THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DILLON COUNTY
Court of Common Pleas
Alison Renee Lee, Circuit Court Judge

RECEIVED
FEB 2 4 2014
SC Court of Appeals

Case Nos.: 2008-CP-17-0376
2008-CP-17-0377

Claude W. Graham, ... Respondent-Appellant,

v.

Town of Latta, South Carolina, ... Appellant-Respondent.

AND

Vickie B. Graham, ... Respondent-Appellant,

v.

Town of Latta, South Carolina, ... Appellant-Respondent.

RECORD ON APPEAL

Reynolds Williams
Post Office Box 1909
Florence, South Carolina 29503
(843) 662-3258
Attorney for Respondents-Appellants

Andrew F. Lindemann
Michael B. Wren
Daniel C. Plyler
Post Office Box 8568
Columbia, South Carolina 29202
(803) 806-8222
Attorney for Appellant-Respondent

INDEX

Order Granting Directed Verdict as to Inverse Condemnation of March 8, 2013 003

Order Denying Judgment Notwithstanding Verdict of March , 2013 007

Consent Order Substituting Counsel of December 15, 2010 017

Verdict (Claude Graham) by Jury on October 11, 2012 020

Verdict (Vickie Graham) by Jury on October 11, 2012 022

Complaint of Claude Graham of November 19, 2008 024

Second Amended Complaint of Vickie Graham of January 26, 2011 028

Answer to Complaint of Claude Graham of January 19, 2008 035

Answer to Second Amended Complaint of Vickie Graham of February 3, 2011 040

Notice of Appearance 045

Defendant's Motion for Judgment Notwithstanding Verdict of October 22, 2012 046

Plaintiffs' Opposition to Motion for Judgment Notwithstanding Verdict (s) of
October 30, 2012 056

Transcript of Trial of October 8-11, 2102
Testimony of Claude Graham
Direct Examination by Reynolds Williams 066
Cross Examination by Daniel Plyler 129
Testimony of Benton Henry
Direct Examination by Reynolds Williams 130
Redirect Examination by Reynolds Williams 147
Recross by Daniel Plyler 148
Testimony of Danielle Watson
Direct Examination by Reynolds Williams 149
Cross Examination by Daniel Plyler 156
Redirect Examination by Reynolds Williams 157
Testimony of Vickie Graham
Direct Examination by Reynolds Williams 164
Publication of Court's Exhibit 2 176
Testimony of David Culpepper
Direct Examination by Reynolds Williams 177

Testimony of Rogers Davis
Voir Dire By Daniel Plyler 180
Continued Direct Examination by Reynolds Williams 181
Cross Examination by Michael Wren 192
Testimony of John Benton
Further Direct Examination by Reynolds Williams 197
Redirect Examination by Reynolds Williams 207
Colloquy 209
Testimony of Michael Hanna
Further Direct Examination by Michael Wren 227
Cross Examination by Reynolds Williams 232
Redirect Examination by Michael Wren 234
Recross Examination by Reynolds Williams 235
Testimony of Claude Graham
Direct Examination by Reynolds Williams 238
Cross Examination by Daniel Plyler 244
Testimony of Danielle Watson
Direct Examination by Reynolds Williams 245
Colloquy 251

Plaintiffs' Exhibit 1 253

Plaintiffs' Exhibit 2 265

Plaintiffs' Exhibit 6 267

Plaintiffs' Exhibit 9 268

Plaintiffs' Exhibit 11 271

Plaintiffs' Exhibit 13 277

Plaintiffs' Exhibit 17 279

Defendant's Exhibit 1 284

Defendant's Exhibit 2 285

Defendant's Exhibit 3 286

Defendant's Exhibit 4 287

Certificate of Counsel 288

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF DILLON) FOURTH JUDICIAL CIRCUIT

FILED
GWEN T. HYATT
2013 MAR -8 PM 3:46
CLERK OF COURT
DILLON COUNTY

Claude W. Graham,

Plaintiff,

v.

Town of Latta, South Carolina,

Defendant.

Civil Action Number: 08-CP-17-376

ORDER

A CERTIFIED TRUE COPY
CLERK OF COURT
DILLON COUNTY

AND

Vickie B. Graham,

Plaintiff,

v.

Town of Latta, South Carolina,

Defendant.

Civil Action Number: 08-CP-17-377

THIS MATTER CAME BEFORE THE COURT pursuant to a motion for directed verdict on behalf of the Defendant, Town of Latta, during a trial held in Dillon, South Carolina, the week of October 8, 2012. The Plaintiffs were represented by Reynolds Williams, Esquire, and the Defendant was represented by Michael B. Wren, Esquire, and Daniel C. Plyler, Esquire. Arguments were presented by counsel for both the Plaintiffs and the Defendant.

The Court enters this Order with regards to the cause of action for inverse condemnation asserted by Plaintiff Vickie B. Graham in her Second Amended Complaint. This Order contains the Court's findings of fact and conclusions of law pursuant to Rule 52, SCRCP. After hearing the evidence in this matter, considering the arguments by counsel, and thoroughly reviewing the applicable law, the Court finds as follows:

#1

Plaintiff Vickie B. Graham has pled a cause of action for inverse condemnation against the Defendant relative to her residence and real property located at 220 East Rice Street in the Town of Latta, South Carolina. The Defendant operates a municipal wastewater system, which includes a sewer line located upon the subject property. The Plaintiffs assert that the sewer line on the subject property leaked or overflowed on September 5 and 6, 2008, and on subsequent dates, thereby causing damage to the subject property, and constituting a taking of the subject property. The Defendant has denied this claim.

Plaintiff Vickie B. Graham purchased the subject property in either 1989 or 1990. Subsequently, Plaintiff Claude W. Graham discovered, at some time prior to the events on September 5 and 6, 2008, that there was a sewer line located upon the subject property. The sewer line in question has existed on the subject property since approximately 1924. However, the parties have stipulated that the Defendant has been unable to produce a written instrument conveying an easement for the portion of the sewer system that crosses the subject property.

The storm event on September 5 and 6, 2008 resulted from Tropical Storm Hanna passing through Dillon County, South Carolina, which, by various accounts, produced a significant amount of rainfall causing flooding in the vicinity of the subject property. The Plaintiffs' engineering expert witness, Roger Davis, opined during their case in chief, that infiltration was an issue with the Town of Latta's wastewater system, which may have resulted from improper maintenance of that system. However, no evidence was presented that the Defendant undertook any affirmative act that resulted in any of the damages asserted by the Plaintiffs. There was also testimony that infiltration is a common issue in municipal wastewater and/or sewer systems. Furthermore, the sum of the testimony by the Plaintiffs and their witnesses was that the Defendant did not take any action relative to the subject sewer line on the Plaintiffs' property during the relevant time periods in question.

Based upon the facts and evidence presented at trial, the Court makes the following conclusions of law:

An inverse condemnation occurs when a government agency commits a taking of private property without exercising its formal powers of eminent domain. To establish an inverse condemnation, a plaintiff must show: (1) an affirmative, positive, aggressive act on the part of the governmental agency; (2) a taking; (3) the taking is for a public use; and (4) the taking has some degree of permanence. *Hawkins v. City of Greenville*, 358 S.C. 280, 290, 594 S.E.2d 557, 562 (Ct. App. 2004). Allegations of mere failure to act are insufficient. *Id.* at 291, 594 S.E.2d at 563.

Whether the plaintiff has established a claim for inverse condemnation is a matter for the court to determine. *WRB Limited Partnership v. County of Lexington*, 369 S.C. 30, 32, 630 S.E.2d 479, 481 (2006)(*citing Cobb v. South Carolina Dep't of Transp.*, 365 S.C. 360, 618 S.E.2d 299 (2005)). To prevail in such an action, a plaintiff must prove "an affirmative, aggressive, and positive act" by the government entity that caused the alleged damage to the plaintiff's property. *Id. See also, Rolandi v. City of Spartanburg*, 294 S.C. 161, 363 S.E.2d 385 (Ct. App. 1987).

The Plaintiffs have set forth no evidence that the Defendant Town of Latta, or any agent or representative thereof, undertook any affirmative, aggressive or positive act, which resulted in the damages alleged by the Plaintiffs. At most, the Plaintiffs have asserted that the Defendant failed to act with regard to the subject sewer line located on the Plaintiffs' property. As is stated above, mere failures to act are an insufficient basis upon which to maintain a claim for inverse condemnation. Therefore, based upon the applicable case law cited herein, the Court finds that the Plaintiffs have failed to establish a claim for inverse condemnation, and, as such, the Defendant is entitled to directed verdict and this claim is dismissed as a matter of law.

ard
3

AND IT IS SO ORDERED.

The Honorable Alison Renee Lee
Presiding Judge

Columbia, South Carolina

February 27, 2013

FILED
GWEN T. HYATT
2013 MAR -8 PM 3:43
CLERK OF COURT
DILLON COUNTY

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF DILLON) FOR THE FOURTH JUDICIAL CIRCUIT

Claude W. Graham and Vickie B. Graham,) Civil Action No.: 2008-CP-17-0376
2008-CP-17-0377

Plaintiff,

v.

Town of Latta, South Carolina,

Defendant.

A CERTIFIED TRUE COPY
CLERK OF COURT
DILLON COUNTY

ORDER

This matter comes before the Court by way of Defendant Town of Latta's Motion for Judgment Notwithstanding Verdict (JNOV) pursuant to Rule 50(b), SCRCP, or in the alternative, for New Trial Absolute pursuant to Rule 59, SCRCP. Plaintiffs, Claude W. Graham ("Mr. Graham") and Vickie B. Graham ("Mrs. Graham"), are represented by Reynolds Williams, Esquire, and Defendant is represented by Michael Wren, Esquire, and Daniel Plyler, Esquire.

Plaintiffs filed separate Complaints against Defendant on November 19, 2008. Mr. Graham's Complaint contained a cause action for negligence, and Mrs. Graham's Complaint alleged negligence, inverse condemnation, and trespass. A jury trial was held the week of October 8, 2012. Before the matter was submitted to the jury, this Court granted Defendant's Motion for Directed Verdict as to the trespass and inverse condemnation claims. The jury returned with a verdict of $100,000 for Mr. Graham and $225,000 for Mrs. Graham on their negligence claims. Defendant filed post-trial motions on October 26, 2012. Plaintiffs and Defendant submitted memoranda on the post-trial motions.

1. **JUDGMENT NOTWITHSTANDING THE VERDICT (JNOV)**

Defendant contends that the evidence adduced at trial does not justify the jury's verdict and that the Court should grant Defendant's motion for JNOV. "A party who has moved for a directed verdict may move to have the verdict and any judgment entered thereon set aside and to have judgment entered in accordance with his motion for a directed verdict." Rule 50(b), SCRCP. In ruling on JNOV motions, the trial court is required to view the evidence and the inferences that reasonably can be drawn therefrom, in the light most favorable to the non-moving party. *See Curcio v. Caterpillar, Inc.*, 355 S.C. 316, 320, 585 S.E.2d 272, 274 (2003). "The trial judge cannot disturb the factual findings when ruling on a motion for judgment notwithstanding

the verdict unless a review of the record discloses no evidence that reasonably supports them." *Burns v. Universal Health Services, Inc.*, 361 S.C. 221, 231-32, 603 S.E.2d 605, 611 (Ct. App. 2004). "The trial court must deny the motions when evidence yields more than one inference or its inference is in doubt." *Sabb v. South Carolina State Univ.*, 350 S.C. 416, 427, 567 S.E.2d 231, 236 (2002).

A. Tort Claims Act

Defendant moved for a Directed Verdict at the conclusion of Plaintiffs' case and renewed its arguments as to Plaintiffs' negligence claims at the conclusion of the evidence. Defendant contends that it is entitled to JNOV because it is immune from Plaintiffs' negligence claim for failure to properly maintain the sanitary sewer and drainage system based upon exceptions to the waiver of sovereign immunity under the South Carolina Tort Claims Act, specifically S.C. Code Ann. Sections 15-78-60(1), (2), and (5) (1976). "The governmental entity asserting the Act as an affirmative defense bears the burden of establishing a limitation upon liability or an exception to the waiver of immunity." *Hawkins v. City of Greenville*, 358 S.C. 280, 292, 594 S.E.2d 557, 563 (Ct. App. 2004). "The Plaintiff must present evidence of the governmental entity's duty to act in order to recover under the Act." *Id.* at 293, 594 S.E.2d at 564.

Section 15-78-60(1) provides that a "governmental entity is not liable for a loss resulting from . . . legislative, judicial, or quasi-judicial action or inaction," and Section 15-78-60(2) provides immunity for "administrative action or inaction of a legislative, judicial, or quasi-judicial nature." There is no evidence of any legislative, judicial, or quasi-judicial action or inaction or any administrative action or inaction. Plaintiff presented testimony that Defendant had a duty to operate and maintain the sewer system and that the Mayor of the Town of Latta was aware of a problem on Plaintiffs' property after the September 5 - 6, 2008 flooding events. The evidence presented at trial was that the Defendant's governing body did nothing consciously or unconsciously regarding the sanitary sewer and drainage matter on Plaintiffs' property. There was no testimony that any ordinance was enacted in relation to Plaintiff's property or the flooding or that there was any action or inaction of a legislative, judicial, or quasi-judicial nature by the Town of Latta's governing body. In addition, there was no evidence presented that any administrative action or inaction took place. Accordingly, Sections 15-78-60(1) and (2) do not apply.

Section 15-78-60(5) provides a governmental entity immunity for "the exercise of discretion or judgment by the governmental entity or employee or the performance or failure to perform any act or service which is in the discretion or judgment of the governmental entity or employee." "A finding of immunity under the Act 'is contingent on proof that the governmental entity, faced with alternatives, actually weighed competing considerations and made a conscious choice using accepted professional standards.'" *Sabb*, 350 S.C. at 428, 567 S.E.2d at 237 (quoting *Wooten ex rel. Wooten v. South Carolina Dep't of Transp.*, 333 S.C. 464, 468, 511 S.E.2d 355, 357 (1999)). The South Carolina Court of Appeals has held that a city exercises discretion in "the measured policy judgments required to build and maintain an adequate municipal sewer and drainage system," and therefore, "is immune from liability for negligence claims arising out of the design and maintenance of the drainage system." *Hawkins*, 358 S.C. at 294, 594 S.E.2d at 564.

The burden was on Defendant to show that it not only actually weighed competing considerations and alternatives regarding the action or inaction taken to remedy the problems with its sanitary sewer and drainage system on Plaintiffs' property, but that, in doing so, it utilized accepted professional standards appropriate to resolve the issue. The standard to prove discretionary immunity is inherently factual. *See Pike v. South Carolina Dept. of Transp.*, 343 S.C. 224, 232, 540 S.E.2d 87, 91 (2000). A government entity "should not be entitled to discretionary immunity as a matter of law by creating an issue of fact." *Id.* "It is not enough to say the defect was noted and a decision was made not to repair it." *Id.* Defendant claims that the testimony of Mike Hanna established that Defendant considered and weighed competing alternatives, and then used accepted professional standards in deciding that there was nothing needed to be done regarding the portion of its sanitary sewer and drainage system at issue. Testimony was given at trial that Defendant was presented with several choices to remedy the drainage problem: move the pipe on Plaintiffs' residence, add a sleeve to insulate the pipe, fix any crack or leak with concrete or glue, or do nothing. Testimony was also presented that Defendant conducted smoke tests to determine whether there was a defect, and attempted to snake a camera through the line, then made a decision not to repair the pipe. Roger Davis, Plaintiffs' expert in mechanical engineering and environmental engineering in the field of waste disposal, testified that DHEC reports indicated that the Defendant was warned to take action or investigate an inflow problem in the Town's water system. Mr. Davis further testified that this

type of problem may get worse if not remedied. Thus, testimony was presented that Defendant was on notice of defects in the Town's water system and also at Plaintiff's residence in particular, yet made a decision not to repair the defects.

Furthermore, a duty arose on Defendant's part once Defendant was placed on notice of the problem at Plaintiffs' residence after the flooding events on September 5 - 6, 2008. *See Sabb*, 350 S.C. at 429, 567 S.E.2d at 237. Danielle Watson of the South Carolina Department of Health & Environmental Control (DHEC) testified that Defendant had a duty to operate and maintain the sewer system. Roger Davis provided testimony that there was a breach in the system and that Defendant failed to properly maintain the system. Whether Defendant breached its duty to maintain its drainage system by failing to exercise one of the options available to fix the flooding at Plaintiffs' residence was a question for the jury. *See Steinke v. South Carolina Dept. of Labor, Licensing and Regulation*, 336 S.C. 373, 520 S.E.2d 142 (1999). The jury considered the evidence of whether Defendant's inaction constituted maintenance and rejected the discretionary immunity provision of the Tort Claims Act. Because there is evidence to support the jury's verdict, Defendant's Motion for JNOV on the grounds that Plaintiffs' negligence claim is barred by application of the South Carolina Tort Claims Act is **DENIED.**

B. Standard of Care and Proximate Cause

Defendant maintains that Plaintiffs failed to produce evidence at trial regarding the applicable standard of care for proper maintenance of the portion of Defendant's sanitary sewer and drainage system at issue. Defendant also asserts that the matters at issue were not within common knowledge, and that design, operation, and maintenance of a municipal drainage system requires specialized training and knowledge.

There was evidence presented at trial relating to duty and Defendant's breach of that duty. Testimony was presented by Danielle Watson that Defendant had a duty to operate and maintain the sewer system. Roger Davis provided testimony that there was a breach in the system and that Defendant failed to properly maintain the system. If the duty to maintain a municipal drainage system is outside the realm of common knowledge, Plaintiff provided expert witness testimony on that duty.

Defendant also claims that Plaintiffs failed to present evidence establishing that their damages were proximately caused by Defendant's acts or omissions. Taking the evidence in the light most favorable to Plaintiffs, there was evidence to establish that there was a problem with

Defendant's sewer line on Plaintiffs' property. There was also evidence that Defendant took no steps to correct the problem to stop the damage to Plaintiffs after it became aware of the problem. Davis' testimony was that Defendant's sewer and drainage system maintenance records showed infiltration and/or inflow problems. Evidence was also presented as to the location of Defendant's sewer line in relation to Plaintiffs' house. Mr. Graham testified that he discovered the location of Defendant's sewer line, which he identified as running directly running under his house, when he hired a plumber and the line was revealed. From these facts, competing inferences might be reasonably drawn as to Defendant's failure to exercise due care in the maintenance of its sewer and drainage system on the Graham's property and the issue of proximate cause. *See Snow v. City of Columbia*, 305 S.C. 544, 409 S.E.2d 797 (Ct. App. 1991). The jury weighed the evidence and concluded that the Defendant was liable. Defendant's Motion for JNOV on these grounds is **DENIED.**

C. Damages

Defendant argues that Plaintiffs failed to present any evidence establishing that their damages were proximately caused by events subsequent to September 5 - 6, 2008. Defendant claims that Plaintiffs only pled damages caused by two events, one occurring on September 5 - 6, 2008, and the other occurring September 13, 2008. This Court determined, as a matter of law, that Defendant is not responsible for damages stemming from the September 5 - 6 event. Specifically, Defendant claims that Plaintiff Claude Graham failed to present any evidence that his alleged damages relating to personal property were caused by an event subsequent to September 5 - 6.

Evidence was presented at trial that Mr. Graham's claim for damages to personal property may be related to the flooding event on September 13, 2008. The personal property included hand tools, golf equipment, two lawn mowers, and other equipment stored in a shed on the Plaintiff's property. The shed containing the personal property was not evaluated for damage until after the September 13, 2008 flooding event and subsequent flooding events. Therefore, there is evidence to support that the damage to personal property may not be solely related to the September 5 - 6 flooding events.

Additionally, Defendant argues that Plaintiffs failed to present evidence establishing diminution in fair market value to the property at issue. Generally, "[t]he measure of damages for permanent injury to real property by pollution, whether by nuisance, trespass, negligence, or

inverse condemnation is the diminution in market value of the property," or the difference between value of the land before injury and value after injury. *Ravan v. Greenville County*, 315 S.C. 447, 465, 434 S.E.2d 296, 307 (Ct. App. 1993). In this case, Plaintiffs pled damages for the cost to rebuild their house, not the value of the land itself. "[T]he cost of repair or restoration is a valid measure of damages for injury to a building." *Roland v. Palmetto Hills*, 308 S.C. 283, 286, 417 S.E.2d 626, 628 (Ct. App. 1992). Plaintiffs presented evidence through John Benton of the cost to repair or rebuild the Plaintiff's house. Mr. Benton provided an itemization of the costs of the materials needed to rebuild Plaintiff's house, including electrical wiring, plumbing, appliances, and painting. Thus, Plaintiffs presented evidence to support their damages as the cost to rebuild or repair the house. Defendant's Motion for JNOV on these grounds is **DENIED**.

2. NEW TRIAL ABSOLUTE

Defendant also contends that it is entitled to a new trial absolute. The trial court's decision to grant or deny a motion for a new trial absolute is within its discretion. *See Cock-N-Bull Steak House, Inc. v. Generali Ins. Co.*, 321 S.C. 1, 466 S.E.2d 727 (1996). A trial court may grant a new trial pursuant to Rule 59(a) when there is prejudicial error in the admission of evidence or if the "the verdict is excessive or inadequate." *Rush v. Blanchard*, 310 S.C. 375, 379, 426 S.E.2d 802, 805 (1993). For a trial court to order a new trial based on erroneous admission of testimony, "the record must show not only error but also prejudice." *Watts v. Bell Oil Co. of Ocean Drive, Inc.*, 266 S.C. 61, 63, 221 S.E.2d 529, 530 (1976). When deciding a motion to grant a new trial, "this Court must consider the testimony and reasonable inferences therefrom in the light most favorable to the nonmoving party." *Welch v. Epstein*, 342 S.C. 279, 302, 536 S.E.2d 408, 420 (Ct. App. 2000).

A. The Witnesses

Defendant moves for a new trial absolute on the grounds that the Court erred in allowing the testimony of Plaintiffs' expert witness, John Benton. Defendant claims that during voir dire it was elicited from Mr. Benton that he only performed an estimate of what it would cost to completely rebuild the house owned by Plaintiffs, and that Plaintiffs failed to produce evidence that the house needed to be completely rebuilt.

"A competent estimate of the cost of repair to a building creates a factual issue regarding damages." *Scott v. Fort Roofing and Sheet Metal Works, Inc.*, 299 S.C. 449, 385 S.E.2d 826 (1989). Mr. Benton testified as to an estimate to rebuild the house as it was prior to the damage

sustained. Mr. Benton's estimate did not include the land upon which the house is built, Plaintiffs' swimming pool, carport, or driveway. While Mr. Benton did not testify as to the nature and extent of the damages or whether the house needed to be completely rebuilt or partially repaired, there was sufficient evidence for the jury to infer that the Plaintiffs' house had become a total loss. Ms. Graham testified that she was unable to enter the house due to health concerns. Thomas Manning Robertson presented evidence that testing inside the Plaintiffs' house indicated that a quantity of mold was present. Dr. David Culpepper presented evidence that Plaintiffs had respiratory problems that may have been related to the presence of mold in their house after the flooding events. Therefore, there was evidence for the jury to infer that the house needed to be rebuilt, and because Plaintiffs only asked for damages in the form of the building itself, the correct measure of damages was used. Because the admission of Mr. Benton's testimony was not an error, Defendant is not entitled to a new trial absolute on this basis.

Defendant also claims that the court erred in allowing Plaintiffs' witness, William Benton Henry, to review, in front of the jury, photographs that had been excluded by the court during the pre-trial conference. Defendant further claims that the photographs were not needed to "refresh" Mr. Henry's memory, as it was not established through proper questioning whether his memory needed to be refreshed. The photographs were not introduced into evidence or given to the jury. This Court allowed the photographs to refresh Mr. Henry's recollection as to the dates of the events at issue. Defendant made no objection to the foundational questions used to establish that Mr. Henry needed to refresh his recollection as using the photographs. Mr. Henry testified that he witnessed several significant flooding events at Plaintiffs' house, and had taken pictures of these events on various occasions. Thus, Defendant is not afforded a new trial absolute on these grounds.

In addition, Defendant argues it is entitled to a new trial absolute because the court erred in failing to exclude Plaintiffs' Exhibit 1 after the Court granted a directed verdict as to Plaintiffs' claims associated with the September 5 - 6 events. Plaintiffs' Exhibit 1 consisted of photographs taken on September 6, 2008 by Plaintiffs. These photographs purported to show resulting debris that collected on Plaintiffs' property following the September 5 - 6 flooding events. This Court determined at trial that the photos were allowed to go to the jury not to support Plaintiffs' claim for damages, but to show conditions that led to Defendant having notice

of the alleged sewer flooding. The Court is accorded broad discretion in ruling on the admissibility of testimony and exhibits. *See State v. Quattlebaum*, 338 S.C. 441, 527 S.E.2d 105 (2000); *State v. Von Dohlem*, 322 S.C. 234, 471 S.E.2d 689 (1996). Because Defendant has not shown prejudice, Defendant is not afforded a new trial on this basis.

Furthermore, Defendant claims that the Court failed to instruct the jury that Defendant was not responsible for claims associated with the alleged damages stemming from the September 5 - 6 events and that Defendant was not liable for the mere presence of a portion of its sanitary sewer and drainage system on Plaintiffs' real property. The Court provided an instruction to the jury on the September 5 – 6 events as it deemed appropriate. Defendant did not request that the Court charge the jury as to Defendant's liability for the mere presence of the sanitary sewer and drainage system on Plaintiff's property. Thus, Defendant is not afforded a new trial on this basis.

Defendant also claims that the Court erred in allowing the rebuttal testimony of Claude Graham and Danielle Watson, as they did not provide testimony that rebutted any of the testimony or evidence presented by Defendant. The admission of reply testimony is within the sound discretion of the court and should only result in a new trial if the admission of such testimony is prejudicial. *See State v. Farrow*, 332 S.C. 190, 194, 504 S.E.2d 131, 133 (Ct. App. 1998). The two witnesses called in reply, Claude Graham and Danielle Watson, placed in issue two additional facts: (1) the location of the sewer line; and (2) the nature of the testing done by Defendant to determine the location and integrity of the line. Mr. Graham's testimony contradicted Defendant's witness, Will Brown, who also testified about the location of the sewer line. Ms. Watson testified, contrary to Mr. Brown and Plaintiffs' witness Mike Hanna, that Defendant attempted to run a camera through the line on Plaintiffs' property, but was unable to do so because of an obstruction. Thus, the admission of rebuttal testimony was proper and Defendant was not prejudiced.

Defendant further argues that the Court erred in allowing Danielle Watson to testify as to information told to her by James Bailey, the Water/Sewer Department Supervisor of the Town of Latta, which Mr. Bailey obtained from a third party. This testimony dealt specifically with an alleged effort to snake a camera through a portion of Defendant's sewer system. Defendant contends that this testimony was hearsay within hearsay and should have been excluded. Plaintiffs argue that the statement was not hearsay within hearsay pursuant to Rule 801(d)(2) of

the South Carolina Rules of Evidence, because it was "a statement made by the party's agent or servant concerning a matter within the scope of the agency or employment during the existence of the relationship." Unless the error by the court in admitting the testimony affected the substantial rights of Defendant, a motion for new trial absolute must be denied. *See* Rule 61, SCRCP. Danielle Watson's statement did not affect the substantial rights of Defendant and thus Defendant's Motion for New Trial Absolute on these grounds is **DENIED.**

B. Charges to the Jury

Defendant claims that the Court erred in failing to charge S.C. Code Ann. Sections 15-78-60(1), (2), (4), (9), and (13). Defendant also contends that the Court failed to charge language that Defendant requested regarding Plaintiffs' burden to establish proximate cause, and therefore Defendant was prejudiced.

This Court determined at the Directed Verdict stage that Sections 15-78-60(1), (2) do not apply in this case. Section 15-78-60(4) does not apply because there is no claim that there is a violation of a specific regulation or ordinance. Section 15-78-60(9) simply had no applicability relating to the sole surviving cause of action for negligence. Section 15-78-60(13) does not apply because DHEC was exercising its authority and performing inspections in conjunction with DHEC authority, rather than the Town of Latta exercising its authority over businesses and other entities.

In regard to Defendant's proximate cause charge, the Court charged an equivalent proximate cause charge and the Court's charge was neither erroneous nor prejudicial, both of which are required for post-verdict reversal. Thus, Defendant's Motion for New Trial on these grounds is **DENIED.**

C. Inappropriate Verdict

Defendant moves for a new trial absolute based upon the Thirteenth Juror Doctrine. Defendant also claims that the verdict returned by the jury was grossly excessive in light of the evidence presented at trial regarding alleged damages suffered.

Based on a thorough review of the record, the jury's verdict was not grossly excessive in light of evidence presented at trial. Mr. Graham presented evidence that he had been damaged by several hundred dollars in medical bills, $7,500 in equipment, and by $70,000.00 in rent paid or due for substitute housing from November 2008 to April 15, 2012. Ms. Graham testified and evidence was presented that that she sustained several hundred dollars in medical bills, the loss

of a house that would cost at least $457,000.00 to replace, and pain and suffering. A verdict of $100,000 for Mr. Graham and $225,000 for Mrs. Graham is well within the range reasonably inferred by the evidence.

In regard to the Thirteenth Juror Doctrine, this Court finds that there was sufficient evidence in the record to support the jury's verdict and the verdict should not be overturned or disregarded. "The thirteenth juror doctrine is a vehicle by which the trial court may grant a new trial absolute when [it] finds that the evidence does not justify the verdict." *Folkens v. Hunt*, 300 S.C. 251, 254, 387 S.E.2d 265, 267 (1990). "This ruling has also been termed granting a new trial upon the facts." *Id.* "A trial judge may also set aside a verdict and grant a new trial based solely on the judge's view of the evidence." *Pinckney v. Winn-Dixie Stores, Inc.*, 311 S.C. 1, 5, 426 S.E.2d 327, 329 (Ct. App. 1992). Because the evidence justifies the jury's verdict, the verdict should not be overturned.

ORDER

For the reasons stated above, Defendant Town of Latta's Motion for Judgment Notwithstanding Verdict, or in the alternative, for New Trial Absolute is **DENIED.**

AND IT IS SO ORDERED.

ALISON RENEE LEE
Presiding Judge

Columbia, South Carolina
February 28, 2013

#10

STATE OF SOUTH CAROLINA **COUNTY OF DILLON** Claude W. Graham, Plaintiff, Vs. Town of Latta, South Carolina, Defendant, AND Vickie B. Graham, Plaintiff, vs. Town of Latta, South Carolina, Defendant.	**IN THE COURT OF COMMON PLEAS** **FOURTH JUDICIAL CIRCUIT** **C/A # 2008-CP-17-376** **CONSENT ORDER** **(Substituting Counsel)**

A CERTIFIED TRUE COPY
CLERK OF COURT
DILLON COUNTY

FILED
GWEN T. HYATT
2010 DEC 21 AM 10:17
CLERK OF COURT
DILLON COUNTY

This matter is presently before the court upon the requests of James C. Rushton, III by and through William P. Hatfield and Reynolds Williams, as is evidenced by their consents affixed hereto, that this court issue an Order allowing the Plaintiffs to substitute Reynolds Williams of Willcox, Buyck & Williams, P.A., for their present counsel, James C. Rushton, III, in the above entitled action on the grounds that they have dismissed their former counsel and now wish to retain new counsel to represent them in the case at bar.

ACCORDINGLY, IT IS THEREFORE ORDERED that Reynolds Williams is hereby substituted as counsel of record for the Plaintiffs, Mr. Claude W. Graham and Mrs. Vickie B. Graham.

AND IT IS SO ORDERED.

CHIEF ADMINISTRATIVE JUDGE
FOR THE FOURTH JUDICIAL CIRCUIT

Date: 12/15/2010

Charlesfield, SC

WE CONSENT:

JAMES C. RUSHTON, III BY AND THROUGH
WILLIAM P. HATFIELD

REYNOLDS WILLIAMS

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTH JUDICIAL CIRCUIT
COUNTY OF DILLON	)	C/A # 2008-CP-17-376 & 2008-CP-17-377
Claude W. Graham,	)	
Plaintiff,	)	
vs.	)	
Town of Latta, South Carolina,	)	
Defendant,	)	
AND	)	**NOTICE OF REPRESENTATION**
Vickie B. Graham,	)	
Plaintiff,	)	
vs.	)	
Town of Latta, South Carolina,	)	
Defendant.	)	

A CERTIFIED TRUE COPY
CLERK OF COURT
DILLON COUNTY

FILED
GWEN T. HYATT
2010 DEC 21 AM 10:17
CLERK OF COURT
DILLON COUNTY

PLEASE TAKE NOTICE that we are represented by Reynolds Williams and the firm of Willcox, Buyck & Williams, P.A. in connection with the prosecution of the above cases against the Town of Latta.

Reynolds Williams

Claude W. Graham

Vickie B. Graham

December 9, 2010

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Dillon
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2008 -CP-17- 376

Claude Graham

PLAINTIFF(S)

Town of Latta

DEFENDANT(S)

CHECK ONE:

☒ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other _____

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____
NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

FILED
GWEN T. HYATT
2012 OCT 11 PM 6:15
CLERK OF COURT
DILLON COUNTY

IT IS ORDERED AND ADJUDGED: ☐ See attached order. (Formal order to follow)
☐ Statement of Judgment by the Court:

Jury verdict for $100,000 for Plaintiff. Post trial motions to be supplemented within 10 days

Dated at Dillon, South Carolina, this 11th day of October, 2012.

A. Shirl Lee
PRESIDING JUDGE

This judgment was entered on the _____ day of _____, 20____, and a copy mailed first class this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

A CERTIFIED TRUE COPY
CLERK OF COURT
DILLON COUNTY

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

SCCA SCRCP Form 4 Revised 06/2008

JR# 2008-CP-17-00376

STATE OF SOUTH CAROLINA COUNTY OF DILLON	)	IN THE COURT OF COMMON PLEAS FOURTH JUDICIAL CIRCUIT
Claude W. Graham, Plaintiff, v. Town of Latta, South Carolina, Defendant.	)	Civil Action No.: 2008-CP-17-00376 **VERDICT**

WE, THE JURY, UNANIMOUSLY FIND FOR:

[✓] The **PLAINTIFF**,

One hundred thousand dollars ($ 100,000.00)
Actual damages

[ ] The **DEFENDANT**.

FILED
GWEN T. HYATT
2012 OCT 11 PM 6:15
CLERK OF COURT
DILLON COUNTY

George Plowden
Foreperson

Date: 10/11/12

A CERTIFIED TRUE COPY
CLERK OF COURT
DILLON COUNTY

JR# 2008-CP-17-00376

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Dillon
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2008 -CP- 17 - 377

Vicki Graham

PLAINTIFF(S)

Town of Latta

DEFENDANT(S)

CHECK ONE:

☒ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other _____.

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____.

FILED
GWEN T. HYATT
CLERK OF COURT
DILLON COUNTY
2012 OCT 11 PM 6:

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____
NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order. (Formal order to follow).
☐ Statement of Judgment by the Court:

Jury Verdict for $225,000 for Plaintiff. Post trial motions to be supplemented within 10 days.

Dated at Dillon, South Carolina, this 11th day of October, 2012.

A. Hiott Lee
PRESIDING JUDGE

This judgment was entered on the _____ day of _____, 20____, and a copy mailed first class this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CERTIFIED TRUE COPY
CLERK OF COURT
DILLON COUNTY

CLERK OF COURT

SCCA SCRCP Form 4 Revised 06/2008

JR# 2008-CP-17-00377

STATE OF SOUTH CAROLINA COUNTY OF DILLON	)	IN THE COURT OF COMMON PLEAS FOURTH JUDICIAL CIRCUIT
Vickie B. Graham Plaintiff, v. Town of Latta, South Carolina, Defendant.	)	Civil Action No.: 2008-CP-17-00377 **VERDICT**

WE, THE JURY, UNANIMOUSLY FIND FOR:

[✓] The **PLAINTIFF**,

Two hundred twenty five thousand dollars ($ 225,000.00)
Actual damages

[ ] The **DEFENDANT**.

FILED
GWEN T. HYATT
2012 OCT 11 PM 6:15
CLERK OF COURT
DILLON COUNTY

Foreperson

Date: 10/11/12

A CERTIFIED TRUE COPY
CLERK OF COURT
DILLON COUNTY

TDL 2008-CP-17-00377

STATE OF SOUTH CAROLINA **COUNTY OF DILLON** Claude W. Graham, Plaintiff, Vs. Town of Latta, South Carolina, Defendant.	**IN THE COURT OF COMMON PLEAS** **FOURTH JUDICIAL CIRCUIT** **C/A # 2008-CP-17- 376** FILED GWEN T. HYATT 2008 NOV 19 AM 9:54 CLERK OF COURT DILLON COUNTY **COMPLAINT** **(Jury Trial Requested)**

The Plaintiff, complaining of the Defendant herein, alleges as follows:

1. The Plaintiff is a resident and citizen of the County of Dillon, State of South Carolina.

2. The Defendant is a municipal corporation organized and existing in Dillon County under the laws of the State of South Carolina.

3. The Plaintiff resides with his wife at 220 East Rice Street within the municipal limits of the Town of Latta, South Carolina. The Plaintiff is the owner of two (2) motor vehicles which operate out of the residence at 220 East Rice Street, Latta, South Carolina.

4. The Town of Latta operates a municipal wastewater/sewer system. A portion of the sewer system runs along the right-of-way of East Rice Street. After the incidents described below, the Plaintiff learned that a portion of the municipal wastewater/sewer system is actually located on the property owned by the Plaintiff and his wife and runs beneath the house which is constructed on the property.

5. On the night of September 5, 2008 and the morning of September 6, 2008, the municipal wastewater/sewer system operated by the City backed up, overflowed, and flooded the

residence of the Plaintiff and his wife, flooding the two (2) vehicles and effectively destroying them or seriously damaging them to the point that they have no residual value.

6. The Plaintiff has attempted to repair the vehicles and continues to experience trouble with the vehicles, both with odor emanating from the vehicles and with mechanical and electrical problems.

7. The Plaintiff and his wife pumped water from under the residence and had repairs done when once again on September 13, 2008 the municipal wastewater/sewer system backed up and overflowed again, once again flooding the Plaintiff's property and further damaging the residence located on the property.

8. Subsequent to these occurrences, the Plaintiff has learned that the Defendant was cited in the past by the South Carolina Department of Health and Environmental Control for failure to properly maintain its municipal wastewater/sewer facilities and equipment.

9. Prior to the flooding on September 5, 2008 and September 6, 2008 and subsequent flooding on September 13, 2008, the officials of the Town of Latta, South Carolina were aware of problems with its municipal wastewater/sewer system. The Defendant failed to adequately fund, maintain, and properly operate its municipal wastewater/sewer system.

10. As a result of the flooding activities described above, the Plaintiff has been injured and damaged as more particularly set forth herein.

11. That the injuries and damages sustained by the Plaintiff were caused and occasioned by the willful, wanton, reckless, careless, negligent, and unlawful conduct on the part of the Defendant in one or more of the following particulars, to wit:

a) In failing to properly maintain and operate its municipal wastewater/sewer system;

b) In failing to take corrective action after previous citations by the South Carolina Department of Health and Environmental Control;

c) In failing to appropriate adequate funds for the proper maintenance and operation of its municipal wastewater/sewer system, especially after having previous notice of problems with the operation of that system;

d) In failing to take proper precautions for the safety and health of the citizens and residents of Latta, South Carolina with particular regard to the Plaintiff;

e) In failing to notify the Plaintiff of the existence of a leaking water line running from the right-of-way of East Rice Street across the Plaintiff's property and under the residence in which he and his family reside;

f) In failing to warn the Plaintiff of the existence of the leaking wastewater/sewer line under her house; and

g) In failing to follow the laws of the State of South Carolina and the appropriate regulations with regard to proper operation of a municipal wastewater/sewer system.

All of the above being in violation of laws of the State of South Carolina.

12. As a direct and proximate cause of said negligence, wantonness, recklessness and unlawfulness on the part of the Defendant, the Plaintiff has been greatly damaged in that his property has been flooded by untreated waste water which has substantially prevented him from the use of enjoyment of his vehicles and it has destroyed their value.

13. In addition, since the flooding has occurred, the Plaintiff has been made physically ill as a result of the wastewater contamination and has suffered damages in that regard in the following particulars:

a) That he has suffered severe and painful symptoms as a result of the contamination;

b) The Plaintiff has required medical treatment and will in the future be required to undergo medical expense and treatment for his symptoms;

c) The Plaintiff's previous good health has been permanently impaired;

d) The Plaintiff has suffered a loss of enjoyment of life; and

e) The Plaintiff has been put into a great inconvenience in having to reside on the second floor of his residence and, most likely, will have to relocate at great expense.

14. The Plaintiff is entitled to judgment against the Defendant for actual damages in an amount to be determined by a jury.

WHEREFORE, the Plaintiff prays as follows:

a) That the Court inquire into the matters and things set forth herein;

b) That the Plaintiff be granted judgment against the Defendant for an amount of actual damages to be determined by a jury; and

c) For such other and further relief as may be just and proper.

Florence, SC

November 14, 2008



JAMES C. RUSHTON, III,
Attorney for Plaintiff

THE HYMAN LAW FIRM, LLP
170 Courthouse Square
Post Office Box 1770
Florence, SC 29503-1770
(843) 662-5000

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTH JUDICIAL CIRCUIT
COUNTY OF DILLON	)	C/A # 2008-CP-17-377

A CERTIFIED TRUE COPY

CLERK OF COURT
DILLON COUNTY

Vickie B. Graham,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**SECOND AMENDED COMPLAINT**
	)	**(Jury Trial Requested)**
Town of Latta, South Carolina,	)	
	)	
Defendant.	)	

FILED
GWEN T. HYATT
2011 JAN 26 AM 10: 25
CLERK OF COURT
DILLON COUNTY

The Plaintiff, complaining of the Defendant herein, alleges as follows:

1. The Plaintiff is a resident and citizen of the County of Dillon, State of South Carolina.

2. The Defendant is a municipal corporation organized and existing in Dillon County under the laws of the State of South Carolina.

3. The Plaintiff is the owner of real property and improvements located at 220 East Rice Street within the municipal limits of the Town of Latta, South Carolina. This property is the residence where the Plaintiff and her husband have lived and raised their family.

4. The Town of Latta operates a municipal wastewater/sewer system. A portion of the sewer system runs along the right-of-way of East Rice Street. After the incidents described below, the Plaintiff learned that a portion of the municipal wastewater/sewer system is actually located on the property owned by the Plaintiff and runs beneath the house which is constructed on the property.

5. On the night of September 5, 2008 and the morning of September 6, 2008, the municipal wastewater/sewer system operated by the City backed up, overflowed, and flooded the

property owned by the Plaintiff and seriously, and effectively, destroyed the residence constructed on the property and owned by the Plaintiff.

6. The Plaintiff and her husband pumped water from under the residence and had repairs done when once again on September 13, 2008 the municipal wastewater/sewer system backed up and overflowed again, once again flooding the Plaintiff's property and further damaging the residence located on the property.

7. Subsequent to these occurrences, the Plaintiff has learned that the Defendant was cited in the past by the South Carolina Department of Health and Environmental Control for failure to properly maintain its municipal wastewater/sewer facilities and equipment.

8. Prior to the flooding on September 5, 2008 and September 6, 2008 and subsequent flooding on September 13, 2008, the officials of the Town of Latta, South Carolina were aware of problems with its municipal wastewater/sewer system. The Defendant failed to adequately fund, maintain, and properly operate its municipal wastewater/sewer system.

FOR A FIRST CAUSE OF ACTION
(Negligence)

9. The allegations set forth above are re-alleged as if fully set forth hereafter.

10. As a result of the flooding activities described above, the Plaintiff has been injured and damaged as more particularly set forth herein.

11. That the injuries and damages sustained by the Plaintiff were caused and occasioned by the willful, wanton, reckless, careless, negligent, and unlawful conduct on the part of the Defendant in one or more of the following particulars, to wit:

a) In failing to properly maintain and operate its municipal wastewater/sewer system;

b) In failing to take corrective action after previous citations by the South Carolina Department of Health and Environmental Control;

c) In failing to appropriate adequate funds for the proper maintenance and operation of its municipal wastewater/sewer system, especially after having previous notice of problems with the operation of that system;

d) In failing to take proper precautions for the safety and health of the citizens and residents of Latta, South Carolina with particular regard to the Plaintiff;

e) In failing to notify the Plaintiff of the existence of a leaking water line running from the right-of-way of East Rice Street across the Plaintiff's property and under the residence in which she and her family reside;

f) In failing to warn the Plaintiff of the existence of the leaking wastewater/sewer line under her house; and

g) In failing to follow the laws of the State of South Carolina and the appropriate regulations with regard to proper operation of a municipal wastewater/sewer system.

All of the above being in violation of laws of the State of South Carolina.

12. As a direct and proximate cause of said negligence, wantonness, recklessness and unlawfulness on the part of the Defendant, the Plaintiff has been greatly damaged in that her property and improvements to the property have been flooded by untreated waste water which has substantially prevented her from the use of her residence and which has greatly depreciated the improvements in value, to the point where they have no value.

13. As a direct and proximate result of the negligence, wantonness, recklessness and unlawfulness on the part of the Defendant:

a) The Plaintiff and her husband have been required to live in the second floor of the residence and will likely have to vacate the residence due to health concerns;

b) The household pet owned by the Plaintiff has developed severe respiratory problems and has required veterinarian treatment as a direct result of the actions on the part of the Defendant;

c) The Plaintiff will incur substantial damages in the repair of her house and it will be depreciated in value even if such repairs are possible;

d) The Plaintiff and her husband will be forced to undergo relocation expense.

14. In addition, since the flooding has occurred the Plaintiff has been made physically ill as a result of the wastewater contamination and suffered damages in that regard in the following particulars:

a) That she has suffered severe and painful symptoms as a result of the contamination;

b) The Plaintiff has required medical treatment and will in the future be required to undergo medical expense and treatment for her symptoms;

c) The Plaintiff's previous good health has been permanently impaired;

d) The Plaintiff has suffered a loss of enjoyment of life; and

e) The Plaintiff has been put into a great inconvenience in having to reside on the second floor of her residence and, most likely, will have to relocate at great expense.

15. The Plaintiff is entitled to judgment against the Defendant for actual damages in an amount to be determined by a jury.

FOR A SECOND CAUSE OF ACTION
(Inverse Condemnation)

16. The allegations set forth above are re-alleged as if fully set forth hereafter.

17. The Plaintiff is the owner of the property of the aforementioned address which the Plaintiff uses as her personal residence and that of her family and which is more particularly described as follows:

> All that certain piece, parcel, or tract of land, situate in Latta, Dillon County, South Carolina, having the following measurements and boundaries: Commencing in a ditch on the North side of Rice Street where said lot adjoins property owned now or formerly by M.H. Cox, Jr. and running thence along Rice Street North 55 degrees 20 minutes West 125 feet to an iron pipe; thence North 34 degrees 40 minutes East 180.8 feet to the Town Canal (an iron stake and 4 inch gum tree being on the ditch bank marking the line); thence along said Town Canal South 54 degrees 20 minutes East 26 feet and South 44 degrees 05 minutes East 129.5 feet to a junction of canals; thence along unnamed canal South 39 degrees 35 minutes West 112 feet and South 59 degrees 50 minutes West 48 feet to the beginning point; said lot being bounded, now or formerly, to-wit: On the North by Town Canal; on the East by unnamed canal and property of M.H. Cox, Jr.; on the South by Rice Street ; and on the West by property of Margaret K. Finklea.

18. The Defendant is a municipal corporation authorized to operate a municipal wastewater/sewer system and said operation is for a public purpose. The Defendant is vested with the powers of eminent domain under the statutory laws of the State of South Carolina.

19. On the evening of September 5, 2008 and the subsequent day of September 6, 2008 and on subsequent dates, the Defendant's municipal wastewater/sewer system backed up and overflowed causing severe, permanent, and irreparable damage to the Plaintiff's property and residence. The Defendant had prior notice of problems with the operation and maintenance of its municipal wastewater/sewer system.

20. The failure of the Defendant to properly construct, operate, and maintain its municipal wastewater/sewer system has resulted in a *de facto* taking of the property of the Plaintiff.

21. The Plaintiff is entitled to an award of damages from the Defendant for the taking of her property as described above and is further entitled to an award of attorney's fees.

FOR A THIRD CAUSE OF ACTION
(Trespass)

22. At some unknown time in the distant past the Town of Latta began to trespass upon the property now owned by the Plaintiff Vickie B. Graham. The trespass was not discovered until after the damages described in the previous Paragraphs of this Complaint manifested themselves.

23. The Defendant's trespass upon the land now owned by Vickie B. Graham continued, is intentional, and has caused damage to the Plaintiff's property.

24. The Town of Latta has no legal right to construct or operate its main sewer line on the Plaintiff's property, and has received no such permission from the Plaintiff. As a result of the Defendant's trespass, the Plaintiff's property has been damaged in an amount exceeding Three Hundred Thousand and No/100 ($300,000.00) Dollars and the Plaintiff and her family have suffered the injuries and damages described above.

25. In addition to actual and punitive damages for the Town of Latta's intentional tort, the Plaintiff is entitled to an injunction requiring the Town of Latta to cease operating its main sewer line, or indeed any sewer line, on the instant property belonging to the Plaintiff.

WHEREFORE, the Plaintiff prays that the Court grant judgment against the Defendant as follows:

a) On the First Cause of Action in an amount of actual damages to be determined by a jury;

b) On the Second Cause of Action in an amount of damages to be determined by a jury;

c) On the Third Cause of Action in an amount of damages to be determined by a jury;

d) For an award of attorney's fees;

e) For a permanent injunction barring the Town of Latta from operating its main sewer line, or any sewer line, on her property at 220 East Rice Street, Latta, South Carolina; and

f) For such other and further relief as may be just and proper.

WILLCOX, BUYCK, & WILLIAMS, P.A.

By: _____

Reynolds Williams #006153
PO Box 1909
Florence, S C 29503-1909
(843) 662-3258 - Tel.
(843) 662-1342 - Fax
Email: Reynolds@WillcoxLaw.com
Attorney for Plaintiff

January 25, 2011

2008312

STATE OF SOUTH CAROLINA	)	
	)	**IN THE COURT OF COMMON PLEAS**
COUNTY OF DILLON	)	
Claude W. Graham,	)	
	)	Civil Action Number:08-CP-17-376
Plaintiff,	)	
	)	**ANSWER**
v.	)	**(Jury Trial Demanded)**
	)	
Town of Latta, South Carolina,	)	
	)	
Defendant.	)	

NOW COMES the Defendant Town of Latta and answers the Complaint of the Plaintiff as follows:

FOR A FIRST DEFENSE

1. The Complaint fails to state facts sufficient to state a cause of action against this Defendant.

FOR A SECOND DEFENSE

2. The Defendant denies each and every allegation of the Plaintiff's Complaint not hereinafter specifically admitted, qualified, or explained.

3. As to Paragraphs 1 and 2 of the Complaint, the Defendant admits the allegations contained therein.

4. As to Paragraph 3 of the Complaint, the Defendant admits upon information and belief that he resides with his wife at 220 East Rice Street within the Town of Latta. As to the remainder of Paragraph 3, the Defendant lacks sufficient information as to form

KAR
#1

a belief as to the truth and veracity of the same and therefore denies the same and demands strict proof thereof.

5. As to Paragraph 4 of the Complaint, the Defendant admits only that it operates a municipal wastewater and sewer system within the Town of Latta which includes East Rice Street and includes pipes running beneath the Plaintiff's residence. As to the remainder of Paragraph 4, the Defendant denies the same and demands strict proof thereof.

6. As to Paragraph 5 of the Complaint, the Defendant admits only that on September 5 - 6, 2008, the sewer system around East Rice Street overflowed. As to the remainder of Paragraph 5, the Defendant denies the same and demands strict proof thereof.

7. As to Paragraph 6 of the Complaint, the Defendant lacks sufficient information as to form a belief as to the truth and veracity of the same and therefore denies the same and demands strict proof thereof.

8. As to Paragraph 7 of the Complaint, the Defendant admits only that on September 13, 2008, the sewer system around East Rice Street overflowed. As to the remainder of Paragraph 7, the Defendant denies the same and demands strict proof thereof.

9. As to Paragraph 8 of the Complaint, the Defendant lacks sufficient information as to form a belief as to the truth and veracity of the same and therefore denies the same and demands strict proof thereof.

KAR
#2

10. As to Paragraph 9 of the Complaint, the Defendant denies the same and demands strict proof thereof.

11. As to Paragraph 10 of the Complaint, the Defendant lacks sufficient information as to form a belief as to the truth and veracity of the same and therefore denies the same and demands strict proof thereof.

12. As to Paragraphs 11, 12, 13 and 14, the Defendant denies the same and demands strict proof thereof.

FOR A THIRD DEFENSE

13. The Defendant would allege that such claims brought by the Plaintiff are governed by the terms and conditions (including immunities and statutory limitations) applicable to claims against governmental entities and therefore would plead the South Carolina Tort Claims Act, Section 15-78-10 et seq. of the Code of Laws, as a bar to this action.

FOR A FOURTH DEFENSE

14. This Defendant is immune from suit pursuant to the South Carolina Tort Claims Act, South Carolina Code Ann. Section 15-78-10 et seq., specifically, Section 15-78-60(1), (2), (4), (5), (7), (8) and (13).

FOR A FIFTH DEFENSE

15. This Defendant is entitled to sovereign immunity.

KAR
#3

FOR A SIXTH DEFENSE

16. This Defendant is entitled to legislative immunity.

FOR A SEVENTH DEFENSE

17. The Plaintiff has failed to properly mitigate his damages, if any, and/or properly maintain the property at issue and, therefore, one or more of his claims are barred in whole or in part by such failure.

FOR AN EIGHTH DEFENSE

18. The Defendant would allege, upon information and belief, that any injuries or damages sustained by the Plaintiff were due to and caused by an act of God which bars the Plaintiff's claims against the Defendant.

FOR A NINTH DEFENSE

19. The Plaintiff's claims are barred by application of the Common Enemy Rule.



WHEREFORE, having fully answered the Complaint of the Plaintiff, the Defendant prays that the Complaint be dismissed with prejudice, for the costs of this action, and for such other and further relief as the Court deems just and proper.

DAVIDSON & LINDEMANN, P.A.

BY: _____

WILLIAM H. DAVIDSON, II, ESQUIRE
KATE A. RICE, ESQUIRE
1611 Devonshire Drive, Second Floor
Post Office Box 8568
Columbia, South Carolina 29202
T: 803-806-8222
F: 803-806-8855
wdavidson@dml-law.com
krice@dml-law.com

ATTORNEYS FOR DEFENDANT TOWN OF LATTA

Columbia, South Carolina

December 19, 2008

STATE OF SOUTH CAROLINA	)	
	)	**IN THE COURT OF COMMON PLEAS**
COUNTY OF DILLON	)	
		Civil Action Number:08-CP-17-377
Vickie B. Graham,	)	
	)	
Plaintiff,	)	**ANSWER TO SECOND AMENDED COMPLAINT**
	)	
v.	)	
	)	**(Jury Trial Demanded)**
Town of Latta, South Carolina,	)	
	)	
Defendant.	)	
	)	

The Defendant, Town of Latta, hereby answers the Second Amended Complaint of the Plaintiff as follows:

FOR A FIRST DEFENSE

1. The Second Amended Complaint fails to state facts sufficient to state a cause of action against the Defendant.

FOR A SECOND DEFENSE

2. The Defendant denies each and every allegation of the Plaintiff's Second Amended Complaint not hereinafter specifically admitted, qualified, or explained.

3. As to the allegations set forth in Paragraph 1 of the Second Amended Complaint, the Defendant admits same upon information and belief.

4. As to the allegations set forth in Paragraph 2 of the Second Amended Complaint, the Defendant admits that the Town of Latta is a political subdivision and/or municipality organized under the laws of the State of South Carolina.

5. As to the allegations set forth in Paragraph 3 of the Second Amended Complaint, the Defendant admits the same upon information and belief.

Def
①

6. As to the allegations set forth in Paragraph 4 of the Second Amended Complaint, the Defendant admits only that it operates a municipal wastewater and sewer system within the Town of Latta which includes East Rice Street and includes pipes running beneath the Plaintiff's residence. As to the remainder of Paragraph 4, the Defendant denies the same and demands strict proof thereof.

7. As to the allegations set forth in Paragraph 5 of the Second Amended Complaint, the Defendant admits only that on September 5 – 6, 2008, due to flooding in the Town of Latta associated with a Tropical Storm, the wastewater and/or sewer system around East Rice Street overflowed. As to the remainder of Paragraph 5, the Defendant denies the same and demands strict proof thereof.

8. As to the allegations set forth in Paragraph 6 of the Second Amended Complaint, the Defendant admits only that on September 13, 2008, the wastewater and/or sewer system around East Rice Street overflowed. As to the remainder of Paragraph 6, the Defendant denies the same and demands strict proof thereof.

9. As to the allegations set forth in Paragraph 7 of the Second Amended Complaint, the Defendant lacks sufficient information as to form a belief as to the truth and veracity of the same and therefore denies the same and demands strict proof thereof.

10. As to the allegations set forth in Paragraph 8 of the Second Amended Complaint, the Defendant denies the same and demands strict proof thereof.

11. As to the allegations set forth in Paragraph 9 of the Second Amended Complaint, the Defendant reiterates each of the preceding paragraphs as if set forth verbatim herein.

12. As to the allegations set forth in Paragraphs 10, 11, 12, 13, 14, and 15 of the Second Amended Complaint, the Defendant denies the same and demands strict proof thereof.

DCP
2

13. As to Paragraph 16, the Defendant reiterates each of the preceding paragraphs as if set forth verbatim herein.

14. As to the allegations set forth in Paragraph 17 of the Second Amended Complaint, the Defendant admits the same upon information and belief.

15. As to the allegations set forth in Paragraph 18 of the Second Amended Complaint, the Defendant asserts that said allegations attempt to establish a legal conclusion, and therefore the Defendant would crave reference thereto.

16. As to the allegations set forth in Paragraph 19 of the Second Amended Complaint, the Defendant admits only that the wastewater and/or sewer system overflowed on September 5 – 6, 2008. As to the remainder of Paragraph 19, the Defendant denies the same and demands strict proof thereof.

17. As to the allegations set forth in Paragraphs 20 and 21 of the Second Amended Complaint, the Defendant denies the same and demands strict proof thereof.

18. As to the allegations set forth in Paragraphs 22, 23, 24 and 25, the Defendant denies the same and demands strict proof thereof.

FOR A THIRD DEFENSE

19. The Defendant would allege that such claims brought by the Plaintiff are governed by the terms and conditions (including immunities and statutory limitations) applicable to claims against governmental entities and therefore would plead the South Carolina Tort Claims Act, Section 15-78-10 *et seq.* of the Code of Laws, as a bar to this action.

DCP
(3)

FOR A FOURTH DEFENSE

20. The Defendant is immune from suit pursuant to the South Carolina Tort Claims Act, South Carolina Code Ann. Section 15-78-10 *et seq.*, specifically, Section 15-78-60(1), (2), (4), (5), (7), (8), (9) and (13).

FOR A FIFTH DEFENSE

20. The Defendant is entitled to sovereign immunity.

FOR A SIXTH DEFENSE

21. The Defendant is entitled to legislative immunity.

FOR A SEVENTH DEFENSE

22. The Plaintiff has failed to properly mitigate her damages, if any, and/or properly maintain the property at issue and, therefore, one or more of her claims are barred in whole or in part by such failure.

FOR AN EIGHTH DEFENSE

23. The Defendant would allege, upon information and belief, that any injuries or damages sustained by the Plaintiff were due to and caused by an act of God which bars the Plaintiff's claims against the Defendant.

FOR A NINTH DEFENSE

24. The Plaintiff's claims are barred by application of the Common Enemy Rule.

FOR A TENTH DEFENSE

25. Plaintiff's Petition for Attorney's Fees is improper in this action and must be dismissed, pursuant to the South Carolina Tort Claims Act and South Carolina common law.

④

FOR AN ELEVENTH DEFENSE

26. Any and all claims for punitive damages are barred by the South Carolina Tort Claims Act § 15-78-10 *et seq.* of the Code of Laws of the State of South Carolina, 1976 as amended and the common law of the State of South Carolina.

FOR A TWELFTH DEFENSE

27. The Defendant asserts that the Plaintiff's claims are barred, in whole or in part, by the applicable statute of limitations.

WHEREFORE, having fully answered the Second Amended Complaint of the Plaintiff, the Defendant prays that the Second Amended Complaint be dismissed with prejudice, for the costs of this action, and for such other and further relief as the Court deems just and proper.

DAVIDSON & LINDEMANN, P.A.

BY: _____

WILLIAM H. DAVIDSON, II, ESQUIRE
DANIEL C. PLYLER, ESQUIRE
1611 Devonshire Drive, Second Floor
Post Office Box 8568
Columbia, South Carolina 29202
T: 803-806-8222
F: 803-806-8855
wdavidson@dml-law.com
dplyler@dml-law.com

Counsel for the Defendant

Columbia, South Carolina

February 3, 2011

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTH JUDICIAL CIRCUIT
COUNTY OF DILLON	)	C/A # 2008-CP-17-376 & 2008-CP-17-377
Claude W. Graham,	)	
Plaintiff,	)	
vs.	)	
Town of Latta, South Carolina,	)	
Defendant,	)	**NOTICE OF APPEARANCE**
AND	)	
Vickie B. Graham,	)	
Plaintiff,	)	
vs.	)	
Town of Latta, South Carolina,	)	
Defendant.	)	

A CERTIFIED TRUE COPY

CLERK OF COURT DILLON COUNTY

FILED GWEN T. HYATT 2010 DEC 15 AM 10:02 CLERK OF COURT DILLON COUNTY

Please take notice that the undersigned hereby enters his appearance in this matter as attorney for the Plaintiffs. The undersigned requests that he be provided copies of all notices, orders, etc., which may be issued.

WILLCOX, BUYCK, & WILLIAMS, P.A.

By: _____

Reynolds Williams #006153
PO Box 1909
Florence, S C 29503-1909
(843) 662-3258 - Tel.
(843) 662-1342 - Fax
Email: Reynolds@WillcoxLaw.com
Attorney for Plaintiffs

December 14, 2010

STATE OF SOUTH CAROLINA	)	
	)	**IN THE COURT OF COMMON PLEAS**
COUNTY OF DILLON	)	
Claude W. Graham,	)	
	)	Civil Action Number: 08-CP-17-376
Plaintiff,	)	
	)	
v.	)	
	)	
Town of Latta, South Carolina,	)	
	)	
Defendant.	)	
	)	
AND	)	Civil Action Number: 08-CP-17-377
	)	
Vickie B. Graham,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
Town of Latta, South Carolina,	)	
	)	
Defendant.	)	

NOTICE OF MOTION AND MOTION FOR JUDGMENT NOTWITHSTANDING VERDICT, OR ALTERNATIVELY, MOTION FOR NEW TRIAL ABSOLUTE

TO: THE HONORABLE ALISON RENEE LEE.

REYNOLDS WILLIAMS, ESQUIRE, COUNSEL FOR PLAINTIFF

YOU WILL PLEASE TAKE NOTICE that the undersigned attorney for the Defendant Town of Latta, South Carolina will move before the Honorable Alison Renee Lee at such time and place as may be set by the Court, for an Order pursuant to Rule 50(b), SCRCP, and Rule 59,

SCRCP, granting a judgment notwithstanding the verdict, or alternatively, a new trial absolute, after the above referenced matter was tried the week of October 8, 2012.

The Defendant asserts that the only claim that was supposed to be presented to the jury was the alleged failure on the part of the Defendant Town of Latta to properly maintain the portion of the Defendant's sanitary sewer system, which runs across the real property owned by Plaintiff Vickie Graham at 220 East Rice Street in Latta, South Carolina. All other claims asserted by the Plaintiffs in this matter were properly dismissed by this Court at the directed verdict stage of the trial. However, the Defendant expressly reserves, and craves reference to, all of the arguments for directed verdict set forth by the Defendant at the trial of this matter.

The Defendant Town of Latta's motion is based on the following grounds:

1. The Defendant is entitled to a judgment notwithstanding the verdict because the Plaintiffs' remaining claim of negligence was completely barred by application of South Carolina Tort Claims Act, specifically S.C. Code Ann. § 15-78-60(5), which is commonly referred to as discretionary immunity.

In this court's ruling on the Defendant's motion for directed verdict, this court correctly ruled that the evidence in the record showed that the Defendant, Town of Latta, exercised its discretion in deciding not to perform any work on the pipe in question, because the objective testing performed on said pipe showed that no work was necessary. The evidence at trial clearly showed that the Defendant Town of Latta was faced with multiple choices, but decided, in its discretion, not to act. That exercise of discretion was based upon accepted professional standards, as was testified to by the Defendant Town of Latta's consulting Engineer, Mike Hanna.

As has been recognized by our Supreme Court, "the exercise of such discretion includes the right to be wrong." *See*, *Giannini v. S.C. Dep't of Transportation*, 378 S.C. 573, 664 S.E.2d 450. The discretionary immunity defense does not require a showing that discretion was exercised without error, or that a correct decision was made. If that were what is required, there would obviously be no need for an immunity defense. *See*, *Denene, Inc. v. City of Charleston*, 352 S.C. 208, 574 S.E.2d 196, 198 (2002) ("[t]he Court must presume the legislature did not intend a futile act, but rather intended its statutes to accomplish something"). The governmental entity does not need immunity where it acted reasonably or made a correct decision. In those instances, there would be no liability irregardless of immunity. Instead, a governmental entity is entitled to discretionary immunity particularly in those instances where it is alleged that errors were made in the exercise of discretion, or where it is alleged that an incorrect decision was made.

This important distinction was recognized by our Supreme Court in the seminal case of *McCall v. Batson*, *supra*. In abolishing the common law defense of sovereign immunity, our Supreme Court nonetheless recognized the importance of maintaining discretionary immunity, holding:

> [T]he abrogation of the rule will not extend to legislative, judicial and executive acts by individuals acting in their official capacity. These discretionary activities cannot be controlled by threat of tort liability by members of the public who take issue with the decisions made by public officials. We expressly decline to allow tort liability for these discretionary acts. *The exercise of discretion includes the right to be wrong.*

329 S.E.2d at 742. (Emphasis added). *See also, Jensen v. Anderson County Dept. of Social Services*, 304 S.C. 195, 403 S.E.2d 615, 619 (1991) ("[g]enerally, a government official may not be held liable for the negligent performance of a discretionary duty").

As the court correctly observed during its ruling on the Defendant's motion for directed verdict, the evidence at trial clearly showed that the Defendant exercised its discretion in this matter. As the testimony of Mike Hanna established, the Defendant Town of Latta actually considered and weighed competing alternatives, and then used accepted professional standards in deciding that there was nothing that needed to be done regarding the portion of their sanitary sewer system at issue. Therefore, the Plaintiffs' only remaining claim should not have been submitted to the jury, as it was completely barred by discretionary immunity as set forth at S.C. Code Ann. § 15-78-60(5).

2. The Defendant is entitled to a judgment notwithstanding the verdict due to an exception to the waiver of sovereign immunity, pursuant to the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-60(1) and (2). Specifically, our Court of Appeals has found that the design and maintenance of a sewage and/or drainage system is considered a quasi-judicial and discretionary function of a governmental entity. *See*, *Proctor v. Dep't of Health and Environmental Control*, 368 S.C. 279, 628 S.E.2d 496 (Ct. App. 2006); *Hawkins v. City of Greenville*, 358 S.C. 280, 594 S.E.2d 557 (Ct. App. 2004). The evidence at trial clearly showed that the Plaintiffs' only remaining claim was the alleged failure on the part of the Defendant Town of Latta to properly maintain the portion of its sanitary sewer system that crosses the property owned by Plaintiff Vickie Graham at 220 East Rice Street in Latta, South Carolina. The Defendant Town of Latta is clearly immune from such claims.

3. The Defendant is entitled to judgment notwithstanding the verdict because the Plaintiffs failed to present any evidence at the trial of this matter regarding what the applicable standard of care would be regarding the proper maintenance of the portion of the Defendant Town of Latta's sanitary sewer system at issue. The Defendant asserts that the matters at issue

were not within the common knowledge, and that the design, operation, and maintenance of a municipal sewer system requires specialized training and knowledge. Therefore, since the Plaintiffs failed to present evidence at trial establishing the applicable standard of care, the Defendant Town of Latta is entitled to judgment notwithstanding the verdict.

4. The Defendant is entitled to judgment notwithstanding the verdict because the Plaintiffs failed to present evidence establishing that the damages claimed by the Plaintiffs were proximately caused by any alleged act or failure to act on the part of the Defendant Town of Latta. It is the burden of the Plaintiffs in a claim of negligence to establish the existence of a duty, the existence of a breach of said duty, and that the alleged breach of said duty proximately caused damages. The Plaintiffs failed to present any evidence that the damages claimed in this matter were proximately caused by any act or failure to act on the part of the Defendant Town of Latta.

5. The Defendant is entitled to judgment notwithstanding the verdict because the Plaintiffs failed to present any evidence establishing that the damages claimed by the Plaintiffs were proximately caused by any subsequent events and/or overflows, as set forth at trial. The Defendant Town of Latta asserts that the Plaintiffs only pled that their damages were caused by two events, one occurring on September 5th and 6th of 2008, and the other occurring on September 13th of 2008. This Court correctly determined, as a matter of law, that the Defendant Town of Latta is not responsible for any alleged damages stemming from the alleged September 5th and 6th event. However, the Plaintiffs failed to present any evidence establishing that any of their alleged damages were proximately caused by the subsequent event, or any other subsequent event, as opposed to being solely caused by the September 5th and 6th event. This is especially true for any and all claims of damages asserted by Plaintiff Claude Graham, as his Complaint is

solely for personal property, which he pled, and testified to at the trial, was damaged in the September 5th and 6th event.

6. The Defendant is entitled to judgment notwithstanding the verdict because the Plaintiffs failed to present any evidence establishing the diminution in fair market value to the property at issue. The correct measure of damages in the matter at issue is for diminution in fair market value of the real property in question. The Plaintiffs failed to present any evidence establishing diminution in fair market value. As such, the Plaintiffs failed to meet their burden, and failed to establish their claims.

7. The Defendant moves for a new trial absolute because the court made an error in allowing the testimony of Plaintiffs' expert witness, John Benton. During voir dire it was elicited from Mr. Benton that he only performed an estimate for what it would cost him to completely rebuild the house owned by Plaintiff Vickie Graham. However, Mr. Benton further admitted that he had no evidence, information, or knowledge that the house in question needed to be completely rebuilt. Furthermore, the Plaintiffs failed to present any evidence that the house in question needed to be completely rebuilt. As such, Mr. Benton's testimony was completely irrelevant to the matters at issue, and most likely caused juror confusion. Additionally, the correct measure of damages in the matter at issue is for diminution in fair market value of the real property in question, which Mr. Benton's testimony failed to address, and the Plaintiffs failed to present any evidence establishing any diminution in the fair market value of any of the property at issue.

8. The Defendant moves for a new trial absolute because the court made an error in allowing Plaintiffs' witness, Benton Henry, to review, in front of the jury, photographs that had been excluded by the court during the pre-trial conference. The review of those photographs was

improper, as those photographs had specifically been excluded. Furthermore, the use of those photographs to allegedly "refresh" Mr. Henry's memory was inappropriate, as it was never established, through proper questioning whether or not Mr. Henry's memory needed to be refreshed. Allowing Mr. Henry to testify while reviewing the excluded photographs further compounded the prejudice to the Defendant that had already been found to exist by the court during the pre-trial conference.

9. The Defendant moves for a new trial absolute because the court made an error in not excluding Plaintiffs' exhibit 1 after the court directed verdict for any of the Plaintiffs' claims associated with the September 5th and 6th events. It was clear from the testimony at trial that the photographs which comprise Plaintiffs' exhibit 1 were taken on September 6, 2008 by either Vickie or Claude Graham, and were purportedly showing the resulting debris that collected on the property at issue following the September 5th and 6th event. Once any claims associated with the September 5th and 6th event were dismissed by the court, the photographs which comprise Plaintiffs' exhibit 1 were completely irrelevant to any matter at issue, and should have been excluded. Allowing this exhibit to go with the jury during their deliberations most likely resulted in juror confusion.

10. The Defendant moves for a new trial absolute because the court made an error in not fully explaining to the jury the court's directed verdict rulings. The court considered, and treated as such during the trial, the Plaintiffs' claim of negligence as two separate and distinct claims, one being negligence by the Defendant in failing to properly maintain its sanitary sewer system prior to the September 5th and 6th event, and the other being negligence on by the Defendant in failing to properly maintain and/or repair its sanitary sewer system after the September 5th and 6th event. The court correctly determined, as a matter of law, that the

Defendant Town of Latta was not responsible for any claims associated with any alleged damages stemming from the September 5th and 6th event, but failed to adequately instruct the Jury as to that ruling, which most likely resulted in juror confusion.

11. The Defendant moves for a new trial absolute because the court made an error in not fully explaining to the jury that they could not consider the mere presence of the portion of the Defendant Town of Latta's sanitary sewer system on the real property owned by Plaintiff Vickie Graham as a basis for awarding damages to the Plaintiffs. As the court correctly ruled at the directed verdict stage, the Defendant was not liable to the Plaintiff for the mere presence of the portion of its sanitary sewer system on the real property at issue. However, the failure to adequately instruct the Jury as to that ruling, most likely resulted in juror confusion.

12. The Defendant moves for a new trial absolute because the court made an error in allowing rebuttal testimony from Claude Graham and Danielle Watson, both of whom had already testified during the Plaintiffs' case in chief. Neither of the two rebuttal witnesses provided any testimony that rebutted any of the testimony or evidence presented by the Defendant, and therefore it was error on the part of the court to allow said witnesses to testify in rebuttal.

13. The Defendant moves for a new trial absolute because the court made an error in allowing Danielle Watson to testify as to information told to her by James Bailey, that resulted from information obtained by James Bailey from a third-party. This testimony dealt specifically with an alleged effort to snake a camera through the portion of the Defendant's sanitary sewer system at issue in this case. Such testimony constituted hearsay within hearsay, and should have been excluded. Furthermore, that testimony was offered in rebuttal, but failed to rebut any testimony or evidence submitted by the Defendant.

14. The Defendant moves for a new trial absolute because the court failed to charge S.C. Code Ann. §15-78-60(1), (2), (4), (9), and (13), even though said statutory provisions clearly applied to the matters at issue and the evidence presented at trial.

15. The Defendant moves for a new trial absolute because the court failed to charge language requested to be charged by the Defendant regarding the Plaintiffs' burden in establishing proximate cause. Specifically, the Defendant requested that the court charge the jury with the following:

> I charge you that "the general principle applies that where the cause of the plaintiff's injury may be as reasonably attributed to an act for which defendant is not liable as to one for which he is liable, plaintiff has failed to carry the burden of establishing that his injuries were the proximate result of defendant's] negligence."
>
> *Messier v. Adicks*, 251 S.C. 268, 271, 161 S.E.2d 845, 846 (1968).

The Defendant asserts that the court refused to charge this language, or its equivalent, and thereby the Defendant was prejudiced.

16. The Defendant moves for a new trial absolute because the verdict returned by the jury was grossly excessive in light of the evidence presented at trial regarding alleged damages suffered.

17. The Defendant moves for a new trial absolute based upon the Thirteenth Juror doctrine. "Under the 'thirteenth juror' doctrine, a trial judge may grant a new trial absolute when he finds the evidence does not justify the verdict. This ruling has also been termed a granting of a new trial upon the facts." *Vinson v. Hartley*, 324 S.C. 389, 477 S.E.2d 715, 722 (Ct. App. 1996). "[T]he trial judge is the thirteenth juror, possessing the veto power to the Nth degree." *Id.* "The trial judge, sitting as the thirteenth juror charged with the duty of seeing that justice is done, has the authority to grant new trials when he is convinced that a new trial is necessitated on

the basis of the facts in the case." *Id.* As discussed, the evidence presented in this case does not support the jury's verdict. Therefore, a new trial absolute should be granted.

DAVIDSON & LINDEMANN, P.A.

MICHAEL B. WREN
DANIEL C. PLYLER
ANDREW F. LINDEMANN
1611 Devonshire Drive, 2nd Floor
Post Office Box 8568
Columbia, South Carolina 29202-8568
T: 803-806-8222
F: 803-806-8855

Counsel for the Defendant, Town of Latta

Columbia, South Carolina

October 22, 2012

FILED
GWEN T. HYATT
2012 OCT 30 AM 9:46
CLERK OF COURT
DILLON COUNTY

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
	FOURTH JUDICIAL CIRCUIT
COUNTY OF DILLON	C/A 2008-CP-17-376
Claude W. Graham, Plaintiff, vs. Town of Latta, South Carolina, Defendant, AND Vickie B. Graham, Plaintiff, vs. Town of Latta, South Carolina, Defendant.	**PLAINTIFFS' OPPOSITION TO MOTION FOR JUDGMENT NOTWITHSTANDING VERDICT AND/OR FOR A NEW TRIAL**

A CERTIFIED TRUE COPY
CLERK OF COURT
DILLON COUNTY

The Plaintiffs respond to the Defendant's post-trial motions as follows:

DISCRETION

The Town of Latta argues that it is not liable for and is, in fact, immune from suit for losses covered by 15-78-60(1), (2), and (5): Legislative, judicial, or quasi-judicial actions or inactions, administrative actions of the foregoing nature, and the exercise of discretion or judgment by the Town or its employees.

The operation and maintenance of a sewer system is not a legislative act, a judicial act, or a quasi-judicial act. Nor is it administrative activity performing the same functions as a legislature or judiciary. It is axiomatic that legislators enact laws by established procedures and that judges

determine cases and controversies arising under the law. The burden of establishing a limitation upon liability or an exception to the waiver of immunity under the Tort Claims Act is upon the governmental entity asserting it as an affirmative defense. Latta offered no evidence that it was performing a legislative, quasi-legislative, judicial, or quasi-judicial function. Proctor v. DHEC, 368 S.C. 279, 292, 628 S.E.2d 496, 503 (Ct. App. 2006), Strange v. South Carolina Dep't Of Hwys., 314 S.C. 427, 430, 445 S.E.2d 439, 440 (1994).

Latta has mis-stated the law in its Motion (on page 4, section 2). The South Carolina Court of Appeals has not ever held that the design and maintenance of a sewage and/or drainage system is considered a quasi-judicial and discretionary function of a governmental entity. Proctor, *supra*, did not relate to a water or a sewer system in any way. Proctor was contesting a fine imposed upon him by DHEC for the way it conducted its business of disposing of and/or recycling tires. Hawkins v. City of Greenville, 358 S.C. 280, 594 S.E.2d 557 (Ct. App. 2004) arose from Hawkins's claim that the city had flooded its property as a result of negligence in the design of its storm water drainage system because a record amount of rain fell in and around Greenville in a short period of time, overwhelming the capacity of a creek. The court found, after considering the question of whether the acts of the city were discretionary rather than ministerial, that "in the present case" it had exercised "the measured policy judgments required to build and maintain an adequate municipal sewer and drainage system in Greenville" and was thus immune. The Hawkins Court in no way considered whether that conduct was a quasi-judicial function or whether a municipality is absolutely immune from any conduct relating to the building and maintenance of such a system.

Latta also had the burden of proving that it exercised "discretion or judgment" when it allowed its sewer system to overflow, leak, or discharge on the Plaintiffs' property. Strange, *Ibid.*

In ruling on this Motion for Judgment Notwithstanding Verdict, this court is required to view the evidence and the inferences that reasonably can be drawn therefrom, in the light most favorable to the Plaintiffs. Strange, 445 S.E.2d at 440. The evidence offered by the Town's witnesses related to the conduct of a smoke test, the location of a sewer line, and the Town's conclusion that it need do nothing. The Town's position relating to the exercise of discretion is mere conjecture about what it might have considered, not real evidence of an exercise of discretion. In order to carry its burden of proof, the Town was required to show that its employees were "faced with alternatives, actually weighed competing considerations, and made a conscious choice; furthermore, the Town must have shown that in weighing the competing considerations and alternatives, it utilized accepted professional standards appropriate to resolve the issue before them." Clark v. South Carolina Dept. Of Public Safety, 353 S.C. 291, 578 S.E.2d 16 (S.C. App. 2002). Mere room for discretion on the part of the Town is not sufficient to invoke the discretionary immunity provision of the Tort Claims Act. That immunity is contingent on the Town carrying the burden of proof that it actually weighed competing considerations and made a conscious choice using accepted professional standards. Sabb v. South Carolina State, 350 S.C. 416, 567 S.E.2d 231 (2002).

The duties of public officials are generally classified as either ministerial or discretionary for these purposes; a duty is ministerial when it is absolute, certain, and imperative, involving merely execution of a specific duty arising from fixed and designated facts, while a duty is discretionary if the Town carries its burden of proving the three step review process recited above. Faile v. South Carolina Dep't of Juvenile Justice, 350 S.C. 315, 566 S.E. 2d 536 (2002). Latta's evidence, viewed in the light most favorable to the Plaintiffs, is that it received a credible notice of the need for maintenance to its sewer system but nonetheless took no more than a cursory look at the

neighborhood with a cursory glance at the Graham property. See, Steinke v. South Carolina Dep't of LLR, 336 S.C. 373, 527 S.E.2d 142 (1999).

STANDARD OF CARE AND PROXIMATE CAUSE

To prove a cause of action for negligence, the Plaintiffs must prove facts which demonstrate the concurrence of three (3) elements: (1) a duty of care owed by the Defendant, (2) a breach of that duty by a negligent act or omission, and (3) damage proximately caused by the breach. Bishop v. South Carolina Dep't of Mental Health, 331 S.C. 79, 88, 502 S.E.2d 78, 82 (1998).

The duty of care to be exercised here, as in almost all negligence suits, is "that standard of conduct the law requires of an actor in order to protect others against the risk of harm from his actions." It embodies the principle that the plaintiff should not be called to suffer a harm to his property which is "foreseeable and which can be avoided by the defendant's exercise of reasonable care." Snow v. City of Columbia, 305 S.C. 544, 555, 409 S.E.2d 797 (S.C. 1991), citations omitted.

Snow, *supra*, involved an allegation that the city's failure to exercise due care in the installation and maintenance of its water main proximately caused damages to the plaintiff. The standard of care was stated by the Appellate Court as a matter of law, and it is South Carolina law quoted in my preceding paragraph which establishes the standard of care with respect to the Town of Latta. Establishing the standard of care in cases such as this is *not* one of the essential elements which a plaintiff must prove.

The Defendant Town argues that there is *no evidence* from which the jury could have concluded that the injuries and damages to the Plaintiffs were proximately caused by the Town's actions or failure to act. Taking the evidence in the light most favorable to the Plaintiffs, they have established that the Town had the duty to maintain the sewer line under their house appropriately,

that the line was cracked and leaking, and that the Town took no steps whatsoever among the various alternatives to stop the pattern of damage to the Plaintiffs even after the Town became aware of the clear and present danger to them. The events on the night of September 5th/6th gave notice to the Town of the existence of its duty and that its sewer line was compromised. September 8th and September 13th led an Internal Medicine Specialist to recommend to the Plaintiffs that they no longer live in their home, the Plaintiffs' necessity to find new lodging and to pay rent for same, the Plaintiffs' medical expenses, and the attendant anxiety, pain and suffering, the loss of various items of personal property, and the necessity for the Plaintiffs to find suitable alternative permanent living arrangements. The half dozen or so subsequent sewage events validated their resulting decision to move .

DAMAGES

The cost of repair or restoration is a valid measure of damages for injury to a building. However, compensation may be limited to the value of the building before the damage was inflicted. It is proper for a jury to consider a competent estimate of the cost of repair to a building. The owner of a building has the right to consider whether the building is repairable from a practical standpoint, as well as economically feasible, whether to reconstruct and the issue of whether there is a total loss or a partial loss of the building is dependent upon the factual presentation. See, Scott v. Fort Roofing & Sheet Metal Works, Inc., 229 S.C. 449, 385 S.E.2d 826 (1989); Division of General Services v. Ulmer, 256 S.C. 523, 183 S.E.2d 315 (1971); Rowland v. Palmetto Hills, 308 S.C. 283, 417 S.E.2d 626 (Ct. App. 1992); 22 Am. Jur. Second Damages §273. Here, the jury could infer from the evidence that the Graham house situated on the Graham property has become totally worthless, a total loss. For the Grahams to return to the position they were in before the Defendant was negligent,

that house could be reconstructed on a different lot. Testimony as to the cost of that construction could have been helpful to the jury's consideration of the facts in dispute and John Benton's testimony was competent and helpful to that end. Benton testified that the cost of replacement for the house alone is Four Hundred Fifty-Seven Thousand and No/100 ($457,000.00) Dollars; the jury awarded Two Hundred Twenty-Five Thousand and No/100 ($225,000.00) Dollars in damages to the owner of the house. It is clear that the jury considered the cost of replacement as but one of its measures, and applied common sense and experience to determine that a lesser sum than the full replacement cost might be warranted in view of the age of the house and the other circumstances presented to it.

THE WITNESSES

The Defendant objects, now, to Benton Henry using the photographs he took to refresh his recollection. No objection to the foundation questions was made when the refreshment occurred, but Henry did state he had witnessed several significant sewage events at the Graham house, directly across the street from his mother's and had taken pictures of them on various occasions. He used the photographs simply to refresh his recollection *of the dates*. Those particular pictures were not admitted into evidence.

The Plaintiffs' Exhibit 1 is a group of photographs depicting the events of September 5th and 6th, the very events which gave the Defendant notice of its duty to perform maintenance and repair. The jury was instructed that the events of September 5th and 6th did not give rise to recoverable damages, the Plaintiffs did not argue to the jury for any damages arising from the events of September 5th and 6th, and the testimony from each of the Plaintiffs was to the effect that "the same thing happened again" on multiple occasions.

This Court is accorded broad discretion in ruling on the admissibility of testimony and exhibits. The admission into evidence and subsequent use by the jury of Plaintiffs' Exhibit 1 is well within the discretion of the trial court. See, State v. Quattlebaum, 338 S.C. 441, 527 S.E.2d 105 (2000); State v. Von Dohlem, 322 S.C. 234, 471 S.E.2d 689 (1996). Likewise, the admission of reply testimony is within the sound discretion of this Court and should only result in a new trial or judgment notwithstanding the verdict if the admission of such testimony is prejudicial. State v. Farrow, 332 S.C. 190, 194, 504 S.E.2d 131, 133 (Ct. App. 1998). Prejudice that is unfair is distinguished from the legitimate impact all evidence has on the outcome of a case. "Unfair prejudice does not mean the damage to a defendant's case that results from the legitimate probative force of the evidence; rather it refers to evidence which tends to suggest a decision on an improper basis." State v. Gilchrist, 329 S.C. 621, 630, 496 S.E.2d 424, 429 (Ct. App. 1998). Such decisions must be based on the entire record of a case and the trial court's decision will generally turn on the facts of each particular case. State v. Wilson, 345 S.C. 1, 7, 545 S.E.2d 827, 830 (2001).

Claude Graham and Danelle Watson were the two witnesses called in reply and the Defendant preserved no objection to their being called. Each had testified during the Plaintiffs' case in chief, but the defense witnesses placed in issue two additional facts: (1) the location of the sewer line with the implication that it did not run under the Plaintiffs' house, rather between the swimming pool and within inches of the house and (2) the nature of the testing done by the Town to determine the location and integrity of the sewer line. Claude Graham specifically contradicted Town Employee Will Brown's testimony about the location of the line through the words of the Town's Supervisor of its sewer system, formerly the superior to Brown, Melvin Jackson. Danelle Watson testified that, contrary to Hannah and Brown, the Town had attempted to camera the line on the

Graham property and been unable to do so because of a lack of integrity to the line - roots or other debris inside the line.

The Watson testimony, argues the Defendant, should have been excluded because it is "hearsay within hearsay." One never gets to the second hearsay in the town's argument because the testimony is, by definition, "not hearsay". Rule 801(d)(2) South Carolina Rules of Evidence: "A statement is **not hearsay** if (it is) a statement by the party's agent or servant concerning a matter within the scope of the agency or employment made during the existence of the relationship ... ." (Emph. Supp.) Danelle Watson testified about a statement made to her by the Town's Supervisor of its sewer system. It was not hearsay.

THE CHARGES TO THE JURY

The Defendant argues for a new trial because the Court "made an error in not fully explaining to the jury the court's directed verdict rulings." The Court owes no explanation to the jury of its direct verdict rulings, the Defendant made no request that a particular explanation be given, and the Defendant did not object when the Court went farther than it needed to with the jury. The Plaintiffs never argued that the mere presence of the line on their property was an act of negligence or led to any particular damage. The Court need not have charged §60(1) and (2) for the reasons set forth above in my **Discretion** section. Subsections (4), (9), and (13) had no applicability to the facts presented to the jury which could be considered by it in connection with the sole surviving cause of action for negligence; the adoption, enforcement or compliance with the law, and the conduct of a regulatory inspection were simply not issues presented in this case.

The Defendant urges the Court to grant a new trial because of a failure to charge its unnumbered charge (now set forth in Paragraph 15 on page 9 of its Motion) relating to proximate

cause. The Court did charge the equivalent and the Court's charge, taken as a whole, is neither erroneous nor prejudicial, both of which are required for a post-verdict reversal. State v. Gaines 380 S.C. 23, 31, 667 S.E.2d 728, 732 (2008); State v. Sims, 304 S.C. 409, 422, 405 S.E.2d 377, 384 (1991).

INAPPROPRIATE VERDICT

The verdict returned by the jury was not grossly excessive in light of the evidence presented at trial. Mr. Graham presented evidence that he had been damaged by several hundred dollars in medical bills, by several thousand dollars to his equipment, by $70,000.00 in rent paid or due for substitute housing from November 2008 to April 15, 2012. Ms. Graham testified and evidence was presented to the effect she had been damaged by several hundred dollars in medical bills, the loss of a house that it would cost at least $457,000.00 to replace, and the attendant anxiety, pain, and suffering. A verdict of $100,000.00 for Mr. Graham and $225,000.00 for Mrs. Graham is well within the range reasonably inferred from the evidence.

As to the Thirteenth Juror doctrine, for this Court to grant such a motion it must be "convinced that a new trial is necessitated on the basis of the facts in the case." The Court has heard and considered the facts in the case and considered them carefully at the close of the Plaintiffs' evidence and again at the close of the Defendant's evidence and the Plaintiffs' reply. This jury was presented with factual disputes and the jury resolved those disputes within the tolerance range of reasonable inferences from the evidence. This case is not suitable for the application of the Thirteenth Juror doctrine because the evidence does justify the verdict.

[Signature page to follow]

Respectfully submitted,

WILLCOX, BUYCK, & WILLIAMS, P.A.

By: _____

Reynolds Williams #006153
PO Box 1909
Florence, S C 29503-1909
(843) 662-3258 - Tel.
(843) 662-1342 - Fax
Email: Reynolds@WillcoxLaw.com
Attorney for Plaintiffs

October 29, 2012

was -- what did Dillon County Administrator do?
A. County Administrator is charged with -- he's the chief administrative officer for the County. Responsible for all of its day to day activities, whatever those might be. Pretty much like a general manager in a plant or superintendent of schools. Pretty much responsible for the day to day operations of the County.
Q. Okay. Is there any significant difference between those duties at Dillon County or Marion County or Florence County?
A. Just more people.
Q. Okay. Tell me about 222 Rice Street in Latta?
A. I think it's 220, but I couldn't tell you.
Q. You might be right. The house you were living in?
A. Yes. 220 East Rice Street is a home that whenever Vickie and I after we got married we were trying to decide where we were going to live. Initially, lived over in Dillon. She taught school here. And so we initially lived over here in Dillon. But as we are riding around one of the homes that she saw was 220 East Rice Street and she told me at that particular point in time if that house ever became available then that's the house she would like to own.
Q. And did it become available?
A. Yes, sir.

Q. When was that?
A. Late 80's. '88 or '89. Somewhere in that neighborhood.
Q. All right. At that time how did it become available? Why?
A. That house was on owned by the Toalers, and Miss Toaler had died, and they had one daughter and -- who I was in school with. And came back to Latta. I don't know exactly where it was she was living prior to coming back to Latta. But she came back to Latta. Her father was still alive.

I don't know exactly what all happened, but it ended up that the -- I think the house was taken by the Department of Social Services or the Department of Social Services got involved in it somehow or another. And we actually purchased it, the financing and all that part. One of the checks went I now to the Department of Social Services. But it was a situation where they -- Mr. Toaler, I think he went to live in a nursing home or something somewhere.

And I think they used that money to assist in his living expenses.
Q. Okay. Before you and Vickie decided to buy the house did you look it over?
A. Yes, sir.

Q. Describe to the jury how -- what you did to make your decision?

A. The house was in pretty bad shape. I know for a period of time no one lived in the house. I guess whenever they were trying to decide just exactly what was going to happen with Mr. Toaler. And the house was in pretty bad shape. So we recognized that it was going to take a right good bit of work for us to bring it to the point where it would be liveable.

They had cats in the house. Either one of two of the cats had died. The cats had used the inside of the house as a restroom. So it was -- it needed a lot of work on the inside. So we basically pretty much -- totally remodeled the inside of the house. The outside was fine, but the inside was.

Q. How about the structural part of the house?

A. Structurally very sound. Very sound.

Q. When you say we remodeled completely the inside of the house who are you talking about?

A. Vickie and I.

Q. Who did the actual work?

A. Me.

Q. You didn't have contractors?

A. No, sir.

Q. Day laborers to do all that?

A. No, sir.
Q. So you know that house?
A. Yes, sir.
Q. Okay. And when did y'all move in?
A. I believe it was somewhere around 1989.
Q. Okay. The deed is dated 1989. How long after that did you move in?
A. It took me about a -- almost a year, I guess. So somewhere in that neighborhood. '89, '90, somewhere in that neighborhood.
Q. Okay. So I'm going to say 1990, okay?
A. Yes, sir.
Q. Would that be fair?
A. Yes, sir.
Q. Give or take eight years. Okay. What was the condition of the house once you moved in?
A. Once we moved in it?
Q. Uh huh.
A. Pristine. It was nice. It was a nice, nice -- it was a nice, nice home Miss Toaler had built. An extremely nice home. Miss Toaler, I had some kind of relationship with Tilmar Lumber Company, and I was told.
MR. PLYLER: Objection, Your Honor.
THE COURT: I sustain it. Don't hearsay.
BY MR. WILLIAMS:

Q. Don't said what you were told?
A. Oh, okay. I'm sorry. I can't hear.
Q. She had a relationship with Tilmar Lumber Company?
A. Yes, ma'am -- yes, sir. And the lumber in the house that was used to construct the house was what's commonly called full cut lumber.
Q. Full cut?
A. Yes, sir.
Q. What does that mean?
A. Full cut lumber is lumber, as an example a two by four. Now a days, if you buy a two by four it's actually not a two by four. I think it's like one and three quarters by two and a half or -- it's not a full cut lumber. The lumber in this house if it was a two by four it's a true two by four. It's what is called full cut lumber.
Q. More lumber than now?
A. Oh, yes, sir.
Q. Okay. When you bought the house did you look at the land -- the lot?
A. Yes, sir.
Q. Okay. You look at the -- did it have a swimming pool in it?
A. Yes, sir.
Q. Did you look at the pool?

A. Yes, sir.
Q. Did you look at the backyard?
A. Yes, sir.
Q. Did you inspect the property to see that it was suitable?
A. We felt like we had. Yes, sir.
Q. Did you have anything to do with building the house and go to that house there?
A. No, sir.
Q. It was already built when you bought it?
A. Yes, sir.
Q. Okay. Did you know then that the Town's sewer lines ran through you property?
A. Not at that point. No, sir.
Q. Did you have the title searched to that house when y'all bought it?
A. Yes, sir.
Q. Who searched it?
A. Mr. Charles Curry.
Q. Did your title search reveal any sewer lines running underneath your house? On your property or underneath your house?
A. No, sir.
Q. Did you later come to learn that there was in fact a sewer line running through your property?

A. Yes, sir.
Q. And I'm saying 'your property'. At that time this was Vickie's property, correct?
A. Correct. Yes, sir.
Q. The deed was in her name?
A. Yes, sir.
Q. Whose name is the deed in now?
A. Both.
Q. Okay. I'm going to call it your property because when I talk to her I'll indicate your property, too. How did you come to learn that there was a sewer line running through your property?
A. We started having problems -- excuse me. We started having problems with one of the toilets in the house or several of the toilets in the house. And I contacted the plumber to -- thinking that my toilets were malfunctioning. And I contacted him and had him come around.

And as he got to looking he couldn't really find the problem. So he started tracing the line, the drain line that comes out of the house and goes to the sewer system and discovered that there was a line. It went out the back of the house and tied into a line out on the property.
Q. When you say 'out on the property' what ---

A. In the backyard.
Q. In the backyard?
A. Yes, sir.
Q. Okay. Is that the extent you learned when this plumber was looking ago at?
A. Well, whenever u discovered that I got in touch with Mr. Jackson, Mr. Melvin Jackson.
Q. Melvin Jackson?
A. Yes, sir.
Q. Who is Melvin Jackson?
A. He worked for the Town.
Q. What was his job with the Town of Latta?
A. Water and sewer. I mean he was like a public works director, I guess.
Q. Is he the number one water and sewer guy for Latta?
MR. PLYLER: Objection, Your Honor.
THE COURT: If he knows he can testify.
BY MR. WILLIAMS:
Q. If you know state whether he was the top guy or?
A. He's the only person I ever talked to about water and sewer. Yes, sir.
Q. Okay. So did you tell him -- what did you tell him?
A. I told him that the plumber had found that the lines tied into a big line coming across the property there and that line was stopped up. And he said, "yes." He said,

"There is a main line that runs through here."
Q. What was your reaction to that?
A. Shock.
Q. Did you express your shock to him?
A. Yes, sir.
Q. And what did he say?
A. Well, he said that that line came across our property and went diagonally across under the house and tied into another main line out on Rice Street, out there. And that the flow -- the waste water was coming from the property back behind our house in that community back behind our house and when across our property and tied into the Town's main line out on Rice Street.
Q. Before Melvin Jackson told you that did you have any idea that that was the case with your sewer line?
A. No, sir.
Q. Did you have any reason to suspect that that was the case with the sewer line?
A. No, sir. Now, at the same time we were having problems with a smell, and Mr. Jackson took me back there and showed me the line that came across that ditch and it was leaking.
Q. Tell the jury about the line that came across?
THE COURT: Before we do that I'm going to ask the jurors if they want to stand up for a second and stretch.

I know after lunch everyone gets a little sleepy. So if everybody wants to stand up and stretch for a second.

MR. WILLIAMS: Thank you, Your Honor. That was a good idea.

THE COURT: It always happens after lunch. We all do it. I'm guilty of it, too.

BY MR. WILLIAMS:

Q. I think that you were just talking about he showed you a line that went back behind the house?

A. Yes, sir.

Q. Tell the jury what you're talking about.

A. There is a big line that comes across the ditch. There is a huge ditch back behind the house, and there is a big line that comes across the ditch. And it runs right across our property. And it in fact was leaking and that's where the smell was coming from.

Q. Okay. Whose ditch is that? Is it your ditch?

A. No, sir.

Q. Okay?

A. It's a drainage ditch. I don't know whether it's owned by the Town or the State. I guess everybody would argue that.

Q. All right. Now, the line that came across the ditch how much could you see? How long is it?

A. Where it comes across the ditch there, six to eight

feet, I guess.
Q. Is the ditch width running parallel to the ditch or perpendicular?
A. Perpendicular to it.
Q. So it cross the ditch?
A. Yes, sir.
Q. So it runs from one side of the ditch?
A. Yes, sir.
Q. Okay. And then does it go underground, maybe?
A. Yes, sir.
Q. Okay. Had you ever seen that pipe before?
A. No. I'm not going to say I hadn't seen it, but if I saw it before it was whenever I was a young fellow. Youngster. Because we played in the ditches all the time around Latta.
Q. When did you learn that that line contained sewage.
A. Whenever Mr. Edwards -- Mr. Jackson told me that that was a main sewer line coming from that community back in there.
Q. That Melvin Jackson told you ---
A. Yes, sir.
Q. That it was the main sewer line?
A. Melvin Jackson, right.
Q. Okay. And did it get repaired?
A. Yes, sir, he fixed it. He put a repair strap around

it.
Q. All right. Now, in September -- on or about September 5th 2008 did something out of the ordinary happen?
A. Yes, sir.
Q. Tell the jury about that?
A. On September the 6th I -- I wake up early. Real early, and at approximately 5:15 or so I woke up on September the 6th. And we had a little puppy, a little Maltese puppy. And, of course, whenever I get up she wants to get up. And I go out she wants to go out. So I was in the process of getting ready to take her outside whenever I stepped out on the back porch. I stepped into water and really couldn't figure out what was going on.

It was dark. Pitch back dark, and I couldn't figure out what was going on. So I put the dob back in the house, and I went out the front door and ---
Q. Let met stop there at the back door for just one second. How deep did you step into the water?
A. Upon the stoop there it was lacked about 3 inches of coming in the back door. So in excess of 3 feet.
Q. Okay. All right. So you left the back door, and I think I interrupted you. You said you were head to the front?
A. Yes, sir. Went to the front door and opened up the

front door. And, of course, there are some lights out on Rice Street out there. And I noticed I remember that the front yard was completely covered in water.

Q. Could you see better in the front yard?

A. Yes, sir.

Q. Okay.

A. Than I could in the back. And stepped into it, and several steps that go down to the sidewalk. And stepped off of those onto the sidewalk there and it was over -- it was over my knees.

Q. Okay. Was it pure, clean, clear water?

A. Well, that particular time I could tell cause it was pitch black dark. I mean I had a flashlight, but I still couldn't tell. But, not, it wasn't clear. I mean I could tell it wasn't clear.

Q. So what did you do? Did you go back inside or did you explore?

A. Well, I got out and walked to the driveway to try and figure out what in the world was going on, and eventually I realized as close as it would get to the front door that if any traffic had came down that road then the waves were going to put it into the inside of the house. And so I went and got in my truck -- in my truck and went hunting for someone where I could get a barricade hopefully and barricade that road.

Q. And were you successful?
A. No, sir.
Q. Why not?
A. I found two police officers out at the convenience store up on Main Street and 301, but they told me they didn't have any more barricades; that they had put them all out. They didn't have any more.
Q. Did you go back home?
A. Yes, sir.
Q. And it started getting light by then?
A. It started lighting up by then. Yes, sir.
Q. Could you tell what was going on at your house and the neighborhood?
A. Well, by that time I could see what was in the yard, and there was fecal material, toilet paper, female hygiene products which you normally see in a sewer system. It was floating around in my yard.
Q. You talking about one or two?
A. Oh, no. The whole yard was covered with it. Not completely covered, but it was all in the water.
Q. Okay. Were you able to determine what was going on, where it was coming from or what had caused it?
A. Well, it appeared to be coming from one of the areas where there's a manhole cover.
Q. And what could you see in the manhole?

A. Well, as it went down a little bit I could see it bubbling up.
Q. Let's talk about before it went down. What could you see?
A. A lot of toilet paper and stuff.
Q. Did you see any pooling of the water or anything like that before the water level ---
A. I'm sorry.
Q. Did you see any rolling of the water ---
A. Yes, sir.
Q. --- before it was ---
A. It was -- you could tell it was coming from this particular area. I couldn't tell exactly where it was coming from, but you could tell it was coming from that area.
Q. As the water receded you were able ---
A. It became more prominent.
Q. Okay. Have you ever seen any videotape or taken any videotape of what was happening that morning?
A. I have not taken any videotapes of it. No, sir.
Q. Have you ever seen any videotapes?
A. I'm trying to think. I think I did. I think we -- I think I did look at one.
Q. Okay. Did ---
A. Someone else had taken them and brought them to the

house.
Q. Do you remember the name of that person?
A. Mr. Burden.
Q. Mr. Burden?
A. Burden, yes, sir.
Q. What did you spend the rest of September 6th doing?
A. I was trying to clean up. Trying to clean up the yard, and I got ahold of my heating and air conditioning man because I had taken the crawl space covers off. And it was all up under the house and everywhere else.

And I had gotten ahold of my heating and air conditioning man, and he, you know, obviously told me wasn't anything he could do until the water level went down. And as it started down I started trying to pump the water out from under the house.

Q. So you looked up under the house?
A. Yes, sir.
Q. What was up under the house?
A. The same thing that was in the yard.
Q. Same stuff?
A. Yes, sir.
Q. Okay. How did you go about -- when you say, 'crawl space' that's where you take off the aluminum or metal thing and lift up?
A. Right. So you can crawl up under the house.

Q. How did you go about trying to clean up under the house?
A. About only thing I could do was to try to pump the water out from under there.
Q. Okay. Did you have a pump?
A. Yes, sir. Well, I bought two.
Q. You bought two?
A. Yes, sir.
Q. That day?
A. I bought one of them that day I know.
Q. Okay. How long did it take you to pump out from under the house?
A. About two days, three days.
Q. Okay.
A. Whenever my heating and air conditioning man came by, and he came by on a Sunday, you know, to look at it. And he brought a bigger pump so that helped considerably.
Q. So now you had three pumps?
A. Yes, sir.
Q. Two of them yours?
A. Right.
Q. Okay. After he brought that bigger pump around how long did it take you to pump it out?
A. Not long. It was huge.
Q. And where did you pump this to?

A. There is a side of a fence over there which leads off into that big ditch that is behind the house.
Q. And this ditch that you've already talked about?
A. Yes, sir.
Q. Okay. How long did it take the water level in your yard to recede?
A. Later on that day.
Q. Okay. So when you cleaned the yard were you raking it and that kind of thing? Was there water still there?
A. Well, you know, it's a combination of raking and then I had a lawnmower that has a suction system on it. And when it got to where it was dry enough to run that mower across it I used the mower to suck it up into the collection system.
Q. Okay. Now, that Monday did you talk with any water and sewer people from the Town of Latta?
A. Yes. I did.
Q. Who did you talk to?
A. I want to say his name was Mike, but I'm not exactly sure. But he came by the house and told me that he had
---

MR. PLYLER: Objection, Your Honor.

THE COURT: Sustained. Hearsay.

MR. PLYLER: Your Honor, I would say that this would be a statement by a party opponent. He's identified him

as an official of the Town of Latta Water and Sewer System.

MR. WILLIAMS: Your Honor, I'm sorry. Our response would be he doesn't even know who this person is. So that's complete speculation at this point.

THE COURT: I'll sustain it.

BY MR. WILLIAMS:

Q. Mr. Graham, do you know how come Mike happen to come to your house?

A. To advise me that he's been in touch with D.H.E.C.

Q. How did he -- how did he git to your house? Did you call for somebody or did they just appear?

A. I had advised the Town that I was having a problem.

Q. Did he have on any kind of Town uniform or any identifying insignia?

A. Town truck. He was in a Town truck.

Q. And how did he identify himself to you?

A. That he was handling the water and sewer system for the Town of Latta.

Q. Okay.

MR. WILLIAMS: Your Honor, I think I've laid a foundation. I'd like to reask that same question, but I don't want to do it if ...

THE COURT: You can ask the question. We'll see what happens.

MR. WILLIAMS: Okay.
BY MR. WILLIAMS:
Q. Did he -- did Mike explain to you what the Town believed or he believed was going on with your sewer system -- with your sewer line?
MR. PLYLER: Objection. Objection, Your Honor. Not only is that hearsay but also would be speculation. We have no idea who this Mike is.
THE COURT: I'll also sustain the objection.
MR. WILLIAMS: I'm sorry. I didn't hear you, Your Honor.
THE COURT: I will still sustain the objection.
MR. WILLIAMS: Thank you, Your Honor.
BY MR. WILLIAMS:
Q. Other than Mike with the Town who else did you consult with about the sewer problem at your house?
A. The Mayor.
Q. Okay. And when was that?
A. It was that weekend or that Monday. I believe it was that weekend.
Q. And what did the Mayor tell you?
A. She was trying to be very cooperative and trying to help, you know, with the situation.
Q. And what did she say, though?
A. She said, "We've got a mess."

Q. Did she say whose fault the mess was?
MR. PLYLER: Objection, Your Honor.
THE COURT: Overruled.
BY MR. WILLIAMS:
Q. Did she say whose fault the mess was?
A. She said she had talked with D.H.E.C. and that D.H.E.C. had explained to them that with the mixture of the water in the sewer system that it was contaminated and that that was the Town's responsibility.
Q. And did she say what she was going to do to ---
A. She was trying to get ahold to -- I believe she had been advised of a group out of North Carolina that, you know, did the pumping and all that kind of stuff. And I think she was trying to get ahold of them to get them possible to come down to the house and pump the stuff out from under the house. And I advised her at that time that I was already doing that.
Q. Please, state whether you did or did not talk with her about any concerns you had with health issues.
A. Yes, sir.
Q. What you say?
A. I told her what I -- that I was very concerned with the fact, you know, with the fact that the sewage was coming up out of that manhole cover and mixing with that water. And it was all up under my house and in my yard.

Everywhere, and I mean, it even gotten into two of my vehicles.

Q. Two of your vehicles?

A. Yes, sir.

Q. And what did the Mayor say when you told her that?

A. That she was very concerned about the situation; that we needed to do something, you know, to try and get the situation resolved.

Q. Did you and she discuss the subject of whether the Town would pay for it?

MR. PLYLER: Objection, Your Honor.

THE COURT: Counsel want to approach?

(WHEREUPON, a bench conference was held off the record in the presence of the jury, but out of the hearing of the jury.)

BY MR. WILLIAMS:

Q. Did you and the Mayor discuss whether the Town had any responsibility?

A. She told me that she had talked with D.H.E.C. and that D.H.E.C. had advised her that, you know, that it was the Town's responsibility, and that's why she was trying to get hold of the people out of North Carolina to pump, you know, the water out from under the house.

Q. Did something happen on September the 13th relating to your sewage?

A. On the 13th?
Q. Let me ask it this way. Did a second occasion occur?
A. Yes, sir.
Q. Where something happened with your sewage?
A. Yes, sir.
Q. Roughly, when was that?
A. It was about a week later.
Q. Tell the jury what happened then?
MR. PLYLER: Your Honor, I'm sorry. I just noticed he's referring to some notes or something here. Obviously, I need a right to see those or whatever he's reading from.
MR. WILLIAMS: Counsel, of course, has a right to see those, Your Honor. Only is this the right time for him to have that right?
MR. PLYLER: This is the first I've seen he had notes up there with him.
THE COURT: You can take a look at them, counsel.
MR. PLYLER: Thank you.
BY MR. WILLIAMS:
Q. Continue telling us what you were talking about. Did something happen about a week later or a week after the 6th?
A. Well, you know, it happened again, and there was additional sewage up under the house again.

Q. So when you said, 'it happened again' do you mean it rained again?
A. Well, there was some rain, you know. It wasn't so much in the yard, but it was all up under -- it was 10, 12 inches up under the house.
Q. And how much in the yard?
A. Very little in the yards. It wasn't cluttered or anything, but it was.
Q. It had been a particularly heavy rain?
A. Not anything like the first one, but it was a normal rain is what I would have called it.
Q. Did you, as a result of that, did you have any further discussion with any Town officials?
A. Yes. I went down to the Water Department down there. There was only one employee down there. And I advised him that I needed to talk with somebody to handle the situation.
Q. And who did you talk to?
A. Gary.
Q. And who is Gary?
A. He works for the Town.
Q. Okay. And did the Town do anything that day to help out with the situation?
A. No, sir.
Q. Okay. Did you talk with the Mayor?

A. Yes, sir.
Q. When?
A. Well, I talked with her, you know, right after it happened. Well, when I know could ahold to her to let her know, you know, what had happened. And she said she was just very concerned about the situation. You know, and what had occurred and how we were going to resolve the problem.
Q. Now, I'm asking now about the second time you talked to the Mayor. Is that what you just asked her?
A. Yes, sir.
Q. Okay. So essentially the same thing as the first time?
A. Yes, sir. Pretty much. Because during that period of time Miss Watson had called me to tell me ---
Q. Wait a minute. Don't tell me what Miss Watson told you?
A. Okay.
Q. But you can identify who is Miss Watson?
A. Mrs. Danielle Watson, she works for the Department of Health and Environmental Control.
Q. Okay. She had some discussions with Mrs. Watson ---
A. She had and I had. I mean she ---
Q. --- Mrs. Watson ---
A. --- I mean Miss Watson.

Q. Who do you mean?
A. Miss Brigman had had some discussions with -- she indicated she had had discussions with Mrs. Watson.
Q. Miss Brigman told you that?
A. Yes, sir.
Q. The Mayor?
A. And that Mrs. Watson called me. I think Miss Brigman had Miss Watson to call me or somebody had Miss Watson to call me.
Q. Did the Mayor tell my anything about what she thought the Town would have to do as a result?
A. Well, I think that she was very concerned that, you know, the cost factor that was going to be involved as to what were we going to be able to do.
Q. Tell me what she said as best as you can recall.
A. Well, she said you know that -- she said she had talked with the D.H.E.C. and that D.H.E.C. had told her that the Town was responsible for the contamination.
MR. PLYLER: Objection, Your Honor. He's reading from those papers. He doesn't know the answer to the question. He's reading from this paper that hasn't been identified. It's hearsay.
BY MR. WILLIAMS:
Q. Mr. Graham ---
THE COURT: I'll allow you to lay a foundation.

You've got to lay a foundation.
BY MR. WILLIAMS:
Q. Does it assist you to refresh your recollection to look at your notes?
A. Yes, sir. This thing happened four years ago.
Q. Who wrote those notes?
A. I did.
Q. Why did you write them?
A. I figured y'all were going to be asking me about it today. So it was the only way I could -- well, you can tell I'm even getting mixed up now. But it's the only way I can half way keep it straight was to write these notes out.
Q. Would it help you to refresh your recollection if you can refer to your notes?
A. Yes, sir.
Q. All right. What I'm going to ask you to do is look at your note. Don't read from it. Refresh your recollection and then answer the question?
A. Yes, sir.
MR. PLYLER: Your Honor, the only problem I have, while the foundation has been perfectly laid, because we don't know when these notes were written.
THE COURT: You can him that question.
BY MR. WILLIAMS:

Q. When were the notes written?
A. Last night.
Q. Based upon what?
A. The fact that we were going to be in here this morning.
Q. What did you refer to to come up with those notes?
A. An outline that I had prepared earlier.
Q. When did you prepare the earlier outline?
A. Right after the first incident.
Q. So right after September 6th 2008?
A. Yes, sir. 2008, yeah.
Q. When you prepared your outline from which you did these notes were all the events fresh? Just happened?
A. Oh, yes, sir.
Q. Okay. Let me ask you this question again. Would it assist you to testify today if you could look at your note?
A. Yes, sir.
Q. Okay. I'm talking about September the 13th 2008 now. And you were describing a conversation you had with the Mayor of the Town. And I think you were interrupted when you said she told you that she had a conversation with D.H.E.C. Look at your notes if you need to. If you don't need to you don't have to. Tell the jury what Ms. Brigman told you about the Town's responsibility?

A. Ms. Brigman told me that she had had a conversation with Ms. Watson with the Department of Health and Environment Control.

MR. PLYLER: Your Honor, I hate to object, but that's double hearsay. That's, apparently, Ms. Brigman telling him what D.H.E.C. told her, and that would be double hearsay without any exception.

MR. WILLIAMS: Your Honor, that's not double hearsay. It's what Ms. Brigman said. That's a statement by a party opponent. It's not hearsay in any way, shape or form. Ms. Brigman is the Mayor of the Town of Latta and defendant in this case.

THE COURT: I understand that. One moment.

MR. WILLIAMS: I'm looking at Rule 801.

THE COURT: (d)2.

MR. WILLIAMS: (d)2, yes, Your Honor.

THE COURT: I'll overrule the objection.

MR. PLYLER: Your Honor, can I just state that Rule 805, hearsay within hearsay, requires both parties of the hearsay in this particular instance, to be provided with an exception. The only way an exception for what Ms. Brigman is speaking. The problem is she's repeating what's been told to her by the D.H.E.C. lady or the lady at D.H.E.C, Danielle Watson. That statement does not have an exception under the hearsay rule would be our position.

THE COURT: I'm looking at it as 801(b)2, B, and that's why I'm allowing it. It's a statement in which the parties adopted. Manifest an adoption, belief in its truth.

MR. PLYLER: Thank you, Your Honor.

BY MR. WILLIAMS:

Q. Let me reask my question, Mr. Graham. You can answer it. And if you need to look at your notes to refresh your memory you can. My question is that on September the 13th when you talked to Mayor Brigman what did she tell you about the Town's responsibility for what they were going to do?

A. Well, I met with Miss Brigman on the 15th because of the 13 incident.

Q. All right. Where was that?

A. It was in her office.

Q. All right.

A. And she told me then that she had discussed the situation with Miss Danielle Watson, Department of Health and Enviromental Control employee, and that Ms. Watson had said that the sewer had contaminated the water and it was the responsibility of the Town. Ms. Brigman said that she appreciated what we had done in trying to pump it out and save the Town that money because that would have been over a weekend and that would have been time and a half. And

that she was most concerned, you know, if there was additional cost, she was most concerned as to how the Town would be able to cover those costs to clean up.

Q. Okay. Did you discuss with her the condition of your property as a result of the have September 13th incident? By that I mean the manhole situation and sewage under your house, that type of thing?

A. We discussed it in general. Yes, sir.

Q. What did you tell her?

A. Well, that it was a real health concern to us; that it looked dangerous to us.

Q. And what was her reaction to that?

A. She was just as concerned as I was.

Q. What did she say?

A. She said that she didn't know how the Town would pay, you know, for the clean up of the contamination.

Q. All right. Let's move forward. Was there a later occasion in September when the same or similar problem manifested itself?

A. Yes, sir.

Q. When was that?

A. That was September the 25th. Well, the night of the 25th, morning of the 26th.

Q. All right? Tell the jury what happened?

A. It overflowed again.

Q. Refresh your memory and put it down and just tell us what happened next. What you remember about what happened then?
A. The sewer system out in the road overflowed again, and whenever I looked up under the house there was in excess of 12 inches of sewage up under house.
Q. Was there any sewage in the yard?
A. No, sir.
Q. Was there any sewage in the street?
A. Bubbling up out of the manhole cover.
Q. Okay. But how about under the house, was there sewage?
A. Yes, sir.
Q. How deep?
A. In excess of 12 inches.
Q. Okay. But there were -- there was none under -- none in the yard?
A. No, sir.
Q. It was in the street at the manhole cover and under your house?
A. Yes, sir.
Q. How about behind your house? In the yard behind your house?
A. No, sir.
Q. Okay. Were there any other occasions in September or

October when there was sewage under the house?
A. Can I refresh memory?
Q. Yes. You can just refresh your memory. Let me ask it another way. You don't need to refresh your memory. After these occasions that we just talked about were there ever again any occasions where there was sewage up under your house?
A. Yes, sir.
Q. When?
A. Several times. Several times.
Q. Describe several times?
A. I'm aware of four or five times, but you know, we were no longer staying at the house.
Q. Okay.
A. We had been advised not to stay there.
Q. Okay. I'm going to come back to whether you were staying at the house or not. But you remember four or five times over what period of time? Over the last two years? Four years?
A. In the last four years for sure, yeah.
Q. Okay. But did you go there and see the sewage under the house?
A. Yes, sir.
Q. On four or five occasions?
A. Yes, sir.

Q. All right. On any of those occasions was there sewage under the house and in the yard or just under the house?
A. Both.
Q. Okay. How many both and how many one or not the other?
A. I didn't really keep a number, but you know, generally speaking if it was in the yard it was up under the house. But there were occasions when it was up under the house and it was not in the yard.
Q. But there was never any in the yard and not up under the house?
A. No, sir.
Q. Okay. All right. You just told the jury that you hadn't been in the house for a long time. Tell the jury when you and your wife moved out of the house?
A. November of 2008.
Q. About two months after this -- the first sewage incident?
A. Yes, sir.
Q. Why did you move out of the house?
A. Our doctor ---
MR. PLYLER: Objection, Your Honor.
THE COURT: I'll sustain the objection.
BY MR. WILLIAMS:

Q. Between -- after this incident you just described, the latest of which was September 25th or 26th, did you go to a doctor?
A. Yes, sir.
Q. Did Vickie go to a doctor?
A. Yes, sir.
Q. Why did y'all go to a doctor?
A. I went because of respiratory problems, and I'm not exactly sure, you know, about her situation. But I had to go because the respiratory problems.
Q. As a result of going to the doctor what did you and Vickie decide to do?
A. We decided to move out the house.
Q. Why did you decide to move out the house?
MR. PLYLER: Objection, Your Honor.
THE COURT: I'll sustain the objection. You can rephrase the question.
BY MR. WILLIAMS:
Q. What was your reason for wanting to get out of the house?
A. Well, I was worried about the health situation and it stunk.
Q. Okay. We haven't talked about the odor. Tell me -- obviously, when the sewage was up under the house when you looked up under there and you could smell it then?

A. Yes, sir.
Q. What about other times when the sewage had subsided?
A. You can smell it all out in the yard.
Q. Okay. What what about inside of the house? Was it having an affect on you?
A. Oh, yes.
Q. What affect was it having on you?
A. I was having problems with the cough and sore throats and just sick.
Q. Were you able to observe any affects that it had on Vickie?
A. Yes, sir, she was.
Q. What was Vickie doing?
A. Respiratory problems.
Q. Did they appear to be similar to your respiratory problems?
A. Maybe a little more severe.
Q. Okay. But of the same type?
A. Yes, sir.
Q. Okay. When you all were away from the house were you having the same respiratory problems?
A. No, sir.
Q. And is that what prompted you to go to the doctor?
A. Yes, sir.
Q. When you and Vickie moved out of the house in

November of 2008 where did you go?
A. Her brother had a house at the beach, and he suggested that we move into his house.
Q. And is that when you -- you moved in in November of 2008?
A. Yes, sir.
Q. How long did you live in that house?
A. Three years.
Q. Until roughly when?
A. About a year ago. Maybe a little more than a year ago now.
Q. So from 2008 until roughly April of 2011?
A. Yes, sir. Somewhere in there. Yes.
Q. Did you have any arrangements with him about owing him rent?
A. Yes, sir.
Q. How much rent you owe him?
A. Well, it's not actual written, you know, agreement, but it was right at $2,000 a month.
Q. And in April of 2011 where did you move?
A. We leased -- he moved back to the beach, and so we leased the house down there.
Q. And how much did that rent cost you?
A. $1,000 a month.
Q. And how long were you at that place?

A. A year.
Q. Then where did you go?
A. Moved back to Latta to my mother's house.
Q. Okay. And why were you able to move back to Latta to your mother's house?
A. Because my mother had passed away summer before.
Q. And you owe any rent to your mother's estate?
A. I'm repairing the house. My brother, sister, and myself own the house. I am repairing the house and fixing the house back up. I didn't work none, and that took a long time. So I agreed to repair and do the work necessary around the house to get it ready for resale.
Q. Why have you and Vickie abandoned your house in Latta?
A. I don't know a nice way to so that. Well, one, the doctor told me not to.
MR. PLYLER: Objection, Your Honor.
THE COURT: Sustain your objection.
BY MR. WILLIAMS:
Q. Other than what the doctor may or may not have told you what have you found in your house?
A. It smells bad. It smells real bad. And we worry that, you know, that -- it made Vickie so sick one time that we had to put her in the hospital.
Q. Have you spent one night in that house since you

moved out in November of 2008?
A. If I have it hadn't been much.
Q. Do you remember spending a night in that house since November 2008?
A. It's possible that I did. Vickie has not, no.
Q. Okay. Have you all had a meal in that house since November ---
A. No, sir.
Q. Have you used it in any way shape or form as your living there?
A. No, sir.
Q. Are the conditions today such that you can live in? Use it for your living?
MR. PLYLER: Objection, Your Honor. He's not qualified to make that statement. He's speculating.
THE COURT: Rephrase the question.
BY MR. WILLIAMS:
Q. When is the last time you saw that house?
A. Been to the house?
Q. When is the last time that you've been to that house?
A. Friday I mowed the yard.
Q. Okay. Have you been mowing the yard consistently since November 2008?
A. Yes, sir.
Q. What else have you been doing around that house?

A. That's about it.
Q. Okay. Could you move into that house today?
MR. PLYLER: Same objection, Your Honor.
THE COURT: Rephrase the question.
BY MR. WILLIAMS:
Q. Is that house in a suitable condition for you and Vickie to move into it today?
MR. PLYLER: Same objection, Your Honor.
BY MR. WILLIAMS:
Q. Has anything been done to that house since November 2008 that would make it more suitable for a living place?
A. No, sir.
Q. Has the Town fixed the sewer line?
A. No, sir.
Q. Does it still run under your house?
A. Yes, sir.
Q. When it runs under the house and it gets full of sewage does it still come up under your house?
MR. PLYLER: Objection, Your Honor. Leading.
BY MR. WILLIAMS:
Q. Please state whether or not ---
MR. WILLIAMS: I'm sorry.
THE COURT: Go ahead.
BY MR. WILLIAMS:

Q. Please state whether or not the sewage still comes up under the house when the pipes get full?
A. Yes, sir, it does.
Q. Why don't you just move back in?
A. I don't want to live in the house wit that up underneath me.
Q. During the course of your early problems did you and Vickie try to determine how -- what you could do to the house to fix it up, make it better, in the light of the problems you had with the sewage?
A. We had the duct work replaced up under the house. The heating and air conditioning, the duct, cause it was all under water. Sewage.
Q. Okay?
A. So we had all of that replaced in an attempt that perhaps we could. Less than a week after that was done it happened all over again. The heating and air conditioning man said he can put it back in there ---
MR. PLYLER: Objection, Your Honor. Hearsay again.
BY MR. WILLIAMS:
Q. Don't say what he said, but when you say a week after -- less than a week after you had it done. So this would be sometime between September the 13th and September 25th?
A. Yes, sir.

Q. The sewage happened again; is that correct?
A. There had been additional over accumulations of sewer and water up under the house to the extent that is messed up the duct work again. And I saw no need to continuously spend money of replacement of duct work.
Q. What about the air conditioning system itself?
A. We've done nothing with a air conditioning system. Again, I don't see any need to spend any money on it if it's going to continue to do that.
Q. Did you get a quote for doing something? For fixing up the air conditioning?
A. Not for fixing the air conditioner. No, sir.
Q. Did you ask for a quote for rehabilitating the house from the infection of the fecal materials?
A. I'm sorry.
Q. Did you ask somebody about how do you clean up a house that has fecal material?
A. Yes, sir.
Q. Okay. Did you receive a price for that?
A. We received a -- not for cleaning it up. We received a figure as to what it would take to stay at the house.
Q. Okay. Did you and Vickie ultimately decide to do any of those clean up repair, refurbish things to deal with the sewage problem?
A. No, sir.

Q. Why not?
A. It keeps happening. It just keeps happening all the time. I mean, I'm just throwing away my money to do that.
Q. Okay. The four or five occasions that you described since you move out when there was a sewage buildup under the house, are those you know of your own personal knowledge?
A. Yes, sir.
Q. You witnessed with your own eyes?
A. Yes, sir.
Q. Okay. What money -- withdraw that question. At the time of September of 2008 when you first had the problem, first had the sewage problem, what was your intention with respect to living in the house on Rice Street in Latta?
A. It was our intention to live there until we die.
Q. Okay. Did you have any desire to move to your brother's house at the beach or move to the beach or anything?
A. Absolutely not.
Q. You described to the jury the work, your personal labor that you put into that house when you first moved that. Have you continued to do that kind of work on the house?
A. Not me personally as much as I had before, but I had a considerable amount of work done to the house that I

paid for.
Q. Okay. When y'all suffered the sewage damage at the house did you lose any items of personal property?
A. Yes, sir.
Q. Tell the jury what type of things? What happened and why that you loss the items of personal property?
A. Well, loss two vehicles, and ---
Q. What happened to the two vehicles?
A. Well, they were filled up with sewage and water.
Q. Okay?
A. Not filled up to the top, but I mean there was 8 to 10 inches inside.
Q. Inside the vehicle?
A. Yes, sir.
Q. Okay. And what two vehicles were those?
A. Ford Taurus and a Toyota Avalon.
Q. All right. Let's talk about the Ford Taurus first. What year was it?
A. It was old.
Q. How old?
A. It was old. It was old. I'm not -- I truthfully am not sure what age that car was.
Q. Okay. Did you repair or ---
A. No, sir. Didn't attempt to do any repairs to it at all.

Q. What did you do with it?
A. Sold it.
Q. For salvage?
A. Yes, sir.
Q. How much you get for it?
A. $1,000.
Q. How much was it worth before the sewerage problem -- sewage damage?

MR. PLYLER: Objection, Your Honor. My objection he is he can't remember what year the car is. I don't know how he can possibly give an accurate value for what it was worth.

THE COURT: Well, he's entitled to express his opinion as to its value. So you can cross examine him on it.

MR. PLYLER: Thank you, Your Honor.

BY MR. WILLIAMS:
Q. What did you think the car was worth before the sewage problem?
A. Before the sewage problem?
Q. Right.
A. We weren't having any problems with it, and we were using it all the time. But the truth it was not worth much more than that.
Q. Okay. How about the other car?

A. That was a Toyota Avalon.
Q. What kind of car was it? What year?
A. 2007 or 2008. Somewhere in that neighborhood.
Q. I was going to rephrase the question to how was the car when these things happened?
A. About two years old.
Q. And about how many miles did it have on it?
A. Probably about 80,000.
Q. Okay. What was the nature of the damage to the Avalon? Was it just like you've already described?
A. It was 8 to 10 inches of raw sewage inside it.
Q. What did you do with it? Did you fix it up or did you sell it?
A. We tried to have it fixed up. We replaced all the carpet in it. Everything we could do to the inside of the vehicle short of just stripping it totally and replacing everything inside trying to eliminate the odor.
Q. Were you able to eliminate the odor?
A. No, sir.
Q. So what you do as a result?
A. Traded it.
Q. How much trade in value did you get for it?
A. The Toyota people said it was worth $19,000.
Q. And what was it worth in your opinion? What was the value of it before it had the sewage in it?

A. I'd be prejudiced about that. It's worth more than that to me because it was in perfect condition.
Q. How much more? The jury is going to have to come up -- one of the things that they're going to have to think about is how many you were damaged. So how much do you think the value of your Toyota Avalon was affected by the sewage in it?
A. Probably if you look it up $24,000. Somewhere in that neighborhood.
Q. Okay.
A. I mean it had a lot of miles on it, so, but it was in great shape.
Q. Did you lose any other items of personal property. By that I mean not real estate as a result of this sewage?
A. Hand tools, equipment, the whole storage room down there along with some golf equipment.
Q. And tell the jury what is wrong with those thing. Why do you consider those lost?
A. Well, some of them electrical, and you know, whenever you get electricity and water don't mix real good together. But before I realized what had happened out there it had rusted. Most of it had rusted. Some of the pliers you couldn't even open and close it.
Q. When you say 'before you realized it' what do you mean before you realized it?

A. Well, I was so busy trying to get everything else cleaned up that I didn't even think about it was something messed up inside the little storage room there.
Q. And what did you find as the condition of the storage room when you first went in there?
A. Well, it had been filled. I mean it had that same amount of water and sewage inside it as was outside in the yard.
Q. Okay. So there as sewage inside the storage room?
A. Yes, sir. And in the refrig -- we had a refrigerator out there. It was inside the refrigerator. Fortunately, did not get inside the freezer, but it was inside the refrigerator.
Q. Any other items that -- any other items around your house or in the storage room other than what you've already described that were lost by the sewage contamination?
A. Two lawn mowers.
Q. Okay. Anything else?
A. I made a list, but I don't remember what was on it now.
Q. Okay. Would it help you to look at that list? Help you refresh your recollection?
A. Yes, sir.
Q. Okay. I'm going to show you what's been marked as

Plaintiff's Exhibit Number Three. This is a copy of it. Take a look at that. Is that in your handwriting? Did you make that?

A. Yes, sir.

Q. Okay.

A. Yes, sir. That's that equipment and all that was out in the storage room.

Q. Okay. And how did you go about making that inventory of what was out there?

A. I just, best I could remember, I listed it down and then I went to various hardware stores and all and got prices. Walk the isles and got the prices.

Q. Okay. So it was a list based on your memory, and the prices based on your observations?

A. Yes, sir.

Q. Okay. The last page of Exhibit Three what is that?

A. The last page is the home improvements that Vickie and I made just prior -- well, within a year of this incident occurring to the house.

Q. Okay. What were home improvements you all had done in the year prior to the incident occurring in the house?

A. We installed a vinyl fence to go around the backyard. 6 foot tall vinyl fence. We had completed reworked the kitchen and the utility room in the house completely with floor and everything. We bought appliances. New stove,

dish washer, refrigerator. We replaced the windows with the double windows and put in the irrigation system. Put in a new pool liner and bought a pool cover to go over the swimming pool. New hot water heater. Put on a new roof. And we replaced the shrubbery.

Q. And so, roughly, how much money did you put in that house immediately before the September 5th sewage overflow?

A. In excess of $40,000.

Q. The tools and other items of personal property that you listed on the first two pages, what's been marked as Exhibit Three, do you know what that added up to? The dollar value of the tools and other personal items that you lost?

A. No, sir. I didn't add it up.

Q. Have you ever seen an adding tape that had it added up?

A. Sure. Probably did, but I don't see it.

Q. Do you have any memory of what it added up to?

A. No, sir. I really couldn't. Not accurately I couldn't tell you.

MR. WILLIAMS: Excuse me a minute, Your Honor.

THE COURT: Tell you what, Mr. Williams, let's go ahead and take an afternoon break. Ladies and gentlemen, I'm going to remind you the instructions I've given to you

and that is to not to begin to discuss this matter among yourselves because you have still not heard all the evidence. Let's take afternoon break and come back and continue on?

MR. WILLIAMS: Thank you, Your Honor.

THE COURT: Have a seat right there for just a moment, please. You may step outside to the jury room.

(WHEREUPON, the jury panel was excused from the courtroom at 3:38 p.m.)

THE COURT: Mr. Graham, you may step down. I ask that you do not discuss your testimony during this break. Since you have not concluded it would not be proper for you to discuss it with anyone.

THE WITNESS: Yes, ma'am.

THE COURT: You may step down. Let's take a break. We'll come back.

(WHEREUPON, Court was in recess at 3:39 p.m. and reconvened at 3:58 p.m.)

THE COURT: Is there anything we need to take up before we bring the jury in?

MR. WILLIAMS: Nothing from the Plaintiff, Your Honor.

MR. PLYLER: Nothing from the Defense, Your Honor.

THE COURT: You may ask the jury to come in, please.

(WHEREUPON, the jury panel enters the courtroom at

3:59 p.m.)

THE COURT: Yes, sir. You may continue.

MR. WILLIAMS: Thank you, Your Honor. May it please the Court?

BY MR. WILLIAMS:

Q. Mr. Graham, would it help you to remember or testify about the value of the tools and gardening equipment, etc; that golf equipment that we just talked about, if you could look at a document that you and I worked on earlier?

A. I don't think I have anything in there about that.

Q. Let me show you this. Does that refresh your recollection?

A. Yes.

MR. PLYLER: Your Honor, can we at least know what he's looking at.

BY MR. WILLIAMS:

Q. Mr. Graham, do you recall roughly what your estimate of the value of your golf equipment was?

A. The golf and the tools and stuff?

Q. I'm going to go one by one or would you rather me ask all at once?

A. Yes, sir.

Q. Okay. The golfing equipment, your tool and your gardening supplies?

A. I think it was in excess of about $7,500, $8,000.

Somewhere in that neighborhood. I believe it was somewhere in that neighborhood.

Q. Okay. Let me hand you Plaintiff's Exhibit Number One. Now, before I hand it to you let me ask you this. Did you take any photographs of the events that you've described to the jury?

A. Yes, sir.

Q. What day did you take photographs?

A. I mean several. I mean various days but I don't remember specifically. I mean I ---

Q. Let me show you these photographs.

A. Yes, sir.

Q. Go through them. Referring now specifically to the photographs that are marked in Plaintiff Exhibit Number One. Do you know who took those photographs?

A. More than likely I did.

Q. Okay. And why do you say more than likely?

A. Well, my wife took some pictures also.

Q. Did y'all use the same camera or two different ones?

A. Two different ones.

Q. Okay. What camera is your camera?

A. It's on my telephone. Yeah, telephone.

Q. And what camera is her camera? Is hers a telephone camera or a regular?

A. Generally, a telephone camera. Yes, sir.

Q. Okay. It's two different phones?
A. Yes.
Q. Okay. Do you recognize all the scenes depicted in the documents marked as Plaintiff's Exhibit Number One?
A. Yes, sir.
Q. Okay. Are there any in there that were not taken by you or by your wife?
A. I don't think so.
Q. Okay.

MR. WILLIAMS: I offer these in evidence as Plaintiff's Exhibit Number One.

MR. PLYLER: Your Honor, the only objection I have is I didn't hear as to where they were taken and if they're accurate depiction of what was seen at that time. So subject to that missing piece of the foundation I would have no objection.

MR. WILLIAMS: I believe I did half of that, but let me go through it again.

THE COURT: All right.

BY MR. WILLIAMS:

Q. Now, that you've looked at them do you know when these were taken?
A. I would say that it's right at the time that the first event occurred.
Q. September 6th 2008?

A. Yes, sir.
Q. Any possibility it could be more than a day or two apart from that?
A. Not likely. Not with those particular ones.
Q. And do these photographs that you have in your hand do they fairly and accurately depict what you saw at the time these events were going on?
A. Yes, sir.
Q. Okay.
MR. WILLIAMS: Your Honor, now I would offer these in evidence as Plaintiff's Exhibit One.
THE COURT: Any objection?
MR. PLYLER: The only objection is what we mentioned in chambers. I'll take that up at the next break, but at this point no objection.
THE COURT: Then they will be admitted.
(WHEREUPON, Plaintiff's Exhibit No. 1 was admitted into evidence.)
MR. WILLIAMS: Your Honor, may I ask the witness to step down from the witness stand and help me show these things to the jury so that it might ...
THE COURT: Yes, sir. As long as -- if you're talking about the pictures I ask that you keep your voice up so that the court reporter can hear you and record what you say as well. But you can step down.

MR. WILLIAMS: Your Honor, I have a duplicate set of the same pictures. Claude, why don't you stand at that end, kind of second juror in, and I'll stand at this end. I'll try to stay on the same page you're on. Tell us what the first sheet of Plaintiff's Exhibit One depicts?

A. That's a picture looking east on Rice Street. That's the a manhole cover there where it's bubbling up.

Q. Are any of the houses depicted here your house?

A. No, sir.

Q. Okay. That two story house with the white fence on the second floor, is that at the end of the street?

A. That's at the end of the street.

Q. Of Rice Street?

A. Yes, sir.

Q. Looking towards your house or away from your house?

A. Looking east towards -- away from my house.

Q. And where the bubbling up is occurring where is that?

A. That's the manhole cover where the man ---

Q. Is that in somebody's yard?

A. No, that's out in the middle of Rice Street?

Q. All right. Let's go to the second sheet. What does that depict?

A. I think that's my house. No. That's Marion -- that's the house next door to me.

Q. Okay. If you're looking at your house is that a

house to the right of yours or to the left of yours?
A. To the right.
Q. Okay. And that's the house next door to you?
A. Yes, sir.
Q. And what does it depict?
A. That's water and all up in my neighbor's yard.
Q. Okay. Is it partly in your yard?
A. Mine would be back to the left, I believe.
Q. Okay. To the left of that picture?
A. Yes, sir.
Q. And where does it look to you like if you or Vickie were standing when that picture was taken?
A. In the road.
Q. In the road part of your house?
A. Yes, sir.
Q. Okay. Go to the next page. What does that depict?
A. That's looking at my house.
Q. So.
A. This is my house here.
Q. And what's that white gate looking thing?
A. The white gate goes -- the swimming pool back behind that, and that's the gate that gets into the backyard.
Q. Okay. And the green grass is your yard?
A. Yes, sir.
Q. And the water is where?

A. All in my front yard.
Q. Okay. Is any of portion -- any of that in the street? Is any of that in the street?
A. In the street, no, sir.
Q. Okay. Well ---
A. Yes, it does look like there is a portion right here at the very bottom of the picture that does look like its pavement right there.
Q. Okay. And do you know where either you or Vickie were standing when this photo was taken?
A. In the street.
Q. In the street. Okay. Let's go to the next page. All right. Now, what does that depict?
A. Look like a lot of grass and some other things.
Q. What is that?
A. That's the grass and toilet paper and I think that's a -- it looks like a ---
MR. PLYLER: Objection, Your Honor.
THE COURT: Overruled.
BY MR. WILLIAMS:
Q. You were reluctant to use a particular word, is that what I ---
A. Yes, sir.
Q. Okay.
A. I think that is a female hygiene product.

Q. Okay. What else is depicted in that photograph?
A. Toilet paper.
Q. Okay. Any fecal material in this particular picture?
A. I don't see any.
Q. Okay. Let's look at the next page which I believe would be Page Five of Plaintiff's Exhibit One. What is that depict?
A. Same stuff. Toilet paper and female products.
Q. Okay. Now, these two that we just looked at. The one that was close up of the grass. You know where that was? What part of the Town it was?
A. I think it's probably looking at my house maybe the right front up there. Right by the road?
Q. At your house?
A. Yes, sir.
Q. Okay. Now, let's go to the next page. You have to show me how to hold this one, and I'm going to hold it the same way you're holding it, I hope. Yeah, okay. I'm just trying to hold it.
A. That's the proper way.
Q. So this is the proper way?
A. Yes, sir.
Q. Okay. Tell me what that depicts?
A. That's the line of the -- that's hooked to the pump, the sump pump, trying to pump the material out from under

my house. And that's fecal material.
Q. You could see the fecal material?
A. Yes, sir.
Q. Share with the jury where you can see it?
A. Right there?
Q. Right there. Okay. Now, that line has it always been there or is that something -- this like here.
A. This line?
Q. Um hum.
A. That's the line from the sump pumps hooked on the other end. That up under -- that's under my house here.
Q. Okay.
A. There is a pump down in submerged in that stuff there. And that's pumping it out from under my house.
Q. I guess my question is is that a pump that was always there or is that a pump you put there?
A. That's a pump I put there.
Q. To clean out?
A. To get it out from under my house.
Q. Okay. All right. Let's go to the next picture. What is that?
A. Pretty much the same thing, but it's just moved. The material is moved.
Q. Okay. Next. Looks like we're back near a grate of some kind?

A. Yes, sir. That's out by the -- that's the drain. The road is out here and that's the drain off of the road and that's toilet paper?
Q. Again, and that drain is located on whose property?
A. That would be -- technically, I believe that belongs to the either the Town or the State.
Q. My question is ---
A. It's right in my front yard. It's just east of my front yard.
Q. Okay. Right by the highway?
A. Right by the road.
Q. Okay. And the sewage reached here?
A. Yes, sir. This is toilet paper. Remnants of toilet paper.
Q. Okay. Let's go to the next one. What is this right here?
A. I think that's a portion of a female hygiene product.
Q. And where was that?
A. Looks like it was out beside the road.
Q. On your property?
A. I mow it, bit it might belong to the State or the Town.
Q. All right. Let's go to the next one. This one is not in full focus. What is this?
A. Looks like toilet paper.

Q. And where was that?
A. Right in my front yard.
Q. Okay. Let's go to the next one. What is that?
A. Remnants of toilet paper.
Q. Anything else?
A. Well, looks like this is fecal material in various places, but again, it's not that good a camera so.
Q. And, again, is this to your front yard?
A. Right there in my front yard. Right.
Q. Okay. Let's go to the last one. What is that depict?
A. That's up under my carport. That's where it goes out into my backyard.
Q. And what is -- again, what does that show?
A. It shows the level of -- for this particular incident. See a line going across the bottom of the door here. That's the height of the substance in my backyard and under the carport there.
Q. Under the carport?
A. Yes, sir.
Q. Okay. That's all. Thank you. You may take your seat.

MR. WILLIAMS: Your Honor, may I pass this material on to the jury, this exhibit?

THE COURT: Yes, sir.

BY MR. WILLIAMS:

Q. Claude, let me hand you what's been marked for identification as Plaintiff's Exhibit Number Two. Can you tell the jury what that is?

A. It's a ---

Q. Don't read any portion of it?

A. Yes, sir.

Q. Just tell me what it is?

A. It appears to be a bill from Palmetto Internal Medicine. It says for me. All of them for me.

Q. And for what doctor would that be?

A. I believe that would be Dr. Culpepper.

Q. Okay.

MR. WILLIAMS: Your Honor, I'd like this marked just for identification at this point. I'll tie it up later. Offer it in evidence.

COURT REPORTER: It's already marked.

MR. WILLIAMS: That's fine.

BY MR. WILLIAMS:

Q. Claude, if I can waive a magic wand and have the underneath of your house right now cleaned. No debris under there. No sanitary napkins. No toilet paper. No anything. And have your duct work put up and have your whole house sanitized with the best sanitation products in the history of the world. Have it crystal clear,

pristine, beautiful, wonderful would that house be suitable for living?

A. Not in the present condition. No, sir.

Q. Why not?

A. Because the sewer line is still there.

Q. Okay. Thank you.

THE COURT: Any cross?

MR. PLYLER: Yes, Your Honor.

CROSS-EXAMINATION

BY MR. PLYLER:

Q. Mr. Graham, I think we've already established, but just to make sure we're clear. You grew up in Latta?

A. Yes, sir.

Q. And you actually grew up -- I think you spent a good portion of your time over on Bamburg Street; is that right? Isn't that where your mother's house is?

A. No, sir.

Q. What house is your mother street on? What street is your mother's house on?

A. Highland Drive.

Q. Highland Drive?

A. Yes, sir.

Q. Okay. You ever lived on Bamburg Street?

A. No.

Q. Were you familiar with the house that we've been

A. I'm a commercial photograph.
Q. And what's that mean?
A. Photograph for advertising agencies and companies. I provide them pictures for their use.
Q. And they pay you for what you do?
A. Yes.
Q. Okay. And how long have you been doing that?
A. Professionally, about 20 years.
Q. Okay. where exactly do you live in Latta?
A. I live on -- 224 East Bamburg Street.
Q. And do you have family in Latta?
A. Yes, sir.
Q. Who?
A. My mother.
Q. Where does your mother live?
A. She lives on Rice Street.
Q. What's her address?
A. 225 East Rice Street.
Q. Where is that in relation to 200 East Rice Street?
A. It's ---
Q. The Graham house?
A. Diagonally across. It's one house up on the opposite side of the street.
Q. Across the street one house down?
A. Yes, sir.

Q. If you're standing on your momma's front porch which direction would you look to see the Graham house?
A. The left.
Q. Okay. So catty corner? Half way?
A. Yes.
Q. Okay. And is that the house you grew up in or did your momma move into there?
A. I grew up there.
Q. So you're familiar with that neighborhood?
A. Yes, sir.
Q. Okay. Do you know the Grahams?
A. Yes, sir.
Q. How long have you known them?
A. All my life.
Q. You have any special relationship with them other than being neighbors or having been neighbors?
A. We're in the same church.
Q. How far is your house on Bamburg Street from your Momma's and the Graham house on Rice Street?
A. My property butts up with my mother's. My backyard and her backyard join.
Q. So you can see your house from the Graham house if your mother's house wasn't in the way?
A. Yes.
Q. Okay. Do you remember the events of September 5th

and 6th 2008?
A. Not really.
Q. Okay.
A. Not specifically.
Q. Do you remember any occasions where there had been sewage overflows out of the manhole on Rice Street?
A. Yes.
Q. Okay. What's the earliest one your remember?
A. It's early 2000s. Somewhere -- I don't ...
Q. Okay. Have you taken any such photographs of any such sewage overflows?
A. Yes, sir.
Q. On how many different occasions?
A. I know of twice, but I know there are more than that.
Q. Okay. When you became aware of a sewage overflow what did you do?
A. First time I knew there was a problem I contacted the Town.
Q. Okay. What did you to do -- did you do anything to observe the actual overflow?
MR. PLYLER: Your Honor, objection. And we may need to have a side bar.
THE COURT: Yes, sir.
(WHEREUPON, a bench conference was held off the record in the presence of the jury, but out of the

hearing of the jury.)

BY MR. WILLIAMS:

Q. The first time you became aware of a sewage overflow from the manhole on Rice Street what did you do to observe conditions if anything?

A. I mean there was -- I took pictures at times when it.

Q. And when you took pictures did you go over there and look around?

A. Just in my -- as far as my mother's yard. I did, yeah.

Q. When we were looking at your mother's yard could you also see the Graham's yard?

A. Yes.

Q. Okay. Do you recall what the earliest of those occasions was?

A. Not exactly. I want to say 2003, but I'm not positive.

Q. Do you recall the earliest occasion on which you took pictures?

A. I take a lot of pictures.

Q. When you took pictures of the neighborhood, the Graham house or Rice Street?

A. Probably that same time period would have been the first time.

Q. Let me question you to look at something and see if

this refreshes your recollection. I'm going to show you what's been marked for identification as Plaintiff's Exhibit Number Seven.

MR. PLYLER: Objection, Your Honor. Your Honor, this is your rule -- your earlier ruling. This is the problem we're stepping into here.

MR. WILLIAMS: Your Honor, I'm not offering these into evidence. I'm asking if that refreshes his recollection.

THE COURT: I'll allow you to talk -- to utilize those photos for purposes of his testimony, but I think I previously ruled that those exhibits are not admissible into evidence.

MR. WILLIAMS: Correct. Thank you, Your Honor.

BY MR. WILLIAMS:

Q. Mr. Henry, look at those photographs. Does that refresh your recollection about them?

A. It mean I took these.

Q. Okay. Do you now remember taking them?

A. Yes, sir.

Q. All right. So what was the condition of Rice Street at your mother's house, in front of your mother's house, and at the Graham house and on Rice Street on or about April 14th 2009?

A. The water was covering the street from pretty much

her drive all the way across the street to -- there was a house to the right straight across from her, and the water went up to the front of their house and up to about halfway of Claude and Vickie's house. And then the house that is to the left of my mother's was about halfway up into their yard.

Q. And when you say 'water' was it water? Was it just water?

A. Well, I know that the manhole there was sewage coming out of that or material coming out of it.

Q. Okay. So it was sewage all over Rice Street, right? At your mother's house and across the street and at the Grahams?

A. Yes, sir.

Q. Okay. Did you observe anything related to the sewage on May 28th 2011?

A. We had the same flooding problems. It's very similar situation.

Q. Let me show you an exhibit that's been marked for identification as Plaintiff's Exhibit Number Eight. Take a look at those and see if that refreshes your recollection?

A. Yes, sir.

Q. Okay. Now that your recollection has been refreshed what was the condition of Rice Street and the Graham

property on May 28th 2011?
A. It was the same type flooding. Water covers the entire street, and the house across from my mother's and it goes up -- well up into their yard, the Graham yard and then the house to the left of my mother's. It's up into their yard.
Q. And you saw that?
A. Yes, sir.
Q. And I know you are reluctant to say. You keep saying -- you say 'water'. Was it more than water? Was it sludge?
A. Well, it was material coming out of the manhole.
Q. Sewage?
A. Sewage, yes, sir.
Q. Okay. Now, let me show you what's been marked for identification as Plaintiff's Exhibit Number Nine. Can your identify those photographs in Plaintiff's Exhibit Nine?
A. Yes, sir.
Q. What is that?
A. That's another flooding of the same area on Rice Street.
Q. And did you take those photographs?
A. Yes, sir.
Q. And are those photograph dated?

A. Yes, sir.
Q. What date?
A. 3/18/12, 2012.
Q. And what do they depict? Not in particular, just in general. What do they depict?
A. The area in front of my mother's house and Claude and Vickie's house and, yeah, the flooding and the street.
Q. I would offer these into evidence without objection, I believe, Your Honor?
THE COURT: Any objection to Exhibit Nine?
MR. PLYLER: Subject to our earlier objection.
THE COURT: Yes. It's admit.
(WHEREUPON, Plaintiff's Exhibit No. 9 was admitted into evidence.)
BY MR. WILLIAMS:
Q. And what was the date of those pictures?
A. 3/18/12, 2012.
Q. And, again, the water depicted there is it rain water or some other kind of water?
A. It's both. I mean there's sewage from the manhole.
Q. Okay. Let me show you what's been marked for identification as Plaintiff's Exhibit Number Ten. Does that refresh your recollection?
A. Yes, sir, I remember taking the picture.
Q. Of the events of April of 2012?

A. Yes, sir.
Q. And what were the conditions at your mother's house and on Rice Street on April 10th 2012?
A. The photograph is the ditch that next to my property and that's ---
MR. PLYLER: Your Honor.
THE COURT: I'll sustain that objection.
BY MR. WILLIAMS:
Q. I'm not asking what's in the photograph. What I'm asking you is does that photograph help you remember what conditions were like on Rice Street, at your mother's house and at the Graham's house?
A. Yes, sir.
Q. And what were the conditions? Don't tell me about your house what it was like. Talk about Rice Street and the street between your mother's house and the Graham's house and at the Graham's house?
A. This ditch goes downstream from my house. So the sewer -- the things that are in my ditch are -- it's the same ditch.
MR. PLYLER: Your Honor, this is the same issue.
THE COURT: I think you need to move on. I sustain that objection.
MR. WILLIAMS: Okay.
BY MR. WILLIAMS:

Q. All right. Let me ask you now to take a look at what's been marked for identification as Plaintiff's Exhibit 11. Do you have that? Here it is. Let me show you what's been marked for identification as Plaintiff's Exhibit 11. Look at that and see if it refreshes your recollection.

A. Yes, sir.

Q. And what does that depict?

A. It's another flooding situation on -- showing the flooding on Rice Street.

Q. And when was that?

A. I don't recall the date. I don't have it on here.

Q. I believe the record will reflect May 17th 2012; is that jibe with your recollection?

A. That sounds right.

Q. Okay. Did you take those pictures?

A. Yes, sir.

Q. And do those accurately depict the conditions on Rice Street on that day?

A. Yes, sir.

MR. WILLIAMS: I would offer that into evidence at this time without objection, I believe, Your Honor?

MR. PLYLER: Your Honor, subject to our earlier objection and your earlier ruling.

THE COURT: They're admissible. It's admitted.

888

(WHEREUPON, Plaintiff's Exhibit No. 11 was admitted into evidence.)

BY MR. WILLIAMS:

Q. And in general, without going picture by picture through there, tell the jury what they show.

A. They show flooding on Rice Street and the street is covered and the yard and the surrounding area covered. An there is also pictures the backyard of Claude and Vickie Graham's house.

Q. Okay. Let me ask you to take a look at Plaintiff's Exhibit 12 see if that refreshes your recollection.

A. Yes, sir.

Q. With on June the 23, 2012.

MR. PLYLER: Your Honor, I mean I've got to do this objection again. This photograph has nothing to do with the Graham's property.

MR. WILLIAMS: That's not my question, Your Honor.

THE COURT: Let me hear the question first.

BY MR. WILLIAMS:

Q. My question is does that refresh your recollection as to the condition of Rice Street in front of your mother's house and at the Graham property on or about June 23 2012?

A. It's the same time. Yes, sir.

Q. Okay. And do you recall now what Rice Street was

like on or about July June 23 2012?
A. It was flooding, another flooding event.
Q. Okay. Same type you've described before?
A. Yes, sir.
Q. Was there -- was there sewage flooding or water flooding or both?
A. There would have been both. Yes, sir.
Q. All mixed together?
A. Mixed together, yes, sir.
Q. On that date did you -- please, state whether or not you did see sewage materials in the water?
A. I did from the manhole.
Q. Okay. All right. Now, let's talk about Plaintiff's Exhibits Nine and 11 which I believe are already in evidence and should be right in front of you? If you would let me?
MR. WILLIAMS: And with the Court's permission, let me get you to come down and stand in front of the jury with Plaintiff's Exhibits Nine and 11.
BY MR. WILLIAMS:
Q. And let's go through. Let's just do -- have Nine and 11 in front of you?
A. Yeah.
Q. But let's just do one at a time. Let's do Number Nine right now.

THE COURT: And I just ask that you keep your voice up so that the court reporter can hear what you're saying as well.

MR. WILLIAMS: If with the Court's permission I'll stand at one end, and you sort of stand at the other end. And come this way a little bit. About right there, and I'll come about the same amount in and we'll both show the pictures at the same time.

BY MR. WILLIAMS:

Q. What does this depict? I'm showing you Plaintiff's Exhibit Number Nine?

A. That's -- the house on the left if Claude and Vickie's house. I'm actually standing in my mother's yard, and this is Rice Street in the middle.

Q. Okay. And where, point with your finger, and show where is the manhole on Rice Street?

A. Right in this area.

Q. All right. Let me see where your finger is. Right here. Is that about right?

A. Yes.

Q. Okay. All right. Show the second page. Is that another view of the same?

A. Yes, sir. That's at little more further up. That's still the Graham house, and you can see the street now.

Q. Okay. And what is the third page?

A. The similar view. Less of the street and more up street. Little more where the house and the ditch and the manhole is.
Q. Are you able to actually see the manhole in any of the street pictures or you just know where it is?
A. No, I cannot see it.
Q. Okay. So when You were pointing to it you just know where it is?
A. Yes, sir.
Q. Okay. Now, let's look at Number 11. And let's go through the same situation. These photographs were taken on May 17 2012 as I recall; is that right?
A. I think that's right.
Q. All right. The first sheet?
A. Again, I'm standing on my mother's property, and that's the Graham house across the street.
Q. You know what that orange cone is?
A. I'm pretty sure ---
MR. PLYLER: Objection, Your Honor. Speculation.
THE COURT: If he knows what it is he can testify as to what it is.
MR. PLYLER: As far as an answer I'm pretty sure he doesn't know.
BY MR. WILLIAMS:
Q. Do you know what it is?

A. I do not know.
Q. Okay. Did you put it there?
A. No, sir.
Q. Did you see anybody else put it there?
A. No, sir.
Q. Is it near anything that you know about?
A. There's a patch in the road.
Q. And how do you know there is a patch in the road?
A. I mean you can see it out there after -- I think it -- may be the other picture shows that.
Q. I show the second page of Plaintiff's Exhibit 11.
A. This is -- the Graham house is on the left side. This is the Coxes live over here and the road in between.
Q. And you said over here on the right side?
A. On the right. Excuse me.
Q. And the road in between the Coxes and the Grahams?
A. Right. Well, between them is their property line, but Rice Street runs up to the left in the ditch.
Q. On the right hand side of the picture is that Rice Street or is that a yard?
A. That's a yard.
Q. Okay. Whose yard is that?
A. That's the Cox.
Q. Okay. On the left hand side of the picture where the sewage is covering?

A. That's the Graham house, and that's the front of their house.
Q. Okay. You can just see a little teeny bit of the front of their house?
A. Yes, sir.
Q. Okay. And the oak tree right in the middle, whose yard is that if you know?
A. That would be the Coxes.
Q. Okay. And that light pole, is that a boundary more or less?
A. The ---
Q. Between the properties?
A. The green part, that's my understanding, is the boundry line is where the ditch would be.
Q. The green hedge?
A. Hedge, yes, sir.
Q. Okay. All right. The third sheet of paper? What is that?
A. That's the entrance under Claude and Vickie's house.
Q. You took that picture?
A. I took take picture.
Q. And what does it show?
A. You can see the water underneath the house.
Q. And did you observe that with your own eyes?
A. Yes, sir.

Q. Did you see any evidence of sewage under the house on that particular day?
A. I could smell sewage.
Q. Okay. What's the next picture?
A. That's actually a picture inside up underneath their house from that same hole. I'm actually in the hole or in the ditch.
Q. And then was there still a smell?
A. Yes, sir.
Q. And the next picture?
A. That's their backyard on their back steps looking to the right hand corner of their property.
Q. Is there a swimming pool in that picture?
A. Yes, sir, that's the swimming pool.
Q. Covered up?
A. Yes, sir, covered.
Q. And when you said, 'their property' you're talking about the Grahams?
A. The Graham property, yes.
Q. And the very last page of that exhibit what's that?
A. That's the manhole on Rice Street.
Q. Okay. And that's when the sewage was coming out of it? You can see it coming out while you were taking the pictures?
A. Yes, sir.

manhole cover is that shows the sewage but not the bubbling up is because the water is too deep?

MR. PLYLER: Objection, Your Honor. This is clearly leading.

THE COURT: Rephrase the question.

BY MR. WILLIAMS:

Q. If you took pictures and you can't see the water bubbling up what was the reason?

MR. PLYLER: Objection, Your Honor. Calls for speculation. It's hypothetical. He's not qualified as an expert.

MR. WILLIAMS: I don't know how to rephrase the question, Your Honor.

THE COURT: I'll overrule that objection. I think he can answer based upon his previous testimony.

THE WITNESS: Say it again.

BY MR. WILLIAMS:

Q. If you took a picture of the area where the manhole cover is and the sewage in the picture, sewage water in the picture, but you can't see the manhole bubbling up, why is that?

A. The water is too deep as it comes down and you can't see it bubbling out.

Q. Okay. So the level of the water masks the roaring?

A. Yes, sir.

Q. What does the level of the water have to do with your ability to smell the sewage if anything?
A. Well, it dilutes it. When you have a lot more water it's more diluted. I mean you just wouldn't smell it. It wouldn't be as obvious.
Q. Thank you.
MR. WILLIAMS: That's all I have.
MR. PLYLER: Your Honor, may I have a brief recross?
THE COURT: Yes, sir.

RECROSS-EXAMINATION

BY MR. PLYLER:
Q. I think I just have one or two questions Mr. Henry. If the water is so high you can't see how the manhole bubbling how do you know it was bubbling?
A. When it goes down.
Q. You didn't go back out and take pictures of it when it went down, did you?
A. No.
Q. All right. That's all the questions I have for you.
MR. WILLIAMS: May the witness be excused, Your Honor?
THE COURT: Yes, you may step down and you may be excused. Thank you.
MR. WILLIAMS: We call Danielle Watson.
DANIELLE WATSON, after being duly sworn,

Q. When D.H.E.C. discovered those D.H.E.Cs -- those defects -- when D.H.E.C. discovered the defects did your or did you not advise the Town of the Latta about that?
A. Sure we did.
Q. How did you do that?
A. We have set up meetings with the Town and talked to them about that. If it was found during an inspection it was written up in the inspection. If it was on their D-M-Rs, if they didn't pass their certain perimeter, then it was addressed in a letter to them. There are several different ways we can process that.
Q. And did D.H.E.C. or did it not make recommendations to the Town of Latta on what to do?
A. I wouldn't call them recommendations. What we call them is they have to be in compliance.
Q. Okay.
A. With their permit.
Q. Okay. So that's stronger than a recommendation, correct?
A. Yes, sir.
MR. PLYLER: Objection, Your Honor.
THE COURT: Sustained. Rephrase.
BY MR. WILLIAMS:
Q. You were reluctant to use the phrase, 'recommendation'. What word would you use instead of

recommendation?
A. Compliance.
Q. Okay. Explain what you mean by that?
A. Compliance is they have a permit that they are under. And they have to comply with that permit. They have to, in other words, do what's in that permit to meet our standards. And if they don't then they're not in compliance.
Q. Okay. How does D.H.E.C. notify the Town that it needs to get into compliance?
A. Usually by a letter.
Q. And did you all write letters to the Town of Latta prior to September of 2008?
A. Sure there have been letters.
Q. Approximately how many?
A. I have no idea of how many.
Q. More than half a dozen, correct?
A. I'm not sure. I can't answer that.
Q. Do you know what the content of those recommendations were?
A. If they were ---
Q. Those compliance efforts?
A. If they were associated with a inspection that I did then it was a notice of violation. In those letters they note what the violations are and what they have to do to

comply.
Q. And have all of those violations been completely corrected?
A. I'm not real sure what you're asking.
Q. Did some of those violations continue to this date or not?
MR. PLYLER: Your Honor, I'm really biting my tongue here, but I'm not sure how this is relevant. We're getting some irrelevant material here.
THE COURT: What's the relevance?
MR. WILLIAMS: Let me withdraw that question and move in a different angle, okay.
BY MR. WILLIAMS:
Q. Forget that question?
A. Okay.
Q. September 6th of 2008, were you summoned or asked to come to the Town of Latta?
A. If this was -- I don't remember the date, but I was called during an event, a rain event, that was causing problems in the Town, and yes, Latta did call me to come.
Q. Okay. Did you go to or meet Mr. and Mrs. Claude Graham, my clients, the Plaintiff's in this case?
A. I don't remember meeting them on certain dates, but I did go to the Town and I met with some Town people. Sometimes I meet with clients that are having problems. I

don't remember the dates.
Q. Did there come a time when you went to the Grahams house?
A. Yes, sir.
Q. Tell the jury what you remember about going to the Graham's house?
A. I went because the Town called me and said they were having a problem with the line overflowing on that street. They got down into the yard cause it's lower than the street, and it had gotten under his house and I went to look, observed it. See what was going on.
Q. How long after the rain event, for lack of a better word, was it that you were there? Was it in a matter of days or hours or weeks?
A. The day they called me.
Q. Okay. All right. And what did -- what precisely did you observe? How deep was the water?
A. It was pretty extensive. In fact, I mean the Town was inundated with water. They had a large rain event, and they were having drainage problems and the sewer line was inundated with water overflow. Storm water got in and it had caused overflows over the Town.
Q. Storm water got into the sewage system?
A. Yes, sir.
Q. Which filled up the sewage line, and then the sewage

line, it started spewing out of it? Is that basically what happens?
A. Yes, that were overflowing.
Q. Okay. So did you see -- I'm going to call it sewage material. By that I mean fecal matter, toilet paper or over cloth paper items; that sort of thing?
A. There was some debris, yes, sir, in areas.
Q. You saw that yourself?
A. Yes, sir.
Q. Including at the Graham's property?
A. Yes, sir.
Q. Okay. Did you go up under the house?
A. No. That's a confined space, we're not allowed to go. No.
Q. Okay.
A. I did look under it.
Q. Okay. When did you observe when you looked under there?
A. I mean it was water or sewer under the house. It was wet and ...
Q. Were you able to tell how deep that sewage water had been?
A. No.
Q. You couldn't see a line under, say ---
A. I don't recall seeing a line.

Q. Okay.
A. But I know it was wet.
Q. How deep was it when you were there?
A. I'm not real sure. I don't remember to tell you the truth.
Q. Okay.
A. It's been a while.
Q. If you don't remember you don't remember. Whose responsibility is it to maintain, operate, install, correct, etc. a municipal sewage system?
A. The owner of the sewer system.
Q. In the case of Latta who is the owner of the sewer system?
A. It would be the Town of Latta.
Q. Town of Latta, okay. Did you discuss with any officials of the Town of Latta its responsibilities with respect to the Grahams?
A. Yes, sir.
Q. Pardon?
A. Yes, sir.
Q. What -- who did you talk about it with?
A. The Mayor.
Q. Okay.
A. And the Operator.
Q. I'm sorry. Mayor and the Operator?

A. Yes, sir.
Q. Now, who is the Operator?
A. At that time it was a Mr. James.
Q. Mr. James?
A. Um hum.
Q. What was his first name, you know?
A. I don't remember his first name.
Q. All right. Mr. James?
A. Um hum.
Q. What did you tell them?
A. That the area had to be cleaned up, and that usually when we clean an area up we add agricultural lime which helps bring up the PH which will help kill the bacteria and also cut down on the smell. All the solids had to be taken up and then lime the areas that were having overflows.
Q. Did you discuss whose responsibility it was that that work be done?
A. Yes, sir. I told the M.E. It was their system. It was their overflow so.
Q. Okay. Did you discuss actions that could be taken to prevent such things from happening again in the future?
A. Yes, sir. We actually had asked the Town to do some studies on the system to see where they were having problems with water getting into it.

Q. And where those studies done to your knowledge?
A. I know a smoke and stuff was done. Yes.
Q. Have you the problems that were identified been corrected to your satisfaction?
A. Some of them have, but not all of them that I know of.
Q. Were you present in the courtroom and heard some testimony about sewage overflow occurring as recently as June of this year?
A. Yes, sir.
Q. Is that consistent with your understanding of the situation in Latta?
A. There was some problems and in the area that caused.
Q. That's all the questions I have. Thank you, Miss Watson.

THE COURT: Any cross?

MR. PLYLER: Yes, Your Honor. May it please the Court.

THE COURT: Yes.

CROSS-EXAMINATION

BY MR. PLYLER:

Q. Hello, Ms. Watson?
A. Hello.
Q. We met recently, didn't we?
A. Yes, sir.

MR. WILLIAMS: Just a few, Your Honor.

REDIRECT EXAMINATION

BY MR. WILLIAMS:

Q. Ms. Watson, when you used the term, 'significant rain event' when Mr. Plyler uses that term what do you take that to mean? What is a significant rain event?

A. To me anything that would cause flooding problems in the areas.

Q. Anywhere in the area?

A. Um hum. Yes, sir.

Q. Okay. You've lived in Marion County basically your entire life, correct?

A. Pretty much.

Q. Okay. And that's contiguous or touches right here at Dillon County?

A. Yes, sir.

Q. Are conditions any different in Marion County than they are in Dillon County?

MR. PLYLER: Objection, Your Honor. This is -- one, she hasn't been qualified as an expert. Seems outside of her area of expertise. She hasn't been qualified as an expert, and I think we're getting into some irrelevant material sterile here.

THE COURT: I'm going to overrule the objection. You may need to narrow it somewhat as it relates to her duties

and responsibilities.
BY MR. WILLIAMS:
Q. Have you observed whether conditions in Dillon County to be significantly different from weather conditions in Marion County?
A. Sometimes. Sometimes it's different. Sometimes it's not.
Q. I understand a particular day's weather, but I'm talking about just conditions in general?
A. Usually they're about the same.
Q. Okay. Does the significance of a rain event diminish, alter or increase a town's responsibility to maintain their sewage system?
A. Can you say that again?
Q. Does a significant rain event affect a town's responsibility to maintain and operate their sewage system in a healthy and environmentally clean way?
A. They should be able to maintain their system. Sometimes rain events or storm events causes problems in the systems that the system is not able to take care of.
Q. Okay. In this area of the State are significant rain events a predictable occurrence?
MR. PLYLER: Your Honor, objection. It's leading. Again, we're getting into opinion testimony. She hasn't been qualified as an expert.

THE COURT: Rephrase the question.
BY MR. WILLIAMS:
Q. In your experience is a significant rain event a rare thing or does that happen with some frequency even though not a predictable frequency?
MR. PLYLER: Objection, Your Honor. That's lay opinion.
THE COURT: Overruled.
BY MR. WILLIAMS:
Q. You may answer the question?
A. Ask the question again.
Q. Do you know or do you not know whether a significant rain event is going to happen periodically around here?
A. Sometimes you know, yeah. A lot of times you do know?
Q. I'm talking about looking forward ---
A. You mean like ---
Q. From now for the next, let's say three to five years out in the future, do you think we're going to have some significant rain events?
A. I don't ---
MR. PLYLER: Your Honor, this is speculation and lay opinion.
MR. WILLIAMS: Let me rephrase the question.
BY MR. WILLIAMS:

Q. Looking back in the past for the last three to five years ---
A. Um hum.
Q. --- I want to let you look back at all 24 years since you've been working with D.H.E.C.
A. Okay.
Q. Have there been almost no significant rain events? Or very, very few significant rain events? Some significant rain events? Or fairly common to have a significant rain event?

THE COURT: Overruled.

THE WITNESS: We do have a lot of rain events in this area, but it depends on the seasons when the rain events are. So we do have some significant rain events.

Q. Are you or Mr. Plyler or I in a better position to predict that there will be significant rain events than you are? Does it require any special knowledge?
A. Well, I guess if you were a meteorologist it would be easier for you to predict it, but I'm not one of those.
Q. I'm not talking about what day they will happen on. I'm just saying that they will happen.
A. Well, most of the time, yes, they will happen.
Q. And if you build a house or sewer system or waste water system or storm water system is the occurrence of significant rain events something you should plan for?

A. Most of the time when they do build sewer systems they do calculate in there for some infiltrations around it.

Q. Okay. Does the occurrence of the significant rain event absolve the owner of a sewage system from his responsibility?

MR. PLYLER: Objection, Your Honor. That's a legal conclusion and it's significantly outside the area qualified for as well. I believe I mentioned one time the Town's responsibility during my cross one time.

THE COURT: Overruled.

BY MR. WILLIAMS:

Q. You may answer the question?

A. Can your ask the question again?

Q. Yes. Does the existence of a significant rain event absolve the owner of a sewage system responsibility for its operation and maintenance of the system?

MR. PLYLER: Please note my prior objection, Your Honor.

THE WITNESS: Well, it's kind of a -- in the permits they do have verbiage in there for named storms that -- not that they shouldn't maintain the system, but if the system fails in some way that they won't get fined. But they are still responsible to maintain the system and try to keep the system where it should be. But if it does get

out that enforcement action won't be taken, but they still have to do their due diligence in taking care of what's gotten out if something gets out.

Q. Okay. Thank you. The Defendant's Exhibit 14, I think you have it in front of you, but it's -- I'll call it clean up suggestions for houses?

A. Yes, sir.

Q. That one phrase you and Mr. Plyler used was non-porous materials?

A. Yes, sir.

Q. And I understand that that would be things like plastic, silicone, refrigerators, stuff like that; is that correct?

A. Stuff that cannot absorb water.

Q. Okay. And the porous materials would be things like wood, clothe, paper, floors, wood furniture?

A. Anything that would be able to absorb water.

Q. Okay. Only water or water and vapors, for example?

A. Well, when you say 'vapors' what are you asking, vapors?

Q. Gases. Smelly gases?

A. I'm not real sure exactly what you're ...

Q. It's a porous material. Can a porous material, in addition to absorbing water, can it suck up smells?

MR. PLYLER: Objection, Your Honor.

THE COURT: She can answer if she knows.

THE WITNESS: Well, I -- if you have draperies or something like that in your home or materials it's going to absorb smells that are in your house; the sewer smells, smoke, whatever. So I would think, yes, it would absorb some smell.

Q. Okay. Let's say somebody does all these things. This is not a numbered list, but it looked to me like it's half a dozen or more things you should do to clean up your house after a sewage infiltration?

A. Yes, sir.

Q. Is that about right?

A. Yes, sir.

Q. Are they, in your experience, are they costly to do those things?

A. They can be, yes, sir. It depends on how much gets in your house, where it is and where it goes.

Q. If you lived in that house would you put that money into doing it if you knew that the next time there was a significant rain event you're going to have to do it all over again?

MR. PLYLER: Objection, Your Honor. Hypothetical, not an expert and calls for a conclusion.

THE COURT: I sustain the objection.

BY MR. WILLIAMS:

legal conclusion. The existence or non-existence of an easement.

THE COURT: Rephrase the question.

BY MR. WILLIAMS:

Q. Did there come a time when you were lead to believe that the Town did not have an easement?

A. Yes.

Q. When was that?

A. Well, I can't remember the exact date of that.

Q. Estimate. Give us a frame of reference instead of estimating it.

A. Oh, gosh. I mean it was ...

Q. Was it before or after I became your lawyer replacing Mr. Rushton.

A. It was while you were -- I think it -- I just can't remember it exactly.

Q. I'm not asking for exactly. I'm asking to the best of your recollection. Let me rephrase it and let's try it this way.

A. Okay.

Q. Do you remember your suit in this matter that we're litigating here today?

A. Yes, sir.

Q. You remember it was amended at one point?

A. Right.

Q. That I amended it?
A. Yes, sir.
Q. Was it before that day?
A. It was before that day. Yes, sir.
Q. Was it a long time before that day or a few weeks or a few months?
A. I just don't know how long it was before.
Q. Did Mr. Rushton -- was it Mr. Rushton or was it I that lead you to believe that the Town did not have an easement?
A. I think it was you.
Q. Okay. Let me show you -- well, let me not do that. Do you remember the events of September 5th and 6th 2008 that we're talking about here today?
A. Yes, sir.
Q. Tell the jury how you -- what happened when you woke up that morning or in the middle of the night, whenever it was?
A. Well, when I woke up and went to the back door and opened the back door to -- I don't know if I was taking the dog out of what, but there was water almost to come into the door. I thought what in the world has happened here. And then I went looking out the windows to see, you know, where the water was and it was surrounding, And I went to the front door and it was up on the steps and all.

And I think at that time my husband said he was going to try to go get some help and he needed his boots. So we had to put a chair for him to put his boots on out on the front steps because water was everywhere.

And he said, you know, for me not to go outside because there was some things out there he didn't think I wanted to be involved in. And so I stayed inside and I was getting ready to roll the rugs up because I was afraid it was going to come into the house. And he came back and said that, you know, he could not get anybody to block off the street because he couldn't find -- he found some people but they didn't have anything to do it with.

And I was just on go to start moving furniture and putting the rugs up and all because I was afraid it was going to come in the house.

Q. How close was it to coming in the house?

A. I'd say it was maybe, I mean, you know, that little lip from the porch to the door. It was covering -- it was almost maybe 2-inches or so. I don't know exactly before it came in.

Q. Is your porch a raised porch?

A. It is.

Q. Okay. How many steps, roughly?

A. Maybe three in the back. I'm speaking of the back.

Q. So it covered -- did it cover the flat part of the

porch?
A. It covered the flat part.
Q. Okay. But didn't reach up to the door?
A. No.
Q. Didn't reach other parts of the wood down there near the door frame?
A. Right under it kind of. A little bit under.
Q. Okay. And again I don't want to belabor this point, but was it just water or was it other stuff too?
A. It was other stuff too.
Q. Okay. No water -- I think Claude testified that no water actually got inside the house; is that correct?
A. No, sir. no water came into the house.
Q. Okay. What all did -- what sort of precautionary or other measures did you and he take that day and the next?
A. You mean as far as cleaning up?
Q. Yeah, cleaning up and tending to the situation?
A. Well, we had to wait until the water subsided so we could get out, actually. And so as it went down we went outside, and I think there was debris and stuff everywhere. And I think I started washing down some of the walls outside the -- under the carport and maybe breaking up some. And he had to call somebody to see about the duct work and all under the house.
Q. And when you say 'stuff' everywhere you're talking

about foul, filthy, disgusting stuff?
A. Yes, sir.
Q. Okay. After the water had subsided describe whether there were or not odors?
A. There were odors.
Q. Did y'all stay in the house after? Did you get it cleaned up any?
A. We did get it cleaned up some. We worked all that afternoon trying to clean it up.
Q. Did you stay in the house?
A. Yes, we did.
Q. Okay. When you went out on the -- after the water had subsided and wanted to got somewhere and tend to things, did you observe your cars?
A. We did.
Q. Tell me the situation with your cars?
A. It was in the cars. The carpets and all were wet inside the cars. And the Taurus and the Avalon, the two cars, and you could see from, you know, around the cars where like, I don't know, grass and whatever, you kind of see the level that it had been.
Q. Did you have to drive anywhere even though your car is in that condition?
A. I think we took the truck. I can't remember exactly, but I think we took his truck.

Q. That's a third vehicle?
A. Right. Right.
Q. Okay.
A. I mean I know we took the car over to the Toyota place, the Avalon, at some point in time because it was so bad you couldn't stand the smell. And we took it over there. We had to drive it other there to get it -- to get them to try to decontaminate it.
Q. Okay. Anyway, after you got over the immediate crisis of that weekend as I recall September 5th was a Friday, and the 6th was a Saturday; is that correct?
A. Yes.
Q. Once you got over that weekend did you continue to live in the house for a while?
A. We did. We didn't have anywhere else to go.
Q. And what if anything happened?
A. We kept getting sick. My husband and I kept getting sick and our dog got sick. And we kept going back and forth to the doctor and taking to dog to the vet and all. And you know, we were on medication and all.
Q. What doctor did you go to?
A. Doctor Culpepper.
Q. Okay. And during what period of time did you go to him?
A. Whenever we started getting sick.

Q. How long after the 5th and 6th?
A. Might have been a week, a couple weeks. I don't know the exact date.
Q. Okay. As a result -- well, let me scratch the question about Dr. Culpepper. While you were still living in the house did any similar events happen?
A. They did.
Q. Tell me -- tell the jury about that?
A. Several more times, and I don't know the exact number, but several more times we had it in your yard and under our house again.
Q. As bad as the first time?
A. Maybe not quite as bad as the first time.
Q. Okay. And what did you all have to do to deal with it each of those subsequent occasions?
A. Well, we -- I think the -- he tried to get the man to come and look at the duct work again, but he said that there is no point in doing anything about that as long as, you know, this keeps happening. And we just tried to clean up the yard as best we could. And I think lime was put out or something at some point in time.
Q. Now, let me question you. During that time did you yourself have any conversations with Mayor Brigman?
A. No.
Q. Okay. Now, let's return to your treatment by Dr.

Culpepper. For what health condition did you go see Dr. Culpepper?

A. I kept having respiratory problems. Coughing and runny nose and you know, all that that goes along with respiratory. And so I would go to him and he would give me an antibiotic and cough medicine and everything. And then finally he said, you know, one time when I had been back ---

MR. WREN: Objection, Your Honor. Hearsay comment.

THE COURT: To the extent she wants to testify as to what her doctor told her I sustain it as hearsay.

MR. WILLIAMS: Thank you, Judge.

BY MR. WILLIAMS:

Q. Don't quote or say what the doctor said?

A. Okay.

Q. Just say what treatment you ---

A. I ---

Q. What you went to him for and what treatment you received.

A. Right. And I got pneumonia, and they treated me for that.

Q. Did you advise him of the situation that had happened at your house?

A. We did.

Q. In great detail or just casually presented it?

A. You know, I think my husband spoke to him more about that than I did.
Q. Okay. Did you discuss with -- did you discuss with Dr. Culpepper your living situation?
A. I did. I'm sure I did.
Q. As a result of that discussion what did you and Claude do?
A. We moved out of the house.
Q. And have you lived in the house since then, since you moved out?
A. I have not been, no. I have not been back in the house since 2009.
Q. Okay. Do you recall when it was that you moved out the house?
A. We moved out, it was 2008 around November because my brother knew we were all sick and the dog was sick. And so he offered us a place to live. So we were able to move into his house.
Q. And you said you hadn't been back in the house since 2009. Why were you in the house in 2009?
A. I went back occasionally to get some clothes out of there. And then I had to go -- we had a copy machine upstairs and make some copies from my Sunday school class. So I went upstairs to make copies for my Sunday school class and I got so I couldn't breathe. And I couldn't get

my breath. So I went outside and I sat in the car. And at that point my sister called and I told her I said, "I can't breathe." And so my husband rushed me to the emergency room. I had a reaction to something in there, and he rushed me to the emergency room over in Marion.

Q. When you went in the house on that occasion did you take any precautions before going inside?

A. No, I didn't.

Q. Okay. Have you been back in there since that day?

A. No. I'm scared.

Q. Okay. Has Claude been back -- have you been back to the house but not gone inside?

A. I've been to the house to get my mail on the outside.

Q. Okay. Have you seen Claude go inside the house since then?

A. I haven't seen him go in.

Q. Okay. You lived in -- starting in November of 2008 you went to your -- is it your brother's house?

A. My brother.

Q. To your brother's house?

A. Right.

Q. And you lived there until when?

A. We stayed at my brother's house about two and a half years, and then he moved back into the house with his son. And so, you know, we felt like we couldn't stay there any

longer.
Q. For two and a half years, in effect, it was your and Claude's sole residence?
A. Right. Right.
Q. Then your brother and his son needed to move back into the house so you and Claude move somewhere else?
A. Right.
Q. Where did you move to?
A. We rented a house in Lynchville.
Q. Okay. How far was that from your brother's house where you had been living?
A. Probably about six miles.
Q. Okay. And then at some point after Claude's mother died y'all came back to Latta?
A. We came back to Latta. His mother had passed away, and so his brother and sister said it was okay if we stayed in that house. You know, we're fixing it up so they could sell it. You know, they want to sell the house, and so they said we could stay there until we got to house fixed up.
Q. Okay. Had it ever been part of yours and Claude's plans and goals to retire to the beach or go somewhere other than Latta to live?
A. Our plan was to stay right in our house. That summer we had just, you know, done some updating to the house

cause we were hoping to be there the rest of our lives because our family was there and our friends were there and our church was there.

Q. Let me show you or not show you. Let me ask you to take a look at Plaintiff's Exhibit 13, and I'm not offering it into evidence at this time, but I just want you to tell me if you can identify what that is?

A. This is our record of going to the doctor.

Q. Doctor Culpepper?

A. Doctor Culpepper.

Q. And does it reflect the charges? You can look at the second page?

A. Oh, okay. Yes, sir.

Q. Okay. Is that for the period of time that you told the jury about?

A. Yes, sir, but I was also in the hospital with pneumonia.

Q. The hospital and pneumonia is not part of this; is that correct?

A. That's not part of that.

Q. Okay.

MR. WILLIAMS: As I say I'm not offering that into evidence yet.

BY MR. WILLIAMS:

Q. Let me show you one page from what I believe

(WHEREUPON, Court was in recess at 12:52 p.m. and reconvened at 2:16 p.m.)

THE COURT: Is there anything we need to take up this afternoon before we get started?

MR. WILLIAMS: No, Judge.

MR. WREN: I don't believe so, Judge.

THE COURT: Ask the jury to come in, please.

(WHEREUPON, the jury panel enters the courtroom at 2:17 p.m.)

THE COURT: Good afternoon, ladies and gentlemen. You play call your next witness.

MR. WILLIAMS: May it please the Court. Before I call my next witness I'd like to publish the stipulation.

THE COURT: Yes, sir.

MR. WILLIAMS: Madam Foreman, ladies and gentlemen of the jury, this is a stipulation which has been entered into between myself and the attorneys for the Town of Latta. And I read it as follows:

"The parties stipulate that the Town of Latta is unable to produce a written instrument conveying an easement for a portion of the Town's sewer system which cross the property currently owned by Claude and Vickie Graham. 220 East Rice Street in Latta, South Carolina." That concludes the stipulation, Your Honor. And I pass it up to the Court.

recall, fall of 2008, when they came to see you at that practice?
A. Yes, sir. The first visit was by Mr. Graham with respiratory symptoms, and they both had repeated visits very rapidly for lower respiratory tract symptoms and upper respiratory tract symptoms.
Q. First was by Mr. Graham, you said, then they both came?
A. Yes, sir. As best I can recall it was about October.
Q. Okay. 2008?
A. Yes.
Q. And when you say 'repeated' how many does that mean, roughly?
A. Half a dozen each.
Q. Okay. What did you do in order to diagnosis and/or treat? Let's say Claude Graham first?
A. In private practice you tend to take the most common thing. And so we attempted to think they probably had either a viral or bacterial infection because of the severe symptoms. We treated with antibiotics. A short burst of steroids at times a concerted measures that we would teach them. Fluids, over the counter medications, gargles, and at some point in one patient we did a pulmonary function test to see if there was an underlying problem, but that was normal. And we also a one point did

x-ray to check a neck, chest x-ray and then a C.T. scan.
Q. Does that answer apply to both Mr. and Mrs. Graham?
A. No. That's pretty much compiled. The initial part, yes. The x-rays and C.T. scans depending on which patient we're talking about.
Q. Okay. Did you do any other testing or gather any additional information other than what you just described?
A. Mrs. Graham was referred to a specialist to check for allergies during this time period.
Q. Did you talk with the patients about their family history and background?
A. That's a regular yearly review. We already had family history, so that was not an item that we bring up each year unless there has been a change.
Q. Is happened in October whatever of 2008. Did you talk to them about their living situation at that time?
A. Initially that was not an issue, but -- with the first respiratory symptoms, but then they informed me that there had been liquid, floating liquid, in the basement by what appeared to be sewage in their basement and mold. And they were concerned that there had been some type of lead into their basement.
Q. What significance, if any, did you attach to that information?
A. I pretty much made the correlation because they were

not patients who came in frequently. They were patients who pretty much had their occasional upper respiratory tract symptoms over several years. But this was very intense. It was much more severe and very concentrated visits.

And the correlation was further evidence to me as being related to their symptoms because I insisted they leave the house. And there seemed to be a dramatic improvement in the symptoms when they were able to stay away from the house.

And then when Mr. Graham would return to the home to do business items, take care of business, even though he was upstairs, he would complaint of respiratory symptoms and seem to have a persistent cough even at that time. We had to treat with narcotics to suppress the cough.

Q. As a result of your diagnosis and treatment did you give the Grahams any advice about their living circumstances?

A. It became clear to me that the best thing for them was to stay out of the house. And I encouraged them to seek other living quarters until the matter could be corrected. If it couldn't be corrected don't go back in the house if at all possible.

Q. That's all I have. Answer any questions Mr. Wren may have?

designing and building and maintaining sanitary sewer systems; that would be an area of expertise, correct?

A. Yes.

Q. Okay. You don't have the background and in designing sanitary sewer systems though, do you?

A. I have the background in the design of them. I have not actually put the pen to the paper to do the physical design, but I have studied how they're designed. I've reviewed how they're designed. I approved how they're designed. And I have been the owner of facilities that -- for which facilities were designed of that type.

Q. And then you worked with D.H.E.C. back in the '70s, early '80s which was just reviewing plans?

A. And subsequent to that add Lay Law.

Q. Lay Law. All right, Mr. Davis, thank you very much.

MR. WREN: Judge, I don't have any objection at all to him being an expert in mechanical engineering. That's what his studies were in, but I hesitate, Your Honor, to see that he is an expert in this term we've designated as environmental waste disposal.

THE COURT: All right. I find him qualified as an expert in mechanical engineering and environmental -- as an environmental engineer in the field of waste disposal.

MR. WREN: Thank you, Judge.

MR. WILLIAMS: Thank you, Your Honor.

CONTINUED DIRECT EXAMINATION

BY MR. WILLIAMS:

Q. Applying your training and experience and expertise in those fields, mechanical and environmental engineering, as it relates to waste disposal have you formed any opinions about the events and the causes of those events at the Graham residence in Latta, South Carolina in September 2008?

A. Yes, sir, I have.

Q. Okay. And in forming those opinions have you applied the same type of investigation and analysis that would commonly be done by other persons with your qualification s and experience?

A. Yes.

Q. You didn't do anything new and unusual and different?

A. No, I did not.

Q. Okay. What opinions did -- have you formed that would assist the triers of fact here in determining what happened at the Graham residence in September 5th and 6th 2008 and what caused it?

A. Well, on those dates there was a tropical storm passing through the area that dumped quite a lot of rain in the area. So we had a lot of localized flooding. The flooding from the ditch adjacent to the Graham property. I think they call it the Main Town Ditch or something like

that. It's kind of the main drainage channel for that area. Flooding from that ditch flooded the yard and surrounding streets around the Graham residence on that occasion.

But they also experienced release of sewage from the sewage system or sewage collector lines which ran across their property and underneath their house releasing the contents of the sewer line into this flooded area. There was also release of sewage from manholes in the street that were bubbling up through the flooded street at that time.

But there were also some other events which occurred both before and after that which involved the release of sewer from the collection system for the sewer in the Town of Latta. There was record as a number of complaints about those releases. There are some investigations that were done by the field investigator at D.H.E.C. documenting high levels of fecal chloroform bacteria in the ditches around the -- abetting the Graham property.

And I've talked so long I forget what my question was. I'm not sure I've answered it completely.

Q. You've answered a lot, but let me go back and see if I can pick up the pieces of parts you didn't answer. How did you determine that the underground sewer collection line of the Town of Latta passes through the Graham

property and under their house?

A. Well, I never physically saw it under their house. I did -- I was able, because it's underground, and I didn't dig it up, but the sewer line is visible as it crosses the ditch behind their house. And you get an idea for the route that it's taking, and it's heading across their property towards their house.

Mr. Graham told me that he observed the pipe as it went under his house when it was dug up by a plumber that he had engaged, too, I think as a result of this incident. So he did indicate to me that it did pass under his house. I reviewed some records which lead me to believe that that was correct. Including some engineering work done by consultants on behalf of the Town of Latta to reroute that sewer line. And I believe for the purpose of removing it so it would not be under the house. Because if it's under the house, for one thing, when you have problems it affects the house. But for the other thing you really don't have good access for maintenance of that sewer line.

So for that reason it's not -- it's very unusual to find a residence built over a sewer line.

Q. Did you form an opinion or determine when that sewer line was constructed?

A. The best information I've had was most likely was built in 1924.

Q. And in part what did you base that opinion on?
A. That was based on responses to what the legal folks would call responses to interrogatories or information provided on behalf of the Town of Latta.
Q. Okay. What were sewer lines made out of back in 1924?
A. Most commonly they were terra cotta. What's called terra cotta or unfired, unblazed clay.
Q. What is the lifespan of a terra cotta pipe?
A. Well, terra cotta itself can last a long time. Clay pipe can last a long time. Typically what happens is the joints degrade and the typical life span of a sewer line of that type is 50 years.
Q. Were you able to find anything in the records of the Town of Latta that you examined to indicate that that line had ever been replaced with a more durable line or different materials?
A. No.
Q. Did you determine anything about the waste water collection system in the Town of Latta itself and especially think about it in terms of infiltration and exfiltration?
A. I did. I read the records, and confirm my suspicions that there was a significant amount of what we engineers call infiltration and inflow. That's water coming in from

the inside coming into the sewer line that's not intended. And it may be i need to explain those terms.

Q. Please do. That was my next question to you.

A. Infiltration and inflow are typically what happens to a sewer line as it ages over time. It will no longer be watertight. Particularly at things like joint. You get extraneous water coming in.

Infiltration is leaks at those joints and sewer lines that occur as a result of ground water rising up above the level of the sewer so that you've got ground water around the sewer line and it runs into the sewer line through those open joints or cracked joints or cracked pipe or things like that. So infiltration is ground water, and ground water rises and lowers with the seasons. So somewhat variable.

Inflow, however, is typically surface water or storm water that enters into the sewer line through things like a down spouts that somebody has illegally connected to the sanitary sewer through open holes in the pipe where surface water can run into it. Things of that type. So that's inflow. And, typically, inflow is very obvious if you look at the -- if you look at flow records at the Waste Water Treatment Plant that you will see on days when you've got a lot of rainfall. You will see a big spike in the flow.

Changes in flow due to infiltration are a little more gradual. So that's how we determine whether a system is subject to excessive infiltration and inflow.

Q. Did you form any opinion about the sewer; line under the Graham residence and its condition?

A. I did. It was my opinion that the problems created by that sewer line were largely in part due to excessive infiltration and inflow. And some of the evidence of that, if you look at the maintenance records provided by the Town, they frequently have to do what they call blow out the sewer lines. What that means is they take a high pressure hose and flush a clogged up sewer.

Sewers are designed so that they're self-flushing. They're on floats so that the water moves fast enough that it will carry the solids with it. But if you've got an aging sewer, like we have in Latta where you have this infiltration and inflow, when that water comes into the sewer it carries soil with it, dirt and things of that type which are very hard to keep in trained in the flow of sewage.

So that settle out and eventually blocks up the sewer and it requires that you go in frequently and flush it out with a high pressure hose. So the records indicate that they had to frequently do that in the Town of Latta which is another indication that they have problems with

infiltration inflow.

In addition to that the D.H.E.C. inspector made observations over the years that infiltration and inflow were problems that the Town needed to address. And that went back at least as far as five years before this incident.

Q. You said before this incident?

A. Yes, sir.

Q. Okay. You discussed something about some measurements of fecal count in the areas near the Graham residence?

A. Yes, sir.

Q. Tell the jury more about that, what you observed at the residence?

A. Well, these were samples collected by D.H.E.C, the D.H.E.C. Field Investigator. Samples of surface water from the streams. You can tell how clean the stream is by doing bacteriological sampling. Fecal chloroform is a particular kind of bacteria that's found only in the intestines of warm blooded animals like humans for example.

It can also be caused by live stock and things like that, but the high level of fecal chloroform bacteria in these ditches is an indication to me that -- another indication that these are leaking sewers in the Town which

you would expect from the age of these sewers. They're -- at the time of this incident they were some 85 years old when the normal life span of a sewer at about 50 years.

So that's the sort of thing you would expect from an old sewer line of that type.

Q. What problems arise out of a -- would you expect to arise out of a leaking sewer line under a residence?

A. Well, of course, if it leaks under the residence you know you have this contamination under the residence. Any contact with that contamination can lead to health problems. The wet conditions, of course, can lead to things like mold and damage to the structure itself.

Q. Are there any gases that would be associated with that sort of the thing?

A. Yes. What's call sewer gases. Principally, hydrogen sulfide. It's generated by sewage as it decays. And so you get sewer gas in the sewer line. For that reason sewer workers have to be very careful when they go into a manhole because they can become asphyxiated and die.

And I've investigated case like that where that's actually occurred. But point is sewer gases exist in sewer lines, and any time you have a break in the line those sewer gases can escape. And they're heavier than air so they tend to accumulate in low areas. And so they would tend to accumulate in a crawl space of a house, for

example.
Q. And I think you touched on this, but let he get you to elaborate on it. You indicate, I believe, that the Town of Latta was aware of the inflow infiltration, exfiltration problem?
A. Yes.
Q. How do you know they were aware?
A. Well, because the D.H.E.C. reports indicate and warn the Town that they need to investigate and take action on those issues.
Q. Based on what you observed in May of 2009 what work would need doing in order to keep the -- that type of problem from recurring in the future?
A. Well, with an old sewer line -- sewer system like this, you know, the options are you can either replace the lines that are determined to be bad or you can use a pressure grouting to inject a concrete like material in the joints of the pipe to seal it up or you can what's called slip lining the pipe. Put a -- typically, a plastic type liner material in the sewer system to seal off the leaks. So those are the options.
Q. See if I understand that last thing you said. I think it's slip line. Would that be like putting a little straw inside a big straw?
A. Yes, sir.

Q. Little straw that works inside a big straw that doesn't?
A. Right.
Q. Okay. In the absence of either replacing the pipe, pressure grouting to in effect block it out or to slip line it, would you expect the problem to recur or not?
A. It would only get worse if you don't do something about it.
Q. Would it make any sense to repair, replace, refurbish and put significant money into fixing up this house?
A. This house?
Q. Uh huh. Without any replacing of the pipe, pressure grouting or slip lining?

MR. WREN: You know, Your Honor, I believe it's beyond the expert's expertise. He's a mechanical engineer and waste water we agreed. Not construction of residences.

THE COURT: You need to rephrase the question.

BY MR. WILLIAMS:

Q. Is the problem going to go away if you don't replace the line, pressure grout it or slip line it?

MR. WREN: The same objection, Judge.

THE WITNESS: These are the method ---

THE COURT: On that question I'll overrule your objection.

MR. WREN: Thank you.

BY MR. WILLIAMS:

Q. You play answer.

A. Those are the methods available to deal with the problem.

Q. Any other method?

A. I can't think of any others.

Q. Okay. Thank you, sir. That's all I have. Answer Mr. Wren's questions.

THE COURT: Before we do that let's take an afternoon break. Ladies and gentlemen, I'm going to remind you the instructions I've given to you; that is not to begin to discuss this matter among yourselves as you have not heard all the evidence. Let's take an afternoon break, and we'll come back and we'll continue on.

(WHEREUPON, the jury panel was excused from the courtroom at 3:41 p.m.)

(WHEREUPON, Court is in recess at 3:42 p.m. and reconvenes at 3:54 p.m.)

THE COURT: Is there anything we need to take up before we bring in the jury?

MR. WILLIAMS: Nothing from the Plaintiff, Your Honor.

MR. WREN: Nothing from the Defendant, Your Honor.

THE COURT: You may ask the jury to come in, please.

Q. Correct. Okay. Going back some point in time. And as it stands, now, you've looked, correct, to try to determine exactly where this was, where -- whether there was an easement, whether there wasn't an easement, whether it was recorded, all that, correct?
A. I did.
Q. And those are real property records kept at the court house; is that right?
A. Typically, yes.
Q. Typically. And here as with every -- all 46 counties in South Carolina that would be -- locally, it would be here in the Dillon County Court House; is that right?
A. I would assume so.
Q. Okay. To the best of your knowledge, and that's separate from the Town of Latta? Town of Latta is 10, 12 miles down the way, correct?
A. Correct.
Q. Okay. From your investigation, what you looked at, you couldn't find it; is that right?
A. Well, I didn't personally look for it. I asked the attorney I was working for to determine whether such an easement existed.
Q. Okay. All right. And you did not have any other information other than what I just touched on with your understanding of how that process worked?

A. I did not have any further information on the existence of an easement or right of way until the Town provided the information through the interrogatories. They provided an old right of way document which presumably was recorded somewhere. But had not been transferred to property after it was subdivided.

Nor was it clear from the right of way document whether this line was even included. It was very general language that indicated the easement covered 3,600 feet across a 400 acre tract running parallel to the main ditch, the main drainage ditch for the Town. This line actually runs perpendicular to the ditch. So it's not clear to me whether it was even included in that easement.

But the fact is it was never transferred to subdivided property as it should have been.

Q. It was not clear. You're not sure?

A. I'm not -- I am not ---

Q. That's where we are, correct?

A. I am not.

Q. Okay. Now, you went on to say that the house, the Graham's residence, should not have been built over a sewer line; is that correct?

A. That's correct.

Q. All right. Now, to that point that would be the responsibility of the person who's digging out a

foundation and building that house, correct?
A. Well, that would be the responsibility of the owner to ascertain whether easements existed. There were none recorded. I'm not sure how he would have done that, but for whatever reason back in the day when this house was built, I think in the 1960's there was no recorded easement for this subdivided property.
And, apparently, there was no knowledge that the sewer line existed there.
Q. All right. And sewer lines don't just appear, correct?
A. No, they don't.
Q. Okay. And in fact the -- now, you contend the sewer line is underneath the Graham's house' is that right?
A. Mr. Graham indicated to me that it ran under his house. Yes.
Q. Okay. And as with any -- well, let me not say any. But most residences the -- when you flush the toilet, the commode in the house, it's connected to the sewer line; isn't it?
A. Correct.
Q. You have a service line which is the home owner's responsibility, correct?
A. It is.
Q. It goes out through and under the house to connect to

a sewer line at some point; is that right?
A. Correct.
Q. That would be the owner's responsibility, correct?
A. Yes, sir.
Q. Okay. But the thing is when yo flush it it's got to connect at some point to the sewer line, right?
A. Of course.
Q. All right. And for the property to use that Sewer line, correct? You tap into it?
A. The one that's under the house?
Q. Well ---
A. I don't know where it's connected.
Q. Okay. Fair enough. Your further opinion was that the Town's system is significantly influenced by infiltration and inflow, correct?
A. Yes, sir.
Q. I'm paraphrasing what you stated a moment ago?
A. You did it correctly.
Q. But just so we're clear I touched on all the types of testing, the mapping, location issues, all of that. You personally have not performed any of that?
A. No. Those are things the Town should have done.
Q. And you don't know if the Town's done them, do you?
A. Well, I do. Yes, I do.
Q. You do?

A. I do.
Q. Okay. If there is a leak in the sewer line at the Graham's residence, remember I asked you about smoke testing, things like that, you can easily determine that, can't you?
A. You can determine the presence of leaks through smoke testing, yes.
Q. Yes, sir. And if you can determine the location of a leak you can fix that problem; is that right?
A. Depends on what the problem is. Yeah, you can fix it. You can replace the sewer line, for example. I don't believe that it would be feasible to replace the sewer line where it exists. But instead you would have to move it to property where there is no structure.
Q. Well, that's an option, right?
A. That's on option. One in fact that was recommended by the Town's engineer.
Q. Indeed. Well, another thing is if you're actually able to identify and locate a leak is you can repair it, correct?
A. I'm sorry. Repeat that.
Q. If you identify and locate a leak you can repair it, correct?
A. A leak in what?
Q. In a pipe. It's as simple as that. A trench pipe

Q. And what job do you do for -- what's the name of his company?
A. Now it's Construction Management of Florence.
Q. What's your principle function with Construction Management of Florence?
A. Estimating, supervision.
Q. Any difference between that type of estimating you're doing now and what you used to do when you owned your own company?
A. No, it is not.
Q. Okay. Thank you?
CLERK OF COURT: I'll find him qualified as an expert in estimating residential home building.
MR. WILLIAMS: Thank you, Your Honor.
THE COURT: And I'll overrule your objection otherwise.
MR. PLYLER: Thank you, Your Honor.

FURTHER DIRECT EXAMINATION

BY MR. WILLIAMS:
Q. John, were you engaged to do certain work with respect to the Graham house?
A. Pardon?
Q. Were you engaged to do something relating to the Graham house?
A. I was asked to work up an estimate to replace it as

built as close as possible.
Q. And who asked you to do that?
A. You did.
Q. And did you do it?
A. Yes, I did.
Q. Approximately, when was that?
A. February this past year.
Q. Okay. Of 2012?
A. Yes, sir.
Q. Okay. How did you -- in order to do that what did you do?
A. I got a set of floor plans from your office, I think. Made a copy of them. Returned those to your office. Went to the site. You gave me Mr. Graham's number. I called him. He met me, opened the door, showed me though the house, and he left. And I went through the house. Upstairs, down. I looked under the house, but I didn't go under the house for obvious reasons.

I went in the attic. I looked at everything that I could possibly look at. And I wound up making three other trips back to be sure to confirm everything that -- cause sometimes you look at a whole house some things you can't remember at all. And I wound up with three other trips to be sure that I got it all right as far as finished materials and how things were done, what materials were

used. And it took four trips all together to finish my estimate.

Q. And having done all that and having gathered that information what did you do next?

A. Well, I was -- during the whole process I was figuring. Once in a while you run up on something like, well, what was around the front door or what kind of windows were they. Hundreds of thousands of things, you know, that's involved in it, and you can't get them all with one trip. And I run into something that stumped me, and I couldn't remember what was used or how it was used. I had to go back and check it. And then I completed my estimate.

Q. And what do you do about pricing things that you observe?

A. I don't understand.

Q. How did you determine what a window cost, for example?

A. You get a price from a window manufacturer or a building supply.

Q. And is that what you did in this case?

A. The same. I got prices on just about everything in the house I got two different prices from different building supplies. In fact the windows come from a building -- from a window manufactures. But not a

manufacturer. A window dealer, not a building supply. Most of the materials I got prices from two different building supplies.

Q. When you're doing your estimating like that on this house -- you said you checked from two different places. Is that what you've typically always done?

A. Yes.

Q. Are there things that you don't get fresh, new estimates from that you know what to price is and you're willing to just kind of guess?

A. Not in the last ten years. The prices change daily. In fact since I've done that estimate prices have changed.

Q. Okay.

A. Some of them dramatically.

Q. All right. What kind of computer records do you keep when you do that kind of work?

A. As far as an estimate I don't do computer. I do it all by hand. I do it I guess the old way, you know.

Q. You just use paper and pencil?

A. Paper and pencil. I'm computer illiterate. I don't know how to turn one on. I got three in the house. My wife, you know, do all the bookkeeping.

Q. How about calculators? You use a calculator?

A. Oh, yes, sir.

Q. And then you write down the -- what you --

A. Yes. Advanced to master calculator.
Q. Okay. Did you prepare a written estimate in this?
A. Yes. Yes, I did?
Q. Okay. I'm going to show it to you. It's Plaintiff's Exhibit 15. It's been marked, and here it is. Can you identify Plaintiff's Exhibit 15?
A. Yes. That's my estimate.
Q. Okay. And what is it consist of?
A. Every piece of material in the house.
Q. And the front page is what?
A. It's a cover sheet of accumulation of different items. Everything from what a survey would have to be done. Get it on the property for a new house all the way down to paint, plumbing, electrical, everything.
Q. And what are all the other pages in there?
A. Those are an accumulation of itemized materials in the house.
Q. Give us an example of what you mean by itemized material?
A. Well, if you go to any sheet you will find, like on this one, is two by tens. I've get the lengths of every different length, every different length, every different amount of every different length that I use, and i put where they're used. And it's just an accumulation. Like in the floor systems of how many two by tens. Anywhere

from 8 foot to 16 foot that are used. Same thing with baseboard in the house. Accumulation of how many linial feet is a baseboard, crown molding or whatever.

Q. Okay. Now, John, in this case you had an actual house? You knew exactly what you were going to build, right?

A. Yes.

Q. Is that typical?

A. No. Usually you have to take off a set of plans.

Q. Okay. Have you ever had to duplicate a house before?

A. Yeah. I -- might as well as I reconstructed one. Somebody had an old house that was built in, you know, late 18, 1900s. You would go a measure it, redraw it and rebuild it, you know.

Q. So this was not something that you had to study up on how to do?

A. No. No.

Q. Okay. Is there a book you can go to or would it be easier to go to some book somewhere and figure out what the prices this house?

A. Not for me, not. A lot of people square foot stuff, but you can't do it. You can't square foot something unless you build the same house over and over.

Q. Okay. On this house, when you examined it, did it -- earlier you used the words 'custom house' and 'ordinary

house' What kind of house was the Graham's house in Latta from its original, as is construction when you saw it?
A. It was a reasonably nice home.
Q. Would you put it in a category of a custom house or ordinary house?
A. Yeah. Yeah. I mean it's just some things, you know, aren't updated maybe. Like everybody now is using granite countertops, you know. But there were some unique things about the house that were unique. Yes.
Q. When you were pricing it did you price it like you were trying to reconstruct that house as a custom house or as it set?
A. As it set.
Q. As it set?
A. Yep.
Q. And is that what you did?
A. Yes. Like upstairs they had something I've never seen anybody do. It was oak flooring, and they had sanded them and went back and used a sand blaster. And it eat out the soft porous part of the wood and made it look like it was, you know, a couple hundred years old. I'd never seen that done before. It was real neat. And I priced which costs about another $1,800 over just refinishing the oak floors.
Q. Okay. Any other special features that you noticed in

the house that affected the pricing?
A. I mean every house has it's little quirks, you know, but those kitchen countertops were I think -- I can't remember exactly. I believe they were heart pine and they were naturally finished.
Q. All right. Well, let's ---
A. It's been six or eight months since I've done this so I don't remember everything.
Q. Okay. Well, look back at your work if you need to and let me just ask you this question. After all that work, all that analysis and applying your training and background and experience, did you determine what it would cost to rebuild the Graham house on a different piece of land?
A. Yes.
Q. And what was that?
MR. PLYLER: Your Honor, I just renew my objection as to relevance. Just to make sure the record is protected.
THE COURT: Overruled.
BY MR. WILLIAMS:
Q. You may answer.
A. $478,280.
Q. And does that include everything?
A. I think the only thing it didn't do would be grading and seeding the yard. Landscaping and that sort of thing.

Q. Okay. So does it include buying the land?
A. No.
Q. So this is just to reconstruct that house on a different piece of land?
A. The house, the driveway, the fence, the brick fences, storage, the back part of the carport, everything. Everything that is on that piece of property. Not including the pool nor irrigation, nor grading and landscaping.
Q. Did you say not including the pool?
A. Not including the pool.
Q. Okay. Does that include the appliances?
A. Yes, it did.
Q. Let's say that for some reason they decided to not use the appliances you priced but to take the appliances from the existing house and put them in this other house. How much did the appliances cost out of that $468,000?
A. $4,500.
Q. $4,500.
A. Yes, sir.
Q. And give me the ---
A. I rounded that figure off cause it was a few dollars of being that.
Q. All right. Give me the figure again. The bottom line what it would cost to rebuild the house?

A. $478,280.
Q. $478,280?
A. And 56 cents.
Q. Okay. And is all that paperwork there in your handwriting and you did the calculations yourself?
A. Yes, sir, it is.
Q. And does that reflect your opinions that you just expressed here today?
A. Yes, sir.

MR. WILLIAMS: Your Honor, I would offer that in evidence.

MR. PLYLER: Objection, Your Honor. It's not admissible evidence. This is hearsay. He just specifically said it was his opinions so it's not available to exception under the hearsay rules. He's obviously testified to it. Mr. Williams is willing to talk a bit more if he likes, but that doesn't mean that it comes in evidence.

MR. WILLIAMS: Your Honor, I think it would have helpful for the jury to examine it during their deliberations, and I believe it is admissible.

THE COURT: Then the opinions only relate as to the pricing? Is that what it is?

MR. WILLIAMS: Yes, Your Honor. And the whole exhibit relates to the pricing.

Q. Nobody from the Town of Latta?
A. No, sir.
Q. Okay. And you didn't do any -- you weren't asked to do, I assume, so it might be why you didn't do it. But you didn't do any investigation to see what property and houses cost in the Town of Latta, did you?
A. No.
Q. And you charge $2,800 to put this estimate together; is that correct?
A. That is correct.
MR. WREN: Court's indulgence.
BY MR. WREN:
Q. Thank you for your time, Mr. Benton. We had a Benton Henry earlier, and I'm tempted to call you Mr. Henry. I apologize.
A. Okay.
THE COURT: Any redirect?
MR. WILLIAMS: Yes, Your Honor.

REDIRECT EXAMINATION

BY MR. WILLIAMS:
Q. John, you didn't put this appraisal -- this estimate together for the purpose of bidding on building this house, correct?
A. No, sir.
Q. Okay. If Mr. Graham had said to you, "Cool. I

really like this estimate. I've got a piece of land. Will you build this house for me for that price," would you have at that time?
A. At that time. I wouldn't today do it for that price.
Q. And why not?
A. The prices have increased.
Q. They've increased since then?
A. Yes.
Q. Okay.
A. Plywood has gone up $8 a sheet in the last three weeks.
Q. Okay. But as of the time you prepared that estimate it was suitable for entering into a contract or testifying in court, either one?
A. I would replace it for that price. Yes.
Q. All right. Thank you.
THE COURT: You may step down.
MR. WILLIAMS: That's it. May Mr. Benton be excused, Your Honor?
THE COURT: Without objection you may be excused.
MR. WILLIAMS: Than means you can go home. Your Honor, may I approach the bench?
THE COURT: Yes, sir.
(WHEREUPON, a bench conference was held off the record in the presence of the jury, but out of the

the theories they've advanced.

Let me while I'm on this issue, Judge, address one other thing cause I think it's important to set forth is that, and I'm going to cite you a case, Judge. It's Loftus -- I misplaced it. I set it down. Judge, it's Loftus v. S.C.E. & G, a utility case. It's a South Carolina Court of Appeals Opinion. A 2004. The cite is 694 SE 2d 714. It's a prescriptive easement case, Judge, and essentially dealt with what they contended was open and obvious utility lines across a property.

Curiously sounds a lot like this case. An easement was looked for but could not be located. And the law is, Judge, in order to establish an easement by prescription a party must show the continued and uninterrupted use or enjoyment of a right for a full period of 20 years, Number One.

Number Two, the identify of the thing enjoyed, and.

Number Three, had the use or enjoyment was adverse or under claim of right.

Your Honor, we would submit and argue that is exactly what the evidence exists in this case that's been set forth to this Court establishes was that the Town of Latta had a prescriptive easement or the sewer line in question. And, Your Honor, Further I want to just clarify that nowhere in this case have the Plaintiffs set forth or

established that the Town did not have a right to the sewer line on the property. I understand, of course, we stipulated for the jury that an easement was not -- I can't remember the language. Was not produced. That's the facts.

However, what the Plaintiffs have failed to establish as a matter of -- for our purposes, a matter of law now is that, and they have the burden; that the Town did not have a right to have that line on the property. The facts being going back to the 1920 or thereabouts, the subsequent construction on the house, and the connection on that house to the line. There are a number of issue -- questions there.

Not with standing they haven't established that there was not a right to the Town. So I share that as an ancillary argument, Judge, to your question in point as to this continuing trespass argument.

THE COURT: Does it make any difference whether subsequent purchases of the property had notice of the line on the property?

MR. WREN: I take that on a couple of quick levels, Judge. It certainly would from a statute of limitations issue. Of course, a two year statute would apply here. And otherwise for purposes of the Plaintiff in this case under this theory of a continuing trespass I'm not sure if

it does, Judge. I don't know. I don't know if it is -- if it an argue. I don't think it is. It's still the burden on the Plaintiff to establish, and I believe they failed to do.

Judge, actually, if I may in addressing your question, going go to this Loftus Opinion that I cited. It states, and I'll cite to it, "A purchaser of land with actual, constructive or implied notice that the property is burdened with an easement ordinarily takes subject to the easement. In order to charge the purchaser of the certain estate with notice of an unrecorded easement the marks of the servitude must be open and visible."

Your Honor, the testimony in this case of Benton Henry alone was it open and obvious, yes. Mr. Claude Graham as a child in that vicinity, in that area. Pipe was there. As I told the jury in opening one of nice things here is sometimes we agree upon that are established here. Easy. We know that's been there for well before any of us.

Your Honor, it's our contention that establishes a presumptive easement. In addition, we would assert that the Plaintiffs failed to establish that there was not a right that the Town had.

THE COURT: Mr. Williams.

MR. WILLIAMS: May it please the Court. Plaintiffs

have established that the Town of Latta has no right. We have established is that there is no right recorded or otherwise establishing an easement for the Town of Latta. As a matter of law in South Carolina an interest in real estate can be conveyed must be in writing. There is no writing.

In order for the Grahams to have notice of it it must be recorded. It is not recorded. So the evidence -- and in addition to that is that if they have actual knowledge of that easement. That would be a fact to be in dispute, but they have testified that they did not in fact have actual knowledge of an easement; that they acquired actual knowledge of a claim of an easement sometime long after they had purchased the property. And they acquired that knowledge from the Waste Water Manager for the Town of Latta.

So what the Plaintiffs have established is that there is no actual right in the Town to have the pipe there.

THE COURT: Well, so basically, what you're saying is that any argument about an easement by prescription doesn't apply even though the pipe has been there since 1924?

MR. WILLIAMS: With respect to easement by prescription, but let me go back to the Loftus case on Page -- I'm quoting exactly the same language that Mr.

Plyler just quoted. In order for the Graham to be held with knowledge of an easement by prescription or for one to exists that can be enforced against the Grahams, and I quote, "A purchaser of land with actual constructive or implied notice that the property is burdened with an easement ordinarily takes it the subject to the easement. In order to charge the purchaser of a servant mistake with notice of an unrecorded easement the marks of the servitude must be open and visible."

Their argument of open and visible servitude is that in a ditch that these people do not own and did not purchase there is a pipe crossing that ditch. There is no evidence where that pipe comes from or where that pipe goes to or what kind of pipe it is. There has been no evidence and there will be no evidence that either Graham knew what that pipe was, what it was for, where it went, where it goes, whether there is anything in it or not until one time it malfunctioned and the City came out and taped it up. At that point they learned it was a sewage pipe.

But there was not evidence that at the time they bought the property they had actual, constructive notice that was open and visible that a sewer line was running under the law. And they testified that if they had known that they wouldn't have bought the property. Who would?

Their testimony is manifested and credible and just an issue of fact for the jury to determine. But at this point the testimony with all reasonable inferences be drawn in favor of the Plaintiff is that they did not have actual knowledge of a claim's servitude.

And, of course, there is no evidence that there is a servitude much less something -- there is evidence that a pipe was there but not that they knew it was there or that the City has a right to have the pipe there.

With respect to the other arguments, as to affirmative act, we say that there are three affirmative acts. One is an affirmative act somewhere in the 1920s when the Town of Latta put the sewer line there;

That the Grahams did not have a cause of action relating to the existence of that sewer line until they had damages;

That that Grahams at all times thought that the City had -- not at all times, but at all times once they were told by the City that the sewer line ran under their house, they thought the City had an easement to have that sewer line there. And the City represented to them they had an easement for that sewer line.

Ms. Graham has testified that she did not learn it until sometime after I began representing her which was in 2010 this record will reflect. Until 2010 that she

obtained the fact which would make her either know or should know that the City did not have a lien. And we are immediately moved to ament the complaints. It was well within the statute of limitations.

The other affirmative act is the City put the pipe there is affirmative act number one. They elected, once they learned that they were -- are pumping sewage onto the property and had no right to have the line there they continued to do so. That's an affirmative act, to leave the pipe there and continue to dump sewage on the property and the dumping of the sewage is in fact an affirmative act.

And as Your Honor considers this issue I would refer the Court to Raven v. Greenville County which I believe Your Honor mentioned to us yesterday as one of the cases you were considering. I'm looking at beginning at Note 21 on Page 463 of the South Carolina Reporting. And I'm going to quote reasonably extensively here.

It says, "The common law landowner showing in that case;" that's where the Town had capped a landfill. It said, "The common law landowner showing in this case would be insufficient to demonstration trespass because of the requirements of an affirmative act." The Court goes on to hold that, "Nevertheless, there is a trend in environmental law to recognize that the infiltration of a

conterminous onto a plaintiff's property constitutes as much an invasion of his possession in interest as the cutting of a tree on his property."

And then it goes on to say. Skip another citation, "Because the landowners claim a continuing trespass by the respondents the lack of possession at the time of dumping prevents no bar to recovery when they're presently being injured." So the fact that the plaintiffs didn't own this land until 1989 is not a bar to their recovery even though the trespass didn't occur long before that unbeknownst to them.

Ultimately, Greenville County prevailed the issue of trespass, but that was because that the record in that case didn't -- said there was no unauthorized entry by Greenville County. No unauthorized entry. In this case the evidence is that the entry is in fact unauthorized, and it should be distinguished from the result in Raven v. Greenville. Thank you, Your Honor.

MR. WREN: Your Honor, may I address that just briefly?

THE COURT: Yes, sir.

MR. WREN: Judge, just for the Raven case and to distinguish myself for our purposes here today. Of course, Raven had -- there was an affirmative act. They established the element. We contend they have not and

will come back.

MR. WILLIAMS: What time you want us back, Your Honor?

THE COURT: 1:30.

MR. WREN: Thank you, Judge.

(WHEREUPON, Court was in recess at 12:37 a.m. and reconvenes at 2:15 p.m.)

THE COURT: As to the trespass issue I'm going to grant the directed verdict as to trespass on the same basis that there is not an affirmative act on the part of the Defendant for the same reasons as inverse condemnation. There was part of the argument by the Plaintiff was that the trespass was the existence of the pipe itself on the property. And I don't find that to be trespass.

There is no evidence establishing the circumstances under when it was built or how it was built or whether it was a right or title or any easement. In specifically under the provisions of -- under the provisions of Loftus v. South Carolina Gas we've all been focusing on the notice issue. But the Court in Loftus found the existence of the prescriptive easement before even addressing the notice issue.

And the notice issue was just an additional sustaining ground, additional basis by which to say and in

addition to the prescriptive easement you also had notice. The way I read Loftus is there has to be a continued and uninterrupted use or enjoyment of the right for a period of 20 years, the identify of the thing that's enjoyed, and the use or enjoyment was adverse or under a claim of right.

Certainly, in this case there has been evidence presented that the pipe was placed on the property in 1924. And that it has continuously been on that property since 1924. The house that was built on this property that the Graham's subsequently purchased was not built until 1960. At the time of -- up until I guess this is lawsuit or shortly before this lawsuit the Town was under the impression and had a belief that the pipe was there pursuant to an easement. And so they were claiming a right to use the property for the pipe.

And I think that they demonstrated their belief that they had a right to use the property, and that was done partially through the testimony that was presented by the witnesses as well as the stipulations and the discussions that we've had about that particular pipe. I think Mr. Davis is the one who indicated that that pipe had been there since 1924. So he's established that it was 20 years.

And the information about the license has been

established as well through the witnesses. Or there might have been a belief that there was an easement. And the Court in Loftus indicated as it relates to S.C. E&G's use of the property that the poles, utility poles, and power lines on the property that S.C. E&G has used and maintained the power lines in question since the 1930's pursuant to their belief that they had a valid right of way to use the property in this manner.

Evidence supporting that claim was presented to the master. There was information about SC E&G searching for the document believed to exist but missing proving that filed a right of way on the property. And in addition to that case -- in addition to those facts, the Court also found that because of service agreements between the customer, who were previous owners of the property, that there was information in the service agreements about allowing them the right to access the property to do trimming and clearing.

And the Court said that pursuant -- all of this evidence clearly supports the master's finding that SC E&G has a substantial belief that it has the right to use the property in the manner it did based upon the totality of the circumstances. And so in -- pursuant to this Court standard of review, therefore, hold the master's establishment of an easement or prescription in favor of

S.C. E&G. And then after making that statement it went on the address one of the other arguments made by the appellants that because they never had service from SC E&G that that didn't make any difference what theory you used to talk about prescriptive easements.

There was no evidence to support it, and that's when the Court talks about the notice provision. So I think the existence of the right is a red herring. That is not trespass in this particular case. And I don't think that would seriously consider to be the trespass until such time as we start the arguments because everything that has been testified to about the pipe or in the -- has all been about the fact that it leaked; that it was on the property and, yes, it was testimony that the Plaintiffs did -- weren't aware of it.

But the existence of the pipe is not what gives rise to the trespass, and even if there were allegations to that I think that under Loftus there is a prescriptive easement, and so the Town would have had a right to place the pipe on the property.

So then the question goes to the other allegations or other elements for the cause of action for trespass. I talked already about the fact that there was no affirmative act with respect to the release of sewage on the September 5th and 6th, and that continued release of

sewage, whether you call it a leak or whether it's from the heavy rains. But that's not an affirmative act as recognized by case law pursuant to cases I discussed earlier.

Additionally, I at least find that as it relates to the September 5th and 6th incident there was not an intentional act. There was no intent for there to be any release of sewage or there was no intent that -- on the part of the Town for any actions to occur on the property of the Plaintiff. And so for those reasons I find that the directed verdict should be granted as a trespass.

As it relates to the negligence, additionally, one additional point on the trespass. Snow v. City of Columbia indicates that trespass does not like a non-feasance or the failure to perform a duty. And so to the extent that there is a claim that the Town had a duty to repair, to replace, to move, to do something to change the course of the sewer pipe or the sewer line and that they failed to do that; that does not give rise to the trespass claim.

So then we look to the negligence. What I've heard -- I kind of view this in terms of separate incidents. What I gather is that there is this major event which is the event that started all of the problems on September 5th and 6th. And it's clear that no one had

any notice of any problems of the sewer line, the sewer pipe or anything relating to the operation of the waste water system in this particular area.

Now, I agree that there has been testimony that there were previous instances in which the Town had been cited. The evidence does not tell us what they were cited for. It doesn't tell us when they were cited. It doesn't tell us what remedial action was required if any. The witness testified for letters written. We don't know what the contents of those letters were. We don't know nothing other than the City -- the Town was cited for some reason.

There is not a correlation between notice about -- notice of certain violations, and there is really no telling what these violations were. Notice of any violations and the fact that the Town may have had notice that there was a problem with the sewer line in this particular location.

I would state that under Snow in which the situation was that there was a break in the water line or leak in the water line that caused the water to leak into the property of Snow, into the house. And no one knew about it until Snow called and told the City there was a problem, and the City came out to fix it. In Snow the Court states that the Snows did not show to the exclusion of all other reasonable inferences that the City aught to

have known about and repaired the leaking pipe before it was reported as a problem. And so there is a question as to whether or not there was a negligence if you don't know that there is a problem; that how can you either affirmatively do something about it or fail to do something about it if you are not aware that there is an issue.

And so to the extent that there is a question about negligence on the date of September 5th and 6th I think that that claim would fail because that really is a res ipsa argument. It's -- the water came, and it's the City's fault and the City was negligent, but as it relates to any questions about infiltration or exfiltration, while there was testimony that there apparently was some type of a breach some time, I'm not sure that there is evidence that there was negligence on the part of the City at particular point.

And there has been no showing that they failed to have any type of system of maintenance or repair. The allegations were that they failed to adequately maintain or properly operate the system, but there has been no showing as to what they did specifically and within the timeframe that would put them on notice to what they did or didn't do.

Other than there was infiltration and exfiltration

based upon all the information we got from everywhere, but there is no timetable. And I think that -- so as it relates to September 5th and 6th I'll direct a verdict as to the negligence on those issues.

As it relates to subsequent information which has been -- if it hasn't specifically been alleged its at least been evidence presented about subsequent issues with leaks or the release of sewage. I will deny the motion at this time on these basis -- bases. And I'm not necessarily excluding all the other arguments. I will be happy the rehear the arguments again as it relates to some of these issues at the conclusion of the Defendant's case.

But I think some of the immunity issues that have been raised as it relates to discretionary immunity in particular I think that the case law indicates that it's the Defendant's burden or the person asserting the immunity to establish it. And so I think there needs to be some additional information related to that and to demonstrate it was in fact these were in fact discretionary acts and/or that there was a conscience choice that had to be or could be exercised by the Town in deciding what to do and when to do it.

These are not ministerial acts. These are not acts in which -- it does not require the exercise of some competing factors to determine what and when and where a

course of conduct should take place. I did hear the Plaintiffs argument that it's not a question of what to do but it's a question -- but it is a requirement that they do something. And in this case there was -- they did nothing. And so I'm somewhat persuaded by that argument.

As it relates to after they were put on notice that there was a problem in this particular area and that there was a problem with either the sewer line or the sewer system and what they chose to do. So I think at least there is sufficient evidence at this particular point to get past a directed verdict on those act that occurred after September 5th and 6th.

We heard your argument about public duty, and I didn't really consider those arguments. And as I said I will be happy to consider those again, but I think at this particular point I believe that there needs to be some information presented from the Defendant to be able to flush out the remaining factors that need to be considered. Anything in particular I need to address?

Statute of limitations; to the extent I think it's -- there is a two year statute of limitations, and the action was filed in 2008, 2009. I notice that it was amended. The second amended complaint for Vickie Graham was filed in January of 2011. And that was the second amended complaint raised the issue about the trespass I believe

and so that's been taken care of. But I think it's the negligence claim is timely. And I don't think that statute of repose applies and as I stated I don't think the argument that it was there in 1924 and it wasn't until they got notice in 2010 that their claim accrued.

It's a viable one. I think what we have in this particular case is that they claim that events occurred after September of 2008; and that because the City was aware of the issues and because they did not undertake to fix the problem and it continued; and, therefore, they were damaged and I think those claims are certainly under statute of limitations on the negligence.

Anything else?

MR. WILLIAMS: Nothing from the Plaintiff, Your Honor.

MR. WREN: Nothing from the Defendant, Your Honor. If I may though just seek five minutes or so before the jury is called back in, Judge. In light of your ruling I just want to think real quick how to put the remainder of our case up.

THE COURT: Okay.

MR. WREN: If I may, Judge?

THE COURT: Yes.

MR. WREN: Okay.

(WHEREUPON, a short break was taken.)

Q. Thank you, Mike. Let me stand right here, and I'll try to make this short. The next one in order was Defendant's Exhibit Number Two, and other way.
A. Other way.
Q. And could you just explain to the jury what this is.
A. All right. This one is slightly zoomed into the area in question. A little bit more, but also turned on our flood plain layer which is a depiction of our other map with gray interior. Everything inside this red is inside the flood plain. And between Zeal and Rice Street that's the area in question. And I just showed you these two manholes we shot and a green line that we drew straight between the outside.
Q. And I didn't want to cut you off, but the red line that is reflected is that same area that we looked at that was the shaded area on the F.E.M.A. map?
A. Yes.
Q. Again, like we did on the last map, can you take the highlighter and just generally show -- I think you did. I just want to make sure we're clear. Where the Graham's property is?
A. Right here.
Q. Is that a swimming pool is see?
A. I can see the swimming pool right there. I can barely make it out. Few houses on this version, but

that's the house. That's the swimming pool, and the sewer line goes right between the two.

Q. All right. That's all the questions I have for that one. All right. Let me show you what you were looking at, Defendant's Exhibit Number Three. Can you please tell the jury what this is?

A. This is just a more zoomed in version of the previous. Now, we've got the two manholes on Zeal and Rice. That's the perimeter of the house roof. There is the swimming pool. There is the connection between it. There is the limits of the flood plain. Everything within here is inside those flood plain limits.

You can even see right in here this is the ditch leaving the property. Now, right under here it's under the cover of the trees so it comes up through here I believe somehow. But right there is fairly well defined. You can see what resembles the ditch.

Q. Okay. And I think as you pointed out can you see the four a little bit here?

A. There is the pool there. It's got a cover on the top. See all these little white stripes. It may be strapping. I'm not exactly sure what they are, but you can see the pools got a cover on it.

Q. I'm going to grab one -- right there without a cover on it.

A. There is one right there without a cover on it.
Q. And are you familiar with looking at, reading and interpreting these kinds of maps?
A. Yes, sir.
THE COURT: Y'all need to keep your voices up, please.
MR. WREN: Thank you, Judge.
BY MR. WREN:
Q. Last one. Mike, this is the document you looked at marked Defendant's Exhibit Number Four. Can you please tell the jury what this is?
A. Once again an even more zoomed in version of the two manholes. One at Zeal. One at Rice. A straight line to the green line that we drew on top of it. You see the roof outline here. You see the pool outline, and the proximity to that. You also see the red lines. Everything within this area is in the flood plain. You also see the ditch that I pointed out before pretty defined on the lower part.
Q. Okay. And, Mike, if the jury is like me I see we've zoomed way in. You can see a little bit more. Mostly on the really dark areas a little bit of this speckling white. Do you know what that is?
A. Just the reproduction qualities of that photo that we exported.

Q. When you zoom in?
A. Yes.
Q. And you pointed out the green lines same as the other one that that location for manhole to manhole of the sewer line?
A. Yes, sir.
Q. That crosses the Graham property?
A. Yes, sir.
Q. And, now, this photo is becoming more clear. Can you tell the jury from your observation, your knowledge of looking at this matter where the sewer line is located?
A. Well, here is -- you can barely see the outline of the roof line right along that green line. So the sewer line would be at least 3 or 4 feet outside the roof line. It also skirts along the edge of this pool right here. So in my opinion it's a few feet outside the house, but not under the house.
Q. And have you seen anything throughout your work on this, your experience and knowledge or investigation that has indicated to you that or confirmed that the sewer line on the Graham property is underneath their house?
A. I have not seen anything. The only two known points I know of is this manhole, this manhole and a straight line between them.
Q. And is this a gravity sewer system?

A. Gravity sewer lines with the direction of flow coming this way and turning and going out.

Q. And my guess is civil engineer. Is it more common to see a house built upon or in the vicinity of a line? Or a line built somehow underneath a building?

A. It's very uncommon, but it does happen.

Q. Here, though, you have not seen anything to indicate that that line runs underneath the house?

A. No.

MR. WILLIAMS: Objection.

MR. WREN: I'll be happy to rephrase it.

BY MR. WREN:

Q. Mike, have you seen anything, everything you looked at in this case to indicate that that sewer line runs underneath the Graham's residence?

A. I have not seen anything.

Q. Thank you. You may have a seat, Mike. I'm going to wrap up.

MR. WREN: Beg the Court's indulgence.

BY MR. WREN:

Q. Mike, the couple of documents that we have looked at today, have you looked at other documents relative to this matter?

A. Yes, sir.

Q. Have you looked at other photographs and such things?

MR. WREN: Objection, Your Honor. The witness is not an expert. Just testified he doesn't know where the storm went.

BY MR. WILLIAMS:

Q. You weren't interested enough in it to figure out where it went? You just liked the name?

A. I remember the name. I didn't say I liked the name. I remember it, but I don't remember its path.

Q. Isn't there another way to determine where a line is other than running smoke through it and running a camera through it and standing on manholes and looking at each other?

A. If there is some sort of magnetic location device or if it's cast on or steel you can use magnetic locators to find ---

Q. But for the magnetic locators to work it would have to be a metal pipe or have some sort of wiring in it? It couldn't be terra cotta pipe; is that correct?

A. That's right.

Q. All right. Is there such a thing as coring to determine where it would be?

A. I'm not sure what coring is.

Q. Is there any kind of technique where somebody can go out with a tool of any kind whatsoever and jab it in the ground and figure out what's underneath the ground?

A. Yes, sir. But you're not 100 percent sure you know what line you're tracing.
Q. Okay. But you can determine lines?
A. Yes, sir.
Q. You're won't know which line it is, but you will find lines?
A. Yes.
Q. Okay. You may find more lines than you're looking for or you may find the wrong lines, but you will find lines, right?
A. It's not 100 percent reliable.
Q. Well, neither is G.P.S. or G.I.S. Nothing is 100 percent reliable, correct?
A. I have a lot of faith in the G.P.S. system.
Q. Did y'all send anybody out before going to these other techniques? Did y'all send somebody out poking in the ground to see if you can find the line?
A. No, sir.
Q. That's never been done?
A. Not to my knowledge.
Q. Okay. Will you agree with me that if the service line from the Graham house connects with the main line right at their back door within 5 or 6 feet of the carport. You know what area I'm talking about?
A. Yes, sir.

Q. Where the back steps join the grass, if there is a main line connection to the service line at that point would you agree with me that you can't get to Rice Street from that point without going under their house?
A. That would be true.
Q. Thank you.
MR. WILLIAMS: I'm sorry. I'm through, Your Honor.
THE COURT: Any redirect?
MR. WREN: Yes, brief redirect, Your Honor.

REDIRECT EXAMINATION

BY MR. WREN:
Q. Mike, the -- all the opinions you've relied to the jury here today have they all been to a reasonable degree of engineering certainty?
A. Yes, sir.
Q. And that is your profession; is that correct?
A. Yes, sir.
Q. If there had been a camera study done of this particular location would you have seen it?
A. Yes, sir.
Q. You recall Mr. Williams asked you about options of the potentially relocating the line. Do you recall all that from a little bit earlier ago?
A. Yes, sir.
Q. And you actually, indeed, did look at options of

possibly relocating the line. Was that your earlier testimony?

A. Yes, sir.

Q. Did you need to relocate this line?

A. We didn't find a problem with this line that needed relocating.

Q. Mike, thank you very much for your time.

A. Thank you.

MR. WREN: I believe I have no further questions.

RECROSS-EXAMINATION

BY MR. WILLIAMS:

Q. Mr. Hanna, does the Town have to ability to shut down the sewer system? To turn a crank or something and temporarily have things stop flowing?

A. No, sir.

Q. There is no way to do that? How do y'all when y'all have -- do you ever have to repair a sewer line by taking out part and replacing it?

A. Yes, sir. You have to plug the line, but that's not a very normal -- you start creating blockages upstream when you do that.

Q. So you block it off somewhere?

A. Yes, sir.

Q. Block it off upstream and downstream?

A. You've just got to block it upstream.

Q. Only upstream?
A. Yes, sir.
Q. Then you can work on it?
A. Yes.
Q. Okay. Has the Town of Latta ever done that with its main line during your relationship with them?
A. I don't recall any specific events, but I'm sure they probably have. Contractors do it more frequently than the to Town staff do it.
Q. When I say, "the Town' I mean the Town and its contractors and subcontractors and people like you. Has the Town in the few few years not had occasions where it would shut down the sewer line temporarily to do repairs?
MR. WREN: Your Honor, objection. I was trying to give some deference, but my redirect was pretty brief. And I'm pretty sure I didn't go into any of this, Judge?
THE COURT: I'll allow him to ask the question.
MR. WILLIAMS: Thank you.
BY MR. WILLIAMS:
Q. Have they done that?
A. Yes.
Q. And after affecting the repair cut the sewer system back on?
A. Yes, sir.
Q. And what's the most recent occasion for that?

A. In the last few weeks.
Q. How often does it happen?
A. Not very often. The Town is going through a project right now because of a highway expansion on 301 an 501. Some of that work is causing us to tie into the sewer lines with contractors. Not the Town's staff, and I do believe that they've had to plug and bypass lines around things while they can make the new repairs.
Q. Okay. Is that a once a year thing?
A. I'd say more like once every three to four to five years.
Q. But most recently two or three weeks ago?
A. Yes, sir.
Q. Thank you.

COLLOQUY

MR. WREN: Your Honor, may the witness be excused?

THE COURT: Yes, sir. You may step down. You may be excused.

MR. WREN: And, Judge, Your Honor, with that the Defendant rests.

THE COURT: Is there any rebuttal testimony?

MR. WILLIAMS: I think so, Your Honor, but perhaps not. If we can have a recess so we can consider it and make a phone call.

THE COURT: Yes. Ladies and gentlemen, once again

still under oath to tell the truth in this matter.

THE WITNESS: Yes, ma'am.

CLAUDE GRAHAM, after have been previously duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. WILLIAMS:

Q. Claude, you're still under oath?

A. Yes, sir.

Q. Did you ever locate your service line for your sewage system for your house?

A. Yes, sir.

Q. And how did you do that?

A. Hired a plumber to come to the house, and we dug up the section of line and then followed it where it tied into the sewer line.

Q. And did you watch that hole being dug?

A. Yes, sir.

Q. Did you watch the hole after it was dug?

A. Yes, sir.

Q. Did you see the place where your service line tied into another line?

A. Yes, sir, I did.

Q. Describe to the jury what you say?

A. The service line came out of the house, and it went to a bigger line that was up under the ground. And right

in the top of the line the service line was like hooked to the bigger line with cement all around it.

Q. All right. So the service line ran up and down from your house?

A. Yes. Well, it came from the house like this and whenever it got to the sewer line it went like this to the sewer line.

Q. It crooked down?

A. Yes, sir.

Q. To the sewer line?

A. Right.

Q. Okay. What was the size of the service line? Use your hand if you want to.

A. About this big around.

MR. PLYLER: Objection. Calls for an opinion, an estimate and speculation.

THE COURT: He can give an estimate of what he saw.

THE WITNESS: It was approximately that big around.

BY MR. WILLIAMS:

Q. And was the other line bigger or smaller?

A. Smaller.

Q. I asked -- my question ---

A. About this big. The other line coming from the house was about that big.

Q. All right. The line coming from your house was how

big?
A. The line coming from the house was about that big.
Q. Okay. And the other line?
A. The other line was about that big.
Q. Okay. So the other line was bigger?
A. Much bigger, yes, sir.
Q. What did you believe -- as a result what did you believe the other line to be?
A. The main sewer line.
MR. PLYLER: Objection. This is speculation. He's asking what he believes it to be. He's not been qualified as an expert. It's lay opinion and it's speculation.
THE COURT: I'll sustaining that one, and you can rephrase the question.
BY MR. WILLIAMS:
Q. Did you have any line on your property other than the service line?
A. No, sir.
Q. Okay. So that other bigger line was somebody else's line, correct?
A. Yes, sir.
Q. All right. That other bigger line, where did it lead? What direction was it running?
A. Towards my house.
Q. Towards your house?

A. Yes, sir.
Q. And how far away from your house was this hole that you dug?
A. 8 feet, 6 feet, eight feet.
Q. Let me get you to -- this is a blow up of Defendant's Exhibit Number Three. And I believe that we've got an even better one, view. Okay, this is a blow up of Defendant's Exhibit Number Four. You may -- with the Court's permission ask you to step down?
THE COURT: Just keep your voice up so we can hear you.
BY MR. WILLIAMS:
Q. It's a Sharpie that I borrowed from the Clerk of Court. Do you recognize this picture?
A. Yes, sir.
Q. Okay. Show, just so we can all reorient ourselves, show us Rice Street?
A. Rice Street is right here.
Q. Where is your house?
A. This is my house.
Q. And where is your pool?
A. This is swimming pool.
Q. Okay. This green line that might represent a sewer line, does that run underneath your swimming pool?
A. I couldn't tell you.

Q. Have you ever had any trouble with your swimming pool related to sewage?
A. No, sir.
Q. Okay. Draw with that Sharpie on here where you observed the hole that you saw the service line?
A. Where the service line came from the house?
Q. Where the service line came from the house and connected with the other larger line.
A. I don't know what this black stuff is, but it was right in there.
Q. All right. Make a -- draw a big circle around that little circle that you just drew. And put 'CG'. So on the center of this circle right here is where the hole was?
A. Yes, sir.
Q. How big around was that hole?
A. Pretty big.
Q. But was it big?
A. Yes, sir.
Q. As big as that?
A. Yes, sir.
Q. You had a clear, unobstructed view of it?
A. Yes, sir.
Q. Okay. Did you get down on your hands and knees and feel around in there or just looked?

A. I just looked.
Q. Okay. Could you tell what the other line was made out of?
A. It was covered in mud and everything else. So the thing I could see was where it was connected.
Q. Okay? All right. From this point here where you saw that connection if you wanted to get to Rice Street how could you do it?
A. Right there.
Q. And what direction was that other line pointed that you saw?
A. Right like that.
Q. Just like you just depicted?
A. Yes, sir.
Q. Both of them going through your house or under your house?
A. Underneath the house.
Q. Through the line running under your house.
A. Yes, sir.
Q. You can sit down back up there. Now, you recall some earlier testimony about Melvin Jackson, the supervisor of the Sewer Department for the Town of Latta?
A. Yes, sir.
Q. Did you ever have a discussion with him while he was in that capacity about the location of the manholes around

your house?
A. Yes.
Q. Tell the jury what he said, what you asked him, what he said as best you can remember?
A. He told me there was a manhole cover out at the end of my driveway that was covered up by pavement by the Highway Department the last time they paved the road.
Q. Did he say when the last time they paved the road was?
A. No, sir.
Q. And tell again the location of it that he said?
A. Out at the end of my driveway in the road. In Rice Street.
Q. And that line that you just showed the jury, the line that you drew on the map from your hole in the ground where the other line was, tracing it out, where would it have ended in relation to Rice street?
A. Pretty much in that area that we're talking about.
Q. At the end of your driveway?
A. At the end of my driveway.
Q. Okay.

MR. WILLIAMS: That's all the questions I have.

THE COURT: Mr. Plyler.

CROSS-EXAMINATION

BY MR. PLYLER:

A. To camera a line?
Q. To camera a line. I beg your pardon. Tell the jury what to camera a line means?
A. It's an instrument that has a camera on it that is run into sewer/water lines to look to see what's inside.
Q. Okay. And why would one want to do that?
A. Well, if you want to see actually where it goes or if there is cracks or if there is problems in there or what's in it you need to see. You really can't -- I mean you can't crawl in there. And that's a good way to look inside lines.
Q. And how big a camera is that?
A. They come in different sizes.
Q. Typically, how big?
MR. PLYLER: Objection, Your Honor.
THE COURT: Overruled. If she knows.
THE WITNESS: Well, I don't -- there is different sizes for different lines.
Q. Okay.
A. I mean there is not a specific size, you know.
Q. Well, let me ask you this. It's small enough to get inside the lines?
A. Yes, sir.
Q. Okay?
A. They make them small enough to get in lines, and they

make them big enough for bigger lines.
Q. How do you get it in there? Do you push it or pull it or what?
A. The cameras usually have some type of mobility wheels, tracks. They can be changed out for different sizes per lines to pull the cords in there ---
Q. Okay.
A. --- to see.
Q. All right. Do you know James Bailey?
A. Yes, sir.
Q. Who is James Bailey?
A. He was the Operator at the Town of Latta?
Q. Operator of what?
A. The water/sewer system.
Q. Would he have -- would he have been the successor to Melvin Jackson?
A. No.
Q. Some time after Melvin Jackson?
A. He was after Melvin Jackson.
Q. But of people in between Melvin Jackson?
A. Yes, sir.
Q. Okay. Is he the Town Sewer Supervisor now?
A. No.
Q. Who is?
A. Harold Snipes.

Q. Okay. Do you know Willie Hooks?
A. Yes, I've met Willie.
Q. Okay. What's the relationship in employment terms between Willie Hooks and James Bailey?
A. He worked for the Town of Latta. I don't know the hierarchy.
Q. Okay.
A. I'm not sure exactly how they -- he was employed with the Town of Latta.
Q. Okay. This trial is about events that first started in September of 2008. Let me direct your attention to the timeframe of mid-September, mid to late September 2008 through the end of that year.
A. Okay.
Q. Did you have any discussions with the Town of Latta Sewer Supervisor, James Bailey, about cameraing a line?
A. Yes.
Q. Tell the jury about that?
A. After they ---
MR. PLYLER: Objection, Your Honor. Calls for hearsay.
THE COURT: Overruled.
THE WITNESS: After they had the flooding in the Town, of course, there were some problems in the line, and I became aware of a line under a house and ---

Q. The Graham house?
A. Yes.
Q. Okay?
A. And to look to see -- I wanted to make sure the line was intact and was not going to cause problems. I asked that the Town do a line -- if they could -- if they could get somebody to go look at it or do a smoke test on it. They were actually in the process of doing smoke tests before that incident, and they were still in the process of doing that and mapping.

So I asked them to see if they could get somebody to do that.

Q. So smoke tests has been done before this incident?
A. In some parts of Town. I don't know if it was that section yet.
Q. Okay. Now, when you say you asked the Town to camera the line does that mean you asked James Bailey?
A. Yes.
Q. Okay. And did he agree to camera the line?
A. They agreed to camera it. To try to get somebody to camera it.
Q. Okay. Did he report back to you on what steps they had taken or what happened?
A. He reported back saying that they did, and I can't remember if that got the City of Dillon to do it or

another company to do it. I can't remember which, but he said they did try to camera the line.

Q. Tried to camera the line?

A. Um hum.

Q. Did he say why it was a trial and not a success?

MR. PLYLER: Objection, Your Honor. At this point we're getting into double hearsay. Apparently a third entity tired to camera this line, and he would be reporting to her what they reported to him.

THE COURT: And the statements that would be made by Mr. Bailey would be as a representative and an agent of the Town of Latta, and so I'm going to allow the testimony because he was responsible for that and would be the party who would be responsible for supervising and making sure it was done. And so I'll overrule your objection.

MR. PLYLER: Thank you, Your Honor.

BY MR. WILLIAMS:

Q. What did Mr. Bailey say happened when they tried to camera the line?

A. That they were going to come up behind the house to get to the line, and once they got so far they had obstruction in the line. They couldn't get the camera over or to go any forward. So they couldn't get to that part to took at.

Q. Did he say what the nature of the obstruction was?

A. If he did I don't remember. I mean those cameras can be stopped by a lot of things. I could be solids. It could have been a rock. It could have been a root. It could have been -- he just said obstruction.
Q. And where would those obstructions be?
A. It was before. It was in the lot behind the house. I don't know exactly. I wasn't present during the cameraing. So I don't know exactly how far they got into the line.
Q. What I mean is would obstruction be inside the line or outside the line?
A. Obstruction could be something in the line or it could be that the line was pushed up and the camera couldn't get over it. So it could be a lot of things.
Q. Did he say what the nature of the obstruction was?
A. He just said obstruction.
Q. Did he say anything else about their inability to camera the line?
A. Not that I remember. No.
Q. Okay. Would the Town have records of that attempt?
A. I would think he would have put it in his logs ---
MR. PLYLER: Objection, Your Honor.
THE WITNESS: --- but I don't know.
MR. PLYLER: Objection, Your Honor.
THE COURT: To the extent that it calls for

MR. WILLIAMS: Your Honor, the Plaintiff has a motion.

THE COURT: Yes, sir.

MR. WILLIAMS: The Plaintiff moves the Court to reconsider it's rulings on inverse condemnation and trespass based on the testimony of the Town's engineer to the effect that they cut off and cut back on the sewer lines every three to five years at least. And as recently as three weeks ago. And the basis for the reconsideration would be that every time they cut back on the sewer line that's an affirmative act; that the Town is electing to cut it back on knowing that it's going to create a trespass on the Plaintiff's property in times of rain.

The bottom line of the argument is that cutting it back on is an affirmative act.

THE COURT: The way -- I believe the way the case law reads is it has to be an affirmative act that causes the damage to the property. And that or the act has to proceed the actual damage to the property or whatever injury has been suffered. And so the simple act of -- I view that as maintenance on the line; that that is not an affirmative act that creates the inverse condemnation which is -- you're claiming that the way the line was maintained or whatever the Town specifically caused the problems that led to your clients moving and whatever

injuries and damage to either include their health or to the property itself.

And I don't believe that the fact that they are exercising their duties and discretions in maintaining the lines or allowing contractors to come in and perform work for other people, for other entities whether it's the Department of Transportation or some other entity. But the fact that they are allowing people to come in and they -- and that affects the line is what caused the damage to your client's property, and I think affirmative act, it has to be some correlation between the affirmative act that is done by the Town and the actual damage that's caused to your clients.

And so on that basis simply because they have performed work or they have allowed sewer -- the flow of sewage to be disrupted for periods of time for maintenance or to allow other contractors for other governmental agencies to come in and perform work in which the lines had to be -- the flow had to be stopped I don't think that that is the precipitating reasons for the damage.

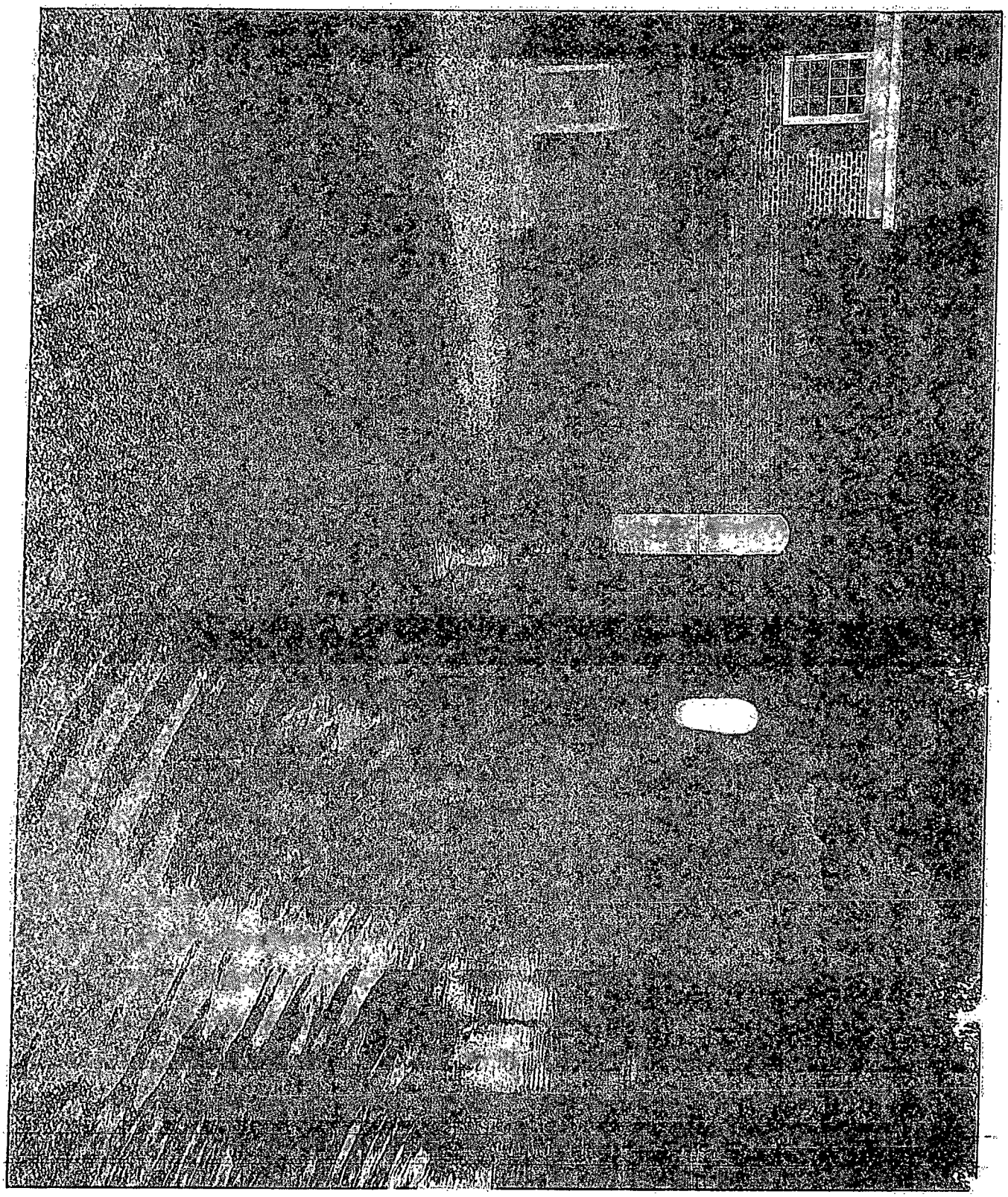
So I don't consider those to be affirmative acts and I think the case law supports me on that and so I deny that request.

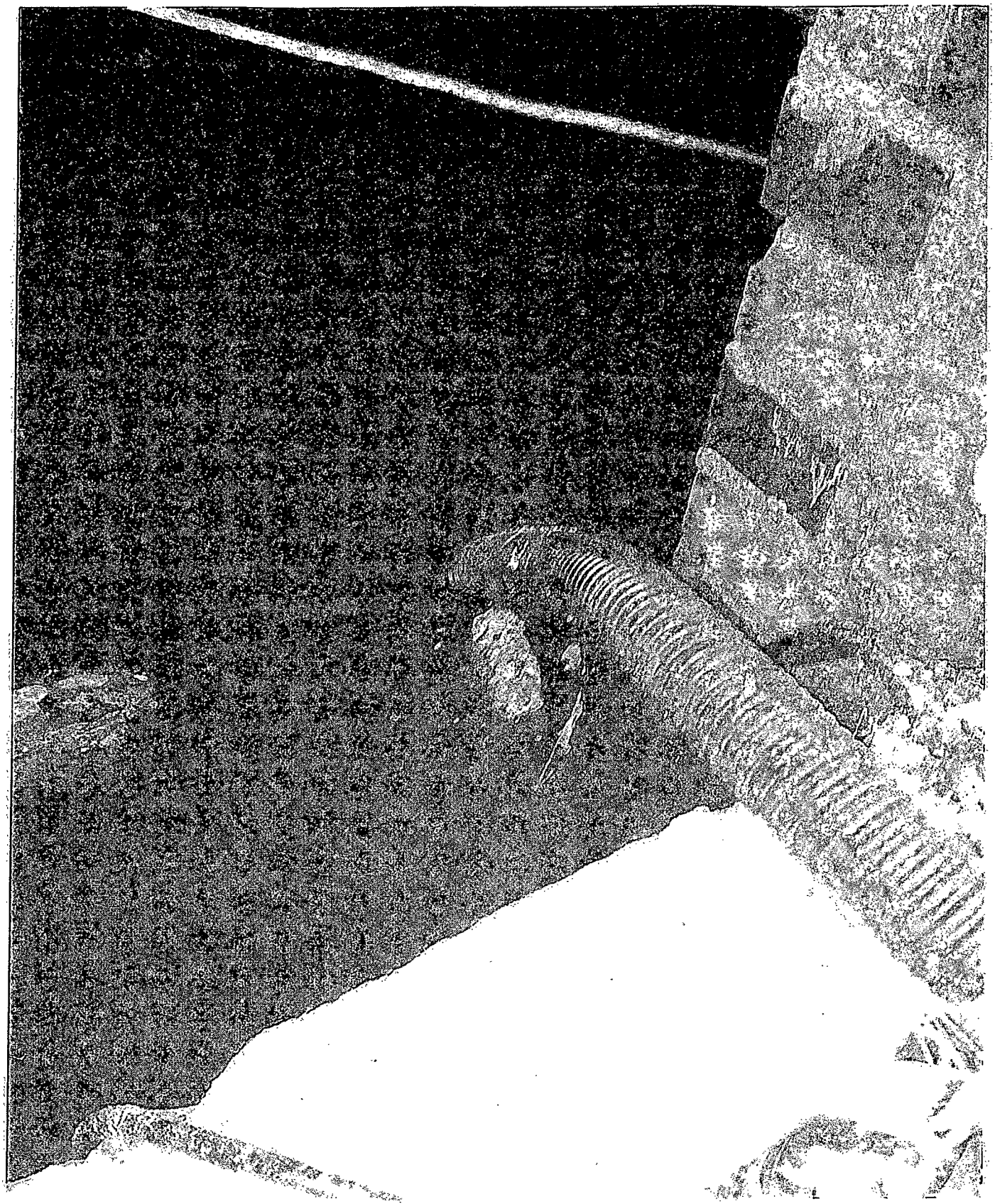
MR. WILLIAMS: Thank you, Your Honor.

THE COURT: Any other motions by the Plaintiff.

ALLSTATE LEGAL®
PLAINTIFF'S
EXHIBIT
1

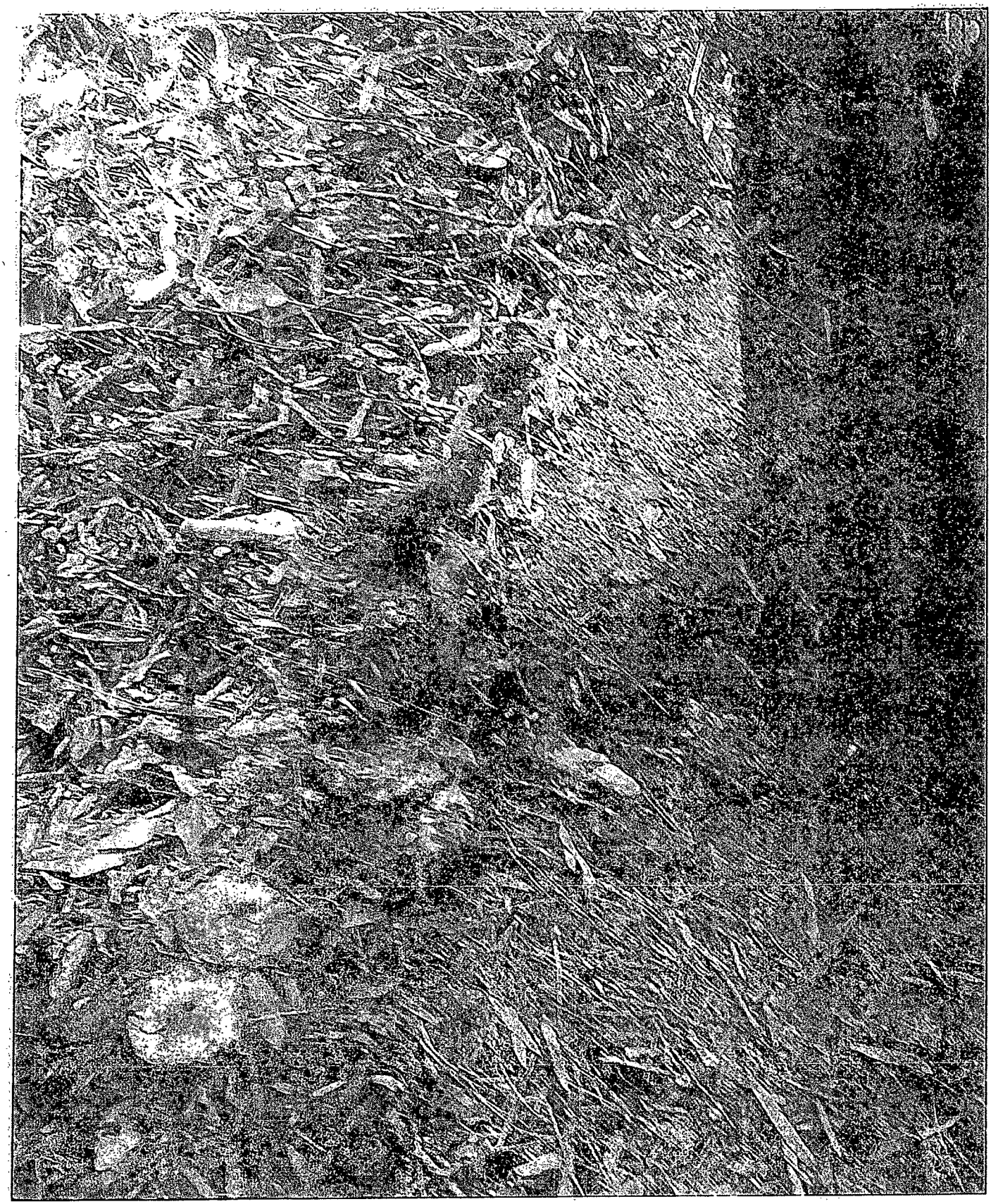




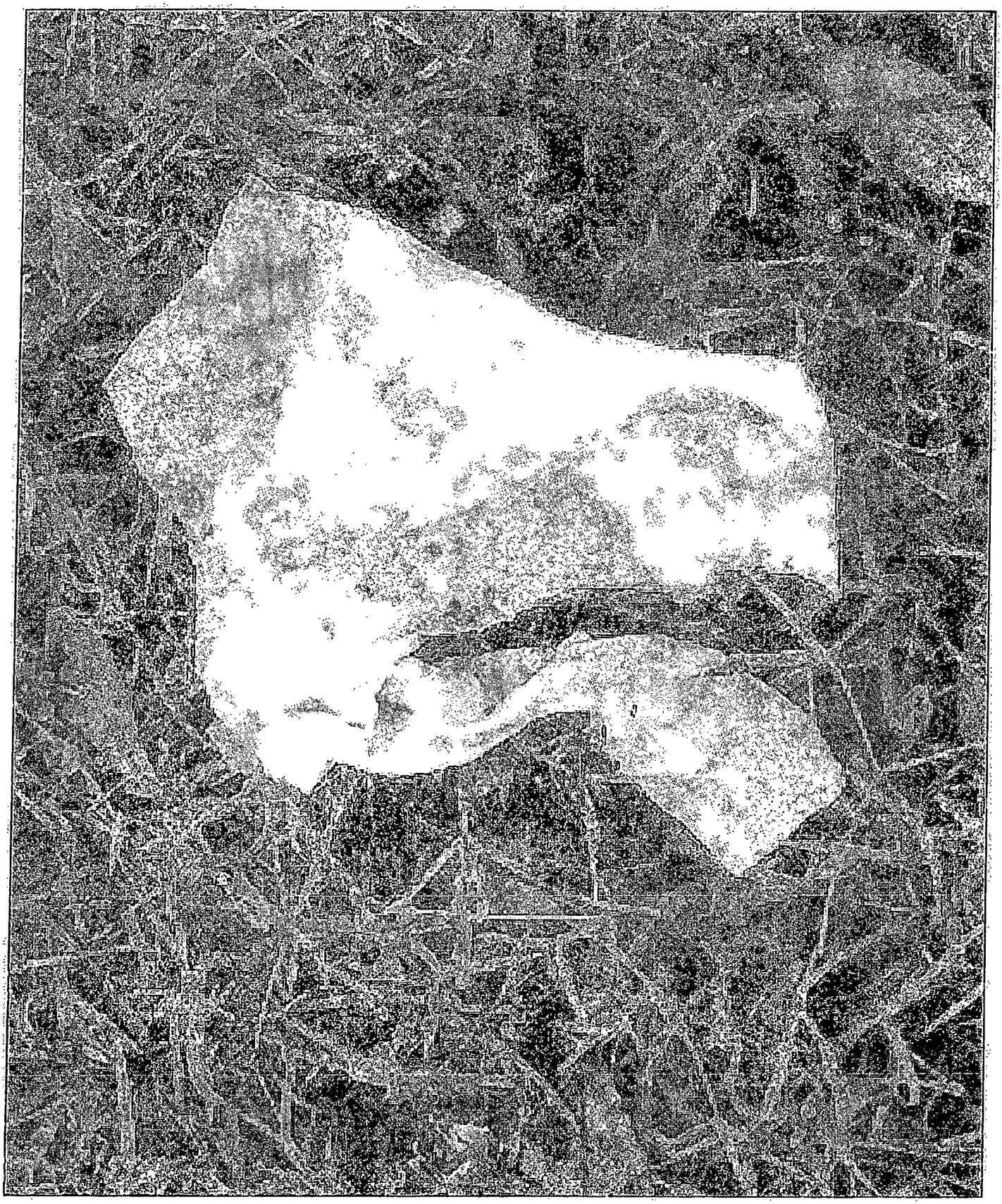




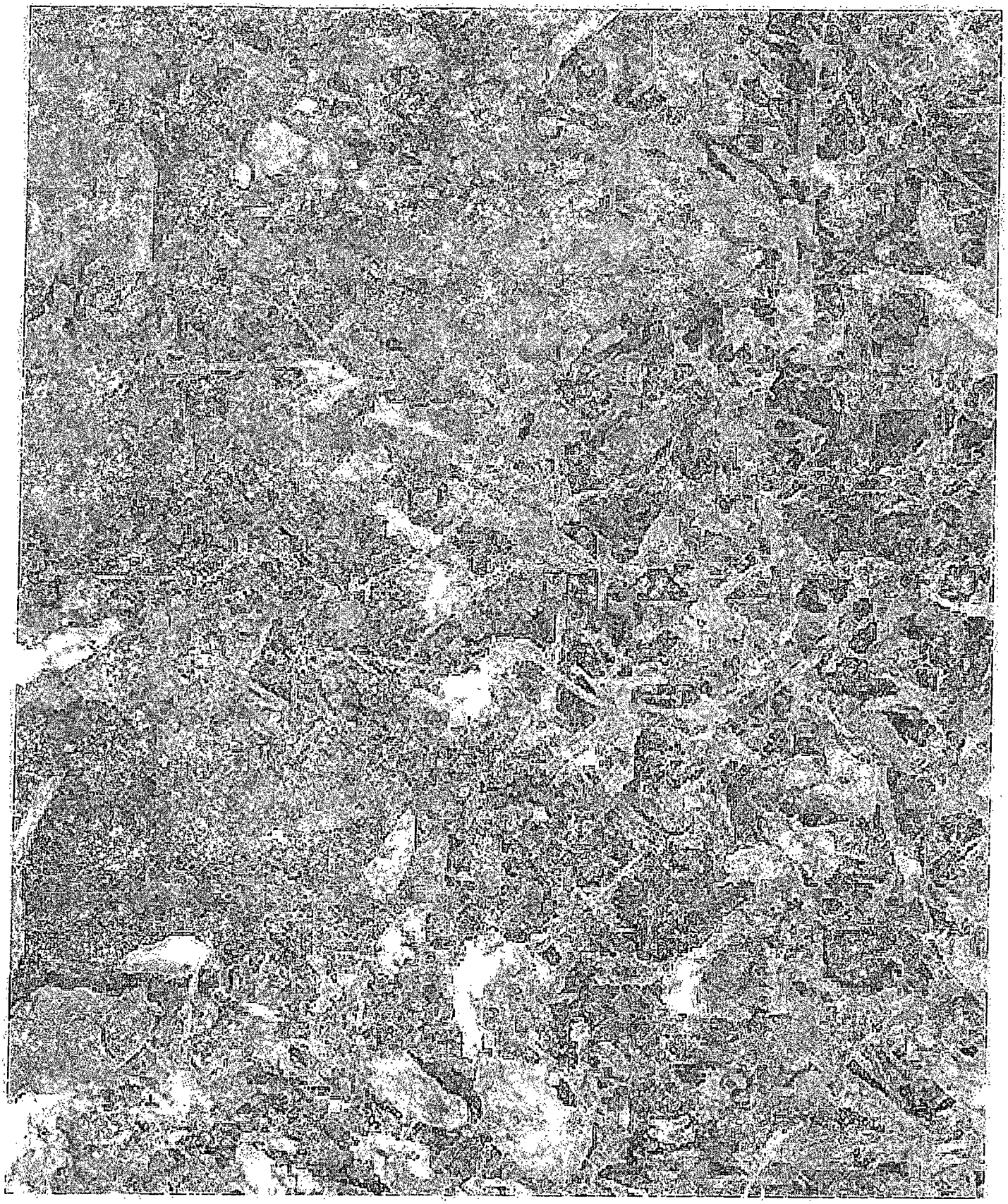


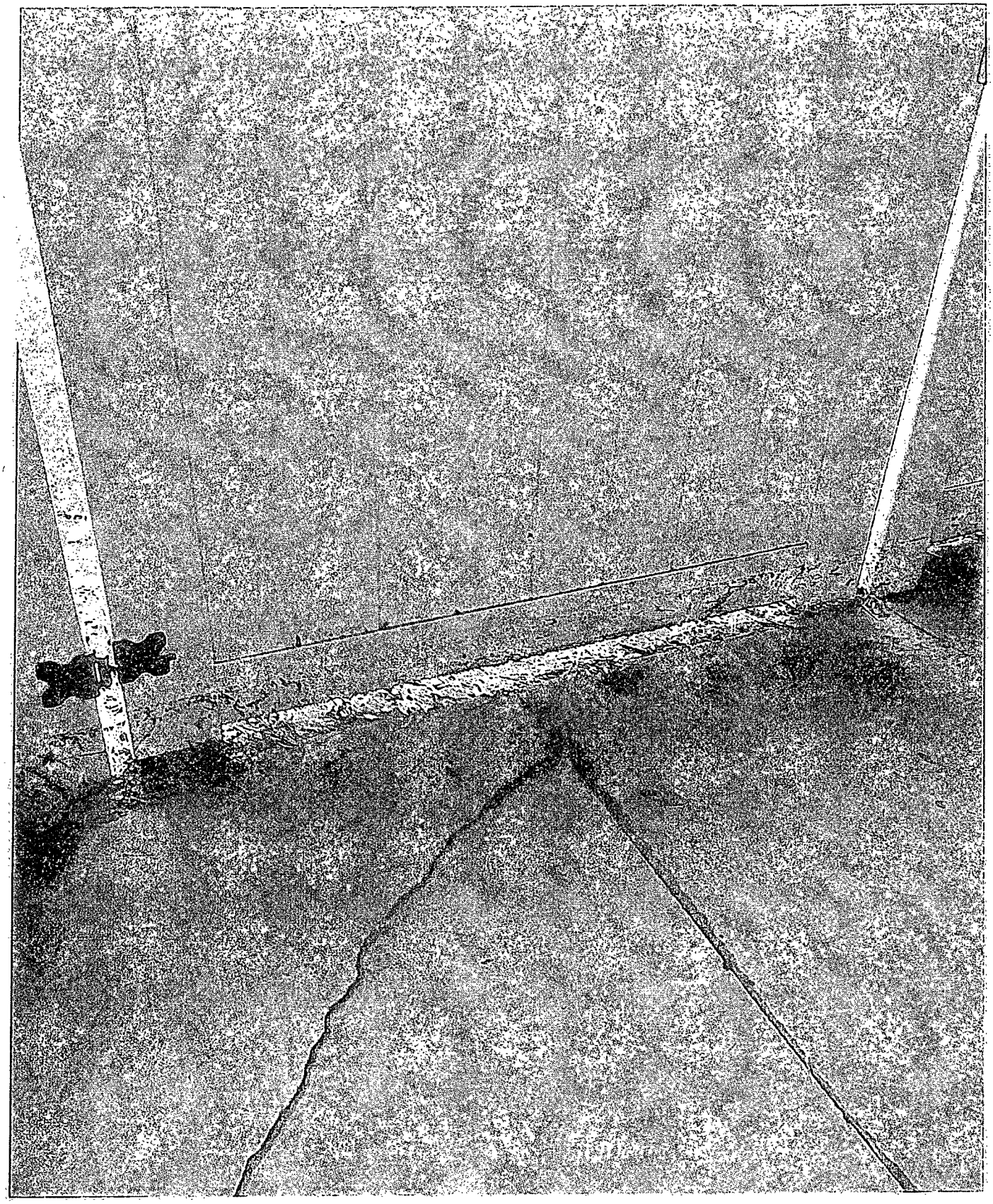












Pay to:
Palmetto Internal Medicine of Florence PC
305 E. Cheves, Suite 120
Florence, SC 29506
(843) 656-2122

Patient Receipt

Friday, May 29, 2009

Amount Due	Amount Paid
$124.20	$217.30

Claude W Graham
220 E Rice St
Latta, SC 29565

Date	Description	Check	Fee	Units	Insurance	Patient
	Claude W Graham(577)/David M Culpepper MD/067460					
~~08/05/2008~~	~~Office or other outpatient visit for an established patient~~	~~$97.00~~	~~1.0~~	~~$97.00~~	~~$0.00~~	
10/08/2008	Disallowed Adjustment from BCBS State Employee	0827800585			($12.00)	$0.00
10/08/2008	Payment from BCBS State Employee	0827800585			($60.00)	$0.00
10/08/2008	Transfer from Insurance	0827800585			($25.00)	$25.00
10/24/2008	Payment from Graham, Claude W	2240			$0.00	($25.00)
	Balance:				$0.00	$0.00
	Claude W Graham(577)/David M Culpepper MD/067818					
~~09/19/2008~~	~~Office visit for established patient~~	~~$62.00~~	~~1.0~~	~~$62.00~~	~~$0.00~~	
10/08/2008	Disallowed Adjustment from BCBS State Employee	0827800585			($18.00)	$0.00
10/08/2008	Payment from BCBS State Employee	0827800585			($19.20)	$0.00
10/08/2008	Transfer from Insurance	0827800585			($14.80)	$14.80
10/24/2008	Payment from Graham, Claude W	2240			$0.00	($14.80)
	Balance:				$0.00	$0.00
	Claude W Graham(577)/David M Culpepper MD/068117					
10/03/2008	Office or other outpatient visit for an established patient	$67.00	1.0		$67.00	$0.00
10/20/2008	Disallowed Adjustment from BCBS State Employee	0828900529			($11.00)	$0.00
10/20/2008	Payment from BCBS State Employee	0828900529			($36.80)	$0.00
10/20/2008	Transfer from Insurance	0828900529			($19.20)	$19.20
10/30/2008	Payment from Graham, Claude W	2243			$0.00	($39.80)
05/29/2009	Payment from Graham, Claude W				$0.00	$20.60
	Balance:				$0.00	$0.00
	Claude W Graham(577)/David M Culpepper MD/069821					
10/20/2008	Office or other outpatient visit for an established patient	$67.00	1.0		$67.00	$0.00
12/17/2008	Disallowed Adjustment from BCBS State Employee	0833800620			($11.00)	$0.00
12/17/2008	Payment from BCBS State Employee	0833800620			($36.80)	$0.00
12/17/2008	Transfer from Insurance	0833800620			($19.20)	$19.20
01/06/2009	Payment from Graham, Claude W	2280			$0.00	($137.70)
05/29/2009	Payment from Graham, Claude W				$0.00	$25.40
	Balance:				$0.00	($93.10)
	Claude W Graham(577)/David M Culpepper MD/071913					
01/26/2009	Office or other outpatient visit for an established patient	$67.00	1.0		$67.00	$0.00
02/27/2009	Disallowed Adjustment from BCBS State Employee	0904200597			($21.00)	$0.00
02/27/2009	Payment from BCBS State Employee	0904200597			$0.00	$0.00
02/27/2009	Transfer from Insurance	0904200597			($46.00)	$46.00
	YOUR INSURANCE COMPANY HAS APPLIED THIS TO YOUR COINS AND / OR DEDUCTIBLE. PLEASE REMIT PAYMENT. THANK YOU.					
05/29/2009	Payment from Graham, Claude W				$0.00	($20.60)
05/29/2009	Payment from Graham, Claude W				$0.00	($25.40)
	Balance:				$0.00	$0.00

As always, we wish to thank you for your confidence in choosing us as your physicians!

Total Balance	Ins. Balance	Pat. Balance
$201.90	$295.00	-$93.10

ALL-STATE LEGAL®
PLAINTIFF'S EXHIBIT
2

	Claude W Graham(577)/David M Culpepper MD/071239				
~~06/07/2009~~	~~Office or other outpatient visit for an established patient~~	~~$155.00~~	~~1.0~~	~~$155.00~~	~~$0.00~~
05/07/2009	Urinalysis w/ alb/creat ratio	$14.00	1.0	$14.00	$0.00
05/07/2009	Electrocardiogram, routine ECG	$74.00	1.0	$74.00	$0.00
	Balance:			$243.00	$0.00
	Claude W Graham(577)/David M Culpepper MD/074314				
~~05/14/2009~~	~~Office visit for established patient~~	~~$52.00~~	~~1.0~~	~~$52.00~~	~~$0.00~~
	Balance:			$52.00	$0.00

Your next appointment is on Friday, June 19, 2009 9:00AM with Mary Mitchell NP at Palmetto Internal Medicine of Florence PC.

As always, we wish to thank you for your confidence in choosing us as your physicians!

Total Balance	Ins. Balance	Pat. Balance
$201.90	$295.00	-$93.10

Palmetto Internal Medicine of Florence PC * 305 E Cheves St Suite 120 * Florence, SC 29506 * (843) 656-2122

PLAINTIFF'S TRIAL EXHIBIT 6
VIDEO CREATED BY JOHNNY BURDEN

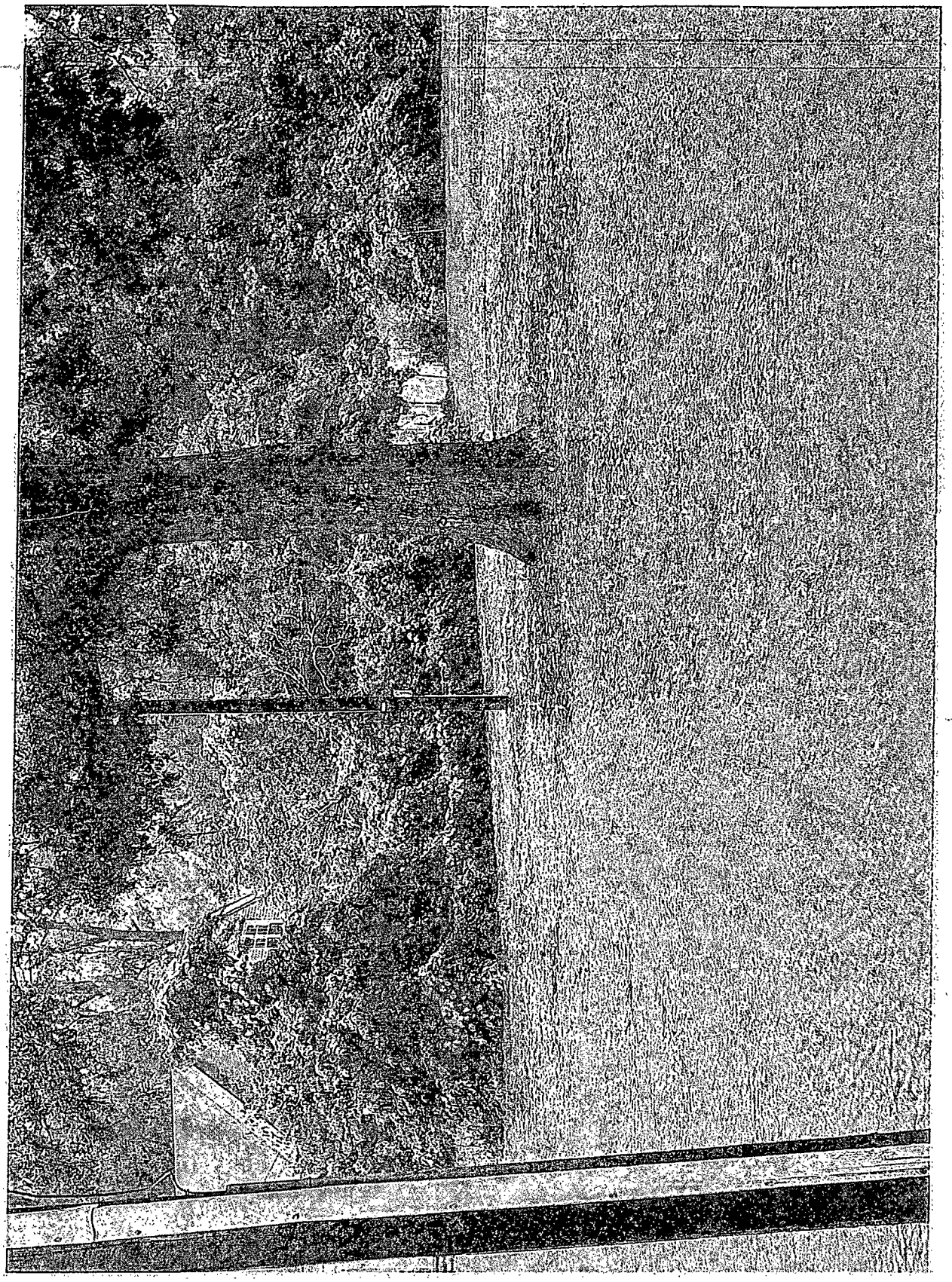
CD ATTACHED

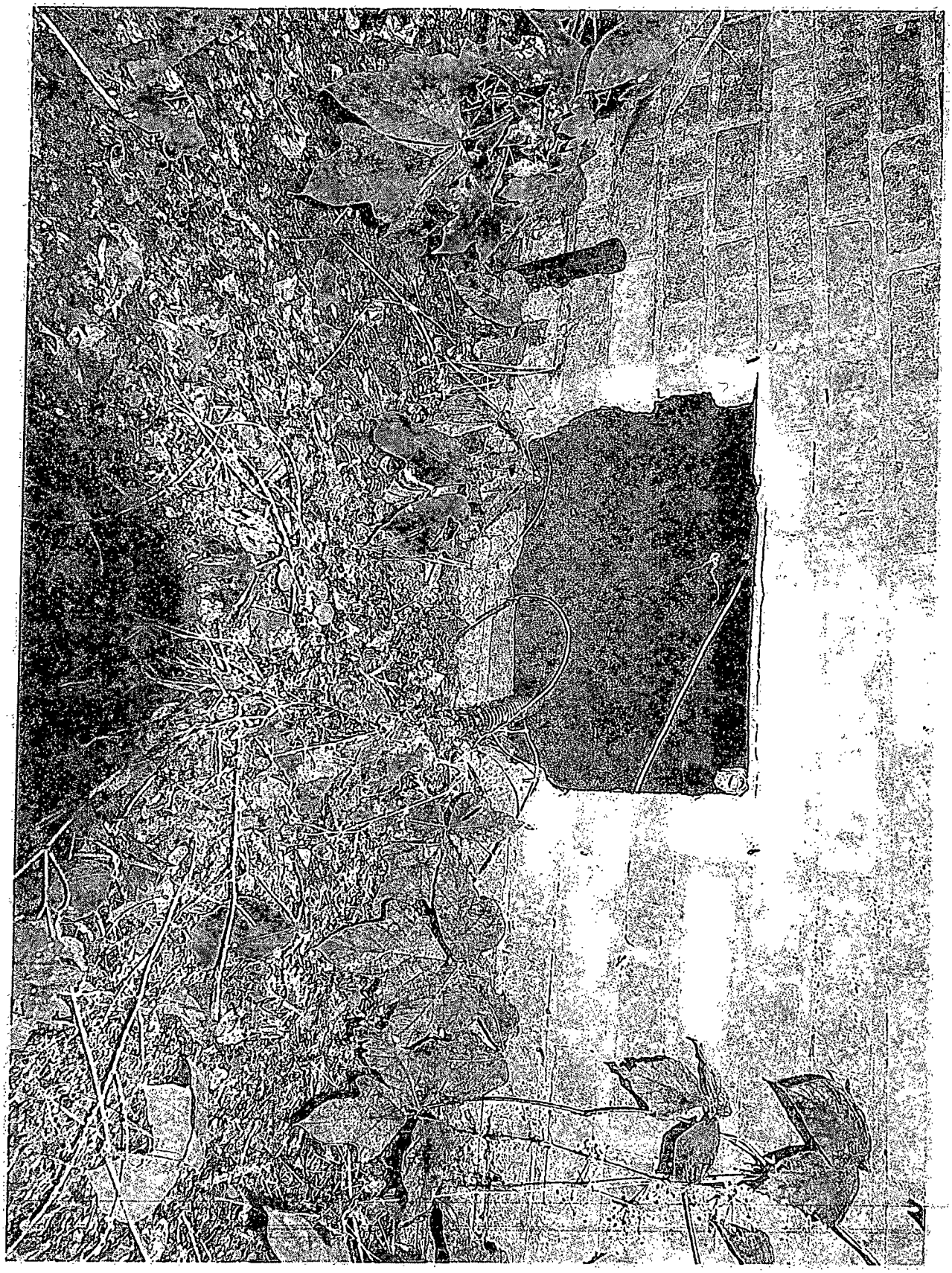
PLAINTIFF'S
EXHIBIT
9
ALL-STATE LEGAL
3/18/2012

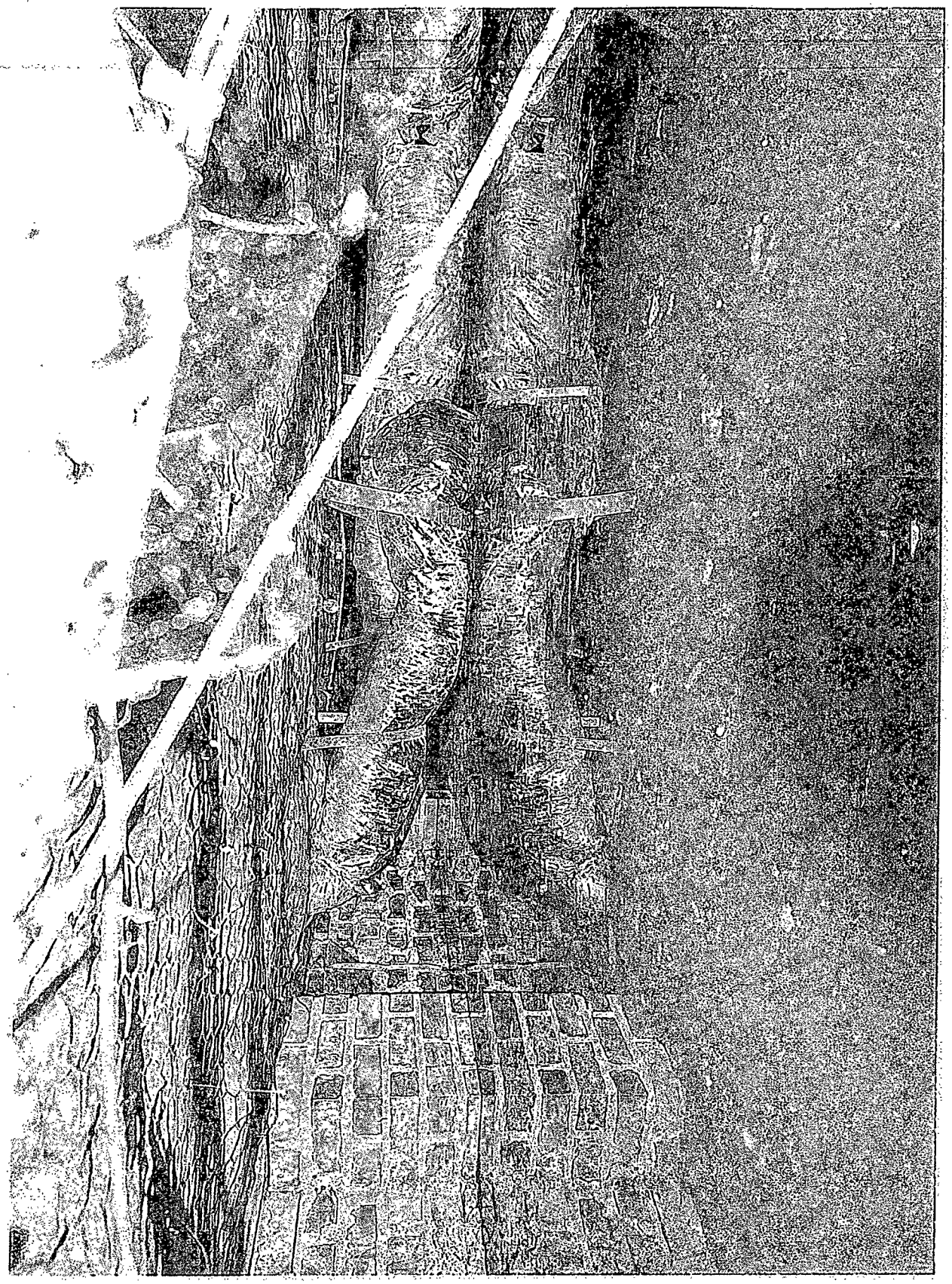
C-102-81-3

3/18/2012

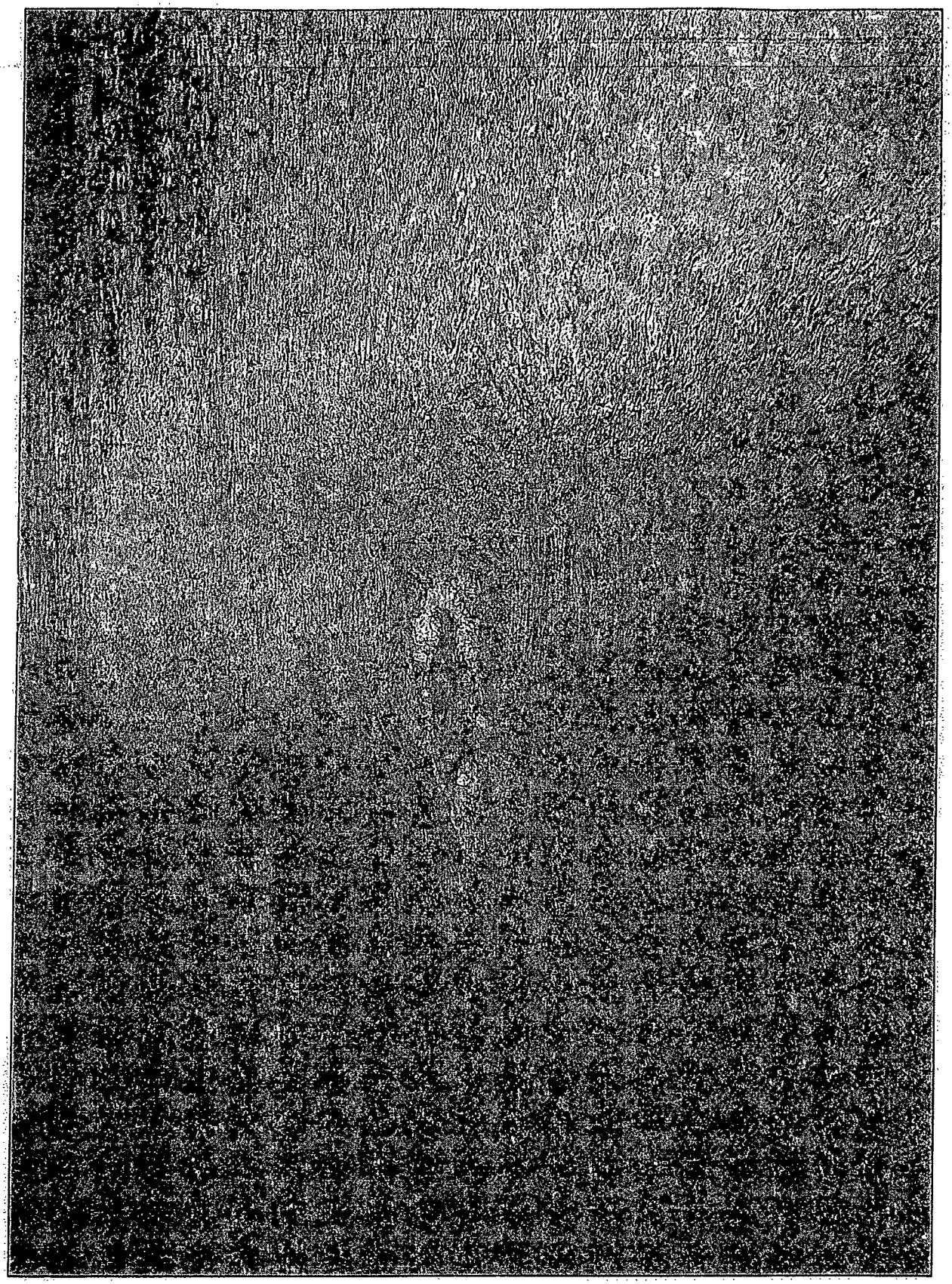
PLAINTIFF'S
EXHIBIT
LL
ALLSTATE LEGAL











Pay to:
Palmetto Internal Medicine of Florence PC
305 E. Cheves, Suite 120
Florence, SC 29506
(843) 656-2122

Vickie B Graham
220 East Rice St
Latta, SC 29565

Patient Receipt

Friday, May 29, 2009

Amount Due	Amount Paid
$161.40	$161.40

Date	Description	Charges	Units	Insurance Adj. / Pat.	Check # / Rec.	Ins. Balance	Pat. Balance
	Vickie B Graham(593)/David M Culpepper MD/070081						
~~12/01/2008~~	~~Office or other outpatient visit for an established patient~~	~~$97.00~~	~~1.0~~			~~$97.00~~	~~$0.00~~
12/17/2008	Disallowed Adjustment from BCBS State Employee				0834500623	($12.00)	$0.00
12/17/2008	Payment from BCBS State Employee				0834500623	($60.00)	$0.00
12/17/2008	Transfer from Insurance				0834500623	($25.00)	$25.00
01/27/2009	Payment from Graham, Vickie B				5742	$0.00	($25.00)
	Balance:					$0.00	$0.00
	Vickie B Graham(593)/David M Culpepper MD/070246						
~~12/15/2008~~	~~Office or other outpatient visit for an established patient~~	~~$97.00~~	~~1.0~~			~~$97.00~~	~~$0.00~~
01/19/2009	Disallowed Adjustment from BCBS State Employee				0901000578	($12.00)	$0.00
01/19/2009	Payment from BCBS State Employee				0901000578	($60.00)	$0.00
01/19/2009	Transfer from Insurance				0901000578	($25.00)	$25.00
01/27/2009	Payment from Graham, Vickie B				5689	$0.00	($25.00)
	Balance:					$0.00	$0.00
	Vickie B Graham(593)/David M Culpepper MD/071581						
12/29/2008	Office or other outpatient visit for an established patient	$97.00	1.0			$97.00	$0.00
12/29/2008	Aerosol treatment	$35.00	1.0			$35.00	$0.00
01/19/2009	Disallowed Adjustment from BCBS State Employee				0901000578	($35.00)	$0.00
01/19/2009	Payment from BCBS State Employee				0901000578	($77.60)	$0.00
01/19/2009	Transfer from Insurance				0901000578	($19.40)	$19.40
03/04/2009	Payment from Graham, Vickie B				5772	$0.00	($19.40)
	Balance:					$0.00	$0.00
	Vickie B Graham(593)/David M Culpepper MD/071606						
~~01/06/2009~~	~~Office or other outpatient visit for an established patient~~	~~$67.00~~	~~1.0~~			~~$67.00~~	~~$0.00~~
02/03/2009	Disallowed Adjustment from BCBS State Employee				0901700618	($21.00)	$0.00
02/03/2009	Payment from BCBS State Employee				0901700618	$0.00	$0.00
02/03/2009	Transfer from Insurance				0901700618	($46.00)	$46.00
	YOUR INSURANCE COMPANY HAS APPLIED THIS TO YOUR COINS AND / OR DEDUCTIBLE. PLEASE REMIT PAYMENT. THANK YOU.						
03/04/2009	Payment from Graham, Vickie B				5772	$0.00	($46.00)
	Balance:					$0.00	$0.00
	Vickie B Graham(593)/David M Culpepper MD/071748						
01/19/2009	Office or other outpatient visit for an established patient	$67.00	1.0			$67.00	$0.00
01/29/2009	Disallowed Adjustment from BCBS State Employee				0902800592	($21.00)	$0.00
01/29/2009	Payment from BCBS State Employee				0902800592	$0.00	$0.00
01/29/2009	Transfer from Insurance				0902800592	($46.00)	$46.00
	YOUR INSURANCE COMPANY HAS APPLIED THIS TO YOUR COINS AND / OR DEDUCTIBLE. PLEASE REMIT PAYMENT. THANK YOU.						
03/04/2009	Payment from Graham, Vickie B				5772	$0.00	($46.00)
	Balance:					$0.00	$0.00

As always, we wish to thank you for your confidence in choosing us as your physicians!

Total Balance	Ins. Balance	Pat. Balance
$676.00	$676.00	$0.00



	Vickie B Graham(593)/David M Culpepper MD/071210				
~~04/30/2009~~	~~Office or other outpatient visit for an established patient~~	~~$97.00~~	~~1.0~~	~~$97.00~~	~~$0.00~~
04/30/2009	Electrocardiogram, routine ECG	$74.00	1.0	$74.00	$0.00
04/30/2009	Urinalysis w/ alb/creat ratio	$14.00	1.0	$14.00	$0.00
	Balance:			$185.00	$0.00
	Vickie B Graham(593)/David M Culpepper MD/074368				
~~05/19/2009~~	~~Office or other outpatient visit for an established patient~~	~~$97.00~~	~~1.0~~	~~$97.00~~	~~$0.00~~
05/19/2009	Cardiovascular stress test	$424.00	1.0	$424.00	$0.00
	Balance:			$491.00	$0.00

Your next appointment is on Monday, October 19, 2009 9:30AM with Mary Mitchell NP at Palmetto Internal Medicine of Florence PC.

As always, we wish to thank you for your confidence in choosing us as your physicians!

Total Balance	Ins. Balance	Pat. Balance
$676.00	$676.00	$0.00

Palmetto Internal Medicine of Florence PC * 305 E Cheves St Suite 120 * Florence, SC 29506 * (843) 656-2122

PRO-LAB®
1675 North Commerce Parkway, Weston, FL 33326 (954) 384-4446

EXPERTISE UNLIMITED, INC.
2304 TIMBERLANE DR
FLORENCE, SC 29506

Certificate of Analysis

Prepared for:	EXPERTISE UNLIMITED, INC.
Phone Number:	(843) 669-2916
Fax Number:	(843) 669-2940
Email Address:	expertise_unlimited@msn.com
Project Name:	C. GRAHAM %J. RUSHTON
Test Location:	220 EAST RICE STREET LATTA, SC 29565
Chain of Custody #:	404428
Received Date:	June 4, 2010
Report Date:	June 7, 2010

John D. Shane Ph.D., QA Manager

Currently there are no Federal regulations for evaluating potential health effects of fungal contamination and remediation. This information is subject to change as more information regarding fungal contaminants becomes available. For more information visit http://www.epa.gov/mold or www.nyc.gov/html/doh/html/epi/mold.shtml. This document was designed to follow currently known industry guidelines for the interpretation of microbial sampling, analysis, and remediation. Since interpretation of mold analysis reports is a scientific work in progress; it may as such be changed at any time without notice. The client is solely responsible for the use or interpretation. PRO-LAB/SSPTM Inc. makes no express or implied warranties as to health of a property from only the samples sent to their laboratory for analysis. The Client is hereby notified that due to the subjective nature of fungal analysis and the mold growth process, laboratory samples can and do change over time relative to the originally sampled material. PRO-LAB/SSPTM Inc. reserves the right to properly dispose of all samples after the testing of such samples are sufficiently completed or after a 7 day period, whichever is greater.

AIHA LAP, LLC
ACCREDITED LABORATORY
ENVIRONMENTAL MICROBIOLOGY
ISO/IEC 17025:2005
WWW.ANAACCREDITPLUS.ORG
LAB # 163230

For more information please contact PRO-LAB at (954) 384-4446 or email info@prolabinc.com

PLAINTIFF'S EXHIBIT 17
ALLSTATE LEGAL

PRO-LAB®
1675 North Commerce Parkway, Weston, FL 33326 (954) 384-4446

Prepared for : EXPERTISE UNLIMITED, INC.

Test Address : C. GRAHAM %J. RUSHTON
220 EAST RICE STREET
LATTA, SC 29565

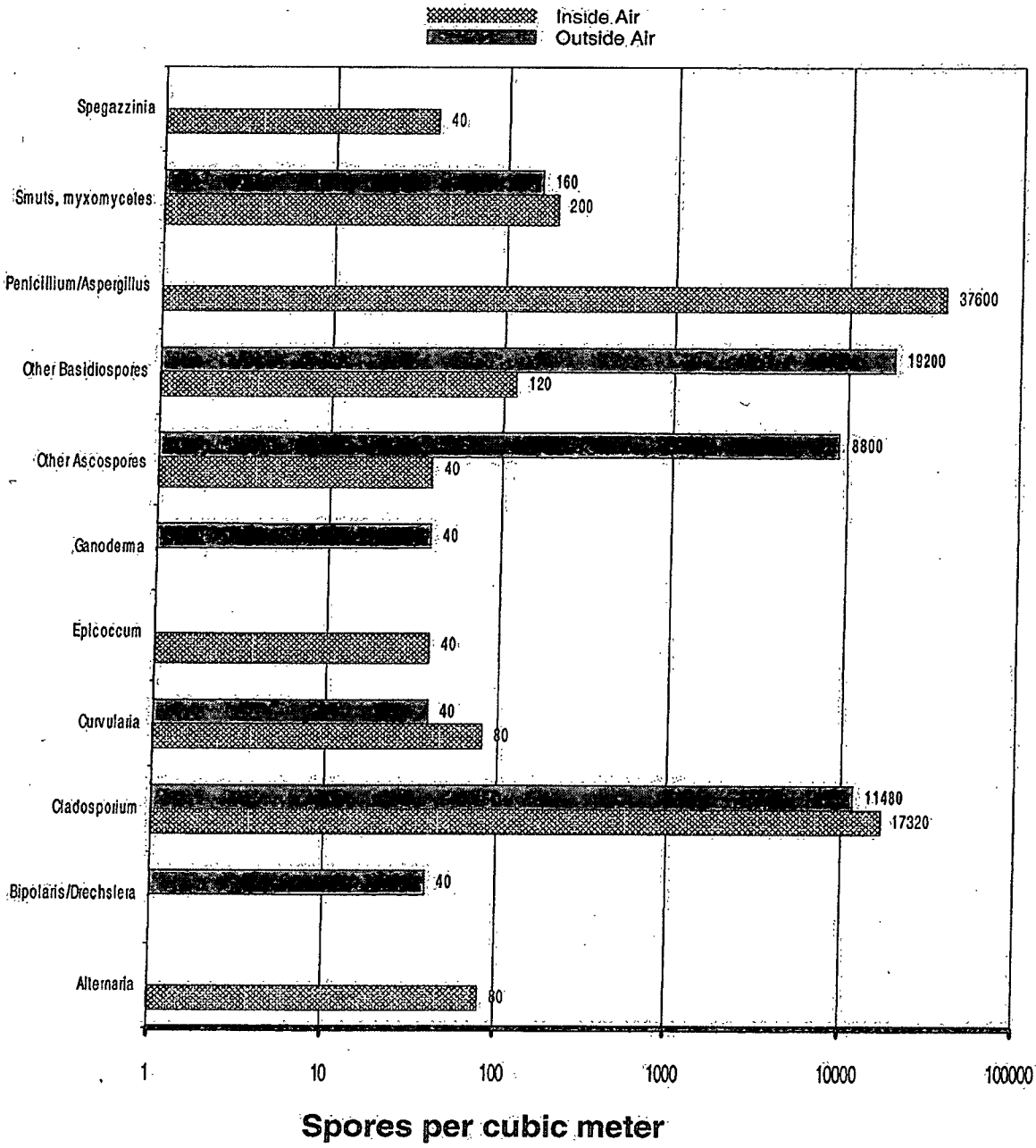
ANALYSIS METHOD	Direct Microscopic Exam	Direct Microscopic Exam	Spore trap analysis	Spore trap analysis
LOCATION	Hvac Return Air Duct	Hvac Supply Duct	Inside Air	Outside Air
COC / LINE #	404428-3	404428-4	404428-5	404428-6
SAMPLE TYPE & VOLUME	SWAB	SWAB	Z5 - 25L	Z5 25L
SERIAL NUMBER			Z463493	Z463502
COLLECTION DATE	Jun 3, 2010	Jun 3, 2010	Jun 3, 2010	Jun 3, 2010
ANALYSIS DATE	Jun 7, 2010	Jun 7, 2010	Jun 7, 2010	Jun 7, 2010
RESULT	UNUSUAL	UNUSUAL	ELEVATED	CONTROL

IDENTIFICATION	Mold Present	Mold Present	Raw Count	Spores per m^3	Percent of Total	Raw Count	Spores per m^3	Percent of Total
Alternaria			2	80	<1			
Bipolaris/Drechslera						1	40	<1
Cladosporium	X	X	433	17,320	31	287	11,480	29
Curvularia			2	80	<1	1	40	<1
Epicoccum			1	40	<1			
Ganoderma						1	40	<1
Hyphae	X	X						
Other Ascospores			1	40	<1	220	8,800	22
Other Basidiospores			3	120	<1	480	19,200	48
Penicillium		X						
Penicillium/Aspergillus	X		940	37,600	68			
Smuts, myxomycetes			5	200	<1	4	160	<1
Spegazzinia			1	40	<1			
TOTAL SPORES			1,388	55,520	100	994	39,760	100
Minimum detection limit:				40			40	
BACKGROUND DEBRIS			Moderate			Light		
Cellulose Fiber			4	160				
Insect Fragments			1	40		1	40	
Pollen			1	40				
OBSERVATIONS & COMMENTS	Presence of current or former growth observed.	Presence of current or former growth observed.						

Background debris estimates the amount of particles that are not pollen or spores and directly affects the accuracy of the spore counts. The categories of Light, Moderate, Heavy and Too Heavy for Accurate Count, are used to indicate the amount of deposited debris. Increasing amounts of debris will obscure small spores and can prevent spores from impacting onto the slide. Spore counts that are included with Heavy or Too Heavy for Accurate Count are minimal counts and the actual numbers of spores are likely much higher. Total percent may not equal 100% due to rounding.

PRO-LAB®
1675 North Commerce Parkway, Weston, FL 33326 (954) 384-4446

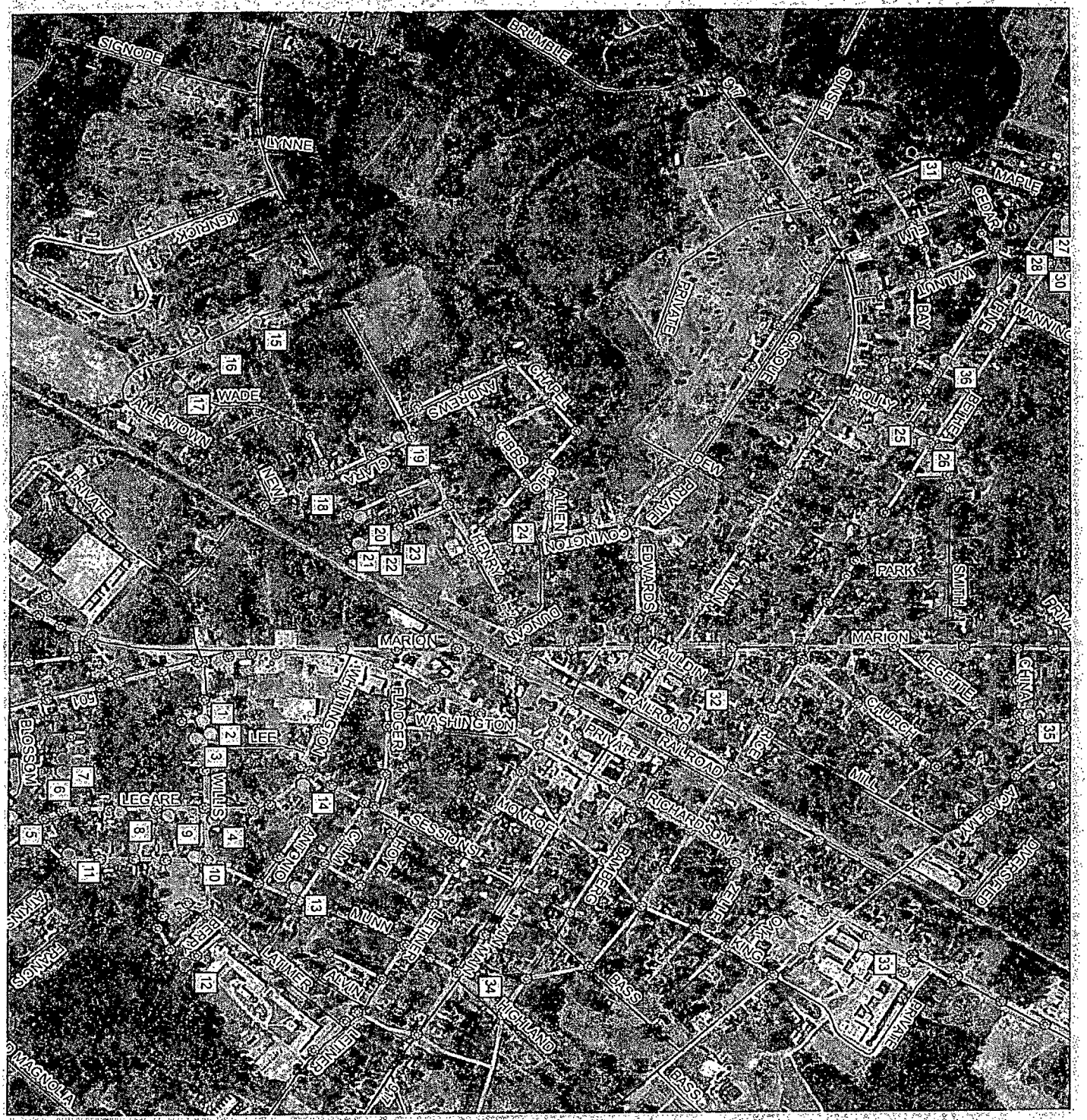
Chain of Custody # 404428



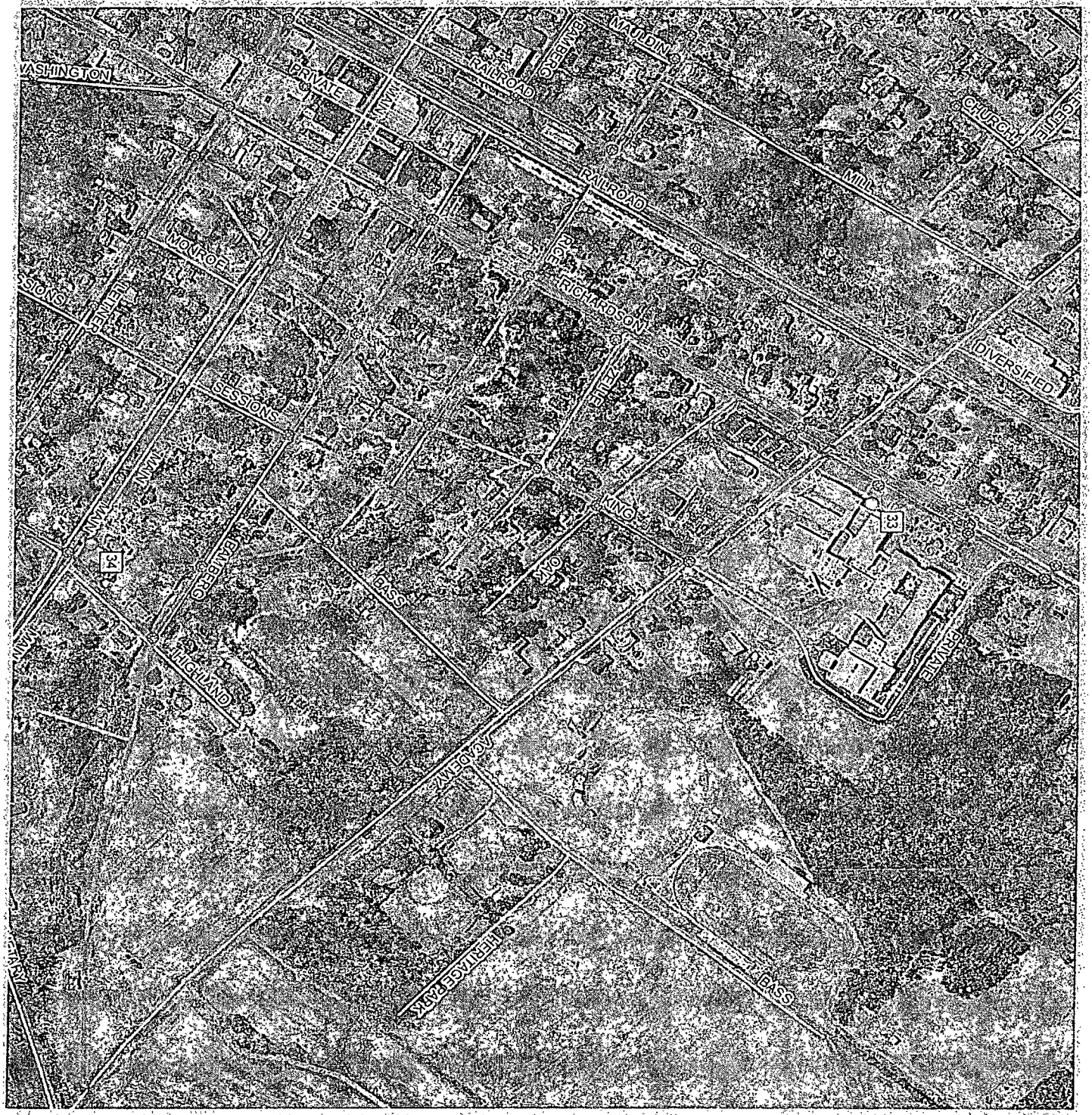
Identification	Outdoor Habitat	Indoor Habitat	Allergic Potential	Toxins Produced	Comments
Alternaria	One of the most commonly reported airborne spores worldwide; Soil, dead or dying plants, foodstuffs, textiles	Wallboard paper backing, wood, other various cellulose-containing materials. Common in settled dust on carpets, drapes, textiles, etc.	Common allergen. Type I allergies (hay fever and asthma); Type III hypersensitivty pneumonitis. Common cause of extrinsic asthma.	Dextruxin B, alternariols, alteriuenes, altertoxins, tenuazonic acid	Alternaria is commonly found in elevated numbers on wet-intruded building materials and in higher spore numbers in the air with respect to the outside when growth on wet building materials occurs.
Bipolaris/Drechslera	Common everywhere. Frequently associated with grasses, but also found on plant material, decaying food, and soil.		Common Type I (hay fever and asthma), fungal sinusitis.	None known.	This is a group of like-looking spores that include Bipolaris, Drechslera, Exserohilum, and sometimes Helminosporium. They cannot be consistently separated by spore morphology and are thus grouped together. Must be cultured to consistly separate the genera.
Cladosporium	The most common spore type reported in the air worldwide. Found on dead and dying plant litter, and soil.	Commonly found on wood and wallboard. Commonly grows on window sills, textiles and foods.	Type I (hay fever and asthma), Type III (hypersensitivity pneumonitis) allergies.	Cladosporin, emodin.	A very common and important allergen source both outdoors and indoors.
Curvularia	Commonly found everywhere on soil and plant debris.	Capable of growing on many cellulytic substrates like wallboard and wood.	Type I (hay fever and asthma) and common cause of allergenic sinusitis.	None known.	
Epicoccum	Commonly found everywhere. Grows on plant debris, insects and soil.	Capable of growing on several different substrates, notably wallboard and paper	Type I (hay fever and asthma) allergies.	Epicoraxine A&B, flavipin.	Very common in the summer, especially in the midwest and during harvest time.
Ganoderma	Common everywhere growing on hardwood trees.	None known.	None known.	None known.	
Hyphae	Common everywhere.	All substrates.	None known.	None known.	Hyphae are the "root-like" food absorption strands common to nearly all fungi. They sometimes can become airborne.
Ascospores	Common everywhere. Constitutes a large part of the airspora outside. Can reach very high numbers in the air outside during the spring and summer. Can increase in numbers during and after rainfalls.	Very few of this group grow inside. The notable exception is Chaetomium and Ascotricha.	Little known for most of this group of fungi. Dependent on the type (see Chaetomium and Ascotricha).	None known for most of the group (see Chaetomium)	
Basidiospores	Commonly found everywhere, especially in the late summer and fall.	Not normally found growing indoors. Can grow on wet lumber, especially in crawlspaces.	Some allergenicity reported. Type I (hay fever, asthma) and Type III (hypersensitivity pneumonitis).	None known.	Among this group are dry rot fungi Serpula and Poria that are particularly destructive to buildings.

PRO-LAB®
1675 North Commerce Parkway, Weston, FL 33326 (954) 384-4446

Identification	Outdoor Habitat	Indoor Habitat	Allergic Potential	Toxins Produced	Comments
Penicillium	Very common, growing on decaying plant material, soil, fruits and many other substrates.	Common indoor mold that grows on fruit, bread, textiles, leather and other substrates that are wetted.	Type I (hay fever and asthma) and Type III (hypersensitivity pneumonitis).	Many toxins known, e.g., verruculogen, nephrotoxin, viomellein, xanthocillin X, griseofulvin, ochratoxin, citrinin, penicillin, cyclopiazonic acid, etc.	Penicillium is one of the most commonly identified mold type worldwide. Spores of Penicillium and Aspergillus are usually too similar to separate and when seen without fruiting bodies will be identified as "Pen/Asp".
Penicillium/Aspergillus	Common everywhere. Normally found in the air in small amounts in outdoor air. Grows on nearly everything.	Wetted wallboard, wood, food, leather, etc. Able to grow on many substrates indoors.	Type I (hay fever and asthma) and Type III (hypersensitivity pneumonitis) allergies.	Toxin potential is dependant upon which species of Penicillium or Aspergillus is present.	This is a combination group of Penicillium and Aspergillus and is used when only the spores are seen. The spores are so similar that they cannot be reliably separated into their respective genera.
Smuts, myxomycetes	Commonly found everywhere, espcially on logs, grasses and weeds.	Smuts don't normally grow indoors, but can occasionally be found on things brought from outs de and stored in the house. Myxomycetes can occasionally grow indoors, but need lots of water to be established.	Type I (hay fever and asthma) allergies.	None known.	Smuts and myxomycetes are a combined goup of organisms because their spores look so similar and cannot be reliably distinquished from each other
Spegazzinia	Not commonly observed, but widely distributed.	Not known to grow indoors.	None known.	None known.	Frequently seen especially in southern United States.


SICNODE
BRUMBLE
LYNNE
KENRICK
WADE
ALLENTOWN
ANDREWS
CHAPEL
CREEK
ALLEN
COVINGTON
PRIVATE
DEW
GASQUE
SUNSET
MAPLE
CEDAR
ELM
WALNUT
BAY
PINE
TANNING
BENEFIELD
SMITH
PARK
EDWARDS
HENRY
DUNCAN
MARION
WASHINGTON
RAILROAD
LAUDIN
ALGEITE
CHURCH
CHINA
MILL
BERESFORD
BLOSSOM
LEE
WILLIS
LEGARE
LADGER
SESSIONS
MONROE
RICHARDSON
CAMPBELL
ALDINO
GALT
HOLT
LENEAR
NUNN
LATIMER
ALVIN
HIGHLAND
BASS
OAKLEY
KEITH
FRANCIS
MAGNOLIA
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
30
31
32
33
34
35
36

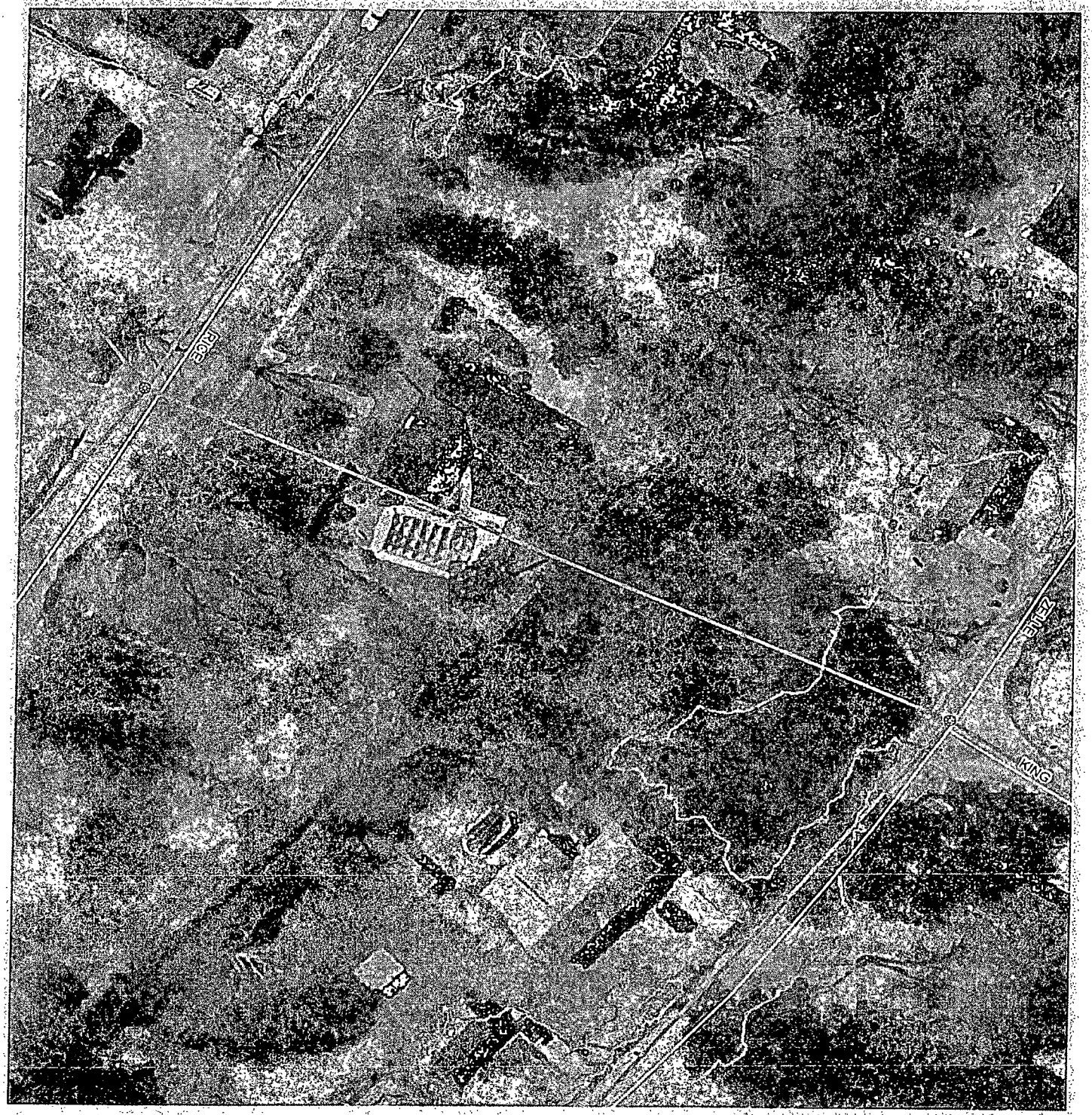
A's 1


WASHINGTON
PRIVATE
MAIN
RAILROAD
MAULDIN
CHURCH
MILL
MONROE
RICHARDSON
DIVERSIFIED
SESSIONS
KING
OAK
BASS
HIGHLAND
CHERITAGE PARK
43
33

A's 2



A's 3



A's 4

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DILLON COUNTY
Court of Common Pleas

Alison Renee Lee, Circuit Court Judge

Case Nos.: 2008-CP-17-0376
2008-CP-17-0377

Claude W. Graham, ... Respondent-Appellant,

v.

Town of Latta, South Carolina, ... Appellant-Respondent.

AND

Vickie B. Graham, ... Respondent-Appellant,

v.

Town of Latta, South Carolina, ... Appellant-Respondent.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

Reynolds Williams
Post Office Box 1909
Florence, South Carolina 29503
843-662-3258
Attorney for Respondents-Appellants

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DILLON COUNTY
Court of Common Pleas
Alison Renee Lee, Circuit Court Judge

RECEIVED
FEB 24 2014
SC Court of Appeals

Case Nos.: 2008-CP-17-0376
2008-CP-17-0377

Claude W. Graham, ... Respondent/Appellant,

v.

Town of Latta, South Carolina, ... Appellant/Respondent.

AND

Vickie B. Graham, ... Respondent/Appellant,

v.

Town of Latta, South Carolina, ... Appellant/Respondent.

PROOF OF SERVICE AND CERTIFICATE OF COUNSEL

I certify that I have served the Record on Appeal on the *Appellant/Respondent*, through its attorneys of record, Andrew F. Lindemann, Michael B. Wren, and Daniel C. Plyler, by depositing a copy of same in the United States Mail, postage prepaid, to Post Office Box 8568, Columbia, South Carolina, 29202, on February 5, 2014.

I do also certify that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

February 20, 2014

Reynolds Williams
Post Office Box 1909
Florence, South Carolina 29503
843-662-3258
Attorney for Respondents/Appellants