the plaintiff or reckless
14 disregard of the rights of the plaintiff. Recklessness is
15 an awareness of wrongful conduct and continuation to act
16 regardless of the consequences.

17 Gross negligence is the intentional conscious failure
18 to do something which is incumbent upon one to do, or the
19 doing of a thing intentionally that one ought not to do.
20 Negligence is the failure to exercise due care, while gross
21 negligence is the failure to exercise even the slightest
22 care.

23 Gross negligence is a relative term and means the
24 absence of care that is necessary under the circumstances.
25 Punitive damages are recoverable for negligence so gross or

1 reckless of consequences as to imply or to assume the
2 nature of wantonness, willfulness, or recklessness. But
3 punitive damages may not be awarded for mere negligence.

4 I charge you that where you find the builder's actions
5 are grossly negligent, punitive damages may be sought. The
6 test for determining whether a tort may be deemed reckless,
7 willful, or wanton is whether it has been committed in such
8 a manner and under such circumstances that a person of
9 ordinary reason or prudence would have been conscious of it
10 as an invasion of the rights of the party suffering
11 damages.

12 There is no formula or standard that can be used as a
13 measure for assessing punitive damages. However, factors
14 relevant to your consideration of punitive damages are as
15 follows. Number one, the character of the defendant's act.
16 Number two, the nature and extent of the harm to the
17 plaintiff which the defendant caused or intended to cause.
18 Number three, the defendant's degree of culpability.
19 Number four, the punishment that should be imposed. Number
20 five, the duration of the conduct. Number six, the
21 defendant's awareness or concealment. Number seven, the
22 existence of similar past conduct. Number 8, the
23 likelihood that an award will deter the defendant and
24 others from like conduct. Number nine, whether the award
25 is reasonably related to the harm likely to result from

1 such conduct. And finally number ten, defendant's wealth
2 or ability to pay.

3 The existence of similar past conduct may be
4 considered as a factor, but you may not punish a defendant
5 for conduct of others who are not a party to this lawsuit.

6 The financial condition of a defendant is a factor you
7 should consider in awarding punitive damages. However,
8 there is no requirement that a defendant be a person or
9 entity of means before you are justified in awarding
10 punitive damages. While the wealth of a defendant is a
11 relevant factor in assessing punitive damages, it is not
12 necessarily controlling. In other words, the financial
13 worth of a defendant is a fact properly to be considered by
14 you in determining the amount to be awarded as punitive
15 damages. But evidence of net worth is not a prerequisite
16 to a punitive damage award.

17 Before you can award punitive damages, you must find
18 that plaintiff is entitled to actual or nominal damages.
19 There must be an award of actual or nominal damages for a
20 verdict of punitive damages to be supported. This rule is
21 premised on the fact that liability must be established
22 before a plaintiff can seek punitive damages. Accordingly,
23 if you should find that the plaintiff is entitled to
24 recover punitive damages in addition to actual damages, it
25 would be your duty to include such damages in your verdict

1 and award such amount as you may deem reasonable and proper
2 in light of the facts and circumstances.

3 A party who has suffered damages from the actionable
4 conduct of another is under a duty to make all reasonable
5 efforts to minimize the damages occurred. To the extent
6 that the damaged party reasonably could have so minimized
7 those damages and failed to do so, it is not entitled to
8 recover from the other party. In other words, one cannot
9 recover any damages that might have been avoided by the use
10 of reasonable care and diligence. The failure of a
11 plaintiff to mitigate damages allows defendants to avoid
12 only those damages that reasonably could have been avoided
13 by the plaintiff. A damaged party is required to do that
14 which an ordinary, prudent person would do under similar
15 circumstances to mitigate his or her damages. However, the
16 damaged party is not required to reasonably exert itself or
17 incur substantial expense in an effort to mitigate damages.

18 The party who claims damages should have been
19 minimized has the burden of proving the damages could have
20 been avoided or reduced.

21 I am required to charge you the law as I have done
22 through these instructions now being given to help guide
23 you to a just and lawful verdict. Whether some of the
24 instructions should apply will depend upon what you find to
25 be the facts. The fact that I have instructed you on

1 various subjects in this case, including damages, must not
2 be taken as indicating an opinion of this court as to what
3 you should find to be the facts or as to what your verdict
4 should be.

5 You may have taken notes during the trial of this
6 case. However, please remember some people are better note
7 takers than others. Juror notes should not be given any
8 greater weight than the recollection of other jurors. The
9 recollections of individual jurors should be considered as
10 reliable as notes taken by any other jurors.

11 You have been chosen and sworn to give the parties in
12 this case a fair and impartial trial, and when you have
13 done so, you will have complied with your oath, and no one
14 will have a right to criticize your verdict. You must not
15 be influenced by opinions or expressions of opinion you
16 have heard outside the courtroom, but rather you should
17 base your verdict only on the testimony of the sworn
18 witnesses who took the stand, the exhibits received into
19 evidence, and facts which have been stipulated to or agreed
20 to by parties. Your verdict in this case must be supported
21 by a rational and reasonable view of the evidence and bear
22 a reasonable relationship to the character and extent of
23 the evidence presented in this case.

24 You should not be swayed by passion, prejudice, or
25 improper sympathy for or against any of the parties in this

1 case. Circumstances in this case may arouse sympathy for
2 one party or the other. Sympathy is a common human
3 experience. The law does not expect you to be free of such
4 normal reactions. However, the law and your oath you took
5 as jurors require you to disregard sympathy and to prevent
6 it from influencing your verdict.

7 You must not be influenced by a consideration of
8 sympathy or prejudice. It is your duty to weigh the
9 evidence, to decide the disputed questions of fact, and to
10 apply the instructions to your findings, and to render your
11 verdict accordingly.

12 In fulfilling your duty as jurors, your efforts must
13 be directed toward arriving at a fair and just verdict.
14 Remember you have no friends to reward or enemies to
15 punish, and all parties are entitled to a fair and
16 impartial trial at your hands.

17 Now, you may have noticed I have read these
18 instructions. I do so to give you the law as accurately as
19 possible. I will give you a copy of these instructions to
20 have in the jury room. You may refer to these instructions
21 to assist you in your deliberations. Please return to the
22 instructions to the bailiff when you finish your
23 deliberations.

24 Mr. Foreman, it will be your duty to preside over the
25 deliberations of the jury. If during your deliberations

1 you should desire to communicate with the court, please
2 reduce your message or question to writing, signed by your
3 foreperson, and pass the note to the bailiff, who will
4 bring it to my attention. I will then respond as promptly
5 as possible either in writing or by having you return to
6 the courtroom so that I can address you orally. I caution
7 you, however, with regard to any message or question you
8 might send that you should never state or specify your
9 numerical division at the time.

10 Again, any verdict you reach must be a unanimous one.
11 That is it must be agreed to by all twelve of you. When
12 you have reached a unanimous verdict and have completed the
13 verdict form, you may knock on the door and we will take
14 the verdict.

15 So, please retire now to the jury room, but do not
16 begin to discuss the case until you have received a copy of
17 the jury charge, the verdict form, and the exhibits. Once
18 you receive these things, that will be your signal to begin
19 deliberating. Once you begin deliberating, you will
20 deliberate until you have reached a verdict as to each
21 claim, at which time you will knock on the door, advise the
22 bailiff, and we will bring you out to receive your verdict.
23 Thank you very much. You are free to leave.

24 (THE JURY EXITS AT 9:47 A.M.)

25 THE COURT: Thank you. Please be seated. Any

1 objections or exceptions other than those previously stated
2 as to the charge read by the court from the plaintiff?

3 MR. LUCEY: No, Your Honor.

4 THE COURT: Any additional from the defense?

5 MR. KENDALL: Nothing new. We renew the same.

6 MR. COLE: Nothing new as long as we're renewing what
7 we had before, Your Honor.

8 THE COURT: I said in addition to ---

9 MR. COLE: Yes, ma'am.

10 THE COURT: --- anything previously stated.

11 MR. COLE: The -- I just want to raise that you, you
12 -- we didn't take out the term express warranty from the
13 charge. I noticed that when we read through it. I,
14 honestly, I'm just raising because we forgot to take it
15 out, but I don't know that it had any impact because you
16 didn't talk about express warranty other than raising it
17 once.

18 The second, what I said before about the quotation
19 exhibits going back. I notice there were the additional
20 quotation in the statute of limitations language.

21 THE COURT: I saw that, too.

22 MR. ATKINS: Your Honor, may it please the court? Can
23 I get some clarifications? All I'm asking. I assumed that
24 yesterday's argument by plaintiffs' counsel that allocation
25 is not available unless you clear the gross negligence

1 hurtle ---

2 THE COURT: Right.

3 MR. ATKINS: --- was accepted by this court.

4 THE COURT: So, depending on how their verdict comes
5 back, we'll go into that phase next.

6 MR. ATKINS: Okay. That, that's ---

7 THE COURT: Pursuant to statute 15-38-14.

8 MR. ATKINS: Because there was no provision for
9 allocation.

10 THE COURT: And that statute clearly lays out the
11 procedure for that. We will follow that ---

12 MR. ATKINS: Okay.

13 THE COURT: --- if necessary.

14 MR. ATKINS: Thank you, Your Honor.

15 MR. REESER: Your Honor, just want to renew our
16 earlier objections, but I remember during discussions on
17 the verdict form -- or not on verdict form but on -- well,
18 yes, on the verdict form. We had circulated our proposed
19 verdict form. I did not receive any confirmation that the
20 court had received it.

21 THE COURT: Everyone sent proposed verdict forms
22 despite my request for everyone to reach a consensus on
23 one. So, if you'd like to see the verdict form, you're
24 welcome to see it at this time.

25 MR. REESER: I understand, Your Honor. I just wanted

1 to confirm on the record that our verdict form was
2 received.

3 THE COURT: It was, yes. Thank you.

4 MR. KENDALL: Would it be possible for that to be
5 emailed to us just so we can follow along when they're
6 reading it?

7 MR. LUCEY: Your Honor, I would just like to see the
8 paper form that's being handed to them.

9 THE COURT: Yeah. I'll let y'all see the verdict
10 form, as well as I want every attorney to review the
11 exhibits before they're sent back to the attorneys -- I
12 mean, the jury.

13 (WHEREUPON, ATTORNEYS REVIEW EXHIBITS WITH COURT
14 REPORTER.)

15 MR. LUCEY: The court reporter wants us to put
16 something on the record, Your Honor.

17 THE COURT: Okay. Quiet, please. We need a little
18 order.

19 Go ahead.

20 MR. LUCEY: Exhibit 111 was stipulated into evidence
21 last week. It wasn't showing up on her records. We went
22 over that Monday morning again. She wanted us to put it on
23 the record that 111 is being included in the exhibits going
24 back to the jury.

25 THE COURT: All right. Any objection?

1 MR. COLE: No objection, Your Honor, and we've gone
2 through all of the exhibits that were plaintiffs' numbers
3 and defense numbers, and we think they're accurate. We've
4 tried to redact all insurance by either strike outs
5 literally cutting the page off. So, we have that and then
6 when the jury gets that, we'll go through the court
7 exhibits.

8 THE COURT: Okay. Are you ready for the exhibits and
9 verdict form to go back to the jury?

10 MR. COLE: Yes, ma'am. The court reporter put them on
11 right here so they're -- I don't know if they in the order,
12 but they're all here.

13 MR. LUCEY: They're in order.

14 THE COURT: Okay, Mr. Ladson, you can put them on the
15 cart and take it to them.

16 (WHEREUPON, JURY DELIBERATIONS BEGIN AT 10:10 A.M.)

17 (OFF THE RECORD.)

18 THE COURT: All right, we've gotten a note from the
19 foreperson. This will be marked as Court's 14. It says:
20 Request for eleven copies of verdict form.

21 Which I understand. This is a complicated verdict
22 form. They want to all be able to follow along together.
23 I don't have a problem accommodating that request. What
24 we've done is we've made eleven copies, stapled those
25 copies, and written with a big, red pen on the front of the

1 copies copy. Does anybody object to me giving ---

2 MR. LUCEY: No objection, Your Honor.

3 THE COURT: --- them copies?

4 MR. KENDALL: No, ma'am.

5 THE COURT: All right. We'll do that. Thank you very
6 much. You're free to be back at ease.

7 (JURY NOTE MARKED INTO EVIDENCE AS COURT'S EXHIBIT
8 NUMBER 14.)

9 (OFF THE RECORD.)

10 THE COURT: This note will be marked as 15, and the
11 note reads: May we get the deposition from Vasquez that was
12 read into evidence?

13 There was no deposition from Vasquez read into
14 evidence, so I will instruct them. I will say there was no
15 deposition of Vasquez read into evidence. The only
16 deposition that was read into evidence was that of Mr.
17 Sales. If they would like to rehear that portion that was
18 read into evidence, the court reporter can play it, play
19 the audio back, and we'll do that in the courtroom, and
20 that's how I plan to address that.

21 Does anybody have any problems with my plan?

22 MR. LUCEY: Not from the plaintiffs, Your Honor.

23 MR. BOYD: Nothing, Your Honor.

24 THE COURT: All right.

25 MR. COLE: If you're not giving the paper, if you're

1 just replaying it to them, correct. Yeah. All right.

2 Thank you. Just making sure.

3 THE COURT: Okay, we should bring the jury in.

4 (JURY NOTE MARKED INTO EVIDENCE AS COURT'S EXHIBIT
5 NUMBER 15.)

6 (OFF THE RECORD.)

7 (JURY NOTE MARKED INTO EVIDENCE AS COURT'S EXHIBIT
8 NUMBER 16.)

9 THE COURT: All right, we have a note which has now
10 been marked as Court's Exhibit 16 which states: May we see
11 the revised estimates? Signed, Walter Doan.

12 The only recollection I have of a revised estimate was
13 the one from the plaintiffs which I believe was marked as
14 Plaintiff's 1049 and entered into evidence through Mr.
15 Handegan, which means they have it in there. They just
16 have so much that they're probably having a hard time
17 locating documents. So, I'm happy to entertain suggestions
18 apart from pointing them to Exhibit 1049. Anything else?

19 MR. LUCEY: Your Honor, if it pleases the court, we
20 don't believe that the revised estimate is in evidence.

21 THE COURT: Oh, is it not? Okay.

22 MR. LUCEY: Because in our experience -- we didn't
23 move it in because in our experience, estimates are
24 typically considered reports and they are not admitted.
25 So, later in the trial, because they wanted to cross

1 Handegan on the revisions, they put the original estimate
2 in as 677.

3 THE COURT: Yes, I have that note.

4 MR. LUCEY: So, they have the -- they got the revised
5 estimate orally.

6 THE COURT: Okay.

7 MR. LUCEY: So, the only way they, I guess -- the
8 following point would be the only way they could see or
9 hear the revised estimate would be to have a replay of, of
10 Handegan's testimony as to the amount.

11 THE COURT: Okay. All right. Well, I can instruct
12 them that they have all the evidence in the case that they
13 need to decide the matter, and if they wish to hear the --
14 if they wish for us to play back the testimony of Mr.
15 Handegan, we can do that. But, of course, that would have
16 to be his entire testimony, including cross-examination.
17 So, I'll give them that option, and we'll allow them to
18 make that decision. We'll bring them back in after this.

19 MR. LUCEY: Your Honor, we respectfully would object
20 to the last part of that instruction. We don't think there
21 is a requirement that they listen to the entirety. We
22 don't think they should be given that. We believe they,
23 they want to hear the estimate. They should just be
24 entitled to hear the estimate.

25 THE COURT: So, typically what I do is I tell them

1 that I will play it in its entirety. I also give them the
2 option if they want to tell me that they're ready for it to
3 stop, that they can just tell us to stop and we'll stop it
4 at that time.

5 MR. LUCEY: Yes, ma'am.

6 THE COURT: That's normally the court's procedure.
7 Defense want to chime in on this at all?

8 MR. KENDALL: I will just follow the, the court's
9 normal pattern.

10 THE COURT: Okay. Okay.

11 All right, you can bring the jury back in.

12 Thanks for clearing up 1049. I did not have it as
13 admitted, so that makes sense now.

14 (THE JURY ENTERS AT 12:48 P.M.)

15 THE COURT: Thank you. Please be seated.

16 All right, ladies and gentlemen, we received your note
17 which states: May we see the revised estimate? You have
18 all the evidence that has been moved in in this trial. If
19 you wish to replay that portion of the testimony of -- or
20 the testimony to Mr. Jay Handegan through which a revised
21 estimate was, was discussed, we can replay that portion of
22 the testimony. We would replay it in its entirety, or
23 until you indicate to us you heard what you needed to hear,
24 at which point in time we would stop it at that time.

25 So, I need for you -- with that instruction, I'll

1 dismiss you back into your room, and I would need for the
2 foreperson to send the court another note advising whether
3 or not it is necessary to replay the testimony of Jay
4 Handegan. All right, thank you very much.

5 (THE JURY EXITS AT 12:50 P.M.)

6 (OFF THE RECORD.)

7 (JURY NOTE MARKED INTO EVIDENCE AS COURT'S EXHIBIT
8 NUMBER 17.)

9 THE COURT: What's been marked as Court's 17 is a note
10 from the foreperson that states: We will continue with the
11 evidence that has been provided. Thank you. Signed,
12 Walter Doan.

13 Thank you. We'll be back at ease.

14 (OFF THE RECORD.)

15 (JURY NOTE MARKED INTO EVIDENCE AS COURT'S EXHIBIT
16 NUMBER 18.)

17 THE COURT: All right, I have received another note
18 which has been marked Court's Exhibit 18. It requests
19 eleven copies of Exhibit 677 which was, according to my
20 court reporter, the original estimate from Handegan.

21 MR. LUCEY: Yes, ma'am.

22 THE COURT: Make eleven copies. If it helps them in
23 their deliberations, I don't have a problem doing that.
24 They already have it. They just want more copies, so we'll
25 honor their request. I don't think it requires them to

1 come in here and hear anything, but if there's an objection
2 from the attorneys, let me hear that now.

3 MR. LUCEY: No objection, Your Honor.

4 MR. KENDALL: No, no objection.

5 THE COURT: Okay.

6 MR. COLE: None, Your Honor.

7 THE COURT: All right. Thank you so much. Appreciate
8 it. We'll be back at ease, and we'll honor that request.

9 (OFF THE RECORD.)

10 THE COURT: Mr. Boyd is here now. You ready to
11 proceed?

12 MR. BOYD: Yes, Your Honor.

13 THE COURT: All right, you can bring the jury in.

14 (THE JURY ENTERS AT 3:09 P.M.)

15 THE COURT: Thank you. Please be seated.

16 Mr. Foreman, I understand the jury has reached a
17 verdict. Is that correct?

18 FOREPERSON: We have, Your Honor.

19 THE COURT: Thank you. You can pass that verdict form
20 to the bailiff, who will then pass it up to me. Thank you.

21 (A PAUSE.)

22 THE COURT: All right, I'll pass this verdict form to
23 the deputy clerk for publication.

24 *VERDICT*

25 CLERK OF COURT: State of South Carolina, County of

1 Charleston, in the Court of Common Pleas, Ninth Judicial
2 Circuit, case number 2015-CP-10-0955, *Palmetto Pointe at*
3 *Peas Island Property Owners Association, Inc., and Jack*
4 *Love, individually and on behalf of all other similarly*
5 *situated, plaintiffs vs. Complete Building Corp., et al.,*
6 *defendants, we, the jury, find for the plaintiffs against*
7 *the following defendants on the cause of action for breach*
8 *of implied warranty: Complete Building Corporation, yes;*
9 *Tri-County Roofing, yes; W.C. Services, no; Wilson Lucas*
10 *Sales, DBA Miracle Siding, yes; Eloy Vasquez, yes.*

11 We, the jury, find for the plaintiffs against the
12 following defendants on the cause of action for negligence:
13 Complete Building Corporation, yes; Tri-County Roofing,
14 yes; W.C. Services, no; Wilson Lucas Sales, DBA Miracle
15 Siding, yes; Eloy Vasquez, yes.

16 If the answer to any of the subparts of the following
17 -- of the forgoing two questions is in favor of the
18 plaintiffs, set forth below your award of damages to the
19 plaintiffs: \$6,504,000.

20 If you find through clear and convincing evidence that
21 any of the defendants acted with gross negligence or with
22 conscious of reckless disregard for plaintiffs' rights,
23 indicate by circling yes below: Complete Building
24 Corporation, yes; Tri-County Roofing, yes; W.C. Services,
25 no; Wilson Lucas Sales DBA Miracle Siding, no; Eloy

1 Vasquez, no.

2 If your answer to the following question before was
3 yes, how much do you award against the specified defendants
4 in punitive damages? Complete Building Corporation,
5 500,000; Tri-County Roofing, 500,000.

6 Do you find that Complete Building Corp. is entitled
7 to indemnity from Tri-County Roofing? Yes. If yes, how
8 much do you award Complete Building Corp. on its
9 cross-claim against Tri-County Roofing? 1,000. Do you
10 find that Complete Building Corp. is entitled to indemnity
11 from W.C. Services? No.

12 Dated May 16, 2019, Foreperson -- is it Walter?

13 FOREPERSON: Doan.

14 CLERK OF COURT: Walter Doan?

15 FOREPERSON: Yes, ma'am.

16 Ladies and gentlemen ---

17 THE COURT: All right.

18 CLERK OF COURT: I'm sorry.

19 THE COURT: Go ahead.

20 CLERK OF COURT: Ladies and gentlemen of the jury, if
21 this is your verdict, please raise your right hand.

22 (JURORS COMPLY.)

23 FOREPERSON: May I clarify, please?

24 THE COURT: Yes. I was getting ready to ask you. Go
25 ahead.

1 FOREPERSON: When you read 6,504,000, I apologize.
2 My, my zeros are funny.

3 CLERK OF COURT: Okay.

4 FOREPERSON: It should be 6,500,000.

5 CLERK OF COURT: 6,500,000.

6 FOREPERSON: Yes, ma'am.

7 CLERK OF COURT: Will you be able to clarify his
8 zeros?

9 THE COURT: Yes. He just draws a line through his
10 zeros.

11 CLERK OF COURT: Okay. Okay.

12 THE COURT: But it's fine.

13 CLERK OF COURT: Thank you.

14 FOREPERSON: Yes, ma'am.

15 THE COURT: With the clarification, Mr. Foreperson, is
16 that your verdict?

17 FOREPERSON: Yes, it is.

18 THE COURT: Is that still your verdict?

19 FOREPERSON: Yes, Your Honor.

20 THE COURT: And, ladies and gentlemen of the remainder
21 of the jury, is that your verdict? Indicate by saying yes.

22 JURORS: (*EN MASSE*) Yes.

23 THE COURT: Is it still your verdict?

24 JURORS: (*EN MASSE*) Yes.

25 THE COURT: Okay. All right. At this point in time,

1 ladies and gentlemen, I'm going to ask that you retire back
2 to your jury room. I'm going to speak with these attorneys
3 one more time, and then we will let you know where we go
4 from here, okay? So, thank you very much.

5 (THE JURY EXITS AT 3:14 P.M.)

6 THE COURT: Thank you. Okay, moving on to
7 post-verdict motions, I suppose I need to hear motions from
8 the attorneys at this point in time. Has everyone had time
9 to process the verdict form? I know we provided copies to
10 you all so you could follow along. Does everybody have the
11 requisite information they need right now?

12 MR. KENDALL: Your Honor, is this limited to whether
13 or not there would be an apportionment hearing?

14 THE COURT: If that's necessary or not. It's going to
15 have to be on motion from the attorneys, if they make the
16 motion for it.

17 MR. KENDALL: Obviously I don't think we have standing
18 for that motion.

19 THE COURT: Right.

20 MR. KENDALL: And so we're not.

21 THE COURT: All right, going through the verdict form,
22 it appears that Wilson Lucas Sales, DBA Miracle Siding, and
23 Eloy Vasquez appear to be the only defendants who would
24 have standing to assert a motion for apportionment of
25 damages at this point in time.

1 MR. REESER: Yes, Your Honor. We move to make that
2 motion for apportionment of damages at this time.

3 THE COURT: Okay. All right.

4 MR. LUCEY: And the plaintiffs would oppose that
5 motion, Your Honor, whenever the court wants to hear it.

6 THE COURT: Yeah. I'm happy to hear from you. Sure.

7 MR. LUCEY: Yes, Your Honor. The uncontroverted
8 evidence is that Tri-County didn't do any work. All its
9 work was by the subcontractors, Vasquez and Miracle Siding.
10 As such, because of the relationship and the fact that
11 Tri-County asserted an equitable indemnity claim against
12 these defendants until, until just before the verdict, as
13 such they should be grouped together and they should not be
14 entitled to an apportionment. The three parties,
15 Tri-County, Miracle, and Vasquez, should be treated as one
16 party for purposes of allocation. And therefore, the
17 subcontractor would not be entitled to an apportionment of
18 the verdict.

19 THE COURT: You want to respond to that?

20 MR. REESER: Yes, Your Honor. I think it's really
21 fairly clear from the statute. The statute applies to an
22 indivisible injury. In this case, there may be similar
23 scopes of work, but there's no evidence in this record
24 that, for example, Vasquez did any siding or Wilson did any
25 roofing. And additionally, the evidence that went before

1 the jury, both in argument and in the exhibits, was
2 certainly much more expansive than that. For example, W.C.
3 Services, there's no evidence that my clients did any of
4 that work for Tri-County.

5 And, Your Honor, I think these -- I think from the
6 verdict, we can tell that the jury has divided this injury.
7 So, Your Honor, I, I think per, per the sheet there is no
8 evidence there was any joint, joint action or joint concert
9 in this case. And certainly you could have parties acting
10 in concert with each other and have two divisible injuries.
11 That's not a -- just, just if the argument that parties are
12 acting in concert has nothing to do with the injuries that
13 are caused in the case, Your Honor. So, I certainly don't
14 think that would apply and believe that my clients would be
15 entitled to an apportionment based on their scopes of work
16 and what's been argued.

17 MR. LUCEY: Your Honor, he brings up a different angle
18 in his argument than the plaintiff approached. In fact,
19 his argument actually supports the inability to apportion
20 even more than the plaintiffs' original argument.

21 The uncontroverted testimony at trial was that most of
22 this leaking was taking place at the intersection, at the
23 joint between Miracle and Vasquez's work. As such, Your
24 Honor, they actually are in concert. They both stopped
25 right of the joint, and they should not be able to seek an

1 allocation.

2 And the acting in concert is clearly relevant. We
3 briefed that to the court earlier today.

4 THE COURT: So, Mr. Lucey, you're looking at under the
5 code section, which is 15-38-15, you're looking under
6 subpart (c)(3)(a)?

7 MR. LUCEY: Yes, where it required -- it actually says
8 court must group people as one, as a single defendant for
9 purposes of allocation if they're related by contract or
10 they're acting in concert, or there's other reason that
11 they should be treated as a single group. In this case,
12 both these subcontractors and their, their master
13 subcontractor, Tri-County, satisfied it. They should be
14 treated as a group.

15 And I, I didn't get a chance to respond to the comment
16 about W.C. Services and this, this defendant not being
17 liable for those type of damages. There are no W.C.
18 Services damages in this verdict. That's been removed; the
19 jury has removed all prior damages from the verdict. So,
20 what's left principally is the, the siding, the roofing,
21 the decking, the intersection between those two trades, all
22 which these three defendants acted in concert in
23 installing.

24 THE COURT: Mr. Reeser, how do you think I need to
25 proceed? In other words, okay, now what?

1 MR. REESER: As for apportionment, Your Honor?

2 THE COURT: Right, in terms of what the next verdict
3 form would look like and all that. Guide me as to what
4 you ---

5 MR. REESER: I, I think ---

6 THE COURT: --- argue is appropriate.

7 MR. REESER: At this point, I think it's, I think it's
8 clear that there has been evidence on many things that have
9 gone to the jury.

10 THE COURT: I'm asking you logistically ---

11 MR. REESER: Yes, Your Honor.

12 THE COURT: --- speaking. I'm talking about ---

13 MR. REESER: That ---

14 THE COURT: --- what would a form look like and all
15 that kind of stuff. What do you see?

16 MR. REESER: I, I...

17 THE COURT: Who's thought this many steps ahead? Sir?

18 MR. REESER: I might need to think about that for a
19 moment.

20 THE COURT: Okay. Yeah.

21 MR. REESER: If possible, Your Honor.

22 MR. LUCEY: The one thing, Your Honor, I would add to
23 the court, another reason they should be treated as the
24 same is they're here in court with the same attorney. They
25 are acting as one in this court.

1 THE COURT: Those two, right, Sales and Wilson Lucas
2 -- I mean, and Vasquez.

3 MR. LUCEY: Yes.

4 THE COURT: Right.

5 MR. LUCEY: Everybody else ---

6 THE COURT: A minute ago, you were arguing that they
7 were really just a subpart of Tri-County, so.

8 MR. LUCEY: Well, the three of them should be grouped
9 anyway because they did all Tri-County's work, and as such
10 the court should treat them as one, and there wouldn't be
11 an allocation.

12 But separate from that, they acted in concert, the
13 joints that leak, and they're here in court being
14 represented by a single attorney, and they have spoken with
15 a single voice throughout the trial. Clearly they're
16 acting in concert, and they're not entitled to an
17 apportionment.

18 MR. REESER: Your Honor, I think we discussed this.
19 If this was a post case -- it's not. Those -- that's the
20 portion that Mr. Lucey brings up because he's focused on
21 the intersection, but this, this case wasn't about the
22 posts and postings. It was about much more than that.
23 Much more than that went to the jury.

24 MR. LUCEY: I'd also remind the court that the
25 entirety of the defense table put up a single estimate.

1 They acted in concert on that, too.

2 THE COURT: Well, I'm trying to give credence to the
3 jury verdict, and the jury verdict form obviously that was
4 provided from plaintiffs' counsel does separate out these
5 parties. They are different parties. I understand they
6 were represented by one attorney. And for one reason or
7 another, neither one of the actual parties were present
8 during the trial, but I'm not sure that any of that bears
9 on whether or not they should be deemed as separate parties
10 or single parties for purposes of the apportionment
11 statute.

12 I mean, reading closely the subsection (a), and it
13 says:

14 For this purpose, the court may determine that
15 two or more persons are to be treated as a single
16 party. Such treatment must be used where two or
17 more defendants acted in concert, or where by
18 reason of agency, employment, or other
19 relationship, the defendant is vicariously
20 responsible for the conduct of another defendant.

21 I'm not sure that we -- I mean, was there evidence
22 that they acted in concert? I mean, I just don't honestly
23 remember. Am I missing something?

24 MR. REESER: No, Your Honor. We, we contend there was
25 no evidence presented they acted in concert.

1 MR. LUCEY: Your Honor, they are jointly responsible
2 for that intersection. They stopped their work right there
3 short of the intersection, and that meant they acted in
4 concert. Neither one of them ---

5 THE COURT: Were they separate, were they, I mean,
6 were they separate legal entities? What is the
7 relationship of the two parties? Did I miss it? Are they
8 just entirely separate parties?

9 MR. REESER: Yes, Your Honor, they have none.

10 COURT REPORTER: Repeat that, please.

11 MR. REESER: I said yes, Your Honor, they have none.

12 THE COURT: You have to say it. You have to be
13 louder. I know it's hard.

14 MR. REESER: Yes, Your Honor, they have none.

15 MR. KENDALL: They have none.

16 MR. REESER: They have no relationship is what I said.

17 THE COURT: Thank you. I couldn't hear none.

18 MR. REESER: My apologies, Your Honor.

19 THE COURT: That's okay.

20 Subsection (b) goes on to say:

21 After the initial verdict awarding damages is
22 entered and before the special verdict on
23 percentages of liability is rendered, the parties
24 shall be allowed oral argument, with the length
25 of such argument subject to the discretion of the

1 trial judge on the determination of the
2 percentage attributable to each defendant.

3 However, no additional evidence shall be allowed.

4 The statute is a little unclear, each defendant. I'm
5 assuming each defendant as to who we are trying to allocate
6 apportionment to.

7 MR. KENDALL: My understanding is we would not
8 participate any further.

9 THE COURT: No. My understanding as well.

10 MR. COLE: That's not necessarily my understanding,
11 but I understand the direction of the court.

12 MR. BOYD: The statute's not clear.

13 THE COURT: I think, to me, the statute contemplates
14 each defendant. My question would be what does the form
15 look like that they get next, and what is my instruction to
16 them?

17 MR. REESER: Your Honor, I think, I think that's made
18 a little bit difficult by the, the verdict form that was
19 submitted being this one number. But we can -- I, I
20 believe we can work through that as far as apportionment.
21 I mean, it's clear the jury has made an apportionment as
22 about each party, tried to.

23 THE COURT: To me, I want to ask them what percentage
24 of the 6.5 million do you attribute to Sales and Vasquez.

25 MR. REESER: Yes.

1 THE COURT: And I don't think their percentage is
2 necessarily -- obviously they're not going to equal 100
3 percent.

4 MR. REESER: No, Your Honor.

5 THE COURT: And I think that's my instruction to them.
6 I just need to ask them to what -- of what percentage of
7 this actual damage award do you assess to Vasquez and leave
8 a blank, and then Wilson Sales, DBA Miracle Siding, and
9 leave a blank and instruct them that these percentages do
10 not necessarily have to equal 100 percent.

11 MR. REESER: Yes, Your Honor.

12 THE COURT: Any objection to that?

13 MR. REESER: No objection.

14 THE COURT: I understand the plaintiffs probably have
15 any objection. Go ahead, Mr. Lucey.

16 MR. LUCEY: Well, no. I would say the court is
17 proceeding over our objection to allocation.

18 THE COURT: Right. Correct.

19 MR. LUCEY: But, but that said, I don't think the last
20 clause of what the court said needs to be said to them,
21 that they don't have to give 100 percent. I think all that
22 has to be said, all that has to be asked, how much of the
23 \$6.5 million be attributed to A, be attributed to B, end.

24 THE COURT: Okay.

25 MR. LUCEY: It can either be an amount or percentage.

1 THE COURT: And again, the statute doesn't really give
2 us a whole lot of guidance on that.

3 MR. COLE: You're plowing new ground, Your Honor,
4 because this is not been tested at this point.

5 MR. REESER: Your, Your Honor, I believe that -- I
6 believe they do need to be instructed the, the amount or
7 the percentage doesn't add up to the whole because clearly
8 there's been a verdict as to other parties. So, it's clear
9 the jury is contemplating that Wilson Lucas Sales, Sales
10 and Mr. Vasquez are not, are not subject to a verdict for
11 the whole. I don't want to mislead the jury and think that
12 there's some suggestion that they would be after they've
13 already rendered this verdict as given on this form.

14 THE COURT: I think I need to ask for a percentage
15 based on the statute's language.

16 MR. REESER: Yes, Your Honor.

17 THE COURT: And in section (a), they do contemplate
18 the percentages. So, I will ask for a percentage. I don't
19 think it's necessary for me to say your percentages don't
20 necessarily have to add up to 100. To me, that might be
21 commenting too much; it might be overly suggestive. If
22 they ask me do they have to add up to 100 ---

23 MR. REESER: Well, and one thing ---

24 THE COURT: --- I think I could say no, but ---

25 MR. REESER: --- they may not have understood is in

1 reaching this verdict, do they understand that allocation
2 may happen after? So, I don't know they necessarily know
3 that.

4 THE COURT: No, but they're going to upset that
5 they're going to have to come back and do something else.

6 MR. REESER: Yes.

7 THE COURT: Of course. We know that.

8 All right, let's -- my able clerk has been drafting a
9 verdict form. So, let's see how we can word it. She has
10 right now:

11 Please indicate what percentage of the \$6.5
12 million of actual damages awarded to the
13 plaintiffs is attributable to the following
14 defendants: Wilson Lucas Sales, Eloy Vasquez.

15 And a blank and percentage sign after each one. To
16 me, nothing about that implies that they need to equal 100
17 percent. So, I don't think we need to, like, specify on
18 there. Okay, so we just need to put a caption on that, and
19 we'll entitle it special verdict form.

20 Now, Mr. Reeser.

21 MR. REESER: Yes, Your Honor.

22 MR. COLE: He's reading the statute, Your Honor.

23 THE COURT: Good. Read the statute. Read along with
24 me. It says you:

25 Shall be allowed oral argument. The parties ---

1 Of course the plaintiff, too.

2 ---- shall be allowed oral argument ---

3 With the length of such argument subject to my
4 discretion.

5 --- on the determination of the percentages
6 attributable to these defendants. However, no
7 additional evidence shall be allowed.

8 So, I will let you gentlemen argue. You know, we've
9 had a lot of time from this jury. I'm going to ask that
10 you don't argue too long. I can't imagine that you would
11 need too long, given that we're down to these two, but how
12 much time do you think you need, Mr. Lucey or Mr. Buckley?

13 MR. LUCEY: Five minutes.

14 THE COURT: Five minutes.

15 MR. REESER: Five minutes.

16 THE COURT: That's more than reasonable. So, we'll
17 get this verdict form printed off. I'll let you gentlemen
18 look at it.

19 (A PAUSE.)

20 MR. LUCEY: Your Honor, before Mr. Atkins departs, the
21 plaintiffs will have post-trial motions as to him and his
22 client, unless the court would like to just establish now
23 that that would be a ten-day period and we can do it in
24 writing.

25 MR. ATKINS: A week or ten days.

1 THE COURT: Yeah, I'm happy for y'all to take the
2 ten-day period. And I'm mostly here, so if we need to come
3 back and argue, we can certainly accommodate ---

4 MR. ATKINS: So, we ---

5 THE COURT: --- the time to do that. That's kind of
6 up to y'all's schedules.

7 MR. ATKINS: So, it will be ten days for post-trial
8 motions.

9 THE COURT: All right, print it off. Let's see what
10 it sounds like.

11 MR. COLE: Your Honor, just ten days falls on Sunday.
12 So, that would be Monday the 20th?

13 THE COURT: Yes, by 5 p.m.

14 MR. COLE: All right. Oh, no, I'm sorry. I counted
15 wrong. Monday the 27th, right? Seven days gets us to the
16 23rd.

17 (A PAUSE.)

18 MR. LUCEY: Your Honor, procedurally while she's doing
19 that, do you envision telling them the question they're
20 going to have to answer, we argue for five minutes each,
21 then they get the question in writing? They're going to
22 need to know why we're talking to them.

23 THE COURT: Yeah. No, I think -- I'm glad you bring
24 that up. You know, I'm not armed with a standard charge on
25 this type of situation, so.

1 MR. REESER: I'm not aware of a charge in the bench
2 book.

3 MR. LUCEY: I would just, I would just suggest we say
4 there's two more -- one more question we need you to
5 answer.

6 THE COURT: I think that's ---

7 MR. LUCEY: This is going to be the question. These
8 attorneys get five minutes each to talk to you, and then
9 we're going to send you back.

10 THE COURT: I think that sounds like a fabulous plan.

11 MR. COLE: Your Honor, you can read subpart (b) if you
12 want because that basically ---

13 MR. LUCEY: I oppose any legalese. I think just a
14 simple instruction from the court will suffice.

15 THE COURT: Yeah, I'm just going to basically ---

16 MR. COLE: All right.

17 THE COURT: --- read the verdict form and then let you
18 gentlemen talk, and send them back with this piece of
19 paper. I think that's -- it speaks for itself.

20 (A PAUSE.)

21 MR. COLE: And then for the ten days, did I calculate
22 correct the second time, 5 p.m. Monday the 27th?

23 THE COURT: I haven't counted them, but I'll take your
24 word for it.

25 (A PAUSE.)

1 THE COURT: Just so I have an idea to --
2 realistically, how long do you think we're going to need to
3 argue post-trial motions?

4 MR. BOYD: We will need some time.

5 MR. KENDALL: Are you looking for a separate date for
6 that? I would, I would set aside couple hours, an hour.

7 THE COURT: Great.

8 MR. KENDALL: I mean, I don't -- you, you know the
9 issues. We don't have to brief you extensively ---

10 THE COURT: No.

11 MR. KENDALL: --- on the facts. We've talked about
12 most of them already.

13 MR. LUCEY: Would you like us to approach to look at
14 it?

15 THE COURT: Sir?

16 MR. LUCEY: Would you like us to approach to look at
17 it, the verdict form?

18 THE COURT: Oh, yeah, I'm going to let y'all look at
19 it. Yeah, please. Come up. Of course. Look at it
20 together.

21 (OFF-THE-RECORD BENCH CONFERENCE.)

22 THE COURT: All right, let's bring the jury back in.

23 (THE JURY ENTERS AT 3:39 P.M.)

24 THE COURT: Thank you. Please be seated.

25 All right, ladies and gentlemen, you thought you were

1 finished but not quite. Getting close. Pursuant to South
2 Carolina Code 5-38-15, there is one more question that we
3 need to ask you, and that is we are going to ask you what
4 percentage of the \$6.5 million of actual damages do you
5 award to the -- that you have awarded to the plaintiff is
6 attributable to the following defendants: Wilson Lucas
7 Sales, DBA Miracle Siding, and then Eloy Vasquez.

8 I'm going to allow the attorneys for each -- for the
9 plaintiffs and those defendants to give you very brief
10 argument as to what would be appropriate. And at that
11 point in time, we'll give you this one other special
12 verdict form and let you fill that out and come back to us,
13 all right?

14 So, Mr. Lucey.

15 MR. LUCEY: Yes, ma'am.

16 THE COURT: You can proceed.

17 MR. LUCEY: Your actual damage award is \$6.5 million.
18 The way you completed the verdict form clearly shows what
19 you thought about the responsibilities this job site, who
20 you thought was more responsible, who you thought was less
21 responsible for that \$6.5 million, and the homeowners
22 respect that.

23 So, here's what the homeowners propose for you to do
24 on your allocation. We know that \$6.5 million, almost all
25 of it is attributed to these two subcontractors. Almost

1 all the building code violations, almost all the damages,
2 almost all of it. But we get that the jury has spoken, and
3 the general contractor should have known better and the
4 master subcontractor should have known better.

5 These guys should, too. Miracle Siding should have
6 known better, and the roofer should have known better, too.
7 All of them should have known better.

8 So, almost all of that \$6.5 million is their work. We
9 propose, plaintiffs propose, plaintiffs request that you
10 allocate 16 and a half percent to Miracle Siding and 16 and
11 a half percent to the roofer and decker. That will be a
12 total of one-third of that \$6.5 million.

13 Plaintiffs' thinking is at least a third of that
14 ownership belongs to the general contractor, a third of
15 that ownership belongs to the master subcontractor, and the
16 two second-tier subcontractors should split the last third.
17 It's all their work. It's all their damage. It's all
18 their code violations. But, yes, the general contractor
19 and the master subcontractor should have done a much better
20 job themselves.

21 So restating it, court's going to ask you to allocate
22 what portion of that verdict is attributable to those two
23 subcontractors. The homeowners request that you attribute
24 16 and a half percent to each one for a total, if my math's
25 right, a total of 33 percent, just less than one-third.

1 Thank you.

2 THE COURT: Mr. Reeser.

3 MR. REESER: Ladies and gentlemen of the jury, I
4 understand that Mr. Lucey has a recommendation for you
5 based on how he sees the case. We've talked about this
6 twice now, and we think this is very clear.

7 This table, these are not the only people here. Those
8 architects, those engineers, those code officials, those
9 manufacturers' reps, everyone else had a piece of this pie,
10 and that's what's been put back to you. Supervision,
11 specifications, how you do it, instructions ---

12 MR. LUCEY: Objection, Your Honor. The allocation is
13 between parties in this case, not third parties.

14 THE COURT: Pursuant to code, I'll let him continue.

15 MR. REESER: And because we've talked about it, I
16 think it is clear that with all these people involved, if
17 you are going to allocate, we would request that you
18 allocate, include all those folks. It doesn't matter if
19 they're here. These are all the folks who touched it.

20 Mr. Sales didn't pick the siding, and it didn't matter
21 how Mr. Sales put it up. Could have hit every single stud.
22 Doesn't matter. Mr. Mease didn't have to check the
23 fasteners; he didn't have to check the spacing of them. He
24 knew that didn't work. That was the architect.

25 So, we, we trust that -- it is clear that y'all

1 understood the evidence and the testimony, and we would ask
2 that you make an allocation as to both, understanding what
3 they did and what they didn't do.

4 So, we're not going to ask you for a number. We're
5 going to ask you to be fair, based on your analysis of this
6 case, understanding every single one of these moving parts
7 we've talked about these past two weeks. Thank y'all for
8 your time.

9 THE COURT: All right, thank you very much. And I
10 will hand this verdict form to Mr. Ladson and discharge the
11 jury back to your jury room for this final question. Thank
12 you very much.

13 (THE JURY EXITS AT 3:44 P.M.)

14 (WHEREUPON, JURY DELIBERATIONS RESUME.)

15 THE COURT: Thank you, and for the record, it's
16 subsection D which specifically states:

17 A defendant shall retain the right to assert that
18 another potential tortfeasor, whether or not a
19 party, contributed to the alleged injury or
20 damages and/or may be liable for any or all of
21 the damage alleged by any other party.

22 So for that basis, I allowed Mr. Reeser to continue
23 over your objection. All right.

24 MR. LUCEY: Yes, Your Honor.

25 THE COURT: Wait. Sit tight.

1 MR. KENDALL: Thank you, Your Honor.

2 MR. LUCEY: If it comes up again, it was our
3 understanding that's a codification of the right of
4 defendants to continue to argue an empty chair during the
5 trial. But when you get the allocation, you can only
6 allocate between parties.

7 THE COURT: Think so? Okay.

8 MR. LUCEY: Thank you.

9 THE COURT: All right.

10 MR. KENDALL: We've argued unsuccessfully, Judge, that
11 you should put all those people on that allocation form,
12 regardless of who's left in the courtroom. We lost that
13 issue every time.

14 THE COURT: I understand that. Right. Okay.

15 (OFF THE RECORD.)

16 THE COURT: All right, you can bring the jury back in.
17 Thank you.

18 (THE JURY ENTERS AT 3:58 P.M.)

19 THE COURT: Thank you very much. Please be seated.

20 Mr. Foreman, once again you have reached a special
21 verdict on the issue we asked you to address?

22 FOREPERSON: We have, Your Honor.

23 THE COURT: Thank you so much, and if you will hand
24 that up to the bailiff, once again he will hand that to me
25 and we will publish that.

SPECIAL VERDICT

CLERK OF COURT: In The Court of Common Pleas, Ninth Judicial Circuit, case number 2015-CP-10-0955, *Palmetto Pointe at Peas Island Condominium Property Owners Association, Inc.*; and *Jack Love, individually and on behalf of all others simply situated, plaintiffs, vs. Complete Buildings, Corp, et al., defendants.* Please indicate what percentage of the \$6.5 million actual damages awarded to the plaintiff is attributable to the following defendants: Wilson Lucas Sales, DBA Miracle Siding, 5 percent; Eloy Vasquez, 5 percent. Dated May 16, '19 signed foreperson.

Ladies and gentlemen of the jury, is this your verdict? Please raise your right hand.

(JURORS COMPLY.)

CLERK OF COURT: Thank you.

THE COURT: The record will reflect all jurors raised their right hands.

All right, anything else from the plaintiff before I release the jury?

MR. EVANS: No, Your Honor.

THE COURT: Anything else from the defense?

MR. KENDALL: No, Your Honor.

MR. REESER: No, Your Honor.

MR. COLE: No, Your Honor.

1 THE COURT: All right, thank you very much, ladies and
2 gentlemen. You have truly been such a wonderful jury to
3 have the past two weeks. I know I speak on behalf of all
4 the attorneys in the courtroom, and I appreciate you
5 sincerely for your time and consideration.

6 I never comment on a verdict, but I will just comment
7 on how appreciative we are of your time and how much we
8 appreciate you being on time. I think all the court staff
9 and I agree you're the most prompt jury we've ever seen.
10 So, we certainly appreciate that for what it's worth, and
11 you are officially released from jury duty. Thank you very
12 much.

13 (THE JURY EXITS AT 4:00 P.M.)

14 MR. KENDALL: Your Honor, just want to assume they've
15 been advised to leave all their notes behind.

16 THE COURT: Yeah. The bailiffs always tell them ---

17 MR. KENDALL: Okay.

18 THE COURT: --- to leave all those. Yes, they leave
19 the notebooks.

20 Okay, we'll be adjourned. All post-trial motions will
21 be due within ten days of today. I think we deemed that to
22 be the day after Memorial Day by 5:00.

23 MR. COLE: Yes, ma'am.

24 THE COURT: If necessary, we'll arrange a time to hear
25 arguments on those very soon after that, okay?

1 MR. BOYD: Your Honor, Your Honor, could I bring up
2 one thing? One of the issues obviously that we're going to
3 deal with is the setoffs. Plaintiffs are going to argue
4 that we're not entitled to them. We're going to argue that
5 we are entitled to them. But I believe that one thing we
6 need in order to facilitate those arguments are copies of
7 all of the settlement agreements that have been reached by
8 the parties that are not here that the plaintiffs entered
9 into. So, I just request that we have those so that we can
10 properly prepare for the, the briefing and the arguments.

11 THE COURT: Will that be fine?

12 MR. BUCKLEY: We'll get it to them.

13 THE COURT: Okay.

14 MR. BUCKLEY: We produced -- some of them are brand
15 new.

16 MR. COLE: And I think, I think, to be fair, I think
17 that, that, you know, Complete has all that probably. I
18 don't know that everybody else can share with ---

19 (COUNSELORS CONFER.)

20 MR. KENDALL: We'll talk. We'll work it out.

21 THE COURT: Okay, thank you very much. Court is
22 adjourned.

23 --- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED
VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH
JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO
HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE
AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE
PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING
OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE
CIRCUIT COURT FOR CHARLESTON COUNTY, SOUTH CAROLINA,
ON THE 13TH, 14TH, 15TH, 16TH DAYS OF MAY, 2019.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

/S/ ELIZABETH B. HARRIS, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

MARCH 23RD, 2020

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON) 2015-CP-10-0955

Palmetto Pointe at Peas)
Island Condominium)
Property Owners Assoc.,)
Inc. and Jack Love,)

Plaintiffs,)

Vs)

Transcript of Record

Island Pointe, LLC,)
Complete Building Corp.,)
Tri-County Roofing, LLC,)
WC Services, Inc.)
Miracle Siding, LLC and)
Wilson Lucas Sales d/b/a)
Miracle Siding, LLC, Eloy)
Alonzo Vasquez, JMC)
Construction, Inc. and)
JMC Construction, LLC,)

Defendants.)

B E F O R E:

The Honorable Jennifer McCoy
Charleston County Courthouse
Charleston, South Carolina

A P P E A R A N C E S:

Edward Buckley, Jr., Esquire
Justin Lucey, Esquire
Attorney for Plaintiffs

James Williams, Esquire
**Attorney for JMC Construction, Inc.
& JMC Construction, LLC**

Andrew N. Cole, Esquire
Attorney for Tri-County Roofing

James A. Atkins, Esquire
Attorney for WC Services, Inc.

Sallie Beth Todd
Official Court Reporter

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I N D E X

(There were no witnesses called during the hearing.)

Certificate of Court Reporter	62

E X H I B I T S

(There were no exhibits marked during the hearing.)

1 **THE COURT:** Good afternoon, everybody. Please be seated.
2 Good to see everybody. Alright. I certainly appreciate our
3 court reporter from Conway agreeing to stay this Friday
4 afternoon to hear these motions. I am in receipt of the
5 Plaintiff's Motion and Order Dismissing Certain Defendants in
6 the case and I've signed both copies of that. What I was
7 going to do was just give y'all the copy that I signed and let
8 you take it down for filing at the conclusion of today's
9 hearing. Alright, with that, let me hear from the plaintiff
10 on your motion.

11 **MR. LUCEY:** Yes, Your Honor. First, chronological the
12 first motion filed by any party was Plaintiff's Motion to
13 Vacate the Directed Verdict in Favor of JMC and/or for a New
14 Trial. Your Honor, the Court may recall at the close of the
15 plaintiff's case JMC moved for a directed verdict and the
16 Court granted it over plaintiff's objection.

17 **THE COURT:** Yes.

18 **MR. LUCEY:** The plaintiff had pointed out to the Court
19 that the counsel for JMC had admitted their scope of the work
20 in his opening statement to the jury. They were one of two
21 siding installers on this job site. And then thereafter
22 plaintiff had proved that all of the siding on the site was a
23 code violation for a half-dozen different reasons, fastener
24 patterns, failure to nail to the studs, the use of oversized
25 siding, etcetera, etcetera. So, between the two -- between

1 their admission in opening that they installed some of the
2 siding and our proof that all of the siding was faulty, was a
3 code violation, plaintiff believes that we did in fact put on
4 prim facia case. I don't believe the Court was familiar with
5 the precedent as to admissions in opening statements at the
6 time we argued, and we actually offered to get some precedent
7 during lunch if we were given time but that didn't occur. We
8 have since submitted some of the precedent to the Court. And
9 while we have focused on admissions in opening statements, we
10 know the law, we know what South Carolina Supreme Court would
11 do if in fact it actually reached this issue in a published
12 decision. They're complaining and have cited an unpublished
13 decision where they recognize this concept. We know what
14 South Carolina would do in a published decision. Why?
15 Because in Magnolia North, Judge Newman just a couple of years
16 ago granted a directed verdict after opening based upon
17 conception in the opening by counsel. So, South Carolina
18 recognizes the importance of statements by counsel during a
19 trial. And we -- I have all the cases, all of the South
20 Carolina cases cited in our brief. The fourth circuit has
21 expressly recognized this in a decision, we included in our
22 brief. We have handed up to the Court an actually opening
23 statement decision from Virginia in the case of *Hall* versus
24 *Wal-Mart Stores East*. It was cited in our Reply Brief. And
25 this is where they actually -- the opening statement admission

1 became key in the case and the Court, like all the other
2 precedent that we've previously briefed to this Court, that
3 Court explained how and why judicial admissions in opening
4 statements are important; and how and why they actually differ
5 from evidentiary admissions. It's a judicial admission that
6 essentially binds a party. An evidentiary admission is
7 typically subject to further proof either which way if
8 somebody wants to try and retract their admission whereas a
9 judicial admission is binding on the parties for the duration
10 of the case. The distinction actually doesn't make a
11 difference in this case because they never tried to retract
12 the statement during opening that they in fact installed a
13 portion of the siding on this job site. So, Your Honor,
14 without belaboring the point further, although I'm happy to
15 answer any questions, we have briefed the precedent to the
16 Court as to why a judicial admission as to their scope of work
17 should have been binding on them and therefore the directed
18 verdict should not have been granted. We ask that the Court
19 vacate it and either grant judgment to the plaintiff or grant
20 us a new trial against JMC.

21 **THE COURT:** Okay. I'm going to have to review this case.
22 If you can hand it up to me, I will review it, with my
23 research as well of *Hall versus Wal-Mart Stores* case. That's
24 a part of the law I relied upon in making my decision
25 actually, but I'm happy to hear a counterargument as to this.

1 Yes, sir, Mr. Williams.

2 **MR. WILLIAMS:** I am Mr. Williams, James Williams for JMC.
3 Your Honor, we think that the ruling at trial was correct in
4 that the cases that plaintiffs cite now are either not
5 controlling and/or not on point and completely distinguishable
6 from the facts of this case. First, we would say this is not
7 a judicial admission as the plaintiff's argued. A judicial
8 admission generally goes to things like pleadings or formal
9 waivers or stipulation, which a stipulation is not a statement
10 or possible fact at an opening statement, it would be like an
11 agreement between two opposing parties. And a waiver is when
12 a party waives a legal right or legal argument and it's a
13 formal action that's done. It would be analogous to one of
14 the defendants withdrawing crossclaim against another in open
15 court, that's what a waiver is. All of the cases cited by
16 plaintiffs are really distinguishable on either it's a waiver
17 or formal stipulation or it has to do with the counsel in
18 opening statement admitting that there is liability and
19 admitting facts that it is liability. And when you get
20 underneath -- what's underneath all of these cases is that
21 what the defense counsel said in his opening statement was
22 basically that every one of those cases they tell the jury
23 that it's a case about damages, we're not here to talk about
24 liability, we're here to talk about damages, and then they go
25 back and try to argue against that and say that they don't

1 have liability. All of these cases -- we've got two briefs to
2 deal with from the plaintiffs. The first brief kind of seems
3 like they abandoned that -- abandoned that with what they
4 cited today and the stuff they cited today is only -- in the
5 first brief there's no South Carolina cases at all except the
6 unpublished one, which the Court can't rely on for numerous
7 reasons. But, the second one has two South Carolina cases. I
8 think one is with the Supreme Court and one with the Court of
9 Appeals. But those are only about what's in the pleadings and
10 that you can't deny what's in the pleadings. So, they're not
11 at all relevant to this. That's not what this case is about.
12 This is about something somebody said in an opening statement.
13 So, I don't think it needs to be -- this isn't a situation
14 where I now need to explain what I said and get it out of the
15 realm of judicial admission. But, even if -- and I'll point
16 out that even if I said what he says I said in his new memo,
17 but he doesn't quote the transcript so I'm not going to say I
18 definitely said exactly what he said I said because today he
19 said that I was one of two siding installers is what I said,
20 that's not anywhere close to what I said and that's not even
21 factually accurate to what happened out there. I'm pretty
22 sure there was two siding installers for the general
23 contractor, which is what the evidence showed, and we had
24 nothing to do with that. Even if what I said, what he says I
25 said I did say, and even if you take that to mean it was a

1 judicial admission, they still didn't carry their burden. You
2 know, they had at least six attorneys at all times in the
3 courtroom and still didn't enter any piece of evidence that
4 mentioned my client's name at all, no testimony that mentioned
5 my client's name even though there was ample opportunity to do
6 that. They could have called my client to testify and I would
7 say that -- I would describe my opening statement as a
8 rebuttal to his because what he said about my client in
9 opening statement was inaccurate and the evidence that had
10 been developed prior to trial did not support what he said.
11 He tried to make our alleged scope of work larger than what we
12 said it was and he tried to say that we worked on more houses
13 than any of the evidence before trial said that we worked on
14 and there is nothing to support that in the depositions.
15 Nobody could have said what he said they said and even the
16 people that talked about JMC, they say they thought he was
17 going to use them in testimony, none of those people were
18 under subpoena. So, it was more of a rebuttal to what he
19 said. I would say next that going back to my point on if what
20 he says I said is what I said and is a judicial admission.
21 They still did not -- by not mentioning my client at all they
22 did not -- they didn't say what my client's duty was, they
23 couldn't establish a duty, they couldn't establish a breach
24 and they couldn't establish any damages related to my client.
25 All he's saying is that assuming that my client did do some

1 site work out there and because I assume he's relying on
2 Russell Mease's testimony was that all of the siding that was
3 there now was bad, that a jury could have found a verdict
4 against my client. However, you'd still -- there's too many
5 possibilities out there for what could have happened that
6 would have reasonable for a jury to find a verdict and that's
7 actually the standard for a directed verdict. You don't --you
8 still have to consider whether it would be a reason to -- like
9 with bad evidence or the opposing party in a motion for
10 directed verdict you still have to look and see would it have
11 been reasonable and as a matter of law would a jury not have
12 been able to find for my client -- for the plaintiff. In this
13 case he didn't establish -- he certainly didn't establish a
14 but for cause. I think what he says in his memo that I said
15 is - pardon me while I find it. I think you would have --
16 what was said that we put back siding up that was not there
17 and that we did it in the same manner as was there before.
18 Well, if that's what was said and if that's taken as true then
19 that would mean that he didn't establish a but for cause
20 because we would have put everything back as it was there
21 before and that does not create any new damages. I mean, you
22 can make the analogy to a car wreck case where one car hits
23 another car and the only evidence of the record of negligence
24 was they were speeding but all of the evidence shows that the
25 accident would have happened whether or not they were speeding

1 and that speed had nothing to do with the damages then the
2 plaintiff doesn't get (inaudible) and that's the same thing
3 here. If what he said we said was true then we put everything
4 back where it was. The plaintiffs were already in that
5 position, we didn't change that position at all. So, we
6 wouldn't be a but for cause in any damages and again they
7 didn't establish a duty as to my client either. And I think
8 it's important to note the footnote in his filing today talked
9 about that we don't need to worry about judicial economy here
10 because there's a second pending case related to here -- to
11 Palmetto Pointe. But I think it's pretty clear that all of
12 damages related to the siding were contemplated by the jury
13 and a verdict was issued and it would be a double recovery to
14 try and come after JMC at a separate trial. Clearly the
15 plaintiffs aren't allowed a double recovery so it's kind of a
16 moot point. But I think I will go back again to during their
17 actual case in chief, my client's name was never mentioned, no
18 duty established, the jury had nothing to rely on.

19 **THE COURT:** Alright.

20 **MR. WILLIAMS:** Thank you.

21 **MR. LUCEY:** Your Honor, clearly they admitted installing
22 the siding, they said to the jury five times, at the end of
23 this trial I want you to remember what I'm telling you, I want
24 you to remember what I'm telling you, I want you to remember
25 what I'm telling you we did \$12,000 worth of siding work. We

1 did one tenth of one percent of the cost of this entire job.
2 He said that ten times. He kept saying it and that's what I
3 want you to remember at the close of this case, we did \$12,000
4 worth of siding work. And it wasn't just Mr. Mease that
5 testified all of the siding installation was a code violation,
6 Mr. Schwiguard, Engineer Schwiguard also testified about that.
7 If he wants to argue that -- the fact that he just copied
8 somebody else's code violations to the jury as a reason he
9 shouldn't be assessed the full amount of damage to something,
10 he's certainly welcome to do that. But that doesn't negate
11 the fact that they conceded their scope of work in opening and
12 two engineers testified that all of the -- the installed
13 siding was a code violation and they conceded to installing
14 siding on this job site. Thank you, ma'am.

15 **THE COURT:** Okay. I am going to review the case *Hall*
16 *versus Wal-Mart*. I didn't feel at the time in the statement
17 that he made in his opening was this sort of unequivocal
18 statement as to a matter of fact. But, what I'm going to do
19 is just get that portion of the transcript back from the court
20 reporter and I'll review it again and of course in light of
21 the memorandum that you all filed today and issue a ruling in
22 compliance with what I believe the law to be. Okay.

23 **MR. WILLIAMS:** Thank you, ma'am.

24 **THE COURT:** Alright. Next motion.

25 **MR. LUCEY:** I believe it would be TCR's Motion.

1 **THE COURT:** Oh, a 13th juror motion, is that correct?

2 **MR. LUCEY:** It was a motion for a new trial.

3 **THE COURT:** Motion for a new trial. Okay. Alright.
4 Plaintiff's Motion for a New Trial regarding WC Services.

5 **MR. BUCKLEY:** Yes, Your Honor. Let me first address the
6 fact that we are moving in the alternative, Your Honor, for a
7 judgment notwithstanding a verdict JNOV, or in the alternative
8 for a new trial.

9 **THE COURT:** Okay.

10 **MR. BUCKLEY:** And while I understand that the bar is
11 pretty high on a judgment notwithstanding verdict, I think to
12 paraphrase and almost quote if I could Mr. Atkins in his
13 opening statement to the jury, this is an odd-ball case
14 involving an odd-ball defendant. And in this particular case
15 the evidence supported and justified Your Honor granting our
16 motion for directed verdict against WC Services for a number
17 of reasons. We had established through the evidence that was
18 completely uncontradicted that the Folly ordinance section
19 90.08 subparagraph (C) govern the installation of fire
20 sprinkler systems within Folly Beach's jurisdiction. We had
21 established that the contract that WC Services entered into as
22 a subcontractor with Complete Building Corporation, the
23 general contractor, required that the WC Services system
24 comply with both NFPA 13 (D) which was a state code
25 requirement and with the Folly ordinance. The contract itself

1 actually referenced a letter dated March 6th, 2006 from Tom
2 Hall, the then building official at the City of Folly Beach,
3 to the developer Tommy Brown and that letter specified that
4 the building sprinkler systems must comply with that
5 provision. It also importantly, Your Honor, attached a copy
6 of the ordinance. The contract with WC Services, between CBC
7 and WC Services incorporated and referenced that letter. That
8 letter enclosed a copy of the ordinance and said so. If for
9 example, WC Services didn't see a copy of that letter they
10 could have read the letter that was part of the basis of their
11 contract and said where is this ordinance. The evidence then
12 establishes clearly with no contradiction that there are no
13 sprinklers in the attics of these buildings, the provisions of
14 90.08 (C) are as explicit as any statute I've ever seen. The
15 second page of that statute, Your Honor, contains a chart that
16 is crystal clear, and it says areas where sprinklers may be
17 omitted and down the left side it has those areas listed.
18 Among those areas significantly are carports and similar
19 attached structures and they are allowed in single family
20 dwellings to omit those under conditions met by the asterisk
21 below; and then two-family dwellings under those same
22 conditions. And those conditions require that the attached
23 structures be separated from the dwelling units by a one-hour
24 rated fire assemble. Mr. Hall's letter expressly contains
25 that language. It does not mention anything about the next

1 item, which is attic -- areas where attics are not used for
2 living or storage. Under their ordinance single family
3 dwellings allow the omission of sprinklers in the attics for
4 only those structures. The two-family dwellings, on the other
5 hand, do not allow that. In order to allow or in order to
6 obtain permission to omit sprinklers in the attics we have to
7 go to the next section which is subsection (D). And
8 subsection (D) says variances to this ordinance may be granted
9 after a hearing by the fire chief, building official and a
10 member of the building industry appointed by the city council.
11 That's the only way that a variance can be granted. There is
12 no evidence in this record, nor will there ever be if this
13 case is retried, that a hearing was held, that a hearing was
14 sought, that a committee composed of those three people was
15 empaneled, or that any variance was granted. Instead what the
16 only evidence reflects is that the person at WC Services who
17 drew the plans with water sprinkler system, Mr. Chad
18 Christopher, he says he had never seen the contract, he had
19 never seen the requirement or the ordinance, and he had never
20 seen the ordinance. So, he drew plans that didn't consider
21 anything but NFPA 13(D). The next step in the approval
22 process or certification process for fire sprinklers is very
23 unique to fire sprinklers. There must be a fire engineer, a
24 certified fire engineer, who approves those plans. That was
25 Mr. Constantine's roll. Mr. Constantine has his own

1 engineering firm and he testified that he approved the plans,
2 the plans that are in evidence, are stamped with his seal at
3 the bottom, there are eight pages of those plans and all of
4 those plans, he testified, were based only on the NFPA 13(D)
5 because he had never seen the Folly ordinance. He also
6 testified that he was never provided by WC Services very
7 important documents. The contract between WC Services and
8 CBC, the letter from Tom Hall dated March 6th, 2006 containing
9 the requirement for the installation of the sprinkler system
10 including the requirements to comply with the Folly ordinance
11 or the Folly ordinance itself, which was attached to that
12 letter. Mr. Constantine then testified that if he had known
13 about those requirements and the Folly ordinance, his design
14 would have been very different. There is absolutely no
15 evidence, Your Honor, to support any conclusion by any fact
16 finder that there was any excuse -- any legal excuse not to
17 include fire sprinklers in the attics of these buildings. For
18 that reason, we believe we are entitled to a directed verdict.
19 Not only was there not a variance granted, there was not a
20 variance sought and it makes perfect sense that there was not
21 a variance sought because nobody who was involved in the
22 design of this system ever bothered to realize that there was
23 an ordinance to try to comply with or to try to get a variance
24 from. The only evidence in the record establishes negligence
25 per se in the violation of section 90.08 (C), that's the only

1 evidence in the record. For that reason, we were entitled to
2 a directed verdict and should be entitled to a judgment not
3 withstanding verdict. Now, in the alternative, the failure to
4 install the system -- let me, let go also to another ground
5 for the JNOV. The system as installed, Your Honor, violates
6 the only certified installation plan. Your Honor will recall
7 that there was a certification issued by Mr. Constantine, and
8 the certification is required by law. Again, this is the odd-
9 ball case. You have to have a certified fire system design
10 before you can install a fire system here and that's
11 statewide. Mr. Constantine admitted understandably that the
12 Certificate of Compliance he executed dealt on with 13(D).
13 And more importantly from this stage of our argument, Your
14 Honor, that Certificate of Compliance certified with his seal
15 the design that is reflected in Exhibit 705. That design is
16 significantly and most importantly drastically different from
17 the design that is actually in place at this project. This
18 design, if Your Honor will look at either side of each
19 building, this Exhibit 705 contains drawings pertaining to a
20 building that's shown as a duplex and the yellow lightly
21 shaded line in the middle is the actual fire separation wall
22 between the two units. There's a unit on the left and a unit
23 on the right. On either side the exterior walls, the left-
24 hand wall in the left-hand unit and the right-hand wall of the
25 right-hand unit, it shows where the fire sprinkler system

1 enters the building. That is not where these systems enter
2 the building at. They enter the building under the fire wall
3 near the garages. The system that was certified would show
4 and did show that the system would not violate the fire wall
5 in any way because as you can see from the lines that are the
6 pipes and cells shown on the plans on Exhibit 705, none of
7 those pipes that feed the actual sprinkler heads themselves
8 penetrate the fire wall in any location at all. Everyone who
9 has testified in this case including Mr. Lazzo, the expert for
10 WC Services admits that constructing a system that is not in
11 compliance with the Certificate of Compliance is a building
12 code violation. Again, negligence per se. Here, Your Honor,
13 there's no evidence to establish that the system that was
14 built was ever certified by any engineer. There is no --
15 because the only system that was ever certified was the one
16 that was shown in 705. Because the system that's in place was
17 never certified, that constitutes a code violation. Likewise,
18 Your Honor, because the system shown in Exhibit 705 is the
19 only system that was ever certified, there will not be any
20 evidence or that there was any evidence to establish that any
21 variance was granted. No variance was granted, there was no
22 certificate, or any system ever penetrated the fire walls or
23 emanating within the fire walls creating a chase up through
24 the bottom of the building up to the top. For all or some of
25 these reasons, Your Honor, or any one of them Palmetto

1 Pointe's entitled to a directed verdict on a negligence as a
2 matter of law. It remains for the jury to determine
3 approximate cause and damages, if any. But we would ask the
4 Court to grant a JNOV at this time. In the event the Court
5 does not do so, we would ask for a new trial on those and some
6 additional grounds. The jury here, Your Honor, should have
7 been charged on 90.08 (C) and (D) and on the provisions of the
8 International Residential Building Code 2003 section R102.2.
9 Your Honor would recall that we submitted both of those.
10 There was much discussion during the trial regarding both of
11 those. Section 102.2 of the IRC states that nothing contained
12 within the building code shall be deemed to eliminate any
13 provision of local, state or federal law. The section 90.08
14 (C) and (D) we ask that -- we requested that the Court charge
15 that section. Your Honor may recall that there was a great
16 deal of discussion during the early stages of the trial
17 regarding admission of that ordinance into evidence. And
18 understandably Mr. Atkins did not want the jury to be able to
19 take the statute itself back into evidence. Regardless of
20 that, it was admitted into evidence as a Court's Exhibit. It
21 was discussed at length with many of the witnesses during the
22 trial and it is uniformly recognized by every witness who
23 testified in this case as the applicable ordinance that
24 applied to this fire system -- fire sprinkler system assembly.
25 As an additional ground for a new trial, Your Honor, we have

1 raised an issue of the hearsay evidence that was allowed over
2 our objection for a couple of witnesses, Mr. Schwiguard and
3 Mr. Lazzo testified something to the effect that based on
4 their information or maybe even in the case of Mr. Lazzo based
5 on a telephone conversation with former fire chief at Folly
6 Beach, Tittle, that they never required installation of fire
7 sprinklers. That element should never have been allowed to be
8 considered by a jury. Even if you -- if we conceded on our
9 behalf that that evidence was properly admitted, it doesn't
10 rise to the level of proof of a variance as required under
11 section (D) of 90.08. And further, Your Honor, because of
12 overwhelming evidence established, WCS's negligence is a
13 matter of law and the jury's verdict must have been based on
14 considerations other than the evidence before it, what those
15 were we do not know, they may have felt sorry for WC Services
16 because WC Services owner is now deceased, I don't know. But
17 for whatever reason they didn't follow the law and Your Honor
18 failed to charge them on the applicable ordinance itself.
19 Either we should be entitled to a JNOV with a trial only as to
20 approximate cause of damages as to WC Services or we should be
21 given a new trial as to them entirely. Thank you.

22 **THE COURT:** Alright. Mr. Atkins.

23 **MR. ATKINS:** May it please the Court? Jimmy Atkins for
24 WC Services. We've retried this case again, haven't we? What
25 I heard at trial was vastly different than what I just heard

1 again from Mr. Buckley. He is taking a letter -- March 6th,
2 2006 letter which was an exhibit -- plaintiff's exhibit, and
3 he reads that letter in one way. He reads that letter to say
4 well there is no variances being granted because it doesn't
5 mention the added sprinklers with respect to 90.8 (sic), the
6 ordinance. If you read that letter you can certainly read it
7 another way. It says the following will be required and it
8 lists what the building code official was requiring that he
9 copy the other folks when writing to the developer. And one
10 thing he did not bother to list was 90.8's (sic) requirements
11 for added sprinklers. That was before the jury. That's an
12 issue of fact, it is reasonable minds coming to reasonable
13 conclusions on the significance of the absence of that
14 reference and this jury decided that it made more sense and it
15 made more sense than reading the letter without trying to
16 twist the meaning of that letter, that it meant what it said
17 on the face. The following is required, and it made no
18 reference to added sprinklers. That was before the jury.
19 Now, could you draw that there had been a waiver, a formal
20 hearing, or what have you, I don't know. I do know that that
21 letter does indicate, and it is subject to interpretations,
22 two clearly distinct interpretations which will lead to two
23 clearly distinct results. To say that that is not evidence
24 that a reasonable jury could rely upon to justify their
25 verdict, I think is a falsehood. I think that is the

1 foundation, the baseline for the argument of plaintiff's case
2 to the jury and here in the post-trial motions as to why this
3 Court should step in and overturn that jury's verdict. And
4 there is the evidence staring you right in the face. That
5 could be taken either way. 90.8 (sic) do not apply. 90.8
6 (sic) didn't apply to a letter that is incorporated in the
7 contract for WC Services was part of my contract. There's no
8 breach of contract action by the plaintiffs so I don't know
9 where that goes, but nonetheless we're still back to the March
10 6th, 2006 letter from the Building Code Division to the
11 developer copied to the Fire Marshall amongst others. With
12 regard to the -- with regard to Eddie suggesting that there
13 was no basis or there was a lack of any other evidence upon
14 which the jury could sustain or that would support the jury
15 verdict. There was also evidence that counts as infamous
16 hearsay I believe. There was evidence from Mr. Lazzo after I
17 established the foundation -- proper foundation that was a
18 part of the information that he is an expert relied upon, that
19 he didn't meet directly with the Fire Marshall, there was no
20 dispute about that and he said there was no enforcement of the
21 added requirements of that ordinance. In the record and it
22 was impermissible as well, and I had either Mr. Schwiguard or
23 Mr. Constantine to tell us what did Mr. Tittle tell you, but I
24 did establish they both had spoken to Mr. Tittle as well and
25 as a result they didn't change anything that they did. They

1 didn't put sprinklers in attics. Mr. Schwiguard put a
2 requirement in his repair reports, or the pricing that was
3 done by the estimator for Mr. Schwiguard, and Mr. Constantine
4 never changed a thing on the plans that he put in. The final
5 plans were they didn't have sprinklers in the attics. And
6 that's an inference that I didn't argue to the jury. Anybody
7 that spoke to Mr. Phillip, concluded that those sprinklers
8 were never required in those attics. That brings us back to
9 the letter of March 6th, 2006. Now, the Certificate of --
10 Certification Compliance argument that Mr. Buckley just made
11 about Exhibit 705. As I recall the evidence at trial, there
12 was never any evidence that that was -- that 705 was -- were
13 the eight sheets of fire protection plans that were part and
14 parcel of that certification. Nobody ever testified to that
15 in that case. In fact, the testimony in the evidence was
16 we're not even sure if that was the final set of plans for the
17 sprinkler design. It had to be changed in the field and
18 modified. We just didn't know because it certainly wasn't
19 signed by Mr. Constantine. It didn't have a signature affixed
20 to it as if it were anything other than perhaps a draft. So,
21 that's one argument about that. Another argument I just
22 thought of is, well great, if you think 705 is final then show
23 me sprinklers in the attics. It's got first floor and second
24 floor sprinklers, but nothing in the attics. So, you know,
25 you can't have your cake and eat it too. The other -- on jury

1 charges 38 and 39 this kind of gets back to the new trial
2 motion portion that's been argued. That ordinance and whether
3 it was or was not applicable was a fact of dispute in the
4 case. It was a material fact and it was hotly disputed in
5 this case. And I don't think that it would have been proper
6 for the Court to charge the jury that this is law in this case
7 under those circumstances. I just think that would have been
8 wrong. So, Your Honor, I think that what we've got is counsel
9 for the plaintiff is rearguing the trial that we just had a
10 couple weeks ago and the evidence was one in such that a
11 reading supports the verdict of this jury and there is
12 evidence that supports the verdict of the jury, then the
13 Court's duty is to respect that verdict.

14 **THE COURT:** Alright. Mr. Buckley, do you want to
15 respond?

16 **MR. BUCKLEY:** Just very briefly, Your Honor.

17 **THE COURT:** Okay.

18 **MR. BUCKLEY:** Assume that Mr. Tittle said everything that
19 everyone said Mr. Tittle said. So what? That doesn't meet
20 the requirements of section 90.08 (D). There have to be three
21 people and a hearing to determine whether a variance could be
22 granted. There's no evidence that there was ever one applied
23 for and there was none granted. Secondly, as far as the fact
24 that we don't know whether 705 was the actual plan that was
25 ultimately approved, it is the only plan that Mr. Christopher

1 identified himself having ever drawn. He's the only person
2 who WC Services produced at the trial in this case who
3 participated in drawing those plans. So -- and it is the one
4 that has the seal of Mr. Constantine on it and Mr. Constantine
5 readily admitted that if he would have known about 90.08 his
6 plan would have been -- his approved certification would have
7 been very different. The mere fact, standing by itself alone
8 that this system was allowed to penetrate the walls where that
9 penetration -- those penetrations are not shown on the only
10 plan certified by Mr. Constantine is a per se code violation
11 entitling us to either a JNOV or a new trial.

12 **THE COURT:** Alright. I'll take a look at the
13 memorandums. And moving right along to the next motion. What
14 is that?

15 **MR. COLE:** I think these are some of my motions, Your
16 Honor. The first one was the Motion for the Production of the
17 Settlement Agreements and late yesterday afternoon with the
18 documents that Your Honor received by e-mail from plaintiffs
19 that I signed and plaintiffs signed, they agreed under the
20 confidentiality order ---

21 **THE COURT:** Yes. I signed that, and we have that as
22 well.

23 **MR. COLE:** In light of that, they produced it and then
24 later on in the evening they produced a couple of others that
25 one there and there are a couple that they don't actually have

1 yet. But I have here, and I'll give you a copy of this that
2 I'm going to use during my presentation. The notebook is a
3 collection of the settlement agreements that are in the
4 record. So, I think that motion is moot at this point because
5 we were able to work it out yesterday, finally.

6 The second motion I have is a Motion for the Plaintiff to
7 Elect Remedies. I asserted this because it was -- well, I
8 asserted this in part because I'm expecting some arguments
9 from the plaintiff's that if I don't do this then they're
10 going to try to hold my feet to the fire with some kind of
11 legal argument. Essentially, it doesn't matter whether in
12 this case whether they choose between tort or contract because
13 under the *Stoneledge* case you get setoff under either of those
14 and also it doesn't matter because the verdict form that was
15 proposed by the plaintiff was the only one that had one line
16 for both the tort and the contract damages. So, by their
17 proposed verdict form and the one that the Court put in, we
18 just had one line, so we don't have to figure out what part
19 was one and what part was the other. So, you know, I'm
20 assuming they're going to elect the tort damages because then
21 they would be able to still go after the punitive damages
22 against me. I would welcome them to waive their punitive
23 damages if they want to, but I think from their brief they're
24 not going to do it. But I just put that out there, but they
25 need to make that election. But, you know, from the rest of

1 the discussion I don't think it's necessary. So, the -- I
2 wrote a brief that -- I have extra copies if Your Honor needs
3 it, that is Post Trial Motion from this, and I have several
4 arguments in there. Do you need a copy?

5 **THE COURT:** Yes, that would be great.

6 **MR. COLE:** Alright.

7 **MR. LUCEY:** Should I respond to the election argument
8 first before he moves to his next motion?

9 **THE COURT:** Sure. Justin, why don't we do that? I think
10 that's a great idea, Mr. Lucey. Why don't you respond to the
11 election remedies on the record? I'm happy to hear from you.

12 **MR. LUCEY:** Your Honor, we're actually to reply it's
13 unnecessary to prevent double recovery because of the single
14 number on the jury verdict form there's no risk of double
15 recovery. I would note the conversation either now or in the
16 post-trial motions related to the jury verdict form is
17 inappropriate. The Court announced what form it was going to
18 use and asked if anybody had any objections and there were
19 none. Everybody acquiesced the jury verdict form as written.
20 We do need to elect and we do elect negligence and gross
21 negligence. Thank you, ma'am.

22 **THE COURT:** Thank you very much. Alright, Mr. Cole, let
23 me hear from you.

24 **MR. COLE:** Alright. I'll just briefly say that my
25 recollection was when the jury form did go to the -- or the

1 verdict form did go to the jury that I think -- at least I and
2 I think some other people renewed that we liked our form
3 better than the one that went to the jury so I think that
4 preserved that issue. I don't think that we need to get into
5 that.

6 So, I wrote a brief and I have some of the standard post
7 trial motions in that for a new trial nisi remittitur and so
8 forth.

9 **THE COURT:** Uh-huh. (Affirmative response)

10 **MR. COLE:** I'm just going to focus on a couple of things
11 and I'm going to let my brief stand for some of the things
12 that I'm not going to talk about. First, with the -- with the
13 crossclaim I'll just bring this up partly because I believe
14 that if you look in the notebook under tab number 1 I believe
15 that ---

16 **MR. LUCEY:** Crossclaim is gone.

17 **MR. COLE:** Alright. That's what I was going to say is I
18 believe the crossclaim is gone so that is not an issue
19 anymore.

20 The second one is under punitive damages that there is
21 still a requirement for the Court to review the punitive
22 damages in this case to make sure that they're reasonable and
23 that they fit with the case and we have the *BMW* case that
24 still references the *Gamble* fact pattern necessary.

25 **THE COURT:** That is in a form order which I still -- I

1 think we got a draft of it. Anyway, I'll make that clear in
2 my order. Yes.

3 **MR. COLE:** Okay. And I think in my brief I said that I
4 would prefer not to have punitive damages in it. I think, you
5 know, they were not warranted against my client in this case,
6 but we'll get on to the big thing that we're going to talk
7 about today which is setoff. And setoff -- oh wait, actually
8 before I get to that, to the extent that you look at the
9 punitive damages, I noticed with plaintiff's brief that he has
10 a couple of exhibits that he attached to the back of his brief
11 as part of his proof for whatever his argument is for punitive
12 damages.

13 **THE COURT:** Uh-huh. (Affirmative response)

14 **MR. COLE:** I handed up a thing that I've titled: A List
15 Of Exhibits That Were Entered At Trial. This is the list of
16 exhibits using the terminology that we had on the common list
17 of exhibits that everybody had at trial. And at the end of
18 the trial, I was one of the people with the court reporter
19 that wrote down and made sure that I had a complete listing of
20 all of the exhibits that were actually put in during the trial
21 and none of the things attached to the plaintiff's brief are
22 on this list. That is, they were talked about and I will
23 acknowledge that we did talk about some of those things, but
24 those particular exhibits are not in this trial and it's
25 improper to try to attach them right now. So, Your Honor

1 should disregard those and not use those exhibits for any part
2 of your analysis.

3 **THE COURT:** Okay.

4 **MR. COLE:** Alright. Now, back to setoff. As Your Honor
5 is aware, for over 180 years from the common law and at least
6 since the 80's according to statutory law, setoff is a --
7 required by the law. It is not discretionary. There are many
8 cases that talk on how it's not discretionary to have a setoff
9 analysis and to apportion or to reduce the verdict by the
10 amount of setoff. In fact, during the *Huck* case, which is one
11 that I also used when we were debating whether or not I could
12 get copies of the settlement agreements; under the *Huck* case
13 the Court basically admonished the trial court for not going
14 through a setoff analysis because it is a matter of right.
15 This is not a duty; it is not a burden. I don't have a burden
16 to prove what should be a setoff because the law and the
17 statutes say I'm entitled to it. That's -- we don't even have
18 to get into the debate and any arguments to say that it is
19 incumbent on a plaintiff to try to prove what was either in
20 the plaintiff's head when they reached these settlements or
21 anything else like that is improper; it's not the analysis.
22 The spreadsheet that I handed up, the two-page spreadsheet
23 that I entitled the Palmetto Pointe At Peas -- it's the
24 spreadsheet to help with the discuss on setoff. The way this
25 is setup is the numbers on the left-hand column, those are

1 numbers that correspond with the tabs in the notebook that I
2 passed up.

3 **THE COURT:** Okay.

4 **MR. COLE:** So, those are all the ones that either we have
5 a settlement agreement that was provided. For some of these
6 they don't quite have a settlement agreement, they just have
7 some e-mails that they were able to produce that has an
8 amount, general terms, and things like that. The settlement
9 amount column is the column that under the law the judgment in
10 this case should be setoff by. And at the bottom of that, the
11 total amount of settlements that should reduce the verdict in
12 this case are the amount of \$5,415,000 and I'll get to why
13 that applies. The next column I have labeled as issue
14 releases for the settlements. Those issue releases add up to
15 \$1,385,000. One of the issues that we talked about during
16 trial was what actually was before the jury and I got this
17 from Mr. Kendall, but you might remember this. I don't think
18 you were able to see this because you were not facing the same
19 direction, but this is the only exhibit for plaintiff's
20 damages that was put into the record. It is exhibit 677.
21 Exhibit 677 ---

22 **THE COURT:** Was this the more recent version or the
23 December one?

24 **MR. COLE:** This was the December 21, 2017 version. If
25 you'll remember, the version that had Mr. Handegan's

1 handwritten notes on it that he testified from was a court
2 exhibit. It was never put into -- it was never put in as an
3 actual exhibit at trial. The reason why this is important is
4 because when we're talking about setoff what we're looking at
5 is the damages that are incurred at the end, the injury is
6 what we're looking at. We're not looking at whether or not a
7 person put in the same type of flashing, not looking at if the
8 person did the same type -- scope of work. That's the
9 incorrect analysis because if you get into that and if you
10 look at the way the plaintiffs calculate what I'm entitled to,
11 they are guaranteeing that they are going to have multiple
12 recoveries for the same damages. Because remember at the end
13 of the day what everybody was talking about during the trial
14 was what is it going to cost to fix the buildings and what are
15 the damages for loss of use while they're out of the buildings
16 while they're being fixed.

17 **THE COURT:** Uh-huh. (Affirmative response)

18 **MR. COLE:** That's what all of the thing we were talking
19 about at trial were. And then we had several discussions at
20 the pretrial. We had several discussions during trial, and we
21 had discussions in front of the jury of what should and what
22 should not be in the case. Now, what was removed from the
23 case are things that are on my column there that say the issue
24 releases. Those are things like the HVAC system. Those are
25 the interior trim and those types of things that, if you

1 recall, when the closing argument was done this is what the
2 jury saw. They saw this and then they saw Mr. Kendall go
3 through and he said as he was talking to them, let's look at
4 this. Alright, we have acknowledgements from the plaintiffs
5 that, for example that the doors and the windows, because
6 those are product issues and remember when we talked about it
7 we had a discussion with Mr. Lucey when he was arguing that
8 there's a distinction between how the windows are installed
9 and the windows themselves because he's making that very
10 distinct distinction i.e saying anything other than the
11 product is still in the case. So, Mr. Kendall went through
12 this and he took from all of the testimony that we had from
13 plaintiff's experts and he went through and taking out the
14 clubhouse because everybody agreed that the clubhouse wasn't
15 part of it. So, taking out the drainage, etcetera, all of
16 these things; so, this is the evidence that the jury saw.
17 What this means is everything that was X'ed out here, i.e.
18 everything in my column that says issue releases, is stuff
19 that the jury arguably did not have. Now, they actually had
20 everything, but we acknowledge or at least the argument was
21 the jury doesn't have any of this. So, when we take out those
22 issue releases for the HVAC, for the drainage, for the
23 clubhouse, etcetera, what's left over is everything. Now,
24 plaintiff's make a very convenient argument now that since
25 Tri-County is the only defendant here that they can ignore the

1 fact that there were other people at trial. Look at
2 plaintiff's brief. When plaintiffs did their brief, they said
3 all we're entitled to is Creekside that did the painting and
4 the caulking. I agree we're entitled to that. They said
5 Certainteed, which was the manufacturer of the products that
6 we or subs installed. I agree that that is part of our
7 setoff. Then Cornerstone, which was a previous subcontractor
8 that was not at trial, they settled out previously.

9 **THE COURT:** Uh-huh. (Affirmative response)

10 **MR. COLE:** The reason why they concede that is because we
11 actually signed the settlement agreement with Cornerstone
12 where plaintiffs agreed that they would give us a setoff so
13 that's sort of -- that's a chip for them that doesn't matter.
14 What did they not include on this? They don't include
15 anything, or they don't acknowledge anything from Complete
16 Building Corporation that if I recall Complete was about three
17 feet away from me the entire trial. Then also they don't
18 include anything from my subcontractors, Vasquez and Sales.
19 In fact, if you pull open the settlement agreement that the
20 plaintiffs have, they have two of them for Complete Building.
21 If you flip to the second settlement agreement from the
22 plaintiffs for Complete Building this is the only place where
23 they say they're making an allocation here. When they make
24 this allocation no dollars whatsoever from the more than \$2.1
25 million dollars that Complete paid to settle this case, do

1 they plaintiffs say should be allocated to any setoff. I will
2 say to you based on the *Huck* case, based off of the years of
3 precedence from *Rooker* and based off of other cases that this
4 is a per se bad faith attempt to try to escalate the amount of
5 money that the plaintiffs can get in this case. It's not a
6 reasonable argument for them to say that absolutely nothing
7 that was tried is Complete Building -- that before they
8 settled Complete Building and Tri-County according to the
9 plaintiffs were joint and several liable for up to \$6.5
10 million dollars of the entire verdict that the jury gave. So
11 now it's convenient because they got a little bit of money
12 from them after the fact and now they can say well we're going
13 to allocate it. What's also funny is if you look at the first
14 time that Complete settled, their original settlement
15 agreement which was in July of 2018 where they gave a covenant
16 after the first insurance company paid a million dollars, they
17 don't make any allocation in there. Instead they wait until
18 after there's a judgment to try to figure out what
19 subcontractor or what defendant they're going to try to
20 prejudice by their allocation that they have here. So they go
21 back and they say well when we took that money we really
22 didn't take it for anything except for these specific things.
23 That's improper. The case law does not allow the plaintiffs
24 to do that. They cite two cases in their brief, one of them
25 is the *Borden* case. That's a collateral resource case. That

1 was one termite company, had a termite contract on a house and
2 then they basically let it expire and their was termite damage
3 but the owners then hired a second termite company so you had
4 two different termite companies that had independent damages
5 that they were dealing with. That's a collateral resource,
6 it's not a setoff so the Court denied them the ability to use
7 the previous companies' settlement money to setoff the later
8 judgment against the company. That's not what we have in this
9 case. We have in this case the people that were working at
10 the same time out there during the original construction, that
11 were sitting at the same table during the trial, that are
12 joint tortfeasors. The second case that the plaintiffs rely
13 on that I talk about deals with the *Oaks*. The *Oaks* was a case
14 from 2017. The *Huck* case which was decided last year, it was
15 more recent in giving direct to the Court that you have to
16 give the setoff. But in the *Oaks* case, what happened in that
17 case was at the end of trial the things that were issue
18 releases, i.e that right hand column that I had in my chart.
19 The things that are Xed out here during the closing argument
20 that these are not part of the case. The parties in the *Oaks*
21 case says well we should be entitled to all of that and the
22 Court said no you're no allowed to it because that is not in
23 front of the jury. Again, the evidence in front of the jury
24 is they had this. They had everything except for the issue
25 releases that were Xed out. If I were saying -- standing up

1 here and saying I am entitled to 100 percent of the
2 settlements which is over \$6.8 million dollars I think that
3 they've received then they could through the *Oaks* case in my
4 face and say no because the HVAC was not in front of the jury,
5 you know, the other parts were not in front of the jury.
6 That's not what I'm advocating here. Instead, what I'm saying
7 is those things are out so when we look at the chart
8 everything under the issue releases, those are the things in
9 the *Oaks* case. So that \$1.385 million dollars are things that
10 I have not asked for. In my initial brief I did not have all
11 of the information and so I to add them and that's why my
12 numbers are slightly off. So, what was in front of the jury
13 and what is required by the Court, there's no discretion for
14 this, the plaintiffs will say that they were entitled to
15 allocate this any way they want to. They are interpreting
16 cases incorrectly to say that they are entitled to allocate
17 it. The allocation cases and the one that -- one of the ones
18 that they're referencing is the automobile case where the
19 plaintiff sued Ford because of the death and it was a wrongful
20 death and a survivorship action and the parties allocated the
21 damages a certain way. And what the court did is the Court of
22 Appeals tried to reallocate the way that the plaintiff and the
23 settling party decided that they wanted to do it. The Supreme
24 Court said no you're not allowed to do it; basically, said
25 we're going to analyze it and this particular case it was

1 reasonable for us to allocate those damages because that
2 particular thing was not tried before the jury. That's
3 different from the case that we have here. The general
4 contractor was in the entire case. The general contractor was
5 there 100 percent of the time. If you tell me that now the
6 general contractor was just there for Jim's -- Mr. Atkins
7 client which is what was advocated in the settlement
8 agreement, I am just completely boggled. I don't understand
9 that argument other than it's a way for the plaintiffs to, in
10 bad faith, increase what they say they're entitled to in this.
11 So, I believe that as a matter of law under the clear case law
12 that the Court should not honor the attempted ways that the
13 plaintiffs are trying to multiply their damages over and over.
14 Because what the jury said was looking at everything that was
15 before them, they said the value affixed to property is \$6.5
16 million dollars. That number included the loss of use that
17 the plaintiffs asked for in their trial. Whether or not the
18 jury gave them 100 percent of what the plaintiffs was asking
19 for is not the question. The jury said we heard your number
20 plaintiffs but really your claim is only worth \$6.5 million
21 dollars. Now, I did say that the issues that were issue
22 releases are not part of this analysis here. I will submit to
23 the Court that when you look at all of the settlement
24 agreements, all of the settlement agreements include lost use.
25 Lost use clearly was in the trial in front of the jury. So I

1 believe that I could even be entitled to additional parts of
2 these settlements that were not part of the jury before the
3 lost use component, I came up with a figure being \$1.6 million
4 dollars that the plaintiffs had for their repair or for their
5 number that they had in their estimate and just use a
6 percentage of that, it was 11 percent, I think that I may even
7 be entitled to an initial \$152,350 for the lost use component
8 for all the other settlements that the plaintiffs put in.
9 And that's because lost use was clearly tried in front of the
10 jury because remember the testimony we had from two of the
11 witnesses about what they had. In fact, the defendants argued
12 that we thought it was speculative and Your Honor ruled
13 against us so that was definitely there. At the very least
14 the setoff should reduce the judgment if we're including the
15 punitive damages to \$1.585 million dollars. And if you agree
16 that the lost use component should come out or should reduce
17 the damages to \$1.432650. What's curious, and Your Honor is
18 familiar with this and it was at trial but the defendant
19 really frustrated me, is that Tri-County was here because of
20 the crossclaim that we had to deal with -- with Complete.
21 That turns out it was not worth as much in the jury's eyes as
22 what we were worried about it but there's a potential that the
23 crossclaim could have been worth \$6.5 million dollars plus
24 attorney's fees which was pretty significant and was a major
25 impediment to our settlement. Despite that we, you know,

1 tried in good faith tried to resolve this case and what's
2 funny is the fights that we're having now is basically in the
3 realm that we were offering the plaintiffs to try to settle
4 this case before the case started. And now they're trying ---

5 **MR. LUCEY:** Objection. Move to strike. Incorrect and
6 not relevant.

7 **THE COURT:** I won't consider that. Thank you.

8 **MR. COLE:** The case law is clear that we are entitled to
9 setoff. The plaintiffs are not entitled to try to allocate
10 this to try to create a bad faith settlement that on its face
11 will make it so that the plaintiffs are getting multiple
12 recoveries for the same damages for the plaintiffs. The jury
13 said you get \$6.5 million dollars total, but plaintiff had
14 already received \$6.8 million dollars and they're trying to
15 accelerate that and increase that number through these post-
16 trial arguments and that's not the law and it's not correct.
17 That's my argument on that, Your Honor.

18 **THE COURT:** Okay. Mr. Lucey.

19 **MR. LUCEY:** I've been accused of a lot of things, but bad
20 faith might be a new one. But addressing counsel's arguments
21 in the order in which he presented them. First, in regards to
22 the exhibits attached to the brief, there was oral testimony
23 admitted on each one of those exhibits. The plaintiff is not
24 trying to get those exhibits admitted, it is just refreshing
25 the Court's memory as to some of the evidence that was

1 discussed at trial. In fact, it was defense counsel that
2 went over those exhibits with the witnesses. The -- with
3 regards to the punitive damages, Your Honor, briefly, the
4 aware of \$500,000 was eminently reasonable in light of many
5 factors including the -- the damages put on by the plaintiff
6 were \$12.8 million dollars. That's what, less than five
7 percent. It's very reasonable in light of the conduct that
8 the Court -- that was put on through evidence. The evidence
9 also showed that Tri-County was a going concern. It's a very
10 modest amount, in fact, they put into evidence their
11 (inaudible) that shows their contract total at \$1.4 million
12 dollars and they said they'd perform that in a year, so we
13 know they grossed over \$1.4 million per year. We then heard
14 from Ms. Joyner -- Ms. Poyner, I believe it is, regarding them
15 being an extensive ongoing business. They have their trucks
16 all over the road, they can't keep up with their phone calls
17 every time a storm comes, and they are a very viable business.
18 We believe that the punitive damage award is very reasonable
19 under any evaluation and we're happy to discuss it more, but
20 it doesn't seem as though we need to discuss it very much.

21 Going now to the issue of setoff. Yes, if the stars
22 align -- if the stars align for you, you're entitled to a
23 compulsory setoff. The stars have to align. There's four
24 different types of setoffs as a practical matter, Your Honor.
25 There's a statutory compelled setoff if the stars align for

1 you: same damage, same claim, same cause of action and then
2 it's automatic. If you don't have that then you get kicked
3 into the *Smith versus Widener* analysis or the equitable setoff
4 analysis, two completely different analysis. *Smith versus*
5 *Widener* says if you've got a claim that does constitute a
6 joint tort and you've got another claim that doesn't then the
7 Court decides how much to allocate to each one and then there
8 will be a setoff on the one where there's a joint tort feisor.
9 If you go into equitable setoff there's only one rule of thumb
10 and that rule of thumb is that it can be evoked to prevent
11 double recovery which has not and will never happen in this
12 case. The plaintiff's damages by -- was \$15.9 million dollars
13 with \$2 million dollars equals \$17.9 million dollars. If the
14 Court denies every setoff motion now the plaintiffs will only
15 walk away with a little over half of that, nine and a half
16 million dollars, so there will never be a double recovery in
17 this case in a gross sense. Speaking of the stars aligning,
18 the law as to setoff wasn't exactly accurately described to
19 the Court. *Riley* is currently -- if you have your stars
20 aligned *Riley* is the Bible in South Carolina. The Court of
21 Appeals tried to look behind an allocation, the Supreme Court
22 just three years ago essentially clarified all prior precedent
23 and said no you must have a really good reason to look behind
24 somebody's allocation. And you are to presume that the
25 plaintiffs personally allocated it in a prejudicial manner.

1 That's what they're there to do. They're there to allocate
2 their client's interest and the public policy of this State is
3 to favor resolutions and we're not going to reward the party
4 that does not negotiate a settlement by reallocating the
5 settlement that occurred with the plaintiff and the party that
6 did negotiate a settlement. You're to presume that it's
7 prejudicial, that's why they did it and that is not a ground
8 to look behind the allocation. They have to have more.
9 *Terminix* was an allocation case, you just got told it was not
10 an allocation case. It is an allocation case. *Terminix* went
11 up on appeal because the trial court allocated, and the
12 Supreme Court said no. Yes, maybe *Terminix* and *Orkin* caused
13 the same termite damage, but this is not a joint damage
14 statute; it's a joint tortfeasor statute. And because the
15 *Terminix* duties arose out of a different contract, then the
16 *Orkin* duties -- they couldn't be joint tortfeasors because
17 they were different sets of duties. Now, is Tri-County going
18 to get up and tell us that they've jointly designed this
19 project with the architect and that's why they're entitled to
20 half of the \$800,000 the architect paid? I don't think so.
21 That would be illegal; they don't practice architecture. They
22 can't show us any joint torts that they performed with the
23 architect. In speaking of the law that we're dealing with
24 right here, another representation, whose burden? Well, one
25 of the four scenarios. If your stars align, they don't have a

1 burden. Every other scenario, whether it's *Smith versus*
2 *Widener* or equitable setoff or some blended version, they've
3 got the burden, they must prove they're entitled to the
4 setoff. And since the stars aren't aligned, since they don't
5 practice architecture, they have the burden here today. *The*
6 *Oaks at Rivers Edge* is a case that they have not dealt with.
7 It is completely in plaintiffs favor. And that -- *The Oaks at*
8 *Rivers Edge* brings us to this exhibit. That's pretty tricky.
9 The defense puts in the wrong damage estimate and then they
10 use the wrong damage estimate to try to setoff plaintiff's
11 damages. Allow me to back up, please. Plaintiff's never
12 moved their revised estimate into evidence because plaintiff's
13 experience is it's a report, it's hearsay, it doesn't come in
14 unless the parties stipulate it in, which sometimes we do.
15 But we hadn't done that in this case. Now, the Court viewed
16 them otherwise and the Court admitted this because frankly it
17 was moved in by an opposing party. We wouldn't have grounds
18 to oppose it anyway. They put in the original estimate and
19 now they're trying to use it as a basis to kick out our
20 damages. It doesn't work that way. Now, the plaintiff's
21 damages were put into evidence, but it was put in through
22 testimony. The exhibit -- the damage exhibit -- the revised
23 damage exhibit itself was not placed into evidence. So, first
24 settlement on the list, Complete Building Corporation. The
25 reason there is no allegation in the first million dollars

1 paid is because one policy just tendered their limits. They
2 said here's our million. We gave to the owner of CBC a
3 covenant not to execute because the insurance company wanted
4 to make sure to protect its insured. But there was no
5 settlement. There was no settlement agreement. There was a
6 covenant. So, there's no allocation at that time. It was not
7 until CBC agreed to pay another \$1.1 million dollars last week
8 that they were arranging for a release which would constitute
9 a settlement at which time part of the agreement was
10 plaintiffs would have the right to allocate the proceeds. We
11 have done so and under the *Riley* case those proceeds are gone,
12 they're not eligible for the setoff and it's very expressed
13 what those proceeds are in the settlement agreement what the
14 allocations are and the Court will see that there are not too
15 many issues that got tried in this courtroom two weeks ago.
16 Number two, Creekside \$150,000 we conceded that in our brief.
17 Number four, Atlantic Building Construction is a framer, if I
18 can deal with both framers at one -- at the same time, number
19 17 is also a framer. This Court has never seen the framing
20 issues that got paid on in this document that's never seen the
21 light of day in this courtroom. The Court might have seen it
22 if they hadn't objecting to me admitting Exhibit 55. This
23 Court will recall Exhibit 55 did not come into evidence
24 because there was an objection by the instant movement to 55
25 coming in. What Exhibit 55 that was excluded from evidence

1 shows is that there was this dispute that went on during
2 construction. The two framers did not adequately install the
3 shear walls in these 40 buildings. The Court will please
4 recall it never heard the word shear walls throughout the
5 entire trial two weeks ago. These buildings have shear walls
6 on the outside on the front and the back and they had also
7 designed some of the interior walls to be shear walls. When
8 construction was about half or two-thirds of the way done it
9 was discovered that the shear walls hadn't been fastened
10 properly, hence the siding that got removed that JMC ended up
11 putting back on later, they had to remove the siding to see
12 and to fix the shear wall installation. The shear wall
13 problem came into its greatest light in December of 2017
14 during the depositions of Britt, Peters and Associates, that's
15 an engineering firm here in town. We mediated the case the
16 following January or early February at which time much of the
17 framing -- the first framer went out because of that shear
18 wall issue. That shear wall issue has never made it into an
19 estimate and has never made it into this courtroom and no
20 credit should go through this movement for the shear wall
21 issue. The Builder Services Corporation that was fireplaces
22 and they were not in our estimate that got presented through
23 our damage expert to the jury orally. There were no fireplace
24 claims in our estimate. That \$22.5 is out. Novus Architects
25 we've already talked about. This defendant didn't do any

1 design work. He can't show that he's a joint tortfeasor with
2 the architect. That \$650,000 is out. Plaintiff does not
3 contest the \$35,000 for Certainteed. We put in our brief we
4 don't contest the \$150,000 for Cornerstone. That's in our
5 brief. Miracle Siding and Vasquez movement Tri-County just
6 made plaintiff elect. Plaintiff elected negligence. Vasquez
7 and Miracle Siding, those settlements were allocated to
8 implied warranty. They -- the movement made the plaintiff
9 elect. The movement has created -- the movement has created
10 the distinction between the settlement and the plaintiffs
11 going forward. Stanley Vinyl Fence Design is not in our
12 brief, but we do agree that that was in the courtroom, number
13 14, so that would be a \$295,000 reduction from the number that
14 is listed in our brief which was \$6.61 million I believe. H&A
15 Framing, number 17, we've already discussed. And that framing
16 issue, the shear wall issue has never seen the light of day in
17 this courtroom. So, the burden is on them. The Supreme
18 Court's recent statement as to setoff is the *Riley* case.
19 There was some talk about whether or not the defendant was
20 present for the entire *Riley* case or not, that's not the issue
21 at all. And the *Riley*, *Terminix* and *Oaks*, the burden is
22 clearly on the movement to establish his right to setoff
23 except for the ones conceded by the plaintiff. The plaintiff
24 doesn't believe that they're entitled to any further setoff.
25 I need to look at my printout. Can I get the Court's patience

1 for one moment?

2 **THE COURT:** Uh-huh. (Affirmative)

3 **MR. LUCEY:** Thank you, ma'am.

4 **THE COURT:** Okay. Mr. Cole.

5 **MR. COLE:** That was an amazing argument, Your Honor. I
6 disagree with it, I guess, 110 percent. There is no burden on
7 me to prove that we are entitled to -- or that this judgment
8 should be setoff. The case that went to trial, the plaintiff
9 put in and they submitted the purposed jury form that had just
10 one number for every claim that they were given. That claim
11 was for the negligence and for the warranty claim. So they
12 combined everything together and now they're trying to say
13 that they allocate everything that was tried in front of the
14 jury together, combine them all together and then say now that
15 they can allocate and take my subcontractor -- my
16 subcontractor that the testimony was that he worked for me and
17 somehow that doesn't give me a setoff. That is, like I said
18 before, bad faith. That is not a reasonable argument in this
19 case for him to say that I am not entitled to that, you
20 shouldn't allocate that because it was the plaintiff that
21 tried to argue and spent half of the time saying that we were
22 joint tortfeasors reasonable for all of the damages out there
23 and again with the general contractor sitting at the same end
24 -- or the other end of the table that I'm sitting on, that
25 they were part of that same judgment. They were part of that

1 same determination and now basically want you to forget about
2 that. It doesn't make any sense. It's incorrect. The case
3 law is clear that, for example in *Ellis v. Oliver* that talks
4 about the common injury. The common injury is to repair these
5 buildings and for the lost use. Plaintiffs can say they
6 should have gotten \$15 million dollars. Plaintiffs can say at
7 trial that they should have gotten \$18 -- \$12.8 million
8 dollars. The jury said no. The jury said that total amount
9 of the damages that you should get to repair these buildings
10 is \$6.5 million dollars. The plaintiffs can't try to use
11 these post-trial motions now to get the judgment that they
12 wanted because that's not what the jury gave them. The jury
13 said to fix this it's \$6.5 million dollars. So, they can't
14 come here and ask for a Judge to do that. And, in fact, I
15 will submit that if Your Honor believes what they are saying,
16 essentially what the plaintiffs are doing is they want to take
17 the actual damages award that they are trying to get against
18 my client now and get you to basically say those should be
19 punitive damages because that's what they doing. They're
20 trying to penalize me for being part of the trial and by
21 taking these things that by a matter of the statute and by
22 matter of case law you are supposed to state that they are not
23 entitled to double recovery, but you are creating a punitive
24 award against -- against me. *Ellis v. Oliver* was a case that
25 dealt with medical malpractice. It had a survivorship of a

1 wrongful death case and the hospital settled beforehand and
2 the trial went against the anesthesiologist. The Court came
3 back and said that was a common injury, that's the way they
4 looked at it. Common injury is what gave them the setoff and
5 that's what the Court applied. The case *Smalls versus South*
6 *Carolina Department of Education* says that it's proper for the
7 trial court to look at what the parties are joined to allocate
8 and come up with a proper allocation. They cite the *Rookard -*
9 *- Rookard* case which is a 1911 case that starts out with all
10 of this stuff. It's over 100 years. It said that the
11 settlement is "a portion of the total damages that are sought
12 by the plaintiffs". That is what *Smalls* says is that the
13 monies that they have already received are part of the total
14 damages that they have. So all of the monies they've received
15 so far minus the ones that we're conceding for the issue
16 releases are things that the jury, if they knew about it, they
17 would say okay instead of \$6.5 they would have reduced it
18 because you've already received that other money. The *Smith*
19 *v. Widener* case, I think Mr. Lucey addressed this, also says
20 that as an operation of law for the same injuries when we get
21 to this. In that case it was a wife that was fighting a claim
22 and she sued a bunch of different people dealing with her
23 claims that she said she was entitled to. She settled with
24 one person and went to trial with another person that was
25 involved with the claim. At the end of it, the Court reduced

1 the damage including reducing part of the communitive damages
2 that were awarded to her because they said it all arose out of
3 the same injury. So, you know, these are a bunch of cases
4 that do that. I don't need to go through all of these. I
5 will reference a 4th Circuit case, *Atlas Food Services* were the
6 Court specifically says that South Carolina does not allow a
7 party to have manipulative attribution of a settlement amount.
8 That goes back to what I was talking about earlier that the
9 Court has to review that's a good faith settlement. The *Riley*
10 case does not say what plaintiff says it says. Now, we've
11 already dealt with the thing where the plaintiff said that
12 somebody said something that they didn't actually say and
13 they're doing it again. *Riley* was someone who got injured in
14 an automobile -- or was killed in an automobile accident and
15 the Court corrected the Court of Appeals and said in this
16 particular context it's unreasonable for or you are not proper
17 to reallocate the damages. But in that underlying case they
18 were actually separate types of claims that they were going
19 after. In our case the whole claim is against the repair
20 contract or the repair of the builders. Mr. Lucey went
21 through the different parties on the list. Complete Building
22 Corporation was the general contractor and they had their
23 hands in everything. They were responsible for everything.
24 That's what the plaintiffs argued. My client, Tri-County
25 Roofing, is joint and severally liable for those claims that

1 were against the plaintiff. So, anything that the plaintiffs
2 brought up against the -- against Complete Building, they're
3 trying to get my client to pay for. That includes all of the
4 claims that were asserted for the fire stopping issues,
5 includes all of the claims for the sprinkler issues, includes
6 all of these other claims, that some have been settled and did
7 not get an issue release or were tried at trial. So
8 plaintiffs are asking the Court to ignore the fact that I
9 could be potentially on the hook for 100 percent of the stuff,
10 which some of that doesn't belong to me but since I'm joint
11 and severally liable because of the verdict originally they're
12 saying that now I should essentially be paying for that or
13 under the allocation they say well we're taking care of that a
14 different way. That means that they are increasing the amount
15 of damages which is improper. I'm glad they acknowledge some
16 of these that we have. Under, let's see -- Atlantic Building
17 -- Atlantic was a framer. There was some testimony out there,
18 you'll remember one of the issues out there was the
19 waterproofing of the decks and the slope and the problems with
20 the slope in waterproofing the decks. There's also an issue
21 with how the windows were installed. The framer installed the
22 windows which is next to the trim and the siding that my
23 client put up. So, we've got those components where the
24 plaintiff is now arguing that well the framing dealt with
25 something else that we didn't talk about. No, we talked about

1 framing problems that they're going after at least Complete
2 Building, but they're also trying to go after me for some of
3 those same damages. That should apply. Builder Services,
4 I'll admit I don't know if it's in here or not but they never
5 took it out, it was never considered an issue release and so I
6 believe that the law is clear that they received a settlement
7 for something that wasn't taken out, it's still in. The
8 architect, plaintiff's in their brief tried to distinguish the
9 architect by saying that was professional negligence which is
10 different from negligence against my client. It's both
11 negligence and then also at trial you'll recall that the
12 architect was involved in the trial because we talked about
13 how they were involved in the process. Everybody talked about
14 how the architect was involved the process in the summary of
15 how we were going through the archives that Mr. Lucey is
16 bringing up again now and other components like that that the
17 -- if the architect was here they would be considered a joint
18 tortfeasor at trial, whatever they pay should also be part of
19 the setoffs. Let's see, Miracle Siding -- it is very
20 convenient for the plaintiffs to now say that they're
21 allocating what my subcontractor did to a different cause of
22 action when they're just one line that was purposed by the
23 plaintiff for the damages. I did say that we need to do an
24 allocation. I guess if I hadn't said that then he would have
25 come up with another way to get that. I don't understand that

1 that's the direct argument and clearly my subcontractors,
2 especially since he can get Cornerstone, which was another
3 subcontractor that did the same work as Miracle Siding.
4 There's no reason it shouldn't be also part of the setoff.
5 Vasquez -- Vasquez did the waterproofing and they did the
6 roofs out there. Again, a subcontractor of mine who was
7 sitting I guess behind me, but he was sitting, you know same
8 side of the courtroom with me and it's clear that the
9 plaintiffs were saying their problem -- that they had problems
10 with their work and I'd definitely be entitled to a setoff.
11 In my defense, I didn't catch it if Mr. Lucey acknowledged
12 this one, but I will say that Stanley has poked holes in the -
13 --

14 **MR. LUCEY:** We acknowledge that.

15 **MR. COLE:** Okay. Since they acknowledge it, I will move
16 on.

17 Cohens Drywall, I don't know if you acknowledge that or
18 not, but again he was not removed from the case and was not
19 considered to be a joint tortfeasor for everything that was in
20 front of the jury that includes every line that is in here
21 that talks about fire stopping and other components that may
22 be involved in Cohens work and therefore the plaintiffs are
23 not entitled to double recovery. H&A Framing, they were a
24 subcontractor to ARS -- excuse me, to Atlantic for the
25 framing. The same argument for them because they were the

1 ones that were responsible for doing the deck slips. They
2 were responsible for doing -- installing the roofs that the
3 plaintiffs said had the wrong slope that then caused problems
4 with the work that my other subcontractors worked on. So, I
5 understand the arguments from plaintiffs but they're just
6 wrong. They are not entitled to allocate away the settlements
7 that they issued for things that were in front of the jury and
8 instead I go back and say that Your Honor should award
9 \$5,450,000. Thank you.

10 **MR. LUCEY:** Your Honor, Mr. Adams was actually prevented
11 from asking witnesses about window installation by the
12 defendants. There was one window issue in the case which was
13 the sealant joint around the windows. That has nothing to do
14 with window installation. That is a siding and trim
15 installation issue. So, the windows were not tried in this
16 case. The decks, the unequivocal testimony was that the deck
17 was not a framing issue. The decks were framed on a slope.
18 It was the additional trim work, the fascia and sub fascia
19 applied by the siding subcontractor that create -- and
20 additional metal drip edge applied by the deck coating
21 installer that created that lip at the end of the deck. So,
22 it was not the framer and it was not presented to the jury as
23 a framing issue. Concluding the \$295,000 payment by Stanley's
24 which the plaintiffs have conceded the net judgment would be
25 \$6.37 million dollars. If the Court gives them credit for

1 their two subcontractors, the net judgment would be \$5.72
2 million dollars. Thank you, Your Honor.

3 **MR. COLE:** One thing else, Your Honor. In the *Huck* case,
4 that's the 2018 case where the Supreme Court admonished the
5 lower court saying that you have to do a review of the
6 settlement which is one of the reasons why I handed up the
7 notebook. And when you read through that you'll notice that
8 in the language of the settlement agreements that are entered,
9 it makes reference to the -- several of the issues that or --
10 let me say it a different way -- it has language in it that
11 essentially says that they're agreeing because of Complete
12 giving up their crossclaim, that Complete either gets a setoff
13 for the amount of that settlement or if it's removed from the
14 case, i.e all of the things I talked about before, then they
15 don't get that. And that gets us to the *Oaks* analysis that if
16 it's not there then it doesn't count. So essentially the
17 plaintiffs have conceded with at least one of the parties in
18 this case that they should get a dollar for dollar setoff for
19 things that they have settled. They make the distinction
20 between if it's removed from the case then it shouldn't be a
21 setoff but that's because the number is reduced. Also, one
22 other thing I just wanted to address, that this was plaintiffs
23 repair estimate. The revised estimate is the same thing, it's
24 just that it has the handwritten notes from Mr. Handegan. So,
25 if we have the revised testament it would be the same analysis

1 and we would just say okay you crossed out remove existing
2 driveway portions so that's not part of it. That's the same
3 analysis that we have here because it's the exact same
4 document the difference is that this has the handwriting notes
5 put on it that I've been talking about here from the closing
6 arguments from Mr. Kendall. Whereas if the other document was
7 put in it would have the handwritten notes on it taking out
8 the exact same things. So, saying that now I buy more than
9 the plaintiffs were awarded because this came in is a
10 misnomer. It's the same analysis that the issue releases are
11 removed, that's not what I'm asking for with the setoff. I
12 did say that might be entitled to a little bit more because of
13 the lost use issue but I'm certainly entitled to the \$5
14 million etcetera that is calculated on my sheet there. Thank
15 you.

16 **THE COURT:** Okay.

17 **MR. LUCEY:** *Huck* was not Supreme Court; it was Court of
18 Appeals and it cannot overturn *Riley* which predates it by
19 three years which was in fact the Supreme Court. And there's
20 a huge difference between the damage estimate that's in the
21 courtroom at this time and the one that plaintiffs put on.
22 Plaintiffs had to cross out some items that did not apply.
23 Thank you, ma'am.

24 **MR. COLE:** I think I said *Huck* was an Appellate Court
25 case that the Supreme Court denied cert on and so certainly

1 the Supreme Court weighed in.

2 **THE COURT:** Okay. Alright. Thank you very much. I look
3 forward to reviewing these documents.

4 **MR. LUCEY:** The Court has two orders for us to file?

5 **THE COURT:** We do. And we also -- originals on top ---

6 **MR. COLE:** And, Your Honor, all of this I think goes hand
7 in hand with the Form 4 Order that we were talking about.

8 **THE COURT:** Sure. Right.

9 **MR. COLE:** I didn't know if you wanted to talk about that
10 or if we're going to deal with this and then we can deal with
11 the Form 4?

12 **THE COURT:** Well it will probably be better to deal with
13 this first before we go to the Form 4.

14 **MR. COLE:** Okay.

15 **THE COURT:** I'm no privy to e-mails that were exchanged
16 over the Form 4.

17 **MR. COLE:** I think it was just that the plaintiff
18 submitted a version and somebody else submitted a version and
19 then I think some people settled and somebody sent a Reply. I
20 know I copied your clerk on when they said I don't think
21 you're calculating it correctly and that's when we got the
22 response saying we need to talk about it today.

23 **THE COURT:** Okay.

24 **MR. COLE:** So.

25 **THE COURT:** Well, what parts of it do you think we can

1 take up today?

2 **MR. COLE:** Well, I think the Form 4 should be reformed
3 down to the number that I say at the bottom of it if the -- if
4 Your Honor awards the full amount of settlement then the Form
5 4 should just say that there's a verdict against Tri-County
6 for \$1.585 million and then everybody else is either indicated
7 as settled or dismissed, etcetera. If the -- if Complete
8 Building and if the other subcontractors are still on it I
9 think it's improper to say that the judgment isn't the full
10 amount of the jury verdict because that's an incorrect number
11 even on its face from some of the acknowledgements that we had
12 today. We can't say that we're entitled per rule, responsible
13 for joint and several for the entire jury verdict when that's
14 not the correct number with everything else. Either everybody
15 has to be on the form and everybody is part of that verdict or
16 if you're taking out all of the people that have settled then
17 it should be reformed down to the \$1.585 million dollars with
18 a reference that everybody else is already out.

19 **THE COURT:** Alright.

20 **MR. REESER:** Your Honor, very briefly, Brandon Reeser on
21 behalf of Miracle Siding, Wilson Lucas Sales and Eloy Alonzo
22 Vasquez. The only issue that I wanted to bring up and this
23 may be handled in a future Form 4, I understand during the
24 trial there were multiple crossclaims put on defendants and
25 Your Honor did issue Form 4's on the Motions for Summary

1 Judgment, JMC and we joined in dismissing Complete Building
2 Corporations equitable claims. The only language that I'd
3 like included in the form order, and we can do a simple form
4 order on this, is that a lot of these crossclaims were
5 withdrawn during the course of the trial and before trial in a
6 directed verdict in, I guess, what had been circulated as the
7 defense version as the Form 4. May I approach, Your Honor?

8 **THE COURT:** Sure.

9 **MR. REESER:** I'm just -- just language noting that
10 formally what happened to those claims in the Form 4. That
11 would be my only request.

12 **THE COURT:** Were these things that were verbalized on the
13 record?

14 **MR. REESER:** They were, Your Honor.

15 **THE COURT:** You know, I don't think it's necessary to do
16 orders on ruling, you know, made during the course of trial.
17 I don't think it's necessary.

18 **MR. REESER:** Thank you, Your Honor.

19 **MR. LUCEY:** Plaintiff believes the Form 4 order they
20 submitted is correct as submitted. It sets forth the judgment
21 that remains on the verdict form against the only defendant
22 that is remaining in the case, didn't notice that post-trial
23 motions were pending. So we believe it's accurate. Thank
24 you, Your Honor.

25 **THE COURT:** I'll look at it. I think that it needs to

1 essentially restate the jury's verdict at the time the verdict
2 came. I think everything else will be addressed and these
3 will be the orders that I'm going to come up with shortly
4 following your arguments today. Okay. That will be
5 incorporated in those orders. I'll look at it all together
6 though and take into consideration everything you told me
7 today. Anything else that I can do for you this afternoon?

8 **MR. LUCEY:** Nothing from the plaintiff, Your Honor.

9 **MR. REESER:** I think I've said enough, Your Honor.

10 **THE COURT:** Alright. Well, thank you very much.

11 **(ADJOURNED)**

12

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
	)	
PALMETTO POINTE AT PEAS ISLAND	)	CASE NO. 2015-CP-10-0955
CONDOMINIUM PROPERTY OWNERS	)	
ASSOCIATION, INC. AND JACK LOVE,	)	
INDIVIDUALLY, AND ON BEHALF OF	)	
ALL OTHERS SIMILARLY SITUATED,	)	
	)	
	)	
Plaintiffs,	)	
	)	
VS.	)	
	)	
ISLAND POINTE, LLC; COMPLETE	)	
BUILDING CORPORATION; TRI-COUNTY	)	
ROOFING, INC.; CREEKSIDE, INC.;	)	
AMERICAN RESIDENTIAL SERVICES, LLC	)	
D/B/A ARS/RESCUE ROOTER	)	
CHARLESTON; ANDERSEN WINDOWS,	)	
INC.; ATLANTIC BUILDING	)	
CONSTRUCTION SERVICES, INC. N/K/A	)	
ATLANTIC CONSTRUCTION SERVICES,	)	
INC.; BUILDER SERVICES GROUP, INC.	)	
D/B/A GALE CONTRACTOR SERVICES;	)	
NOVUS ARCHITECTS, INC., F/K/A SGM	)	
ARCHITECTS, INC.; TALLENT AND SONS,	)	
INC.; W C SERVICES, INC.; CRG	)	
ENGINEERING, INC.; CERTAINTEED	)	
CORPORATION; KELLY FLOORING	)	
PRODUCTS, INC., D/B/A CARPET	)	
BAGGERS; CORNERSTONE	)	
CONSTRUCTION AND MARK MALLOY	)	
D/B/A CORNERSTONE CONSTRUCTION;	)	
MIRACLE SIDING, LLC AND WILSON	)	
LUCAS SALES D/B/A MIRACLE SIDING,	)	
LLC; MARK PALPOINT A/K/A MICAH	)	
PALPOINT; ELROY ALONZO VASQUEZ;	)	
CHRIS A/K/A JOHN DOE 61; ALDERMAN	)	
CONSTRUCTION; STANLEY'S VINYL	)	
FENCE DESIGNS; COHEN'S DRYWALL	)	
COMPANY, INC.; MOSELY CONCRETE;	)	
HAND A FRAMING CONSTRUCTION, LLC	)	
A/K/A H&A FRAMING CONSTRUCTION,	)	
LLC AND D/B/AH AND A FRAMING, LLC,	)	

PROPOSED JOINT VOIR DIRE

H&A CONSTRUCTION, AND HAND A
CONSTRUCTION; JMC CONSTRUCTION,
INC.; JMC CONSTRUCTION, LLC; JOHN
DOE 1-15,

Defendants.

COMPLETE BUILDING CORPORATION,
INC.,

Third-Party Plaintiff,

VS.

LEONARD T. BROWNE AND
CHRISTOPHER N. UNION,

Third-Party Defendants.

CREEKSID, INC.,

Third-Party Plaintiff,

VS.

CHRISTOPHER N. UNION,

Third-Party Defendant.

AMERICAN RESIDENTIAL SERVICES, LLC,

Third-Party Plaintiff,

VS.

VICTOR HUGO HERNANDEZ; HERNANDEZ
ELECTRIC, LLC; LILIANA ROJAS FLORES;
MARTIN BARR D/B/A PORT CITY
STRUCTURED WIRING; KELLER
ELECTRIC, LLC; JOHN TOOLIN D/B/A
JOHN F. TOOLIN HEAT AND AIR; RUSSELL
"RUSTY" HILL D/B/A RUSTY'S HEATING &
AIR; and WARREN ANDERSON,

Third-Party Defendants.

The parties request the following additional voir dire. *(In the event of any affirmative responses, all parties request that the responding person provide brief background information on the response):*

1. The case has to do with alleged claims of construction defects at Palmetto Pointe at Peas Island in Charleston, South Carolina. Peas Island is located on Folly Road, on the left or Northeast side, approximately a mile before Folly Road ends at Folly Beach. Has any member of the jury panel heard anything or does any member know anything specifically about claims relating to the alleged construction defects at Palmetto Pointe at Peas Island?

2. Have you or any member of your immediate family ever owned, rented or lived at Palmetto Pointe at Peas Island?

3. These claims are brought by two (2) Plaintiffs: the homeowners' association, called Palmetto Pointe at Peas Island Condominium Property Owners Association, Inc, and one of the Association's members Jack Love. The names of the homeowners which make up the Association's current Board of Directors are: Leonard Lundquist, Jack Love, John Stanich, William Garvey and Kathleen Fitch. Is any member of the jury panel a personal friend, relative, or other acquaintance of any of these homeowners, or any member of their families, or associated in any way with the Palmetto Pointe homeowner association?

4. Do you or any of your immediate family live in a community that belongs to a homeowner's association; or have you or your immediate family ever served on a homeowners or property association board?

5. Have you or any member of your immediate family ever been represented by any counsel appearing in this matter:

- Justin Lucey, Joshua Evans, Stephanie Drawdy, or the firm Justin O'Toole Lucey, P.A.;

- Edward D. Buckley, Jr. or the firm Young Clement Rivers, LLP;
- Everett A. Kendall, II, Brent Boyd or the firm Murphy & Grantland P.A.;
- Andrew N. Cole, Christopher M. Adams, Jamie L. Williams, or the firm of Collins & Lacy;
- Bonum S. Wilson, III, Brandon T. Reeser or the firm of Wilson & Heyward, LLC;
- Troy Thames, Esq. or the firm of Willson Jones Carter & Baxley, P.A.;
- David A. Anderson, Jasmine Wyman, or the firm of Richardson, Plowden & Robinson, P.A.;
- Christopher M. Ramsey or the firm of Bostic Law Group, P.A.; or
- James A. Atkins or the firm of Clawson & Staubes.

6. Have you or any member of your immediate family ever had a social acquaintance or business relationship with any employee of Palmetto Pointe at Peas Island's previous property management firms, C&T Management (including Property Manager Tim Goodwin) and/or Southern Shores (including Property Manager Josh Walden)?

7. Have you or any member of your immediate family ever worked for or had contact with the following defendants and/or third-party defendants:

- Complete Building Corporation;
- Leonard T. Browne;
- Tri County Roofing Inc.;
- Eloy Alonzo Vasquez;
- Miracle Siding LLC;
- Wilson Lucas Sales d/b/a Miracle Siding, LLC;
- Stanley's Vinyl Fence Designs;
- Mosley Concrete;
- Andersen Windows, Inc.;
- Christopher N. Union ;
- Island Pointe, LLC ;
- W C Services, Inc.;
- JMC Construction, Inc.; or
- JMC Construction, LLC.

8. Have you or any member of your immediate family ever worked for or had contact with the following witnesses:

- Alan ("Al") J. Schweickhardt, PE;
- Alan Hudson;
- Brian Pucel;

- Buddy Hilton;
- Chad Christopher;
- Christopher Constantine, P.E.;
- Christy Poyner;
- David Lombardi;
- Douglas M. Smits, C.B.O.;
- Edward (“Eddie”) Polk, R.R.C.;
- Eloy Alonzo Vasquez;
- Floyd Stanley;
- Jason McDonald, P.E.;
- Jerry S. (“Jay”) Handegan;
- Jorge Medina-Velencia;
- J. Lawrence Elkin, P.E.;
- Kirk R. Richards, PE
- Leonard Browne;
- Lewis C. White Jr.;
- Mark Lazo, P.E.;
- Mark Poyner;
- Seth Robertson, P.E.
- Russell T. Mease, P.E.;
- Steve Apat;
- Steve “JR” Watkins, II;
- Tim Rooks;
- Victor Apat;
- Wilson Lucas Sales;
- Current and/or former employees of any Defendants; and/or
- Any Palmetto Pointe at Peas Island Owner (list attached).

9. Is there any member of the jury pool who does not own his or her residence?

10. Do you or any member of your immediate family or a close friend own any property other than your primary residence, such as a vacation home and/or rental property?

11. Do you or any member of your immediate family or a close friend have a license to sell real estate or a property manager’s license or work for a firm that engages in property management or vacation rentals?

12. Have you or any member of your immediate family ever been involved in commercial or residential construction, or consider yourselves to have an expertise in construction matters, have a contractor’s license, have a residential builder’s license, been

employed in facilities management or building maintenance, or have a degree in engineering or architecture, or involved in building inspections? If so, please identify which of the foregoing applies to you.

13. Have you or any member of your immediate family ever designed, purchased, installed or have experience installing any of the following: windows, waterproofing systems, siding, trim, shingles, flashing, or fire sprinkler systems? If so, briefly describe the type and circumstances.

14. Have you or any of your immediate family ever worked for any local or state building code official or office and/or for any local or state fire marshal or other fire code official or office? If so please identify who was so employed, for whom they were employed, and the capacity of such employment?

15. Have you or any of your immediate family's employment ever required the interpretation or application of building code and/or fire code provisions in the design or construction of any improvements to realty.

16. Have you or any of your immediate family or close friends ever worked for a construction material supply firm, such as Lowes, Home Depot, or Builders First Source, or a construction product manufacturer, such as Andersen Windows or James Hardie Siding? If so, please provide the type of supply firm or product manufacturer and your position or role.

17. Have you or any member of your immediate family dealt with construction, renovations, and/or problems with your home or had dispute with a contractor or subcontractor over the quality of their work or payment?

18. Has any member of the jury panel ever read any published materials or articles regarding alleged construction defects in Charleston County?

19. Have you or any member of your immediate family been involved in prior civil court proceedings as either a Plaintiff or a Defendant, including but not limited to any lawsuit against a builder, contractor subcontractor, product supplier or developer, or against the builder of your home, second home, or any commercial property you may own? If so, please tell us whether you were a Plaintiff or Defendant and describe the nature of the suit.

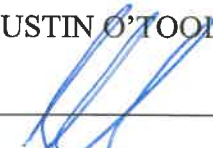
20. Would the fact that one of the Defendants in this case is of Hispanic origin and is not present to defend the claims brought against him prejudice you in coming to a fair and impartial judgment in this case in any way?

21. Would the fact that one of the Defendants is no longer in business and may not have former owners present to defend the claims brought against it prejudice you in coming to a fair and impartial judgment in this case in any way?

Respectfully submitted,

JUSTIN O'TOOLE LUCEY, P.A.

BY:


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Stephanie D. Drawdy, Esquire
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AND

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Charleston, SC 29402

Attorneys for Plaintiffs

Charleston, SC
May __, 2019

CERTIFICATE OF MAILING

I hereby certify that a copy of the foregoing pleading was emailed to all counsel of record in this proceeding this 3rd day of May, 2019.

A handwritten signature in blue ink, appearing to read "Hawaking", is written over a horizontal line.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
	)	
PALMETTO POINTE AT PEAS	)	CASE NO. 2015-CP-10-0955
ISLAND CONDOMINIUM PROPERTY	)	
OWNERS ASSOCIATION, INC. AND	)	
JACK LOVE, INDIVIDUALLY, AND	)	
ON BEHALF OF ALL OTHERS	)	
SIMILARLY SITUATED,	)	
	)	
	)	
PLAINTIFFS,	)	
	)	
vs.	)	PLAINTIFFS' PRE-TRIAL BRIEF
	)	
ISLAND POINTE, LLC, et al,	)	
	)	
DEFENDANTS.	)	
	)	

The Plaintiffs, by and through undersigned counsel, hereby submit the following pre-trial brief to the Court in accordance with Rule 16(c), SCRPC.

I. STATEMENT OF THE FACTS

This case involves the construction of 40 townhome style condominium units located in 20 buildings on Peas Island. The units are located on either side of a single roadway which runs the length of the island. The units on the southeastern side of the island face Folly Creek, while the units across the street are marsh front. A Google Earth photo of the project is attached hereto. The units were constructed in 2006-2007. The units were marketed as luxury units and ranged in price from \$450,000 to \$700,000. The project was developed by Island Pointe, LLC and constructed by Complete Building Corporation and its subcontractors and sub-subcontractors.

In early 2015, the POA began to notice persistent roof leaking. A roof inspection was commissioned which documented holes in the shingles caused by the attachment of scaffolding

pump jacks which had been nailed through the shingles during original construction. Counsel was retained to investigate more comprehensively.

The Subsequent investigations (then and over the ensuing years of litigation) revealed thousands of building code violations and deviations from industry standards, including the following: improper shingle installation, improper or missing flashing, 52 firewall penetrations per residence (1,040 fire code violations in the attics per the defense expert), improper fire sprinkler assembly, improper siding and siding installation, improper assemblies of incompatible materials, and improper caulking and waterproofing of windows, balconies and decks. At wind velocities below 60 mph, shingles and siding have blown off many units. During the recent deposition of the POA president, shingles were blowing off during an ordinary blustery day.

Attached hereto is Exhibit 826 which is the *defense* expert's list of defects midway through his investigation.

The cost of repairs will be expensive, and significantly more than the defense estimate of less than \$2,000,000 - which contemplates an unreasonably limited scope of repair. Further, Plaintiffs' repair contractor will testify to the need for owners to move out during the extensive repairs. The owners will testify as to the fair rental value of their property. Many comparable properties are located in regimes which prohibit rental for terms less than 90 days.

Defects in the following narrowly defined areas have been eliminated from the case through settlement: HVAC and electrical (cost of framing work to facilitate access to the HVAC equipment remains in the case), driveways, fireplaces, and window manufacturing defects (but not cost of removal and reinstallation of the windows – which remains in the case).

The following defendants remain in the case the case:

- Island Pointe, LLC (Developer – inactive in this case)
- Complete Building Corp (CBC) – General Contractor

- TriCounty Roofing (TCR) – Principal Subcontractor including Roofs, Decks, and Siding, along with its Siding subcontractor Lucas Sales/Miracle Siding and its roof and deck subcontractor, Vasquez
- Stanley Fence (deck rails and some posts)
- WC Services (Fire Suppression System)

II. FACTS IN CONTROVERSY

The scopes of work needed to remediate the construction deficiencies and code violations are disputed in part. Cost of repair is disputed. Plaintiffs' loss of use is disputed.

III. LEGAL ISSUES

A. Plaintiffs have alleged the conditions precedent for class certification; however, each unit owner has assigned all claims to the POA;

B. Plaintiffs have alleged estoppel from defendants pleading statute of limitations; and

C. Plaintiffs have alleged the following Causes of Action:

1. Negligence/Gross Negligence (All Defendants);
2. Breach of Warranty (All Defendants);
3. Strict Liability (Manufacturing and Supplier Defendants) (no longer relevant); and
4. Unfair Trade Practices (Island Pointe, LLC).

The experts for Defendants and Plaintiffs have discovered thousands of building code violations. Violations of the building code constitute negligence *per se* and require the submission of a charge for punitive damages to the jury.

IV. WITNESSES & EXHIBITS

A. EXHIBITS

Exhibit List attached hereto.

B. WITNESSES

Witness List previously submitted.

V. ANY UNUSUAL PROBLEMS RELATING TO EVIDENCE TO BE INTRODUCED

Plaintiffs do not currently anticipate any significant evidentiary issues besides the minor issues raised by the various motions in limine.

VI. ANY UNUSUAL QUESTION OR MATTER WHICH SHOULD BE BROUGHT TO THE ATTENTION OF THE COURT

This is a multi-party complex condominium construction defect case, along with the complicated matters which normally accompany such a case, the following unusual questions or matters are expected to come before the Court to determine in this case:

Plaintiffs have alleged the conditions precedent for class certification, however the class has yet to be certified because the Plaintiffs are proceeding upon assignments granted by the homeowners to the Association.

Plaintiffs have alleged estoppel from defendants pleading statute of limitations defenses based on their knowledge and conduct.

VII. A STATEMENT THAT SETTLEMENT NEGOTIATIONS WERE ATTEMPTED BEFORE THE DATE OF THE PRE-TRIAL HEARING, AND THE STATUS OF SETTLEMENT NEGOTIATIONS

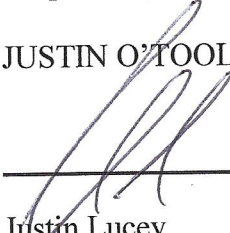
This case has been mediated twice and was successful in settling out certain defendants. Bill Lyles served as the mediator. Plaintiffs sent final pre-opening demands to most defendants on May 4, 2019, which expire at 5pm on May 5, 2019.

(Signature on Following Page)

Respectfully submitted,

JUSTIN O'TOOLE LUCEY, P.A.

By: _____


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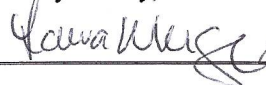
-and-

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May 5, 2019
Charleston, South Carolina

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was emailed to all counsel of record in this proceeding this 5th day of May, 2019.



Palmetto Pointe

Write a description for your map.



Palmetto Pointe: Deposition of Al Schweickhardt, PE

June 27, 2018

DEPOSITION POINTS – VOLUME 1

Code Violations:

- 1) CT siding (p. 26)
 - a. Inadequate nails (p. 105)
 - b. 9" boards don't meet wind loads (p. 105)
 - c. Substrate fastening inadequate (pp. 113, 115)
 - i. Spec'd use of Southern Pine (pp. 114, 116)
 - d. Failure to engage framing (p. 106)
- 2) HVAC duct insulation (code of laws) (pp. 26, 199)
- 3) Firestopping in attic (p. 26)
 - a. General (pp. 94, 220)
 - b. Perpendicular wood members (p. 198)
 - c. Ridge vent gap through firewall (pp. 101, 192, 223)
- 4) Corrosion of piling bolts – 4 units (pp. 23, 26), plus several (p. 217)
- 5) Fastening of floor diaphragm at one location looked at (p. 26)
- 6) Six rear decks with leaks at post intersection (p. 28)
- 7) Excessive shingle overhang (pp. 69, 127, 146)
- 8) Corroded post base trim nails (p. 71)
- 9) Low sloped roofs without double membrane and/or shingles on very low sloped roofs (pp. 83-5, 182-3)
- 10) Missing flashing on rear posts at six residences (p. 91)
- 11) Incorrect fasteners in fascia (p. 150)
- 12) Attachment of railing mounting plate to siding (pp. 176-7)
- 13) Rail post fastened through stair tread (p. 180)
- 14) Inadequate length rail plate fasteners (p. 192)

Violations of Industry Standards:

- 1) Above code violations 1-5 (pp. 26-27)
- 2) Coil stock adjacent to treated lumber (p. 27)
- 3) Improper shingle starter strip (pp. 27, 38) **CODE**
- 4) Reversed lapped weather barrier at base of wall z-flashing (p. 27)
- 5) Mixing of deck products between manufacturers (p. 64)
- 6) Attaching pump jacks through shingles (pp. 104, 150)
- 7) Trim in contact w shingles (pp. 133, 140, 148, 151)
- 8) Unpainted wood (p. 134)
- 9) Concrete control joints (p. 179)
- 10) Pinched duct turns (p. 191)

- 11) Connector plate in contact with Pressure Treated wood corroding (pp. 194-5, 216) strapping (p. 223)
- 12) Lack of sealant gap around window perimeter edge (pp. 167-8) *Manufacturer*

Unallocated:

- 1) Mid-rail support rubbing deck (pp. 51, 63)
- 2) Abrupt drip flashing edge transition creating gaps and water intrusion and damage (pp. 78-9, 162) *Manufacturer*
- 3) Unconfirmed firestopping at bottom of common wall (pp. 175, 23) *Code Violation*
- 4) Gaps in front post flashing not supposed to be there (pp. 110, 157, 160) *Code Violation*
- 5) Open seams between deck coating and posts (p. 144) - *Code*
- 6) Privacy walls (pp. 182-8) - *Code*
- 7) Ponding 7/16" deep (p. 200) 1/2" deep depression (p. 215) - *Manufacturer*

Plaintiffs' Trial Exhibit List					
Ex. No	Date	Description	CBC	TCR & JMC	Vasquez & Miracle
4	12/5/2005	Application for Building Permit			IN
5A	12/27/2005	CBC & Palmetto Pointe Subcontract R	IN	IN	IN
6	3/20/2006	CBC Weekly Project Reports	IN	IN	
7	4/4/2006	CBC Subcontract Log	IN		
9	4/17/2006	CBC & Tri-County Subcontract R		IN	IN
11A	4/28/2006	Executed CBC Change Order #1	IN	IN	
12A	5/26/2006	Executed CBC Change Order #2	IN	IN	
13A	10/4/2006	Executed CBC Change Order #3	IN	IN	
14A	10/9/2006	Executed CBC Change Order #4	IN	IN	
15	1/22/2007	CBC Change Order #5	IN	IN	
16	1/22/2007	CBC Change Order #6	IN	IN	
17	1/31/2007	CBC Change Order #7	IN	IN	
18	2/28/2007	CBC Change Order #8	IN	IN	
19	3/31/2007	CBC Change Order #9	IN	IN	
20	4/30/2007	CBC Change Order #10	IN	IN	
21	10/8/2007	CBC Change Order #11	IN	IN	
22	4/3/2008	CBC Change Order #12	IN	IN	
24	10/12/2006	CBC Meeting Agendas	IN	IN	
25	10/16/2006	Tri-County Roofing Change Order #1	IN	IN	IN
26	3/1/2007	Tri-County Roofing Change Order #2	IN	IN	IN
26A		Tri-County Roofing Change Order #2	IN	IN	IN
27	6/27/2007	Tri-County Roofing Change Order #3	IN	IN	IN
28	7/6/2007	Tri-County Roofing Change Order #4	IN	IN	IN
29	8/24/2007	Tri-County Roofing Change Order #5	IN	IN	IN
30	10/16/2007	Tri-County Roofing Change Order #6	IN	IN	IN
31	10/22/2007	Tri-County Roofing Change Order #7	IN	IN	IN
32	10/22/2007	Tri-County Roofing Change Order #8	IN	IN	IN
33	10/22/2007	Tri-County Roofing Change Order #9	IN	IN	IN
34	10/29/2007	Tri-County Roofing Change Order #10	IN	IN	IN
34 A	10/29/2007	Change Order Invoices	IN	IN	IN
35	12/13/2007	Tri-County Roofing Change Order #11	IN	IN	IN
36	2/15/2008	Tri-County Roofing Change Order #12	IN	IN	IN
37	10/31/2006	Deficiency and Correction List	IN		IN
38	11/16/2006	CBC Action List	IN		
39	11/16/2006 - 01/04/07	CBC Progress Meeting Notes	IN		IN
40	11/16/2006	Field Observations	IN	IN	IN
41	11/17/2006	CBC Inspection Logs	IN		IN
42	11/28/2006	Apat Email	IN		IN
44	1/11/2007	CBC Punch List	IN		IN
45	Undated	Brown to Hilton "Weekly Report"	IN		
46	Undated	Shop drawing submittal from Tri County	IN	IN	IN
48A	1/22/2007	Amended & Restated Master Deed	IN	IN	IN
49	7/19/2007	1 st Amendment to Amended Master Deed	IN	IN	
50	10/15/2007	2 nd Amendment to Amended Master Deed	IN	IN	
51	7/18/2008	3 rd Amendment to Amended Master Deed	IN	IN	
52	8/22/2009	4 th Amendment to Amended Master Deed	IN	IN	
53	10/17/2014	5 th Amendment to Amended Master Deed	IN	IN	
54	1/29/2007	CBC Punch List	IN		IN
55	11/12/2007	M. Poyner to C. Poyner Email re: Atlantic	IN	IN	IN
58	7/18/2008	Vasquez Invoice	IN	IN	
64	2/10/2009	Union to Board Email	IN		
66	5/8/2009	AmTrust Condo/PUD Project Questionnaire	IN		
80	1/11/2015	Elite Development Group, LLC Inspection Report	IN	IN	IN

Ex. No	Date	Description	CBC	TCR & JMC	Vasquez & Miracle
81	12/7/2015	Mease 1601 Folly Creek Way Photo Log	NO	NO	NO
82	12/7/2015	Mease 1603 Folly Creek Way Photo Log	NO	NO	NO
83	12/7/2015	Mease 1606 Folly Creek Way Photo Log	NO	NO	NO
84	12/7/2015	Mease 1608 Folly Creek Way Photo Log	NO	NO	NO
85	12/7/2015	Mease 1611 Folly Creek Way Photo Log	NO	NO	NO
86	12/7/2015	Mease 1614 Folly Creek Way Photo Log	NO	NO	NO
87	12/7/2015	Mease 1617 Folly Creek Way Photo Log	NO	NO	NO
88	12/7/2015	Mease 1618 Folly Creek Way Photo Log	NO	NO	NO
89	12/7/2015	Mease 1619 Folly Creek Way Photo Log	NO	NO	NO
90	12/7/2015	Mease 1620 Folly Creek Way Photo Log	NO	NO	NO
91	12/7/2015	Mease 1621 Folly Creek Way Photo Log	NO	NO	NO
92	12/7/2015	Mease 1622 Folly Creek Way Photo Log	NO	NO	NO
93	12/7/2015	Mease 1623 Folly Creek Way Photo Log	NO	NO	NO
94	12/7/2015	Mease 1624 Folly Creek Way Photo Log	NO	NO	NO
95	12/7/2015	Mease 1625 Folly Creek Way Photo Log	NO	NO	NO
97	12/7/2015	Mease 1628 Folly Creek Way Photo Log	NO	NO	NO
98	12/7/2015	Mease 1629 Folly Creek Way Photo Log	NO	NO	NO
99	12/7/2015	Mease 1631 Folly Creek Way Photo Log	NO	NO	NO
100	12/7/2015	Mease 1635 Folly Creek Way Photo Log	NO	NO	NO
101	12/7/2015	Mease 1637 Folly Creek Way Photo Log	NO	NO	NO
102	12/7/2015	Mease 1639 Folly Creek Way Photo Log	NO	NO	NO
103	12/7/2015	Mease 1643 Folly Creek Way Photo Log	NO	NO	NO
104	12/7/2015	Mease 1649 Folly Creek Way Photo Log	NO	NO	NO
105	12/7/2015	Mease 1651 Folly Creek Way Photo Log	NO	NO	NO
106	12/7/2015	Mease 1655 Folly Creek Way Photo Log	NO	NO	NO
109	1/6/2016	Mease Concrete Deficiency Photo Log	NO	NO	NO
110	2/1/2016	Mease Scope of Repairs	NO		
111		Plans	IN	IN	IN
114	2006-2007	DuoSil Caulk Invoices	IN		IN
115	2013	DuoSil Fact Sheet	IN		IN
116	6/25/2015 - 11/11/15	Mease Siding Photo Extracts		NO	IN
117	6/25/2015 - 11/11/15	Mease Window Caulk Photo Extracts			NO
118		Overall Drawing of the Project	IN	IN	
120		CBC Document Production			
121	2003	IRC § R703.1	NO	NO	NO
122	2003	IRC § R903.1	NO	NO	NO
123	2003	IRC § R905.2.8.4	NO	NO	NO
124	2003	IRC § R301.2.1.1	NO	NO	NO
125	2003	IRC § Table R703.4	NO	NO	NO
126	2006	CertainTeed Specs	IN	IN	IN
128	7/9/2004	Andersen 200 Ser. Narroline DH Inst. Instr.	NO		IN
128A	1/29/2004	Anderson 200 Series Tilt-Wash DH Window Installation	NO		IN
129	2003	IRC § R905.15.1	NO	NO	NO
130	2003	IBC § 1607.7.1	NO	NO	NO
131	2003	IRC § R501.2	NO	NO	NO
132	2003	SC Code § 6-9-50(C)(2)(d)	NO	NO	NO
133	2003	IRC § 703.8	NO	NO	NO
134	2003	IRC § R407.2	NO	NO	NO
135	2003	IECC § 502.1.1	NO	NO	NO
136	Aug-01	JLC - "Trimming w Aluminum Coil"			
137		ACI § 302.1 – Chapter 3 (§§ 3.2.2, 3.2.5.3)		NO	NO
138		ACI § 360 – Chapter 2 (§ 2.2.1)		NO	NO
139	2003	IRC § R317	NO	NO	NO
140	2003	IRC § R602.8.1.2	NO	NO	NO

Ex. No	Date	Description	CBC	TCR & JMC	Vasquez & Miracle
141	2006	Folly Beach Code § 90.08	NO	NO	NO
143	2003	NOFMA - "Wood Flooring Inst. Manual"	NO	NO	
144	3/31/2016	Smits Report	NO	NO	
145		ACI § 360 – Chapter 3 (§ 3.1)	NO	NO	NO
146		ACI § 360 – Chapter 5 (§ 5.1)	NO	NO	NO
147		ACI § 360 – Chapter 7 (§ 7.1.1)	NO	NO	NO
148	3/25/2016	Mease Construction Deficiencies Photo Log	NO	NO	NO
149	5/2/2016	Mease 1607 Folly Creek Way Photo Log	NO	NO	NO
150	4/29/2016	Mease 1611 Folly Creek Way Photo Log –REVISED	NO	NO	NO
151	4/4/2016	Mease 1628 Folly Creek Way Photo Log –REVISED –	NO	NO	NO
152	9/23/2015	CBC's Answers to Plaintiffs' First Set of Discovery			
154		Contractors Inspection Services, LLC			
157	3/14/2006	Tri-County Contract #6972 Re Oak A&B R	IN	IN	IN
158	6/20/2006	SGM to Buddy (CBC)	IN		
160	9/6/2006	CertainTeed Invoices	IN		
161	9/13/2006	CBC Fax - NRCA roofing and Waterproofing Manual Extract	IN		IN
162	9/27/2006	Tri-County Contract w/ Cornerstone R	IN	IN	IN
163	10/8/2006	CBC Fax to Tri-County re: Pics and Inspection Reports	IN	IN	IN
164	10/6/2006	Wilson Sales d/b/a Miracle Siding Subcontractor File R	IN	IN	NO
166	11/16/2006	Palmetto Point Action List	IN		
169	4/16/2007	Sealoflex Warranty Issues to Mark Poyner	IN	IN	
170	5/2007- 11/1/2007	Sub Vasquez Invoices and Acord Form R	Redact Ins.	IN	NO
172	6/29/2007	D&B Construction Subcontractor File			
173	7/25/2007	Poyner (Tri-County) Ltr to CBC re: 1649	IN	IN	IN
177		Tri-County Total Payment Spreadsheets		IN	
179		Tri-County Invoices, Apps for Payment and copies of checks	IN	IN	
180	12/8/2016	Pls 30(b)(6) NOD of Tri-County			
184		Mease Photo Log of Tropical Storm Hermine	NO	NO	NO
185		Mease Photo Log of Hurricane Matthew	NO	NO	NO
186	11/28/2016	Smits Addendum to 3/31/16 Report	NO	NO	
187		CBC Job Cost Summary			
188		CBC Final Billing Detail Report			
189	2005	CertainTeed Siding Instructions		IN	
190	Nov-03	ICC ES Legacy Report NER-537		IN	
192		TCR Website Extract			
193	9/2006- 8/1/2007	ARD Invoices	IN		IN
194		Site Plan with Poyner HW Notations	IN		
201	11/16/2006	Stanley's Vinyl Fence Sub-Contract w/ CBC R	IN		IN
203	5/22/2007	WC Services Sub-Contract w/ CBC R	IN		IN
205	9/22/2005	CRG Agreement for Services	IN		
209	5/2/2006	WC Services – Sprinkler Proposal	IN		IN
212	9/22/2005	CRG Memo: re: Meeting w/ Brown & SGM	IN		
218	1/11/2006	SMG Ltr re: contractor questions	IN		
221	3/2/2006	SGM Ltr re: Estimating Items Need to be Clarified/Corrected	IN		
223	3/14/2006	List of PP Building & Site Plan	IN	IN	

Ex. No	Date	Description	CBC	TCR & JMC	Vasquez & Miracle
227	4/6/2006	CBC Ltr re: Siding Change	IN		
236	5/24/2006	Sprinkler System Cost	IN		
240	6/20/2006	Emails re: Status Update of Fire Protection Drawings	IN		IN
241	6/20/2006	CRG: Fire Protection Design Review Memo	IN		
242	6/22/2006	Fire Sprinkler System Spec Sheet	IN		
244	6/23/2006	Fire Sprinkler System COC	IN		
245	6/23/2006	Britt Peters letter re: nail spacing	IN		
246	6/26/2006	Window & Door Submittal	1		IN
249	7/31/2006	Jim McGuire Roof Section/Privacy Wall Sketches	IN	IN	
250	8/8/2006	Typical Scupper Sketches	IN	IN	
251	8/8/2006	Typical Window Installation	NO		
252	8/8/2006	Change Proposals from TCR	IN		IN
257	8/23/2006	Emails re: Andersen Narrowline Window	NO		
259	8/28/2006	SGM Sketch: Wall Section at Party Wall, Ground Floor	IN		IN
260	8/28/2006	ABS Add'l Points to Andersen Window Install	NO		
267	9/7/2006	Email re: Sept. 5 HVAC Report	NO		
270	9/11/2006	SGM Shop Drawing & Sample Record	IN		
272	9/21/2006	Hydro Stop Specs	IN	IN	IN
276	10/12/2006	Owner CO – Install Flame Sealant at Ground Fl. Party Wall	IN		IN
281	11/14/2006	Handwritten Sketch – Typical Gutter Detail	IN		
300	2/22/2007	SGM Letter re: Ace Home Inspection Rpt	NO		IN
305	4/24/2007	Exterior Punch List w/ Photos	IN		IN
311	7/27/2007	Britt Peters review of Privacy wall Unit 1649	IN		IN
320	8/15/2007	SGM Exterior Punch List	IN		IN
331	9/7/2007	Emails re: structural modifications to shear wall	IN		
338		Atlantic: Summary of Change Orders	IN		
340	11/4/2005	Project Manual	IN	IN	IN
342		CertainTeed Master Shingle Applicators Man. – Laminated Shingles		IN	NO
343	7/13/2006	Curry Engineering Field Observation Report	IN	IN	
344	7/31/2006	SGM Response to Curry Engineering Field Notes from 7/13/06	IN	IN	
345	8/4/2006	Curry Engineering Field Observation Report	IN	IN	
346	7/27/2006	Curry Engineering Field Observation Report	IN	IN	
347	8/24/2006	Curry Engineering Photographs	IN	IN	
348	9/7/2006	Curry Engineering Field Observation Report	IN	IN	
349	7/13/2006	SGM Field Observations	IN	IN	
350	7/13/2006	Meeting Regarding Roof	IN	IN	
351	7/27/2006	SGM Field Observations	IN	IN	
351A	7/27/2006	SGM Handwritten Meeting Notes	IN	IN	
352	8/3/2006	SGM Field Observations	IN	IN	
353	8/4/2006	SGM Field Observations	IN	IN	
353A	8/4/2006	SGM Handwritten Meeting Notes	IN	IN	
354	8/10/2006	SGM Field Observations	IN	IN	
355	8/15/2006	SGM Field Observations	IN	IN	
356	8/22/2006	SGM Field Observations	IN	IN	
357	8/24/2006	SGM Field Observations	IN	IN	

Ex. No	Date	Description	CBC	TCR & JMC	Vasquez & Miracle
358	8/28/2006	SGM Field Observations	IN	IN	
359	8/29/2006	SGM Field Observations	IN	IN	
360	9/5/2006	SGM Field Observations	IN	IN	
361	9/7/2006	SGM Field Observations	IN	IN	
362	9/7/2006	SGM Field Observations #2	IN	IN	
363	9/19/2006	SGM Field Observations	IN	IN	
364	9/21/2006	SGM Field Observations	IN	IN	
365	9/26/2006	SGM Field Observations	IN	IN	
366	10/3/2006	SGM Field Observations	IN	IN	
367	10/5/2006	SGM Field Observations	IN	IN	
368	10/6/2006	SGM Field Observations	IN	IN	
369	10/7/2006	SGM Field Observations	IN	IN	
370	10/10/2006	SGM Field Observations	IN	IN	
371	10/17/2006	SGM Field Observations	IN	IN	
372	10/19/2006	SGM Field Observations	IN	IN	
373	10/24/2006	SGM Field Observations	IN	IN	
374	10/31/2006	SGM Field Observations	IN	IN	
375	11/2/2006	SGM Field Observations	IN	IN	
376	11/9/2006	SGM Field Observations	IN	IN	
377	11/16/2006	SGM Field Observations	IN	IN	
378	11/30/2006	SGM Field Observations	IN	IN	
378A		SGM Handwritten Photo Log	IN	IN	
379	12/7/2006	SGM Field Observations	IN	IN	
380	12/14/2006	SGM Field Observations	IN	IN	
380A		SGM Handwritten Photo Log	IN	IN	
381	1/4/2007	SGM Field Observations	IN	IN	
382	1/11/2007	SGM Field Observations	IN	IN	
383	1/18/2007	SGM Field Observations	IN	IN	
384	1/25/2007	SGM Field Observations & Contractors Meeting	IN	IN	
384A		SGM Handwritten Photo Log	IN	IN	
385	2/1/2007	SGM Field Observations & Minutes	IN	IN	
386	2/8/2007	SGM Field Observations & Minutes	IN	IN	
387	2/15/2007	SGM Field Observations & Minutes	IN	IN	
387A		SGM Handwritten Photo Log	IN	IN	
388	2/22/2007	SGM Field Observations & Minutes	IN	IN	
389	3/1/2007	SGM Field Observations & Minutes	IN	IN	
389A		SGM Handwritten Photo Log	IN	IN	
390	3/8/2007	SGM Field Observations & Minutes	IN	IN	
391	3/22/2007	SGM Field Observations	IN	IN	
392	3/29/2007	SGM Field Observations/Construction Meeting	IN	IN	
392A		SGM Handwritten Photo Log	IN	IN	
393	4/5/2007	SGM Field Observations	IN	IN	
394	4/12/2007	SGM Field Observations	IN	IN	
394A		SGM Handwritten Photo Log	IN	IN	
395	4/19/2007	SGM Field Observations	IN	IN	
395A		SGM Handwritten Photo Log	IN	IN	
396	4/26/2007	SGM Field Observations	IN	IN	
397	5/3/2007	SGM Field Observations	IN	IN	
398	5/21/2007	SGM Field Observations	IN	IN	
399	5/24/2007	SGM Field Observations	IN	IN	
400	5/31/2007	SGM Field Observations	IN	IN	
401	6/7/2007	SGM Meeting Minutes	IN	IN	
402	6/29/2007	SGM Field Observations	IN	IN	
403	8/2/2007	SGM Field Observations	IN	IN	
404	8/21/2007	SGM Field Observations	IN	IN	
405	1/30/2008	SGM Field Observations	IN	IN	

Ex. No	Date	Description	CBC	TCR & JMC	Vasquez & Miracle
406	9/24/2008	SGM Field Observations	IN	IN	
407	10/16/2008	SGM Field Observations	IN	IN	
408	11/11/2005	SGM Pre-Bid Meeting Minutes	IN	IN	
409	4/3/2006	SGM Progress Meeting Minutes	IN	IN	
410	4/27/2006 - 5/4/06	SGM Progress Meeting Minutes	IN	IN	
411	1/26/2007	SGM Progress Meeting Minutes	IN	IN	
412	3/14/2006	CBC Pre-Construction Meeting Minutes	IN	IN	
413	4/27/2006	CBC Meeting Agenda & Minutes	IN	IN	
414	5/4/2006	CBC Meeting Minutes	IN	IN	
415	5/11/2006	CBC Meeting Minutes	IN	IN	
416	5/18/2006	CBC Meeting Minutes	IN	IN	
417	5/25/2006	CBC Meeting Minutes	IN	IN	
418	6/1/2006	CBC Meeting Minutes	IN	IN	
419	6/8/2006	CBC Meeting Minutes	IN	IN	
420	6/15/2006	CBC Meeting Minutes	IN	IN	
421	6/22/2006	CBC Meeting Agenda & Minutes	IN	IN	
422	6/29/2006	CBC Meeting Minutes	IN	IN	
423	7/6/2006	CBC Meeting Minutes	IN	IN	
424	7/13/2006	CBC Meeting Minutes	IN	IN	
425	7/20/2006	CBC Meeting Minutes	IN	IN	
426	7/27/2006	CBC Meeting Minutes	IN	IN	
427	8/10/2006	CBC Meeting Minutes	IN	IN	
428	8/17/2006	CBC Meeting Minutes	IN	IN	
429	8/24/2006	CBC Meeting Minutes	IN	IN	
430	9/7/2006	CBC Meeting Minutes	IN	IN	
431	9/14/2006	CBC Meeting Minutes	IN	IN	
432	9/21/2006	CBC Meeting Minutes	IN	IN	
433	9/28/2006	CBC Meeting Minutes	IN	IN	
434	10/5/2006	CBC Meeting Minutes	IN	IN	
435	10/12/2006	CBC Meeting Minutes	IN	IN	
436	10/19/2006	CBC Meeting Agenda & Minutes	IN	IN	
437	10/26/2006	CBC Meeting Agenda & Minutes	IN	IN	
438	11/2/2006	CBC Meeting Minutes	IN	IN	
439	11/9/2006	CBC Meeting Minutes	IN	IN	
440	11/16/2006	CBC Meeting Minutes	IN	IN	
441	11/30/2006	CBC Meeting Minutes	IN	IN	
442	1/4/2007	CBC Meeting Minutes	IN	IN	
459	5/24/2007	Britt Peters Field Report 17	IN	IN	IN
460	5/31/2007	Britt Peters Field Report 18	IN	IN	IN
461	6/8/2007	Britt Peters Field Report 19	IN	IN	IN
462	6/11/2007	Britt Peters Field Report 20	IN	IN	IN
463	6/28/2007	Britt Peters Field Report 21	IN	IN	IN
464	9/18/2007	Britt Peters Field Report 22	IN	IN	
465	11/7/2007	Britt Peters Field Report 23	IN	IN	
466	11/14/2007	Britt Peters Field Report 24	IN	IN	
467	11/27/2007	Britt Peters Field Report 25	IN	IN	
468	12/4/2007	Britt Peters Field Report 26	IN	IN	
469	12/11/2007	Britt Peters Field Report 27	IN	IN	
470	12/18/2007	Britt Peters Field Report 28	IN	IN	
473		RFI Log	IN	IN	
473.1		RFI #1	IN	IN	
473.2		RFI #2	IN	IN	
473.3		RFI #3	IN	IN	
473.4		RFI #4	IN	IN	
473.5		RFI #5	IN	IN	
473.6		RFI #6	IN	IN	
473.7		RFI #7	IN	IN	

Ex. No	Date	Description	CBC	TCR & JMC	Vasquez & Miracle
473.8		RFI #8	IN	IN	
473.9		RFI #9	NO		
473.1		RFI #10	IN	IN	
473.11		RFI #11	IN	IN	
473.12		RFI #12	NO		
473.13		RFI #13	IN	IN	
473.14		RFI #14	IN	IN	
473.15		RFI #15	IN	IN	
473.16		RFI #16	IN	IN	
473.17		RFI #17	IN	IN	
473.18		RFI #18	IN	IN	
473.19		RFI #19	IN	IN	
473.2		RFI #20	IN	IN	
473.21		RFI #21	IN	IN	
473.22		RFI #22	IN	IN	
473.23		RFI #23	IN	IN	
473.24		RFI #24	IN	IN	
473.25		RFI #25	IN	IN	
473.26		RFI #26	IN	IN	
473.27		RFI #27	IN	IN	
473.28		RFI #28	IN	IN	
473.29		RFI #29	IN	IN	
473.3		RFI #30	IN	IN	
473.31		RFI #31	IN	IN	
473.32		RFI #32	IN	IN	
473.33		RFI #33	IN	IN	
473.34		RFI #34	IN	IN	
473.35		RFI #35	IN	IN	
473.36		RFI #36	IN	IN	
473.37		RFI #37	IN	IN	
473.38		RFI #38	IN	IN	
473.39		RFI #39	IN	IN	
475	12/4/2007	Correspondences re: RFI	IN	IN	
478		Hydrostop Flex Coat 5 Year Material Warranty	IN	IN	
484	6/28/2017	Mease Photos – Unit 1643	NO	NO	
485	2006 - 2016	Bruce Installation Instructions for Solid Wood Flooring	NO	NO	
489	9/19/2006	CBC to Atlantic re: Phase 1	IN		IN
494	Sep-06	Siding Nail Invoices	IN		IN
495	11/29/2007	Miracle Siding Invoices	IN	IN	NO
496	1/26/2007	TCR Invoice – 8.25 Beaded Hardi Plank		NO	
499	6/13/2017	Mease Photo Log – Clubhouse	NO	NO	Photos Only
500	9/1/2017	Mease Photo Log – 1622 Folly Creek Way	NO	NO	
501		Walker House – Before Relocation			
502		Walker House – Post Relocation			
503		Graphic – Wilson Lucas and Cornerstone Scopes of Work	IN	IN	Remove Commentary
540		Site Plan Graphic with Unit Numbers	IN	IN	
545	1/8/2007	CBC to SGM – Project Behind Schedule	IN		IN
564	8/3/2006	CBC Progress Meeting Minutes	IN		
572	10/20/2006	CBC to SGM: CO exterior stairs	IN		IN
577	3/1/2007	Atlantic Resp to 2/22/07 SGM Field Report	IN		IN
579	7/24/2007	CBC - Costs to Construct Privacy Walls	IN		IN
580		Knee Wall Sketches	IN		IN
583	1997	A201-1997 AIA Gen Conditions	IN		IN
584	11/7/2007	Britt Peters Site Visit Photos	IN	IN	

Ex. No	Date	Description	CBC	TCR & JMC	Vasquez & Miracle
592	6/25/2007	Atlantic – 1603 Pictures	IN		IN
596	6/13/2007	BP Shear wall Drawings	IN		IN
602	8/18/2006	Email to Atlantic re: window installation	NO		IN
606	9/20/2006	Inspection Reports/Pictures from Apat's 9/18/06 Inspection	IN		IN
613		Charges for Defective Workmanship	IN		IN
615		Collection of Change Orders	IN		
619		Construction Set Plans [Bound Separately]	IN	IN	IN
620		Site Plan Graphic with Phases	IN	IN	
621		Atlantic PO Summary for JMC	IN	IN	IN
622	10/1/2006	ESR-1688 Reports: CertainTeed Siding	IN		IN
624		JMC Secretary of State Information			IN
646	1/10/2018	Maddox Preliminary Investigation and Report of the Mechanical Systems at Peas	NO	NO	
649		Maddox Photos of 1601 and 1631	NO		IN
651		2003 IRC Ch. 13 Gen Mech System Requirements, IMC 2003, and 2003 IPC Extracts	NO	NO	
655	2003	IRC R301 Extract – Live Loads for Handrails	NO	NO	
661	4/30/2018	Stanley's Vinyl Fence NOD			
663	2003	IRC R319	NO	NO	
664		Site plan with witness mark-up (Stanley)	Duplicate of 620		IN
665		Plans Excerpt: G001, A303, A321, A501-502	IN		
666	6/25/2015	Mease Railing Video: MVI_0240 06-25-15 Mease .MOV	NO		?
667	6/25/2015	Mease Railing Video: MVI_0236 06-25-15 Mease .MOV	NO		?
669	10/1/2013	ESR-1688 Report – CertainTeed Siding	IN		
670	2016	Demonstrative: TS Hermine & Hurricane Matthew Damage	Need identification of underlying data for summary per		Only w/ Mease Testimony
671	9/11/2017	Mease Hurricane Irma Photo Log	NO		
672	2017	Demonstrative: Hurricane Irma Damage	Need identification of underlying data for summary per		Only w/ Mease Testimony
674	6/25/2018	ABS Scope of Repair			
675		ABS Invoices			
677	Dec-17	Handegan Revised Estimate (Loss of Use Removed)			
678	Dec-17	Handegan Loss of Use Estimate			
679	3/6/2006	Hall to Brown re: Fire Suppression System at Peas	IN		IN
680	4/11/2006	Hilton to McGuire Letter re: Sprinkler Quote	IN		
681	5/2/2006	WC Services Sprinkler Proposal	IN		IN
682	5/15/2006	Email re: CPW Issue?	IN		
685	5/24/2006	Hilton to McGuire re: fire sprinkler cost	IN		
688	6/6/2006	WC Services Prop Meter Layout and Calculations	IN		IN
689	8/29/2006	Email re: Window Water Test & Ernesto	1		IN

Ex. No	Date	Description	CBC	TCR & JMC	Vasquez & Miracle
691	10/8/2016	Weather Data			NO
692	9/2/2016	Weather Data			NO
695	2/19/2016	Al Schweickhardt Field Notes	IN	IN	
696	2/19/2016	Al Schweickhardt Site Visit Photos	IN	IN	NO
697	9/1/2016	Al Schweickhardt Field Notes	IN	IN	
698	9/1/2016	Al Schweickhardt Site Visit Photos	IN	IN	NO
699	12/1/2016	Al Schweickhardt Field Notes	IN	IN	
700	12/1/2016	Al Schweickhardt Site Visit Photos	IN	IN	NO
701	12/2/2016	Al Schweickhardt Deck Photos – Unit 1635- Holly “A”	IN	IN	NO
702	12/2/2016	Al Schweickhardt Deck Photos – Unit 1655- Holly “A”	IN	IN	NO
703	12/2/2016	Al Schweickhardt Deck Photos – Unit 1645 - Dogwood	IN	IN	NO
704	3/6/2018	Design No. U341; BXUV.U341; Fire Resistance Ratings - ANSI/UL 263			
705		WC Services Fire Sprinkler Drawings	IN		
706	3/25/2016	Mease – Unit 1615 Photo Exemplar	NO	IN	
707	3/25/2016	Mease – Unit 1617 Photo Exemplar	NO	IN	
708	3/25/2016	Mease – Unit 1623 Photo Exemplar	NO	IN	
709	3/25/2016	Mease – Unit 1629 Photo Exemplar	NO	IN	
710	2/19/2016	Unit 1611 - Front Deck - Schweickhardt Inspection Photos	IN	IN	NO
711	12/1/2016	Unit 1629 - Front Deck - Schweickhardt Inspection Photos	IN	IN	NO
712	2003	IRC – Section R317 – Dwelling Unit Separation	NO	NO	NO
713	12/2/2016	Unit 1623 - Front Deck - Schweickhardt Inspection Photos	IN	IN	NO
714		Ponding - Schweickhardt Inspection Photos	IN	IN	NO
716		ABS Invoices			
717		Rear lower roof slop of Palmetto B Units Repair	NO		
718		ABS – 2006 Closed Peas File for Window Testing	NO		IN
719	2/19/2016	Polk Field Notes	IN		
720	2/19/2016	Polk Site Visit Photos	IN	IN	NO
721	9/1/2016	Polk Field Notes	IN	IN	
722	9/1/2016	Polk Site Visit Photos	IN	IN	NO
723	12/1/2016	Polk Field Notes	IN	IN	
724	12/1/2016	Polk Site Visit Photos	IN	IN	NO
725	12/2/2016	Polk Field Notes	IN	IN	
726	12/2/2016	Polk Site Visit Photos	IN	IN	NO
727	4/25/2016	Polk Site Visit Photos	IN	IN	NO
728	4/27/2017	Polk Field Notes	IN	IN	
729	4/27/2017	Polk Site Visit Photos	IN	IN	NO
730	11/16/2017	Polk Field Notes	IN	IN	
731	11/16/2017	Polk Site Visit Photos	IN	IN	NO
732	5/8/2018	Polk Field Notes	IN	IN	
733	5/8/2018	Polk Site Visit Photos	IN	IN	NO
734	4/25/2017	Unit 1607 - Front Deck – Polk Inspection Photos	IN	IN	NO
735	4/25/2017	Unit 1628 - Front Deck – Polk Inspection Photos	IN	IN	NO
736	4/25/2017	Unit 1619 - Front Deck – Polk Inspection Photos	IN	IN	NO

Ex. No	Date	Description	CBC	TCR & JMC	Vasquez & Miracle
737	2/19/2016	Unit 1611 - Front Deck – Polk Inspection Photos	IN	IN	NO
738	8/2/2005	Fire Sprinkler Cert of Compliance	IN		
739	6/6/2006	Email from Chad to Kirk re: Supply Line	IN		
740	6/7/2006	WCS (Chad) fax to CRG re: calc sheet	IN		
741	6/7/2006	CRG to WCS email re: fire line proposal	IN		
742	6/14/2006	CBC fax to WCS re: copy of 6.8.06 meeting minutes	IN		
743	6/20/2006	CRG new project description sheet	IN		
744	6/20/2006	CRG email re: FYI	IN		
745	6/22/2006	CRG memo to Chad re: 5 sets of fire protection dwgs & sprinkler spec sheets	IN		
746	7/10/2006	CRG invoice to Bucky Chapman	IN		
747	7/11/2006	Fax Richards (CRG) to Lydia Owens re: approval of 1" line	IN		
748	12/15/2006	CRG photos (3) – exterior fire sprinkler piping	IN		
750		3M Fire Barrier Sealant Product Data Sheet			
751	2003	IRC R106 Construction Documents	NO	NO	NO
752	2/2/2016	Unit 1603: Smits Inspection Photos	IN		IN
753	2/2/2016	Unit 1624: Smits Inspection Photos	IN		IN
754	2/2/2016	Unit 1655: Smits Inspection Photos	IN		IN
755	11/3/2016	Unit 1635: Smits Inspection Photos	IN		IN
757	12/14/2017	Unit 1625: Maddox Inspection Photos	NO		IN
758	4/27/2017	Unit 1627: Lazo Inspection Photos			IN
759	12/14/2017	Unit 1603: Maddox Inspection Photos	NO		IN
760	12/14/2017	Unit 1618: Maddox Inspection Photos	NO		IN
761	12/14/2017	Unit 1601: Maddox Inspection Photos	NO		IN
762	12/14/2017	Unit 1631: Maddox Inspection Photos	NO		IN
763	12/14/2017	Unit 1629: Maddox Inspection Photos	NO		IN
764	2007	NFPA 13D – Standard for the Installation of Sprinkler Systems in 1-2 Family Dwellings & Manufactured Homes			
765	2/13/2006	Hall to Wise – Recap of Feb. 10, '06 Peas Island Meeting			
767	2003	IRC Ch. 26 General Plumbing	NO		
771	6/29/2017	Lazo to Folly Beach re: Fire Protection Ordinance prior 2014	NO		
772	6/8/2017	Lazo and Atkins re: NFPA standard and fire sprinklers			
789		Certificates of Occupancy	IN	IN	IN
790	2007	Installation Guide for Andersen 400 Series Tilt-Wash DH and 200 Series Narroline DH	NO		
791	8/25/2003	Prefin i shed Sill Stop and Stool for Andersen 200 Series Narroline DH	NO		
792	7/27/2007	Andersen Test Report PSNL 3862 Low-E/200 Series Narroline DH	NO		
793	7/27/2007	Andersen Test Report PSNL 3862 HP Glass and DP UPGRADE	NO		
794	1/24/2017	Stoppelbein Site Visit Notes	NO		
795	1/24/2017	Stoppelbein Site Visit Photos	NO		
796	2003	IRC Part III - Building Planning and Construction	NO		
797	Jan-11	Delmhorst BD-2100 Owner's Manual	NO		
798	Feb-98	Cooperative Extension Service Clemson University - Residential Housing: Wood Moisture Content	NO		

Ex. No	Date	Description	CBC	TCR & JMC	Vasquez & Miracle
800	2002	Andersen Care Instructions	NO		
801	7/9/2018	NOD - Andersen	NO		
812	8/21/2018	Al Schweickhardt Site Visit Photos – Unit 1615	IN	IN	NO
813	8/21/2018	Al Schweickhardt Site Visit Photos – Unit 1628	IN	IN	NO
814	8/21/2018	Al Schweickhardt Site Visit Photos – Unit 1623	IN	IN	NO
815	8/21/2018	Al Schweickhardt Site Visit Photos – Units 1631 & 1647	IN	IN	NO
816	8/22/2018	Al Schweickhardt Site Visit Photos – Unit 1639	IN	IN	NO
817	8/22/2018	Al Schweickhardt Site Visit Photos – Unit 1627	IN	IN	NO
818	8/22/2018	Al Schweickhardt Site Visit Photos – Remainder of Day	IN	IN	NO
819	8/21/2018	Al Schweickhardt Field Notes	IN	IN	NO
820	8/22/2018	Al Schweickhardt Field Notes	IN	IN	NO
821	9/5/2018	Al Schweickhardt Scope of Repair			
822	9/5/2018	Through-penetration Firestop Systems, XHEZ - UL Product Spec			
823	2003	IRC R.802.11	NO		
824		Schweickhardt Updated Invoices			
825		Table 2 from Al Schweickhardt Report	IN		
826		Al Schweickhardt Depo Points – Volume 1 – with H/W notes			NO
827		Graphic: REAR Damage & Flashing Repair Locations per Al's Table 2	IN		NO
828		Graphic: FRONT Damage per Al's Table 2	IN		NO
829	9/18/2018	Schweickhardt Email to Burke at Folly Beach – Fire Marshall Question	IN		
830	2015	SC Residential Code – Building Planning R302	NO		
831	2007	Hall Cert. of Conformance	NO		
833	2007	Andersen Coastal Prod Guide Extract	NO		
834A	9/25/2018	Andersen 2 nd Supp Ans to Pls DR	NO		
842		Sealoflex – 1.3.1.1 Decks w/ Hardwearing Color Finish			?
843	08/21-22/18	Polk Site Visit Photos	IN	IN	
844	08/21-22/18	Polk Field Notes	IN		
845	2003	IRC Extract: Code and Industry Standards for underlayment requirements	NO		
849	1/1/06 to 12/4/16	Wind Verification Report: 1645 Folly Creek Way, Charleston, SC	IN		NO
850	01/01/09 to 7/1/08	Wind Verification Report- 2742 Fort Trenholm Rd, Johns Island, SC 29455	IN		NO
851	10/5/2018	Polk Field Notes	IN		
852	10/5/2018	Polk Site Visit Photos	IN	IN	
853	1/1/1999	Hydrostop Standard Drip Edge Detail		IN	IN
854	12/15/2016	Hydrostop Standard Drip Edge Detail		IN	IN
864		Excerpt from 2003 IRC, Section R110.1	NO	NO	
868		ASTM C 1193-05a Standard Guide for Use of Joint Sealants			
875	12/3/2018	Elkin H/W Wood Floor Notes	NO		
876	12/4/2018	Elkin H/W Mease Vol 1 Notes	NO		
877	12/5/2018	Elkin H/W Mease Vol 2 Notes	NO		
878	12/4/2018	Elkin H/W Vasquez Notes			

Ex. No	Date	Description	CBC	TCR & JMC	Vasquez & Miracle
879	12/5/2018	Elkin H/W CertainTeed Notes			
880	12/6/2018	Elkin H/W Schweickhardt Notes			
881	12/7/2018	Elkin H/W Wilson Sales Notes			
882	12/9/2018	Elkin H/W Poyner Vol 1 Notes			
883	12/9/2018	Elkin H/W Poyner Vol 2 Notes			
884	12/9/2018	Elkin H/W TCR Records Notes			
885	12/9/2018	Elkin H/W Wilson Sales Depo Notes			
886	12/10/2018	Elkin H/W SGM Field Obs Notes			
887	4/7/2017	Elkin Job Detail Report – Wilson & Heyward			
888	6/25/2018	Elkin Job Detail Report – Murphy & Grantland	NO		
889	4/27/2018	Elkin Engineering Site Visit Photos	NO		
890	8/21/2018	Elkin Engineering Field Notes	NO		
891	8/21/2018	Elkin Engineering Site Visit Photos	NO		
892	8/22/2018	Elkin Engineering Field Notes	NO		
893	8/22/2018	Elkin Engineering Site Visit Photos	NO		
894	10/5/2018	Elkin Engineering Field Notes	NO		
895	10/5/2018	Elkin Engineering Site Visit Photos	NO		
896	12/11/2018	Elkin Engineering Field Notes	NO		
897	12/11/2018	Elkin Engineering Site Visit Photos	NO		
898		Elkin Invoices	NO		
900		Elkin Site Plan w/ HW Notes	NO		
901	1/22/2019	Smith Photos: Unit 1612	NO		
902	1/23/2019	Smith Photos: Unit 1619	NO		
903	1/23/2019	Smith Photos: Unit 1623	NO		
904	1/23/2019	Smith Photos: Unit 1626	NO		
905	1/23/2019	Smith Photos: Unit 1627	NO		
906	1/23/2019	Smith Photos: Unit 1629	NO		
907	1/22/2019	Smith Photos: Unit 1631	NO		
908	1/22/2019	Smith Photos: Unit 1633	NO		
909	1/23/2019	Smith Photos: Unit 1641	NO		
910	1/22/2019	Smith Photos: Unit 1651	NO		
911	1/23/2019	Smith Photos: Unit 1653	NO		
912	1/22/2019	Smith Photos: Unit 1655	NO		
913	1/27/2017	Bowie Email re: Rough notes of moisture readings	NO		
914		Index of ABS Photos and Field Notes in File	IN		
915		Index of Plaintiffs' Experts Documents in File			
916		ABS Units observed with Model correlation	What is the source of this?		
917		Watkins H/W Notes/Calcs on Plans	IN		
918		Watkins Estimate H/W Notes	IN		
919	10/12/2017	ABS Scope of Repairs - Palmetto Pointe - Preliminary			
920	12/14/2017	Watkins Preliminary Draft Estimate			
921	12/12/2017	ABS Scope of Repairs - Palmetto Pointe - Preliminary			
922	9/20/2018	Watkins Preliminary Draft Estimate			
923	7/27/2018	ABS Scope of Repairs - Palmetto Pointe - Preliminary			
924	10/30/2018	Watkins Preliminary Draft Estimate 1			
925	9/5/2018	ABS Scope of Repairs - Palmetto Pointe - Preliminary			
926	11/30/2018	Watkins Preliminary Draft Estimate			
927	7/27/2018	ABS Suggested Additional investigation as of July 27 2018			

Ex. No	Date	Description	CBC	TCR & JMC	Vasquez & Miracle
928		ABS Palmetto B rear roof repair scope			
929		Emails			
930		Invoices			
931	2/13/2019	Watkins Preliminary Draft Estimate		IN	
932	1/29/2019	ABS Scope of Repairs - Palmetto Pointe - Preliminary			
955	3/14/2019	Andersen Resp to Pls 2 nd Supp RFP	NO		
956		Andersen Hallmark Certificate of Conformance & License	NO		
957	2003	IRC – Section R613	NO	NO	
958	11/26/2018	Lowcountry Home Inspection, Inc. Firewall Inspection Report			IN
959	4/9/2019	TCR 9 th Supp Resp			NO
961		Redacted HO Fee Agreements	Not provided		IN
962	2/5/2015	Mease Photographs: Peas Island (00469-00526)	IN	IN	IN
963	6/25/2015	Mease Photographs: Peas Island (00527-00763)	IN	IN	IN
964	6/26/2015	Mease Photographs: Peas Island (00764-00809)	IN	IN	IN
965	7/8/2015	Mease Photographs: Peas Island (00810-00828)	IN	IN	IN
966	11/11/2015	Mease Photographs: Peas Island (00829-01052)	IN	IN	IN
967	12/7/2015	Mease Photographs: Peas Island (09058-09226)	IN	IN	IN
968	1/6/2016	Mease Photographs: Peas Island (09227-09561)	IN	IN	IN
969	3/21/2016	Mease Photographs: Peas Island (10418-10441)	IN	IN	IN
970	3/25/2016	Mease Photographs: Peas Island (10442-10622)	IN	IN	IN
971	4/12/2016	Mease Photographs: Peas Island (10722-10736)	IN	IN	IN
972	4/21/2016	Mease Photographs: Peas Island (10737-10773)	IN	IN	IN
973	4/27/2016	Mease Photographs: Peas Island (10800-10835)	IN	IN	IN
974	6/27/2016	Mease Photographs: Peas Island (11327-11345)	IN	IN	IN
975	7/25/2016	Mease Photographs: Peas Island (11346-11365)	IN	IN	IN
976	8/15/2016	Mease Photographs: Peas Island (11366-11370)	IN	IN	IN
977	9/6/2016	Mease Photographs: Peas Island (11528-11560)	IN	IN	IN
978	10/10/2016	Mease Photographs: Peas Island (11561-11658)	IN	IN	IN
979	1/25/2017	Mease Photographs: Peas Island (13078-13143)	IN	IN	IN
980	2/21/2017	Mease Photographs: Peas Island (13144-13159)	IN	IN	IN
981	2/24/2017	Mease Photographs: Peas Island (13160-13195)	IN	IN	IN
982	4/27/2017	Mease Photographs: Peas Island (13196-13230)	IN	IN	IN
983	6/13/2017	Mease Photographs: Peas Island (18081-18173)	IN	IN	IN

Ex. No	Date	Description	CBC	TCR & JMC	Vasquez & Miracle
984	6/19/2017	Mease Photographs: Peas Island (18174-18219)	IN	IN	IN
985	6/28/2017	Mease Photographs: Peas Island (18220-18235)	IN	IN	IN
986	9/1/2017	Mease Photographs: Peas Island (18236-18288)	IN	IN	IN
987	12/28/2017	Mease Photographs: Peas Island (21514-21533)	IN	IN	IN
988	7/13/2018	Mease Photographs: Peas Island (021715-021724)	IN	IN	IN
989	9/7/2018	Mease Photographs: Peas Island (021725-021771)	IN	IN	IN
990	9/17/2018	Mease Photographs: Peas Island (021772-021796)	IN	IN	IN
991	10/5/2018	Mease Photographs: Peas Island (021797-021917)	IN	IN	IN
992	12/11/2018	Mease Photographs: Peas Island (38081-38139)	IN	IN	IN
993	1/25/2019	Mease Photographs: Peas Island (38140-38153)	IN	IN	IN
994	1/29/2019	Mease Photographs: Peas Island (38166-38177)	IN	IN	IN
995	3/6/2019	Mease Photographs: Peas Island (38178-38237)	IN	IN	IN
996	3/29/2019	Mease Photographs: Peas Island (040867-040881)	IN	IN	IN
997	4/15/2019	Mease Photographs: Peas Island (40984-041041)	IN	IN	IN
998	1/1/2007	Fire Marshall Inspection Orders of Clubhouse			
999	11/3/2016	Smits Photo of Unit 1635 PVC Fire Sprinkler Pipe			
1000		Test Samples	Not provided		
1001		Test Samples	Not provided		
1002		Test Samples	Not provided		
1003		Test Samples	Not provided		
1004		Test Samples	Not provided		
1005		Test Samples	Not provided		
1006		Test Samples	Not provided		
1007		Test Samples	Not provided		
1008		Test Samples	Not provided		
1009		Test Samples	Not provided		
1010		Test Samples	Not provided		
1013	5/8/2018	Remnants from 1622/1624 Privacy Wall			
1017	10/5/2018	Schweickhardt Photos			
1019	12/11/2018	Schweickhardt Floor OOL Photos			
1021	1/29/2019	ABS (LEP) Unit 1622 Photos			
1023	3/6/2019	Schweickhardt AJS Unit 1621 Photos			
1038	1/25/2019	Handegan's Revised Estimate Supplement (Palmetto Pointe 38154-38157)			
1039	11/26/2018	Lowcountry Home Inspection, Inc.'s Photos			
1040	8/20/2018	Mease Photographs: Peas Island			
1041	9/20/2017	Mease Photographs: Peas Island			
1042	10/13/2016	Mease Photographs: Peas Island			
1043	10/18/2018	Mease Photographs: Peas Island			
1044	6/16/1987	City of Folly Beach Ordinance 87-16			
1045	10/14/2009	CCRR-0143 – Southern Vinyl			

Ex. No	Date	Description	CBC	TCR & JMC	Vasquez & Miracle
1046	5/8/2018	Buckley Video of 1622/24 Privacy Wall			
1047	5/1/2019	TCR 10th Supp Resp			

From: Justin Lucey <jlucey@lucey-law.com>
Sent: Wednesday, May 15, 2019 7:58 AM
To: McCoy, Jennifer Law Clerk (Alexandra Heaton); jmccoyj@sccourts.org
Cc: ademato@yclaw.com; laura knight; shatch@clawsonandstaubes.com; Rett Kendall; Jennifer Zambriczki; McCoy, Jennifer B. Secretary (Kathryn B. Stone); Stephanie Drawdy; Josh Evans; Buckley, Edward D. (Ed); Andrew Cole; Christopher Adams; Bo Wilson; Brandon Reeser; Wendy McCravy; Chris Ramsey; Jim Atkins; Kellie Hunt; Troy Thames; Tarsha M. Jefferson; Richelle Campbell; leonardtbrowne@gmail.com; Jasmine Wyman; Cerchione, Carla; Brent M. Boyd
Subject: Re: Palmetto Pointe v. Island Pointe, et al (Case No. 2015CP1000955): Plaintiffs' Notices of Publication
Attachments: Jury Charge Draft Palmetto Point 2019 PL Exceptions & Comments 5.15.19.docx; Verdict Form v. 3.doc

Ms. Heaton/Judge McCoy

Plaintiffs comments and exceptions to the proposed charge is attached.

Also attached is Plaintiffs' proposed verdict form.

Justin Lucey

On Tue, May 14, 2019 at 6:03 PM Justin Lucey <jlucey@lucey-law.com> wrote:

Ms Heaton/Judge:

Plaintiffs will be dismissing their claims against Island Point, LLC tomorrow morning. SCUTPA will not need to be charged.

Justin Lucey

On May 14, 2019, at 5:16 PM, McCoy, Jennifer Law Clerk (Alexandra Heaton) <jmccoyle@sccourts.org> wrote:

Counsel:

A draft of the jury charges is attached. Please let us know if there are any additions, deletions, or corrections you would like made to this draft.

Thanks!

Alex

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
PALMETTO POINTE AT PEAS	)	CASE NO. 2015-CP-10-0955
ISLAND CONDOMINIUM PROPERTY	)	
OWNERS ASSOCIATION, INC. AND	)	
JACK LOVE, INDIVIDUALLY, AND	)	
ON BEHALF OF ALL OTHERS	)	
SIMILARLY SITUATED,	)	
	)	
	)	
PLAINTIFFS,	)	
	)	
vs.	)	VERDICT FORM
	)	
ISLAND POINTE, LLC, et al,	)	
	)	
DEFENDANTS.	)	
	)	

1) We, the jury, find for the Plaintiffs against the following Defendants on the cause of action for Breach of Implied Warranty (select all that apply):

a)	Yes / No (Circle one)	Complete Building Corporation;
b)	Yes / No (Circle one)	TriCounty Roofing;
c)	Yes / No (Circle one)	WC Services;
d)	Yes / No (Circle one)	Wilson Lucas Sales d/b/a Miracle Siding;
e)	Yes / No (Circle one)	Eloy Vasquez.

2) We, the jury, find for the Plaintiffs against the following Defendants on the cause of action for Negligence (select all that apply):

a)	Yes / No (Circle one)	Complete Building Corporation;
b)	Yes / No (Circle one)	TriCounty Roofing;

- c) Yes / No (Circle one) WC Services;
- d) Yes / No (Circle one) Wilson Lucas Sales d/b/a Miracle Siding;
- e) Yes / No (Circle one) Eloy Vasquez.

(Answer next questions only if one or more subparts in the first two (2) questions were found in favor of the Plaintiffs)

- 3) If the answer to any of the subparts to the foregoing two (2) questions is in favor of the Plaintiffs, set forth below your award of damages to the Plaintiffs:

(\$_____)

- 4) How much of the foregoing damage award was for damages relating to the fire resistance/suppression components at Peas Island:

(\$_____)

- 5) If you find that any of the Defendants acted with gross negligence, or with conscious or reckless disregard for the truth or Plaintiffs' rights, so indicate by circling Yes below. Otherwise, circle No below:

- a) Yes / No (Circle one) Complete Building Corporation;
- b) Yes / No (Circle one) TriCounty Roofing;
- c) Yes / No (Circle one) WC Services;
- d) Yes / No (Circle one) Wilson Lucas Sales d/b/a Miracle Siding;
- e) Yes / No (Circle one) Eloy Vasquez.

6) If your answer to the forgoing question (5) was yes, how much do you award against the specified Defendants in punitive damages?

a) Complete Building Corporation:

(\$_____)

b) TriCounty Roofing:

(\$_____)

c) WC Services:

(\$_____)

d) Wilson Lucas Sales d/b/a Miracle Siding:

(\$_____)

e) Eloy Vasquez:

_____ (\$_____)

Date: _____

Presiding Juror