

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
) FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT) CASE NO 2006-CP-07-0866

16 JADE STREET, LLC,

PLAINTIFF,

VS

R DESIGN CONSTRUCTION CO , LLC,
CARL R ATEN, JR , individually and in his
capacity as principal and agent of R
Design Construction Co , LLC
CATTERSON & SONS CONSTRUCTION
and MICHAEL S CATTERSON,
individually and in his capacity as principal
and agent of Catterson & Sons
Construction,

DEFENDANTS

NON-JURY TRIAL
VOLUME 2 OF 3

held before the Honorable Carmen T Mullen
Mia Perron, Circuit Court Reporter, 14th Judicial Circuit
in the Beaufort County Courthouse
Beaufort, South Carolina
on Tuesday, October 14, 2008, Commencing at 11 14 a m

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PROCEEDINGS

THE COURT All right Mr Carpenter, I will
remind you, sir, that you are still under oath
[Whereupon, Mr Carpenter re-takes the witness
stand]

THE COURT Whenever you're ready, Tab

MR BENDLE Thank you, Your Honor Good
morning, Mr Carpenter

THE WITNESS It's morning

MR BENDLE I'm going to try to be as brief as
possible, but I want to be thorough I understand that
Mitch has gone through a lot of your report, or list of
repairs, as well as some items in the Kern-Coleman
report so I'm going to try not to repeat or have you
repeat what you've already testified to

- - - - -

STEVE CARPENTER,

Having Been First Duly Sworn,
was Examined and Testified as Follows

DIRECT EXAMINATION

BY MR BENDLE

Q But if we could start did Anchor Construction
ever submit an original proposal to do this job?

A I don't recall

Q Okay You don't know if Eddie Powell ever

1 talked to Mr Green about --

2 A That I don't --

3 Q -- bidding this project?

4 A That I don't know

5 Q You were the superintendent? Was that your role
6 for Anchor?

7 A Yes

8 Q Okay You are not a licensed builder in the
9 state of South Carolina, are you?

10 A No

11 Q Have you ever been licensed in any other state?

12 A No

13 Q Do you have any engineering licenses?

14 A No

15 Q All right Whose license were you operating
16 under when you were functioning as the superintendent for
17 Anchor on this project?

18 A Eddie's Eddie Powell

19 Q Okay And Mr Powell is a licensed residential
20 and commercial builder?

21 A Yes

22 Q What role did Mr Powell play in this project?

23 A The general contractor

24 Q Did he come out and supervise your work from
25 time to time?

1 A Occasionally he would come to the job site

2 Q Did he ever perform any inspections on this job?

3 A Occasionally he would walk through, if that is
4 what you call an inspection, but --

5 Q You testified that you attended the inspection
6 with Jonathan Livingston on October 18th of 2005, correct?

7 A I'm not sure of the date, but I did attend

8 Q Was Mr Powell with you during that inspection?

9 A No, he was not

10 Q Was a scope of repair ever created by you for
11 the repair to -- or to Jade Quarters?

12 A What do you mean by scope of repair?

13 Q Did you ever come up with some sort of plan
14 identifying the deficiencies and create a report as far as
15 any recommended or methods of repair that you intended to
16 use to fix this --

17 A The only report was the primary walkthrough that
18 I made That was the list of deficiencies

19 Q And are you referring to that itemization --

20 A Yes

21 Q -- that you went over with --

22 A Yes

23 Q -- Mr Griffith?

24 Okay How about Mr Powell? Did he ever
25 prepare any type of report or scope of repair for --

1 A No

2 Q -- this project?

3 A No

4 Q How about an estimate for the repairs? Did you
5 or Mr Powell ever create any sort of estimate to give to
6 Mr Green?

7 A Not on the entire project On some aspects of
8 it we did, but not on the entire project

9 Q If you would tell the Court what you did prepare
10 an estimate for, with regards to the repairs

11 A The reworking of the garages

12 Q Okay And outside of those three garages, was
13 there any other aspect of the repairs that were estimated
14 before you began the work?

15 A A lot of the items were estimated, but not in
16 the sense of turning it over to Mr Green

17 Q When were you actually retained by Mr Green to
18 be the repair contractor for this job?

19 A After R Design got released I'm not sure what
20 the date was

21 Q Okay Was it immediately after R Design's
22 termination, then?

23 A I believe so

24 Q Do you recall -- well, let me ask you this Did
25 you enter into any kind of contract, or did Anchor enter

1 into any type of contract, written contract, with 16 Jade
2 Street?

3 A Anchor submitted a contract to Dennis, as far as
4 I -- as far as I -- as far as I know

5 Q All right Do you recall when exactly R Design
6 was terminated from this project?

7 A I do not It was sometime in the fall of 2005

8 Q Okay Were you approached by Mr Green to do
9 the repair work, and completion for this project, prior to
10 R Design being terminated?

11 A I was not

12 Q You were not?

13 A No

14 Q Okay Did you ever have the opportunity to
15 inspect this project prior to R Design being terminated?

16 A I did not

17 Q You never would stop by the job site just to
18 check it out?

19 A I don't -- I drove by, but I never went into the
20 job site

21 Q Okay Did you ever have any conversations with
22 Mr Green with regards to the work that R Design was
23 doing or that Catterson had done prior to R Design being
24 terminated?

25 A I don't recall if I did or not

1 Q Was a budget prepared for the repair work?

2 A No

3 Q Why wasn't a budget prepared for the repair
4 work?

5 A Too many variables trying to put definite
6 numbers down

7 Q So no aspect of the repairs that you performed
8 were ever budget per se?

9 A No

10 Q Were there any momentary constraints placed on
11 Anchor with regards to the repair work?

12 A The constraints were to try to do it the most
13 reasonable expenses that I could

14 Q How was Anchor to be paid for this project?
15 What was the contract arrangement?

16 A Upon billing Anchor return of billing, and
17 Dennis was to pay it

18 Q Were you always paid on time?

19 A Pretty much

20 Q Was it -- would you consider it to be a cost-
21 plus contract, then?

22 A Yes, it was a cost-plus

23 Q How often would you get paid?

24 A I don't -- I believe it was -- I believe it was
25 pretty much every two weeks

1 Q Did you use subcontractors for the repair work?

2 A I did

3 Q Okay And who chose those subcontractors?

4 A I did

5 Q And were they approved by anyone from 16 Jade or
6 Mr Green?

7 A No

8 Q So you had pretty much free rein to hire anybody
9 you wanted to --

10 A I did

11 Q -- on this project?

12 Okay And I understand from your testimony
13 yesterday that at some point there was a list of
14 remediations that was created by you, correct?

15 A What do you mean remediation?

16 Q The list of what you considered to be
17 deficiencies --

18 A Yes

19 Q -- was created?

20 All right And you did create that list?

21 A I did create that list

22 Q All right Did Mr Powell have any hand in
23 creating that list?

24 A I believe he was the one that typed it up He
25 did not create it All he did was copy my handwritten

1 Q Okay And you may have already testified to
2 this, so I apologize if you've answered But when was
3 that list created?

4 A It was right after Dennis contacted Eddie
5 Which at that point I went and got with Dennis, got a copy
6 of the prints That list was made so that Dennis would be
7 aware of what Anchor was going to require before we were
8 to finish the job

9 Q Was that list not created in anticipation of a
10 lawsuit?

11 A It was not

12 Q Had you spoken to Mr Green about anticipating a
13 lawsuit at that time?

14 A Not at that time

15 Q Okay Of the items that were included in your
16 list of deficiencies, were a large portion of those items
17 also identified in the Kern-Coleman reports?

18 A Yes A lot of them were

19 Q All right Did you agree with the deficiencies
20 that were outlined in the Kern-Coleman reports?

21 A Yes

22 Q The Kern-Coleman reports offered some
23 suggestions with regard to the method of repair, correct?

24 A Correct

25 Q And you didn't always agree with those methods,

1 correct?

2 A I did not agree with them But after Kern-
3 Coleman went in, my understanding was that an independent
4 engineer was brought in Because at that point, Dennis
5 got ahold of Mitch, and Mitch got an independent, and then
6 we went through the independent Because at that time,
7 Kern-Coleman, they -- Mitch figured an independent
8 engineer would be the best one to tell us what to do

9 Q So at the point that they enlisted the services
10 of Mr Still, they had Mr Still working as an engineer on
11 their behalf, as well as Jonathan Livingston, who was the
12 original engineer for Mr Green, correct?

13 A Jonathan Livingston was somewhat out of the
14 picture when Randy came in the picture

15 THE COURT Let me ask a question

16 Sir, why did you not agree with some of Mr
17 Livingston's suggested fixes?

18 THE WITNESS Because he had different things on
19 the print that said that it had to be built one way,
20 and then after he made the inspection he comes back and
21 said, well, it was okay to do it the way they did it,
22 even though it's not up to the same requirements that
23 the plan called for

24 THE COURT Okay

25 THE WITNESS At that point I went back to

1 Jonathan and said, well, if your plan says it requires
2 it at this point in time, why now does it not require
3 it And if it's not required, then it shouldn't have
4 been on the prints to begin with If five-eighths
5 bolts are fine, versus three-quarter-inch bolts, then
6 it shouldn't have been on the plan to begin with All
7 of a sudden, Jonathan is back-stroking, as far as I was
8 concerned, on different requirements

9 THE COURT So, Mr Carpenter, just so I'm
10 clear did you make some changes and improvements
11 based on making sure it adhered to the plans and
12 specifications versus whether or not it had already met
13 code? In other words, in some portions of Mr
14 Livingston's report, just as you said, it said it does
15 not -- it's not as stated in the plans and
16 specifications, but it is not in violation of the
17 building code and it is not a safety issue Is that
18 what you're saying?

19 THE WITNESS No I'm saying that my main lead
20 was Randy Stills, not Jonathan Livingston at that
21 point, as an engineer I did not change a lot of the
22 deficiencies that did not meet the plans because they
23 were approved by Randy I did not change all the five-
24 eighths bolts holding the columns up, because they
25 couldn't get to them There was different deficiencies

1 I could not change I did not go over and above what
2 was required If Randy said it needed to be done, or
3 if standard building codes said it needed to be done,
4 that's what I did My complaint with Jonathan was
5 basically he let the deficiencies go that met the
6 print But if Randy said they were still okay, I left
7 them there

8 THE COURT Okay

9 MR BENDLE Are you done, Your Honor?

10 THE COURT Yes

11 MR BENDLE Okay

12 Q [Mr Bendle] At some point, there was a new set
13 of plans that were created, correct?

14 A There was some different interior-finish plans
15 Yes, there was

16 Q And who created those plans?

17 A The architect that Dennis had hired

18 Q And did those plans incorporate any improvements
19 or betterments to this project?

20 A There were some improvements to the project,
21 yes

22 Q And who requested that those improvements be
23 implemented into the plans?

24 A The improvements was -- some of it was different
25 layouts The walls were already down because of having to

1 redo things At that point, Jim Bazemore, who was the
2 architect, walked in and decided they were putting new
3 walls up, let's redo the layout The layout is the
4 improvements

5 Q So is it your testimony, then, that it was Jim
6 Bazemore who requested a lot of these changes and
7 improvements? Or was it Mr Green?

8 A I'm not sure how Jim went back to Mr Green
9 Jim was the architect that I dealt with And the main
10 improvement was different room layouts, but it was because
11 the walls were already down And having put walls up a
12 foot over one way, versus the other way, doesn't make any
13 difference to me cost-wise

14 Q All right I don't want to go through the list
15 again and rehash a lot of the items that were covered
16 yesterday, but I did want to ask you about a few things

17 You just mentioned that there was walls
18 throughout the building that had to be torn down

19 A Yes

20 Q One of the conversations you had with Mr
21 Griffith was concerning a wall, and the picture was put up
22 on this projector that showed a bunch of mold

23 A Yes

24 Q Do you recall that?

25 At what point was mold noticed at any place in

1 this building?

2 A Mold was noticed when I first walked through the
3 building

4 Q Okay So, it's your testimony that the mold was
5 in existence at the time that you conducted your
6 inspection with Mr Livingston?

7 A Yes

8 Q Okay Why wasn't mold listed in your list of
9 deficiencies or problems?

10 A Mold was not a construction issue

11 Q I'm sorry?

12 A To me, I put down construction problems Mold
13 is -- it's a problem, but not anything that I put down

14 Q If that wall had been constructed, in your
15 opinion, correctly, would it have had to have been
16 remediated because of the mold?

17 A There was problems because of the mold It
18 would have been had to have been taken care of The mold
19 was a problem

20 Q But you would agree that it's not listed in your
21 list of deficiencies?

22 A It is not listed in the report

23 Q Any idea why Mr Livingston didn't feel
24 compelled to include that as a deficiency or a problem in
25 his report?

1 A I don't -- I can't speak for him

2 Q Okay But it's your testimony that you are
3 certain that that condition existed at the time that you
4 first inspected this building?

5 A I'm certain

6 Q Yet --

7 A Yes

8 Q Yet that condition is not documented in any
9 report, be it your own or otherwise?

10 A It's not documented, no It is in all the
11 pictures, and the pictures started from when we first took
12 the job

13 Q The pictures that have been produced, were they
14 taken by you?

15 A Some of them by me, others by different -- there
16 was different people taking pictures on the job

17 Q All right And weren't those pictures taken
18 throughout the course of the repairs?

19 A Yes, they were

20 Q When did the actual repairs begin?

21 A I don't recall what the date was

22 Q It was sometime months after your initial
23 inspection, though, correct?

24 A I really don't recall the date I believe it
25 was sometime in January

1 THE COURT Why can't we look at the first pay
2 app to see? They were paid every two weeks

3 MR GRIFFITH I'm looking at the building
4 permit I think it shows it was in February of '06

5 THE COURT That's what I thought the earlier
6 testimony was

7 A It may be I don't recall the date It's been
8 a few years

9 Q [Mr Bendle] I can understand that I can't
10 remember what you testified to yesterday, so --

11 A I can't either

12 Q Moving along, Mr Carpenter in addition to the
13 mold, you testified that there was some moisture or water
14 damage to some of the windows and doors, correct?

15 A Correct

16 Q Okay Was that condition -- did that condition
17 exist at the time that you inspected --

18 A Yes

19 Q -- in October?

20 A Yes

21 Q Okay And again I'll ask why wasn't those
22 conditions noted in your list of deficiencies or problems
23 with the building

24 A Water damage is not a structural problem, and
25 it's not an engineering problem I went through and did

1 structural problems and engineering, and that's what I --
2 I put down code violations

3 Q But clearly, Mr Carpenter, you have identified
4 the windows and doors in the report as having installation
5 problems and otherwise

6 A Correct

7 Q Okay So the window and door issue were, at
8 least in part, addressed in your report?

9 A Yes, they were

10 Q Okay Yet you didn't think that it was worth
11 mentioning that there was water damage to these windows?

12 A I guess I didn't I may have screwed up on
13 that But I did not write it down

14 THE COURT Mia, could I have the photos

15 [Whereupon, the court reporter proffers
16 documents to the Court]

17 THE COURT Thank you

18 If you need them back, Tab, just let me know

19 MR BENDLE Sure

20 Q [Mr Bendle] And, again, Mr Carpenter, I'll
21 ask if you are aware of any mention of moisture damage to
22 the windows and doors in the Kern-Coleman reports

23 A I am not aware of it

24 Q Okay Is that something that you think an
25 engineer that's hired to do an inspection should include

1 in a report like that?

2 MR GRIFFITH Your Honor --

3 A I do not --

4 MR GRIFFITH -- I'm going to object now, what
5 he thinks should be included

6 THE COURT Okay

7 MR GRIFFITH They were the ones that objected
8 to him being qualified as an engineer

9 MR BENDLE Well, he's been qualified now,
10 so --

11 THE COURT He's a construction expert, so let's
12 just leave it at that

13 A I think water damage is not an engineering
14 problem, either

15 Q [Mr Bendle] All right So your list of
16 deficiencies were limited to engineering problems?

17 A No It was -- you've got a copy of the report
18 It was concrete problems, framing problems, code
19 violations

20 Q Sure But you would agree that certainly the
21 windows were mentioned in both your and the Kern-Coleman
22 reports?

23 A They were They were --

24 Q But no mention of moisture damage, is my
25 question

1 A No

2 Q Just real quickly The four points that you
3 have kind of captioned in your list, we'll start with the
4 first one, the foundation and the AAC block What is your
5 understanding -- or what is your understanding of who was
6 responsible for that work during original construction?

7 A At what point in time? When I first took the
8 job over, all I knew was R Design

9 Q Okay Were you aware of what subcontractor was
10 involved in the original construction that would have been
11 responsible for the foundation and AAC block work?

12 A Not when I first went to the job site

13 Q Okay What is your understanding today as to
14 who was responsible for --

15 THE COURT Mr Ross? Hold on a second, Mr
16 Carpenter

17 MR ROSS Your Honor, this is strictly hearsay
18 at this point He was not on the job site at the time
19 He didn't know it then He can't testify that he saw
20 somebody doing any of the work

21 THE COURT Unless he actually, in fact, saw
22 someone, which he says he didn't So --

23 MR BENDLE Okay I'll move on

24 THE COURT -- Tab, I think we can move on

25 MR BENDLE Okay

1 Q [Mr Bendle] Was the block system completely
2 installed at the time that you came on board?

3 A On the main structure it was done, on the
4 garages there was one garage that was not complete, and
5 the fire walls were not ran through the roof system

6 Q So there was still some work to the block system
7 that needed to be completed?

8 A Correct

9 Q And with regard to the ironwork, was there still
10 work that was yet to be completed with regard to the
11 columns that are mentioned under that?

12 A They were not bolted together The columns were
13 not bolted down correctly

14 Q Well, wouldn't you agree that that's something
15 that could have been done at a later time had R Design or
16 Catterson remained on this project?

17 A It could have been, but there was -- some of it
18 you could -- you would have had -- you would have had to
19 undo work to get to it

20 Q That would include bolting down these columns?

21 A Yes

22 Q With regard to the framing, did you ever ask Mr
23 Still not to worry about inspecting the wood-framing
24 components of this building?

25 A I did not ask him not to inspect it I asked

1 him if he wanted to

2 Q Okay Did he?

3 A He said he did not have to

4 Q So who was responsible for creating a list of
5 deficiencies with regard to the wood-framing components?

6 A I was

7 Q Was there any engineer involved in coming up
8 with recommended repairs with regard to the wood-framing
9 components?

10 A Not recommended repairs

11 Q My understanding is that Mr Still inspected
12 this building on two dates Were you in attendance with
13 him during those inspections?

14 A Yes

15 Q And I'll represent to you that I believe the
16 second inspection occurred on May 26, 2006 Does that
17 sound about in the right time frame?

18 A It may have been

19 Q All right Had most of the wood-framing repairs
20 been completed by the time Mr Still inspected on that
21 date?

22 A I'm not sure what percentage was complete
23 There was quite a bit of the repairs that was done by
24 them

25 Q At the time that you created this list, which

1 you represented earlier was shortly after R Design left
2 the project, what percentage of the building had been
3 completed, in your opinion?

4 A I'm not sure what percent The main structure
5 was framed, all but one garage was framed, and siding was
6 on seventy-five percent of the building

7 Q There's been testimony -- or testimony given
8 yesterday that the building was approximately completed to
9 the tune of fifty to sixty percent Would you disagree
10 with that?

11 A Probably fifty to sixty I would agree with
12 that

13 Q You would agree with that

14 All right And based upon that percentage of
15 completion, would you not expect that some of the items
16 that you listed as deficient just have been maybe items
17 that they hadn't gotten to yet or that could have been
18 done or completed if R Design were allowed to stay on the
19 project?

20 A Any item can be done at any point in time
21 What's your question? It's --

22 Q Well, my question is do you feel like some of
23 the items that you've included as deficiencies or
24 problems, are those items that you would also consider
25 just to be incomplete?

1 A I don't feel that's what my list was

2 Q All right And moving on to just the Anchor
3 report certainly windows and doors were mentioned in
4 that report We established that earlier --

5 A Yes

6 Q -- correct?

7 Okay Approximately how many windows in these
8 four units had to be replaced?

9 A I believe I only replaced three windows

10 Q Three windows in the whole project?

11 A Yes I replaced all of the doors except for
12 one

13 THE COURT How many were there?

14 THE WITNESS Approximately ten, twelve doors

15 THE COURT Okay

16 Q [Mr Bendle] And what happened to those three
17 windows that needed to be replaced?

18 A One I believe was water damage, one the glass
19 was cracked when we got there, and the other one, the
20 frame was -- when we pulled the frame out, it was in too
21 bad a condition to put back in

22 Q At what point would you consider Anchor to have
23 been in control of this project after R Design left?

24 A I don't understand your question

25 Q Well, let me ask it another way You attended

1 the inspection the day after R Design was terminated,
2 correct?

3 A It could be that date I'm not sure

4 Q Okay And you were asked by the plaintiff to
5 attend that inspection --

6 A Yes

7 Q -- on their behalf?

8 Okay On that date of the inspection, did you
9 feel like you had been retained by Mr Green to be in
10 control of this project as the new general contractor?

11 A Not at that date

12 Q Okay Had discussions taken place that you
13 would be the general contractor that was in charge of the
14 repairs and completion?

15 A Dennis wanted us to finish the project That
16 report was given to Dennis before we would agree to finish
17 the project If Dennis did not agree to take care of the
18 deficiencies, Anchor Construction was not going to finish
19 the project

20 Q Are you aware what, if any, measures were taken
21 by Mr Green, or anyone on his behalf, after R Design
22 left this building, to protect the building from water
23 damage and exposure to the elements?

24 A I'm not aware of what Mr Green did You would
25 have to ask him

1 Q Okay Did Anchor, immediately after R Design
2 was terminated, take any measures to protect the building
3 from exposure to the elements?

4 A After Anchor took over, Anchor started
5 protecting the building from water damage

6 Q But you don't recall exactly when the date
7 Anchor took over was, correct?

8 A I do not recall

9 Q Do you recall when the permit was pulled?

10 A I don't recall

11 THE COURT Did you find it? Mitch, did you
12 find it?

13 [Whereupon, Mr Bendle and Mr Griffith confer]

14 THE COURT Why don't you go ahead and show him
15 the permit

16 MR BENDLE I'm sorry, Judge?

17 THE COURT Why don't you go ahead and show him
18 the permit, Tab --

19 MR BENDLE Sure

20 THE COURT -- so you can tell us when the
21 permit was pulled

22 [Whereupon, Defendant's Exhibit Number 1,
23 building permit, is marked by the court reporter]

24 Q [Mr Bendle] Mr Carpenter, I'm handing you
25 what I've asked to be marked by the court reporter as

1 Defense Exhibit 1, I believe Could you identify what
2 that document is?

3 A It's a building permit

4 Q And could you let the Court know when that
5 permit was issued?

6 A 1/4/2006

7 Q So would you agree, then, that there were
8 several months that passed that Anchor wasn't technically
9 the general contractor on this job?

10 A I would agree

11 THE COURT Well, let me ask you this You had
12 a contract, that's Plaintiff's Exhibit Number 8, signed
13 between Mr Green and Mr Powell, making y'all the GC
14 as of November 22nd of 2000 and -- what is it? Is that
15 2005 or '06?

16 THE WITNESS Okay This is where we had to get
17 a contract signed Then it takes a certain amount of
18 time to get the paperwork transferred to Anchor's name
19 So that's where the time frame --

20 THE COURT I understand that But my question
21 is at what point do you believe that you took over the
22 project as the GC and that you are responsible for
23 protecting the property? Would it be as of the date
24 you signed the contract, or do you believe it's the
25 date as of you pulled the permit?

1 THE WITNESS On my end of it, it's the day of
2 the permit because I can't be on the project until we
3 have a legal permit

4 THE COURT Okay That's what I needed to know
5 Thank you, sir

6 Q [Mr Bendle] So from the time period that
7 R Design was terminated, up to the point of January the
8 4th of 2006, who would have been responsible for
9 protecting this building, in your opinion, from any
10 damage?

11 A You would end up going back to the owners of the
12 project

13 Q And obviously we've established that the block
14 work was one of the biggest problems with this building
15 Would you agree with that?

16 A Block work and framing

17 Q All right And one of the recommendations from
18 Mr Livingston, I believe, was that cement bonding be
19 applied?

20 A Correct

21 Q But you disagreed with that method of repair,
22 correct?

23 A I did And I still disagree with it

24 Q Okay Are you aware that Aercon, the
25 manufacturer of this product, also suggests that as a

1 repair? To use the cement bonding

2 A I did not hear that from Aercon

3 Q Did you ever consult Aercon?

4 A I contacted Aercon and had a representative come
5 out Aercon was not real cooperative with me

6 THE WITNESS Can I elaborate a little bit?

7 THE COURT Sure

8 MR BENDLE Absolutely I asked the question

9 A Okay You talk about surface bonding That
10 building was at the point you could not do surface bonding
11 because it was already stuccoed on the exterior of the
12 building Surface bond has to be on both sides Every
13 company I've dealt with, Bondsal, Quikcrete, and Sakrete,
14 requires both sides of surface bond That was -- any
15 application specs -- I know three companies require both
16 sides If stucco is already applied, you can't -- surface
17 bonding will not work

18 Q [Mr Bendle] Well, since you mentioned it, what
19 percentage of the stucco work had been completed on the
20 building?

21 A The main part of the structure had the stucco on
22 the outside walls The garages did not The courtyard
23 had a ground coat, did not have a top coat

24 Q Weren't you -- or wasn't it necessary to remove
25 the stucco to fix the other problems?

1 A It was necessary to remove the windows and the
2 stucco around the windows We did not remove the stucco
3 The stucco had to be resurfaced because of the openings
4 being removed

5 Q The next items I would like to speak with you a
6 little bit about is the garages There were three garages
7 that had already been framed out, is that right?

8 A Correct

9 Q And there's four all together?

10 A Yes

11 Q Okay You testified yesterday that you had
12 determined that it would be more cost-effective to
13 demolish these garages and rebuild them, as opposed to
14 repairing what you saw as deficient, correct?

15 A Correct

16 Q All right Who did you consult with with
17 regards to that analysis?

18 A The lumber yard, on material costs, and the
19 framing contractors I had on site

20 Q Okay Did you consult with any engineers with
21 regard to the tear-down versus the repair?

22 A Consulted with Randy as to how we were to repair
23 them

24 Q Wasn't it initially Mr Still's opinion, as
25 given to you, that it was unnecessary to demolish these

1 garages?

2 A No It was -- he -- it was not necessary to
3 demolish it if I could repair it

4 Q Correct And wasn't that his recommendation
5 that it -- initially to repair rather than demolish?

6 A He recommended repairing I said, well, let me
7 figure up the price, and I will tell you what I think will
8 be the best And that's when the prices came up

9 Q Did he perform his own cost of repair versus
10 demolition analysis that he shared with you?

11 A I couldn't tell you what he did

12 Q Did you ever see any documents from him that
13 analyzed repair versus demolition?

14 A I did not

15 Q Your deposition has been taken in this case,
16 correct?

17 A Yes

18 Q Okay And one of the questions that was asked
19 or posed to you, I believe by Mr Ross, was whether or not
20 he thought that there was any aspect of construction, that
21 was original, that was done correctly Do you recall what
22 your response was?

23 A Not completely, but it was probably a little
24 smart-ass comment

25 Q Well, let me ask it again Do you feel like

1 there is any aspect of construction that was performed by
2 R Design, Catterson and Sons, or any of those original
3 subcontractors, that was done correct?

4 A Very little of it

5 Q You did mention in your deposition that you
6 thought the foundation was done correctly, correct?

7 A Yes

8 Q And am I incorrect when I say that that was the
9 only item involved in the original construction that was
10 done correct?

11 A You could probably say that

12 Q Does Anchor do any concrete work or foundation
13 work?

14 A We do not personally We hire concrete people
15 to do the work

16 Q All other aspects of repair to this building,
17 though, Anchor is engaged in, correct?

18 A We hire subcontractors

19 Q Okay We mentioned earlier that there were some
20 design changes to the building I just want to run
21 through a few of these with you There were additional
22 windows added to these units that weren't planned for in
23 the original design, correct?

24 A Correct

25 Q There were original skylights added to these

1 units that weren't part of the original design, correct?

2 A There's no skylights on the building

3 Q There were no skylights added at all?

4 A No There's not any skylights even on the job
5 site

6 Q Okay Were the garages relocated in any way
7 when you tore them down and rebuilt them? Were they --

8 A No They were built on the existing slab

9 Q Okay There was additional square footage added
10 to the rooms over the garage, correct?

11 A Not over the garages

12 Q Not over the garages?

13 A Same square footage

14 Q They were the same square footage?

15 A Same footprint

16 Q Okay How about ceiling heights?

17 A There was an increase in the height of the
18 ceiling in the garage

19 Q Okay

20 A Not in the main structure, not in the room
21 above

22 Q The dormers that exist on the building now,
23 they're in different locations than the original design
24 called for, aren't they?

25 A No, they're not in different locations

1 Q Were they torn down?

2 A They were taken down and rebuilt

3 Q But otherwise they exist today as the original
4 plans called for them to be?

5 A Yes

6 Q Okay The spiral staircases in these units,
7 they were torn down, correct?

8 A There was never a spiral staircase in the unit,
9 but --

10 Q How about the original staircases that were
11 built?

12 A They were temporary

13 Q Temporary?

14 A They were construction staircases

15 Q Okay Traditional staircases were eventually
16 built using --

17 A Correct

18 Q Were additional closets added to these units?

19 A I don't recall

20 Q How about additional square footage that was
21 added to the kitchens and the living rooms?

22 A There was additional -- there was additional
23 square footage added to kitchens

24 Q How about was there -- the balconies that were
25 in existence at the time that you came on board, were they

1 ever covered? Was that a design change?

2 A No Those were covered when -- they were
3 covered when we got there

4 Q What about the relocation of the exterior or
5 main entrance to the four units? Was that relocated?

6 A The elevator was relocated

7 Q What about just the regular entranceway into the
8 courtyard?

9 A The front entrance was basically at the same
10 location it was

11 Q I've asked you already about the windows and
12 doors Is it still your testimony that there were only
13 three windows that you had to replace?

14 A There was three I had to replace, and then there
15 was other windows that had to be purchased on top of them

16 Q Were any of the original windows used?

17 A All but three

18 Q When you say additional windows needed to be
19 purchased, are you referring back to the three, or were
20 there --

21 A When the garage was -- when the garage was
22 rebuilt, windows were added to the garage

23 Q I see Okay The breeze ways from the carriage
24 houses to the main units, according to the original
25 design, they were not covered, correct?

1 A The breeze ways?

2 Q Or the corridor, whatever I'm probably not
3 calling it the right thing The walkway from the carriage
4 houses to the main units, was that an improvement?

5 A Yes, that was an improvement

6 Q Were the balconies outside of the carriage
7 houses enlarged?

8 A I don't remember

9 Q Okay Was the roof line of the garages
10 redesigned and constructed? I believe they -- I've heard
11 the term eyebrow [phonetic] roof was placed on there that
12 wasn't in accordance with the original plans

13 A On the garages?

14 Q Yes, sir

15 A The garages I believe had a -- I believe the
16 garages were full gable, and I believe that's what the
17 plan called for The roof dormers was changed They went
18 from a hip to a gable

19 Q So that was a design change with regard to the
20 roof under the dormers, you said?

21 A On the dormers

22 Q Oh, I see So the --

23 A Yes

24 Q Thank you

25 A That was done for a cost-effect It was cheaper

1 for my guys to build the gables than hips

2 Q Would you agree that the building that exists
3 today is pretty different than the one that was originally
4 designed?

5 A No, I would not agree

6 Q You would not agree?

7 A [No response]

8 Q I believe that you testified a little bit with
9 regards to pay application number 18, and that I believe
10 has already been introduced into the record I would like
11 to ask a few questions about that

12 A Okay

13 THE COURT Why don't you go ahead and give it
14 to him It's right there

15 MR BENDLE Certainly

16 THE COURT Does anyone have an extra copy of
17 that? No The pay applications are right there

18 MR BENDLE Oh Sorry

19 THE COURT In the --

20 MR BENDLE I actually do have extra copies
21 Let's just --

22 THE COURT Does someone just have number 18 for
23 me to have, just to look at it?

24 [Whereupon, Mr Griffith proffers documents to
25 the Court]

1 MR GRIFFITH Thanks, Mitch

2 MR BENDLE Judge, do you need a copy, as well?

3 THE COURT Mitch has given me -- I'm assuming
4 this is pay application 18 Do you have the backup
5 documentation, too?

6 MR GRIFFITH That's the backup, if you want
7 it

8 THE COURT I want the backup

9 MR GRIFFITH That's just for 18, though

10 THE COURT Yes

11 MR BENDLE I think 18 is agreed to, as well,
12 if he needs to reference it

13 [Off the record momentarily]

14 Q [Mr Bendle] I believe you testified previously
15 that pay app 18 represents the costs that were involved in
16 this project through the time that you completed repair,
17 correct?

18 A [No response]

19 Q Or that it represents the costs that were
20 involved in the repair of this project?

21 A That's the breakpoint that we determined There
22 were repairs made afterwards, and there was a few things
23 that was done in 18 that was not further repair

24 Q Were those -- would you consider those costs
25 that are reflected in pay app 18 to be nominal or --

1 A It would be -- there would be a balance probably
2 around thirty, 40,000, plus or minus, where we did work
3 that was not part of the repair and then afterwards there
4 was repair work

5 Q I just want to run through a few of the charges
6 that I have questions about The first is with regard to
7 your supervision charge How much did you charge for the
8 repair alone in supervision costs?

9 A This would pretty -- that would pretty much
10 be -- these lines are your breakpoint

11 Q Okay So \$13,000, is it fair to say, that you
12 charged for supervision costs?

13 A Thereabout, yes

14 Q And you also had a markup of ten percent,
15 correct?

16 A Correct

17 Q Is that correct?

18 All right And was that ten percent markup,
19 86,000-plus?

20 A That's what it says, yes

21 Q Okay So essentially you would agree that you
22 charged the plaintiff over \$200,000, between your markup
23 and supervision fees, for the repairs only, correct?

24 A Correct

25 Q All right Do you have any idea of what that

1 breaks down to as far as a weekly rate?

2 A My fee is basically \$65 an hour

3 Q So was that your fee alone with regards to
4 markup and supervision?

5 A That's not markup That's supervision

6 Q Just supervision alone Okay

7 How long did it take you guys to get up to the
8 point where pay app 18 was issued to the plaintiffs? In
9 other words, how long did it take you guys to perform the
10 repairs?

11 A From permit date, which is 1/4, through 11/16

12 Q Okay With regard to the carpentry work, how
13 many carpenters were hired to perform repairs on this
14 building?

15 A It varied according to what I needed to have
16 done at the time

17 Q And my understanding is that there are three
18 carpenters represented on this pay app Would you --

19 A Correct

20 Q -- disagree with that?

21 A Correct

22 Q Would you disagree that it appears that over
23 \$300,000 was spent in carpentry work alone for just the
24 repairs to this building?

25 A Correct

1 Q Wasn't most of the framing and block work
2 completed when you came aboard this project?

3 A Most of it was done It was not complete
4 Seventy-five percent of the outside walls had to be torn
5 down and rebuilt The blocks had to be reworked because
6 of the deficiencies What do you consider complete? If
7 you can't leave it, it's not complete

8 Q The charge to Pender Brothers was that for
9 plumbing alone? Or were there other charges?

10 A There's two different Pender Brothers out here
11 You've got a Pender Welding and a Pender Plumbing

12 Q Okay Well, then, allow me to be more specific
13 I'm referring to the line item 22, Pender Brothers
14 Plumbing Was that just for plumbing?

15 A That was plumbing

16 Q Okay Isn't it true that most of the plumbing
17 was already roughed in at the time that you came aboard
18 this project?

19 A Yes But it all came back out, so it had to be
20 all redone

21 Q There's a Grayco bill on this pay app for
22 \$203,000, I believe Can you tell me what sort of items
23 were purchased at Grayco?

24 A Miscellaneous framing material That would be
25 your windows, doors, two-by material, siding material

1 That's basically building material

2 Q Is it not true that over \$100,000 was spent at
3 Grayco, in windows alone, during the course of repair?

4 A I don't believe it was that much, but I would
5 have to look at the tickets

6 THE COURT Well, let's look at them Do y'all
7 have the break-up backup, because it's not in this --
8 Mitch?

9 THE WITNESS I don't have any backup in this

10 MR GRIFFITH That's just 18

11 THE COURT Pardon?

12 MR GRIFFITH That's just 18

13 THE COURT It's just 18 So it's got to be --
14 do we know what pay app it's in?

15 MR BENDLE I'm sorry I don't

16 THE COURT Mitch, do you know what pay app it's
17 in?

18 MR GRIFFITH No But I've got them all, if
19 you want them

20 THE COURT Well, let's go ahead and let's find
21 them

22 [Off the record momentarily]

23 MR GRIFFITH Do you have an invoice number? A
24 date?

25 MR BENDLE I don't I don't

1 MR GRIFFITH Have you got a document you're
2 referring to?

3 MR BENDLE I don't -- no

4 In fact, if you'll allow me, Judge, because I
5 don't have the document here with me, if I could just
6 continue my line of questioning?

7 THE COURT Okay

8 MR BENDLE I don't have it, and I don't want
9 to be the cause for anymore delay

10 THE COURT No But the point is this --

11 And we can go ahead and we can still do this on
12 the record, Mia

13 Obviously, because we're trying this non jury,
14 the idea is to get to what the actual truth is And
15 because I'm the one that actually has the questions and
16 has to make the decision, we need to find this stuff
17 now The idea is not to ask him and him not to know
18 The idea is let's get the information out there
19 Whether it comes from him or through one of your
20 experts, we need to get the information out there

21 MR BENDLE Sure

22 THE COURT So one way or the other, I need to
23 know that, obviously I don't see that anything has
24 been introduced yet that would have the backup to
25 Grayco, but I am positive that it exists So if we

1 need to take two minutes If maybe Mr Still knows
2 where it is, possibly I don't know if he would He's
3 shaking his head no Probably not

4 But someone out of here should be able to find
5 it I mean --

6 MR BENDLE I do have all the payouts at my
7 office

8 THE COURT And, Tab, if your contention is is
9 that \$100,000 was spent on doors and windows, when he's
10 testifying that only three were replaced, then you need
11 to go find it

12 MR BENDLE I'll find that

13 THE COURT If you're -- if that's what you're
14 trying to do to get your number down, you need to find
15 it

16 THE WITNESS I did not testify only three
17 windows --

18 THE COURT Pardon?

19 THE WITNESS -- three windows and doors were
20 replaced All the doors were replaced

21 THE COURT You said all the doors were
22 replaced I heard that, sir

23 THE WITNESS Okay

24 THE COURT All the exterior doors And you
25 said they were between ten and twelve

1 THE WITNESS Yes

2 MR BENDLE I apologize, Your Honor And I
3 will look for that, and find it, and perhaps bring it
4 up again in my expert's testimony

5 THE COURT Okay

6 Q [Mr Bendle] But moving on, Mr Carpenter I
7 apologize for that delay

8 Again, you would agree that there was \$203,000
9 spent with Grayco for the repairs?

10 A Correct

11 Q And a portion of that was for windows, correct?

12 A Correct

13 Q But you don't have an idea as to how much?

14 A I would have to look at the pay app

15 Q Do you have an estimate of any sort as to how
16 much was spent? Or a guess?

17 A I'm not even going there

18 Q Okay During your deposition I believe Mr Ross
19 posed the same types of questions with regard to how many
20 windows were replaced Do you remember your testimony
21 being that twenty-five -- at least twenty-five percent of
22 these windows had been replaced?

23 A I don't recall

24 Q Okay If, in fact, twenty-five percent of the
25 windows were replaced, do you have any idea where those

1 windows went?

2 A As far as my memory serves me, it was three
3 windows I don't recall There may have been more But
4 I would have to go back and look But I remember three

5 Q Okay Whether it was three or more, did you
6 keep any of these windows?

7 A Those windows were of no value

8 Q Okay Were there any windows -- and I apologize
9 if you answered this But were there any windows, from
10 the original installations, that were kept in these units?

11 A What do you mean kept in the units?

12 Q Well, you've testified that a large number of
13 the windows had to be replaced because of framing,
14 correct?

15 A Correct

16 Q Okay Did you use those same windows in some
17 areas --

18 A Yes

19 Q -- to reinstall?

20 A Yes

21 Q Okay So not all of the windows in the units
22 were replaced, then?

23 A They were replaced, but not with new With --

24 Q I got you Okay

25 THE COURT All right Y'all, let's take just

1 five minutes and let me go see the attorneys back in
2 chambers

3 Mr Carpenter, if you need to step down, feel
4 welcomed to Use the restroom or whatever We'll be
5 back with you in just a moment

6 [Whereupon, a recess is taken from 12 04 p m to
7 12 31 p m]

8 THE COURT All right Mr Bendle, you can go
9 ahead and continue

10 Q [Mr Bendle] Mr Carpenter, shortly before we
11 took a short break, we were discussing the windows and the
12 doors that were purchased from Grayco, correct?

13 A Yes

14 Q Okay I believe we found a bill from Grayco
15 that I would like to have you take a look at, if I may

16 MR BENDLE And, Judge, I apologize, but I
17 think we could only find one copy

18 THE COURT Don't worry about it I can look
19 over Mr Carpenter's shoulder, though I may have to
20 borrow his glasses

21 [Off the record momentarily]

22 Q [Mr Bendle] Mr Carpenter, does that invoice
23 from Grayco reflect the number of windows that were
24 purchases from Grayco during the repair to this project?

25 A No It reflects the doors

1 Q The doors? Okay I'm sorry Well, then we can
2 do the doors while you've got that document

3 A Okay

4 Q The doors to the project how many doors were
5 purchased on this project?

6 A Twelve

7 Q Twelve

8 Okay And were those all purchased to replace
9 existing doors?

10 A Yes

11 Q Okay Were there any new doors added --

12 A No

13 Q -- to the project? Okay

14 A And one old door was salvaged

15 Q I'm sorry?

16 A One old one was salvaged

17 THE COURT And this is in the amount of
18 \$35,248 13?

19 THE WITNESS Correct

20 Q [Mr Bendle] And next, Mr Carpenter, I'll hand
21 you a second invoice from Grayco Could you identify what
22 was purchased from that invoice?

23 THE COURT Tab, are you marking these as
24 exhibits, or are all of these backups coming in? Did
25 we figure out how we're doing that?

1 MR BENDLE Mitch, did you introduce all of
2 these? I mean --

3 MR GRIFFITH Judge, I have Mr Powell in the
4 courtroom, who actually prepared the payouts, so I can
5 put him up to lay the foundation Or if they'll
6 stipulate that these are the payouts --

7 MR BENDLE We'll stipulate to that, Judge

8 THE COURT Do y'all stipulate these are the
9 payouts and these are the backups for it? Okay We'll
10 go ahead and stipulate it, and we'll enter it all in
11 Is that correct?

12 What exhibit will this be, Mia? Is this
13 Defense's 2?

14 MR BENDLE Your Honor, I believe if we enter
15 the door invoice as Defense Exhibit 2, and then the one
16 I just handed up would I believe be 3

17 THE COURT Okay

18 MR GRIFFITH Judge, in order to keep --

19 THE COURT That was 1

20 MR GRIFFITH In order to keep continuity,
21 shouldn't we just put it back in there and just mark
22 it, tab it?

23 THE COURT I thought you were putting it all
24 in Yeah

25 MR GRIFFITH I'm putting it all in

1 MR BENDLE I've got it -- I've got it marked
2 where they need to go back in So if you want when
3 we're done, which will be in two minutes, I can just do
4 that and then hand it up

5 THE COURT REPORTER And what was 2? I'm sorry

6 MR BENDLE 2 was the invoice with regard to
7 the doors, I believe

8 THE COURT And, Tab, you're going to keep them
9 tabbed for me?

10 MR BENDLE Sure Sure Otherwise, I would
11 probably be getting a call

12 THE COURT REPORTER And what was 3?

13 MR BENDLE 3 is the one that's in his hand
14 Could you -- I'm sorry

15 THE COURT I'm sorry

16 MR BENDLE You go ahead

17 THE COURT Tab, what pay app were those backing
18 up?

19 MR BENDLE I believe that they came from 18,
20 is that right, or did they -- let me look

21 THE COURT Where did it come from, Mitch?

22 MR BENDLE Actually, Judge, it looks --

23 MR GRIFFITH I don't know I have actually
24 just tabbed them That's why I didn't want to take
25 them out

1 THE COURT Who takes credit for finding it?

2 You evidently --

3 MR BENDLE I could tell you --

4 MR GRIFFITH Mr Carpenter will take credit
5 for finding it

6 THE COURT All right Mr Carpenter, thank
7 you

8 THE WITNESS I don't know what app it was,
9 though

10 THE COURT That's okay

11 MR BENDLE It looks as though, Judge, that --

12 THE COURT Is it 18 or below?

13 MR BENDLE It is

14 THE COURT Okay That's all I need Thank
15 you

16 MR BENDLE It looks like 15 and 16 is where
17 they came from

18 THE COURT Thank you

19 Q [Mr Bendle] Mr Carpenter, could you look at
20 that invoice and tell me how many windows were purchased
21 during the repair portion of this project?

22 A There was a total of twenty-eight windows, and
23 four of the twenty-seven size windows were replaced

24 Q And what's the amount of the invoice for the
25 windows?

1 A Thirty-one thousand three sixty-five

2 Q Okay And would that total amount be reflected
3 on that final pay app or in one of the pay apps that come
4 before 18?

5 A Yes

6 Q All right You testified that there were four
7 windows purchased for replacement purposes only?

8 A Correct

9 Q Okay And the additional windows that are
10 reflected on that invoice, were those part of a redesign
11 for the project?

12 A Correct

13 THE COURT Okay So let me look at it So it
14 was four of the twenty-seven, is that correct, sir?

15 THE WITNESS Correct

16 THE COURT Okay Tab, you can keep going

17 MR BENDLE Sure

18 Q [Mr Bendle] So is it your testimony today, in
19 conclusion of this line of questioning, that essentially
20 there was \$980,000 wrapped up in repair costs alone?
21 Thereabouts?

22 A Thereabouts

23 Q Okay And you testified earlier that it was
24 more or less thirty-or-so thousand dollars on either side
25 of pay app 18?

1 A Yes

2 Q Okay All right And are you aware, as you sit
3 here today, about how much cost had been poured into this
4 project by the plaintiff at the time that you came in to
5 do the repairs?

6 A How much was -- Dennis had spent before?

7 Q Yes, sir

8 A No, I'm not

9 Q Would you agree with me that it may have been
10 cheaper, in hindsight or otherwise, just to go ahead and
11 had bulldozed this entire project and started from
12 scratch?

13 A In hindsight, it probably would have been, yes
14 But I can't look at the future, and I can't -- you can't
15 go back

16 Q Sure

17 MR BENDLE Okay That's all I have Thank
18 you, Mr Carpenter

19 Judge, do you want me to place these back in the
20 notebooks? I'm scared that they are --

21 THE COURT Yeah Let me give it to you

22 [Whereupon, the Court proffers documents to Mr
23 Bendle]

24 MR GRIFFITH I think she wants to mark them as
25 exhibits

1 MR BENDLE They have been

2 MR GRIFFITH Okay

3 THE COURT Mia, you marked those as exhibits?
4 Did we mark that as all of 2? Because you had marked
5 it as 2 and 3, Tab?

6 MR BENDLE Yes, ma'am This is 2 No This
7 is 2, representing the doors 3, representing the
8 windows

9 THE COURT I thought we were just going to put
10 the whole thing in I thought that was our point, we
11 were going to put the whole thing in

12 MR BENDLE That would suit me, as well, Judge
13 However you would like for it to be marked

14 THE COURT Because, Mitch, you need to rely on
15 some of this backup is that correct?

16 MR GRIFFITH Yes, ma'am

17 THE COURT So we need to go ahead and just put
18 the whole thing in

19 MR BENDLE Okay

20 THE COURT So I guess this is considered 1 and
21 2 so --

22 MR BENDLE This is considered 2

23 THE COURT Okay

24 THE COURT REPORTER So we need 2 and 3?

25 THE COURT Mia, they are going to be 2-A and B,

1 is what those are Okay?

2 THE COURT REPORTER 2-A and B

3 [Whereupon, Defendant's Exhibit Number 2-A,
4 notebook, is marked by the court reporter]

5 [Whereupon, Defendant's Exhibit Number 2-B,
6 notebook, is marked by the court reporter]

7 THE COURT Could I just ask another quick
8 question, just so I'm clear?

9 You talked about -- I saw an invoice for the
10 doors There were twelve doors You said you were
11 able to save one door, is that correct, sir?

12 THE WITNESS I did salvage one door

13 THE COURT Okay So were any of the doors that
14 were purchased here for any of the changes, or were
15 they all the existing --

16 THE WITNESS No

17 THE COURT No door openings were changed,
18 correct? Or added?

19 THE WITNESS There was doors relocated, but
20 nothing added

21 THE COURT Okay Thank you, sir

22 MR ROSS Ready?

23 THE COURT Yes, sir

24 MR ROSS Mr Carpenter, you know my name is
25 Jeff Ross I represent Michael Catterson individually

1 I have some questions for you, as well

2 CROSS-EXAMINATION

3 BY MR ROSS

4 Q I heard you earlier today your position is
5 that things on the job site need to be exactly as they are
6 on the blueprint, otherwise the party who installed that
7 should be held accountable for it, is that correct?

8 A I don't think I ever said that word for word

9 Q Is that a true statement, then? Is that your
10 position?

11 A Basically

12 Q Okay I want to ask you about the round
13 staircases that were in these units Do you know why they
14 were removed?

15 A They were never put in to begin with

16 Q But they were originally in the plan, though,
17 right?

18 A They were in the plan

19 Q Is there a problem with the round staircases,
20 like getting furniture up to that elevation? You can't do
21 that with round staircases, can you?

22 A It depends on the size of furniture and the size
23 of --

24 Q Can you get a sofa up a round staircase?

25 A No

1 Q How about a bed?

2 A Some beds

3 Q Baby beds? Can you get a single-size bed up a
4 round staircase?

5 A [No response]

6 Q Probably not, right?

7 A I don't know I don't have a round staircase,
8 so I can't --

9 THE COURT Were these lofts?

10 MR ROSS Yes

11 THE COURT Okay

12 Q [Mr Ross] So if you can't get furniture up
13 into the loft, you have to do some redesign to get a
14 staircase so you can get furniture up there?

15 A No A lot of people have round staircases going
16 to lofts I have put them in before

17 Q How do you get furniture up there?

18 A Mattresses will fold around it Beds come
19 apart Dressers come apart People have them in all
20 kinds of houses

21 Q The dormers earlier you said that -- and I
22 think you may have corrected this I don't remember for
23 sure Did you put them back as they are in the plan?

24 A I did not put them back as they were in the
25 plan

1 Q Okay How did you put them back?

2 A I put them back with a gable roof versus the hip
3 because gables were less money, at the time, for my
4 framers to frame them

5 Q Okay I believe you testified yesterday that
6 the windows were not properly flashed, correct?

7 A Correct

8 Q How should the windows be flashed?

9 A With sticky wrap

10 Q How did you install the windows back in the
11 building?

12 A Wrapped the opening, put the caulking, screws,
13 and then reroute the window after the fact

14 Q Okay What was not correct about the windows in
15 this place? Some of them didn't have the sticky wrap, is
16 that right?

17 A Some did not have the sticky wrap Some did not
18 have caulking

19 THE COURT Do you need to go ahead and mark
20 them?

21 MR ROSS Yes, ma'am

22 THE COURT Can we mark them all? Are you going
23 to use them all?

24 MR ROSS I am ultimately going to use them
25 all, but some of them are on different issues, and I

1 can go ahead and mark them all and talk about them all
2 now

3 THE COURT Mia, would you prefer to mark them
4 all right now?

5 THE COURT REPORTER Yes

6 THE COURT She would

7 [Whereupon, Plaintiff's Exhibit Numbers 3
8 through 13, photographs, are marked by the court
9 reporter]

10 Q [Mr Ross] These are probably going to be out
11 of order But, Mr Carpenter, I'm going to hand you
12 Defense Exhibit 3 Those windows appear to be flashed,
13 correct?

14 A Yes

15 Q Okay And they look like they were flashed
16 properly, is that also correct?

17 A Yes

18 Q And then Defense Number 4 the windows you see
19 there, the same way?

20 A Yes

21 Q And Defense -- I'll show you Defense 5 It
22 just -- it's the same picture, so it doesn't help

23 And Defense 6 looks like there was some flashing
24 on those windows, correct?

25 A [No response]

1 Q That's what the sticky stuff is around the side?

2 A Yes

3 Q All right Defense Number 7 you said earlier
4 that the columns, the twenty-foot columns, were all out of
5 plumb, right?

6 A The steel columns Yes

7 Q Okay There is a level in that picture, shown
8 hanging from the side of the wall Do you have a picture
9 with a level on the column?

10 A I do not have a picture with a level on the
11 column That level is stuck up there on a nail

12 Q That's fine But you did have a level, and you
13 were able to take a picture of it, but you couldn't take a
14 picture of one with the columns?

15 A No, I did not

16 Q And these pictures here show the trusses that
17 were damaged from rain water, correct?

18 A Correct

19 Q Those were on the site when you got there?

20 A Yes

21 Q Okay How much are you paid an hour out there?
22 \$65 an hour?

23 A Yes

24 Q How long does it take you to smoke a cigarette?

25 A I do smoke quite a few of them

1 Q When you took over the job, all the windows and
2 doors were installed except around the Number C garage,
3 correct?

4 A Except for what?

5 Q The garage that wasn't even built

6 THE COURT That was Number C?

7 MR ROSS I think it's Number C

8 THE COURT You said Unit C?

9 MR ROSS The letter C

10 A Yes, I believe that was correct

11 Q [Mr Ross] You gave an estimate to repair the
12 garages versus tear them down, which we have in evidence
13 Do you know now much it cost to build them back?

14 A I don't recall I did not break that down

15 Q The bond beam was cut, when you got on the job
16 site, for various utilities to run through, correct?

17 A Correct

18 Q If the information to do something is not in the
19 plans, you've got to ask somebody how to do it, like the
20 general contractor, right?

21 A Correct

22 Q A subcontractor would ask?

23 A Yes

24 Q What about conflicts in the plans?

25 A You need to ask -- you need to find out what

1 needs to be done

2 Q Okay And you reviewed the plans I think you
3 testified earlier that the plans are fine, is that right?

4 A They're okay

5 Q But a contractor could build according to those
6 plans, right?

7 A Yes

8 Q Okay Did you find any discrepancies in the
9 plans?

10 A Every plan has some discrepancies

11 Q Do you remember any of them?

12 A Not right offhand

13 Q Do you remember that the top windows and the
14 bottom windows don't line up?

15 A I don't remember that

16 Q But they're supposed to line up, according to
17 the picture, right?

18 A They may I don't recall

19 Q Okay Would you -- do you want me to show it to
20 you, or would you take -- well, let me show it to you
21 This may be easier to do down somewhere, because I'm going
22 to need you to look at it, as well

23 THE COURT Let's stick them right here

24 Q [Mr Ross] All right Let's look at plan A-1
25 This is the first-floor plan, is that right?

1 A Yes

2 Q Okay And this would be in the block work,
3 right?

4 A Yes

5 Q And then the contractor that built to this, he
6 would build this floor first and then go up and build the
7 next floor, correct?

8 A Correct

9 Q And you would line up his windows on this plan,
10 and put them in according to the plan, correct?

11 A Correct

12 Q And right here is the outside-corner wall, and
13 it indicates three feet eight inches to the center of that
14 window, correct?

15 A Correct

16 Q And according -- now, these appear to be lined
17 up, right? These should be lined up?

18 A They appear to be

19 Q That would make sense, right?

20 A [Indicates affirmatively]

21 Q All right So we've got three foot eight there
22 What is it on this second-floor plan?

23 A Three foot eleven

24 Q So they don't line up

25 A [No response]

1 Q And then to the next window --

2 THE COURT Is it the same size window?

3 MR ROSS It's to the center

4 THE COURT Okay

5 Q [Mr Ross] So the center of the window in this
6 one would be four -- would be three inches off from the
7 center of that window And the first floor is already
8 laid so now the contractor has to go and make adjustments,
9 when he's doing the second floor, to get them to line up,
10 correct?

11 A Correct

12 Q And then the same thing with the next one It's
13 the three six and five three This is to the center of a
14 door So that's eight foot nine?

15 A Uh-huh

16 Q Come over to this one What is that?

17 A Eight foot

18 Q Eight foot So we're another nine inches off
19 And I'll represent this goes across that way

20 A Yes

21 Q So as a framer is going through these plans,
22 he's got to make adjustments --

23 A Yes

24 Q -- to get these windows to line up?

25 And that makes his job harder, is that correct?

1 A Yes

2 MR ROSS I regret I've got to do this a couple
3 more times I should have --

4 THE COURT That's okay Let's just keep going
5 through it

6 Come on over here, Mr Carpenter

7 [Off the record momentarily]

8 Q [Mr Ross] The first issue that I'm going to
9 look at is the LVL Do you know where that LVL is with
10 it's three broken headers? Which frame is that on?

11 A [The witness indicates]

12 Q The post Yeah Okay This is --

13 THE COURT Point out -- point out again where
14 this is for me,

15 MR ROSS This LVL right here is the -- he
16 showed about ten pictures of it --

17 THE COURT Right

18 MR ROSS -- where it was supported, and the
19 mold, and the --

20 THE COURT Okay

21 MR ROSS And they cut this LVL out, because it
22 was supported on a single --

23 THE COURT Right Is this for the loft, or
24 what is this for? Is this for the second floor? What
25 is this for?

1 THE WITNESS This supports the loft over on
2 this side

3 THE COURT Okay That side

4 THE WITNESS And this runs out on the porch

5 THE COURT Okay That -- okay Okay

6 Q [Mr Ross] This LVL is shown being supported on
7 the middle of this window header, correct? First of all,
8 this is a -- supposed to be three LVLs, right?

9 A Correct

10 Q Which you -- all right

11 How is a contractor supposed to install three
12 LVLs if they're not on the project? He can't, right?

13 A Okay Whether something is on the project or
14 not, then you need to get it on the project You don't --

15 Q Okay But if you're told -- if you don't have
16 this to install, you can't install it, is that correct?

17 A You do not put it in

18 Q Okay Now, with this LVL being supported midway
19 through that, you know, span of that window, that's
20 generally a bad idea, isn't it? It probably should be
21 over that post right there, or shifted one way or another?

22 A Not if you use three LVLs, per the plan

23 Q So you're saying the engineer came in here and
24 this -- as a general rule, would you put an LVL over the
25 top of the center of a window that supports all that

1 weight?

2 A If the layout worked out in the middle of that
3 window, as long as this header supported it, I wouldn't
4 have a problem with it

5 THE COURT And what did you find there instead
6 of -- my understanding was there was an LVL here, but
7 nothing here, correct?

8 MR ROSS Three --

9 THE WITNESS Three individual headers

10 THE COURT Okay

11 Q [Mr Ross] And if you went on a job site and
12 saw that, the first thing you would do would be maybe to
13 brace it to keep from preventing any other damage You
14 would know that was a problem You knew it was a problem
15 And so if you were there, you're either going to tear it
16 out or you're going to put a brace under it so it doesn't
17 break something, right?

18 A Correct

19 Q Okay The garages Where are the garages?

20 A What -- where are the --

21 Q I want to see the roof trusses in the garages
22 The floor trusses

23 [Whereupon, Mr Ross reviews documents]

24 [Off the record momentarily]

25 Q [Mr Ross] All right And you said yesterday,

1 and I think Kern-Coleman may have mentioned it, that the
2 trusses on these outside two garages were turned ninety
3 degrees to what they show here, correct?

4 A Correct

5 Q Could they physically have been installed in the
6 direction they're shown there?

7 A Could they have been?

8 Q I'll cut to the chase The garage is twenty-two
9 by twenty-four, therefore, the truss was twenty-two feet
10 to go from here to here A twenty-two-foot truss is not
11 going to fit in a twenty-four-foot space, correct?

12 A Right

13 Q The trusses are on the site, they're twenty-two
14 feet long They cannot physically go here

15 A Okay I didn't order the trusses

16 Q I understand that And neither did we I just
17 want to know if they --

18 A If they're the wrong size, they can't go
19 anyplace in here

20 Q Well, they certainly can't go the way they're
21 shown on the plans

22 A If they're the wrong size, I'll agree If these
23 are the wrong size, if they're only eight feet long, they
24 will not fit per the plans

25 Q All right That's all I have of the plans for

1 now

2 A Okay

3 Q These twenty-foot long columns that are in the
4 AAC block, they needed to be installed before the AAC
5 block was installed, correct?

6 A Normally, that would be the proper procedure

7 Q Right And who is it on a job site that
8 coordinates when things arrive on site and when the trades
9 interact with each other?

10 A Normally, the superintendent will coordinate
11 what happens on the job site

12 Q The superintendent or general contractor?

13 A Yes

14 Q The windows you said the rough-opening size
15 was wrong on every single one of them?

16 A Pretty much Correct Yeah

17 Q Let me show you Defense Exhibit Number 12 That
18 gap around that window looks pretty good, doesn't it? I
19 know you're going to now say that you can't use the OSB as
20 filler But, otherwise, the gap is okay, correct?

21 A As long as the gap wasn't over a quarter inch
22 That looks like it's a little less than a quarter inch,
23 but --

24 Q That's pretty darn close And without a ruler,
25 you can't say otherwise, right?

1 A Yeah I don't have a ruler

2 Q Okay And this piece of wood up here, you said
3 that's some really bad framing technique, right?

4 A That's not --

5 Q You said, what the heck --

6 A That's not normal procedure That's what I
7 said

8 Q And it's got a really big notch in it, right? I
9 mean, it just -- it doesn't look right?

10 A Correct That's what I said

11 Q And you took issue with that, is that correct?

12 A I did

13 Q And, also --

14 THE COURT Are you going to mark that as an
15 exhibit or not?

16 MR ROSS I'm sorry, Your Honor It is Exhibit
17 Number -- Defense Exhibit Number 12

18 THE COURT Okay Thank you

19 Q [Mr Ross] Let me ask you again If you were
20 to put Sheetrock in there, that piece of wood suddenly
21 becomes important It's dead wood, isn't it?

22 A It's basically dead wood, correct

23 Q Okay So it does -- it serves a purpose?

24 And --

25 A Yes

1 Q And, Mr Carpenter, you took, or somebody on
2 your behalf took, a lot of pictures out there, like six or
3 700 of them, right? I've got a stack of them here

4 A Yeah

5 Q We went through them at your deposition?

6 A Yeah

7 Q Okay And basically every window on this job,
8 the rough-opening size was incorrect And you showed
9 pictures where there's a ruler on it that says it's an
10 inch and a quarter out Okay? And I showed you a picture
11 that looks like it's good

12 A Yes

13 Q Okay Show me some documentation that tells me
14 what size that window rough opening was

15 A It's not on that

16 Q Any documentation that you have that says this
17 rough opening was the wrong size

18 A I've got documentation that was sold -- an
19 example of what you would get from Grayco when you order
20 the windows

21 Q Okay You don't know what size that rough
22 opening was?

23 A No I don't remember what that opening was

24 Q What about that one?

25 A I don't remember what the dimensions were on

1 these openings

2 MR ROSS Do I need to continue, Your Honor?

3 A When you --

4 MR ROSS I'll continue this until you tell me
5 to stop

6 A When you order windows, at that time a drawing
7 is given out from Grayco with rough-opening dimensions

8 Q [Mr Ross] Okay

9 A I've got a copy of it in my briefcase, what
10 Grayco's quote looks like and what their window drawing
11 looks like It's not for this plan It's not --

12 Q Right

13 A -- for this building

14 Q Right But Grayco gives a plan with the size of
15 the windows, and the contractor doing the rough openings
16 builds them according to that?

17 A Correct

18 Q Okay And we don't have that plan for this job?

19 A I do not have it for this job

20 Q All right The rough opening -- I'm sorry The
21 window flashing we spoke of, you found that it was
22 generally installed all correctly on one wall and
23 incorrectly on another wall It was a per-wall basis,
24 correct?

25 A [No response]

1 Q It wasn't like we have two windows side-by-side
2 and one is wrong and one is right? It was generally on a
3 wall basis?

4 A No These pictures you showed me with the
5 flashing on them, these are ones we did You did not ask
6 me who did them

7 Q All right Let me see them

8 [Whereupon, the witness proffers documents to
9 Mr Ross]

10 A You asked me if they were flashed properly

11 Q [Mr Ross] Okay You're telling me you did
12 that flashing right there?

13 A We did not do that flashing

14 Q Okay Hold on one second

15 THE COUPT What's the date on that photograph?
16 The one you showed him

17 MR ROSS 3/1 -- well, let me go back up there
18 and look, because I don't know

19 [Whereupon, Mr Ross reviews documents]

20 Q [Mr Ross] All right Now, you say that's the
21 flashing you installed, right? Look at the second window
22 to the left

23 A This is flashing that we installed This is
24 flashing we installed

25 Q Okay And that looks like the same flashing,

1 right?

2 A That is the same flashing

3 Q Okay So you installed ripped pieces of
4 flashing on that door?

5 A No That's the same type of flashing

6 Q Okay

7 A We did not install --

8 Q You did not install that --

9 A -- the doors were being pulled --

10 Q -- so right there you're putting flashing on,
11 correct?

12 A We're putting flashing --

13 MP GRIFFITH Judge, I would just like --

14 THE COURT Let him finish his answer

15 MR GRIFFITH -- him to finish his answer

16 THE COURT Okay

17 MR ROSS I'm sorry

18 THE COURT Yes, Mr Griffith

19 Let him finish his answer --

20 MR ROSS I'm sorry

21 THE COURT -- Mr Ross

22 A Okay This, we're finishing up the flashing on
23 these This was taken getting ready to pull this out and
24 redo the framing Those windows were flashed I did not
25 say at any time that none of the windows were flashed

1 Q [Mr Ross] But some of these windows -- what
2 I'm -- let me just ask you this Some of the windows were
3 flashed correctly --

4 A Some of them were flashed

5 Q And I've shown pictures of some that were done
6 correctly?

7 A Correct

8 Q And some that were done correctly before you got
9 on site?

10 A Correct

11 Q Okay

12 THE COURT Mr Ross, let me ask a question

13 MR ROSS Yes

14 THE COURT You pulled all the windows on this
15 project, correct?

16 THE WITNESS We did pull all the windows

17 THE COURT Why did you pull all the windows?

18 THE WITNESS Because the openings were wrong to
19 meet impact

20 THE COURT So it wasn't for the flashing
21 purposes or lack of flashing --

22 THE WITNESS No

23 THE COURT -- it was because they were the
24 wrong size openings?

25 THE WITNESS The openings were the wrong size

1 THE COURT Okay And you said that no one has
2 ever had a copy, from Grayco, of the dimensions for the
3 openings?

4 MR ROSS They're gone

5 THE COURT I know we're kind of --

6 THE WITNESS I could not --

7 THE COURT -- doing the cart before the horse
8 I'm assuming Mr Catterson is going to testify
9 that he, in fact, did have some at the time, is that
10 correct?

11 MR ROSS That's correct

12 THE COURT Or they were never provided at all?

13 MR ROSS No He is going to say he had them
14 And the job was four years ago, and you don't --

15 THE COURT I understand its construction --

16 THE WITNESS -- and I tried to get a copy from
17 Grayco

18 MR ROSS And we did, as well

19 THE WITNESS But I can show you an example of
20 what Grayco does I've got it all, for another job, in
21 my briefcase

22 THE COURT Okay For the same size windows, is
23 that correct?

24 THE WITNESS They're for a -- they're for a
25 window package from Grayco, not necessarily the same

1 size

2 THE COURT Are they not specific to the type of
3 window? Or does it matter?

4 MR ROSS It will be specific to a type of
5 window, but they'll go on to a print, as I understand
6 it -- correct me if I'm wrong -- and they'll draw a
7 dimension around or in the window that that window
8 opening needs, in the rough opening that that rough
9 opening, needs to be able to fit that window

10 THE WITNESS Can I get down just one second?
11 My briefcase is right out there, and I can show you
12 what Grayco does

13 MR ROSS If you would like

14 THE COURT That's fine I guess what we're
15 saying is was it Grayco's engineer that would do that
16 on each specific window package?

17 MR ROSS Yes, Your Honor

18 THE COURT Okay So it's not something that
19 was necessarily provided by Weather Shield, it's
20 something that Grayco will do --

21 THE WITNESS It is a Weather Shield package

22 THE COURT Okay

23 THE WITNESS Weather Shield has a program that
24 Grayco has in the computer They type a window in, and
25 it prints out --

1 THE COURT Okay

2 THE WITNESS -- the rough openings It prints
3 out the size of the actual window, everything

4 MR ROSS And then somebody goes and writes it,
5 handwrites it --

6 THE WITNESS And Grayco actually writes --

7 THE COURT Right

8 MR ROSS -- on the --

9 THE WITNESS -- it on a set of prints --

10 THE COURT Okay

11 THE WITNESS -- for that floor

12 THE COURT All right Thank you

13 Q [Mr Ross] The issue with the doors, the reason
14 those delaminated is because they were not painted or
15 primed after they were installed, correct?

16 A Correct

17 Q That wouldn't be a framer's responsibility to do
18 that, ordinarily, would it?

19 A Contractor finds a painter

20 Q The top plates had to have a certain amount of
21 overlap on them?

22 A Correct

23 Q And you took issue with that, correct?

24 A Correct

25 Q But you didn't fix all the ones that you saw out

1 there, is that correct?

2 A I fixed all the ones that did not bear, that did
3 not have the four-foot overlap I did fix them

4 Q Do you remember telling me earlier in your
5 deposition that you didn't fix some of them because they
6 were too difficult to get to and you didn't think it was
7 important enough to fix them?

8 A No, I did not, not on the overlaps I did not
9 say that There may be a misunderstanding there, but I
10 fixed the ones that did not have the correct overlap

11 Q And that's your testimony today anyway, correct,
12 regardless of what may or may not have been said before?

13 A Yes

14 Q Okay The siding the siding was installed in
15 some places with a roofing nail, correct?

16 A Correct

17 Q And you took issue with that, because you said
18 Hardyplank requires a special type of nail?

19 A Yes

20 Q Okay And the nail that Hardyplank requires is
21 a smooth-shanked galvanized nail, correct?

22 A Correct

23 Q And a roofing nail is a smooth-shanked
24 galvanized nail, correct?

25 A Correct

1 Q And you didn't contact anybody at Hardy to see
2 if the roofing nail would work?

3 A No I looked at the paperwork, as far as the
4 requirements on the -- from Hardy

5 Q Okay But you did not --

6 A I did not personally contact anybody

7 Q Okay Even an engineer who might have been able
8 to approve that nail?

9 A No I did not -- my understanding is the
10 paperwork that is drawn up by Hardy is done by an engineer
11 to tell you what needs to be used for different locations
12 The paperwork states what you can use at different areas
13 to meet different wind loads If it wasn't done by an
14 engineer to begin with, it wouldn't be on the paperwork,
15 is what my understanding would be

16 THE COURT Was there any failure of the siding?
17 I mean, was it pulling away? Were there any issues as
18 far as that's concerned?

19 THE WITNESS Not really what you call failure

20 THE COURT Okay

21 Q [Mr Ross] The windows that you removed all for
22 the DP ratings, did you do any tests to see if they would
23 have met the DP rating?

24 A I did not

25 Q And a building inspector can allow deviations in

1 the code, correct? Is that your understanding? If he
2 chooses to pass something, that's acceptable, correct?

3 A Correct

4 Q And do you know that the building inspector came
5 out and inspected these windows and passed it?

6 A Correct

7 Q YellaPine it warps, it twists, it's heavy
8 Builders don't like to use it, correct?

9 A Correct

10 Q And this wasn't built with YellaPine, it was
11 built with spruce?

12 A Correct

13 Q Okay And builders prefer that?

14 A Yes I do, too

15 Q And is it also cheaper?

16 A Spruce is actually a little bit more, YellaPine,
17 normally a little bit less

18 Q They're close, though, aren't they?

19 A They're real close

20 Q If I were to ask different builders, would they
21 all agree with you, or would some have slightly different
22 opinions about the cost? I mean, is it two-by-fours are
23 more expensive than spruce, and a two-by-six more
24 expensive in YellaPine?

25 A I don't know It probably about balances But

1 when it comes down it, Spruce is probably cheaper to work
2 with I use it all the time myself I had rather work
3 with that YellaPine splits up It's hard to deal with

4 Q And you said earlier that you listened to H2L
5 You took your directions from Randy Still, correct?

6 A Yes To a point

7 Q And where you found issue with Jonathan
8 Livingston's report, what Randy Stills said was good for
9 you, correct?

10 A Yeah He was the independent engineer that I
11 had to deal with

12 Q Okay And when he suggested the option of
13 cutting grooves in the AAC block and installing rebar, you
14 said, are you crazy?

15 A Basically, yes

16 Q And then you suggested another idea to fix it,
17 and he passed off on it?

18 A Yes Let me clarify that I started looking at
19 what he wanted to do I looked at the cost it was going
20 to be to do it And then it's like, there has to be a
21 better damn way to do this Then I started thinking about
22 other things that I had done in the past I did a similar
23 repair to a basement -- it was in a half-basement -- as to
24 what I suggested to Randy It was similar to what I had
25 done before I knew about what -- how to do it, and I

1 turned that over to Randy and asked Randy if this would
2 work

3 Q The cutting of the grooves, you wouldn't have
4 had to move the walls, the utilities, or the HVAC or any
5 of that, right?

6 A No It all would have had to have been moved
7 anyway because --

8 Q Why?

9 A -- there were several different columns, in
10 different locations, that had to go up per his original
11 drawing His original drawing also had the plates mounted
12 on the tops of the windows Well, those plates on the top
13 of the windows and the bolts, you still have to fur the
14 walls out Furring the walls out, I was going to have to
15 move it

16 THE COURT That was per Randy Still's specs --

17 THE WITNESS Yes

18 THE COURT -- not the original plans, correct?

19 THE WITNESS Randy Stills

20 Q [Mr Ross] Okay The plates you said
21 something originally there I didn't hear Something that
22 sounded -- columns?

23 A There were still some columns in different
24 places, that went under some of the locations where the
25 block was spalled, that Randy wanted --

1 THE COURT Where the block was what?

2 THE WITNESS Where the block was broken

3 A -- where the beams were sitting on them, that
4 Randy wanted columns I had to go around them I had to
5 go -- I had to fur out for the window headers where the
6 lintels were not setting properly The bolt and the plate
7 would have took up an inch and a half to two inches I
8 would have had to fur out for all of that

9 Q [Mr Ross] An inch and a half to two inches?
10 What size plate?

11 A It was -- if I remember right, it was like a
12 three-eighths plate that we put up there And then you've
13 got bolts And the bolts -- basically, you have to put
14 them in and tighten the threads up so you would have a
15 certain amount of thread sticking out

16 Q It doesn't just have one head on the outside?

17 A No, it does not

18 Q How do these bolts go in?

19 A They're set with a epoxy, with a nut, and you
20 tighten the -- after the epoxy sets --

21 THE COURT Is this what we're talking about?

22 THE WITNESS Yes

23 A These have washers, nuts, and the threads
24 sticking out There's just a bolt sticking out of the
25 plate You set the bolts --

1 THE COURT How far are they sticking out?

2 THE WITNESS They stuck out -- varied inch and
3 a half to two inches so you could thread your nut out
4 and tighten them up But you put them in epoxy to --
5 you know, first

6 Q [Mr Ross] What walls did you have to move
7 because of this five-inch wall you put on the inside?
8 What problems did you have? I mean, were there toilets
9 against the outside wall?

10 A There were some toilets on the outside walls
11 there were some bathtubs on the outside walls

12 Q How much clearance did they have from the
13 original wall?

14 A I don't remember I honestly do not remember

15 Q So when you moved the wall five inches versus
16 maybe an inch and a half, it may have worked with the inch
17 and a half?

18 A [No response]

19 Q Well, you don't remember how much clearance --

20 A I don't remember the clearance

21 Q The cutting the grooves you said was more
22 expensive because you had -- you're working on a small
23 space?

24 A Correct

25 Q And you have to drill an epoxy into the

1 concrete?

2 A Correct

3 Q But you have to drill an epoxy into the concrete
4 in this -- the way you fixed it, also, correct?

5 A Correct

6 Q And this block is real easy to work with? They
7 don't cut it with a skill saw or another -- it uses wood
8 tools? You don't need special masonry blades?

9 A Supposedly, yes

10 Q Okay And I believe you said -- and correct me
11 if I'm wrong -- that it would take a couple of guys about
12 a day and a half to do one vertical groove in that wall,
13 is that correct?

14 A With epoxy and everything, yes

15 Q Okay The rafter tails that were sticking out
16 of the -- the exposed rafter tails were supposed to be
17 treated lumber You took issue with those in one of your
18 reports, correct? They were not treated?

19 A Yes

20 Q And you didn't put treated wood back there You
21 just painted them, right?

22 A I did not replace all the rafter tails

23 Q The ones that were not treated and exposed, that
24 you took issue with --

25 A We painted them

1 Q -- some of them you painted?

2 A Yes

3 Q The LVL that goes across, that we've spoken
4 about a lot -- we've got about ten pictures of them from
5 yesterday --

6 A Yes

7 Q -- your testimony is that you can't cut it at
8 that angle like that, right? You took off too much of the
9 tail?

10 A Yes

11 Q Okay You put an LVL back in there How did
12 you arrange to not cut off the tail, like it was done, so
13 it didn't stick up through the roof?

14 A Moved the roof line up

15 Q So that roof line, as it was framed previously,
16 would have been -- was in the right place, you just had to
17 raise it because the LVL stuck up too high?

18 A I don't know if it was in the right place or
19 not

20 Q Okay But if it was in the right place the
21 first time, and you had to move it higher to stick the LDL
22 in there, that would be a design flaw, wouldn't it?

23 A That would be a design flaw

24 MR ROSS Your Honor, you look confused Do
25 you know what I'm talking about?

1 THE COURT I know exactly what you are talking
2 about That's what I was saying, it's -- yes

3 MR ROSS I think I'm about done, Your Honor

4 THE COURT Okay

5 Q [Mr Ross] When you put the new garages back
6 on, you raised the ceiling about two feet, right?

7 A One foot

8 Q Okay One foot

9 A Okay

10 Q But it was raised so that you would be on equal
11 level with the room above the laundry room, correct?

12 A Correct

13 Q And without tearing those garages down, you
14 couldn't have met that level very easily, correct?

15 A Correct

16 Q The Anchor Construction day sheets -- is that --
17 am I pronouncing that right?

18 A Close enough

19 Q That's what tells you what's going on, on the
20 job, on a daily basis?

21 A Yes

22 Q Do you have those?

23 A Not with me

24 Q They're back in Anchor Construction's office,
25 right?

1 A I've got a copy at my place, too

2 Q They were never produced, though, correct? You
3 never gave a copy of those to Mitch?

4 A I believe Mitch had a copy

5 THE COURT Are those daily notes, or additional
6 receipts? What are they, Jeff?

7 MR ROSS I understand -- why don't you tell
8 her I'm not really --

9 THE COURT What are they?

10 MR ROSS -- sure what they are

11 THE COURT You called them day sheets?

12 THE WITNESS Day sheets D-A-Y

13 THE COURT D-A-Y

14 THE WITNESS Just people kept a report as to
15 what happened

16 THE COURT Okay Just your daily notes?

17 THE WITNESS Daily reports Yeah

18 Q [Mr Ross] But they would have a more accurate
19 description of what was done on the job than the pay
20 requests with that attached documentation --

21 A Yes

22 Q -- correct?

23 A I thought Mitch had a copy of those

24 THE COURT Mr Ross, did you request them?

25 MR ROSS I requested them in a deposition

1 MR GRIFFITH I think we probably could I
2 would assume they were responded to in the subpoena
3 I'm sorry

4 THE COURT They were responded to in a
5 subpoena?

6 MR GRIFFITH I assume they were, if they sent
7 a subpoena

8 THE COURT You subpoenaed the construction
9 file?

10 MR ROSS I would have I'm sure I did But I
11 don't believe they were produced I don't know why I
12 mean, I don't know what they look like I --

13 THE COURT Right

14 MR ROSS I've got the pay apps like that

15 THE COURT Okay And you never filed a motion
16 to compel or anything?

17 MR ROSS No, Your Honor

18 THE COURT No? Okay

19 Q [Mr Ross] The idea of surface bonding is --
20 Mr Still is going to hear a lot about it, as I'm sure
21 he's aware I want to talk to you a little bit about it,
22 as well

23 Earlier you stated that you didn't think you
24 could do the surface bonding, partially because of the
25 stucco on the outside of the AAC block, correct?

1 A Correct

2 Q Do you know what was -- what product was put on
3 the outside of the AAC block?

4 A Standard stucco

5 Q Standard stucco

6 All you could see was the finish coat, right?

7 A That's all I could see

8 Q Okay You don't know what, if anything, was
9 underneath?

10 A There was a bed coat underneath it

11 Q How do you know that? Did you cut into it to
12 look?

13 A I know the people that did it They were
14 Preston, with Two Brothers, and Two Brothers were the ones
15 that finished the project

16 Q But this was put on before you got on the
17 project?

18 A It was

19 Q Did you specifically ask them what they put on?

20 A I contacted them when we took the project over

21 Q Do you know if Mr Aten told them to put on a
22 FRP, or a fiberglass reinforced plaster?

23 A I do not know what they --

24 Q Do you know -- I'm sorry Go ahead

25 A I don't know what somebody else told them to do

1 Q Okay Do you know if the product that was put
2 on the outside of the AAC block wall has the surface-
3 bonding qualities to it that Mr Livingston spoke about?

4 A It does not I found that out after I got on
5 the project And I asked them about the bonding agent,
6 and they did not have that Jonathan brought up putting
7 bonding on the inside of the wall to take care of the
8 problem That's when I looked up the paperwork on the
9 bonding material At that point, I called Preston and
10 asked Preston if he used the special stucco on the outside
11 for bonding He did not

12 Q Okay Do you know if the product that was put
13 on the outside of that wall has qualities that will serve
14 similar to a bonding agent?

15 A That I --

16 Q Are you -- let me ask you --

17 A I don't know what the quality of it is It's
18 not specified as a surface-bonding agent

19 Q Okay That's what I wanted to know

20 Do you know if you can apply -- have you had any
21 classes in stucco?

22 A Not classes

23 Q So you don't know if you could apply a bonding
24 agent on an FRP, to the exterior of the stucco, and
25 achieve the same results?

1 A You probably could I'm not aware of what you
2 can do to the outside stucco

3 Q The bond beam that was cracked -- that you said
4 was cracked and stuccoed over, isn't it the rebar inside
5 the bonding that gives it the strength?

6 A To a point Correct

7 Q But you didn't --

8 A But the rebar is held together with the concrete
9 around it

10 Q But that would really be for an engineer to
11 decide, correct?

12 A Correct

13 Q And did you contact anybody at Aercon to see if
14 they spent -- sent special lintels down there that didn't
15 need an eight-inch-bearing length on them?

16 A I did not contact them on that

17 Q I'm sorry?

18 A I did not

19 Q The plans were sent to Aercon, and Aercon sent
20 bond beams back to be installed on this job, correct?

21 A I don't know I was not there

22 Q Have you ever installed AAC block before?

23 A I have never installed it

24 MR ROSS I don't have anything further, Your
25 Honor

1 THE COURT Okay Mitch? I'm sorry Tom,
2 anything?

3 MR BENDLE I'm good, Your Honor

4 THE COURT Okay Mitch?

5 REDIRECT EXAMINATION

6 BY MR GRIFFITH

7 Q I think this was cleared up, Steve, but I just
8 want to ask you there was questions about the flashing
9 Did you remove all these windows because of the flashing
10 issues, or because of framing issues and installation
11 issues?

12 A Framing, installation issues

13 Q And a combination of all?

14 A Yes

15 Q All right You were asked a question about if
16 there's a conflict between the plans, that what are you
17 supposed to do

18 A Normally you would contact the architect or the
19 engineer and resolve the problem before you proceed

20 Q Is it proper just to go to whatever is in your
21 pickup truck and just decide to stick it up?

22 A Sometimes I have But normally you would take
23 and get the answer first

24 Q And simply for the record, when you were talking
25 about the plans over here with the LVLs and the headers --

1 do you recall that?

2 A Yes

3 Q That --

4 A F-2

5 Q F-2? Okay I didn't think I heard that

6 So that was on F-2 And that actually called
7 for a triple LVL, is that correct?

8 A Correct

9 Q All right Was that out there?

10 A I was not there when it was put in, so I don't
11 know if it was out there

12 Q When you showed up -- when you showed up there,
13 was it installed?

14 A It was not installed But there were LVLs on
15 the job site laying outside, on top of the trusses, that
16 were water damaged

17 Q All right You had mentioned a beam and about
18 furring out the AAC block We had a photograph yesterday
19 where it appeared as though some red-iron steel was
20 crushing an AAC block?

21 A Correct

22 Q Was that where you had to install the beam, per
23 Mr Still?

24 A Column

25 Q Column I'm sorry

1 A There was different locations the columns had to
2 go

3 [Off the record momentarily]

4 THE COURT Keep going, Mitch

5 Q [Mr Griffith] You were asked about certain
6 improvements that were made Were those made -- or were
7 those priced out by Anchor Construction?

8 A They were not Some of them was priced out,
9 some was not It's just -- you know, was I -- do you
10 think we can do this for about the same price

11 Q Okay And were those improvements made after
12 pay application number 18 that we've talked about?

13 A Some was done before

14 Q We talked about also, I believe, the window and
15 door package You had testified about three windows
16 After we took the break, did you understand or did it
17 refresh your memory that --

18 A Yes There --

19 Q -- there was actually four?

20 A -- was four

21 Q And the replacement of the doors did they all
22 need replacement, in your opinion?

23 A Yes Now, every door comes in with a label on
24 it, that says it must be painted immediately upon
25 installation, and I could not find one of those labels

1 MR GRIFFITH All right I think that's all
2 the questions I have Thank you very much, Mr
3 Carpenter

4 THE COURT Mr Bendle?

5 MR BENDLE No

6 THE COURT Mr Ross?

7 MR ROSS I've got one follow-up

8 RECROSS-EXAMINATION

9 BY MR ROSS

10 Q Mr Carpenter, when you got on site, there was
11 no stickers on any of the windows, right?

12 A Yes There were stickers on all the windows and
13 doors

14 Q There were stickers on all the windows, still,
15 when you --

16 A Pretty much there was, yes

17 Q When I asked you that question earlier, do you
18 remember telling me that you've never seen any paperwork
19 on the windows? Is paperwork different from stickers?

20 A Yes

21 Q Okay What is the paperwork?

22 A Paperwork is what Grayco sent out when you order
23 the windows The windows, they've got different stickers
24 on them as far as warranty They got the sash sizes, sash
25 number, and window requirements during installation

1 Paperwork is what I refer to as a set of drawings from
2 Grayco and the actual window order That's paperwork

3 MR ROSS All right Thank you

4 MR GRIFFITH And I'm sorry I did want to --

5 FURTHER REDIRECT EXAMINATION

6 BY MR GRIFFITH

7 Q When we were talking about F-2 -- and I'll try
8 to be very quick -- it also called for coming across
9 laying into that triple LVL --

10 A Yes

11 Q It says on the plans W-16X30 What is that?

12 A That's the I-Beam, iron I-Beam

13 Q All right And what was out there?

14 A Wood

15 Q All right And is this a photograph of that?
16 Because we've talked about a lot, and I think there might
17 be a photograph yesterday, but instead of trying to grab
18 one, I know --

19 A The one with your thumb, where your thumb is, is
20 where that is not, and that's the wood beam

21 Q Okay And what you had to do, as I understand,
22 is go back and replace it And you did replace it with --

23 A Okay That's the outside --

24 Q That's the outside of it That's the LVL that
25 was supposed to be there?

1 A Yes

2 Q All right And --

3 A We replaced the inside, but we replaced it back
4 with wood

5 Q With wood? And you --

6 A With a larger size wood, and we replaced it back
7 with wood

8 Q Okay But this depicts what went back up on the
9 outside, is that correct?

10 A Yes

11 THE COURT Is this the inside, or is that a
12 different one?

13 THE WITNESS That's the inside

14 THE COURT That's the inside

15 THE WITNESS That's the outside wall --

16 THE COURT Just making sure

17 THE WITNESS -- the windows That's what --
18 that header right there --

19 THE COURT Right

20 THE WITNESS -- is the replacement

21 THE COURT That's what you put in

22 THE WITNESS Yes

23 Q [Mr Griffith] And I want to make sure the
24 record is clear, Steve

25 The dates on these photographs, that's not the

1 actual date you took them, is it? }

2 A No

3 Q Did you have trouble --

4 A Some of them may have the actual date Most of
5 them don't Cameras -- I know my cameras, I never set the
6 date and I normally have the date off

7 Q Okay And you said you had a copy of the LVL
8 specifications Was that end over-cut, per the
9 specifications?

10 A Yes

11 MR GRIFFITH Okay That's all the questions I
12 have

13 THE COURT Anything further?

14 MR BENDLE No, Your Honor

15 THE COURT Mr Ross?

16 MR ROSS No, Your Honor

17 THE COURT Mr Finn?

18 MR FINN No, Your Honor

19 THE COURT All right Y'all, we'll take lunch
20 We'll come back at ten after I'll see you-all then

21 You can step down, Mr Carpenter Just don't
22 take off with any of the exhibits All right?

23 THE WITNESS I won't

24 THE COURT Thank you, sir

25 [Whereupon, Mr Carpenter is excused and exits

1 the witness stand]

2 [Whereupon, a recess is taken from 1 25 p m to
3 2 21 p m]

4 [Whereupon, Plaintiff's Exhibit Number 54 is
5 marked by the court reporter]

6 [Whereupon, Plaintiff's Exhibit Numbers 56
7 through 98, photographs, are marked by the court
8 reporter]

9 THE COURT All right Are y'all ready? Is the
10 plaintiff ready to call your next witness?

11 MR GRIFFITH The plaintiff would call Randy
12 Still

13 [Whereupon, Mr Still is duly sworn by the
14 Court]

15 THE COURT Thank you Go ahead and take a
16 seat

17 [Whereupon, Mr Still takes the witness stand]

18 - - - - -

19 WILLIAM R STILL,

20 Having Been First Duly Sworn,

21 was Examined and Testified as Follows

22 DIRECT EXAMINATION

23 BY MR GRIFFITH

24 Q Mr Still, could you state your full name for
25 the record, please

1 A William Randall Still, Sr

2 Q And you're a professional engineer, is that
3 correct?

4 A Yes, sir, I am

5 Q And prior to starting your testimony, you
6 provided me with a copy of your CV, is that correct?

7 A Yes, sir, I did

8 [Whereupon, Plaintiff's Exhibit Number 99, CV,
9 is marked by the court reporter]

10 MR GRIFFITH Judge, I would ask that this
11 witness be qualified as an expert in the field of
12 engineering

13 THE COURT Any objection?

14 MR BENDLE No objection, Your Honor

15 THE COURT He is qualified as such, and I'm
16 sure has been on many occasions

17 Q [Mr Griffith] Mr Still, what was your first
18 involvement with the Jade Street project?

19 A Well, I was called by you to come look at a
20 property that had been looked at by the engineer of
21 record, Kern-Coleman They tendered a report You gave
22 me a copy of that report And you asked me to come look
23 at the property and evaluate it for some specific areas

24 Q And that was in November, 2005, is that correct?

25 A I believe that's right

1 Q All right And as a result, did you come and
2 look at the project?

3 A Yes, sir, I did

4 Q Made a site visit?

5 A Yes, sir

6 Q And in making that site visit, did you do --
7 then did that lead into an investigation?

8 A It did

9 Q All right And as a result of that, I believe I
10 provided you with the Kern-Coleman report, which is an
11 exhibit Did you go through the Kern-Coleman report?

12 A I did

13 Q All right Did you find the things, in general,
14 that Kern-Coleman found?

15 A I believe I did

16 Q Okay Did you agree that these were defects?

17 A I guess in broad terms, yes

18 Q Okay And when I ask you today, I'm going to
19 ask you some opinions that you have When I ask you an
20 opinion, can you state to a reasonable degree of
21 engineering certainty whether -- first of all, in general
22 terms, whether the work that you saw at the Jade Street
23 project was in compliance with the plans?

24 A I believe so

25 Q Can you state to a reasonable degree of

1 engineering certainty whether the work that you saw on
2 your initial visit to the Jade Street property, was it
3 in -- was it built in accordance with industry standards?

4 A I believe I can testify to that, yes

5 Q Okay And can you testify to a reasonable
6 degree of engineering certainty as to the -- whether what
7 you saw at the Jade Street project met with the code in
8 effect at that time?

9 A I would think so, yes

10 Q All right What is your opinion about the way
11 it was built in accordance with industry standards?

12 A Well, when I got to the project -- I think it
13 was described earlier -- all of the exterior walls were
14 up the Aercon block was in place for the first floor, all
15 the foundations and slabs were in, the second-floor Aercon
16 floor was in, with its supports, the exterior walls on the
17 second floor, and roof framing, were in, three of the --
18 two of -- three of the carriage houses were partially
19 constructed I would say, in broad scope, it was
20 partially constructed It wasn't -- didn't have any of
21 the finish work done, but the rough framing was in and the
22 foundations were in

23 Q All right Did you find any defects in the
24 property out there?

25 A Yes

1 Q All right And did you also make photographs of
2 the property?

3 A Yes, sir

4 Q All right And I asked you about defects Did
5 you also find that there were items that were not code
6 compliant out there?

7 A I would think so, yes

8 Q All right And, basically, what did you do?
9 Did you form -- how did you go about forming what you were
10 going to do and what repairs you were going to make or you
11 thought needed to be made at the project?

12 A I think I discussed, both with you and Mr
13 Green, that there were two things we could do for him we
14 could do an investigation that would encompass every
15 component out there or we could do an inspection that
16 would encompass, in broad scope, those components that are
17 not common wood-framing items And that's where we really
18 concentrated And that would be the Aercon block, the
19 floor system, and the steel frame Those were kind of the
20 key points we looked at

21 Q All right What about some of the engineered
22 framing, such as the LVLs?

23 A We looked at all of those

24 Q Okay So anything that dealt with engineering
25 principles, is that where you sort of concentrated on? Or

1 outside of the normal framing

2 A Right Other than floor trusses, we did

3 Q Now, as a result of your investigation, did you
4 find defects or problems at the Jade Street property?

5 A Yes, sir

6 Q And as I understand, you said that there were
7 three areas that you addressed and those would be in your
8 repairs Would those be structural modifications to AAC
9 block wall?

10 A It would be

11 Q And was it structural steel framing?

12 A Yes, sir

13 Q And did you also review the carriage house
14 Aercon block walls and wood framing?

15 A We did

16 Q All right And how was it decided that there
17 were -- how was it decided to handle the other problems at
18 the project?

19 A Well, most of -- it was a discussion between us
20 and Anchor Construction And what we were trying to
21 describe was there are prescriptive portions of the code
22 which is, in general, the wood framing, that most
23 residential contractors can understand without a problem
24 and can be code compliant in their review We didn't
25 think it was cost effective for us to look at all of those

1 wood-framing items and that could be easily taken care of
2 by Anchor

3 Q All right Did you come up with a set of the
4 repair documents for the project?

5 A Yes, sir

6 Q I'm going to hand you what's been marked as
7 Plaintiff's Exhibit 58, 59, 60, 61, 62, and 63, and ask
8 you if you can identify those documents

9 A These are the repair documents that we prepared
10 THE COURT Mitch, do you have a copy for me?

11 MR GRIFFITH Yes, ma'am

12 [Whereupon, Mr Griffith proffers documents to
13 the Court]

14 Q [Mr Griffith] All right I'm going to show
15 you Plaintiff's Exhibit Number 58, and can you tell us
16 what that is?

17 A That is the first-floor wall plan, and it shows
18 the addition of structural-steel tubes and framing that we
19 added to reinforce the exterior Aercon walls, and some
20 additional columns that were required for support of the
21 second floor

22 Q All right And Exhibit Number 59 is this also
23 part of your repair drawings?

24 A Right That's the S-3 That's the third sheet
25 in the set It's a set of details, and we used the

1 photographs and annotated those with the sections to go --
2 to reference repairs

3 MR GRIFFITH Okay I'm sorry I must have
4 put them out of order

5 Q [Mr Griffith] Plaintiff's Exhibit Number 61
6 is that the floor plan of the second floor?

7 A Yes, sir

8 Q Plaintiff's Number 60 what do we have here?

9 A It's a sheet of details of how we intended to
10 reinforce around the openings, wall openings, on the
11 exterior walls, and then how we were going to brace some
12 additional frame tubes that were already there, and
13 support of steel framing and anchorage of the second floor
14 to the Aercon first-floor block and slab

15 Q And what is Plaintiff's Exhibit Number 62?

16 A Technical specs on construction grout and a
17 surface bonding agent for the interior surface of the
18 wall

19 Q And, finally, Exhibit Number 63 What is that?

20 A Those are the LVLs at the loft area, and shows
21 some additional framing we had to add to support it, and
22 how the LVLs needed to be attached to each other

23 Q First of all, let's talk about this deals
24 primarily, you said, at three areas With the Aercon
25 block --

1 A Yes, sir

2 Q -- is one of the areas that you dealt with?

3 AAC, or Aerated Autoclave Concrete, is this an
4 AAC block down here?

5 A It looks like it

6 Q All right And that was one that came from the
7 project

8 Do you have any -- well, first of all, what is
9 Aercon block?

10 A It's an exterior wall component and it's used to
11 construct an exterior wall, similar to masonry

12 Q All right And did you do any investigation on
13 Aercon in your work at the Jade Street project?

14 A I did

15 Q Did you obtain any technical data on Aercon?

16 A I did

17 Q And did you also obtain any manufacturer
18 specifications on the Aercon block?

19 A I did

20 Q And did you also find an ICC report on Aercon?

21 A I did

22 Q All right And in reviewing the documentation
23 in your investigation, did you find any problems with the
24 Aercon block as it existed, or the installation of the
25 Aercon block as it existed, at the Jade Street project?

1 A I did

2 Q I'm going to show you what's been marked as
3 Plaintiff's Exhibit Number 64 Can you identify what that
4 is?

5 A That's an Aercon block in the garage, with a
6 large crack running up the middle of the wall

7 Q Okay This photograph that you took, can you
8 just point out --

9 MR GRIFFITH I don't know, guys If y'all
10 want to come around here --

11 Q [Mr Griffith] Can you point out for the judge
12 what we are looking at on this particular photograph?

13 THE COURT I think I can see it

14 THE WITNESS See if I can do this without
15 hitting anybody

16 A It's got a large crack running up between the
17 block

18 Q [Mr Griffith] Is that good installation
19 practice?

20 A No

21 Q What am I --

22 A If you --

23 Q What am I seeing through here?

24 A Well, that's the other side of the wall That's
25 day light

1 THE COURT Light

2 Q [Mr Griffith] Is that supposed to happen?

3 A No

4 Q Is that installed in accordance with the plans
5 and specifications?

6 A No

7 Q Is that installed in accordance with the
8 manufacturer's data?

9 A No

10 Q All right And what else do we see here on this
11 particular -- in these areas? What do we see on this
12 particular exhibit?

13 A You see that you've got bed joints, which are
14 the horizontal joints, and you've got the vertical joints,
15 called head joints The manufacturer requires those be
16 fully grouted And in the case you see here, they are
17 partially grouted There are places that they are not
18 grouted at all

19 Q Was this representative of what you found out
20 there with the majority of the walls?

21 A This wall looks good compared to some

22 Q Okay Well, let's go ahead and talk about
23 were there any other problems that you saw or that are
24 identified or represented on this photograph which is
25 Plaintiff's Exhibit Number 64?

1 A Well, the first thing you notice, you've got one
2 size block here, you've got another size here, you've got
3 a full size here, you've got a full size here, and then
4 you've got smaller pieces You don't have a use of the
5 full size of the block You've got pieces and parts that
6 are put together And the way the block is intended to be
7 put in, and as is called for on the original engineering
8 drawings, is they are supposed to be overlapped, with a
9 core The core is supposed to have a steel reinforcing
10 bar in it It's supposed to be grouted Well, you can't
11 hardly align cores because if you look at the block, the
12 cores are on one end And, granted, you could go in and
13 make a lot more cores But it would be easier to use them
14 in full length, stack them up, and let the cores be
15 concentric one to another

16 Q So when you talk about the core, you're talking
17 about this hole right here?

18 A Yes, sir

19 Q And that core is supposed to have rebar in it?

20 A Yes, sir

21 Q And then it's supposed to be grouted?

22 A Yes, sir

23 Q And then the next run, while it would be flipped
24 upside down, is it supposed to be set up so that your
25 cores can line up so you can run rebar from top to bottom?

1 A Yes, sir

2 THE COURT And is that just from floor level?
3 I mean, how far can you go up with the rebar to tie it
4 all together?

5 THE WITNESS Full height is what the drawings
6 call for

7 THE COURT Full height of the two-story
8 building?

9 THE WITNESS Uh-huh

10 THE COURT Okay

11 Q [Mr Griffith] The rebar goes up full height?
12 Or the rebar goes up full height of the first story?

13 A Well, in this case it goes from the foundation
14 level to the second floor, which is also Aercon product

15 Q And then is it tied into the wood framing in
16 order to create a bond or knitting from the top to the
17 bottom?

18 A It is

19 Q And that was what the plans required, is that
20 correct?

21 A That's what the plans required

22 Q Was that what you found out there?

23 A No

24 Q All right And does this show that at least at
25 the Aercon -- at the Aercon block wall, problems that we

1 had?

2 A Yes

3 Q All right You said that it was supposed to be
4 tied together And when you talk about tied together,
5 we're talking about rebar and grout that runs up the core?

6 A Yes, sir

7 Q All right What does this photograph, which is
8 Plaintiff's Exhibit Number 68, tell you?

9 MR GRIFFITH And if I might bring it up here a
10 little bit closer

11 A It's one of the Aercon walls that we chose to
12 drill holes in to see if we could find grout and rebar
13 In some cases -- that one's open There's no rebar That
14 one's open That one looks like it's had grout in it
15 That one looks like it's got grout in it So you would go
16 part way up the wall and there would be grout and rebar,
17 you would go part way up the wall and there would be
18 nothing, you would hit open spaces And it's relatively
19 soft, so you could use a drill, with a wood bit, to core
20 it out

21 Q [Mr Griffith] Now, according to the plans, how
22 far apart was this core and rebar supposed to be spaced?

23 A Thirty-two inches on center horizontally

24 Q When you start off the project, then, when you
25 put your foundation in, do you have to put your rebar at

1 thirty-six inches on center?

2 A Thirty-two inches

3 Q Thirty-two inches I'm sorry Thirty-two
4 inches on center?

5 A You would have to decide how you're going to lay
6 out your block so you could embed your rebar in the
7 foundation

8 Q All right Now, the plans called for it to be
9 you said thirty-two inches on center

10 A Yes, sir

11 Q Did you find it at thirty-two inches on center?

12 A Erratically, if at all We've got a lot of
13 photographs in there that when we drilled the box, it
14 annotates where we found rebar and where we didn't

15 Q All right Is that what this blue tape is
16 showing right here? I guess that's painter tape that you
17 could write on?

18 A Yes, sir, it is I can't read that from here,
19 but --

20 Q I understand I'm just asking you what it is

21 A Yes, sir

22 Q It tells you where you located rebar, is that
23 correct?

24 A Yes, sir

25 Q And it tells you the distance apart the rebar

1 was?

2 A Right We found rebar in that core --

3 Q Stop for just a second I hate to interrupt
4 you

5 A I'm sorry

6 Q But let's -- you're starting -- looking at
7 Plaintiff's Exhibit Number -- I'm sorry

8 THE COURT 68

9 Q [Mr Griffith] -- 68 You're starting on the
10 right-hand side of the tape

11 A Yes, sir

12 Q Describe to the judge what you're seeing going
13 from right to left

14 A All right The first annotation is, rebar, four
15 and a half inches And what you see is there's a yellow
16 mark on the wall The four and a half inches is to a
17 joint in the piece of block The eight and a half inches
18 shows you the size of the next piece of block Nineteen
19 and a half inches finds the next rebar So as I'm
20 pointing right here, that's one full block And then
21 you've got a seven-inch piece of block and a twenty-inch
22 piece of block So from this rebar to this one, we're at
23 thirty-one and a half inches And then we've got a four-
24 inch piece of block, then we've got an eight and a quarter
25 inch piece of block, and it just keeps going on and on,

1 and there's rebar twenty inches away So the yellow mark
2 here, here, here, and here were rebar that we found

3 Q All right When you found that rebar, was it
4 fully grouted in accordance with the manufacturer's
5 recommendations?

6 A No

7 Q Does the grouting give it a structural property?

8 A Yes

9 Q Is that required by the manufacturer's
10 specifications?

11 A Yes

12 Q All right I want to go back and jump -- I
13 asked you a little bit about ICC What is the ICC?

14 A ICC is International Code Conference, and they
15 are the composite body I think now of all the codes that
16 are used in the United States And in the building,
17 there's a separate entity, that I understand It's called
18 ICC-ES, I believe it is, and they're the entity that will
19 test products to determine if they're code compliant if
20 they're installed in a certain manner

21 Q And do you have to have ICC approval if you have
22 a product that is not I guess -- or that is new to the
23 building industry?

24 A It would be recommended to do it The only
25 reason you would have an ICC-compliant statement is, one,

1 so the general contractor can understand how it's to be
2 put in, two, you'll know what your end product will be,
3 and, thirdly, it allows the code official to determine if
4 it's been tested in any manner, and, if so, how should it
5 be used

6 Q And do you have a copy of your file?

7 A It's back there in that white box

8 Q Did you get a copy of the -- or did you obtain a
9 copy of the ICC compliance report?

10 A Yes, sir

11 Q All right Did the building, as you saw it,
12 comply with the ICC compliance report?

13 A I don't think so no

14 Q All right And we're talking about that -- we
15 talked about dry stacking Is that what we talk about
16 when there's no mortar in between the joints?

17 A Yes, sir

18 Q There's the -- did the manufacturer require head
19 and bed joints?

20 A Yes, sir

21 Q All right We talked about I believe the rebar
22 in there It looks like there's some patching going on
23 here, something going over the top of that What is that?

24 A I think they've just come back with the grout
25 and troweled it on over the joint

1 Q Speaking of troweling is the ICC so technical
2 or so detailed that it tells you how thick to trowel the
3 grout on, or the mortar?

4 A Yes

5 Q Does it tell you what kind of trowel to use?

6 A It does

7 Q And if you didn't find any, was it used on this
8 particular project?

9 A A lot of places, no

10 Q I want to show you Plaintiff's Exhibit Number 65
11 and ask you if you can identify that

12 A This is another wall downstairs where we were
13 looking for rebar, and there's blue tape that runs this
14 side of the wall And, again, we drilled holes on a lot
15 of walls to try and find out if there was reinforcing in
16 it Erratic spacing, erratic placement of rebar, erratic
17 placement of grout

18 Q Did that concern you, from a structural
19 standpoint?

20 A Yes

21 Q Why?

22 A Well, you don't have a known entity if you can't
23 tell how it's reinforced, it's not constructed in
24 compliance with the code compliance statement and I can't
25 imagine that a code official, having seen the code

1 compliance statement, would accept it

2 Q Let me ask you about this right here What is
3 that?

4 A That's a plumbing vent line, I believe, and the
5 block has been routed out to allow it to go inside of it

6 Q All right Is that a proper application or
7 routing of the block?

8 A It's a lot bigger hole than you probably need,
9 but it needs to be grouted after they finish

10 Q All right And that's grouted back --

11 A Yes

12 Q -- covered up?

13 All right And did you see areas where there
14 had been routing, or routing so thick that it cracked the
15 block on the other side?

16 A Yeah, probably so I mean, they cut it -- they
17 cut a lot of the block out

18 Q All right I noticed that in the Kern-Coleman
19 report, which you went through in photograph 7 Is that
20 one where they would have cut too deep?

21 A I would think so

22 Q All right I'm going to show you now
23 Plaintiff's Exhibit Number 66, and ask you if you can
24 identify that

25 A That, again, is another inside wall where we

1 drilled holes looking for rebar And when you see the
2 darker circles, it meant we got to drill all the way
3 through and we happened to be in one of the cores but
4 there was no rebar in it or there was no reinforcing in
5 it And then here we've got -- we found a rebar here, we
6 found one here, we found one here And if you look at the
7 spacing, again, it's kind of erratic

8 Q And is it supposed to be spaced at thirty-two
9 inches on center?

10 A That's what the contract drawings called for

11 Q All right Is that -- the routing did you
12 comment on that?

13 A Again, they all need to be grouted

14 Q All right That looks like just a piece of
15 Rumex going through there Do you need that much coring
16 to take that out?

17 A I wouldn't think you would need something two to
18 three inches wide to put a piece of cable in that's about
19 as big as your little finger

20 Q Let me show you now what's Plaintiff's Exhibit
21 Number 67 Can you identify that for the Court?

22 A Again, this is an interior wall that we looked
23 at You can see how there's supplemental framing around
24 the windows

25 Q Let me stop you there Is that a good thing?

1 A Well, if it's all properly anchored to the
2 walls, and all the windows are properly anchored, it could
3 probably be okay I probably wouldn't put that much
4 framing in between Normally, if you have any, it would
5 be one stud and not two And I'm not sure why it's built
6 up on the bottom, other than the windows are probably the
7 wrong size

8 Q All right Tell us what you see in there

9 A Well, what you see in here is there is blue tape
10 that goes horizontal And there happens to be two pieces
11 of blue tape that says rebar goes up to here And then
12, rebar comes down to here But there's none in between
13 Because we didn't find it here We found it here, we
14 found it here, we didn't find it here

15 Q What does that tell you about it being tied down
16 from top to bottom?

17 A It's not There are pieces that are missing

18 Q All right Let's look at the lintels up there
19 on this picture What do you see in the lintels?

20 A You see that the lintels have various bearing on
21 the one on the right-hand side It's got a lot of bearing
22 on the right-hand side, and very little on the left And
23 on the left-hand window, the same thing occurs again
24 You've got very little bearing on the right-hand side, and
25 more on the left

1 Q Do the Aercon specifications address the bearing
2 issue?

3 A I believe it specifies eight inches

4 Q All right And was this eight inches on the
5 window on the left-hand -- the right-hand lintel, left-
6 hand side of the window?

7 A No

8 Q All right Is that a problem, also, from the
9 tie-down?

10 A You just don't have this system tied together

11 Q Well, let me ask you can you tie it together
12 with just this much lintel bearing over on the wall?

13 A No, because the rebar would go past it

14 Q All right Is it required that you have a rebar
15 next to an opening?

16 A The contract drawings I think call for it I
17 would always put it there And I think Aercon would say
18 you need to do that You've got to reinforce where you
19 transition from solid wall to big openings

20 Q All right And that's what I wanted to ask you
21 What engineering principles would say that you need to put
22 a rebar in there?

23 A To add stiffness to the wall and knit it
24 together

25 Q All right And when we talk about knitting it

1 together, we're talking about being able to tie it in from
2 top to bottom, is that correct?

3 A That is correct

4 Q All right I don't want to jump too far ahead
5 We have a photograph -- I don't know if you knew I was
6 going to have one, but at least now we've got a photograph
7 of -- which is Plaintiff's Exhibit Number --

8 THE COURT 69

9 Q [Mr Griffith] -- 69, which is actually just a
10 photograph of some Aercon, is that correct?

11 A That is correct

12 Q And you're taking some measurements there, is
13 that correct?

14 A That is correct

15 Q All right I'm going to show you Plaintiff's
16 Exhibit Number 70

17 MR GRIFFITH Would y'all like me to put them
18 up here?

19 MR ROSS Yeah, if you wouldn't mind, because
20 I'm going to have to walk up and --

21 MR GRIFFITH Sure

22 THE COURT Jeff, are you sure you don't want to
23 just stand behind?

24 MR ROSS Well, I could do that, too

25 THE COURT Why don't you just -- if you don't

1 mind

2 Because, Mitch, it's going to take you an extra
3 minute to flash them each time

4 MR GRIFFITH That's all right

5 THE COURT This seems to be going faster, as
6 long as Mr Still doesn't mind you sitting over his
7 shoulder I'm on one side, you can be on the other,
8 Jeff

9 Tab, if you need to come over, you are welcome
10 to

11 A Yes, sir

12 Q [Mr Griffith] All right Plaintiff's Exhibit
13 Number 70 what does that show?

14 A It shows that there are fairly large pieces of
15 block, and slivers

16 Q All right Is that a concern to you?

17 A Yes

18 Q Why?

19 A Because you don't have integrity across the
20 surface I believe the way that Aercon would have had the
21 wall tested is it would be tested with solid block, full
22 block sizes, because there's nothing in those documents
23 that say, we're going to put in little pieces and test it

24 Q All right As a result -- and I'm going to go
25 back to some photographs in a minute But as a result of

1 what you're seeing in this particular photograph and these
2 other photographs, when you initially started to develop
3 your repair scope, I guess, for lack --

4 A Yes, sir

5 Q -- of a better word, did you initially think
6 that maybe you could surface bond this?

7 A I thought we could surface bond it, maybe even
8 add a little bit of reinforcing, but as I looked at the
9 little smaller pieces I just couldn't find a way we could
10 do that and that I could stand behind it

11 Q All right So did that give you a concern,
12 then, from an engineering standpoint?

13 A It did

14 Q All right And when you first thought about
15 surface bonding, did you consider -- or did you have, at
16 that time, any of the specifications for surface bonding?

17 A I think I may have had some, but I don't recall
18 that I had researched whether -- which product we would
19 use

20 Q All right And did you ultimately look and see
21 if surface bonding would be appropriate?

22 A It would be under certain conditions

23 Q What conditions are that?

24 A So that you could bond both sides of the wall
25 with an adequate thickness And even if you did that, you

1 would have to perform the engineering calculations to make
2 sure the wall had sufficient flexile strength

3 Q All right Did you look to see if you could
4 actually get both sides of the wall bonded with the
5 surface bond?

6 A Well, when we were out there, we could have if
7 we took all the stucco off the building -- we could have
8 bonded both sides -- but that seemed to be cost
9 prohibitive, at least for that first blush

10 Q All right And then did you come up with a
11 second idea about how you might go about fixing this
12 project, or at least the Aercon wall part of it?

13 A Well, I thought we could probably replicate what
14 the engineer of record thought of initially, which was to
15 have reinforcing bars within the wall, grouted in place,
16 running top to bottom And talked to Anchor Construction,
17 and we talked about how we would cut groves in the block,
18 how we would place reinforcement bars And I think
19 initially that was thought, well, that might work But
20 then I think they finally priced it and said, that's
21 going to be costly And then we came up with another
22 scheme and --

23 THE COURT Well, let me ask you why would
24 that be costly? I mean, we're talking about routing
25 again, correct?

1 THE WITNESS Right

2 THE COURT Okay And they keep saying that you
3 can cut this block with like a wood cutter, I guess I
4 don't know --

5 THE WITNESS Right I think the real -- I
6 don't think the problem lies within creating the groove,
7 that's four inches wide or so, top to bottom I don't
8 think that's any problem whatsoever

9 THE COURT What was the problem?

10 THE WITNESS The problem becomes when you have
11 to drill holes in the existing foundation, epoxy, grout
12 the rebar in, place the rebar in the wall, put a form
13 up, pour --

14 THE COURT All the way up

15 THE WITNESS -- the grout, wait, wait, wait

16 THE COURT Okay

17 THE WITNESS And if you did that at thirty-two
18 on center on each side of wall, you have an awful lot
19 of time that you would be cutting grooves in the wall
20 So --

21 Q [Mr Griffith] And are you working in a tight
22 spot, too, there?

23 A Well, you are

24 Q All right

25 A But in concert with that, we looked at another

1 alternative, which was external reinforcing to the wall
2 And we developed enough drawings I mean, Anchor
3 Construction said, well, we've done this before, we've put
4 plates on the walls, we've put tubes on the walls And
5 I've put tubes on foundation walls before to strengthen
6 them And my first thought was the tubes would be more
7 expensive than cutting them out, grouting them, and
8 putting rebar in But Anchor Construction said the steel
9 was less expensive

10 Q All right And when you talk about plates, did
11 you have to put a plate on the head and the seal of the
12 Aercon?

13 A There's a -- yes, we did And there's a drawing
14 in our set that might be worth looking at

15 Q All right Well, we'll come back to that --

16 A Okay I'm sorry

17 Q -- in just a minute, then

18 I want to go on and talk a little bit about -- I
19 want to make sure we're clear You've got to tie this
20 thing together from top to bottom, is that correct?

21 A Yes, sir

22 Q And that's what you were working on doing, is
23 that correct?

24 A That's right

25 Q All right I'm going to show you Plaintiff's

1 Exhibit Number 77 Tell us what that depicts

2 A This is a wall in the garage It has a crack in
3 it And we also drilled it to see if there was
4 reinforcing bars and grout in it And I would say
5 probably when we checked, fifty percent had no grout,
6 fifty percent did It was very random

7 Q Okay Plaintiff's Exhibit Number 72 is that a
8 photograph that you took?

9 A Yes

10 Q What's depicted in that photograph?

11 A Well, again, we're seeing that head joints and
12 bed joints are not fully grouted, we're seeing various
13 size pieces of Aercon block being used, and we're seeing
14 chips in it So it's just an inconsistency in size

15 Q All right Photograph -- or Plaintiff's Exhibit
16 Number 73 what does that show?

17 A This is also in the garage areas where you've
18 got, again, various size blocks that's been surface
19 grouted on the joints to try and fill those joints, and
20 then you've got various-sized pieces of block

21 THE COURT What is the benefit, do you think,
22 Aercon block versus just a regular concrete block?

23 THE WITNESS I think it's lighter, I think it's
24 probably faster, and it more likely than not has a
25 better insulating capacity

1 THE COURT Okay

2 Q [Mr Griffith] Looking at Plaintiff's Exhibit
3 Number 74 what does that show?

4 A It shows that there is a plumbing line that goes
5 up through a bond beam, and you can see the reinforcing
6 bar sticking out of the bond beam where the bond beam has
7 been cut to put the drain line in

8 Q Let me ask you about that bond beam Does
9 Aercon have a specification for how you install a bond
10 beam?

11 A I believe they do

12 Q All right Is that -- should the bond beam be
13 cut?

14 A No It should be continuous with the
15 reinforcing and the grouting

16 Q All right And I want to ask you is this
17 just incomplete work, or is there something that's going
18 to be -- can somebody come back and just finish that up?

19 A Well, the answer is no It's not complete work
20 It has a thought of getting the drain line in But the
21 problem is if you're going to put a bond beam in here that
22 functions as it should, you're going to have to take more
23 Aercon block out, you're going to have to have proper lap
24 over the reinforcing bars, and you're going to have to
25 re-pour that bonding and then re-anchor the plate that's

1 on top of it

2 Q Does Aercon have a way that you're supposed to
3 actually run your utility lines, or that was actually
4 shown in the plans?

5 A Yeah I think they had a detail in the plans
6 how it was to be shown -- run

7 Q Okay Was it built like the detail in the
8 plans?

9 A No

10 Q Let's go on with a few more of these photographs
11 right now These also have some -- Plaintiff's Exhibit
12 Number 75 that also has some blue tape on it What does
13 that show?

14 A It shows a couple of things one, that the
15 bearing for the lintel over this door is five and a
16 quarter inches, it shows the width of what's left between
17 the openings is thirteen and a half inches wide, and we
18 didn't find any reinforcing in it, you've got small pieces
19 that have been added here, and then you've got large cut-
20 outs It just hasn't been completed That needs to be
21 grouted

22 Q Was that lintel in accordance with the plans and
23 specifications?

24 A No

25 Q Was it in accordance with the good industry

1 practice?

2 A No Because you've got electrical wires where
3 they routed out the lintel block where you've got the
4 highest shear and it will shear off

5 Q As a result of the ICC report, did that meet
6 code?

7 A No

8 Q Also, with regards to the rebar tying it down at
9 that opening, was that omitted?

10 A Yes

11 Q And is that a problem?

12 A Yes

13 Q Is that a defect in the construction?

14 A Yes

15 Q I'm going to show you Plaintiff's Exhibit Number
16 76 Tell the judge what that -- or tell the Court what
17 that depicts

18 A It depicts an Aercon header, or a lintel over
19 the top of the door You've got, again, various piece
20 sizes of blocks being used You've got incomplete
21 grouting of the head joints and bed joints

22 THE COURT Is there a special header, Aercon
23 header, that goes over each either door or window?

24 THE WITNESS Well, it comes in a long length,
25 and they cut it to fit So it merely is -- if you cut

1 it the right length, and you fit it in the right place,
2 you shouldn't have a problem

3 THE COURT Okay Is that where it's supposed
4 to go eight inches above on both sides or --

5 THE WITNESS I would think so

6 THE COURT I mean, that's what the
7 specifications called for?

8 THE WITNESS Uh-huh

9 Q [Mr Griffith] Called for it to bear eight
10 inches?

11 A I believe it is

12 THE COURT Okay

13 Q [Mr Griffith] Okay And --

14 A But you can't bear it in two inches

15 Q Correct And that shows about two inches in
16 that?

17 A That one is probably about four, because you've
18 got a portion of a block sitting right here

19 Q Okay Let me show you Plaintiff's Exhibit
20 Number 77 What does that depict?

21 THE WITNESS Can I have that one, too?

22 MR GRIFFITH Oh I'm sorry

23 THE WITNESS And can I have the next one? Can
24 I have the next one? Thank you

25 MR GRIFFITH All right

1 THE WITNESS I'm sorry

2 Q [Mr Griffith] For the record --

3 A 77

4 Q -- you're going to talk about Plaintiff's
5 Exhibit 77, 78, 79 and 80, is that correct?

6 A Yes

7 Q And when you refer to those, would you just call
8 out the exhibit number for the record

9 A Yes 77 is an elevation of a wall that you can
10 see blue tape on it 78 is a blow-up of the center
11 section of that, that shows you five and three quarter
12 inch block size, fifteen and a quarter inch block size,
13 where we found a rebar and where they have cut for the
14 plumbing line to go through And then it also shows all
15 the different block sizes and the dimensions When you
16 see a dimension running between two lines, a horizontal
17 dimension, it runs between the joints of the block

18 In the lower right-hand -- left-hand corner of
19 this dark spot of 77, there's a steel-tube column, and you
20 can see that in Exhibit 79, and you can see a reinforcing
21 bar And if you look up under the blue tape and along the
22 rebar, you'll see that it terminates in a solid block So
23 there's not a continuous bar that runs up at that
24 location

25 THE COURT Shouldn't it be grouted, as well, or

1 no?

2 THE WITNESS It should have been grouted

3 Q [Mr Griffith] But I guess what you're pointing
4 out here is this should have been grouted, but it didn't
5 even go all the way up?

6 A Right It stops part way

7 Q All right And that's a full -- that's not a
8 core, that's just the bottom of a block?

9 A That's the bottom of a block

10 Q Okay So it couldn't go up?

11 A No

12 Q Can you actually look at some of these
13 dimensions that you've got with the block itself to
14 determine whether it would or would not have rebar in it?

15 A I would think so If you put them all together
16 and you go from wall to wall, you can see the size of the
17 block And we tried to drill, at four inches over from
18 the end of a solid block where we thought there might be a
19 rebar, to try and find them And in some cases we found
20 them, in some cases we didn't

21 Q Was it just random?

22 A Yes

23 Q And from an engineering perspective, did that
24 concern you?

25 A Yes

1 Q I think I'm going to show you now Plaintiff's
2 Exhibit 81, 82 and 83 I think those three go together
3 Can you tell me what that depicts?

4 A 81 is a corner of one of these walls where
5 you've got a steel beam that sits on the Aercon block If
6 you look at 82, you'll see that you've got a steel beam,
7 an Aercon corner, and a corner of the block is broken off

8 And 83 is a blow-up of it, and you see that
9 There are -- there's not an anchor bolt that attaches the
10 beam to the wall You can see that there are multiple
11 rebar, and it's a very small hole, and it's grouted in, so
12 there's hardly room for the grout once you put three or
13 four rebar in it

14 Q Should there have been --

15 A And the beam was not attached

16 Q Should there have been an anchor bolt?

17 A Yes

18 Q All right Was the beam attached, I guess is --

19 A No It was sitting on top of the wall

20 Q Okay As a result, did you have to design
21 something to repair that?

22 A I did And we added a tube under it and beared
23 it on the floor below

24 THE COURT What do you mean when you say you
25 added a tube?

1 THE WITNESS A square steel tube And I think
2 we've got a photograph of it I think that's it

3 MR GRIFFITH Here's one Actually, that may
4 give you the dimension of it

5 Q [Mr Griffith] But those are the tubes that you
6 added?

7 A In this case we added this red line right here
8 is a structural steel tube, and it's below the end of the
9 beam where we had a fractured-off edge You can see the
10 burn marks where he welded it

11 And that's just an end product, with the plates
12 in place, and the tubes, and an angle across the top

13 THE COURT These are just more of those square
14 tubes?

15 THE WITNESS Yes, ma'am

16 THE COURT Okay And that is not only to
17 anchor the wall, but it's also to hold the support on
18 top? Or no? These ones

19 THE WITNESS What we're trying to do with the
20 steel tubes is we've got the plates that anchor the
21 bottom The tubes are anchored to the plates And
22 these tubes carry the load from the wall, the wind
23 load, the horizontal load

24 THE COURT The horizontal load Okay

25 Q [Mr Griffith] And why we're talking about

1 that, here we've got another -- it looks like -- we're
2 going back to the Aercon, briefly Photograph -- or
3 Plaintiff's Exhibit Number 84 what does that show?

4 A It shows that we drilled two holes and there was
5 a rebar in there and there was no grout

6 Q Should there have been grout in there?

7 A Yes

8 Q Anywhere you've got a core with rebar, should it
9 be grouted?

10 A Yes

11 Q All right Did that give you some concern from
12 an engineering standpoint?

13 A Absolutely

14 Q Photograph number -- or Plaintiff's Exhibit
15 Number 85 Hold that up and show the judge what that is
16 depicting

17 A It shows that there's three inches of bearing
18 for the lintel over the door, and there's also a three-
19 inch-wide piece below it, and a three-and-a-half-inch
20 piece beside it It's just an accumulation of small
21 pieces put together

22 Q Is that the way that Aercon's specifications
23 require that it be put together?

24 A I don't think there are any specifications that
25 require you to use those tiny little pieces of block

1 Q Is that good industry standard in putting
2 together AAC block in that fashion?

3 A I wouldn't think so

4 Q Do you have an opinion?

5 A No, it's not

6 Q Plaintiff's Exhibit Number 86?

7 A 86 is another lintel over a door, and you can
8 see that the AAC block below it is cracked, and there's no
9 bed-joint grout, there's no grout between the lintel and
10 the AAC block, and then the little filler pieces are not
11 grouted in

12 THE COURT What is causing the cracking?

13 THE WITNESS This not being fully grouted, and
14 the load coming down and causing it to rotate

15 Q [Mr Griffith] So does that show, actually,
16 failure of the block itself already occurring?

17 A Yes

18 Q And I think we'll shift gears just a little bit
19 here with Plaintiff's Exhibit Number 87 and 88 Can you
20 tell the -- those are your pictures Can you tell the
21 judge what's in there?

22 A These are the five-inch-square structural tubes
23 that were put in the wall originally, and called for The
24 anchor bolts that you see are the five-eighths-inch anchor
25 bolts that Kern-Coleman talked about should have been

1 three-quarters and they accepted For the location of
2 this, I don't see anything wrong with the five-eighths I
3 wouldn't have a problem with it What I do have a problem
4 with is that you have a lot of washers stacked up because
5 they missed the embedment of the bolt, and they haven't
6 grouted under the bearing plate, so it's kind of partially
7 floating

8 Q What's holding that up? Is it being held up
9 from the top?

10 A Probably so

11 Q Is that good construction practices?

12 A No, sir

13 Q Do you need to fix that in some fashion?

14 A Yes

15 Q And that's not just because the bolts are the
16 wrong size, is that correct?

17 A That's right

18 Q Show you Plaintiff's Exhibit Number 89 Can you
19 tell the Court what that is?

20 A It's a section where they've got a washer-dryer
21 connection and they've routed out the block and they
22 haven't re-grouted it And in that entire section, it
23 doesn't show they found any rebar

24 Q Based upon how much they grouted across there,
25 should there be some rebar that you could identify?

1 A Could have been

2 Q Looking at Plaintiff's Exhibit Number 90 what
3 does that depict?

4 A That's an interior pipe column without any
5 anchor bolts to attach it to the concrete

6 Q And when you're dealing with good construction
7 practice, when do you put those anchor bolts in?

8 A Well, you need to put them in right after the
9 steel has been put in

10 Q Why is that?

11 A Well, you're trying to knit all of the structure
12 together and keep it from moving There's no reason not
13 to do it initially

14 Q And is it -- can it move, then?

15 A Some of the columns you can move them If
16 they're not anchored and the shims are not driven in
17 tight, the bottom of the base plates could be loose

18 Q Did you hear Mr Carpenter state earlier today
19 about how some of them were not plumb?

20 A I think so

21 Q Let's look at Plaintiff's Exhibit Number 91
22 What does that depict?

23 A It's some of the structural steel framing that
24 is supporting the second floor And what you see is
25 you've got a clip angle that's used to attach the piece of

1 steel on the right to the piece of steel on the left And
2 you see that there are holes and there are no bolts And
3 those clip angles were not welded to the connecting piece

4 THE COURT Should they have lined up instead --

5 THE WITNESS They should have aligned

6 THE COURT Okay

7 Q [Mr Griffith] The next couple of photographs
8 we have deal I think primarily with the repair

9 A Yes, sir

10 Q Let's talk about what you came up with to
11 repair, or how you came up -- or how you designed the
12 repair

13 MR GRIFFITH I think we handed the judge a
14 copy of this but --

15 THE COURT I've got it

16 MR GRIFFITH -- it might be easier if y'all
17 just share one here

18 THE COURT Just look over his shoulder

19 Q [Mr Griffith] All right Tell us how you came
20 up with the -- to fix the building

21 A Okay You've got a lot of openings that are
22 windows You've got some openings that are doors This
23 lower wall that I'm pointing at now is a load-bearing
24 wall, this wall is load-bearing, and this wall is punched
25 with a lot of openings We came up with a detail, as

1 you've seen before, with tubes on either side of the
2 window, the plates above and below the windows, that are
3 anchored to the first floor and they're anchored to the
4 second-floor Aercon And that's just to knit it back
5 together and give some integrity to the system so that you
6 now have the roof anchored to the second-floor framing,
7 anchored to the second floor, anchored to the foundation

8 Q You ran through something there I want to ask
9 you about You said when the roof was anchored to the
10 second floor, which is anchored to the first floor When
11 you arrived on the project in 1995, was the first floor
12 tied to the second floor?

13 A Kind of erratically There were anchor bolts at
14 some places, the sill plate, some places there weren't

15 Q Did the plans call for them to be there sixteen
16 inches on center?

17 A I believe they did

18 Q And did you find them there at sixteen inches on
19 center, or was it more like thirty-two inches on center?

20 A It was random It was all over the place

21 Q Okay And as a result, did you have to come
22 up -- design a way to tie in the first floor and the
23 second floor?

24 A I did

25 Q All right Let's go -- we've talked about

1 getting from where you are up to the -- from the first-
2 floor foundation, or the slab, up to the ceiling of the
3 first floor, which would be the floor of the second floor?

4 A I would think so

5 Q If I said that right

6 You started -- you talked about some columns
7 that you tied in or you put in between the openings, is
8 that correct?

9 A Yes, sir

10 Q And then you also said that you tied in a piece
11 of steel across the opening, is that correct?

12 A That's correct

13 Q All right Now I want to show you Plaintiff's
14 Exhibit Number 92 Does that depict what you did on the
15 first floor?

16 A It does

17 THE COURT Show me where you tied in Show me
18 where you tie into this thing I assume from the
19 floor

20 THE WITNESS Okay These are the vertical
21 tubes

22 THE COURT Right

23 THE WITNESS This is the floor line There's a
24 base plate on the bottom of this, and it's anchored
25 here These plates are anchored to the wall, above and

1 below the windows The plates are welded to the tubes
2 The tubes go up to an angle that is attached to the
3 second-floor Aercon floor planks, and it's attached to
4 this wall So this whole system is knitted together

5 THE COURT Okay

6 Q [Mr Griffith] All right And maybe, since we
7 looked at a picture, let's look at Plaintiff's Exhibit
8 Number 60 in conjunction with Plaintiff's Exhibit Number
9 91

10 THE COURT 92

11 MR GRIFFITH I'm sorry 92

12 Q [Mr Griffith] Is the detail one over S-1 -- am
13 I saying that right?

14 A Yeah Section one, S-1 That's four

15 Q Section one -- S-1, S-4 Does that show your
16 design of how to implement that tie-down?

17 A It does

18 Q All right And when you're asked -- why did you
19 put this steel plate over and below the openings?

20 A Well, above the openings so we could knit the
21 wall back together and to get proper bearing for the
22 lintels, and across the bottom just to tie it back
23 together because of all the pieces we had, and then the
24 columns transfer the wall load into the columns

25 Q All right And then you were asked I believe

1 how you tied in between the ceiling of the first floor and
2 the wall of the -- the exterior wall of the first floor
3 Does Section S-3 show you how to do that? Is that a
4 detail you devised?

5 A Yes, sir And here you've got the floor slab
6 that's existing, you've got the wall that you had We
7 were putting adhesive anchors in, and we're putting this
8 angle in and attaching it, which is this angle, which is
9 that angle

10 Q All right And I note you've got a note up
11 here, install new five-eighths inch --

12 A Hilti

13 Q -- Hilti from the --

14 A Top side

15 Q -- top side, down And that was to anchor it
16 down That's what, well, you say, we're missing there, is
17 that correct?

18 A That's correct

19 Q Okay And then you've got the angle iron coming
20 in right there, is that correct?

21 A Yes, sir

22 Q All right This section two, S-1, S-4, does
23 that depict how you're going to tie in the column to the
24 plate over there?

25 A It does It shows the three-inch-square

1 structural tube and the anchors

2 Q All right And what is section S -- section
3 four, S-1, S-4?

4 A If you remember when we were talking about, a
5 moment ago, where the bottom of the AAC block had broken
6 off where you had an existing beam? We had a photograph
7 of it This is the steel tube that we put in to support
8 it

9 Q All right And then what is section five?

10 A Section five is a detail to brace back an
11 existing tube, that was supporting the balcony, back into
12 the floor system because the top was not attached And in
13 section six, it does some more bracing of the tube in a
14 different location

15 Q All right If you could just point out to the
16 Court where section S-5 was located on the plans

17 A Here's section six, which is on this front wall
18 Five should be on this side wall

19 THE WITNESS It may be on that other sheet
20 [Off the record momentarily]

21 THE WITNESS I think it's on those photographed
22 sheets, Mitch It's not on that one

23 MR GRIFFITH It's not on this one?

24 THE WITNESS No It's on the one that has the
25 photographs That one

1 Q [Mr Griffith] All right Now, we've gone
2 through and just looked at what you had detailed Also in
3 your plans, did you take photographs of the areas to show
4 locations where the details that you have just discussed
5 with the Court would be located --

6 A Yes

7 Q -- and how to do it?

8 A And it just became easier to include these
9 photographs because you could look at it and see that this
10 is where we're going to add a post in this area, we've got
11 to repair the grout This is the one we're talking about
12 here, five, for bracing it And there's another section
13 It was just a good way for you to look at it

14 Q All right And we've talked about -- we've
15 heard about surface bond and questions about surface bond
16 I've noticed that you have a change on your plans here --

17 A Yes, sir

18 Q -- where you wanted to put a coat of interior
19 surface bond on the inside, is that correct?

20 A Yes

21 Q And was that -- what was the purpose of that?

22 A I was trying to knit the surface of all these
23 little tiny pieces back together after the structure was
24 put in place

25 Q Okay Were you trying to give it structural

1 properties so that you wouldn't -- you wouldn't even have
2 to put up this steel?

3 A No

4 Q Did you feel like the steel was necessary,
5 reasonable degree of engineering certainty?

6 A Yes And this is just to supplement that

7 Q I think I've talked pretty much about your plans
8 for the -- how to fix the Aercon, and I believe we've also
9 talked about the floor system, how you had to put in
10 additional anchor bolts on the second floor, is that
11 correct?

12 A Yes, sir

13 Q I say anchor On the sill?

14 A The anchors at the sill

15 Q And showing you Plaintiff's Exhibit Number 93
16 does that show the work that had to be done there, or that
17 was done?

18 A Yes, it does

19 Q All right And --

20 A This is the sub-framing Took it out

21 Q Plaintiff's Exhibit Number 94 does that show
22 the steel I-beam that you put in a new column to support
23 it?

24 A Yes, sir It also shows the framing around a
25 window, and the additional angle to knit the floor and the

1 wall back together parallel to the beam

2 Q Plaintiff's Exhibit Number 95 that looks like
3 a good shot showing the angle iron at the top that you
4 used, is that correct?

5 A It does It's showing we're adding the columns
6 and the plates

7 Q And 96 looks like the same thing, but it looks
8 like now it's been furred out so that you can start
9 applying your Sheetrock?

10 A It does

11 Q Do you have to use insulation once you've got
12 this up there? Did you have to go back and insulate
13 between those studs?

14 A I don't know if the code official required it,
15 but if he did you would need the furring

16 Q All right And you talked about the code
17 official Did you have to take your plans to the code
18 official?

19 A I did not take them Anchor Construction, I
20 assume, took those so they could get a permit

21 Q So you actually did -- you actually prepared
22 these plans so that Anchor could take them and get them
23 permitted?

24 A Yes, sir

25 Q All right And the last two photographs, Number

1 97 and 98, just explain to the Court what that depicts

2 A Again, it shows the framing that you have to add
3 to get around the tubes, and the reinforcing that we
4 added, and it shows the wall after it's bonded

5 Q When we talked about alternatives, you went
6 through the things that you thought were potential
7 alternatives and the way it evolved into this scope of
8 repair that you came up with Based on the photographs we
9 saw, with all the small pieces and cut up pieces, did you
10 believe to -- or do you have an opinion to a reasonable
11 degree of engineering certainty whether you could actually
12 use just a surface bond to repair this wall?

13 A I would not no

14 Q Why not?

15 A Because I don't see that it gives you the
16 structural integrity to allow the wall to expand
17 vertically

18 Q Did you also have a concern that you didn't have
19 your rebar in there?

20 A Absolutely

21 Q Is that something that was required?

22 A Yes

23 Q By the plans?

24 A Yes

25 Q By good building practice?

1 A Yes

2 Q Or industry standard?

3 A By the engineer of record, yes

4 Q I think we talked about the floor panels

5 themselves, but let's -- I just want to make sure I go

6 through all of this You had designed an angle to knit

7 the floor and the ceiling together on the first floor, is

8 that correct?

9 A Yes, sir

10 Q All right And you also found problems with the
11 bond beams Why didn't you just fill those bond beams?

12 A Well, you couldn't You would have to take the
13 wall framing up, or cut the plate apart, to try and grout
14 it I just couldn't find a way to do it economically

15 Q So this isn't just something like punch-list
16 items that I hadn't finished the -- I hadn't quite
17 finished it This was something that was a defect --

18 A Yes

19 Q -- in your opinion?

20 I believe that we also -- we talked a little bit
21 about the structural steel framing where you put that
22 column in

23 A Yes, sir

24 Q Was that a construction defect, in your opinion?

25 A It was two things one, it was a defect because

1 it didn't have anchorage, but, two, there was damage
2 there, and I couldn't find a way to anchor the beam
3 without -- with all the reinforcement that was in that
4 core

5 Q All right Did you look to see if there were
6 any problems with the LVLs or the structural lumber?

7 A We did

8 Q All right And what did you find there?

9 A We found that at least one of them was over-
10 stressed We added a column to change the span of it We
11 also found that the LVLs, in general, were not knitted
12 together or anchored together as required by most of the
13 manufacturers So we provided a detail to do that

14 Q The fact that one of the LVLs was over-stressed,
15 was it undersized?

16 A [No response]

17 Q What I'm trying to find out was it built in
18 accordance with the plans, or was the LVL just too small?

19 A I don't remember looking at the plans What was
20 installed was undersized for the load it needed to carry

21 Q All right And where on the plans was that
22 located?

23 A It would have been on the Kern-Coleman plans

24 Q Okay And as a result, you said that y'all
25 designed some type of repair there, is that correct?

1 A That's correct

2 Q Put in a bigger beam?

3 A In one case we put a column in, with some
4 columns below, to transfer the load from the loft, through
5 the second floor, to the first floor

6 Q All right And what problems had the LVL beams
7 caused?

8 A I think there was a little bit of sag in it
9 But, you know, really, these beams hadn't been loaded with
10 all the load they will see

11 Q When they were loaded what was, in your opinion,
12 going to happen?

13 A Well, it would have overloaded and it had a
14 potential for failure

15 Q Mr Still, we've gone through and looked at all
16 the items that you've talked about with the Aercon Were
17 those construction defects, in your opinion?

18 A Yes

19 Q To a reasonable degree of engineering certainty,
20 did they need to be fixed?

21 A Yes

22 Q And did you design the fix?

23 A Yes

24 Q And did Anchor implement the fix in accordance
25 with your design?

1 A Yes

2 Q Did you go back and inspect to ensure that they
3 did that?

4 A Yes

5 Q And had they fixed it in accordance with your
6 design?

7 A In general, yes We did have a little punch
8 list I think that was back in -- I'm trying to remember
9 when it was But we had a punch list They had several
10 items to complete

11 Q Do you actually go out and inspect jobs? Is
12 that part of what you do?

13 A Yes

14 Q And in the construction industry, are you
15 familiar with the way things are built?

16 A I would think so

17 Q All right We talked a little bit about -- I
18 heard something about when there's a conflict between the
19 plans and -- a conflict between the -- in the plans
20 themselves What are you supposed to do when you get
21 that?

22 A Well, the first thing you need to do is look at
23 the plans and see what the conflict is In some cases,
24 it's something that may be minor It may be something
25 overlooked by the engineer of record or architect If

1 there's a question, you call the architect Or you may be
2 able to resolve it without doing that

3 Q If you don't know what to do, what do you do?

4 A Call the person that prepared the plans

5 Q All right If you're building and you come upon
6 not having the right material as a builder, what is a
7 builder supposed to do?

8 A I don't understand the question

9 Q Well, if the builder is out there, and if a sub
10 contractor is on site, and material -- the plans call for
11 him to put up something, say, an LVL beam --

12 A Right

13 Q -- and the LVL is not there and it's not sized,
14 what's he supposed to do?

15 A Tell the contractor to get the materials he
16 needs If he's not furnishing the materials, he needs to
17 make sure the proper materials are installed

18 Q Can he just go on and put up whatever is out
19 there and make do?

20 A I wouldn't think so

21 Q I want to briefly ask you about licensure
22 as a -- for contractors Does the State license
23 contractors?

24 A I believe they do

25 Q Do they license individuals?

1 A I believe it's individuals they license

2 Q Do they license the business?

3 A I don't think so I believe there are
4 individuals that take the test and become licensed

5 Q What about specialty subs?

6 A I would think the same thing follows for them,
7 too

8 Q All right They don't license the business,
9 they license the individual, is that correct?

10 A I would think so

11 Q There have been some questions about whether you
12 created an estimate Did you create an estimate?

13 A No, sir

14 Q Why not?

15 A Well, I could have created an estimate with the
16 program software that I have, but it wouldn't really be
17 effective in Beaufort County If I didn't have a ready
18 source of getting subcontractors to bid the work, and a
19 contractor to put his overhead mark on it, it would be
20 almost meaningless or could be almost meaningless

21 Q Sort of in wrapping up you saw the Kern-
22 Coleman report -- I gave you a copy of that -- did you
23 not?

24 A Yes, sir

25 Q Did you agree with the way to fix the problems

1 out there the way Kern-Coleman set out?

2 A In some areas, yes, other areas, no

3 Q Okay And then the areas that you didn't feel
4 that were proper, did you design something to do?

5 A Yes, sir

6 Q And is that what we've talked about here?

7 A Yes, sir

8 Q All right You worked with Anchor Construction
9 Company We talked a little bit about prescriptive things
10 in building Did you feel, in your work with them, that
11 they were competent to handle the issues that were
12 everyday construction or just regular wood construction?

13 A Yes, I think so

14 Q All right And based on your last inspection,
15 did it appear as though they were actually handling it and
16 doing it in a proper fashion?

17 A Yes

18 MR GRIFFITH I think that's all the questions
19 I have right now, unless you want me to ask him how
20 much plaintiff's work he does, Judge

21 THE COURT Mr Bendle?

22 Well, we'll ask you that, Mr Lewis [sic] What
23 percentage of your testifying --

24 THE WITNESS Still

25 THE COURT I'm sorry, Mr Still I apologize

1 Sorry

2 What percentage of your work is for plaintiffs
3 and what percentage is for defense?

4 THE WITNESS The honest answer is I think it
5 varies It's probably eighty-five, ninety percent
6 defense

7 Could we take a five-minute break?

8 THE COURT Absolutely

9 MR BENDLE Do you have his CV up there?

10 THE COURT No They didn't pass it up to me
11 He kept it down there

12 You can go ahead You're fine We're all going
13 to take five

14 [Whereupon, a recess is taken from 3 28 p m to
15 3 40 p m]

16 MR BENDLE Your Honor, before I start my
17 cross, we were talking during the break about how --
18 again, about scheduling and how things are going to
19 play out between what's left of today and tomorrow I
20 know that Mitch, as a final witness, wanted to call Mr
21 Catterson, who is obviously not here

22 THE COURT Right

23 MR BENDLE I don't believe that I'm going to
24 be any more than perhaps fifteen or twenty minutes with
25 Mr Still I believe that he's got about as much time

1 needed as I do with him

2 Because Catterson is not here, I just wanted to
3 consult with you as far as going ahead with my case I
4 would actually object to going ahead with my case,
5 because I've got several directed verdict motions that
6 I plan to bring before the conclusion of the plaintiffs
7 case We talked about it, Jeff and I, at least, and
8 believe that we can finish before five o'clock tomorrow
9 with what we have left as far as witnesses I just
10 don't know how you feel about it

11 THE COURT What is your basis for your directed
12 verdict motions that you think --

13 MR BENDLE Basically it's just to put on the
14 record, preserve the record, with regard to the
15 different causes of action against my client
16 individually And then there's a separate motion, that
17 will be based upon the Uniform Limited Liability Act,
18 with regard to managing members of LLCs And I don't
19 believe that --

20 THE COURT Why is that -- wait a minute Why
21 does that require Mr Catterson's testimony?

22 MR BENDLE It doesn't If I go forward with
23 my case today, I will probably -- I am going to put up
24 my client first, and I would rather him not have to go
25 first and give Mr Griffith another opportunity to

1 cross him before my motions are heard

2 THE COURT Okay

3 MR ROSS Your Honor?

4 THE COURT Yes

5 MR ROSS I realize that we're in this position
6 partially because we're helping my client out because
7 he's got kids to pick up from school

8 I'm in the same position as Tab is here I
9 don't want -- I had rather not start putting on our
10 case before Mr Griffith has completed his case, for
11 the simple fact of one of us may ask a question that
12 would spark something that Mitch needs to ask or --
13 I've got a number of directed verdict motions, as well,
14 which I would like to have heard before we put up our
15 case

16 And I understand that we are doing this as kind
17 of on my request here, so I'm not going to make -- I've
18 said my piece about that But I am in agreement with
19 Tab on that matter

20 MR GRIFFITH Judge, for the sake of pushing it
21 forward, I will agree that whatever I've asked Mr Aten
22 in my case, that if something comes up now, you can't
23 consider it You've got to consider --

24 THE COURT Right

25 MR GRIFFITH -- the directed verdict up to the

1 point I close my case

2 THE COURT Right

3 MR GRIFFITH So it wouldn't be like them
4 opening the door again And I'll stipulate to that

5 THE COURT Okay Well, that's fine

6 MR BENDLE That will be fine

7 THE COURT Yeah That's fine So you can go
8 ahead and call him

9 MR ROSS Are you still planning on calling
10 Mr Catterson?

11 MR GRIFFITH I do need to ask him some
12 questions, basically for your directed verdict motion,
13 yeah

14 THE COURT Okay

15 MR BENDLE But for today's sake, Your Honor, I
16 will say, too, I think I'll probably be maybe an hour
17 or so with Mr Aten If we need to go -- or you need
18 to be out of here by 5 00 --

19 THE COURT I don't I actually cancelled what
20 I'm doing

21 MR BENDLE Okay

22 THE COURT So I'm here, and we're good

23 MR BENDLE Okay If you want to --

24 THE COURT If we can get Mr Aten up and down,
25 that will be great

1 MR BENDLE -- go past 5 00, then, that's fine

2 THE COURT Absolutely

3 MR BENDLE Okay

4 THE COURT Yes, sir?

5 MR GRIFFITH Just checking my notes at the
6 break, I had about three more questions I wanted to ask
7 Mr Still

8 THE COURT Okay

9 Q [Mr Griffith] Mr Still, I forgot to ask you
10 about the ACC [phonetic] floor system Was there an area
11 on the floor system in the second floor that needed
12 grinding?

13 A Yeah I think the second was rough, as I
14 recall

15 Q All right And what caused that to be rough?

16 A I think just the placement of the slabs
17 themselves

18 Q Is that just poor installation?

19 A It could be I just -- we didn't do any
20 measurements on it It was just when you walked across
21 that, you could tell it was rough

22 Q All right Per the plans, was there a firewall
23 required in between the units?

24 A I'm sure there was

25 Q Okay And do you remember whether you addressed

1 that issue, or you left that to the general contractor or
2 Anchor?

3 A I had left it for the general contractor
4 [Whereupon, Plaintiff's Exhibit Number 100, ICC
5 evaluation, is marked by the court reporter]

6 Q [Mr Bendle] All right And finally I want to
7 show you -- or hand you up a copy of the ICC evaluation
8 Is that a copy of the ICC evaluation for the AAC block?

9 A Yes, sir, it is

10 Q And is that what you've testified to that you --
11 one of the things that you got to review?

12 A Yes

13 MR GRIFFITH I just had to make sure I hit a
14 hundred Thanks

15 MR BENDLE Good afternoon, Mr Still

16 THE WITNESS Good afternoon

17 MR BENDLE I just have a few questions or so
18 for you

19 CROSS-EXAMINATION

20 BY MR BENDLE

21 Q You were contacted in November of '05 to assist
22 in this case, is that correct?

23 A I believe that's right

24 Q And I believe that you inspected this property
25 on two different occasions, the first being March of '06,

1 the second time being in May of '06, is that correct?

2 A I think that's about --

3 [Whereupon, the witness reviews documents]

4 A Right And again in September of '06

5 Q [Mr Bendle] Okay Upon your first inspection
6 in March of '06, some of the repair work had been begun by
7 Anchor Construction, is that -- isn't that correct?

8 A I think so, yes

9 Q Okay And definitely by May a lot of that
10 repair work had been completed, isn't that correct?

11 A I don't know that I would say a lot I really
12 hadn't quantified how much they had done We just kind of
13 observed what was there

14 Q And my understanding that -- is that your
15 involvement with this case was limited to the steel
16 framing system, the floor systems, the AAC block, correct?
17 And I believe the elevator shaft maybe you inspected as
18 well?

19 A I looked at that, and also the engineered LVL
20 beams

21 Q You were not required as part of your scope of
22 work to inspect or offer any opinions as to the wood-
23 framing components of this project, were you?

24 A No, sir

25 Q Okay You indicated earlier that you have seen

1 and read the Kern-Coleman reports?

2 A Yes, sir, I have

3 Q Okay And based upon your initial inspection,
4 were you relying on those reports?

5 A No I was using those as information

6 Q Okay Were you hired to prepare plans for the
7 repair of this building?

8 A That's kind of hard to answer Initially, no
9 It was a discussion as to whether we would do it or not,
10 whether they were even needed So as the project evolved,
11 we were asked if we could do that, and we did --

12 Q Okay

13 A -- for those items that you have seen on the
14 drawings

15 Q Okay You spoke with Mr Griffith about the AAC
16 block work And my understanding is that there were
17 several options, initially, that were explored as far as
18 how to reinforce the structural integrity, correct?

19 A Yes, sir

20 Q Okay One of those initial recommendations was
21 that a bonding compound be applied to all those surfaces
22 Eventually, you chose not to go that route, correct?

23 A That's correct

24 Q All right Initially, however, that was one of
25 the options that you were recommending?

1 A That was at least one of the first ones I looked
2 at, yes

3 Q Okay And is -- using the bonding compound, is
4 that acceptable, by Aercon standards, with regard to
5 repair and reinforcing the structural integrity? Do you
6 know that?

7 A I don't think so Not by the ICC report it's
8 not

9 Q Okay And what was the suggestion given by the
10 engineer, Jonathan Livingston, with regard to reinforcing
11 the structural integrity of those blocks?

12 A As I recall, he was talking about putting a
13 bonding agent on it

14 Q Okay So it was his recommendation that that
15 method be used, correct?

16 A That was his recommendation, yes

17 Q Eventually it was decided, between you and the
18 other folks involved, that some sort of steel framing
19 component be added with concrete, correct? Is that the
20 system -- or is that the method of repair ultimately
21 chosen?

22 A No, sir

23 Q Okay Explain to me briefly what kind of method
24 was decided upon by you and Anchor

25 A What is depicted in these drawings, which is

1 structural steel applied to the interior surface of the
2 AAC block walls and attached to the -- the floor slab, and
3 attached to the second-floor slab itself

4 Q All right And that method was never
5 recommended by any other engineer involved in this
6 project, correct?

7 A No

8 Q Okay The second option I believe was to cut
9 grooves in the block work to reinforce the blocks with
10 rebar?

11 A Yes, sir

12 Q Why was that option never chosen?

13 A I think we went through that When I thought it
14 was going to be a good idea, I did not consider the time
15 it would take to drill the holes in the slab, epoxy the
16 rebar in, lap the rebar, form up the outside wall, pour in
17 the grout, and then remove all the form work Initially
18 it sounded like a real good idea on paper, but in reality
19 it was labor intensive

20 Q Yes, sir Now that you have repeated yourself,
21 I do recall you explaining

22 A Okay

23 Q So I apologize

24 A No problem

25 Q Have you ever had experience with spec'ing a job

1 using an Aercon product?

2 A Spec'ing one from --

3 Q Yes, sir

4 A -- initially?

5 Q Yes, sir

6 A I don't think that particular product, no I've
7 seen it before, but I just can't recall where I saw it

8 Q And are you familiar with the recommendations
9 with regard to installation of the product?

10 A I have read their product literature, yes

11 Q Have you ever met with anybody at Aercon --

12 A No

13 Q -- with regard to this case?

14 A I have not

15 Q I just want to go through a few of the items
16 that you were asked to inspect that garages were at
17 issue in this case, correct?

18 A Yes, sir

19 Q Okay And they were eventually torn down,
20 correct?

21 A Yes, sir

22 Q Wasn't it your initial recommendation that they
23 be repaired rather than demolished?

24 A Not exactly I gave Anchor Construction a
25 repair method, and it was very similar in nature to what

1 we were going to do inside the units themselves, and it
2 became an issue with Anchor Construction to come up with a
3 costing of which would be the most cost effective

4 Q Okay Did you ever do a cost of repair?

5 A No, sir, I did not

6 Q Did you rely upon the cost of repair versus
7 demolition that was produced by Anchor?

8 A Yes, sir

9 Q Were you aware that when the garages were
10 rebuilt, that approximately two feet of ceiling space was
11 added?

12 A No

13 Q Have you ever been asked to make any
14 determination as to the original windows --

15 A No, I was never --

16 Q -- with regard to their --

17 A -- asked to look at the windows

18 Q And I understand that you were also asked to
19 render opinions, initially, with regard to the elevator
20 shaft?

21 A Yes, sir

22 Q I haven't heard much talk about the elevator
23 shaft Would you tell the Court what you were asked to
24 inspect with regard to that

25 A The only thing I inspected was the -- to

1 determine if there was reinforcing in the corners, as you
2 would expect in masonry construction There wasn't I
3 understand, from I believe it was Anchor Construction,
4 that the shaft size would not fit the elevator they were
5 intending on putting in So then it became an issue for
6 them to resolve it

7 Q You did not participate in any decisions with
8 regard to how it was supposed to be repaired?

9 A No, I don't think so

10 Q Have you ever been asked to repair -- or to
11 prepare an estimate for repairing this project?

12 A No

13 Q Have you ever met with Jim Bazemore, with
14 Celadon?

15 A I think so I may have asked him about his
16 drawings I don't know that I met with him

17 Q Okay Did you meet with Mr Bazemore, or anyone
18 else, with regards to design changes?

19 A No, sir, I did not

20 Q You're aware that Steve Carpenter, with Anchor,
21 is not an engineer, correct?

22 A Yes, sir

23 Q I just have a few more questions, Mr Still

24 A Sure

25 Q Upon your initial inspection on the 20 -- I'm

1 sorry, on the 18th of -- I'm sorry November, what was
2 it, 2nd? I've got my dates all messed up now I'm sorry
3 March 2nd of 2006 was your initial --

4 A Yes, sir

5 Q Okay Do you recall sending an e-mail to
6 plaintiff's counsel with regard to the best method to
7 repair these walls was to apply a wall coating?

8 A Probably so

9 Q Okay So that, at one point, was your opinion
10 that that was the best method of repair?

11 A It was an opinion Maybe not the best, but an
12 opinion

13 Q Okay And do you also recall that there was an
14 opinion rendered in that same e-mail with regard to the
15 garages being repaired rather than demolished?

16 A Right

17 Q And you also -- would you also recall that you
18 indicated to them that you were not going to be inspecting
19 or offering any opinions with regards to the wood-framing
20 components?

21 A I believe that's correct

22 Q And you've earlier stated that you have not, and
23 don't plan to, opine as to the wood-framing components,
24 correct?

25 A That's correct

1 MR BENDLE Your Honor, if I may, unless there
2 is some objection Mr Still has produced a report
3 that sort of outlines what he has testified to as far
4 as what his kind of scope was May I introduce that?

5 MR GRIFFITH If you can lay the foundation for
6 it I'm not sure what you're talking about, but I
7 probably don't have a problem with it

8 THE COURT Well, since it's Mr Still's report,
9 if he's the author of it, all he's got to do is ask him
10 if it's his report

11 MR BENDLE This is a report -- or a letter,
12 cover letter, that was done to this report that was
13 produced

14 MR GRIFFITH Yeah

15 Q [Mr Bendle] Mr Still, I'm going to hand you
16 what -- the first page is an actual cover letter to what
17 looks to be a report that you produced to the plaintiff
18 Is that a letter that you wrote?

19 A Yes, sir

20 Q Okay And following that letter, is that a
21 report that you produced for the benefit of the plaintiff?

22 A I'm not sure I understand the question

23 Q Sure I'm just asking if that -- the report
24 that's behind that letter there, is that a report that was
25 generated by you?

1 A Oh The site visit report?

2 Q Yes, sir

3 A No, sir It was created by Norm Snyder

4 Q Okay Is Norm Snyder with your firm?

5 A He is not No longer

6 Q Okay Was he with your firm at the time that --

7 A Right He was an engineer that worked for me
8 for about ten years

9 Q Okay Was that report generated based upon the
10 inspections that you attended at 16 Jade Street or Jade
11 Quarters?

12 A Yes

13 MR BENDLE Okay Your Honor, I would offer
14 that into evidence as Defense Exhibit 4, maybe?

15 THE COURT REPORTER 14

16 [Whereupon, Defendant's Exhibit Number 14,
17 letter, is marked by the court reporter]

18 THE COURT Without objection, Mr Griffith?

19 MR GRIFFITH Is that the letter dated January
20 the 11th, 2007?

21 MR BENDLE That is the letter

22 MR GRIFFITH Okay

23 [Whereupon, Mr Bendle and Mr Griffith confer]

24 MR GRIFFITH That's fine And attached to it
25 were his plans, is that correct?

1 MR BENDLE I'm not certain of that

2 MR GRIFFITH That's fine Never mind Just
3 put it in as is

4 THE COURT Okay It is in without objection
5 [Whereupon, Defendant's Exhibit Number 14,
6 letter, is admitted into evidence by the Court]

7 MR BENDLE Thank you, Mr Still I appreciate
8 it

9 THE COURT Mr Ross

10 CROSS-EXAMINATION

11 BY MR ROSS

12 Q Mr Still, when you put the steel on the surface
13 of the AAC block, what did that do that the surface bond
14 wouldn't do for you?

15 A Gave me structural integrity for the system

16 Q Okay And what in the system is supposed to
17 provide that structural integrity? Or if it was installed
18 according to the Aercon specs, what is it that gives it
19 structural integrity?

20 A I don't understand your question

21 Q What component of the system does the steel take
22 the place of?

23 A The reinforcing bars and the grout

24 Q Okay So if the reinforcing -- you say the
25 reinforcing bars and the grout Are you talking about the

1 columns?

2 A The vertical sections that were intended to be
3 in the core sections of the Aercon block

4 Q Okay What does it do as far as the Thin Set in
5 the blocks?

6 A I'm sorry The Thin Set what? I'm sorry

7 Q What do you call the stuff in between the
8 blocks?

9 A Grout

10 Q Okay You had mentioned several times that the
11 blocks were dry-stacked?

12 A No, sir I never said that

13 Q Okay Are the blocks dry-stacked?

14 A No, sir, they're not

15 Q Okay There are spots where the grout, as you
16 call it, is missing from in between the blocks, correct?

17 A That's correct

18 Q How does that affect the system?

19 A The lack of the grout between the blocks?

20 Q Yes, sir

21 A It compromises the integrity, and the ability of
22 one block to bond to another

23 Q Okay What did you do in your fix to make up
24 for that?

25 A I added structural steel to the frame on the

1 outside surface to change the span direction of blocks
2 from vertical to horizontal, and I put bonding compound on
3 the surface of the blocks to allow it to span between the
4 columns

5 Q You put a bonding compound -- like a surface --
6 what we've been talking about? A surface bond?

7 A Yeah

8 THE COURT On the interior, or the exterior?

9 THE WITNESS Interior

10 Q [Mr Ross] All right So the structural steel
11 makes up for the rebar, is that correct?

12 A Yes, sir

13 Q Okay The rebar and grout

14 A Yes, sir

15 Q Okay And the surface bond that you put on the
16 blocks, that was --

17 MR ROSS I'm sorry Let me see if I've got
18 anything else

19 Q [Mr Ross] The surface bond handles the wind
20 load, as well, correct?

21 A No, sir All it does is bond those blocks,
22 where we don't have a sufficient amount of grout between
23 the cores, to allow it to span four feet horizontally, as
24 opposed to ten feet eight inches vertically

25 Q I see

1 Can you show me in the plans where it says to
2 put rebar on each side of the windows?

3 A I think it says at each end of each opening

4 Q Which set of plans do I need?

5 A I just had a small set I don't have a full set
6 with me

7 Q I haven't been able to find it I don't know
8 that it's not in there or it's in there I just -- I
9 can't find it

10 A Excuse me Let me --

11 THE COURT Mr Still, if you need to put it out
12 over there --

13 THE WITNESS Sure

14 THE COURT -- it might be the easiest way to do
15 it Whatever you can --

16 [Off the record momentarily]

17 A It says in Section two, on sheet S-2 -- number-
18 five rebar thirty-two inches on center, and at each change
19 in direction, and at each end of each wall section So
20 when you have an opening, you have a wall section

21 Q [Mr Ross] Wall section is not defined in here,
22 though I mean, it -- wall section could mean from corner
23 to corner Somebody might interpret it that way

24 A They could But I would interpret it every time
25 you break the wall with a large opening, you've got a new

1 segment of wall

2 Q But certainly that's open for interpretation A
3 contractor might interpret it to go corner to corner

4 A I assume he could

5 Q Do you have an idea of how many -- what
6 percentage of the rebar in core is in place?

7 A [No response]

8 Q Let's see if I can change that question a little
9 bit

10 The plans call for it to be thirty-two inches on
11 center?

12 A Yes, sir

13 Q And, supposedly, it was installed forty-eight
14 inches on center?

15 A Supposedly

16 Q Okay And forty-eight inches on center was
17 acceptable for Kern-Coleman, correct?

18 A I don't know that I think that's what his
19 report said, but that's not what his drawings called for

20 Q Okay What's your opinion? What do you need it
21 at, thirty-two? or would forty-eight be --

22 A Thirty-two inches on center is what the drawings
23 call for

24 Q I understand

25 A That's what the contract required

1 Q I understand that

2 What does it need -- what needs to be there so
3 that the wall is structurally sound?

4 A Thirty-two inches on center Engineer of record
5 sealed his drawings at thirty-two inches on center

6 Q And you're a professional engineer, correct?

7 A Absolutely

8 Q And you could make that calculation, correct?

9 A Yes, sir

10 Q And you did not make a calculation to determine
11 if forty-eight inches on center was sufficient?

12 A I never checked it

13 MR ROSS Okay I don't have anything else
14 Thank you

15 MR GRIFFITH Let me just follow up real
16 quickly

17 REDIRECT EXAMINATION

18 BY MR GRIFFITH

19 Q Randy, you made a comment about changing the
20 span from vertical to horizontal, and I'm not sure I
21 followed that And I saw some squints What were you
22 talking about there?

23 A Let me see if I can find a good way to explain
24 it This may do it If we take this as a wall section,
25 originally it was held at the top and the bottom and it

1 intended, when the load hit the middle of it --

2 THE WITNESS Hold this for me

3 THE COURT Sure

4 A -- the load would push in this direction So
5 you've got to have a certain stiffness and reinforcing in
6 it If you change the direction to here, you've got a
7 shorter span It needs less capacity when you push on it,
8 when the wind pushes on it

9 THE WITNESS Thank you

10 THE COURT Okay

11 A You decrease the span length, and when you do
12 that you decrease the bending moment in the section, what
13 causes it to flex

14 Q [Mr Griffith] And that's what you did with
15 your design?

16 A Yes, sir

17 THE COURT Above and below the windows,
18 correct, and --

19 THE WITNESS Yes

20 THE COURT Okay

21 Q [Mr Griffith] And it also --

22 A It's between the windows, too

23 THE COURT Okay

24 Q [Mr Griffith] What you call wall sections --

25 A Yes, sir

1 Q -- it worked there, too? It gave them
2 structural stability?

3 A Yes, sir

4 Q For lateral loading?

5 A Yes, sir

6 Q For horizontal loading?

7 A Yes, sir

8 Q For seismic?

9 A Yes, sir

10 Q All the engineering properties that this
11 [indicates] was originally designed to meet?

12 A We improved it, yes

13 Q Improved what was out there?

14 A Yes, sir

15 Q Also, you were asked about the elevator shaft
16 And I'm sorry I thought I had a picture of the elevator
17 shaft But was working with the elevator shaft something
18 that you also --

19 A I mean, we told them to demolish it and build it
20 per the design drawings

21 Q Okay

22 A We didn't provide any details for that That's
23 what I meant earlier

24 Q Okay But you did address it?

25 A Oh Yes, sir

1 Q All right And right now we're looking for a
2 picture that we introduced yesterday with the elevator
3 shaft I want you --

4 THE COURT What was it built with? Was it
5 built with this AAC block?

6 MR GRIFFITH No It was built with --

7 THE COURT It was built --

8 THE WITNESS -- concrete block

9 THE COURT It should have been concrete?

10 MR ROSS Your Honor?

11 THE COURT Do you have it?

12 MR ROSS You're talking about the elevator
13 shaft?

14 THE COURT Yeah

15 MR ROSS That was, in fact, concrete block

16 THE COURT Right That's what he just said

17 THE WITNESS Right

18 THE COURT I was just asking

19 MR ROSS I just wanted to make sure

20 THE COURT Mitch, are you sure you -- there it
21 is right there

22 MR GRIFFITH It would be the bottom

23 THE COURT Of course

24 Q [Mr Griffith] All right You can -- because
25 you were asked about this, I want you -- I believe that

1 there was some discussion about it yesterday What is
2 wrong with this elevator shaft as built?

3 A My understanding is, one, there was no
4 reinforcing in the corners, two, that --

5 THE COURT Any rebar?

6 THE WITNESS Yeah Any reinforcing bars
7 Rebar in the corners

8 Q [Mr Griffith] Can you build an elevator shaft
9 structurally sound without reinforcement in the corners?

10 A I wouldn't think so, no

11 Q And what else did you understand the problems to
12 be?

13 A It was not the correct size for the elevator
14 they were intending on using

15 Q And as a result, was it your opinion that this
16 elevator shaft needed to be demo'ed and rebuilt?

17 A Yes

18 THE COURT Mitch, give me one second

19 MR GRIFFITH Sure

20 [Off the record momentarily]

21 THE COURT All right

22 Q [Mr Griffith] And is that opinion to a
23 reasonable degree of engineering certainty?

24 A Yes, sir

25 Q And you were asked about the surface bonding

1 when you wrote an e-mail Was that early on in the
2 process?

3 A Yes, sir

4 Q And is that something that you evaluated and
5 determined that that was not feasible or sound?

6 A Yes, sir, just like the putting the rebar in the
7 walls and grouting it

8 Q And do you believe that based upon your
9 investigation, your knowledge, training and skill, that
10 this was the best way or the most economical method to
11 repair the building?

12 A Yes, sir

13 MR GRIFFITH That's all the questions I have

14 THE COURT Okay Mr Still, what is that
15 number based on? Because you said you didn't do any
16 kind of estimates

17 THE WITNESS Their -- them doing the estimates,
18 not me

19 THE COURT When you say them, you're talking
20 about Anchor?

21 THE WITNESS Yes, ma'am

22 THE COURT All right I haven't seen produced
23 from Mr Carpenter, other than the estimate of tearing
24 down the garages, any other estimates of trying to fix
25 this any other way either by bonding on both sides or

1 anything else I mean, was it produced or -- were the
2 numbers wrong, is my question

3 MR GRIFFITH I think the numbers were -- I
4 think that -- they testified to that, that they just --
5 they had meetings, they talked about it, and said they
6 never actually did a full-blown estimate I think
7 that's what --

8 MR CARPENTER I worked it out on the site,
9 through the different people that were going to do
10 work, as to what it was going to cost to do it this way
11 versus another way

12 THE COURT So you never wrote it down And do
13 you have a number?

14 MR CARPENTER I scribbled it down on my pads,
15 but I do not have an actual --

16 THE COURT Do you think it might be in those
17 notes that -- your daily notes?

18 MR CARPENTER I doubt it would be in that

19 THE COURT Okay But you -- Mr Still, you
20 based your opinion on the cost on what Mr Carpenter
21 told you it would be to fix?

22 THE WITNESS Yes, ma'am

23 THE COURT And, sir, let me ask you in
24 looking at Mr Livingston's report of November 16th, he
25 states that despite the walls -- the rebar being placed

1 forty-eight on center, instead of the thirty-two as the
2 construction drawings stated, that it did, in fact,
3 meet the minimum requirements of the building code Do
4 you understand that?

5 THE WITNESS I understand that

6 THE COURT Understanding that -- and I will
7 also state this It also says, however, some vertical
8 rebar must be located in each of the last two cells on
9 either side of all openings

10 So your consideration of a fix, and the cost for
11 that, if all you had been required to do was go ahead
12 and put this vertical rebar on the last two cells at
13 each side of all the openings, plus double bonding -- I
14 guess front and back, is what I'm understanding from
15 the testimony -- would be required Is that what
16 you're testifying is more expensive than the fix that
17 you, in fact, did?

18 THE WITNESS No

19 THE COURT That is not?

20 THE WITNESS What I testified to was, one, if
21 you don't take the stucco off the outside, you can't
22 bond the outside, two --

23 THE COURT Provided if you take the stucco --

24 THE WITNESS Okay

25 THE COURT -- off the outside

1 THE WITNESS Two, I found a significant number
2 of bars that were un-grouted or missing in the field
3 areas that give me concern Lastly, the piece size of
4 the block that was put in varied from three inches wide
5 to eight inches wide to full size I was concerned
6 about trying to knit all this together, as was intended
7 for the ICC report They intended to use large
8 sections, grout it together, reinforced I didn't
9 think you could accomplish it

10 THE COURT The reason why I ask you that is I
11 guess I'm not fully understanding why -- it sounds to
12 me like your main concern were these small pieces that
13 it appears were in this AAC block Why wouldn't
14 bonding on both sides be the best thing to structurally
15 hold those together? because your plate here, your
16 plate here, and your supports here and here, while I
17 understand take the loads off everything, they don't
18 knit those things together

19 THE WITNESS No The surface bonding, on the
20 inside surface, bonds it and changes the way the loads
21 are brought into the steel

22 The problem I have with the Kern-Coleman report
23 is he's not an engineer

24 THE COURT You mean Livingston?

25 THE WITNESS No, ma'am, he's not

1 THE COURT It says, a senior structural
2 engineer

3 THE WITNESS No, ma'am, he's not He didn't
4 seal it

5 MR ROSS Your Honor, Mr Kern, I believe, who
6 is the structural engineer and registered, is the one
7 that approved that

8 THE COURT He actually signed off and stamped
9 it

10 MR ROSS So his argument that's not a
11 structural engineer, he's not an engineer It's been
12 approved by a structural engineer

13 THE COURT Right And I understand that

14 THE WITNESS I would not put my company at risk
15 to tender an opinion that you could only bond two sides
16 to a wall, that has multiple small pieces, in a high-
17 wind, seismic environment such as Beaufort

18 THE COURT Give me your first letter

19 That H2L letter right there, Mia, what was that
20 exhibit? I think it's the one on the top I don't
21 know that for a fact, but I think it might be I don't
22 know, but I'm looking at it

23 [Whereupon, the court reporter proffers
24 documents to the Court]

25 THE COURT So other than this report, and your

1 repair drawings that we went through --

2 THE WITNESS Yes, ma'am

3 THE COURT -- you didn't generate anything
4 else, is that correct? Or am I missing something?

5 MR ROSS Your Honor, can I -- may I offer
6 something here for a second?

7 THE COURT Yes

8 I guess my question to you is my understanding
9 was that you originally stated that you thought that
10 this double bonding would work I guess my question is
11 what made you change your mind Was it going back out,
12 or was it going back the first time and seeing the
13 simple, small, independent components?

14 THE WITNESS It was the small components, not
15 well-bonded, the lack of reinforcement, and the --

16 THE COURT When you say --

17 THE WITNESS -- lack of grout --

18 THE COURT When you say not well-bonded --

19 THE WITNESS Which means that the -- there's
20 not sufficient mortar between the horizontal --

21 THE COURT Okay

22 THE WITNESS -- every horizontal and every
23 vertical joint

24 THE COURT Okay It wasn't just that there
25 was no inadequate rebar, according to you, and not

1 poured --

2 THE WITNESS There's three or four different
3 things that --

4 THE COURT -- we're talking about the grout in
5 between, as well?

6 THE WITNESS Yes, ma'am

7 THE COURT That, in addition Okay

8 Well, let me ask you Was your first opinion
9 tendered after your first site visit, or before you
10 even looked at it, or was it just based on this Kern-
11 Coleman report?

12 THE WITNESS It was probably after the first
13 visit and I was trying to find out if there was an
14 easier way to fix it And I really hadn't looked at
15 the ICC I did not have the ICC documents that didn't
16 allow it They wasn't tested that way And it
17 required it either be reinforced or non reinforced
18 And if you look at the ICC report, they treat the AAC
19 block just like a masonry wall It needs to be
20 designed by an engineer, it needs to be installed
21 properly, it needs to be inspected And it functions
22 just like a masonry wall does when you reinforce it

23 THE COURT Okay

24 THE WITNESS But that's the intent

25 THE COURT Okay

1 THE WITNESS And all those -- the multiple
2 things of reinforce and lack of grout, missing
3 reinforce, and small pieces, gave me a lot of concern

4 THE COURT So your opinion changed after you
5 got your ICC report, and then also you saw that there
6 was such a great number of these small ACC [phonetic]
7 blocks --

8 THE WITNESS Right It did

9 THE COURT -- that had been cut up --

10 THE WITNESS It did

11 THE COURT -- is what it sounds like

12 Okay And one other question Mitch, are you
13 claiming this entire bill of thirty-eight thousand two
14 ninety-five, for H2L, in your dollar amount?

15 MR GRIFFITH As much as I can --

16 THE COURT Is that a part --

17 MR GRIFFITH -- get of it

18 THE COURT Is that a part of this?

19 MR GRIFFITH I'm claiming it I'm not sure
20 I'm entitled to it, but I'm claiming it

21 THE COURT That's what I'm asking You're
22 claiming for the thirty-eight thousand two ninety-five
23 What portion of this is for forensic work versus
24 supervision and constructing the fix?

25 MR GRIFFITH I thought they would ask him

1 that, so I believe you're going to have to ask him

2 THE COURT I'm assuming we're getting to it I
3 just didn't know -- I don't know They didn't seem to
4 be getting to it, so I'm asking now

5 THE WITNESS I don't know I would have to go
6 look at my financial -- at the accounting records

7 THE COURT Do you have a copy of your bill,
8 Mitch? I'm sure Mitch has got it

9 THE WITNESS I think they're in there, and it
10 should have a description

11 THE COURT Can you find it?

12 THE WITNESS I think everybody has got it All
13 those gentlemen have it

14 THE COURT Mr Ross, were you getting to that?

15 MR ROSS I've got something else, Your Honor

16 THE COURT Okay

17 THE WITNESS They're a part of the documents
18 that were subpoenaed

19 THE COURT You've got to bring it to me if you
20 want me to make a decision

21 [Off the record momentarily]

22 THE WITNESS I'm not sure they have totals Is
23 that attached?

24 THE COURT Do you want to go ahead, Mr Ross?
25 Do you want to ask your questions, and then we'll take

1 a quick -- and he'll take a look

2 MR ROSS Sure

3 THE COURT Whatever you need to -- okay Why
4 don't we go ahead

5 RECROSS-EXAMINATION

6 BY MR ROSS

7 Q Mr Still, you've never done any forensic work
8 on the AAC block before? I think you stated that earlier,
9 right?

10 A This particular brand, I don't think so

11 Q Okay So would you agree that the people at
12 Aercon were more knowledgeable about the product than you
13 are?

14 A I would think they would know what the limits of
15 it are

16 Q Right And when a Mr Porez, from Aercon, sent
17 this letter to Norm Snyder saying that the size of the
18 block does not matter when surface bonding, did that
19 affect your opinion at all?

20 A No

21 Q So your argument that the block size being so
22 small led to some concern about surface bonding ignores
23 the advice from Aercon?

24 A Absolutely Aercon wasn't on the job site to
25 see the block They had no idea what it looked like

1 They had no idea it was unreinforced, to my knowledge

2 Q That says, the block size doesn't matter,
3 correct?

4 A That's what that says

5 Q It doesn't say the block size doesn't matter
6 down to a size of six inches or down to a size of twelve
7 inches? It says it doesn't matter?

8 A That's what it says That's what Mr Snyder
9 wrote

10 Q And the Aercon people are more knowledgeable
11 about this product than you are?

12 A I would think so I don't know the
13 qualifications of this gentlemen Mr Snyder talked to

14 Q Did you find out?

15 A No I wasn't concerned about it

16 Q So you've got advice from a representative of
17 the manufacturer of the block that is in direct conflict
18 with your recommendations, and you didn't call them to
19 find out why?

20 A No

21 Q All right

22 A He never went to the job site to look at the
23 condition of the walls

24 Q How many times did you go inspect the job site
25 to see if they were being -- if it was being done in

1 accordance with your plans?

2 A Twice

3 Q How long did that take?

4 A Mr Snyder was there for two full days

5 Q Okay

6 A I was there for the part of a day

7 Q All right So is that four hours?

8 A No, sir I said two full days I'll have to go
9 look at his time sheets But I would expect he was there
10 more than ten hours

11 Q Okay And you were there for half a day?

12 A Yeah

13 Q And you get paid at how much an hour?

14 A Two fifty an hour

15 Q So that's \$1,000?

16 A Yes, sir

17 Q And then what about Mr Snyder? Two full days?

18 A We can look at his billing rate I don't know
19 what it was then

20 Q All right But does Mr Snyder get two fifty an
21 hour, as well, or does he get something less?

22 A Much less

23 Q How much does Mr Snyder make?

24 A Mr Snyder's billing rate is different than his
25 salary

1 Q Do you understand the question I'm asking?

2 A Absolutely But that's not what you asked me

3 Q How much are you charging for Mr Snyder's time
4 to visit the job to see that it was being built according
5 to the plans, sir?

6 A I am looking One fifty an hour

7 Q Okay And that is for ten hours? Sixteen
8 hours? How much?

9 A Let me look in the billing I'll tell you how
10 many hours

11 [Whereupon, the witness reviews documents]

12 A Mr Snyder charged twenty-seven hours In that
13 time period --

14 THE COURT That's on the site?

15 THE WITNESS I'm trying to find the exact time

16 [Whereupon, the witness reviews documents]

17 MR ROSS Your Honor, while he's looking, I
18 want to formally enter --

19 THE WITNESS I would say twenty-seven hours

20 MR ROSS -- this Exhibit 15 for defense, which
21 is the memo by Norm Snyder about the Aercon telephone
22 conference, into evidence

23 THE COURT Mitch?

24 MR GRIFFITH If it's part of his file, that's
25 fine

1 THE COURT Okay

2 [Whereupon, Defendant's Exhibit Number 15, memo,
3 is marked by the court reporter]

4 THE COURT It's in evidence without objection

5 [Whereupon, Defendant's Exhibit Number 15, memo,
6 is admitted into evidence by the Court]

7 THE WITNESS Twenty-seven hours

8 THE COURT Is that on --

9 THE WITNESS Two nights

10 THE COURT Does it say on site? Is that what
11 it does?

12 THE WITNESS No The time frame was May 22nd

13 THE COURT So you know that's on site?

14 THE WITNESS Yes, ma'am Travel --

15 THE COURT So it's twenty-seven hours Travel
16 is exclusive of that, right?

17 THE WITNESS No It's included

18 THE COURT It's included Did he drive from
19 Greenville?

20 THE WITNESS Yeah

21 THE COURT He came from Greenville, so it's
22 four --

23 THE WITNESS So that's twenty --

24 THE COURT -- hours each way

25 THE WITNESS Yeah So that's twenty --

1 nineteen hours on site, more or less

2 THE COURT Nineteen hours on site for Mr
3 Snyder At \$150 an hour?

4 THE WITNESS No At \$95 an hour

5 THE COURT I'm sorry Okay

6 THE WITNESS He was doing inspections

7 THE COURT \$95 an hour

8 Okay And then you, sir, said you had a half a
9 day there, roughly?

10 THE WITNESS Yeah I think so

11 THE COURT Do you have that on there?

12 THE WITNESS I've got to go find it

13 [Whereupon, the witness reviews documents]

14 THE WITNESS It shows four hours

15 THE COURT Four hours At two fifty?

16 THE WITNESS At one --

17 THE COURT One fifty?

18 THE WITNESS Hang on a second

19 THE COURT Okay

20 THE WITNESS At two -- it was \$900

21 THE COURT A total of 900? Okay

22 THE WITNESS For four hours

23 MR ROSS Your Honor, I wasn't able to hear

24 THE COURT That's two twenty-five an hour

25 THE WITNESS I'm sorry I was trying to figure

1 out the numbers I'm sorry

2 MR ROSS Yes, sir No I just wondering --

3 THE COURT That's okay What I was asking him
4 was how much time he had on there What he told me is
5 that Mr Snyder had, on site, nineteen hours at \$95 an
6 hour and that Mr Still had a half a day, four hours
7 His total was \$900 So I am assuming that it was two
8 twenty-five an hour I'm not a math major, but I think
9 I'm correct Okay

10 MR ROSS Thank you That's all for right now

11 THE COURT All right Anyone else? I have one
12 last question I need to ask him, and we're here

13 You said you did not prepare an estimate in this
14 case but you do prepare an estimate if requested to, is
15 that correct, sir?

16 THE WITNESS Yes

17 THE COURT Okay And have you estimated cost-
18 plus jobs?

19 THE WITNESS Generally, the answer is no
20 Normally, we use means-cost estimating --

21 THE COURT Right

22 THE WITNESS -- which just gives a lump-sum
23 cost Normally, we don't do cost-plus

24 THE COURT Okay In your experience, and
25 you've been doing this for a long time, obviously,

1 according to your CV, how much is a typical fee for a
2 superintendent in this area on an hourly basis?

3 THE WITNESS I don't know for Beaufort

4 THE COURT You have no idea?

5 THE WITNESS I haven't done anything here
6 recently, so I don't know

7 THE COURT Nothing in Beaufort County at all?

8 THE WITNESS We've done some in Hilton Head,
9 but I just don't remember what the superintendent
10 charged

11 THE COURT You have no idea?

12 THE WITNESS I can go back and look It's
13 probably in that range

14 THE COURT Probably in what range?

15 THE WITNESS The range of what he was saying,
16 sixty-five --

17 THE COURT \$65 an hour?

18 THE WITNESS Yeah But I think that's a
19 billing rate, is the way we would look at it It's not
20 necessarily how he's compensated

21 THE COURT Right And on a cost-plus job, he
22 should be -- it should be the true cost And then, of
23 course, on top of that would be burden --

24 THE WITNESS I would think --

25 THE COURT -- is that correct?

1 THE WITNESS I would think so

2 THE COURT All right Anyone else? Anyone
3 else?

4 All right You can step down

5 THE WITNESS Okay What did you want out of
6 this?

7 THE COURT I think you answered my question
8 Oh What I wanted to know was the total amount, what
9 was done for forensic purposes and what was done -- I
10 guess you told me your supervision afterwards, is that
11 correct?

12 THE WITNESS Yes I think There is a way to
13 sort it out

14 THE COURT Mitch?

15 MR GRIFFITH Simply for purposes of the
16 record, I understand what your questioning is leading
17 to I want to ask him how much of his time was also
18 spent in preparing the design documents to repair it

19 THE COURT And I asked him that, as well

20 MR GRIFFITH Okay I'm sorry

21 THE COURT As opposed to the strictly forensic
22 work of it

23 MR GRIFFITH Strictly forensic I know what
24 you're getting at, and I won't --

25 THE COURT Thank you

1 MR GRIFFITH I didn't want you to limit
2 yourself just to the --

3 THE COURT Oh, don't you worry --

4 MR GRIFFITH -- two site visits

5 THE COURT -- I won't

6 MR GRIFFITH I knew you wouldn't, so that's
7 why we were asking

8 THE WITNESS Can I spend a little time doing
9 this and hand it back to Mitch?

10 THE COURT Absolutely

11 MR GRIFFITH What we'll do is if we can take
12 the next witness, and then he can --

13 THE WITNESS Otherwise, I'll make a mistake

14 MR GRIFFITH -- come back up

15 THE COURT If you don't mind Yeah If you
16 want to go sit down, and we'll just go ahead --

17 THE WITNESS Sure

18 THE COURT -- and you just fill me in Thank
19 you Okay Before you leave

20 THE WITNESS Yes, ma'am

21 THE COURT Thank you I appreciate it All
22 right

23 All right Mr Griffith, do you want to call
24 your next witness

25 MR GRIFFITH Judge, my next witness would be

1 Mr Catterson at this time Based upon the stipulation
2 I'm willing to make, I would only -- I would have to
3 accept directed verdicts based upon the testimony I put
4 up at the close, believing that you can separate those
5 two When I finish with Mr Catterson, I will rest

6 THE COURT Thank you I appreciate that All
7 right

8 Mr Bendle

9 MR BENDLE Your Honor, sure The defense
10 calls Carl Aten

11 THE COURT All right Mr Aten, if you'll
12 please come forward And, sir, out of an abundance of
13 caution, I'm just going to swear you again, all right?

14 MR ATEN Okay I'll find the Bible here
15 somewhere

16 THE COURT There you go Sometimes you do have
17 to search for it

18 [Whereupon, Mr Aten is duly sworn by the Court]

19 THE COURT All right Thank you, sir

20 [Whereupon, Mr Aten re-takes the witness stand]

21

22

23

24

25

- - -

- - -

1 CARL K ATEN, JR ,
2 Having Been First Duly Sworn,
3 was Examined and Testified as Follows
4 DIRECT EXAMINATION

5 BY MR BENDLE

6 Q Mr Aten, could you please state your full name
7 for the record

8 A My full name is Carl Kenneth Aten, Junior

9 Q And you're married, correct?

10 A Yes, I am

11 Q What is your wife's name?

12 A Rose Aten

13 Q And where do you live?

14 A Okatie, South Carolina

15 Q And what type of profession are you involved in?

16 A I am a supervisor for D R Horton

17 Q D R Horton is your current employer?

18 A Yes, it is

19 Q Can you tell us briefly a little bit about your
20 educational background?

21 A High school, two years of college

22 Q What was your degree in?

23 A Management

24 Q Okay Are you a licensed builder in South
25 Carolina?

1 A Yes, I am

2 Q Is it for residential construction?

3 A I'm a -- my license says residential
4 homebuilder

5 Q Okay And does that license qualify you to
6 build a four-unit condo that's the subject of this
7 litigation?

8 A Yes, it does

9 Q Okay Tell me how -- or, I'm sorry You owned
10 a company called R Design, correct?

11 A Correct

12 Q And R Design is the entity involved in this
13 lawsuit that's responsible for --

14 A Correct

15 Q -- the project?

16 Okay How was R Design organized? What type
17 of company is it?

18 A It was a -- it's an S Corp No It's a -- it's
19 an LLC I'm sorry

20 Q Okay And that company was formed by you and
21 your wife?

22 A Correct

23 Q Okay And that was for the purpose of building
24 residences, is that right?

25 A We started out building -- putting up homes,

1 build them, sell them That's, some would say,
2 speculation or spec homes

3 Q When was that LLC organized?

4 A I think '96, I think

5 Q Have you ever had any complaints against your
6 license?

7 A Never

8 Q Okay Approximately how many homes have you
9 built here in Beaufort?

10 A Now?

11 Q Yes, sir

12 A Probably up to about eighty now

13 Q Okay Tell me briefly, if you would, how you
14 came to be involved with the Jade Quarters project

15 A I had met --

16 THE COURT Actually, if you don't mind me
17 interrupting you

18 MR BENDLE Sure

19 THE COURT And I apologize, sir

20 You say you've built up to eighty homes now I
21 think you testified yesterday that -- have you built
22 eighty homes under R Design?

23 THE WITNESS No

24 THE COURT Okay So I'm assuming that some of
25 that is now with your experience?

1 THE WITNESS Correct

2 THE COURT So you had, prior to the Jade Street
3 project --

4 THE WITNESS Four or five

5 THE COURT Okay I think you said seven or
6 eight yesterday Just give me your best estimate is
7 okay Just give me your best estimate

8 THE WITNESS Somewhere between four and eight

9 THE COURT Somewhere between four and eight
10 Okay Before you started this --

11 THE WITNESS Not as --

12 THE COURT Before you started the Jade Street
13 project, is that correct?

14 THE WITNESS Correct

15 THE COURT All right Thank you

16 THE WITNESS Uh-huh

17 MR BENDLE I'll repeat the last question

18 THE WITNESS Okay

19 THE COURT Go ahead

20 Q [Mr Bendle] I just wanted you to briefly tell
21 me how you came to be involved with Jade Quarters

22 A My wife and I had met Dennis in his office that
23 he had downtown He had lots that he wanted to sell in
24 Celadon We eventually purchased a lot from Dennis, put a
25 spec house up, sold that house Once we sold that house,

1 we actually I think purchased another lot through him --
2 from him

3 I think it was somewhere in the time that we
4 were getting ready to build that second spec house that we
5 had talked to Dennis about this other piece of property,
6 which is where 16 Jade Street sits on He had already had
7 a set of drawings basically done -- not completed, but
8 semi-completed drawings for this particular building that
9 we've been talking about So we tried to get financing
10 for that, and we couldn't get financing Eventually went
11 back to Dennis, told him that we can't do the project

12 Dennis came back to us and said, how about if
13 I -- I meaning him or his partners, whatever, whoever was
14 going to put the building up -- and he wanted to know if
15 R Design wanted to supervise the project

16 Q Okay And eventually you agreed to do that,
17 correct?

18 A Yes, we did

19 Q And, in fact, a contract was entered into in or
20 about --

21 A Yes

22 Q -- July of '04?

23 Okay Did you have any involvement prior to
24 signing that contract, with regard to the plans or specs
25 or designs or anything of that nature, for this project?

1 A Prior to signing the contract? Not -- I guess
2 the plans that we had at that time were only the --
3 partially the ones that are -- Randolph Stewart had That
4 was the beginning set of plans that we had

5 Q But you weren't the architect or designer --

6 A No

7 Q -- on this project, correct?

8 A No

9 Q All right I understand that a budget was also
10 created for the construction, is that correct?

11 A Yes

12 Q And who was responsible for creating that
13 budget?

14 A The budget was created -- Dennis and I both
15 created the budget, and it was done in this manner
16 Dennis wanted me to create -- and which we eventually did
17 We basically did the budget backwards He knew his
18 bottom-line number He had a set of plans, he knew his
19 square footage, he knew how much he could sell that, you
20 know, square footage for at the time Whatever
21 calculations he did -- came up with So we came with a
22 bottom-line number Normally, it would be the other way
23 around We would take the set of plans, bid it all out,
24 blah, blah, blah, and we would come to the bottom-line
25 number He basically told me, here's the bottom-line

1 number I want you to be at, fill this out, go from the top
2 up And so that's what we did

3 Q What was that bottom-line number?

4 A One million six-something, six and change

5 Q So the amount of the budget, essentially?

6 A Correct

7 Q Okay

8 THE COURT And that did not include the land,
9 correct?

10 THE WITNESS I don't believe so Those were
11 the hard-cost numbers

12 THE COURT Okay

13 Q [Mr Bendle] Eventually, you went down and
14 pulled the permit to begin the construction, correct?

15 A Correct

16 Q And did you do that on behalf of R Design?

17 A Yes, I did

18 Q And your wife, is she a residential builder?

19 A No

20 Q Okay

21 A She doesn't have a license

22 Q What sort of license?

23 A She doesn't have a license

24 Q She does not have a license Okay A driver's
25 license?

1 A I think she has one of those

2 Q And were you, as an individual, required to pull
3 that permit on R Design's behalf before construction
4 could begin?

5 A Yes

6 Q Okay And that contract, again, was with
7 R Design, correct?

8 A That is correct

9 Q Tell me if you would, generally, what your -- or
10 R Design's role was under that contract I mean, it's
11 been established that you were the general contractor
12 But if you could elaborate on what you understood your
13 role to be

14 MR GRIFFITH Your Honor, I'm going to object
15 to this Obviously --

16 THE COURT Again, you're going to say that the
17 contract speaks for itself

18 MR GRIFFITH Unless there's some ambiguity --

19 THE COURT I want to know, on the record, who
20 drafted this

21 THE WITNESS I don't remember

22 THE COURT It had better not have been any of
23 you All right

24 [Off the record momentarily]

25 THE COURT Okay

1 MR BENDLE Judge, based on his objection, I
2 mean, I'm going to re-ask the question

3 THE COURT Okay

4 Q [Mr Bendle] Under the contract, were you
5 obligated to perform any physical labor?

6 A I was -- no I was not obligated to do that,
7 no

8 Q And your obligation, then, was to sort of act in
9 a supervisory capacity --

10 A That's correct

11 Q -- as the general contractor?

12 A Keep the job going

13 Q Okay So for all facets of this project, I
14 assume, then, that you would hire subcontractors, correct?

15 A Yes

16 Q Okay What was the contract price for your
17 services?

18 A A hundred-and-something thousand 110,000

19 THE COURT Ignore my notes

20 A 150,000

21 Q [Mr Bendle] Okay And were you paid \$150,000
22 by the time that you were terminated --

23 A No

24 Q -- from the project?

25 Okay Do you recall about how much you were

1 paid for your supervision services?

2 A Seventy-ish Seventy-some thousand

3 Q Do you feel that that was a fair rate for your
4 services as a general contractor for this type of project?

5 A It was exactly as the contract read

6 Q Tell me a little bit about the selection of the
7 subcontractors on this job Were you initially the one
8 that would call for bids?

9 A Correct One of the -- basically, when I
10 started to get the bids, I would start from the top down,
11 from the concrete, blah, blah, blah, go down One of the
12 first -- very first issues we came up with was the cost
13 that we found for the subcontractor to do the block work
14 Everyone's price was exorbitant, real high \$100,000 just
15 to do the -- a hundred and something and change It's all
16 in your documents, whatever those bids were

17 When we found Catterson, Catterson found me, I
18 don't remember how it came up with -- his price was
19 significantly lower than everyone else If I --
20 originally we took a block-work man, and we had a framing
21 bid, and we had a siding bid So we had three different
22 bids And those prices were, if I remember correctly, if
23 I added all three of those up, they were maybe 300,000 for
24 all three of those different guys But when we found
25 Catterson, he was willing to do it for whatever the price

1 was on his contract

2 So basically we found -- tried to find the
3 lowest bidder on every subcontractor You have to
4 understand that Dennis repeatedly, repeatedly -- and I'll
5 say it one more time -- repeatedly talked to me about the
6 budget and how much to be under budget, be under budget,
7 be under budget, whatever it took, just be under budget

8 Q Was Catterson one of the first subcontractors
9 that you spoke with about beginning --

10 A He would have been --

11 Q -- the contract?

12 A -- maybe the second or third There was, you
13 know, the guy that did the land clearing, then a couple of
14 other maybe laborers, and then the foundation, the man who
15 did the foundation, Hull Construction

16 Q Okay And at some point, then, you had to have
17 received some sort of proposal from Catterson --

18 A Correct

19 Q -- correct?

20 MR GRIFFITH I believe it's in

21 MR ROSS It's already been entered Has it?

22 Okay

23 MR BENDLE All right I believe it's already
24 been entered, Judge I'm not sure what --

25 THE WITNESS It has That's --

1 THE COURT This is what?

2 MR BENDLE This is the proposal between
3 Catterson --

4 THE COURT Yes It's Plaintiff's Number 9

5 MR BENDLE Okay All right

6 Q [Mr Bendle] I'm going to hand you, Mr Aten,
7 what has been marked as Plaintiff's Number 9

8 A Uh-huh

9 Q Can you identify that document?

10 A It's the agreement between R Design -- or,
11 actually, it's between R Design and Catterson and Sons

12 Q Okay And does that accurately outline what the
13 scope of work was for Catterson on --

14 A Yes

15 Q -- this project?

16 A Yes

17 Q Okay And could you read briefly what that
18 scope of work entails?

19 A Frame according to plan, felt the roof, Tyvek,
20 sheet the exterior windows and doors, decking and stairs
21 Down near the bottom it also says basically framing,
22 exterior siding and trim, and the AAC block work along
23 with the ACC [phonetic] floor panels

24 Q And you've already indicated that that was one
25 of the lowest bids or the lowest bid that was --

1 A This was the lowest bid for all of those
2 components

3 Q I believe you testified already that you had
4 never really had any dealings with Mr Catterson prior to
5 receiving this proposal, correct?

6 A Not in -- no No

7 Q Okay Did you consult with Mr Green with
8 regards to hiring him for this project?

9 A Not to get his opinion, no Basically told him
10 who we were going to hire, because he was the lowest
11 bidder

12 Q All right Did you speak to Mr Catterson,
13 prior to awarding him -- or accepting the proposal, about
14 any experience he had with this type of --

15 A Extensively

16 Q -- Aerocrete [phonetic] block work?

17 A Uh-huh He assured me to the ninth degree that
18 he knew what he was doing Yeah, I did -- led me to
19 believe that he did numerous jobs on a place called
20 Dafuskie, down off of Hilton Head, using this block

21 Q And what had your experience been, prior to Jade
22 Quarters, with working with this type of block system?

23 A Zero

24 Q So was it a special consideration, then, of
25 yours, to hire someone that had experience using this

1 type --

2 A Yes

3 Q -- of product?

4 A There was actually another vendor that we
5 probably wanted to use It was probably the same vendor
6 that may have done -- did Dennis' building and another
7 house in the neighborhood, but his price was exorbitant

8 Q After selecting Catterson for, amongst other
9 things the block work, what did you do to educate yourself
10 with regard to this type of system?

11 A I had conversations on the phone with the
12 manufacturer's representative Read the literature And
13 that's about all, really Visited job sites

14 Q One question, if you'll allow me to go back, Mr
15 Aten, that I meant to ask earlier with regards to the
16 contract There's been some mention with regards to the
17 lack of written change orders with the design changes and
18 all Did Mr Green ever require written change orders
19 from you?

20 A No

21 Q Okay Were there conversations that took place
22 between --

23 A There would be --

24 Q -- between you and Green --

25 A -- many conversations --

1 Q -- with regard to those changes?

2 A Going through the job If we found an area
3 where we could -- first of all, if we could save money --
4 let's say it would be -- if the plan would say -- this
5 would be just an example I don't mean it being
6 literally But let's say the plan would say using
7 pressure-treated lumber for exterior trim I would go to
8 Dennis and say, why don't we use this other exterior
9 lumber, it's different, less price, I would rather use
10 that He would say, no problem As long as it's less

11 Q Okay Do you know -- back to the framing and
12 block work Did Mr Catterson perform this work himself,
13 or did he have his own crew, or did he use subcontractors?
14 How did he operate on the job?

15 A The block work, he was there with them He was
16 there -- he was there on the machine, directing traffic
17 So he was there with them

18 Q Okay And when you say them, do you --

19 A His workers

20 Q -- know if he had his own employees or if he
21 subbed some of the work out?

22 A I don't -- couldn't answer that As far as I
23 knew, they were his employees

24 Q And at some point, you personally began having
25 problems with the work that was being done by Catterson,

1 is that correct?

2 A That's correct

3 Q Okay And tell me a little bit -- or initially
4 what you did about those concerns

5 A One of the things that Mike, or Catterson, did
6 while he was on the job, he was always rushing, hurry,
7 hurry, hurry, let's hurry up and get this done, let's
8 hurry and get this done I would ask him repeatedly, you
9 know, you need to slow down and make sure that -- there
10 would be many occasions that it was just his -- basically
11 his speed that he was trying to get the job done Instead
12 of quality, he was trying to get quantity out of the job
13 That was probably one of the biggest issues I had

14 Q So it's fair to say, then, that initially you
15 would go to Mr Catterson --

16 A That's correct Uh-huh

17 Q -- to discuss the problems?

18 Okay Eventually, did you have to go Mr Green
19 and involve him with the problems --

20 A Yes, I did

21 Q -- that were taking place?

22 A [Indicates affirmatively]

23 Q Okay Tell me about some of those problems that
24 were addressed with the owner

25 A Mike kept coming to me -- as his contract says,

1 he wanted to get paid on a weekly basis It says draws
2 weekly Mike would have to come to me, I would determine
3 whether he had finished that much work for the amount of
4 draws that he was getting Closer to the end, I kept --
5 he was almost ahead of us, if you know what I mean He
6 was trying to get ahead So I would say, well, I don't
7 want to -- I don't want to pay you anymore until you get
8 some more work done He didn't really like that He got
9 boisterous about it, you know So what he ended up doing
10 was actually being on the job less So that was one of my
11 big issues near the end The less he got paid, the less
12 he was on the job, if that makes any sense

13 Q Sure At any point, did you feel like you
14 needed to involve the engineer that was of record on this
15 project?

16 A Yes

17 Q Did you contact that engineer?

18 A I called -- I'm the person that called There's
19 been a date there of April, an April date, that the first
20 time Livingston came to the job site I'm the person that
21 called him, to begin with, to come to the job site I had
22 concerns of the main -- especially the thing that Mitch
23 has been talking about, about this beam over on the second
24 floor, what do you call it, the loft area I personally
25 called Jonathan Livingston because my concern was the way

1 that that beam was laying on top of that window, on the
2 header that was going across the window

3 The other thing that I had discussed with
4 Jonathan specifically was the change that we made to the
5 steel downstairs and the way that the steel was going --
6 laying on the ground, laying on the concrete on the
7 ground So that basically, the day that Jonathan came
8 out, we talked about the beam and we talked about the
9 steel and the way that we were going to fix that, those
10 two items

11 Q Okay And there were several items that were
12 identified in a report from Kern-Coleman, correct?

13 A That day I think there was four items I can't
14 remember without looking at the other two items I do
15 specifically remember those two items

16 THE COURT Has that report been introduced,
17 that first one, or letter?

18 MR BENDLE Was it introduced?

19 MR ROSS I don't think so

20 THE COURT I've never seen it

21 MR BENDLE I would like to introduce it, if I
22 may

23 THE COURT Grab it

24 MR BENDLE Without objection?

25 MR GRIFFITH I understand the rules we're

1 playing by, but I don't think there's been any
2 foundation for the first report

3 MR BENDLE I'll be glad to lay one

4 THE COURT Pull it out and lay one

5 MR GRIFFITH That's going to be hard to do
6 with this witness

7 THE COURT I was going to say with this
8 witness, but --

9 MR BENDLE If you have an objection to it,
10 I'll --

11 THE COURT Was it not introduced in his
12 deposition? Was it not introduced at his deposition?

13 [Off the record momentarily]

14 THE COURT I know the other one was attached
15 Was the second one -- I mean, the first one attached?
16 Sorry

17 Mia, do you have it?

18 It would be Court's -- you introduced it

19 MR GRIFFITH It was not We introduced the
20 second one through the deposition excerpts We didn't
21 introduce the first one

22 THE COURT It wasn't attached to the deposition
23 is what you're saying?

24 MR GRIFFITH I do not know that

25 MR BENDLE I don't believe it was, Your Honor,

1 but it's not imperative that that --

2 THE COURT Go

3 MR BENDLE -- report be entered --

4 THE COURT Okay That's fine

5 MR BENDLE -- so I'll keep going

6 Q [Mr Bendle] So, at any rate, Mr Aten, you did
7 call Mr Livingston and he came out and inspected And as
8 you recall, there were several, at least --

9 A Yes

10 Q -- concerns that were addressed by him?

11 MR ROSS Your Honor --

12 THE COURT Yes, Mr Ross?

13 MR ROSS -- since that report is not into
14 evidence, he can't testify about what was in the report
15 or what Mr Livingston said in that report It's all
16 hearsay, Your Honor

17 MR BENDLE I'll strike that, Judge

18 THE COURT I'm assuming what was in there was
19 encompassed probably later in the second report Good
20 chance? Or no We're talking about a whole different
21 issue

22 MR ROSS Your Honor, again, that report is not
23 in evidence

24 THE COURT The second report is in evidence

25 MR ROSS But the first report is not in

1 evidence, so what's in that report is not before us
2 today

3 THE COURT Yes But Mr Ross, what I said was
4 is I'm going to assume that the problems that were in
5 that first report were probably chronicled in the
6 second report I could be wrong, because I don't know
7 what's in the first report So what I'm saying is they
8 probably are, but maybe not Maybe they fixed them
9 before we got to the second set of supposed issues

10 MR ROSS Your Honor, and, you know, we don't
11 have anything in the record that says anything in that
12 first report is part of the second report

13 MR GRIFFITH I'll withdraw my objection to it
14 I didn't -- I don't have any problem with it

15 THE COURT It doesn't matter Just go ahead
16 We're talking about a report that I know nothing about
17 Go ahead

18 Q [Mr Bendle] You were on site with Mr
19 Livingston sometime to inspect the job, correct?

20 A Correct

21 Q And the purpose of that inspection was because
22 you had some concerns with regards --

23 A That's correct

24 Q -- to Catterson's work?

25 A Correct Catterson's work, and the drawings

1 Q Okay Based upon your conversations with Mr
2 Livingston from that inspection, did any remedial work
3 take place from Mr Catterson? In other words, did he go
4 back and try to repair the deficiencies that were noted by
5 you and discussed with Mr Livingston?

6 A As far as I remember, he had not finished those
7 before he had left the job

8 Q Okay Which gives rise to my next line of
9 questioning Eventually, he left this project, correct?

10 A Correct

11 Q Okay You did not fire him, is that correct?

12 A Absolutely not

13 Q Okay In fact, just days before he actually did
14 not show up on the job, you had had a meeting with him,
15 correct?

16 A Myself and Dennis Green

17 Q Okay And tell me a little bit about that
18 meeting and what gave rise to what you believed to be the
19 reason why he left the project

20 A The meeting was held -- he wanted to get another
21 draw against -- he wanted to get another draw I
22 basically refused to sign off on his draw because I
23 believed at that time that he was too far right ahead of
24 Dennis As a matter of fact, I specifically told Dennis
25 that day that I did not want to sign another draw for him

1 to sign off on the work It's well-documented I told
2 him very, very specifically, heated exchange, myself,
3 Mike, Dennis, words flying around the room At that
4 particular point, Dennis basically shoved a piece of paper
5 in my hand and said, sign this thing so I can get this guy
6 out of here

7 Q So he was paid, at least in part, for what --

8 A What -- yes

9 Q -- for what he was claiming he was owed at that
10 point?

11 A That's correct

12 Q Okay And that following Monday, at least the
13 Monday following that meeting, did Mr Catterson return to
14 the project?

15 A No, he did not

16 Q Did anyone on his behalf return to finish the
17 job that he was responsible for?

18 A Not that I can remember, no

19 Q Tell me what measures were taken, on your own
20 behalf or R Design's behalf, to get someone to replace
21 Mr Catterson so that the framing and the work that he was
22 responsible for could be completed

23 A We had found -- there was actually a laborer on
24 the job who worked on and off from the beginning of the
25 job The laborer -- and his brother, who I would say --

1 call him more of a -- somewhere in between a rough and a
2 finish carpenter We hired him to start to try to
3 complete the work He worked on some of the railings on
4 the outside, whatever, just trying to get the job back on
5 So that's basically how we tried to keep it going, tried
6 to keep the job, keep going There was another person
7 hired -- I just almost forgot -- to start again working on
8 the siding on the exterior

9 Q Okay Other than the siding and the railing,
10 was there much work done with regards to the framing and
11 the block work from the time that Catterson left the job
12 and the time that you were terminated?

13 A Can't remember a whole lot Most of the work
14 was being done on the exterior

15 Q Okay You were terminated a few months shortly
16 thereafter when Catterson left, correct?

17 A Correct

18 Q Okay Would you tell me briefly kind of what
19 led to your termination

20 A Specifically, I can tell you -- the only thing
21 that I was told by Dennis that particular day -- well, let
22 me start over a little bit I was working on another spec
23 home in the neighborhood Dennis wanted to meet with me,
24 told me that morning, meet with me to go through that
25 house for basically the exterior, because he's in charge

1 of not only of -- he's in charge of the review board
2 there, basically, or at the time

3 So he wanted to walk that house with me to make
4 sure we were complying with the review-board standards
5 We did that walkthrough And then I told Dennis that I
6 had something to do, I had to leave He got extremely
7 upset with me, threw a tirade in the road, almost
8 screaming and yelling, saying that he wanted to talk to me
9 now in his office Told him I needed to go somewhere I
10 agreed to go meet him in the office When we got to the
11 office, he had a bill from Grayco with him The bill
12 showed a 250-dollar or 200-dollar -- I can't remember the
13 exact amount -- a small amount of finance charge I think
14 because the bill had got paid late And he just couldn't
15 understand why he never -- or he concede -- or he
16 perceived that he didn't receive this bill on time so that
17 there wasn't going to be a late charge As far as I knew,
18 that's the day he said to me, I don't know whether I'm
19 going to fire you today or tomorrow And I said, well, I
20 guess I should assume it's today, and then I left the
21 building So as far as I'm concerned, he basically fired
22 me for money -- for money issues

23 Q And was it that day, or shortly thereafter, that
24 you pulled the permit for R Design?

25 A I think it was -- by the time I got a letter

1 written to the County, I think it was just a couple of
2 days

3 Q When's the next time you heard from Mr Green or
4 had any contact with Mr Green?

5 A I think the very next time is maybe in January,
6 or something, when I received the letter for right to --
7 what's it called --

8 Q You received the right --

9 A Right to repair?

10 Q Yeah Right to repair --

11 A Yeah

12 Q -- right-to-cure letter?

13 Okay And at the time that you received that
14 letter, did you understand that Anchor had already been
15 selected as the G C on that project?

16 A No I had no idea

17 Q Were you living in Celadon still --

18 A Yes

19 Q -- at this time? So you were able to observe
20 what was going on --

21 A Yes

22 Q -- at this project? You would ride past it
23 every day?

24 A Every day

25 Q Okay At some point, you were aware that a

1 report was generated after you left from Kern-Coleman,
2 correct?

3 A I think it was one I received the right to
4 repair My memory could be wrong But I did receive that
5 report

6 Q Okay So this -- the report, the November 23rd
7 report --

8 A The big report everyone keeps talking about,
9 yes That's the first --

10 Q All right And you've had a chance, obviously,
11 to review that report?

12 A Yes A thousand times Hundred times

13 Q And when you first initially reviewed that
14 report, or initially reviewed the report, what was your
15 overall impression with regards to the items that were
16 contained therein?

17 A For the most part, I kind of feel -- and I still
18 do today -- that a lot of them were just items that were
19 unfinished, either unfinished before I left or after
20 Catterson left

21 Q Okay Would you tell me about -- with you as
22 the general contractor, about where was the project in
23 terms of completion when you were terminated?

24 A Fifty, sixty percent, somewhere in there

25 Q And were you aware that, prior to you being

1 terminated, that Anchor had been asked to come and inspect
2 the job?

3 A Had no idea

4 Q Can you give us a general idea, in your opinion,
5 of what basically is contained in the report with respect
6 to the different subcontractor jobs or what the report
7 basically is saying is wrong? What aspects of the
8 construction, I guess Sorry That was a very poorly-
9 asked question

10 A Would you mind repeating it?

11 Q Sure Yeah I would be happy to
12 Generally, what are the main issues that are
13 found in the report?

14 A Probably the largest issue that I see in the
15 report is -- talks about the block work Or the most -- I
16 should say the most expensive issue, or incomplete, or
17 repair, or what everyone -- anyone else in the room wants
18 to call it, has to do with the block work

19 Q Okay How about the framing? Was that a big
20 issue, as well?

21 A I don't think it was as large of an issue as the
22 block work

23 Q What subcontractor that was under your
24 supervision would you hold responsible for most of the
25 items that are contained in this report?

1 A Catterson and Sons

2 Q So based upon their scope of repairs outlined in
3 their proposal, they were the subcontractor that, by and
4 large, was responsible for the completion of the work --

5 A For the most part, yes

6 Q -- in this report?

7 You've heard some talk about problems with
8 moisture damage to some windows and doors and wall units?

9 A Yes

10 Q Prior to your departure, had you ever observed
11 any mold or moisture damage to any components of this
12 building?

13 A No Absolutely not

14 Q Were you ever asked prior to your termination,
15 or even after you were terminated, to come take measures
16 to protect --

17 A No, I was --

18 Q -- this building?

19 A -- not

20 MR BENDLE Judge, can we go off the record for
21 just one second?

22 THE COURT Sure

23 [Off the record momentarily]

24 THE COURT Okay What we'll do is this we'll
25 go ahead and -- I haven't seen whatever he generated

1 for me Can I look at it really quick?

2 MR ROSS Sure

3 THE COURT And then what we'll do is this --

4 [Whereupon, Mr Ross proffers documents to the
5 Court]

6 MR ROSS There's probably not an issue with
7 them, but I don't want to sit here and go through and
8 calculate and figure everything out

9 THE COURT Okay Drawing prep --

10 MR STILL Judge, it's segregated by job
11 number If it has a 01 or a 02 at the tail end of
12 it, then it is engineering work, drawings, records, as
13 opposed to forensic time And there's two different
14 billing records

15 THE COURT Okay I guess my question is this
16 doesn't add up to the number that Mitch was --
17 originally stated, which was thirty-eight two ninety-
18 five

19 MR STILL Those were all the invoices I had in
20 my file There may be some in the office I would
21 have to look at what he's got

22 MR ROSS Could I ask a few questions real
23 quick?

24 THE COURT Sure

25 MR ROSS It looks like somebody by the name of

1 Holly had about sixty hours of CAD time?

2 MR STILL No There should be a Lisa that has
3 CAD time

4 MR ROSS But there's about sixty hours of CAD
5 time, is what it looks like And then you had some --
6 or there may have been some additional --

7 MR STILL That's for design time We had
8 design time

9 MR ROSS Yeah So that was about \$6,000 in
10 CAD time and about -- approximately 1500 in your guy's
11 time Does that sound --

12 MR STILL Whatever It's \$14,000 for draw and
13 prep

14 MR ROSS Okay

15 MR STILL There's a whole bunch of invoices

16 MR ROSS All right And one was drawing, I
17 thought that was --

18 MR STILL No It's all of them --

19 THE COURT Okay Your drawing prep is fourteen
20 two sixty-six, and then your supervision time would be
21 what we talked about, your \$900 on site, is that
22 correct? And Mr Snyder's? Am I wrong on that one?

23 MR STILL I think it's included in there

24 THE COURT It's already included in here?

25 MR STILL Yes, ma'am

1 THE COURT So it's everything?

2 MR STILL I'm not sure why I didn't come up to
3 Mitch's number, but I haven't seen what he used to
4 tally his There may be one or two month's billings
5 that aren't in there, because those only go through
6 '07 I didn't have the rest of them I don't have the
7 '08 time

8 THE COURT When was the job finished? When did
9 we finish the job?

10 MR BENDLE July of '07 was the CO, right?

11 THE COURT July of '07 was the CO?

12 MR STILL Yes

13 THE COURT Well, then, there shouldn't be any
14 '08 time, because it would all be for trial prep and
15 for litigation

16 MR GRIFFITH That's correct

17 THE COURT Right?

18 MR GRIFFITH I tend to agree with that I
19 believe by the time it was CO'ed, he probably had no
20 more engineering time All of it would have been,
21 probably at that point, litigation

22 THE COURT Okay This is what we're going to
23 do, Mr Ross We're going to go off of that his
24 testimony would be that his engineering time is
25 fourteen thousand two sixty sixty I'm going to let

1 you look at this overnight If you have any questions,
2 then what we're going to do is we are going to leave it
3 open that if we need to, Mr Still --

4 MR STILL Yes, ma'am

5 THE COURT -- we're going to call you That's
6 the beauty of trying this non jury We are going to
7 call you by the telephone, okay --

8 MR STILL No problem

9 THE COURT -- and we will go ahead and
10 establish that way As long as there's no objection
11 from anybody

12 MR ROSS No objection, Your Honor

13 THE COURT Okay No objection, Mr Bendle?

14 MR BENDLE No objection, Your Honor

15 THE COURT And I'm sure there's no objection by
16 you, Mitch

17 MR ROSS Can we go off the record a second?

18 [Off the record momentarily]

19 THE COURT Thank you, Mr Still Can he be
20 excused, y'all?

21 MR BENDLE Yes, ma'am

22 MR ROSS Yes, Your Honor

23 THE COURT All right Safe drive back

24 MR STILL Thank you

25 [Whereupon, Mr Still is excused and exits the

1 courtroom]

2 THE COURT Go ahead

3 MR BENDLE Ready to start?

4 THE COURT Yes

5 Q [Mr Bendle] Mr Aten, I just handed you what's
6 been introduced as Plaintiff's Exhibit Number 11 Could
7 you identify that document?

8 A This is the Kern-Coleman report, dated November
9 16th

10 Q Okay And you and I have had the opportunity
11 together to go through that document, correct?

12 A Correct

13 Q And one of the things that we've discussed in
14 the past was whether or not you, in your opinion, believed
15 those items to be either deficiencies or whether you
16 believed them to be just items that were noted as
17 incomplete --

18 A Correct

19 Q -- work, correct?

20 For the sake of brevity, I believe that everyone
21 has stipulated, and the Court's going to allow us, just to
22 identify those items in the report that you believe to be
23 incomplete

24 A Correct

25 Q Okay? And I'll just go through them quickly

1 Item number 1, with regards to the bond beams

2 A Correct

3 Q Do you believe those -- or the item or do -- you
4 believed item number 1 to reference what you considered to
5 be incomplete --

6 A Correct

7 Q -- work, correct?

8 Okay And you can take your time as I'm going
9 through these

10 A Go ahead

11 Q Items 5 through 7 are items that you believed to
12 be incomplete work, correct?

13 A Yes

14 Q Items 9 through 10, or 9 and 10, you consider to
15 be incomplete work correct?

16 A Yes

17 Q Items 14 through 21 you believed to be
18 incomplete work, correct?

19 A 14 through 21?

20 Q Yes, sir

21 A Yes

22 Q Items number 23 and number 25 you believe are
23 indicative of incomplete work?

24 A 23 Yes

25 Q Number 29 is an item that you would consider to

1 be incomplete work, correct?

2 A 29 Yes

3 Q Item number 33, 34 and 35 are also items that
4 you believe to be incomplete work, is that correct?

5 A Back porch 34? You said 33, 34, and 35?

6 THE COURT I only have through 33

7 Q [Mr Bendle] That's correct

8 THE COURT I'm sorry 33, 34, and 35?

9 MR BENDLE Yes, Your Honor

10 THE COURT Okay

11 A Yes 35 Yes

12 Q [Mr Bendle] Do the items that were just
13 mentioned, is that --

14 A Yes

15 Q -- comprehensive? All the items mentioned in
16 this report that you believe to be incomplete work?

17 A Yes

18 Q Okay Since you were terminated from the
19 project, Mr Aten, have you had the opportunity to go
20 visit the site again?

21 A I have never been inside the building, no

22 Q Okay But you testified earlier that you have
23 had the opportunity to ride by?

24 A Correct

25 Q Okay I'm sure as the general contractor you've

1 had a difficult time not paying close attention to the
2 repair process and all?

3 A Absolutely

4 Q Okay During the times that you've noticed the
5 repairs being made, and the completion of the building,
6 did you notice anything peculiar with regards to design
7 change?

8 A Very -- to me, it's not the same building as is
9 on that -- that is on that plan It's a completely
10 different building

11 Q Okay And without going into detail with regard
12 to every single design charge, what --

13 A The main design change --

14 Q -- sticks out in your mind?

15 A The main design change is the back -- the way
16 the garages in the back connect with the main part of the
17 house or the main part of the building What they -- in
18 essence, what they did was they gained square footage in
19 the house, and that is the biggest difference between that
20 building and -- and another main factor is is that the
21 doors were changed There used to be some entry doors on
22 the inside of the -- in the middle I don't know what you
23 would like to call it Those were changed to the
24 courtyard Back porches were changed all around It's
25 just a completely different building It's not the same

1 building that's on that set of plans

2 Q Okay Anchor Construction was the repair
3 contractor, correct?

4 A Correct

5 Q Was that your understanding?

6 Okay Have you seen any documents from Steve
7 Carpenter, or anyone from Anchor, that highlights the
8 deficiencies in the building that you were hired?

9 A No

10 Q Okay Can you tell me, if you know, how much
11 money had been invested in this project up through the
12 time that you were terminated?

13 A Seven hundred-ish I don't know exactly how
14 much

15 Q And you testified also that the building was
16 somewhere between fifty and sixty percent complete?

17 A Yes

18 Q Mr Aten, on your behalf there have been several
19 causes of action that have been filed against Mr
20 Catterson Is that your understanding?

21 A Yes

22 Q Okay One of those -- well, let me back up Or
23 let me -- one of those causes of action is for negligence
24 Do you feel that Mr Catterson was negligent with regards
25 to his responsibilities for constructing --

1 MR ROSS Objection, Your Honor

2 Q [Mr Bendle] -- this project?

3 MR ROSS It calls for a legal conclusion

4 MR BENDLE He was more or less in his employ
5 I think he can testify with regards to the workmanship
6 performed

7 MR ROSS Can testify as to what was wrong with
8 his work, if there's anything wrong with respect to the
9 contract items or the plans, but to say that Mr
10 Catterson was negligent, I mean, that's the ultimate
11 issue here

12 MR BENDLE Well, we can -- I can use another
13 term, if you would like, but -- I'll ask it a different
14 way

15 Q [Mr Bendle] Do you feel that there was any
16 problems with Mr Catterson or Catterson and Sons'
17 workmanship with regard to the block work, the framing,
18 the decking, the trim, and any other item of
19 responsibility in the proposal?

20 A Yes, there were some Yes

21 Q Okay So you do acknowledge that there are
22 deficiencies, or were --

23 A Yes

24 Q -- with this building?

25 And of those deficiencies, do you feel that

1 Catterson and Sons was charged with the responsibility of
2 completing the work that is mentioned in the Kern-Coleman
3 report?

4 A To me a subcontractor is no different than
5 hiring a CPA, hiring an attorney I'm relying on the CPA,
6 I'm relying on the attorney, to give me their best work,
7 their best advice That's how I deal with a
8 subcontractor I'm not a plumber, I'm not an electrician,
9 I'm not a framer I'm not any of those things I rely on
10 my subcontractors

11 Q Would you consider the proposal, that was given
12 to you by Catterson, a contract of sorts?

13 A Yes

14 Q Okay And it certainly outlined the scope of
15 work?

16 A Correct

17 Q Correct? It outlined what price he was to be
18 paid for the job?

19 A Correct

20 Q And that price was based upon the completion and
21 approval of the work by yourself, correct?

22 A Correct

23 Q Okay But, in fact, he did not complete what he
24 was contracted to do?

25 A That is correct

1 Q And I think I've asked you before

2 MR BENDLE Forgive me, Judge, if I have

3 Q [Mr Bendle] But you're not aware if he had
4 employees on the job, or subcontractors, is that right?

5 A I don't know what their relationship was

6 Q Okay If a verdict is rendered against you in
7 this case, or your company, R Design, do you feel that to
8 an extent Catterson and Sons would be responsible for
9 paying that amount that you may be held by this Court to
10 be responsible for?

11 A I guess I'll repeat what I just said I rely on
12 my subcontractors As far as I'm concerned, they're the
13 experts at what they do on a daily basis They are the
14 experts That's why I hire them

15 Q And having said that, however, you do take
16 responsibility for your role --

17 A Oh, yes

18 Q -- in this, as well correct?

19 A Oh, yes

20 MR BENDLE Okay Thank you, Judge

21 That's all I have, Mr Aten I appreciate it

22 THE COURT Mr Ross

23 [Off the record momentarily]

24 THE COURT While y'all are doing that, can we
25 take just two minutes

1 You can step down if you need to

2 THE WITNESS Okay

3 [Whereupon, a recess is taken from 5 28 p m to
4 5 33 p m]

5 THE COURT All right Are we ready to go,
6 y'all? Am I missing anybody? Okay

7 MR ROSS Mr Aten, I have just a few questions
8 for you

9 CROSS-EXAMINATION

10 BY MR ROSS

11 Q I want to go back over a couple of those issues
12 on the Kern-Coleman report

13 Number 2 is -- I don't --

14 MR ROSS And, Judge, if you've got it marked
15 and he thinks it's incomplete and I'm mistaken --

16 THE COURT I don't

17 MR ROSS -- speak up

18 Q [Mr Ross] Number -- let me skip on that

19 Number 6, the PHD straps, was that just
20 incomplete work? And I'm going to ask you the same about
21 number 7 and number 8, too I believe you stated earlier
22 that those were incomplete items

23 A This has to do with the back and the garage?

24 Q The one is the PHD hold-down straps, I believe,
25 number 6

1 A Yeah, but --

2 Q Number 7 is a crack by the doors that needs to
3 be repaired

4 A Correct Number 6, they weren't installed so
5 obviously they need to be installed So in my mind,
6 that's an incomplete part of the process

7 Q And the crack by the door, somebody just needs
8 to go back and repair that, right?

9 A That's correct

10 Q And the circle washers that were not installed,
11 someone needs to install them?

12 A That's correct

13 Q Okay You remember when the job was going on,
14 Catterson pointed out several places where the plans were
15 inadequate?

16 A We had many discussions about that

17 Q And Catterson had asked you to explain things on
18 the plans?

19 A We had -- we pulled the plans out, yes

20 Q Okay And you called either the engineer or
21 Mr Green to get clarification on things?

22 A I usually wouldn't call Mr Green, but I would I
23 think at the time -- especially on that wall, that front
24 wall -- or, actually, I would have called Mr Green on
25 that one because I would have had to pay Mike extra,

1 because the item that you were talking about were the
2 windows and it didn't match from top to bottom Mr Green
3 knew about that, because I had to verify from him that we
4 had to pay Mike extra because Mike had already built the
5 wall, he had to tear the wall back down, once we figured
6 out that the plans were not right So, yes, in some cases
7 I should say I did have to call Mr Green

8 Q And you remember there were problems with the
9 dormers? Mike made issue --

10 A Absolutely

11 Q -- Mike made an issue about the dormers?

12 A Yes That is another issue that we did have to
13 go through Mr Green because that wasn't really part of
14 Mike's scope of work Because they were designed
15 incorrectly, we had to pay Mike extra So I had to go
16 through Mr Green and let him know that

17 Q Do you remember what that was? Was it \$5500?
18 Do you remember?

19 A Somewhere between four and six As a matter of
20 fact, one of Mike's draws probably says for repair of the
21 dormers

22 Q All right Do you remember what the issue was
23 with the dormers?

24 A The way that they were -- if I remember
25 correctly, the way that they were drawn in the plans

1 didn't work as to the roof line, is the only thing that I
2 can remember

3 Q Right And you had to make some modifications
4 or --

5 A Correct I think we went from -- I think
6 originally I believe they're drawn as a gable dormer
7 Then we went to like a hip-style dormer That's the way
8 Mike -- I think, if I remember right I knew that there
9 was a problem I knew that we had to pay him extra to fix
10 them

11 Q All right And it was a fit problem with the
12 window --

13 A Yes

14 Q -- and the way they were drawn --

15 A Window --

16 Q -- and the header and the roof, right?

17 A And I believe it also had to do with some egress
18 through those windows upstairs, too, because they're --
19 there's a couple of them that were actually bedroom
20 windows up on that loft area

21 Q All right And you said Dennis hired somebody
22 to finish the siding work, right?

23 A Well, Dennis and myself We found someone else
24 to work on the siding, yes And I can't recall his name,
25 to be honest with you

1 Q Two Brothers Plastering did some stucco work on
2 the outside of the block, is that right?

3 A Before I left Yes

4 Q Okay And that was after Mike left, is that
5 right? Or do --

6 A Yes

7 Q -- you remember?

8 A They -- I don't remember exactly I really
9 don't

10 Q And I had asked you this before It's your
11 opinion that if Mike had stayed on and finished the job,
12 the job would have been completed as contracted, right?
13 He didn't stay -- he wasn't there to finish the project?

14 A Well, we gave Mike that opportunity that last
15 Friday before, you know, that he never came back We
16 wanted him to be back Dennis wanted him to be back We
17 wanted him to be back on Monday We -- as a matter of
18 fact, I think one of the last things, if I remember
19 correctly, that Dennis said to him, are you going to be
20 here Monday And he said, yes

21 Q But if he had finished the work -- let's take --
22 let's put the AAC block aside for a second The framing
23 work, if he was allowed to continue or -- and I'm not
24 trying to put words in your mouth about how he left the
25 job But if he stayed on the job and continued and

1 finished it, you believe the framing work would have been
2 acceptable?

3 A Mike had the capability of finishing the work,
4 yes He definitely had the capability of finishing it

5 Q Okay And after Mike left, Mr Green told you,
6 came to you and said get people on site to finish up the
7 items that are listed on the Kern-Coleman report, correct?
8 Or to finish up -- to get people on site to finish the
9 job?

10 A Correct

11 Q And you did try and get some people on site to
12 finish the job?

13 A That's correct

14 Q After the AAC block was stacked, put rebar in
15 the cores, and you called the County and the County came
16 out and inspected it, right?

17 A They inspected it before the cells were poured

18 Q And it passed inspection?

19 A Yes

20 Q Okay And you were given an inspection report?

21 A Yes

22 [Whereupon, Defendant's Exhibit Numbers 16
23 through 31, inspection report, are marked by the court
24 reporter]

25 [Off the record momentarily]

1 MR ROSS All right I have marked what is
2 Defendant's 16 through Defendant's 31, and I'll
3 represent that it is a portion of Beaufort County
4 Inspection's Department file

5 Any objections, Mitch?

6 MR GRIFFITH [Indicates negatively]

7 Q [Mr Ross] Mr Aten, would you take a look at
8 these exhibits The first question -- and I'm going to
9 try and shortcut this a little bit for you There's a
10 couple of inspections I want you to look at There is a
11 core inspection, which is when the County inspects for the
12 rebar in the holes, is that correct? Is that what a core
13 inspection is?

14 A Yes

15 Q And there's also a strap and nail inspection,
16 where the County comes out and inspects to make sure the
17 nailing pattern on plywood sheeting is correct --

18 A That is correct

19 Q -- and that the windows are nailed in properly,
20 is that correct?

21 A Correct

22 Q Okay Can you tell me if those reports are in
23 that file?

24 A Well, here's a core for eighteen I don't
25 remember which units were eighteen or sixteen or twenty,

1 but --

2 Q But Beaufort County came out and did a strap and
3 nail inspection and did a --

4 A Did a core

5 Q -- core inspection, is that correct?

6 A Yeah Here's a core on eighteen, a core on
7 sixteen Here's a strap -- here's a slab on sixteen

8 Q All right And you can't continue until the
9 County inspector comes out and looks to see that there's
10 rebar in those holes, correct?

11 A Correct As a matter of fact, like here on this
12 one right here, number twenty-five, he'll say, need
13 stamped drawings on site, needed stairs to second floor
14 correct and recall So he's telling me on that one I
15 needed to do that, then recall them before he would pass
16 This is not a pass

17 Q Right And when -- but there is another one for
18 that building that says -- is that a strap and nail
19 inspection or a core inspection?

20 A Which one? Sixteen? That's a core on sixteen
21 There was a core in here Okay --

22 Q Mr Aten?

23 A Uh-huh Yeah Here's a strap and nail right
24 here

25 Q Okay You recall a strap and nail inspection

1 and --

2 A Absolutely

3 Q -- you recall a core inspection --

4 A Sure

5 Q -- correct?

6 Okay And when the inspector comes out to
7 inspect the cores, he looks on top of the block and he can
8 see that hole, right, and --

9 A We have to --

10 Q -- he can look in --

11 A -- provide him a ladder

12 Q Okay But he can look in and see the hole?

13 A Absolutely

14 Q He doesn't have to drill holes?

15 A No

16 Q Okay Now, Mr Still said that he was drilling
17 holes four inches from the end of the block And he found
18 holes there sometimes right?

19 A Correct

20 Q Is that where the holes were in these blocks?

21 A No

22 Q Why not?

23 A All of the block -- I should say most of the
24 block was cored on site

25 Q The blocks come solid sometimes, don't they?

1 A If you'll check the bills from Aercon, you'll
2 see that most -- the majority of the block came uncored
3 and not cored

4 Q So if Mr Still checks four inches from the end
5 of the block, there's not necessarily rebar that?

6 A That's correct

7 Q There may be a hole there, but there does not
8 have to be rebar?

9 A Correct

10 Q That's correct? And the rebar is coming out of
11 the foundation how often?

12 A Every four -- forty-eight inches

13 Q And according to Mr Livingston, that's
14 acceptable, correct?

15 A Yes

16 Q And the lintels, when they come from the
17 manufacturer, they don't come -- they come pre-cut They
18 don't come in twenty-foot lengths and you cut them on
19 site, do you?

20 A No As a matter of fact, I believe the
21 manufacturer doesn't want you cutting them because there
22 is a either four or six pieces of rod going through the
23 entire lintel As a matter of fact, the lintels came
24 prescribed from the manufacturer All we did was sent the
25 set of plans to the manufacturer The manufacturer came

1 back and said, okay, here's what you guys need, you need
2 this, this, this, you need this many blocks, you need this
3 size lintels, here you go

4 Q And they sent them to you?

5 A We paid for them, and they got sent to us

6 Q Okay And the rebar that sits on each side of
7 the window, that can't go all the way up through the
8 ceiling, can it?

9 A As far as I know, no, because you would have to
10 be drilling into the lintel

11 Q And that's not allowed?

12 A As far as I know, no

13 MR ROSS I don't have anything else

14 THE COURT Mitch?

15 CROSS-EXAMINATION

16 BY MR GRIFFITH

17 Q Mr Aten, you became an expert in AAC block
18 between the time you testified for Mr Bendle until the
19 time you testified for Mr Ross, didn't you?

20 A Actually, I just answered his questions

21 Q Well, what you testified to is that all you did
22 was read up on it? When you answered his questions, when
23 you answered Mr Bendle's questions, you read up on it,
24 and you made a phone call to Aercon Correct?

25 A Not just one phone call Several

1 Q And then you said you relied on Mr Catterson to
2 install it --

3 A Yes

4 Q -- so that it was installed properly, correct?

5 A Yes

6 Q All right And now you started testifying
7 about, well, this is the way it came, and this is the way
8 we saw it, and this is the way it was supposed to go up
9 Is that right?

10 A That's right

11 Q Actually, it does have a core hole in it,
12 doesn't it?

13 A Some of the blocks came with core holes, yes

14 Q All right And, actually, the photograph that
15 we saw of all of it that's left there, on photograph
16 number 69, all that has core holes in it, doesn't it?

17 A That was the second shipment

18 Q That's the second shipment?

19 A That was the shipment sent for the last
20 remaining garage You're talking about the remainder of
21 the block?

22 Q I'm talking about that picture right there

23 A Yeah Is that the remainder of the block that
24 was on site? I don't know when the picture was taken

25 Q Well, the picture was taken right after you

1 left

2 A Okay Yeah That was the remaining -- that was
3 the remaining block that we ordered to finish the final
4 garage

5 Q All right Now, let's go back to the initial
6 testimony that you gave Mr Bendle You said that Dennis
7 came up with a budget and said, let's build back and see
8 if we can build within that budget --

9 A Yeah

10 Q -- is that correct?

11 A Uh-huh

12 Q And it's not unusual for an owner to want to
13 stay under budget, is it?

14 A No

15 Q As a matter of fact, you would expect that if
16 you could get it, right?

17 A Uh-huh

18 Q True?

19 A Yes

20 Q All right And when you prepared this contract
21 and signed it with Dennis, you never went to him and said,
22 I can't do it, did you?

23 A I had reservations about it

24 Q Why did you sign it?

25 A Oh I was talking about the reservation about

1 the amount, the amount of his budget

2 Q Well, why did you sign it if you couldn't do it?

3 A Thought we could

4 Q You thought you could?

5 A Yeah

6 Q Matter of fact, you thought you could so much
7 that you were going to do it within good industry practice
8 and to the code, is that correct?

9 A That's correct

10 Q That didn't happen, did it?

11 A No

12 Q All right Now, you went down and you pulled
13 the permit, is that right?

14 A Yes, sir

15 Q You, individually

16 A [No response]

17 Q You couldn't have pulled it without having a
18 license, is that correct?

19 A That's correct

20 Q And you did order the AAC block, is that
21 correct?

22 A I made the phone call to tell the ladies, send
23 it, send it

24 Q Send it

25 All right Did you send them the plans down so

1 they could look at the plans?

2 A Yes, I did

3 Q All right And did they mark up any plans and
4 send them back?

5 A Did they mark the plans?

6 Q Right Did they mark the plans up and say --

7 A I don't recall

8 Q -- we can't do anything special?

9 A Don't recall

10 Q All right Then you -- they were relying on
11 you?

12 A I did get some plans back, but I think it had to
13 do with the floor system

14 Q Okay But in any event, you went through --
15 after you signed the contract with Dennis, or Jade Street,
16 16 Jade Street, you took these plans, you made the phone
17 call down to Aercon and said, this is what I need, I'm
18 building four condominium units, going to use Aercon AAC
19 block, send me what I need, is that right?

20 A Basic terms, yes

21 Q Did you check it to see if they sent you the
22 right material?

23 A They're the ones that recommended the material

24 Q Well, no They sent you AAC block, didn't they?

25 A Correct

1 Q All right Did you check it to see if they sent
2 you the right AAC block?

3 A I'm not sure what you're asking me

4 Q All right You don't even know whether you got
5 the right block, is what you're saying You don't know if
6 you were supposed to have core holes in each part of it,
7 do you?

8 A Oh Yes, I do, because the manufacturer, when
9 we discussed the take-off that they did, they suggested
10 that we really didn't need all of them cored, because the
11 cored block was more expensive than the uncored block

12 Q And you got it in that fashion, is that correct?

13 A We received both They sent -- the majority of
14 the block they sent was uncored The lesser amount was
15 cored

16 Q All right Well, let's jump to what material
17 you got And I want to talk specifically about the
18 lintels

19 A Okay

20 Q Were the lintels too short?

21 A We put up the lintels that Aercon sent according
22 to the plans

23 Q According to the plans? According to the plans
24 it's supposed to have eight-inch bearing on each side,
25 isn't it?

1 A Yes

2 Q That doesn't exist, does it?

3 A I've only answered this question for you how
4 many times? We put up what Aercon sent

5 Q So in other words, if the lintel was too short,
6 you didn't pick it up, call Aercon, and said, you sent me
7 the wrong lintel?

8 A No, I did not

9 Q All right If you had gotten the wrong
10 material, you would have had enough sense as a contractor
11 to say, send me back -- send it back, send me the right
12 material?

13 A I didn't believe it was the wrong material

14 Q Okay Well, when you put it up and you didn't
15 have eight-inch bearing on the lintel, why didn't you say,
16 Catterson, you've got to stop, this is the wrong lintel?

17 A I can't answer that

18 Q Because you didn't want to stop You wanted to
19 keep going, right, and you were just going to cover it up

20 A [No response]

21 Q Do you understand that you've got to tie it down
22 between the --

23 A Yes

24 Q -- top and the bottom?

25 A Yes, sir

1 Q All right Did you have it tied down within a
2 foot of the openings?

3 A As far as I know, yes As far as I know, that
4 there is -- I believe that there is rebar going from the
5 foundation, through the block, to the second floor

6 Q You believe it is?

7 A I believe it is

8 Q But you don't know whether it is or not,
9 correct?

10 A I didn't go out there with a rebar detection
11 device and look

12 Q All right And Mr Still went out there You
13 saw photographs of where the rebar was placed in there,
14 didn't you?

15 A All I saw was places that he took a drill and
16 knocked out some of the block and couldn't find it

17 Q And he couldn't find it So if he couldn't find
18 it --

19 A I don't know Did he use a -- I guess --

20 THE WITNESS Can I ask him a question?

21 A Did he use a detection device? I don't know

22 Q [Mr Griffith] He was out there, and he
23 inspected it Did you ever go out there and inspect it
24 afterwards?

25 A No, I did not

1 Q All right

2 A No, I did not

3 Q You were invited to go out there and inspect it,
4 weren't you?

5 A [No response]

6 Q You talked about that right-to-cure letter

7 A Yes, I was given that letter

8 Q You were given that letter, and that letter said
9 that there are framing -- numerous construction defects in
10 framing defects at Jade Street

11 A I believe I responded to the letter, also,
12 didn't I?

13 Q And we have a -- we told you we had another
14 structural engineer going to look at the project, didn't
15 we?

16 A I believe I responded to the letter, didn't I?

17 Q You basically said, I deny it, in your letter
18 Didn't you?

19 A That's correct

20 Q So you didn't even take the time to come out and
21 look at it And you had relied on Mr Catterson, is that
22 correct?

23 A I believe that the right-to-cure letter that was
24 sent to me was only a formality on Dennis' part, because
25 if you'll think about it the way I thought about it is

1 that here you're asking me to come fix something that I
2 didn't spend any money to create to begin with In other
3 words, you asked me to come fix something, when Dennis was
4 totally responsible for all the bills and everything that
5 got paid So how was the right-to-cure something that
6 worked for me?

7 Q You were the contractor, were you not, pursuant
8 to the contract?

9 A [No response]

10 Q Correct?

11 A Correct But how would that -- you asked me why
12 I didn't come look But how -- if I came out and said,
13 okay, Dennis, I'm going to come and fix all this stuff,
14 well, Dennis would be the one paying for it

15 Q If you messed it up, you're going to make him
16 pay for it again?

17 A No According to our contract, Dennis was
18 responsible for all the monies that went into the project

19 Q But you were responsible for the means and
20 methods, correct?

21 A [Indicates negatively]

22 Q No? You weren't responsible?

23 A Yes

24 Q You deny that responsibility --

25 A Yes

1 Q -- under the contract?

2 A Yes

3 Q Let's look at Plaintiff's Exhibit Number 3 We
4 went through this yesterday I didn't know we were going
5 to have to replot the ground

6 THE COURT We don't need to replot the ground
7 I think we testified to it It's paragraph number 9,
8 page 3 And he did already testify to it yesterday
9 when you called him as a witness

10 MR ROSS Your Honor, I think we've plowed a
11 lot of this ground already, too, as a matter of fact

12 MR GRIFFITH And we're getting different
13 answers today, Judge

14 Q [Mr Griffith] Now, let's go back through your
15 testimony You said that you were paid about \$70,000 --

16 MR ROSS Your Honor, this has already been
17 addressed yesterday There is no reason to go back
18 through it

19 THE COURT Where are we going, Mitch?

20 MR GRIFFITH Simply to clear up the exhibits
21 that are in

22 THE COURT To clear up the exhibits that are
23 in?

24 MR GRIFFITH Right I put in an exhibit that
25 shows he was paid \$105,000

1 THE COURT Right

2 MR GRIFFITH I want to give him the benefit of
3 the doubt He was only paid 70,000 for supervision
4 The other was for reimbursable expenses That's the
5 only thing I'm trying to establish

6 THE COURT Okay

7 Q [Mr Griffith] Is that a true statement,
8 Mr Aten?

9 A Dennis did pay me some other things I believe
10 near the beginning of the project there was a day that he
11 was going to be gone, someone needed to get paid, I paid
12 them, then I got the money back from Dennis There may
13 have been some times maybe when a laborer or something,
14 that I paid the laborer Those kinds of things

15 Q And so it's clear in what was Plaintiff's
16 Exhibit Number 1, we've got at least one there for about
17 \$6,000 It was earth work

18 A Uh-huh

19 Q We've got reimbursing you for Lowe's

20 A [Indicates affirmatively]

21 Q So basically what this is saying is all the
22 money that went to you was a hundred and five But we are
23 in agreement that --

24 A Approximately seventy, I think, was --

25 Q -- about 70,000 was paid to you --

1 A I think so

2 Q -- for supervision fees?

3 And you testified earlier that Mr Catterson was
4 the lowest person on the block, is that correct? The AAC
5 block

6 A Correct

7 Q And as a result, you hired him

8 A Correct

9 Q And you told Dennis that's who you hired?

10 A Yes

11 Q And I believe you testified you had zero
12 experience with AAC block, so you relied on Mr Catterson,
13 is that correct?

14 A That's correct

15 Q You've testified that Mr Catterson was there at
16 the site Was he there on a daily basis?

17 A For the most part

18 Q He was on machines?

19 A Uh-huh

20 Q He was actually doing the work?

21 A Correct

22 Q He was laying the block and moving it around?

23 A [Indicates affirmatively]

24 THE COURT Is that a yes, for the record?

25 A Yes

1 Q [Mr Griffith] All right And you said that
2 you became concerned with Mr Catterson because he wanted
3 quantity over quality, is that correct?

4 A Correct

5 Q Even to the point where you now defend the
6 block, you were concerned enough that you called the
7 engineer of record to come out and take a look at it, is
8 that correct?

9 A I believe that I called the engineer I don't
10 remember calling specifically about block issues I can't
11 tell you that I do remember calling him about -- very
12 specifically about the beam that was upstairs and about
13 the --

14 Q About the LVL?

15 A Yes And the steel that we put downstairs

16 Q All right But that was Mr Catterson's work,
17 wasn't it?

18 A Yes

19 Q And that was work that he individually was
20 working on? He was out there hands-on, right?

21 A Yes

22 Q All right You talked about calling the
23 engineer in April of 2004 -- I think it's 5 I'm sorry
24 2005 Is that right?

25 A Right

1 Q Because the project started in 2004, is that
2 correct?

3 A Correct

4 Q You said that there were some problems out there
5 that were identified when you walked around with the
6 engineer, is that correct?

7 A Correct

8 Q And then Mr Catterson was fired or whatever,
9 released, whatever it is, in July, correct?

10 A Correct

11 Q Those problems had not been fixed, had they?

12 A That's correct

13 Q So he had left them there for at least April,
14 May, June, almost four months He hadn't even addressed
15 them That was another reason you were worried about him,
16 wasn't it?

17 A Probably

18 Q And you testified that you relied on the
19 subcontractors to give you the work that you expect to be
20 done in a quality fashion, is that correct?

21 A That's correct

22 Q And you expect them to do that, just like you
23 said you would go hire a CPA or a lawyer --

24 A That's right

25 Q -- is that right?

1 And when an owner hires a general contractor, a
2 contractor such as you, he has the right to rely that he's
3 going to get the plans -- the house built to the plans
4 that he gives you, is that correct?

5 A Yes

6 Q He has a right to rely that you're going to give
7 it -- build it in accordance with the specifications, does
8 he not?

9 A Yes

10 Q And he has a right to rely that's it's going to
11 be built according to the code, is that correct?

12 A Yes

13 Q And that it's going to be built in good industry
14 practice, is that correct?

15 A That's correct

16 Q And these buildings at Jade Street were not
17 built in that fashion, is that correct?

18 A There are -- when I left, there were
19 deficiencies, yes

20 Q Okay And you said you thought that Mike
21 Catterson could come back and finish it, had he come back,
22 is that correct?

23 A Yeah, I believe he could have finished them --
24 fixed it

25 Q All right Well, let's just talk, first of all,

1 about the first one you said this was an incomplete item
2 on the Kern-Coleman report It was noted that several
3 bond beams were cut to accommodate various mechanical and
4 electrical utilities All right? When we look at that,
5 that bond beam is what ties the whole building together
6 around the top, is it not?

7 A Correct

8 Q All right And that's got to be tied together,
9 correct?

10 A Uh-huh

11 Q As such, you don't know how AAC -- or at least,
12 according to the plans, that was not done correctly, true?

13 A This item number 1?

14 Q Correct

15 A Yes That's what Kern-Coleman called out as
16 being needed to be repaired, or as a deficiency, whatever
17 you would like to call it

18 Q All right And while they call it out as a
19 deficiency, you call it out as incomplete?

20 A Correct

21 Q There's no reason to cut the bond beam if you do
22 it according to the plans, is it?

23 A No

24 Q So that's not incomplete, that's really just
25 wrong, correct?

1 A Correct

2 Q All right Number 5 You said that the floor
3 trusses in the garage were installed in the wrong
4 direction

5 A I think you're talking about this, but go ahead

6 Q All right That was one of the items that came
7 up back in April, wasn't it?

8 A Uh-huh

9 Q Never fixed?

10 A No I believe I told you -- testified that the
11 reason that they were set the other way is because the
12 Grayco engineer who designed the floor system wanted them
13 put that way

14 Q All right Did you take --

15 A I think --

16 Q -- it to the engineer of record? Kern-Coleman

17 A No

18 Q All right They're the person that's got to
19 sign off on it, because you're responsible for it if
20 somebody changes the plans, aren't you?

21 A [No response]

22 Q You should have taken it to them, shouldn't you?
23 That was just a mistake on your part?

24 A More than likely, yes

25 Q All right Number 6 you said was incomplete

1 But as I read it, it says the Simpson PAHD foundation
2 strap was not installed properly

3 The word properly there means it was done wrong,
4 is that correct?

5 A That's correct

6 Q All right So that's not an incomplete item,
7 that's a wrong item

8 A I'll agree with you I thought they were
9 referring to there was some missing from some of the
10 blocks out there

11 Q I think that those were maybe skipped over here
12 I agree with you there are some hurricane straps outside
13 that --

14 A There were some missing

15 Q -- probably were just some got-to-get-to-it
16 And I know at one point, and we'll go through
17 that, the bird's-mouth cut --

18 A That's correct

19 Q -- you said that was just an incomplete item,
20 correct?

21 A Adding the straps, yes

22 Q Okay Well, actually, to make the bird's-mouth
23 cut, don't you have to go in there, lift the joist up, cut
24 into it, and then put it up there?

25 A That's correct

1 Q So in good framing practice, it would be that
2 you would make the cut before you put it up there --

3 A That's correct But I've also --

4 Q -- and then you strap it down later, correct?

5 A That's correct

6 Q All right So that was done wrong, too, the
7 bird's-mouth cut?

8 A But I believe that -- if I could find it in here
9 -- Mr Livingston kind of agreed that it was maybe not
10 industry standard but it will be sufficient if straps were
11 added

12 Q Number 23 we recommend the Simpson strap We
13 can jump over to that one But what I'm saying is it
14 wasn't done right

15 A Correct

16 Q All right And what he's saying is, we can get
17 by

18 A Correct

19 Q And getting by and doing it right aren't the
20 same thing, is it?

21 A I don't believe so, no

22 Q All right Now, number 7, you said that was
23 incomplete That's a vertical crack next to the -- in the
24 garage Now, you said you really didn't know much about
25 the ACC [phonetic] But let's talk about that There,

1 the AAC block was removed to accommodate the utility line

2 A Yeah I believe the plumbing line No, it may
3 have been --

4 Q Yeah, it was a plumbing line And there's a
5 picture of it Well, there in the plan, there's a way
6 that you do that, isn't it?

7 A Yes

8 Q It's got a drawn design You actually don't put
9 your AAC block up in a certain location --

10 A That's correct

11 Q And if you do it the way the plan shows, you
12 won't have to break the bond beam, either, will you?

13 A That's correct

14 Q All right So this was -- instead of being
15 incomplete, again, this was not correct Is that true?

16 A I guess, in a fashion

17 Q All right Number 9 You said that was
18 incomplete ACC [phonetic] wall did not extend to the
19 underside of the roof between the two adjacent units and
20 requires a fire separation, clearly stated in the
21 drawings

22 A Uh-huh

23 Q We went through that the other day, and I'm not
24 going to go through it with you You said, well, you
25 might want to cut out that roof line That's just not

1 efficient, though, is it?

2 A No, it's not I do believe that Mike knew that
3 the block did have to go through the roof I believe he
4 did know that

5 Q Okay He knew it?

6 A Correct

7 Q You had talked to him about it?

8 A We talked about it

9 Q You had seen it on the plans And he had a copy
10 of the plans?

11 A Uh-huh

12 Q So he individually knew that was wrong, then

13 A [Indicates affirmatively]

14 Q Talk about the nailing pattern If the nailing
15 pattern wasn't right, you want to say that's incomplete,
16 correct?

17 A I believe I was talking about that one unexposed
18 wall on the outside that was never covered up

19 Q Right And when you go nailing around a piece
20 of plywood, why -- when you've got your gun up there, why
21 do you just want to tack it up and then come back a day
22 later or a week later or a month later and then have to
23 actually fit the nailing pattern? It's not efficient, is
24 it?

25 A No

1 Q It's just not good construction practice, is it?

2 A [No response]

3 Q And, quite frankly, if you remove some of that
4 siding, you're probably going to find that the nailing
5 pattern wasn't met there, either, correct?

6 MR ROSS Objection, Your Honor That's pure
7 speculation

8 THE WITNESS I was going to say --

9 Q [Mr Griffith] What about the siding that was
10 nailed up?

11 A And the question is?

12 Q Was that nailed on properly?)

13 A As far as I know, yes

14 Q All right If it were done with roofing nails,
15 it's got to actually touch -- the recommendations or the
16 specifications are that it's actually got to go through
17 and hit one of the stud --

18 A It should be on the studs

19 Q -- structural members, the stud wall? And a
20 roofing nail is about that long [indicates] It's not
21 long enough to go --

22 A Roofing nails actually come in all different
23 sizes, but --

24 MR ROSS Your Honor, he's testifying

25 MR GRIFFITH That's my job on cross

1 THE COURT It's cross-examination

2 Q [Mr Griffith] Roofing nails aren't a proper
3 application for the siding that was used, the Hardyplank,
4 is that correct?

5 A Without me looking at the Hardyplank documents,
6 I can't answer that

7 Q All right And I'm going -- I'm not going to go
8 through each one of these because it looks like we're
9 starting to see that some of them were not really
10 incomplete, that they were wrong

11 I want to talk about the CMU block wall at the
12 elevator shaft That's got to be reinforced, doesn't it,
13 per the code?

14 A Correct

15 Q All right Matter of fact, that's what I
16 believe that --

17 A I don't believe that was ever completed, though

18 Q Well, if you've got --

19 A It was never poured

20 Q If you've got the CMU wall stacked up there,
21 it's --

22 A It was never poured

23 Q -- it's done, isn't it?

24 A No

25 Q All right Well, let me ask you something

1 When we looked at the photograph of it --

2 A I remember what -- I remember exactly what
3 you're talking about

4 Q All right You couldn't get a rebar down the
5 shaft

6 A I believe that through this corner you could,
7 all the way down

8 Q All right All the way down this corner?

9 A Uh-huh All the --

10 Q Well, doesn't it have to be --

11 A -- way down this corner

12 Q What the code requires, though, is that it be
13 over here next to the wall

14 A I don't know that code off the top of my head
15 I'm not going to testify that I know

16 Q And we talked about the LVL beams The way they
17 were cut, you had a concern about them

18 A Correct

19 Q Mr Catterson did that?

20 A Correct

21 Q Correct?

22 A [No response]

23 Q And that you know was wrong You would agree
24 with that?

25 A Correct

1 Q And when he used a wood member where it called
2 for an I-beam, that's wrong, isn't it?

3 A Not necessarily

4 Q Where he used three headers as opposed to one,
5 that's not in accordance with the plans, is it?

6 A That was one of the items that needed to be
7 repaired, yes

8 Q All right And that was caught on here But,
9 also, we saw where it was already starting to collapse and
10 lower That had already caused problems, hadn't it?

11 A I don't know if it caused problems I mean, I
12 wasn't there when they pulled the LVL off to see below it,
13 so I can't really answer that

14 Q And when you put in floor trusses, you've got to
15 make sure that they are seated properly, is that correct?

16 A Yes

17 Q All right Do you understand what that means?

18 A Are you talking about where it hangs?

19 Q Where it sits

20 A Yeah

21 Q All right You understand it's got to sit on
22 the end because it's got a two-by member on the end?

23 A It's got a cord

24 Q It's got a cord on the end And if it hangs
25 over, if the pressure is --

1 A That's correct

2 Q -- right here and the cord is over here --

3 A That's correct

4 Q -- it's not good

5 A I believe that Mike knew about that at the time,
6 and I believe that he even figured that his remedy was
7 going to be add more -- another cord or another member
8 inside there so that it was resting on whatever support
9 was there

10 Q All right And did you discuss with him how he
11 was going to transfer that load if he moved it out and
12 added --

13 A No

14 Q -- another framing member in there?

15 A No

16 Q That's got engineering principles you've got to
17 take --

18 A Yeah

19 Q -- into consideration, doesn't it? You know
20 that as a general contractor And so that was wrong?

21 A I do remember that it was discussed

22 Q All right It was not incomplete, it was wrong,
23 correct?

24 A It was -- yeah It was discussed

25 Q And you hold Mr Catterson responsible for this,

1 the framing and the block work, is that right, because he
2 did it as your subcontractor?

3 A That's correct

4 Q And you agree that you're responsible to 16 Jade
5 Street if Mr Catterson did it wrong, correct?

6 A That's correct

7 MR GRIFFITH No further questions

8 THE COURT Any redirect?

9 MR BENDLE Nothing further, Your Honor

10 MR ROSS I've got a couple --

11 THE COURT Mr Ross, go ahead

12 MR ROSS -- of questions, Your Honor

13 THE COURT Sure

14 RECROSS-EXAMINATION

15 BY MR ROSS

16 Q Mr Aten, you physically saw, with your own
17 eyes, the lintels come from the manufacturer in different
18 lengths, correct?

19 A Correct

20 Q And you physically saw, with your own eyes,
21 solid blocks coming from the manufacturer, correct?

22 A Correct

23 Q Okay And Mr Catterson, when he was on site,
24 he had crews doing the work, correct?

25 A Yes

1 Q He wasn't actually up on the roof banging nails
2 He was directing crews or he was -- there's a guy named
3 Got You, right? He was the foreman?

4 A Yes That's sounds familiar --

5 Q And Mr Catterson was the liaison between Got
6 You and you, correct?

7 A Correct Got You was there on it all the time
8 Mike was there most of the time How is that

9 Q And he would come out and he would talk with Got
10 You and he would go talk with you, and he would kind of be
11 a middle man?

12 A Correct

13 MR ROSS Okay Nothing else

14 THE COURT Mitch, anything further?

15 MR GRIFFITH No, ma'am

16 THE COURT Okay Anything else?

17 MR BENDLE No, Your Honor

18 THE COURT You can step down, Mr Aten Thank
19 you

20 THE WITNESS Do you want any of this paperwork?

21 THE COURT You need to leave everything that is
22 a -- got a little exhibit sticker right there

23 [Whereupon, Mr Aten is excused and exits the
24 witness stand]

25 THE COURT All right, y'all It is actually

1 almost six -- it's 6 18 That clock is not right back
2 there Let's go ahead and break, y'all, and start back
3 up at 10 30 tomorrow morning We'll run hard, whatever
4 we need to do And if for some reason we have a little
5 issue, we can certainly go over to Thursday and finish
6 up if we need to But we'll plan on having everyone we
7 need here tomorrow Okay?

8 MR ROSS Your Honor, if I may suggest --

9 THE COURT Yes?

10 MR ROSS Mitch is going to want to put Mike up
11 first thing in the morning If it would be all right
12 with everybody else, after we hear whatever directed
13 verdict motions are going to be, or motions to dismiss,
14 could he go back up on the witness stand next? Because
15 I think he's going to want to leave, and I'm not going
16 to let him, and he's going to be very upset with me
17 And I don't think anybody would have objection to
18 letting me put him up before Allen Patterson But I'll
19 leave it to these others

20 MR BENDLE I don't have any problem with that,
21 Judge

22 THE COURT Okay

23 MR GRIFFITH Judge, I don't have any problem
24 with that If for any reason they want to make their
25 directed verdict motions after I direct Mr Catterson,

1 and then go directly into their -- or after I cross Mr
2 Catterson, and then go -- make the motions, and then go
3 directly into it so you can consider the evidence, so
4 that we can push forward, I'm happy to do that if that
5 would make it more smooth

6 MR ROSS That works for me, Your Honor

7 THE COURT That's fine, as long as you're okay
8 with that

9 MR BENDLE I'm okay with that, so long as we
10 don't run into time problems with Catterson I mean,
11 if we're not starting until 10 30 --

12 MR ROSS Yeah And that's my concern I'm
13 going to be a while with him if Mitch doesn't cover the
14 grounds that I --

15 THE COURT Okay We'll do whatever we have to
16 do to get him up and get him out of here, because he
17 has to go pick up his kids

18 MR ROSS All right Thank you, Your Honor

19 THE COURT All right See y'all at 10 30

20 [NON-JURY TRIAL ADJOURNS AT 6 18 P M]
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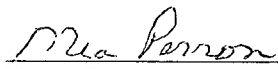
C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

I, the undersigned Mia Perron, Circuit Court Reporter for the 14th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the non-jury trial held before the Honorable Carmen T Mullen, on October 14, 2008

I do further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action

Dated this 15th day of March, 2009


Mia Perron, CCR, CVR-CM
Circuit Court Reporter
14th Judicial Circuit