

20350

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Case No. 2010-CP-40-06486

RECEIVED

APR 22 2013

SC Court of Appeals

Kevin Schumacher, ... Appellant,

v.

Lance Hoover, ... Respondent.

RECORD ON APPEAL VOLUME I

Kirby D. Shealy III, SC Bar # 11556
Ellis, Lawhorne & Sims, P.A.
1501 Main Street, Fifth Floor
Columbia, South Carolina 29201
(803) 254-4190
Attorneys for Appellant

James Edward Bradley, SC Bar # 66130
Margaret Amelia Hazel, SC Bar # 100634
Moore, Taylor & Thomas, P.A.
1700 Sunset Boulevard (Hwy 378)
West Columbia, South Carolina 29169
(803) 796-9160
Attorneys for Respondent

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STATE OF SOUTH CAROLINA
COUNTY OF _____
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 10 CP- 40-6486

Kevin SchumacherLance Hoover

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☒ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCPP; ☐ Rule 41(a), SCRCPP (Vol. Nonsuit); ☐ Rule 43(k), SCRCPP (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCPP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court: Verdict for the defendant.

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.
Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

2012 JAN -6 AM 10:21
 JEANETTE W. McBRIDE
 C.C.P. & G.S.
 FILED
 RICHLAND COUNTY

R. Denny M. P. [Signature]
Circuit Court Judge

2061
Judge Cod

1-6-12
Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 6th day of Jan., 2012 to attorneys of record or to parties (when appearing pro se) as follows:

Kirby D. Shealy, III

James E. Bradley

ATTORNEY(S) FOR THE PLAINTIFF(S)

[Signature]
ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2010 CP-40-06486

Kevin Schumacher

Lance Hoover

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: James Edward Bradley

Attorney for : ☐ Plaintiff ☒ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Lance Hoover	Kevin Schumacher	\$30,910.93
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge
SCRCP Form 4C (12/2011)

Judge Code

Date

Page 1

For Clerk of Court Office Use Only

This judgment was entered on the 22 day of Nov, 2012 and a copy mailed first class or placed in the appropriate attorney's box on this 22 day of Nov, 2012 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

Janette W. White
ATTORNEY(S) FOR THE DEFENDANT(S)
CLERK OF COURT

Court Reporter:

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Kevin Schumacher,)
Plaintiff,)

C/A No. 2010-CP-40-06486

vs.)

ORDER

Lance Hoover,)
Defendant.)

FILED
2012 MAY 23 PM 12:05
CLERK OF COURT
C.C.P. & C.S.

RICHLAND COUNTY
FILED

I. INTRODUCTION

The Court tried this landlord tenant dispute January 3, 4, and 5, 2012. During the trial of this case, the parties agreed that matters regarding attorney fees and the entry of damages on the Defendant's Counterclaim would be taken up by way of post trial motions. The case was tried to the jury which found against the Plaintiff Kevin Schumacher on his claim for rent and in favor of the Defendant Lance Hoover on his claim for a return of his security deposit.

After the verdict, the Court invited Lance Hoover to submit motions for fees and costs as well as an entry of a monetary judgment on the Defendant's Counterclaim.

After consideration of Lance Hoover's motion for fees, costs and entry of monetary judgment as well as the Affidavit of James Edward Bradley regarding fees and costs in this matter, the Court enters judgment as follows:

1. Attorney Fees \$19,549.20;
2. Costs \$4,161.73; and
3. Damages on Counterclaim \$7,200.
4. Trial judgment against Kevin Schumacher of $\$19,549.20 + \$4,161.73 + \$7,200 =$
\$30,910.93.



5. Interest is to run from the date of this Order at the rate of 7.25 percent as indicated by the January 4, 2012 Order of Chief Justice Jean Toal.

II. DISCUSSION

1. Attorney Fees

a. An award of attorney fees is proper under the contract and the law.

During the trial of this matter, the parties agreed that any entry of attorney fees would be taken up by the Court after a verdict based upon the evidence presented. In review of the evidence, it appears that the lease entered as Defendant's Exhibit 1 calls for the prevailing party to recover both attorney fees and costs. ~~Paragraph 13 of the Lease reads as follows: "The~~ prevailing party shall be entitled to all costs incurred in connection with any legal action brought by either party to enforce the terms hereof or relating to the demised premises, including reasonable attorney fees." In addition, the South Carolina Residential Tenant Act makes provisions for the awarding of attorney fees. South Carolina Code Section 27-40-410(b) indicates that when a landlord fails to return a security deposit the tenant may recover reasonable attorney fees. This award is not discretionary but mandatory with a trial judge who must award the prevailing tenant attorney fees. See, *Prevatte v. Ashbury Arms*, 302 S.C. 413, 396 S.E.2d 642 (Ct. Ap. 1990). In addition, South Carolina Code Section 27-40-610(b) indicates that if a landlord's non-compliance with a duty imposed upon him by South Carolina Code Section 27-40-440 (landlord to maintain premises) is willful, the tenant may recover reasonable attorney fees. Based upon the contract in this matter, South Carolina Code Section 27-40-410(b), South Carolina Code Section 27-40-610(b), and *Prevatte v. Asbury Arms*, 302 S.C. 413, 396 S.E.2d 642 (Ct. Ap. 1990), the Court finds that an award of attorney fees is proper to Lance Hoover as the prevailing tenant in this matter.



b. Lance Hoover is the prevailing party.

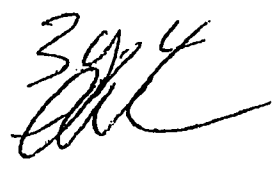
The Court finds that Lance Hoover is the prevailing party. This matter was brought by Kevin Schumacher to enforce a lease alleging a breach of lease and breach of contract. In response, Lance Hoover alleged that Kevin Schumacher had failed to properly maintain the premises in a fit and habitable condition and had failed to return the security deposit. The jury found against Mr. Schumacher and in favor of Lance Hoover on his Counterclaim. For this reason, the Court finds that Lance Hoover is the prevailing party in this matter and entitled to an award of attorney fees.

~~**c. The fees requested are reasonable.**~~

The Court has closely reviewed the motion for attorney fees as well as the Affidavit of James Edward Bradley. The Court finds that an award of attorney fees is appropriate in the amounts requested. The Court finds upon review of the entire affidavit that the amounts requested are reasonable in nature and amount. Mr. Bradley has submitted a detailed hourly invoice showing charges at the rate of \$200 an hour which the Court finds is a fair and reasonable rate prevailing in Richland County for litigation of this sort. The Court finds that the fees and costs are reasonable in this matter and awards fees in the amount of \$19,549.20 and costs in the amount of \$4,161.73.

2. Counterclaim for Deposit

In addition, Lance Hoover prevailed in his Counterclaim for a wrongful withholding of the security deposit. The evidence presented in trial shows the security deposit was \$2,400, and the security deposit was not returned. The jury found that Lance Hoover was entitled to a return of his security deposit. Under South Carolina Code Section 27-40-410(b) "[i]f the landlord fails to return to tenant any prepaid rent or security/rental deposit ... the tenant may recover the



property and money in an amount equal to three times the amount wrongfully withheld...." The word 'may' in this sentence has been found to be mandatory as an election of remedies to the tenant. *See, Provatto v. Asbury Arms*, 302 S.C. 413, 396 S.E.2d 642 (Ct. Ap. 1990). For this reason, it is proper to enter a judgment in accord with the jury's verdict. The jury found that Lance Hoover's \$2,400 security deposit was wrongfully withheld. For this reason, the Court enters judgment on that verdict in the amount of three times \$2,400 or \$7,200.

III. CONCLUSION

For the reasons indicated above, the Court enters judgment in favor of Lance Hoover as follows:

Attorney Fees \$19,549.20;

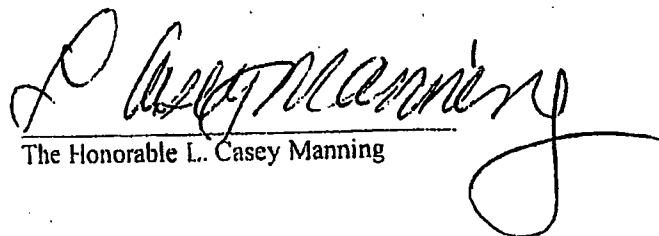
Costs \$4,161.73;

Statutory Damages \$7,200;

Total: \$30,910.93

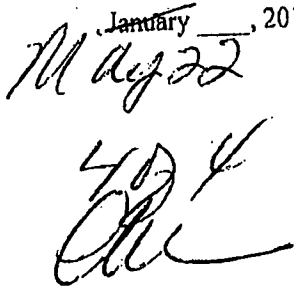
This amount is to draw interest at the rate of 7.25 percent from the date of this Order as indicated in the January 4, 2012 Order of the Honorable Jean Toal.

AND IT IS SO ORDERED.


The Honorable L. Casey Manning

Columbia, South Carolina

January 22, 2012



STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Kevin Schumacher,

☒ Plaintiff

v.

Lance Hoover

☐ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.
2010-CP-40-06486

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:

Kirby D. Shealy, Bar No 11556
Address: PO Box 2285 (29202)
1501 Main Street, Fifth Floor, Columbia, SC 29201
phone: 803-254-4190 fax: 803-779-4749
e-mail: kshealy@ellislawhorne.com other:

Defendant's Attorney:

James Edward Bradley, Bar No. 66130
Address: P. O. Box 5709, West Columbia, SC 29171
phone: 803-796-9160 fax: 803-791-8410
e-mail: ward@mttlaw.com other:

- ☒ **MOTION HEARING REQUESTED** (attach written motion and complete SECTIONS I and III)
☐ **FORM MOTION, NO HEARING REQUESTED** (complete SECTIONS II and III)
☐ **PROPOSED ORDER/CONSENT ORDER** (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion To Continue

Estimated Time Needed:

Court Reporter Needed: ☐ YES / ☒ NO

SECTION II: Motion/Order Type

- ☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff / ☐ Defendant

January 17, 2012
Date submitted

SECTION III: Motion Fee

☒ **PAID - AMOUNT:** 25.00

- ☐ **EXEMPT:** (check reason)
- ☐ Rule to Show Cause in Child or Spousal Support
 - ☐ Domestic Abuse or Abuse and Neglect
 - ☐ Indigent Status ☐ State Agency v. Indigent Party
 - ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
 - ☐ Motion for Stay in Bankruptcy
 - ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)
 - ☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

☐ Other:

JUDGE'S SECTION

- ☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

JUDGE

CODE: Date:

CLERK'S VERIFICATION

Collected by: _____

Date Filed: _____

- ☐ **MOTION FEE COLLECTED:** _____
☐ **CONTESTED - AMOUNT DUE:** _____

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Kevin Schumacher,

Plaintiff,

v.

Lance Hoover,

Defendant.

IN THE COURT OF COMMON PLEAS

C/A No.: 2010-CP-40-06486

**PLAINTIFF'S MOTION FOR
JUDGMENT NOTWITHSTANDING
THE VERDICT**

2012 JAN 17 PM 2:47
JEANETTE W. MERRID
C.C.P. & G.S.

RICHLAND COUNTY
FILED

TO: JAMES EDWARD BRADLEY, ESQUIRE, ATTORNEY FOR DEFENDANT:

YOU WILL PLEASE TAKE NOTICE that Plaintiff, by and through his undersigned attorneys, hereby moves pursuant to Rule 50(b) of the *South Carolina Rules of Civil Procedure* to have the jury's verdict and any judgment thereon set aside and to have judgment entered in accordance with Plaintiff's Motion for a directed verdict made at the close of all evidence introduced at the trial in this case, the grounds for which are restated below.

The undersigned hereby affirms that the presiding judge at the trial of this action is being provided with a copy of this Motion pursuant to Rule 50(f) simultaneous with its filing.

GROUND FOR MOTION

At the close of the Defendant's case-in-chief, Plaintiff moved for a directed verdict on the grounds that there was no genuine issue of material fact from the evidence presented, and the case only presented a question of law for the Court to decide in Plaintiff's favor. Plaintiff's cause of action against Defendant arose from Defendant's termination of a residential lease agreement between the parties. The South Carolina Residential Landlord and Tenant Act provides the manner and basis upon which a tenant may terminate a residential lease prior to its expiration:

(a) Except as provided in this chapter, if there is a material noncompliance by the landlord with the rental agreement or a noncompliance with § 27-40-440 materially affecting health and safety or the physical condition of the property, the tenant may deliver a written notice to the landlord specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than fourteen days after receipt of the notice if the breach is not remedied within fourteen days. The rental agreement shall terminate as provided in the notice except that:

(1) The rental agreement shall not terminate by reason of the breach:

(i) if the breach is remedied by repairs or otherwise and the landlord adequately remedies the breach before the date specified in the notice; or

(ii) if such remedy for a breach not affecting health and safety cannot be remedied within fourteen days, but is commenced within the fourteen-day period and is pursued in good faith to completion within a reasonable time.

(2) The tenant may not terminate for a condition caused by the deliberate or negligent act or omission of the tenant, a member of his family, or other person on the premises with the tenant's permission or who is allowed access to the premises by the tenant.

S.C. Code Ann. § 27-40-610(a)(1)(i-ii) and (2) (2007). Taken in the light most favorable to the Defendant, the evidence indicated that the home Defendant rented from Plaintiff had a mold problem which reasonably fall in within the parameters of "a noncompliance with § 27-40-440 materially affecting health and safety."¹ Section 27-40-610 indicates that in such situations, the

¹ Section 27-40-440 reads, in pertinent part:

(a) A landlord shall:

(1) comply with the requirements of applicable building and housing codes materially affecting health and safety;

(2) make all repairs and do whatever is reasonably necessary to put and keep the premises in a fit and habitable condition;

(3) keep all common areas of the premises in a reasonably safe condition, and, for premises containing more than four dwelling units, keep in a reasonably clean condition;

(4) make available running water and reasonable amounts of hot water at all times and reasonable heat except where the building that includes the dwelling unit is not required by law to be equipped for that purpose, or the dwelling unit is so constructed that heat or

tenancy can terminate if two things occur: (1) the tenant provides the landlord with written notice of the problem and that the tenancy will end if the problem is not corrected within fourteen (14) days; and (2) the landlord fails to rectify the problem within fourteen (14) days.

At trial, the evidence indicated that the Defendant provided Plaintiff with written notice of the termination of the lease on September 3, 2010. (Plaintiff's Exhibit 9). The notice came in the form of an email from Defendant's real estate agent, Todd Beckstrom, to Plaintiff. No other evidence was presented by either party, either in the form of another such writing or in the form of testimony from a witness, that would create a genuine issue of material fact as to the date and form of the required notice of termination.

From September 3, 2010, Plaintiff had until September 17, 2010 to remedy the problem and avoid the termination of the tenancy. Evidence in the record indicated that Plaintiff was prepared to remedy the problem on or about September 12, 2010, but Plaintiff was not allowed to do so. (*See, e.g.*, Plaintiff's Exhibit 29; Defendant's Exhibits 4, 5, 15, and 16). Plaintiff testified that he was ready to perform the mold remediation on September 12, but he was told by Defendant in a conversation that occurred that day that he would not be allowed in the residence to make the necessary repairs until the Defendant and his family had vacated the premises. Plaintiff's Exhibit 28 further corroborated this testimony, as the mold remediation company Plaintiff hired was not allowed into the house on September 21, 2010, a full week after

hot water is generated by an installation within the exclusive control of the tenant and supplied by a direct public utility connection;

(5) maintain in reasonably good and safe working order and condition all electrical, gas, plumbing, sanitary, heating, ventilating, air conditioning, and other facilities and appliances, including elevators, supplied or required to be supplied by him. Appliances present in the dwelling unit are presumed to be supplied by the landlord unless specifically excluded by the rental agreement. No appliances or facilities necessary to the provision of essential services may be excluded.

S.C. Code Ann. § 27-40-440 (2007).

Defendant had moved his family out of the residence. The date that the Defendant moved was testified to variously, but it was either September 15 or 16, as evidenced by Plaintiff's Exhibit 5 and the testimony of both Monica Hoover and the Defendant.

There was no evidence in the record from which a jury could conclude that Defendant had afforded Plaintiff the opportunity to correct the mold problem within fourteen (14) days after he notified Plaintiff of his intention to terminate the lease. Therefore, the Court should have directed a verdict in Plaintiff's favor as to his claim for wrongful termination of the lease, leaving only the issue of damages to be determined by the jury.

Concomitantly, a directed verdict on Plaintiff's claim for wrongful or improper termination of the lease would have meant that Defendant's claim for the return of his security deposit was unsupported by the evidence. Defendant brought his claim pursuant to S.C. Code Ann. § 27-40-410 (2007), which states:

(a) Upon termination of the tenancy, property or money held by the landlord as security must be returned less amounts withheld by the landlord for accrued rent and damages which the landlord has suffered by reason of the tenant's noncompliance with Section 27-40-510. Any deduction from the security/rental deposit must be itemized by the landlord in a written notice to the tenant together with the amount due, if any, within thirty days after termination of the tenancy and delivery of possession and demand by the tenant, whichever is later. The tenant shall provide the landlord in writing with a forwarding address or new address to which the written notice and amount due from the landlord may be sent. If the tenant fails to provide the landlord with the forwarding or new address, the tenant is not entitled to damages under this subsection provided the landlord (1) had no notice of the tenant's whereabouts and (2) mailed the written notice and amount due, if any, to the tenant's last known address.

(b) If the landlord fails to return to the tenant any prepaid rent or security/rental deposit with the notice required to be sent by the landlord pursuant to subsection (a), the tenant may recover the property and money in an amount equal to three times the amount wrongfully withheld and reasonable attorney's fees.

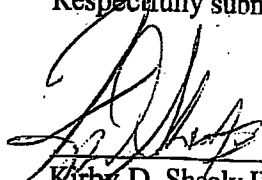
S.C. Code Ann. § 27-40-410 (2007). This section only applies if, after the tenancy has terminated, the landlord withholds amounts from the security deposit *because of accrued rent or*

the tenant's failure to maintain the dwelling in accordance with the tenant's responsibilities, as set forth in S.C. Code Ann. § 27-40-510. In such circumstances, the landlord is required to itemize the amount of accrued rent (i.e., if the tenant stays in the dwelling without paying rent) or expenses he incurs for repairs, cleaning, etc., and to provide a tenant with an accounting. The statute has no application in the case before the Court, where a tenant terminates a tenancy without just cause, as the primary purpose of a security deposit is to provide the landlord with security against the tenant's failure to pay all of the rent due under the lease. (See, e.g., Plaintiff's Exhibit 1, ¶ 11). Furthermore, as was testified to by the Defendant and the Defendant's wife, Plaintiff commenced an action for breach of the lease agreement on September 17, 2010, which satisfies the requirements of section 27-40-410, as Plaintiff's complaint informed Defendant of the reason why the security deposit was withheld.

CONCLUSION

For the foregoing reasons, Plaintiff hereby requests that the jury's verdict in this case be set aside and that judgment be entered in Plaintiff's favor on his claim for wrongful termination of the lease between the parties. Because this relief requested by Plaintiff would not dispose of this matter outright, but would require a new trial to determine Plaintiff's damages, Plaintiff would also request that a new trial be had on that issue.

Respectfully submitted,



Kirby D. Shealy III
ELLIS, LAWHORNE & SIMS, P.A.
1501 Main Street - 5th Floor (29201)
P. O. Box 2285
Columbia, SC 29202
Telephone: (803) 254-4190

Fax: (803) 779-4749

E-Mail: kshealy@ellislawhorne.com

Attorney for Plaintiff

January 17, 2012

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Kevin Schumacher,)

Plaintiff,)

vs.)

Lance Hoover,)

Defendant.)

C/A No. 2010-CP-40-06486

MOTION FOR ENTRY OF
ATTORNEY FEES
AND DAMAGE AWARD

The Defendant Lance Hoover hereby moves for the Court to award him attorney fees and enter damages on his counterclaim in this matter.

INTRODUCTION

This matter concerns a landlord tenant dispute which was tried before the Court on January 3, 4, and 5, 2012.

During the trial, the parties agreed that an award of attorney fees would be made by motion and Court order at the conclusion of the case. In addition, the parties agreed and the Court ruled that in the event the jury found for the Defendant on his counterclaim, the Court would enter a damage amount on that finding.

The verdict came back from the jury in favor of the Defendant Lance Hoover against the Plaintiff Kevin Schumacher on the Plaintiff's claim and in favor of Lance Hoover on his Counterclaim.

Lance Hoover hereby moves for an entry of his attorney fees and costs in the amount of \$23,710.93. The justification for these fees and costs is set forward in the Affidavit of James Edward Bradley which is submitted along with this motion.

The Defendant is entitled to attorney fees because the lease at issue in this matter indicates at paragraph 13 the following: "The prevailing party shall be entitled to all costs incurred in connection with any legal action brought by either party to enforce the terms hereof or relating to the demised premises, including reasonable attorney fees." This lease was a part of the action and introduced as Defendant's Exhibit 1 in the lawsuit.

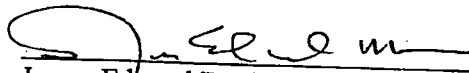
In addition, South Carolina Code Section 27-40-410 indicates that when a landlord fails to return a security deposit, a tenant is entitled to reasonable attorney fees. In addition, South Carolina Code Section 27-40-610 entitled "Non-Compliance By A Landlord In General" indicates in subsection B that a tenant may recover reasonable attorney fees when a landlord has not complied with South Carolina Code Section 27-40-440. South Carolina Code Section 27-40-440 sets forth the duties of the landlord to maintain the premises which requires that a landlord "make all repairs and do whatever is reasonably necessary to put and keep the premises in a fit and habitable condition." For these reasons, Lance Hoover is entitled to an award of his attorney fees and costs and seeks an award in the amount of \$19,549.20 attorney fees and \$4,161.73 costs as detailed in the Affidavit of James Edward Bradley which is filed and served along with this motion.

In addition, Lance Hoover seeks the return of his \$2,400 security deposit along with treble damages as allowed by South Carolina Code Section 27-40-410(b). At trial, the evidence presented was that the security deposit retained by the Plaintiff Kevin Schumacher was \$2,400. The jury found against Mr. Schumacher on his claims and in favor of the Defendant Lance Hoover on his counterclaim for a return of his security deposit pursuant to South Carolina Code Section 27-40-410(b). This statute entitles a prevailing tenant to attorney fees as a matter of right as well as a trebling of damages. See *Prevatte v. Asbury Arms*, 302 S.C. 413, 396 S.E.2d

642 (Ct. Ap. 1990). The statute provides that "a tenant may recover the property and money in an amount equal to three times the amount wrongfully withheld and reasonable attorney fees." Based upon the statute, the rulings of the Court during the trial in this matter, and the stipulations of the parties, Lance Hoover asks that this Court award him three times the amount of his security deposit as found by the jury on his counterclaim. This amount would be three times \$2,400 or \$7,200.

In conclusion, based on the jury's verdict in this matter, Lance Hoover asks for an award of \$19,549.20 in attorney fees, \$4,161.73 in costs, and \$7,200 in damages for a total award of \$30,910.93 along with post judgment interest at the rate of 7.25 percent as indicated in the January 4, 2012 Order of the Honorable Jean Toal.

Respectfully Submitted,



James Edward Bradley
MOORE, TAYLOR & THOMAS, P.A.
1700 Sunset Boulevard
P.O. Box 5709
West Columbia, SC 29171
(803) 796-7160
(803) 791-8410
ward@mttlaw.com

West Columbia, South Carolina

January 17, 2012

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Kevin Schumacher,

Plaintiff,

vs.

Lance Hoover,

Defendant.

IN THE COURT OF COMMON PLEAS

C/A No. 2010-CP-40-06486

AFFIDAVIT OF
JAMES EDWARD BRADLEY

1. I am over the age of 18 and otherwise qualified to give sworn testimony in Court.
2. I have represented Lance Hoover in this matter.
3. I have expended attorney fees to defend Dr. Hoover.
4. I attach a summary of the costs and fees incurred in this matter showing the hours devoted to this matter as well as the costs incurred to third party providers. (Exhibit A).
5. The total attorney fees expended by our law firm in this matter to date are \$19,549.20. The total costs incurred to date are \$4,161.73. An itemization of these fees and costs is attached to this affidavit as Exhibit A.
6. I charged Dr. Hoover \$200 per hour in this matter.
7. I was admitted to practice law in 1993 by the South Carolina Supreme Court. I am a graduate of the University of South Carolina School of Law where I served on the Moot Court Board, the National Moot Court Team, the Law Review, and student government. A copy of my resume showing my activities in law school and some of my professional activities is attached as Exhibit B to this affidavit.

8. Since graduating law school, I have clerked for Don S. Rushing who was a state circuit court judge. I clerked for Federal District Judge G. Ross Anderson, Jr. I then worked at the McNair Law Firm as an associate in commercial litigation for two years.

9. In 1997, I came to work at Moore, Taylor & Thomas, P.A., where I work now as a partner in this law firm.

10. I have tried a significant number of jury trials. I have been invited into membership in the American Board of Trial Advocates (ABOTA) which is an invitation only organization of lawyers who try cases before juries. In order to be considered for membership in ABOTA, a particular lawyer must have tried at least 25 cases to verdict before a jury. I have tried more cases than this to a verdict before juries.

11. I have also been designated a super lawyer by the Super Lawyer publication for South Carolina, and I carry an AV rating from the Martindale Hubble Peer Review Rating Service.

12. As to the extent of difficulty of the legal services rendered in this matter, there were depositions taken in this matter by counsel for the Plaintiff Kirby Shealy. In addition, the case involved questions of landlord tenant law and real estate law. The case was hotly contested. It involved environmental questions of mold and remediation and numerous documents.

13. As to the time and labor necessarily devoted to this case, I attach a copy of the hours I spent on this case as well as an explanation for the work done.

14. As to the professional standing of counsel, I rely upon my previous statements in this affidavit as well as my attached resume.

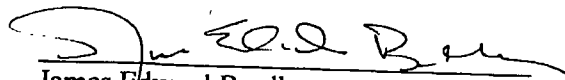
15. As to the contingency of compensation, I handled this matter on an hourly fee basis so there was not a contingency of compensation. Dr. Hoover has paid me the amounts which I have charged him.

16. As to the fee customarily charged for similar services, I believe the fee of \$200 an hour to be reasonable and within the range of what is normally charged for litigation in Richland County.

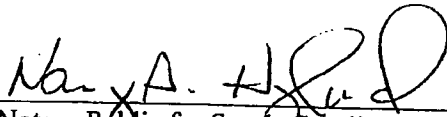
17. As to the beneficial results obtained, after discovery was completed, we tried this case for 3 days and obtained a favorable judgment on the defense and a judgment in the Defendant's favor on counterclaims.

18. Based upon the statements in this affidavit and the attachments, I believe the fees we have charged in this matter are \$19,549.20 and the costs incurred in this matter are \$4,161.73. I believe these fees to be reasonable and reasonably expended on behalf of Lance Hoover.

FURTHER AFFIANT SAYETH NAUGHT.


James Edward Bradley

SWORN to before me this 17th
Day of January 2012


Notary Public for South Carolina
My Commission Expires: 5/28/2018

Lance Hoover

MTT File No. W101646

FEES:		COSTS:
\$5,492.00 (thru 9/30/2011)	PCLaw	\$70.00
\$897.00 (Oct. & Nov. 2011)	Client Profiles (Billed)	\$430.61
\$13,160.20 (12/2011 & 01/2012)	Client Profiles (Pre-Bill)	\$1,921.62

TOTALS: \$19,549.20

\$2,422.23



Costs Paid Directly by Lance Hoover

Mediator's Fee	\$ 250.00
Bio-Tek Environmental Services	\$ 250.00
Applied Building Sciences	\$1,239.50
Total:	\$1,739.50

Jan. 6/2012

MOORE, TAYLOR & THOMAS, P.A.

Client Ledger

ALL DATES

PCLaw

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Date	Entry #	Received From/Paid To Explanation	Chq# Rec#	General	Repts	Disbs	Fees	Bld Inv#	Acc	Trust Activity Repts	Disbs	Balance
118234		Hoover, Lance & Monica										
W101646		Hoover, Lance & Monica v. Schumacher, Kevin										
Sep 22/2010		Billing on Invoice 67594										
	547754	FEES 500.00										
Sep 22/2010		Fees To Lawyer JEB				0.00		67594				
	547755	Consultation Fee										
Sep 22/2010		Hoover, Lance					500.00	67594				
	547757	PMT - Consultation Fee (Ck# 3028)	189419		500.00							
Oct 7/2010		Lawyer: JEB 0.40 Hrs X 200.00										
	574002	Telephone call with K. Shealy regarding status					80.00	71538				
Oct 11/2010		Lawyer: JEB 0.30 Hrs X 200.00										
	574003	Review correspondence from K. Shealy with complaint; Memo regarding same					60.00	71538				
Oct 12/2010		Lawyer: JEB 0.20 Hrs X 200.00										
	574004	Correspondence regarding case and meeting					40.00	71538				
Oct 30/2010		Lawyer: JEB 2.00 Hrs X 200.00										
	574005	Meeting with clients; Draft answer, counterclaim and discovery					400.00	71538				
Nov 5/2010		Hoover, Lance										
	557080	RET - Retainer (Ck# 3037)	190149		3500.00							
Nov 9/2010		Lawyer: NH 0.30 Hrs X 80.00						71538				
	564113	Review and revise documents										
Nov 10/2010		Lawyer: JEB 0.30 Hrs X 200.00					24.00	71538				
	574006	Telephone call with K. Shealy regarding status					60.00	71538				
Nov 11/2010		Lawyer: NH 0.60 Hrs X 80.00										
	564117	Copy, file and serve answer, counterclaim and third-party complaint					48.00	71538				
Nov 15/2010		Lawyer: JEB 0.10 Hrs X 200.00										
	574007	Review memo regarding telephone call with Lance Hoover					20.00	71538				
Nov 18/2010		Lawyer: JEB 0.30 Hrs X 200.00										
	574008	Review correspondence from K. Shealy regarding third party claim; Memorandum regarding service of process					60.00	71538				
Dec 3/2010		Lawyer: NH 0.50 Hrs X 80.00										
	573248	Arrange for service of third party complaint					40.00	71538				
Dec 23/2010		Davis Rudolph										
	566704	Service Fee										
Dec 30/2010		Lawyer: JEB 0.50 Hrs X 200.00				70.00		71538				
	574009	Letter to clients with discovery										
Feb 1/2011		Billing on Invoice 71538					100.00	71538				
	574772	FEES 932.00 DISBS 1002.00				0.00		71538				
Feb 1/2011		RET - Rtnr alloc on Inv: 71538	71538		-3500.00			71538				
Feb 1/2011		RET - Rtnr alloc on Inv: 71538	71538		70.00			71538				
Feb 1/2011		RET - Rtnr alloc on Inv: 71538	71538		112.00			71538				
Feb 1/2011		RET - Rtnr alloc on Inv: 71538	71538		820.00			71538				
Feb 1/2011		RET - Retainers Carried Forward	71538		2498.00			73406				
Feb 1/2011		Hoover, Lance										
	577615	PMT - Correct Rtnr Alloc on Inv. 71538	191662		-112.00							
Feb 1/2011		Hoover, Lance										
	577617	PMT - Correct Rtnr Alloc on Inv. 71538	191663		112.00							
Feb 25/2011		Lawyer: CLK 1.20 Hrs X 70.00										
	587873	Review of file to complete discovery responses and drafting responses to discovery					84.00	73406				
Mar 1/2011		Lawyer: CLK 0.60 Hrs X 70.00										
	587516	Draft responses to interrogatories					42.00	73406				
Mar 4/2011		Lawyer: CLK 4.10 Hrs X 70.00										
	587517	Draft responses to plaintiff's interrogatories and requests for production					287.00	73406				
Mar 7/2011		Lawyer: JEB 0.20 Hrs X 200.00										
	587874	Conference with M. Peters regarding discovery					40.00	73406				
Mar 15/2011		Lawyer: JEB 0.30 Hrs X 200.00										
	587875	Review correspondence from M. Hoover regarding discovery					60.00	73406				
Mar 28/2011		Lawyer: PLGL 0.10 Hrs X 70.00										
	587490	Set up appointment					7.00	73406				
Mar 31/2011		Lawyer: PLGL 0.10 Hrs X 70.00										
	587514	Follow up call on appointment					7.00	73406				
Apr 1/2011		Billing on Invoice 73406										
	588061	FEES 527.00 RCPTS				0.00		73406				

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MOORE, TAYLOR & THOMAS, P.A.

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Date	Entry #	Received From/Paid To Explanation	Chq# Rec#	General Rcpts	Disbs	Fees	Bld Inv#	Acc	Trust Activity Rcpts	Disbs	Balance
		527.00									
Apr 1/2011	588063	RET - Rtnr alloc on Inv: 73406	73406	-2498.00			73406				
Apr 1/2011	588064	RET - Rtnr alloc on Inv: 73406	73406	14.00			73406				
Apr 1/2011	588065	RET - Rtnr alloc on Inv: 73406	73406	413.00			73406				
Apr 1/2011	588066	RET - Rtnr alloc on Inv: 73406	73406	100.00			73406				
Apr 1/2011	588067	RET - Retainers Carried Forward	73406	1971.00			74134				
Apr 1/2011	591345	Hoover, Lance PMT - Correct Rtnr Alloc on Inv. 73406	192705	-413.00							
Apr 1/2011	591347	Hoover, Lance PMT - Correct Rtnr Alloc on Inv. 73406	192706	413.00							
Apr 1/2011	591349	Hoover, Lance PMT - Correct Rtnr Alloc on Inv. 73406	192707	-14.00							
Apr 1/2011	591351	Hoover, Lance PMT - Correct Rtnr Alloc on Inv. 73406	192708	14.00							
Apr 16/2011	591676	Lawyer: NH 0.60 Hrs X 80.00 Prepare discovery responses for service				48.00	74134				
Apr 18/2011	592268	Lawyer: JEB 2.50 Hrs X 200.00 Telephone call with client Monica Hoover regarding motions; Meeting with M. Hoover; Prepare discovery responses; Prepare for motions				500.00	74134				
Apr 19/2011	591576	Lawyer: MBB 2.20 Hrs X 125.00 Research and prepare response to plaintiff's motion to dismiss				275.00	74134				
Apr 19/2011	592196	Lawyer: JEB 2.50 Hrs X 200.00 Review discovery; Prepare for hearing; Telephone call with K. Shealy; Attend hearing				500.00	74134				
Apr 25/2011	592337	Lawyer: JEB 0.30 Hrs X 200.00 Review correspondence from K. Shealy regarding mediation; Reply in writing				60.00	74134				
May 5/2011	594859	Billing on Invoice 74134 FEES 1383.00 RCPTS 1383.00			0.00		74134				
May 5/2011	594861	RET - Rtnr alloc on Inv: 74134	74134	-1971.00			74134				
May 5/2011	594862	RET - Rtnr alloc on Inv: 74134	74134	275.00			74134				
May 5/2011	594863	RET - Rtnr alloc on Inv: 74134	74134	48.00			74134				
May 5/2011	594864	RET - Rtnr alloc on Inv: 74134	74134	1060.00			74134				
May 5/2011	594865	RET - Retainers Carried Forward	74134	588.00			74976				
May 5/2011	597114	Hoover, Lance PMT - Correct Rtnr Alloc on Inv. 74134	193053	48.00							
May 5/2011	597116	Hoover, Lance PMT - Correct Rtnr Alloc on Inv. 74134	193052	-48.00							
May 9/2011	599926	Lawyer: PLGL 0.20 Hrs X 70.00 Set up mediation				14.00	74976				
May 11/2011	599936	Lawyer: PLGL 0.10 Hrs X 70.00 Scheduling mediation				7.00	74976				
Jun 1/2011	600927	Billing on Invoice 74976 FEES 21.00 RCPTS 21.00			0.00		74976				
Jun 1/2011	600929	RET - Rtnr alloc on Inv: 74976	74976	-588.00			74976				
Jun 1/2011	600930	RET - Rtnr alloc on Inv: 74976	74976	21.00			74976				
Jun 1/2011	600931	RET - Retainers Carried Forward	74976	567.00			76216				
Jun 1/2011	604163	Hoover, Lance PMT - Correct Rtnr Alloc on Inv. 74976	193568	-21.00							
Jun 1/2011	604165	Hoover, Lance PMT - Correct Rtnr Alloc on Inv. 74976	193569	21.00							
Jun 6/2011	605468	Lawyer: JEB 1.30 Hrs X 200.00 Draft and send amended Answer; Letter to K. Shealy regarding same; Letter to Hoovers regarding same				260.00	76216				
Jun 6/2011	606767	Lawyer: NH 0.50 Hrs X 80.00 Amend Answer; Copy, serve and file amended answer				40.00	76216				
Jun 13/2011		Lawyer: JEB 0.10 Hrs X 200.00									

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MOORE, TAYLOR & THOMAS, P.A.

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Date	Entry #	Received From/Paid To Explanation	Chq# Rec#	General	Repts	Disbs	Fees	Bld Inv#	Acc	Trust Repts	Activity Disbs	Balance
	605564	Correspondence EMC regarding meeting					20.00	76216				
Jun 16/2011	605974	Lawyer: JEB 0.20 Hrs X 200.00 Letter regarding mediation to Hoovers					40.00	76216				
Jun 17/2011	606066	Lawyer: JEB 0.30 Hrs X 200.00 Review subpoena; Letter to K. Shealy regarding same					60.00	76216				
Jun 24/2011	606109	Lawyer: JEB 0.30 Hrs X 200.00 Review reply to amended answer and counterclaim					60.00	76216				
Jul 1/2011	608769	Billing on Invoice 76216 FEES 480.00 RCPTS 480.00				0.00		76216				
Jul 1/2011	608771	RET - Rtnr alloc on Inv: 76216	76216		-567.00			76216				
Jul 1/2011	608772	RET - Rtnr alloc on Inv: 76216	76216		40.00			76216				
Jul 1/2011	608773	RET - Rtnr alloc on Inv: 76216	76216		440.00			76216				
Jul 1/2011	608774	RET - Retainers Carried Forward Hoover, Lance	76216		87.00			77482				
Jul 1/2011	612027	PMT - Correct Rtnr Alloc on Inv. 76216	194162		-40.00							
Jul 1/2011	612029	PMT - Correct Rtnr Alloc on Inv. 76216 Hoover, Lance	194163		40.00							
Jul 8/2011	618502	Lawyer: PLGL 0.10 Hrs X 70.00 Left voice message for Monica Hoover					7.00	77482				
Jul 14/2011	620007	Lawyer: JEB 0.70 Hrs X 200.00 Review of material from Beckstrom; Correspondence to Beckstrom and NH; Letter to Hoovers					140.00	77482				
Jul 27/2011	617536	Lawyer: JEB 1.20 Hrs X 200.00 Meeting with clients; Telephone call with K. Shealy's Office; Memorandum regarding meeting and new deposition date					240.00	77482				
Aug 3/2011	617871	Lawyer: JEB 0.20 Hrs X 200.00 Correspondence regarding mediation					40.00	77482				
Aug 5/2011	617936	Lawyer: JEB 0.30 Hrs X 200.00 Review deposition notice; Letter to clients regarding same					60.00	77482				
Aug 10/2011	618069	Lawyer: JEB 0.20 Hrs X 200.00 Correspondence regarding deposition					40.00	77482				
Aug 18/2011	618138	Lawyer: JEB 0.50 Hrs X 200.00 Review documents from K. Shealy; Letter to clients regarding same					100.00	77482				
Aug 23/2011	618503	Lawyer: PLGL 0.30 Hrs X 70.00 Telephone calls scheduling mediation					21.00	77482				
Aug 24/2011	618504	Lawyer: PLGL 0.10 Hrs X 70.00 Telephone calls confirming depositions					7.00	77482				
Aug 24/2011	618505	Lawyer: PLGL 0.20 Hrs X 70.00 Calls regarding change of plans for depositions					14.00	77482				
Aug 25/2011	618419	Lawyer: JEB 2.00 Hrs X 200.00 Attend deposition of Lance Hoover					400.00	77482				
Sep 1/2011	620257	Billing on Invoice 77482 FEES 1069.00 RCPTS 87.00			0.00			77482				
Sep 1/2011	620259	RET - Rtnr alloc on Inv: 77482	77482		-87.00			77482				
Sep 1/2011	620260	RET - Rtnr alloc on Inv: 77482	77482		3.99			77482				
Sep 1/2011	620261	RET - Rtnr alloc on Inv: 77482 Hoover, Lance	77482		83.01			77482				
Sep 1/2011	624143	PMT - Correct Rtnr Alloc on Inv. 77482	194996		-3.99							
Sep 1/2011	624145	PMT - Correct Rtnr Alloc on Inv. 77482 Hoover, Lance	194997		3.99							
Sep 14/2011	623437	Lawyer: JEB 0.80 Hrs X 200.00 Telephone call with K. Shealy regarding trial schedule; Telephone calls (2) with client regarding trial					160.00	78734				
Sep 14/2011	625815	Lawyer: JEB 0.20 Hrs X 200.00 Correspondence K. Shealy regarding continuance					40.00	78734				
Sep 26/2011		Hoover, Lance & Monica										

Jan- 6/2012

MOORE, TAYLOR & THOMAS, P.A.

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Date	Entry #	Received From/Paid To Explanation	Chq# Rec#	General	Disbs	Fees	Bld Inv#	Trust Activity	Disbs	Balance
	624428	PMT - Fee (CK #3545)	195060	982.00						
Sep 29/2011	625686	Lawyer: JEB: 0.20 Hrs X 200.00 Review deposition notice and memorandum regarding same				40.00	78734			
Sep 30/2011	625690	Lawyer: JEB: 1.30 Hrs X 200.00 Meeting with M. Hoover; Plan strategy; Letter to clients				260.00	78734			
Sep 30/2011	625691	Lawyer: JEB: 0.40 Hrs X 200.00 Telephone call with Judge Lee and K. Shealy regarding scheduling				80.00	78734			
Oct 1/2011	627883	Billing on Invoice 78734 FEES 580.00								
				0.00			78734			

TOTALS	CHE	UNBILLED	RECOV	FEES	TOTAL	DISBS	FEES	TAX	RECEIPTS	BALANCES	TRUST
PERIOD	0.00	0.00	0.00	0.00	0.00	70.00	5492.00	0.00	4982.00	580.00	0.00
END DATE	0.00	0.00	0.00	0.00	0.00	70.00	5492.00	0.00	4982.00	580.00	0.00

FIRM TOTAL	CHE	UNBILLED	RECOV	FEES	TOTAL	DISBS	FEES	TAX	RECEIPTS	BALANCES	TRUST
PERIOD	0.00	0.00	0.00	0.00	0.00	70.00	5492.00	0.00	4982.00	580.00	0.00
END DATE	0.00	0.00	0.00	0.00	0.00	70.00	5492.00	0.00	4982.00	580.00	0.00

REPORT SELECTIONS - Client Ledger

Layout Template Default
 Advanced Search Filter None
 Requested by Nancy
 Finished Friday, January 06, 2012 at 01:50:21 PM
 Ver 10.0 SP4 (10.0.20100527)
 Matters W101646
 Clients All
 Major Clients All
 Client Intro Lawyer All
 Matter Intro Lawyer All
 Responsible Lawyer All
 Assigned Lawyer All
 Type of Law All
 Select From Active, Inactive, Archived Matters
 Matters Sort by Default
 New Page for Each Lawyer No
 New Page for Each Matter No
 No Activity Date Dec 31/2199
 Firm Totals Only No
 Totals Only No
 Entries Shown - Billed Only No
 Entries Shown - Disbursements Yes
 Entries Shown - Receipts Yes
 Entries Shown - Time or Fees Yes
 Entries Shown - Trust Yes
 Incl. Matters with Retainer Bal No
 Incl. Matters with Neg Unbld Disb No
 Trust Account All
 Working Lawyer All
 Include Corrected Entries No
 Show Check # on Paid Payables No
 Show Client Address No
 Consolidate Payments No
 Show Trust Summary by Account No
 Show Interest No
 Interest Up To Jan 6/2012
 Show Invoices that Payments Were Applied to No
 Display Entries in Date Order



Moore, Taylor & Thomas, P.A.
P.O. Box 5709
West Columbia, SC 29171
Tax I.D. Number: 57-0808395

Client Profiles
- Billed

Ph:(803) 796-9160

Fax:(803) 791-8410

Lance & Monica Hoover
Hoover, Lance & Monica
324 Running Fox Road
Columbia, SC 29223

November 30, 2011
Invoice Number: 79626
File Number: W101646
Billed through: 11/30/2011

RE: W101646 - Hoover, Lance & Monica v. Schumacher, Kevin

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER

TOTAL FEES

DISBURSEMENTS:

Deposition Transcript Lance Hoover

\$229.20

TOTAL DISBURSEMENTS:

\$229.20

TOTAL FEES	\$0.00
TOTAL DISBURSEMENTS	\$229.20
PLUS PREVIOUS BALANCE	\$0.00
LESS PAYMENTS RECEIVED	-\$229.00
BALANCE DUE NOW	\$0.20



Moore, Taylor & Thomas, P.A.
P.O. Box 5709
West Columbia, SC 29171
Tax I.D. Number: 57-0808395

Ph:(803) 796-9160

Fax:(803) 791-8410

Lance & Monica Hoover

Hoover, Lance & Monica
324 Running Fox Road
Columbia, SC 29223

December 01, 2011

Invoice Number: 79746
File Number: W101646
Billed through: 10/31/2011

RE: W101646 - Hoover, Lance & Monica v. Schumacher, Kevin

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
Oct-12-11	Telephone call with client, Kirby Shealy, and court reporter to confirm deposition	0.10	\$7.00	EMC
Oct-13-11	Telephone Conference with Client Monica Hoover to cancel deposition and reschedule deposition with client, Kirby Shealy	0.20	\$14.00	EMC
Oct-18-11	Telephone Conference with Client Hoovers, Kirby Shealy re rescheduling mediation	0.20	\$14.00	EMC
Oct-18-11	Telephone call with L. Hoover regarding mediation; Rescheduling mediation	0.50	\$100.00	JEB
Oct-18-11	Letter to K. Shealy regarding records request	0.30	\$60.00	JEB
Oct-20-11	Telephone call with client Monica Hoover and Kirby Shealy re confirming deposition	0.10	\$7.00	EMC
Oct-21-11	Deposition of M. Hoover	2.00	\$400.00	JEB
Oct-25-11	Telephone Conference with Client Dr. Hoover re: mediation	0.10	\$7.00	EMC
TOTAL FEES		3.50	\$609.00	
DISBURSEMENTS:				

TOTAL DISBURSEMENTS:

\$0.00

RE: W101646 - Hoover, Lance & Monica v. Schumacher, Kevin

12/01/2011

InvoiceNumber : 79746

Page 2 of 2

TOTAL FEES	\$609.00
TOTAL DISBURSEMENTS	\$0.00
PLUS PREVIOUS BALANCE	\$0.20
LESS PAYMENTS RECEIVED	-\$5.00
BALANCE DUE NOW	\$604.20



Moore, Taylor & Thomas, P.A.
P.O. Box 5709
West Columbia, SC 29171
Tax I.D. Number: 57-0808395

Ph:(803) 796-9160

Fax:(803) 791-8410

Lance & Monica Hoover

Hoover, Lance & Monica
324 Running Fox Road
Columbia, SC 29223

December 14, 2011

Invoice Number: 80396
File Number: W101646
Billed through: 11/30/2011

RE: W101646 - Hoover, Lance & Monica v. Schumacher, Kevin

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
Nov-03-11	Email Exchange with Kirby Shealy re mediation dates	0.10	\$7.00	EMC
Nov-08-11	Email Exchange with Kirby Shealy re scheduling mediation	0.10	\$7.00	EMC
Nov-16-11	Email Exchange with Kirby Shealy re mediation	0.10	\$7.00	EMC
Nov-21-11	Email Exchange with Kirby Shealy re scheduling mediation	0.10	\$7.00	EMC
Nov-28-11	Telephone call with K. Shealy regarding upcoming trial	0.40	\$80.00	JEB
Nov-30-11	Telephone call with K. Shealy; Telephone call with Judge Lee's office regarding trial; Go by courthouse regarding trial date; Email to clerk regarding same	0.90	\$180.00	JEB
TOTAL FEES		1.70	\$288.00	

DISBURSEMENTS:

Deposition of Monica Hoover

\$201.41

TOTAL DISBURSEMENTS:

\$201.41

RE: W101646 - Hoover, Lance & Monica v. Schumacher, Kevin

12/14/2011

InvoiceNumber : 80396

Page 2 of 2

TOTAL FEES	\$288.00
TOTAL DISBURSEMENTS	\$201.41
PLUS PREVIOUS BALANCE	\$604.20
LESS PAYMENTS RECEIVED	-\$0.00
BALANCE DUE NOW	\$1,093.61

Moore, Taylor & Thomas, P.A.

Prebill:5411

01/17/2012

Thru: 01/16/2012

Page 1 of 3

Client: 118234 Hoover, Lance & Monica

Matter: W101646 Hoover, Lance & Monica v. Schumacher, Kevin

Responsible Atty: JEB

Contact: Lance & Monica Hoover

Address: Hoover, Lance & Monica
324 Running Fox Road
Columbia, SC 29223

Client Profiles
- Prebill

JEB

BILLING INSTRUCTIONS
BILL AS IS _____ BILL WITH CHANGES _____
HOLD TIME _____ HOLD DISBURSE _____
RETURN TO WIP _____ SHOW TO _____

Prebill Notes:

Seq #	Date	Prod	Description	Rate	Hours	Bill Value
Matter: W101646 : Hoover, Lance & Monica v. Schumacher, Kevin						
14711	12/01/2011	NAH	Prepare motion for continuance, motion information sheet, letter to Judge Lee; Arrange for filing and hand delivery to Judge; Fax motion to K. Shealy	\$80.00	1.00	\$80.00
16669	12/01/2011	JEB	Conference with Judge's law clerk; Motion to continue and letter to Judge Lee	\$200.00	0.90	\$180.00
16798	12/02/2011	JEB	Telephone call with clerk's office regarding continuance of case	\$200.00	0.30	\$60.00
16820	12/07/2011	JEB	Telephone call with L. Hoover regarding mediation, strategy and trial	\$200.00	0.40	\$80.00
16836	12/08/2011	JEB	Review trial roster; Telephone call with M. Hoover regarding trial preparation	\$200.00	0.50	\$100.00
16841	12/09/2011	JEB	Meeting with M. Hoover; Prepare for trial after meeting	\$200.00	2.50	\$500.00
16844	12/11/2011	JEB	Prepare for trial	\$200.00	2.00	\$400.00
16860	12/12/2011	JEB	Prepare for meeting with clients; Telephone call with MBB regarding roster and email regarding same; Meeting with clients to prepare direct testimony; Mediation; Meeting with Ancel Hamilton regarding direct testimony; Telephone call with L. Hoover regarding trial calendar; Review jury information from MBB	\$200.00	7.50	\$1,500.00
18470	12/12/2011	MBB	Preparation of jury strike list, grade jury, attend roster meeting and jury strike.	\$200.00	2.00	\$400.00
16876	12/13/2011	JEB	Meeting with T. Beckstrom regarding testimony	\$200.00	2.00	\$400.00
16877	12/13/2011	JEB	Telephone call with Judge Benjamin's office regarding trial	\$200.00	0.30	\$60.00
17347	12/20/2011	JEB	Telephone call with Lee Cappell regarding testimony	\$200.00	0.10	\$20.00
17386	12/27/2011	JEB	Telephone call with L. Hoover; Review roster for priority	\$200.00	0.30	\$60.00

Prebill:5411

Client: 118234 Hoover, Lance & Monica

Matter: W101646 Hoover, Lance & Monica v. Schumacher,
Kevin

Page 2 of 3

1/17/2012

9:28:59AM

Seq #	Date	Prod	Description	Rate	Hours	Bill Value
17400	12/29/2011	JEB	Correspondence T. Beckstrom regarding scheduling	\$200.00	0.10	\$20.00
17430	12/30/2011	JEB	Prepare for trial; Meet with L. Cappell; Prepare pre-trial brief; Prepare exhibits and exhibit list	\$200.00	6.00	\$1,200.00
17803	01/02/2012	JEB	Review pretrial brief and create package for judge; Work on opening statement, document examination and cross of Shumacher, Mold Solutions and Terry Bishop; Draft jury charges; Review and complete pretrial brief; Prepare opening; Pick up and revise exhibit books	\$200.00	6.70	\$1,340.00
17804	01/03/2012	JEB	Trial	\$200.00	8.00	\$1,600.00
17805	01/04/2012	JEB	Trial; Prepare for closing	\$200.00	11.00	\$2,200.00
18327	01/04/2012	MBP	Research regarding award of attorney's fees and memo to Ward	\$70.00	1.66	\$116.20
18328	01/04/2012	MBP	Research on jury instructions	\$70.00	1.75	\$122.50
18330	01/04/2012	MBP	Research on jury instructions and drafting jury instructions	\$70.00	2.25	\$157.50
17806	01/05/2012	JEB	Review and prepare cross of Mike O'Neill; Review and prepare for direct of Ancel Hamilton and Lee Appell; Organize exhibits; Review and prepare closing; Review and revise jury charges; Conference with M. Peters regarding jury charges; Trial	\$200.00	7.00	\$1,400.00
17969	01/06/2012	JEB	Telephone call with L. Cappell and Telephone call with A. Hamilton regarding trial and invoices; Correspondence Judge's clerk regarding form 4	\$200.00	0.70	\$140.00
17807	01/09/2012	NAH	Prepare attorney fee affidavit - put together fee and cost information; Draft affidavit for JEB	\$80.00	2.30	\$184.00
17979	01/09/2012	JEB	Telephone conference with T. Beckstrom regarding case; Work on petition for fees and post trial motion	\$200.00	1.20	\$240.00
18451	01/11/2012	JEB	Draft Motion for Fees and Costs and Proposed Order; Research regarding same	\$200.00	3.00	\$600.00
Total fees for matter:W101646					71.46	\$13,160.20

Prebill:5411

Client: 118234 Hoover, Lance & Monica

Matter: W101646 Hoover, Lance & Monica v. Schumacher,
Kevin

Page 3 of 3

1/17/2012

9:28:59AM

Seq #	Date	Exp Code	Description	Reference	Bill Value
24759	12/01/2011		Check # 26753 to Jeanette W. McBride; disbursement for: FILING FEE Filing Fee - Motion for Continuance	26753	\$25.00
28373	01/03/2012		Check # 27052 to James E. Bradley, Esquire; disbursement for: MEALS	27052	\$15.55
28689	01/09/2012		Check # 27110 to City of Columbia; disbursement for: TRAVEL EXPENSE Parking Tickets during Trial	27110	\$19.00
28690	01/09/2012		Check # 27112 to James E. Bradley, Esquire; disbursement for: MEALS 2 meals during trial	27112	\$55.44
28691	01/09/2012		Check # 27111 to James E. Bradley, Esquire; disbursement for: COPIES Trial Exhibits	27111	\$333.14
28692	01/09/2012		Check # 27106 to Applied Building Sciences, Inc.; disbursement for: EXPERT FEE Expert Fees - Lee Capell	27106	\$895.79
28762	01/09/2012		Check # 27119 to Biotek Environmental, Inc.; disbursement for: EXPERT FEE	27119	\$577.70

Summarized Costs

Cost Total: \$1,921.62

MATTER SUMMARY

TOTALS THIS PREBILL

Billing Cycle		Costs:	\$1,921.62
Billing Format	BF1	Fees:	\$13,160.20
Rate		Hours:	71.46
Trust Balance	\$0.00	Total charges this prebill:	\$15,081.82
Unapplied	\$0.00	Balance Forward:	\$468.61
Last Bill#	80396	Total Amount Due:	\$15,550.43
Last Date	12/14/2011		

WORKING TIMEKEEPER SUMMARY

Working Timekeeper	Bill As	Last Date	Hours Worked	Avg Rate	Rate Billed	Hours Billed	Bill Value
JEB - Bradley, James E., Esqu	JEB	01/11/2012	60.50	200.00	\$200.00	60.50	\$12,100.00
MBB - Biediger, M. B., Esquire	MBB	12/12/2011	2.00	200.00	\$200.00	2.00	\$400.00
MBP - Peters, Michael B.	MBP	01/04/2012	5.66	70.00	\$70.00	5.66	\$396.20
NAH - Hazelwood, Nancy A.	NAH	01/09/2012	3.30	80.00	\$80.00	3.30	\$264.00
						71.46	\$13,160.20

JAMES EDWARD BRADLEY
Moore, Taylor & Thomas, P.A.
P.O. Box 5709
West Columbia, South Carolina 29171
(803) 796-9160

PERSONAL: Born Chapel Hill, North Carolina, December 18, 1967
Son of James Bradley, Jr. and Nancy Jones Bradley
Married to Elizabeth Holderman: 3 children – ages 6, 6, and 8

EDUCATION: **UNIVERSITY OF SOUTH CAROLINA SCHOOL OF LAW**
Columbia, South Carolina
J.D., *Cum Laude*, May 1993
Honors and Activities
Order of the Coif; Publications Editor, South Carolina Law Review; Associate Justice, Moot Court Bar; National Moot Court Team; Order of the Barrister; Order of the Wig and Robe; Dean's List; Legal Writing Instructor; Elected Representative, Student Bar Association; Karen Lee Scholarship; John Belton O'Neal Inn of Court; Academic Standing Committee and Dean's Advisory Counsel

DAVIDSON COLLEGE
Davidson, North Carolina
B.A., Economics, May 1990

LEGAL EXPERIENCE: **UNIVERSITY OF SOUTH CAROLINA SCHOOL OF LAW**
Columbia, South Carolina
Adjunct Professor, Legal Writing 1998-2000

McNAIR LAW FIRM
Columbia, South Carolina
Associate, Commercial Litigation 1995-1997

THE HONORABLE G. ROSS ANDERSON, JR.
Federal District Court Judge for the District of South Carolina
Law Clerk 1994-1995

THE HONORABLE DON S. RUSHING
Resident Circuit Judge for the Sixth Judicial Circuit
Law Clerk 1993-1994

NELSON, MULLINS, RILEY & SCARBOROUGH
Columbia, South Carolina
Summer Associate, Summers 1991 and 1992

PUBLICATIONS: *Carolina Research and Development Foundation Considered Public Body Under Freedom of Information Act*, 44 SCLR 127 (1992)
Cameras in the Courtroom Revisited, South Carolina Lawyer, March/April 1994 at 33
Daubert! Small Impact on South Carolina Evidence Law, South Carolina Trial Lawyer Bulletin, Fall 1994 at 12

PROFESSIONAL ORGANIZATIONS: American Board of Trial Advocates 2007-2011
Chairman, South Carolina Bar Judicial Qualifications Committee 2010-2011
South Carolina Bar Judicial Qualification Committee 2007-2011
President USC School of Law Alumni Association 2008-2011
Richland County Bar Association Memorial Chair 2009

EXHIBIT

B

Richland County Bar Newsletter Editor 2010-2011
Executive Committee Richland County Bar 2011
11th Circuit Representative, South Carolina Bar House of Delegates 2002-2011
11th Circuit Representative, Young Lawyers Division 2001-2002
5th Circuit Representative, Young Lawyers Division 1995-1997
Chairman, Tolerance Project 1994-1995
Chairman, Law School for Nonlawyers Project 1995-1997
Editor, *The Bar Tab*, South Carolina Publication 1997
Board of Editors, *The Young Lawyer*, ABA Publication 1996-1998

**COMMUNITY
INVOLVEMENT:**

Shandon Presbyterian Church, Sunday School Teacher 1997-2011
Salkehatchie Summer Service Project Board of Directors 1997-2011
Richland County Children's Hospital Board 2004-2007
Leadership Columbia 1997

PRESENTATIONS: *Civil Court Judicial Forum*

Moderator
Columbia, South Carolina
September 30, 2009

The Art of Depositions: Powerful Techniques to Maximize Your Success
Columbia, South Carolina
October 30, 2008

Advanced Discovery and Evidence
Columbia, South Carolina
November 30, 2007

Preserving Objections and Making Post-Trial Motions
South Carolina Defense Trial Attorneys' Association
Asheville, North Carolina
July 27, 2007

Building Your Civil Trial Skills
Columbia, South Carolina
December 19, 2006

Winning Your First Civil Trial in South Carolina: What They Didn't Teach You in Law School
Columbia, South Carolina
March 22, 2006

The Fundamentals of Construction Contracts: Understanding the Issues
Columbia, South Carolina
February 10, 2006

Conducting Depositions in South Carolina: Practical Strategies That Win Cases
Columbia, South Carolina
December 15, 2005

How to Litigate Your First Civil Trial in South Carolina
Columbia, South Carolina
December 20, 2004

Superior Deposition Strategies in South Carolina Civil Trial Practice
Columbia, South Carolina
December 9, 2004

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Kevin Schumacher,

Plaintiff,

v.

Lance Hoover,

Defendant.

IN THE COURT OF COMMON PLEAS

C/A No.: 2010-CP-40-06486

**PLAINTIFF'S MEMORANDUM IN
OPPOSITION TO DEFENDANT'S
MOTION FOR ENTRY OF ATTORNEY
FEES AND DAMAGE AWARD**

2012 JAN 30 AM 11:47
JEANETTE W. McBRIDE
C.C. & G.S.

RICHLAND COUNTY
FILED

Plaintiff submits this memorandum in opposition to Defendant's Motion for Entry of Attorney Fees and Damage Award on the following grounds. First, Plaintiff submits that the Court should grant its Motion for Judgment Notwithstanding the Verdict; all arguments raised the within memorandum should not be construed as a waiver or concession of any arguments raised in Plaintiff's Motion. Second, while Plaintiff does not contest Defendant's counsel's professional standing or hourly rate, Plaintiff is informed and believes that Defendant's claims for costs were not pled in his Amended Answer and Counterclaim and should therefore not be awarded by this Court. *Hackworth v. Greywood at Hammett, LLC*, 385 S.C. 110, 682 S.E.2d 871 (Cl. App. 2009) (special damages must be specifically alleged in the complaint to avoid surprise to the other party).

Furthermore, Defendant's attorney's fee petition includes fees incurred in an attempt to erroneously add Monica Hoover to this lawsuit, which Plaintiff successfully defeated. By Plaintiff's calculation, fees associated with that failed effort total One Thousand Eight Hundred Forty-Seven and No/100 (\$1,847.00) Dollars.¹ The South Carolina Supreme Court has

¹ Plaintiff would direct the Court's attention to billing entry numbers 574005, 564113, 564117, 574008, 573248, 592268, 591576 and 592196 on Exhibit A to defense counsel's affidavit.

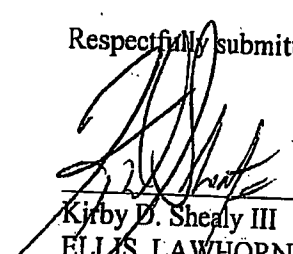
enumerated the following factors to be considered when determining an amount of attorney's fees to be awarded to a prevailing party:

- (1) the nature, extent, and difficulty of the case;
- (2) the time necessarily devoted to the case;
- (3) professional standing of counsel;
- (4) contingency of compensation;
- (5) beneficial results obtained;
- (6) customary legal fees for similar services.

Donahue v. Donahue, 299 S.C. 353, 384 S.E.2d 741 (1989). Because the time entries that concern Defendant's unwarranted attempt to gratuitously add Monica Hoover as a party to this action were not "time necessarily devoted to the case," Plaintiff submits that any award of attorney's fees to the Defendant should not include fees associated with this aspect of the litigation between the parties.

For the foregoing reasons, Plaintiff asks that this Court deny Defendant's motion, or, alternatively, that any award of damages to the Defendant not include litigation costs and not include attorney's fees associated with Defendant's attempt to add Monica Hoover as a party to this case.

Respectfully submitted,



Kirby D. Shealy III

ELLIS, LAWHORNE & SIMS, P.A.
1501 Main Street - 5th Floor (29201)

P. O. Box 2285

Columbia, SC 29202

Telephone: (803) 254-4190

Fax: (803) 779-4749

E-Mail: kshealy@ellislawhorne.com

Attorneys for Plaintiff

January 30, 2012

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Kevin Schumacher,
☒ Plaintiff

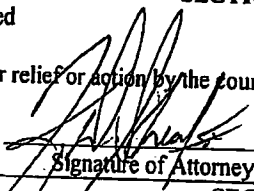
v.

Lance Hoover
☐ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.
2010-CP-40-06486

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: Kirby D. Shealy, Bar No 11556 Address: PO Box 2285 (29202) 1501 Main Street, Fifth Floor, Columbia, SC 29201 phone: 803-254-4190 fax: 803-779-4749 e-mail: kshealy@ellislawhome.com other:		Defendant's Attorney: James Edward Bradley, Bar No. 66130 Address: P. O. Box 5709, West Columbia, SC 29171 phone: 803-796-9160 fax: 803-791-8410 e-mail: ward@mttlaw.com other:	
☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: Motion To Amend Judgment		Court Reporter Needed: ☐ YES ☒ NO	
Estimated Time Needed:			
SECTION II: Motion/Order Type			
☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.			
 Signature of Attorney for ☒ Plaintiff / ☐ Defendant		May 30, 2012 Date submitted	
SECTION III: Motion Fee			
☒ PAID - AMOUNT: 25.00 ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other:			
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:		JUDGE _____ CODE: _____ Date: _____	
CLERK'S VERIFICATION			
Collected by: _____		Date Filed: _____	
☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED - AMOUNT DUE: _____			

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Kevin Schumacher,

Plaintiff,

v.

Lance Hoover,

Defendant.

IN THE COURT OF COMMON PLEAS

C/A No.: 2010-CP-40-06486

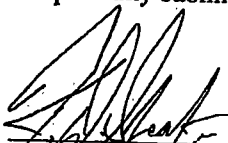
**PLAINTIFF'S MOTION TO AMEND
JUDGMENT PURSUANT TO RULE
59(e)**

2012 MAY 30 PM 1:45
FILED
CLERK OF COURT
C.C.P. & G.S.
JAMES M. MANNING
JUDGE

**TO: JAMES EDWARD BRADLEY, ESQUIRE, ATTORNEY FOR DEFENDANT AND
THE HONORABLE L. CASEY MANNING, PRESIDING JUDGE:**

Plaintiff hereby moves for an order amending the judgment entered in the above-referenced case on May 23, 2012, a copy of which was received by the undersigned on May 29, 2012, on the grounds that the Court's order did not address Plaintiff's motion for judgment notwithstanding the verdict filed on January 17, 2012. Plaintiff therefore seeks the Court's ruling on this motion prior to the entry of judgment as directed in the Court's May 23, 2012 order.

Respectfully submitted,


Kirby D. Shealy III

ELLIS, LAWHORNE & SIMS, P.A.

1501 Main Street - 5th Floor (29201)

P. O. Box 2285

Columbia, SC 29202

Telephone: (803) 254-4190

Fax: (803) 779-4749

E-Mail: kshealy@ellislawhorne.com

Attorney for Plaintiff

May 29, 2012.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Kevin Schumacher

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

Plaintiff(s)

vs.

Lance Hoover

Defendant(s)

(Please Print)

Submitted By: Jenny A. Draffin

Address: P. O. Box 8057, Columbia, S. C. 29204

SC Bar #: 76129

Telephone #: (803) 799-9091

Fax #: (803) 779-3423

Other:

E-mail: jdraffin@brblegal.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

Contracts ☐ Constructions (100) ☐ Debt Collection (110) ☐ Employment (120) ☐ General (130) ☒ Breach of Contract (140) ☐ Other (199)	Torts - Professional Malpractice ☐ Dental Malpractice (200) ☐ Legal Malpractice (210) ☐ Medical Malpractice (220) Previous Notice of Intent Case # 20 -CP- ☐ Notice/ File Med Mal (230) ☐ Other (299)	Torts - Personal Injury ☐ Assault/Slander/Libel (300) ☐ Conversion (310) ☐ Motor Vehicle Accident (320) ☐ Premises Liability (330) ☐ Products Liability (340) ☐ Personal Injury (350) ☐ Wrongful Death (360) ☐ Other (399)	Real Property ☐ Claim & Delivery (400) ☐ Condemnation (410) ☐ Foreclosure (420) ☐ Mechanic's Lien (430) ☐ Partition (440) ☐ Possession (450) ☐ Building Code Violation (460) ☐ Other (499)
Inmate Petitions ☐ PCR (500) ☐ Mandamus (520) ☐ Habeas Corpus (530) ☐ Other (599)	Judgments/Settlements ☐ Death Settlement (700) ☐ Foreign Judgment (710) ☐ Magistrate's Judgment (720) ☐ Minor Settlement (730) ☐ Transcript Judgment (740) ☐ Lis Pendens (750) ☐ Transfer of Structured Settlement Payment Rights Application (760) ☐ Other (799)	Administrative Law/Relief ☐ Reinstat Driver's License (800) ☐ Judicial Review (810) ☐ Relief (820) ☐ Permanent Injunction (830) ☐ Forfeiture-Petition (840) ☐ Forfeiture-Consent Order (850) ☐ Other (899)	Appeals ☐ Arbitration (900) ☐ Magistrate-Civil (910) ☐ Magistrate-Criminal (920) ☐ Municipal (930) ☐ Probate Court (940) ☐ SCDOT (950) ☐ Worker's Comp (960) ☐ Zoning Board (970) ☐ Public Service Commission (990) ☐ Employment Security Comm (991) ☐ Other (999)
Special/Complex /Other ☐ Environmental (600) ☐ Automobile Arb. (610) ☐ Medical (620) ☐ Other (699)	☐ Pharmaceuticals (630) ☐ Unfair Trade Practices (640) ☐ Out-of State Depositions (650) ☐ Motion to Quash Subpoena in an Out-of-County Action (660) ☐ Sexual Predator (510)		

Submitting Party Signature:

Jenny A. Draffin

Date: September 17, 2010

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Colleton, Florence, Greenville, Hampton, Horry,
Jasper, Lexington, Pickens (Family Court Only), Richland, Union and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Kevin Schumacher,

Plaintiff,

v.

Lance Hoover,

Defendant.

IN THE COURT OF COMMON PLEAS

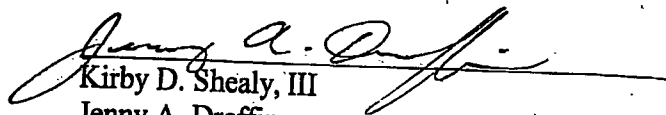
C/A NO.:

SUMMONS.

2010 SEP 17 PM 4:02
JENNIFER H. WOODRIDGE
C.C.P. & G.S.

TO: THE DEFENDANT NAMED ABOVE:

YOU ARE HEREBY SUMMONED and required to answer the complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer to the said complaint on subscriber hereto at his office at 3710 Landmark Drive, Suite 400, Columbia, South Carolina 29204, within thirty (30) days after service hereof, exclusive of the day of such service; and if you fail to answer the complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the complaint.


Kirby D. Shealy, III
Jenny A. Draffin
BAKER, RAVENEL & BENDER, L.L.P.
3710 Landmark Drive, Suite 400
Columbia, South Carolina 29204
(803) 799-9091
Our File No.: 10285.7
Attorneys for Plaintiff

September 17, 2010.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
Kevin Schumacher,)
Plaintiff,)
v.)
Lance Hoover,)
Defendant.)

IN THE COURT OF COMMON PLEAS

C/A No.: 2010-CP- -

COMPLAINT
(NON-JURY)

2010 SEP 17 PM 4:02
JEANE L. HARRISON
C.C.P. & G.S.

The above-named Plaintiff, complaining of the above-named Defendant, alleges:

FACTUAL BACKGROUND

1. Plaintiff Kevin Schumacher is a resident of Richland County, South Carolina.
2. Upon information and belief, Defendant Lance Hoover is a resident of Richland County, South Carolina.
3. This is a contract dispute and the contract at issue was entered into within Richland County; therefore, venue is proper pursuant to section 15-7-10 of the South Carolina Code (Supp. 2009).
4. On or about April 30, 2010, Defendant entered into a Residential Lease with Option to Purchase Agreement ("Lease") with Plaintiff for possession and use of a residence located at 4120 Kilbourne Road, Columbia, South Carolina ("the Leased Premises"). A true and correct copy of Lease is attached hereto as Exhibit A and incorporated herein by reference.
5. According to the terms of the Lease, Defendant agreed to pay Two Thousand Four Hundred (\$2,400) Dollars in rent per month and that the lease term would

begin on June 15, 2010 and continue for twelve months.

6. On or about August 24, 2010, Defendant notified Plaintiff's agent that he suspected the Leased Premises were contaminated by mold.

7. On or about September 3, 2010, Defendant provided Plaintiff with a copy of a mold report from BioTek Environmental, Inc. that indicated mold existed at the top of a stairwell near the attic access within the Leased Premises.

8. On or about September 7, 2010, Plaintiff arranged for Mold Solutions, Inc. to inspect and diagnose the mold problem.

9. After a quote for remediation from Mold Solutions, Inc. on September 7, 2010, Plaintiff arranged for Mold Solutions, Inc. to remediate the mold problem on or about September 13, 2010.

10. Additionally, Plaintiff arranged to provide alternate accommodations for Defendant and his family at a local hotel while the problem was being remediated.

11. On or about September 12, 2010, Defendant informed Plaintiff that he was terminating the Lease.

12. On or about September 16, 2010, Defendant and his family vacated the Leased Premises.

**FOR A FIRST CAUSE OF ACTION
(Breach of Contract)**

13. Plaintiff hereby realleges paragraphs one (1) through twelve (12) above as if fully reiterated herein verbatim.

14. Plaintiff and Defendant entered into a legally binding contract for the lease of residential real estate.

15. Defendant breached the terms of the contract by failing to allow Plaintiff a

reasonable amount of time to cure any problems with the Leased Premises before vacating and abandoning them.

16. As a direct and proximate result of the Defendant's breach, the Plaintiff will suffer actual damages in the form of lost rental income in the amount of \$19,200.00.

17. Plaintiff is informed and believes that he is entitled to a judgment against Defendant for actual and consequential damages as a result of the breach of the contract.

18. As a result of Defendant's conduct, Plaintiff is informed and believes that he is entitled to a judgment against Defendant for attorney's fees incurred in bringing this action pursuant to a provision in the Lease.

FOR A SECOND CAUSE OF ACTION
(Available Remedies under the Landlord Tenant Act)

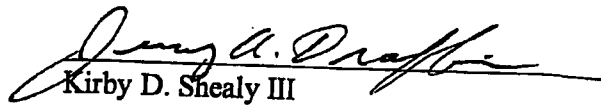
19. Plaintiff hereby realleges paragraphs one (1) through twelve (12) above as if fully reiterated herein verbatim.

20. Plaintiff complied with his obligations under the Lease.

21. Defendant unlawfully terminated the Lease without allowing Plaintiff the chance to cure any problems with the Leased Premises after being notified of their existence in violation of S.C. Code Ann. § 27-40-610 (Rev. ed. 2007).

22. Plaintiff is informed and believes he is entitled to all relief afforded by S.C. Code Ann. § 27-40-750 (Rev. ed. 2007) that have been occasioned by Defendant's unlawful termination of the Lease.

WHEREFORE, Plaintiff prays for judgment against the Defendant for actual and consequential damages, including attorney's fees, for the taxable costs of this action, and for such other and further relief as this Court may deem just and proper.



Kirby D. Shealy III

Jenny A. Draffin

Baker, Ravenel & Bender, L.L.P.

3710 Landmark Drive, Suite 400

Post Office Box 8057

Columbia, South Carolina 29202

(803) 799-9091

Our File No.: 10285.7

Attorneys for Plaintiff

September 7, 2010.

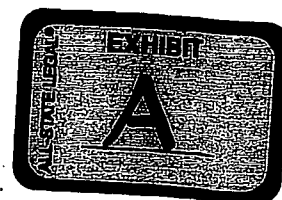
RESIDENTIAL LEASE WITH OPTION TO PURCHASE

THIS AGREEMENT made and entered into this 30th day of April 2010 by and between Kevin Schumacher hereinafter called Lessor and Lance Hoover hereinafter called Lessee; The Lessor, for and in consideration of the sum of this lease dollars to hand paid by the Lessee, receipt of which is hereby acknowledged, hereby leases to the Lessee, his heirs or assigns, the premises situated in the City of Columbia County of Kirkland State of South Carolina legally described as Lot 8 Kilbourne Park 163, 7-3155 Columbia, SC 29205 and consisting of a front of land 85 x 194.7 x 50 x 200 (If the legal description is not included at the time of execution, it may be attached to and incorporated herein afterward.) (Street address: 4100 Kilbourne Rd Columbia, SC 29205) and consisting of the map # 17907-B-11 upon the following TERMS AND CONDITIONS:

1. PERSONAL PROPERTY: Said lease shall include the following personal property: Washer/Dryer + Refrigerator
2. TERM: The term hereof shall commence on June 15, 2010 and continue for a period of twelve months thereafter.
3. RENT: Rent shall be Twenty Five Hundred dollars per month, payable in advance, upon the first day of each calendar month to Lessor or his authorized agent at the following address: 4100 Kilbourne Rd Columbia, SC 29205 or at such other place as may be designated by Lessor from time to time. In the event rent is not paid within five (5) days after due date, Lessee agrees to pay a late charge of 5% per annum on the delinquent amount.
4. UTILITIES: Lessee shall be responsible for the payment of all utilities and services, except Lessee shall pay all utilities which shall be paid by Lessor.
5. USE: The premises shall be used as a residence and for no other purpose, without the prior written consent of the Lessor.
6. HOUSE RULES: In the event that the premises are a portion of a building containing more than one unit, Lessee agrees to abide by any and all house rules, whether promulgated before or after the execution hereof, including, but not limited to, rules with respect to noise, odors, disposal of refuse, pets, parking, and use of common areas.
7. ASSIGNMENT AND SUBLETTING: Lessee may not assign this agreement or sublet any portion of the premises without prior written consent of the Lessor.
8. MAINTENANCE, REPAIRS OR ALTERATIONS: Lessee shall maintain the premises in a clean and sanitary manner including all equipment, appliances, furniture and furnishings therein and shall surrender the same at termination hereof, in as good condition as received, normal wear and tear excepted. Lessee shall be responsible for damages caused by his negligence and that of his family or invitees or guests. Lessee shall irrigate and maintain any surrounding grounds, including lawns and shrubbery, and keep the same clear of rubbish and weeds. If such grounds are a part of the premises and are exclusively for the use of the Lessee.
9. ENTRY AND INSPECTION: Lessee shall permit Lessor or Lessor's agents to enter the premises at reasonable times and upon reasonable notice for the purpose of inspecting the premises or for making necessary repairs.
10. POSSESSION: If Lessor is unable to deliver possession of the premises at the commencement hereof, Lessor shall not be liable for any damage caused thereby nor shall this agreement be void or voidable, but Lessee shall not be liable for any rent until possession is delivered. Lessee may terminate this agreement if possession is not delivered within thirty days of the commencement of the term hereof.
11. SECURITY: The security deposit of Twenty Five Hundred dollars shall secure the performance of the Lessor's obligations hereunder. Lessor may, but shall not be obligated to, apply all or portion of said deposit on account of Lessee's obligations hereunder. Any balance remaining upon termination shall be returned to Lessee.
12. DEPOSIT FUNDS: Any reasonable deposits shall be refunded within fifteen days from date possession is delivered to Lessor or his Authorized Agent.
13. ATTORNEY FEES: The prevailing party shall be entitled to all costs incurred in connection with any legal action brought by either party to enforce the terms hereof or relating to the damaged premises, including reasonable attorney fees.
14. NOTICE: Any notice which either party may or is required to give may be given by mailing (in same, postage prepaid), to Lessee or to Lessor at the addresses shown below or at such other places as may be designated by the parties from time to time.
15. HEIRS, ASSIGNS, SUCCESSORS: This lease and option shall include and inure to and bind the heirs, executors, administrators, successors, and assigns of the respective parties hereof.
16. TIME: Time is of the essence of this agreement. This offer shall terminate if not accepted before May 4, 2010.
17. HOLDING OVER: Any holding over after expiration of the term of this lease, with the consent of Lessor, shall be construed as a month-to-month tenancy in accordance with the terms hereof, as applicable.
18. DEFAULT: If Lessee shall fail to pay rent when due, or perform any term hereof, after not less than three (3) days written notice of such default given in the manner required by law, the Lessor, at his option, may terminate all rights of Lessee hereunder, unless Lessee, within said time, shall cure such default. If Lessee abandons or vacates the property, within in default of the payment of rent, Lessor may consider any property between the premises to be abandoned and may dispose of the same in any manner allowed by law. In the event the Lessor reasonably believes that such abandoned property is a nuisance, it may be discarded.

Lance Hoover Lessee 430-10 Date

PB 8a



19. OPTION: Lessee shall have the option to purchase the leased premises described herein upon the following **TERMS AND CONDITIONS:**

a.) The total purchase price shall be \$ 420,000 (Four Hundred Twenty Thousand Dollars)

b.) The purchase price shall be paid as follows:

20. ENCUMBRANCES: Lessee shall take title to the property subject to: 1) Real Estate Taxes not yet due and 2) Covenants, conditions, restrictions, reservations, rights, rights of way and easements of record, if any, which do not materially affect the value or intended use of the property.

21. EXAMINATION OF TITLE: Fifteen (15) days from date of exercise of this option are allowed the Lessee to examine the title to the property and to report in writing any valid objections thereto. Any exceptions to the title which would be disclosed by examination of the records shall be deemed to have been accepted unless reported in writing within said 15 days. If Lessee objects to any exceptions to the title, Lessor shall use all due diligence to remove such exceptions at his own expense within 90 days thereafter. But if such exceptions cannot be removed within the 90 days allowed, all rights and obligations hereunder may, at the election of the Lessee, terminate and end, unless he elects to purchase the property subject to such exceptions.

22. EVIDENCE OF TITLE: Lessor shall provide evidence of title in the form of a policy of title insurance at Lessor's expense.

23. BILL OF SALE: The personal property identified in paragraph ONE shall be conveyed by bill of sale.

24. CLOSING: Closing shall be within 45 days from exercise of the option unless otherwise indicated by other terms of this agreement.

25. PRORATIONS: Tax and Insurance escrow account, if any, to be transferred intact to Lessee with no prorations. Interest and other expenses of the property to be provided as of the date of closing. Unpaid real estate taxes, security deposits, advance rentals or considerations involving future lease credits shall be credited to Lessee.

26. EXPIRATION OF OPTION: This option may be exercised at any time prior to its expiration at midnight December 31, 2010. Upon expiration, Lessee shall be released from all obligations hereunder and all of Lessor's rights hereunder, legal or equitable, shall cease.

27. EXERCISE OF OPTION: The option shall be exercised by mailing or delivering written notice to the Lessor prior to the expiration of this option. Notice, if mailed, shall be by certified mail, postage prepaid, to the Lessor at the address set forth below, and shall be deemed to have been given upon the day shown on the postmark of the envelope in which such notice is mailed. In the event the option is exercised, 45 percent from the rent paid hereunder prior to the exercise of the option shall be credited upon the purchase price.

28. RIGHT TO SELL: Lessor warrants to Lessee that Lessor is the legal owner of the leased premises and has the legal right to sell leased premises under the terms and conditions of this agreement.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year first above written.

x [Signature]
LESSOR

4/2/2010
[Signature]
LESSOR

LESSOR

LESSOR

ADDRESS

ADDRESS

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Kevin Schumacher,

Plaintiff,

vs.

Lance Hoover,

Defendant,

and

Monica Hoover,

Third-Party Plaintiff,

v.

Kevin Schumacher,

Third-Party Defendant.

IN THE COURT OF COMMON PLEAS

C/A No. 2010-CP-40-06486

**ANSWER, COUNTERCLAIM
AND THIRD-PARTY COMPLAINT**

(Jury-Trial Demanded)

The Defendant and Counterclaimant Lance Hoover and the Third-Party Plaintiff Monica Hoover answer the Complaint as follows:

FOR A FIRST DEFENSE

1. Unless specifically admitted in this Answer, Counterclaim and Third-Party Complaint, Lance and Monica Hoover deny each and every allegation of the Complaint.

FOR A SECOND DEFENSE

2. Each and every allegation set forth above is hereby reasserted and realleged as fully as if set forth verbatim.

3. The Defendant admits the allegations of paragraphs 1 and 2.

4. In response to paragraph 3, the Defendant admits that this is partially a contract dispute and that the contract was entered in Richland County. The Defendant admits that venue is proper in Richland County.

5. In response to paragraph 4, the Defendant admits entering a lease agreement with the Plaintiff on or about April 30, 2010, for property located at 4120 Kilbourne Road, Columbia, South Carolina. The Defendant admits that a copy of the lease is attached as Exhibit A to the Complaint.

6. In response to paragraph 5, the Defendant admits that the lease called for payments of \$2,400 per month, that the lease began on June 15, 2010, and that the lease would continue for 12 months. In addition, the lease contained an option to purchase.

7. In response to paragraph 6, the Defendant notified the Plaintiff himself that the leased premises was contaminated by mold on August 13, 2010. The Defendant denies the remaining allegations of paragraph 6.

8. In response to paragraph 7, the Defendant admits that he and his wife contracted with BioTek Environmental, Inc., to assess the mold problem because the landlord did not do so. The Defendant admits that he forwarded the report from BioTek Environmental showing the presence of toxic mold in concentrations well above safe levels in the house to the Plaintiff. The Defendant denies the remaining allegations of paragraph 7.

9. The Defendant is without sufficient knowledge or information to form a belief as to the truth or accuracy of the allegations of paragraph 8 and 9 and, therefore, denies these allegations.

10. In response to paragraph 10, the Defendant admits that at one time the Plaintiff arranged to provide alternate accommodations, but the Plaintiff indicated that it could not be

done immediately as he was waiting for an insurance company to inspect the property. Therefore, the Defendant denies the allegations of paragraph 10.

11. In response to paragraph 11, the Defendant admits telling the Plaintiff that he believed the property posed a significant health risk to him and his family and, therefore, terminated the lease. The Defendant denies the remaining allegations of paragraph 11.

12. In response to paragraph 12, the Defendant admits that he and his family vacated the leased premises as a result of toxic mold in the premises which had not been remediated. The Defendant denies the remaining allegations of paragraph 12.

13. In response to paragraph 13, the Defendant realleges his previous allegations and denials.

14. In response to paragraph 14, the Defendant admits signing the contract attached as Exhibit A to the Complaint. The Defendant denies the remaining allegations of paragraph 14.

15. The Defendant denies the allegations of paragraphs 15, 16, 17, and 18.

16. In response to paragraph 19, the Defendant realleges his previous allegations and denials.

17. The Defendant denies the allegations of paragraphs 20, 21, and 22.

FOR A THIRD DEFENSE AND FIRST COUNTERCLAIM

18. Each and every allegation set forth above is hereby reasserted and realleged as fully as if set forth verbatim.

19. The Defendant is entitled to a return of his deposit. The Plaintiff has not returned the deposit as required in the South Carolina Residential Landlord and Tenant Act. As a result, the Defendant is entitled to damages as set forward in the Act including, but not limited to, treble damages and attorney's fees.

FOR A FOURTH DEFENSE, SECOND COUNTERCLAIM AND
FIRST THIRD-PARTY CLAIM

20. Each and every allegation set forth above is hereby reasserted and realleged as fully as if set forth verbatim.

21. The Plaintiff has breached the contract by renting the home in a condition which is not acceptable, reasonable, or habitable.

22. As a direct and proximate result of the Plaintiff's breach of contract, the Defendant and Third-Party Complainant have been injured as alleged above. The Defendant and Third-Party Plaintiff are entitled to an award of this Court for their injuries as well as their attorney's fees as set forth in the South Carolina Residential Landlord and Tenant Act and the contract between the parties.

FOR A FIFTH DEFENSE, THIRD COUNTERCLAIM AND
SECOND THIRD-PARTY CLAIM

23. Each and every allegation set forth above is hereby reasserted and realleged as fully as if set forth verbatim.

24. The Plaintiff has breached the warranty of habitability by renting to the Defendant a home in a condition such that it created toxic threats to the Defendant and his family.

25. As a direct and proximate result of the Plaintiff's breach of the warranty of habitability, the Defendant, his children, and his wife have all been injured.

26. This claim is made by way of affirmative defense and counterclaim as well as third-party claim on behalf of Monica Hoover.

27. As a result of the breach of warranty of habitability by virtue of toxic substance in the house occupied by a family with children, the Defendant Lance Hoover and the Third-Party

Complainant Monica Hoover have been injured including, but not limited to, the following: loss of deposit, moving expenses, loss of their benefit of the bargain from an option to purchase, physical injuries to Monica Hoover as a result of toxic mold exposure, harassment and aggravation, medical expenses for Monica Hoover both past, present, and future, pain and suffering for Monica Hoover, costs to investigate the mold problem, attorney's fees, investments in repairs and upgrades to the home, and other damages all to their actual damage.

28. The Defendant Lance Hoover and Third-Party Complainant Monica Hoover are entitled to an award of damages against the Plaintiff in this matter for the breach of the warranty of habitability for the rental of the home.

FOR A SIXTH DEFENSE, FOURTH COUNTERCLAIM AND

THIRD THIRD-PARTY CLAIM

(Negligence and Gross Negligence)

29. Each and every allegation set forth above is hereby reasserted and realleged as fully as if set forth verbatim.

30. The Plaintiff in this matter had a duty of due care to rent the home in a condition such that it was safe and habitable for a family.

31. In fact, the Plaintiff breached that duty of due care including, but not limited to, the following ways:

- a) In failing to inspect the home for dangerous toxins and conditions that could give rise to dangerous toxins.
- b) Failing to remediate the dangerous toxins when they were pointed out to the Plaintiff or take such action as to immediately stop the effect of the mold and toxins.

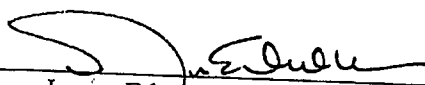
- c) Failing to take reasonable and affirmative steps to insure the safety of his tenants.

32. As a result of the Plaintiff negligence and gross negligence as alleged above, the Defendant and the Third-Party Claimant have been damaged including, but not limited to, the ways listed above.

33. The Defendant and Third-Party Complainant are entitled to an award of both their actual and punitive damages in this matter as a result of the Plaintiff negligence and gross negligence.

WHEREFORE, the Defendant and Third-Party Plaintiff having responded to the allegations in the Complaint and set forward their defenses and counterclaims asks that the Complaint be dismissed with prejudice and that the Defendant and Third-Party Complainant be awarded the relief requested above as well as such other relief as the Court deems fair and equitable.

MOORE, TAYLOR & THOMAS, P.A.

By: 

James Edward Bradley
1700 Sunset Boulevard
P.O. Box 5709
West Columbia, SC 29171
(803) 796-9160
Attorney for Defendant Lance Hoover and
Third-Party Complainant Monica Hoover

West Columbia, South Carolina

November 10, 2010

STATE OF SOUTH CAROLINA	)	
COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS
Kevin Schumacher,	)	
	)	C/A No. 2010-CP-40-06486
Plaintiff,	)	
vs.	)	AMENDED ANSWER AND
Lance Hoover,	)	COUNTERCLAIM
	)	
Defendant,	)	(Jury Trial Demanded)

The Defendant and Counterclaimant Lance Hoover answers the Complaint as follows:

FOR A FIRST DEFENSE

1. Unless specifically admitted in this Answer and Counterclaim, Lance Hoover denies each and every allegation of the Complaint.

FOR A SECOND DEFENSE

2. Each and every allegation set forth above is hereby reasserted and realleged as fully as if set forth verbatim.

3. The Defendant admits the allegations of paragraphs 1 and 2.

4. In response to paragraph 3, the Defendant admits that this is partially a contract dispute and that the contract was entered in Richland County. The Defendant admits that venue is proper in Richland County.

5. In response to paragraph 4, the Defendant admits entering a lease agreement with the Plaintiff on or about April 30, 2010, for property located at 4120 Kilbourne Road, Columbia, South Carolina. The Defendant admits that a copy of the lease is attached as Exhibit A to the Complaint.

6. In response to paragraph 5, the Defendant admits that the lease called for payments of \$2,400 per month, that the lease began on June 15, 2010, and that the lease would continue for 12 months. In addition, the lease contained an option to purchase.

7. In response to paragraph 6, the Defendant notified the Plaintiff himself that the leased premises were contaminated by mold on August 13, 2010. The Defendant denies the remaining allegations of paragraph 6.

8. In response to paragraph 7, the Defendant admits that he and his wife contracted with BioTek Environmental, Inc., to assess the mold problem because the landlord did not do so. The Defendant admits that he forwarded the report from BioTek Environmental showing the presence of toxic mold in concentrations well above safe levels in the house to the Plaintiff. The Defendant denies the remaining allegations of paragraph 7.

9. The Defendant is without sufficient knowledge or information to form a belief as to the truth or accuracy of the allegations of paragraph 8 and 9 and, therefore, denies these allegations.

10. In response to paragraph 10, the Defendant admits that at one time the Plaintiff arranged to provide alternate accommodations, but the Plaintiff indicated that it could not be done immediately as he was waiting for an insurance company to inspect the property. Therefore, the Defendant denies the allegations of paragraph 10.

11. In response to paragraph 11, the Defendant admits telling the Plaintiff that he believed the property posed a significant health risk to him and his family and, therefore, terminated the lease. The Defendant denies the remaining allegations of paragraph 11.

12. In response to paragraph 12, the Defendant admits that he and his family vacated the leased premises as a result of toxic mold in the premises which had not been remediated. The Defendant denies the remaining allegations of paragraph 12.

13. In response to paragraph 13, the Defendant realleges his previous allegations and denials.

14. In response to paragraph 14, the Defendant admits signing the contract attached as Exhibit A to the Complaint. The Defendant denies the remaining allegations of paragraph 14.

15. The Defendant denies the allegations of paragraphs 15, 16, 17, and 18.

16. In response to paragraph 19, the Defendant realleges his previous allegations and denials.

17. The Defendant denies the allegations of paragraphs 20, 21, and 22.

FOR A THIRD DEFENSE AND FIRST COUNTERCLAIM

18. Each and every allegation set forth above is hereby reasserted and realleged as fully as if set forth verbatim.

19. The Defendant is entitled to a return of his deposit. The Plaintiff has not returned the deposit as required in the South Carolina Residential Landlord and Tenant Act. As a result, the Defendant is entitled to damages as set forward in the Act including, but not limited to, treble damages and attorney's fees.

FOR A FOURTH DEFENSE AND SECOND COUNTERCLAIM

20. Each and every allegation set forth above is hereby reasserted and realleged as fully as if set forth verbatim.

21. The Plaintiff has breached the contract by renting the home in a condition which is not acceptable, reasonable, or habitable.

22. As a direct and proximate result of the Plaintiff's breach of contract, the Defendant has been injured as alleged above. The Defendant is entitled to an award of this Court for his injuries as well as his attorney's fees as set forth in the South Carolina Residential Landlord and Tenant Act and the contract between the parties.

FOR A FIFTH DEFENSE AND THIRD COUNTERCLAIM

(Negligence and Gross Negligence)

23. Each and every allegation set forth above is hereby reasserted and realleged as fully as if set forth verbatim.

24. The Plaintiff in this matter had a duty of due care to rent the home in a condition such that it was safe and habitable for a family.

25. The Plaintiff's duties are set forth in the South Carolina Residential Landlord-Tenant Act including, but not limited to, Section 27-40-440.

26. In particular, the Plaintiff has a duty to "make all repairs and do what is reasonably necessary to put and keep the premises in a fit and habitable condition" and "maintain in reasonably good and safe working order and condition all ... heating, ventilating, air conditioning, and other facilities and appliances...." S.C. Code §27-40-440(a).

27. In fact, the Plaintiff breached that duty of due care including, but not limited to, the following ways:

- a) In failing to inspect the home for dangerous toxins and conditions that could give rise to dangerous toxins.
- b) Failing to remediate the dangerous toxins when they were pointed out to the Plaintiff or take such action as to immediately stop the effect of the mold and toxins.

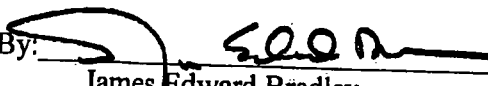
- c) Failing to take reasonable and affirmative steps to insure the safety of his tenants.
- d) Through the action of his agents in creating a dangerous condition that led to the development of toxic mold.

28. As a result of the Plaintiff's negligence and gross negligence as alleged above, the Defendant has been damaged including, but not limited to, the ways listed above.

29. The Defendant is entitled to an award of both his actual and punitive damages in this matter as a result of the Plaintiff's negligence and gross negligence.

WHEREFORE, the Defendant having responded to the allegations in the Complaint and set forward his defenses and counterclaims asks that the Complaint be dismissed with prejudice and that the Defendant be awarded the relief requested above as well as such other relief as the Court deems fair and equitable.

MOORE, TAYLOR & THOMAS, P.A.

By: 

James Edward Bradley
1700 Sunset Boulevard
P.O. Box 5709
West Columbia, SC 29171
(803) 796-9160
Attorney for Defendant Lance Hoover

West Columbia, South Carolina

June 6, 2011

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
Kevin Schumacher,)
Plaintiff,)
v.)
Lance Hoover,)
Defendant.)

IN THE COURT OF COMMON PLEAS
C/A No.: 2010-CP-40-06486

**PLAINTIFF'S REPLY TO
DEFENDANT'S AMENDED ANSWER
AND COUNTERCLAIM**

Plaintiff, by and through his undersigned attorneys, hereby replies to Defendant's amended answer and counterclaim as follows:

FOR A FIRST DEFENSE

1. Plaintiff denies each and every allegation of the Defendant's amended answer and counterclaim except as specifically admitted, qualified, or explained herein.
2. Plaintiff is informed and believes that the allegations contained in paragraphs one (1) through seventeen (17) of the Defendant's amended answer and counterclaim require no response from Plaintiff; however, to the extent that a response to the allegations contained in said paragraphs is required of Plaintiff, they are denied.
3. Answering paragraph eighteen (18) of Defendant's amended answer and counterclaim, Plaintiff hereby realleges and incorporates herein by reference the preceding allegations of his Reply.
4. Plaintiff denies the allegations contained in paragraph nineteen (19) of Defendant's amended answer and counterclaim.
5. Answering paragraph twenty (20) of Defendant's amended answer and counterclaim, Plaintiff hereby realleges and incorporates herein by reference the

preceding allegations of his Reply.

6. Plaintiff denies the allegations contained in paragraphs twenty-one (21) and twenty-two (22) of Defendant's amended answer and counterclaim.

7. Answering paragraph twenty-three (23) of Defendant's amended answer and counterclaim, Plaintiff hereby realleges and incorporates herein by reference the preceding allegations of his Reply.

8. Plaintiff denies the allegations contained in paragraph twenty-four (24) of Defendant's amended answer and counterclaim as stated, in that they seeks to impose a common law duty upon Plaintiff when no such duty exists. By way of further reply, Plaintiff craves reference to the Order signed by the Honorable G. Thomas Cooper and filed on May 17, 2011 in the above-captioned matter.

9. Plaintiff admits paragraphs twenty-five (25) and twenty-six (26) of Defendant's amended answer and counterclaim.

10. Plaintiff denies the allegations contained in paragraph twenty-seven (27) of Defendant's amended answer and counterclaim, inclusive of subparts (a) through (d).

11. Plaintiff denies the allegations contained in paragraphs twenty-eight (28) and twenty-nine (29) of Defendant's amended answer and counterclaim.

FOR A SECOND DEFENSE

12. Defendant has failed to state facts sufficient to constitute causes of action cognizable under South Carolina law. Defendant's third counterclaim for negligence and gross negligence should therefore be dismissed pursuant to Rule 12(b)(6) of the *South Carolina Rules of Civil Procedure*.

FOR A THIRD DEFENSE

13. Even if it is determined that Plaintiff was in any way negligent or grossly negligent (which is denied) and if it is further determined that any act on the part of the Plaintiff in any way proximately contributed to Defendant's damages, if any (which is also denied), the negligence and gross negligence of Defendant contributed to, combined with and exceeded any negligence or gross negligence of the Plaintiff so as to bar Defendant from recovery.

FOR A FOURTH DEFENSE

14. Even if it is determined that Plaintiff was in any way negligent or grossly negligent (which is denied) and if it is further determined that any act on the part of the Plaintiff in any way proximately contributed to Defendant's damages, if any (which is also denied), Defendant's recovery must be reduced in proportion to the amount of his negligence and gross negligence.

FOR A FIFTH DEFENSE

15. Defendant's claim for punitive damages violates the Fifth, Sixth, and Fourteenth Amendments of the United States Constitution and Article I, Section 3 of the South Carolina Constitution, for even if it could be argued that a standard governing the imposition of punitive damages exists, this standard is void for vagueness.

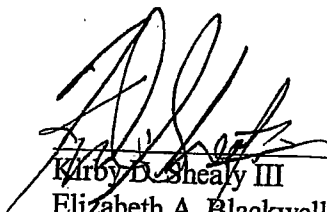
FOR A SIXTH DEFENSE

16. Defendant's claim for punitive damages violates the equal protection clause of the Fourteenth Amendment of the United States Constitution and Article I, Section 3 of the South Carolina Constitution in that the amount of punitive damages is based upon the wealth of Defendant, whatsoever.

FOR A SEVENTH DEFENSE

17. Defendant's claim for punitive damages violates the federal doctrine of separation of powers and Article I, Section 8 of the South Carolina Constitution for the reason that punitive damages are a creation of the judicial branch of government which invades the province of the legislative branch of government.

WHEREFORE, having fully and completely replied to the allegations of Defendant's amended answer and counterclaim, Plaintiff prays that the counterclaims be dismissed with prejudice, for the taxable costs of this action, and for such other and further relief as this Court may deem just and proper.



Kirby D. Shealy III

Elizabeth A. Blackwell

BAKER, RAVENEL & BENDER, LLP

3710 Landmark Drive, Suite 400

Post Office Box 8057

Columbia, South Carolina 29202

(803) 799-9091

Our File No.: 10285.7

Attorneys for Plaintiff

June 23, 2011.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) 2010-CP-40-6486

Kevin Schumacher,)
Plaintiff,)
vs.) TRANSCRIPT OF RECORD
Lance Hoover,)
Defendant.)
_____)

January 3, 4 and 5, 2012
Columbia, South Carolina

B E F O R E:

HONORABLE L. CASEY MANNING, JUDGE AND JURY.

A P P E A R A N C E S:
KIRBY D. SHEALY, III, ESQUIRE
Attorney for Plaintiff

JAMES E. BRADLEY, ESQUIRE
Attorney for the Defendant

Crystal Holmes
Official Court Reporter

EXHIBITS

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1 approximately 2:55 p.m.)

2 BAILIFF: Jury's seated, Your Honor.

3 THE COURT: All right. You may swear them.

4 THE CLERK: Ladies and gentlemen, I need to ask
5 you to stand up one more time, please. I need to put you
6 under oath. Please raise your right hand.

7 (The jury was duly sworn.)

8 THE CLERK: Please answer, I do, everybody.

9 (Complied.)

10 THE CLERK: Thank you very much, please have a
11 seat.

12 (Complied.)

13 THE COURT: Now, members of the jury, before
14 this case begins, I would like to tell you a little bit
15 about how matters will proceed.

16 Now, the first thing that will happen in this
17 case is that the attorney for the Plaintiff, that's Mr.
18 Kirby Shealy, the Plaintiff is the party that brought
19 this lawsuit, will make what is known as the opening
20 statement followed by a similar statement by Mr. Bradley
21 on behalf of the Defendants in this case.

22 Now, these opening statements, members of the
23 jury, are not arguments. The arguments will come at the
24 conclusion of this case. The purpose of opening
25 statements is for each side to outline his or her claim

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1 to the evidence which they intend to present in support
2 of these claims.

3 Now, following the opening statements, each
4 side will present its evidence, once again with the
5 Plaintiff going first.

6 Now evidence may take many forms, members of the
7 jury. It may be testimonial, people take the witness
8 stand and swear and tell you what they remember about the
9 case or it could be photographs or other similar pieces
10 of evidence. You should pay close attention to all the
11 evidence which is presented by each party. You the jury
12 are the sole finders of the facts in this case and no one
13 else will be permitted to weigh the evidence and render a
14 verdict based upon the evidence.

15 Now, after all the evidence has been presented,
16 the attorneys will make their closing arguments. Unlike
17 opening statements, these final remarks will be true
18 arguments, that is each side will emphasize their
19 portions of the evidence and try to persuade you to agree
20 with their version of the facts.

21 Now, after the arguments are finished, I will
22 explain to you the law that applies to this action. You
23 will then retire to the jury room, consider the facts and
24 the law and render a verdict in favor of one side or the
25 other.

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1 Now, members of the jury, y'all know I'm the
2 only one who can tell you what the law is, you are the
3 only ones who can determine what the facts are. I do not
4 have a right to indicate to you how I may feel about the
5 evidence presented. Throughout this trial my intentions
6 will be to act fair and impartially toward each of the
7 parties involved.

8 Now, from time to time either Mr. Shealy or Mr.
9 Bradley will object to some bit of testimony or evidence
10 the other side is seeking to present. You can imagine
11 like in business, sports or any other structured
12 activity, there are certain rules that everyone must obey
13 in the presentation of evidence. These rules have a
14 definitive purpose, they ensure that the information you
15 receive is the most trustworthy and reliable available.

16 An objection is a procedure we use for attorneys
17 to call a possible violation of the rules of presenting
18 evidence to my attention. And for this reason, you shall
19 not hold an objection against the lawyers or against
20 their clients nor should you conclude how I rule on an
21 objection that I favor one side or the other.

22 My interest in this is that I have no interest
23 in this case except to ensure as the Judge that both
24 sides receive a fair trial which is the exact same
25 interest that you all have as jurors.

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1 I would ask that you not take notes and pay
2 close attention. It's sort of time honored tradition in
3 this state that jurors not take notes, the reason being,
4 if you were to write down a mistake or an error it might
5 be more detrimental rather than helpful to you during the
6 course of your deliberation. If you each listen
7 carefully, individually and collectively, you should be
8 able to render a fair and just verdict based on what you
9 hear.

10 From time to time, it will probably be necessary
11 for me to invite Mr. Shealy and Mr. Bradley up here, we
12 may engage in some whispering. The reason for that is
13 that we will be discussing certain points of law. The
14 only way I can do that is either here outside your
15 earshot or in your absence. It may be necessary to send
16 you back into the jury room while I hear some more
17 lengthier discussion. That is the only way I can do
18 that is in your absence. We're not trying to hide
19 anything from you but we all try and obey and follow the
20 rules, that's what the rules dictate.

21 So with that, I invite your close attention to
22 the opening statements, from Mr. Shealy followed by Mr.
23 Bradley.

24 You may proceed, Mr. Shealy.

25 MR. SHEALY: May it please the Court.

1 THE COURT: Yes, sir.

2 OPENING STATEMENT ON BEHALF OF THE PLAINTIFF

3 BY MR. SHEALY:

4 Ladies and gentlemen, this is not going to be
5 some sort of a knock down drag out fight. It's not going
6 to be traumatic. It's not going to be anything like
7 something you might have seen on television.

8 The legal system in this country is a very
9 civilized process. It is a way of organizing and
10 arranging a resolution to disputes to avoid drama and
11 avoid a whole lot of fighting.

12 This is a breach of contract case. That's the
13 lawyer way of saying it. What is a contract? Well the
14 contract is at its bottom an exchange of promises between
15 two people. Contracts are the sorts of agreements that
16 sort of hold society together.

17 Let me explain what I mean, and I don't mean to
18 be dramatic or, you know, sort of high-falutin in saying
19 that. But the world depends upon people being able to
20 enter into contracts with each other. If I go to the
21 grocery store and buy groceries and pay for those
22 groceries and take them home and have them for a little
23 while and look at them for a little while and then say,
24 you know what, I decided I don't really -- I didn't want
25 to do that, I just want to take them back, we have chaos

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1 because people need to be able to rely on the fact that
2 when you bought the groceries you own them now, and I
3 don't own them anymore if I'm the grocer.

4 It's just that -- it allows us to rely on each
5 other to get things done. There are certainly countries
6 in this world where the rule of law is not as strong as
7 it is in America and there are -- you can't rely on
8 contracts, they're not legally enforceable because the
9 government and the rule of law is not nearly as strong as
10 it is in the United States.

11 So this is a breach of contract case. It's a
12 breach of the oldest kind of contract, one of the oldest
13 known to the law, a lease, a residential lease. It
14 involves a house, a house that Mr. Schumacher continues
15 to own, located on Kilbourne Road here in Columbia, that
16 was leased by Dr. Hoover and his wife, Monica Hoover.
17 Dr. Hoover is the person whose name is on the lease and
18 that's why he is the Defendant.

19 What the evidence will show is that Mr.
20 Schumacher decided, for reasons having to do with his
21 family, he's a father of children and married and they
22 decided that it was time for them to move to a different
23 house other than the one they lived in on Kilbourne Road
24 and he offered his house for sale for over a year and
25 because of the times we're living in, wasn't able to sell

1 it. Had no choice but to offer it for rent.

2 The Hoovers, the evidence will show, were
3 transferred, Dr. Hoover was transferred by the United
4 States Army from San Antonio, Texas to Columbia and
5 needed to find a place to live. And they entered into a
6 lease, a one year lease, with an option to purchase Mr.
7 Schumacher's house.

8 The evidence will show that they did that
9 without actually every walking into the house. They did
10 all their research via the internet and there's nothing
11 wrong with that. But they entered into this lease in
12 April of 2010 and then the lease was to begin June 15 of
13 2010.

14 The evidence will further show that when they
15 got there, they experienced some problems with the house,
16 some things they wanted changed about the house and they
17 were there for a brief period of time in June, had to
18 leave for a funeral and didn't come back until July.

19 The evidence will show that during that time
20 there were still negotiations going on as to what -- what
21 modifications Mr. Schumacher would do to the house,
22 hoping that the Hoovers would actually buy the house.
23 They had an option to buy, they had a price they had
24 agreed upon up till December of 2010.

25 He made those modifications. The evidence will

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1 show that the Hoovers eventually just decided that that
2 was not the house they were going to buy. They were
3 there for about a month, decided they would not buy it
4 and really wanted out of the lease. They -- after they
5 got settled in Columbia began to look around, found a
6 house that they liked better, the house that they live in
7 now.

8 Judge Manning mentioned that there was an issue
9 with mold. There was an issue with mold and what the
10 evidence will show is that the Hoovers ran the air
11 conditioning and it caused some condensation to form on a
12 duct that had not been insulated in the attic during a
13 renovation that Mr. Schumacher had done with the house in
14 2006. He had a contractor do a renovation and that piece
15 of duct work had never been reinsulated so it tended to
16 sweat. And that the condensation then formed a spot of
17 mold and you'll hear about that as we go through this
18 trial.

19 The Hoovers, we believe you'll hear, take a
20 position that the mold was the reason that they wanted to
21 break the lease and that's the -- they felt justified in
22 doing so.

23 A couple of things to bear in mind, residential
24 leases in this state are governed by a particular set of
25 laws that Judge Manning will educate you about in the

1 end. And a lease is not a guarantee that nothing will
2 break or nothing will go wrong with the house, it's just
3 that if something does, depending on how the lease is
4 written, the landlord has certain responsibilities and
5 certain -- and the law affords the landlord a period of
6 time to fix those things.

7 And it's our contention, ladies and gentlemen,
8 that the Hoovers never afforded Mr. Schumacher that
9 ability to fix things that -- that occurred and that
10 therefore the Hoovers were just not justified in breaking
11 the lease as they did..

12 This is not going to be the most riveting case
13 perhaps that you've -- if you've ever served on jury duty
14 but it is, it's very important to Mr. Schumacher, to the
15 Hoovers. And so all both sides can ask of you is, please
16 pay attention, maintain your attention to all of the
17 evidence, everything that you'll be introduced. A lot of
18 it is e-mail exchanges between the parties, all of that
19 is very important. It's establishing a timeline that
20 will show you the picture that is this case, that is the
21 reason that we have this case.

22 Neither side in this case is looking to you as
23 their friends that want you to reward one side or the
24 other. There's no enemies for you to punish. We're just
25 looking to you to adhere to the oath that you took and to

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1 try this case in accordance with the law that you'll be
2 given at the end.

3 At the end of the case, we're going to be asking
4 you to bring a very modest verdict for the Plaintiff for
5 the amount of damages for not having the house rented for
6 the year as he anticipated. He ended up getting it
7 rented in April of 2011, the middle of April, and that
8 stopped his damages. Even though the lease was for a
9 full year, his damages stopped in April. So that's --
10 that's what we're talking about is the lease was breached
11 in September of 2010 and the damages stopped in April of
12 2011.

13 Thank you very much and we appreciate your
14 service.

15 THE COURT: Mr. Bradley.

16 MR. BRADLEY: Thank you, Your Honor.

17 OPENING STATEMENT ON BEHALF OF THE DEFENDANT

18 BY MR. BRADLEY:

19 A landlord has to provide a safe home for the
20 people who live in it and pay him money for the privilege
21 of it. And if there's a problem with that home, he's got
22 to fix it. He's got to make allowances for the people
23 who would move their family into that home, who have
24 trusted him to provide what he's promised to provide.
25 He's got to make sure it's done properly.

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1 That's not what happened in this situation. As
2 a result, Mr. Schumacher should not have sued the
3 Hoovers. The Hoovers were right to move their family out
4 of the house that they did not feel safe in. Any of us
5 would have done the same things. He's not entitled to
6 recover the tens of thousands of dollars he's demanded in
7 this lawsuit. And when this case is over, you will agree
8 with us on that.

9 Lance and Monica Hoover are raising a family of
10 three school age children. Lance is a soldier and he
11 asked me to apologize that he has fatigues on, he came
12 straight from work and that's what he's required to wear
13 at work. He serves out at Ft. Jackson.

14 They were living in Texas and the army asked him
15 to move, it actually was a place he wanted to move, to
16 Columbia, South Carolina to work at Ft. Jackson in the
17 clinics there taking care of our soldiers as an
18 anesthesiologist. So when someone comes in, a soldier
19 that needs some sort of surgery, he would be the person
20 who puts them to sleep. He also helps manage the clinics
21 at Ft. Jackson.

22 With this in mind, he had to find a place for
23 his family to live, his three children and his wife. So
24 Monica and Lance got in touch with Todd Beckstrom who is
25 a real estate agent here in Columbia, South Carolina.

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1 And they also looked on the internet and made other
2 connections trying to find a house that would be a good
3 one for them.

4 They find a house on Kilbourne Road that Mr.
5 Schumacher owns. They liked the house for a lot of
6 reasons. One, it was very close to where their children
7 were going to go to school. St. Joseph's Elementary
8 School and Cardinal Newman for High School. They also
9 liked the way it looked and so they signed a lease. They
10 liked the way it looked so much, that actually Lance
11 Hoover signed what's called a lease with an option to
12 purchase which means that you're going to rent the house
13 for a year and if you like the house at the time of the
14 year, you can buy it if you want to at a set price
15 because you've got the right to do that at the time the
16 lease is up. You don't have to but you can if you want
17 to. That's how much they liked the house.

18 They started moving their family in in June,
19 July of 2010. They started doing all the things that you
20 have to do to get a family to a new town, three kids
21 enrolled in school, find places to go, where to buy the
22 groceries, get everything delivered, all the boxes
23 unpacked. Lance had to get to know the people he was
24 going to work for at the Fort, all the things that go
25 along with moving an entire family across the United

1 States.

2 As they moved into the house, they had a house
3 inspector look around the house to see things that needed
4 to be repaired. There were squirrels in the attic, there
5 was a problem with the electrical system. These are the
6 kind of things that homeowners have sometimes,
7 everybody's had something like that.

8 And a lot of them were repaired. Some of them,
9 Lance and Monica liked this house so much, they paid to
10 repair themselves, Mr. Schumacher didn't even pay to
11 repair them. That would be his responsibility to fix
12 problems with the house because when you're a tenant, you
13 have to pay the rent and the landlord has to fix the
14 problems if something breaks. That's a part of the deal.

15 And so, if there's squirrels in the attic and
16 you're paying the rent, the landlord's got to get rid of
17 the squirrels. That's not your job, okay. And if
18 there's a problem with the electrical system, the
19 landlord's supposed to fix it.

20 That's not what happened here because the
21 Hoover's paid for it themselves because they liked the
22 house and they wanted to stay in it and they were
23 concerned that the electrical system wasn't working
24 properly.

25 But then in the middle of all this, they had

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1 another problem that concerned them even more. And that
2 is, near their children's bedrooms, at the top of the
3 stairs, the second floor of their house, they started to
4 see nasty black mold on the wall, on the sheetrock wall
5 inside the house, not down in the kitchen where it's wet,
6 not in the bathroom between the tiles, but nasty black
7 mold up on the wall which they didn't think should be
8 there. I think any one of us would agree you shouldn't
9 have mold in the walls right next to your children's
10 bedrooms.

11 Mr. Schumacher came by and looked at it about
12 August 16th. In fact, Monica called the real estate
13 agent, Todd Beckstrom, and he called Terry Bishop who was
14 the real estate agent for Mr. Schumacher and told him
15 about the problem. Mr. Schumacher didn't do anything
16 about it.

17 On August 24th, the real estate agents came up
18 with a plan. Mr. Schumacher didn't do anything. The
19 Hoovers hired someone who's a specialist in mold to come
20 look at it and tell us, is this mold safe, is this mold
21 bad, what should we do about it? This doesn't look like
22 it's supposed to look like. This is not something in
23 your bathroom that you spray bleach on.

24 They hired a company called Biotek to come look
25 at it. Biotek came out, they prepared a report. This

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1 mold is aspergillus. This mold can cause health
2 problems. This mold needs to be remediated. To
3 remediate it, you need to seal off the rooms, bring
4 somebody in, cut out the sheetrock and fix the problem
5 with the air conditioning which is causing this mold to
6 grow inside your house.

7 In response, you would think that when a
8 landlord with people and children living in this house
9 found out that this had happened, he would say, oh, my
10 gosh, I'm so sorry you're having this problem, let me
11 come fix it. That's what would be a reasonable thing to
12 do. But that's not what happened.

13 Instead, what Mr. Schumacher did, is he said,
14 number one, I'm not paying for that report. Number two,
15 I'm not going to do what those guys said. Number three,
16 I'll find somebody I like and that was it. And that was
17 it, that's what he said.

18 In response, at the beginning of September,
19 Lance Hoover wrote Mr. Beckstrom and Mr. Schumacher and
20 said, look, we're leaving. He's got to do something
21 about this, it's his responsibility and he hasn't done
22 anything. It's been two weeks. We got the report, he
23 won't pay us back for it and he won't do what the report
24 says and he hasn't got a report himself. He hasn't done
25 anything to address the problem.

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1 Well, the start -- they were looking for another
2 place to go. And about six or seven days later, around
3 September 8th, they got an e-mail from Mr. Schumacher.
4 It said, I am in the process of hiring -- this is three
5 weeks after the mold started. He's now in the process,
6 three weeks later, of hiring someone to fix the mold. I
7 will pay for you to stay in a hotel. It's going to take
8 three days, you get out of the house and I'm in the
9 process of doing it. So you would think that would be
10 great, he's stepping up. He's doing what a responsible
11 landlord should do.

12 Three hours later that afternoon, he sent
13 another e-mail and said, you know, I can't do that.
14 We've got too many problems going on, I'm dealing with
15 the air conditioner. I am not in control of the
16 timeframe.

17 So now it's been three weeks. The Hoovers were
18 in the house. They've done a report. They've given the
19 report. They've paid for the report. The report says
20 you need to get the mold out and Mr. Schumacher has done
21 nothing.

22 And then they leave the house. They've paid the
23 entire rent for the month of September, okay. In
24 response to all this, Mr. Schumacher says, I am going to
25 sue you. Not, hey, guys, I'm sorry you had this mold.

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1 I'm sorry, I couldn't fix the problem fast enough. I'm
2 sorry your children and you have to live in this house
3 with this mold that makes you nervous and that the
4 company has said needs to come out and I haven't hired
5 anybody to fix it. No, I'm sorry. Not, I'll fix it this
6 time. Not, here's my plan for fixing it, here's what I'm
7 going to do. I'm going to hire these guys and we're
8 going to fix it and I'm going to fix it. It will be
9 great and you're going to love it. None of those things.

10 You know what he said? I'll sue you. And you
11 know when he sued them? September 17th, 2010, a month
12 after the mold was discovered and while they had still
13 paid the month for the rest of the month of September.
14 You would think the landlord would say, oh, gosh, here's
15 your security deposit back. I'm sorry for your problem,
16 I'll fix it. I know it's a lot of trouble for y'all to
17 move three children, get another place to live and move
18 all of your things back out of this house that you just
19 moved in to. I'm sorry for causing you that much
20 problem.

21 That's not what he did. He said, I'm going to
22 sue you. And you know what he did, he did it too. Here
23 we are.

24 Now, Mr. Shealy said something interesting when
25 he started. He said, when you go to the grocery store,

1 you buy your groceries and you take them home. Then you
2 decide, I don't like this cottage cheese, I like
3 mozzarella cheese better. I want my money back, right.
4 That's ridiculous. No one would do that.

5 But, say you go to the grocery store and you buy
6 some cottage cheese and you open it up and it's full of
7 mold. Would you eat it? Of course you wouldn't eat it
8 and if you did eat it and got sick, would you blame the
9 grocery store? No, you should have enough sense not to
10 eat cottage cheese that's got mold on it. And if you
11 carried it back to the grocery store and said, hey -- or
12 you might just throw it in the trash, it's not worth the
13 trouble. But if you did carry it back to the grocery
14 store and you walk into the Kroger and you open it up and
15 you show the manager, say, listen, I bought this cottage
16 cheese from you and it's full of mold. What would you
17 expect them to do, sue you? No, you would expect them to
18 say, I'm sorry there's mold in your cottage cheese. How
19 much did it cost? We'll give you your money back. Would
20 you like some more cottage cheese? That's the way things
21 should work.

22 And that's why the Hoovers shouldn't be sued.

23 Thank you.

24 THE COURT: Mr. Shealy.

25 MR. SHEALY: Your Honor, we would call Lance

1 Hoover to the stand.

2 THE COURT: Members of the jury, our rules allow
3 the Plaintiff to call Dr. Hoover as a witness. We call
4 it an adverse witness.

5 (LANCE R. HOOVER, having first been duly sworn,
6 testified as follows:)

7 THE CLERK: Please have a seat there, sir.
8 State your full name for the record.

9 THE WITNESS: Lance Randall Hoover.

10 DIRECT EXAMINATION

11 BY MR. SHEALY:

12 Q Dr. Hoover, you live at 324 Running Fox Road here in
13 Columbia?

14 A Yes, sir.

15 Q And that's in the Wildwood Subdivision?

16 A Yes.

17 Q That's a house you own, correct?

18 A That is correct.

19 Q You purchased it on October the 1st, 2010, is that
20 right?

21 A That is correct.

22 Q Before that, you lived at 4120 Kilbourne Road, that
23 was a house you rented from Kevin Schumacher,
24 correct?

25 A Yes, sir.

- 1 Q Right. Let me back up a little bit. You are
2 originally from Indiana?
- 3 A Yes.
- 4 Q Moved from Texas, correct?
- 5 A Yes.
- 6 Q All right. You're married to Monica Hoover and you
7 have three children, ages 13, 9 and 7?
- 8 A 13, 10 and 8, they all have -- they all --
9 September, October, with the birthdays.
- 10 Q Okay. And you're a Lieutenant Colonel in the Army?
- 11 A Yes, sir.
- 12 Q And you're a medical doctor by profession?
- 13 A Yes.
- 14 Q And as I understand it, you're a board certified
15 anesthesiologist ---
- 16 A Yes.
- 17 Q --- correct? All right. And you're not an
18 epidemiologist or a toxicologist or an infectious
19 disease specialist?
- 20 A No, I have no credentials in that area.
- 21 Q All right. So, in late February to early March of
22 2010, you received orders that you were being
23 transferred from San Antonio, Texas to Columbia,
24 South Carolina, right?
- 25 A That is correct.

1 Q And so you began looking on the internet and found
2 the house at 4120 Kilbourne Road, right?

3 A Yes.

4 Q And as I understand it, it was a attractive to you
5 and to Mrs. Hoover because it was close to St.
6 Joseph's Catholic Church on Devine Street, that's
7 where your children were going to go to school?

8 A Yes and still do.

9 Q All right. Now, after you picked out the house you
10 wanted from the internet research, you contacted a
11 real estate agent in Columbia, is that right?

12 A Yes, with ERA Wilder Realty.

13 Q And that was Todd Beckstrom?

14 A That is correct.

15 Q And with Mr. Beckstrom's help, you signed a one year
16 lease on 4120 Kilbourne Road, correct?

17 A Yes.

18 Q And you signed that lease on April the 30th, 2010?

19 A That's correct.

20 Q Now, at the time that you had signed the lease, you
21 had never walked through the house or seen it in
22 person, correct?

23 A Yes.

24 Q All right. And you first visited the home on or
25 about say June 8th of 2010, is that right?

1 A That's right.

2 Q Okay. But the lease term began on June the 15th?

3 A Yes, the 15th. We were traveling because my father-
4 in-law had died of cancer so we were traveling and
5 came from Texas on route to take a look at the house
6 for the first time.

7 Q All right. And as I understand it, you were to pay
8 rent of \$2400 a month, is that right?

9 A Yes, that is correct.

10 MR. SHEALY: Your Honor, I believe I have left
11 my packet of exhibits up here.

12 (Pause.)

13 MR. SHEALY: Your Honor, may I approach the
14 witness?

15 THE COURT: Yes, sir.

16 Q Dr. Hoover, I'm going to show you a document that's
17 been marked as Plaintiff's Exhibit Number 1 and ask
18 if you can identify that?

19 A Yes, this is the residential lease that I signed
20 with the option to purchase.

21 MR. SHEALY: Your Honor, based on that
22 identification, I would move ---

23 THE COURT: Without objection, I'm sure.

24 MR. BRADLEY: I don't object. I think actually
25 the contract which was signed by Mr. Schumacher is a

1 little bit different, they changed the numbers but
2 everything's fine, it's okay.

3 THE COURT: Very good.

4 (Whereupon, Plaintiff's Exhibit Number 1,
5 Residential Lease with Option to Purchase, Two
6 Pages, was admitted into evidence.)

7 Q Now, you mentioned this as you were looking at
8 Exhibit 1, the lease contained a provision that gave
9 you the option to -- of purchasing the house, right?

10 A Yes, sir.

11 Q All right. You agreed upon a purchase price but you
12 weren't agreeing to purchase it. You were just --
13 you just had an option to purchase that you could
14 exercise by the end of December, 2010, is that
15 right?

16 A Yes, I believe it's item number 19.

17 Q Okay. And the owner on Exhibit 1 is listed as Kevin
18 Schumacher, right?

19 A Yes, sir.

20 Q Okay. Now, I want to try to go through some of this
21 chronology but I understand your wife and perhaps
22 your real estate agent are more attuned to the
23 particular details, is that right?

24 A The timing, yes. It was a very challenging time,
25 moving and getting work started and so, yes, that is

1 true.

2 Q Okay. All right. So you get the key on June the
3 15th and arrive with your family at that point?

4 A Well, no. We didn't actually get our household
5 goods moved until late July but we came -- we did
6 actually get the key 15 June, on the 15th, but we --
7 our household goods didn't arrive. So ---

8 Q Right.. My question was just that you got the key on
9 ---

10 A We did get the key on the 15th, yes.

11 Q And the household goods didn't arrive until the end
12 of July?

13 A That's correct.

14 Q All right. All right. But, as I understand it, you
15 put out some air mattresses and stayed there a few
16 days in June just to try to establish a residency,
17 set up accounts with ---

18 A Yeah, set up utilities, get a bank account, all
19 those things.

20 Q Okay. And during that time was the first time you
21 met Kevin Schumacher, correct?

22 A Yes, that's correct.

23 Q And as I understand it, he came over, met you all,
24 brought you some pastries, welcomed you to Columbia?

25 A Yes. Yes, he did.

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1 Q And then your father-in-law died?

2 A Yes.

3 Q In Indiana?

4 A He had died previously but we -- yes.

5 Q But you all had to go up there for the funeral?

6 A Right. So we came here on route.

7 Q All right. Now, while you were gone, did you get a
8 home inspection done?

9 A We did get a home inspection, yes.

10 Q Okay. Now, and as I understand it, that inspection
11 was done in anticipation that you would exercise the
12 option to buy if certain things were modified about
13 the house?

14 A Yes.

15 Q Okay. It had nothing do with the lease because you
16 had already entered into the lease?

17 A Right. We were just wanting to get certain things
18 fixed prior to purchase.

19 Q Okay. And is it Boysia that did the ---

20 A Yes.

21 Q --- inspection?

22 A Yes.

23 Q Now, that inspection revealed some items that you
24 all wanted to have corrected by July the 16th as a
25 condition of your exercising the option to purchase,

1 correct?

2 A Yes.

3 Q Okay. And the inspection was to the exterior and
4 the interior and even underneath the house, right?

5 A Yes, it was pretty detailed.

6 Q All right. But it didn't include a termite
7 inspection or an inspection of the heating and air
8 conditioning system?

9 A It did not.

10 Q Now, after that was done, you all had some
11 communications with -- perhaps through your real
12 estate agents as to the things that you all wanted
13 to have done, correct?

14 A Yes.

15 Q Okay. And Mr. Schumacher paid someone to address
16 those items, correct?

17 A Yes, he did. He did address the majority of the
18 items as I recall.

19 Q All right. Now, so you all arrived really with the
20 intention of being there and living there in late
21 July with your household goods, right?

22 A Yes. I think it was July 24th.

23 Q All right. And after you've been there a little
24 bit, you noticed some other electrical issues that
25 hadn't been ---

1 A Right. The main issue was in our -- in the front
2 bedroom, I believe it was, we had our two youngest
3 daughters sharing, there was an outlet that every
4 time we plugged in either the lamp or the vacuum or
5 anything in to it, that it shorted out the house.
6 So we basically just stopped using that outlet.

7 Q Okay. Now, this is an older home, correct?

8 A I think it was built in the late 40's.

9 Q Okay. Not -- certainly not brand new?

10 A No.

11 Q Okay. And -- all right. Was there a friend of
12 yours from Augusta ---

13 A Yes ---

14 Q --- that came ---

15 A --- Charlie O'Neill (phonetic). He came over and
16 took a look at it and said it was missing -- a lot
17 of the electrical units - and I'm not an electrician
18 by any means, but the timeframe that it was built,
19 the codes didn't have the third ground, the neutral,
20 so it had, I guess, just two. It didn't have -- it
21 didn't have a third ground.

22 Q All right. Well, let me back up and make sure the
23 jury understands who this person is. All right, so
24 Charlie O'Neill is a friend of yours who lives in
25 Augusta, Georgia and he's an electrician?

1 A I think he's a general contractor.

2 Q Okay.

3 A I just wanted him to take a look at it.

4 Q All right. So he came over, stayed with you all a
5 while?

6 A He just came over and took a look at it and
7 diagnosed it.

8 Q Okay. And so the wiring was not modern, it was ---

9 A It was not modern. It was 40's, 50's era.

10 Q Now, so then, did you hire an electrician to upgrade
11 the wiring to modern standards?

12 A Well, not all of the wiring in the house. We did
13 have, I believe -- we did have electricians come
14 out. I'm blanking on their name ---

15 Q Buck Thomas?

16 A Buck Thomas, they came out and I think it was also
17 that we were having -- we had asked permission to
18 get the computer line brought up. So they brought a
19 line up. They also worked on a fan in the -- in the
20 master bathroom. They worked on the fan. There was
21 also some wiring up in the attic I believe that they
22 fixed as well.

23 Q Okay. Now, did you have any conversation with Mr.
24 Schumacher about the work that you were having done
25 that Buck Thomas performed for you?

1 A We had the conversation, I believe, about the
2 computer lines but the other stuff we just had
3 fixed.

4 Q Okay. Now, a computer -- the computer line was like
5 something you just wanted added to the house, not a
6 -- not a safety or a functional ---

7 A No, it was just for, you know, recreational, you
8 know, having access to the computer.

9 Q All right. Was there another dedicated line that
10 you wanted ---

11 A Oh, I think we had wanted -- we wanted cable too.
12 We also wanted cable installed which he had given us
13 permission for the cable because they had to drill a
14 hole for the cable to come in. So he had given us
15 permission for that.

16 Q Okay. So some of this work that he did for you was
17 to add -- to modify the house for recreational
18 purposes ---

19 A Yes, upgrade.

20 Q Okay. Now, the --- the electrical issues that you
21 had, had those been picked up in the home inspection
22 that you all commissioned?

23 A I don't -- I don't know that they were picked up per
24 se. I didn't look at it in that great of detail in
25 terms of the electrical findings.

1 Q Okay. Now, another modification, you talked about
2 sort of an upgrade or modification to the house
3 being a computer line and then adding a cable line
4 and you said he gave y'all permission. Is that Mr.
5 Schumacher?

6 A For the cable line and the computer line. The other
7 stuff we -- we had the fan fixed and we also had the
8 -- there was something in the attic, as I recall. I
9 mean, it was a while ago. But as recall, there was
10 something in the attic that we asked, some wiring.

11 Q Well, leaving that aside for a second, did -- again,
12 with respect to the cable, did the cable company
13 require Mr. Schumacher to ---.

14 A Yes, it required that they would not do the work
15 without the owner of home granting permission.

16 Q All right. And he gave that to you?

17 A He did. He did.

18 Q All right. So, now, regarding another modification
19 to the house. Did this house have, like so many
20 other houses do, an attic fan?

21 A It did. At the time I had no idea what it was.
22 There was board that was occluding the attic fan.

23 Q When you say occluding -- all right, well, hold on.
24 It -- you didn't know that -- what it was ---

25 A I didn't know what it was.

1 Q All right. But you subsequently learned that it had
2 a fan in the attic predating, I guess, modern air
3 conditioning?

4 A Right. Right.

5 Q Okay. That was a way of drawing air into the attic
6 and getting hot air out of the house?

7 A That is correct. And as I recall, there was a
8 switch that I thought was like a hall light switch
9 that when you hit it, it turned the attic fan on but
10 then it would shut down some of the electrical
11 circuitry upstairs because the attic fan was
12 covered.

13 So we did have that removed because we had
14 concerns that when we turned it on, that -- that
15 would turn on the attic fan with it being covered.

16 Q All right. So let me -- so there was a place in the
17 upstairs hall that -- where the attic fan drew air?

18 A That's correct.

19 Q Okay. In the ceiling?

20 A Yes, sir.

21 Q And when you moved in, there was a board that had
22 sealed up that -- that area?

23 A Yeah it was a huge board. It was probably 6 foot by
24 8 foot.

25 Q Okay. And so you asked Mr. Schumacher to -- if you

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1 could unseal that board, is that correct?

2 A I don't recall if we had that conversation but ---

3 Q You had it done?

4 A We had it done.

5 Q Yeah. And so that -- did it ever occur to you that
6 that board may have been put up there when the air
7 conditioning was installed in the house to ---

8 A Honestly, my concern was the electrical issue that
9 it was creating. I mean, I guess I could have just
10 put a piece of tap over it and just not touched it
11 but...

12 Q Well now -- all right... Do you recall that you
13 actually had a conversation with Mr. Schumacher
14 about removing that board and that he actually was
15 the one that paid to have someone take it off?

16 A If he did it could have been Johnny Housewright that
17 would have taken off. But yeah that ---

18 Q Is that your recollection of what happened?

19 A Yes, I -- yeah, I believe that they came over and
20 took it out.

21 Q Okay. Now -- and then I understand that you also
22 put in a window air conditioning unit in an upstairs
23 bedroom?

24 A Yes, we did.

25 Q And that was because the upstairs was not cool

1 enough and there was too much humidity for it to be
2 comfortable, correct?

3 A Yes, that's right.

4 Q You all typically keep your house at 74 degrees, is
5 that my understanding?

6 A That's exactly right.

7 Q But you all -- when you got the key and took
8 possession of the house in June, you set the air
9 conditioner, and came back in July and were met with
10 a utility bill of \$518, is that right?

11 A Yes.

12 Q Okay. And then you had another electrical bill of
13 \$611 right after that, is that right?

14 A Right. Yeah, I think the bills were coming about
15 ever four weeks or so.

16 Q Okay. Now, let's talk about this problem that we
17 mentioned in the opening statements with the mold.
18 Before there was mold, in the first or second week
19 of August, you had been in the house since say the
20 24th or 26th of July, correct?

21 A I believe we -- yes, that's when we -- that's when
22 our -- we actually got there a little before that
23 because we did a partial ditty move where you move
24 some of your stuff. So I think we got there about a
25 week before our stuff arrived.

1 Q Okay. But so you -- okay. So then you'd been there
2 say two or three weeks?

3 A (Affirmative response.)

4 Q First or second week of August, you began to see
5 some condensation form on the ceiling of the
6 stairwell, right?

7 A Yes, sir. It was at -- it was at -- where the
8 molding met the ceiling, about two and a half feet
9 worth of condensation.

10 Q All right. Now, and as I understand this, this
11 house has sort of a central -- a main stairs or one
12 stairwell?

13 A Yes.

14 Q Okay. And you walk up the stairs and you can -- and
15 then it has a hallway upstairs and the area of the
16 mold was sort of in the stairwell if you sort of
17 leaned over the railing up there in the ceiling?

18 A Yes, sir.

19 Q Okay. How high are the ceilings in the upstairs?

20 A Really tall ceilings, I mean, probably 11, 12 feet.
21 I mean, it's high ceilings.

22 Q Okay. In the -- in the second floor?

23 A I believe they're pretty high. I mean you'd --
24 you'd need a ladder to get up there for sure.

25 Q Okay. So -- all right. So you noticed this

1 condensation form but it didn't trigger any response
2 from you when you saw the condensation form, is that
3 right?

4 A Well, it was -- it was concerning certainly. Mr.
5 Schumacher had been to the house around the time
6 that the cable was installed and that's when we had
7 shown him what happened after it dried. But at the
8 time, I don't recall that it triggered me to
9 immediately call Mr. Schumacher.

10 Q All right. But you see condensation, you see
11 wetness on the wall?

12 A Yes.

13 Q And there's no mold there but you see wetness?

14 A Yes, that's what was first there.

15 Q Okay. And that had been there a while, maybe a
16 week, 10 days before you began to see blackish green
17 spots form around the condensation?

18 A I can't say whether it was 10 days. I can't say
19 whether it was a week. It could have been less. It
20 certainly wasn't more than 10 days.

21 Q Okay.

22 A There's no way it was more than 10 days.

23 Q Okay. But there was a period of time where it was
24 wet to see it, it was no mold and you did not do
25 anything about it, just noticed it?

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1 A Yeah, it could have been three days, it could have
2 been seven, I don't know.

3 Q All right. Okay and so we talked about this earlier
4 and you just mentioned it again I think. You point
5 this out say a week later, middle of August ---

6 A Uh-huh.

7 Q --- there's green spots beginning to form, correct?

8 A Yes. When that two, two and a half foot area became
9 green and blackish, that's when we had shown Mr.
10 Schumacher.

11 Q And he was coming over there anyway to bring you the
12 letter that we talked about for the cable company?

13 A Correct, that is correct.

14 Q And Mr. Schumacher said, I think that's mold, didn't
15 he?

16 A He said, I think that's mold and I'm concerned.

17 Q And he told you to spray bleach on it?

18 A He said -- he said, I've seen this before and you
19 can spray -- you can spray bleach on this and he
20 said he was concerned about it.

21 Q Okay. And -- but you didn't spray any bleach on the
22 mold?

23 A You know, I stayed as far away from it as I could at
24 the time because I just didn't want to -- I didn't
25 want to disturb it. And to be honest with you, I had

1 never seen mold growing on a wall before, so I
2 stayed away from it.

3 Q All right. So, you don't take any action just there
4 it is. Mr. Schumacher's recommended spray bleach on
5 it and you just decide to stay away from it?

6 A Well, I'm not -- like I said, I wasn't sure that
7 spraying bleach on it would do anything to it. But
8 I -- you know, I didn't do it. I didn't know if it
9 would be helpful or if it...

10 Q All right. But Mr. Schumacher when he -- when you
11 told him about that, he called somebody to come find
12 out why there was condensation forming that was then
13 leading to the mold, correct?

14 A He -- he did send two gentlemen out from Johnny
15 Housewright, an elderly gentleman and a younger guy.
16 And they went into the attic and they found an area
17 that they could insulate but they determined that
18 there was a significant portion of the insulation
19 that was -- I mean it was just not insulated.

20 Q A duct?

21 A Yeah, what's in the substance of the wall from the
22 master into the -- into the hallway.

23 Q Okay. So just so that we are clear with the jury,
24 we're talking about a duct that conducts cool air
25 from the air conditioning unit through the wall to

1 the various vents in the house?

2 A Right, correct.

3 Q All right. And was it your understanding that that
4 had actually been caused by a repairman leaving it
5 uninsulated during a previous renovation?

6 A That's -- that's what I was told by the Johnny
7 Housewright folks.

8 Q All right. Now, was there -- did the folks at
9 Johnny Housewright, were they going to also cut out
10 the section of drywall that had mold on it and get
11 rid of it?

12 A They were looking at potentially reinsulating it but
13 I don't -- I can't say with definity (phonetic). I
14 don't think they went -- I don't think that they
15 were going to do that. I mean, I don't recall them
16 saying that they were going to come out and cut the
17 drywall out.

18 Q But they came out very quickly after you pointed
19 this out to Mr. Schumacher?

20 A They came out and checked the integrity of the vent
21 and the AC unit. But in terms of what type of mold
22 is this and how do we take care of it, I wasn't
23 given anything in writing with specifics about what
24 they would do with the mold.

25 Q All right. Now, let's move forward a few days. You

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1 all eventually, because you're concerned about the
2 mold, hire a company called Biotek to test the mold,
3 test the air in the house?

4 A That's correct.

5 Q All right. You had never heard of Biotek before
6 this, correct?

7 A No.

8 Q Haven't having dealt with household mold of any
9 kind?

10 A No, the only mold I had dealt with was when I was a
11 anesthesiology resident in the burn unit. If it got
12 into -- aspergillus in particular, people who's
13 immunocompromised, if it gets into their lungs it
14 can be bad news. But I had never dealt with
15 residential mold or any kind of household dust
16 allergens or mold, no.

17 Q Okay. Had never -- had you ever cleaned the shower
18 before or any other area in a house that has a
19 tendency to stay wet?

20 A I had no previous experience with it.

21 Q Okay. Now, you just called a -- you just named a
22 particular kind of mold, aspergillus?

23 A Yes, sir.

24 Q And just because you've mentioned a mold by name, is
25 it your understanding that there's mold all around

1 us all the time?

2 A Mold is -- mold is ubiquitous in certain areas
3 outside and certain damp areas indoors, it's just
4 when it is in areas where it's not supposed to be.
5 But mold is ubiquitous, it's just a matter of its
6 concentration.

7 Q All right. Now, ubig...

8 A Ubiquitous, everywhere, sorry.

9 Q All right. Thank you. And aspergillus is a
10 naturally occurring mold that's in dirt and in the
11 air that we breathe every day, correct?

12 A It is. It's just typically not aerosolized inside.

13 Q Okay. So, now, you mentioned that your experience
14 with mold in a burn unit but you hadn't had any
15 experience with mold remediation?

16 A Oh, no, never.

17 Q Okay. And remediation, as I understand it, means to
18 sort of fix a mold problem?

19 A Yes.

20 Q Okay. And you had no knowledge of any -- whether
21 there were any standards that applied to mold
22 remediation or what those standards were before ---

23 A Yeah, prior to the report and prior to the
24 assessment by Biotek, I did not have that knowledge.
25 But there -- in his report he did report to

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1 remediate to a certain standard, to a -- and I'm
2 blanking on what the standard was but it was in the
3 report.

4 Q All right. But there wasn't a standard that you were
5 familiar with or knew anything about?

6 A No. I just -- yeah ---

7 Q Okay. And so anyway, you get a report. He says
8 that he would -- the guy at Biotek says he would
9 remediate the mold to a certain standard?

10 A Yeah, pretty much negative pressure because it's in
11 the air, negative pressure containment and cut the
12 drywall via what he called traditional remediation
13 technique.

14 Q All right. You didn't speak with any other
15 companies or individuals that held themselves out as
16 a mold remediation specialist?

17 A At that time I didn't. What gave me confidence in
18 his report is that he had a disclaimer that he was
19 willing to have someone test behind him. That he
20 would have -- that he would allow someone to air --
21 do air samples behind his work and that kind of sold
22 me.

23 Q Okay. All right. So Biotek did the test that we've
24 been talking about on August the 30th, is that
25 right?

1 A Yes, sir.

2 Q Okay. All right. And then on September 3rd, you
3 provided notice through your real estate agent to
4 Mr. Schumacher of your intent to terminate the
5 lease, correct?

6 A I did.

7 Q All right. And you all planned to move out on
8 September 30th?

9 A That is correct.

10 Q All right. And, as I understand the position you
11 take in this lawsuit, you were concerned about the
12 health and safety of your family and that's the
13 basis ---

14 A And my wife in particular.

15 Q And so when you moved out of the house on Kilbourne
16 Road in late September, you moved into the very
17 house that you live in now?

18 A Yes.

19 Q And that's the house at 324 Running Fox Road?

20 A Yes.

21 Q Now, am I correct that the very day that you gave
22 Mr. Schumacher or instructed your real estate agent
23 to give Mr. Schumacher notice of your intent to
24 vacate the property, you told your real estate agent
25 that 324 Running Fox Road was currently vacant?

1 A (No response.)

2 Q And you were interested in moving to that house?

3 A I was interested in getting into a safe environment
4 for my family.

5 Q All right.

6 MR. SHEALY: Your Honor, may I approach.

7 THE COURT: Sure.

8 Q Dr. Hoover, I'm going to show you a document that's
9 previously been marked as Plaintiff's Exhibit 2 and
10 ask you if you can identify this e-mail chain?

11 A Yes, this is communication from me to Mr. Todd
12 Beckstrom and his -- the results of me communicating
13 with him showing contamination of upstairs of
14 aspergillus and my wish to end the lease due to
15 health concerns and, you know, the issue with
16 repairs to an acceptable standard.

17 So it's essentially me giving my notification.

18 Q All right. And that -- what -- what you're doing
19 there -- well, what's on the bottom of this e-mail
20 chain is the e-mail by which a person, Ancel
21 Hamilton, at Biotek sent you his report on September
22 2nd, correct?

23 A Yes, sir.

24 Q And then you forwarded that to Todd Beckstrom, your
25 real estate agent, on September 3rd and that's the

1 first time you gave that to Todd Beckstrom, correct?

2 A Yes, of the report, yes.

3 Q All right. And -- and then the second paragraph of
4 your e-mail to Todd is where you say, the home which
5 we're interested in and is currently vacant is 324
6 Running Fox Road, is that correct?

7 A Yes, that's how it reads.

8 Q All right.

9 MR. SHEALY: Your Honor, based on that ---

10 THE COURT: Any objection, Mr. Bradley?

11 MR. BRADLEY: No, sir.

12 THE COURT: All right.

13 MR. SHEALY: Thank you, Your Honor.

14 THE COURT: Plaintiff's Number 2.

15 (Whereupon, Plaintiff's Exhibit Number 2, E-mail
16 Chain September 3, 2010 Inspection Report, was
17 admitted into evidence.)

18 Q All right, Dr. Hoover, your health was not impacted
19 in any way by the mold that -- in the house on
20 Kilbourne Road?

21 A Mine was not.

22 Q Okay.

23 MR. SHEALY: Beg the Court's indulgence.

24 THE COURT: Yes, sir.

25 (Pause.)

1 MR. SHEALY: Your Honor, that is all the
2 questions I have for Dr. Hoover.

3 THE COURT: All right, Mr. Bradley -- actually,
4 that's Mr. Bradley's witness. He did what we call an
5 adverse witness but he's allowed to cross-examine him.
6 I'm going to give Mr. Bradley a little bit of leeway,
7 okay.

8 Go ahead, Mr. Bradley.

9 MR. BRADLEY: Judge, may I approach the witness.

10 THE COURT: Yes, sir.

11 (Pause.)

12 CROSS-EXAMINATION

13 BY MR. BRADLEY:

14 Q Now, Lance, we talked about the lease, Defendant's
15 Number 1, did y'all actually attach the inspection
16 report to that lease?

17 A Oh, at the time that we signed it, did we attach it?

18 Q At some point didn't you guys agree that the
19 inspection report, the things that Mr. Boysia found
20 that needed to be fixed about the house that Mr.
21 Schumacher would fix?

22 A Yes.

23 Q All right. And is that what's marked there in that
24 book as Exhibit 1? Does that have the complete
25 lease with all the changes and everything?

1 A I believe so. There may be another one with more
2 changes but...

3 Q Does it have the inspection report and the
4 additional changes?

5 A This one does not have the inspection report.

6 Q I'm asking the question, I'm messing it all up. I'm
7 sorry, Lance. Exhibit 1 in that book that I gave
8 you, does that ---

9 A Oh, the book.

10 Q --- have the inspection report and everything?

11 A Yes, it should, yes.

12 MR. BRADLEY: Judge we'd like to put that into
13 evidence. And I've given Mr. Shealy my book with all the
14 things that we think are relevant.

15 THE COURT: Is there any objection?

16 MR. SHEALY: Your Honor, well I do have some
17 issues with how we're doing this.

18 THE COURT: So do I, it's really kind of
19 confusing. But y'all come up, come on up here.

20 (Whereupon, a bench conference was held off the
21 record, in the presence of the jury, but out of
22 the hearing of the jury.)

23 THE COURT: Members of the jury, I'm going to
24 give you a little break. There's a logistical matter we
25 need to resolve, nothing difficult but I think it would

1 be better if y'all go to the jury room. Don't talk about
2 the case. We'll bring you back out shortly.

3 (The jury retires from the courtroom at
4 approximately 3:55 p.m.)

5 THE COURT: All right. So did -- all right. So
6 Plaintiff's Number 1, the lease, just the lease itself.
7 And you were mentioning, Mr. Shealy, there was an
8 addendum that now you want to introduce. Y'all both have
9 the same thing, it's just a matter of how you label it --
10 everything.

11 MR. BRADLEY: So, what Kirby put in was the
12 lease and not the -- my client's -- actually the signed
13 lease that his client signed too is what I'm putting in
14 which is a little different but that's not that big a
15 deal. The addendum that he talked about where he said
16 Mr. Schumacher agreed to make these changes and this that
17 and the other based on the home inspection report ---

18 THE COURT: Uh-huh.

19 MR. BRADLEY: --- that was signed as an addendum
20 to the lease in writing and that's what we're trying to
21 put in, the whole document to show what the lease was,
22 what the inspection report showed and what they agreed to
23 do.

24 MR. SHEALY: Your Honor, the lease was signed in
25 April.

1 THE COURT: Uh-huh.

2 MR. SHEALY: This addendum is entered into or is
3 proposed and signed by Dr. Hoover in July. The lease is
4 already in effect.

5 THE COURT: Uh-huh.

6 MR. SHEALY: So it's -- I am happy with it to
7 come in as its own document.

8 THE COURT: Well look, this is -- you both got
9 the same thing. Y'all know the case a lot better than
10 me. You've got the lease in. Let's do it one step at a
11 time. I don't think there's any objection, it's just a
12 matter of clarifying it for the purpose of the jury to
13 understand, one, two, three, four, is that right?

14 MR. SHEALY: Right, it's the identification is
15 -- is not lacking but it is confusing. That is the issue
16 I have, is the way the document has been identified means
17 -- makes it look like it ---

18 THE COURT: That can be explained. You've got
19 the lease, you've got this other document that goes along
20 with the lease that was signed later. I don't see a
21 problem. Help me out.

22 MR. BRADLEY: I don't either, Judge.

23 THE COURT: Okay.

24 MR. SHEALY: But ---

25 THE COURT: Go ahead, Mr. Shealy.

1 MR. SHEALY: Well, I think what Mr. Bradley is
2 getting ready to do is -- I mean, he has a bound item.

3 THE COURT: Uh-huh.

4 MR. SHEALY: And I can't say that I'm going to
5 agree ---

6 THE COURT: I understand that but what do you
7 object to right now is my concern. I don't care about
8 later on.

9 MR. SHEALY: Well, my objection is to the
10 document that has already been admitted into evidence ---

11 THE COURT: No, no, no, part of a document has
12 been admitted into evidence. There's a subsequent part
13 to it that now he wants to introduce.

14 Is that the correct understanding?

15 MR. BRADLEY: Yes, Judge ---

16 THE COURT: I don't know.

17 MR. BRADLEY: What happened was just, to give
18 you outline, okay.

19 THE COURT: All right, go ahead.

20 MR. BRADLEY: Lance signed the lease, he
21 forwarded it to Mr. Schumacher. Mr. Schumacher changed
22 some of the terms, the purchase price ---

23 THE COURT: Okay.

24 MR. BRADLEY: --- then sent it back.

25 THE COURT: Uh-huh.

1 MR. BRADLEY: So the document that Mr. Shealy
2 put in was really Lance's offering. The document I'm
3 trying to put in is actually what was accepted. I don't
4 really care too much about that. I just wanted to give a
5 complete picture to the jury.

6 THE COURT: Okay, that's fine.

7 MR. BRADLEY: The addendum that I'm talking
8 about is what Mr. Shealy actually asked Lance about on
9 direct which was, what are you going to fix and do you
10 agree to do it.

11 THE COURT: All right, this is the way -- maybe
12 I'm getting too old but this is the way you do it.
13 Here's the document, this is the lease, this is the one
14 that was signed. This is something else that goes along
15 with it, you got it back and sent it back. Explain all
16 that through the witness.

17 MR. BRADLEY: Judge, I'm just asking ---

18 THE COURT: What now?

19 MR. BRADLEY: I'm just asking to put it into
20 evidence.

21 THE COURT: But have him identify, have him to
22 specify, yes this came later on. It's got the date and
23 time on it.

24 MR. BRADLEY: Okay. You guys are smart guys.
25 Nobody went to Clemson or anything, you guys talk.

1 Let's take a little short break. This is going
2 to be tedious but we'll just take it one step at a time.
3 But the way to do it is, all right, he got this part, you
4 can explain this is the other document, this is when he
5 got it back, this is when he signed it, step by step. If
6 it takes forever, it does, no big deal.

7 MR. BRADLEY: All right, thank you.

8 THE COURT: Let's take a short break. And I've
9 got to stop about 5 today, I don't care. If somebody
10 else has a problem, it's yours, not mine but I'm not
11 going any longer than 5.

12 MR. BRADLEY: Yes, sir.

13 MR. SHEALY: Yes, sir.

14 THE COURT: I've got another job, that's not the
15 only reason, but you know.

16 MR. BRADLEY: I got it. I understand, Judge.

17 THE COURT: We'll take a short break.

18 (The court was in recess.)

19 THE COURT: We all ready?

20 MR. BRADLEY: Yes, sir.

21 THE COURT: And, by the way, Mondays I always
22 send the jury home about 5:00 anyway. They don't know
23 what's going on, just a heads up.

24 And, let's see, hopefully we can get him, if
25 nothing else. Who's the guy ---

1 MR. SHEALY: I ---

2 THE COURT: --- how long is he going to take?

3 MR. SHEALY: Your Honor, I don't expect to awful
4 long but ---

5 THE COURT: Too awful long? Is that 10 minutes,
6 20 minutes, we don't know, huh?

7 MR. SHEALY: I don't believe that my direct
8 would take longer than 10 to 15 minutes.

9 THE COURT: It's going to be very close to be
10 honest with you. But we'll work around it. You're going
11 in the morning? But it's going to be -- I don't think
12 we're going to be able to do it but we might.

13 Bring the jury in.

14 (The jury returned to the courtroom at
15 approximately 4:08 p.m.)

16 BAILIFF: Jury's seated, Your Honor.

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

18 Welcome back, members of the jury. Mr. Bradley,
19 you may continue, sir.

20 MR. BRADLEY: Thank you, Judge.

21 CROSS-EXAMINATION CONTINUES

22 BY MR. BRADLEY:

23 Q Lance, I just handed you what I believe is the
24 signed lease with the addendums showing the house
25 report and the work that was going to be done that

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1 Mr. Shealy asked you about.

2 A Yes, it's dated 10 May, 2010. It says under
3 comment, signed counter-offer for 4120 Kilbourne
4 Road, \$425,000.

5 Q That's for the option to purchase it?

6 A Yes.

7 Q Okay. And then attached to it is the house
8 inspection, the work that was going to be fixed?

9 A That is correct. It's also dated the same, 10 May,
10 Inspection Response Addendum to Contract.

11 Q That is what Mr. Shealy was asking you about before?

12 A Yeah, actually it's dated 2 July but it's got a
13 contract final agreement date of 10 May, yes.

14 MR. BRADLEY: We'd like to put that into
15 evidence as Defendant's Exhibit 1.

16 THE COURT: All right.

17 MR. SHEALY: No objection, I guess, as to with
18 that.

19 THE COURT: Okay, Defense Number 1 without
20 objection.

21 (Whereupon, Defendant's Exhibit Number 1, Fax of
22 Signed Lease with Addendums, was admitted into
23 evidence.)

24 Q And when did you start moving -- I'm sorry, I can't
25 talk until she's done. She can't write it down and

1 put the sticker on it at the same time.

2 (Pause.)

3 Q When did you start moving into the house?

4 A We started moving in in July. We got the key in
5 June.

6 Q When did you first notice the problem with the mold?

7 A We noticed it roughly the middle of August, I
8 believe. After reviewing some of the dates that my
9 wife gave me, around August the 13th, the 15th
10 timeframe.

11 Q All right. What was it about the mold that bothered
12 you?

13 A Its location bothered me in that it wasn't in an
14 area that I would expect mold. And the coloration
15 and the size of it bothered me. It was about 2 and
16 a half feet.

17 Q Did you guys tell Mr. Schumacher about it?

18 A We did.

19 MR. BRADLEY: May I approach, Your Honor?

20 THE COURT: Yes, sir. You want to show

21 Mr. Shealy what the next one is?

22 MR. BRADLEY: He knows what it is.

23 THE COURT: All right. That's okay?

24 MR. SHEALY: Yes, Your Honor.

25 THE COURT: All right.

1 Q Lance, I showed you a picture. Is that picture of
2 the mold?

3 A Yes.

4 MR. BRADLEY: We'd like to put that into
5 evidence, Judge, if we may.

6 MR. SHEALY: Your Honor, I think with a little
7 more foundation, you know, when?

8 THE COURT: When did you take the picture? It
9 was a picture in the hallway going up. Lay all the
10 foundation, Mr. Bradley.

11 MR. BRADLEY: Yes, sir, Judge.

12 Q When did the mold look like that in the picture
13 (indicating)?

14 A That mold looked like that the 15th, around the
15 middle -- middle of August.

16 Q Is that a picture of the house you were living in
17 that Mr. Schumacher rented to you?

18 A Yes.

19 Q Where in the house does this picture show?

20 A This is above the stairwell on the second floor
21 where the ceiling meets the trim work.

22 Q Is it in a bathroom?

23 A No, it's in a common area in the hallway upstairs.

24 Q I see.

25 MR. BRADLEY: We'd like to put this in evidence.

1 MR. SHEALY: No objection.

2 THE COURT: Without objection, Defense Number 2.

3 (Whereupon, Defendant's Exhibit Number 2,
4 Photograph of Mold, was admitted into evidence.)

5 MR. BRADLEY: I have a few copies to show the
6 jury, Judge.

7 THE COURT: Go ahead.

8 Q And what was it about this mold that you -- that
9 bothered you?

10 A The location and its coloration..

11 Q And when did you let Mr. Schumacher know about it?

12 A I believe it was the -- we had shown him this around
13 the time that he came for the cable, August 13th to
14 15th timeframe, in those few days there.

15 Q How far away from the children's bedroom was it?

16 A The children's bedroom was immediately across the
17 hallway, both my oldest daughter and my young
18 children.

19 Q Did the fellow from Johnny Housewright come out and
20 look at the mold?

21 A He came out and looked at the air conditioning but
22 he did not specifically address the mold issue.

23 Q Do we know if he had any particular training about
24 what to do about mold that -- like this inside your
25 house?

1 A I don't believe -- he didn't present himself as if
2 he had credentials to do so.

3 Q What about Mr. Schumacher, did he tell you he had
4 any credentials to do it?

5 A No, he just said he had seen and dealt with mold
6 before and you could spray bleach on it.

7 Q His response to the problem, this mold at your
8 house, was spray bleach on it?

9 A Initially.

10 Q Were you comfortable with that?

11 A No.

12 Q Why not?

13 A Well, I mean, even though I don't practice in the
14 area of dealing with mold or allergy, I have seen
15 what the stuff can do if it gets in someone's lungs.

16 Q So did you just spray the bleach on it?

17 A No, I didn't touch it.

18 Q Did Mr. Schumacher suggest anything else that might
19 be done besides just spray the bleach on it?

20 A Not at that time

21 Q All right. What did you do? Did you let anybody
22 else know? Did you hire anybody?

23 A We hired Biotek to come test samples of testing the
24 mold and test the air quality.

25 Q Why did you pick Biotek?

1 A They did have some standards that they said they
2 would fix it to and it looked like a pretty
3 reputable company based on just a quick -- quick
4 search in seeing what they did.

5 Q Had you ever met the fellows from Biotek before?

6 A Nope.

7 Q Did they actually come out to your house to do
8 something?

9 A They did. They did both -- I believe they both
10 sampled the actual wall itself and they did air
11 quality samples.

12 MR. BRADLEY: May I approach, Your Honor?

13 THE COURT: Yes, sir.

14 (Pause.)

15 THE COURT: And I assume this is the report?

16 MR. BRADLEY: It is. It's number 11 in the book
17 that I gave you.

18 THE COURT: Any objection, Mr. Shealy?

19 MR. SHEALY: No, Your Honor. I mean, I assume
20 that the witness will identify it.

21 THE COURT: Okay.

22 Q What is that, Lance?

23 A It is a residential mold investigation report.

24 Q Is that the report you ordered?

25 A Yes, this is the Biotek report we did order.

1 MR. BRADLEY: We'd like to put that into
2 evidence, Judge.

3 THE COURT: I think without objection. Is the
4 mold person going to ---

5 MR. BRADLEY: Yes, he's a witness.

6 THE COURT: Okay, without objection ---

7 MR. SHEALY: (The witness nodded head.)

8 THE COURT: --- Number 3.

9 (Whereupon, Defendant's Exhibit Number 3,
10 Residential Mold Investigation Report, was
11 admitted into evidence.)

12 Q What did the report tell you, Lance, about this mold
13 as far as whether you should be concerned about it?

14 MR. SHEALY: Your Honor, I think that's probably
15 crossing the line and if the person that wrote the report
16 is a witness, then that should be posed to that person.

17 THE COURT: Rephrase your question. It's going
18 to get in one way or the other. Go ahead.

19 Q Lance did the report make you feel better about the
20 mold or worse about the mold?

21 A It made me worse because the indoor air quality was
22 of concern in the report. That's what was the issue
23 because it is potentially now just not in the wall
24 but aerosolized, we could be breathing it.

25 Q What kind of mold was it that was in the house that

1 made you worry?

2 A They said it revealed elevated penicillin which I
3 wasn't so much worried about that but the
4 aspergillus, I was very worried about.

5 Q What made you worry about the aspergillus?

6 A Well, in immunocompromised patients ---

7 MR. SHEALY: Your Honor, and I am going to
8 object because Dr. Hoover has not been identified by the
9 Defendant as a expert.

10 THE COURT: But he's testifying to how he felt
11 about a condition in his own home that might have
12 affected his family, himself and he's a doctor. He's not
13 being offered as an expert. He's trying to explain how
14 he felt and with his background, I'm going to overrule
15 that objection.

16 MR. SHEALY: Yes, Your Honor.

17 A Well, the concern was that when I -- again, when I
18 was a resident and I was at the San Antonio burn
19 unit, I did see some patients that got this stuff in
20 their lungs and it can be pretty devastating.

21 Q Did anybody in your family get sick?

22 A My wife was very sick.

23 Q Did Mr. Schumacher, by this time, had he ordered a
24 report?

25 A At this time he had not ordered a report.

1 Q And how long was it when this report came in since
2 you had shown Mr. Schumacher the mold?

3 A This report came in on -- it's dated the 3rd of
4 September and I believe the timeframe I gave was
5 roughly the 13th to 15th of August of 2010.

6 Q So it had been over two weeks?

7 A Yes, sir.

8 Q Had he done anything in those two weeks to fix the
9 problem other than say just spray it with bleach?

10 A The mold itself, no. He had sent out the air
11 conditioning folks but not the mold itself.

12 Q Did you send Mr. Schumacher the report?

13 A We did.

14 Q Did he say, gosh, I'm sorry about this mold that's
15 causing you concern?

16 A No, he said he wasn't going to pay for anything that
17 Biotek did and that he had his own company that he
18 felt comfortable with.

19 Q Did he tell you any reason that Biotek wasn't a good
20 company?

21 A No.

22 Q Did he even agree to pay for the report that you
23 asked for?

24 A No. No, sir.

25 Q Did he agree to do anything to take care of the mold

1 then?

2 A When he initially turned down the Biotek report, it
3 was a couple of days, I believe, and then he came
4 back and offered Mold Solutions.

5 Q All right. When you sent him the report, did he do
6 anything or say he was going to do anything?

7 A No, not at that time.

8 Q How long had this black mold been in your house
9 then?

10 A Going on -- it would have been to the probably --
11 let's see, 13 to maybe two -- a little over two and
12 a half weeks.

13 Q Did he say, can't do something right now but I've
14 got a plan to fix it, don't worry about it, I'm
15 going to take care of it?

16 A No. I mean, until -- until the actual e-mail came
17 to me about Mold Solutions, there was not -- there
18 was not a plan prior to that.

19 Q Okay. All right. Tell me -- you said that Monica
20 was ill, is that right?

21 A Yeah, she was ---

22 Q What was wrong with Monica?

23 A She had chronic -- chronic fatigue. She had a
24 persistent dry cough. She was generally just not
25 herself. I mean, very fatigued. Multiple times I

1 had to take the kids to school. Again, she had --
 2 she had unexplained bloody nose and general just
 3 malaise and fatigue.

4 Q When Mr. Schumacher hadn't done anything and you
 5 received that report from Biotek about aspergillus,
 6 what did you do?

7 A Well, I was concerned for the health of my family
 8 and, you know, talked it over with my real estate
 9 agent and, you know, I was kind of stuck. You know,
 10 we'd just moved and wasn't sure if we were going to
 11 get a remediation plan. So, I said, it's time for
 12 us to go if we're not going to get a plan that we
 13 feel safe with considering Monica was already sick.

14 Q And did Biotek actually give you a plan in that
 15 report about what needed to be done?

16 A They gave a very -- very detailed plan, very
 17 detailed recommendations.

18 Q And is that when you sent the e-mail that Mr. Kirby
 19 told you about where you said you didn't want to
 20 stay in the house anymore, Exhibit 2, Plaintiff's
 21 Exhibit 2?

22 A Exhibit 2, I have to look at it.
 23 (Pause.)

24 A Yeah, that would be -- that would be one day
 25 following that report, September 3rd.

1 Q Why did you send that e-mail?

2 A Well, my wife was sick. He had said he wasn't going
3 to pay anything Biotek was going to do. I was
4 concerned about the health of my family and, you
5 know, I knew what the stuff can do but, I mean, not
6 being an expert in it but, I mean, I was just very
7 concerned. And believe me, the last thing I wanted
8 to do was move. We had just moved. But I felt like
9 I had no other option at this point.

10 Q Up to this time, September 3rd, it had been a little
11 over two weeks since Mr. Schumacher knew about the
12 mold, right?

13 A Yes, sir.

14 Q And did he send anybody out to make a plan about
15 what to do about it?

16 A There was no specific plan on how the mold would be
17 remediated.

18 Q And had you sent somebody to get a plan?

19 A Yes, Biotek.

20 Q What did he say about your plan?

21 A What did Mr. Schumacher say about my plan?

22 Q Yes, sir.

23 A He said he wouldn't pay for anything that had -- do
24 anything that Biotek would do, he would use his own
25 people.

1 Q All right.

2 MR. BRADLEY: May I approach the witness, Your
3 Honor?

4 THE COURT: Yes, sir.

5 Q I'm showing you an e-mail that appears to have been
6 sent from Kevin Schumacher on September 8th
7 regarding Mold Solutions. Is that correct, Lance?

8 A Yes, I have that.

9 Q And did you see that?

10 A Yes.

11 Q All right. Now, this was sent actually five days
12 after you told him that you were going to look for
13 another place?

14 A That's correct.

15 Q Is this what you're talking about the plan he
16 submitted to you about how he was going to fix it?

17 A Yes.

18 MR. BRADLEY: We would like to put that in as
19 Defense Exhibit 4, Judge.

20 MR. SHEALY: Your Honor, may I approach and
21 review the ---

22 THE COURT: Yes, sir, make sure it's the same
23 thing.

24 (Pause).

25 MR. SHEALY: No objection.

1 THE COURT: All right, without objection, Number
2 4. What's this e-mail?

3 MR. BRADLEY: September ---

4 THE COURT: Mr. Schumacher's response?

5 MR. BRADLEY: Mr. Schumacher ---

6 THE COURT: All right.

7 (Whereupon, Defendant's Exhibit Number 4,
8 Plaintiff's E-mail of September 8, 2010, was
9 admitted into evidence.)

10 Q September 8th, over three weeks after he knew about
11 the mold problem and a full week after you had given
12 him the report, what did he say he was going to do?

13 A He said he was going to hire a reputable company,
14 Mold Solutions, to solve the problem.

15 Q Did he say he had hired Mold Solutions, he was going
16 to solve the problem?

17 A It says, I am in the process of hiring a reputable
18 company, Mold Solutions Incorporated, to solve the
19 problem.

20 Q And this was three weeks after the problem started?

21 A Yes, sir.

22 Q Did he actually hire Mold Solutions?

23 A Not to my -- not to my knowledge. I -- I don't know
24 if he did or didn't.

25 Q Well, did he stand by what he said in that e-mail?

1 A No one from Mold Solutions actually came out and
2 gave us a detailed plan like Biotek.

3 MR. BRADLEY: May I approach?

4 THE COURT: Yes, sir.

5 Q Lance, I'm showing what I believe to be an e-mail
6 from that very same day about two or three hours
7 later from Kevin Schumacher regarding whether he was
8 going to hire somebody to fix this problem. Is that
9 what that is?

10 A This is an e-mail about an air conditioning
11 contractor coming to the house. It's not about the
12 mold.

13 Q But doesn't it say, I do not have control of the
14 timeframe ---

15 A Yes, basically this is him telling me the contractor
16 who put in the air conditioner has got his insurance
17 company involved. They'll have to make their own
18 inspection and he doesn't have control of the
19 timeframe to fix this and -- until an adjuster comes
20 to the house and tells him how to proceed.

21 Q Is it your impression that he was going on back on
22 what he had said two hours earlier about hiring Mold
23 Solutions and finding a place for y'all to stay
24 while he fixed the problem?

25 MR. SHEALY: Your Honor, I'm going to object to

1 the leading.

2 THE COURT: Form of the question, sustained.

3 Dissect it, Mr. Bradley.

4 MR. BRADLEY: Thank you, judge.

5 Q This e-mail about not controlling the timeframe came
6 about two hour or three hours after the e-mail about
7 hiring Mold Solutions to fix the problem?

8 A Yes, sir. And my concern was -- our concern
9 frankly, Monica and I's, was that we had had a plan
10 and now we're gonna -- three weeks, you know --
11 three weeks into the process and now we're waiting
12 even longer with no control.

13 Q Did it say when he was going to have the problem
14 fixed?

15 A It says he did not have control of the timeframe.

16 Q Did it say, I promise I'll get it done in two weeks
17 or one week or three weeks or?

18 A It did not say that.

19 Q Well, did he tell you anything besides this e-mail,
20 hey, wait, I'm going to fix it, don't worry, hang
21 out, stay with me?

22 A He just said it was on hold.

23 Q Did you ever receive anything from him that said
24 otherwise than it's on hold?

25 A No.

1 Q When you received the e-mail from Mr. Schumacher
2 saying that it's on hold, how long had you and your
3 family been dealing with this problem?

4 A August 15th to September 8th, so three -- three and
5 a half weeks.

6 Q At this point, did you have any plan or promise or
7 assurance or anything from him that he's going to
8 fix it?

9 A Other than the e-mail which he said was now on hold,
10 there was no specific plan as to how the mold was
11 going to be handled by Mold Solutions.

12 Q When did you begin to actually move your family to a
13 new place?

14 A The first couple of truckloads from us, probably, I
15 want to say, maybe 13, 14 September. I mean, it's
16 been over a year but rough timeframe, you know,
17 after maybe 10 to 13 September.

18 Q So would it be fair to say about a week after Mr.
19 Schumacher had said it was on hold you started to
20 move your family?

21 A That would be fair.

22 Q And that would have been about a month after you
23 told him there was a problem with the black mold?

24 A Yeah, that's accurate.

25 MR. BRADLEY: May I approach the witness, Judge?

1 THE COURT: Yes, sir.

2 (Mr. Bradley confers with Mrs. Hoover.)

3 THE COURT: Stop.

4 MR. BRADLEY: I'm sorry.

5 THE COURT: She -- go over and talk to your
6 witness if you need to. But I'm not going to have that
7 become a part of the record ---

8 MR. BRADLEY: Sorry.

9 THE COURT: --- unless she's sworn.

10 MR. BRADLEY: All right.

11 Q Lance, have you looked at those pictures?

12 A Yes, sir.

13 Q Do you recognize those pictures?

14 A Yes, I do.

15 Q What do they show?

16 A They show mold.

17 Q Where were they taken?

18 A They were in the house. One, I believe, was in the
19 living room and the other one was the downstairs
20 when you go out, as you start going down into the
21 basement, in that same area underneath where the
22 other mold was all the way down. That was as you
23 walk into the basement, this one here (indicating).
24 I don't have them identified by an exhibit but --
25 and the other one was in the living one.

1 Q All right.

2 A Towards the floorboard, I believe.

3 MR. BRADLEY: Judge, I want to put these into
4 evidence, these pictures. I can mark them all as one
5 exhibit or separately.

6 MR. SHEALY: Your Honor, I don't think I'm going
7 to have an objection and they can come in however -- one
8 exhibit or several exhibits. However, I don't know that
9 we know when they were taken.

10 THE COURT: All right, you don't have an
11 objection. Lay a foundation, they were all taken at the
12 same time as number...

13 Q These were all taken about the same time, Lance?

14 A Roughly the same timeframe.

15 Q And about what time were they taken?

16 THE COURT: This is the same time as Exhibit
17 Number 2 that's been introduced was taken?

18 MR. BRADLEY: No, these are when they moved ---

19 THE COURT: Go ahead, lay a foundation.

20 A Yeah, these were taken in that timeframe when we
21 were moving out.

22 Q About the 2nd week of September?

23 A Second week of September, that's correct, about
24 September 12th.

25 Q Those three photographs are what the house looked

1 like when you left?

2 A Yes, sir.

3 Q And had anything been done to fix it at this point?

4 A Nothing had been done up to that time.

5 Q Did you have a plan from them on how they were going
6 to fix it?

7 A No specific plan from the mold company as to how it
8 would be fixed.

9 Q And did anyone accept the plan you had purchased
10 from Biotek?

11 A No, that plan was -- was turned down.

12 MR. BRADLEY: We'd like to put these three
13 photographs into evidence as our next exhibit.

14 THE COURT: As what?

15 MR. BRADLEY: As our next exhibit, Your Honor.

16 THE COURT: All right, Number 6, three
17 photographs of mold that appeared ---

18 MR. SHEALY: No, objection.

19 MR. BRADLEY: And I have some copies to show the
20 jury.

21 THE COURT: Sure.

22 (Whereupon, Defendant's Exhibit Number 6, Three
23 Photographs of Mold, was admitted into
24 evidence.)

25 THE COURT: But whatever we do, we'll going to

1 stop at 5:00 and nothing's going to change my mind,
2 nothing's going to alter that just based on the
3 timeframe.

4 MR. BRADLEY: Got it, Judge.

5 THE COURT: I don't care.

6 MR. BRADLEY: I promise ---

7 THE COURT: Go ahead.

8 MR. BRADLEY: --- before then.

9 THE COURT: Well, 5:00 is 5:00.

10 MR. BRADLEY: Yes, sir.

11 Q All right. When you left, did you hire another
12 company to look at the mold?

13 A I did.

14 Q Why did you hire another company to look at it?

15 A At that point, we were threaten -- being threatened
16 with a lawsuit and I wanted to have another
17 independent company come in and take a look at it
18 and see if it wasn't just a matter of error or maybe
19 -- or maybe the other company, you know, maybe they
20 didn't have better equipment. So I hired someone
21 that had a very good reputation.

22 Q All right.

23 MR. BRADLEY: May I approach the witness?

24 THE COURT: Sure. And by the way, for
25 everybody, you can approach the witness, whether your

1 witness or the other witness, ain't no threatening.

2 MR. BRADLEY: Yes, sir. I promise I won't do
3 that.

4 Q Is that the report you hired the second time, Lance?

5 A Yes.

6 Q And what did that report tell you about the
7 aspergillus?

8 A It showed that there was some -- some progression.
9 Actually I'd like to read the part that concerned
10 me. The part that concerned is that the outdoor ---

11 THE COURT: It's in evidence.

12 MR. SHEALY: Actually it's not.

13 THE COURT: All right.

14 Q Is this the report that you paid for ---

15 THE COURT: Thank you, Mr. Shealy.

16 A This is the report -- yes, I paid for this.

17 MR. BRADLEY: We would like to put this into
18 evidence as the report. It's number 26 in the exhibits I
19 gave to Mr. Shealy.

20 MR. SHEALY: Your Honor, I again object to the
21 lack of proper foundation as to when this was done ---

22 THE COURT: You're going to call this guy too?

23 MR. BRADLEY: Yes, sir, Lee Capell is on our
24 witness list, standing by to be called.

25 THE COURT: Objection is overruled. And if

1 you're going to call the witness, I might have to take it
2 out but I'm going to admit it so we can -- and you know
3 all this already.

4 MR. BRADLEY: Yes, sir.

5 THE COURT: And that will be Defense Number 7.

6 (Whereupon, Defendant's Exhibit Number 7, ABS
7 Mold Report, was admitted into evidence.)

8 Q What did this report tell you about your concern
9 about the aspergillus?

10 A It showed that it was significantly higher than the
11 outdoor concentration and it says approximately 12
12 to 135 times higher and was very expensive and I was
13 concerned that there was progression of the mold.

14 Q And did the report make you feel better about it or
15 worse?

16 A It made me feel worse.

17 Q Before you had this mold problem, did you want to
18 stay in this house?

19 A I mean, I did. I certainly did.

20 Q Why did you want to stay in the house?

21 A It was close to the kids' school. I mean, it had a
22 very good look from the street. It's an attractive
23 house. I mean, even though it's older, it has a
24 mystique to it and it was very very convenient. I
25 mean, it was right there on Beltline, just, you

1 know, five minutes to Fort Jackson, two minutes to
2 St. Joseph and another five minutes to get to
3 Cardinal Newman.

4 So, I liked this location. I mean, that was
5 really the selling point and it had a very nice look
6 from the driveway.

7 So, I liked the house.

8 Q Why did you, one month, 45 days after you moved in,
9 pack your whole family up and move again?

10 A Well, I was concerned about the health and well-
11 being of my family. It was not my first instinct
12 just to jump and leave. It was a very difficult
13 decision to make and so I made it and we moved.

14 Q Did you give Mr. Schumacher a chance to fix the
15 problem?

16 A I believe I did. I believe -- I believe I gave him
17 notice and I wasn't willing to wait any longer. My
18 wife was very ill and I really believe that she was
19 sick from the mold.

20 Q Did he fix the problem?

21 A It was not fixed when we left.

22 Q Did he follow the plan, did he say anything about
23 the plan you got from Biotek?

24 A No.

25 Q Would you do the same thing again even though you

1 got sued?

2 A Yeah.

3 Q Did he ever even say, I'm sorry for the
4 inconvenience to your family?

5 MR. SHEALY: Objection.

6 THE COURT: Sustained, covered. Anything
7 further?

8 MR. BRADLEY: That's all.

9 THE COURT: Mr. Shealy, recross (sic).

10 REDIRECT EXAMINATION

11 BY MR. SHEALY:

12 Q Dr. Hoover, the first exhibit -- and I've ---

13 THE COURT: Number 2.

14 Q Number 2, Defense 2 that you identified, this is the
15 only place that had any mold in the house when you
16 showed it to Mr. Schumacher, is that correct?

17 A That is correct.

18 Q All right. And isn't it true that Mr. Schumacher
19 attempted to send folks to fix the problem after
20 September 3rd and he was told, don't disturb the
21 mold until we've moved out?

22 A Once I made the decision to move, I did say I did
23 not want the mold disturbed. And at no point did
24 Mold Solution give us any plan as to what they would
25 do. The only thing that I found that they would do

1 is when I did a web search on them, they had this
2 stuff called Chitin (phonetic) that they spray into
3 the wall. But I was never given a plan from them as
4 to what they would do.

5 Q But you didn't hire Mold Solutions, correct?

6 A Not -- no, I did not.

7 Q All right. So -- so because you kept the problem
8 from being remediated for the entire month of
9 September, the mold was allowed to progress and
10 become the problem that you then identified in the
11 later photographs?

12 A No one from Mold Solution ever actually called me
13 directly.

14 Q Now, Dr. Hoover ---

15 A Yes, sir.

16 Q --- isn't it true that your wife decided before you
17 ever got the report from Biotek on September 3rd
18 that she didn't want to buy this house and wanted to
19 begin looking at other houses in the Columbia area?

20 A She didn't want to buy a house that had mold, that
21 is a true statement. And it didn't -- she did not
22 want to buy the house prior to the actual report
23 coming back on the 3rd of June (sic). She did not
24 want to buy a house that had mold which we found
25 around 13 to 15 August.

1 Q All right. And the -- as I understand it, you got
2 the report from Biotek on September 2nd, sent it to
3 Mr. Schumacher on the 3rd of September, correct?

4 A That's correct, based on the e-mail.

5 Q And at the exact time that you sent the Biotek
6 report was when you said, we intend to terminate the
7 lease effective the end of September?

8 A He had already repudiated the report and said he
9 would not pay for anything that Biotek was going to
10 do and that was in that timeframe.

11 So, yes, I, was not going to stay and wait for a
12 company that I had not been given a plan and I did
13 not feel comfortable with.

14 So that is a true statement.

15 Q I'm going to show you what's been marked as
16 Plaintiff's Exhibit 3 which is an e-mail chain. Do
17 you -- have you seen this before, your participation
18 in the chain, is that -- appears to be at the very
19 top of the page?

20 A Yes.

21 Q All right. And what started this chain, would you
22 agree with me, is an e-mail to your real estate
23 agent, Todd Beckstrom, from your wife indicating
24 three houses that you all were interested in looking
25 at as of August 25th, correct?

1 A Yes, some 10 days after we identified the mold in
2 our house.

3 Q All right. And so, Todd Beckstrom responded to her
4 and to you saying, don't we want to wait until we
5 work out the lease first, that was the response,
6 correct?

7 A Yes.

8 Q And that was also on August 25th. And then you
9 responded the same day telling Todd, I agree we need
10 to work out the lease first. I am sure something
11 like this takes time. I will inform Monica to be
12 patient.

13 Is that -- there's more to it there but ---

14 A I mean, in essence what I'm saying here is, I know
15 we have mold, I know it takes time to remediate the
16 mold, we need to be patient, but there may come a
17 point in time when we just have to stay in the home.
18 But I certainly want to ensure that the mold
19 situation is under control and I didn't want it to
20 get too nasty. And I believe this was after he had
21 repudiated our initial mold report.

22 So ---

23 Q This is August the 25th, is it not?

24 A It is August 25th.

25 Q And Biotek's report doesn't get to you at the

1 earliest until September 2nd, according to your own
2 testimony, correct?

3 A That is correct. I have the time wrong, I
4 apologize.

5 Q All right.

6 MR. SHEALY: Your Honor, I move to have
7 Plaintiff's 3 admitted into evidence.

8 THE COURT: Any objection, Mr. Bradley?

9 MR. BRADLEY: No, sir.

10 THE COURT: All right.

11 (Whereupon, Plaintiff's Exhibit Number 3, E-mail
12 Chain of August 25, 2010 Wildwood House, was
13 admitted into evidence.)

14 Q Isn't it true that around August 24th or 25th is
15 when you all decided that you didn't want to buy the
16 house on Kilbourne Road?

17 A That's a rough timeframe, 10 days after we saw mold
18 in the house.

19 Q All right. And that was 10 days in which you all
20 had done nothing about the mold yourselves, correct?

21 A I had not sprayed bleach on it if that -- no.

22 Q Or done anything else to the mold, correct?

23 A We didn't disturb it, no.

24 Q All right.

25 MR. SHEALY: I have no further questions.

1 THE COURT: All right. Anything on redirect
2 (sic), Mr. Bradley?

3 MR. BRADLEY: No, Judge.

4 THE COURT: Can I see y'all for a minute.

5 (Whereupon, a bench conference was held off the
6 record, in the presence of the jury, but out of
7 the hearing of the jury.)

8 THE COURT: And, members of the jury, what I was
9 discussing with Mr. Shealy and Mr. Bradley, he was our
10 next witness but he had some dental procedure scheduled
11 first thing in the morning and we couldn't work him in
12 today, I don't think we'd finish and besides, I have
13 another matter I need to do at 9:30. So I'm going to ask
14 you to be back in the jury room at 11:00 anyway. But
15 we'll take him out of order sometime and it shouldn't
16 materially affect the progress of this trial. It's going
17 to take us two or three days, so.

18 Whatever, I need to remind you, please don't
19 talk about the case. Be back in your jury room tomorrow
20 morning at 11:00. Don't come into the courtroom, the
21 Bailiffs will show you how to get in and out of this
22 maze.

23 I hope you have a pleasurable and restful
24 evening and -- are there any Clemson fans on the jury?
25 Two tigers, we'll see y'all in the morning.

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1 Okay, thank you all so very much.

2 (The jury retires from the courtroom at
3 approximately 4:45 p.m.)

4 THE COURT: All right, we can mark it. It was
5 without objection.

6 (Whereupon, Defendant's Exhibit Number 5, E-mail
7 of September 8, 2010 Mold, was admitted into
8 evidence.)

9 THE COURT: Is there anything else y'all can
10 think of that -- logistically that I can help y'all with?
11 I mean, we are where we are. I think we'll finish this
12 case anyway, if we have to go late at night, we'll work
13 it out.

14 MR. SHEALY: Your Honor, I have one item ---

15 THE COURT: Yes, sir.

16 MR. SHEALY: --- that I meant to take up at the
17 beginning.

18 THE COURT: That's all right.

19 MR. SHEALY: Part of what both sides are
20 claiming is attorney's fees. I typically ---

21 THE COURT: Does the lease specify attorney's
22 fees?

23 MR. SHEALY: It does.

24 THE COURT: Okay.

25 MR. BRADLEY: It does.

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1 THE COURT: That's a matter we can -- you don't
2 need to -- you're only going to get them if you're the
3 prevailing party anyway. We can take it up at a later
4 time if you want to.

5 MR. SHEALY: That's -- I just wanted to know if
6 the Court was anticipating my putting up that element of
7 our damages before the jury ---

8 THE COURT: Oh, no, no, no.

9 MR. SHEALY: Okay, that's all I needed to know.

10 THE COURT: We can do that -- we can do that --
11 you can do an affidavit. Y'all can exchange -- we'll --
12 we can handle that without the jury having anything to do
13 with it. That's really my call more so than theirs
14 anyway.

15 MR. SHEALY: Yes, Your Honor.

16 THE COURT: Anything further?

17 (No response.)

18 THE COURT: Y'all have a pleasant evening. See
19 y'all tomorrow at 11:00. Have a good night.

20 (The Court was in recess.)

21 Wednesday, January 4, 2012:

22 THE COURT: Bring the jury in.

23 (The jury returned to the courtroom at
24 approximately 11:20 a.m.)

25 BAILIFF: The jury's seated, Your Honor.

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1 THE COURT: Good morning, Mr. Foreman and
2 members of the jury. Thank you all so very much for your
3 patience. I explained a little bit to you yesterday and
4 this morning about what we're doing at the latest.

5 So we're ready to resume, I think. Let's see
6 Mr. Shealy will call the next witness on behalf of the
7 Plaintiff.

8 Go ahead, Mr. Shealy.

9 MR. SHEALY: May it please the Court. At this
10 time I would call Monica Hoover.

11 THE COURT: Come around, Mrs. Hoover.

12 (MONICA HOOVER, having first been duly sworn,
13 testified as follows:)

14 THE CLERK: Thank you, have a seat in the
15 witness stand, please. State your name for the record.

16 THE WITNESS: Monica Hoover.

17 DIRECT EXAMINATION

18 BY MR. SHEALY:

19 Q Mrs. Hoover, you are originally from Indiana,
20 correct?

21 A Yes.

22 Q And you're married to Dr. Lance Hoover?

23 A Yes.

24 Q How long have you all been married?

25 A 17 and a half years.

1 Q And you have three children.

2 A Yes, we do.

3 Q How old are they?

4 A 13, 10 and eight.

5 Q Okay. And I understand you're a fulltime homemaker?

6 A Yes, I am.

7 Q You all have moved around a good bit during your
8 husband's career, is that correct?

9 A Yes.

10 Q I guess you have to go where the Army sends you?

11 A Yes, we do.

12 Q When you're transferred to a new place, would it be
13 fair to say that you begin looking for housing based
14 upon its proximity to the church that you're
15 planning to attend and the school that your children
16 are going to attend?

17 A Yes, I have spent a great deal of time volunteering
18 at my children's school and usually the church so we
19 usually find the church and school and then a house
20 at that point.

21 Q Okay. That's sort of -- those are the first things
22 and then the house is ---

23 A Yes.

24 Q Its proximity to those things is what determines
25 where you're going to live?

1 A Yes.

2 Q Okay. When you learned that you were going to be
3 moving to Columbia in the spring of 2010, I
4 understand you used the internet, correct?

5 A Yes, we did.

6 Q And you looked at St. Joseph's Church on Devine
7 Street?

8 A Yes.

9 Q And as I understand it, that sort of served two
10 purposes for you because it would be a place for you
11 to go to church and it has a school?

12 A Yes. I actually researched several of the other
13 catholic schools in town and having served on the
14 PTA before, I chose certain educational requirements
15 and that's what actually led me to St. Joseph's, not
16 just that the church and school are together but I
17 thought that was important.

18 Q Yes, ma'am. And so then you found on the internet
19 the house at 4120 Kilbourne Road which was available
20 for rent or purchase and it was only three blocks
21 from St. Joseph's, correct?

22 A Yes.

23 Q Okay. And I imagine you have to make some of these
24 decisions pretty quickly when the Army says that
25 they're going to transfer you, is that right?

1 A Yes, and actually at that point in time the Army was
2 kind of flip-flopping about where they were going to
3 send us. So one minute it was actually Fort Hood,
4 Texas, the next minute it was Columbia. And then
5 they kind of left it up to us at that point, based
6 on some medical concerns for my daughter which place
7 we would go. And we had previously been in Augusta
8 and really preferred living in the south, we
9 preferred the family structure, so we actually chose
10 to come to Columbia.

11 Q Okay.. And so -- but because you had to make some of
12 these decisions quickly, you ended up with a one
13 year lease for the Kilbourne Road property without
14 ever actually walking inside, is that correct?

15 A Yes. We actually also had the death in the family.
16 We had planned on coming out and looking at the
17 property and also coming out and looking even before
18 that at other homes but we had some other things
19 going on. My daughter's first communion and things
20 that didn't allow us to actually leave town in San
21 Antonio to come here.

22 Q Okay. And I know all this kind of stuff is in flux
23 but as I understand it, you all were not planning to
24 get here until July but because of the death in the
25 family, you ended up coming in June for a few days

1 and then going from here to Indiana, is that
2 correct?

3 A Right. And a lot of that just has to do with the
4 military setting up when they can move your goods
5 and when they can't. So there was some things with
6 that and it's kind of hard to live somewhere for a
7 month without all of your possessions, so.

8 Q Okay. So when you got here in June, you at least
9 tried to take care of a couple of things like
10 establishing an account with SCE&G and things like
11 that?

12 A Yes, we did.

13 Q Okay. You found a few things sort of out of order
14 with the house when you arrived?

15 A We arrived about 2:00 in the morning and woke up 7,
16 8:00 to try to take -- give the children a bath and
17 the hot water heater wasn't working. Several
18 electrical things were not in order and I think the
19 refrigerator kind of shut off overnight. The stove,
20 there were several things like that. Within that 24
21 hour period, there were several things that I need
22 to function with my family that just kind of fell
23 apart which really led us to go ahead and do the
24 home inspection even before we were going to occupy
25 the residence.

1 Q Well but you were occupying the residence at that
2 point, correct?

3 A Yes, we had left some air mattresses that we brought
4 to sleep on and that was really also to help once we
5 got there in July while we were waiting on our home
6 goods. We brought a few things since we were making
7 a trip anyway.

8 Q All right. And as I understand it, the lease with
9 the option to purchase was signed -- was originally
10 proposed by you all maybe in late April, finally
11 signed in May and included the purchase price, the
12 lease term, all that sort of thing, correct?

13 A I believe -- my husband was handling lots of that
14 stuff from work, faxing back and forth, but I
15 believe that they signed the initial lease purchase
16 and then they were kind of negotiating the price.
17 And then once we did the home inspection, we added
18 an addendum to that and we just requested that
19 several things that came up on the home inspection
20 -- I believe the wording was that we actually
21 requested that the electrical and safety concerns be
22 addressed prior to us moving there permanently in
23 July.

24 Q All right. And so with the home inspection -- and
25 that was Boysia that ---

1 A Yes, sir.

2 Q --- that took care of the home inspection? That was
3 done while you were away in Indiana?

4 A Yes.

5 Q Okay. And then you all moved in on July 24th, is
6 that right?

7 A Yes.

8 Q Okay. And then after you moved in, as your husband
9 mentioned yesterday, you had some other electrical
10 things done but I think you added a line for the
11 computer or something like that?

12 A The computer line was just actually upgrading the
13 outlet so that it could handle -- I believe my
14 husband spoke about that the wiring was old and it
15 wasn't actually grounded. So we thought that was
16 necessary to protect our -- the integrity of our
17 electrical things.

18 But most of the electrical repairs were actually
19 things that we had addressed in the home inspection.
20 The outlet in our daughter's room, my husband spoke
21 about that when we would plug things in it would
22 short out where there was actually a sizzling
23 popping noise. And in the home inspection it had
24 actually addressed improper electrical connections
25 and also some loose wiring that was in the attic

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1 which would have been directly above our daughter's
2 bedroom.

3 So, as a parent, I was very concerned about my
4 daughter sleeping in that bedroom that could become
5 a potential fire hazard.

6 Q Okay. Now, as I understand it, you all, when you
7 got there in June, you set the heating and air
8 conditioning temperature at 74, is that what you all
9 were used to?

10 A Yes.

11 Q Okay. And you established the account with SCE&G at
12 that time?

13 A Yes, we did.

14 Q And then when you got back to the house, you had
15 mail and a bill from SCE&G and a electric bill for
16 over \$500, is that correct?

17 A Yes.

18 Q And then your second bill for the second month that
19 you were there was for \$611, correct?

20 A Yes.

21 Q All right.

22 A I was very concerned about that and actually
23 addressed that with my real estate agent and also to
24 Mr. Schumacher. At the time that we arrived in June,
25 there was a notice on the door and there was some

1 problems with the hot water heater. So I was very
2 concerned that perhaps that hadn't been fixed
3 either. So I didn't know if that was something that
4 was continuing to run up the electricity. We had
5 moved from Texas and been in a much larger home with
6 -- I mean the temperatures are far greater than what
7 they are here. And in the five years I was in
8 Texas, we didn't receive an energy bill for that
9 much with all -- I have three children, five people
10 in the house running, you know, televisions,
11 computers, games, lights. Children leave lights on
12 but even living in the home, we had not received a
13 bill that high so I was very concerned about that.

14 Q Okay. So within about a month of being there, you
15 all decided you were not going to exercise the
16 option to purchase the house, correct?

17 A Actually that's not true. We had actually presented
18 with an offer through Mr. Bishop which was Mr.
19 Schumacher's real estate agent. He had actually
20 contacted Mr. Beckstrom. I believe it was the
21 weekend of the 13th to the 16th when we actually
22 came into the house to lease, we were under the
23 impression that the house was then taken off the
24 market. I think there was someone who may have, may
25 not have been interested in the house at that time

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1 who actually wanted to make an appointment to see
2 the home because it was still appearing as being
3 actively for sale on the market.

4 And so they actually came to us and presented us
5 with an offer that if we agreed to put the house
6 back on the market, they would let us out of the
7 lease. And we actually, via our real estate agent,
8 said that we actually didn't want to do that, that
9 we would honor the terms of the lease.

10 Q Okay. Let me show you a document that's previously
11 been marked as Plaintiff's Exhibit 10. And I call
12 it a document, I would describe it as a chain of e-
13 mails. And I would ask you to turn to the bottom of
14 page 2.

15 THE COURT: Have you marked this for ID or
16 anything?

17 MR. SHEALY: Yes, I marked it for ID as ---

18 THE COURT: All right. What's the number?

19 MR. SHEALY: Plaintiff's 10, I believe.

20 THE COURT: Plaintiff's 10 for ID, all right.

21 Q And first, let me ask you if you recognize this
22 chain of e-mails?

23 A Yes, I do.

24 Q Okay. And the e-mail at the bottom of page 2 is
25 dated August 23rd, 2010, correct?

1 A This one's dated -- yes, August 23rd.

2 Q All right. And that's an e-mail from Todd
3 Beckstrom, your real estate agent, to Terry Bishop,
4 Mr. Schumacher's real estate agent, correct?

5 A Yes.

6 Q All right. And this is an e-mail in which Todd
7 Beckstrom informed Mr. Bishop that you all were not
8 going to purchase the Kilbourne Road property,
9 correct?

10 A And that actually -- that question had been posed
11 directly to us because there was a potential that
12 this other party may be interested in purchasing the
13 home. So they were asking our intent as to whether
14 or not we had decided, would we really be interested
15 or should they pursue or even consider pursuing the
16 other purchase option because the house had been for
17 sale for quite a long time and I believe Mr.
18 Schumacher ultimately had wanted to sell the home.

19 Q All right. And then what follows is an exchange of
20 e-mails as to what to do about the lease between the
21 two ---

22 A Yes and several of the e-mails also -- they're
23 talking about what to do with the home and the lease
24 but they're also at that point in time between the
25 two real estate agents, we were also addressing the

1 mold -- because we hadn't had a response from Mr.
2 Schumacher, I was pursing that with our real estate
3 agent, asking what we should do in response to the
4 mold even at that point.

5 Q All right. But you're familiar with the exchange of
6 e-mails that's on the exhibit that's before you,
7 correct?

8 A Yes.

9 Q And you were involved in that conversation?

10 A Yes, I was.

11 Q All right.

12 MR. SHEALY: Your Honor, based upon that
13 identification ---

14 THE COURT: Let me ask you this, how many e-
15 mails are there total?

16 MR. SHEALY: There are one, two, three, four,
17 five.

18 THE COURT: All right, total five e-mails. This
19 is primarily between the two real estate agents, Mr.
20 Bishop and the other gentleman, correct?

21 MR. SHEALY: And Mr. Beckstrom, yes, Your Honor.

22 THE COURT: Beckstrom. Is that correct, Mr.
23 Bradley?

24 MR. BRADLEY: Yes, sir, I think so. We don't
25 have an objection.

1 THE COURT: Okay, all right.

2 MR. SHEALY: I would move to introduce that.

3 THE COURT: All right, Number 10 in without
4 objection.

5 MR. SHEALY: Thank you.

6 (Whereupon, Plaintiff's Exhibit Number 10,
7 E-mail Chain August 24, 2010 Kilbourne Road, was
8 admitted into evidence.)

9 Q All right. So, we've looked at Exhibit 10 and the
10 -- as of August 23rd, about one month after you all
11 moved in, you've notified Mr. Schumacher's agent
12 that you don't intend to purchase the property,
13 correct?

14 A Right.

15 Q All right. And it was at that point that you all
16 began to look for other -- other houses, correct?

17 A At that point, I actually did start looking because
18 I was concerned about the safety of my family. We
19 had just moved and I don't even think we had
20 completely, you know, finished unpacking. The
21 children just started school and I was very
22 concerned about if I needed to move, where was I
23 going to go, you know. It's very difficult to put a
24 family of five into temporary, you know, quarters as
25 far as an apartment or anything else like that.

1 So I did become very proactive about looking and
2 trying to find something for my family that was a
3 safe place as a backup.

4 Q All right. And if we -- if I could turn your
5 attention to Plaintiff's Exhibit 3. It's already in
6 evidence. In fact, on the same day, August -- I'm
7 sorry, August 25th, you indicated to Todd Beckstrom
8 that there were three houses that you were
9 interested in looking at at that time, correct?

10 A Yes. I had begun looking at houses that were
11 potentially vacant because I wanted to make sure
12 that there was something if we need to move that I
13 would be able to move into pretty quickly.

14 So I was actually limited, very limited on what
15 I was searching for on the market. I didn't want to
16 perhaps enter into another lease and have to move
17 again, you know, the following summer after that. I
18 was really, you know, wanted to come to Columbia and
19 settle and move into a home and kind of stay in one
20 place.

21 Q And, as I understand it, that was about --
22 August 25th was about a week before you ever got the
23 report from Biotek, correct?

24 A Actually, August 23rd, 24th, was the conversation
25 and the e-mail that you brought up was actually

1 between Mr. Bishop and Mr. Beckstrom. They were
2 discussing the mold situation. I am referring to
3 the one that you did on Exhibit 10. Mr. Beckstrom
4 is speaking to Mr. Bishop and he says, pursuant to
5 our conversation earlier today, I would advise my
6 clients to get a professional mold inspection.
7 Because we were discussing with our real estate
8 agent how we should proceed with the mold, getting a
9 remedy and as quickly as possible. And on that
10 recommendation is when we ordered the mold
11 inspection. And I was already becoming sick and so
12 were the children, so I was looking for a backup
13 plan.

14 Q Okay. So it was indeed about a week before you got
15 the report?

16 A Yes, it was.

17 Q And then on Sept -- and that was on September the
18 1st is when you got the report from Biotek?

19 A Yes.. And I believe yesterday they had mentioned
20 that the report was not forwarded to Mr. Schumacher,
21 to our real estate agent, until the 3rd. But I
22 believe Mr. Hamilton sent it out to all of us
23 simultaneously on the 1st.

24 Q And do you have any proof showing that?

25 A It should be within the e-mails that were introduced

1 that that stuff went to -- and I'm sure Mr.
2 Beckstrom would probably have those documents. But
3 I believe -- I believe he sent that to everybody at
4 the same time.

5 Q Okay. I'll invite your lawyer to introduce that if
6 that exists.

7 So -- all right. On September 3rd is when you
8 notified, through your agent, Mr. Schumacher that
9 you all were terminating the lease, correct?

10 A Yes. That was in response -- when he had received
11 the report, Mr. Schumacher turned around and said
12 that he refused to pay for the report or anything
13 that Biotek would do to remedy the mold.

14 Q All right. And so then you all moved forward with
15 the plan to buy another house from that point
16 forward, correct?

17 A Yes, we did.

18 Q Okay. I'll show you a document that's marked for
19 identification purposes as Plaintiff's Exhibit 4 and
20 ask if you can identify that?

21 A Yes, I can.

22 Q All right. And am I correct that this is an e-mail
23 from you to Todd Beckstrom September 5th, two days
24 after notifying of your intent to turn in the lease,
25 that you all were interested in 324 Running Fox Road

1 where you live now?

2 A Right. It said 324 Running Fox Road and also a
3 different address on Oakbrook Drive.

4 Q Okay. And also in this e-mail you mentioned that
5 you all had been away over the -- the previous
6 weekend in Augusta, is that right?

7 A I had spent the night with a girlfriend in Augusta,
8 I believe that Saturday evening.

9 Q Okay. And said that you have been a bit under the
10 weather with a cold and runny nose prior to that
11 time, correct?

12 A During that time, both myself and my youngest
13 daughter had been sick and she had a green runny
14 nose that was actually even to the point of
15 bleeding. So I actually had noted that given the --
16 given the Biotek report saying that we were
17 inhaling, you know, hazardous amounts of mold and
18 that I had been feeling bad, we actually were
19 interested in looking at something that was vacant
20 that we would perhaps move in to if this situation
21 was not taken care of.

22 Q All right. And you all moved out and actually moved
23 into 324 Running Fox Road the middle of September,
24 correct?

25 A Yes, we did.

1 Q And then closed on the house on October 1st?

2 A We actually closed on the house on October 15th.

3 Q Okay. All right and you got -- you had items of
4 yours moved from the house on September 15th ---

5 A Yes, we did.

6 Q Okay.

7 A My husband did the majority of moving himself but
8 there were several heavy items that we hired Two Men
9 and a Truck to come in and move for us.

10 Q All right. I'm going to show you a document that's
11 been marked for ID as Plaintiff's Exhibit 5 and ask
12 if you can identify that?

13 A Yes.

14 Q And is that the invoice for Two Men and a Truck?

15 A Yes, it is.

16 Q Okay. And it indicates that it was booked September
17 15th?

18 A Yes.

19 Q Okay. Is that about the time when they actually ---

20 A Yes.

21 Q --- did the move? Okay.

22 MR. SHEALY: Your Honor, I would like -- at this
23 time we would move to introduce that exhibit and the
24 previous exhibit because I don't think I actually moved
25 to introduce it.

1 THE COURT: 4 and 5, any objection, Mr. Bradley?

2 MR. BRADLEY: No, sir, Judge.

3 THE COURT: Without objection.

4 (Whereupon, Plaintiff's Exhibit Number 4, E-mail
5 September 5, 2010, was admitted into evidence.)

6 (Whereupon, Plaintiff's Exhibit Number 5, Two
7 Men and a Truck Invoice, was admitted into
8 evidence.)

9 Q Mrs. Hoover, just a couple of other things and I'll
10 be really finished with -- with the examination of
11 you.

12 I'm going to show you a document that I marked
13 as Plaintiff's Exhibit 7, just to kind of fill out
14 some of the details and ask if you can identify
15 that?

16 A Yes.

17 Q All right. Is that an e-mail from you -- it's
18 really from your husband's account, laughinggas
19 @sc.rr.com?

20 A Yes.

21 Q But it's you sending the e-mail?

22 A Yes, we were both corresponding with Mr. Beckstrom,
23 Mr. Schumacher. In any -- even though it came from
24 our -- I say it's his account but that's kind of our
25 joint family account and any correspondence from me,

1 I of course signed myself. This says, thank you,
2 Monica Hoover. And anything that my husband was
3 directly responsible for, I'm sure his name appears
4 at the bottom of those.

5 Q Okay. This is an e-mail from you to Todd Beckstrom
6 of August 31st?

7 A Yes.

8 Q Okay. And at this point you had paid Biotek to
9 issue its report but you were waiting on the result,
10 correct?

11 A Yes, we were.

12 Q All right. And then you mention at the bottom Kevin
13 -- at the last paragraph, Kevin had sent someone out
14 to look at the mold and discuss repair with us last
15 week.

16 Am I reading that right?

17 A Yes.

18 Q All right. And that person had told you that you
19 would need to be out of the house for three days for
20 the remediation and repair, correct?

21 A Yes. And Kevin had sent out -- and I believe the
22 gentleman worked for Johnny Housewright. His name
23 was Shawn and I don't recall his last name. But he
24 actually came out to look at the AC vent and while
25 he was there, he went in the attic and said, oh,

1 this mold's growing behind the wall. And then
2 that's when he actually said, oh, now, this couldn't
3 be done with you in the house. He said, this would
4 need -- you would need to move out, the wall would
5 need to be torn out in order for them to insulate
6 the duct.

7 So he was actually with Johnny Housewright.

8 Q All right. And that is consistent with what Biotech
9 was telling you would need to be done ---

10 A Yes.

11 Q --- to remedy it? Okay.

12 A And I believe I was actually, you know, questioning
13 whether or not we'd be reimbursed for the cost of
14 the test and the inspection and also if we needed to
15 move out, would our hotel expenses or anything like
16 that be reimbursed by Mr. Schumacher.

17 Q And you -- you were posing those questions at that
18 point to Todd Beckstrom, correct?

19 A Yes.

20 (Pause.)

21 MR. SHEALY: Thank you, Your Honor.

22 THE COURT: All right.

23 Mr. Bradley.

24 MR. SHEALY: I have no further questions.

25 THE COURT: And once again, I'm going to give

1 you a little bit of leeway. You can lead a little bit,
2 not too much, okay.

3 MR. BRADLEY: Yes, sir, Judge.

4 CROSS-EXAMINATION

5 BY MR. BRADLEY:

6 Q Okay. How old are your kids?

7 A 13, 10 and eight.

8 Q When did you first tell Kevin Schumacher about the
9 problem with the mold?

10 A It was August 13th; August 16th.

11 Q How do you know that was date?

12 A Because he had actually came by the house to deliver
13 -- we needed the -- request the letter of approval
14 to add the additional cable line. So he came to the
15 home and personally delivered the letter giving us
16 approval so we could submit that to the cable
17 company.

18 Q So, let me show you, see if this is it.

19 A Yes, this is the ---

20 Q Is that the letter you're talking about?

21 A Yes, it is.

22 Q And that's dated August 13th?

23 A Yes, it is.

24 Q And so you know that he saw that black mold at your
25 house on August 13th because he delivered this dated

1 letter?

2 A I'm not sure if he came exactly on the 13th but it
3 was within the 13th, 14th -- well, it was within a
4 day or so of the date of this letter.

5 Q Okay.

6 MR. BRADLEY: We would like to move that into
7 evidence as Defendant's Exhibit 8.

8 THE COURT: Defendant's Number 8, any objection?

9 MR. SHEALY: No objection.

10 THE COURT: What is it again? Does it have a
11 date on it?

12 MR. BRADLEY: It's a letter from Kevin
13 Schumacher dated August 13th regarding cable.

14 THE COURT: Mr. Schumacher's letter to the
15 Defendants, is that correct?

16 MR. BRADLEY: It's to the cable company.

17 THE COURT: Oh, the cable company.

18 (Whereupon, Defendant's Exhibit Number 8,
19 Time Warner Cable Letter, was admitted into
20 evidence.)

21 Q Okay. What did the mold look like when he came by
22 the see it?

23 A It was black and green and kind of just growing in
24 different spores and areas and it was -- I'm not
25 great at -- but I'm saying a 2 foot area. But it

1 was growing and you could kind of see a shadow from
2 the ceiling and the wall.

3 Q Where was the mold?

4 A It was in the upstairs foyer hallway.

5 Q How far was that from for children's bedroom?

6 A Directly across the hall.

7 Q Was it like mold that you had seen before, mold in
8 your bathroom, something like that?

9 A No, it was not.

10 Q What was the difference?

11 A The green, the black and it appeared to be spotty
12 and still kind of even wet and moist.

13 Q Were you the one who took those pictures that we saw
14 yesterday?

15 A Yes, I did.

16 Q Why were you concerned about it?

17 A Because it was in an area where there was no
18 moisture. It wasn't outside, it wasn't in my shower
19 and because it was an area if you came upstairs to
20 go to the bathroom, to use the laundry, to go to
21 your bedroom. We passed that area multiple times
22 during the day.

23 Q Did you still want to stay in the house even though
24 the mold was there?

25 A We did at that point.

1 Q And in fact, did you pay for electrical invoices to
2 fix some things that were broken and to upgrade some
3 things in the house?

4 A Yes, we did. We had addressed those electrical
5 concerns following the home inspection. I believe
6 in the addendum we had asked to have those -- when
7 we found those things in June, we said, you know,
8 we're going to be permanently occupying the house in
9 July and we actually requested that those things,
10 out of, you know, safety concerns, be addressed
11 prior to us living there from the time in July and
12 once we moved in they were not.

13 And so I didn't want to take any -- it had been
14 approximately a month and those hadn't been
15 addressed so I wanted to make sure that, you know --
16 the safety of my children was paramount to me even
17 if we had to pay that cost ourselves.

18 Q Okay. So did you actually wind up paying for
19 electrical service?

20 A Yes, we did.

21 Q Is that a copy of the invoice you paid for the
22 electrical service at the house?

23 A Yes, it is.

24 MR. BRADLEY: We'd like to put that into
25 evidence, Judge, as Defendant's Exhibit 9.

1 THE COURT: Mr. Bradley, help Mr. Shealy locate
2 that ---

3 MR. SHEALY: What does that correspond to?

4 MR. BRADLEY: It's number 2 in the list I gave
5 you.

6 THE COURT: You got it?

7 MR. SHEALY: No objection.

8 THE COURT: Without objection. And what is it
9 again? This is the...

10 MR. BRADLEY: It's the invoice for electrical
11 repairs at the house.

12 (Whereupon, Defendant's Exhibit Number 9,
13 Invoice Buck Thomas Electrical Service LLC, was
14 admitted into evidence.)

15 Q Did Mr. Schumacher offer to pay for this?

16 A No, he did not.

17 Q Okay. This was something you paid?

18 A Yes, we did.

19 Q And it was to fix some things and improve other
20 things in the house?

21 A Yes.

22 Q And you paid it actually after you had already seen
23 the mold and were working to get it fixed?

24 A Yes, we did.

25 Q All right. I want to talk to you about around about

1 August 24th, was that when you were talking to Terry
2 Bishop or Todd Beckstrom about the mold inspection?
3 Tell us how that came about.

4 A There was conversation as to whether or not we would
5 put the for sale sign back in the yard and those
6 kind of things. And then we were -- I had actually
7 e-mailed those mold pictures to Todd Beckstrom and
8 said, you know, how do we proceed at getting this
9 fixed as quickly as possible. I believe he had a
10 conversation with Mr. Bishop, you know, saying that
11 his clients were very concerned about the mold and
12 the health of our children. And the conversation
13 was, you know, how should we proceed?

14 We had been 10 days and we really hadn't heard
15 any response from Mr. Schumacher. So, you know, the
16 mold was growing and I was very concerned that we
17 needed to do something very quickly about the mold.
18 I wasn't sure how to -- you know, what kind of mold
19 it was. I didn't -- I didn't know how to repair it
20 but I wanted to make sure that it was handled very
21 quickly.

22 Q Is that why you guys hired Biotek?

23 A Yes, it was.

24 Q It was your understanding that you had talked to
25 real estate agents and they had discussed it,

1 everybody agreed this was what you were going to do?

2 A Right. And we were advised by the real estate agent
3 to get the inspection report... I was assuming once
4 we had a report that actually said this was mold
5 that something would be done about it once we had an
6 environmental report that said this is serious.

7 Q Okay. Monica, I'm showing you an e-mail I think you
8 wrote around September 1st regarding this inspection
9 report.

10 A Yes.

11 MR. BRADLEY: We'd like to put that into
12 evidence, Judge.

13 THE COURT: Mr. Bradley, let me suggest that you
14 show Mr. ---

15 MR. BRADLEY: He's got it there ---

16 THE COURT: I know but show it to him so he
17 knows exactly where it is without flipping through your
18 notebook.

19 MR. BRADLEY: Absolutely.

20 (Pause.)

21 MR. SHEALY: I don't have any objection.

22 THE COURT: All right, with no objection.

23 MR. BRADLEY: Yes, sir. May I give a copy of
24 this to the jury, Judge?

25 THE COURT: Yes, sir.

1 (Whereupon, Defendant's Exhibit Number 10,
2 E-mail September 1, 2010 Hoover and Beckstrom
3 and E-mail Beckstrom and Bishop, was admitted
4 into evidence.)

5 THE COURT: All right. Help me out, what's
6 Number 10 again?

7 MR. BRADLEY: It's an e-mail from Monica Hoover
8 dated September 1st to -- it's actually two e-mails.
9 That e-mail and then an e-mail from Todd Beckstrom to
10 Terry Bishop, on the same page.

11 THE COURT: All right.

12 Q Okay. So, Monica, this e-mail that we're looking
13 at, why did you send this out?

14 A I sent the e-mail because at that point we had
15 actually hired Biotek. They had come to the house
16 and looked at the mold and I was concerned --
17 actually I sent this to Kevin saying that, you know
18 -- I forward him the correspondence from the 24th
19 between the two real estate agents and I informed
20 him that we proceeded, as we were advised. We
21 called several different mold companies in Columbia
22 and based upon the standards -- I'm not familiar
23 with what kind of standards those in fact are but I
24 believe Biotek agreed that they would do mold
25 remediation according to some EPA standards.

1 And so we felt very comfortable with that
2 company. That was the reason we made that decision.
3 I let him know when the appointment actually was for
4 the testing which was August 30th. And I said that
5 we incurred the expense -- excuse me -- six days
6 after the e-mail correspondence and Biotek has
7 performed the services and had been paid. And I
8 asked Mr. Schumacher how he would like to proceed
9 with reimbursement of the inspection testing costs.

10 Q And why were you hiring Biotek to do this? What was
11 the purpose of that?

12 A To identify what kind of mold that was because it
13 was in an area that mold should not be.

14 Q And beyond identifying mold, what else was Biotek
15 supposed to do?

16 A Give us a plan to actually remedy the mold, to tell
17 us, you know, how it should be done and to what sort
18 of standard to ensure the safety of my family.

19 Q Monica, I handed you what I believe to be
20 Mr. Schumacher's response ---

21 THE COURT: Can I see y'all for a minute?

22 (Whereupon, a bench conference was held off the
23 record, in the presence of the jury, but out of
24 the hearing of the jury.)

25 Q Monica, I'm showing you what I believe to be the

1 response you received from Mr. Schumacher regarding
2 your report. Is that what this is?

3 A Yes.

4 MR. SHEALY: Your Honor, I'm just -- I have not
5 objected to the leading in the introduction of the
6 exhibits. But I need to at this point. The witness can
7 just identify it.

8 THE COURT: What is it that you have in your
9 hand, do you recognize it? Go ahead.

10 Q Monica, what are you holding?

11 A An e-mail sent from Mr. Schumacher to me in response
12 to the Biotek report and it's actually dated
13 September 1st.

14 Q And what is he telling you about the Biotek report
15 in that e-mail?

16 A He says, regarding the mold inspection you ordered,
17 I will not be paying for that. I have someone that
18 I prefer to use. I will gladly pay for my preferred
19 company to do an inspection and cleanup. I will not
20 pay for anything Biotek does.

21 Q At this point, how long had you been living with
22 this problem in the house?

23 A Two and half, three weeks.

24 Q Was that from about the 13th or the 16th to the 1st
25 of September?

1 A Yes.

2 Q Okay. Had he given you any plan or anything he was
3 going to do to fix the problem?

4 A No.

5 Q Had you tried to get a plan to fix the problem?

6 A Yes.

7 Q And even though he hadn't given you a plan to fix
8 the problem, what did he say about your plan?

9 A He said he would not pay for it and he wouldn't pay
10 for anything, in fact, that Biotek did, from the
11 testing to fixing the problem.

12 Q Did he make any promises or give you any plans about
13 what he was going to do or when he was going to fix
14 it?

15 A No.

16 MR. BRADLEY: We'd like to put this into
17 evidence, Judge, as Defendant's Exhibit 10 -- 11.

18 THE COURT: 11.

19 MR. SHEALY: No objection, Your Honor.

20 THE COURT: All right.

21 (Whereupon, Defendant's Exhibit Number 11, E-
22 mail September 1, 2010 Schumacher and Hoover,
23 was admitted into evidence.)

24 MR. BRADLEY: May I give a copy to the jury?

25 THE COURT: Yes, sir, you may publish it.

1 Q How did you feel after he told you he wasn't going
2 to follow your plan and he didn't have a plan for
3 himself?

4 A After we received the report -- I was already
5 concerned prior to the report for the health of my
6 children. We had already -- I was very ill, my
7 children were becoming sick. And once the report
8 did in fact say, yes, we were inhaling toxic mold, I
9 became very concerned about the safety and well-
10 being of my family.

11 Q There was some question about a visit from someone
12 that he was trying to set up that you had to cancel.
13 Do you remember that, Monica?

14 A Yes, I do.

15 Q Tell us about that.

16 A I believe there was some e-mail correspondence that
17 Johnny Housewright was trying to get in touch with
18 us, perhaps come out and look at the AC and find the
19 source of the condensation problem. That was some
20 correspondence over the Labor Day weekend and they
21 were supposed to, I believe, come out on that Monday
22 -- Monday or Tuesday. But I actually had to cancel
23 that appointment because my daughter was home sick
24 from school. I was also ill. And I believe at that
25 point in time, in the e-mail, I said I apologized

1 for the, you know, inconvenience but that I would be
2 happy to reschedule that appointment any time that
3 following week.

4 Q Okay. And then at some point, did Mr. Schumacher
5 send you some sort of representation that he was
6 going to hire somebody to do something about this
7 problem?

8 A I believe on September 8th, we received an e-mail in
9 the morning that said he was in the process of
10 hiring Mold Solutions. It didn't state clearly that
11 he actually had hired Mold Solutions or what Mold
12 Solutions would do to fix the problem. It kind of
13 laid out a plan for us to go to a hotel for a couple
14 of days for that.

15 That same afternoon, I believe 2:00 or so in the
16 afternoon, we received another e-mail saying that
17 that was no longer the case. There was no plan
18 whatsoever and that there was now an insurance
19 adjuster or someone involved that had to come out
20 and now look at the house and there was no control
21 of the timeframe to actually fix this.

22 Q All right. Were these Exhibits -- Defendant's
23 Exhibit 4 and 5 that Lance talked to the jury about?

24 A Yes, they were.

25 MR. BRADLEY: Judge, I would like to give copies

1 of Defendant's Exhibits 4 and 5 that were introduced
2 yesterday to the jury.

3 THE COURT: They're already in. Any objection
4 to being published?

5 MR. SHEALY: No, Your Honor.

6 THE COURT: All right. You may do so.

7 (Pause.)

8 Q So if you could see -- do you have Defendant's
9 Exhibits 4 and 5 there?

10 (Pause.)

11 Q Take a look at Exhibit 4 if you would, Monica. Can
12 you tell us what that is?

13 A That's an e-mail from Mr. Schumacher to Mr.
14 Beckstrom. It's dated September 8th at
15 approximately 10:25 in the morning. It says that
16 he's in the process of hiring a reputable company,
17 Mold Solutions, to solve the problem.

18 Q All right. And at that point, how long had you guys
19 been living with the problem that he was in the
20 process of hiring someone?

21 A Almost a month.

22 Q At least three weeks by then?

23 A Yes.

24 Q All right. Did he say that he hired anybody or that
25 ---

1 A No, in the process of hiring. So I wasn't sure that
2 he actually decided to hire them at that point.

3 Q And it also says something about he'll pay for you
4 to stay in a hotel while it's fixed?

5 A Yes, it does say that.

6 Q All right. Did he actually do that?

7 A No, he did not.

8 Q Okay. So look at Exhibit 5 from yesterday. What
9 does that say?

10 A Exhibit -- it is actually from Mr. Schumacher to my
11 husband. It says, the contractor who installed the
12 air conditioning has just informed him the insurance
13 company is involved. They only do their own
14 inspection to determine what needs to be done to
15 fix. And he says, I do not have control of the
16 timeframe to fix this until an adjuster visits the
17 home and tells him how to proceed.

18 Q So this was over three weeks after you told
19 Mr. Schumacher about the problem?

20 A Yes, it was.

21 Q And at this point was there any promise of when
22 anything was going to be fixed?

23 A No, there was not.

24 THE COURT: This is Number 5 or 4 or 5?

25 MR. BRADLEY: That was 5 that I just handed to

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1 the jury. It's already been put into evidence.

2 THE COURT: I know, that's Plaintiff's Number 5.

3 MR. BRADLEY: I think it's Defendant's Exhibit
4 5.

5 THE COURT: Okay, Defendant's Number 5, all
6 right.

7 Q While you were there, did Mr. Schumacher ever give
8 you a plan about when he was going to fix the
9 problem and how he was going to fix the problem?

10 A No, he did not.

11 Q Did he ever make a promise that he went through
12 with, we'll do it by this time, we're going to have
13 these people do it this way?

14 A No.

15 Q Did he ever give you a date about when he was going
16 to get it fixed?

17 A No, he did not.

18 Q After this September 8th e-mail where he says, okay,
19 everything's on hold, I don't have control of the
20 timeframe, did he ever get back to you and say,
21 okay, guys, we'll get it fixed by a certain time?

22 A No.

23 Q Did he ever tell you, look, I can't fix the problem?

24 A No.

25 Q Did he -- did he threaten to sue you as part of it?

1 A Yes, he did.

2 Q When did he do that?

3 A I believe shortly after this, in the e-mail he said,
4 he hoped that we would reconsider our initial
5 reaction to break the lease. Within a few days of
6 that he actually decided to go ahead and pursue
7 suing us.

8 Q When he said he was going to sue you, had he even
9 given you a plan about how he was going to fix this
10 problem in your home?

11 A No.

12 Q Did you feel safe in the home?

13 A No, I did not.

14 Q Had you seen the Biotek report at this time,
15 September 8th?

16 A Yes, we had.

17 Q And what was it about the Biotek report that
18 concerned you about living in the home?

19 A The high number of mold spores that we were
20 breathing in the home and the reports that the
21 aspergillus had aerosolized which meant that not
22 only was it growing from within the wall but my
23 family was breathing that in the air and within our
24 home.

25 Q Did you actually go to see a doctor?

1 A Yes, I did, four different doctors.

2 Q Who did you go to see?

3 A Dr. Allan Lieberman. I don't recall -- I was at the
4 acute care at Moncrief, preventative medicine
5 doctor. Dr. Lieberman, I had to actually drive to
6 Charleston to receive care from him. And I also was
7 referred to Augusta to Eisenhower Medical Center for
8 a pulmonologist for my lungs.

9 Q What was wrong with you that you had to go see the
10 doctors?

11 THE COURT: She can testify ---

12 MR. SHEALY: No, I agree, I agree.

13 THE COURT: Thank you.

14 A I had chronic fatigue, headaches, runny nose,
15 coughing. I'm a very high energy person and I was
16 many days not even able to get out of bed to drive
17 my children three blocks to school.

18 Q And when you moved out of the house, did these
19 symptoms get better?

20 A A little bit, it took quite a long time.

21 Q Before you moved in, did you have these problems?

22 A No, I did not.

23 Q Monica, I'm showing what I think is your summary of
24 what it actually cost you to have the house
25 inspected?

1 MR. SHEALY: Your Honor, I would object to --
2 may we approach?

3 THE COURT: Yeah, sure.

4 (Whereupon, a bench conference was held off the
5 record, in the presence of the jury, but out of
6 the hearing of the jury.)

7 THE COURT: Members of the jury, go to the jury
8 room for the few moments. Don't discuss this case, once
9 again. I'll bring you back out shortly.

10 (The jury retires from the courtroom at
11 approximately 12:04 p.m.)

12 THE COURT: It appears that Mr. Bradley wants to
13 get through this witness certain medical expenses she
14 incurred as a result of like mold, I don't know.

15 MR. BRADLEY: No, sir.

16 THE COURT: What is it?

17 MR. BRADLEY: These are just the expenses for
18 moving and the investigation.

19 THE COURT: Is there a counterclaim?

20 MR. BRADLEY: Yes, sir.

21 THE COURT: All right. Mr. Shealy.

22 MR. SHEALY: Your Honor, the counterclaim is
23 only for the security deposit. That's been represented
24 to this Court in a trial brief and in depositions. The
25 counterclaim is only for the security deposit.

1 MR. BRADLEY: Your Honor ---

2 MR. SHEALY: In your office ---

3 THE COURT: I don't know, I'm asking you
4 gentleman. Mr. Bradley, help me out.

5 MR. BRADLEY: We certainly are requesting the
6 security deposit. As well, we're requesting additional
7 costs that we had, it's in our responses to discovery,
8 it's in the Answer and Counterclaim.

9 MR. SHEALY: Well, the responses to discovery
10 were tendered when Mrs. Hoover was a party -- she was
11 gratuitously made a party.

12 THE COURT: What's your specific objection, Mr.
13 Shealy?

14 MR. SHEALY: My objection is that these are not
15 relevant to the issues that are before the Court. The
16 only issues before the Court are the Plaintiff -- the
17 Plaintiff (sic), Lance Hoover's request for ---

18 THE COURT: Was all that prayed for in his
19 Answer?

20 MR. SHEALY: Your Honor, again, the ---

21 THE COURT: My question is, was that -- was all
22 that he prayed for in his Answer?

23 MR. SHEALY: Well, the Answer ---

24 THE COURT: Or the Counterclaim?

25 MR. SHEALY: The Answer included -- Mrs. Hoover

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1 joined the case in the -- in the Defendant's Answer as a
2 third party Plaintiff.

3 THE COURT: Okay.

4 MR. SHEALY: Her claim was dismissed on a motion
5 to dismiss because the rules don't allow for such a
6 thing.

7 THE COURT: Okay.

8 MR. SHEALY: And so -- and it's been represented
9 -- I will be happy to show the Court ---

10 THE COURT: I don't know, I am asking y'all.
11 I'm trying to get it clarified.

12 MR. SHEALY: Been represented and I think
13 judicial estoppel applies that the only remaining claim
14 for damages in this case is the claim for the security
15 deposit.

16 THE COURT: Okay. How about that Mr. Bradley?
17 He says this matter has been disposed of.

18 MR. BRADLEY: Well ---

19 THE COURT: Either it has or it hasn't, I don't
20 know.

21 MR. BRADLEY: What happened was initially we
22 sought to add Monica Hoover as a third party Plaintiff,
23 Monica had injuries. Technically there's not really a
24 provision for that in the rules and Judge Cooper agreed
25 with that.

1 THE COURT: So you're trying to bring something
2 up before me that Judge Cooper has already disposed of
3 then, is that correct?

4 MR. BRADLEY: No, sir ---

5 THE COURT: The objection is sustained.

6 MR. BRADLEY: But, Judge, can I finish, please.

7 THE COURT: Yes, you go ahead.

8 MR. BRADLEY: It had to do with the medical
9 bills and I'm not seeking to introduce those. It's
10 nothing -- it doesn't have anything to do with that.

11 THE COURT: Has Judge Cooper already ruled on
12 this matter, yes or no?

13 MR. BRADLEY: No, he has not.

14 THE COURT: How about that, Mr. Shealy? Now,
15 who's telling the truth? You both can't be right.

16 MR. BRADLEY: He ruled on the medical ---

17 THE COURT: I'm not mad with either one of you
18 but ---

19 MR. BRADLEY: Yes, sir.

20 THE COURT: He's claiming Judge Cooper has
21 already disposed of this matter, you're saying that he
22 hasn't. Which is right?

23 MR. SHEALY: Your Honor, Judge Cooper has
24 dismissed Monica Hoover as a party to this lawsuit.

25 THE COURT: Okay.

1 MR. SHEALY: Subsequently, her husband, the
2 Defendant's deposition was taken. The -- it's been
3 represented at that deposition, it's been represented in
4 a trial brief to this Court that the only thing that the
5 Defendant is claiming at this point in the litigation is
6 the security deposit. It is upon that basis that I'm
7 objecting to the introduction of the document that was
8 shown to this witness.

9 THE COURT: Which goes to her medical expenses
10 are expenses incurred ---

11 MR. SHEALY: No, Your Honor.

12 MR. BRADLEY: It doesn't have anything to do
13 with medical, nothing.

14 THE COURT: What do they involve then?

15 MR. BRADLEY: The home inspection, the cost of
16 moving, the security deposit and the electrical repairs.

17 THE COURT: Well, Mr. Shealy is saying that
18 those matters have already been -- look, gentlemen. I
19 haven't been involved in this case, you know, this is my
20 first time so I don't know the history of it.

21 MR. BRADLEY: Here's Judge Cooper's Order,
22 Judge. It doesn't say anything about -- it just says
23 that the medical claim is dismissed. I'm not seeking
24 recovery of medicals.

25 THE COURT: But Mr. -- apparently Mr. Shealy's

1 position is the only thing that was left after Judge
2 Cooper's ruling was your security deposit. I don't know
3 whether it is or not. I haven't read the Order. I don't
4 know the history of this case. So, somebody better be
5 telling me the truth and you better be right before I
6 make a decision.

7 MR. SHEALY: I don't believe either of us is
8 actually contradicting the other. I agree that he is not
9 seeking to introduce medical expenses by that document.
10 What I was telling you was, that you had asked me what
11 had he prayed for in his Answer. And there were a lot of
12 things prayed for. I've got to look back to ---

13 THE COURT: All right. Let's take a break, you
14 both revisit the pleadings and we'll take it up. It's
15 all right. I'm not upset with anybody but if you're both
16 not on the same page, we've got a problem.

17 MR. BRADLEY: Yes, sir.

18 THE COURT: Let's see if we can straighten it
19 out. Let's take a little break. I'll be right back.
20 You can step down but you can't talk to your lawyer.

21 (The witness leaves the witness stand.)

22 (The Court was in recess.)

23 THE COURT: Now, Mr. Bradley, what are you
24 seeking in addition to the return of the deposit?

25 MR. BRADLEY: The home inspection, electrical

1 repairs and the cost for ---

2 THE COURT: I'm sorry, speak up a little bit.

3 MR. BRADLEY: Sorry. The home inspection, the
4 mold testing cost and the electrical repairs, Your Honor.

5 THE COURT: All right. How about that, Mr.
6 Shealy. That's what he says he's asking for.

7 MR. SHEALY: May it please the Court, Your
8 Honor.

9 THE COURT: Yes, sir.

10 MR. SHEALY: In the Plaintiff's (sic) pretrial
11 brief to this Court on page two at the top, the only ---

12 THE COURT: I'm looking at the Answer and
13 Counterclaim is what I'm looking at.

14 MR. SHEALY: Yes, Your Honor. And subsequent to
15 that, the -- what was asserted in the Answer and
16 Counterclaim was dismissed, the original Answer and
17 Counterclaim and third party Complaint. And subsequently
18 the deposition of Lance Hoover was taken and I posed the
19 question trying to figure out what of the Counterclaim
20 they were continuing to maintain.

21 And I said, to the extent that it's necessary
22 for you all to have consultation about the extent to
23 which he continues to maintain a Counterclaim and then
24 you can give me an answer. Mr. Bradley says, I think the
25 idea is if you want an answer, in the pleadings we

1 believe we're entitled to return of the deposit because
2 we were properly terminating the lease and that we're
3 entitled to have the security deposit returned. In
4 response to being sued, that's what we've alleged. I
5 don't know of any personal damages to Lance other than a
6 potential loss of consortium claim that he could assert,
7 but we have not asserted in this case.

8 And in following that is the trial brief to this
9 Court in which the only claim to relief is the security
10 deposit because in two different legal proceedings
11 connected with this action, subsequent to the filing of
12 the pleadings, the Defendant has limited the claims for
13 relief to the return of the security deposit, we believe
14 that judicial estoppel applies and that the items of
15 damage that are on the exhibit presented to Mrs. Hoover
16 are not proper elements of damages.

17 Even if they were, even if judicial estoppel did
18 not apply, Your Honor, there are several items that don't
19 -- that are improper items of damage. One of them is for
20 a mold inspection that took place after the -- the
21 Defendant terminated the lease, notified of the
22 termination of the lease. It's trial preparation
23 material. They had already been served with the lawsuit,
24 according to the testimony.

25 There are things that -- that they paid for, the

1 electrical work that they paid for that are not a -- or
2 not an element of damage caused by mold. They've ---

3 THE COURT: They volunteered to pay for that
4 themselves?

5 MR. SHEALY: Yes, Your Honor,

6 THE COURT: Okay.

7 MR. SHEALY: Yes, Your Honor. So there are a
8 number of different -- there are other issues with that
9 ---

10 THE COURT: Where's the list again, Mr. Bradley,
11 that you had?

12 (Pause.)

13 THE COURT: Thank you ---

14 MR. BRADLEY: Thank you, Judge.

15 THE COURT: --- that's it. Kilbourne expenses,
16 home inspection \$455, electrical repairs \$625, Biotek
17 Environmental Services 250, Applied Building Services
18 Mold Inspection \$1,239.50, moving expenses \$1,344, loss
19 of initial security deposit \$2400.

20 MR. SHEALY: Your Honor, the home inspection,
21 for instance, was something that they paid for, something
22 that they decided they wanted to do and -- and as part of
23 the negotiations about potential to exercise the option
24 to purchase this house. It's nothing about the -- the
25 issues in this case that would give rise to that being a

1 proper element of damages.

2 And we have talked about the electrical repairs.
3 The -- the Applied Building Science mold inspection is
4 what takes place after they've been sued. Then their
5 moving expenses, Your Honor, they -- they elected to
6 move. This is not a ---

7 THE COURT: Okay, okay.

8 MR. SHEALY: All right.

9 THE COURT: I've heard from you. Mr. Bradley,
10 your response.

11 MR. BRADLEY: Yes, sir. Just that these are
12 damages that were incurred because Mr. Schumacher did not
13 fix the problem and because the problem was there in the
14 first place. They wouldn't have had to move if ---

15 THE COURT: How about the home inspection? What
16 would Mr. Schumacher have to do with those expenses,
17 \$450?

18 MR. BRADLEY: Well, that's just an expense they
19 sunk into the house that they didn't get to recover
20 because they had to move.

21 THE COURT: How about the electrical repairs
22 that they paid for themselves, you're claiming that too,
23 \$625?

24 MR. BRADLEY: They invested that money into his
25 house with the idea they were going to be staying there

1 and then they couldn't stay. They certainly had the
2 house repaired and fixed and it's still repaired and
3 fixed.

4 THE COURT: What about moving expenses? You
5 want the Plaintiff to pay for them moving?

6 MR. BRADLEY: Yes, sir, because the reason they
7 had to move was because he didn't have a safe house ---

8 THE COURT: All right. Do either one of y'all
9 have any authority to substantiate or back up your
10 position?

11 Do you, Mr. Kirby? You got a case on point? Or
12 you, Mr. Bradley, do you have a case on point or can you
13 cite a statute or rule that supports your position.

14 You go first Mr. Kirby.

15 MR. SHEALY: Your Honor I would argue first that

16 ---

17 THE COURT: My question is this, do you have a
18 case on point? Do you have a rule on point that you rely
19 on for the position you take?

20 MR. SHEALY: The doctrine of judicial estoppels
21 is the first ---

22 THE COURT: Do you have a case?

23 MR. SHEALY: I ---

24 THE COURT: I'll give you a chance to get one.

25 MR. SHEALY: I'll be happy to.

1 THE COURT: Do you have as case, Mr. Bradley, to
2 support your contentions?

3 MR. BRADLEY: No, sir, I do not have a case or
4 statutory or -- I believe it's a discretionary call for
5 you, Judge.

6 THE COURT: All right.

7 MR. SHEALY: Your Honor, I would be happy to
8 brief this issue.

9 THE COURT: Go ahead. Like -- like Judge --
10 what's his name? Judge -- when you leave -- he's still
11 alive, when you leave, they forget your name. Judge who?
12 He worked for Jim Brockman (phonetic).

13 MR. SHEALY: Your Honor, that was before my
14 time.

15 THE COURT: He told me once, okay, you want to
16 brief it, brief it right now, is what he told me once,
17 over in Lexington County. So brief yours right now, go
18 ahead and brief it.

19 MR. SHEALY: Your Honor, as I indicated to you,
20 the doctrine of judicial estoppel ---

21 THE COURT: All right. I'm asking you do you
22 have cases to support that, you say you don't.

23 MR. SHEALY: Not on me, no, no, sir.

24 THE COURT: Okay and you want to brief it?

25 MR. SHEALY: I think it's well recognized ---

1 THE COURT: He told me once, brief it right now,
2 all right. You both come in here and make certain
3 assertions that you're entitled to this, you say he's
4 not. But yet, neither one of you are offering me
5 anything to rule for you.

6 MR. SHEALY: Well, Your Honor -- and forgive me
7 for being taken by surprise.

8 THE COURT: What?

9 MR. SHEALY: Because this has been represented
10 to me two different times that that was all that they
11 were -- that they were claiming. That is the basis for
12 judicial estoppel is to -- is to prevent the party from
13 taking a position at one point in the litigation and
14 taking a completely different position in a different
15 point in litigation. There's a reliance interest that
16 has to be -- of the litigants and of the Court, it has to
17 be protected. And that's what judicial estoppel is all
18 about.

19 THE COURT: Once again, I ask you -- I
20 understand the principle of judicial estoppel. Do you
21 have a case that you can provide me that supports your
22 position? You don't have it right now?

23 MR. SHEALY: I don't have it.

24 THE COURT: Relax, relax, all right.

25 All right, Mr. Bradley, one more time. Y'all --

1 y'all are quibbling over something I'm not sure how
2 important it is in this case.

3 MR. BRADLEY: Judge, I agree with everything.
4 Just shoot somebody out of a tree ---

5 THE COURT: What now?

6 MR. BRADLEY: If you'll just -- I agree with
7 you, this is quibbling. I'm ready to go one way or the
8 other. I don't have a case or statute that says one
9 thing or the other.

10 THE COURT: I understand. You know, I'm not
11 yelling at either one of you but when you make these
12 assertions -- okay, I think I'm required to invite you to
13 support your position.

14 I don't know about whether or not he's abandoned
15 any rights he may or may not have based on depositions or
16 anything like that. That's pretty much your assertion.
17 You say he takes the position at one point where, all I
18 want is my security deposit back. And now he comes to
19 court and says, well, some of these things -- led to
20 repairs -- the testimony's been they did that themselves
21 -- Biotek, Applied Building Specialties, moving expenses.
22 And yet, any party has the right to, based on the
23 evidence that's presented, to amend their pleadings.

24 Well what do you call it at the end, what's the
25 motion? Help me out.

1 MR. BRADLEY: Just to conform to the evidence.

2 THE COURT: Yeah, to conform to the evidence.

3 How about that, Mr. Shealy?

4 MR. SHEALY: Your Honor, that's what I'm
5 objecting to, go through the evidence, to prevent such a
6 thing from happening.

7 MR. BRADLEY: I think the pleadings covered it,
8 Judge, I ---

9 THE COURT: I am not sure what happened in the
10 deposition but when I read his -- let's see, paragraph
11 22, the Plaintiff's breach of the contract, the
12 Defendants have been injured as alleged above. The
13 Defendants are entitled to an award from this Court for
14 his injuries as well as attorney's fees as set forth in
15 the South Carolina Residential Landlord Tenant Act and
16 contract between the parties.

17 What does the contract say about recovering
18 these expenses, Mr. Bradley?

19 MR. BRADLEY: Judge ---

20 THE COURT: First of all, y'all all look first
21 at the contract, see what it says. Y'all got a copy of
22 the contract? I hate to take all this time but y'all
23 made an issue out of it, not me.

24 What does the contract say, gentlemen?

25 MR. SHEALY: I think it's silent as to this

1 matter.

2 THE COURT: That's all right. It's okay.

3 (Pause.)

4 THE COURT: Y'all want to help direct me to the
5 part -- and I can't read it -- I mean, I can read it, I
6 just can't see it.

7 MR. BRADLEY: Take a -- take a look at the
8 second copy ---

9 THE COURT: Which one?

10 MR. BRADLEY: Well, the first copy was faxed
11 about three times.

12 THE COURT: Yeah.

13 MR. BRADLEY: You can hardly read it. That's
14 why I included the second copy. It's not real better but
15 it's better. I don't think it addresses this question at
16 all.

17 THE COURT: So it doesn't address what you're
18 seeking to introduce and get recovery for nor does it
19 address, I would assume, Mr. Shealy, what you're
20 objecting to, the contract itself.

21 Is that fair enough? I don't know.

22 MR. BRADLEY: Yeah, it does not ---

23 THE COURT: Either way, the contract is silent
24 as to what you're seeking to recover and what you're
25 saying he shouldn't be allowed to recover because of

1 judicial estoppel?

2 MR. SHEALY: I agree, it does not. It's silent
3 as to this matter.

4 THE COURT: All right. This is what we're going
5 to do. I'm going to let him proffer this, not let it go
6 to the jury. The prevailing party is going to be
7 entitled seek attorney's fees that I'm going to handle
8 separate anyway and I'll take up this issue separately
9 than what we have here now.

10 I'm going to assume that you proffered this, you
11 objected and the proffer can be, I can mark these items
12 as exhibits as to proffer, okay.

13 I'll take it up later on. I think it's strictly
14 a legal issue, not a factual issue.

15 THE COURT: Will she be able -- I guess not,
16 testify to it then, Judge?

17 THE COURT: Yeah, well, she's going to testify
18 these are expenses that they incurred as a result of
19 being constructively evicted, something like that.

20 Is that fair enough?

21 MR. SHEALY: Well, if she's able -- if she's
22 able to testify then ---

23 THE COURT: I'm saying -- listen to me
24 carefully, Mr. Shealy. She's not testifying to this.
25 It's a proffer.

1 MR. SHEALY: Yes, sir.

2 THE COURT: It means the jury doesn't see it.

3 I'm marking this as a proffer by Mr. Bradley in terms of
4 what he'd like to get for his claims -- his Defendant's.

5 Does that make sense?

6 MR. SHEALY: Yes, sir.

7 THE COURT: Okay.

8 MR. SHEALY: Crystal clear.

9 THE COURT: So we'll take this matter up later
10 on and give you both a chance to brief the issue and I
11 can handle it legally when I handle the matters of
12 attorney's fees.

13 MR. BRADLEY: Yes, sir. And the only issue I
14 had was, so I should not ask her about this but can I ask
15 her about the security deposit?

16 THE COURT: Oh, yeah, yeah, yeah, yeah, of
17 course. Of course, there's no doubt that the security
18 deposit is in. Those other things are what's
19 questionable.

20 MR. BRADLEY: So you would like me -- I just
21 want to make sure I've got it, so.

22 THE COURT: Okay, that's fine.

23 MR. BRADLEY: Don't ask about anything but the
24 security deposit and the exhibit is proffered as a
25 Court's Exhibit and not ---

1 THE COURT: I think you both -- I think you all
2 covered that.

3 MR. BRADLEY: Yes, sir.

4 THE COURT: We all on the same page now,
5 gentlemen?

6 Mr. BRADLEY: Yes, sir. I just didn't want to
7 do anything ---

8 THE COURT: I'm in the same position y'all are
9 in and that gives you a chance between now and when we
10 end this trial to submit a case or anything, okay. When
11 I handle the attorney's fees, I will handle this proffer
12 as well. And it either or it's not, so.

13 Are we all together now?

14 MR. SHEALY: Yes, sir.

15 MR. BRADLEY: Yes, sir.

16 THE COURT: All right. You think they're ready
17 -- do you think they want to come back in?

18 (Laughter.)

19 BAILIFF: I don't know, Your Honor.

20 THE COURT: Go check and see.

21 Let's see, we've got how many more minutes of
22 her? We'll try to work in Mr. Bishop before lunch. How
23 long is Mr. Bishop's testimony going to take?

24 MR. SHEALY: I don't believe too awful long,
25 maybe 20 minutes.

1 THE COURT: I would appreciate a straight answer
2 one day. Not from you but from lawyers in general.

3 We'll say 20 minutes. We can go that long.
4 She's got what, another 20 maybe, I'm guessing, Mr.
5 Bradley?

6 MR. BRADLEY: Judge, probably less than 10.

7 THE COURT: Okay, whatever it is, we want to
8 finish her and get Mr. Bishop in before we break for
9 lunch, that's all.

10 Bring the jury in.

11 (The jury returned to the courtroom at
12 approximately 12:35 p.m.)

13 BAILIFF: Jury's seated, Your Honor.

14 THE COURT: Welcome back, Mr. Foreman and
15 members of the jury. I told y'all at the beginning of
16 this case that there would come a time or two when I
17 would have to send you out and entertain arguments on the
18 law. And the only way I can do that would be in your
19 absence. That's just what occurred. It has nothing to
20 do with the merits of this case the fact that I had to
21 send you all out. I'm sure y'all understand that. Don't
22 hold against either party or against me for that matter.

23 You may proceed, Mr. Bradley.

24 MR. BRADLEY: Thank you, Judge.

25 CROSS-EXAMINATION CONTINUES

1 BY MR. BRADLEY:

2 Q Monica, what was the security deposit that you and
3 Lance put on the house?

4 A \$2400.

5 Q Did you ever receive that back from Mr. Schumacher?

6 A No, we did not.

7 Q Before -- did you pay the September for the whole
8 month?

9 A Yes, we did.

10 Q So the first month's rent you didn't pay would have
11 been October?

12 A Yes, that's correct.

13 Q And before you left, were there additional problems
14 with the mold?

15 A Yes. The mold continued to get worse from the
16 initial -- it continued to grow and spread and
17 actually, I believe the pictures that were yesterday
18 showed an actual black strip which directly behind
19 that was the air duct..

20 Q All right. Monica, I'm going to show you what I
21 think is the e-mail that you had sent to Todd
22 Beckstrom?

23 A Yes.

24 Q And was that just telling him what the problems were
25 you were seeing at that time?

1 A Yes, it was.

2 MR. BRADLEY: We'd like to put this into
3 evidence, Judge.

4 THE COURT: This is Number 11.

5 COURT REPORTER: 12.

6 THE COURT: 12.

7 MR. SHEALY: No objection, Your Honor.

8 THE COURT: All right, Number 12.

9 MR. BRADLEY: May I show copies ---

10 THE COURT: Yes, sir, you may publish it.

11 (Whereupon, Defendant's Exhibit Number 12, E-
12 mail September 14, 2010 to Todd Beckstrom, was
13 admitted into evidence.)

14 Q Monica, why did y'all leave this house in September?

15 A Because I was increasingly sick. We had been
16 notified that the mold that was present was toxic to
17 our family and nothing had been done to remedy that.
18 There was no plan, not timeframe and we really felt
19 that Mr. Schumacher was not concerned about the
20 well-being of our family or that we were becoming
21 ill or even about the investment of his property and
22 making sure that it was an adequate place to live.

23 Q Did you give Mr. Schumacher a chance to fix it?

24 A Yes, we did.

25 Q How long were you in the house after Mr. Schumacher

1 was shown the mold?

2 A Over a month.

3 Q Did he ever give you a written plan about, this is
4 how we're going to fix it and this is what we're
5 going to do?

6 A No, he did not.

7 Q Even after you got sued, would you do the same thing
8 again?

9 A I would absolutely do what was necessary to ensure
10 the safety of my family.

11 MR. BRADLEY: Thank you.

12 THE COURT: All right, Mr. Shealy, recross
13 (sic).

14 REDIRECT EXAMINATION

15 BY MR. SHEALY:

16 Q Mrs. Hoover, do you still have Defendant's Exhibit
17 11?

18 A Yes, I do.

19 Q All right. And as I recall, Mr. Bradley
20 characterized that as Mr. Schumacher's response to
21 the -- I believe to giving him the Biotek report, is
22 that correct?

23 A It's -- I'm not sure what -- I can't say as to what
24 exactly he's responding to. I believed at that
25 point he had the inspection report but I do know he

1 was aware at that point in time that we had tested
2 the house and that we were testing to see what kind
3 of mold it was.

4 So his response to that was that he would not --
5 he was aware of what company we were hiring and that
6 we hired it and I can't testify as to whether or not
7 he had the report at that actual time but he was
8 very aware of what was going on and refused to pay
9 for it.

10 Q The subject line of the e-mail that's in evidence as
11 Defendant's 11 is high utility bills, correct?

12 A I'm not sure what e-mail he chose to respond to but
13 that was -- that's coming from Mr. Schumacher
14 because we had continually addressed the high energy
15 bills with him, that we were concerned about the
16 efficiency of the air conditioning and we actually
17 had addressed those high energy bills, not just with
18 Mr. Schumacher, with our real estate agents and also
19 with SCE&G. We were concerned, was there a problem
20 with the meter. We were really puzzled as to why,
21 in a month's time, we had received almost \$1200's
22 worth of utility bills.

23 Q So, Mrs. Hoover, my question was just, is the
24 subject line on the e-mail that is Exhibit 11, high
25 utility bills?

1 A Yes, it is.

2 Q All right. I'm going to show you a document I
3 represent to you is a chain of e-mails that all have
4 that same subject line that has been marked as
5 Plaintiff's Exhibit 15 and ask if you can identify
6 that.

7 A Yes, I can.

8 Q All right. And is this -- if you'll turn to the
9 bottom of page 3, is ---

10 THE COURT: How many pages is it?

11 MR. SHEALY: Four, Your Honor.

12 Q Is the e-mail that you sent to Todd Beckstrom dated
13 August 31st at 2:04, the beginning of that chain?
14 (Pause.)

15 A I believe it is.

16 Q All right. And so the e-mail that's in Defendant's
17 11 is actually on page 2 at the bottom of
18 Plaintiff's 15, correct?

19 A Yes.

20 Q All right. And that is in response to an e-mail to
21 Mr. Schumacher from you in which you say -- and
22 that's August 31st, Kevin, thank you for your prompt
23 response, we have not been contacted by Mr. O'Neill.
24 Please give him my cell number, that is the best way
25 to reach us.

1 And then that's where you pose the question
2 about the water heater, is it possible that this may
3 still be an issue in the cause of the large utility
4 bills. Is that correct?

5 A Yes.

6 Q Okay. And that was sent in response to an e-mail
7 from Mr. Schumacher just a few hours earlier on the
8 same day ---

9 A Well what page -- I'm sorry, I'm trying to follow
10 what page you're on.

11 Q I'm still on page 3, below that, which was his first
12 response to your e-mail where you bring up the high
13 utility bill, correct?

14 A On page 3?

15 Q Yes.

16 A Yes..

17 Q Okay. So what was represented to the jury as the
18 response concerning a mold report was actually part
19 of this chain of e-mails where you're talking about
20 the high utility bills and you're having a
21 conversation directly with Mr. Schumacher about
22 those issues and what he's doing to deal with them,
23 correct?

24 A His e-mail actually has two separate paragraphs and
25 it specific -- even though the subject line says,

1 high utility bills, it says, Monica, not likely.
2 The hot water heater had been leaking out of the
3 release valve which caused it to run constantly.
4 That has been fixed.

5 And he goes on in a further paragraph and says,
6 regarding the mold inspection you ordered, I will
7 not be paying for that.

8 So I was -- I'm sure that you can address more
9 than one issue in an e-mail regardless of the title.
10 Q Sure. Oh, all I'm saying is that Plaintiff's 15
11 gives the jury the whole context of the
12 conversation, does it not?

13 A (No response.)

14 Q From the initial e-mail that you title, high utility
15 bills, until the ---

16 A There's an e-mail on that same page with the subject
17 line, re: high utility bills, that's from my real
18 estate agent Todd Beckstrom and it says, Kevin, my
19 clients are very concerned about the mold in the
20 home that they are leasing. The contactor you sent
21 over to take a look was also very concerned.

22 So he's not addressing -- my real estate agent's
23 not addressing the utility bills, he's addressing
24 the same mold under the same subject line.

25 Q And I'm sorry we're misunderstanding each other.

1 Doesn't this chain of e-mails give the jury the
2 entire conversation about -- it starts with your e-
3 mail regarding high utility bills? Many different
4 issues were discussed in that conversation but this
5 is the entirety of the conversation?

6 A Yes.

7 Q Okay.

8 MR. SHEALY: Your Honor, based upon that, I ask
9 that Plaintiff's 15 be admitted into evidence.

10 MR. BRADLEY: No objection.

11 (Whereupon, Plaintiff's Exhibit Number 15, Chain
12 of E-mails September 2, 2010 High Utility Bills,
13 was admitted into evidence.)

14 Q And, Mrs. Hoover, you mentioned in your direct
15 testimony, when I was first asking questions, that
16 the report was -- from Biotek was sent to you and to
17 Mr. Schumacher as early as September the 1st but did
18 you identify any e-mail in the course of your
19 examination with Mr. Bradley that indicated that?

20 A I don't have that information with me but I do know
21 in the e-mail dated September 1st in his response
22 that he was aware of the Biotek report and that the
23 testing had been done.

24 Q He was aware that ---

25 A We were anticipating a report or that he had had

1 one. I'm not sure -- I'm not sure the date that he
2 received that report.

3 Q Okay. He was aware that Biotek was involved and
4 everyone ---

5 A Yes.

6 Q --- was awaiting a report at that point, correct, as
7 of September 1st?

8 A I believe so. I don't have that information right
9 here in front of me to refer to.

10 Q Okay. And also, just one minor point, you said
11 originally that the first time that you pointed out
12 the mold to Mr. Schumacher, you said September 13
13 and 16. Now, is it the 13th or the 16th?

14 A I'm not sure exactly which day that he came. I do
15 know that he delivered -- the date of the letter that
16 he wrote was the 13th. He delivered it within a day
17 or two of that because once he responded and said,
18 that's mold, I'm concerned, we weren't comfortable
19 with that. So we proceeded to address that situation
20 with our real estate agent.

21 MR. SHEALY: Thank you, I have no further
22 questions.

23 THE COURT: Anything further, Mr. Bradley?

24 MR. BRADLEY: No, sir.

25 THE COURT: You sure.

1 MR. BRADLEY: Absolutely.

2 THE COURT: All right.

3 MR. BRADLEY: Thank you, Judge.

4 THE COURT: You may step down.

5 (The witness leaves the witness stand.)

6 THE COURT: All right, Mr. Shealy, call your next
7 witness.

8 MR. SHEALY: Your Honor, at this time we would
9 call Terry Bishop to the stand.

10 THE COURT: All right, come on around, Mr.
11 Bishop.

12 (TERRELL F. BISHOP, having first been duly sworn,
13 testified as follows:)

14 THE CLERK: Thank you have a seat in the witness
15 stand, please. State your name for the record.

16 THE WITNESS: Terrell F. Bishop, Jr.

17 THE COURT: What's your first name, sir?

18 THE WITNESS: Terrell F. Bishop.

19 THE COURT: Oh, Carol (sic).

20 THE WITNESS: T-e-r-r-e-l-l.

21 THE COURT: Oh, Terrell.

22 THE WITNESS: Terrell.

23 THE COURT: All right, sir. Go ahead, Mr. Shealy.

24 MR. SHEALY: May it please the Court.

25 DIRECT EXAMINATION

1 BY MR. SHEALY:

2 Q Mr. Bishop, what do you do for a living?

3 A I sell real estate.

4 Q And for whom do you -- or are affiliated -- well, for
5 whom do you work or with what real estate company are
6 you affiliated?

7 A RE/MAX Advantage Group on Devine Street.

8 Q And how long have you been affiliated with RE/MAX?

9 A Probably about three and a half, four years now.

10 Q How long have you been in the real estate ---

11 A 29.

12 Q 29 years?

13 A 29 plus.

14 Q Are you originally from Columbia?

15 A I am not. I'm from Georgia.

16 Q How long have you been practicing -- or how long have
17 you been in Columbia?

18 A Since 1978 I came here to the University of South
19 Carolina.

20 Q All right. And have you -- in selling real estate,
21 do you represent buyers and sellers?

22 A I do.

23 Q Okay. And at any point in time have you ever
24 represented or worked with Kevin Schumacher?

25 A I have.

1 Q All right. How many -- on how many occasions?

2 A Just the once.

3 Q And did that concern the house that he still owns on
4 Kilbourne Road?

5 A Correct.

6 Q All right. Do you recall when Mr. Schumacher listed
7 the house with you?

8 A I do.

9 Q Do you know approximately when that was?

10 A A year and a half, a year ago? I'm working on short
11 memory here. I think it's been about a year.

12 Q Okay. So in that -- well a year ago would have been
13 in 2011 and I represent to you the circumstances
14 talking about here began in the spring of 2010.

15 A Well, I was -- I listed the house -- I had the house
16 listed when they contracted to rent...

17 Q All right. I'm going to walk you through just to
18 fill out -- fill in some details as to what the jury
19 has already heard, a series of e-mails.

20 Do you do a lot of your business in selling real
21 estate by communicating via e-mail?

22 A I do.

23 Q Okay. I'm going to show you a document that has not
24 been marked yet for identification purposes and ask
25 if you can identify that.

1 Q Yeah.

2 A And what is that document?

3 Q This is an inquiry about another property that I had
4 for sale and I'm just stating that the house had just
5 gone under contract but, oh, by the way I have
6 another home that might suit your client's needs.

7 Q All right. The inquiry came in from Todd Beckstrom?

8 A Yeah -- well, Carolyn, Carolyn his administrative
9 assistant I guess.

10 Q Somebody on behalf of Todd Beckstrom?

11 A Yes.

12 Q Okay. And that was back on April 27th?

13 A April 27th, 2-10.

14 Q All right. And your response, you indicated that
15 4120 Kilbourne Road was available?

16 A I did.

17 Q Okay.

18 MR. SHEALY: Your Honor, we move Plaintiff's 16,
19 what would be Plaintiff's 16 into evidence.

20 MR. BRADLEY: No objection.

21 THE COURT: Without objection, Plaintiff's 16.

22 (Whereupon, Plaintiff's Exhibit Number 16, E-mail
23 April 27, 2010 Bishop and Beckstrom, was admitted
24 into evidence.)

25 Q All right. And then I would show you another

1 document that has yet to be marked and ask if you can
2 identify that, Mr. Bishop?

3 A Yes.

4 Q And what is -- and this is another exchange of e-
5 mails, correct?

6 A Correct.

7 Q And is this -- what does this concern?

8 A It's a -- an offer to lease with the option to
9 purchase the property at Kilbourne Road.

10 Q All right. And that exchange occurred in early May?

11 A Correct, May 3rd.

12 Q And you communicated with Todd Beckstrom, is that
13 correct?

14 A Correct.

15 Q All right.

16 MR. SHEALY: Your Honor, I'd move Plaintiff's 17
17 into evidence.

18 MR. BRADLEY: No objection.

19 THE COURT: All right, without objection, 17.

20 (Whereupon, Plaintiff's Exhibit Number 17, E-mail
21 May 3, 2010 Bishop and Beckstrom, was admitted
22 into evidence.)

23 Q Then, Mr. Bishop, I'll show you another document and
24 ask you if you can identify that?

25 A Sorry, did you ask ---

1 Q Yes, can you identify that?

2 A Yes, correct, yes.

3 Q All right. Is this an e-mail that you sent to Mr.
4 Schumacher and his wife ---

5 A Correct.

6 Q --- about the receipt of the signed agreement?

7 A Correct.

8 Q All right.

9 MR. SHEALY: Your Honor, we move that Plaintiff's
10 18 be admitted into evidence.

11 MR. BRADLEY: No objection.

12 THE COURT: All right, without objection.

13 (Whereupon, Plaintiff's Exhibit Number 18, E-mail
14 May 11, 2010 Bishop and Schumacher, was admitted
15 into evidence.)

16 Q And then, Mr. Bishop, again this is all -- forgive me
17 for the tedium, but can you identify the document I
18 just handed you?

19 A Correct, yes.

20 Q And this is June 7th?

21 A That's correct.

22 Q Okay. It's this, you giving instructions to the
23 Schumachers about what they needed to do to get some
24 items out of the house?

25 A Correct.

1 Q Okay.

2 MR. SHEALY: Your Honor, I move Plaintiff's 19
3 into evidence.

4 MR. BRADLEY: No objection.

5 THE COURT: All right.

6 (Whereupon, Plaintiff's Exhibit Number 19, E-mail
7 June 7, 2010 Bishop and Schumacher, was admitted
8 into evidence.)

9 Q Okay. And then, Mr. Bishop, I show you yet another
10 document and ask you if you can identify that?

11 A Yes.

12 Q All right. Is this a communication that you had with
13 Mr. Beckstrom concerning the -- again, making
14 preparation for ---

15 A Correct.

16 Q --- the tenants to move in?

17 A Correct.

18 MR. SHEALY: Your Honor, I move Plaintiff's 20
19 into evidence.

20 MR. BRADLEY: No objection.

21 THE COURT: All right, without objection.

22 (Whereupon, Plaintiff's Exhibit Number 20, E-mail
23 June 9, 2010 Bishop and Schumacher, was admitted
24 into evidence.)

25 Q So finally we've sort of seen the progression of

1 getting this thing under contract with a lease with
2 the option to purchase, correct?

3 A Correct.

4 Q All right. So I'm going to show you a document --
5 and is Becky Bishop ---

6 A She's my wife.

7 Q --- your wife? Your wife, you all work together?

8 A We do.

9 Q Okay. I'll show you a document and ask if you can
10 identify that?

11 A I can, yes.

12 Q All right. Again this is when the lease is getting
13 ready to begin in the middle of June?

14 A Correct.

15 Q Okay. And just some further instructions as to --
16 because the new tenants had wanted the key, is that
17 correct?

18 A That's correct.

19 Q Okay.

20 MR. SHEALY: Your Honor, I move Plaintiff's 21
21 into evidence.

22 MR. BRADLEY: No objection.

23 THE COURT: All right.

24 (Whereupon, Plaintiff's Exhibit Number 21, E-mail
25 June 9, 2010 Bishop and Schumacher, was admitted

1 into evidence.)

2 Q Now we're getting into the meat of the thing. All
3 right, Mr. Bishop, I'll show you a document. Is that
4 an e-mail from your wife to Mr. Schumacher dated
5 September 21st?

6 A Correct.

7 Q All right. And what are you telling Mr. Schumacher
8 at that point?

9 A That the potential purchaser is showing the necessary
10 -- doing the necessary things to potentially buy the
11 home.

12 Q And what were they doing?

13 A Home inspections and meeting with lenders.

14 Q Okay.

15 A A lender.

16 Q All right. And then ---

17 MR. SHEALY: And then so I move that into
18 evidence, Your Honor, as Plaintiff's 22.

19 MR. BRADLEY: I don't object -- I'll just speak
20 up if I've got one. Otherwise ---

21 THE COURT: How many more have you got?

22 MR. SHEALY: Not too many, five.

23 THE COURT: How many?

24 MR. SHEALY: Five.

25 THE COURT: Thank you.

1 MR. SHEALY: Yes, sir.

2 THE COURT: Do you want to show them all -- well,
3 you do them one at a time will be better.

4 (Whereupon, Plaintiff's Exhibit Number 22, E-mail
5 June 9, 2010 Bishop and Schumacher, was admitted
6 into evidence.)

7 Q Mr. Bishop, I show you another document, another e-
8 mail dated July 3rd. Can you identify that?

9 A I can.

10 Q And is that when you all received the repair addendum
11 that's been testified to?

12 A Correct.

13 Q Okay. That was after the home inspection ---

14 A Correct.

15 Q --- had been performed? Okay. And this again,
16 you're communicating with Mr. Schumacher about that,
17 correct?

18 A Correct.

19 MR. SHEALY: I move to admit Plaintiff's 23
20 into evidence.

21 (Whereupon, Plaintiff's Exhibit Number 23, E-mail
22 July 3, 2010 Bishop and Schumacher, was admitted
23 into evidence.)

24 Q And then I would show you a document dated July 16.
25 Again, this is from your wife, is that correct?

1 A Correct.

2 Q All right. And she's communicating with Todd
3 Beckstrom?

4 A Correct.

5 Q And she's indicating that all of the repairs are
6 going to be completed by July 21st, correct?

7 A That's correct.

8 Q All right. And that -- those repairs were to be done
9 by Mick O'Neill of Johnny Housewright?

10 A That's correct.

11 MR. SHEALY: Your Honor, I move Plaintiff's 24
12 into evidence.

13 (Whereupon, Plaintiff's Exhibit Number 24, E-mail
14 July 16, 2010 Bishop and Beckstrom, was admitted
15 into evidence.)

16 Q Okay. I show you an exchange of e-mails dated July
17 25th and July 26th and ask if you can identify those?

18 A Yes.

19 Q Okay. Again this is the bottom e-mail comes first,
20 correct?

21 A Correct.

22 Q All right. And this is your wife inquiring, now that
23 these repairs have been done, as to whether or not
24 they're going to move forward with purchasing the
25 house, correct?

1 A Yes.

2 Q And it's at that point that Mr. Beckstrom said they
3 were going to take their time, correct?

4 A Correct.

5 Q All right. So that's July 26th, correct?

6 A Uh-huh.

7 MR. SHEALY: I move Plaintiff's 25 into evidence,
8 Your Honor.

9 (Whereupon, Plaintiff's Exhibit Number 25, E-
10 mails July 25 and 26, 2010 Bishop and Beckstrom,
11 was admitted into evidence..)

12 Q Mr. Bishop, I show sort of a chain of e-mails that's
13 four pages in length, really the fourth page doesn't
14 have anything of substance on it but it is the fourth
15 page in the chain. Is this when -- is this when Mike
16 O'Neill sent in the invoice, if you go to the third
17 page?

18 A Correct.

19 Q Okay. And then this is again another e-mail after
20 that on August 10th, where Becky's following up with
21 Todd about whether or not they were going to follow
22 through and purchase the house, is that correct?

23 A Correct.

24 Q All right. And then the response from Todd is,
25 they're still getting settled, needing to learn the

1 area and figure by the end of the year, correct, if
2 they think about buying the house?

3 A Uh-huh, yep.

4 Q Okay. All of this is just part of the process you
5 all engage in if you're representing a seller, that's
6 to try to see if you can move a sale along, correct?

7 A Correct.

8 Q All right.

9 MR. SHEALY: Your Honor, move Exhibit Plaintiff's
10 26 into evidence.

11 (Whereupon, Plaintiff's Exhibit Number 26, E-mail
12 Chain August 10, 2010 Bishop and Beckstrom,
13 was admitted into evidence.)

14 Q And finally, Mr. Bishop, I show you an e-mail dated
15 August 17th and if you could -- can you identify
16 that?

17 A Yes.

18 Q What is that document?

19 A Us talking to -- sending Ginie (phonetic) and Kevin a
20 notice that said the tenant said there's a ceiling
21 leak in the hallway near the master bedroom.

22 Q Okay. Is that the first time that you had been made
23 aware of a leak in the hallway upstairs?

24 A Yes.

25 Q All right. And, Mr. Bishop, after this series of e-

1 mails, did you ---

2 MR. SHEALY: Oh, I move to admit Plaintiff's 27
3 into evidence.

4 (Whereupon, Plaintiff's Exhibit Number 27, E-mail
5 August 17, 2010 Bishop and Schumacher, was
6 admitted into evidence.)

7 Q After this series of e-mails, did this potential sale
8 fall apart?

9 A After this particular one?

10 Q No, after the whole series that we've gone through,
11 did the -- did the sale with -- to the Hoovers, did
12 that ever come to pass?

13 A No, it fell apart.

14 Q Okay. And so, do you recall what you all did after
15 the Hoovers moved out?

16 A Not particularly. I mean, we...

17 Q Did you continue to market the property?

18 A We put it back on the market, obviously.

19 Q All right.

20 A Once they had, you know, disclosed to us that they
21 were done and not moving forward with the purchase..

22 Q All right. And you continued to market the property
23 several months, is that correct?

24 A Correct.

25 Q All right. And eventually, was the house re-rented

1 in April of 2011?

2 A I know it was rented, I'm not sure exactly the date.

3 Q Okay. But you know that it was eventually rented
4 again by another tenant?

5 A Correct.

6 Q Okay. You're just not sure of the date?

7 A I'm not sure of the date.

8 MR. SHEALY: All right. Thank you very much for
9 walking through that with me. Please answer any questions
10 that Mr. Bradley may have.

11 CROSS-EXAMINATION

12 BY MR. BRADLEY:

13 Q Mr. Bishop, you would agree that a landlord has a
14 duty to provide a safe house for the tenants?

15 A Sure.

16 Q Okay. And that would include Lance Hoover and his
17 family, the landlord has to make the house safe?

18 A Yeah.

19 Q Okay. And if there's a problem with the house that
20 makes it not safe, it's the landlord's job to fix
21 that problem?

22 A I would think so.

23 Q And it's the tenants job to tell the landlord if
24 there's a problem?

25 A Right.

1 Q And after the tenant has told the landlord, the
2 landlord should do something to fix it ---

3 A Yeah.

4 Q --- is that right?

5 A Yeah.

6 Q You wouldn't expect the Hoovers to live in the house
7 that they felt was unsafe, would you?

8 MR. SHEALY: Your Honor, that calls for
9 speculation.

10 MR. BRADLEY: I would be glad to ---

11 THE COURT: Stop, hold on. It's a given, nobody
12 would want to live in a house that's not safe. I mean,
13 it's just -- what do you call those questions?

14 Q You wouldn't ---

15 THE COURT: Yeah, rhetorical questions. Go
16 ahead.

17 Q You wouldn't let your family stay in a house that was
18 unsafe.

19 THE COURT: I know what your objection is, just
20 go ahead, Mr. Bradley.

21 Q All right. Mr. Bishop, would you let your family
22 stay in a house that's not safe?

23 A No.

24 Q And if you found black unexplained mold in a house,
25 you would call a professional to evaluate it, right?

1 A Well, I would certainly notify the owner and, you
2 know, give him an option or the option to do
3 something about it or check it out or whatever.

4 Q That's what the Hoovers did, isn't it?

5 A I'm assuming.

6 Q And you were actually involved in the decision to get
7 the mold inspection, right?

8 A Well, I think when it was brought up that -- I'm
9 trying to remember all the conversations. I'm not up
10 -- I haven't reviewed all of the documents, the
11 timelines but ---

12 Q If it might -- I'm sorry to interrupt you but this
13 might help you remember. Let me let you take a look
14 at it ---

15 A Okay.

16 Q That will be the best thing to do.

17 (Pause.)

18 A Okay.

19 Q Okay. Mr. Bishop, that -- is that an e-mail that
20 Todd Beckstrom, the real estate agent for the
21 Hoovers, sent to you?

22 A Yes.

23 Q All right. And we would like to put that into
24 evidence, Judge, as our exhibit.

25 MR. SHEALY: Your Honor, if I -- if we can

1 consult, I believe this is already in evidence.

2 THE COURT: Well, let's just double check and
3 see. So many things, so many e-mails are in evidence,
4 just double check. Is it already in, do you think, as one
5 exhibit?

6 MR. SHEALY: I'm fairly sure it is but I've got
7 to check. I really have got to check the exhibits up
8 there, Your Honor.

9 THE COURT: Let's check them. Go ahead, take
10 your time. And I think both of you have introduced some
11 of the same e-mails probably.

12 MR. BRADLEY: Yes, sir.

13 THE COURT: Just double check.

14 (Pause.)

15 MR. SHEALY: Forgive me, it's confusing.

16 THE COURT: Take your time.

17 (Pause.)

18 MR. SHEALY: Yes, it is Plaintiff's 10.

19 THE COURT: All right.

20 MR. SHEALY: It's actually longer -- it's a three
21 page document that includes ---

22 THE COURT: Let's see, Plaintiff's 10, chain of
23 e-mails Beckstrom to Bishop 8/23/2010, is that right?

24 MR. SHEALY: That is correct.

25 THE COURT: All right.

1 THE COURT: So, Mr. Bradley, you want -- see,
2 it's already in. Looks like it's Plaintiff's Number 10.
3 It was -- it says a chain of e-mails, three or four maybe.
4 Which one were you looking at?

5 MR. BARDLEY: The August 24th one.

6 THE COURT: Can you find that, Mr. Bishop, that
7 chain, August 24th?

8 THE WITNESS: Yeah.

9 THE COURT: All right, go ahead.

10 MR. BRADLEY: Can I give a copy of it ---

11 THE COURT: Yeah, go ahead.

12 Q Whenever you're ready, Mr. Bishop. Whenever you get
13 a chance to read it.

14 (Pause.)

15 A Okay.

16 Q Okay. So now that you've looked at Plaintiff's
17 Exhibit 10, that's an e-mail from Todd Beckstrom to
18 you about the mold problem, right?

19 A Correct.

20 Q And it's dated August 24th, 2010?

21 A Correct.

22 Q At this point, the Hoovers had told Mr. Schumacher
23 about the problem more than a week before, right?

24 A I'm guessing. Where would that be?

25 Q I don't know that it's in the e-mail but it's been in

1 evidence the ---

2 A Let me just say, I have not reviewed -- I send tons
3 of e-mails out to people and I've not had a chance to
4 review all the e-mails here. So, if I'm not snapping
5 right to it, it's because I haven't had a chance to
6 review this situation.

7 Q I understand.

8 A Okay, good.

9 Q So -- but one thing we know for sure, looking at this
10 e-mail that you recall, is that you and Mr. Beckstrom
11 made a plan to do something about the mold?

12 A Correct.

13 Q And the plan was, the Hoovers were going to hire
14 somebody to look at the mold, make a plan and fix it,
15 right?

16 A Yeah.

17 Q And if it found mold that could make the house not
18 safe, that Mr. Schumacher would pay to fix the
19 problem and pay for the inspection?

20 A Correct.

21 Q Right.

22 A Yeah.

23 Q And at the time you were referencing Mr. Schumacher?

24 A Correct.

25 Q You're aware that Mr. Schumacher rejected this plan

1 -- are you aware of that?

2 A I don't recall that.

3 Q All right. Are you aware that when the Hoovers ask
4 him to pay for the inspection he said he wouldn't?

5 A I think I remember hearing something like that.

6 Q And do you recall that when they ask him to do what
7 the inspector said should be done to make the house
8 safe, he wouldn't do it?

9 A It was my understanding that Mr. Schumacher was
10 working toward correcting that. I do not know
11 exactly the timeline but those are my impressions, he
12 was working toward correcting it.

13 Q Are you aware that the plan that was made pursuant to
14 this e-mail of August 24th, Mr. Schumacher rejected?

15 A No, I don't.

16 Q You just didn't know that one way or the other?

17 A I don't recall that.

18 Q Would you say as a renter, it would be a reasonable
19 thing to let the property owner know and then have a
20 professional look at it?

21 A Correct, yeah.

22 Q And if you were the renter, that's what you would
23 have done?

24 A Unless the owner was a mold specialist.

25 Q Right, absolutely. And that's what the Hoovers did in

1 this situation, right?

2 A Yeah.

3 Q And you even talked to Todd Beckstrom about it, y'all
4 agreed that was the best thing to do?

5 A Right.

6 Q Because the mold certainly was a matter of concern,
7 right?

8 A Sure.

9 Q According to those e-mails.

10 (Pause.)

11 Q I'm showing you an e-mail, Mr. Bishop, whenever
12 you're ready to look at it, let me know.

13 THE COURT: Parenthetic, members of the jury,
14 we're going to stop after this, just in case y'all were
15 wondering. We wanted to get Mr. Bishop in before we broke
16 for lunch and that's why we're running over a little bit.
17 Usually I let you go at 1. You've only got a few more
18 minutes, Mr. Foreman.

19 Q Whenever you're ready, Mr. Bishop.

20 A Okay, ask.

21 Q Is this an e-mail regarding this lease that Mr.
22 Beckstrom sent to you?

23 A Yes.

24 Q We'd like to put this into evidence as our next
25 exhibit, Judge.

1 MR. SHEALY: Your Honor, forgive me, it's -- part
2 of this exhibit is already in as Exhibit Plaintiff's 10.
3 To the extent that the e-mail at the beginning is not in
4 evidence, I have no objection at all.

5 THE COURT: So what does that mean, you have no
6 objection to what he's seeking to introduce, this specific
7 item?

8 MR. SHEALY: It's -- well, I'm just concerned
9 about the duplication in the record. But I have
10 absolutely no objection to this ---

11 THE COURT: I understand, I understand. We'll
12 work on the duplication later.

13 All right, what number is it, Mr. Bradley?

14 COURT REPORTER: 13.

15 MR. BRADLEY: Exhibit 13.

16 (Whereupon, Defendant's Exhibit Number 13, E-mail
17 August 24, 2010 Beckstrom and Bishop,
18 was admitted into evidence.)

19 MR. BRADLEY: Can I give a copy to the jury?

20 THE COURT: Sure, you may publish it.

21 Q Okay. Can you explain what was going on here with
22 Defendant's Exhibit 13, what context this
23 conversation you and Mr. Beckstrom were having?

24 A I don't know exactly what the conversation was.
25 Obviously, it says that he passed an offer to his

1 clients and said that they would honor the terms of
2 the lease provided the owner addressed the potential
3 problem.

4 Q Including an inspection by the ---

5 A Including an inspection and whatever treatment was
6 necessary to correct it.

7 Q Did you think that was a reasonable way to go about
8 fixing the problem?

9 A Yes, I would think.

10 Q To your knowledge, did Mr. Schumacher ever address
11 the problem?

12 A Yeah, I think he did.

13 Q You think he fixed ---

14 A I mean, I think he responded to their request, their
15 concerns.

16 Q Did he ever ---

17 A There was some ---

18 Q --- have another report or plan to fix the plan that
19 you know of?

20 A I think he was addressing the problem. I do not know
21 the specifics of it, no.

22 Q All right.

23 A And, you know, there were a lot of conversations
24 directly from Kevin and the tenants that I was not
25 always involved in.

SCHUMACHER V. HOOVER

1 (Pause.)

2 Q Whenever you're ready to answer questions about that
3 one, let me know.

4 (Pause.)

5 A Okay.

6 Q This is an e-mail that you received that was part of
7 the discussion of the mold problem?

8 A Well, it's an e-mail to Kevin from Mr. Beckstrom.

9 Q And you were copied on it though as the agent?

10 A Yeah, okay, yeah.

11 Q All right..

12 MR. BRADLEY: We'd like to put this into evidence
13 as I believe Defendant's Exhibit 14?

14 THE COURT: All right.

15 MR. SHEALY: Your Honor, that document is already
16 included in Plaintiff's 15.

17 THE COURT: Can I see you both for minute,
18 please?

19 (Whereupon, a bench conference was held off the
20 record, in the presence of the jury, but out of
21 the hearing of the jury.)

22 THE COURT: Mr. Bishop, come over here for a
23 minute, let's work out something logistically.

24 (Whereupon, a bench conference was held off the
25 record, in the presence of the jury, but out of

1 the hearing of the jury.)

2 THE COURT: Members of the jury, it's one of
3 those things. I think I'm going to send you to lunch. I
4 know y'all are tired, I am. Are you? I can tell that you
5 are. And that's why I brought Mr. Bishop over to see
6 whether or not he can come back after lunch.

7 Mr. Bishop, you just can't talk to the lawyers
8 about your testimony.

9 Let's just take -- let's see, what is it, 1:20,
10 let's say 2:30. Can y'all eat lunch in about an hour or
11 so? I know this is kind of tedious but if you were the
12 Plaintiff or you were the Defendant, you would want your
13 case heard the way -- the attention that you've given it.

14 So, with that in mind, please don't talk about
15 this case and be back at 2:30, okay. We'll try to move it
16 along.

17 Thank you all so very much.

18 (The jury retires from the courtroom at
19 approximately 1:20 p.m.)

20 THE COURT: Mr. Bishop, let me thank you. You
21 know, you look at a jury, you can tell they're tired and
22 hungry and ready to stop.

23 MR. BISHOP: Yeah, I'm tired and I'm hungry ---

24 THE COURT: They say 20 minutes, they say 20
25 more minutes, I don't know it could be 30. We don't know

1 how long it's going to go. So I want to thank you for
2 being courteous and upstanding.

3 We'll all resume back at 2:30?

4 MR. BRADLEY: Yes, sir.

5 THE COURT: Is that right, 2:30? And we'll get
6 Mr. Bishop out of here.

7 MR. BISHOP: So when I get back at 2:30, think it
8 will be a 30 minute, 40 minute, or ---

9 THE COURT: That's why I stopped now because I
10 don't know how long they were going to go. They tell me
11 20 minutes but that probably means 30, Mr. Bishop. So my
12 guess is you'll be out of here by 3. That's my best
13 guess.

14 Is that fair enough, Mr. Shealy?

15 MR. BRADLEY: Yes, sir, I think I've got 10
16 minutes or less.

17 THE COURT: And he's got another five minutes?

18 MR. SHEALY: No, Your Honor, I think I'm
19 finished.

20 THE COURT: All right. So maybe you got 20
21 minutes.

22 Thank you very much. Say hello to your bride,
23 will you.

24 (The witness leaves the witness stand.)

25 (The Court was in recess.)

1 THE COURT: All right. You can bring the jury
2 in. You can come resume your seat, Mr. Bishop.

3 (The witness returns to the witness stand.)

4 (The jury returned to the courtroom at
5 approximately 2:35 p.m.)

6 BAILIFF: Jury's seated, Your Honor.

7 THE COURT: All right. Mr. Foreman, members of
8 the jury, welcome back. This case will resume with Mr.
9 Bradley continuing his -- it would be cross-examination of
10 Mr. Bishop.

11 Go ahead, Mr. Bradley.

12 MR. BRADLEY: Thank you, Judge.

13 CROSS EXAMINATION CONTINUES

14 BY MR. BRADLEY:

15 Q Mr. Bishop, if you would look at Plaintiff's Exhibit
16 15. Let me get that for you.

17 MR. BRADLEY: Judge, may I give the jury a copy
18 of the e-mail I want to talk to him about?

19 THE COURT: This is already in evidence, right?

20 MR. SHEALY: Yes, sir.

21 THE COURT: All right. You may publish it, go
22 ahead.

23 Q Okay, Mr. Bishop, I'm looking at an e-mail dated
24 September 1st from Todd Beckstrom to Kevin Schumacher
25 and also to you. Have you got that there? It might

1 be on the second page. It says, my clients were very
2 concerned about the mold.

3 A Yes.

4 Q Okay. Do you -- do you remember seeing this during
5 ---

6 A I'm sure I did.

7 Q All right. At this point do you think this was a
8 significant concern about the house?

9 A If it has mold, yeah.

10 Q And this had been -- at this point had been about two
11 weeks since they told Mr. Schumacher about it?

12 A I'm assuming, I don't remember that.

13 Q Had you or Mr. Schumacher done anything about the
14 problem at that point?

15 A I had not.

16 Q Okay. All right.

17 A Well, I mean, you know, we had -- it was disclosed
18 and, I mean, I knew that Kevin was working on
19 addressing the situation.

20 Q Right.

21 A Like I said, there was some direct conversations that
22 I was not involved with.

23 Q It wasn't your responsibility to fix the mold?

24 A Well, I mean, the mold needed to be fixed, period.
25 But the homeowner, Kevin, was addressing it.

1 Q But after two weeks of finding out, he hadn't fixed
2 it yet?

3 A What's the...

4 Q Right. The date of this e-mail was about two weeks
5 after the mold was first disclosed ---

6 A Right.

7 Q --- to you and to Kevin?

8 A Right.

9 Q And at this point he hadn't done anything to fix it?

10 A I do not remember that.

11 Q Okay. You just don't know whether he had done
12 anything to fix it?

13 A I'm not aware of that, yeah.

14 Q Assuming this e-mail is correct, it certainly implies
15 that nothing has been done at this point ---

16 MR. SHEALY: Your Honor, objection to the ---

17 THE COURT: Sustained, wrong witness, he doesn't
18 know.

19 MR. BRADLEY: Yes, sir.

20 Q Do you know if there was any plan to fix the mold at
21 this point? Do you remember seeing any plan?

22 A I know Mr. Schumacher is a responsible person and a
23 family man. And he was addressing the situation.
24 You know, I do not know exactly because there were
25 conversations that I was not privy to. So from a

1 timeline standpoint, I'm not exactly sure what had
2 been done or addressed at this point, specifically.

3 Q You just can't remember whether things had been done
4 because it was a year ago or so?

5 A It's been two years, hasn't it?

6 A I understand, got it. I am showing you an e-mail
7 that I think came from your office to Kevin
8 Schumacher about October 4th, is that correct, Mr.

9 Bishop?

10 A Yes.

11 Q And this had to do with putting the house back on the
12 market?

13 A Yes.

14 MR. BRADLEY: We'd like to put that into
15 evidence, Judge, as our next exhibit. That would be 14?

16 MR. SHEALY: No objection, Your Honor.

17 THE COURT: All right. And what is it again, Mr.
18 Bradley.

19 MR. BRADLEY: It's an e-mail from Terry Bishop's
20 office to Mr. Schumacher regarding ---

21 THE COURT: Okay.

22 MR. BRADLEY: --- putting the house on the
23 market.

24 THE COURT: What's the date?

25 MR. BRADLEY: There are two e-mails actually. One

1 is -- they are both dated October 4th.

2 (Whereupon, Defendant's Exhibit Number 14, E-mail
3 October 4, 2010 Bishop and Schumacher,
4 was admitted into evidence.)

5 MR. BRADLEY: May I give copy of this ---

6 THE COURT: Yes, sir, you may publish it.

7 Q Now, in this e-mail, this would have been about two
8 weeks after the Hoovers moved out of the house, is
9 that right?

10 A You know, I don't remember. I don't know exactly
11 what date they moved out of the house.

12 Q All right. Do you remember if they paid all the rent
13 for the month of September?

14 A He -- they were paying directly to the owner.

15 Q Okay. You just can't remember?

16 A Well, I wasn't involved in that part.

17 Q In this it says, not sure if your new renter is there
18 yet, do you see that?

19 A Uh-huh.

20 Q What does that mean?

21 A I'm assuming he was -- maybe had a renter.

22 Q He had a new tenant to come in right after the
23 Hoovers left?

24 A I do not know that.

25 Q You can't remember that's what that meant in the

1 e-mail or can you?

2 A No, I don't.

3 Q Okay. Look if you would at the next page down at the
4 bottom. You see where that e-mail went from Kevin
5 Schumacher back to your office? And it says, no new
6 renter coming, my wife and I decided against it. Do
7 you see that?

8 A Uh-huh.

9 Q Does that help you remember that he had a tenant
10 lined up to come in right after the Hoovers and then
11 decided not to let them rent it?

12 A No, I didn't have any involvement with what -- what
13 Mr. Schumacher was doing with a new tenant.

14 Q You just didn't know that?

15 A No.

16 Q Okay. I understand. Would it have been maybe your
17 wife who did these e-mails, maybe that's why you
18 don't remember?

19 A Well, she does -- she sends a lot of them.

20 Q Right.

21 A We correspond but she ultimately does a lot of
22 typing.

23 Q I understand?

24 A I mean if I sat around and typed e-mails all day, I
25 wouldn't...

1 Q Looking back on it with the help of this e-mail and
2 your memory the best as you can, can you explain to
3 us what these comments mean about the new renter
4 being in there yet and Mr. Schumacher saying that his
5 wife had decided against the new renter? Can you
6 explain what that means?

7 A No. I'm assuming that he might have been looking
8 potentially for a new renter. I was not involved in
9 that. I do not know who he talked with or if he
10 talked with anyone, I can only -- you know, you see
11 what it says here.

12 Q Right. But he wasn't going to get a new renter?

13 A (No response.)

14 Q I mean, does it say, my wife and I decided against
15 renting it?

16 A Yeah, it says that.

17 Q So when -- you were the only real estate agent
18 working on this house, right?

19 A Yeah, correct, yeah.

20 Q Okay. And so when the Schumachers moved -- I mean,
21 when the Hoovers moved out, Mr. Schumacher did not
22 put the property back out to rent it, right?

23 A He did not put out the what?

24 Q To rent it, he didn't put it out to rent to any
25 tenant?

- 1 A I do not know that.
- 2 Q Okay. That's not what that e-mail ---
- 3 A My -- listen. I was in -- I was hired to sell the
- 4 home.
- 5 Q Right.
- 6 A That's what I was doing is selling the property. It
- 7 so happened that we had a situation where you had a
- 8 potential buyer but it was going to be a lease
- 9 purchase.
- 10 Q Right.
- 11 A Okay. That's the only rental situation I was
- 12 involved.
- 13 Q Okay. So you guys weren't marketing the property to
- 14 rent it at all?
- 15 A No.
- 16 Q That wasn't what you did?
- 17 A No.
- 18 Q All right. And in fact ---
- 19 A But if the situation presented itself where it might
- 20 be a good thing for my client, then we certainly
- 21 would, you know, give him the opportunity to turn it
- 22 down or make a decision on it.
- 23 Q As far as you know, is anybody marketing the property
- 24 to be rented after the Hoovers left?
- 25 A I do not remember, do not recall that.

1 Q And the e-mail from Kevin Schumpert (sic) says, no
2 new renter, my wife and I decided against it.

3 THE COURT: You said Schumpert, you mean
4 Schumacher?

5 MR. BRADLEY: Schumacher, yes, sir.

6 THE COURT: That's all right.

7 A What was your question again, sir?

8 Q It says, no new renter, my wife and I decided against
9 it?

10 A I do not know what that's pertaining to.

11 Q Okay, thank you.

12 MR. BRADLEY: I don't have any more questions.

13 THE COURT: Mr. Shealy?

14 MR. SHEALY: No additional questions, Your Honor.

15 THE COURT: Mr. Bishop, thank you for coming
16 back, sir. Have a pleasant day. I'm sure you want to
17 leave.

18 THE WITNESS: Huh?

19 THE COURT: You want to leave?

20 THE WITNESS: Can I?

21 THE COURT: Yes.

22 THE WITNESS: You sure?

23 THE COURT: It's good to see you.

24 THE WITNESS: Thank you.

25 (The witness leaves the witness stand.)

1 THE COURT: All right, Mr. Shealy, call your next
2 witness.

3 MR. SHEALY: Your Honor, at this time we would
4 call Todd Beckstrom to the stand.

5 THE COURT: All right.

6 (MICHAEL TODD BECKSTROM, having first been duly
7 sworn, testified as follows:)

8 THE CLERK: Please have a seat there, sir.

9 Please state your full name for the record.

10 THE WITNESS: My name is Michael Todd Beckstrom.

11 DIRECT EXAMINATION

12 BY MR. SHEALY:

13 Q Mr. Beckstrom.

14 A Yes, sir.

15 Q What do you do for a living?

16 A I'm a real estate broker.

17 Q For whom do you work or what agency are you
18 affiliated?

19 A I'm with ERA Wilder Realty.

20 Q And is there a particular office that you are
21 connected to and that you work out of?

22 A Yes, I work out of the Chapin office.

23 Q And how long have you been affiliated with ERA
24 Wilder?

25 A About 12 years now.

1 Q How long have you worked as a real estate agent?

2 A The entire period.

3 Q Did you work in some other field before working as a
4 real estate agent?

5 A Oh, yes.

6 Q What other fields have you worked in?

7 A I was a broker, selling to the military in the past.
8 Been in management. I was a sales trainer. A little
9 bit of everything.

10 Q All right. Do you -- have you ever worked in the
11 medical field?

12 A No.. My wife is a physician. I haven't worked in the
13 medical field.

14 Q All right. And as I understand it, you were
15 contacted by the Hoovers in the spring of 2010,
16 correct?

17 A That's correct.

18 Q They were in Texas at the time but looking to move to
19 Columbia?

20 A Yes.

21 Q How often does a situation like that present itself
22 to you?

23 A Pretty frequently, work off a lot of referrals and
24 this was a referral from another agent to me to help
25 the Hoovers get relocated to Columbia.

1 Q All right. You didn't have any -- sorry, didn't mean
2 to interrupt you.

3 A No.

4 Q You didn't have any relationship with the Hoovers
5 prior to their contacting you or via this referral
6 from another agent?

7 A No, I didn't.

8 Q All right. And what was their intention when they
9 contacted you?

10 A They were looking for a place to lease. Dr. Hoover
11 had been relocated here to Fort Jackson and they were
12 looking for a place to lease and then potentially for
13 a place to buy at some point.

14 Q And did they -- had they done some of their own
15 research as -- about houses available ---

16 A Yes.

17 Q --- on the market?

18 A Yes, I had quite a bit of contact with both Dr.
19 Hoover and his wife Monica. They were very concerned
20 about the schools and knew where they wanted their
21 children to go and that was a major factor was their
22 family and making sure that they were close enough to
23 the schools of choice.

24 Q All right. And was -- was there a house at --
25 located at 4120 Kilbourne Road that was available for

1 lease at that time?

2 A No, it was available for sale.

3 Q I see.

4 A And we identified it as a property that they might be
5 interested in long term on a purchase because of the
6 location and the neighborhood.

7 And so I approached Terry Bishop about the
8 possibility of a lease, maybe with an option to
9 purchase at some point in the future if they decided
10 to.

11 Q All right. And this was a house that they had sort
12 of picked out themselves over the internet?

13 A Yeah, I had sent them some things but they had found
14 this one on their own.

15 Q All right. And the information that was available to
16 them over the internet was neighborhood pictures,
17 that sort of thing?

18 A Yes, yes, standard, multiple listing service type
19 information.

20 Q All right. Pictures of the exterior of the house,
21 interior of the house, how many bedrooms, that kind
22 of stuff?

23 A That's right.

24 Q All right. And so eventually you all worked out a
25 lease with option to purchase, correct?

1 A That's right.

2 Q All right. That's already been introduced into
3 evidence. And so then the Hoovers moved to Columbia,
4 correct?

5 A Yes.

6 Q All right. And were you involved in sort of
7 assisting them getting -- getting the key to the
8 property and getting them possession of the property?

9 A Yeah, we did some of that, did inspections and things
10 like that as well. Since -- since their intent might
11 be to purchase at some point in the future, we wanted
12 to take care of all those things up front and make
13 sure there was no big issues with the house up front.

14 Q All right. So, as I understand it, they moved --
15 they took possession in mid-June and that was the
16 first time they'd been in the house, is that correct?

17 A No, they had actually been -- Dr. Hoover had made a
18 trip to Columbia to look at some homes and upon
19 looking at that, that's when we did the lease with
20 the option to purchase.

21 Q Okay.

22 A So he had been in the home, his wife and family had
23 not seen it at that point.

24 Q Okay.

25 A Until they moved.

1 Q All right. So his -- but I guess when they took
2 possession in mid -- the middle of June, Mrs. Hoover
3 had not been inside the home?

4 A That's right.

5 Q All right. The lease had already been signed,
6 correct?

7 A Yes.

8 Q All right. And it was a year lease and I think with
9 an option to purchase the house by the end of 2010?

10 A I believe -- I don't have it in front of me but I do
11 believe that's right.

12 Q And you all did some negotiation over the price of
13 the purchase but in terms of the lease terms, that
14 was settled early on, is that correct?

15 A Yes.

16 Q Okay. So, they -- once they -- Mrs. Hoover had the
17 chance to walk around the house and really give it an
18 inspection of her own, did she notify you of some
19 things that she wanted to be corrected with that?

20 A Yes, absolutely. And she had some things and we also
21 did a home inspection and went back to Terry and Mr.
22 Schumacher with a list of items that needed repair.
23 And we hoped to have those fixed before they moved
24 in.

25 Q All right. And did -- it was actually your advice

1 that they have the home inspection, correct?

2 A Yeah, I always would advise a home inspection,
3 exactly.

4 Q And did you recommend Boysia Home Inspection?

5 A No, not necessarily. They asked me for some
6 recommendations. I think I gave them three or four
7 or let them -- say they could choose whoever they
8 wanted but they ended up talking to Frank Boysia and
9 picked him.

10 Q Okay.

11 A So I helped them schedule it and get in the house and
12 those sorts of things.

13 Q All right. And as I understand, then after that was
14 performed, with some consultation with you all, you
15 presented a list of items that were identified in the
16 inspection that they wanted to be altered or
17 corrected before they moved back in in July, is that
18 right?

19 A That's right.

20 Q Okay. And did you receive a scope of work performed
21 by a contractor that addressed those items from Mr.
22 Schumacher's real estate agent?

23 A No.

24 Q You never received any kind of proof that the work
25 had been done?

1 A Not until much later when this kind of started coming
2 out.

3 Q All right.

4 A I mean, I didn't personally but I wasn't involved in
5 that part of it. It may have been something that was
6 addressed and given to the Hoovers, I'm not certain.

7 Q Okay. You just don't recall that?

8 A I don't recall that particular thing being in my
9 file.

10 Q All right. Now, the Hoovers get there in late July
11 and then at some point they tell you that they're not
12 interested in purchasing that house any longer,
13 correct?

14 A Yeah, they had told me -- and I think there's an e-
15 mail in the file somewhere that Terry Bishop asked,
16 how do they like it, do you think they'll be
17 purchasing it. And at that point, after Monica and
18 Dr. Hoover got here and got settled with the kids,
19 they thought Wildwood might be a better fit but we
20 were just going to go ahead with the lease and, you
21 know, continue to look for -- start looking for
22 homes.

23 Q All right. I am going to show you what's already
24 been introduced into evidence as Plaintiff's Exhibit
25 3 and just direct your attention to that.

1 Looking at the e-mail that's at the bottom of
2 Plaintiff's Exhibit 3, is this an e-mail that Monica
3 Hoover sent you on August 25th?

4 A Yes.

5 Q All right. And she lists -- she says she'd like to
6 make an appointment to view some houses at that
7 point, correct?

8 A Yeah, that's not uncommon. And again, we pretty much
9 decided we weren't going to purchase this home and
10 they were going to be shopping for a home eventually,
11 so.

12 Q All right. And are these homes -- the three
13 addresses listed there, they're all in Wildwood
14 Subdivision?

15 A Yes.

16 Q Okay. And so did you respond to that e-mail with
17 your own -- well, you -- and for whatever reason the
18 time looks wrong but the e-mail in front of that
19 looks to be a response to the e-mail below. And I'm
20 interested in the sentence there in your e-mail, I
21 can set it up for Friday but don't we want to wait
22 until we work out the lease first? Was that your
23 advice that you were giving to the Hoovers?

24 A To some extent. They were very concerned about the
25 mold that I think Monica had showed Kevin on the 13th

1 of August. Subsequently, you know, they were very
2 concerned. And so, yeah, I just said, let's work out
3 the lease, let's see what happens with the mold
4 before we, you know, go out and start looking because
5 right now we're in a lease.

6 Q Right. And a lease -- as a real estate agent, you
7 understand a lease to be a binding contract between
8 people, right?

9 A Yes.

10 Q All right. And so anyway, Dr. Hoover responded to
11 you, correct?

12 A Yes.

13 Q All right. And he was accepting your advice?

14 A Well, it says he -- he agrees we need to, it takes
15 time, that sort of thing.

16 Q All right.

17 A He wants to make sure the mold situation is under
18 control, that sort of thing. And at this point,
19 Kirby, we had had some discussions because we were
20 deciding to buy another house. We had had some
21 discussions about what would the potential be for
22 getting out of the lease, let me put the house on the
23 market, allowing it to be shown while we were there.
24 And I believe there's some e-mails that both
25 attorneys have to that effect. And he had responded

1 with, no, at this point, he wanted to keep the lease.
2 And so that's what we were doing.

3 Q Right. As I understand it, the Hoovers, once they
4 decided that they weren't going to purchase the
5 house, made the proposal that -- to break the lease
6 on 60 days' notice, is that your ---

7 A Yeah, we wanted to be fair to Mr. Schumacher of
8 course. Just if we were to find a house sometime in
9 the future would it be possible, if we gave you this
10 much notice. And like I say, we got his response and
11 we abided by it.

12 Q All right. And his response -- is it your
13 recollection that his response was, well, I'm not
14 willing to let them break the lease but if I can sell
15 the house, then we'll let them -- let them move out
16 and then the lease will be terminated, is that
17 correct?

18 A I don't recall -- I would have to see the
19 correspondence. It's almost -- almost everything I
20 did was by e-mail for this very reason so everything
21 would be in writing and everybody was copied in, so.

22 Q Okay. So -- so, you all continued to deal with the
23 mold situation and do you recall getting the mold
24 report from Bio -- a company called Biotek?

25 A Yeah, I do recall. As I recall, it was about

1 September the 3rd, I believe, we got the report.

2 Q Okay. You didn't get it any time prior to that, did
3 you?

4 A No.

5 Q All right. And you -- you gave it to Mr. Schumacher
6 the same day you got it, correct?

7 A Absolutely.

8 Q All right. Let me show you what's been marked as
9 Plaintiff's Exhibit 9 and ask if you can identify
10 that?

11 A Yes, that's an e-mail from me to Mr. Schumacher with
12 a copy of the report letting them know, based on the
13 results, that we -- our intention was to terminate
14 the lease.

15 Q All right. So -- and at the bottom of that exhibit
16 is the e-mail by which you first got the report from
17 Biotek, correct?

18 A Yes.

19 Q Okay.

20 MR. SHEALY: Your Honor, I would move Plaintiff's
21 9 into evidence.

22 MR. BRADLEY: No objection.

23 THE COURT: All right.

24 (Whereupon, Plaintiff's Exhibit Number 9, E-mail
25 September 3, 2010 Mold Inspection, was admitted

1 into evidence.)

2 Q Okay. So, as I understand it, Mr. Beckstrom, the
3 same day that you got the Biotek report, that list of
4 remediation plan and list -- and describes what kind
5 of mold was present, you tell the -- you tell Mr.
6 Schumacher that they're terminating the lease
7 effective September 30th, correct?

8 A Yes.

9 Q Okay.

10 A I think -- if I may. I think it's important to note
11 that this is 21 days after Mr. Schumacher was
12 initially shown the mold and that he had done nothing
13 at this point to do any reports on his own. He
14 actually had sent one handyman with a bleach bottle
15 and that just -- and that scared my client silly. If
16 you can imagine, their family's there and somebody
17 comes out and says, I can have this, you know,
18 knocked down in a few days, and they were going to
19 get it airborne. And Dr. Hoover and his wife did a
20 lot of research on mold and were very afraid that it
21 was not going to be handled in the correct manner and
22 for the safety of the family.

23 Q All right. Did I show you -- did I present
24 Plaintiff's 15 to you before?

25 A No.

1 Q All right. Well, I must have.

2 A I've got 3 and 9. I'll trade you for a 15.

3 Q I could show you a copy of 15.

4 A Oh, it's here on -- must have been Mr. Bishop had it.

5 Q Okay. I thought 15 was there. If you will turn to
6 page 2 of Plaintiff's 15, at the top there is an e-
7 mail from you to Kevin Schumacher on September 1st,
8 correct?

9 A Yes.

10 Q All right. And you mentioned that -- that Biotek is
11 certified by the EPA and you also talk about
12 aspergillus as the kind of mold that would shut down
13 a hospital wing, correct?

14 A Yes.

15 Q All right. Is that -- is that -- do you have some
16 sort of specialized knowledge about mold?

17 A Not necessarily. My background -- I am a biochemist
18 though.

19 Q Okay. So then are you aware that the EPA recommends
20 killing mold with bleach?

21 A Yes, in certain -- under certain protocol, yes.

22 Q In fact, that's also recommended by other government
23 agencies, the Centers on Disease Control for
24 instance. Are you familiar with that as a
25 biochemist?

1 A Yeah, a little bit.

2 Q Okay. So the thought of killing what was present
3 with a bleach solution is not some hair brained idea,
4 is it?

5 A I think it was the manner that they were going to
6 come in and rip it and send it airborne and make it
7 worse that it already was.

8 Q Well, would you agree with me that if you address the
9 mold before you addressed the source, the problem
10 that was causing the mold, you're not making any real
11 progress toward resolving the problem, correct?

12 A That's true.

13 Q Okay. So it would be appropriate then to address the
14 cause, the reason there's wetness, before -- to make
15 sure you eradicate the mold because otherwise you're
16 going to have a continuing problem, right?

17 A Right.

18 Q All right. So isn't it true that that's really what
19 -- the focus had been on the stopping the source of
20 the problem and then we'll deal with the mold, prior
21 to this point?

22 A It didn't feel that way being involved.

23 Q Okay.

24 A I can tell you. It didn't feel like any of that was
25 being done.

1 Q Mr. Schumacher had sent a person over there to deal
2 -- figure out why it is that this place is wet,
3 hadn't he?

4 A He sent over, I think, the Johnny Housewright...

5 Q What you're calling a handyman. Were you aware that
6 Johnny Housewright is a licensed contractor?

7 A No.

8 Q Okay. Well, he sent him over there to deal with that
9 shortly after he was first shown the problem, hadn't
10 he?

11 A I think it was several weeks later, as I recall.

12 Q Well -- all right, go ahead.

13 A If I had my timeline in front of me I could tell you
14 -- exactly what day it was.

15 Q Okay. Let me...

16 A I think it was pretty near the end of the month,
17 around the 31st or so, 25th, that week.

18 Q Let me point you to Plaintiff's Exhibit 10. This is
19 already in evidence and this appears to be a
20 conversation that you -- at least part of Exhibit 10.
21 It appears to be a conversation that you and Terry
22 Bishop are having about addressing the mold back in
23 -- on August 24th. Does it appear that way to you?

24 A Yes.

25 Q Okay. And so the suggestion from your end was, they

1 will get the mold inspection and then if the
2 inspection comes back and it's hazardous mold, then
3 Mr. Schumacher will be responsible for cleaning that
4 up, correct?

5 A Yes.

6 Q Okay.

7 A And we were taking action because he had been shown
8 it on the 13th and hadn't taken any action as of the
9 24th. So we decided -- we were concerned about it so
10 we decided to do something.

11 Q All right. And so then the report comes back on the
12 3rd of September and that's when the notice of
13 termination is issued, correct?

14 A Yes.

15 Q All right, sir. Now, after the notice of termination
16 came -- after you issued that, your clients never
17 backed off or reconsidered terminating the lease from
18 that point, correct?

19 A No, they didn't feel like the remediation was going
20 to be done correctly and didn't want to put their
21 family at risk.

22 Q All right. But are you aware that they would not
23 allow any remediation to take place for the entire
24 month of September?

25 A As I recall, there was an appointment set and the

1 family was reeling from being sick and wouldn't let
2 them in at that point because they were ill.

3 Q All right. And you're aware that Mr. Schumacher had
4 offered to take them out of the house, put them up in
5 the Whitney Hotel while the remediation took place,
6 five days after the Biotek report came in?

7 A And then about four hours later he reneged on that
8 offer, if you see the e-mails.

9 Q Well, the offer -- what -- if I'm thinking about the
10 same e-mail you're talking about, just indicates that
11 there's the air conditioning repair person's
12 insurance company is involved and that's messing up
13 the timeframe, correct?

14 A Yeah but I think it basically canceled, if I recall,
15 the offer to go in the hotel as well.

16 Q Okay, well the jury can figure that out. Let me ---

17 THE COURT: Stop, no more editorials ---

18 MR. SHEALY: Yes, Your Honor.

19 THE COURT: --- Mr. Shealy.

20 MR. SHEALY: Yes, Your Honor.

21 (Pause.)

22 Q Now, the -- the Hoovers moved out the middle of
23 September, correct?

24 A That's right.

25 Q Still had some personal items in the house all the

1 way to the end of September, correct?

2 A Yes.

3 Q Okay. I'm going to show you a document that has not
4 yet been marked and ask if you can identify that.

5 A Yes, this is an e-mail from me to Kevin saying that
6 Mold Solution showed up without notice and that they
7 didn't really want the mold being disturbed while
8 they were moving their things out.

9 Q All right. Now, that e-mail was sent on September
10 22nd, right?

11 A Yes.

12 Q All right. And the -- the Hoovers had already moved
13 out of the house, were not living in the house any
14 longer, correct?

15 A No, they weren't.

16 Q Okay. But nonetheless, no one wanted the mold
17 disturbed until the end of September and that was the
18 instructions you were giving to Kevin Schumacher,
19 correct?

20 A Yes.

21 Q All right.

22 MR. SHEALY: Your Honor, I would move that
23 exhibit into evidence as Plaintiff's next in order.

24 MR. BRADLEY: No objection.

25 THE COURT: Which number is it?

1 MR. SHEALY: I guess it will be Plaintiff's ---
2 COURT REPORTER: 28.

3 (Whereupon, Plaintiff's Exhibit Number 28, E-mail
4 September 21, 2010 Bishop and Schumacher,
5 was admitted into evidence.)

6 Q Mr. Beckstrom, I have no further questions for you,
7 thank you. Please answer any questions that Mr.
8 Bradley may have.

9 A Yes, sir, thank you.

10 CROSS-EXAMINATION

11 BY MR. BRADLEY:

12 Q Mr. Beckstrom, in the month before Mold Solutions
13 came, had Mr. Schumacher taken any steps to execute
14 the Biotek report plan the Hoovers had paid for?

15 A No, I think there's an e-mail in there that says that
16 they won't be paying for it, he won't be doing
17 anything that they said. He had his own -- I think
18 it says he had his own team of experts but we never
19 saw them.

20 Q In the month before the Hoovers left, after Mr.
21 Schumacher knew about the mold, did you see any plan,
22 promise or anything about how it was going to be
23 fixed or when it was going to be fixed?

24 A No, the only person who came over was the Johnny
25 Housewright guy and looked at it and he said, it's

1 mold and it's serious and something needs to be done
2 with it.

3 Q If you have been in this situation, would you have
4 stayed in this house and waited for him to do
5 something or would you have left?

6 A I probably would have been gone before the
7 Hoovers.

8 MR. BRADLEY: Thank you.

9 THE COURT: Anything further of this witness?

10 MR. SHEALY: No, Your Honor.

11 THE COURT: All right you may step down, sir.

12 (The witness leaves the witness stand.)

13 THE COURT: Mr. Schumacher is next?

14 MR. SHEALY: Yes, Your Honor.

15 MR. BECKSTROM: Am I dismissed, Your Honor.

16 THE COURT: Yes, sir.

17 MR. SHEALY: Your Honor, at this time we would
18 call Kevin Schumacher.

19 THE COURT: All right. Come around, Mr.
20 Schumacher.

21 (KEVIN MICHAEL SCHUMACHER, having first been duly
22 sworn, testified as follows:)

23 CLERK: Have a seat there, sir. State your full
24 name for the record.

25 THE WITNESS: Kevin Michael Schumacher.

SCHUMACHER V. HOOVER

DIRECT EXAMINATION

BY MR. SHEALY:

Q Mr. Schumacher, where do you currently live?

A 16 Copperfield Court, Columbia.

Q How long have you lived there?

A Three years.

Q And where did you live prior to that?

A 4120 Kilbourne Road.

Q How long did you live there?

A Four or five years.

Q And then prior to that?

A I was at Makeway Drive.

Q Is that here in Columbia?

A Yes.

Q Okay. Just so the jury gets to know you a little bit, where are you from originally?

A I grew up in Tennessee.

Q What brought you to South Carolina?

A To start a business.

Q What was the business that you started?

A It was a little coupon paper called Zipsheet (phonetic).

Q All right. And do you still have an interest in that business?

A Not anymore. I've just in fact sold out this year.

SCHUMACHER V. HOOVER

1 I bought Eat More Tees in '97.

2 Q All right. Eat More Tees, what sort of an operation
3 is that?

4 A We print T-shirts, USC, Clemson, stuff like that.

5 Q And are you married?

6 A Yes.

7 Q Do you have any children?

8 A I have three children, two adopted.

9 Q And what are their ages?

10 A 1, 3 and 9.

11 Q Does -- what's your wife's name?

12 A Virginie, she goes by Ginie in the e-mails.

13 Q Okay. Is she -- Virginie, is she from another place?

14 A My wife was born in France but she moved here when
15 she was 8.

16 Q Okay. And let me ask you first, what was the reason
17 that caused you to move from Kilbourne Road to
18 Copperfield?

19 A A couple of reasons. The economy was going down, I
20 needed to move into a less expensive home. And the
21 traffic on Kilbourne was kind of busy and my children
22 -- I had two children at this point and I just wanted
23 a less busy road and we moved to a cul de sac.

24 Q Okay. And you moved there in approximately -- in
25 what month ---

- 1 A I think it was July 2008.
- 2 Q July 2008.
- 3 A 2009? Yeah, it would be 2009 based on -- yeah.
- 4 Q Okay. And did you put your -- the Kilbourne Road
- 5 house up for sale at that point?
- 6 A Yes.
- 7 Q And did you have any traffic in the house, any
- 8 interest in the house?
- 9 A We had some traffic right at the beginning with the
- 10 open house. But this is right when the market was
- 11 starting to plummet. We sort of chased it down. I
- 12 had budgeted to have the house vacant for six months.
- 13 Six months came and went fairly quickly and I was
- 14 paying for two homes. It was a difficult situation.
- 15 Q Okay. Now, the -- your business Eat More Tees, is
- 16 that -- is that the only business enterprise that
- 17 you're involved in?
- 18 A Yes.
- 19 Q All right. So, let's talk about why you occupied
- 20 that house. Approximately how big of a house is it?
- 21 A 3300 square feet. It's a big house.
- 22 Q How many -- how many bedrooms?
- 23 A Three and a half. I don't know how -- there's one
- 24 that's kind of a nursery.
- 25 Q Okay. And how many bathrooms?

1 A Three full baths.

2 Q While you owned it, did you -- did you perform any
3 work or have any work performed on the house?

4 A We performed an enormous amount of work. We gutted
5 and remodeled the entire kitchen, rewired the whole
6 thing. The same with the master bath, redid the
7 entire master bedroom. You know and a few other
8 things that needed to be done.

9 Q All right. How old of a house?

10 A It was built in 1940.

11 Q And before the renovation that you did, do you know
12 the last time it had been updated?

13 A No, I don't. I know they added a wing at one point.

14 Q When you had the renovation done that you did on the
15 house, who did you have do that work?

16 A Johnny Housewright did a great deal of it.

17 Q Okay. And is that a -- the name of a company or is
18 that the name of a person?

19 A Sure, it's the name of a company.

20 Q Okay. What relationship, if any, did you have with
21 Johnny Housewright prior to that renovation?

22 A He had done a couple of fix-ups in there. We had
23 gotten to know each other. I trusted his work and
24 what he did. And when he bid on this he -- I was
25 comfortable working with him.

1 Q Okay. Now, how many -- how many air conditioning
2 systems does the house have?

3 A One.

4 Q All right. And that is for -- to heat and cool the
5 entire house?

6 A Yes.

7 Q How many floors is it?

8 A Two

9 Q And while you lived in the house, what was the
10 temperature that you typically kept the air
11 conditioning on?

12 A 70, 72, somewhere in that range.

13 Q Do you recall what your typical experience was with
14 respect to utility bills?

15 A Our utility bills ranged anywhere in the high one
16 hundreds to the high two hundreds.

17 Q All right. In the summertime, what would they --
18 what was the range?

19 A 250, 275. I don't recall it ever exceeding \$300.

20 Q When you -- when you set the temperature on the air
21 conditioner, did it have one of those controls that
22 turned the fan on and off and turn it on and off
23 automatically?

24 A You mean like a timer?

25 Q Well, no, did it -- when you set the temperature, did

1 -- did the air conditioner turn itself on and turn
2 itself off?

3 A Yes, it regulated to that temperature, yes.

4 Q All right. Is there a way to set the air conditioner
5 where it runs all the time?

6 A I guess if you put it at 50 degrees, but no.

7 Q While you were in the house living there, did you
8 have any experience with mold on the ceilings or the
9 walls?

10 A No.

11 Q Did you have any experience with mold anywhere in the
12 house?

13 A No.

14 Q How about shower, bathroom?

15 A I mean, you have a little mold in your shower every
16 once in a while that you clean, yes.

17 Q Okay. Now, there was some mention prior to something
18 that you said, that you had had experience with mold
19 before. I think that was when you first -- it was
20 pointed out to you what was on the wall. Do you
21 recall that?

22 A Yes.

23 Q What experience did you have with mold at some point?

24 A Well, in my house on Makeway, one January we didn't
25 realize that the pipe had burst underneath. It had

1 been a freeze and it had burst. We didn't know. But
2 one day I was in the little bath and I saw some what
3 looked like possibly mold on a window. And I touched
4 the window and it was moist. I didn't think that
5 that was accurate, started investigating. I found
6 that there was a pipe under the house that was
7 springing water, you know, like a faucet kind of on
8 one-third way.

9 So I realized there was mold under the house and
10 we had a problem.

11 Q What did you do about the problem?

12 A I moved my family out of the house that night to a
13 hotel. I read up on the EPA site, what can you do
14 solve this problem. I read that they recommended two
15 percent bleach solution to kill surface mold. It
16 wasn't in the walls, it was just on the joists and
17 things. We -- moved my family out, bleached every
18 square inch of the house. And after that, moved back
19 in and we never had another problem.

20 Q Okay. But did you have any kind of experience like
21 that at the Kilbourne Road house?

22 A No.

23 Q Now, you talked about your attempts to sell the
24 house. At some point did you -- did you become more
25 amenable to leasing the house, renting it to someone?

1 A When -- I assume we were talking about when the
2 Hoovers came onboard. It was always for sale. They
3 proposed the idea of lease to own. I had had the
4 house empty for about a year and I -- my wife and I
5 talked about it and decided that -- and Terry
6 especially brought up, you know, this is someone
7 who's interested in buying.

8 So we said, sure, we'll do this. We're not
9 landlords but we will go with this. If they buy it,
10 it will be a great opportunity.

11 Q All right. Had you ever -- had you ever leased a
12 residence that you owned to other people prior to
13 this?

14 A Years ago I owned a little -- small piece of property
15 for about a year, a year or two, that was it and I
16 sold it for \$2,000, a long time ago.

17 Q All right. So -- so this proposal was made to you
18 and what happened? This proposal was to lease.

19 A Right. Well, we talked about it for awhile and
20 decided to do it, to allow them to lease it with an
21 option to buy. My goal was to encourage them that
22 this was a great house and please buy it.

23 Q All right. And did you all have any kind of
24 negotiations over what was going to happen?

25 A This is two years ago and I have reviewed some of

1 these things but I don't recall exactly that
2 conversation except that the rent would be \$2400 a
3 month. It would be for a year. They had an option
4 to purchase through December. They were moving in in
5 June and I'm a little foggy on any other details.

6 Q Any -- did you all have any negotiations about the
7 price?

8 A Yes, we negotiated I believe it was 429.

9 Q But eventually you reached an agreement?

10 A Yes, sir..

11 Q All right. And these negotiations -- these took
12 place through the real estate agents, not you and the
13 Hoovers talking to each other, is that correct?

14 A That's correct.

15 Q Okay. When's the first time that you met the
16 Hoovers?

17 A The day they moved in.

18 Q All right. And did you call them on the phone, did
19 you come by, how did that happen?

20 A I came by with some pastries my wife had made to
21 welcome them to Columbia.

22 Q Okay. Did they have any questions for you at that
23 time?

24 A I don't think so. I think it was a fairly -- hold
25 on. Because this was the day after they had come in

1 early in the morning maybe. This was the day we went
2 out, I believe Dr. Hoover had turned on the attic fan
3 by mistake and had shorted it out and apparently
4 turned off some of the electric elsewhere.

5 Can I describe what an attic fan is or is that
6 important?

7 Q Well, I want to focus about the attic fan for a
8 second. This house has an attic fan, correct?

9 A Yes.

10 Q Was that something that a feature of the house that
11 you used while you lived there?

12 A No.

13 Q And why was that?

14 A My wife did not want to use it.

15 Q Okay.

16 A It was very simple.

17 Q Okay. When you moved into the house -- when you
18 moved into the house, did it have central heating and
19 air?

20 A Yes.

21 Q All right. But it still had an attic fan in it from
22 before it had central heating and air?

23 A Correct.

24 Q All right. And so, where -- did it have a vent of
25 some kind?

1 A Well, I had never seen a house with an attic fan
2 before. I had never lived in a house this large or
3 this old. An attic fan is about four or five feet
4 tall. This isn't a small thing. It's in the attic,
5 it's this big around (indicating). And so there's a
6 very large opening for it in the ceiling to pull air
7 through.

8 What we did, there -- how this works is -- may I
9 draw? Or is that necessary?

10 MR. SHEALY: Your Honor, is that ---

11 THE COURT: It's your witness.

12 MR. SHEALY: I mean, if he wants to do that.

13 THE COURT: I assume he's going to draw an attic
14 fan.

15 MR. BRADLEY: It's fine with me if he wants to
16 draw ---

17 THE COURT: Go ahead. If he sees a problem,
18 he'll object.

19 A So it has a fan, this is in the attic, there's the
20 fan. I'm not an artist, I just design t-shirts.
21 There's a door right here (indicating) that when this
22 opens up by a pulley system so that the fan can pull
23 air. Maybe I'm not drawing, just the basic system.

24 The mistake that Dr. Hoover made when he moved in
25 is he flipped on the switch that he didn't know what

1 it was. This thing rumbles, it's not quiet. It's
2 very loud, it's an old pulley system motor. And this
3 was -- we had sealed this shut (indicating). So when
4 this tried to pull air -- and this is a contained
5 area so it can only pull air from here (indicating),
6 not from the rest of the attic circulating
7 insulation. It only pulls from here (indicating).

8 As it tried to do that, it shorted out some
9 things in the house, I believe, from the description.
10 He paid or took care of returning the motor to its
11 original condition, as I recall. And he asked me to
12 unseal this and open it so that that wouldn't happen
13 again.

14 Q All right. And this was on the first meeting when
15 you came by the -- to bring the pastries?

16 A As I recall.

17 Q Okay. And did you unseal it or did you have
18 somebody else do it?

19 A I had Johnny Housewright come over and unseal it.

20 Q All right. And how soon after the request was made
21 did you have that done?

22 A I'm pretty certain it would have been the next day.

23 Q Okay. Now, did you -- the door that had been covered
24 over by the -- by the board.

25 A Uh-huh.

1 Q Is that opened manually or does the fan open it?

2 A The -- there's a rope that comes down in one of the
3 closets and it's a pulley system through the attic.
4 invented, I guess, in the 1940's. And you can pull
5 on this rope and you tie it off on a little spindle
6 and that holds the door open.

7 While I -- after this was unsealed, I showed Dr.
8 Hoover how to do this. I opened it up for him so that
9 they could turn on the attic fan. I showed them how
10 to raise it or lower it.

11 Q Okay. And again, this is all -- this is -- all of
12 that took place within the first couple of days of
13 them being there?

14 A As I recall.

15 Q All right. And then did you receive a request to
16 make some modifications to the house at some point
17 thereafter?

18 A Yes.

19 Q Okay. And what -- what was the scope of that
20 request, if you recall?

21 A I don't remember the particular items. I remember
22 that an inspection was done and then we were sent
23 that inspection with a list of items that they wanted
24 changed.

25 I remember that Terry Bishop and Mr. Beckstrom,

1 through us, we through them, negotiated a few of the
2 things on here about what was supposed to be done.

3 And then when we finished that, I gave that list to
4 Mike O'Neill with Johnny Housewright and said, we've
5 got until the 15th or 20th of July to get this list
6 done, let's take care of it.

7 Q All right. And so, did you pay to have those items
8 addressed?

9 A Yes. As I recall, it was a lot of money.

10 Q I'm going to show you what's been marked as
11 Plaintiff's Exhibit 12 and ask you if you can
12 identify that?

13 A This is the invoice from Johnny Housewright.

14 Q And what's the date of that invoice?

15 A 7/22 -- July 22nd.

16 Q All right. And does this list all of the work that
17 he did in response to the request made by the
18 Hoovers?

19 A Yes.

20 Q All right. And did you -- did you pay this invoice?

21 A Yes, sir.

22 Q Okay.

23 MR. SHEALY: Your Honor, I move to have
24 Plaintiff's 12 admitted into evidence.

25 MR. BRADLEY: No objection.

1 THE COURT: All right.

2 (Whereupon, Plaintiff's Exhibit Number 12, Johnny
3 Housewright Invoice, was admitted into evidence.)

4 Q Okay. After that, were there any other communications
5 from the Hoovers about other things that they wanted
6 done to the house?

7 A Yes.

8 Q What were those things?

9 A I don't recall exactly. But every week we were going
10 back to fix this or that or something else. From the
11 time they returned, Johnny Housewright was there, I
12 believe, on a weekly basis to fix something
13 somewhere.

14 Q All right. Now, did you ever meet an electrician or
15 other person that the Hoovers had brought over there?

16 A Yes, I did.

17 Q Do you remember the name of the person?

18 A I do not recall his name. I know he was from
19 Augusta. I think his name came up on court sometime
20 but I don't recall.

21 Q Okay. Do you recall the substance of what they were
22 talking to him about?

23 A Sure. He had made a -- my impression was, he had
24 made some repairs to the house and was telling me
25 what he did and then recommended a couple of things

1 that were either beyond his scope or what he felt I
2 should do which I believe we put on the list for
3 Johnny Housewright. Anything I was aware of, we did.

4 I don't mean to interject but a couple of things
5 that have come up, the fan in the bathroom, the
6 shorting out. As I recall, anything they brought up,
7 we were fixing. I don't think I was aware of that
8 until after it was fixed by this gentleman from
9 Augusta or the invoice they're talking about.

10 Q All right. Did you have any discussion with Dr.
11 Hoover about paying for an electrician that they
12 hired?

13 A Well, when his friend was there, I talked about the
14 work that he was doing and Dr. Hoover said, don't
15 worry about it. I was -- he was there on a weekend
16 spending the night with them and I -- that was the
17 end of it.

18 Q Okay. Now, at some point did the Hoovers make a
19 request to you to give them a letter so that the
20 cable company would install a cable line?

21 A Yes.

22 Q Do you know about when that occurred?

23 A I saw my letter, it says I typed it on the 13th. I do
24 remember showing up, apologizing for being a little
25 bit late so I know it wasn't that date. It could

1 have been anywhere the 14th through the 16th, I'm not
2 sure.

3 Q Okay. And what were you made aware of during that
4 visit to the Hoovers?

5 A That there was mold in the house. This was my first
6 knowledge that there's any problem in the house
7 regarding mold.

8 Q All right. Now, her testimony about the condensation
9 being present before mold, what -- what knowledge did
10 you have about condensation being present in that
11 spot before this particular visit?

12 A I didn't.

13 Q Okay. And when you saw what was pointed out to you,
14 describe it for the jury.

15 A Well, it was wet. It looked like -- it was very
16 drippy as if you took -- if you were at your sink,
17 you took one of the spray nozzles and sprayed the
18 ceiling. It was really bad drippy and wet. But this
19 wasn't just water, it was filled with mold.

20 Q Okay. Now, was that concerning to you?

21 A Absolutely.

22 Q Okay. And what recommendations, if any, did you
23 make?

24 A Well the first thing I said was, we need to wipe that
25 down with bleach water. I wanted to kill the mold

1 that was existent. The second thing we did was like,
2 let's find out why this is happening.

3 Q So what did you do to find out why this mold was
4 happening?

5 A I'm trying to recall if -- I'm pretty certain I went
6 up into the attic and checked things out. I also had
7 Johnny Housewright come, I believe, the very next day
8 or that afternoon. It was very quick and we got up
9 and looked at the closet problem, figured out it was
10 the vent -- I'm sorry. There's ductwork in the attic
11 that leads to the air conditioner in the bedroom.
12 And when it came out of the wall, there's an elbow
13 that wasn't insulated. The rest of the ductwork was
14 all insulated and done properly. For whatever
15 reason, when they installed this, they had forgotten
16 to insulate just that corner. And that corner was
17 showing condensation like a glass of ice water on a
18 hot day outside.

19 Q Now, this -- was this ductwork worked on or installed
20 during the renovation?

21 A Correct.

22 Q Okay. And that had been performed in what year?

23 A '06, '07, somewhere in there.

24 Q Okay. So three or four years before what we're
25 talking about here?

1 A Yes.

2 Q And that -- the work that led to that uninsulated
3 pipe, was that Johnny Housewright had done?

4 A Yes.

5 Q Okay. So, what instructions, if any, did you give to
6 Mike O'Neill at Johnny Housewright?

7 A Well, the first thing was, solve the problem. We've
8 got -- the attic fan -- the reason I drew this is
9 part of the problem. When we went in the attic and
10 looked at -- the attic fan door was open. Now,
11 that's a three by six, four by eight opening in the
12 ceiling, that's in feet, not inches. It's a very hot
13 attic and so if that door is open, it's just attic
14 air going right into the house.

15 And so when the Hoovers were complaining high
16 electric bills, I didn't realize it until this point
17 but they probably had never closed the door back
18 after I opened it for them.

19 And so this entire time, all of their air
20 conditioning was just going right out the attic.
21 This caused the air conditioner to run 24/7. And
22 they still can't keep the house cool as I recall.
23 They got a window unit for the bedroom. The -- so
24 when it's running constantly, that ductwork is very
25 cold 24/7, the condensation had time to build up. I

1 guess when I was there, there may have been some
2 condensation but because it didn't run constantly, it
3 had time to evaporate.

4 Q Okay. Now, how quickly, if you know, did Johnny
5 Housewright insulate that elbow?

6 A Well, that day Johnny -- Mike O'Neill, the owner, and
7 I spoke and I said, I want you to cut out that moldy
8 part of the ceiling and replace it and seal the attic
9 fan so that they don't have the air conditioning
10 running constantly and then get rid of this
11 condensation problem.

12 I actually called an air conditioner repairman.
13 Since Mike, you know, had not done this part right, I
14 hired someone else to reinsulated that entire area of
15 ductwork so that, you know, we didn't have any more
16 condensation.

17 Q Okay. But how quickly did you ---

18 A I apologize. It was -- I mean, I told Mike that day
19 and he was there within a few days, before the end of
20 the week, to seal the attic door and the air
21 conditioning man was there within a week to
22 reinsulated the pipe.

23 Q Did he ever actually cut out a section of wall?

24 A No, he didn't. I learned that a week later or so
25 when the Biotek information started occurring. I'm

1 learning about that we want to do this and so I
2 called Mike O'Neill and said, did you take care of
3 the ceiling, did you cut that out and replace it?
4 And he said, no, I did not. At that time I'm like,
5 well, that needs to be done, it's very important.
6 And I don't think I was as nice as I am right now.

7 And so he tried to reach the Hoovers to enter the
8 house to work on that, at least to remove the problem
9 and ---

10 Q To your knowledge, was he ever able to do that?

11 A No. In fact, at one point, I called -- I spoke with
12 Mike, I said, look, we need to get in. He said, they
13 won't return my calls or enable him to set an
14 appointment. So I called. I did not reach anybody.
15 I left a message and said, Mike O'Neill will be there
16 tomorrow at 10:00 to cut out that part of the ceiling
17 wall so that it's gone and repair it. He was not
18 allowed to enter the house.

19 Q All right. Are we -- we still in August now or we in
20 September?

21 A We're still in August.

22 Q Okay. Now, when did you receive the report from
23 Biotek?

24 A September 3rd, late afternoon.

25 Q Okay. And did you also at that time receive

1 notification that the Hoovers intended to terminate
2 the lease?

3 A Yes, sir.

4 Q When you got the report from Biotek and you got that,
5 what did you -- well, first, let me back up, before
6 we get there. The -- there's been some
7 identification of, you know, e-mail you sent to Mrs.
8 Hoover at which at one point you said, I'm not going
9 to pay for a report done by Biotek.

10 A Right.

11 Q What -- describe the circumstances around -- around
12 that.

13 A Sure. Well we had Mike O'Neill had been denied
14 entrance to cut out the house. That was, I believe,
15 earlier that week. I had been -- so once this began
16 I talked to a friend of mine who had worked in air
17 purification for like 30 years. And he was not
18 supportive or fond of Biotek. He said, I have a much
19 better company that ---

20 MR. BRADLEY: Your Honor, unless he's going to
21 call this friend to the witness stand, I think this is
22 hearsay.

23 THE COURT: Everybody speak up, I have trouble
24 hearing. I'm having a little bit of trouble hearing.

25 THE WITNESS: I'm sorry ---

1 MR. BRADLEY: My objection is he's talking about
2 what one of his friends told him about why Biotek ---

3 THE COURT: Sustained. Sustained..

4 Q Don't say what your friend told you.

5 A Okay, sorry.

6 Q So -- but, was there a reason that you wanted to use
7 someone else other than Biotek?

8 A Yes.

9 Q What was that reason?

10 A The reason was the company that my friend recommended
11 offered a guarantee. Biotek would not offer a
12 guarantee. Mold Solutions -- it was either 20 or 30
13 years guarantee against mold recurring in the house.

14 Q Had you ever used Mold Solutions for anything before?

15 A No.

16 Q Okay. So if you -- if you were going to have to deal
17 with this problem, you wanted to deal with it for
18 good?

19 A Yes.

20 Q Okay. Now, were there other things happening about
21 the time that people were waiting on the Biotek
22 report that had nothing to do with the house?

23 A Yes. And I'm generally a polite person, I like to do
24 things the right way. On September 1st, the morning
25 of September 1st, my son went into emergency surgery

1 for his -- he's fine but it upsets me, for his
2 appendix, it ruptured. And I was very concerned that
3 day about his health. When this whole problem with
4 the mold and we tried to get into the house and I
5 hadn't been able to use -- they had already hired
6 Biotek before I had had an opportunity to try to hire
7 somebody at that point. I was a little irritated and
8 I was very on edge.

9 So I regret the way I sent that e-mail, how
10 direct it was and will not -- I think the e-mail
11 said, I will not pay for anything Biotek does. It
12 was a very bad day for me. I was very nervous.

13 So I regret that e-mail. But, you know, the
14 circumstances as they were, I was still 100 percent
15 behind fixing their problem. I think the next day on
16 September 2nd I e-mailed, sorry, my personal problems
17 were making things difficult. I'm moving things
18 along as quickly as I can.

19 Q Okay. And do you know when the first time you were
20 able to get in touch with Mold Solutions was?

21 A I do not, I apologize. My friend Andrew was helping
22 me with that connection.

23 Q Okay. The -- there's been an e-mail introduced from
24 September 8th where you say, I am in the process of
25 hiring Mold Solutions?

1 A Uh-huh.

2 Q Where were you in that process at that point?

3 A May I step back just a hair?

4 Q Sure.

5 A September 3rd, I got -- finally got the report. We
6 had been waiting for this report. I had already been
7 introduced -- or Andrew had already said, we'll just
8 have to wait for the report.

9 So we waited for the report. I finally received
10 it on the afternoon of September 3rd along with their
11 intent to vacate the premises. I e-mailed or texted
12 Andrew, okay, here it is, now that we have the
13 information. Mold Solutions couldn't give me
14 anything, a price, a time table, what procedures
15 would be necessary until they saw this report. And
16 so that was holding things up. It was also Labor Day
17 weekend. I received it on Friday right before the
18 weekend and no one opens till Tuesday.

19 So Tuesday, we're working very quickly and on
20 Wednesday, I've got things set up. I think they just
21 had to kind of see the premises to give me something
22 to sign so that they could do it. But -- we might
23 have even tried to get in on the 6th -- before that
24 and were unable to. I know somehow we weren't able
25 to get in, an appointment was canceled, so it slowed

1 things down.

2 Q Okay. All right, were you ever -- were you ever able
3 to get in to the house to try to remediate this
4 problem after September 3rd, before -- before the end
5 of September?

6 A No.

7 Q What sort of communications, if any, did you have
8 with either Dr. Hoover or Mrs. Hoover about trying to
9 make that happen?

10 A I believe on the 8th, we're trying to make this
11 happen. I'm put on hold by an insurance company.
12 I'm calling the adjuster, more than daily, at least
13 twice daily, trying to get them out there and work
14 this out.

15 We finally get things together and they say that
16 it's not their responsibility. And by the 12th I was
17 able to get everything lined up.

18 Q Okay ---

19 A At the time I went over physically.

20 Q Before -- okay, we're at the 12th. Before we get
21 there though.

22 A Okay.

23 Q There's been an e-mail introduced of yours talking
24 about that insurance situation with the heating and
25 air conditioning situation. What -- what was your --

1 what were you attempting to convey in that e-mail?

2 A That I'm working on it. My hands are tied by this
3 insurance company for the next -- I know I didn't
4 give a timeline but I was pushing them along to get
5 them out so that we could get this thing done. I
6 don't -- I never meant to call things off, if it was
7 interpreted that way. It was never in my sightline
8 at all.

9 Q Okay. So we get to 12th, you've got everything lined
10 up?

11 A Yes.

12 Q So what do you do?

13 A Well, I agree to -- I ask to put them up at the
14 Whitney. The reason I chose that is because it was a
15 suite so the whole family could stay in one area as
16 opposed to two separate rooms, they had young
17 children. It was more expensive than your average
18 place but, you know, they're use to nicer things, I
19 wanted them to be comfortable.

20 I thought that I had done everything as quickly
21 as I possibly given the scenario of events that had
22 occurred. And so I had actually went over to the
23 house and, in addition to the e-mails you might read,
24 and talked to Dr. Hoover and he said, you know, we're
25 leaving, we're not honoring the lease.

1 And this is when I start asking them to
2 reconsider because I thought, once we make this
3 happen, once we finally get here, we can -- you know,
4 they'd want to stay. But they had no intention of
5 staying.

6 Q All right. And so when did you find out that the
7 Hoovers had actually moved out of the house?

8 A It was a very uncertain time. We had been trying to
9 get in for a while by the -- by the 22nd, I said, --
10 just go. I think it might have been a couple of days
11 before that that I learned that they were gone. They
12 didn't tell me, today we're out. And we were met by
13 the Hoovers and they were told not to enter the
14 premises. So even though they weren't living there,
15 I still wasn't allowed to fix the problem.

16 Q Okay. So, just looking at that sort of globally, by
17 what date had you got all your ducks in a row to deal
18 with the mold problem?

19 A I guess September 12th is when I had everything in
20 order.

21 Q All right. Eventually, the -- did you have the
22 problem remediated?

23 A Yes.

24 Q Was that done after the Hoovers -- after the end of
25 September?

1 A Yes.

2 Q Okay. I'm going to show you what's been marked as
3 Plaintiff's 13 and ask if you can identify that.

4 A A report from Mold Solutions, I guess everything that
5 they did. I'm not -- I'm skimming it, my bad.

6 Q Okay. And at the back is there an invoice?

7 A Yes, sir.

8 Q Okay. And how much was their invoice?

9 A \$1878.

10 Q Okay. And did you pay for that remediation?

11 A Yes.

12 Q Okay. Did -- as part of what you paid for, did you
13 pay for a third party screening of what they did?

14 A I believe so, I'll have to look at it.

15 Q Okay. If you'll look at the invoice, the last page
16 of the exhibit.

17 A Yeah, prescreen -- post-screen testing ---

18 THE COURT: What exhibit is this?

19 MR. SHEALY: This is ---

20 THE COURT: ID ---

21 THE WITNESS: Plaintiff 13.

22 MR. SHEALY: This is Plaintiff's 13.

23 THE COURT: All right. Sorry, go ahead.

24 A And it says post-screen testing by certified third
25 party inspector.

1 Q All right. That's part of what you paid for?

2 A Yes, sir.

3 MR. SHEALY: Your Honor, I would move to admit
4 Plaintiff's 13 into evidence.

5 MR. BRADLEY: No objection.

6 THE COURT: All right, without objection.

7 (Whereupon, Plaintiff's Exhibit Number 13, Mold
8 Solutions Report and Invoice, was admitted into
9 evidence.)

10 Q Okay. Now, so after this was done, this work was
11 done, what all -- what did you do about the house,
12 about renting the house or selling the house? What
13 actions did you take?

14 A We immediately put it back on the market for sale
15 which is how it had been when they saw the house.

16 Q All right. What consideration, if any, did you give
17 toward trying to enter into another lease agreement?

18 A I'm not exactly sure. I saw the e-mail that Mr.
19 Bradley brought forward. I don't recall that
20 incident at all. I don't recall getting an offer to
21 rent so I apologize. I just -- I don't remember that
22 opportunity presented to us.

23 Q All right. Were you -- what interest did you have at
24 that point in -- in renting the house versus selling
25 it?

1 A I definitely preferred to sell it.

2 A Okay. And so what is your recollection of how long
3 the house was on the market before its status
4 changed?

5 A We leased it in April of the next year.

6 Q All right.

7 A Is that what you mean?

8 Q April the 15th?

9 A I -- I think so.

10 Q Okay. And is it still being leased today?

11 A It is, they're very happy.

12 Q Okay. Was -- during that period of time between
13 October 1st and April 15th, were you all -- did you
14 all have it on the market the whole time?

15 A Yes.

16 Q Okay. What brought you to the point of leasing it
17 again?

18 A I was out of money.

19 Q All right. And the -- so, this was an annual lease,
20 is that correct?

21 A That's correct.

22 Q Okay. And the monthly rent was \$2400?

23 A The same for the next tenants, yes.

24 Q Okay.

25 MR. SHEALY: All right. I have no further

1 questions, Mr. Schumacher. Please answer any questions
2 that Mr. Bradley ---

3 THE COURT: All right, the members of the jury
4 get a break, Mr. Bradley.

5 MR. BRADLEY: Thank you, Your Honor.

6 THE COURT: Go to the jury room. Please don't
7 talk about this case. If you want some refreshments, the
8 Bailiffs will be more than happy to accommodate your
9 request.

10 Thank you all.

11 (The jury retires from the courtroom at
12 approximately 3:50 p.m.).

13 THE WITNESS: Am I allowed to return to the table
14 or....

15 THE COURT: You just can't talk to your lawyer
16 about your testimony.

17 THE WITNESS: Okay, thank you.

18 (The witness leaves the witness stand.)

19 THE COURT: 10, 15 minutes, maybe 10 minutes. We
20 got -- who else we got this afternoon, two more witnesses,
21 Mr. Shealy?

22 MR. SHEALY: Your Honor, no, I don't have any
23 other witnesses this afternoon. My last witness will be
24 tomorrow assuming ---

25 THE COURT: You just have one left, the guy with

1 the tooth problem? What's his name?

2 MR. SHEALY: Mike O'Neill, also known as Johnny
3 Housewright apparently.

4 THE COURT: The handyman?

5 MR. SHEALY: Yes, sir.

6 THE COURT: We'll take a break.

7 (The Court was in recess.)

8 THE COURT: We all ready?

9 MR. SHEALY: Your Honor, one procedural matter.

10 THE COURT: Yes, sir.

11 MR. SHEALY: I was checking with the court
12 reporter before Mr. Bradley commences his cross-
13 examination. I don't believe I ever formally moved to
14 introduce Plaintiff's 7. It is up there but we were just
15 checking. I mentioned this to Mr. Bradley.

16 I would at this time ---

17 THE COURT: What is Plaintiff's 7, another e-
18 mail?

19 MR. SHEALY: Yes, sir.

20 THE COURT: You don't have it in?

21 COURT REPORTER: No, sir, I don't.

22 THE COURT: They're all in your notebook, right?

23 MR. BRADLEY: I don't even know, I've lost track.

24 It's fine with me. Everything's okay.

25 THE COURT: All right, 7 without objection,

1 whatever it is.

2 (Whereupon, Plaintiff's Exhibit Number 7, E-mail
3 August 31, 2010 Mold Inspection, was admitted
4 into evidence.)

5 THE COURT: We all ready? Bring them in.

6 (The jury returned to the courtroom at
7 approximately 4:16 p.m.)

8 BAILIFF: Jury's seated, Your Honor.

9 THE COURT: We got all -- we got everybody?

10 BAILIFF: Yes, sir, we got them.

11 THE COURT: Welcome back, Mr. Foreman and members
12 of the jury. I've got to confess, y'all are the first
13 jury I've had this year because we just got started.

14 There's a certain affection I've developed for you all.

15 (Laughter.)

16 THE COURT: I will tell you that before we get
17 started.

18 So, welcome back. Mr. Bradley, you may cross-
19 examine, sir.

20 MR. BRADLEY: Thank you, sir.

21 CROSS-EXAMINATION

22 BY MR. BRADLEY:

23 Q Okay. Mr. Schumacher, didn't you say you had a mold
24 problem yourself before at your house?

25 A Yes, sir.

1 Q Okay. And when you did, you were concerned about the
2 safety of your family, right?

3 A Yes, sir.

4 Q Because you were concerned it might not be safe to
5 have your family in a house with mold?

6 A With a large amount of mold, yes, sir.

7 Q So you moved them out that very day?

8 A Yes, sir.

9 Q Because you owned that house and you can make a
10 decision about what to do?

11 A Sure.

12 Q All right. Why did it take you three weeks to come
13 up with a plan to help the Hoovers out?

14 A It did not take me three weeks.

15 Q It didn't?

16 A No, sir.

17 Q Well, you found out when, August 14th?

18 A We're not exactly sure, no later than August 16th,
19 yes.

20 Q Okay. By August 21st did you have a plan?

21 A By August 21st we had eliminated the problem, water
22 condensation. We had sealed the attic fan and
23 reinsulated the pipe. I had also thought at that
24 time that the Johnny Housewright Company had cut out
25 the ceiling and replaced it.

1 Q The house -- the mold was still there August 21st,
2 right?

3 A I learned that on or about the 23rd or 24th, yes,
4 sir.

5 Q And the mold was still there on the 24th?

6 A Yes, sir.

7 Q In fact, from the 16th to the 24th, you had not even
8 hired anyone with expertise at mold to even look at

9 it?

10 A That's ---

11 Q Right?

12 A --- correct.

13 Q So for a week you didn't hire anybody who knew
14 anything about mold to come look at it, right?

15 A Correct.

16 Q And then the Hoovers, with your real estate agent,
17 agree to hire somebody themselves on the 24th?

18 A That's my understanding, yes.

19 Q Yes. And you knew about that, right?

20 A I don't -- I didn't know about it until the next day.

21 Q But Terry Bishop did tell you that he had agreed to
22 do that?

23 A Yes, I'm assuming from the e-mails. I don't recall
24 any conversation about that. I remember being
25 surprised that I hadn't had an opportunity -- I felt

1 I had not -- I had just learned the 24th, 25th that
2 Johnny Housewright had not cut out that section of
3 ceiling like I had asked them to do. And ---

4 Q Well now ---

5 A --- at that time is when I became aware that we
6 needed now to take a little more drastic direction.

7 Q You don't take the position that Johnny Housewright
8 was qualified to remediate the mold in this house, do
9 you?

10 A When I saw the mold, it was contained to a relatively
11 small area and I wanted that small area removed.

12 Bleached first so that it wouldn't spread as you do
13 it and then removed. If we had found mold beyond
14 that, then absolutely we would have done something
15 else. But, you know, until we get that done...

16 Q Do you take the position that Johnny Housewright has
17 any expertise in mold remediation?

18 A No.

19 Q Do you take the position that you have any expertise
20 in mold remediation?

21 A I had only my previous experience at my last house.

22 Q That was when you got your family out the day that
23 you found it?

24 A Yeah.

25 Q And after a week, you hadn't even hired anybody to

1 come look at the house where the Hoovers lived?

2 A Again, I thought that Johnny Housewright had -- at
3 that point, had removed that section of ceiling so

4 ---

5 Q We know that they didn't.

6 A Correct.

7 Q And we know they weren't qualified to remediate it?

8 A Correct.

9 Q Okay. So now that takes us one week to when the
10 Hoovers take action and hire Biotek, right?

11 A Yes, sir.

12 Q And did you tell the Hoovers at that time, I don't
13 like Biotek, I won't pay them and I won't do what
14 they say?

15 A On the 25th?

16 Q When they -- when they -- when your real estate agent
17 made the agreement for them to hire somebody because
18 you hadn't.

19 A It was on or around that day that I realized I needed
20 to hire a mold remediation company and began talking
21 with someone to bring someone in and then I learned
22 that Biotek had been hired. And I -- at that point,
23 that was the fastest course of action although it
24 wasn't the company I would have chosen.

25 Q So eight days after you were shown the mold, you

1 decided you should hire somebody, right?

2 A Yes.

3 Q After the Hoovers had already hired somebody with the
4 agreement of your real estate agent?

5 A Yes.

6 Q With your understanding and knowledge of that
7 transaction?

8 A Again, I don't know when I learned of that
9 transaction but when I found out about it, I began --
10 I mean this is how I learned that the mold wasn't cut
11 out. This is how I learned everything. I thought
12 the bulk of the problem had been solved before this
13 moment. So I was caught off guard.

14 Q Who's responsibility was it to take care of the mold?

15 A Mine.

16 Q Okay. Was it the Hoover's responsibility because you
17 owned the house?

18 A Correct.

19 Q Okay. But they took responsibility for it because
20 you didn't do it, right?

21 A I'll say again, up until that point, I thought the
22 section of the ceiling had been cut out. I thought
23 we had plenty of time. I hadn't been told that there
24 had been any mold growth beyond that point. I
25 learned then that he had not done that part of what

1 we had agreed to do.

2 So now it became, in my opinion and according to
3 the Hoovers at that point, a more urgent situation.

4 I understand their perspective. From their
5 perspective, it just sat there. If they had cleaned
6 it with bleach as I had suggested while it was still
7 wet, this would have definitely slowed down the
8 problem.

9 Q Where do you get the expertise to say that?

10 A I read through the EPA site on how to treat surface
11 mold.

12 Q You do realize that Biotek said the house was
13 contaminated with aspergillus?

14 A When I read the report, yes, sir.

15 Q And you understand that's a toxic mold?

16 A It's a mold that appears everywhere in nature. It's
17 only toxic in extremely high doses.

18 Q And you understand that Biotek said it had to be
19 remediated from the house which meant the area was
20 sealed and that the thing was cut down and use an air
21 scrubber to clean the air?

22 A And I agreed to do that.

23 Q I understand. But you understand all those problems,
24 right?

25 A Realize from the 16th when I thought that we were

1 cutting this out and it was wet and when this test
2 was taken on or about the 30th, the 31st of August,
3 we had eliminated the water problem very quickly. So
4 the mold, instead of being wet and drippy became dry
5 which is what causes this thing to aerosolize.

6 Had we been able to get in to even -- just a
7 simple thing. I mean, if you have mold in your
8 shower, I don't call a remediation company. I take
9 some bleach, I clean the mold. If we can -- I'm not
10 saying I'm belittling it, I'm not trying to. What
11 I'm saying, if we had just been able to treat it with
12 some bleach and cut it out of the ceiling, we
13 wouldn't have this problem we have today.

14 But if we had, if it was beyond that, I had no
15 problem with doing that. I had spent a ton of money
16 up to that point fixing any problem that came up. I
17 was dedicated to making sure that they had a nice
18 place to live.

19 When Biotek -- when they hired Biotek, we had to
20 wait until that report was done because that was the
21 fastest thing and then I took very quick action
22 again.

23 Q Do you have anyone who was qualified to say that the
24 answer to this problem was just to spray bleach on
25 the mold to testify for you?

1 A No, sir.

2 Q All right. Do you believe you're more qualified than
3 Biotek to make that decision?

4 A No, sir.

5 Q And you realize that aspergillus was found in the
6 house?

7 A I realize that aspergillus is in this room right now
8 too.

9 Q And you realize it was found in the house in
10 concentrations that can cause people to be ill?

11 A By the 31st of August, yes.

12 Q And you don't pretend that this is just like seeing a
13 little mold in your shower that you clean up, do you?

14 A When I was notified of the mold, which obviously had
15 been growing for some time, you know, apparently it
16 was a space about this large (indicating) and it was
17 wet and drippy.

18 Q But it wasn't in the bathroom or something, it was in
19 the hallway?

20 A Correct.

21 Q Okay. So you're not saying this is just like
22 somebody found a little mold in their bathroom and
23 scrubbed up or are you?

24 A I am saying that to slow down the growth of the mold,
25 to look out for the welfare of the family, it would

1 have been a wise idea to wipe it down with bleach and
2 kill what was there on the surface of the wall. If
3 it was beyond that, I had no problem paying for a
4 mold remediation company which I eventually did
5 because the mold, instead of being treated at all,
6 was allowed to continue to grow without being
7 touched.

8 Q When you had a similar problem and you moved your
9 family out on the very same day?

10 A Yes, sir.

11 Q Okay.

12 A Had the Hoovers come to me and said, we need to move
13 out now, we're not comfortable with this, I would
14 have paid for the hotel immediately.

15 Q Well, who's responsible for fixing it, the Hoovers or
16 you?

17 A I am responsible for fixing it.

18 Q Good. All right.

19 A That's why I would pay for the hotel.

20 Q And you didn't fix it -- you didn't pay for a hotel?

21 A I offered.

22 Q You offered to pay for a hotel three weeks after they
23 told you about the problem?

24 A Sir ---

25 Q Right?

1 A I understand your perspective ---

2 Q And my question ---

3 A --- but I ---

4 Q --- is, did you offer three weeks or did you offer
5 that day?

6 A That day I tried to find a solution. The very first
7 day, we moved on it aggressively. We solved the
8 condensation problem, we closed the attic fan so that
9 the air conditioner wouldn't have to run 24/7 and we
10 -- I expected that that area, that entire section
11 would be cut out and replaced. And had we done that
12 at that time, we may have solved the problem.

13 Q But you didn't do it?

14 A I'm sorry that -- regret that I hired someone to do
15 it and they didn't.

16 Q It's not the Hoover's fault?

17 A I never blamed the Hoovers for that.

18 Q But you sued the Hoovers?

19 A I'm sorry, I don't mean to be ---

20 MR. SHEALY: Objection.

21 THE COURT: Basis.

22 MR. SHEALY: Argumentative.

23 THE COURT: Cross-examination, overruled. Go
24 ahead, Mr. Bradley.

25 Q So this offer to put them up, it took place three

1 weeks after you knew about the problem, right?

2 A Well, I'm not avoiding your question. We were
3 delayed -- once Biotek was hired, we had to wait for
4 a report. From the time they were hired until we got
5 the report was more than a week. And then that was
6 Labor Day weekend. They were hired -- I mean, I
7 receive the report on Friday Labor Day weekend.
8 Tuesday, we're in business, Wednesday, I've got
9 things lined up, I just have to get a couple of
10 things finalized. I'm trying to keep them abreast of
11 what's going on.

12 I've got them, we're putting this together and
13 then the insurance company steps and says, wait, we
14 have to look at this first. I was moving as quickly
15 as I could based on the knowledge available to me.
16 The only thing that slowed us down was when I thought
17 the section of ceiling has been cut out and it
18 hadn't. That delayed us a week and then I had to
19 wait for Biotek a week.

20 So to say that I didn't do anything for two
21 weeks, I had the brakes put on with waiting for a
22 Biotek report and as soon as that came in, I was
23 moving quickly.

24 Q But you moved your family out in one day, right?

25 A Yes.

1 Q You offered to move the Hoovers out after they had
2 been there for three weeks, right?

3 A Correct.

4 Q And then four hours later, you said, that's on hold,
5 right?

6 A I only said the treatment was on hold because we had
7 to wait for insurance.

8 Q Is that what your e-mail said, only the treatment's
9 on hold or I'm not in control of the timeframe?

10 A I'd have to see the e-mail.

11 Q Okay. We'll get to that. You knew that Biotek was
12 investigating because you said you were waiting a
13 week for the report, right?

14 A I'm assuming because on the 25th is when I learned
15 they hired them, I guess.

16 Q And so you waited a week for that report, that's what
17 slowed you down, right?

18 A When I spoke with -- I'm trying to -- can I say,
19 Andrew?

20 Q My question was just, you waited a week for the
21 Biotek report?

22 A Correct.

23 Q During that week that you were waiting for the Biotek
24 report to decide if you were going to do anything for
25 the Hoovers, did you tell them, I don't like Biotek,

1 I won't pay -- I won't pay to do what Biotek says
2 should be done? Did you do that?

3 A I -- yes and I also said that I had another company
4 that I felt was better qualified.

5 Q Okay. But you waited a week to tell them that,
6 right?

7 A I believe I told them that on September 1st.

8 Q Okay.

9 A It may have been that I only learned about Biotek the
10 day before. I'm not exactly sure.

11 Q Got it. So you knew about this on August 16th at the
12 latest?

13 A Yes.

14 Q And by the 24th, the Hoovers had hired somebody to
15 look at it, with your blessing?

16 A No, sir.

17 Q You didn't bless them looking at it?

18 A Sir -- and I'll say this again. When I learned about
19 Biotek -- and I'm not sure, I see the e-mails on the
20 24th and 25th. I remember being surprised by it and
21 then trying to figure out, what can I -- how do I do
22 this and is this a good company and who should I have
23 doing this.

24 So this is a year and a half ago, I couldn't tell
25 you -- I couldn't guarantee what day when I learned

1 of this on.

2 Q You didn't say you rejected Biotek until two weeks
3 after the Hoovers had been living in the house with
4 mold, right?

5 A I'm sorry, repeat that again. I apologize.

6 Q You said September 1st is when you said, no good to
7 Biotek, I don't like them, right?

8 A Correct.

9 Q And so the Hoovers had been in the house two weeks by
10 the time you said that?

11 A Correct.

12 Q And you hadn't hired anybody?

13 A I was talking with contractors at that time who were
14 waiting for the report.

15 Q Had you hired anybody?

16 A I couldn't until I had the report.

17 Q Why were you waiting on the Biotek report if you had
18 already decided you weren't going to do it and you
19 weren't going to pay for it?

20 A No, I had decided that I wasn't going to use Biotek
21 for the remediation but we were going to use a
22 different company.

23 Q But you ---

24 A I believe we have -- at some point we had someone
25 come out. But I'm sorry, go ahead.

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1 Q You told Mrs. Hoover you wouldn't even pay for
2 Biotek's report?

3 A Yes. And I, in hindsight, feel that -- I wish that
4 it had been differently. I had mentioned before, I
5 was going through a lot on that day when I learned of
6 all this. And, you know, if there's anything that I
7 could change, I would just go ahead and pay for that
8 report because that's what I believe we used that.

9 Q I understand but two weeks after the problem surfaced
10 and you had hired nobody, they had hired somebody,
11 the report came back, you said, I'm not paying for
12 the report and I won't do what's in the report,
13 right?

14 A No, sir, I didn't say that. I said that I won't pay
15 for the report and I won't do anything -- the
16 remediation that Biotek has, I won't pay for that. I
17 want to use my own company for remediation, again
18 because they offered a guarantee. And I already knew
19 this at this point so I was already working toward a
20 solution.

21 Q But you had not hired -- you hadn't hired the
22 company?

23 A I couldn't hire them until I saw the report and saw
24 what needed to be done. Then they were going to --
25 they had to put together a contract saying, this is

1 what's required for your house and I had to sign it.
2 They couldn't give that to me until after they had
3 seen the report and visited the house. This ---

4 Q When did you tell the Hoovers all of this that you're
5 telling the jury, that you were going to do this and
6 you had this company and they were going to look at
7 Biotek's report and take care of this problem just as
8 soon as this report comes out? When did you tell Mr.
9 and Mrs. Hoover, don't worry about your children and
10 your family, I'm going to handle it, when?

11 A On the 16th of August. I ---

12 Q The 16th of August you told them that?

13 A I said, we're going to take care of this. I hired
14 Johnny Housewright. We had people coming in to fix
15 the air conditioning, to seal the attic fan. I
16 thought the ceiling had been cut out and -- bleached
17 and cut out. When I learned it hadn't and we hired
18 Biotek, I was told we needed to wait until this
19 report came out before we did anything else.

20 After that report came out, I moved very quickly.
21 As soon as I had seen the report, reviewed, said this
22 is what we're going to do, I notified them that I had
23 the company in place.

24 Q You refused to pay for the report and refused to pay
25 Biotek to fix the problem, right?

1 A Correct.

2 Q All right. And when you did that, did you say, I
3 don't like Biotek but I've got somebody else right
4 here that's going to fix this problem, they'll have
5 it done in a week? Did you say that?

6 A I said everything except the week.

7 Q Did you say who it was going to be, what they were
8 going to do, when they were going to have it done?

9 A No, sir.

10 Q So what are the Hoovers supposed to think when they
11 get the report, they ordered it because you haven't,
12 and when it comes back, you reject it and you reject
13 even paying for it, your responsibility? What should
14 they think at that time?

15 A Well, also in that e-mail where I rejected Biotek, I
16 tell them that I have another company that -- that's
17 a reputable company that I want to use.

18 Q Did you even tell them the name of the company?

19 A I don't know.

20 Q You didn't?

21 A Okay.

22 Q Did you?

23 A I'll take your word on it, I'm not looking at the e-
24 mail.

25 Q You didn't even have a company then, did you?

1 A Yes, sir, I did.

2 Q You didn't have a company until like September 5th,
3 that was when you sent them the one about Mold
4 Solutions and your plan, right?

5 A I had a company when I told them I had a company. I
6 was working with Andrew Hackney (phonetic) who
7 referred me to Mold Solutions and we were already in
8 talks and I was told to wait until after the report
9 came before we take any further action to figure out
10 what has to be done.

11 Q Okay. Let's take a look at your e-mails. I'm
12 showing what's been marked as Defendant's Exhibit 4.
13 That's your e-mail, isn't it?

14 A Yes, sir.

15 Q What's the date of that e-mail?

16 A September 8th.

17 Q September what?

18 A 8th.

19 Q How long after the problem immerged did you send that
20 e-mail?

21 A I guess three weeks.

22 Q Three weeks. And at that time, what did you tell
23 them?

24 A Current plan is for them to leave Monday morning by
25 9:00 a.m. and return Wednesday afternoon. I made

1 tentative reservations at the Whitney in a two
2 bedroom, two bath suite for the family for those few
3 days. It is the best accommodation I could find for
4 them.

5 Q Why don't we start at that beginning of what you told
6 them.

7 A I'm in the process of hiring a reputable company Mold
8 Solutions Inc. to solve the problem.

9 Q Okay ---

10 A They will do everything necessary to fix the problem
11 permanently.

12 Q And that's September 8th, 3 weeks after the problem
13 started?

14 A Yes, sir.

15 Q And then you said you were in the process of doing
16 it, what does that mean?

17 A They have to give me a quote or a contract that I
18 have to sign. I had not signed that yet.

19 Q So ---

20 A Because they were working that up. This is not
21 something that I could -- that was exactly in my
22 control.

23 Q So when you sent them the e-mail on the 8th, three
24 weeks after you had been told about the problem, you
25 hadn't even hired them yet, right?

1 A Legally I had not hired them but we had an agreement
2 for them to do the job.

3 Q Three weeks after the problem emerged, you hadn't
4 hired anybody to fix it even though the Hoover's had,
5 right?

6 A Sir, if I talk to you and I say, look I've got this
7 situation coming up, can you help me out with it, you
8 know, I want you to represent me and you say, sure
9 but you need to come to the office and sign some
10 paperwork before you can get started. I'm in the
11 process of hiring you, we've already got a verbal
12 agreement. There is just a few I's to dot and T's to
13 cross.

14 So that's why I was in the process but it was
15 done.

16 Q So why didn't you tell them it was done instead of
17 you were in the process?

18 A I don't know.

19 Q You're telling the jury that you had done it and you
20 told the Hoovers that you were in the process of
21 doing it. Is that the same thing?

22 A In this context, yes, sir.

23 Q All right. Let's look at the next e-mail you sent
24 about four hours later.

25 (Pause.)

1 Q I'm showing you what's marked as Defendant's Exhibit
2 5. That's an e-mail that you sent, right?

3 A Yes, sir.

4 Q On that very same date you told them, I do not have
5 control of the timeframe to fix this, right?

6 A Correct.

7 Q Did you ever -- September the 8th when you told them
8 you didn't have control of the timeframe, three weeks
9 after you knew about the problem, did you ever say,
10 I've got it, I'm going to fix it today, this is what
11 we're going to do?

12 A I believe on the 12th I sent another e-mail.

13 Q On the 12th you send an e-mail saying that you were
14 going to fix it?

15 A Well, it took that long on the insurance stuff.

16 Q How long were the Hoovers supposed to wait with this
17 mold in their house for you to do something, a month,
18 two months, a year? What would be reasonable? Is
19 two weeks long enough to wait for something that's
20 dangerous to their family?

21 A You know, we're both coming at this from different
22 perspectives. They're nice people. I'm nice people.
23 We both try to do both our careers honestly.

24 Q But they're not suing you.

25 A Well, this is true, this is true. I'm not trying ---

1 I've never done this before.

2 Q You've never been in a lawsuit before?

3 A Not like this, I've been in small claims.

4 Q You've been in lawsuits before, haven't you?

5 A I've been in small claims. So I have -- I'm sorry,
6 what was your question?

7 Q My question was, how long were the Hoovers supposed
8 to wait for you to authorize something to be done to
9 this house? Two weeks, three weeks, four weeks, two
10 months?

11 A As long as I'm working to actively solve the problem,
12 on a continuous basis ---

13 Q Just as long as you're working on it, they have to
14 wait and stay there in the house?

15 A I would have gladly moved them to a hotel but they
16 never asked or moved or brought any of that up. This
17 was -- look, we need to find another place to live
18 while you figure this out. That would have been no
19 problem.

20 Q Well, why didn't you suggest that to them after they
21 have been waiting for three weeks for you to do
22 something?

23 A I did.

24 Q And then you said, that you're not in control of the
25 timeframe the next evening?

1 A Only on remediating the problem, that's correct.

2 Q Does it say that in your e-mail, only on remediating
3 the problem, I'll put you up in a hotel until this
4 problem's fixed? Does it say that?

5 A No, sir.

6 Q It doesn't say anything about that, does it?

7 A Sir, communication is a two way street. I was doing
8 everything in my power to make this happen as quickly
9 and efficiently as possible. And I was working on it
10 regularly. I worked on it when I was in the hospital
11 with my son. I worked on it continuously and on
12 weekends trying to make this thing expedited. I had
13 no idea how long it takes to hire a mold remediation
14 company, the processes they have to go through, you
15 have to work into their schedule. The insurance
16 company's jumping to get involved and put the brakes
17 on everything. I was working diligently and in good
18 faith.

19 And that's what this is about is that I was
20 working very hard to solve this problem as quickly as
21 I could. And to not be given an opportunity to solve
22 the problem is -- what I mean by that, and I respect
23 the Hoovers greatly. But Dr. Hoover never came to me
24 and said, look, we need you to have this done or move
25 us out or something or we will terminate the lease.

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1 It wasn't that.

2 It was on September 3rd, we're terminating the
3 lease. And even though we had that, I still kept
4 working hard to solve this problem. It didn't slow
5 me down. I kept pushing and pushing and pushing and
6 pushing even though I knew that I wasn't going to
7 have the -- you know, I was going to have a problem.
8 It was -- they didn't allow me to come back in the
9 house to remediate the problem later. They didn't
10 allow Mike O'Neill to come in in August to at least
11 treat it with something, bleach, anything just to
12 slow down things, to help the situation.

13 I was trying.

14 Q I understand..

15 A As ---

16 Q In three weeks, you were in the process of hiring
17 someone, right?

18 A Yes.

19 Q So for the three weeks before you got in the process
20 of hiring Mold Solutions, you were trying to do
21 something?

22 A Yes.

23 Q How much work was it to call up Mold Solutions on the
24 phone and get started with your verbal agreement you
25 mentioned before, in the process of hiring them?

1 A Well we had done that before -- during the -- waiting
2 for Biotek.

3 Q And Mr. Hoover, after you didn't do anything for a
4 week, hired somebody himself, right?

5 A Excuse me ---

6 Q After you didn't ---

7 A --- the first week?

8 Q After you didn't do anything for a week, Dr. Hoover
9 hired someone with that expertise himself to do it,
10 right?

11 A Well, I had done things. I had solved the moisture
12 problem. You said I didn't do anything.

13 Q Did you hire someone to fix the mold problem?

14 A I had not hired a professional mold remediation
15 company, no, sir.

16 Q So who was stopping you during those two weeks that
17 the Hoovers were living in the house from doing that?

18 A Okay ---

19 Q Did Mr. Hoover say -- Dr. Hoover say, oh, don't do
20 that?

21 A It was only one week between learning of the mold --
22 I'm sorry, a little over a week, I apologize, seven,
23 eight, nine days between learning of the mold and
24 Biotek being hired. In that time, we solved the air
25 conditioning problem and the condensation problem.

1 We solved the attic fan problem which we believed was
2 causing the high utility bills and causing the excess
3 condensation on the vent.

4 That is doing something. You're saying I'm not
5 doing anything. And I thought that Mike O'Neill's
6 company had cut the ceiling out and replaced it to
7 eliminate this huge wet spot that had mold on it. If
8 we eliminate that, we might not have a serious
9 problem.

10 Q In the three weeks after the Hoovers told you about
11 the problem, had you hired a mold company to fix it?

12 A Well, I'm not avoiding your question. The -- during
13 the ---

14 Q What's the answer?

15 A During the week of Biotek, I was in talks with Mold
16 Solutions which is why I said I wouldn't pay for it
17 because I already had somebody that was going to
18 offer me a guarantee and Biotek didn't.

19 So, yes, I was in -- there I was in the process.
20 The 8th we're just signing paperwork.

21 Q Okay. So it took you three weeks to get to the
22 process of hiring Mold Solutions, right?

23 A No, I was in process the last week of August.

24 Q You started the process of hiring Mold Solutions the
25 last week August?

1 A Yes, sir.

2 Q And by the 8th of September, you were still in the
3 process of hiring Mold Solutions?

4 A Well, we had been put on hold waiting for the report,
5 sir.

6 Q So it's the Hoovers' fault that you didn't hire
7 anybody?

8 A No, sir, I never that said that.

9 Q Well whose fault is it?

10 A It's just the facts of life, when you have to wait
11 for a report to see results to get an estimate to
12 sign it for a contract. Those things just take time.
13 I can't -- I couldn't speed up Biotek and I couldn't
14 speed up the process to get Mold Solutions on board.

15 Q But before you had even heard from Biotek, you were
16 rejecting them?

17 A Because I already had Mold Solutions.

18 Q You agree that it's your job to make sure the house
19 is safe?

20 A Yes.

21 Q And you agree that if it's not safe, you've got to
22 fix it?

23 A Yes.

24 Q And that if you don't do that, you're not entitled to
25 be paid rent as a landlord?

1 MR. SHEALY: Your Honor, objection. That calls
2 for a legal conclusion.

3 THE COURT: Beg your pardon?

4 MR. SHEALY: It calls for a legal conclusion.

5 THE COURT: What was the question?

6 MR. BRADLEY: Whether he's entitled to pay (sic)
7 the rent if the house is not safe?

8 THE COURT: Whether he's entitled to?

9 MR. BRADLEY: To be paid rent if the house is not
10 safe, if he hasn't fixed the problems in the house.

11 THE COURT: You said that calls for a legal
12 conclusion?

13 MR. SHEALY: Yes, Your Honor.

14 THE COURT: Y'all -- y'all approach.

15 (Whereupon, a bench conference was held off the
16 record, in the presence of the jury, but out of
17 the hearing of the jury.)

18 Q Mr. Schumacher, if you had been living in this house
19 and Mr. Hoover was the landlord, would you have been
20 happy after the mold was not addressed after a week?

21 MR. SHEALY: Your Honor, objection as to
22 relevance, the question as to his happiness ---

23 THE COURT: Repeat the question, Mr. Bradley.

24 Q Sure. Would you think you were treated fairly if you
25 were in a house with your children three weeks before

1 your landlord found time to get into the process of
2 hiring a company to clean up the mold?

3 THE COURT: And your objection, Mr. Shealy?

4 MR. SHEALY: Well, Your Honor, it's a slightly
5 different question. I withdraw my objection.

6 Q Would you think that would be treated fairly as a
7 tenant?

8 A I would have done a lot of things differently had I
9 been a tenant.

10 Q You would agree with me that's not a fair way to
11 treat somebody, is it?

12 A Sir, if I had been a tenant I would have reported the
13 mold before it was two and a half feet wide in a
14 circle on the ceiling and I would have cleaned it and
15 I would have prevented the problem from becoming
16 something that could affect my family. And if it was
17 that large, I would have moved out regardless -- to a
18 hotel so that the landlord could fix it, if it was a
19 huge problem as the Hoovers felt that it was.

20 Q I see. So you don't see any -- you wouldn't feel it
21 was unfair to stay in the house for three weeks with
22 three children while you got in the process of hiring
23 a company to clean it up?

24 A Again, I mentioned previously how I dealt with the
25 problem.

1 Q Right..

2 A I moved out immediately, I fixed the problem. If I
3 had been a tenant, I would have done the exact same
4 thing.

5 A It was a different problem for you, right?

6 A Not exactly.

7 Q Well, I mean, do you know what kind of mold you had
8 in your house then?

9 A No.

10 Q Did you have anybody check it to see?

11 A No.

12 Q You agree that this mold had to be remediated by a
13 professional company because that's what happened?

14 A Yes, because it had gotten into the walls,
15 absolutely. It had to be professionally by that point
16 because it wasn't dealt with at an early stage. And,
17 you know, we had -- once we solved the cause of the
18 problem, we could move forward. But again, I would
19 have dealt with this the first week of August if it
20 were occurring. It looked like it had been growing
21 there for a while before it was ever reported to me.

22 Q Then why didn't you deal with it on August 16th when
23 they told you about it?

24 A And I told you I did.

25 Q But you didn't hire anybody to come clean it or test

1 it or do anything?

2 A Sir, I was referring to my past experience, that it
3 solved my problem which was, get rid of anything
4 that's there. Cover it with bleach because the EPA
5 says bleach kills mold on surface. Get rid of
6 anything where it might be inside of it and go from
7 there. If we had discovered that mold was beyond
8 that area at that point, we would have hired a mold
9 remediation company.

10 But again, the contractor I hired didn't cut out
11 the ceiling as I requested and I learned about that a
12 week or so later. And that's when every -- we hired
13 -- they hired Biotek and everything changed. And then
14 I switched gears as quickly as I could, waited for
15 the report and moved to expedite hiring a mold
16 remediation company.

17 Q It took the Hoovers a week of waiting for you to hire
18 Biotek, right?

19 A I'm sorry?

20 Q They hired Biotek, right?

21 A They hired them on the 24th or ---

22 Q They hired Biotek within a week of when they told you
23 about it?

24 A They hired them the next day or -- when I learned
25 about it, they were already hired.

1 Q Right. And it took you three weeks to get into the
2 process of hiring Mold Solutions?

3 A No, sir.

4 Q Right?

5 A No, sir. I was working with Mold Solutions, talking
6 with Mold Solutions the last week of August.

7 Q Well, your e-mail says that on the 8th of September
8 you were in the process of hiring Mold Solutions?

9 A I understand that.

10 Q Okay.

11 A But it also -- my e-mail also says on September 1st
12 that I'm hiring a reputable company. And I was
13 already in talks with Mold Solutions at that time, a
14 week prior to this.

15 Q You have three children?

16 A Yes, sir.

17 Q You wouldn't expose them to unnecessary risks, would
18 you?

19 A No, sir.

20 Q You wouldn't expect the Hoovers to expose their
21 children to unnecessary risks, would you?

22 A No, sir.

23 Q And if their children were sick from this mold in the
24 house, you would expect them to leave, wouldn't you?

25 A Move into a hotel so the problem can be solved, yes.

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1 Q I understand. And of course, you were going to pay
2 for as long as they had to stay in a hotel, three
3 weeks, a month?

4 A Yes, sir.

5 Q When did you tell them that?

6 A I did not until the 8th or the 12th, whatever that e-
7 mail says.

8 Q After it had been three weeks?

9 A Yes, sir.

10 Q Right. Okay.

11 A I will restate, for the first week I thought the mold
12 had been removed from the house. So as soon -- and
13 then, when I learned of this, Biotek had already been
14 hired. So, at that point my hands were tied waiting
15 for this report and I was moving immediately to hire
16 a company.

17 Q All right. You read the report from Biotek, right?

18 A Yes, sir, a long long time ago.

19 Q And you know that it found elevated levels of
20 aspergillus in the house?

21 A Yes, sir.

22 Q In the upstairs hallway near the children's bedroom?

23 A It was about 10 feet away, yes, sir.

24 Q And you're aware that aspergillus can cause asthma?

25 A Yes, sir.

1 Q And breathing problems?

2 A In high quantities, especially with people who are
3 susceptible.

4 Q Like children?

5 A I don't know if children but just people sensitive to
6 mold.

7 Q Right. And it can cause other diseases too?

8 A I don't know.

9 Q Why didn't you ever pay the Hoovers for the
10 inspection that they hired Biotek to do if it's what
11 you used to remediate the problem?

12 A They had already terminated the lease by -- they
13 terminated the lease on the day that we got the
14 report. They had already terminated and not given me
15 what I felt was a chance to move forward and fix
16 things.

17 Q Well, two days before that, you told them you weren't
18 going to pay Biotek for the report?

19 A That's right.

20 Q Right?

21 A I wanted to use my own company that I hired.

22 Q But you used Biotek's report?

23 A Sir, I agree that was a mistake. I should have paid
24 that report.

25 Q Okay. So you agree you owe them the money for the

1 report, you just didn't pay it to them?

2 A Oh, in hindsight today, looking at the circumstances,
3 I probably should have paid for that report.

4 Q But you told them you weren't going to use the
5 report?

6 A I don't recall saying that. I said I wouldn't use
7 them for remediation services.

8 Q All right. Let's take a look at Defendant's Exhibit
9 13 regarding...

10 (Pause.)

11 Q I'm showing you Defendant's 13 which I think is an e-
12 mail to you or your agent from Todd Beckstrom, is
13 that right?

14 A Yes.

15 Q And in that e-mail, the Hoovers say they will honor
16 the terms of the lease provided that the owner
17 addresses the potential mold issues.

18 A Yes.

19 Q To include an inspection by a licensed mold
20 inspector.

21 A Yes.

22 Q And whatever treatment is necessary to remedy the
23 problem, right?

24 A Yes, I read that.

25 Q And that's on August 24th?

- 1 A Yes.
- 2 Q Did you hire a mold inspector on August 24th?
- 3 A Do you know when I received this e-mail because I do
- 4 not?
- 5 Q Well it says August 24th.
- 6 A But this went to Terry.
- 7 Q But Terry is your real estate agent, right?
- 8 A Yes, sir but I do not know when he informed me.
- 9 Q You think your real estate agent didn't tell you
- 10 about them honoring the lease and wanting you to fix
- 11 the mold?
- 12 A No, I'm sure he told me, I just don't remember which
- 13 day and I don't have an e-mail to tell me which day
- 14 he did that.
- 15 Q All right.
- 16 A That's all. I would guess that day or the next day,
- 17 you know. The 24th or the 25th I would assume I was
- 18 aware of this. But they hired Biotek on the 25th, if
- 19 I'm not mistaken.
- 20 (Pause.)
- 21 A If I -- let's just say for your sake I learned of
- 22 these at 3:00 in the afternoon because this is at
- 23 1:00 or close, I learned about it immediately though
- 24 I don't read e-mails every five minutes. I still
- 25 would be not in a position to hire a company within

1 two hours before the end of the business day. So if
2 I started working on it the next day, they had
3 already hired someone at that point. They were
4 already -- by the way things sound, they are already
5 in the process but I, you know, I can't be certain.

6 Q They hired the people that you said you were going to
7 reject from the beginning, right?

8 A I think I said that on September 1st.

9 Q Okay.

10 A After I had had time to look for a mold company and
11 found out that Biotek did not guarantee and another
12 company did.

13 (Pause.)

14 Q I am going to look at one of the exhibits your lawyer
15 put in here for the minute.

16 (Pause.)

17 Q Take a look if you would at your e-mail of
18 September 2nd, is that right?

19 A That's what it says.

20 Q That's Plaintiff's Exhibit 15, is that right?

21 A Yes.

22 Q At this point on September 2nd, you had not hired a
23 mold remediation company to fix the problem, right?

24 A Correct.

25 Q But you did send that e-mail, right?

1 A Yes.

2 Q And who is that e-mail copied to?

3 A Let me see. The one I'm sending Todd Beckstrom, Kirby
4 Shealy.

5 Q Kirby Shealy?

6 A Yes.

7 Q You mean the lawyer in this courtroom, Kirby Shealy?

8 A Yes.

9 Q So on September 2nd, before you were in the process
10 of hiring a mold remediation company, you already
11 were e-mailing your lawyer about this.

12 A Well, Kirby's more than a lawyer, he's a friend. And
13 anything that looks, you know, unusual goes his way.

14 Q Is he a mold remediator?

15 A No.

16 Q Well, why were you sending him the e-mail instead of
17 calling a mold remediation company on September 2nd?

18 A Well (a), as I've already discussed, I was already
19 talking to a mold remediation company before
20 September 1st because on September 1st, I explained,
21 I would use the company that I trusted. I don't say
22 this, I don't think; but that they'll give a
23 guarantee. Other than that, I don't know.

24 Q Kirby wasn't going to fix the mold situation, was he?

25 A No, sir.

1 Q Kirby was going to sue the Hoovers for you, right?

2 A That would not be why I was sending him something
3 like this.

4 Q Well, why did you send it to him?

5 A Probably for advice. I don't recall what I was
6 thinking at that moment.

7 Q So, we know, two weeks after the Hoovers told you
8 this was a problem, you hadn't hired anybody with
9 qualifications to fix it, right?

10 A I couldn't. I was still waiting on the report.

11 Q But you were sending an e-mail to your lawyer about
12 this problem?

13 A I cc'd him on the reply to Todd Beckstrom.

14 Q Right. So why did you do it?

15 A I don't recall. Again, Kirby gives me advice on
16 multiple things. I send him little things, anything
17 that comes up. I'm very liberal about that. So
18 anything that comes up that could be -- you know,
19 that is any type of a problem, he's included, when I
20 realize that, anyway. It wasn't to set up a lawsuit.
21 It was just -- that's who he is. He's as much gives
22 me advice as anything -- as he's legal.

23 Q Was he going to give you advice on how to take care
24 of mold problem?

25 MR. SHEALY: Your Honor, objection, relevance.

1 THE COURT: How about that, Mr. Bradley?

2 MR. BRADLEY: The relevance is that he contacted
3 his lawyer about this before ---

4 THE COURT: So you know he's a common confidence
5 lawyer. We know he's not a mold specialist.

6 MR. BRADLEY: All right.

7 THE COURT: Go ahead.

8 Q One of the things that you said when Mr. Shealy, your
9 friend, asked you about Johnny Housewright and Mr.
10 O'Neill, was that Mrs. Hoover wouldn't let them in
11 the house. Isn't that what you said?

12 A I believe -- I know that that happened one time.

13 Q And that Mrs. Hoover wouldn't call them back?

14 A I know that we couldn't reach her for some time.

15 Q All right. Take a look at Plaintiff's Exhibit 15
16 that your lawyer put into evidence. Tell me what
17 you've got there.

18 A Well, we're -- we're already on 15.

19 Q Okay. Look at the third page of that exhibit your
20 friend Mr. Shealy put into evidence.

21 A Yes.

22 Q Do you see this e-mail from Monica to you on August
23 31st, two weeks after they told you about the
24 problem?

25 A Yes.

1 Q And it says, we have not been contacted by Mr.
2 O'Neill. Do you see that?

3 A Yes.

4 Q So two weeks after the problem came up, Monica sent
5 you an e-mail and said she hadn't been contacted by
6 Mr. O'Neill.

7 A Well, Mr. O'Neill had already been in a couple of
8 times in that first week after this because he was
9 required to reseal the attic fan. And he came in
10 once again to look at the condensation on the air
11 vent. So he had been in a couple of times. But when
12 we were trying to get in to cut out the mold, that
13 was when we had these difficulties.

14 Q You had told her by e-mail that he was trying to get
15 in touch with her, right?

16 A Yes.

17 Q And she said, I haven't heard from him. And then she
18 said, give him my cell phone number ---

19 A Okay.

20 Q --- if he needs to talk to me, right?

21 A It says that here, yes, sir.

22 Q So Monica was trying to cooperate with you two weeks
23 after this happened. She was saying, give him my
24 cell phone number, I haven't heard from him?

25 A If you don't mind, I'm just -- I would like to read

1 this e-mail to refresh so that I can answer your
2 question.

3 Q Sure, sure.

4 (Pause.)

5 A Okay, I can answer your questions now.

6 Q Monica was trying to cooperate with you and get these
7 people in there. She even gave -- said, give him my
8 cell phone, do it?

9 A On August 31s, yes, sir.

10 Q Okay. So for two weeks after the problem, at least,
11 Monica was trying to help cooperate to get this done?

12 A As I recall -- and it's very difficult. These
13 timelines get fuzzy so long ago. And I regret that I
14 didn't notate everything but I didn't plan on being
15 here.

16 The -- as I recall, around the time that I
17 learned of the Biotek report because I thought that
18 they were going to cut out the ceiling. I had -- I
19 told Mike to go back to the house and cut that area
20 out of the wall and get it out of the house for the
21 safety of the family.

22 It was at that time that I thought he had been
23 told he couldn't enter. That's the way I recall it.
24 But -- and then maybe this happened after. I'm not
25 exactly sure.

1 Q Now that you've seen the e-mails that you receive
2 with Monica trying to cooperate with you, do you wish
3 to revise what you told Mr. Shealy about her not
4 cooperating?

5 A At the time that we were trying to get in to cut the
6 mold out, Mr. O'Neill told me that he had been trying
7 on multiple occasions to reach Mrs. Hoover. And I
8 had at one point said, just go over. And I called
9 and left a message, he'll be there at 10 a.m.
10 tomorrow. And at that time, he was told that he
11 couldn't go in. If she's -- she says she hasn't been
12 contacted by Mr. O'Neill, I'm not going to say that
13 -- maybe he was dialing the wrong number, I don't
14 know. I'm not -- you can ask Mr. O'Neill that
15 tomorrow.

16 Q But my question is this ---

17 A It might be better.

18 Q You said when Mr. Shealy asked you that Monica
19 wouldn't cooperate with you and here's an e-mail two
20 weeks after the problem started where she says, he
21 hasn't called me, give him my cell phone number?

22 A I think that's being very cooperative.

23 Q Right. So you would change your testimony from what
24 you told Mr. Shealy, she was being cooperative?

25 A On this day, yes, sir.

1 Q Okay. On this day, she was being cooperative?

2 A Yes, sir.

3 Q All right. And you also said, she wouldn't let
4 anybody come into the house, right?

5 A I said on the day that Mr. O'Neill came by at 10:00,
6 he was told he couldn't enter the house. He wasn't
7 allowed to touch the mold.

8 Q In fact, she said anybody -- she would let people
9 come in as long as they called ahead of time, right?

10 A Is that what you're referring to here?

11 Q Is that what she said in the exhibit you put into
12 evidence?

13 A The day that I'm talking about where he was told that
14 he couldn't enter the house to touch the mold, I
15 don't know if that's before or after this e-mail.
16 There's no -- anything in writing with a date on it
17 so I apologize. I just know that that did happen.

18 Q I'm showing you an e-mail from Monica to you on
19 September 6th, 2011 (sic). This is where she's
20 trying to get an appointment for your people to come
21 into the house?

22 A What this has to do with mold remediation, this has
23 nothing to do with the Johnny Housewright issue.

24 Q Okay, all right.

25 MR. BRADLEY: We'd like to put this in to

1 evidence, Judge. It's a September 6th e-mail from Monica
2 Hoover to Mr. Schumacher.

3 MR. SHEALY: Your Honor, I don't have any
4 objection. I'm just checking to make sure it's not
5 already in evidence. I don't believe it is. I don't have
6 an objection.

7 THE COURT: That's fine.

8 A And I would say, as I recall, this was not a Johnny
9 Housewright issue on this date. This was mold
10 remediation.

11 MR. BRADLEY: Is this Exhibit 15?

12 THE COURT: What number is it?

13 COURT REPORTER: 15.

14 MR. BRADLEY: 15.

15 THE COURT: All right.

16 MR. BRADLEY: Can I give a copy to the jury,
17 Judge?

18 THE COURT: Sure.

19 MR. BRADLEY: Thank you.

20 (Whereupon, Defendant's Exhibit Number 15, E-mail
21 September 6, 2010 Hoover and Schumacher, was
22 admitted into evidence.)

23 Q All right. So we know on September 6th she was
24 willing to let anybody come in the house but she just
25 had to cancel an appointment because her child was

1 sick?

2 A Yes.

3 Q And she even told you, I will be happy to reschedule
4 this for any time, Tuesday or another day this week?

5 A Okay.

6 Q Right?

7 A That's what it says.

8 Q That sounds pretty cooperative to me as far as

9 letting your guys come in and take care of the

10 problem?

11 A Yes, it does.

12 Q So would you like to change that testimony when you
13 said she wouldn't let anybody come into the house
14 that you told Mr. Shealy before?

15 A The day that -- this is a different event. The day
16 that Johnny Housewright came by at 10 a.m., I had
17 called and let her know that he was coming but I
18 hadn't reached her. He came by and he was not
19 allowed to come in and touch anything in the house.
20 That's what I -- that even happened. I don't recall
21 what day so I can't change testimony on that because
22 I know it happened.

23 Q Well, we know by September 6th that Monica was
24 sending you e-mails apologizing because she had to
25 miss an appointment saying, come anytime, just call

1 me ahead of time, right?

2 A That was on that e-mail, yes, sir.

3 Q And that's pretty cooperative, isn't it?

4 A The e-mail -- yes, sir.

5 (Pause.)

6 Q I'm showing you the e-mail of Tuesday, September 14th
7 from you to Mr. Beckstrom, your real estate agent,
8 and to your lawyer, Kirby Shealy? Is that an e-mail
9 that you sent out, Mr. Schumacher?

10 A Yes.

11 MR. BRADLEY: We'd like to put that into evidence
12 as Defendant's Exhibit 16.

13 MR. SHEALY: No objection.

14 THE COURT: All right, without objection.

15 (Whereupon, Defendant's Exhibit Number 16, E-mail
16 September 14, 2010 Schumacher, Beckstrom and
17 Shealy, was admitted into evidence.)

18 Q And this e-mail says that Lance told you he's moving
19 out of the house on Sunday and this e-mail is on
20 Tuesday, right?

21 A Yes.

22 Q And in this e-mail you said that the mold issue was
23 scheduled to be fixed this past Monday, right?

24 A Yes.

25 Q And that would have been the day before, the 13th?

1 A I guess it would have been the 13th, yes.

2 Q Okay. That was almost a whole month after they told
3 you about the problem?

4 A But it was 10 days after I had the report.

5 Q But you would acknowledge that you didn't have
6 anything in place to fix this problem for a month
7 after they told you about it?

8 A I worked on this problem continuously for that entire
9 time.

10 Q And that's not my question. For a month after the
11 problem, you didn't fix the problem?

12 A It was not scheduled -- I could not get anyone in the
13 house to professionally mold remediate this until
14 apparently the 13th of September.

15 Q That would include Biotek that the Hoovers got
16 themselves?

17 A Yes.

18 Q All right. And this, like your other e-mails, is
19 copied to Mr. Shealy, right?

20 A Yes, sir.

21 Q And this was actually three days before Mr. Shealy
22 filed the lawsuit against the Hoovers on September
23 17th?

24 A Yes, sir.

25 Q And the Hoovers had paid you the rent for the whole

1 rest of the month, the whole month of September?

2 A Yes, sir.

3 Q So at the time you told Mr. Shealy to sue them, on
4 September 17th, they had paid you rent for another 14
5 days?

6 A They -- I didn't sue them until they moved out of the
7 house.

8 Q Didn't you file the lawsuit on September 17th?

9 A They moved out on the 15th.

10 Q But hadn't they paid you the rent for the whole
11 month?

12 A They had. But up until they actually moved out of
13 the house, I had the hope that they would stay there,
14 we could resolve this, we could work it out and make
15 this right. And when they actually did it, I
16 realized, okay, they are going to break this lease.
17 I'm doing everything I can to fix the problem. I
18 need to -- I need the rent money for the house. They
19 had agreed to a year lease. In real estate, houses
20 sell well and rent well in the summer, they do not do
21 so well in the winter. And I sat on that house when
22 I was expecting to have a tenant. Had we not had the
23 lease entered into in May, I would have had the
24 entire previous summer to sell the house. So
25 reneging on the lease, was extremely financially

1 damaging to me. I wasn't making any money on this.

2 This just covered the expenses.

3 Q Did you ever just call them up and say, hey, Lance, I
4 think you're a great guy, like you said earlier today
5 to the jury, and I know this is a misunderstanding.

6 Let's just see what we can do to resolve it.

7 A I don't remember my exact words. I did come by on or
8 about the 12th, physically came by the house, came up
9 to him, told him what's going on. And he was just
10 like, no, there's nothing we can do, we're out of
11 here and, you know, moved on from there. I was not
12 given any open doors anywhere to work with.

13 Q And so you sued them even though they paid rent for
14 the whole month?

15 A Well, I didn't sue them for September, sir ---

16 Q You filed the ---

17 A --- you know, I sued them for the broken lease.

18 Q --- lawsuit in the middle of September.

19 A Yes, sir. I sued them for what the lease -- they had
20 already moved out two days prior. They had made it
21 well -- me well aware that they had no intentions of
22 paying anymore rent although they had the year lease.

23 Q Okay. And they asked for their security deposit
24 back, right?

25 A I don't recall.

1 Q Didn't you see the letter from Todd Beckstrom where
2 he said, we want the security deposit back?

3 A You probably need to show it to me.

4 Q Let's see if we can remind you.

5 (Pause.)

6 Q Okay. I'm showing you an e-mail dated September 3rd
7 from Todd Beckstrom to you ---

8 A Yes, and it ---

9 Q --- and it says ---

10 A --- does ask for a full return of the security
11 deposit.

12 Q We would like a full return of the security deposit?

13 A I see that, yes, sir.

14 Q So now wouldn't you agree the Hoovers were asking for
15 the security deposit back?

16 A Yes, sir.

17 Q Did you give it to them?

18 A No, sir.

19 Q Did you ever send them a letter and say why you
20 didn't give it to them?

21 A I don't think so.

22 Q It was \$2400?

23 A Yes, sir, one month's rent.

24 Q You just kept it?

25 A Yes, sir, they broke the lease.

1 Q So you applied it to the October rent?

2 A Yes, I guess so.

3 Q So they had paid rent all the way through the 1st of
4 November but you sued them in the middle of
5 September?

6 A No, sir. They hadn't paid rent through the first of
7 -- the end of November -- I mean, the end of October.
8 They paid rent through the end of September. And
9 their security deposit was -- that's what security
10 deposits are for, you keep that when someone breaks a
11 lease, causes damage to your house, things like that.

12 Q Did they cause any damage to your house?

13 A No, mistakes happen. If they hadn't -- if they had
14 closed that attic fan door, we wouldn't have had the
15 condensation on the air duct and we wouldn't have had
16 this mold problem because it never existed before.

17 Q Are you a contractor?

18 A No, sir.

19 Q Are you a scientist of any sort?

20 A No, sir.

21 Q Where are you coming up with all these opinions about
22 what caused the mold problem?

23 A I haven't said they caused the mold problem.

24 Q You said ---

25 A I said leaving the attic fan door open which ---

1 Q Who did it then?

2 A Some things just -- at times, just things happen that
3 not necessarily anyone's -- no one's deliberate
4 fault. It's just things happen sometimes and this is
5 the case here.

6 Q My question to you was, did the Hoovers damage your
7 house in any way?

8 A I don't recall. I remember walking around taking
9 some pictures but, you know, we didn't worry about
10 things like that.

11 Q All right. So there was no damage where you said,
12 hey, you broke my window so I'm taking some of your
13 \$2400 to fix it? You never told them that, sent them
14 a letter or anything?

15 A The only expense I had, I guess, would have been the
16 mold remediation -- no, I did not send them a letter,
17 no, sir.

18 Q All right. And you didn't account for why you were
19 keeping their \$2400 or what you were applying it to?

20 A No, sir.

21 Q You just kept it?

22 A Yes, sir.

23 Q Even when they asked for it back?

24 A On September 3rd they did and they never requested it
25 again.

1 Q Well, how many times are they supposed to request it?

2 A I'm just mentioning, it wasn't brought up again when
3 they reaffirmed their -- the termination, you know,
4 that they were leaving.

5 Q Okey dokey. Take a look, if you would, at
6 Defendant's Exhibit 14. Let's see here, have you got
7 it up there?

8 A Defendant is blue. Yes.

9 Q All right. This is the e-mail to your realtor Terry
10 Bishop, right?

11 A Uh-huh.

12 Q Is that right?

13 A Yes.

14 Q And it's already in evidence as Defendant's Exhibit
15 14. You heard me ask Mr. Bishop what this business
16 was about the new renter and was he in there yet, do
17 you remember me asking Mr. Bishop that question?

18 A Yes, sir.

19 Q And he said he couldn't remember whether that meant
20 there was a renter or not, he didn't remember what it
21 was?

22 A Right.

23 Q And you wrote, no new renter coming, my wife and I
24 decided against it, right?

25 A Yes, sir.

1 Q You guys had somebody lined up to move into this
2 house in October?

3 A I don't recall. I wish -- when you brought this up,
4 I don't remember it. The -- my guess -- am I allowed
5 to guess on the stand?

6 Q It's okay with me if it's okay with your lawyer.

7 MR. SHEALY: (Affirmative response.)

8 A I guess is that Terry had found somebody, something
9 along those lines, that they wanted to rent the
10 house. It may have been that they were only offering
11 a lower rent -- I don't know why because I don't
12 stipulate here. I don't remember the situation at
13 all.

14 Q All right. But the one thing that you do remember,
15 from looking at this, in your own memory, is that you
16 had a tenant lined up to go in this house in October
17 without missing even one month's rent?

18 A Well, we would have missed -- I had to remediate the
19 problem. I wasn't allowed to enter the house to fix
20 the mold until October.

21 Q But you had a security deposit plus all the rent paid
22 for September. If you would have moved that tenant
23 in there in October, you wouldn't have lost a dime?

24 A Again, I don't remember the details of that
25 transaction. I wish I could answer that question. I

1 do not recall this event.

2 Q One thing's for sure is you wrote an e-mail that
3 says, no new renter coming, my wife and I decided
4 against it?

5 A I have a question. This e-mail is page 1 of 3.

6 Anyway I can see the next two pages?

7 THE COURT: Stop. Witnesses don't get to ask
8 questions.

9 THE WITNESS: I apologize.

10 THE COURT: Mr. Shealy, help me out.

11 MR. SHEALY: I agree, Your Honor.

12 THE COURT: Thank you.

13 THE WITNESS: I'm sorry.

14 Q I don't know, this is what your real estate agent had
15 and gave us.

16 A Okay.

17 Q And it just says, no new renter coming, my wife and I
18 decided against it. It appears to be written by you,
19 right?

20 A Absolutely, yes, sir.

21 Q And you recall that we asked for all your
22 correspondence about this case?

23 A Yes, sir.

24 Q When you sued Dr. Hoover.

25 A Yes, sir.

1 Q But you didn't sent this to us.

2 A I don't recall it so you're correct.

3 Q I see. It had to come ---

4 A Everything ---

5 Q --- from your real estate agent?

6 A I thought I sent every e-mail I had to Kirby, I
7 thought.

8 Q One thing's for sure, you didn't send us the e-mail
9 about the new renters that you turned down because
10 you and your wife decided against it.

11 A Sir, I promise and I'm here with sworn testimony, I
12 never withheld a single thing.

13 Q And you don't recall that your -- you admit that you
14 wrote this e-mail to your realtor that gave it to us?

15 A I don't recall it but that's my e-mail so I had to
16 have written it.

17 Q You don't think Terry Bishop made it up or anything?

18 A Not at all.

19 Q Okay. So now that you've admitted that you wrote the
20 e-mail saying that you and your wife decided against
21 letting the renter in the house, does that help you
22 remember that there was somebody there to rent the
23 house as soon as the Hoovers left?

24 A When you presented this into evidence when Terry
25 Bishop was on the stand, I looked at that and began

1 racking my brain to remember this event. I just --
2 I've had two or three hours, I still do not recall
3 this event. And I had hoped that the additional
4 pages of the e-mail might have had more information
5 in there.

6 Q Now, the e-mail came from your account, right?

7 A Yes, sir.

8 Q So if there were additional pages, you should have
9 them?

10 A I should but I ---

11 Q And we asked you for them?

12 A Yes, sir.

13 Q And you didn't give them to us?

14 MR. SHEALY: Your Honor, objection. May we
15 approach?

16 THE COURT: Sure.

17 (Whereupon, a bench conference was held off the
18 record, in the presence of the jury, but out of
19 the hearing of the jury.)

20 Q Did you ever apologize to the Hoovers?

21 A Yes, sir.

22 MR. SHEALY: Objection.

23 Q For all these problems they had to go through?

24 THE COURT: Sustained. Come on, Mr. Bradley.

25 MR. BRADLEY: Thank you.

1 THE COURT: All right. Anything on redirect?

2 REDIRECT EXAMINATION

3 BY MR. SHEALY:

4 Q The e-mail you were just shown, Mr. Schumacher, that
5 is Defendant's 14, does it have a Bates label on the
6 bottom?

7 A Yes.

8 Q All right. Are you familiar with the fact that your
9 client number at my law firm is 1-0-2-8-5?

10 A I was not.

11 Q Huh?

12 A No, sir.

13 Q Are you -- I'll just represent to you that that is
14 the client number?

15 MR. SHEALY: And Your Honor, I don't know how to
16 handle this. He's been represent ---

17 THE COURT: Stop.

18 MR. SHEALY: Yes, sir.

19 THE COURT: Go to the jury room, ladies and
20 gentlemen. Don't talk about this case. I will arrange to
21 have deputies walk you ladies to your car. It's going to
22 be about dark by the time you leave here.

23 Just don't talk about the case.

24 (The jury retires from the courtroom at
25 approximately 5:25 p.m.)

1 THE COURT: All right. The problem is, Mr.
2 Bradley, through your witness, it's legitimate cross-
3 examination, pulled out of him the fact that they might
4 not have sent that particular e-mail. You said to me at
5 the sidebar that you thought you had sent it to him in
6 discovery. That's the problem, is it not?

7 MR. SHEALY: It's not just that I thought, I know
8 that to be a fact.

9 THE COURT: Go ahead, Mr. Bradley.

10 MR. BRADLEY: I apologize if I messed this up.
11 Let me back up and tell you what I was ---

12 THE COURT: Okay, okay, relax. I've know both of
13 you guys for a long time and I know nobody's trying to do
14 anything unhanded, unfair. Let's start with that, go
15 ahead.

16 MR. BRADLEY: This -- Kirby Shealy sent me this
17 document.

18 THE COURT: Uh-huh.

19 MR. BRADLEY: So I am not trying to say Kirby did
20 anything, okay. This came from a subpoena to Terry
21 Bishop. When I asked Mr. Schumacher about it, he said he
22 didn't know anything about it or anything that goes with
23 it. And he didn't produce it in our regular discovery for
24 his correspondence. It came from a subpoena to the real
25 estate agent. That's why I asked, why did the real estate

1 agent have to produce it. That was the reason I asked the
2 question that way.

3 I am not accusing Kirby Shealy ---

4 THE COURT: I know you're not.

5 MR. BRADLEY: And I'm not saying -- I'm saying
6 that Mr. Schumacher should have given it to Kirby Shealy
7 not Terry Bishop. That was my point on cross-examination
8 and that's my point.

9 THE COURT: I'm trying to help both of y'all. Go
10 ahead, Mr. Shealy.

11 MR. SHEALY: Yes, Your Honor, thank you. I did
12 not for one moment think that he was accusing me of
13 anything.

14 THE COURT: I know.

15 MR. SHEALY: My point though is -- and I don't
16 know how to deal with it because we're talking about
17 things that took place in discovery that the jury doesn't
18 know anything about.

19 THE COURT: I can help y'all out a little bit.
20 We'll stipulate, we can work out a stipulation although it
21 didn't come from this source, it came from that, you got
22 it anyway.

23 MR. BRADLEY: That's fine.

24 THE COURT: We can figure something out. We all
25 went to school too long not to be able to solve this small

1 problem with this big case.

2 MR. SHEALY: I think your proposal is perfect.

3 THE COURT: I'll do a stipulation or something.

4 There was something a little bit -- not misleading but let
5 me clarify something for everybody. This is how discovery
6 -- I'll make some little statement, we'll take care of it.

7 We'll put our heads together and take care of it one way
8 or the other.

9 MR. BRADLEY: I wasn't trying to make -- I was
10 trying to make a point but the point wasn't that --

11 THE COURT: We'll you're an advocate. Y'all both
12 relax a little bit. This is a wakeup.

13 Now, how much more do you want to say today? You
14 want to go into this today? How much more do you want to
15 go?

16 MR. SHEALY: I mean, if we can make that point
17 today then I think Mr. Schumacher can ---

18 THE COURT: Step down?

19 MR. SHEALY: Step down?

20 THE COURT: All right. Let's take a little
21 break. Let's work on a little stipulation. Come back out
22 and say, ladies and gentlemen, this is part of the
23 discovery that really doesn't concern you. It's a legal
24 matter. But Mr. Shealy got it to Mr. Bradley who got it
25 through Mr. Shealy and was provided by Mr. Bishop,

1 something like that. Y'all think about it, something
2 along those lines. I'll bring the jury back in and
3 clarify that and we can go home. Or I can do it in the
4 morning, I don't care. You want to do it this afternoon,
5 Mr. Shealy?

6 MR. SHEALY: It would be ---

7 THE COURT: All right, you both work on -- y'all
8 jointly work on it. I'll come back, I'll look at it. If
9 I don't like it, I'll do what I'm going to do myself.
10 That's essentially what I mean.

11 MR. BRADLEY: All right.

12 (The Court was in recess.)

13 THE COURT: All right, bring them in.

14 (The jury returned to the courtroom at
15 approximately 5:37 p.m.)

16 BAILIFF: Jury's seated, Your Honor.

17 THE COURT: Thank you for your patience and
18 understanding. Mr. Shealy does have one question to get
19 something in through Mr. Schumacher then I have a
20 stipulation I need to take up after this.

21 Mr. Shealy.

22 REDIRECT EXAMINATION CONTINUES

23 BY MR. SHEALY:

24 Q I show you a document that's been marked as
25 Plaintiff's Exhibit 29 and ask if you can identify

1 that.

2 A Can I just read it, it's easier? Per our phone
3 conversation ---

4 Q Rather than reading it to the jury, if you'll look at
5 it silently and just if you'll tell the jury ---

6 A Absolutely.

7 Q --- what it refers to.

8 A She's writing to confirm that the party I'm bringing
9 to the house is not disturbing the mold in any way.

10 Q All right. And this is on September the 5th?

11 A Yes.

12 Q Okay. And do you know what party she's referring to?

13 A I don't recall. I'm assuming it's Mold Solutions.

14 Q Okay.

15 MR. SHEALY: Your Honor, I move to admit
16 Plaintiff's 29 into evidence.

17 THE COURT: Mr. Bradley, any objection.

18 MR. BRADLEY: No objection.

19 THE COURT: All right, without objection.

20 (Whereupon, Plaintiff's Exhibit Number 29, E-mail
21 September 4, 2010 Hoover and Schumacher, was
22 admitted into evidence.)

23 THE COURT: Anything further of this witness?

24 MR. SHEALY: No, Your Honor.

25 THE COURT: Anything else, Mr. Bradley?

1 MR. BRADLEY: No, sir.

2 THE COURT: All right. Think about it overnight.
3 You may step down, Mr. Schumacher.

4 (The witness leaves the witness stand.)

5 THE COURT: We can revisit it if we have to.

6 Now, members of the jury, I told y'all in the
7 jury room that there was a stipulation that me and the
8 lawyers were working on that would clarify some
9 misconception or some confusion. And this is what the two
10 lawyers, Mr. Shealy and Mr. Bradley, agreed upon. This is
11 the statement.

12 Mr. Bradley asked Mr. Schumacher about e-mails to
13 Terry Bishop. These e-mails were provided to Mr. Bradley
14 in discovery from Mr. Shealy's law firm. They came
15 pursuant to a subpoena issued to Mr. Bishop who provided
16 documents to Mr. Shealy that Mr. Bradley asked Mr.
17 Schumacher about.

18 Y'all understand that now? Good. Thank you all
19 so very much. Please don't talk about this case, once
20 again. Go back to the jury room before you leave. Let me
21 makes sure I round up the deputies they can walk y'all
22 across the street, okay.

23 (The jury retires from the courtroom at
24 approximately 5:40 p.m.)

25 (The Court was in recess.)

SCHUMACHER V. HOOVER

1 Thursday, January 5, 2012:

2 THE COURT: All right, Mr. Shealy, go ahead.
3 You rest?

4 MR. SHEALY: We do. I will announce that to the
5 jury when the jury is present.

6 THE COURT: Well, let's go ahead and do it now so
7 we can hear the motions.

8 MR. SHEALY: Plaintiff rests.

9 THE COURT: All right. I'll hear your motions.

10 MR. BRADLEY: All right. I'll keep this brief,
11 Judge.

12 We move for a directed verdict on two bases.
13 Number one, that the evidence is clear that Mr. Schumacher
14 was given notice of the problem, given the opportunity to
15 remediate it, did not remediate it, and therefore the
16 Hoovers were justified in leaving and it was a legal
17 termination of the lease.

18 THE COURT: Okay.

19 MR. BRADLEY: The second basis is they have not
20 established any damages, what they prayed for in this
21 case, they have not presented that to the jury. Therefore,
22 we should be entitled to a directed verdict.

23 THE COURT: All right. Go ahead, Mr. Shealy. I
24 was going to rule but you go ahead, make your record.

25 MR. SHEALY: Your Honor, we believe that the

1 section 27-40-610 is the applicable statute. We believe
2 that ---

3 THE COURT: Let me have both of you. I think it's
4 a question of fact. Considering the evidence in the light
5 most favorable to the non-moving party, it's respectfully
6 denied, it's a jury issue, out of an abundance of caution
7 but I personally think it has nothing to do with it but
8 it's a jury decision. And you understand that?

9 MR. BRADLEY: I understand it a hundred per cent.

10 THE COURT: Let's see -- I mean, you can take --
11 we might as well get those out of the way right now. The
12 jury comes back in, you rest and you're ready to go with
13 your two.

14 MR. BRADLEY: We've got two witnesses. I'll call
15 Lee Capell first. He told me this morning he has some
16 kind of stomach virus and he feels bad. So I'm going to
17 get him up as quick as I can and get him home in case he
18 has a problem.

19 THE COURT: Well, nobody's pregnant in this case?

20 MR. BRADLEY: Not as far as I know.

21 THE COURT: We've had everything else. Okay
22 we've got this gentleman and this gentleman, is that it?

23 MR. BRADLEY: Yes, sir.

24 THE COURT: Okay.

25 MR. BRADLEY: Those are my witnesses.

1 THE COURT: We'll have a little charge conference
2 and it's a lot sooner than I thought. I'm trying to think
3 of anything else that crossed my mind overnight. I don't
4 think so. We don't have any Clemson fans here, do we?

5 (Affirmative response.)

6 THE COURT: That's good to be part of the record,
7 that's all I'm going to say.

8 Bring the jury in.

9 (The jury returned to the courtroom at
10 approximately 9:45 a.m.)

11 BAILIFF: Jury's seated, Your Honor.

12 THE COURT: Thank you, sir. Welcome back, Mr.
13 Foreman and members of the jury. I guess first and
14 foremost I should extend my deepest sympathies and
15 condolences to all -- to you three Clemson fans. I can
16 tell you it's always nice to be part of a record. Anyway,
17 that's the way it goes sometime, that's life.

18 All right. Mr. Shealy wants to formally -- go
19 ahead, what you got next, Mr. Shealy?

20 MR. SHEALY: Your Honor, at this time the
21 Plaintiff rests.

22 THE COURT: All right. That means we probably
23 have heard all the evidence from the Plaintiff we shall
24 receive in this case. There is a slight possibility he'd
25 want to reply or something, we'll see.

1 So that leaves it in your hand, Mr. Bradley, you
2 may call your next -- you may call your first witness.

3 MR. BRADLEY: Thank you, Judge. We call Lee
4 Capell.

5 (WILLIAM LEE CAPELL, having first been duly
6 sworn, testified as follows:)

7 THE CLERK: Please have a seat up here, sir...
8 State your name for the record and please spell your first
9 and last.

10 THE WITNESS: Full name is William -- my full
11 name is William Lee Capell, W-i-l-l-i-a-m.

12 THE COURT: Yes, sir.

13 MR. BRADLEY: Thank you, judge.

14 DIRECT EXAMINATION

15 BY MR. BRADLEY:

16 Q Mr. Capell, where do you live?

17 A Prosperity, South Carolina.

18 Q How long have you lived around here?

19 A I've been in the Columbia area all my life except
20 nine years I spent in the Navy.

21 Q What did you do in the Navy?

22 A I was a pilot.

23 Q What kind of aircraft?

24 A F-14's.

25 Q How long -- was that the nine years you were there?

1 A Yes, sir.

2 Q Okay. And where did you go to school before then?

3 A I graduated from Irmo High School 1979, University of
4 South Carolina 1984.

5 Q What did you study at USC.

6 A I have a bachelor of science in chemical engineering.

7 Q Do you have any children?

8 A I have two boys.

9 Q All right. What do you do now?

10 A I am a partner in an environmental and engineering
11 consulting company called Applied Building Sciences.

12 Q What does Applied Building Sciences do?

13 A We investigate problems in buildings, anywhere from
14 structural issues to design issues to environmental
15 issues.

16 Q How long have you been involved in the field?

17 A Since 1995.

18 Q Do you have any certifications to investigate mold,
19 anything of that nature?

20 A I have a certification as a certified indoor
21 environmental consultant from the Indoor Air Quality
22 Association.

23 MR. BRADLEY: We proffer Mr. Capell as an expert
24 in the area of mold analysis and remediation, Your
25 Honor.

1 THE COURT: Any voir dire, Mr. Shealy?

2 MR. SHEALY: No, Your Honor, but may we approach?

3 THE COURT: Yes, sir.

4 (Whereupon, a bench conference was held off the
5 record, in the presence of the jury, but out of
6 the hearing of the jury.)

7 Q Okay. Mr. Capell, I would like to talk to you about
8 the house on Kilbourne Road where the Hoovers were
9 living. How did you meet the Hoovers? How did you
10 find out about this?

11 A It's been a couple of years so I'm not exactly sure.
12 I believe Mr. Hoover or Mrs. Hoover called in regards
13 to a -- to a problem they thought they were having at
14 the home with regards to mold.

15 Q Do you know how they got your name, why they got to
16 you?

17 A I think they got my name from Ancel Hamilton.

18 Q Okay. But you have never met them before, didn't
19 know them?

20 A No, sir.

21 Q All right. What did they ask you to do?

22 A They asked me to come look at what they thought was
23 mold in the house and collect some air samples in the
24 home.

25 Q So what did you do?

1 A I went out and looked at what they were talking about
2 as far as the mold. And after we talked about it,
3 I'm not sure when the decision was made, but they did
4 want us to come back and collect some air samples and
5 surface samples inside the home. So at a later date,
6 I sent someone out to collect the samples.

7 Q What did the mold look like when you got there?

8 A Uh...

9 Q I know you see a lot of mold in your job. Can you
10 explain it to the jury at all?

11 A It just looked like -- it's hard to describe, brown,
12 green, what you would consider mold growth, kind of
13 like what you would see on a piece of bread, maybe,
14 but on the plaster or sheetrock in the home.

15 Q Did it raise any concerns to you when you saw it?

16 A Yes, it did.

17 Q What concerns did it raise for you as a professional?

18 A I mean, you're always going to have some mold, you
19 know, in homes maybe in small quantities or in the
20 air. But mold growing on surfaces in the home like
21 what I saw is not what I would consider typical or
22 acceptable.

23 Q All right. After you saw the mold on the walls that
24 was unacceptable, what was the next steps that you
25 took?

1 A Could you repeat the question, please?

2 Q Sure. After you saw the mold that was unacceptable,
3 what did you do next ---

4 A Okay. Well, we collected the samples and relayed the
5 information to the Hoovers that they had mold growing
6 in certain areas in the home and they had air samples
7 of concentrations of mold in the air inside the home
8 that I would consider not acceptable.

9 Q When you took those samples did you prepare a report
10 of what you found?

11 A I did.

12 Q Do you have a copy of the report?

13 A Yes, sir.

14 MR. BRADLEY: I think we've already put it into
15 evidence. What number is it?

16 MR. SHEALY: It's up there.

17 THE COURT: Can I see y'all one minute.

18 (Whereupon, a bench conference was held off the
19 record, in the presence of the jury, but out of
20 the hearing of the jury.)

21 Q All right. I believe your report has been marked
22 Defendant's Exhibit 7. Is that a copy of your
23 report?

24 A Yes, sir.

25 MR. BRADLEY: Judge, may I give copies of the

1 report to the jury?

2 THE COURT: Sure, it's in evidence. You may
3 publish it.

4 MR. BRADLEY: These copies are not the best. I'm
5 sorry about that, guys.

6 Q All right. Can you tell us in general what the
7 report tells us?

8 A There was mold growing inside the house on the walls
9 and ceilings in the areas where we sampled. And there
10 were concentrations of mold -- airborne mold in the
11 home that were not typical for your normal home.

12 Q What mold was it that you found elevated
13 concentrations of?

14 A A group of molds called -- classified as aspergillus
15 and penicillium.

16 Q When you test mold, what do you do to see whether
17 it's -- compare it with other amounts, how much is
18 too much, how much is enough? What -- do you do some
19 kind of comparison?

20 A We typically compare it to outside. If it's in a
21 building, we would also maybe do a non-complaint
22 area. But since this is a home, we couldn't really
23 find a non-complaint of the home so in this case we
24 just had outside to compare it to.

25 Q What was your finding regarding aspergillus and the

1 concentrations in that house?

2 A That it was significantly higher than outside.

3 Q So what needed to be done as a result of what was in
4 this house?

5 A The mold needed to be cleaned up from the surfaces.
6 Whatever was causing the mold needed to be fixed,
7 corrected. And there needed to be some kind of
8 cleaning inside the home because the mold is like
9 dust and it will settle on surfaces. So there needed
10 to be some kind of cleaning of surfaces and of the
11 air the home.

12 Q And when you did that, could you just go in there
13 with a bleach bottle or a hacksaw and cut it out or
14 squirt on it? What would be the process? Will you
15 walk us through and tell us what you would do if you
16 were hired to fix this problem?

17 A We would probably set up -- where the area where the
18 mold was on the wall, we would isolate it from the
19 rest of the house using some plastic so that --
20 because when you remove the mold from sheetrock or
21 when you -- or if you abrasively clean it from wood
22 or plastic, it creates a lot of dust with mold in the
23 air so you don't want it going through the rest of
24 the home.

25 So you would isolate it with plastic to kind of

1 keep that dust with a lot of mold in it confined to a
2 certain area. And then you would put a piece of
3 equipment called an air scrubber which cleans the air
4 as you're doing the work.

5 Then if mold is on sheetrock or materials like
6 that, you just would cut the sheetrock out and throw
7 it away. If it's on wood or plaster, it can be
8 cleaned.

9 But under no circumstances would I recommend
10 putting a bleach on it and just wiping it down.

11 Q Why not?

12 A It's just not the accepted practice.

13 Q Okay. What happens when you do that? Is it released
14 into the air or...

15 A No. Bleach at times can kill the pigment in the mold
16 and it may not necessarily kill the mold and the mold
17 will still be there. So if we have mold growing on a
18 building material inside a home, the key is to get
19 that mold out of the house. If you have an affected
20 building product, you either -- you've got to cut it
21 out and remove it or clean it and you don't need to
22 spray a chemical on it prior to that before you
23 remove it from the house.

24 Q So after you sealed the area and put in this air
25 scrubber, cut out or pulled out whatever you can,

1 what's the next step that you take, Mr. Capell?

2 A Then the next step is to -- you can take down the
3 barriers that you had up where you were doing the
4 work and the next step would be to actually clean the
5 house, do kind of a dusting of sorts just to kind of
6 clean the surfaces. And there's a procedure that you
7 use that gets the mold airborne and you have a piece
8 of equipment that sucks the air into it and filters
9 the air and cleans it.

10 Q Is that the air scrubber you were talking about or is
11 that another ---

12 A That's an air scrubber, yes.

13 Q Do you have to do anything with the ductwork of the
14 house or...

15 A You don't have to but based on these concentrations,
16 I would recommend that the ductwork be cleaned.

17 Q How would you do that?

18 A There are duct cleaning companies that specialize in
19 it. According to what kind of ductwork you have,
20 there's different procedures for it.

21 Q And based on the concentrations you saw here, that
22 needed to be done too?

23 A I would have recommended it, yes.

24 Q Could the Hoovers live in this house while this was
25 going on?

1 A They can. I wouldn't recommend it.

2 Q And this mold was at the top of the staircase, right?

3 A There was some at the top of the staircase. There was
4 some -- some water damage along the staircase and
5 there was some down going towards the basement also.

6 Q If you sealed off that area to clean it, would they
7 be able to come from their bedrooms downstairs or
8 from the downstairs upstairs?

9 A They could but again, I wouldn't recommend it because
10 we had already established there were elevated
11 concentrations throughout the entire house. I would
12 have, you know, just recommended them staying out
13 until we get it fixed.

14 Q Now, when you're telling us how you would do this and
15 what you're doing, are you just making this up or are
16 you following a protocol that's kind of accepted in
17 your industry?

18 A I'm following a protocol established by the ---

19 THE COURT: Stop, stop. Who's phone is that?

20 This is the second day in a row this has been going on.

21 You've got to shut it off completely.

22 (Phone continues to vibrate in courtroom.)

23 THE COURT: Who's phone is that? Do we know?

24 THE WITNESS: That would be my phone. I turned it
25 off and sat it back there. I'm sorry.

1 THE COURT: Thank you.

2 MR. BRADLEY: Well, I'm almost finished.

3 THE COURT: All right. Continue, Mr. Bradley.

4 Q Okay. Mr. Capell, would you let your family live in
5 a house with this problem? What would you do?

6 A I would ---

7 MR. SHEALY: Objection, relevance.

8 THE COURT: Overruled.

9 Q What would you do for your family if you had this
10 problem in your house?

11 A I would relocate them until we got it fixed.

12 Q All right.

13 MR. BRADLEY: I don't have any more questions,
14 thank you.

15 THE COURT: All right, Mr. Shealy, go ahead.

16 CROSS-EXAMINATION

17 BY MR. SHEALY:

18 Q Mr. Capell, is your company certified by the
19 Environmental Protection Agency?

20 A No, sir, no one is.

21 Q Are you aware of the EPA issuing statements about how
22 to treat mold and deal with mold?

23 A Yes, sir.

24 Q Okay. Are you aware that it has indicated that
25 applying a bleach solution to mold on hard surfaces

1 is an effective way to kill mold?

2 A No, sir.

3 Q Okay. And -- but is it your testimony that that
4 would make the problem worse or is it just that
5 that's not everything that needs to be done?

6 A Well, I would say that EPA, CDC and several other
7 organizations do not recommend the use of biocides
8 and fungicides in the treatment of mold. So that
9 being said, I'm not going to say it's going to make
10 it better or worse.

11 Q Okay.

12 A And I realize that the EPA has said in certain
13 circumstances you can use bleach. But if you go on
14 to read, they don't -- as a blanket statement, they
15 don't recommend the use of it in mold remediation as
16 the accepted normal practice.

17 Q And -- now, do they also talk about removing mold by
18 controlling moisture?

19 A Everyone does, yes, sir.

20 Q Okay. Now, am I right that mold -- when mold begins
21 to grown, it -- the longer it's allowed to grow
22 untreated, the larger the problem is?

23 A Basically, yes, sir.

24 Q Okay. And am I also correct that you performed your
25 test at the residence on Kilbourne Road on September

1 27th, 2010?

2 A The samples were collected on September 27th, 2010.

3 Q All right. And are you aware that the Hoovers had
4 moved out by the middle of September, some two weeks
5 prior?

6 A There wasn't a lot of furniture there and I was not
7 aware of any circumstances of moving in, moving out
8 and what was going on.

9 MR. SHEALY: Thank you, sir, no further
10 questions.

11 THE COURT: Anything on redirect, Mr. Bradley?

12 MR. BRADLEY: No, sir. I would just ask that Mr.
13 Capell be excused.

14 (The witness leaves the witness stand.)

15 THE COURT: Sure. Don't forget to take your
16 phone.

17 THE WITNESS: I'm sorry.

18 THE COURT: That's all right.

19 Call your next witness, Mr. Bradley.

20 MR. BRADLEY: Ancel Hamilton.

21 (ANCEL A. HAMILTON, having first been duly sworn,
22 testified as follows:)

23 THE CLERK: Please have a seat there, sir. Please
24 state your full whole name for the record.

25 THE WITNESS: Ancel Adams Hamilton. First name is

1 spelled A-n-c-e-l.

2 DIRECT EXAMINATION

3 BY MR. BRADLEY:

4 Q Okay, Mr. Hamilton, what do you do for a living?

5 A I am the owner of a company named Biotek

6 Environmental.

7 Q How long have you been involved with that?

8 A We've been in the business since 2007.

9 Q What sort of training do you have to work at Biotek

10 and own Biotek?

11 A It's several different areas of training. We're

12 trained by our provider of chemistry, Advanced

13 Remediation Solutions in the proper use and so forth

14 of the chemistry that we use for the remediation of

15 mold. Also trained through the Academy of Building

16 Sciences in microbiology and assessments of microbial

17 situations and through the Indoor Air Quality

18 Association in the Certified Mold Remediator Program.

19 And certification through the American Council of

20 Accredited Certification.

21 Q What does by Biotek do?

22 A What did Biotek do in this situation?

23 Q What does it do? What does the company do?

24 A We're primarily a remediation company. We do limited

25 assessments. As in this case, we went to the Hoover

1 home with a specific limited focus being the top of
2 the stairwell.. And we assessed that small area. So
3 we do limited assessments such as that and then we do
4 remediation of anything from crawlspaces to 50-60,000
5 square foot buildings.

6 Q Before you were involved with this business, what did
7 you do for a living, Mr. Hamilton?

8 A I spent most of my career in the corporate world. I
9 was in the Marine Corps for 10 years and then spent
10 time as a general information -- general manager
11 information systems at SCANA Corporation. I was a
12 sales person at IBM prior to that. I also served as
13 operations officer for several startup companies.

14 Q How did you get involved with the Hoovers, under what
15 circumstances? Did you ever know them before, had
16 you met them?

17 A I did not know the Hoovers. I received a call from
18 Mrs. Hoover and she said she had an area in her home
19 where it appeared to mold growing on the surface, on
20 the ceiling in the upstairs area. They asked me to
21 come look at that specific area of the home.

22 Q Do you know how she got your name?

23 A I suspect it was through the internet.

24 Q So what did you do when she called?

25 A Went to her home, looked at the area in question

1 which was at the top of the stairs, on the ceiling,
2 on the walls. There was what appeared to be mold
3 growth on the surfaces. I used something called a
4 thermal imaging camera which is a piece of equipment
5 that allows you to determine very slight temperature
6 differentials behind surfaces. So if there maybe
7 moisture or a leak or something behind a surface
8 that's not evidence, then this will allow you to
9 identify that. So I used that piece of technology to
10 help us to determine if there was some hidden source
11 of moisture that was causing the mold.

12 It appeared that there was in this case a heating
13 and air conditioning duct going up through the wall
14 that was significantly cooler which may very well
15 have caused condensation given the temperature that
16 we were having.

17 Also used moisture meters to help determine what
18 the relative humidity and so forth were in the home.
19 And then I conducted an air sample in that area and
20 one outside just to get a feel for how much of a
21 contamination had spread.

22 Q Can you describe to the jury what you saw in that
23 stairway? Was it, you know, the size of a quarter?
24 Was it the sort of thing you would wipe up off the
25 bathroom floor? Was it the sort of thing you see on

1 a piece of bread that's been in the cupboard too
2 long?

3 A No -- yes, sir, I will be happy to do that.

4 The area that we saw, that I saw, was on the
5 ceiling primarily and -- if I'm remembering
6 correctly, this has been September of 2010. If I'm
7 remembering correctly, there was some coming down the
8 wall area as well. It was greater than -- I think
9 that the EPA and another group called the ICRC which
10 is a standards organization, say that a homeowner can
11 clean up a small area less than 10 square feet. This
12 was significantly greater than that. It was black,
13 brown, green in color.

14 So that's what I saw.

15 Q Would you have recommended just spraying bleach on
16 it?

17 A No. For the same reasons Mr. Capell gave earlier,
18 bleach will change the pigmentation. All of the
19 studies show that bleach does not kill mold. It
20 will, again, leave the mold spores there. The mold
21 spores can still be allergenic. They still can
22 possess mycotoxins and so forth.

23 So bleach is not an acceptable solution or an
24 acceptable alternative.

25 Q Is there any way the Hoovers could have created this

1 situation? Is there anything they could have done to
2 try and make it like this?

3 A I don't know of anything they could have done to
4 create it. I think that it candidly was a
5 combination of a lot of things. One was the
6 excessively hot summer we had had because of high dew
7 points which they create more area for mold growth.
8 The other had to do with the air conditioning duct,
9 the appearance that it might be leaking and it also
10 appeared that there may be some warm moist air being
11 -- infiltrating into the home from around the attic
12 door that was right there. All of that created
13 condensation and giving mold an opportunity to grow.

14 Q So I think you said you took some samples of the
15 mold. Did you actually have the mold, these samples,
16 studied?

17 A I took air samples. I didn't take any samples on the
18 surface itself. But the air samples that we took
19 came back and showed that there was significantly
20 higher concentration of penicillium aspergillus in
21 the air in that specific area than there was in the
22 outside.

23 Q All right. How elevated was the aspergillus?

24 A If I'm remembering correctly, the interior -- the
25 outside count was somewhere around 230 to 250 total

1 count per cubic meter and the concentration was about
2 10 percent of the sample. I may not be quite right.
3 The interior sample was 820 or 840, I don't remember
4 exactly. So you had about a four times increase
5 above the outside levels.

6 Q All right. So do you have your report there?

7 A I do not.

8 Q Okay. Let's give it to you so we're not trying to
9 guess.

10 (Pause.)

11 Q Mr. Hamilton, I'm showing you what's been marked as
12 Defendant's Exhibit 3 which I think is your report,
13 the report that you're talking about, is that right?

14 A Yes.

15 Q Okay.

16 MR. BRADLEY: I'd like to give a copy to the
17 jury, if I could, Your Honor.

18 THE COURT: All right. It's already in, right,
19 Mr. Shealy?

20 MR. SHEALY: Yes, sir, Your Honor.

21 THE COURT: Go ahead.

22 Q All right. So let's get back to the aspergillus that
23 you found in the air. What did you say the
24 concentration was, three or four times higher in the
25 house than outside?

1 A The laboratory report on this page, the one where the
2 colors and so forth, shows the outside concentration
3 of aspergillus was 267 spores per cubic meter and
4 that the percentage of the total was about 3 percent
5 of the total sample. Inside it was 840 so that's a
6 little over three times as much and the concentration
7 was 75 percent of the interior sample. Both of those
8 things are indications of air quality concern.

9 Q So what does it tell you when you see readings like
10 that inside someone's house?

11 A It tells me that there's a source somewhere in the
12 home that needs to be -- a source of mold somewhere
13 in the hold that needs to be removed. And that,
14 again, there is relative to outside air -- air
15 quality is poor relative to outside.

16 Q Can aspergillus make people sick?

17 A Well, I'm not a physician. There is a lot of
18 information out there that would tell you that it
19 can. And if you go to the page -- two pages beyond
20 that, this comes from an accredited laboratory and it
21 talks about aspergillus and penicillium and it talks
22 about it containing common allergens, causing
23 hypersensitivity pneumonitis, asthma. It says there
24 can opportunistic pathogens but that's -- again, I'm
25 not an expert in that field. It just comes from

1 laboratories and studies. In hospitals it causes
2 invasive pulmonary aspergillosis and a number of
3 other things. But in a home setting, you'd have to
4 go to this to get your -- or to a physician.

5 Q Okay. Did you see this as a problem that needed to
6 be remediated by a professional?

7 A Yes.

8 Q Would it be okay for a handyman just to cut it out or
9 spray bleach on it?

10 A No. What is required, as Mr. Capell mentioned, is
11 that whenever you're dealing with mold you have to
12 establish containment. You would have to totally
13 isolate the area where the mold is. Otherwise, as
14 you disturb it you cross-contaminate the rest of the
15 structure and you create a much bigger problem than
16 you had before.

17 So it has to be contained and using bleach is not
18 an acceptable alternative, in any standards
19 organization.

20 Q What did you recommend needed to be done to fix the
21 problem?

22 A Well, two things. For the specific area there I
23 recommended that they needed to remove the drywall
24 that was damaged, establish containment, do it in the
25 approved manner. Remove the drywall that was

1 damaged, investigate to find out what the root cause
2 of the moisture was. And I was making the assumption
3 that it had to do with the two things we mentioned
4 earlier. And I also recommended that they contact
5 Lee Capell because I felt like the entire home needed
6 a more thorough assessment than I was comfortable
7 making.

8 Q Okay. And to get the mold out, what would need to be
9 done?

10 A Well, as Mr. Capell mentioned, we would remove the
11 drywall -- first of all, establishment containment.
12 He said, put up plastic. What that really means is
13 establishing a plastic barrier, floor to ceiling,
14 completely isolating that area. Within that area we
15 would set up something called Hepa Air Scrubbers,
16 also called a negative air machine. Those would be
17 exhausted to the outside of the home so that you're
18 pulling air in that is contaminated air through that
19 device, exhaust it outside the home and it creates
20 something of a vacuum in there so that as you're
21 distributing the mold, it doesn't get moved out into
22 the rest of the home.

23 So we'd start with that. We would then have
24 people go in who are properly respirated, wearing
25 Tyvek suits and so forth, remove the drywall. The

1 drywall would be bagged. The outside of that bag
2 wiped -- bagged -- the outside of the bag wiped with
3 quaternary disinfectant, sealed, then we would double
4 bag it and do the same thing again and it would be
5 removed from the home.

6 Any mold that was on wooden surfaces would be
7 both physical abraded to remove it from those
8 surfaces as well as treated with an oxidative surface
9 cleaner to kill whatever might be embedded in the
10 spores of the wood.

11 Once all of that's done according to the
12 standards that are -- we go by, we go -- any mold
13 that you see, you remove two feet additional of
14 drywall beyond that to make sure you've gotten
15 everything.

16 Once that's done, we would do what's called an
17 air scrub of the space. We would use candidly leaf
18 blowers to really stir the air up and have it flushed
19 through these Hepa Air Scrubbers so you make sure
20 you've gotten everything. So it flows through,
21 scrubs it, gets it totally clean and then after that
22 we would have a third party like Lee Capell or
23 another industrial hygienist, a certified indoor
24 environmentalist come in and verify that our work was
25 done correctly.

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1 Q Okay. Did you send this report to the Hoovers, did
2 you give it to them?

3 A I did.

4 Q Did you discuss the things you told the jury about
5 the mold that you found, the concentrations and what
6 it can do with the Hoovers?

7 A I did.

8 Q Did Mr. Schumacher ever call you and talk about this?

9 A I have a vague recollection of a conversation with
10 Mr. Schumacher but it was not -- I don't know for
11 sure that I spoke with him. I know there was never
12 any discussion about us doing the work. I did
13 receive a call from someone that he had recommended
14 to go in there, Andy someone who I think he suggested
15 go in and we had some conversation about it but we
16 never talked about doing any remediation in the home,
17 that I recall.

18 Q So he never called you to say, go ahead and get it
19 fixed?

20 A No.

21 Q Would you have let your family stay in a house that
22 had this problem?

23 A Not without it being rectified or being remediated,
24 no.

25 MR. BRADLEY: Thank you, no more questions.

1 THE COURT: Mr. Shealy.

2 CROSS-EXAMINATION

3 BY MR. SHEALY:

4 Q Mr. Hamilton, just a couple of questions.

5 A Uh-huh.

6 Q Biotek, did you form that business?

7 A I did.

8 Q All right. Is that -- is it -- is it a franchise, is
9 it a -- is it a member of a larger organization?

10 A It is not.

11 Q Okay. Just a local business that you formed?

12 A It is a business that I formed, yes.

13 Q All right. And you formed that in 2007?

14 A That's correct.

15 Q Okay. Looking at Defendant's 3, the report that
16 you've been referring to.

17 A Uh-huh.

18 Q If you'll turn to page four, I just want to make sure
19 I'm reading the conclusions right.

20 A My report, page four?

21 Q Yes, sir.

22 A Okay.

23 Q The first conclusion, the first paragraph in the
24 section entitled Conclusions, you indicate that the
25 cause of this was in part because of the close

1 proximity to the attic access door and you said,
2 there's warm moist air coming in from that door, is
3 that correct?

4 A That is in part correct.

5 Q It is in part not correct what I said?

6 A Well, you gave part of the -- you gave part of the
7 paragraph. If you read the entire paragraph, it
8 gives another reason as well.

9 Q Right, I wasn't meaning to say that the attic was the
10 only reason but that's part of it. And you said a
11 combination of reasons led to the mold growth,
12 correct?

13 A That's correct, yes.

14 Q Okay. All right. And you recommended -- recommended
15 at the bottom of that page removing the plaster and
16 drywall as you've described, correct?

17 A Yes. And if you'll notice there it says, to achieve
18 the IIC -- IICRC S520 standard. So that would be the
19 reason for that recommendation.

20 Q Yes, sir. Page 5 of your report, there's some
21 language in all caps that says, THE INVESTIGATION,
22 TESTING AND REPORT DO NOT CONSTITUTE A WARRANTY,
23 GUARANTEE OR INSURANCE POLICY OF ANY KIND. THERE ARE
24 NO WARRANTIES, GUARANTEES OR INSURANCE AVAILABLE OR
25 PROVIDED BY THE INSPECTOR. Did I read that

1 correctly?

2 A Yes.

3 Q Okay. And then you've also given a quote to do this
4 work, correct ---

5 A Uh-huh.

6 Q --- at the end of your report?

7 A That's correct.

8 Q Okay. And most of what you're describing there is
9 removing -- removing the mold itself, correct?

10 A Uh-huh.

11 Q And then scrubbing the air?

12 A Uh-huh.

13 Q Is that correct?

14 A Yes, establishing the containment, the entire process
15 that I described earlier.

16 Q All right. Are there -- is your company the only
17 company in the midlands that performs this kind of
18 work?

19 A No.

20 Q Okay. This is a competitive industry you're in,
21 correct?

22 A It is.

23 Q Okay. Now, are you familiar with EPA guidance as to
24 how to prevent and treat mold?

25 A Yes.

1 Q I assume that you would have to keep up with that to
2 some extent to make sure that you are keeping up with
3 guidelines and doing what the EPA says, correct?

4 A Yes but understand that the EPA is only one of many
5 guidelines. And so the actual standards that we go
6 by are a bit more stringent and called, again, the
7 IICRC S520, than anything the EPA puts out.

8 Q Okay but you're not saying that the Environmental
9 Protection Agency of the United States Government is
10 not an authoritative source on how to deal with mold

11 --

12 A No.

13 Q --- are you? All right. I'm going to show you a
14 document. ---

15 THE COURT: Stop, y'all come up here.

16 (Whereupon, a bench conference was held off the
17 record, in the presence of the jury, but out of
18 the hearing of the jury.)

19 THE COURT: Go to the room, don't talk about this
20 case. I'll bring you back out shortly.

21 (The jury retires from the courtroom at
22 approximately 10:22 a.m.)

23 THE COURT: And I did that as an abundance of
24 caution. So fill us in, what is this all about?

25 MR. SHEALY: Your Honor, the witness has

1 indicated that he's familiar with ---

2 THE COURT: I know that but what do you have --
3 what do you intend to put in front of the jury? You've
4 got to show it to him. I need to know what it is before
5 we do something that causes a mistrial.

6 MR. SHEALY: Yes, Your Honor. I have shown -- I
7 handed a copy of it to Mr. Bradley ---

8 THE COURT: Just a moment ago?

9 MR. SHEALY: Yes, Your Honor.

10 THE COURT: All right.

11 MR. SHEALY: This is guidance by the EPA about
12 how to deal with mold. I was actually not seeking to
13 introduce it into evidence but to ask the witness if he
14 was familiar ---

15 THE COURT: But this is the problem you create,
16 Mr. Shealy.

17 MR. SHEALY: Yes, sir.

18 THE COURT: You've got a document. He hasn't
19 seen it. I don't know what it is, only you. The witness
20 hasn't seen it, in front of the jury, okay. I'm not
21 yelling at you but you're creating a situation that
22 sometimes leads to mistrials, so.

23 MR. SHEALY: Your Honor, I'll be happy to step
24 away ---

25 THE COURT: I don't really care but we've gone

1 this far and you're introducing something that nobody's
2 seen. I don't know if it's authentic.

3 Mr. Bradley, I'm not trying to try your case for
4 you but I'm just trying to avoid a situation that none of
5 us want to be in.

6 MR. BRADLEY: Yes, sir.

7 THE COURT: So you got to share these things, Mr.
8 Shealy, come on.

9 MR. BRADLEY: I don't --

10 THE COURT: I don't care one way or the other.

11 MR. BRADLEY: I don't know what basis he has to
12 bring this -- I don't know any basis to put into evidence
13 and I don't know any basis ---

14 THE COURT: He doesn't intend to put it into
15 evidence. Forget putting it in evidence, he's showing --
16 waving it in front of the jury is my concern.

17 MR. SHEALY: Your Honor, I -- I'll step away from
18 this line of questioning if this creates a problem.

19 THE COURT: Well, I don't know if it does or not
20 but before we get to that point, that's why I wanted to
21 stop everybody, you know. So, you know, like I said, I'm
22 not trying to try your case for you. I see a potential
23 problem with you doing it this way and I wanted to stop it
24 before we got too far where we couldn't come back.

25 What's your position on it, Mr. Bradley?

1 MR. BRADLEY: Judge, I -- I just saw it. I don't
2 know what it has to say about anything. It appears to be
3 a webpage from the EPA that talks about mold. It's not a
4 guideline, it's not a rule, it's not a regulation, it's
5 not a part of law. I don't think ---

6 THE COURT: Well, go ahead and -- go ahead and do
7 it in camera. Make your record, do it in camera what you
8 want to ask.

9 MR. SHEALY: Your Honor, honestly I don't even
10 need to proffer it.

11 THE COURT: Okay.

12 MR. SHEALY: I can step away from the question.

13 THE COURT: Okay, that's fine, that's fine.

14 Let's take a little short break.

15 (The Court was in recess.)

16 THE COURT: All right. Whatever you need to get,
17 you can get out, Mr. Shealy, out of this witness.

18 (Pause.)

19 THE COURT: Bring the jury in.

20 (The jury returned to the courtroom at
21 approximately 10:43 a.m.)

22 BAILIFF: Jury's seated, Your Honor.

23 THE COURT: All right. Welcome back once again,
24 Mr. Foreman. I told you at the beginning I might have to
25 send you out from time to time, maybe twice I've had to do

1 so. It has nothing to do with the merits of the case. We

2 We can resume and Mr. Shealy continue with his
3 cross-examination of Mr. Hamilton.

4 MR. SHEALY: Thank you, Your Honor.

5 THE COURT: All right.

6 MR. SHEALY: May it please the Court. Mr.

7 Hamilton, I have no further questions for you. Thank you
8 for your testimony.

9 THE WITNESS: Thank you.

10 THE COURT: Anything on redirect?

11 MR. BRADLEY: Just that Mr. Hamilton asked that
12 he be allowed to leave, Judge.

13 THE COURT: Sure. Thank you, Mr. Hamilton, nice
14 to meet you.

15 THE WITNESS: Thank you.

16 (The witness leaves the witness stand.)

17 THE COURT: All right. Anything further, Mr.
18 Bradley?

19 MR. BRADLEY: No, sir, the Defense rests.

20 THE COURT: All right. Now, members of the jury,
21 you have heard all the evidence you shall receive in this
22 case. Now we are at a point in this trial where some
23 matters -- you have anything in reply?

24 MR. SHEALY: Nothing in reply. I do have a
25 matter of law to take up with the Court.

1 THE COURT: All right, outside their presence?

2 MR. SHEALY: Yes, Your Honor.

3 THE COURT: Okay. So there's some legal issues
4 I've got to talk to the lawyers about. I can only do that
5 in your absence. And then we'll have what we call a
6 little conference regarding what law I will tell you
7 applies in this case. That could take a little while, 30
8 minutes or so, I'm guessing, gentlemen, something like
9 that? It may not be quite that long.

10 MR. BRADLEY: Yes, sir, I think we can do it in
11 that time.

12 THE COURT: So you'll probably be in there for
13 about 30 minutes. We'll be working on some things that
14 have nothing to do with the facts of this case. And if
15 it's going to take any longer than that, I'll come in and
16 let you know, give you a chance to walk around or
17 something like that if you want to. But it should be less
18 than 30 minutes.

19 After we get that done, we'll bring you back out
20 and hear the arguments on the law and -- the arguments on
21 the case and I'll charge you on the law and y'all will get
22 it. How is that?

23 Just don't talk about it until I tell you to.
24 Thank you all so very much. Go back to your jury room.

25 (The jury retires from the courtroom at

1 approximately 10:45 a.m.)

2 THE COURT: Yes, sir, Mr. Shealy.

3 MR. SHEALY: Your Honor, at this time the
4 Plaintiff would move for a directed verdict.

5 THE COURT: All right.

6 MR. SHEALY: You will recall that I sort of
7 hesitated in the way that I was responding to Mr.
8 Bradley's because I did not believe at that time there was
9 an issue of fact. I do not believe there is an issue of
10 fact to be decided by this jury and would direct the
11 Court's attention to Section 27-40-610. And so legally,
12 as a matter of law, this lease was terminated illegally
13 without appropriate -- without giving the landlord
14 adequate time to remedy the problem. It's a 14 day
15 window. All of these dates are established and
16 uncontradicted in the record.

17 And so we would ask for a directed verdict on the
18 Plaintiff's cause of action.

19 THE COURT: All right.

20 MR. SHEALY: Concomitantly, we would ask that the
21 counterclaim then be dismissed because there -- there can
22 be no claim for return of the security deposit if the
23 lease was terminated inappropriately.

24 THE COURT: All right.

25 MR. SHEALY: So that's -- that would be our

1 directed verdict.

2 THE COURT: Thank you, Mr. Shealy. Mr. Bradley.

3 MR. BRADLEY: Thank you, Judge.

4 Briefly, facts are clear that Mr. Schumacher
5 admitted this on the stand, he knew about this problem
6 between August 13th and 16th. He said he knew it was a
7 problem and that it had to be fixed and that he was going
8 to take steps to fix it. That was his testimony to Mr.
9 Shealy. So there's no question that he had notice. This
10 thing about, you've got to do a written notice, he's
11 admitted he had notice.

12 But just say, for the purpose of argument, that
13 Mr. Shealy's right and the fact that he knew about it and
14 didn't do anything doesn't make a difference. On the 24th
15 of August, there's an e-mail where Mr. Beckstrom says, we
16 will honor the lease if you will fix the problem, August
17 24th. Two weeks later, September 8th, he says, I'm
18 working on hiring somebody.

19 THE COURT: That's what I meant by fixing or
20 doing something ---

21 MR. BRADLEY: I'm fixing to hire someone, I'm in
22 the process. Four hours later he says, that's on hold.
23 There's no question he had two weeks to get this done and
24 he didn't get it done.

25 So I think that Mr. Shealy is at least

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1 interpreting the facts in a way that doesn't follow
2 testimony that's been presented to the Court. And at
3 worst, from our standpoint, there is a dispute of fact --
4 although I don't think there's dispute because Mr.
5 Schumacher admitted it on the stand. He also admitted
6 that Monica Hoover said, here's my cell phone number, call
7 me any time. And after he said it on direct, on cross he
8 changed his testimony.

9 So under their own testimony, I think we should
10 get a directed verdict against them.

11 Now, the second thing is this.

12 THE COURT: All right.

13 MR. BRADLEY: If they want to take -- stick to
14 the technical language in the statute, the Landlord Tenant
15 Act requires that if you hold tenant's security ---

16 THE COURT: You have to specify why you held it
17 ---

18 MR. BRADLEY: You have to specify why you held
19 them. He admitted that he didn't do that.

20 THE COURT: Uh-huh.

21 MR. BRADLEY: So we're entitled to a directed
22 verdict and treble damages and attorney's fees because he
23 admits he didn't comply with the statute. They've got no
24 evidence on the other side. There is no question of fact
25 on that. The fact is, he didn't return it, he didn't send

1 the notice that he's required to send and they asked for
2 it in the e-mail which he admits. He's admitted
3 everything we have to show to recover triple our deposit
4 and our attorney's fees.

5 THE COURT: All right, thank you. Mr. Shealy.

6 MR. SHEALY: Briefly, Your Honor. The notice
7 period, the notice of the 14 day period begins to run from
8 the notice of termination, not from notice of a problem.
9 That's what the statute says. So all of these dates prior
10 to September 3rd are actually immaterial to what we're
11 here about. But the period, the 14 day period, runs from
12 the date of notice of termination and that is clear that
13 was delivered on September the 3rd. That's what the
14 evidence says.

15 THE COURT: All right.

16 MR. SHEALY: Secondly, Your Honor, the evidence
17 has established -- Mr. Bradley made great hay about that
18 we sued on September the 17th. That's the -- that
19 complaint is the very notice that is required on the
20 security deposit statute.

21 THE COURT: That's what the statute says, that if
22 you file a complaint, that serves as - in lieu of notice
23 or an explanation to the renters why the security deposit
24 was not returned? You're saying your complaint serves the
25 same purpose as his written explanation, this is why I'm

1 keeping your deposit, that's what you're saying?

2 MR. SHEALY: Your Honor,

3 THE COURT: Is that what you're saying?

4 MR. SHEALY: Yes, that is what I'm saying.

5 THE COURT: All right.

6 MR. SHEALY: That the complaint establishes the
7 facts giving rise to his keeping the security deposit. It
8 complies with the statute in toto.

9 THE COURT: Okay.

10 MR. SHEALY: It's not -- it -- the statute
11 doesn't say, it shall be done by letter, it shall be done
12 one way or the other. This is notice that we know was
13 served and it's in the form of a complaint.

14 THE COURT: Complaint, okay.

15 MR. SHEALY: Yes, sir.

16 THE COURT: Thank you, sir. Anything further,
17 gentleman?

18 MR. BRADLEY: Only this. I think I know what
19 you're going to do so it doesn't make too much difference.

20 The complaint was filed on the 17th. And under
21 the statute, that is when the lawsuit begins. But it
22 wasn't served within 30 days of when he ---

23 THE COURT: Okay, both of you stop. It's going
24 to the jury. It think it's a question of fact, both ways.

25 MR. BRADLEY: I ---

1 THE COURT: The only question we have is this --
2 of course, we can talk about it in chambers. We can, I
3 think we probably should, take up attorney's fees
4 separately. I don't see any other way to do it. But it's
5 simple to me, if he wins, he's entitled to whatever
6 damages that he has established. You have a duty to
7 mitigate your damages. According -- with your
8 presentation of evidence, that could be a month, it could
9 be seven months, according to him, I don't know. We'll
10 let y'all argue about that.

11 And if they win, then I think the statute
12 provides that they treble their damages and attorney's
13 fees, we'll see. I think even the lease agreement says
14 reasonable attorney's fees, does it not? Those issues I
15 don't think necessarily need to go before the jury. Who
16 wins, who loses, then we can remember the rest of it.

17 Is that fair ---

18 MR. BRADLEY: I agree with that procedure, yes,
19 sir.

20 THE COURT: All right. Let's do this. Let's go
21 ahead and with the charge conference so we -- and I know
22 y'all are going to need some time to get things together
23 but let's have a charge conference and get that out of the
24 way. Let me know how much time y'all need to line your
25 arguments up and I can let the jury know this or that.

1 Y'all come back in chambers. Let's do it first
2 like that and then come back out here and put it on the
3 record, if we have to.

4 All right, we'll be at ease.

5 (The Court was in recess.)

6 THE COURT: I am guessing 30, 40 minutes a piece
7 maybe, about that long, 30 minutes?

8 MR. BRADLEY: I don't think quite that long.

9 THE COURT: Huh?

10 MR. BRADLEY: I don't think I'll talk that long,
11 Judge .

12 THE COURT: That's all right.

13 MR. BRADLEY: I think I'll take about ---

14 THE COURT: The old days if you wanted 30 minutes
15 you asked for an hour, that's what the old judges ---

16 MR. BRADLEY: I clerked for Ross Anderson. If
17 you asked for 10 minutes, he'd give you five.

18 THE COURT: Yeah, so if you want 30 you ask for
19 60.

20 All right. Bring the jury in.

21 (The jury returned to the courtroom at
22 approximately 12:00 p.m.)

23 BAILIFF: Jury's seated, Your Honor.

24 THE COURT: All right. Welcome back, Mr. Foreman
25 and members of the jury. Let me first of all thank you

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1 for your patience and understanding of all this. I said
2 Jimmy John's, they stopped taking orders. So we go to
3 Zoe's (phonetic), I hope that's okay. Is that okay with
4 y'all?

5 JURORS: (Affirmative response.)

6 THE COURT: Now we're at the point in the trial
7 where you will hear the final arguments on behalf of the
8 parties. As I told you in the beginning, this is where
9 each side will try to persuade you to agree with their
10 version of the facts. And after you've heard the
11 arguments, I will charge you the law on this case.

12 Now, the Plaintiff brought this lawsuit and has
13 the burden of proof by the greater weight or the
14 preponderance of the evidence. The lawyers will argue a
15 little bit about that, I will tell you all about that in
16 my charge.

17 And there's a counterclaim in this case where the
18 Hoover's, the Defendants, say, you owe us our deposit
19 basically. So you will hear all these arguments, I will
20 give you the law that applies to this action and you
21 should be able to make a fair and just decision after you
22 hear all of these things.

23 So with that in mind -- let me explain this.
24 Since the Plaintiff has the burden of proof, even though
25 we have a counterclaim, we will first hear from Mr. Shealy

1 followed by Mr. Bradley and then he'll have an opportunity
2 to respond to his arguments based on the rules, that's how
3 it will unfold.

4 I will invite your keen and close attention to
5 the final arguments. Mr. Shealy, you may proceed.

6 MR. SHEALY: Thank you, Your Honor. May it
7 please the Court.

8 THE COURT: Yes, sir.

9 CLOSING ARGUMENT ON BEHALF OF THE PLAINTIFF

10 BY MR. SHEALY:

11 Ladies and Gentlemen, you hear me say, may it
12 please the Court lots of times. That's just an old
13 tradition we have. There are lots of traditions that go
14 with practicing law and trying cases.

15 One of those traditions is that the Plaintiff
16 bears the burden of proof in the case and that's what I
17 want to talk to you a little bit about. And then I want
18 to talk to you some about the facts that you've heard and
19 seen.

20 Lawyers have different ways, styles of trying
21 cases. Mr. Bradley liked to hand you things so that you
22 could see them as the witness was testifying. I want you
23 to focus on what the witness is saying and know that
24 you'll have a chance to read all of the evidence that we
25 put when you go back to deliberate. It's just different

1 ways of doing it.

2 Ladies and Gentlemen, this is a landlord tenant
3 dispute, one of the oldest kinds of disputes known to the
4 law. We are claiming -- our claim is that Dr. Hoover
5 terminated his lease without proper justification, without
6 the proper way of doing that. And I -- Judge Manning will
7 explain to you what the particular law is that applies.
8 There are some statutes that talk about how a lease can be
9 terminated. Once somebody enters into a lease, there's no
10 way for a landlord to make a person stay there and nobody
11 was asking if they didn't want to stay there for them to
12 stay there. But if you're going to breach the lease,
13 there's -- or terminate the lease, certain conditions have
14 to apply. And I'll talk to you particularly about --
15 about the law that you'll hear Judge Manning say to you at
16 the end of this case.

17 But first I want to kind of talk about some
18 general things. I want to talk about the difference
19 between how the lawyers in this case might characterize
20 the facts, how some of the witnesses might characterize
21 some things.

22 First is what the evidence that you've heard and
23 the evidence in the form of all these e-mails shows
24 because that tells you a lot about the credibility of the
25 evidence, the credibility of the story. You all have

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1 heard the story of these two parties. And these are --
2 these are two nice people, no question about that, that
3 came together in the spring of 2010.

4 And I frankly think that this situation was
5 doomed to failure from the beginning because a lease was
6 entered into by Dr. Hoover before Mrs. Hoover had ever
7 walked through the house. And there was an option to
8 purchase and everything was geared, all of the real estate
9 agents and everybody was gearing towards a sale of this
10 house. But what happened along side of that was entering
11 into a one year lease, that is a contract between folks
12 that is enforceable that we're seeking to enforce in this
13 case.

14 But it's clear from the evidence that shortly
15 after arriving in Columbia, Mrs. Hoover particularly
16 didn't want to live in this house anymore. She was
17 interested in looking in another neighborhood, the
18 Wildwood neighborhood. And so that then became sort of
19 the focus. We want to get out of here. We are not
20 interested in buying this house.

21 Now, that's clear because that was set forth in
22 an e-mail on August 23rd from Todd Beckstrom, the real
23 estate agent. Then that's clear from the subsequent e-
24 mails in which the Hoovers are looking for other houses
25 beginning on the 23rd and thereafter before there's ever a

1 report from Biotek.

2 When I talk about the difference between how we
3 characterize the facts versus what the facts actually are,
4 why we don't go back to the way Mr. Bradley painted this
5 out. He talked about Mr. Schumacher being on notice of
6 this problem with the mold on August 16th, and that's been
7 described variously as between August 13th and 16th, and
8 then doing nothing for a period of time.

9 And I want to ask you if the evidence you've
10 heard, the testimony given by all the parties, indicates
11 that that's what kind of person, the kind of landlord Mr.
12 Schumacher was. You've heard testimony, evidence
13 introduce, that Mr. Schumacher was making alterations to
14 the house as quickly as possible. He made 1800 plus
15 dollars worth of alterations to the house after the home
16 inspection.

17 And yeah, this is an older house in an older part
18 of Columbia. It's not a house he built, it's a house he
19 lived in and all old houses need some work. So these are
20 things he was willing to do to make his tenants, the
21 Hoovers, happy. He was certainly not sort of the textbook
22 example that you might -- or example of a landlord, of
23 somebody that's heartless and doesn't care about the
24 tenants, they just care about the rent. This is a person
25 with a family just like the Hoovers who couldn't sell his

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1 house, decided that he needed to rent it for financial
2 reasons and was thankful that, at the very least, he had a
3 one year lease on the house because it just wasn't able to
4 be sold.

5 So, again, think about the characterizations that
6 have been made about the evidence and whether or not that
7 really comports with the story.

8 Another person whose testimony is rather
9 interesting is Todd Beckstrom. And you'll see that there
10 are lots of e-mails from Todd Beckstrom. Todd Beckstrom
11 is acting as the agent for the Hoovers. He sells real
12 estate. He sells real estate. Mr. Beckstrom makes a
13 commission if this house sells.

14 When, as of August 23rd, his clients are no
15 longer interested in buying the house, then his interest
16 in keeping them in the house begins to wane, his advocacy
17 for their moving to another house, the house where they
18 ended up moving into a little over a month later, becomes
19 more attractive to him. And you'll see in the e-mails the
20 sort of language that he uses about this -- about how he
21 characterizes this problem, how -- and quite frankly, he
22 describes the problem as if he's an expert in -- about
23 mold.

24 I think the Hoovers, quite understandably, are
25 upset. And let me just talk about that very quickly. No

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1 one in this case has taken the position that the mold that
2 was present there was a problem that could be ignored, was
3 a problem that didn't need to be remediated and remediated
4 appropriately. Mr. Schumacher did that when he was
5 finally allowed to do it. He hired Mold Solutions.

6 Look -- look at Mold Solutions' report, compare
7 it to what Biotek planned to do. It's the same process,
8 the same thing that Dr. Hoover said that Biotek was
9 willing have another third party come in and test the air.
10 It's the same thing that Mold Solutions did. That's all
11 in the evidence for you. So not that he was unable or
12 unwilling to do that, he knew, he recognized that that was
13 the problem.

14 What you're going to hear is that he knew it was
15 a problem on the 16th of August and then didn't take care
16 of it immediately. Well, you've heard though that he
17 focused on solving the source of the moisture. And you've
18 heard the testimony that that was an appropriate thing to
19 do, deal with the moisture, that's the thing that's giving
20 rise to an environment where mold can grow. Then deal
21 with the mold.

22 There's nothing in a law or in the -- in our
23 common experience that would require Mr. Schumacher, the
24 landlord, to use the company that had been picked by the
25 tenant, picked his own company, but at the time that he

1 had gotten all of that squared away, he wasn't allowed to
2 do it, wasn't allowed to fix the problem.

3 And that's -- that's what this case really
4 ultimately comes down to is because the Hoovers lost their
5 interest in purchasing the house, that's what everything
6 is geared for in the beginning, lost their interest in
7 purchasing the house, then everything that came after that
8 was geared toward getting them out of the house.

9 And so, folks, the -- what you'll hear is that
10 the relationship of landlord and tenant has got to -- is
11 governed by a duty of good faith on both sides. And a
12 duty of good faith means that a party can't say, well,
13 I've got a problem that you need to fix but I'm not going
14 to let you fix it. I'm going to put it over here, I'm
15 going to put it over here, I'm not going to let you -- I'm
16 not going to let you in to fix it. And that's the
17 behavior we start to see in some of the e-mails. All the
18 way until after the Hoovers move out of the house, they
19 still won't let Mr. Schumacher come in with Mold Solutions
20 to fix the problem so that they can get their own --
21 another entity in there, after they've already moved out,
22 to show how horrible the mold situation has gotten.

23 Yes, mold gets worse over time. And the longer
24 it's left to grown, the worse the problem becomes. So by
25 the time they move out or allow Mr. Schumacher back in the

1 house, it is a significant problem. Not that it was
2 insignificant before because it was significant when he
3 saw it on the 16th.

4 Now, so -- I mean, that's what you have to ask
5 yourself, to what extent is that mold issue sort of a
6 pretext for or cover for breaking the lease. Everybody
7 that -- every witness that Mr. Bradley questioned was
8 asked at the end, would you want your family to be living
9 in that environment. No one would want their family to be
10 living in that environment. Mr. Schumacher wouldn't want
11 his family, didn't have his family live in such an
12 environment, moved his family out. That's why he offered
13 what he offered to put them in a hotel.

14 But at the point that he did that, on the 8th of
15 September, the die was already cast. The die was cast on
16 September 3rd, we're breaching the lease. It is over,
17 there is nothing that you can do about it at this time.
18 And despite his many efforts and despite having gotten the
19 insurance company out of the way and being ready to go on
20 the 12th, some nine days after he gets the notice that
21 they're breaching the lease, they say, no, you're just
22 going to have to wait until we move out.

23 Folks, you can't treat people that way,
24 particularly somebody that is responding to everything the
25 best way you can.

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1 You know, he said from the stand that he regrets
2 sending the e-mail in as an abrasive fashion as he did
3 about Biotek. But again, consider the circumstances,
4 consider the whole context.

5 You'll note that the evidence that I put in,
6 these e-mail chains, and that often there were attempts to
7 isolate e-mails put in by the Defendant that were part of
8 a chain. Folks, again, that is an effort to characterize a
9 piece of evidence that takes it out of context. You need
10 to see the whole conversation. You need to see for
11 instance that the Hoovers initiated this whole business
12 about breaking the lease on 60 days' notice right after
13 they determined that they were not going to purchase the
14 house. And that a conversation took place between Mr.
15 Schumacher and the Hoovers after that in which Mr.
16 Schumacher said, look, if they'll let me continue to show
17 the house and if it sells, then we'll end the lease, a
18 reasonable thing to offer. They were not interested in
19 that, they wanted the lease to be over immediately.

20 So, again, there's a difference between the
21 characterization of the evidence by the lawyers -- and I'm
22 certainly guilty of it too, of characterizing things in
23 the light most favorable to my client but just me, just
24 like you judge everybody, on the degree to which what I'm
25 saying to you about the evidence is in line with what the

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1 evidence actually is and what the story that you've heard
2 actually is versus something that I would like it to be.
3 And I think you'll find that the evidence and the story
4 that you've heard from the Plaintiff who's tried to give
5 you every bit of testimony and e-mails so that you see the
6 whole picture, is that Mr. Schumacher tried to do
7 everything he could to remedy this unfortunate situation.

8 Now, it's worth noting as you're looking at this
9 that this mold problem had not been present when Mr.
10 Schumacher had lived in the house. That his electrical
11 utilities were not anywhere near what the Hoovers
12 electrical utilities were. From that you can draw a
13 reasonable inference that there was some unreasonable use
14 being made of that -- of that air conditioning system.
15 You can also -- you've heard that that attic door was left
16 open. You heard that from the fellow from Biotek. And
17 that that was part of the reason why moisture was allowed
18 in to the house that gave rise to this environment that
19 mold can grow in.

20 Folks, the law says that a breach of a lease
21 cannot be induced by the -- by the tenant's own conduct.
22 The tenant cannot create a problem and say, landlord,
23 you've -- you know, there's a problem here that you need
24 to fix. Now, we're not really, you know, harping on that
25 so much, it's just something I want you to bear in mind.

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1 But you'll hear that the law says that a -- a lease cannot
2 terminate because of some conduct, some negligence on the
3 part of the tenant.

4 What does the law really say? This is what the
5 focus of this is. What does the law say is the
6 appropriate way to terminate a lease? If the tenant says
7 that the landlord has not -- is not providing a reasonably
8 fit inhabitable livable situation, the tenant has to give
9 the landlord notice that the lease will terminate at a
10 point not less than 14 days from that day. And if the
11 reason for the proposed termination is some condition
12 affecting health and safety, the landlord's got to fix
13 that within 14 days of the date that the tenant says the
14 lease is going to terminate.

15 Now, what's the evidence in the record about that
16 date that the land -- that the tenants said, we're
17 terminating the lease? That's September 3rd, no question
18 about that. From that point forward, Mr. Schumacher's
19 efforts to remedy this problem were completely
20 frustrating. He was never allowed 14 days. In fact, the
21 Hoovers moved out before 14 days ever occurred. Dr.
22 Hoover told Mr. Schumacher on the 12th, you're just going
23 to have to wait until we move. The die was cast, they had
24 made their decision.

25 Folks that is -- that law, that statute in our

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1 Code of Laws is the -- is at the bottom the bucket, the
2 whole thing that this case is about. You have to give a
3 landlord time to fix a problem because a landlord doesn't
4 guarantee that no problems will arise. I mean, if that's
5 what the law would be, we -- we wouldn't have houses and
6 apartments to rent because nobody can guarantee that there
7 would be no problems. The only thing that they can do is
8 do their very best to correct problems that do arise. And
9 that's what you saw here from Mr. Schumacher. The focus
10 will be placed by the Defendant upon what was going on
11 between August the 16th and September 3rd.

12 And again, as Mr. Schumacher testified he was
13 trying to rectify the problem at that time, had to wait on
14 Biotek to figure out what the remediation plan ought to
15 be. But quite frankly, under the law that stuff doesn't
16 matter. The termination date, the notice of the
17 termination date is September 3rd and that is when this 14
18 day clock begins to run. And there's nothing in the
19 record that would lead you to any other conclusion but
20 that the Hoovers had made their decision at that point and
21 Mr. Schumacher was not going to be able to correct the
22 problem in 14 days. They were moving out.

23 If that is the conclusion that you reach by
24 looking at all of the evidence, and there's a lot of it
25 that you haven't seen, that you haven't read. It was

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1 important that you listen to witnesses testify from the
2 stand. So I urge you to look through all of the e-mails.
3 It's tedious but that will really inform you as to what
4 this conversation really -- really was about.

5 But there's nothing in all of that that can lead
6 you to any other conclusion but that the Hoovers were
7 leaving. It doesn't matter what Mr. Schumacher does after
8 the 3rd, they're leaving and he's never given the 14 day
9 -- 14 days to rectify the problem from that point.

10 That's the whole case. That's what the thing is
11 about. And because they terminated the lease
12 inappropriately, they didn't give him the 14 days, they're
13 not entitled to their security deposit back. The security
14 deposit is to secure their obligations under the lease.
15 That's what the lease says. It secures their future
16 obligation to pay rent and they -- and they stopped paying
17 rent as of the end of September.

18 Now, just briefly about damages. We could come
19 to you and say that what we're seeking in this case is --
20 in addition to rent for the period from October until
21 April 15th minus the security deposit, the work that Mr.
22 Schumacher had to do, the \$1800 plus dollars that he had
23 spend with Mold Solutions to rectify this problem because
24 it was caused in part by the Hoovers' own activity. We're
25 not taking that position.

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1 We're not trying to heap on damages here. There's
2 no claim for that amount of money that Mr. Schumacher had
3 to pay. There's no claim for the money he paid to respond
4 to the home inspection. No claim for anything like that.
5 The only claim is for the rent for the months of October,
6 November, December, January, February, March and half of
7 April, minus the security deposit. That's all he's
8 entitled to once he finally has no choice but to rent the
9 house again, then his damages cease. That's really all
10 that we're seeking in this case because the law was not
11 complied with by the Hoovers.

12 I told you at the beginning that we have a lot of
13 traditions that -- that go along with our legal system and
14 trying cases. One of the traditions that is extremely
15 important to this legal system and to this country is that
16 we follow the law. The law has to be followed whether
17 people are nice people, not nice people, really awful
18 people and that's your obligation here.

19 The question has been posed multiple times, what
20 would you have done? Well, the question really is, what
21 does the law require to be done. I think none of us would
22 want to have been in that situation and all of would have
23 wanted to leave the house so that the problem could be
24 remediated. But we have to follow the law. There's no
25 excuse that excuses following the law. That is an

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1 important thing for all of us to bear in mind each and
2 every mind but it's very important in this case because,
3 quite frankly, all of our hearts go out to -- I'm a
4 father. I understand and so does Mr. Schumacher the
5 concern for safety but we have to follow the law.

6 Finally, I just want to go back to the analogy
7 that I opened in my opening statement about bringing
8 groceries home and then looking at them for a while and
9 then taking them back, deciding well, I don't really want
10 these. And Mr. Bradley made a very clever play on that
11 by saying, you know, if you brought the groceries home and
12 they were all moldy, you know, no one would expect you to
13 keep those groceries. But, again, is that
14 characterization consistent with what -- with what the
15 evidence is here?

16 There was not mold in this house at the time that
17 the home inspection was done. The inspector was in the
18 house, looked outside of the house, all over the house.
19 There was no mold there, there wasn't mold there when they
20 moved in. The mold developed later. It developed after a
21 wet spot developed. So this is not a situation where
22 people brought home moldy cheese from the grocery store.
23 The moldy cheese developed a whole lot of time after the
24 fact.

25 And so, again, I urge you to think about the

1 sanctity of the law and the reason why we have contracts
2 and why we have to hold people responsible for the
3 contracts they enter into. Without that, the whole
4 system, the whole country falls apart.

5 Thank you for your attention to this case. I
6 apologize for the degree to which the introduction of
7 evidence has been tedious. We're asking for you to review
8 the evidence closely and at the end of your deliberations,
9 bring back a verdict for the Plaintiff.

10 Thank you.

11 THE COURT: Mr. Bradley.

12 CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

13 BY MR. BRADLEY:

14 What happened in this case is? The house wasn't
15 safe, the Hoovers tried to get the house fixed, Mr.
16 Schumacher didn't do it and they left. And he kept their
17 security deposit and sued them. He should not have done
18 that.

19 Now, rather than talking about characterizations
20 of facts or whether or not the legal system will collapse
21 if you don't render a verdict for Mr. Schumacher. I'm
22 going to talk about the facts of this case.

23 The first fact that we know is that between
24 August 13th and August 16th, Mr. Schumacher knew there was
25 a problem in this house. Right? Right. August 13th,

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1 16th.

2 Now, we've seen almost 30 exhibits that his
3 lawyer has put into evidence. There is probably 29, 28,
4 something like that. It might not be exactly 30. There
5 is no activity from Mr. Schumacher whatsoever, no
6 testimony of anybody he sent out there, no e-mails.

7 You've got all of these e-mails, no e-mails from Mr.
8 Schumacher, no nothing, nothing.

9 What's the first thing that happens that we've
10 seen written evidence of? I'll tell you what it is,
11 August 24th. August 24th, what happens on August 24th?
12 Mr. Beckstrom, the real estate agent, and Mr. Bishop, the
13 real estate agent for Schumacher, they're talking and
14 saying, hey, what's this problem. We've got a problem
15 we've got to fix. Has Schumacher done anything, is he
16 involved? No. But Bishop and Beckstrom are and what did
17 they say?

18 Well, it's pretty clear because they wrote it
19 down. Plaintiff's Exhibit 10, Mr. Beckstrom wrote to Mr.
20 Bishop. Terry, pursuant to our conversation today, I will
21 advise my clients to get a professional mold inspection.
22 Should the inspector find hazardous mold, your client will
23 be responsible for paying for the inspection and the cost
24 of treating the home, okay, and this is a serious health
25 issue that warrants addressing by the seller. That's

1 written down, you've seen it, I handed it to you. It's
2 Plaintiff's Exhibit 10.

3 So we know the first thing that happened, it's
4 been eight days at least, 11 days perhaps, since Mr.
5 Schumacher knows about it. The first thing we've got is
6 an e-mail from Mr. Beckstrom who's not responsible for it
7 to Mr. Bishop saying, we will take responsibility, the
8 Hoovers, since you haven't done anything for a whole week.
9 The Hoovers step up and say, we'll do it, we'll hire them,
10 okay.

11 The next thing which is a fact in this case, and
12 you've seen this too, they were discussing whether or not
13 they were going to stay with this lease. That's true.
14 Mr. Shealy's telling that's true. And the question was
15 whether or not they were going to be allowed to leave
16 because they might find another house, this, that and the
17 other, okay. And Mr. Beckstrom writes back and says, I
18 passed the offer on to my clients. That was the offer
19 that they could get out of the lease if the house sold.
20 And this is what they said. They will honor the terms of
21 the lease.

22 So on August 24th, their agent says, we'll honor
23 the lease provided, what, that the owner address the
24 potential mold issues, okay. So on August 24th, the
25 Hoovers are saying, we'll hire somebody and we want you to

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1 address it. And Bishop and Beckstrom are talking about
2 it. And where is Schumacher? Who knows. He hasn't risen
3 his head. And had he brought anybody to say, oh, yeah, we
4 were working on it, I talked to this guy? Did he bring --
5 he brought a real estate agent, he put the Hoovers on the
6 stand. He brought his real estate, their real estate
7 agent. Did he bring anybody to say he was doing anything
8 for that eight to 11 days? No, nothing.

9 So when do we hear from Mr. Schumacher? Well,
10 the nice thing is it's all written down so we know,
11 September 1st. So now it's been 31 days in August so
12 that's seven plus eight to 11, so somewhere around 15 to
13 18 days. I might not be exactly right on that. That's
14 why I'm a lawyer and not a mathematician. Something like
15 that, September 1st.

16 And what do we hear from Schumacher? Oh, my
17 gosh, I'm sorry, I know mold is bad. I'm worried about
18 your family, I have a child too, is what he said on the
19 stand. Is that what you hear from Schumacher? Oh, no,
20 that's not what you hear from him. Do you hear, I agree
21 this is a serious problem, I'm going to get on it. Here's
22 my plan. I've got Mold Solutions waiting right here.
23 They're going to come in and fix it. You guys will be
24 golden. Nothing, not a peep.

25 Here's what you hear. He wrote it, his own hand,

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1 he admitted it. Regarding the mold inspection you ordered
2 -- they didn't order it, their real estate agent agreed
3 with his real estate agent that they were going to do it.
4 His real estate agent agreed to it. Well, they did order
5 it just like they promised. They did what they said they
6 were going to do. Regarding the mold inspection you
7 ordered, I will not be paying for that. Huh, that's
8 exactly the opposite of what his agent had said a week
9 ago. I have someone that I prefer to use that I trust.
10 Doesn't say who it is, when he's going to talk to them or
11 what they're going to do. I will gladly pay for my
12 preferred inspect-- company to do an inspection and mold
13 cleanup. Now, that's what he writes here and I gave it to
14 you guys.

15 What did he say on the stand about 10 times? Oh,
16 I was waiting on the inspection from Biotek before I did
17 something. How many times did he say that? A bunch. He
18 said, I was just waiting on Biotek. I couldn't do
19 anything till Biotek came back. He said in his own e-mail
20 that he was going to hire another company to do an
21 inspection. And then he says, I will not pay for anything
22 that Biotek does.

23 And so the first piece of correspondence you get
24 from Schumacher is over two weeks after he knows about the
25 problem. And what is it? Is it, I'm going to fix the

1 problem? Is it, yeah, I will do what my real estate agent
2 promised you'd I'd do? No, he said I won't. I won't do
3 it and I have somebody else that's going to do it but no
4 indication of who, what, when, where, how, why or even
5 that, I'm sorry, you're going through this problem.

6 All right. The next thing that we get is an e-
7 mail back from Monica, September 1st. It says basically,
8 hey, we proceeded as advised, we ordered this and we've
9 already paid for it. What are you going to do? Okay.
10 This is Defense Exhibit 10 when Monica writes him back and
11 says, hey, we've already paid Biotek. We did what we
12 thought everybody agreed to. What are you going to do
13 about it? You don't get a response from Schumacher at
14 all. No, oh, gosh, yeah, you're right, my agent did agree
15 to it. I'll pay for it or, since we're waiting on it,
16 we'll do this... Nothing, silence from him.

17 So what's the next thing that you hear from him?
18 Well, on September 2nd, before the Biotek report has even
19 come, okay, no report from Biotek yet, before he gets the
20 report he says, I'm not going to do it. That's what he
21 said on September 1st, I'm not doing it. On September 2nd
22 he says, I agree we have to fix the problem quickly.
23 Well, at least he's agreed now that he has to fix the
24 problem because it's been two weeks at least, longer than
25 that. Okay.

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1 Interestingly, who is this e-mail copied to,
2 September 2nd? Kirby Shealy, he's already thinking he's
3 going to sue the Hoovers. He hasn't even hired anybody to
4 fix it yet and he's copying his friend who happens to be a
5 lawyer, Kirby Shealy, who's obviously not a mold
6 remediator. He doesn't copy Mold Solutions. On September
7 2nd, still hasn't done anything to fix the problem, but
8 put the lawyer on there, I've got a huge problem here.
9 All right and that's Plaintiff's Exhibit 15, that's their
10 own exhibit.

11 All right. So the next thing we get is an e-mail
12 where Mr. Shealy says to you, September 3rd is the first
13 time they told him that they were going to terminate this
14 lease. And I guess this is the first time they said,
15 yeah, we're leaving but they had told them almost three
16 weeks before, you got a problem and clearly two weeks
17 before, we'll honor the lease if you fix it. And so when
18 the report comes back and says, your house is full of
19 aspergillus which Dr. Hoover knows can make you sick, and
20 his children and his wife are sick, he says, we're
21 terminating the lease September 3rd.

22 Okay, so that's when Lance Hoover says, here's
23 the report and it's too dangerous and we're getting out.
24 That's Friday, September 3rd. But that's certainly not
25 the first time he's gotten notice and certainly not the

1 first time he's got written notice. Two weeks earlier,
2 they sent him an e-mail and said, we'll honor the lease if
3 you fix the problem. What have they got to do to him,
4 send up a flare, tattoo on their forehead, send it by
5 FedEx? They've told him on August 24th, there's a problem
6 you need to fix.

7 So, you're still not hearing anything from
8 Schumacher about what am I going to do, when am I going to
9 do it. Finally, finally, we get something. Maybe this
10 problem will be fixed, Defendant's Exhibit 4. It's a
11 letter from Schumacher. He emerges September 8th,
12 September 8th. September 8th, now we are over three weeks
13 since the initial notice, clearly two weeks and more -- I
14 mean, four -- almost four -- you know, three and a half
15 weeks from when he knew about it, over two weeks from when
16 they sent the first notice saying, we'll honor the lease
17 if you fix the problem.

18 We finally, September 8th, after they had been
19 staying in this -- after they hired somebody, he's
20 rejected the person, the reports come back with
21 aspergillus, five days after that, five days after that,
22 he says, I am in the process of hiring a reputable
23 company. I'm glad he finally got in the process. He
24 waited three weeks to get in the process. I don't know
25 what that means. He says it means he hired them,

1 regardless of that. They'll do everything necessary to
2 fix the problem. And then he says, I will put you up in
3 the hotel. Well, that's real nice, we appreciate that,
4 that's great. You'd think that this would solve it, right
5 and in the way he plays it, it does, except for one thing.

6 Four hours later, he sends another e-mail and it
7 says, I do not have control of the timeframe to fix this.
8 Well, he's waited three weeks to tell us he's not in
9 control of the timeframe to fix it, okay. So four hours
10 after he says, I'm going to fix it right now, here's my
11 plan, you guys don't worry about it, I've got it under
12 control, I'm going to do the right thing, he says, I'm not
13 going to do it. Can't do, I'm not in control of the
14 timeframe. I don't know what in the world the insurance
15 company has to do with it why he couldn't do what he was
16 supposed to do but apparently it did. And he said, I'm
17 not going to do it.

18 Now, when is the next time we hear from
19 Schumacher saying, okay, guys, I'm ready to go, got it
20 done, we're ready? We don't, we don't. We hear from him
21 on September 12th after Lance talked to him, he says, oh,
22 I was ready to go last week and you guys all kept me from
23 doing it. That's just nonsense. The only time that he
24 said he would fix it was three weeks afterwards when he
25 said he was in the process. And four hours later, he

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1 pulls it, he goes back on what he promised.

2 So, at this point the Hoovers and their three
3 children move from Texas. They were living in a house
4 that they know if not healthy, they're sick. It's been
5 almost a month since they told Schumacher about it, it's
6 been over two weeks since they wrote him an e-mail that
7 says, we'll honor the agreement if you'll fix the mold.
8 He's finally said I'm going to do something -- well, let
9 me back up. They, the Hoovers themselves, order a report
10 to fix it. Okay, you're not going to fix it, we'll fix
11 it. They ordered the report.

12 Before the report even comes back in, after his
13 real estate agent has promised to do it, he says, I won't
14 do it. So now he's gone back on his word once when his
15 real estate agent promised to do it, now he says, I won't
16 do it, before it even comes back.

17 Then the second time is September 8th. He says,
18 I'll fix it. Four hours later he says, I can't control
19 it, I don't know when. So now, September 8th, more than
20 three weeks later since they knew about it, more than two
21 weeks later since they've seen -- almost three weeks. He
22 has gone back on his word twice. What are they supposed
23 to do in this situation? How long are they supposed to
24 stay.

25 And it's interesting because I asked Mr.

1 Schumacher that very question. He said there (indicating)
2 and I said, Mr. Schumacher, how long are they supposed to
3 wait for you to fix the problem? Y'all remember what he
4 said? He said this, the first thing is he said was, I
5 don't understand the question. The second thing he said,
6 when I said, is it two weeks, a month, three weeks, a
7 year, how long did they have to wait for you to do what
8 you're supposed to do? And he said, I don't really know,
9 I don't know what would be reasonable.

10 Well, I'll tell you this. This is not
11 reasonable. These people don't have to sit around in this
12 house that's not healthy while he decides he's going to
13 get in the process of fixing it for three weeks.

14 Now, another interesting thing about Mr.
15 Schumacher, he and his real estate agent he called to the
16 stand admits that he wrote these two e-mails, Exhibit 14.
17 Number one says -- it's from Terry Bishop's real estate
18 company. We've heard from Terry. It says, not sure if
19 your new renter is in there yet. This is dated October
20 4th, okay. So the Hoovers had paid rent for September.
21 They paid the whole rent even as they were dealing with
22 the mold, they paid rent. So they paid rent for the whole
23 month. According to Bishop's e-mail, there's a new
24 renter. And then the response, no new renter coming, my
25 wife and I decided against it.

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1 At this point he's sued the Hoovers. He sued the
2 Hoovers. He had a renter -- I don't know, he denies that
3 he did. You guys read this and decide yourself. But he
4 -- the words that he wrote on the e-mail in October
5 indicate that he had a renter which he decided not to
6 take. And the law is, you're a landlord and the
7 property's empty because the tenant left, even if the
8 tenant did it for a bad reason, just because the tenant
9 didn't want to pay it or couldn't pay it or moved
10 somewhere else, you have to rent it to somebody else, you
11 just can't let it sit open and then charge the tenant for
12 all the money. If you've got another tenant, you have to
13 put them in there. That makes sense, doesn't it? You
14 wouldn't want it any other way. Clearly had a tenant and
15 he sued the Hoovers by then because he sued them 9/17,
16 September 17th. Actually, they had paid the rent for the
17 whole month but he sued them anyway even though he had all
18 their rent and the security deposit.

19 Now, you would expect that a person who's done
20 these things and ignored this and had this problem, they
21 knew there was a family, they knew the family was sick,
22 would say this, gosh, I'm sorry for this problem. Maybe
23 it wasn't his fault there was a problem but still you
24 would say, I'm sorry, it's your house, the people are
25 having a problem and fix it as quick as you can imagine,

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