

Mar 27 2024**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 III

Stephanie A. Douglas (admitted pro hac vice)
Jeffrey A. Turner (admitted pro hac vice)
Bush Seyferth PLLC
100 W. Big Beaver Road, Suite 400
Troy, MI, 48084
(248) 822-7800
douglas@bsplaw.com
turner@bsplaw.com

Thomas C. Hildebrand, Jr.
William G. DesChamps, IV
Paul Nicholas Nybo
Parker Poe Adams & Bernstein LLP
850 Morrison Drive, Suite 400
Charleston, SC, 29403
(843) 727-2650
tomhildebrand@parkerpoe.com
willdeschamps@parkerpoe.com
nicknybo@parkerpoe.com

Katon E. Dawson, Jr. (SC Bar #101167)
Parker Poe Adams & Bernstein LLP
1221 Main Street, Suite 1100
Columbia, SC, 29201
(803) 255-8000
katondawson@parkerpoe.com

Attorneys for Appellants

Gene M. Connell, Jr. (S.C. Bar No. 1358)
L. Sidney Connor, IV (S.C. Bar No. 1363)
Kelahe, Connell & Connor, P.C.
The Courtyard, Suite 209
1500 U.S. Highway 17 North
Post Office Drawer 14547
Surfside Beach, SC 29587-4547
(843) 238-5648
gconnell@classactlaw.net
sconnor@classactlaw.net

Stacy L. Stanley (SC Bar No.: 13410)
Stanley Law Firm
3303 Highway 9 East
Little River, SC 29566-7825
(843) 390-9111
sstanley@stanleylawfirm.com

Attorneys for Respondents

INDEX

ORDERS

PAGE

Order Granting Partial Summary Judgment, November 18, 2022.....1

JUDGMENTS

Form 4 Judgment on Jury Verdict 8

Amended Form 4 Judgment on Jury Verdict 11

Form 4 Judgment Denying Defendants’ Motion for JNOV 14

DECISIONS

Jury Verdicts.....20

PLEADINGS & MOTIONS

Summons and Complaint.....22

Centex’s Motion for Summary Judgment & Supporting Memorandum 36

Wedgewood’s Memorandum in Opposition to Centex’s Motion for Summary Judgment.....92

Wedgewood’s Supplemental Memorandum in Opposition to Centex’s

Motion for Summary Judgment 251

Centex’s Motion for JNOV, or in the alternative, a new trial 298

Wedgewood’s Response to Centex’s Motion for JNOV or in the alternative, a new trial.....334

TRANSCRIPTS

Jury Trial Transcript.....660

 Opening Statements 775

Wedgewood’s Witness Testimony

 Randall Spencer

 Direct Examination 793

 Cross-Examination.....844

 Redirect Examination.....907

Ross Clements	
Direct Examination	913
Direct Examination	1014
Cross-Examination.....	1057
Bob Gallagher	
Direct Examination	1136
Cross Examination	1173
Centex’s First Motion for Directed Verdict	1202
Centex’s Witness Testimony	
Jeremy Martin	
Direct Examination	1225
Cross-Examination.....	1274
Redirect Examination.....	1301
Recross-Examination	1303
Robert “Bob” Carter	
Direct Examination.....	1304
Cross-Examination	1410
Cross-Examination (Cont.).....	1425
Redirect Examination	1488
Recross-Examination.....	1491
Skip Lewis	
Direct Examination.....	1492
Cross-Examination	1511
Steve Watkins	
Direct Examination.....	1536
Cross-Examination	1547
Centex’s Second Motion for Directed Verdict & Jury Charge Conference	1563
Closing Arguments.....	1614
Jury Charge	1663
Verdict	1690

Punitive Damages	
Presentation	1711
Closing	1715
Verdict	1727
Transcript of Hearing on Centex’s Motion for JNOV or, in the alternative, a new trial	1732

JURY CHARGES

Centex’s Proposed Jury Instructions	1937
Final Jury Instructions	1957

EXHIBITS

Court’s Exhibits

Exhibit 1	1968
Exhibit 2	1970
Exhibit 3	1992
Exhibit 4	2019
Exhibit 5	2034
Exhibit 6	2072
Exhibit 7	2094
Exhibit 8	2115
Exhibit 9	2160
Exhibit 10	2187

Wedgewood’s Trial Exhibits

Trial Exhibit 1	2202
Trial Exhibit 2	2210
Trial Exhibit 3	2279

Trial Exhibit 4.....	2584
Trial Exhibit 5.....	2608
Trial Exhibit 6.....	2613
Trial Exhibit 7.....	2615
Trial Exhibit 8.....	2621
Trial Exhibit 9.....	2670
Trial Exhibit 10	2671
Trial Exhibit 11.....	2673
Trial Exhibit 12	2678
Trial Exhibit 13	2680
Wedgewood’s Trial Exhibits on Punitive Damages	
Exhibit 1	2681
Exhibit 2	2745
Centex’s Selected Trial Exhibits	
Trial Exhibit 63	2748
Trial Exhibit 64	2751
Trial Exhibit 67	2755
Trial Exhibit 71	2766
Trial Exhibit 72	2770
Trial Exhibit 76	2775
Trial Exhibit 78	2777
Trial Exhibit 80	2779
Trial Exhibit 82.5	2794

Trial Exhibit 105	2796
<u>OTHER MATERIALS OR DOCUMENTS</u>	
Centex’s Notice of Appeal	2800
<u>CERTIFICATE OF COUNSEL</u>	2807

1 team, we compared the as-built condition to the
2 drawings that were the sign and sealed documents
3 for the buildings. So it is a comparison between
4 the as-built construction and the drawings that
5 they were permitted with.

6 THE COURT: So is your testimony then that it
7 doesn't comply with the drawings? Is that what
8 your opinion is?

9 THE WITNESS: Yes.

10 THE COURT: But does it go any further than
11 that?

12 THE WITNESS: No.

13 THE COURT: Tell me the objection to that,
14 then.

15 MR. HILDEBRAND: Well, it does go further,
16 because he says that it -- what he sees is not what
17 is shown on the drawings, but he hasn't done the
18 calculations to say that it complies with the
19 structural requirements of the code.

20 THE COURT: He's not going to say that. I
21 thought he just said that is as far as he was
22 going. He is just going to say that, no, it was
23 not as-built as what the drawings called for.
24 Correct? That is the sole thing?

25 MR. CONNELL: It goes to the weight whether

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 they built the buildings in conformity with what
2 the plans say.

3 THE COURT: Which is a requirement.

4 MR. CONNELL: Right.

5 THE COURT: Help me out.

6 MR. DesCHAMPS: I think it goes to duty. He
7 doesn't --

8 MR. HILDEBRAND: If there is no damage, he
9 can't testify about this is a breach of the
10 standard of care and has caused damage because it
11 is a structural issue that is not working or is
12 contrary to the code. He can't say that. All he's
13 saying is, well, here it is done one way, and here
14 it's done another way.

15 THE COURT: So you are saying he can't say
16 that, listen, because it is a structural issue, it
17 needs to be taken out or replaced?

18 MR. DesCHAMPS: Right. And part of it is we
19 say it is the plans. It is not like we have a set
20 of plans for -- I think one of the buildings and
21 one of the building types, when they sent a FOIA to
22 the city, I think one of the building types, a
23 couple of pages it, structural plans were in there,
24 and so it was received in the mail, and that is
25 what they are saying. It is not like, oh, we

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 talked to the architect or structural engineering,
2 here are the sealed plans, we reviewed them all,
3 the as-builts, but that is basically it.

4 And I will say, this whole thing is only one
5 of the three building types or one of the four
6 building types here. So even that is specifically
7 limited to just that.

8 THE COURT: So cross examine him on that.
9 That goes to what he is claiming as damages.

10 MR. DesCHAMPS: But I think it goes to a
11 duty. He is saying I FOIA'd the city and found
12 this document and one doesn't comply with the
13 other. There is no establishment that it is a
14 basis for him telling the jury that it is a basis
15 for a repair recommendation. I mean, he can't say,
16 oh, it is a deficiency, because he is not a
17 structural engineer.

18 THE COURT: Can you say it is a deficiency?

19 THE WITNESS: Yeah.

20 THE COURT: How?

21 THE WITNESS: Well, because the buildings are
22 permitted under that set of structural engineering
23 drawings, and any deviation from those drawings is
24 noncompliance with the signed and sealed documents
25 with which the project was permitted.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 THE COURT: I thought we didn't have those?

2 MR. DesCHAMPS: If he goes there, I think it
3 is a foundation issue. They would have to find out
4 what these structural plans are, are they sealed,
5 are there other parts?

6 Our expert is going so say they could be shop
7 drawings, modifications, just finding without
8 context one piece of paper in a FOIA --

9 THE COURT: Your expert is going to testify
10 because he is a structural engineer?

11 MR. DesCHAMPS: He will respond if you allow
12 it in, but the point is, without any further
13 context, this FOIA and the city and getting the
14 structural plans is not enough to say it is a
15 deviation, that it's a problem.

16 THE COURT: Show me what they didn't do
17 according to the plans. Let's just go through it.

18 THE WITNESS: So the drawings called for
19 these MTS-16 anchors to be installed. This is an
20 example of what the MTS-16 anchor looks like at
21 Building 6 where they were installed.

22 These are trusses in other buildings where
23 the MTS-16 anchors were not installed.

24 The drawings also called for there to be
25 blocking in between the bottom cores of the

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 trusses, and they didn't install that. That is
2 another non-conformity with the drawings.

3 That is an example of what the H2.5 hurricane
4 ties look like.

5 They are supposed to have H2.5 hurricane ties
6 installed on both sides of the bottom cords where
7 they meet the walls, and they didn't install those
8 on both sides.

9 This is a MTT28B tie that is installed at the
10 truss girders, and we found evidence that they were
11 improperly installed.

12 This one was loose.

13 THE COURT: I guess my question is -- I see
14 that it is not in compliance, and some of it is
15 obvious, like missing ties completely. So the
16 ultimate question is: How do we know, though,
17 whether or not it can bear its weight or be
18 structurally safe? Can you say that? I mean, does
19 it meet the requirements?

20 THE WITNESS: It doesn't meet the
21 requirements per the drawings.

22 THE COURT: Beyond that.

23 THE WITNESS: I would look at it from the
24 perspective of there is no evidence that the
25 as-built condition does comply, because the

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 engineer of record designed the building with all
2 of these parts and pieces required, and then it
3 wasn't installed.

4 THE COURT: My question is: Is there a
5 failure other than it not being in compliance as
6 the structural engineer drew originally?

7 THE WITNESS: I'm not aware of a failure at
8 this time.

9 THE COURT: So is it your opinion that those
10 all have to come into compliance with what you are
11 saying? They have to have the 2-bys blocking, all
12 of the ties appropriate, is that what --

13 THE WITNESS: In order to comply with the
14 construction documents that the buildings were
15 permitted under.

16 MR. DesCHAMPS: Judge, may I?

17 THE COURT: Yeah.

18 MR. DesCHAMPS: On the construction
19 documents, so this isn't a situation where an owner
20 hires an architect and hire a general contractor
21 and enter into a contract, and then general
22 contractor as that obligation -- Centex owned the
23 property, gets plans, and then builds them up, and
24 when they are done, they are going to sell the
25 units. There is more than one way to have code

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 compliance, and it is not unusual, per what I
2 understand from our structural engineer -- you
3 know, there is more than one way to meet
4 compliance.

5 THE COURT: So how does it -- how does that
6 go to the weight and not the admissibility?
7 Because you can cross exactly what you are saying.

8 MR. DesCHAMPS: There is not a threshold
9 deficiency that he established that exists. There
10 is nothing for us to respond to. I mean,
11 especially this, in and of itself, noncompliance
12 with those plans is not a deficiency.

13 THE COURT: Well, ask him that.

14 MR. DesCHAMPS: But -- but it is the burden
15 of a threshold showing a deficiency for us to
16 respond to; otherwise, it is more money put in this
17 estimate that the jury is going to be given a lot
18 of information and things to process.

19 You know, there has to be a threshold level
20 for them to establish a deficiency before we tell
21 the jury there is evidence of a deficiency, a
22 defect, that needs to be repaired and that they can
23 seek damages from Centex for. There is not that
24 threshold showing of a deficiency.

25 MR. HILDEBRAND: Why didn't they call a

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 structural engineer? That is all they had to do.

2 MR. CONNELL: We didn't have to do that. It
3 goes to the weight versus the admissibility.

4 MR. DesCHAMPS: We might know the answer,
5 because it sounds like a structural engineer -- it
6 sounds like we're both saying there's not a
7 problem.

8 MR. CONNELL: They can cross examine him
9 about that all day long.

10 THE COURT: As long as he is not going to sit
11 here and say he did calculations or anything -- I
12 thought he was fair in his deposition. He said
13 what he could do. So as long as he testifies along
14 those lines, I'm fine.

15 Tell me about the vapor barrier now. What is
16 the issue with the vapor barrier as far as his
17 testimony?

18 MR. CONNELL: Take him to the vapor barrier.

19 THE COURT: And tell me what is the purpose
20 of the vapor barrier?

21 THE WITNESS: It was installed in the wall on
22 the interior side between the sheetrock -- that was
23 it, Stacy. Go back -- actually, yeah. Yeah.
24 Yeah, go back.

25 So there is a plastic sheeting that was

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 installed in between the sheetrock and the wood
2 studs on the interior side of the wall, and it is
3 part of the insulation component of the building,
4 and that is a problem.

5 THE COURT: Why is it a problem?

6 THE WITNESS: It traps moisture within the
7 wall causing condensation, moisture accumulation.
8 Where there is a vapor drive from the exterior to
9 the interior, you have condensation that forms on
10 that plastic sheeting inside the insulation within
11 the stud cavity, because the moisture condenses on
12 those colder surfaces on the interior side and gets
13 trapped.

14 THE COURT: Is it your opinion there is not
15 supposed to be the vapor barrier on the interior
16 walls?

17 THE WITNESS: That's correct. It is not
18 supposed to be there in the hot, humid climate.

19 THE COURT: It's because it is a hot, humid
20 climate where you have hot outside and your cold
21 air inside so it causes condensation?

22 THE WITNESS: Yes. Yes. Yes.

23 THE COURT: Why is he not qualified to
24 testify about that?

25 MR. HILDEBRAND: If he has an opinion, he can

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 render an opinion. I don't have a problem with
2 that, Your Honor, but the code simply says that if
3 you live in a certain area, you have to have a
4 vapor barrier. In our area, you don't have to have
5 it. So Mr. Clements says since you don't have to
6 have it, if you did put it, that's contrary to the
7 code. The code does not say you can't have it. It
8 just says that you don't have to have it.

9 THE COURT: I'm assuming he's going to
10 testify what the code says properly.

11 THE WITNESS: And they are not representing
12 all of my testimony.

13 THE COURT: Okay. I think you all should be
14 clear on that. I don't think that's hard.

15 It is my understanding that you do have an
16 interior vapor barrier if you are in a colder
17 climate, correct?

18 MR. HILDEBRAND: 50 miles from here. I mean,
19 the line is right where we are if it's required or
20 not.

21 THE COURT: Right. Again, that is just
22 subject to cross examination. The code section
23 does not say that the interior vapor barrier is not
24 allowed, and you have to agree with that, right?

25 I mean, I don't know how to say it in a

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 double negative, but that is what it comes out as.

2 Okay. I think he can testify as to that. I
3 just think you have to cross examine him, and then
4 what is the --

5 MR. CONNELL: Take them to the other
6 projects.

7 THE WITNESS: The floor/ceiling assembly and
8 the shear walls.

9 MR. STANLEY: So what will it be under?

10 THE WITNESS: In the middle, you had attics
11 and shear walls and floor/ceiling assemblies.

12 MR. STANLEY: Is that what you are talking
13 about?

14 THE WITNESS: After attics. That is shear
15 walls there.

16 So then we -- that is a copy of the
17 structural plans showing where the shear walls are
18 located.

19 THE COURT: Okay. And the point of a shear
20 wall?

21 THE WITNESS: It's a structural reinforcing
22 for the building. So the anchor bolts facing was
23 found to be 45 inches, and the drawings required
24 the anchor bolts to be at 32 inches.

25 THE COURT: Is that a code violation?

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 THE WITNESS: It violates -- at this time, I
2 know it violates the structural drawings.

3 THE COURT: But is it a code violation? And
4 I'm going to tell you this: When he asked you that
5 specific question on cross, you need to answer the
6 question yes or no. You can then explain that it
7 doesn't meet the drawings, but you have to answer
8 that yes or no, is it a code violation.

9 THE WITNESS: I guess the answer would be: I
10 don't know.

11 THE COURT: You don't know. Okay. That is
12 according to the 1997 --

13 THE WITNESS: Yes, ma'am.

14 THE COURT: -- standard building code. Okay.
15 You really want your expert answering a
16 question "I don't know"? That seems dangerous,
17 but, okay.

18 All right. So other than that?

19 MR. CONNELL: And the flooring. Didn't you
20 say the flooring is an issue?

21 THE COURT: Again, this is Wedgewood we're
22 talking about?

23 MR. CONNELL: Yes, ma'am.

24 Is there anything else?

25 THE WITNESS: So that is an example of a

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 comparison with the shear wall between the as-built
2 and the drawings.

3 The next issue, separate issue, is moving
4 down to the floor/ceiling assembly.

5 MR. CONNELL: Tell us where that is.

6 THE WITNESS: After this, after the shear
7 walls.

8 So within the floor/ceiling assemblies, we
9 found there was 2-by blocking not installed between
10 the floor trusses that was required on the
11 structural drawings.

12 THE COURT: Okay. The problem with that is
13 that you have the 2-bys in between them so they
14 don't collapse?

15 THE WITNESS: Yeah. It is blocking for the
16 load path of the wall above, and probably due to
17 the lateral stability of the trusses as well.

18 THE COURT: Lateral stability of the trusses,
19 okay.

20 THE WITNESS: You know, side-to-side.

21 And then within the space between the two
22 units along the common wall, we found that the
23 gypsum board was not continuous. It was gapped.

24 THE COURT: Should they be abutting each
25 other?

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 THE WITNESS: Yes. So fireproofing was --

2 THE COURT: This is for fireproofing?

3 THE WITNESS: Yes. And it was not

4 continuous.

5 Then, at another building where we did the

6 test cut at the common wall, we saw there was no

7 gypsum board fireproofing between the units.

8 THE COURT: None at all?

9 THE WITNESS: No.

10 THE COURT: And what is this?

11 THE WITNESS: It's showing where the

12 continuous drywall is located on the structural

13 drawings and showing where the 2-by blocking

14 between the floor trusses is called out.

15 THE COURT: Okay. Is that everything as to

16 that?

17 MR. CONNELL: Yes.

18 THE COURT: Okay. I think he can testify to

19 that.

20 MR. CONNELL: Do you want to see the other

21 projects?

22 THE COURT: I think that is probably the most

23 important thing in this case, which I think is why

24 we go back to it. I'm concerned about it. Again,

25 I mean, we've talked about it, looking at it from a

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 404(b) and 403 analysis, I just have some concerns.
2 I know you cited Cliff Newman's case, but I do
3 think that -- I will say this, for the record, all
4 we're doing here is we're making an appellant
5 record, which is why I'm asking you what things are
6 for so they will know what we're talking about,
7 because it is terrible to read a record of a trial
8 for the appellant court.

9 So, again, tell me your basis. And you are
10 bringing this for?

11 MR. CONNELL: Let him testify and we'll --

12 THE COURT: Okay. Okay.

13 MR. CONNELL: All right. Ross, talk to us
14 about the -- how you came up with this chart
15 regarding Wedgewood, Clearwater Bay, Willow Bend
16 and the defects you found and how they all
17 interrelate.

18 THE WITNESS: Okay. So I investigated
19 Wedgewood, Clearwater Bay and Willow Bend which are
20 all neighboring properties in Barefoot Resort.

21 THE COURT: At what times did you investigate
22 Clearwater Bay and Willow Bend?

23 THE WITNESS: Within the same year of
24 Wedgewood. So in that 2017 -- I think the initial
25 site visit at Wedgewood was 2016. Clearwater Bay

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 was I think also 2016, and Willow Bend was early
2 2017. So I think the initial investigations were
3 all within a six-month period.

4 So, like I said, all of these are within the
5 Barefoot Resort. They are neighboring communities,
6 and all of them are developed by Centex.

7 THE COURT: Let me ask a quick question. Why
8 didn't you bring suit all at the same time for all
9 three of them? Were all three brought at the same
10 time?

11 MR. CONNELL: They were. Two went to
12 arbitration.

13 THE COURT: That's why there is such a time
14 difference, because we are going through trial
15 court, okay. But you brought them all at the same
16 time?

17 MR. CONNELL: Because it's the only one
18 that's tried -- a construction case -- here in
19 about five years.

20 THE COURT: I know. Cliff Newman is
21 wonderful. I wish he was trying them.

22 MR. CONNELL: So you have a list.

23 THE WITNESS: Yeah. So at each one of those
24 properties, we found where the weather barrier was
25 not installed properly with gaps and cuts and

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 different things deficient about the weather
2 barrier. We also saw improper installation with
3 the weather barrier --

4 THE COURT: Let me back up a second. So just
5 looking at this, is the WRB that was used at
6 Wedgewood the same water resistant barrier used at
7 Clearwater and Willow Bend?

8 THE WITNESS: I don't know if it was the same
9 manufacturer, but it was the same type of weather
10 barrier.

11 THE COURT: Was it the same subs that did the
12 work?

13 MR. DesCHAMPS: No.

14 THE COURT: I'm asking him. Because I don't
15 think he knows these answers. I don't know if he
16 remembers, but if he testified in these cases, he
17 should know.

18 So you don't know if the same subcontractors
19 did the same work?

20 THE WITNESS: I don't know that I have that
21 information.

22 THE COURT: Let me ask you this: If I put up
23 a picture of Wedgewood, what you are showing as
24 improper water vapor barrier, and then Clearwater
25 and Willow Bend, could you identify which ones

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 belong to which project without looking at the
2 outside structure and being obvious and say, yeah,
3 that clearly is Clearwater?

4 THE WITNESS: I certainly think in some
5 regards, no.

6 THE COURT: So part of 404(b) requires that
7 if you want to show these other acts, you have to
8 show they are substantially similar, and I don't
9 know how they are substantially similar if you
10 can't tell me if the same product is used, if the
11 same contractors are used, and the same
12 deficiencies are there.

13 The other problem I have with this -- and,
14 again, looking at it in a bigger picture, I'm
15 assuming all of these other projects had multiple
16 buildings between one, six, seven, eight, nine. We
17 don't know the same subs did all the same work on
18 all of the buildings, so how are we saying
19 specifically this is a problem when it could have
20 been just this one sub that was a problem?

21 MR. CONNELL: Your Honor, number one, he did
22 three different reports, and similar things
23 occurred in each one.

24 B, you already said we can't say anything
25 about the subs in this case, and so we can't say

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 anything about the subs in the other case either.

2 THE COURT: No. I said you can't say that
3 the subs are unlicensed. Unless you can show me
4 somewhere where general contractors are not allowed
5 to use unlicensed subs, I think you saying that
6 isn't fair.

7 MR. CONNELL: So what you are saying, Your
8 Honor, is that if you are a general contractor, and
9 you don't supervise your subs enough so that you
10 have unlicensed subcontractors, the general
11 contractor is not liable, but the general
12 contractor is liable for unlicensed subs. That's
13 my point.

14 THE COURT: Back in 2001, was it required
15 that all subcontractors be licensed?

16 MR. CONNELL: We have someone from LLR who's
17 going to come.

18 THE COURT: Were they required to be? If
19 they worked for a general contractor, were they
20 required to be licensed?

21 MR. CONNELL: It goes to the weight of the
22 evidence about supervision by Centex of the
23 project.

24 THE COURT: Okay. I guess we're going to
25 continue to disagree about that. I just don't see

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 that at all.

2 So my question is this then: How are you
3 showing me that these are substantially similar
4 problems?

5 MR. CONNELL: I'll have him testify about
6 each one.

7 THE COURT: I'm listening, and I haven't
8 heard it yet. I haven't heard it.

9 MR. CONNELL: Let him go down the list.

10 **Q** (BY MR. CONNELL) Okay. Start with WRB.

11 **A** As I mentioned earlier, we found evidence of
12 discontinuous weather barrier at each of the three
13 projects. We also saw evidence of the Z flashing
14 being reversed lapped with all three projects.

15 THE COURT: When you say "reversed lapped,"
16 are we talking about every single building and
17 every single project that they were reversed
18 lapped?

19 THE WITNESS: I don't know if I can say that.

20 THE COURT: If we're just going to pretend
21 that there was nine buildings in Clearwater and one
22 in Willow Bend, too --

23 THE WITNESS: There were 18 at Willow Bend,
24 and I think 50 or 70 or something at Clearwater.

25 THE COURT: Buildings at Clearwater?

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 THE WITNESS: Yeah. It was a lot.

2 THE COURT: Okay. So there was improper Z
3 flashing where -- oh, you said reverse lap, I
4 apologize, but where?

5 THE WITNESS: At the transitions like between
6 the brick and the fiber cement siding. Also at
7 windows and trim, and then siding attachment was
8 improper at all three properties, trim attachment
9 was improper at all three properties. The flashing
10 of the brick was improper at all three properties.
11 The brick lintels was not improperly installed at
12 Wedgewood and Willow Bend. It did not apply to
13 Clearwater Bay. There was improper head flashing,
14 and then improper roof underlayment at all three
15 properties. The shingle attachment was improper at
16 all three. Fascia applied to Wedgewood and
17 Willowbend -- I think Clearwater Bay primarily had
18 fiber cement fascia instead of the metal fascia, so
19 it didn't apply. Then, improper waterproofing at
20 all three properties. At Clearwater Bay, the
21 location was different. I mean, Wedgewood and
22 Willowbend are similar buildings. Clearwater Bay,
23 the liquid waterproofing was applied over the
24 garage -- there were four garages, and it had that
25 condition.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 THE COURT: Did both Clearwater and Willow
2 Bend have these exterior walkways?

3 THE WITNESS: Clearwater is more of a
4 townhome and not the three-story condo wood frame
5 like Wedgewood and Willow Bend, but it is all the
6 same building materials, just -- you know, it's
7 townhomes instead of the condo buildings.

8 THE COURT: So there wouldn't be that in a
9 townhome, no exterior breezeway?

10 THE WITNESS: No. No.

11 THE COURT: Again, my concern is how are you
12 showing that they are substantially similar,
13 because that is what is required to show that it is
14 substantially similar?

15 I mean, the reason I say this is that every
16 construction project has that exact same litany of
17 problems. If you build something on the ocean or
18 any coastal communities, it has all of that. So
19 you have to specify how can we show that this is
20 similar to each other, other than Centex built them
21 all.

22 MR. CONNELL: But that is not what he said.
23 I understand where you are coming from, but,
24 respectively, that is not for you to decide. That
25 is for the jury to decide. If we have evidence of

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 all of these problems also in three different
2 homeowners associations, the jury can decide for
3 themselves. They can argue that they aren't
4 similar, but we have testimony -- this man spent
5 hundreds of hours on each one of them, and he can
6 talk about each one of those, and that is why we
7 have the list.

8 The unfair trade practices claim is not new.
9 It's been in this case since 2018.

10 THE COURT: So is his testimony going to be
11 that Centex didn't supervise adequately?

12 MR. CONNELL: Based on what you see here,
13 yes.

14 THE COURT: Is that an opinion he makes?

15 MR. CONNELL: It's the law. The general
16 contractor is responsible for the entire project.

17 THE COURT: But you are supposed to show what
18 the deceptive act is, and this is where my problem
19 is. Just because there is a construction defect
20 doesn't mean it is a deceptive act.

21 If we're talking about the deceptive act
22 being we're building these most beautiful condos in
23 the world or they are going last through the
24 elements, and we follow all of these specific
25 standards, like we make sure that our

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 subcontractors flash properly, we make sure that we
2 have adequate blah, blah, blah, this is just so
3 general that even when you look at it in a 404(b)
4 argument, I don't see, A, that it's substantial.
5 And I think that under the 403 argument, I think
6 the prejudice of this so outweighs any probative
7 value, I just think it is too much of a stretch.

8 If you get a verdict, you want to hold onto
9 that, because I'm not sure if I let it all in
10 that -- I'm not so sure about it. So, to me, I
11 think it is too attenuated, and I haven't seen any
12 cases -- we're looking in North Carolina for where
13 they've allowed them to go that far.

14 MR. CONNELL: Our position is based upon the
15 marketing documents, which say that they are going
16 to sell exceptional homes, priority satisfaction,
17 Centex Certainty, new standard in residential
18 construction and uncompromising quality.

19 THE COURT: But that is all very general. I
20 think the marketing company was careful, in
21 general. They didn't promise it was going to be
22 built with HardiePlank, and they didn't do it. I
23 mean, it is not -- it's just general.

24 We talked about puffery. And, again, saying
25 our buildings are great and you'll love it, I think

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 if I misrepresented or told people that we're
2 putting this in and this is what you got, you know,
3 I think that's what it goes to. I don't think it
4 goes towards just generalities. I haven't heard it
5 yet.

6 MR. CONNELL: So in relation to -- I've done
7 a lot of litigation with auto dealers and them
8 selling you vehicles that doesn't have certain
9 things --

10 THE COURT: That's bait and switch. That is
11 totally different. Tell me one thing that they
12 promised you that you got that you didn't get,
13 other than a good whatever.

14 MR. CONNELL: They promised you that you
15 would get homes of exceptional quality,
16 uncompromising quality, and you would have a high
17 priority --

18 THE COURT: But following your analogy it
19 doesn't work, because in a car we can say
20 specifically say that you were going to get a --
21 they said you will get a four-wheel drive, and you
22 didn't. Or you thought you were buying this
23 specific car sitting here, while they are preparing
24 it, they turn around with a different car. They
25 are saying to you this is a new car, when it isn't.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 That is a bait and switch. So if you set a certain
2 product, I would say, yeah, that's not fair.

3 If you were saying -- again, take -- I don't
4 know where everyone puts the gold standard in
5 construction, but whatever it is, if they said
6 that's what it is, and they gave you something
7 inferior, or they said this is HardiePlank, and
8 then instead they bought something much less
9 inferior or something else, and I say HardiePlank
10 because that's one I know, so that I think would be
11 subjected to the deceptive trade practice, no
12 question. I think this is too general.

13 MR. CONNELL: So what you are saying, Your
14 Honor, is you can't have a deceptive trade practice
15 if it is a service you are providing and not a
16 product, and that is not the case.

17 THE COURT: That's not true at all. I didn't
18 say that. Mr. Connell, I didn't say that.

19 MR. CONNELL: But that's what you are
20 extrapolating to, Your Honor.

21 THE COURT: Nothing specific was promised, if
22 that makes sense. And I would be fine if there was
23 a specific service or product promised and you
24 didn't get it.

25 MR. CONNELL: They were promised that -- the

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 law promised them they would get a house built
2 according to the code, and that is a minimum
3 requirement.

4 THE COURT: Well, it's too general. I mean
5 that is just too general.

6 I mean we can go back to building inspectors.
7 If they are not supposed to catch building code
8 violations, what is their purpose? It has to be a
9 specific promise.

10 Is that everything that you were going to
11 testify to as to these projects?

12 THE WITNESS: At this time, yes.

13 THE COURT: Is that pretty much --

14 THE WITNESS: Yes.

15 THE COURT: Okay. I don't think it meets it
16 under a 404(b) or a 403 analysis, so I won't let
17 him testify to that. I don't think they are
18 similar enough.

19 Any other issues so I can bring the jury back
20 in?

21 MR. CONNELL: No, Your Honor.

22 THE COURT: So, you know, does he have
23 anything -- he had a few more slides?

24 MR. CONNELL: The things you just talked
25 about.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 THE WITNESS: Stacy, we need to -- I can't
2 remember where we left off, but we need to go back
3 and cover these structural issues before we go to
4 the end of the slides.

5 THE COURT: Right. The structural issues and
6 the vapor barrier because you stopped.

7 MR. CONNELL: Shear walls and floors.

8 MR. DesCHAMPS: Can we have the slide with
9 the other two projects removed so when they try --

10 MR. CONNELL: We'll take it out. We would
11 just like to mark those as Court's exhibits.

12 THE COURT: Do you need a break, or are you
13 okay? Anyone need a break?

14 MR. HILDEBRAND: Just two minutes.

15 THE COURT: Okay.

16 (A recess was taken.)

17 MR. CONNELL: Your Honor, did you hear that?

18 THE COURT: No, I'm sorry.

19 MR. CONNELL: There was motions that we just
20 got, the ones that you just ruled on, but I guess
21 it is protected motions?

22 MR. DesCHAMPS: I think it was on Saturday
23 when they were provided to you. Evidently, they
24 weren't E-filed, so I think the secretary was
25 E-filing them.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 THE COURT: Is that what you e-mailed to us?
2 That is what you printed?

3 LAW CLERK: Yes.

4 THE COURT: Your office needs to E-file.

5 MR. DesCHAMPS: That was done today.

6 THE COURT: Yeah. Okay.

7 (Court's Exhibit 1 marked.)

8 MR. CONNELL: I had the other lawsuits that
9 you ruled on already, and I'll make those Court's
10 Exhibits 2 through 9.

11 (Court's Exhibits 2-9 marked.)

12 THE COURT: Yeah. Absolutely. And, remind
13 me again, what you were going to try to enter them
14 to show?

15 MR. CONNELL: I was going to try to enter
16 them to show common scheme of practice, which you
17 say I can't do.

18 THE COURT: You are saying based on your
19 lawsuit?

20 MR. CONNELL: Not mine. Others. There are
21 all sorts of others.

22 THE COURT: Okay, so others. My problem,
23 again, is just because lawyers bring lawsuits
24 doesn't mean anyone is necessarily liable. I see
25 what you are trying to do, but I don't think it

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 shows anything, unless you think it is repetition.

2 MR. CONNELL: I do argue it is repetition,
3 and I also argue that there can be argument made
4 that they are true. Just like any lawsuit, if you
5 are cross examining someone, you can ask questions
6 about you've been sued before and what for.

7 THE COURT: Okay. The problem I have is it
8 begs the question about them talking about So what
9 happened with those lawsuits? What was the result
10 of them? What were the verdicts from the other
11 lawsuits?

12 MR. CONNELL: You can charge them lawsuits
13 are pending, and it doesn't mean anything.

14 THE COURT: I thought they were all resolved?

15 MR. CONNELL: Ours are, but there are a whole
16 bunch of others out there. I don't know how many.

17 THE COURT: How many are outstanding for
18 Centex out of the nine he's trying to enter?

19 MR. DesCHAMPS: Three are pending.

20 He just wants to proffer this?

21 THE COURT: He wants to make them Court's
22 exhibits. He wanted to use them to show repetition
23 as to the cause of action of the Unfair Trade
24 Practices Act or as to punitive damages.

25 MR. HILDEBRAND: How did you get the sealed

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 settlement?

2 MR. CONNELL: All it says is "sealed."

3 MR. DesCHAMPS: It's not the agreement?

4 MR. CONNELL: No. No. It is just the
5 lawsuit.

6 MR. HILDEBRAND: Oh, because Judge Newman
7 sealed them.

8 MR. CONNELL: These are all of the
9 complaints. The clerk wrote on there what the
10 status was of each one.

11 MR. DesCHAMPS: Oh, okay. If it is just the
12 complaints.

13 MR. CONNELL: Right. There is no sealed
14 settlements.

15 THE COURT: All right. Are there any sealed
16 settlements with this?

17 MR. CONNELL: No, ma'am.

18 MR. DesCHAMPS: Not in those papers.

19 MR. CONNELL: There was one.

20 MR. HILDEBRAND: I think it was George's
21 case. The Edgewater one was sealed.

22 THE COURT: And Cliff Newman did it?

23 MR. HILDEBRAND: Uh-huh.

24 THE COURT: Just so you all know, you know
25 that's not going to happen anymore after this whole

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 last fiasco. You know, entering into settlement
2 agreements on the basis of confidentiality isn't
3 going to happen anymore. I can tell you that is
4 going to be an absolute mess, and it's going to be
5 difficult to settle cases as a result of it. Very
6 unfortunately. I said unfortunately.

7 I don't think it facilitates settlements, but
8 I understand the public policy and the purpose --
9 anyway.

10 (Court's Exhibit 10 marked. Defendants'
11 82.5)

12 THE COURT: I can tell you as an aside that I
13 am hopeful that Cliff Newman, if he decides --
14 because he has to retire based on age this
15 December, but I would love it if he would take a
16 designation to do construction cases or other types
17 of cases as part of the senior active status.

18 Although, I can tell you our chief justice
19 does not like business court, did not like
20 construction court. He thinks that any judge
21 should try any case. The hard part about that is
22 you have to practically follow it for so many years
23 because it's so big with so many parties, it's
24 difficult.

25 For instance, yesterday, I was so concerned

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 that I did not remember that motion to amend that I
2 went straight back to the hotel and pulled up all
3 of those documents to recall it. While I am
4 getting a little bit older, I didn't think I was
5 that old, and I completely forgot some things. I
6 think there is just a lot.

7 If you are ready to go? Yes?

8 Okay. Thank you.

9 Let me ask you both. Did you enter that in
10 through Mr. Spencer? This is 104, Defendants'
11 financial statement from 2021.

12 MR. DesCHAMPS: I did. There were four of
13 them during the break.

14 THE COURT: For the record, that was my
15 effort to speed things along, and I'm saying this
16 for the appellate court in case they said it wasn't
17 entered into evidence, and I'm saying, yes, it was.

18 (The jury enters at 3:52 p.m., and the
19 following is heard in the presence of the jury.)

20 THE COURT: Thank you for your patience.
21 We're trying to streamline this.

22 Mr. Stanley, whenever you are ready to
23 continue.

24 MR. STANLEY: Yes, Your Honor.
25

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

DIRECT EXAMINATION (CONT.)**BY MR. STANLEY:**

Q To continue your presentation to the jury, if you will continue, please?

A During the break, we left -- before the break, we were talking about some of the window installation issues, and we'll pick back up with those in a little bit.

Right now, we'll switch over to the attics and talk about some of the findings we had when we investigated the attic framing. This is an example of what the hurricane ties MTS-16 anchors look like when they are installed between the top of the beams and the roof trusses that form the roof of the buildings. So those are MTS-16 anchors that are properly installed at Building 6.

We found the MTS-16 anchors to be missing at the other buildings.

We also found there was no blocking installed between the bottom cords of the trusses.

This is an example of what the hurricane ties, H2.5, look like.

We found hurricane ties not properly installed within the attics. They are supposed to be installed on both sides.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 This is a different type of tie called a
2 MTT-28B that was found to be loose.

3 At this location, there was a MTT-28B tie
4 that was missing.

5 At this location, the tie was cut off and not
6 coming in over the top of the truss.

7 This is the standard building code
8 requirements, as it relates to the wind resistance
9 of the building and the design and construction of
10 the roof trusses.

11 These are the structural drawings for the
12 buildings that show -- in the top red box up
13 there -- that there are supposed to be 2-by solid
14 wood blocking between the trusses. The drawings
15 also call for the MTS-16 hurricane anchors at each
16 end of each truss, and we found those to be
17 missing.

18 This structural drawing for the building
19 shows the 2-by solid blocking in the upper box
20 between the bottom cords, and the MTS-16 hurricane
21 anchor located at the end of each truss.

22 And then you see on the right box over there
23 it says, "Simpson H2.5 hurricane tie staggered,"
24 and one of them is dashed and the other one is
25 solid, meaning that they were supposed to be

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 installed on opposite sides of the bottom cord, and
2 we found those to be missing.

3 Q When you talk about drawings, can you tell
4 the jury where you found those drawings and who
5 drew them?

6 A Yes. They were provided by a structural
7 engineer, signed and sealed when they applied for
8 these buildings. I believe they came from the
9 county -- I mean from the city, North Myrtle Beach.

10 Q And someone from Centex Homes drew those
11 drawings?

12 A I don't know -- I mean, I believe it would be
13 someone employed by Centex, but I don't know if it
14 was someone on staff, but a structural engineer
15 signed and sealed those drawings for the buildings.

16 Another example where there is supposed to be
17 H2.5 hurricane ties. The importance of this is to
18 keep the roof truss from being uplifted and pulled
19 off the building during a high-wind event like a
20 hurricane.

21 On the structural plans these are the
22 locations where the ties were required to be
23 installed.

24 That is a drawing showing a Simpson connector
25 called the MTT28B, what it looks like with the

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 tension rod, threaded rod connecting the bottom --
2 top and bottom of the connector.

3 Next, with the trusses, we found deficiencies
4 with the as-built condition of the attic trusses
5 not just the connections, but of the trusses
6 themselves and also with framing around windows and
7 the gables.

8 At this location, the trusses were not sized
9 properly and stopped short. There was this gap
10 here between trusses. The contractor scabbed in
11 2-by-6s attached to the top cords where the trusses
12 were not the right size.

13 The trusses stopped short of the ridgeline,
14 and, again, you can see where the 2-by-6s were
15 scabbed onto the trusses. They should be
16 constructed to extend over to the ridgeline;
17 instead, there is 2-by-6 framing.

18 In this location, the trusses were
19 unsupported where they cantilevered off of a roof
20 deck up underneath in the attic.

21 In this location, we saw at Building 5 that
22 the trusses were barely sitting on the stud wall.
23 There is only about a quarter-of-an-inch that the
24 truss is sitting on the stud wall. It should be
25 all the way to the backside of the stud by the

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 gypsum board.

2 The lateral bracing of the trusses is
3 supposed to be extending across two bays of trusses
4 so you have -- or fully across -- the laps should
5 be fully across one bay so the lateral bracing is
6 attached to the webs at each side of that truss bay
7 so that you have, you know -- each lateral brace
8 that we're pointing to, they are nailed into the
9 webs on both sides of that bay.

10 This is an example of a broken truss found
11 within the attics.

12 This is another broken truss. What happens
13 with these trusses is they are lifted into place
14 with cranes. They are placed on the ground -- when
15 they are delivered, they are put on the ground in
16 stacks and lifted into place with cranes and nailed
17 into place. In that process of that construction,
18 sometimes they get broken.

19 This is an example of one of those 2-by-6s
20 that was notched.

21 Around this window in the gable, there was no
22 framing at all. It was just a hole cut into the
23 OSB sheathing and the window just put in place and
24 then painted with spray paint on the backside I
25 guess to keeping people's view from looking through

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 the window into the attic, but there should be
2 framing all the way around the window.

3 Again, the standard building code refers to
4 structural requirements for the wind resistance of
5 the buildings.

6 This refers to the building code HIB-91
7 regarding bracing.

8 Where we were talking about some of the
9 trusses not extending to the ridgeline, these are
10 structural drawings showing where the trusses --
11 the horizontal lines you see on the right and left
12 side extend to the ridgeline, and that is the way
13 it should have been constructed.

14 The structural drawings showing openings,
15 notches, or modifications in wood components shall
16 be field cut without written permission by the wood
17 component designer.

18 This diagram from the Wood Truss Council of
19 America talks about diagonal bracing and horizontal
20 bracing, and you can see in the upper-right corner
21 where that "D" is located and circled how I was
22 talking about how the horizontal bracing is
23 supposed to extend across one bay and be attached
24 on both sides of that bay.

25 We talked about that one -- the fire

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 protection in the attics -- so we can move through
2 that.

3 With the shear walls we found -- so the next
4 issue related to the structure of the building has
5 to do with the shear walls. So, first, was the
6 framing attachment. So on the structural plans the
7 drawings -- this is a floorplan showing where the
8 shear plans are located within the building. So at
9 these six shear walls we did a test cut at one on
10 the first floor of a building, and one at a second
11 floor on another building, and this is inside
12 people's units where these test cuts had to be
13 done.

14 So the anchor bolt spacing we found to be
15 45 inches, and the drawings required the anchor
16 bolts -- the sheer walls to be anchored to the
17 concrete slab at 32 inches, and we found it to be
18 at 45 inches.

19 In order to find this, we have to remove
20 sheetrock from someone's unit and then cut out the
21 OSB behind the sheetrock in order to get to where
22 these bolts are located. We found the anchor bolts
23 to be loose.

24 We also found missing hurricane ties at this
25 location as well.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 The standard building code speaks to
2 requirements related to the structural design of
3 the building. In the structural drawings, you can
4 see on the left-hand side there, at the top, it
5 says: "Anchor studs to sole plate with H2.5 at 24
6 inches on center."

7 That is the hurricanes ties we said were
8 missing. They are supposed to also have the
9 five-eighth-inch anchor bolts through the bottom
10 plates, and that is the dash line that goes down
11 into the concrete, you can see on the left where
12 the red underline is pointing to the anchor bolt,
13 and that is supposed to be 32 inches on center.

14 Seven-sixteenths-inch OSB sheathing wall,
15 12-inch long, is the shear wall, and then, again,
16 you see the requirements for the H2.5s which we
17 found missing.

18 Next, we found problems with the attachment
19 of the sheathing at the shear walls. So where I
20 mentioned that we had to take the gypsum board off
21 of the wall on the interior of the unit in order to
22 inspect the OSB wall sheathing, which is the wood
23 sheathing, the sheathing is supposed to be attached
24 at the first floor at 3 inches on center around the
25 perimeter. We found the nails to be spaced

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 7 inches, 6 inches, 5 1/2, and 6, and that is just
2 representative of what we found.

3 We found areas where there was no nails
4 installed in the sheathing.

5 And then, on the second floor, at a different
6 shear wall test cut, the fastener spacing is
7 supposed to be 4 inches on center, and we found it
8 to be 6, 7, 5, 7, 6 1/2, and 5.

9 We also found that there was missing blocking
10 where there should be at panel edges. So along the
11 horizontal joint where a sheathing panel meets
12 across a stud bay, there should be blocking at
13 those locations within the shear walls.

14 We found sheathing that was just missing.

15 Again, the standard building code has
16 requirements related to the structural design and
17 construction of the buildings.

18 These are the requirements from the
19 structural engineering drawings related to the
20 second floor shear walls needing to be attached at
21 4 inches along the edges, and then also at the
22 first floor at 3 inches along the edges.

23 We were also asked to look at the
24 floor/ceiling assemblies, which is basically your
25 common wall between you and your neighbor within a

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 condo building. Between you and the floor above
2 you or below you, you have a floor/ceiling
3 assembly, so it's the floor above you and the wall
4 between you and your neighbor within a multi-tenant
5 building like this.

6 So within that floor/ceiling assembly, we had
7 to cut a hole in the ceiling of a unit and looked
8 up into the plenum space where the framing is
9 between your unit and the unit above you and
10 compared what we found there to what was required
11 on the structural drawings.

12 Within those floor/ceiling assemblies, we
13 found that there was 2-by blocking, 2-by wood
14 framing that was not installed between the trusses
15 as required on the drawings.

16 We also found gaps in the drywall or the
17 sheetrock that is between the units. This is part
18 of the fireproofing between the units where it
19 should be continuous, and we found there were gaps
20 or holes between adjacent units.

21 At the other floor/ceiling assembly test cut
22 we found there was no sheetrock at that building
23 between the tenants.

24 The arrow points to where there is continuous
25 drywall that should be installed between the units,

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 and it also -- the notes on the right show the 2-by
2 blocking that should be installed between the floor
3 trusses.

4 We've already covered the entry stairs.

5 We can cover the vapor barrier now.

6 So within the exterior walls, we found that
7 there was a plastic vapor barrier installed between
8 the sheetrock and the wood studs, and that is part
9 of the insulation component of the building, to
10 have this plastic sheathing in between the gypsum
11 board and the exterior wood framing. This is on
12 the interior side of the exterior walls.

13 Now, as a consequence of that vapor barrier
14 being installed in a hot and humid climate where
15 these buildings are located, in North Myrtle Beach,
16 you have condensation that forms within the wall
17 cavities because of the moisture drive from the
18 inside to -- from the outside to the inside. So if
19 it is hot and humid outside, it's air conditioned
20 in the inside, that hot, humid air is driven
21 through the exterior envelope of the building
22 towards the interior, and when it reaches that
23 plastic sheathing, the moisture cannot pass through
24 it, so it condenses on that cold surface, which is
25 the air conditioned gypsum board that is on the

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 inside of the unit. When it condenses on that
2 surface, then it gets the insulation wet, and it
3 also causes mildew and moisture accumulation within
4 the walls.

5 This is a location where the insulation is
6 wet and it has adhered to the plastic vapor
7 barrier.

8 The standard building code says that all
9 buildings shall be designed in accordance with the
10 Model Energy Code. It also says that residential
11 buildings of three stories or less may comply with
12 the requirements of ASHRAE 90.2.

13 The Model Energy Code says the design of the
14 building shall not create conditions of accelerated
15 deterioration from moisture condensation.

16 ASHRAE 90.2 says: "The use of vapor
17 retarders is not required in humid climates. If
18 vapor retarders are used, they should be used on
19 the exterior of the building, not the interior
20 side."

21 This comes from the ASHRAE Handbook of
22 Fundamentals which states: "Water vapors diffuses
23 through building materials from the outside into
24 air conditioned spaces in high humidity climates."
25 So outside to inside. Then, where vapor retarders

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 are used, they should be on the outside. You can
2 see we are in that humid climate where the arrow is
3 pointing.

4 This brings us back to this window
5 installation we were talking about earlier. Before
6 we had our last break, we were talking about the
7 reverse laps of the weather barrier and the
8 flashing below the window with the nailing flange
9 of the window.

10 We can pick up where we left off.

11 We were talking about the ridges and valleys
12 in the nailing flange.

13 These are pictures of damage below the
14 windows as a consequence of the water intrusion
15 that has occurred.

16 The standard building code says: "Flashing
17 shall be provided and is necessary to prevent the
18 entrance of water at openings in or projections
19 through veneered walls. Surfaces exposed to the
20 weather shall have an improved barrier to protect
21 the structural frame and the interior wall
22 covering. Such felt or paper shall be applied
23 horizontally with upper layer lapped over the lower
24 layer."

25 So, again, upper one over the lower one so

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 that the water continues to flow down the wall and
2 then flashing carries it to the exterior and not
3 back into the walls.

4 Tyvek, which is a weather barrier that was
5 installed on these buildings, their manufacturer's
6 installation instructions at the time say to put
7 the -- No. 8 up there is talking about tacking up
8 the bottom sill flashing and overlapping the rough
9 sill. That is the middle diagram at the bottom
10 where it is basically saying to take that flashing
11 and tack it up and fold it into the rough opening.

12 Then it says to install windows or doors
13 according to the manufacturers' instructions, and
14 then if you look at that right diagram there where
15 the red arrow is pointing, you can see that this
16 shows the sill flashing behind that window nailing
17 flange, and those dashes you see in the nailing
18 flange are like where the nails would go. So you
19 would see those nails. They wouldn't be covered up
20 along the sill.

21 The installation instructions also say to
22 pull the sill and jamb flashing out to overlap the
23 Tyvek at the window bottom. So the sill flashing
24 is behind the nailing flange, and over the top of
25 the Tyvek below it.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 Here is an example from the Moist Stop Easy
2 Seal instructions showing the flashing up
3 underneath the nailing flange at the sill of the
4 window.

5 Regarding the Hardie trim installation
6 instructions, as you see on the top, the flashing
7 is being installed back behind the weather barrier
8 and no caulking along little top edge.

9 In addition to improper flashing of the sill
10 of the windows, we found also that the windows were
11 improperly mulled. Mulled means you have more than
12 one window. So what we have out there is we have
13 single windows, which is one window by itself, and
14 then double windows, and we have triple windows.

15 The double windows is two single windows that
16 have been brought together and mulled together. So
17 when we talk about mulling, we're talking about
18 bringing two windows together and joining them, and
19 doing so in a way that is in conformance with what
20 the manufacturer says needs to be done in order to
21 bring those two windows together in a way that will
22 keep water out.

23 So what we found is that the mulling of the
24 windows for the doubles and the triples was not
25 followed, that the installation of those windows

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 did not comply with the manufacturer's instructions
2 for the mulling, and that resulted in water
3 intrusion because there is parts -- pieces and
4 parts of the mulling that were never installed that
5 should have been installed. So this is an example
6 of a double window that has been mulled together.

7 This is an example of a triple window that
8 was mulled together. That arch top window above it
9 is a separate window from the triple below it.
10 Even though they are in close proximity, they are
11 separate.

12 So this is a mull joint. This is the top of
13 a mull joint where there is missing sealants, and
14 the mull cover does not extend all the way up to
15 where the grooves are for the drip cap.

16 So this is the location where this cover
17 right here should extend all the way up to the
18 underside of this drip cap. What this is pointing
19 to is this is running along the top of both windows
20 all the way cross, and it is called a "drip cap."

21 It has a vertical leg that comes down and
22 goes across horizontally, and then it turns down,
23 and then there is an edge that goes back in and it
24 clips into a groove right along the top of the
25 window there. This drip cap was supposed to be

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 installed at the head of the windows and at the
2 bottom, and it was never installed at the bottom of
3 the windows.

4 This is a picture showing the sill of the
5 gang windows where you have that groove I was
6 talking about. You can't see that groove at the
7 top because the drip cap is there, but at the sill,
8 they were supposed to have that drip cap installed
9 here as well, and it is missing.

10 As a consequence of that drip cap not being
11 installed across the bottom of the window as it was
12 supposed to be, you have gaps, and you have gaps
13 along here as well. So wind-driven rain can be
14 blown in here, and when it is blown in there and
15 goes back behind this self-adhered flashing down
16 here, that is reversed lapped that we were talking
17 about with the ridges and valleys, the water enters
18 here, goes back behind this flashing, and then down
19 into the wall and rots out the walls. This is part
20 of the original construction that wasn't done
21 right.

22 Here is an example of a wall below a window.
23 It is completely rotted out, and you see a
24 concentration of damage below this mull joint.

25 That is another photograph showing that mull

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 joint there with the gap.

2 And a concentration of damage below that as
3 well.

4 Again, more damage to the sheathing and
5 damage to the mull joint.

6 Here, you can see where that drip cap should
7 be installed at this location, and it is not, and
8 you have more rotten wood below the windows.

9 Here is more rotting sheathing and framing
10 and that missing sealant and missing drip cap.

11 These windows were what is called Series 8540
12 windows. The installation instructions for those
13 windows applies to these windows. So at the top --
14 can you go down two slides, Stacy?

15 So this drip cap, it gets installed into that
16 groove we were talking about along the top of the
17 window. It is supposed to go into that groove, and
18 there is supposed to be sealant underneath it. So
19 you are supposed to seal this and have sealant
20 underneath the drip cap, and then put the drip cap
21 in and lock it in place. You can see on here it
22 says: "Apply continuous drip caps to the head and
23 the sill."

24 Can you go back?

25 Okay. So, again, here, caulking, caulking,

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 apply caulk across joint where frames meet head and
2 sill.

3 If you can go back to the mull cap, the drip
4 cap.

5 So this piece is missing from the windows,
6 and that has contributed to a significant amount of
7 water intrusion of these buildings.

8 So in addition to the investigative work that
9 me and my team did on our own, we observed the work
10 of H2L, who are the expert witnesses for the
11 defendant Centex. Both of the gentlemen here that
12 are the experts for Centex are here today. I had
13 the opportunity to observe their work and observe
14 their testing. So on these dates here, I attended
15 their testing, and that included visual
16 observations as well as destructive testing.
17 Consistent with my findings H2L also found
18 defective --

19 MR. HILDEBRAND: He can't testify about what
20 our experts will say.

21 THE COURT: Actually, if he reviewed
22 something in his investigation, like a deposition
23 of your expert, while we don't want to pit
24 witnesses, which he is doing it, not you, but I
25 think he can testify as long as he doesn't misstate

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 what is said.

2 MR. STANLEY: He just observed their cuts,
3 and with those cuts, he observed deficiencies.

4 THE COURT: He can tell me what he sees.

5 MR. HILDEBRAND: He needs to limit it to
6 observations, what he saw, that's fine. But he
7 can't testify about what our experts will testify
8 about. They'll be here on the stand shortly.

9 THE COURT: But, again -- go ahead. They'll
10 testify. It is subject to cross examination, so.

11 A So when I observed the destructive testing
12 that H2L did, in addition to the 57 test cuts I did
13 with my team, I observed all of the test cuts they
14 did. I saw in their test cuts conditions that were
15 the same as what I had found with my own test cuts.

16 So, essentially, what I found in their test
17 cuts also was defective construction that resulted
18 in hidden damage within the exterior walls of the
19 building.

20 These are photographs that were taken during
21 H2L destructive testing. What you can see here is
22 conditions below a window in brick veneer. It is
23 hard to see on this slide because of the lighting
24 in here, but the wood sheathing is damaged at this
25 location. You can see that is evident with the

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 moisture meter there, which is registering around
2 25 percent moisture content in the wood sheathing.

3 This is another location where they did a
4 test cut below a window in brick veneer, and you
5 can see that the sealing joints are continuous
6 along this point between the window frame and the
7 brick, and yet we still have water damage to the
8 sheathing below the windows.

9 Here again, below that mold condition, you
10 have rotten wood behind the brick veneer and the
11 weather barrier at their test cuts.

12 Here is another location at their test cut.
13 The brick has not been taken out yet.

14 So now the brick is removed, and what they
15 found, and what we saw, was that the weather
16 barrier was sliced horizontally at this location as
17 part of the original construction, and so it is --
18 hard to see in this photograph because it is so
19 dark, but this is all rotted wood in here.

20 You can see it better here, how black the
21 wood is.

22 There is other things about that photograph
23 -- maybe go back one or two, please.

24 Okay. All right. This is a location where
25 H2L did a test cut at the base of the wall, and so

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 they removed some bricks at the base of the wall
2 where the flashing is at the bottom of the brick
3 veneer.

4 The black flashing, that is the thru-wall
5 flashing at the base of the wall, behind the brick
6 veneer. It goes across and turns up behind the
7 brick, and in this area you can see the white
8 weather barrier.

9 Here, you can see the white weather barrier
10 extending down the wall, and here you see the black
11 flashing, and it is the thru-wall flashing folded
12 over, and then there is a gap here between the
13 white weather barrier and the black flashing where
14 the weather barrier does not lap over the flashing.

15 Then, in H2L's report, they reported: "H2L
16 found thru-wall flashing to be satisfactory and
17 serviceable and contrary to the Fuller report. We
18 do not find the thru-wall flashing to be reversed
19 lapped." That is not consistent with what I
20 observed at their test cuts.

21 This is a location where one of their expert
22 witnesses is taking moisture readings at the left
23 side of an arched window. He is in the middle of
24 the opening taking a reading.

25 Go ahead.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 You can see that I've also used my moisture
2 reader at the same location and finding elevated
3 moisture content within the wood sheathing at that
4 location. It is up above 20 percent.

5 This is another test cut location where H2L
6 performed a test cut, and then cut out the weather
7 barrier to observe the sheathing at this location,
8 but you can see where the red arrow is pointing
9 over here that the weather barrier is torn and
10 sliced in this area.

11 This is a closer-up photograph showing where
12 the weather barrier is torn. Like we were talking
13 about earlier, the felt and weather barrier has to
14 be installed continuous. Code requires that it be
15 installed without breaks or holes in it, and here
16 is an example of breaks and holes in the weather
17 barrier.

18 So I cut out the weather barrier around that
19 location, and you can see the rotted wood at this
20 location. You can see where H2L's experts focused
21 on this area over here, and not this area.

22 This is a location where the brick ties in
23 their test cuts were also not utilized properly.
24 It is just laid back flat. You can see it's never
25 been used.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 This is another location where brick ties in
2 their test cuts were not used.

3 This one as well, but in this location there
4 is a big glob of mortar. It is called mortar pack.
5 When they lay up the brick walls and mortar drops
6 off the backside, it accumulates on top of these
7 ties sometimes, so this was a location where there
8 was a tie there that was not used.

9 In addition to observing their destructive
10 testing, I also observed their work related to
11 moisture readings. H2L reported in their report
12 that they took moisture readings of the wood
13 sheathing behind the fiber cement siding. Within
14 their report, Issue 1.1, H2L reported having
15 conducted 44 test cuts at areas of fiber cement
16 siding finding no evidence of water damage.

17 This is one example of one of H2L's employees
18 taking a moisture reading of the wood sheathing
19 behind the fiber cement siding. It is within the
20 -- this is standing on a man lift where they can
21 get access to an elevated floor condition.

22 Their moisture readings were here in the
23 middle of the wall, and this is an example of what
24 those moisture readings look like.

25 As you can see where these moisture readings

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 were taken, they are locations in the middle of the
2 wall where no one reasonably anticipates that you
3 will have water intrusion.

4 We have talked about how when you install
5 that weather barrier and you have penetrations
6 through the exterior wall and you have penetrations
7 through the exterior cladding and through the
8 weather barrier in intersections with other
9 building components like balconies, so reasonably
10 anticipated water intrusion will happen at
11 locations where you have terminations and
12 penetrations through your weather barrier and your
13 claddings. So that is at the head of windows,
14 sills of windows, at intersections with balconies
15 and things. It is not going to happen, typically,
16 within the middle of the wall. So what you are
17 going to be fed is data for the sake of data. It
18 is not data that is meaningful data. It is just in
19 the middle of the wall.

20 H2L's investigation also included taking
21 moisture readings of trim. Their report, Issue
22 1.6, stated H2L reported having conducted 984
23 moisture readings at areas of trim. They found
24 only six of the 984 exceeded a moisture content of
25 20 percent.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 I was on the man lift with one of H2L's
2 employees while he was doing his readings and
3 observed what he was doing.

4 MR. HILDEBRAND: I do think he's pitting one
5 witness against another. He can testify what he
6 saw, but I think it is improper for him to try to
7 say how our guy has done their investigation.

8 THE COURT: I think he can testify as to what
9 he saw when you were watching them do theirs -- is
10 that what you are saying?

11 THE WITNESS: Yes.

12 THE COURT: So I think he can -- be careful.
13 You can't say they are going to say or they said.

14 THE WITNESS: Okay. You are right. I
15 understand. Thank you.

16 **A** (Continuing) So this is a location where you
17 can see multiple pieces of trim coming together at
18 the outside of one of the buildings, and you can
19 see a blackish area here. This red arrow will stay
20 on each of these slides pointing to the same area.

21 Here you have what is an area of
22 deterioration of the wood trim because of the
23 improper painting and priming of the cut ends of
24 the wood trim. You end up with moisture being
25 absorbed up into the trim and rotting out the trim.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 So you can see the blackness of the fungal growth
2 on the wood trim at this location.

3 Moisture readings were taken by H2L employees
4 on the man lift with me. You can see here he is
5 taking a moisture reading here. This obvious area
6 of damage is located here. He's taking moisture
7 readings here, but again the damage is here.

8 What I witnessed is they completely ignored
9 areas where there is problems with the
10 construction.

11 H2L also did not report -- regarding moisture
12 readings at trim. They also did not report that
13 they relied on Terracon to conduct a portion of the
14 trim moisture readings.

15 Terracon is another engineering firm that
16 they use as a subcontractor. Terracon's work was
17 unsupervised by H2L. I witnessed their work. I
18 listened to the conversations of the Terracon
19 employees while I was there, and it was just me and
20 one other gal on my staff --

21 THE COURT: Okay. Now we're getting into
22 hearsay, so I assume you are going to object.

23 You can't say what you heard; that is
24 hearsay.

25 Do you have a question for him?

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **Q** While you were out there looking at
2 Terracon's work, what did you observe?

3 **A** I observed that the staff was inexperienced.

4 MR. STANLEY: He's just making --

5 THE COURT: I understand. No one objected.
6 Go ahead.

7 **A** I observed the staff was inexperienced, and I
8 observed that -- am I allowed to say what they say?

9 THE COURT: No. That is hearsay. I have no
10 way to cross examine the statement for its
11 truthfulness.

12 **Q** **(BY MR. STANLEY)** How did you determine they
13 were inexperienced?

14 MR. HILDEBRAND: That calls for speculation.

15 THE COURT: I agree. That does call for
16 speculation. I don't think he can say that. He
17 can say what he believes they did wrong.

18 THE WITNESS: I will.

19 THE COURT: He will be able to say the things
20 he saw them do wrong.

21 THE WITNESS: So I won't talk about what I
22 heard them say?

23 THE COURT: You cannot.

24 **A** I will say that I witnessed that there was
25 some confusion on their part about what it is that

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 they were supposed to be doing that day. They did
2 not --

3 MR. HILDEBRAND: Your Honor it is not a back
4 door, Your Honor. He's basically stating his
5 observations based on hearsay.

6 THE COURT: We need to move past this.

7 **A** Let me say that I did see --

8 MR. HILDEBRAND: Wait a second.

9 THE COURT: We're stopping. Just ask him
10 anything that, again, he observed. Move past this
11 portion of it.

12 **A** So do you want me to continue?

13 **Q (BY MR. STANLEY)** So in this photo, what did
14 you observe that you did not believe was standard
15 for investigations?

16 **A** I witnessed them taking moisture readings of
17 PVC plastic trim. I witnessed them taking moisture
18 readings of fiber cement trim. I also witnessed
19 them taking moisture readings of MDF trim, the
20 engineered wood trim. In my opinion, based on what
21 I saw and witnessed, the data that they have
22 related to the trim, the 984 trim moisture readings
23 that they have, include areas of plastic trim, as
24 well as fiber cement trim that has nothing to do
25 with wood.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 That is a photograph of them taking a
2 moisture reading of some of the trim.

3 **Q** What type of trim is that?

4 **A** I can't tell from here. I suspect MDF trim
5 based on the location.

6 **Q** This one was PVC plastic trim. That is a
7 close-up of the PVC plastic trim at the same
8 window.

9 This was an area of fiber cement trim.

10 This document, this e-mail, refers to the
11 vapor barrier and the exterior walls as we talked
12 about earlier.

13 **Q** So tell the jury who this e-mail is from and
14 who it is to?

15 **A** Yes. I will.

16 MR. HILDEBRAND: Your Honor, this is hearsay.
17 He has no --

18 THE COURT: I haven't heard who it is to and
19 from, so I don't know.

20 MR. HILDEBRAND: From our expert to another.
21 He can't provide a foundation for this.

22 THE COURT: For the e-mail. He can't. Is
23 this an e-mail or letter?

24 MR. HILDEBRAND: E-mail that he's not a party
25 to.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 THE COURT: He can't lay a foundation for it.

2 A I don't know that that one is relevant
3 without the e-mail.

4 Q (BY MR. STANLEY) So tell the jury who
5 Morningstar Consultants are in this case.

6 A So through filed discovery, we received
7 documents relating to Morningstar Consultants, who
8 was a construction consulting expert during the
9 construction of the project at Wedgewood. He made
10 site visits during the construction to advise
11 Centex and to bring to their attention to anything
12 he saw from a quality control perspective that
13 wasn't being done right.

14 So in reviewing Hershel Morningstar and
15 Morningstar Consultants' reports, we found -- we
16 found deficiencies that he reported at the time of
17 construction. We found deficiency -- the same kind
18 of deficiencies when we did our investigation.

19 So, you know, he saw these things during the
20 construction in 2000/2001, and then in 2016 and
21 beyond when we were doing our investigation, we saw
22 the same type of deficiencies that he had
23 documented and reported to Centex during
24 construction. We saw those as well.

25 Q So was Mr. Morningstar a construction

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 professional?

2 **A** Yes.

3 **Q** What type?

4 **A** I don't believe he was -- I know that he
5 owned a construction company at some point
6 subsequent to this. I believe he had experience as
7 a contractor or construction consultant prior to
8 this as well.

9 **Q** What was he hired to do for Centex Homes?

10 **A** Quality control, site visits during
11 construction to report to them things that they
12 needed to fix about the construction and habits
13 they needed to change as far as the way the
14 buildings were being constructed at Wedgewood.

15 **Q** How do you know that information?

16 **A** From the Morningstar reports.

17 So these are examples of some of the things
18 that Morningstar Consultants reported to Centex
19 during the construction related to Wedgewood. Raw
20 edges of unprimed wood trim, we saw the same thing.
21 Overall integrity of the house wrap sealing, we saw
22 the same thing; problems with the house wrap
23 installation. Lateral truss bracing missing and
24 not installed properly, we saw that. Tyvek cut
25 ragged -- that is the same things as the weather

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 barrier being incomplete. Deck waterproofing
2 damaged by screws, ladders, et cetera. Deck
3 entrances, which would be the same kind of areas of
4 deck waterproofing. Nails and screws, we saw the
5 nail puncturing a membrane as well.

6 He had concerns about deck waterproofing
7 details, which we also had concerns about. He
8 found missing hurricane clips at column straps. We
9 also found missing hurricane clips. He said that
10 the brick lintels at the triple windows with the
11 arch tops were improperly installed, and we found
12 the same thing.

13 These are photographs that he took back in
14 2000 showing the unprimed edge of the trim.

15 This is a photograph he took in 2000 showing
16 incomplete weather barrier. You can go back. You
17 can see it over here (indicates).

18 He also noted that the steel lintel above
19 these windows was improperly installed, and here is
20 that steel lintel.

21 Just to summarize what we've gone over the
22 last several hours, the construction defects have
23 left the buildings in a substandard condition
24 allowing water intrusion and reducing building
25 safety and performance. The construction defects

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 represent violations of the applicable building
2 codes, industry standards, and manufacturers'
3 instructions that were applicable at the time of
4 the construction for the contractor to follow.

5 The construction defects have caused hidden
6 damages that were revealed through my destructive
7 testing. In order to fix the construction defects,
8 Fuller prepared a scope of work to describe
9 everything that needs to be done to fix the
10 buildings, and we've submitted that to Bob
11 Gallagher with Procon and Associates. Procon has
12 prepared a cost estimate to fix the buildings.

13 MR. STANLEY: That is all the presentation,
14 Your Honor. I have follow-up questions.

15 THE COURT: Keep going.

16 MR. STANLEY: Can I talk to co-counsel for
17 one moment, Your Honor?

18 THE COURT: Sure.

19 (A pause in the proceedings.)

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

22 MR. HILDEBRAND: Without objection, I let
23 them introduce their PowerPoint that has all of the
24 photographs, and now he wants to submit them
25 separately. I think it is duplicative and is

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 improper. It gives undue weight -- they've already
2 got them in there. Why have the same thing in
3 there twice?

4 THE COURT: You can't have them in twice. If
5 there are things not in there -- that is why I
6 asked in the beginning are you putting in your
7 report, your PowerPoint.

8 MR. STANLEY: We'll go with the PowerPoint.

9 (Plaintiff's Exhibit 3 marked and admitted.)

10 (The following was had in open court.)

11 Q (BY MR. STANLEY) So, Mr. Clements, thank you
12 for your testimony and the presentation to the
13 jury. I don't know that this came up during your
14 testimony, but did you -- can you tell the jury
15 what the role of Centex Homes and the associated
16 companies that have been sued in this case was at
17 Wedgewood?

18 A It is my understanding they were the
19 developer and contractor.

20 Q So what is, in your opinion, the
21 responsibilities of a contractor?

22 A To construct the buildings in accordance with
23 the plans and in accordance with the building code
24 and industry standards and manufacturers'
25 instructions.

CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!

1 **Q** Okay. So did you find, based on your
2 investigations, any building code violations at
3 Wedgewood?

4 **A** Yes.

5 **Q** And did you find violations of industry
6 standards at Wedgewood?

7 **A** Yes.

8 **Q** And did you find violations of manufacturers'
9 specifications at Wedgewood?

10 **A** Yes.

11 **Q** And you believe that Centex Homes was
12 responsible for those building code violations,
13 violations of industry standards, and violations of
14 manufacturers' specifications?

15 **A** Yes.

16 **Q** You talked about -- during your presentation
17 to the jury -- about hidden defects. Do you recall
18 that testimony?

19 **A** Yes.

20 **Q** So looking at the exterior walls, which was
21 one of the first things that you covered for the
22 jury, do you believe that the defects that you have
23 investigated were hidden defects?

24 **A** Yes.

25 **Q** So tell the jury the significance of a hidden

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 defect?

2 **A** Well, they --

3 MR. HILDEBRAND: Your Honor --

4 THE COURT: I think he can say what it is,
5 but this is also common sense. Go ahead.

6 **A** Meaning you can't see it without tearing out
7 some of the building cladding components to get to
8 it to make observations of it.

9 **Q** (BY MR. STANLEY) Can the homeowners maintain
10 a hidden defect?

11 **A** No.

12 **Q** Did you find hidden defects at the roofs?

13 **A** Yes.

14 **Q** Did you find hidden defects at the walkways?

15 **A** Yes.

16 **Q** Did you find hidden defects at the attics?

17 **A** Yes.

18 **Q** Did you find hidden defects at the shear
19 walls?

20 **A** Yes.

21 **Q** Did you find hidden defects at the
22 floor/ceiling assemblies?

23 **A** Yes.

24 **Q** Did you find hidden defects when it related
25 to the vapor barrier?

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **A** Yes.

2 **Q** And did you find hidden defects with the
3 window installation?

4 **A** Yes.

5 **Q** So, in this case, you have been paid for your
6 architectural -- forensic architectural services,
7 correct?

8 **A** Yes. That's correct.

9 **Q** Do you have any idea of what your rate is
10 when you are doing investigations?

11 **A** Yes.

12 **Q** Tell me what those are, please.

13 **A** Currently, my hourly rate is \$275 an hour for
14 normal hourly work.

15 **Q** What about when you are having your
16 deposition taken by Centex or someone else, what is
17 your rate?

18 **A** Currently, \$550 an hour.

19 **Q** And so in this case, do you happen to know
20 the approximate amount of your fees and costs?

21 MR. HILDEBRAND: Objection, Your Honor.
22 Objection, Your Honor. May we approach?

23 THE COURT: Sure.

24 (The following is a bench conference had out
25 of the hearing of the jury.)

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 MR. HILDEBRAND: Your Honor, they are not
2 entitled under case law to recover their expert
3 fees.

4 THE COURT: That's not the point. The point
5 is that experts are expected to be paid, and I'm
6 assuming you are going to do the same with yours.

7 MR. HILDEBRAND: We'll stipulate that he gets
8 paid.

9 THE COURT: No, but it goes to the weight. A
10 lot of times they ask the hours because you know
11 how much time you used versus how much time the
12 other guy used. But, secondly, it could affect his
13 opinion because how much he's being paid, so it's
14 fair.

15 MR. DesCHAMPS: There is no way to cross.

16 THE COURT: Why not cut it off -- no, you can
17 ask it. It's appropriate.

18 (Whereupon, the following was had in open
19 court:)

20 Q (BY MR. STANLEY) So you were testifying
21 earlier about your hourly rate for investigations
22 and also taking of your deposition, correct?

23 A Yes.

24 Q Do you happen to know how many hours you
25 spent investigating the Wedgewood project?

CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!

1 **A** I don't have the number of hours off the top
2 of my head.

3 **Q** I think you testified earlier it was 31 days
4 that you spent investigating Wedgewood?

5 **A** Yes, on-site.

6 **Q** And with that hourly rate with your
7 investigations and site visits, and the rate for
8 depositions and any discovery-related items, do you
9 happen to know how much your total bill was to the
10 homeowners?

11 **A** I think it is somewhere --

12 THE COURT: Hold on a second.

13 (Whereupon, a bench conference was had.)

14 THE COURT: I want to make sure. You're
15 going to require me to give the jury charge that
16 says they can make a claim --

17 MR. STANLEY: No. No. They are not making a
18 claim for that.

19 THE COURT: Okay. But that's where you are
20 getting dangerously close. You are making it sound
21 like it -- rephrase that.

22 MR. STANLEY: I think the jury is entitled to
23 know why it was so excessive, because he had
24 numerous days of deposition, multiple different
25 times of deposition.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 THE COURT: I don't think that all -- I think
2 the only thing you can say is how many total hours,
3 and if he doesn't know, he doesn't know. I mean
4 you can say what's your bill, roughly, but not that
5 the homeowners had to pay. I know they have to
6 pay, but, you know.

7 (The following was had in open court.)

8 **Q** **(BY MR. STANLEY)** Mr. Clements, if you
9 could -- and I believe I'm getting to my last line
10 of questioning here -- when you identified
11 construction defects for the exterior walls that
12 you have shown the jury earlier, can you tell the
13 jury what the consequence of those defects are?

14 **A** The consequences of the construction defects
15 are that the walls have rotted out at many
16 locations, and you have damaged insulation,
17 sheathing, and framing.

18 **Q** Same with the roofs, can you tell the jury
19 what the consequences are for those defects?

20 **A** The shingles are not adequately attached and
21 the wood roof deck is not properly protected. So
22 with the shingle attachment issues, we have
23 witnessed already where they have blown off during
24 wind events.

25 **Q** With the walkways, what are the consequences

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 of the walkways?

2 **A** Water intrusion and damage to the framing and
3 sheathing below the waterproofing.

4 **Q** And for the effects that you identified for
5 the stairs, what are the consequences?

6 **A** I would say that they are also a life safety
7 concern as it relates to the walkways and guardrail
8 post and the water intrusion that causes the
9 guardrail post to be loose and not adequately
10 attached.

11 **Q** For the defects that you identified for the
12 attics, what are the consequences for that?

13 **A** That during a high-wind event you can have
14 framing that becomes loose or dislodged as a
15 consequence of not being properly attached to the
16 building.

17 **Q** For the shear walls, the construction defects
18 that you identified, what are the consequences for
19 the homeowners?

20 **A** Again, the building is not constructed in a
21 way that is compliant with the drawing, the
22 structural engineer's design. Therefore, it
23 affects the capacity of the building to handle the
24 lateral resistance as designed.

25 **Q** For the floor/ceiling assemblies, for those

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 construction defects you identified, what are the
2 consequences for the homeowners?

3 **A** The structural concerns are related to the
4 lateral resistance and fireproofing between
5 adjacent units.

6 **Q** And accessibility, the construction defects
7 that you identified, what are the consequences for
8 the homeowners?

9 **A** Life safety concerns related to not having
10 handrails, ramps installed too steep, stairs that
11 have risers that don't comply with the
12 requirements, are too tall, handrails not
13 installed. They are life safety concerns.

14 **Q** And for the vapor barrier, the construction
15 defects you identified, what are the consequences
16 for the homeowners for the vapor barrier?

17 **A** Reduced R-value, so reduced insulating value
18 of the exterior walls of the residence increasing
19 your heating and cooling bills, as well as mildew
20 within the walls and condensation that it has
21 created within the exterior walls of the building.

22 **Q** And for the window installation and the
23 construction defects you identified, what are the
24 consequences for the homeowners?

25 **A** Which ones?

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

```
1 || Q Window installation.
```

2 **A** Water intrusion and damage to the wall
3 framing and sheathing and insulation below the
4 windows.

5 MR. STANLEY: Thank you, Mr. Clements.

6 THE COURT: All right.

7 CROSS EXAMINATION

8 BY MR. HILDEBRAND:

9 Q Hello, Mr. Clements. I'm Tom Hildebrand and
10 represent Centex Homes. I have questions for you.

11 First off, I would like to ask: Have you --
12 you're an architect; is that right?

13 **A** Yes.

14 Q Have you ever sealed a set of drawings for
15 the original construction of any residence?

16 **A** No, I don't believe so.

17 Q Okay. So you criticize contractors and talk
18 about design and such as that, but you don't
19 actually design these things yourself, correct?

20 **A** No. I do design documents and repair
21 projects to fix buildings that have water intrusion
22 problems, and so I've signed and sealed and been
23 the architect of record for projects related to
24 primarily repair projects or renovations, but not
25 ground-up new construction.

CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!

1 **Q** Right. We're not here about repairs. We're
2 here about new construction, and that is what you
3 are testifying about, correct?

4 **A** That is correct, the original construction of
5 the buildings at Wedgewood.

6 **Q** And you have never designed a new building,
7 correct?

8 **A** Not that I recall. My career has been spent
9 within the renovation and investigative realm, as
10 well as the five years prior to doing forensics
11 where I did design work for other architects. Most
12 of that also was dealing with existing building
13 construction and renovations of existing building,
14 and not new construction from the ground up.

15 **Q** Are you a general contractor?

16 **A** No.

17 **Q** Have you ever worked for a general
18 contractor?

19 **A** No.

20 **Q** In this matter, you have not billed the
21 association. All of your bills have gone to
22 Mr. Stanley, correct?

23 **A** That's correct. I direct my invoices to
24 Mr. Stanley.

25 **Q** And he's the one that hired you?

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **A** Yes.

2 **Q** You've testified here today that a general
3 contractor, as I understand, should follow the
4 building code to the extent that he's aware of it?

5 **A** Yes. He should build the buildings in
6 accordance with the building code.

7 **Q** Whose obligation is it to design a building?

8 **A** The structural part is designed by a
9 structural engineer. The architectural is designed
10 by an architect.

11 **Q** And it's the -- under South Carolina law, a
12 contractor can't undertake design responsibilities;
13 those have to be done by an architect or engineer?

14 **A** It should be. I mean, it is not uncommon for
15 contractors to make modifications during
16 construction if there is maybe not a detail and the
17 architect is not involved, the contractor may
18 undertake some aspect of the design on their own.

19 **Q** Okay. But a contractor can't seal a set of
20 drawings, can he?

21 **A** No.

22 **Q** Under South Carolina law, a set of drawings
23 for a project like this or individual residence has
24 to be sealed by an architect or engineer, correct?

25 **A** Yes.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **Q** Now, you testified that a contractor should
2 follow the building code to the extent that it
3 applies to his work and he's aware of it, correct?

4 **A** Yes.

5 **Q** You've never acted as a general contractor.
6 Do you know on an actual construction job who has
7 the final say on whether a building code says one
8 thing or another and what it requires?

9 **A** I think there is multiple people that would
10 have an opinion about it between the design
11 professionals that might be involved with contract
12 administration on the project, as well as the
13 contractor and building code officials.

14 **Q** But who has the final say on a job? Who
15 issues a Certificate of Occupancy that allows a
16 residence to be used and occupied?

17 **A** Regarding Certificate of Occupancy, that is
18 the building code official.

19 **Q** Right. And under the codes, the building
20 official is the final say on code interpretation,
21 correct?

22 **A** I think that is fair to say.

23 **Q** Right. Right. So if a building official
24 says to a contractor do not do this, because if you
25 do, it's contrary to code, then the contractor

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 should follow that instruction, agreed?

2 **A** Well, generally speaking I would agree,
3 except there are times where there could be
4 disagreements between the code official and the
5 contractor as it relates to the applicability of a
6 certain provision, and they may seek a third party
7 or something to resolve it.

8 **Q** But in the everyday world, everyday
9 construction world, and in Myrtle Beach back in
10 2001, the building official is the one who has the
11 final say, and he says, Contractor, you do it one
12 way or the other way, correct?

13 **A** That's possible.

14 **Q** Are you familiar with any of the building --
15 did you work with any of the building officials in
16 North Myrtle Beach in the 2001 time frame?

17 **A** No. I started working with building
18 officials in North Myrtle Beach probably around
19 2006 or seven.

20 **Q** Okay. So the building official has the final
21 say to a contractor whether he follows -- he has
22 the interpretative abilities, and he's the one who
23 makes the final decision as to whether the
24 building -- what section of a building code should
25 be followed and how, correct?

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **A** They certainly have that authority.

2 **Q** Right. And if a contractor is directed to do
3 something by a building official, then that is on
4 the building official, that ain't on the
5 contractor, agreed?

6 **A** Yes.

7 **Q** Okay. Thank you.

8 Let's talk about your investigation of a
9 project and what you do and what your expertise is.
10 Your expertise is as a forensic architect, correct?

11 **A** As an architect and as a forensic architect,
12 yes.

13 **Q** Right. So what you do is if you are called
14 out on a project like this by Mr. Stanley, you go
15 to the building, and based on your experience from
16 having done a lot of these, you can look around the
17 exterior of a building and then say, gosh, I can
18 see that there is some discolored wood right there
19 and based on my experience, that is going to be a
20 pretty good place for me to look to see if there is
21 water intrusion and damage, correct?

22 **A** Certainly, if I see an area that has evidence
23 of water damage, like earlier when we were looking
24 at the trim where you see the fungal growth growing
25 on the outside, if I see something like that, that

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 is something I want to investigate to learn more
2 about what is it and why is it happening, but that
3 does not mean that that is the only places I look.
4 I look at locations where you don't see any
5 evidence of a problem.

6 Q But you hone in -- on your investigations,
7 you hone in on the areas that you suspect there
8 might be a problem, correct?

9 A No, that is not true.

10 Q You don't?

11 A No.

12 Q So I thought you said if you saw something on
13 the exterior of the a building that looks like
14 there is water intrusion and a problem, that is
15 where you look?

16 A It is important if there is evidence of a
17 problem on the exterior of the building that has
18 manifested itself to that point, it is important to
19 understand why is that happening, but that does not
20 mean that is the only place I'll investigate. I'll
21 also investigate locations where I don't see any
22 evidence of a problem.

23 Q What you have done on this project is you've
24 looked on the exterior and in the areas where you
25 believe that there is likely to be a problem,

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 correct?

2 **A** That is not correct.

3 **Q** You investigated all of the buildings? You
4 investigated every aspect of all the buildings?

5 **A** I believe I investigated all nine buildings,
6 yes.

7 **Q** Maybe I misunderstood your testimony, because
8 I thought that you had testified when you said that
9 H2L had looked at deficiencies, that it made no
10 sense to look at an area where there is not a
11 deficiency. You sat there doing moisture readings
12 in the -- say if we're looking at a wall here and
13 window here, I thought you were telling the jury it
14 doesn't make sense to do a moisture reading in that
15 wall because you won't find any moisture?

16 **A** What they did is they made that a focus in
17 looking in areas. They did 44 test cuts, but a lot
18 of test cuts were just in the middle of the wall
19 just to have the data to say this is what we found.
20 We found no water damage, and it is in the middle
21 of the wall. I mean, there is a difference.

22 I looked at areas where there is damage that
23 I could see there was a possibility that something
24 was going on, and I looked at areas where I didn't
25 see any evidence that there was something wrong.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **Q** I thought you were critical of H2L for
2 looking at areas to determine that there is not
3 damage, because that is important, isn't it?

4 **A** Well, what I'm getting at is that there is a
5 quantity of those. They did -- I can find out the
6 number, but it was dozens upon dozens of locations
7 like that in the middle of the wall.

8 **Q** Where there is no damage?

9 **A** Correct.

10 **Q** And they confirmed that?

11 **A** But they didn't balance that out with
12 locations that you would look at below a window in
13 the fiber cement. They didn't balance their
14 investigation out.

15 **Q** We can agree, though, that there are some
16 areas in buildings that have damage, that can be
17 determined, and should be considered by this jury
18 as to what areas have damage, and then there is
19 some areas that don't have damage, and that should
20 be something that this jury and fact finder should
21 look at, what areas have damage and what areas
22 don't; do you agree with that?

23 **A** I agree. And I have not included in my scope
24 of repair and the work that needs to be done fixing
25 areas like H2L identified in the middle of the

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 wall. I didn't include that.

2 Q Okay. So any area that there is not damage
3 that H2L included, you did not price out for your
4 repairs, correct?

5 A I don't understand your question. I think I
6 missed the first word in that question, so I didn't
7 follow you.

8 Q I'll move on.

9 Now, some of these buildings you didn't even
10 test in even one location on a whole building as to
11 whether a defect exists or not. Some of them you
12 just tested other buildings, and then made the
13 assumption that that deficiency is in a particular
14 building, correct?

15 MR. STANLEY: Your Honor, I'm sorry to
16 interrupt. I just want to make sure that based on
17 a prior decision by the Court that we're not
18 getting into statistics. It sounds like we're
19 getting into that area.

20 THE COURT: I can't imagine why he would be
21 the one doing that, but, okay.

22 MR. HILDEBRAND: I'm not sure of the
23 objection.

24 THE COURT: I'm not either.

25 MR. STANLEY: The objection, I think, he's

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 trying to get to a point where he's going to say
2 that Mr. Clements was making decisions based on his
3 cuts, and that, statistically, those weren't enough
4 cuts, and I just want to make sure he wasn't headed
5 that way, because they have withdrawn their
6 statistician.

7 THE COURT: Those are two different things.
8 Overruled.

9 MR. HILDEBRAND: Thank you.

10 Q (BY MR. HILDEBRAND) The fact is that there is
11 some buildings on this project that you didn't make
12 any investigation on to find a particular defect.
13 You found it on other buildings, but you didn't
14 find it on a particular building because you didn't
15 make any investigation, correct?

16 A Again, I mean, I don't know if you are asking
17 me two questions in the same question, but it is
18 true that there are -- like I mentioned during the
19 presentation, we did -- like, you take the shear
20 walls or take the floor/ceiling assembly, we did
21 one shear wall location from one building on the
22 first floor, and we did one shear wall location on
23 the second floor in a different building. Those
24 are very disruptive cuts. What we saw was that --
25 like with the attics where we don't have to go into

CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!

1 someone's unit --

2 **Q** You are not responding to the question.

3 **A** I think I am.

4 THE COURT: Okay, you need to tell me. You
5 are saying he is not responding to the question?

6 MR. HILDEBRAND: My simple question was:
7 Some of these buildings he didn't examine at all
8 for particular deficiencies.

9 THE COURT: So did you say "isn't that true"?
10 That begs a "yes," "no," or "I don't know."

11 **Q** (BY MR. HILDEBRAND) Isn't that true, yes or
12 no?

13 **A** For some of the deficiencies it is true.

14 THE COURT: No. First answer yes or no, and
15 then explain it all you want.

16 **A** Yes, it is true that for some of the
17 deficiencies we don't have any test cuts at some of
18 the buildings, like with the shear walls or
19 floor/ceiling assemblies where, like I said, with
20 the floor/ceiling assembly we did two different
21 test cuts, at two different floors, at two
22 different buildings. At the shear walls, we did
23 two different test cuts, two different floors, two
24 different buildings. Those are interior test cuts
25 and very intrusive into people's units and harder

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 to do. We found it difficult to get access to
2 other units as well.

3 With the attics, we don't have to tear up the
4 interior of someone's unit, so we went into attics
5 where we went into attics in all of the buildings
6 and made observations of the framing connections --

7 MR. HILDEBRAND: This is very nonresponsive,
8 and it is not explaining anything. It's just going
9 on. I am asking: Are there some buildings that
10 you made particular tests for?

11 THE COURT: We need to move on.

12 Q (BY MR. HILDEBRAND) So, basically, if you did
13 an investigation and found a deficiency, on some of
14 those you used extrapolation, basically, you say, I
15 found it here, so my opinion is it must exist in
16 other places, even though I didn't test there,
17 agree?

18 A Yes. That is because I did not just take one
19 issue by itself. When I'm looking at the problems
20 with the installation of the framing and the attic
21 and that spans multiple buildings, and then you've
22 got something like the shear walls or the
23 floor/ceiling assembly, which is also work that is
24 installed by the framer on the project, and the
25 general contractor is responsible for the framer's

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 work, and I'm seeing that there is framing
2 deficiencies across multiple buildings, whether it
3 is the installation of the weather barrier, the
4 windows, flashing for the windows, attic trusses,
5 the installation of the attic trusses, and then the
6 -- I'm not looking at those individually. I'm
7 looking at all of those framing deficiencies
8 together and seeing that everywhere I look, it's
9 bad.

10 I don't have to keep looking to see more of
11 the same. I'm taking it in its totality, and it is
12 everywhere I'm looking at the construction of the
13 framing of the buildings. There is problems.

14 **Q** And you can do that from looking at four cuts
15 on the structural aspect we just talked about?

16 **A** In addition to taking into consideration all
17 of the framing problems with the attics, with the
18 exterior walls, and understanding that each place
19 that we're looking, we're continuing to find
20 framing problems.

21 **Q** So because you contend that there were a lot
22 of issues in other areas of the building, then that
23 didn't require you to do more exhaustive testing
24 for the structural issues? You thought, well,
25 there is a bunch of issues on some other places, so

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 I can just make a guess that those four locations
2 existed on all nine buildings, correct?

3 **A** Not correct. What I'm saying is because of
4 the totality of the framing problems that I was
5 repeatedly seeing, whether it was attic trusses,
6 shear walls, exterior walls, floor/ceiling
7 assemblies, exterior walls, installation of
8 windows, and weather barrier, all of these framing
9 problems taken together tell me that I don't need
10 to keep doing more cuts that everywhere I'm
11 looking, I'm finding problems.

12 **Q** Do you -- did you make any effort to look at
13 who the subcontractors were on this job?

14 **A** I don't remember seeing roster cards. I
15 don't remember seeing those being available to
16 review.

17 **Q** Did you ever ask for them?

18 **A** I asked for all of the file documents that
19 are available.

20 **Q** And you are saying that there were no files
21 that identified who the subcontractors were for
22 these jobs?

23 **A** I don't remember seeing that, no.

24 **Q** Okay. So you don't know which buildings were
25 constructed by which different subcontractors,

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 correct?

2 **A** I don't have that information, no.

3 **Q** So it could have been that if you have nine
4 buildings, you might have had nine framing
5 subcontractors for each one, or it could have been
6 the same framing subcontractor. You just don't
7 know?

8 **A** That's correct.

9 **Q** Now, you've testified about building code
10 violations several times in your testimony here
11 today, correct?

12 **A** Yes.

13 **Q** Right. And is it your opinion that if there
14 is a building code violation, a specific code
15 violation, it has to be fixed?

16 **A** Yes.

17 **Q** It has to be fixed regardless of what the
18 cost is?

19 **A** Yes.

20 **Q** You don't take into account what the cost is
21 when you come up with your repair recommendations
22 for one of the structures you investigate?

23 **A** That's correct.

24 **Q** And it doesn't matter if the building code
25 violation is very slight or large, if it is a

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 building code violation, by golly, it has to be
2 fixed?

3 **A** Yes.

4 **Q** There is no common sense, no black and white.
5 It is building code; got to be fixed?

6 **A** I don't think I would characterize it as
7 common sense. I think it's common sense to follow
8 the building code.

9 **Q** Let me give you a crazy example. Here it is.
10 Let's assume that the building code says -- I want
11 you to assume this -- the building code says that
12 the ceiling height of every room in Wedgewood has
13 to be 7 feet high. You do your investigation and
14 you say, golly, look at that, the ceilings in
15 Wedgewood are 6 feet, 11-and-a-half inches, and the
16 only way that that can be fixed is for the building
17 to be tore down. In your view, that should be
18 done?

19 **A** In my view, something like that should be
20 taken to the building code official to see if they
21 would approve a variance from the building code
22 and, you know, accept what is that condition.

23 **Q** Your opinion, though, is before you do that,
24 if it's a building code violation, it needs to be
25 fixed regardless, correct?

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **A** Not necessarily. What I'm saying is that
2 there are circumstances like you are referring to
3 that would be a slight variation between what is
4 required by the building code versus a slight
5 deviation, and if the building code official has
6 the authority to be able to accept or reject that
7 tolerance.

8 **Q** Okay. So I guess that gets back to our
9 original point: It's the building code official
10 who is out there day in and day out. He's the one
11 that is the final arbiter of whether the
12 construction is in compliance of the building code
13 or not?

14 **A** I've already answered before, I think they
15 have the authority to make determinations on what
16 the code requires and doesn't require.

17 **Q** Have you looked at the documents in this case
18 to see how often building code officials were out
19 there on site and what they were doing?

20 **A** I don't remember seeing those.

21 **Q** Do you know how detailed those inspections
22 were?

23 **A** I don't remember seeing those.

24 **Q** Okay. Are you familiar with the term ASTM?

25 **A** Yes.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 Q What is that?

2 A American Society of Testing and Materials.

3 Q And the ASTM standards, that is something
4 that is referenced in the building code as a
5 third-party source, that the code, in some
6 instances, says that that third-party standard
7 needs to be followed in the construction, correct?

8 A That's correct. It only applies to -- we
9 call it a code reference -- code reference
10 standard, and it only applies to that provision
11 within the code that references to that standard.

12 Q Right. So what the code does it -- the code
13 book has very specific portions of things that are
14 to be done and not done, but then on some of them,
15 it says refer to the ASTM standard, blah, blah,
16 blah, and you need to follow that, or you need to
17 follow the Roofing Association standard or the
18 Brick Manufacturers Association; that is what
19 happens?

20 A It doesn't usually say or, or, or. Here is
21 the code reference standard you need to follow and
22 then maybe a different provision that refers you to
23 a manufacturer's instruction or some other industry
24 standard.

25 Q It's your opinion, though, that even aside

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 from what is in the building code, that if there is
2 an applicable construction standard, whether it is
3 an ASTM standard or brick manufacturer's standard,
4 if there is an applicable standard, even if it
5 hasn't been adopted by the building code, good
6 workmanlike practices and industry standards
7 dictate that the contractor follow that, correct?

8 **A** Because that industry standard represents a
9 body of knowledge, yes.

10 **Q** Right. Right.

11 So if we're -- again, hypothetically, if
12 we're in a town that, for some reason, never
13 adopted any building codes, you would still feel
14 comfortable going to that town, looking at a
15 structure, and saying I don't think that that
16 building was built properly because it didn't
17 follow the appropriate standards that were in
18 effect, even if they weren't adopted by the local
19 building official. I think those standards should
20 be followed, and that includes ASTM standards,
21 correct?

22 **A** Yes. I guess it depends on the relevance to
23 the item, you know, to the issue at hand.

24 **Q** Okay. Let me ask you -- you told me what
25 ASTM standards are. Are there ASTM standards that

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 specifically relate to you as a forensic expert
2 that say that when you are doing an investigation
3 of a building like this, this is the way that you
4 are supposed to do it?

5 **A** There are guides that are published that
6 design professionals, like myself, forensic
7 architects and engineers, can rely upon as a tool
8 to help us with our investigative work, but it is
9 not something that you have to follow verbatim,
10 word for word. They are just -- the ASTM standard
11 is just a guide.

12 **Q** It seems to me that what is good for the
13 goose is good for the gander.

14 If a contractor is supposed to follow
15 published standards, whether they are enacted or
16 not, and ASTM standards -- and you already said
17 that -- shouldn't -- if they are ASTM standards
18 that relate to your investigation, shouldn't you
19 have told them as well, Mr. Clements?

20 **A** Again, the ASTM standard you are referring
21 for me is a guide for design professionals, design
22 professionals and forensic professionals, to
23 utilize in their professional judgment to how they
24 apply that guide to their work.

25 **Q** There are direct ASTM standards that relate

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 to how you should perform an investigation such as
2 you did for Wedgewood, agreed?

3 **A** There are guides that ASTM have published
4 relating to building envelope investigative work
5 for windows, for different aspects of building
6 envelope consulting, but they are guides and
7 clearly for the design professional to utilize in
8 their professional judgment in how they apply the
9 guides to their work.

10 **Q** Did you follow any of those guides on this
11 project?

12 **A** I performed a qualitative investigation that
13 is consistent --

14 **Q** Wait. Did you follow the -- did you even
15 read the ASTM guides before you conducted your
16 investigation?

17 **A** I have read the ASTM E2128 guide in the past
18 and, generally speaking, I follow qualitative
19 investigation work that is consistent with the
20 industry standard among building envelope
21 professionals in South Carolina that work in the
22 same area.

23 **Q** Mr. Clements, we took your deposition, and
24 I'll bring it out if we need to, but I asked you
25 this question about a year ago, maybe a

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 year-and-a-half ago.

2 **A** No, sir. It was three-and-a-half years ago.

3 **Q** Okay. Three-and-a-half years ago. At the
4 time you gave your deposition, I asked had you
5 reviewed and followed any of the ASTM standards
6 that relate to the investigation of this project,
7 and you said, no. Do you remember that?

8 **A** What I remember is that you took my
9 deposition for one day, three-and-a-half years ago
10 related to this case, and you surprised me with
11 some things that day that I wasn't prepared for and
12 didn't have very good answers for that. But since
13 then, I have learned more about some of the
14 language that is in that ASTM guide, because I was
15 also asked about it on subsequent days of testimony
16 in this case.

17 As I said, I was familiar with that guide,
18 and I had reviewed it prior to my investigative
19 work on Wedgewood, and the types of things that are
20 described in there are things that I apply in my
21 investigations on a regular basis when I do
22 forensic consulting and serving as a forensic
23 architect.

24 **Q** Let's pull up your deposition. Do you have
25 that? Page 134, Lines 17 through 22. 134,

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 Line 17, if you could highlight that, please.

2 "Question: Okay. Are there any ASTM
3 standards that relate to making investigations like
4 you made?"

5 And your answer, when I took your
6 deposition, was: "Yes."

7 "Question: Did you follow those standards?

8 Answer: No.

9 Question: Did you refer to them?

10 No."

11 A few pages later: "You didn't refer to
12 those standards at all?"

13 And the answer was: "Correct."

14 That was your testimony then, agreed?

15 **A** Where is the part that you said a few pages
16 later?

17 **Q** Page 136, Line 14.

18 "You didn't refer to those or follow them?

19 Answer: That's correct."

20 **A** You are taking out of context what all of my
21 testimony was on that date three-and-a-half years
22 ago. You are misrepresenting what I said, because
23 there is a point at which --

24 THE COURT: Hold on a second. All right.

25 You need to ask the question, and you can explain

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 it. If you need to go to a different part of the
2 deposition to put something into context, you are
3 welcome to, but we need to move on without you all
4 arguing with each other.

5 MR. HILDEBRAND: Okay.

6 Q (BY MR. HILDEBRAND) Let me ask you this very
7 quickly. I asked you about ASTM standards. Tell
8 me what you knew at the time you did your
9 investigation on this project and the time you gave
10 your deposition several years ago, all right?

11 A Okay. I have not had an opportunity to -- I
12 haven't had time to reread this deposition, so I
13 don't know exactly what was said. I don't know
14 what you are going to ask me. I'm not trying to
15 get in a situation where, you know, there is this
16 "gotcha" on what you said then versus now. But I'm
17 saying I haven't had time to reread this
18 deposition.

19 Q Mr. Clements, what importance -- is there
20 anything in your report that you based -- in the
21 compilation of your testimony in front of this
22 jury -- that relates to maintenance?

23 A No.

24 Q Were you asked by Mr. Stanley to address
25 maintenance and how it would impact the

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 functionality of this building?

2 **A** I didn't report anything about maintenance
3 because I didn't see anything that I saw that was a
4 maintenance-related item that, to me, was a
5 construction defect that I saw that was part of the
6 damages to the buildings. I didn't see anything
7 about the maintenance, in my opinion, that was
8 improper.

9 **Q** Okay. Is maintenance important on a
10 building?

11 **A** Yes.

12 **Q** And if you don't maintain a building, then
13 small problems will develop into big problems,
14 right?

15 **A** I think it depends on the circumstances.

16 **Q** For water intrusion, if you don't -- if you
17 have an issue that causes water intrusion and needs
18 to be maintained, you need to do that or the
19 problem is only going to get worse over time,
20 correct?

21 **A** I guess it just depends on the circumstances.

22 **Q** Have you ever heard the term: "A stitch in
23 time saves nine"?

24 **A** Yes.

25 **Q** That means if you have a problem and address

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 it early, then it prevents it from getting worse
2 over time, correct?

3 **A** Yes.

4 **Q** Did you make any effort to look to see what
5 was -- what the regime and HOA was told that they
6 should do as far as maintenance on this project?

7 **A** You know, I didn't -- I don't know what you
8 are referring to with that. If you are talking
9 about HOA internal documents, meeting minutes, I
10 don't know what you are referring to with your
11 question.

12 **Q** When you made your investigation, were you
13 aware that the -- when you formulated your report
14 that you talked about here today, were you aware
15 that the association had ripped up all of the
16 carpets on the walkways and not replaced the
17 waterproofing membrane underneath it?

18 **A** No, I was not aware that the carpet was
19 replaced until you and Mr. DesChamps -- well,
20 Mr. DesChamps introduced that information to me at
21 one of my depositions.

22 **Q** When you issued your report in this case,
23 were you aware that a pretty large portion of the
24 trim around the windows had been replaced?

25 **A** No, I was not aware of that. And I don't

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 know if I would characterize it as a pretty large
2 portion, but I was not aware that some of the trim
3 had been replaced at the time that my report was
4 issued.

5 Q It was about \$87,000 worth, wasn't it?

6 A Yes, but by comparison of the cost -- I guess
7 we shouldn't talk about damages or cost, but by
8 comparison, in my mind, I don't know that that is a
9 significant amount. It seems to me that it is
10 limited on the buildings. Across the nine
11 buildings, you are only talking about \$9,000 per
12 building where trim was replaced, and it wasn't all
13 the trim.

14 Q Okay. Well, I guess my question is: Do you
15 know, when you are walking around this particular
16 building, if you are looking at a window, whether
17 the trim was what was installed originally by
18 Centex, or what was replaced subsequently by the
19 owner's association?

20 A It's my understanding -- yes, I believe so in
21 that my understanding is that the engineered wood
22 trim was the original trim, and that the fiber
23 cement siding and the PVC plastic trim was -- you
24 know, is stuff that has been replaced.

25 Q How do you know that?

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **A** Because Mr. DesChamps showed me invoices
2 related to the trim replacement, and I saw where it
3 was saying the HOA paid to have some cement trim
4 installed, and so that would tell me that the fiber
5 cement correlates with replacement trim. But it is
6 also possible that there is some original fiber
7 cement trim as well.

8 **Q** Has there been any damage that has exhibited
9 itself to these buildings because of the claimed
10 HardiePlank attachment issue with the nailing
11 patterns that you identified?

12 **A** I think the damages -- just the siding is not
13 properly attached in accordance with the
14 manufacturer's instructions.

15 I don't recall seeing where the falling has
16 fallen off the building at this time. The HOA may
17 have other knowledge about that from past
18 experience beyond my involvement in 2016. But as
19 far as siding fall off the buildings, I have not
20 witnessed that.

21 **Q** I took notes when you were testifying, and I
22 think you said that the problem with the attachment
23 of the siding is that it may not withstand the code
24 prescribed hundred-mile-an-hour wind resistance,
25 correct?

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **A** Yes.

2 **Q** And did you make any test other than say,
3 well, the siding is not nailed right, or I don't
4 think it is nailed exactly right, so it has got to
5 come off or be removed and replaced, whatever your
6 repair is? Did you do any testing -- for example,
7 if you had a siding board -- to see what the actual
8 resistance would be?

9 In other words, what sort of pressures would
10 it take the way that this siding was installed to
11 have it moved or to have it fail? Did you do any
12 testing there?

13 **A** No, sir. I made a comparison between the
14 as-built condition and the manufacturers'
15 instructions requiring the contractor to do.

16 **Q** And how about the -- you also testified that
17 you found lintels, which are things over the
18 windows that support the brick above them, and you
19 said that some of those you didn't feel had
20 attachments at the proper distance. Was there any
21 damage that you noted as a result of that?

22 **A** Yes, I observed where brick mortar was
23 cracked where the steel lintels extend to the brick
24 mortar and where the steel lintels were sagging
25 downward where they're cantilevered off of the

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 brick wall and carrying the load of the brick above
2 it. So two different issues that are occurring as
3 a consequence of that.

4 Q How many instances did you make -- record
5 that observation?

6 A The defective lintel, I believe we documented
7 that at a few locations. And the cracked brick
8 mortar, I think we saw that at a few locations as
9 well.

10 MR. HILDEBRAND: Your Honor, I'm happy to
11 finish. I know the jury said they wanted to stop
12 at 5:30. I don't want to mess someone up.

13 THE COURT: You have awhile still, correct?

14 MR. HILDEBRAND: I would guess maybe another
15 ten minutes or so.

16 THE COURT: Are you -- don't be shy. If you
17 are committed to be somewhere, tell me. I want to
18 be sure.

19 JUROR: Ten minutes is it.

20 THE COURT: Okay. We'll hold him to ten
21 minutes. I'm timing you.

22 MR. HILDEBRAND: You can't draw out your
23 answers either.

24 Q (BY MR. HILDEBRAND) Just a few more
25 questions.

CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!

1 So, Mr. Clements, you are an architect,
2 correct?

3 **A** Yes.

4 **Q** You have a degree in architecture and you are
5 licensed as an architect?

6 **A** Yes.

7 **Q** You are not a structural engineer, correct?

8 **A** That's correct.

9 **Q** Now, you testified that you looked at some
10 drawings in this case, and the way that the framing
11 was done was not exactly as it was shown in the
12 drawings, correct?

13 **A** That's correct.

14 **Q** But you admit that you don't have the
15 expertise or the knowledge to be able to tell this
16 jury whether what was in place actually meets the
17 codes or not, correct?

18 **A** That's correct.

19 **Q** So all you did was say, well, I don't think
20 this is exactly like it is shown in the drawings,
21 but what is shown in place was actual maybe
22 functioning perfectly fine and is code compliant,
23 agreed?

24 **A** I have not seen any evidence to support what
25 you are suggesting.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **Q** Well, I guess the jury, all they can do in
2 this case, is to listen to a structural engineer to
3 make those assertions, and then you wouldn't have
4 the ability to question that, correct?

5 **A** Correct.

6 **Q** Okay. Were the inspections on this case that
7 were performed by Morningstar, was that required?
8 Was that a code requirement or otherwise required?

9 **A** No.

10 **Q** It is something that Centex did on this
11 project that was above and beyond what the minimum
12 standards of what they were required to do,
13 correct?

14 **A** Yes.

15 **Q** Thank you. You testified about a lot of
16 deficiencies here today. My question to you is:
17 If in 2006 -- let me ask you this: Were you here
18 this morning to hear the testimony of Mr. Spencer?

19 **A** Yes.

20 **Q** And did you hear him talk about the board
21 meeting where it was discussed by the property
22 manager, and recommended by the property manager,
23 that, look, there is a problem with these windows
24 and you all need to have it investigated by an
25 engineer to determine whether it relates to

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 original construction or not? Did you hear that?

2 **A** Yes.

3 **Q** If you had done that inspection back in 2006,
4 and the board followed that recommendation and
5 hired you or an engineer who do these inspections,
6 is there any reason why any of these claimed
7 deficiencies that you testified about here today
8 would not have been discovered?

9 **A** I don't believe that is the case because what
10 they were talking about this morning is just
11 described as a gap at the top of a window. It's
12 not representative of all of the issues we talked
13 about here today.

14 **Q** I understand, but if an engineer was called
15 out and said, look, we need you to look at this,
16 that engineer could have looked at that and very
17 easily looked at all of the other deficiencies and
18 made a full investigation about everything you
19 found?

20 **A** I don't think anyone would reasonably think
21 you would go from a small gap being described at a
22 window and that would be translated into a full
23 investigation the way -- like what I was hired to
24 do.

25 **Q** You are a forensic architect?

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **A** Yes.

2 **Q** And if you had been called out by the
3 association in 2006 and they said we think there
4 might be an issue with water intrusion and windows,
5 and we think you need to do a forensic
6 investigation, you would have recommended that they
7 do a full investigation, correct?

8 **A** I don't know that I would have. I would have
9 potentially looked at the things that they wanted
10 me to look at at the time. I don't see any
11 evidence that that is something that would have
12 been correlated into a full investigation like I
13 was asked to do in this case at this time.

14 **Q** All right. I have five minutes.

15 MR. CONNELL: Your Honor, we'll need to talk
16 about this.

17 THE COURT: All right. Let me see it.

18 MR. HILDEBRAND: You specifically --

19 THE COURT: We'll do that tomorrow. Go back.
20 Go back.

21 Ladies and gentlemen, I think now is a good
22 wrap-up point. I have to remind you, don't discuss
23 this case. Don't do any individual research. Get
24 a good night's sleep.

25 Ladies and gentlemen, I'm asking the clerk's

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 office to have lunch for you tomorrow. I'm going
2 to ask if they bring it roughly at 12 o'clock. Are
3 we okay to start at 9:00?

4 FOREPERSON: Yes, ma'am.

5 THE COURT: I appreciate it. See you
6 tomorrow morning. Thank you.

7 (The jury exits at 5:45 p.m., and the
8 following is heard out of the presence of the jury.)

9 THE COURT: All right. This is Mr. Clement's
10 house? What is this a picture of?

11 MR. HILDEBRAND: It's his house.

12 THE COURT: I thought so.

13 MR. HILDEBRAND: And the point is that his
14 house, which is a brick house and has wood siding,
15 a lot of the same defects that he's complaining of
16 that he is telling this jury needs to be fixed,
17 when he's not doing it.

18 THE COURT: Didn't we visit this before? And
19 what happened?

20 MR. HILDEBRAND: You ruled that we would not
21 be required to have close-up photographs of his
22 house, but you did specifically say I think it is
23 fair game for cross examination.

24 THE COURT: It says all of that in an order,
25 or was that verbal?

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 MR. HILDEBRAND: Do you have a transcript of
2 that?

3 MR. CONNELL: I don't remember that at all.

4 THE COURT: You better order the transcript.

5 MR. STANLEY: This was a situation --

6 THE COURT: Was there a talk about a drone,
7 flying a drone over his house? I mean, I have a
8 couple of cases they are doing this exact same
9 thing where people are flying drones over places.

10 Okay. Keep going.

11 MR. HILDEBRAND: It will take five minutes.

12 THE COURT: What hearing was it at?

13 MR. HILDEBRAND: Same one in Columbia.

14 THE COURT: Okay.

15 MR. HILDEBRAND: I thought I had a transcript
16 of the hearing.

17 THE COURT: I would love to have a
18 transcript, but keep going.

19 MR. HILDEBRAND: I think it is hypothetical
20 for an expert to come in and say, look, this
21 structure has these deficiencies, and they need to
22 be fixed irregardless, doesn't matter how much it
23 costs. These are industry standard violations.
24 But when Mr. Clements buys his own house and knows
25 and can see that it doesn't have flashing and some

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 of the same deficiencies, he buys the house purely
2 voluntarily and doesn't fix any of these things.

3 THE COURT: What if he says I know it doesn't
4 have any flashing, and I haven't seen any evidence
5 of water damage, so I don't need to do it.

6 MR. HILDEBRAND: Then that's what he says.

7 MR. STANLEY: Your Honor, I think that the
8 ruling from the Court was -- and this was a
9 situation where I asked Mr. Hildebrand if he had
10 any documents that was not produced to me prior to
11 the deposition, he said no. Then, he pulled this
12 out. Then, subsequent to that, he also sent a
13 subpoena to Mr. Clements' real estate agent, sent a
14 subpoena to Mr. Clements', I believe, banker to
15 determine his financing and HUD Ones, settlement
16 statements.

17 THE COURT: Did you file a motion to quash
18 that?

19 MR. STANLEY: I did, and you granted that.

20 THE COURT: I thought I would.

21 MR. STANLEY: I didn't think there was much
22 questioning in Your Honor's mind that it needed to
23 be granted.

24 I believe the house -- I would have to look
25 at the notes. It's been two-and-a-half years,

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 whatever it is, where the house was purchased in
2 the early 2000's, and it was built in the 1960s. I
3 think the Court was concerned about opening up the
4 door to us starting to investigate expert's houses,
5 paralegal's houses, attorney's houses. I mean, I
6 don't know where this ends.

7 So we're revisiting this when it already has
8 been decided. I don't think the Court left
9 anything open on this.

10 THE COURT: So if anyone can find what I said
11 specifically, let's look at it. What exactly --
12 just give me the proffer what you want to ask him
13 so I know and can rule on it. What are you going
14 to do?

15 MR. HILDEBRAND: Is this your house? Yes.

16 THE COURT: No. Do the proffer.

17 MR. HILDEBRAND: I thought you were just --
18 got you.

19 THE COURT: My worry is this: What is he
20 going to respond? And once he responds, then
21 you'll say he opened up many doors. So just ask
22 him the question.

23 **PROFFER TESTIMONY**

24 **BY MR. HILDEBRAND:**

25 **Q** I've handed you photographs. Do you

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 recognize the three photographs I've handed you?

2 THE COURT: Thank you -- it's Adam, right?

3 Thank you.

4 MR. HILDEBRAND: Would you like me to --

5 THE COURT: That's okay; Adam took care of
6 you. Okay.

7 Q (BY MR. HILDEBRAND) Do you recognize these
8 three photographs?

9 A Yes.

10 Q What are they?

11 A Google screen views.

12 Q Right. Is this your house?

13 A Yes.

14 Q What is the cladding on your house?

15 A Brick veneer.

16 Q Is there also hardboard siding on it?

17 A No.

18 Q Is there wood siding on it?

19 A Yes.

20 Q Does the -- do the windows on your house have
21 flashing?

22 A The way the wood is installed at the fascia
23 and gables, it overlaps the windows in a way that
24 flashing is not applicable.

25 Q My simple question is, and I asked you in a

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 deposition: Is there head flashing over the
2 windows as shown in this photograph?

3 **A** No, because the way the house is constructed,
4 the wood siding at the fascia and gables and
5 soffits overlaps the heads of the windows.

6 **Q** Is there weep holes in the brick?

7 **A** Yes.

8 **Q** There are weep holes in the brick in your
9 house?

10 **A** Yes.

11 THE COURT: I can see them.

12 MR. HILDEBRAND: No, those are the
13 ventilation --

14 THE COURT: Oh, I'm sorry, those are
15 ventilation. Okay.

16 MR. HILDEBRAND: Right.

17 **Q** **(BY MR. HILDEBRAND)** The hardboard siding, how
18 is that -- do you know what the nailing pattern is?

19 **A** It is not hardboard siding.

20 **Q** What kind of siding is it?

21 **A** Wood.

22 **Q** Do you know what the nailing pattern is?

23 **A** I haven't done a forensic investigation on my
24 own house, so I haven't deconstructed the siding.

25 This house was purchased in 2005, before I

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 was even a licensed architect. It's manufactured
2 -- built in the 1960s.

3 Q Just answer my question. Is there -- have
4 you undertaken any analysis of the nailing pattern
5 on the hardboard siding on your house?

6 A It's not hardboard siding.

7 Q That's what you told me.

8 A No. It's wood.

9 Q What's the difference?

10 A It's pine.

11 Q Have you done an analysis of the nailing --

12 A I already said no.

13 Q How about --

14 A I believe it's attached to the studs, but I
15 have not deconstructed it.

16 Q So you don't know?

17 A Like I said, I believe it is attached to the
18 studs.

19 Q How would you know that?

20 A I just believe based on the date of the
21 construction, that is how it was done.

22 Q Based on the date of the construction?

23 A It's an old house. It's like old. And I
24 haven't bought a new one -- and I haven't bought a
25 new one because of the harassment over the last

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 several years.

2 Q You have been harassed over it?

3 A Absolutely. It is intimidation.

4 MR. STANLEY: To intimidate, harass --

5 Q You're being thin skinned --

6 A Absolutely not. I've been sitting up here
7 all day. I haven't been thin skinned at all.

8 THE COURT: We're not going to go down that
9 rabbit hole.

10 What else did you want to ask him?

11 MR. HILDEBRAND: That's it.

12 THE COURT: I'm not letting you ask him. It
13 is not relevant. This is a place built in 1968.
14 If he built his own house in 2001, when Centex was
15 built, on the coast, and it was substantially
16 similar with all of the same products, it might be
17 relevant in some way, shape, or form, but this
18 isn't it. It is a 1968 house, so, no.

19 I mean, you are just beating up on experts.
20 I agree. I think it is a rabbit hole. I guarantee
21 you, every person in here, something is wrong with
22 their houses either with the building code
23 violations, city standard, or not built according
24 to the drawings or the manufacturing specs, so that
25 is just a reality.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 MR. HILDEBRAND: We're good then.

2 THE COURT: Okay. Tomorrow morning they are
3 going to be here at 8:45 to eat breakfast. We're
4 feeding them lunch at 12:00 and break only for,
5 roughly, 30 to maybe 40 minutes. Roughly, 12:00
6 and 12:40-ish, maybe. I want you to plan
7 accordingly.

8 What else?

9 MR. CONNELL: Is your cross examination
10 finished?

11 MR. HILDEBRAND: Yes.

12 THE COURT: So you are done with him?

13 MR. HILDEBRAND: I'm done.

14 THE COURT: Do you have redirect?

15 MR. CONNELL: We'll let you know tomorrow.

16 MR. HILDEBRAND: Well, I'll let you know
17 tomorrow if I'm finished.

18 THE COURT: Okay. And we'll finish up.

19 Who is the next witness? Your estimator?

20 MR. STANLEY: Yes, ma'am, Bob Gallagher.

21 MR. HILDEBRAND: Is that it?

22 MR. CONNELL: Don't know. We'll let you
23 know.

24 THE COURT: So you know what time to have
25 your expert here?

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 MR. HILDEBRAND: Yes, ma'am. They're here.

2 THE COURT: Okay. Good. Perfect. I would
3 suggest them being here. So we'll run hard
4 tomorrow.

5 MR. HILDEBRAND: Your Honor, I need to know
6 if I can ask this: They've subpoenaed the division
7 president for --

8 MR. CONNELL: We'll let you know.

9 MR. HILDEBRAND: Tonight?

10 MR. CONNELL: We'll let you know. I told you
11 I'll give you 24 hour's notice.

12 THE COURT: Let me ask one other question. I
13 figured all of this whole
14 did-you-go-up-and-pull-the-siding begs this whole
15 issue on the pull test for the siding that,
16 apparently, your expert gets into. My question is
17 this is: Is there any ASTM standards for a siding
18 pull test?

19 MR. HILDEBRAND: I would like to discuss that
20 at length, because what we have here as testified
21 by Mr. Clements --

22 THE COURT: You can step down by the way,
23 Mr. Clements.

24 MR. HILDEBRAND: He testified that, in his
25 view, the siding did not comply with the

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 hundred-mile-an-hour wind resistance criteria that
2 applies to it. That is what he said. He said that
3 in front of the jury.

4 So what his criticism is, largely, is that,
5 look, the nails that the manufacturer said to use
6 were different type of nails than what were used,
7 and the way that the siding should be adhered
8 should be spaced at a different interval than what
9 was actually spaced. So Mr. Carter said, okay,
10 gosh, let's figure out one way or the other if that
11 siding is adhered to the building appropriately or
12 not.

13 What he did, he put a device on it to
14 continually put pressure and look at a pressure
15 gauge to see if it failed. What I found was the
16 siding sticks on there very well, and there is no
17 way that it is ever going to come off in a
18 hurricane if by multiplicity withstands the wind
19 resistance.

20 Now, this is -- having a gauge to pull on a
21 nail, pull on a board, there is nothing unusual
22 about that in construction litigation. All
23 Mr. Carter did was work up something that he could
24 apply that to a whole board and see what the
25 resistance is, and I think there is nothing

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 prejudicial about it. It is relevant.

2 THE COURT: So I understand, it sounds like
3 Mr. Clements didn't do any ASTM testing
4 specifically. He just gave an opinion, correct?

5 MR. HILDEBRAND: Right.

6 THE COURT: And then your guy is doing the
7 same thing, correct? There is no ASTM standards
8 for what you are saying how he did it. It is just
9 his opinion that it was fine, correct?

10 MR. HILDEBRAND: Yes, ma'am.

11 MR. CONNELL: Your Honor, he can offer his
12 opinion, but he can't use a pull test, because as
13 you have already figured out, the ASTM standards --
14 this is something that the defendants' expert
15 devised. He wrote it up himself. It's never been
16 tested.

17 THE COURT: As long as he doesn't represent
18 it as something that is approved in standard use.
19 The only time I heard of a pull test is on a roof.

20 MR. HILDEBRAND: Same thing.

21 THE COURT: But it's not. So, again, is it
22 how he's characterizing it? Because, again, it is
23 just an opinion. Your guy just testified that he
24 wasn't even -- in his deposition -- talking about
25 ASTM standards on testing, that that is not what he

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 used and he didn't need to, so I can't see why he
2 can't as well.

3 MR. HILDEBRAND: What he said was he didn't
4 follow the ASTM standards, but he used his
5 experience and judgment and did destructive
6 testing, and these are his opinions.

7 THE COURT: Right, which is what your guy did
8 as well, right?

9 MR. HILDEBRAND: That is what my expert wants
10 to say. I did testing, and in my opinion -- I
11 won't say it is ASTM or building code.

12 THE COURT: He can say he did it in the last
13 20 years and done it on how many projects, and this
14 is what I used.

15 MR. CONNELL: But, Your Honor, he did it on
16 other Centex projects, too.

17 MR. HILDEBRAND: Other forensic architects do
18 the same thing. It is not an unusual procedure.

19 THE COURT: I thought your guy was an
20 engineer?

21 MR. HILDEBRAND: Yes, ma'am.

22 THE COURT: Just making sure.

23 MR. HILDEBRAND: Forensic investigator.

24 THE COURT: Right. So I just want to be sure
25 if there was an issue -- I don't see what the fight

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 is. I think it is an opinion, and what it is based
2 on, it is subject to cross examination. I mean,
3 it's an opinion, just like anything else.

4 If he wants to get up here and purport it is
5 a self-guided test or whatever, he can do that. I
6 guess I'm missing the problem with it.

7 MR. HILDEBRAND: It will be quick, Your
8 Honor.

9 Anything else that will come up tomorrow that
10 we can look at ahead of time that will be
11 objectionable?

12 MR. HILDEBRAND: I don't think so.

13 THE COURT: No? Okay. Anything you can
14 think of?

15 MR. STANLEY: I can't think of anything.

16 THE COURT: Okay. All right. Let's break
17 for the evening.

18 I saw -- Mr. Connell had given us a proposed
19 verdict form. I'm anticipating going in -- we
20 start looking and working on the charges, so we
21 were working on them last week in anticipation of
22 what we think will be coming. Have you all thought
23 about a verdict form at all?

24 MR. HILDEBRAND: Yes, ma'am.

25 THE COURT: Did you submit one?

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 MR. HILDEBRAND: We have not yet.

2 THE COURT: That is what I thought.

3 MR. HILDEBRAND: It depends how things
4 develop at trial.

5 THE COURT: I agree. Again, I just want us
6 to be thinking towards that end.

7 MR. CONNELL: Are you going to give us your
8 verdict form? I gave you mine.

9 MR. HILDEBRAND: Of course. I understand,
10 but --

11 THE COURT: We'll all share.

12 I can tell you, looking at yours, what
13 plaintiffs and defendants usually fight over is,
14 you know, was the defendant grossly negligent?
15 Well, defense usually likes to break it down, not
16 only grossly negligent, but was there a proximate
17 cause to cause damages. But if you can agree on
18 something simple and straightforward, that is
19 great. If not, I have to decide.

20 MR. CONNELL: I gave you the one from the
21 Greenbriar case.

22 MR. HILDEBRAND: Right. I don't think it is
23 far off.

24 THE COURT: Who tried Greenbriar?

25 MR. HILDEBRAND: I did, with Judge Newman.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 THE COURT: Does anyone have a jury charge
2 floating around on that?

3 MR. HILDEBRAND: I think so.

4 THE COURT: Was it appealed, or no?

5 MR. DesCHAMPS: No.

6 THE COURT: Our little secret when something
7 goes up on appeal, we go and pull the old jury
8 charges on the record on appeal.

9 MR. HILDEBRAND: It never got to the
10 transcript section. They dropped it.

11 THE COURT: What year was that tried?

12 MR. DesCHAMPS: 2018.

13 THE COURT: I just wanted to look and see. I
14 have a jury charge on *Magnolia North*, and that is
15 pretty impressive that Cliff Newman still had that.

16 MR. CONNELL: But you are not going to be
17 using *Magnolia North*, so why do you have a jury
18 charge on --

19 THE COURT: What do you mean I'm not using
20 it?

21 MR. CONNELL: Well, you won't let me use the
22 evidence of --

23 MR. HILDEBRAND: Good Lord.

24 THE COURT: No. No. You are beating a dead
25 horse.

CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!

1 It begs the question that there are just not
2 that many construction cases that are tried. That
3 is why there is not that much law. I can tell you
4 that, I think, probably in the last four or five
5 years, there was only, you know, seven, eight,
6 nine, ten cases on construction law in South
7 Carolina. I think there has been more lately, but
8 there just really isn't. They tend to settle.

9 Anyway, you said you have two other cases now
10 in the pipe. Are they yours that you have against
11 Centex?

12 MR. CONNELL: We settled them.

13 THE COURT: So you don't have any more out
14 there?

15 MR. CONNELL: Thank God, no.

16 THE COURT: I thought you said there were two
17 others pending.

18 MR. CONNELL: No. This is it.

19 THE COURT: Are there any other cases against
20 Centex in Myrtle Beach right now?

21 MR. HILDEBRAND: Yeah, there are. There are
22 a couple in Barefoot. Bobby Wylie just filed one
23 last week, God bless him.

24 THE COURT: Okay. Well, see you tomorrow
25 then.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **(WHEREUPON THE PROCEEDINGS FOR MAY 23, 2023**
2 **CONCLUDED.**

3 **(THE FOLLOWING WAS HAD ON MAY 24, 2023 OUT OF**
4 **THE PRESENCE OF THE JURY.)**

5 (The following was had in the Judge's chambers.)

6 THE COURT: It's Wednesday morning, and I
7 brought all the attorneys back just because I
8 wanted to ask you a couple of questions, things for
9 you all to think. I didn't want to do it in front
10 of your clients, and so that's why we're back here.

11 So I'm wrestling, and I'm really wrestling,
12 with the charge and how we're arguing the different
13 causes of action, and now we have already
14 bifurcated out punitive damages.

15 So my question to you, Gene, after we
16 address -- and if they come back with a verdict for
17 actual damages, are you going to put on more
18 evidence as to -- I'm assuming it would be at least
19 the net worth of Centex, and how do you get that
20 in?

21 MR. CONNELL: We have a request of admission
22 with their 10-Q.

23 THE COURT: What else after that?

24 MR. CONNELL: I don't know. I may read some
25 portion of someone's deposition.

CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
 BERNSTEIN, LLP USE ONLY!!

1 So, Judge, I don't think -- and here is my
2 thought about the verdict, so you will be thinking
3 about this -- and of course I haven't tried this
4 kind of a thing, and I don't know that anyone has.

5 THE COURT: No one has.

6 MR. CONNELL: But I think there is two
7 verdict forms. There is a verdict form for gross
8 negligence, and there is a verdict form for unfair
9 trade practices. I don't think we get warranty or
10 any of these other causes of action because we have
11 to prove gross negligence under the statute. So
12 I'm thinking those two verdict forms, a verdict for
13 the defendant, and that's it.

14 THE COURT: One of the things I was wondering
15 was whether or not the Statute of Repose applies to
16 the Unfair Trade Practices Act, and it does,
17 clearly, from just looking at it. I mean, it is
18 the ninth one on here. So that kind of -- so what
19 happens if they come back with as to gross
20 negligence, no, and then they come back with a
21 "yes" as to the Unfair Trade Practices Act?

22 MR. CONNELL: They can still do that under
23 the statute.

24 THE COURT: But they would have proven this,
25 though. But then there would have to be a Statute

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 of Repose question.

2 MR. CONNELL: I don't think so. They are two
3 separate remedies under two separate statutes. If
4 you look at the statutory language of the Unfair
5 Trade Practices Act, it says it is accumulative to
6 other remedies. So you have a tension between the
7 unfair trade practices and the Statute of Repose,
8 so two different remedies. So I think they can
9 find unfair trade practices and not find gross
10 negligence.

11 THE COURT: Okay.

12 Do you agree with that?

13 MR. HILDEBRAND: Absolutely not, Your Honor.
14 If you read the Statute of Repose, it says the
15 development, sale -- it's the terminology.

16 THE COURT: I mean, No. 9, I wanted to know
17 what exactly applied. It says: "For purposes of
18 this section, an action based upon or arising out
19 of the defective or unsafe condition of an
20 improvement to real property includes" -- and it
21 has all of these lists. No. 9 says: "An action
22 against any person who develops" -- and I'm taking
23 out the other things -- "who develops real property
24 or construction of or improvement to real
25 property."

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 So that would include -- correct me if I'm
2 wrong, wouldn't that include the Unfair Trade
3 Practices Act?

4 MR. HILDEBRAND: Yes, Your Honor. I don't
5 see how you cannot -- that is just so broad, you're
6 right. That is the language of the statute.

7 MR. CONNELL: I wrote about that in my
8 pretrial brief.

9 THE COURT: Yeah.

10 MR. HILDEBRAND: You can't argue anything
11 arising or related to the sale, development. I
12 mean, that's what the statute says. Anything
13 arising out of that -- so what they showed was a
14 brochure for the sale and purchase. The master
15 deed, they introduced that, but everything arises
16 out of the sale, and you can't try to bootstrap
17 around that by arguing the unfair trade practice.
18 It is very inclusive.

19 Now, my view on the verdict form is just like
20 we did in Greenbriar. If he wants to have his
21 claims, then you just put in gross negligence, find
22 that yes or no. And then you have breach of
23 warrant, whatever your things are, and have them
24 find the damages.

25 If they don't find gross negligence, then

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 they don't get a verdict on -- if they do find
2 gross negligence, then they decide those issues,
3 and they have a verdict. But there is no -- there
4 is no cause of action, Your Honor, I don't believe,
5 for just gross negligence. You have to have -- if
6 you can prove gross negligence -- the way I read
7 the statute, if you can prove gross negligence,
8 then the statute does not prohibit claims for
9 negligence and other things, and that is how they
10 would have to -- how it would have to go back to
11 the jury. Otherwise, it would just say gross
12 negligence. There is no claim for that, and how
13 would they prove their damages?

14 THE COURT: There is a claim for negligence.
15 So if you get gross negligence, you've obviously
16 proven negligence, which is a cause of action.

17 I guess what I'm trying to figure out, and
18 what I'm struggling with -- I mean, clearly, what
19 you are trying to do on the Unfair Trade Practices
20 Act is to get them to say, yes, it's unfair and
21 deceptive practices, and then it's for the Court to
22 determine whether or not it was willful, to the
23 point where I would treble damages and give you
24 attorney's fees.

25 I guess where I'm struggling -- and, again,

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 you disagree, it sounds like to me, on what we're
2 bifurcating -- I mean, I think, for the most part,
3 the way this is written is that you are conceding
4 that you have a Statute of Repose issue, and that
5 you have to prove gross negligence to get anything,
6 right?

7 MR. CONNELL: I don't think there is any
8 question. I think we all agree to that. That is
9 why I don't think you should have a verdict form
10 with just negligence, because then you go back and
11 argue, well, he didn't prove gross negligence. And
12 the two statutes are accumulative, so two causes of
13 action.

14 THE COURT: Right. Right.

15 So my question is this, then: So you get
16 actual damages, let's say, under any cause of
17 action, and it is gross negligence, so you are
18 entitled to have the consideration of punitives
19 sent to the jury. So you would put up some
20 evidence, and then I would charge punitive damages.

21 My question is this: I'm going back, once
22 again, to the Gamble factors in looking at what you
23 need to prove or what they can consider. I'm
24 looking at the factors: The existence of similar
25 past conduct. So, in this case, because it was the

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 first one, I don't think that evidence of future
2 projects having problems or similar projects, but
3 Question No. 8 is: "The likelihood the award will
4 deter the defendant or others from like conduct."

5 My question is: Do I then at that point let
6 you talk about the other projects?

7 MR. CONNELL: You know, that is what I would
8 say. At that point, we would put up evidence about
9 that if we win and -- that's what I would do.

10 THE COURT: I look at it this way. Whatever
11 happens, we're going to create an appealable issue.
12 If I let it in on the actual damages phase, you get
13 a big verdict, he can appeal, and I think it is
14 very likely they'll overturn it.

15 Same thing on the reverse, though. I think
16 you have an appealable issue as well. If I say no
17 and I don't give it to you, at that point, when it
18 get to punitives, then that potentially is an
19 appealable issue.

20 I think you all are tired of this case. I
21 know I am. I'm trying to figure out -- I haven't
22 seen any charge, I haven't seen any case even tried
23 like this.

24 MR. HILDEBRAND: I had one exactly like this
25 with Stephanie McDonald, who is now on the Court of

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 Appeals.

2 THE COURT: The house case?

3 MR. HILDEBRAND: Right. But it's the same
4 issues, exact same issues.

5 THE COURT: So she bifurcated -- was there a
6 punitive award in that case?

7 MR. HILDEBRAND: No. She just -- no. When
8 the jury didn't find gross negligence, then it was
9 a non-issue.

10 THE COURT: Okay. But was there an Unfair
11 Trade Practices Act claim in that case?

12 MR. HILDEBRAND: I don't recall.

13 THE COURT: That is the difference. There
14 would have to have been an unfair trade practices
15 portion on it.

16 That was the termite?

17 MR. HILDEBRAND: No -- well, there might have
18 been some termites, but mainly the foundation --
19 the pilings under the house, the foundation walls
20 -- it was a raised house.

21 THE COURT: Wasn't it kicked out? Keep
22 going, I'm sorry.

23 MR. HILDEBRAND: It was a raised house, and
24 they decided to make the house bigger. When they
25 did that, the structural walls were not resting --

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 THE COURT: Okay. I'm not worried about any
2 of that. That doesn't matter. What was the issue?
3 Was it a Statute of Limitations?

4 MR. HILDEBRAND: Statute of Repose.

5 THE COURT: It was a Statute of Repose issue,
6 and it went to the jury?

7 MR. HILDEBRAND: Yes.

8 THE COURT: She didn't kick the whole thing
9 out? I thought there was one she kicked out
10 completely?

11 MR. HILDEBRAND: Not this one.

12 THE COURT: What is the case caption?

13 MR. HILDEBRAND: I gave it to you as one of
14 the cases that was attached to my trial brief.

15 THE COURT: Do you remember what it was?

16 MR. HILDEBRAND: Not trial brief. It was to
17 exclude any reference to the Statute of Repose, and
18 we said that Judge McDonald did that. We moved to
19 exclude any evidence of the Statute of Repose and
20 said, okay, argue to the jury whether they find
21 gross negligence or not. They did that, and when
22 they did that, then the whole case was over.

23 But that -- it is a John Weiland case. It is
24 on our brief to exclude that evidence.

25 THE COURT: Did it go up on appeal?

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 MR. HILDEBRAND: No. They started to, and
2 then they dropped it. But I think that probably is
3 still on file in Charleston.

4 THE COURT: So there was nothing appealed on
5 it, so how am I --

6 MR. HILDEBRAND: Oh, I just thought you
7 wanted to see --

8 THE COURT: So you moved to exclude any
9 mention of the Statute of Repose.

10 MR. HILDEBRAND: And Judge McDonald agreed,
11 and that was the order we submitted to you.

12 THE COURT: And why? Why would you do that?

13 MR. HILDEBRAND: Because what I said was,
14 Your Honor, the Statute of Repose is an issue of
15 law. It's black and white. The Statute of Repose
16 applies. The only issue is whether there is gross
17 negligence or not. To argue to the jury, well,
18 we're -- we can't recover unless you find under the
19 statute -- you have to find gross negligence in
20 order for us to recover just submits sympathy into
21 the equation. She said you're exactly right. I
22 think the exact words she used was -- she said --
23 there used to be a med-mal cases or something with
24 the State that you had to prove willfulness, or
25 something like that, and she said I agree with you,

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 Mr. Hildebrand, that is improper, and I will
2 exclude it.

3 So what the plaintiffs did was they put up
4 all of their evidence on their causes of action,
5 including negligence, implied warranty of
6 habitability, workmanlike service. The jury
7 checked off which ones they found. Then there was
8 a place for damages, and they stated what the
9 damages were, and then there was a simple question
10 of: Do you find gross negligence or not? And they
11 found no gross negligence, so the Statute of Repose
12 barred the claim.

13 MR. CONNELL: I don't think you need to do
14 all of that. It is a simple verdict form.

15 THE COURT: It is not just the verdict form.
16 It is the question -- you didn't move for summary
17 judgment on the Statute of Repose, only on the
18 Statute of Limitation; am I correct?

19 MR. DesCHAMPS: That's right.

20 THE COURT: That's what I remember. Okay.
21 I'm still having a hard time with is when we all
22 agree that the Statute of Repose applies to all of
23 these causes of action, you get out of it on the
24 gross negligence aspect of it. Can you show me
25 where the statute of repose is always a question of

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 law as opposed to sometimes a question of law, and
2 sometimes a question for the jury?

3 MR. CONNELL: Gross negligence is always a
4 question for the jury.

5 THE COURT: I know that.

6 MR. CONNELL: So you are going to charge the
7 Statute of Repose and law, and we get to argue
8 that, because that is the appropriate law and the
9 facts.

10 THE COURT: You are saying I'm not, and that
11 is why it doesn't make sense to me. I can tell you
12 right now, I think it has to be in.

13 MR. CONNELL: You have to charge that.

14 THE COURT: That's where I need you all
15 to....

16 MR. CONNELL: The case is Statute of Repose
17 and unfair trade practices, you'll charge both, and
18 we'll argue the law and the facts, because that is
19 what it is. You'll submit two verdict forms, and
20 that will be it. I mean, it's really not that
21 hard.

22 THE COURT: The first one will be just as to
23 the gross negligence and as to these causes of
24 action. The second one will be just punitive
25 damages?

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 MR. CONNELL: I don't even think you need to
2 put in all of those causes of the action. I think
3 it just should be: Do you find gross negligence?
4 Yes or no. If yes -- I'm trying to make it simple.

5 THE COURT: I understand.

6 MR. CONNELL: Because it should be. There is
7 no question, in my mind -- I mean, we're going to
8 have to stipulate that the things were built in
9 2001. The only way we're getting around anything
10 is to argue gross negligence.

11 THE COURT: Right and to say there is
12 building violations and standards and --

13 MR. CONNELL: Exactly. Otherwise, we lose.
14 So we have to prove that. If the jury finds we
15 didn't prove that, we lose. It took me a long time
16 to figure that out.

17 THE COURT: So you don't agree then -- you
18 don't think the Statute of Repose even gets
19 charged?

20 MR. HILDEBRAND: It hasn't in the other cases
21 that I've tried.

22 THE COURT: You've only tried one. And,
23 again, it didn't go up on appeal, which means there
24 is nothing for me to look at.

25 MR. CONNELL: The other thing about that,

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 Your Honor, is this: It has to be charged, because
2 one of their arguments is this is too old.

3 THE COURT: Right.

4 MR. CONNELL: My response to that is the law
5 allows us to do that under the Statute of Repose.
6 So if they win on that, the jury will find for them
7 on the defendant.

8 THE COURT: I think it has to be charged.
9 That is why I'm not understanding when you say you
10 can't -- I'll read Stephanie's order and see if it
11 comes close to applying. I know you gave it to me,
12 but I'll look at it.

13 MR. HILDEBRAND: I think we're making the
14 verdict form much more complicated -- I think it is
15 pretty simple.

16 THE COURT: I need you to understand
17 something. I'm not basing this on I'm that worried
18 about the verdict form. I'm more worried about how
19 they are going to find something, and it depends
20 how I charge how the verdict form comes out. This
21 is a backwards way of figuring out what is
22 appropriate to charge and what you have to prove,
23 which is why I went to the back portion of it,
24 which is what you do in every case, at least I've
25 always done and was taught to. You go to your

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 cause of action, go figure out what you have to
2 prove. Once you figure out what you have to prove,
3 then you have to go back and know what you are
4 charging.

5 So, again, I went back. Because I feel like
6 I'm struggling with this tension between the past
7 -- I mean the subsequent conduct that occurred --
8 more cases, obviously, and I'm still not going to
9 let you say we brought a bunch of lawsuits, because
10 I still think that is not evidence.

11 MR. CONNELL: You made that clear.

12 THE COURT: But I think at some point -- what
13 I'm concerned about is -- I guess you just bring
14 back in Clements and says he looked at these two
15 other projects -- and that's if we get to the
16 punitive damages part.

17 MR. CONNELL: I won't telegraph what I'm
18 going to do, but let's see what happens. If he
19 wins, it is over.

20 THE COURT: I understand that. I understand
21 that. I'm trying to figure out -- I mean, again, I
22 only know what you all have given me. Okay.

23 I have to tell you that what does get lost in
24 the weeds, I believe, with the jury is when you
25 talk about the implied warranty of inhabitability,

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 workmanlike services, breach of fiduciary duty.
2 They say how does that relate to all of the other?
3 I don't think they understand those are separate,
4 you know, so. Okay.

5 So you two are going to work on a verdict
6 form, and then we'll talk about it.

7 You need to put on the record your objections
8 when we do the jury charge conference that you
9 don't want the Statute of Repose charged or some
10 explanation for it.

11 But you did give me -- did you give me a
12 Statute of Repose jury charge? Will, did you?

13 MR. DesCHAMPS: I don't think so.

14 THE COURT: I know you did -- someone gave me
15 one.

16 LAW CLERK: No. That was the unfair trade
17 practices.

18 MR. HILDEBRAND: I have Gene's proposed
19 verdict form, and I think we can come to an
20 agreement on that. I don't think it is far off.

21 MR. CONNELL: I didn't put the Statute of
22 Repose as a jury charge because I figured you had
23 to charge it. You were saying don't give you stuff
24 that you already know.

25 THE COURT: I didn't need you to give it to

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 me, but -- well, my last question -- you keep
2 harping on this and I want to make sure -- can you
3 show me anywhere that it was required for Centex to
4 have licensed specialty subcontractors, I mean, in
5 this case? And did the testimony from Clements,
6 was there anything as to -- did you have any
7 unlicensed mechanical, electrical, plumbing people
8 on this project?

9 MR. CONNELL: There are two. There is AK
10 Construction and a mason. I have stuff from the
11 LLR, and I have the LLR person on standby.

12 THE COURT: AK Construction, what did they
13 do?

14 MR. CONNELL: They did framing and things
15 like that.

16 THE COURT: I'm asking what about -- do you
17 have any unlicensed persons that did plumbing,
18 electrical, or mechanical.

19 MR. CONNELL: Well, mechanical, electrical
20 and plumbing are not issues in the case.

21 THE COURT: So I need you to show me
22 somewhere where Centex was required back in 2000 to
23 have licensed subcontractors. I was going to look
24 at when the statute -- when the specialty
25 subcontractor requirements went into effect. I

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 don't think that was in.

2 MR. CONNELL: We have someone from LLR, and
3 I've given them copies of all of the -- there were
4 people that were licensed, as I think Tom would
5 agree. Probably 80 percent are licensed, and two
6 unlicensed.

7 THE COURT: And they are AK Construction, and
8 they did the framing. And who else?

9 MR. CONNELL: BK Brick, I think.

10 MR. DesCHAMPS: Can I respond to this, since
11 it is on the record?

12 THE COURT: Yeah.

13 MR. DesCHAMPS: AK Framing was not alleged to
14 be a subcontractor of Centex. They were brought in
15 as a secondary subcontractor by one of our licensed
16 subcontractors. So I don't think AK Framing should
17 be a part of the equation.

18 MR. CONNELL: They are a sub-sub.

19 THE COURT: And they are allowed to work
20 under the other subs?

21 MR. DesCHAMPS: Yeah. Right. They were not
22 in a relationship with Centex.

23 THE COURT: Back in 2000, in a commercial
24 project, where is the requirement that you had to
25 use licensed subcontractors?

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 MR. CONNELL: So I knew you had been thinking
2 about it.

3 THE COURT: I've been trying to find it. I
4 know now what you are required to do.

5 A So everybody's experts, including the
6 defendants' experts, said they wouldn't hire -- it
7 is not a good industry practice, and when they get
8 up on the stand --

9 THE COURT: So just saying it is not a good
10 industry practice?

11 MR. CONNELL: Right. Standard industry
12 practice is to do that.

13 THE COURT: And their own expert said that?

14 MR. CONNELL: They do.

15 MR. DesCHAMPS: I don't think that is what he
16 said. I think he said, Would you do it at your
17 house, or something like that.

18 THE COURT: But the difference is now versus
19 then. I mean, nowadays we have a statute that says
20 what is required.

21 MR. CONNELL: Here is the thing. We have all
22 of this -- all of the copies from LLR for the whole
23 project, so they all had to have them, and they
24 just didn't have them.

25 MR. DesCHAMPS: You said they all have to

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 have them?

2 MR. CONNELL: There is licenses for a lot of
3 the others; two that are missing.

4 MR. HILDEBRAND: You are right, there is
5 nothing that requires --

6 THE COURT: Show me somewhere that says it
7 was required. I understand you are saying it is
8 not a good -- if your experts agree that that was
9 not the industry standard in 2000, that is one
10 thing, and they can testify to that. But I don't
11 know where that is a violation. Will you get
12 slapped -- if they come out there when they are
13 inspecting it, will they shut you down back in 2000
14 if you have a subcontractor working on the project
15 that is -- I mean, that might be the question to
16 ask. I guess that is your cross.

17 MR. CONNELL: It goes to the gross negligence
18 claim and negligent supervision. You don't have
19 licenses for those people.

20 THE COURT: So you are saying they should
21 have been supervised more closely because they
22 didn't have licenses? How are you going to prove
23 there was a different standard?

24 MR. CONNELL: I don't know what you mean.

25 THE COURT: You are making a jump. Say that

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 again.

2 MR. CONNELL: So one of my arguments will be
3 that those subcontractors were unlicensed.

4 THE COURT: Okay.

5 MR. CONNELL: And they didn't have licenses,
6 and Centex --

7 THE COURT: And weren't required to by law.

8 MR. CONNELL: But good supervision is that
9 you do that, and everybody --

10 THE COURT: You are -- maybe I'm looking at
11 supervision as two different things. You are
12 saying supervision as you should never hire
13 subcontractors that are not licensed?

14 MR. CONNELL: It is not good industry
15 practice, not standard industry practice.

16 THE COURT: In 2000? That is what your guy
17 says?

18 MR. CONNELL: He says that.

19 MR. HILDEBRAND: He wasn't even out of
20 college yet, how on the earth can he say that?

21 MR. CONNELL: Your expert said --

22 MR. HILDEBRAND: He did not. Well, we'll
23 have to look.

24 THE COURT: Go back and find it.

25 I'm trying to take care of anything that is

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 an appealable issue. Because, again, if you get a
2 verdict, you want to keep it. You don't want to
3 create appealable issues. Then we're back to this
4 case should have been settled. This case should
5 have been settled.

6 Did you talk anymore, or no?

7 MR. HILDEBRAND: I invited Gene to talk. I
8 said call me if you want to talk, and I haven't
9 heard from him.

10 MR. CONNELL: I'll talk to you as soon as we
11 finish -- or we'll talk to you.

12 THE COURT: Just for another point --

13 MR. CONNELL: You are a trailblazer. This is
14 a trailblazer -- (laughing)

15 THE COURT: No, I'm not. I'm not a
16 trailblazer. I'm just trying to make heads or
17 tails of this.

18 I can't remember what I was going to say. If
19 I remember, I'll bring it back up again.

20 If they come back with a verdict, based on
21 when that is, and let's say you are going to
22 theoretically put up some evidence, how much time
23 are we talking about? I need to make -- what
24 happens if this verdict comes back at 8 o'clock on
25 Friday, and then we have to go forward with the

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 same jury as to punitives? What do we do with
2 that?

3 MR. CONNELL: I think, what I understand now,
4 I think we're in a situation where I think we can
5 finish by tomorrow. I'm thinking. I don't know --
6 are you going to get Mr. Clements back again or
7 not?

8 MR. HILDEBRAND: Oh, no. No.

9 I thought that the punitive damages -- the
10 only issues -- they've already introduced the sales
11 brochure and what they have for the Unfair Trade
12 Practices Act. I thought that they -- the only --
13 the only thing I envisioned for punitive damages
14 was to introduce our net worth, which is typical,
15 in most cases, on punitive damages, that is the
16 only thing that is excluded. You say if they find
17 punitive damages --

18 THE COURT: Right. The only -- that is only
19 one of the factors, and I think when it comes to
20 punitives, he has an opportunity, if he wants to,
21 to show, again, the deterrent aspect of it.

22 MR. HILDEBRAND: I think you need to hear the
23 testimony as well, Your Honor, from our witnesses
24 and what they have to say on this.

25 THE COURT: Oh, no. No. I agree. I'm

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 looking at it from the top and trying to figure it
2 out, because I've already not allowed him to
3 testify to it, so I have to look down the line as
4 to what is coming in. I already said no, but I
5 want to be sure -- again, if I had let it in, I
6 think it would have been an appealable issue. And
7 then again, if it doesn't come in, it could be an
8 appealable issue for you, so...

9 MR. CONNELL: We'll see if they give us
10 actual damages and then worry about that.

11 THE COURT: And you will work on the verdict
12 form?

13 Shoot, there was one other thing and I can't
14 remember it. If I come up with it, we'll go from
15 there.

16 So we don't know of any requirement back
17 then, other than industry standard -- well, let's
18 just hear what your guy has to say.

19 MR. CONNELL: How long are we going to run
20 tonight?

21 THE COURT: Well, I have a board meeting by
22 WebEx at 5:00. I have missed the last two, so I
23 was hoping to finish by 5:00 today, which is why we
24 brought in lunch. I was thinking we would finish
25 at 5:00 today, and then I can just sit back here

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 and do it. So that is my thought.

2 MR. HILDEBRAND: I was going to ask Ross
3 Clements a few more questions, but I'll skip those,
4 and they can go right to their damages guy.

5 MR. CONNELL: I don't know how long your
6 experts will be. About the same length of time as
7 Mr. Clements?

8 THE COURT: I mean, we can go later. I just
9 had planned on stepping back here and doing it
10 right here, and I can do it from the bench, but I
11 feel bad that I haven't been on it.

12 MR. CONNELL: You can do what Judge Peeples
13 did. He came back here and let the law clerk be
14 the judge one time on a case.

15 THE COURT: Oh, you are talking about Judge
16 Peeples. Oh, I know exactly. Everybody knows this
17 story. Oh, yeah, he even had him put on the robe.
18 It was Scott Lee, who is a Beaufort lawyer. Yeah,
19 he had him go up there and hear all of the motions,
20 and then apparently Court Administration caught
21 wind of it, made Peeples go back and listen to all
22 of those again, and he ruled exactly like Scott
23 ruled on every single one of them, which is so
24 funny.

25 I have my own Peeples story. When I clerked

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 for Casey Manning, Scott Lee clerked at the same
2 time for Peeples. Scott called me at like
3 11 o'clock on a Friday night and started asking me,
4 Why did Judge Manning do this? Why did he rule
5 like this? Why did he do this? And then about
6 three minutes into the conversation -- and I
7 thought it was a little weird because it was 11
8 o'clock at night, and three minutes into the
9 conversation, Judge Peeples in the background, god
10 damn it -- and he was right there. They were still
11 sitting at the Lexington County Courthouse. It was
12 11 o'clock at night, and he was going through what
13 Judge Manning had done. I started laughing, and of
14 course I turned around and called Judge Manning and
15 said, Hey, you are not going to believe what just
16 happened to me. It is what it is.

17 MR. HILDEBRAND: He always had an ashtray
18 there (indicates).

19 THE COURT: The stories I heard are so
20 different and so unbelievable. It's not the same
21 anymore.

22 MR. HILDEBRAND: There were some characters
23 for sure.

24 THE COURT: I will say this, and I've said
25 this on the record before, judges are a quirky

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 group. They really are a quirky bunch. We're more
2 fun than you think, but they are a quirky group.

3 Okay. So I hope we're on the same page. So
4 you are going to be done? Okay.

5 (Whereupon, the in-chambers hearing concluded
6 and the following was had in the courtroom out of
7 the presence of the jury.)

8 THE COURT: Thank you. Okay. We'll wait for
9 the attorneys. Are we ready to go?

10 MR. CONNELL: Yes, ma'am.

11 THE COURT: All right. Let's bring in the
12 jury.

13 You had some redirect, correct?

14 MR. STANLEY: No, ma'am.

15 THE COURT: So you are just going to put up
16 your estimator?

17 MR. STANLEY: Yes, ma'am.

18 THE COURT: If you are fine with putting it
19 up, yeah, go ahead.

20 (The jury enters at 10:17 a.m., and the
21 following is heard in the presence of the jury.)

22 THE COURT: Good morning, ladies and
23 gentlemen. Thank you for your patience. We're
24 going to continue with the plaintiff's case.

25 Mr. Stanley, if you will, call your first

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 witness for this morning.

2 MR. STANLEY: Plaintiff calls Bob Gallagher.

3 (ROBERT "BOB" GALLAGHER, having been duly
4 sworn, testified as follows:)

5 THE WITNESS: Robert Allen Gallagher.

6 **DIRECT EXAMINATION**

7 **BY MR. STANLEY:**

8 **Q** Good morning, Mr. Gallagher. If you would,
9 please, tell the jury a little bit about your
10 background and qualifications. Let's start with
11 your education. Can you tell the jury about your
12 education background?

13 **A** Sure. Good morning. I graduated high school
14 in 1981. From there, I went to work for the SCM
15 Glidden Paint Company, and they sent me to various
16 training seminars, both in-house and other
17 companies that put on training seminars, for
18 construction type of materials.

19 At the time I was there, Glidden purchased a
20 company that sold building repair and maintenance
21 materials, and so I was sent to different training
22 seminars, like the National Association of
23 Corrosion Engineers, KTA-Tator out of Pittsburgh to
24 learn about corrosion and to learn about
25 construction materials, building repair materials.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 I sold those materials when I was with Glidden.

2 And then Procon --

3 Q Will you Slide up to the microphone so we can
4 hear you? Thank you.

5 A While I was at Glidden, working with them and
6 selling building products, Procon was one of my
7 larger accounts here in the Carolinas, so they were
8 one of my customers at that time. When Hurricane
9 Hugo came through the area in late 1989, they
10 contacted me and asked me to come onboard with
11 them, so I did. I made a change, career change,
12 and went from selling building products to working
13 in the construction industry.

14 As a -- as a general contractor, I held my
15 license here in South Carolina since '96. At one
16 time I worked nationally and was licensed in
17 multiple states.

18 What ProCon does, and what I've done for the
19 past 30-plus years, is to repair and maintain
20 buildings. So we specialize in working with
21 customers who own maybe a single building or
22 multiple buildings, and we go in and work with
23 architects, engineers, develop repair scopes of
24 work, develop maintenance type of programs for
25 buildings, and then we actually go in and do the

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 work.

2 We still work predominantly along the east
3 coast. At one time we worked nationally, but
4 predominantly here along the east coast now.

5 Q You mentioned that you were a licensed
6 contractor?

7 A Correct.

8 Q What type of license do you hold?

9 A An unlimited general contractor's license.

10 Q Is that in this state or other states?

11 A For South Carolina and North Carolina, and
12 then some states don't have a licensing program,
13 but you register with them as an unlimited general
14 contractor, so I'm registered in several states as
15 well as a general contractor.

16 Q If you would, tell the jury what is an
17 unlimited general contractor?

18 A The classification that the state issues for
19 an unlimited contractor's license means I could
20 build anything of any dollar value holding that
21 license. So I can build new construction up to any
22 dollar amount, so I'm not limited by the dollar
23 amount by of the project. But, again, I don't
24 build new. I repair/maintain existing properties.

25 We separate our company into two

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 subdivisions. We have one division that basically
2 does the multifamily, like Wedgewood that you have
3 been hearing about, and then we have another
4 division that works on the mid-rise and high-rise
5 buildings on the beach. I do a lot of repair and
6 maintenance work in both divisions.

7 Q So how long have you held your unlimited
8 general contractor's license?

9 A Since 1996.

10 Q And you consider yourself to be a general
11 contractor?

12 A Yes, sir.

13 Q And how long have you been a general
14 contractor?

15 A Well, since I obtained the license in '96. I
16 am the qualifier.

17 Q How many overall years of construction
18 experience do you have?

19 A Over 37.

20 Q And most of that was as a general contractor?

21 A Correct.

22 Q So you told the jury that you worked with
23 ProCon. Tell the jury about how long you have
24 worked with ProCon and what have been your
25 responsibilities.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **A** Okay. Well, when I came to work for ProCon
2 in '89, I acted as the role of general manager. So
3 I took on the day-to-day tasks. I was the lead
4 estimator. I bidded all of the projects,
5 negotiated all of the contracts, estimated all of
6 the projects.

7 Then, I worked with in-house staff to
8 schedule crews for the work, negotiations with
9 owners. So that was pretty much my role when I
10 came into ProCon.

11 Then the owners wanted to retire, so we
12 worked out an agreement, and over a four-year
13 period, I purchased the assets of the ProCon and
14 became the owner in 1996, and at the same time, I
15 obtained my general contractor's license.

16 **Q** So what is ProCon's area of emphasis?

17 **A** Again, repairing buildings. We do pretty
18 much the whole building, what we refer to as the
19 "building envelope;" that means starting at the
20 roof, coming down to the exterior walls, the
21 windows, the doors. Whether it is concrete, wood
22 frame, we take care of everything on the outside of
23 the building from either a maintenance standpoint
24 where they implement maintenance, or from a repair
25 standpoint, if they needed repairs that needed to

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 be done.

2 Q As a general contractor, have you prepared
3 any repair estimates?

4 A Oh, thousands.

5 Q Have you done repair estimates for
6 multi-family projects?

7 A I have.

8 Q How many do you estimate?

9 A Off the top of my head, probably at least a
10 dozen.

11 Q What is your background as to estimating?
12 What is your experience?

13 A Well, I learned, basically, all of my
14 estimating skills from the previous owner of
15 ProCon, Mr. Rex Healy (phonetic). I worked with
16 him those four or five years closely developing
17 those skills and working with him to learn the
18 estimating side of the business.

19 Q How long have you been preparing estimates?

20 A Well, since, basically, 1990 when I came into
21 ProCon.

22 Q So, approximately, 33 years?

23 A Yes, sir.

24 MR. STANLEY: Your Honor, I offer
25 Mr. Gallagher as an expert in general contracting

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 and estimating.

2 MR. DesCHAMPS: No objection.

3 THE COURT: Ladies and gentlemen, Mr.
4 Gallagher has been qualified as an expert in the
5 area of general contracting and estimating.

6 Ladies and gentlemen, that information allows
7 him to give -- sorry, that designation allows him
8 to give his opinion and the reasons for the
9 opinion. You are to use that as you see
10 appropriate and as compared to other evidence in
11 this case.

12 Q (BY MR. STANLEY) Mr. Gallagher, if you would,
13 tell the jury when you were contacted about the
14 case this we're here for today, Wedgewood
15 Condominium Association versus Centex Homes and
16 other associated Centex companies.

17 A That would be back in 2018.

18 Q And who contacted you?

19 A I believe, initially, it was Mr. Clements
20 with Fuller Group to ask if I would be interested
21 in developing a repair estimate.

22 Q Have you worked with Mr. Clements before?

23 A I have.

24 Q And what did Mr. Clements ask you to do?

25 A To, basically, prepare the repair estimate

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 for the case.

2 Q What does a repair estimate require you to
3 do?

4 A Well, the first thing that I need is,
5 obviously, all of the documentation that
6 Mr. Clements relied upon to develop his reports. I
7 want to review the same information and data that
8 he is looking at as he is preparing his report.

9 Once I obtained all of that information, I
10 then scheduled several trips out to the actual
11 property so that I could look firsthand at the
12 issues and areas of concerns.

13 While I'm there, I start developing what we
14 call the "take-off." So I'm out there measuring
15 and counting how many windows, what size, how many
16 doors, what size are the doors, measuring trim,
17 areas of lap siding, measuring siding of brick.

18 I'm looking at -- in this case, I contacted a
19 company called Eagle View that provides overhead
20 view of the roofs, give you photographs of the
21 roof. They take quantities, tell you how many feet
22 of valleys and flashings. So I'm starting to
23 formulate -- based on the report and the data I'm
24 receiving from the Fuller Group, I'm starting to
25 develop that repair estimate.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 I need all of those components, like how many
2 square feet of walkway surface, how many linear
3 feet railings on each building. So it is a very
4 involved process that takes time to compile all of
5 that information.

6 Once I have that information and I start
7 understanding the repair program that has been
8 recommended even more, I'm relying not just on the
9 entire report, but there is also a repair matrix
10 within the report that Mr. Clements may have shared
11 with you during his testimony. But the repair
12 matrix is the main go-to, as far as setting up what
13 needs to be done, where it needs to be done. I
14 follow that to the letter exactly. You know, here
15 is the repair matrix Part A., I follow that through
16 and put that into my estimate and break those
17 quantities down based on that field investigation.

18 Another thing that I'm doing during that same
19 time is I'm reaching out to my suppliers because
20 this is what I do day in and day out. I buy
21 building repair materials and repair buildings. So
22 I'm reaching out to vendors, suppliers,
23 subcontractors, and I'm starting to get estimates
24 back from them so I can utilize them in my estimate
25 to compile the total estimate, if you will.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **Q** And you commented on or testified about
2 information that was provided by Mr. Clements,
3 correct?

4 **A** Correct.

5 **Q** Tell me again what information you received
6 from Mr. Clements?

7 **A** It was the initial March 2nd report with
8 all of the photographs, the repair matrix, there
9 were some original drawings, construction drawings
10 for the buildings in this report. There was the
11 summary of construction defects and required
12 repairs breaking down each area, you know, the
13 individual components that had to be repaired as
14 part of his investigation. So it was the entire
15 report from the Fuller Group.

16 **Q** And that is part of your working file?

17 **A** It is, yes.

18 **Q** How many site visits did you make to the
19 Wedgewood Condominium Association?

20 **A** I don't remember the exact amount, but at
21 least four, if not more.

22 **Q** That was to do what?

23 **A** As I mentioned earlier, that was to
24 physically count -- basically, there is two style
25 of buildings out there: The 12-unit and 15-unit

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 building. So it was literally to count everything
2 on each one of those buildings and then go visit
3 the other buildings to make sure I had everything
4 covered and picked up in my estimate.

5 Q And you testified earlier about suppliers.
6 That information is part of your file, also?

7 A It is. It is part of my file, and I list
8 within my estimate who supplied the estimate to me,
9 if it was a supply house, if it was a
10 subcontractor, a vendor. I put that data into my
11 spreadsheet so we know where the number came from.

12 Q And can you tell the jury who the suppliers
13 are, as best you recall? We're going to talk about
14 your repair estimate, but as best as you recall for
15 this case.

16 A I purchase a lot from Blanton Building Supply
17 in Little River because they are over by my office.
18 So they provided pricing for a lot of the siding,
19 framing, lumber materials.

20 I contacted Guarantee Supply, who is on the
21 south end, for a lot of the waterproofing products
22 that are being utilized in this work scope.

23 Those are some of the main key players that
24 provided pricing for the materials.

25 Q So you took the information that you

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 testified about earlier, and what did you do with
2 this information?

3 **A** Well, as the information came in, I started
4 building a spreadsheet, and as the information, you
5 know -- my spreadsheet is basically laid out --
6 again, going back to that repair matrix that was
7 provided by Fuller, my spreadsheet, my repair
8 estimate follows that outline to the letter. And
9 so as my -- as the estimates are coming in from the
10 various trades and subs and vendors and suppliers,
11 I'm applying those costs within my spreadsheet to
12 the appropriate line item within that spreadsheet.
13 So, literally, I broke down every component of this
14 repair.

15 **Q** And have you prepared a repair estimate for
16 this case?

17 **A** I have.

18 **Q** If you can, identify that document for me,
19 please. Hold on one second, I'm sorry.

20 (A brief pause in the proceedings.)

21 **Q** (BY MR. STANLEY) I needed to show that to
22 opposing counsel, but can you now identify this
23 document?

24 **A** Yes. This is a 24-page spreadsheet that is
25 my estimate for Wedgewood Condominiums for the nine

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 buildings located on the property.

2 MR. STANLEY: We would like to present this
3 on the screen, please.

4 THE COURT: Do you have an extra copy of it?
5 Whichever one you are going to enter into evidence,
6 you can give me and I'll make sure I won't write on
7 it and that can go in -- or did you already give it
8 to her?

9 MR. STANLEY: I have not.

10 Your Honor, the plaintiff moves to have the
11 repair estimate admitted into evidence.

12 THE COURT: Okay. Well, he has to lay a
13 foundation, but once it is in, we're fine. I just
14 don't think I have it updated.

15 MR. STANLEY: Would you like me to e-mail it
16 to you now?

17 THE COURT: No. No.

18 MR. STANLEY: We have two copies.

19 THE COURT: Oh, no. No. Then you're fine.
20 You're fine.

21 **Q (BY MR. STANLEY)** What is on the screen, is
22 that a reflection and identical and accurate
23 document to the repair estimate you have before
24 you?

25 **A** It is.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **Q** So let's talk about the first item, which is
2 "mobilization." Instead of going through every
3 single line, just for the sake of time, if you
4 could tell the jury an overall opinion about these
5 items M1 through M8.

6 **A** The first section is "mobilization."
7 Basically, what that describes is everything that
8 needs to be brought to the site in order to set up
9 the site for construction. Those components
10 include -- very first line item -- scaffolding,
11 which is delivered and returned, the freight
12 charges, the scaffolding erection around the
13 buildings, dumpster delivery that comes to the
14 site, portable toilets for the crews, lull
15 equipment, which is a large forklift, Conex office
16 storage box, containers for putting materials into
17 and storing them, and then moving them as the work
18 progresses. So that is basically what is captured
19 in 1.

20 **Q** Thank you.

21 If you will, explain to the jury what the
22 columns are at the top, starting with "unit type,
23 quantity, unit price, total," and then your notes.

24 **A** Okay. So, at the top, you have the
25 description of -- for example, the first line item

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 is scaffolding, delivery and return, the freight
2 charges associated with that. I've listed it as a
3 lump sum quantity because that is how it was quoted
4 to me from the vendor. It is one lump sum, and the
5 unit price is \$3,000 for the freight. That brings
6 it over to a total of \$3,000. The vendor who
7 supplied that quote is called Southeast Access. So
8 that it is an example of one of the quotes that I
9 received.

10 Q And you've done those types of quotes for the
11 entire section for M?

12 A Correct.

13 Q What is the subtotal you have for the
14 mobilization?

15 A \$533,537.

16 Q The next issue is "exterior walls," correct?

17 A Correct.

18 Q And what are you addressing here for the
19 exterior walls?

20 A Where we start -- again, we have the Fuller
21 summary of construction defects that Mr. Clements
22 may have talked about with you yesterday. In other
23 words, he's identifying where the defects have
24 occurred, and he's put them into a summary at each
25 location of what needs to be done, how to address

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 it, and how to fix it.

2 So starting with my section one, "exterior
3 walls," I'm taking that data right off of the
4 summary of construction defects prepared by the
5 Fuller Group. Within that, there is a required
6 repair recommendation, and that is exactly what
7 I've put into my section one, is the same verbiage
8 and same information.

9 So with Section 1, this deals with the
10 incomplete coverage of the weather resistant
11 barrier. You may have heard it referred to as
12 "WRB" yesterday.

13 Q If you would, for the sake of time, just
14 touch on these items starting at 1.1.1 and explain
15 to the jury what they cover and the subtotal of
16 those costs.

17 A Sure. The first thing is to remove and
18 replace existing weather resistant barrier where it
19 was damaged. There is an allowance amount in there
20 for that component. And then you have the unit
21 rate and the subtotal and the vendor who is
22 providing that service, all the way to the far
23 right. And then you are -- so 1.1 is "removal,"
24 and 1.1.2 is replacement of that barrier. So you
25 are taking it off, and then putting it back on.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 Then about three-quarters of the way down is
2 the material cost. So the first couple line items
3 represent the labor cost that the vendors are
4 quoting. When you move down to the material cost,
5 that is some of the materials I was getting priced
6 from Blanton Building Supply, and you can see their
7 name at the far right.

8 **Q** So 1.1.1 to 1.1.10, you have the quantity --
9 unit type, quantity, unit price, and unit total,
10 and who the supplier is, correct?

11 **A** Correct.

12 **Q** And what is the subtotal for that?

13 **A** \$76,027.

14 **Q** So this is the second page of your repair
15 estimate.

16 1.2, can you tell the jury what this issue
17 is?

18 **A** Sure. 1.2 represents the improper
19 termination and lapping of the weather resistant
20 barrier at the waterproofing. That is also 1.2 on
21 the Fuller summary of construction defects and
22 recommended repairs -- excuse me, required repairs.

23 So, again, the Fuller Group identified what
24 the defect is, what the problem is, and they've
25 made a repair recommendation on that same document.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 So I transferred that data over to my 1.2. Again,
2 I'm following the repair scope that was recommended
3 by the Fuller Group. So 1.2.1 we have properly lap
4 and seal the WRB at all terminations and
5 waterproofing at the walkway locations.

6 Within the scope, we'll repair and replace
7 damaged framing from past water intrusion. We also
8 will replace damaged wood sheathing that was
9 damaged from past water intrusion. Replace
10 insulation that was wet from past water intrusion.

11 So those are the -- the first section for the
12 labor, and then we come down again and we have the
13 material listed separately.

14 MR. DesCHAMPS: I'm sorry to interrupt. May
15 I approach?

16 THE COURT: You may approach. Come on.

17 (The following is a bench conference had out
18 of the hearing of the jury.)

19 MR. DesCHAMPS: This is something that --
20 going at this pace -- that they have to lay
21 foundation. I'm not going to object it can come
22 into evidence. It seems like he's restating all of
23 this and all he's really saying is I prepared the
24 estimate, and we don't need to restate these
25 defects again.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 THE COURT: No. I think he's just saying
2 what has to be done.

3 MR. DesCHAMPS: But he doesn't know it has to
4 be done. He is relying --

5 THE COURT: Yeah, but he's allowed to rely on
6 what Clements gave him. I mean I think he can get
7 through these a little quicker, but....

8 MR. STANLEY: What would the Court suggest on
9 how to approach this? I didn't want to not put in
10 enough --

11 THE COURT: I think he has explained how you
12 read this, how he got into this, which is what you
13 needed to know first for these people. So I think
14 you can go through and just say, So to do the
15 weather resistance, you would have to lap and seal
16 and replace -- you know, this is what the number
17 is. I think you can go faster, as long as they can
18 follow it.

19 MR. STANLEY: That's great.

20 (Whereupon, the following was had in open court:)

21 Q (BY MR. STANLEY) So, Mr. Gallagher, we're
22 talking about 1.2. In an effort to move it along
23 quicker, I'll ask you some things.

24 So this issue is -- you are going to lap and
25 seal the WRB, remove and replace the damaged

CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!

1 framing, damaged sheathing, damaged insulation.
2 The material you are using is Tyvek, some wrap,
3 WRB, wood sheathing, wood studs, insulation, and
4 fasteners?

5 **A** Correct.

6 **Q** So what is your total for that issue?

7 **A** 27,846.

8 **Q** And, again, without repeating this over and
9 over, just going forward, you've done the unit
10 types, quantity, unit price, unit total, and your
11 suppliers are on this sheet?

12 **A** That's correct.

13 **Q** So for 1.3, improper installation of
14 Z-flashing, you are going remove the existing band
15 boards. You are going to provide new Z-flashing,
16 properly lap the WRB, install new wood, new band
17 board, repair and paint sealants, other items
18 including aluminum and paint; is that correct?

19 **A** Correct.

20 **Q** What is your subtotal for issue 1.3?

21 **A** \$42,545.

22 **Q** This is 1.4: Inadequate protection of
23 non-preserved and untreated wood furring. You are
24 going to remove some wood, install some wood.

25 Your materials are wood studs and fasteners.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 What is your total for that?

2 **A** 21,492.

3 **Q** 1.5: Inadequate attachment of fiber cement
4 siding. You are going to remove some siding.

5 You're going to install new siding. You're going
6 to prime and paint. You have new sealants. For
7 your material you have Tyvek, cement lap siding,
8 some paint, and some sealant, correct?

9 **A** Yes.

10 **Q** And what is the total for that?

11 **A** \$946,438.

12 **Q** Do you mind taking another look at that
13 number you just stated?

14 **A** 964,438.88.

15 **Q** Thank you.

16 And 1.6, you are removing trim. This is
17 inadequate attachment of fiber cement trim. So
18 you'll install new trim, going to repair, prime,
19 and paint, new sealants.

20 The materials are Hardie -- James Hardie
21 fiber cement trim. You are going to have some PVC
22 brick mold, paint and sealant; is that correct?

23 **A** That's correct.

24 **Q** And what is your total for that?

25 **A** 694,579.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **Q** And 1.7 is inadequate installation of
2 thru-wall flashing at the base of brick veneer.
3 You are just going to remove some brick. You are
4 going to integrate, remove and replace damaged wood
5 sheathing, damaged insulation, install new brick
6 veneer, and you have wall flashing, WRB flashing,
7 wood sheathing, wood studs and insulation, correct?

8 **A** Correct.

9 **Q** And what is your subtotal for that?

10 **A** \$28,684.

11 **Q** This is 1.8: Inadequate support of lintels.
12 You are going to remove brick, existing lintels,
13 and then you are going to reinstall new lintels and
14 fasteners; is that correct?

15 **A** That's correct.

16 **Q** What is your subtotal for that?

17 **A** \$6,433.

18 **Q** 1.9: Improper installation of metal ties and
19 brick veneer. You are removing existing brick,
20 installing WRB, installing new brick. You are
21 going to reuse some of the steel lintels. For your
22 material, you have new bricks, Tyvek, and wrap,
23 correct?

24 **A** Correct.

25 **Q** What is your subtotal for that?

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **A** \$546,932.

2 **Q** 1.10: Installation of vapor barrier. You
3 are going to cut out the vapor barrier from within
4 the wall cavity during repair scope and removal of
5 materials.

6 What is that total?

7 **A** \$18,931.

8 **Q** This is 2.0, windows. That is the inadequate
9 installation of rough opening. You are going to
10 remove and reinstall some of the windows. You are
11 going to rewrap. You are going to use self-adhere
12 flashing, replace any damaged wood, sheathing, or
13 framing and insulation. Material, you have
14 sealant, SAF, wood sheathing, wood studs,
15 insulation, fasteners, and more sheathing and
16 studs, correct?

17 **A** Correct.

18 **Q** And what is your subtotal for that item?

19 **A** \$393,950.

20 **Q** And then we have the failed self-adhere
21 flashing at the windows. We're a little bit
22 covered up there, but you are going to remove
23 existing self-adhered flashing, and you are going
24 to replace the self-adhered flashing at rough
25 openings.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 What are the materials? We can't see that on
2 there.

3 **A** Just the self-adhered flashing.

4 **Q** And what is your subtotal for that?

5 **A** \$57,534.

6 **Q** 2.3: Absence of thru-wall flashing and weep
7 holes. Again, you are removing existing brick.
8 You have new thru-wall flashing, installing brick
9 veneer, removing and replacing damaged wood
10 sheathing, framing, insulation.

11 Your material is thru-wall flashing,
12 sheathing, studs, insulation, fasteners and more
13 fasteners.

14 What is that total?

15 **A** \$9,342.

16 **Q** 2.4: Inadequate head flashing. You're
17 removing the existing cladding above the windows,
18 installing new drip caps, properly lapping the WRB,
19 installing new cladding, and your material is new
20 aluminum and WRB flashing tape; correct?

21 What is your total for that?

22 **A** \$11,444.

23 **Q** Going on to roofs. 3.0: Roof deck not
24 adequately covered with underlayment. So you are
25 removing existing asphalt shingles, installing

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 underlayment at the deck edges, installing new
2 shingles.

3 Your material, you've got roof, underlayment,
4 shingles, roofing cement, and nails, correct?

5 **A** Correct.

6 **Q** What is your total for that?

7 **A** 12,452.

8 **Q** 3.2: Improper attachment of shingles.

9 Remove existing asphalt shingles, install new
10 shingles. You are going to -- that is for certain
11 buildings. You have roof underlayment, shingles,
12 drip edge, step flashing, pipe boots for pipe
13 penetrations, ridge vents, ridge caps, cement and
14 nails, correct?

15 **A** Correct.

16 **Q** And what is your subtotal for that?

17 **A** \$156,446.

18 **Q** 3.3: Improper starting strip installation.

19 You are going to add a dab of roofing cement per
20 shingle. Your roofing cement is your material.

21 What is your -- there is no total for that?

22 **A** That was included in Section 3.1.

23 **Q** 3.4: Improper installation and attachment of
24 sheet metal fascia. You are going to remove and
25 install new metal fascia for certain buildings, and

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 then your material is metal fascia and fasteners.

2 What is the subtotal for that?

3 **A** \$39,170.

4 **Q** 4.0: Walkways. Missing gypsum sheathing,
5 joints not sealed, gypsum sheathing deteriorated.
6 You are going to remove the cladding, remove
7 deteriorated gypsum sheathing, remove cladding
8 along balconies.

9 Again, gypsum sheathing, gypsum sheathing,
10 remove cladding. You are going to prime, paint,
11 and seal new Hardie panel and apply sealants.

12 Your material is sealant, tape, drywall joint
13 compound, fasteners, and James Hardie panel, and
14 paint. What is your subtitle for that?

15 **A** \$72,427.

16 **Q** Next is 4.2: Improper and incomplete
17 installation of liquid applied waterproofing
18 membrane. Remove the existing carpet, remove
19 existing carpet glue and waterproofing, remove the
20 existing cladding, replace sheathing, install new
21 Bituthene waterproofing, new stainless steel deck
22 wall flashing, WRB, more cladding, sealants.

23 Your material is going to be sheathing,
24 fasteners, Bituthene products, more fasteners, WRB,
25 James Hardie panel, fasteners, paint, sealants.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 What is your total?

2 **A** 478,875.

3 **Q** 4.3: Improper drip edge at columns. You
4 will provide new drip edge flashing, Bituthene, you
5 are going to repair the damaged gypsum sheathing,
6 repair and replace damaged gypsum sheathing, metal
7 strapping.

8 Your materials are drip edge, Bituthene,
9 gypsum products, metal strapping, and fasteners.

10 What is your total for that?

11 **A** 33,979.

12 **Q** 4.4: Inadequate waterproofing at post
13 fattener penetration missing blocking. You're
14 going to remove the guardrails, remove guardrail
15 posts, remove and replace damaged sheathing, add
16 blocking, sealant, reinstall guardrail posts.

17 Material is wood sheathing, wood studs,
18 sealant, fasteners, and more fasteners.

19 What is your total for that?

20 **A** \$123,352.

21 **Q** 4.5: Improper construction of stairways.
22 Remove existing handrails, grab rails, wood
23 stringers. You're going to construct new wood
24 stairways, reinstall handrails, remove wall
25 projections, adjacent handrails.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 The material is stringers, steps, risers, and
2 your fasteners.

3 What is your total for that?

4 **A** \$77,846.

5 **Q** 5.0: Attics. You are going to install
6 hurricane anchors, install blocking.

7 Your material is hurricane anchors, blocking,
8 and fasteners.

9 What is your total for that, please?

10 **A** \$54,866.

11 **Q** 5.2: Missing hurricane ties at trusses. You
12 are going to add some Simpson hangers. Mainly,
13 that is it.

14 You have hurricane ties and fasteners for
15 materials.

16 What is your total for that?

17 **A** \$16,452.

18 **Q** 5.3: Inadequate anchorage of truss girders.
19 You're going to install eight tension ties.

20 Material is tension ties and fasteners.

21 What is your total there?

22 **A** \$1,388.

23 **Q** 5.4: Inadequate support of truss framing.
24 You are going to repair and replace jack trusses,
25 valley trusses, more jack trusses.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 Material is wood framing and fasteners.

2 Total?

3 **A** \$1,751.

4 **Q** 5.5: Inadequate bracing on diagonal truss
5 bracing. You are going to provide some additional
6 framing, framing members.

7 So your material is wood framing and
8 fasteners.

9 What is your total?

10 **A** 11,586.

11 **Q** 5.6 -- we're getting there -- improper
12 damaged truss members. You are going to replace
13 truss members. Your material is wood framing and
14 fasteners.

15 And your total?

16 **A** \$3,335.

17 **Q** 5.7: Inadequate framing around gable
18 windows. Repair and replace modified trusses,
19 provide framing around window openings.

20 Material is wood framing, wood framing
21 fasteners.

22 And your total?

23 **A** \$3,963.

24 **Q** 5.8: Inadequate taping of fastener heads and
25 gypsum joints. Install mud over the fastener heads

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 install tape and mud at gypsum sheathing joints.

2 Materials are drywall mud and tape.

3 And your total?

4 **A** \$3,934.

5 **Q** 6.0: Shear walls. You are going to do work
6 in the interior of the buildings. You are going to
7 remove interior drywall, remove OSB sheathing,
8 install anchor bolts, hurricane ties, sheathing,
9 drywall tape, mud, caulk and paint.

10 Material is bolts, hurricane ties, sheathing,
11 fasteners, drywall panel, more fasteners, and joint
12 tape, for the most part I covered it.

13 What is your total?

14 **A** \$121,310.

15 **Q** 6.2: Inadequate fastener spacing or
16 attachment of interior shear wall sheathing. And,
17 again, you are doing interior finishes inside
18 second and third floor units, removing baseboard,
19 drywall, OSB, installing blocking, sheathing,
20 fasteners, drywall, tape, mud, caulking.

21 Your materials are blocking, fasteners,
22 sheathing, more sheathing, screws, among other
23 things.

24 What is your total there?

25 **A** \$238,054.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **Q** 6.3: Missing sheathing at first floor
2 interior shear wall. You are replacing the
3 sheathing.

4 Your materials is OSB sheathing and
5 fasteners.

6 Where is that total?

7 **A** That is included with 6.1.

8 **Q** That we've already covered?

9 **A** Correct.

10 **Q** 7.0: Accessibility. Again, you are going to
11 build up the curb ramps, provide accessible routes,
12 repair asphalt and paving.

13 Materials, it says all materials are
14 included.

15 Where is that subtotal?

16 **A** I believe that was actually removed from the
17 scope.

18 **Q** Okay. You are correct.

19 8.1: Missing blocking between floor trusses.
20 You are removing the interior drywall blocking,
21 repairing gypsum sheathing, more drywall, applying
22 ceiling texture to the drywall, caulking and
23 priming.

24 Your materials is blocking, framing screws,
25 joint tape, joint compound, among other things.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 Your total for that, please?

2 **A** \$232,531.

3 **Q** 9.0: Additional work scope to implement
4 these needed repairs. Can you briefly describe
5 what you are doing here for the jury?

6 **A** Sure. In order to access these areas and
7 implement this scope, we have to remove and
8 reinstall the HVAC disconnect boxes on the outside.
9 These are all things attached to the outside of the
10 building where we have to remove components.
11 Electrical panel boxes, utility boxes, light
12 fixtures, gutters and downspouts attached to the
13 outside of the building, signage. And then trim
14 back the landscape when we're working. So those
15 are components that need to be removed to access
16 the work. That value was \$232,408.

17 **Q** If you could briefly give an overview of the
18 next section, the GC related general conditions.
19 If you can tell the jury briefly what that is.

20 **A** Sure. For all of those things we brought to
21 the job site under mobilization, the first area I
22 covered with you, these are the rental rates that
23 are listed back here in the project related to
24 general conditions. So you have the scaffolding,
25 dumpsters, forklift, fuel and insurance for the

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 equipment, portable toilets for the workers,
2 on-site office storage box. Then, my management
3 and supervisory staff assigned to the project.
4 That is all captured in this section called
5 "Project Related General Conditions."

6 That total is \$539,125.

7 Q And you touched on it briefly, but you have a
8 project manager, project supervisor, project
9 assistant supervisor, and two laborers?

10 A Correct.

11 Q Now, the next section or project subtotals,
12 if you can -- is this a summary of what we already
13 have gone through?

14 A Correct.

15 Q So we're going through 1.0, 2.0, 3.0, roofs,
16 walkways, attics, shear walls, accessibility
17 floor/ceiling assemblies, and additional work
18 components needed.

19 So let's go to the project's subtotal.

20 A Okay.

21 Q We had to make changes earlier today, so we
22 have redacted that part of your report, but per an
23 agreement with opposing counsel, he's allowed us to
24 write it in the report that is going to be marked
25 as an exhibit in a minute. Can you give the jury

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 what the subtotals are for this part of your
2 estimate?

3 **A** All of those numbers we just talked about for
4 the scope, that comes to a project subtotal of
5 \$5,810,423.02.

6 **Q** Just to make sure, that is the first line,
7 "project subtotal," on this?

8 **A** That's correct.

9 And then the next line is permits and
10 licenses. Those are for the City of North Myrtle
11 Beach building permits. That is 1.25 percent of
12 that subtotal. So that is \$72,630.29.

13 Then you have an owner's contingency to cover
14 potential defects, hidden defects, things you can't
15 observe until you start repairing, and that number
16 is \$581,042.31.

17 Then you have the contractors, operations,
18 and overhead expenses at 10 percent, so it's the
19 same number of. \$581,042.31.

20 Then you have the contractor fee, which is
21 the profit at 10 percent. Again, another
22 \$581,042.31.

23 Then you have the architectural/engineering,
24 contract administrative fees that the owner has to
25 pay the architect or the engineer who develops the

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 designed documents, and that is 10 percent of that
2 total, and that is also \$581,042.31.

3 Q So what is your total for all of these
4 buildings for this estimate?

5 A \$8,207,222.52.

6 MR. STANLEY: Your Honor, plaintiff moves to
7 have this repair estimate admitted into evidence.

8 MR. DesCHAMPS: No objection, Your Honor.

9 THE COURT: Without objection.

10 (Plaintiff's Exhibit 4 marked and admitted.)

11 Q (BY MR. STANLEY) Mr. Gallagher, you covered
12 the estimate -- the original estimate?

13 A Correct.

14 Q Were there any additional recommendations
15 from Mr. Clements to you?

16 A There were. It was issued in what was
17 referred to as an "Addendum 1."

18 Q Okay.

19 MR. STANLEY: Your Honor, can I approach?

20 THE COURT: You may.

21 Q (BY MR. STANLEY) So, Mr. Gallagher, I handed
22 you a document. Can you identify that document?

23 A My repair estimate for the components
24 identified by Fuller Group as Addendum 1.

25 Q So let's go over that repair estimate, which

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 is your addendum documents. It is going to be in
2 addition to?

3 **A** That's correct.

4 **Q** These numbers are in addition to the estimate
5 that you just testified about?

6 **A** That is correct.

7 **Q** We'll go over this document. The first item
8 is exterior walls. You'll remove and replace the
9 remaining WRB, exterior wall sheathing, remove the
10 vapor barrier, remove and replace wall cavity
11 insulation.

12 Your materials are going to be Tyvek, wrap,
13 wood sheathing, fasteners, among other things.

14 What is the total?

15 **A** \$663,881.

16 **Q** And then 7.0: Ramp accessibility. That is
17 you are going to remove the existing ramps and new
18 code compliant ramps. What is that?

19 **A** 13,800.

20 **Q** Stair accessibility, Buildings 5 to 9. You
21 are going to remove non-compliant concrete steps
22 and install new code compliant concrete steps?

23 What is that total?

24 **A** \$1,200.

25 **Q** 7.4: Handrails. You have material and

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 installation of 42 vinyl rail and grab rails. You
2 are going to have handrail accessibility.

3 Your subtotal for that?

4 **A** \$29,268.

5 **Q** This is your GC project-related general
6 conditions. If you can again go over this briefly.

7 **A** Yes. Basically, it is the same list of
8 materials that I brought to the job site. So for
9 this amount, this particular scope of work, we
10 added two months to the schedule. So I have the
11 same components listed: Scaffolding, dumpsters,
12 forklift, all of the same components, project
13 manager, supervisor, assistant supervisor, and the
14 laborers. So for two months' worth of general
15 conditions, because we've added scope of work, that
16 total comes to \$119,813.

17 **Q** So you are summarizing all of these items
18 that you just testified about, so your subtotal is
19 \$827,962?

20 **A** That's correct.

21 **Q** And your estimated total for all buildings?

22 **A** \$1,169,497.

23 **Q** Since we made changes earlier this morning,
24 I've asked you to do a total, and I've shared that
25 with opposing counsel. Can you tell the total of

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 your estimates, the original estimate and the
2 addendum, to the jury?

3 **A** Those two combined totals equal
4 \$9,376,719.85.

5 **Q** And have you made your estimate to a
6 reasonable degree of general contracting certainty?

7 **A** Yes.

8 **Q** One last document.

9 MR. DesCHAMPS: Stacy, what is it?

10 MR. STANLEY: I'm sorry, Will.

11 (A brief pause in the proceedings.)

12 MR. STANLEY: Judge, Counsel reminded me
13 about the addendum, and we move to have this
14 admitted into evidence.

15 MR. DesCHAMPS: No objection.

16 THE COURT: No objection.

17 (Plaintiff's Exhibit 5 marked and admitted.)

18 MR. STANLEY: That is all I have for Mr.
19 Gallagher.

20 **CROSS EXAMINATION**

21 **BY MR. DesCHAMPS:**

22 **Q** Good to see you again.

23 You are not offering the opinion that any of
24 this work needs to be done, correct?

25 **A** I'm only offering the cost of the repair.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **Q** All you did was take the recommendations made
2 by Mr. Clements, and then estimate what you think
3 the cost of that would be?

4 **A** That's correct.

5 **Q** You weren't there with Mr. Clements when he
6 was doing his investigation?

7 **A** Right.

8 **Q** And when you were out there, it was just to
9 review the buildings to prepare these estimates?

10 **A** That's correct.

11 **Q** So kind of to cut to the chase, what your
12 estimate does is removing and replacing every inch
13 of the exterior siding out there, correct?

14 **A** That's correct.

15 **Q** It is removing and replacing every inch of
16 the exterior trim; is that correct?

17 **A** That's correct.

18 **Q** It's removing and replacing every inch of the
19 brick; is that right?

20 **A** Correct.

21 **Q** Your estimate is removing and replacing every
22 inch of the weather-resistant barrier?

23 **A** Correct.

24 **Q** We can call that the building paper?

25 **A** Yes, WRB.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **Q** Okay. Sure.

2 Your estimate is removing and replacing every
3 inch of the OSB sheathing on the building; is that
4 correct?

5 **A** Yes. In order to access the plastic, the
6 polyethylene that was put up.

7 **Q** Behind the sheathing is where you see the
8 wood studs, the framing members, right?

9 **A** Yes.

10 **Q** And you are replacing some of those?

11 **A** Were rotted, yes.

12 **Q** So you are basically -- the repair scope you
13 are pricing is, basically, tearing the building
14 down to studs and installing brand new exteriors on
15 the buildings?

16 **A** Well, I prefer to use the word "reclad,"
17 which is common in our industry.

18 **Q** But, basically, that is what it is, right?

19 **A** It is a reclad, yes.

20 **Q** When you went out to the project, one of the
21 things you did was you counted all of the windows?

22 **A** That's correct.

23 **Q** And the reason you did that is because
24 Mr. Clements instructed you to prepare your
25 estimate where the scope of the repairs you were

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 making was the same in every single window, right?

2 **A** Yes.

3 **Q** So the repairs you are making in this
4 estimate is the same for every window on the front,
5 correct?

6 **A** Yes. The windows are coming out so that the
7 proper wrap can be done at the rough openings.

8 **Q** But I recall there was 419 windows?

9 **A** Correct.

10 **Q** And so when you went out to count the
11 windows, you were including the windows and the
12 covered walkway on the front of the building that
13 has a ceiling over them, right?

14 **A** Correct.

15 **Q** And you also counted on the front of the
16 buildings, if you look towards the top, there is
17 some windows that go into the attic; is that right?

18 **A** Yes, the half rounds.

19 **Q** And you are performing the same scope or
20 repair to those attic windows that you are to the
21 rest of them, right?

22 **A** Actually, the attic windows have to be framed
23 because there was never any framing put around
24 those windows. They were just put into the
25 plywood.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **Q** Mr. Clements said to form a scope of repair
2 for all windows, so you counted the windows, and
3 you had a scope of repair for every single window
4 out there, though, correct?

5 **A** Correct.

6 **Q** The work you are doing in this case, you call
7 it "preparing a litigation cost estimate"?

8 **A** That's fair.

9 **Q** And I think you told me a couple of weeks ago
10 you have done a little over 60 of them in your
11 career?

12 **A** That is correct.

13 **Q** And for all but one of them, you did it for
14 the plaintiff in the lawsuit, correct?

15 **A** Correct.

16 **Q** At the time you were preparing this estimate,
17 you knew it was prepared for a lawsuit?

18 **A** Yes.

19 **Q** You knew you weren't bidding competitively
20 against another contractor?

21 **A** Correct.

22 **Q** And you knew from your experience -- you
23 understood that the purpose for what you are
24 preparing was so that the plaintiff in a lawsuit
25 could submit it as a measure of claimed damaged in

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 a lawsuit?

2 **A** Correct.

3 **Q** I think you told me over the 60 litigation
4 estimates that you prepared, you could think of
5 only one of those where you went back after the
6 lawsuit and performed some work for that client; is
7 that right?

8 **A** Correct.

9 **Q** When we had your deposition not long ago, we
10 decided that -- we identified a couple of mistakes
11 in the estimate that should come out. Do you
12 remember that?

13 **A** I do remember that, and I went back to the
14 office and double checked those components, and
15 they are correct.

16 **Q** So one of the ones we looked at was 1.5.2 in
17 your estimate; is that correct?

18 **A** I need a copy in front of me.

19 **Q** I thought we agreed when you initially
20 prepared 1.5.2, at that point, you were not
21 removing all of the WRB, and so this part of the
22 estimate you were including the cost to put tape
23 over the portion that you were not removing, and
24 then later on through an addendum from Mr.
25 Clements, he changed his mind and said you are

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 going to take off all of the WRB, but you didn't
2 take out this portion that was doing work on the
3 WRB at that time that was supposed to stay on the
4 buildings. Do you recall that?

5 **A** I do.

6 **Q** Did you go back and change your mind on what
7 you said to me in your deposition about that?

8 **A** No. That one still -- you are correct on
9 that one. It was a couple of the other ones that
10 we reviewed.

11 **Q** And so that would also apply to 1.5.8 in your
12 estimate?

13 **A** Yes.

14 **Q** Those don't need to be in there?

15 **A** Correct.

16 **Q** So if it is in there now, it has mistakes in
17 it?

18 **A** Those two line items should come out if
19 Addendum 1 is accepted, if it is part of the scope.

20 **Q** Right.

21 As far as what you are planning to do is
22 prepare an estimate from all of Mr. Clements'
23 recommendations, what you have here does have
24 mistakes, correct?

25 **A** Those two items do need to come out.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **Q** Part of the work you are doing in this
2 estimate is putting flashing tape on the window
3 sills?

4 **A** Yes.

5 **Q** That is up at the top, down the jambs, down
6 to the sill?

7 **A** Yes.

8 **Q** All four sides?

9 **A** Right.

10 **Q** So that is after the windows are installed,
11 you take that tape and put it over the nailing fin,
12 which is part of the metal that you use to install
13 and fastener the window?

14 **A** Yes.

15 **Q** And so you put that tape over the bottom of
16 the flange on the window sill?

17 **A** Over the nail flange.

18 **Q** And as it happens, I think upon what you were
19 talking about earlier where we were discussing in
20 your deposition -- I asked you did you include the
21 cost to do that twice in your estimate. Do you
22 recall that?

23 **A** I recall that.

24 **Q** And when we were talking about it you said,
25 well, I'm not real sure, I think maybe, but now you

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 think maybe not?

2 **A** Yes, I checked those and it is correct. The
3 sheet is correct, because you have to go around
4 that opening multiple times.

5 **Q** So you are putting the tape on there twice?

6 **A** Let's go to the section, if we could.

7 **Q** Please. Tell me what you found after the
8 deposition that you didn't tell me that day?

9 **A** So the first thing that has to happen -- and
10 I'm going to go in and sequential order -- the
11 first thing that has to happen is 2.2.1, there is
12 that 8,613 linear feet. We have to remove the SAF
13 on the windows now in order to access the nails in
14 the nailing fins. So that removes the SAF, that
15 amount.

16 Then the next thing that happens is we pull
17 the window. Then we have 2.1.4, put in the sill
18 pan flashing. And then we go to 2.2.2, replace the
19 flashing around the rough opening then you set the
20 window, and then you use 2.1.5 and put another
21 piece of membrane, the same linear footage, over
22 the nail fins. So there is a layer underneath it,
23 and there is a layer on top of it. So the
24 information on here is correct.

25 **Q** It has the same quantities?

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **A** Yes.

2 **Q** Same unit price?

3 **A** Yes.

4 **Q** So you are putting the same thing twice?

5 **A** Correct.

6 **Q** Look at 1.5 for me, please, sir. That is
7 going to be removal and replacement of all of the
8 siding on the buildings, right?

9 **A** 1.5 is inadequate attachment and installation
10 of fiber cement siding.

11 **Q** That is what Mr. Clements called it, but you
12 just have the cost estimate for the cost to do
13 that, right?

14 **A** Yes.

15 **Q** And the subtotal you have for that work is
16 \$964,438?

17 **A** Correct.

18 **Q** If you were to take that work out of the
19 estimate, the price will drop a lot more than just
20 that \$964,000, correct?

21 **A** Well, you add in the fees, correct.

22 **Q** So bare minimum, you would take out an
23 additional 40.125 percent, correct, of the amount
24 you are taking out?

25 Let's put it this way. You would multiple

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 the subtotal of the part you are taking out by
2 1.4125?

3 **A** That equates to the general condition.

4 **Q** That is the bare minimum for how much the
5 total would drop if you remove an item?

6 **A** Yes. In round terms, yes.

7 **Q** And for a lot of these items, if you took it
8 out, other costs would also come out, correct?

9 **A** I'm not sure I follow.

10 **Q** I'll give you an example. You have the cost
11 in here to put up scaffolding and rent it for a
12 year, correct?

13 **A** Correct.

14 **Q** But if you are not going to remove and
15 replace all of the exterior cladding, you are not
16 going to need scaffolding for a year, right?

17 **A** Correct.

18 **Q** So if you are not going to do a removal and
19 replacement of all of the siding, you can take off
20 that scaffolding cost, right?

21 **A** Correct.

22 **Q** In your estimate, you are planning to do this
23 whole job for a year, correct?

24 **A** Correct.

25 **Q** If you took out some of these larger items,

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 removal and replacement of all of the siding or the
2 brick, it is not going to take a year if you take
3 out some of those items, right?

4 **A** Yeah. It would have an impact on the
5 duration.

6 **Q** You've got some ProCon employees that has
7 labor cost in here, right?

8 **A** Yes.

9 **Q** Super, project manager, laborers -- I think
10 there is four or five of them?

11 **A** Correct.

12 **Q** And because this is a project that you say
13 takes a year, you have their year's salary in the
14 estimate?

15 **A** Right. Because of the scope of the work
16 we're working with at this point in time, right.

17 **Q** Yep. So if you take out some of these
18 items -- removal and replacement of all of the
19 siding of all of the brick -- you don't need to
20 have those employees of yours salaries for a year
21 in the estimate, right?

22 **A** It would be adjusted accordingly.

23 **Q** It would come down a pretty good bit?

24 **A** The scope drives everything.

25 **Q** Sure.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 Do you think there are any more mistakes in
2 here?

3 **A** No.

4 **Q** And the one we talked about earlier, you
5 didn't know it was in there until I showed you in
6 your deposition?

7 **A** Correct. And I'll have to say, if I had
8 gotten my deposition transcript earlier, I could
9 have made it earlier. I didn't receive it until
10 late Monday night.

11 MR. DesCHAMPS: You have to take that up with
12 the court reporter.

13 Thank you.

14 THE COURT: Any redirect?

15 MR. STANLEY: No redirect.

16 (A bench conference was had out of the
17 hearing of the jury.)

18 THE COURT: Do you have anything you want to
19 put up?

20 MR. CONNELL: We have some documentary
21 evidence we have to put in. I have certified
22 copies of statutes.

23 THE COURT: Do you have those people here?
24 Do you want to do that?

25 MR. CONNELL: I don't have the person here

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 because the statute provides if you have a sealed
2 copy, you can present it.

3 THE COURT: Oh, okay. Okay.

4 Anything else?

5 MR. CONNELL: Got that and the building code
6 ordinance.

7 THE COURT: My question is: Can we call
8 those people now? I mean between now and lunch?

9 MR. CONNELL: We don't have it. We don't
10 have any more witnesses after we put all of those
11 things in.

12 THE COURT: You don't have anything you can
13 do right now?

14 MR. CONNELL: I can put in the things I was
15 just telling you.

16 THE COURT: Okay. I'm just trying to keep
17 them busy before we break for lunch.

18 MR. CONNELL: I understand. And then I guess
19 that will be the plaintiff's case.

20 THE COURT: I was just trying to talk
21 scheduling, that's all. I think lunch might be
22 12:15 now, so I don't want to stick them back
23 there. So we'll do whatever else you want to do.

24 MR. CONNELL: Okay.

25 (Whereupon, the following was had in open

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 court:)

2 MR. CONNELL: We would like to offer into
3 evidence the North Myrtle Beach building code
4 ordinance that was adopted, and a true and
5 certified copy. Those would be the next exhibit in
6 line, and I would offer them.

7 THE COURT: Any objection?

8 MR. HILDEBRAND: I'm sorry. Oh, the
9 ordinance. No. No objection.

10 THE COURT: That's in evidence.

11 (Plaintiff's Exhibit 6 marked and admitted.)

12 MR. CONNELL: Next, we would offer into
13 evidence records from the Department of Labor and
14 Licensing pursuant to section --

15 MR. HILDEBRAND: Your Honor, I think we need
16 to talk about all of this.

17 THE COURT: Come on up.

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

20 MR. HILDEBRAND: It is the licensing stuff.
21 I thought he was going to do that on the proffer.
22 It would be proffer. I don't want him to stand up
23 and say -- to show, well, these contractors are
24 licensed and these ones aren't and such. It's
25 getting into what you have already ruled on. So I

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 think that needs to be made as a proffer outside of
2 the jury.

3 THE COURT: Are these certified copies?

4 MR. CONNELL: Yes, ma'am. We have the person
5 under subpoena, and I told her I would find out
6 whether she needs to come, but she can come
7 tomorrow.

8 THE COURT: I think she probably needs to
9 come.

10 MR. CONNELL: The statute says that certified
11 copies are admissible, 40-1-50, Section B.

12 THE COURT: Do you have any objection that it
13 says that?

14 MR. HILDEBRAND: I don't know that I do. I
15 just think it needs to come in as a proffer not in
16 front of the jury, but I think we can probably
17 stipulate, if we take a look. I can probably admit
18 that they are accurate copies, because we have the
19 same thing.

20 MR. DesCHAMPS: Yeah. Yeah.

21 THE COURT: Okay. So we'll probably admit
22 them and a stipulation will be fine.

23 MR. HILDEBRAND: As a proffer, though, right?

24 THE COURT: No, not as a proffer yet.

25 MR. CONNELL: As an admission is what we

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 want.

2 THE COURT: Okay. Just step back then.

3 Anything else other than that?

4 MR. CONNELL: We have one other issue.

5 (Whereupon, a brief pause in the proceedings
6 while the attorneys confer.)

7 MR. CONNELL: The other thing we have is a
8 stipulation of evidence agreed to by the parties as
9 to when the buildings were certified for occupancy,
10 and we would offer that as the next exhibit.

11 THE COURT: And what was the date on it?

12 MR. CONNELL: Building --

13 THE COURT: Oh, they are different for each
14 building? I apologize.

15 MR. CONNELL: Yes, ma'am.

16 THE COURT: Okay.

17 MR. DesCHAMPS: Okay.

18 THE COURT: But you agree those are accurate.

19 (Whereupon, a brief pause in the proceedings
20 while the attorneys confer.)

21 THE COURT: So there are no other objections
22 other you guys are going to get together and take
23 out certain things?

24 MR. HILDEBRAND: Right.

25 MR CONNELL: That will be Exhibit No. 7.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 (Plaintiff's Exhibit 7 marked and admitted.)

2 THE COURT: Anything else?

3 MR. CONNELL: That's it, Your Honor.

4 THE COURT: And after that, you are resting
5 your case?

6 MR. CONNELL: Plaintiffs are going to rest.

7 THE COURT: Ladies and gentlemen, there is
8 some matters of law I have to take up with the
9 attorneys. I'll tell you now that I think you will
10 be back there for a while. When your lunch comes,
11 please eat.

12 I remind you, do not discuss this case, and
13 we'll be back with you as soon as we can.

14 Mr. Foreperson, once the food does come, I
15 need you to knock on the jury room door and let us
16 know when you have finished eating.

17 FOREPERSON: Yes, Your Honor.

18 (Whereupon, the jury exits the courtroom at
19 12:20 p.m., and the following is had out of the
20 presence of the jury.)

21 MR. CONNELL: The code section for the
22 subcontract licensing is 40-1-50, Subsection 8:
23 "Records of a board and its registry are prima
24 facia evidence of a proceeding, and a copy
25 certified by an administrator or director under

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 seal is admissible as evidence with the same force
2 and effect as the original."

3 I had Ms. Beeson under subpoena. She's the
4 director. She can come. I don't think it is
5 necessary, but if you want her to come, I'll have
6 her come tomorrow.

7 THE COURT: Why do you think it is necessary,
8 Mr. Hildebrand, or do you?

9 MR. HILDEBRAND: I don't know that it is,
10 Your Honor.

11 THE COURT: Oh, okay. Just so -- I don't
12 think we have to bring her. I think you are right.
13 I think it comes in under 40-1-50, Subsection 8.
14 The question is -- this is whether or not some of
15 the subcontractors on this project were licensed or
16 not licensed?

17 MR. CONNELL: Correct.

18 THE COURT: Just so I understand, what
19 exactly did Mr. Clements testify to yesterday in
20 regards to -- did he talk about industry standards
21 as far as....

22 MR. CONNELL: He did talk about industry
23 standards.

24 THE COURT: Industry standards as to whether
25 or not subcontracts -- the best practice to have

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 licensed subcontractors?

2 MR. CONNELL: I do not remember. I wish I
3 could tell you.

4 THE COURT: Me either. I was looking at her
5 notes. Does Mr. Clements remember?

6 MR. CLEMENTS: I don't remember.

7 MR. CONNELL: It was too long of a day.

8 THE COURT: I don't know what his expert is
9 going to say. That seems to be how this all came
10 up, is that defense's expert says something about
11 that, correct?

12 MR. CONNELL: Yes, ma'am.

13 THE COURT: I think you can enter it. So I'm
14 going to allow it in.

15 MR. HILDEBRAND: But, Your Honor, if he
16 enters it into evidence, it goes to the jury, and
17 he can argue about that. You ruled on that, that
18 he cannot -- there is no statute that prohibits --

19 THE COURT: Well, there is nothing that
20 requires it, but what we've been going on and on
21 about is he's telling me -- at least that is what
22 you said -- is it is industry standard, and I
23 haven't heard anyone say that yet. I don't know
24 how you guys are getting into it.

25 We can wait until his expert testifies and

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 says, in fact, right?

2 MR. CONNELL: Exactly.

3 THE COURT: Someone give me his deposition.
4 Give me your expert's deposition, and put me to the
5 part where he talks about this.

6 MR. CONNELL: This is Page 25 in the
7 Clearwater case, but it follows through. Based on
8 your ruling, I'm not going to....

9 (A pause in the proceedings.)

10 THE COURT: This is pretty specific. It just
11 says that if you have a sub working on a job, and
12 his licensed gets revoked or expires while he's on
13 the job, is it the general contractor's
14 responsibility to update his records to make sure
15 that all subs are currently licensed?

16 And he says, "I don't think that is the
17 normal practice in the industry."

18 I can tell you, most general contractors do
19 it, don't they, because they want their people
20 licensed? And that is in Clearwater.

21 Just so I understand, Clearwater was built
22 when?

23 MR. CONNELL: 2004.

24 MR. DesCHAMPS: 2008 to 2015.

25 THE COURT: So my question is: Can your

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 expert say it is an industry standard to use
2 licensed subcontractors in 2000?

3 MR. CONNELL: I think so. Your Honor, one of
4 the reasons I say that is because the license
5 that -- the subcontractors license, if you look at
6 those, they indicate when they lapsed, when they
7 were not licensed, and the whole -- they go back
8 into the '90s, so I think so.

9 THE COURT: It only matters when they are on
10 this project, though.

11 Give me a copy of what they are again. You
12 took them back.

13 MR. CONNELL: This is for this project.
14 Those are all of the subcontractors that worked.

15 THE COURT: So these are the ones that did
16 have licenses. So is there anything in here for
17 the ones that don't?

18 MR. CONNELL: I put everything in. I put all
19 of the ones that I got.

20 THE COURT: Show me the ones that don't then.
21 You said AK?

22 MR. CONNELL: And BR Brick, I think are the
23 two.

24 MR. DesCHAMPS: May I approach?

25 THE COURT: Sure.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 (Whereupon, a bench conference was had.)

2 MR. DesCHAMPS: I'm a little confused what it
3 is that you want. I think the bulk of this did
4 have licenses, so I don't know what is the purpose
5 of him putting that in.

6 THE COURT: I don't know. Probably pretty
7 good for you.

8 MR. CONNELL: It goes to negligent
9 supervision. Some were licensed, and some were
10 unlicensed.

11 MR. DesCHAMPS: Here is what I really came up
12 to say. I'm looking at the last page of this --

13 MR. CONNELL: Which one?

14 MR. DesCHAMPS: It is a letter saying that
15 certain people could not be found by their search.
16 So this is --

17 THE COURT: That is to what sub?

18 MR. DesCHAMPS: AK Framing.

19 THE COURT: Are you able to get this?
20 You need to talk louder.

21 COURT REPORTER: Yes, please.

22 MR. DesCHAMPS: Oh, okay.

23 AK Framing wasn't a subcontractor of Centex,
24 and never was alleged to be. They were with
25 somebody that one of our subcontractors hired, the

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 typical.

2 THE COURT: So who were they working under?

3 MR. DesCHAMPS: Right Way Construction.

4 THE COURT: Were they licensed?

5 MR. DesCHAMPS: Yes.

6 THE COURT: And they were framers; is that
7 what you told me?

8 MR. CONNELL: Yes, ma'am.

9 MR. DesCHAMPS: Others on this group are
10 Coastal Carolina Mechanical Contractors, Vance
11 Johnson Plumbing --

12 THE COURT: Okay. Hold on a second. So
13 Coastal Carolina Mechanical Contractors, okay.

14 MR. DesCHAMPS: Plumbing subcontractors.

15 THE COURT: So they were subs of a sub as
16 well, or no?

17 MR. DesCHAMPS: I think they were
18 subcontractors.

19 THE COURT: My concern is this: I think
20 mechanical and plumbing were required to be
21 licensed in 2000.

22 MR. DesCHAMPS: Honestly -- here is what I
23 was going to say. The plumbing things are off the
24 table. That is by Statute of Limitations.

25 THE COURT: But he's --

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 MR. CONNELL: I'm not offering it for that
2 point.

3 MR. DesCHAMPS: Can I say something else on
4 this? Vance Johnson Plumbing and Coastal Carolina
5 Mechanical Contractors, I know this for a fact,
6 because I did it, we got these plumbing allegations
7 halfway through this, as I told you at the Statute
8 of Limitations hearing. This thing is old. We had
9 a hard time finding all of the records. We scoured
10 the earth to find what we could, but some of it
11 was, look, we found a warranty document where Vance
12 Johnson -- and our people say, you know --
13 typically, if we can call back for warranty the
14 original subcontractor, so I found one from Vance
15 Johnson. I know Vance Johnson, we never served,
16 because we named him, and I thought that is not a
17 good basis to identify subs, so we didn't even
18 serve him.

19 Vance Johnson was in the pleadings because I
20 thought maybe we could prove that they were a
21 subcontractor. I never saw any evidence of it, and
22 we never served them.

23 THE COURT: So were they a subcontractor or
24 not?

25 MR. DesCHAMPS: I have no clue. It was so

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 long ago, who knows. I never found enough evidence
2 to serve them, Vance Johnson. I saw them in the
3 warranty documents, but we can't prove that, so
4 let's not serve them.

5 It was like we had to move quickly when they
6 added these plumbing claims, and we never pursued
7 claims against Vance Johnson.

8 THE COURT: How is this not opening a huge
9 can of worms if we start to talk about
10 subcontractors? I mean, I worry a little bit
11 about -- you don't want them pushing the finger
12 down the -- I mean, you are talking about a sub
13 hiring another sub, so this whole idea with AK that
14 you're talking about -- I mean, we're going back to
15 whether or not there is a requirement. But, again,
16 how is that Centex's responsibility?

17 MR. CONNELL: That is what you call a general
18 contractor, Your Honor.

19 THE COURT: So they have to be in charge of
20 the subs?

21 MR. CONNELL: Everything. That is why they
22 are called the general; otherwise, it would be
23 called something else. And they are also called
24 the developer.

25 THE COURT: I guess because they allowed the

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 subs to sub out the work; is that what you are
2 saying?

3 MR. CONNELL: Correct. Correct.

4 MR. DesCHAMPS: What duty did they have not
5 to do that?

6 MR. CONNELL: They are the general
7 contractor.

8 MR. DesCHAMPS: So what? They could be the
9 finest laborers in the world. We don't know. Who
10 knows?

11 MR. CONNELL: They could, but they are not
12 licensed and I think we're entitled --

13 MR. DesCHAMPS: It doesn't matter.

14 MR. CONNELL: I think we can argue to the
15 jury that it was a hodgepodge of licenses, some
16 were licensed, some weren't, and Centex was in
17 charge of everything, in getting all of the money,
18 and as a result, the jury should consider that.

19 MR. DesCHAMPS: On one case I want to tell
20 you about, although it is in a different setting, I
21 think it was in a claim where someone was trying to
22 qualify a contractor to testify as an expert, and
23 somebody opposing that was saying, They're not
24 licensed. I think there was a ruling that
25 prohibited that, that went up on appeal, and they

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 said it was error.

2 The procedure on that, I'm not certain, but
3 what the case says is you can't just infer from a
4 lack of license a lower skill.

5 THE COURT: Right.

6 MR. CONNELL: Well, if that's the case -- you
7 cited the Fields case, but that's just an issue of
8 expert testimony. Whole different thing.

9 THE COURT: No, I understand that. Because
10 you can have it just based on experience, you know.

11 MR. DesCHAMPS: You could say, look, I'm in
12 such high demand that I'm getting all of the
13 generals calling me. I'm not going to pay the
14 license stuff. It's just overhead. I'm such a
15 good laborer, they are calling me anyway. I don't
16 need the license. My quality drives my demand.

17 THE COURT: I understand that, but....

18 MR. DesCHAMPS: I mean, you get the point.

19 THE COURT: So, again, in this case, you are
20 saying that a sub of a sub, so AK was not licensed,
21 so that was a sub of a sub?

22 I'll agree with you on the one, with the
23 plumbing, because you don't even know if they
24 worked on the project.

25 MR. DesCHAMPS: Here is another one -- the

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 other one is Coastal Carolina Mechanical
2 Contractors. I know that -- the only thing I could
3 find about that, I could never serve them. It was
4 a deceased person associated with that name. I
5 can't say that they definitively were. The
6 plumbing ones were hard to track down. I never
7 served these people, and it was an unincorporated
8 person, and he was dead.

9 THE COURT: Does it matter? Because you are
10 responsible for whoever is out there.

11 MR. HILDEBRAND: Not on the licensing issue.
12 That is what you hit on so many times.

13 THE COURT: I just don't understand the hay
14 he's making about the licensing issue at this
15 point, because, again, it wasn't required.

16 MR. HILDEBRAND: It wasn't required. For the
17 ones that were specifically doing the work that
18 he's complaining of, the ones -- a lot of them --
19 he wants to introduce these records that relate to
20 the subs, but it had nothing to do with any of the
21 violations. There is no even connection to the
22 subs in this case.

23 MR. CONNELL: One of them is the brick mason,
24 and they did all sorts of work.

25 MR. DesCHAMPS: That was a Texas company.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 You know, were they properly licensed, but because
2 it was 20 years ago in a different state -- I mean,
3 that's the only one they are even pointing to.

4 THE COURT: My understanding is that that
5 deposition testimony that you gave me in
6 Clearwater, that is what you are relying on to say
7 it is an industry standard breach?

8 MR. CONNELL: Right.

9 THE COURT: I still think -- based on all of
10 that, I don't think it is relevant unless your guy
11 gets up here and someone says it is an industry
12 standard back in 2000, then I don't think any of
13 that really matters. So I'm not going to let it
14 in.

15 MR. CONNELL: Could I make it a court exhibit
16 along with the others?

17 THE COURT: Absolutely. Any motions?

18 MR. HILDEBRAND: Yes, ma'am.

19 Now that we're at the directed verdict stage,
20 we move to direct a verdict on all of the
21 plaintiff's claims: Negligence, gross negligence,
22 carelessness, recklessness, willfulness, and
23 wantonness. I don't think that there's been
24 appropriate evidence to establish any of those
25 claims.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 What we have here and what you heard were
2 some homeowners in 2006 found out about some
3 problems. If they made an investigation then,
4 those problems would have been discovered and
5 corrected very easily. So I think it is barred by
6 the Statute of Limitations.

7 Moreover, gross negligence, Your Honor, is
8 important in this case, as you well know. The code
9 section on -- with regard to UTPA and the cases say
10 that gross negligence -- I'm sorry, a violation of
11 a building code can be some evidence of gross
12 negligence. However, the cases go on to say that
13 gross negligence....

14 THE COURT: Defective workmanship is not
15 evidence of gross negligence, is that what you are
16 trying to say?

17 MR. HILDEBRAND: Yes, ma'am. Yes, ma'am.
18 And that gross negligence requires an intentional,
19 conscious failure to do something, which you are
20 supposed to do or consciously and intending not to
21 do something that you are -- not doing something
22 you are supposed to.

23 There's been no evidence that Centex
24 intentionally or consciously installed any bad work
25 here. At most, we had an identification of some

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 defective work, but there's been no establishment
2 of the intent. I think it is going to be a lot
3 more clear in our case, but I want to make that for
4 the record, that there wasn't any established thus
5 far, and it's not going to be established after
6 this.

7 The other claims of breach of expressed
8 warranty, I'm not sure what they are relying on
9 there.

10 THE COURT: Let's start with negligence and
11 gross negligence, or are you going to lump into --
12 just go ahead and make your motion.

13 MR. HILDEBRAND: Yes, ma'am. So directed
14 verdict on the negligence, gross negligence,
15 carelessness, recklessness, willfulness, and
16 wantonness.

17 I understand the negligence and carelessness,
18 those are typically jury issues. My motion is
19 really directed towards primarily towards the other
20 ones: Gross negligence, recklessness, willfulness,
21 and wantonness. There has been no evidence of
22 that. There's been no evidence of an intentional
23 act. There has been no evidence that Centex
24 intentionally installed, knowingly installed any
25 defective work on this case. None.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 The cases that I've cited that are in our
2 jury charge require that it is an intentional
3 knowing act. Mr. Ralph King Anderson's charge,
4 Civil 21-1: "Gross negligence is the intentional,
5 conscious failure to do something, which it is
6 incumbent upon one to do or the doing of a thing
7 intentionally that one ought not to do."

8 There is no evidence of that, Your Honor.
9 None. There has not been any evidence of that.
10 How can a jury come to a conclusion that we
11 intentionally installed bad work?

12 Do you want me to keep going?

13 THE COURT: Sure. Sure.

14 MR. HILDEBRAND: Breach of expressed
15 warranty. We that --

16 THE COURT: Give me a second.

17 MR. HILDEBRAND: Breach of expressed
18 warranty, I don't know what that is based on. It
19 cannot be based on the brochure they introduced.
20 That is no warranty. It is simply a brochure. The
21 only warranties might be in the master deed, and if
22 they want to stand on those, we'll address those in
23 our case. But, otherwise, I haven't seen where
24 they put any evidence where we've breached an
25 expressed warranty in the master deed or bylaws or

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 any documents whereby we conveyed the common
2 elements to the association.

3 Next one: Breach of implied warranty of
4 workmanlike construction. Frankly, that is
5 probably a jury issue.

6 Implied warranty of habitability, that is
7 probably a jury issue except for, on both of those,
8 negligence and carelessness, the Statute of Repose,
9 I don't know that they can establish that the
10 knowing intentional -- any evidence of a knowing
11 and intentional act that would allow those issues
12 to go to the jury.

13 All of these claims I think are barred by the
14 Statute of Repose, unless they can prove gross
15 negligence, and I don't think there has been any
16 evidence in this case that Centex intentionally
17 or -- committed an act or there was a conscious
18 failure to do something, which it should have done.
19 If that's the threshold issue, how can they get to
20 these other causes of action? They've introduced
21 no evidence of that -- none.

22 THE COURT: So you think then that it would
23 be out of breach of expressed warranty, breach of
24 implied warranty, workmanlike construction, and
25 then warranty habitability?

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 MR. HILDEBRAND: Yes, ma'am. The Statute of
2 Repose, if you read it, it is extremely broad. If
3 you read that Statute of Repose --

4 THE COURT: It is an action brought by an
5 owner against any person.

6 MR. HILDEBRAND: "No actions -- no actions to
7 recover damage -- and here is the broad language --
8 based upon or arising out of the defective or
9 unsafe condition of an improvement to real property
10 may be brought more than eight years."

11 For purposes of this section: "An action
12 based upon or arising out of the unsafe condition
13 of an improvement. Real property includes: One,
14 an action to recover damages for breach of a
15 contract to construct or repair real property.

16 "Two, an action for negligent construction or
17 repair of real property.

18 "Three, an action to recover for personal
19 injury, death, or damage to property.

20 "Four, an action to recover economic or
21 monetary loss."

22 That includes the UTPA. Aren't they trying
23 to claim monetary loss? Would that not include the
24 Unfair Trade Practices Act?

25 "Five, an action in contract or in tort or

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 otherwise."

2 I mean, Lord knows, the legislature -- seems
3 to me they made this thing as broad as they
4 possibly could. How can you get more broad than
5 "an action in contract or in tort or otherwise"?
6 There is nothing else. There are no other actions.

7 If I remember my first semester in law
8 school, it was that's all there is in the civil
9 arena, either contract, tort, or otherwise. It
10 can't be more broad.

11 Nine expands on it further: "An action
12 against owners or manufacturers of components or
13 any person, furnishings, materials, or against any
14 person who develops real property, or who performs
15 or furnishes, design, plans, specifications,
16 survey, planning, supervision, testing."

17 Your Honor, I just don't know how broader the
18 legislature could have been. All of those are
19 barred. They are flat barred unless the plaintiff
20 can prove gross negligence, and to do that, they
21 have to prove the gross negligence as I articulated
22 it to you, an intentional wrongdoing.

23 THE COURT: With that said, it makes sense
24 why Mr. Connell is saying we just need a verdict
25 form just asking whether the contractor was grossly

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 negligent. It makes sense. Because if they don't
2 get past that --

3 MR. CONNELL: We lose. I don't see any way
4 around it.

5 THE COURT: Right.

6 MR. CONNELL: Oh, are you finished?

7 So our position is that, first of all, this
8 is not a directed verdict motion. All of the
9 evidence is not in.

10 THE COURT: Well, it is a directed verdict
11 motion of them, but....

12 MR. CONNELL: He's asking for involuntary
13 non-suit of prejudice against us. Based on the
14 case law, all of the inferences are --

15 THE COURT: Obviously in favor of the
16 non-moving party.

17 MR. CONNELL: Correct.

18 He's also quoting from Judge Anderson's jury
19 charge on gross negligence, which is exactly what
20 the case is about: Gross negligence.

21 So our position would be that our expert
22 testified extensively that there were building code
23 violations, manufacturers' specification
24 violations, and standard industry violations. All
25 of which is what I would call the escape valve in

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 the Statute of Repose.

2 THE COURT: Yes.

3 MR. CONNELL: So I would say, Your Honor,
4 that the motion should be denied.

5 MR. HILDEBRAND: I'm not going to argue
6 anymore if you don't want to hear it, but what the
7 statute says is that violation of an applicable
8 building code can be some evidence of gross
9 negligence. But then if you read the cases, that
10 prevents summary judgment, okay. You can't get a
11 summary judgment, but then the cases, as I've cited
12 in the jury charge, they define what gross
13 negligence is. In order for the jury to find that,
14 they have got to find an intentional, conscious
15 wrongdoing, and there is no evidence of that.

16 They could have called our witnesses. They
17 could have tried to introduce that by some other
18 way. I can't tell them how they should have tried
19 their case, but they didn't do it.

20 MR. CONNELL: There is a whole bunch of case
21 law that says gross negligence is a jury issue.

22 THE COURT: Also, there is a lot of case law
23 that says it can be carelessness, recklessness, and
24 I think the jury can easily find that,
25 respectively.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 So it sounds to me, just so that we're on the
2 same page, you agree that negligence is not
3 appropriate? Simple negligence does not allow
4 Wedgewood to recover, correct?

5 MR. CONNELL: I do.

6 THE COURT: So, I guess, that's agreed to by
7 both of you.

8 So the only question is gross negligence,
9 taking everything, obviously, in the light most
10 favorable to the non-moving party. I think it is a
11 jury issue for them to determine, and I think
12 evidence was put up, certainty, through Mr.
13 Clements and through Mr. Spencer, and of course
14 your estimator after that, that can show gross
15 negligence on behalf of Centex.

16 At this time, I'm denying the motion.
17 Obviously, you get to make it again after your own
18 evidence.

19 MR. HILDEBRAND: Let me see if I can
20 understand your ruling, Your Honor.

21 THE COURT: Judges hate it when you say that,
22 because what you are trying to do it is pair it
23 with what I said, when it isn't what I said. So I
24 need you to stand on what I actually said, because
25 Mr. Connell tried do it yesterday when he said, So

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 you are saying you can't bring an Unfair Trade
2 Practices Act based on a service? And I said, No,
3 that is not what I said.

4 What I'm saying is there is evidence from
5 which this jury could determine that Centex was
6 grossly negligent.

7 MR. HILDEBRAND: I understand.

8 THE COURT: And because of that, I think it
9 is going to the jury.

10 Now I haven't wrapped my head yet around the
11 warranties, inhabitability, workmanlike --
12 whatever. I don't think we need to get to that, I
13 really don't.

14 MR. HILDEBRAND: That is my question.

15 THE COURT: I don't think we need to.

16 MR. HILDEBRAND: Are you granting a directed
17 verdict of all the other causes of action? The
18 only cause of action that is going to the jury is
19 gross negligence, and if they find gross
20 negligence, then there is a separate aspect of
21 punitive damages?

22 THE COURT: I'm going to think about that. I
23 don't know. I don't know. Because it has to be
24 above and beyond that. If they do find that Centex
25 was grossly negligent, I think they may also could

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 find that they breached the warranty of
2 inhabitability. I think you can go through all of
3 those, breached their fiduciary duty, go through
4 all of that. But I think the threshold issue is if
5 there is even gross negligence, right?

6 MR. HILDEBRAND: So they would go back -- if
7 you draw that out --

8 THE COURT: I don't think it even matters,
9 quite frankly. The only thing he really cares
10 about -- you tell me. What is the only thing you
11 care about? You just want to find gross
12 negligence? I think you run a risk when you talk
13 about all of these other causes of action that you
14 get the jury thinking they have to find all of
15 these things in some way, shape, or form, and they
16 don't. They just have to find one.

17 MR. CONNELL: That's exactly right. Two
18 causes of action: Do you find gross negligence?
19 If you do, write the number down. If you don't,
20 stop.

21 Second cause of action: Unfair Trade
22 Practices. I know you are thinking about that, but
23 those are the only two causes of action I sent you,
24 and I don't think we need to put ten causes of
25 action. They will be so confused, we'll be here

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 until Saturday.

2 I don't want to repeat this, but the statute
3 allows us only to win if we show recklessness and
4 gross negligence; otherwise, we're out of court. I
5 think it's easy.

6 THE COURT: I understand.

7 MR. CONNELL: I think it is easy. It took me
8 two weeks to figure it out, but....

9 THE COURT: No, I understand that. But you
10 did state in chambers, which was on the record,
11 that you thought the jury could find that Centex
12 was not grossly negligent, but they could find that
13 Centex violated the Unfair Trade Practices Act.

14 MR. CONNELL: Yes, ma'am.

15 THE COURT: But, then, we would still have to
16 address the Statute of Repose.

17 MR. CONNELL: I don't think so.

18 THE COURT: But it says "any action."

19 MR. CONNELL: I put that in my brief.

20 THE COURT: So you don't know what you argued
21 in your brief?

22 MR. CONNELL: I argued in my brief that there
23 are two separate statutes, cause for two separate
24 remedies. The Unfair Trade Practices Act is based
25 on your discovery of the act, not the Statute of

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 Repose, and so that is -- if you will look at that
2 section.

3 THE COURT: Okay.

4 MR. CONNELL: So that would have been....

5 MR. HILDEBRAND: So it is not an action in
6 tort or contract or otherwise arising out of or
7 related to the construction, sale, development of
8 real property?

9 MR. CONNELL: It is a statutory action.

10 THE COURT: The statute says "or other."

11 MR. CONNELL: Don't know what that means.

12 MR. HILDEBRAND: Well, let's look at the
13 definition.

14 THE COURT: You are saying it would be
15 triggered by when they knew that they had a claim?

16 MR. CONNELL: That is what the statute says.

17 THE COURT: So aren't we back to -- that is
18 what the Statute of Repose says?

19 MR. CONNELL: No. We're back to the time of
20 discovery.

21 THE COURT: So you are talking about the
22 Statute of Limitations, the discovery statute?

23 MR. CONNELL: No. No. I'm talking about the
24 Unfair Trade Practices Act. It actually uses the
25 word "discovery," I believe.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 THE COURT: I want to read the Unfair Trade
2 Practices Act. I think it is a judicial issue. If
3 the jury came back and found there was an unfair
4 deceptive method, I think it would be then the
5 Court's issue -- unless someone tells me -- whether
6 or not it was a willful and knowing violation.

7 I mean, it says, "The Court shall award." It
8 says, "The Court finds that the use or employment
9 of the unfair or deceptive method or practice was
10 willful or knowing, the Court shall award."

11 It would require me making a finding that it
12 was willful and knowing.

13 I don't know why you don't think the Statute
14 of Repose doesn't apply to this. I need you to
15 show me why the Statute of Repose does not apply to
16 this Unfair Trade Practices Act cause of action.

17 You said there was some discovery language,
18 Mr. Connell, in the statute, but I don't see it.

19 Kylyn just pointed out in the Unfair Trade
20 Practices Act -- it goes to 39-5-150 about the
21 Statute of Limitations being three years after
22 discovery of the unlawful conduct.

23 MR. HILDEBRAND: I think the Statute of
24 Repose says specifically that the normal periods of
25 Statute of Limitations runs during the Statute of

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 Repose. You can't get over the Statute of Repose.
2 The Statute of Repose is 13 years. You can't say,
3 well, I discovered the defect in year 12 and,
4 therefore, I have two years beyond the Statute of
5 Repose. It is a flat out bar.

6 The issue is very simple that you touched on.
7 Again, any contract, tort, or otherwise -- not when
8 you might have discovered it or some other --

9 THE COURT: It says "and arising out of" as
10 well, of real estate -- you know, the development
11 of real estate. So I think it applies.

12 This is Judge Anderson, just as a little
13 light note: "The term 'unfair trade practice'
14 encompasses a wide variety of shady practices
15 sometimes associated with the marketing of consumer
16 goods and services."

17 So let's take a break for lunch. You see
18 what you can find, if there is anything. I'm going
19 to look -- you want me to look at your pretrial
20 brief?

21 MR. CONNELL: Yes, ma'am. Pages 8, 9, and
22 10.

23 THE COURT: The jury will be back in about
24 20, 25 minutes. So let's take a break.

25 (A recess was taken.)

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 THE COURT: Thank you. Please be seated.

2 Is everyone ready to go?

3 MR. HILDEBRAND: Yes, ma'am. To be clear,
4 and I'll be brief, I just want to make my record
5 that we move for directed verdict on all of the
6 plaintiff's causes of action, because they are all
7 barred by the Statute of Repose.

8 If plaintiff's counsel says that he's only
9 pursuing a gross negligence cause of action, then
10 by stipulation the remaining actions need to be
11 dismissed.

12 Moreover, I think that many of these singular
13 actions, there have been no proof of them. Again,
14 breach of expressed warranty, I don't think there
15 has been a proof of that with the sales brochure or
16 on the master deed.

17 Breach of implied warranty of workmanlike
18 construction, that falls under the Statute of
19 Repose, as does negligence, gross negligence,
20 carelessness. Breach of implied warranty of
21 habitability goes out under the Statute of Repose.
22 Fraud goes out on Statute of Repose, violation of
23 the South Carolina Unfair Trade Practices Act, and
24 breach of fiduciary duty.

25 I would also move -- on the fraud causes of

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 action specifically, even if that were in and not
2 under the Statute of Repose, there's been no false
3 representation of a material fact, whether by words
4 or conduct, by false or misleading allegations, or
5 by concealment of anything in an effort to deceive.
6 I'm citing Ralph King Anderson's request to charge
7 on fraud.

8 There's been no fraud here, Your Honor. That
9 is -- should not even be in this case. They
10 submitted a brochure that talks about -- there
11 really aren't any statements here: Places a high
12 priority on your satisfaction. Home purchased at
13 Barefoot, rest assured you can have peace of mind
14 -- it is pure puffery. There are no fraudulent
15 statements. The statements made by one homeowners
16 that he got this thing and relied on it is not
17 satisfactory to establish fraud.

18 Moreover, also under Ralph King Anderson,
19 there hasn't been a wrongful representation, the
20 falsity of the representation, the materiality of
21 the representation.

22 The speaker's knowledge of its falsity or
23 reckless disregard for its truth, that goes to the
24 time that the statement was made. All we did was
25 publish a brochure, apparently, prior to the

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 construction where they are saying that we knew
2 that the construction was bad.

3 The ignorance of the falsity, reliance on the
4 truth, right to rely, approximate injury -- I mean,
5 how can this apply to a homeowners association?
6 You have one individual who said that he got this
7 thing, this brochure. It is not a class action.
8 You have an HOA. How can the HOA, who doesn't even
9 own the association, all they have is a common duty
10 to repair and claim those elements. I don't think
11 they can do that.

12 Non-disclosure of a fact still has to be a
13 fact. There has been no non-disclosure here. I
14 don't think that fraud is applicable.

15 I would also like to go to the UTPA. There
16 has been no deceptive act or practice that has been
17 alleged here. We cite Judge Ralph King Anderson's
18 Civil Request Charge 34-2, Second Edition, 2016.
19 UTPA violation is proof by an unfair -- an actual
20 practice is unfair when it is offensive to public
21 policy or when it is immoral, unethical, or
22 oppressive.

23 I just don't see how the allegations that
24 have been made here are offensive to public policy,
25 immoral, unethical, or oppressive.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 Then I cite the case, which is *Holmes versus*
2 *Haynesworth*. It is a 2009 case granting a directed
3 verdict on the action where it says: "It is
4 well-settled that the South Carolina Unfair Trade
5 Practices Act was not intended to apply to mere
6 acts of negligence."

7 I would also cite, Your Honor, *Clarkson*
8 *versus Orkin Company, Fourth Circuit case, 761 F2d*
9 *189* where it says: "Under South Carolina law, a
10 person does not violate the SCUTPA if he performs
11 his job poorly or overlooks something which should
12 have attracted his attention."

13 So all of these, again, are trumped by the
14 Statute of Repose, but even individually, I don't
15 think there has been evidence to support them.

16 The Statute of Limitations, I would also move
17 on that. The homeowners noticed these deficiencies
18 back in 2006. If they investigated those and hired
19 the engineer who was recommended, I think that they
20 would have found these.

21 Oh, and breach of fiduciary duty. I keep
22 skipping over that, but I haven't seen any evidence
23 of that either. The common elements were deeded at
24 the time that they were constructed. If you look
25 at the master deed and bylaws, when you have a

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 condo, when you do the master deed, the condos are
2 deeded over right then and there.

3 THE COURT: Right.

4 MR. HILDEBRAND: In some cases, you have
5 common elements that are not deeded until a lot
6 longer, like the roads. So I think that is what
7 the cases are saying, that you can't deed over the
8 roads or something where you know that they are in
9 a bad condition and hang the homeowners with unfair
10 assessments or giving them bad construction or
11 something that they have to spend a lot of money
12 on.

13 Here, as every single unit -- every single
14 building was finished, as shown in the master deed
15 and bylaws, they were transferred to the
16 association. So they were done in new condition.

17 Moreover, the other way you can get around
18 that, or another way of the case is to say the
19 board was controlled by the developer and that
20 there was some period of time where they should
21 have done something or not done something that was
22 wrong.

23 Here, the board was transferred by December,
24 as I recall, of 2002. So we were on the board for
25 only a year. The testimony has been a professional

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 management company has been engaged from the start
2 giving advice. There is no evidence that Centex
3 didn't pay its share of the regime fees or
4 otherwise, so I believe the fiduciary duty claim
5 falls as well. Thank you.

6 THE COURT: Do you want to respond?

7 MR. CONNELL: You've already ruled.

8 THE COURT: Yeah. We already did it.

9 MR. CONNELL: We need to get on with it.

10 THE COURT: All right. I heard one thing.
11 Did you say the two of you would stipulate or
12 offering to stipulate -- is that what I heard --
13 that this was just a gross negligence claim? What
14 was it?

15 MR. CONNELL: Stipulation with evidence to
16 the COs.

17 THE COURT: No. No. He said something in
18 his motion at the beginning. I think he said if
19 they will stipulate that this is just a gross
20 negligence standard; is that what you said?

21 MR. HILDEBRAND: What I said is I heard him
22 stipulate to that. I heard him say he's only
23 pursuing -- oh, I'm glad you said that, because one
24 other ground for my motion --

25 THE COURT: First, answer my question, and

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 then you can do the next ground.

2 MR. HILDEBRAND: That is what I understood
3 Gene to say, that he's only pursuing a claim for
4 gross negligence. That is all he wants on the jury
5 verdict form. If that is the case, the other
6 claims are irrelevant. He's stipulating that he's
7 only pursuing or admissions or whatever --
8 stipulation of counsel, that he's only pursuing
9 gross negligence.

10 My second claim is that under the Statute of
11 Repose, it's only gross negligence -- and I don't
12 think -- I'll take the position that that precludes
13 punitive damages as well. You get gross
14 negligence, and that's it. And if that is what
15 Mr. Connell wants to hang his hat on, then that is
16 all you get are actual damages under gross
17 negligence. It's gross negligence, and that's it.
18 You don't get punitive damages.

19 MR. CONNELL: I can't see how that can be the
20 case, Your Honor. But, anyway, I'm ready to go
21 forward.

22 MR. HILDEBRAND: We are, too, Your Honor.

23 THE COURT: All right. Finding gross
24 negligence allows the jury to consider punitive
25 damages. They are not required to award it. They

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 can just consider it. So it takes it to that
2 level, I believe.

3 Anything else? We're good?

4 Who are we putting up?

5 MR. HILDEBRAND: Jeremy Martin.

6 THE COURT: Bring the jury in.

7 (The jury enters at 1:24 p.m., and the
8 following is heard in the presence of the jury.)

9 THE COURT: Welcome back, ladies and
10 gentlemen. We're going to go ahead and start with
11 the defense's case.

12 Call your first witness, sir.

13 MR. HILDEBRAND: We call Jeremy Martin.

14 (JEREMY MARTIN, having been duly sworn,
15 testified as follows:)

16 THE WITNESS: Jeremy Warren Martin.

17 **DIRECT EXAMINATION**

18 **BY MR. HILDEBRAND:**

19 **Q** How old are you, Mr. Martin?

20 **A** 46.

21 **Q** Where were you born?

22 **A** Born in a small town in Pennsylvania named
23 Meyersdale.

24 **Q** How long have you lived in Myrtle Beach?

25 **A** I moved to Horry County, Myrtle Beach, in

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 1989 with my family.

2 Q So you are married?

3 A Yes, sir.

4 Q Any children?

5 A I have two small children.

6 Q How old are they?

7 A Now they are 10 and 11.

8 Q And so you've lived in Horry County since
9 1989?

10 A Yes, sir.

11 Q How far did you go in school?

12 A I graduated Socastee here locally, and after
13 that, shortly after that, I attended Horry
14 Georgetown Technical College.

15 Q Are you a little nervous?

16 A A little bit.

17 Q You've been in the construction industry your
18 whole life?

19 A Yes, sir.

20 Q And your father was as well?

21 A Yes, sir.

22 Q So tell me how long you -- how you got
23 started with construction and your progression of
24 your career.

25 A While I was attending Horry Georgetown, I was

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 enrolled in their civil engineering program.
2 Shortly -- about a year before graduating, I got
3 offered an opportunity to join the team at Centex
4 Homes.

5 Q Tell me about Centex Homes. You have been
6 with them since when?

7 A 1999, December.

8 Q And you have been here in the Myrtle Beach
9 area working for them since that time?

10 A That is correct.

11 Q So Centex Homes, do you know,
12 approximately -- or maybe you know exactly when it
13 was started, or do you know anything about the
14 history?

15 A We started in 1945. Over 70 years now.

16 Q What does it do? What do Centex Homes do?

17 A Homebuilder. We build mainly
18 production-style homes around the country. We
19 build single family homes, smaller homes for new
20 homebuyers, all the way to luxury-style homes,
21 which you can find at Barefoot Resort, as well as
22 multi-family condominium and townhomes.

23 Q Now, when this project was constructed, which
24 was, I believe, in 2001 or so, Centex Homes was a
25 stand-alone company, but as I understand it, at

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 some point it merged with another company?

2 **A** That is correct, in 2009.

3 **Q** What is that company that it merged with?

4 **A** We were acquired by Pulte Group, is the
5 parent company.

6 **Q** So you have been with Centex since 1999?

7 **A** Yes, sir.

8 **Q** So if my math is correct, that is close to 24
9 years?

10 **A** A little over 23, that's correct.

11 **Q** Is there anybody else in the Myrtle Beach
12 offices or division that is still with Centex that
13 was there when you started?

14 **A** No, sir.

15 **Q** You are the last one?

16 **A** The last one.

17 **Q** How many employees do they have, would you
18 approximate, in the Myrtle Beach area?

19 **A** In Myrtle Beach? Probably over 50, including
20 salespeople -- maybe closer to 70.

21 **Q** Are you familiar with the -- so, I guess,
22 since you have been employed -- tell me what your
23 job was in 1999 with Centex, and then give the jury
24 a thumbnail sketch what you started doing and how
25 you progressed and where you are now.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **A** When I was hired with Centex Homes, I was
2 hired as a field manager. We had different levels,
3 so I was hired as a Field Manager 1. Probably six
4 months into doing a Field Manager 1 role, I was
5 promoted to a 2, and after few years of doing a
6 Field Manager 2's job, promoted to a 3, and then
7 eventually a 4 after that.

8 Each level of field management consists of
9 more responsibility. A Field Manager 1 doesn't,
10 typically, carry very many homes or manage the
11 construction of many homes. Field Manager 2
12 carries more. A 3 could carry communities. They
13 could manage communities, as well as other field
14 managers within those communities. A 4 is like a
15 lead field manager for a large development.

16 Then, currently, I'm an area construction
17 manager and have been for numerous years. Area
18 construction manager manages a specific market,
19 like Myrtle Beach.

20 **Q** So as a longtime employee of Centex, are you
21 familiar with the quality control measures that it
22 has, and that it did have, in 2000/2001 when
23 Wedgewood was being constructed?

24 **A** Absolutely.

25 **Q** Tell the jury about the monthly technical

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 training and how that worked.

2 **A** Yeah. So that was one of our continuing
3 education kind of processes with our field
4 managers. We had, basically, monthly technical
5 training, is what it is called. We would meet in a
6 room this size or a little smaller. Each month we
7 would review a specific topic, it could be roofing,
8 could be framing, some sort of -- even safety. It
9 could be any aspect of construction. Basically, we
10 review what our requirements were, review code
11 requirements, industry standard requirements, as
12 well as product requirements.

13 We would educate everyone. We would do
14 continuing education for field managers that had
15 been with us for awhile, and basically talked
16 through those process to make sure everyone
17 understood those processes.

18 **Q** Would outside people come in and help with
19 those sessions?

20 **A** Absolutely. We've had manufacturers'
21 representatives come in and teach programs like
22 Lynx, HVAC equipment. I recall them
23 specifically -- the window company, we've had them
24 come in and teach us training on many aspects.

25 **Q** So they happened monthly, and they would

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 happen in the office?

2 **A** That's correct.

3 **Q** And how long would each monthly meeting last?

4 **A** It was usually all morning. We would have
5 lunch after and then dismiss.

6 **Q** So start from about what time?

7 **A** About 8:00 or 9:00, at the latest.

8 **Q** And go to noon, and then lunch?

9 **A** Yes, sir.

10 **Q** Tell me about the "Toolbox Talks for
11 Tailgates."

12 **A** Those are two different things. So toolbox
13 talks are like training programs we incorporate
14 into our weekly production meetings. We had a
15 production meeting every single week to review the
16 construction of homes or buildings. We would talk
17 about scheduling and things that were going on.

18 We would introduce toolbox talks into those
19 as well as a training sessions. So, again, many of
20 the aspects that we talked about on the technical
21 training side, we would introduce in the toolbox
22 talks. But it is a short training session,
23 anywhere from 20 to 30 minutes. We would discuss
24 safety issues, things that we saw in the field if
25 they were done incorrect, identify issues and

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 concerns, and then train on those to make sure we
2 were looking for those issues in the field.

3 Q So those were weekly?

4 A That was part of the weekly production
5 meetings, yes.

6 Q Were subcontractors part of that?

7 A They were if we felt the need to bring them
8 in to address a specific concern.

9 Q And then the "tailgate meetings," that is a
10 different thing?

11 A That's correct. So a tailgate meeting is
12 something that we identified, and we did those,
13 usually, biweekly or once a month. We would bring
14 all of the trades for those projects. So if
15 Wedgewood or Clearwater Bay or Cedar Creek, on the
16 single family side, we would bring subcontractors
17 specific to those communities and have a brief
18 meeting about where we were at on construction
19 phases, where the buildings were at. We would
20 discuss issues or concerns, discuss the future
21 schedules, and also address any items or things
22 that we were seeing in the field that needed to be
23 addressed like safety violations, construction
24 concerns, or issues.

25 Q Were the same things done with the

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 multifamily --

2 **A** Absolutely.

3 **Q** All right. It sounds like Centex has a lot
4 of ongoing education or commitment to quality; is
5 that fair?

6 **A** Absolutely, we do. To this day as well.

7 **Q** Is that a core value?

8 **A** Core value or our mission, you know. It is
9 addressed directly in our mission statement.

10 **Q** Tell me about "inline inspections."

11 **A** So inline inspections are basically a group
12 of inspections that we require the field managers
13 to do on our homes or buildings that we construct.
14 They are compiled in a book that is given for every
15 home or unit that we construct in what we call an
16 "inline book." That was given to the field manager
17 when we would start construction of that building
18 or home.

19 The inspections were all inside of that book
20 and they went everywhere from prior to putting the
21 forms on the ground for the foundation, through
22 framing, through mechanical, plumbing, HVAC,
23 electrical, all the way through an inspection that
24 was required prior to presenting the home to a
25 customer.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 So we would have to do, you know, like
2 quality control things like drywall, paint, things
3 like that. Those are internal inspections that we
4 did as field managers to make sure we were
5 providing quality homes to our customers.

6 **Q** How often were those done?

7 **A** At specific stages of construction, so
8 probably anywhere from 10 to 12 of those
9 inspections that were done throughout the building
10 process of a building or a home.

11 **Q** Tell me about, yet, another quality control
12 or mechanism that Centex had to try to build a good
13 quality home. Have you ever heard the acronym EEE?

14 **A** Yes.

15 **Q** What is that?

16 **A** So that is a something we created amongst
17 ourselves that we still utilize today, and that is:
18 "Every room, every house, every day." So a field
19 manager is required to be in every room, every
20 house, every day during their daily walks of the
21 projects.

22 **Q** Tell me about -- tell the jury about, yet,
23 another layer, the "Construction Operations
24 Review." What is that?

25 **A** Yeah. So the abbreviation is "COR." That is

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 basically an internal audit that our corporate
2 headquarters performed on every division of Centex
3 yearly. It was an announced audit that --
4 basically, we had someone that sat in our corporate
5 headquarters at Dallas and his job was to perform
6 these audits throughout every division of the
7 country that we built in.

8 Q Is it a surprise inspection?

9 A Yes. It was unannounced and a surprise. We
10 had no idea it was coming until the day before they
11 called.

12 Q What happened -- tell me about those.

13 A They would bring a couple other experts with
14 them within our company, like other area
15 construction managers or division construction
16 managers, from other markets or divisions. They
17 would show up, and it was about a week-long
18 process. They show up on Tuesday morning. They
19 would review almost every neighborhood. Typically,
20 it was every neighborhood, but we were a large
21 division back then, so they couldn't get to every
22 single neighborhood within the week. But,
23 basically, they spent Tuesday, Wednesday, and
24 Thursday in the field walking homes, looking at
25 materials, looking at the construction of the

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 homes, and then we would have a debrief on Friday
2 morning.

3 You know we would -- a few people got to walk
4 with them as well, but once the inspection was
5 completed on Thursday, they would compile a report
6 and do a debrief with the whole construction
7 department on Friday morning.

8 **Q** And what impact, if any, did the COR's
9 grading or ranking or assessment have on the
10 individuals on the division?

11 **A** As far as the individuals like the field
12 managers and the team?

13 **Q** Uh-huh.

14 **A** That is basically a report card on how well
15 we were performing as a division. So, yeah, it
16 definitely -- if we weren't performing well, there
17 could have been consequences for that.

18 **Q** Does Centex self-perform work? What does
19 "self-perform" mean?

20 **A** Actually do the -- swing the hammers and
21 drive the nails, is how I think about that.

22 **Q** Right. So you are the general contractor?

23 **A** Correct.

24 **Q** You hire subcontractors who do your work?

25 **A** That is correct. We don't actually perform

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 the work.

2 Q I'll hand you Exhibit 87. This is called a
3 "new subcontractor orientation packet." Do you
4 recognize this?

5 A Yes, sir.

6 Q Before I go on, were all of the policies,
7 ongoing educational mechanisms and such, were all
8 of these in effect and active while the project was
9 being done?

10 A Yes.

11 Q So this new contract orientation packet, do
12 you recognize that?

13 A Yes.

14 Q And is this provided to the subcontractors?

15 A Yes.

16 Q When is it given to them?

17 A Prior to them becoming a subcontractor for
18 Centex Homes.

19 Q And how is -- is it just handed to them, or
20 how is it implemented?

21 A No. It would be reviewed -- typically, our
22 purchasing and estimating department would have sat
23 down with them in a meeting, reviewed every aspect
24 of this packet, including the schedules, along with
25 the area construction manager, who would have been

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 a part of the meeting as well. They would review
2 them together, and any questions or concerns would
3 be answered at that time.

4 Q Let's turn to Page 3, which I think is the
5 next page. Let's look at No. 2, that paragraph.
6 All right. "Centex Mission Statement and Goal,"
7 was that reviewed with the subcontractors?

8 A Absolutely.

9 Q You are positive of that?

10 A Yes.

11 Q It is on the board, but it says "our
12 mission," but I'll ask you, without looking at it,
13 can you tell me what the Centex mission is?

14 A Yes, sir. To build quality homes in
15 neighborhoods that exceed the expectations we've
16 established with our customers. Our goal is to
17 have satisfied homeowners that recommend us without
18 reservation.

19 Q That's just good business practice?

20 A Absolutely.

21 Q What is your goal -- when you sell a
22 residence or home to one of your customers, what is
23 your ultimate goal?

24 A To provide a quality-built home to them so
25 that they can recommend us to their friends or

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 relatives so, in turn, we sell more homes, build
2 more homes.

3 Q Under that same section, "Our mission is our
4 goal. Satisfied customers who recommend us without
5 reservation"?

6 A Yes, sir.

7 Q On the next page, "accountability," and next
8 to that it says "field manager," and I'm going to
9 go to No. 3 on that one.

10 MR. HILDEBRAND: Start with "accountability"
11 and go to 3. There you go, Adam.

12 Q (BY MR. HILDEBRAND) Accountability, field
13 manager, so that is what you started out as?

14 A Yes, sir.

15 Q So field manager, that is your responsibility
16 to review these with your subcontractors?

17 A Yes.

18 Q Did you do that?

19 A Yeah.

20 Q No. 2: "Covering bad work and
21 accountability." What does that mean?

22 A That means if any sub -- they are not to
23 cover up any bad work from a subcontractor that was
24 performing for them. So if there was poor
25 workmanship done prior to vinyl flooring or

CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!

1 carpeting being installed, he was not to do his job
2 and to stop and contact a Centex representative to
3 let them know there is poor workmanship, and he
4 can't perform his job without it being addressed.

5 **Q** No. 3: "Pride of ownership and work," and
6 then it says, dash, D-I-R-T-F-T?

7 **A** Do it right the first time.

8 **Q** Explanatory, I guess.

9 **A** Yes, sir. That is what we did our best to
10 do.

11 **Q** If you go down to "Quality Management," and
12 "field manager and construction services
13 representative," so who would give that section?

14 **A** The field manager or area manager would
15 discuss that with the trade, as well as a
16 construction service representative, which would be
17 a purchasing or estimating manager.

18 **Q** And No. 3 says: "Inline inspections, why we
19 do it, defect prevention." What is that?

20 **A** To identify concerns and make sure we reduce
21 the amount of defects that are done in our homes.
22 So they are addressed so they don't continue to
23 happen.

24 **Q** Warranty service -- "Warranty Customer
25 Service, No. 1." Actually, we'll go through all

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 six of those.

2 It says: "Importance of customer service."
3 Tell me about that aspect under this warranty of
4 customer service that you reviewed with your
5 subcontractors.

6 **A** We reviewed this with the subcontractors
7 because we wanted to make sure that our
8 subcontractors knew how important it was for them
9 to perform any type of warranty service on the home
10 after they closed on them. So to take that
11 warranty service as being just as important as the
12 build aspect of their homes. They needed to
13 provide warranty.

14 **Q** Tell the jury about the Centex Warranty
15 Program and how it was back in 2000, 2001, 2002
16 through 2005 or '06. Has it changed much?

17 **A** It hasn't changed much. We've always
18 considered our warranty program to be beyond and
19 above our competitors. A lot of our competitors
20 provide warranties, but perform that service in
21 specific times time frames or integrals throughout
22 a customer's home. So they come back three months
23 of closing of a home and address any issues that
24 the customers would identify, and then they would
25 come and check in at about 11, 12 months, at the

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 one-year mark, and address any concerns or issues.

2 We took it a step further and we considered
3 ourselves to have a "Warranty on Demand Program,"
4 is what we identified it as. Our customers can
5 contact us any time. We had an emergency line.
6 They can contact us every day. It didn't matter.
7 But our general rule of thumb is we would respond
8 to them within 48 hours and schedule an assessment
9 to take a look at the warranty issue, if it was
10 warrantable or wasn't. But we would meet with the
11 customer and determine a resolution and move on
12 from there. It was considered a warranty on
13 demand.

14 **Q** What is the ultimate goal of the warranty
15 program?

16 **A** Satisfied customers, to be happy with our
17 homes and products, provide good service.

18 **Q** What is the -- have you heard of a one-year
19 homebuyer's mark or something like that?

20 **A** Yes.

21 **Q** Is it typical a year?

22 **A** Yes.

23 **Q** Does Centex ever address issues after a year
24 when it is the right thing to do?

25 **A** Absolutely. I, myself, have done that many

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 times.

2 Q Do you have full-time warranty people on
3 staff?

4 A Yes.

5 Q That is all they do?

6 A Yes.

7 Q There is another level of inspections, the
8 "QI," quality inspection. Tell them about that,
9 please.

10 A Quality inspection was an inspection -- at
11 the time frame when these buildings were built, we
12 hired a third-party company. The owner of the
13 company's name was John Toyman (phonetic), and he
14 would perform a quality inspection. Once that home
15 was near completion, typically about a week to two
16 weeks prior to closing, he would go --

17 MR. CONNELL: Objection, Your Honor. He
18 can't testify about what someone else did. He said
19 John Toyman went into another home.

20 MR. HILDEBRAND: These are his independent
21 inspectors. He can say what they did. How is that
22 inappropriate? He has personal knowledge of it.

23 THE COURT: If he has personal knowledge and
24 did he rely on it, then he can use it.

25 Q (BY MR. HILDEBRAND) Do you have personal

*CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!*

1 knowledge of the QI inspections that were done?

2 **A** Yes. I attended many of the QI inspections.

3 **Q** Who performed them?

4 **A** John Toylan.

5 **Q** What did he do?

6 **A** Inspected the quality and the workmanship of
7 the homes prior to us closing with the customer on
8 those homes.

9 **Q** What did that inspection involve?

10 **A** He looked at all of the aspects of the
11 construction, the materials and the quality in the
12 homes. He would look at paint, drywall, caulking,
13 trim, all of the quality workmanship of our homes.

14 **Q** And how about with the multifamily units like
15 at Wedgewood?

16 **A** It was no different, same program.

17 **Q** So we talked about the Centex programs and
18 its quality control and ongoing efforts to build
19 quality buildings. Do you ever miss the mark?

20 **A** Sometimes, yes, sir. We are human.

21 **Q** And that it is why you have the QI program?

22 **A** Yes.

23 **Q** On this particular project, was there, yet,
24 another level of inspection that Centex implemented
25 on its own to oversee this particular project,

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 Wedgewood?

2 **A** Yes.

3 **Q** What is the name of the company that did
4 that?

5 **A** Morningstar Consultants.

6 **Q** Who is the owner of that?

7 **A** Hershel Morningstar.

8 **Q** So tell me about Morningstar. How did they
9 come to be involved?

10 **A** Prior to us constructing multifamily units in
11 Myrtle Beach, we felt the need or necessity to have
12 that extra layer of inspection. So our leadership
13 team reached out to a consulting firm that had
14 experience in doing third-party inspections on
15 multifamily units.

16 **Q** Do you know what his educational background
17 is?

18 **A** I do not know. I know he owned various
19 construction companies -- or one construction
20 company.

21 **Q** Okay.

22 MR. CONNELL: Can we have a side-bar about
23 this?

24 (Whereupon, a bench conference was had out
25 of the hearing of the jury.)

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 MR. CONNELL: He is going to offer through
2 this witness some independent information about a
3 third-party who came and apparently did some
4 inspections.

5 THE COURT: Is that the company you hired,
6 Morningstar?

7 MR. HILDEBRAND: Yes, ma'am.

8 MR. CONNELL: They can't do that through this
9 witness. He is going to offer his contract.

10 THE COURT: What is your objection?

11 MR. CONNELL: I object. I think that it is
12 hearsay. He can't testify as to what they did. He
13 didn't write it. He didn't sign it. None of those
14 things were by him.

15 THE COURT: So you are challenging that this
16 existed; is that what you are saying?

17 MR. CONNELL: He's going to try to get in, I
18 assume, whatever Mr. Morningstar did, and I don't
19 think he can do that.

20 Furthermore, Your Honor --

21 THE COURT: Hold on a second. I'm not
22 following you why he can't? Because he wasn't a
23 personal party to this contract? He works for
24 Centex.

25 MR. CONNELL: This is an independent person.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 Morningstar Consultants is an independent
2 contractor. If he wants to get them in, he can
3 call them.

4 THE COURT: I'm missing your question,
5 because part of your claim is they failed to
6 supervise. What they are saying is they had an
7 extra level to supervise.

8 MR. CONNELL: I'm with you on that, but
9 what's good for the goose is good for the gander.
10 When he gets that in, I'm going to go right at it.

11 THE COURT: Right at what?

12 MR. CONNELL: Right at what happened.

13 THE COURT: Well, I don't know what happened.

14 MR. CONNELL: So Mr. Morningstar got sued by
15 them later on. That's going to be to admissible.

16 MR. HILDEBRAND: No, it's not. No, it's not.
17 He was brought in, just like our subcontractors.
18 He was brought in exactly like the subcontractors.
19 Direct claims were made against him in all of those
20 other cases.

21 MR. CONNELL: It's got to be admissible.

22 MR. HILDEBRAND: Your Honor, they brought
23 that up in Ross Clements -- you'll remember in his
24 testimony he said, Was anyone out there, and he
25 said, Yes, then he had a chart up there.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 THE COURT: With their name, I know.

2 MR. HILDEBRAND: So we certainly have a
3 right -- we didn't bring this up, they did.

4 THE COURT: Yeah. I think he can ask it,
5 unless you think.

6 MR. HILDEBRAND: Thank you.

7 (The following was had in open court.)

8 MR. HILDEBRAND: I would like to introduce
9 87.

10 MR. CONNELL: If I could have a copy.

11 MR. HILDEBRAND: I'm sorry.

12 THE COURT: I can take mine, Mr. Connell.

13 That's No. 87 that is in evidence without
14 objection.

15 MR. CONNELL: Besides what I put on the
16 record before.

17 THE COURT: We're talking about two different
18 documents now.

19 MR. CONNELL: This is something separate?
20 Okay. Let me look at this. Okay.

21 No objection.

22 THE COURT: 87 is in evidence.

23 (Defendants' Exhibit 87 admitted.)

24 **Q (BY MR. HILDEBRAND)** You told us about Hershel
25 Morningstar. Can you identify this document you

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 have in front of you?

2 **A** Yes, it is an agreement for consulting
3 services.

4 **Q** You can identify it as one of the business
5 records for Centex?

6 **A** Yes.

7 **Q** And it was signed at or about the time it
8 indicates on the document?

9 **A** That's correct.

10 **Q** To your knowledge?

11 **A** Yes.

12 **Q** And you were working at Centex at this time?

13 **A** I was.

14 **Q** Looks like it was signed by -- signature is
15 Hamilton Pitts, division manager?

16 **A** That's correct.

17 **Q** This is the agreement by which
18 Mr. Morningstar provided his services?

19 MR. HILDEBRAND: I'll introduce this as
20 Defense 90.

21 MR. CONNELL: No objection.

22 THE COURT: Okay. 90 is in.

23 (Defendants' Exhibit 90 admitted.)

24 **Q** **(BY MR. HILDEBRAND)** On the front page, it is
25 a consult agreement for the owner/developer, Centex

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 Homes. The third line says: "For its Barefoot
2 Landing Resort project in North Myrtle Beach"?

3 **A** Yes.

4 **Q** And then going down to Roman Numeral 3,
5 "Scope of Work." It says that Mr. Morningstar will
6 provide inspections and debriefs, but we'll move it
7 along.

8 Go to Page 2 at the very bottom, C. This is
9 probably the meat of the document. See where it
10 says: "Quality critique and specialty trades job
11 site meetings"?

12 **A** Yes.

13 **Q** And this what Mr. Morningstar agreed to
14 provide; is that correct?

15 **A** Correct.

16 **Q** Would you read that paragraph as to what your
17 expectations of Hershel Morningstar were?

18 **A** "The consultant shall conduct a technical
19 critique meeting for the purpose of isolating
20 examples of acceptable and unacceptable quality of
21 workmanship at the job site. Actual photographic
22 and videotape situations shall be utilized to
23 encouraged satisfactory performance of construction
24 of foundations, framing, structural elements,
25 roofing, flashings and fascia, mechanical,

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 electrical, plumbing, rough-in work.

2 "No. 4: Windows, doors, siding and veneer
3 accents.

4 "No. 5: Millwork, trim, flooring, floor
5 coverings, drywall, paint, wall coverings.

6 "No. 6: Decks, stairs, concrete flatwork,
7 and landscaping.

8 "Quality critique shall be provided on each
9 job site inspection."

10 Q Okay. Did you have any personal involvement
11 with Mr. Morningstar?

12 A I have, yes.

13 Q Did you observe any of these inspections?

14 A I have, yes.

15 Q So tell me how the process works. What would
16 he do? How would he communicate his findings to
17 the job site personnel?

18 A Sure. He usually came once a month. If we
19 required more inspections or if a foundation or
20 home was in mechanical trim, he would come during
21 those phases of construction more often. He would
22 basically walk through the whole site, look at
23 every building, look at all of these issues. He
24 would invite, typically, the area construction
25 manager or the field superintendent to be with him

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 during those inspections. He would walk through
2 and take pictures, make notes, and then do a
3 debrief with us the next day, including the trades.
4 All the trades that were involved were at those
5 meetings as well.

6 He would point out the issues and concerns,
7 and we would take that report and, you know, make
8 sure that the trades knew to address it, and then
9 we would have a follow-up inspection a week later
10 to make sure those issues were corrected, as well
11 as going forward.

12 Q So he would do an inspection -- and he did
13 this on Wedgewood, correct?

14 A Yes.

15 Q And so he would do an inspection, and after
16 he spent a day doing his inspection, there would be
17 a meeting on site with all of the subcontractors,
18 and he would point out things that he felt that
19 they needed to correct or work on?

20 A Yes.

21 Q And those inspections that he did, and the
22 things that he pointed out, it says: "He will
23 conduct a technical critique meeting for the
24 purpose of isolating examples of acceptable and
25 unacceptable quality of workmanship." Was it your

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 experience that he did, in fact, do that?

2 **A** Yes.

3 **Q** And for pretty broad aspects of this
4 building: Foundation, framing, structural
5 elements, roofing, flashing, fascia, windows,
6 doors, siding, veneer, millwork, stairs, steps --
7 would he do all of that?

8 **A** Yes, that's correct.

9 **Q** Did you find him to be competent?

10 **A** Yes.

11 **Q** Professional?

12 **A** Yes.

13 **Q** Did he have a good rapport with the
14 subcontractors?

15 **A** Yes.

16 **Q** Did Mr. Morningstar have occasion to follow
17 up his inspections with the subcontractors and
18 provide a written report that was compiled for
19 Wedgewood?

20 **A** Yes, he would.

21 **Q** So I'll show you 91. I'll show you Exhibit
22 91, and ask if you can identify that document?

23 MR. CONNELL: Your Honor.

24 THE COURT: Yes.

25 (Whereupon, a bench conference was had out

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 of the hearing of the jury.)

2 MR. CONNELL: I assume you are going to try
3 to introduce the whole Morningstar report with all
4 of these photographs and all of that? I mean, he's
5 not coming, because we subpoenaed him, and he said
6 it was too old to come. So how are they going to
7 get all of these pictures in?

8 MR. HILDEBRAND: They are business records,
9 Your Honor. It was his project, and they
10 referenced it. He said -- he told this jury we
11 didn't follow the reports. He looked at the
12 reports and said we didn't follow them
13 appropriately. There are some isolated instances
14 where he brought something, and then he caught when
15 he did.

16 MR. CONNELL: Your expert can say that.

17 MR. HILDEBRAND: It is just a foundational
18 expert.

19 MR. CONNELL: You're offering this for the
20 truth of the matter asserted, the inspection
21 records and all of that, you can't do that.

22 MR. HILDEBRAND: Yes, I can. It is our
23 inspection just like --

24 MR. CONNELL: It is not your inspection. It
25 is Morningstar's people, a third-party

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 subcontractor.

2 THE COURT: It is part of his business
3 records, though.

4 MR. CONNELL: I don't see how they are. They
5 are Morningstar's business records.

6 MR. HILDEBRAND: Given to us for our project.

7 THE COURT: This is just his job, and he's
8 turning them over.

9 MR. CONNELL: There's all sorts of
10 impressions in it and --

11 THE COURT: Well, I haven't read it. This is
12 the first time I've seen it. Do I need to send the
13 jury back? Do we need to talk about this?

14 MR. CONNELL: I think so.

15 (Whereupon, the following was had in open
16 court:)

17 THE COURT: Ladies and gentlemen, I'm going
18 to send you back to your jury room.

19 Do not discuss this case. It wouldn't be
20 appropriate to do so. We'll be right back with
21 you.

22 (Whereupon, the jury exits the courtroom at
23 2:05 p.m., and the following was had out of the
24 presence of the jury.)

25 THE COURT: I'm looking right now at

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 Rule 803, records regularly conducted activity.
2 Under Subsection 6: "A record of an event at
3 condition or opinion or diagnosis if the record was
4 made at or near the time by, or from information
5 transmitted by someone with knowledge, the record
6 was kept in the course of a regularly conducted
7 activity of a business, organization, occupation,
8 or calling, making the record was a regular
9 practice of that activity. All of these conditions
10 are shown by the testimony of the custodian or
11 another qualified witness."

12 I mean, I can see -- clearly, under the rule:
13 "The business records exception to the hearsay
14 rule, clearly does not require that the witness
15 have personal knowledge of the entries in the
16 records. The witness need only have knowledge of
17 the procedures under which the records were
18 created." It's clear, they come in.

19 MR. CONNELL: I disagree, Your Honor.

20 THE COURT: I just read with the rule, so
21 tell me how you disagree?

22 MR. CONNELL: If you look at the book, there
23 are pages and pages of pictures and mental
24 impressions of Mr. Morningstar. Mr. Morningstar is
25 an independent consultant that was hired by Centex.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 So if Centex had this record in their file, that
2 doesn't mean that they can offer his mental
3 impressions when he's not coming to trial.

4 We subpoenaed him. He said he is 82 years
5 old, he is not able to come. So I don't see how
6 they can -- if you look at what is in each unit,
7 all the way through, all of these photographs, that
8 is getting in through the back door. If they want
9 to have their expert say, I've looked at this stuff
10 and here is my opinion about X, Y, and Z, like we
11 did, then they can do that. I don't think you can
12 offer this book with all of these particular --
13 each unit, what they did --

14 MR. HILDEBRAND: We're not going through all
15 of them.

16 MR. CONNELL: Then don't put them all in.

17 MR. HILDEBRAND: But they definitely come in.

18 Moreover, Your Honor, I would like to say on
19 the record, that they opened the door to this.
20 Mr. Clements -- I can show you the slide --

21 THE COURT: I remember. He testified that
22 they hired an independent person to come in, and I
23 remember his name as Honeywell or something.

24 MR. CONNELL: Hershel Morningstar.

25 THE COURT: Oh, okay. And that they brought

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 him in to do it. I think he was critical that
2 clearly he didn't do his job. Isn't that what
3 Mr. Clements said?

4 MR. CONNELL: That's true.

5 THE COURT: Okay. Well, he's trying to show
6 by documented evidence that he did, at a minimum,
7 this.

8 I think it comes in under the business record
9 exception. The whole purpose of this man being
10 hired was for him to do just what he did, to
11 document the construction while it was in process.

12 MR. CONNELL: I understand your ruling.

13 THE COURT: With that said, I will tell
14 you -- I'll allow you to enter in that they hired
15 unlicensed subcontractors, because you are saying
16 how great Centex is, and he is saying that is one
17 of the things that they should consider, even if it
18 was not a violation and that they weren't required
19 to, and for the jury to use this as they may. So
20 he certainly can get into that.

21 I'm going to sit down for two minutes. I'm
22 sure the jury will take another couple of minutes,
23 so let's take a break.

24 (A recess was taken.)

25 THE COURT: Just real quick, I'm assuming

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 Mr. Morningstar was the one that provided this copy
2 to the parties?

3 MR. HILDEBRAND: Yes, ma'am.

4 THE COURT: It begs the question why there is
5 no plans and lack of documents, but Mr. Morningstar
6 still had his files and documents, so I was
7 wondering how that happened?

8 We can go ahead. Ready?

9 MR. HILDEBRAND: When you said I'm going to
10 introduce this, and you're going to introduce the
11 inspection reports, and I said, okay, to clarify
12 the record, I didn't consent or agree that the
13 licensing issues should come in. I just wanted to
14 clarify that for the record. I understand your
15 ruling, but just to clarify.

16 THE COURT: Yes. Subject to your objection.
17 Again, I think you have opened up the door in your
18 case, more than adequately, saying what a great job
19 Centex does, how thorough they are, because that is
20 what you have done by saying they hired
21 Mr. Morningstar.

22 Now, I do think that it is consideration that
23 they hired licensed subcontractors or not, in some
24 cases. So I think it is relevant now.

25 Again, we all know it is not a violation of

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 any law or requirement at the time, but I think he
2 can use it.

3 MR. HILDEBRAND: Okay.

4 THE COURT: I mean, it's for the same purpose
5 as what you are saying, Look at all of the pictures
6 he took, he was so careful. It's the same thing as
7 if you were so careful, why didn't then hire
8 licensed subs? I just want to be fair across the
9 board.

10 Let's bring the jury in.

11 MR. CONNELL: One other thing about the
12 document before they come in. So if you look at
13 the document, Your Honor, it also refers to Cypress
14 Bend, Clearwater, and all other associations. So
15 my position is if they let them in, I can do
16 whatever I want to with that information, because
17 he has it all in.

18 MR. HILDEBRAND: I'm not going to address
19 those, and I'll be glad to take those out.

20 MR. CONNELL: I bet you will. It's all going
21 in.

22 MR. DesCHAMPS: I think if it is in there
23 it's because it mentions Wedgewood on the same
24 page.

25 MR. CONNELL: It says Cypress Bend and all

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 sorts of other things, so.

2 MR. HILDEBRAND: I'll withdraw that then. I
3 will withdraw the exhibit.

4 (Defendants' Exhibit 91 withdrawn.)

5 THE COURT: So his testimony is that they
6 hired an independent contractor, Mr. Morningstar,
7 and he documented and looked through each of the
8 units and was required to look each of the units,
9 and that is it? So we're done with that testimony?

10 MR. HILDEBRAND: Yes, ma'am.

11 THE COURT: Okay. Now can we bring the jury
12 in?

13 (The jury enters at 2:17 p.m., and the
14 following is heard in the presence of the jury.)

15 THE COURT: Okay.

16 **DIRECT EXAMINATION (CONT.)**

17 **BY MR. HILDEBRAND:**

18 **Q** I've handed you now what is marked as
19 Defendants' 89. Can you identify that?

20 **A** This is the permit placard for the municipal
21 inspections from the City of North Myrtle Beach for
22 one of the buildings at Wedgewood. Looks like
23 Building 2.

24 **Q** Okay. So tell me what the role of the
25 building inspector is with the construction --

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 MR. CONNELL: Objection, Your Honor. Now he
2 wants to know what the role of the building
3 inspector is.

4 THE COURT: In his role, can he not say what
5 it is?

6 MR. HILDEBRAND: Absolutely. He deals with
7 them every day.

8 THE COURT: I think he can. I think
9 generally, based on his experience, he can say what
10 a building inspector does and is.

11 Q (BY MR. HILDEBRAND) Do you work with building
12 inspectors?

13 A Yes, I do.

14 Q All the time?

15 A All the time.

16 Q Daily -- sometimes daily, weekly, monthly?

17 A Yes. There is scheduled inspections
18 throughout the construction of a building or home
19 that have to be passed before you can move to the
20 next stage.

21 Q I think you identified this as one of the
22 building inspection reports for Wedgewood; is that
23 correct?

24 A That's correct.

25 MR. HILDEBRAND: I would introduce this as

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 Defense 89.

2 MR. CONNELL: No objection.

3 THE COURT: Without objection, it is in
4 evidence.

5 (Defendants' Exhibit 89 admitted.)

6 MR. HILDEBRAND: This is kind of hard to
7 read. The copies we got from the building inspector
8 are not all that great. If we can go down to No. 3,
9 piling inspection. If you can, blow that up for the
10 jury. And the only reason I'm bringing this up
11 is -- are these inspections --

12 **Q** (BY MR. HILDEBRAND) Tell me from the start to
13 finish, tell the jury what the inspectors do and at
14 what points they come out, from start to finish?

15 **A** There is various inspections that are
16 required for building a multifamily unit. All the
17 way from the very beginning, before you even set
18 forms on a building pad, there is a first
19 inspection that is an electrical service. This is
20 a temporary inspection to provide temporary power
21 to the site.

22 The next inspection would have been the
23 underground plumbing. It goes all the way through
24 the completion of the building, which is called a
25 CO inspection.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 So there is various identified inspections
2 that have to be passed prior to moving to the next
3 stage. For instance, you have to pass slab
4 plumbing before you put your underground mechanical
5 or rough gas plumbing in or before you even pour
6 your foundation, which is the monolithic slab.

7 We contact the building department, which was
8 the City of North Myrtle Beach, to schedule these
9 inspections. We would contact them the day prior
10 to needing that inspection, and then they would
11 send a building inspector -- sometimes multiple --
12 to the site to inspect the projects.

13 **Q** And how long would they be out, say, on this
14 project, on one of these Wedgewood buildings?

15 **A** It depended on the inspection. For instance,
16 the temporary power service could take ten minutes,
17 whereas a foundation phase could take 30 minutes,
18 or a framing inspection could take multiple hours.

19 **Q** So the very first start of the foundation
20 from the bottom through the completion of the
21 issuance of the Certificate of Occupancy, the
22 building inspectors are out there?

23 **A** Yes.

24 **Q** And you have dealt with North Myrtle Beach
25 building inspectors?

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **A** Yes. With many over the years.

2 **Q** What is your impression of them? Are they
3 competent?

4 **A** North Myrtle Beach was considered to be a
5 stricter building department.

6 MR. CONNELL: Now, he's talking about how
7 competent North Myrtle Beach building inspectors
8 are, I mean....

9 MR. HILDEBRAND: I'm asking his opinion based
10 on his observations of the North Myrtle inspectors.

11 MR. CONNELL: He's not qualified to do that.
12 He can bring the inspector.

13 THE COURT: Maybe as someone in his expertise
14 in his work -- come here.

15 (Whereupon, a bench conference was had out
16 of the hearing of the jury.)

17 MR. HILDEBRAND: I'll tell you what, I'll
18 move on.

19 THE COURT: Same question could be asked of
20 Clements, who said he had experience with working
21 with them before.

22 MR. CONNELL: He has a license, this guy
23 doesn't.

24 THE COURT: Well, I don't even think it
25 matters if he has a license and experience, but

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 withdraw and move on, because I think you are
2 opening a can of worms you don't want to. I mean,
3 that is opinion testimony.

4 MR. HILDEBRAND: Okay.

5 (Whereupon, the following was had in open
6 court.)

7 Q (BY MR. HILDEBRAND) I'll move along. So the
8 inspector, if they saw something that they did not
9 feel was correct, what was the procedure?

10 A They would issue -- fail the inspection,
11 provide an inspection form, and say this has to be
12 corrected before the next inspection pass.

13 Q So the next time they came out, whatever it
14 was that they said was wrong, had to be corrected;
15 is that correct?

16 A That's correct.

17 Q And that happened with each phase of the
18 construction?

19 A Yes.

20 Q So let's move down to "foundation walls,"
21 about a third up from the bottom.

22 Why don't you follow through and tell the
23 jury about elevated structure inspection, where it
24 says the first floor sheathing has been installed.

25 A Yes. That inspection would have been --

CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!

1 after the framing of the first floor was installed,
2 and the sheathing, OSB sheathing, was installed on
3 that, the building inspection department -- we
4 would call that inspection in, and they would come
5 and check the nailing patterns on the OSB to make
6 sure they meet the engineered design.

7 Q So they check the nailing patterns?

8 A Yes.

9 Q Where it says, "Wall and roof exterior
10 sheathing inspection," what does that mean?

11 A That's a similar inspection, but done for the
12 other floors, as well as the roof.

13 Q It says: "This inspection to be made upon
14 completion of wall framing and roof framing, and
15 completion of wall and roof sheathing." Is that an
16 accurate statement?

17 A That is correct.

18 Q Where it says the inspector and the date, do
19 you see where those initials are?

20 A Yes.

21 Q Do you recognize the initials on here?

22 A There are various building inspectors. I
23 know a few of them, yes.

24 Q Do you know who any of the inspectors were on
25 this job?

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **A** Jeff Overature (phonetic). He is the JO. He
2 inspected the saw and many of the final completion
3 items.

4 Joe Jacrumley (phonetic) was the plumbing
5 inspector.

6 Randy, I don't recall the last name, but he
7 was the framing inspector, the RB. It was a long
8 time ago, I don't remember the last name.

9 **Q** Page 2: "Building frame inspection." That
10 is long one. It talks about to be made after the
11 roof, all framing, fire blocking, and bracing is in
12 place. All concealed wiring, all pipes, chimneys,
13 ducts, and vents are complete. This inspection
14 includes, but not limited to, the following:
15 Crawlspace, CMU walls and peers, foundation walls.

16 Below that further, is roof sheathing,
17 nailing, type of nailing, types of fasteners and
18 fastening, floor systems, wood species, spans, wall
19 framing, wall openings, header spans, floor joists,
20 nailing, and wind bracing. Did all of those have
21 to pass inspection?

22 **A** Yes. They were all included in their
23 inspection process.

24 **Q** Under the next section: "Building high-wind
25 resistance inspection." What is that?

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **A** Verifying all of the components that needed
2 to be installed for, you know, hurricane
3 protection, metal ties, anchor bolts, things like
4 that that are needed for a high-wind area.

5 **Q** Do they sometimes disapprove of the
6 construction and require that to be fixed?

7 **A** Yes. We've failed inspections before with
8 municipalities.

9 **Q** Okay. "Windows and glazed exterior
10 openings," do you see that one as the next one?

11 **A** Yes.

12 **Q** "Verification of DP," is that "design
13 pressure"?

14 **A** That is correct.

15 **Q** Rating tags on windows.

16 Was the insulation of the windows, is that
17 something that the billing inspectors look at that
18 as well?

19 **A** Yes. They verify it meets the code
20 requirements.

21 **Q** Who has the final say on a job as to whether
22 a building meets the building codes?

23 **A** The building inspector.

24 **Q** And do they sometimes disapprove what is in
25 place?

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **A** Yes.

2 **Q** Do they sometimes say, Wait a second, you
3 don't have something that needs to be there?

4 **A** Yes.

5 **Q** Let's talk about one of the issues on this
6 job. You have been here the whole time?

7 **A** Correct.

8 **Q** And you heard discussion about vapor
9 barriers?

10 **A** That's correct.

11 **Q** Did you have personal involvement with the
12 building inspectors regarding vapor barriers?

13 **A** Yes.

14 **Q** At the time this was constructed?

15 **A** Yes.

16 **Q** And tell the jury what was the requirement,
17 if any, regarding the vapor barrier that
18 Mr. Clements criticized?

19 **A** During the installation, the building
20 inspectors would be required to visually see the
21 vapor barrier installed. On many of my homes, they
22 required it, so I would assume the same thing for
23 any project built in that time frame in Barefoot
24 Landing.

25 **Q** So the buildings on residential construction,

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 the building inspector required the vapor barrier
2 to be installed?

3 **A** To pass the installation inspection, he
4 required to visually see that vapor barrier.

5 **Q** Centex had no choice but to install it?

6 **A** Correct.

7 **Q** Could the building inspector shut the job
8 down? What if Centex said, No, I'm not going to
9 install it?

10 **A** He would issue a stop-work order until those
11 issues are resolved.

12 **Q** Is there some sort of appeal process?

13 **A** I'm not sure if there is an appeal process,
14 but there are discussions that would take place
15 with the chief building inspector.

16 **Q** Did you have any reason to believe that there
17 was anything inappropriate with the vapor barrier
18 being installed?

19 **A** No.

20 **Q** So you had to install it, and you had no
21 reason to believe that that was incorrect?

22 **A** Correct.

23 **Q** I'm going to read you -- let me ask you this:
24 Are Centex employees permitted to buy Centex Homes?

25 **A** Absolutely.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **Q** How about in the Wedgewood Condominiums, were
2 Centex employees permitted to buy them?

3 **A** Yes.

4 **Q** Did, in fact, any Centex employees buy any of
5 the Wedgewood units?

6 **A** Yes. I believe there were multiple.

7 **Q** I'll give you names, and tell me whether they
8 bought units.

9 Jim Watkins owned Unit 431?

10 **A** Yes.

11 **Q** Owen Wilson, Unit 611?

12 **A** That's correct.

13 **Q** Brian Laud, Unit 614?

14 **A** Yes, he did purchase that.

15 **Q** Hampton Pitts, 631?

16 **A** Yes.

17 **Q** Everett Lee, 921?

18 **A** Yes.

19 **Q** Who is Hampton Pitts?

20 **A** Our division president, at that time.

21 **Q** And Jim Watkins?

22 **A** He worked for our regional office out of
23 Charlotte.

24 **Q** And these other folks? Owen Wilson?

25 **A** I don't recall what position he held. I

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 don't know him too well.

2 Q Brian Laud?

3 A He was a sales agent that worked for us at
4 that time.

5 Q And Everett Lee?

6 A He owned -- he was a sales agent.

7 Q We talked a lot about quality control persons
8 that Centex implemented and the measures you took
9 to try to avoid problems with your homes; is that
10 correct?

11 A Yes.

12 Q You said that sometimes you missed the mark
13 and you had warranty issues and such; is that
14 correct?

15 A Sure.

16 Q Would Centex intentionally or consciously
17 build a home that was inappropriate?

18 A Absolutely not. I think that goes back to
19 our mission statement, desire to build quality
20 homes for our customers.

21 MR. HILDEBRAND: Thank you. Please answer
22 any questions that these fellows may have.

23 THE COURT: Cross examination?

24 MR. CONNELL: Thank you, Your Honor.

25

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

CROSS EXAMINATION

BY MR. CONNELL:

Q You do not have a general contractor's license?

A No.

Q So you can't build anything in South Carolina?

A Personally, I cannot, but I do fall under Centex Homes' and Pulte's license.

Q And you didn't have the general contractor's license for Wedgewood? Someone had to have that at the time of this, correct?

A That's correct. The company held the license, and then there is a qualifier.

Q And who was that?

A I don't recall who the qualifier was.

Q It is true, is it not, that a lot of the records in this project have been lost by Centex?

A I wouldn't say "lost." I think over 20 years have passed, and, yes, we don't retain records for 20 years in some cases.

MR. CONNELL: Can I ask you to put up this Exhibit 89, sir? Can you increase the size, this point right here? It is the handwritten notes below the boxes. Okay. Thanks.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 Q (BY MR. CONNELL) Do you see that, sir?

2 A Yes.

3 Q So the inspection report, Exhibit 89, that
4 you have just shown to the jury is for 12 units; is
5 that right? It says 7/28/2000, 12 units?

6 A Yes.

7 Q So that is for one building; is that right?

8 A Typically, yeah. The units were 12 to 15
9 units, yes.

10 Q So you don't have any of the inspection
11 records for any of the other buildings, do you?

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

13 Q This is the only one you've been able to
14 find; isn't that correct?

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

16 Q This is the only one you've testified to,
17 right?

18 A Correct.

19 Q And you haven't talked to any of the
20 inspectors, correct, since this?

21 A Since that, no.

22 Q And there are 111 units there; is that
23 correct?

24 A Yes.

25 Q And so this is the only inspection report you

CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!

1 can show; is that correct?

2 **A** This is the only inspection report I'm aware
3 of.

4 **Q** And all of the rest of them, you don't know
5 where they are, do you?

6 **A** I do not, no.

7 **Q** You don't know what they say either, do you?

8 **A** No, sir, I don't.

9 **Q** Now, Centex is a big company, correct?

10 **A** It's a large homebuilder, yes.

11 **Q** How many employees does it have?

12 **A** I don't know.

13 **Q** How many divisions does it have?

14 **A** The last I recall is 28.

15 **Q** And how many states does it operate?

16 **A** I'm sorry, I misspoke. 28 states we operate
17 in. I don't know how many divisions we have now.

18 **Q** And you've only worked in South Carolina?

19 **A** That's correct.

20 **Q** Now, you said you have been with Centex since
21 1999?

22 **A** December of '99.

23 **Q** So you would have started right when this
24 project would have started; is that right?

25 **A** Just prior to it breaking ground, yes.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **Q** And you weren't out there on the scene every
2 day?

3 **A** Not at Wedgewood, no, but at Barefoot.

4 **Q** Where were you assigned?

5 **A** I built multiple communities there. I built
6 homes in multiple communities, Cedar Creek being
7 the first one, Bridle Ridge.

8 **Q** How many other condominium/townhomes like
9 we're talking about here did you build out there?

10 **A** Did I build?

11 **Q** Or were you on site for, I should say.

12 **A** In Barefoot Landing, I was there for
13 multiple.

14 **Q** Which ones?

15 **A** Cypress Bend, Tangle Wood, Willow Bend,
16 various -- Barefoot is a very large community.

17 **Q** So Centex built multifamily buildings
18 throughout Barefoot, correct?

19 **A** Correct.

20 **Q** Now, have you -- you submitted a subcontract
21 orientation package, I believe; is that correct?

22 **A** That's correct.

23 **Q** Would you agree that Centex at times had
24 unlicensed contractors on the job?

25 **A** Not that I'm aware of.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **Q** Did you require them to have licenses?

2 MR. HILDEBRAND: Objection, Your Honor. May
3 we approach?

4 THE COURT: You may.

5 (Whereupon, a bench conference was had out
6 of the hearing of the jury.)

7 MR. HILDEBRAND: I thought it was a quid pro
8 quo if I introduced the Morningstar inspections,
9 then you would allow licensing issue in, but I
10 didn't introduce the Morningstar inspections, so.

11 THE COURT: I don't think it was a quid pro
12 quo. You opened the door. I think you can ask.

13 MR. CONNELL: Your Honor, can I have the
14 licenses -- thank you.

15 **Q** **(BY MR. CONNELL)** So we've heard from you that
16 Centex was real interested in making sure they had
17 the greatest subcontractors; is that right?

18 **A** Not sure I testified to that, but yes we
19 hired subcontractors to provide quality work for
20 us.

21 **Q** And some of the subcontractors at Wedgewood
22 were unlicensed and did not have licenses, correct?

23 **A** I don't know that specifically.

24 **Q** I'll show you this exhibit from LLR and I'll
25 have you look at the last page. AK Construction,

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 if you would, tell me whether or not, based on that
2 document, that AK Construction was licensed or
3 unlicensed?

4 **A** Yes. It states that someone found evidence
5 they did not hold a license.

6 **Q** And they were working at Wedgewood?

7 **A** I don't know if they performed work at
8 Wedgewood, personally.

9 **Q** Let me show you BR Brick. Do you know BR
10 Brick?

11 **A** I do not.

12 **Q** BR Brick did the brick work at Wedgewood.
13 Did then have a license according to LLR?

14 **A** It says they found no evidence of them
15 holding a license.

16 **Q** And in your subcontractor packet, one of the
17 things you wanted to make sure about when you hired
18 a subcontractor is that they had all the
19 credentials, correct?

20 **A** Yeah. We would check references and verify
21 that they were credible subcontractors, yes.

22 **Q** And these two did major work on siding and
23 brick, and they did not have a license, right?

24 **A** I think you stated that AK Construction was a
25 framer, and BR Brick did brick work. It sounds

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 like they did not have licenses, but I don't
2 believe that is required.

3 Q But that was a mistake by Centex by its own
4 policy, correct?

5 A I don't know that it was a policy or not.

6 Q Let's look back at your new subcontractor
7 orientation package. What exhibit do you have
8 there, sir?

9 A 87.

10 Q So Page 3. The mission statement was
11 something that you just talked about, right?

12 A Correct.

13 Q "To build quality homes and neighborhoods
14 that exceed the expectations that we have
15 established with our customers"; is that right?

16 A Yes.

17 Q And you think that having unlicensed
18 subcontractors would mean building quality homes?

19 A I'm not certain you would have to hold a
20 license to build a quality home.

21 Q So you would let unlicensed subcontractors
22 work on your home; is that right?

23 A It depends what trade they perform. I don't
24 think you have to -- I don't think that a license
25 is required to provide cleaning services or

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 anything.

2 Q So you don't draw a correlation to the
3 problems behind the brick and the framing and the
4 siding with the fact that they are using unlicensed
5 subcontractors; is that right?

6 A I do not, no.

7 Q You think that it is okay for a quality home
8 to have unlicensed subcontractors, correct?

9 A I think we did many things to verify that our
10 subcontractors were qualified to perform work, and
11 that included checking references and things of
12 that nature.

13 Q But checking licenses with the government,
14 that is a basic thing to be done, right?

15 A I don't know that it is a basic thing, but it
16 can be done.

17 Q And you did do it, because some of the others
18 are licensed, correct?

19 A Yes. Absolutely, many are.

20 Q But those two aren't.

21 Now, if you would, go to Page 4, No. 2,
22 "Covering bad work, accountability," right?

23 A Yes.

24 Q So what I am hearing you say, and correct me
25 if I'm wrong, but if a subcontractor had bad work,

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 you were going to require them to do it correct,
2 right?

3 **A** This statement means that if a subcontractor
4 performed bad workmanship, and the next
5 subcontractor showed up to do their work and found
6 that they could not perform their work because of
7 the bad workmanship, they were not to perform that
8 work. They were to stop and identify that with a
9 Centex personnel to get it addressed prior to
10 performing their work; therefore, they wouldn't be
11 covering up poor workmanship from a previous
12 subcontractor.

13 **Q** And you don't have any records of that being
14 done; isn't that correct?

15 **A** I don't believe I do, no.

16 **Q** In fact, you weren't actually on the job at
17 Wedgewood. You were at another project during all
18 of this?

19 **A** Yes.

20 **Q** And that is Willow Bend?

21 **A** No. I worked in many single family
22 communities at Barefoot, and I oversaw projects in
23 Barefoot that were multifamily.

24 **Q** You have never been involved in any
25 construction activity at Wedgewood, correct?

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **A** I worked with the multifamily team, because
2 we were one community, Barefoot Landing. We had
3 multiple field managers. There was probably 15, 20
4 of us, and we helped each other. So I've been to
5 Wedgewater (sic) -- I mean, Wedgewood. Sorry, I'm
6 getting them mixed up.

7 But, yeah, I've been to Wedgewood and helped
8 them do things periodically, as well as multiple
9 other communities that I didn't directly oversee.

10 **Q** Did you take any notes of any defects with
11 the brick, the siding, the stairs, any of those
12 things?

13 **A** I personally did not, no.

14 **Q** You have been in this courtroom for the whole
15 time of this case?

16 **A** Yes.

17 **Q** And you heard testimony about all sorts of
18 defects at the Wedgewood property; is that right?

19 **A** I have.

20 **Q** And you would agree with me that there are
21 violations of building codes at Wedgewood from
22 construction by Centex and its subcontractors,
23 correct?

24 **A** Yes, I would agree there are things in
25 pictures that may not meet the building codes;

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 however, those concerns may not cause problems.

2 **Q** So let's talk about some of the most
3 important ones. Let me ask you something. You are
4 a quality control person; that's part of the job,
5 correct?

6 **A** Yes.

7 **Q** So did you know that Centex's own experts
8 stated that over 1200 staircase treads were out of
9 alignment? Did you know that?

10 MR. HILDEBRAND: Objection.

11 THE COURT: Basis?

12 MR. HILDEBRAND: Pitting one witness.

13 THE COURT: You did this yesterday, so I
14 think this is fair. You can ask.

15 **Q** **(BY MR. CONNELL)** The staircases, they all
16 have to be even, don't they?

17 **A** There is a variance that is allowed within
18 three-eighths.

19 **Q** But there is violations at the Wedgewood
20 project; isn't that right?

21 **A** I don't know personally other than from the
22 testimony that was given.

23 **Q** And one of the reasons you want to have all
24 of your staircases even is so that one of these old
25 retirees who is living there doesn't fall down it,

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 right?

2 **A** I'm sure there is multiple reasons, but,
3 yeah.

4 **Q** That is a life and safety issue, is it not?

5 **A** It's a tripping hazard. I don't know if I
6 would call it life safety.

7 **Q** And how about handrails, did you see the
8 thing about the handrails, you are walking up the
9 staircases and you can't grab the handrail and you
10 are 80 years; isn't that a problem?

11 **A** That is not a life safety issue. That is an
12 area where it turned the corner to wrap around a
13 right angle or turn 180 degrees, and it came a
14 little too close. I don't know that that is a life
15 safety.

16 **Q** It's a violation of code, correct?

17 **A** I would have to verify that.

18 **Q** Let's talk a little bit about -- you have
19 Page 4, "Defect Prevention." Do you see that?

20 **A** Yes.

21 **Q** You don't have any records showing that
22 Centex did any defect prevention at this project;
23 isn't that right?

24 **A** Other than the Morningstar report. We hired
25 a third-party consult to identify defects, but I

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 have first-hand knowledge that we did multiple
2 inline inspections on these buildings.

3 Q So you don't have any records -- let me put
4 it this way -- that you can prove, that you can
5 show to this jury, that the hidden defects behind
6 the walls, the masonry area, were disclosed, do
7 you?

8 A Could you repeat that?

9 Q You have seen the pictures in the last couple
10 of days of rotten wood under windows?

11 A Yes.

12 Q And when the homeowner bought, they had no
13 idea that would happen, correct?

14 A Sure.

15 Q Nobody opened up the wall and said, hey, the
16 wall is going to be okay, right?

17 A Correct.

18 Q So when you are talking about warranty, even
19 the Centex employees who were selling the property
20 for Centex didn't know what was behind those walls?

21 A Correct.

22 Q But there were defects; isn't that right?

23 A I don't know what caused those defects. I can
24 only go by the pictures.

25 Q You have been in this business 23 years?

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **A** Correct.

2 **Q** And you just saw the pictures, and that is
3 not quality work, correct?

4 **A** I think there are some defects. What caused
5 those defects I think is what we're here to talk
6 about.

7 **Q** But there is no question that Centex, a large
8 company, 23 states I think you said, they were the
9 general contractor on this project, correct?

10 **A** Correct.

11 **Q** And the general contractor is the group that
12 is responsible for all of the subs and all of the
13 work, right?

14 **A** Yes. We're responsible for building homes,
15 yes.

16 **Q** And your literature says that you have to
17 build quality and exceptional homes; isn't that
18 correct?

19 **A** I mean, it is our mission statement to build
20 quality homes in neighborhoods.

21 **Q** Yes. And what you saw in this courtroom
22 earlier this week, those defects underneath the
23 windows, the handrails, staircases, that is not
24 exceptional or quality work, correct?

25 **A** I think those are areas -- a lot of pictures

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 of specific areas. I don't consider that -- yes,
2 there are concerns and issues with those specific
3 issues, but there are other aspects of the
4 buildings that are quality built, yes.

5 Q But there are aspects not quality?

6 A There are some aspects and some issues with
7 the buildings, absolutely, that were missed or
8 whatever, or other things could have happened to
9 them as well that were out of our control.

10 Q So Centex and its subcontractors missed
11 issues when they sold units?

12 A We could have missed issues. We're human and
13 not perfect.

14 Q And you did miss issues, right?

15 A It's possible.

16 Q From what you saw, you did, correct?

17 A I can't say that every issue in those
18 pictures was caused by Centex Homes.

19 Q You saw pictures of rotted wood; did you not?

20 A Yes.

21 MR. CONNELL: Could you get me a picture of
22 one of the rotted windows?

23 Q (BY MR. CONNELL) That is Page 18 of the
24 PowerPoint presentation. You saw that?

25 A I think we saw that yesterday, yes.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **Q** And you would agree with me, would you not,
2 that that shows a defective condition?

3 **A** It is rotted wood, yes. I don't know what
4 area of the building it is. It could be a
5 breezeway or something.

6 **Q** And no homeowner, who put their hard-earned
7 money down, would be able to see that when they
8 bought the building, would they?

9 **A** And it may not have existed at the time they
10 purchased.

11 **Q** Understood.

12 What about this one that is hidden behind
13 some trim, that's a defective condition, too; is it
14 not?

15 **A** Yeah. The wood should not be rotten.

16 **Q** You are not supposed to have rotten wood
17 behind that, correct?

18 **A** You would not want rotted wood behind trim
19 work, but what caused that rotted trim, I can't
20 speak to. Many things can cause that.

21 **Q** We'll go to a lintel picture. Is that a
22 defect there, that lintel, not properly supported?

23 **A** I can't see how far it is being supported by
24 the brick to the right, so I can't tell exactly.

25 **Q** We don't know whether or not that unlicensed

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 brick mason did that or not, do we?

2 **A** I know that the brick masons in their
3 included scope of work would have set those
4 lintels.

5 **Q** And how about that -- see that steel piece up
6 there?

7 **A** Yes.

8 **Q** That is not properly tied to the brick, is
9 it?

10 **A** If it is supported on the brick next to it --
11 again, I can't see to the left, so I don't know if
12 it is supported on the other side or not. I can't
13 really answer that question.

14 **Q** And how about the gaps in the finish, that is
15 not appropriate either, is it?

16 **A** Gaps in the finish?

17 **Q** See the arrows?

18 **A** I'm not familiar with that area. I would
19 have to refer to the expert's opinion.

20 **Q** Look at the brick tie standing straight up.
21 It's not even attached to anything. That is a
22 defect, isn't it?

23 **A** Not necessarily.

24 **Q** You don't think a brick tie should have to be
25 tied?

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **A** As long as there is another brick tie within
2 close proximity to that that meets the code
3 requirement or is not causing an issue.

4 **Q** Rotted wood, do you like that (indicates)?

5 **A** No, sir.

6 **Q** That's a defect, isn't it?

7 **A** It all depends on what caused that issue.

8 **Q** So my understanding, and correct me if I'm
9 wrong, you are the construction expert, I'm not,
10 but one of the reasons you have your lintel support
11 is if you have an earthquake?

12 **A** No. It supports the brick above it.

13 **Q** So the brick won't fall in if you have an
14 earthquake?

15 **A** To support the weight above it.

16 **Q** You have seen the pictures where there is no
17 hurricane clips?

18 **A** I've seen some of those.

19 **Q** So if I'm in one of those units underneath
20 there and we have a big hurricane, the whole roof
21 can come off, correct?

22 **A** No, sir. That is not correct.

23 **Q** You agree there are missing hurricane clips?

24 **A** I don't know per the plans. I can only go by
25 what I saw yesterday. I don't know if that is the

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 exact plan for that building or where that picture
2 was taken. Just because a hurricane tie is missing
3 here or there, that doesn't mean that the building
4 is going to fall down or receive any damage from a
5 hurricane.

6 Q You agree it is a code violation not to have
7 the appropriate number of hurricane clips, correct?

8 A It means it won't meet the engineered design.

9 Q And you saw that in the pictures; did you
10 not?

11 A If those engineered designs was for that
12 exact location, then, yeah, I saw that. It doesn't
13 necessarily mean it is a defect.

14 Q So we've talked about Centex employees who
15 bought units there?

16 A That's correct.

17 Q Do Centex employees get a discount?

18 A I believe we did offer a friends and family
19 discount kind of thing.

20 Q So I'm a Centex employee. I can buy a unit
21 and then sell it to someone else and make money; is
22 that right?

23 A Yeah. But there were requirements and
24 stipulations on how long you had to hold that unit.

25 Q You would agree that not one Centex employee

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 lives there now; isn't that right?

2 **A** I don't know the answer.

3 **Q** You don't keep up with these folks?

4 **A** The names that Mr. Hildebrand mentioned, I
5 don't where all of those employees are now, former
6 employees.

7 **Q** You talked about the vapor barrier, didn't
8 you?

9 **A** I believe so, yes.

10 **Q** Have you seen the e-mail between Centex about
11 the vapor barrier?

12 **MR. HILDEBRAND:** Objection. He can't lay a
13 foundation for this. This witness is not a party
14 to that document.

15 **THE COURT:** Come on up here.

16 (Whereupon, a bench conference was had out
17 of the hearing of the jury.)

18 **THE COURT:** You asked him about Centex's
19 expert in reference to the vapor barrier?

20 **MR. CONNELL:** If he's seen this.

21 **THE COURT:** Your expert?

22 **MR. CONNELL:** No. If he's seen it. It is
23 between the two Centex experts.

24 **MR. HILDEBRAND:** It is an e-mail between our
25 experts, an internal e-mail.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 MR. CONNELL: About the vapor barrier.

2 MR. HILDEBRAND: He can't testify. He can
3 ask the people who wrote that.

4 MR. CONNELL: You brought it up. You're the
5 one that talked to him about the vapor barrier, and
6 I want to see if he knows anything about it.

7 MR. HILDEBRAND: Ask him about the vapor
8 barrier, but this is an e-mail between our experts.

9 THE COURT: Okay.

10 (Court examines document.)

11 THE COURT: You can't get this in with him.
12 Let's move on.

13 MR. CONNELL: Okay.

14 (Whereupon, the following was had in open
15 court.)

16 Q (BY MR. CONNELL) Did you see the brochure
17 from yesterday?

18 A Yes.

19 Q Are you familiar with Exhibit No. 1?

20 A I don't recall seeing it, no.

21 Q You've never seen that before?

22 A Until yesterday. But, again, I don't see
23 every brochure.

24 Q Do you have any reason to believe this is not
25 an appropriate brochure for Centex?

CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!

1 **A** No, sir.

2 **Q** Have you seen similar brochures in the past?

3 **A** Yes.

4 **Q** Have you had a chance to read it?

5 **A** No, not really.

6 **Q** In it, it talks about something about "Centex
7 Certainty." Do you know what that is?

8 **A** Other than what it is stating in there.

9 **Q** I don't know if that was something that was
10 still used, the Centex Certainty?

11 **A** No, sir, it's not.

12 **Q** Do you know what it was at the time?

13 **A** No.

14 **Q** You do agree, do you not, that a brochure
15 like this, or this one, was used to sell these
16 units to the homeowners, correct?

17 **A** Yes, I would assume so.

18 **Q** I thought you said you worked a lot with the
19 single family homes?

20 **A** I did.

21 **Q** And your primary focus is single family
22 homes?

23 **A** Until I became area construction manager, I
24 started to get more involved with the multifamily
25 homes.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **Q** When you were talking about the warranty and
2 Centex employees that would come out there, the
3 Centex employees couldn't talk about a warranty on
4 rotted wood, because they didn't know anything
5 about it, right?

6 **A** Say that again.

7 **Q** The Centex employees weren't talking about
8 rotting wood behind masonry, behind walls, behind
9 siding, they weren't talking about that when they
10 were selling it to a homeowner, were they?

11 **A** Our salespeople?

12 **Q** Yeah, the people you said came out and they
13 were willing to handle any warranty problem you
14 have.

15 **A** That is our customer service team. So the
16 warranty team assesses any issues that the
17 homeowner identified on their home.

18 **Q** Right. But they are talking about coming out
19 because my toilet doesn't work, something is wrong
20 with my door lock, stuff like that?

21 **A** Many things, including water intrusion.

22 **Q** But not what we're talking about here, water
23 intrusion behind brick and siding and roofs?

24 **A** I have dealt with things like that on -- not
25 on Wedgewood, but other projects we've dealt with

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 multiple warranties.

2 Q You've dealt with other projects that had
3 similar problems?

4 MR. HILDEBRAND: Objection, Your Honor.

5 MR. CONNELL: He opened the door, Your Honor.

6 MR. HILDEBRAND: May we approach?

7 THE COURT: You may.

8 (Whereupon, a bench conference was had out
9 of the hearing of the jury.)

10 MR. HILDEBRAND: This is not him asking a
11 question on whether they have had problems on other
12 projects. He has to answer the question. The
13 answer is, yes, but that doesn't open the door for
14 him to -- he can say, Did you work on these other
15 projects that are in litigation. He can ask him,
16 and they would answer, yes. Have you had any
17 allegations of problems? Yes. Simply asking the
18 question of whether he had water intrusion
19 problems, yeah, and they've addressed them as
20 warranty issues. That does not, in any way, open
21 the door through his questioning of the witness.

22 MR. CONNELL: It's cross examination, Your
23 Honor. It's broad, and I can ask any question I
24 want to, unless you tell me I can't.

25 MR. HILDEBRAND: That is not --

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 MR. CONNELL: That is a fair question based
2 on what is going on. They've offered that we do
3 all of these things for the customers, we do this,
4 we do that. The jury is entitled to note what goes
5 on.

6 MR. HILDEBRAND: Your Honor, he can't by his
7 questions open the door with this witness as to
8 project problems on other projects. It gets into
9 the same confusion and issues. He can ask him
10 generally, Are there sometimes warranty issues
11 related to water intrusion? Yes. Do you address
12 them? Yes.

13 THE COURT: I think he can ask -- I don't
14 think you can ask him about any specific projects
15 or specific -- it is just something that does
16 happen. So you can't start saying what about --
17 whatever the other ones are.

18 MR. CONNELL: Because he said he had that in
19 other projects.

20 THE COURT: Yeah. He's seen it in other
21 projects.

22 MR. CONNELL: Thank you.

23 (Whereupon, the following was had in open
24 court.)

25 Q (BY MR. CONNELL) So you have seen the water

CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!

1 intrusion problems in other projects, correct?

2 **A** As an area construction manager, as well as
3 managing the customer care team, I have dealt with
4 concerns with water leaks or shower leaks, things
5 like that. I have dealt with warranty issues
6 concerning those types of issues, yes.

7 **Q** Water intrusion in walls behind brick?

8 **A** Very few, but, yes.

9 **Q** You have?

10 Have you ever testified before, or is this
11 your first time?

12 MR. HILDEBRAND: Objection, Your Honor.

13 THE COURT: Basis?

14 (Whereupon, a bench conference was had out
15 of the hearing of the jury.)

16 THE COURT: You can't ask him -- you can just
17 ask if he has testified before. You can't ask him
18 what it is about.

19 (Whereupon, the following was had in open
20 court.)

21 **Q (BY MR. CONNELL)** It is true that you have
22 seen violations of industry standards at the
23 Wedgewood project; isn't that correct?

24 **A** I would have to, you know, defer to our
25 experts on that. That's a very general question.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **Q** From what you saw previously on the video or
2 photographs, those are some violations of industry
3 standards, would they not?

4 **A** Again, it is a very general question. I
5 defer to our experts.

6 **Q** If Centex, for instance, with the Hardie
7 board, if they didn't use the Hardie board nails
8 that Hardie required, that is a violation of the
9 manufacturer's specification, correct?

10 **A** Again, I don't know. I would have to defer
11 to our expert.

12 **Q** You have been in quality control, but never
13 had that issue before?

14 **A** No, sir.

15 **Q** And if there was a problem with a nailing
16 pattern on the roof, the way the nails were nailed
17 into the singles on the roof, you haven't dealt
18 with that before?

19 **A** Very little.

20 **Q** Okay.

21 **A** I'm familiar with the nailing pattern in a
22 high-wind zone requiring six nails per shingle.
23 I've dealt with those issues before, yes.

24 **Q** And the fact that a nail is driven through
25 the shingle is a problem, correct? That is called

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 an overdriven nail, right?

2 **A** It depends on if it is causing an issue or
3 not.

4 **Q** But it is not to code unless it is nailed
5 correctly; isn't that right?

6 **A** Again, I don't know if it is to code or not.

7 MR. CONNELL: I would like to admit the
8 licensing information at this point.

9 THE COURT: Subject to your prior objection.

10 COURT REPORTER: I have a question. That was
11 originally a Court's exhibit. Do you want me to
12 now --

13 THE COURT: Yeah, let's make it an actual
14 exhibit. Court's 11 is now Plaintiff's 8.

15 (Plaintiff's Exhibit 8 marked and admitted.)

16 THE COURT: Redirect?

17 MR. CONNELL: Thank you.

18 MR. HILDEBRAND: I have a couple of
19 questions.

20 **REDIRECT EXAMINATION**

21 **BY MR. HILDEBRAND:**

22 **Q** The building inspection report, we've only
23 been to locate one due to the passage of time,
24 correct?

25 **A** Sure.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **Q** Are you familiar with that form?

2 **A** Yes.

3 **Q** Would each of those forms, would they be
4 required for each one of the buildings outside here
5 in order to get a certificate of occupancy?

6 **A** Yes.

7 **Q** I think Mr. Connell showed you some
8 photographs of some rotted wood under windows. Do
9 you remember that?

10 **A** Yes.

11 **Q** Those windows that were mulled, does Centex
12 mull those windows?

13 **A** No. We never mull windows. They would have
14 been provided as single, twins, or triple windows
15 from the manufacturer. We never mull windows in
16 the field.

17 **Q** The caulking at the top and the piece missing
18 that the expert testified about, that would have
19 been provided in the factory?

20 **A** Yes. To my knowledge, that would have been
21 provided as a single unit.

22 MR. HILDEBRAND: That is all I have.

23 THE COURT: Anything further?

24

25

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

RECROSS EXAMINATION

BY MR. CONNELL:

Q Centex, as the general contractor, is responsible to make sure when the windows are mulled that they are put up correctly, or they would have to call back to the manufacturer and say, hey, we don't want them, correct?

A I don't know the answer to that. I don't know that that was inspected, the actual product that we purchased.

Q You don't think that was inspected by the general contractor when they are going to sell somebody something to make sure that the manufactured product is going to perform like it is supposed to be?

A We would not have inspected the window units, no. No different than any other products. Like an appliance, we didn't take apart an appliance to make sure it works correctly.

Q So you just put the windows up and didn't inspect them at all?

A We purchased completed window units and had them installed. We would look at the installation of the product itself.

Q So you would look at the installation of the

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 products?

2 **A** The installation, not the manufacturing of
3 the window.

4 MR. CONNELL: Thank you.

5 THE COURT: Okay. Let's take a break.

6 (The jury exits at 3:12 p.m., and a recess
7 was taken.)

8 THE COURT: Thank you. Be seated.

9 Are you ready to go?

10 MR. CONNELL: Yes, ma'am.

11 THE COURT: I got a message from Judge
12 Culbertson that he wanted to release the panel,
13 which was fine. I don't plan on doing anything
14 else.

15 (Whereupon, the jury enters the courtroom at
16 3:25 p.m., and the following is had in the presence
17 of the jury.)

18 THE COURT: Call your next witness.

19 MR. DesCHAMPS: We call Bob Carter.

20 (ROBERT "BOB" CARTER, having been duly
21 sworn, testified as follows:)

22 THE WITNESS: My name is Robert L Carter.

23 **DIRECT EXAMINATION**

24 **BY MR. DesCHAMPS:**

25 **Q** Good afternoon, Mr. Carter.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **A** Good afternoon.

2 **Q** Where are you from?

3 **A** Greenville, South Carolina.

4 **Q** How long have you lived there?

5 **A** 65 years.

6 **Q** Where did you go to school?

7 **A** I have a mechanical engineering degree from
8 Clemson University.

9 **Q** When did you finish Clemson?

10 **A** '57.

11 **Q** What do you do for a living?

12 **A** I'm a registered professional engineer.

13 **Q** Is this a licensed position?

14 **A** It is a licensed requirement to be a
15 professional engineer.

16 **Q** And when did you become a licensed engineer?

17 **A** I think it was in -- the first state I was
18 licensed was South Carolina, and I believe it was
19 '72.

20 **Q** 1972?

21 **A** 1972.

22 **Q** Can you tell the jury about your working
23 history after you finished Clemson? What did you
24 do?

25 **A** I have been in the engineering construction

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 industry for 65 years either directly in
2 construction or in the design industry or in the
3 design-build industry.

4 Q And where did you go to work after?

5 A I was employed by Mechanical Contractors
6 based in Rhode Island to be a field engineer on a
7 project in eastern Virginia.

8 Q When did you move back to South Carolina?

9 A I was with them for about two years, about
10 '59, '60.

11 Q And then you came back here?

12 A Yes.

13 Q And where did you work after that?

14 A I was employed with a mechanical contractor
15 doing design-build for piping and HVAC systems.

16 Q And tell the jury about your work history
17 through the years.

18 A After that, I worked for an international
19 design-build construction company. In that
20 position, I held a position of a vice president of
21 construction, and also vice president of
22 engineering.

23 We had an architectural engineering division.
24 When I left that position, we were just a few over
25 900 engineers, designers, architects.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **Q** Where do you work now?

2 **A** H2L Consulting Engineers.

3 **Q** How long have you been with H2L?

4 **A** H2L was formed in 1988, and I came to work
5 two, three months after that, after the company was
6 formed.

7 **Q** What is your position now?

8 **A** President of the company.

9 **Q** How long have you been the president?

10 **A** 15, 20 years.

11 **Q** What does H2L do?

12 **A** H2L was formed as an engineering firm
13 performing all disciplines of engineering: Civil,
14 structural, mechanical, electrical, fire
15 protection, plumbing.

16 We are today an engineering firm, so we still
17 do engineering work. My business partner and I are
18 engaged in forensic engineering, but I still do
19 design work.

20 At the current time, I am the engineer of
21 record on a number of electrical jobs, and I have
22 done the electrical design on those jobs.

23 **Q** What you are doing -- what you are testifying
24 about today in your role with Wedgewood, you would
25 describe that as forensic work?

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **A** Forensic, yes.

2 **Q** That's when you are investigating something?

3 **A** Yes.

4 **Q** So you would draw a distinction between that
5 and your engineer and design work?

6 **A** Certainly from what you do on a day-to-day
7 basis. However, the requirements that I face as an
8 engineer is designing to code to meet the
9 requirements of the city. The state are the same
10 whether it is forensic or design.

11 **Q** So you have been involved with construction
12 projects rather than just investigating them after
13 they are finished?

14 **A** Yes.

15 **Q** Explain to the jury what your role was in the
16 construction projects.

17 **A** I started out as a project manager managing a
18 particular project. From there, I went into sales,
19 and then back into -- from sales, I went into
20 engineering, as I mentioned earlier, as vice
21 president of engineering. From there, back into
22 construction as vice president of construction, and
23 then started a construction management division for
24 the company.

25 **Q** And how long have you been --

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 MR. CONNELL: Your Honor, I'll concede he is
2 an expert, forensic engineering expert.

3 MR. DesCHAMPS: Yeah. I was just going into
4 his background a little bit.

5 Q (BY MR. DesCHAMPS) How long have you been
6 doing forensic work?

7 A We started shortly after the company was
8 formed. In the early part of the company, we had a
9 few cases. It has grown over the years. Probably
10 now it's a good 50/50.

11 Q Fifty-fifty?

12 A Between engineering and forensic.

13 Q What about, say, 20 years ago?

14 A 20 years ago? I don't really know the
15 percentage, but less than 50/50, doing more
16 engineering than forensic.

17 Q Doing engineering work on construction jobs
18 would have been the majority of what you are doing?

19 A Yes. Yes. Compared to the current.

20 Q Okay. You heard these buildings were built
21 in 2000/2001. Professionally, what were you doing
22 or working on back then?

23 A Personally, I was doing more design work than
24 forensic work. As I mentioned, we had been doing
25 forensic work since the inception of the company.

CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!

1 **Q** Okay. And did you work with the '97 building
2 code?

3 **A** Yes.

4 MR. DesCHAMPS: Your Honor, I proffer him as
5 an expert witness to testify about engineering --
6 forensic engineering and construction projects.

7 MR. CONNELL: No objection.

8 THE COURT: Ladies and gentlemen, Mr. Carter
9 has been qualified in the area of forensic
10 engineer, and that allows him to give his opinion
11 and the reasons for his opinion, and that is for
12 you to use as you see appropriate and compare it to
13 other evidence in the case.

14 **Q** **(BY MR. DesCHAMPS)** Mr. Carter, will the
15 opinions you offer today be rendered within a
16 reasonable degree of engineering certainty?

17 **A** Yes.

18 **Q** Okay. You investigated the Wedgewood
19 project?

20 **A** Yes, I did.

21 **Q** When did that start?

22 **A** I believe we were contacted in 2018.

23 **Q** Tell the jury when you are contacted by
24 someone to investigate a building, what is your
25 general practice or philosophies that you would

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 employ to do that.

2 **A** Well, in order to determine what we're going
3 to be doing on the project, it is generally the
4 result of a forensic engineer having investigated a
5 building and issued a report. So our first request
6 is to have a copy of that report.

7 With that report, and with other documents
8 that can be supplied, and are supplied, like
9 drawings, specifications, various other
10 construction documents, we formulate a protocol for
11 our inspection of the facility.

12 **Q** We've heard about building codes. What is
13 the building code?

14 **A** Building code is a document that defines how
15 to build a building -- how to design a building and
16 build a building with the safety of the public as a
17 primary driver behind that.

18 **Q** Mr. Carter, I'll hand you what is marked for
19 identification as Exhibit 106. Do you recognize
20 that?

21 **A** Yes.

22 **Q** We were talking about the building code this
23 week, and this is something I would like you to
24 explain to the jury. What is this?

25 **A** This happens to be the preface to the

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 standard building code, 1997 edition.

2 Q So you asked me to pull it. What did you
3 want to tell the jury about the preface?

4 A I think this is a good introduction to what
5 the code is about and why it is required. If you
6 don't mind, I'll read just a small portion.

7 The purposes of the standard building code is
8 to serve as a comprehensive regulatory document to
9 guide decisions aimed at protecting the public's
10 health, life, and welfare in the building
11 environment. The protection is provided through
12 the adoption and enforcement by states and local
13 governments of the performance-based provision
14 contained herein.

15 Q Performance-based requirements, what does
16 that mean?

17 A I think that is key to the code. The
18 performance-based requirement of the code allows a
19 lot of flexibility to the engineers. As a matter
20 of fact, it even states further on that the purpose
21 for it being a performance base is to create and
22 utilize the creativity of engineers in doing the
23 design.

24 Q The end of the next paragraph states: "This
25 concept promotes maximum flexibility in building

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 design and construction, as well assuring a high
2 degree of safety"; is that correct?

3 **A** Right.

4 **Q** Do these provisions we're talking about, do
5 they guide you in your philosophy about how you go
6 about investigating a building?

7 **A** As I mentioned earlier, my license requires
8 me, as an engineer, to design and keep in mind the
9 requirements for the protection of the public.
10 That should be the foremost in the eyes of any
11 engineer that is doing design work.

12 **Q** Okay. You were called to investigate a
13 building that has a number of years behind it, and
14 you are looking at issues that someone else may
15 have identified something to inspect. Say it is
16 under the 1997 building code. How do these
17 provisions -- the performance-based standards, how
18 does it guide your investigation on what you are
19 looking for and the response is to investigating a
20 building?

21 **A** Well, let's take an example of the
22 performance-based requirements of the code, and it
23 pertains to this building. The performance-base
24 part of the code would say, for example, that the
25 design in construction is to prevent water from

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 entering the building structure and not to pass
2 through the WRB on the sheathing of the building.

3 How you do that is -- how you achieve that is
4 up to the design engineer.

5 **Q** Can there be more than one way to build a
6 building and satisfy the '97 code?

7 **A** Absolutely.

8 **Q** Performance-based, and so there is more than
9 one way to get it done?

10 **A** Matter of fact, the engineer can design
11 outside the code providing he or she can prove to
12 the code official that the design is correct and
13 safe.

14 **Q** How old are the Wedgewood buildings, say,
15 when you went out there and did your investigation?
16 How old were the Wedgewood buildings?

17 **A** I believe the buildings were CO'd in 2001.
18 So, today, 22 years old.

19 **Q** If you were out there doing your
20 investigation in 2020, they would be 19 years old?

21 **A** 19 years old.

22 **Q** Does that give you enough time to examine if
23 it's passing a performance-based standard?

24 **A** Sorry?

25 **Q** If the building is 19 years old when you are

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 investigating it, has enough time gone for you to
2 go and inspect it to see if it is passing a
3 performance-based standard?

4 **A** Yes.

5 **Q** So how would you do that?

6 **A** Well, you would do it a number of ways. One,
7 visually inspect it. That is generally the process
8 that we use in order to get some feel for the
9 building you walk the project and look at the
10 various components on the building to determine
11 visually how it looks.

12 Then you are -- we set up a protocol to do
13 destructive testing and go in and make cuts.
14 You've seen a lot of pictures over the last few
15 days of cuts that were made on this building by
16 both the plaintiff's expert, and you will see some
17 from us.

18 That is the means of going into the building,
19 opening up things, and finding out, as best we can,
20 what is the cause of the damage.

21 **Q** What is the code -- you spoke about this a
22 little bit, but what does the code say about water
23 intrusion?

24 **A** The code simply says you need to protect the
25 structure of the building by directing the water in

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 a way that it does not reach the structural
2 integrity of the building.

3 Q So did the building components do its job?
4 Did it protect the components from water intrusion?

5 A Right.

6 Q And if it did, it would pass the building
7 code?

8 A From the standpoint of code, it does, yes.

9 Q Okay. Does the building code allow engineers
10 to make engineer judgment, common sense calls as to
11 compliance?

12 A Well, from our standpoint, one of the basis
13 of the company is to apply common sense, not only
14 in our design work, but in the forensic
15 examinations we do. I live in the real world, a
16 world where it is perfect.

17 Q Common sense, say in forensic work, what does
18 that mean?

19 A Well, there is things that go on in the
20 building that are or could be issues with the
21 building, but you want to look at those things and
22 determine what the cause is first, whether or not
23 that cause is detrimental to the building.

24 I would say virtually every building, if not
25 every building, I've looked at over these last 30

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 years I will find, for example, like you've seen
2 already, overdriven and angled driven nails and
3 roofing shingles. That, to me, is just -- in the
4 real world, it is going to happen.

5 They, obviously, so have to put out an
6 instruction on how to properly install their
7 shingles. For example, they are not going to say
8 overdrive or angle drive the nail. So the
9 instructions are going to be perfect: Drive them
10 to the surface and no further. In the real world,
11 that does not happen. You hope that the majority
12 of them, the overwhelming majority of them, are
13 properly installed.

14 If you've ever used a nail gun on a roof,
15 after a few hours of walking or bent over on your
16 knees with a nail gun, that is not a light tool. I
17 understand why there are overdriven and angled
18 given nails. I do not believe that the operator of
19 the equipment intentionally drives the nails
20 overdriven. I don't believe they drive them at an
21 angle on purpose. But if you are bent over with a
22 nail gun and you are driving into shingles, you
23 have to hold that tool perfectly vertical so it
24 comes in contact with the shingle. After doing
25 that for eight hours, that tool gets very heavy.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 So it's going to happen.

2 The question is whether or not -- and in my
3 mind, we see it on this building, and we do not
4 question the plaintiff's statement that there are
5 overdriven nails on this roof. The point, though,
6 is even though they are there, the shingles have
7 been there now for 22 years, and those nails are
8 that old.

9 Q When you do see the need for repairs at a
10 building, what is your philosophy then on the
11 approach as to determining what the appropriate
12 scope of repairs is?

13 A I'm sorry?

14 Q When you do see the need for repairs, what
15 then is your philosophy for determining what the
16 appropriate scope will be?

17 A Well, that's the key is determining what the
18 -- what caused the damage. It's easy to say that
19 water got into a wall. It has to be repaired.
20 You've seen pictures of this building that the
21 cause of the water generally -- there is two
22 locations on this building where water intrusion is
23 there, and we do not deny that.

24 First one is under windows whether it has
25 brick around the windows or whether it has Hardie

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 siding. The second is at the intersection of
2 walkways to the building. In both cases, there a
3 reason for that water entry.

4 In the first, with the windows, it is the
5 mulling of the windows. If you look at the
6 pictures that the plaintiff has provided, and that
7 we will provide, the majority, if not all of them,
8 the damage below the windows is at a mull or at the
9 jamb sill location, and maybe in both cases. The
10 primary cause is a breakdown of the caulking.

11 Q Ultimately, you prepared a scope of repairs
12 that you published following your investigation of
13 Wedgewood?

14 A Yes.

15 Q You see some things that need to be repaired?

16 A Absolutely.

17 Q Including at the windows?

18 A Absolutely.

19 Q We'll talk about it in some detail, but
20 generally explain what the scope of the repair is
21 that you published?

22 A The only way that you are going to be able to
23 repair the damaged OSB, which is sheathing, and
24 could be plywood, but in this case it is generally
25 OSB, is you have to remove either the Hardie siding

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 or the trim. You have to get to the source to
2 correct it. You have to remove the weather
3 resistant barrier that is on the face of the
4 sheathing to get to the sheathing in order to
5 repair it.

6 Q That is what you are calling to be done?

7 A Yes.

8 Q So we know that Mr. Clements talked about the
9 water intrusion issues, and you talked about the
10 windows. Where else is there water intrusion
11 occurring in these buildings?

12 A Primarily, the second place is at the
13 walkways around the building. In my mind, the
14 cause of that is waterproofing of these decks when
15 the carpet was removed. If you've ever tried to
16 pull up carpet that is adhered to wood or concrete,
17 it is a pretty good struggle. In pulling that
18 carpet up, if that is the purpose of replacing the
19 carpet, I'm convinced that in almost a hundred
20 percent of the case you are going to do damage to
21 the waterproofing underneath that carpet.

22 In this case, Sealoflex recommends that you
23 reseal or repair or replace that in the case you
24 are making that change.

25 Q Did you investigate for water intrusion

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 issues away from the windows and walkways?

2 **A** We did. One of the comments that
3 Mr. Clements made about our investigation, and he
4 showed photographs of us cutting away from windows
5 high up on the wall, and he said, well, obviously,
6 that is no place water is going to come in. We
7 weren't looking for water at that particular place.

8 He is claiming that all of the WRB has to be
9 removed because there is issues with the WRB.
10 There's tears. There's missing areas of WRB. In
11 order to get -- to satisfy myself and my partner in
12 our investigation, I want take look at that. I
13 want to see is there damage? Is there slits in the
14 WRB? I don't know that we'll show you a
15 photograph, but we photographed a slit of the WRB
16 of one of our cuts.

17 After I photographed it, I made a cut of that
18 through the WRB to look at the OSB behind it, and
19 there was no damage. The water has to get through
20 the envelope of the building.

21 I disagree with Mr. Clements. He states that
22 the WRB is the primary weather barrier on the
23 envelope of the building. The document he put on
24 his report is from Tyvek, which is a manufacturer
25 of WRB, and it was used on this project. Tyvek

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 states that their material is not a primary water
2 resistant barrier on the building, that it is
3 either the brick or it's the Hardie siding. Those
4 are the primary water resistant barriers on the
5 building.

6 Q Away from the windows that you talked about,
7 and we'll cover that in detail, and away from the
8 areas impacted from the waterproofing membrane,
9 what did you find in the exterior walls as far as
10 some of the claimed water intrusion issues that
11 Mr. Clements identified?

12 A I don't think we found any that demonstrated
13 any evidence of water intrusion.

14 Q So you have been out to Wedgewood?

15 A Yes.

16 Q And what did you do when you investigated --

17 A The first trip, as I remember, that I made
18 was for a visual walk-through the site, generally
19 getting familiar with the site. Then we made a
20 determination that we needed to do cuts, so we set
21 up a protocol to do the cuts.

22 We also included in that to do some pull
23 tests on the HardiePlank siding.

24 Q You have a photo presentation you would like
25 to show the jury?

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **A** Yes. This particular thing that you are
2 looking at here is simply the number of cuts that
3 we made on Buildings 1 through 9.

4 **Q** Some in the siding, some in the brick?

5 **A** Right.

6 **Q** Total of 62, and some on each building?

7 **A** Right.

8 **Q** Why don't you walk us through it. What is a
9 cut?

10 **A** A cut is -- as you can see here, this
11 particular cut is between two windows on the second
12 floor. You'll see a single window with a circle,
13 and then a double window adjacent to it, and we
14 made a cut between those two windows.

15 After we made the cut, we looked at the WRB.
16 I would either take a moisture reading through the
17 WRB, or I would make a cut and peel back the WRB,
18 which is what we did in this case and take moisture
19 readings at that point.

20 **Q** Let's look at -- what is the white stuff?
21 Walk us through the various components.

22 **A** Well, to the very left of your screen is the
23 trim around a window, and it's at the head and
24 right jamb of the window, and the beginning of the
25 circle head.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **Q** You can see the trim here?

2 **A** Yes.

3 **Q** What is this surface here?

4 **A** WRB.

5 **Q** That's the building wrap?

6 **A** Yes.

7 **Q** And you removed a piece of siding to look at
8 this?

9 **A** Yes.

10 **Q** What are you looking for during this test
11 cut?

12 **A** Here again, I'm looking for a number of
13 things. I want to see what the siding looked like
14 before I cut it, and I want to see the caulking
15 that was applied, as you see in the left-hand side
16 and the right-hand side where the siding abuts the
17 trim. As we pull that siding off, we look at the
18 condition of the WRB. And as I mentioned earlier,
19 we made a cut and looked at OSB behind it.

20 **Q** So when you removed the siding, it was just
21 the paper, and then you made a cut to see the wood
22 behind it?

23 **A** Right.

24 **Q** And that is what you are seeing there, the
25 wood component?

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **A** Correct.

2 **Q** You cut the paper with a blade to inspect the
3 OSB sheathing?

4 **A** Yes.

5 **Q** So what are you looking for when you look at
6 the sheathing?

7 **A** Whether there is evidence of water intrusion
8 or damage.

9 **Q** If it is, how would you know?

10 **A** By experience, we have found -- especially on
11 the coastal area -- I can open that cut on a
12 particular day, say at 8:30 or 9 o'clock in the
13 morning, and I can get a high moisture reading, and
14 I can come back two hours later and get a low
15 moisture reading. You say, How is that possible?
16 In this environment, with the humidity levels that
17 you have, and during the evening and during the
18 night, the temperature drops and the moisture
19 condensates behind the weather resistant barrier.

20 As the sun comes up and heats it up, it
21 dissipates so it doesn't have time to do damage.
22 It is there in a water form for a short period of
23 time, and then it evaporates due to the heat.

24 **Q** If there is a source of water intrusion at
25 this area -- when you made this investigation at

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 Wedgewood, say, 19 years after construction, if
2 there is a source of water intrusion, what would
3 that sheathing look like at this point?

4 **A** It would either be stained, which is evidence
5 that water is there, it's getting there, or can be
6 damaged.

7 Generally, if it is a long-term leak, it is
8 going to be damaged. If it's a relatively new
9 leak, it could just be discolored and probably the
10 beginning stages of deterioration of that board.

11 **Q** So when you are making this cut here, you are
12 inspecting things that were criticizing by Mr.
13 Clements, and this is investigating those
14 allegations?

15 **A** Yes. Yes.

16 **Q** So specifically with regard to what he said
17 he found, what do you learn from a test cut like
18 this?

19 **A** I learned there is not an issue with that
20 particular area of the building.

21 **Q** Not a source of the water intrusion?

22 **A** No.

23 **Q** And the building paper is intact and well
24 applied?

25 **A** Yes.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **Q** And that is up against a window on the left
2 side, right?

3 **A** Yes.

4 **Q** And then that is going over to the corner of
5 the building on the right side?

6 **A** Right.

7 **Q** I know we said we did 62 of these, and we
8 won't go through all of them at this pace, but I
9 would show the jury some of what you found.

10 Can you talk us through what you found here
11 and, you know, we can pick up the pace, but what
12 did you find here?

13 **A** There is one high up on the wall just to the
14 right area, again, near the circle head of the
15 window. There is a criticism by Mr. Clements there
16 in that the WRB is behind the metal flashing that
17 goes behind the circle head.

18 **Q** The window in this picture is here?

19 **A** Yes, sir.

20 **Q** And you are putting your moisture reader
21 right here beside it the head flashing of that
22 window?

23 **A** Yes. The moisture level was low.

24 **Q** Is that a good thing?

25 **A** That's good.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **Q** What about the building paper and the rest of
2 the sheathing that you inspected?

3 **A** Here again, we went through the same process.
4 The picture on the right shows before the cut. The
5 picture on the left shows after the cut of the WRB.

6 **Q** No problem?

7 **A** No problem.

8 **Q** Here is another one. Where is this?

9 **A** That is on the second floor near the vertical
10 wall adjacent to a balcony and above the window
11 head there.

12 **Q** What we're seeing here, this is wood,
13 correct?

14 **A** That's the OSB.

15 **Q** You cut the paper there to inspect the wood?

16 **A** Yes.

17 **Q** And this is giving you information if there
18 is a source of water intrusion above that?

19 **A** Yes.

20 **Q** And what did you find?

21 **A** Nothing.

22 **Q** And this is the same area over closer to the
23 head of that triple window?

24 **A** Right.

25 **Q** And that is cutting the paper right beside

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 the head flashing of that window?

2 **A** Yes.

3 **Q** Any problem there?

4 **A** No.

5 Again, I would point out that Mr. Clements
6 would say that it is reversed lapped between the
7 flashing and the -- the flashing is the metal tabs.

8 **Q** He is saying this is metal and the paper, and
9 he thinks that you should cut this and put it over
10 the metal?

11 **A** He is saying that the WRB needs to be on top
12 of the flashing.

13 **Q** What does the code say about it?

14 **A** The code does not tell you how to do it.

15 **Q** The code says protect the building from water
16 damage?

17 **A** Right.

18 **Q** Did that happen at this location?

19 **A** There was no water damage.

20 **Q** Here is another one. Same thing there?

21 **A** Yes.

22 **Q** Any different there?

23 **A** No. Same.

24 **Q** Okay.

25 **A** I think we made a cut -- well, we made more

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 as you saw in the beginning, we made a number of
2 cuts per building. We made a number of cuts on
3 each of the nine buildings.

4 Q Here is one at Building 1?

5 A Yes.

6 Q Same thing?

7 A Correct.

8 Q I'll flip through.

9 A Same.

10 Q That is the building paper?

11 A Yes.

12 Q What Mr. Clements contends is that this
13 paper, when you removed it, it would be sliced and
14 it needs to be replaced or cut, is that what you
15 are looking for, is the paper allowing water to
16 intrude? Is that what you are looking for?

17 A I'm looking -- yes. As I mentioned earlier,
18 I found an area where it had been slit, and you are
19 looking for that, looking for missing WRB.

20 Q And you are looking for areas where the WRB
21 is not protecting the wood from water intrusion?

22 A Right. Right.

23 Q Here is another one?

24 A Same thing.

25 Q Wood in good condition?

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **A** Yes. Now, this one is at brick, where before
2 it was lap siding.

3 **Q** Brick is at the first floor of the buildings?

4 **A** With the exception of Building 3, brick stops
5 at the top of the first floor.

6 **Q** You have brick on the first floor, and the
7 siding on the second and third?

8 **A** Siding above that.

9 **Q** And Building 3, brick goes up to the top?

10 **A** On the back of the building.

11 **Q** This is a cut where you guys went -- where is
12 this on the building? Is that a window on the
13 left?

14 **A** That is a circled in window on the left.

15 **Q** What are you looking for here?

16 **A** Same thing, condition of the OSB, the
17 condition of the WRB.

18 **Q** What did you find?

19 **A** Nothing.

20 **Q** Nothing as in no problems?

21 **A** No.

22 **Q** Is this another cut into the brick?

23 **A** Yes.

24 **Q** At a window head?

25 **A** The head of the window adjacent to a circle

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 head.

2 Q Let's talk about this for a moment. What is
3 this we're looking at here?

4 A That is the steel lintel.

5 Q It's metal?

6 A It is steel.

7 Q Okay. And that exists at the heads of the
8 windows in the brick?

9 A It is there to support the brick above the
10 window.

11 Q Okay. And are you calling for any repairs
12 with regard to the brick lintels?

13 A In that case, if you look at the photograph
14 on the right, you can see just under what looks
15 like the top half of "H," you'll see a hole in the
16 steel lintel.

17 Q Here?

18 A Correct.

19 Q What is that?

20 A That there should have been a lag screw put
21 in that location. And to the left, it's hard to
22 see in this photograph, but there are other holes
23 down the lintel that also require lag screws.

24 Q So you are calling for the installation of
25 lag screws there?

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **A** Lag screws are required. You need to tie the
2 lintel to the building, for a number of reasons,
3 but in this case, that lintel is cantilevered. It
4 is resting on the brick to the right. It is not
5 supported on the left. I think Mr. Clements
6 mentioned he saw some sagging. I would think that
7 was more probably that the lintel was laid unlevel,
8 for that lintel of that thickness of steel and the
9 shape of the lintel, to sag with that limited load
10 on it would be highly unusual.

11 **Q** You said you issued a repair scope as part of
12 your investigation, so what is part of your repair
13 scope?

14 **A** Here, we have to remove the brick. We would
15 install new -- first off, we would install the lag
16 screws, and then repair the weather resistant
17 barrier.

18 **Q** Just at this window?

19 **A** No. At all of the other windows.

20 **Q** So you are going to fix the lintels, correct?

21 **A** I think in every cut that we made at the head
22 of windows, where there was lintels and circle
23 windows, we didn't find sufficient lag screws, so,
24 yes, we are calling for the repairs of all of
25 those.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **Q** What are these things here?

2 **A** Sorry, I can't see. The brick ties. Those
3 are brick ties, yes.

4 **Q** And those are properly bent into --

5 **A** Yes, it appears to be.

6 **Q** In the way it was supposed to be?

7 **A** Sorry?

8 **Q** They are supposed to be bent into the brick;
9 is that right?

10 **A** You'll see in the photographers, later on
11 probably, the brick tie is nailed to the wood
12 structure before the brick mason starts laying his
13 brick. Then, as he builds his masonry wall, he'll
14 bend the flexible wall tie out over the brick so
15 the next brick that lays on top of it and it will
16 secure that tie to the brick.

17 **Q** Here is another wall cut that you and your
18 team made. Where is this on the buildings?

19 **A** Again, this is the top of the wall. It
20 happens to be above a circle head window, and it
21 has a couple other features here, but you will see
22 Z-flashing -- and you'll hear a lot about
23 Z-flashing -- at the top of the band board. The
24 band board is --

25 **Q** Is that run through here (indicates)?

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **A** Yes. And we've removed the band board. That
2 is the worker who has just taken it off.

3 **Q** Where is Z-flashing? Is there Z-flashing --

4 **A** It would be at the top of the band board.

5 **Q** Up here?

6 **A** Yes.

7 **Q** And is there one down at the bottom, or just
8 here (indicates)?

9 **A** That. Yes.

10 **Q** What are you looking for in this test cut?

11 **A** Looking for damage.

12 **Q** Did you find any?

13 **A** No.

14 **Q** Here the components of the building are
15 protecting it from water intrusion?

16 **A** Yes.

17 **Q** What about the WRB, what did you find here?

18 **A** The WRB was in good shape.

19 The wood supporting the band board is also
20 sound indicating no water intrusion there.

21 **Q** No water intrusion there?

22 **A** No. No.

23 **Q** Is this another one?

24 **A** Yes.

25 **Q** Same thing?

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **A** Same thing.

2 **Q** Here?

3 **A** Same.

4 **Q** Here?

5 **A** Same basic condition.

6 **Q** And?

7 **A** Yes.

8 **Q** Same thing?

9 **A** Yes.

10 **Q** That's on the right side near a window on the
11 left side going over by the rear balconies?

12 **A** Yes.

13 **Q** And you removed the paper all the way across?

14 **A** Yes.

15 **Q** And checked the wood behind it?

16 **A** I did.

17 **Q** No problem?

18 **A** No.

19 **Q** Is this another one?

20 **A** Yes.

21 **Q** And here, same area?

22 **A** Same.

23 **Q** Same results?

24 **A** Same.

25 **Q** Is this another one?

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **A** Yes.

2 **Q** Is this up against the window?

3 **A** Yes.

4 **Q** Checked the wood and checked the paper?

5 **A** Yes.

6 **Q** All good?

7 **A** Did not find any damage.

8 **Q** And in Building 7, what did you find?

9 **A** No damage.

10 **Q** The paper was all the way across?

11 **A** Right.

12 **Q** What is this here? Do you see it right here?

13 **A** That is a piece of the WRB.

14 **Q** The one with the writing on it behind the
15 trim, is that part of the window flashing?

16 **A** Yeah. We don't cut all the way to the trim,
17 because to put this back, you need to repair that
18 cut. So I need to leave enough WRB exposed to
19 put -- Tyvek makes a tape that is used for that
20 purpose, so you tape that cut. Same thing there.

21 **Q** Wood look good here?

22 **A** Yes.

23 **Q** Paper look good here?

24 **A** Yes.

25 **Q** And this one?

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **A** Yes.

2 THE COURT: Is that a yes? I didn't hear.

3 I'm sorry, for the record.

4 **A** Yes. I'm sorry.

5 **Q** **(BY MR. DesCHAMPS)** Is this another one,

6 Building 8?

7 **A** Yes.

8 **Q** Same result?

9 **A** Same result.

10 **Q** Did you find any trouble?

11 **A** No.

12 **Q** Is this another one?

13 **A** Yes. Same result. Same. Building 8 is the

14 same.

15 **Q** And Building 8, another one?

16 **A** Same. That's the same condition.

17 **Q** Paper good here?

18 **A** Good.

19 Same.

20 **Q** And Building 9?

21 **A** Yes.

22 **Q** And does that look good?

23 **A** Yes.

24 **Q** Now, that was not all of your test cuts,

25 right?

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **A** No.

2 **Q** You said you had done 62 of them?

3 **A** Yes.

4 **Q** That was some, but not all. Were there any
5 away from the windows that you made where you did
6 find water intrusion?

7 **A** I didn't find any where we were cutting away
8 from windows that the water protection wasn't
9 performing as intended.

10 **Q** You spoke a little earlier, but now that
11 we've seen some of your photographs, what are your
12 key take-aways of your water intrusion
13 investigation of the exterior walls?

14 **A** I don't think there is any water intrusion to
15 the general exterior walls of the building. Again,
16 we will see in other photographs, and we've already
17 seen Mr. Clements' photographs, that there is water
18 intrusion at the sill of the window, primarily at
19 the mulling joint of the windows.

20 **Q** Okay. And that is where you are calling for
21 the repairs?

22 **A** Yes.

23 **Q** What do the green boxes reflect here in this
24 photograph?

25 **A** This is an indication so that the members of

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 the jury can understand where we are recommending
2 repairs at the sill on the second floor windows, at
3 the head of the first floor windows and the sill.

4 Q Is that 146 windows at the sill?

5 A Yes.

6 Q And at the brick it is at 69 windows?

7 A Yes.

8 Q The brick is the first floor windows. They
9 are three-story buildings, so that is why it is a
10 lower number in the brick?

11 A Yes.

12 Q So we've seen some of the buildings have
13 triple windows with the half circle?

14 A Yes.

15 Q And what is your repair scope there?

16 A We identified 35 triple circle head windows
17 in the brick. We recommend removing the shoulder
18 course and a portion of the roll arch to the left
19 and right of the building to expose the lintels --

20 Q Let me stop you there. The area you just
21 described, how does that relate to what we are
22 seeing with the green boxes there?

23 A That is where we're saying the cuts need to
24 be made.

25 Q The writing on the left of the screen, what

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 is that? Do you recognize that?

2 **A** That is our notes of scope of repair.

3 **Q** That is from your scope of repair?

4 **A** Yes.

5 **Q** I interrupted you.

6 **A** I mean, we simply go through there and define
7 for the person -- the company that was going to do
8 a cost estimate to describe what needs to be done.

9 **Q** This is where these lintels are?

10 **A** Yes. They may not show up there very well,
11 but -- go back one to the lintel.

12 Again, I think you can see there is at least
13 two holes in that lintel, the steel lintel, and
14 there are no lag screws.

15 **Q** 35 of the triple windows with the half
16 circle, is that all of them?

17 **A** Yes.

18 **Q** And then some of the windows in the brick
19 don't have the circle; is that correct?

20 **A** Correct.

21 **Q** You are calling for repairs there? That is
22 the 16 doubles?

23 **A** Yes.

24 **Q** Twelve triples and six singles?

25 **A** Right.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 Again, what you are seeing now partially over
2 the photograph is our scope of repair.

3 **Q** This is where the water intrusion was found?

4 **A** Yes.

5 **Q** And this will address that?

6 **A** It will.

7 **Q** And what is shown here, Mr. Carter?

8 **A** The green boxes are the areas where we were
9 recommending repairs.

10 **Q** All exposed windows on first and second
11 floors; what does that mean?

12 **A** Yes.

13 **Q** What is "exposed windows"?

14 **A** It means it is exposed to the weather. Do
15 you remember on the front of the building there is
16 a recessed walkway, and we are calling those
17 "protected windows" because there is a walkway that
18 is waterproofed, although the waterproofing is not
19 working very well right now, it is still sufficient
20 to keep -- there is no reason for the windows to
21 keep that much water.

22 **Q** When you said the waterproof is not working
23 right now, you are talking about something --

24 **A** I'm talking about the waterproofing on the
25 walkways.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 Q Nothing to do with the windows?

2 A Nothing to do with the windows.

3 Q So you and Mr. Clements are calling for
4 repairs at the windows out there, correct?

5 A Yes.

6 Q What is the difference between your repair
7 scope and the plaintiff's?

8 A Well, obviously, we're saying that the
9 covered windows and the half circle windows in the
10 attic, and all of the third floor windows, do not
11 need to be repaired.

12 Q Is this a covered window?

13 A That's a covered window.

14 Q And what is this up here?

15 A That is the ceiling between the first floor
16 walkway and the second floor walkway.

17 Q Do -- does the ceiling provide protection
18 from rain?

19 A From normal rain, yes.

20 Q And how many of -- that area is in the front
21 of the buildings?

22 A Yes.

23 Q How many windows are there total in that
24 condition covered by the front walkways?

25 A Approximately, 168.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **Q** So those are windows that Mr. Clements is
2 calling to repair?

3 **A** Yes.

4 **Q** What about these (indicates)?

5 **A** Yes.

6 **Q** What about these (indicates)?

7 **A** Those windows are in the attic. It is a
8 different window. The left-hand photograph is what
9 you see in the attic. It is in the half circle
10 looking frame, that is the window. There was no
11 water damage to the OSB, as you can see.

12 **Q** Was there any mullions on this window?

13 **A** No. No.

14 **Q** And then the third floor windows, tell us
15 about those.

16 **A** Here again, we did not find in the inner cuts
17 we made, we did not find any water intrusion, even
18 adjacent to those windows on the third floor level.

19 **Q** What is the difference between the third
20 floor windows and the --

21 **A** Well, you have a fairly significant roof
22 overhang that's giving it protection.

23 **Q** Protection from rain?

24 **A** Rain.

25 And you do have -- as you can see on the

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 right, there are some areas where there are circle
2 head windows at the same location.

3 Q So the distance from the top of this window
4 to the overhang in this condition here would be a
5 couple of inches?

6 A Say again.

7 Q A couple inches?

8 A Few inches.

9 Q What is this showing here?

10 A That is at the third floor at the sill of the
11 window at a mull strip.

12 Q Any condition there that needs to be
13 repaired?

14 A No. None.

15 Q So you are calling for repairs at 146 windows
16 on the first and second floor windows, in the back
17 of the buildings, and on the sides of the building?

18 A Yes.

19 Q And then the plaintiff's repair is 419
20 windows?

21 A Yes.

22 Q What is being called to be repaired below the
23 windows by the plaintiff's scope?

24 A They are recommending replacing 64 square
25 feet of OSB sheathing, replacing 60 lineal feet of

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 wood stud, and replacing all insulation behind that
2 64 square feet.

3 Q At every window?

4 A Every window.

5 Q And do you have an opinion of the scope of
6 repair at those windows?

7 A Well, 64 square feet, if you look at the
8 space that is available, in my opinion, is an
9 exaggeration of what needs to be repaired.

10 For example, one of the areas under the first
11 floor window, that green area, that's about 2 feet
12 high, so about 18 square feet, and they are calling
13 for 64 square feet of both OSB and brick removal.

14 In order to do that, you would have to dig
15 down in the ground and you will hit footing.

16 Q In areas below some of the windows where it
17 was found to have water below the mullions, how
18 broad was the damage to the wood?

19 A Generally speaking, and we found this on
20 other projects as well, if you have a leak at the
21 mull and it's showing up here, that water will come
22 in and run like this (indicates). Gravity will
23 pull it that way. So water entering that mull and
24 getting into the WRB is going to migrate downward.

25 In this case it could drain out if it hasn't

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 gotten behind the WRB. It would drain out at the
2 flashing of the base brick, but it is getting into
3 that wall.

4 Q Okay. This area here is what (indicates)?

5 A That is directly under a mull.

6 Q Is this is wood damaged?

7 A Yes.

8 Q Damaged by what?

9 A Water intrusion.

10 Q From the mullion?

11 A Yes.

12 Q A mullion is where two windows are joined?

13 A A mull, I think it was already been explained
14 to the jurors, but when you take window units and
15 put them together in doubles or triples, it is
16 called "mulling the window." I could go through
17 that whole process, but --

18 Q This area here, is that below the window?

19 A It is. It is to the right-hand side.

20 Q This is not below the mull?

21 A It is not below the mull, and there is no
22 damage.

23 Q On the left side, what are you seeing below
24 the mull?

25 A Again, there is water damage at the mull of

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 that window.

2 Q The photograph to the right, is that the same
3 window?

4 A Yes, to the right where the window abuts the
5 brick.

6 Q Is the area on the right damaged wood?

7 A No.

8 Q That is not below the mullion, on the right?

9 A No.

10 Q So the repair scope for the 64 square feet
11 that the plaintiff's estimate calls for, does that
12 apply also to the single windows on the front of
13 the buildings?

14 A According to what I read in their scope of
15 repair, it calls for 64 square feet.

16 Q The windows covered by the walkways, those
17 are not mulled windows?

18 A No.

19 Q Because they are single windows?

20 A Yes.

21 Q And the area below those would be, roughly,
22 how much square footage?

23 A Oh, 5 or 6 square feet.

24 Q Did you investigate why it is occurring, why
25 there is water under the windows?

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **A** Again, I believe that the cause of the damage
2 is the lack of caulking and maintaining the mull.

3 **Q** What is this (indicates)?

4 **A** This is the manufacturer's installation
5 instructions for mulling a window, and how to caulk
6 the window so it will not leak.

7 **Q** Part of the mullion assembly includes caulk?

8 **A** Yes.

9 **Q** What is the purpose of caulk?

10 **A** It is to keep water from entering the mulls
11 and the frame of the window.

12 **Q** Does that caulk ever need to be replaced?

13 **A** As you can see here, the window manufacturing
14 -- manufacturer is saying it is important to use a
15 high-quality silicone caulking. Silicone,
16 generally, has about a 10-year life, useful life.
17 It doesn't mean it will last for 10 years. Some
18 will last more, but there is a lot of reasons for
19 the caulk to deteriorate, how much exposure it has
20 to the heating and cooling process, the wetting and
21 drying process, and how well it is installed.
22 Those areas are important to be properly caulked.

23 **Q** Can you tell now, or when you went out there
24 in 2019/2020, was the caulk originally applied
25 there?

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **A** As far as I could tell, yes.

2 **Q** Maybe --

3 **A** It's been 20 years -- 18 at least -- when we
4 were there. They should have been caulked over
5 that period of time at least twice. The caulking
6 manufacturers recommend an annual or semiannual
7 inspection of caulking. It doesn't mean you have
8 to repair it that often, but they still require
9 that you inspect it and make necessary repairs as
10 needed in their product.

11 **Q** The builder finishes the building and sells
12 it to the homeowners, and the replacement of caulk
13 is something that is done after that?

14 **A** Yes. The initial caulking is done by the
15 contractor.

16 **Q** Correct. And then there needs to be caulking
17 done afterwards?

18 **A** There should be a protocol established to
19 inspect caulking on an annual basis or semiannual
20 basis, and repair or replace that caulk when and if
21 it deteriorates.

22 **Q** That initial caulk applied during
23 construction is the contractor's responsibility?

24 **A** Yes.

25 **Q** And what about the next step, the next time?

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **A** That is the homeowner's responsibility. In
2 this case, in condominiums, it is the HOA's
3 responsibility.

4 **Q** Were you in the courtroom this week when the
5 gentleman from the HOA talked about the maintenance
6 history of these buildings?

7 **A** Yes.

8 **Q** What information did you glean from that as
9 it relates to --

10 **A** What he had said is he provided a document
11 that even though there was a recommendation to do
12 this, the board deleted that from the
13 recommendation.

14 **Q** Deleted the recommendation to periodically
15 re-caulk?

16 **A** As far as we can tell, it was never caulked
17 on the project since.

18 **Q** Did you hear the gentleman who testified from
19 the HOA about the board meetings in 2005 and 2006?

20 **A** Yes.

21 **Q** To remind you -- and this writing is a little
22 small -- but the one on the left, was that the
23 meeting from April 19, 2005?

24 **A** Yes.

25 **Q** That was when it was stated during the board

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 meeting that, quote, "Caulking around the windows
2 is going bad causing leaks," end quote; is that
3 right?

4 **A** Yes.

5 **Q** And about a year-and-a-half later was the
6 meeting he told us about in October of 28, 2006
7 when during that board meeting the property manager
8 told the board: "It appears that in windows that
9 are double and triple hung, there is a gap at the
10 top of the strip between the windows. It is
11 believed that is where the leaking is occurring."
12 Do you recall that?

13 **A** Yes.

14 **Q** And do you recall that the board president
15 said he doesn't recall the board taking any action
16 in response?

17 **A** That's my recollection, yes.

18 **Q** Okay. What is the impact of not taking
19 action of a leaking window in 2006 when you are
20 looking at it now 17 years later?

21 **A** I doubt very seriously that this would be an
22 issue today if the recommendation from the property
23 manager had been followed. There is no guarantee.
24 As I mentioned earlier, in the real world, things
25 happen, but it's not going to happen to the

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 magnitude that it is happening here if it is
2 properly maintained. It would be nice to have a
3 non-maintenance required house, car. It doesn't
4 happen. If you don't maintain your car or your
5 house, you are going to have problems, and it is
6 true for this building.

7 It's up to the homeowners association to make
8 the repairs to do the proper maintenance of their
9 facility.

10 Q Let's talk about water intrusion that we
11 found under some of these windows. Is that
12 something that happens overnight on one end, or
13 like a slow drip? Talk to us about the nature of
14 how that works.

15 A In my opinion, this has been continuous.
16 These cuts were made -- depending whose photograph
17 it is -- either in 2016 or '18 or '20, depending on
18 whether it is Mr. Clements' or ours. So you've got
19 water coming in. When did it start? I have no
20 idea. How long did the caulk last? I don't know.
21 I can look at only what is there, but the damage
22 that is there is caused by fairly continuous water
23 intrusion.

24 Q If the condition that was causing this leak
25 was remedied and addressed in 2006, would you

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 expect there to be less damage, less repair, than
2 there is now?

3 **A** It is impossible to say that there would be
4 no damage, but I don't think that perhaps it would
5 be at a level you would have to do any serious
6 repairs if it had been repaired in 2006.

7 **Q** Couple of other things. The vapor barrier,
8 did you look into that?

9 **A** Yes.

10 **Q** And talk to the jury what your opinions were.

11 **A** Well, according to the code, the vapor
12 barrier is required, as is stated in 502.1.4, that
13 the vapor retarder shall be installed on the warm
14 and winter side of the insulation.

15 **Q** Warm and winter side, where it is at in
16 Wedgewood, is that on the warm and winter side?

17 **A** Yes.

18 **Q** All right. Sorry to interrupt you. Go
19 ahead.

20 **A** There is an exception that in certain hot and
21 humid climates, the two conditions you see below of
22 67-degree wet bulb, or 3,000 hours, or 73-degree
23 wet bulb, for 1500 hours during the warmers six
24 consecutive months. If those conditions are where
25 the building is located, the code is saying there

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 is an exception that you do not have to install it.
2 It doesn't say you can't install it. It simply
3 says you are not required to install it.

4 Q This is a publication of a map that shows
5 where that cut-off is for the hot, humid weather?

6 A If I remember, this is from the code.

7 Q Okay. On the northern side of the green line
8 is where the '97 building code required the
9 installation of the vapor barrier?

10 A No.

11 Q The required?

12 A It requires it, but then it exempts the areas
13 to the south.

14 Q Let's talk the northern side of the green
15 line first. What did the '97 building code say
16 about the insulation --

17 A It's required.

18 Q What about south of the green line?

19 A It is not required.

20 Q It says it is not required?

21 A It is an option.

22 Q Does it say that it is prohibited?

23 A No, it does not prohibit it. Doesn't state
24 that.

25 Q And with the building code and the way it is

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 drafted or interpreted, what does that mean?

2 **A** I'm not....

3 **Q** Is it a violation in that regard for places
4 with it is prohibited --

5 **A** I did not find a violation of the code here
6 because that exemption does, again, state you can't
7 do it, and then in this case, you've heard earlier
8 from the Centex guy that they were required to put
9 the barrier in by the state -- by Horry County.

10 **Q** Do you know -- what is the role of a code
11 official, local code official?

12 **A** The code official is defined in the code as
13 the authority that is supposed to interpret the
14 code and apply the code in reasonable
15 interpretation.

16 In the event that there is a requirement that
17 the engineer feels is not appropriate or would be
18 detrimental to the building, there is a process for
19 an appeal, but that process is lengthy, and you can
20 end up --

21 **Q** Let me ask you this: In the world,
22 construction world, if you are building a building
23 and the code official tells a contractor to do a
24 certain task to, you know, be in conformance with
25 the code, what is a contractor to do?

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **A** The contractor has two possibilities. One,
2 he can refuse to do it; or, two, he can do it. If
3 he refused to do it, the code official can pull his
4 permit, meaning he has to stop work.

5 **Q** What is the prevailing practice? If a code
6 official tells a contractor to do something, what
7 is usually done?

8 **A** Generally speaking, the code official will
9 say to a contractor, I have found, for example, the
10 outlet doesn't meet the code, you need to fix that,
11 and most of the time that is the end of it.

12 **Q** After the contractor does it?

13 **A** Yeah. Sure. And he will come back. That is
14 the purpose of doing periodic inspections in
15 certain stages.

16 For example, framing cannot be inspected by
17 code official after sheetrock or brick has been put
18 on the outside, so the framing inspection is done
19 when the framing is completed so that the inspector
20 can look at it. Once he approves it, then the
21 contractor can put brick or Hardie or whatever is
22 appropriate, and he can put insulation and
23 sheetrock on the inside.

24 **Q** With this vapor barrier, I've seen you've
25 written here about encouraged by utilities, what is

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 that about?

2 **A** The Horry County Electric and Santee Cooper,
3 which is a state owned power company and would be
4 considered a state agency, they encouraged the use
5 of this code during this period of time. Matter of
6 fact, Santee Cooper had a program called the Good
7 Cents, C-E-N-T-S, program. Its concept was for the
8 benefit of the consumer, really, because if it were
9 installed, it reduced the flow of hot and cold air
10 in and out of the building and would save the
11 homeowner on their energy costs.

12 **Q** What is it that you are talking about? How
13 does the vapor barrier relate to the Good Cents
14 program?

15 **A** That was the concept. By installing the
16 vapor barrier, you met the requirement of the Good
17 Cents program.

18 **Q** Installing the vapor barrier in the way it
19 was done at Wedgewood is what the Good Cents
20 program called for?

21 **A** Yes.

22 **Q** So you told us about the wall cuts you did.
23 Did you find any damage that would be caused by a
24 vapor barrier?

25 **A** Not that we could tell, no.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **Q** Z-flashing, you mentioned this earlier. We
2 have the yellow box. What is inside the yellow
3 box?

4 **A** That is the Z-flashing.

5 **Q** Mr. Clements makes some repair
6 recommendations regarding Z-flashing?

7 **A** I think he's confusing the requirements of
8 Z-flashing with thru-wall flashing. Z-flashing,
9 and the intent of Z-flashing, is to prevent water
10 from coming into the building. It is not to take
11 water out of the building.

12 **Q** Do you see any need for any repairs at these
13 buildings regarding the Z-flashing?

14 **A** Not that I found, no.

15 **Q** Have you seen Z-flashing failing to do what
16 it is intended to do at Wedgewood?

17 **A** No.

18 **Q** You talked about this a little bit earlier,
19 but let's talk about it in more detail. One of the
20 other areas you investigated was the waterproofing
21 membrane on the fronts of these buildings?

22 **A** Yes.

23 **Q** Let's orient ourselves on where the
24 waterproofing membrane is on the buildings and what
25 is it?

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **A** The photographs on the left is showing the
2 carpet on the walkways on the front of the
3 building.

4 **Q** The green is carpet?

5 **A** In this particular building, the carpet was
6 green.

7 The larger areas, that is at the stairwells
8 at either end of the building. It narrows down the
9 walkway between those large areas on each end of
10 the walkway, so you have the access to the
11 condominium entrances along the front of the
12 building.

13 **Q** Where is the membrane?

14 **A** The waterproofing membrane is applied
15 directly to the tongue and groove plywood deck that
16 is supporting what you see there, the carpet.

17 **Q** These are photographs of what?

18 **A** This is a photograph -- and, obviously, it
19 was during construction, so it is not ours, but
20 it's showing on the left a workman who is applying
21 waterproofing, and he has put down a protective
22 walkway material.

23 **Q** What is the pink surface?

24 **A** That is the waterproofing.

25 **Q** That is part of the membrane?

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **A** Yes.

2 **Q** And you applied that, and it comes out like a
3 liquid?

4 **A** Yes. It's a roll-on material, yes.

5 **Q** And the worker on the left photograph, are
6 they standing on the membrane or on something else?

7 **A** No. He's putting down some form of material
8 as a walking material to protect the membrane
9 surface.

10 **Q** And what is the purpose?

11 **A** To keep water from penetrating to the
12 structure below.

13 **Q** There is wood underneath it?

14 **A** Yes. Wood deck, wood structure, and below
15 that is a sealant, so you are trying to prevent
16 water from going into -- first, from damaging the
17 structure of the building, which could be,
18 obviously, serious if you had people walking along
19 and the walkway underneath collapses.

20 **Q** The photograph on the left, "Sealoflex
21 application on the third floor." What is that?

22 **A** Sealoflex is a manufacturer of the
23 waterproofing membrane.

24 **Q** Okay. And what did you find from the
25 Sealoflex product material?

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **A** There is a couple of things. First off,
2 Sealoflex, their warranty on the material is ten
3 years. It doesn't mean that the material will
4 necessarily last ten years, or it can last ten
5 years, but the warranty is for ten years.

6 **Q** You heard the gentleman from the HOA testify
7 about what the HOA was told over the years about
8 replacing the membrane. Did you hear that?

9 **A** Yes.

10 **Q** And what was the HOA told to do?

11 **A** I think in that case they are, first off,
12 saying we need to replace the carpet because of the
13 heavy traffic.

14 Apparently, it is an eight-year cycle in that
15 environment with the traffic that is there and the
16 weather conditions. They are -- their plan was to
17 change it about every eight years.

18 **Q** So how is the carpet installed?

19 **A** The carpet is adhered to the waterproofing
20 membrane.

21 **Q** Directly to the top?

22 **A** Directly to the top.

23 **Q** Is it laid on top, stapled, glued?

24 **A** There is an adhesive that is used to keep the
25 carpet adhered to the membrane.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **Q** If you replaced carpets in 2010, but did not
2 replace the waterproofing membrane, what could
3 happen?

4 **A** I don't know how you replace the carpet
5 without either replacing the membrane or repairing
6 the membrane, depending how much is damaged.

7 **Q** And if the membrane is damaged during the
8 carpentry placement, and you don't repair or
9 replace the membrane, what could happen?

10 **A** I think it is pretty obvious that leaks
11 started occurring, water penetrating and
12 deteriorating the plywood subfloor, staining some
13 of the structural members below, and even damaging
14 below that.

15 **Q** We ultimately got the invoice from the HOA
16 about when they replaced the carpet in 2010. Did
17 you read that invoice?

18 **A** Yes.

19 **Q** Is there a note in here -- and it is a little
20 small, but are you able to see what the note said
21 in that invoice?

22 **A** "Carpet to be installed with a premium
23 multi-purpose adhesion to ensure easy carpet
24 removal in the future and reduce chances of
25 damaging the membrane."

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **Q** In the future, reduce chances of damaging the
2 membrane. That is what it said?

3 **A** That is purpose of that.

4 **Q** And it talked about a multi-purposes
5 adhesive. Did you do anything to see what that
6 multi-purpose adhesive was mentioned on the
7 invoice?

8 **A** The manufacturer of that product does not
9 recommend it to be used in an outdoor application
10 where there is moisture evidence. I don't know
11 what it does to it. I don't know what damage it
12 causes, but that's their recommendation that you do
13 not use it in that environment.

14 **Q** You heard Mr. Spencer from the HOA talk about
15 in the board meeting, August 9, 2013, the board was
16 told that the carpet installer sliced through
17 waterproofing?

18 **A** Yes.

19 **Q** The type of damage that has been shown to be
20 existing out at Wedgewood, and that Mr. Clements
21 identified. Is that something that can be caused
22 by a slice in a waterproofing membrane?

23 **A** Certainly could be, yes.

24 **Q** You included this photograph. What is this
25 from?

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **A** I believe that is one of Mr. Clements'
2 photographs. Apparently, he had some of the carpet
3 pulled back to take a look.

4 **Q** This is from his report?

5 **A** This is from his report.

6 **Q** It states: "Waterproofing membrane separated
7 when carpet was lifted"?

8 **A** Yes.

9 **Q** Who wrote that?

10 **A** I'm assuming he did.

11 **Q** This is from the Fuller Group report?

12 **A** Yes.

13 **Q** This says: "Cut and waterproofing alone drip
14 edge."

15 **A** Yes.

16 **Q** And the red arrows are pointing to a cut?

17 **A** Yes.

18 **Q** And that is the type of cut that can lead to
19 water getting into the wood substrate of those
20 walkways?

21 **A** Yes.

22 **Q** We heard about the red soccer card. Do you
23 remember that?

24 **A** Yes.

25 **Q** That's a cut into the membrane?

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **A** Yes. There is to the left of that red pan
2 there.

3 **Q** That is a type of cut that can occur when you
4 cut the carpet out --

5 **A** Yes.

6 **Q** -- and install new carpet?

7 **A** Again, if you've done carpet removal,
8 especially -- even in a reasonably small room, in
9 some cases it is easier to cut the carpet and pull
10 it up in smaller strips, because just trying to
11 pull that carpet from an entire area, it's heavy
12 and hard to pull. I've tried it. I've tried to do
13 it.

14 **Q** In investigating this issue with the
15 waterproofing membrane, did you look at the repair
16 invoices?

17 **A** Yes.

18 **Q** This one is dated 2013?

19 **A** Yes.

20 **Q** It says, "Sealoflex applied." That is a
21 waterproofing membrane?

22 **A** Yes.

23 **Q** This was somewhere where rail posts were
24 replaced and new Sealoflex was installed?

25 **A** Yes.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **Q** And that was in 2013?

2 **A** 2013.

3 **Q** You found a number of instances of that
4 occurring on these buildings after the carpets were
5 replaced?

6 **A** Yes.

7 **Q** So the first one we looked at was nine rail
8 posts were replaced and the Sealoflex placed around
9 it, that would be -- that's in the front walkways?
10 That is the area we're talking about?

11 **A** Yes.

12 **Q** So the Sealoflex there would be something
13 placed after the fact, not during original
14 construction?

15 **A** No. Well, the Sealoflex should have been --
16 and we saw it was applied -- to the area there, but
17 if you going to take that post up and replace it or
18 repair it, you have to cut it out in order to take
19 it out. When you put it back, you need to reseal
20 or apply Sealoflex to this area that you are
21 repairing.

22 I think he did there around the post what
23 should have been done in 2006 when they took the
24 carpet up and repaired that surface, and perhaps it
25 would not have had the problems that we had later

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 in this building. Although, I think, again, their
2 eight-year cycle is about right for replacing the
3 carpets, so that would be at least two removals and
4 two repairs to the waterproofing membrane.

5 Q This is more photographs of the membrane when
6 the carpet is pulled up?

7 A Yes.

8 Q What kind of condition is the membrane in?

9 A It's hard to tell by looking at it, but as
10 you see there, I think Mr. Clements put his pen
11 there to show there is a slit or a cut in the
12 membrane.

13 Q That type of cut in the membrane can and will
14 lead to water intrusion?

15 A Yes.

16 Q What is your opinion -- tell the jury about
17 the waterproofing membrane and responding to what
18 Mr. Clements identified there.

19 A Again, I like the fact that the property
20 manager was recommending replacing the carpet every
21 eight years, roughly. That is more esthetic,
22 probably, more than anything else. I mean, the
23 carpet gets dirty and worn. But when you do that,
24 you also have to be sure that that membrane is
25 protecting the building.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 In my opinion, that first time that they did
2 this, they did not adequately repair or replace the
3 waterproofing to prevent water intrusion.

4 **Q** Did you include repairs to the waterproofing
5 membrane in your scope of repair you offered in
6 this case?

7 **A** Yes, but as a maintenance issue item.

8 **Q** And you are talking about some repairs on the
9 front of the walkways?

10 **A** Yes.

11 **Q** Let me have you pause and talk about the
12 membrane itself.

13 **A** Oh, no, we did not recommend it. It is a
14 maintenance issue.

15 **Q** Your recommendation to the Association with
16 the waterproofing membrane would be what, as a
17 whole?

18 **A** I think the carpet needs to be taken up. To
19 what degree the membrane needs to be repaired at
20 this point, I don't know. It may be necessary to
21 scrape it up. I just don't know. But it is
22 important that that membrane -- that is the
23 critical item. The carpet is esthetic. It's for
24 looks, not for keeping water out of the building,
25 and that's the wood structure below it. If you

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 don't keep the water out, you're going to have
2 deterioration.

3 Q All right. Mr. Carter, you included these
4 two photographs in your report. Tell us what you
5 want to tell the jury about this.

6 A Here again, some of the areas -- and this may
7 not be one of them, but a number of the areas where
8 Mr. Clements found -- even vertical -- down the
9 vertical flash of the trim of the building and
10 siding, water is evident. It's evident that water
11 is -- from the decks or the walkways is getting
12 into that area and causing damage.

13 Q Do you see this area of the photograph?

14 A Right.

15 Q What is that?

16 A Deteriorated wood.

17 Q Where is the water coming from?

18 A I think it is coming from the membrane on the
19 deck.

20 Q Was the stained and deteriorated, rotted wood
21 that Mr. Clements showed, was it underneath the
22 walkways and balconies?

23 A I did not -- at the time we did our
24 inspection, we cut some ceilings out. I did not
25 find any damage to the wooden structure or the

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 plywood deck.

2 I did find, in one case, where, apparently,
3 the HOA -- where the plywood deteriorated, and
4 instead of replacing it, they put a piece of
5 plywood down over the carpet. So you are walking
6 on carpet, and now you are walking on a piece of
7 plywood and starting up the stairs.

8 Q What about further down the wall off the
9 corners of the walkways?

10 A We did not make any cuts there. As I said, I
11 remember at least one location, if not more, where
12 at the upper level, which would be the second floor
13 level, water that did come down behind the trim
14 and, in my opinion, it is getting in at the same
15 location here, but it got behind the WRB and caused
16 damage to the sheathing.

17 Q If the waterproofing membrane and the
18 sealants in this area, at the transitions from the
19 balconies to the walkways to the walls are not
20 maintained, can it result in water intrusion going
21 down the wall?

22 A Certainly. And that is -- I used to call --
23 I hate to call it this, but it is probably a weak
24 point in the concept of using this material. Not
25 that the material is a bad material. It isn't, but

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 it is an area you have to be very careful.

2 Q That's an area that needs to be maintained?

3 A Yes. If you don't maintain that area and
4 maintain the caulking in that area, it is going to
5 get water into that area.

6 MR. DesCHAMPS: Your Honor, I'm kind of
7 somewhat in a transition, and I'm happy to keep
8 going, but --

9 THE COURT: Right. Come up here for a
10 second.

11 (Whereupon, a bench conference was had out of
12 the hearing of the jury.)

13 THE COURT: You have a lot still?

14 MR. DesCHAMPS: More than 15 minutes.

15 THE COURT: Yeah. Let's go ahead and break
16 for the day and start at 9:00 a.m.

17 MR. DesCHAMPS: Okay.

18 (The following was had in open court.)

19 THE COURT: Ladies and gentlemen, the
20 attorneys are telling me we are at a good breaking
21 point, so we'll do that.

22 I'll remind you, do not discuss this case.
23 Don't do independent research. Get a good night's
24 sleep. These are long days. We'll see you back at
25 9:00 a.m.; is that okay, Mr. Foreperson?

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 FOREPERSON: Yes, ma'am.

2 THE COURT: I look forward to seeing you all,
3 and I'll make sure that we start as quickly as we
4 can at 9:00. Thank you.

5 (The jury exits at 5:10 p.m., and the
6 following is heard out of the presence of the jury.)

7 THE COURT: Anything for the record?

8 MR. HILDEBRAND: No.

9 MR. CONNELL: No.

10 THE COURT: One other thing to put on the
11 record, I was trying to remember this morning, and
12 I couldn't, so I made myself a note. You told me
13 yesterday, Mr. Hildebrand, that Bobby Wyle has
14 filed a new case against Centex; is that correct?

15 MR. HILDEBRAND: Yes, ma'am.

16 THE COURT: So I'm on my drive home -- drive
17 to the hotel last night, I called my husband and
18 asked him, and he said he didn't know of one. So
19 he turned around and called Bobby Wyle, who is his
20 law partner in Myrtle Beach. George didn't know
21 about it, but apparently Bobby had, and he just
22 hadn't told George.

23 So, anyway, I just wanted to make sure and
24 put that on the record. It was on the record
25 yesterday, but I wanted to be sure there is no

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 issues, no objections, no problems with it.

2 MR. HILDEBRAND: None from Centex.

3 MR. CONNELL: No.

4 THE COURT: I just wanted to make sure. It
5 caught me off guard and caught my husband off
6 guard, because he turned around and yelled at
7 Bobby. I don't know why, but -- because he didn't
8 know, I guess.

9 But, anyway, I wanted to put that on the
10 record.

11 Anything else we have left to do tonight? We
12 have to finish up this expert, and you're putting
13 your estimator up tomorrow, and anyone else?

14 MR. HILDEBRAND: No, ma'am. That's it.

15 MR. DesCHAMPS: We will have Skip Lewis as
16 well.

17 MR. HILDEBRAND: He will be shorter.

18 THE COURT: Oh, you will have Skip Lewis?
19 Will he be after him or the estimator?

20 MR. DesCHAMPS: Skip will be next.

21 THE COURT: Okay. That's what I figured.
22 Okay.

23 **(WHEREUPON THE PROCEEDINGS FOR MAY 24, 2023**
24 **CONCLUDED.**

25 **(THE FOLLOWING WAS HAD ON MAY 25, 2023 OUT OF**

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **THE PRESENCE OF THE JURY.)**

2 (Defendants' Exhibits 107-108 marked.)

3 THE COURT: Good morning. How are we doing
4 this morning?

5 MR. DesCHAMPS: Can I address two things?
6 Yesterday, during Bob Carter's testimony, I showed
7 him a document I marked as Defendants' 106, it
8 should have been 107, and I never moved for it to
9 be admitted. I showed it to Mr. Connell, and he
10 agrees without objection.

11 MR. CONNELL: Yes, sir.

12 MR. DesCHAMPS: And then 108, I marked that,
13 and he agrees, and I move to that be admitted as
14 108.

15 MR. CONNELL: No objection.

16 (Defendants' Exhibits 107-108 admitted.)

17 THE COURT: Are we continuing with Bob
18 Carter's testimony? I allowed you all --

19 MR. Des CHAMPS: Oh, I am not finished.

20 THE COURT: All right. Let's bring in the
21 jury.

22 (The jury enters at 9:15 a.m., and the
23 following is heard in the presence of the jury.)

24 THE COURT: Good morning, ladies and
25 gentlemen. Good to see you all. We'll be

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
 BERNSTEIN, LLP USE ONLY!!**

1 continuing with Mr. Carter.

2 Mr. DesChamps, whenever you are ready.

3 **DIRECT EXAMINATION (CONT.)**

4 **BY MR. DesCHAMPS:**

5 **Q** Next topic is the item that Mr. Clements
6 identified about the attaching of the exterior
7 siding on the buildings?

8 **A** Yes.

9 **Q** As part of your investigation of Wedgewood, I
10 understand you made some test cuts into the walls
11 yourself. Did you also review the materials from
12 Ross Clements' investigation?

13 **A** We did. We looked at his photographs,
14 obviously, and any notes that we had from him. The
15 idea is that we want to present a repair scope that
16 covers all of the areas that need to be repaired.

17 **Q** The repair scope, what is Mr. Clements
18 calling to be done as far as the exterior siding on
19 the buildings?

20 **A** The recommendation is to remove all of the
21 siding on all nine buildings.

22 **Q** And did you review Mr. Clements'
23 investigation of the siding about what he found to
24 make that repair recommendation?

25 **A** Yes.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **Q** Can you tell the jury what you found
2 Mr. Clements looked at before he made that repair
3 recommendation?

4 **A** As you can see on the screen, I think he took
5 off about 16 pieces of siding out of some almost
6 14,000 pieces that are on these buildings.

7 **Q** The siding, let's make sure we understand
8 what part of the building we're talking about.
9 This is the large area of the building with the
10 boards going horizontal?

11 **A** Lap siding is very distinct in that the board
12 laps the other, i.e., lap siding. It is on the
13 front, rear, and both ends of the building.

14 **Q** So how large are the pieces of siding on the
15 building?

16 **A** I think it is -- a board is 12 feet.

17 **Q** So other than the first floor, most of these
18 buildings comprised of the exterior of the lap
19 siding?

20 **A** Yes.

21 **Q** And so that is how they get to the 13,000
22 pieces of siding on these buildings.

23 **A** Yeah. And that's, obviously, a rough
24 take-off.

25 **Q** Sure.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 What did Mr. Clements, in your investigation,
2 report finding as it relates to the attachment of
3 the exterior siding?

4 **A** Well, according to his documents that we
5 looked at, and as you can see here on this
6 particular case, he found on this cut, on the left,
7 the nails were about 13 inches on center, and on
8 the right, 9 inches on center.

9 **Q** 9-inches on center, what does that mean?

10 **A** The nail -- if you drive a nail, the next
11 nail is whatever distance it is supposed to be from
12 the center of this nail, to the center of that
13 nail.

14 **Q** It's how far apart two nails are?

15 **A** As you go down the board.

16 **Q** And what conclusions did Mr. Clements, that
17 you understand, offer about the distance between
18 these nails?

19 **A** The manufacturer's recommendation is the
20 nails should be 16 inches on center, and I'm
21 assuming he's just pointing out that this is not
22 16 inches on center.

23 **Q** So these are 9 inches apart or 13 inches
24 apart?

25 **A** According to this photograph, yes.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **Q** So that's more nails?

2 **A** Sure. Nine or 13 is less than 16, yes.

3 **Q** Meaning you would add more nails than would
4 be there if they were 16 inches apart?

5 **A** Correct.

6 **Q** And what does he say the significance is of
7 the 16 inches?

8 **A** Well, that is the manufacturer's
9 recommendation, but it is predicated on a test from
10 an independent lab that they sent a particular
11 board to be tested, and the nails were inserted at
12 16 inches on center. They do a test to see if that
13 board will fail at the wind pressure that it is
14 supposed to withstand.

15 **Q** Okay. And when the siding is installed,
16 behind this paper is wood sheathing that we talked
17 about and also the framing members; is that right?

18 **A** This is the photograph inside the building or
19 inside the wall looking to the outside. As you can
20 see, the framing of the building, especially around
21 the windows, there are multiple studs there, and
22 they certainly vary from 16 inches on center.

23 **Q** Okay. The wood studs is where you marked
24 with the green notch?

25 **A** Yes.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **Q** Let me ask you this. Are you able to tell
2 whether or not a siding nail was installed into
3 those framing members just by measuring the
4 distance between the two of them?

5 **A** No.

6 **Q** Because they are not always exactly 16 inches
7 apart?

8 **A** No.

9 **Q** Here is maybe a better example. Talk to us
10 about where the framing studs are in this picture.

11 **A** What you can see here are the studs that have
12 not been covered by exterior sheathing, and you can
13 see the number of studs that are in that wall.
14 Some are 16 inches on center, some are not.

15 **Q** If you want to know if a framing nail was --
16 siding nail was installed into the framing, you
17 would need to look to determine that?

18 **A** You cannot look and tell.

19 **Q** You can't tell just by measuring the
20 distance?

21 **A** You cannot look at it or simply measure it
22 and say, There is a stud there.

23 **Q** What else did you do to investigate the wind
24 resistance at Wedgewood?

25 **A** We did a pull test I believe at six

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 locations.

2 MR. CONNELL: Your Honor, can we have a side?

3 THE COURT: You may.

4 (Whereupon, a bench conference was had out of
5 the hearing of the jury.)

6 MR. CONNELL: I wanted to make sure that I
7 preserved my objection.

8 THE COURT: Oh, for the record. Right. He
9 can say it as long as it is an ASTM standard or
10 whatever.

11 MR. DesCHAMPS: Absolutely.

12 (The following was had in open court.)

13 **Q (BY MR. DesCHAMPS)** What is a pull test?

14 **A** A pull test is using an instrument that
15 allows the operator to determine how much pressure
16 it takes to pull, in this case, a piece of siding
17 off of the building.

18 **Q** Okay. And how do you perform a pull test?

19 **A** It is necessary -- in order to make an
20 attachment to the board you are going to pull, we
21 actually went down about a week before and set up
22 areas where we can set up a test. It is difficult
23 in certain areas, so you have to find an area where
24 you can put the test rig and attach, what we call,
25 a strong-back, which is simply a two-by-four. In

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 the photograph you are looking at, it is the board
2 that has been glued to the face of on that
3 particular wood siding.

4 Q That piece of wood that is not painted --

5 A We glued that on about a week before the
6 test. You have to let the glue dry, otherwise the
7 board will just pull off.

8 Q And then what did you do?

9 A During the test, as you can see, we insert
10 connectors to the board that we've installed and
11 set up a rig. This instrument measures force in
12 pounds, and we go through the process of increasing
13 the pressure to some point where the machine says
14 you've reached the max.

15 Q This blue thing, this machine, is attached by
16 cables to the board that you glued to the siding?

17 A Yes. We're trying to get a reasonable
18 uniform force on that board.

19 Q This blue thing has the capability of pulling
20 these cables back towards it?

21 A It is fairly simple -- except the measuring
22 instrument, it is a fairly simple device. It has a
23 threaded rod that you turn, and it tightens those
24 cables. The more you turn, the more pressure you
25 put on the building.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **Q** And this apparatus that you set up in the
2 siding, in your opinion, can gauge the wind
3 resistance of the siding board you are testing?

4 **A** It will give you the force it takes to pull a
5 device off of the building.

6 I might add that this device is used in other
7 locations. We didn't do it because we had no
8 reason to test other things. But it is used if you
9 want to know the pull-out strength of a nail or a
10 screw or other components on a building. You can
11 use this device, and it is used for that purpose.

12 **Q** The photograph on the right, what is being
13 shown there?

14 **A** The distance where the bottom of the board,
15 which is not attached to the building, begins to
16 separate as the force is applied.

17 **Q** Okay. When you say it is not attached to the
18 building, the nails are further up on that board?

19 **A** The nailing requirements here -- and it's
20 what most people do -- is called "blind nail." You
21 nail at the top of the first board, and when you
22 put the second board over and lap it, then you nail
23 at the top of that board, and you keep doing that.
24 So it's -- it's not "face nail," it is "blind
25 nail."

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 Q What are you measuring?

2 A Just to get some approximate distance of the
3 pull-out.

4 Q This is a measurement while the apparatus is
5 pulling on the board?

6 A As the force increases, that gap will move
7 out.

8 Q What findings did you make from your pull
9 test?

10 A Here, the basic code, standard building code,
11 in 1997 had a requirement for 100 miles per hour.
12 The code references ASCE-7. We went to ASCE-7, and
13 they have a different requirement of 130 miles an
14 hour. There is some useful information there.

15 There is two areas that you are concerned
16 about: The interior part of the building, meaning
17 when I look at the wall it is the flat part of the
18 wall. The wind forces at the end zones are much
19 greater, because as the wind goes around the
20 building, it creates a negative pressure at the
21 corners of the building. The wind comes and does a
22 circular motion and creates a higher, negative
23 pressure at the ends of the building than at the
24 field of the building.

25 So what I did here is show -- first off, the

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 test in red, that is the pounds per square foot
2 that we applied to Buildings 1 through 6, a test on
3 those six buildings.

4 If you look at the SPC, at a hundred miles an
5 hour, the pounds per square foot would be 25.6.
6 That has been corrected because, in the
7 calculations, the wind acts differently on the
8 building, and so as you see, at the ends of the
9 building or the end zones of the building, it is
10 29.6. At the lower flat part of the building, it
11 is 26.7.

12 So if you look at that, we are -- the worse
13 case is scenario is 29.6 pounds per square foot.
14 We range from 96 on Building 4 to 265 on Building
15 1. I did the same calculations on ASCE-7 simply to
16 show what the requirement at 130 miles an hour, and
17 obviously the worse condition there is 50 pounds
18 per square foot. Again, significantly below the
19 test pressures that we applied.

20 Q Let me see if I can put this in plain
21 language. The device pulled the tested board until
22 it could apply no more pressure?

23 A We could have applied more pressure, but when
24 you get to that level -- I mean, we're not going to
25 pull the board off the building. If it was

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 improperly attached at those pressures, it would
2 come off the building.

3 As I mentioned before -- if I may use this?
4 If you look at the board being nailed here and
5 loose here, as you pull on that board, it is going
6 to start to rotate. It is fastened here, not
7 fastened there. As you pull, it's going to begin
8 to move at this unfastened area.

9 **Q** None of the boards were pulled off when you
10 applied pressure?

11 **A** We did not, even at 265 pounds.

12 **Q** And the pressures were higher than what the
13 code would require?

14 **A** As you can see, the requirement would have
15 been -- even under the 130 miles an hour -- would
16 have been 50 pounds per square foot.

17 **Q** What is your final takeaway as far as
18 responding to Mr. Clements' repair recommendation
19 as to remove and repair all the siding?

20 **A** I see absolutely no reason to take off siding
21 which, to the best of my knowledge, there has been
22 nothing found to show that the siding and the --
23 and anything related directly to the sidings, is
24 causing damage to this building.

25 There is water getting into and behind some

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 of the trim and some of the siding, but that is not
2 because of the siding.

3 Q That has to do with the window issues we
4 talked about yesterday?

5 A It has to do with the penetrations through
6 the siding, like windows, the corners where the
7 decks meet the building.

8 Q But that is unrelated to the attachment?

9 A That is unrelated to the attachment of the
10 siding, and I see no reason to replace the siding
11 on these buildings.

12 Q All right. Can we talk about the attachment
13 of the brick? What is Mr. Clements' repair
14 recommendation for the brick of the building?

15 A Again, he's recommending that we remove and
16 replace all of the brick on all nine buildings.

17 Q All right. What are brick ties?

18 A Brick ties are devices that -- if you will
19 look to the photograph -- on the photograph on the
20 left -- and there is all kinds of designs of brick
21 ties, but this one particular style of brick tie is
22 a flat piece of metal that has been deformed to
23 give it some bending capability.

24 Here, before the brick mason started -- and I
25 don't know if the brick mason installed them or

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 some other trade, but before the brick mason's work
2 began, these brick ties were nailed to the building
3 through the sheathing and into the studs.

4 Q Okay. So all of these pieces of metal here,
5 as you are laying the brick, you are going to fold
6 them into the brick?

7 A As the brick mason goes up with each course
8 of brick, he would fold the brick tie into the
9 mason and move up the wall.

10 Q What did Mr. Clements' report find with
11 respect to the brick ties?

12 A According to what we saw, he found about five
13 that were unused.

14 Q Is this an example here on the left?

15 A Yes.

16 Q So in that yellow box is an unused brick tie,
17 correct?

18 A It appears to be. But if you notice, there
19 is a brick tie just to the right of that.

20 Q So just to the right and just to the left are
21 brick ties that are used?

22 A I don't know why they are that close. It
23 doesn't matter to me.

24 Q So how often does a brick tie need to be
25 used?

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **A** The requirement is about, I think, 3.2 square
2 feet. I may be wrong on exact -- every three plus
3 square feet of brick gets a brick tie.

4 **Q** In this instance, if you have an unused brick
5 tie, but to the left and right you have brick ties,
6 is it a problem to have an unused one here?

7 **A** I don't think so.

8 **Q** Is this -- these are two of the brick ties
9 you mentioned that Mr. Clements found that were
10 unused?

11 **A** Yes.

12 **Q** And on the right -- so, here, this is a
13 couple of inches above the ground where you found
14 that one, where Mr. Clements found that one?

15 **A** Yes.

16 **Q** This was the location where it was?

17 **A** I think so, yes.

18 **Q** And this is part of your area that, in your
19 repair scope, is going to be repaired for the
20 window?

21 **A** It is.

22 **Q** Did you find in the course of H2L's
23 investigation, and in reviewing Mr. Clements'
24 report, improperly installed brick ties?

25 **A** We did. And, you know, again, in doing any

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 type of work like this, some of them are -- the
2 norm would to get that tie about half-way through
3 the brick, and they vary. I mean, the man is not
4 out there with a tape measuring exactly how far it
5 goes out.

6 Q This is one where Mr. Clements found that at
7 this particular brick tie he found was
8 three-quarters of an inch short of being exactly
9 half-way?

10 A Right.

11 Q In your opinion, is having that brick tie
12 being three-quarters short evidence of needing to
13 remove and replace all of the brick on this
14 building?

15 A This is a lot like the nailing of the siding.
16 It is all very good if you can build a building
17 exactly like everyone tells you to build, but in
18 the real world, that doesn't happen.

19 The question is whether or not there is
20 adequate ties in this building from keeping the
21 brick from being pulled off the building. I have
22 not seen anything in their cuts or ours that would
23 tell me that we should be concerned and that we
24 should remove the brick to be sure that all of the
25 brick ties are in the exact proper location.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **Q** In your repair scope that you issued, no
2 repairs to the bricks?

3 **A** That is our recommendation.

4 **Q** The roofs. If we can look through maybe one
5 example of Mr. Clements' photographs from his
6 inspection of the roofs.

7 How big are these roofs?

8 **A** They vary in size, but you gave me Building 5
9 as an example, and it is about 7800 square feet of
10 roof surface. I think the largest one is a little
11 over 9,000 square feet, and there are one or two
12 that are less than 7800.

13 **Q** You could take that surface area and have a
14 rough approximation of the number of shingles
15 likely on those?

16 **A** Yes.

17 **Q** What is that about?

18 **A** About 5,000.

19 **Q** Let's take a look at Building 5. In your
20 review of Mr. Clements' photographs, what did you
21 find he inspected as far as the shingles on
22 Building 5?

23 **A** He, apparently, looked at six fasteners. He
24 found four with no problem, and two that were
25 overdrawn.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **Q** This is one of the four shingles that he
2 looked at?

3 **A** Sorry?

4 **Q** Is this one of the shingles he looked at
5 here?

6 **A** Apparently so. He marked it. He marked the
7 location of the nails and indicated "OD," which
8 means overdriven.

9 **Q** So this is one of the nails he reported that
10 was overdriven?

11 **A** Yes.

12 **Q** And in this shingle, Building 5, we have two
13 ODs?

14 **A** Same condition.

15 **Q** So this is the nail here?

16 **A** It is a little hard to see in that
17 photographs, but that is it.

18 **Q** This is the one reported to be underdriven?

19 **A** That one is underdriven.

20 **Q** Third of fourth shingles of Building 5 is
21 this one?

22 **A** Yes.

23 **Q** And is this an example of what he reported as
24 being an overdriven nail?

25 **A** Yes.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **Q** And this is the fourth of the fourth shingle.
2 This is a measurement he conducted on some nails in
3 that shingle. This is where the nail is, and this
4 is where he says it should be, agreed?

5 **A** Yes.

6 **Q** And a nail on that shingle --

7 **A** Yes.

8 I think I used this yesterday -- not these
9 photographs, but I used the concept of a person
10 putting on shingles working outdoors, eight hours a
11 day, using a nail gun. He knows, as I know, that
12 the exact and correct location of every nail is to
13 be driven to the surface of the shingle. That is
14 the ideal world. It doesn't happen.

15 If we apply that requirement, based on my
16 experience in looking at roofs, we can probably
17 take a significant number of roofs off in Horry
18 County because you will find overdriven nails on
19 virtually every roof you go to. I'm sure they are
20 on my house, and I bet they are on your house.

21 These shingles have been there, with the
22 exception of a few blow-offs, during Hurricane
23 Matthew, I believe it was. Other than that, these
24 shingles have reached their useful life. It is
25 time to replace this roof.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 I don't know of anything that has been
2 reported related to roof damage by water intrusion.
3 If there is, I haven't seen it.

4 Q So if you are inspecting a roof and you see
5 some nails like the ones that Mr. Clements reported
6 at Building 5, a handful of shingles on roofs that
7 are 22 years old, do you agree that that is grounds
8 for needing to remove and replace all of the
9 shingles in that building?

10 A Not at all. I don't think it sets up a
11 requirement that says you need to pull off
12 perfectly good shingles because you have some
13 overdriven nails.

14 Q This is one example of Building 5. We don't
15 need to go through all nine buildings, but what we
16 found in Building 5, is that pretty representative
17 of what Mr. Clements found in other buildings as
18 well?

19 A Correct.

20 Q What is the repair recommendation for the
21 triple attachment?

22 A Again, Mr. Clements is recommending that all
23 of the trim be removed.

24 Q Let's talk about the trim. The white pieces
25 of board around the window, is that trim?

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **A** There is a number of components in that
2 photograph. That is them. If you look at the
3 transition from the deck to the building, there is
4 a vertical white board, and that's trim. Around
5 the windows is trim. There is other pieces of trim
6 around the posts there on the columns of the deck.

7 So there is a lot of trim on this building --
8 these buildings.

9 **Q** Did you hear Mr. Spencer testify earlier this
10 week about trim replacement that was performed?

11 **A** Yes.

12 **Q** And so does it appear that the component that
13 was replaced as part of the 2010 repairs is the
14 type of thing we're talking about here with the
15 trim that Mr. Clements is calling to be replaced?

16 **A** According to their record, and these are from
17 their records.

18 **Q** And what does -- what did Mr. Clements
19 identify as to the reason why he thinks all the
20 trim should be replaced?

21 **A** He's applying the 16-inch rule. I don't know
22 that is applicable, because on a vertical trim at
23 the window, there is a solid board behind the trim.
24 There is not studs placed at 16 feet vertically.
25 If you remember all of those studs that we looked

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 at earlier on a photograph, there is multiple studs
2 around windows. So this vertical board is,
3 basically, going to be against those studs.

4 Q Some of the trim is going up the building
5 this way?

6 A Right.

7 Q And if a stud board is going up the same
8 direction, it is going to be -- all of the nails
9 are going to be on that stud, regardless of how far
10 apart the nails are?

11 A Exactly.

12 Q How many trim board fastener measurements did
13 you find in Mr. Clements' materials you reviewed?

14 A In reviewing his file, we found that he took
15 off and measured nine of the trim boards.

16 Q Is this an example of one?

17 A This is Building 1, and you can see the
18 spacing 15, 5, 12, 15, 14, and so forth.

19 Q So a lot of those are lower than 16 inches,
20 so that is more nails than if he's placing them
21 every 16 inches, right?

22 A In this case, the only one that is greater
23 than 16 is 24.

24 Q There is another example?

25 A Same.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **Q** 12 inches, 18 inches, 14 inches apart?

2 **A** Yes.

3 **Q** Do you think that all of the trim needs to be
4 removed and replaced?

5 **A** No. I think there is trim that needs to be
6 replaced, just as the HOA did some time ago.

7 **Q** For what reason is that?

8 **A** Again, because of the lack of caulking and
9 painting. Depends on the trim that is used,
10 whether it is wood-based trim, cement-based trim.
11 I think Mr. Clements mentioned possibly some of the
12 trim was PVC.

13 I don't know what materials the HOA used when
14 they took off trim, but we found some areas out
15 there that the trim is damaged and should be
16 replaced. It is not something I recommend that we
17 include in a repair scope of work.

18 **Q** Is there two or three different types of
19 trim?

20 **A** Apparently so. I wouldn't have been
21 surprised -- what is called MDF, it's a medium
22 density fiberboard. It has a wood base. There is
23 trim that is cement-based, which is Hardie trim.
24 And then, apparently, Mr. Clements found in his
25 review some PVC trim.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 PVC is very expensive. I would love to build
2 my house and put PVC on it because I wouldn't have
3 to worry about it. It is very expensive, but it
4 will last, but it's not commonly used in every day
5 construction.

6 Q The MDF trim, is that made of wood?

7 A MDF is a fiber-based product.

8 Q Does it need to be repainted?

9 A Yes.

10 Q How often?

11 A Paint, generally, is going to last -- good
12 paint, and a good paint job, should last five to
13 seven years.

14 Q If you don't repaint the MDF trim, what can
15 happen?

16 A Like any other property, if you don't paint a
17 wood-based product, you will get some water
18 intrusion, the fibers do swell, and they begin to
19 break apart.

20 Q So you found some areas of the MDF trim --

21 A I found some areas where the trim should be
22 replaced.

23 Q Did you find some MDF trim that does not need
24 to be replaced?

25 A Much of it does not.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **Q** What did you do to investigate the MDF trim,
2 whether or not it needs to be replaced?

3 **A** We took moisture readings on the trim, and
4 after that, it was visual examination.

5 **Q** And how many moisture readings in the trim do
6 you have?

7 **A** I think we were in almost a thousand.

8 **Q** How many did you find where you thought the
9 trim should be replaced?

10 **A** I think there was six that was greater than
11 20 percent. And 20 percent, for most people that
12 are measuring moisture in wood components, that is
13 getting a little bit to the borderline. Actually,
14 a 19 is a borderline. It does not mean that you
15 have a problem, it just means that you need to be a
16 little more sensitive to what is there.

17 **Q** So the MDF trim is what we're talking about
18 that needs the paint?

19 **A** You need to paint all of the trim. Just like
20 painting the lap siding, at some point you need to
21 paint.

22 **Q** Who is Terracon, and how are they involved in
23 this?

24 **A** Terracon is an engineering testing company.
25 They are nation-wide. They have an office here in

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 the Myrtle Beach area. They have one in
2 Charleston, Greenville, Columbia. This is one --
3 one of the field notes that they made.

4 I think if you remember Mr. Clements made
5 some comment about H2L hiring a firm that they did
6 not know what they were doing. Terracon does know
7 what they are doing. They are doing exactly what I
8 directed them to do. I directed them to take
9 measurements in the trim. They made notes on their
10 field notes, as indicated here, that here is a
11 reading, and it is not in wood.

12 So they were cognizant of what material was
13 there. I didn't ask them to make a note whether
14 they found other stuff. Quite frankly, I wasn't
15 aware that any PVC existed. I didn't see any. I
16 doubt, seriously, it was put on originally. I
17 don't know.

18 But Terracon technicians are capable of doing
19 work. They've done it before.

20 Q Let me make sure I understand what we are
21 looking at. This is a photograph of the back of a
22 building at Wedgewood?

23 A Yes.

24 Q And what are these numbers here?

25 A These are field notes from the Terracon

*CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!*

1 technicians, and it is where they took the
2 readings, and where they wrote them down.

3 Q What are these numbers up here?

4 A I think it relates to this column over here.

5 Q This is showing where the measurement was
6 taken?

7 A You are in the area of 22. So if you look
8 over at 22, it is 19 percent.

9 Q But, generally speaking, this is showing
10 where the measurements were taken?

11 A This is their method of saying, here is where
12 I measured, this is what I found.

13 Q And Terracon -- you employed Terracon to
14 scour these buildings to take all of these moisture
15 readings?

16 A We were there. We had two H2L people on the
17 job, Mr. Lewis, myself, and Mr. Chauf (phonetic).
18 We were doing pull tests, taking brick off of the
19 building, and so forth.

20 I just didn't have the technicians that were
21 available to come to the job, so we employed
22 Terracon, who are local. I've used them before for
23 other reasons. They are knowledgeable engineers,
24 and in this case technicians. It doesn't take an
25 engineer to read a moisture reading.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **Q** Mr. Carter, there is a document you have in
2 front of you. If we can go through Defendant's
3 108. You prepared a repair cost estimate, a scope
4 of repair?

5 **A** Scope of repair, yes.

6 **Q** And you recognize what this is?

7 **A** This is the --

8 **Q** This Defendant's 108 is the H2L's scopes of
9 repairs.

10 **A** That's correct.

11 MR. DesCHAMPS: I'm sorry, Adam. Could you
12 go back to the PowerPoint?

13 **Q** **(BY MR. DesCHAMPS)** Okay. We've talked about
14 your repairs to the exterior walls with the
15 windows, at the brick heads, and below the windows,
16 correct?

17 **A** Correct.

18 **Q** What are the other repair issues that you
19 identified and put in your scope?

20 **A** As we talked yesterday, the lintels over the
21 windows are not probably fastened. That would be
22 one of the things that when we take the brick off,
23 we want to repair that.

24 The metal fascia is on the rake of the roof,
25 generally, and Mr. Clements found that was not

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 nailed properly. We would renail that.

2 The gypsum board there is a fireproofing
3 board under the band boards around the building.
4 When we took off -- and when Mr. Clements took
5 off -- some of the band boards, we found missing
6 areas of the gyp board. That's a safety issue. It
7 gives some protection if there is a fire. The
8 whole intent is not to keep the building from
9 burning, but to keep the building from burning so
10 quickly that the people can't get out safely.

11 **Q** How much did you find missing in an area?

12 **A** It varied, but you could find a gap that is
13 12 inches, 16 inches. Why it was that way? I
14 don't know.

15 **Q** And in the area you are looking at, it would
16 span 12 feet across or something?

17 **A** Probably more. It ran horizontally. It's
18 that band board, in particular, at the walkways.
19 Some of the areas are pretty long. We obviously
20 did not remove it all.

21 **Q** Okay. And let's walk through the repair
22 scope.

23 **A** Mr. Clements found that the concrete paths
24 and steps don't meet code, and we agree. From a
25 standpoint of the seriousness of it, they've been

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 there now 22 years, but it doesn't mean that it's
2 right. I think the thing that helps here is there
3 is not that many steps from the walkway at the
4 building down to the concrete paths.

5 The issue of requiring that risers be within
6 a certain standard, as each of you and I walk down
7 a set of stairs, our brain begins to tell us, You
8 can expect this distance to be that all the way
9 down.

10 Q There is a couple concrete steps?

11 A These are two risers, and the two risers --

12 Q The code said they should be, roughly, the
13 same height?

14 A Within three-eighths of an inch?

15 Q And for some of them you found them to be a
16 couple inches?

17 A There is only two. One is seven-and-a-half
18 and the other is five -- I can't remember, but....

19 Q So you have an inch variance?

20 A Yeah, and they just need to be repaired.

21 Q Handrails of the exterior stairs?

22 A We found a number of conditions there. There
23 is evidence that some of the handrails had been
24 taken off and put back in. By whom, I have no
25 idea. But there is evidence of holes where the

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 brackets had been fastened and moved, and now there
2 is new holes with brackets fastened to the
3 building.

4 As a matter of fact, when we were there,
5 those handrails had not been replaced, and to my
6 knowledge, maybe still haven't.

7 I think the issue Mr. Clements was making is
8 that some of the handrails are less than an
9 inch-and-a-half. Again, it is a distance that has
10 been developed over years that grasping an
11 inch-and-a-half handrail and having an
12 inch-and-a-half space between your hand and any
13 part of the building is a reasonably comfortable
14 and safe distance.

15 Q Mr. Carter, if this is the side of an area
16 and you have a handrail here, you are measuring the
17 distance from the handrail to what is attached to?

18 A From the inside of the rail to the wall or
19 the column.

20 Q When you go to grab it --

21 A Yes. If it is too close, you can't get your
22 hand in there.

23 Q So your repair scope is going to extend some
24 of those handrails out?

25 A It does, yes.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **Q** The height of the stairs, the stair risers of
2 the buildings, is that part of your repair scope?

3 **A** There is a different issue. Keep in mind
4 that these stairs are pressure treated lumber.
5 They are in an outdoor environment. They are
6 subjected to cycles of wet and dry, hot and cool.
7 The manufacturer pressure treated lumber makes a
8 comment in their publication that normal use for
9 pressure treated lumber should be in the 15-year
10 range; however, if it is in an environment where
11 you go through repeated wet and dry cycles, the
12 life expectancy may be in the 10-year range. These
13 stairs are 22 years old and they need to be
14 replaced.

15 That being said, the stairs were built with a
16 variance greater than code. From a code
17 perspective, the stairs do not meet the code.

18 **Q** And the reason is because some of the heights
19 of the stairs are different from the height of
20 another one?

21 **A** Again, I think you all heard Mr. Clements
22 testify that the greater variance is three-eighths
23 of an inch, so as the risers from one landing on
24 the next, the greatest difference you can have in
25 risers is three-eighths of an inch. It could be a

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 sixteenth, an eighth, but it cannot be greater than
2 three-eighths of an inch.

3 Q Where on the steps was the largest
4 measurement of the stair risers?

5 A Generally, at the top and the bottom.

6 Q Is there a metal piece connected to that
7 carpet?

8 A As I remember, there is, but you are taxing
9 my old brain this morning.

10 Q Mr. Carter, in your opinion, if the HOA
11 performs the repairs that you call for on these
12 buildings and perform the maintenance at the
13 membrane at the walkway that we talked about
14 yesterday, if they made the repairs you call for,
15 will the Wedgewood owners and HOA have a good,
16 functioning, performing, and safe building?

17 A I think the key word there is make the
18 repairs necessary and correctly, and then maintain
19 those. If you do that, I see no reason that these
20 buildings -- these buildings would not function as
21 they are intended and function very well.

22 Q Were you here yesterday when Mr. Jeremy
23 Martin testified?

24 A Yes.

25 Q Did you hear him describe the levels of

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 supervision that Centex employed for subcontractors
2 at the time these were built?

3 **A** Yes.

4 **Q** And in your experience and opinion, do those
5 measures meet or exceed industry standard for
6 general contractors?

7 **A** I don't know that there is an industry
8 standard. Obviously, the general contractor is
9 responsible for the building and needs to provide
10 adequate supervision on the job. I don't know what
11 contract they used here. If they used the standard
12 AIA contract, it requires a general superintendent
13 to be on the job during construction.

14 Most construction firms will have at least a
15 superintendent and other people on job as necessary
16 to provide help to the subs, answer questions, and
17 generally supervise their work.

18 I've heard this, Well, you need to supervise
19 them more closely. Who are you going to supervise?
20 If you have 250 brick masons working, are you going
21 to have a supervisor on 250 masons? I'm watching
22 this mason, can I watch that one and that one and
23 that one? No. So we have to have a person on each
24 one of them watching what they are doing. That is
25 not the real world.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **Q** Did you hear Mr. Martin describe the
2 involvement that Hershel Morningstar and
3 Morningstar Consultants had in this project?

4 **A** I did.

5 **Q** In your experience, is it common for a
6 general contractor to hire a third-party inspector
7 to supervise and document and report on --

8 **A** Not in my experience, no.

9 **Q** That's going beyond and above what is normal?

10 **A** I don't think we ever did it on any of our
11 jobs, and we did a lot of work on a lot of
12 buildings from nuclear power plants to
13 manufacturing plants. I can't say we never did it,
14 but, in general, we did not do it, and we were an
15 international construction firm doing a billion
16 dollar-plus a year work.

17 **Q** Mr. Carter, in your opinion, any of the
18 issues you found out there that you are calling to
19 be repaired, is that something you think would rise
20 to the level of gross negligence or recklessness on
21 the part of the builders?

22 **A** Not at all. I mean, there is problems there.
23 There is problems on every building. It is the
24 nature of the beast.

25 Again, I think you have to apply a

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 common-sense approach to looking at these problems.
2 Was it intentional? As I mentioned yesterday, I've
3 worked with construction workers generally most of
4 my working life. I have probably found less than
5 five that I thought should work at something else,
6 and I've had several of construction workers. They
7 are dedicated people.

8 I, personally, put on one roof, and I'll
9 never do it again. I've tried to lay brick, and
10 you would not want me to lay the brick on your
11 house. I consider that an art, not a skill. It's
12 tough work, and you are working -- we have the
13 comfort of this room, good lighting, no rain. They
14 are out there in conditions that are harsh, and in
15 some cases, hot, cold, wet, dark.

16 So I don't see the level of gross negligence
17 anywhere on this job.

18 MR. DesCHAMPS: Just one moment, Your Honor.
19 May I approach my co-counsel?

20 (A brief pause in the proceedings.)

21 MR. DesCHAMPS: Thank you. Please answer any
22 questions defense may have.

23 **CROSS EXAMINATION**

24 **BY MR. CONNELL:**

25 **Q** Mr. Carter, have you ever been in the

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 military?

2 **A** I was in the military about six months.

3 **Q** Do you know what a general is?

4 **A** Yes.

5 **Q** Everybody stand at attention when the general
6 came in the room?

7 **A** Absolutely.

8 **Q** Is that why we call these people "general
9 contractors," because they are in charge and
10 responsible for everything; isn't that correct?

11 **A** The general contractor is responsible for the
12 project, right.

13 **Q** So Centex is responsible, is it not, for
14 everything on that job?

15 **A** No question.

16 **Q** They are responsible for every nail to every
17 board to every roof shingle, correct?

18 **A** Yes.

19 **Q** And so the buck stops there, right? If you
20 are the general contractor and making millions of
21 dollars on a property and selling it to homeowners
22 putting mortgages on it, that is something that the
23 general contractor and developer is responsible
24 for, correct?

25 **A** I don't disagree.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **Q** All right. So your comments about it's hot,
2 it's dirty, the general contractor is making a lot
3 of money on these projects, aren't they?

4 **A** I can't answer that.

5 **Q** Centex is a national homebuilder that does
6 this on a regular basis, correct?

7 **A** I assume so, yes.

8 **Q** I thought I heard a comment that you worked
9 on nuclear power plants?

10 **A** Yes.

11 **Q** And there were code requirement there, too?

12 **A** There was more code and restrictions on a
13 nuclear power plant than any other project I've
14 ever been involved in.

15 **Q** And everything had to be to specification?

16 **A** That is true, in most every project.

17 **Q** All right. So in this particular case, this
18 was going to be a brand new building that
19 homeowners could buy; isn't that correct?

20 **A** Absolutely.

21 **Q** And aren't they entitled to a brand new
22 building?

23 **A** Yes.

24 **Q** Aren't they entitled to a building built to
25 code?

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **A** Yes.

2 **Q** And so I'm a simple guy, not an engineer, so
3 tell these jurors, it is your opinion, is it not,
4 that to a reasonable degree of certainty that these
5 buildings were not built according to the building
6 code, correct?

7 **A** There are examples out there that the work
8 did not meet certain standards. A standard is
9 incorporated into the code. If it doesn't meet
10 that standard, then technically it is a violation
11 of the code.

12 **Q** Technically, the code is the law, is it not?

13 **A** The code is the requirement.

14 **Q** And the homeowners are entitled to get what
15 they paid for, which is a to-code-built home?

16 **A** There is no question about that.

17 **Q** And they didn't get that in this case,
18 correct?

19 **A** Not in every case, no.

20 **Q** And, in fact, he or she didn't get a home
21 that was built pursuant to construction industry
22 standards either; isn't that correct?

23 **A** In some cases that's correct.

24 **Q** And he or she didn't get a building that was
25 built according to manufacturers' specifications?

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **A** In some cases that is right.

2 **Q** It is in a lot of cases on this building,
3 isn't it?

4 **A** I can't....

5 **Q** Let's go through some of them. You ever buy
6 a car?

7 **A** Yes.

8 **Q** And when you buy a car, do you expect it to
9 be right?

10 **A** Yes.

11 **Q** Expect it to be brand new?

12 **A** Yes, if it is a new car.

13 **Q** Okay. And you don't want to have parts on a
14 car that aren't brand new genuine parts, correct?

15 **A** I would not expect them to be. I have no
16 idea whether they are or not.

17 **Q** You don't want after-market parts on a brand
18 new car, right?

19 **A** That is my preference.

20 **Q** So a homeowner shouldn't settle for
21 after-market parts on a brand new home that she's
22 going to put a 20 or \$30,000 mortgage on, correct?

23 **A** I don't consider the products on these
24 buildings to be after-market products.

25 **Q** Let's talk about that. You would agree with

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 me, would you not, that if you are the general
2 contractor on any building, that one of the
3 responsibilities is to make sure that you have
4 licensed subcontractors?

5 **A** Not necessarily.

6 **Q** You don't think that is a problem?

7 **A** I don't think it is a requirement.

8 **Q** Now, Mr. Carter, didn't you tell me in your
9 deposition that you wouldn't hire unlicensed
10 contractors?

11 **A** I personally would not.

12 **Q** Yes, sir. You did say that?

13 **A** I did, yes.

14 **Q** So you would never hire an unlicensed
15 contractor to work on your job?

16 **A** Well, our firm had a requirement that the
17 subcontractor must be licensed and bonded. There
18 are subcontractors that may be licensed, but they
19 can't get bonds.

20 **Q** All right.

21 **A** But that's my company. That doesn't mean it
22 is a requirement on the rest of the industry.

23 **Q** You are aware, are you not, that the framing
24 contractor and the brick mason on this job were not
25 licensed?

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **A** I do not know that.

2 **Q** Have you seen documents in evidence that show
3 that?

4 **A** I don't remember seeing that.

5 **Q** Would you like to see them?

6 **A** No, sir, I don't have to see them.

7 **Q** Would you take my word that they are both
8 unlicensed?

9 **A** I have no reason to believe it or disbelieve
10 it.

11 **Q** So let's talk about the framing contractor.
12 Hardie board is a part -- is a siding?

13 **A** Hardie board makes a number of products. Lap
14 siding is one of them, yes.

15 **Q** And Hardie board siding was used on this
16 property; is that correct?

17 **A** As far as I know, yes.

18 **Q** And the Hardie board siding that was used on
19 this property, Hardie board recommends that you use
20 a certain nail; is that correct?

21 **A** They have certain nails that are acceptable.

22 **Q** And this property was -- did not use the
23 manufacturer's recommended nail?

24 **A** I do not know what nails were used on this
25 and how many.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **Q** But you do not believe that Hardie
2 recommended nails for use, correct?

3 **A** I do not know that.

4 **Q** You have not worked as a hands-on engineer
5 for over ten years; isn't that right?

6 **A** I'm working on it right now -- not on this
7 project.

8 **Q** You have not worked as a hands-on engineer on
9 any project in ten years. Didn't you say that in
10 your deposition?

11 **A** I don't remember saying that. If I did, it's
12 what I said.

13 **Q** And you said in your deposition that you try
14 to keep up with building codes; isn't that correct?

15 **A** Absolutely.

16 **Q** And you said that because that is the law,
17 and you want to keep up with the law, right?

18 **A** In the design business and the construction
19 business, you need to be aware of the current code
20 because the code changes every three years.

21 Obviously, the code that was applied at a
22 particular building, you need to be aware of what
23 that code is.

24 **Q** All right. And I believe you said in your
25 deposition that you had worked for Centex since

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 2016?

2 **A** Worked for?

3 **Q** Well, you are a hired consultant engineer for
4 them since 2016?

5 **A** I have worked on Centex projects as a
6 consultant, yes.

7 **Q** And those include projects in the Barefoot
8 Resort?

9 **A** That's correct.

10 MR. DesCHAMPS: Can we approach please?

11 THE COURT: You may.

12 (Whereupon, a bench conference was had out
13 of the hearing of the jury.)

14 MR. DesCHAMPS: He's trying to go into these
15 other lawsuits.

16 MR. CONNELL: I'm just asking which ones he
17 worked on. He's an expert. I'm going to cross
18 examine him on anything he's done.

19 THE COURT: Can you say it without using
20 lawsuits relating to it?

21 MR. CONNELL: I won't use that word because
22 you told me not to. I'll use the names of the
23 projects.

24 THE COURT: Other projects.

25 MR. HILDEBRAND: Your Honor, he's going

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 through the back door of what he --

2 THE COURT: But he's not going to say
3 "lawsuits," so I'm going to let him do it. The
4 reason I'm allowing him to do it is I think it goes
5 to show that he's done a lot of work for Centex and
6 that he may be biased in his opinions, potentially.
7 That is why I'm allowing him to do it.

8 MR. HILDEBRAND: Your Honor, but I would like
9 to make a proffer because -- on the record as
10 well -- that for all of the reasons that we've
11 stated before, this interjects other projects that
12 are irrelevant. We've been through that ad
13 nauseam, and you ruled on that. If he wants to say
14 that he's done other work for Centex, that is no
15 problem, and that he's looked at other buildings.

16 THE COURT: That's what he is going to say.

17 MR. HILDEBRAND: Nothing about Barefoot?

18 MR. CONNELL: I'm going to ask him about each
19 one of the Barefoot projects. It goes to bias.

20 MR. HILDEBRAND: See, that's where he says --
21 he said, I'll ask him about every one of the
22 Barefoot projects.

23 MR. CONNELL: I won't say "lawsuit." I'll
24 say, You looked at project X, Y, and Z. He's
25 biased with the amount of work he's done for

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 Centex. I think, clearly, under the rules it is
2 allowed.

3 MR. HILDEBRAND: That is entirely different.
4 He's trying to go through the back door of what you
5 have already ruled on.

6 THE COURT: Do we need to do this as a
7 proffer? I don't know what you are going to ask.

8 MR. CONNELL: I'm not going to use the word
9 you told me not to.

10 MR. HILDEBRAND: He just told me that he's
11 going to say, I'll ask him about every one of the
12 projects in Barefoot Landing. You already ruled he
13 can't do that.

14 MR. CONNELL: It is offered for a different
15 point. It goes to the bias of the witness, the
16 amount of work he has done --

17 MR. DesCHAMPS: It is going to be what he's
18 trying to get through --

19 MR. CONNELL: Bias is clearly allowed.

20 MR. HILDEBRAND: Well, he could say --

21 THE COURT: In other words -- are you going
22 to go so far as to say that you find the same kinds
23 of problems?

24 MR. CONNELL: No.

25 THE COURT: Okay. As long as you don't do

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 that.

2 THE BAILIFF: your honor, the jurors need to
3 use the restroom.

4 (The following was had in open court.)

5 THE COURT: Okay. All right. Ladies and
6 gentlemen, let's take a break.

7 Do not discuss the case, it wouldn't be
8 appropriate, and we'll be right back with you.

9 (Whereupon, the jury exits the courtroom at
10 10:31 a.m., and the following was had out of the
11 presence of the jury.)

12 THE COURT: Sir, you are welcome to step
13 down, just don't talk about your testimony. Let's
14 take a break.

15 (A recess was taken.)

16 THE COURT: I want to do a proffer of what
17 you were going to ask him.

18 MR. CONNELL: Yes, ma'am.

19 THE COURT: This is a proffer outside of the
20 presence of the jury.

21 **PROFFER TESTIMONY**

22 **BY MR. CONNELL:**

23 **Q** You indicated in your deposition and previous
24 testimony that you worked at the following Barefoot
25 projects: River Crossing?

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **A** Yes.

2 **Q** Havens?

3 **A** Yes.

4 **Q** Greenbriar?

5 **A** Yes.

6 **Q** Tanglewood?

7 **A** Yes.

8 **Q** Woodlands?

9 **A** Yes.

10 **Q** In this case, Wedgewood?

11 **A** Yes.

12 **Q** Willow Bend?

13 **A** Correct.

14 **Q** Clearwater Bay?

15 **A** Yes.

16 MR. CONNELL: That is all I'm going to ask
17 him. It goes to case called *Yoho v. versus*
18 *Thompson*.

19 THE COURT: That's it?

20 MR. CONNELL: I am not going to go any
21 lawsuits, you told me I couldn't do it, but I am
22 going to try to show bias with the witness with all
23 the work he's done.

24 THE COURT: Okay. And when we get -- if we
25 get to the punitive damages aspect, we can talk

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 about it.

2 MR. CONNELL: Yes, ma'am.

3 THE COURT: Anything else?

4 MR. HILDEBRAND: We strongly object to that.

5 THE COURT: I'm sure you do.

6 MR. HILDEBRAND: We discussed it ad nauseam.

7 He doesn't need to identify what the names are. He
8 can certainly ask Mr. Carter if he's worked on
9 other projects for Centex to establish bias that
10 he's been paid a lot of money and has worked on a
11 lot of other projects, but that has nothing to do
12 with the probative value of his bias. He's trying
13 to ask him about projects in Barefoot, and the
14 clear implication is that the same problems that
15 are being alleged in this lawsuit, are what he
16 worked on in the other things. That is why he's
17 trying to introduce those things, not to show
18 simply he made money and worked for Centex.

19 I'll stipulate that he's worked on other
20 single family homes. He's worked on a lot of
21 things. But they are not specifying by name the
22 other projects in Barefoot. It is highly
23 prejudicial.

24 THE COURT: I don't think there is the
25 implication. I think it goes to whether or not

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 there is any bias. And I think it would be the
2 same thing for Mr. Clements and how many times he
3 worked for plaintiffs, right?

4 MR. CONNELL: Right. How much he made from
5 plaintiffs.

6 THE COURT: I mean, that is what we talked
7 about, because I'm sure his bill is huge.

8 MR. CONNELL: Right. Bias and credibility is
9 always what the jury has to hear about.

10 MR. HILDEBRAND: But that's it? Just that
11 simple question is all he's going to ask?

12 MR. CONNELL: Just what I said.

13 THE COURT: Of course, if Mr. Carter opens up
14 a door, and then we have a Pandora's box.

15 MR. HILDEBRAND: Just answer that one
16 question.

17 MR. CONNELL: Wait a minute now. He doesn't
18 get to coach the witness.

19 MR. HILDEBRAND: I don't want him to open the
20 door by inadvertently --

21 THE COURT: No. No. Again, that would be
22 his problem, but he's on the stand, so.

23 MR. HILDEBRAND: But it is --

24 THE COURT: You are sitting here trying to
25 tell your expert what to say, and you can't do

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 that.

2 Okay. Ready to bring the jury in?

3 MR. CONNELL: Yes, ma'am.

4 THE COURT: Bring the jury in.

5 (The jury enters at 10:50 a.m., and the
6 following is heard in the presence of the jury.)

7 THE COURT: Welcome back. I understand the
8 clerk's office is going to order you lunch, so I
9 appreciate that very much.

10 Mr. Connell, you can continue.

11 **CROSS EXAMINATION (CONT.)**

12 **BY MR. CONNELL:**

13 **Q** So you have worked at other Barefoot Resort
14 projects; isn't that correct?

15 **A** Yes.

16 **Q** For Centex?

17 **A** Yes.

18 **Q** And they include River Crossing?

19 **A** Yes.

20 **Q** And they include Havens?

21 **A** Yes.

22 **Q** And they include Greenbriar?

23 **A** Right.

24 **Q** And they include Tanglewood?

25 **A** Correct.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 Q And they include Woodlands?

2 A Yes.

3 Q This project, Wedgewood?

4 A Yes.

5 Q Willow Bend?

6 A Yes.

7 Q And Clearwater Bay?

8 A Yes.

9 Q And you would agree with me that you earn
10 substantial income from the work you have done from
11 Centex?

12 A I certainly get paid for my work.

13 Q I understand that. And 95 percent of your
14 work has been done for homebuilders, national
15 builders, and defendants; is that correct?

16 A Say again?

17 Q 95 percent of your work, of what work you are
18 doing currently, has been done for defendants,
19 correct?

20 A That's probably a reasonable percentage, yes.

21 Q So if I showed you your deposition, Page 27,
22 would you agree that 95 percent of your work is
23 done with defendants?

24 A If that's what I said, yes.

25 Q Now, you hold yourself out in this case as an

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 expert in repair cost, correct?

2 **A** No.

3 **Q** Well, scope of repairs; isn't that right?

4 **A** I have the expertise to define the scope of
5 work into a level that would allow the contractor
6 to estimate the cost. It is not a design repair.

7 **Q** I think you've done this numerous times over
8 the years?

9 **A** Yes.

10 **Q** And H2L, what size company is that?

11 **A** We have about 16, 18 people.

12 **Q** And you've offered repair and design
13 testimony all over South Carolina; isn't that
14 correct?

15 **A** Yes.

16 **Q** In other cases, too?

17 **A** Yes.

18 **Q** And, in fact, H2L has been sued for that
19 before, haven't they?

20 **A** We have.

21 **Q** And it got sued in Beaufort County, Windsor
22 Place Horizontal Property Regime versus Wise
23 Construction and H2L?

24 **A** I was not directly involved, no.

25 **Q** Do you remember the allegations that H2L had

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 underbid on a reconstruct and remediation project?

2 **A** Again, I wasn't involved in it. I don't know
3 the details.

4 **Q** So who was involved in that project?

5 **A** I believe it was Mr. Lewis, may have been
6 Mr. Still.

7 **Q** And you understand in that particular lawsuit
8 that was filed against the company, the same type
9 of remediation that's going on in this case, is
10 what you were sued for in that case?

11 **A** Again, I'm not familiar with the details.

12 **Q** You've never seen any copies of the summons
13 and complaint or any other records?

14 **A** Oh, I'm sure I saw some of the documents.

15 **Q** Your deposition was not taken in that case?

16 **A** Not that I remember, no.

17 **Q** So you had no involvement in it then, right?

18 **A** I, obviously, am involved, but I did not get
19 into the details of that project. We talked, and I
20 assume most all the employees of the company talk.
21 But to sit down and go through the details of it,
22 no.

23 **Q** Did you know that in Windsor Association that
24 there were, apparently, several remediations and
25 that your firm made some repair -- scope of repair

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 in those cases?

2 **A** Again, I don't know.

3 **Q** Did you know that the same issues in this
4 case, evidence of water intrusion in buildings, was
5 at Windsor in Beaufort County?

6 **A** Again, I don't know the details of that
7 project or that case.

8 **Q** And Mr. Lewis, he is in the courtroom? Is
9 that him?

10 **A** Mr. Lewis is in the courtroom, yes.

11 **Q** He is here to testify this afternoon?

12 **A** He is supposed to testify this afternoon.

13 **Q** And you and he did not do any joint work in
14 the Windsor case; is that right?

15 **A** I don't remember doing anything on the
16 Windsor place.

17 **Q** Did you know the allegations in that
18 complaint was that you were supposed to have
19 full-time representation at Windsor with the
20 contractor as the remediation process went forward?

21 **A** I don't know that.

22 MR. HILDEBRAND: Objection. This is a bit
23 far.

24 THE COURT: I'm going to let him do a little
25 bit.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 MR. CONNELL: I'm not going to go too far,
2 and I'm sure you will calm me down if I do, so.

3 Q (BY MR. CONNELL) And that case is over?

4 A I don't know.

5 Q Now, you would agree with me, would you not,
6 that the code is pretty much the Bible for people
7 who build buildings, general contractor,
8 developers, engineers; is that right?

9 A The code is the document that all engineers
10 and contractors use in the construction industry,
11 yes.

12 Q And you would agree with me, would you not,
13 that if an individual owner of Wedgewood wanted to
14 sell their unit, they would have to disclose to the
15 next person --

16 MR. DesCHAMPS: Objection, Your Honor.

17 MR. CONNELL: I haven't gotten my question
18 out yet.

19 THE COURT: Let him repeat the question one
20 more time.

21 Q (BY MR. CONNELL) If they wanted to sell their
22 unit to me or you or someone else, they would have
23 to disclose the current construction and code
24 defects to those homeowners under the law; isn't
25 that right?

CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!

1 MR. DesCHAMPS: Calls for speculation. They
2 can ask that from the guy who was here and was an
3 owner, but Mr. Carter doesn't know.

4 THE COURT: If he knows, then he can answer.

5 Q (BY MR. CONNELL) South Carolina has a
6 property disclosure law; does it not?

7 A I do not know.

8 Q You don't know anything about that?

9 A No.

10 Q And I think in your deposition you also
11 indicated that you didn't know whether or not
12 Centex was a developer or the contractor; is that
13 right?

14 A At the time, I wasn't sure, no.

15 Q And are you sure now?

16 A No.

17 Q And you indicated in your deposition that you
18 went to Wedgewood on June 19, 2019, correct?

19 A I believe that is correct.

20 Q September 19 and 20, 2019?

21 A Yes, I think so.

22 Q And you went on June 20, 2020?

23 A I believe that is correct.

24 Q I think you said in September you were there
25 for five days; is that right?

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **A** I don't remember exactly. It probably was
2 five days.

3 **Q** So you would admit, would you not, that you
4 were there off and on for four, five days?

5 **A** Yes.

6 **Q** And you would admit, would you not, that when
7 you left Terracon, there was no engineer there when
8 Terracon was doing its work that you told them to
9 do?

10 **A** I'm not aware that there was an engineer with
11 Terracon. I don't know. I asked for technicians
12 to do the work. One or more may have been an
13 engineer. I have no idea.

14 **Q** So you decided, did you not, where the test
15 cuts were going to be on the Wedgewood building?

16 **A** Test cuts, yes -- sorry, Mr. Lewis made some
17 decisions on that, I made some decisions, and
18 Mr. Shop (phonetic) made decisions.

19 **Q** I'm not an engineer, you are, but you had a
20 lot of test cuts in the flat part of the building?

21 **A** Correct.

22 **Q** So, again, I may not be an engineer, but it
23 seems like water runs downhill, right?

24 **A** It does.

25 **Q** So why didn't you do cuts all the way at the

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 bottom where the water would collect instead of
2 test cuts across the wall when you knew water
3 wouldn't collect there?

4 **A** One of the reasons we did it in other areas
5 is Mr. Clements made the comment that the WRB and
6 defects throughout the whole project. One of the
7 reasons for some of the tests is to look at and
8 find the conditions of the WRB. It had nothing to
9 do directly with whether there was water there or
10 not.

11 **Q** You didn't do any test cuts -- it looked like
12 to me -- underneath windows of the second floor,
13 did you?

14 **A** I can't recall exactly. I don't know.

15 **Q** We didn't see any photographs of it, did we?

16 **A** I don't know.

17 **Q** So the pull test that you've shown the jury,
18 that is not a test that is approved by the
19 engineering society, is it?

20 **A** I'm not aware whether it is or isn't.

21 **Q** Well, you know that you came up with that
22 test; did you not?

23 **A** I developed the testing mechanism. I did not
24 develop the pull test mechanism, no.

25 **Q** The mechanism of how you're going to apply it

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 to the building, you came up with that?

2 **A** Yes.

3 **Q** And you wrote a paper on that?

4 **A** Yes.

5 **Q** In part of your practice as a defense expert
6 95 percent of your time?

7 **A** Sorry?

8 **Q** As part of your practice in defending
9 contractors, developers, you came up with this pull
10 test on how you do it yourself, correct?

11 **A** Yes.

12 **Q** And you did not go to the ASTM board and say,
13 This is a test that I want to use, did you?

14 **A** I'm not required to do that.

15 **Q** I realize you are not required to, but you
16 didn't do it?

17 **A** I had no reason to do it.

18 **Q** Tell the jury, if you would, what ASTM is?

19 **A** American Standard Testing.

20 **Q** And what do they do?

21 **A** Material testing. They develop the testing
22 concepts for various materials.

23 **Q** I think of it like the Consumer Product
24 Safety Commission where they are going to test
25 something that people recognize across the country,

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 the ASTM?

2 **A** I would assume so, yes.

3 **Q** And in this test you just showed the jury, it
4 is not a test that is approved by the ASTM; is that
5 right?

6 **A** I have no idea.

7 **Q** Well, if it was, you would know about it,
8 wouldn't you?

9 **A** Not necessarily. I didn't submit it to them
10 for approval or disapproval.

11 **Q** You did not submit the pull test that you did
12 on the Wedgewood building to the ASTM society?

13 **A** I did not.

14 **Q** So that is cornered on testing; is that
15 right?

16 **A** I'm sorry?

17 **Q** That is just your theory on testing?

18 **A** I wouldn't call it "my theory." It is a
19 fairly simple process. There are other means of
20 doing what we did. I know another engineering firm
21 that is doing the same, and he developed -- or
22 someone in his firm developed -- a different rig,
23 if you will, of how to do it.

24 **Q** That is a good word, "rig."

25 **A** It is a test rig.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **Q** So let's talk, if we can, about your theories
2 in the case. You did not make any test cuts to
3 prove or disprove Ross Clements' theories, correct?

4 **A** I tested the building that determines whether
5 the siding on this building would meet the wind
6 code requirements.

7 **Q** You said you never made any test cuts to
8 prove or disprove Mr. Clements' theory of this
9 case?

10 **A** If that's what I said, that is what I said.

11 **Q** There is no doubt, without a question, that
12 these are original construction defects in this
13 case, correct?

14 **A** I think that is a correct statement, yes.

15 **Q** And you would agree with me, would you not,
16 that the 1997 building code was enforced and in
17 effect?

18 **A** That is the code that was in effect, yes.

19 **Q** And part of the 1995 building code is
20 something called the "energy code"; is that right?

21 **A** I'm not sure of that.

22 **Q** You've never looked at that?

23 **A** I've looked at the code and the energy code.

24 **Q** Is the 1995 energy code a part of the 1997
25 building code?

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **A** It may or may not be depending on whether the
2 county has adopted that code, that amendment.

3 **Q** I'll ask you if you have seen this before,
4 sir. Do you see that e-mail sent to you by your
5 partner, Mr. Lewis?

6 **A** Certainty.

7 **Q** Have you seen that before?

8 **A** Yes.

9 **Q** Is that an e-mail he sent to you?

10 **A** It is.

11 MR. CONNELL: We would like to offer that as
12 the next in line.

13 THE COURT: Without objection?

14 MR. DesCHAMPS: Okay.

15 THE COURT: Without objection.

16 (Plaintiff's Exhibit 9 marked and admitted.)

17 MR. CONNELL: Your Honor, this is the same
18 thing as the exhibit.

19 THE COURT: Thank you, sir.

20 **Q** **(BY MR. CONNELL)** Okay. So let's look at this
21 exhibit, if we could. It is an e-mail from
22 Mr. Lewis to you; is that right?

23 **A** It is.

24 **Q** And let's start by reading the first
25 sentence.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **A** You are asking me?

2 **Q** Yes, sir.

3 **A** Sorry, I didn't hear.

4 This is from Mr. Lewis. It is an e-mail, and
5 it begins: "BC," which is Bob Carter.

6 "Attached are two papers that I came across
7 this evening. It might be worth your reading. It
8 might be important to confirm, and if all buildings
9 were constructed compliant with the Good Cents
10 Program."

11 **Q** Next sentence, please.

12 **A** "If they were, or in the alternative, all of
13 the ones that were built to comply may have to be
14 addressed by someone."

15 **Q** All right. What is the next sentence say,
16 sir?

17 **A** "The someone would need to determine -- be
18 determined by legal mind."

19 **Q** So who is he talking about there?

20 **A** I have no idea.

21 **Q** Did you talk to him about the e-mail?

22 **A** We didn't have a deep discussion about it.
23 He sent it to me, I read it, looked at the
24 articles, that is about it.

25 **Q** So you had no discussion about the e-mail?

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **A** We had a general discussion about it, but not
2 in depth.

3 **Q** Did you have any discussion with the lawyers
4 about the e-mail?

5 **A** I have not.

6 **Q** You didn't contact the Centex defense team
7 about the e-mail that had been written by your
8 partner?

9 **A** I did not.

10 **Q** Let's read the next part where it says "for
11 buildings."

12 **A** "For buildings that were built this way, the
13 only fix, of which I am aware, involves removing of
14 all interior GBW -- gypsum wall board -- on
15 exterior wood stud walls, removing the vapor
16 barrier material, and repair of damaged studs,
17 sheathing. A costly affair."

18 **Q** All right. Now, isn't that exactly what
19 Mr. Clements has called for, what is in this
20 e-mail?

21 **A** I think Mr. Clements made the statement that
22 it needs to be removed.

23 **Q** And Mr. Lewis is talking about that in this
24 e-mail, is he not?

25 **A** That appears to be what he is talking about.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **Q** Read the next part.

2 **A** "The reason I bring this up is that some of
3 the photographs I have seen of brick veneer, which
4 are as reported by others, allegedly separates from
5 the sheathing because of the failure to engage
6 brick ties. Where the picture was taken, there is
7 also deterioration of OSB."

8 **Q** Let me stop you there. Maybe I am a layman,
9 and these folks are laymen, but what are you
10 talking about when you said "OSB"?

11 **A** OSB is the sheathing board.

12 **Q** All right. Are those the same rotten boards
13 that were shown by plaintiff's expert?

14 **A** Some of the sheathing on this building is
15 OSB.

16 **Q** All right. And he's talking about those --
17 the vapor barrier put behind that; is that right?

18 **A** The vapor barrier is on the -- is behind the
19 gypsum board on the interior of the exterior wall.

20 **Q** So go to the next part. Read the next part.

21 **A** "I suspect the real reason for veneer
22 detachment is likely sheathing has deteriorated
23 from moisture in the stud cavity resulting from the
24 interior side polyethylene vapor barrier, and the
25 inability of the sheathing to provide an anchor for

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 the corrugated ties."

2 Q All right.

3 MR. CONNELL: Can you get me up on the screen
4 the barrier picture, please, sir?

5 Q (BY MR. CONNELL) All right. So Mr. Lewis is
6 telling you, is he not, that I think those vapor
7 barriers may have caused the deterioration in the
8 Wedgewood project?

9 A That is what this memo said to me.

10 Q The photos that we've already seen?

11 A That's what it says.

12 Q Read the next sentence, please, sir.

13 A "This, in my judgment, is a very big deal."

14 Q Stop right there. What does it mean by he
15 thinks it is a very big deal?

16 A Sorry?

17 Q I'm sorry. What do you think he means when
18 he says: "This, in my judgment, is a very big
19 deal?"

20 A I have no idea.

21 MR. DesCHAMPS: Objection.

22 Q (BY MR. CONNELL) Did you ask him?

23 A No.

24 Q Did you write him back an e-mail?

25 A No.

CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!

1 Q Did you talk to counsel about that?

2 A No.

3 Q Read the rest of it, please, sir.

4 A It is quite possible that recurring --

5 Q Go back. Go back where it says "a very big
6 deal," and read the rest where it says "and needs
7 to be discussed"?

8 A This, in my judgment, is a very big deal and
9 needs to be discussed with counsel ASAP before we
10 issue any reports.

11 Q Stop right there. So you did not discuss
12 with counsel this e-mail; is that right?

13 A I did not.

14 Q And you issued a report without discussing it
15 with counsel; is that right?

16 A Again, I did not discuss this with counsel.

17 Q Did you and Mr. Lewis co-sign the report?

18 A Yes.

19 Q Next sentence.

20 A "It is quite possible that recuring high
21 humidity levels inside the stud cavities is a root
22 cause of all or most of the weather-resistant
23 issues being found at the exterior wall covering."

24 Q All right. I'll ask you now: So Mr. Lewis
25 was opining that he thought the high humidity

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 levels in the Wedgewood building was the result --
2 was causing the rot in the exterior part of the
3 building; is that right?

4 A You have to ask him, but that is what it
5 appears, yes.

6 Q And you did not offer an opinion about that;
7 is that right?

8 A I haven't replied or offered an opinion.

9 Q So Mr. Lewis at H2L, your partner, thought it
10 was the root cause of all of the rot?

11 A That is what this memo says.

12 Q And you never talked to him about it, right?

13 A Just generally. We didn't sit down and
14 discuss it.

15 Q Okay. Read the next part, please.

16 A "Repairs to correct would be expensive and
17 disruptive."

18 Q So let's assume for the moment that
19 Mr. Lewis' theory in this Exhibit 9, I think it is,
20 is correct. Assume he is right. Wouldn't you
21 agree that Mr. Clements' repair cost of taking off
22 all of the siding, all the way down to the studs,
23 is what you would have to do?

24 A No. You wouldn't have to do it that way.

25 Q It would be costly?

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **A** Either way it is going to be costly.

2 **Q** And people are going to be out of their
3 units; are they not?

4 **A** Depends whether you do it from the inside or
5 outside.

6 **Q** If you are taking the vapor barrier out of
7 nine buildings, that is really a costly affair, is
8 it not?

9 **A** It would be.

10 **Q** Can you tell the jury, based on your
11 experience of 50-some years of expertise in this
12 area, how costly it would be to take those vapor
13 barrier out in the nine buildings at Wedgewood?

14 **A** Not without doing a complete estimate.

15 **Q** Can you give us a ballpark?

16 **A** No.

17 **Q** Do you think Mr. Lewis can do that?

18 **A** I have no idea. You need to ask him.

19 **Q** I will, if he comes up here.

20 **A** I assume you will.

21 **Q** The next sentence says: "Work,
22 theoretically, could be done from the inside to the
23 outside"?

24 **A** Correct.

25 **Q** So tell the jury how they would do the work

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 on the outside first, what would they do?

2 **A** Obviously, to get to that point, you would
3 have to take the envelope off the building, the lap
4 sidings and the brick and the sheathing.

5 **Q** So we're taking about taking all of the
6 siding off of the building, all nine?

7 **A** I don't know. It may be possible -- and this
8 would take an engineering study -- it may be
9 possible to take a sufficient amount off to allow
10 you to remove sections of the vapor barrier and
11 accomplish that, but that is way beyond anything
12 I'm prepared to discuss at this point.

13 It would take a lot of calculations and
14 efforts to determine that.

15 **Q** And it would take, literally, months to do
16 this kind of work?

17 **A** Oh, sure, it would.

18 **Q** More than a year?

19 **A** At this point, I don't know.

20 **Q** Nine buildings?

21 **A** If you can work on all nine at the same time.
22 I don't know.

23 **Q** Work from the inside would be more difficult,
24 because you would have to go to each person's unit,
25 correct?

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **A** Work from the inside?

2 **Q** Yes, sir.

3 **A** In my mind, working from the inside would be
4 more disruptive to the owner of the unit.

5 **Q** Why so?

6 **A** Well, obviously, you are going to take --
7 make cuts in the gypsum board in their unit.

8 **Q** So you would have to go in each person's
9 individual unit and cut into the walls?

10 **A** Yes. Correct.

11 **Q** And you can't say right now how many cuts you
12 would have to make in the walls, but it would be
13 some cuts; is that right?

14 **A** It would be some cuts.

15 **Q** And then the contractors employees would have
16 to pull that insulation and vapor barrier out; is
17 that right?

18 **A** Working from the inside, you would not take
19 the insulation -- if I heard you say "insulation"?

20 **Q** Yes, sir.

21 **A** You would not have to take the insulation
22 out.

23 **Q** Okay. But it would require everybody in the
24 Wedgewood Homeowners Association to have to put up
25 with that type of work in their building unit?

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **A** Any time you do work inside an occupied space
2 it is disruptive to the people that live there.

3 **Q** Now, the outside. If you did it by the
4 outside, what do you have to do on the outside?

5 **A** We discussed that earlier. You have to take
6 the lap siding, the brick, and the sheathing, and
7 pull the insulation out, out of some or all of the
8 building, but I don't know how much.

9 **Q** And the note says on Exhibit 9: "For the
10 earlier ones, in which I was involved" -- do you
11 know which earlier ones he is talking about there?

12 **A** Have no idea.

13 **Q** You don't know what projects they are talking
14 about?

15 **A** Again, I have no idea.

16 **Q** So this is obviously a problem that H2L was
17 aware about from, quote, "the earlier ones"?

18 **A** I was not aware of this until well into this
19 report.

20 **Q** Is says: "The earlier ones, on which I was
21 involved, we did repair work from the outside"; is
22 that right?

23 **A** That is what he says.

24 **Q** And you can't offer any historical knowledge
25 from H2L about when that work was done, where it

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 was done, or what projects it was done on?

2 **A** I have no idea what projects he's talking
3 about.

4 **Q** So we have to get Mr. Lewis up here and see
5 what he says about it?

6 **A** That's correct.

7 **Q** So after Exhibit No. 9 was -- do you see what
8 date that was written, please, sir?

9 **A** 10/10/2019.

10 **Q** You wrote that on 10/10/2019, and thereafter
11 you wrote a report in this case?

12 **A** I did not write this.

13 **Q** I understand, but you and Mr. Lewis
14 co-authored the report in this case?

15 **A** We did.

16 **Q** So you had knowledge of that e-mail?

17 **A** Correct.

18 **Q** And you did not address that in your report?

19 **A** I did not.

20 **Q** And you didn't think it was important to tell
21 the jury all the facts you knew what was going on
22 with this e-mail from Mr. Lewis?

23 **A** No, not that e-mail. You'll have to ask
24 Mr. Lewis about this.

25 **Q** So you did not even address the issues that

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 we've just talked about in your report, did you?

2 **A** No, because I do not think it is a violation
3 of the code.

4 **Q** And you and Mr. Lewis didn't talk about that
5 report or e-mail before you wrote the report in
6 this case?

7 **A** We talked about it very briefly. We had no
8 in-depth discussion. We had no discussion about
9 how it might impact this project.

10 **Q** And you did no testing to see if Mr. Lewis'
11 statements in the e-mail were correct; is that
12 right?

13 **A** No.

14 **Q** Okay. That is in Mr. Clements' report, that
15 is in evidence I believe. You saw this yesterday,
16 I believe; is that right?

17 **A** Yes. I'm pretty sure I did, yes.

18 **Q** Is that the plastic vapor barrier that
19 Mr. Lewis was writing about in his e-mail to you?

20 **A** Again, you need to ask him, but that is the
21 polyethylene that, I believe, is in one of
22 Mr. Clements' photographs, yes.

23 **Q** So are we on the same page, that is the same
24 plastic barrier that he wrote to you about in the
25 e-mail; is that right?

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **A** I would assume so, yes.

2 **Q** I know you had some discussions earlier with
3 counsel or Centex about this particular weather
4 barrier?

5 **A** I'm sure I did.

6 **Q** You talked about that earlier in your
7 testimony?

8 **A** Yes.

9 **Q** I'll ask you again: The Model Energy Code of
10 1995, isn't it true that that is part of the 1997
11 standard building code?

12 **A** I think there is some question on whether
13 Horry County adopted that. I do not know that.

14 **Q** Let me ask you to look at Plaintiff's Exhibit
15 No. 6. Have you seen that?

16 **A** (Witness examines document.)

17 (A brief pause in the proceedings.)

18 THE COURT: Do you all want to stand and
19 stretch while he's looking over that?

20 **A** I examined it.

21 **Q** **(BY MR. CONNELL)** You have had a chance to
22 look at it?

23 **A** Yeah.

24 **Q** You said Horry County, but the building codes
25 for these particular condominiums is North Myrtle

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 Beach; is that right?

2 **A** I don't know.

3 **Q** You have been saying "Horry County," but it
4 is true, is it not, based on Exhibit No. 6, that
5 the North Myrtle Beach building code is applicable,
6 correct?

7 **A** It appears to be.

8 **Q** So you would agree, would you not, that the
9 1997 standard building code was approved by the
10 City of North Myrtle Beach; is that right?

11 **A** It appears to be, yes.

12 **Q** And, normally, the standard building code has
13 an energy code, isn't that correct, that is
14 attached to it as an addendum?

15 **A** It references Exhibit E, as I remember, which
16 is the energy code.

17 **Q** And that's the Model Energy Code?

18 **A** Yes.

19 **Q** So we are agreeing now that the Model Energy
20 Code is part of the standard building code and part
21 of the basis for these particular codes that were
22 in force and in effect for the Wedgewood
23 Condominium Homeowners Association?

24 **A** I don't specifically see that in this
25 document, that Exhibit E is a part of it, but....

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **Q** Let me ask you this: Isn't it true that,
2 normally, in your experience of over 50 years of
3 doing this, that when a standard building code is
4 approved, the Model Energy Code is an appendix to
5 that?

6 **A** The energy code may or may not be of the same
7 vintage as the code. Meaning if the code is 2018,
8 the energy code may not be the 2018. It would be
9 an energy code that was written in '15. But the
10 energy code, in some form or fashion, is generally
11 a part of the code.

12 **Q** So you showed the jury earlier a map of the
13 United States with a line?

14 **A** Yes.

15 **Q** So would you agree with me that that is not
16 actually the map for the 1997 standard building
17 code. That is something you pulled off the
18 Internet?

19 **A** That map is a general reference to the area
20 for high humidity conditions.

21 **Q** But that is not the map that is attached to
22 the Model Energy Code?

23 **A** No.

24 **Q** So you did not tell the jury that, did you?

25 **A** I don't remember making that statement one

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 way or the other.

2 Q But that is not actually a part thereof of
3 the standard building code adopted by the City of
4 North Myrtle Beach?

5 A I would think that may be a correct
6 statement, yes.

7 Q But you didn't intend to mislead the jury
8 when you showed them that map, did you?

9 A I didn't intend to do that at all.

10 Q All right. So your understanding of the
11 Model Energy Code actually requires that this vapor
12 barrier not even be put in buildings that are on
13 the east side of that particular line on the map?

14 A That is not what the code says.

15 Q Well, don't you think that if they said that
16 you should do it, it would be put in the code?

17 A No.

18 Q So when you see an exception in the code, and
19 it says it is not required if you are in hot, humid
20 climates --

21 A It doesn't say that.

22 Q Have you read it?

23 A Yes, I read it.

24 Q Would you agree with me that the Myrtle Beach
25 area is a hot, humid climate?

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **A** I think that is a fair statement.

2 **Q** Would you agree that that is on the east side
3 of that line on the map that is actually a part of
4 the Model Energy Code?

5 **A** I just thought you said it wasn't?

6 **Q** It isn't. I think we agreed. But you are
7 using that in your testimony, aren't you?

8 **A** As a reference, yes.

9 **Q** And so you would agree, would you not, that
10 in the Model Energy Code there are exceptions that
11 say you shouldn't use or you don't have to use --
12 maybe I'll put it that way -- you don't have to use
13 these vapor barriers, right?

14 **A** My interpretation of the code is that -- the
15 code specifically states that you shall use the
16 polyethylene vapor barrier. There is an exception
17 that says in areas where the wet bulb temperature
18 is at a certain level for so many hours, that that
19 is exempted from the "shall" part of the code.
20 Meaning, you don't have to do it, but it doesn't
21 say you can't do it.

22 **Q** It is a good idea not to do it if you are on
23 the east side of the line?

24 **A** No. That is not what it said.

25 **Q** Let me ask you this: Are you aware of the

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 ASHRAE standards?

2 **A** In general, yes.

3 **Q** If you would read --

4 MR. DesCHAMPS: Objection.

5 THE COURT: You want to come up?

6 (Whereupon, a bench conference was had out
7 of the hearing of the jury.)

8 MR. HILDEBRAND: I don't know what he is
9 going to show him, if it post-dates this project or
10 predates, but if it is something that post-dates
11 it, then that is irrelevant and improper.

12 MR. CONNELL: He can say. He's an expert. I
13 can ask him anything I want to.

14 MR. HILDEBRAND: Not for things -- that is
15 like a subsequent remedial standard or state of the
16 art. What is going on today might be different
17 than what happened in 2000.

18 THE COURT: Yeah, but you can do it on
19 redirect, if you want to, too.

20 MR. CONNELL: Right.

21 THE COURT: But you are not going to
22 misrepresent something.

23 MR. CONNELL: I'm going to show to him and
24 show him the date.

25 MR. HILDEBRAND: And how am I going to let

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 him -- do you have a copy?

2 MR. CONNELL: I don't.

3 MR. DesCHAMPS: Is this the only one you
4 have?

5 MR. CONNELL: It is.

6 THE COURT: Let him look at it.

7 (A brief pause in the proceedings.)

8 THE COURT: Let's stand up one more time.
9 Ready to go forward?

10 MR. HILDEBRAND: Yes, ma'am.

11 Q (BY MR. CONNELL) Mr. Carter, can you look at
12 this document, ASHRAE Standard 90-2-1993? Do you
13 know what that is?

14 A I have seen this document, yes.

15 Q When did you see it?

16 A When?

17 Q Yes, sir.

18 A When you handed it to me.

19 Q I thought you meant you had seen it earlier?

20 A Oh, over the years I have looked at this
21 document, yes.

22 Q Tell the jury what that document is, please,
23 sir.

24 A It is an energy efficient design for new
25 low-rise residential buildings.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 Q What date is on the document?

2 A 1993 edition.

3 Q So would this apply to the construction of
4 the Wedgewood Condominium Association project?

5 A It may or may not. I don't know.

6 Q You are not familiar enough to know?

7 A I didn't go back and check.

8 Q So would you look at the last page, please,
9 sir. Underlined in red, there is an exception.
10 Please read that to the jury.

11 A "The use of vapor retarders is not required
12 in humid climates. If vapor retarders are used,
13 they should be on the exterior."

14 Q Okay. So looking at the picture up here, and
15 looking at the ASHRAE code, is the vapor retarder
16 on the inside or outside?

17 A Inside.

18 Q Is that to code?

19 A I don't know.

20 Q But it violates what you just read, right?

21 A It seems to be in opposition to that, yes.

22 Q Now, I believe in your scope of repair you
23 had a discussion about staircases; is that right?

24 A Yes.

25 Q And the Wedgewood Condominium Association has

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 staircases that go up each of the nine buildings?

2 **A** Correct.

3 **Q** And it is my understanding that you agree
4 with Mr. Clements that these particular staircases
5 was not built to the standard building code?

6 **A** Certain components on the stairwell are not
7 in compliance with code.

8 **Q** And, in fact, isn't it true that in your
9 report you indicated there was 1,152 stairs that
10 were out of compliance, risers?

11 **A** I don't remember stating it that way, no.

12 **Q** I'll come back to that then.

13 You do agree that stairs are out of code?

14 **A** There are risers on the stairs that do not
15 meet the code requirement.

16 **Q** So if I or someone who owns a condominium
17 invites someone to come over and they fall down the
18 stairs, the association is liable because the code
19 says they have not built the stairs correctly?

20 MR. DesCHAMPS: Objection; speculation.

21 THE COURT: Okay. If he can answer the
22 question, then fine, but if he can't....

23 **A** That is a legal issue, and I can't answer
24 that.

25 **Q (BY MR. CONNELL)** But you do agree that risers

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 were out of --

2 **A** Yes.

3 **Q** You also said in your deposition that you
4 found incomplete weather barriers, which is a
5 violation of the code; is that right?

6 **A** The code simply states that you will place
7 weather barrier underneath lap siding.

8 **Q** And you found that?

9 **A** We found areas, yes.

10 **Q** And you said that in your deposition that is
11 not a good construction practice?

12 **A** It is not.

13 **Q** And you said that the weather barrier is a
14 deviation from the code?

15 **A** I don't know that I stated it that way, but
16 it is a deviation of the code.

17 **Q** And you said in your deposition that code
18 violations should be corrected when possible?

19 **A** When possible, yes.

20 **Q** And you also indicated -- I think you said
21 this a couple times today -- that if the code
22 violation doesn't justify itself because of an
23 economic justification, then you shouldn't fix
24 that; is that right?

25 **A** I don't believe that is quite stated exactly

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 like that.

2 Q Well --

3 A Sorry.

4 Q Go ahead.

5 A I interrupted you.

6 Q No, I interrupted you, I'm sorry.

7 A There are times when the variance in the code
8 doesn't rise to the level that requires repair.

9 Q So you believe that certain codes don't have
10 to be enforced even though it is the law?

11 A I did not say that.

12 Q Are you a code official?

13 A I am not.

14 Q How are you getting that code violations
15 shouldn't be corrected if there is no economic
16 justification when you know that is the law?

17 A Because in my experience in dealing with code
18 officials, I've had them approve situations that
19 were in deference to the code.

20 Q I'm with you. But in this case, Centex
21 didn't go to any code enforcement officers and say
22 we have this code problem, and this one, and this
23 one, and can we get a pass?

24 A I have no idea what Centex did.

25 Q You haven't heard any evidence about that,

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 have you?

2 **A** Sorry?

3 **Q** No one testified about that, have they?

4 **A** Not to my knowledge.

5 **Q** That they found code violations in the stairs
6 and they went to the building official and said,
7 Can we do something about this?

8 **A** I'm not aware of that part.

9 **Q** You also indicate in your deposition there
10 were violations of codes in the balconies and
11 walkways; is that right?

12 **A** I think that is correct.

13 **Q** You said there was a lapping issue, and it's
14 found in Section 1.2 in my report. It is not a
15 code issue, but it is not a good industry practice,
16 correct?

17 **A** If I wrote that, yes.

18 **Q** And as I go back to what we've talked about
19 before, a homeowner -- a buyer of a new product, a
20 new home, is entitled to have a home that is free
21 of code defects, made with good industry standards,
22 and the manufacturers' specifications have not been
23 violated in a house they are going to buy, correct?

24 **A** I think that is a reasonable statement, but I
25 doubt very seriously that most homeowners know.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **Q** And they don't know if there is hidden
2 defects, do they?

3 **A** No, they don't.

4 **Q** Think of it this way. I have this home over
5 here, a condo, and all of these code defects,
6 right, and I have this home over here, and I have
7 no code defects, which one do you want?

8 **A** There's a lot of factors if I was the buyer
9 that I would have to look at.

10 **Q** If you knew before you bought that this one
11 had a stair problem, this one didn't have a stair
12 problem, would you want the one with a stair
13 problem?

14 **A** Again, it depends on the seriousness of the
15 violation.

16 **Q** All right. Fair enough.

17 So would you pay as much for the one with the
18 code violation as the one that didn't have any?

19 **A** I can't answer that.

20 **Q** Wouldn't you want a discount?

21 **A** I would like to have a discount on
22 everything.

23 **Q** I know you would, so would I.

24 But it seems logical, does it not, that
25 somebody buying a house, a place they are going to

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 borrow money on, expects the contractor, the
2 general contractor, the developer, to provide them
3 a product that is clearly in compliance with the
4 code?

5 **A** I think that is the general attitude that we
6 all have.

7 **Q** You said the two flashing boards that you saw
8 were improper and in violation of good construction
9 practices; is that right?

10 **A** Yes, if I wrote that.

11 **Q** And then you said, and I quote, "the windows
12 were mulled incorrectly." It's a construction
13 defect?

14 **A** I didn't say it was a construction defect.
15 The mulling process, as far as I know, is correct.

16 **Q** Okay, but --

17 **MR. CONNELL:** Your Honor, I'll ask you to
18 tell the jury, if you would, please, what a
19 deposition is.

20 **THE COURT:** Ladies and gentlemen, a
21 deposition is sworn testimony usually taken at a
22 lawyer's office or some other professional's office
23 where a deponent, the person giving the testimony,
24 is sworn in. It is on the record, so there is a
25 court reporter present. There is no judge, but

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 there are attorneys from both sides that are
2 allowed to ask questions of that person.

3 You are to judge any deposition testimony
4 just as if you would if they were giving it right
5 here in front of you. So, again, it's to be used
6 by you and to be taken as sworn testimony, okay.

7 MR. CONNELL: Thank you.

8 **Q (BY MR. CONNELL)** Let me ask you to look at
9 Page 89 of your deposition. I know that was a good
10 while back, and hours and hours. I'll read the
11 question, and you can read the answer.

12 **A** Fine.

13 **Q** Out of fairness to you, I'll let you read
14 Lines 9 to 16.

15 **A** Okay.

16 "Question: But they were done incorrectly;
17 is that right?

18 "Answer: There's evidence that suggests
19 that some of the mulling was not correctly sealed,
20 yes.

21 "Question: And that's a construction
22 defect, correct?

23 "Answer: That would be a defect, yes."

24 **Q (BY MR. CONNELL)** All right. Thank you, sir.

25 **A** May I look for a second? Yes.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **Q** So you said that at your deposition, and you
2 are not changing your mind now, are you?

3 **A** No, because I think that was referencing the
4 sealing of the mull.

5 **Q** It was a construction defect, you said that,
6 right?

7 **A** If it is incorrectly sealed, it would be a
8 defect, yes.

9 **Q** All right. Now, you said about the siding in
10 your deposition that there was a nailing issue, and
11 it was not the -- the siding was not nailed
12 according to the Hardie board standards?

13 **A** I think that's evident.

14 **Q** So when you said you didn't know what kind of
15 nails was put in the Hardie board, we know that the
16 Hardie board applied to the outside of these units
17 was not nailed properly?

18 **A** The Hardie board that was installed here is
19 not nailed -- spacing of nails are not 16-inch on
20 center on every board. Whether the nail is a nail
21 that meets a requirement of that Hardie board
22 instruction, I really don't know.

23 **Q** All right.

24 MR. DesCHAMPS: May I have one moment of law?

25 THE COURT: You may.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 (Whereupon, a bench conference was had out of
2 the hearing of the jury.)

3 MR. DesCHAMPS: Ross Clements did not
4 identify the type of nails as a problem in the
5 siding.

6 MR. CONNELL: You can bring that up on
7 redirect.

8 MR. DesCHAMPS: It is misleading. There is
9 not even a contention that the nails are even
10 improper.

11 MR. CONNELL: You can do anything you want on
12 redirect.

13 MR. DesCHAMPS: There is no contention that
14 the nails are improper. It is not an issue in the
15 case.

16 MR. CONNELL: The contention is you are using
17 the pull test to indicate that the Hardie board is
18 correct, and I'm showing that he said it was not
19 constructed according to the rules.

20 MR. DesCHAMPS: I'm talking about the type of
21 nails. You've mentioned it two or three times.

22 MR. CONNELL: He said he didn't know anything
23 about it.

24 MR. DesCHAMPS: There is no contention that
25 the nails are improper. That is not what Ross

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 Clements says. The type of nails being used is not
2 an issue in the case, whatsoever.

3 THE COURT: So are you raising this as a new
4 issue? I don't understand.

5 MR. CONNELL: No. No. I'm just asking him
6 what he said in his deposition.

7 MR. DesCHAMPS: The implication of the
8 question is they are going to think that Ross
9 Clements did say that they are improper nails.
10 They heard a bunch of things they can't remember.
11 The implication of the question is that Ross
12 Clements said they used incorrect nails, when he's
13 not.

14 MR. CONNELL: I'll go back and where he said
15 it wasn't built according to Hardie board
16 standards, if that satisfies you?

17 MR. DesCHAMPS: The spacing of the nails is
18 the only claimed issue.

19 THE COURT: So you are putting in evidence,
20 and you can't do that.

21 MR. DesCHAMPS: Yeah.

22 THE COURT: Okay.

23 (The following was had in open court.)

24 **Q (BY MR. CONNELL)** You also said in your
25 deposition that the fasteners that were applied

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 were not applied according to the Hardie board
2 manufacturer's recommendations, correct?

3 **A** I think that is evident.

4 **Q** You said the fasteners, the nails, were not
5 consistent, right? Not a correct nail pattern?

6 **A** Correct.

7 **Q** And then you said -- and correct me if I'm
8 wrong -- you should always follow what the
9 manufacturer of the product tells you what to do
10 with their product?

11 **A** That would be a good practice.

12 **Q** And the reason why you want to do that is you
13 want to make sure the warranty is good, correct?

14 **A** I don't know that -- I don't know. You would
15 have to look at the warranty that Hardie issued on
16 that, whether that is governed or not. I have no
17 idea.

18 **Q** Aren't you familiar with the fact that Hardie
19 board siding is a lifetime guaranteed siding?

20 **A** I assume it is.

21 **Q** It is a concrete-type of siding?

22 **A** It is a cement-based product.

23 **Q** And it does not rot, right?

24 **A** It will deteriorate if you have it underwater
25 for an extended period of time.

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **Q** And it is designed, is it not, to be a
2 product, if used properly, to last for the life of
3 these buildings, correct?

4 **A** I would assume so. I do not know what the
5 life of Hardie siding is.

6 **Q** More than 50 years, wouldn't it?

7 **A** I don't know.

8 **Q** Wouldn't you expect that if you applied it
9 improperly, or fastened it improperly, that if you
10 went back to the Hardie manufacturer and they
11 looked at it, they would say, We're not going cover
12 this?

13 **A** I can't answer that.

14 **Q** Would you cover it in that situation?

15 **A** That's not my product. I can't answer that.

16 **Q** You would agree, would you not, that most
17 manufacturers wouldn't cover a product that was not
18 constructed consistent with their specification and
19 recommendations?

20 **A** I can't answer that question. I don't know
21 what they would do.

22 **Q** Fair enough.

23 When you did the pull test that you showed
24 the jury, you did not use Hardie nails in that
25 either, did you?

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**

1 **A** I didn't put the nails in there.

2 **Q** I think you said this, but I want to make
3 sure the jury understands this. You never would
4 tell a subcontractor to build or apply the Hardie
5 board in violation of their own specifications,
6 would you?

7 **A** I would never instruct a subcontractor to do
8 anything incorrectly.

9 **Q** And I think you also said in your deposition
10 that MiraTEC trim is supposed to last the life of
11 the building, correct?

12 **A** If I said that, I said it.

13 **Q** Do you want to see it?

14 **A** No, I don't need to see it.

15 **Q** You said inadequate violation of thru-wall
16 flashing violates the standard, correct?

17 **A** Yes.

18 **Q** That is a code violation?

19 **A** Yes. It is a standard and part of the code.

20 **Q** And then you also said window mulling, which
21 leaks through the windows, is a construction
22 defect; isn't that correct?

23 **A** It could be a construction deficiency or
24 product deficiency.

25 **Q** We all agree that the OSB was damaged by the

**CERTIFIED ORIGINAL TRANSCRIPT FOR PARKER POE ADAMS &
BERNSTEIN, LLP USE ONLY!!**