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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY COMMON PLEAS COURT
Honorable Carmen T. Mullen, Circuit Court Judge

Appellate Case No. 2023-001132
Trial Court Case No. 2018-CP-26-00307

Wedgewood Condominium Association, Respondent,

v.

Centex Homes, a Nevada General Partnership; Balfour Beatty Construction, LLC as Successor by Merger to Centex Construction Company, Inc., and Centex Construction, LLC; Crescent Engineering, Inc., Defendants,

Of which Centex Homes, a Nevada General Partnership; Balfour Beatty Construction, LLC as Successor by Merger to Centex Construction Company, Inc., and Centex Construction, LLC, are the Appellants.

and

Centex Homes, a Nevada General Partnership, Third Party Plaintiff,

v.

Right Way Construction, Inc. a/k/a RWG, Inc. a/k/a Right Way Group, Inc. a/k/a RWGR, Inc.; Frank Harris d/b/a Frank Harris Construction a/k/a/ F. Harris Construction a/k/a Harris Drywall; Builders First Source- South East Group, LLC; Stock Building Supply, LLC f/k/a Stock Building Supply, Inc. f/k/a Carolina Builders Corporation; Michael D. Brownlee d/b/a Carolina Drywall & Interiors; Carolina Drywall & Interior, Inc., a/k/a Carolina Drywall & Interiors, Inc. a/k/a Carolina Drywall Contractors, Inc.; Roof Doctor of the Carolinas, Inc.; John D. Frazier d/b/a and/or a/k/a Roof Doctor and/or Roof Doctor of the Carolinas and/or Roof Doctor of the Carolinas, Inc.; Steven Bosch d/b/a The Roofer Man; Tri- City Insulation and Building Products of Myrtle Beach, Inc.; Martin Mata d/b/a Martin Masonry, Inc.; Martin Masonry, Inc.; BR Brick & Masonry, Inc.; BR Brick & Masonry, LP f/k/a BR Brick & Masonry, Inc.; Unicon Concrete, LLC; Seno's Cleaning Services; Rice Planter Carpets, Inc. n/k/a Creative Touch Interiors, Inc., Floors, Inc. Successor By Merger to Rice Planter Carpets, Inc.; Carpets by Kendall, Inc.; Reliable Floor Systems, Inc.; TNT Painting; Paint with Pride a/k/a Painting with Pride; William Evans d/b/a Top Notch Painters; Morningstar Consultants, Inc.; MI Windows and Doors, LLC; Michael Dawson d/b/a Michael

Dawson Construction, and Inc.; Vereen Concrete Co. Inc.; AK Construction Inc. a/k/a AK Framing and Siding Co.; and AK United, Inc. f/k/a AK Construction Inc., Third-Party Defendants.

RECORD ON APPEAL – VOLUME II

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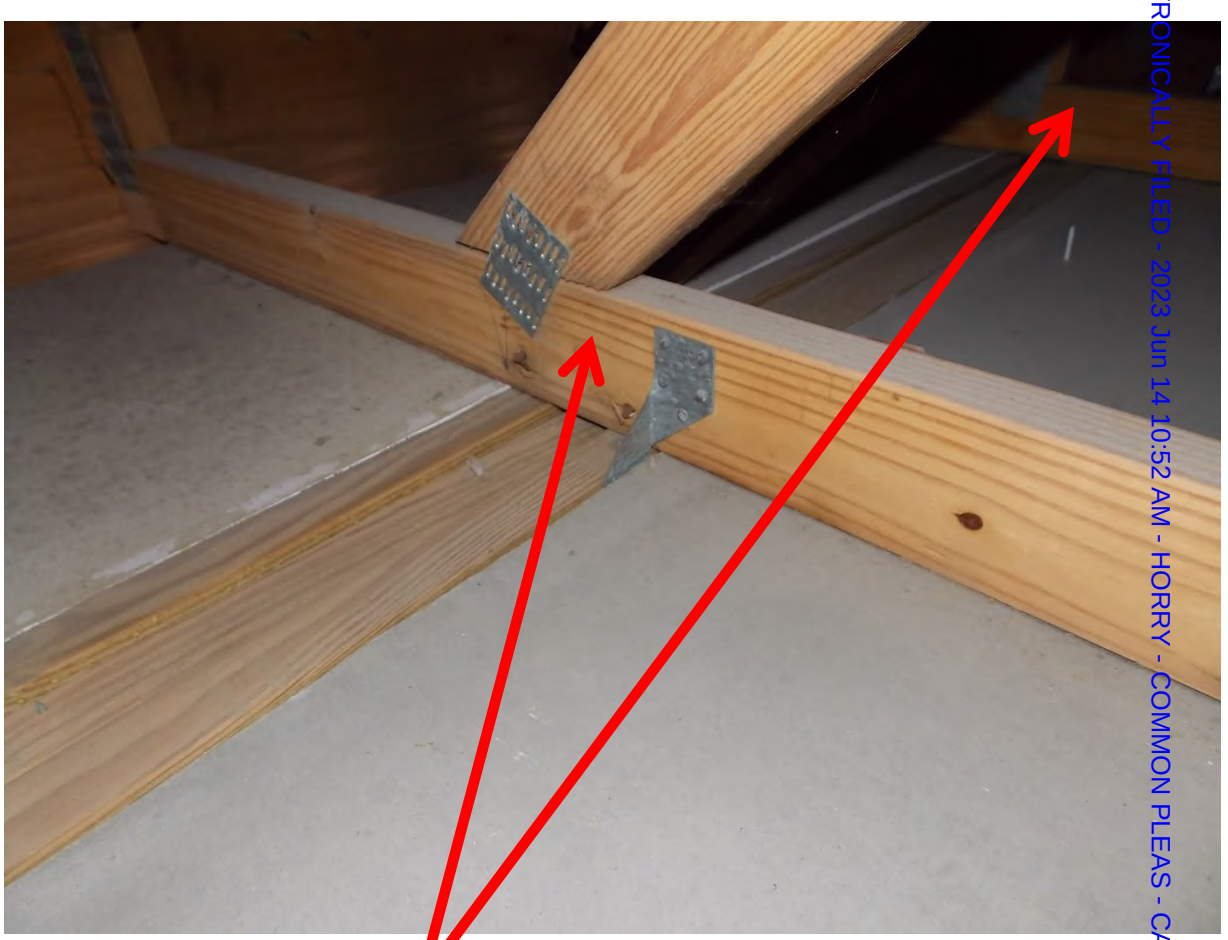
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ATTICS: FRAMING CONNECTIONS

As-Built Conditions

- Missing MTS16 anchors



MISSING MTS16 ANCHORS AT TRUSSES

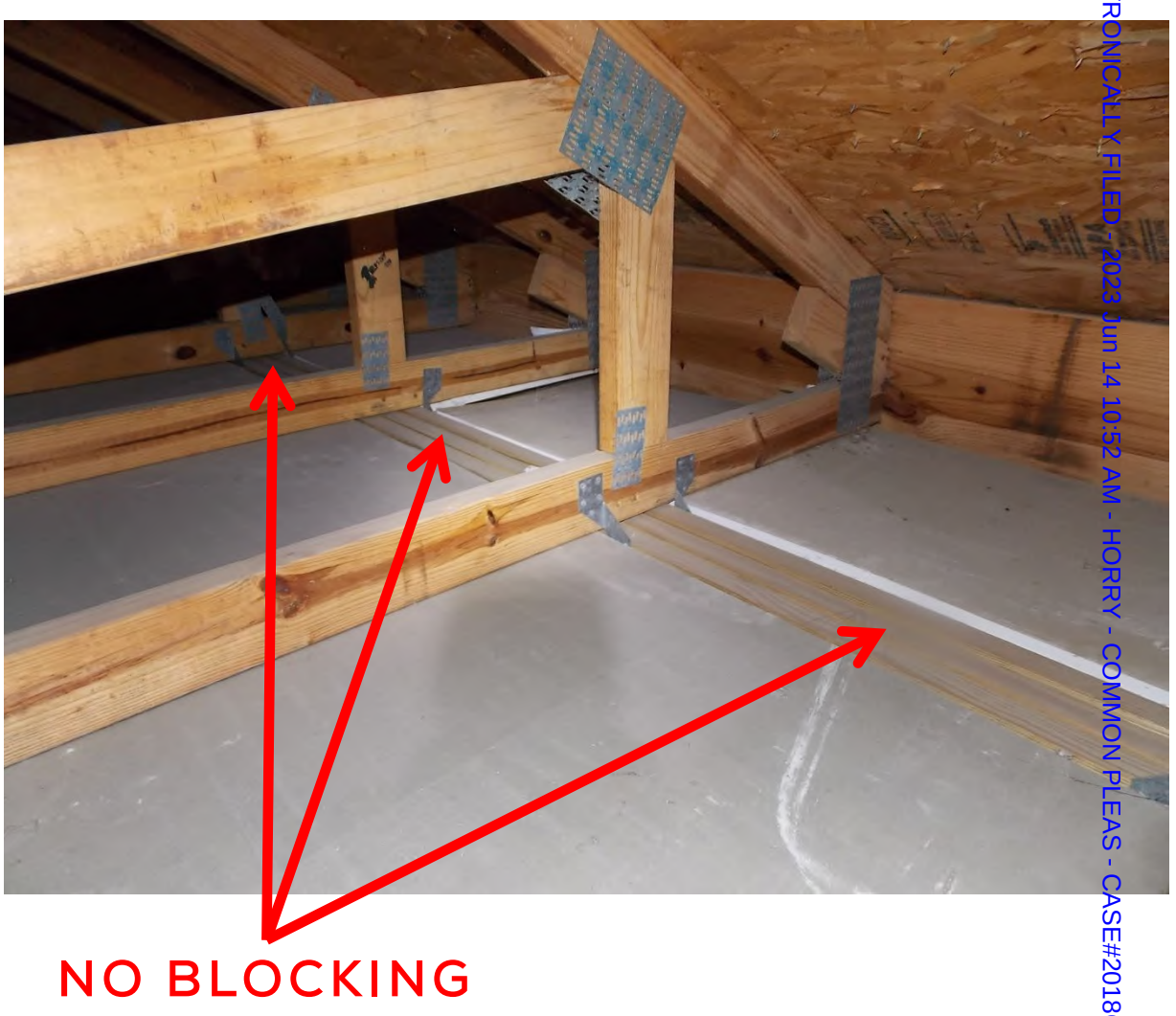
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ATTICS: FRAMING CONNECTIONS

As-Built Conditions

- Missing MTS16 anchors
- Missing wood blocking between trusses



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ATTICS: FRAMING CONNECTIONS

As-Built Conditions

- Missing MTS16 anchors
- Missing wood blocking between trusses
- Missing hurricane ties



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ATTICS: FRAMING CONNECTIONS

As-Built Conditions

- Missing MTS16 anchors
- Missing wood blocking between trusses
- Missing hurricane ties



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ATTICS: FRAMING CONNECTIONS

As-Built Conditions

- Missing MTS16 anchors
- Missing wood blocking between trusses
- Missing hurricane ties
- Missing, loose, and damaged MTT28B ties



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ATTICS: FRAMING CONNECTIONS

As-Built Conditions

- Missing MTS16 anchors
- Missing wood blocking between trusses
- Missing hurricane ties
- Missing, loose, and damaged MTT28B ties



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ATTICS: FRAMING CONNECTIONS

As-Built Conditions

- Missing MTS16 anchors
- Missing wood blocking between trusses
- Missing hurricane ties
- Missing, loose, and damaged MTT28B ties



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ATTICS: FRAMING CONNECTIONS

As-Built Conditions

- Missing MTS16 anchors
- Missing wood blocking between trusses
- Missing hurricane ties
- Missing, loose, and damaged MTT28B ties

Requirements

- Standard Building Code

1601.2 Structural safety

1601.2.1 Every building and structure shall be of sufficient strength to support the loads and forces encountered, or combinations thereof, without exceeding in any of its structural elements the stresses prescribed elsewhere in this code.

SECTION 1606
WIND LOADS

1606.1 Applications. All buildings, structures and parts thereof shall be designed to withstand the appropriate wind loads prescribed herein. Decreases in wind loads shall not be made for the effect of shielding by other structures. Wind pressures shall be assumed to act normal to the surfaces considered.

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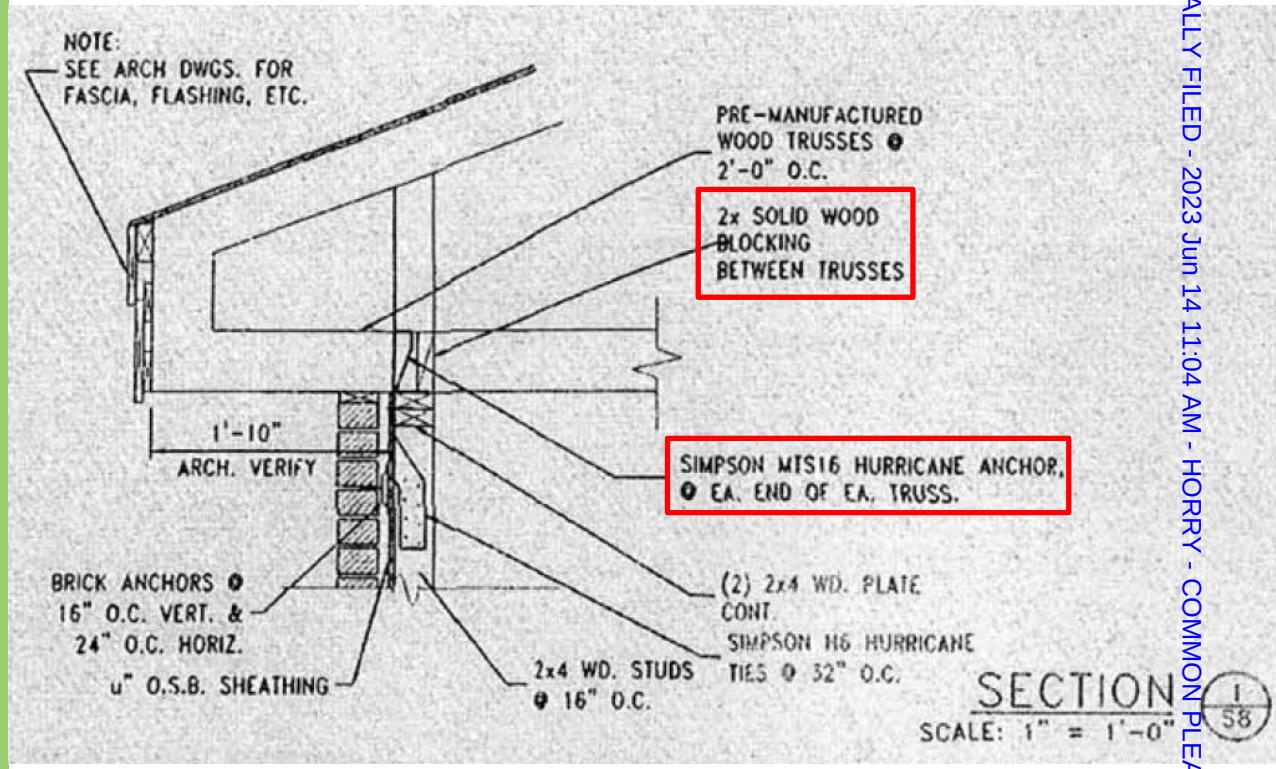
ATTICS: FRAMING CONNECTIONS

As-Built Conditions

- Missing MTS16 anchors
- Missing wood blocking between trusses
- Missing hurricane ties
- Missing, loose, and damaged MTT28B ties

Requirements

- Standard Building Code
- Structural Drawings



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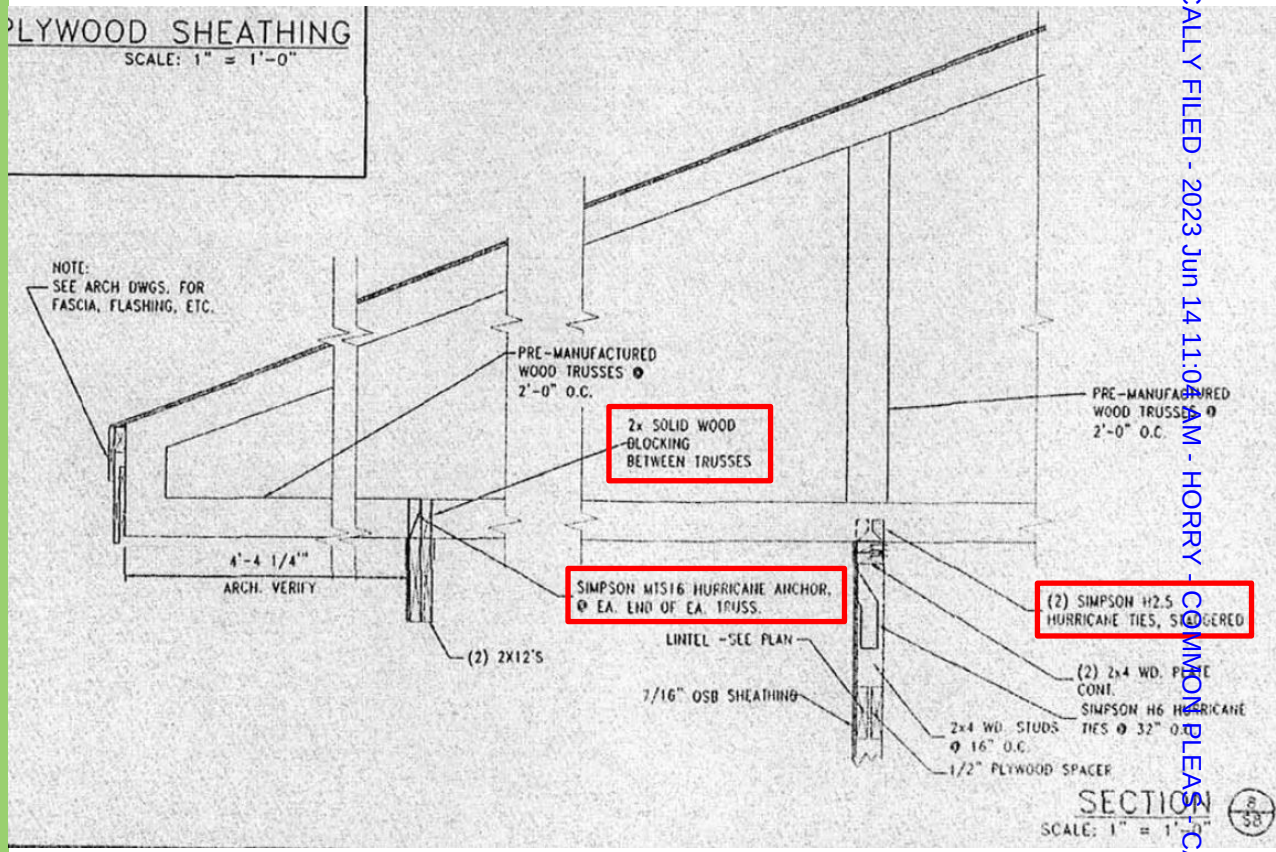
ATTICS: FRAMING CONNECTIONS

As-Built Conditions

- Missing MTS16 anchors
- Missing wood blocking between trusses
- Missing hurricane ties
- Missing, loose, and damaged MTT28B ties

Requirements

- Standard Building Code
- Structural Drawings



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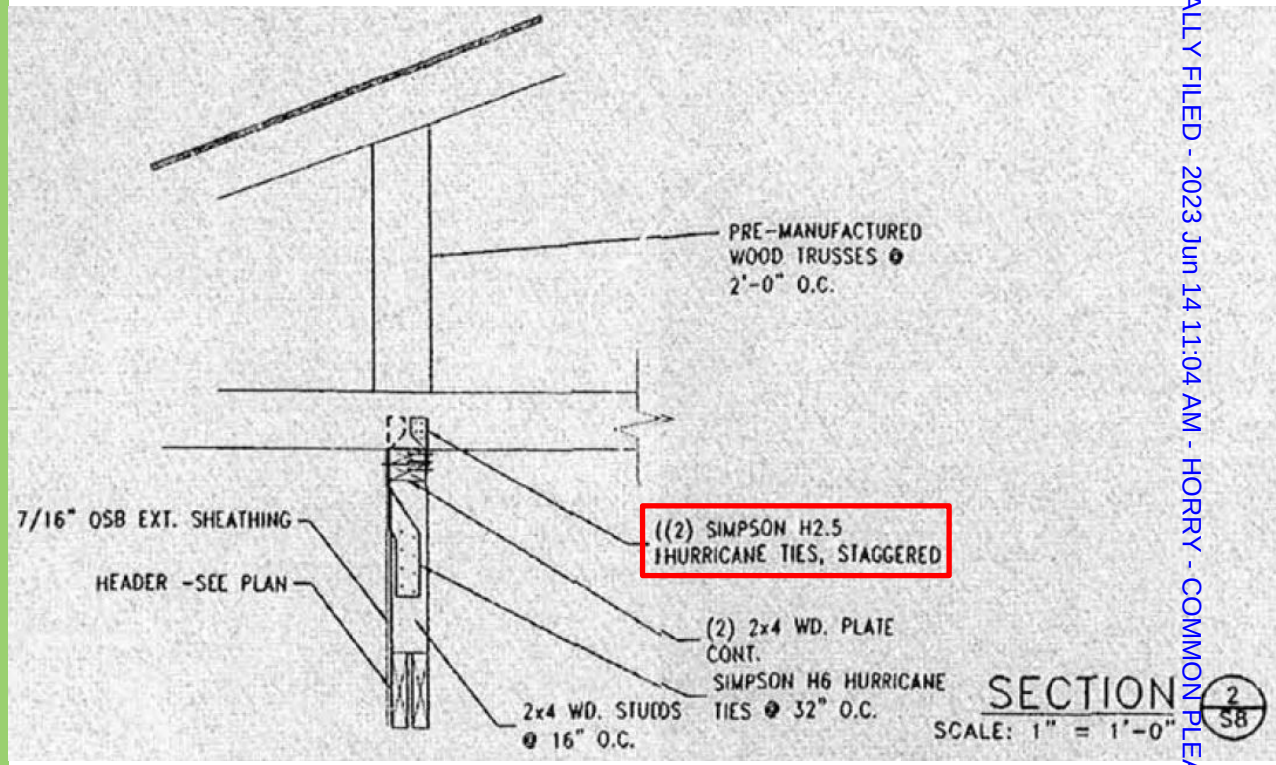
ATTICS: FRAMING CONNECTIONS

As-Built Conditions

- Missing MTS16 anchors
- Missing wood blocking between trusses
- Missing hurricane ties
- Missing, loose, and damaged MTT28B ties

Requirements

- Standard Building Code
- Structural Drawings



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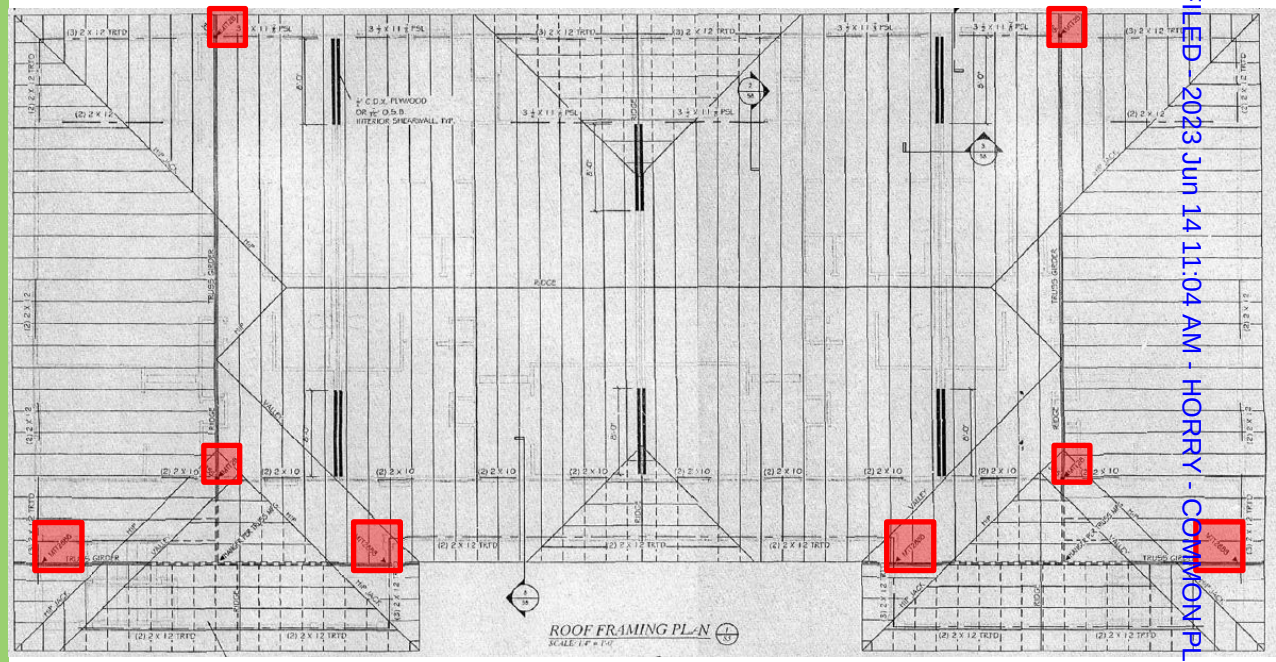
ATTICS: FRAMING CONNECTIONS

As-Built Conditions

- Missing MTS16 anchors
- Missing wood blocking between trusses
- Missing hurricane ties
- Missing, loose, and damaged MTT28B ties

Requirements

- Standard Building Code
- Structural Drawings



MTT28B TIES REQUIRED

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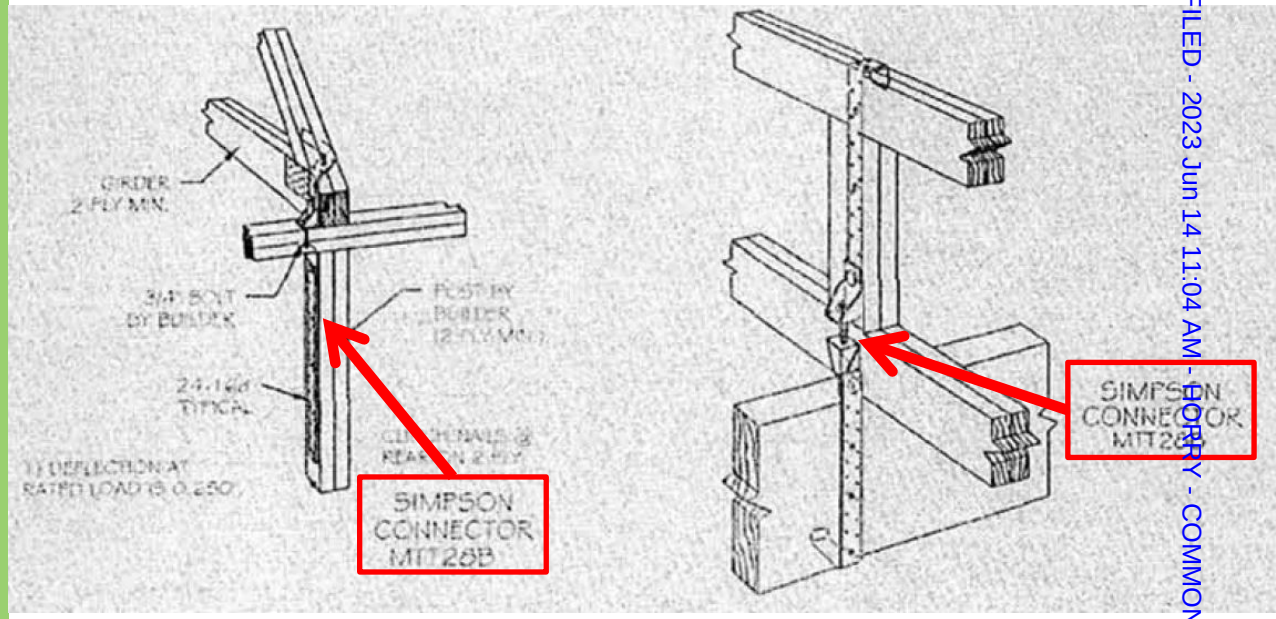
ATTICS: FRAMING CONNECTIONS

As-Built Conditions

- Missing MTS16 anchors
- Missing wood blocking between trusses
- Missing hurricane ties
- Missing, loose, and damaged MTT28B ties

Requirements

- Standard Building Code
- Structural Drawings



MTT28B TIE DETAILS

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FINDINGS

- Exterior Walls
- Roofs
- Walkways
- Stairs
- Attics
  - Framing Connections
  - Truss and Window Framing
  - Fire Protection

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ATTICS: TRUSS AND WINDOW FRAMING

As-Built Conditions

- Improper truss framing



TRUSSES STOPPED SHORT OF RIDGE LINE (BUILDING 9)

ROA 505

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ATTICS: TRUSS AND WINDOW FRAMING

As-Built Conditions

- Improper truss framing



TRUSSES STOPPED SHORT OF RIDGE LINE (BUILDING 9)

ROA 506

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ATTICS: TRUSS AND WINDOW FRAMING

As-Built Conditions

- Improper truss framing



NO SUPPORT UNDER TRUSSES (BUILDINGS 2 AND 5)

ROA 507

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ATTICS: TRUSS AND WINDOW FRAMING

As-Built Conditions

- Improper truss framing



MINIMAL TRUSS BEARING (BUILDING 5)

ROA 508

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ATTICS: TRUSS AND WINDOW FRAMING

As-Built Conditions

- Improper truss framing



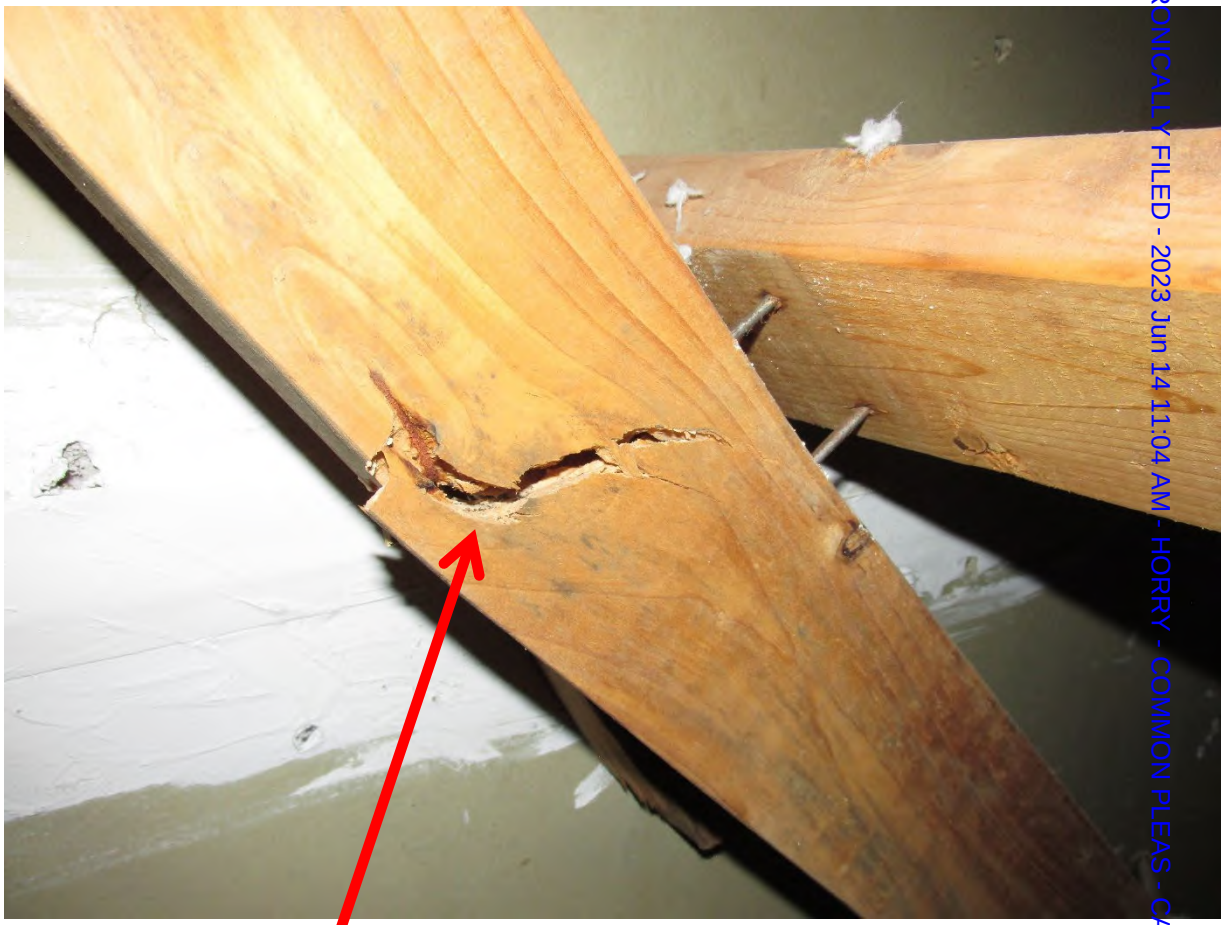
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ATTICS: TRUSS AND WINDOW FRAMING

As-Built Conditions

- Improper truss framing



BROKEN TRUSS FRAMING

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ATTICS: TRUSS AND WINDOW FRAMING

As-Built Conditions

- Improper truss framing



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ATTICS: TRUSS AND WINDOW FRAMING

As-Built Conditions

- Improper truss framing



NOTCHED TRUSS FRAMING

ROA 512

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ATTICS: TRUSS AND WINDOW FRAMING

As-Built Conditions

- Improper truss framing
- Missing framing around window openings



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ATTICS: TRUSS AND WINDOW FRAMING

As-Built Conditions

- Improper truss framing
- Missing framing around window openings

Requirements

- Standard Building Code

1601.2 Structural safety

1601.2.1 Every building and structure shall be of sufficient strength to support the loads and forces encountered, or combinations thereof, without exceeding in any of its structural elements the stresses prescribed elsewhere in this code.

SECTION 1606
WIND LOADS

1606.1 Applications. All buildings, structures and parts thereof shall be designed to withstand the appropriate wind loads prescribed herein. Decreases in wind loads shall not be made for the effect of shielding by other structures. Wind pressures shall be assumed to act normal to the surfaces considered.

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ATTICS: TRUSS AND WINDOW FRAMING

As-Built Conditions

- Improper truss framing
- Missing framing around window openings

Requirements

- Standard Building Code

2309.2.3 The bracing of metal plate connected wood trusses shall comply to their appropriate engineered design. In the absence of specific bracing requirements, trusses shall be braced in accordance with the Truss Plate Institute's "Handling, Installing and Bracing Metal Plate Connected Wood Trusses, HIB-91."

2309.2.4 Truss members and components shall not be cut, notched, drilled, spliced or otherwise altered in any way without written concurrence and approval of the design engineer. No additional loading of any member (e.g., HVAC equipment, water heater) shall be permitted without such additional load being incorporated in the engineering design.

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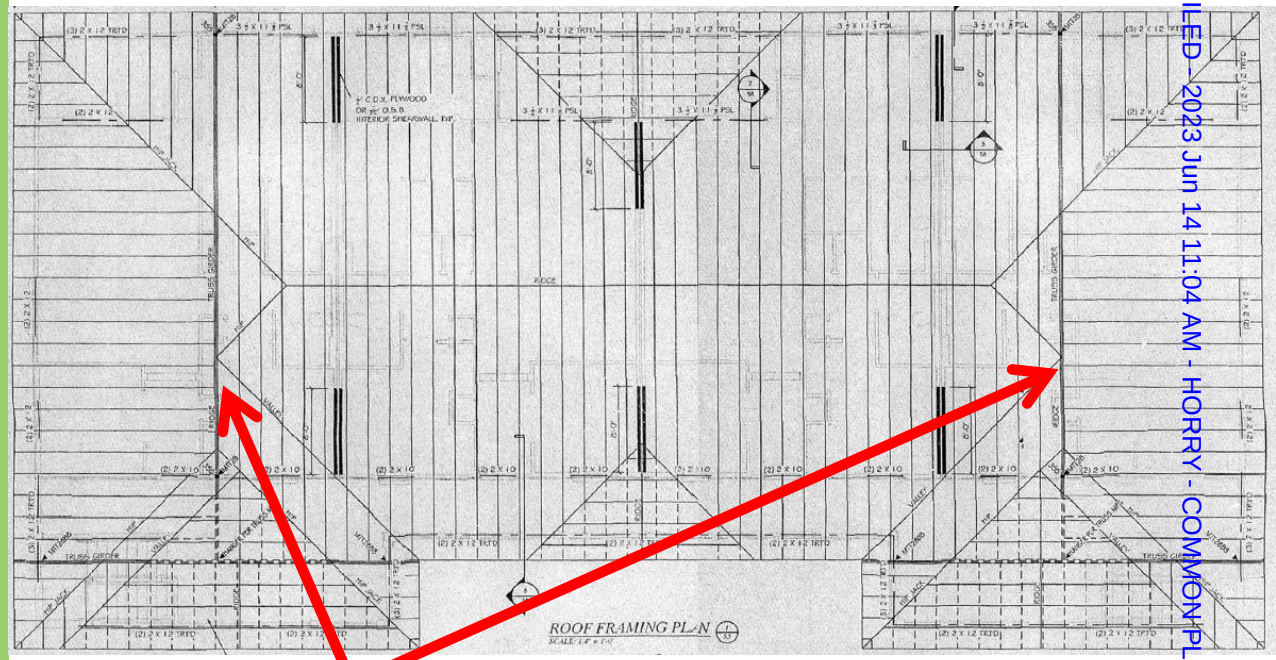
ATTICS: TRUSS AND WINDOW FRAMING

As-Built Conditions

- Improper truss framing
- Missing framing around window openings

Requirements

- Standard Building Code
- Structural Drawings



TRUSSES EXTEND TO RIDGE LINE

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ATTICS: TRUSS AND WINDOW FRAMING

As-Built Conditions

- Improper truss framing
- Missing framing around window openings

Requirements

- Standard Building Code
- Structural Drawings

16. NO OPENINGS NOTCHES OR MODIFICATIONS IN WOOD COMPONENTS SHALL BE FIELD CUT WITHOUT WRITTEN PERMISSION BY THE WOOD COMPONENT DESIGNER.

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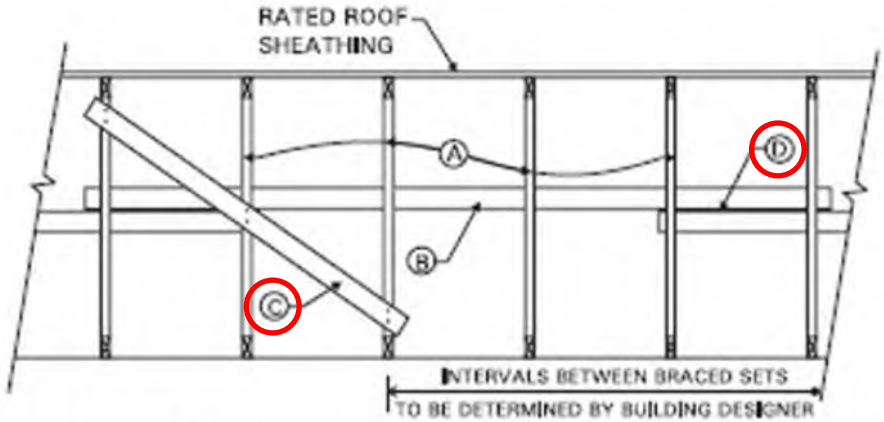
ATTICS: TRUSS AND WINDOW FRAMING

As-Built Conditions

- Improper truss framing
- Missing framing around window openings

Requirements

- Standard Building Code
- Structural Drawings
- Wood Truss Council of America - Commentary for Permanent Bracing of Wood Trusses



Ⓐ COMPRESSION WEB MEMBER IN ADJACENT SIMILAR WOOD TRUSSES

Ⓑ CONTINUOUS LATERAL BRACING PER TRUSS DESIGN DRAWING TO REDUCE BUCKLING LENGTH OF WEB MEMBER. LOCATION BY TRUSS DESIGNER. DESIGNED AND DETAILED BY BUILDING DESIGNER.

Ⓒ DIAGONAL BRACE ATTACHED TO SIDE OF WEB OPPOSITE THE LATERAL BRACE. PREVENTS ALL WEB MEMBERS FROM BUCKLING SIMULTANEOUSLY IN THE SAME DIRECTION.

Ⓓ OVERLAP CONTINUOUS LATERAL BRACING (CLB) AT LEAST 2 FEET. DESIGN OF CLB SPLICE CONNECTION BY BUILDING DESIGNER.

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FINDINGS

- Exterior Walls
- Roofs
- Walkways
- Stairs
- Attics
  - Framing Connections
  - Truss and Window Framing
  - Fire Protection

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ATTICS: FIRE PROTECTION

As-Built Conditions

- Fastener heads not mudded in drywall draftstopping



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ATTICS: FIRE PROTECTION

As-Built Conditions

- Fastener heads not mudded in drywall draftstopping
- Seam tape not properly mudded in drywall draftstopping



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ATTICS: FIRE PROTECTION

As-Built Conditions

- Fastener heads not mudded in drywall draftstopping
- Seam tape not properly mudded in drywall draftstopping

Requirements

- Standard Building Code

2305.2.7 The integrity of all draftstops shall be maintained.

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ATTICS: FIRE PROTECTION

As-Built Conditions

- Fastener heads not mudded in drywall draftstopping
- Seam tape not properly mudded in drywall draftstopping

Requirements

- Standard Building Code
- Gypsum Fire Resistance Design Manual

Unless otherwise specified, the face layers of all systems, except those with predecorated or metal covered surfaces, shall have joints taped (minimum Level 1 as specified in GA-214, *Levels of Gypsum Board Finish*) and fastener heads treated.

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FINDINGS

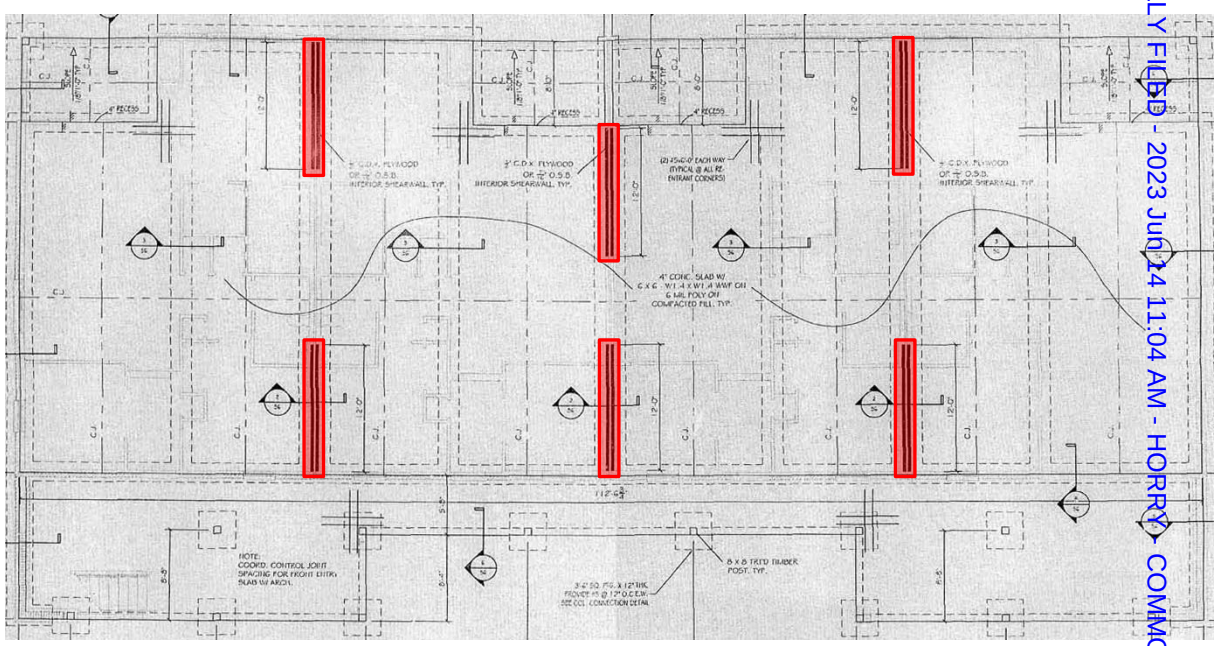
- Exterior Walls
- Roofs
- Walkways
- Stairs
- Attics
- Shear Walls
  - Framing Attachment
  - Sheathing Attachment

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SHEAR WALLS: FRAMING ATTACHMENT

As-Built Conditions

- Anchor bolt spacing exceeds 32" requirement on drawings



SHEAR WALLS

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SHEAR WALLS: FRAMING ATTACHMENT

As-Built Conditions

- Anchor bolt spacing exceeds 32" requirement on drawings



ANCHOR BOLT SPACING

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SHEAR WALLS: FRAMING ATTACHMENT

As-Built Conditions

- Anchor bolt spacing exceeds 32" requirement on drawings
- Anchor bolt nuts loose



LOOSE ANCHOR BOLT NUTS

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SHEAR WALLS: FRAMING ATTACHMENT

As-Built Conditions

- Anchor bolt spacing exceeds 32" requirement on drawings
- Anchor bolt nuts loose
- No hurricane ties at base of walls



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SHEAR WALLS: FRAMING ATTACHMENT

As-Built Conditions

- Anchor bolt spacing exceeds 32" requirement on drawings
- Anchor bolt nuts loose
- No hurricane ties at base of walls

Requirements

- Standard Building Code

1601.2 Structural safety

1601.2.1 Every building and structure shall be of sufficient strength to support the loads and forces encountered, or combinations thereof, without exceeding in any of its structural elements the stresses prescribed elsewhere in this code.

SECTION 1606
WIND LOADS

1606.1 Applications. All buildings, structures and parts thereof shall be designed to withstand the appropriate wind loads prescribed herein. Decreases in wind loads shall not be made for the effect of shielding by other structures. Wind pressures shall be assumed to act normal to the surfaces considered.

SECTION 2310
WOOD STRUCTURAL PANEL DIAPHRAGMS

2310.1.3 Connections and anchorages capable of resisting the design forces shall be provided between the diaphragms and the resisting elements. Openings in

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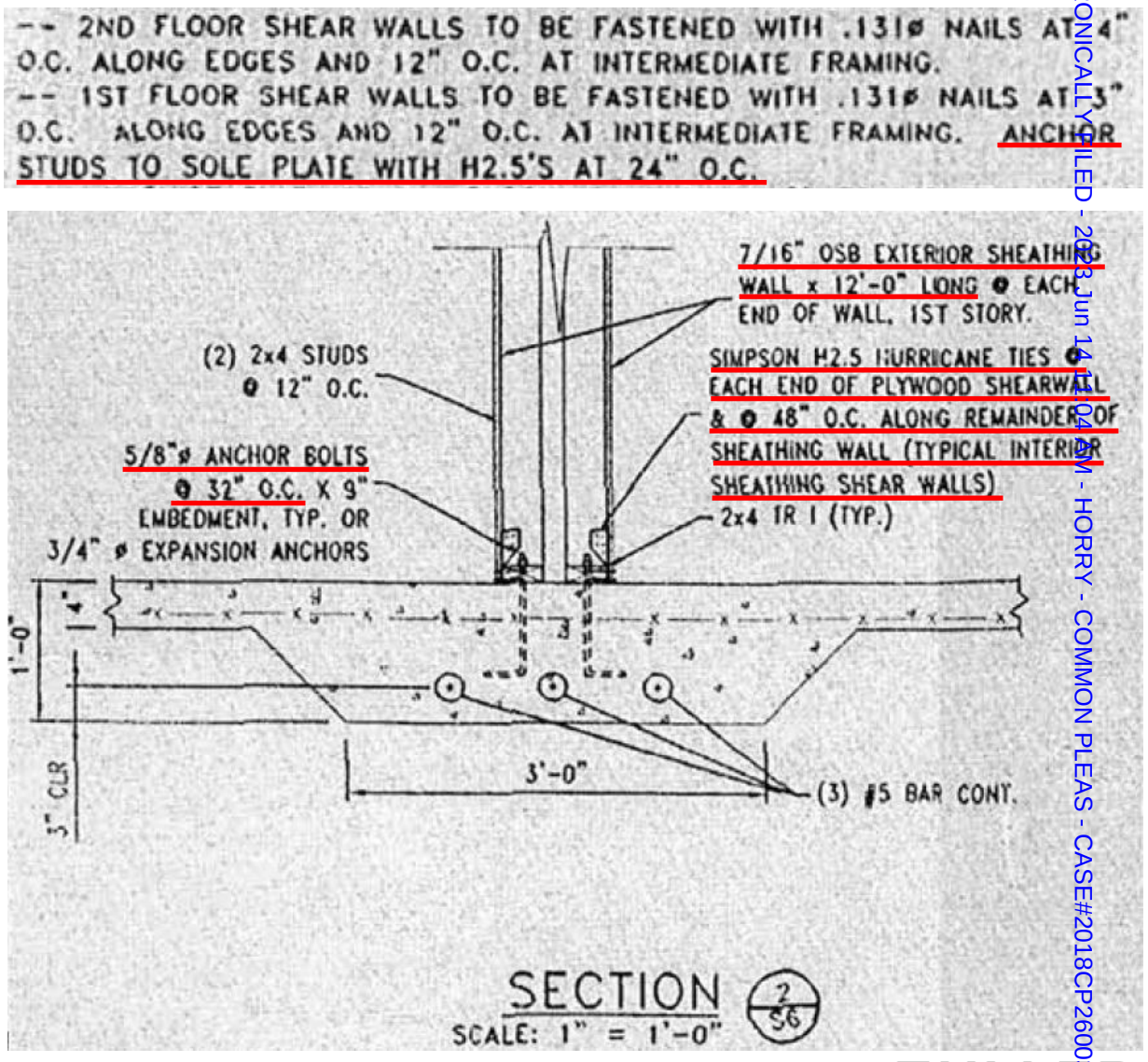
SHEAR WALLS: FRAMING ATTACHMENT

As-Built Conditions

- Anchor bolt spacing exceeds 32" requirement on drawings
- Anchor bolt nuts loose
- No hurricane ties at base of walls

Requirements

- Standard Building Code
- Structural Drawings



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ROA 530

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FINDINGS

- Exterior Walls
- Roofs
- Walkways
- Stairs
- Attics
- Shear Walls
  - Framing Attachment
  - Sheathing Attachment

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SHEAR WALLS: SHEATHING ATTACHMENT

As-Built Conditions

- Sheathing fastener spacing exceeds 3" spacing required by drawings on first floor



FASTENER SPACING OVER 3"

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SHEAR WALLS: SHEATHING ATTACHMENT

As-Built Conditions

- Sheathing fastener spacing exceeds 3" spacing required by drawings on first floor



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SHEAR WALLS: SHEATHING ATTACHMENT

As-Built Conditions

- Sheathing fastener spacing exceeds 3" spacing required by drawings on first floor
- Sheathing fastener spacing exceeds 4" spacing required by drawings on second floor



FASTENER SPACING OVER 4"

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SHEAR WALLS: SHEATHING ATTACHMENT

As-Built Conditions

- Sheathing fastener spacing exceeds 3" spacing required by drawings on first floor
- Sheathing fastener spacing exceeds 4" spacing required by drawings on second floor
- No blocking along horizontal sheathing joint



MISSING BLOCKING

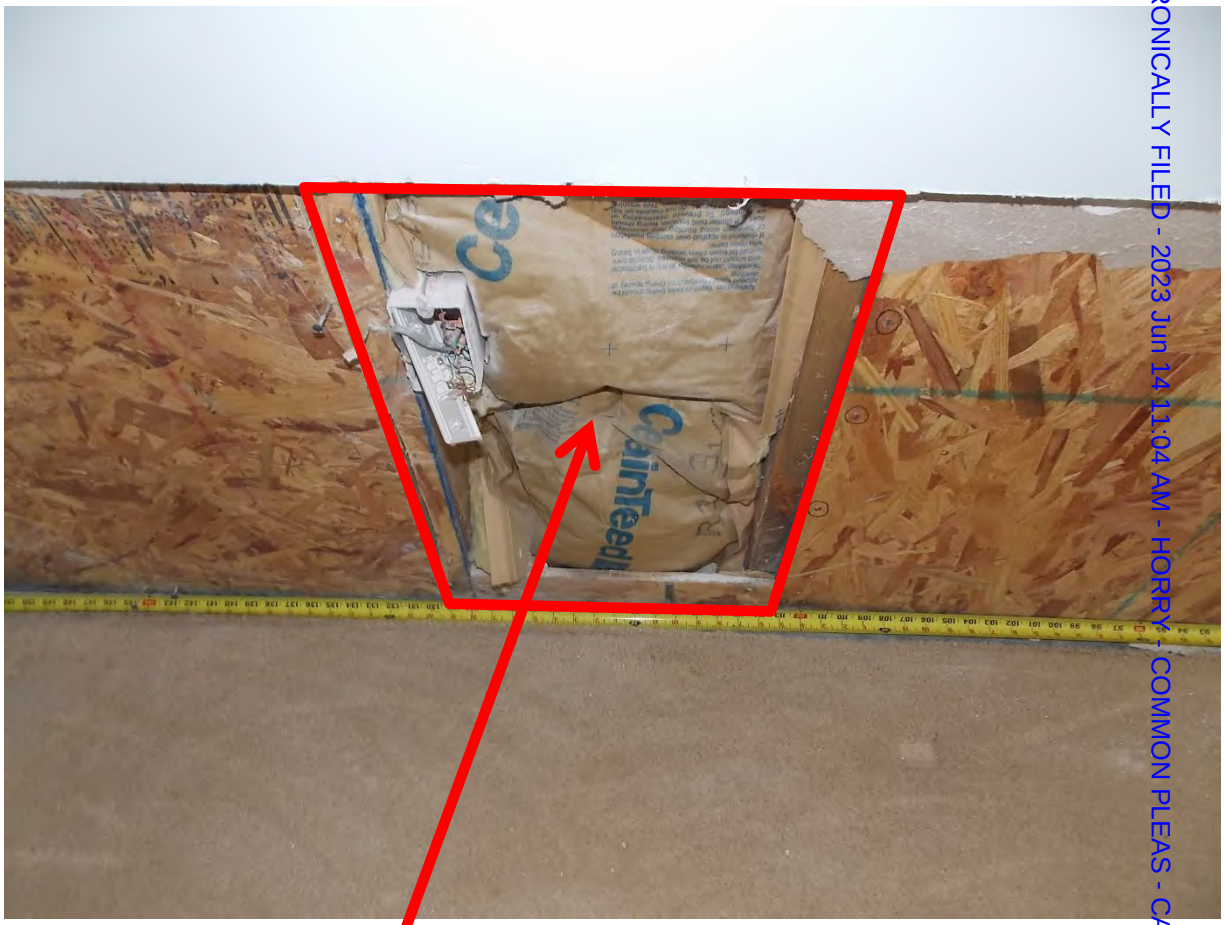
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SHEAR WALLS: SHEATHING ATTACHMENT

As-Built Conditions

- Sheathing fastener spacing exceeds 3" spacing required by drawings on first floor
- Sheathing fastener spacing exceeds 4" spacing required by drawings on second floor
- No blocking along horizontal sheathing joint
- Missing shear wall sheathing



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SHEAR WALLS: SHEATHING ATTACHMENT

As-Built Conditions

- Sheathing fastener spacing exceeds 3" spacing required by drawings on first floor
- Sheathing fastener spacing exceeds 4" spacing required by drawings on second floor
- No blocking along horizontal sheathing joint
- Missing shear wall sheathing

Requirements

- Standard Building Code

1601.2 Structural safety

1601.2.1 Every building and structure shall be of sufficient strength to support the loads and forces encountered, or combinations thereof, without exceeding in any of its structural elements the stresses prescribed elsewhere in this code.

SECTION 1606
WIND LOADS

1606.1 Applications. All buildings, structures and parts thereof shall be designed to withstand the appropriate wind loads prescribed herein. Decreases in wind loads shall not be made for the effect of shielding by other structures. Wind pressures shall be assumed to act normal to the surfaces considered.

SECTION 2310
WOOD STRUCTURAL PANEL DIAPHRAGMS

2310.1.3 Connections and anchorages capable of resisting the design forces shall be provided between the diaphragms and the resisting elements. Openings in

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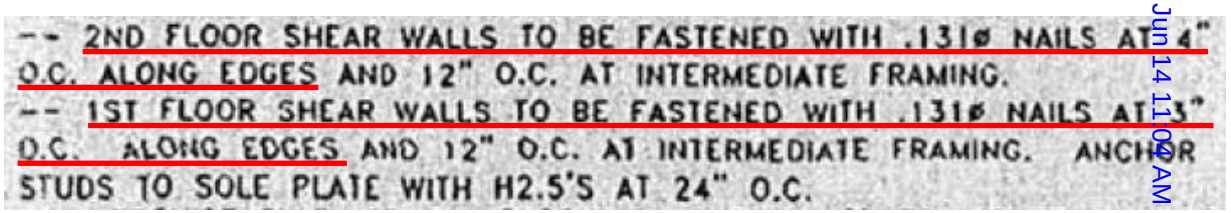
SHEAR WALLS: SHEATHING ATTACHMENT

As-Built Conditions

- Sheathing fastener spacing exceeds 3" spacing required by drawings on first floor
- Sheathing fastener spacing exceeds 4" spacing required by drawings on second floor
- No blocking along horizontal sheathing joint
- Missing shear wall sheathing

Requirements

- Standard Building Code
- Structural Drawings



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FINDINGS

- Exterior Walls
- Roofs
- Walkways
- Stairs
- Attics
- Shear Walls
- Floor/Ceiling Assemblies
    - Tenant Separation Walls

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FLOOR/CEILING ASSEMBLIES

As-Built Conditions

- Missing 2x blocking between floor trusses



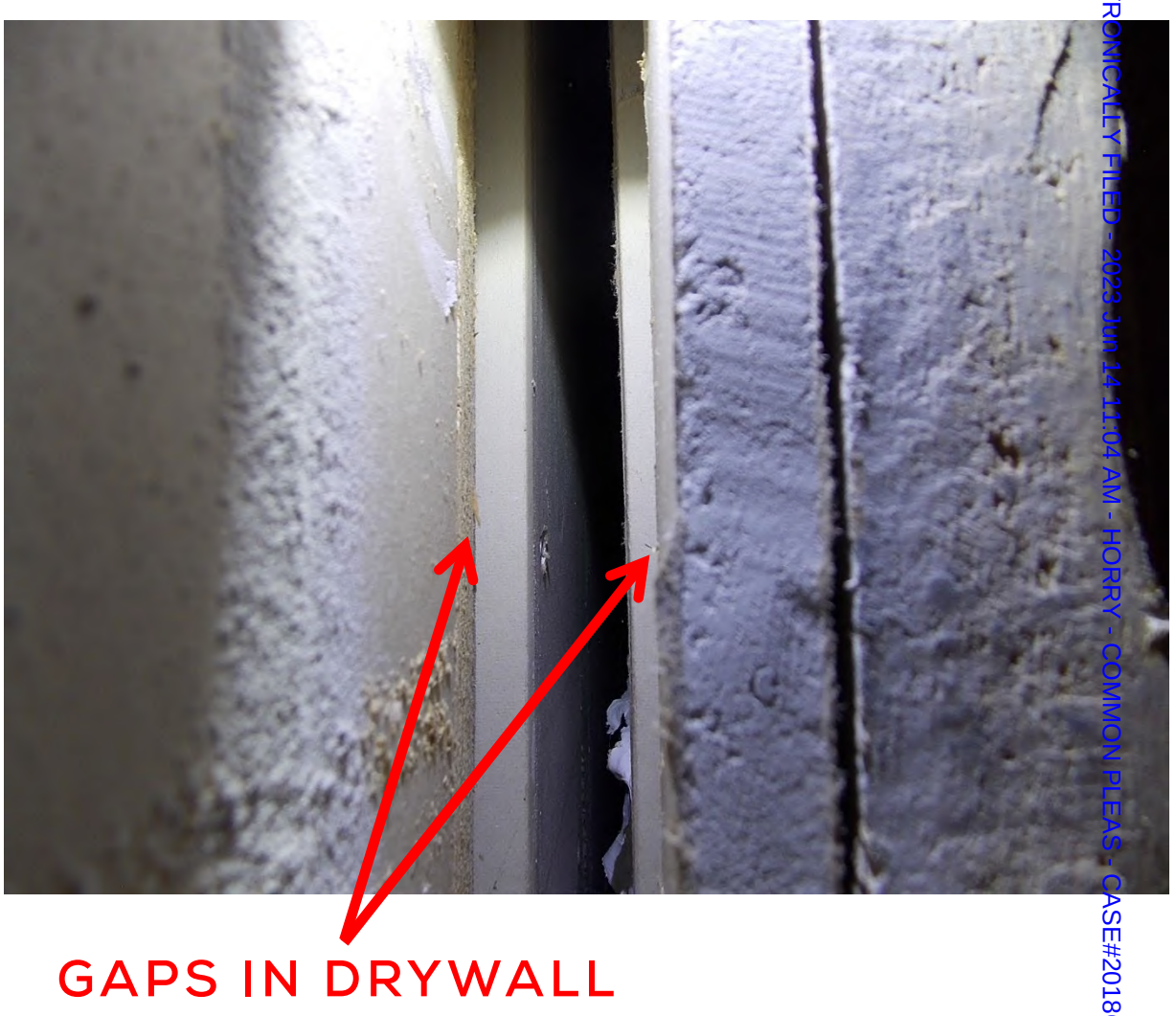
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FLOOR/CEILING ASSEMBLIES

As-Built Conditions

- Missing 2x blocking between floor trusses
- Gypsum board not continuous



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FLOOR/CEILING ASSEMBLIES

As-Built Conditions

- Missing 2x blocking between floor trusses
- Gypsum board not continuous



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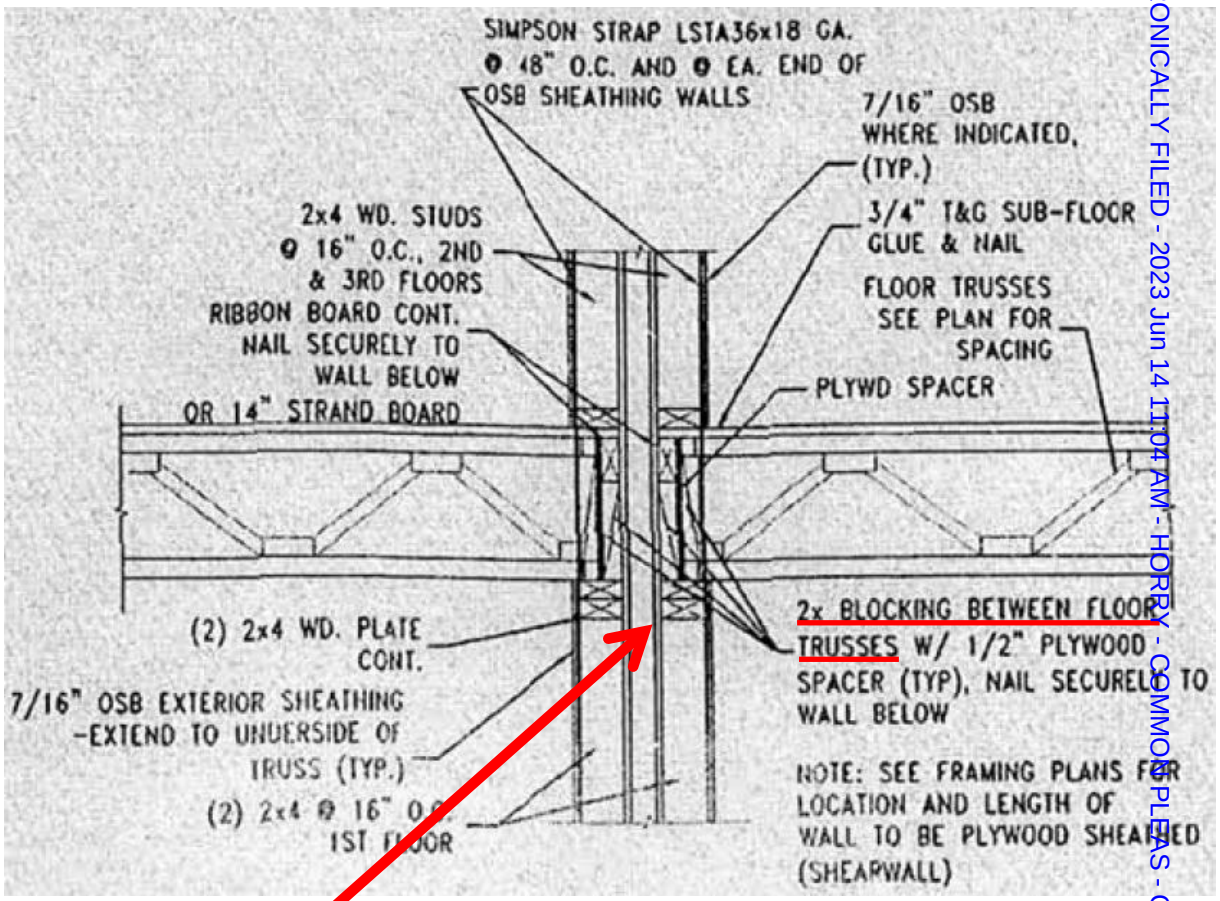
FLOOR/CEILING ASSEMBLIES

As-Built Conditions

- Missing 2x blocking between floor trusses
- Gypsum board not continuous

Requirements

- Structural Drawings



CONTINUOUS DRYWALL

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FINDINGS

- Exterior Walls
- Roofs
- Walkways
- Stairs
- Attics
- Shear Walls
- Floor/Ceiling Assemblies
- Accessibility
  - Entry Stairs and Ramps

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ACCESSIBILITY: ENTRY STAIRS AND RAMPS

As-Built Conditions

- Improper ramp slope at Buildings 3 and 6
  - Exceeds 1:12 (8.33%)



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ACCESSIBILITY: ENTRY STAIRS AND RAMPS

As-Built Conditions

- Improper ramp slope at Buildings 3 and 6
  - Exceeds 1:12 (8.33%)



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ACCESSIBILITY: ENTRY STAIRS AND RAMPS

As-Built Conditions

- Improper ramp slope at Buildings 3 and 6
  - Exceeds 1:12 (8.33%)



RAMPS EXCEED 1:12 (8.33%)

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ACCESSIBILITY: ENTRY STAIRS AND RAMPS

As-Built Conditions

- Improper ramp slope at Buildings 3 and 6
  - Exceeds 1:12 (8.33%)
- Improper ramp length at Building 4
  - Exceeds 30 linear feet



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ACCESSIBILITY: ENTRY STAIRS AND RAMPS

As-Built Conditions

- Improper ramp slope at Buildings 3 and 6
  - Exceeds 1:12 (8.33%)
- Improper ramp length at Building 4
  - Exceeds 30 linear feet
- Improper stair riser height at Buildings 5 and 9
  - Exceeds 7 inches



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ACCESSIBILITY: ENTRY STAIRS AND RAMPS

As-Built Conditions

- Improper ramp slope at Buildings 3 and 6
  - Exceeds 1:12 (8.33%)
- Improper ramp length at Building 4
  - Exceeds 30 linear feet
- Improper stair riser height at Buildings 5 and 9
  - Exceeds 7 inches



RISER HEIGHT
OVER 7 INCHES

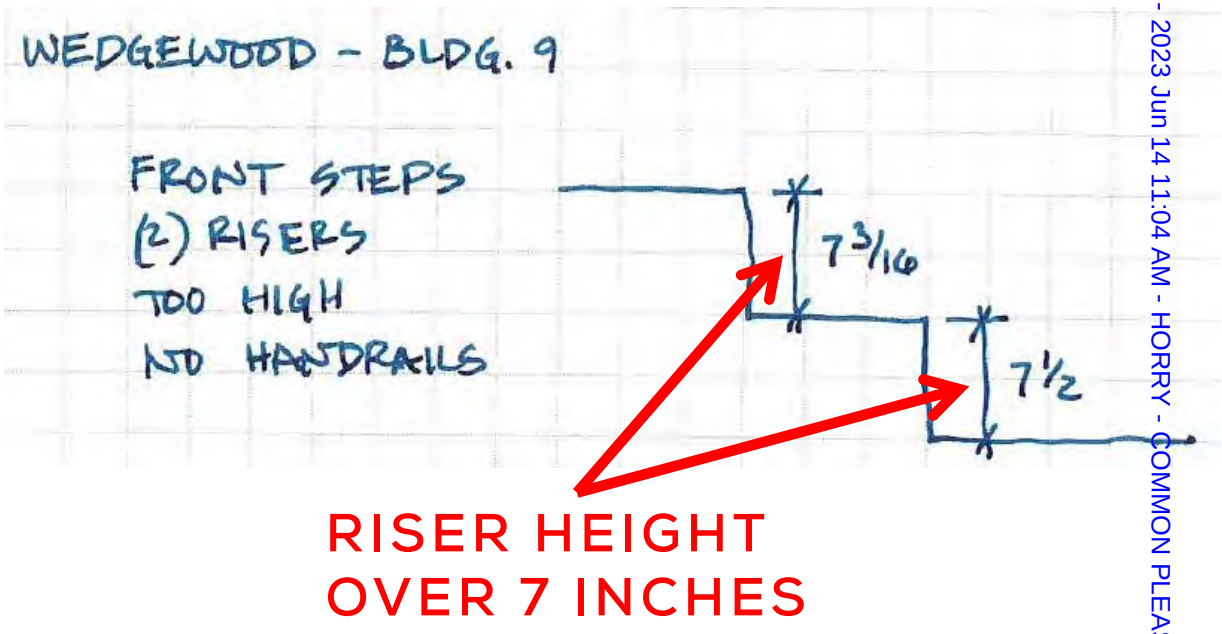
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ACCESSIBILITY: ENTRY STAIRS AND RAMPS

As-Built Conditions

- Improper ramp slope at Buildings 3 and 6
  - Exceeds 1:12 (8.33%)
- Improper ramp length at Building 4
  - Exceeds 30 linear feet
- Improper stair riser height at Buildings 5 and 9
  - Exceeds 7 inches



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ACCESSIBILITY: ENTRY STAIRS AND RAMPS

As-Built Conditions

- Improper ramp slope at Buildings 3 and 6
  - Exceeds 1:12 (8.33%)
- Improper ramp length at Building 4
  - Exceeds 30 linear feet
- Improper stair riser height at Buildings 5 and 9
  - Exceeds 7 inches
- Missing handrails along stairs and ramps at Buildings 2 through 9



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ACCESSIBILITY: ENTRY STAIRS AND RAMPS

As-Built Conditions

- Improper ramp slope at Buildings 3 and 6
  - Exceeds 1:12 (8.33%)
- Improper ramp length at Building 4
  - Exceeds 30 linear feet
- Improper stair riser height at Buildings 5 and 9
  - Exceeds 7 inches
- Missing handrails along stairs and ramps at Buildings 2 through 9

Requirements

- Standard Building Code

1101.1.4 Details, dimensions and construction specifications for items herein shall comply with the requirements of CABO/ANSI A117.1.

1103.2 Entrances

1103.2.1 In each building and structure, and each separate tenancy within a building or structure, at least 50% of its entrances, but not less than one, shall comply with the accessible route provisions of CABO/ANSI A117.1.

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ACCESSIBILITY: ENTRY STAIRS AND RAMPS

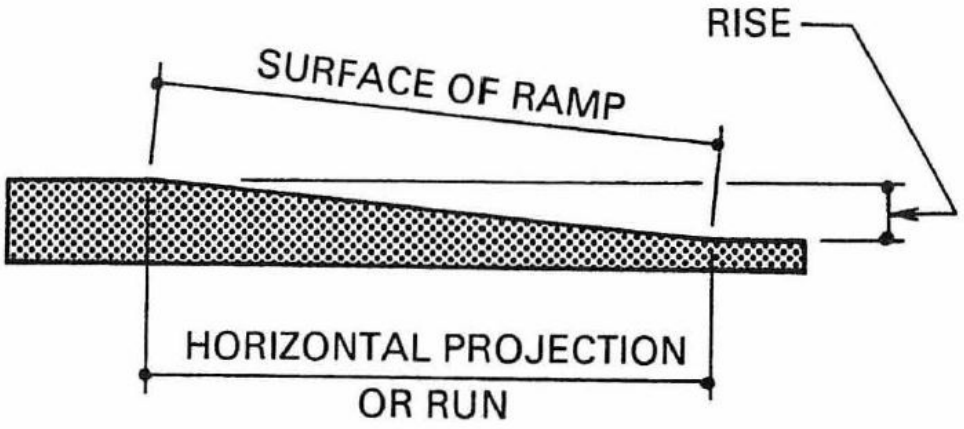
As-Built Conditions

- Improper ramp slope at Buildings 3 and 6
  - Exceeds 1:12 (8.33%)
- Improper ramp length at Building 4
  - Exceeds 30 linear feet
- Improper stair riser height at Buildings 5 and 9
  - Exceeds 7 inches
- Missing handrails along stairs and ramps at Buildings 2 through 9

Requirements

- Standard Building Code
- CABO/ANSI A117.1

4.8.2* Slope and Rise. Ramps in new construction shall have a slope not steeper than 1:12. The rise for any ramp run shall be 30 in (760 mm) maximum. See Fig. B4.8.2. Curb ramps and ramps



Slope	Maximum Rise		Maximum Horizontal Projection	
	in	mm	ft	m
1:12 to 1:15	30	760	30	9
1:16 to 1:19	30	760	40	12
1:20	30	760	50	15

ROA 554

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ACCESSIBILITY: ENTRY STAIRS AND RAMPS

As-Built Conditions

- Improper ramp slope at Buildings 3 and 6
  - Exceeds 1:12 (8.33%)
- Improper ramp length at Building 4
  - Exceeds 30 linear feet
- Improper stair riser height at Buildings 5 and 9
  - Exceeds 7 inches
- Missing handrails along stairs and ramps at Buildings 2 through 9

Requirements

- Standard Building Code
- CABO/ANSI A117.1

4.9.2 Treads and Risers

4.9.2.1 Dimensions. All steps on a flight of stairs shall have uniform riser heights and uniform tread depth. Risers shall be 7 in (180 mm) maximum and 4 in (100 mm) high minimum. Treads shall be 11 in

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ACCESSIBILITY: ENTRY STAIRS AND RAMPS

As-Built Conditions

- Improper ramp slope at Buildings 3 and 6
  - Exceeds 1:12 (8.33%)
- Improper ramp length at Building 4
  - Exceeds 30 linear feet
- Improper stair riser height at Buildings 5 and 9
  - Exceeds 7 inches
- Missing handrails along stairs and ramps at Buildings 2 through 9

Requirements

- Standard Building Code
- CABO/ANSI A117.1

4.8.5 Handrails. Ramps with a rise greater than 6 in (150 mm) or a run greater than 72 in (1830 mm) shall have handrails complying with 4.3.10 and 4.3.11.

4.9.4 Handrails. Stairs shall have handrails complying with 4.3.10 and 4.3.11.

4.3.10* Handrails. Handrails for stairs and ramps shall comply with 4.3.10.

4.3.10.1 Handrails shall be provided on both sides of stairs and ramps.

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FINDINGS

- Exterior Walls
- Roofs
- Walkways
- Stairs
- Attics
- Shear Walls
- Floor/Ceiling Assemblies
- Accessibility
- Vapor Barrier
  - Exterior Walls

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VAPOR BARRIER: EXTERIOR WALLS

As-Built Conditions

- Vapor barrier installed on interior side of exterior walls



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VAPOR BARRIER: EXTERIOR WALLS

As-Built Conditions

- Vapor barrier installed on interior side of exterior walls



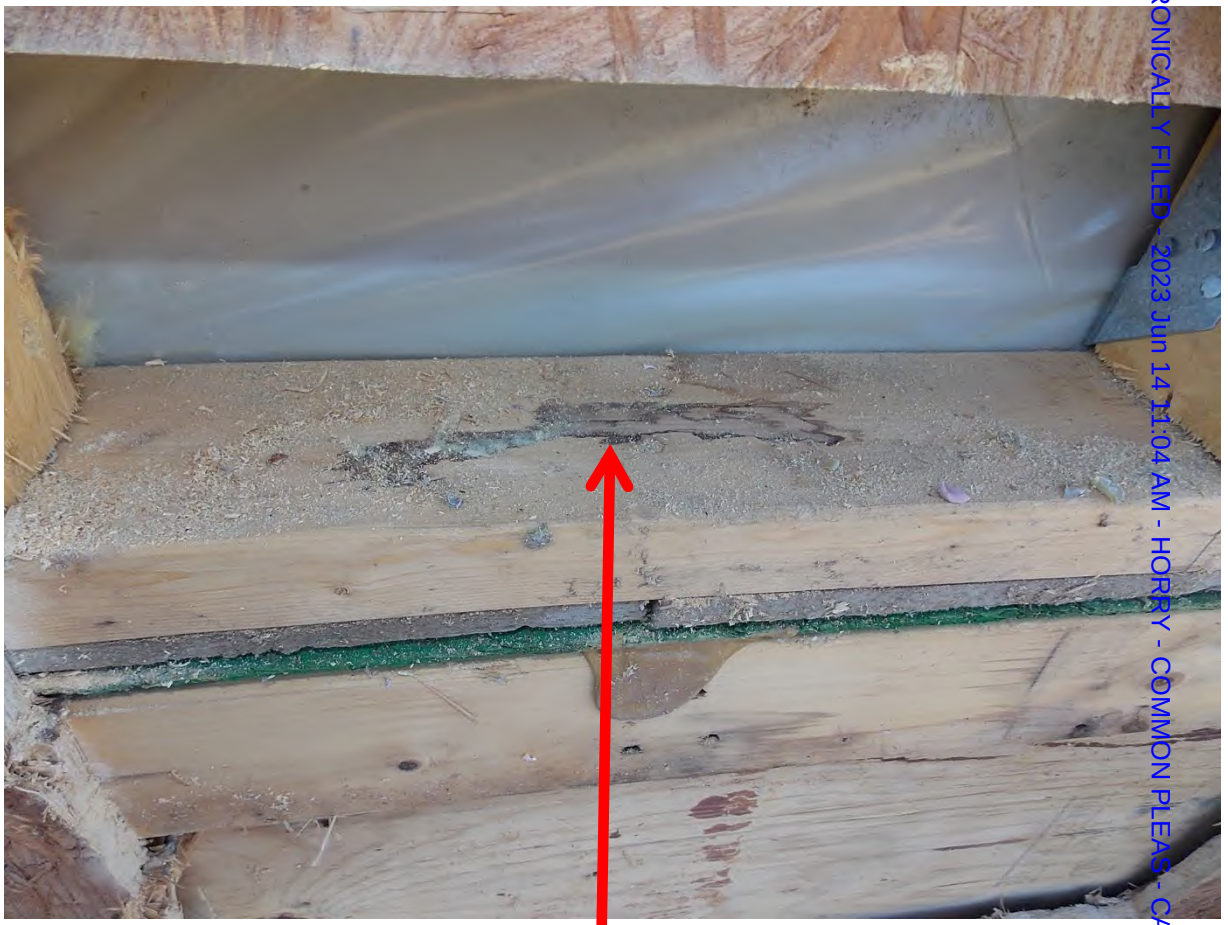
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VAPOR BARRIER: EXTERIOR WALLS

As-Built Conditions

- Vapor barrier installed on interior side of exterior walls
- Resulting damage
  - Condensation



EVIDENCE OF MOISTURE ACCUMULATION WITHIN WALL CAVITY

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VAPOR BARRIER: EXTERIOR WALLS

As-Built Conditions

- Vapor barrier installed on interior side of exterior walls
- Resulting damage
  - Condensation
  - Reduced performance of insulation



INSULATION ADHERED TO VAPOR BARRIER DUE TO MOISTURE ACCUMULATION

ROA 561

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VAPOR BARRIER: EXTERIOR WALLS

As-Built Conditions

- Vapor barrier installed on interior side of exterior walls
- Resulting damage
  - Condensation
  - Reduced performance of insulation

Requirements

- Standard Building Code

E101.2 All buildings, except those listed below, shall be designed in accordance with the CABO Model Energy Code.

Exceptions:

1. Buildings and structures, or portions thereof, which are neither heated nor cooled.
2. Buildings and structures, or portions thereof, whose peak design rate of energy usage is less than 1 watt per square foot or 3.4 Btuh per square foot (10.76 W/m^2) of floor area for all purposes.

SECTION E102
OTHER STANDARDS

E102.1 Compliance with the applicable provisions of ASHRAE Standard 90.1 shall be deemed to meet the requirements of this chapter, unless otherwise specifically provided herein.

Exception: Residential buildings of 3 stories or less may comply with the requirements of ASHRAE 90.2 Code.

ROA 562

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VAPOR BARRIER: EXTERIOR WALLS

As-Built Conditions

- Vapor barrier installed on interior side of exterior walls
- Resulting damage
  - Condensation
  - Reduced performance of insulation

Requirements

- Standard Building Code
- Model Energy Code

502.1.4. The design shall not create conditions of accelerated deterioration from moisture condensation. In all frame walls and floors and ceilings not ventilated to allow moisture to escape, an approved vapor retarder having a maximum rating of 1.0 perm, when tested in accordance with Standard RS-21 listed in Chapter 8, Procedure A, shall be installed on the warm-in-winter side of the thermal insulation.

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VAPOR BARRIER: EXTERIOR WALLS

As-Built Conditions

- Vapor barrier installed on interior side of exterior walls
- Resulting damage
  - Condensation
  - Reduced performance of insulation

Requirements

- Standard Building Code
- Model Energy Code
- ASHRAE 90.2

Exception: The use of vapor retarders is not required in humid climates. If vapor retarders are used, they should be on the exterior.

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VAPOR BARRIER: EXTERIOR WALLS

As-Built Conditions

- Vapor barrier installed on interior side of exterior walls
- Resulting damage
  - Condensation
  - Reduced performance of insulation

Requirements

- Standard Building Code
- Model Energy Code
- ASHRAE 90.2
- ASHRAE Handbook of Fundamentals

Water vapor diffuses through building materials from the outside into air-conditioned spaces in high humidity climates. Exterior surfaces should have higher vapor resistance than interior surfaces in such climates. Paints and finishes can provide the necessary vapor resistances, with the greater vapor resistance at the outside surface and lower vapor resistances toward the inside. Where vapor retarders are used, they should be on the outside.

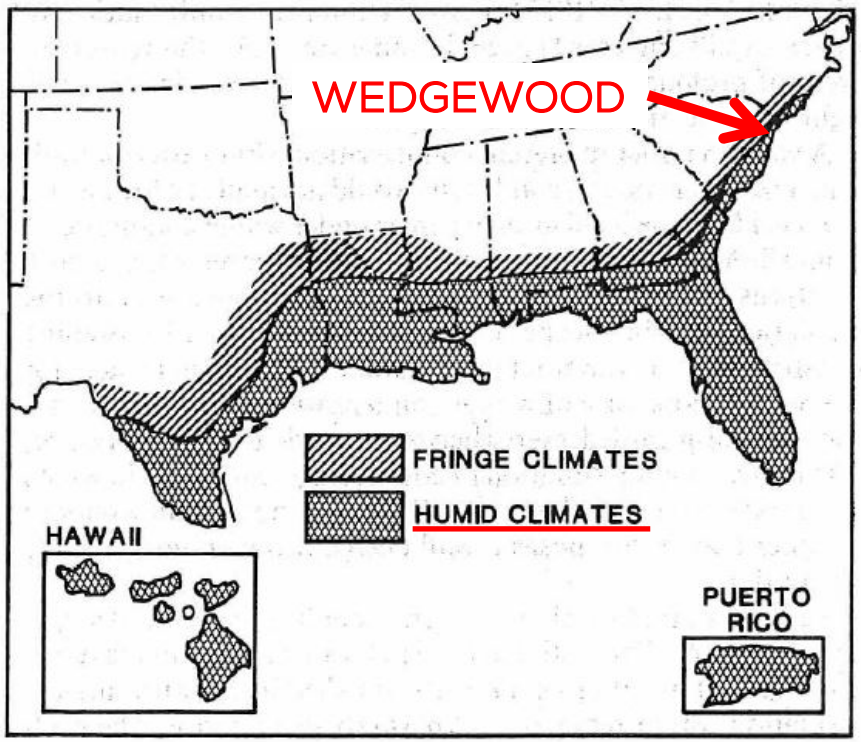


Fig. 12 Humid Climates in Continental United States

ROA 565

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FINDINGS

- Exterior Walls
- Roofs
- Walkways
- Stairs
- Attics
- Shear Walls
- Floor/Ceiling Assemblies
- Accessibility
- Vapor Barrier
- Window Installation
  - Improper Flashing
  - Improper Mulling

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WINDOW INSTALLATION: IMPROPER FLASHING

As-Built Conditions

- Rough opening flashing and WRB improperly installed over the sill nailing fin



FLASHING AND WRB OVER SILL NAILING FIN

ROA 567

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WINDOW INSTALLATION: IMPROPER FLASHING

As-Built Conditions

- Rough opening flashing and WRB improperly installed over the sill nailing fin



ROA 568

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WINDOW INSTALLATION: IMPROPER FLASHING

As-Built Conditions

- Rough opening flashing and WRB improperly installed over the sill nailing fin



FLASHING AND WRB OVER SILL NAILING FIN

ROA 569

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WINDOW INSTALLATION: IMPROPER FLASHING

As-Built Conditions

- Rough opening flashing and WRB improperly installed over the sill nailing fin
- Failed flashing material



DEFECTIVE FLASHING- FALLING APART

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WINDOW INSTALLATION: IMPROPER FLASHING

As-Built Conditions

- Rough opening flashing and WRB improperly installed over the sill nailing fin
- Failed flashing material



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WINDOW INSTALLATION: IMPROPER FLASHING

As-Built Conditions

- Rough opening flashing and WRB improperly installed over the sill nailing fin
- Failed flashing material
- Flashing sealed shut



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WINDOW INSTALLATION: IMPROPER FLASHING

As-Built Conditions

- Rough opening flashing and WRB improperly installed over the sill nailing fin
- Failed flashing material
- Flashing sealed shut
- Flashing reverse lapped with WRB



FLASHING REVERSED WITH WRB

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WINDOW INSTALLATION: IMPROPER FLASHING

As-Built Conditions

- Rough opening flashing and WRB improperly installed over the sill nailing fin
- Failed flashing material
- Flashing sealed shut
- Flashing reverse lapped with WRB
- Hidden damage



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WINDOW INSTALLATION: IMPROPER FLASHING

As-Built Conditions

- Rough opening flashing and WRB improperly installed over the sill nailing fin
- Failed flashing material
- Flashing sealed shut
- Flashing reverse lapped with WRB
- Hidden damage



ROTTED WOOD SHEATHING AND FRAMING

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WINDOW INSTALLATION: IMPROPER FLASHING

As-Built Conditions

- Rough opening flashing and WRB improperly installed over the sill nailing fin
- Failed flashing material
- Flashing sealed shut
- Flashing reverse lapped with WRB
- Hidden damage



ROTTED WOOD SHEATHING AND FRAMING

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WINDOW INSTALLATION: IMPROPER FLASHING

As-Built Conditions

- Rough opening flashing and WRB improperly installed over the sill nailing fin
- Failed flashing material
- Flashing sealed shut
- Flashing reverse lapped with WRB
- Hidden damage



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WINDOW INSTALLATION: IMPROPER FLASHING

As-Built Conditions

- Rough opening flashing and WRB improperly installed over the sill nailing fin
- Failed flashing material
- Flashing sealed shut
- Flashing reverse lapped with WRB
- Hidden damage



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WINDOW INSTALLATION: IMPROPER FLASHING

As-Built Conditions

- Rough opening flashing and WRB improperly installed over the sill nailing fin
- Failed flashing material
- Flashing sealed shut
- Flashing reverse lapped with WRB
- Hidden damage



ROTTED WOOD SHEATHING AND FRAMING

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WINDOW INSTALLATION: IMPROPER FLASHING

As-Built Conditions

- Rough opening flashing and WRB improperly installed over the sill nailing fin
- Failed flashing material
- Flashing sealed shut
- Flashing reverse lapped with WRB
- Hidden damage



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WINDOW INSTALLATION: IMPROPER FLASHING

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As-Built Conditions

- Rough opening flashing and WRB improperly installed over the sill nailing fin
- Failed flashing material
- Flashing sealed shut
- Flashing reverse lapped with WRB
- Hidden damage



ROTTED WOOD SHEATHING AND FRAMING

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WINDOW INSTALLATION: IMPROPER FLASHING

As-Built Conditions

- Rough opening flashing and WRB improperly installed over the sill nailing fin
- Failed flashing material
- Flashing sealed shut
- Flashing reverse lapped with WRB
- Hidden damage



ROA 582

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WINDOW INSTALLATION: IMPROPER FLASHING

As-Built Conditions

- Rough opening flashing and WRB improperly installed over the sill nailing fin
- Failed flashing material
- Flashing sealed shut
- Flashing reverse lapped with WRB
- Hidden damage

Requirements

- Standard Building Code

1403.1.4 Flashing shall be provided as necessary to prevent the entrance of water at openings in or projections through veneered walls. Flashing shall be provided at intersections of veneered walls of different materials unless such materials provide a self-flashing joint and at other points subject to the entrance of water. Caulking

2303.3 Moisture protection. Surfaces exposed to the weather shall have an approved barrier to protect the structural frame and the interior wall covering. The barrier shall be at least Type 15 felt or kraft waterproof building paper. Building paper and felt shall be free from holes and breaks other than those created by fasteners and construction systems due to attaching of the barrier, and shall be applied over studs or sheathing of all exterior walls. Such felt or paper shall be applied horizontally with the upper layer lapped over the lower layer not less than 2 inches (51 mm). Where verti-

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WINDOW INSTALLATION: IMPROPER FLASHING

As-Built Conditions

- Rough opening flashing and WRB improperly installed over the sill nailing fin
- Failed flashing material
- Flashing sealed shut
- Flashing reverse lapped with WRB
- Hidden damage

Requirements

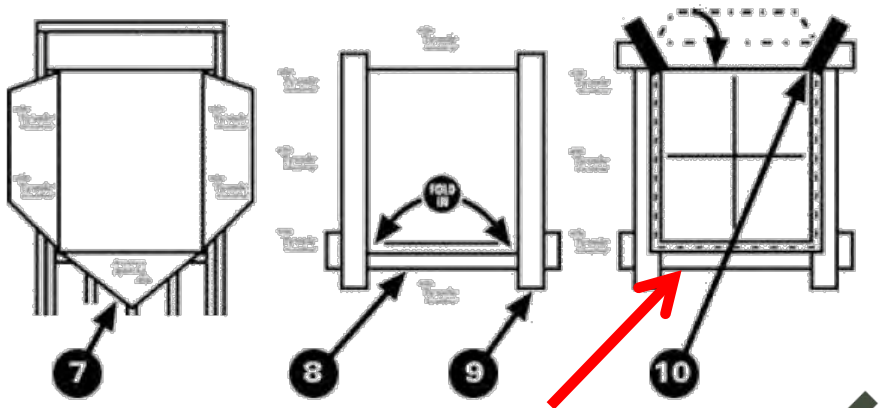
- Standard Building Code
- Tyvek Installation Instructions

7. **FOLD flaps inside around window or door openings.** Fasten every 6". Trim excess Tyvek.®

8. Tack up bottom sill flashing, overlapping rough sill by 4"-5". As a best practice, make two vertical corner cuts in the flashing. **FOLD flashing inside over rough sill.**

9. Tack up side flashings, OVERLAPPING bottom sill flashing. Then, install window or door accordingto manufacturer instructions

10. Cut two 450 angles in Tyvek® from each top window corner. Install head flashing UNDER top flap of Tyvek,® OVER window flange. Extend flashing out OVER side flashings by 3-4". Fold top flap of Tyvek® OVER head flashing. TAPE both diagonal cuts.



SILL FLASHING BEHIND WINDOW FLANGE

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WINDOW INSTALLATION: IMPROPER FLASHING

As-Built Conditions

- Rough opening flashing and WRB improperly installed over the sill nailing fin
- Failed flashing material
- Flashing sealed shut
- Flashing reverse lapped with WRB
- Hidden damage

Requirements

- Standard Building Code
- Tyvek Installation Instructions



SILL FLASHING BEHIND WINDOW FLANGE

10

Here is an example of a properly flashed window opening. Top flashing is installed AFTER window is installed.

11

If the windows are installed before wrapping with Tyvek,® flash all sides of window, roll Tyvek® over window, cut Tyvek® around window flange. PULL sill and jamb flashing out to overlap Tyvek® at window bottom.



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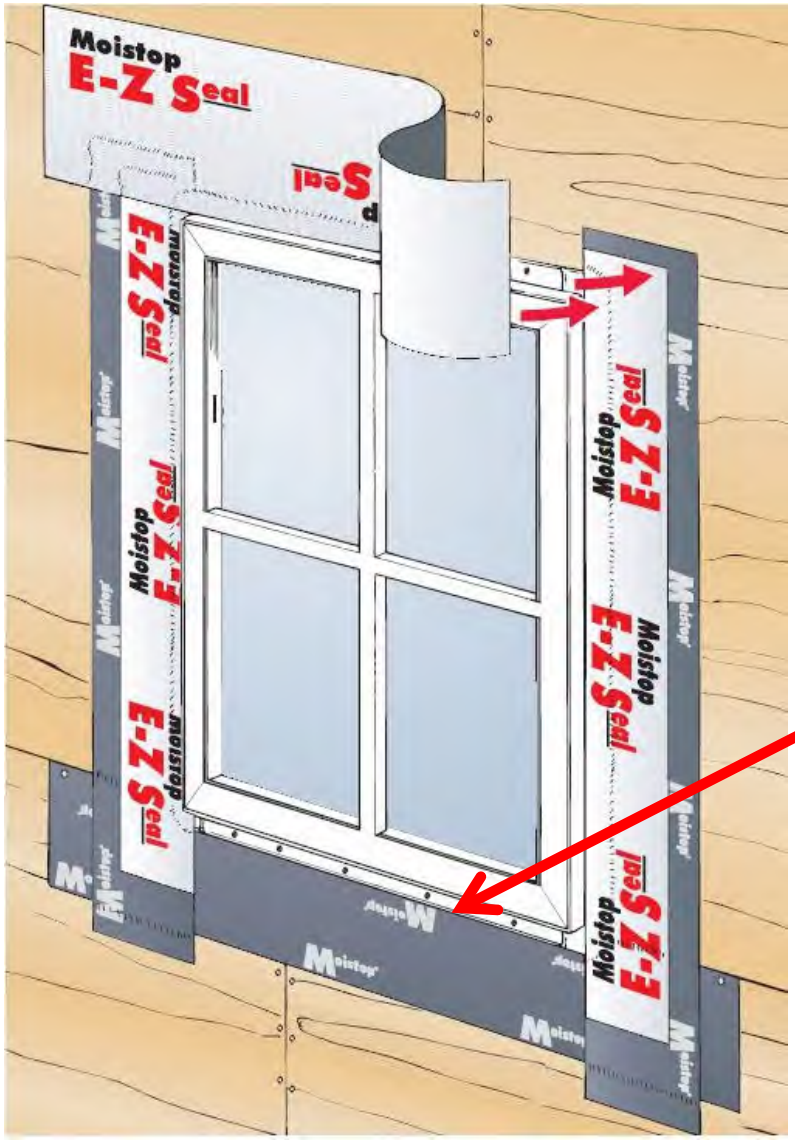
WINDOW INSTALLATION: IMPROPER FLASHING

As-Built Conditions

- Rough opening flashing and WRB improperly installed over the sill nailing fin
- Failed flashing material
- Flashing sealed shut
- Flashing reverse lapped with WRB
- Hidden damage

Requirements

- Standard Building Code
- Tyvek Installation Instructions
- Moistop E-Z Seal Installation Instructions



ROA 586

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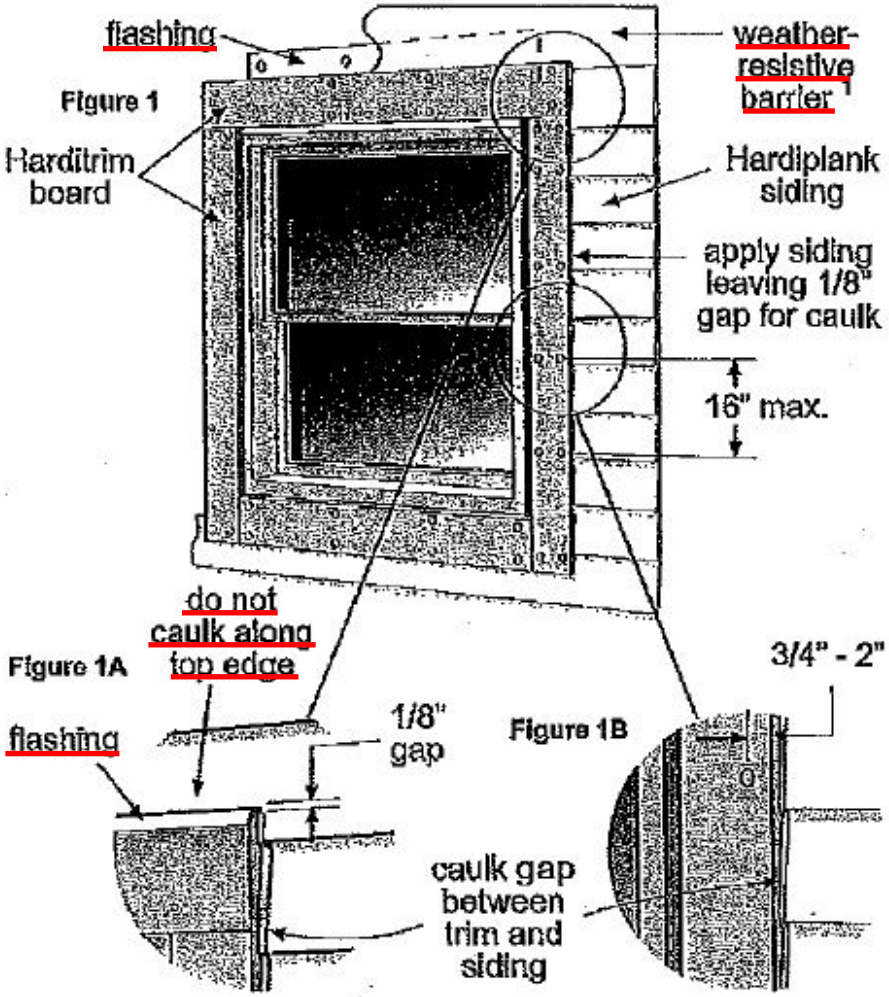
WINDOW INSTALLATION: IMPROPER FLASHING

As-Built Conditions

- Rough opening flashing and WRB improperly installed over the sill nailing fin
- Failed flashing material
- Flashing sealed shut
- Flashing reverse lapped with WRB
- Hidden damage

Requirements

- Standard Building Code
- Tyvek Installation Instructions
- Moistop E-Z Seal Installation Instructions
- Harditrim Installation Instructions



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FINDINGS

- Exterior Walls
- Roofs
- Walkways
- Stairs
- Attics
- Shear Walls
- Floor/Ceiling Assemblies
- Accessibility
- Vapor Barrier
- Window Installation
  - Improper Flashing
  - Improper Mulling

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WINDOW INSTALLATION: IMPROPER MULLING

As-Built Conditions

- Mull joints missing sealant and mullions not installed even with mull grooves



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WINDOW INSTALLATION: IMPROPER MULLING

As-Built Conditions

- Mull joints missing sealant and mullions not installed even with mull grooves



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WINDOW INSTALLATION: IMPROPER MULLING

As-Built Conditions

- Mull joints missing sealant and mullions not installed even with mull grooves



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WINDOW INSTALLATION: IMPROPER MULLING

As-Built Conditions

- Mull joints missing sealant and mullions not installed even with mull grooves
- Drip cap and sealant not installed at sill of windows



DRIP CAP AND SEALANT MISSING AT SILL OF WINDOW

ROA 592

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WINDOW INSTALLATION: IMPROPER MULLING

As-Built Conditions

- Mull joints missing sealant and mullions not installed even with mull grooves
- Drip cap and sealant not installed at sill of windows



DRIP CAP AND SEALANT MISSING AT SILL OF WINDOW

ROA 593

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WINDOW INSTALLATION: IMPROPER MULLING

As-Built Conditions

- Mull joints missing sealant and mullions not installed even with mull grooves
- Drip cap and sealant not installed at sill of windows



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WINDOW INSTALLATION: IMPROPER MULLING

As-Built Conditions

- Mull joints missing sealant and mullions not installed even with mull grooves
- Drip cap and sealant not installed at sill of windows



ROA 595

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WINDOW INSTALLATION: IMPROPER MULLING

As-Built Conditions

- Mull joints missing sealant and mullions not installed even with mull grooves
- Drip cap and sealant not installed at sill of windows



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WINDOW INSTALLATION: IMPROPER MULLING

As-Built Conditions

- Mull joints missing sealant and mullions not installed even with mull grooves
- Drip cap and sealant not installed at sill of windows



ROTTED SHEATHING AND FRAMING BELOW MULL JOINT

ROA 597

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WINDOW INSTALLATION: IMPROPER MULLING

As-Built Conditions

- Mull joints missing sealant and mullions not installed even with mull grooves
- Drip cap and sealant not installed at sill of windows



ROTTED FRAMING
BELOW MULL JOINT

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WINDOW INSTALLATION: IMPROPER MULLING

As-Built Conditions

- Mull joints missing sealant and mullions not installed even with mull grooves
- Drip cap and sealant not installed at sill of windows



ROTTED SHEATHING AND FRAMING BELOW MULL JOINT

ROA 599

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WINDOW INSTALLATION: IMPROPER MULLING

As-Built Conditions

- Mull joints missing sealant and mullions not installed even with mull grooves
- Drip cap and sealant not installed at sill of windows

Requirements

- MI Window Mulling Instructions for 8500 Series Windows



SERIES 8540 WINDOWS

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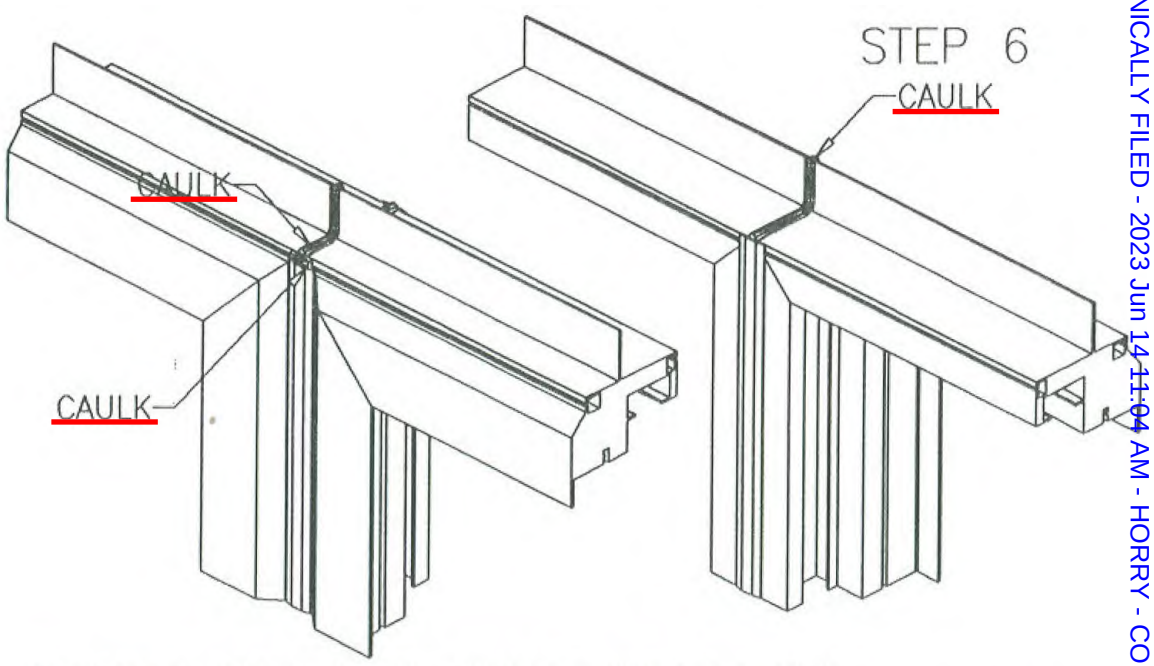
WINDOW INSTALLATION: IMPROPER MULLING

As-Built Conditions

- Mull joints missing sealant and mullions not installed even with mull grooves
- Drip cap and sealant not installed at sill of windows

Requirements

- MI Window Mulling Instructions for 8500 Series Windows



IMPORTANT: USE A QUALITY SILICONE WHEN CAULKING.
APPLY CAULK ACROSS JOINT WHERE FRAMES MEET. (HEAD & SILL)
APPLY CAULK ACROSS JOINT WHERE NAILING FINS MEET
APPLY CAULK INTO MULL GROOVES AND ACROSS TOP OF MULL.

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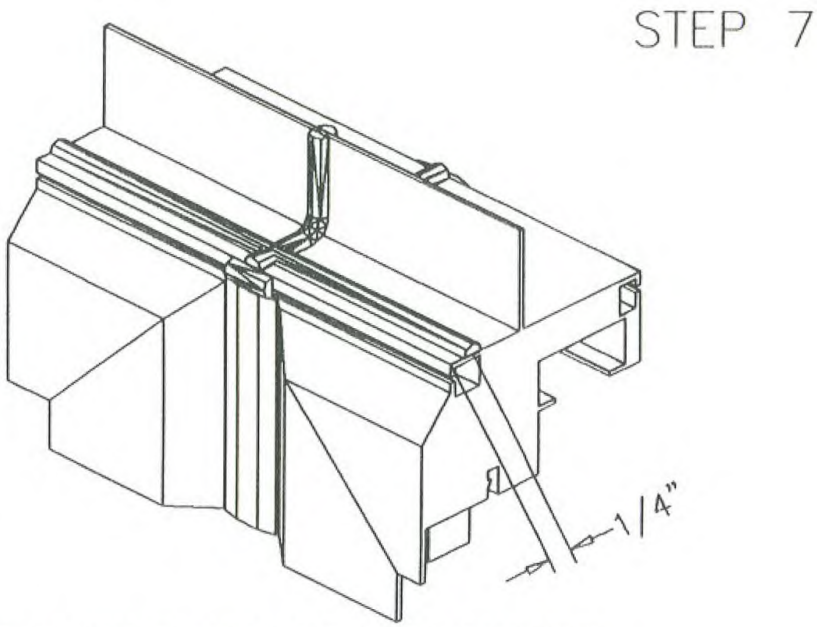
WINDOW INSTALLATION: IMPROPER MULLING

As-Built Conditions

- Mull joints missing sealant and mullions not installed even with mull grooves
- Drip cap and sealant not installed at sill of windows

Requirements

- MI Window Mulling Instructions for 8500 Series Windows



IMPORTANT: USE A QUALITY SILICONE WHEN CAULKING.
APPLY 1/4" BEAD OF CAULK ACROSS HEAD AND SILL OF BOTH WINDOWS BEFORE APPLYING DRIP CAPS.
(APPROX. 1/4" AWAY FROM EDGE OF MAIN FRAME).

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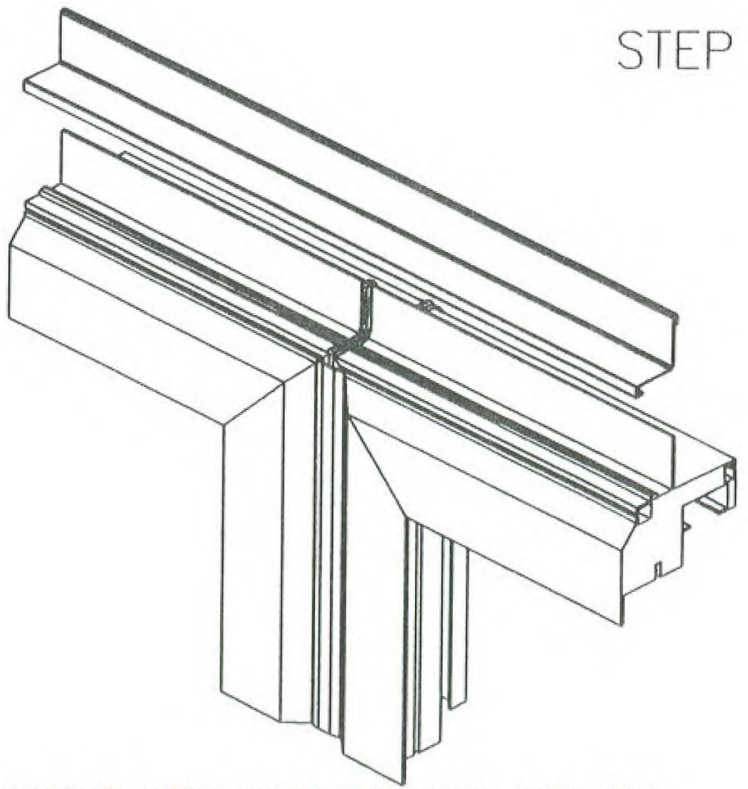
WINDOW INSTALLATION: IMPROPER MULLING

As-Built Conditions

- Mull joints missing sealant and mullions not installed even with mull grooves
- Drip cap and sealant not installed at sill of windows

Requirements

- MI Window Mulling Instructions for 8500 Series Windows



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H2L FINDINGS

DESTRUCTIVE TESTING

- Dates of H2L's site visits with destructive testing:
  - January 7, 2019
  - September 16 through 19, 2019
  - June 9 and 10, 2020
- Fuller attended H2L's site visits and observed their destructive testing
- Consistent with Fuller's findings, H2L's destructive testing also found defective construction that has resulted in hidden damage within the exterior walls of the buildings

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H2L FINDINGS

WATER DAMAGE BELOW WINDOWS



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H2L FINDINGS

WATER DAMAGE BELOW WINDOWS



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H2L FINDINGS

WATER DAMAGE BELOW WINDOWS



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H2L FINDINGS

WATER DAMAGE BELOW WINDOWS



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H2L FINDINGS

WATER DAMAGE BELOW WINDOWS



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H2L FINDINGS

WATER DAMAGE BELOW WINDOWS



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H2L FINDINGS

WATER DAMAGE BELOW WINDOWS



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H2L FINDINGS

WATER DAMAGE BELOW WINDOWS



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H2L FINDINGS

WATER DAMAGE BELOW WINDOWS



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H2L FINDINGS

FLASHING NOT LAPPED WITH WRB



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H2L FINDINGS

FLASHING NOT LAPPED WITH WRB



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H2L FINDINGS

FLASHING NOT LAPPED WITH WRB



ROA 616

H2L Issue 1.7

"H2L found the through-wall-flashing to be satisfactory and serviceable and contrary to the Fuller report, we do not find the thru-wall flashing to be reverse lapped."

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H2L FINDINGS

WATER INTRUSION BEHIND BRICK



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H2L FINDINGS

WATER INTRUSION BEHIND BRICK



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H2L FINDINGS

WATER INTRUSION BEHIND BRICK



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H2L FINDINGS

WATER INTRUSION BEHIND BRICK



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H2L FINDINGS

WATER INTRUSION BEHIND BRICK



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H2L FINDINGS

WATER INTRUSION BEHIND BRICK



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H2L FINDINGS

BRICK TIES NOT USED



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H2L FINDINGS

BRICK TIES NOT USED



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H2L FINDINGS

BRICK TIES NOT USED



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H2L FINDINGS

MOISTURE READINGS BEHIND SIDING

- H2L's investigation included taking moisture readings of the wood sheathing behind the fiber-cement siding
- Within their report, Issue 1.1, H2L reported having conducted 44 test cuts at areas of fiber-cement siding
- Finding no evidence of water damage

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H2L FINDINGS

MOISTURE READINGS BEHIND SIDING



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H2L FINDINGS

MOISTURE READINGS BEHIND SIDING



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H2L FINDINGS

MOISTURE READINGS BEHIND SIDING



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H2L FINDINGS

MOISTURE READINGS AT TRIM

- H2L's investigation included taking moisture readings of trim
- Within their report, Issue 1.6, H2L reported having conducted 984 moisture readings at areas of trim
- They found only 6 of the 984 exceeded a moisture content of 20%

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H2L FINDINGS

MOISTURE READINGS AT TRIM



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H2L FINDINGS

MOISTURE READINGS AT TRIM



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H2L FINDINGS

MOISTURE READINGS AT TRIM



ROA 633

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H2L FINDINGS

MOISTURE READINGS AT TRIM



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H2L FINDINGS

MOISTURE READINGS AT TRIM

- H2L did not report that they relied on Terracon to conduct a portion of the trim moisture readings
  - Terracon's work was unsupervised by H2L
  - Performed by inexperienced Terracon staff
  - Terracon borrowed a moisture meter from H2L, which H2L had left at the front desk of their hotel for Terracon
  - Terracon's moisture readings included fiber-cement trim and PVC (plastic) trim, as well as MDF trim

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H2L FINDINGS

TERRACON MOISTURE READINGS AT TRIM



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H2L FINDINGS

TERRACON MOISTURE READINGS AT TRIM



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H2L FINDINGS

TERRACON MOISTURE READINGS AT TRIM



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H2L FINDINGS

TERRACON MOISTURE READINGS AT TRIM



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H2L FINDINGS

TERRACON MOISTURE READINGS AT TRIM



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H2L FINDINGS

TERRACON MOISTURE READINGS AT TRIM



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VAPOR BARRIER: EXTERIOR WALLS

H2L October 10, 2019 Email

- Installation of vapor barrier causing damage and needs to be discussed
- Repair expensive and disruptive

Santee Cooper Good Cents
Skip Lewis to: Robert Carter 10/10/2019 09:39 PM

History: This message has been forwarded.

SanteeCooperGoodCentsFiasco.pdf

BC,

Attached are two papers I came across this evening. Might be worth your reading.

It might be important to confirm if all buildings were constructed compliant with the Good Cents program.

If they were, or in the alternative....all of the ones that were built to comply, may have to be addressed by someone.

The "someone" would need to be determined by legal minds.

For buildings that were built this way, the only fix of which I am aware involves removal of all interior GWB on exterior wood stud walls, removal of the vapor barrier material, and repair of damaged studs/sheathing.....a costly affair.

The reason I bring this up is that some of the photos I have seen of brick veneer which, as reported by others, allegedly separated from the sheathing because of a failure to engage brick ties. Where the picture is taken, there is also deterioration of OSB. I suspect the real reason for veneer wall detachment is likely that sheathing has deteriorated from moisture in the stud cavity resulting from the interior side polyethylene vapor barrier and the inability of sheathing to provide an anchor for the corrugated ties.

This, in my judgment, is a very big deal and needs to be discussed with counsel asap....before we issue any reports. It is quite possible that recurring high humidity levels inside the stud cavities is a root cause of all or most of the weather related issues being found at the exterior wall coverings. Repairs to correct would be expensive and disruptive. Work theoretically could be done from inside, or outside. For the earlier ones on which I was involved, we did repair work from the outside.

Skip Lewis
H2L Consulting Engineers
116 South Pleasantburg Dr.
Greenville, SC 29607
(864) 233-8844

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VAPOR BARRIER: EXTERIOR WALLS

H2L October 10, 2019 Email

- Installation of vapor barrier causing damage and needs to be discussed
- Repair expensive and disruptive

H2L November 14, 2019 Report

- H2L reports installation of vapor barrier is not a code violation
- H2L states vapor barrier was appropriate and met industry standard

1.10 Installation of Vapor Barrier on Interior Side of Exterior Wall:

H2L Assessment: The installation of a vapor barrier on the interior side of the exterior wall is not a code violation. The installation, at that time, was appropriate and encouraged by Horry Electric as an energy savings program and met the industry standard and standard of workmanship.

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MORNINGSTAR REPORTS

ORIGINAL CONSTRUCTION

- During original construction, Morningstar Consultants made site visits to inspect the quality of Centex's work
- Morningstar held regular meetings with Centex's project managers
- Morningstar found deficient construction and reported that to Centex
- Fuller has reviewed Morningstar's reports and has found that defective construction reported by Morningstar to Centex was still present during our investigation in 2016

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MORNINGSTAR REPORTS

ORIGINAL CONSTRUCTION

DEFECTS REPORTED BY MORNINGSTAR AND OBSERVED BY FULLER			
Issue	**Building(s)**	**Report(s)**	**Photo(s)**
Raw edge of unprimed wood trim in contact with slabs or near soil. Prime and flash behind wood product material at rowlocks and slabs to reduce wicking action	WW-02/WW-09	Report 4 (Pages 5, 12, 15)	7, 15, 17
	WW-04	Report 7 (Page 20)	115
Overall integrity of the house wrap sealing at patios and porch light receptacles is very critical	General Comment	Report 4 (Page 6)	23, 24, 74
Lateral truss bracing missing	WW-05	Report 4 (Page 14)	58
	WE-06/ WE-08/ WW-04	Report 6 (Pages 12, 13)	57, 70, 74, 88
	WE-08	Report 7 (Page 11)	
Tyvek cut ragged at porch light receptable/Tyvek system breeched	WW-02/WW-07	Report 4 (Page 15)	20, 63
Deck waterproofing membrane damaged/cut by screws, ladders, etc.	WE-05	Report 5 (Pages 6, 11)	None
Deck entrance trashy. Nails/screws on membrane	WW-04	Report 7 (Page 18)	None
Deck waterproofing detail in question	WE-06	Report 7 (Page 18)	None
Missing hurricane clips/column straps	WW-05	Report 6 (Page 11)	32, 33
	WW-05	Report 7 (Pages 5, 21)	123-126, 135
Incorrect lintels at arched window head	WW-07	Report 7 (Pages 6, 21)	142, 143

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MORNINGSTAR REPORTS

ORIGINAL CONSTRUCTION



WW-02 (Pad 6) Raw Edge Trim Board near Rowlock (Wicking Risk) . . . . . 7 of 90

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MORNINGSTAR REPORTS

ORIGINAL CONSTRUCTION



WW-02 Unit 3-2 Tyvek™ System Breeched at Balcony . . . . . 20 of 90

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MORNINGSTAR REPORTS

ORIGINAL CONSTRUCTION



WW-07 Short Lintel Over Window Unsupported at Center . . . . . 142 of 147

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REPAIR SUMMARY

FULLER ENVELOPE

- The construction defects have left the buildings in a substandard condition, allowing water intrusion, and reducing building safety and performance
- The construction defects represent violations of the applicable building codes, accepted industry standards, and manufacturers' instructions
- The construction defects have caused hidden damages that were revealed through Fuller's destructive testing
- In order to fix the construction defects, Fuller has prepared a scope of work and submitted that to Bob Gallagher with Procon and Associates
- Procon has prepared a cost estimate to fix the buildings

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Wedgewood Condominiums

H. Ross Clements, AIA, Principal

FULLER GROUP. LLC
1350 C Cleveland St.
Greenville, SC 29607

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ELECTRONICALLY FILED - 2023 Jun 14 11:04 AM - HORRY - COMMON PLEAS - CASE#2018CP2600307

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REPEATED CONSTRUCTION DEFECTS

MULTIPLE CENTEX PROJECTS

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INSTALLATION DEFECT	WEDGEWOOD	CLEARWATER BAY	WILLOW BEND
Improper WRB	✓	✓	✓
Improper Z-flashing	✓	✓	✓
Improper siding attachment	✓	✓	✓
Improper trim attachment	✓	✓	✓
Improper flashing at brick	✓	✓	✓
Improper brick lintels	✓	n/a	✓
Improper window head flashing	✓	✓	✓
Improper roof underlayment	✓	✓	✓
Improper shingle attachment	✓	✓	✓
Improper fascia attachment	✓	n/a	✓
Improper waterproofing	✓	✓	✓
Improper stairway construction	✓	n/a	✓

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CASE NO. 2018-CP-26-00307
Wedgewood Condominium Association,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**AFFIDAVIT OF RANDALL SPENCER IN OPPOSITION TO DEFENDANT CENTEX'S MOTION FOR SUMMARY JUDGMENT**
	)	
Centex Homes et al.,	)	
	)	
Defendants.	)	
	)	
Centex Homes,	)	
	)	
Third-Party Plaintiff,	)	
	)	
vs.	)	
	)	
Right Way Construction, Inc., et al.,	)	
	)	
Third-Party Defendants.	)	
	)	

PERSONALLY APPEARED BEFORE ME, Randall Spencer who, after being duly sworn, states as follows:

1. On or about December 8, 2001, I was appointed by Centex Homes ("Centex"), the developer of the Wedgewood project, to serve on the Wedgewood Condominium Association Board of Directors ("Board of Directors") to participate with Centex and CCMC, the management company, in the management of the Wedgewood community.

2. I have served continuously on the Board of Directors in different capacities including President and Vice-President from December 8, 2001 to present.

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3. As required by the Master Deed of the Wedgewood Condominium Association, the Board of Directors is responsible for the maintenance, repair, and replacement of the common elements.

4. During my time on the Board of Directors from 2001 to present, the Board of Directors made routine and ordinary maintenance and repairs to the common elements.

5. In 2016, the Board of Directors was notified by Waccamaw Management, the management company, that we should contact an attorney related to construction issues, however, the Board of Directors was never aware of original construction defects until on or about early to mid-2017 when we were advised of original construction defects as a result of the findings of forensic architect H. Ross Clements of the Fuller Group.

6. Because of spinal cord damage and resulting health issues that began around 2018, I was diagnosed with a proprioception disorder and spasticity. At that time, I was not able to perform many normal activities including my responsibilities as a Board Member. Although I still have physical limitations such as a loss of balance and stiffness of muscle that may affect my movement and speech, I have improved some since 2018.

RANDALL SPENCER

SWORN to before me this

15 day of September, 2022

Rachel Bullard
Notary Public

My commission expires: 9-20-28

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CASE NO. 2018-CP-26-00307
Wedgewood Condominium Association,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**AFFIDAVIT OF H. ROSS CLEMENTS IN OPPOSITION TO DEFENDANT CENTEX'S MOTION FOR SUMMARY JUDGMENT**
	)	
Centex Homes et al.,	)	
	)	
Defendants.	)	
	)	
Centex Homes,	)	
	)	
Third-Party Plaintiff,	)	
	)	
vs.	)	
	)	
Right Way Construction, Inc., et al.,	)	
	)	
Third-Party Defendants.	)	
	)	

PERSONALLY APPEARED BEFORE ME, H. Ross Clements, AIA, who, after being duly sworn, states as follows:

1. In May of 2001, I earned an accredited Bachelor of Architecture degree from the University of Tennessee. Since that time, I have participated in numerous continuing education courses and seminars.

2. I have been a Registered Architect since April 2006, and am currently licensed to practice architecture in South Carolina, where I have been a licensed architect for over 16 years.

3. I am certified by the National Council of Architectural Registration Boards (NCARB) and am a member of the American Institute of Architects (AIA).

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4. I am one of the owners of Fuller Group, LLC ("Fuller"). Fuller was retained by the Plaintiff in this action, Wedgewood Condominium Association (the "Association"), to perform an investigation of the existing conditions at the Wedgewood condominium project in North Myrtle Beach, South Carolina.

5. As part of Fuller's forensic architectural services, I reviewed project documents and visited the Wedgewood project on numerous occasions, beginning on September 16, 2016, to perform visual surveys and conduct destructive testing to determine if the buildings were constructed in accordance with applicable building code requirements, accepted industry standards, and manufacturers' instructions.

6. As a result of my investigations, I issued a comprehensive report (Summary of Field Observations) dated March 2, 2018 and an addendum report dated November 14, 2019. The text portion of these reports is attached as Exhibit A to this Affidavit.

7. I have reviewed the 24 pages of "Undisputed Facts" included in Exhibit A to the Motion for Summary Judgment filed by the Defendant Centex Homes ("Centex"), as well as the Memorandum submitted in support of Centex's Motion for Summary Judgment.

8. With regard to the approximately $280,000 of expenditures identified in Centex's "Undisputed Facts" for the period from August 18, 2003 to May 29, 2014, it is my professional opinion that the size, scope, and nature of those expenditures are consistent with reasonably anticipated expenditures for routine maintenance and repairs to the nine buildings comprising the Wedgewood project and were insufficient to put the Association or its management company on notice of the construction defects I later discovered through destructive testing at the Wedgewood project beginning on November 29, 2016.

9. The latent construction defects I discovered through my investigations between September of 2016 and June of 2020 are far broader in scope and not tailored to the specific repairs previously made at Wedgewood that are catalogued in Centex's "Undisputed Facts."

H. Ross Clements, AIA

SWORN to before me this
23rd day of August, 2022.

Kimberly A. Winter
Notary Public

My commission expires: 10-31-24

KIMBERLY A WINTER NOTARY PUBLIC SOUTH CAROLINA

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Santee Cooper Good Cents
Skip Lewis to: Robert Carter 10/10/2019 09:39 PM

History: This message has been forwarded.



SanteeCooperGoodCentsFiasco.pdf

BC,

Attached are two papers I came across this evening. Might be worth your reading.

It might be important to confirm if all buildings were constructed compliant with the Good Cents program.

If they were, or in the alternative....all of the ones that were built to comply, may have to be addressed by someone.

The "someone" would need to be determined by legal minds.

For buildings that were built this way, the only fix of which I am aware involves removal of all interior GWB on exterior wood stud walls, removal of the vapor barrier material, and repair of damaged studs/sheathing.....a costly affair.

The reason I bring this up is that some of the photos I have seen of brick veneer which, as reported by others, allegedly separated from the sheathing because of a failure to engage brick ties. Where the picture is taken, there is also deterioration of OSB. I suspect the real reason for veneer wall detachment is likely that sheathing has deteriorated from moisture in the stud cavity resulting from the interior side polyethylene vapor barrier and the inability of sheathing to provide an anchor for the corrugated ties.

This, in my judgment, is a very big deal and needs to be discussed with counsel asap....before we issue any reports. It is quite possible that recurring high humidity levels inside the stud cavities is a root cause of all or most of the weather related issues being found at the exterior wall coverings. Repairs to correct would be expensive and disruptive. Work theoretically could be done from inside, or outside. For the earlier ones on which I was involved, we did repair work from the outside.

Skip Lewis
H2L Consulting Engineers
116 South Pleasantburg Dr.
Greenville, SC 29607
(864) 233-8844

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STATE OF SOUTH CAROLINA **TRANSCRIPT OF RECORD**

COUNTY OF HORRY CASE NO.:2018-CP-26-00307

CERTIFIED ORIGINAL

May 22, 2023 - May 26, 2023

BEFORE: The Honorable Carmen Mullen

Wedgewood Condominium Association,

Plaintiff,

vs.

Centex Homes, a Nevada General Partnership; Balfour Beatty Construction, LLC, as successor by Merger to Centex Construction Company, Inc., and Centex Construction, LLC,

Defendants.

APPEARANCES:

Gene Connell, Esq.
Stacy Stanley, Esq.
Appearing for the Plaintiff.

Thomas Hildebrand, Jr., Esq.
William DesChamps, IV, Esq.
Appearing for the Defendants.

Natalie Dahl, RPR
Registered Professional Reporter,
State of South Carolina Official Court Reporter

NOTE: *Pursuant to Rule 607 (H)(1)(B), SCACR "A Court REPORTER SHALL RECEIVE THE FEE OF $1.00 PER PAGE FOR FURNISHING A COPY OF A PREVIOUSLY PREPARED TRANSCRIPT." All requests for a copy of the enclosed transcript shall be sent to: Natalie Dahl, RPR, P.O. Box 762, Conway, SC 29526*

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2	Sealed settlement	350
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** Exhibits were self-marked by Defendants **

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1	PowerPoint presentation	6	953
2-62	Not marked or admitted	--	--
63	4-19-2005 minutes	6	236
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65-66	Not marked or admitted	--	--
67	Invoice 7-23-2010	6	235
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69	Invoice 8-26-2010	6	213
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76	Invoice 12-29-2010	6	218
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78	Invoice 5-24-2014	6	223
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89	Inspection report	6	604
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** Exhibits were self-marked by Defendants'**

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PROCEEDINGS - MAY 22, 2023

THE COURT: Welcome, ladies and gentlemen. Good morning -- good afternoon. It is 1:20. I'm Carmen Mullins. I'm a visiting judge who has the pleasure of working up here in Conway this week to try the case before us.

I want to tell you about the schedule of the trial before I go ahead and ask you specific questions directed to the case. Ladies and gentlemen, I understand it is this upcoming Memorial weekend. This case, I believe, will take probably through Friday. I want you to know something: We will not be working Saturday, Sunday, or Monday. I believe the case will be finished on Friday. There is an outside chance it could go into next week, but I'll address that at the time.

Ladies and gentlemen, I say all of this because I want to make sure before we even begin that I don't have any of you that have plane plans, travel, or anything like that that you absolutely have to leave sometime early Friday morning. Anyone in that kind of situation because of the long weekend this weekend?

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No. Very good.

All right. With that said, ladies and gentlemen, I'll tell you that we expect this case to move along quickly; although, I think we'll be here through Friday.

Ladies and gentlemen, under the oath that you took downstairs, there is a number of questions that I'm required to ask according to this case when I call it. I'm simply asking that if there is a question that you need to respond to, I need you to stand. Do you all have juror numbers here? You have your juror numbers? Okay. If you can respond by your juror number, and if you have forgotten, you can tell me your last name. Give us a moment to locate you on our list, and then we'll hear what you have to say. All right.

Go ahead. You're fine.

(A brief pause in the proceedings.)

THE COURT: Ladies and gentlemen, the case that we are about to begin is entitled Wedgewood Condominiums Association versus Centex Homes, a Nevada general partnership, Balfour Beatty Construction, LLC, as successor by merger to Centex Construction Company, Inc., and Centex Construction.

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Ladies and gentlemen, Wedgewood Condominiums Association brought this action against Centex Homes for alleged construction defects to the common elements of the Wedgewood Condominium Association.

To go ahead and begin this case, I'll ask that the attorneys from both sides introduce not only themselves, but also who is with them, this side of the bar, and whatever their role is in this case. Also, explain to the jury -- or the panel what their role is.

So if you would like to start, Mr. Stanley.

MR. STANLEY: Yes. Thank you, Your Honor. I'm Stacy Stanley with the Stanley Law Firm. My office is in Little River, South Carolina.

I have here with me today Mr. Randall Spencer. He is a former member of the board of directors and a homeowner at Wedgewood HOA.

Gene Connell is co-counsel, and Renee Hardee is with my office. She is one of my paralegals. Dale Lovers is also a member of the board.

THE COURT: Please.

MR. HILDEBRAND: Thank you. I'm Tom Hildebrand, and I represent Centex Homes in this case. I have here with me Will DesChamps, who is

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my co-counsel and partner.

I'm with the Parker Poe Firm in Charleston. There is another associate who is not here now, but he will be here shortly, and his name is Nick Nivo. I have Jeremy Martin who is with Centex, and he is the representative here today. Thank you.

THE COURT: All right. Thank you.

Ladies and gentlemen, is there anyone here related by blood or connected by marriage with any of these attorneys trying this case or any of the parties or anyone who has been introduced this morning? If so, please stand.

Anyone here who has a close personal relationship, professional relationship, or close relationship with any of these attorneys or parties or any persons that have already been introduced? If so, please stand.

Ladies and gentlemen, the following is a list of potential witnesses in this case, and my question will be the same to you: Are you related by blood, connected by marriage, have a close personal relationship, special friendship, or professional relationship with any of these people: Ross Clements, Bob Gallagher, Eric Lundblad -- if you don't mind facing the panel, Mr. Lundblad, I

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appreciate it. Matthew Raines, our clerk of court, Sheila Harrelson, Holly Beeson, Hershel Morningstar, Randall Spencer, Chris Loftus, Bob Carter, Skip Lewis, J.R. Watkins, Robert Gallagher, Scott Bourcier, Billy Ray Lampley, William Evans.

Ladies and gentlemen, again, the question is: Is there anyone related by blood, connected by marriage, any special relationship with any of these potential witnesses in this case? If so, please stand.

Any member of this panel or any member of your immediate family -- and that would be father, mother, children -- any member of the jury panel, a member of your immediate family ever been employed by a developer, a contractor, a subcontractor or has worked at a building material supply company? If so, please stand.

I'll start with you, ma'am. Give me your number and name.

JUROR: 281.

THE COURT: Is it you or a family member?

JUROR: My brother.

THE COURT: Where did he work?

JUROR: DC as a lead carpenter at a company called Four Brothers.

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THE COURT: Thank you, ma'am. I appreciate it.

Sir.

JUROR: 325, Hubert Smiser.

THE COURT: Yes, sir. Was it you or a family member?

JUROR: It's me. The company I work for is Form Tech. We supply contractors for forming and shoring equipment and construction supplies.

THE COURT: Thank you. You may be seated.

Yes, ma'am.

JUROR: 246. I currently work for AR Homes.

THE COURT: What do you do for them?

JUROR: I draw, drafting.

THE COURT: Okay. Thank you, ma'am.

Is there any member of this jury panel or any member of your immediate family ever been employed by the following companies: AK Construction, Incorporated, as known as AK Framing and Siding Company; AK United, Incorporated, formerly known as AK Construction, Incorporated; American Residential Services, LLC, also known as American Residential Services, Inc.; BR Brick and Masonry, Inc.; BR Brick and Masonry LP, formerly known as BR Brick and Masonry, Inc.; Builders FirstSource Southeast

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Group; Carolina Drywall and Interior, Inc., also known as Carolina Drywall and Interiors, Inc., also known as Carolina Drywall Contractors, Inc.

Ladies and gentlemen, if you do know someone or you have worked with them, I need you to stand.

Carpets by Kendall, Incorporated; Coastal Carolina Mechanical Contractors; Dunn Plumbing, Incorporated; also known as Dunn Plumbing Company, Inc., also known as DD&D, Incorporated, or doing business as Dunn Plumbing; Frank Harris doing business as Frank Harris Construction, or Frank Harris Construction, or Harris Drywall; John D. Frazier, also known as Roof Doctor, Roof Doctor of the Carolinas, or Roof Doctor of the Carolinas, Incorporated; Martin Masonry, Inc.; Martin Mata doing business as Martin Masonry; MI Windows and Doors, LLC; Michael Brownlee doing business as Carolina Drywall Interiors; Michael Dawson doing business as Michael Dawson Construction Incorporated; Morningstar Consultants, Inc., Paint With Pride, also known as Painting with Pride; Reliable Floor Systems, Inc.; Rice Planter Carpets, Incorporated; Creative Touch Interiors; Floors, Incorporated; Rice Planter Carpet, Incorporated; Right Way Construction, also known as Right Way

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Group; Roof Doctor of the Carolinas; Seno's, S-E-N-O, apostrophe, S, Cleaning Service; Steven Bosch doing business as the Roofer Man; Stock Building Supply, formerly known as Carolina Builders Corporation; TNT Painting, Tri-City Installation and Building Products of Myrtle Beach, Incorporated; Unicon Concrete, LLC; Vance Johnson Plumbing Company, Incorporated; Vereen Concrete Company, Incorporated; and William Evans doing business as Top Notch Painters.

Again, ladies and gentlemen, is there anyone here who has ever been employed by or an immediate member of your family has been employed by them?

Yes. You are Juror 368, correct?

JUROR: No. 246.

THE COURT: Sorry. Go ahead.

JUROR: I'm drawing the Roof Doctor's house.

THE COURT: You've done a drawing for Roof Doctor?

JUROR: Yes.

THE COURT: How long ago was that? Is that something you did in the past, or how long ago?

JUROR: I'm doing it now.

THE COURT: Okay.

Anybody else?

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Any member of the jury panel or any member of your immediate family hold a contractor or subcontractor license? If so, please stand.

Yes, ma'am.

JUROR: 196. It is my husband.

THE COURT: And what type of license does he hold?

JUROR: It's an LLC, but he's a subcontractor for HTC, the phone company.

THE COURT: Thank you.

Ladies and gentlemen, is there any member of this panel or any member of your immediate family ever been involved in the construction of homes or condominiums? If so, please stand.

Yes, ma'am. Your number?

JUROR: 312. My dad used to build homes for a living.

THE COURT: He was a homebuilder?

JUROR: Uh-huh.

THE COURT: Is he still working or retired?

JUROR: He's a disabled veteran now.

THE COURT: Where does he live?

JUROR: In Conway.

THE COURT: And what was the name of his company?

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JUROR: I don't remember. He worked for a few. He owned one for a little bit, and then we moved.

THE COURT: Can you give me his name?

JUROR: Keith Brooks.

THE COURT: Was he a general contractor or subcontractor, or do you know?

JUROR: I'm not sure.

THE COURT: Thank you. You may be seated.

Yes, ma'am.

JUROR: 129. My husband following the miliary used to work for a place that owned Guilty Glass back in New York.

THE COURT: Guilty Glass? How long ago was it that -- did he build homes or?

JUROR: He worked in construction, and then he worked for his father. He was part of the company for Guilty Glass.

THE COURT: All right. Thank you.

Sir.

JUROR: 122. I worked for a general contractor about 20 years ago.

THE COURT: Who did you work for?

JUROR: Fouse Construction.

THE COURT: What was your title or duties?

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JUROR: I was a laborer.

THE COURT: Thank you, sir.

Ladies and gentlemen, is there any person in this panel or any member of your immediate family that either currently or in the last 10 years owns or has owned a condominium or townhome? If so, please stand.

It is a broad question. It is meant to elicit responses, that is why we ask them.

I'll start over here, because there is less over here. I need you to give me your number so I can find it.

Is it you or a family member, and tell me if it is a condominium or townhome and where. If it is multiple, there is multiple.

JUROR: There is multiple. I'm 192. There is multiple. We own three condos.

THE COURT: Where are they?

JUROR: North Myrtle, Myrtle, and Conway.

THE COURT: Can you tell me the name of your condominium associations?

JUROR: One is Waccamaw Property Managers for the Fountain Point Property.

THE COURT: I don't need to know who -- just the name of the property, I think.

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JUROR: Fountain Point, and then two at Lands End.

THE COURT: Okay. Do you still have those units?

JUROR: We only have two currently. One at Lands End and the one at Fountain Point.

THE COURT: Thank you. You may be seated.

Yes, ma'am.

JUROR: No. 32. In Murrells Inlet, condominium.

THE COURT: And what is it called?

JUROR: Sweetwater.

THE COURT: Thank you. Are you using that unit and currently have it?

JUROR: Yes.

THE COURT: Thank you, ma'am.

Sir.

JUROR: 168, and two condos.

THE COURT: What are their names?

JUROR: Myrtlewood.

THE COURT: Both of them are there?

JUROR: Yes.

THE COURT: You currently own them?

JUROR: Yes.

THE COURT: Anyone mind tapping the gentleman

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behind you. He needs to wake up.

JUROR: I'm up.

THE COURT: Okay. It looked like you were asleep.

Yes, ma'am.

JUROR: 281. I live in a townhome in North Myrtle Beach in Barefoot.

THE COURT: Barefoot Landing?

JUROR: Yes.

THE COURT: Yes, ma'am.

JUROR: 349. I currently own and live in a condo in Indian Wells.

THE COURT: Thank you.

Yes, ma'am.

JUROR: 334. My sister-in-law and brother-in-law both own a condo in Southbridge, Surfside Beach.

THE COURT: Okay. Thank you, ma'am.

Yes.

JUROR: 186. I owned a condo in Austin, Texas, but don't currently own it.

THE COURT: Thank you.

JUROR: 246. My parents own one at Wild Wing in Conway.

THE COURT: Thank you.

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Yes.

JUROR: 93. I have two condos in Sea Watch in Myrtle Beach.

THE COURT: Thank you.

Ma'am.

JUROR: I'm 164. We own an investment townhome in Socastee.

THE COURT: Does it have a name?

JUROR: It is on Zion Drive, but I don't know the subdivision.

THE COURT: Thank you.

Okay. Ladies and gentlemen, is there anyone here on this panel or any member of your immediate family ever been an officer or on the board of directors of a townhome condominium or property association in the last ten years? If so, please stand.

JUROR: 192. My sister was on the board of directors for Glennbrooke.

THE COURT: Thank you, ma'am.

Anyone else?

Ladies and gentlemen, is there anyone here or any member of your immediate family that has ever lived in or owned a single family or multifamily residential unit at Barefoot Landing in Myrtle

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Beach, South Carolina?

JUROR: I live there.

THE COURT: That is where you live now? And you are 381?

JUROR: No. 281.

THE COURT: Why am I having such a hard time reading my writing today? I'm sorry.

MR. HILDEBRAND: Could we ask if she owns or is renting?

JUROR: We're renting.

THE COURT: You are renting? Okay. Thank you, ma'am.

Ladies and gentlemen, is there anyone here or any member of your immediate family ever lived in or owned a condominium unit at Wedgewood Condominiums at Barefoot Landing Resort in Myrtle Beach, South Carolina? If so, please stand.

Has any member of the jury panel or any member of your immediate family ever owned a residence that was constructed by Pulte Homes, Del Webb, or Centex Homes? If so, please stand.

Ladies and gentlemen, any member of this panel or any member of your immediate family ever been involved in a legal dispute regarding the design, construction materials, or sale of a

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residence? If so, please stand.

Has any member of this jury panel or any member of your immediate family ever experienced what you consider to be a significant construction problem related to a dwelling you have lived in? If so, please stand.

Yes, sir.

JUROR: 161.

THE COURT: Can you tell me about that?

JUROR: It was a drainage pipe underneath the backyard that ultimately caused a sinkhole.

THE COURT: Did it result in litigation?

JUROR: There was -- it was about 25 years ago, but there was legal proceedings over it.

THE COURT: Did you end up going to a jury trial?

JUROR: No, I did not.

THE COURT: Is there any follow-up questions from the plaintiff or defense with this gentleman?

MR. HILDEBRAND: None, Your Honor.

MR. CONNELL: No, Your Honor.

MR. STANLEY: No, Your Honor.

THE COURT: Thank you.

Is there any member of this jury panel or any member of your immediate family that has ever been

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involved in a dispute of any kind with a contractor, builder, developer, or buyer, seller of a residence or a structure? If so, please stand.

Okay. Same one. I appreciate that.

Anyone else?

THE COURT: Ladies and gentlemen, is there any member of this jury panel or any member of your immediate family ever been a plaintiff or defendant in a lawsuit?

Ladies and gentlemen, that would not include a divorce. We're talking just about a civil lawsuit. Has anyone ever been a plaintiff or defendant or any member of your family ever been involved in a lawsuit? That can include a car wreck, anything along those lines.

JUROR: 192. My sister.

THE COURT: What kind of lawsuit was it?

JUROR: Medical.

THE COURT: Malpractice lawsuit?

JUROR: Yes.

THE COURT: Was it resolved?

JUROR: Yes.

THE COURT: Thank you, ma'am. You may be seated.

Yes.

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JUROR: 65 --

THE COURT: Oh, I'm sorry. Was your sister the plaintiff or defendant in that case?

JUROR: Plaintiff -- no. No. Sorry. Defendant.

THE COURT: What does your sister do?

JUROR: She was a teacher.

THE COURT: Thank you.

I apologize. Your number again.

JUROR: 65.

THE COURT: Yes, ma'am.

JUROR: Just a car wreck.

THE COURT: Plaintiff or defendant?

JUROR: I was the defendant.

THE COURT: So someone brought a case against you?

JUROR: No. Other way.

THE COURT: You brought a case against someone?

JUROR: Yes. I'm sorry.

THE COURT: Was it resolved?

JUROR: Yes.

THE COURT: Yes, ma'am.

JUROR: 32. Car accident. I was the plaintiff.

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THE COURT: Is that case resolved?
JUROR: Yes.
THE COURT: How long ago was it?
JUROR: 18 years ago.
THE COURT: Thank you.
On the very far end. Yes, ma'am.
JUROR: 89.
THE COURT: Did you bring the lawsuit?
JUROR: No. My dad did.
THE COURT: Was there a lawsuit brought against someone else against your father?
JUROR: Not against my father. It was -- it happened to me. A dog attacked me.
THE COURT: That is all we need to know. So you brought a case against someone else -- your father did on your behalf?
JUROR: Yes, because I was five.
THE COURT: It has been long resolved, I hope?
JUROR: Yes, ma'am.
THE COURT: Okay.
Sir.
JUROR: 122. I was a defendant in a civil case, and I was also a plaintiff in a civil case.
THE COURT: You were the defendant in what

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type of case?

JUROR: Automobile accident.

THE COURT: And then when you were a plaintiff, what was it?

JUROR: Wrongful death.

THE COURT: Okay. Thank you, sir.

Yes, sir.

JUROR: 161. I was the lead plaintiff in a class action lawsuit.

THE COURT: For what?

JUROR: It was back in late '90s. A technology company.

THE COURT: Can you tell me the name of the company?

JUROR: InfoSpace.

THE COURT: Okay.

Yes, ma'am.

JUROR: 239. Car accident. I was the plaintiff, and it was settled.

THE COURT: Thank you, ma'am.

There were a couple of names that I inadvertently left off so I will say those names as well on the off-chance you might know them: Michael Woodcock, Ron Oler, Thomas Larson, Carl Armstrong, and Sandra Wettington.

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Again, those were names that I left off, ladies and gentlemen, that could be potential witnesses in this case or names you may hear during the trial of this case. Is anyone related by blood, connected by marriage, have a close personal relationship or special friendship with any of those persons? If so, please stand.

Ladies and gentlemen, I know I've told you very little about this case. Again, it is an alleged construction defect case. I want to make sure that no one involving Wedgewood Condominium Association, which I understand is in Barefoot Landing, correct? Does anyone have any independent knowledge about this case, whatsoever? Has anyone read anything, seen anything in the newspaper or news on it? And I don't know there was one. I'm sorry, I don't live here, so I wouldn't know, but I want to be sure that no one has any separate individual information in reference to this case.

Ladies and gentlemen, anyone know of any reason why you cannot be fair to both the plaintiff and the defendant in this case?

Ladies and gentlemen, I'm going to ask my catch-all, because it wasn't before me earlier, you were qualified by Judge Culbertson. Does anyone

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have a serious problem or difficulty remaining on jury duty here this week because of some previous pressing engagement or something you absolutely have to do?

I want to make sure everyone understands it is very likely we'll go through until Friday. Anyone have a hard time working on Friday?

I wasn't down there for qualifications so I didn't hear everything that Judge Culbertson asked, but I'm assuming he took care of anyone that had scheduling difficulties, children difficulties, all of that?

MR. CONNELL: He did.

THE COURT: All right. Very good.

Is there any further questions, Mr. Connell?

MR. CONNELL: Did I hear you ask if anyone was an employee of Centex or Pulte?

THE COURT: Oh, I apologize. Did I miss it?

Ladies and gentlemen, is there any member of this panel or any member of your immediate family currently employed by or in the past that have been employed by Centex Homes or Pulte Homes? If so, please stand.

I want to make sure, it would include your immediate family members as well.

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All right. Thank you.

Anything further, Mr. Connell?

MR. CONNELL: No, Your Honor.

THE COURT: Mr. Hildebrand?

MR. HILDEBRAND: No, thank you, Your Honor.

THE COURT: All right. Ladies and gentlemen, what happens now -- is this the draft list because we didn't lose everyone?

THE CLERK: Yes, ma'am.

THE COURT: We're taking this draft list that we have, and the attorneys need 15 or 20 minutes to look at this list -- is that okay?

THE CLERK: Yes, ma'am.

THE COURT: Okay. So what I'm going to ask is, ladies and gentlemen, you are welcome to walk out of the courtroom, but I ask that you don't leave the building. My intent is that we will pull this jury, and as soon as I have my list of jurors, I'll have everyone grab lunch, and the rest of the pool I'll send them downstairs -- or what do I do with them?

THE CLERK: You call the number on your slip.

THE COURT: Okay. So if you are not chosen as jurors in this case --

THE CLERK: I apologize. They need to go

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back downstairs. Judge Culbertson is waiting to pull his.

THE COURT: Oh, okay. I did not know that. Sorry.

So you have to go back downstairs, ladies and gentlemen. I apologize for that. We don't know what the other hand is doing. So if you don't get chosen on this case, you have to go back downstairs to check in again, and we'll see what Judge Culbertson will do with you all at that point.

So you are free to go about your business for about 20 minutes or so, but be back at 20 after, we'll go ahead and pull this jury.

MR. CONNELL: How many alternates?

THE COURT: What do you think? How has it been here? I can tell you that in Beaufort I had three alternates, and I lost all three. Are you willing to go with at least ten if we lost some?

MR. CONNELL: Sure.

THE COURT: And what about you?

MR. HILDEBRAND: We prefer to stay with 12, Your Honor.

THE COURT: All right. I need at least three alternates. Don't you think? I think we need at least three.

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MR. HILDEBRAND: So three, and then both get one strike on the alternates, so five potentials?

THE COURT: Exactly.

MR. CONNELL: So....

THE COURT: One strike -- so one through 20.

MR. CONNELL: Pick four from each?

THE COURT: Exactly. And then the next is 21 through 23, 24 through 26, and 27 through 29. Okay.

MR. DesCHAMPS: I'm sorry, top 20?

THE COURT: Yes. And then the next three, the next three, and the next three.

MR. HILDEBRAND: Four strikes, top 20.

MR. CONNELL: Yes. Alternates is one. We you will strike one, and then go down to 23 to 26.

(A discussion was had off the record.)

(A recess was taken. The following was had in open court with the jury panel present.)

THE COURT: The clerk came to me and told me those of you not chosen, to send you downstairs. They are making arrangements that you have time to get a bite to eat.

JUROR: Yeah.

THE COURT: Are we ready to go?

MR. CONNELL: Yes, ma'am.

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THE COURT: Ladies and gentlemen, I need to tell you something. When your names were placed in the computer, it gave you all new numbers. So if you think you heard your number struck, you didn't, because these numbers are between one and 20, and then 21 and 29, okay.

So, again, you don't do anything. Just sit tight. Once we go through and they have done all of their strikes, then we'll call your numbers and pull you up.

When you come forward, ladies and gentlemen, I need you to bring all of your belongings with you and take a seat up there. That is the signal you are on this jury.

Whenever you are ready.

THE CLERK: Plaintiff strikes on the numbers on the left, 1 through 20.

MR. CONNELL: Plaintiff strikes No. 6.

THE CLERK: Plaintiff strikes No. 6.

MR. HILDEBRAND: Defendant strikes No. 10.

THE CLERK: Defendant strikes No. 10.

MR. CONNELL: Plaintiff strikes No. 7.

THE CLERK: Plaintiff strikes No. 7.

MR. HILDEBRAND: Defendant strikes No. 15.

THE CLERK: Defendant strikes No. 15.

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MR. CONNELL: Plaintiff strikes No. 13.
THE CLERK: Plaintiff strikes No. 13.
MR. HILDEBRAND: Defendant strikes No. 12.
THE CLERK: Defendant strikes No. 12.
MR. CONNELL: Plaintiff strikes No. 17.
THE CLERK: Plaintiff strikes No. 17.
MR. HILDEBRAND: Plaintiff strikes No. 8.
THE CLERK: Defendant strikes No. 8.
We'll begin with the first alternate with the numbers on the left between 21, 22, and 23.
MR. CONNELL: Plaintiff strikes No. 22.
THE CLERK: Plaintiff strikes No. 22.
MR. HILDEBRAND: Defendant strikes No. 23.
THE CLERK: Defendant strikes No. 23.
Start with the second alternate. Strike from the numbers on the left between 24, 25, and 26.
MR. CONNELL: Plaintiff strikes No. 25.
THE CLERK: Plaintiff strikes No. 25.
MR. HILDEBRAND: Defendant strikes No. 26.
THE CLERK: Defendant strikes No. 26.
We'll select the third alternate from the numbers on the left between 27, 28, and 29.
MR. CONNELL: Plaintiff strikes No. 28.
THE CLERK: Plaintiff strikes No. 28.
MR. HILDEBRAND: Defendant strikes No. 29.

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THE CLERK: Defendant strikes No. 29.

THE COURT: May we review your strikes? For the plaintiff, plaintiff strikes Nos. 6, 7, 13, 17, 22, 25, and 28; is that correct?

MR. CONNELL: That's correct.

THE CLERK: Defendant strikes Nos. 8, 10, 12, 15, 23, 26, and No. 29; is that correct?

MR. HILDEBRAND: It is. Thank you.

THE CLERK: As I call your name, come forward and have a street in the jury box.

Juror 52, Raquel Cestaro; Juror 93, Rebecca Elmendorf; No. 10 Elizabeth Barbare; 312, Melissa Seek; 188, Daphne Kirk; 15, Olin Beaty; 242, Sarah Moody; 248, Lisa Morse; 100, Kenneth Faulk; 196, Anne Renee Lane; 145, Amanda Haidet; 89, Alexandra Eckert; 105, Louise Fiaschetti; 349, Stephanie Trump; 46, Briget Capell.

THE COURT: All right. Are there any matters of law we need to take up regarding the jury process?

MR. STANLEY: Nothing, Your Honor.

MR. HILDEBRAND: Nothing, Your Honor.

THE COURT: All right. Very well.

Ladies and gentlemen, thank you. For the remainder of you, I'll send you back to your -- who

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-- to the assembly room downstairs. I come from a smaller county where we don't have an assembly rooms. With that, go back down, check in, and they'll tell you what to do and where to go. Thank you.

(The prospective juror panel members exit the courtroom at 1:28 p.m.)

THE COURT: Can I see the attorneys up here?

(The following was a bench conference had out of the hearing of the jury.)

THE COURT: So I'm trying to figure out what time to bring the jury back. I need you to get a bite to eat. How long do you need for lunch? I'm seriously -- I don't want to starve you out the first day, but I also want to get moving. Pretrial will take a while.

MR. STANLEY: An hour?

THE COURT: That's too long. It is 1:30. I'm going to have this jury come back at 3:30. Do you think that is okay? We can get openings and a witness or two in. I just don't want them waiting on us.

Are you okay to just go straightforward and do some pretrials? We can do that and then break. I may need to do a little research on a couple of

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them during break. Is that okay with you all? Okay.

(The following was had in open court.)

THE COURT: Ladies and gentlemen, we were just talking scheduling. I want to thank you and welcome you. You are going to resolve this matter for us this week, and we want to thank you for that.

We are going to right now just break for lunch. There are a few ground rules, ladies and gentlemen, when you sit on jury duty that I need to go over with you.

First off, you are permitted to bring your cell phones into the courthouse. That is a recent development. Ladies and gentlemen, the only thing I need to warn you and caution you is that you are not to use your cell phone to get any information while performing jury duty. In other words, on a Smart phone to look at anything. You will have everything you need to determine this case right here in this courtroom. It is highly inappropriate for you to be influenced in your duty of that, so I tell you don't do any research or anything on your phone.

Ladies and gentlemen, also the attorneys, the

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parties, the witnesses in this case have been instructed that if they pass you in coming and going from the courthouse, they are not to speak to you. The reason is simple. Even just an innocent conversation of, oh, it looks like it is going to rain outside gets caught on camera, gets reported, and then I have to ask you about it. So out of an abundance of caution -- I don't have want to have to do that, so I tell them not to speak with you.

In passing, sometimes inadvertently someone might say, Hi. As long as no one talks about any substance about anything in regards to this case, that's fine.

Also, you cannot talk about the case with each other or with anyone outside when we break for the evening or for lunch. The reason is this: Someone will try to tell you something about something when they know nothing about this case. It is highly inappropriate for you to be influenced. Therefore, when you talk to someone over the lunch hour, go home tonight, the only thing you are permitted to say is, I've been chosen as a juror in a trial of a civil case. You can't say what it is about, the parties involved, or the lawyers involved. So there should not be any

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conflicts or problems along those lines.

Additionally, you can't talk to each other about what you are hearing over the course of the trial until the very end, because you wouldn't have received all of the evidence or heard the arguments from the lawyers, nor my charge on the law, which comes at the end of the trial. So during all of these breaks between now and Friday, before I send the case to you, you are not to discuss this case back in the jury room when we take breaks or the lunch hour. It is not appropriate for you to come to any conclusions until you have heard all of the evidence.

Lastly, ladies and gentlemen, I'll ask that you do your best to be punctual. I'm staying up here, and I'm usually very on time. So as long as you are here and on time, we'll move this case along. Some days we may break for lunch, and some we may not. If we do not break, we'll have food for you and have a shorter break where you have food in your jury room to eat.

Obviously, we'll take a break, and we're going to take a long one because there is some pretrial matters that I have to take up with the attorneys. I don't want you sitting back there

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waiting on us.

Typically, we take about an hour break and typically take it around 1:00-ish, but it depends how tired the jury is and where the natural break for a witness is for that day.

So, again, ladies and gentlemen, you can anticipate that, but for today, I'm going to ask that you be back in your jury room at 3:30 where we'll begin the trial of this case. That will give me enough time to hear the pretrial matters and be ready to go. We expect to put up opening statements for you and maybe even a witness. That is our hope.

That clock is right back there, right?

So, ladies and gentlemen, the last thing I need to tell you is you'll have a bailiff back there with you that will get a good phone number for you. We need a way to contact you at any time. If you were to fall sick over the lunch hour or whatever, you need to call in and tell us, because I can't start unless all 15 of you are here after every time we break. So if something is happening or whatever, I need to know, because I'm going to be concerned about you and hunting you down to make sure you are fine.

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Anyone have an issue? I don't know if it's hot or cold in this courtroom. It's been awhile since I've been here in Horry County, but if you are too hot or too cold, I'll tell you to tell the bailiff, and we'll see what we can do. It is probably done remotely, right? Like every courthouse in this state these days. We'll see what we can do.

I'll excuse you, and see you back in your jury room at 3:30, and then we'll begin the trial of this case. At that point we'll swear them in. Okay. You're excused.

(The jury exits at 1:34 p.m., and the following is heard out of the presence of the jury.)

THE COURT: Let's go through your motions. I looked at them, the things that you raised in your pretrial brief. So let's work through those, if we can.

Do you want to start with your motions in limine? I know they specifically stated them as motions in limine.

MR. DesCHAMPS: I can start, Your Honor.

THE COURT: Sure.

MR. DesCHAMPS: Thank you, Judge. May it please the Court?

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I'll start with the motion in limine to exclude evidence or mention of other lawsuits and other projects in the Barefoot Resort community and lawsuits regarding those communities.

So, Judge, I think it was the Friday before last we received a production from the plaintiff's counsel with some expert reports and deposition testimony from Centex's experts and three other lawsuits. Those lawsuits pertained to projects that were done by Centex Homes and Barefoot Resort.

In the pretrial brief we received Saturday morning, plaintiff disclosed their apparent plan to bring in arguments and evidence about a host of communities within Barefoot. I think it was nine of them.

So, Your Honor, just a quick background. I think you know Barefoot Resort is in North Myrtle Beach on the other side of the waterway. This project, Wedgewood, is a condominium project and the first one built of a number of them within that area.

In the, say, 15 years that followed, Centex Homes was a developer and general contractor on a number of communities within their -- at least nine of them that we're talking about. There has been

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some litigation about it, and it seems like their apparent plan is try to introduce those lawsuits and, I guess, some expert testimony or expert reports about those, and I assume with the implication that if you were sued in the other cases, it must mean that there is something wrong in this case.

THE COURT: I just want to know exactly what they are going to try to get into. I mean, just because someone was sued doesn't mean anything was wrong.

So the general -- I saw Ms. Harrellson's name on this witness list. Is it for her to just get up here and say there is eight other lawsuits? I mean, lawyers file lawsuits. That doesn't mean anyone is liable for anything. So that is not enough to say that something is wrong.

But my next question gets to, okay, what are we using them for? You want to get into that they are having similar problems, I presume, at those projects, as well as Wedgewood; is that correct?

MR. CONNELL: Among other things, Your Honor. there is an unfair trade practices claim. We'd argue deceptive practices. And so what our intent to do is to prove, not only that there are other

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lawsuits, but they used the same experts. In their depositions, they indicated there were the same problems that included water intrusion, roofing problems, all sorts of other problems.

Your Honor, it is no different than what Judge Newman did --

THE COURT: I read it.

MR. CONNELL: -- in the Murdaugh case. It is similar situation. All we're trying to do is prove repetition of the same conduct. And they can argue all they want to.

This is the first one. Barefoot Landing -- and we'll show the jury on a poster board or video -- is a big project. They had plans to do it all at one time. A lot of the same subs was used. A lot of the same projects were started at the same time. So you have all eight of them in this one area, and you have a common scheme or plan, and you have common defects. The jury should hear that, because that goes to deceptive unfair trade practices.

THE COURT: So how many were going at the same time of Wedgewood?

MR. CONNELL: We've had -- Stacy and I have already had two and settled with them.

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MR. DesCHAMPS: Lawsuits -- are you asking which projects were being built at the same time?

THE COURT: Yeah.

MR. DesCHAMPS: Zero.

THE COURT: That is what I'm guessing.

MR. CONNELL: I disagree. 2001 -- it is a common scheme. 2001, 2003, 2004, 2005, they are building the whole project out. So the argument we're just starting one doesn't mean anything because they didn't start one and stop. It was like a mushroom. They were going to build it all out.

THE COURT: So it's my guess that you are going to start with one and then move on to the next project with those subs, move on to the next project, move on to the next one? Is that how they did it?

MR. CONNELL: That is how they did it. And they used most of the same subs, in most of them.

THE COURT: I will tell you this: As much as I love Judge Newman, and I can tell you he's tried most of these construction cases, I actually don't think, like he did in the Murdaugh trial -- I don't think you should let it all in.

I do think that the impetus for what caused

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it potentially, the killing -- so, in other words, having the revelation of having one specific lawsuit, that I think had to do with Chris Wilson, that, I think, could show motive and intent, but I don't think it all should have come in.

I know a lot of judges -- we've all talked about our differing views would have been on that. I can tell me, specifically, I wouldn't have.

So I'm concerned -- and I'll tell you this: I looked back and re-read *Pope versus Heritage Communities* and looked at *Magnolia,* which were both Judge Newman's cases. In looking at it, it looks like in both of those cases he did allow evidence of other projects.

I know, Mr. DesChamps, you're going to tell me the difference is these are projects that predated the one he's arguing about.

MR. DesCHAMPS: It is not the timing. It goes to notice. It goes to their actual knowledge. In *Heritage*, the builder -- the CO of the company admitted in a deposition that he was aware of claimed defects, water intrusion basically, at a project that was known prior to when they were building the communities that were at issue in that lawsuit. It was knowledge that was the issue. It

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is not common scheme. It is knowledge.

THE COURT: Okay.

MR. DesCHAMPS: So that is the biggest part. And I will say that in *Heritage* it came in under the punitive damages statute. Here, that predated the bifurcation statute. Here, we're going to bifurcate, so even though --

THE COURT: You agreed to that? Or did I agree?

MR. DesCHAMPS: The statute reads as it is an unconditional right.

THE COURT: Okay. Okay.

MR. DesCHAMPS: The premise of the statute, of course, is that evidence that would come in only for purposes of punitive damages is not admissible in the first stage. And so even with what I said about *Pope* and *Heritage* and all of that, it was limited to actual knowledge.

And, also, that came in under the plaintiff's argument that it goes to punitive damages. And we actually -- in the reply to the plaintiff's pretrial briefs that we sent Your Honor over the weekend, we quoted something from Judge Newman's trial order, and that is what was up on appeal.

So it is the same thing with UGPA, punitive

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damages, negligence. It is actual knowledge. So that's the biggest thing.

I think, here, it is an easier question than in could be in some cases, you know, if they were going up at the same time. If they had evidence that they think they could argue knowledge, that's one thing. Here, it is pretty crystal clear. This is the first one that was built, and they have no evidence of actual knowledge. So what's the point? I mean, what could they argue? Because they filed a lawsuit about a project that was built 14 years later that it shows a common plan of scheme?

The difference between the other communities and this one is important as well, not just the time, but you had different designs. You actually have a different building code. This was '97, and not long after that you had IBC, and then later iterations of that, different designers, different laborers, subcontractors. It is too remote.

Again, that is not the point as much as the only reason it would come in is actual knowledge of notice, that you knew of these things, knew they weren't working, and you still built it. They can't prove that with these with other lawsuits, because the obvious point is this project was built

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before those other ones.

So you would be looking at things that occurred prior to when this project was built, and there is no evidence of that. These things have nothing to do with that.

Judge, if I may, that is the main point. If you are looking at other case law, that's it.

The other thing is just the prejudice and the mini trials. There is somewhat of a pattern we see with these cases. Essentially, what it is, is there may be either a known problem, say a single window or, hey, we're having a window leak, can you look at it, and one thing leads to another.

They hire a lawyer, who hires a forensic expert who works in the field of doing litigation support, and they are good at knowing the one place or the handful of places where there might be a problem. They go directly there and do a wall cut, find what you would expect, because it is already known that there is a problem there, and then they extrapolate those findings there to the whole building and have a very large repair scope from it.

We receive notice. And then, in essence, it almost becomes our burden to take that very large

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scope of repair, and through a lot of depositions, take the thousands of photographs of the plaintiff's expert and figure out where he cut, what he knew when he did, all of the places where he didn't find those things. We have to take a lot of depositions of the HOA people, property management.

We find out a lot of times that there is modifications or changes to the components. We find there is a lack of maintenance. It is almost our burden because we have to spend a lot of time and years of discovery to show it is not as simple as saying, oh, we found a problem here, so it must be happening in the whole building.

THE COURT: So he jumped to another issue, and you are talking about this whole extrapolation issue?

MR. DesCHAMPS: I haven't.

My point is if they try to introduce that these same defects happened at other projects, it is also our burden to do the same thing we plan on doing in Wedgewood. We'll spend a week here refuting what they say is prevalent at Wedgewood, and we have to do that nine times, and on two days notice?

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The prejudice to the defendant here is too much. I mean, it would take too much time, and they'll get confused. The jury can look at a photograph of a different building altogether that has nothing to do with Wedgewood, but we're spending all of this time trying to convince them that the things they say happened to other communities didn't, and it was built ten years later anyway. It is going to be so confusing to them. Why are we spending all of this time talking about buildings other than Wedgewood?

You know, this is a defect claim -- allegedly defect. Put up your evidence about Wedgewood, and we can do that.

THE COURT: Mr. Connell, or whoever wants to argue this.

MR. CONNELL: As you indicated, the *Magnolia* case is directly on point. It wasn't just about punitive damages. It was about evidence offered to show similar issues, water intrusion issues.

THE COURT: But weren't they projects that were subsequent -- I'm sorry. I mean --

MR. CONNELL: They were all built in the same period of time, but some later. I agree with that. But I would point out to Your Honor that it is an

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unfair trade practice, too.

Not only do you use the unfair trade practice claim, you have to prove repetition or potential for repetition. In this case, we have it better. We have repetition all the way through all of the projects. That doesn't mean that we're going to show pictures of each and every different association. We're just going to show, through testimony of the plaintiff's expert, that he found the same problems in other condominium projects.

And, Your Honor, this is no surprise to the defendants. During their depositions, I asked them -- each of the defendants' experts -- I said, Did you all find any evidence of construction defects in any of these other condominium projects, and they said, Yes.

I asked, Did you find evidence of industry standards in these other condominium defects and in other associations? They said, Yes. And I said, Did you find evidence of any violation of any manufacturing specifications? They said, Yes.

THE COURT: Was it specific as to the same problem you are having at the Wedgewood project?

MR. CONNELL: It was.

And so when their experts get on the stand

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they are going to have to say that they found the same problems that we're complaining about all throughout all the projects.

So if we're attempting to prove an unfair trade practice claim, we don't have to show notice. We just have to show repetition. We have a classic case of repetition from one to two to three, all the way to nine.

On top of that, we also have a case tried, the Greenbriar case, and a verdict was rendered for the plaintiff. That certainly would be admissible evidence in this case.

So we would argue to Your Honor it is a --

THE COURT: Why would you say it is admissible?

MR. CONNELL: Because it shows -- it's been tried before. We have prior conduct. We have the same situation.

MR. DesCHAMPS: This is pure -- essentially, it is character evidence. If you built something bad, you must have done it bad four years prior at Wedgewood. Can I give one example?

THE COURT: Sure.

MR. DesCHAMPS: Willowbend. Mr. Stacy filed the Willowbend lawsuit around the same time as

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Wedgewood. That is one of the cases they are seeking to have their own expert say I found the same things there, as I did here.

Willowbend was built over a long period of time, from 2008 up to 2014. So that is seven to 14 years after this project.

Here is kind of the skinny. We about tried that one, and here are the basics. It started with I think about 242 units at Willowbend. There was a couple of windows. I know I mentioned earlier there is a couple of places where unit owners said it looks like something at my windows, and one thing led to another. It led to Ross Clements going directly to those windows and found the source of what that guy was complaining of.

Then, he says this is a problem. We have to do the repairs in all of the windows, in all of the units. It is going to cost some $10 million, or whatever. There's a lawsuit, and then, of course, we hire our own engineers who go and do test cuts at other places, in other buildings. They looked and said, Yeah, we agree it looks like something happened. The installer at that one window did make an error, something happened over the years, a slow drip of that one window -- or maybe it was

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four or five.

The building code basically says you need to flash and wrap the buildings so it doesn't allow water intrusion. Ten years later, if there is some water intrusion at that one window, yeah, you have to say, okay, a code of violation happened at that one window. Let's fix it.

So they are going to say, Centex's own experts admit there is code violations, when, really, all that means is at those windows. It doesn't mean there was some defective construction practice across the board.

Our repair scope at Willowbend was $44,000. Theirs was $12 million. We had to go through years of discovery, so many depositions, so many photographs, hundreds of test cuts and say, The things you found at this window, you didn't find here, here, here, here. By the way, when was the last time you did re-caulking? When was the last time -- did you change this? That? We haven't had control of the community for so many years.

These lawsuits are complicated because a lot of time has passed between when Centex has built these and when the lawsuit is filed. So we have to spend a lot of time showing what happened in the

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interim, and we are going into the history of the communities.

So that is what we're going to do with Wedgewood, for sure. You'll hear a lot of that. But Mr. Connell says we won't show them a lot of pictures. I don't doubt they will. They'll have Ross Clements say, Oh, I found the same thing at all of these. And then, like I said, it will put the burden on us to show all the pictures and say, well, you really didn't. So that is the problem.

What we're planning to do, and it would take a week doing it for Wedgewood, and they are kind of forcing us -- or would be forcing us, if this was allowed to come in, it would be up to nine times. The prejudice from it, and the jury confusion -- and, again, what's the point? What is it that they would be proving? That other contractors and other subcontractors years later also had a couple of windows that needed to be repaired?

THE COURT: Okay.

MR. CONNELL: Your Honor, it is weight versus admissibility. I mean, that is all it is. It goes to the weight. They can cross examine Mr. Clements. They can get their own experts to say what they are going to say. But it all goes to

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unfair trade practices and what happened to all of these other lawsuits.

THE COURT: All right. I'm going to take that under advisement for right now. Let's take care of the other ones, and I'll let you all know.

MR. DesCHAMPS: Hopefully, this one will be more straightforward. This is a claim about the association says there is a need for repairs of the common elements at Wedgewood.

Your Honor is probably aware that these condominiums are set up where it is a common building and then a bunch of individual residences within the condo buildings. So they have an HOA and a board of directors who's tasked with maintaining and repairing the exteriors of the buildings.

Under the master deed, they have an obligation to maintain the, quote, common areas. So that is largely what is done here, and most of the repairs are to the exterior of the buildings.

They also have allegations and repair estimates, and then damages or claim damages for repairs to the unit owner's private back porches. To get there, you have to go into the private room and exit. It is a private area. It is all

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governed by the master deed. Those private areas are per the master deed and not part of the common areas. They are the charge of those unit owners.

So the way it works is you go to the master deed and it says common elements is everything that is not a unit, capital "U." The private balconies are within the definition of the unit.

So it is pretty clear -- it is just under the master deed. There is the *Roundhouse* case -- I think is what it is called -- that has this exact same ruling. It was private balconies in that case, too. It is just a matter of they can't introduce -- they should not be allowed to introduce evidence of the cost to repair those private balconies, because the plaintiff doesn't have standing to recover those damages.

MR. STANLEY: Your Honor, we agree with him, that the balcony is a non-common element. It is a limited common element. The master deed is very clear about that, so we agree. We consent to their motion to exclude the balconies from this lawsuit.

THE COURT: Okay. So that is a stipulation.

MR. DesCHAMPS: So we're clear, they cannot introduce evidence of the cost it would take to repair -- I mean, it would include evidence of the

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cost to repair anything on the private balconies. So long as that is what we're agreeing to, then that's fine.

THE COURT: So you are taking it out of the estimate, is what you are saying?

MR. STANLEY: We're taking it out of the estimate now.

I'll tell Your Honor that our general contractor, when he prepared this estimate, he had walkways and balconies, which is customary, in his estimate together.

THE COURT: Oh, okay. So there are public walkways in front of the building?

MR. STANLEY: Correct. Correct. So he's working on that today. We've notified him that we would consent to this motion, and that was -- that is stated in the master deed.

Now, I would like to mention one other thing to Your Honor. Yesterday, as we were talking to our expert, Ross Clements, he realized -- and we were talking over this issue of the balconies. We agreed on that, but he said -- and I realized something as I was going through this.

When Your Honor made the decision about the DP rating of the windows, we took that issue out of

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the estimate. Our estimator, inadvertently, also took out the cost of taking out the windows, and then reinstalling them. Because Ross Clements has testified --

THE COURT: I understand.

MR. STANLEY: So we are going to have to -- while we're taking out the issue of the balconies, we have to add back in --

THE COURT: The cost to pull the windows and replace them?

MR. STANLEY: And reinstall them.

MR. DesCHAMPS: That may be the case, but at some point it is their burden to get their house in order, and now is not the --

THE COURT: You knew that was coming, though, Mr. DesChamps. You knew that was coming.

MR. STANLEY: Ross Clements has testified about this issue, so it was real clear.

MR. DesCHAMPS: Okay. He finalized his estimate a couple months ago and we waited --

THE COURT: I know, but everyone continues to do it up until trial. It is a moving part, I understand. Thank you for letting them know. So that is by agreement.

What else?

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MR. DesCHAMPS: As you recall from prior hearings, this lawsuit largely relates to the exterior and claims of water intrusion. There are some additional items that Ross Clements identified, and that there are repair estimates, that are claimed as structural deficiencies to the interior of the homes, mainly about the structural shear walls and framing and some blocking and issues within the plenum area of the buildings, which is in between --

THE COURT: Did he use an engineer or anyone to run the numbers?

MR. DesCHAMPS: No, Your Honor. And you have all of the testimony. It is in the brief. He readily admits that he cannot identify that this is in violation of any structural codes. You know, he says I would have to rely on a structural engineer to do that. I can't do that.

THE COURT: Did he use one or no?

MR. DesCHAMPS: No. No. It is crystal clear in the testimony. So all he is saying is that for some of the building I found a structural plan that I looked at 18 years later, and when I go up there in the attic, for example, or a shear wall, the thing I found, I don't see it matches this plan

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that I think applies.

So I said, Okay. But can you then take the extra step and say that that is actually a structural problem, a code violation? Does it fail to provide the structural support and integrity the code requires? And he says, No. Did you run any calculations, run numbers? No. I didn't try. I would have to rely on a structural engineer to do that, which he concedes he did not do.

As it happens, we did hire a structural engineer, Skip Lewis, who looked at it. He says that two of these items that we're talking about, 6.0, 8.0, no structural repairs are needed. We deny that altogether.

The attic framing issue is basically saying there is a couple of places where you might want to have a contractor for a day or two add a couple of ties. I think it was an $8,000 repair estimate. Otherwise, no structural deficiencies.

What Mr. Lewis testified to and put in his report is just because you, out of context, find some paper, you know, that says it is a drawing detail years later, and there is a deviation from that, that is not surprising at all because that is the way things happen.

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You have a truss manufacturer, provide shop drawings, modifications. You have that same engineering guy who prepared those plans, Bobby Curry. It is not unusual for once you are in the field, you have modifications, approvals, shop drawings, RFBs, all of that. That totally is not unusual and not surprising at all.

Just out of context, just having an architect who says I have nothing to do with any structural engineering saying I think it should be repaired because it doesn't comply with this piece of paper, the plans I found in the FOIA. There is no evidence, whatsoever, of a structural deficiency.

And, again, Mr. Clements admits to that. And so, you know, it is not even that complicated as a 702 analysis because he concedes he is not an expert in this. So that is the point.

I will say, Your Honor, on this particular issue, we added an additional ground why we think this repair scope to the structural issue should not be allowed to be offered, and that is it is a woefully inadequate investigation.

Let's take the example of the shear wall allegations he makes. Some of them relate to what would only be a first floor shear wall. It is

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basically putting some anchor bolts where the shear wall comes down to the concrete. So he admits that, basically, you know, that places in the buildings would occur 112 times. It is 111 units, and they count how many shear walls there are. He did one. He looked at one. Essentially, he found, well, at that one, the spacing of the anchor bolts, I think, were farther than what the plans say.

First of all, Mr. Lewis, our expert, looked at it and said, No problem. It complies. It has the structural wind loads required.

But, anyway, he didn't look at anything else, just simply a lag nut. He says, Well, I think that probably must have applied everywhere, so I think you need to make those repairs, not only there, but on all 112 shear walls on the first floor.

He can't offer any scientific basis to render that opinion and tell the jury that it's likely to be present at the other places that he didn't inspect. They are trying to shift the burden to us. You can't just hire someone who says, well, I do it for a living. I'm a forensic architect. I testify for lawsuits for a living so, therefore, I'm qualified to say that this thing must be present elsewhere. And so he -- that is repeated

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in all of the other issues.

So, again, I offer that really to add some flavor. This thing is really off the reservation. I mean, he concedes he is not an expert, so I think the analysis is as simple as that. But when you combine that with the fact that it was such an inadequate investigation, the jury doesn't need to hear about this. They are going to be confused and think about something because they have an expert testifying, somebody that says I'm a building investigator, and there are structural problems.

We can cross him, of course, but they are going to be confused. This is pure gatekeeping. This is the perfect example of gatekeeping the trial court's function on this. We're not trying to keep him out of saying he investigated the alleged water intrusion issue. This is strictly on the structural issue where he concedes he is not an expert. He concedes you would have to defer to a structural engineer.

THE COURT: I read the portion of it in the motion.

Why don't you all respond.

MR. STANLEY: Your Honor, if it were up to Centex, they would take Ross Clements and put him

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on the reservation. They would never want him to be in this courtroom. They have attacked him from day one, wanting to look at his house, bank records, you know, what purchases of property. They have attacked him violently, really, and they don't want him to get on that stand.

While we will concede -- you've seen, Your Honor, we have conceded on certain things when it is reasonable, but this is being taken completely out of context by Centex.

Ross Clements and the homeowners should have a right for him to take the stand and testify about these issues, because these are jury questions for them. It is not enough to just say, well, you said that you didn't get a structural engineer. What other factors go into that? For me to explain that would not be fair to Your Honor, but I believe Ross Clements needs an opportunity to describe what is going on there, why he identified this as a defect.

Here is what is so great about our system. Centex can cross examine him. If they want to undercut him on that issue and say, You said this and you didn't get a structural engineer and, therefore, it is completely not an issue here, and undercut him in front of the jury, go right ahead.

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That is their right. But he should have an opportunity to explain this.

We didn't come up with five pages of a report. His report is extensive and very expensive, for that matter. But Mr. Clements, under Rule 702, testimony by expert, if scientific --

THE COURT: He won't go beyond what he testified to in his deposition, is he? He said he didn't do the statistics. He didn't run the numbers, so he can't testify as to that.

MR. STANLEY: I'll believe that he will tell you that there are other factors involved with this issue that they did not cover in the deposition.

THE COURT: That they did not cover?

MR. STANLEY: That they did not cover in the deposition. They didn't ask the right questions.

Again, if they want to ask him on the stand, then this is a factual issue for the jury. This is a technical issue that he should have an opportunity to talk about it.

THE COURT: I think it depends how far he goes. I just don't know how far he's going to go, but I don't know how to look at that beyond a proffer or limiting to how he testified in his

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deposition. I won't do that. I won't cut him off at the knees and say, no, you can't extrapolate. I think that just goes to you can attack him on that, but if he only did one cut, you know, and he wants to say this is in every other building, you know, you know how to take care of that.

MR. DesCHAMPS: I agree. That is why we didn't raise that generally. If that was the only issue, I wouldn't make the motion. It is primarily about his conceded lack of experience and qualifications to render an opinion that there are structural deficiencies. I raised the other things to give you the additional flavor. I don't want you to think there are structural deficiencies out there. There is no evidence out there. This is about his own conceded lack of experience.

THE COURT: As long as he doesn't exceed what he said in his deposition. I think he was very straightforward in his deposition, and he said I'm not an engineer.

I just didn't know whether or not you already hired an engineer and that he was relying on someone else's numbers. If he has no numbers and not relying on them, then -- I don't know the verbiage that you don't want him to get to, but I

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read the deposition, and I assume he will testify like he did in his deposition.

MR. DesCHAMPS: I guess the relief we're asking for is, of course, we don't want him testifying about this. But, two, like I said earlier, we don't want them introducing evidence and repairs that he says is needed at the shear walls as a result. It is evidence of the need for repairs and the claimed damages --

THE COURT: It may not be -- you are saying it might be for another purpose. He can say why they need to be repaired instead of just saying structural, correct?

MR. STANLEY: It all goes to the weight of the evidence, and it is a jury question.

If he -- if he feels that strongly about this, then I would -- if I'm him, if I'm Will DesChamps, then I want Ross Clements on that stand and I want to cut his legs off. I absolutely want to use this. Why would I be arguing it now? I would want to undercut him while he's on the stand.

THE COURT: Well, that's just strategy. That doesn't matter.

MR. DesCHAMPS: Pure gatekeeping. There is some junk science where it is time for the trial

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court to say, no, I'm not going to allow this proffered expert testimony to be permitted. And that is where we're drawing the line here. We're not asking you to say all of the water intrusion claims and all the --

THE COURT: This is my problem. I haven't read his six volumes -- six, not five, but volumes of deposition, right?

MR. STANLEY: Six or seven or eight days of testimony.

MR. DesCHAMPS: This is the motion. Let's hear it.

THE COURT: I saw the portion of it that was asked, and you gave me the portions in it, and I think he was very fair in what he said he could and could not do. As long as it is limited to what he did, then that's fine. As long as he doesn't try to do something else.

MR. DesCHAMPS: But he's making a repair recommendation that they are seeking damages from Centex based on that. There is no basis for that. He can't say there is an actual structural deficiency, so they are trying to seek damages for something there is no evidence of deficiency.

MR. STANLEY: There is a bases or he wouldn't

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have put it in his report or in the estimate.

Can I just mention a couple of other things in the way they are attacking Ross Clements and not wanting him to get on the stand? Just looking at their motion, "Clements lack of scientifically based and statistically sound estimation."

They are talking about statistics here, but they have already admitted that they are not going to bring Farina up to testify. So they are arguing stuff to take out Ross Clements, which they've already withdrew today, about statistics. They talk about his samples not being large enough. Again, that is to the deference of the expert. If the --

THE COURT: That's a jury argument.

MR. STANLEY: That is a jury issue. And sometimes it takes one cut, sometimes 50. There are not enough cuts to satisfy -- there are not enough cuts to satisfy Centex.

THE COURT: Well, they can do all of their own cuts, too, to look at.

MR. DesCHAMPS: If he was a structural engineer he says, look, I see it. I think there is a deficiency. I run the numbers. I have the experience. Okay, that is a jury issue. We

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haven't gotten that threshold level. He needs to have the qualifications.

THE COURT: I think the only way to do that, as to that narrow issue, if we need to do a proffer on what he's going to testify to, then we do a proffer.

I mean, I can't sit here with a crystal ball All I know is I've seen what is in here, and it is that narrow portion of it. I don't know what his big entire testimony is, so let's make sure we do a proffer on that section beforehand.

It's hard for me to limit on a motion in limine to know exactly what is going to be proved. That is why judges hate ruling on motions in limine before we really know what this is about. And not that I don't know what the case is about, but what the big picture us.

I just don't know how far he'll go. If he oversteps his ability and his expertise, obviously, you can object and call it and stop it. But, at this point, it sounds like he's not going to testify to numbers, and as long as he adheres to what he said before, that he cannot and will not -- I don't know how he makes the leap to say there is structural defects. I don't know how he makes that

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leap, so I'm interested in a proffer for him to tell us how he's going to make that leap, okay.

MR. STANLEY: Yes, ma'am.

THE COURT: Okay.

MR. STANLEY: And we'll deal with that.

THE COURT: If it is not appropriate, we'll look at whatever estimates that need to come out or not come out.

MR. DesCHAMPS: One more quick matter. Another opinion that Ross Clements seeks to offer, and this has to do with interpretation of a code provision.

Your Honor, under the '97 building code -- well, out of Wedgewood, it was found that within the shear walls behind -- in between the interior drywall and the studs, there is a polyethylene vapor barrier. This was built under the 1997 Standard Building Code. The code, at that time, said that the installation of vapor barrier in that manner is required for most parts of the country. It had an exception. It said it is not required to do that in other parts, southern coastal, essentially hot, humid environments.

So, basically, it was neither required nor prohibited in Horry County under the '97 code.

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THE COURT: Okay.

MR. DesCHAMPS: Incidentally, at the time, there was something called the "Good Sense Program." It was an initiative that was run by a number of state-owned local utilities, Santee Cooper, Horry County Co-op, and some other places in neighboring states, I think.

Basically, it had an incentive program for builders to install that vapor barrier, because at the time they thought it would be a good energy initiative. That is the basic background. Subsequent codes are different, but this again was under the '97 code.

Ross Clements is saying, well, it is my opinion when I read the relevant code provision that putting it in the walls, as they are at Wedgewood, is a code violation.

We said, well, what are you referring to? So I put the testimony in the motion and, basically, I say, all right, so the sole basis for your opinion that the installation of the vapor barrier there is Code Section 502 point whatever, and he says, Yes. There is no question that is it.

If you go to 502 -- Your Honor, I can hand it up to you.

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THE COURT: Got it.

MR. DesCHAMPS: You have a page that looks like --

THE COURT: Yup.

MR. DesCHAMPS: See on the left-hand side there, you see the red underlined provisions? Is that what you are looking at? So this is from the Model Energy Code, 1995, which was, essentially, made part of the '97 building code. The top part says what I said, the vapor barrier shall be installed. Exceptions, you can see in No. 2 there, certain hot and humid climates. So if you --

THE COURT: Got it.

MR. DesCHAMPS: We have -- we think we have a map that our expert can talk about. It looks like there is this line where the inception kind of cuts through the middle of North Carolina/South Carolina, through that area.

But, anyway, based on this hot and humid climate exception, it wasn't required to be installed in the manner that it was at Wedgewood, but there is nothing in this provision that says that it is anything other than permissive. It does not say that you shall not do it or cannot do it.

So Ross Clements is going to say, well, in my

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judgment, in my opinion, doing it was a code violation. It is just --

THE COURT: He can't create it to be a code violation. He can just say he wouldn't do it that way and doesn't think it is correct.

MR. DesCHAMPS: That's right. That is the relief we are asking for, that he should not be permitted to tell the jury in his judgment it is a code violation. That is outside of -- he doesn't have the authority to do that. He can't say, well, you know, even though it says what it says, I think it is a code violation. So that is the relief we're asking. I mean, he can't say two plus two equals five.

THE COURT: Mr. Stanley.

MR. STANLEY: I think the reason they don't want this to come in is because of an e-mail from their own expert on this issue, and his name is Skip Lewis. Skip was sending another -- we just got this by subpoena. Skip was sending an e-mail to another co-worker, Bob Carter, and he said, "For the buildings that were built this way, the only fix, of which I'm aware, involves removal of interior gyp on exterior stud walls, removal of the vapor barrier material -- which is what we're

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talking about -- and repair of damaged stud sheathing, a costly affair."

Again, this is their expert's own internal e-mail.

He goes on to say, "This -- being the issue of the vapor barriers -- in my judgment, is a very big deal and needs to be discussed with counsel ASAP before we issue any reports."

We were very fortunate -- and there is more in this e-mail, but I believe that Centex is really making this motion based on, primarily, they do not want the jury to see this with their own experts or admitting that this vapor barrier issue is a big -- as they say, it is a very big deal, and it needs to be fixed, and it will cost a lot, very costly.

They try to critique -- again, this is a jury question, Your Honor. This is an issue for the jury. They tried to critique the amount of cuts he made at these buildings. He made cuts for the vapor barriers in Buildings 1, 3, 4, 6, and 9. He felt that was sufficient to determine that this was an issue.

Also, Your Honor, just so you know, these findings really originated in a class action case where Larry Elkton found that this was a defective

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issue. He issued an affidavit that we got ahold of, and we'll be happy to present that to the Court.

But, again, you have numerous people -- Larry Elton, Ross Clements, and their own experts -- saying this is a very big deal. This is why they're making the motion. They don't want this e-mail to get in front of the jury because it is very damaging to their case.

MR. DesCHAMPS: Judge, if Ross Clements wants to tell the jury these buildings need to be ripped down to their studs for something that wasn't a building code, and was actively promoted at the time they were built, I am not trying to stop him. I'm just saying he can't say that in my judgment it is a building code violation.

THE COURT: But it's in contravention to 502.1.4 says; is that what you are saying?

MR. DesCHAMPS: Right. Yeah. Just as a matter of 702 expert opinion, he can't say, look, here is the building code, but in my judgment it means that it was prohibited, because there is no language in there to support the opinion. That is the relief we're seeking.

If he thinks it is on some other basis, he

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can tell them. I'm not trying to stop him. But he can't say it is a building code violation because there is no grounds.

MR. STANLEY: Your own expert is saying that.

MR. DesCHAMPS: No, he's not.

THE COURT: He's saying it is a big deal, not a building code violation. That is what your problem is, correct?

MR. DesCHAMPS: Well, I don't think it is a problem, but, yeah. All I'm saying is he shouldn't be permitted to tell the jury in my judgment this is what the code actually says, when the language --

THE COURT: The code says what it says.

MR. DesCHAMPS: Correct.

THE COURT: I'm not going to tie his hands, but I don't think he would say something other than what it is.

MR. DesCHAMPS: We can -- I can -- if they ask the question, I can raise it. Just talking in pretrial, I wanted you to know.

THE COURT: Well, thank you for letting me know.

What else?

MR. HILDEBRAND: Your Honor, the next motion

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is under No. 5. This is an issue that was addressed before. It's simply that the Statute of Repose is barred as a matter of law. If it's after here at the time these buildings were built, if you bring an action after 13 years, it is barred by the Statute of Repose.

If they can prove gross negligence or recklessness, then they can put in that evidence and try to prove it.

The problem is, though, you can't -- I think it is improper to try to argue to the jury, look, I want you all to understand the reason we're trying to prove gross negligence is because we're not going to get anything unless we prove gross negligence. That interjects the outcome of the trial and interjects sympathy that otherwise would not be here.

What they are saying is you've got to find it, and we're not going to recover anything unless you find gross negligence. The case law that I've cited -- or we've cited, Page 5 of our motion, United States Supreme Court and Court of Appeals, information regarding the consequences of a verdict is irrelevant -- irrelevant to the jury's task to determine prejudice due to the likelihood of

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prejudice, unfairness, and confusion.

Then, I go on to cite a South Carolina case that says, "Argument of counsel that is designed to arouse passion or prejudice is improper."

The Court of Appeals has said specifically that we reject -- this is on Page 6 of our motion -- the notion that juries should use outcome-based reasoning to arrive at a verdict.

So I think the jury needs -- they can decide whether they find there is gross negligence or not. And, again, if they do, then the Statute of Repose is not barred. If they don't find it, then it is.

The exact issue was raised by Judge Stephanie McDonald in another case, and I've attached a copy of her order, where she says, yeah, you're right, there is no reason for that argument to be made and for that to be shown to the jury. They just need to decide whether there is gross negligence or not.

We had the same issue with Judge Newman, and we basically just agreed, yeah, that is improper and it will invite sympathy or try to argue sympathy.

THE COURT: Okay. You want to respond?

MR. CONNELL: My response to that is that if they are going to get up there, which we know they

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will, and say this is a 20-year-old project and this has been too long, and they didn't push this case, I think we're certainly able to say we're trying to prove gross negligence, the law allows us to do that, the Statute of Repose is an exception, and we're going to prove that to you in this case.

THE COURT: I think you can say that, but I think he's saying that he doesn't want you to go one step further, which is, if you don't find gross negligence, we don't get a dime. I think that is what you are looking for.

It's almost like saying, If you convict this guy, the mandatory minimum is 30 years, type of thing. I understand where that is coming from. What you said, I think is fine, because your burden is to prove gross negligence, if you're getting past that.

What I'm hearing him say is something different. I'm hearing him say he doesn't want you to argue that, listen, we don't get a dime unless you find gross negligence. You are not going to say that straight out, are you?

MR. CONNELL: I gave you a verdict form. It doesn't have anything but gross negligence on it. I don't see what the point is.

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I do think we ought to be able to say -- because the defense, I believe, will be this is too old, this too long, and I think we should be able to show that the law allows it, and there is exceptions of the law, and this is one of them, and the Statute of Repose. I think you have to charge it, anyway, I believe. I don't see what the issue is.

THE COURT: I'm kind of missing it, too.

Mr. Hildebrand, the only thing I think you can't say is you don't want them to make a statement that argues to the point of sympathy -- but, I mean, that is one of the things that until I hear it, I can't tell you what it is.

MR. HILDEBRAND: So I think to compromise is to simply charge the jury. Just charge the Statute of Repose. I agree with you exactly, it is not an appropriate argument for them to say, look, you can only -- we're not going to recover -- like you said, we're not going to recover anything unless you come back with the gross negligence verdict. Because then the jury is going to say whether they would otherwise find gross negligence or not, they'll say, gosh, we think they should recover a bit of something, we feel sorry for them, and that

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is why we're going to find gross negligence.

THE COURT: I don't think they'll go that far.

MR. CONNELL: I think we should say -- he doesn't want me to say that the Statute of Repose allows you to recover if you find gross negligence, and that is the law. That is part of the facts, and I should be able to say that over and over again, if I want to.

MR. HILDEBRAND: I think it is just a charge, Your Honor. What he's trying to do is backdoor -- I don't see how he can unravel the argument that we're trying to prevent him from making.

What he is saying is he wants to argue to the jury to say, listen, unless you recover, come back for gross negligence, my people don't get anything. He shouldn't argue that. He can put on his proof, put on if he thinks we're grossly negligent, negligent, breach of whatever, implied warranties. He can put all of that in, but he doesn't need to go through the extra step, and it is improper, as Judge McDonald has ruled.

THE COURT: Okay. So you just don't want him to say "we get nothing."

MR. HILDEBRAND: I don't think it should be

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mentioned. He can put it in a jury instruction, if you want to, but I don't know how you otherwise address that point.

THE COURT: I don't know how you want me to put it in a jury charge if you won't let him argue it.

MR. CONNELL: We can argue the facts of the law, and the law is the Statute of Repose here, and we ought to argue that. It is a significant point that they have to find gross negligence.

THE COURT: I haven't looked at your verdict form, so I didn't know that it only had gross negligence on it. So I will have to look over that over lunch to see.

Obviously, if you go too far, that is an issue. But that is so the cart before the horse because we're not in the closing arguments yet, so -- and there is no other way to get that through anyone else either, so -- okay.

MR. HILDEBRAND: Under Tab 6, which is any discussion that Centex last had third-party claims against subcontractors or settled them or dismissed them or whatever, there is no relevance to that.

THE COURT: General contractors are responsible for whatever the subs did. It doesn't

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matter, correct? You are not going to turn around and point the finger at someone else, are you?

MR. HILDEBRAND: No, ma'am.

THE COURT: I understood the way you defended this case you were using their experts to show -- I guess I agree with you with what you are saying until and unless you start pointing the finger at someone else and you say, No, no, no, it is the subcontractor's fault, not ours.

MR. HILDEBRAND: No. No. I won't open that door. I won't blame the subcontractors, but to the contrary, I'm going to say they were --

THE COURT: Great, right?

MR. HILDEBRAND: Yeah.

MR. CONNELL: That goes to the pleadings. He filed third-party complaint against all of those defendants, and then collected money based on our experts, and we ought to be able to say, by the way, those people aren't in here, and they are trying to hide this from you, jury, because they did this. So all of those third-party defendants they sued and said negligent acts. That is clearly appropriate for the jury to hear.

THE COURT: I don't think so. I don't think in any way that is appropriate for them to hear

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that they paid them money.

MR. CONNELL: Just that they sued them and they blame them, and now those people are out of the case. And I cited in my brief --

THE COURT: According to Judge Fuge case, I think it was then Judge Fuge who said all of these claims are just that of indemnity claims, and there's no responsibility unless they are found that through their work they are responsible. So I don't think it is appropriate to talk about that they sued them. I don't agree. You could have brought direct claims against them, but you didn't.

MR. CONNELL: No, we couldn't, based on what happened before. The master deed provided an assignment of claims to us, and Your Honor denied that three years ago, so we couldn't do that.

THE COURT: Oh, okay. Yeah.

MR. CONNELL: The fact they filed it and it is in the pleadings, it is clear we can show that is what happened. The jury is going to know that sooner or later. They'll find out about all of the subs anyway. Whether or not they got any money or not is a separate issue. But they sued them in this case, and they are out of the case now, for whatever reason.

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THE COURT: I don't think it is relevant anyway. Just because someone pays doesn't mean there is any negligence or problems. So I don't think that is appropriate.

MR. HILDEBRAND: Thank you, Your Honor.

Our next motion relates to -- this is kind of the same argument.

THE COURT: Is this the empty chair?

MR. HILDEBRAND: No. No. It is unlicensed -- they tried to say that some of our subcontractors were unlicensed. We've done all of the research, and a couple of them -- they aren't the primary ones, but a few of the contractors are unlicensed. But they want to try to argue that, oh, my gosh, Centex used unlicensed subcontractors. That is improper. But the law allows us to do that.

THE COURT: I thought the law allowed it. That is why you have a GC in the first place.

MR. HILDEBRAND: Exactly. Exactly, Your Honor.

THE COURT: Okay.

MR. HILDEBRAND: They said in their brief we think that Centex -- something that supports our claims for gross negligence and EGBA or Centex used

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unlicensed subcontractors, and we're saying, okay, so what? We're allowed to under the statute.

THE COURT: Unless you open the door, obviously. They can open the door, I think, on a lot of this.

MR. CONNELL: The uninsured contractor issue goes to a couple of things. Some of the uninsured contractors, the masons and the framer, are where some of the major damage is in the case. So it's our contention that that is going to prove deceptive trade practices, using unlicensed contractors. In fact, their own experts in their depositions indicated they would not hire unlicensed contractors. They would not do that. So we think that that goes directly to --

THE COURT: They are not required to, though. They don't have to use licensed contractors.

MR. CONNELL: Their own expert said they would not use unlicensed contractors. So the ability to show that to the jury is they are using unlicensed contractors, and it shows the supervision issue on behalf of Centex of the very issues with water intrusion from brick and siding.

So we would argue to Your Honor that they can say, yeah, we hired unlicensed contractors, but you

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shouldn't have hired them. Your own expert said you shouldn't have hired them, and everyone says you should not hire unlicensed contractors.

THE COURT: But there is nothing wrong with that. I mean, that is like saying should I hire the best of whatever versus this person here.

MR. CONNELL: It goes to the supervision of their claims in this case to hire unlicensed masons to do all of this work and find out that the brick ties are not tied properly or the siding is not done. It goes to that issue, and it goes to the deceptive trade practice. In their marketing parts of their --

THE COURT: Did they say they use only licensed subcontractors?

MR. CONNELL: No. They say we build exceptional homes. We use "Centex Certainty." You can be certain this is a good home. And the fact that these unlicensed contractors are being used is not Centex Certainty. That is not something you can plan on, because they are using them. If they want to use them, they need to supervise them, and they should have gotten them licensed.

THE COURT: I think by calling them unlicensed that way, I don't think matters. That

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is why you have a GC in a case. They are responsible for everything.

I do think there is many, many ways they can open the door in all of this, and that may happen in this case, and I'll let you argue it all you want. I just don't see that it matters.

I mean, I'm trying to figure out -- in this day and age, it is better to use people who are licensed, and better to use those who have insurance as well, but you still hire people that don't have insurance and don't have licenses, and it wasn't prohibited by the law at the time. I'm trying....

MR. CONNELL: That goes to their responsibility to hire someone who is licensed. You would assume that those persons can do what they are supposed to do, and that is not what happened in this case. There are at least two big subcontractors that did work that had no licenses, and we should be able to show that to the jury to show that defect is directly as a result of those unlicensed subcontractors.

THE COURT: How do you get to the defect was caused because they were unlicensed?

MR. CONNELL: Because there are certain rules

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and regulations for licensed subcontractors. A licensed subcontractor would most likely not build a wall like how they did.

THE COURT: I don't know how bad it is, but if that were the case, you wouldn't have any lawsuits, so that makes no sense to me at all.

Okay. If we need to get to that point -- I just don't see how you extrapolate that there is a construction defect because the subcontractor was unlicensed.

MR. CONNELL: I'll say that there is a construction defect and that is from an unlicensed subcontractor.

THE COURT: And the relevance is, what?

MR. CONNELL: They didn't supervise their own subcontractors to make sure they were licensed before they put them on the job.

THE COURT: So you are saying then the opposite, so if they were licensed, they didn't have a duty to supervise?

MR. CONNELL: No. They had both, but they didn't exercise their duty in this case. They had only so many people licensed, and some were unlicensed, and it so happens that those are some of the areas where the biggest problems are.

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THE COURT: I think it goes to their supervision, but I don't think it's because they hired unlicensed people. They just didn't supervise those people at that time.

It would be the same thing as if they didn't supervise people that weren't licensed, which also caused defects, and I'm sure there is a lot of them in cases as well. I'm just not sure how it is relevant when it is not required.

MR. HILDEBRAND: You're right, it's not. If they want to argue they weren't supervised, then --

THE COURT: Your experts shouldn't have agreed and said, yeah, they should have used licensed contractors.

MR. HILDEBRAND: I think they said -- and I would have to look at the testimony -- but I think they said, yeah, best practices, you would use licensed subcontractors, yeah.

Like you said, would I require them to be insured? Yeah. You know, just a lot of things you could say that they might do, but what we're talking about is a legal duty. Here, South Carolina law says a general contractor doesn't have to use licensed subcontractors. They want to try to make that a negligence and to say that we were

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negligent simply because -- that's the point.

MR. CONNELL: It goes to the industry standards.

THE COURT: My question is: Is it a breach of standard of care of what they should be doing?

MR. CONNELL: Yeah. This case is about defects.

THE COURT: That, we all understand.

MR. CONNELL: And it's not industry standard to hire unlicensed subcontractors.

THE COURT: In 2001 it wasn't?

MR. CONNELL: We'll have the person from LLR come testify that these people did not have licenses.

THE COURT: But would they not have let them on the project?

MR. CONNELL: Well, that goes to their supervision, as Your Honor just indicated.

THE COURT: We're going in circles, then.

MR. DesCHAMPS: I think I raised the bifurcation thing, so we're moving to bifurcate under 15-32-520. I believe it is a right of the defendant to do that, but --

MR. CONNELL: I agree. Wish I didn't have to, but I agree.

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THE COURT: What else?

MR. DesCHAMPS: So the unlicensed, you rule that is irrelevant?

THE COURT: Yeah. I don't think it is relevant. I'm subject to changing my mind, but over lunch I'll see what I can find.

MR. CONNELL: But that doesn't allow me not to ask him on cross examination what he agreed to in his deposition, that they had unlicensed contractors on the job.

MR. HILDEBRAND: Again, is it relevant? He's trying to backdoor it.

THE COURT: Oh, I know he is. I'm trying to figure out how you stop him from doing it, though. Your guy gave that as an opinion, and if he gave it as an opinion, how do you not --

MR. HILDEBRAND: It might be the best practices, and he might say, yeah, you should use -- the best practice might be to use treated wood.

THE COURT: On everything, right?

MR. HILDEBRAND: Yeah. But, I mean, that doesn't establish the standard of care. The standard of care is established by the law. If we want to accept our experts -- everything they say

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is gospel and that is the standard, then, gosh, we win the case because they say their case is a bunch of baloney.

THE COURT: That is why both of them have different opinions. That is why they are experts.

MR. HILDEBRAND: I think the question is: Does it breach the standard of care to use an unlicensed contractor? He can ask him that.

THE COURT: And he can give his opinion. I don't know what he said previously. It sounded like he said, I would have, right?

MR. CONNELL: Yes, ma'am.

THE COURT: All right. Okay. I think we kind of know, then.

I'm going to go -- when we go to this whole Unfair Trade Practices Act and the other lawsuits, you have to show it is capable or there is a potential, not that it happened, but there is a potential for repetition.

MR. CONNELL: This is better than that. It did happen.

THE COURT: It was after the fact. I think you have a great argument for a case that was later.

MR. CONNELL: What difference does it make if

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it is potential for repetition or did happen? In this case, you can prove both. There was a potential, and it did happen.

MR. DesCHAMPS: I think the *Wright* case addressed that. It talks about the potential for repetition may be demonstrated by showing the same kind of actions occurred in the past thus making it likely to occur in the future. So it's looking at it retrospectively, in the past.

THE COURT: So it says: "The potential for repetition may be demonstrated in either of two ways: One, by showing the same kind of actions occurred in the past, thus making it likely they will continue to occur absent deterrence."

So that doesn't apply, because it had to be in the past.

"Two, by showing the company's procedures create a potential for repetition of the unfair and deceptive acts."

If says: "These two ways are not the only means for showing the potential for repetition or public impact. In each case it must be provided on some merits to determine what a plaintiff must show to satisfy the potential for repetition of public impact."

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MR. HILDEBRAND: I think what that is saying is that they can show our procedures in this case, at this time. They can say how our procedures for overseeing subcontractors were inappropriate, they don't like them, they think what we did was wrong, and they'll testify about that.

What they want to try to do introduce, though, as we've discussed ad nauseam are subsequent -- subsequent cases. There is no case that allows subsequent projects or actions to try to prove a prior --

THE COURT: Action, conformity with.

MR. HILDEBRAND: Right. Right. And it just doesn't make sense. One, it is not appropriate under the law. And, two, it, again, opens the door to a mini trial, and this thing is actually going to drag on for weeks.

THE COURT: I understand that argument.

My question to you, Mr. Connell, where in Ross Clements' deposition testimony does he talk about other projects? Can you kind of direct me to that?

MR. CONNELL: They didn't ask those questions.

THE COURT: Oh, okay.

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MR. CONNELL: But they knew, because the unfair trade practices cause of action was filed in 2018.

THE COURT: Didn't I see that part of your argument from the defense was that when you talked about the scope of what your experts were going to testify to, did they say they would testify as to other projects that they also have been the expert witness in or seen? Did they? Did Clements say that in his answer?

I think that is what you were pointing out to me in your motion, that they didn't list it and say he's going to talk about whatever these nine other cases are?

MR. DesCHAMPS: Exactly right. I think it was seven days of deposition.

THE COURT: I understand that you could have forgotten to ask something.

MR. DesCHAMPS: I don't have it chapter and verse here, but basically state all of the facts you are relying on to support the allegations. There is no mention of it, and the 30(B)(6) --

THE COURT: So this is a new opinion, then?

MR. CONNELL: No.

MR. DesCHAMPS: Just the lawyers arguing

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about what does Ross Clements know about any of these other projects?

THE COURT: How do we know he's going to testify to them?

MR. DesCHAMPS: It's not just a motion to exclude his testimony. It's a motion to exclude evidence and arguments about those other cases. It is not limited to just Mr. Clements.

THE COURT: Well, like I said, I saw Sheila Harrelson's name on this, and I am not going to let you introduce that other lawsuits were filed and, therefore, these projects are all bad, because I think that is ridiculous. Just because someone filed a lawsuit doesn't mean anything.

My question is: What did Ross Clements do, and what did he see? Is that allowed, and was that anticipated?

MR. DesCHAMPS: Most of these projects, he wouldn't know anything about because he wasn't the plaintiff's expert.

For the other two that Mr. Stacy and Mr. Connell represented, that is the Willowbend and Clearwater Bay. Clearwater Bay finished in 2015. Willowbend was 2014. Those are the ones that Ross Clements looked at as the expert for those

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projects. Again, different codes, different subcontractors, up to 14, 15 years later, I mean.

THE COURT: Just so I understand, was that talked about in his deposition at all? Did they talk about Willowbend or any of those?

MR. DesCHAMPS: No. I don't think so. He didn't say, oh, yeah, I think it is a defect at Wedgewood because --

THE COURT: My question is -- because these depositions in Wedgewood would have been taken after Willowbend? Even though they were built later, the lawsuits were brought sooner?

MR. DesCHAMPS: They were all filed around the same time by the same counsel.

MR. CONNELL: Your Honor, the difference in all of this is -- back to their experts. I asked the questions. Their experts looked at all of them, and Mr. Carter said multiple times, I found code defects. I found violation of industry standards, and I found manufacturing specification violations; however, they weren't that big of a deal.

But that evidence is true evidence for an unfair trade practices case, because their own expert admitted to those things. So I think I

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could get the evidence from Mr. Clements, and I think I can get it from Mr. Carter or from the other expert.

They hired the same group of experts to defend all of these claims, and he admitted in his deposition that they found them in every one. He could not, because there was all sorts of evidence that they did.

MR. DesCHAMPS: But the conduct on trial here is the construction of Wedgewood that happened in 2000/2001. This is focusing on things that happened in 2015 and '16. So we're losing focus on what the matter is in this lawsuit, which is the construction of Wedgewood and what they knew when they did it.

MR. CONNELL: No, the conduct, Your Honor, is unfair trade practices and deceptive practices, proven by defendants' experts.

MR. DesCHAMPS: They filed the lawsuits. They would be creating their own evidence on a claim they filed.

THE COURT: All right. Let me just sit on that one in the next 30, 40 minutes and let you know.

The jury is coming back at 3:30, and so get a

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quick bite, and we'll go from there.

Is there anything I can read in reliance to that other than *Magnolia* and --

MR. CONNELL: The *Whaley* case talks about evidence of that. I can give it to you.

THE COURT: Oh, no, we'll pull it. You guys go. We're good.

MR. DesCHAMPS: The *Magnolia North*, that was the *Heritage* case, and then *Pope*.

THE COURT: Okay.

(A recess was taken.)

THE COURT: Anyone have any objection to giving notepads and pencils to the jury?

MR. CONNELL: I was going to ask if you did anyway.

THE COURT: Absolutely, if they ask for it. Okay.

Just very quickly, I took my 45-minute lunch break reviewing *CSX versus Wayley and Magnolia North*. I don't think -- looking at the analysis under a 404(b), evidence of other lawsuits is not appropriate to show action and conformity with, which is a 404(b).

Additionally, all the case law says that you've got to present facts and the other acts were

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substantially similar. So in this case the way they were built or whatever happened, or the incident or the accident, would have to be substantially similar to Wedgewood.

I think that would take a lot of time, and I haven't heard or seen where that has been done yet or could be done yet.

I do have a huge issue with confusing issues on projects. From looking at a picture from a later project -- I think you said Wild Wood was one of them -- with this. But even after that, I think even on a 403 analysis, I think the prejudice is certainly there and certainly exceeds any probative value.

I think there is a possibility in some way, shape, or form that the door could be opened, but when I went and looked at *Magnolia North*, the emphasis that Cliff Newman ruled and allowed it in, and what he allowed in, was he allowed in previous past acts. It wasn't anything that was necessarily done contemporaneously or post. So I just have a concern about that.

Also, I think Mr. DesChamps was right, just you filing other lawsuits against the same parties, you are creating your own evidence that

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potentially -- something is capable of repetition, and you are creating your own repetition. So I think that overall, based on the timing of these, that this project proceeded those, I just don't think it is appropriate.

Again, I say all of that -- don't talk about it in your opening statements. I don't think I'll change my mind, but something may open the door or something may convince me in some way, shape, or form, but I don't think at this point it is appropriate.

MR. CONNELL: Can we seek a ruling on whether or not -- what your ruling would be to prove repetition under the Unfair Trade Practices Act, because we need that ruling.

THE COURT: What exactly do you need a ruling on?

MR. CONNELL: We want to introduce those lawsuits to prove repetition under the unfair --

THE COURT: That something is capable of repetition?

MR. CONNELL: Yes, ma'am.

THE COURT: What exactly is capable of repetition?

MR. CONNELL: The violations of the building

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codes, manufacturers' specifications, and industry standards.

If you are not going to let it in, I understand, but --

THE COURT: I'm trying to understand what you are asking for a ruling on.

MR. CONNELL: I want to protect the record. We want to present those nine lawsuits, and we want to present testimony that the same type of defects, same type of industry standard violations, and the same type of manufacturers' specification violations occurred in all of them. So I understand you are not going to let us do that, is what I'm hearing, I think?

THE COURT: So you want your expert to testify that they went in there and looked and saw, and this exact same thing was there, because that is what would have to occur for it to come in. Your guy had to have been like, yeah, I went and saw it, and that's what the problem was, not just I'm taking it off of someone else. On his own accord he could say this is exactly what happened as to each of the different types of defects, because they can't be all the same?

MR. CONNELL: Water intrusion defects.

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I'll tell you what I'll do. I'll offer -- I can proffer him on that issue when we get to that, if you would like.

THE COURT: Okay.

MR. HILDEBRAND: Your Honor, I think your ruling is absolutely right on with prejudice and everything else.

THE COURT: Well, I understand this is a huge issue. I understand that in this case. What I'm saying is that I don't know that this expert can specify as to putting someone on notice -- and I understand Mr. Connell wants to use it for just not being put on notice, but that they didn't supervise adequately or they weren't doing what they were with other cases, but also that something is capable of repetition.

In my head, it is obvious that you can violate, I guess, industry standards and the building code if you don't build in compliance. My problem is the specifics of you would have to say to me -- if it is substantially similar, you would have to say to me that the same framing subcontractors, same guys, same people did the exact same thing in each of these projects across the board. Again, we're saying this all finding it

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out after the fact, if that makes sense. I just don't see how you do that.

I mean, you can't say in general, because there is violation of building codes, because there is a lot of building codes or industry standards that you could extrapolate, and this is how we get to proving our Unfair Trade Practices Act.

MR. CONNELL: We're going to prove the same defect -- the same defect in the ones we have. That is what we're going to prove.

THE COURT: I would have to have proffer for that. But you said the same defect, you say water intrusion, and there is so many ways to have water intrusion. I'm trying to say you have to show me as to this is why and show me that they were done similarly.

I would be shocked if across nine projects, with each of them having between eight and nine buildings themselves, over time that you -- Centex used the exact same subcontractors, or that they did it the same way. I would be shocked from building one to nine at Wedgewood if they are even wrapped the same, flashed the same, because chances are, there are different subcontractors by that point.

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I think it will differ from subcontractor to subcontractor if it is used. That is why I'm having a hard time saying that something is substantially similar. I just think there is too many variables.

MR. CONNELL: I'll put him up there, and let me know what you think.

THE COURT: And if I change my mind, I change my mind, but I don't think I'm going to.

I can tell you that I've looked at this and looked at it over the weekend, and I am still having a very hard time in this specific case saying that. I think in a construction case it is difficult.

Again, I re-read Magnolia *North*, and Cliff Newman seems to hang his hat on allowing it. He said it was things that preceded the case before Magnolia North. What he argued in that case -- or what was said in the opinion of that case, which I don't remember if it was Buck James -- but they basically say you already had Magnolia to know that there were problems, and then they build Magnolia North and do it the same way. They were talking about using the same siding products, and we already knew there was a problem previously. I

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think there was one question as to an actual product.

But, secondly, when we talk about application -- and I don't even know at what point you are talking about as to Wedgewood if it is a product issue, if it is an application or, you know, what exactly it is that they are doing.

So I would entertain an offer, but I still think it would have had to have preceded, in fairness. In my mind, I think anything is capable of repetition. I mean, maybe that is not a big hurdle in an Unfair Trade Practices Act.

MR. CONNELL: That's why we should present it to the jury.

THE COURT: I understand, but that is not the issue, I don't think. I don't think that that is what the issue is on that case.

MR. HILDEBRAND: It would be like Walmart if you have a slip and fall, that every slip and fall would be an Unfair Trade Practices Act. You'd say, oh, my gosh, there was a prior slip and fall, you know.

THE COURT: For me, it is the similar situations, and I think that is very difficult to prove in a construction case.

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MR. HILDEBRAND: And different building codes.

THE COURT: And that in and of itself is an example.

I know the jury is waiting, so let's stay off that issue.

Openings, how long are you going to argue in your opening?

MR. CONNELL: I'm not sure what I'm going to say based on your ruling, so I have to figure it out. I don't know. You know, 15.

THE COURT: I won't stop you. I will never limit you unless I have a juror that is falling asleep, like the guy sitting back there today.

MR. HILDEBRAND: I'm short.

THE COURT: You have a witness that will take how long?

MR. STANLEY: Mr. Spencer, and I would think an hour-and-a-half, maybe.

THE COURT: I think that is more than today, so I think we're good.

MR. STANLEY: I don't know how long cross will take.

THE COURT: Oh, I don't either. You never know that.

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If you all need a break, let me know.

MR. HILDEBRAND: Do you have a preference whether we stand up, don't?

THE COURT: I think you should just do the same, that's it.

MR. CONNELL: What now?

MR. HILDEBRAND: When the jury comes in, do you want to stay seated or --

THE COURT: If it is an agreement, I think that is the better way to do it. Depends how old school you are.

I know before I became a judge we always did it, but....

(The jury enters at 3:56 p.m., and the following is heard in the presence of the jury.)

THE COURT: Welcome back, ladies and gentlemen. I trust everyone got a bite to eat for lunch? Very good.

Ladies and gentlemen, what we're going to do is swear you in as the jury for the trial of this case. I'm going to make a few brief opening remarks, and the attorneys are going to make their opening statements.

If you would, go ahead and swear the jury in.

(Whereupon, the jury was sworn.)

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THE COURT: All right. Thank you, ladies and gentlemen. What I am now going to say to you is intended to help you understand a road map of what we're going to be doing here during the trial of the case.

You have been selected as fair and impartial jurors whose purpose is to find and determine the facts. You, the jury, are the sole judge of all facts in this case.

If, at any time, I make a comment regarding the facts of this case, you must disregard it.

As jurors, ladies and gentlemen, your duty is to find the facts from the testimony that you are going to hear from the witness stand, as well as any other evidence that has been presented. You should only be -- you should not be influenced by any opinions or statements that you have heard outside of this courtroom.

Please understand it is especially important that you perform your duty in determining the facts diligently and conscientiously, because ordinarily there is no way to correct an error in determination of the facts by a jury.

Ladies and gentlemen, on the other hand, the same law that makes you, the jury, the judge of the

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facts, makes me the judge of the law. The law as given by the Court is the only law you may consider. You must accept and follow it even though you may disagree with it.

I cannot tell you what the facts of this case are, and you cannot disagree with me about what the law is or what you think the law ought to be.

Your job at the end of the trial is to take the law as I give it to you and apply it to the facts as you find them, and from there, render a true and just verdict under the oath you took.

As I told you before, until you begin your deliberations, you must not discuss this case with anyone, and that includes each other, until you have heard all of the evidence, you have heard the arguments from the parties, and I've charged you on the law applicable to this case.

Also, ladies and gentlemen, I don't think there will be anything in the newspaper or news about this case, but out of an abundance of caution, if there is anything, I need you to move the channel past it, turn past it, don't listen to it. As I stated to you before, you are going to have everything you need to determine the facts of this case right here in this courtroom, and it will

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be inappropriate for you to be influenced in that duty and by some outside source.

Also, as I told you before, the attorneys have been instructed, the parties, and the witnesses not to speak with you in coming and going. I know you understand, we just don't want any improper communication between any person.

Additionally, I told you that if for any reason, whatsoever, anyone approaches you during the trial of the case, to talk about any issue or anything in front of you, I need you to immediately let me know by notifying your bailiff, and they'll come get me. All right.

Now, I want you to know something, ladies and gentlemen, during the trial of this case from time to time, you may hear the lawyers say, Your Honor, there is a matter of law we need to take up, or I may motion them to talk to me at the bench, or I may send you out of the courtroom to talk to the lawyers. I want you to understand something. I'm not hiding anything from you. Oftentimes, when I have to rule as a matter of law on whether or not certain testimony or evidence is admitted, I may make a comment on the facts of the case, and because I don't want anything I do to influence you

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in your determination of the facts, out of an abundance of caution, we do it outside of your presence.

Also, I want you to know that the attorneys will make opening statements. I want you to understand that what the attorneys say in their opening statement is not evidence in this case. The evidence comes from the witness stand, as well as the other evidence introduced in the case. This is only the lawyers' contentions as to what they believe the issues of the case will show.

So as I told you before, your job in this case will be to determine the true facts. Ladies and gentlemen, you do this by watching the witnesses on the witness stand, by analyzing what they have to say. You have the right, ladies and gentlemen, to consider anything that is in the evidence that will help you determine the credibility and the believability of that testimony.

Ladies and gentlemen, also, I understand some of you have asked for notes. Did they give you notepads?

THE BAILIFF: I'm waiting on a few more. There wasn't enough.

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THE COURT: Okay. I just need to give you a quick instruction on note taking. First off, you are not required to take notes. Some people don't like to take notes. Also, some people are better note takers than others. Those notes are for your own recollection at the end of this case. You are going to hear me tell you that you are not to rely on someone else's notes against your own memory of what the testimony was given. They are just to use for you if you would like them to aid you in remembering certain testimony, if you find it necessary or if you think something was important.

So you will have notes and notepads. Those are for your use, and at the end of the case, we'll destroy them. Again, ladies and gentlemen, you are not required to take notes, and you do not need to rely on notes of anyone else when the case goes to you for your deliberations.

Ladies and gentlemen, I respectively ask you to pay close attention to the lawyers. So at the very end of the trial, you can accurately remember what occurred and what was stated and what evidence was produced.

Any exceptions or additions, Mr. Connell?

MR. CONNELL: No, Your Honor.

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MR. HILDEBRAND: None, Your Honor.

THE COURT: Ladies and gentlemen, we'll begin the trial of this case.

MR. CONNELL: Thank you, ladies and gentlemen. Again, I'm Gene Connell, and I practice law in Surfside Beach. This is Stacy Stanley and Randall Spencer from Wedgewood Homeowners Association.

What I want to do is talk to you about a guide about what is going to happen in the trial. In order to do that, I have to talk to you about some of the rules.

So the first rule, number one, this is not a criminal trial. No one is going to go to jail. No one is going to be indicted or anything of this nature. This is a civil trial. So in a civil trial, there is a different standard of proof.

If you remember from your eighth grade schooling, there was a blind lady with a set of scales. The teacher would tell you, Beyond a reasonable doubt, meaning you have to put the scales all the way to the bottom. That is if you are trying to convict someone of a crime, okay. Beyond a reasonable doubt is in a criminal case.

In a civil case, it is a mere tipping of the

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scales. So if you think of the scales, and it tips a little bit in that favor, then the plaintiff wins. That is called "the burden of proof."

The burden of proof on the scales is somewhat hard to understand when you think of it in theory, but I like to talk about it in practice. So in practice, the burden of proof can be described, if you like football, this way: We are playing football. I'm trying to win the game. Well, I don't have to score or spike the ball or kick a field goal. All I have to do is move above the 50-yard line, and the burden of proof has been satisfied, just a few inches. All right.

I don't think that is this case, because you'll see an enormous amount of evidence, but I try to explain this in the beginning because the burden of proof is what you have to decide in the beginning.

So you'll hear statements, testimony from experts, from witnesses, and you have to decide who carries the burden of proof. The defense doesn't have to do anything in the case. The plaintiffs have the burden of proof, but it is a slight tipping or preponderance of the evidence.

Couple other things I've been asked about in

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trials recently. For some reason, there is a belief out there that we have like listening devices in the jury room or video cameras or something. We don't have any of that. We don't know what goes on in there, and we can't ask what goes on in there. Each juror is under his or her oath to decide the case based on the facts and the evidence. The other jurors have a responsibility to make sure that everybody follows that rule.

So when you go back in the jury room and talk about the case at the end, we won't know what you will say. We have no idea. There seems to be a misnomer that we have an idea.

Couple other things. Everyone has a cell phone -- everybody. What do we do? What do your kids do? What does your husband do? They want to know the answer, they look on a cell phone. You cannot do that during this trial, all right. You can't look up the building codes. You can't look up Barefoot Resort. You can't look up anything relating to the case, because you have swore an oath that you would take what we tell you during this trial and decide it based upon that evidence, and nothing else.

So first thing your spouse or significant

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other will ask tonight is, hey, what did you do today? I'm on this construction case. You are not supposed to talk to them, because we didn't pick them to be on the jury. We picked you all. I know how hard it is going to be, because I've been in that situation myself. I was on a jury one time for a week, similar to what this case may be. You have to remember that it's about what you all do when you get together, because at the end of the case, all of you will get together and go back in the room and make a decision.

That comes to the next rule, the rule of unanimous. That means everyone has to agree. It's not ten to four, eight to two. Everyone has to agree about the verdict. At that point, when we get to that point, we're going to give you a piece of paper. It's going to have questions on it. Whoever the foreperson will be -- I don't know who that will be. The judge hadn't said if she is going to pick one or you elect one -- but that person is in charge of checking off that form, and there will be certain questions about the case. So that kind of gives you a little bit of background on how we'll proceed.

So what's the case about? So I'd like to

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talk about it like this. Who are we and why are we suing? The Wedgewood Homeowners Association is a homeowners association up in Barefoot Resort in North Myrtle Beach. There is a map here. Barefoot Resort consists of 10, 12 homeowner associations all in Barefoot, North Myrtle Beach. A lot of people -- Mr. Stevens and other folks -- they are retired. They spent their whole lives working, and they have places up there.

So what is the case about? It is about this (indicates). Everybody who bought at Barefoot got one of these brochures. It is a brochure about what they are offering and what they will do.

In this case, Mr. Stevens, and others, are going to tell you that they bought based on Centex's promises. What kind of promises are in this brochure that is important? You'll have this back in the jury room. Centex places a high priority on satisfaction, peace of mind, exceptional homes. It's called the Centex Certainty rule, that you can be certain that your home will be a standard -- high standard uncompromising quality. What does that mean? It means this -- when Mr. Stevens and others bought their homes, they believed that they would get a

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high quality home for what they bought.

What happened in the case? They did not get a high quality home, and you will hear about that. More importantly in that regard, you will hear this: These homes have water leaks. There are defective roofs. There are staircases that are not proper. You will hear about nine or ten different defects.

So why is that important? Because outside of a car, the biggest thing you'll buy in your life is a home. Most of us spend 30, 40 years with a mortgage on a home, and that is what you are going to hear about in this case. The defects that are in these homes -- or in this homeowners association should not have been there when they started.

So you understand, this is a condominium or townhome project. So everybody in a condominium or townhouse project owns a portion of that. In other words, the stairwell, the parking lot, the roof. It's not like a stand-alone home.

So the defects we'll talk to you about are defects in the common areas. Common areas meaning the areas that everyone shares. So you are going to hear testimony about that, and you are going to hear expert opinions ad nauseam. You will see

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hundreds of pages of reports, photographs. Everything you probably didn't want to know about how to build a home, you'll hear about in this trial, or how to build a condo project.

Our expert will be here tomorrow. This is his notebook about what he found in this case. So you are going to hear all about the defects that he found.

Now, what really is the case about? It is about harms and losses. Harms and losses to the Wedgewood Homeowners Association, 111 people who have millions of dollars of damage in their homes that need to be repaired. When I say "harms and loss," I mean this: There are three areas in a construction defect case. The law says that you have got to build homes according to certain codes. That is called the building code. We all know what a building code is. It is a set of rules that require you to build something to a minimal standard of safety.

So you are going to hear in this case the first harm and loss, the first safety violation, are violations of building codes, number one. You will hear that. Interestingly enough, the defendants' experts will tell you there is building

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code violations, too. They have to testify to that, because they testified to that in their depositions.

Number two, you are going to hear something called "industry standard." What does industry standard mean? It means it's built that way around the country. It is an industry standard to build a home in a safe and correct manner. That is Rule 2.

Rule No. 3, you will hear that Centex, the developer, builder, violated manufacturers' specifications. What does that mean? That is a fancy word. A manufacturers' specification is if a certain name is required to put on a roof or on a siding, that Centex did not do that. They didn't build according to what the manufacturer of that product told them to do. So you'll hear those three violations.

At the end of the case, you are going to find -- asked to find that Centex was reckless and was in a situation where they violated all three of these safety rules and harmed the plaintiffs to about, I want to say, $9-, $10 million dollars, but you'll get the exact amount in the next couple of days.

Now, you'll also hear during the trial of

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this case about a fancy word called "fiduciary duty." That is a fancy legal word, but it means that when you are selling something to somebody, and they are putting their life savings into it, that you have a duty to make sure it is done correctly and done according to the code, done according to industry standards, and done according to manufacturers' specifications. You have a duty, because you are making money by selling this product, and you have to do that.

So you have to leave the project -- when you go out of the project and sell everything out, you have to be sure everything is correct, the staircases, roofs are correct, walls are correct. You have to do that. That is part of your job, because you are getting paid money for that.

So you are going to hear about fiduciary duty, and you'll hear about the fact that the construction products are defective construction and negligence.

The last thing you'll hear about is "unfair trade practices." Unfair trade practices sounds ominous, doesn't it? It just says that if you do something that is unfair or deceptive, for instance, in this case, you will see many pictures

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of rotten wood behind brick or siding. So we maintain that that is a deceptive practice not to build according to the code to have this kind of problem. You will see ad nauseam pictures of that.

What do you think happens when you have this situation? What happens is you have homeowners pay -- the 110 people -- expected that they were going to get what they were supposed to get. That is what you have in a situation like this. These homeowners have to bear the loss of the defective construction that was done by Centex.

So one of the other things I want to point out to you is how you decide what you are going to do? As the judge said, you can't really decide about the case until you hear all of the evidence. And the only way I can describe that is if you have any children, and you are trying to figure out which ones are telling you the truth, you have to hear the story from everyone, right? That is what you hear.

So you'll hear the whole story from us, and you'll hear their story. When you hear the whole story, you'll find that there are building code violations, manufacturers' specification violations, and there are industry standards. I

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don't know where you all live, but I know that if you come up the road the back way into Conway here -- I've been traveling this way for many years, but you'll see a series of signs, tiny signs that are from the Rotary Club. Two of the signs always make me think when I come over here. It is just a small round sign, and the first Rotary motto says, "Is it the truth?" That is one of the things you have to decide. Is it the truth about what we're telling you, and I think when you hear from our expert, you'll believe that.

The second question when you drive up the highway a little further says, "Is it fair?" And that is another thing you have to decide in this case. So I think when you decide at the end is it true and is it fair, you'll give a verdict for the plaintiff, for the homeowners association, against Centex, a national builder who has fought us for over five years in this case. And you'll find that Mr. Fuller's expert report is true, fair, and it's rational. So we ask that you pay some attention to us.

I realize this is not going to be easy for you all. I'm no contractor or builder, and I know you are not either, but I want to point out to you

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that this is the only time that the Wedgewood Homeowners Association will be able to come here. We don't get to come back next week or the week after. This is a one-time trial, and so we ask that you listen closely, and we'll do our best to try to move through this as quickly as possible.

I realize that all of you get a big $20 a day to be here, but it is not about the money. It is about the service of others. That is what jury duty is about. The service of others is trying to decide and help people solve a problem. Thank you.

THE COURT: Thank you.

MR. HILDEBRAND: May it please the Court?

THE COURT: Yes, sir.

MR. HILDEBRAND: Thank you, Your Honor.

Hi, folks. I introduced myself earlier. I'm Tom Hildebrand, and I have the pleasure of representing Centex Homes in this case.

Centex Homes has been around for 78 years. Its business motto is that it tries to build homes so that purchasers are happy, and that they will recommend their homes to friends and family and that they'll buy another home from Centex. You'll hear evidence of what Centex did in this case to do -- to build condominiums that were appropriate.

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Let's back up a little bit to this particular project. What you did not hear was when this project was constructed. It was constructed in 2021 -- I'm sorry, in 2001. 22 years ago. 22 years ago this project was constructed. It is a part of a larger project that Centex was doing at Barefoot Landing.

So we came in, and we decided to build these condominiums. There are nine buildings, 111 units. We hired contractors, subcontractors to do the work.

Centex is a large company, but it really boils down to individuals who try to do the right thing in construction. All week here will be Jeremy Martin, who is a field supervisor during the construction of this project, and he'll tell you how it was constructed, the way it was constructed. We had a set of plans. We hired subcontractors to do the work. We tried to hire very good subcontractors. We entered into contracts to require them to do the right thing. We have supervisors who come in and oversee the construction.

You'll hear that on this case, for these particular projects, Centex said, you know, we're

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going to go above and beyond what is required by the building codes and what is otherwise required, and we hired an independent inspector, a fellow named Hershel Morningstar, who has an engineering degree. We'll hire him to come through and look behind the work to make sure that it is being done right.

You'll hear that Hershel Morningstar -- you'll see photographs. He has a whole bunch of photographs about how this project was done right in accordance with the applicable codes and such. Centex also had it inspected by local building inspectors and signed off.

So Centex finishes the project. We were happy with it. Local building officials signed off that, yes, it is ready to go in 2001.

So 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, '10, '11, '12, '13, '14, '15, '16, '17, '18 -- we don't hear a peep. All the sudden, we get served with a lawsuit, and it says there are all sorts of problems here in this project.

I know a lot of you all may not know a lot about construction law, but what you all do have, and what you brought here as people who live in the community, is common sense. When you step into the

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jury and you sit in your jury chairs, you don't leave common sense at home, and that is what I want to ask you to listen to when you hear the evidence and hear the experts, because this is a case that really, really has a huge diversity of opinion between experts.

On the one hand, you have Mr. Clements, who is an architect. All he does is go to projects and do investigations to try to find deficiencies. That is what he does. He looks at defective construction -- or alleged defective construction. He doesn't build homes. He's never designed a home. He talks the talk, but does he walk the walk?

He comes in, and he knows -- because he's been around for a long time, he can say I think there might be a place right here on this very old building where there might be rotted wood behind here. So he opens up that particular area, and then he says, oh, my gosh, I found it in one area, so it must exist on all of these buildings.

What you'll see -- the photographs you have seen are areas that Ross Clements birds-eyed and looked at specifically and found an issue, and now he wants to say that it's pervasive throughout the

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project, but that is not true.

You'll say that -- there are isolated areas where there are issues, but most of these buildings are in excellent condition. Had they been maintained properly, the damages that you see in that photograph would not have occurred or they would have been minimal.

So you have an expert, Ross Clements, who goes into a project, and even when he doesn't find damage, he comes in with a wholesale removal and replacement of materials; for example, the roofs. The roofs on these buildings have been in place now for 22 years. They have provided a good service life for the homeowners. There may be an occasional leak, but they are performing very well. He says they should be completely removed and replaced all at the cost of Centex, even though they are due for replacement anyway.

He also will say, you know, I think maybe some of the nails weren't installed right and, therefore, all of the siding, every inch of the siding, has to be removed and replaced. That is what he says.

Bob Carter, who is sitting right there in the blue, he's been around for a long time and has a

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tremendous amount of experience. He looks at a building and says, let's apply a commonsense analogy or examination of this project, and let's see if there is one area that is having damage, we'll fix that. If there are other areas in the buildings that are having no damage at all, then if it's not causing a problem, it has no damage. It does not need to be repaired.

He tries to look at it like people would look at their home. If you have rotted wood in one area, it doesn't mean you replace all the siding on your entire house.

What this boils down to is that Mr. Clements comes up with a very high repair figure, estimate, to fix these buildings. And Mr. Carter will say, look, to fix these issues that exist on these buildings, the ones that relate to the original construction, it is about $131,000, things that relate to original construction. If you want to do upgrades and maintenance that is required, that will add about $237,000. So for $360,000 these buildings can be fixed, and we'll explain in some detail where the issues are and how these can be fixed.

So I'm confident that after you hear the

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testimony, you'll find that Centex did endeavor to build good buildings, that these homebuyers did buy appropriate buildings. They might need some maintenance and minor work, but there certainly was no intention of building a building that had problems. I'm convinced, and I believe after you hear the evidence, you'll return a verdict in that regard.

One other thing I would ask you to do that's related to common sense is to understand that the plaintiff goes first. So they put their entire case, call all of their witnesses. So you hear everything from just their perspective at the beginning.

But then there's the other side. As Mr. Connell said, you want to hear both sides. After they do that, then we call our witnesses, and I would ask you to keep an open mind and listen to our witnesses as well as you hear testimony throughout this case.

Thank you very much for your time, and I look forward to trying the case.

THE COURT: Yes, sir.

MR. STACY: We call Randall Spencer.

(RANDALL SPENCER, having been duly sworn,

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testified as follows:)

THE WITNESS: I'm Randall W. Spencer.

DIRECT EXAMINATION

BY MR. STANLEY:

Q Thank you for coming here today. It is my understanding that you are a unit owner at the Wedgewood Condominium Association; is that correct?

A That is correct.

Q And I also understand that you have been on the board of directors for the Wedgewood Condominium Association, correct?

A That is correct.

Q I would like for you to first tell the jury just a little bit about yourself so they get to know you. If you could tell them where you were born and where you grew up.

A If I make it one more week, I'll be 79 years old. I live in Colfax, North Carolina. Colfax is a bedroom community that's surrounded by Greensboro, High Point, and Winston-Salem, so that gives you an idea where that is.

I'm married to Diane Spencer. She's the love of my life, my partner for 45 years. We have two children. We have three grandchildren. And we spend most of our time spoiling the grandchildren,

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ages three, four, and five. They are perfect for spoiling.

I like to think I have common sense, and I'm going to bring common sense here today. I have -- education, I went to a little high school. We had 54 people in our graduating class, a little county school. I went on to Brevard Junior College, had a wonderful experience there. I got a two-year degree, associates in arts degree. I transferred those credits to East Tennessee State University in Johnson City, Tennessee. I graduated with a bachelor's degree in business management from East Tennessee State University.

I'm a good Presbyterian. My wife and I are members of the Presbyterian church for 43 years, and she and I both held positions as elders, deacons, and on several committees over the years in the Presbyterian church.

Q So what about -- you talked about your education. What did you do after your education for your career?

A After graduating -- I'll never forget the fact that I graduated on a Saturday, and my daddy put me to work on Monday. But I spent 20 years as a human resources director with the City of High

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Point, North Carolina. We had about 1100 employees there.

Then, I changed direction and went to work for a consulting firm in Greensboro, W. Stanley and Company. We were retirement planning administrators, and we also managed assets for -- retirement plan assets. I was there about 15 years as a consultant, working consulting, sales, asset management.

Then, we were bought by BB&T Bank, now called Truist Bank. Then it was called BB&T. I spent my last five years with them, prior to retirement, working as a consultant in asset management for retirement plans.

Q When did you retire?

A I retired in 2005.

Q So you know that we are here today for litigation involving your unit that you own at Wedgewood?

A Yes, I do.

Q If you would, I want to talk about the property at Wedgewood for the jury so they can understand what kind of place it is.

Can you tell the jury, as best you can, where the Wedgewood project or Wedgewood Condominium

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Association is located?

A In Barefoot Resort. I don't know if you are familiar with Barefoot Resort. As you come into the Barefoot Resort Road, the first multifamily development that you'll see is Wedgewood.

Wedgewood is nine buildings, has a swimming pool, 111 units. 105 units are two bedroom golf villas, a thousand square feet, fairly small, really. Then there is six, three bedroom units in Building 3. But I have a two bedroom golf unit overlooking the 15th green on the Norman course.

Golly Moses, we were attracted -- like many other folks, we were attracted to four of the five finest golf courses in the southeast, and in some cases, in the country.

So as I approached retirement, I wanted to play golf. So Wedgewood -- getting back to what you were asking, it is a golfing community. It is west of the waterway. We're not oceanfront or anything like that. We're a golf community.

Q What type of people do you have that are owners at Wedgewood?

A Well, you know, a lot of the owners are like myself. I've been there 21 years, and I met a lot of people. They are retirees like me. Average age

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is probably 65 to 70 when they get there. Like me, they are from middle income. Generally, they are middle-income earners. It is not your upper. It's more of your middle-income earner. They have worked hard all of these years and awarded themselves with a small golf villa at Barefoot with four golf courses, which they became members when we bought our units.

Q Where are most of the homeowners from?

A Yeah. There is a lot of folks. Of course, North Carolina and South Carolina, but I bet you over half of our owners are Ohio, Connecticut, DC, Jersey, Virginia. So we have a broad cross-section of ownership, some in the midwest; so pretty broad cross-section of ownership.

Q You said most of the homeowners, you believe, are retirees; is that right?

A Yes. Most are retirees in that 65 -- mid-60s age range. I do know several of them, and there is a commonality between all of us, a lot of retirees. Again, it's people who generally have come from middle income and just want to come south and play golf.

Q So let's talk about when you purchased your unit at Wedgewood. What is that unit number?

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A Wedgewood 713. So that is Building 7 on the first floor, and Unit 3 on the first floor.

Q When did you purchase that unit?

A 2001.

Q What did you like -- you kind of talked about what you liked about the project, which you liked the golf course, but is there anything else you liked about the project?

A Well, when we purchased our unit, the developer and the representative of the developer laid out some maps, and some what are called "future plans" for Barefoot. The golf courses were already here. We knew about the golf courses, and I actually played the golf courses.

What we didn't know is some of the future plans, which other amenities that the developer had promised would happen. So between the golf and what we would get in the future, we were excited about this.

Q You said you went to Centex. Was it a sales center you went to?

A Yes.

Q And at that center, did they hand you any documents, pamphlets, brochures?

A Brochures, yes.

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MR. STANLEY: Can I approach?

THE COURT: You may.

MR. HILDEBRAND: May I see that?

MR. STANLEY: Sure.

MR. HILDEBRAND: I have an objection. It may be better to do it outside of the presence of the jury.

(The following was a bench conference had out of the hearing of the jury.)

MR. STANLEY: It was submitted in our production subpoena documents.

MR. HILDEBRAND: Do you have copies for us?

MR. STANLEY: Sure. Sure.

MR. HILDEBRAND: Here's my point, Your Honor. This case has been brought only by the HOA for damages to the common elements. They could have filed a class action, or they could have gotten assignments from individuals for individual damages, for damages to their balconies, or whatever. They didn't do that. This witness, to testify about this document, is irrelevant to the homeowners association. The homeowners association didn't get this. The individuals did. So it's improper for him to -- what he's trying to do is bring claims by individuals, but they have not

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asserted --

THE COURT: Overruled. I think he can use it if he was given this when he was looking for a home. I think he can use it.

(Whereupon, the following was had in open court.)

Q **(BY MR. STANLEY)** Mr. Spencer, I handed you a document. Do you recognize that document?

A I do.

Q What is it?

A It's one of the items that was presented to me as we were talking to the developer. When they were making their presentation, this is a brochure that was handed to me.

Q And that came from Centex Homes; is that correct?

A Yes, sir, it did.

Q And that was for projects in the Barefoot Resort area; is that right?

A Yes, in Wedgewood.

Q That is where Wedgewood is in, the Barefoot Resort?

A Yes.

Q If you would, go to the last page of that pamphlet. Can you read for the jury that first

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paragraph?

A "Secluded, prestigious, and perfectly attuned to gracious living. This is Barefoot Resort Centex Homes, one of the Nation's largest and most successful homebuilders who is proud to be the major residential developer of an extraordinary selection of outstanding neighborhoods within Barefoot Resort. As American's Builder of the Year in 1998, Centex Homes brings with it nearly 50 years of experience dedicated to providing quality homes to families all over the United States."

Q So when that Centex Homes brochure talks about quality homes, what was your understanding at the time as to what that would be?

A I expected a first-quality home based on what the developer had told us in writing, as well as the presentation that were made to us. I expected a top quality home.

Q Did you expect the project to be in good repair?

A Absolutely.

Q Did you expect the project to be without construction defects?

A Common sense would tell me that the project would be without construction defects.

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Q If you would -- if you would go to the last paragraph of the pamphlet. If you will read that for the jury.

A "Centex places a high priority on your complete satisfaction, so as you consider a home purchase at Barefoot Resort, rest assured that you will have complete peace of mind. The Centex name has been associated with exceptional homes around the country for nearly half a century. Every one of them is backed by something called 'Centex Certainty.' It is an approach to home buying designed to make sure your questions are answered every step of the way before, during, and after construction, that way, you can be confident that when you invest in a dream, it's not just like -- it's not just likely to come true. It's a certainty."

Q So when that paragraph states an "exceptional home," what do you believe that to be?

A Well, this paragraph is telling me that they are guaranteeing me an exceptional home with absolute certainty.

MR. STANLEY: Your Honor, I move to have that admitted into evidence.

MR. DesCHAMPS: No objection.

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THE COURT: Without objection.

(Plaintiff's Exhibit 1 marked and admitted.)

Q (BY MR. STANLEY) Now, it's my understanding, as you testified earlier, that you were a board member at Wedgewood Condominium Association, correct?

A That's correct.

Q And are you currently on the board of directors?

A I'm currently not on the board of directors.

Q And when did you begin on the board of directors?

A In 2001.

Q And so what was your last year as a board member?

A This past December of 2022 I went off the board, so I served, approximately, 21 years on the board of directors.

Q And as a board member, what did you understand to be the responsibility of the board of directors for Wedgewood Condominium Association?

A The board of directors has a fiduciary duty. A fiduciary duty simply means that we're responsible to maintain the common elements of Wedgewood, and we're responsible to pay the bills.

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We do this through -- you want me to go ahead and further the role of the board?

Q Tell the jury what you think, in addition to the fiduciary duty, what are some of the responsibilities or things that a board does for the homeowners.

A Well, we meet four times a year, quarterly. At these meetings, we are presented an agenda by our management company. Our management company, we depend heavily on them to put in front of us what needs to be fixed. We try to fix what needs to be fixed and pay the bills. When we have a board meeting, we will go over the agenda. We'll take the actions that are necessary for maintenance. Much of our role is maintenance and paying the bills.

So four times a year we come in there, act on our agenda, and we go on our way and enjoy our families.

Q So when the board is making decisions, is there a particular document that controls those decisions or directs those decisions of the board for the homeowners?

A There is a document called "the master deed." It is about this thick (indicates). It's 50, 60

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pages and written by the developer, written by attorneys.

The master deed outlines -- and the bylaws. The master deed and bylaws are the two things that guide the board of directors and the homeowners association in making decisions. So numerous times we say, well, what does the master deed say about this or that? What are our rights and responsibilities?

For lack of a better term, it is the Bible that dictates the rules and regulations and the rights and responsibilities and the fiduciary duties of the board of directors.

Q And that master deed and bylaws, is that drafted by a company?

A It was drafted by the developer, Centex.

Q Okay.

MR. STANLEY: May I approach?

THE COURT: You may.

Q **(BY MR. STANLEY)** Mr. Spencer, I handed you a document. Can you identify that document?

A It is the master deed.

Q Is it the document you talked about earlier that controls the decisions of the board?

A Yes. This is the master deed. It is what we

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use time and time and time again to control the decisions of the board of directors.

Q Does that document lay out the board's duty to maintain the property?

A Yes, it does.

Q And in maintaining the property, has the board hired anybody to assist them with the maintenance of the property?

A Of course we have our management company, Waccamaw Management. They are our primary contact as far as the needs of the community is concerned. We depend heavily on them. So in addition to Waccamaw, we have the professionals that Waccamaw would recommend to you to do the repairs, maintenance that needs to be done.

So keep in mind that on our board of directors we don't have a building contractor. In 21 years on the board, I've never had a building contractor as a board member on the board. So we rely heavily on Waccamaw, our management company, and the professionals that we hire to do the work.

Q And you testified earlier that you believe that the board has a fiduciary duty; is that right?

A I absolutely do, yes.

Q And explain to the jury what you believe that

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fiduciary duty is to the homeowners.

A Our fiduciary duty to the homeowners is to always represent the best interest of the needs of the homeowners, and we do that by maintaining the property at an acceptable level, pay the bills on a timely basis.

Q And do you believe all board of directors have a fiduciary duty?

A I do, yes.

Q At one time, do you know whether the board was composed of mainly Centex Homes members or appointees to the board of directors?

A In the beginning, for a period of time -- I came on the board, and I was asked to join by another homeowner in late 2001, I think. And at that time, and for a while thereafter, there were three members of Centex on the board and two homeowners on the board. So the developer had the most voting power on the board, and that went on for some time.

Q You believe that the Centex-controlled board had a fiduciary duty to the homeowners?

A Oh, absolutely I do.

MR. DesCHAMPS: Your Honor, foundation on legal duties.

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THE COURT: That is above and beyond what he should be testifying to.

MR. STANLEY: Okay. Thank you, Your Honor.

Q (BY MR. STANLEY) So let's talk about your early years that you talked about on being on the board of directors.

Do you recall that Centex had a responsibility to turn over the property to the homeowners?

MR. DesCHAMPS: Foundation; objection, Your Honor.

THE COURT: Okay. If he can answer the question.

MR. DesCHAMPS: An obligation -- he said do you recall they had an obligation. If he can establish where he thinks this duty comes from.

THE COURT: You just want to know where you believe it comes from? Okay.

Ask him the question.

Q (BY MR. STANLEY) So as a board member in 2001, do you recall the board being turned over to the homeowners?

A No. No. Not really. I don't recall an event or ceremony, a passing of the baton, anything like that. I don't recall how it occurred.

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Q What provides that Centex would turn over the homeowners association to the homeowners?

A The master deed outlines the rights and responsibilities that Centex would pass on to the homeowners at some point in time.

Q Again, do you recall, at any point, where there was a handing off of the baton from Centex to the homeowners?

A No, I do not.

MR. STANLEY: Your Honor, I move to have the master deed offered into evidence, please.

THE COURT: All right.

MR. DesCHAMPS: No objection.

THE COURT: Without objection.

(Plaintiff's Exhibit 2 marked and admitted.)

Q **(BY MR. STANLEY)** So when we are talking about the turnover, do you recall whether there was any relinquishment of rights by Centex to the homeowners?

A No, I do not recall that there was a relinquishment of rights.

Q Do you believe that a turnover from Centex to the homeowners would be that they would relinquish all rights to the homeowners association?

A That would be my understanding, yes.

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Q And do you believe that Centex has turned over the condominium association fully to the homeowners?

A I don't think so.

Q Do you remember the developer, Centex, doing anything to relinquish its rights or give everything it has to the homeowners?

A No, I do not.

Q Do you remember any document from Centex that would say we relinquish our rights to the homeowners?

MR. DesCHAMPS: Your Honor, I'm sorry, leading.

THE COURT: Okay. Mr. Stanley, please don't lead.

Q **(BY MR. STANLEY)** If you would, would you look at Paragraph 3.6 of the master deed?

A What pages?

Q I believe that is Page 10.

A Okay.

Q Could you read for the jury the second -- last two sentences of Paragraph 3.6?

A "Each owner in accepting a deed from the developer or any other party to a unit expressly acknowledges and agrees that this section, 3.6,

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establishes the sole liability of the developer to the association and the owners related to the defects and the common area and the remedies available with regards thereto. At the end" --

MR. DesCHAMPS: I'm sorry to interrupt. May we have a moment of law?

THE COURT: You play. Ladies and gentlemen, we're going to take a brief recess. And I can tell you that I know when you started today you didn't know what you were going to be doing and how late. I need you for the next five minutes or so to elect a foreperson. They don't have any more say in the case, but the person I communicate with regarding scheduling.

I want you to do two things. Once you elect that foreperson, I need them to take that front seat. I also want to know how late you are willing to work today, and it may be just until now, and what time you would like to start tomorrow morning. Our options are 9:00, 9:30, 10:00 if we need to go that late, but that is what our options are.

So I'll ask you to go back to your jury room. Don't discuss this case. I'm going to take up a matter of law with the lawyers. When you come back, I'll ask you what time do you want to work

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until today, and what time do you want to start tomorrow morning?

Do not discuss this case other than working times. Refresh yourselves, and we'll be back with you.

(The jury exits at 5:03 p.m., and the following is heard out of the presence of the jury.)

THE COURT: Yes, sir.

MR. DesCHAMPS: Thank you, Your Honor. This was a while ago. I want to make sure you recall this. Some time ago, probably 2020, the plaintiff made a motion to amend their complaint. It was to assert a claim for like breach of contract or specific performance. It wasn't really clear how they were selling it, but it related to a claim under this 3.6 of the master deed.

The essence of that states that a year after substantial completion, there is going to be a transfer of the general contractor's rights against the subcontractors in exchange for a limitation of liability. You denied that motion on the grounds of futility based on the Statute of Limitations; obviously, sometime past -- one year past the substantial completion. So the motion to amend to raise this was denied, and that was three years

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ago.

I mean, we assumed that that is off the case. I mean, that is off the table. That is something -- you know, I don't know why we are getting testimony about this. I don't see how it has anything to do with anything, but specifically you've already ruled on this, that it is not going to be a part of this case, so...

THE COURT: Okay.

Mr. Stanley.

MR. STANLEY: I think the Court ruled that Centex did not have to assign those rights to the homeowners. I don't think the Court was ruling that we can't discuss Paragraph 3.6.

MR. DesCHAMPS: I guess that would be relevance, I mean.

MR. STANLEY: I think it goes to whether there was a complete turnover to the homeowners. It also goes to whether they have the right to sue subcontractors. It always goes to the gross negligence of Centex in that they did not convey everything they were supposed to to the homeowners.

MR. DesCHAMPS: May I?

THE COURT: Go ahead.

MR. DesCHAMPS: Okay. Under the master deed,

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the developer, the declarant, has the right under the master deed to sell a certain amount of units. After they sell those units --

THE COURT: It gets turned over.

MR. DesCHAMPS: Right. And what, in fact, is done is they have the right to sell and build units, and then they no longer hold any seats on the board.

THE COURT: Right.

MR. DesCHAMPS: The homeowners take the seats on the board, Centex is done, they go onto the next project. That was done here in 2002, in December.

THE COURT: I understand there was a discrepancy as to that.

MR. DesCHAMPS: May I explain to you?

THE COURT: Yes.

MR. DesCHAMPS: As I mentioned earlier today, Mr. Stanley signed up three homeowners associations at the same time. He filed three lawsuits against Centex. This one built in 2000/2001. The other two, Clearwater Bay and Willow Bend, those cases, the build-out, finished in 2014 and 2015, you know, 14 years later relative to Wedgewood.

In the interim, of course, there was a merger, a major corporate merger, where it became

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Pulte entity. It was different people and management, different processes involved.

In those latter two communities, at the end of the build-out, they had a new legal team and new management. They filed this document. I think they call it a special warranty deed. It, essentially, is a public recording they made at the same time that they relinquished control of the board.

THE COURT: And their argument is they didn't do it in this case?

MR. DesCHAMPS: So the inference is we have these three clients. Two of them we found this document, but in the earlier one we don't. So I think they are trying to extend that to mean a turnover never occurred, and that is -- it is beyond dispute that there was no one from Centex on those boards at any time since --

THE COURT: I thought the argument was the time when it was turned over? I think that was my understanding. There was no question it was turned over. If no one had any more seats, then Centex didn't want to be responsible, didn't want to be hooked for paying for anything. So they want to get it turned over. It makes sense.

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So I guess I'm not following what this 3.6 has to do with anything.

MR. DesCHAMPS: I'm not either. And I think that, honestly, this all flows from the fact that the other two clients, that just happened to have this other document that they don't have for this client, but the reason why is it was 14 years earlier. It was a different management group, different process, and different company, in fact.

So I think they are making an illogical leap on what not having that document means.

The master deed imposed no duty on Centex to do anything at turnover. It doesn't even use the word "turnover." It is just that after they sell all of the units, they no longer hold any board seats.

The association is managed only by its board. If you don't have any board seats, you can't exercise any control over the association. It is that simple. After December 2002, they had no more seats on the board. They were done.

THE COURT: I'm having a hard time following. I'm not understanding what he is testifying to. And I think he took a few steps in saying some kind of legal duty or pursuant to the master deed type

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of duty, and I think you have to be careful for this witness to testify to that.

I just don't understand what you are using this for.

MR. STANLEY: Well, I'm using it for the fact that Centex failed to turn over the project properly. A turnover is a relinquishment of all rights.

THE COURT: I understand what a turnover is.

MR. STANLEY: But they didn't do that here, because the master deed required that they provide an assignment or assign in writing these rights to the homeowners association, and they didn't do that. So they never completely turned over the project to the homeowners. So it could be argued that they are actually in control.

THE COURT: This is how you are getting around the Statute of Limitations?

MR. STANLEY: Yes.

THE COURT: That is your way of doing this?

MR. STANLEY: Yes.

THE COURT: That's how you're arguing it. Okay.

MR. DesCHAMPS: Okay. I just wanted to -- the argument that they didn't complete turnover

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because they didn't go the assignment thing was the very basis of their claim they sought after their complaint in 2020 that the Court denied the motion, so...

THE COURT: Right. I think we need to move past this. I'm hearing his testimony, and he still doesn't believe they are in control. If he doesn't, then I don't know who they think is in control, but, okay.

I guess that -- I don't know that that is a legal basis, but, okay.

MR. HILDEBRAND: So how do they have standing if they --

THE COURT: Exactly.

MR. HILDEBRAND: It's a slippery slope.

THE COURT: If it's never been turned over and there's no control, how does this HOA even have standing to bring a case? I don't know how Centex would be acting on behalf -- how do you say it wasn't turned over, I mean?

MR. STANLEY: Well, because that's one of the requirements in the master deed, that you are to relinquish these rights to the homeowners, and that never happened. They've admitted that. I have a request to admit where they said they did not

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assign that right to the homeowners, so, therefore, the homeowners --

THE COURT: I thought it was automatic. I thought it was somewhere in here it was automatic that after they sold the last of the units, that they were to turn it over.

MR. DesCHAMPS: Yeah. What we admitted to is that we did not assign our claims against subcontractors through the association. We did not.

THE COURT: Right.

MR. DesCHAMPS: And we admitted to that.

THE COURT: Is there anything that required you to?

MR. DesCHAMPS: There is a provision in the master deed that at one year past substantial completion, there is to be an exchange. We would assign our rights against the subcontractors in exchange for a limitation of liability.

I, mean we'll take the limitation of liability if that is what they are arguing, but, again, this was three years ago that we argued this. This is what we argued, and they sought to add this to the case, and you said no then.

THE COURT: Okay.

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MR. STANLEY: Your Honor, in their documents there is evidence that they had trouble figuring out how to turn over the project, and they were trying to figure out how to surrender control and relinquish their control, relinquish all of their rights. So that was an issue for them, and they never did it.

We just ask that the Court allow us to get into that just for the purpose of establishing that they still, in essence, controlled part of the HOA.

THE COURT: How?

MR. STANLEY: Because they didn't give the assignment, the HOA can never sue the subcontractors.

THE COURT: But you say per the master deed, they were required to do that, give that assignment?

MR. STANLEY: After one year, they were supposed to have a warranty, and then it was supposed to go -- the assignment was supposed to be in writing to the homeowners.

MR. DesCHAMPS: In exchange for a limitation of liability.

So what they would be seeking to recover from us in this lawsuit would not be allowed under that

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framework, because they are seeking to impose liability against us.

THE COURT: Right.

MR. DesCHAMPS: That was a quid quo pro. We would assign and get the limitations of liability. The assignment to dispose the contractor's rights did not occur. There is no evidence of that. That is what we talked about three years ago, and now they are trying to make the same argument now that they sought to make in this motion to amend.

THE COURT: I'm having a hard time understanding why they are using this. It doesn't make a whole lot of sense. Maybe I'm just tired. I'm going to have this jury come in, and I'm going to look at your motion and my ruling. Again, I think everyone is talking a bit -- I'm not following.

MR. DesCHAMPS: This was thoroughly briefed three years ago.

THE COURT: That is why I'm going to look at it. Hopefully, it will be there so I can understand what you are trying to argue.

Do you know what the motion was entitled? Do you know when it was so I can pull it up?

MR. DesCHAMPS: It was a motion to amend the

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complaint. From memory, I thought it was 2020.

THE COURT: Okay. Okay. Motion to amend complaint.

MR. CONNELL: September of 2020, Your Honor.

THE COURT: Okay. All right.

So it's 5:15. I know the jury is tired. Let's see what they say. If they say they want to wrap up, I think it is a good idea. I gave them the option of what time they want to start back up again.

Was his deposition taken?

MR. DesCHAMPS: Yes, Your Honor.

THE COURT: Was this testimony a part of the deposition?

MR. DesCHAMPS: No.

THE COURT: Okay. If you need a couple of minutes, I'm waiting to see if the bailiff can ask the jury if they can come back and what time.

MR. CONNELL: Could we talk them into starting earlier and not having to stay until 7:00 at night? I think it is better in the morning.

MR. DesCHAMPS: I suggest that 10:00 might be a late suggestion.

THE COURT: I didn't say 10:00. I thought I said 9:00 or 9:30? If they say 10:00, I'll push

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them earlier.

Let's go ahead and find out what time they are thinking and what time they want to work till tonight.

THE CLERK: Yes, ma'am.

THE COURT: Let's be at ease for a couple of minutes.

THE COURT: You're welcome to step down, but you can't talk about your testimony to anyone because you are still on the stand.

(A recess was taken.)

THE COURT: The jury wants to break for the evening and start at 9:00, so that is fine.

Sir, I'll let you go back and take your seat. I'll bring them back. We will stop for the evening, and go from there.

We'll take up this issue after I let the jury out, okay. I couldn't find anywhere where I had an order denying that motion.

MR. CONNELL: It is a form order.

THE COURT: Okay. She can't find it in the file.

MR. CONNELL: We have a copy of it.

THE COURT: It should have been filed, so I want to find it in the file.

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MR. CONNELL: It's been filed. I've seen it.

THE COURT: Okay. They are going to bring the jury back in?

MR. HILDEBRAND: Will we have access to the -- do you know what time we will have access to the courtroom?

THE CLERK: It's with the Sheriff's Office.

THE COURT: Sir, what time will you open the courtroom in the morning?

DEPUTY: 8:30, 8:45.

THE COURT: Okay.

MR. HILDEBRAND: Another housekeeping matter. I typically give a copy of an exhibit to the witness, you, and opposing counsel. I would like to have that courtesy extended both ways. If you don't want copies of mine --

MR. CONNELL: I have plenty of copies, but based on what she said, I didn't give them to you.

MR. HILDEBRAND: Oh, okay. But on the exhibits you do enter, can you give us copies?

MR. CONNELL: Yeah. And we gave you a copy of it before. I don't know what it is.

THE COURT: You mean in the courtroom contemporaneously.

MR. HILDEBRAND: And we'll do the same.

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(The jury enters at 5:29 p.m., and the following is heard in the presence of the jury.)

THE COURT: Sir, I assume you are now my foreperson; is that correct?

FOREPERSON: Yes, ma'am.

THE COURT: I appreciate your willingness to serve.

Ladies and gentlemen, I understand that we're ready to break for the evening, which is fine. I think we're all tired.

Ladies and gentlemen, there is a few things I need to caution you on. You're not to discuss this case with anyone as you go home. You can't talk to the attorneys, parties, the project, what it is about in any way. All you can say is I've been chosen as a juror for a civil case.

Also, over the evening, I don't want you to go driving by this condominium project or do any independent research or independent research on the Internet in regards to it. That is inappropriate.

I understand from the jury, sir, that you are willing to start at 9:00 a.m. here in the courtroom; is that correct?

FOREPERSON: That's correct, Your Honor.

THE COURT: The clerk's office provides

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breakfast for you, and they like you here, roughly, at 8:45 to be able to serve you before we come in. Is that okay with everybody?

Very good.

All right, ladies and gentlemen, I expect to proceed through the day tomorrow. I still expect we'll take a lunch break, grab a bite to eat for an hour or so. That is how we'll proceed at this point.

Ladies and gentlemen, go home and get a good night's sleep. I know you are in a difficult position. People don't serve on juries often, and it requires you to sit there and listen, and I understand that. So I would suggest getting a good night's sleep. You'll get a good breakfast in the morning. If you need anything, let us know.

Also, if you need breaks, I just need you to flag me down or flag the bailiff, either way. This is not an endurance contest. If you need a break, we will, but everybody has to take a break.

I thought I saw someone waive with a question. No? Okay.

So I'll see you, roughly, at 8:45 in your jury room. They should have told you where to go and how to get in the morning. I look forward to

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seeing you. Thank you and good night.

(The jury exits at 5:31 p.m. and the following is heard out of the presence of the jury.)

THE COURT: Anything else we need to put on the record for the evening?

MR. HILDEBRAND: No, ma'am.

THE COURT: When you made the motion to amend, what number of amendment was that for the complaint? Was it a third or fourth; do you remember?

MR. CONNELL: I think it was the only one we made. I'll go and find it. We have it. I just didn't bring that box up. Do you have a form order?

MR. DesCHAMPS: I'm looking at a copy of the proposed order that I submitted, and the hearing was August 12, 2020, and the motion was dated I think February 4, 2020.

THE COURT: I haven't read your response. I read your motion. I haven't read your response, but you filed the response?

MR. DesCHAMPS: Yes, Your Honor.

MR. CONNELL: To be fair, you denied the motion.

THE COURT: I understand.

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MR. CONNELL: So I don't understand --

THE COURT: I don't know what we are fighting over. I have zero independent recollection of it, I'm sorry. I have so many cases. It is not trigger something.

MR. CONNELL: You probably don't remember. You were in Columbia, and so we met up there and had two or three different hearings. One was about Mr. Clements' house and whether they could look at it.

THE COURT: Oh, I remember that.

MR. CONNELL: That was the same day.

MR. DesCHAMPS: One other date I'll tell you is August 19, 2020. It was an e-mail from Ms. Wilks Demato (phonetic). It states: "Judge Mullen has reviewed the filing and plans to deny plaintiff's motion to amend. She requests that Mr. DesChamps submit a proposed order."

THE COURT: Did I sign your proposed order?

MR. DesCHAMPS: I don't believe you did. I submitted it. I'm not sure that it was ever entered.

MR. CONNELL: Probably didn't like it.

THE COURT: Probably didn't like it is right.

MR. CONNELL: That's why we had a form order.

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THE COURT: What was the date of the form order?

MR. DesCHAMPS: I don't know.

THE COURT: At least I know the time period.

MR. CONNELL: I have one. I'll bring it tomorrow.

THE COURT: I should be able to read it in the E-file, so.

MR. STANLEY: I thought it was early 2021, wasn't it?

MR. CONNELL: I was thinking September, about a month afterwards.

THE COURT: Oh, okay. We'll find it. Sorry.

Anything else you think will come up with this witness?

One of the other things that I remember that you -- someone put in a pretrial brief, and I don't know if it is an issue, but you had a pretrial motion about a pull test in reference to siding.

MR. CONNELL: That is my pull test motion, but I figured you had heard enough that day, and I'd wait until we got to the witness.

THE COURT: That is what I figured.

MR. CONNELL: I had another motion, but I'll wait.

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THE COURT: What was the other one?

MR. CONNELL: That was the one about the pleadings, but I think you shot me down on that, about judicial estoppel. I had written about that in a pretrial brief.

THE COURT: I read that. Okay.

I'll see you tomorrow. Sounds like they'll be here between 8:30 and 8:45. We'll see you in the morning. And if you need me to look at anything, case law or any issues, you are welcome to e-mail myself and Kilynn directly.

Thank you all.

(WHEREUPON THE PROCEEDINGS FOR MAY 22, 2023 CONCLUDED.

(THE FOLLOWING WAS HAD ON MAY 23, 2023 OUT OF THE PRESENCE OF THE JURY.)

THE COURT: Thank you. Good morning. I believe our jury is ready this morning. Anything else we need to take up this morning?

MR. STANLEY: Nothing that I know of, Your Honor.

THE COURT: Other than the issue we were talking about yesterday, I went back and re-read the original motions and re-read the other motions that I heard. I went through the entire file last

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night. Obviously, I'm sure you realize now, if you are to make the argument that you are trying to make again, you wouldn't have a standing to bring the case. So that doesn't make a whole lot of sense to talk about.

I understand why you are using it, obviously, because of the Statute of Repose issues, but I think we need to move on with it, okay, this morning.

Is our hope that we're going to get Mr. Fuller up and down today? Is that the goal, Mr. Connell?

MR. CONNELL: He'll be here in the next 30 minutes.

THE COURT: Very good.

Anything else?

MR. HILDEBRAND: Nothing, Your Honor.

THE COURT: I wanted to ask you -- I saw you made a motion to compel arbitration and that predated me. Judge Seals denied it. I know you had a couple of these other cases. Did you arbitrate those?

MR. CONNELL: We did. We had a meeting, Tom and I and all of the subs. It was settled at a hotel in Myrtle Beach.

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THE COURT: You understand what a role reversal that is, though. I mean, quite frankly, it is usually the defense that prefers arbitration and not the plaintiff, but I just found that interesting.

MR. CONNELL: I think he said -- as I remember, he said there was some discovery done, and so we waived that. The other two there had not been, so that is how we got those.

THE COURT: The other two had not been? Okay. And just the cost of discovery is so great.

MR. CONNELL: Right. And we each picked an arbitrator, and they picked the third. So it worked out pretty well, I thought.

THE COURT: All right. Good.

As long as everyone is ready, we're ready to go forward.

SHERIFF'S DEPUTY: They are saying the TVs are in the way to see people's expressions, so you need to pull back the TV on the witness stand.

THE BAILIFF: They are saying right now. I guess they are not able to see certain people's faces.

THE COURT: They should just be able to see whoever is speaking to the witness and the witness,

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but we'll pull them back. I think we're okay with this. I can't imagine -- there is no one else hiding back there. We'll just pull this TV back. Thank you.

It is a pretty conscientious jury. They asked to take notes before I even invited it, and now they are concerned about seeing everyone's faces, so I think that is good.

MR. CONNELL: Some judges don't allow those. Judge Hyman and I had a huge argument about notes. He was taking notes, but he wouldn't let the jury take notes, and we had a huge argument. I said Didn't you take notes in school? He said I'm not letting them take any notes, even though they asked.

THE COURT: I will tell you, in a case like this, I don't know how you don't take notes. It's just too much.

MR. CONNELL: I agree.

THE COURT: Can we pull the TV back? Were you using that yesterday?

MR. STANLEY: No.

MR. CONNELL: I'm assuming they want the small one?

MR. DesCHAMPS: I think they can see it here.

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(A discussion was had off the record.)

THE COURT: Mr. Spencer, after we get this fixed, I'll have you take the stand before the jury comes in. I'll remind you, for the record, you are still under oath.

MR. SPENCER: Okay. Thank you.

THE COURT: Let's bring the jury in.

(The jury enters at 9:20 a.m., and the following is heard in the presence of the jury.)

THE COURT: Good morning, ladies and gentlemen. It is a pleasure to see you all.

Thank you for letting us know that you were having difficulties seeing the witness. We tried to move things a little bit. They lowered the screen in front of the witness. We're leaving that that one there because, really, there is nothing you need to look at over there, but I wanted to be sure that is fine.

As a trial judge, I go all over the state and try cases, and I haven't ever been in a courtroom that didn't have some type of issue or trouble to be able to see witnesses, videos, and that type of thing. We've always had difficulty with that, but I think we've done the best we can. If there is anything else you need, particularly in being able

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to see or hear something, please let me know.

With that said, we'll resume with Mr. Spencer's direct examination.

Mr. Stanley, whenever you are ready.

DIRECT EXAMINATION

BY MR. STANLEY:

Q Mr. Spencer, continuing from yesterday, I believe you testified you were on the board from 2001 to the last year being 2022; is that correct?

A Yes, sir, that is correct.

Q So if my math is right, that is approximately 21 years on the board?

A Yes.

Q And those are consecutive years?

A Yes.

Q During that time, do you believe that the board did everything it could to maintain the property at the Wedgewood Condominium Association?

A Yes, sir, I do.

Q And as part of its maintenance for the Wedgewood Condominium Association, does the board hire another company or agency to help it maintain the property?

A Yes. The board hires a management company, and in our case, it is Waccamaw Management. They

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have been with us probably 15 years or so. So we hire them directly. We depend on them for all of our agenda, to keep us informed of what is going on. They're an extremely important part of the board's role at Wedgewood.

Q And does Waccamaw Management Company assist you, the board, in the maintenance of the Wedgewood Condominiums Association?

A Yes. They let us know what our maintenance needs are. They prepare the agenda. We meet four times a year. We come in, and they have an agenda for us. The agenda will dictate what maintenance issues that we have to deal with that day. We deal with those issues. We approve the expenditures to repair whatever needs to be repaired. We approve the bills to be paid, and we're on our way to enjoy our families.

Q So the board -- does the board enter into a contract with Waccamaw Management for those types of services that you just described?

A Yes, we do.

Q Is that like an annual contract that is renewed on an annual basis?

A Typically, it is a three-year contract.

Q So, if you would, take the jury through one

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of your board meetings where Waccamaw Management was present. Can you give us a general overview of when the board is meeting with Waccamaw Management, and how does it go from there?

A They will present the board with agenda items, and we will generally take the agenda items in the order that they have listed on their agenda. We take these items one at a time. We ask Waccamaw Management to explain each item as we go down. They are usually maintenance items. So we're going to have questions about why do we need to do this? How much is it going to cost? Can we take bids for this?

We try to take multiple bids for any item. If there are multiple vendors out there that are qualified, we want to get three bids; otherwise, we will at our next meeting act on that. They'll bring us the bids.

So they are a critical part of our agenda, and we complete the agenda for that day and move on.

Q So Waccamaw -- let's talk about the maintenance issues. So Waccamaw presents a maintenance issue at a board meeting, to the board members. What are the next step? You briefly

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talked about that, but what is the next steps? It is presented to the board, and then what action is taken?

A The board will ask Waccamaw to send out specifications, take bids for that particular repair of the particular maintenance issue. They'll do that and bring it back to us at the next meeting for those maintenance needs.

Q So you are here today for a lawsuit against Centex Homes, a Nevada General Partnership, Balfour Beatty Construction, LLC, as successor by merger to Centex Construction Company, and Centex Construction, LLC, and that lawsuit was filed January 18th, 2018, correct?

A Yes.

Q Now, I think it is important for you to tell the jury how the board led up to filing that lawsuit in 2018.

So when was the first time that you believe that the board recognized that there were construction issues more significant than just maintenance issues?

A That was late 2016, if my memory serves me correctly. At one of our regular meetings, Waccamaw Management came to us and said, folks, we

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have some construction issues that we wanted to discuss with you. We have run across construction issues that are not the normal maintenance -- routine maintenance that we've been accustomed to doing. We are seeing construction issues that go across multiple buildings, things that concern us, and we feel you should speak to an attorney.

Q And then what action did the board take after that recommendation from Waccamaw Management?

A We asked Waccamaw to assist us in securing an attorney that was well versed in this field and had experience in this field. They recommended Mr. Stanley's law firm, and Mr. Stanley came and met with us.

Q Okay. And then, at some point -- we can't get into that here, but at some point we entered into an agreement between the board and Stanley Law Firm; is that right?

A That's correct.

Q Do you recall what the next steps were after the board hired an attorney?

A Yes. Mr. Stanley recommended to the board that we secure the services of a forensic architect. We asked him to make a recommendation to us regarding a good firm to do this. He

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recommended the Fuller Group, and Mr. Ross Clements is the forensic architect that we used from the Fuller Group.

Q Why did the board ask Stanley Law Firm for a recommendation for a forensic architect?

A Well, we had no experience in anything like that. We had to use experts, so we asked Mr. Stanley, who was very well versed in dealing with forensic architects, to find the best one for us.

Q And did -- at some point, did the board meet or talk to Mr. Clements from the Fuller Group?

A I don't think so. I think -- I don't recall a direct meeting with Mr. Clements.

What we asked Mr. Stanley to do was secure the services of a forensic architect, and then direct that person to go out and investigate all nine of our buildings, bring a report back to Mr. Stanley, and then ask him to bring the report to us and tell us what we had.

Q Just so we're clear, at some point, the board authorized the hiring of Ross Clements of Fuller Group; is that right?

A Yes. That was based on Mr. Stanley's recommendation.

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Q And then it's your understanding that Mr. Clements visited the site at Wedgewood Condominium Association?

A Yes. Mr. Clements -- it was our understanding that Mr. Clements came on-site multiple times, conducted their investigation of all buildings, behind siding and brick and under shingles, and whatever you have to do to get a thorough report. We didn't have any building contractors on the board, so we had to rely heavily on what Mr. Stanley had told us and what Mr. Clements told us.

Q Do you recall anything about Mr. Clements' investigations at the Wedgewood project? Did you see any of those?

A You mean did I participate in any way in the investigation?

Q Did you observe any of his investigations at Wedgewood?

A No.

Q Do you know anything about his investigations at Wedgewood other than just what you stated?

A No.

Q Do you know if Mr. Clements investigated the exterior walls at the Wedgewood Condominium

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Association?

A I would assume so, as part of a thorough investigation. But do I know it directly, no.

Q Do you know if Mr. Clements investigated the windows or the window installation or anything surrounding the windows at the Wedgewood Condominium Association?

A I don't know, but I would think so.

Q Do you know if Mr. Clements investigated the roofs or the walkways or the attics at Wedgewood Condominium Association?

A I don't know, but I would think so.

Q So after his investigation, did he make a recommendation to the board on his findings?

A He made a recommendation, if my memory serves me, correct. He made a recommendation through you that his findings were -- that there were multiple problems, that there were -- the term that we like to use is there were systemic issues, meaning they spread across all of our buildings. That was the first time that we really realized, Mr. Stanley, that we had a systemic defect across multiple buildings, and it was based on what Mr. Clements said from the thorough investigation he had made.

Q And subsequent to these findings and these

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findings being conveyed to the board, was that when the board authorized the filing of the lawsuit that we're here for today?

A That is correct. After learning what was in the report, we knew that we had systemic issues, that the thing to do was to file a lawsuit, and we authorized Mr. Stanley to file a lawsuit against Centex.

Q Do you believe that the filing of the lawsuit was in accordance to the master deed, which you kind of referred to yesterday as the Bible for your HOA?

A Yes, I do believe that.

Q Do you believe also that it was the fiduciary duty, as you discussed yesterday, for the board to bring this lawsuit against Centex?

A Absolutely. The board's fiduciary duty is always to act in the best interest of the homeowners.

Q And you understand, too, don't you, that as a result of these findings by the Fuller Group, that a contractor also has been hired to estimate those damages?

A Clarify, please.

Q Do you know if those damages or -- excuse

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me -- those construction defects that were discovered by Mr. Clements resulted in an estimate?

A Yes. Thank you for the clarification. Yes, I am aware that an estimate was made for the totals of those damages. Thank you.

Q Again, the HOA, in this lawsuit, is asking for those damages that were determined by an estimate to be paid for by Centex; is that correct?

A That is correct.

MR. STANLEY: That is all the questions I have, Your Honor. Thank you.

CROSS EXAMINATION

BY MR. DesCHAMPS:

Q Mr. Spencer.

A Morning.

Q Good morning. Nice to see you again.

A Thank you.

Q You purchased your unit in 2001, correct?

A Yes, sir.

Q That was back -- you purchased it from Centex Homes?

A I did.

Q You've never lived at Wedgewood; is that right?

A No.

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Q I think you told me that you would come down maybe four times a year, on average?

A Well, we come down for board meetings, which is quarterly, and occasionally we would come other times.

Q Never listed it for sale, correct?

A No.

Q I think you told me -- I took your deposition maybe a month-and-a-half ago. You told me then that you were happy with your purchase?

A I'm sorry?

Q You recall that I took your deposition in this case about a month-and-a-half ago?

A Yes.

Q And I asked you if you were happy with the purchase of your unit, and you told me, yes?

A Right.

Q Do you recall -- I looked it up. Do you recall you paid $120,245 for the unit?

A Yes.

Q Do you know what the Zillow estimate is on it now?

A I have no idea.

Q Do you have an idea what it would be worth now, your unit?

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A 240, probably.

Q Maybe 250?

A Something like that.

Q Okay. Would looking at some recent sales of other Wedgewood units be a good idea to determine what it would be worth now?

A Comparabilities, yes.

(A brief pause in the proceedings.)

MR. STANLEY: Your Honor, plaintiff would just object to this document. First of all, this is the first time we've seen this. It has not been disclosed to us through discovery.

Secondly, if he does happen to sell his unit, which he hasn't said that he has any plans to do, which I believe this is what it is being used for --

THE COURT: Come up for a second.

(Whereupon, a bench conference was had out of the hearing of the jury.)

THE COURT: What is this? Are you using this to impeach him? What is this Zillow estimate?

MR. DesCHAMPS: 252.

THE COURT: He just agreed to it. I don't think we need that.

(Whereupon, the following was had in open

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court:)

Q **(BY MR. DesCHAMPS)** Mr. Spencer, we can agree -- I think you said 240, 250 is a reasonable range for what your unit is worth now?

A I think so.

Q You said that the board would typically have four board meetings a year; is that right?

A Yes. Quarterly.

Q And we have those meetings. A property manager is there with you?

A Oh, yes.

Q And what is discussed and what business is done at those the board meetings is reduced in writing to board meeting minutes?

A That's correct.

Q And the way those things are set up -- whatever is written in those minutes should accurately reflect what was in those board meetings, correct?

A That is correct.

MR. STANLEY: Your Honor, can I approach?

THE COURT: You may.

(Whereupon, a bench conference was had out of the hearing of the jury.)

MR. STANLEY: These are minute meetings, and

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whether they need to be excluded or it just needs to be disclosed to the jury that these are from a different deposition. They are not from his deposition.

THE COURT: So you have to show him and ask him if he was there and if he sees them. It doesn't matter -- I don't think it matters what deposition it was attached to originally.

First, you have to make sure that he was at that meeting, and if he was, if he's familiar with it. If that's enough, then, okay. I mean, right?

MR. STANLEY: Okay. Thank you, Your Honor.

(Whereupon, the following was had in open court:)

Q **(BY MR. DesCHAMPS)** I'll show you what is Defendants' Exhibit 106. Could you take a look at that, please? You recognize those to be the board meeting minutes for the first annual members meeting for the Wedgewood Association?

A I do, yes.

Q And that is dated December 14, 2002?

A Yes.

Q All right. Could I direct your attention to the second page of these minutes to Roman Numeral 6. If you can -- if we can put it on the screen

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and zoom in on Roman Numeral 6 for us, please.

A Yes.

MR. HILDEBRAND: Can we pull it closer?

THE COURT: Ladies and gentlemen, do you want it closer? What I don't want to do is cut the jury off to see Mr. Spencer. We can pull it a little closer, but it can't block Mr. Spencer, okay.

Thank you.

Q **(BY MR. DesCHAMPS)** Mr. Spencer, I'll ask you to read the first sentence of Roman Numeral 6, and am I correct that this indicates that the primary purpose of that members meeting in December of 2002 was for the Wedgewood unit owners to elect their board of directors?

A That is correct.

Q Okay. And if you look further into the same Roman Numeral 6, do you see that you were one of the Wedgewood owners that was elected to the board that day?

A Yes.

Q And then the other names listed there were the other board members who were elected by the Wedgewood membership to be board members that day?

A Yes.

Q And each of those people voted to the board

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that day were, in fact, unit owners at Wedgewood?
A That's correct.
Q And none of them were affiliated or employees or otherwise representatives of Centex Homes, correct?
A Correct.
Q That was in 2002 when that occurred, correct?
A Yes.
Q And you have been on the board from all times up until this past December, correct?
A Yes.
Q And it's correct that during that whole time, from the end of 2002 all the way to the present, a Centex representative or employee has never been on the board of directors for Wedgewood; is that correct?
A That's correct.
Q And the association is governed and managed by its board of directors, correct?
A Yes.
Q So Centex Homes had no involvement, whatsoever, with managing the board of directors for Wedgewood at any time since December of '02, correct?
A Based on this, that's correct.

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MR. DesCHAMPS: May I move to admit 106?

THE COURT: Without objection?

MR. STANLEY: No objection.

(Defendants' Exhibit 106 admitted.)

Q (BY MR. DesCHAMPS) Not only does it hire a property manager, but once a year it hires a CPA to review and edit its finances and publish a financial report?

A Yes, we do.

Q What I would like to do is show you what I've marked for identification purposes as Defendants' 80. Can you take a look at that for me, please.

You recognize that to be the year-end audit from the CPA that was delivered to the Wedgewood Association for the year-end of 2007?

A Yes.

Q And if I could have you flip to the second to the last page of that document for me.

MR. DesCHAMPS: Adam, second to last page, PD 14, I think.

Q (BY MR. DesCHAMPS) If we can zoom in before I ask you questions about this document.

So the association has an operating account, and it has a reserve account, correct? Two different funds in the bank?

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A Yes.

Q The operating account is going to be paying for day-to-day expenses and the like?

A That's correct.

Q And the reserve account is the money that the association puts away, saves a little bit each month or year, for the purpose of saving to replace some of the building components in the future when their expected useful life expires; is that correct?

A That's correct.

Q And to assist the HOA in figuring out when the building components are to be replaced and how much money needs to be saved, you hire a reserve specialist to come in and look at the components, finances, and make a recommendation to the board?

A That's correct.

Q And this last page of this year-end financial audit you received from the CPA contains what would be the replacement reserve schedule for the HOA, correct?

A Yes.

Q And let's look at a couple of examples to make sure we understand how this other -- how the document works.

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The headings in bold "component" and "expected useful life" --

A Yes.

Q So the far left column would be various components at the Wedgewood property, correct?

A Yes.

Q And then the first column on the right is the expected total useful life of that component, correct?

A Yes.

Q And then the next one would be the estimated remaining useful life of the component at the time of this writing, correct?

A Yes.

Q And then there is estimated cost of what it will cost to make that replacement in the future when the board needs to, and that is shown in the far right column?

A Yes.

Q Let's look at this year end 2007. The roofs, you have three different rows or columns, and it is, essentially, what the board decided to do -- there is nine buildings, so you can spread out the anticipated cost over three years, so you would replace the roof shingles on three buildings in one

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year and then --

A Correct.

Q So the year end of 2007, the board's or the association's year-end audit was anticipating that the roofs would be replaced in seven years' time for three of the buildings, eight years' time for three of the buildings, and nine years for the other three, correct?

A Yes.

Q So, at that time, they were saving money each year anticipating that they would be replacing the roof shingles in 2015 through 2017, correct?

A Yes.

Q If we could go part down to the bottom half of the page, and we'll look at more of these.

The wood stairs, I'll ask you about those. That will be the outdoor stairs that are part of the front walkways. Is that right?

A Those are the stairs that -- between floors.

Q Those are exterior stairs?

A Yes.

Q And at this time they are anticipating replacing those for three of the buildings in 13 years' time, three of the buildings in 14 years' time, and then three of the buildings at 15 years'

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time?

A These are reports from the firm that does the reserve study. That is their recommendation.

Q But what we're looking at here is the association's own financial records, correct?

A This is included in the auditor's report, yes.

Q The auditor's report of the HOA's finances?

A Correct.

Q And so at this time -- say 13 years from then would have been in 2020, correct?

A Yes.

Q Let's look at the bottom one. It says "hall carpets"?

A Correct.

Q Mr. Spencer, the hall carpets, what that is referring to is the outdoor carpeting that is covered on the front walkways of the building?

A And all of the breezeways.

Q Breezeways, walkways, those are synonymously? You are talking about an outdoor area that is covered in the front of the buildings?

A Right. Right.

Q So year-end 2007, the association's replacement schedule was anticipating replacing

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those outdoor carpets in 2010 and 2011; is that right?

A Yes.

Q And if you could go to the next page, please. If we can zoom in on the top, "carpet membranes" there. This will be the last one on this document.

I'll ask you about the carpet membranes, sir. Do you see that?

A I do.

Q The carpet membrane, what that is referring to is a membrane underneath the carpets we just talked about, correct?

A Yes.

Q On the --

A Top two floors.

Q But on the front of the buildings is these front walkways that we will be hearing about in this case. There is a carpet on top of it, and underneath that, on the second and third floor, is what you call a "membrane"?

A Yes.

Q And, so, year-end 2007, the association's replacement schedule was calling for replacing that membrane under the carpet in 2010, 2011, 2012, three buildings at a time, correct?

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A Right.

MR. DesCHAMPS: I move to introduce Defendants' 80.

THE COURT: Any objection?

MR. STANLEY: No objection.

THE COURT: Without objection.

(Defendants' Exhibit 80 admitted.)

Q **(BY MR. DesCHAMPS)** I'm handing you what is marked for identification as Defendants' Exhibit 79. If you can, look at that took me, please.

Over the years, Wedgewood Association has hired Miller Dodson, a company, to prepare its reserve studies; is that right?

A Yes.

Q And what I'm showing you is the reserve study that Miller Dodson prepared and sent to the association on May 30, 2007; is that right?

A Yes.

Q If you can, go to the sixth page from the last, Page 28, and Page D-4, the right-hand side of the page.

A Okay.

Q If we can zoom in on the bottom portion about the building roofs. If we could highlight the last two sentences there. This is part of the condition

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assessment portion of the report, and it is reported here that the shingles of the buildings were reported to be 20-year quality. Experience for being close to the shore in this area is they usually last about 15 years; is that right?

A Yes, that is what that says.

Q If you can, go to the next page -- two pages past, please. That is Page D-6 in the top, right-hand corner. If we can zoom in to the top portion of that that is the exterior hallway carpeting. Starting at the third sentence where it is the second and third floors -- if we can highlight that.

So what this is referring to is the front walkways, correct?

A Yes.

Q And it says that the second and third floors have a membrane underneath the carpet, correct?

A Yes.

Q It says that with these types of services glued in place, it is assumed that the membrane, as well as the carpet, must be replaced at the same time, correct?

A Yes.

Q And then the last sentence reads: "Based on

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the open location and the amount of traffic, we have given these carpets an eight-year life expectancy." Is that what it says?

A Yes.

Q So the Miller Dodson report is recommending that the carpet and the membrane underneath the carpet be replaced at the same time because they are glued together, and then being done every eight years?

A That is what they are recommending, but that doesn't mean that is what we do.

Q Understood.

If you could, flip back to B-5. The numbers on the bottom, right-hand corner, the Bates number is 010673. If we could, zoom in on the half part of that. Are you there, sir?

A I am.

Q And we recognize this format is similar to what we saw on the financial audit where you have the component on the left-hand side, and then it has the total estimated life of these components, and then the remaining life of the components?

A Yes.

Q And for the roofs, it has total estimated life of 15 years, and at this time, in 2007, to be

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replaced seven, eight, and nine years from then, correct?

A Yes.

Q And the bottom portion of what we're looking at here is regarding the wood stairs on the front walkways, correct?

A Yes.

Q And, for these, they are estimating -- the Miller Dodson report to the board is saying those can be expected to last 20 years, and here in 2007 they should be replaced in 13, 14, and 15 years' time from then, correct?

A Yes.

Q If you can, go to the next page, B-6 in the top, right-hand corner. If you can, zoom into the top half and look at the exterior hall carpet and membrane portion.

All right, sir. Going through the same components, this is, again, calling for the hall carpets and the membrane underneath the carpet to have an expected life of eight years, correct?

A Yes.

Q And to be replaced at the same time, right?

A Yes.

Q And at that time, in 2007, both of those

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components, the carpet and the membrane under it, should be replaced in three years' time for three of the buildings, and four years' time for three other buildings, and five years' time for the last three buildings?

A That is what they have in their report. That doesn't mean that that is what we're going to do.

Q Understood.

If you can go to the second page of the document.

A All right.

Q And zoom in on the bottom of the writing. It says "signature" and then the analyst's credentials.

This report came from a gentleman named Ted Seeley from Miller Dodson; is that right?

A Yes.

Q And on the second page of the report, it lists Mr. Seeley's credentials; is that right?

A Yes.

Q Bachelor of science degree in engineering from Princeton?

A He does.

Q Over 40 years of experience in engineering and construction fields, and is a licensed

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professional engineer in several states; is that right?

A Yes.

Q He's managed a variety of construction projects and is currently a construction consultant for private buildings and reconstruction projects and is a reserved analyst at Miller Dodson?

A Yes.

Q Pretty good qualifications for determining proper maintenance and when these building components should be replaced, right?

A I suppose so.

Q Let's go to Page B10 of this report, please. That is Bates No. 10678.

MR. DesCHAMPS: Adam, if we can zoom in on the top half where it says "caulk sealed windows."

Q **(BY MR. DesCHAMPS)** You see there in the middle it says, "Caulk seal windows, paint budget," and then on the far right it says that the replacement cost is excluded. Do you know what that is about?

A Yes.

Q Why is the window -- caulk sealed windows excluded from the replacement cost of this report?

A I have no idea.

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MR. DesCHAMPS: I move to introduce Defendants' Exhibit 79.

THE COURT: Without objection?

MR. STANLEY: No objection.

THE COURT: Without objection it is in evidence.

(Defendants' Exhibit 79 admitted.)

Q (BY MR. DesCHAMPS) I'm handing you what is marked for identification purposes as Exhibit 105.

Can you turn to the third page. That is the letter and the e-mail. Let's go to the third page, bottom half.

MR. DesCHAMPS: Can you zoom in the e-mail at the bottom?

Q (BY MR. DesCHAMPS) Okay. Mr. Spencer, Chuck Gornet, he was property manager for Wedgewood?

A Yes.

Q He worked for a company called Chicora?

A Correct.

Q And Chicora was a predecessor company to Waccamaw?

A That's correct.

Q This is an e-mail from Chuck Gornet to you and the other board members, May 29, 2007, right?

A Yes.

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Q And the subject line is "Reserve Study"?

A Yes.

Q And he is e-mailing about changes that the board of directors made to the reserve study. If you look at the middle paragraph there, it says that, basically, as a result of these changes, the reserve study doesn't include painting and caulking; is that right?

A Yes.

Q Can you go to the first page of this document for me?

All right. If we can go to the signature page of this letter. You see it is from James Dodson, one of the principals at Miller Dodson, right?

A Yes.

Q Dated May 31, 2007, you see at the top?

A Yes.

Q Right there at the top it is from Miller Dodson to Chuck Gornet, he's the property manager. It says, "At the request of the board of directors of Wedgewood, we have made the following adjustments to the replacement reserve analysis that was performed at the project in April of 2007." And No. 6 is "delete caulk seal," right?

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A Yes.

Q So it looks like the reason that the caulk seal component of the reserve study was deleted is because the board of directors requested that, correct?

A This was in 2007. What is that? Sixteen years ago? I do not recall all of the specifics of this. I see what you are showing me, but I don't recall the specifics.

Q Given that it is that long ago --

A It was 16 years ago. What I do know and what I can tell you is that the reserve studies is a guide. It's not -- it's not a Bible. It is a guide. We have those done periodically. We're required to under South Carolina state law.

THE COURT: Mr. Spencer, again, you can't say what you are required to do by law. That is not appropriate. But what he's asking you is he's trying to refresh your recollection with documents. If you remember it, say, yes. If you don't, say, no. You can explain it after that, but you need to answer his question.

He can put this in front of you, and he's hoping that you're able to have you remember something. If you don't, just say you don't. But

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you can say you see it. Okay, sir?

A I do not recall this.

Q **(BY MR. DesCHAMPS)** Sure. Given it was this long ago, these documents are going to be the best way to recall what was happening with the management of the company back then, right?

A Yes.

Q If I could have you look at the bottom half of this letter. It begins with "the effect of," the bottom half.

So it looks like the recorder of records requested some changes to the reserve study or reserve analysis, and according to Mr. Dodson, the effect of that is the amount of contribution that the Wedgewood Association would have to make per year would decrease, correct?

A Correct.

Q So as a result of the changes that the board requested, they didn't have to pay as much per year to the reserve account, correct?

A Yes.

MR. DesCHAMPS: I move to introduce Defendant's 105 into evidence.

THE COURT: Without objection?

MR. STANLEY: No objection.

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THE COURT: Thank you. Defendants' 105.

(Defendants' Exhibit 105 admitted.)

Q (BY MR. DesCHAMPS) I'll hand you Defendants' 70. If you can, look at that for me, please.

Defendant's 70 is the year-end audit from the CPA for the year-end of 2011, right?

A Correct.

Q We can go to Page 14. I'll direct you to Bates No. 8098, the 14th page in -- oh, sorry, the one before that.

This is similar to what we looked at earlier in the 2007 audit, but this is the one four years later for the year end 2011?

A Yes.

Q If we can look at the roofs. We won't go through them all. This is four years later from the one we looked at earlier, and what we're seeing here, year end 2011, the association is now calling to replace the roofs in three years' time, correct, for three of the buildings?

A Yes.

Q And then for the next three buildings it is four years' time, and then the remaining is five years' time, correct?

A That is probably information passed on from

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the reserve study.

Q Sure.

And the reason we're seeing the remaining useful life decrease from the one we looked earlier, is because four years went by, so from 2007 to 2011, the remaining use of life has decreased by four years in that Column, right?

A Right.

Q If you can, look down to the bottom of this. It is the hall carpets. Again, this is the outdoor carpets in the front of the buildings, right?

A Yes.

Q And we can see here that the remaining expected life of those carpets expired in 2011, right?

A Yes.

Q And if we look to the next page for me, it is the carpet membrane section?

A Okay.

Q Carpet membranes -- it is the same schedule as the carpets above it, correct, expected useful total life of 11 years, and then at that point the expected useful life had expired, correct?

A Yes.

Q So under this schedule, by year end 2011,

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both the outdoor carpet and the membrane underneath it would be replaced or time to replace them as of 2011?

A Based on what was recommended.

Q What happened was in 2010 the homeowners association replaced all of the outdoor carpets on the front walkways, correct?

A That's correct. I think that is a correct year.

MR. DesCHAMPS: I move to introduce defendants' 70 into evidence.

THE COURT: Without objection.

(Defendants' Exhibit 70 admitted.)

Q **(BY MR. DesCHAMPS)** So in 2010 the association replaced the carpets on the front walkways?

A Yes.

Q And at the same time the association did not replace the membrane underneath the carpets, correct?

A They were still in good condition. There was no need to replace them.

Q So you did not, correct?

A Yes.

Q I'll hand you what is marked for identification as defendants' 69. Can you look at

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that for me, please. Let's zoom in on the top half. To understand how this document works, we went through this a little bit in your deposition, but the bottom part of Page 1 of this is showing a check number in the middle, right?

A Yes.

Q That is going to be the check number written from the association, correct?

A Yes.

Q The number on the right, 57,000, that is amount of the check?

A Yes.

Q And the date on the left is the date of the check; is that right?

A Yes.

Q And then if you look kind of at the top it is abbreviated, but it is the name of the vendor at the top. The name of this is vendor is Plantation Flooring, but, essentially, the check stub has the name of the vendor there; is that right?

A Yes.

Q If we go to the next page. You see Page 2 of this is an invoice from Plantation Flooring?

A Yes.

Q Dated August 26, 2010?

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A Yes.

Q This is the invoice for the replacement of the outdoor carpets in the front walkways?

A Correct.

Q If we can zoom in on the description part there. Kind of the fifth from the bottom you see "carpet tear out and carpet installation," right?

A Yes.

Q So what was done is you paid Plantation to, I guess, pull up the carpet and put new ones in?

A I suppose. I do not know for sure.

Q Do you know of any measures that were taken to protect the membrane that was underneath the carpet?

A It would have been in our interest to protect the membrane.

Q I agree.

Could you look at the note at the bottom of the invoice? This invoice from Plantation Floorings says, "Note: Carpet to be installed with a premium multi-purpose adhesive to ensure easier carpet removal in the future and reduce chances of damage to the membrane." Did I read that right?

A Yes.

Q So looks like they are having a hard time

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with the carpet removal and damaging the membrane? Is that how you interpret that?

A I don't remember the details of that.

Q Seems to be --

A It speaks for itself.

Q Seems to be what the note is suggesting, right?

A It would appear that the original carpet had a type of adhesive that we did not want to use again.

Q Okay. Sure.

So let's go back up to the top there. Can you look at the second line within the description of the work? You see the "multi-purpose adhesive M, 4094"? I assume that is the adhesive that was used this time around?

A It would appear that way.

MR. DesCHAMPS: I move to introduce defendants' 69.

THE COURT: Any objection?

MR. STANLEY: No objection.

THE COURT: In evidence.

(Defendants' Exhibit 69 admitted.)

Q **(BY MR. DesCHAMPS)** Mr. Spencer, I'll show you Defendant's Exhibit 72. Do you recognize these to

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be the minutes from the board meeting on August 9, 2013?

A I do.

Q You were on the board then?

A I was.

Q At the meeting, second paragraph?

A Yes.

Q If you can go to the top of the second page. Look at that for me, please. Paragraph B -- sorry let's go to the fourth page, Bates 36.

MR. DesCHAMPS: If you can zoom in on the top.

Q **(BY MR. DesCHAMPS)** This is carpet repairs. Do you see that?

A I do.

Q So these minutes indicate that the board was informed during this meeting that additional repairs were needed as a result of the carpet installer slicing through the waterproofing; is that right?

A Yes.

Q And then Mike Runcer (phonetic), does he work for the management company?

A Yes.

Q And he said those repairs have been done, and

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the carpet company paid for the repairs?
A Yes.
Q So that is talking about the carpet company who came and did the carpet replacement in 2010?
A It would appear that that is what that means.
Q So they found that that company sliced through the membrane some, you guys called them back, told them it had damage, and you had them try to come and fix it?
A It appears that way, yes.
MR. DesCHAMPS: I'll introduce Defendants' 72, please.
MR. STANLEY: No objection.
THE COURT: 72 is in evidence.
(Defendants' Exhibit 72 admitted.)
Q **(BY MR. DesCHAMPS)** Mr. Spencer, I'll hand you what is marked for identification as Defendants' 76. These are invoices from a company called Indigo Homes and Investments; is that right?
A Yes.
Q Dated December 2010?
A Yes.
Q That is after the carpets were replaced, right?
A Yes.

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Q And Wedgewood Building 4 and 9, do you see that?
A Yes.
Q If you look at the description of the work, it says it was to remove and replace rotted double end posts on the second floor landing at the end of a rail post; is that right?
A Yes.
Q That is talking about on the front walkways, right?
A Yes.
Q And what it is talking about is rail posts that they found rotten -- something rotten under the rail posts on the front of the walkways?
A Yes.
Q So that is under the carpet, under the membrane that wasn't replaced, right?
A No. The rail post has nothing to do with the carpet.
Q The rails are on top of the carpet, right?
A I expect that the carpet was cut around the rail post, but I don't know.
Q They are in the same place?
A Yes, but I don't think they are connected.
Q Take a look at the second page. Wedgewood

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Buildings 1 and 2, and this is December 2010?

A Yes.

Q And replace rotten double end post on the second floor stairway landing by steps, right? And so that is some repairs in the front walkways, right?

A Yes.

Q Do you know if these were the same before where the carpet installer sliced through something and caused these problems?

A I do not know. Again, I don't recall this specifically. It is what it is. I would defer to the minutes on what we did. These are maintenance issues that -- the types of issues that we dealt with when we would have our meetings --

Q Right.

A -- four times a year. It is just maintenance, routine maintenance.

Q The Miller Dodson reserve guy said you should replace the membrane at the same time as the carpet because they are glued together, right?

A It may have said that, but we would not replace membrane unless we needed to.

Q But wasn't he telling you that by pulling up the carpet, that it's glued to the membrane, and in

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doing so you could damage the membrane? Isn't that what he is telling the board?

A I'm not certain about that.

Q Do you think maybe these repairs that you had to do to the walkway after that was because they were damaged when you replaced the carpet and didn't replace the membrane under it?

A I really do not know.

MR. DesCHAMPS: I move to introduce Defendants' 76, the Indigo Homes invoice.

THE COURT: Any objection?

MR. STANLEY: No objection.

THE COURT: Thank you. It is in evidence.

(Defendants' Exhibit 76 admitted.)

Q **(BY MR. DesCHAMPS)** I'll hand you what is marked as Defendants' 71 for identification purposes.

May I see which one I handed you? Okay.

If we could look at the first page of this, this is another check that the association wrote to a vendor. This one is dated January 20, 2012?

A Yes.

Q For $12,595?

A Yes.

Q And if you look at the vendor, it is GH Greg

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(phonetic)?
A Yes.
Q And then the second page of this is from the GH Homebuilders?
A Yes.
Q For the same amount, $12,595.
A Sorry?
Q This would be for the invoice of $12,000, the date of that invoice is January 2012?
A Yes.
Q And this was for work at all nine of the buildings where you had replaced the ceilings within the exterior breezeways, right?
A It says "refinishing work."
Q Look at the top. Bullet point: "remove existing drywall as needed in all breezeway corridor ceilings, remove existing damage of MiraTEC trim, and reinstall new ceilings," right?
A Yes.
Q So that is going to be underneath the carpet, and the membrane and the wood flooring on the front walkways, right?
A For the second and third.
Q On the first floor, I look up and I see the ceiling, which is directly under the carpet and

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membrane for the second floor?

A Right.

Q And if I am on the second floor, I look up and I see the ceiling for the third floor?

A Yes.

Q So in 2012, the board had damage within those ceilings, and they replaced them in all nine buildings, right?

A I think that we did replace them at that time.

Again, this was maintenance -- routine maintenance. I recall we had some damage to the ceilings in the second and third floor breezeways, just drywall. That is all they were -- they were drywall, similar to what you have on your side walls, but these were ceilings.

Q And they were replaced?

A They needed to be replaced. Some of the taping I remember had come off and was starting to show, and it was looking bad.

Q This was two years after the carpet replacement, right?

A Yes.

Q So could it be when you pulled up the carpet, but didn't replace the membrane, that in doing

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that, it damaged that membrane and caused the damage to the ceilings below that?

A I can't say that. I don't recall the details. I just know that we had issues with the ceilings looking badly, and we wanted to correct that.

Q And it started to look badly at this time, 2012, right?

A Yes.

Q Again, that is two years after the carpet replacement?

MR. DesCHAMPS: I move to introduce Defendants' 76 (sic).

MR. STANLEY: No objection.

THE COURT: Okay.

MR. STANLEY: That was 71.

MR. DesCHAMPS: 71, thank you.

THE COURT: 71 is in.

(Defendants' Exhibit 71 admitted.)

THE COURT: If anyone wants to stand and take a stretch, you are welcome to.

Q **(BY MR. DesCHAMPS)** I'm handing you what is Defendants' 78. Can you take a look at that?

Page 1 of this is evidence of a check written from Wedgewood Association to SB Precision

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Builders; is that right?
A Yes.
Q In the amount of $4,220?
A Yes.
Q And Page 2 is an invoice from SB Precision for the same amount?
A Yes.
Q Dated 2014?
A Yes.
Q If you looked down in the middle of the page, far left, where it says: "Item: Waterproofing and repair"?
A Yes.
Q And then describing it in the middle, "Remove drywall, carpet, rotted flooring, blocking, Hardie trim, railing, brackets, remove and replace 5-inch post and 4-inch posts." Do you see that?
A Yes.
Q And what this is talking about is repairs done on the front walkways of the buildings; is that right?
A I think so.
Q And when it says "remove carpet," that is where the carpet is on the front walkways?
A Yes.

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Q "Remove and replace posts," that is going to be posts on the fronts walkways, right?

A Yes. In this case, it is the second floor.

Q Down at the bottom you see where it says "Sealoflex applied"?

A Yes.

Q Is that the membrane, the Sealoflex type of membrane that goes underneath the carpet?

A I don't have any idea what a Sealoflex is.

Q Do you know or have any reason to say that the need for these repairs wasn't because the board didn't replace that membrane in 2010 when it did replace the carpet?

A No. I don't think that at all.

Q You don't think that?

A No.

MR. DesCHAMPS: I move to introduce Defendants' 78.

MR. STANLEY: No objection.

THE COURT: It's in evidence.

(State's Exhibit 78 admitted.)

Q **(BY MR. DesCHAMPS)** I'm handing you what is marked Defendants' 81 for identification.

Go to the second page of that. Do you see this is another reserve study from Miller Dodson?

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It is based on the following and says: "Visual evaluation and measurements on May 24, 2013"?

MR. DesCHAMPS: That's the next page, Adam.

Q (BY MR. DesCHAMPS) This is right in the middle. It is just to help you with the date. Do you see the date of inspection they performed was May of 2013?

A I do.

Q If you can flip two more pages, the date at the top right-hand corner of this -- the report is dated May 24, 2013?

A Correct.

Q Can you go to Page 3760 on the pdf, so about the middle of that document. If you can go to Page D3. We'll look at the roofing section.

This is part of the condition assessment portion of the report. It starts with the asphalt single roofing. Do you see that?

A I do.

Q "The asphalt shingled roofs are in good condition. We have estimated the remaining useful life of the roofs based on the condition seen at the site, as well as the age of the roofs. We have assumed that the roofs will eventually require replacement, all roofs will be placed with 25-year

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roofs."

Okay. And, then, let's go to the next page. Look at the bottom, the exterior hallway and carpeting. Again, this is similar to the 2007. "With all surfaces glued in place, it's assumed that the membrane, as well as the carpet, must be replaced at the same time. Based on the open location and the amount of traffic, we have given the carpet an eight-year life expectancy."

Did I read that correctly?

A It speaks for itself.

Q This is talking about the front walkways, correct?

A Yes.

Q And what the Miller Dodson report is saying is because the membrane and the carpet are glued together, they are saying it needs to be replaced at the same time, and they are giving both of those components an eight-year life cycle, right?

A That is what they are saying.

Q Go to Page 21, got B5 on the pages on the top right of the document.

A Okay.

Q Look at the top portion about the roofs. So we're familiar with the format now, and when you

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see the total life of the roof based on the 2013 report, they actually extended it from 15 years to 25, right?

A Yes.

Q They came and looked at it and said it looked like they were in good condition, let's extend it from 15 years to 25 years, right?

A Yes.

Q Down further, we'll look at the wood stairs portion of this. As before, they are calling for these to have a 20-year life cycle, and at this time, in 2013, to be replaced, you know, between eight to ten years from then, three buildings at a time, correct?

A Yes.

Q Down at the bottom, Miller Dodson, for the hallway carpets.

A Yes.

Q They got the same eight-year life cycle for the hallway carpets, right?

A Yes.

Q And they were replaced in 2010. This is in 2013, so that's why you got five remaining years for three of the buildings, and so on and so forth? They have to be replaced every eight years?

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A Yes.

Q And if you go to the top of the next page, that is the membrane underneath the carpets?

A Yes.

Q So as before, Miller Dodson is recommending a eight-year cycle for that, and it says there is five remaining years until the membrane needs to be replaced?

A Yes.

Q But he's assuming that the membrane was replaced in 2010 when he is making that recommendation, correct?

A I'm not sure what he is assuming.

Q Well, you can tell that is what the report is based on, right?

Let's look at the bottom.

A It's confusing.

Q Let's look at the bottom of the bullet point: "We assume the rubber membrane under carpet on the second and third floor exterior carpet is glued and must be with the carpet," right?

A Yes.

Q Again, the carpets at Wedgewood were replaced in 2010, but the membrane underneath the carpet was not replaced, correct?

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A Only the membrane that needed to be replaced was replaced.

Q Is the original membrane out there now -- that has never been replaced?

A Some of it is probably original, and some has been replaced. I cannot tell you how much, I just know we replaced it when it was either torn or for whatever reason it needed to be replaced.

Q You replaced it if there was a need for repair?

A That's correct.

MR. STANLEY: If he could, just let Mr. Spencer finish his answer.

THE COURT: Absolutely. Let him finish, sir.

Q **(BY MR. DesCHAMPS)** You guys never replaced the membrane as part of the normal wholesale replacement membrane, right? Any membrane that was replaced is when you made the repairs, and some of them we looked at? If you had a problem, then you would replace the membrane there, right?

A I don't remember that we replaced the membrane without a reason.

Q Never like a wholesale, okay, let's remove and replace all of the membrane because the useful life has expired. You never did that, right?

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A Right.
Q If you could, go to the prior page again. The bullet points down at the bottom, the third from the bottom, same note we saw earlier in the 2007 reserve study is still here in this 2013 one, right? May 30, 2007, deleted caulk seal, right?
A I see that.
Q So the item to do caulking seal was not added back to the reserve study at this time in 2013, right?
A I'm not sure what that means. I think I mentioned that before. I'm not aware of what that even means.
Q We talked about this a little bit in your deposition, but you are not aware in the 20 years that you were on the board the HOA having any kind of maintenance protocol where they repaint the buildings every so often; is that right?
A The board, no. As I mentioned before, we met four times a year. We perform, essentially, the same type of duties each time. We look at the agenda placed before us. If there is maintenance issues, and there always are, we act on those maintenance issues.
Q You are not aware of the HOA having any kind

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of maintenance protocol where they go out and inspect and redo the exterior caulking and sealants every so often, right?

A More on an as-needed basis.

Q You are not aware of the HOA having ever done a project-wide repainting of the exterior trim out there; is that right?

A No. No.

Q And you are not aware of the HOA having ever done a project-wide re-caulking of the exterior area surfaces that have caulk joints, right?

A We have done caulking where needed on a number of occasions.

Q That would be in response to a known issue at a certain location?

A If you are asking do we have a protocol for caulking every window or anything, no.

Q Never done that?

A No. There was no need for it.

MR. DesCHAMPS: I move to introduce Defendants' 81, the 2013 Miller Dodson report.

THE COURT: Any objection?

MR. STANLEY: No objection.

THE COURT: Without objection.

(Defendants' Exhibit 81 admitted.)

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Q **(BY MR. DesCHAMPS)** I'll hand you what is marked for identification as Defendants' 82. You see this is another study from Miller Dodson?

A Yes.

Q And this is dated November 27, 2019; is that right?

A Yes.

Q Can you go to Page 17. It is Page B5, the bullet points down at the bottom. We still have the caulk and seal deleted from the reserve analysis, right, 2019?

A Yes.

Q If you go to Page 38, down at the bottom, "wood trim" section.

In 2019, they report that the wood trim is in poor condition at places, and they are calling for it to be painted, right?

A Yes.

Q And could you go back to B6, which is near the page that we just looked at. It is going to be B6.

Okay. Towards the top of the page, kind of in the middle, there is a section, Line 47, "Wood trim, allowance with paint cycle." Do you see that?

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A Yes.

Q And they've got normal life of eight years, and then remaining life, none.

Basically, trim should be painted every eight years, and it is time to do that knew, is what they are saying, right?

A It appears that is what they are saying.

Q So the exterior painting has always been taken out of this report, and as far as you know, the exterior trim has never been repainted, right?

A It's been painted as needed.

Q But never a wholesale job to hire a painter and repaint all of the trim out there, right?

A No.

Q Leading up to this report, or in the three or four years since then, right?

A No. We paint where we need to paint.

Q Okay.

A Fix what we need to fix.

MR. DesCHAMPS: I move to introduce Defendants' 82.

MR. STANLEY: No objection.

THE COURT: Without objection.

(Defendants' Exhibit 82 admitted.)

Q **(BY MR. DesCHAMPS)** I'll hand you what is

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marked as Defendants' 67.

This is a number of pages together, and we looked at this some in your deposition, I think. If you look at the first page, you see that is a check for $7,405 back in 2010, right?

A Yes.

Q And let's go two pages. Here is another check August 2010, that is $16,975; is that right?

A Yes.

Q Go another page. We have a check here for $12,000, right?

A Yes. I see it.

Q And let's look at one of the invoices here. You have Bates No. 4803, an invoice. You see 4803? This is from GH Homebuilders, right?

A Yes.

Q And if you look, this is for removal and replacement of exterior trim out on the buildings, right?

A Yes, it is.

Q And you may recall that we went through these in your deposition. Essentially, what he said in 2010 was we agreed it was about $87,000 and some change for the removal and replacement of exterior trim on all nine buildings; is that right?

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A It would appear that is correct. Again, I don't specifically remember each and every one of these invoices.
Q I think you told me that of the trim out there now, you don't know what is original and what might have been replaced in 2010?
A That's correct.
Q You also told me that the board had not given this information or these invoices to Ross Clements during his investigation of the buildings years later, right?
A I don't recall telling you that.
Q Is that a fact?
A Restate the question.
Q Did you provide these invoices to Ross Clements?
A I have no idea.
Q Do you know if he knew that some of the trim out there, maybe all of the trim out there, was replaced in 2010?
A I don't know what he knew.
Q Do you know if part of what Ross Clements recommended in his report in 2018 is what he thought was some problem with some of the exterior trim out there?

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A You'll have to ask Mr. Clements about that. I have no idea.

Q Okay. When the board got the report from Mr. Clements, did it say, oh, it looks like he identified some trim issues, maybe we should let him know that we replaced a lot of the trim in 2010? Did the board do that?

A No.

MR. DesCHAMPS: I move to introduce Defendants' Exhibit 67.

MR. STANLEY: No objection.

THE COURT: Without objection.

(Defendants' Exhibit 67 admitted.)

MR. HILDEBRAND: Could we take a minute break?

THE COURT: Yes, we can.

Ladies and gentlemen, I'll send you back to your jury room.

Sir, if you would have the jury refresh themselves, and when you are ready to come back, knock on the door so we know you are ready. Thank you. And do not discuss this case. It wouldn't be appropriate to do so.

(The jury exits at 11:01 a.m., and the following is heard out of the presence of the jury.)

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THE COURT: If you can, look through the exhibits and stipulate. It will go a lot faster. You're going to lose this jury.

(A brief pause in the proceedings.)

MR. STANLEY: I have no objection.

THE COURT: You all agree? What are the numbers?

MR. DesCHAMPS: Defendants' 64, Defendants' 82.5, Defendants' 63 and 104, all stipulated.

(Defendants' Exhibits 63, 64, 82.5, 104 admitted.)

(A recess was taken.)

THE COURT: The jury is also going to let me know what time they want to work today. We started at 9:00 a.m., so I'm hoping they'll go a little late today.

MR. STANLEY: Judge, if we could, we just need about ten minutes to set up for Ross. We have to put the projector up and everything. We have everything ready as we can get it without moving stuff around.

THE COURT: You can't do it right now? I hate sending them back out. Is that possible?

Sit tight for a minute.

If you could, tell them I was thinking maybe

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6:00 or 6:30, but I don't want anyone missing games or anything, so just have the foreperson say who has pending engagements on which dates.

I think we also need to order lunch for the rest of the days other than today and only take a half hour break. Tell them that she'll provide lunch for the remainder of the days.

But tell them I was thinking 6:00 to 6:30.

THE BAILIFF: Okay. The only thing the one said was for tomorrow.

THE COURT: Okay. And that's fine. We can break whenever we need to, that's okay.

MR. STANLEY: Judge, I think the only thing we need to do at this point is to bring down the screen and move the projector over.

(A discussion was had off the record.)

(Whereupon, the jury enters the courtroom at 11:23 a.m., and the following is had in the presence of the jury.)

THE COURT: Okay. We can continue.

CROSS EXAMINATION (CONT.)

BY MR. DesCHAMPS:

Q Defendants' Exhibit 104, that's the 2021 year-end financial statements for the association; is that right?

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A Yes.

Q If you flip through the fourth page of that, this is from the CPA. It is dated July 7, 2022, right?

A It is.

Q This is the most recent year-end financial statements that the board has?

A Yes.

Q And if you go to the second of the last page, we'll look at the reserve schedule again, the most recent one.

A Okay.

Q We'll look at the roofs towards the bottom of the first page there. In the middle column, "Estimated remainder useful life for the roofs." It's all the way over to the middle column there, 001, that is the remaining life of the roof per the association's own replacement schedule. It is time to replace the roof in the normal course of things, correct?

A Yes.

Q If I could have you go to the next page, please. If you could look at the hall carpets and membrane on the carpet again.

Again, we still have the eight-year

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replacement schedule that Miller Dodson has always recommended to the association?

A Yes.

Q So under this schedule, the buildings were finished in 2001, and the membrane and the carpet are to be replaced every eight years, so by 2017 they should have been replaced twice, and then per this year, they should come up for a third replacement in 2025, correct?

A Based on the schedule that they are using, I guess.

Q And we agree that the waterproofing membrane has never been replaced, right, other than some local repairs you had to make, but wholesale there's never been a --

A Right.

Q We talked a lot about the membrane. The purpose is to protect the wood underneath the membrane from water intrusion, right?

A Yes.

Q So it is a waterproofing membrane. If it gets through the membrane, it can damage the membrane underneath, correct?

A Correct.

Q I understand we're not construction managers.

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We hire construction managers, reserve analyst who has a Princeton degree in engineering?

A Yes.

Q I understand you are going to follow those instructions because you are not professionals yourselves, right?

A Yes. We're lay people.

Q But if the board decides not to follow those instructions, and it is that failure to follow the instructions that the things -- that does cause any problems, you can agree that those problems is not Centex's fault, right? That is from not following the experts opinion by the association itself. Can we agree with that?

A No. If I understand what you are saying, to do our fiduciary duty, to do what is in the best interest of our homeowners, we're not going to waste money. We're not going to spend money to replace something just because it is on a replacement schedule. If it doesn't need to be replaced, that is not in the best interest of our homeowners.

Q Let's use a specific example. Use the waterproofing membrane. If Miller Dodson tells the board you need to replace the waterproofing

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membrane at the same time you replace the carpets because they are glued together, and then we come to find out that failure to do that, and keeping that membrane in place, even when you replace the carpet, was the cause of some water intrusion in the decks, then, in that case, the board was not following the advice of the experts, right?

A I'm not a contractor. I'm a layperson. I can assure you, though, that the board tried to do what was in the best interest of our homeowners and fix what needed to be fixed, repair what needed to be repaired.

Q Can we agree that if there is damage on the front walkways, it was caused by damage to the membranes when the carpet was pulled up, and that is not Centex's fault, right? Centex had nothing to do with that, right? Is that agreeable?

A No. I can't say whose fault anything is. I don't know. I mean, I'm not qualified to say that.

Q But that happened in 2010, correct, when the carpets were replaced?

A Yes, carpets were replaced.

Q And Centex wasn't around then, so the decision to not replace the membrane at 2010, Centex had nothing to do with that; agree?

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A We did not confer with Centex, if that is what you are asking. We just tried to do what was in the best interest of our homeowners and save money where we can save money.

Q If I could have you look at what is in front of you there, Defendants' 63.

A Yes, sir.

Q There's the board meeting minutes from back -- way back in April of 2005, correct?

A Correct.

Q You were on the board then?

A I was.

Q You were at this meeting?

A I was.

Q At the top of the second page of these minutes, second sentence, "Jim McGrath stated that caulking around the windows is going bad causing leaks"; is that right?

A That is what that sentence says.

Q And these minutes accurately reflect what was discussed during that board meeting back in 2005?

A I assume so, yes.

Q Can you look at Defendants' 82.5 in front of you?

A Okay.

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Q These are the minutes from the board's meeting of January 14, 2006?
A Yes.
Q And down at the bottom you see the bottom bullet point, "Bill Kerry, owner of Unit 813, he reported that master bedroom window is leaking." Jim Finn was the property manager back then; is that right?
A Yes.
Q So the property manager told the board during this meeting that caulking should be replaced every three, four years, right?
A Mr. Finn might have said that just as a belief that he had. It's just an offhand comment he made.
Q By the property manager to the board?
A Yes. Yes. I don't recall the specifics of this.
Q That was back in 2006?
A Yes.
Q That is why we have the minutes?
A That's why we have minutes.
Q Can I have you look at Exhibit 64?
A Yes.
Q These are the minutes October 28, 2006,

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correct?

A Correct.

Q You were the president of the association at this time?

A Yes.

Q You were at this meeting?

A I was.

Q If I could have you go to Page 2. Roman Numeral 4, Subparagraph B. If we look at the second paragraph -- I mean second sentence starting with "Mr. Gornet."

So Mr. Gornet was the property manager for Wedgewood, correct?

A Correct.

Q So during this meeting, he told the board: "It appears that the windows that are double and triple hung, there is a gap at the top of the strip between the windows. It is believed this is where the leaking is occurring."

Mr. Gornet recommended having an engineering expert look at these windows and try to determine if it is a Centex problem.

The board recommended notifying Centex that an expert will be looking at the windows.

Mr. Gornet stated that he will keep the board

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posted on all developments. Do I read that correctly?

A I do.

Q And so during 2006, the property manager told the board that the double and triple windows out there, there is a gap and it is causing leaks, right?

A It was his opinion.

Q The property manager's, right?

A Yes.

Q And he recommended that the board hire an engineering expert to look at that, correct?

A Yes.

Q Okay. For purposes of seeing if it was a Centex problem back in 2006, right?

A Yes. That is what he apparently said.

Q We talked about this, and you said as far as you know, nothing was done about this. You didn't contact Centex, you didn't hire an engineer, and no further work was done about this?

A I do not recall that anything further was done about this.

Q And as far as you know, whatever these gaps were that property manager was telling the board about back in 2006, that has remained in place

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until today, right?

A Yes.

Q The board never did anything to address it -- these double and triple windows -- at all, right?

A We can look at future minutes to see if the board addressed it. I do not recall --

Q You're not aware?

A -- whether we did or not.

Q And we agreed there was never any kind of project-wide re-caulking and resealing of the windows, right?

A That is correct.

Q You told us earlier when you were talking to Mr. Stanley that what precipitated this lawsuit was that the property manager told you to hire Mr. Clements, and that is what ultimately led to it, right?

A The property manager did not tell us to hire Mr. Clements. Mr. Stanley recommended that we hire Mr. Clements, yes.

Q But in 2006 you have the property manager telling you to hire an engineering expert to look at the windows, right?

A Apparently, he asked -- was concerned about a gap or something at the top of the windows.

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Q And this gap, isn't that something that Mr. Clements identified as well?

A I don't know. You have to ask him.

Q You don't know?

A I don't know.

Q You don't know what he found?

A I do not know what Mr. Clements found in relation to the gaps at the tops of the windows.

Q Okay. If the board would have hired an engineering expert back in 2006 instead of waiting ten years later, then this whole thing -- whatever is causing the problems you say existed with the windows -- could have been fixed back in 2006 rather than waiting until now, right?

A There was not a need that we saw to hire an engineer in 2006 to look at windows. Mr. Gornet is our property manager. It is not uncommon in a board meeting for property managers to throw offhand comments. It doesn't necessarily mean that the board should act on them.

Q But you agree yourself that they are the experts, and you are the lay people, so you should follow the advice of the property managers, right?

A Property managers, yes, we do follow the advice, but not just everything that they say is

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not what we have to do. We get guidance from them.

MR. DesCHAMPS: No further questions at this time.

THE COURT: Okay. Any redirect?

MR. STANLEY: Yes, ma'am. I'll be brief.

THE COURT: They've stipulated they are in evidence.

REDIRECT EXAMINATION

BY MR. STANLEY:

Q Mr. Spencer, Mr. DesChamps asked you an interesting question. He said that you -- did you say that you were happy with your unit; do you recall that question?

A He did.

Q Are you happy with Centex?

A No. No, I'm not.

Q Are you happy that a forensic architect has investigated your property and found that there are original construction defects?

A No, I'm not happy about that at all.

Q Are you happy that you had to bring this lawsuit?

MR. DesCHAMPS: Judge, I'm sorry, but leading.

THE COURT: Okay. Overruled. We're trying

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to wrap it up. Keep going.

Q **(BY MR. STANLEY)** I think I asked you are you happy that you and the board had to bring this lawsuit?

A No, I am not.

Q Would you have preferred not to be here today?

A Absolutely I would prefer not to be here today.

Q Would you have preferred not to have brought a lawsuit?

A Absolutely.

Q Mr. DesChamps showed you several reserve reports and financial statements; do you recall that?

A I do.

Q I think you testified earlier that the first time that you and the board knew of these original construction defects was in 2016; is that right?

A Yes, that's correct.

Q So most of these reserve reports go back to years prior to 2016?

A They do.

Q So the first one that I believe he showed you was in 2007?

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A Yes.

Q 2011?

A Yes.

Q A reserve report that I believe is 2013, and another reserve study that was in 2014. Do you recall that?

A Yes.

Q During those years -- 2007, 2011, 2013 and 2014 -- did the board know that there were original construction directs at Wedgewood?

A No, we did not.

Q And did you know that as a result of those original construction defects that there was damage behind the exterior siding at the time of the reserve reports and financial statements?

A No, we did not.

Q Did you know that there was water intrusion behind your --

THE COURT: You are leading now, Mr. Stanley. I knew you would make that objection. So let's not lead him, let's go. You are testifying.

MR. STANLEY: Sure.

Q **(BY MR. STANLEY)** So Mr. DesChamps also showed you several invoices, didn't he?

A Yes, he did.

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Q And don't you think these invoices he showed you --

MR. DesCHAMPS: I'm sorry.

THE COURT: I understand. Just don't lead him.

Q **(BY MR. STANLEY)** So, Mr. Spencer, in regard to the invoices that Mr. DesChamps showed you, do you believe that they are evidence of the board maintaining the property?

A I'm sorry, repeat that?

Q So these invoices that Mr. DesChamps --

MR. STANLEY: Can I approach, Your Honor?

Q **(BY MR. STANLEY)** Well, do you recall that Mr. DesChamps showed you several invoices?

A Yes, he did.

Q And they related back to 2010, 2014, 2013, and another 2010. Do you recall that?

A Yes.

Q I believe there were five exhibits that were marked that were invoices; do you recall that to be correct?

A I do.

Q Do you recall that those invoices, those five invoices, were an effort by the board to maintain the property?

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A Yes. It was always the board's position that it was in the best interest of our homeowners to maintain the property, to fix what needed to be fixed at the time.

Q Are you asking Centex to pay the HOA back for the invoices you have for those maintenance repairs?

A Yes.

Q You are asking Centex for that?

A Yes.

Q Those five invoices -- tell me how old the Wedgewood project is?

A It was built in 2001, so 22 years.

MR. DesCHAMPS: Your Honor, they have a damages model that has no -- I can speak to it now or --

THE COURT: That's okay. We'll do it at the break. I understand.

Q **(BY MR. STANLEY)** So you are saying the project is 22 years?

A Yes. Yes.

Q And all Mr. DesChamps was able to show you today is five exhibits over the 22 years of the project's life; is that correct?

MR. DesCHAMPS: Judge, again.

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THE COURT: Mr. Stanley, you are testifying at this point, so you have to ask him a question.

Q (BY MR. STANLEY) So you stated earlier, did you not -- did you state that the project is 22 years old?

A I did.

Q And these invoices that Mr. DesChamps introduced to you today, do you believe that to be over the 22 years?

A Those occurred during those 22 years, yes.

Q Do you believe that he only showed you five invoices that are -- five exhibits of these invoices that were marked over these 22 years?

A Yes.

Q Let me conclude with this. You testified earlier that you relied on the management company, correct?

A Yes.

Q And you stated something to the effect of paint what you need to paint, fix what you need to fix, correct?

A Correct.

Q And when you painted what you needed to paint and you fixed what you needed to fix, repaired what you needed to repair, was that per the management

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company's recommendations?

A Yes, based upon the management company's recommendation.

MR. STANLEY: Thank you.

THE COURT: Anything further?

MR. DesCHAMPS: No.

THE COURT: You may step down. Thank you.

Call your next witness.

MR. STANLEY: We call Ross Clements.

(ROSS CLEMENTS, having been duly sworn, testified as follows:)

THE WITNESS: Hugh Ross Clements.

DIRECT EXAMINATION

BY MR. STANLEY:

Q Mr. Clements, good afternoon -- or good morning. Can you tell the jury about your background? Can you tell them about your education?

A Yes. I graduated from the University of Tennessee in 2001 and have a bachelor of architecture degree. It's the first professional degree. It is a five-year degree.

Q If you would, too, tell the jury about the licenses that you hold.

A I'm currently licensed as an architect here

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in South Carolina, North Carolina, and Georgia, as well as Tennessee.

Q And would you also tell the jury about your work experience, please?

A When I graduated from college in 2001, I went to work for an architectural firm in Nashville, Tennessee and did design work for three years. I moved to Greenville, South Carolina, in 2004, and I did design work there for two more years.

Then, in 2006, I went to work for a forensic engineering firm and became the only architect working at the engineering firm. From that point forward, the firm was a forensic architectural and engineering firm.

Following my employment with that firm, I left there and started my own practice in 2011, and I've had my own business running a forensic architecture firm since 2011.

Q And could you tell the jury about your area of emphasis or practice, please?

A My primary focus is on building envelope enclosures and consulting with clients relating to problems that they have with their buildings and water intrusion issues, mainly.

Q Where are you registered to practice

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architecture?

A Here in South Carolina, as well as North Carolina, Georgia, and Tennessee.

Q And how many -- would you describe the Wedgewood project -- what type of project would you describe the Wedgewood project?

A I would say it's relatively common construction for what we see in the Grand Strand for condominium buildings. It is concrete slab on grade with wood frame construction, three stories, and wood truss framing for the attics.

Q How many type of projects like this at Wedgewood have you investigated?

MR. HILDEBRAND: Objection.

THE COURT: Okay. Sustained.

Q **(BY MR. STANLEY)** You investigated the Wedgewood project, correct?

A Yes.

MR. STANLEY: Based on his background and experience, we offer Mr. Clements as an expert in forensic architecture.

THE COURT: Voir dire?

MR. HILDEBRAND: No, ma'am.

THE COURT: Any objection?

MR. HILDEBRAND: No, ma'am.

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THE COURT: Ladies and gentlemen, Mr. Clements is qualified as an expert in the area of forensic architecture. That allows him to give his opinion and the reasons for his opinion, and that is for you to use as you see as appropriate and as compared to other evidence in the case.

MR. STANLEY: Thank you, Your Honor.

Q **(BY MR. STANLEY)** So let's just give a little bit of background, if we could, about this project and your interaction with Wedgewood. Can you tell the jury about when you were first contacted about the Wedgewood project?

A I believe it would have been sometime in the summer of -- late summer of 2016.

Q Who contacted you?

A You did.

Q And what was our discussion?

A I believe our discussion was that you had met with the homeowners association that had recently learned about some problems with their buildings, and you wanted us to meet at the project with the client and the management company and take a closer look at the buildings.

Q After that discussion, what did you do at Wedgewood?

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A So following an initial site visit and meeting with you and the client, it was determined that additional investigative work and destructive testing needed to be done to learn how the buildings were constructed and to learn more about the problems and the things that they may not even be aware of that are problematic about their buildings. So we scheduled destructive testing and additional site visits to be done in late November and early December of 2016.

Q And as a result of those site visits what else did you do?

A Well, following the initial site visits with the destructive testing, we reviewed and filed documents as they became available and researching the as-built construction relative to requirements such as building codes, industry standards, and manufacturers' instructions that were applicable at the time of the construction.

Q So you said in late 2016 you conducted site visits and destructive testing; is that correct?

A Yes.

Q And, if you could, tell the jury what destructive testing is, please.

A Yes. So destructive testing is where we take

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apart the exterior cladding of the building, remove brick off the side of the building or remove fiber cement siding, which is the horizontal lap siding that you see on the outside of buildings and houses.

When we take those materials off, we can look underneath those materials, what we call the weather barrier or flashings or window installation, and try to learn more about how the buildings were constructed, and see whether or not there is anything about the way it's been constructed that is causing damage to the buildings.

Q And are you making any destructive cuts to the buildings to examine them or investigate them?

A I'm not personally doing it. I'm directing a contractor who is working with me, you know, assisting me in that process. I'm directing them as to where I would like to do test cuts to learn more about the building, and that actual physical labor is being done by other -- another entity that is a contractor.

Q So are you directing the contractor to make destructive cuts on a building?

A Yes.

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Q And who was the contractor that assisted you in those destructive cuts?

A Initially, it was Watkins Services.

Q After your site visits and destructive testing, did you do any additional investigative work at Wedgewood?

A Yes.

Q Tell the jury about that, please.

A I would say over several years when the -- when the homeowners reported a leak, whether it is water intrusion that showed up on the ceiling of their unit or a soft area on the balcony or walkway, or another problem they became aware of, and that it is reported to the management company. It is reported from the management company to you, and you would let me know that you would like for me to go out and investigate precisely what it is that is being reported and what is causing that leak or that water damage at that location.

Q And do you know how many days, approximately, of site visits you made at Wedgewood?

A Yes. Total, I've been at the Wedgewood project 31 times.

Q Does that include your days of destructive testing?

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A Yes.

Q And as a result of your site visits and destructive testing over 31 days, have you prepared any reports?

A Yes.

Q And what reports have you prepared?

A My initial report was prepared in March of 2018, and it is a comprehensive report that includes all of the information about the property, what we found that was deficient, reporting about the damages, and also all of the manufacturers' instructions, building codes, and industry standards that support the opinions that I have within the report about the bad construction.

And then I also have an addendum report that I issued as well, and I don't recall the date, but it was a couple years later.

Q As a result of your findings at Wedgewood, did you advise the board that there were original construction defects?

A Yes.

Q And as a result of that, do you know what action the board took?

A It's my understanding they filed suit against Centex after that.

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Q And based on these findings, your site visit, destructive and reports, have you prepared a PowerPoint presentation to present to the jury.

A Yes.

MR. STANLEY: Your Honor, if we could.

THE COURT: Yes. Go ahead.

Q **(BY MR. STANLEY)** Will it help you to come around here, or are you good?

A I'll try here first. Some of the things that are in the initial parts of the PowerPoint, Mr. Stanley asked me a moment ago so I may touch on some things you just heard, but I'll try to move through them quickly.

As we spoke of a moment ago, Wedgewood is comprised of nine buildings that have three stories.

THE COURT: Can you all see?

THE WITNESS: It would be better if the lights were lowered.

(A discussion was had off the record.)

A There are 111 homeowners that are affected by these buildings. The project is located within Barefoot Resort on the other side of the Intracoastal Waterway near where Highway 22 meets Highway 17.

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This is a site plan that shows the nine buildings. You see them labeled on the roofs of the buildings.

They were constructed starting in 2000 and finished in 2001. They are concrete slab on grade, wood frame walls, exterior walls are clad with brick veneer and fiber cement siding. Fiber cement siding is usually a generic name for like Hardie board or Hardie panel. It was engineered wood trim, called MDF, which is a medium density fiberboard, and then vinyl windows and roofs with shingles.

This is what the front elevations look like typically, a side elevation, and a rear elevation.

As mentioned, I met with the HOA in 2016. Some of the members of the board met Mr. Stanley and made visual observations of the existing buildings, and then we were retained by the HOA to investigate the buildings further.

We are looking at the exterior walls, windows, and doors, walkways, balconies, and the roofs. The investigations include visual observations, as well as destructive testing to better understand how the buildings are constructed.

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We want to look at different cladding materials and the interfaces between those cladding materials. We document everything we find with photographs and field notes.

We performed our investigation in November of 2016. Like I mentioned, Watkins Services was approached by me to serve as the contractor assisting me with the destructive testing. Watkins Services agreed and provided contractor assistance.

In that relationship, it has been customary for Watkins Services to provided expert witness services as a co-expert with Fuller going forward, if there is litigation.

After assisting Fuller with the destructive testing, we learned that Watkins Services was retained by Centex to serve as their defense expert.

Additional site visits were performed in August of 2017 with Procon and Associates helping us with contractor assistance for additional destructive testing. We did site visits in '17 and '18 related to ongoing leaks reported to me.

Then we issued our initial report on March 2 of 2018.

We made additional site visits responding to

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calls about leaks, and then expert witnesses for the defendant, Centex, performed their own destructive testing and investigative work on several dates, including January 7, 2019, September 16 through 19, 2019, and June 9 and 10 of 2020. We attended all of their site visits as well and observed all of their destructive testing.

We issued an addendum report on November 19, 2019. Within that period of time, we visited the site 31 times.

MR. HILDEBRAND: Your Honor, I have an issue to discuss before the next slide. I think it should be outside of the jury. It is a legal issue.

THE COURT: All right. Ladies and gentlemen, I'm going to send you back out to your jury room very quickly. I'll tell you that I plan on taking lunch at 1 o'clock, so you can anticipate that.

Leave your pads in your chairs. Don't discuss this case, and we'll be right back in. Thank you.

(The jury exits at 12:09 p.m., and the following is heard out of the presence of the jury.)

MR. HILDEBRAND: On Page 13, I noticed that they are leading into building codes. It says,

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"Applicable building codes 1997 standard building code." In order to lay a foundation for him to testify about this --

THE COURT: I'm sorry, what's the problem?

MR. CONNELL: I was just going to change the slide so you could look at it.

THE COURT: Thank you.

Go ahead.

MR. HILDEBRAND: Upper left you say the 1997 building code. It's construction law 101, every case the plaintiff has the obligation to introduce the local ordinances, the Supreme Court in *Kincaid versus Land Development Company* specifically addressed this issue and said that the adoption of a local building code is not subject to judicial notice, and plaintiffs have to put on evidence. So if they have that evidence, then they can introduce it. If not, then he can't testify that that was the code in effect.

MR. STANLEY: So he can testify what he has done to research that code?

THE COURT: He just needs to say when municipality or whomever adopted the building code.

MR. HILDEBRAND: With all due respect, it is beyond that. They have to introduce the ordinance.

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MR. CONNELL: I don't think so.

MR. HILDEBRAND: Yes, you do. Look at the case.

THE COURT: It shouldn't be hard. You should be able to pull it off of your computer, the ordinance. I mean, it shouldn't be difficult to do.

MR. HILDEBRAND: They have to introduce the ordinance.

MR. CONNELL: You don't deny that the 1997 code applies, do you?

MR. HILDEBRAND: The question is --

MR. CONNELL: You've been arguing about it the whole time.

MR. HILDEBRAND: You asked a question, may I answer it?

MR. CONNELL: Sure.

MR. HILDEBRAND: The answer is: Under South Carolina law, the courts do not take judicial notice of local ordinances. It is your obligation -- it's not my burden of proof, it is yours -- to introduce the foundation for the evidence you want to introduce.

Local -- so you have to introduce the local ordinance that adopts the building code before this

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witness can testify.

THE COURT: He's not going to stipulate, is what he is saying.

MR. HILDEBRAND: Read the code.

THE COURT: I think if you won't agree to it, then I think you do. But you should be able to pull up the code right there and print it out when it was adopted, and just hand it to him and say it was adopted by....

MR. CONNELL: He can base his opinion based on his own investigation of what the code was. He's an expert.

THE COURT: Give me the case law. Give me the case that sets it out.

MR. HILDEBRAND: I handed you the brief, Your Honor, *Kincaid versus Land Development Corporation*, and it dealt with this exact issue.

MR. CONNELL: It is a jury charge, not an expert's opinion about what is going to happen.

MR. HILDEBRAND: If you are familiar with it, then why are you --

MR. CONNELL: I'm just reading what you said. It's a jury charge.

MR. HILDEBRAND: If the court -- yeah, you cannot -- look at the second page, you cannot take

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judicial notice.

MR. CONNELL: That is a different thing than an expert testifying about his understanding of the review of other materials that decides the 1997 building code applies.

MR. HILDEBRAND: Your Honor, every case I've ever had or tried on this issue, every single one, they introduce the local ordinance. They have -- he can't testify about what the City of North Myrtle Beach's adoption process were that were in effect.

MR. CONNELL: He certainly can. He can say that he investigated it and what he normally does in what building code applies, how he decided that, and in his expert opinion, he came to that conclusion based on years of doing this. Same thing -- you don't think he goes to every building department he wants to --

MR. HILDEBRAND: Well, Your Honor, it's your obligation to do that, I'm sorry.

THE COURT: Sir, yes.

THE WITNESS: Can I step down?

THE COURT: Oh, yes.

MR. HILDEBRAND: Every case I ever had -- check with your husband, he does it.

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THE COURT: I know. Let's do this. Let's break for lunch with this jury and -- if you guys are okay, I'll tell the bailiff to tell the jurors to go to lunch for, roughly, an hour or so without bringing them back in here. I don't think we need to torture them and tell them we'll be back.

I'll have Kylyn go with them, and you will go with them as well, and just instruct the jury it is 12:15, and we'll ask them to be back in their jury room in 1:30.

Kylyn, go with them to be sure, but don't walk all the way into the jury room.

So we'll take a break for lunch, and let's keep talking about this.

You just need to find where it was adopted and the legislation. I mean, you're required to do this.

MR. CONNELL: I don't think we are, Your Honor. He's an expert. He can testify about how he did it, just like an expert can offer all sorts of stuff that is not admissible. I mean, if we want to later on --

THE COURT: You mean as far as a jury charge is concerned?

MR. CONNELL: Yeah. If he wants to talk

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about jury charge --

MR. HILDEBRAND: It is reversible error. Every other case --

THE COURT: I've done it in every case, too. I mean, I can tell you that is part of it.

MR. CONNELL: If he testifies, I found this to be what I do in my normal course as an expert, this is what I use, this is how I determine this. There is nothing wrong with that. Experts testify all the time about stuff that may not have been admissible for some reason. It is done every day.

If we want to put in -- if he has a big harp about that -- they've been asking about the 1997 building code all the way through this thing already, but if you have heartburn, I'll get the ordinance and put it in.

MR. HILDEBRAND: I'll be fair. I'm onboard with the Court. What the case is saying is, unless he has the ordinance, then he's not prohibited from talking about it, but he can't reference it as an adopted standard building code that was required.

He can say it was the standard and he thought -- it is a standard that he thinks would be applicable, as he would maybe other industry standards, but that is it. It does not --

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THE COURT: Is there any question that it was adopted?

MR. HILDEBRAND: I have no idea. I've had trouble with this in the past, because this happened in the -- in a case in Charleston, and they never were able to find it. I don't know that they did.

MR. CONNELL: I believe your own expert said the '97 building code applies in his deposition.

MR. HILDEBRAND: But that is not my obligation to support it. Like the Judge said, it is your obligation.

MR. CONNELL: That's a jury charge. That's not --

MR. HILDEBRAND: It's a local -- the law is that you can't take judicial notice of local ordinances. You've got to bring in the legislation.

MR. CONNELL: It is an issue of whether the expert can testify as to his understanding of it based on his professional opinion.

THE COURT: So you are saying you think that he can say he believes that the 1997 code was adopted. Now, he could be wrong.

But you are saying that he can't take the

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next step and say that it is a building code violation because he hadn't shown that it was adopted. Is that what you are saying?

MR. HILDEBRAND: He can say he believes it was a relevant standard and he doesn't feel that that standard was followed. But he can't say that it was an applicable building code because it was -- without you setting the foundation.

MR. CONNELL: I do not think that is the case.

THE COURT: I do think it is.

MR. CONNELL: That case is about a jury charge, not about an expert's opinion.

THE COURT: I understand that.

MR. HILDEBRAND: But if you read it, it is directly on point.

THE COURT: In this case it didn't matter because the Court already directed a verdict as to liability, so it didn't matter anyway.

MR. HILDEBRAND: You hit on a good point, because now they've been adopted state-wide, so you don't have to do this except --

THE COURT: Exactly. Okay. We should be able to go in and find....

MR. CONNELL: I will, but I don't think it

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prohibits his testimony at this point.

THE COURT: I was taught that you had to do that. I mean, absolutely. And I did it in every construction case I tried, I mean.

MR. HILDEBRAND: If you want him to testify it is the standard.

THE COURT: No, he wants it to be a building code violation.

MR. CONNELL: Exactly.

THE COURT: I know what you want. I'll see if I can find it as well.

What else do we need to do? Are you moving this into evidence, or what are you doing with this?

MR. CONNELL: We are going to at the end.

THE COURT: Can you agree? I don't know if you were moving your report in, if you were moving this in (indicates).

MR. CONNELL: That is the compilation of everything in those slides, and it includes the pictures that I've given to them that was taken in the original investigation.

THE COURT: So are you objecting to that?

MR. HILDEBRAND: If it is good for the goose, then it's good for the gander.

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THE COURT: If you both agree, let's put them in.

MR. HILDEBRAND: I'm fine.

THE COURT: So we're not going to put in his full report, because that is what I was following along with, but now I'm just going to watch this.

So, then, as far as estimates are concerned, are we going to agree that they come in, both of them? Are we okay with that?

MR. HILDEBRAND: I'm fine with that.

THE COURT: So let's all agree on that.

MR. HILDEBRAND: And for the record, this one page, Page 13, until we can get....

THE COURT: Can we mark these as exhibits, Stacy, so when we refer to it, we're talking about -- if that is okay? So if you have a full set, it needs to go in.

Will and Tom, make sure you have a copy of it. You are ready to put yours in?

MR. HILDEBRAND: For ours, yes, ma'am.

THE COURT: Yes. So the clerk has it.

So we'll be at ease. Anyone need to talk anymore?

I let the jury come back at 1:30, so if anything changes, I'll let you know, and I'll do my

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own research.

(A lunch recess.)

THE COURT: Please be seated.

Have we resolved any issues?

MR. CONNELL: It is on your desk.

MR. HILDEBRAND: And I'll stipulate at this point.

THE COURT: Perfect. Thank you. Let's bring in the jury.

MR. HILDEBRAND: Oh, wait, I'm sorry. I'm sorry. I don't want to have to interrupt the jury. Before Mr. Clements gets started, there are a couple of issues that I ask the Court to address as the gatekeeper on structural items. I mean, you can't un-ring the bell if he starts testifying --

THE COURT: I agree. So what is he going to testify to?

MR. CONNELL: Two things. So why don't we let him testify about everything but structural, and we'll make a proffer about the other condominium units. So you can hear the proffers at the end of the testimony and make a decision on both of those issues, because we've got his PowerPoint on that at the end.

THE COURT: Okay. So you are going to

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proffer projects that he looked at himself; is that correct?

MR. CONNELL: Yes, ma'am.

THE COURT: And had the same issues, correct?

MR. STANLEY: Correct.

THE COURT: I guess what I'm trying to figure out on the Unfair Trade Practices Act is not the construction deficiencies themselves that is capable of repetition, it is the same line -- I apologize for saying "line," I don't mean it in that way. I mean the representations that we built a good product, we have Centex Certainty, we've got such-and-such -- you see what I'm saying?

MR. CONNELL: Could be both, Your Honor. The marketing documents already in evidence, and the construction defects are the same.

THE COURT: Just because someone is negligent though doesn't mean that it necessarily is deceptive.

MR. CONNELL: Is it not a negligence claim. Unfair trade practices is almost strict liability. That is the difference.

THE COURT: No, I understand that. That is not the point. What I'm saying is -- what is he going to testify to other than he'll say the same

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type of problems that I saw at Wedgewood, I also observed at -- I don't know -- what are the other projects?

THE WITNESS: Clearwater Bay and Willow Bend, which are neighboring communities.

THE COURT: Okay. Are you okay with them not talking about the structural issues, let's not talk about the other projects until we can take a break until you're wrapping up? You can say it's time for us to take a break, and then we can go ahead and have his proffer. I can hear what he has to say, go from there, and then bring back the jury back in if we need to.

THE WITNESS: The structural issues are in the middle of the presentation, so you have to figure out when to stop.

MR. CONNELL: When you get to that point, we'll flip those over.

THE COURT: Can you look at it now and mark them so we know?

MR. HILDEBRAND: I think it is two, four, and seven.

On the proffer, if we get into the other two cases...

THE COURT: I'm listening.

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MR. HILDEBRAND: I'm so sorry.

THE COURT: Oh, no, I'm good. Yeah. Go ahead.

MR. HILDEBRAND: I thought that you already ruled on that issue on the other cases. If we're going to get into those, that is going to extend it in a pretty substantial -- my time, because I told you my expert --

THE COURT: I'm concerned now that I understand he did the inspection on those, is my understanding. He actually went and looked at them himself, correct?

MR. CONNELL: Yes, ma'am.

THE COURT: Because they are your two cases?

MR. CONNELL: Correct.

THE COURT: Okay. So your two cases. He did the inspection of them, and I understand Mr. DesChamps argument and yours was, well, if he's going to generally say that we have the same type of construction defects, you have to say, all right, what wall did you look at, where did you find this exactly, and you were talking about mini trials within this trial. I understand that.

But I am concerned, I can tell you, on proving the unfair and deceptive trade practices

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case for cause of action. I don't know how there is any other evidence other than, yeah, it happened, and it continued to happen.

Again, I don't know if you are saying it is supervision, is that part of what you said before? You thought it was like a lack of supervision here, lack of supervision? Because it is the deceptive practice, it is not the actual construction defects. It is the holding it out there as this is a great product, and it's not.

You also would have to show that they did that in later projects, and I don't know how you do that, Mr. Connell.

MR. CONNELL: He knows it.

THE COURT: Does he have the literature that says --

MR. CONNELL: No. But that literature should be enough. We're trying to prove it in this case.

THE COURT: I understand, but was it just as to this project?

MR. CONNELL: Yeah. That is what was testified to.

THE COURT: Right. I let you in the opening, and you objected, but I thought it just had to do with Wedgewood?

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MR. CONNELL: It does, but it is a Barefoot marketing ad.

THE COURT: Let me ask you this, because I was a little confused. Because, originally, when you asked Mr. Spencer, I believe, you asked him whether or not it was directed to Wedgewood or Barefoot Landing, and there was two different answers given. I wasn't sure if it was specific as to Barefoot Landing, which would encompass all of them, or just Wedgewood.

MR. CONNELL: Do you want to see?

THE COURT: Yeah. I think I want to see it.

My question also is: How do you show that other people saw this?

MR. CONNELL: You don't have to, Your Honor.

MR. HILDEBRAND: Your Honor, that goes to impact on the public. And for crying out loud, Your Honor, the statements made in here -- if these are unfair or deceptive trade practices, just to say that -- I mean the way -- it is a brochure saying we've got amenities available. We've been around a long time. Show me what in this brochure is unfair or deceptive in a trade.

It is such -- for them to say -- making those very broad -- it is like puffery that we all

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learned in law school, selling a product. There is no -- if they would have said these roofs were constructed with 45-year shingles, and we didn't do it and knew it, then maybe that. But just these general comments that you would have that could subject us to an unfair trade practices claim in South Carolina, simply on these benign statements? If that can subject you, then I think every business would be subjected to an unfair trade practice. They couldn't even advertise their products because someone could say these general statements you made about quality can be proven if it's shown that you didn't -- that you were negligent or that you didn't do something perfectly. Your Honor, there is nothing that smells bad with this, in my view.

THE COURT: I mean, what you are saying is this is just puffing and marketing, and you shouldn't be liable? I don't know. I think maybe.

MR. DesCHAMPS: I think the Wright case that we cited actually goes into that puffery and advertising language and doesn't give rise to --

THE COURT: Right. I'm going to reserve it until I hear what he testifies to, as far as those.

Obviously, your cross examination is this:

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These were $150,000 condo units. They are not going to be built like they are a million dollars. So you can use that as your way to cross examine that, I mean.

MR. HILDEBRAND: But, Your Honor, that is where the prejudicial impact -- I think you nailed it on the head when you said the jury -- let's keep it to this project. Let him argue his points about this project.

THE COURT: I don't know what he is going to testify to. We'll allow him to do the proffer, I'll hear it, and then I'll decide whether I'll allow it. But we won't do it and beat it like a dead horse.

MR. HILDEBRAND: Okay. Okay. Got you.

THE COURT: Okay. Let's bring in the jury now, please.

(The jury enters at 1:53 p.m., and the following is heard in the presence of the jury.)

THE COURT: Welcome back, ladies and gentlemen. We're going to go ahead and continue.

DIRECT EXAMINATION (CONT.)

BY MR. STANLEY:

Q We were stopped at the presentation of this line. Do you want to continue?

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A Tom, can you move your -- thank you.

Folks, this is where we left off before lunch. We were talking about the investigative work that I had done and the site visits that I made. Following those site visits, and as a part of issuing the report in March of 2018, the addendum report in November 2019, the research that we did following the site visits included reviewing the applicable building codes, including the 1997 standard building code, and the 1995 model energy code, as well as other codes that apply.

We also compared the as-built construction with industry standards that applied at the time of the construction, as well as manufacturers' instructions for the building products themselves.

Starting with the exterior walls, these are the conditions that we found as part of the investigation.

Starting with the weather-resistant barrier, I want to explain what the weather-resistant is and what a drainage wall is.

When you see this wall section, that is what we call an isometric drawing of a cut-through of a typical building. You see -- above the window you see a steel lintel and flashing, and above that is

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a weather barrier. You see the top is called house wrap or building paper? That is what you think of when you see houses under construction and the paper wrapped around the house. It usually has something written like "Tyvek" or something like that.

The building paper is installed all the way down to the base of the wall, and then there is flashing at the bottom of the wall to let water out. When you have a drainage plane or water managed wall, it means that water is going to get through the exterior cladding, and it is going to get behind that exterior cladding and get to the weather barrier and the flashing behind it.

So everywhere that there is a penetration through that drainage plane, and through that cladding, like at a window or at the base of a wall or door or balcony, you want to be able to let water drain out from behind that cladding.

It is not just a matter of sealant joints. Sealant joints are just part of it, but the reality is water goes through the exterior cladding, right through the brick within the field of the wall. So you want to have the drainage plane complete behind the cladding to allow it to drain to the exterior

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and to allow the water to drain to the exterior.

As part of our investigation, when we did our testing and removed the exterior cladding, we found there was missing weather barrier behind the cladding. You see above the balcony location that there was weather barrier installed above, and then it was missing, and then it showed up further down. So the drainage plane is not complete. So when you have it incomplete, water is able to migrate into the wood framing of the structure and rot out the building.

These are more examples of missing barrier.

Again, missing weather barrier on the walkway beams.

Go ahead.

Q Let me ask you, this photograph, can you identify the two men working?

A Yes. That is contractors that work for Watkins Services.

Q What are they doing?

A They are assisting us with the testing by removing the exterior cladding.

Q How do you know they are Watkins Services employees?

A Because I coordinated working with Watkins to

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do the destructive testing, and they were wearing Watkins Services shirts.

This is another missing weather barrier behind the cladding. The weather barrier was sliced in places where it was incomplete because there was damage to the weather barrier during the construction process that was left unsealed.

This is another example of weather barrier that is sliced behind the cladding.

Between the brick veneer, which is at the first floor of the building and the fiber cement siding on the second and third floor of the building, there is a band board with metal flashing above and below. That metal flashing you can see in two locations. It is reversed wrap with a weather barrier in a way it does not allow the water to drain out throughout the exterior of the building.

Again, that is a reverse wrap.

Then we also saw that the flashing was caulked up between the Hardie panel and the metal flashing blocking any drainage that would occur at the flashing. As a consequence of the reversed laps and missing weather barrier, we found more rotted wood.

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Same.

Go ahead. Here, the waterproofing on the walkways is rotted. Water damage and the paper fascia is coming off and the gypsum board is falling apart because it is not protected.

Again, more damage to the wood framing.

More damage.

Rotted wood behind the Hardie panel at the floor line.

Again, rotted wood.

Rotted wood.

More wet wood behind the cladding.

Q And, Mr. Clements, what is that instrument in this picture you are using?

A It is called a moisture meter.

Q What does it read?

A The moisture content of the wood building product. The two pins are pushed into water damaged wood.

The standard building code requires the building paper or felt that is behind the cladding to be installed free from holes and breaks. It is also required to be installed where it laps over the lower layer, and we've seen examples where that didn't happen.

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This is from the Hardie trim installation instructions showing flashing above the Hardie trim with building paper. In these slides, you can look to the areas that have the red underlines, but at the top, you see the flashing above the window, you see the weather-resistant barrier over the top to shed water to the outside. And then at the lower part it says, "Do not caulk along the top of the flashing to prevent the water from coming out."

The Tyvek home wrap instructions says to tape any accidental tears or damage.

We'll talk now about cladding and trim. The exterior cladding was a fiber cement siding manufactured by James Hardie. We found that the James Hardie siding was not attached in accordance with the manufacturer's instructions. You can see these measurements here are 17-and-a-half and 20-and-a-half inches, 23 inches, 36 inches, 17 inches.

Go ahead.

Then, in addition to documenting the backside of the fiber cement siding, we also used a probe at some locations to look, basically, into the holes where the siding was installed to look to see if the siding had been attached to studs, and these

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are examples of locations where they had not been attached to studs. The siding should be attached at 16 inches on center into the stud framing.

The basis of those requirements from the manufacturer are based on the window requirements from the building code.

You can see it in the box at the top the 16 inches on center maximum spacing from the manufacturer.

It also refers to the code evaluation report, which is NER-405.

For the type of siding that we have, the product type, the thickness, the fastener type, the type of two-by-four wood frame, and the attachment method, it should be 16 inches on center in order to meet our 100-mile-an-hour wind speed for where the project is located.

There was fiber cement trim not attached in accordance with the manufacturer's instructions, as you can see with the 34-and-a-half-inch dimension and the 39-inch dimension.

The MDF trim, which we talked about earlier, like an engineered wood trim, it was unpainted along the cut edges. Any of the field cut edges, if you have a board of this trim that you purchased

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from the -- that they purchased from the building supply company, they have to cut it to fit around the window in the field. Anywhere where it is cut, it has to be painted before it is installed. So locations like this where you have a cut edge on a 45-degree angle coming out of the window and not painted, that is a problem, and it has led to damage to the MDF wood trim.

This is another example of unpainted trim on the edges.

This is an example of trim that had swelled up from where it was installed and in contact with the walkways on the front of the buildings and where it is down in contact with the carpet. It absorbed water and expanded and rotted away.

Another example of deteriorated wood trim.

During the discovery process in this case, I learned that the HOA had replaced some of the trim in 2010, and that is what this receipt represents, some of the trim replacement that was done that was talked about earlier in testimony. It is my understanding that that trim was replaced because of the deterioration like you've seen with some of the pictures that I've taken pictures of. So they recognized they had deteriorated trim, and they

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replaced it in localized areas.

Again, this building code requirement speaks to the wind load capacity of the siding requirements.

The manufacturer for the trim says to space the fasteners a maximum of 16 inches on center.

And also typical manufacturer's instructions like this LP Smart Start instruction says that for the cut edges of the trim, they need to be painted before it is installed. It says, "Prime and paint all exposed surfaces."

This is regarding the brick veneer. We found that the thru-wall flashing -- we looked earlier at some cut-away section of the building, and you saw thru-wall flashing at the base of the wall, here is an example of what it looks like in the field. What you see behind the brick is a black area that is the black plastic thru-wall flashing that doesn't turn out into the brick and extend to the exterior as shown in the example that I provided earlier.

We also found that black thru-wall flashing where my finger is holding that back, you can see that that black thru-wall flashing is reversed lapped with the weather barrier. So that is an --

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an example of what that would be if you were to tuck your pants inside your boots instead of the outside of the boots, if it rains, water is going to go inside your boots. If you have pants on the outside of your boots, it won't happen. It's the same concept where you have a reverse lap and water can migrate behind the flashing and not to the exterior.

We also found that the brick window lintels, which are steel angles that support the brick above the windows, they were not properly installed at the triple windows that have an arch. They are only supported on one side and not on the other side. They should be supported on both sides by the brick on either side of the window, or it should be treated like a shelf angle where it is bolted back to the wall, and neither of those things were done.

We also found evidence that there were weep holes not installed in the brick veneer. We also found that above the windows there was no thru-wall flashing to direct the water on the drainage plane out and around the windows as required.

We found gaps in the flashing, and these areas point to locations where there are holes in

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between the flashing and the window frame.

We found evidence that metal ties were not installed. They were attached to the wall, but not turned out into the brick veneer to hold it back to the building as required. These brick ties should turn out into the mortar joints between the bricks.

We found evidence of damage to the mortar where the steel lintels extended into the brick on either side. We also found hidden damage behind the claddings and weather barrier in multiple locations. This is an example of sheathing that has rotted behind the brick and weather barrier that you would only know is there through the destructive testing.

Again, rotted wood behind the sheathing -- I mean behind the weather barrier and brick.

Same thing here, water damage behind the brick.

At this location, there is rotted wood above the windows.

Continue.

Okay. Standard building code, which applies to the construction of these buildings, required flashing to be provided as necessary to prevent the entrance of water at openings and/or projections

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through the veneer walls.

Flashing and weep holes as outlined in 2111.1.3 shall be located beneath the first course of masonry above finished ground level, also at other points of support including lintels and shelf angles.

Continue.

These code provisions speak to the proper support of the lintel itself and also to the masonry veneer anchored to wood framing to be attached with a corrosion resistant corrugated sheet metal. So the brick ties are the corrugated sheet metal brick ties that should be embedded in mortar joint for a minimum of one-half of the veneer thickness, and we found multiple instances where that was not done.

The Brick Industry Association, which is an industry standard, also has data that supports the code and the right way to construct the buildings.

This is from the BIA technical notes showing flashing at the base of the wall and weep holes. You can see that the weather barrier behind the brick laps over the top of the flashing. You can see that on the right-hand of the drawing where the felt extends over the top of the flashing.

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Here is another example at a lintel or a shelf angle where you have thru-wall flashing that comes from behind the brick and out through the brick, and it also calls for weep holes.

As the BIA technical notes state, in order to properly drain any water collected on the flashing, weep holes must be provided immediately above the flashing.

The lintels should bear at least 4 inches at each jamb.

Moving on from the exterior walls, we also found evidence of problems with the way the roofs were installed. Starting with the underlayment, we found that the roof underlayment, which is a layer of felt that is installed underneath the asphalt shingle. So you have the wood deck that is your first layer of your roof, and then you've got felt underlayment that goes over on top of that, and then asphalt shingles on top of that.

We found that the underlayment does not completely cover the roof deck. We also found that the underlayment was reversed lapped with the drip edge, which is along the perimeter of the roof at the eave.

The building code requires underlayment to be

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applied shingle fashion, meaning the upper one over the lower one, parallel and starting from the eave. So when it starts further up on a roof, it is not starting at the eave.

Go back one.

Okay. So eave must be submitted to -- or the metal -- or the metal drip edge should be installed under the felt. So when we talked about the metal drip edge being installed over the top of the felt it should be -- the metal drip edge should be underneath the felt so any water that gets below your shingles and onto your roofing felt continues to flow out, because the upper one is over the lower one.

This is an example from the Asphalt Roofing Manufacturers Association that shows a graphic depicting what should be there, and that is your metal drip edge installed continuously across the eave at the bottom right, and then the felt installed over the top of that all the way to the edge of the roof.

Following the findings to the underlayment, we found problems with the attachment of the shingles themselves. We found that the nails for the shingles were overdriven. That was very

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common. I believe it was in seven of the buildings, which we've included in our scope for repair.

Go ahead.

So here we have an example of an overdriven nail there. If the picture were easier to see, you could see that the nails have completely punctured through the top of the shingle. It should be flush with the top of the shingle, not breaking through the shingle, because when it breaks through, the head of the nail does not provide as much resistance to the shingles being blown off during a high-wind event.

There you can see where the nails are, and you can see a shadow because the nails were driven so far through the shingles that they are not holding the shingle anymore. They are all the way through the shingle.

These are -- this is just an example of where shingles were blown off, I believe, in 2016 or '17. I think it was Hurricane Matthew that was offshore. It didn't come ashore, but it was offshore in the Atlantic. They lost a lot of shingles due to the improper attachment of the shingles at that time. So these are areas where there is some building

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paper installed to cover up those areas where shingles blew off.

Based on the wind speed for where this building is located and the building code requirements, the shingles are required to be attached with six fasteners per each shingle.

This is showing where we are in that 100-mile wind speed at that time.

This graphic is from the Asphalt Roofing Manufacturers Association shows on the left nails that are driven properly and seated plush with the top of the shingle. The three examples on the right are not installed properly. They are either high nailed or under-driven where the nail sticks up above, or overdriven where the nail is driven into the shingle, which is the part that is in the red box.

Then we have examples of crooked nails as well.

We also found problems with the way the shingle starter strip was installed for the roofs. That is a layer of shingles that is installed along the eave and rake where -- the eave is the bottom of the slope. The rake is the side of the slope. So along the eave where the water runs off the

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roof, that is where you have this self-sealing adhesive missing on that first layer of the shingle between the first layer and the upper shingle.

The building code requires the shingles to be self-sealing or interlocking. Asphalt shingles have self-sealing strips.

This is an example of where that self-sealing strip should be. That is so when you put the next layer of shingles on top, which is the layer that will be visible, you want that top layer of shingle to be able to be bonded to the lower layer. So when you have wind that comes up and catches the roof, that it is not separating those shingles at the eave.

The sheet metal fascia, that is the white fascia underneath the roof at eaves and rakes. We found that the attachment of that was spread fairly far apart where there were nails 45 inches on center.

This is 32 inches.

We also found evidence where the fascia, the metal fascia, was not installed in a way that it was weather lapped with the metal drip edge. So in this example, you can see that the -- like we were talking about with the weather barrier and the

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flashings where water continues to flow out, at this location you have water that can go back behind the metal fascia at that gap and get trapped in the wood framing behind the metal fascia.

This is an example of metal fascia that has blown off of the buildings in a high-wind event due to the improper attachment.

These are examples of fascia that blew off from the buildings as well.

The drip edge is required to be mechanically attached at 12-inch on center, which is a similar component and piece -- you have the fascia that comes up to the drip edge. The drip edge, according to the building code, is supposed to be attached every 12 inches. CertainTeed, which is a manufacturer of the fascia product, has a requirement for 24 inches on center. So what we saw was examples of spacing of the fasteners that was much greater than 12 inches or 24 inches, and as a consequence, we had the fascia blown off of several buildings.

On the walkways, we found problems with the fire protection. It is difficult to see with the lighting in here, but behind the exterior cladding, removing the exterior cladding, we saw the gypsum

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board, which is the fireproofing installed over the wood beams on the walkways, and that gypsum board was incomplete in places, so the fireproofing is incomplete on the beams.

We also found that the gypsum board -- and when I say "gypsum board," that is like sheetrock or drywall, the same stuff you have inside of your house, but it is fireproof. It is a little different composition and thickness. It is usually five-eighths. "Type X" is what they call it.

Anyway, we found evidence that it was missing in places, and we found evidence that it was not properly taped.

This is an example of where the gypsum board joints was not properly taped.

Again, not properly taped.

This leads to how the water barrier didn't protect -- there was no weather barrier installed at this location to protect the gypsum board from being damaged, so the fireproofing is not -- no longer working as it should.

This is where the building code requires a one-hour rating for the beams, and that is provided through the installation of the gypsum board. The gypsum fire resistance design manual says, "The

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face layers of all systems shall have joints taped."

At the walkways, we found problems with the waterproofing. Earlier this morning you heard testimony about the walkways and carpets and the membrane underneath the carpet. This is a picture of what that looks like. So you have green carpet that has been pulled back, and you see the waterproofing underneath the carpet. We found problems with the installation of the waterproofing.

This reddish color waterproofing is the original waterproofing installed by Centex. It is a Sealoflex product. What we found is that the fabric reinforcement was not properly embedded into the waterproofing, which is a liquid applied product. You roll it on with a roller. So there is a human element to that installation, and what we found is that the fabric reinforcement was not adequately embedded in the waterproofing.

This is another example.

We also took measurement of the thickness of the waterproofing and found it was less than 40 mils, and 40 mils is what is required by the manufacturer. The thickness of the membrane is not

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consistent with the manufacturer's requirements.

We found there was no waterproofing installed on certain areas of the walkways and stairs. Like this is behind a stair riser showing just bare wood with no waterproofing on it.

We also found that the waterproofing did not extend up the vertical surfaces where it was terminated. So this is the other side of a stair riser. As you are ascending or descending the stairs, you would see this part, and the waterproofing just came over and stopped against the riser, but the manufacturer requires that waterproofing to turn up the riser and to have a sealant behind it when it makes that transition at the 90-degree turn.

We also found at columns that there were gaps between the metal drip edge on the walkways and the columns, so water is able to migrate in and around the columns off of the walkway and down into the gypsum board fireproofing below it at locations like this.

We also found nail -- an example here is a nail that penetrated through the waterproofing, and this was an area that had an extensive amount of damage.

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We found evidence of a slice in the waterproofing, as you see here. That red is like a card similar to the size of a soccer referee's card, just like a red card slid in there. So that is about the size of it, and you can see that slice is somewhere around 6 inches long.

This is an example of some of the damage we found below the waterproofing on the walkways.

More rotted wood.

More rotted wood looking from the underside up towards the wood decks of the walkways.

So those silver lag bolts you see extending down -- there is four of them extending down there -- so that is at a location where you have part of your guardrail. The guardrail system has these anchor bolts that hold the guardrail posts to the walkway. At locations where that has been done, there is water intrusion and damage that has been happening from those penetrations through waterproofing so the wood framing and sheathing underneath the waterproofing and underneath the posts has rotted, as you can see in that photograph.

More rotted wood below and guardrail post.

More rotted wood.

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More water damage below the wood post.

You can see this is a location where there is a guardrail post to the left, at the upper middle part of the photograph, and to the right is a stair riser where the waterproofing terminated at the face of the riser and didn't turn up along the stringers and risers as required. As a consequence, we have rot that has happened.

More rotted wood underneath the waterproofing.

This is a location where the waterproofing on the walkway beams is rotted and falling apart. The standard building code has requirements related to liquid-applied coatings for waterproofing. It says in the lower part of the first paragraph: "The dry mil thickness of the coating shall be in compliance with the weather barrier coating manufacturer's specification, and flashing shall be provided as necessary to prevent the entrance of water."

This is the installation instructions from the waterproofing manufacturer. This is Sealoflex' instructions. It says to install cant strips at junctions of vertical and horizontal surfaces. So like when we were talking earlier, when you bring the waterproofing across the floor and turn it up

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at the stairs, it is supposed to have a sealing cant. The upper part of this is also part of Sealoflex' installation instructions requiring that the junctions between decks and walls, that you flash -- basically saying that the waterproofing has to extend up the vertical surfaces of the decks and walls and any other adjacent surfaces, like the stairs. Whether spraying or rolling, ensure good embedding and saturation of the fabric, which we saw examples where that wasn't done.

It says that the total cure thickness should be 40 mils and seal watertight items projecting through the waterproofing.

At the stairs, we found problems with the riser heights and handrails. As you can see in this example, the bottom riser of the stair measured about five-and-a-half inches. At the top riser of that flight, it measured over 7 inches. So that is the difference of about -- go back one more.

Okay. So that is about an inch-and-a-half difference between the top and the bottom, between the risers. The building code requires that there is no deviation in a stair flight greater than three-eighths of an inch.

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We found that handrails didn't have adequate clearance around obstructions like columns and trim. At this location, the clearance is about three-quarters of an inch, and it should be an inch-and-a-half in order to meet the building code requirements.

This is another example where it was about three-quarters of an inch -- actually, less than that at the top, where it meets the trim at the top.

The standard building code says: "Treads shall be of uniform depth and risers of uniform height in any stairway between two floors. The tolerance between the largest and smallest riser shall not exceed three-eighths. The clear space between handrail and wall shall be a minimum of one-and-a-half inches."

Within the attics, we found issues with the fire protection.

We found evidence where the fastener heads were not muddied in the drywall stopping within the attics. There is some black dots on the drywall where the arrows are pointing where the exposed fastener heads are.

We found evidence of seam tape that was

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falling off of the drywall.

We're talking about how there wasn't any tape installed on the walkway beams, but then within the attics, there was tape installed, but there was evidence, at least in one location and one building, where the tape was falling off.

The gypsum fire resistance manual, it says: "The face layers of all systems shall have joints taped and fastener heads treated," meaning there should be drywall mud installed on all of these locations.

That section we have to skip. We might have to exit out of it, Stacy.

Scroll down to the start of the next section. Keep going. Keep going down.

We're okay with this one, I believe -- oh, no.

We'll pick up here with the accessibility regarding the entry stairs and ramps. We found that the ramps accessing Buildings 3 and 6 didn't have the right slope, that they were too steep. They exceeded 1 to 12.

I took measurements of the slope to verify that, and it shows 9.89 percent, which is greater than the 8.33 percent that is allowed.

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We found evidence of ramp -- an accessible ramp that exceeded over 30 linear feet, which it is not allowed to do.

We found entry stairs that had the height of the risers that were too tall. They exceeded 7 inches, which 7 inches is the requirement.

Here is an example of one of the risers being seven-and-a-half inches -- yeah, seven-and-a-half and seven-and-three-sixteenths. They should be no more than seven.

We found that handrails were missing at stairs and ramps where they should be installed. The standard building code refers to the NCA 117.1 for accessibility requirements.

As you can see in the upper part where it is underlines in red: "Ramps in new construction shall have a slope not steeper than 1 to 12." It has the maximum horizontal projection of ramps at 30 linear feet.

It says that risers shall be 7 inches maximum.

This aspect requires that handrails to be installed at stairs and ramps, as you can see in 4.3.10, and they shall be installed on both sides.

We also found problems with a vapor barrier

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that is installed within the walls.

MR. HILDEBRAND: Your Honor, I think this is one of the issues that we've discussed.

THE COURT: Do you want to go past this and we'll take it up?

MR. CONNELL: Sure.

(A brief pause in the proceedings.)

A All right. Picking up with the window installation, we found improper flashing. We found that the rough opening flashing, which is a self-adhered flashing installed at the bottom of the window, we found that the rough opening flashing, which is self-adhered flashing, to be improperly installed over on top of the sealed nailing fin. So it comes back to that reverse lap we were talking about earlier where everything needs to be installed where the upper building material is installed over the top of the lower building material so that water sheds out of the building. When you reverse that, then you have water that gets trapped behind the weather barrier and behind the flashing and rot out the walls.

This is an example -- on the right side where it says "sealed nailing fin," these windows have what is called a "nailing fin" all the way around

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them, and that nailing fin has nails that go through it into the wood sheathing and framing in order to hold the window into the wall and into the rough opening. That flange, that fin, hangs out all the way around the window. It has flashing that goes over it on the jambs at the sides of the window and at the head of the window. But at the sill, that flashing should go underneath the nailing flange so water continues to drain out and not get reversed lapped.

Go back real quick.

One more thing about this. One thing that happens when you have that self-adhered flashing reverse lap with the nailing fin like this is because the nails are driven through that flexible nailing fin, which is made of like a plastic vinyl, there are emulations to that fin, ridges and valleys. So everywhere there is a nail, you have a valley. Everywhere there is not a nail, you have a ridge. So when you put tape over the top, you don't get a good seal at all of the valleys, you just maybe get a good seal at the ridges. So any water blown in around or above that flashing migrates down at those valleys into the wood framing.

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You can see where to the right of that nail you have a black area where the self-adhere flashing still has some of the rubber attached to the flange, and then you have a valley where the nail is, where there is no attachment, and then you have another valley where there is no adhesion of that flashing.

This is another example here. Things that we've been seeing with the photographs, it is not just the flashing that is reversed lapped, it is also the weather barrier that is reversed lapped. So you have two different reversed laps. You have the weather barrier over the top of the flashing, and then you have the flashing over the top of the flange, and both of those things are reversed lapped with the window nailing flange.

We found evidence that the flashing product that was selected and installed by Centex with the original construction was failing. It was falling apart. So this is part of the paper facer that was just falling off of the adhered portion behind it.

Again, here is another example of that defective flashing falling apart.

We also found evidence of locations where window head flashing was sealed shut with caulking.

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And we also found evidence where the flashing above the trim was reversed lapped with the weather barrier on the wall. Again, we want to have that weather barrier installed out over the flashing to keep the water moving out of the building.

As a consequence of these installation defects, we found extensive rotted wood framing and sheathing below windows, as you can see in this photograph. All of that below the window can be taken out by your hands.

This is more of the rotted wood sheathing and framing below the windows. You can see those valleys and ridges where the self-adhered flashing was attached to the flange and where it wasn't.

Again, more rotting in the sheathing below the windows.

More rotted wood.

More rotted examples of rotted wood.

MR. CONNELL: He said this is not matching up, I want to make sure.

MR. HILDEBRAND: Thank you.

(Mr. Connell and Mr. Hildebrand confer.)

MR. CONNELL: Judge, can we talk to you a moment?

(The following is a bench conference had out

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of the hearing of the jury.)

MR. CONNELL: We had to rearrange the slides because of what is going on. I think he has an issue with that, because in the notebook I gave him, it is everything, but it is not in the same order as what we're going through.

MR. HILDEBRAND: I can't follow along.

THE COURT: The slide is -- page numbers are not on the slides?

MR. CONNELL: Page numbers are on the slides.

THE COURT: So is there a way as we're going through it you can look at your copy and say this is page number, and then you can find it? Do you see what I'm saying?

MR. STANLEY: We had to rearrange.

THE COURT: I understand.

MR. HILDEBRAND: The exhibit they introduced doesn't match up with this.

MR. CONNELL: We can fix that.

THE COURT: Should we take a break?

MR. CONNELL: Can we talk to him a minute and make sure we have the right --

THE COURT: Yeah. Yeah. Go ask him. Go ask.

(The following was had in open court.)

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THE COURT: Ladies and gentlemen, take a stand while they hash it out.

(A pause in the proceedings.)

THE COURT: Let's just go ahead and take a break while they figure it out. Their page numbers are not lining up, so they are not sure what they are talking about and referring to. So we'll take a break.

Don't discuss this case. It wouldn't be appropriate to do. So we'll be right back with you all. Thank you.

(The jury exits at 2:46 p.m., and the following is heard out of the presence of the jury.)

THE COURT: This is all over the board. Can you go off the screen being shown to the jury and you can reference --

MR. CONNELL: We took them out of order because of the issues, so the pages are renumbered automatically with the PowerPoint.

THE COURT: Oh, so it changes the PowerPoint. He can't just keep the numbers on it.

MR. HILDEBRAND: Oh, I got it. Okay.

MR. DesCHAMPS: If we can have the first page of the section, we can find it.

THE COURT: On that section? Okay. That

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sounds good.

How far along are we? Should we go ahead and do any proffer, or not?

MR. CONNELL: I think -- Ross, how far are you towards the end?

THE WITNESS: I think we're close. I mean, we have to go back to some other things, if I'm allowed to testify about it.

THE COURT: Should we do the proffer now while they are out and talk about the structural issues that he can or cannot testify to, and also talking about the other projects, right?

MR. CONNELL: Right.

THE COURT: Can I ask everyone a quick question. You might be able to tell me. I know it is common practice for HOAs to bring Unfair Trade Practices Acts, but I can't find any case law that allows an association to bring -- I know people have brought them, but I haven't seen where that has been challenged in any way. Because if you read the statute --

MR. DesCHAMPS: I think the statute says you can't bring it in a representative fashion.

THE COURT: Exactly. And that is my concern. I mean, that is what I've been doing for the last

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20 minutes. I just can't find --

MR. CONNELL: This is not a representative form. This is for common elements. We're not bringing it on behalf of all of the homeowners inside unit problems. This is for common elements throughout. So the only way it can be brought is by the association. An individual could not bring an Unfair Trade Practices Act for common area.

THE COURT: But read the statute.

MR. DesCHAMPS: The association doesn't own the common elements. They are doing this on behalf of the owners who do.

THE COURT: Exactly. I want to find case law. I know lawyers have been doing it and it is probably -- I don't know when you started doing it, but maybe in the last ten years is when I started seeing it. You know, I'm just wondering.

MR. CONNELL: There is a case about class action, because I've had several class action.

THE COURT: But this is not a class action.

MR. CONNELL: But -- but it is the one association, so I think that's the difference.

THE COURT: Is the one association any different than just like a corporation? Because under the law a corporation is treated like an

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individual, so this association -- what is the legal status?

MR. CONNELL: Non-profit.

THE COURT: It's a non-profit. I wonder if we can look under the non-profit statute.

My point is -- show me somewhere where there is a case where it is allowed that an HOA to bring an Unfair Trade Practices Act claim. I would -- you think this would be raised all the time in summary judgment. I would think it, because if you couldn't on behalf of the HOA, defense would be filing motions to dismiss those causes of action. I'm just trying to sit here and come up with one.

You know, the only case we're talking about -- and, really, what this gets me to, Mr. Connell, is whether or not I'll let him testify as to the other projects, because the *Magnolia North* case talks about punitive damages, and we're talking about whether or not you can show gross negligence, and that is another separate issue, but it could go to that portion of gross negligence.

So it isn't completely dispositive, but I'm trying to figure out whether or not even an Unfair Trade Practices Act is appropriate. I know why you want them. I'm just trying to find something that

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shows me. We're going to look in North Carolina.

Let's take five minutes. We'll come back and let's talk about the structural issues, and then get a quick proffer.

MR. CONNELL: We have to talk about structure, vapor barrier, and the issue about the other projects he looked at.

THE COURT: Okay. Okay. All right. We'll be right back.

(A recess was taken.)

THE COURT: Okay. Either, Mr. Connell or Mr. Stanley, will someone bring to my attention what the issue is as to the structural?

MR. CONNELL: We'll show you slides and let him testify about the structural issue, the vapor barrier, and the other projects.

THE COURT: Okay. For the record, my understanding of what this issues is, is that Mr. Clements is a forensic architect. He is not a structural engineer. I read in his deposition when he talked about structural issues, he stated he was not qualified to talk about calculations. What we all know is if you had someone else do the calculations, he could have relied on those and used them, but in this case, I understand that he

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did not, correct?

MR. CONNELL: Correct.

THE COURT: So is he going to talk about them in general, or how is he going to talk about them?

MR. CONNELL: We'll let him go through the slides and tell how he --

THE COURT: Okay. Okay.

THE WITNESS: Okay. That is where the attics are.

PROFFER TESTIMONY

BY MR. CONNELL:

Q Ross, before you start, I want to ask you how you reached these findings and what training and education you had on this particular section of the PowerPoint?

A Okay. So regarding the attics, at some point during the discovery in the case, we received copies of the structural engineering drawings for the buildings. As an architect, I'm not qualified to run the calculations and design of the structural engineering system, but I do have experience reviewing and coordinating drawings and structural engineering drawings with the architectural drawings as my job as an architect.

So what we do is -- me and my architectural

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