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INDEX TO PROCEEDINGS

	PAGE
PROCEEDINGS	6
<u>Witnesses for the Plaintiff</u>	
MICHAEL S CATTERSON	
Cross-Examination by Mr Griffith	7
Direct Examination by Mr Ross	50
Cross-Examination by Mr Bendle	52
Recross-Examination by Mr Griffith	58
MOTION FOR DIRECTED VERDICT	64
By Mr Bendle	
MOTION FOR DIRECTED VERDICT	71, 74
By Mr Ross	
MOTION	77
By Mr Bendle	
<u>Witnesses for the Defendant</u>	
JOSEPH A PATTERSON, IV,	
Direct Examination by Mr Bendle	84
Cross-Examination by Mr Ross	136
Cross-Examination by Mr Griffith	143
Redirect Examination by Mr Bendle	173
Recross-Examination by Mr Ross	175
Recross-Examination by Mr Griffith	185
Further Recross-Examination by Mr Ross	189
Further Recross-Examination by Mr Griffith	190

INDEX TO PROCEEDINGS, continued

	PAGE
ALAN J SCHWEICHARDT	
Direct Examination by Mr Ross	198
Cross-Examination by Mr Griffith	219
Redirect Examination by Mr Ross	241
Recross-Examination by Mr Griffith	243
Further Redirect Examination by Mr Ross	246
RENEWED MOTIONS	247
MOTION	250
By Mr Ross	
MOTION FOR DIRECTED VERDICT	255
By Mr Griffith	
CERTIFICATE OF COURT REPORTER	264

INDEX TO EXHIBITS

	PAGE
Plaintiff's Exhibit Number 101 [Bonsal document]	156
Defendant's Exhibit Number 32 [Packet]	83
Defendant's Exhibit Number 33 [Mr Patterson's estimate]	88
Defendant's Exhibit Number 34 [CV - Mr Schweichardt]	198

PROCEEDINGS

THE COURT Okay How did we decide we are
doing this? Mitch, you're calling Mr Catterson, is
that correct?

MR GRIFFITH Yes, ma'am

THE COURT All right Whenever you're ready

MR GRIFFITH The defendants call -- excuse me
The plaintiffs would call Michael Catterson

THE COURT That would be a slip fo the tongue,
huh?

Mr Catterson, there's a Bible right over there
By the TV over there Evidently, it's roaming Thank
you, sir Raise your right hand

[Whereupon, Mr Catterson is duly sworn by the
Court]

[Whereupon, Mr Catterson takes the witness
stand]

THE COURT Thank you Mike, if you would just
give us your full name for the record

THE WITNESS It's Michael S Catterson

MR GRIFFITH Mr Catterson, we've met before
I've got a few questions for you

- - -

- - -

1 MICHAEL S CATTERSON,
2 Having Been First Duly Sworn,
3 was Examined and Testified as Follows

4 CROSS-EXAMINATION

5 BY MR GRIFFITH

6 Q You are Michael Catterson, and you live at 48
7 Courtney Lane in Ridgeland, South Carolina, is that
8 correct?

9 A Correct

10 Q And I believe you're married, is that correct?

11 A Correct

12 Q You are the -- as I understand it, the sole
13 shareholder in Catterson and Sons Construction Company,
14 Inc, is that correct?

15 A Correct

16 Q And Catterson and Sons Construction Company is a
17 specialty subcontractor, is that correct?

18 A Correct

19 Q And you are the license holder for -- or the
20 certificate holder? You hold a --

21 A It's a specialty license

22 Q -- specialty license? And that is for -- I
23 believe you do framing?

24 A Uh-huh That's correct

25 Q All right And you actually -- you personally

1 took that test, correct?

2 A There is no test for a specialty license

3 Q You're the qualifying person, though, is that
4 correct?

5 A Correct

6 Q All right And you worked on the 16 Jade Street
7 project is that correct?

8 A Correct

9 Q You were contacted by Carl Aten?

10 A Correct

11 Q All right And your understanding was that Carl
12 was the G C on the project, is that correct?

13 A That is correct

14 Q You had never worked with Carl before, correct?

15 A Not worked with him, no

16 Q I believe you may have known him personally, is
17 that correct? Socially?

18 A Socially, yes

19 Q Right And you had done some prior work with
20 AAC block, is that correct?

21 A That is correct

22 Q And that's Aerated Autoclave Concrete, is that
23 correct?

24 A Correct

25 Q And I believe, as I understand it, you had done

1 two prior projects with it, one on Dafuskie and maybe one
2 over on the island?

3 A All of it was on Dafuskie

4 Q On Dafuskie

5 Probably need to clarify, too When I say the
6 island, over here we think about St Helena and not Hilton
7 Head

8 A Thank you

9 Q But, in any event, you had done two houses over
10 on Dafuskie, correct?

11 A That's correct

12 Q All right And in this project -- I'm going to
13 show you Plaintiff's Exhibit Number 9 -- you submitted a
14 contract to Carl Aten or R Design, is that correct?

15 A That's correct

16 Q And under that contract, you were actually
17 awarded the contract, is that correct?

18 A Correct

19 Q And that is signed by both you and Mr Aten?

20 A Correct

21 Q Part of that contract required you to install
22 the AAC block, the rebar, and the framing, is that
23 correct?

24 A Correct

25 Q In addition to that, I understand you would have

1 been doing -- as part of the contract, you would have been
2 doing floor panels?

3 A Correct

4 Q Is that correct?

5 And also framing that would include setting the
6 interior windows -- I mean, excuse me -- setting the
7 windows, exterior windows?

8 A Exterior windows Correct

9 Q And you would have done -- would you have done
10 the exterior trim?

11 A Yes The exterior trim was in the siding
12 package

13 Q And that would have included the siding?

14 A The siding and the window trim on the outside

15 Q Okay Now, when you worked on this project, you
16 actually worked I believe, I understood, in a supervisory
17 capacity, is that correct?

18 A That is correct

19 Q And you also I believe testified earlier that
20 you worked with some subcontractors, is that correct? Or
21 you had subcontractors?

22 A Yes

23 Q All right And in doing this project over the
24 course of time, you signed the contract it looks like in
25 August of '04?

1 A That's correct

2 Q And there seemed to be some problems that sort
3 of cropped up on the project, correct?

4 A Correct

5 Q All right You had problems, as I understand,
6 getting in touch with Carl, is that correct?

7 A That is correct

8 Q Now, the way the plan was set up was you
9 contracted directly with Carl and you submitted pay
10 applications to Carl, correct?

11 A Correct

12 Q Submitted them on a weekly basis, and he was
13 supposed to pay you I believe on Fridays?

14 A Thursdays

15 Q Thursdays

16 Now, in this setup, though, the checks actually
17 came directly from 16 Jade Street, though, correct?

18 A Correct

19 Q Carl was in charge of approving the pay
20 application or the draw, is that correct?

21 A That's correct

22 Q And he was the person that you reported to if
23 you had problems, correct?

24 A Correct

25 Q And as I understand, when you got out there --

1 while your contract is in August of '04, when you got out
2 there, the slab had already been poured, is that correct?

3 A The contract -- the slabs were on hold for a
4 little bit I can't remember what the date we started
5 that project I know what day we signed the contract It
6 was in August

7 Q Well, when you arrived, the slabs had been
8 poured and the J-bars -- or the rebar was sticking out of
9 the slab?

10 A That's correct

11 Q It had to be done before --

12 A Absolutely

13 Q -- you could lay your block?

14 All right And as I understand, you were a
15 labor-only contractor, correct?

16 A That's correct

17 Q So materials would have been ordered by Carl, is
18 that correct?

19 A That is correct

20 Q If improper material showed up, he was
21 responsible, correct?

22 A That's correct

23 Q And if improper material showed up and you
24 noticed it, you would call him and say, got the wrong
25 stuff, right?

1 A Correct

2 Q If you could get a hold of him, correct?

3 A Correct

4 Q And you had trouble getting a hold of him at
5 times, I understand

6 A Yes

7 Q All right Now, we've talked about you've done
8 it -- installed AAC block before You've been doing
9 framing for fifteen years or better, I understand?

10 A I have been framing probably twenty-five years

11 Q Okay So you've been doing that long enough you
12 understand what good framing practice would be, then,
13 correct?

14 A Absolutely

15 Q With regards to the AAC block, you had only done
16 that twice Did you feel competent to install the AAC
17 block?

18 A Yes

19 Q Had you read up on the materials?

20 A Yes

21 Q All right And was it your understanding that
22 the specifications that Aercon or Hevel [phonetic] were to
23 put out for the AAC block, those were to be followed?

24 A Correct

25 Q And those are the manufacturer specifications

1 You followed those, correct?

2 A To my knowledge

3 Q Right Just like if you got laminated veneer
4 lumber, you've got to follow the specifications to make
5 sure that it meets when you cut it and --

6 A Glue it

7 Q -- glue it You've got to make sure that it's
8 right, correct?

9 A Correct

10 Q All right And you also felt that since you had
11 done it before, you were competent to supervise the
12 installation, is that correct?

13 A Correct

14 Q Was everything you did on the project at the
15 direction of Mr Aten?

16 A Yes He was the general contractor

17 Q And if any of the work that was performed on the
18 AAC block did not meet or was changed from what it was on
19 the plans, is it your position that he changed those?

20 A Correct

21 Q Now, you did get a set of plans? Is that
22 correct?

23 A Yes

24 Q And you followed the plans, with the exception
25 of the changes that Mr Aten made, is that correct?

1 A Correct

2 Q And there has been some discussion about it, and
3 I've heard it here Your position is you did not walk off
4 this job, you were fired, correct?

5 A I did not walk off the job

6 Q All right And when you were terminated -- we
7 sound like we've got a Clemson coach here When you were
8 either terminated or walked off or whatever, that was in
9 July of '05 I just want to get the time frame

10 A Yeah I think it was the 22nd was the telephone
11 conversation that I had with Mr Aten

12 Q All right And I believe, also, we've seen a
13 copy -- I don't know if one was introduced But it looks
14 like maybe your last pay application was dated that day,
15 July 22nd, 2005?

16 A Yeah It may have been before, or a little bit
17 after

18 Q Okay But in any event, we've got that July '05
19 time frame? Late July?

20 A Uh-huh

21 Q All right Now, I want to go through with you,
22 just very briefly, some of the items that we saw out --
23 are out here

24 You understand what a bond beam is, don't you?

25 A Yes

1 Q All right And on this project there were
2 certain bond beams that had been cut, is that correct?

3 A From what I understand from these pictures, yes

4 Q Okay Well, I'm going to show you Plaintiff's
5 Exhibit Number 11, back page, looking at the photos
6 Photo number 2 talks about a bond beam being cut right
7 there Is that -- can you see that that's what happened
8 there?

9 A Yeah I could see that that has happened

10 Q Okay And as I understand it, it's your
11 position that you had built the block up, put in the bond
12 beam, and then after that another subcontractor -- it
13 likes like maybe a plumber -- came back and cut the bond
14 beam, correct?

15 A Yes

16 Q All right You would agree with me that this is
17 improper work, correct?

18 A Yes

19 Q This is -- your position is, though, this is not
20 work performed by Catterson but work that was done after
21 you installed --

22 A Correct

23 Q -- the AAC block and the bond beam?

24 A Right

25 Q Right This should not have happened on a

1 construction site for you -- should not have happened to
2 your work, is that correct?

3 A That's correct

4 Q All right Also, there's been testimony about
5 when you got out there, the rebar that was in was forty-
6 eight inches on center Were you here for that testimony?

7 A I was not here for that, but I -- I don't
8 remember what the spacing was, out whatever the spacing
9 was is what I had to follow

10 Q Okay Did you look at the plans and understand
11 that those were wrong -- I mean, that the spacing was
12 wrong according to the plans?

13 A Yes I brought it to their attention, and I was
14 told to go ahead

15 Q Just go ahead and put it up, don't worry about
16 it?

17 A Correct

18 Q So at that point in time you went ahead and
19 started putting it up, and I guess maybe grouting at that
20 point in time, forty-eight inches on center, is that
21 correct?

22 A I believe the majority of the spaces were
23 tighter than forty-eight because we had cores coming up
24 alongside windows and door openings that I remember So
25 it would have made it tighter than forty-eight inch spaces

1 everywhere

2 Q And we've got the AAC block here AAC is
3 actually easy to cut, fairly easy to cut, I guess -- is
4 that true?

5 A Yes

6 Q And when it comes, it comes with these grout
7 holes, is that correct?

8 A It comes both ways They come with solid block
9 and the cored block

10 Q All right And the cored block is actually --
11 did all of it come cored?

12 A No

13 Q Did you have to core for some of the --

14 A Yes

15 Q All right And when you put it up, did you make
16 sure that the cores were filled? Well, let's go back
17 The way you built it, if you stack it and if you don't
18 have a core, you've got to core it, correct?

19 A Right That is where the rebar comes up from
20 the foundation

21 Q And once you stack it and core it, you've got to
22 drop rebar in it to tie it together?

23 A Correct

24 Q And then you grout it --

25 A Correct

1 Q -- so that the rebar and the grout then form a
2 bond so it doesn't pull apart, like my pen just did --

3 A Correct

4 Q -- so that it holds, correct?

5 A That's correct

6 Q So rebar without grout is worthless, correct?

7 A For the most part

8 Q All right Grout without rebar is poor,
9 correct?

10 A Yes

11 Q And is it your position that you filled all the
12 cores with grout and rebar?

13 A We put all the rebar in We did not do the
14 pumping

15 Q All right And who was in charge of the
16 pumping?

17 A It was a company -- it was John Hawker's
18 [phonetic] company I don't remember what his name was,
19 the guy that did the actual holding the hose and pumping
20 the concrete

21 Q All right And at that time that that was done,
22 you were to come back in and then you would have had to
23 have put your bond beams across the top, is that correct?

24 A It would all be poured at one time

25 Q You would pour the bond -- you would grout the

1 holes and then put up the bond beams?

2 A The rebar come up out of the hole, then it was a
3 double rebar that went around the bond beam, and all that
4 was pumped at one time

5 Q Slipped into the --

6 A Right It's a U-block on top

7 Q There's a U-block, I guess That's right I'm
8 sorry And then the rebar sits across that for the bond
9 beam, which is then tied together with the concrete?

10 A With what's coming out of the top

11 Q Okay Now, other than at this location, did you
12 see any other breaks in the bond beam?

13 A When I was on the job, no, I don't believe so

14 Q All right And if there were breaks in the bond
15 beam, you would agree that that was not properly done or
16 properly built, is that correct?

17 A Unless it was specified

18 Q All right Now, let me ask you here I'm going
19 to show you Plaintiff's Exhibit Number 76, which looks
20 like the top where the trusses come across it It doesn't
21 look like we've got a bond beam going across that lintel,
22 is that correct?

23 A That's correct

24 Q It should have one, shouldn't it?

25 A Unless the plans -- or I was told to do

1 different

2 THE COURT Mitch, can I ask him a quick
3 question?

4 MR GRIFFITH Yes, ma'am

5 THE COURT Mr Catterson, you said that you
6 were not responsible for pumping in the concrete?

7 THE WITNESS That's correct

8 THE COURT Is that -- was that a part of your
9 contract and you just subbed that out or --

10 THE WITNESS No

11 THE COURT -- or is that something completely
12 outside of what you were to be paid in this?

13 THE WITNESS Completely outside that

14 THE COURT Okay Thank you And would that be
15 just a concrete guy? Is that -- is there a specialty
16 other than what I would call a concrete guy?

17 THE WITNESS Yeah The pump company That's
18 all they do is pump concrete and block

19 THE COURT And block

20 THE WITNESS That's all they do

21 THE COURT Okay So they don't lay driveways
22 or anything else? They don't do that kind of stuff?

23 THE WITNESS Well, if you can't get the
24 concrete truck in, they do have the pump available and
25 they will place the concrete

1 THE COURT Okay Okay Thanks

2 Q [Mr Griffith] Now, while we're looking at the
3 lintels, the lintels, according to the specifications,
4 also have to bear at least eight inches, is that correct?

5 A That's what I've heard here

6 Q Is that what the manufacturer's specifications
7 require?

8 A I don't know I wasn't provided with that
9 information

10 Q Is the -- in your contract you said that you
11 were going to install the block AAC -- it says AAC block
12 and floor panels You would not have familiarized
13 yourself with the specifications to ensure that you got
14 the proper bearing on all the block?

15 A Aercon sent the plan that came with this, and
16 they sent the parts, and if they sent an eight-foot header
17 to go over an area that was eight foot six or eight foot
18 seven, it was labeled on the plan

19 Q So it's your testimony, then, they sent you
20 basically a puzzle that you have to put the puzzle
21 together that this lintel goes over -- lintel A goes over
22 the head of window A on the plans, is that correct?

23 A For the most part

24 Q All right And if that lintel did not meet the
25 specifications that they had sent, did you bring it to the

1 attention of Mr Aten?

2 A I had no specifications that it said it had to
3 have an eight-inch bearing on there

4 Q You never read the specifications, then?

5 A In general, yes

6 Q Okay And when you read them, did you feel
7 confident then to go ahead and put them up without knowing
8 what all the specifications required?

9 A Yes, because I was told to follow the plan

10 Q Okay Now, let's go one step farther There's
11 been -- well, the block, when you lay the block, is it
12 supposed to be grouted? Or, excuse me Are you supposed
13 to put a mortar bed when you stack the block?

14 A The first course

15 Q The first course Not the second course?

16 A No

17 Q Are you supposed to put a mortar bed between the
18 heads when you -- once they butt up together?

19 A It's Thin Set

20 Q Thin Set?

21 A Yes

22 Q All right And with the Thin Set mortar, would
23 you be able to look through, or see light coming through,
24 if it were done properly?

25 A In occasional places

1 Q And I'm going to show you Plaintiff's Exhibit
2 Number 64 We've got a crack in the wall right here,
3 we've got it's looks like --

4 THE COURT Okay Just so I'm clear, Mr
5 Catterson so are you saying that the first course is
6 to have a mortar bed in between this and the second
7 course, and then after that's it's just to be like on
8 the sides, like a Thin Set on both sides? Is that what
9 you're saying?

10 THE WITNESS No, no, no The first course you
11 lay like a regular block

12 THE COURT Okay

13 THE WITNESS Okay? It's a half-inch --

14 THE COURT Just like concrete block work

15 THE WITNESS Right You set that, get the
16 level plumb, square everything, then you take a notched
17 trowel

18 THE COURT Yeah

19 THE WITNESS And it's a Thin Set, just like
20 setting tile

21 THE COURT Okay

22 THE WITNESS Okay? And you put one swipe
23 there, and you swipe the head joint And you -- it's a
24 sixteenth of an inch It's butt tight

25 THE COURT Okay So it's supposed to be tight?

1 THE WITNESS Yes

2 THE COURT Okay Thank you

3 Q [Mr Griffith] All right And when you said a
4 sixteenth of an inch -- and that's only supposed to be on
5 one course, is your understanding?

6 A As far as?

7 Q As far as where the mortar goes Does it go
8 on --

9 A That's -- you're talking about the bottom? Or
10 the Thin Set?

11 Q Well, what I'm talking about is when you stack
12 up the AAC block like this, and the first course is
13 supposed to have a course of mortar right there, is that
14 correct, between these two blocks?

15 A No That's where the Thin Set goes

16 Q That's where the Thin Set goes

17 THE COURT So the mortar goes on the bottom?
18 Is that what you're saying?

19 THE WITNESS Yes

20 THE COURT Okay So he's saying there's a
21 mortar bed underneath, then Thin Set, Thin Set

22 So it's supposed to be Thin Set all the way
23 around from everything else, right?

24 THE WITNESS That's correct

25 THE COURT All the way around?

1 THE WITNESS Yes

2 MR GRIFFITH Okay A matter of semantics I
3 apologize I've been calling the -- what you call Thin
4 Set I've been calling just mortar, an eighth-inch or a
5 sixteenth-inch mortar

6 Q [Mr Griffith] But it's supposed to be grouted?

7 MR GRIFFITH Wrong word It's supposed to
8 have a Thin Set all the way to the top?

9 A On the head joints, the vertical joints

10 Q [Mr Griffith] On the head joints
11 What about the bed?

12 A Yes

13 Q Okay And did these -- all these blocks have
14 it?

15 A To my knowledge, all the blocks that we
16 installed had that

17 THE COURT So what causes the light to show
18 through that? Is that just the Thin Set is just so
19 thin that sometimes it -- that's why you can see
20 through it?

21 THE WITNESS Can I answer now?

22 THE COURT Absolutely

23 THE WITNESS Okay

24 THE COURT Actually, yeah, you can answer
25 anything I ask you

1 THE WITNESS This system -- and the Thin Set
2 and that block, that block is so light And it's
3 powdery You can take your hand against that block
4 right now and your hands are full of powder, white
5 powder And they break like nothing So what it is is
6 you're mixing that Thin Set up, it's wet, and it's a
7 real runny --

8 THE COURT You say it's almost like tile?

9 THE WITNESS Basically, yes

10 THE COURT Okay

11 THE WITNESS And it's got no sand in it to hold
12 it, to give it any consistency It's like wet bread
13 dough or pizza dough And what happens is is when you
14 put that on wet and bring it up the sides, yes, it
15 sticks But if you take a piece of pizza dough or
16 something and go like this [indicates] and put it on
17 the counter, it sticks If you put flour on it and
18 flip it over, it's going to do this [indicates]

19 THE COURT Got you

20 THE WITNESS And that's what happens

21 THE COURT And that's what it does, it just
22 goes down

23 THE WITNESS Right

24 THE COURT Yeah

25 THE WITNESS And there's another procedure,

1 after the block is done, that --

2 THE COURT Takes care of that

3 THE WITNESS Yes

4 THE COURT Okay And I'm sure we'll get to
5 that Okay

6 Q [Mr Griffith] So in a situation like this,
7 we've got a crack going this way, and we've got openings
8 right here It looks like we've got a little bit of Thin
9 Set in there, but we've got voids in it, is that correct?

10 A Yes But I believe that wall has been backed
11 into

12 Q Okay Actually, I believe this is the garage
13 wall, and that may be where your plumbing line was cut
14 into

15 A That may be

16 Q And, also, we've got issues out there with the
17 floor trusses The floor trusses --

18 THE COURT When you say the plumbing line was
19 cut into that was that the exterior you were showing
20 me in the photo, or is it the interior?

21 MR GRIFFITH This is the interior in the
22 photo You can see --

23 THE COURT Where would the plumbing line have
24 been -- or the electric, whatever line you said, was
25 cut into? Where would it have been cut into?

1 MR GRIFFITH Cut in on the back side

2 THE COURT The back side of the wall?

3 MR GRIFFITH Yeah You have got your
4 plumbing, you've --

5 THE COURT Got you

6 MR GRIFFITH You've got the toilet fixture, or
7 at least --

8 THE COURT So it would have been on the --

9 MR GRIFFITH -- where it's going to be seated
10 right there

11 THE COURT -- back side of that wall

12 MR GRIFFITH So you're going to have plumbing
13 fixtures right near this

14 THE COURT Got you

15 MR GRIFFITH And I think probably you're going
16 to --

17 THE COURT Okay

18 MR GRIFFITH You're going to see maybe, on
19 photo number 7 --

20 THE COURT That's 7 on the -- okay Now I
21 understand

22 MR GRIFFITH -- what we were talking about

23 THE COURT Okay

24 Q [Mr Griffith] And you know that when -- and
25 let's just jump to it In the Kern-Coleman, remember

1 Mr Livingston coming out there one time before you left?

2 A Yes

3 Q All right And in his photo number 4, he
4 indicated that there was lack -- a lack of the eight-inch
5 mortar bond You say that was there, is that correct?

6 A Yes But like in the picture it shows all these
7 head joints got mortar in it, and this one doesn't And
8 that goes back to what I said before

9 Q All right So you disagree that he found a
10 typical lack of mortar bond? You say you put it in there?

11 A We put in on the stuff that we did

12 Q Now, we also talked a little bit about -- or
13 we've been hearing about, about the floor trusses and the
14 bearing of the floor trusses I'm going to show you
15 Plaintiff's Exhibit Number 36 When a truss is put in
16 like that, you're not supposed to have a bearing point
17 like that You're supposed to bear on the end, is that
18 correct?

19 A Yes, that's correct No, not on this piece
20 Not on this piece because this would have a hanger on it
21 onto this beam

22 Q All right Then if you've got a piece right
23 there, how is it going to transfer the load down without
24 something to support the truss?

25 A Well, in this -- the load needs to be on the

1 end, but in this picture these would have been hung on
2 this steel beam

3 Q All right And --

4 THE WITNESS On this LVL beam

5 THE COURT Okay

6 THE WITNESS Which would have been strapped
7 right there Which it kind of looks like there was one
8 on there at one time

9 THE COURT It looks a little lighter

10 THE WITNESS Yes

11 Q [Mr Griffith] And so when Mr Livingston went
12 out there, you disagree with his findings that there were
13 improper loading on the trusses, is that correct?

14 A I can't say that I disagree or agree I mean --

15 Q If it was out there, it was done wrong is that
16 correct?

17 A It -- depending on the picture, yes

18 Q All right Let's talk about the firewall I
19 believe in the photograph, Plaintiff's Exhibit Number 10,
20 you're supposed to have a firewall going up with this AAC
21 block, is that correct?

22 A That is correct

23 Q And the firewall is actually supposed to extend
24 through the roof line, is that correct?

25 A That's correct

1 Q All right And it does not in that picture, is
2 that correct?

3 A That's correct

4 Q On the plans, it's supposed to, correct?

5 A That's correct

6 Q And as I understand, it's your position that it
7 did not extend through the roof line because you ran out
8 of block, is that correct?

9 A That is correct

10 Q And --

11 A And that section of -- that section of block
12 needed to be pumped before we went any further

13 Q Okay So you just went forward, at Mr Aten's
14 instruction, and put the roof on? You understand you're
15 going to have to cut -- now come back and cut through the
16 roof, correct?

17 A Yes That's correct

18 Q Okay And why did you do it that way?

19 A To protect the framing that was already in
20 place, because we had no block

21 Q Okay And had you told Mr Aten that you had
22 run out of block?

23 A Several times

24 Q And when you didn't get it, you had to go ahead
25 and do it in this fashion?

1 A That's correct

2 THE COURT How hard is it to get this block? I
3 understand it comes from Aercon But, you know, you
4 call up, you're short, what do you -- I mean, what kind
5 of --

6 THE WITNESS I didn't do the --

7 THE COURT Oh You didn't do --

8 THE WITNESS I didn't do the ordering, but --

9 THE COURT Okay Do you know what the
10 turnaround is typically? I just don't know --

11 THE WITNESS I've never had a problem getting
12 it on other jobs

13 THE COURT Okay

14 Q [Mr Griffith] All right We also talked --
15 that you've heard about, maybe, if you've been in here --
16 about the nailing pattern on the sheeting?

17 A Correct

18 Q All right And you also -- I believe we
19 understand that you nailed it properly, is that correct?

20 A In the places that we nailed it, yes Three and
21 six

22 Q And, also, there was some blocking that had to
23 go behind -- on the second floor where you've got your
24 stud walls, it's supposed to have some blocking in there,
25 is that correct?

1 A Pearling blocks Yes

2 Q Pearling blocks And are those pearling blocks
3 supposed to be tight so there's no movement?

4 A For the most part, yes

5 Q Okay And Plaintiff's Exhibit Number 26, that
6 shows an example of a pearling block, is that correct?

7 A That does

8 Q All right And 27 is a similar, if not just a
9 closer, view?

10 A That's correct

11 Q That's not a proper installation of a pearling
12 block, is it?

13 A No, it's not

14 Q All right And we had talked also about some
15 balloon framing And I think --

16 THE COURT He needs to explain something,
17 Mitch

18 MR GRIFFITH I'm sorry

19 THE WITNESS Can I explain this?

20 THE COURT Yeah

21 MR GRIFFITH Yeah

22 A We didn't put this in This was put in after
23 the fact And as you can see, this is brand new wood
24 And this is yellow, from being there, from the age
25 Somebody knocked these blocks out and put them in This

1 was not our construction

2 THE COURT Okay And just so I'm clear when
3 you say the nailing you did was three and six, what are
4 we talking specifically of? Are we talking about the
5 portion of the siding you did, are we talking about the
6 framing? What are we talking about?

7 THE WITNESS It's the sheathing

8 THE COURT It's on the sheathing? Okay

9 THE WITNESS It's the -- it's on the outside
10 The code says you --

11 THE COURT Right

12 THE WITNESS -- can't vary more than three
13 inches around the edges and six inches in the field,
14 which is the middle of the board

15 THE COURT Okay

16 Q [Mr Griffith] And we've got -- we've talked
17 about -- we've heard about an issue with some balloon
18 framing I believe that would show a wall that runs up
19 You understand what balloon framing is, is that correct?

20 A Yes, I do

21 THE COURT You need to explain it to me I'm
22 sorry, Mitch

23 MR GRIFFITH That's all right

24 THE WITNESS Balloon framing is an area say you
25 have a cathedral room and a gable --

1 THE COURT Yeah

2 THE WITNESS -- okay, and that wall would be
3 your outside wall with glass in it And this room
4 would be cathedral The studs would go from the bottom
5 floor, all the way to the top of the rafters, no breaks
6 in between, so it's --

7 THE COURT Got you

8 THE WITNESS -- so that it doesn't -- we don't
9 have any flopping

10 THE COURT Got you

11 THE WITNESS Okay?

12 THE COURT Okay I understand now

13 Q [Mr Griffith] The balloon framing is a
14 structural issue You want to make sure you don't have a
15 hinge in it so when you get a wind --

16 THE COURT Right

17 A Correct

18 Q [Mr Griffith] -- it bends, correct?

19 THE COURT Okay

20 Q [Mr Griffith] And in 47 there's another issue
21 of balloon framing, or improper I understand that you
22 were told --

23 THE COURT Well, show me what's improper about
24 it on these photos

25 THE WITNESS Can I explain -- yeah

1

1 THE COURT Yeah

2 THE WITNESS It's not improper because there is
3 porch roofs on the outside of this, and that will hold
4 that from any deflection anywhere They're just not up
5 yet

6 THE COURT So is the point this should have
7 been extended all the way? Is that what --

8 THE WITNESS Yes But there --

9 THE COURT Is that his complaint?

10 THE WITNESS That's his complaint But the
11 area is so -- it's so small it's not even -- it might
12 have been six foot that there's no roof on And nobody
13 had a problem with it

14 THE COURT Okay

15 THE WITNESS And on the plan, it calls for
16 actually this LVL to continuously go all the way across
17 there, then the knee wall set on top

18 THE COURT So that should have been okay, then,
19 is what you're saying?

20 THE WITNESS Right Right

21 THE COURT Okay

22 THE WITNESS So this was better than what they
23 were expected -- supposed to get

24 THE COURT Okay Thank you

25 THE WITNESS And if I may?

1 THE COURT Sure

2 THE WITNESS You can see again how this wood is
3 very yellowed and very old And this is new This is
4 all new construction, way after --

5 THE COURT Okay How long would it take the
6 wood to yellow? You know, I mean, how much time are we
7 talking, in your experience?

8 THE WITNESS Two weeks

9 THE COURT Okay

10 THE WITNESS Actually, there's -- there was a
11 picture you just had, Mitch, where it showed a diagonal
12 brace and you could see where the brace was coming down
13 the wall where the sun had yellowed the wood except for
14 where the brace was

15 THE COURT Okay

16 Q [Mr Griffith] So the engineer that found the
17 balloon framing out there and recommended the repair to
18 it, you disagree that that needed to be repaired?

19 A To my knowledge, we passed inspection and passed
20 code, and the first engineer-architect that was out there
21 didn't have a problem with it

22 Q Even if he put it in his report, at paragraph
23 19, it was noted that the gable end walls were not balloon
24 framed, we recommend that the walls be modified?

25 A But that's not a gable

1 Q Okay Do you remember the gable walls?

2 A [No response]

3 Q Were they improperly balloon framed?

4 A There was no gables -- gable walls framed on
5 this house

6 Q Okay So what he saw in paragraph 19 just did
7 not exist?

8 A There is -- it's all hip roof

9 Q Okay Now, if there is framing that should be
10 balloon framed and it's not balloon framed, that violates
11 industry standard, does it not?

12 A Correct

13 Q Okay Now, we also talked about locations with
14 the top plate The plates are supposed to overlap, if
15 you've got a double top, by four feet, is that correct?

16 A Our general rule of thumb was twelve to sixteen
17 inches And that's by code

18 Q And if the engineer complained about it not
19 being in code compliance, you believe it was --

20 THE COURT Do you have a picture of that,
21 Mitch?

22 Q [Mr Griffith] Where the engineer said that
23 several of the double top plates were noted to overlap by
24 sixteen -- ten to sixteen inches and do not meet code
25 minimum requirements of forty-eight-inch overlap --

1 THE COURT What number of that on the report?

2 MR GRIFFITH Number 21

3 THE COURT Photo 23, it says

4 MR GRIFFITH I'm sorry Photo 23, item 21

5 THE COURT Got you

6 Q [Mr Griffith] You think the code is ten to
7 sixteen inches, is that correct?

8 A That's the general rule of thumb that we've been
9 doing for years and that we've always passed Nobody has
10 ever brought it to anybody's attention

11 Q If the code man misses a mistake, though, is
12 that his fault or your fault?

13 A It's both our fault

14 Q Okay Now, you also installed the windows, is
15 that correct?

16 A Correct

17 Q Were you to flash the windows?

18 A The bottom flash

19 Q Okay The rough-opening flash?

20 A The windows are supposed to be installed with a
21 sill flashing, which is the rubber sticky, on the bottom

22 Q Right

23 A The window is supposed to be caulked all the way
24 around the edges, then stuck in, then the sticky flash
25 around it

1 Q Right

2 THE COURT Do the plans not call for a flashing
3 around the whole rough opening? You said just sill
4 flashing?

5 THE WITNESS Right They've changed this so
6 many times in the industry, it's -- it'll make you
7 crazy Really I mean, the County wants it a certain
8 way, and that's the way we do it And that gives it a
9 good seal, and then you're putting your flashing over
10 the top, which creates so you can't get water in

11 THE COURT Okay

12 Q [Mr Griffith] And let me just ask you this
13 Did all the windows have -- and when I talk about rough
14 opening, I'm talking about flashing before you stick the
15 window in So you say rough opening on the sill --

16 A Right

17 Q -- which is the bottom of the window?

18 A Right

19 Q You put the window in?

20 A Right

21 Q Nail it, screw it, or whatever is required?

22 A Right

23 Q And then you put your weather lap, your sticky
24 flashing, again?

25 A Right As you're putting the siding on

1 Q Right

2 At that point in time, did all -- had all the
3 windows been flashed when you left, or had all the windows
4 that you installed been flashed?

5 A To my knowledge, all the windows that we
6 installed were installed properly with the bottom sill
7 flashing

8 Q All right What about the weather lapping on
9 the outside?

10 A If we were not putting the siding on, we may
11 would have not -- we may have, and may not have, got to
12 it Because it won't stay on with the sun The sun beats
13 on it, and it just falls off

14 THE COURT The sticky peels

15 THE WITNESS Correct

16 Q [Mr Griffith] And if --

17 THE COURT How many of the windows did you
18 actually put in before you left?

19 THE WITNESS We put in a good majority of them
20 They were there --

21 THE COURT Like ninety percent, you think?

22 THE WITNESS I would say probably

23 THE COURT Okay

24 Q [Mr Griffith] And if trim were pulled off and
25 there were no sticky flashing there, that would have been

1 improper? You would agree?

2 A Correct But that would have gone on during the
3 siding

4 Q Okay Did you do the siding?

5 A Not all of it

6 Q Okay And --

7 THE COURT How much of the siding did you do?

8 THE WITNESS A very little bit of it

9 THE COURT Like give me a percentage

10 THE WITNESS Three or four walls Front,
11 maybe, side Not a lot That's when things started to
12 deteriorate

13 THE COURT Okay

14 Q [Mr Griffith] And while we're talking about
15 the windows you did the framed opening of the windows,
16 is that correct?

17 A That's correct

18 Q And there were some two-inch shims that were
19 placed in there Did you do that?

20 A Two-inch shims?

21 Q Shims that were placed in to put the windows in

22 A If you've got a picture, I would like to see it

23 THE COURT Mr Catterson, there's been an
24 allegation that all of the openings were improper,
25 framed improper At least that's what I heard

1 Is that correct, Mitch?

2 MR GRIFFITH That is correct

3 THE COURT And there is some kind of
4 discrepancy And I know we talked about what Weather
5 Shield sent over from Grayco versus what was on the
6 plans Do you have an issue with that? And what did
7 you use to decide, as far as the openings were
8 concerned, for these hundred windows or so, or doors?

9 THE WITNESS Grayco provided me with the rough
10 openings on the plan That was what I was told to make
11 my opening to

12 THE COURT Okay

13 THE WITNESS Their argument seems to be that
14 it needs to be no more than a quarter of an inch, I
15 think it is, or whatever -- whatever they're sticking
16 to In a perfect world, that would be lovely But if
17 we have -- we had to trim out all the block areas with
18 double two-by-six framing, which was treated All
19 right They're supposed to be an inch and a half, inch
20 and a half There is -- I could get twenty pieces of
21 two-by-six in here right now, of treated lumber, and
22 every one of them would be a sixteenth to an eighth of
23 an inch difference in depth

24 THE COURT Right

25 THE WITNESS So if I have a rough opening that

1 needs to be thirty-eight inches, okay, I'm going to
2 compensate three inches on this side, three inches on
3 this side, for my lumber, and then the thirty-eight
4 inches It could be a slight -- a sixteenth or eighth
5 of an inch bigger, or a little bit smaller We have no
6 control over that

7 THE COURT Does that affect the structural
8 integrity?

9 THE WITNESS No

10 THE COURT Okay

11 Q [Mr Griffith] Not according to you? Or not
12 according to Weather Shield?

13 A I've never experienced any problems

14 Q And you've installed a lot of Weather Shield
15 windows?

16 A Yes, sir

17 Q And where Weather Shield, which is Plaintiff's
18 Exhibit Number 20, states in there, make sure that you
19 have the correct window type and the correct size window,
20 make sure the rough opening -- measure the rough opening
21 to ensure that it is not more than a half inch taller in
22 overall height or a half inch wider in overall width than
23 the frame height or width -- and then it goes on to say --
24 this is to meet design pressure ratings, a minimum of
25 fourth-inch shim

1 It affects, according to them, the design
2 pressure And you would agree with me Plaintiff's Exhibit
3 Number 19, that that's more than a half inch?

4 A Yes But this -- there's been some goings-on
5 after the fact here, because I don't know what that is
6 That looks like glue or --

7 THE WITNESS Do you see it?

8 THE COURT I see it

9 THE WITNESS I don't know what that is

10 THE COURT Okay

11 Q [Mr Griffith] In the floor -- between the
12 first and the second floor and the plate, you had to have
13 anchor bolts to anchor it down, is that correct?

14 A Correct

15 Q Anchor bolts were installed at thirty-two inches
16 on center, is that correct?

17 A I believe so

18 Q The plans call for it at sixteen inches on
19 center, is that correct?

20 A If the plans say so, yes

21 Q Okay And if the -- that's what the engineer
22 found, too In item number 28, he made that comment And
23 they needed to be sixteen inches on center in order to tie
24 it down, is that correct?

25 A That's correct But I did what I was told to

1 do

2 Q That's what I understood, that you were told to
3 do it --

4 A Yes

5 Q -- at thirty-two inches on center, is my
6 understanding

7 THE COURT By whom?

8 THE WITNESS R Design But it is an easy fix

9 THE COURT Well, what's the fix? What's your
10 easy fix?

11 THE WITNESS They drill a hole You have to
12 drill a hole in epoxy, a red-head bolt in there, and
13 that takes all of three minutes

14 THE COURT Okay

15 Q [Mr Griffith] And, now, we also -- you had
16 mentioned something about an LVL, and we talked about an
17 over-cut You've not supposed to over-cut a half of the
18 LVL, the end of it, is that correct?

19 A [No response]

20 Q Do you remember where there was a problem with
21 one out on one of the balconies?

22 A Yes

23 Q And as I understand, you were told to go ahead
24 and I call it chop, or saw-cut it, in that fashion, is
25 that correct?

1 A I don't keep an eye -- I keep an eye on my guys
2 pretty good, but this is not something that we would
3 typically do in this fashion I know where the beam is

4 Q All right And you know that there was supposed
5 to be a steel beam coming in across the top, is that
6 correct?

7 A That's correct

8 Q That's what we were talking about earlier?

9 A That's correct

10 Q That didn't show up, so you used an LVL?

11 A I was told to put the LVL in because Grayco -- I
12 was told Grayco put it on the computer, spanned it, said
13 it would meet the code, meet the pressures, and --

14 Q We need to understand Carl Aten told you that?

15 A Yes

16 Q And then when it came across, because of the
17 angle of the roof then it had to be cut off?

18 A That's correct

19 Q And that was cut off in order to meet the angle
20 of the roof without regard to the ends of the LVL And
21 you were told to do that by Carl, is that correct?

22 A If my guys did it, yes

23 Q Okay And also at that location, because it
24 rested on a header, that was supposed to be a solid LVL
25 across -- spanning those window, door, window?

1 A That's correct

2 Q Instead, it was one header --

3 A That's correct

4 Q -- on each one?

5 Why did you do one header on each one, instead
6 of a solid header?

7 A I didn't have the LVLs, and I was told it would
8 be okay I had issue with that beam from day one

9 Q And it is my understanding, Mr Catterson, that
10 the work you performed out there, you either did it in
11 accordance with the plans and specifications, or you were
12 told to make the changes by R Design, Carl Aten, is that
13 correct?

14 A That's correct

15 MR GRIFFITH That's all the questions I have
16 for now

17 THE COURT Okay Tab?

18 MR BENDLE Nothing, Your Honor

19 THE COURT Okay Do you want to go ahead and
20 make motions? Is that what you want to do? Or do you
21 want to go ahead --

22 MR ROSS No, Your Honor I just have a few
23 follow-up questions for him But I want to reserve my
24 right to ask him questions when --

25 THE COURT Absolutely

1 MR ROSS -- my turn comes

2 DIRECT EXAMINATION

3 BY MR ROSS

4 Q The gable ends can you describe what a gable
5 end is? It's a point, right, and the --

6 A That's --

7 Q -- the wall comes up flat?

8 A That's correct It's what I explained before
9 And it would be a cathedral room where the roof -- it
10 would be no flat ceiling in the room, and it would be a
11 gable, which a gable is a -- where the rafters come there
12 A hip roof has no gable

13 Q All right So when -- you know, when you're in
14 preschool or whatever and you're drawing houses, you've
15 got a four-sided house, you've got a roof going up on each
16 side, the ends go all the way up, that point that we're
17 talking about doesn't exist on this building, correct?

18 A That's correct

19 Q And if there's no gable ends, you don't need to
20 balloon frame?

21 A That's correct

22 Q The LVL that we just spoke of, there's a picture
23 showing four two-by-fours supporting that LVL

24 A Two-by-sixes

25 Q Are they two-by-sixes?

1 A Yes

2 Q How did those get there?

3 A I put them in when we put the beam in

4 Q Why?

5 A Well, because we had concern right from the get-
6 go Typically, you don't stack loads over the top of
7 windows It should be stacked to the ground

8 Q And that saw cut on the end of that LVL, you can
9 cut a miter cut on the LVL Now, as Mitch said, it looks
10 like it was hatcheted But you can make that cut, right?

11 A Yes And it's in the code book As long as you
12 don't take two-thirds -- more than two-thirds of the
13 entire width of that beam away, you can cut that

14 THE COURT That photograph, did it take more
15 than two-thirds --

16 THE WITNESS I don't --

17 THE COURT -- of the width of the beam?

18 THE WITNESS I don't believe so, because that
19 beam was -- that's just a little bit right there

20 THE COURT Okay

21 MR ROSS That's all I have, Your Honor Thank
22 you

23 THE COURT Okay Mitch, any follow up?

24 MR GRIFFITH Not to that

25 THE COURT All right Mr Catterson --

1 MR BENDLE Your Honor, I think I do have a few
2 questions

3 THE COURT Okay Go ahead, sir

4 CROSS-EXAMINATION

5 BY MR BENDLE

6 Q Mr Catterson, you testified a few minutes
7 ago that you had problems getting paid on this project by
8 R Design?

9 A I had problems getting paid, in general, at
10 times

11 Q Isn't it true that often you would request
12 payment for work that had not yet been completed?

13 A No

14 Q You also testified that you had problems getting
15 a hold of Carl Isn't it true that Carl was on this
16 project on a daily basis?

17 A Not on a daily basis And for an hour in the
18 morning, at times

19 Q Were you on this project on a daily basis?

20 A At least four days a week

21 Q And did you often try to reach him on his cell
22 phone?

23 A Yes

24 Q And it's your testimony that he just wouldn't
25 call you back?

1 A For the most part

2 Q You indicated that there was also some trouble
3 getting materials delivered to the site, isn't that
4 correct?

5 A That's correct

6 Q Were those problems addressed with Mr Aten or
7 Mr Green?

8 A They were

9 Q Would that often hold you up?

10 A For weeks

11 Q Did you have the capability of going to Mr
12 Green and asking to get those materials yourself?

13 A When he was available

14 Q Did you have any contact with the materials
15 suppliers yourself?

16 A Only just to find out information on product

17 Q If the wrong materials were delivered to the
18 project, would you use them?

19 A Not if they were so drastically wrong that they
20 were supposed to be red and they were purple But, I
21 mean, I was told to do what I was told to do

22 Q With regard to the scope of work that is
23 outlined in the proposal or the contract with R Design,
24 that Mr Griffith mentioned earlier, did R Design assist
25 you with regards to your scope of work? Physically, did

1 they perform any physical labor that you were otherwise
2 responsible for?

3 A Not when I was there

4 Q You claim that you were actually terminated from
5 this project rather than you just leaving, correct?

6 A That's correct

7 Q Who actually terminated you?

8 A Carl

9 Q And when was that termination or when did that
10 termination occur?

11 A It happened twice

12 Q It happened twice? When was the first time?

13 A The first time was months before the second
14 time, in a heated argument about materials and pay

15 Q And then the second time --

16 A The second time was over the telephone, and that
17 was right after our meeting with Dennis Green, and he told
18 me that I don't need to come back up there and bring
19 anybody because they were finishing it themselves

20 Q Was that the same meeting that you were paid --

21 A That's correct

22 Q -- a portion of what you said you were owed?

23 A That's correct

24 Q And you weren't expected, by Mr Aten or Mr
25 Green, to return or have your people return that following

1 Monday after that meeting?

2 A Yes That's what I just said

3 Q Because you were terminated by phone?

4 A Yes

5 Q Did you have other projects going on at the time
6 that you were working on this project?

7 A Not immediately as we left, no

8 Q Is your testimony today different than the
9 testimony you've given in your deposition in the past with
10 regards to that?

11 A I don't believe so

12 Q You talked with Mr Griffith a little bit about
13 filling in the concrete or pumping in concrete to these
14 blocks Was that part of your scope of work with regards
15 to the framing and the block work? Did that have to be
16 done to complete your scope of work?

17 A The pumping, yes But I did not do the pumping
18 It was not -- I didn't -- I was not paid for it They
19 were paid separately

20 Q I understand that That was done by a different
21 sub, correct?

22 A That's correct

23 Q Okay But wasn't that necessary to complete
24 your scope of work?

25 A Well, of course

1 Q Okay Did you take responsibility to ensure
2 that that was done correctly?

3 A To the best of my ability

4 Q You would acknowledge that you have a contract
5 with R Design, correct?

6 A That's correct

7 Q And who drafted that contract?

8 A My wife

9 Q Okay You failed to complete the job that the
10 contract required you to perform, correct?

11 A Because I was terminated

12 Q You acknowledge that any of the deficiencies
13 that have been outlined throughout the course of this week
14 were your responsibility as the framing and the block
15 subcontractor?

16 A There was a lot of incomplete work

17 Q But no deficiencies on your part?

18 A I -- if there was a deficiency, you know, show
19 it to me in a picture and I would -- I can answer that

20 Q Okay It seems that you have been quick to
21 indicate that R Design was the reason for a lot of the
22 problems on this job that relate to your scope of work
23 Is that an accurate statement?

24 A There was a lot of -- for the most part, yes

25 Q Okay But you were actually hired to complete

1 this work according to the specs, the designs that were
2 given to you, according to industry standards, and you
3 were required to follow building codes, correct?

4 A Correct

5 Q And this is an obligation that you have by
6 virtue of having a license in South Carolina as a
7 residential builder, correct?

8 MR ROSS Objection, Your Honor

9 MR BENDLE He's got a license He can testify
10 what he's obligated to --

11 MR ROSS So far, it hasn't been established
12 that his license is even at issue in this case

13 MR BENDLE I'm not calling into question his
14 license I'm just saying he's obligated --

15 THE COURT Does he have a residential building
16 license? I thought he had a specialty license

17 MR ROSS Your Honor --

18 THE COURT We haven't gotten there? Is that
19 your point?

20 MR ROSS That's exactly my point And if I
21 may, further we haven't established that either -- or
22 neither of those licenses have been used on this job
23 Those questions haven't been addressed Mitch
24 established that he has a specialty contractors
25 license That's as far as it went

1 MR BENDLE I'll ask the question again

2 THE COURT Go ahead

3 Q [Mr Bendle] Under your specialty contractor's
4 license, aren't you obligated to follow the building
5 codes --

6 A Correct

7 Q Industry standard? Okay

8 So when a directive, as you indicated earlier,
9 was issued by general -- the general contractor, R
10 Design, would you implement those changes if they were not
11 in accordance with industry standard, the specs, the
12 designs, or if they were in violation of any kind of code?

13 A No

14 MR BENDLE Okay That's all I have for now,
15 Your Honor Thank you

16 THE COURT Mitch?

17 MR GRIFFITH I just want to make sure -- clear
18 up one thing Or maybe two things

19 RECROSS-EXAMINATION

20 BY MR GRIFFITH

21 Q You talked about when you were fired You said,
22 he told me not to come back That was Carl that told you
23 not to come back, not Dennis, correct?

24 A That's correct

25 Q All right And, now, with regards to that

1 specialty contractor's license you hold a specialty
2 contractor's license, is that correct?

3 A Correct

4 Q As a framer, correct?

5 A Correct

6 Q As a specialty contractor you can't take a job,
7 if it exceeds \$5,000, without that specialty contractor's
8 license, can you?

9 A I have no earthly idea

10 Q You can't go out and actually do work as a
11 framer without that license --

12 A Okay

13 Q -- correct?

14 A Correct

15 Q And Catterson and Sons, your license hangs with
16 that business, is that correct?

17 A Correct

18 Q All right So without that license, Catterson
19 and Sons couldn't go do the work?

20 A Correct

21 Q And I believe -- I may not have asked you But
22 I understand you actually -- you do have a general
23 contractor's license, don't you?

24 A That's correct

25 Q And did you have that in 2004?

1 A No, not in 2004, I don't believe

2 Q When you did this job?

3 A No

4 MR GRIFFITH Okay

5 THE COURT Mr Catterson, just so I'm clear I
6 understand that you had a discussion with Mr Aten and
7 Mr Green in regards to a pay draw, and there was a
8 fight over it You wanted 5,000, they ended up paying
9 you 3,500 You said you were typically paid on a
10 Thursday Was that argument on a Thursday, or was it
11 on a Friday?

12 THE WITNESS That was on a Friday

13 THE COURT It was on a Friday Y'all had that
14 discussion, they paid you the 3,500 When you left
15 that conversation --

16 THE WITNESS They paid me 2,000

17 THE COURT I'm sorry

18 THE WITNESS Yeah

19 THE COURT They paid you 2,000 Okay So you
20 left At that point, Mr Green's office -- that's
21 where he testified this occurred

22 THE WITNESS That's correct

23 THE COURT Is that correct?

24 THE WITNESS Uh-huh

25 THE COURT When did you get a phone call being

1 fired?

2 THE WITNESS Monday, at eleven o'clock

3 THE COURT In the morning?

4 THE WITNESS Uh-huh

5 THE COURT Okay So you had planned on coming
6 back Monday, then --

7 THE WITNESS Oh, yeah

8 THE COURT -- correct?

9 THE WITNESS Oh, yeah

10 THE COURT When that occurred, did you even
11 have men on-site?

12 THE WITNESS The guys may have been there or
13 they may not have been there I know they were heading
14 that way

15 THE COURT Okay But that's when you got your
16 phone call?

17 THE WITNESS Right Well, I called I called
18 him I would not walk off a job

19 THE COURT Okay Just so I'm clear And I'm
20 just trying to think You aren't required to pull any
21 kind of permits whatsoever as a specialty contractor
22 He just lists them on his building permit, correct?

23 THE WITNESS That's correct Uh-huh

24 THE COURT Okay Does he have to list a
25 license number? I just can't remember, guys

1 MR ATEN I --

2 THE COURT Mr Aten knows? Mr Ross, do any of
3 you know? I'm just trying to think -- I'm thinking
4 sometimes -- it tells you to list who your specialties
5 are, and it lists their name, and I'm trying to
6 remember if it's a license number next to it But I
7 want to say it is To the left, you've got to list a
8 license number

9 THE WITNESS But at the time -- sometimes
10 Beaufort County requires only certain trades' licenses
11 to be --

12 THE COURT Right It's not everybody

13 THE WITNESS It's not everybody It's the
14 mechanical, the plumber, the electrician --

15 THE COURT Electrical

16 THE WITNESS -- and HVAC

17 THE COURT Typically not the framer?

18 THE WITNESS Typically not

19 THE COURT Okay Okay Anything further from
20 anyone before I let him go down?

21 MR BENDLE Not from me, Your Honor

22 THE COURT All right Mr Catterson, step
23 down, sir

24 THE WITNESS Thank you

25 [Whereupon, Mr Catterson is excused and exits

1 the witness stand]

2 THE COURT All right Are we going to do
3 motions at this time? Is that where we're at? Mitch,
4 are you resting your case?

5 MR GRIFFITH Yes, ma'am

6 THE COURT I want to see the lawyers just back
7 in chambers for one second just so I can clear up
8 something

9 [Whereupon, a recess is held from 11 53 a m to
10 12 19 p m]

11 THE COURT Okay Gentlemen, are there any
12 motions?

13 MR BENDLE Yes, ma'am

14 THE COURT Okay

15 MR BENDLE Are we going to entertain the
16 motions, prior to Catterson going forward, because of
17 time constraints?

18 MR ROSS There is some question whether or not
19 that's going to take place at this point

20 MR BENDLE Putting him on?

21 MR ROSS Yes

22 MR BENDLE Okay Well, then, I'll --

23 THE COURT Okay Well, I guess we're going
24 forward with the motions

25 - - -

1 MOTION FOR A DIRECTED VERDICT

2 MR BENDLE Judge, I do have one motion It's
3 a motion for a directed verdict

4 The basis for the motion is that Carl Aten was
5 the managing member of R Design, who contracted with
6 the plaintiff in this case to supervise and act as the
7 general contractor over Jade Quarters There has been
8 no evidence entered into the record that would indicate
9 that at any time he acted outside of the course and
10 scope of his role as that managing member

11 If I may approach the bench, Your Honor, I do
12 have --

13 THE COURT Yes, sir

14 MR BENDLE -- a memorandum in support of this
15 motion, for your consideration

16 [Whereupon, Mr Bendle proffers documents to the
17 Court]

18 THE COURT Thank you

19 MR BENDLE Your Honor, if I may continue?

20 The basis of this motion lies within the Uniform
21 Limited Liability Company Act Specifically, Your
22 Honor, I'm relying on Section 33-44-201 of that code
23 that indicates that a limited liability company is a
24 legal entity distinct from its members The comment
25 section in that code, Judge, is that members are not

1 proper parties to suits against the company unless an
2 object of the proceeding is to enforce a member's
3 rights against the company or to enforce their
4 liability to the company

5 Further, Your Honor, I'm relying on the portion
6 of the code in Section 33-44-302 which indicates that
7 an LLC is liable for loss or injury caused to a person
8 or for a penalty incurred as a result of a wrongful act
9 or omission, or other actionable conduct of the member
10 or manager acting in the ordinary course of business of
11 the company or with authority of the company

12 This section, Your Honor, specifically protects
13 the individual so long as they act within that course
14 and scope of their role as a member or a managing
15 member

16 Further, Your Honor, I'm relying on another
17 portion of the same act, Section 33-44-303, which
18 indicates that a member or a manager is not personally
19 liable for a debt, obligation, or liability of the
20 company solely by reason of being or acting as a member
21 or a manager

22 Again, Your Honor, the plaintiff in their case
23 has failed to demonstrate that Mr Aten consented to
24 being held personally liable for the LLC or that he
25 acted outside the scope of the ordinary course of

1 business

2 This motion, Your Honor, has been brought before
3 in the form of a summary judgment Arguments that have
4 been made on the plaintiff's behalf basically reference
5 sections of the code of the Uniform Residential
6 Construction Code And in the past they have argued
7 that because Mr Aten individually had to pull the
8 license -- or had the license for the LLC, and that he
9 actually was the individual that pulled the permit,
10 that he has a certain professional responsibility owed
11 and that he could be held liable by virtue of having
12 held that license for the firm However, if you read
13 that portion of the code on which they rely, that act
14 clearly contemplates the fact that firms can engage in
15 the business of construction practices and it clearly
16 contemplates an individual, rather than a firm, having
17 to pull the permit and having to hold that license
18 Obviously, a firm can't go take the test to get the
19 license Obviously, a firm can't go to the County and
20 pull the necessary permits to begin the construction

21 The professional responsibility that this
22 qualified registrant has under that Residential
23 Construction Act is to the commission that issues the
24 license And it's also an obligation to the actual LLC
25 of which that individual is a member of

1 We certainly aren't arguing that that individual
2 license holder does not have a responsibility to
3 construct, in a workmanlike manner, that which they are
4 hired to construct We're just merely saying that so
5 long as that managing member does not act outside of
6 the course and scope of that role, that it's the firm
7 who assumes those debts and obligations, not that
8 individual member

9 So for that reason, along with the memo that
10 I've handed up to you, I would ask that Carl Aten be
11 dismissed as an individual for the remaining causes of
12 action against him, which would include the breach of
13 warranty action and the negligence action Thank you,
14 Your Honor

15 THE COURT Do you want to respond, Mr
16 Griffith?

17 MR GRIFFITH Yes, ma'am

18 I anticipate this argument also coming from
19 Catterson and Sons And I would take up this -- first
20 of all, the general law of agency is that when the
21 agent must answer not in contract, but in tort, an
22 agent's liability for his own tortuous acts and
23 unaffected by the fact that he acted in his
24 representative capacity As such, there is evidence
25 that Mr Aten acted on this property, that he was the

1 person in charge, and I believe even in admission he is
2 the responsible charge As such, what he is doing is
3 he is having to act in his own capacity

4 Further, by being the responsible charge, that
5 he is also the resident licensee Holding that
6 license, he has taken a test and gone to the Commission
7 and basically said, I will build in accordance with the
8 good building practices and the codes As such, as the
9 license holder, he is the person that is responsible to
10 ensure that this building is built in accordance with
11 the code and in accordance with good industry practice
12 And as such, we believe that that basically takes him
13 to the point where he has committed a tort, because he
14 has violated a duty of care to 16 Jade Street

15 And that would be my response to those
16 arguments

17 THE COURT Okay Respectfully -- and, Mr
18 Griffith, I would agree with you I think we can all
19 find that Carl Aten -- and I even believe it was by
20 stipulation from his counsel, Mr Bendle, that he, in
21 fact, did act as the general contractor and he used --
22 Mr Aten used his license to pull the building permits
23 I think he testified that he oversaw the daily
24 construction and was responsible, and ultimately
25 responsible for the subs, and that he interacted I

1 think he said with building officials

2 So, respectfully, I'm going to deny your motion
3 to dismiss him individually

4 MR BENDLE Your Honor, if I may just --

5 THE COURT Yes, sir

6 MR BENDLE -- for the record --

7 THE COURT Yes, sir

8 MR BENDLE -- respond to Mr Griffith

9 He indicates that the actions that were taken by
10 Mr Aten, I guess the implication being, again, that he
11 was acting individually and as the license holder for
12 the company I would just reassert that any actions,
13 whether dealing with other subs or engineers or anyone
14 that was involved in this project, was done on behalf
15 of the company, not himself, as evidenced in the
16 contract The contract, of course, was with R Design,
17 not with him personally And I believe that all the
18 actions of the plaintiff indicate that they had full
19 knowledge that they were dealing not with Aten as an
20 individual, or even as an agent, but certainly with
21 R Design

22 THE COURT But it's also correct that without
23 Mr Aten's license, R Design could not build this
24 project

25 MR BENDLE Correct

1 THE COURT Correct?

2 MR BENDLE I would agree with that However,
3 to that, Your Honor, I would say that the statutes that
4 we're arguing today clearly contemplate that an LLC,
5 being defined within -- being defined as a firm, can
6 engage in these types of construction practices

7 THE COURT Okay

8 MR BENDLE Thank you, Judge That's all I
9 have I appreciate it

10 THE COURT Thank you, Mr Bendle I appreciate
11 it

12 Mr Finn?

13 MR FINN Your Honor, could I request that we
14 take just a two-minute break? I have something to
15 discuss with Mitch that I need to do it now before --

16 THE COURT Absolutely We'll go ahead and take
17 about five minutes, y'all

18 Mitch, when y'all are -- Tom, either one of
19 y'all just come get me when y'all are finished and
20 you're ready to go Okay?

21 [Whereupon, a recess is taken from 12 31 p m to
22 12 40 p m]

23 THE COURT I don't need to hear from Mr Finn
24 I just need Mr Ross

25 MR FINN Not yet, Your Honor

1 THE COURT Got you

2 - - - - -

3 MOTION FOR DIRECTED VERDICT

4 MR ROSS Your Honor, as you know, I represent
5 Michael Catterson individually

6 The plaintiff has raised causes of action in
7 negligence and breach of warranty against Mr Catterson
8 individually First off, the breach of warranty claim
9 should be dismissed Mr Catterson was never given
10 notice of any -- or any chance to correct the alleged
11 deficiencies Under Draffin vs Chrysler Motors, the
12 allegation of warranty does not arise until the
13 contractor has been given reasonable opportunity to
14 remedy the alleged defects No such evidence has been
15 introduced that he was given any such notice,
16 therefore, the warranty should be dismissed

17 Additionally, the warranty arises out of a
18 contract Mr Catterson is an individual He's a
19 director of the company The contract is with the
20 corporation, the checks were paid to the corporation,
21 the contract that he signed with R Design is with
22 the corporation, therefore, the plaintiff should not
23 be able to breach the corporate form to get through
24 Mr Catterson individually

25 THE COURT As to the breach of warranty cause

1 of action?

2 MR ROSS Yes, Your Honor

3 THE COURT All right Mitch?

4 MR GRIFFITH I think the same argument
5 obviously applies with regards to Mr Catterson as it
6 did with regards to Mr Aten Obviously, the agent's
7 liability for his own tortuous act is unaffected by the
8 corporate formality Obviously, I think the negligence
9 cause of action certainly should go to the jury, based
10 upon the testimony you sought, as well as for the
11 record, the fact that he was the license holder and he
12 is the responsible --

13 THE COURT What about the breach of warranty
14 cause of action? That's what I need specifically, Mr
15 Griffith

16 MR GRIFFITH I have a little bit more problem
17 with that one as to the individual I don't have it
18 with regards to the corporation, if that motion is
19 made, because obviously privity does not exist here

20 THE COURT Right

21 MR GRIFFITH But with regards to the
22 individual, the warranty claim is a little bit more
23 problematic with me

24 THE COURT Right

25 MR GRIFFITH And I would simply state as the

1 sole shareholder, which I believe is what he testified
2 to, he actually gets the benefit of it

3 THE COURT Okay Mr Ross?

4 MR ROSS Your Honor, just for the record, my
5 first motion was only for the breach of warranty I do
6 intend on making the --

7 THE COURT That's okay I'm sure you'll get to
8 it, and I'm sure you're going to pare it pretty much to
9 what Mr Bendle said And you can put it on the
10 record, and don't you worry about that But I was
11 asking him directly

12 I have a little more concern about it as to the
13 breach of warranty, as well, Mr Griffith, and that's
14 why I just needed you to expound on that specifically
15 Okay?

16 All right Well, I'm going to grant --

17 MR BENDLE I'm sorry Go ahead, Judge

18 THE COURT That's okay

19 I'll go ahead and grant your motion for a
20 directed verdict as to him individually as to the
21 breach of warranty cause of action

22 But you can go ahead and make yours for the
23 negligence cause And you know obviously, based on how
24 I just ruled with Mr Aten, where we're going But you
25 can go ahead and make that for the record, as well,

1 sir

2 - - - - -

3 MOTION FOR A DIRECTED VERDICT

4 MR ROSS Thank you, Your Honor

5 I would also like to make a directed verdict
6 motion on the cause of action for negligence against
7 Michael Catterson individually I would reiterate most
8 of what Mr Bendle has said, and I would also like to
9 add that Mr Catterson's license was not -- I'm sorry
10 I would also like to say that there is an exception for
11 subordinate supervisors, and Mr Catterson had a
12 foreman between him and his crew and Mr Catterson was
13 acting as a liaison between his foreman and R Design
14 I believe Hunt v Raven specifies that the officer or a
15 director of a corporation is not liable for the
16 corporate -- for the torts of the corporation unless
17 they personally contributed to the torts Directing
18 the tort wouldn't qualify, but you're not responsible
19 for the direction of your subordinates, the direction
20 that they give to the crew And in this case, I
21 believe that's the only evidence we have in front of
22 us

23 THE COURT Okay Well, I will tell you,
24 respectfully, as we stated before, I think it's clear
25 through his own testimony I believe he testified that

1 he was on the project four out of five days a week, I
2 believe was his testimony, and that he directly oversaw
3 and in some cases actually acted and did some work I
4 understand he didn't say he was pounding nails on the
5 roof Or maybe that was Mitch that said that But he
6 was actually on site every single day and --

7 Mitch, go ahead You're dying to say something

8 MR GRIFFITH Mr Aten did say that he was out
9 there

10 THE COURT Okay Oh I know he said he was
11 out there every single day

12 MR GRIFFITH Mr Aten also said he was -- that
13 he was doing work

14 THE COURT Actually doing -- in fact, doing
15 work Okay

16 I do think, obviously, you know, taking the
17 evidence in the light most favorable to the non-moving
18 party, as you all understand and know, I'm going to go
19 ahead and respectfully deny your motion There was
20 testimony, again, that he was out there, by his own
21 testimony, four to five days I think he was involved,
22 which, quite frankly, unfortunately, in this situation
23 it's to his credit Oftentimes there are
24 subcontractors, you know, that never show up

25 But anyway, in this case certainly I'm going to

1 deny that motion

2 MR ROSS Of course, Your Honor

3 I would also like to -- I mean, we're at
4 directed verdict stage -- maybe perhaps clean up the
5 pleadings may be a better way of addressing this
6 There has been cross-claims by Carl Aten and R Design
7 against Michael Catterson individually They have
8 brought a number of claims against him I don't
9 believe the claim for negligence, breach of warranty,
10 contribution, or breach of contract are applicable
11 The only claim that should arguably survive would be
12 the equitable indemnity claim

13 THE COURT All right Mr Bendle, would you
14 agree with that?

15 MR BENDLE Your Honor, I would agree with
16 that I do believe that we are owed indemnity
17 Equitable indemnity, to be more specific And with
18 regards to the other causes of action, I would
19 stipulate that those could be dismissed

20 THE COURT Okay We'll go ahead and do that,
21 as such The only thing that exists on the cross-claim
22 from Carl Aten -- and this is to Mr Catterson,
23 correct, is the equitable indemnity?

24 MR ROSS Your Honor, I believe it's -- well,
25 yes, Your Honor, it is just the equitable indemnity

1 should survive

2 THE COURT Okay

3 MR FINN Your Honor, I would make the same
4 argument on behalf of Catterson and Sons

5 THE COURT Okay And again, Mr Bendle, you
6 would agree and stipulate that as far as the company is
7 concerned, as well?

8 MR BENDLE I would, Your Honor

9 THE COURT Okay So, again, we'll just clean
10 up the pleadings just to only allow surviving under the
11 cross-claim, the equitable indemnity claim Okay?

12 - - - - -

13 MOTION

14 MR BENDLE Your Honor, if I may address one
15 more thing I would be remiss if I didn't join in in
16 Mr Ross's motion with regard to the warranty claim --
17 there's one still that exists, I believe, as to Mr
18 Aten, individually -- for the same reasons I believe
19 that the warranty cause of action against Aten
20 individually needs to dismiss The contract, again,
21 Judge, was between R Design --

22 THE COURT R Design and --

23 MR BENDLE -- and 16 Jade Street Yes, ma'am
24 And all of the warranties that -- or all the warranties
25 are included within that contract The warranties were

1 given by the LLC, not by Mr Aten individually, and
2 there's been no testimony offered that any implied
3 warranties or other warranties that were created
4 outside of that -- if any existed outside of that
5 contract

6 THE COURT You still have the same agency
7 argument as far as Mr Aten was concerned, because he
8 was privy of the contract with Mr Green, correct?

9 MR GRIFFITH Sure And, as well, I think that
10 definitely an implied warranty arises out of any
11 building, to the owner, even if I'm not the first
12 owner

13 THE COURT All right Respectfully --

14 MR FINN Your Honor, if I could just --

15 THE COURT Well, let me just for the record,
16 Mr Finn --

17 Respectfully, I deny your motion, Mr Bendle, as
18 to Mr Aten personally as to that claim

19 Yes?

20 MR FINN I'm sorry, Your Honor I just wanted
21 to clarify I think I just threw in with Jeff But I
22 believe that Mr Bendle would have -- his breach of
23 contract cross-claim would also survive I just -- I
24 didn't want to lump that in and have Tab not --

25 THE COURT The breach of contract claim?

1 Between -- oh Is there a cross-claim for breach of
2 contract for Mr Catterson --

3 MR FINN Cross --

4 THE COURT -- as to Mr Aten?

5 MR FINN Yes

6 THE COURT Or Mr Aten as to Catterson Sorry

7 MR FINN Yes, Your Honor I didn't want to
8 lump everything in and have Tab miss it and --

9 MR BENDLE Let me clarify, Judge I am
10 stipulating to dismiss the breach of contract claim
11 against Mr Catterson individually --

12 THE COURT Right

13 MR BENDLE -- with regards --

14 THE COURT Not the company

15 MR BENDLE -- to the contract claim as against
16 the company I would ask that the Court allow that to
17 still exist

18 THE COURT Okay All right

19 MR BENDLE Thank you

20 THE COURT Respectfully, I appreciate that

21 Okay Anything further we need to put on the
22 record?

23 MR BENDLE No, Your Honor

24 THE COURT Okay All right Mr Bendle, are
25 you going to call your next witness?

1 MR BENDLE Yes, ma'am

2 THE COURT Your first witness --

3 MR BENDLE Mr Catterson does not want to be
4 called because of time constraints I think that that
5 was one of the --

6 THE COURT Y'all just need to figure out
7 whether or not you're going to call Mr Catterson? Do
8 you need another minute to talk, or --

9 MR ROSS Well, actually, I was just looking at
10 the clock I thought you had a -- 1 10 I thought
11 maybe it would be a good time to --

12 THE COURT Do you want to take lunch?

13 MR ROSS It may be a good time to take a break
14 and then come back --

15 THE COURT Is that okay? Do you want to take
16 lunch?

17 MR GRIFFITH I just want to make sure we
18 finish today, like everybody else I'm ready to push
19 forward in whatever fashion However much -- fifteen
20 minutes of testimony is fifteen minutes shaved at the
21 end of the day

22 THE COURT Well, y'all, if I've got a 1 15, it
23 probably won't start until 1 30-ish So you're getting
24 about forty-five minutes Do you understand? Is that
25 okay?

1 MR BENDLE Yes, Your Honor

2 THE COURT Okay Well, then, let's go ahead
3 and break And, y'all, we're pushing through tonight
4 I understand we only have so many suits, so -- all
5 right

6 Y'all, we'll be back -- why don't y'all come in
7 about -- be here before 1 30, just in case they're
8 short-winded It's doubtful, but just in case it
9 happens

10 [Whereupon, a recess is taken from 12 50 p m to
11 2 09 p m]

12 THE COURT All right Where are we?

13 MR BENDLE Your Honor, I have one witness, and
14 then I'll rest my case

15 However, as I've indicated before, I was going
16 to call Gary Horn, with Lowcountry National Bank
17 We've stipulated to the documents that I would like to
18 introduce into evidence If I could just hand those up
19 to the Court?

20 THE COURT Absolutely Do you have them
21 marked?

22 MR BENDLE I do not, Your Honor

23 THE COURT Let's have Mia mark them

24 MR BENDLE Would you like to have them marked
25 individually, because there are several, or would you

1 like to have them sort of marked as a packet?

2 THE COURT As long as they are stapled together
3 in the packet

4 Is that okay, Mitch? Have you seen them all, or
5 no?

6 MR GRIFFITH I've seen them all Part of it,
7 though, is Mr Horn -- in the package there's also --
8 he's introducing an appraisal from '04?

9 MR BENDLE That's correct There's an
10 appraisal in this package that was done prior to
11 completion

12 MR GRIFFITH That's right

13 THE COURT Okay

14 MR GRIFFITH And I know that there's an
15 appraisal done in '07 So I know mister -- it's in
16 Mr Horn's package

17 THE COURT Okay So you want the '07 appraisal
18 in there, as well?

19 MR GRIFFITH Yeah And I'm just going to --

20 THE COURT Not a problem

21 MR GRIFFITH I'm going to put them together
22 I don't think --

23 THE COURT Keeping the whole thing together is
24 fine with me

25 MR BENDLE Okay

1 [Whereupon, Defendant's Exhibit Number 32,
2 packet, is marked by the court reporter]

3 MR BENDLE Your Honor, with that, I would like
4 to call my next witness, Allen Patterson

5 THE COURT All right Mr Patterson, if you'll
6 please come forward to be sworn, sir

7 There is a Bible, and it should have made its
8 way right there You've got it? There it is

9 Sir, if you would raise your right hand, please

10 [Whereupon, Mr Patterson is duly sworn by the
11 Court]

12 [Whereupon, Mr Patterson takes the witness
13 stand]

14 MR BENDLE Your Honor, before I begin my line
15 of questioning with Mr Patterson, I believe that it's
16 been stipulated that he should be qualified as an
17 expert

18 THE COURT Is that correct, Mr Griffith?

19 MR GRIFFITH That's correct

20 THE COURT Is that correct, Mr Ross?

21 MR ROSS Yes, Your Honor

22 THE COURT Okay He is an expert in?

23 MR BENDLE Residential construction, Your
24 Honor

25 THE COURT Okay Thank you

1 JOSEPH A PATTERSON, IV,
2 Having Been First Duly Sworn,
3 was Examined and Testified as Follows

4 DIRECT EXAMINATION

5 BY MR BENDLE

6 Q Mr Patterson, would you please state your full
7 name for the record

8 A Joseph Allen Patterson, IV

9 Q And do you own your own business?

10 A Yes, I do

11 Q And is that business engaged in the practice of
12 building residences in Beaufort County?

13 A Yes, it is

14 Q How long have you been involved with
15 construction?

16 A Well, I've been actively involved in building
17 since 1976, but I grew up in that business, too, since my
18 father did it and my grandfather did it

19 Q And you have been retained in this case to
20 testify for R Design, correct?

21 A That's correct

22 Q When did you become involved in assisting with
23 this case?

24 A Probably about a year and a half ago

25 Q So then the subject premises, or building that

1 is the subject of this case, was completed at the time
2 that you became involved, is that correct?

3 A Yes, it was

4 Q How was it that you were able to prepare an
5 estimate, and how is it that you're prepared today to give
6 opinions with regard to the original construction and the
7 repair of this building, since you became involved after
8 the completion?

9 A Well, I looked at a lot of pictures, the pay
10 apps, reviewed a lot of reports, talked to the individuals
11 that worked on the job A lot of the subcontractors I
12 know personally They actually work for me I asked them
13 what was going on I interviewed Steve Carpenter,
14 reviewed the plans with him on two or three occasions,
15 walked through the structure two or three times

16 Q And, specifically, what were you asked to do
17 with regards to any opinions in this case?

18 A I was asked to look at what -- I looked at the
19 Kern-Coleman report to see what the deficiencies were and
20 to see if I could come up with what the remediation cost
21 would be

22 Q And in doing so, were you also asked to prepare
23 an estimate?

24 A Yes

25 Q Okay And what was the estimate for?

1 A My estimate was based on the cost of repair and
2 the items listed on the November 23rd report from Kern-
3 Coleman about what the deficiencies were At the time, I
4 think Mr Aten was dismissed from the job R Design was
5 no longer there There was an engineering report done on
6 what the deficiencies were I prepared an estimate based
7 on those deficiencies

8 Q Okay Then it's fair to say that you're wholly
9 familiar with the Kern-Coleman report?

10 A Yes

11 Q And have you mainly relied on that Kern-Coleman
12 report to prepare your estimate?

13 A Yes, I have

14 Q Have you also had the opportunity to review
15 documents from Anchor Construction, inclusive of an
16 itemized list of deficiencies that Mr Carpenter came up
17 with?

18 A Yes, I have reviewed that

19 Q Okay And have you taken those documents and
20 that itemization into consideration, with regards to your
21 estimate, for any opinions that you plan to offer today?

22 A Yes, I have

23 Q Based upon your review of the case, what is your
24 understanding of how this building was to be constructed?

25 A Well, they were going to use the AAC concrete

1 block foundation and put wood framing up above, up I
2 mean, that's --

3 Q And with regard to the total building, or
4 building as a whole, what is your understanding as far as
5 where they were in terms of completion?

6 A Well, they're about forty-five or fifty percent
7 complete

8 Q Are you yourself familiar with the ACC
9 [phonetic] type of block system?

10 A I am familiar with it

11 Q Okay It's obviously been mentioned that you
12 are -- were asked to prepare an estimate, asked to prepare
13 a repair estimate And you've done so, correct?

14 A That's correct

15 MR BENDLE Your Honor, what I plan to do --
16 this is off the record, actually

17 [Off the record momentarily]

18 THE COURT Are you going to introduce his
19 estimate?

20 MR BENDLE Yes, ma'am And I would like to do
21 that now, if I can

22 THE COURT Any objection to him doing that so
23 we can go through them simultaneously?

24 MR GRIFFITH No I assume he can lay a
25 foundation for the estimate

1 MR BENDLE Sure

2 THE COURT I would assume it, if he offered it

3 All right Do you want to give me --

4 MR BENDLE I'm sorry, Judge

5 THE COURT Can I have a copy of it?

6 MR BENDLE Absolutely

7 THE COURT And you have marked one for an

8 exhibit, right? But I just --

9 Y'all have it, yes?

10 MR ROSS Yes

11 THE COURT Okay

12 [Whereupon, Defendant's Exhibit Number 33,
13 estimate, is marked by the court reporter]

14 Q [Mr Bendle] Allen, I'm going to hand you a
15 document, and I would ask that you tell the Court what
16 that document is

17 A This is my estimate, for the repairs of the 16
18 Jade Street, based solely on the Kern-Coleman report And
19 I've gone through it line item by line item -- I think
20 there were thirty-eight items -- and I've put a dollar
21 amount on each one to remedy the problems

22 Q Okay And does the line items contained within
23 your estimate, do they correspond to that November 16th,
24 2005 Kern-Coleman report?

25 A Yes, they do

1 Q Okay And we're going to try to get through
2 this as quickly as possible, but I want you to be as
3 thorough as you need to be to explain your answer

4 But starting with the Kern-Coleman report -- and
5 I'll ask do you have a copy of that? That has already
6 been introduced into evidence

7 A Yes, I do

8 Q Okay

9 MR BENDLE And, Judge, is it okay if he
10 references that as we go through this?

11 THE COURT Absolutely

12 Q [Mr Bendle] Starting with the first item in
13 the Kern-Coleman report, could you identify what the
14 deficiency that's noted in that report is?

15 A Well, it was noted that several bond beams and
16 chases were cut through the AAC block and they needed to
17 be reinforced with rebar and filled with concrete And I
18 discussed with the -- I discussed with the subcontractors
19 and things, and came up with that there must have been no
20 more than thirty of those in the whole units

21 I mean, and I might elaborate right now that my
22 estimate takes on -- since they weren't specific about how
23 many chases there were, or how many windows had to come
24 out, I figured very liberal amounts I mean, there were
25 only thirty chases in the whole building, but I figured

1 every one of them had to be fixed There were forty
2 windows I figured every window had to be repaired, you
3 know I came up with a cost on that of \$4500

4 THE COURT Can I ask just a quick question?

5 Is this based on the suggested fix of how to fix
6 it by the Kern-Coleman report? Or could this be a
7 different way?

8 THE WITNESS Well, this is based on Kern-
9 Coleman's report

10 THE COURT How he said to fix it, is that
11 correct?

12 THE WITNESS That's correct

13 THE COURT Okay Just so I'm clear

14 MR BENDLE Sure

15 Q [Mr Bendle] And Allen, or Mr Patterson,
16 rather, did you agree with the recommended repair from
17 Kern-Coleman with regard to the utilities and the --

18 A Yes I did agree with that

19 Q All right Do you believe that this is an item
20 that you -- would you consider this item to be deficient,
21 or is this a condition that could have been fixed had
22 R Design -- or I should say completed, had R Design
23 remained on this project?

24 A It's a condition that would have had to have
25 been repaired before they finished the job, so it was --

1 comes under the category of incomplete work It was
2 something that they would have to address before they
3 finished

4 Q Okay Can you tell us what item number 2 notes
5 on the Kern-Coleman report?

6 A There was -- the AAC block calls for rebars on
7 each -- throughout the house -- or throughout the walls
8 And based on -- and the cost for number 5 rebar spaced
9 forty inches on center, instead of thirty-two, they -- the
10 Kern-Coleman report says that it was okay and that they
11 would have to put these rebars in on each side of these
12 windows And I proposed \$16,000 to do that

13 You know, it said that the rebar spacing wasn't
14 adequate, it was too far apart But then when you came to
15 an opening, you had to put rebar down each side of the
16 window and put a metal plate across the top of it And I
17 went in there and figured that there were -- I counted
18 that there were forty windows in that first floor, and I
19 figured that they had to -- that none of them had any
20 rebar and that we had to put rebar on each side, grout it
21 in place, and put a steel plate over the top of that
22 window

23 Q So this estimate on line -- or for item 2 was
24 based -- or was just assuming, then, that there was no
25 rebar in any of these locations, is that correct?

1 A That's correct

2 Q With regard to item number 3 several lintels
3 had bearing points less than eight

4 Would you consider that a deficiency, and, if
5 so, how would you recommend that it be fixed?

6 A Well, I just followed the Kern-Coleman repair
7 It is a deficiency They said several Again, we figured
8 all of them in the structure And, you know, I got a
9 price for a steel plate and figured that we were putting
10 forty of them, and the labor on top of that, and that's
11 how we repaired it The cost on that was 12,400

12 Q And item number 4, with regards to the AAC walls
13 not being constructed with a one-eighth inch quarter -- or
14 I'm sorry -- one-eighth-inch mortar beds Do you agree
15 that that's a deficiency? Or is that something that could
16 have been done or repaired?

17 A Well, I figured that that is a deficiency And
18 I figured the Kern-Coleman report recommended that they
19 put a bonding mortar on that I figured that we would --
20 that although I only saw one or two pictures of it, I
21 figured that maybe the whole structure would need to have
22 this bonding mortar and I put the bonding mortar across
23 the whole foundation of that house, of the structure

24 And, you know, I've researched that, and that is
25 a fix that they talk about using with the AAC block So

1 I'll agree with how they said fix it And that's what I
2 figured when I did this estimate

3 THE COURT How do you -- I'm sorry How do you
4 put a bonding mortar on it? I mean, is it with a
5 trowel or --

6 THE WITNESS It's like plaster You just
7 trowel it on

8 THE COURT You just trowel it Okay

9 A And, you know I also figured putting some
10 Sheetrock over that, because there would be a -- with the
11 bolts and stuff there, it may stick beyond where the
12 mortar was So you put the bonding mortar on, make the
13 wall hole, put the Sheetrock over it, fasten it down,
14 plaster that in, you've got a good finish

15 Q [Mr Bendle] And you just -- you were
16 indicating a moment ago that they would recommend that
17 repair, as well Were you referring to the engineer that
18 generated the Kern-Coleman report, or someone else?

19 A Kern-Coleman recommended that fix for it And
20 then I also read the manual on the Aercon block, which is
21 the product that was used here, and they also recommended
22 that that was a way of repair -- of putting these walls
23 in

24 Q Was that the way these walls were repaired?

25 A No That was not the way the final repair was

1 put in

2 Q Okay And what is your understanding of how
3 that item was repaired?

4 A Well, from the pictures and the reports I saw
5 from Randy Still, they put a four-by-four metal beam on
6 each side of each opening along the walls, put a metal
7 angle on the floor, and another one at the ceiling, and
8 bolted it in place They ordered over a thousand tubes of
9 epoxy mortar to do that And they put in a tremendous
10 amount of steel, \$25,000 worth Then they framed a wall
11 in front of that and then hung Sheetrock over it And
12 when they did that, they were -- it forced them to take
13 out all the interior walls, all the air-conditioning, all
14 the electrical, move the plumbing I don't understand why
15 that was done And I couldn't find any documentation why
16 they went that way, but that's where they ended up

17 Q With regard to item number 5, the addition of
18 vertical and diagonal core members, the garage-door
19 trusses, tell me a little bit about that problem

20 A Well, that's kind of incomplete work Normally
21 when contractors are building a house, they'll frame it
22 up And they want to get it dried in, get all the windows
23 on and a roof on it And then they have to come back and
24 put in their bracing and put in their hurricane clips and
25 strapping, finish putting the Go Bolts in, strap down

1 their iron bars So -- but that was -- what I -- it was
2 kind of incomplete work, but I put a dollar amount on that
3 of somewhere around \$4500

4 Q Okay And number 6 6 is with regards to the
5 Simpson PAHD straps for the garage doors

6 A Yeah That's a heavy-duty hold-down strap for
7 the -- that holds the beam over the top of the garage
8 openings And usually they come back in and fasten that
9 down I'm assuming that's what didn't happen But I put
10 some money on top of that, \$600, you know

11 Q Is that something that could have been done at a
12 later date, or is that something that should have been
13 done at the time that R Design left the job?

14 A No It could have been done -- it would have
15 been done when they had their framing inspection at the
16 end of that phase of work, and he wasn't finished building
17 those garages or finished framing

18 Q Number 7 has to do with a crack that was found
19 adjacent to the garage doors Tell me how you would fix
20 that crack that's noted in the report

21 A Well, I think -- let me look at that photo real
22 quick, just to make sure

23 Well, it looks like they got a chase down
24 through there that would be repaired similar to what we
25 did with the other chases where you cut it out twelve

1 inches wide, epoxy in rebar and then fill it with concrete
2 and reinforce it

3 Q And is that essentially the repair that's
4 recommended by the engineer who generated the Kern-Coleman
5 report?

6 A It is

7 Q Number 8 has to do with some circle washers that
8 were missing Or, actually, improper circle washers that
9 were used on the oversize slotted holes of the plate
10 washers Is that a problem, and why?

11 A Well, the oversized square washers have a large
12 slot, and the bolt just barely covers it, so often we're
13 required to go back in and put a larger washer to cover
14 that In that particular case I figured that they needed
15 bolts on every one of them, and I put a dollar amount in
16 there for 150 bolts and \$902

17 Q There's been much discussion throughout the last
18 few days about the AAC wall not extending to the underside
19 of the roof between the adjacent units Was that an item
20 that just you believed was not completed, or was that a
21 deficiency that may have existed?

22 A Well, it was an item that wasn't complete I
23 mean, they were short one whole garage that was there
24 And I don't know why they didn't put it up there But I
25 actually figured -- eighty square feet, I figured 3600 for

1 material, 1,000 for labor, and I put \$4600 in there to
2 finish that block wall at the top up there So --

3 Q There's also been discussion about item -- I'm
4 sorry -- item number 10 with regard to the nailing
5 patterns used Can you talk a little bit about the
6 nailing patterns and what you would have done to fix that
7 deficiency?

8 A Well, there's a couple of ways of fixing it I
9 guess they're talking about it in two different places
10 One is on the sheathing What they recommended doing was
11 putting in a Go Bolt system, which is a system I'm
12 familiar with We use it in our houses We run a metal
13 rod from the bond beam, all the way up to the top plate
14 It acts as the structural member there, like plywood It
15 holds that top plate down to that mud sill

16 And I figured putting that on all the exterior
17 walls on the building, and I came up with a price of it
18 of -- oh, what was it Let's see here Which item was
19 that? 10?

20 Q It was item 10

21 A Ninety-four fifty Now, that would alleviate
22 any nailing patterns that weren't sufficient on the wall
23 sheathing There was some discussion later on, and
24 mentioned that the siding wasn't fastened properly Now,
25 the Hardyplank siding can either be blind nailed, which

1 means it's nailed behind the lap, or it can be face
2 nailed You know, you could have gone back and re-nailed
3 it using face nailing So I have given somebody a
4 brochure that actually shows those two methods So --

5 Q Item number 11 does that item, that's
6 mentioned by Jonathan Livingston in this report, require
7 any modification?

8 A Not according to his He said, requires no
9 modification I didn't put any dollar amount for that

10 Q Was it also your opinion that this condition
11 needed no further modification?

12 A I've built a lot of structures with five-eighths
13 instead of three-quarters It's just a matter of what's
14 called on I think both of them are adequate

15 Q The difference in sizes wouldn't compromise the
16 structural integrity, or otherwise, of this building?

17 A Well, not that I would think But I'm not an
18 engineer I have to follow his recommendation on that

19 Q Okay Item number 12 there had been some cuts
20 in the steel beams How would you propose that that
21 condition be fixed?

22 A Well, I proposed that they take a metal plate,
23 just like the engineer, and put a quarter-inch metal plate
24 at all the openings, remove the duct work, and re-run it,
25 and locate the duct runs through the metal beams where

1 they were specified, you know, in the middle thirds, not
2 on the ends

3 Q And what's your understanding of how the actual
4 repair to those steel beams was effected?

5 A I don't know I believe they removed them, and
6 removed the duct work, and actually welded them over I'm
7 not sure how they actually repaired them

8 Q Number 13 there was suggestion -- or, I'm
9 sorry Number 13 talks about the additional steel beams
10 that were installed to support the floor systems Do you
11 concur that those steel beams were necessary?

12 A Well, I agree with what they said in this report
13 to repair them and how they talk about having to shimming
14 them up underneath the wood-framing wall I mean, that
15 certainly would transfer the load down to where they
16 needed to have it on the foundation And what their
17 concern was is that if you didn't have bearing all along
18 that wall, you would have these -- you'd have --

19 MR GRIFFITH Your Honor, I'm going to object
20 I'm not sure that he can interpret what they're
21 concerned about He just said he's not an engineer
22 And this is the engineer's report He's just here to
23 talk about what he priced and fixed

24 THE WITNESS All right

25 A Well, I'm going to follow the recommendation

1 that metal shims be installed at sixteen-inch spacing
2 between the top load-bearing stud wall and an additional
3 beam to transfer the load to the walls and off the columns
4 and -- that were originally designed

5 Q [Mr Bendle] So you would follow the
6 recommended repair?

7 A That's correct

8 Q Number 14 mentions that the CMU block wall at
9 the elevator shaft was not reinforced and contained only a
10 partial block Would you consider that to be an
11 incomplete item that could have been taken care of prior
12 to the completion of the block work and framing?

13 A Yes, I would

14 Q And what have you estimated it would cost to
15 finish that work?

16 A I estimated the cost on that to be \$1,000

17 Q Okay Number 15 identifies what they consider
18 to be a deficiency with regards to the front entrance wall
19 not being reinforced, and it also contained a partial CMU
20 block Do you agree with the recommended fix there?

21 A Yes, I do And I put \$2,000 on it That work
22 in that area was not completed Those walls weren't all
23 the way up You know, they weren't finished

24 Q So it's possible that that would have been work
25 that could have -- or would have been done, actually, to

1 complete that area of the front-entrance wall --

2 A That's correct

3 Q -- had the framers stayed on the job?

4 A [No response]

5 Q Number 16 it's noted that the front entrance
6 was framed with wood rather than the AAC floor panels, and
7 that no hangers were installed on the wall for the heavy
8 girders

9 Again, is this something that could have been
10 done, or would have been done, had the framer and block-
11 work sub stayed on the job?

12 A Yes They would have had to have put hangers up
13 there to support all that And I put -- that's number 16?
14 I put a dollar amount on that of \$900

15 Q Okay Number 17 it's noted that there were no
16 anchor bolts installed at the base of the columns

17 Is that something that could have been added
18 later without having compromised, up to that point, the
19 structural integrity of the building?

20 A Yes, it is something that -- you would normally
21 come back and fasten all of your posts and everything in
22 before you finish the job I put a dollar amount of
23 \$2,000 on there to take care of that

24 Q Number 18 a horizontal header between the
25 steel posts of the front porches apparently was not

1 installed

2 Is that something that could have been installed
3 or would have been installed as part of the original
4 framing job?

5 A This is number 18?

6 Q Yes, sir

7 A Well, that was a -- that was something that
8 wasn't done, and now they're going to require that you go
9 back and fasten each stud to that thing And I put a
10 dollar amount in there of -- number 18, I put a dollar
11 amount of \$2,000 in there And that's installing H-10
12 hurricane ties to each stud along that beam

13 Q Moving along Number 19 it's noted that the
14 gable-end walls were not balloon framed

15 Was it necessary for the gable end walls to be
16 balloon framed?

17 A Well, they normally would have been balloon
18 framed, so you would be required to go back and put this
19 fix in there where you put these beams in there and tie
20 them up and give them solid, continuous support all the
21 way from the floor to the ceiling because of their height
22 So I do recommend with their fix, and I put a dollar
23 amount in there of \$6400 to go in there and put them in
24 there

25 Q And number 20 it's noted that the LVL beams

1 were not properly fastened

2 Tell me what it would have taken to correct
3 that

4 A It would be required to get the correct metal
5 fastener and hanger and hang that beam in there, and
6 fasten it to the lateral beam and the other beam that's
7 running into it, and make a pocket where it sits down in
8 there Usually they're pretty heavy steel, you know,
9 quarter-inch type So I put a dollar amount in there, to
10 fasten those in there, of I think \$2260

11 Q And would you identify that item as an item that
12 you would consider to be deficient, or is that something
13 that could have been or would have been done?

14 A Well, normally you would do it at the end of the
15 job, before you walked away from it, once you started
16 putting everything in there It certainly -- what they do
17 is they put these beams in there, they tack them in place,
18 they secure them, they go ahead and keep building, and
19 come back and put all their clips and fasteners in And
20 that's kind of universal throughout the building Once
21 they get dried in, they come back and they put on all
22 their fasteners and stuff like that, put in their Go
23 Bolts, make sure that everything is secure, and the
24 blocking and everything is in the house

25 So this is something, that was incomplete work

1 at this time, that would have been finished before the
2 end And like I said, I put \$2260 in there to repair it

3 Q Item number 21 discusses the double top plates
4 as overlapping by ten to sixteen inches instead of the
5 required forty-eight-inch overlap Would you consider
6 that to be a deficiency, and, if so, what would you have
7 done to have fixed it?

8 A Well, I would consider it to be a deficiency
9 I'm going to follow the Kern-Coleman report and put that
10 plate on there Now, it didn't tell us how many of those
11 there were What item was that?

12 Q Item 21

13 A 21 So I figured there's about 467 linear feet
14 of that plate Usually that material is sixteen feet
15 long, so there would have been thirty connections
16 somewhere in that structure I put a dollar amount on
17 each one of them I figured every one of them must be
18 bad, even if it was one or two, and I put \$1800 in there
19 to fix that

20 Q Item 22 indicates that there was only one
21 through-bolt that was installed at the post locations at
22 the balcony In order to correct that deficiency, if you
23 consider it as such, tell me what you would need to do and
24 how much it would have cost

25 A Well, you would have to go back and put some

1 bolts in there I figured there were twenty -- forty-
2 eight bolts, forty-eight posts, you put two bolts in them
3 or something I figured \$1344 in there to put bolts in
4 all of those posts

5 Q Number 23 that item discusses the fact that
6 there was no bird-mouth cuts at the rafters and that there
7 were no hurricane clips, again, at the front balcony
8 locations Is it necessary to have bird-mouth cuts?

9 A Well, I've always put them, to be honest That
10 is a traditional building But sometimes I've actually
11 seen some construction when they weren't there I can't
12 tell you that absolutely they're required, but that is --
13 that's the prudent way of building

14 Putting an H-10 clip on there will secure it
15 down in place I figured there was a hundred of them I
16 put \$10 apiece in there, for \$1,000

17 Q So then you would concur with the engineer with
18 regards to the clips --

19 A Right

20 Q -- and the bird-mouth cuts?

21 A [No response]

22 Q Okay There's an item number 24 that indicates
23 that there was some electrical conduit that penetrated the
24 fire-rated floor system What would you have done to
25 correct that problem?

1 A I would pull out the conduit and put metal in
2 there and use some fireproof caulk and caulk around it
3 Or, as he recommends, put mortar on it I put \$400 in
4 there for that And I believe that was corrected

5 Q Number 25 addresses the problem that there were
6 no collar ties in the roof framing adjacent to the front
7 entrance of the building Would you agree that that was a
8 deficiency, or is that something that could have been done
9 closer to wrapping up the framing of this project?

10 A It's something you normally do towards the end
11 of wrapping up the framing They put a couple of them up
12 there to hold the roof in place, and then they go back and
13 put them all in I think we put \$1800 in there

14 Q Another item that we've had much discussion
15 about in the last few days has been the window
16 penetrations Number 26 identifies the deficiency
17 concerning the OSB that was used as a filler for the
18 oversized window openings Would you comment on that
19 deficiency and tell me what you would do to remedy that
20 situation

21 A Well, I concur with Kern-Coleman that, you know,
22 go ahead and pull them out and -- and put them in
23 Normally, that type of installation requires you to glue
24 that flange in place But we didn't have that sort of
25 option here, because the windows were pocketed Not to

1 get into all that detail But what I figured was pulling
2 the windows out, removing them, flashing, and putting them
3 back in And I figured removing sixty windows, which are
4 the total windows in this structure, and I figured \$100 to
5 remove, fifty to flash, and another two fifty to set, for
6 a total of \$450 a window, for \$27,000

7 Now, generally, that's like eleven hours per
8 window to get it out and put it back in, way more than I
9 would expect my crews to figure But the fact that they
10 had to chip it out and had to be careful with it, I put
11 that extra money in there

12 Q Number 27 addresses the problem with the lack of
13 horizontal bridging or x-bracing of the floor trusses Do
14 you agree with the recommended repair of the engineer?

15 A Yes, I do They require you to put that in,
16 typically Again, that's something you come back and do
17 towards the end of the project, you know, as you're doing
18 your -- checking your nailing patterns and putting all
19 your bracing in and making sure your block is in place

20 I figure that there were forty-eight -- forty-
21 eight LVLs on each one of those garages They had three
22 of them I figured \$20 labor, \$10 material, for \$4320

23 Q There's also been some discussion, and item
24 number 28 identifies the deficiency, that the anchor bolts
25 on top of the AAC walls were spaced thirty-two inches on

1 center as opposed to sixteen inches on center What would
2 needed to have been done to fix that problem?

3 A Well, I figured going back in and putting in the
4 anchor bolts

5 Q Is that a relatively easy fix?

6 A Yeah It is an easy fix, epoxying it in place
7 I figured 154 bolts at \$25 apiece, for thirty-eight sixty-
8 two

9 Q Number 29 identifies the fact that several floor
10 trusses were not properly seated on the bearing walls at
11 the support ends of the trusses What needed to be done
12 to correct that deficiency?

13 A Well, you would need to put blocking where the
14 bearing point is between the bottom cord and the top cord
15 They really didn't tell me how many I figured that there
16 were maybe twenty-five areas I put \$25 apiece in there,
17 for \$625

18 Q Could that have been done closer to the
19 completion of the framing?

20 A It was -- it's something that happens at the end
21 of a job You know, building inspector catches it And,
22 usually, the truss people are required to give you a
23 letter on it So, yes

24 Q Number 30 indicates that an eighteen-inch LVL
25 beam was used, as opposed to a steel beam, to support an

1 interior balcony If you consider that to be
2 inappropriate, tell me about what you would do to fix it
3 and how much that would cost

4 A Well, I don't I followed their report that
5 they said that the LVL beam had adequate capacity to
6 handle that load And, you know, typically, we switch
7 back and forth between steel and wood just based on -- you
8 know, if we've got enough room to put wood in there, we
9 put it in and switch back to steel I don't like to
10 change But in this case they did, and the engineer said
11 it was -- it could carry the load, so I went with it I
12 didn't change it or do anything to it

13 Q Do you know who this system was designed by?

14 A Grayco did -- sold them the truss packages and
15 designed these -- a lot of these engineered wood products
16 in there in the garages and, particularly, this LVL beam

17 Q Number 31, following number 30, with regards to
18 the LVL beam there was a note that there was a cut at
19 the bearing end that supports the interior balcony What
20 needed to be done to add that support back to that beam?

21 A Well, Kern-Coleman provided us with a sketch on
22 what needed to be done there, on how a metal plate was
23 supposed to be fastened to that, and I believe I put --
24 let's see what -- that was item number what? 30?

25 Q Item number 31

1 A 31? I put \$2400 in there to remedy that
2 problem

3 Q And again with the balconies, item number 32
4 addresses an LVL header that needed to be installed to
5 support, again, an interior balcony Do you concur with
6 the recommended fix --

7 A Yes I agree --

8 Q -- that the engineer stressed?

9 A -- with Kern-Coleman I put \$2,000 in there to
10 put that header in

11 Q Number 33 addresses the problem that there was a
12 lack of hurricane clips on the back porch If, in fact,
13 that could not have been done at a later date, or would
14 not have been done, what did you price that out as?

15 A Well, I followed their recommendation of putting
16 H-10 clips and installing it on each side of the rafters,
17 which was pretty standard, and I put in there that -- I
18 put in about I think it was -- let's see here That was
19 number 33 I put \$2800 in there for doing that

20 Q Number 34 addresses the fact that there were no
21 shear walls installed, per the construction drawings Can
22 you kind of briefly tell us what shear walls are and what
23 you would have done to fix that deficiency?

24 A Well, a shear wall is a wall that's -- when you
25 have a structure, a square box, a shear wall is a wall

1 that stops it from racking diagonally so it doesn't go
2 like this [indicates] They reinforce these walls
3 throughout the structure so it maintains its integrity
4 during loading, say during hurricanes and stuff like that
5 So we reinforce these walls, and that maintains the
6 integrity of the building Normally, it's done with added
7 plywood, or straps I know Simpson makes some shear-wall
8 wall systems that won't allow it to move

9 And what he's recommended to do here is that we
10 go back in there and that we go in there and put some
11 anchors and extend the headers out into the corner of the
12 building and with some LSTA-24 straps, which I think he's
13 got a picture of one in here somewhere So that's what
14 he's recommending that we do, and I kind of agree with
15 him And I put some dollar amounts, I know for that, I
16 think of about -- of \$3,000

17 Q All right Number 35 addresses the problem that
18 there were no anchor bolts installed at the interior load-
19 bearing walls Is that something that could have been
20 done closer towards the end of the framing?

21 A Yeah Just like they were able -- just like the
22 repair was you could go in and put them in there I mean,
23 it's -- you can just drill them in and epoxy them in
24 place I figured 141 linear feet of walls, putting them
25 sixteen inches on center, 105 at \$40 apiece, for \$4200

1 Q Number 36 has to do with the ceiling support
2 system and the need to have it fastened to the structure
3 Do you concur with that deficiency, and, if so, what would
4 you have done to make sure that that was fastened down in
5 accordance with the seismic?

6 A Well, I just went back in there and added
7 another 200 locations, 200 more fasteners, in that ceiling
8 area I mean, there's also -- and I put \$25 a fastener,
9 which, \$5,000 You know, there's a couple of ways to
10 solve that problem You could put a -- you could put a
11 channel up in there and tie your wires to that, or you
12 could put more of these connectors in there I mean, what
13 their concern is is it's only connected every so often,
14 and as it rocks or moves, it'll fall down

15 So you can put a channel in there and tie your
16 ceiling to it with these support wires, or you could put
17 more fasteners I put 200 locations, with more fasteners
18 And that would reduce the actual span to the four-foot
19 max Okay? So that's how I came up with that dollar
20 amount of \$5,000

21 Q The next-to-the-last item, Mr Patterson, is
22 number 37 the exterior door of the corridor is noted to
23 be a non-fire-rated door

24 In an effort to make certain that it is, what
25 did you assign as far as value to replace that door?

1 A I just put a new door in at \$300 apiece, put two
2 of them in, \$600

3 Q And number 38 talks about the type of wood,
4 southern pine versus spruce I believe the engineer notes
5 that there was no further modification needed with regard
6 to the type of wood used for the exterior wall
7 application, is that correct?

8 A That's correct

9 Q Okay Do you see a need to change out the type
10 of wood that was originally used?

11 A No I mean, we use them pretty much
12 interchangeably The only time I don't use it maybe would
13 be in the floor system But exterior walls typically are
14 spruce fir

15 Q Your total estimate for the repair came to what,
16 Mr Patterson?

17 A What was it? One sixty-five something One
18 sixty-five six thirteen

19 Q And if the plaintiff had come to you in this
20 lawsuit and had asked you to bid for the repair, would you
21 have done that repair for that amount?

22 A Yes

23 Q Is that a comprehensive amount with regards to
24 what you would have to expend to get these repairs
25 accomplished?

1 A Well, I might have put something more in there
2 But it's pretty comprehensive for doing these repairs,
3 based on this report

4 Q Okay

5 A Okay?

6 Q Now, in your deposition, there were some notes
7 produced that have a higher figure than the one sixty-
8 five I believe that there was a figure of 280-something
9 thousand dollars that was talked about

10 A Right I just went --

11 Q Can you tell me where you got that figure?

12 A Well, I looked at the pay app I was given a
13 pay app, whatever this pay app was, and said, well, here's
14 where we were, this is what it cost to finish, and here's
15 what the deficiencies were can you please --

16 THE COURT Help me with what pay app is he --

17 MR BENDLE It's probably --

18 THE COURT -- number 18, I'm assuming?

19 MR BENDLE -- pay app number 18, is what I

20 assume Yes, ma'am

21 THE WITNESS Yeah, it's number 18

22 ,THE COURT Okay

23 A Yeah, pay app 18 So I said, well, how did they
24 get up to \$900,000 So I started throwing money at it,
25 and that's how I got up to \$285,000 And those were

1 just -- I was just trying to figure out what I missed, or
2 what I didn't figure in there, so I threw a bunch of stuff
3 at it But some of this stuff doesn't apply to the -- a
4 lot of it doesn't apply to the Kern-Coleman report But I
5 said, well, maybe there's some other things that needed to
6 be repaired in this process here So this was just me
7 making notes and having discussion with you and, well,
8 maybe what did I leave out, you know So that's where we
9 came up with this number

10 Q [Mr Bendle] So, in summary, those notes were
11 just made in an effort to try to understand where Anchor,
12 who did the repair work, was coming from with regard to
13 that amount of repair, correct?

14 A That's correct

15 Q Okay But otherwise, if you were asked to
16 repair strictly in accordance with the plaintiff's
17 engineer of record, based upon his own recommendations,
18 you're telling the Court that you would be -- you would
19 have been willing to do this job for \$165,000?

20 A That's correct

21 Q Okay And you're not the cheapest builder in
22 town, are you, Mr Patterson?

23 A I don't think so

24 Q You're not aware of any reports that have --
25 from your review, that mention anything about moisture

1 damage to this building?

2 A I haven't seen anything that mentioned moisture
3 damage I saw one picture, but it had no explanation with
4 it, but --

5 Q How about mold?

6 A I didn't see any mold I saw weathered plywood
7 and stuff, but it was months You know, no problem
8 May I say something?

9 Q Certainly

10 A I saw pictures of doors and things that had
11 water -- it looked like could possibly be water damage
12 In my review of the pay apps from Anchor Hardware, I
13 noticed that all the doors were fiberglass

14 THE COURT And when you say from from Grayco,
15 you mean?

16 THE WITNESS From Grayco

17 A And they were fiberglass doors, so they would
18 not be prone to water damage

19 THE COURT You mean the original doors were?

20 THE WITNESS The original doors that were
21 replaced on this structure were originally fiberglass,
22 by ThermaTrue

23 THE COURT They were fiberglass doors?

24 THE WITNESS Yes

25 Q [Mr Bendle] Based on your experience in the

1 construction industry in Beaufort County, do you believe
2 that your cost of repair, your estimate, is reasonable?

3 A Well, like I said, when I did this estimate, I
4 figured every window, all the walls, every anchor bolt
5 That may not be the case I mean, I never saw -- all I
6 saw was pictures, and read this report I made
7 assumptions that everything was wrong with it But that's
8 not always the case You know, there may have been rebar
9 on each side of the windows and doors, and it might have
10 only been eight or ten places There may have been
11 sufficient mortar between the AAC block except in one or
12 two places So I thought it was a very liberal estimate
13 and very -- you know, here, let's fix everything,
14 everything is wrong

15 But that's not the case You know, I mean, some
16 of the stuff had to be done right, you know But when you
17 do this and you -- and I don't look at the product -- I
18 didn't see it before the -- during the Kern-Coleman
19 report The photographs weren't sufficient to document
20 how many areas of deficiencies or corrective areas needed
21 to be made But I made the assumption based on every
22 window, every door, every butt joint on the top plate
23 And that, I thought, was more than fair, you know

24 Q We've kind of gotten to this But as part of
25 your review on behalf of R Design, you were, in fact,

1 asked to take a look at the repairs that were accomplished
2 by Anchor Construction and sort of analyze how they got to
3 their final cost, correct?

4 A Yeah I reviewed the pay apps and the subs'
5 application for payment, and have a good understanding of
6 how the job was being run, based on that

7 Q And as part of you preparing to submit your own
8 estimate for the cost of repair and, in addition, looking
9 at what the repair costs were from Anchor, other than your
10 own experience did you do any other research, have any --
11 interview anyone, talk to the contractors or the materials
12 suppliers that were involved in the actual repair?

13 A Well, actually, I talked to a lot -- almost all
14 the subcontractors that were on the original job when R
15 Design had it, the plumber, the HVC guy, the electrician,
16 and I interviewed -- I said, well, what was wrong with
17 this job, what happened, what was going on, where were
18 you, what percentage of completion did you have there, and
19 what problems did you see, just trying to get an
20 understanding of what the problems were, you know

21 Q I would like to not go over everything in the
22 pay app But is pay app essentially -- is it your
23 understanding that pay app 18 is reflective of what the
24 repair costs were for Anchor?

25 A Well, pay app 18 is -- I was told was, okay,

1 everything is back to where we need to be, everything has
2 been fixed and completed when Carl was dismissed from the
3 job, so the owner has been whole And I reviewed the pay
4 apps from 1 all the way up to here And, you know, I have
5 some comments on that

6 Q There were a few items in this report that you
7 found a bit shocking to your senses, is that correct?

8 A Well, I questioned why so much money was spent
9 in certain areas

10 Q Was one of those areas with regard to the
11 supervision costs incurred by the plaintiff?

12 A Well, it's just \$107,000 It seems like a lot
13 But, you know, I just looked at it and said, I wish I was
14 working on that job But that's fine They can pay what
15 they want

16 Q In addition to that supervision fee, was there
17 also a markup fee of ten percent that excluded the
18 supervision?

19 A Yes, there was

20 Q Do you think that for this type of project that
21 a fee of \$200,000 for markup and supervision is a little
22 exorbitant, based on your own experiences?

23 A Well, normally a contractor will do a cost-plus
24 job for cost plus ten percent and overhead So -- but
25 they usually charge -- it did seem expensive You know,

1 it seems like this is an awful lot of money to get back to
2 where you were You had done \$800,000 worth of work to
3 this point, and then you come back and spend another
4 \$900,000 And essentially the structure was already in
5 place The foundations and site work and everything was
6 done You spent that much again to make it whole And I
7 question where was the money spent, and what did we
8 change

9 Q And are you aware of what had been invested in
10 this project at the time that R Design was terminated
11 from the project?

12 A Yes

13 Q What was that?

14 A Eight hundred and -- I have it on some notes
15 here Just give me a second I think it was eight sixty-
16 four or something like that I don't -- eight sixty-
17 eight

18 Q Okay And where did you get that figure from?

19 A Maybe from you, or from some pay apps or
20 something like that, or talking to Carl

21 Q There's been testimony --

22 A No It's seven thirty-two It's forty-five
23 percent finished, is what it was

24 Q I'm sorry Could you say that figure again?

25 A \$732,000 is what was paid at the time that Carl

1 was dismissed from the job

2 Q At the time that the pay app number 18 goes
3 through, about how long had they, Anchor, been on this job
4 doing nothing but repairs?

5 A Nine months

6 Q Okay With regard to the carpentry expenses,
7 tell me, based upon under column B, the work description,
8 what your understanding of how many carpenters on this
9 project were

10 A Well, I went through all the pay apps and
11 reviewed almost every inch of paper that made up those
12 costs I identified three contractors working on framing
13 and stuff One of them was Evans Construction, Hamilton
14 Construction, and Cline Construction I reviewed their
15 pay apps Evans was very detailed in what he was doing
16 He said, I'm taking out these windows, I'm putting them
17 in, I'm finished, I've moved over to here And then
18 Hamilton was not near as much, but he had pay apps in
19 there where he says, well, I've re-grouted all the steel
20 and finished putting the concrete back in on the
21 structure So he gave us a dollar amount And I could
22 identify the costs associated with repairing the bond
23 beams

24 And through -- and a quick review of Evans'
25 invoices, every time he mentioned he took out a window or

1 had to re-frame an LVL or put that in, I wrote that -- I
2 highlighted that And I came up with a dollar amount that
3 Evans was doing for his repairs And the way I see that
4 the job went down is Evans was doing all the -- removing
5 all the windows and doing all the repairs and deficiencies
6 that were addressed in the Kern-Coleman report Hamilton
7 did the concrete work and some grout and steel work
8 underneath the structure And Cline was doing exterior
9 trim at some location on the structure

10 Now, what makes this job confusing is that not
11 only were they fixing deficiencies, they were continuing
12 to finish other parts of this project So not all the
13 costs that we're seeing incurred are the result of fixing
14 deficiencies or making repairs Some of this work was
15 where they were continuing to finish up other parts that
16 didn't have any problems with it

17 Q So am I correct in my understanding that a large
18 part of the bill -- well, let me back up

19 What is your understanding with regard to the
20 expenses associated with carpenters, alone, during the
21 repair process? Do you know what that dollar figure
22 essentially came to?

23 A Well, I went through -- I went through Evans'
24 invoice, and I came up with roughly \$30,000

25 Q And that was for Evans alone?

1 A Evans, alone, to do these repairs cited in the
2 Kern-Coleman report, you know

3 THE COURT Hang on a second It's just taking
4 me a minute, in pay app 18, to figure out Oh I'm
5 sorry It's number 2

6 MR BENDLE Yes, ma'am

7 THE COURT Okay

8 Q [Mr Bendle] All right And that -- the work
9 that Evans did, as far as you can tell, is -- that figure
10 that you just spoke of, is that something that you think
11 should have cost, or --

12 A That's what it actually --

13 Q -- actually did cost?

14 A That's why they actually paid to have that work
15 done

16 Q Okay If you look at pay app 18, under item
17 number 2, Evans Construction is listed as a carpentry
18 What is the dollar-figure amount that was charged by Evans
19 during that nine-month period?

20 A 180,000 I believe there's a markup on that,
21 but still --

22 Q And there were also charges associated with the
23 other two carpenters that you spoke of, Hamilton and
24 Cline, correct?

25 A Right Now, Hamilton was doing miscellaneous

1 work around the job, some steel work There were certain
2 areas of this building that were not finished, that were
3 finished, and that cost is incurred in here Those would
4 be the trashcan and HVAC enclosure areas, which is -- and
5 in my review of the pictures, they weren't there You
6 can't expect our client to be responsible for that cost,
7 because it wasn't completed And there's other areas,
8 breeze ways and stuff like that And there were stairs,
9 that were only temporary, that would have had to have
10 been -- the final ones would have had to have been put in
11 later on, that Evans worked on, and I didn't count that as
12 any sort of deficiency or something he had to do because
13 that work was incomplete at the time Carl was dismissed
14 from the job

15 So -- now, in all fairness, you know, there may
16 be more costs that Evans did that he just didn't document
17 well But if you take his cost and Hamilton's cost, and
18 those -- that's the cost that it would take to fix these
19 remediations here, and you add them up, they come to
20 \$40,000 If you look at my estimate, I've got almost
21 \$60,000 in there for labor I still have another \$100,000
22 in there for materials, for more labor, for other things
23 that I missed Now, I just don't see where -- why there's
24 such a big difference there, but there is

25 I look at these structures here and -- if I'm

1 going too quick, now, if I'm getting off-point, you let me
2 know But part of what -- the cost that we incurred on
3 this pay app was the rebuilding of the garages, all four
4 of them One of them was not complete when he was
5 dismissed from the job The other three were taken down
6 Anchor gave him an estimate of \$122,000 or something And
7 Randy Still says, now, you've got to give him an estimate,
8 you can't just take them down, you've got to make him back
9 whole Anchor said, we'll build them back and make
10 everything right for \$122,000

11 My review of the cost from Grayco, Evans' labor,
12 Cline's labor, Ruyard's [phonetic] labor, and the stucco
13 people, indicates that those costs for those four garages
14 are in this pay app You know, many of the applications
15 that Evans has, framing garage, putting walls in, I've got
16 hundreds and hundreds of studs and sheets of plywood that
17 could only have been used to rebuild the garages

18 Q One of the other items that we had discussions
19 about is with regard to the Grayco bill Is it your
20 understanding that a portion of that bill involved the new
21 windows and doors?

22 A Yeah I found two invoices that totaled
23 \$66,613 My understanding of where those windows went
24 were in the two end units, which I understand were
25 modified and connected to the rear garages Part of

1 that costs were I think thirty -- twenty or \$30,000 for
2 french -- for Marvin doors, a clad-door product, and the
3 rest were windows And I figured that they wanted to
4 change out those doors so they could match the windows and
5 have a better product there They had a different locking
6 system, and that seemed to be a big issue So those costs
7 are in there

8 Grayco had \$208,000, take out sixty-six, you've
9 got a hundred and forty in there You take out what was
10 used for the modifications and the decks and stuff There
11 were also other costs incurred on this project that were
12 beyond the scope of what was supposed to be done And
13 when they added the breeze ways to those rear garage
14 lofts, they built some deck areas and stairs and things
15 back there, and that would have added more materials cost
16 and labor cost to the job

17 Q You just indicated that you assume that someone
18 wanted to match the new windows with the doors and all
19 that Have you verified that with anyone from Grayco?

20 MR GRIFFITH Your Honor, I'm going to object
21 to --

22 A No, I haven't

23 THE COURT Okay

24 Q [Mr Bendle] With regard to the price that you
25 just quoted with regard to the windows and doors, of that,

1 of the amount of windows and doors for which you have seen
2 an invoice for, do you know how many were actually
3 involved in the replacement or were used as replacement
4 windows in this project?

5 A I don't But you could not use them The
6 original doors in this structure were Weather Shield
7 doors These are Marvin doors, Marvin-clad units
8 They're not the same doors Which tells me -- I bet if I
9 go back and I looked at the windows, and I look where
10 those windows went, they went in those two end units in
11 those two doors

12 MR GRIFFITH Your Honor, I can't tell --

13 A I would have to -- that's something we would
14 just have to verify

15 MR GRIFFITH -- if he's just guessing now or
16 if he's testifying to what he's viewed and knowledge --
17 has knowledge of

18 THE COURT I think he just clearly testified
19 he's speculating He said, I'll bet if I --

20 THE WITNESS I'm speculating

21 THE COURT -- go back, is what he said And
22 that sounds like speculation to me

23 MR BENDLE I'll strike the question

24 A But I will tell you the original windows were
25 Weather Shield, and these \$66,000 were Marvins

1 Q [Mr Bendle] The additional windows that were
2 installed in this project, were there additional windows
3 added that weren't called for in the original designs?

4 A Based on my pictures and my visits to the
5 structures, I can see some extra windows in those
6 connectors between the second-floor lofts and the garage
7 lofts There are extra windows and structures back there
8 And that's -- you know, I know they're there I can tell
9 that I can't identify it all I -- you know

10 Q All right And based upon the invoices that
11 you've reviewed from Grayco, can you offer any opinion --
12 or did you notice whether or not those windows that Grayco
13 had charged those windows in a pay app or in an invoice
14 that falls under pay app 18 or less? In other words --

15 A Yes They're on pay app -- I don't know Pay
16 app 12 or 14 or something

17 Q So there were some windows, then, that were
18 ordered to complete the building, correct, not to repair?

19 A Yeah They would have been -- I believe they
20 would have been ordered when they were doing that
21 construction of the garages and that area back there

22 Q With regard to the windows and doors that were
23 replaced in this project, the original windows and doors,
24 do you have any knowledge, in your review in this case, as
25 to where those windows and doors actually went or how they

1 were disposed of or where they went?

2 A Well, in my discussions with Steve Carpenter I
3 said, why did you pull out the windows and doors? Well,
4 they weren't installed right I said, okay I said,
5 well, what happened to the doors, I mean He said, well,
6 they were warped Well, I got to checking on the
7 invoices, and I noticed they were fiberglass So I just
8 don't know I don't -- they're a lot less prone to damage
9 when they're all fiberglass

10 Q There's a line item on pay app 18 for painting,
11 correct?

12 A Yes

13 Q And I believe that line item is number 18 Can
14 you tell the Court what that amount was, for the painting,
15 through the repair process of this building?

16 A Well, forty-three thousand nine nineteen

17 Q Are you aware of any painting that had been done
18 at the time that R Design was terminated from this
19 project?

20 A Well, there was some painting, but it wasn't
21 anywhere near complete

22 Q What was painted, as far as you know?

23 A I don't know I just had some discussions with
24 Carl on what percentage of the work was done He said,
25 you know, twenty, thirty percent

1 Q And Pender Brothers there's a line item for
2 Pender Brothers Plumbing I believe that's line item
3 number 22, and the amount, as indicated on the pay app, is
4 \$27,800 What is your understanding of where they were
5 with regard to the plumbing rough-in at the time that
6 R Design left this -- or was terminated from the project?

7 A When R Design left this process -- product --
8 let's see here I think two of the units were completely
9 roughed in One of the garages wasn't there Most of the
10 units were roughed in except for unit C, and that was the
11 garage unit that wasn't built And that unit -- but the
12 others were all roughed in, which means that they were,
13 you know, sixty percent complete

14 Q Okay And lastly, with regard to the pay app,
15 there's a charge on here from Hilti, Incorporated What
16 is H-I-L-T-I?

17 A Hilti is a fastening company, and what they are
18 buying there is epoxy injection glue And it's \$500 for
19 twenty-five, and so they bought \$22,000 worth I figure a
20 thousand units

21 Q Do you consider that to be excessive, given the
22 size of this project?

23 A Well, given -- after I reviewed what they did
24 for the repairs underneath the house, you know, they
25 probably needed that much But that's a -- \$22,000 is a

1 lot of money to make a repair that could be done with
2 bonding mortar

3 Q And when you speak of the repair, you're talking
4 with regards to the block work?

5 A Yes I'm referring to the steel structures that
6 were put in on the ground floor

7 Q And that method of repair was not the
8 recommended method by Jonathan Livingston and is not the
9 recommended repair that you would have used, correct?

10 A It's not the recommended way I would have done
11 that

12 Q Also, as part of your review of this project you
13 were asked to determine, based upon different sets -- or
14 plans and all, to determine what sort of design changes or
15 improvements had been made at this project correct?

16 A Yes

17 Q Okay How would you generally categorize the
18 differences between this way this project was originally
19 designed versus how it turned out through completion of
20 Anchor?

21 A Well, the way it was originally designed, the
22 garages were detached, with lofts above them, and the
23 two -- the other units were -- you know, they weren't
24 connected After all the garages were torn down, they --
25 the two outside units on each end of that building were

1 connected to lofts above the garages And, you know,
2 there was breeze ways and connectors there associated with
3 that And I think it added, you know, 800 or 900 square
4 feet to each of those units when you did that There were
5 also redesigns to bathrooms, and stuff, in the interior
6 structures Kitchens were moved, and stuff like that

7 Q Based upon your understanding of all the design
8 changes and modifications and improvements to this
9 building, do you feel like those changes accounted for
10 some of the costs on pay app 18?

11 A Yeah I mean, one of the main things that I
12 attribute the cost to is the fix for the walls When they
13 put that steel up against that wall and spent \$22,000 for
14 fasteners and spent another -- let's see here Some of
15 this painting -- they had to paint all that steel in
16 there Marlin has got several thousand dollars painting
17 that But the \$34,000 worth of steel they put in there to
18 fix that, once they put that steel against the walls and
19 came out four inches, they tore out all the HVAC, they
20 tore out all the electrical, they moved -- tore out most
21 of the plumbing, tore out all the interior walls, and
22 reframed, and dropped the ceiling And all that work was
23 complete

24 So that particular fix required them to do a
25 tremendous amount of work But it also gave them the

1 option to do any design changes at that time And based
2 on the pictures and my discussion with the Pender
3 Brothers, they moved toilets and bathrooms around on that
4 ground floor

5 MR BENDLE Your Honor, I may be done with this
6 witness If I may just have --

7 THE COURT Sure

8 MR BENDLE -- one second

9 [Off the record momentarily]

10 MR BENDLE Madam Court Reporter, did I give
11 you back the estimate that you marked?

12 THE COURT REPORTER It's Number 33

13 MR BENDLE Number 33?

14 THE COURT Do you think I've got it? Do you
15 think I have it?

16 THE COURT REPORTER No We have it

17 MR BENDLE I'm sorry, Judge I just needed --
18 I didn't realize y'all were looking

19 THE COURT Okay

20 Q [Mr Bendle] Mr Patterson, the opinions that
21 you have given today, have they been to a reasonable
22 degree of residential construction certainty? Have they
23 been given in that regard?

24 A Yeah Based on thirty years experience building
25 houses and looking at costs

1 Q And do you believe that the estimate that you
2 have prepared is a reasonable estimate, given the size of
3 this project and the repairs that have been identified by
4 the plaintiff's engineers?

5 A The \$165,000 addresses the deficiencies There
6 may very well have been some other things that needed to
7 be addressed And in all fairness to the plaintiff, if
8 you take my estimate and say, okay, let's add in the
9 garages that we had to tear down because they were
10 deficient, and put that back in there, you come up with,
11 what, \$270,000 or something like that

12 So, I mean, we haven't addressed that issue of
13 the garage deficiencies You know, we've got a letter in
14 there saying, oh, they're in such bad shape they need to
15 be torn down But, you know, my deficiencies there, based
16 on the Kern-Coleman report, I could do that work and get
17 it fixed for \$165,000

18 Q Do you believe, generally, that the repair cost
19 that Anchor has submitted in their pay app 18 is
20 unreasonable given the size of this project and the
21 repairs that were recommended by the engineers involved?

22 A I believe the costs incurred on getting to this
23 point -- yes

24 Q And one question that I forgot to ask you
25 earlier is with regards to the items listed in the Kern-

1 Coleman report, what subcontractor on this job was, by and
2 large, responsible for that actual work?

3 A What, now? Repeat it again I'm trying to --

4 Q Sure

5 I'm just wanting to know if you've formulated
6 an opinion as to what subcontractor or what type of
7 subcontractor would have been responsible for actually
8 doing the physical work that gives rise to this list of
9 deficiencies in the Kern-Coleman report

10 A Almost all of it is framing and block work, and
11 that would be where the bulk of the issues in the Kern-
12 Coleman report are generated from

13 MR BENDLE That's all I have for now, Judge
14 Thank you, Allen

15 THE COURT Okay Y'all, can we just take two
16 minutes very quickly? Just two minutes

17 You can step down, sir I just remind you that
18 you don't talk about your testimony to anyone Okay?

19 [Whereupon, a recess is taken from 3 23 p m to
20 3 26 p m]

21 MR ROSS I've got questions I don't know if
22 I'm next

23 MR GRIFFITH I believe if we read the
24 pleadings we can see who's up next

25 MR ROSS Mr Patterson, how are you doing

1 today?

2 THE WITNESS Fine

3 MR ROSS My name is Jeff Ross We met when we
4 did your deposition a while back I don't know if you
5 remember I have a couple of questions for you, as
6 well

7 CROSS-EXAMINATION

8 BY MR ROSS

9 Q With regard to the trusses in the garage, is it
10 common practice for the truss manufacturer to change the
11 direction of a truss?

12 A It's not -- it is common I mean, when we get a
13 set of plans, I usually give them to a truss manufacturer
14 and say look at these, and check with the engineer, and
15 then give me a design layout

16 Q It's not something specifically that the general
17 contractor would go and say, I want to change them this
18 way It generally comes from the truss manufacturing,
19 right?

20 A Right We have to have a stamped set of
21 drawings, and we have to install them based on their
22 layout plans

23 Q And when OSB is exposed to the elements for
24 several months, can you reuse it? Can you leave it on the
25 building?

1 A Well, it needs to be covered, you know I saw
2 some -- I saw some picture of it there It looks like it
3 was weathered pretty good

4 Q So if -- OSB, coming down the side of a building
5 has been out there for several months, does that OSB have
6 to be removed and put up with fresh OSB? You can't reuse
7 it when it's swollen, correct?

8 A No, you can't

9 Q And if it stays out in the rain, it's going to
10 tend to swell?

11 A Yes, it will

12 Q When you went through those reports, did you
13 break out the labor cost to install the steel?

14 A I did

15 Q Could you tell me what that was, please?

16 A I think that labor cost was about \$10,000

17 Q And there's, what, \$34,000 worth of steel?

18 A Oh Now, you're talking about the labor cost
19 for the -- oh, for the wall modifications I thought you
20 were talking about the -- for the Kern-Coleman repairs

21 Q No, sir I was thinking the -- in the pay app
22 18 when Anchor went in and actually put a steel post every
23 four feet all the way around the entire perimeter of this
24 building and fastened it to the wall with plates and I
25 think you said \$20,000 or so worth of fasteners

1 A Yeah There was \$22,000 worth of fasteners and
2 \$34,000 worth of steel That work was done mostly by
3 Evans and Hamilton Now, when I reviewed the labor
4 charges there for Cline, he didn't tell me what he did
5 He just charged so much every month But Hamilton and
6 Evans broke down what they were doing

7 Q Are you able to look at that and say how much
8 labor they spent, how much they paid for labor, to do that
9 steel?

10 A Well, I can account for how much Evans charged
11 for it, and Hamilton, possibly, because he was doing that
12 same work

13 Q Is that something you can grab rather quickly?

14 A No You have to go through invoice by invoice,
15 and Evans has detailed it very exacting about what he was
16 doing when

17 Q Okay The Marvin window that you spoke of, I
18 think I -- is it Marvin?

19 A They are Marvins, yes

20 Q Okay Do you know if that's the same dimension
21 as the windows that they replaced?

22 A I do not

23 MR ROSS Let me see Exhibit 19, if I may

24 It's Plaintiff's Exhibit 19

25 THE COURT Showing like one -- almost one and a

1 half or --

2 MR ROSS That's the one

3 THE COURT -- a little more? Is that the one
4 you're --

5 MR ROSS Right

6 THE COURT -- talking about? I don't have it

7 MR ROSS All right I'll look for it later

8 THE COURT Is it in that set right there that
9 Mitch just put down? In that one? On that set?

10 THE COURT REPORTER I think that's 5

11 THE COURT Yeah I think it's in that set,
12 y'all There aren't photos in there, so it isn't going
13 to be in there It would be in that set, Mitch

14 MR ROSS All right I'll look for it later,
15 while you're going

16 THE COURT Well, actually, if you pass them up
17 to me, I can look at them while y'all are talking

18 MR ROSS Here's 21, here's 18

19 THE COURT It should be right there

20 MR ROSS Yeah It's the one that's missing

21 THE COURT So y'all have been through those
22 Let's make sure I don't have it

23 [Off the record momentarily]

24 MR ROSS There it is

25 THE COURT So we've got it

1 Q [Mr Ross] I was hoping for something
2 different I thought it showed more of the window, and I
3 wanted to know if it was a Marvin window in there or if
4 you could tell But it doesn't show enough of the window
5 There's not enough for you to say anything about
6 that, right?

7 A No

8 Q Okay I apologize

9 The items addressed in the report -- they total
10 \$165,000 -- that is based on the Kern-Coleman report But
11 you've said that a lot of those items you consider
12 incomplete, is that correct?

13 A That's correct

14 Q Have you gone through and totaled the items that
15 you would consider to be deficient work versus the
16 incomplete items?

17 A I haven't No, I haven't done that But if you
18 want to, we can do it

19 Q I think we can do it rather quickly

20 MR ROSS I don't know if Your Honor has marked
21 what he said was incomplete versus --

22 THE WITNESS I have it marked

23 MR ROSS -- complete Sir?

24 THE COURT You have it marked?

25 THE WITNESS I have it marked

1 THE COURT On your Kern-Coleman --

2 THE WITNESS Coleman report

3 THE COURT -- report, is that correct?

4 THE WITNESS You've added it up?

5 MR ROSS I've got a calculator I could do it
6 here

7 Q [Mr Ross] I just want to total up what you
8 think are items that should have been done, to date, and
9 establish a figure

10 THE COURT Are we going to go off the Kern-
11 Coleman report, or are we going off of his estimate?

12 MR ROSS Well, we're going to go off of his
13 estimate

14 THE COURT Right

15 THE WITNESS If you'll take my estimate, the
16 numbers correspond

17 THE COURT Exactly

18 THE WITNESS And so are you ready? Do you have
19 that? Do you want me to?

20 THE COURT I've got one, too You know what?
21 Why don't both of you total it How about we do that?

22 MR ROSS I've already done it I can tell you
23 what I got

24 THE COURT Do you want to -- why don't you give
25 him the calculator, and then we'll all do one at the

1 same time

2 MR ROSS Sure

3 THE COURT So he and I will do them If you've
4 already done them, so we already know what your number
5 is --

6 MR ROSS Right

7 THE COURT So give him one, and I'll take one
8 [Off the record momentarily]

9 THE WITNESS All right Let's start out with
10 item 1 for 4500

11 THE COURT That's an incomplete?

12 THE WITNESS Yes Item 5 for 4500, again, item
13 6, for 600, item 7, for seven fifty, item 9, for 4600,
14 item 14, for 1,000, item 15, for 2,000, item 16, for
15 900, item 17, for 2,000 item 19, for 6400, item 21,
16 for 1800, item 23, for 1,000, item 25, for 1800, item
17 29, for six twenty-five, item 33, for 2800, item 34,
18 for 3,000, item 35, for 4200

19 Forty-two four seventy-five?

20 THE COURT Uh-huh

21 THE WITNESS Oh, man

22 MR ROSS What did you get?

23 THE WITNESS Forty-two four seventy-five

24 Q [Mr Ross] Those are items that you think need
25 to be addressed or should have already been addressed?

1 A Those are items that are incomplete that could
2 have been addressed before -- during the construction

3 Q All right You weren't present at the time of
4 the construction, were you?

5 A No, I was not

6 Q So you don't know who was doing what work on
7 site correct?

8 A I do not

9 MR ROSS I don't have anything further Thank
10 you

11 THE COURT Mr Griffith

12 MR GRIFFITH Mr Patterson, first of all,
13 let's just follow up

14 CROSS-EXAMINATION

15 BY MR GRIFFITH

16 Q You were talking about incomplete, and what
17 could have been finished Based on the documents we have
18 here today, you reviewed them all, or you reviewed a lot
19 of them You saw Mr Catterson's contract, did you not?

20 A I have not seen that

21 Q You haven't? You know his contract was for
22 about \$133,000, if you look at the numbers And if you
23 look at what was paid, he was paid about \$122,000 So he
24 was going to finish that \$44,000 worth of work for
25 \$10,000?

1 A Maybe he was drawing ahead

2 Q Just got ahead of them, right?

3 A Yeah

4 Q That happens sometimes, doesn't it?

5 A If I could make money -- I always lose money at
6 the end of the job I can make it all the way up to then,
7 but --

8 Q Well, you had also talked a little bit, I think,
9 about the building department inspected it and it made it
10 by inspection?

11 A No I have never said anything about that here

12 Q Just because you do it wrong and the building
13 department approves it, that doesn't make it right, does
14 it?

15 A No Normally, they -- normally, when you do a
16 walk-through with them, you'll pick up on certain
17 deficiencies And trusses is one of those areas which I
18 did allude to the codes people as catching that

19 Q But in any event, there's been a lot of
20 testimony about, well, it passed code You know, as a
21 general contractor, because that's what you are -- you
22 know, as a general contractor, you've got to do it right
23 and you can't rely on the building department to catch
24 your mistakes

25 A I can tell you the building codes inspectors are

1 not my quality control people

2 Q That's correct

3 A How about that

4 Q That's correct

5 As a matter of fact, even based on Plaintiff's
6 Exhibit Number 32, there's a note in the file that says,
7 Anchor Construction has met with the building -- Beaufort
8 County building inspectors, who are embarrassed they
9 missed so many items during their inspections The
10 inspector no longer works for the County And that came
11 from your client's exhibit You know sometimes that
12 happens, doesn't it?

13 A Yes

14 Q All right Now, I want to ask you a little bit
15 about you said you were contacted first in 2007, is this
16 correct?

17 A I believe so, yes

18 Q And I believe you gave your deposition in April
19 of 2008, correct?

20 A Right And I had been working quite a while on
21 it before then That's why I came up with that time

22 Q I believe at that time you said you had been
23 about a year So it was sometime around April of '07, is
24 that right?

25 A I guess that would work about right

1 Q Plus or minus?

2 A Yeah

3 Q The job was pretty much done by then, though,
4 wasn't it?

5 A The job was completed

6 Q Okay And you were contacted by Mr Bendle, is
7 that correct?

8 A That's correct

9 Q And, first of all, he said, I want an estimate
10 on the damages, is that correct?

11 A Yes

12 Q All right And when he said that, he told you
13 there was a problem out there, correct?

14 A Yes

15 Q All right And so you knew you were going in
16 there just to -- not to say this is right, this is all
17 done right, but if there's a problem I'm just going to
18 give you a price to fix it, correct?

19 A When he first contacted me, he asked me to give
20 him a price on where we were And I said, well, this is
21 hard, do you have an estimate to start with And we
22 didn't have an estimate to start with, so I didn't have a
23 starting number It was very difficult to come up with a
24 cost of, you know, what it should have cost and what it
25 did cost, because we didn't have a starting point

1 Q All right Well, if there's no damage, there's
2 no problem You've got damage, so there is a problem
3 We're just trying to establish that right now --

4 A Right

5 Q -- correct?

6 A Uh-huh

7 Q All right And you reviewed some of the
8 documents that were given to you by Mr Bendle, is that
9 correct?

10 A Yes, I have

11 Q Were you given a set of the plans?

12 A Yes

13 Q All right And you got -- did you mark those
14 plans up with the things, the deficiencies, that you
15 found?

16 A I marked the plans up with the things I saw were
17 different than the plans And I looked at the Kern-
18 Coleman report, and I marked up where beams were, and I
19 interviewed Steve Carpenter, and he redlined about thirty
20 or forty items with me

21 Q Now, I want to ask you about that because you've
22 brought it up I believe the third or fourth time, that you
23 interviewed Mr Carpenter And you said a few minutes ago
24 one of the documents you had was you came up with about
25 \$285,000 And you said, I was just trying to figure up

1 how they came up with it, right?

2 A That's right

3 Q Well, when you were talking to Mr Carpenter,
4 why didn't you ask him how did you come up with this
5 number?

6 A Well, because he couldn't tell me

7 Q That's because he was doing a different scope
8 than you were bidding, is that right?

9 A Right All I wanted to talk to him about was
10 why they did this or why they did that

11 Q And they did it because the engineer told them,
12 this is the way we're going to do it, correct?

13 A I haven't -- I asked a lot of those questions
14 I didn't see any engineering documents on it, but I'm
15 assuming they were directed by somebody --

16 Q You mean all the stuff --

17 A -- particularly on the structural end of it

18 Q Let me ask you all the stuff that Mr Bendle
19 gave you, he didn't give you these structural documents
20 from H2L --

21 A I had those documents

22 Q -- on how to fix it?

23 A That's right

24 Q You've got them?

25 A I had those, and drawings Yes, I did

1 Q Did you bid it?

2 A Not that way, no, I didn't

3 Q Why not?

4 A I had a letter from him stating that maybe the
5 masonry -- because I was told to use the Kern-Coleman
6 report And I reviewed a document from Randy Stiles
7 [phonetic] that said, maybe we'll use the mortar, or maybe
8 we'll use the steel

9 Q First of all, let me ask you about what you were
10 asked to do As a matter of fact, you were asked to go
11 out there and you were asked to give an estimate?

12 A That's correct

13 Q You went back to Tab and you said, how do you
14 want me to estimate this, and he said -- or you said, this
15 is a huge amount of time and effort So he said, well,
16 here's where I think we need to be, and this is the gist
17 of it

18 A That's right

19 Q Right? So it's like the old --

20 MR BENDLE Your Honor --

21 A No

22 MR BENDLE -- excuse me

23 THE COURT Hold on a sec, Mitch
24 Your objection?

25 MR BENDLE The current -- or my conversation

1 with Allen, I didn't testify in a deposition or
2 otherwise, so he can't basically testify to what I've
3 said He can ask the question as to what he was asked,
4 of course, that I asked him to do --

5 THE COURT Right

6 MR BENDLE -- but he can't give testimony
7 about what he thinks I told him to do

8 THE COURT I think you need to clear it up with
9 the deposition

10 MR GRIFFITH All right Do you have the
11 original, Jeff?

12 MR ROSS I do

13 [Off the record momentarily]

14 THE COURT Mitch, I guess the question is is
15 why did you do it this way

16 MR GRIFFITH That's basically what I'm getting
17 to

18 THE COURT I mean, I guess what you're trying
19 to get to is why did you do the estimate this way as
20 opposed to this way And he can just give his answer
21 of why he did it that way He's got a reason So why
22 don't we just ask him, Mitch?

23 A Do you want to ask that question?

24 Q [Mr Griffith] You prepared your estimate based
25 upon the Kern-Coleman report, is that correct?

1 A That's correct

2 Q And you talked about it throughout your direct
3 Your estimate was based on that report Didn't you
4 testify that the reason you did it that way is because you
5 were asked to do it that way?

6 A Yes

7 Q You were not asked to do it this way, were you?

8 A I was not

9 Q So we're talking apples and oranges here, aren't
10 we? What Mr Carpenter did, and what you're putting
11 forth, they're not even the same scope of work, are they?

12 A Do you want to talk about it? We --

13 Q I want to ask you are they the same scope of
14 work Yes, or no

15 A What he did with the steel is different than the
16 recommendation from Kern-Coleman, yes

17 Q All right When did you -- you talked about the
18 times you met with Steve When did you visit Jade Street
19 the first time?

20 A Grand opening, and then two other times after
21 that, I went through over there

22 Q All right So when you went to Jade Street, the
23 project was already done?

24 A Right Yes Hundred percent

25 Q You didn't see it in the condition it was in

1 when Mr Still was there or when the work was going on,
2 correct?

3 A No

4 Q And so when you first started, you were asked to
5 determine the damages And you tried to do that and said,
6 that's going to be a lot of work, correct?

7 A No I was asked to determine how they arrived
8 at the final cost of the project I didn't have a
9 starting point And then I said, well, this is a big job,
10 I can estimate this whole job and tell you what it should
11 have cost

12 Q And this would have been a pretty good starting
13 point, how they arrived at it, if you had estimated what
14 he did?

15 A Well, it would have, I guess I don't know

16 Q And you had these?

17 A I got those later on, yes

18 Q All right Well, did you ask Mr Bendle or did
19 you ask Steve Carpenter, when you went, what you got here?

20 A Yes I have received those and reviewed them

21 Q Right And you didn't bid them? You never bid
22 them?

23 A No But I have a cost on that I do have a
24 cost on that, by the way

25 Q You've never produced it, though?

1 A I have not produced it, no

2 Q All right So when you were asked to produce
3 all of your file to Mr Bendle, you didn't give it all to
4 him, did you?

5 A I've -- you know, recently, in the last couple
6 of days, I've gone back through a whole scope of work, and
7 I reviewed it the last two weeks

8 Q And what you said was, here is -- Tab said, this
9 is where we need to focus, this is -- and basically,
10 according to your testimony, he said, this is where we
11 need to be, correct?

12 A Yeah He said, this is an engineered report,
13 that was prepared when my client was dismissed from the
14 job, that cites the deficiencies cited by Kern-Coleman,
15 can you give me an estimate on what it would take to fix
16 these And I have

17 Q And if we look at that, you said you also went
18 out and you talked to Steve Carpenter, correct?

19 A That's correct

20 Q You said that Steve Carpenter -- you saw this at
21 least was provided to you, Plaintiff's Exhibit Number 12,
22 which is a list of defects, is that correct?

23 A I do have that, yes

24 Q Okay And I believe you testified that you
25 believe that those defects did exist if Mr Carpenter said

1 it, correct?

2 A A lot of them are covered in the Kern-Coleman
3 report, the majority of them

4 Q There are more on there than there are in the
5 Kern-Coleman report, is that correct?

6 A I went through most of them There's only a
7 few

8 Q There are more there than in the Kern-Coleman --

9 A Yes

10 Q -- report, correct, Mr Patterson?

11 A Yes

12 Q And you talked to Steve Carpenter And based on
13 that conversation, you believed those additional defects
14 were there, is that correct?

15 A Some of them I don't agree with

16 Q Mr Patterson, do you have a copy of your
17 deposition now? Let's turn to page 194

18 A All right What do you want me to tell you?

19 Q All right I want you to -- on line 10 the
20 question was asked of you do you have a reason to doubt
21 Mr Carpenter as to if he was incorrect about the
22 existence of those items And if you'll just read your
23 answer for me

24 A I talked to him I think they were there

25 Q And you think they were there, correct?

1 A All right

2 Q And you didn't bid all the defects you found, is
3 that correct, in Defendant's Exhibit Number --

4 A No I bid just the ones that were here on this
5 particular list right here

6 Q Okay Now, let's talk a little bit about the
7 ACC [phonetic] block You've never built with the ACC
8 [phonetic], is that correct?

9 A That's correct

10 Q Or AAC, I believe, is what it's called, right?

11 A Aerated Concrete, yeah AAC

12 Q Aerated Autoclave Concrete And you admit that
13 it's a little bit pricy?

14 A Oh, yes

15 Q All right And you admit that it's a little bit
16 different?

17 A [Indicates affirmatively]

18 THE COURT Is that a yes, for the record?

19 A That is a yes It is different

20 THE COURT Thank you

21 Q [Mr Griffith] And you actually, I believe,
22 read up on it, is that correct?

23 A Yes, I have

24 Q Did you read the ICC report on it?

25 A I would have to see it

1 [Whereupon, Mr Griffith proffers documents to
2 the witness]

3 A Yes, I have read that

4 Q [Mr Griffith] All right The ICC report,
5 anywhere in there does it talk about surface bonding?

6 A I don't know I've read the manual, from
7 Aercon, on the block and it said it could be dry-stacked
8 and surface-bonded

9 Q Did it talk about where it can be dry-stacked
10 and surface-bonded?

11 A I just read it when I was there

12 Q And when it talks about surface bonding, you
13 said you read up on that?

14 A Uh-huh

15 Q The information that you were provided, did you
16 get a copy of the Bonsal surface bonding cement?

17 A Yes I've read -- I've seen that

18 Q All right

19 A I think we bid that to put on the product

20 Q All right And in that -- is this a copy of the
21 Bonsal surface bonding cement specifications?

22 A Yes Now, they're specifically referring to
23 some sort of fiberglass-reinforced bonding compound

24 Q Let me ask you the questions

25 [Whereupon, Plaintiff's Exhibit Number 101,

1 Bonsal document, is marked by the court reporter]

2 Q [Mr Griffith] This is what you've said -- you
3 just said you read, and it's highlighted here This is
4 going to be a structural application, correct?

5 A [No response]

6 Q Read to the Court what it says, for structural
7 applications, that I've highlighted there

8 A For structural application, reply [phonetic]
9 one-eighth-thick coat to both sides of the block wall

10 Q All right And when you got out there, I
11 believe Two Brothers had already been up and put up
12 stucco, is that right?

13 A Yes And they installed scratch-bed mortar,
14 which is a fiberglass-reinforced mortar

15 Q And I assume that's based upon your conversation
16 with them?

17 A Yes

18 Q And Mr Carpenter had a conversation with them,
19 and they came back and finished the job and told him they
20 didn't do it That's what he testified to

21 A Well, I actually saw it in pictures

22 Q So we don't know what's out there, then, do we?

23 A I believe if you review the pictures, you'll see
24 it's there

25 Q Well, I believe we've got to get it on both

1 sides And that doesn't say anything about substituting
2 fiberglass-reinforced concrete for Bonsal surface cement,
3 does it? It says, this has got to go on both sides,
4 correct

5 A All right It does say that in that piece of
6 paper, yes

7 Q And if you want to meet their specifications,
8 then you've got to tear the stucco off to put this up on
9 the other side, don't you?

10 A If you use that product and follow that
11 instruction, yeah

12 Q All right You talked about dry-stacking Is
13 dry-stacking the way that it's recommended by the
14 specifications?

15 A No, it's not

16 Q All right And did you see that it was dry-
17 stacked out there?

18 A No, I did not

19 Q All right So the report that you relied on
20 from Kern-Coleman, you don't even believe it?

21 A Why wouldn't I?

22 Q Well --

23 A They actually were there and inspected it

24 Q That was something you didn't do

25 So do you believe, based upon what they said,

1 that it didn't have the mortar in it, the one-eighth-inch-
2 bed-and-head mortar?

3 A I believe the one picture that I saw of it did
4 not have that I honestly do not believe the whole
5 structure didn't

6 Q Did you bring any pictures to show that?

7 A I've seen pictures that are here But I do have
8 them over there, that are in evidence somewhere, that it's
9 not existent on the whole structure

10 Q Well, I was going to say, you talked about a lot
11 of things that I'm trying to figure out what's in
12 evidence You talked about a 60,000-dollar window
13 package?

14 A Yes

15 Q And you talked about certain --

16 A Well, I had the -- I brought the invoices --

17 Q Okay

18 A -- from the windows here

19 Q Let's see the invoice, then I thought you
20 brought it up here with you You didn't bring your file?

21 A No I didn't know if y'all would let me bring
22 all that stuff But I have the invoices

23 THE WITNESS And I think I gave them to y'all
24 this morning, Tab

25 MR BENDLE If it will help to move this along,

1 I've got --

2 THE WITNESS Why don't you get it

3 MR BENDLE -- a copy of what we spoke about we
4 had this morning

5 [Off the record momentarily]

6 Q [Mr Griffith] And this is what you showed me I
7 believe before you came up and testified I don't see any
8 Grayco invoices in here Are there any in there in the
9 stack you've got, Allen?

10 A If they're not there, I have them right over
11 there somewhere I have a tendency to shuffle papers

12 THE COURT If you need to go get them, Mr
13 Patterson, you are welcome to step down

14 THE WITNESS Okay Here they are I do have
15 them

16 Q [Mr Griffith] Okay You talked about \$60,000
17 worth of windows --

18 A And doors

19 Q Okay Let's just clear that -- make sure the
20 record is clear

21 You're talking about \$30,000 worth of windows,
22 correct?

23 A Let's see here

24 Q I'm just going by your numbers right down here

25 A What have you got there?

1 Q This one says doors at the top That's in your
2 handwriting

3 A Well, it may be backwards

4 Q The windows were thirty-one thousand three
5 sixty-five --

6 THE COURT Forty-seven, is what someone else
7 testified to, in my notes

8 A And the doors were thirty-five two forty-eight

9 THE COURT Thirteen Yeah Okay

10 A Those came from pay apps 14 and something, and
11 pay app --

12 Q [Mr Griffith] I believe that Mr Carpenter
13 testified, and found and marked as Defendant's Exhibit
14 Number 2 --

15 Is that the one which is part of Defendant's
16 Exhibit 2-A? Is that the windows or the doors?

17 A Those are the windows

18 Q Okay

19 A Okay?

20 MR GRIFFITH You don't have a notebook?

21 [Whereupon, Mr Griffith reviews documents]

22 THE COURT Are you showing him now the door
23 invoice?

24 MR GRIFFITH Excuse me?

25 THE COURT Are you showing him now the door

1 invoice?

2 MR GRIFFITH Yes

3 THE COURT In here --

4 MR GRIFFITH I think this is what --

5 THE COURT It's the same thing It's the
6 twelve doors

7 MR GRIFFITH Which was Defendant's Exhibit 3

8 THE COURT It was already tabbed Yeah

9 MR GRIFFITH Yeah

10 Q [Mr Griffith] I want to make sure We talked
11 about these yesterday There are no more window and door
12 invoices, are there?

13 A I don't know I didn't find them I just --
14 you know, I went through a lot of invoices last night I
15 could have missed them Those jumped out at me

16 Q Right Mr Carpenter testified yesterday there
17 are only three windows that were -- excuse me -- four
18 windows that were replaced out of that invoice The
19 others were all new He took that into account

20 A Well, I don't know I was given pay app 19
21 It's in the cost of that You said that's what it took to
22 get us back whole That's how it was presented to me

23 Q Well, you talked to Mr Carpenter He testified
24 a lot He went through and actually gave percentages to
25 each one of those and said, that's generally where it is

1 A Okay

2 Q Right? You saw that in his deposition?

3 A I have not reviewed his deposition

4 Q They didn't give you his deposition?

5 A Not Carpenter's, no

6 Q Okay Well, he had gone through and he had
7 assigned percentages And he said it comes up with right
8 about here, about the same amount as pay app 18 That's
9 what we are using as a baseline So what he was doing, he
10 said plus or minus in there

11 A Okay

12 Q You heard him testify to that, right?

13 A [No response]

14 Q Well, let's go back to the AAC block We talked
15 about the bed and the mortar, the quarter -- eighth-of-an-
16 inch mortar bed that's got to be in there Did you see
17 that -- you didn't see it You just saw some pictures of
18 it, right?

19 A I saw pictures of it, yeah

20 Q All right And according to the report, at
21 least Kern-Coleman, that was not done, correct?

22 A I saw one picture of one area where it wasn't
23 done

24 Q Okay

25 A How many other areas were there?

1 Q And that's pretty basic, isn't it, that you've
2 got to put that mortar in there?

3 A Yeah

4 Q All right And the mortar, since you did the
5 read-up on it, that gives it the structural support, part
6 of the structural support, doesn't it?

7 A Yes, it does

8 Q All right And you also looked at the plans,
9 then, and you saw that there should be some number-five
10 rebar at thirty-two inches on center, per the plans,
11 correct?

12 A Yes

13 Q You saw from the Kern-Coleman report that that
14 did not exist, is that correct?

15 A From what I read in the Kern-Coleman report, it
16 didn't

17 Q All right And that was wrong not to put that
18 number-five-inch rebar thirty-two inches on center, then,
19 is that correct?

20 A What did the Kern-Coleman report say?

21 Q It said it was supposed to be number-five rebar
22 thirty-two inches on center Or at least the plans say
23 that

24 A The plans say that, and the Kern-Coleman report
25 says it's okay to put it at forty-eight

1 Q Well, they actually sealed the plans And your
2 client was contracted to build according to the plans He
3 didn't do it, did he?

4 A Apparently not on those instances where that --

5 Q Now, the rebar coming out of the foundation was
6 forty-eight inches on center You could have seen it
7 right there Your rebar has got to tie into the
8 foundation, doesn't it?

9 A Yeah

10 Q If you see something wrong when it's put up,
11 you, as a general contractor, you stop it, don't you, and
12 say, wait a minute guys, I've got a sub, you've done
13 something wrong?

14 A Well, we need to follow the plans

15 Q That's right

16 Now, here I believe you testified that the guy
17 laying the block needs to know it's not lining up, and he
18 needs to get the rebar in there, doesn't he?

19 A I would have said that, yes, if that's what it
20 called for It would have been a deficiency in the
21 construction

22 Q Okay And the block is very specific about it's
23 got to have rebar in it Without the rebar, you lose all
24 your structural -- well, not all But you lose a lot of
25 structural capacity, is that correct?

1 A Actually, that block is very strong, and it can
2 take all the way up to seven or eight feet apart

3 Q You are not a structural engineer, is that
4 correct?

5 A I have talked --

6 Q You testified to that

7 A -- to them, and they have informed me of that
8 fact, and I'm repeating it

9 Q All right Well, when you -- well, while I'm
10 looking for -- let's see

11 [Whereupon, Mr Griffith reviews documents]

12 Q [Mr Griffith] I'm showing you Plaintiff's
13 Exhibit Number 79 Looking at a piece of rebar there, is
14 that correct?

15 A Yes

16 Q All right That rebar is supposed to be
17 grouted, is it not?

18 A Yes, it is

19 Q That's not done, is it?

20 A No

21 Q That's a bad thing, isn't it? Well, let's just
22 say it's --

23 A We'll have to fix that

24 Q -- it's a defect

25 A It's a defect

1 Q That's a defect

2 And then we've got rebar here It looks like
3 some photographs where somebody tested, punched holes
4 They found rebar and no grout again That's got to be
5 fixed That's what they're talking about fixing for you,
6 isn't it?

7 A Yes

8 Q And you talked about the subcontractor that did
9 the majority of the work that you were talking about
10 It's actually the general contractor's responsibility to
11 make sure that this all comes together and get's done
12 right, correct?

13 A Ultimately, the responsibility ends up there

14 Q I believe one of the items we found was actually
15 -- it looks like a piece of steel that didn't have
16 anything to sit on, is that right?

17 A Yeah It looks like they chipped it when they
18 put the steel in there

19 Q Well, it looks like maybe they pulled out what
20 was broken

21 A Uh-huh

22 Q All right And there was nothing -- there was
23 no proper bearing point for that, is that correct?

24 A Well, it looks like there's a grouted cell, with
25 rebar in it, underneath there where the block is chipped

1 away

2 Q You've got to have something for the steel to
3 rest on for it to bear on, don't you?

4 A Yeah I'm thinking that's a solid-poured cell
5 with rebar in it and it -- when they put it up, they
6 chipped this ACC block [phonetic] away

7 Q All right Well, when we look at that steel
8 when it's -- is that a way you want to tie it together?

9 A No You'll have to rebolt that steel in place

10 Q All right And when you lay your columns, is
11 that the way -- or the structural steel, is that the way
12 you want it sitting up? That's not good, is it?

13 A No Actually, they grout -- come back and grout
14 under that

15 Q Don't you want to lay it in a grout bed, so it's
16 got some support under there, before you even start?

17 A No Actually, they shim it up and grout under
18 it afterwards They put bolts on both sides and adjust
19 it

20 Q And do you know -- we were talking a minute ago
21 about is that enough support to hold that iron Or is
22 this a better way to do it, with a column or a beam, to
23 hold that beam up?

24 MR ROSS Your Honor, that's an engineering
25 decision, whether there's enough support, asking what

1 the present load capabilities of whatever -- whatever's
2 underneath that is And that's what he needs to find
3 the answer to that question He's not an engineer

4 MR GRIFFITH I'll withdraw that question
5 I've already -- I think he's already testified he's not
6 an engineer

7 THE WITNESS No, I'm not

8 Q [Mr Griffith] Now, we also talked about other
9 problems with the Aercon Did -- you read in the report
10 about the headers, didn't you, that the lintels didn't
11 bear properly Do you remember that?

12 A Yes, sir

13 Q All right That's not in accordance with the
14 Aercon plans, is that correct, or specifications, correct?

15 A That's correct

16 Q That's something that had to be addressed, true?

17 A I did, and I bid it In my bid, I covered that

18 Q You talked about the foundation strap where
19 mister -- where the Kern-Coleman report says it was not
20 installed properly, it just wasn't done right I believe
21 you indicated that was incomplete work

22 A Is that the one at the garage header?

23 Q Yes, sir Item number 6, I believe

24 A Yes I mean, you've got to -- we need to
25 fix it

1 Q Need to fix it Need to fix the bond --
2 basically, you need to fix all the things in here, is that
3 correct?

4 A Yeah

5 Q And we talked about the things you did You
6 talked about the windows in there, and you talked about
7 the window package How many windows were in the
8 building?

9 A Oh, let's see I actually have that number, I
10 believe I think there were -- let's see -- sixty windows
11 or something

12 [Whereupon, the witness reviews documents]

13 A Sixty windows

14 Q [Mr Griffith] And you said that you bid on the
15 high side, is that correct?

16 A I did

17 Q All right And in bidding the windows, under
18 item number 2, you said that you bid replacing missing
19 ✓ rebar, two bars on each side of openings in AAC block
20 You proposed \$16,000 Actually, you only bid forty
21 openings, didn't you?

22 A Well, that's because that was the steel repair
23 and the foundation only On item 26, I removed all the
24 windows in the structure and reset them So I might have
25 some -- I just put a steel plate of steel on each side of

1 the window on the first floor -- on item 2 On item 26, I
2 pulled the window out and put it back in

3 Q And you had to pull the windows out because they
4 weren't put in properly, is that correct?

5 A Because there was --

6 MR ROSS Objection, Your Honor No personal
7 knowledge how the windows were put in

8 A I don't know

9 MR GRIFFITH He doesn't have any personal
10 knowledge about how any of the construction work was
11 done

12 A But I was following the Kern-Coleman report It
13 said remove them and reinstall So --

14 Q [Mr Griffith] Mr Patterson, it's basically
15 you were called up a year, almost a year, after this
16 lawsuit started, almost more than a year after R Design
17 had been terminated, is that correct?

18 A Yes

19 Q All right And then you were asked to give an
20 estimate based upon a scope of work that was done at the
21 time R Design was terminated, is that correct?

22 A Yes Yes

23 Q And you were asked, it sounds like, to ignore
24 the other structural engineer, to figure out how much it
25 would have cost to have repaired what was the problems out

1 there, correct?

2 A Well, I haven't addressed his issues totally

3 Q Which goes back to my point You're bidding
4 apples, and Anchor Construction is repairing something
5 else A different scope of work, correct?

6 A I bid the Kern-Coleman report --

7 Q That's right

8 A -- which had an engineer recommending repairs,
9 and Anchor has come in and done repairs that are much
10 different than that

11 Q Correct Based on a different engineer's scope
12 of work Right there, H2L

13 A Well, I don't know if that engineer recommended
14 all the changes that were done

15 Q You don't know what they recommended, because
16 you ignored the information that was given to you, or you
17 were --

18 A Well, I've looked at that

19 Q -- told to ignore it, because you were told
20 let's make this estimate at this, and this is how we're
21 going to do it, right?

22 A Right

23 Q And it's easy to give an estimate and say, I
24 would have done the work for that, when the work has
25 already been done and you know you haven't got to worry

1 about contingencies in there, correct?

2 A Well, I mean, it limits your scope of what the
3 estimate is

4 MR GRIFFITH That's all the questions I have
5 THE COURT Anything further?

6 MR BENDLE I just have very few, Your Honor,
7 just for clarification

8 REDIRECT EXAMINATION

9 BY MR BENDLE

10 Q Jonathan Livingston, the engineer from Kern-
11 Coleman, is it your understanding that he was the engineer
12 of record on this project that the plaintiff hired?

13 A Well, yes, it is I read some letters where he
14 said he was hired to see what deficiencies were in -- on
15 the job, and to prepare a report, and the recommended
16 conditions That's all

17 Q And that was going to be my next question
18 Wasn't it the plaintiff that also hired him to come out
19 there, the day after R Design was fired, to generate a
20 report that spoke to the deficiencies that existed the day
21 after my client was terminated from this project?

22 MR GRIFFITH I'm going to object to that
23 question as a mischaracterization of the testimony

24 MR BENDLE How does that mischaracterize his
25 testimony?

1 THE COURT Okay I don't know, either I
2 didn't hear the end of it But I believe what you
3 asked was, is that --

4 MR BENDLE It's that same engineer,
5 essentially, that they asked to come inspect and
6 produce a report

7 THE COURT On the 18th of October?

8 MR BENDLE Yes, ma'am

9 THE COURT And which was the day after R
10 Design left, correct?

11 MR BENDLE Correct

12 THE COURT Okay

13 Q [Mr Bendle] Is that your understanding, as
14 well, Mr Patterson?

15 A Yes

16 Q And from that report you were asked to prepare
17 an estimate, based on the plaintiff's engineer's report,
18 as to what it would take to place the building back into a
19 position so that someone could come out and repair and get
20 it back into a position where that building could be
21 completed, correct?

22 A That's correct

23 Q And that's what you did in the form of your
24 estimate, correct?

25 A Yes

1 MR BENDLE Thank you

2 THE COURT Mr Ross, anything?

3 MR ROSS I do have a couple, Your Honor

4 RECROSS-EXAMINATION

5 BY MR ROSS

6 Q Mr Patterson, you said there's I think -- and
7 correct me if I'm wrong -- there's \$60,000 worth of
8 windows and doors contained in pay apps 1 to 18?

9 A Yes

10 Q So if the -- if Anchor only replaced three
11 windows on this job, all the rest of the windows in those
12 pay apps would be extra, right?

13 A That's correct

14 Q And I believe Mr Griffith showed you a picture
15 of rebar without grout in it a few minutes ago Do you
16 have that up there, still?

17 A No

18 Q Let me just ask you he showed you a picture
19 with rebar and no grout in it And right next to it is
20 more white AAC block Are you able to tell us, as you sit
21 here today, if there is, say, six inches over from that
22 rebar, rebar in a core with grout in it?

23 A No, I'm not able to --

24 Q And if there was rebar in a core six inches over
25 from that picture, it wouldn't matter if there was grout

1 there, would it, because there's a -- there's rebar with
2 grout in it right next to it?

3 A Well, I don't believe it would matter I think
4 -- I would think you would still have to fix that, though
5 But you're right I mean, if it's --

6 Q But from a space --

7 A If you have enough rebar in the specified
8 spacing, it should meet the specifications

9 Q So we could go through pictures all day long
10 that show rebar and no grout So long as somewhere
11 adjacent thereto there is rebar with grout, we have
12 complied with the structural requirements, correct? If it
13 meets the spacing, if it's thirty-two inches on center or
14 forty-eight inches on center -- depending on whether you
15 want it to meet the plans or the Kern-Coleman report, so
16 long as there is a core with rebar and grout on that
17 spacing interval, it doesn't matter how many pictures he
18 shows you with rebar and no grout Is that true?

19 A As long as you've got the rebar within the
20 specified forty-eight inches, I guess you should be within
21 code or within spec

22 Q You scoped -- or you prepared an estimate on a
23 scope of work that you believe got the building back to
24 where it was originally, correct?

25 A Yes, I did

1 Q And is that also your understanding of what
2 Anchor did?

3 A Well, I might add here that to get everything
4 back to where it -- we never have addressed the issues of
5 the garages Anchor gave Mr Green an estimate, said for
6 \$122,000, we'll get these three garages back, we'll tear
7 them down and build them back right to where you need to
8 be So if you take my Kern-Coleman estimate and you put
9 that \$122,000 in there, then all the issues in the garage
10 are a dead issue, because Anchor said for \$122,000, we'll
11 put these back, make you whole, and so for \$165 plus a
12 hundred and twenty-two, you get right back to when Carl
13 Aten was dismissed from the job

14 Q Do you know if the Kern-Coleman report includes
15 the garages or not?

16 A It does address many issues in the garages the
17 floor trusses, the straps, you know, the leaning beams I
18 think there was one cell that had to be grouted out there
19 So there are issues out there

20 Q And the lintels --

21 A And any lintels that might be associated with
22 it Yes

23 Q And the mortar in the block?

24 A [No response]

25 Q So if you add that 122,000 to your estimate,

1 you're going to do a lot of things twice, correct?

2 A Yes There was a lot of duplicity there

3 Q But Mr Griffith was trying to say that you did
4 one scope of work and Anchor did another scope of work
5 Do they both reach the same end result?

6 A Anchor's scope of work, at this pay app,
7 finished all the garages One of them didn't exist when
8 your client was dismissed It finishes them completely
9 It frames them all back up Now, three of them should
10 have been done for 122,000 So we've got a whole bunch
11 of extra expense there, you know And, actually -- and
12 in this estimate is all the costs associated with
13 rebuilding -- taking those garages down and rebuilding
14 them, so -- and plus the one that was missing, plus the
15 additional breeze ways and stuff between the two end units
16 and the loft apartments That cost us, also, in this pay
17 app of 900,000

18 Q Okay I'm a little confused right now, and so I
19 want to see if you can clear it up The Kern-Coleman
20 report addressed the issues in all the buildings and all
21 three built garages, correct?

22 A Yes

23 Q Okay So the anchor estimate for a hundred -- I
24 believe it was 106 or 110,000, but --

25 THE COURT Actually, one of them was one zero

1 two and one of them was one zero eight and some change
2 One was to tear them down, or one was to fix them But
3 it's an exhibit

4 Q [Mr Ross] Whatever --

5 THE COURT I think it --

6 Q [Mr Ross] Whatever the exhibit is

7 THE COURT I think it was -- I think it was 102
8 to tear them down, or it was 108 to fix -- or maybe it
9 was 106 to fix Those were the two numbers that I
10 remember

11 Q [Mr Ross] The numbers -- we'll use 102 and
12 108, but we'll rely on whatever the exhibit says

13 THE COURT Okay

14 A Right

15 THE COURT Mia? If anyone can find it, that
16 would be good

17 THE WITNESS I've got it I've got my copy of
18 it

19 THE COURT Okay Mr Ross, you can go ahead
20 and continue

21 [Whereupon, the witness proffers documents to
22 the Court]

23 THE COURT Thank you It's 108 and 102

24 Q [Mr Ross] When Kern-Coleman did their
25 inspection, the garages were standing, right?

1 A Yes Three of them

2 Q Okay And they generated this report to address
3 the issues that they found, including the issues in the
4 garages?

5 A Yes

6 Q And you generated your scope of work to address
7 all the issues in the Kern-Coleman report?

8 A That's correct

9 Q And Anchor's scope of work, they rebuilt the
10 garages but the goal was to get them back to where they
11 were at the time R Design left the job, correct?

12 A That's correct

13 Q So Anchor's scope of work and your scope of work
14 both achieved the same basic end result, is that correct?

15 A Yes I guess I do, yes

16 MR ROSS Okay Thank you

17 THE COURT Does anyone else have anymore?

18 Mitch, you're standing Go ahead

19 [Off the record momentarily]

20 THE COURT Are you going to ask questions?

21 MR GRIFFITH One second, Your Honor

22 THE COURT Can I ask him a question, then?

23 Because now Mr Ross has got me confused If he was
24 confused, now I'm really confused

25 MR GRIFFITH Go ahead

1 THE COURT I guess my question is, does your
2 estimate, 1 through 38, account for repairing the three
3 garages?

4 THE WITNESS Yes

5 THE COURT Already, is that correct?

6 THE WITNESS Right Based on the Kern-Coleman
7 recommendations and repairs that needed to be made

8 THE COURT Right So Mr Ross's point is is
9 that what you're doing, then, is you're saying, okay,
10 we're going to repair them according to the Kern-
11 Coleman report but then we're going to rebuild them
12 again, is what you're saying, and that's why you're
13 adding the hundred and --

14 THE WITNESS Right

15 MR ROSS That's what I --

16 THE COURT -- two on top That's the point
17 you're trying to make, right?

18 THE WITNESS Right There's --

19 MR ROSS Well, that's the point I'm trying not
20 to make because it sounded like, we're going to do it
21 according to the Kern-Coleman report and then he said,
22 add the repairs from the Anchor report on top And
23 that was exactly what you just said That would have
24 been, fix them and then fix them again And I was
25 trying to make it clear that the Kern-Coleman report

1 addresses fixing everything And if we're going to add
2 that 100,000-dollar --

3 THE COURT Right

4 MR ROSS -- tear-down and repair, that would
5 be redoing it And we don't need to do that

6 THE COURT So the question is -- I guess the
7 question, then, is what of 1 through 38 do you back
8 out --

9 THE WITNESS Well, you back out --

10 THE COURT -- if you were to go ahead and just
11 say, okay, we're tearing down the garages and
12 rebuilding them at \$102,000?

13 THE WITNESS You back out the truss repair, the
14 strap repair, the grout in that one cell, you know

15 THE COURT Okay

16 THE WITNESS But the bottom line on that is
17 it's only \$265,000

18 MR ROSS But, Your Honor, the issue is Kern-
19 Coleman had one scope --

20 MR GRIFFITH Your Honor --

21 THE COURT I understand

22 MR ROSS Okay

23 THE COURT I believe I understand what the
24 argument you're making now

25 And just ask his question -- well, can I ask him

1 a question before you go on, Mitch?

2 You, in your estimate, didn't account for any
3 supervision? I mean --

4 THE WITNESS I put that in I mean, we put
5 some in I mean --

6 THE COURT Well, I'm asking you what's
7 reasonable according to you You build here in
8 Beaufort You would do this job, and you would do this
9 repair work, correct?

10 THE WITNESS Yes Usually --

11 THE COURT Well, what was --

12 THE WITNESS Usually, I put the supervision and
13 a markup on it You know, I've marked all that up

14 THE COURT So you put it all in there?

15 THE WITNESS But if you --

16 THE COURT Well, I don't see any markup or
17 overhead on this, either

18 THE WITNESS I put it --

19 THE COURT But usually that's built in

20 THE WITNESS It's built into it

21 THE COURT I mean, did you give any kind of
22 percentage or --

23 THE WITNESS Twenty-five, thirty

24 THE COURT Twenty-five percent? So then you
25 just doubled up your supervision and your --

1 THE WITNESS Right

2 THE COURT -- markup together?

3 THE WITNESS My labor on that, I doubled

4 THE COURT So it was about twenty-five percent?

5 THE WITNESS Yes

6 THE COURT Let me ask you if you were billing
7 out a superintendent's fee, what is reasonable in
8 Beaufort County?

9 THE WITNESS Most superintendents make
10 somewhere around forty-eight to \$60,000 --

11 THE COURT A year?

12 THE WITNESS -- a year

13 THE COURT Based on a forty-hour workweek, or
14 the month?

15 THE WITNESS Forty-hour workweek

16 THE COURT A forty-hour workweek Okay

17 THE WITNESS Okay And just to give you --
18 well, that's basically it I mean, some of your high-
19 dollar superintendents that are building like hotels
20 and things like that, really -- the government-center
21 guys, they're making seventy-five or 85,000 a year

22 THE COURT Okay But they're not making one
23 fifty?

24 THE WITNESS No

25 THE COURT Okay Hold on a second

1 [Off the record momentarily]

2 THE COURT I'm sorry They're not making
3 135,000, would be your point, correct?

4 THE WITNESS Not that I know of

5 THE COURT Superintendents aren't making --

6 THE WITNESS They're not making --

7 THE COURT Okay

8 THE WITNESS I don't think lawyers or doctors
9 make quite that much

10 THE COURT Okay

11 RECROSS-EXAMINATION

12 BY MR GRIFFITH

13 Q What do you bill them out at, Allen?

14 A My superintendent -- I bill them out, you know,
15 anywhere from eighteen to \$25 an hour

16 Q Superintendent?

17 A Yeah

18 MR GRIFFITH So -- that's fine I'll stick to
19 that Thank you No further questions

20 THE COURT And then do you put your -- on top
21 of that, that's when you account for your markup and
22 overhead to account for the burden and --

23 THE WITNESS Normally, what you do is -- if you
24 billed a cost-plus contract, you billed for --

25 THE COURT Yeah

1 THE WITNESS -- cost plus ten, cost plus
2 fifteen Your overhead is usually seven or eight
3 percent

4 THE COURT Right

5 THE WITNESS So that's really how you arrive at
6 it Insurance adjustors and companies like that, where
7 you have a lot of this, they generally give you a
8 twenty-percent markup on everything, or twenty-five
9 So, you know, your overhead varies a lot But
10 typically in residential construction, or even
11 commercial, it's in that six to eight percent range

12 THE COURT When you bill a cost-plus job, you
13 bill the superintendent at their actual hourly rate,
14 correct, and not with the --

15 THE WITNESS Normally -- and you could --

16 THE COURT -- burden and all the --

17 THE WITNESS You should check your contract
18 with Anchor, because he will list what he's going to
19 bill out each of those individuals have, what dollar
20 amount On a cost plus contract --

21 THE COURT Right

22 THE WITNESS And I assume y'all had a contract

23 THE COURT And it said it, yes It said \$78 an
24 hour, is what it said

25 THE WITNESS And I'm like at 55 or \$65 an hour

1 If you bill me out like that, that's what it is

2 THE COURT And so that includes, though, what?
3 Does that include -- does that include the overhead,
4 the twenty-five percent overhead already, or the
5 burden? Does that include those things?

6 THE WITNESS No And it depends on how you
7 write those contracts But typically that does not
8 include the overhead burden on that You bill them out
9 at that rate But that probably has the workman comp
10 and overhead working into it at that rate right there
11 That's why you bill it out that much

12 THE COURT Okay

13 THE WITNESS If I make twenty-five -- if I make
14 \$20 an hour, I usually have -- taxes and overhead are
15 about thirty-four percent You see what I mean?

16 THE COURT The question, though, is is then --
17 is it appropriate, then, to on top of that -- if you've
18 already got an hourly rate, brought in the worker's
19 comp and what I call the burden, if you've already got
20 that worked into the hourly rate is it then appropriate
21 to, whatever your markup is -- and you're saying in
22 your case it's usually twenty-five percent -- is it
23 appropriate, then, on top of that -- I guess what I'm
24 saying is do you do twenty-five percent on top of your
25 sixty-whatever you said an hour? Well, you said fifty-

1 five, sixty, somewhere along there

2 THE WITNESS I might be different I usually
3 do cost plus ten, and I bill it out at that rate and
4 mark the whole job up ten percent and --

5 THE COURT Ten percent Okay

6 THE WITNESS Okay? So it's just a matter of
7 how you write your contract and how you go in at it I
8 mean, some jobs you may want to get more There may be
9 more supervision required I mean, you know, it may
10 require a lot more time and effort than, you know, you
11 might normally have if you're building slab-on-grade
12 houses or something So it varies from job -- from
13 contract to contract

14 THE COURT Okay Let me just ask you one last
15 question Based on what work was actually done by
16 Anchor at this job, should it have taken nine months?
17 Based on the work they did? Not what Kern-Coleman
18 would say to do it, but the way they actually did it,
19 should it have taken nine months to repair it, to get
20 it back?

21 THE WITNESS Well, it would -- I would have --
22 typically, a job like this would have taken nine months
23 from start to finish I do not think it should have
24 taken nine months just to get to this point But, you
25 know, like I don't know all the repairs they were

1 doing You know, I'm not -- I wasn't there

2 THE COURT Okay You haven't gone through --
3 so you haven't gone through it Okay

4 THE WITNESS I look at the scope of the work,
5 and it seems like it did take a long time They were
6 there for a year How long were they there? A year
7 and a half?

8 THE COURT Okay Mitch, you had a follow-up
9 question? You had something you wanted to ask?

10 MR GRIFFITH [Indicates negatively]

11 THE COURT No?

12 MR ROSS I have one question, Your Honor

13 FURTHER RECROSS-EXAMINATION

14 BY MR ROSS

15 Q When you say from start to finish, you mean from
16 dirt to complete buildings, or from dirt to where that job
17 was when R Design left?

18 A Dirt to finish should have taken eight, nine
19 months, ten months, you know

20 Q So that's dirt to done?

21 A Yes

22 MR ROSS Okay

23

24

- - -

25

- - -

FURTHER RECROSS-EXAMINATION

BY MR GRIFFITH

Q And you understand that the contract with R Design was signed in July of '04 and they were terminated in July of '05? They had already spent a year And you say they should have been done three months before that, right?

A Well, I mean, I build houses --

Q That's what you just testified to, wasn't it?

A I build houses all the time that are 10,000 square feet, and I can build them in five and a half months, four and a half months I mean, it's just a matter of -- now, I will have to say that AAC block may have slowed them up, and the different trades that you have to have in there, you know

Q In addition to that, it takes more time to tear out and repair than it does just to build new construction, correct?

A That's right

MR GRIFFITH Okay No further questions

THE COURT Anything further from anyone?

MR BENDLE Nothing further, Your Honor

THE COURT Mr Ross?

MR ROSS [Indicates negatively]

THE COURT You can step down, Mr Patterson

1 Thank you, sir

2 THE WITNESS Okay Thank you

3 THE COURT All right

4 [Whereupon, Mr Patterson is excused and exits
5 the witness stand]

6 MR BENDLE Your Honor, I believe that you
7 would concur that he's welcome to say But otherwise,
8 can he be released as a witness?

9 THE COURT Any objection?

10 MR GRIFFITH No objection

11 THE COURT All right You are released, Mr
12 Patterson Thank you, sir

13 THE WITNESS Thank you

14 THE COURT All right Mr Bendle, do you have
15 anything further?

16 MR BENDLE No, ma'am, I do not

17 THE COURT Okay So you're going to go ahead
18 and rest your case now?

19 MR BENDLE I will rest my case, Your Honor

20 THE COURT All right Mr Ross, I know we have
21 your expert And anyone else?

22 MR GRIFFITH We're done

23 THE COURT And how long do we think he's going
24 to take? And I'm not limiting you to anything I just
25 need a guesstimate

1 MR ROSS I don't have a whole lot Maybe
2 thirty minutes for me I mean, I really don't have a
3 lot

4 THE COURT Okay And that's fine And like I
5 said, I am not limiting you in any way I just need to
6 make a quick phone call

7 MR ROSS I would love to take a break, if you
8 need to make a phone call

9 THE COURT Is that okay? Let's just -- we'll
10 go ahead and take just five minutes We'll all come
11 back, and --

12 MR ROSS That's great

13 THE COURT -- we'll finish up We're okay to
14 go?

15 MR ROSS Can I ask you a question real quick?

16 THE COURT Yes

17 MR ROSS When we wrap up with Al, do you
18 intend to hear closing arguments, are you going to have
19 us submit an order --

20 THE COURT Yeah

21 MR ROSS -- or how are you going to wrap this
22 up?

23 THE COURT What is Mitch shaking his head for?

24 MR ROSS Well, I hope it's -- I don't know

25 MR GRIFFITH Wouldn't you just make a decision

1 and then ask for a proposed order --

2 MR ROSS I was just --

3 MR GRIFFITH -- instead of everybody having to
4 write an order and --

5 THE COURT Well, I can do -- I've done it two
6 ways You know, I've done it where I just basically
7 say, this is probably where we're going and -- I can
8 tell you, in a construction case we can do it either
9 way I can ask each of you for a proposed order And
10 that's kind of like your closing argument, obviously
11 I have done that

12 Or I've done where kind of this is where we're
13 going, y'all, you lay out your numbers for me that you
14 presented, you lay out your numbers almost as if you
15 would stand in front of a jury and say, okay, this is
16 where we were That's provided I'm going to award
17 Mitch anything But that would be provided if that's
18 what I was going to do Does that make sense?

19 So I can tell you, as of right now I don't know
20 what I want y'all to do I will tell you this I
21 don't want y'all to waste time if you don't want to do
22 it that way In other words, you know, y'all can write
23 briefs And that's all fine and good, if you want to
24 But I don't know time wise I mean, it's funny that
25 you're the one that's objecting to it But --

1 MR GRIFFITH My thought was exactly what you
2 said don't waste time So if you make a decision and
3 just say, this is where we're going, I would like a
4 proposed order, and then should Tab be the one required
5 to write it, then -- you know, then we would all, you
6 know, at least get to look at it and make comments on
7 it before it's executed If I'm the one that's asked
8 to write it, then, you know, they would make comments
9 on it and whatnot I don't want to do the unnecessary

10 THE COURT And I agree with you The point,
11 though, is is that I think -- and I can tell you I'm
12 not going to sit here today and give y'all numbers, I
13 mean, I can tell you right now, because I've got to go
14 back through all the exhibits because some of these
15 y'all haven't even pushed up to me yet

16 So I guess my point was is that what you're
17 suggesting, Jeff, is somewhat like I like to do, is you
18 can say, okay, provided if I were going to, you know,
19 find that there were deficiencies and, you know, award
20 an amount -- you know, sometimes it'll just take a
21 breakdown And I've had people just even give me what
22 their breakdown was at mediation

23 I'm assuming y'all mediated this case I'm
24 assuming you had -- Jeff is looking at me like, no

25 MR ROSS No We mediated it, but that won't

1 be of any use to you

2 THE COURT Okay So I don't know if you've
3 redone your numbers And, you know what, I understand,
4 because this wasn't tried to a jury, that you didn't do
5 your typical boards or you didn't even do -- but I'm
6 assuming somewhere your guy kind of like -- I mean, you
7 can just -- if Tab wants to just say, my number right
8 here, you've got it, you know, that's --

9 MR BENDLE I don't have a problem with --

10 THE COURT -- that's what it is

11 I just don't know I haven't seen -- I haven't
12 seen what Al is going to put up yet, so I don't know
13 what you've got But let me see once I know what he's
14 got And I'm assuming -- I don't know if he did
15 numbers or not I'm assuming he had to have done
16 numbers, but I don't know that

17 MR ROSS No, Your Honor I'm relying on his
18 expert, as well

19 THE COURT Okay

20 MR ROSS I mean, I was merely asking just -- I
21 know that they're done different ways and --

22 THE COURT Yeah

23 MR ROSS -- I didn't know if you had a
24 particular way in which you did it which you could tell
25 me in advance, or just wait until the end That's what

1 I was asking about

2 THE COURT No I usually just do it depending
3 on -- based on how you-all present it If I look at
4 it -- quite frankly, if I think you haven't adequately
5 given me where I need to go number-wise, I may ask you
6 for a number breakdown just -- but I don't know yet
7 Let's just put it that way

8 MR ROSS Okay

9 THE COURT But I will say this I do not want
10 anyone doing unnecessary work That -- certainly, you
11 know, this is not an exercise in time I'm sure y'all
12 have plenty of work to do, and plenty of cases to work
13 on So I'm not concerned about that at all I don't
14 want to cause y'all problems or pain

15 MR ROSS Okay

16 THE COURT Okay?

17 MR ROSS When we're done with Al, then we're
18 done

19 THE COURT Then we'll talk about it Yeah
20 When we're done with Al, we're done I mean, obviously
21 you'll need to renew your motions and --

22 MR ROSS Right

23 THE COURT Obviously, I don't know You rested
24 your case Are there any motions at that point, or are
25 we just going to renew our earlier motions?

1 MR BENDLE Actually, I do intend to at the end
2 of the trial, or I could do it when we come back But,
3 obviously, I would like to preserve the record and
4 renew my motion for a directed verdict as to the
5 issues

6 THE COURT All right Take five

7 MR ROSS Please

8 THE COURT We'll come back, and then we'll
9 decide -- we'll decide how we're going to do it, Jeff
10 [Whereupon, a recess is taken from 4 38 p m to
11 4 47 p m]

12 THE COURT We'll go ahead and -- you can -- go
13 ahead

14 [Whereupon, Mr Schweichardt is duly sworn by
15 the Court]

16 THE COURT All right, sir Go ahead and take a
17 seat

18 [Whereupon, Mr Schweichardt takes the witness
19 stand]

20 [Whereupon, Mr Bendle enters the courtroom]

21 MR BENDLE I'm sorry, Judge

22 THE COURT That's all right, Mr Bendle I
23 just sworn him in That's it

24 MR ROSS Your Honor, I think we've already
25 stipulated that Mr Schweichardt is an expert in the

1 area of engineering and construction Is that correct?

2 THE COURT Is that correct, Mr Bendle and Mr
3 Griffith?

4 MR BENDLE That's correct

5 MR GRIFFITH That is correct

6 THE COURT All right He is admitted as an
7 engineer and an expert in that

8 You can go ahead, Mr Ross

9 MR ROSS All right

10 - - - - -

11 ALAN J SCHWEICHARDT,

12 Having Been First Duly Sworn,

13 was Examined and Testified as Follows

14 DIRECT EXAMINATION

15 BY MR ROSS

16 Q Mr Schweichardt, do you have a copy of your CV
17 with you?

18 A Yes, I do

19 MR ROSS We submit that as a defense exhibit
20 [Whereupon, Defendant's Exhibit Number 34, CV,
21 is marked by the court reporter]

22 THE COURT Mr Ross, keep going

23 MR ROSS All right

24 Q [Mr Ross] Mr Schweichardt, is that a current
25 and accurate copy of your CV?

1 A Yes

2 Q Okay I've got a few questions If you were
3 going to look to see if these AAC walls had rebar in them,
4 what method would you use?

5 A I would use drilling, and I would use a rebar
6 detector, would be the first way to start

7 Q What's a rebar detector?

8 A A rebar detector is basically a magnetic
9 detector

10 Q All right And that will tell you whenever
11 there's metal, whatever it covers is metal, is that
12 correct?

13 A Yes

14 Q Are there other methods, like using infrared or
15 x-ray?

16 A Infrared will give you a good idea of grouted
17 cells and actually how full the cells are grouted X-ray
18 is probably the most definitive It'll tell you grouted
19 cells, and the size of rebar

20 Q Okay And those are both nondestructive
21 methods, right?

22 A Yes

23 Q And if we somehow could walk around and get an
24 accurate sample of every inch of that wall relatively
25 easily, without doing any destruction, with the x-ray or

1 with the -- well, with the x-ray, correct?

2 A Well, the x-ray is just a more definitive,
3 nondestructive method, yes And you could look at entire
4 wall segments

5 Q Okay The method that was used to fix the small
6 block pieces and the intermittent Thin Set between the
7 blocks was to surface bond Is that your understanding?

8 A Right

9 Q And is that a method that you believe to be a
10 good way of correcting the block sizes and lack of Thin
11 Set?

12 A If there's a lot of missing areas of Thin Set
13 joints and a lot of smaller pieces of AAC block, a
14 comprehensive surface bonding is a good approach If
15 there's limited amounts of them, you could just go and
16 apply -- push the Thin Set in with a trowel in those
17 areas

18 Q And what does a Thin Set do for the blocks?

19 A The Thin Set provides the tensile strength
20 between the blocks

21 Q Okay There is a -- when Mr Still designed a
22 fix, he put a steel beam across the bottom of the windows
23 Is that required, according to the plans?

24 A No, it's not

25 Q Do you know why that was there? What purpose

1 does that serve? Does it need to be there for any
2 structural purposes?

3 A And just to clarify, it wasn't a steel beam It
4 was a steal plate below the windows

5 Q I'm sorry

6 A And, no, that's not required

7 Q Are you familiar with Hardyplank siding?

8 A Yes

9 Q Is it part of the manufacturer's instructions --
10 is it appropriate to install it with roofing nails?

11 A Yes The manufacturer's instructions, even most
12 recently for 2007, state a roofing nail is permissible
13 when you blind-nail Hardyplank siding

14 Q And when you're -- and I'm going to jump around
15 a little bit I apologize But when you're laying this
16 AAC block, we saw some pictures of it sticking out of the
17 garage where it's kind of toothing out We have every-
18 other block sticks out halfway Do you remember seeing
19 those pictures?

20 A Yes

21 MR ROSS Your Honor, do you know what I'm
22 referring to?

23 THE COURT I know exactly what you're talking
24 about

25 Q [Mr Ross] If someone were to go and adjoin the

1 wall, can they tooth the block in? Is that allowed by the
2 manufacturer?

3 A Yes In fact, if you're at a point that you're
4 going to be adding an AAC wall to it, you would want to
5 have the existing wall in a toothed fashion And so you
6 then could tooth the new wall into it, interlace the new
7 wall into it And where you have a corner where that
8 occurs, you definitely want them to be interlaced The
9 fact that one -- or a whole right-of-way or column of
10 several AAC blocks is protruding out is inconsequential
11 If that's going to be the final corner, you could simply
12 saw that out where it extends beyond the face of the other
13 wall

14 Q And I think we've already established But this
15 stuff cuts pretty easily, right?

16 A Yes

17 Q Okay And we saw several pictures where you can
18 see light in between the head joints Do you recall that?

19 A Yes

20 Q And does the manufacturer of this make an
21 allowance for that?

22 A Yes, they do I mean, in that one picture
23 that's in the Kern-Coleman report you see I think twelve
24 head joints, and you see one of them with light through
25 it Head joints are notorious to sometimes be

1 substandardly mortared It can happen It's imperfect
2 construction In the design of the AAC block, there's a
3 safety factor of more than two percent, or two -- a safety
4 factor over of a hundred In fact, when you're designing
5 this, the allowable stress is twenty-four pounds per
6 square inch And when you do an actual calculation, you
7 use twelve pounds per square inch And, actually, the ICC
8 report has discussion of unmortared head joints That's
9 not the case in this job From the photos I've seen,
10 you've got intermittent head joints that aren't filled
11 And that can be corrected with the surface bonding or
12 mortaring those head joints

13 Q All right And you said factor of safety of
14 two Can you explain what that means?

15 A Well, a factor of safety of two is the allowable
16 tensile stress for a system of mortared AAC blocks is
17 twenty-four pounds per square inch And that's an
18 allowable There's an ultimate above that, where it
19 ultimately fails The allowable is twenty-four But in
20 the design calculations, per Aercon, you're supposed to
21 use twelve So you're accounting for workmanship issues,
22 material issues when you're using number twelve, which is
23 well below an ultimate number

24 Q All right And I'm going to try and dumb that
25 down just a little bit more You got a block wall that's

1 say nine feet tall It'll withstand wind force, pushing
2 on the middle of the wall, of the ultimate number that you
3 referred to, right?

4 A Right

5 Q So let's say that number is a hundred

6 A Right

7 Q And the fact -- and the minimum force would be
8 say ten right?

9 A Well, in this case, for a ten-foot wall,
10 67-foot wall -- and this is -- and I just reviewed
11 Mr Still's calculations He's got thirty-three My
12 determination is thirty-three pounds per square foot is
13 allowable So that's the allowable wind load on an
14 unreinforced mortared wall from the side So in all
15 actuality, that could take a hundred pounds per square
16 foot And that doesn't equate to the wind speed The
17 thirty-three is based 120-mile-per hour -- mile-per-hour
18 three-second gust, which I used from Mr Still's
19 calculations

20 Q All right But what you're saying, then, is a
21 perfectly constructed wall will withstand far in excess of
22 that wind pressure that you're talking about, correct?

23 A Yes

24 Q And so this factor of safety takes into account
25 the fact that this wall is not perfectly constructed?

1 A Yes

2 Q In fact, have you ever seen any masonry, of any
3 kind whatsoever, perfectly constructed?

4 A No

5 Q Would it be -- I mean, based on your experience,
6 on a job of this size would you expect to have
7 architectural administration? Have an architect oversee
8 the construction?

9 A Well, I don't call it oversee, I call it
10 construction administration And I would say any job
11 where you're a high-end residence, you would want some
12 construction administration by an architect or an
13 engineer

14 Q And who generally -- does the general contractor
15 typically do that, or is that something the owner does?

16 A The owner typically contracts the professional
17 engineer or the architect

18 Q And what are the risks of not having this
19 architect?

20 A The risks are that the problems could get so far
21 along that you can't easily correct them And also, an
22 additional thing, as in any set of drawings the drawings
23 are imperfect, may contain some errors, may contain
24 omissions There needs to be interpretation of some of
25 the technical issues of the drawings, from the drawing to

1 construction

2 Q And we have already heard some issues with these
3 drawings, correct?

4 A Yes

5 Q With the windows not lining up?

6 A Yes

7 Q Mr Carpenter has testified that every single
8 one of the rough openings for the windows was too large
9 and so he had to replace and reframe all of them In your
10 opinion, is there an alternative means for making these
11 sizes correct?

12 A Well, based upon the pictures I observed, and
13 Mr Carpenter's testimony, he based his criteria on
14 reframing the rough openings based on that there was more
15 than a one-quarter-inch gap, or that OSB was used, and he
16 considered OSB as nonstructural It doesn't say that the
17 rough opening has to be plus or minus one half -- or the
18 whole rough opening a half inch It suggests that But
19 it says where your shim gap is going to be greater than
20 one-quarter inch, that you need to fill it with solid
21 material And OSB is a structural material that can be
22 used as a solid material to fill that rough opening until
23 your shim gap is one-quarter inch

24 Q So he could have gone back with pieces of OSB or
25 some other structural material, and screwed it or glued it

1 to the inside of these rough openings until he got the
2 size that he wanted, and then put the window in it, right?

3 A Yes

4 Q There's no need to reframe the entire rough
5 opening?

6 A Yes There's no need

7 Q And in your opinion, that would have been a much
8 quicker fix, correct?

9 A Yes

10 Q And less expensive?

11 A Yes

12 Q And with the exception of the one photograph, or
13 two photographs, have you seen any pictures of these large
14 rough openings?

15 A I saw the picture with the tape measure on it
16 The others, it's not clear whether it's before or after
17 repairs

18 Q And when I was -- when Mr Still was on the
19 stand yesterday, he was adamant that we needed thirty-two
20 inch spacing on the rebar

21 MR GRIFFITH Your Honor, I'm going to object
22 to his characterization of the testimony He's trying
23 to pit one witness against the other He just needs to
24 ask the question of his witness But he's pitting my
25 expert against his, and he's doing it improperly

1 MR ROSS Your Honor, I'm just setting up my
2 question I'm not going to ask whether or not he
3 agrees with Mr Still's testimony I'm just setting up
4 the question

5 THE COURT Why don't you go ahead and just ask
6 him the question of what his opinion is

7 MR ROSS Sure

8 Q [Mr Ross] Mr Schweichardt, you are a
9 professional engineer in this state, correct?

10 A Yes

11 Q Okay Did you do the calculations to determine
12 what the necessary spackling of the vertical rebar needs
13 to be on this AAC block wall?

14 A Yes, I did

15 Q What basis did you use to come up with your --
16 what numbers did -- where did you get your information
17 from?

18 A I used Mr Still's wind loads and his seismic
19 loads And parallel to the walls is where the seismic
20 criteria is the limiting criteria, meaning here's a wall,
21 it's a shear wall, and the earthquake loads are going to
22 shift it this way and that way Well, using Mr Still's
23 seismic criteria for that, wind load isn't the limiting
24 criteria, so it wouldn't apply But using the seismic
25 criteria, you determine your shear-wall segment size that

1 you would need to hold down the wall while it's being
2 pushed over

3 And using Mr Still's seismic number and his
4 shear-per-unit foot at the top, at a 10 67 I came up with
5 greater than eight feet is necessary And where I came
6 from that eight foot, I heard testimony that where cells
7 are grouted, and on the garage walls was the only -- where
8 I heard a good number And it's my recollection that Mr
9 Still testified that -- he said fifty percent of the cells
10 were grouted on the garage wall, and fifty percent
11 weren't

12 So that's where I came up with the number of
13 eight foot, because it was -- came out of the foundation
14 apparently at four feet, based upon testimony So I said,
15 all right, fifty percent are grouted, so I'm going to go
16 with eight-foot shear-wall segments And when I used --
17 and I did the calculations, and based upon the eight-foot
18 spacing, I came up with a safety factor of seven, still,
19 meaning you could probably extend your vertical rebar even
20 farther than eight foot

21 Q This spacing of eight foot if we put a rebar,
22 a grouted and rebar cell every eight foot, you're still --
23 this system is still way over-designed, then, correct?

24 A Yes For overturning moment

25 Q And that is the limiting factor The other

1 it's -- has even a greater design for, say, wind loads?

2 A Wind loads, it does not -- the design criteria
3 does not use rebar It uses the properties of the AAC
4 block and the mortar itself So perpendicular to the
5 wall, with wind blowing on the wall, it does not consider
6 the rebar, and the AAC block with the surface bonding on
7 it would be more than adequate for the wind loads
8 perpendicular to the wall

9 And then for uplift from the second floor down
10 to the first floor, again, going back and using Mr
11 Still's calculations, there's no net uplift from the
12 second floor down to the first floor, so, in fact, those
13 anchor bolts coming from the second floor down into the
14 top of the first floor in theory aren't even needed
15 because there's no net uplift You would certainly need
16 some for overturning moment And we've got them at
17 thirty-two inches on center So, again, the original
18 design was well over-designed

19 Q The thirty-two inches on center is acceptable?

20 A It would be acceptable, yes

21 Q Do you know what balloon framing is?

22 A Yes

23 Q That's where you have a gable end, is that
24 correct?

25 A Typically, the issue is a gable end, right

1 Q Okay Were there any gable ends on this
2 building?

3 A No And the big difference is a gable end
4 doesn't have load bearing on the wall in question On a
5 hip roof, the rafters bear on the wall It doesn't
6 qualify as a gable-end wall because it doesn't have load-
7 bearing on that wall, and because it's a larger gable from
8 say the bottom of your second floor up to your attic is
9 more likely to blow inward or outward Again, here we
10 also have a roof below it, that's outside of that wall,
11 that would prevent it from moving outward But it doesn't
12 meet the definition of a gable-end wall

13 Q At the end of the day, though, there doesn't
14 need to be balloon framing on this project to meet the
15 code correct?

16 A I haven't done those calculations But it
17 doesn't appear to require balloon framing In fact,
18 balloon framing was not called for in the original
19 drawings

20 Q Okay Why do you say that?

21 A Because at the top of those walls it required a
22 rim joist, an LVL rim joist, that would have interrupted
23 the framing coming up to the ceiling of the second floor

24 Q The rim joist would be at the top of the --

25 A Second floor

1 Q Top of the second floor and bottom of what would
2 have been the -- if there was a floor there, the third
3 floor?

4 A Bottom of the roof -- you know, the roof space,
5 the cathedral roof space

6 Q Okay But this rim joist cuts off -- would have
7 cut off any attempt to balloon-frame this wall, correct?

8 A Correct And now in place you've got three two-
9 by-sixes, which is a real -- is a pretty strong beam
10 That three two-by-six is what would be -- would prevent
11 that hinge action And then you have sheathing spanning
12 over it You've got a full sheathing spanning over that
13 triple two-by-six, so that's going to help prevent hinge
14 action Then you've got the roof on the outside So I
15 haven't done the calculations on that But balloon
16 framing was not required by the original drawings, and
17 it's not a typical gable -- it's not even a gable-end that
18 would require balloon framing per the wind load portions
19 of the code

20 Q This LVL beam that was cut at an angle, that we
21 spoke about at quite some length, the -- is that type of
22 cut allowed?

23 A A chamfer cut is allowed It's not talked about
24 explicitly in the LVL specifications The LVL
25 specifications talk about a notch A notch, a right-angle

1 notch, at the end of a beam is where you have the greatest
2 up-and-down force, shear force So that develops a stress
3 concentration in a ninety-degree corner So a chamfer
4 doesn't develop that That requires an engineering
5 calculation to determine whether that chamfer is adequate
6 or not And Kern-Coleman called for a repair there I
7 have not done the analysis, but their repair seems
8 reasonable

9 Q Okay The plans actually specify an I-beam,
10 correct?

11 A A W-16 I -- wide-flange beam, which means
12 sixteen-inch deep, yes

13 Q Okay And if someone tried to install a W-16 I-
14 beam there, would that extend through the roof?

15 A That would have extended through the roof, also,
16 because you see that that beam -- the existing -- or at
17 the time, the LVL wood beam only had five inches left So
18 the wide-flange beam would have required to be cut down to
19 five inches, too, with an acetylene torch So either way,
20 whatever beam was designed in there would have required a
21 chamfer cut at the end

22 Q Okay Where the roof had to be raised, correct?

23 A Yes

24 Q Did the plans specify a chamfer cut?

25 A No

1 Q Okay So the --

2 THE COURT Is that a design flaw?

3 THE WITNESS Yes

4 Q [Mr Ross] Did you -- is it your understanding
5 that when the windows were placed back into this building,
6 the rough openings were flashed, top, bottom and side?
7 And you may remember better than I do There was some
8 sill flashing, the window was caulked, stuck in the hole,
9 and then sticky on the sides and top, correct? Is that
10 what -- do you remember it being put in that way?

11 A Based upon the photos I've seen, that's what it
12 looks like I see the sill flashing I obvious can't
13 tell if it's caulked

14 Q Right

15 A But that was Mr Catterson's testimony

16 Q Now, these are Weather Shield windows?

17 A That's my understanding

18 Q Is rough-opening flashing on the sides and the
19 top in violation of the manufacturer's instructions for
20 installing these windows?

21 A Yes, it was

22 THE COURT Repeat that again Repeat your
23 question again

24 Q [Mr Ross] The question was is rough-opening
25 flashing on the sides and top of the window in violation

1 of the manufacturer's instructions?

2 THE COURT Weather Shield

3 Q [Mr Ross] For Weather Shield

4 A That goes inside the rough opening It is

5 Q Okay And the rough-opening flashing, we're
6 talking about that stuff that wraps the two-by-four,
7 correct? Not the stuff on the outside, stuff that goes on
8 the inside?

9 A Before the window That would have violated the
10 manufacturer's instructions

11 Q All right And that's the way they were put
12 back in this building, correct?

13 A I don't know

14 Q But if they were put back in this -- in the
15 building that way, that would be incorrect?

16 A Based upon my review of the Weather Shield
17 instructions, that I downloaded, that appears to be
18 current, yes

19 Q Okay

20 THE COURT Why is that?

21 THE WITNESS It's for the design-pressure
22 rating I've got it right here They say they want
23 the window flanges caulked right to the sheathing, all
24 around it Again, it just shows where manufacturer's
25 instructions sometimes violate the intent of the

1 building code where you would want --

2 THE COURT Is that unusual? Is that --

3 THE WITNESS That is a first -- one of the
4 first times I've seen where a manufacturer explicitly
5 calls out that detail for you to not have rough-opening
6 flashing I've seen it -- before all the discussion of
7 design-pressure ratings -- for a window to be called to
8 be caulked directly to the sheathing Yes, I've seen
9 that a long time ago But you don't normally see that
10 in newer windows

11 MR ROSS Do you still have that stack of
12 pictures back there, Your Honor?

13 THE COURT I don't

14 Q [Mr Ross] Yesterday we spoke of a column of
15 AAC block that was between two garage doors and there's no
16 rebar in that block Do you recall that?

17 A I recall discussion of that, yes

18 Q Okay Does there need to be rebar in that
19 block?

20 A If the header beam over the garage doors spans
21 across that short section of wall, there doesn't
22 necessarily have to be rebar in that column of AAC block

23 Q Is it your understanding that that header beam
24 does span it?

25 A Based upon Mr Catterson's description to me,

1 yes

2 Q There has been also a lot of discussion about
3 eight-inch bearing for lintels With the factor safety of
4 two, does that take into account where sometimes -- do you
5 want to see a picture?

6 A That picture right there looks to be --

7 Q Does that take into account where sometimes you
8 don't get eight inches of bearing?

9 A Well, it would I haven't done the
10 calculations But in the ICC report, it talks about eight
11 inches of bearing required It actually doesn't talk
12 about it in the instructions that I've printed out

13 But I just wanted to point out that I did see
14 conditions where the -- there was eight inches of bearing
15 For instance, in Exhibit 76

16 Q If there is not enough bearing surface for the
17 lintel to sit on, what happens?

18 A If there's not enough bearing, then you're going
19 to get cracks in the lintel or, most likely, cracks in the
20 support if there's not enough bearing surface

21 Q So you would see -- the block would crack,
22 essentially, right?

23 A It would crack or compress excessively

24 THE COURT Where would we be talking about like
25 in this photograph?

1 THE WITNESS Well, this one has it looks like
2 at least eight inches It looks like

3 THE COURT Okay

4 THE WITNESS It's got decent bearing But say
5 if it didn't, you would probably see --

6 Q [Mr Ross] What is that? Exhibit what?

7 A Where you would see it -- there's a picture of a
8 column that has over-bearing You would see some cracks
9 like that You could see this starting to crack The
10 support under it would start to crack

11 Q Maybe you would see something like that?

12 A That's the ultimate result of improper bearing,
13 Exhibit 81

14 Q And in Exhibit 85, it's pointed out that there's
15 only three inches of bearing there That block below it
16 is not cracking, right?

17 A It doesn't appear to be

18 Q So would that bearing -- that has not failed?

19 A It has not It doesn't appear to have failed

20 Q And alongside of these windows and doors, there
21 are two -- typically, there are two two-by-fours Or the
22 plans called to put two two-by-fours, correct?

23 A Commonly called a buck Yes

24 Q And that also is part of your bearing width,
25 right?

1 A That can be considered -- I wouldn't rely on it
2 I mean, it can be considered part of, you know, a look at
3 the safety factor of it You want to get eight inches of
4 bearing on the AAC block But, for instance, if you can't
5 because you don't want to cut -- obviously, you don't want
6 to cut your lintel And if there's rebar coming up within
7 that eight inches, then you have to perhaps slide the
8 lintel over and maybe get four inches of bearing So that
9 would be something you would look at -- an engineer would
10 look at on a case-by-case basis

11 Q So when the rebar is coming up from the ground
12 up into the bond beam, if it's too close to the window in
13 some cases you might have to slide the window -- the
14 lintel over just a hair so you don't run into this, you
15 don't have to drill your lintel, correct?

16 A Correct You're not allowed to drill the
17 lintel

18 MR ROSS That's all I've got Thank you

19 THE COURT Okay

20 CROSS-EXAMINATION

21 BY MR GRIFFITH

22 Q Mr Schweichardt, where does it say you can't
23 drill the lintels?

24 A In the instructions

25 Q All right Have you got a copy of that?

1 A Yes Well, it says you cannot cut the lintels

2 Q Okay There's a difference between cutting a
3 lintel and drilling a lintel, isn't there?

4 A Yes I guess so

5 Q As a matter of fact, you've got to have,
6 according to these specifications, eight inches, right?

7 A I cannot find --

8 Q Eight-inch bearing

9 A -- the eight-inch bearing in these instructions,
10 which would be, you would think, the main instructions

11 Q We're just going to the internet That's all
12 you did, wasn't it?

13 A Right

14 Q And I went to the internet and I found the same
15 thing, it looks like

16 A Yeah I knew I had seen it somewhere, so --
17 yeah, eight inches Right

18 Q All right It's clearly right there in what you
19 were relying on, correct?

20 A Correct

21 Q All right So really what you want to do is --
22 you were wrong about that What you want to have is you
23 want to have the lintel bearing eight inches so you don't
24 crush the block below it, correct?

25 A Well, that's what I said You do want to have

1 the eight inches I'm saying sometimes you might not be
2 able to get that eight inches

3 Q But then you bring the rebar up, and you can
4 drill in the core You can drill in it, and then you can
5 sit it on top of the rebar and you get the tie down
6 between the floor and the ceiling, which you as a
7 structural engineer know is required, correct?

8 A Well, you would want -- in theory, that's what
9 you would want But you don't want to be drilling in your
10 lintels, because you could break apart the -- you could
11 drill through the wire that's in the lintel That is your
12 main reinforcing in a lintel So really what you want is
13 your rebar outside that eight inches

14 Q Let's go back When did you form your opinions
15 in this case, Mr Schweichardt?

16 A Oh I've been involved in the case since
17 January of this year

18 Q January of this year
19 So you never saw any of the problems out there,
20 did you?

21 A No Not personally

22 Q This lawsuit was started in April of 2006 You
23 weren't called to, say, come out here and see how to do
24 it

25 A No

1 Q And since in January of 2006 -- or January of
2 2008, you've been involved in this case, right?

3 A Yes

4 Q And you're a pretty quick study, is that
5 correct?

6 A I don't know

7 Q When did you do these calculations you've been
8 telling the Court about?

9 A Actually, I did them last night

10 Q Why didn't you do them before last night?

11 A Because I don't think I had the Randy Still
12 calculations to look at, or I didn't know where they were,
13 or just workload

14 Q That's what I meant by pretty-quick study On
15 Monday you told my associate, Mike Freeman, I'm not real
16 sure why I'm here, didn't you?

17 A I can't remember if I said that I might
18 have -- I don't really recall saying that exact word

19 Q When did you go to the site?

20 A I have not been to the site

21 Q Never been to the site, correct?

22 A Correct

23 Q I mean, even to see it in the present condition,
24 correct?

25 A Correct

1 Q All right Are you, as a structural engineer,
2 willing to put your seal on the Kern-Coleman report right
3 now?

4 A That's not my job to put my seal on the Kern-
5 Coleman report

6 Q Would you put it on there?

7 A No, because that would be against my
8 licensing -- I would -- if I was called out to look at
9 this as Kern-Coleman, I would put together a report and
10 stamp the report That's my job

11 Q That's right And let me take off the John Kern
12 stamp, and let's ask about that Jonathan Livingston is
13 his stamp on that report?

14 A No I don't think it is, is it?

15 Q All right Why wouldn't -- he's the one that
16 went out there Why didn't he stamp it?

17 A I don't know

18 Q All right So the person that puts the seal on
19 it, he's the responsible person So it's really John
20 Kern's responsibility, right?

21 A Yes

22 Q All right But Jonathan Livingston went out
23 there and looked at it Is that done frequently in
24 engineering?

25 A Yes

1 Q Send an EIT out to look at something, and then
2 you'll stamp it for them?

3 A Well, if he covers the information, sees the
4 information, that's -- yes, that's done

5 Q All right Let's take John Kern's seal off of
6 it Will you put your seal on that report right now,
7 based on what you know in this case?

8 A No I find some errors in the report

9 Q Okay So, now, we've already talked about that
10 We found some errors You don't feel comfortable with his
11 report, do you?

12 A Portions of it I think can be clarified

13 Q All right You would admit, from an engineering
14 standpoint, that you've got to tie down the floor to the
15 ceiling, correct? You've got to -- from the top to the
16 bottom, you've got to tie it down?

17 A Through the wall Yes

18 Q All right And can you say that this building
19 was tied down?

20 A Based on Mr Catterson's testimony and based on
21 Mr Still's testimony, there were some grouted cells that
22 the rebar went from the foundation, was lapped, and it
23 went into the bond beam, based upon Mr Catterson's
24 testimony

25 Q Did you stay for Mr Still's testimony?

1 A Yes I was here for Mr Still's testimony,
2 portions of it

3 Q And he wasn't comfortable with it, as an
4 engineer, is that correct?

5 A Portions of it, yes That's why he added those
6 tube-steel columns

7 Q And you heard him talk about how he changed the
8 structure of it from going I believe laterally -- or
9 horizontally to laterally That's why he put the two
10 plates in, correct? Or you missed that?

11 A No, I didn't miss it I heard that he said that
12 he put the plates and welded them to the columns to tie
13 the whole structure together

14 Q All right And then he had to put an angle-iron
15 in there because there were not enough bolts --

16 MR ROSS Your Honor --

17 THE COURT Yes?

18 Q [Mr Griffith] -- at the top?

19 MR ROSS -- he's either bolstering his own --

20 THE COURT Or pitting, one or the other, and --

21 MR ROSS -- or pitting That's -- thank you

22 THE COURT It goes both ways I appreciate and
23 understand that

24 Q [Mr Griffith] And you don't think that it's
25 necessary to have sixteen-inches-on-center bolts tying it

1 down?

2 A No I think it could be done with thirty-two
3 inches on center from the second floor down into the
4 walls

5 Q And that's not what the plans call for, correct?

6 A Correct

7 Q That's not what, as everybody wants to call him,
8 at least as of that time, the engineer of record says --

9 MR ROSS Your Honor --

10 Q [Mr Griffith] -- is that correct?

11 MR ROSS -- it's the same issues, pitting
12 issues

13 Q [Mr Griffith] Is that what that report from
14 Kern-Coleman says?

15 MR ROSS Your Honor, can we --

16 THE COURT Okay Well, technically, he has
17 testified that he disagrees with portions of Kern-
18 Coleman's report, or whatever that engineer's fix is

19 I think, Mr Griffith, what you need to do is
20 focus on what portions of it possibly that he disagrees
21 with

22 MR GRIFFITH Okay

23 Q [Mr Griffith] Let's just go back, then What
24 I want to focus on right now is you need a complete -- you
25 need a complete load path from ceiling to floor, is that

1 correct?

2 A Yes

3 Q Cut through bond beams That breaks that path,
4 does it not?

5 A Right That needs to be fixed

6 Q You've got to fix that, correct?

7 A Correct

8 Q You saw photographs that that was wrong, didn't
9 you?

10 A Yes

11 Q That's not good construction practice, correct?

12 A Correct

13 Q You talked about head joints and bed joints, and
14 just out in the field you might not get it perfect You
15 don't expect construction to be perfect, do you?

16 A No

17 Q You expect it to be workmanlike, though, don't
18 you?

19 A Right

20 Q And if the specifications call for there to be
21 head and bed joints, you at least expect them to try and
22 put them there, is that correct?

23 A Yes

24 Q You don't expect them to have it like this, do
25 you?

1 A Well, that's -- a crack is not a head or bed
2 joint --

3 Q I understand

4 A -- if that's what you're pointing out

5 Q What about right there? Is that --

6 A Right

7 Q Is that a crack?

8 A That needs to be filled

9 Q What about that?

10 A That would need to be filled

11 Q That?

12 A [No response]

13 Q That?

14 A [No response]

15 Q That?

16 A And then look at the rest of the -- you can see
17 that the mortar joints are required to be one-sixteenth
18 inch, not one-eighth as people have been testifying One-
19 sixteenth inch is very thin, and you might have some minor
20 gaps and such

21 THE COURT Could we take a one-second break?

22 MR GRIFFITH Yes, ma'am

23 THE COURT Off the record, Mia

24 [Off the record momentarily]

25 THE COURT I want to hear from him what's wrong

1 with the Kern-Coleman report

2 MR GRIFFITH All right You want to hear it?

3 THE COURT He's my engineer

4 A Well, the big items are --

5 THE COURT We're back on the record, Mia

6 MR GRIFFITH You mean the engineer on the
7 stand as of now?

8 THE COURT Pardon? Yeah

9 MR GRIFFITH You mean the engineer on the
10 stand?

11 THE COURT I want to hear what he says

12 Q [Mr Griffith] What do you disagree with the
13 Kern-Coleman report?

14 A Well, the big item is he says that rebar is
15 required at both sides of the windows, and it was not on
16 the drawings to put it both sides of the windows He came
17 out with this requirement right here And if this is a
18 requirement, that would need to be a change order He
19 talks --

20 THE COURT Was it appropriate where it was on
21 the original plans?

22 THE WITNESS The original plans, ma'am, says
23 thirty-two inches on center

24 THE COURT But it doesn't say --

25 THE WITNESS That's well over design It --

1 that was -- that's fine Engineers are allowed to
2 over-design it But then he says in his report that it
3 could be at forty-eight inches on center And so
4 forty-eight inches on center is fine My calculations
5 indicate that we could have gone to eight feet on
6 center and it still would have worked And these
7 calculations, again, are based upon Mr Still's seismic
8 and wind loads

9 THE COURT Okay So when you say you disagree
10 with him, basically you think he's over-engineering it,
11 from your perspective, is that correct?

12 THE WITNESS That's right And, ma'am, from
13 the -- that requirement right there for the two
14 vertical number-five next to each window is why Mr
15 Still engineered those posts adjacent to each window
16 If that requirement is not there, then those posts
17 aren't required to be there

18 THE COURT Okay

19 Q [Mr Griffith] Didn't he do it, though,
20 instead, because it wasn't thirty-two inches on center
21 like the plans called for?

22 A No, he --

23 Q That's the way you had to put the rebar in
24 there?

25 A They are there because of the requirement to

1 have them on both sides of the window by this Kern-Coleman
2 letter But that's not in the drawings

3 Q Well, the drawings weren't done -- the building
4 wasn't done to the drawings They did it forty-eight
5 inches on center --

6 A Right I believe --

7 Q -- so, therefore, you've got to make a
8 modification He's saying, we aren't going to go back and
9 do every one thirty-two inches on center but we are going
10 to put it by the windows

11 A And the reason he's putting it by the windows is
12 because Mr Still thinks --

13 Q It's because they screwed it up the first time,
14 right?

15 THE COURT Okay Mr Griffith, do not cut him
16 off

17 A Because Mr Still went with that requirement
18 that -- the requirement, made after the drawings, that's
19 not required, that the rebar needs to be on both sides on
20 the windows And it's not required on this AAC block

21 Q [Mr Griffith] What was required, Mr
22 Schweichardt, was thirty-two inches on center What got
23 put in was forty-eight We have to repair or fix,
24 correct?

25 A You have to meet the Kern-Coleman requirement of

1 forty-eight inches on center that he said was -- which he
2 said was adequate So the thing -- you go in there -- is
3 you verify that it's forty-eight inches on center If you
4 find it ungrouted, you grout that cell

5 Q All right We've talked about finding the
6 cells, and you talked about x-raying Does your firm x-
7 ray cells?

8 A No We would have to subcontract that out

9 Q Pretty pricy, isn't it?

10 A Yes

11 Q As a matter of fact, you did it once for me?

12 A Not me personally, but the firm probably did

13 Q The firm did And y'all had to get somebody
14 else to come in and do it?

15 A Yes, sir

16 Q Out of Florida or Louisiana, I believe, is that
17 right?

18 A They come from all over

19 Q All right

20 THE COURT What kind of machine? I mean, is it
21 a hand-held machine? Or what do they do?

22 THE WITNESS Yes, ma'am It has a --
23 photographic It has film on one side, and a nuclear
24 instrument on the other, and it shoots x-rays through
25 it just like a doctor's office But it's hard to --

1 it's expensive to take it across state lines

2 Q [Mr Griffith] You talked about -- I just want
3 to make sure I'm going to hit some high points, because
4 I've got to remember my jury

5 You were talking about surface bonding The ICC
6 report, that basically tells the code people how we're
7 going to do this, right?

8 A For an alternative product, yes, or for any
9 product that says that this product meets code Yes, sir

10 Q And in this, the ICC report, you would agree
11 that surface bonding, first of all, was not the design
12 intent of the plans?

13 A Right That's correct

14 Q All right And you would agree with me, then,
15 that the intent has changed now to surface bond, per the
16 Kern-Coleman report, is that correct?

17 A Yes And I think that surface bonding is to
18 make up for the head joints and bed joints and slivers
19 That's the purpose of it

20 Q And you would agree, based upon Exhibit 101,
21 that to do a surface bond and get structural capacity, the
22 specifications from Bonsal require that it be bonded on
23 both sides, is that correct?

24 A Yes

25 Q All right And, as such, you would have to take

1 the stucco off in order to get the Bonsal on the outside,
2 is that correct?

3 A Well, not exactly The -- all the surface-
4 bonding material has to be is fiber-reinforced cement
5 material that has a compressive strength greater than the
6 material it's bonding And AAC has a very small
7 compressive strength of like 600 psi that many stucco base
8 coats can meet that So testing might need to be done
9 But the reason I think surface bonding would have to be
10 done is on the inside to fill those -- some of those
11 joints I'm not using -- I'm just using it to make sure
12 that -- or I would have used it just to make sure all your
13 head and bed joints were filled and any small pieces were
14 fully bonded to each other, but then you're meeting the
15 unreinforced AAC requirement in the ICC report

16 Q And, as such, we talked about -- you just said
17 you didn't think you would have to take the stucco off I
18 think the judge knows this, but how is stucco attached to
19 the wall?

20 A Well, stucco -- I don't know, in this case If
21 it's pargeted, then it may not have to come off If it's
22 mechanically afastened, yes, it would have to come off

23 Q Okay You just don't know?

24 A I don't know

25 Q And you agree with me that this ICC report does

1 not test surface bonding, is that correct?

2 A No But it discusses unreinforced AAC, which is
3 what you're doing the surface bonding to become a well-
4 unreinforced AAC system

5 Q And the AAC or the Aercon actually makes
6 differences for the unreinforced when you're dealing in a
7 seismic area versus when you're not in a seismic area, is
8 that correct?

9 A Unreinforced is allowed in a seismic design
10 category D, which is what Mr Still determined that this
11 was in

12 Q So you believe that unreinforced is proper in
13 this location?

14 A Yes, with the reinforcement, like I said, at
15 eight foot or greater Or eight foot would make it work

16 Q Even with the --

17 A I can walk through the ICC with you and show how
18 it allows it

19 MR GRIFFITH What I'm looking for is the
20 photograph Oh It's probably right here

21 Q [Mr Griffith] That particular photograph,
22 which is Plaintiff's Exhibit Number 70, shows various
23 small cuts going through there -- or small slivers of the
24 AAC block Is that the way that you're supposed to put
25 this together?

1 A It doesn't -- it states that your -- you should
2 offset your vertical joints by four inches So something
3 like that would probably need to be corrected

4 Q Okay

5 THE COURT How do you correct it?

6 THE WITNESS Well, that's where you might have
7 to cut out and -- cut out that AAC and put in --

8 THE COURT You know, slivers and --

9 THE WITNESS Well, and the instructions does
10 make mention of slivers being used or small sections
11 being used We were talking about lintels A filler
12 piece of block may be required to achieve -- so it's an
13 engineering judgment You want your vertical joints to
14 be offset by four inches You can see this doesn't
15 offset by four inches, because it's a two- or one-inch
16 sliver So at this section you would probably have to
17 cut out that AAC or plate across it or something right
18 there

19 MR GRIFFITH And I'm not here to beat a dead
20 horse I'm not going to cut my case off, but I do
21 understand my jury again

22 THE COURT No I just --

23 MR GRIFFITH I'm just making a little light of
24 this It is late in the day I'm sorry

25 [Off the record momentarily]

1 Q [Mr Griffith] The AAC appears to have -- it's
2 cored out, is that correct?

3 A Yes, sir

4 Q And that's how you're supposed to run your
5 grout, is that right?

6 A That's where rebar and grout can go, yes, sir
7 Or a tie rod without grout

8 Q Okay And, in any event, it would be stacked up
9 in this fashion, correct?

10 A Correct

11 Q All right And then there would be another one
12 under it?

13 A Yes

14 Q And that would come -- and they would be blocked
15 like that, is that correct?

16 A Yes That's the way to do it

17 Q Obviously, I've got to --

18 A Right

19 Q -- knock them a little bit closer together

20 The design intent of the plans as we talked
21 about at thirty-two inches on center, the way those are
22 cored, can you get it thirty-two inches on center with
23 these blocks?

24 A Those are twenty four, so --

25 Q Right So you're actually going to get it at

1 forty-eight?

2 A That seems to be, yeah, a multiple of twenty-
3 four

4 Q Because it looked like Mr Still did a
5 measurement that was four inches And then on a twenty --
6 what is it, on a twenty-inch block?

7 A Twenty-four-inch block?

8 Q And this is a twenty-four-inch block If it's a
9 twenty-four-inch block, you're not going to get it right
10 But on a twenty-inch block, you're going to get sixteen
11 and sixteen, to make it thirty-two inches on center,
12 correct?

13 A Yes

14 Q All right And, as such, what they actually
15 ordered out there and what they got out there was the
16 wrong product to begin with, is that correct?

17 MR ROSS Objection, Your Honor Pure
18 speculation He has no idea what they ordered -- what
19 they were ordering out there, or what they intended to
20 order out there

21 THE COURT Okay I guess the question, then,
22 becomes based on the plan, what the plan called for,
23 which was thirty-two inches on center, you could not
24 build according to plan, based on the block that was
25 used, correct?

1 MR GRIFFITH That was out there on the site
2 Yes, ma'am

3 THE COURT That was used Is that what you're
4 telling me?

5 THE WITNESS Yes, ma'am Yeah It would be --
6 I don't see how you would do it with a twenty-four-
7 inch-long block --

8 MR GRIFFITH No further questions

9 THE WITNESS -- unless it was drilled on site

10 Q [Mr Griffith] If you got the -- if you're the
11 subcontractor that puts up the AAC block and you get the
12 wrong material, you're supposed to go to the general and
13 say we need the right material, correct?

14 A Yes

15 THE COURT And, Mr Schweichardt, I believe --
16 and I'm not sure it was you that testified Someone
17 else may have testified before, and I believe I saw you
18 sitting back there What either the general or the
19 specialty contractor does is sends a copy of the plans
20 to Aercon, and they're the ones that determine what
21 needs to be I guess for the material, is that correct?

22 THE WITNESS That's the way I understand,
23 ma'am But for the blocks, I don't know that their
24 drawings discuss the actual block-wall pieces, except
25 for the lintels

1 THE COURT You're talking about Aercon's
2 drawings?

3 THE WITNESS Right Yes, ma'am

4 THE COURT That they send back?

5 THE WITNESS They mainly -- right They mainly
6 discuss the floor panels and lintels, but they don't
7 piece out every individual wall piece

8 Q [Mr Griffith] It's not like a puzzle You've
9 got to put -- you've got to sort of understand the picture
10 some, don't you, when you're putting it together?

11 A Right But you -- yeah But the lintels come
12 out -- they should come out the right size

13 Q It looks like -- I believe all the lintels come
14 out about eight feet eight --

15 A I don't --

16 Q I don't know

17 A I don't --

18 Q I think -- it's a standard lintel size, though

19 A I don't know the answer to that

20 MR GRIFFITH Okay That's all the questions I
21 have

22 MR ROSS A couple of follow-ups

23 MR GRIFFITH Excuse me If Mr Bendle is
24 going to pass -- let's go ahead and go in order

25 MR BENDLE I was just going to say I don't

1 have any questions for this witness

2 MR ROSS I just asked Mr Bendle, so --

3 CROSS-EXAMINATION

4 BY MR ROSS

5 Q For the record, when I was asking you questions,
6 were all your answers to a reasonable degree of
7 engineering certainty?

8 A Yes

9 Q Okay And is water damage a structural concern
10 in wood framing?

11 A Yes

12 Q What about mold? Is that also structural
13 concern?

14 A It can be, because mold is a fungus and fungus
15 is what eventually eats mold -- I mean, eats wood

16 Q And would you be able to tell me if one window
17 is a representative sample of a hundred?

18 A No I would say you would need -- I mean, it's
19 not a statistical analysis, but you would want to see at
20 least ten photos

21 Q Ten different windows?

22 A Yes

23 MR ROSS Thank you

24 THE COURT Do we have a picture of the doors
25 anywhere in here, Mitch --

1 MR GRIFFITH Yes, ma'am

2 THE COURT -- that you can pull for me? Maybe
3 you're anticipating your audience

4 MR GRIFFITH No Actually, I meant to do that
5 with Mr Patterson

6 THE COURT I think it was --

7 MR GRIFFITH I think it was --

8 THE COURT It's not on the ones on the foam
9 core, it's on one of the regular ones

10 MR GRIFFITH That's right

11 [Whereupon, Mr Griffith reviews documents]

12 MR GRIFFITH What did you want?

13 THE COURT I want a picture of the bottom of
14 the door --

15 MR GRIFFITH Right

16 THE COURT -- one of the doors

17 [Whereupon, Mr Griffith reviews documents]

18 [Off the record momentarily]

19 THE COURT Okay What kind of door is that?

20 THE WITNESS I don't know It could have a
21 different face, or it could be fiberglass, it could be
22 metal But that's wood core, and the wood has
23 obviously absorbed moisture from the bottom and started
24 to decay That would not be a function of
25 installation It could be -- it's probably a function

1 of the door is not treated properly

2 MR GRIFFITH Can I follow up that?

3 THE COURT Please

4 RECROSS-EXAMINATION

5 BY MR GRIFFITH

6 Q Aren't the doors supposed to be primed on the
7 top and bottom before they're installed?

8 A Well, this is a -- that's of the frame This is
9 of the slab, the operating slab And that typically --
10 it's going to come pre hung, so there's no way to get to
11 the bottom of that I don't know if that's bare wood or
12 not, but eventually that does need to be painted But how
13 do you get -- I mean, I guess you could open it and paint
14 it But, yeah, doors are supposed to be primed and
15 painted at exposed edges

16 Q Right

17 THE COURT Are you saying they come pre-primed?

18 THE WITNESS Some do Nowadays, you're finding
19 them pre-primed But you still see some coming from
20 the distributor with raw wood exposed

21 MR GRIFFITH And I wanted to follow up just
22 one or two more questions

23 Q [Mr Griffith] About the LVLs LVL -- there,
24 there is a limitation on the cut you can make on the LVL,
25 is that correct?

1 A Well, a notch cut, not a chamfer cut A chamfer
2 cut like this is a condition not covered explicitly by the
3 manufacturer You would need to ask the engineer And
4 the engineer saw this Kern-Coleman saw this and, I mean,
5 specified a repair that I probably would have specified

6 Q Okay And at that particular location, when
7 you've got four two-by members there as a temporary
8 support, it looks like loading up pretty heavy right
9 there I'm not -- again, I'm not an engineer A lot of
10 people have said that in the courtroom this week But I'm
11 not But that doesn't look very good, does it?

12 A No But I can tell you, if those are four two-
13 by-fours, that can carry about 10,000 pounds I mean,
14 that could be a function of jamming that -- that four two-
15 by-fours being too long and being jammed into place So
16 that could be that Or, I tell you, four two-by-fours is
17 what I've specified for the end of LVLs I've just done
18 some calculations on it, and I -- the capacity of four
19 two-by-fours is upwards about eight to 10,000 pounds

20 MR ROSS What if those were two-by-sixes? I'm
21 sorry, Mitch

22 THE WITNESS If they're two-by-sixes, then
23 you're talking 12,000, thirteen, 14,000 pounds
24 capacity

25 Q [Mr Griffith] So if they're bending, there's

1 about 12,000 pounds on it? Is that what you're saying?

2 A No I'm saying the bending could be a function
3 of it was too long when it was put in and it's banged into
4 place But -- so I have not done the load calculations on
5 that LVL

6 Q And in those photographs that you looked at, did
7 you see where that the floor had sagged over an inch? Did
8 you hear Mr Carpenter's testimony about that?

9 A No, I didn't

10 Q And just in conclusion you talked about
11 drilling holes to find rebar And it looks like Mr
12 Still, from his exhibits, he had done the drilling there
13 not just in one, two places, it looks like he had done an
14 adequate number of holes Do you disagree with anything
15 he found?

16 A No, I don't But he doesn't sound explicit in
17 how many cores are ungrouted, how many cores don't have
18 the rebar at forty-eight inches on center He seems to
19 have found it at a lot of places, but I don't have a good
20 feel for -- other than his testimony yesterday -- he said
21 at the garage, fifty percent

22 Q Once you get to a lot of places, don't you start
23 making some assumptions in engineering?

24 A Yes

25 MR GRIFFITH All right

1 [Off the record momentarily]

2 MR ROSS I do have a couple of questions for
3 you

4 FURTHER REDIRECT EXAMINATION

5 BY MR ROSS

6 Q Mr Schweichardt, when you chamfer the end of
7 that beam off, what's going to be the mode of failure as a
8 result of that chamfer?

9 A A shear The beam doesn't carry any bending
10 moment at the ends It's a shear, an up and down, so
11 you're going to see a diagonal or a vertical crack if it's
12 going to fail

13 Q So that chamfer has absolutely no effect on
14 whether that beam is bowed in the middle, is that correct?

15 A Oh That's correct, yeah The chamfer doesn't
16 have anything to do with the strength of the beam at the
17 middle

18 MR ROSS Nothing else

19 THE COURT All right Everyone -- you're done
20 Thank you

21 THE WITNESS Thank you, ma'am

22 [Whereupon, Mr Schweichardt is excused and
23 exits the witness stand]

24 [Off the record momentarily]

25 MR GRIFFITH Simply for the record, are we

1 through?

2 THE COURT For the record

3 MR ROSS No, we're not, Your Honor

4 THE COURT Obviously, we need some motions

5 MR ROSS Yes, Your Honor

6 MR GRIFFITH I didn't know if we had more
7 testimony That's fine

8 MR ROSS I rest, Your Honor

9 THE COURT Thank you, Mr Ross

10 - - - - -

11 RENEWED MOTIONS

12 THE COURT Any motions?

13 MR BENDLE Your Honor, I do have a couple just
14 very briefly, because they have been heard What I
15 would like for the Court --

16 THE COURT You don't even need to be brief, if
17 you want

18 MR BENDLE -- to consider is just to renew my
19 motions that I brought earlier at the end of
20 plaintiff's case, the first being the breach of
21 warranty claim as to my client individually

22 Again, I would submit to the Court that the
23 contract lays out what the scope of work was for
24 R Design, not Aten individually The contract was
25 created from that scope of work, from which the

1 warranties flowed Those warranties are created,
2 specifically in that contract Any implied warranties
3 outside of what's in the contract were warranties that
4 had to be honored by R Design, who was the entity that
5 contracted to do this work

6 So I would renew that -- along those lines, I
7 would renew that motion and ask that the Court dismiss
8 the breach of warranty claims as against my guy
9 individually I do concede that they would exist as to
10 R Design, LLC

11 THE COURT Mr Griffith?

12 MR GRIFFITH Judge, I made that argument just
13 a minute ago, a few hours ago I would stand by my
14 argument at that time, and I believe that Your Honor's
15 ruling was correct There has been no new evidence to
16 change your prior ruling

17 THE COURT Okay It stays the same My ruling
18 remains the same, based on the same grounds as
19 previous

20 MR BENDLE The second motion, and what I would
21 consider to be the most important, Your Honor, is with
22 regard to the individual liability of my client, Carl
23 Aten, as a member-manager of the LLC

24 Again, I would renew what I said earlier with
25 regard to my reliance on the Uniform Liability Company

1 Act and the sections of that that discuss protections
2 afforded to managing members so long as they don't act
3 outside of the scope of their role as a managing
4 member And I would conceded that any arguments that
5 are made under any separate code sections, inclusive of
6 the Residential Builders Act, would not necessarily
7 trump the statute, the Limited Liability Company Act
8 statute, with regard to those protections afforded to
9 the individuals within that

10 THE COURT Okay Respectfully, I deny that
11 motion, again, based on the same earlier grounds as
12 before

13 MR BENDLE Thank you, Your Honor

14 THE COURT Absolutely Mr Ross?

15 MR ROSS Your Honor, I would like to renew my
16 earlier motions for the same reasons I don't think I
17 need to go through the testimony again I just
18 reiterate what I've said earlier

19 THE COURT Okay

20 MR ROSS I also do have an additional motion,
21 Your Honor

22 THE COURT Okay Well, let's go ahead And,
23 obviously, I deny those based on --

24 Stay standing You're good

25 I deny those based, on my earlier rulings and on

1 the same grounds

2 - - - - -

3 MOTION

4 MR ROSS Okay My additional motion, Your
5 Honor, is on the cross-claim for indemnity by R Design
6 and Carl Aten As you know, equitable indemnity is
7 only available to those that come to the table with
8 clean hands Mr Aten has admitted liability on a
9 number of issues here in this case today, therefore, he
10 comes to the table with unclean hands and cannot claim
11 equitable indemnity against my client I therefore ask
12 that it be dismissed

13 MR BENDLE Your Honor, while my client has
14 admitted that there have been certain deficiencies in
15 this project that he was -- that his company was hired
16 to supervise the work of, it was actually Catterson and
17 his company that was hired, via contract, to actually
18 perform that work We believe, and there has been
19 testimony from their own expert, that the work was done
20 with deficiencies We relied upon their own expertise
21 in dealing with this type of framing and block work
22 that the design plans called for That was -- it was
23 represented to my client that Catterson was capable of
24 doing that That's what gave rise to the contract

25 The contract sets forth the scope of work It

1 was not completed, it was not done correctly, and
2 absolutely with our reliance and the contract that was
3 set forth between those two parties, we do feel that we
4 are owed indemnity for the deficiencies that were
5 caused from the work of Catterson And I believe that
6 those -- that we've properly pled, and I think we've
7 properly proven the fact, that they do owe us that as
8 our subcontractor

9 MR ROSS Your Honor, nowhere in there did he
10 state that they came to the table with clean hands I
11 mean, they admitted liability to a number of issues
12 That is the determining factor The law is clear on
13 that

14 MR BENDLE Your Honor, clearly their hands are
15 not clean, either And certainly we're not taking
16 responsibility for all of the deficiencies in this
17 building

18 MR ROSS I'm trying to find you a case, Your
19 Honor

20 THE COURT That would be a good idea

21 MR ROSS What's that?

22 THE COURT That would be a good idea

23 MR ROSS I just have to find my --

24 [Whereupon, Mr Ross reviews documents]

25 MR GRIFFITH Judge, while he's looking for his

1 case --

2 THE COURT Yeah

3 MR GRIFFITH -- I find this a fascinating
4 issue And I'm not here to argue for Mr Ross, but I
5 believe he's right probably as to equitable indemnity

6 THE COURT Right

7 MR GRIFFITH The flip side of it, though, is
8 there is an issue that I wanted to hear -- and I don't
9 know how to bring it up, but simply that in a
10 contribution action I think would be the proper motive
11 for him However, the statute says you can make it by
12 motion at the end of the case So I understand, you
13 know, if that could be made at this time

14 MR ROSS The first thing I would say, Your
15 Honor, is this is not Mr Griffith's argument

16 The second issue is contribution isn't ripe
17 until the party is paid money

18 The issue at hand is one of equitable indemnity
19 Ordinarily, if one person is compelled to pay damages
20 because of --

21 THE COURT No

22 MR ROSS -- negligence imputed to him as a
23 result of a tort committed by another, he may maintain
24 an action over for indemnity against the person who's
25 wrong has thus been imputed to him, but this is subject

1 to the provisor that no personal negligence has -- of
2 his own has joined in causing the injury And it's
3 Addy v Bolton, 257 S C 28

4 THE COURT How about giving me that copy

5 MR ROSS Ma'am?

6 THE COURT Give me that copy Could I read it?
7 You only have one copy, I presume?

8 MR ROSS I don't even know that I've got the
9 case with me I've got the cite

10 THE COURT Oh, okay Oh, you're quoting out of
11 a brief?

12 MR ROSS Yes, ma'am

13 THE COURT I'm sorry Did you get the cite?

14 THE LAW CLERK Please say the cite again

15 THE COURT Will you do it again for her?

16 MR ROSS It's 257 S C 28

17 THE COURT Okay Mitch now wants to weigh in

18 MR GRIFFITH Let me just throw something out
19 for the Court's benefit while the clerk is there
20 There's a case of the Woodchuck or Woodchucker case,
21 which is -- I think it's Woodchuck Woodchuck Chipper

22 MR FINN Vermeer vs Wood/Chuck Chipper, Your
23 Honor

24 MR GRIFFITH Vermeer That's it

25 THE COURT Vermeer

1 MR GRIFFITH And Judge Ralph King Anderson
2 wrote the opinion on that, so you will find pretty much
3 the law of indemnity in that case, I believe And I
4 know that Becky Laffitte was the defense lawyer and it
5 was out of Florence, or something like that I'm just
6 throwing out words to word search it

7 THE COURT So you can find it

8 MR GRIFFITH I'm giving you the -- I can't
9 remember what it is, but that's a great case

10 MR BENDLE Your Honor, what I was just going
11 to suggest, seeing as how we don't have --

12 THE COURT Don't worry I'm going to go ahead
13 and sleep on this anyway

14 Why don't y'all do this You find what ever
15 you've got, Mr Bendle Mr Ross, we're going to pull
16 up your Addy case, obviously I'll find Vermeer Let
17 me do a little of my own research And that's just one
18 thing we won't rule on

19 MR BENDLE With regard to just this one issue,
20 do you want anything submitted from either of us?

21 THE COURT Just case law, if you can find it

22 MR BENDLE Right I'll be glad to do that

23 THE COURT -- to support your opinion And
24 that's it

25 And if you would just -- if you don't mind

1 either sending Aaron a cite, or just scan it and e-mail
2 it to me

3 MR BENDLE I'll be glad to do that

4 THE COURT But do it fast, like tomorrow

5 MR BENDLE I'll be here tomorrow

6 THE COURT Okay Poor guys Well, I don't
7 mean at like 8 00 I mean, like, you know, at the end
8 of the day I would consider it just a continuation of
9 the trial You can go back to your office and say, I
10 can't do anything, I still have to finish up

11 Yes?

12 - - - - -

13 MOTION FOR A DIRECTED VERDICT

14 MR GRIFFITH The plaintiff would move for a
15 directed verdict on the grounds that the evidence taken
16 in light most favorable to the defendants, both of
17 them, would show that by their own admissions, as well
18 as their experts', that they, [a], breached the
19 standard of care for good construction practices, had
20 various code violations, and, as such, they did not
21 build in a good workmanlike manner Therefore, I think
22 there's also testimony that the contract was not
23 followed by Mr Aten, so I believe that I would be
24 entitled to a directed verdict on all issues However,
25 I understand that damages are still before the Court

1 But I do believe that we are entitled, based upon the
2 evidence taken in the light most favorable to them,
3 that the plaintiff is entitled to a verdict

4 MR ROSS Your Honor?

5 THE COURT Yes

6 MR ROSS Can we just be clear as to are you
7 speaking to both of us, or one of us?

8 MR GRIFFITH I think as to --

9 THE COURT He was speaking as to both of you,
10 yeah

11 MR GRIFFITH -- both of you There was
12 testimony --

13 MR BENDLE All right Well, Your Honor, the
14 damages are still before the Court I think it's
15 clear You know, you've been here, obviously And we
16 have conceded that there were some deficiencies with
17 this building We're not hiding that, we're not
18 denying that The damages are what this case is about,
19 as far as we are concerned, and that's what we came
20 Monday to argue So I don't necessarily disagree with
21 Mr Griffith with regard to some of those things

22 Now, we're not going to concede that we did any
23 actual physical work on this project, so I'm not going
24 to concede that we didn't do work in a workmanlike
25 fashion But I definitely will concede that we have

1 admitted to some of the deficiencies that have been
2 outlined by the various experts and witnesses

3 THE COURT Okay Mr Ross?

4 MR ROSS Your Honor, I am not willing to
5 concede that at this point I --

6 THE COURT Didn't Mr Catterson, though,
7 admit -- and that was Mr Catterson that admitted to
8 specific deficiencies?

9 MR ROSS Your Honor, my recollection and -- my
10 recollection is Mr Catterson admitted to doing things
11 that were not in accordance with what was on -- what is
12 on that plan, as we speak, but there have been changes
13 to that plan by R Design or somebody up over his head,
14 which Mr Catterson followed So the contention that
15 we have to build exactly as to what is on that set of
16 plans I have an issue with, in the fact that those
17 plans have changed, the fact that there's not a change
18 order It's not even part of my contract that I have
19 to have a written change order We were given verbal
20 instructions that changed or modified those plans, and
21 that is what we followed, Your Honor

22 THE COURT Mitch, do you have notes, or do you
23 know specifically, as to whether or not Catterson
24 admitted to deficiencies or code violations? I'm just
25 looking through my notes Hold on

1 [Whereupon, the Court reviews documents]

2 MR GRIFFITH Judge, just to take one item, I
3 believe that he said he agreed with the Kern-Coleman
4 report, at item number three, that the lintels were not
5 bearing at the eight-inch as required I believe he
6 also said that if mortar -- one-eighth-inch mortar beds
7 were missing, that would be his job He didn't agree
8 that all of them were missing He did agree that there
9 were some, but he didn't agree that they were all
10 missing He took issue with it But those are the two
11 issues that I remember having specific conversations
12 about or I believe I remember having specific
13 conversations about I'm looking for my notes, though

14 MR ROSS Your Honor, even if that is true, we
15 would take the position that the lintels were supplied
16 by the manufacturer and, therefore, we have the right
17 to rely on the manufacturer They were given a set of
18 plans, and we were given a set of lintels and said, put
19 these lintels there The manufacturer has the engineer
20 working for them to specify where to put the lintels,
21 and they arguably are the only ones that can override
22 their set of standard instructions

23 The other issue that Mr Griffith mentions is
24 missing mortar in between the blocks, which there was
25 testimony that it's standard practice to put a surface

1 coat on the outside, after these blocks are installed,
2 to make up for that

3 THE COURT His testimony was -- Mr Catterson's
4 testimony was is that he didn't realize he had to have
5 eight inches on each side of the lintels That's what
6 he testified to

7 MR GRIFFITH And if it doesn't meet the
8 specifications, it's wrong

9 MR ROSS Your Honor, and what I said earlier
10 is the lintels were supplied by the manufacturer They
11 were given a set of plans They sent lintels down
12 They are the only ones that can override the standard
13 specifications Apparently they did Mr Catterson is
14 not an engineer

15 THE COURT But it's his job -- if materials are
16 put to the job site and if they're improper, it's his
17 job to send them back, or say they're improper, or to
18 go to Mr Aten and tell him they are improper

19 MR ROSS Yes, Your Honor But I think that he
20 also has a right to rely on the engineer If the
21 lintels were sized by somebody at Aercon, he has a
22 right to rely on them

23 MR GRIFFITH Judge, I'm going to chime in here
24 just a second I don't remember there ever being any
25 evidence that these lintels were the wrong ones

1 They're eight-foot lintels, and it's a four-foot
2 opening, or -- what's a window? I've got an engineer
3 in here, don't I?

4 MR ROSS I don't know that we talked about the
5 window openings

6 MR GRIFFITH There's no testimony that it
7 couldn't work, except Mr Schweichardt, and then he
8 changed it when we talked about it about running the
9 rods up in there And if you want to take it under
10 advisement --

11 THE COURT What I'm going to do --

12 MR GRIFFITH -- that's fine with me

13 THE COURT Yeah, I will Let me take a look at
14 it I think --

15 Tab, I think your client -- and this is not
16 my ruling But I'm going to tell you I do think that
17 Mr Aten adequately testified that he was the G C , and
18 that there were code violations, and that there was
19 deficiencies And I think both times he was up he
20 testified to that

21 But I want to go through the testimony again of
22 Mr Catterson Let me just look through again

23 MR ROSS Your Honor, may I chime in something,
24 additionally?

25 THE COURT Yes

1 MR ROSS I know this has been an issue
2 throughout this case, but Catterson and Sons was the
3 contractor actually doing the work, and I think you've
4 got to go through a couple of layers before you get to
5 Mr Catterson installing a lintel improperly These
6 things were installed by Catterson and Sons
7 Construction I mean, he was merely in a -- a go-
8 between between Got You and R Design

9 THE COURT And Got You was his superintendent?

10 MR ROSS Got You was his --

11 THE COURT Catterson's superintendent? Hired
12 by Catterson?

13 MR ROSS Yes, Your Honor

14 THE COURT Paid for by Catterson?

15 MR ROSS That's correct

16 THE COURT Chosen by Catterson?

17 MR ROSS And Got You was the one that was
18 running the crews

19 THE COURT And Got You was directed by
20 Catterson, correct?

21 MR GRIFFITH I don't want to confuse the
22 record with discussions in chambers I don't remember
23 a Got You, in this trial, in this courtroom

24 MR ROSS I believe I asked Carl about it
25 yesterday

1 THE COURT I think he did testify that the --

2 MR GRIFFITH Maybe he did

3 THE COURT -- guy he saw mostly on site was Got

4 You Didn't even ask where the name came from

5 Resisted

6 Okay Well, let me just go back and take a look

7 at Mr Catterson's testimony All right?

8 [Off the record momentarily]

9 THE COURT All right Anything else we need to
10 put on the record, y'all?

11 What I'm going to do is this Let me just
12 sleep on some stuff If y'all will just give Aaron
13 your e-mail addresses for every one of you If you've
14 either got a business card, or just give her your
15 e-mail address so she doesn't have to look them up

16 What I'll do is this I'll probably just e-mail y'all

17 As of right now, it's my understanding, Tab,
18 what you would give me, what you are using, as well, is
19 the number from --

20 MR BENDLE Mr Patterson

21 THE COURT Mr Patterson Correct, sir? That
22 would be your presentation? The number is in your --

23 MR ROSS Well, I would use portions thereof

24 So I'll send you something, if that's all right I
25 mean, to the extent that that wasn't my scope of work,

1 I don't want to be held accountable for it if there are
2 issues there that --

3 THE COURT That you need to back out, is what
4 you're saying?

5 MR ROSS Yes, Your Honor

6 THE COURT Okay So why don't you do that
7 But in the meantime, I'll just e-mail y'all when I want
8 a proposed order, and I'll just -- whoever -- I'll
9 probably just ask someone

10 Because it sounds to me like Tab doesn't have
11 anything else to give me, correct, for the most part?

12 MR BENDLE Not unless I would be authorized to
13 reply to whatever he sends you I mean, I know --

14 THE COURT Oh, absolutely

15 MR BENDLE -- the time for argument is over

16 THE COURT No, no Absolutely And the idea
17 is is that whatever I get submitted, then y'all will
18 take -- you know, take a look at, obviously Okay?

19 MR BENDLE Sure

20 THE COURT Okay

21 MR BENDLE Okay

22 THE COURT Okay Good night, y'all

23 [NON-JURY TRIAL CONCLUDES AT 6 10 P M]

24

25

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 15, 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

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