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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM OCONEE COUNTY
Court of Common Pleas
The Honorable R. Lawton McIntosh, Circuit Court Judge

Court of Common Pleas Case No. 2023-CP-37-00329
Appellate Court Case No. 2025-000537

Hugh T. Watson, ... Appellant,

v.

Hayward Baker, Inc.; Keller North America, Inc.;
and Ground Technology, Inc. d/b/a D'Appolonia
Engineering Division of Ground Technology, Inc., ... Respondents.

RECORD ON APPEAL
VOLUME II

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INDEX

VOLUME I

Orders

Order Granting Summary Judgment, filed February 14, 2025	1
Order Granting Motion for Summary, Judgment filed February 19, 2025	23
Order Denying Plaintiffs Motions to Amend, filed March 13, 2025	44

Pleadings

Amended Summons and Amended Complaint, filed June 5, 2023	47
Amended Complaint Ex. 1, filed June 5, 2023	69
Amended Complaint Ex. 2, filed June 5, 2023	79
Defendant Keller’s Answer to Amendment Complaint, filed July 3, 2023	89
Answer to Plaintiff’s Amended Complaint of Defendant Ground Tech Inc., filed July 5, 2023	101
Motion for Summary Judgment of Defendant Ground Tech, Inc. et al., filed October 22, 2024	110
Motion for Summary Judgment of Defendant Keller, filed October 22, 2024	112
Motion for Summary Judgment of Defendant of D’Appolonia with Exhibits, filed October 22, 2024	117
Exhibit 1	119
Exhibit 2	132
Exhibit 3	166
Ground Tech’s Memo in Support of Motion for Summary Judgment, filed January 27, 2025 ...	177
Plaintiff’s Memo in Opposition to Ground Tech’s Motion for Summary Judgment, filed January 27, 2025	199
Exhibit 1	212
Plaintiff’s Memo in Opposition to Keller’s Motion for Summary Judgment, filed January 27, 2025	280

Exhibit 1	310
Exhibit 2.....	471

VOLUME II

Exhibit 3.....	481
Ground Tech’s Motion to Strike First Addendum Affidavit of LG Lewis Jr., filed January 28, 2025.....	530
Exhibit 1	533
Motion to Reconsider as to Ground Tech filed February 24, 2025	537
Motion to Reconsider as to Keller filed February 28, 2025	542

Transcripts

Deposition Excerpts of Hugh Watson, dated April 15, 2024	552
Deposition Excerpts of L.G. “Skip” Lewis, dated April 16, 2024.....	681

VOLUME III

Deposition Excerpts of John Wolosick dated April 17, 2024.....	838
Exhibit 34	1065
Exhibit 37	1094
Exhibit 38	1095
Exhibit 40	1097
Exhibit 41	1105
Exhibit 44	1122
Exhibit 48	1123
Exhibit 49 – Warranty Agreement dated April 17, 2002.....	1153
Exhibit 51 – Letter from D’Appolonia dated November 3, 2004.....	1155
Exhibit 52 – Letter to Bart and Stephanie Schmidt dated November 10, 2004.....	1157
Exhibit 54 – Letter from Qore Inc., to Hayward Baker, June 28, 2005.....	1165
Exhibit 55 – Email between Bart Schmidt and John Wolosick, July 2005	1172
Exhibit 56 – Email between Bart Schmidt and John Wolosick, October 2006	1173
Exhibit 57 – Letter from Qore Inc to Bart Schmidt, November 21, 2006	1181
Exhibit 61 – Emails from D’Appolonia, July 2020	1189
Deposition Excerpts of James G. Kahle dated May 20, 2024	1193

VOLUME IV

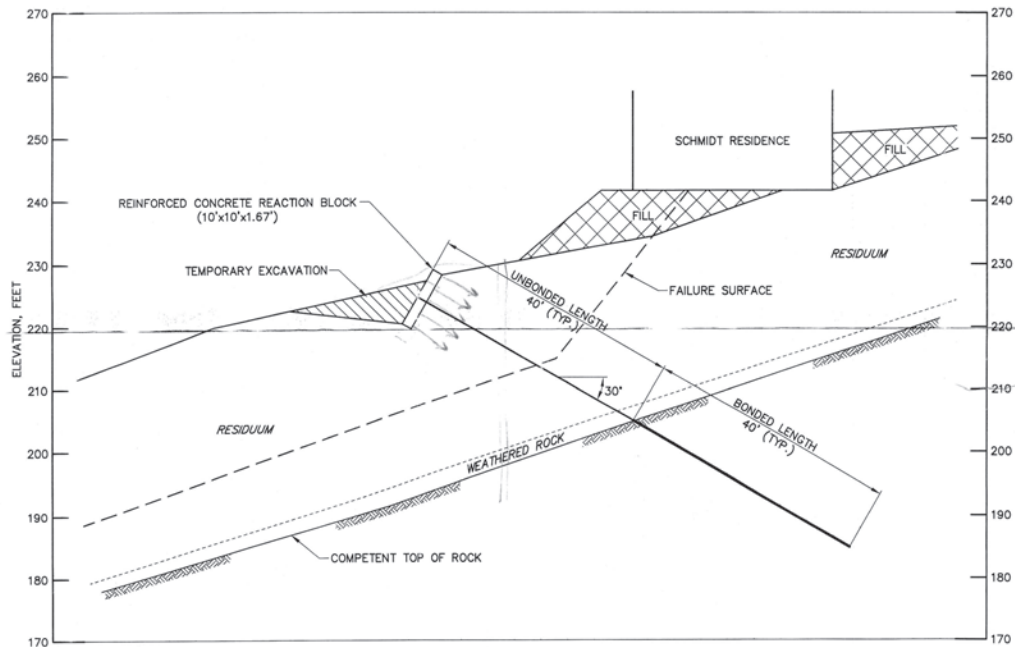
Deposition Excerpts of James G. Kahle dated May 20, 2024, continued.....	1327
Deposition Excerpts of Stephanie Schmidt dated October 19, 2024	1373
Exhibit 77 – handwritten note regarding Hayward Baker work at the property dated April 10, 2012	1393
Transcript of Record of Hearing on January 29, 2025.....	1394

Exhibits

Exhibit 73 to Robert Shusko’s September 17, 2024 Deposition	1440

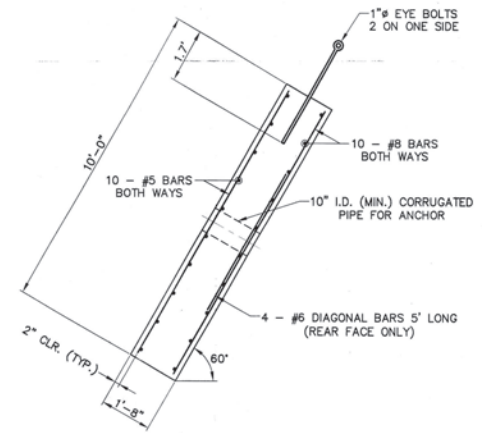
Other Documents

Deed, filed February 28, 1988	1608
Deed, filed May 26, 2015	1610
First Addendum Affidavit of LG Lewis Jr., filed January 27, 2025.....	1613



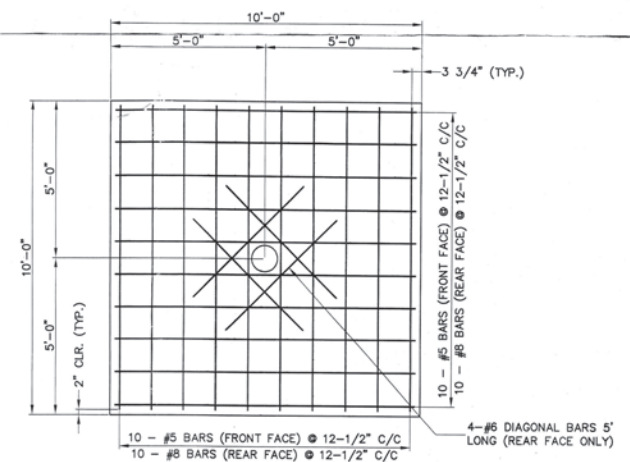
TYPICAL CROSS-SECTION

SCALE: 1" = 10'



PRECAST REACTION BLOCK DETAIL

SCALE: 1" = 2'



ELEVATION - PRECAST REACTION BLOCK

SCALE: 1" = 2'



NO.	DATE	BY	CHKD	REVISION	NO.	DATE	BY	CHKD	REVISION

- ☐ PRELIMINARY
- ☐ FOR REVIEW AND COMMENT
- ☒ SUBMIT FOR APPROVAL
- ☐ RESUBMIT FOR APPROVAL
- ☐ ISSUE FOR CONSTRUCTION

OWNER: SCHMIDT RESIDENCE, OCONEE COUNTY, SOUTH CAROLINA
 CONTRACTOR: HAYWARD BAKER, INC., ROSWELL, GEORGIA
 CDD FILE: R:\023725\3725E03.dwg
 DANGER! WHERE APPLICABLE, THE TOP OF THE RETAINING WALL IN THIS DRAWING PRESENTS FALLING HAZARD AND SHOULD BE ADEQUATELY FENCED OR ROPED OFF IN ACCORDANCE WITH ALL FEDERAL, STATE AND LOCAL STATUTES, RULES AND REGULATIONS. HAYWARD BAKER DOES NOT, IN THE DESIGN OR INSTALLATION OF THIS RETAINING WALL, ASSUME ANY OBLIGATION OR RESPONSIBILITY FOR THE ERECTION OR MAINTENANCE OF SUCH FALL PROTECTION.
 172

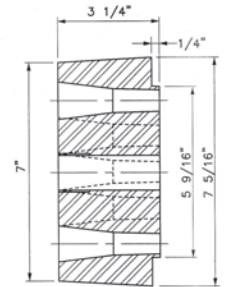
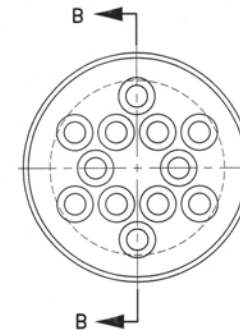
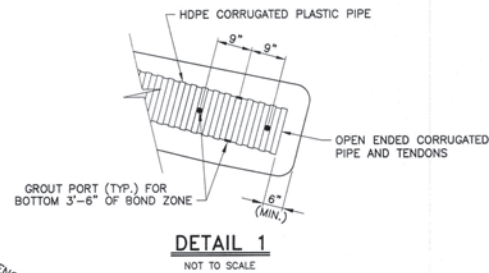
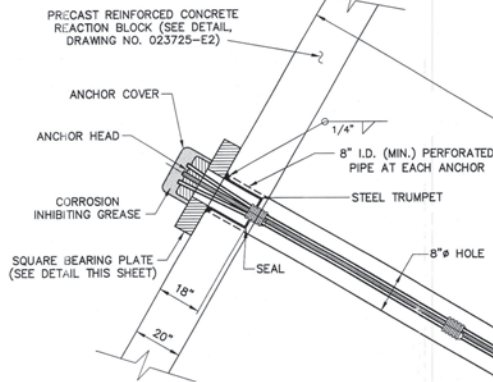
THIS DRAWING IS THE EXCLUSIVE PROPERTY OF HAYWARD BAKER. THE INFORMATION AND DETAILS SHOWN MAY NOT BE USED FOR THE DRAWINGS REPRODUCED WITHOUT WRITTEN PERMISSION OF HAYWARD BAKER.

SHOP DRAWING

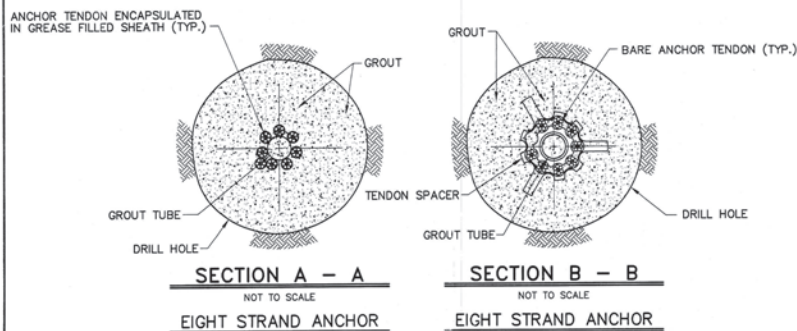
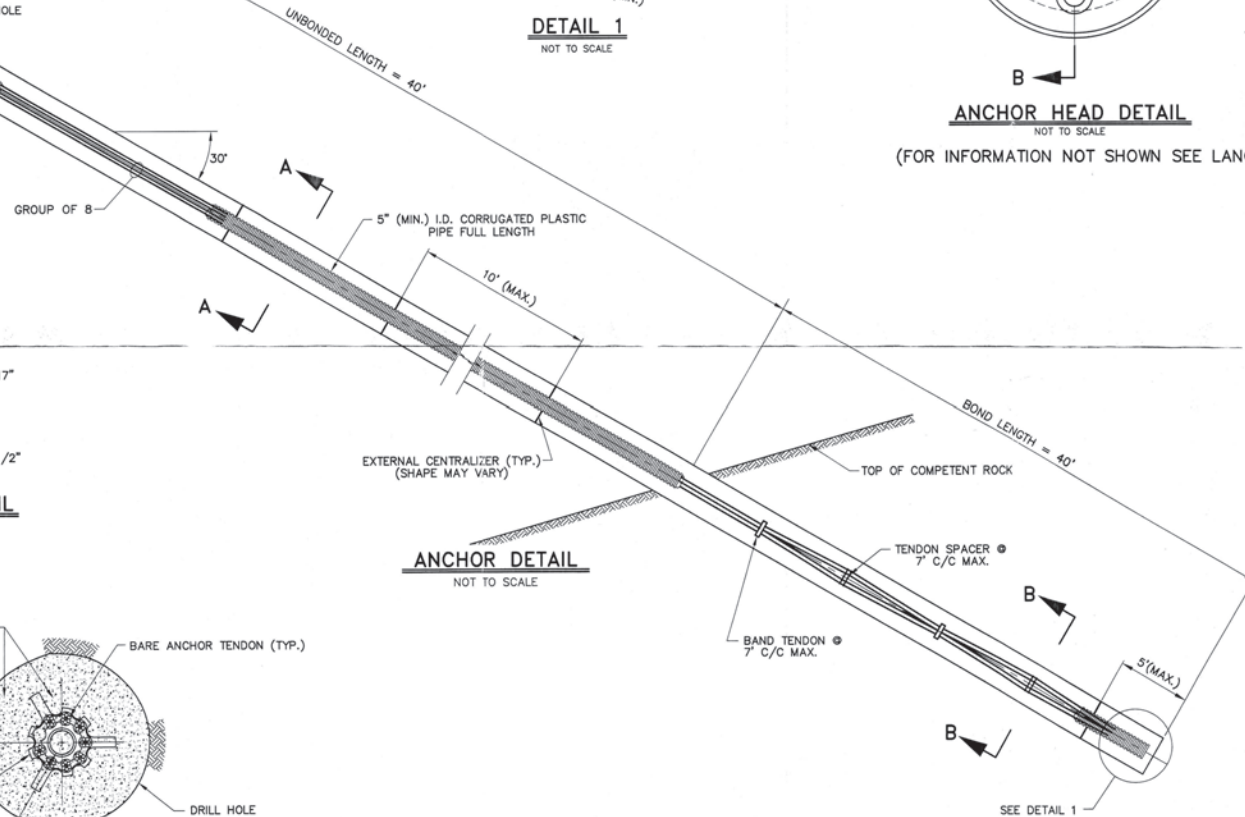
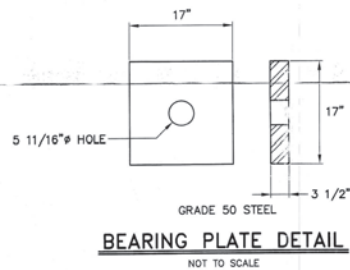
HAYWARD BAKER INC.
 A Keller Company

PREPARED BY
D'APPOLONIA
 ENGINEERING DIVISION OF
 GROUND TECHNOLOGY, INC.

SLOPE STABILIZATION SYSTEM
 SCHMIDT RESIDENCE
 KEOWEE TOWNSHIP, SOUTH CAROLINA
 TYPICAL SECTION AND REACTION BLOCK DETAILS
 SCALE: AS NOTED DATE: 2/15/02
 DWN. BY: HAK CHKD: HEC
 DWG NO: 023725-E3 0



(FOR INFORMATION NOT SHOWN SEE LANG TENDON SPECIFICATIONS)



PREPARED BY
D'APPOLONIA
ENGINEERING DIVISION OF
GROUND TECHNOLOGY, INC.

NO.	DATE	BY	CHK'D	REVISION	NO.	DATE	BY	CHK'D	REVISION

- ☐ PRELIMINARY
- ☐ FOR REVIEW AND COMMENT
- ☒ SUBMIT FOR APPROVAL
- ☐ RESUBMIT FOR APPROVAL
- ☐ ISSUE FOR CONSTRUCTION

OWNER: SCHMIDT RESIDENCE, OCONEE COUNTY, SOUTH CAROLINA
CONTRACTOR: HAYWARD BAKER, INC., ROSWELL, GEORGIA
DID FILE: R:\023725\3725E04.dwg

DANGER! WHERE APPLICABLE THE TOP OF THE RETAINING WALL IN THIS DRAWING PRESENTS FALLING HAZARD AND SHOULD BE ADEQUATELY FENCED OR ROPED OFF IN ACCORDANCE WITH ALL FEDERAL, STATE AND LOCAL STATUTES, RULES AND REGULATIONS. HAYWARD BAKER DOES NOT, IN THE DESIGN OR INSTALLATION OF THIS RETAINING WALL, ASSUME ANY OBLIGATION OR RESPONSIBILITY FOR THE ERECTION OR MAINTENANCE OF SUCH FALL PROTECTION.

173

THIS DRAWING IS THE EXCLUSIVE PROPERTY OF HAYWARD BAKER. THE INFORMATION AND DETAILS SHOWN MAY NOT BE USED NOR THE DRAWINGS REPRODUCED WITHOUT WRITTEN PERMISSION OF HAYWARD BAKER.

SHOP DRAWING

HAYWARD BAKER INC.
A Keller Company

SLOPE STABILIZATION SYSTEM	
SCHMIDT RESIDENCE	
KEOWEE TOWNSHIP, SOUTH CAROLINA	
PRESTRESSED ANCHOR DETAILS	
SCALE: AS NOTED, DATE: 2/15/02	DWG NO. 023725-E4
DWN. BY: RAW	CHK'D: BOC
REV. NO.	0

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF OCONEE	)	C.A. NO. 2023-CP-37-00329
	)	
Hugh T. Watson,	)	
	)	
Plaintiff,	)	CERTIFICATE OF SERVICE
	)	
v.	)	
	)	
Hayward Baker, Inc.; Keller North America,	)	
Inc.; and Ground Technology, Inc. d/b/a	)	
D'Appolonia Engineering Division of	)	
Ground Technology, Inc.,	)	
	)	
Defendants.	)	

I hereby certify that I have this 21st day of November 2023, **Hugh T. Watson's First Set of Requests for Admission and Requests to Admit the Genuineness of Documents to Defendants Hayward Baker, Inc. and Keller North America, Inc.** to the attorney of records in the above-captioned case in accordance with Supreme Court Order dated May 6, 2022, RE: Service by Email in Trial Courts, by electronic mail to the e-mail addresses listed in the Attorney Information System as follows:

Stephanie Holmes Burton
 Gibbes Burton, LLC
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 sburton@gibbesburton.com
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luke.allen@arlaw.com
Counsel for Hayward Baker, Inc. and Keller North America, Inc.



Katharine O. Spooner, CP
Certified Paralegal to H. Drennan Quattlebaum and
Mason A. Goldsmith, Jr.

EXHIBIT 2



August 13, 2024

Attention: Mr. Hugh Watson
hugh.watson@coveconsulting.com

Subject: **Budgetary estimate for Engineered Landslide Stabilization Construction
113 Shipmaster Drive, Salem SC
Watson Residence Slope Stabilization
Wurster Engineering & Construction, Inc. Budgetary Estimate No. 24-1421**

Wurster Engineering & Construction, Inc. (WEC) is pleased to submit this budgetary estimate for the referenced project. This budgetary estimate includes a review of the project information provided to us, the proposed scope of services, exclusions, access and supply provisions, price and payment provisions, and anticipated terms and conditions.

PROJECT INFORMATION

We understand that currently the property at 113 Shipmaster Drive is experiencing distress and differential settlement. Previously 6 anchor blocks with post tensioned tiebacks were installed by others along the eastern side of the house below the patio at approximate elevation 830' +/- . This work was performed in 2002. We understand that the subject property is still seeing the signs of distress associated with deep seated ground motion. WEC has reviewed the engineering reports and information provided by H2L Engineering and consulted with H2L Engineering on remediation efforts. WEC also performed a site visit on May 23rd where we met you and performed a site walk. WEC also observed what appears to be a secondary scarp on the eastern portion of the home.

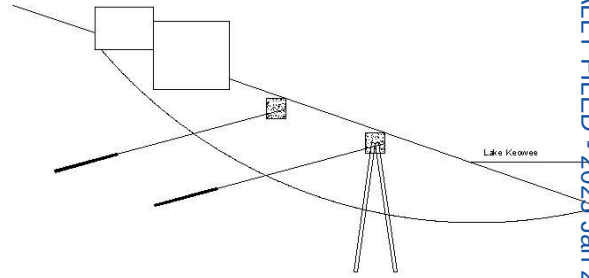
WEC plans to engage a geotechnical consultant experienced in landslide remediation of this type in this geographic area to assist us in preparing a formal design to provide a safety factor of 1.5 against future movement of the existing slide.

We have proposed a repair consisting of the following:

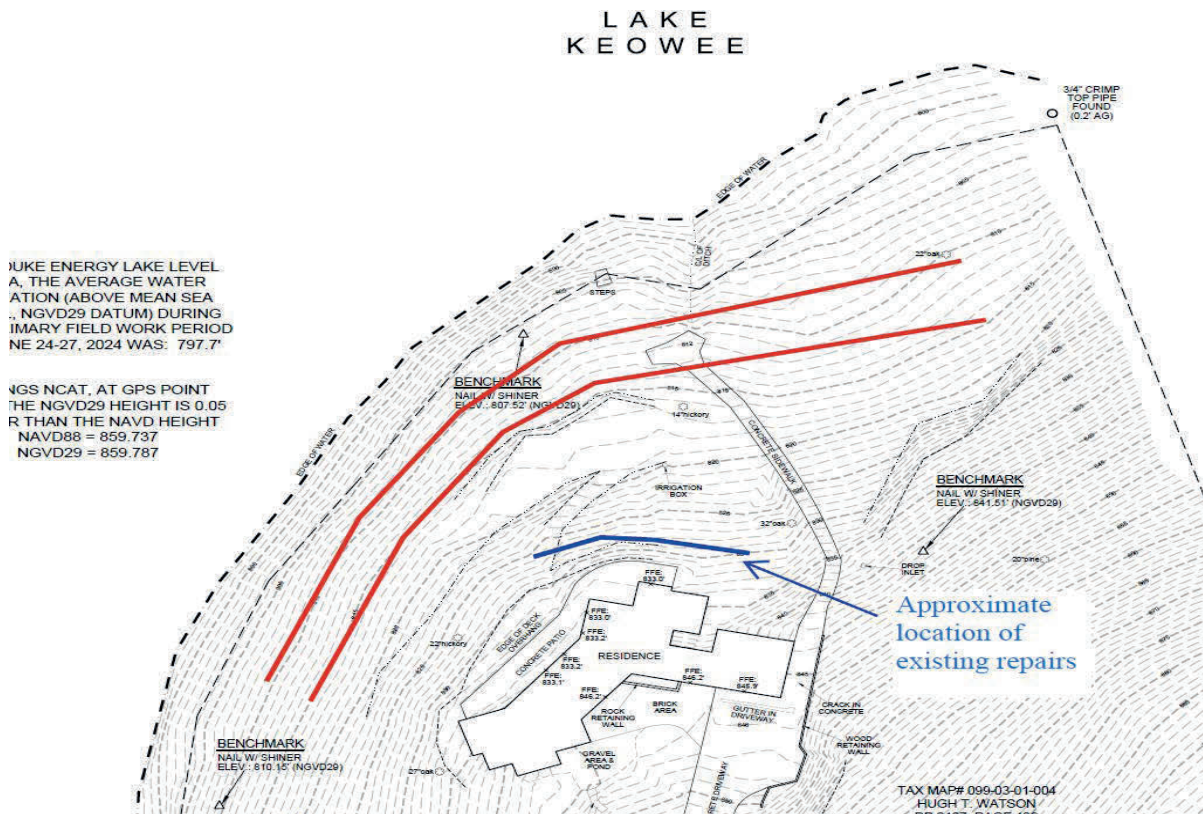
- A reinforced concrete lower grade beam supported by battered micropiles and laterally restrained by tieback anchors.
- An upper row of reinforced concrete patterned ground anchors laterally restrained by tieback anchors.
- Horizontal drains drilled into slope and incorporated into the grade beam to reduce the influence of ground water on the stability of the slope.
- Filling in voids (up to an estimated 6 inches) under the floor slab of the house with polyurethane grout.

PROPOSED SCOPE OF SERVICES

We propose to install micropiles and tieback anchors to improve slope stability at the site. A conceptual schematic of a cross section and a plan view of our proposed scope of work is provided below for clarity. A registered professional engineer specializing in geotechnical engineering and construction will design the slope stabilization.



PROPOSED REPAIR



Map of Proposed Approximate Repair Locations

TYPICAL ACCESS AND SUPPLY

Owner shall provide and assume responsibility for the following at no cost or delay to us unless specifically stated otherwise in this budgetary estimate:

1. Right of way enabling one continuous operation for the installation of the above-described slope stabilization.
2. Power lines closer than legally or safely permissible are to be removed or de-energized; clear and accurate markings of all existing adjacent utilities with formal notification to our personnel, prior to the start of work. If deemed necessary by WEC, relocation of utilities interfering with slope stabilization. Removal and relocation of all overhead, land or underground utilities and obstructions interfering with our work.
3. On-site parking for all corporate vehicles.
4. Water supply: Furnish sufficient potable water for the conduct of our work at city pressure on the job site. A water spigot will be suitable.

PRICE AND PAYMENT PROVISIONS

We estimate a budget of **\$2,200,000** to perform the scope of services described above. This includes design, (1) mobilization, construction of the proposed slope stabilization, and post construction clean-up of your property (seeding and strawing).

CONCLUSION

We appreciate the opportunity for the involvement in preparing this price.

Respectfully submitted,

Wurster Engineering & Construction, Inc.



Bennett Livingston, PE
Project Engineer



Richard Adams, PE
Sr. Project Engineer / Vice President

EXHIBIT 3

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	TENTH JUDICIAL CIRCUIT
COUNTY OF OCONEE	)	
	)	
Hugh T. Watson,	)	Civil Action No. 2023-CP-37-00329
	)	
Plaintiff,	)	
	)	DEFENDANT KELLER NORTH
v.	)	AMERICA, INC.'S RESPONSES TO
	)	PLAINTIFF HUGH T. WATSON'S
Hayward Baker, Inc.; Keller North	)	FIRST SET OF REQUESTS FOR
America, Inc.; and Ground Technology,	)	ADMISSION AND REQUESTS TO
Inc. d/b/a D'Appolonia Engineering	)	ADMIT THE GENUINENESS OF
Division of Ground Technology, Inc.	)	DOCUMENTS
	)	
Plaintiff.	)	
	)	

TO: H. DRENNAN QUATTLEBAUM, ESQUIRE, MASON A. GOLDSMITH JR., ESQUIRE, AND KATHERINE S. ELMORE, ESQUIRE, ATTORNEYS FOR PLAINTIFF:

Pursuant to Rules 26 and 36 of the South Carolina Rules of Civil Procedure, Defendant Keller North America, Inc. ("Defendant" or "Keller"), incorrectly identified in the Amended Complaint as Hayward Baker, Inc. and Keller North American, Inc., by and through their undersigned attorneys, hereby responds to Plaintiff Hugh T. Watson's ("Plaintiff's") First Set of Requests for Admission and Requests to Admit the Genuineness of Documents, dated November 21, 2023.

In setting forth responses thereto, Defendant does not waive their attorney-client, work product, or any other privilege or immunity from disclosure which may attach to information called for herein or responsive to these requests. Defendant does not concede the relevance or materiality of the requests or the subject matters to which the requests refer. These responses are submitted by Defendant subject to, and without in any way waiving or intending to waive, but on the contrary intended to reserve and reserving:

A. All questions as to competence, relevancy, materiality, privilege, and admissibility of evidence for any purpose of any of the documents referred to or responses given or the subject matter thereof in any subsequent proceeding in, or the trial of this action, or any other action or proceeding;

B. The right to object to other discovery procedures involving or relating to the subject matter of the requests; and

C. The right at any time to revise, correct, add to, or clarify any of the responses set forth herein or documents referred to herein.

RESPONSES TO REQUESTS FOR ADMISSION

1. Admit that Keller was aware on or before November 10, 2004, that displacement data indicated the slope stabilization system had yielded movement in excess 0.75 inches contained in Hayward Baker's 5-year Express Warranty.

RESPONSE: Denied as stated. Defendant would admit that it was aware on or before November 10, 2004 that a report created by Erik Mikkelsen, PE concluded that the system installed in 2002 for Mr. and Mrs. C.B. Schmidt had yielded some movement in excess of 0.75 inches.

2. Admit that Keller was aware on or before July 12, 2005, that displacement data indicated the slope stabilization system continued to yield movement in excess of Hayward Baker's 5-year Express Warranty and in excess of the displacement data known to Hayward Baker/Keller on or before November 10, 2004.

RESPONSE: Denied as stated. However, Defendant would admit that it was aware on or before July 12, 2005 that a report created by Tim Russell indicated some more slight movement over the previous year.

3. Admit that neither Keller, John Wolosick or any consultant for Keller ever took any additional inclinometer readings after July, 2005.

RESPONSE: Denied as stated. Defendant would admit that at no point in time was Keller or John Wolosick responsible for taking inclinometer readings or monitoring the slope deformation monitoring system.

4. Admit that John Wolosick was both an employee and an authorized representative of Keller in connection with the installation and evaluation of the Soil Stabilization System on the subject property.

RESPONSE: Denied as stated. Defendant would admit that John Wolosick was both an employee and authorized representative of Keller in connection with the installation of the Soil Stabilization System on the subject property.

5. Admit that at time that Watson was investigating whether to purchase the subject property from Mr. & Mrs. Schmidt that John Wolosick advised Watson that the Soil Stabilization System would continue to perform satisfactorily for at least 60 years and that Watson should not be concerned with further soil movements or damage to the residence.

RESPONSE: Denied as stated. Defendant would admit that John Wolosick, in response to Plaintiff's inquiry, spoke with Plaintiff in 2015 regarding Defendant's work for the Schmidts at the subject property in 2002.

6. Admit that neither Keller, John Wolosick or any consultant for Keller ever took any additional inclinometer readings before John Wolosick made his representations to Watson in 2015 regarding the Soil Stabilization System or the lack of soil movement.

RESPONSE: Denied as stated. Defendant would admit that at no point in time was Keller or John Wolosick responsible for taking inclinometer readings or monitoring the slope deformation monitoring system.

7. Admit that John Wolosick failed to disclose the existence of the inclinometer monitoring system to Watson during their 2015 conversations.

RESPONSE: Denied as stated. Defendant would admit that John Wolosick spoke to Plaintiff in 2015 regarding Defendants' work for the Schmidts at the subject property.

Defendant would deny John Wolosick owed any duty of disclosure, or otherwise, to Plaintiff.

8. Admit that the Soil Stabilization System design prepared by D'Appolonia for Hayward Baker called for an anchor installation angle of 30 degrees below horizontal.

RESPONSE: Defendant denies information and knowledge necessary to respond to this request fully and accurately, as discovery is ongoing, and based on the request seeking information from twenty years ago.

9. Admit that the Soil Stabilization System was installed by Keller at an anchor installation angle that was approximately 20 degrees below horizontal, and that the installation deviated from the design prepared by D'Appolonia.

RESPONSE: Defendant denies information and knowledge necessary to respond to this request fully and accurately, as discovery is ongoing, and based on the request seeking information from twenty years ago.

RESPONSES TO REQUESTS TO ADMIT THE GENUINENESS OF DOCUMENTS

1. Admit that the document attached hereto as Exhibit "A" is a true and correct copy of the document it purports to be.

RESPONSE: Admitted.

2. Admit that the document attached hereto as Exhibit "B" is a true and correct copy of the document it purports to be.

RESPONSE: Admitted.

3. Admit that the document attached hereto as Exhibit "C" is a true and correct copy of the document it purports to be.

RESPONSE: Admitted.

4. Admit that the document attached hereto as Exhibit "D" is a true and correct copy of the document it purports to be.

RESPONSE: Admitted.

ADAMS AND REESE LLP

s/ Kirby D. Shealy III

Kirby D. Shealy III (SC Bar No.: 11556)

Katherine H. Mills (SC Bar No.: 104665)

1221 Main Street, Suite 1200
Columbia, South Carolina 29201
Telephone: (803) 254-4190
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kirby.shealy@arlaw.com
kate.mills@arlaw.com

*Attorneys for Defendants Hayward Baker, Inc. and
Keller North America, Inc.*

January 19, 2024.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	TENTH JUDICIAL CIRCUIT
COUNTY OF OCONEE	)	
	)	
Hugh T. Watson,	)	Civil Action No. 2023-CP-37-00329
	)	
Plaintiff,	)	
	)	
v.	)	CERTIFICATE OF SERVICE
	)	
Hayward Baker, Inc.; Keller North America,	)	
Inc.; and Ground Technology, Inc. d/b/a	)	
D'Appolonia Engineering Division of	)	
Ground Technology, Inc.	)	
	)	
Plaintiff.	)	
	)	

I, Monica Gende, an employee of Adams and Reese, LLP, hereby certify that I have served a copy of **Defendant Keller North America, Inc.'s Responses to Plaintiff Hugh T. Watson's First Set of Requests for Admission And Requests to Admit The Genuineness Of Documents** by e-mailing copies of same via electronic mail only to counsel at the following e-mail address:

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 Elmore Goldsmith Kelley & deHoll, P.A.
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 Greenville, SC 29602
agoldsmith@elmoregoldsmith.com
kelfmore@elmoregoldsmith.com
Attorneys for Plaintiff

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 Gibbes Burton, LLC
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 Spartanburg, SC 29302
sburton@gibbesburton.com
*Attorney for Defendant Ground Technology
 Inc. d/b/a D'Appolonia Engineering Division
 of Ground Technology*

s/ Monica Gende
 Monica Gende
 Adams and Reese LLP

January 19, 2024.

EXHIBIT 4



PROPOSAL ACCEPTANCE SHEET

Description of Services Proposal for Inclinator Testing
Project Name Schmitt Residence
Project Location Seneca, South Carolina
Proposal Number & Date GP-5443-02, May 28, 2002 Consultant Doral S. Hopkins
Location or QORE Office Performing Services Greenville, South Carolina

FOR PAYMENT OF CHARGES:

Charge Invoice to the Account of: 1st & 2nd readings only

Firm Hayward Baker Inc
Address 515 Main Atlanta Court City Asheville
State GA Zip Code 30004 Phone Number 770-442-1801
Attention: Robyn Title _____

FOR APPROVAL OF CHARGES:

If the invoice is to be mailed for approval to someone other than the account charged, please indicate where to mail the invoice in the space below.

Firm _____
Address _____ City _____
State _____ Zip Code _____ Phone Number _____
Attention: _____ Title _____

PROPERTY OWNER IDENTIFICATION (If Other than Above):

Name _____
Address _____ City _____
State _____ Zip Code _____ Phone Number _____
Attention: _____ Title _____

SPECIAL INSTRUCTIONS:

QORE will be contacted by owner for all subsequent inclinometer readings beyond the 2 sets paid for by HBZ

PAYMENT TERMS:

Compensation will be in accordance with the proposal referenced above. Invoices will be issued monthly. Client agrees to pay all charges not in dispute within 30 days of receipt of invoice and recognizes that charges not paid within 30 days are subject to a late payment charge of 1.5 percent of the balance due for each additional month or fraction thereof that undisputed charges remain unpaid. Charges held in dispute will be called to the attention of QORE within 10 days of receipt of invoice. Client agrees to pay cost of collection, including reasonable attorney's fees, if invoices are collected by law or through an attorney. Client further agrees that QORE has the right to suspend or terminate service if undisputed charges are not paid within 45 days of receipt of QORE invoice and agrees to waive any claim against QORE and to indemnify, defend and hold QORE harmless from and against any claims arising from QORE's suspension or termination due to Client's failure to provide timely payment.

PROPOSAL ACCEPTANCE:

The Terms and Conditions of this Proposal, including the Terms on this page and the reverse hereof are:

Accepted this 4th day of June, 2002

Hayward Baker Inc.
Print or type individual, firm or corporate body name
[Signature]
Signature of authorized representative
Mike Terry
Print or type name of authorized representative and title

EXHIBIT 5

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	TENTH JUDICIAL CIRCUIT
COUNTY OF OCONEE	)	
	)	
	)	Civil Action No. 2023-CP-37-00329
Hugh T. Watson,	)	
	)	
	)	DEFENDANT KELLER NORTH
	)	AMERICA, INC.'S ANSWERS TO
v.	)	PLAINTIFF HUGH T. WATSON'S
	)	FIRST SET OF INTERROGATORIES
Hayward Baker, Inc.; Keller North	)	AND RESPONSES TO PLAINTIFF'S
America, Inc.; and Ground Technology,	)	FIRST SET OF REQUESTS FOR
Inc. d/b/a D'Appolonia Engineering	)	PRODUCTION
Division of Ground Technology, Inc.	)	
	)	
	)	
Plaintiff.	)	
	)	

TO: H. DRENNAN QUATTLEBAUM, ESQUIRE, MASON A. GOLDSMITH JR., ESQUIRE, AND KATHERINE S. ELMORE, ESQUIRE, ATTORNEYS FOR PLAINTIFF:

Pursuant to Rules 26 and 33 of the South Carolina Rules of Civil Procedure, Defendant Keller North America, Inc. ("Defendant" or "Keller"), incorrectly identified in the Amended Complaint as Hayward Baker, Inc. and Keller North America, Inc., by and through its undersigned attorneys, hereby answers Plaintiff Hugh T. Watson's ("Plaintiff's") First Set of Interrogatories and responds to Plaintiff's First Set of Requests for Production.

In setting forth answers thereto, Defendant does not waive the attorney-client, work product, or any other privilege or immunity from disclosure which may attach to information called for herein or responsive to the Interrogatory or Requests. Defendant does not concede the relevance or materiality of the Interrogatories or Requests and the subject matters to which the Interrogatories or Requests refer. These answers are submitted by Defendant subject to, and without in any way waiving or intending to waive, but on the contrary intending to reserve and reserving:

A. All questions as to competency, relevancy, materiality, privilege and admissibility

as evidence for any purpose of any of the documents referred to or responses given, or the subject matter thereof in any subsequent proceeding in, or the trial of this action or any other action or proceeding;

B. The right to object to other discovery procedures involving or relating to the subject matter of the interrogatories or requests; and

C. The right at any time to revise, correct, add to, or clarify any of the answers set forth herein or documents referred to herein.

ANSWERS TO INTERROGATORIES

Defendant hereby answers Plaintiff's First Set of Interrogatories dated November 21, 2023 as follows:

1. Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

ANSWER:

**John W. Wolosick
Keller North America, Inc.
c/o Kirby D. Shealy III, Esquire
Adams and Reese LLP
1221 Main Street, Suite 1200
Columbia, South Carolina 29201**

**Zachary Williams
Keller North America, Inc.
c/o Kirby D. Shealy III, Esquire
Adams and Reese LLP
1221 Main Street, Suite 1200
Columbia, South Carolina 29201**

**Joe Persichetti
Keller North America, Inc.
c/o Kirby D. Shealy III, Esquire
Adams and Reese LLP**

**1221 Main Street, Suite 1200
Columbia, South Carolina 29201**

**James Dickinson
Keller North America, Inc.
c/o Kirby D. Shealy III, Esquire
Adams and Reese LLP
1221 Main Street, Suite 1200
Columbia, South Carolina 29201**

**Todd E. Ross
Keller North America, Inc.
c/o Kirby D. Shealy III, Esquire
Adams and Reese LLP
1221 Main Street, Suite 1200
Columbia, South Carolina 29201**

**Michael Terry
Keller North America, Inc.
c/o Kirby D. Shealy III, Esquire
Adams and Reese LLP
1221 Main Street, Suite 1200
Columbia, South Carolina 29201**

**Thomas A. Layson
Keller North America, Inc.
(Address Unknown)**

**Tim Mirocha
(Address Unknown)**

**Bradley D. Campbell
c/o Stephanie H. Burton, Esquire
Gibbes Burton, LLC
308 E. St. John Street
Spartanburg, South Carolina 29302**

**J. Timothy Onstott, P.E.
c/o Stephanie H. Burton, Esquire
Gibbes Burton, LLC
308 E. St. John Street
Spartanburg, South Carolina 29302**

**Thomas Hudson
Hudson Construction of SC, LLC
5 Berrow Way**

Taylors, South Carolina 29687

**Matthew B. Haston, P.E.
GEOServices, LLC
2561 Williw Point Way
Knoxville, Tennessee 37931**

**C. Bart Schmidt
1432 Trailhead Court
Greenville, South Carolina 29617**

**Stephanie B. Schmidt
1432 Trailhead Court
Greenville, South Carolina 29617**

**Tim Russell
(Address Unknown)**

**Erik Mikkelsen
Geometron
(Address Unknown)**

No written or recorded statements have been taken from these witnesses.

2. Set forth a list of photographs, plats, sketches, or other prepared documents in the possession of you or your counsel that relate to any claim in this case.

ANSWER: In addition to documents provided during discovery by other parties to this action, see documents attached hereto as bates labels HaywardBaker_000001 to 243.

3. Set forth the names and addresses of all insurance companies which have liability insurance coverage relating to the claim and set forth the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.

ANSWER:

**Zurich American Insurance Company
P.O. Box 968020
Schaumburg, Illinois
Policy Number: GLO 3373933-07
\$5,000,000.00 per occurrence with an aggregate for products-completed operations claims**

**Pacific Employers Insurance Company (Chubb Group of Ins. Companies)
9200 Oakdale Avenue, 8th Floor
Chatsworth, California 91311
Will supplement.**

4. List the names and addresses of any expert witnesses whom you propose to use as a witness at the trial of the case.

ANSWER: None at this time. Defendant hereby reserves the right to name and call one or more expert witnesses at an appropriate time in the future.

5. For each person known to the parties or counsel to be witnesses concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements take from such witness.

ANSWER:

**John W. Wolosick
Professional Engineer at Keller. A point of contact for Bart and Stephanie Schmidt on the Project and communicated with Plaintiff regarding the Project.**

**Zachary Williams
Current Operations Manager in Keller's Alpharetta, Georgia office. General knowledge about Keller's business records and operations.**

**Joe Persichetti
Current Vice President in Keller's Alpharetta, Georgia office. General knowledge about geological engineering and Keller's business records and operations.**

**James Dickinson
Current Division Manager in Keller's Alpharetta, Georgia office. General knowledge about geotechnical construction and Keller's business operations.**

**Todd E. Ross
Project Manager of the Project at the subject property.**

**Michael Terry
Operations Manager at Keller during the Project.**

Thomas A. Layson

Keller's Project Superintendent of the Project.**Tim Mirocha**

Engineer that spoke with John Wolosick regarding the Property following Plaintiff's contact with Keller in 2020. Mirocha did a site inspection in 2020 and indicated he agreed with Wolosick that the pavers installation was a source of the movement.

Bradley D. Campbell

Engineer with D'Appolonia that was involved in D'Appolonia's work for the Schmidt residence.

J. Timothy Onstott, P.E.

Professional Engineer with D'Appolonia that was involved in D'Appolonia's work for the Schmidt residence.

Thomas Hudson

Founder of Hudson Construction of SC, LLC. Involved in the building of the Schmidt residence on the subject Property.

Matthew B. Haston, P.E.

Senior Engineer at Law Engineering and Environmental Services, Inc. Performed testing and authored report, *Report of Geotechnical Exploration—Schmidt Residence*, dated September 21, 2001.

C. Bart Schmidt

Previous owner of the residence and subject Property at the time of the Project.

Stephanie B. Schmidt

Previous owner of the residence and subject Property at the time of the Project.

Tim Russell

Created report on inclinometer readings from the Property in or around July 2005.

Erik Mikkelsen

Reviewed and interpreted inclinometer data from the Property for Keller in or around 2004 and authored report, *Schmidt Residence Slope Remediation Inclinometer Displacement Analysis*, dated October 29, 2004.

6. Identify the name(s) and address(es) and the official capacity of all persons furnishing information used to answer these interrogatories and requests for production and state the source of each person's knowledge, listing the particular interrogatory and request for production for which the individual provided the information.

ANSWER:

**Amanda Taylor
Corporate Counsel
Keller North America
c/o Kirby D. Shealy III, Esquire
Adams and Reese LLP
1221 Main Street, Suite 1200
Columbia, South Carolina 29201**

**John Feliccia
Corporate Counsel
Keller North America
c/o Kirby D. Shealy III, Esquire
Adams and Reese LLP
1221 Main Street, Suite 1200
Columbia, South Carolina 29201**

**William Martin
Corporate Counsel
Keller North America, Inc.
c/o Kirby D. Shealy III, Esquire
Adams and Reese LLP
1221 Main Street, Suite 1200
Columbia, South Carolina 29201**

All information and documents provided in response to Plaintiff's requests were furnished by above-listed counsel for Defendant, with the source of their information and documentation being Defendant's corporate file and records concerning the Project.

7. Identify your employees, independent contractors, subconsultants, subcontractors, materials suppliers and/or any other person or entity from whom you obtained any labor, service, or material in connection with the Project and set forth a description of their involvement in the Project including the dates of your involvement with them, and the exact nature of the duties and responsibility of such persons, listing the specific areas in which they were involved. In answering this interrogatory, please provide the address of any named persons or entities.

ANSWER:

Todd Ross

**Keller North America, Inc.
c/o Kirby D. Shealy III, Esquire
Adams and Reese LLP
1221 Main Street, Suite 1200
Columbia, South Carolina 29201
Project Manager**

**Thomas A. Layson
Keller North America, Inc.
c/o Kirby D. Shealy III, Esquire
Adams and Reese LLP
1221 Main Street, Suite 1200
Columbia, South Carolina 29201
Project Superintendent**

**Michael Terry
Keller North America, Inc.
c/o Kirby D. Shealy III, Esquire
Adams and Reese LLP
1221 Main Street, Suite 1200
Columbia, South Carolina 29201
Operations Manager**

**Derrick
(Address Unknown)**

**Butch
(Address Unknown)**

**Thomas C. Enriquez
(Address Unknown)
General site work and concrete work in or around February, March, and April 2002.**

**Antonio C. Enriquez
(Address Unknown)
Concrete work in or around March and April 2002.**

**Eric Layson
(Address Unknown)
Concrete work in or around March and April 2002.**

**Robert H. Nutting
(Address Unknown)
Drilling work in or around March and April 2002.**

Billie A. Layson

(Address Unknown)
Clerical work in or around March and April 2002.

Kenneth Z. Johnson
(Address Unknown)
General site work and concrete work in or around February, March, and April 2002.

Michael Harden
(Address Unknown)
Concrete work in or around March and April 2002.

D'Appolonia Engineering Division of Ground Technology, Inc.
c/o Stephanie H. Burton, Esquire
Gibbes Burton, LLC
308 E. St. John Street
Spartanburg, South Carolina 29302
Designed the Soil Stabilization System in or around February 2002.

Erik Mikkelsen
Geometron
(Address Unknown)
Reviewed displacement data for Keller in or around 2004. Created report, *Schmidt Residence Slope Remediation Inclinometer Displacement Analysis*, dated October 29, 2004.

Tim Russell
(Address Unknown)
Created report on inclinometer readings in or around July 2005.

Hertz Equipment Rental (Branch: 322)
302 E. Frontage Road
Greer, South Carolina 29651
Rented various pieces of equipment for the Project, including forklift, track excavator, track loader, and excavator. Date of rental on or about February 28, 2002.

RSC
Rented chippers from on or about February 7, 2002 until on or about February 15, 2002.

OCI Division; Global Drilling Suppliers, Inc.
20 Pickering Street
Brookville, Pennsylvania 15825
Purchased crossover sub on or about March 12, 2002.

Morgan Concrete Company, Inc.
P.O. Box 246

Toccoa, Georgia 30577

Purchased cement, grout, and ties for the Project in or around March 2002.

Mace More Env.

Purchased shotcrete on or about March 4, 2002

Stay/masters

Supplied temporary workers in or around March 2002 for the Project.

Lindsay Oil Company

P.O. Box 794

Seneca, South Carolina 29679

Purchased fuel on or about March 6, 2002.

Industrial Metals

Atlanta, Georgia

Purchased various bars on or around February 22, 2002.

Lang Tendons, Inc.

1263 Newark Road

Toughkenamon, PA 19374

Purchased plate/pipe assembly and various supplies on or about February 25, 2002.

Law Engineering and Environmental Services, Inc.

Matthew B. Haston

George W. Scott

Greenville, South Carolina

Prepared report of geotechnical exploration for Hudson Construction of Oconee, Inc.

Report dated September 21, 2001. John Wolosick received a faxed copy of the report on January 2, 2002.

Hudson Construction of Oconee, Inc.

Thomas Hudson

800 Whitworth Circle

Seneca, South Carolina 29672

Mr. Thomas Hudson was the contractor who constructed the residence for Mr. and Mrs. Schmidt on the property at issue. Hudson Construction of Oconee, Inc.'s involvement with the property was prior to Defendants engagement on the Project.

Cornerstone of Seneca, Inc.

Michael L. Henderson

800 Whitworth Circle

Seneca, South Carolina 29672

Provided survey work to Carolina Concrete Pumping, Inc. to establish controls in which to monitor movement of the residence in or around 2000 and 2001, prior to Defendants engagement on the Project.

Carolina Concrete Pumping, Inc.

Kevin D. Day

P.O. Box 241185

Charlotte, NC 28224

Involved in establishing controls to monitor movement of the residence, prior to Defendants' engagement on the Project.

8. For each expert witnesses whom you propose to use as a witness at the trial of the case, set forth a summary of the specific opinions held by each expert and the basis for their opinions.

ANSWER: Not applicable. Defendant has not yet retained an expert witness at this time.

9. State whether or not you have ever worked with any persons or entities you identified in your response to Watson's **Interrogatory No. 7** (to include subconsultants, architects, engineers, contractors, subcontractors and materialmen) in any manner apart from your involvement in the Project and provide the dates of your involvement with them and a description of the other project(s).

ANSWER: Defendant objects to this Interrogatory on the grounds that it is compound, unduly burdensome, oppressive, and overbroad, especially as it is not reasonably limited in scope or time. Defendant further objects to this Interrogatory on the ground that it seeks information that is neither relevant to any party's claims or defenses in the pending action nor proportional to the needs of the case considering all factors that bear on proportionality set forth in Rule 26(b)(1) of the South Carolina Rules of Civil Procedure.

10. Identify all professional staff, supervisory professionals, and/or team leaders who worked on the Project and provide a description of their duties and responsibility of such person, including the specific areas in which they were involved.

ANSWER:

Todd Ross

Project Manager

Thomas A. Layson
Project Superintendent

Billie A. Layson
Clerical work

Michael Terry
Operations Manager

11. Identify all other projects designed and/or constructed by you that are similar in scope, size, nature and location.

ANSWER: Defendant objects to this Interrogatory on the grounds that it is compound, unduly burdensome, oppressive, and overbroad, especially as it is not reasonably limited in scope or time. Defendant further objects to this Interrogatory on the ground that it seeks information that is neither relevant to any party's claims or defenses in the pending action nor proportional to the needs of the case considering all factors that bear on proportionality set forth in Rule 26(b)(1) of the South Carolina Rules of Civil Procedure. Subject to the foregoing objection, Defendant responds as follows:

Rhodon- Mountain Park Lake
Slater- Palisades
Vale Residence

12. Identify any and all other claims of professional malpractice filed against you.

ANSWER: Defendant objects to this Interrogatory on the grounds that it is compound, unduly burdensome, oppressive, and overbroad, especially as it is not reasonably limited in scope or time. Defendant further objects to this Interrogatory on the ground that it seeks information that is neither relevant to any party's claims or defenses in the pending action nor proportional to the needs of the case considering all factors that bear on proportionality set forth in Rule 26(b)(1) of the South Carolina Rules of Civil Procedure.

13. Set forth a detailed summary of any and all investigations into any alleged deficiencies in the construction of the Project, by whom the investigation was performed, and when the investigation was performed.

ANSWER: Defendant denies that there was any deficiency in the construction of the Project. Defendant further denies that any formal investigations into alleged deficiencies were conducted by Defendant. Notwithstanding the preceding response, Defendant is aware that John Wolosick visited the site sometime in 2020. Defendant

is further aware that Tim Mirocha performed a site inspection in 2020 following Plaintiff's contact with Mr. Wolosick. Upon information and belief, Mr. Mirocha seemed to agree with Mr. Wolosick that the pavers and work done by persons other than Defendant were the source of any alleged movement. Defendant further responds that it is aware of a report authored by Erik Mikkelsen in or around 2004 concerning the inclinometer data, as well as a letter from D'Appolonia in or around 2004 regarding the inclinometer data.

14. Set forth your basis supporting your denial that John Wolosick informed Watson that the Soil Stabilization System had satisfactorily addressed the soil stability issues at the Property, that the System was performing, that the Property no longer suffered from soil movement problems, and that based on the track record of the type of system installed, the house was not going to move anywhere for at least sixty years.

ANSWER: Objection. This Interrogatory misstates the allegations of Defendant's answer.

15. Set forth your basis supporting your denial that early inclinometer readings taken in 2004 showed deep subsurface soil movement in excess of Hayward Baker's warranty of "three-quarters of an inch in 5-years" limit.

ANSWER: Objection. This Interrogatory misstates the allegations of Defendant's answer.

16. Set forth your basis supporting your denial that inclinometer readings taken after 2004 showed continued movement of deep subsurface soil.

ANSWER: Objection. This Interrogatory misstates the allegations of Defendant's answer.

17. State the degree below horizontal to which the anchor installation was installed for the Soil Stabilization System.

ANSWER: Defendant denies information and knowledge necessary to respond to this request fully and accurately, as discovery is ongoing, and based on the request seeking information from twenty years ago.

18. To the extent Hayward Baker (Keller) denies that the Soil Stabilization System

anchors were installed at an inclination of 20 degrees below horizontal, set forth your basis supporting your denial.

ANSWER: Defendant has not yet taken a position with respect to this contention and discovery is ongoing.

19. Set forth your basis supporting your denial that the Soil Stabilization System was constructed in a manner that materially deviated from the plans and specifications developed by D'Appolonia.

ANSWER: Objection. This Interrogatory misstates the allegations of Defendant's answer. Further answering, Defendant denies information and knowledge necessary to respond to this request fully and accurately, as discovery is ongoing, and based on the request seeking information from twenty years ago.

20. Set forth your basis supporting your denial that the Soil Stabilization System that was installed by Keller has failed in its primary purpose of stabilizing the soil to prevent further damage to the Residence.

ANSWER: Objection. This Interrogatory misstates the allegations of Defendant's answer.

21. To the extent you have lost or no longer have records of any of the documents requested by Watson in his Requests for Production, provide a Corporate Response setting forth a summary sufficient to inform Watson as to why the requested documents were not kept and/or are missing.

ANSWER: Defendant has maintained records in accordance with applicable state and federal law. To the extent Defendant is missing or no longer has records requested by Plaintiff, it is the result of the temporal attenuation between the date when Defendant undertook the Project and the date when this lawsuit was commenced. In addition, Defendant has experienced mergers and changes in corporate structure, further limiting Defendant's access to potentially responsive documents.

RESPONSES TO REQUESTS FOR PRODUCTION

Defendant hereby answers Plaintiff's First Set of Requests for Production dated November

21, 2023 as follows:

1. A complete copy of your file and/or any of your records relating to the Project.

RESPONSE: See documents bates labeled HaywardBaker_000001 to 243.

2. Copies of any and all photographs, plats, sketches, diagrams, or other prepared documents which you or your attorney may have which relate to the matters at issue in this action, including, without limitation, the photographs and their negatives, plats, sketches, diagrams, or other prepared documents listed in your response to Watson's Interrogatories.

RESPONSE: See Defendant's answer to Interrogatory No. 2.

3. Any and all other documents listed or referenced to in your Answers to Watson's Interrogatories.

RESPONSE: See Defendant's answer to Interrogatory No. 2.

4. Any and all written or recorded statements, reports and affidavits of persons who are witnesses to facts relating to this litigation.

RESPONSE: See documents bates labeled HaywardBaker_000001 to 243.

5. Any and all documents including, but not limited to, correspondence, memoranda, instruction or policy manuals, daily reports, journals, purchase orders, invoices, contracts, subcontracts, change orders, written agreements, accounting documents, job cost reports, back charges, photographs, plats, sketches, blueprints, architectural drawings, shop drawings, calendars, schedules, CPM analysis, or other documents relating to your work, any person or entity who supplied labor and/or materials to you or on your behalf, and/or any other entity involved in the Project.

RESPONSE: See documents bates labeled HaywardBaker_000001 to 243.

6. All design calculations taken by you or on your behalf that relate to the Project.

RESPONSE: See documents bates labeled HaywardBaker_000078 to 84; HaywardBaker_000088 to 99; HaywardBaker_000105 to 134; HaywardBaker_000136 to 137; HaywardBaker_000235 to 236.

7. All calculations prepared by you or on your behalf that relate to the Soil Stabilization System that was installed by Keller.

RESPONSE: See Defendant's response to Request for Production No. 6.

8. All calculations prepared by you or on your behalf that relate to the fact that Keller installed the Soil Stabilization System at an angle of 20 degrees from the horizontal as opposed to the angle of 30 degrees from the horizontal as shown on the Ground Technology drawings for the Project.

RESPONSE: Defendant objects to this request on the ground that it assumes the existence of facts not yet proven or admitted as true. Notwithstanding the foregoing objection, see Defendant's response to Request for Production No. 6.

9. All job meeting records and/or meeting minutes including minutes of any and all design phase meetings with respect to the Project.

RESPONSE: See documents bates labeled HaywardBaker_000064 to 77; HaywardBaker_000085 to 86; HaywardBaker_000088; HaywardBaker_000170 to 234.

10. All subconsultant agreements, correspondence, work product exchanges, and/or invoices.

RESPONSE: Defendant objects to this request on the grounds that it is overly broad and unduly burdensome, particularly as it is unlimited in time and scope, and is not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing objections, see documents bates labeled HaywardBaker_000001 to 03; HaywardBaker_000022; HaywardBaker_000060 to 62; HaywardBaker_000078 to 85; HaywardBaker_000088 to 94; HaywardBaker_000096; HaywardBaker_000099 to 169.

11. All payroll and staffing records relating to the Project.

RESPONSE: See documents bates labelled HaywardBaker_000170 to 218.

12. All records relating to your Commercial General Liability insurance and/or professional Errors and Omissions insurance, including but not limited to a copy of all CGL and E&O policies, whether claims made or occurrence policies (with exclusions, deductibles and riders), payment for coverage, and correspondence from the date of first involvement on the Project until present.

RESPONSE: Will supplement.

13. All site and testing reports, from any entity, relating to the Project including any inclinometer readings.

RESPONSE: See documents bates labeled HaywardBaker_000064 to 84; HaywardBaker_000088; HaywardBaker_000090 to 99; HaywardBaker_000105 to 134; HaywardBaker_000136 to 137; HaywardBaker_000219 to 234.

14. All diaries, reports, "daily reports", correspondence or similar documents related to the Project, including but not limited to, those generated by or received by your employees involved with the Project.

RESPONSE: See documents bates labeled HaywardBaker_000064 to 84; HaywardBaker_000088 to 99; HaywardBaker_000105 to 139; HaywardBaker_000141; HaywardBaker_000170 to 234; HaywardBaker_000237 to 243.

15. All drawings, shop drawings, logs, plans, specifications, addenda, and listings of all revisions for the Project.

RESPONSE: See documents bates labeled HaywardBaker_000064 to 99; HaywardBaker_000105 to 139; HaywardBaker_000141; HaywardBaker_000170 to 236.

16. All documents received by you or any of your employees from any party you contracted with, and/or from any contractor, subconsultant, subcontractor, materials supplier, architect, engineer, or inspector on this Project.

RESPONSE: See documents bates labeled HaywardBaker_000001 to 03;

HaywardBaker_000060 to 236.

17. All documents in your possession relating to geotechnical exploration to include soil strength and fluctuations in the water table in relation to the Project.

RESPONSE: See documents bates labeled HaywardBaker_000078 to 84; HaywardBaker_000090 to 99; HaywardBaker_000105 to 137.

18. All non-privileged notes or correspondence by, to, or from you concerning the subject matter of this lawsuit.

RESPONSE: See documents bates labeled HaywardBaker_000001 to 243.

19. All documents relied upon and/or used by you in relation to the field installation of the Soil Stabilization System anchors.

RESPONSE: See documents bates labeled HaywardBaker_000078 to 84; HaywardBaker_000080 to 99; HaywardBaker_000105 to 137; HaywardBaker_000235 to 236.

20. All documents relied upon and/or used by you in relation to safety considerations for purposes of the Project.

RESPONSE: See Defendant's response to Request for Production No. 19 and documents bates labeled HaywardBaker_000199 to 218.

21. All correspondence by and between you (to include John Wolosick and Ted Ross) with any other person or entity relating to Watson, the Property, and/or the Project, including internal memos of your employees.

RESPONSE: See documents bates labeled HaywardBaker_000001 to 03; HaywardBaker_000021 to 52; HaywardBaker_000060 to 243.

22. All correspondence relating to Mr. and Mrs. C. Bart Schmidt (the previous owners of the Property) including internal memos of your employees.

RESPONSE: See Defendant's response to Request for Production No. 21.

23. Any and all documents and recordings that concern the allegations of the

Complaint, your defense to the allegations of the Complaint, and/or the subject matter of this action.

RESPONSE: See documents bates labeled HaywardBaker_000001 to 243.

24. All reports, photographs, drawings, memoranda, correspondence, documents or other communications exchanged between you and D'Appolonia (Ground Technology) that relate to the Project, the Property, and/or the claims in this lawsuit.

RESPONSE: See documents bates labeled HaywardBaker_000088; HaywardBaker_000235 to 236.

25. All reports, photographs, drawings, memoranda, correspondence, documents or other communications exchanged between you and Erik Mikkelsen that relate to the Project, the Property, and/or the claims in this lawsuit.

RESPONSE: Defendant does not have any responsive documents in their possession, custody, or control that could be located through a reasonable search.

26. All reports, photographs, drawings, memoranda, correspondence, documents or other communications exchanged between you and LAW Engineering and Environmental Services, Inc. that relate to the Project, the Property, and/or the claims in this lawsuit.

RESPONSE: See documents bates labeled HaywardBaker_000078 to 85; HaywardBaker_000106 to 134.

27. All reports, photographs, drawings, memoranda, correspondence, documents or other communications exchanged between you and Cornerstone of Seneca, Inc. that relate to the Project, the Property, and/or the claims in this lawsuit.

RESPONSE: See documents bates labeled HaywardBaker_000090 to 104.

28. All reports, photographs, drawings, memoranda, correspondence, documents or other communications exchanged between you and Hudson Construction of Oconee, Inc. that relate to the Project, the Property, and/or the claims in this lawsuit.

RESPONSE: See documents bates labeled HaywardBaker_000078 to 85; HaywardBaker_000106 to 134.

29. All reports, photographs, drawings, memoranda, correspondence, documents or other communications exchanged between you and Qore, Inc. that relate to the Project, the Property, and/or the claims in this lawsuit.

RESPONSE: Defendant does not have any responsive documents in their possession, custody, or control that could be located through a reasonable search.

30. All reports, photographs, drawings, memoranda, correspondence, documents or other communications exchanged between you and S&ME, Inc. that relate to the Project, the Property, and/or the claims in this lawsuit.

RESPONSE: See documents bates labeled Hayward_Baker000237 to 243.

31. Any and all documents (a) relied upon by each and every expert or consultant the party intends to call as an expert witness at trial, in preparation of his or her opinion or testimony, or (b) that embody, reflect, refer to or summarize reports or memoranda prepared for the party to this litigation by any person the party expects to call as an expert witness.

RESPONSE: Defendant has not retained an expert witness or consultant at this time. Defendant reserves the right to identify an expert witness at an appropriate time in the future.

32. Any and all expert's or consultant's reports pertaining to this litigation.

RESPONSE: See Defendant's response to Request for Production No. 31.

33. Copy of all resumes or curriculum vitae for every expert witness expected to be called by you at trial.

RESPONSE: See Defendant's response to Request for Production No. 31.

34. All documents related to any test, investigation or study conducted which reflects any problems, difficulties or deficiencies related to the Project.

RESPONSE: Defendant objects to this request on the ground that it assumes the existence of facts not yet proven or admitted as true. Notwithstanding the foregoing objection, see Defendant's response to Request for Production No. 6.

ADAMS AND REESE LLP

/s/ Kirby D. Shealy III

Kirby D. Shealy III (SC Bar No.: 11556)

Katherine H. Mills (SC Bar No.: 104665)

1221 Main Street, Suite 1200

Columbia, South Carolina 29201

Telephone: (803) 254-4190

Facsimile: (803) 779-4749

kirby.shealy@arlaw.com

kate.mills@arlaw.com

*Attorneys for Defendants Hayward Baker, Inc. and
Keller North America, Inc.*

January 23, 2024.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	TENTH JUDICIAL CIRCUIT
COUNTY OF OCONEE	)	
	)	
Hugh T. Watson,	)	Civil Action No. 2023-CP-37-00329
	)	
Plaintiff,	)	
	)	
v.	)	CERTIFICATE OF SERVICE
	)	
Hayward Baker, Inc.; Keller North America,	)	
Inc.; and Ground Technology, Inc. d/b/a	)	
D'Appolonia Engineering Division of	)	
Ground Technology, Inc.	)	
	)	
Plaintiff.	)	
	)	

I, Monica Gende, an employee of Adams and Reese, LLP, hereby certify that I have served a copy of **Defendant Keller North America, Inc.'s Responses to Ground Technology, Inc. D/B/A D'appolonia Engineering Division of Ground Technology, Inc.'s First Set of Interrogatories, Responses To Defendant Ground Technology, Inc. D/B/A D'appolonia Engineering Division Of Ground Technology, Inc.'s First Set Of Requests For Production, and Answers To Plaintiff Hugh T. Watson's First Set Of Interrogatories And Responses To Plaintiff's First Set Of Requests For Production** by e-mailing copies of same via electronic mail only to counsel at the following e-mail address:

Mason A. Goldsmith, Jr.
 Katherine Sieber Elmore
 Elmore Goldsmith Kelley & deHoll, P.A.
 PO Box 1887
 Greenville, SC 29602
agoldsmith@elmoregoldsmith.com
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Stephanie Holmes Burton
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 308 E. St. John St.
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*Attorney for Defendant Ground Technology
 Inc. d/b/a D'Appolonia Engineering Division
 of Ground Technology*

s/ Monica Gende
 Monica Gende
 Adams and Reese LLP

January 23, 2024.

EXHIBIT 6



July 28, 2020

Mr. Hugh Watson
113 Shipmaster Drive
Salem, South Carolina 29676

Attention: Mr. Hugh Watson

Reference: **Report of Attempted Slope Inclinator Reading**
113 Shipmaster Drive
Salem, South Carolina
S&ME Project No. 1280-20-041

Dear Mr. Watson:

S&ME Inc. (S&ME) has attempted to take the requested readings of the Slope Inclinator casing installed in or before April, 2002 (by others) at 113 Shipmaster Drive Salem, South Carolina. The work was performed in general accordance with our Proposal No. 12-200190, dated June 19, 2020 and authorized by you on July 8, 2020.

Our understanding of the project is based on telephone conversations with you and Mr. Tim Mirocha, P.E. (Ga) and review of a *Report of Inclinator Survey – October 31, 2006* letter by QORE, Inc. (dated November 21, 2006). We understand that the slope north of the house was remediated (for a previous owner of the property) by Hayward Baker prior to installation of the inclinometer casing. You have noticed cracks or other indications in the structure that have caused you concern that some movement may be occurring. This prompted you to seek a firm to take additional readings of the inclinometer casings.

In March of 2010, S&ME, Inc. acquired certain assets of QORE, Inc. (QORE) and hired many of their employees. QORE's Slope Inclinator device (used for their readings) was one of the acquired assets. The previous projects, files and inactive contracts were not part of the acquisition. Mr. Mirocha was an employee of QORE prior to S&ME's acquisition and remains an employee at S&ME. S&ME was able to locate an electronic copy of the QORE 2006 letter and an electronic copy of the previous Slope Inclinator data from old computer files.

We understand that Hayward Baker stabilized the slope below the residence after previous attempts by others had not stopped the slope movement and damage to the structure. After completing the work, Hayward Baker requested that a program to assess future slope movement be implemented. A Slope Indicator™ 70 mm diameter PVC plastic pipe with slotted inclinometer probe "tracks" was installed. The inclinometer casing was installed in the slope below and north of the house. The inclinometer casing was reportedly capped at the bottom of the casing. The annular space between the sidewall of the boring and the casing was filled with a cement-grout. The top of the plastic pipe was sealed with a slip-on plastic cover. Subsurface conditions encountered at the inclinometer installation were not provided.

The QORE letter indicates that QORE took the initial readings on April 25, 2002 and completed additional readings on February 13, 2004 and October 31, 2006. Other readings may have occurred.



Report of Attempted Slope Inclinometer Reading

113 Shipmaster Drive

Salem, South Carolina

S&ME Project No. 1280-20-041

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S&ME loaded the previous readings by QORE into the device prior to our attempt to obtain a current set of readings. Mr. Mirocha visited the site on Friday July 17, 2020 to attempt to make an additional reading of the slope inclinometer casing. The top of the inclinometer casing was estimated to be about 1-foot above the ground surface. The "A0 track" of the casing was previously marked by others and observed with a magnetic compass to have a heading of approximately 50 degrees east of north. Upon insertion and lowering of the Slope Inclinometer probe into the casing, we observed that the probe would not pass below a depth corresponding to an indicated depth of about 26.8 feet as referenced to the reading depth marks on the cable. The "reading depth" of the probe is at the approximate mid-point of the probe, which is about 1.2 feet above the bottom of the probe. Readings are referenced from the top of casing. Thus, the apparent obstruction was about 27 feet below the top of casing or 26 feet below the ground surface.

Water was noted in the casing at a depth of about 21 feet below the top of casing, corresponding to about 20 feet below the ground surface. Mr. Mirocha made several attempts to get the probe to pass but were unsuccessful. Assuming debris in the casing could possibly be causing the obstruction, we attempted to "flush out" the casing by lowering a water hose (approximate 1-inch diameter "male end" with the water turned on) into the casing. The water hose was able to pass significantly deeper than the inclinometer probe. We noted that it seemed to take an inordinate amount of time for water from the hose to flow out the top of the casing. Very little debris or soil was noted in the water flowing from the top of the casing. We also inserted the hose with the "female end" (approximate 1 1/4 inch diameter) of a replacement hose end installed to serve as a "nozzle" to increase the exit velocity of the water and improve flushing. With the replacement hose end threaded onto the male end of the hose, the hose would not pass the same approximate depth as the obstruction to the probe. Multiple attempts to get the probe to pass below the obstruction were made with the probe in each of the four possible orientations but were unsuccessful. Thus, we were not able to obtain a current set of readings of the casing.

Based on the seemingly consistent depth of the obstruction, we anticipate that the impasse may be a kink in the casing (at a joint or other location) due to additional movement since the 2006 reading. We discussed the obstruction with a representative of the manufacturer and were informed that the probe will not pass a bend or kink in the casing of about 3 inches in a 2-foot section. He also advised that attempting to use the smaller probe (currently available) would not be recommended as it could pass below the obstruction but not be recoverable if it could not be retrieved.

The cumulative displacement graphs for the inclinometer casing obtained by QORE in 2006 (relative to the initial readings) indicate a movement in the A0 direction of about 1.4 inches at the 2-foot reading depth and about 1.0 inch at the 26 and 28-foot reading depths. The 2006 data indicates movement in the B180 direction of about 1.3 inches at the 2-foot reading depth and about 1.4 inches at the 26 and 28-foot reading depths. The data indicate that the movement seems to be occurring in a direction about half-way between the A0 and B180 reading tracks. The cumulative displacement graphs of the QORE data and the tabulated data are attached to this letter. We have also plotted the indicated cumulative movement on a polar graph and overlain that graph at the approximate casing orientation and location onto an image obtained from Google Earth™ to present the direction of the indicated movement. A copy of that image is also attached.

Based on the QORE data, and our attempted reading, the obstruction seems to be occurring at the same approximate depth as the previously indicated movement in the approximate 26 to 28-foot depth range. The



Report of Attempted Slope Inclinator Reading

113 Shipmaster Drive

Salem, South Carolina

S&ME Project No. 1280-20-041

obstruction occurring at the same approximate depth as the previously indicated movement indicates, in our opinion, that additional movement has likely occurred since QORE's 2006 readings, although we cannot estimate how much movement has likely occurred.

We appreciate the opportunity to be of service to you on this project. Please contact is if you have any questions.

Sincerely,

S&ME, Inc.



Timothy J. Mirocha, P.E. (Ga)

Principal Engineer

tmirocha@smeinc.com



Gant M. Taylor, P.E.

Senior Geotechnical Engineer

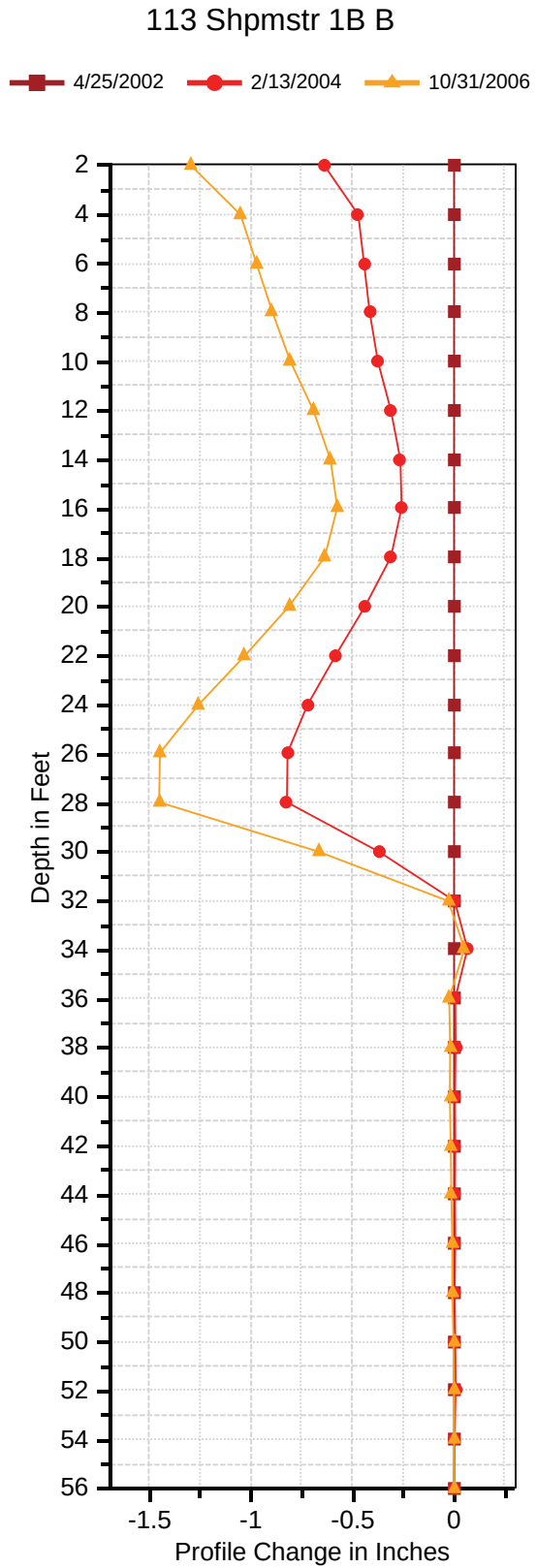
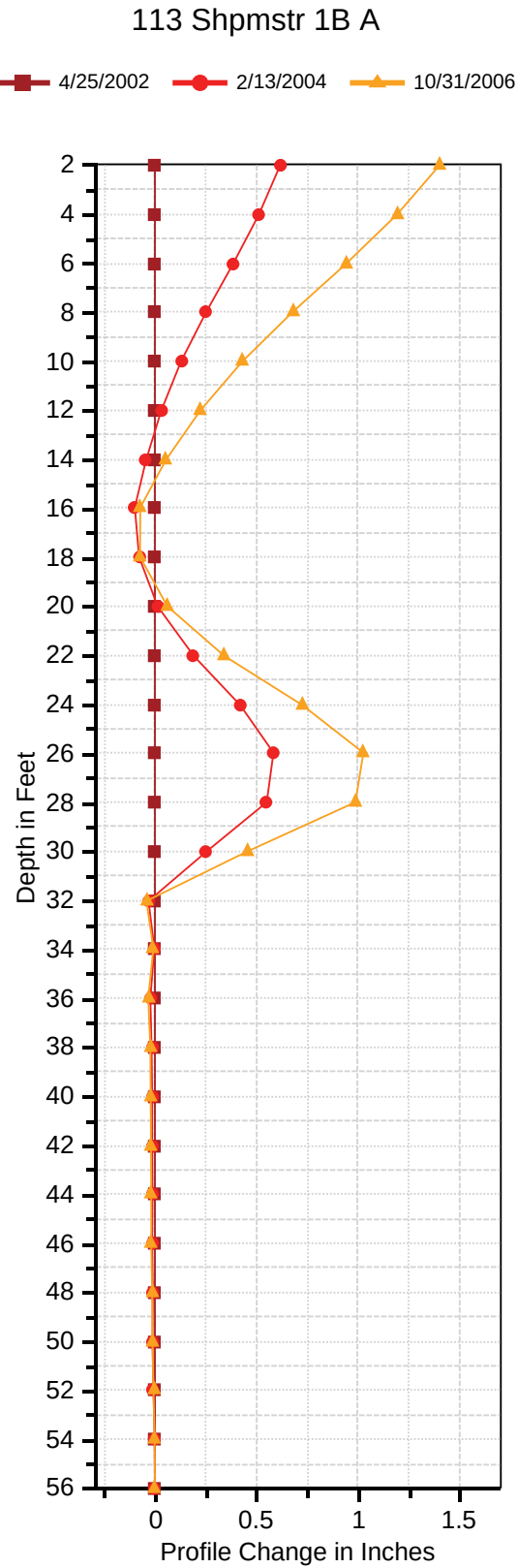
S.C. Reg. No. 21670

gtaylor@smeinc.com

Attachments: 2006 Slope Inclinator Data and Plots (4)

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Attachments



113 Shpmstr:1B Profile_Change

113 Shpmstr 1B A			
Depth in Feet;	Profile_Change: Profile Change in Inches		
Depth	4/25/2002	2/13/2004	10/31/2006
2.0	0.0000	0.6162	1.4022
4.0	0.0000	0.5118	1.1922
6.0	0.0000	0.3846	0.9396
8.0	0.0000	0.2532	0.6804
10.0	0.0000	0.1284	0.4314
12.0	0.0000	0.0312	0.2232
14.0	0.0000	-0.0438	0.0540
16.0	0.0000	-0.0990	-0.0720
18.0	0.0000	-0.0792	-0.0738
20.0	0.0000	0.0138	0.0612
22.0	0.0000	0.1908	0.3408
24.0	0.0000	0.4194	0.7260
26.0	0.0000	0.5838	1.0260
28.0	0.0000	0.5508	0.9882
30.0	0.0000	0.2526	0.4530
32.0	0.0000	-0.0318	-0.0426
34.0	0.0000	-0.0030	-0.0084
36.0	0.0000	-0.0234	-0.0336
38.0	0.0000	-0.0162	-0.0222
40.0	0.0000	-0.0138	-0.0216
42.0	0.0000	-0.0132	-0.0204
44.0	0.0000	-0.0126	-0.0186
46.0	0.0000	-0.0132	-0.0186
48.0	0.0000	-0.0114	-0.0132
50.0	0.0000	-0.0120	-0.0126
52.0	0.0000	-0.0084	-0.0072
54.0	0.0000	-0.0018	-0.0024
56.0	0.0000	0.0000	0.0000

113 Shpmstr:1B Profile_Change

113 Shpmstr 1B B			
Depth in Feet;	Profile_Change: Profile Change in Inches		
Depth	4/25/2002	2/13/2004	10/31/2006
2.0	0.0000	-0.6384	-1.2960
4.0	0.0000	-0.4716	-1.0500
6.0	0.0000	-0.4428	-0.9714
8.0	0.0000	-0.4158	-0.8940
10.0	0.0000	-0.3744	-0.8052
12.0	0.0000	-0.3096	-0.6918
14.0	0.0000	-0.2634	-0.6078
16.0	0.0000	-0.2580	-0.5742
18.0	0.0000	-0.3102	-0.6360
20.0	0.0000	-0.4386	-0.8118
22.0	0.0000	-0.5832	-1.0296
24.0	0.0000	-0.7212	-1.2594
26.0	0.0000	-0.8196	-1.4472
28.0	0.0000	-0.8226	-1.4514
30.0	0.0000	-0.3708	-0.6678
32.0	0.0000	0.0036	-0.0282
34.0	0.0000	0.0672	0.0516
36.0	0.0000	0.0060	-0.0240
38.0	0.0000	0.0084	-0.0192
40.0	0.0000	0.0054	-0.0198
42.0	0.0000	0.0060	-0.0156
44.0	0.0000	0.0054	-0.0132
46.0	0.0000	0.0060	-0.0090
48.0	0.0000	0.0042	-0.0084
50.0	0.0000	0.0066	-0.0018
52.0	0.0000	0.0084	0.0006
54.0	0.0000	0.0036	0.0000
56.0	0.0000	0.0000	0.0000



STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF OCONEE	)	
Hugh T. Watson,	)	C.A. No.: 2023-CP-37-00329
	)	
Plaintiff,	)	
	)	MOTION TO STRIKE FIRST
v.	)	ADDENDUM AFFIDAVIT OF L.G.
	)	LEWIS, JR. OF DEFENDANT
Hayward Baker, Inc.; Keller North America,	)	GROUND TECHNOLOGY, INC. D/B/A
Inc.; and Ground Technology, Inc. d/b/a	)	D'APPOLONIA ENGINEERING
D'Appolonia Engineering Division of Ground	)	
Technology, Inc.,	)	
	)	
	)	
Defendants.	)	
_____	)	

To: Plaintiff Hugh T. Watson, and Mason A. Goldsmith and H. Drennan Quattlebaum, his attorneys:

Defendant Ground Technology, Inc. d/b/a D'Appolonia Engineering ("D'Appolonia") moves the Court, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, to strike the First Addendum Affidavit of L.G. Lewis, Jr. This motion is made upon the following grounds:

1. According to his deposition testimony, Mr. Lewis was retained by counsel for Plaintiff in connection with this matter in 2020.
2. Plaintiff filed this action on April 27, 2023.
3. During the course of this litigation, D'Appolonia produced documents relating to its design of the anchor block system, which is the subject of this Action, including its detailed mathematical calculations. Those calculations were produced by D'Appolonia to all parties in this case on January 25, 2024.

4. On April 16, 2024, the deposition of Mr. Lewis was taken in this case. During that deposition, Mr. Lewis acknowledged that he had reviewed the design calculations prepared by D'Appolonia in connection with his opinions.
5. In his April 16, 2024 deposition, Mr. Lewis did not testify that D'Appolonia was grossly negligent (as he defines that term) in preparing its 2002 calculations for the design of the anchor block system. To that end, Mr. Lewis testified:

Q. This may have already been answered, so I apologize. But I just want to get confirmation as to what's the basis of your opinion that D'Appolonia was negligent related to the soil stabilization system installed here?

A. My concern and my -- my assessment of D'Appolonia's negligence deals with the failure of D'Appolonia, once being placed on notice of the -- the soil movements on this residence, that it did not -- that we don't have any indication that D'Appolonia went back and in any way analyzed its fix solution to determine why or to provide guidance in the assessment of the wedge of soil that, based on the inclinometer readings, show continued slope movement below the bottom elevation of the anchor blocks. And my -- my complaint with D'Appolonia's action and its professional services is being placed on notice of the extent of soil movements, whether it knew one way or the other what the warranty may have been, they were placed on notice, and I think the -- of the extent of movement. And there was no indication of any subsequent analysis to either confirm that the original design by D'Appolonia was sufficient or to offer suggestions on what could or should be done to -- to terminate the movement of the soil wedge that was -- is reflected in the inclinometer readings on this site.

Q. Is that the same basis for your opinion that D'Appolonia was also grossly negligent in this case?

A. Yes. Yes. **It wasn't so much their design**, as it was their lack of responsiveness once the problems were identified.

6. Mr. Lewis offers no explanation for new contradictory statements, nor can he as he admittedly had reviewed the calculations before his deposition was taken. He does not rely upon any new evidence, but rather seeks to offer a new interpretation of evidence that has been in his possession for at least a year. There is no evidence that Mr. Lewis was confused during his deposition.

7. Whether D'Appolonia was grossly negligent in performing its original design calculations in 2002 is relevant to the outcome of this litigation and is pivotal to whether the statute of repose bars Plaintiff's claim.
8. Mr. Lewis's new affidavit varies greatly from his prior sworn testimony in this case and was offered just two days before the motion was scheduled to be heard. This indicates that Plaintiff is attempting to create a sham issue of fact for purposes of summary judgment.
9. This Court must analyze these factors as set forth by the South Carolina Supreme Court in Cothran v. Brown, 357 S.C. 210, 592 S.E.2d 629 (2004); See also McMaster v. DeWitt, 411 S.C. 138, 767 S.E.2d 451 (Ct. App. 2015).
10. Mr. Lewis's affidavit has been submitted in an attempt to create a sham issue of material fact and it must be stricken as a matter of law.

This motion is based upon the pleadings filed in this action, the attached deposition testimony of L.G. Lewis, Jr., and upon applicable common and statutory law.

s/Stephanie H. Burton
Stephanie H. Burton (#13089)
GIBBES BURTON, LLC
308 East Saint John Street
Spartanburg, South Carolina 29302
Telephone: 864-327-5000
Facsimile: 864-342-6884
sburton@gibbesburton.com

*Attorneys for Defendant Ground
Technology, Inc. d/b/a D'Appolonia
Engineering Division of Ground
Technology, Inc.*

January 28, 2025

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

COUNTY OF OCONEE

HUGH T. WATSON,
Plaintiff,

vs. CASE NO.: 2023-CP-37-00329

HAYWARD BAKER, INC.; KELLER

NORTH AMERICA, INC.; and

GROUND TECHNOLOGY, INC.

d/b/a D'APPOLONIA ENGINEERING,

DIVISION OF GROUND TECHNOLOGY, INC.,

Defendants.

DEPOSITION OF: L.G. "SKIP" LEWIS, JR.

DATE: April 16, 2024

TIME: 10:04 a.m.

LOCATION: Elmore Goldsmith Kelley & DeHoll
19 Blair Street

Greenville, South Carolina

TAKEN BY: Counsel for the Defendants

REPORTED BY: Mary K. Stepp, Court Reporter

Job No. CS6503013

1 the report, at this time. And I think it was -- they
2 wanted an early indication of the direction that --
3 that -- that we were finding that the leads to take
4 us in this matter.

5 Q. This may have already been answered, so I
6 apologize. But I just want to get confirmation as to
7 what's the basis of your opinion that D'Appolonia was
8 negligent related to the soil stabilization system
9 installed here?

10 A. My concern and my -- my assessment of
11 D'Appolonia's negligence deals with the failure of
12 D'Appolonia, once being placed on notice of the --
13 the soil movements on this residence, that it did
14 not -- that we don't have any indication that
15 D'Appolonia went back and in any way analyzed its fix
16 solution to determine why or to provide guidance in
17 the assessment of the wedge of soil that, based on
18 the inclinometer readings, show continued slope
19 movement below the bottom elevation of the anchor
20 blocks.

21 And my -- my complaint with D'Appolonia's
22 action and its professional services is being placed
23 on notice of the extent of soil movements, whether it
24 knew one way or the other what the warranty may have
25 been, they were placed on notice, and I think the --

1 of the extent of movement. And there was no
2 indication of any subsequent analysis to either
3 confirm that the original design by D'Appolonia was
4 sufficient or to offer suggestions on what could or
5 should be done to -- to terminate the movement of the
6 soil wedge that was -- is reflected in the
7 inclinometer readings on this site.

8 Q. Is that the same basis for your opinion
9 that D'Appolonia was also grossly negligent in this
10 case?

11 A. Yes. Yes. It wasn't so much their
12 design, as it was their lack of responsiveness once
13 the problems were identified.

14 Q. And were you tasked by Mr. Watson of
15 finding examples of alleged gross negligence on the
16 part of the parties to this case?

17 A. No. But, you know, I am aware -- I'm
18 aware of the conditions surrounding complaints of
19 this nature, particularly the age of complaints. But
20 I will sit here and I will tell you that my honest
21 assessment is that the D'Appolonia and the HB
22 failures to aggressively pursue the reasons why this
23 slug of soil, particularly the lower levels,
24 continued to move, in my judgment is -- is willful
25 and wanton decision not to effect any type of repair

1 is that related to the statute of repose?

2 A. Yes, it is.

3 Q. And the only basis for your allegation
4 that D'Appolonia acted in a grossly negligent way is
5 failure to order more investigations after the 2004
6 letter to Hayward Baker?

7 A. Uhm, let me try to answer that in this
8 context. The answer's yes. I think -- I think
9 the -- the -- the gross negligence on the part of
10 D'Appolonia was its failure to review, analyze, and
11 report on its original design basis, given the extent
12 to which the soil movements had occurred.

13 I don't know whether D'Appolonia received
14 subsequent inclinometer readings from Hayward Baker
15 or not. But in any case, whether they did or whether
16 they did not, once being placed on notice of
17 significant soil movement below its -- its fix, which
18 it intentionally designed to stabilize the house,
19 their -- their -- their failure to review the design
20 and -- and get back to Hayward Baker on whether or
21 not the -- the design was adequate or was short in
22 any particular area, in my judgment, was an act of
23 gross negligence on the part of D'Appolonia.

24 Q. Have you seen any documentation or
25 information that Hayward Baker ever requested or

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF OCONEE	)	C.A. NO. 2023-CP-37-00329
	)	
Hugh T. Watson,	)	
	)	PLAINTIFF HUGH T. WATSON'S
Plaintiff,	)	MOTION TO ALTER OR AMEND
	)	ORDER GRANTING SUMMARY
v.	)	JUDGMENT FOR DEFENDANT
	)	GROUND TECHNOLOGY, INC. D/B/A
Hayward Baker, Inc.; Keller North America,	)	D'APPOLONIA ENGINEERING
Inc.; and Ground Technology, Inc. d/b/a	)	
D'Appolonia Engineering Division of	)	
Ground Technology, Inc.,	)	
	)	
Defendants.	)	

Plaintiff Hugh T. Watson ("Watson"), by and through his undersigned counsel, moves the Court, pursuant to SCRCP 59(e), to alter or amend its February 14, 2025, Order Granting Motion For Summary Judgment For Defendant Ground Technology, Inc. d/b/a D'Appolonia Engineering ("D'Appolonia") (the "Order"). Plaintiff respectfully requests a hearing within ten (10) days or as soon as it may be heard regarding the matters set forth below. This Motion is based on the record, any arguments that may be raised in a subsequent memorandum of law, and the grounds set forth below:

1. Under South Carolina law, a party may move for reconsideration under Rule 59(e), SCRCP, when "the court has misunderstood, failed to fully consider, or [] failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it." *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004).

2. Here, the Order rests on too narrow a definition of gross negligence and, as result, fails to recognize that the gross negligence exception set forth in S.C. Code Ann. § 15-3-670 bars application of the Statute of Repose in the instant case.

3. In addition to those cases which have defined it as the “failure to exercise slight care” (as cited on p. 10 of the Order), gross negligence has also been defined as “the intentional, conscious failure to do something which it is incumbent upon one to do or the doing of a thing intentionally that one ought not to do.” *Steinke v. S.C. Dep't of Lab., Licensing & Regul.*, 336 S.C. 373, 395, 520 S.E.2d 142, 153 (1999). “It is a relative term, and means the absence of care that is necessary under the circumstances” *Id.* (quoting *Hollins v. Richland County School Dist. One*, 310 S.C. 486, 490, 427 S.E.2d 654, 656 (1993) (internal quotations omitted). This absence of care and failure to act is the basis for the Plaintiff’s claim.

4. In particular, the Plaintiff’s experts Skip Lewis and Jim Kahle said repeatedly in affidavits and depositions that D’Appolonia was on notice of a problem and intentionally **failed to act**. Whether their opinions are correct or not is for a jury to decide. Mr. Lewis and Mr. Kahle noted that D’Appolonia was aware of unexplained, excessive movement in a slope stabilization system supporting the Plaintiff’s home. Yet, despite these red flags, they chose to do nothing. Mr. Lewis testified: **“I think the gross negligence on the part of D’Appolonia was its failure to review, analyze, and report on its original design basis, given the extent to which the soil movements had occurred. . . . [O]nce being placed on notice of significant soil movement below its - - its fix . . . their failure to review the design . . . was an act of gross negligence on the part of D’Appolonia.”** See Lewis Tr. 133: 2-23. Jim Kahle agreed, noting: “When the data says that something is not performing as intended, and then if that data is ignored, it’s my opinion that would be gross negligence” particularly when “that has the potential for damage or for loss of life.” See Kahle Tr. 171:24-172:2)) (emphasis added). Mr. Lewis further stated in his Addendum to his Affidavit that he found a **“serious error in [the D’Appolonia] design calculations reducing the**

intended Safety Factor of 1.5 for slope failure resistance to an unacceptably low Safety Factor of 1.07”

5. Moreover, there is evidence that D’Appolonia was not only grossly negligent, but also intentionally and willfully chose to ignore warning signs. Mr. Lewis testified: “my honest assessment is that the “D’Appolonia and the HB failures to aggressively pursue the reasons why this slug of soil, particularly the lower levels, continue to move, in my judgment is - - **is willful and wanton decision** not to effect any type of repair of the benefit of the Schmidt property or the Watson Property” and a “**willful dereliction of a professional responsibility to follow up on yellow flags that indicate problematic solutions.**” (Lewis Tr. 144:21-145:14) (emphasis added).

6. If the testimony of Mr. Lewis and Mr. Kahle is believed, then the Statute of Repose does not apply. And whether the testimony of these experts is to be believed is a question of fact for a jury, not a question of law for summary judgment. *See Faile v. South Carolina Dep’t of Juvenile Justice*, 350 S.C. 315, 332, 566 S.E.2d 536, 545 (2002) (“In most cases, gross negligence is a factually controlled concept whose determination best rests with the jury.”)

7. D’Appolonia, the moving party seeking to raise the Statute of Repose as an affirmative defense, failed to meet its burden of proof. It failed to introduce the Building Permit into evidence, let alone establish that the Building Permit contained the requisite bold type notice clearly required under S.C. Code Ann. § 15-3-640. The Court’s reliance on an unpublished decision from the United States District Court for the District of South Carolina which is not binding is misplaced. *See Pike v. S.C. Dep’t of Transp.*, 343 S.C. 224, 231, 540 S.E.2d 87, 91 (2000) (acknowledging “the well-established rule that the party pleading an affirmative defense ‘has the burden of proving it’” (quoting *Hoffman v. Greenville County*, 242 S.C. 34, 39, 129 S.E.2d 757, 760 (1963))).

8. Finally, the Order misapplies the correct standard for determining the existence of a legal duty and fails to adequately address Mr. Lewis's Addendum to his Affidavit. Footnote 2 to the Order merely states that the Court "disregarded his supplemental affidavit" while citing to two cases without any explaining its disregard. As the Court will recall, at the commencement of the hearing counsel for Watson stated that it had received D'Appolonia's Motion to Strike less than twenty-four hours earlier and desired adequate time to respond and be heard on this issue; the Court responded that the Motion to Strike was not before it at that time and there has been no hearing on the Motion to Strike. Consequently, the Addendum is properly before the Court.

9. Mr. Lewis's Addendum to his Affidavit shows that D'Appolonia negligently, intentionally, or recklessly committed a serious error in its design calculations. Because this error created a substantial risk of personal injury and property damage D'Appolonia became duty bound to warn owners/occupants of the risk of a collapse and to ensure that Hayward Baker mitigated this risk by strengthening the slope stability system. *See Faile v. S.C. Dep't of Juv. Just.*, 350 S.C. 315, 334, 566 S.E.2d 536, 546 (2002) (listing five exceptions to the general duty to control the conduct of another or to warn a third person or potential victim of danger.... (4) where the defendant negligently or intentionally creates the risk.) (citing Hubbard & Felix, *The South Carolina Law of Torts* 57–72 (1990)).

10. In addition to Mr. Lewis's Addendum to his Affidavit, there is ample testimony in the record that D'Appolonia under-designed the system and thus owed a duty to control or warn Hayward Baker and the Schmidts of potential danger affecting life and property when confronted with evidence of unanticipated deep subsurface movement in the soils supporting the structure. (See *e.g.*, Kahle Aff. ¶ 9).

CONCLUSION

For the foregoing reasons, Plaintiff Hugh T. Watson respectfully requests that the Court alter or amend its Order, and deny Defendant Ground Technology, Inc. d/b/a D'Appolonia Engineering Division of Ground Technology, Inc.'s motion for summary judgment.

Plaintiff further requests a hearing within ten (10) days to address these issues contained herein.

Respectfully submitted,

s/Mason A. Goldsmith, Jr.

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Attorneys for Plaintiff Hugh T. Watson

February 24, 2025
Greenville, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF OCONEE	)	C.A. NO. 2023-CP-37-00329
	)	
Hugh T. Watson,	)	
	)	PLAINTIFF HUGH T. WATSON'S
Plaintiff,	)	MOTION TO ALTER OR AMEND
	)	ORDER GRANTING SUMMARY
v.	)	JUDGMENT FOR DEFENDANT
	)	HAYWARD BAKER, INC.; KELLER
Hayward Baker, Inc.; Keller North America,	)	NORTH AMERICA, INC.
Inc.; and Ground Technology, Inc. d/b/a	)	
D'Appolonia Engineering Division of	)	
Ground Technology, Inc.,	)	
	)	
Defendants.	)	

Plaintiff Hugh T. Watson ("Watson"), by and through his undersigned counsel, moves the Court, pursuant to Rule 59(e), SCRCP, to alter or amend its February 19, 2025, Order Granting Motion For Summary Judgment For Defendant Hayward Baker, Inc.; Keller North America, Inc. ("Hayward Baker") (the "Order"). Watson respectfully requests a hearing within ten (10) days or as soon as it may be heard regarding the matters set forth below. This Motion is based on the record, any arguments that may be raised in a subsequent memorandum of law, and the grounds set forth below:

1. Under South Carolina law, a party may move for reconsideration under Rule 59(e), SCRCP, when "the court has misunderstood, failed to fully consider, or [] failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it." *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004).

2. The Order misapplies the appropriate standard in concluding that Watson's claims for (i) negligence, (ii) gross negligence, (iii) breach of implied warranties; (iv) negligent misrepresentation, and (v) constructive fraud/fraud are barred by the Statute of Limitations. The Court's Order correctly states that the determination employed is an *objective* one. However, its

analysis fails to consider whether a reasonable person of *common knowledge* and *experience* in Watson's circumstances would have been on notice by a certain date. *Gibson v. Bank of Am., N.A.*, 383 S.C. 399, 406, 680 S.E.2d 778, 782 (Ct. App. 2009). The Order itself recounts that Heyward Baker had to call on numerous other geotechnical professionals and engineers to interpret and analyze the validity and meaning of the inclinometer readings, yet at the same time concludes that Plaintiff must have become aware of his claims through the existence of technical documentation that the Schmidts left behind in a basement file cabinet. The Court's function at this stage is not to weigh conflicting evidence, conclusions and inferences and determine the truth of the matter, but to rather determine whether issues of material fact exist. Respectfully, this objective determination must be left for the jury.

3. Moreover, the underlying dispute involves complex geotechnical engineering issues that are arguably not within a person's common knowledge or experience and would not put the typical reasonable person on notice of a cause of action. A jury could well find that a reasonable person in Watson's circumstances would not have been on notice that he had a claim until the summer of 2020, in contrast to the court's conclusion that Watson was on notice before he even purchased the residence. (Which conclusion begs the question: why would Watson knowingly purchase someone else's problem?) At a minimum, there is conflicting evidence *and* conflicting conclusions and inferences that can be drawn from that evidence as to when Watson knew or should have reason to know he had a cause of action against Hayward Baker. *See Wogan v. Kunze*, 379 S.C. 581, 585, 666 S.E.2d 901, 903 (2008) (even if evidentiary facts are not disputed but the conclusions or inferences to be drawn from them are, summary judgment should be denied); *see also Moriarty v. Garden Sanctuary of God*, 314 S.C. 320, 338-39, 534 S.E.2d 672, 681-82 (2000) (the discovery rule contained in S.C. Code Ann. § 15-3-535, as well as the determination

of the date the statute began to run in a particular case, are questions of fact for the jury when the parties present conflicting evidence.) (citing cases).

4. Specifically, Watson testified that he relied on his 2015 conversation with Wolosick when contemplating purchasing the residence and he felt such reliance was reasonable because: “I felt that there was no better expert than the engineer that performed the work....Ultimately, I felt betrayed....Because none of the information that apparently was known about the system failing was shared with me. And **I was led to believe** [by Wolosick] **that it was working perfectly and would last for 60-plus years.**” (Watson Tr., 133:22 - 134:3-19) (emphasis added). Watson specifically testified that had Wolosick fully disclosed his knowledge of the system failing he would not have purchased the residence. (*Id.*, 131:4 – 133:5). “I would have asked more questions, I think. What is that? What does that mean? What should we – what – what does it say? Assuming those questions led to the very information that was known [to Wolosick], **I would not have purchased the home.** (*Id.*, 132:25 – 133:1-5) (emphasis added).

5. The Court should further reconsider the province of the jury as compared to other findings and conclusions set for in the Order relating to the statute of limitations.

- a. Watson’s purported knowledge of Hayward Baker’s previous slope stabilization work does not constitute discovery of a *problem* with this work and an actionable claim as a matter of law (Order, p. 9) any more than his possession of the documents that the Schmidts left behind (Order, p 10) – especially considering that in those documents there exists multiple explicit representations by Wolosick that the system was performing. Watson’s testimony is that he did not discover damage to his home or deep surface soil movement until the Summer of 2020. This creates a jury question and should preclude the Court from finding that “the undisputed

evidence shows that Plaintiff knew or should have known of a potential claim against Keller in 2015.” (Order, p. 11)

- b. Conclusions concerning the sufficiency of Watson’s due diligence (i.e., his call to Wolosick) must likewise be left to the jury. The Order cites to pages 30:19-32:18 of the Watson transcript as proof that Watson discovered the inclinometer readings in 2015 (Order, p. 11) when that line of testimony says no such thing.
- c. The erroneous reading of this line of testimony (i.e., Watson Tr., 30:10-32:18) is used to conclude that at “any time following 2015, Plaintiff could have simply confirmed the results of the slope stability work . . . by having the inclinometer checked again.” (Order, pgs. 11-12). Problematically, this analysis overlooks conflicting evidence. Watson’s testimony is that he did not discover damage to his home, the existence of an inclinometer casing in his backyard, or deep subsurface soil movement until the Summer of 2020. (Watson Tr., 33:6 – 34:6; 55:3-16; 132:17-20; 131:4-13.)
- d. The conclusion that “Plaintiff turned an unreasonable, and perhaps intentional, blind eye to the very claims that he now asserts he ‘discovered’ in 2020” (Order, p. 12) is not only unsupported by competent evidence but flat out contradicted by Watson’s testimony that he was not looking to buy a problem and would not have purchased the home had Wolosick made a full and truthful disclosure. (Watson Tr., 131:4 – 133:5).

6. The Order also applies an incorrect standard for purposes of the summary judgment stage when concluding that Watson’s claims are barred by the Statute of Repose. The Court should reconsider its Order regarding the Statute of Repose for four primary reasons.

- a. **First**, the analysis of Watson’s claim for fraud/constructive fails to recognize the evidence in the record that supports Watson’s claim and, as result, fails to recognize that the fraud exception set forth in S.C. Code Ann. § 15-3-670 bars application of the Statute of Repose in the instant case. As an initial matter, the Court concludes in footnote 1 of the Order that the same analysis applies to both fraud and constructive fraud. However, “knowing or reckless disregard of falsity” or “intent that the misrepresentation be acted upon” are *not* elements required for a showing of constructive fraud. *Maybank v. BB&T Corp.*, 416 S.C. 541, 577, 787 S.E.2d 498, 517 (2016) (“Constructive fraud is distinguishable from actual fraud in that constructive fraud does not require the element of intent to deceive.”). Regardless, summary judgment was premature as evidence before the Court shows satisfaction of all nine elements of fraud for purposes of defeating summary judgment: (1) Representations of fact were made to Watson. (Wolosick Tr., 161:12-20, 163:5-164:4); (2) Hayward Baker’s representations were false or a half-truth. Here Hayward Baker, through John Wolosick, failed to disclose movement exceeded $\frac{3}{4}$,” the ancient landslide scarp tugging on the retained zone, and the inclinometer, yet told Watson he had nothing to worry about because the system was solid. (*Id.*, 163:5-164:4); (3) The representations were material. Ample evidence exists that but for Mr. Wolosick’s representations or lack thereof, Mr. Watson would not have moved forward with the purchase of the Property. (Watson Tr., 130:6-21, 131:4-132:3); (4) Hayward Baker had knowledge of the falsity of its representations and/or acted with reckless disregard. (Wolosick Tr., 163:5-164:15); (5) Hayward Baker intended the representations be acted upon. (Ex. 77, Schmidt Tr., 61:9-25;

63:18-65:1) (Wolosick Tr., 43:5-44:7); (6) Watson was ignorant of the falsity of Hayward Baker's statements. (Watson Tr., 131:4-25; 132:1-3; 130:6-21); (7) Watson relied on Hayward Baker's statements when purchasing the residence. (Wolosick Tr., 163:5-164:4); (Watson Tr., 131:4-21; 132:13-21; 133:7-12; 134:10-19); (8) Watson had a right to rely. Mr. Watson has no engineering background. (Watson Tr., 28:4-7) *See e.g., Byrn v. Walker*, 275 S.C. 83, 88, 267 S.E.2d 601, 604 (1980) (The right to rely may arise where the parties involved are not on equal footing, i.e., one party has superior knowledge of the facts which are not reasonably ascertainable by the other.); (9) Watson suffered injury including the need for future remedial work and repairs at a substantial cost. (Watson Memorandum in Opposition, Exhibit 2).

- b. **Second**, the Order rests on too narrow a definition of gross negligence and, as result, fails to recognize that the gross negligence exception set forth in S.C. Code Ann. § 15-3-670 bars application of the Statute of Repose in the instant case. In addition to those cases which have defined it as the "failure to exercise slight care" (as cited in pages 15-16 of the Order), gross negligence has also been defined as "the intentional, conscious failure to do something which it is incumbent upon one to do or the doing of a thing intentionally that one ought not to do." *Steinke v. S.C. Dep't of Lab., Licensing & Regul.*, 336 S.C. 373, 395, 520 S.E.2d 142, 153 (1999). "It is a relative term, and means the absence of care that is necessary under the circumstances" *Id.* (quoting *Hollins v. Richland County School Dist. One*, 310 S.C. 486, 490, 427 S.E.2d 654, 656 (1993) (internal quotations omitted). This absence of care and failure to act is the basis for Watson's claim. Here, Watson's experts

Skip Lewis and Jim Kahle said repeatedly in affidavits and depositions that Hayward Baker's failure to effectively design *and* address subsurface movement, despite being on notice of the problem constitutes gross negligence. It is Mr. Lewis's opinion that "Hayward Baker and persons working under them in connection with the Watson residence were **negligent, reckless, or grossly negligent**...[i]n failing to effectively design and construct remedial measures...." (Lewis Aff. ¶ 15). Mr. Kahle is of the same opinion: "Hayward Baker was **grossly negligent** in [its] post-construction acts and omissions following notification of continued creep in the soil mass and the extreme breach of the Hayward Baker performance warranty." (Kahle Aff. ¶ 11) (emphasis added). Moreover, there is evidence that Hayward Baker was not only grossly negligent but also acted willfully and wantonly in its decision not to effect any type of repair. Mr. Lewis testified: "my honest assessment is that the "D'Appolonia and the [Hayward] [Baker] failures to aggressively pursue the reasons why this slug of soil, particularly the lower levels, continue to move, in my judgment is - - **is willful and wanton decision** not to effect any type of repair of the benefit of the Schmidt property or the Watson Property" and a "**willful dereliction of a professional responsibility to follow up on yellow flags that indicate problematic solutions.**" (Lewis Tr. 144:21-145:14) (emphasis added). The statement that Plaintiff has "failed to adduce admissible evidence in support of its claims for fraud and gross negligence" (Order, p 13) is at odds with the record and the applicable standard when ruling on a motion for summary judgment. If the testimony of Mr. Lewis and Mr. Kahle is believed, then the Statute of Repose does not apply. And whether the testimony of

- these experts is to be believed is a question of fact for a jury, not a question of law for summary judgment. *See Faile v. South Carolina Dep't of Juvenile Justice*, 350 S.C. 315, 332, 566 S.E.2d 536, 545 (2002) (“In most cases, gross negligence is a factually controlled concept whose determination best rests with the jury.”)
- c. **Third**, Hayward Baker, the moving party seeking to raise the Statute of Repose as an affirmative defense, failed to meet its burden of proof. It failed to introduce the Building Permit into evidence, let alone establish that the Building Permit contained the requisite bold type notice clearly required under S.C. Code Ann. § 15-3-640. The Court’s reliance on an unpublished decision from the United States District Court for the District of South Carolina which is not binding is misplaced. *See Pike v. S.C. Dep't of Transp.*, 343 S.C. 224, 231, 540 S.E.2d 87, 91 (2000) (acknowledging “the well-established rule that the party pleading an affirmative defense ‘has the burden of proving it.’” (quoting *Hoffman v. Greenville County*, 242 S.C. 34, 39, 129 S.E.2d 757, 760 (1963))).
- d. **Fourth**, the Order does not address the fact that Watson’s claims for promissory estoppel and negligent misrepresentation are not barred by the statute of repose, because the underlying conduct giving rise to these actions occurred in connection with Watson’s 2015 purchase of the residence – **not the prior construction work itself**.
7. Next, the Order misapplies the correct standard for determining the existence of an implied warranty and fails to address the policy behind implied warranties in the construction context. Policy dictates that “[t]he law should not orphan the purchaser of a house, who has likely invested his life savings and executed a 20, 30, or 40 year mortgage.” *Lane v. Ternholm Bldg. Co.*,

267 S.C. 497, 503, 229 S.E.2d 728, 731 (1976). Mr. Lewis's Affidavit and First Addendum to Affidavit show that Hayward Baker failed to effectively design and implement its soil stabilization system.

8. The Order misapplies the pecuniary interest standard and focusses too narrowly on Hayward Baker's representations made to the Schmidts. Specifically, it fails to consider the false representations **that Mr. Wolosick made directly to Watson**. Mr. Wolosick made these representations to Mr. Watson in the course of Mr. Wolosick's business and profession which is sufficient to create a material issue of fact as to whether Hayward Baker had a pecuniary interest in such statements. Given that Mr. Watson has no engineering background himself (Watson Tr., 28:4-7) and that Mr. Wolosick is an engineer and represented himself as such, the law places upon Hayward Baker a duty to see that truthful and accurate information was conveyed to Mr. Watson. *AMA Management Corp. v. Strasburger*, 309 S.C. 213, 223, 420 S.E.2d 868, 874 (Ct. App. 1992) ("[I]f the defendant has a pecuniary interest in making the statement and he possesses expertise or special knowledge that would ordinarily make it reasonable for another to rely on his judgment or ability to make careful enquiry, the law places on him a duty of care with respect to representations made to plaintiff.").

9. Lastly, the Order fails to consider the evidence that promises were made to Mr. Watson by Wolosick. For example, where Wolosick represented that the system was working perfectly and would last for 60-plus years. Watson testified that he felt betrayed by Wolosick: "[b]ecause none of the information that apparently was known about the system failing was shared with me. And I was led to believe that it was working perfectly and would last for 60-plus years." (Watson Tr. 134:13-19).

CONCLUSION

For the foregoing reasons, Plaintiff Hugh T. Watson respectfully requests that the Court alter or amend its Order, and deny Defendant Hayward Baker Inc./Keller North America, Inc.'s motion for summary judgment.

Plaintiff further requests a hearing within ten (10) days to address these issues contained herein.

Respectfully submitted,

s/Mason A. Goldsmith, Jr.

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Attorneys for Plaintiff Hugh T. Watson

February 28, 2025
Greenville, South Carolina

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

COUNTY OF OCONEE

HUGH T. WATSON,
Plaintiff,

vs. CASE NO.: 2023-CP-37-00329

HAYWARD BAKER, INC.; KELLER

NORTH AMERICA, INC.; and

GROUND TECHNOLOGY, INC.

d/b/a D'APPOLONIA ENGINEERING,

DIVISION OF GROUND TECHNOLOGY, INC.,

Defendants.

DEPOSITION OF: HUGH T. WATSON

DATE: April 15, 2024

TIME: 10:05 a.m.

LOCATION: Elmore Goldsmith Kelley & DeHoll
19 Blair Street

Greenville, South Carolina

TAKEN BY: Counsel for the Defendants

REPORTED BY: Mary K. Stepp, Court Reporter

Job No. CS6502995

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23 and

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ALSO PRESENT:

John Wolosick, Keller North America, Inc.

(INDEX AT REAR OF TRANSCRIPT)

1 Q. And where are you from originally?

2 A. Trion, Georgia.

3 Q. And did you grow up in Trion, Georgia or
4 were you just born there?

5 A. No. No. All of my life through high
6 school.

7 Q. All right. And how far did you go in
8 school?

9 A. In post-education?

10 Q. Well, so, did you graduate from high
11 school?

12 A. I did.

13 Q. And what high school?

14 A. Trion High School.

15 Q. And then I assume you went to college?

16 A. I did go to college.

17 Q. Where did you go?

18 A. Mars Hill University.

19 Q. And then you obtained a degree from Mars
20 Hill?

21 A. I did.

22 Q. In what field?

23 A. In life sciences.

24 Q. And then beyond college, have you had any
25 graduate, postgraduate education?

1 A. No.

2 Q. You ever served in the military?

3 A. I have not.

4 Q. The -- I'll ask you more about your
5 work -- your work background shortly, but you brought
6 this lawsuit in Oconee County. Do you have any
7 relatives over the age of 18 that live in Oconee
8 County, South Carolina?

9 A. No.

10 Q. And when did you first come to South
11 Carolina?

12 A. In 2015.

13 Q. Okay. When you bought the house --

14 A. Correct.

15 Q. -- that is the subject of this lawsuit?

16 A. Correct.

17 Q. Okay. And what brought you here?

18 A. Uhm, several factors. I had several
19 colleagues that had purchased homes on the lake. I
20 have friends that had a home on the lake. So it was,
21 I guess, those factors that were -- predominantly led
22 me to discover it.

23 Q. Okay. And the -- the house that you
24 purchased is located at 113 Shipmaster Drive in
25 Salem, South Carolina?

1 A. Correct.

2 Q. Is that your only residence?

3 A. It is.

4 Q. And where did you move from, when you --
5 when you moved to the Shipmaster?

6 A. I sold my home in Mars Hill.

7 Q. Okay. And how long had you lived in Mars
8 Hill?

9 A. I purchased that home in 1999.

10 Q. And then before that, where did you live?

11 A. In college dormitory.

12 Q. Okay. So tell me about your work
13 experience.

14 A. Uh-huh.

15 Q. Do you work currently?

16 A. I do.

17 Q. What do you do for a living?

18 A. I lead sales and marketing for a
19 diagnostics company.

20 Q. What's the name of that company?

21 A. That name is Boston Heart Diagnostics.

22 Q. All right. And how long have you been
23 with that company?

24 A. A little over two years.

25 Q. Before that, where did you work?

1 A. Genova Diagnostics.

2 Q. And is that also a medical diagnostics
3 company?

4 A. It is.

5 Q. All right. Your current employer, where
6 is it located?

7 A. Our corporate is in Framingham,
8 Massachusetts. The parent company is in Brussels,
9 Belgium.

10 Q. And is there an office that you report to
11 in South Carolina?

12 A. There is not.

13 Q. You are -- you work remotely?

14 A. I do.

15 Q. And does your work involve amount -- a
16 fair amount of travel?

17 A. At times. It comes and goes.

18 Q. When you are -- well, and you said you are
19 the director of sales?

20 A. Senior Vice President.

21 Q. Okay. So are you -- are you overseeing
22 front line sales folks?

23 A. No. I have a director that does that.

24 Q. Okay. So you're overseeing, kind of, a
25 division of the company?

1 A. I oversee all commercial efforts.

2 Q. Okay. Uhm, before -- when you worked for
3 the -- what was it called, Geno --

4 A. Genova.

5 Q. -- Genova, did that -- was there an office
6 that you reported to?

7 A. There was.

8 Q. Was it here in South Carolina?

9 A. It was not.

10 Q. Where was it?

11 A. Asheville.

12 Q. Have you ever worked for any employer that
13 had a physical presence in South Carolina?

14 A. A facility?

15 Q. (Nods head.)

16 A. No, not a facility.

17 Q. Okay. Beyond, I guess, interpreting
18 my -- my use of the word "presence" in South Carolina
19 as broadly as possible, have there been any other
20 employers -- any employers that you have worked for
21 that had some sort of presence in South Carolina,
22 beyond, you know, your -- your owning a house in
23 South Carolina?

24 A. Customers.

25 Q. Okay.

1 A. Excuse me. I'm sorry. 2006.

2 Q. Any children?

3 A. One.

4 Q. Where does that child live?

5 A. He lives in Princeton, New Jersey.

6 Q. Is he college age?

7 A. He's a student.

8 Q. Okay. And then your former wife, where
9 does she live?

10 A. She lives in Arden, North Carolina.

11 Q. Okay. Uhm, how many different homes have
12 you owned in your life?

13 A. Two.

14 Q. So the one at Shipmaster is your second
15 home?

16 A. Correct, yes.

17 Q. When you purchased your first house, was
18 it new construction?

19 A. No.

20 Q. And you owned that house for how many
21 years?

22 A. 1999 until 2015. So 16 years.

23 Q. 16 years. Did you have to perform any
24 significant repair work on that house in the course
25 of 16 years?

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

COUNTY OF OCONEE

HUGH T. WATSON,
Plaintiff,

vs. CASE NO.: 2023-CP-37-00329

HAYWARD BAKER, INC.; KELLER

NORTH AMERICA, INC.; and

GROUND TECHNOLOGY, INC.

d/b/a D'APPOLONIA ENGINEERING,

DIVISION OF GROUND TECHNOLOGY, INC.,

Defendants.

DEPOSITION OF: HUGH T. WATSON

DATE: April 15, 2024

TIME: 10:05 a.m.

LOCATION: Elmore Goldsmith Kelley & DeHoll
19 Blair Street

Greenville, South Carolina

TAKEN BY: Counsel for the Defendants

REPORTED BY: Mary K. Stepp, Court Reporter

Job No. CS6502995

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ALSO PRESENT:

John Wolosick, Keller North America, Inc.

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2 A. Trion, Georgia.

3 Q. And did you grow up in Trion, Georgia or
4 were you just born there?

5 A. No. No. All of my life through high
6 school.

7 Q. All right. And how far did you go in
8 school?

9 A. In post-education?

10 Q. Well, so, did you graduate from high
11 school?

12 A. I did.

13 Q. And what high school?

14 A. Trion High School.

15 Q. And then I assume you went to college?

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17 Q. Where did you go?

18 A. Mars Hill University.

19 Q. And then you obtained a degree from Mars
20 Hill?

21 A. I did.

22 Q. In what field?

23 A. In life sciences.

24 Q. And then beyond college, have you had any
25 graduate, postgraduate education?

1 A. No.

2 Q. You ever served in the military?

3 A. I have not.

4 Q. The -- I'll ask you more about your
5 work -- your work background shortly, but you brought
6 this lawsuit in Oconee County. Do you have any
7 relatives over the age of 18 that live in Oconee
8 County, South Carolina?

9 A. No.

10 Q. And when did you first come to South
11 Carolina?

12 A. In 2015.

13 Q. Okay. When you bought the house --

14 A. Correct.

15 Q. -- that is the subject of this lawsuit?

16 A. Correct.

17 Q. Okay. And what brought you here?

18 A. Uhm, several factors. I had several
19 colleagues that had purchased homes on the lake. I
20 have friends that had a home on the lake. So it was,
21 I guess, those factors that were -- predominantly led
22 me to discover it.

23 Q. Okay. And the -- the house that you
24 purchased is located at 113 Shipmaster Drive in
25 Salem, South Carolina?

1 A. Correct.

2 Q. Is that your only residence?

3 A. It is.

4 Q. And where did you move from, when you --
5 when you moved to the Shipmaster?

6 A. I sold my home in Mars Hill.

7 Q. Okay. And how long had you lived in Mars
8 Hill?

9 A. I purchased that home in 1999.

10 Q. And then before that, where did you live?

11 A. In college dormitory.

12 Q. Okay. So tell me about your work
13 experience.

14 A. Uh-huh.

15 Q. Do you work currently?

16 A. I do.

17 Q. What do you do for a living?

18 A. I lead sales and marketing for a
19 diagnostics company.

20 Q. What's the name of that company?

21 A. That name is Boston Heart Diagnostics.

22 Q. All right. And how long have you been
23 with that company?

24 A. A little over two years.

25 Q. Before that, where did you work?

1 A. Genova Diagnostics.

2 Q. And is that also a medical diagnostics
3 company?

4 A. It is.

5 Q. All right. Your current employer, where
6 is it located?

7 A. Our corporate is in Framingham,
8 Massachusetts. The parent company is in Brussels,
9 Belgium.

10 Q. And is there an office that you report to
11 in South Carolina?

12 A. There is not.

13 Q. You are -- you work remotely?

14 A. I do.

15 Q. And does your work involve amount -- a
16 fair amount of travel?

17 A. At times. It comes and goes.

18 Q. When you are -- well, and you said you are
19 the director of sales?

20 A. Senior Vice President.

21 Q. Okay. So are you -- are you overseeing
22 front line sales folks?

23 A. No. I have a director that does that.

24 Q. Okay. So you're overseeing, kind of, a
25 division of the company?

1 A. I oversee all commercial efforts.

2 Q. Okay. Uhm, before -- when you worked for
3 the -- what was it called, Geno --

4 A. Genova.

5 Q. -- Genova, did that -- was there an office
6 that you reported to?

7 A. There was.

8 Q. Was it here in South Carolina?

9 A. It was not.

10 Q. Where was it?

11 A. Asheville.

12 Q. Have you ever worked for any employer that
13 had a physical presence in South Carolina?

14 A. A facility?

15 Q. (Nods head.)

16 A. No, not a facility.

17 Q. Okay. Beyond, I guess, interpreting
18 my -- my use of the word "presence" in South Carolina
19 as broadly as possible, have there been any other
20 employers -- any employers that you have worked for
21 that had some sort of presence in South Carolina,
22 beyond, you know, your -- your owning a house in
23 South Carolina?

24 A. Customers.

25 Q. Okay.

1 A. Excuse me. I'm sorry. 2006.

2 Q. Any children?

3 A. One.

4 Q. Where does that child live?

5 A. He lives in Princeton, New Jersey.

6 Q. Is he college age?

7 A. He's a student.

8 Q. Okay. And then your former wife, where
9 does she live?

10 A. She lives in Arden, North Carolina.

11 Q. Okay. Uhm, how many different homes have
12 you owned in your life?

13 A. Two.

14 Q. So the one at Shipmaster is your second
15 home?

16 A. Correct, yes.

17 Q. When you purchased your first house, was
18 it new construction?

19 A. No.

20 Q. And you owned that house for how many
21 years?

22 A. 1999 until 2015. So 16 years.

23 Q. 16 years. Did you have to perform any
24 significant repair work on that house in the course
25 of 16 years?

1 A. Yes. A tree fell on the home and it was
2 nearly demolished. So it was rebuilt.

3 Q. Okay. I guess that was the result of some
4 sort of weather event?

5 A. It was.

6 Q. That former residence, did it have any
7 foundation issues or issues with the subsurface
8 soils, anything like that?

9 A. No. At one point in time there was a
10 ground hog that had dug under the home, but other
11 than that just repairing --

12 Q. Yeah.

13 A. -- the hole from the ground hog.

14 Q. Over 16 years, one does tend to run into
15 all manner of different things, including wildlife.
16 But -- okay. But no -- the reason I'm asking these
17 questions is, you don't have any prior experience
18 with the issues that you're currently experiencing at
19 Shipmaster?

20 A. I don't.

21 Q. Okay. So, when did you first begin
22 looking at houses around Lake Keowee?

23 A. Uhm, to the best of my recollection,
24 probably 2013, 2012.

25 Q. Okay. So -- so --

1 A. Very passive.

2 Q. Two, three years before.

3 A. Yeah.

4 Q. You just finally decided on purchasing the
5 one you did?

6 A. Uh-huh.

7 Q. Did you have any kind of prior
8 relationship with the Schmidts, the former owners?

9 A. No.

10 Q. And by the time the Shipmaster house that
11 you put a contract on it, was it -- had it been
12 listed or did you -- did you learn that it was
13 potentially available for sale through some other
14 means?

15 A. It was listed.

16 Q. Okay. And did you work with a real estate
17 agent?

18 A. Yes.

19 Q. And the -- and the Schmidts' house was
20 listed by a real estate agent?

21 A. It was, yes.

22 Q. Okay. Who was the real estate agent that
23 you worked with?

24 A. Mary -- I can see her. Blond hair. Mary.
25 I can't place her last name.

1 Q. If you are -- if her last name comes to
2 you while we're sitting here talking to each other,
3 just let me know.

4 A. Okay.

5 Q. And that may be something we can find when
6 we get a little further into the documents. Do you
7 remember the name of the real estate agency?

8 A. I don't.

9 Q. Okay.

10 A. No.

11 Q. Do you know how you came to have Mary as
12 your real estate agent?

13 A. I called the office and she was the first
14 to call back.

15 Q. Okay. And what made you decide that
16 particular agency to call?

17 A. It was the listing agency did not return
18 my call. And it was just the second most prominent.

19 Q. Okay. So just -- and were you searching
20 on the Internet?

21 A. Yes.

22 Q. Okay. And tell me about, just generally,
23 you know, when -- what caused you to -- to become
24 interested in the house on Shipmaster?

25 A. Uhm, well, I was -- I mean, I was

1 interested in multiple homes. So I looked at many
2 properties over a period of time. Shipmaster -- it
3 was -- I was originally interested in the house next
4 door, but I was late to get and it already had gone
5 under contract. And I think it was through the
6 course of that that I came to be aware of Shipmaster
7 being available.

8 Q. Okay.

9 A. 113.

10 Q. Okay. Any particular features about it
11 that --

12 A. Honestly --

13 Q. -- grabbed you?

14 A. -- it's beautiful.

15 Q. Uhm, and -- so tell me what -- what did
16 you do in the course of, sort of, investigating the
17 house prior to putting an offer on it?

18 A. What do you mean by "investigating"?

19 Q. I'm not really sure what I mean by that,
20 but -- what I'm asking is, I mean, did you have --

21 A. I mean --

22 Q. -- did you have a conversation with the
23 Schmidts, before you ever put a -- an offer on it?

24 A. That would be fairly uncommon. No.

25 Q. Okay. So, just describe to me, if you

1 will, you know, when you made the decision to put an
2 offer in. Do you remember the sequence? Did you
3 have to negotiate with them, anything like that?

4 A. Yes. I made an initial offer and they
5 countered. I made a secondary offer and they
6 countered. And generally I think the term is best
7 and final. And so I made my best and final.

8 Q. Okay. Do you know how long their house
9 had been on the market, at the time that you put your
10 offer in?

11 A. I don't.

12 Q. And they -- they took your -- your best
13 and final offer?

14 A. Yes.

15 Q. And you all closed on the transaction, it
16 looks like, May 26 of 2015; is that correct?

17 A. Yeah, if that's what -- that sounds right.

18 Q. And about how long after that the -- they
19 accepted your offer did you all close?

20 A. I don't recall.

21 Q. And then after -- after they accepted your
22 offer, tell me what sort of due diligence you did, in
23 terms of investigating the house?

24 A. I guess the normal checklist. The
25 processes. Termite inspection, a home inspector.

1 Q. Okay.

2 A. Those were the -- the primaries. There
3 was the call to Mr. Wolosick that I made as part of
4 that diligence process. I'm not sure of any --
5 anything else, in terms of other types of inspections
6 or things of that nature.

7 Q. Okay. So, the -- and we've
8 gotten -- we've got the home inspection report --

9 A. Uh-huh.

10 Q. -- that I'll have you identify here
11 momentarily. But when you got that, was there any
12 issue on -- in the report that caused you concern or
13 anything like that?

14 A. Not to my recollection, no.

15 Q. Okay. Was there -- as a result of
16 receiving that home inspection, did you ask the
17 Schmidts to perform any repairs on the residence?

18 A. I did. I think I requested a securing of
19 deck boards and there's something on the deck
20 railing, if I recall. That's all I recall.

21 Q. Okay. But minor exterior work?

22 A. Yes.

23 Q. And did they do that willingly?

24 A. They did.

25 Q. Uhm, I assume the termite inspection did

1 not reveal any -- any issues that caused you concern?

2 A. No.

3 Q. And how did you learn about Mr. Wolosick
4 and his company's involvement with the house?

5 A. The Schmidts provided his business card.

6 Q. Okay. Did they provide you with any other
7 information about his involvement with the house?

8 A. They gave an overview of the work that was
9 done and provided his -- his contact as the reference
10 point for any questions about the work that was done.

11 Q. Okay. Did they provide you with any
12 documentation of the work that was done?

13 A. There was -- by documentation, I mean,
14 they took photos. They had those of the equipment
15 that was in. Uhm... there were -- I'm trying to
16 think of what else that they had put together. And
17 by provided, I don't -- I don't believe they gave me
18 the documentation. They had it available for my
19 review.

20 Q. Okay.

21 A. So it was -- it was available in the home
22 for prospective buyers to -- to look through.

23 Q. Okay. All right. So this -- so you were
24 provided Mr. Wolosick's contact information?

25 A. Uh-huh.

1 Q. That's a yes?

2 A. That is a yes.

3 Q. And then the -- the other -- whatever
4 other documentation that they had was available to
5 you to review in the home?

6 A. Correct.

7 Q. They didn't hand you a packet of
8 information before --

9 A. (Shakes head.)

10 Q. -- the closing for you to take with you
11 and peruse?

12 A. No. I -- I -- it was in the home.

13 Q. Okay. And did you take the opportunity to
14 review that information?

15 A. I did thumb through the -- the
16 documentation.

17 Q. Okay. And as -- as I understand it, there
18 were some photographs in the documentation?

19 A. Uh-huh.

20 Q. Was -- beyond photographs, was there
21 any -- were there any letters or correspondence?

22 A. There were no letters or correspondence.
23 There was a work log, as I recall.

24 Q. Okay.

25 A. There was the remodel -- the remodel work

1 that they did on the home.

2 Q. Okay. And that's separate from what
3 Mr. Wolosick's firm did, correct?

4 A. Yeah. It took place, I guess, after.

5 Q. Okay. All right. And did it -- was there
6 information about other maintenance or repairs that
7 they had done, other than the remodel and then the
8 slope stabilization work?

9 A. Not that I recall. Not that I recall.

10 Q. Uh, and did they talk to you about the
11 slope stabilization project?

12 A. They did not.

13 Q. They didn't make any comments to you about
14 their experience following the conclusion of the
15 slope stabilization project?

16 A. They did not.

17 Q. Did -- did you receive any information
18 from them, in terms of like a written disclosure form
19 from them about that project?

20 A. They disclosed on the -- on the seller's
21 disclosure that there was stabilization work done.

22 Q. Okay. Did -- in -- in that form, did they
23 indicate what their experience had been related to
24 the slope stabilization, since that project was
25 completed?

1 A. They did not.

2 Q. All right. So, you reached out to
3 Mr. Wolosick; is that correct?

4 A. That is correct.

5 Q. And did you make that contact via
6 telephone?

7 A. I think I did. I recall that we -- we may
8 have traded voicemails for one another. But, yes,
9 ultimately we spoke via telephone.

10 Q. Okay. And it was your understanding that
11 the work that Mr. Wolosick's firm had done had taken
12 place in 2002?

13 A. I don't know that I had an understanding
14 of when it took place --

15 Q. Okay.

16 A. -- at that time.

17 Q. Okay. And so when you called
18 Mr. Wolosick, what -- what did you ask him?

19 A. I introduced myself. I introduced
20 the -- who I was, in terms of the prospective buyer
21 of the property. The Schmidts had provided his
22 contact info and that he would be willing to speak
23 with buyers about the work that was -- had been done.

24 Q. So they had told you that he -- that he
25 would be willing?

1 A. Correct. Yeah. They -- he had left his
2 business card for that purpose --

3 Q. Okay.

4 A. -- to my understanding.

5 Q. Okay. And was he the only person
6 with -- and I'm going to say Keller -- if I say
7 Keller, I'm just talking about Keller North America.

8 A. Okay.

9 Q. Was he the only person with Keller that
10 you spoke to, before you -- before you bought the
11 house?

12 A. He was.

13 Q. All right. And what do you recall
14 Mr. Wolosick saying to you?

15 A. I recall that he recalled the property,
16 recalled the Schmidts. Talked to me about the
17 project and what it consisted of. That they were
18 leaders in that field, in terms of soil movement
19 stabilization or to the fact that I recall him
20 telling me that -- that they do work all around the
21 country, and perhaps around the world. I don't
22 recall if that was right or not. And that they had
23 been employing that solution for 60-plus years. And
24 that's -- that's the life of that type of solution.

25 So, I -- I found John to be very

1 personable and nice to speak with. He seemed very
2 credible. The firm is obviously very big. It -- and
3 it gave me peace of mind.

4 Q. And I didn't ask you this question
5 directly, but you have no engineering background of
6 your own, correct?

7 A. I don't, no.

8 Q. Did you do any research about Keller or
9 about the solution that you just described?

10 A. About Keller -- I'm sorry, I interrupted
11 you.

12 Q. That's okay. Did you do any research
13 about Keller or about the solution that had been
14 offered or had been provided to the Schmidts for
15 Shipmaster?

16 A. Not the solution. I didn't. You know, as
17 far as Keller, yes. I -- I looked at the company,
18 just to understand, you know, this is not a local,
19 you know, Ram Jack solution. This is a big
20 geotechnical company. Seemed to be qualified for
21 complex work.

22 Q. And, again, knowing you're not an
23 engineer, and certainly neither am I, can you tell me
24 what your understanding was, at the time that you
25 talked to Mr. Wolosick, of the -- of the solution

1 that had been provided to the Schmidts?

2 A. My -- my understanding, John basically
3 described it as drilling into bedrock, securing high
4 tension cabling, like a suspension bridge would have,
5 and anchoring that on the outside with
6 steel-reinforced concrete.

7 Q. Okay. And so after having that
8 conversation with Mr. Wolosick, did you
9 investigate -- other than say, you know, checking out
10 Keller, did you do any other investigation as to the
11 slope stabilization project before you purchased the
12 house?

13 A. I did not.

14 Q. And did you all have just one conversation
15 by telephone, you and John Wolosick? And, again, let
16 me -- let me finish that question. Did you and John
17 Wolosick have only one telephone conversation before
18 you purchased Shipmaster?

19 A. That's my recollection, yes.

20 Q. And were there any other communications,
21 either orally or in writing, with Mr. Wolosick before
22 you purchased Shipmaster?

23 A. Not that I recall.

24 Q. All right. Did Mr. -- at the time you had
25 that conversation with Mr. Wolosick -- and I assume

1 this is sometime in the spring of 2015, at some point
2 prior to May 26 of 2015 -- did Mr. Wolosick tell you
3 the last time he had been to the property?

4 A. Not that I recall.

5 Q. Among the material that was available for
6 your review at the Shipmaster residence prior to your
7 purchase of Shipmaster, was Keller's warranty in
8 that -- in those documents?

9 A. Not that I saw.

10 Q. Did you know whether there was a warranty
11 of any kind?

12 A. I did not.

13 Q. All right. So, anything else that you did
14 due diligence-wise that we haven't talked about,
15 before you closed on the purchase of Shipmaster?

16 A. I don't -- I don't think so.

17 Q. Okay.

18 A. No.

19 Q. All right. After you purchased
20 Shipmaster, were the documents that had been made
21 available for your review, were they -- were they
22 turned over to you?

23 A. Left at the home.

24 Q. Left at the home?

25 A. Yes.

1 Q. Were there any other documents that you
2 found in the home that pertained to the -- the slope
3 stabilization project?

4 A. Not immediately. Ultimately, there were
5 some other documents that I found.

6 Q. Okay. When you say "not immediately, but
7 ultimately," I don't know what you mean. But did you
8 -- you found documents later?

9 A. So, in addition to the -- Mr. Schmidt left
10 a lot of records on other work that had been done to
11 the home. So he's fairly meticulous with that. So
12 those were in files that they left. So I referred to
13 some of those things, in terms of even electrical,
14 just knowing which -- which of the breakers were
15 where the water turn off was and who the HVAC people
16 were.

17 So, yes. There were other records that --
18 that Mr. Schmidt left in the home.

19 Q. Okay. Now, a second ago you said that
20 ultimately you found some additional documents
21 pertaining to the slope stabilization. My
22 understanding or assumption is that those documents
23 had been in the home all along, they just -- it just
24 took you a while to find where they were; is that
25 correct?

1 A. They were not with -- they were not with
2 the other materials provided.

3 Q. Okay.

4 A. It was -- it was part of the -- the files
5 that were left. And it was correspondence.

6 Q. Okay. So it was in the home, you
7 just -- it just was in a different place?

8 A. Yeah.

9 Q. Okay.

10 A. Yeah.

11 Q. All right. And so that -- that material
12 that you found after you purchased the home, included
13 correspondence and what other items, if you remember?

14 A. The previous items mentioned.

15 Q. Okay. Uhm, did you have any conversations
16 with the Schmidts after you purchased the home
17 pertaining to the slope stabilization project?

18 A. I did not.

19 Q. Did you have any conversations with the
20 Schmidts about any topic, after you purchased the
21 home?

22 A. They did not attend closing.

23 Q. Okay.

24 A. As I understood, Mr. Schmidt had -- was in
25 poor health and they had moved to a care facility.

1 Q. Okay. And so you moved in at some point
2 after May 26, 2015 --

3 A. Uh-huh.

4 Q. -- correct?

5 A. Correct.

6 Q. And when was the first time that you
7 recall noticing any issues with soil movement or
8 cracking or -- in the -- in the house or anything
9 that -- that gave you concerns about the
10 stabilization of the slope?

11 A. I really -- I didn't -- I mean,
12 ultimately, I think I -- I found there was a crack
13 that formed in -- off of the kitchen. There's a
14 sliding glass door. And in the corner, a crack had
15 opened. And it was that that seemed peculiar to me.
16 And with that is the second time I reached out to
17 Mr. Wolosick.

18 Q. Okay. And that crack was in the -- if you
19 were standing in the inside of the house looking at
20 the sliding glass door, it's in the upper left-hand
21 corner?

22 A. It is.

23 Q. And do you remember approximately when you
24 noticed that crack open up --

25 A. It was right around the time that I

1 reached out to him. Uhm -- and I don't recall if I
2 reached out via e-mail or called him again. I think
3 it's in the records.

4 Q. Okay. We'll look at --

5 A. But --

6 Q. -- that in a minute.

7 A. Yeah. It -- it's what led me to -- to
8 feel like I should probably -- this -- this could be
9 something, I should call John.

10 Q. Okay. When -- when that crack opened, did
11 you -- did you hear it or did you just -- was it a
12 visual notice?

13 A. I just noticed it.

14 Q. Okay. And you had been in the house.
15 -- I mean, we'll verify the dates. But you had been
16 in the house a number of years, by that point,
17 correct?

18 A. Yeah.

19 Q. From the point that you closed until --
20 until you noticed that crack, what sort of work had
21 you done to the house or the lot?

22 A. Mostly just cosmetics and maintenance to
23 the house. Painting, wallpaper removal, changes of
24 that nature.

25 To the lot, did some landscaping. It's a

1 very wooded lot, which is beautiful. But wanted to
2 try to get a little yard space in.

3 Q. Okay.

4 A. Also, a lot of steps between the home and
5 the -- and the water. So did a cart path to be able
6 to access the lake easier.

7 Q. Okay. The -- the land -- all of that work
8 on the lot and the landscaping, did you -- did you
9 work with a -- one contractor or multiple contractors
10 or did you do the work yourself?

11 A. One contractor.

12 Q. Who'd you use?

13 A. Wesley McFalls is his name, Empire
14 landscape is his company.

15 Q. Okay. And how did you learn about him?

16 A. Houzz, perhaps, so Internet.

17 Q. And is he a local company?

18 A. I think he's out of Pickens.

19 Q. Okay. And the -- all right. So,
20 the -- let's talk about -- you talked about
21 landscaping and then putting in a cart path and
22 adding some yard space?

23 A. Uh-huh.

24 Q. I just want to pick that apart. The
25 landscaping that you did, was that -- when you're

1 talking about that, are you just talking about
2 planting plants and flowers and things like that?

3 A. There was -- yeah. There were shrubs in
4 the plan, Rhododendrons, other trees. There was sod
5 for -- for the lawn area. As we got to it, it
6 appears that there was already sod there, at one
7 point, because it had the -- whatever the plastic
8 base is that it's adhered to.

9 There was stone, addition of that, and
10 some small retaining walls. There's a water feature
11 in the front of the home.

12 Q. Okay.

13 A. So, for the pond.

14 Q. Okay. So, this is -- is this all one
15 project or was this done in phases?

16 A. It was all one.

17 Q. All one project?

18 A. Uh-huh.

19 Q. Okay. So there's planting involved,
20 there's the addition of stone --

21 A. Uh-huh.

22 Q. -- installation of a water feature on the
23 front of the house?

24 A. Uh-huh.

25 Q. Is that -- this is all a yes?

1 A. This is all -- correct, yes.

2 Q. Okay. And with the retaining walls, I
3 assume that -- that there was soil brought to the
4 site?

5 A. There -- there was.

6 Q. Okay. Do you know how much?

7 A. I do not.

8 Q. Does that -- the landscaping plan, does
9 that indicate the -- how much material was going to
10 be put in?

11 A. No.

12 Q. Do you have -- do you have photographs of
13 that landscaping project?

14 A. After. Like during construction of it?

15 Q. Correct.

16 A. No, I don't -- I don't think I took
17 photos --

18 Q. Okay.

19 A. -- of it during.

20 Q. All right. And how long did the project
21 take?

22 A. It was in the spring. So rain interfered.
23 So it probably went six weeks or so. Eight weeks.
24 Another area sand was brought in. I have a -- a
25 deeded beach. And we replenished the beach with

1 sand.

2 Q. Okay. And, again, with this same company?

3 A. Same -- same company, yeah.

4 Q. Okay. All right. The retaining walls,
5 those were on the -- on the rear slope, but going
6 toward the -- the lake?

7 A. Correct.

8 Q. How many different retaining walls did you
9 install?

10 A. One.

11 Q. And was this -- I mean, you install a
12 retaining wall for lots of different purposes. Was
13 this to create a level backyard right outside the
14 back of the house?

15 A. It was -- yeah, below the house. It
16 created the area for the -- the lawn.

17 Q. Okay. Do you know approximately how high
18 that retaining wall is?

19 A. 24 -- I would say knee height.

20 Q. Okay.

21 A. And it's not taller than my waist, so...

22 Q. I see. And so what is the -- what's --
23 what -- what's the construction of the wall itself?
24 I mean, is it -- is it timbered? Is it --

25 A. Stone.

1 Q. Stone. Okay.

2 A. Yeah.

3 Q. And then the -- you talked about
4 the -- this trail or path for your golf cart?

5 A. Uh-huh.

6 Q. Is that a yes?

7 A. That is, yes.

8 Q. Tell me how that was constructed?

9 A. Concrete.

10 Q. And did that also involve bringing in
11 soil?

12 A. I -- I don't recall it. The slope was
13 already there, so it's just steep to walk. I mean,
14 they had to prepare, but I don't know if he brought
15 in soil specifically to --

16 Q. Okay.

17 A. -- to me.

18 Q. So I -- I was -- I'm assuming that however
19 much soil was brought in to backfill to make level
20 the backyard where the retaining wall is, correct?

21 A. I don't -- I don't know that.

22 Q. Okay.

23 A. I mean, you know, he could have used the
24 soil that was -- that was -- if he was creating a
25 more level slope where the cart path was --

1 Q. Okay.

2 A. -- that could have gone there. So I don't
3 know --

4 Q. All right.

5 A. -- necessarily.

6 Q. And was there any soil amendment, any
7 addition of soil that you are aware of in the -- in
8 any other place on the lot, as part of this project?

9 A. Huh-uh. No, not that I'm aware of.

10 Q. Any -- any drainage aspect of the
11 landscaping plan?

12 A. Uh, no. He did not do any additional
13 drainage. I take that back. He -- he created -- he
14 put in a basin in an area where he noticed water was
15 causing erosion.

16 Q. Okay.

17 A. And then there's pretty extensive drainage
18 around the home. So in front of the garage there's
19 a -- a long drainage area.

20 Q. Basin?

21 A. Yeah. And then there's a catch way,
22 another catch way where the -- where the cart path
23 was going. So he had to move that a little bit.

24 Q. Okay.

25 A. So he did deal with some drainage.

1 Q. Okay. Any -- did you put in any
2 irrigation system?

3 A. Yes. Yeah.

4 Q. And he did --

5 A. He did that.

6 Q. -- did that?

7 A. Yeah.

8 Q. Okay. How -- where -- was that in the
9 front of the house, back of the house, both?

10 A. Just the lawn. Yeah, the small lawn area
11 in the back.

12 Q. I see. Okay. Is it single zone,
13 multi-zone?

14 A. Single zone.

15 Q. All right. I may ask you more about that
16 in a minute. How about -- I know that you've got a
17 dock at the -- down at the lake?

18 A. Uh-huh.

19 Q. Is that a yes?

20 A. It is, I'm sorry. Yes.

21 Q. That's okay. Everybody does that.

22 A. Yeah.

23 Q. Was that dock ever moved?

24 A. Yes.

25 Q. Did -- who -- who did that work?

1 A. The dock company. So, I replaced the
2 dock, purchased a new dock.

3 Q. And was it when it was put on a different
4 location on the shoreline?

5 A. It was approximately 30 yards from where
6 it was, yeah.

7 Q. Okay. Was there any dredging work that
8 was done in -- in the sort of cove where you are?

9 A. No.

10 Q. And the dock company is the name of the
11 dock company?

12 A. No. Yeah, it -- Custom Dock is the name
13 of the dock company.

14 Q. Okay. Okay. And what year was this --
15 this work done?

16 A. The dock or the landscaping?

17 Q. Well, let's -- how about the dock? What
18 year was the dock done?

19 A. I would have to look to see the -- the
20 purchase record.

21 Q. Okay.

22 A. I don't remember.

23 Q. And how about the -- the landscaping
24 project?

25 A. The same on that. I mean, it -- if I were

1 to speculate, I would say probably 2017, '18. But I
2 don't -- I don't recall.

3 Q. Okay. All right. Other than those two
4 projects, did you have any other projects undertaken
5 of the -- on the exterior of the house?

6 A. No. Other than soft washing of the -- of
7 the roof, washing of the home, washing the driveway,
8 things of that nature.

9 Q. Just regular maintenance?

10 A. Maintenance, yeah.

11 MR. SHEALY: All right. Let's take --
12 let's take a couple minute break.

13 THE WITNESS: Okay.

14 MR. SHEALY: I need to get another half a
15 cup of coffee.

16 MR. GOLDSMITH: We'll get you a full glass
17 this time.

18 (Recess was taken from 10:56 a.m. to
19 11:03 a.m.)

20 BY MR. SHEALY:

21 Q. I promise you I'm not going to show you
22 all of this paper. I'm going to show you a very
23 small subset of it.

24 Okay. You'll have to forgive me, because
25 I'm not as organized as most people. I may be

1 bouncing around, but I do have some things I do -- I
2 want to show you. And I would -- may have to double
3 back on -- on some things.

4 A. Okay.

5 Q. Okay. Just for the sake of form, we took
6 a break, Mr. Watson. During that break, did you
7 discuss the substance of your testimony with --

8 A. No.

9 Q. -- with anyone?

10 A. I did not.

11 Q. Okay. All right. So, I want to show you,
12 first, the building inspection report. What I
13 believe is the building inspection report that you
14 had commissioned.

15 So I'm going to show you a document that
16 is Bates labeled -- lawyers, when we exchange
17 documents, we put labeling on the bottom so that we
18 can keep track of who produced what. And we -- we
19 label things with numbers that we call Bates labels.
20 And most everything I'm going to show you today is
21 Bates-labeled Watson something, because it came
22 from -- from your lawyers.

23 So this is a 30-page-long document that is
24 Bates-labeled Watson 210 to Watson 239. And I just
25 want to ask if you have seen that before.

1 A. Yes.

2 Q. Okay. And is that the inspection that you
3 had commissioned, prior to purchasing the Shipmaster
4 house?

5 A. Yes.

6 Q. Okay.

7 A. Looks to be.

8 Q. And do you know who -- I mean, how you
9 found Advance Home Inspection, LLC?

10 A. I don't recall if it was, again, Houzz,
11 the site, or Google ratings, or if it was a
12 recommendation from the real estate agent.

13 Q. Okay.

14 A. But -- yeah, so...

15 Q. But it -- I guess the -- however you found
16 it, this is not an entity with whom you had some
17 prior relationship?

18 A. No. No, sir.

19 MR. SHEALY: I'll mark -- I'll mark this
20 as Exhibit 1 to your deposition, based on your
21 identification.

22 (Defendant's Exhibit No. 1 was marked for
23 identification.)

24 BY MR. SHEALY:

25 Q. All right. So this report is dated April

1 10, 2015. Do you see that on -- I'm showing you
2 Watson 212. Do you see the date at the top?

3 A. Okay.

4 Q. Do you believe, based on my showing you
5 that, that you received this inspection report around
6 that date?

7 A. I would assume so.

8 Q. Okay. And I just wanted to ask you a
9 couple questions about some of the photographs. If
10 you look at -- it's the 15th page of the report,
11 which is Watson 224.

12 You see that the inspector has pointed out
13 some problems with the -- the deck railing, and I
14 think you mentioned that you had the -- the Schmidts
15 do -- do some repairs to that deck railing --

16 A. Uh-huh.

17 Q. -- correct?

18 A. Correct.

19 Q. He also reported -- he also pointed out
20 some separation of pavers.

21 A. Uh-huh.

22 Q. Do you see that?

23 A. I do.

24 Q. Do you recall seeing that, when you
25 received the report?

1 A. I don't recall necessarily seeing it, but
2 it's clearly here.

3 Q. Okay. Do -- if you don't recall
4 receiving -- seeing that, I guess, my next question
5 really is, did the fact that that was pointed out in
6 the report cause you any concern, at the time you
7 received the report in April of 2015?

8 A. No. I'd have to look to see if there's
9 any commentary specific about it that was their
10 explanation or what the inspector said.

11 Q. I mean, you're welcome to look. But based
12 on your memory, did you have any kind of a
13 conversation with the inspector or anyone about --
14 about that finding?

15 A. No.

16 Q. Okay.

17 A. I did not.

18 Q. Okay.

19 A. (Witness peruses document.) I was just
20 looking to see if there was anything mentioned about
21 it.

22 Q. Did -- in the material that the Schmidts
23 had available for your review prior to your purchase
24 of the Shipmaster house, was there any information
25 about the installation of these pavers themselves?

1 A. Not that I recall.

2 Q. Okay.

3 A. No.

4 Q. Okay. So you don't recall having any
5 conversation or other communication with anyone about
6 the finding of this separation of the pavers that is
7 depicted on Watson 224 within Exhibit 1?

8 A. I do not.

9 Q. Okay. I'm going to show you a two-page
10 document that is Bates-labeled Watson 74 and 75.
11 I'll represent to you that it is a letter from John
12 Wolosick to Mr. and Mrs. Schmidt dated November 10,
13 2004. Ask if you have seen that before.

14 A. (Witness peruses document.) Yes. Have I?
15 I don't know where. I mean, I don't know where or
16 when.

17 Q. Okay.

18 A. I'm trying to do my -- my best with it.

19 Q. And that's all you can do. So let me ask
20 you a couple follow-up questions. Based on what --
21 that testimony, my assumption is that you don't know
22 whether or not that letter that I've just shown you
23 was among the materials that was available for your
24 review, prior to your purchase of the Shipmaster
25 house?

1 A. I could not say that, yeah.

2 Q. Okay.

3 MR. SHEALY: I don't care about marking
4 it.

5 MR. GOLDSMITH: What's that Bates number,
6 so I can type it in?

7 MR. SHEALY: Watson 74, 75.

8 MR. GOLDSMITH: Thank you.

9 BY MR. SHEALY:

10 Q. I'm going to show you another two-page
11 document, which is Bates-labeled Watson 76 and 77,
12 and ask if you have seen that document?

13 A. (Witness peruses document.) Again, I'm
14 not -- I'm not fully certain.

15 Q. Okay. All right. And, actually, I think
16 that this test reports are -- were included with what
17 I've -- the letter I've just shown you, so let me add
18 those. So what I've added to Watson 76 and 77 is
19 Watson 78 through 82. But my assumption is you don't
20 know when or whether you have seen that document?

21 A. (Witness peruses document.) I -- I don't.

22 Q. Okay. And so I -- my understanding then
23 would be that you do not know, as you're sitting
24 there, whether the document I've just shown you was
25 available for your review prior to your purchase of

1 the Shipmaster house?

2 A. I do not recall seeing it, so available by
3 what means? Was it -- I don't recall seeing it.

4 Q. Okay. And -- and when I say available,
5 I'm using the terms -- the term you used earlier,
6 when you said there was some material that was made
7 available for your review by the Schmidts. I'm
8 trying to figure out whether --

9 A. Okay.

10 Q. -- the Watson 76 through 82 was among that
11 material.

12 A. Not that I recall.

13 Q. Okay. Thank you. And you don't recall
14 actually -- and I think you said earlier that you did
15 not recall seeing any correspondence pertaining to
16 the slope stabilization work or project --

17 A. Uh-huh.

18 Q. -- at -- at any point prior to actually
19 purchasing the -- the Shipmaster house?

20 A. That's correct.

21 Q. Okay. All right. This document was
22 produced and it has a -- the world's smallest Bates
23 label. With my 53-year-old eyes I can barely tell.
24 But I believe that it was Watson 2 -- I'm sorry,
25 Watson 115. It is a -- looks like a work order or

1 something for plumbing work. Do you recognize that?

2 A. (Witness peruses document.) Yeah.

3 Q. And what is that -- what does that pertain
4 to?

5 A. Repair of main leak. Repair of leak --
6 leak on main water line.

7 Q. All right. Do you recall a repair of --
8 of the main water line at your house on Shipmaster in
9 2016?

10 A. I can't necessarily say, you know, I
11 recall it at the date of 2016, but I recall the work.

12 Q. Okay.

13 A. Yeah.

14 Q. The -- what's curious to me is that it
15 says John Underwood.

16 A. Correct.

17 Q. Who is that?

18 A. He's a friend that was there, at the time.

19 Q. Okay.

20 A. I was traveling. And he had to meet the
21 plumber.

22 Q. I see. Okay. That was the thing that
23 stood out to me the most.

24 A. Yeah.

25 Q. I couldn't figure out who that was.

1 A. Yeah.

2 Q. So this was somebody, a neighbor or
3 something that you asked to --

4 A. Yeah.

5 Q. -- meet the plumber?

6 A. Close friend.

7 Q. Okay.

8 A. Yeah.

9 Q. All right. Do you know -- do you recall
10 when the water line broke and the circumstances
11 surrounding that?

12 A. No. I don't. The -- my recollection, I
13 don't know like specifically when or what. It was a
14 water bill that set it off.

15 Q. Okay.

16 A. So all of a sudden I'm, you know,
17 utilizing ten times my normal usage and outrageous
18 water bill for a two-month period. And -- and that
19 was it. So...

20 Q. Do you know where the break was?

21 A. No. Did not know where the break was.
22 Turned the water off inside of the house, measured,
23 watched the meter still running, and then just worked
24 backwards from that.

25 So if I recall, the plumber was looking at

1 the -- the house and the entry point of the main and
2 found a soggy area in the yard.

3 Q. Okay.

4 A. And just assumed that that's -- that's
5 where it is.

6 Q. Okay. Now, did you see him do that or did
7 that --

8 A. No.

9 Q. -- did you just discern that from
10 talking --

11 A. That was --

12 Q. -- to John Underwood?

13 A. Correct.

14 Q. Okay.

15 A. Yeah.

16 Q. And do you know the -- the reason for the
17 water main break?

18 A. I don't.

19 MR. SHEALY: Okay. We'll go ahead and
20 mark this as Exhibit 2, since you did identify it.

21 MS. BURTON: 2?

22 MR. SHEALY: Correct.

23 MS. BURTON: The 115?

24 MR. SHEALY: Correct.

25 (Defendant's Exhibit No. 2 was marked for

1 identification.)

2 BY MR. SHEALY:

3 Q. Okay. I'm going to tell you I have, I
4 think, three different e-mail threads or -- and they
5 seem to overlap with each other. They may have some
6 duplication, but they seem to be a little bit
7 distinct e-mail threads between you and Mr. Wolosick.

8 A. Okay.

9 Q. For you -- I just wanted to present these
10 to you. So the first is Watson 206 to 209. And let
11 me ask if you can identify that.

12 A. (Witness peruses document.) Yeah.

13 Q. And is that -- is that an e-mail exchange
14 with Mr. Wolosick that you had in 2020?

15 A. Yeah. Yes.

16 Q. Okay.

17 A. Yeah, appears to be.

18 MR. SHEALY: I'll go ahead and mark --
19 mark that as Exhibit 3.

20 (Defendant's Exhibit No. 3 was marked for
21 identification.)

22 BY MR. SHEALY:

23 Q. Okay. In Exhibit 3 -- dealing with e-mail
24 threads is always interesting because you have to
25 start at the beginning. But the first -- the first

1 e-mail in that thread looks like it's May 17, 2020.

2 A. I saw that.

3 Q. And so earlier you said that you called
4 Mr. Wolosick, when that crack opened up to the upper
5 left-hand corner of the sliding glass door.

6 A. When I noticed -- yeah, when I noticed
7 that, it was -- I felt like it was worth calling
8 John.

9 Q. Okay. And so this -- this first e-mail in
10 the thread says, "Thank you for taking the time to
11 speak with me on Friday." And this is, at least,
12 time-stamped Sunday, May 17, 2020. Am I correct in
13 presuming that Friday, May 15, would have been the
14 day that you called Mr. Wolosick after seeing that
15 crack?

16 A. I would presume that as well.

17 Q. Okay. All right. And so when you called
18 him, it sounds like he offered to come out and take a
19 look at the property?

20 A. Yeah.

21 Q. And -- and the only thing you had noticed
22 was that crack that you -- that you described
23 earlier, correct?

24 A. That was -- that was the thing that I
25 noticed that gave me -- that I felt could -- I'd

1 never seen a crack. So that's what precipitated the
2 call to Mr. Wolosick.

3 Q. Okay. All right. And then the next
4 e-mail in the thread is July 8th of 2020. And it
5 appears that that was the date that Mr. Wolosick came
6 to the property, correct?

7 A. Yeah.

8 Q. Do you recall -- do you recall that visit
9 to the property?

10 A. I do.

11 Q. Tell me what that entailed.

12 A. It was Mr. Wolosick and another employee.

13 Q. Is that person named Zach? The reason I
14 say, because your -- your e-mail --

15 A. Yeah.

16 Q. -- refers to a person named Zach.

17 A. Yeah, that would make sense.

18 Q. Okay.

19 A. They walked the property, looked -- looked
20 through the house, looked at the crack, looked
21 at -- in the front of the house, looked in the back
22 of the house, talked again about the solution. And
23 -- and then it was at that point that John made
24 recommendation, noted, you know, there's a means to
25 measure, and should do -- we should do some

1 measurements to see if there's movement that's taking
2 place.

3 Q. Okay.

4 A. Yeah. He did -- he did ask about the
5 landscaping. And --

6 Q. What'd you tell him?

7 A. I told him everything I told you, what we
8 did.

9 Q. Okay. What did he -- did he make any
10 comments about the landscaping?

11 A. He said that that changes load on the
12 system.

13 Q. Okay.

14 A. So -- so, yeah. He was trying to, you
15 know, I think just through, I assume, technically, is
16 there -- how much weight or what that does or things
17 of that nature.

18 Q. Okay. Any -- did you make any comments to
19 him, I mean, that you can specifically remember --
20 the -- do you remember information you conveyed to
21 him during that --

22 A. Uhm --

23 Q. -- visit?

24 A. I mean, just in terms of, you know, if
25 something -- is something happening? So that was the

1 nature of -- I thought it was very kind of him. I
2 thanked him for coming out and offering his time.
3 But, no, we -- we reviewed the property and looked at
4 the, you know, the area of concern for me in the
5 interior and then all the things. Just the visual
6 inspection outside.

7 Q. Okay. All right. And your e-mail says,
8 "I have just e-mailed Mr. Mirocha to schedule the
9 inclinometer reading."

10 A. Uh-huh.

11 Q. Do you know who Mr. Mirocha is?

12 A. Yes. He was the gentleman that -- that
13 Mr. Wolosick recommended do the -- that testing.

14 Q. Okay.

15 A. That he had done former testing on the --
16 on the site and he would be best.

17 Q. Okay.

18 A. So I was able to find Mr. Mirocha and
19 contact him.

20 Q. Okay. And did Mr. Mirocha come out and --
21 and test the inclinometer?

22 A. He did.

23 Q. Do you know what an inclinometer does?

24 A. I've been told. So, I don't know how it
25 works, necessarily.

1 Q. Okay.

2 A. But, basically, it's a plumb hole in the
3 ground that you can measure to see if there's
4 movement of -- of the earth.

5 Q. Okay. All right. And so do you know when
6 Mr. Mirocha came out to test -- to take the
7 inclinometer reading?

8 A. Not specifically the date. A month or
9 two, perhaps, later.

10 Q. Okay. And did Mr. Mirocha say anything to
11 you during that -- when he came out?

12 A. We -- yes, we -- we spoke. He was a
13 graduate of Georgia Tech. He talked about the -- the
14 inclinometer and how it works. He told me that he
15 was hitting water and also that -- that the
16 test -- he was unable to conduct the test. That he
17 couldn't get the instrument --

18 Q. Okay.

19 A. -- down.

20 Q. Okay. And did he -- did he write up a
21 report?

22 A. He did.

23 Q. Okay. And did he provide that report to
24 you or did it go to -- who did it go to?

25 A. I don't remember if it went to me and

1 Mr. Wolosick or just to Mr. -- I would assume that it
2 would have come to me.

3 Q. Okay.

4 A. I paid for the -- his time.

5 Q. Okay. And -- all right. And then so
6 after that occurred, what do you remember happening
7 next?

8 A. That -- well, that he -- he was able to
9 access his former records.

10 Q. Mr. Mirocha?

11 A. Yes.

12 Q. Okay.

13 A. And the readings that he had conducted
14 formally and put all of that together in the report.
15 And that -- I don't remember his comments in and
16 around. I'd have to look back to his e-mail. I
17 don't know if we spoke again or not by telephone.
18 There was a -- a little bit of a snide comment that
19 he made.

20 Q. That Mr. Mirocha made?

21 A. There was.

22 Q. Okay.

23 A. Just about these solutions. And more as,
24 you know, that -- he kind of intimated that his
25 opinion that the solutions were -- were not that

1 good.

2 Q. Okay.

3 A. And so when -- either getting the report
4 or whether it came to Mr. Wolosick or me directly or
5 both of us, I followed up clearly with questions, I
6 think. And I think I e-mailed him.

7 Q. Okay. You're talking about e-mailed
8 Mr. Wolosick?

9 A. Yeah.

10 Q. All right. So let me show you another
11 document. And this is -- this is from -- this is --
12 Baker is sort of the former name, if you will, of
13 Keller. And it's 237 through 243.

14 And ask if you recognize that e-mail
15 thread. If you -- you may have to go back to the end
16 to see how it progresses.

17 A. (Witness peruses document.) Yeah, this
18 covers a lot. So, what was the question?

19 Q. So, do you recall that e-mail thread?

20 A. Well, it's -- I mean, it's a long thread.
21 I mean, yeah, it's a -- I can look back over it.

22 Q. Okay.

23 A. Yeah.

24 Q. But does it appear that that thread is a
25 complete thread of the communications back and forth

1 between you and Mr. Molosick -- Wolosick, after you
2 received Mr. Mirocha's report?

3 A. Uhm...

4 MR. GOLDSMITH: Kirby, can we -- if I can
5 interrupt for a second.

6 MR. SHEALY: Uh-huh.

7 MR. GOLDSMITH: So our production from
8 y'all stops at Hayward Baker 236.

9 MR. SHEALY: Why is that?

10 MR. GOLDSMITH: And it's a -- that last
11 236 is a shop drawing from D'Appolonia, if that
12 helps.

13 MR. SHEALY: All right.

14 (Off-record discussion.)

15 (Recess was taken from 11:34 a.m. to 11:37
16 a.m.)

17 (Defendant's Exhibit No. 4 was marked for
18 identification.)

19 BY MR. SHEALY:

20 Q. Now, I will say that the 243 does -- is --
21 doesn't appear to be really connected. It really
22 stops at 242. It's a -- and that appears to be an
23 e-mail from John Wolosick to you, July 30th. Do you
24 see that? Starts on 241.

25 A. Yes, I see this.

1 Q. Okay. All right. And then -- so do you
2 recall getting that e-mail from Mr. Wolosick?

3 A. I mean, it's not in front of memory and
4 recall, but I clearly see it.

5 Q. Okay.

6 A. Yes.

7 Q. And then the -- the e-mail that follows
8 that is from you July 31, 2020?

9 A. Uh-huh.

10 Q. Do you see that?

11 A. I do.

12 Q. Okay. And you asked a bunch of questions
13 there, correct?

14 A. Uhm...

15 Q. I say a bunch of questions.

16 A. Yeah.

17 Q. You asked some questions?

18 A. I responded to it. I appeared to respond
19 to his proposal and ask questions about the report --

20 Q. Okay.

21 A. -- it looks like.

22 Q. And then Mr. Wolosick responds to you on
23 August 3, 2020 --

24 A. Uh-huh.

25 Q. -- correct?

1 A. (Witness peruses document.) I see that.

2 Q. Okay.

3 A. I -- just as note, it doesn't include all
4 of the -- the same -- I guess it is the same, it's
5 the way it comes through. I'm looking at the
6 difference between my e-mails outbound with a from, a
7 send, a to --

8 Q. Right.

9 A. -- a date. It's just -- okay.

10 Q. Okay. All right. So -- so, I'm just
11 establishing the timeline.

12 A. Yes.

13 Q. So Mr. Wolosick responds to you August 3,
14 2020. And then you respond to him August 10, 2020?

15 A. Uh-huh.

16 Q. Correct?

17 A. Yeah.

18 Q. Okay. And this is sort of a -- you're
19 kind of picking apart his prior e-mail and sort of
20 embedding some either responses or questions in
21 that -- in his prior e-mail, correct?

22 A. Uh-huh. Correct.

23 Q. All right. And then he responds to you
24 August 19, 2020. Do you see that?

25 A. Yeah, I do. Yes.

1 Q. Do you recall any additional
2 correspondence with Mr. Wolosick, after that final
3 e-mail to you of August 19, 2020?

4 A. I don't think so.

5 Q. Okay.

6 A. No.

7 Q. And have you all had any telephone
8 communication or in-person communication since that
9 time?

10 A. I don't think so.

11 Q. Okay. So, on -- all right. The -- I want
12 to change topics and ask you about the estimates that
13 you understand relate -- that relate to whatever cost
14 there is to repair the problems you have at your
15 house.

16 A. Uh-huh.

17 Q. Tell me about what you know about those,
18 just off the top of your head. About the -- who has
19 examined the problem and who's provided you with
20 estimated scope of repair and cost of repair.

21 A. Skip Lewis has examined and Jim Kahle.
22 They're H2L consulting engineers.

23 Q. All right.

24 A. As I understand it, the solutions being
25 proposed range -- I don't under- -- I don't know

1 the -- understand the specifics of how the solutions
2 work.

3 Q. Right.

4 A. But the estimates I was provided were
5 between 850,000 to upwards of a million-plus dollars.

6 Q. Okay. And do -- do -- have you been made
7 aware of what -- what the current problem is?

8 A. Yes. As I understand it, in their
9 opinions, that the -- the solution was designed
10 incorrectly and installed incorrectly.

11 Q. Okay. And you're saying "the solution,"
12 you're talking about the solution installed by
13 Keller?

14 A. Hayward Baker.

15 Q. Hayward Baker, now Keller?

16 A. Yes.

17 Q. And designed by D'Appolonia?

18 A. Yes, yes.

19 Q. Okay. But -- and so what is the -- what
20 do you understand the current -- well, let me back
21 up.

22 What do you understand is currently going
23 on in your -- on your lot?

24 A. That the soil at a significant depth
25 continues to -- to move causing instability in the

1 foundation of the home.

2 Q. Okay. Okay. And has that -- has it been
3 pinpointed to you where that -- the -- the soil is
4 moving? Where on your lot that the soil is moving?

5 A. Well, I mean, Mr. Mirocha's report says
6 20... I don't know. Yes, it has been. I don't
7 recall.

8 Q. But -- and, again, I know you're not a
9 geotechnical engineer. I'm just trying to get a
10 sense of what you understand the problem to be and
11 where it's located --

12 A. Yeah.

13 Q. -- and that sort of thing. And if you
14 don't know, it's perfectly understandable.

15 A. Yeah.

16 Q. Okay. So, have you had anyone perform
17 any -- any repair work to arrest the movement to
18 date?

19 A. No.

20 Q. Have you -- since Mr. Mirocha issued his
21 report in 2020 --

22 A. Uh-huh.

23 Q. -- have you had to perform any repairs to
24 the house that you are -- that you associate with
25 the -- the problems indicated in his report?

1 A. There's -- there are windows that would
2 not close. I opened some windows that would no
3 longer close. So I had to have someone aid me in
4 getting those pushed in from the outside. But, no,
5 no like direct other types of repairs on the
6 property --

7 Q. Okay.

8 A. -- that I would consider.

9 Q. Okay. When you talk about the windows
10 that would not -- would not close --

11 A. Uh-huh.

12 Q. -- what -- what -- tell me -- describe
13 what the problem was.

14 A. I mean, they're casement windows. When
15 you open them, in trying to close them back in, they
16 will not close back into the housing.

17 Q. Okay. When you say -- they swing out?

18 A. Yeah, (indicating). Swing out.

19 Q. Okay. And when they would -- they would
20 swing back in, they would not fit in the housing?

21 A. Correct.

22 Q. Okay. And who -- did you have to -- did
23 you pay somebody to assist with that?

24 A. No, I had my neighbor come and help me.

25 Q. Okay. What did you -- what did the

1 neighbor do?

2 A. He put an extension ladder up -- they're
3 second story -- an extension ladder up and -- and
4 pushed in from the outside, while I was pulling them
5 from the inside to try to get them locked.

6 Q. Okay. And are -- what -- what -- what
7 makes you conclude that that problem is associated
8 with the issue of -- with the soil movement?

9 A. Nothing, other than they worked
10 previously.

11 Q. Okay. And are these casement windows,
12 windows that were in the house when you purchased it?

13 A. Correct.

14 Q. Okay. All right. Any other repair work
15 that you can identify that you've done since 2020?

16 A. No.

17 Q. What information do you have -- well,
18 what -- what observations have you made about slope
19 instability?

20 A. I -- I don't know that I -- I could make
21 an observation about slope instability.

22 Q. Okay. You haven't seen things -- changes
23 in the contours of your lot or -- or things around
24 your home that, in your mind, you would associate
25 with unstable soil?

1 A. I don't know what unsable -- unstable soil
2 would manifest itself as.

3 Q. Okay.

4 A. Now, I am -- since this point in time, I'm
5 very -- you know, there's things that I notice about
6 the house. I see new cracks. The house creaks,
7 pops. There's a lot of different things that -- that
8 I now notice that I'm sensitized to this.

9 Q. Okay. Did you -- had you heard those
10 things at any time before -- before you first noticed
11 that crack above the sliding glass door?

12 A. Not that I recall.

13 Q. And, again, that was sometime in the
14 spring of 2020, correct?

15 A. Noticing the crack?

16 Q. Yes.

17 A. Yes.

18 Q. All right.

19 MR. SHEALY: I may pass the baton.
20 Mr. McCarthy, you -- are you -- you'll be the next
21 person in line.

22 MR. MCCARTHY: Yeah, I apologize. That's
23 the case.

24 MR. SHEALY: Yeah. Okay.

25 MR. MCCARTHY: Are you finished, Kirby?

1 MR. SHEALY: Yeah. For -- I -- I -- I may
2 have some follow-ups, but I -- for right now, I'm --
3 I'm in good shape.

4 MR. MCCARTHY: Okay. I'll start up then.

5 MR. SHEALY: Okay.

6 EXAMINATION

7 BY MR. MCCARTHY:

8 Q. So, Mr. Watson, my name is Ryan McCarthy.
9 I represent Ground Technology, Incorporated, which is
10 better known as D'Appolonia Engineering. As
11 Mr. Kirby said earlier, if you don't understand
12 any one -- one of my questions or you'd like me to
13 rephrase it, please just ask me and I'll be happy to
14 do so. If you need a break at any time, please let
15 me know and we'll take a break.

16 So, I just want to ask a few -- a few
17 follow-up questions here and I'll try to keep it as
18 brief as I can. Did you review any documents prior
19 to this deposition, in prep- -- in preparation for
20 having this deposition taken?

21 A. I don't know if review is the good term.
22 There's so much here, I guess. So, no. I really did
23 not to any significant degree.

24 Q. Okay. Did you do any other preparation
25 for this deposition, other than reviewing documents?

1 A. No, I did not.

2 Q. I think you may have answered this
3 earlier, but you don't have any experience with any
4 kind of engineering, with geology, with hydrology,
5 that kind of thing?

6 A. That's correct.

7 Q. Does anyone in your family have any
8 experience with engineering, geology, hydrology?

9 A. They do not.

10 Q. Did your ex-wife have any experience with
11 engineering, geology, hydrology?

12 A. No, sir.

13 Q. Do any of your family have any background
14 in science?

15 A. No. Well, my mother worked for the USDA
16 within meat processing. So there -- there's
17 bacterial science that's involved there. But
18 otherwise, no.

19 Q. Okay. Is anyone currently living with you
20 at the property?

21 A. No.

22 Q. Okay. And when I say "the property," I
23 mean 113 Shipmaster Drive.

24 A. That's what I inferred.

25 Q. Okay. Before you purchased the property,

1 did you have any famil- -- familiarity with the area
2 around Lake Keowee?

3 A. What would you mean by "familiarity"?

4 Q. Did you ever take any trips out to the
5 lake? Were you ever in the area before?

6 A. Yes, absolutely.

7 Q. And when did you take trips to the lake?

8 A. I have friends that live in the
9 development. I visited them several occasions. As
10 mentioned, I have colleagues that own property on the
11 lake. So, yes, I've spent time in the area.

12 Q. Could you tell me the names of those
13 friends and colleagues who live in the area?

14 A. Could I provide you their names?

15 Q. Yes.

16 A. Sure. Mark Yarborough. He's now
17 divorced, so I have no reason to give you his wife's
18 name. Chris and Beth Smith. Cysil Ivanoff, John
19 Hepler, Jay Lurie, Jeff Ledford.

20 Q. And all these individuals live in or
21 around Lake Keowee?

22 A. Jay no longer does. He -- he sold his
23 property some time ago.

24 Q. Does John Underwood also live in and
25 around Lake Keowee?

1 A. No, he does not.

2 Q. Okay. And prior to your purchasing of the
3 property, did you have any discussions with any of
4 these individuals regarding owning property at the
5 lake?

6 A. Sure. Yeah.

7 Q. And what did you discuss?

8 A. The different neighborhoods, the areas of
9 the lake. It's pretty significantly different
10 between the north and the south. Shopping, property
11 values. General types of discussion about their
12 experience and information that -- that could help me
13 in -- in my home search in the future.

14 Q. Did you ever discuss any kind of soil
15 movement issues with any of the properties around the
16 lake?

17 A. I did not.

18 Q. Did you ever hear anything regarding any
19 of the other houses in the area having stabilization
20 issues?

21 A. At what point? I -- I have. I have
22 understood that there's other homes that have had
23 issues. Prior to --

24 Q. Did you --

25 A. But I -- I need you to specify. Prior to

1 my purchase, no, I wasn't aware.

2 Q. Okay. That was going to be my next
3 question. If that was prior to or after your
4 purchase of the property.

5 A. Yeah.

6 Q. Prior to your purchase of the property,
7 did you ever do any walk-throughs of the property in
8 question?

9 A. Yes.

10 Q. And how many times did you walk through
11 the property?

12 A. At least two, maybe three or four.

13 Q. And at these walk-throughs, did you ever
14 notice anything at the property that gave you any
15 concern?

16 A. I did not.

17 Q. Did you ever see any cracks or evidence of
18 settlement at the property?

19 A. I did not.

20 Q. And at these walk-throughs, was one of
21 them with the home inspector which you hired?

22 A. No. The home inspector worked
23 independently.

24 Q. Did you ever have any conversations with
25 the home inspector, after he investigated the

1 property?

2 A. No, I don't think we conversed.

3 Q. Okay. So I'm going to go, I think, to --
4 I believe it's Exhibit 1, the Inspection Report. You
5 have a copy of that. If you'll turn to page 5 of
6 that report.

7 A. (Witness complies.)

8 Q. And you can take your time reading that.
9 Specifically, Section 8.

10 A. (Witness peruses document.) I've read it.

11 Q. Okay. Does that written Inspection Report
12 state there were some small settlement cracks noted
13 at the property?

14 A. It does.

15 Q. So when you did your walk-throughs at the
16 property, you never noticed any kind of settlement
17 cracks?

18 A. I did not.

19 Q. And you never discussed any of these
20 settlement cracks that are present on the property,
21 at the time of your purchase with anyone?

22 A. I did not.

23 Q. Okay. Just going up to Section 2, you can
24 take a look at that. On the same page.

25 A. (Witness peruses document.) I've read

1 this.

2 Q. Okay. So, from the Inspection Report, it
3 states that there's -- on the right side of the home
4 it shows erosion on the brick pavers. You never
5 noticed that when you did your walk-through of the
6 property?

7 A. No, I don't recall.

8 Q. Turning to page 12 of this report, I
9 believe there's a series of pictures.

10 A. (Witness peruses document.) Okay.

11 Q. Do those pictures appear to show
12 settlement cracks on the exterior wall of the
13 property?

14 A. There are two noted.

15 Q. So you never saw any kind of exterior
16 cracking, when you walked through the property?

17 A. I did not.

18 Q. And at the property currently, is there
19 any similar kind of cracking that you observed on the
20 exterior walls?

21 A. Uhm, there are -- yes. There are some
22 areas of cracks on exterior walls that I have found.

23 Q. Those existing cracks, were those cracks
24 present prior to you noticing the issues in 2020?

25 A. I had not noticed them. So it was

1 post-2020 that I --

2 Q. Did you ever conduct any repairs of any of
3 these cracks in the exterior of the property?

4 A. I have not.

5 Q. If you can turn to page 26 of that report.

6 A. (Witness peruses document.)

7 Q. Do those pictures appear to show cracks in
8 the interior of the property?

9 A. Yes. One says "crack." Yes. 8.1.

10 Q. So when you were doing your walk-throughs
11 to the property, you never noticed any interior
12 cracks on the property?

13 A. I did not.

14 Q. And after you purchased the property, did
15 you ever repair any of these interior cracks?

16 A. I have not.

17 Q. And is the crack that you noticed above
18 the kitchen glass sliding door, is it similar to the
19 cracks shown in these pictures?

20 A. It is not.

21 Q. What's dissimilar about it?

22 A. It's diagonal rather than vertical. And
23 it -- I'm sorry that I can't make out the -- the
24 scale of picture 8.1. But the crack in the kitchen
25 appears to be larger.

1 Q. Okay. And if you can turn to page 27 of
2 the report.

3 A. (Witness peruses document.)

4 Q. It's kind of hard to see from this
5 picture, but it's labeled that there's a dip in the
6 floor in item 8.2. Do you see that?

7 A. I see the 8.2, yes.

8 Q. Have you noticed any kind of dip in the
9 floors or any kind of elevation issues with floors in
10 the residence for the property?

11 A. I -- I have.

12 Q. Could you describe those issues?

13 A. It seems that the -- that there's a bit of
14 a downward slope in the flooring towards the --

15 Q. And did --

16 A. Please.

17 Q. No, go ahead.

18 A. I was just going to describe where it's
19 at, but...

20 Q. Was that downward slope in the floor, was
21 that present when you purchased the property, if you
22 recall?

23 A. I don't recall. I did not notice it, at
24 the time.

25 Q. And have you any -- noticed any worsening

1 in the slope of the floor?

2 A. It -- it feels as if, but I've not done
3 any objective measurements to -- to know.

4 MR. McCarthy: Okay. I'm going to go to
5 another exhibit here. Stephanie, I believe this is
6 number 2 on our exhibit list, the Residential
7 Disclosure Statement.

8 MS. BURTON: Okay, I've got it.

9 MR. McCARTHY: Okay. If you can hand
10 that out to everyone.

11 (Defendant's Exhibit No. 5 was marked for
12 identification.)

13 BY MR. McCARTHY:

14 Q. And you can take a minute to look that
15 over.

16 A. (Witness peruses document.) I've looked
17 through.

18 Q. Okay. If you turn to Watson 111 in
19 Section 5.

20 A. (Witness complies.)

21 Q. Well, first I should establish what this
22 document is. Have you seen this document before?

23 A. I have.

24 Q. Do you know what this document is?

25 A. It's a disclosure statement.

1 Q. And this document was provided to you, at
2 the time you were considering purchase of the
3 property, correct?

4 A. Correct. I don't see the date. Oh, March
5 9th.

6 Q. In Section 5, item 20, does the report
7 state that there were soil stability issues with the
8 property?

9 A. (Witness peruses document.) It's checked
10 as yes.

11 Q. And on the next page in item 9?

12 A. It says, "Corrected."

13 Q. Yes. So when you saw this report, did you
14 become concerned about those soil stability issues on
15 the property?

16 A. Yes. I don't know that concerned is the
17 right term. I needed to understand it better or
18 learn more.

19 Q. Is this report the reason you reached out
20 to John Wolosick?

21 A. It is.

22 Q. Have you ever had any conversations with
23 the Schmidts about this report?

24 A. I have not.

25 Q. And you took this report to mean that the

1 Schmidts were representing that the issue had been
2 corrected?

3 A. I did.

4 Q. And other than contacting Mr. Wolosick
5 regarding the soil stability issue, did you reach out
6 to any other third party regarding this issue?

7 A. No, I do not believe so.

8 Q. So you didn't reach -- reach out to any
9 kind of third-party engineer regarding this issue?

10 A. No.

11 Q. And why didn't you reach out to another
12 engineer?

13 A. Because I spoke with the engineer that
14 completed the work and felt --

15 Q. Is there a reason that you trusted
16 Mr. Wolosick's representations regarding this system?

17 A. He's -- as I researched him, if I recall,
18 he had been decorated, won awards, worked for a large
19 firm, has many years in the industry, seemed
20 reputable. And I found him to be, again, very
21 personable and came across as trustworthy.

22 Q. When you spoke with Mr. Wolosick regarding
23 the system, did he represent to you that another
24 company was responsible for the design of the system?

25 A. Not that I recall.

1 Q. At that time you initially reached out to
2 Mr. Wolosick, was D'Appolonia ever discussed?

3 A. Not that I recall.

4 Q. Okay. And in your discussion with
5 Mr. Wolosick in 2015, did you discuss the existence
6 of the inclinometer on the property?

7 A. No, not to my recollection.

8 Q. And there were no discussions regarding
9 any kind of testing or investigation of the
10 property --

11 A. No.

12 Q. -- prior to 2015?

13 A. No, there was not, to my recollection.

14 Q. Did you discuss any kinds of evidence of
15 soil movement, such as water line issues, land
16 slides, any kind of worsening cracking on the
17 property?

18 A. We did not. Not to my recollection.

19 Q. Did Mr. Wolosick have any concerns about
20 the system continuing to work, as it was designed?

21 A. No. There was no concern expressed.
22 There was a -- if I recall, a timing of 60, you know,
23 60-plus years experience with the systems. I don't
24 know if --

25 Q. Did he represent -- he represented to you

1 that Keller had 60 years of experience of using these
2 systems?

3 A. That's correct.

4 Q. Okay. And other than your walk-throughs
5 of the property and the inspectors -- inspection of
6 the property, were there any other additional
7 inspections or walk-throughs that you conducted?

8 A. No, not that I recall.

9 Q. And other than the documentation we
10 previously -- or you previously testified to, did the
11 Schmidts provide any other kinds of documentation or
12 disclose anything to you, prior to your purchase of
13 the property?

14 A. They did not.

15 Q. And before you purchased the property, did
16 you have any contact with D'Appolonia?

17 A. No.

18 Q. Did you have any contact with Bradley
19 Campbell?

20 A. No.

21 Q. Any contact with Tim -- Timothy Onstott?

22 A. No.

23 Q. Did the Schmidts disclose any information
24 about any work they had done to the property, other
25 than the soil stabilization system that was

1 installed?

2 A. Yes. They provided an overview of the --
3 of the work done to the home, repairs to the home
4 following the installation of the system.

5 Q. And what repairs were those?

6 A. They were extensive. Foundation work,
7 placing of -- a lot of structural. I don't recall
8 specifically, but...

9 Q. Was there any discussion about
10 construction of a concrete patio?

11 A. No. With whom? I'm sorry.

12 Q. With the Schmidts?

13 A. No.

14 Q. Is it your understanding that the Schmidts
15 put in a concrete patio on the property?

16 A. I -- the Schmidts were the only owners of
17 the home. They built the home. So I would assume if
18 there's anything that was there that they had done
19 that.

20 Q. Did you have any discussion of any kind of
21 interior work that the Schmidts may have done?

22 A. No discussions, no.

23 Q. Were there any discussions of any
24 additional work related to any kind of stabilization
25 of the soil on the property?

1 A. There was -- there was not.

2 Q. How much did you purchase the property
3 for?

4 A. \$640,000.

5 Q. Was that price affected by any of the soil
6 stabilization issues on the property?

7 A. How? What do you mean?

8 Q. Was the issues with soil stabilization a
9 factor in how much you paid for the property?

10 A. No.

11 Q. Did you consult any engineers from the
12 time that you purchased the property until you
13 noticed that crack in 2020?

14 A. No.

15 Q. And in that period, did you notice any
16 additional signs of cracking or settling of the
17 property?

18 A. No. Not -- not that I recognized, at the
19 time.

20 Q. Did you notice any kind of landslides
21 occurring around the property?

22 A. No.

23 Q. There's no evidence of soil movement or
24 development of any kind of structure or anything of
25 that nature?

1 A. As Mr. Wolosick pointed out after the site
2 visit, he suggested that there was.

3 Q. You're referring to the site visit in
4 2020?

5 A. Correct.

6 Q. And what did Mr. Wolosick discuss about
7 the scarp?

8 A. I believe that it's -- it's in the e-mail
9 chain. That -- that there's a movement to the side
10 of the home.

11 Q. Which side of the home is that?

12 A. I wouldn't know the direction. It would
13 be on the home's right. I don't know the -- which it
14 would be facing from a compass perspective.

15 Q. And is it your understanding that that is
16 developing in an area where the current system is not
17 installed?

18 A. I believe that he noted that, yeah.

19 Q. I think previously you testified that you
20 added additional yard space to the property; is that
21 correct?

22 A. I created yard, yes.

23 Q. And about how large of an area is that?

24 A. That was sodded? That area's
25 approximately -- I don't know. 75x20.

1 Q. Did you have to remove any kind of trees
2 or vegetation to create that yard space?

3 A. No. I don't recall removing any trees for
4 that area. There were some other trees that were
5 moved -- removed at --

6 Q. About how many trees were removed?

7 A. I don't know. The neighborhood's very
8 strict on it, so... half dozen, perhaps, over the
9 whole lot. But with that said, if you're speaking
10 specifically back to the back of the home, they
11 weren't located there. So I don't know if that's
12 your question.

13 Q. Yeah, I want to know if there's any kind
14 of trees that you removed to create this yard space
15 or put in the walkway or any other kind of trees you
16 removed in the backyard?

17 A. No. There was no tree removal within the
18 project, within --

19 Q. Okay.

20 A. -- the landscaping project.

21 Q. I think earlier you testified to putting
22 in a retaining wall related to that yard enlargement?

23 A. Correct.

24 Q. Okay. Was any kind of heavy equipment
25 brought in to complete that work?

1 A. There was equipment. I don't know what --
2 what qualifies as heavy versus --

3 Q. What kind of equipment was brought in?

4 A. Like a Bobcat.

5 Q. Was there any kind of excavator?

6 A. No. Just the -- just the Bobcat.

7 Q. And who was the contractor who performed
8 that work?

9 A. Wesley McFalls.

10 Q. And that was the landscaper?

11 A. Correct. Empire landscaping.

12 Q. Were there any kind of written plans or
13 drawings for this project?

14 A. Yes. There was a submission that has to
15 go to the architectural committee of the community.

16 Q. Do you know if those plans or drawings
17 were produced by your counsel?

18 A. I don't. I don't know if -- if I still
19 have the submission. We may be able to get it from
20 the committee.

21 Q. Yeah, if you haven't produced it, we'd
22 like to see that.

23 If -- do you know how long that this work
24 to expand the yard and put in this cart path lasted?

25 A. Yeah, I believe I said six to eight weeks.

1 Q. Were there large amounts of earth that
2 were -- or dirt that were removed to complete this
3 project?

4 A. No. The -- I mean, the largest area of
5 removal would have been the water feature, the Koi
6 pond in the front of the house.

7 Q. Has that water feature ever leaked since
8 its installation?

9 A. It has not.

10 Q. Other than the rupture of the main water
11 line, has there been any kind of drainage or water
12 intrusion on the property that you've noticed?

13 A. No.

14 Q. Has the sprinkler system that you
15 installed, has that caused any kind of movement to
16 erosion that you've noticed?

17 A. It's not in use, but no.

18 Q. Have you noticed any radical changes in
19 the weather since you've purchased the property? Has
20 there been substantially more rain than in the past?

21 A. I don't know how to answer that. No. I
22 mean, I guess -- no.

23 Q. And for the -- any kind of weather on the
24 property, has that caused any kinds of erosion that
25 you've noticed?

1 A. There is a portion of roof which does not
2 have a gutter. It's a small roof area. But yes,
3 there's -- appears to be some -- the runoff needs to
4 be corralled.

5 Q. And is that runoff coming off the roof, is
6 that collecting in and around the patio area of the
7 home?

8 A. No.

9 Q. And where is it collecting around the
10 property?

11 A. It comes off the back side of the home.

12 Q. So it just falls off the roof directly
13 onto the back side of the property?

14 A. Correct.

15 Q. And you haven't noticed any kind of
16 erosion related to that --

17 A. Uhm --

18 Q. -- runoff?

19 A. No. I mean, I don't know what that would
20 look like, necessarily, but it's open roof drainage.
21 It needs a gutter on it.

22 Q. Uh-huh. Just kind of switching gears, go
23 back a little bit. I think earlier you testified to
24 the fact that you were interested in the neighboring
25 property, correct?

1 A. I was, yes.

2 Q. How long -- did you ever view that
3 property?

4 A. How long did I review it?

5 Q. No, did you ever view the property, the
6 neighboring property?

7 A. It was under contract, when I attempted.

8 Q. Okay.

9 A. I viewed it since, as they're my
10 neighbors.

11 Q. Were you concerned, prior to purchasing
12 this property, that if you didn't make an offer
13 quickly, that you might lose your chance to purchase
14 it?

15 A. I think that that's always a reasonable
16 concern, but I don't know that urgency over -- that
17 that drove me to making an offer, no.

18 Q. So, any kind of urgency you had wouldn't
19 be related to not reaching out to any engineer or
20 other third parties to evaluate the -- the soil
21 stabilization issue?

22 A. Could you repeat the question? I'm sorry.

23 Q. So, any kind of urgency you had in
24 purchasing this property, wasn't a factor in not
25 retaining an engineer to review the soil

1 stabilization system; is that correct?

2 A. Yeah. I think I've answered that I didn't
3 feel urgency.

4 Q. I think earlier you looked at an invoice
5 related to a water main line repair; is that correct?

6 A. I did.

7 Q. I believe that... and that occurred in
8 2016, correct?

9 A. Yes.

10 Q. And after that water main break, you said
11 that the soil was soggy around the area where the
12 line broke?

13 A. That's my understanding, yes.

14 Q. Did you go out to check that area after
15 the line was repaired, after you returned home?

16 A. I'm sure I looked at it, yeah.

17 Q. Did you notice any kind of affect on the
18 surrounding soil by the intruding water?

19 A. No, not that I would... no.

20 Q. Were there any other breaks of the water
21 line that you're aware of?

22 A. Yes, there was -- there was one -- one
23 other, I believe.

24 Q. Do you recall when that occurred?

25 A. I do not.

1 Q. Okay. I'm just going to go to another
2 exhibit here.

3 MR. SHEALY: Ryan, can we take a couple
4 minute break?

5 MR. MCCARTHY: Yeah, that's fine with me.

6 (Recess was taken from 12:27 p.m. to 1:11
7 p.m.)

8 BY MR. MCCARTHY:

9 Q. Mr. Watson, are you ready?

10 A. Yes, sir.

11 Q. Okay. Circling back a little bit here, do
12 you employ a housekeeper to take care of the
13 property?

14 A. I don't.

15 Q. Have you ever employed a housekeeper --

16 A. I have not.

17 Q. -- to take care -- okay. Do you employ a
18 gardener?

19 A. I do not.

20 Q. Have you ever employed a gardener?

21 A. I've had people come blow leaves on a
22 one-off, but no, not anyone that's consistently
23 there.

24 Q. Okay. Have you noticed any changes in the
25 level of the lake since you've been on the property?

1 A. Yes. The lake rises and falls within a
2 couple of feet. So, yeah, there's certainly times
3 that you can see the water higher than not.

4 Q. Has there been any instance where the
5 water was particularly higher or particularly lower
6 than would be normal --

7 A. No.

8 Q. -- in your --

9 A. As I understand it, it's maintained within
10 a -- a certain number of feet due to the nuclear
11 plant. So, it's always kept fairly regular.

12 Q. Okay. Do you have any information about
13 any -- other than the -- the breaks in your water
14 line located on the property, about any other water
15 line breaks in and around the area?

16 A. I do not.

17 Q. Is there any fire hydrants that are
18 located near the property?

19 A. There is.

20 Q. Where's that fire hydrant located?

21 A. It's in the cul-de-sac, at the top of the
22 drive.

23 Q. And for the period that you've owned the
24 property, has there been any repairs to that fire
25 hydrant or any of the water lines connected to it?

1 A. Not to my knowledge. I don't know,
2 though.

3 Q. Do you know the utility that provides
4 water for the property?

5 A. The community does.

6 Q. And has the community conducted any
7 repairs of any water lines around the property, since
8 you've been there?

9 A. Not that I've -- I don't know. So I'm not
10 sure that I would know, if they were conducting
11 repairs.

12 Q. Okay. Have you talked to anyone about the
13 effect of your yard expansion project or the
14 installation of the walkway or the cart path on the
15 property affecting the stabilization system?

16 A. Only Mr. Wolosick.

17 Q. You haven't talked to anyone at H2L
18 regarding the effect --

19 A. Oh --

20 Q. -- on the property?

21 A. Oh, certainly. I mean, they're privy to
22 the responses here.

23 Q. And they -- have they done any evaluations
24 regarding the effect of any kind of work you've done
25 on the property on the stabilization system?

1 A. I do not know.

2 Q. They haven't told you about any additional
3 load that may be on the soil stabilization system
4 that was installed?

5 A. Not that I recall.

6 Q. I think when we broke for lunch, we were
7 about to go to an exhibit.

8 MR. MCCARTHY: I believe this -- this is
9 the number 4 on our list, Stephanie, the April 20,
10 2020 invoice regarding the water line repair.

11 MS. BURTON: Got it.

12 (Defendant's Exhibit No. 6 was marked for
13 identification.)

14 BY MR. MCCARTHY:

15 Q. You can take a minute and look at that.

16 A. I've reviewed it.

17 Q. Okay. Do you recognize this document?

18 A. I do.

19 Q. Do you know what this document is?

20 A. It's a receipt.

21 Q. And what's the receipt for?

22 A. Rapid Response Plumbing.

23 Q. And what was the work that this plumber
24 was doing on your property?

25 A. It was repair of the water line.

1 Q. Was this the same water line that broke in
2 2016?

3 A. Yes.

4 Q. Did it break around the same area as the
5 last time?

6 A. It did. Yes. At the joint.

7 Q. And did you have any discussions with the
8 plumber as what was causing these breaks in the line?

9 A. I did. I was present for this one. And
10 he -- he indicated that this high -- there's high
11 pressure, given the -- where the house is in location
12 to the main. And he actually -- it took him several
13 times of trying to seal the joint. He installed, it
14 failed, he installed again. So that went on for a --
15 a little bit of time, while we were there present.

16 Q. And when you refer to high pressure, you
17 mean the pressure of the water in the line?

18 A. That's what I understood from him, yes.

19 Q. Okay. And do you recall how you learned
20 that the water line broke again in 2020?

21 A. It was the same fashion, if I -- if I
22 recall correctly. It was an anomaly bill, a very
23 high bill.

24 Q. And for how long was the water seeping
25 from the broken main, in your estimation?

1 A. I -- I don't know that I could estimate
2 that. I don't know how to arrive at that -- that
3 timeline. The bill was only one billing cycle, but I
4 don't know how much water was leaking and, you know,
5 how many days that was there that caused the
6 elevation in the bill price.

7 Q. In the area around the water line break,
8 was that similar to the previous break? Was it
9 soggy?

10 A. I believe so, yeah. I think that we
11 started in the same place, in terms of --

12 Q. Did you notice any other changes to the
13 surrounding area, after the water line break?

14 A. No, not that I recall.

15 Q. So you didn't notice any kind of soil
16 movement or landslide?

17 A. No. There's a -- a large Japanese maple
18 tree right below there. That's also the area where
19 the -- there's a sewer pump that pumps sewage water
20 up -- back up the hillside to the -- the main sewer
21 lines, that's all in the same area.

22 Q. Did this break occur before or after you
23 contacted Mr. Wolosick again, regarding the -- the
24 crack that you noticed?

25 A. Well, this is April 10. And I think I

1 contacted Mr. Wolosick on May 15. So it would be
2 before.

3 Q. Did you have any discussions with any
4 person regarding if this break in the water line
5 changed the conditions on the property that caused
6 that crack that you noticed?

7 A. No.

8 Q. And so you contacted Mr. Wolosick around
9 May of 2020, that's correct?

10 A. Correct.

11 Q. And you've only contacted him regarding
12 that crack above the kitchen sliding glass door?

13 A. Correct.

14 Q. So there were no other issues on the
15 property that caused you any concern, when you
16 reached out to him?

17 A. Not that precipitated me reaching out.
18 You know, nothing that I -- that I would have
19 characterized or thought may potential have been
20 associated with movement.

21 Q. And when Mr. Wolosick came out to the
22 property, did he make any comments to you on the --
23 on the cart path you installed or the -- the yard
24 expansion project that you had put in?

25 A. Yes, he expressed concerns.

1 Q. And what concerns did he have about those
2 projects?

3 A. That -- that any movement of soil or
4 that -- that the rocks adding weight could affect the
5 system.

6 Q. Did he make any com- -- comments on the --
7 the soil compaction under the -- the cart path?

8 A. Not that I recall.

9 Q. Did he make any comments regarding the
10 soil compaction under the patio of the property?

11 A. He spoke about the -- the paver
12 installation, yeah. That he considered that just
13 surface movement and that the pavers may not have
14 been installed correctly.

15 Q. And where are these pavers located?

16 A. In the front of the home.

17 Q. Did he explain how these pavers not being
18 installed correctly would be affecting the movement
19 of soil on the property?

20 A. No.

21 Q. He came out to the property before the
22 representative from SM&E, Incorporated came to the
23 property, correct?

24 A. Correct. He referred me to Mr. Mirocha.

25 Q. Okay. And when Mr. Mirocha came out to

1 the property, he walked the property with you?

2 A. I wouldn't say he walked the property with
3 me. He showed me where the inclinometer was, but
4 no --

5 Q. Okay.

6 A. -- he didn't -- you know, it's almost
7 three acres.

8 Q. So when he performed incliment -- the
9 inclinometer test on the property, was it his opinion
10 that the probe could not go all the way down because
11 the -- the pipe had a kink in it?

12 A. That was my understanding, yes.

13 Q. And it was his opinion that was being --
14 that kink in the pipe was being caused by soil
15 movement, correct?

16 A. That's my understanding, yes.

17 Q. Have you had any discussions with any
18 other party that have either confirmed that opinion
19 or offered different opinions regarding why those
20 readings couldn't be taken on the inclinometer?

21 A. That have confirmed?

22 Q. Yeah. Let me actually --

23 A. I'm sorry.

24 Q. -- rephrase that.

25 A. Yeah, please.

1 Q. Have you had any conversations with any
2 other persons that have confirmed that the
3 inclinometer reading cannot be taken, because of that
4 earth movement?

5 A. No one else has attempted an inclinometer
6 reading.

7 Q. So you haven't retained any other parties
8 to take any additional readings?

9 A. That has not -- not taken place, no.

10 Q. Has Terracon taken any inclinometer
11 readings?

12 A. I'm not familiar with Terracon.

13 Q. Maybe we should go to an exhibit here.

14 MR. McCARTHY: Stephanie, can you get
15 their Exhibit 10, the June, 14th, 2022 Terracon
16 proposal.

17 (Defendant's Exhibit No. 7 was marked for
18 identification.)

19 BY MR. McCARTHY:

20 Q. And you can review that.

21 A. (Witness peruses document.)

22 Q. Okay. Are you familiar with this
23 document?

24 A. I am not.

25 Q. You haven't seen this document before?

1 A. I have not reviewed this document before.
2 I've not seen this.

3 Q. Have you ever heard of Terracon?

4 A. It may have been discussed as an -- an
5 option of next steps, but no, I don't recall
6 specifically hearing Terracon.

7 Q. So you never signed any proposal from
8 Terracon regarding any work?

9 A. No.

10 Q. You're not familiar with any work that
11 Terracon may have done regarding your property?

12 A. There's been no work on my property.

13 Q. Okay. So you never had any discussions
14 with either Skip Lewis or Jim Kahle regarding
15 Terracon?

16 A. Not that I specifically know as Terracon.
17 I'm sure that there may have been discussions about
18 next steps and understanding what to do, but no, I've
19 not seen this, nor did -- did I go forward with
20 contracting these individuals.

21 Q. So you haven't made a decision yet as to
22 any kind of solution relating to your property?

23 A. No.

24 Q. So you haven't made any kind of decision
25 relating to any kind of additional work or any kind

1 of changes to the soil stabilization system that's
2 currently installed?

3 A. No, I have not.

4 Q. Circling back to Tim Mirocha. Were there
5 any suggestions of using a smaller probe to
6 potentially take some readings --

7 A. Not that I'm --

8 Q. -- of the inclinometer?

9 A. Not that I'm aware.

10 Q. Was it ever discussed, potentially
11 inserting a camera into the casing to see if there's
12 an obstruction?

13 A. I believe that he may have done that as he
14 identified water at a level, but I don't recall.

15 Q. Okay. And earlier I believe you testified
16 to -- that he expressed some -- I think you described
17 it as a snide remark about the -- the stabilization
18 system that was installed; is that correct?

19 A. Yes. There was something expressed to
20 that regard.

21 Q. And when he made that comment, was he
22 referring to the reaction -- anchored reaction block
23 system that was installed or was he referring to soil
24 stabilization systems, generally?

25 A. I do not know.

1 Q. Did he express any kind of opinion on what
2 kind of soil stabilization system would prevent
3 movement on the property?

4 A. No, not that I recall.

5 Q. After that reading was taken, what steps
6 did you take to address your concerns with the
7 property?

8 A. I reconnected with Mr. Wolosick to
9 understand what the significance of the report
10 represented.

11 Q. And what did Mr. Wolosick say about that
12 reading?

13 A. (Witness peruses document.) I'm trying to
14 find it. It's in Exhibit 3. Oh, Exhibit 4. He
15 said, "I spoke with Tim Mirocha at length on Friday.
16 He's an experienced engineer and gave me some
17 significant insights with his observations. Yes, it
18 would be a good idea to use the same surveyor. I
19 think it would decrease the cost significantly. The
20 result of the survey can be used to evaluate the
21 in-place system and potentially indicate what else is
22 needed, if anything."

23 Would you like me to continue or...

24 Q. No, that's fine.

25 A. Okay.

1 Q. Did he say that all systems move?

2 A. All landslide -- "All landslide repair
3 systems move. It is not possible to completely stop
4 the earth from moving instantly, when a repair is
5 installed. You can look up publications online.
6 I've attached a professional paper that I wrote many
7 years ago," so on and so forth.

8 Q. Have you talked to anyone that has stated
9 that there's possibility of a soil
10 stabilization -- or soil stabilization system
11 completely preventing movement?

12 A. I don't know if someone has confirmed nor
13 denied that.

14 Q. Did Mr. Wolosick also say that the -- the
15 additional work that had been done on your property
16 was affecting the soil movement?

17 A. He did express that.

18 Q. And after you had this e-mail
19 correspondence with Mr. Wolosick, is that the point
20 you reached out to H2L engineers?

21 A. Yes. After all of the e-mail
22 correspondence, correct. Actually, I -- I didn't
23 reach out to H2L, but ultimately they were reached
24 out to on my behalf.

25 Q. Okay. Did you have a preliminary meeting

1 with H2L, regarding the issues on the property?

2 A. What would be preliminary?

3 Q. An initial meeting to discuss the issue?

4 A. Yes, they reviewed the issue.

5 Q. What do you think the scope of the
6 investigation that H2L performed was?

7 A. I'm not qualified, I believe, to -- to
8 answer that question.

9 Q. Were there any kind of discussions with
10 H2L that they would be designing a replacement or
11 improved soil stabilization system on the property?

12 A. I think that they were certainly looking
13 at -- at options to fix the problem.

14 Q. Did anyone from H2L ever perform any site
15 visits to the property?

16 A. Yes.

17 Q. And who were those individuals?

18 A. Skip Lewis and Jim Kahle.

19 Q. And when did they perform these site
20 visits?

21 A. Uhm, multiple occasions. I -- I don't
22 know the dates.

23 Q. Were you present for these site visits?

24 A. I was.

25 Q. And what did you discuss on these site

1 visits?

2 A. Uh, very little, in terms of direct
3 discussion. Showed them the areas that -- that had
4 come to my awareness, what had transpired with Mr.
5 Mirocha, just giving them, you know, what my
6 observations were and the experience so far.

7 Q. And did they make any observations as to
8 any kind of evidence of cracking or settlement
9 related to the property?

10 A. I don't know if they made observations.

11 Q. Did they make any comments regarding any
12 kind of cracking or settlement?

13 A. Uhm, there was a comment that I recall
14 from Mr. Lewis about concrete patio in the back
15 showing cracks.

16 Q. Did he give an opinion of why that
17 cracking was occurring?

18 A. Not that I recall.

19 Q. Did H2L ever make any conclusions of the
20 cause of the cracking or settlement that was
21 occurring at the property?

22 A. I don't know if there's a conclusion. I
23 think that would be represented in their reports on
24 the matter.

25 Q. Is it your understanding that H2L has

1 concluded that any kind of damage to the property is
2 being caused by the design and installation of the
3 current soil stabilization system on the property?

4 A. I understood the design and the
5 installation to both be flawed, which is resulting in
6 continued soil movement. Does that --

7 Q. Yeah, that --

8 A. Is that causing the problem? I would
9 infer.

10 Q. Yeah, I believe that you earlier testified
11 to it that -- you stated that the solution was
12 designed and installed incorrectly. Is there any
13 basis for that conclusion?

14 A. I -- I understand that to -- to be within
15 the reports of H2L.

16 Q. And was there any kind of discussion with
17 H2L regarding any kind of proposed solution to this
18 issue?

19 A. Yes. As to technicalities, the
20 underpinning, I do not know. But, yes, there were
21 proposals around different types of solutions.

22 MR. MCCARTHY: Okay. And we're going to
23 go to another exhibit here. This is, I believe,
24 number 12, the June 9th, 2022 e-mail, Lewis to
25 Watson, regarding repair options.

1 (Defendant's Exhibit No. 8 was marked for
2 identification.)

3 THE WITNESS: (Witness peruses document.)
4 BY MR. MCCARTHY:

5 Q. Okay. Do you recognize this document?

6 A. I'm copied on it. No, not necessarily
7 recognize it, but I've scanned it.

8 Q. Are you familiar with the repair options
9 that are discussed in the document?

10 A. I see them mentioned.

11 Q. Did you have any discussions with members
12 of H2L regarding potential repairs of the property?

13 A. As a result of -- of this specific
14 document?

15 Q. Yes.

16 A. No. I don't think that we necessarily
17 talked about, in great detail, what each of these
18 consisted of. So...

19 Q. Were you concerned about the cost of any
20 one of these options?

21 A. Yes, of course.

22 Q. Did you express these concerns to either
23 Skip Lewis or Jim Kahle?

24 A. I don't recall. I think I -- my
25 conversation with Skip Lewis and Jim Kahle is pretty

1 limited.

2 Q. Was there any discussion of any kind of
3 alternative options for repairs to the property?

4 A. I'm sure there may have been. I don't
5 recall there being specific alternative discussions
6 based on the content of this e-mail.

7 Q. Was it ever discussed that these options
8 didn't necessarily have to be completed together?

9 A. I don't recall.

10 Q. Were you ever advised that these options
11 would completely prevent movement or soil movement on
12 the property?

13 A. No. I don't recall being -- that being
14 expressed to me.

15 Q. Was it ever discussed that there would be
16 any kind of warranty related to this work?

17 A. Not to my recollection.

18 MR. McCARTHY: Okay. I think we're going
19 to go to another exhibit here. This one is number 9,
20 the June 9th, 2022 e-mail chain Lewis to Watson. I
21 believe this is actually a response to this current
22 exhibit.

23 MS. BURTON: Bear with me.

24 MR. McCARTHY: I believe the relevant
25 portion of this exhibit is the -- page 3 and 4.

1 MS. BURTON: I'm looking. I'm not finding
2 either.

3 MR. MCCARTHY: If you can't find it,
4 that's fine.

5 MS. BURTON: I can't find a June 9.

6 MR. GOLDSMITH: Hey, Ryan, if you've got a
7 Bates number, we can print it out and distribute
8 copies.

9 MR. MCCARTHY: I believe it is Bates
10 number Watson 177.

11 MR. SHEALY: I've got --

12 MS. BURTON: I've got it. Watson 177 is
13 May 21.

14 MR. MCCARTHY: Yeah, the -- there are two
15 e-mails, I believe they're attached at the beginning,
16 that aren't relevant.

17 MS. BURTON: Yep, I've got it.

18 MR. MCCARTHY: It's the -- page 3 and 4
19 which are -- so Watson 179 and 180.

20 (Defendant's Exhibit No. 9 was marked for
21 identification.)

22 THE WITNESS: (Witness peruses document.)

23 BY MR. MCCARTHY:

24 Q. Okay. Do you recognize this document?

25 A. I -- no, I don't necessarily recognize it,

1 but I -- I see an engagement.

2 Q. If I represent to you that this is
3 Mr. Lewis' response to your questions regarding the
4 options; is that correct?

5 A. Yeah, I would agree with that.

6 Q. Okay.

7 A. Yeah.

8 Q. So in this document, Mr. Lewis is
9 attempting to explain some of the concerns that you
10 had with the proposed options to repair the soil
11 stabilization system; is that correct?

12 A. I would say that's reasonable, yes.

13 Q. Were you concerned with the options
14 because they were surface rather than under the
15 surface solutions?

16 A. I don't know that I would -- if I can say
17 that. I mean, you know, I -- I note that. I think
18 I'm asking -- trying to ask reasonable questions for
19 a person that has no understanding of -- of the
20 technicalities of the problem that I'm thrust within.

21 Q. Were you concerned that the options
22 proposed by H2L were not going to fully resolve the
23 issues with the property?

24 A. I --- I don't know that I would -- that I
25 could say that, necessarily. I think concerned. I

1 think I'm just trying to understand.

2 Q. And you never made a decision of whether
3 to implement any one of these options, correct?

4 A. No. Did not.

5 Q. And there's been no work that's been
6 performed related to any of these options, correct?

7 A. Correct.

8 Q. Have you noticed the crack that you
9 observed over the kitchen sliding glass door, has
10 that worsened from 2020 to now?

11 A. I would -- it appears that it has.

12 Q. And have you noticed any additional
13 cracking on the property?

14 A. I've discovered additional cracking, yes.

15 Q. But you don't know if that cracking was
16 present prior to 2020?

17 A. I never noticed it prior.

18 Q. Have you had any work to repair any of
19 this cracking performed --

20 A. I have not.

21 Q. -- since 2020?

22 Okay. At this point, is there any concern
23 regarding the structural integrity of the property?

24 A. Do I have concern?

25 Q. Yes.

1 A. I -- I have concern.

2 Q. Are these concerns -- have you expressed
3 these concerns to any of the personnel at H2L?

4 A. I don't -- I don't know if I've expressed
5 it directly to them. It may have been expressed on
6 my behalf.

7 Q. Has either H2L or any other person stated
8 that there's any kind of issue with structural
9 integrity of the property?

10 A. No other person. And I think H2L would be
11 able to speak to the -- their opinion of structural
12 integrity.

13 Q. You're still currently living at the
14 property, correct?

15 A. I am.

16 Q. Have you noticed any new issues with soil
17 movement around the property?

18 A. Again, I don't know how those -- what
19 those issues would be, necessarily. You know,
20 the -- so, no. I guess the -- there -- within the --
21 the cart path that was laid, there's separation of
22 the -- the concrete pads and they're moving away from
23 each other.

24 Q. Have you got any estimate for the cost to
25 repair any of these issues you noticed around the

1 property?

2 A. Which -- could you be more specific? The
3 answer is no, I have not. But if you'd like to
4 specify on any one of those issues.

5 Q. So you haven't reached out for an estimate
6 regarding repair of any of the cracks you've noticed
7 related to the property?

8 A. I suffered a water heater burst in the
9 lower level, which caused remediation, so SERVPRO
10 ripped everything out. And within that we found more
11 separation of the drywall and other issues there.
12 So, yes, in talking about the -- the total scope of
13 that project, that has been -- cosmetics has been
14 some of the review. But that's -- you know, that's
15 in addition to larger, other repairs.

16 Q. You said that the cracking that was found
17 because of the water heater that was cosmetic in
18 nature?

19 A. It's more drywall separation, yeah. The
20 tape tearing or -- yeah.

21 Q. And that -- the water heater break, was
22 that caused by any of the issues with the property or
23 was that a separate issue?

24 A. Yeah, it was just a water heater burst
25 inside there.

1 Q. Okay. So, I think we're coming to the
2 home stretch here. I just want to ask you a few
3 questions about what damages you're seeking in this
4 lawsuit.

5 So, if you could just give me an idea of
6 what exact damages that you're seeking to -- to gain
7 through this action.

8 A. I don't -- I don't know that I could
9 specifically speak to that. I mean, ideally, I love
10 the home, right? I bought the home to live in the
11 home and make many, many more years of memories. So
12 it's a bit of a forever home to me.

13 Finding a way to address the problems or
14 if they cannot be addressed in a meaningful manner,
15 you know, my hope is to -- to be able to find a
16 similar and like home. So that's the perspective
17 that -- that I could offer to you.

18 Q. Are you seeking the cost to install a new
19 stabilization system --

20 A. Uhm --

21 Q. -- if that's possible?

22 A. I think installation and repair of damage.
23 If we can address the issue and stop the problem and
24 address the -- the damage that's occurred. Again,
25 I'm -- you know, I don't have desire to necessarily

1 leave the home in any way. But I don't feel
2 comfortable living in a home with instability that at
3 some point in the future may or may not fail.

4 MR. McCARTHY: Okay. I think this is
5 going to be the last exhibit. It's -- Stephanie, I
6 believe number 8, the November 16, 2021 property
7 appraisal.

8 MS. BURTON: Got it.

9 (Defendant's Exhibit No. 10 was marked for
10 identification.)

11 BY MR. McCARTHY:

12 Q. Do you recognize this document?

13 A. I do.

14 Q. And what is this document?

15 A. This was an appraised value of the home on
16 December 1st, 2021.

17 Q. And why did you procure this appraisal?

18 A. Because we were trying to make a
19 determination if -- if there were avenues to
20 potentially sell the home with full disclosure of
21 everything that -- that we know about the -- the
22 problems that exist and what, at that time, market
23 value may represent.

24 Q. Did you provide this appraisal to Keller
25 for the purposes of offering to buy the property?

1 A. I've not provided this appraisal to
2 anyone.

3 Q. This appraisal doesn't take into account
4 any of the soil stabilization issues; is that
5 correct?

6 A. In regard of the reducing the value of the
7 home in light of?

8 Q. Yes.

9 A. No, not to my knowledge.

10 Q. Have you sought any appraisals taking into
11 account potential devaluation of the home because of
12 any kind of issues that might be present?

13 A. I have not.

14 Q. So you don't have any information
15 regarding any kind of loss of value that these issues
16 might be causing?

17 A. You presented me with information about
18 what the potential repair costs would be. I assumed
19 that that would be information.

20 Q. Have you tried to sell this property?

21 A. I have not.

22 Q. Have you received any offers to purchase
23 the property?

24 A. I receive unsolicited offers to purchase
25 the property.

1 Q. Any of those offers above the appraised
2 value?

3 A. I have not gone into detail to -- to
4 engage the potential buyers.

5 Q. I think just one last question. Have you
6 ever had any contact with any personnel of
7 D'Appolonia?

8 A. No.

9 MR. MCCARTHY: Okay. That's all I have.

10 MR. SHEALY: I've got a couple follow-ups,
11 but do you have anything?

12 MR. GOLDSMITH: No. I may have a few to
13 close it out.

14 MR. SHEALY: All right. I'm happy to --

15 MR. GOLDSMITH: Yeah, you can go ahead.

16 MR. SHEALY: Okay. I'll be quick.

17 EXAMINATION

18 BY MR. SHEALY:

19 Q. Mr. Watson, earlier you mentioned the
20 landscaping company. And I just wanted to make sure
21 that I understood the name of that company. In your
22 discovery responses, the -- the information that
23 we've received from your lawyers, when we exchange
24 documents, that it's listed Empire Grading is the
25 company that did the landscaping.

1 A. Okay.

2 Q. Is that -- is that the same company that
3 you were talking about earlier?

4 A. They're synon- -- can you read me the
5 address or --

6 Q. It does- -- it's not listed here.

7 A. Yeah, it -- I believe that to be
8 synonymous. Empire Landscape and Grading, yeah.

9 Q. Okay. Something --

10 A. Yes.

11 Q. It's either Empire Grading or Empire
12 Landscape and Grading?

13 A. Correct.

14 Q. And -- and it's located in what town?

15 A. I believe Pickens.

16 Q. In Pickens. Okay.

17 A. Wesley McFalls is the business owner. So
18 we could validate --

19 Q. Okay.

20 A. -- from that respect.

21 Q. That helps. There are a couple of other
22 contractors listed in your discovery responses. And
23 I just want to make sure that we've talked about
24 them. Custom Dock Systems is the company that did
25 your dock replacement?

1 A. Correct. Yeah.

2 Q. Best Services of Oconee. It's indicated
3 in your discovery responses, they serviced and
4 repaired your HVAC system?

5 A. They did.

6 Q. Did you have -- you had to have it
7 repaired in any respect or was it just --

8 A. Maintenance.

9 Q. -- maintenance?

10 A. Yeah.

11 Q. Okay. Advanced Electrical of Seneca is
12 listed as doing some outside light -- lighting work?

13 A. I think they put the -- ran the lighting
14 down to the new dock location.

15 Q. I gotcha. Then Plumbing by Greg, LLC,
16 various plumbing work.

17 A. That was replacement of the sewer pump.
18 So as I mentioned, there's sewer pumps that -- we --
19 we're not on a septic system.

20 Q. So you've got a lift station?

21 A. You've got a lift station --

22 Q. Okay.

23 A. -- right. So those have a limited life
24 span.

25 Q. Okay.

1 A. So they just replaced that.

2 Q. All right. And did you ever have any, you
3 know, problem with the sewage backup or any kind of
4 overflow into your yard or anything like that?

5 A. No. It never came back into the house.
6 It -- you know, it was -- there were even two
7 installed. So when he came out, one had failed, the
8 other was working. And he just took out both of the
9 two and installed a new one.

10 Q. Okay. Okay. And when was that work done?

11 A. I would have to look. I'm afraid I don't
12 recall.

13 Q. All right. And then Crooks Plumbing &
14 Electrical. I think we've already looked at that --
15 was the exhibit --

16 A. Correct. 20 --

17 Q. Exhibit 2?

18 A. Yeah, Exhibit 2.

19 Q. Yeah. All right. So that -- the --
20 that's the only -- Exhibit 2 is the only -- or is the
21 evidence of the only work that Crooks Plumbing &
22 Electrical has done for you?

23 A. Correct.

24 Q. Okay. Rapid Response Plumbing is listed
25 as -- as performing various plumbing work?

1 A. Uh-huh.

2 Q. All right. Did they -- they did the work
3 as evidenced on --

4 A. I don't think there's an exhibit number on
5 that, but --

6 (Off-record discussion.)

7 THE WITNESS: 6.

8 MR. GOLDSMITH: 6.

9 MR. MCCARTHY: 6. Okay.

10 BY MR. SHEALY:

11 Q. And Exhibit 6, the evidence -- the
12 evidence of the only work that Rapid Response
13 Plumbing has done for you?

14 A. Correct. I think I've had them out to
15 replace a -- a faulty spigot. I couldn't find any
16 record of it, so...

17 Q. Okay. Fair enough. Blossman Gas &
18 Appliance. It says that they installed propane tank
19 and water heater for you?

20 A. They did. So that was the replacement of
21 the burst hot water heater.

22 Q. Okay. And that -- and then SERVPRO came
23 out and did the drying out of the carpet and the
24 replacement of the drywall from the water heater
25 burst in 2022?

1 A. They remove the -- the carpet and the
2 drywall --

3 Q. Okay.

4 A. -- correct.

5 Q. So they only did -- they only tore -- tore
6 it out, they didn't do the replacement?

7 A. That's correct.

8 Q. Okay. SERVPRO just comes in --

9 A. Yeah.

10 Q. -- and just remediates?

11 A. Yeah, yeah.

12 Q. And then Hydrowashmax, they -- they just
13 done some routine pressure washing and that sort of
14 thing?

15 A. Yeah.

16 Q. Okay. Let me make sure that --
17 Sea-to-Summit Pressure has also done pressure
18 washing?

19 A. Uh-huh.

20 Q. Is that a yes?

21 A. Correct. Yes.

22 Q. Okay. A few other folks listed in your
23 discovery response, and I just want to make sure --
24 all right. We talked about H2L Consulting Engineers,
25 Mr. Lewis and Mr. Kahle.

1 A. Kahle.

2 Q. Wurster Engineering & Construction,
3 Mr. Chappell. You're not sure who that is?

4 A. No. That may have been someone that H2L
5 consulted with. I have not, as I recall.

6 Q. Hudson Construction of Ocone?

7 A. Those -- that was work previously done for
8 the Schmidts --

9 Q. Yeah.

10 A. -- if I recall.

11 Q. Law Engineering and Environmental
12 Services?

13 A. I think that was contracted by the
14 Schmidts.

15 Q. I think you're right. Real Property
16 Services, LLC. That's the -- did the --

17 A. Is that the appraisal?

18 Q. It's either the appraisal or the home
19 inspecting.

20 A. Real Property Services. That's the
21 appraisal.

22 Q. They did the appraisal. Okay. All right.
23 SM&E, we talked about Mr. Mirocha and Mr. Taylor.

24 A. I don't know Mr. Taylor.

25 Q. Okay. And then QORE is also Mr. Mirocha.

1 I think he changed firms --

2 A. Okay.

3 Q. -- is the issue there.

4 A. Okay.

5 Q. But there are two other individuals
6 listed. And I wanted to know if you had any contact
7 with Mr. Solvi or Mr. Rynall?

8 A. No.

9 Q. Okay. And you've already testified you
10 had no -- you've had no communications with anyone at
11 D'Appolonia?

12 A. Correct.

13 Q. GeoMetron, Mr. Mikkelsen, did you have any
14 communication with Mr. Mikkelsen?

15 A. (Shakes head.) No.

16 Q. And you've already testified you had no
17 communication with Terracon?

18 A. Correct.

19 Q. And then Cornerstone of Seneca, have you
20 had any -- any communication with a Mr. Henderson or
21 anyone else at Cornerstone of Seneca?

22 A. No.

23 Q. Do you know how much you paid to perfo- --
24 to have the landscaping work -- the six to eight
25 weeks of landscaping work done?

1 A. Around 40- to 50,000.

2 MR. SHEALY: Okay. Okay. I think that is
3 all the questions I have. Please answer any
4 questions Mr. Goldsmith may have for you.

5 EXAMINATION

6 BY MR. GOLDSMITH:

7 Q. Mr. Watson, I've got a couple questions.
8 If you'll look at Exhibit 5 in front of you. It's
9 the Schmidts' disclosure report.

10 A. Okay. There's a lot of papers here. Here
11 we go.

12 Q. And if you'll turn with me to the page
13 that's Bates-numbered Watson 111.

14 A. Okay.

15 Q. They checked off box number 20, indicating
16 that they had knowledge or notice concerning
17 drainage, soil stability, atmosphere or underground
18 problems affecting the property; is that correct?

19 A. Yes.

20 Q. Okay. And then if you turn to the next
21 page, Watson 112, they indicated that -- for question
22 20 they stated, "In 2002 soil stability issue below
23 house was corrected."

24 A. I show that as question IX. The numbers.

25 Q. Yeah, it is question Roman numeral IX --

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

COUNTY OF OCONEE

HUGH T. WATSON,
Plaintiff,

vs. CASE NO.: 2023-CP-37-00329

HAYWARD BAKER, INC.; KELLER

NORTH AMERICA, INC.; and

GROUND TECHNOLOGY, INC.

d/b/a D'APPOLONIA ENGINEERING,

DIVISION OF GROUND TECHNOLOGY, INC.,

Defendants.

DEPOSITION OF: L.G. "SKIP" LEWIS, JR.

DATE: April 16, 2024

TIME: 10:04 a.m.

LOCATION: Elmore Goldsmith Kelley & DeHoll
19 Blair Street

Greenville, South Carolina

TAKEN BY: Counsel for the Defendants

REPORTED BY: Mary K. Stepp, Court Reporter

Job No. CS6503013

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ALSO PRESENT:

John Wolosick, Keller North America, Inc.
Hugh Watson, Plaintiff

(INDEX AT REAR OF TRANSCRIPT)

1 the record, Mr. Lewis, can you just give the high
2 spots of your professional back- -- background.

3 A. Graduated from Clemson in 1966. Received
4 a master's degree in 1967, both in civil engineering.
5 The master's was structural with a minor in
6 geotechnical engineering.

7 First six years after Clemson, I worked
8 for the Navy department. Then I moved to Greenville
9 in -- somewhere around 1971, '72, worked for Piedmont
10 Engineers, Architects and Planners, I guess for 15 or
11 20 years.

12 Left as an executive vice president to
13 start H2L Consulting Engineers, I think around 1988,
14 that time frame. And I have been with H2L Consulting
15 Engineers since that time.

16 Q. And by my estimate, you and I have known
17 each other maybe 15 years and -- and I've hired you
18 multiple times in various different kinds of cases,
19 correct?

20 A. Yes.

21 Q. Okay. So, I guess I want to start today
22 by getting a sense of how you got involved in -- in
23 this case. Do you remember how you all were
24 contacted?

25 A. Yes.

1 Q. Who -- who was that that contacted you?

2 A. I received a telephone call from Bob
3 deHoll.

4 Q. Okay. Here at this firm?

5 A. Yes. I'm not sure he was with this firm
6 at that -- well, I'm not sure. But, yes, it was Bob
7 deHoll.

8 Q. Okay. And the -- what -- what did
9 Mr. deHoll tell you, when -- in that first
10 communication, if you remember?

11 A. He had -- he -- as I recall, he explained
12 some of the physical manifestations of problems that
13 Mr. Watson had observed in his house.

14 Q. Okay.

15 A. He may have also indicated the -- an
16 attempt to do inclinometer readings earlier in the
17 year. I think we were contacted around November
18 of -- what was it? 2020, somewhere in that -- '22,
19 somewhere in that time frame.

20 But anyway, a few months before contacting
21 us, Mr. Watson had tried to have inclinometer
22 readings made to compare readings, at that time, with
23 the history of readings on the -- well, let me back
24 up.

25 When deHoll called us, he, I think,

1 identified that they tried to do inclinometer
2 readings, but were unable to get passage of the
3 instrument to the full depth. So I don't know at
4 what point in time this was. They had the benefit of
5 the history of inclinometer readings.

6 But in any case, Mr. deHoll asked me if I
7 would come visit the Watson residence, see the
8 damages, and assist in their assessment of the
9 causation issues and how to address going
10 forward with the conditions.

11 Q. Okay. And so how many visits have you
12 made to the house at Shipmaster?

13 A. I believe I've been there twice. I know
14 at least twice.

15 Q. Okay.

16 A. Possibly more.

17 Q. And both times was your colleague Jim
18 Kahle there?

19 A. He was not there the first time. He was
20 there the second time.

21 Q. Okay. And during your first visit, did
22 you have a chance to talk to Mr. Watson?

23 A. Yes, I'm sure I did. I know he was there.

24 Q. Okay. And have you had other occasions to
25 talk to Mr. Watson?

1 A. I have.

2 Q. Okay. How many -- how many conversations
3 do you think you've had with him?

4 A. Just a guess would be -- a reasonable
5 guess, I think, would be three, four, five times.

6 Q. Okay. And were these --

7 A. Most -- most of the times by telephone.

8 Q. All right. And were these conversations
9 of things that you initiated to -- to find some
10 additional information out from Mr. Watson or were
11 they to discuss other things?

12 A. Well, I think probably subsequent to our
13 first visit, and perhaps it might have been right
14 after the second visit. But anyway, after we had
15 assessed the conditions that existed, I know we had
16 seen -- at that point in time, I think we had started
17 receiving some of the contemporaneous records with
18 the site explorations, the LawGibb's report,
19 documents such as that, and at least develop what we
20 believe was the cause of the conditions that we were
21 seeing.

22 We had a telephone conference with
23 Mr. deHoll and Mr. Watson, in which we discussed our
24 findings, at that particular point in time, the
25 assessments that we had made, and gave him a --

1 basically, an overview of what we believed to be
2 continuing problems on the -- on the site.

3 Q. Okay. So -- and as I understand it, your
4 firm's role has not only been to -- to figure out
5 what's wrong or what the current conditions are, but
6 to also come up with a -- a proposal to remedy the
7 problem; is that correct?

8 A. That's correct.

9 Q. Okay. We'll get into the specifics of
10 that here in a little bit. But the -- when did you
11 decide to involve Mr. Kahle in the -- in this
12 project?

13 A. Shortly after Bob deHoll got me involved.
14 I -- I could tell it was going to be, basically, a
15 case that involved geotechnical assessments on slope
16 stability, slope movements, restraining systems for
17 the slopes.

18 And at that point in time, I asked Jim
19 Kahle to associate with me. He's been with -- as an
20 independent contractor, been with our company for
21 probably five or ten years anyway, but...

22 Q. And is geotechnical engineering more his
23 concentration of, if you will, or does he have a --
24 other -- other areas that he --

25 A. Yes, he was -- as far as I know, Jim's

1 professional career has been pretty much solely
2 geotechnical engineering issues.

3 Q. Now, and -- and you mentioned in your
4 talking about your background that you had -- you
5 minored in geotechnical engineering, when you were at
6 Clemson, correct?

7 A. Right.

8 Q. Would it be fair to say, though, that
9 as -- in the course of your career, particularly with
10 H2L, geotechnical engineering has been largely
11 outside of your -- of the areas that you have
12 assisted with, when you've been involved in forensic
13 engineering work?

14 A. Not totally. My -- my professional
15 activities that relate in one way or another with
16 geotechnical engineer, goes to basically the
17 exploration plans for developing foundation
18 recommendations for buildings.

19 I practiced structural engineering,
20 predominantly. But that involves geotechnical
21 issues, when you're designing foundation systems,
22 retaining walls. I do retaining wall designs.
23 That's heavily geotechnical oriented, too.

24 So there are elements of geotechnical
25 engineering, but I do not do the testing of the

1 soils. And I do not do what I call deep surface
2 analysis, slope stability, failures, and things of
3 that nature. That's a branch or an area of
4 geotechnical engineering that I have not been
5 involved with.

6 Q. Okay. So to do -- to do mechanical and
7 foundation design, you've got to have a basic
8 understanding of -- of geotechnical issues?

9 A. To do retaining walls and foundation
10 design, you would have to have a basic understanding
11 of geotechnical issues, correct.

12 Q. Okay. But -- and -- and a good part of
13 your work is forensic engineering, working
14 with -- trying to figure out the cause of certain
15 conditions and often in cases that have ended up in
16 litigation, correct?

17 A. Yes.

18 Q. Okay. And in that -- in that part of your
19 practice of your professional career, you have not
20 focused much on geotechnical issues like slope
21 stabilization, things like that?

22 A. Right. If we get into slope stabilization
23 issues, one way or another, I'm going to involve Jim
24 Kahle or someone that I would consider equal to his
25 expertise.

1 Q. Okay. All right. Fair enough.
2 And -- all right. But just to back up a little bit,
3 what -- what did you do to prepare for today's
4 deposition?

5 A. I looked back through the hard files that
6 had been copied, sent to you. Sat down last night,
7 kind of did a timeline, in case I needed to refer to
8 that. And also reduced to writing the basic opinions
9 that -- that I have in this matter.

10 Q. Okay. And did you bring some notes with
11 you today to help assist you in providing testimony
12 today?

13 A. Yes, I did.

14 Q. And did -- did those notes include the
15 timeline and the -- sort of the synopsis of your
16 opinions?

17 A. They do.

18 Q. Okay. At some point we may have those
19 marked, make a copy of those, have those marked as an
20 exhibit to the deposition. I will skip over that for
21 the time being.

22 But the -- you mentioned, when I asked you
23 when you first got involved, that you first got
24 involved in 20 -- in 2020 or 2022. Do your notes
25 tell you --

1 A. They do.

2 Q. -- precisely when?

3 A. They do. We would -- became involved in
4 November of 2020.

5 Q. Okay.

6 A. A long time ago.

7 Q. And -- and -- and when was the first site
8 visit that you made?

9 A. November of 2020.

10 Q. Okay. Right -- that same month?

11 A. Yes.

12 Q. Okay. And then the second site visit
13 that -- that Jim Kahle was involved in, do your notes
14 reflect when that was?

15 A. Yes. It looks like it was December
16 of '22.

17 Q. Okay. Do your notes reflect all of the
18 documents that you've been provided for review in --
19 in the case?

20 A. I doubt they do.

21 Q. Okay.

22 A. I think there are probably some hard copy
23 documents that I didn't consider particularly
24 relevant to my timeline issues.

25 Q. Okay. I think the -- your office produced

1 to me what is about seven inches high of a stack of
2 paper. A good bit of it appears to be, you know,
3 documents that have been exchanged between the
4 parties --

5 A. Right.

6 Q. -- in the case.

7 A. Yeah.

8 Q. You've been provided -- do you understand
9 that you've been provided with the discovery that has
10 been produced by Keller North America and
11 D'Appolonia?

12 A. I have, yes.

13 Q. Okay. All right. Well, let me -- I think
14 the -- there are probably better ways to do this, but
15 I think what I want to do is just go through this in
16 sort of the order that I made note of things to talk
17 to you about.

18 So, let me show you -- everything I have
19 in front of me I think was produced by your file. So
20 I'm going to refer to the Bates labels that I think
21 your office --

22 A. (Shakes head.)

23 Q. Did your office not -- maybe we
24 Bates-labeled it.

25 A. I would imagine that --

1 MR. GOLDSMITH: We might have. I don't
2 know.

3 THE WITNESS: -- his office Bates-labeled
4 it.

5 MR. GOLDSMITH: I think we did.

6 MR. SHEALY: Y'all did it? Okay.

7 BY MR. SHEALY:

8 Q. I've got stuff from your office, I think,
9 that y'all Bates labeled, which I appreciated. But
10 if that was done by Mr. Goldsmith's office, that's
11 fine, too.

12 First thing I want to show you is a
13 one-page document that is Bates-labeled H2L 5, and
14 just ask if you recognize that.

15 A. (Witness peruses document.) Yes, I
16 recognize this.

17 Q. And tell me what that is.

18 A. These, I believe, are some notes that Jim
19 Kahle made --

20 Q. Okay.

21 A. -- when he was making his geotechnical
22 assessment --

23 Q. Okay.

24 A. -- on the issues related to, what I will
25 refer to and continue to refer to as Hayward Baker.

1 Q. Okay.

2 A. It's noted as Keller over here, but...

3 Q. If you say Hayward Baker, I say Keller,
4 we're talking about the same entity?

5 A. We are, yes.

6 Q. All right. So this is a document I need
7 to ask Mr. Kahle about?

8 MS. BURTON: Let me take a peek.

9 BY MR. SHEALY:

10 Q. And then there's a series of photographs
11 that start at H2L 6 and go to H2L 23.

12 Are those photographs that Mr. Kahle took
13 or -- or did you take those?

14 A. These would be my photographs from --

15 Q. Okay.

16 A. -- November 2020.

17 MR. SHEALY: Okay. And the -- let's -- I
18 think, let's mark the whole packet as the next
19 exhibit in order, whichever -- whatever that number
20 is. Is it 10?

21 (Off-record discussion.)

22 MR. SHEALY: So we'll mark this series of
23 photographs as Exhibit 11.

24 (Defendant's Exhibit No. 11 was marked for
25 identification.)

1 BY MR. SHEALY:

2 Q. And, Mr. Lewis, I'm going to thumb through
3 them a little bit, because I think I understand what
4 a lot of them depict. But, for instance, if we look
5 at H2L 7, there are -- there's -- there's some
6 photographs of particular conditions at the property.
7 What are you -- what are you trying to memorialize
8 there?

9 A. Well, that's a good question. I think, at
10 least starting out with the photographs, I was trying
11 to document the areas of concern that Mr. Watson was
12 pointing out --

13 Q. Okay.

14 A. -- as we went through. Excuse me just a
15 second. Let me turn this off.

16 Q. Yes, sir.

17 A. These -- these photographs appear to
18 depict conditions like the slope in the floors,
19 cracked drywall, cracks in the -- what looks like
20 linoleum flooring, vinyl flooring. Erosion or loss
21 of soil below the slab on the back of his house.
22 Out-of-level conditions with his -- what appears to
23 be the patio slab behind his house. General views of
24 the back of the house, the area where the slope
25 stability improvements were made by -- under the

1 Hayward Baker project.

2 Here it's documenting some of the
3 conditions (indicating). This is, again, toward the
4 rear of the house with the outside steps coming up to
5 the -- one of the, I guess, lower levels in the
6 house. The photograph of his exterior balcony.

7 I don't think -- at least photograph
8 number 28 doesn't show anything particularly
9 significant. And the others are just, you know,
10 evidence of movement within the -- the house
11 structure and the wall coverings and floor coverings.

12 Q. Well, maybe if I can come around. Just --
13 I appreciate kind of that general overview of what
14 these show. And if we can look at particular
15 photographs. And I'll identify them by photograph
16 number.

17 Photographs 3 and 4, do those -- is -- for
18 instance, 3, I see that there's a hairline crack in
19 this concrete slab. Maybe -- maybe there are two
20 cracks, I can't really tell. Are those -- are those
21 issues of concern or are those issues that you might
22 expect to see in a house of this age.

23 A. Well, I'd say every anomaly that I saw
24 would be a condition of concern that warranted some
25 explanation --

1 Q. Okay.

2 A. -- whether it's a natural occurrence due
3 to age or some other -- some other issue. There
4 should be, with these drawings, some notes --

5 Q. Okay.

6 A. -- that'll carry the same date as the
7 photographs.

8 Q. Okay.

9 A. And I think that there may be some
10 explanation in the notes, at least of something that
11 will --

12 Q. Okay.

13 A. -- help my memory.

14 Q. All right. We'll -- the way these arrived
15 to me, they -- they were -- these photographs were
16 separate from any notes, but we may get to the -- to
17 that shortly.

18 Okay. So, there are a couple things I
19 just wanted to ask you about. All right. So
20 they're -- you talked about, sort of generally, what
21 you -- what these photographs depict.

22 There are photographs that do show an
23 instrument in them. And, for instance, photograph 16
24 shows a -- the level of a surface --

25 A. Yeah.

1 Q. -- correct?

2 A. That is referred to as an inclinometer.

3 Q. All right.

4 A. And it gives you the degrees of -- off of
5 vertical or depending upon how you set it, off of
6 vertical or off of horizontal that the -- the surface
7 displays.

8 Q. Okay. And this is -- so that's an
9 instrument you carry with you when you're doing a
10 site inspection like this?

11 A. Yes.

12 Q. Now, this appears to be -- in photograph
13 16, the inclinometer has been placed on an exterior
14 concrete surface, presumably that's the patio. Is
15 that -- does that comport with your recollection?

16 A. Yes.

17 Q. Okay. Now, there is a -- there is a slope
18 to that patio. Is it -- is it normal for a hardscape
19 like that to be sloped away from -- slightly from the
20 residence?

21 A. Yes.

22 Q. Okay. So are what -- what you're
23 depicting here in photograph 16, is that something
24 that is out of the ordinary or a matter of concern?

25 A. That's -- that's a correct statement.

1 Q. It is a matter of concern?

2 A. No, it is not.

3 Q. Oh, okay. Okay.

4 A. I mean, that is -- that is within a
5 reasonable slope for a hard surface to drain, so --

6 Q. Right.

7 A. -- I'm - I'm okay with that.

8 Q. Okay. And so the inclinometer is also
9 depicted in photograph 17 and 18. But, again,
10 your -- your understanding is that the slope of that
11 patio is, as designed, to drain water away from the
12 residence?

13 A. Yes. Should be.

14 Q. Okay. Now, let me go through a couple
15 more. Now, the inclinometer is also shown in par- --
16 in photograph 24.

17 A. Yes.

18 Q. Is there -- is there an issue with the --
19 the way the -- this is a wooden deck, the way the
20 wooden deck is sloped?

21 A. No.

22 Q. Okay. All right. And the inclinometer
23 is -- is now shown in close up in photographs 25 and
24 26, again on the deck. No issue with what it's
25 depicting there?

1 A. Correct.

2 Q. Okay. All right. This is what I wanted
3 to ask you about. Photograph 36 depicts a pipe with
4 a red cap on it. Do you know what that is?

5 A. Well, that's what I would refer to my
6 notes. It probably is the inclinometer casing that
7 was placed on the site.

8 Q. Okay. That's what you believe that to be
9 is -- is the top of the -- the in-place, in-ground
10 inclinometer that was --

11 A. Yeah, the casing for the inclinometer
12 readings.

13 Q. All right. So -- and that was, of course,
14 not placed by you, that was placed many years before
15 your site visit, correct?

16 A. Yes.

17 Q. All right. We'll talk about that further,
18 when we look at some other documents.

19 Okay. Then there's a series of invoices
20 that appear in your file. And I'm going to show
21 these to you. This is H2L 24 through 44. And just
22 ask you, generally, are those -- is that a collection
23 of the -- the invoices that your firm has charged Mr.
24 Watson for the work you've performed?

25 A. It is. I don't know that this

1 represents -- well, I don't know. February. This is
2 probably all of the invoices that we've issued --

3 Q. Okay.

4 A. -- except maybe the last one.

5 Q. Okay. I guess there -- and there's one
6 question I wanted to ask about -- on the first page,
7 on H2L 24. You've reviewed an analysis of documents
8 provided by homeowners, analysis of tendon relaxation
9 effects.

10 And I wanted to -- did you -- did you ever
11 come to a conclusion that the -- that the system that
12 Hayward Baker, now Keller, installed had -- that the
13 tension of the tendons had relaxed in some respect?

14 A. Well, I did come to the conclusion that
15 the tensions had -- that the tension had changed. I
16 mean, relaxation is -- is a description, but
17 basically it says -- and the way I analyzed that was
18 that there would be some slight incremental movement
19 of the blocks, as the tension was taken up in the --
20 in the anchor cables. So that's basically what that
21 refers to. But we were looking at that, and included
22 on the -- on the invoice.

23 MR. SHEALY: Okay. I'll just have the
24 whole packet of invoices marked as Exhibit 12.

25 (Defendant's Exhibit No. 12 was marked for

1 identification.)

2 BY MR. SHEALY:

3 Q. There -- There's a series of documents
4 starting with a proposal from Terracon. Was that --
5 was that effort coordinated by Mr. Kahle?

6 A. Jim Kahle did communicate with Terracon
7 and did request a proposal from Terracon.

8 Q. That's what I figured. So let me... then
9 I'm going to show you a document, H2L 106, and ask if
10 you can identify that.

11 A. (Witness peruses document.) Yes. This is
12 an outline of what we had proposed to Mr. Watson, as
13 a report to be developed.

14 Q. Okay.

15 A. We were -- we were seeking his approval to
16 incur the expense of preparing a report.

17 Q. Okay.

18 A. And gave him an outline, as we saw it,
19 that the report would include.

20 Q. All right. And this -- this outline was
21 prepared when, do you know?

22 A. No. I would think that outline was
23 prepared, probably, somewhere around '22. It was --
24 it was during the same general time period, I
25 believe, that we were talking with Terracon about

1 doing some investigations. And we also talked, I
2 think, with one other company about actually doing
3 some repairs or repair scopes.

4 Q. Do you remember --

5 A. All of that was kind of contemporaneous.

6 Q. Do you remember the name of the company
7 that you talked to about doing some repairs?

8 A. It's in the file there somewhere, but I
9 can't recall it off the top of my head.

10 Q. All right. So this -- this outline that
11 you've identified, was this sort of -- was this
12 presented to Mr. Watson in some sort of a -- a
13 meeting that you all -- that you and Mr. Kahle had?

14 A. We discussed it. Probably a telephone
15 conference, I think with Mr. Watson and Mr. deHoll,
16 at that time.

17 Q. Okay. And based on your presenting him --
18 Mr. Watson with this outline, were you then
19 authorized to produce a report?

20 A. No.

21 Q. Okay. What was the -- what -- what
22 decision was made, if any, after presenting this
23 outline?

24 A. I think it was the cost of the engineering
25 services to develop the report.

1 Q. Was -- was it deemed to be too high to --
2 to go forward, at that point?

3 A. Well, I mean, I can't explain why the
4 decision was made. But I know Mr. Watson was all --
5 you know, he -- he -- he was concerned about the cost
6 that would be incurred in pursuing this -- this
7 action.

8 MR. SHEALY: Yes, sir. All right. Let's
9 go ahead and mark this as Exhibit 13.

10 (Defendant's Exhibit No. 13 was marked for
11 identification.)

12 BY MR. SHEALY:

13 Q. Then, Mr. Lewis, I'm going to show you
14 what appears to be an e-mail thread. And it looks
15 like you're communicating with Mr. deHoll in June of
16 2022. And I'm showing you three pages... actually,
17 no. I'm going to show you more than that.

18 Okay. I'll show you -- it's H2L 258 to
19 265. I -- this appears to be one e-mail thread, but
20 I'm not entirely certain of that. Let me see if you
21 recognize that.

22 A. (Witness peruses document.)

23 MR. GOLDSMITH: What's the Bates number?
24 Is that Bates numbered? Yeah, H2L 258.

25 THE WITNESS: This is 258. The top page

1 is 258.

2 BY MR. SHEALY:

3 Q. As far as I can tell that's sequential.

4 A. (Witness peruses document.) Yeah, I don't
5 see a page 4 of 4.

6 Q. Yeah, I didn't either, that's why I was
7 concerned. Some concern about the -- whether that's
8 all one -- one thread or not. But the dates are --
9 seem to be about the same.

10 A. Well, they probably were contemporaneous.
11 I don't know that they were continuous. But...

12 Q. Yes, sir.

13 A. But I don't know -- to be honest with you,
14 I don't know from the computer standpoint where one
15 e-mail thread ends and the next one begins, but I
16 guess it's how you reply to the e-mail.

17 Q. Right. Right.

18 A. But anyway, looks like -- looks like all
19 of these e-mails occurred around the middle of June
20 in '22.

21 Q. Okay. And looks like you're involved in
22 that -- in that e-mail exchange?

23 A. That's true, yes.

24 Q. Okay. Do you know sort of -- do you
25 remember the context in which this e-mail exchange

1 began and -- and -- and can you talk to me about kind
2 of what you all were discussing there?

3 A. (Witness peruses document.) Looks like
4 that the first e-mail is dated June the 9th. I don't
5 think I see one earlier than that.

6 Okay. It appears to me that the earliest
7 e-mail, which is dated -- in this series that you've
8 given me, is dated June the 9th of 2022. And it is
9 an e-mail to Bob deHoll. And I copied Jim Kahle with
10 it. And it's in reference to a cost estimate for
11 repairs that either Bob deHoll or Mr. Watson or both
12 asked us to kind of put together to see what range of
13 cost they were looking at to stabilize the slope.

14 There's a reference in here to Doug
15 Chappell, which is -- his company is the one that I
16 was referring to a moment ago about doing the concept
17 repair. He's done a number of these on the lake.
18 And -- and that's where, in terms of the construction
19 cost, it looks like depending upon the -- the
20 estimates...

21 Looks like we were looking -- discussing,
22 conceptually, three different types of repairs with
23 the cost on the low side being around 63,000. On the
24 high side, about 623,000. And then one in the middle
25 at about 164,000. And there's a brief description of

1 each repair concept in the -- in the e-mail to Bob.

2 This e-mail went to Bob deHoll and to Hugh Watson.

3 Q. Okay.

4 A. And it gives them -- basically, it's -- in
5 these e-mails, it looks like we are discussing some
6 concept repairs to help, I guess, put a fence around
7 what the probable construction costs would be.

8 Q. Okay. The -- what I wanted to know from
9 you, though, is the estimated costs of repair. Did
10 you all come up with those numbers or were those --
11 those numbers provided to you by others?

12 A. That -- they were pro- -- they were
13 provided by Doug Chappell and his company, but they
14 were based on concepts that had been discussed with
15 them by H2L.

16 Q. Okay.

17 A. So, that was interaction in the
18 development of the concepts. But the budget estimate
19 for the costs came from the company that we were
20 talking to that had the capability of actually
21 performing the repairs.

22 Q. Okay. And -- and I may have overlooked
23 it, but I didn't see any -- any written communication
24 from that company providing those numbers. Do you
25 recall that you all got that information just over

1 telephone conversations or -- or how that information
2 was developed?

3 A. I -- I think that would be a better
4 question to ask Jim Kahle because Jim was the direct
5 contact --

6 Q. Okay.

7 A. -- between H2L and Chappell's company.

8 Q. Okay. I see.

9 MR. SHEALY: All right. Let's just, then,
10 mark that e-mail exchange as 14.

11 MS. BURTON: Is that the 6-9-2022, 10:46
12 e-mail?

13 MR. SHEALY: So, it is a series.

14 MS. BURTON: Okay.

15 MR. SHEALY: That may start with 6-9.

16 MS. BURTON: What are the numbers?

17 MR. SHEALY: It's H2L 258 to 265.

18 MS. BURTON: All right.

19 MR. SHEALY: And I believe, actually, this
20 starts 6-9 and goes it to 6-15.

21 (Defendant's Exhibit No. 14 was marked for
22 identification.)

23 BY MR. SHEALY:

24 Q. All right. Mr. Lewis, this is -- I know
25 this is disjointed, but I'm just trying to get the

1 stuff identified and then we'll go back and talk
2 about it.

3 A. Right.

4 Q. But I'm showing you the af- -- your
5 Affidavit that was attached to the Complaint that
6 also includes your CV. Do you recognize that?

7 A. Yes, I recognize this.

8 Q. Okay. And that was prepared by you for
9 this litigation, correct?

10 A. It was, yes.

11 Q. And the CV, as far as you know, was
12 correct as of the date this lawsuit was filed, June
13 5th, 2023?

14 A. Let me look at the date of it. I would
15 say this resume was accurate as of October 2022.

16 MR. SHEALY: All right, sir. We'll have
17 this marked as Exhibit 15.

18 (Defendant's Exhibit No. 15 was marked for
19 identification.)

20 BY MR. SHEALY:

21 Q. There is, in the file -- Bates label is
22 H2L 401. There is a version of that outline I showed
23 you that you said Jim Kahle prepared. And this has
24 some notes on it. Are those Jim Kahle's notes?

25 A. (Witness peruses document.) I would

1 say... I don't know. It looks like -- it looks like
2 these may be my notes. Looks kind of like my
3 printing.

4 Q. Okay. So there was some -- so you had
5 some involvement in the preparation of this Table 1,
6 Evidence of Slope Instability?

7 A. To the -- at least to the extent that you
8 see on there.

9 Q. Okay.

10 A. But I -- I don't think there's anything
11 that's happened in this matter that in one way or
12 another that I have not been involved with.

13 Q. Right. But this -- so, in other words,
14 the document I'm showing you is a product both of
15 your -- it incorporates your input, as well as
16 Mr. Kahle's?

17 A. I would say yes.

18 Q. Okay. All right.

19 MR. SHEALY: Let's mark that as Exhibit
20 16, then.

21 (Defendant's Exhibit No. 16 was marked for
22 identification.)

23 BY MR. SHEALY:

24 Q. And then Mr. Lewis, a handwritten, looks
25 like versions of that -- of what we just identified

1 as Exhibit 16, that as well as the handwritten
2 version of the technical report outline. But are
3 these -- these Mr. Kahle's notes?

4 A. I would say yes.

5 Q. Yes. Okay. It appeared that way to me.

6 All right. Mr. Lewis, I'm just going to
7 show you another series of e-mails that reference
8 certain attachments. And I'm not sure what those
9 are. But I just want to make sure that you're --
10 that you see these.

11 It looks like a series of e-mails that may
12 have started in February of 2021 -- February 24th of
13 2021 and go through March 2 of 2021. And they're
14 Bates-labeled H2L 436 to 441. See if you can
15 identify those.

16 A. (Witness peruses Document.) Okay.

17 Q. Does that series of e-mails look familiar
18 to you?

19 A. Yes.

20 Q. Okay.

21 A. A long time ago, but they do look
22 familiar.

23 Q. Yes, sir. And it -- it appears to me that
24 there's, you know, a fair amount of dialogue going on
25 between you and Mr. deHoll and Mr. Watson?

1 A. Yes.

2 Q. The -- what's -- what's -- what's being
3 discussed then? This is an earlier point in time, I
4 believe, then what we were looking previously.

5 A. Yeah, this is just a month or so after we
6 were engaged to -- to -- to provide the assessments.
7 And we were talking about a number of things. But
8 one of which was getting a -- an updated survey,
9 topographical survey on the site to see the contours
10 that had changed, determine anything from that.

11 Q. And did you all do that? Did you all get
12 another survey done?

13 A. No.

14 Q. Did you -- is that something you feel like
15 is a missing piece of the puzzle?

16 A. Well, I mean, there's always pieces of the
17 puzzle that you'd like to have that may not be
18 available. Topographic survey would be one,
19 inclinometer readings would be another.

20 Q. Right.

21 A. The -- I think the critical -- the
22 critical information would be the inclinometer
23 readings. You know, if the -- if the casing that was
24 there was open, was sufficiently open to do the
25 inclinometer readings, that would have been very

1 useful information.

2 But, yeah, I mean, at this point in time
3 we were discussing a number of alternatives to help
4 supplement the information that we have. Additional
5 inclinometer installations were discussed,
6 topographic surveys were discussed. There were a
7 number of things that we discussed.

8 Q. Okay. But -- but to this point in your
9 involvement in this matter, no additional
10 inclinometers have been installed in that slope,
11 correct?

12 A. Correct.

13 Q. And no -- no additional topographical
14 survey has been done?

15 A. That's correct.

16 Q. So there was a topographical survey done
17 in conjunction with the Hayward Baker project back in
18 2002, correct?

19 A. I'm sorry, what was that question?

20 Q. There was a topographical survey done
21 either in conjunction with the Hayward Baker project
22 in 2002 or just prior to that. Do you recall that?

23 A. I remem- -- there have been two
24 topographic surveys that have been performed. Both
25 may have been prior to the Hayward Baker work. One

1 may have been before and one may have been after. I
2 don't know that I have the dates that -- but both
3 surveys were performed by the same entity that did
4 the first survey.

5 Q. Okay. Was that the Law Engineering or is
6 it a different --

7 A. No, it's -- yeah, I don't think he said
8 anything to -- to the best of my knowledge, it didn't
9 have anything to do with the Law surveys. But I know
10 that there's a topographic survey that we have that
11 reflects, superimposed on each other, the contours
12 from the -- from the two topo surveys --

13 Q. Okay.

14 A. -- that shows slope movement.

15 Q. Okay. And that was -- but those -- those
16 surveys are, as we're sitting here today, 20 years or
17 more old, correct?

18 A. I don't know they would be 20 years. They
19 would be -- I mean, they would date back to the --
20 roughly to the time frame -- well, you know, I don't
21 know when the first survey was done. I don't have
22 dates on the surveys.

23 Q. Okay.

24 A. But they would have been around the point
25 in time, I believe, that the Hayward Baker

1 stabilization work was done.

2 Q. Okay. And that was -- your understanding
3 of that, that was 2002?

4 A. Correct.

5 Q. 22 years ago --

6 A. Correct.

7 Q. -- as we sit here today?

8 Okay. And we may be able to pinpoint
9 those dates here in a -- in a little bit. But you --
10 all of -- those surveys were provided to you as part
11 of your investigation of this project?

12 A. Yes.

13 Q. Okay. All right. So, if I can get this
14 back from you. So, again, I'm looking at that e-mail
15 chain that I sent -- that I had you identify, H2L 436
16 to 441. And Mr. Watson, at -- the last e-mail, is
17 from Mr. Watson to Mr. deHoll and copies you and
18 Mr. Goldsmith.

19 And it says, "I've reviewed the report. I
20 believe that it is well written and have just a few
21 comments."

22 Do you know what report he's referring to?

23 A. Not without digging back into the files.

24 Q. Okay. Okay. And he's got some pretty
25 detailed questions about -- about the -- what he's

1 seeing in the -- in the report, correct?

2 A. Yes.

3 Q. Okay. Did you find that his -- that the
4 questions he was posting were pretty insightful?

5 A. Well, yes. I mean, they were reasonable
6 for the owner of the property.

7 Q. Okay. And I guess he was providing you
8 with an exchange of e-mails between Mr. Wolosick and
9 Mr. Schmidt, I believe. Do you recall that?

10 A. That could be. I know -- I know there are
11 copies of those e-mails in the file.

12 Q. Okay. And you've -- and all that was
13 provided to you?

14 A. Yes.

15 Q. Okay. There are -- the e-mail from
16 Mr. deHoll on February 24th of 2021, he references
17 Michael Henderson as being the individual that
18 performed the first two topographical surveys. Do
19 you see that?

20 A. Yes, I see it. I'm just trying to see if
21 there's anything about the dates on which they were
22 performed. But, yes, I see the name.

23 Q. Okay.

24 A. I think I -- I think I communicated with
25 Mr. Henderson.

1 Q. And it says that Mr. Henderson is not
2 interested in updating his prior surveys?

3 A. Right.

4 Q. Do you remember what -- if you talked to
5 him, why that was?

6 A. No. He just -- I think when I talked to
7 him, he just said he had -- I don't know whether he
8 closed his business down, retired or he wasn't
9 interested in going back out there --

10 Q. Okay.

11 A. -- reconstructing the survey.

12 Q. Okay.

13 A. Again, like you say, it's 20 years after,
14 you know. Close to 20 or more years after the fact.

15 Q. Yes, sir.

16 MR. SHEALY: All right. I'll go ahead and
17 mark this e-mail chain as Exhibit 17.

18 (Defendant's Exhibit No. 17 was marked for
19 identification.)

20 BY MR. SHEALY:

21 Q. Now, Mr. Lewis, there -- immediately
22 behind that, in the material that was provided to us,
23 is a whole bunch of redacted pages. And I couldn't
24 figure out why that was.

25 A. I don't know either.

1 Q. Okay.

2 A. I don't know what those pages represent.

3 Q. Okay. When, I guess, you produced your
4 file to Mr. Goldsmith and -- but you didn't -- you
5 didn't redact it before you produced it, correct?

6 A. No, we didn't redact anything. And
7 I -- you know, I don't know whether we provided our
8 file to -- to the Goldsmith firm or whether our
9 office scanned everything and -- and sent it over.
10 I'd have to check with my office on that.

11 Q. Okay. I'm just going to -- for the
12 purposes of the record, I'll just -- there's a series
13 of pages, H2L 489 through 496, are redacted in their
14 entirety in the file that was produced to me. But
15 you do not -- you don't maintain your file in this
16 format, correct?

17 A. That's correct.

18 Q. You did -- you don't -- you didn't redact
19 your own file, correct?

20 A. No.

21 Q. Okay.

22 A. No.

23 Q. Okay. And there are -- I will also
24 represent to you, there are several other sections
25 in -- in the file that was produced to me that

1 contain redactions. And you would have no reason to
2 know why --

3 A. Right.

4 Q. -- those were --

5 A. If there's not a log that goes with that,
6 I have -- have no explanation.

7 Q. Okay. And just for purposes of the
8 record, I will note that H2L 523, and 524, and 525
9 are also redacted in their entirety.

10 Now, the next little bit that I'm going to
11 show you looks very Skip Lewis like to me. I'm going
12 to show you two pages and ask if you can identify
13 that.

14 A. (Witness peruses document.) Yes, these
15 are my field notes from what looks like the second
16 visit to the Watson house --

17 Q. Okay.

18 A. -- in December 2022.

19 Q. And did they identify -- they go with
20 certain photographs that were taken?

21 A. Yes.

22 Q. Okay.

23 A. Photographs should bear the same date.

24 Q. All right. And the photographs -- what do
25 those field notes say, in terms of the number of

1 photographs?

2 A. Looks like -- looks like 1 through 21.

3 Q. Okay. All right. Then I show you H2L 679
4 through 689, ask you are these the photographs that
5 go along with those field notes?

6 A. Yes.

7 Q. All right. So, we should consider all
8 of -- all of those documents together as one?

9 A. Yes.

10 Q. The photographs and then the key of your
11 field notes?

12 A. Yes.

13 MR. SHEALY: Okay. On -- before we get
14 things out of whack, we'll go ahead and put this all
15 together as Exhibit 18.

16 (Defendant's Exhibit No. 18 was marked for
17 identification.)

18 BY MR. SHEALY:

19 Q. Okay. So that's -- that's from the second
20 visit and the date of that second visit is what?

21 A. December the 20th, 2022.

22 Q. Okay. And Mr. Kahle was with you, at that
23 point?

24 A. I believe so, yes.

25 Q. Okay. And did he take his own notes and

1 have his own -- take his own pictures as well?

2 A. Yeah. May not be in the format that I
3 use, but he did take his own pictures and --

4 Q. Okay.

5 A. -- whatever notes he may have made.

6 Q. All right. Let me just check this real
7 quickly. When you went out there the second time,
8 were there particular -- were there measurements or
9 anything that you were taking?

10 A. Not to my knowledge. I'm not certain what
11 Mr. Kahle's agenda was.

12 Q. Okay.

13 A. But I was primarily interested in -- in
14 seeing -- I know we would probably get -- I was
15 talking to Mr. Watson about putting some crack
16 monitors and things like that at various locations
17 around his house.

18 Q. Did you end up doing that?

19 A. No.

20 Q. Okay. Was that, again, just a matter of
21 cost that he did not want to do that or...

22 A. He never authorized it for whatever
23 reason.

24 Q. All right. Let me come around, so we're
25 both looking at the same thing at the same time.

1 Okay. So just looking at your notes, H2L
2 677 and 678, the first page is sort of the -- the
3 photo reference key, correct?

4 A. Yes.

5 Q. Okay. And in the second page is there --
6 there's some readings that you took; is that correct?

7 A. (Witness peruses document.) Yes. Yeah,
8 that's what it is.

9 Q. Okay. And so -- and just so I'm clear,
10 you're -- you're checking the level of certain
11 surfaces at various elevations, correct?

12 A. Yes.

13 Q. Okay. The -- let's see. The first set
14 looks like it's in the exercise room?

15 A. Yes.

16 Q. And the column on the left at the top, BM
17 elevation?

18 A. Benchmark.

19 Q. Benchmark elevation. Okay. And then
20 below that, BS?

21 A. That's called the backshot. And the FS is
22 foreshot.

23 Q. All right. I have no idea what you mean.

24 A. Well, if you know what your benchmark
25 elevation is, the backshots are elevations or

1 readings, level readings that you -- that you take to
2 establish, you know, elevation points. And then when
3 you -- the backshot is the reading that's taken on
4 the benchmark to establish the height of the
5 instrument.

6 Q. Okay.

7 A. So that tells me that my level instrument
8 on these notes, my level instrument was set at 3'8
9 and 5/8" above the benchmark elevation.

10 Q. Okay.

11 A. And the foreshots are readings that are
12 subtracted from the height of instrument elevation to
13 determine the level of the surface on which you are
14 seeking to determine the elevation.

15 Q. All right. Okay. And what -- what
16 instrument are you using to take those readings?

17 A. I'm using a infrared level reader.

18 Q. Okay. All right. And -- and so you've
19 got a series of readings from the excer- -- at the
20 exercise room, then you've got a series of readings
21 at the recreation room, and then a series of readings
22 at the left rear bedroom; is that correct?

23 A. Yes.

24 Q. All right. What, if anything, did you
25 discern from taking all of those readings?

1 A. These readings indicate that the floors
2 were -- and I think these were all concrete slab
3 floors -- were relatively level. There are a couple
4 of significant readings. For example, the patio slab
5 at the far edge, the -- indicates a significant
6 difference in elevation.

7 It's just -- if you look at -- what is
8 this? The left bedroom. Looks like we've got some
9 areas that -- like four, four and a half, four and a
10 quarter inches low, compared to the -- to the -- to
11 the benchmark elevation.

12 So there -- there were some areas in the
13 house that had significant differences in elevation,
14 but nothing that is in any way alarming to me.

15 Q. Okay. And, I mean, is there just the fact
16 there are some significant areas of differences in
17 elevation? Is there -- is there any conclusion you
18 can reach that -- about that reading that pertains to
19 the issues in this case?

20 A. Not by itself. But when you look at those
21 readings and you look at those things in combination
22 with other manifestations of conditions in the house,
23 you do reach a conclusion that there are movements
24 that are occurring in the house.

25 They're very slight, creeping-type

1 movements. Nothing that would indicate a -- an
2 imminent condition of failure. But you do see
3 evidence that would indicate that there are
4 incremental movements that are creating strains in
5 the materials in the house.

6 Q. Okay. In any new construction, would you
7 expect to -- to see some -- some settling,
8 some -- that's variable across the horizontal plane
9 of a house?

10 A. You wouldn't see -- you wouldn't see
11 differences in elevations of the floor slabs of the
12 magnitude that is reflected in some of these
13 readings. Some of these readings indicate a
14 difference in elevation of three, four, maybe five
15 inches. That's -- that is beyond the cause that
16 you'd expect to see in -- in the construction of the
17 floor slab.

18 Q. Okay. But you do see -- I mean, my
19 question was, but you do see some differential
20 settlement in all new construction that would create
21 some --

22 A. In fractions of an inch.

23 Q. Okay.

24 A. Not in multiples of inches.

25 Q. Understood. Understood. So we talked

1 about, earlier, the -- the topographical survey and
2 Michael Henderson. There is, in your file -- and I
3 just -- it doesn't look dated. There is a letter.
4 And this is H2L 701 to 703. Mr. Henderson appears to
5 have written a letter to Mr. Schmidt. He references
6 a topographical survey done in 1989. And then -- but
7 do you recall reviewing that document?

8 A. (Witness peruses document.) Okay. All
9 right. This -- I'm familiar with this letter. Yes.
10 I think the original topo lines that are shown on the
11 attachment to the letter were done in 1989, which
12 predates the construction of the house.

13 I believe that the second topographical
14 survey was probably done sometime before, and I
15 believe near the July-August time frame of 2002. And
16 if that's the case, it would be a survey that
17 predates the slope repair and a survey that postdates
18 the slope repair.

19 Q. Okay. And that's the -- those are the
20 only two topographical surveys that you're aware of
21 pertaining to Mr. Watson's lot?

22 A. That's correct.

23 Q. Okay. And this -- this -- what you've
24 just identified, H2L 701 to 703, this is material you
25 reviewed as part of your investigation, correct?

1 A. Yes.

2 MR. SHEALY: Okay. Let's go ahead and
3 mark this 19.

4 (Defendant's Exhibit No. 19 was marked for
5 identification.)

6 BY MR. SHEALY:

7 Q. Okay. And then, Mr. Lewis, again, I'm
8 going to represent to you that the material that
9 immediately follows Exhibit 19 in your file that was
10 produced to me, Bates-labeled H2L 746 through 757, is
11 redacted in its entirety. And you don't have any
12 idea why that is?

13 A. That is correct.

14 MR. SHEALY: Okay. Why don't we take a
15 five-minute break. We've been going now for an hour
16 and 15 minutes.

17 MR. GOLDSMITH: Sounds good.

18 (Recess was taken from 11:18 a.m. to 11:29
19 a.m.)

20 BY MR. SHEALY:

21 Q. Mr. Lewis, I just have a couple more
22 things to -- really not even show you right now, then
23 we can talk about some things. I just wanted to
24 point out, also for the record, that there's another
25 section -- couple sections of your file that have

1 been redacted in their entirety. They are
2 Bates-labeled H2L 1092 through -- through 1120. And
3 also H2L 1292 through 1296.

4 And, again, you're not aware of why those
5 sections of your file were redacted?

6 A. I'm not. You're correct.

7 Q. And let me ask you this. Does the
8 Goldsmith firm represent H2L in any capacity?

9 A. I'm sorry, what?

10 Q. Does the Goldsmith firm represent H2L?

11 A. No.

12 Q. Okay. So now that we've kind of gone
13 through that very tedious exercise, I want to kind of
14 back up and ask you some more general questions.

15 Before your involvement in this case, were
16 you familiar with Hayward Baker or Keller and the
17 kind of work that -- that they do?

18 A. Yes.

19 Q. What was your -- where did you develop
20 that familiarity?

21 A. Well, when you -- when you've been an
22 engineer in the construction industry for 50 years,
23 you know a lot of the major players. And with
24 Hayward Baker being a national firm, obviously, that
25 was knowledge from, you know, from that standpoint.

1 Q. Okay. Have you -- to your knowledge, have
2 you ever worked with Hayward Baker or Keller on any
3 projects?

4 A. Not -- not to my knowledge.

5 Q. How about D'Appolonia, the --

6 A. No.

7 Q. -- the design firm?

8 A. I had never heard of D'Appolonia before
9 this case.

10 Q. All right. Have you ever been involved in
11 another case in litigation in which Hayward Baker or
12 Keller was -- was a party?

13 A. I don't know. I don't know without
14 researching that.

15 Q. Okay. And do you recall ever working with
16 Hayward Baker or Keller on a project that wasn't --
17 didn't involve forensic engineering, but a project
18 that you were working on?

19 A. I'm not aware of any previous time in
20 which we've had any direct relationship with Hayward
21 Baker on a project.

22 Q. Okay. The -- the slope stabilization
23 system that was installed at the Schmidt residence,
24 now Mr. Watson's residence, have you ever been
25 involved in a case in which a system identical to or

1 similar to that system was involved?

2 A. I do not recall being associated or
3 involved in a case or project in which this method
4 was used in an attempt to stabilize an active slope
5 failure.

6 Q. Okay. So this is not a -- this is not a
7 system that you are -- that you had any familiarity
8 with, prior to your involvement in this case?

9 A. Well, I mean, I'm familiar with the
10 principles of the system. The system itself, I have
11 not had any previous involvement with it.

12 Q. Have you ever designed a slope
13 stabilization system of -- before your involvement in
14 this case?

15 A. I have not designed a slope stabilization
16 system that relied upon blocks to create soil
17 pressures against the failure surface. In other
18 words, to increase the friction factor between the
19 areas of zones of soil that are moving relative to
20 the -- to the -- to the -- to create this plane.

21 But I have been involved in the design of
22 waler systems and other, what I call retaining wall
23 systems, that would have tiebacks and things of that
24 nature to restrain the movement of soils in the
25 downhill direction.

1 Q. Okay. And do you know how many --
2 approximately, how many of those sorts of projects
3 that you've been involved in?

4 A. Probably not more than four or five over
5 years that I've been practicing engineering.

6 Q. Okay. And the ones that you've done, that
7 you've been involved in the design, they were
8 retaining walls that -- that did have a tieback,
9 weren't just a surface --

10 A. Well --

11 Q. -- system?

12 A. Yeah. I mean, they -- they work on the
13 principles of a retaining wall, but with walers with
14 tiebacks to provide restraint at the upper levels of
15 the retaining wall against the -- the forces that are
16 created between the embedment depth of your sheet
17 piling and the -- and the top of the walling.

18 Q. Okay. All right. In the course of our
19 earlier identification of documents and when we were
20 talking about e-mails and whatnot, you mentioned that
21 there was a suggestion made of having a new
22 topographical survey that was not -- was not done.
23 And there -- and then you suggested the -- the
24 writing of a report that was -- that was not done.

25 Were there any tests or other studies that

1 you recommended as part of your investigation that
2 were declined by Mr. Watson?

3 A. Gosh. I would say, you know, during --
4 during the course of the work, which has, I guess,
5 been about two years now, there have been discussions
6 of various investigative techniques, whether it's
7 additional soil borings, additional inclinometer,
8 surveys, things of that nature that have not been
9 authorized to go forward.

10 There is a study, an analysis, slope
11 failure analysis, that is in process right now that
12 Mr. Watson did authorize us to -- to perform.

13 Q. Okay.

14 A. And that is work that is currently in
15 progress and is being managed by Jim Kahle and using
16 assistance of a consultant that we have in North
17 Carolina.

18 Q. Who's that consultant?

19 A. Mike Simac.

20 Q. And when did that slope -- slope failure
21 analysis begin?

22 A. I'd say two or three weeks ago.

23 Q. Do you know what the anticipated length of
24 time that that analysis will take?

25 A. I expect it to be complete and evaluated,

1 prior to Mr. Kahle's deposition.

2 Q. Okay. And do you know -- have a general
3 understanding of the components of that analysis,
4 what -- what -- what sort of measurements are being
5 taken and by what means?

6 A. This is all a computer failure analysis,
7 based on geotechnical conditions that Mr. Kahle has
8 provided to Mike Simac.

9 Q. Okay. So Mr. Kahle has taken some sort of
10 readings or measurements and -- and provided them to
11 the consultant?

12 A. He has -- he has, to the best of my
13 knowledge. He is relying upon the soil
14 characteristics that were determined by LawGibbs and
15 presented in the LawGibb's report.

16 Q. Okay.

17 A. Same soil mass. And the stability
18 analysis are being performed with software that is
19 provided by Mike Simac.

20 Q. And Mike Simac, is he a sole proprietor or
21 is he with a particular firm?

22 A. To the best of my knowledge, he is a -- he
23 is an independent consultant.

24 Q. Okay. And that LawGibb's report dates
25 from -- from when?

1 A. Circa 2001, I believe.

2 Q. Okay. So it predates the Hayward Baker
3 project?

4 A. Yes. Although, Hayward Baker relied upon
5 that report in the development of its stabilization
6 design.

7 Q. Okay. Okay. In the course of your
8 investigation of your investigation of this project,
9 did you ask Mr. Watson if any changes had been made
10 to -- to his lot in the time that he had lived there?

11 A. I don't know that that was a particular
12 question that we had.

13 Q. Okay.

14 A. We looked at the -- at the general slope
15 conditions behind the house. And certainly did not
16 see any physical conditions that would have any
17 measurable effect on our assessment of the -- of the
18 geotechnical issues.

19 Q. All right. And I'll just represent to you
20 that Mr. Watson gave his deposition yesterday. He
21 indicated in that deposition that he had 40- to
22 \$50,000 worth of landscaping work done to -- to his
23 lot since he -- since he lived there, to include the
24 addition of a retaining wall and the insertion, if
25 you will, of a rear yard.

1 A. The insertion of a what?

2 Q. Of a rear yard, a backyard. I don't know
3 whether to say it's an insertion. But the creation
4 of a level backyard. Are you -- are you aware of any
5 of that work?

6 A. Well, I can say that Mr. Watson's backyard
7 is not level.

8 Q. Okay.

9 A. I certainly didn't see a retaining wall
10 that was higher than what I would consider to be a
11 garden wall, a very low garden wall. I saw some -- a
12 pathway, I think, to his dock. I don't know whether
13 that was new or not new, but --

14 Q. That pathway --

15 A. -- I didn't --

16 Q. -- was it paved?

17 A. I don't know whether it was paved or
18 whether it was just blocks, you know.

19 Q. Okay.

20 A. But landscaping stone. I don't know. But
21 I did not see anything from a standpoint of mass or
22 volume of soil or anything else that would have any
23 significant impact on the -- on the behavior of a
24 suitable stabilization -- geotechnical stabilization
25 system.

1 Q. Okay. But you didn't -- you didn't ask
2 him any questions about -- about changes he made to
3 his lot, correct?

4 A. I don't recall talking to Mr. Watson about
5 landscaping changes on his lot.

6 Q. Okay. Did you ask him if he'd ever
7 suffered any -- any flooding issues or saturation of
8 his -- of his lot by one manner, means or another?

9 A. He did tell us that they had -- there had
10 been, at least on one, maybe more occasions, pipe
11 failures, broken -- very similar to the types of pipe
12 failures that have been described by Bart Schmidt to,
13 I think, to -- to Hayward Baker. That type of
14 failure.

15 So, yes, you would -- I mean, I would
16 expect there to have been some water loss, as a
17 result of those failures. I don't -- again, I don't
18 see that that in and of itself would -- would create
19 a condition where the slope would be unstable.

20 And I -- as I recall, the -- the data that
21 we had indicated continuing slope movement within a
22 year or so after the fix was actually implemented.
23 So I don't think that we have seen -- in fact, I know
24 I have not seen any data in the last ten years that
25 would let us determine to what extent further slope

1 movement has occurred.

2 Q. Okay. So, going back to the -- to the
3 pipe failures that you mentioned. Did you ask about
4 that or was that Mr. Watson just offered that
5 information to you?

6 A. I don't know. It could have been either
7 way. I mean, I don't remember specifically. It's
8 been -- I don't think we took a, you know, a
9 handwritten note and memorialized it in any way,
10 other than it was a condition that was not
11 typically -- it was not in any way, material way,
12 that was different from the descriptions we had seen
13 from the -- the Schmidt correspondence.

14 Q. Okay. So, do you know whether the pipe
15 failures that Mr. Watson had were to his sewer lines
16 or his incoming water lines?

17 A. I want to say water lines, but I'm not --
18 I can't be absolutely certain with that. Maybe some
19 research, even going back and asking Mr. Watson.

20 Q. Okay. And then so you don't have -- you
21 don't have any information about the volume of water
22 that was introduced to the lot, as a result of
23 those -- what you've described as pipe failures?

24 A. I don't have any -- I don't have any
25 record of the volume of water that was discharged, as

1 a result of the pipe failure.

2 Q. Okay. Generally speaking, would the
3 saturation of -- of a lot, due to a pipe failure,
4 would that increase the loading on a slope
5 stabilization system, like the one that's in use by
6 Mr. Watson's residence?

7 A. No more so than a significant summer storm
8 would do in its rainfall. I mean, the soil will
9 become saturated from rainfall, it will become
10 saturated from a -- from a pipe failure. I mean,
11 any -- any number of conditions. I don't -- I can't
12 conceive that a broken pipe would have any effect on
13 the level of the water table on a person's property.

14 Q. Now -- so -- but -- well, let's -- let's
15 talk about the water table. Is -- if there are
16 changes in the elevation of the water table for one
17 reason or another, would that have -- potentially
18 have an impact on the loading of -- on the system
19 that's in place at the Watson residence?

20 A. It would have -- it would have a
21 significant impact on the effects of the soil on the
22 failure plane of a -- of a unstable slope, so...
23 yes, it would have -- it could have material impact
24 on the -- on slope conditions.

25 Q. Tell me what you mean. I've seen

1 references to the failure plane. Can you explain to
2 me what you mean? What that -- I know that's a term
3 of art, but what does that mean?

4 A. Well, if you go back and you look at the
5 LawGibb's report --

6 Q. Uh-huh.

7 A. -- that failure of plane is defined, is
8 described. And as I recall, it basically is a plane
9 at about -- somewhere around 30 feet in depth that --
10 where we have two different zones of soils. And
11 there's an interface between relatively softer
12 materials and -- and very hard materials.

13 And it's where the -- at that interface
14 location where the effects of, in essence, the soil
15 friction or forces that go to stabilize a slope
16 are -- it's kind of like adding oil, I guess, would
17 be one description, on -- on a surf- -- where the --
18 where the -- where the friction factors of the
19 resistance forces to soil sliding are reduced by
20 the -- by the effects of the -- of the water table.

21 Q. Okay. We've made reference -- both of us
22 have made reference to the LawGibb report. And I'm
23 going to show you what's Bates-labeled H2L 762 to
24 800, and ask if that is, indeed, the report that
25 you've been referring to?

1 A. Yes, this appears to be LawGibb's report.

2 Q. Okay. And so --

3 A. September 2001.

4 Q. All right. And so -- and, again, this is
5 the report that Mr. Kahle is using for the -- as one
6 of the bases of the current slope failure analysis
7 that is --

8 A. Yeah, the soil characteristics that are
9 identified in this report.

10 MR. SHEALY: Okay. Let's go ahead and
11 mark this as Exhibit 20.

12 (Defendant's Exhibit No. 20 was marked for
13 identification.)

14 BY MR. SHEALY:

15 Q. Mr. Lewis, one thing we haven't come up
16 with is your field notes for the first set of
17 photographs that you and I have looked at today. And
18 I may search around to --

19 A. Well, look for the -- look for the yellow
20 page, you know. I --

21 Q. Yeah, they're -- they're --

22 A. That's not it.

23 Q. No.

24 A. But I think I -- my field notes probably
25 are on a Xerox that looks like this (indicating).

1 Q. Yes, sir. I generally know what to look
2 for when I look and see a file of yours, but you're
3 right that there are daily site reports from when
4 Hayward Baker was on site that are also on yellow
5 paper. But I'll look for those after I pass the
6 baton.

7 So I want you to go back to the Affidavit
8 that you prepared. And I may -- I'm just going to
9 come around, so we can look at it together.

10 Okay. So this is Exhibit 15. And the --
11 this is an Affidavit that you prepared in -- knowing
12 that it was going to be used in this litigation,
13 correct?

14 A. Yes.

15 Q. Okay. And it describes the things that
16 you have reviewed and the different datapoints you've
17 collected as part of your investigation, correct?

18 A. Yes.

19 Q. Okay. And then it also contains certain
20 opinions of yours. It looks like, perhaps, starting
21 on -- in paragraph 10; is that correct?

22 A. It -- it appears to be, yeah.

23 Q. Okay.

24 A. Paragraph 10 begins, "In my opinion."

25 Q. Okay. So -- and -- and certainly use

1 that, if -- if you will, to -- to refresh your
2 recollection. But can you just sort of generally
3 tell us the opinions that you have come to after
4 conducting the investigation you've done in this
5 case?

6 A. Yes. The general -- the basic opinions I
7 have are that the -- well, there are a lot
8 of -- excuse me, there are a lot of opinions that I
9 have. But the salient opinions are that the
10 movement -- soil movement that is occurring on the
11 site of the Watson residence is a soil mass that is,
12 for lack of a better word, flowing -- I call it
13 creeping -- between the failure plane that was
14 identified in the LawGibb's report and the underside
15 of the anchor blocks. And that is the movement that
16 I think is predominantly responsible for the -- the
17 damages that we see in Mr. Watson's house.

18 The evidence of that movement is
19 described, I think, most vividly in the various
20 inclinometer reading reports that we have -- that we
21 have beginning in 2004 and running up through
22 sometime, I want to say, in 2006, when they just seem
23 to stop. And it was during this period of time, I
24 think, that the inclinometer readings were being made
25 and provided to Hayward Baker.

1 The very first inclinometer reading that
2 occurred showed a breach of the warranty that Hayward
3 Baker provided to -- to Mr. -- Mr. Schmidt. Each
4 subsequent reading of the inclinometers that were
5 made and provided to Hayward Baker shows increasing
6 movement of the soil mass at the surface, too, but
7 predominantly in that zone between the failure plane
8 and the underside of the anchor blocks.

9 When Mr. Watson attempted to have the
10 inclinometer read after he noticed evidence of --
11 of -- of damage to his structure, to his house, the
12 indications are that at the location of this mass
13 soil movement, the inclinometer casing had deformed
14 to such an extent that the inclinometer itself could
15 not pass -- could not make -- take the readings in
16 that zone of -- of soil.

17 So we know that that has been between the
18 last readings that were taken somewhere around 2006
19 and the attempts by Mr. Watson to have readings taken
20 circa 2020, whenever it was, just before the H2L was
21 engaged. There was continuing movement of that slope
22 of soil because of the deformations that did occur in
23 the inclinometer casing.

24 And that -- those -- those, I think, are
25 the significant events that -- that occurred, that

1 are reflected in the opinions that I have here.
2 That -- that Hayward Baker was on notice no later
3 than about early, you know, 2004 with the GeoMetron
4 inclinometer readings. That the -- the lateral
5 movement of the soil, the horizontal movement of the
6 soil had exceeded the limit that it had warranted to
7 Schmidt would be basically a trigger point for
8 repairs.

9 Hayward Baker and D'Appolonia both, at
10 that point, took the position that even though the
11 warranty had been breached, it's not breached in a
12 manner that warrants repairs. They don't say that as
13 explicitly with the subsequent readings. But with
14 each subsequent inclinometer reading up through the
15 point in time where, for whatever reason, the
16 readings stopped, the movement continued. Hayward
17 Baker was aware that the movement was continuing.

18 Hayward Baker, with each report, still
19 elected not to even suggest any -- any supplemental
20 work to -- to Mr. Schmidt. And I think Mr. Schmidt
21 was, basically, relying upon Hayward Baker to do what
22 they, in their determination, thought was the proper
23 thing to do.

24 Q. All right. Can I -- let me ask you some
25 questions about some of the things you've just said.

1 First, could you -- did you ever have a chance to
2 talk to Mr. Schmidt?

3 A. No.

4 Q. Mr. Schmidt, your understanding is he's
5 deceased, at this point, correct?

6 A. That's my understanding.

7 Q. Have you talked to Mrs. Schmidt?

8 A. I have not.

9 Q. Okay. So -- and let me make sure I get
10 the -- the -- the timeline straight. So, there
11 are -- there are problems that the Schmidts begin
12 noticing prior to 2002 with -- with their house,
13 correct?

14 A. Yes.

15 Q. The -- and so Hayward Baker performs its
16 work in 2002?

17 A. Yes. Spring of 2002.

18 Q. Spring of 2002. They put in the -- the
19 system that we've talked about, generally speaking,
20 with the high-tension tendons and the blocks in
21 the -- at -- at or near the surface --

22 A. Okay.

23 Q. -- tied into the bedrock below, correct?

24 A. Yes.

25 Q. All right. And there are --

1 A. Well, wait. Let me put it this way.
2 The -- the -- the cables are tied into bedrock. The
3 anchor blocks are not.

4 Q. Right. They're -- they're -- they're
5 connected to the cables?

6 A. Yes.

7 Q. Okay. There are inclinometer readings
8 that are taken after the work that Hayward Baker does
9 that go to -- go to 2006. That's the last
10 inclinometer reading we have before Mr. Watson
11 purchases the house, correct?

12 A. That's correct. To the best of my
13 knowledge.

14 Q. All right. And Mr. Watson purchases the
15 house in 2015, correct?

16 A. Correct.

17 Q. All right. So, from 2006 to 2015, we do
18 not know, we have no datapoints, we do not know,
19 based on the -- the -- the information you have in
20 front of you or that's been provided to you, whether
21 the movement of the soil below the Schmidt residence
22 had been arrested by the system, do we?

23 A. Yes, we do.

24 Q. We -- we do know that?

25 A. We know that between 2006 and 2020, '21

1 that movement has occurred.

2 Q. Okay. But -- all right. You've -- you've
3 increased the -- the span of time beyond what I'm
4 focused on.

5 A. Okay.

6 Q. Okay. We don't know whether the movement
7 of -- of the soil below the Schmidt residence had
8 been arrested between 2006 and 2015, because we do
9 not have any measurements of any kind in that period?

10 A. We don't have hard data that will tell you
11 one way or another.

12 Q. Okay. And Mr. -- Mr. Watson purchases the
13 house in 2015. And only notices a crack above his
14 sliding glass door in 2020, is that your
15 understanding?

16 A. I don't know what Mr. Watson saw that
17 triggered his -- his initial concern.

18 Q. Okay.

19 A. I know that when I was on site in the end
20 of 2021, I believe, that I saw damages that were more
21 extensive than a crack above a patio door, sliding
22 glass door.

23 Q. Okay. And -- and I've -- you don't have
24 the benefit of Mr. Watson's testimony from yesterday.
25 And you've already indicated that you all didn't have

1 a conversation about any changes that he made to his
2 lot from 2020 -- I'm sorry, from 2015 to 2020. But
3 we do know, I'll just represent to you, that
4 Mr. Watson had done some -- had some landscaping work
5 done to his lot in the period from 2015 to 2020.

6 A. Okay.

7 Q. So do -- we don't know, though, when the
8 movement that you have pointed out that is -- that is
9 documented in 2021, when that movement took place.

10 A. It is my opinion that the soil movement on
11 the Watson property is a continuing condition that
12 moves in fits and starts, depending upon a number of
13 factors.

14 So I think from -- from day one, it's not
15 like there is a slow flow of soils downslope. There
16 are fits and starts of the slope failure --

17 Q. Okay.

18 A. -- that create problems.

19 And it's my opinion that even subsequent
20 to the Hayward Baker repairs, there have been soil
21 movement that occurs in fits and starts. And --

22 Q. Okay.

23 A. -- those fits and starts may be years
24 apart, but they're fits and starts.

25 Q. And you said that there are a number of

1 different factors that may precipitate a movement in
2 fits and starts. What are those factors?

3 A. The primary factors would be the water
4 table and the lake levels, seismic forces. You know,
5 even very, very minor level seismic events around
6 Lake Keowee will -- will -- will effect the slope
7 movement.

8 So those -- those are the factors that
9 come to my mind as factors most likely -- most
10 probable in creating the -- the movements of the soil
11 mass along the slope plane.

12 Q. Okay. You live in the area -- general
13 area of Lake Keowee, do you not?

14 A. I live on Lake Keowee.

15 Q. Okay. Do you have -- do you have some
16 sort of a slope stabilization system in place where
17 you live?

18 A. My slopes are not nearly as drastic as
19 those. I live in the low country. Mr. Watson lives
20 in the high country.

21 Q. Okay. But -- but -- so the answer to my
22 question, though, is no, you don't have any kind of a
23 slope stabilization system at your residence?

24 A. Right.

25 Q. Are you aware of any significant seismic

1 activity in the general area of Lake Keowee since
2 2015?

3 A. I want to say -- I want to say yes. I
4 mean, Lake Keowee intermittently has a number of very
5 low-level seismic events. So a very slight
6 earthquake in and around Lake Keowee is not unusual.

7 Q. Is that unusual regarding any water
8 impoundment, any reservoir of the size of Lake
9 Keowee? Does the fact that you have impounded that
10 much water create the -- the conditions for seismic
11 activity?

12 A. It -- particularly in the mountainous,
13 more hilly regions around Lake Keowee, that is
14 correct.

15 Q. Okay. The -- earlier you identified an
16 inclinometer instrument that you carried with you on
17 your first site visit. And then we talked about an
18 in-place inclinometer that was installed as part of
19 the Hayward Baker project. But that's a totally
20 different instrument, is it not?

21 A. Yes.

22 Q. Okay.

23 A. But -- what was installed under the
24 Hayward Baker project was an inclinometer casing.

25 Q. Okay.

1 A. So, basically a tube that goes into the
2 ground --

3 Q. Okay.

4 A. -- and is -- is -- is hollow, so that an
5 inclinometer instrument can be inserted into it. And
6 that is an entirely different mechanical device from
7 the inclinometer that is -- that I used for the
8 surface measurements. That type of inclinometer is
9 used for -- to check floors, to check roof slopes,
10 to -- to -- to basically reflect, identify, and
11 measure the slopes of -- of finished construction.
12 It is not used to detect sub surface ground
13 movements.

14 Q. Okay. And so the instrument that is
15 inserted in the inclinometer tube, tell me -- just
16 describe for me how that works.

17 A. Well, I'm not familiar with the details of
18 it. But I know that it -- it is a -- it's a digital
19 instrument that is able to measure the deflections
20 against the -- the orientations, so that it -- it
21 measures incrementally the differences from the early
22 measurements that were taken. Such as, I think there
23 was a -- a reading that was taken around the time
24 that the casing was installed, basically the -- what
25 became the -- the reference line, the zero reference

1 line for the -- for the inclinometer.

2 And then the contact between the
3 inclinometer meter and the sides of the casing are
4 able to give you the displacements of the casing, as
5 it goes vertically into the ground.

6 Q. Okay. We talked earlier that your company
7 has been involved in -- in assessing the conditions
8 and determining whether there has been a failure of
9 the system installed by Hayward Baker, now Keller.
10 But it's also in designing a system to mitigate or
11 solve the problem, correct? Is that -- is that
12 correct?

13 A. It's in determine -- yes, yes.

14 Q. Have you been involved in the -- the
15 design of the -- and there were, I think, three
16 different potential fixes. Have you been involved in
17 the design of those three alternative fixes?

18 A. Those three alternatives that you refer to
19 are concepts for fix.

20 Q. Okay.

21 A. There has been no design performed on any
22 of those concepts.

23 Q. Okay. So, I mean, have you been involved
24 in the discussions of the concepts themselves?

25 A. I have been involved in the discussions,

1 yes. Not in the formation of the concepts. But as
2 any manager would do, just staying current --

3 Q. Okay.

4 A. -- with the recommendations that are being
5 considered.

6 Q. Okay. But the -- the -- the formation of
7 those concepts, that's been -- Mr. Kahle has been
8 principally involved in that?

9 A. Correct.

10 Q. All right. And if any one of those
11 concepts or any -- or a combination of those concepts
12 were advanced to the design stage, would Mr. Kahle do
13 that work?

14 A. He would -- he would be deeply involved in
15 that work. The concepts that we were discussing
16 would be the development of a design/build
17 specification --

18 Q. Yes, sir.

19 A. -- that would describe for bidders the --
20 the work to be done. And the specification for the
21 design/build solicitation would be predominantly the
22 work of Mr. Kahle.

23 Q. Okay. The -- the concepts, the three
24 concepts that have been discussed, can you give me
25 your -- just a broad outline of -- of what those

1 three different concepts are?

2 A. No. I think that's probably a better
3 question for Mr. Kahle.

4 Q. Okay.

5 A. I do know that the concept that I felt
6 most comfortable with would be the use of sheet
7 piling to stabilize the soils that are experiencing
8 movement. And that the sheet piling, in combination
9 with tiebacks, would be used to provide that
10 stabilization.

11 Q. Okay. Tell me what you mean by "sheet
12 piling." I think I understand, but if you can just
13 give me a description.

14 A. Well, sheet piling -- my best description
15 of it would be, they are steel sections. They will
16 have -- from a structural standpoint, they will have
17 properties associated with it, the strength of the
18 steel, the shape of the sheet piling that interlocks
19 with the adjacent sheets.

20 You would have the structural properties
21 of the sheet pile, the moments of inertia, and the
22 section modulus of the sections to be able to
23 calculate and determine the earth pressures that
24 would be acting and the resistance it would be
25 required for the earth pressures.

1 And you would, basically, place the --
2 drive the sheet pile to an elevation that is below
3 the failure plane, the slip plane of the -- of the
4 slope failure, and it would come up to just below
5 ground level and -- and tie it off. And you would
6 take the top surface and -- I mean, you would not see
7 the -- see the repair, once it's -- once it's
8 completed.

9 Q. Okay. And that's in your mind the most --
10 the -- the -- has the -- the -- it is the preferred
11 solution?

12 A. It is a solution, if -- if we've got
13 movement between the soil wedge, you know, the -- the
14 less dense materials above the failure plane and the
15 denser materials below the failure plane, my
16 solution -- my preferred solution would be one that
17 would intersect the failure plane, provide protection
18 above the failure plane, and prevent the wedge of
19 soil that is moving from moving with relation to the
20 slip surface of the -- on the slope.

21 Q. What's a scarp?

22 A. A scarp is the change in elevation,
23 basically, that reflects a -- a vertical displacement
24 on the slope over the history of the -- of the site.

25 Q. Okay.

1 A. It's most prevalent -- you hear it
2 frequently when -- when you talk about earthquakes,
3 that you've got vertical displacements in the change
4 in elevation from the topside of the scarp to the --
5 to the bottom of the scarp, generally, is a -- is a
6 measurable dimension.

7 Q. Okay. And I would assume, but I don't
8 know what I'm talking about, I would assume that you
9 could -- a scarp could develop if there is a
10 landslide of the surface soils below a particular
11 elevation that -- and then the soil above that
12 elevation remains in place. That would result in a
13 scarp?

14 A. If you -- right. If you go to the
15 LawGibb's report, and you look in their figures that
16 are attached to the report, you will see a -- a shape
17 which they define as the failure plane. And where
18 that failure plane meets the surface of the ground
19 and what is -- would be below the -- the foundation
20 of the Watson house, if -- if you were to see a slope
21 failure where the soils at the top of that failure
22 plane moved downslope, you would see a scarp between
23 the top of that failure plane and the bottom of the
24 soil wedge that has been displaced.

25 Q. All right.

1 A. Or I should say the top of the soil wedge
2 that has been displaced.

3 Q. Okay. So, the Hayward Baker solution
4 is at a particular point in an elevation to the rear
5 of the -- of the Watson residence, correct?

6 A. Yes.

7 Q. There -- the -- the slope to the rear of
8 the Watson residence is greater than the -- than the
9 area addressed by the Hayward Baker solution,
10 correct?

11 A. I'm sorry, ask that question again.

12 Q. I'm trying. This is hard for me to
13 articulate. The slope to the rear of the Watson
14 residence -- when I say that, I'm talking about the
15 surface -- the horizontal plane of the -- of the --
16 of the rear -- of the surface of the rear slope of --
17 of the Watson lot.

18 A. Let me -- let me -- I think I know what
19 your question is, let me try to answer it this way.

20 Q. Okay.

21 A. The -- the gradient on the Watson property
22 from the rear of their house is downslope to the
23 lake, to the best of my recollection on all --
24 basically, all of the rear sides of the house.
25 And -- and the total geographical area is greater

1 than just the arc that's formed by the placement of
2 the anchor blocks in the Hayward Baker repair scheme.

3 Q. Okay. That -- that helps.

4 A. Does that answer your question?

5 Q. It does. And thank you for that. Do --
6 in the analysis that you've performed and the
7 investigation that you've done, has that revealed any
8 movement of soil that is not protected by or
9 addressed by the arc that is formed by the -- the
10 Hayward Baker solution?

11 A. There are conditions on site that would
12 indicate slope movement beyond the -- as I see it,
13 beyond just the arc of the Hayward Baker of the
14 movement.

15 Q. Okay.

16 A. I'm not sure. I'd have to go back and
17 look at the Hayward Baker proposal. I think the
18 Hayward Baker proposal was to provide a fixed
19 solution for the house, period, to stabilize the
20 house. I don't think that the limits of the arc were
21 established by the proposal.

22 When I look at the -- when I look at the
23 mission that D'Appolonia described in its
24 calculations, their mission was to stabilize the
25 residence, period. The determination of how that was

1 to be done and over what area it was to be done, I
2 think was a decision for Hayward Baker and
3 D'Appolonia.

4 Q. Okay. The -- the movement of soil that
5 you have observed that is beyond that arc, do you
6 know when that movement of soil began?

7 A. A long time ago, based on the evidence
8 that I've seen. I mean, you see the evidence by
9 the -- by the way that the trees have been over time.
10 So I think -- I think that the movement on these
11 slopes probably commenced about the time the lake was
12 constructed. So its been a long time. So I think it
13 has been occurring for a long period of time.

14 The -- the efforts to stabilize that
15 movement within the arc -- within the arc that was
16 actually constructed by Hayward Baker there has
17 failed to prevent its movement. And I think that is
18 directly in conflict with the scope of services for
19 which Hayward Baker was engaged. And is in direct
20 conflict with the mission as D'Appolonia described
21 it, when they were developing the design to stabilize
22 the soil mass.

23 Q. If you wouldn't mind, let me look at this
24 exhibit. You mentioned in your Affidavit in Exhibit
25 15 that their subgrade utility line breaks and

1 displacement of the lines, as a result of the failure
2 of the Hayward Baker solution, as you've just
3 described, is that -- do I understand that correctly
4 that your -- your opinion is that the utility line
5 failures are a result of slope instability?

6 A. Yes, that's how I would describe it.

7 Q. Okay. And the utility line breaks, are
8 they -- have they occurred in the rear of the
9 residence or where -- where -- where are they located
10 with respect to the -- the house itself?

11 A. I would -- I believe they're on the
12 incoming side of the house.

13 Q. Okay.

14 A. But if the house itself is -- is moving,
15 it pulls the incoming lines with it.

16 Q. Okay. There -- you also indicate the
17 patio subgrade appears to be moving downhill towards
18 Lake Keowee. Now, earlier we looked at the
19 inclinometer readings that -- that you took from the
20 patio itself. Do those inclinometer readings lead
21 you to the conclusion that the subgrade appears to be
22 moving downhill?

23 A. No. The -- the principle evidence that --
24 that I would refer to with the patio, is the
25 displacement of soils between the underside of the

1 patio slab and the soil itself. It's -- it's not an
2 area that looks like it would be, you know, just soil
3 erosion. It looks like it's actual movement.

4 Q. Okay.

5 A. But I could be wrong.

6 Q. Is that depicted in any of the photographs
7 that -- that you took from your second site visit?

8 A. It's depicted in either the first site
9 visit or the second site visit. It's in a -- it's
10 in -- it is depicted in one of the sets of
11 photographs that I have taken.

12 Q. All right. Can you show me in -- in
13 the -- one of those two exhibits which photograph
14 we're talking about?

15 A. I can. I should be able to do that.
16 (Witness peruses documents.) In my -- my site visit
17 of 28 November, 2020, if you look at photograph 13.
18 In the photographs that were taken on December the
19 20th of 2022, if you look at photograph 19 and 20,
20 and to some extent 21, I think also depicts what I'm
21 talking about.

22 Q. Okay. And do you know when the patio at
23 the rear of the residence was installed?

24 A. I don't. I think it was part of the
25 Schmidt residence, but I'm not positive.

1 Q. Okay. But you don't -- but you don't know
2 whether that patio predates or postdates the Hayward
3 Baker solution?

4 A. If it was part of the Schmidt residence, I
5 would almo- -- be almost certain that it predates the
6 repair.

7 Q. Okay. And what your -- and I'm just
8 looking at photograph 19 and 20. You are showing a
9 measurement of the space between the surface of
10 the -- the surface of the soil and the bottom
11 surface, the underside, if you will, of the patio
12 slab?

13 A. Yes.

14 Q. Okay. And is that approximately seven
15 inches at the particular point that you're measuring?

16 A. Yes. It looks like it's six-and-a-half to
17 seven inches.

18 Q. Okay. And -- and you relate that
19 difference to soil movement -- subsurface soil
20 movement, as opposed to erosion?

21 A. It's not any one picture or any one
22 observation. It is my best effort at putting the
23 pieces of the puzzle together --

24 Q. Yes, sir.

25 A. -- that in sum total tried to identify the

1 actions or activities that are occurring, which is
2 causing these events.

3 Q. Okay. What is your -- we'll break here in
4 just a second, but I want to ask you this one thing.
5 What's your understanding of the interaction that
6 any -- any representative of Hayward Baker or Keller
7 had with Mr. Watson?

8 A. I am aware that before Watson purchased
9 his house or made the decision to purchase his house,
10 following the disclosures that were made by
11 Mr. Schmidt, Watson contacted Hayward Baker. And my
12 understanding is that Mr. Watson was told by Hayward
13 Baker that the house is stable. That there are no
14 problems. That it was not -- Watson was not provided
15 with any of the historical information on the
16 inclinometer readings or -- or the evidence of slope
17 movement.

18 So I think Mr. Watson made the decision
19 to -- to purchase the house with the basic
20 understanding that slope movement had been
21 stabilized.

22 Q. The -- and the -- did your understanding
23 of that interaction come directly from Mr. Watson?

24 A. I think I learned that from Mr. deHoll.

25 Q. Okay.

1 A. -- in his communications to me.

2 Q. Did -- did you have any follow-up
3 conversation with Mr. Watson concerning the specifics
4 of that interaction between him and a representative
5 of Hayward Baker?

6 A. No. Other than the action itself. I
7 don't think that there's -- I mean, there's -- from a
8 technical standpoint, there was nothing relevant that
9 affects my opinions of -- that I've stated in this
10 case.

11 MR. SHEALY: Okay. All right. Why don't
12 we take a break and then I may pass the baton, but I
13 will check my notes.

14 MR. GOLDSMITH: Sure. I believe lunch is
15 here.

16 (Recess was taken from 12:33 p.m. to 1:09
17 p.m.)

18 BY MR. SHEALY:

19 Q. Mr. Lewis, I just wanted to ask you about
20 one other thing, at least right now. You -- one of
21 your opinions that you expressed in Exhibit 15 is
22 that, "Hayward Baker was negligent, reckless or
23 grossly negligent in failing to install the
24 stabilization system in accordance with its own
25 drawings and specifications, further exposing the

1 residence to a slope stability failure by reducing
2 the factor of safety intended by its design, which we
3 also find to be deficient."

4 There are a couple of things in that
5 paragraph that I just need to ask you about.

6 A. Okay.

7 Q. First, so you've got an opinion that --
8 that there was a -- there was a problem with the
9 installation itself, that it's -- it does not conform
10 to the -- to the drawings and specifications. What
11 did -- what do you base that opinion on?

12 A. The -- the D'Appolonia drawings had
13 specified the angle at which the tension cables were
14 to be installed for anchoring the blocks, the anchor
15 blocks. And the record, I believe, reflects that the
16 actual installation angle of the cables was 20
17 degrees. So 10 degrees, you know, is much less,
18 which would reduce the pressure of the soil mass
19 against the failure plane and, thereby, reduce the
20 factor of safety against still failure.

21 Q. All right. And how do you know that
22 there's a 10 degree variance between the -- the
23 design drawings and the as installed?

24 A. I want to say it's reflected -- I think
25 it's reflected in one of the sketches that was

1 associated with the GeoMetron report. The --
2 there -- there's a profile -- there's a profile that
3 reflects the anchor block and the tension cables,
4 along with the angle of the cable, and the
5 displacement measurements from the inclinometer. And
6 that sketch, as I recall, reflects a 20 degree angle.

7 Q. Is that -- to your knowledge, is that
8 sketch intended to be an as-built drawing?

9 A. No, I don't see it reflected as an
10 as-built drawing. I do reflect it as the information
11 that indicates the condition, at the time the
12 inclinometers were read, so...

13 Q. Okay.

14 A. I don't -- I don't think that I have seen
15 any as-built drawings.

16 Q. Okay. But -- so it's -- it's -- it's that
17 sketch in the GeoMetron report. And do you remember
18 the date of that particular report?

19 A. Well, the -- yeah, the gem -- GeoMetron
20 report is 2004.

21 Q. Okay. So the 2004 GeoMeteron report
22 sketch is the basis for the conclusion that the --
23 that the installation was varied from the design
24 specs and drawings?

25 A. Yes. That is the only documentation that

1 I am aware of that would reflect the -- the
2 construction of the blocks.

3 Q. Okay.

4 A. Other -- other than the original
5 D'Appolonia plans.

6 Q. All right. And then you -- you -- you've
7 said that sta- -- that that variance from 30 degrees
8 to 20 degrees in the installation angle reduces the
9 factor of safety --

10 A. Yes.

11 Q. -- intended by the design. Explain what
12 you mean by "the factor of safety."

13 A. The factor of safety is the intended
14 resistance to sliding, compared to the -- to the
15 forces that would be in play at -- that would be
16 incipient at the point of a sliding failure. And
17 that is -- that is basically reflected by the
18 pressure of the mass against the -- against the --
19 the incline. So you can calculate that based on the
20 natural properties of -- and densities and all of the
21 soils, the pressures that are on the slip plane. And
22 then the additional pressures that are added by the
23 effects of the anchor blocks. And you take those two
24 numbers, divide one into the other, and that
25 basically reflects the factor of safety between

1 incipient failure and the stabilizing forces that are
2 developed for resistance to sliding.

3 Q. All right. And is there a -- is there a
4 benchmark above which or below which a factor of
5 safety needs to -- needs to be?

6 A. There is -- there are standards, yes. I'm
7 not aware of any code-specific standards, but there
8 are varying standards that -- that reflects -- I
9 think, you know, as a minimum you would want
10 somewhere around 1.2, 1.3 factor of safety.

11 I've always been brought up on the -- on
12 the concept that you're trying to achieve -- at a
13 design standpoint, you're trying to achieve a factor
14 of safety at least of around 1.5 or better. But I
15 think in geotechnical terms, they probably work with
16 slightly less factors of safety.

17 Q. Okay. But that's -- are we -- are we
18 talking about an area now that -- that Jim Kahle is
19 more attuned to than -- than you?

20 A. In terms of actual practice, yes.

21 Q. Okay. You -- you -- the end of the
22 sentence says, "Reducing the factor of safety
23 intended by its design, which we also find to be
24 deficient." So -- which sounds to me like you're
25 saying that the design -- the designed factor of

1 safety for this solution was lower than it should
2 have been?

3 A. Yeah, I think we're talking about two
4 different things here.

5 Q. Okay.

6 A. My opinion on the design really goes to
7 the unprotected area between the bottom of the anchor
8 blocks and the slip plane. And -- and, I mean, I
9 realize that the earth pressures created by the
10 anchor blocks are intended to prevent sliding.

11 But in this case, I mean, the -- the
12 readings, the -- all of the results from the
13 measurements that have been taken from, basically,
14 the -- the time that the blocks were installed
15 forward, indicate that there is a mass of soil that
16 is creeping or flowing between the failure plane and
17 the underside of the -- of the anchor blocks.

18 Q. Okay. All right. So then you -- just so
19 we're clear, so you're not of the opinion that the
20 designed -- the design of this system and the factor
21 of safety that it was designed to achieve was
22 deficient, irrespective of how it was installed?

23 A. I -- I'm -- no, I'm not prepared to say
24 that. I think -- again, Kahle would be, I think, the
25 appropriate person to ask that question. But if you

1 go back and look at the design calculations of
2 D'Appolonia, if I'm not mistaken the factors of
3 safety are reflected on those.

4 And I think those factors of safety are
5 very low, very low. And given a property on which
6 you would expect the lake levels to have an influence
7 on the behavior of the soils, I would judge that the
8 factors of safety represented in the D'Appolonia
9 designs were insufficient to address the fluctuating
10 conditions of lake levels in Lake Keowee.

11 Q. Okay. All right. I did not -- I sort of
12 skipped over, earlier, the notes that you brought
13 with you today.

14 A. Oh, yes. What did I do with them?
15 There's that. There's that.

16 Q. All right.

17 A. I brought it. You already have it, so you
18 don't need that.

19 Q. Yeah, you brought your CV.

20 A. Right.

21 MR. SHEALY: Okay.

22 MR. GOLDSMITH: You need me to make some
23 copies?

24 MR. SHEALY: Why don't we do it that way,
25 that way we're looking at it.

1 (Brief pause in proceedings.)

2 MR. SHEALY: All right. Back on the
3 record. So we'll mark Mr. Lewis' project notes that
4 he brought with him today as Exhibit 21.

5 (Defendant's Exhibit No. 21 was marked for
6 identification.)

7 MR. SHEALY: And then Mr. Lewis', sort of,
8 synopsis of his opinions document as Exhibit 22.

9 (Defendant's Exhibit No. 22 was marked for
10 identification.)

11 BY MR. SHEALY:

12 Q. And so, Mr. Lewis, looking at Exhibit 21,
13 this is the timeline that you mentioned earlier?

14 A. Yes.

15 Q. Now, this also shows you are relating
16 certain dates to reports or things that you have
17 reviewed that -- that emanate from particular periods
18 of time, correct?

19 A. Yeah. I mean, that reflects the
20 contemporan- -- the reports that were contemporaneous
21 to the period of time we were talking about.

22 Q. Okay. And you've referred to, as number
23 21, an H2L report sent to Bob deHoll, which was not
24 signed, sent February 21?

25 A. Yes.

1 Q. Okay. And -- and that document we have
2 not looked at here today, have we?

3 A. I don't think you've asked me about that
4 document.

5 Q. Okay.

6 MR. GOLDSMITH: Let me look into that.

7 MR. SHEALY: My -- my thought is, is
8 that's one of the things that has been redacted.

9 MR. GOLDSMITH: What's the date on that
10 again?

11 MR. SHEALY: February 21.

12 MR. GOLDSMITH: Of?

13 MR. SHEALY: '21.

14 MR. GOLDSMITH: 2021. Okay.

15 (Brief pause in proceeding.)

16 MR. SHEALY: Okay. Are you able to
17 tell --

18 MR. GOLDSMITH: No. I'm looking --

19 MR. SHEALY: Well, I'll go ahead and pass
20 the -- pass you off, Mr. Lewis, to counsel for
21 D'Appolonia. Ryan, you're -- you're up.

22 MR. MCCARTHY: Thanks, Kirby.

23 EXAMINATION

24 BY MR. MCCARTHY:

25 Q. Mr. Lewis, my name is Ryan McCarthy. I

1 represent Ground Technology, Incorporated, also known
2 as D'Appolonia Engineering. And we already went over
3 this at the beginning of the deposition, but if at
4 any time you don't understand the question that I am
5 asking or if you'd like me to rephrase my question,
6 please just tell me and I'd be happy to do so. If
7 you need a break, also, please just let me know, we
8 can take a break.

9 A. I will.

10 Q. So, the first thing I want to ask you
11 about is, earlier in your testimony you talked about
12 D'Appolonia's mission to stabilize the house. Do you
13 remember the document that you reviewed that talked
14 about this mission of D'Appolonia?

15 A. I think you find that in the calculations
16 that were produced by D'Appolonia as part of
17 discovery.

18 Q. And what about those calculations makes
19 you think that it was D'Appolonia's mission to
20 stabilize the house?

21 A. To the best of my recollection, that is a
22 statement that is included on the first page of the
23 calculations.

24 Q. Okay. And I think earlier we talked
25 about -- or you talked about Hayward Baker's

1 provision of a warranty to the Schmidts related to
2 the movement of the system; is that correct?

3 A. Yes.

4 Q. To your knowledge, did D'Appolonia ever
5 provide a warranty to the Schmidts related to
6 movement on the property?

7 A. Not to my knowledge.

8 Q. Is there any document that you reviewed
9 that shows that D'Appolonia made any guarantee as to
10 any kind of movement related to this system?

11 A. The only document that would reflect, I
12 think, in any way on that, would be its assessment of
13 the GeoMetron inclinometer report readings.

14 Q. And I think we just -- or you just
15 testified about the -- the alleged deficiencies with
16 D'Appolonia's system. And you stated that
17 D'Appolonia didn't take into account the -- the shift
18 in the lake level; is that correct?

19 A. Not exactly. I -- I think what I said was
20 that the factors of safety that were acceptable to
21 D'Appolonia, in my judgment, were low for a slope
22 stabilization fix solution that would be subject to
23 changes in the lake -- lake levels. And what I
24 didn't say would be -- and what goes along with that
25 are changes in the water table that -- in which the

1 -- the -- the slope is -- it's impacted on the slope.

2 Q. And why would that factor of safety be
3 low?

4 A. I'm sorry. What was that question?

5 Q. Why would the factor of safety be low?

6 A. I understood factor of safety. I didn't
7 get the last part of your question.

8 Q. I'm sorry. Why would the factor of safety
9 that D'Appolonia considered in its design be low?

10 A. Because the lower -- the closer the -- the
11 factor of safety is to 1, the less -- the less
12 resistance to movement exists within the -- the fix
13 that is being proposed. I realize that is a matter
14 of engineering judgment.

15 But in -- in -- in my judgment -- and I'd
16 have to go back and review, again, the D'Appolonia
17 calculations that reflected safety factors -- but I
18 consider those safety factors to be low for a slope
19 that is subject to water level fluctuations in a
20 lake. I see that being somewhat different from the
21 stabilization of a slope on the side of a mountain
22 that is not influenced by any impoundment of waters
23 that would effect the water levels in the -- in the
24 case.

25 But if you look at the -- at the design

1 for the Schmidt residence, I think you'll see that at
2 full pool, the water level of the lake, basically, is
3 at a level where the water table would be up under
4 the -- the footprint of the house. And at the level
5 that was, I think the basis of the D'Appolonia
6 design, the water level was somewhat lower.

7 Q. And as part of this case, did you review
8 the historical water levels of Lake Keowee?

9 A. Well, the -- the normal water level at
10 Lake Keowee is elevation 800. And it generally stays
11 within a foot or so of that elevation at all times,
12 because of the nuclear plant. But there are times
13 when it gets lower for various reasons.

14 And so from low water level to full pool
15 elevation, the hydraulics could have and do have a
16 significant impact on the slope stability factors
17 that -- that are affected at the Watson and other
18 residences around the perimeter of Lake -- Lake
19 Keowee.

20 Q. So I'm thinking -- and correct me if I'm
21 wrong -- the -- if the water level normally stays
22 pretty consistent due to the presence of a nuclear
23 plant, was it correct for D'Appolonia to rely on that
24 water level staying consistent after the installation
25 of the design?

1 A. No. You want -- you want -- no. You
2 would not expect the water level to remain
3 consistent, meaning the same elevation, subsequent to
4 those that are used for design. The fluctuations may
5 be up or down.

6 If -- if D'Appolonia used the 800-foot
7 level for water in -- in Lake Keowee, that would -- I
8 don't think that the level would be analyzed at a
9 point greater than that. But -- but I think you
10 would have -- I would normally expect fluctuations of
11 as much as three to four feet below full pool that
12 would reflect the minimum and maximum elevations
13 of -- of Lake Keowee.

14 Q. Do you know -- or did you review any
15 documentation, prior to the installation of the soil
16 stabilization system on the property, that discussed
17 or described the lake water levels?

18 A. Are -- are you asking me if I reviewed any
19 documents that re- -- that relate to the levels of --
20 water levels of Lake Keowee?

21 Q. I should rephrase the question. Are you
22 aware of any documentation that was issued, prior to
23 the installation of the soil stabilization system,
24 that discussed or described the lake water levels?

25 A. There is discussion of that in the

1 LawGibb's report. And they analyze the slope
2 stability factors at two different water levels. I
3 want to say somewhere around elevation 794, 796,
4 somewhere in that range, and then I think at -- at
5 full pool elevation.

6 Q. In your experience, is cost a factor in
7 selecting what soil stabilization -- soil
8 stabilization system to use for a project?

9 A. I apologize. Could you repeat that again,
10 please, sir?

11 Q. In your experience, is cost a factor in
12 selecting a soil stabilization system to use?

13 A. I don't know that I could answer that
14 question.

15 Q. Okay.

16 A. I think that's more of a Jim Kahle
17 question.

18 Q. That's fair. Just kind of switching gears
19 a little bit. I know you previously testified that
20 you didn't have much experience with the particular
21 kind of soil stabilization system that was installed
22 here; is that correct?

23 A. That is correct.

24 Q. Okay. But I believe you also testified
25 that you were familiar with the principles behind the

1 soil stabilization system installed here; is that
2 also correct?

3 A. I apologize, I keep asking you to repeat
4 the question, but if you would --

5 Q. No, that's fine. I'm happy to do so. I
6 believe that you previously testified that you were
7 familiar with the principles behind the soil
8 stabilization system that was installed here; is that
9 correct?

10 A. Yes.

11 Q. And can you describe what those principles
12 are?

13 A. Yes. Those principles are that, in
14 essence, the tension on the anchor cables create a
15 compressive stress on the face of the anchor blocks
16 against the soil. And the compression wedge of the
17 soil is then applied to, in essence, create the -- a
18 friction force to in- -- to increase the -- the --
19 the friction resistance between the soil layers above
20 the failure plane and the soil materials below the
21 failure plane.

22 So it's that increase in soil pressure on
23 the face of the failure plane that generates the
24 resistance to sliding and creates the factor of
25 safety against sliding.

1 Q. And you've never worked on one of these
2 soil stabilization systems like the one installed
3 here, correct?

4 A. I personally have not done a system, such
5 as that installed at the -- at the Watson residence.

6 Q. Have you reviewed any materials or reports
7 or any kind of studies relating to the kind of soil
8 stabilization system that was installed here?

9 A. Only to the extent that the principles
10 that are applied are the same as the principles that
11 are discussed in geotechnical textbooks and
12 publications that I have read.

13 It's the -- I guess, it's the -- it's
14 the -- it's the details of the construction of
15 the -- somebody -- somebody has to size the anchor
16 blocks. That's not anything that I have done.
17 Someone has to determine the tensile forces, the
18 jacking forces that have to be applied to the tension
19 cables, which is not much different from the jacking
20 forces that are applied through prestressed concrete
21 and -- and other applications, where -- where the --
22 where cables are used to apply compressive pressures
23 against the -- the reaction block that has been
24 created.

25 All of those are very elementary

1 engineering principles. But in terms of calculating
2 the resultant stresses from these -- from the forces
3 that are applied by the face of the block to the
4 soils to the resulting soil stresses that exist on
5 the slip plane is -- is -- is not anything that I
6 have done. But it is related to the basic
7 geotechnical principles of depth and -- and pressures
8 of the geotechnical equations that are commonly
9 applied.

10 Q. Okay. And when you were talking about the
11 tension cables earlier, were you referring to the --
12 the requirement that those tension cables be loaded
13 during the install?

14 A. Yes.

15 Q. And that's normally done using something
16 like a hydraulic jack to do, correct?

17 A. Yes. Just like prestressing cables.
18 That's what you're doing. You're prestressing the --
19 the cables that have been installed and to the rock
20 below the site.

21 Q. And if those cables are not prestressed,
22 will that affect the -- the performance of the
23 system?

24 A. Well, if the cables are not prestressed at
25 all, yes, it definitely would.

1 Q. Okay.

2 A. The prestressing, you know, that the -- I
3 think there are reports of the jacking forces that
4 were applied. There's some reference to that in the
5 files. But to answer your question, if the -- if the
6 cables are not prestressed, as they are specified to
7 be, it would have some effect on the resultant soil
8 pressures inherent with the -- with the anchor
9 blocks.

10 The degree to which the prestressing
11 forces fall below that which is specified will have
12 an impact. But unless it's a significant difference,
13 it won't have a measurable impact on the soil
14 pressures.

15 Q. Okay. Are you familiar with whether
16 these -- the type of system that's installed here
17 typically allows any kind of movement of the soil?

18 A. Well, I can look at the design and say
19 that there is -- there is an expectation there could
20 be movement of soil. But there -- but there is --
21 should not be an expectation that the movement of
22 soil will exceed that which the design of the system
23 indicates would be a -- a maximum limit that one
24 would expect movement of the soil.

25 Q. Just to clarify the -- did the designer of

1 the system here ever state a maximum amount that the
2 soil should move?

3 A. I don't know that I have documentation
4 that reflects that as a discussion point between
5 Hayward Baker and D'Appolonia. I could infer that,
6 based upon D'Appolonia's assessment of the GeoMetron
7 readings that were taken after the installation of
8 the anchor blocks.

9 Q. My experience -- I know that you
10 previously stated that you worked on some retaining
11 walls. Is it typical for retaining walls to allow
12 some degree of movement of the soil?

13 A. Yes. Especially retaining walls that
14 don't have any restraint provisions at the -- at the
15 top of the wall. What's referred to --

16 Q. Are you aware --

17 A. What would be referred to as a cantilever
18 retaining wall, you would expect to see movement in.

19 Q. Are you aware of any kind of soil
20 stabilization system that completely prevents
21 movement of the soil?

22 A. The one that would come closest to it
23 would be the -- the stabilization system as I have
24 described for what I prefer to see as a fix solution
25 for the slope stability at the Watson residence.

1 Q. And that system that you proposed will
2 completely arrest the movement on the property?

3 A. It would -- it would do it in this way.
4 It would pre- -- the passive -- the passive soil
5 pressures being applied against the sheet pile
6 stabilization system would compress some. And the --
7 the cables, which would anchor the top of the sheet
8 pile system would exhibit some strain, as -- as the
9 pressures are -- are transferred.

10 But the movement of that sheet pile system
11 would be incrementally less, by far, than the
12 movements that were indicated by the inclinometer
13 readings that were installed by Hayward Baker at
14 the -- at the Schmidt residence.

15 Q. Now, those incremental movements, they'd
16 be less than a fraction of an inch?

17 A. Yes. It would be probably -- I would -- I
18 would anticipate under the sheet pile system that I
19 described that it probably would be less than a
20 quarter of an inch.

21 Q. I know you previously testified that you
22 live around the area, so I'm sure that you're
23 familiar with the -- the general area around Lake
24 Keowee. But have you handled any particular
25 engineering projects for any homes around Lake

1 Keowee?

2 A. Yes.

3 Q. And what projects are those?

4 A. Well, let's see. At the -- if you go back
5 far enough, Keowee Key, where the -- where the Watson
6 residence is located, was a development that was
7 started by CertainTeed company, the roofing company.
8 CertainTeed went bankrupt, and the project was taken
9 over by the Ford family.

10 And I worked with the Ford family in its
11 ultimate build-out until it, you know, left the
12 Oconee County area -- in -- in developing Keowee Key.
13 I think the Fords moved to Williamsburg, Virginia and
14 started doing developments around Williamsburg.

15 But I was involved with the early
16 development of Keowee Key. I've been involved in
17 several projects on Keowee Key that were, you know,
18 what I would not label as significant engineering
19 challenges. I've been involved with cofferdam
20 analyses, in the construction of the water intake
21 system off of Keowee Key to provide water to
22 Greenville County.

23 And I've been involved in, I'd say, a
24 number of residential issues around Keowee Key, in
25 which soil movements are -- have been a part of the

1 causes of the damages.

2 Let's see. I guess that's probably a
3 fairly good description, as I can recall as I sit
4 here right now.

5 Q. Did any of those projects that you worked
6 on around Lake Keowee, did they involve similar soil
7 movement issues, as what's present in this case?

8 A. Not -- no. I mean, I'm not aware of any
9 projects that involved the analysis of anchor blocks
10 to restrain slope instability.

11 Q. Is one of the reasons that you're alleging
12 that the system installed was deficient, because of
13 failure to take into account soil shear strength?

14 A. My -- my biggest issue with the -- with
15 the conditions at Mr. Watson's residence is that
16 Hayward Baker offered a proposal to stabilize the
17 slope movement. They used the design that
18 D'Appolonia prepared. And they offered a warranty on
19 the extent to which that soil stabilization would
20 relax over a period of time. I think -- I believe, a
21 five-year period of time. And -- and there were
22 limits set to that.

23 Those limits were exceeded with the very
24 first post-construction inclinometer reading survey
25 that was done. And both D'Appolonia and -- and

1 Hayward Baker basically told the owners of -- of the
2 property that it wasn't a problem, your property's
3 fine.

4 And you don't hear much after that in the
5 next three or four years, even though Hayward Baker
6 was receiving subsequent inclinometer readings that
7 showed a continuing -- a continuing movement of
8 the -- particularly of the deeper soil surfaces. The
9 zone below the bottom of the anchor blocks.
10 Continuing movement toward the lake. And that
11 movement reflects in both lateral and vertical
12 displacement up at the level of the house.

13 But still, being placed on notice with
14 each subsequent inclinometer set of readings, there
15 was no action by either Hayward Baker -- and I don't
16 know what influence Hayward Baker may have had on
17 D'Appolonia. But I focus predominantly on Hayward
18 Baker. With -- with the evaluation of the
19 inclinometer readings and the -- and the failure to
20 acknowledge its obligations under the warranty and
21 address the continuing movement of the soil.

22 There's not an indication to me, even
23 though -- even though Hayward Baker acknowledges to
24 Mr. Schmidt that the soil movement is continuing,
25 even though they recognize that there are slope

1 movements to the side of the affected repair areas of
2 the anchor blocks. Notwithstanding all of that,
3 Hayward Baker lifts not one finger to address the
4 commitments that it made in its warranty to -- to --
5 to make repairs, if the horizontal movements of the
6 slope exceed that which was warranted.

7 Q. And as far as you're aware, D'Appolonia's
8 last involvement with this project was in 2004 with
9 the letter to Hayward Baker; is that correct?

10 A. I want to say that is correct. I don't
11 think I remember anything subsequent to D'Appolonia's
12 response to the GeoMetron report, unless there's
13 evidence in some of the e-mails that I have that
14 would reflect a continuing submittal of information
15 by Hayward Baker to D'Appolonia. Some of that may
16 exist.

17 Q. And after that D'Appolonia response
18 regarding the GeoMeteron report, were there
19 additional investigations by Hayward Baker, including
20 inclinometer tet- -- inclinometer tests?

21 A. Well, there were inclinometer readings
22 that continued being provided to Hayward Baker up
23 through, and I think including 2006.

24 Q. So it would be fair to say that Hayward
25 Baker was continuing to monitor the situation, after

1 D'Appolonia's last communication 2004?

2 A. Well, I think they -- they were continuing
3 to receive inclinometer reports after 2004.

4 Q. So I think we're going to go to an exhibit
5 here, if I can find it. I believe this is the
6 November 10th, 20 -- 2004 letter from Hayward Baker
7 to the Schmidts.

8 MR. McCARTHY: I believe that's number 4
9 on our list of exhibits, Stephanie.

10 MS. BURTON: I got it.

11 MR. McCARTHY: Okay.

12 THE REPORTER: Do you want me to mark that
13 23?

14 MR. McCARTHY: Yes.

15 (Defendant's Exhibit No. 23 was marked for
16 identification.)

17 BY MR. McCARTHY:

18 Q. You can take a minute to review that.

19 A. (Witness peruses document.) Are you
20 waiting on me?

21 Q. Take your time, if you're ready.

22 A. Okay.

23 Q. Okay. The last page of that document, I
24 believe, is a depiction of the soil stabilization
25 system; is that fair?

1 A. Yes.

2 Q. Okay. Is this the document you referred
3 to earlier, when you stated that the GeoMeteron
4 reported a picture of the soil stabilization system
5 at a 20-degree angle?

6 A. That is correct.

7 Q. You're not aware of any other documents
8 that show the soil stabilization system installed at
9 a 20-degree angle?

10 A. I think the only -- to the best of my
11 knowledge, this is the only post-construction sketch
12 of the system that I have seen.

13 Q. Okay. And if you could turn to Watson 70
14 of that document.

15 A. (Witness complies.)

16 Q. In the conclusion section of GeoMeteron's
17 letter, does it state that the displacements in the
18 ground surface have stabilized?

19 A. Well, the first bullet point?

20 Q. Yes.

21 A. Yeah. It says, "Has stabilized at
22 three-quarters of an inch total." Their own
23 inclinometer readings showed it has moved one inch.
24 So if it stabilized at all, it's in excess of
25 three-quarters of an inch.

1 Q. So it's your opinion that D'Appolonia was
2 not entitled to rely on GeoMeteron's report that the
3 movement had stabilized?

4 A. What I believe is that with D'Appolonia's
5 review of the GeoMetron readings, it would show an
6 inch of movement in the critical zone of the soil of
7 one inch in less than two years. I would have been
8 reviewing my calculations to find out why we're
9 getting such movement.

10 There's no -- there's no reflection in any
11 of the communications that I have seen from
12 D'Appolonia to Hayward Baker that would in any way
13 indicate its revisit of the calculations that it ran
14 to design the system, to provide or offer opinions as
15 to why the -- the degree of movement that is being
16 measured, so greatly exceeds the limits specified in
17 the warranty that were not to be -- certainly not to
18 be exceeded within the first five years of
19 post-construction time.

20 Q. Have you seen any documentation that
21 D'Appolonia was even aware of Hayward Baker's
22 warranty to the Schmidts?

23 A. I don't know what D'Appolonia was or was
24 not aware of with respect to Hayward Baker's
25 warranty. But notwithstanding that, I think when

1 you've got -- unless D'Appolonia considered one inch
2 of movement in the critical zone below the affected
3 depth of the anchor blocks, that it had -- at least
4 was on notice that it ought to be reviewing --
5 reviewing its analyses to provide reasonable
6 engineering advice to Hayward Baker on why that type
7 of movement is occurring.

8 Q. Do you think the lack of information
9 regarding any additional damage to the property
10 affected -- or affects the reasonableness of
11 reviewing or doing further review of the system, at
12 that point?

13 A. It could, yes. I agree that it could have
14 an impact on it.

15 Q. Have you seen any information or
16 documentation that shows there was any indication of
17 further damage to the property in 2004?

18 A. Let me make sure I understand the context
19 of your question. You're asking me if I have seen
20 any documentation of damage that would have been
21 present on the property as of 2004?

22 Q. I'm asking if there's any documentation
23 you've seen of any new damage occurring in 2004 to
24 the property.

25 A. Uhm, I am aware of some contemporaneous

1 communications between Schmidt and Hayward Baker -- I
2 don't -- can't tell you right now which specific year
3 it was in -- that talks about some damages.

4 But you have to remember, also, that after
5 this repair was implemented in -- in 2002, there was
6 a period of time during which the Schmidt residence
7 itself was undergoing repairs with foundation --
8 repair of foundation damages, repair of interior
9 damages that -- that led to the -- to the discovery
10 of the -- of the slope stability problems and the
11 repairs that were done by Hayward Baker and
12 D'Appolonia.

13 So what I don't have in my timeline is
14 that block of time that was spent by the home builder
15 for the Schmidts in repairing the physical damages to
16 the Schmidt residence that was present, as of the
17 time that the Hayward Baker repair was implemented.
18 I would imagine that that repair went sometime in
19 2003 or later.

20 So you've got -- you've got the GeoMetron
21 report that comes about, as I recall, about two years
22 after the implementation construction was completed.
23 I don't know of any documentation of damages that
24 were present in the Schmidt residence as of 2004. I
25 don't think GeoMetron did any interior condition

1 surveys. And the only subsequent information that I
2 have on damages is reflected in one or two
3 communications by Mr. Schmidt to Hayward Baker.

4 Q. Was there any additional damage from the
5 period between 2004 to 2020, other than what you've
6 already described?

7 A. Well, as I said, there -- there are --
8 there are damages that were reported by Mr. Schmidt,
9 in terms of utility breaks. I'm not aware of any
10 Schmidt reports of -- of -- of movement damages in
11 the -- in the structure of the house itself.

12 The -- and I'm -- I would anticipate that
13 as of 2015, when the house was purchased by
14 Mr. Watson, that if, in fact, there were any interior
15 cracks or damages or anything, those would have been
16 repaired prior to the occupancy of the house by
17 Mr. Watson. And I'm not aware of any indication from
18 the -- from Mr. Watson, as I sit here right now
19 anyway, of -- of damages manifesting within the house
20 between 2015 and somewhere in the 2020 time frame.

21 Q. And when you visited the property, and I
22 believe you visited it twice, how can you tell what
23 damages on the property existed after the
24 installation of the soil stabilization system?

25 A. Well, the best way that I have to measure

1 those damages are based on the conditions that I
2 observed in 2020. And those conditions certainly
3 postdate the installation of the anchor blocks.

4 The -- as I said earlier, it's very
5 difficult, I think, to distinguish between time. So
6 you have to -- you have -- it's like putting the
7 pieces of a puzzle together. You look at all of the
8 data that you can gather. And given the information
9 which you have, you make your best engineering
10 judgments on what has happened.

11 And in this case, when you look at the --
12 the various inclinometer readings that were taken
13 between 2002, when the inclinometer casing was
14 installed, and 2006, which is the last inclinometer
15 readings we have, and you project the line of the
16 soil movements that are occurring from 2002 to 2006,
17 and you move it on up the curve, you get very close
18 to a point in time when the casing and inclinometer
19 readings that were attempted in 2020 found
20 resistance.

21 So you can -- you can explain, from
22 looking at the inclinometer readings all the way from
23 2002 to 2020, the implication of continuing
24 movements.

25 I can't sit here and tell you which year

1 which movements occurred. But it's clear that by
2 2020 the soil movement below the anchor blocks had
3 reached a point that the inclinometer casing had
4 displaced sufficiently to prevent readings of the
5 inclinometer within what I call the critical zone,
6 below the -- the bottom elevation of the blocks.

7 And you look at all of that with the
8 conditions that reflect on the -- in the house
9 itself. And you look at the geotechnical activities
10 on Lake Keowee, where it's not unusual for properties
11 with slope stability issues to see movement in
12 various fits and starts. It's sometimes referred to
13 as the Keowee creep. It's -- it's a very slow
14 movement. It moves in fits and starts, and it's --
15 and it occurs under a variety of different
16 conditions. But they're occurring.

17 And they are indicative of continuing
18 slope failure below the Watson residence and within
19 the zone of slope stability failure that was
20 supposedly addressed with the -- with the Hayward
21 Baker fix solution in 2002.

22 Q. If there was incremental movements related
23 to the property, why did the cracking in the house
24 only become apparent around 2020?

25 A. The only explanation that I could give you

1 is that there were events that occurred. And when I
2 say events, I'm talking about whether it's water
3 table fluctuations, pool level fluctuations in
4 Keowee, seismic events in the terrain surrounding
5 Lake Keowee.

6 But that there are events that, again,
7 occur indiscriminately and without any specific
8 timeline associated with them that result in strains
9 sufficient in the building materials, covers of these
10 of the -- of the residence, that breach a point to
11 where the -- the degree of strain, the tension that
12 is created in the -- in the building materials
13 reaches a point where the gaps or the failure planes
14 that develop become visible.

15 If you think about the Sheetrock cracks
16 in -- in Mr. Watson's residence, those -- the cracks
17 were, in all probability, present for some period of
18 time before they became visible enough for a casual
19 observer of the wall condition to note the presence
20 of the cracks.

21 Q. Did you or your firm do any investigation
22 into any kind of effect that the landscaping or
23 installation of the retaining wall on the property
24 between 2015 and 2020 could have had an effect on the
25 cracking at the residence?

1 A. Let me -- let me try to explain that this
2 way. I look at -- the improvements that have been
3 described today, I take to be what I would refer to
4 as surcharge loads on the -- on the soils above the
5 failure plane of Mr. Watson's residence. And that
6 failure plane is down what, 25 -- 25 feet, 30 feet,
7 somewhere below grade.

8 And I look at the landscape improvements,
9 that the surcharge loads on this soil amount to about
10 one ounce of pressure and five pounds of soil
11 pressure against the same thing. It is -- it is so
12 incremental that I'm surprised it is even an issue in
13 this matter that is being used to -- to reflect some
14 suspicion on the -- on the cause of movement of this
15 house.

16 So I guess the short answer to your
17 question is, I'm aware that there have been
18 landscaping improvements. I do not consider those
19 improvements to be in any way structurally or
20 geotechnically significant with respect to the
21 analysis of the slope stability issues at the Watson
22 residence.

23 Q. Are you aware of any soil movement or land
24 slides occurring at the south of the residence on the
25 property?

1 A. Soil movements occurring where?

2 Q. At the southern portion of the property,
3 where the system was not installed.

4 A. All right. When you say the southern
5 portion, help me get oriented here. If I'm standing
6 at the lake and I'm looking at the house, are you
7 talking about to the right of the improvements or to
8 the left of the improvements?

9 Q. I believe it would be on the right, but it
10 may be helpful to look at the Cornerstone of Seneca
11 topographical survey. I believe that was already
12 offered as an exhibit.

13 MR. SHEALY: You're correct.

14 THE WITNESS: Where would that be?

15 MR. SHEALY: I think it's still in this
16 pile. Let me see if we can get to it. Oh, here it
17 is.

18 THE WITNESS: Is this what you're looking
19 for?

20 MR. SHEALY: I see it.

21 BY MR. MCCARTHY:

22 Q. And if you take a look at that it says,
23 and you'll see --

24 A. I am -- I am looking at a document that's
25 Bates-labeled H2L 702.

1 Q. 702. Yes, I believe that's correct.

2 A. Okay. I do not see a north arrow on this
3 sheet. Are you -- are you taking the north to be at
4 the top of the sheet?

5 Q. I believe the area I'm referring to is to
6 the right of the -- the property, where the -- the
7 previous topographical lines are not present from the
8 survey.

9 A. Okay. Yes. Okay. So what's your --

10 Q. Okay. Are you --

11 A. -- question?

12 Q. Are you aware of any kind of landslide
13 that occurred in that area of the property?

14 A. I am not aware of a landslide. As we
15 discussed earlier, I am aware that the growth of
16 trees and other vegetation on that side of the
17 property is some evidence that there has been slope
18 movement to the right of the anchor blocks.

19 But I -- I am not aware of a landslide and
20 the topo -- the topo that I am looking at does not
21 indicate what I would see as a resultant landslide
22 showing up in the -- in the spacing of the -- of the
23 contours.

24 Q. Would the installation of the
25 stabilization system effect soil movements outside of

1 the area where it was installed?

2 A. Will the -- will the -- are you asking me
3 if the zone of the area that is stab- -- supposedly
4 stabilized by the anchor blocks would have an affect
5 on slopes to the left or right of its -- of its
6 impact area?

7 Q. Have an affect on the slope to the right.

8 A. I don't -- I don't think that I -- I don't
9 think that the -- that the fix solution itself would,
10 other than the -- other than the pressure zones
11 that's created by the compression of the anchor
12 blocks. You know, that's got an effective zone. It
13 will extend somewhat to the left and to the right of
14 where the blocks are physically located.

15 But in terms of the general slope to the
16 right of this fix area, I don't see any way in which
17 those blocks would have a material effect on -- on
18 those sloped areas.

19 Q. So it's possible that other portions of
20 the property could move independently of the soil
21 stabilization system?

22 A. Oh, yeah. That's possible. Sure. But it
23 wouldn't reflect in deformations of the inclinometer
24 casing that's right slap in front of the placement of
25 the anchor blocks in this fix solution.

1 Q. Could movement of soil in other areas of
2 the property effect the soil that is in and around
3 the soil stabilization system?

4 A. That's a good question. And I don't --
5 don't really know. I don't -- I don't see that the
6 soils to the right and to the left of the soil
7 stabilization system would have an effect on the soil
8 stabilization system itself. But since the soil
9 stabilization system really is effective from the --
10 from the blocks and below the blocks that -- that are
11 installed, I think there could be regions downslope
12 from the fix solution, and certainly regions to the
13 left and to the right of the fix solutions, that
14 might exhibit movement that would be unrelated to the
15 impact of the anchor blocks themselves.

16 Q. Have you ever had any contact with any
17 personnel from Hayward Baker related to this project?

18 A. No.

19 Q. Have you ever had any contact with any
20 personnel of D'Appolonia related to this project?

21 A. No.

22 Q. Have you ever had any contact with any
23 personnel from Law Engineering related to this
24 project?

25 A. I -- I say no, but I think -- you know, if

1 we go far enough back in time, Jim Kahle was working
2 for Law, but it was not during the period of time in
3 which LawGibbs was in place or they -- Law was
4 involved in any -- any work at the Schmidt property.

5 Q. Have you had any contact with Tim Mirocha
6 or anyone else at SM&E, Incorporated?

7 A. I don't think that I personally have. It
8 is -- it is possible that Jim Kahle may have had. I
9 think -- I want so say there has been some
10 communication with -- definitely with Terracon,
11 because I think we got some -- talked about some fix
12 proposals.

13 So, anyway, I think -- I think that's
14 probably a better question for Jim Kahle. I don't
15 recall, personally, having any contact with -- with
16 people from SM&E or -- or Terracon.

17 Q. Okay. I think we're going to go to
18 another exhibit.

19 MR. McCARTHY: This is Exhibit 10 on our
20 list, Stephanie, the H2L report.

21 THE REPORTER: Do you want this marked 24?

22 MR. McCARTHY: Yes.

23 (Defendant's Exhibit No. 24 was marked for
24 identification.)

25 THE WITNESS: (Witness peruses document.)

1 BY MR. MCCARTHY:

2 Q. Do you recognize this document?

3 A. Yes, I do recognize this document.

4 Q. Can you tell me what this document is?

5 A. Uhm, this is the draft of a report that I
6 think we did -- or that I did, I think relatively
7 early, in 2000 -- 2022.

8 Q. And why was this report drafted?

9 A. I'm sorry, what?

10 Q. Why was this report drafted?

11 A. When was it drafted?

12 Q. Or why was it drafted?

13 A. It was drafted by me. And it was drafted,
14 I think -- well, it says February 2021 report. So
15 this was -- this was a draft by me in February of
16 2021.

17 Q. Is this drafted as part of your
18 investigation of the property or was this drafted for
19 another purpose?

20 A. This was drafted as -- well, I -- that's a
21 good question. I think this was drafted, at least in
22 my mind, it was drafted as a report for the benefit
23 of Mr. Watson and -- and Mr. deHoll in whatever
24 direction they might plan to take the investigation
25 and the issues identified.

1 Q. I believe that this report states that the
2 repairs were insufficient because the -- the anchors
3 should have been extended around to the area to the
4 right of the property; is that correct?

5 A. Well, the -- if you could direct me to a
6 paragraph, so that I can refamiliarize myself with
7 what I said.

8 Q. I believe that's in subparagraph (b) on
9 the -- the 4th page of the -- of the document.

10 A. Are you on page 1 or page 2?

11 Q. I'm on page 4. It's Watson 205.

12 A. Oh, okay. These -- these --

13 Q. Section B --

14 A. These are in the -- okay. That's a part
15 of paragraph 6 on 200 -- on 204. At this point in
16 time, we had not discovered that there was a -- at
17 least an indication of difference in the inclination
18 of the cable.

19 So this report was prepared at a point in
20 time when the -- at least the understanding was that
21 the cables were installed at the 30-degree angle
22 shown on the -- on the D'Appolonia drawings.

23 The subparagraph (b) that you're referring
24 to says, "The extent of repairs is insufficient. The
25 areas to the south of the anchors is somewhat steeper

1 and additional anchors, in our judgment, should have
2 been installed there."

3 Okay. Now, what -- what is your question
4 with respect to that paragraph?

5 Q. Why is it your conclusion that the system
6 should have been extended further to the right of the
7 property?

8 A. I think -- certainly, at this point in
9 time, it was our conclusion, and I think it still is,
10 that for stabilization of the residence, the affected
11 areas to be stabilized by the repair solution would
12 have extended further to the right of the limit
13 that's indicated on the D'Appolonia drawings.

14 Q. Was the failure plan that was previously
15 referred to, was that present to the right of the
16 property?

17 I believe it is, yes. Maybe -- yes. I
18 believe it -- I believe there -- there certainly is a
19 failure plane present to the right of the property,
20 because the slope is steeper. Whether it's in the
21 exact same location or not, I can't tell you right
22 now.

23 Q. Section C on the same page states that the
24 system was installed too far up the slope and that it
25 should have been installed closer to the lake. Is

1 there a reason you believe it should have been
2 installed closer to the lake?

3 A. Yeah. I think we -- you know, we felt, in
4 our judgment, the -- the stabilized area needed to be
5 more extensive. I think these blocks provided
6 stabilization in roughly somewhere between the mid
7 point or the upper third point of the slope failure
8 plane from the house to the lake.

9 Q. And I think you said earlier that this
10 report was done prior to discovery of the alleged
11 difference in angle of the installation of the -- the
12 anchors, but I see in (d) that there's a reference to
13 the 20-degree angle versus the 30-degree angle; is
14 that correct?

15 A. All right. I think if you'll -- if you'll
16 look at the date on this report, which is February of
17 2021, H2L came on board in November of 2020. So at
18 the time this report was drafted, and probably the
19 reason it was never submitted in any type of final
20 form or got beyond the, you know, the drafting stage,
21 was because there was information that was beginning
22 to arrive after the point in time that this initial
23 report was drafted.

24 I -- you'd have to ask, I think,
25 Mr. Watson or Mr. deHoll what spurred the request for

1 the report, at this time. And I think it was -- they
2 wanted an early indication of the direction that --
3 that -- that we were finding that the leads to take
4 us in this matter.

5 Q. This may have already been answered, so I
6 apologize. But I just want to get confirmation as to
7 what's the basis of your opinion that D'Appolonia was
8 negligent related to the soil stabilization system
9 installed here?

10 A. My concern and my -- my assessment of
11 D'Appolonia's negligence deals with the failure of
12 D'Appolonia, once being placed on notice of the --
13 the soil movements on this residence, that it did
14 not -- that we don't have any indication that
15 D'Appolonia went back and in any way analyzed its fix
16 solution to determine why or to provide guidance in
17 the assessment of the wedge of soil that, based on
18 the inclinometer readings, show continued slope
19 movement below the bottom elevation of the anchor
20 blocks.

21 And my -- my complaint with D'Appolonia's
22 action and its professional services is being placed
23 on notice of the extent of soil movements, whether it
24 knew one way or the other what the warranty may have
25 been, they were placed on notice, and I think the --

1 of the extent of movement. And there was no
2 indication of any subsequent analysis to either
3 confirm that the original design by D'Appolonia was
4 sufficient or to offer suggestions on what could or
5 should be done to -- to terminate the movement of the
6 soil wedge that was -- is reflected in the
7 inclinometer readings on this site.

8 Q. Is that the same basis for your opinion
9 that D'Appolonia was also grossly negligent in this
10 case?

11 A. Yes. Yes. It wasn't so much their
12 design, as it was their lack of responsiveness once
13 the problems were identified.

14 Q. And were you tasked by Mr. Watson of
15 finding examples of alleged gross negligence on the
16 part of the parties to this case?

17 A. No. But, you know, I am aware -- I'm
18 aware of the conditions surrounding complaints of
19 this nature, particularly the age of complaints. But
20 I will sit here and I will tell you that my honest
21 assessment is that the D'Appolonia and the HB
22 failures to aggressively pursue the reasons why this
23 slug of soil, particularly the lower levels,
24 continued to move, in my judgment is -- is willful
25 and wanton decision not to effect any type of repair

1 of the benefit of the Schmidt property or the Watson
2 property.

3 Q. Is there any indication that repairs were
4 necessary in 2004, if there was no damage to the
5 house occurring, at that time?

6 A. I will say, probably for the fifth or
7 sixth time, that in my judgment with -- with the
8 extent of soil movement subsequent to the
9 installation, that there was sufficient data provided
10 to both Hayward Baker and D'Appolonia to suggest
11 that, at a minimum, the cause of the continuing
12 movement, some type of analysis was warranted and
13 some type of recommendation to terminate the
14 continued movement was warranted.

15 Q. I think we're going to go to another
16 exhibit here. And this is the -- the May 21st, 2022
17 e-mail chain.

18 MR. MCCARTHY: I believe this is number 8
19 on our list, Stephanie.

20 MS. BURTON: Okay. I'm working on it.
21 May 21.

22 THE REPORTER: This will be 25.

23 (Defendant's Exhibit No. 25 was marked for
24 identification.)

25 BY MR. MCCARTHY:

1 Q. I think only about the first page of this
2 exhibit is relevant here, so the other pages can be
3 ignored.

4 A. (Witness peruses document.) Is there a
5 particular e-mail that you would like for me to look
6 at?

7 Q. Only the first e-mail, the May 21st, 2022
8 e-mail between you and Bob deHoll.

9 A. Yes.

10 Q. Okay. So -- so did you have any
11 discussions regarding the -- the effect of the
12 statute of repose on this case?

13 A. Uhm, well, yes, we did. And not that Bob
14 needed it, but I certainly was refreshing him as to
15 some of the arguments related to statutes of repose
16 and -- on this case. I probably went into some of
17 the history that I was associated with in legislation
18 related to the statute of repose.

19 But, yes, we -- I've had many discussions
20 with -- with Bob deHoll on the statute of repose and
21 the statute of limitation. But particularly the
22 statute of repose, as it goes to engineering
23 services.

24 Q. The characterization of D'Appolonia's
25 actions related to this project as grossly negligent,

1 is that related to the statute of repose?

2 A. Yes, it is.

3 Q. And the only basis for your allegation
4 that D'Appolonia acted in a grossly negligent way is
5 failure to order more investigations after the 2004
6 letter to Hayward Baker?

7 A. Uhm, let me try to answer that in this
8 context. The answer's yes. I think -- I think
9 the -- the -- the gross negligence on the part of
10 D'Appolonia was its failure to review, analyze, and
11 report on its original design basis, given the extent
12 to which the soil movements had occurred.

13 I don't know whether D'Appolonia received
14 subsequent inclinometer readings from Hayward Baker
15 or not. But in any case, whether they did or whether
16 they did not, once being placed on notice of
17 significant soil movement below its -- its fix, which
18 it intentionally designed to stabilize the house,
19 their -- their -- their failure to review the design
20 and -- and get back to Hayward Baker on whether or
21 not the -- the design was adequate or was short in
22 any particular area, in my judgment, was an act of
23 gross negligence on the part of D'Appolonia.

24 Q. Have you seen any documentation or
25 information that Hayward Baker ever requested or

1 ordered D'Appolonia to conduct any additional reviews
2 of their calculations or of the design?

3 A. I can't say that I have seen any
4 documentation of that.

5 Q. In your experience, is there typically a
6 life expectancy on a soil stabilization system?

7 A. I would expect that an effective soil
8 stabilization system would remain in place and
9 performing as it is intended to perform for the life
10 of the structure it is intended to protect.

11 Q. And how long would you estimate that the
12 residence on this property would be intended to last?

13 A. How long would I expect what?

14 Q. How long would you expect the residence
15 that's presence -- present on this property to last?

16 A. Well, typically you look at a minimum of
17 50 years for -- for the life of a residence. In most
18 cases, will go longer than that. But the general
19 expectation is a minimum of 50 years.

20 Q. I think earlier you testified to some of
21 the options that were proposed regarding potentially
22 extending this system or repairing this system.
23 Would those be more questions to ask -- ask of Jim
24 Kahle or can you weigh in on those options?

25 A. Well, I've already weighed in on them, but

1 I would say, as I said earlier, I think Jim Kahle
2 would be your better source of -- of some of those --
3 some of those questions.

4 Q. Do you have any opinions of whether the
5 three options that were proposed, whether all three
6 of those options are necessary or whether one or two
7 of them would be sufficient to --

8 A. No, I think the intent was that any one of
9 the three options would be appropriate, if the -- if
10 the design was sufficiently developed. But I think
11 as I also said earlier, in my assessment of the three
12 options, just given the structural background that I
13 have, would be for a sheet pile system that would
14 penetrate the slope failure plane, go below the slope
15 failure plane, provide tiebacks near the top, and
16 restrain the entire wedge of soil that is above the
17 slip plane.

18 Q. Has Mr. Watson given the go ahead for any
19 one of these options to be implemented, at this
20 point?

21 A. No.

22 Q. And the only work that Mr. Watson is
23 currently doing related to the property is that slope
24 failure analysis, as you mentioned earlier?

25 A. Yes, that's all that -- that I'm aware of.

1 Q. So there's no additional work that's being
2 performed?

3 A. Other than that study that we describe,
4 there's no additional work that's being performed.

5 Q. In your opinion, is there any current risk
6 of compromised structural integrity of the residence
7 on the property?

8 A. Well, yes. I mean, there is risk from the
9 standpoint of the -- of the slope stability. What it
10 takes to trigger an unstable condition is largely
11 a -- it's not something that is easily predictable.
12 Any significant seismic tremor in that area could be
13 sufficient to trigger a slope failure that would
14 basically destroy the stability of the residence
15 itself.

16 The likelihood of that happening is, in my
17 judgment, very low. But it is a risk. And it's not
18 a risk that I would recommend a homeowner living with
19 for the period of time that they would expect to
20 occupy the house.

21 Q. So at this point, you wouldn't recommend
22 any kind of action to protect the residence from
23 damage related to any kind of soil movement?

24 A. I think I understood your question, but
25 just to be sure, could you please repeat that?

1 Q. Sure. That's fine. Totally fine. So
2 there's no -- you wouldn't recommend any action, at
3 this time, to prevent any kind of structural
4 compromise of the residence on the property?

5 A. Uhm, I think, you know, my -- my -- my
6 assessment of that is no, because I think any action
7 that you would take to stabilize the house is in some
8 way a form associated with a permanent fix to
9 stabilize any movement of the slope within the
10 foundation zone of the house. All of that would be
11 very expensive.

12 And I don't know that there would be --
13 from a -- from the standpoint of preserving the
14 structural reliance of the house, I don't know that
15 there would be anything from an expense standpoint
16 that would be significantly different from the cost
17 of a permanent fix.

18 Q. Have you done any investigation as to the
19 cost to repair the residence on the property?

20 A. We -- somewhere in our file there are some
21 estimates based on -- on repairs. And I think we
22 discussed earlier that those estimates range from
23 something less than 100,000 to in excess of 600,000.
24 So it's a -- quite a -- quite a range of -- of
25 estimates, depending upon which fix option might be

1 selected.

2 Q. But you haven't done any analysis of any
3 kind of cost of repairs of the interior of the
4 property --

5 A. No.

6 Q. -- correct?

7 A. No, no, we haven't.

8 Q. Okay. I'm circling back to your
9 experience related to projects on Lake Keowee. Are
10 you aware of any kind of soil stabilization issues on
11 any of the properties located on the lake?

12 A. Yes.

13 Q. Okay. Do you know what the address of
14 those properties are?

15 A. Not off the top of my head.

16 Q. Okay. Are you aware of any of the soil
17 stabilization systems that were installed to address
18 those problems?

19 A. In a general nature, yes. In a detailed
20 way, no.

21 Q. Do you know what types of soil
22 stabilization systems were installed?

23 A. My best recollection is that they would be
24 akin to the same type of fix recommendation that I
25 consider to be the most appropriate from our review

1 of the three options that -- that were being
2 considered.

3 Q. Okay. I may have to go back and check my
4 notes, but I think I'm -- I'm done for now. So...

5 MR. SHEALY: (Indicating)? Andy, do you
6 have questions?

7 MR. GOLDSMITH: Huh. No.

8 MR. SHEALY: I think I had a couple
9 follow-ups. Can we just like take five minutes?

10 MR. GOLDSMITH: Sure.

11 MR. SHEALY: I might be close.

12 (Recess was taken from 2:55 p.m. to 3:01
13 p.m.)

14 EXAMINATION

15 BY MR. SHEALY:

16 Q. All right. Mr. Lewis, I just have a few
17 follow-up questions. The report that was identified
18 as exhibit --

19 MR. GOLDSMITH: The higher numbers are
20 going to be in that stack to your right, Kirby.

21 BY MR. SHEALY:

22 Q. The report that's identified as -- let's
23 see -- it's not in this stack. Oh, yes it is.
24 Identified as Exhibit 24. The...

25 Mr. Lewis, when we were looking at your

1 e-mail correspondence with Mr. Watson and Mr. deHoll
2 earlier -- hold on. I'll get to it. It's not these
3 ones. There's a reference to a report. And I just
4 wanted to -- I just wanted to -- here it is.

5 In Exhibit 17, is -- is the reference to
6 the report in Exhibit 17 the report that we've now
7 looked at that's Exhibit 25?

8 THE REPORTER: I think 24.

9 BY MR. SHEALY:

10 Q. 24, excuse me.

11 A. I would -- I would take it to be. I mean,
12 this is dated March 2. This report was prepared,
13 what did we say, was it January of '21? Yeah,
14 February. February, March. Yeah, I think it
15 probably is -- relates to -- 17, I -- Exhibit 17
16 appears to relate to Exhibit 24.

17 Q. And, in fact, there's no -- that's the
18 only report that's been generated, correct, by H2L?

19 A. Yes, I think that's right.

20 Q. Okay. All right. And that's the --
21 that's also the report that is set forth as number
22 20 -- as the 21st item on Exhibit 21?

23 A. Yes.

24 Q. Okay. All right. So, that was the
25 missing ingredient.

1 A. They all go together.

2 MR. SHEALY: And Mr. Goldsmith and I had a
3 conversation. And my understanding is that Exhibit
4 24 was not redacted from Mr. -- from the H2L's
5 document production.

6 MR. GOLDSMITH: That's correct.

7 MR. SHEALY: And it was, in fact, produced
8 with Watson's discovery responses.

9 MR. GOLDSMITH: Although, I didn't know
10 that earlier today.

11 MR. SHEALY: Well, but we've now -- we've
12 now --

13 MR. GOLDSMITH: Okay.

14 MR. SHEALY: -- put all -- connected all
15 those dots.

16 BY MR. SHEALY:

17 Q. Okay. Mr. Lewis, you testified a little
18 bit ago that you've been involved in other slope
19 stabilization projects on Lake Keowee?

20 A. No, I don't think -- I think I testified
21 that I have -- that I am aware --

22 Q. Aware.

23 A. -- of -- of slope stabilization projects
24 on Lake Keowee.

25 Q. Okay. But you've not -- you've not worked

1 on any slope stabilization case around Lake Keowee,
2 either as an expert or -- or as a consulting engineer
3 of some kind?

4 A. Not that I recall. I have probably been
5 involved with some retaining wall work around Lake
6 Keowee, but nothing of what I call a massive slope
7 failure, such as what we're looking at on the -- on
8 the Hugh Watson property.

9 Q. Okay. And have you ever -- have you ever
10 been involved in a case involving slope
11 stabilization that is -- involving the failure of a
12 slope stabilization system in which you've
13 recommended the installation of sheet piles?

14 A. I would have to review my files. I
15 suspect that I have over the last 40 or 50 years, but
16 I can't tell you which ones. I've been involved in a
17 number of cases where sheet pile solutions have been
18 used. Whether they involved slope stabilization
19 issues or other issues, I'm not sure without having
20 to review each case.

21 Q. Okay.

22 A. But I have performed a number of sheet
23 pile installation designs to either -- either
24 stabilize slopes or function as retaining walls or
25 excavation shoring or bulkheads, any number of ways

1 in which sheet piles are used to provide soil
2 pressure stabilization, not all of which are related
3 to slope stability failures.

4 Q. Okay. Have you designed any other sub
5 surface slope stable- -- or soil -- soil arresting
6 system, other than using sheet piles?

7 A. Again, probably. I mean, it depends upon
8 what your issues are.

9 Q. Right.

10 A. If -- if -- if a retaining structure is
11 needed, I probably would normally go to a sheet pile
12 system. But there are other solutions that are
13 available from -- depending on the circumstances, to
14 using segmental block walls or other forms of
15 retaining walls, soil replacements -- I mean, soil --
16 soil strengthening with injectable fluids that can
17 improve the density and the performance of the soil.
18 It depends upon what the issues are and -- and the
19 conditions -- soil conditions that you're dealing
20 with.

21 Q. Okay. But you've been involved with -- in
22 designing soil stabilization systems using those
23 other techniques that you've just outlined other --
24 beyond sheet piles?

25 A. Yeah. I've been involved with the other

1 systems, but I don't think I've been involved with
2 a -- an anchor block stabilization system, as
3 reflected in the D'Appolonia fix solution.

4 Q. Okay. The -- the -- the current analysis
5 that's being performed that started about three weeks
6 ago that Mr. -- is it Simac?

7 A. Yes.

8 Q. -- is performing, do you know how he's
9 performing his analysis?

10 A. That I would say is a Jim Kahle question.

11 Q. Okay.

12 A. Which I am very certain he could answer.

13 Q. Okay. If it -- so you just -- you have
14 not --

15 A. I haven't been that close to it.

16 Q. Okay.

17 A. I mean, it's just -- Jim Kahle and Mike
18 Simac are communicating back and forth. I'm not
19 privy to those communications. I'm just interested
20 in the results.

21 Q. Okay. So -- and you've -- you've rendered
22 opinions about both D'Appolonia and Hayward Baker's
23 conduct here, which you've characterized as grossly
24 negligent?

25 A. That is correct.

1 Q. And how -- what's your definition --
2 what's your definition of gross negligence?

3 A. Willful and wanton, particularly willful.
4 I think it was a willful decision by HB and
5 D'Appolonia that there was -- they didn't need to do
6 anything to address the conditions that existed at
7 the Schmidt, later Watson property.

8 Q. So in your mind, there isn't a -- there's
9 not a distinction between gross negligence and
10 willful and wanton conduct?

11 A. In my mind, there's not a difference
12 between gross negligence and willful dereliction of a
13 professional responsibility to follow up on yellow
14 flags that indicate problematic solutions.

15 Q. The fact that the record that you've been
16 provided is devoid of any data or -- from the
17 Schmidts or from -- from other parties from 2006
18 until when the house was sold in 2015?

19 A. Actually, after that.

20 Q. Right. Until 2020.

21 A. (Nods head.)

22 Q. Is that, in your mind, some indication
23 that, in fact, there weren't any problems during that
24 period of time?

25 A. I think it's an indication that there was

1 no manifestation of problems during that period of
2 time, at least that were detected. But, again, if
3 you look -- the information that we have with respect
4 to the inclinometer readings would indicate that,
5 again, a very slow movement of the subsurface soils
6 was occurring, even during the period of time when
7 there was no visible manifestation of damages in the
8 residential structure itself.

9 MR. SHEALY: Okay. All right. I think
10 that's everything I've got. Thank you very much.

11 THE WITNESS: Thank you.

12 MR. GOLDSMITH: Skip, I do have a few
13 questions for you on Exhibit 14 over here, if you can
14 help me find that.

15 THE WITNESS: Can I find it?

16 MR. GOLDSMITH: Let me see if I can help
17 you. You had it.

18 MR. SHEALY: You probably had it queued
19 up --

20 MR. GOLDSMITH: I did.

21 MR. SHEALY: -- and I messed it all up.

22 MR. GOLDSMITH: You did.

23 MR. SHEALY: Yeah, I'm sorry. I'll accept
24 service on that.

25 MR. GOLDSMITH: Here we go.

EXAMINATION

BY MR. GOLDSMITH:

Q. So, Exhibit 14 -- and I'm turning you to the second page, which contains an e-mail from you to Jim Kahle, Bob deHoll, and Hugh Watson. And it -- excuse my iPhone, my IWatch here. It walks through three different concepts that are labeled Repair A, Repair B, and Repair C. Take a minute to look back through those. I've got a few questions.

A. (Witness peruses documents.) Okay.

Q. As -- as I understood it, in order to determine whether one or more of these concepts was needed, your firm was recommending that Hugh Watson retain Terracon to do roughly \$50,000 worth of sub surface soil exploration?

A. That sounds correct.

Q. Okay. And -- and then it's that sub surface soil exploration that determines whether Repair A, B, C or some combination, thereof, is -- is appropriate, correct?

A. Again, that sounds correct. Let me read this. (Witness peruses document.) Yes. It looks like in Section C of the e-mail, we're talking about the geotechnical services by Terracon and our coordination of those to develop bid solicitation

1 documents by qualified contractors.

2 Q. And then if it's -- I believe I've seen in
3 that e-mail or in some of your other documents, where
4 Jim Kahle thought that in order to get a performance
5 warranty that Mr. Watson could rely on, it would
6 likely take A, B, and C at a cost of a million
7 dollars or more?

8 A. That's possible.

9 MR. SHEALY: Object to form.

10 THE WITNESS: I don't recall that off the
11 top of my head, but that would sound reasonable.

12 BY MR. GOLDSMITH:

13 Q. Okay. And then as I read through those
14 options A, B, and C, as I'm reading them, none of
15 them envision sheet piles with the tiebacks that are
16 your preferred method?

17 A. Right.

18 Q. So, how --

19 A. I'm different.

20 Q. You're different. So how do we -- how do
21 we square that up? Would your solution -- would you
22 give any sense of whether your solution would
23 be -- how it -- how the effectiveness and price of it
24 would compare to A, B, and C?

25 A. I mean, I don't -- I don't have a feel for

1 how the price comparison would be.

2 Q. Okay.

3 A. I could tell you that from a
4 decision-making standpoint, I would assess the -- the
5 feasibility and viability of each repair method
6 that's offered and look at the -- if the benefits
7 could be derived, particularly in terms of slope
8 stabilization effects, by ever how many solutions are
9 offered.

10 And I would -- I would look for a solution
11 that would provide a -- a -- a reasonable factor of
12 safety that may be different than from that that
13 would be derived from a sheet pile system. But it
14 would -- but a reasonable factor of safety at a price
15 less than the price of what I believe might be an
16 inappropriate repair.

17 But if I -- if I am convinced that a less
18 expensive, reliable repair would be made, my
19 inclination is to go with the most economical and
20 reliably effective repair that -- that we could
21 offer.

22 Q. Is -- is it your sense the sheet pile
23 system has the highest factor of safety?

24 A. In my judgment, yes.

25 Q. Okay. And then I wanted to make sure I

1 understood. There were some questions earlier about
2 this paver -- stone paver patio that -- that -- that
3 the Schmidts are believed to have built and then some
4 landscaping work. The pavers at the rear of the
5 house, that's what I call the paver patio.

6 A. I think there are two different issues.
7 One was a question concerning the patio behind the --
8 the Schmidt residence, which I believe was a part of
9 the original construction of the house in 1992.

10 Q. Okay.

11 A. And then the second was the landscaping
12 additions that -- that Mr. Watson added after he
13 purchased the house --

14 Q. Okay.

15 A. -- which I look as minor surcharge loads
16 on the -- on the -- on the property soils that are --
17 that are on the slope that's under discussion.

18 Q. Okay. And the -- when you reference minor
19 surcharge loads, is that, you think, a fair
20 description of the landscaping improvements?

21 A. Yes.

22 Q. Okay. And then does that minor surcharge
23 load turn fit with the patio or is --

24 A. No. They are two different things in.

25 Q. Okay. Is the patio a more significant

1 load?

2 A. No, no. No, it's not more significant, it
3 just predates all of the work that --

4 Q. I understand they're separate. But I'm --
5 what I anticipate is that based on some of the
6 correspondence that -- that when I depose
7 Mr. Wolosick tomorrow, he's going to indicate that --
8 that the Schmidts did something with the patio at the
9 rear of the house after Hayward Baker's work. And
10 I'm trying to understand from you the -- whether you
11 consider that patio to be significant or
12 insignificant in the loads that are imposed.

13 A. The -- the --

14 MR. SHEALY: Object to form.

15 THE WITNESS: -- the patio load would be
16 on the order of about 50 to 60 pounds per square foot
17 on the soils. The soil itself will weigh in the
18 range of 110 to 120 pounds per square feet for each
19 foot of thickness of soil. And you've got 25 feet of
20 soil, plus or minus, between the surface of the soil
21 and the failure plane of the -- of the slip plane.

22 So when you look at 60 pounds over -- you
23 do the math -- 120 pounds times 25 feet is thousands
24 of failure. I don't put much credence on the patio
25 load or the stone paver load or the -- the short

1 retaining walls and backfill materials to -- that
2 create a more serviceable backyard. You know, unless
3 those fills start approaching the rate of five or six
4 or seven feet thick, I don't think they would have
5 much impact at all on the behavior of the soils.

6 MR. GOLDSMITH: Okay. I don't have any
7 other questions. Thank you.

8 THE WITNESS: Uh-huh.

9 MR. SHEALY: I guess that -- couple
10 follow-ups.

11 EXAMINATION

12 BY MR. SHEALY:

13 Q. Earlier you were talking about the -- the
14 discussion you all were having about statute of
15 limitations and statute of repose. Was that
16 something you were worried about?

17 A. No. I -- I -- you know, I don't -- I
18 wouldn't say worried about. It was something that I
19 was aware of and that I was sensitive to.

20 Q. Why was that?

21 A. But I wasn't worried about it.

22 Q. Why -- why -- why were you aware of it or
23 sensitive to it in this case?

24 A. Well, Kirby, I helped draft the regulation
25 that moved the statute of repose from infinity to

1 like seven or eight years.

2 Q. Right.

3 A. So I'm fairly well familiar with the
4 statute of repose.

5 Q. Right. And did you -- what about the
6 circumstances in this case that gave you some --
7 that -- that made you sensitive to the potential
8 application of the statute of repose?

9 A. Well, I knew we had -- I knew we had a
10 five-year warranty that was issued in 2002, that's
11 the yellow flag. I knew that we had a change in
12 ownership of the property, that was a yellow flag.

13 So, I mean, I was -- I was aware of and I
14 was sensitive to the -- the issues that Mr. Watson
15 was facing. But not to the extent that it swayed my
16 opinions on the professional behavior or the
17 professional actions, I guess is a better word, the
18 professional actions of Hayward Baker and -- and
19 D'Appolonia.

20 Q. What -- what information did you have
21 about Mr. Watson's knowledge of Hayward Baker or
22 D'Appolonia's actions in this case, about when he
23 acquired that knowledge?

24 A. I mean, I -- I -- I think the knowledge
25 that I have is reflected in the communications -- the

1 records that are in our file of the communications
2 between Hayward Baker and -- and Mr. Schmidt --

3 Q. Uh-huh.

4 A. -- reflecting the -- the monitoring and
5 the reports of the inclinometer readings over the
6 period of years that -- that it was performed. I
7 would say all -- all of the information that I used
8 to digest my assessment of conditions, I think, is
9 reflected in the hard copy communications that are in
10 the file.

11 Q. I'll represent to you that Mr. Watson
12 testified yesterday that during his due diligence
13 with respect to the purchase of the residence in
14 2015, he said that there was materials -- he was made
15 aware that there had been a slope stabilization
16 repair made and that there was material made
17 available to him by the Schmidts during that due
18 diligence period. Did you have any kind of
19 communication with him about --

20 A. I --

21 Q. -- what he reviewed?

22 A. I was aware of that. And I think that
23 the -- if I recall correctly, the information that
24 Schmidt made available to Mr. Watson -- I think
25 Mr. Watson kept or had on file, had some -- you know,

1 he had some connection to it. And I think that was
2 furnished to Bob deHoll, who furnished at least some
3 of it to -- to H2L.

4 Q. Okay.

5 A. But I would -- yeah, I was aware that --
6 that -- that Watson was -- had a disclosure from
7 Schmidt that addressed all of this. I'm aware that
8 Watson had communications with Hayward Baker before
9 he purchased the house.

10 Q. Right.

11 A. And that he made his decision to purchase
12 the house, in large measure, on the representations
13 that were made by Hayward Baker to Mr. Watson about
14 the stable- -- slope stabilization repairs.

15 Q. Okay. Now, just -- I don't -- to put a
16 little finer point on what you just said. The --
17 you're aware that there was a disclosure made on the
18 residential disclosure form that Mr. Schmidt made
19 that Mr. Watson was aware of that there had been a
20 slope stabilization repair, correct?

21 A. I have not seen the form.

22 Q. Okay.

23 A. But, yes, I am aware that a
24 disclosure -- I think that's what led to Mr. Watson's
25 communication to Hayward Baker.

1 Q. Okay. Now -- but you said that there was
2 additional information that Mr. Schmidt made
3 available to Mr. Watson that was then conveyed to you
4 through Mr. deHoll, correct?

5 A. Yeah. I think that's some of the early
6 production documents that we received. And, again, I
7 think it's -- there should be hard copies of all of
8 the production documents that we have received.

9 Q. Okay.

10 A. Including those -- it would have been
11 around the first of 2021 in that -- in that time
12 period.

13 Q. Okay. So you believe that the information
14 that you got from Mr. deHoll very early on included
15 the information that was made available to Mr. Watson
16 during that due diligence period?

17 A. To the best of my knowledge, the answer's
18 yes.

19 Q. Okay. And that would have been attached
20 to e-mails that Mr. deHoll sent to you?

21 A. Most likely. It could have been a link.
22 I mean, it would -- it would have been transmitted in
23 some form electronically.

24 Q. Okay. Was there -- did you have some
25 concern, at any point in your investigation, about --

1 about Mr. Watson's knowledge gained during that due
2 diligence period?

3 A. His knowledge about what?

4 Q. About -- did you have any concern with
5 respect to the tasks that you performed in this case,
6 as to the knowledge that Mr. Watson gained from the
7 material that Mr. Schmidt provided to him during the
8 due diligence period, as to whether that might have
9 an effect on the outcome of this case?

10 A. Gosh, I don't know how to answer that.
11 You know, I'm not aware of what impact, if any, the
12 material had on Mr. Watson, other than to raise
13 the -- the question in his mind to the level that he
14 felt he needed to discuss the issue with Hayward
15 Baker.

16 MR. SHEALY: Okay. Okay. All right. I
17 have no further questions.

18 MS. BURTON: Ryan, anything else?

19 MR. MCCARTHY: I just have one follow-up
20 question.

21 EXAMINATION

22 BY MR. MCCARTHY:

23 Q. Why did the change in ownership of the
24 property raise a yellow flag in your mind?

25 A. Because as -- there was -- at the time, I

1 don't think I understood or knew all of the
2 associations of the -- of the warranty. And I was
3 aware that any time that property ownership changes,
4 there is typically some gap in communications. And I
5 just didn't know what that gap consisted of in this
6 case.

7 MR. MCCARTHY: Okay. Thanks.

8 THE WITNESS: Uh-huh.

9 MS. BURTON: Anybody else?

10 MR. SHEALY: I think we have reached the
11 actual end.

12 MR. GOLDSMITH: All right.

13 (The witness, after having been advised of
14 his right to read and sign the transcript, does not
15 waive that right.)

16 (Deposition was concluded at 3:31 p.m.)
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