

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DILLON COUNTY
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.

RECORD ON APPEAL - VOLUME I

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SC Court of Appeals

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STATE OF SOUTH CAROLINA

COUNTY OF DILLON

Claude W. Graham,

Plaintiff,

v.

Town of Latta, South
Carolina,

Defendant.

IN THE COURT OF COMMON PLEAS

Civil Action Number:08-CP-17-376

A CERTIFIED
TRUE COPY

Bern T. Hyatt

CLERK OF COURT
DILLON COUNTY

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2009 DEC 18 AM 10:15
CLERK OF COURT
DILLON COUNTY

STATE OF SOUTH CAROLINA

COUNTY OF DILLON

Vickie B. Graham,

Plaintiff,

v.

Town of Latta, South
Carolina,

Defendant.

IN THE COURT OF COMMON PLEAS

Civil Action Number:08-CP-17-377

CONSENT ORDER

With the consent of the parties, the above-referenced actions are hereby consolidated under C/A No. 08-CP-17-376.

Additionally, the parties have agreed to the following schedule for the duration of this matter:

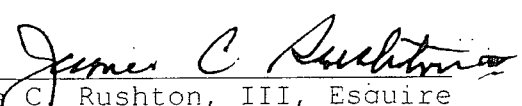
- (1) Discovery shall be completed by April 10, 2010;
- (2) All dispositive motions shall be filed by May 31, 2010; and

(3) This matter shall be subject to trial as of July 1, 2010.

IT IS SO ORDERED.


The Honorable Paul M. Burch
Chief Administrative Judge
Fourth Judicial Circuit

I CONSENT:


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The Hyman Law Firm, LLP
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Post Office Box 1770
Florence, South Carolina 29503-1770
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I CONSENT:


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Columbia, South Carolina 29202
T: 803-806-8222
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ATTORNEY FOR DEFENDANT

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)

FILED
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CLERK OF COURT
DILLON COUNTY

A CERTIFIED
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Gwen T. Hyatt
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.

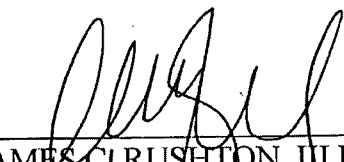
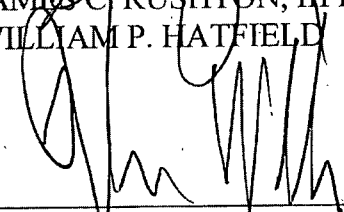


CHIEF ADMINISTRATIVE JUDGE
FOR THE FOURTH JUDICIAL CIRCUIT

Date: 12/15/2010

Chesterfield, SC

WE CONSENT:


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

STATE OF SOUTH CAROLINA)

COUNTY OF DILLON)

IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT

C/A # 2008-CP-17-376 & 2008-CP-17-377

Claude W. Graham,)

Plaintiff,)

vs.)

Town of Latta, South Carolina,)

Defendant,)

AND)

Vickie B. Graham,)

Plaintiff,)

vs.)

Town of Latta, South Carolina,)

Defendant.)

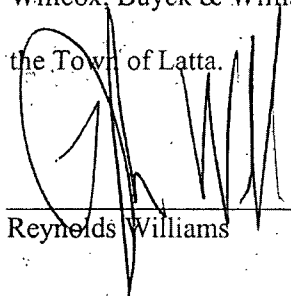
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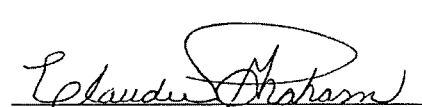
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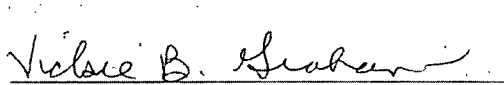
PLEASE TAKE NOTICE that we are represented by Reynolds Williams and the firm of

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

STATE OF SOUTH CAROLINA, FILED IN THE COURT OF COMMON PLEAS
COUNTY OF DILLON GWEN T. HYATT FOURTH JUDICIAL CIRCUIT

2013 MAR -8) PM 3:46

Claude W. Graham,

Plaintiff,

v.

Town of Latta, South Carolina,

Defendant.

AND

Vickie B. Graham,

Plaintiff,

v.

Town of Latta, South Carolina,

Defendant.

CLERK OF COURT
DILLON COUNTY

Civil Action Number: 08-CP-17-376

ORDER

A CERTIFIED
TRUE COPY

CLERK OF COURT
DILLON COUNTY

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, SCRCF. After hearing the evidence in this matter, considering the arguments by counsel, and thoroughly reviewing the applicable law, the Court finds as follows:

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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.

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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.

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AND IT IS SO ORDERED.


The Honorable Alison Renee Lee
Presiding Judge

Columbia, South Carolina

February 27, 2013

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FILED
STATE OF SOUTH CAROLINA GWEN T. HYATT IN THE COURT OF COMMON PLEAS
COUNTY OF DILLON FOR THE FOURTH JUDICIAL CIRCUIT

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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.

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), SCRPC, or in the alternative, for New Trial Absolute pursuant to Rule 59, SCRPC. 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), SCRPC. 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.

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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

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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 (Cl. 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

and
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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, SCRPC. 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

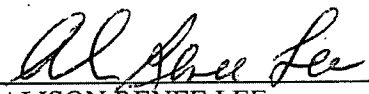
of a house that would cost at least \$457,000.00 to replace, and pain and suffering. A verdict of \$100,000 for Mr. Graham and \$225,000 for Mrs. Graham is well within the range reasonably inferred by the evidence.

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

ad
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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

John J. Latta

PLAINTIFF(S)

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 40(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.

IT IS ORDERED AND ADJUDGED:

☐ See attached order. (Formal order to follow)

☐ Statement of Judgment by the Court:

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

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

Al. Allee 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

ATTORNEY(S) FOR THE PLAINTIFF(S)
CLERK OF COURT
DILLON COUNTY

ATTORNEY(S) FOR THE DEFENDANT(S)
CLERK OF COURT

SCCA SCRCP Form 4 Revised 06/2008

JR# 2008 - CP - 17 - 00376
20

FILED
GWENTHYATT
2012 OCT 11 PM 6:15
CLERK OF COURT
DILLON COUNTY

STATE OF SOUTH CAROLINA
COUNTY OF DILLON

Claude W. Graham,

Plaintiff,

v.

Town of Latta, South Carolina,

Defendant.

IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT

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.

Foreperson

Date:

Anthony Plowden

10/11/12

A CERTIFIED
TRUE COPY

Gwen T. Hyatt
CLERK OF COURT
DILLON COUNTY

FILED
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2012 OCT 11 PM 6:15
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

John J. Latta

PLAINTIFF(S)

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 40, 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.

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.

Alfred Lee
PRESIDING JUDGE

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

ATTORNEY(S) FOR THE PLAINTIFF(S)
Sam T. Hyatt
CLERK OF COURT
DILLON COUNTY

ATTORNEY(S) FOR THE DEFENDANT(S)
John J. Latta
CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF DILLON

Vickie B. Graham

Plaintiff,

v.

Town of Latta, South Carolina,

Defendant.

IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT

Civil Action No.: 2008-CP-17-00377

VERDICT

WE, THE JURY, UNANIMOUSLY FIND FOR:

☒ The PLAINTIFF,

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

☐ The DEFENDANT.

Foreperson

Date:

George Plowden

10/11/12

A CERTIFIED
TRUE COPY

Shawn T. Hyatt

CLERK OF COURT
DILLON COUNTY

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

TO: 11 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-

COMPLAINT
(Jury Trial Requested)

FILED
GIVEN T. HYATT
2008 NOV 19 AM 9:54
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 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)
COUNTY OF DILLON)

IN THE COURT OF COMMON PLEAS

Claude W. Graham,
Plaintiff,

v.

Town of Latta, South
Carolina,

Defendant.

Civil Action Number: 08-CP-17-006

ANSWER
(Jury Trial Demanded)

CLERK OF COURT
DILLON COUNTY

FILED
GWENT. HYATT
2008 DEC 22 AM 10:49
CLERK OF COURT
DILLON COUNTY

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

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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.

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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.

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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.

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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: Kate A. Rice
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
COUNTY OF DILLON

Vickie B. Graham,

Plaintiff,

Vs.

Town of Latta, South Carolina,

Defendant.

IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT
C/A # 2008-CP-17-377

AMENDED COMPLAINT
(Jury Trial Requested)

FILED
GWEN T. HYATT
2009 FEB -4 AM 9:38
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

CLERK OF COURT
DILLON COUNTY

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.

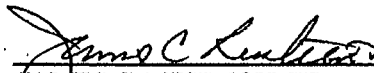
21. The Plaintiff is entitled to an award of damages from the Defendant for the taking of her property as described above and is further entitled to an award of attorney's fees.

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) For an award of attorney's fees; and
- d) For such other and further relief as may be just and proper.

Florence, SC

February 2, 2009



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)
)
COUNTY OF DILLON)

IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT
C/A # 2008-CP-17-376 & 2008-CP-17-377

Claude W. Graham,)
)
Plaintiff,)

vs.)

Town of Latta, South Carolina,)
)
Defendant,)

AND)

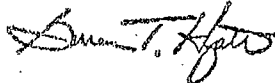
Vickie B. Graham,)
)
Plaintiff,)

vs.)

Town of Latta, South Carolina,)
)
Defendant.)

NOTICE OF APPEARANCE

A CERTIFIED
TRUE COPY

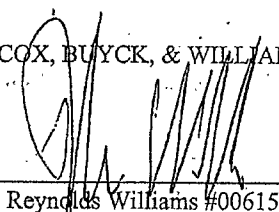


CLERK OF COURT
DILLON COUNTY

FILED
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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)
)
COUNTY OF DILLON)

IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT
C/A # 2008-CP-17-377

Vickie B. Graham,

Plaintiff,

vs.

Town of Latta, South Carolina,

Defendant.

A CERTIFIED
TRUE COPY

Sam T. Hyatt

CLERK OF COURT
SECOND AMENDED COMPLAINT
(Jury Trial Requested)

FILED
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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)**

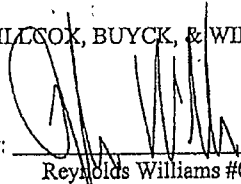
22. At some unknown time in the distant past the Town of Latta began to trespass upon the property now owned by the Plaintiff Vickie B. Graham. The trespass was not discovered until after the damages described in the previous Paragraphs of this Complaint manifested themselves.
23. The Defendant's trespass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

STATE OF SOUTH CAROLINA.)

IN THE COURT OF COMMON PLEAS

COUNTY OF DILLON)

Civil Action Number:08-CP-17-377

Vickie B. Graham,)

Plaintiff,)

v.)

Town of Latta, South Carolina,)

Defendant.)

ANSWER TO SECOND AMENDED
COMPLAINT

(Jury Trial Demanded)

CLERK OF COURT
DILLON COUNTY

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CLERK OF COURT
DILLON COUNTY

The Defendant, Town of Latta, hereby answers the Second Amended Complaint of 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.

Del
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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.

del
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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.

Jcl
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

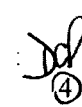
23. The Defendant would allege, upon information and belief, that any injuries or damages sustained by the Plaintiff were due to and caused by an act of God which bars the Plaintiff's claims against the Defendant.

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

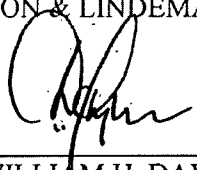
26. Any and all claims for punitive damages are barred by the South Carolina Tort Claims Act § 15-78-10 *et seq.* of the Code of Laws of the State of South Carolina, 1976 as amended and the common law of the State of South Carolina.

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: 

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DANIEL C. PLYLER, ESQUIRE
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F: 803-806-8855
[wdavidson@dml-law.com](mailto:w davidson@dml-law.com)
dplyler@dml-law.com

Counsel for the Defendant

Columbia, South Carolina

February 3, 2011

STATE OF SOUTH CAROLINA
COUNTY OF DILLON

IN THE COURT OF COMMON PLEAS

Claude W. Graham,
Plaintiff,

Civil Action Number: 08-CP-17-376

v.

Town of Latta, South Carolina,
Defendant.

AND

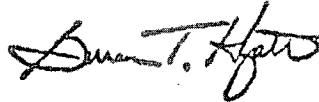
Civil Action Number: 08-CP-17-377

Vickie B. Graham,
Plaintiff,

v.

Town of Latta, South Carolina,
Defendant.

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CLERK OF COURT
DILLON COUNTY

FILED
GWEN T. HYATT
CLERK OF COURT
DILLON COUNTY

2012 OCT 26 AM 11:23

**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.


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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


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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

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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.

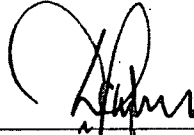
16. The Defendant moves for a new trial absolute because the verdict returned by the jury was grossly excessive in light of the evidence presented at trial regarding alleged damages suffered.

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.

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Columbia, South Carolina

October 22, 2012

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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 I 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

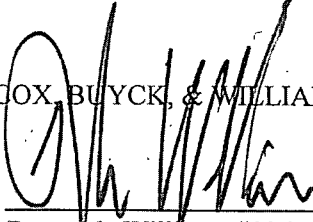
The verdict returned by the jury was not grossly excessive in light of the evidence presented at trial. Mr. Graham presented evidence that he had been damaged by several hundred dollars in medical bills, by several thousand dollars to his equipment, by \$70,000.00 in rent paid or due for substitute housing 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,

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By: 

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Attorney for Plaintiffs

October 29, 2012

1 to the stand.

2 CLAUDE GRAHAM, after being duly sworn, testified
3 as follows:

4
5 CLERK OF COURT: Be seated. State your full name for
6 the Court and spell your last for us, please, sir.

7 THE WITNESS: Claude Wilson Graham the Third.

8 THE COURT: Spell your last name, please, sir.

9 THE WITNESS: G-R-A-H-A-M.

10 DIRECT EXAMINATION

11 BY MR. WILLIAMS:

12 Q. Claude, tell the jury a little bit about your
13 background. Where did you grow up? Where did you go to
14 school?

15 A. I grew up here in Dillon County. Well, I grew up in
16 the Town of Latta. Went to school in Latta, and my after
17 education in Latta I went on to Purson College where I
18 played basketball.

19 Q. What kind of degree did you get?

20 A. Business Administration degree.

21 Q. Okay. And now tell the jury about your work career.

22 A. Well, various different positions, but primarily in
23 County administration. I worked with the schools as a
24 high school guidance counselor for several years. But
25 primarily as a County Administrator which started in

1 Dillon County. And when I left from Dillon County I went
2 to Marion County and from Marion County I went to Florence
3 County and I retired from Florence County.

4 Q. When were you the County Administrator in Dillon
5 County?

6 A. 1976, and I'm not sure when I left to go to Marion,
7 but it was in the 80's, late 80's.

8 Q. Okay. And you retired from County Administration out
9 of Florence County?

10 A. Yes, sir.

11 Q. And when was that?

12 A. Mid to late 90's.

13 Q. Okay. Were you roughly ten years in each County?

14 A. Longer in Dillon County than in others, but short
15 period of time in Florence County when I decided to
16 retire, but longer in Marion and longest in Dillon.

17 Q. Okay. And say again what year you retired?

18 A. Late 90's. Mid to late 90's. I'm not that sure.

19 Q. And have you been doing any work since you retired?

20 A. Yes, sir. I had a consulting company where I
21 consulted with counties and municipalities regard solid
22 waste management, land fills. The disposal of municipal
23 solid waste.

24 Q. Tell the jury what a county administrator does,
25 particularly, like when you were in Dillon County. What

1 was -- what did Dillon County Administrator do?

2 A. County Administrator is charged with -- he's the
3 chief administrative officer for the County. Responsible
4 for all of its day to day activities, whatever those might
5 be. Pretty much like a general manager in a plant or
6 superintendent of schools. Pretty much responsible for
7 the day to day operations of the County.

8 Q. Okay. Is there any significant difference between
9 those duties at Dillon County or Marion County or Florence
10 County?

11 A. Just more people.

12 Q. Okay. Tell me about 222 Rice Street in Latta?

13 A. I think it's 220, but I couldn't tell you.

14 Q. You might be right. The house you were living in?

15 A. Yes. 220 East Rice Street is a home that whenever
16 Vickie and I after we got married we were trying to decide
17 where we were going to live. Initially, lived over in
18 Dillon. She taught school here. And so we initially
19 lived over here in Dillon. But as we are riding around
20 one of the homes that she saw was 220 East Rice Street and
21 she told me at that particular point in time if that house
22 ever became available then that's the house she would like
23 to own.

24 Q. And did it become available?

25 A. Yes, sir.

1 Q. When was that?

2 A. Late 80's. '88 or '89. Somewhere in that
3 neighborhood.

4 Q. All right. At that time how did it become available?
5 Why?

6 A. That house was on owned by the Toalers, and
7 Miss Toaler had died, and they had one daughter and -- who
8 I was in school with. And came back to Latta. I don't
9 know exactly where it was she was living prior to coming
10 back to Latta. But she came back to Latta. Her father
11 was still alive.

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

21 And I think they used that money to assist in his
22 living expenses.

23 Q. Okay. Before you and Vickie decided to buy the house
24 did you look it over?

25 A. Yes, sir.

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

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

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

16 Q. How about the structural part of the house?

17 A. Structurally very sound. Very sound.

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

20 A. Vickie and I.

21 Q. Who did the actual work?

22 A. Me.

23 Q. You didn't have contractors?

24 A. No, sir.

25 Q. Day laborers to do all that?

1 A. No, sir.

2 Q. So you know that house?

3 A. Yes, sir.

4 Q. Okay. And when did y'all move in?

5 A. I believe it was somewhere around 1989.

6 Q. Okay. The deed is dated 1989. How long after that
7 did you move in?

8 A. It took me about a -- almost a year, I guess. So
9 somewhere in that neighborhood. '89, '90, somewhere in
10 that neighborhood.

11 Q. Okay. So I'm going to say 1990, okay?

12 A. Yes, sir.

13 Q. Would that be fair?

14 A. Yes, sir.

15 Q. Give or take eight years. Okay. What was the
16 condition of the house once you moved in?

17 A. Once we moved in it?

18 Q. Uh huh.

19 A. Pristine. It was nice. It was a nice, nice -- it
20 was a nice, nice home Miss Toaler had built. An extremely
21 nice home. Miss Toaler, I had some kind of relationship
22 with Tilmar Lumber Company, and I was told.

23 MR. PLYLER: Objection, Your Honor.

24 THE COURT: I sustain it. Don't hearsay.

25 BY MR. WILLIAMS:

1 Q. Don't said what you were told?

2 A. Oh, okay. I'm sorry. I can't hear.

3 Q. She had a relationship with Tilmar Lumber Company?

4 A. Yes, ma'am -- yes, sir. And the lumber in the house
5 that was used to construct the house was what's commonly
6 called full cut lumber.

7 Q. Full cut?

8 A. Yes, sir.

9 Q. What does that mean?

10 A. Full cut lumber is lumber, as an example a two by
11 four. Now a days, if you buy a two by four it's actually
12 not a two by four. I think it's like one and three
13 quarters by two and a half or -- it's not a full cut
14 lumber. The lumber in this house if it was a two by four
15 it's a true two by four. It's what is called full cut
16 lumber.

17 Q. More lumber than now?

18 A. Oh, yes, sir.

19 Q. Okay. When you bought the house did you look at the
20 land -- the lot?

21 A. Yes, sir.

22 Q. Okay. You look at the -- did it have a swimming pool
23 in it?

24 A. Yes, sir.

25 Q. Did you look at the pool?

1 A. Yes, sir.

2 Q. Did you look at the backyard?

3 A. Yes, sir.

4 Q. Did you inspect the property to see that it was
5 suitable?

6 A. We felt like we had. Yes, sir.

7 Q. Did you have anything to do with building the house
8 and go to that house there?

9 A. No, sir.

10 Q. It was already built when you bought it?

11 A. Yes, sir.

12 Q. Okay. Did you know then that the Town's sewer lines
13 ran through your property?

14 A. Not at that point. No, sir.

15 Q. Did you have the title searched to that house when
16 y'all bought it?

17 A. Yes, sir.

18 Q. Who searched it?

19 A. Mr. Charles Curry.

20 Q. Did your title search reveal any sewer lines running
21 underneath your house? On your property or underneath
22 your house?

23 A. No, sir.

24 Q. Did you later come to learn that there was in fact a
25 sewer line running through your property?

1 A. Yes, sir.

2 Q. And I'm saying 'your property'. At that time this
3 was Vickie's property, correct?

4 A. Correct. Yes, sir.

5 Q. The deed was in her name?

6 A. Yes, sir.

7 Q. Whose name is the deed in now?

8 A. Both.

9 Q. Okay. I'm going to call it your property because
10 when I talk to her I'll indicate your property, too. How
11 did you come to learn that there was a sewer line running
12 through your property?

13 A. We started having problems -- excuse me. We started
14 having problems with one of the toilets in the house or
15 several of the toilets in the house. And I contacted the
16 plumber to -- thinking that my toilets were
17 malfunctioning. And I contacted him and had him come
18 around.

19 And as he got to looking he couldn't really find the
20 problem. So he started tracing the line, the drain line
21 that comes out of the house and goes to the sewer system
22 and discovered that there was a line. It went out the
23 back of the house and tied into a line out on the
24 property.

25 Q. When you say 'out on the property' what ---

1 A. In the backyard.

2 Q. In the backyard?

3 A. Yes, sir.

4 Q. Okay. Is that the extent you learned when this
5 plumber was looking ago at?

6 A. Well, whenever u discovered that I got in touch with
7 Mr. Jackson, Mr. Melvin Jackson.

8 Q. Melvin Jackson?

9 A. Yes, sir.

10 Q. Who is Melvin Jackson?

11 A. He worked for the Town.

12 Q. What was his job with the Town of Latta?

13 A. Water and sewer. I mean he was like a public works
14 director, I guess.

15 Q. Is he the number one water and sewer guy for Latta?

16 MR. PLYLER: Objection, Your Honor.

17 THE COURT: If he knows he can testify.

18 BY MR. WILLIAMS:

19 Q. If you know state whether he was the top guy or?

20 A. He's the only person I ever talked to about water and
21 sewer. Yes, sir.

22 Q. Okay. So did you tell him -- what did you tell him?

23 A. I told him that the plumber had found that the lines
24 tied into a big line coming across the property there and
25 that line was stopped up. And he said, "yes." He said,

1 "There is a main line that runs through here."

2 Q. What was your reaction to that?

3 A. Shock.

4 Q. Did you express your shock to him?

5 A. Yes, sir.

6 Q. And what did he say?

7 A. Well, he said that that line came across our property
8 and went diagonally across under the house and tied into
9 another main line out on Rice Street, out there. And that
10 the flow -- the waste water was coming from the property
11 back behind our house in that community back behind our
12 house and when across our property and tied into the
13 Town's main line out on Rice Street.

14 Q. Before Melvin Jackson told you that did you have any
15 idea that that was the case with your sewer line?

16 A. No, sir.

17 Q. Did you have any reason to suspect that that was the
18 case with the sewer line?

19 A. No, sir. Now, at the same time we were having
20 problems with a smell, and Mr. Jackson took me back there
21 and showed me the line that came across that ditch and it
22 was leaking.

23 Q. Tell the jury about the line that came across?

24 THE COURT: Before we do that I'm going to ask the
25 jurors if they want to stand up for a second and stretch.

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

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

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

7 BY MR. WILLIAMS:

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

10 A. Yes, sir.

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

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

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

18 A. No, sir.

19 Q. Okay?

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

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

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

1 feet, I guess.

2 Q. Is the ditch width running parallel to the ditch or
3 perpendicular?

4 A. Perpendicular to it.

5 Q. So it cross the ditch?

6 A. Yes, sir.

7 Q. So it runs from one side of the ditch?

8 A. Yes, sir.

9 Q. Okay. And then does it go underground, maybe?

10 A. Yes, sir.

11 Q. Okay. Had you ever seen that pipe before?

12 A. No. I'm not going to say I hadn't seen it, but if I
13 saw it before it was whenever I was a young fellow.

14 Youngster. Because we played in the ditches all the time
15 around Latta.

16 Q. When did you learn that that line contained sewage.

17 A. Whenever Mr. Edwards -- Mr. Jackson told me that that
18 was a main sewer line coming from that community back in
19 there.

20 Q. That Melvin Jackson told you ---

21 A. Yes, sir.

22 Q. That it was the main sewer line?

23 A. Melvin Jackson, right.

24 Q. Okay. And did it get repaired?

25 A. Yes, sir, he fixed it. He put a repair strap around

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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 black dark, and I couldn't figure out what was going on. So I put the dog back in the house, and I went out the front door and ---

Q. Let me 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 lapped 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

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

4 Q. Could you see better in the front yard?

5 A. Yes, sir.

6 Q. Okay.

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

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

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

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

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

1 Q. And were you successful?

2 A. No, sir.

3 Q. Why not?

4 A. I found two police officers out at the convenience
5 store up on Main Street and 301, but they told me they
6 didn't have any more barricades; that they had put them
7 all out. They didn't have any more.

8 Q. Did you go back home?

9 A. Yes, sir.

10 Q. And it started getting light by then?

11 A. It started lighting up by then. Yes, sir.

12 Q. Could you tell what was going on at your house and
13 the neighborhood?

14 A. Well, by that time I could see what was in the yard,
15 and there was fecal material, toilet paper, female hygiene
16 products which you normally see in a sewer system. It was
17 floating around in my yard.

18 Q. You talking about one or two?

19 A. Oh, no. The whole yard was covered with it. Not
20 completely covered, but it was all in the water.

21 Q. Okay. Were you able to determine what was going on,
22 where it was coming from or what had caused it?

23 A. Well, it appeared to be coming from one of the areas
24 where there's a manhole cover.

25 Q. And what could you see in the manhole?

1 A. Well, as it went down a little bit I could see it
2 bubbling up.

3 Q. Let's talk about before it went down. What could you
4 see?

5 A. A lot of toilet paper and stuff.

6 Q. Did you see any pooling of the water or anything like
7 that before the water level ---

8 A. I'm sorry.

9 Q. Did you see any rolling of the water ---

10 A. Yes, sir.

11 Q. --- before it was ---

12 A. It was -- you could tell it was coming from this
13 particular area. I couldn't tell exactly where it was
14 coming from, but you could tell it was coming from that
15 area.

16 Q. As the water receded you were able ---

17 A. It became more prominent.

18 Q. Okay. Have you ever seen any videotape or taken any
19 videotape of what was happening that morning?

20 A. I have not taken any videotapes of it. No, sir.

21 Q. Have you ever seen any videotapes?

22 A. I'm trying to think. I think I did. I think we -- I
23 think I did look at one.

24 Q. Okay. Did ---

25 A. Someone else had taken them and brought them to the

1 house.

2 Q. Do you remember the name of that person?

3 A. Mr. Burden.

4 Q. Mr. Burden?

5 A. Burden, yes, sir.

6 Q. What did you spend the rest of September 6th doing?

7 A. I was trying to clean up. Trying to clean up the
8 yard, and I got ahold of my heating and air conditioning
9 man because I had taken the crawl space covers off. And
10 it was all up under the house and everywhere else.

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

16 Q. So you looked up under the house?

17 A. Yes, sir.

18 Q. What was up under the house?

19 A. The same thing that was in the yard.

20 Q. Same stuff?

21 A. Yes, sir.

22 Q. Okay. How did you go about -- when you say, 'crawl
23 space' that's where you take off the aluminum or metal
24 thing and lift up?

25 A. Right. So you can crawl up under the house.

1 Q. How did you go about trying to clean up under the
2 house?

3 A. About only thing I could do was to try to pump the
4 water out from under there.

5 Q. Okay. Did you have a pump?

6 A. Yes, sir. Well, I bought two.

7 Q. You bought two?

8 A. Yes, sir.

9 Q. That day?

10 A. I bought one of them that day I know.

11 Q. Okay. How long did it take you to pump out from
12 under the house?

13 A. About two days, three days.

14 Q. Okay.

15 A. Whenever my heating and air conditioning man came by,
16 and he came by on a Sunday, you know, to look at it. And
17 he brought a bigger pump so that helped considerably.

18 Q. So now you had three pumps?

19 A. Yes, sir.

20 Q. Two of them yours?

21 A. Right.

22 Q. Okay. After he brought that bigger pump around how
23 long did it take you to pump it out?

24 A. Not long. It was huge.

25 Q. And where did you pump this to?

1 A. There is a side of a fence over there which leads off
2 into that big ditch that is behind the house.

3 Q. And this ditch that you've already talked about?

4 A. Yes, sir.

5 Q. Okay. How long did it take the water level in your
6 yard to recede?

7 A. Later on that day.

8 Q. Okay. So when you cleaned the yard were you raking
9 it and that kind of thing? Was there water still there?

10 A. Well, you know, it's a combination of raking and then
11 I had a lawnmower that has a suction system on it. And
12 when it got to where it was dry enough to run that mower
13 across it I used the mower to suck it up into the
14 collection system.

15 Q. Okay. Now, that Monday did you talk with any water
16 and sewer people from the Town of Latta?

17 A. Yes. I did.

18 Q. Who did you talk to?

19 A. I want to say his name was Mike, but I'm not exactly
20 sure. But he came by the house and told me that he had

21 ---

22 MR. PLYLER: Objection, Your Honor.

23 THE COURT: Sustained. Hearsay.

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

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

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

6 THE COURT: I'll sustain it.

7 BY MR. WILLIAMS:

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

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

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

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

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

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

17 Q. And how did he identify himself to you?

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

20 Q. Okay.

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

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

1 MR. WILLIAMS: Okay.

2 BY MR. WILLIAMS:

3 Q. Did he -- did Mike explain to you what the Town
4 believed or he believed was going on with your sewer
5 system -- with your sewer line?

6 MR. PLYLER: Objection. Objection, Your Honor. Not
7 only is that hearsay but also would be speculation. We
8 have no idea who this Mike is.

9 THE COURT: I'll also sustain the objection.

10 MR. WILLIAMS: I'm sorry. I didn't hear you, Your
11 Honor.

12 THE COURT: I will still sustain the objection.

13 MR. WILLIAMS: Thank you, Your Honor.

14 BY MR. WILLIAMS:

15 Q. Other than Mike with the Town who else did you
16 consult with about the sewer problem at your house?

17 A. The Mayor.

18 Q. Okay. And when was that?

19 A. It was that weekend or that Monday. I believe it was
20 that weekend.

21 Q. And what did the Mayor tell you?

22 A. She was trying to be very cooperative and trying to
23 help, you know, with the situation.

24 Q. And what did she say, though?

25 A. She said, "We've got a mess."

1 Q. Did she say whose fault the mess was?

2 MR. PLYLER: Objection, Your Honor.

3 THE COURT: Overruled.

4 BY MR. WILLIAMS:

5 Q. Did she say whose fault the mess was?

6 A. She said she had talked with D.H.E.C. and that
7 D.H.E.C. had explained to them that with the mixture of
8 the water in the sewer system that it was contaminated and
9 that that was the Town's responsibility.

10 Q. And did she say what she was going to do to ---

11 A. She was trying to get ahold to -- I believe she had
12 been advised of a group out of North Carolina that, you
13 know, did the pumping and all that kind of stuff. And I
14 think she was trying to get ahold of them to get them
15 possible to come down to the house and pump the stuff out
16 from under the house. And I advised her at that time that
17 I was already doing that.

18 Q. Please, state whether you did or did not talk with
19 her about any concerns you had with health issues.

20 A. Yes, sir.

21 Q. What you say?

22 A. I told her what I -- that I was very concerned with
23 the fact, you know, with the fact that the sewage was
24 coming up out of that manhole cover and mixing with that
25 water. And it was all up under my house and in my yard.

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

3 Q. Two of your vehicles?

4 A. Yes, sir.

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

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

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

11 MR. PLYLER: Objection, Your Honor.

12 THE COURT: Counsel want to approach?

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

16 BY MR. WILLIAMS:

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

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

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

1 A. On the 13th?

2 Q. Let me ask it this way. Did a second occasion occur?

3 A. Yes, sir.

4 Q. Where something happened with your sewage?

5 A. Yes, sir.

6 Q. Roughly, when was that?

7 A. It was about a week later.

8 Q. Tell the jury what happened then?

9 MR. PLYLER: Your Honor, I'm sorry. I just noticed
10 he's referring to some notes or something here.

11 Obviously, I need a right to see those or whatever he's
12 reading from.

13 MR. WILLIAMS: Counsel, of course, has a right to see
14 those, Your Honor. Only is this the right time for him to
15 have that right?

16 MR. PLYLER: This is the first I've seen he had notes
17 up there with him.

18 THE COURT: You can take a look at them, counsel.

19 MR. PLYLER: Thank you.

20 BY MR. WILLIAMS:

21 Q. Continue telling us what you were talking about. Did
22 something happen about a week later or a week after the
23 6th?

24 A. Well, you know, it happened again, and there was
25 additional sewage up under the house again.

1 Q. So when you said, 'it happened again' do you mean it
2 rained again?

3 A. Well, there was some rain, you know. It wasn't so
4 much in the yard, but it was all up under -- it was 10, 12
5 inches up under the house.

6 Q. And how much in the yard?

7 A. Very little in the yards. It wasn't cluttered or
8 anything, but it was.

9 Q. It had been a particularly heavy rain?

10 A. Not anything like the first one, but it was a normal
11 rain is what I would have called it.

12 Q. Did you, as a result of that, did you have any
13 further discussion with any Town officials?

14 A. Yes. I went down to the Water Department down there.
15 There was only one employee down there. And I advised him
16 that I needed to talk with somebody to handle the
17 situation.

18 Q. And who did you talk to?

19 A. Gary.

20 Q. And who is Gary?

21 A. He works for the Town.

22 Q. Okay. And did the Town do anything that day to help
23 out with the situation?

24 A. No, sir.

25 Q. Okay. Did you talk with the Mayor?

1 A. Yes, sir.

2 Q. When?

3 A. Well, I talked with her, you know, right after it
4 happened. Well, when I know could ahold to her to let her
5 know, you know, what had happened. And she said she was
6 just very concerned about the situation. You know, and
7 what had occurred and how we were going to resolve the
8 problem.

9 Q. Now, I'm asking now about the second time you talked
10 to the Mayor. Is that what you just asked her?

11 A. Yes, sir.

12 Q. Okay. So essentially the same thing as the first
13 time?

14 A. Yes, sir. Pretty much. Because during that period
15 of time Miss Watson had called me to tell me ---

16 Q. Wait a minute. Don't tell me what Miss Watson told
17 you?

18 A. Okay.

19 Q. But you can identify who is Miss Watson?

20 A. Mrs. Danielle Watson, she works for the Department of
21 Health and Environmental Control.

22 Q. Okay. She had some discussions with Mrs. Watson ---

23 A. She had and I had. I mean she ---

24 Q. --- Mrs. Watson ---

25 A. --- I mean Miss Watson.

1 Q. Who do you mean?

2 A. Miss Brigman had had some discussions with -- she
3 indicated she had had discussions with Mrs. Watson.

4 Q. Miss Brigman told you that?

5 A. Yes, sir.

6 Q. The Mayor?

7 A. And that Mrs. Watson called me. I think Miss Brigman
8 had Miss Watson to call me or somebody had Miss Watson to
9 call me.

10 Q. Did the Mayor tell me anything about what she thought
11 the Town would have to do as a result?

12 A. Well, I think that she was very concerned that, you
13 know, the cost factor that was going to be involved as to
14 what were we going to be able to do.

15 Q. Tell me what she said as best as you can recall.

16 A. Well, she said you know that -- she said she had
17 talked with the D.H.E.C. and that D.H.E.C. had told her
18 that the Town was responsible for the contamination.

19 MR. PLYLER: Objection, Your Honor. He's reading
20 from those papers. He doesn't know the answer to the
21 question. He's reading from this paper that hasn't been
22 identified. It's hearsay.

23 BY MR. WILLIAMS:

24 Q. Mr. Graham ---

25 THE COURT: I'll allow you to lay a foundation.

1 You've got to lay a foundation.

2 BY MR. WILLIAMS:

3 Q. Does it assist you to refresh your recollection to
4 look at your notes?

5 A. Yes, sir. This thing happened four years ago.

6 Q. Who wrote those notes?

7 A. I did.

8 Q. Why did you write them?

9 A. I figured y'all were going to be asking me about it
10 today. So it was the only way I could -- well, you can
11 tell I'm even getting mixed up now. But it's the only way
12 I can half way keep it straight was to write these notes
13 out.

14 Q. Would it help you to refresh your recollection if you
15 can refer to your notes?

16 A. Yes, sir.

17 Q. All right. What I'm going to ask you to do is look
18 at your note. Don't read from it. Refresh your
19 recollection and then answer the question?

20 A. Yes, sir.

21 MR. PLYLER: Your Honor, the only problem I have,
22 while the foundation has been perfectly laid, because we
23 don't know when these notes were written.

24 THE COURT: You can him that question.

25 BY MR. WILLIAMS:

1 Q. When were the notes written?

2 A. Last night.

3 Q. Based upon what?

4 A. The fact that we were going to be in here this
5 morning.

6 Q. What did you refer to to come up with those notes?

7 A. An outline that I had prepared earlier.

8 Q. When did you prepare the earlier outline?

9 A. Right after the first incident.

10 Q. So right after September 6th 2008?

11 A. Yes, sir. 2008, yeah.

12 Q. When you prepared your outline from which you did
13 these notes were all the events fresh? Just happened?

14 A. Oh, yes, sir.

15 Q. Okay. Let me ask you this question again. Would it
16 assist you to testify today if you could look at your
17 note?

18 A. Yes, sir.

19 Q. Okay. I'm talking about September the 13th 2008 now.

20 And you were describing a conversation you had with the

21 Mayor of the Town. And I think you were interrupted when

22 you said she told you that she had a conversation with

23 D.H.E.C. Look at your notes if you need to. If you don't

24 need to you don't have to. Tell the jury what Ms. Brigman

25 told you about the Town's responsibility?

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

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

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

13 THE COURT: I understand that. One moment.

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

15 THE COURT: (d)2.

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

17 THE COURT: I'll overrule the objection.

18 MR. PLYLER: Your Honor, can I just state that Rule
19 805, hearsay within hearsay, requires both parties of the
20 hearsay in this particular instance, to be provided with
21 an exception. The only way an exception for what
22 Ms. Brigman is speaking. The problem is she's repeating
23 what's been told to her by the D.H.E.C. lady or the lady
24 at D.H.E.C, Danielle Watson. That statement does not have
25 an exception under the hearsay rule would be our position.

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

5 MR. PLYLER: Thank you, Your Honor.

6 BY MR. WILLIAMS:

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

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

15 Q. All right. Where was that?

16 A. It was in her office.

17 Q. All right.

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

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

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

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

9 Q. What did you tell her?

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

12 Q. And what was her reaction to that?

13 A. She was just as concerned as I was.

14 Q. What did she say?

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

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

20 A. Yes, sir.

21 Q. When was that?

22 A. That was September the 25th. Well, the night of the
23 25th, morning of the 26th.

24 Q. All right? Tell the jury what happened?

25 A. It overflowed again.

1 Q. Refresh your memory and put it down and just tell us
2 what happened next. What you remember about what happened
3 then?

4 A. The sewer system out in the road overflowed again,
5 and whenever I looked up under the house there was in
6 excess of 12 inches of sewage up under house.

7 Q. Was there any sewage in the yard?

8 A. No, sir.

9 Q. Was there any sewage in the street?

10 A. Bubbling up out of the manhole cover.

11 Q. Okay. But how about under the house, was there
12 sewage?

13 A. Yes, sir.

14 Q. How deep?

15 A. In excess of 12 inches.

16 Q. Okay. But there were -- there was none under -- none
17 in the yard?

18 A. No, sir.

19 Q. It was in the street at the manhole cover and under
20 your house?

21 A. Yes, sir.

22 Q. How about behind your house? In the yard behind your
23 house?

24 A. No, sir.

25 Q. Okay. Were there any other occasions in September or

1 October when there was sewage under the house?

2 A. Can I refresh memory?

3 Q. Yes. You can just refresh your memory. Let me ask it
4 another way. You don't need to refresh your memory.

5 After these occasions that we just talked about were there
6 ever again any occasions where there was sewage up under
7 your house?

8 A. Yes, sir...

9 Q. When?

10 A. Several times. Several times.

11 Q. Describe several times?

12 A. I'm aware of four or five times, but you know, we
13 were no longer staying at the house.

14 Q. Okay.

15 A. We had been advised not to stay there.

16 Q. Okay. I'm going to come back to whether you were
17 staying at the house or not. But you remember four or
18 five times over what period of time? Over the last two
19 years? Four years?

20 A. In the last four years for sure, yeah.

21 Q. Okay. But did you go there and see the sewage under
22 the house?

23 A. Yes, sir.

24 Q. On four or five occasions?

25 A. Yes, sir.

1 Q.. All right. On any of those occasions was there
2 sewage under the house and in the yard or just under the
3 house?

4 A. Both.

5 Q. Okay. How many both and how many one or not the
6 other?

7 A. I didn't really keep a number, but you know,
8 generally speaking if it was in the yard it was up under
9 the house. But there were occasions when it was up under
10 the house and it was not in the yard.

11 Q. But there was never any in the yard and not up under
12 the house?

13 A. No, sir.

14 Q. Okay. All right. You just told the jury that you
15 hadn't been in the house for a long time. Tell the jury
16 when you and your wife moved out of the house?

17 A. November of 2008.

18 Q. About two months after this -- the first sewage
19 incident?

20 A. Yes, sir.

21 Q. Why did you move out of the house?

22 A. Our doctor ---

23 MR. PLYLER: Objection, Your Honor.

24 THE COURT: I'll sustain the objection.

25 BY MR. WILLIAMS:

1 Q. Between -- after this incident you just described,
2 the latest of which was September 25th or 26th, did you go
3 to a doctor?

4 A. Yes, sir.

5 Q. Did Vickie go to a doctor?

6 A. Yes, sir.

7 Q. Why did y'all go to a doctor?

8 A. I went because of respiratory problems, and I'm not
9 exactly sure, you know, about her situation. But I had to
10 go because the respiratory problems.

11 Q. As a result of going to the doctor what did you and
12 Vickie decide to do?

13 A. We decided to move out the house.

14 Q. Why did you decide to move out the house?

15 MR. PLYLER: Objection, Your Honor.

16 THE COURT: I'll sustain the objection. You can
17 rephrase the question.

18 BY MR. WILLIAMS:

19 Q. What was your reason for wanting to get out of the
20 house?

21 A. Well, I was worried about the health situation and it
22 stunk.

23 Q. Okay. We haven't talked about the odor. Tell me --
24 obviously, when the sewage was up under the house when you
25 looked up under there and you could smell it then?

1 A. Yes, sir.

2 Q. What about other times when the sewage had subsided?

3 A. You can smell it all out in the yard.

4 Q. Okay. What what about inside of the house? Was it
5 having an affect on you?

6 A. Oh, yes.

7 Q. What affect was it having on you?

8 A. I was having problems with the cough and sore throats
9 and just sick.

10 Q. Were you able to observe any affects that it had on
11 Vickie?

12 A. Yes, sir, she was.

13 Q. What was Vickie doing?

14 A. Respiratory problems.

15 Q. Did they appear to be similar to your respiratory
16 problems?

17 A. Maybe a little more severe.

18 Q. Okay. But of the same type?

19 A. Yes, sir.

20 Q. Okay. When you all were away from the house were you
21 having the same respiratory problems?

22 A. No, sir.

23 Q. And is that what prompted you to go to the doctor?

24 A. Yes, sir.

25 Q. When you and Vickie moved out of the house in

1 November of 2008 where did you go?

2 A. Her brother had a house at the beach, and he
3 suggested that we move into his house.

4 Q. And is that when you -- you moved in in November of
5 2008?

6 A. Yes, sir.

7 Q. How long did you live in that house?

8 A. Three years.

9 Q. Until roughly when?

10 A. About a year ago. Maybe a little more than a year
11 ago now.

12 Q. So from 2008 until roughly April of 2011?

13 A. Yes, sir. Somewhere in there... Yes.

14 Q. Did you have any arrangements with him about owing
15 him rent?

16 A. Yes, sir.

17 Q. How much rent you owe him?

18 A. Well, it's not actual written, you know, agreement,
19 but it was right at \$2,000 a month.

20 Q. And in April of 2011 where did you move?

21 A. We leased -- he moved back to the beach, and so we
22 leased the house down there.

23 Q. And how much did that rent cost you?

24 A. \$1,000 a month.

25 Q. And how long were you at that place?

1 A. A year.

2 Q. Then where did you go?

3 A. Moved back to Latta to my mother's house.

4 Q. Okay. And why were you able to move back to Latta to
5 your mother's house?

6 A. Because my mother had passed away summer before.

7 Q. And you owe any rent to your mother's estate?

8 A. I'm repairing the house. My brother, sister, and
9 myself own the house. I am repairing the house and fixing
10 the house back up. I didn't work none, and that took a
11 long time. So I agreed to repair and do the work
12 necessary around the house to get it ready for resale.

13 Q. Why have you and Vickie abandoned your house in
14 Latta?

15 A. I don't know a nice way to so that. Well, one, the
16 doctor told me not to.

17 MR. PLYLER: Objection, Your Honor.

18 THE COURT: Sustain your objection.

19 BY MR. WILLIAMS:

20 Q. Other than what the doctor may or may not have told
21 you what have you found in your house?

22 A. It smells bad. It smells real bad. And we worry
23 that, you know, that -- it made Vickie so sick one time
24 that we had to put her in the hospital.

25 Q. Have you spent one night in that house since you

1 moved out in November of 2008?

2 A. If I have it, hadn't been much.

3 Q. Do you remember spending a night in that house since
4 November 2008?

5 A. It's possible that I did. Vickie has not, no.

6 Q. Okay. Have you all had a meal in that house since
7 November ---

8 A. No, sir.

9 Q. Have you used it in any way shape or form as your
10 living there?

11 A. No, sir.

12 Q. Are the conditions today such that you can live in?
13 Use it for your living?

14 MR. PLYLER: Objection, Your Honor. He's not
15 qualified to make that statement. He's speculating.

16 THE COURT: Rephrase the question.

17 BY MR. WILLIAMS:

18 Q. When is the last time you saw that house?

19 A. Been to the house?

20 Q. When is the last time that you've been to that house?

21 A. Friday I mowed the yard.

22 Q. Okay. Have you been mowing the yard consistently
23 since November 2008?

24 A. Yes, sir.

25 Q. What else have you been doing around that house?

1 A. That's about it.

2 Q. Okay. Could you move into that house today?

3 MR. PLYLER: Same objection, Your Honor.

4 THE COURT: Rephrase the question.

5 BY MR. WILLIAMS:

6 Q. Is that house in a suitable condition for you and
7 Vickie to move into it today?

8 MR. PLYLER: Same objection, Your Honor.

9 BY MR. WILLIAMS:

10 Q. Has anything been done to that house since
11 November 2008 that would make it more suitable for a
12 living place?

13 A. No, sir.

14 Q. Has the Town fixed the sewer line?

15 A. No, sir.

16 Q. Does it still run under your house?

17 A. Yes, sir.

18 Q. When it runs under the house and it gets full of
19 sewage does it still come up under your house?

20 MR. PLYLER: Objection, Your Honor. Leading.

21 BY MR. WILLIAMS:

22 Q. Please state whether or not ---

23 MR. WILLIAMS: I'm sorry.

24 THE COURT: Go ahead.

25 BY MR. WILLIAMS:

1 Q. Please state whether or not the sewage still comes up
2 under the house when the pipes get full?

3 A. Yes, sir, it does.

4 Q. Why don't you just move back in?

5 A. I don't want to live in the house wit that up
6 underneath me.

7 Q. During the course of your early problems did you and
8 Vickie try to determine how -- what you could do to the
9 house to fix it up, make it better, in the light of the
10 problems you had with the sewage?

11 A. We had the duct work replaced up under the house.
12 The heating and air conditioning, the duct, cause it was
13 all under water. Sewage.

14 Q. Okay?

15 A. So we had all of that replaced in an attempt that
16 perhaps we could. Less than a week after that was done it
17 happened all over again. The heating and air conditioning
18 man said he can put it back in there ---

19 MR. PLYLER: Objection, Your Honor. Hearsay again.

20 BY MR. WILLIAMS:

21 Q. Don't say what he said, but when you say a week
22 after -- less than a week after you had it done. So this
23 would be sometime between September the 13th and September
24 25th?

25 A. Yes, sir.

1 Q. The sewage happened again; is that correct?

2 A. There had been additional over accumulations of sewer
3 and water up under the house to the extent that is messed
4 up the duct work again. And I saw no need to continuously
5 spend money of replacement of duct work.

6 Q. What about the air conditioning system itself?

7 A. We've done nothing with a air conditioning system.
8 Again, I don't see any need to spend any money on it if
9 it's going to continue to do that.

10 Q. Did you get a quote for doing something? For fixing
11 up the air conditioning?

12 A. Not for fixing the air conditioner. No, sir.

13 Q. Did you ask for a quote for rehabilitating the house
14 from the infection of the fecal materials?

15 A. I'm sorry.

16 Q. Did you ask somebody about how do you clean up a
17 house that has fecal material?

18 A. Yes, sir.

19 Q. Okay. Did you receive a price for that?

20 A. We received a -- not for cleaning it up. We received
21 a figure as to what it would take to stay at the house.

22 Q. Okay. Did you and Vickie ultimately decide to do any
23 of those clean up repair, refurbish things to deal with
24 the sewage problem?

25 A. No, sir.

1 Q. Why not?

2 A. It keeps happening. It just keeps happening all the
3 time. I mean, I'm just throwing away my money to do that.

4 Q. Okay. The four or five occasions that you described
5 since you move out when there was a sewage buildup under
6 the house, are those you know of your own personal
7 knowledge?

8 A. Yes, sir.

9 Q. You witnessed with your own eyes?

10 A. Yes, sir.

11 Q. Okay. What money -- withdraw that question. At the
12 time of September of 2008 when you first had the problem,
13 first had the sewage problem, what was your intention with
14 respect to living in the house on Rice Street in Latta?

15 A. It was our intention to live there until we die.

16 Q. Okay. Did you have any desire to move to your
17 brother's house at the beach or move to the beach or
18 anything?

19 A. Absolutely not.

20 Q. You described to the jury the work, your personal
21 labor that you put into that house when you first moved
22 that. Have you continued to do that kind of work on the
23 house?

24 A. Not me personally as much as I had before, but I had
25 a considerable amount of work done to the house that I

1 paid for.

2 Q. Okay. When y'all suffered the sewage damage at the
3 house did you lose any items of personal property?

4 A. Yes, sir.

5 Q. Tell the jury what type of things? What happened and
6 why that you loss the items of personal property?

7 A. Well, loss two vehicles, and ---

8 Q. What happened to the two vehicles?

9 A. Well, they were filled up with sewage and water.

10 Q. Okay?

11 A. Not filled up to the top, but I mean there was 8 to
12 10 inches inside.

13 Q. Inside the vehicle?

14 A. Yes, sir.

15 Q. Okay. And what two vehicles were those?

16 A. Ford Taurus and a Toyota Avalon.

17 Q. All right. Let's talk about the Ford Taurus first.
18 What year was it?

19 A. It was old.

20 Q. How old?

21 A. It was old. It was old. I'm not -- I truthfully am
22 not sure what age that car was.

23 Q. Okay. Did you repair or ---

24 A. No, sir. Didn't attempt to do any repairs to it at
25 all.

1 Q. What did you do with it?

2 A. Sold it.

3 Q. For salvage?

4 A. Yes, sir.

5 Q. How much you get for it?

6 A. \$1,000.

7 Q. How much was it worth before the sewerage problem --
8 sewage damage?

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

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

16 MR. PLYLER: Thank you, Your Honor.

17 BY MR. WILLIAMS:

18 Q. What did you think the car was worth before the
19 sewage problem?

20 A. Before the sewage problem?

21 Q. Right.

22 A. We weren't having any problems with it, and we were
23 using it all the time. But the truth it was not worth
24 much more than that.

25 Q. Okay. How about the other car?

1 A. That was a Toyota Avalon.

2 Q. What kind of car was it? What year?

3 A. 2007 or 2008. Somewhere in that neighborhood.

4 Q. I was going to rephrase the question to how was the
5 car when these things happened?

6 A. About two years old.

7 Q. And about how many miles did it have on it?

8 A. Probably about 80,000.

9 Q. Okay. What was the nature of the damage to the
10 Avalon? Was it just like you've already described?

11 A. It was 8 to 10 inches of raw sewage inside it.

12 Q. What did you do with it? Did you fix it up or did
13 you sell it?

14 A. We tried to have it fixed up. We replaced all the
15 carpet in it. Everything we could do to the inside of the
16 vehicle short of just stripping it totally and replacing
17 everything inside trying to eliminate the odor.

18 Q. Were you able to eliminate the odor?

19 A. No, sir.

20 Q. So what you do as a result?

21 A. Traded it.

22 Q. How much trade in value did you get for it?

23 A. The Toyota people said it was worth \$19,000.

24 Q. And what was it worth in your opinion? What was the
25 value of it before it had the sewage in it?

1 A. I'd be prejudiced about that. It's worth more than
2 that to me because it was in perfect condition.

3 Q. How much more? The jury is going to have to come
4 up -- one of the things that they're going to have to
5 think about is how many you were damaged. So how much do
6 you think the value of your Toyota Avalon was affected by
7 the sewage in it?

8 A. Probably if you look it up \$24,000. Somewhere in
9 that neighborhood.

10 Q. Okay.

11 A. I mean it had a lot of miles on it, so, but it was in
12 great shape.

13 Q. Did you lose any other items of personal property.
14 By that I mean not real estate as a result of this sewage?

15 A. Hand tools, equipment, the whole storage room down
16 there along with some golf equipment.

17 Q. And tell the jury what is wrong with those thing.
18 Why do you consider those lost?

19 A. Well, some of them electrical, and you know, whenever
20 you get electricity and water don't mix real good
21 together. But before I realized what had happened out
22 there it had rusted. Most of it had rusted. Some of the
23 pliers you couldn't even open and close it.

24 Q. When you say 'before you realized it' what do you
25 mean before you realized it?

1 A. Well, I was so busy trying to get everything else
2 cleaned up that I didn't even think about it was something
3 messed up inside the little storage room there.

4 Q. And what did you find as the condition of the storage
5 room when you first went in there?

6 A. Well, it had been filled. I mean it had that same
7 amount of water and sewage inside it as was outside in the
8 yard.

9 Q. Okay. So there as sewage inside the storage room?

10 A. Yes, sir. And in the 'refrig -- we had a refrigerator
11 out there. It was inside the refrigerator. Fortunately,
12 did not get inside the freezer, but it was inside the
13 refrigerator.

14 Q. Any other items that -- any other items around your
15 house or in the storage room other than what you've
16 already described that were lost by the sewage
17 contamination?

18 A. Two lawn mowers.

19 Q. Okay. Anything else?

20 A. I made a list, but I don't remember what was on it
21 now.

22 Q. Okay. Would it help you to look at that list? Help
23 you refresh your recollection?

24 A. Yes, sir.

25 Q. Okay. I'm going to show you what's been marked as

1 Plaintiff's Exhibit Number Three. This is a copy of it.

2 Take a look at that. Is that in your handwriting? Did
3 you make that?

4 A. Yes, sir.

5 Q. Okay.

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

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

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

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

15 A. Yes, sir.

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

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

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

22 A. We installed a vinyl fence to go around the backyard.
23 6 foot tall vinyl fence. We had completed reworked the
24 kitchen and the utility room in the house completely with
25 floor and everything. We bought appliances. New stove,

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

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

9 A. In excess of \$40,000.

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

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

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

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

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

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

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

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

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

5 MR. WILLIAMS: Thank you, Your Honor.

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

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

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

14 THE WITNESS: Yes, ma'am.

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

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

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

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

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

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

25 (WHEREUPON, the jury panel enters the courtroom at

1 3:59 p.m.)

2 THE COURT: Yes, sir. You may continue.

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

5 BY MR. WILLIAMS:

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

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

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

13 A. Yes.

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

16 BY MR. WILLIAMS:

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

19 A. The golf and the tools and stuff?

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

22 A. Yes, sir.

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

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

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

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

7 A. Yes, sir.

8 Q. What day did you take photographs?

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

11 Q. Let me show you these photographs.

12 A. Yes, sir.

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

16 A. More than likely I did.

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

18 A. Well, my wife took some pictures also.

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

20 A. Two different ones.

21 Q. Okay. What camera is your camera?

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

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

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

1 Q. Okay. It's two different phones?

2 A. Yes.

3 Q. Okay. Do you recognize all the scenes depicted in
4 the documents marked as Plaintiff's Exhibit Number One?

5 A. Yes, sir.

6 Q. Okay. Are there any in there that were not taken by
7 you or by your wife?

8 A. I don't think so.

9 Q. Okay.

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

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

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

19 THE COURT: All right.

20 BY MR. WILLIAMS:

21 Q. Now, that you've looked at them do you know when
22 these were taken?

23 A. I would say that it's right at the time that the
24 first event occurred.

25 Q. September 6th 2008?

1 A. Yes, sir.

2 Q. Any possibility it could be more than a day or two
3 apart from that?

4 A. Not likely. Not with those particular ones.

5 Q. And do these photographs that you have in your hand
6 do they fairly and accurately depict what you saw at the
7 time these events were going on?

8 A. Yes, sir.

9 Q. Okay.

10 MR. WILLIAMS: Your Honor, now I would offer these in
11 evidence as Plaintiff's Exhibit One.

12 THE COURT: Any objection?

13 MR. PLYLER: The only objection is what we mentioned
14 in chambers. I'll take that up at the next break, but at
15 this point no objection.

16 THE COURT: Then they will be admitted.

17 (WHEREUPON, Plaintiff's Exhibit No. 1 was admitted
18 into evidence.)

19 MR. WILLIAMS: Your Honor, may I ask the witness to
20 step down from the witness stand and help me show these
21 things to the jury so that it might

22 THE COURT: Yes, sir. As long as -- if you're
23 talking about the pictures I ask that you keep your voice
24 up so that the court reporter can hear you and record what
25 you say as well. But you can step down.

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

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

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

9 A. No, sir.

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

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

13 Q. Of Rice Street?

14 A. Yes, sir.

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

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

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

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

19 Q. Is that in somebody's yard?

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

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

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

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

1 house to the right of yours or to the left of yours?
2 A. To the right.
3 Q. Okay. And that's the house next door to you?
4 A. Yes, sir.
5 Q. And what does it depict?
6 A. That's water and all up in my neighbor's yard.
7 Q. Okay. Is it partly in your yard?
8 A. Mine would be back to the left, I believe.
9 Q. Okay. To the left of that picture?
10 A. Yes, sir.
11 Q. And where does it look to you like if you or Vickie
12 were standing when that picture was taken?
13 A. In the road.
14 Q. In the road part of your house?
15 A. Yes, sir.
16 Q. Okay. Go to the next page. What does that depict?
17 A. That's looking at my house.
18 Q. So.
19 A. This is my house here.
20 Q. And what's that white gate looking thing?
21 A. The white gate goes -- the swimming pool back behind
22 that, and that's the gate that gets into the backyard.
23 Q. Okay. And the green grass is your yard?
24 A. Yes, sir.
25 Q. And the water is where?

1 A. All in my front yard.

2 Q. Okay. Is any of portion -- any of that in the
3 street? Is any of that in the street?

4 A. In the street, no, sir.

5 Q. Okay. Well ---

6 A. Yes, it does look like there is a portion right here
7 at the very bottom of the picture that does look like its
8 pavement right there.

9 Q. Okay. And do you know where either you or Vickie
10 were standing when this photo was taken?

11 A. In the street.

12 Q. In the street. Okay. Let's go to the next page.
13 All right. Now, what does that depict?

14 A. Look like a lot of grass and some other things.

15 Q. What is that?

16 A. That's the grass and toilet paper and I think that's
17 a -- it looks like a ---

18 MR. PLYLER: Objection, Your Honor.

19 THE COURT: Overruled.

20 BY MR. WILLIAMS:

21 Q. You were reluctant to use a particular word, is that
22 what I ---

23 A. Yes, sir.

24 Q. Okay.

25 A. I think that is a female hygiene product.

1 Q. Okay. What else is depicted in that photograph?

2 A. Toilet paper.

3 Q. Okay. Any fecal material in this particular picture?

4 A. I don't see any.

5 Q. Okay. Let's look at the next page which I believe
6 would be Page Five of Plaintiff's Exhibit One. What is
7 that depict?

8 A. Same stuff. Toilet paper and female products.

9 Q. Okay. Now, these two that we just looked at. The
10 one that was close up of the grass. You know where that
11 was? What part of the Town it was?

12 A. I think it's probably looking at my house maybe the
13 right front up there. Right by the road?

14 Q. At your house?

15 A. Yes, sir.

16 Q. Okay. Now, let's go to the next page. You have to
17 show me how to hold this one, and I'm going to hold it the
18 same way you're holding it, I hope. Yeah, okay. I'm just
19 trying to hold it..

20 A. That's the proper way.

21 Q. So this is the proper way?

22 A. Yes, sir.

23 Q. Okay. Tell me what that depicts?

24 A. That's the line of the -- that's hooked to the pump,
25 the sump pump, trying to pump the material out from under

1 my house. And that's fecal material.

2 Q. You could see the fecal material?

3 A. Yes, sir.

4 Q. Share with the jury where you can see it?

5 A. Right there?

6 Q. Right there. Okay. Now, that line has it always
7 been there or is that something -- this like here.

8 A. This line?

9 Q. Um hum.

10 A. That's the line from the sump pumps hooked on the
11 other end. That up under -- that's under my house here.

12 Q. Okay.

13 A. There is a pump down in submerged in that stuff
14 there. And that's pumping it out from under my house.

15 Q. I guess my question is is that a pump that was always
16 there or is that a pump you put there?

17 A. That's a pump I put there.

18 Q. To clean out?

19 A. To get it out from under my house.

20 Q. Okay. All right. Let's go to the next picture.

21 What is that?

22 A. Pretty much the same thing, but it's just moved. The
23 material is moved.

24 Q. Okay. Next. Looks like we're back near a grate of
25 some kind?

1 A. Yes, sir. That's out by the -- that's the drain.

2 The road is out here and that's the drain off of the road
3 and that's toilet paper?

4 Q. Again, and that drain is located on whose property?

5 A. That would be -- technically, I believe that belongs
6 to the either the Town or the State.

7 Q. My question is ---

8 A. It's right in my front yard. It's just east of my
9 front yard.

10 Q. Okay. Right by the highway?

11 A. Right by the road.

12 Q. Okay. And the sewage reached here?

13 A. Yes, sir. This is toilet paper. Remnants of toilet
14 paper.

15 Q. Okay. Let's go to the next one. What is this right
16 here?

17 A. I think that's a portion of a female hygiene product.

18 Q. And where was that?

19 A. Looks like it was out beside the road.

20 Q. On your property?

21 A. I mow it, but it might belong to the State or the
22 Town.

23 Q. All right. Let's go to the next one. This one is
24 not in full focus. What is this?

25 A. Looks like toilet paper.

1 Q. And where was that?

2 A. Right in my front yard.

3 Q. Okay. Let's go to the next one. What is that?

4 A. Remnants of toilet paper.

5 Q. Anything else?

6 A. Well, looks like this is fecal material in various
7 places, but again, it's not that good a camera so.

8 Q. And, again, is this to your front yard?

9 A. Right there in my front yard. Right.

10 Q. Okay. Let's go to the last one. What is that
11 depict?

12 A. That's up under my carport. That's where it goes out
13 into my backyard.

14 Q. And what is -- again, what does that show?

15 A. It shows the level of -- for this particular
16 incident. See a line going across the bottom of the door
17 here. That's the height of the substance in my backyard
18 and under the carport there.

19 Q. Under the carport?

20 A. Yes, sir.

21 Q. Okay. That's all. Thank you. You may take your
22 seat.

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

25 THE COURT: Yes, sir.

1 BY MR. WILLIAMS:

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

5 A. It's a ---

6 Q. Don't read any portion of it?

7 A. Yes, sir.

8 Q. Just tell me what it is?

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

11 Q. And for what doctor would that be?

12 A. I believe that would be Dr. Culpepper.

13 Q. Okay.

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

17 COURT REPORTER: It's already marked.

18 MR. WILLIAMS: That's fine.

19 BY MR. WILLIAMS:

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

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

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

4 Q. Why not?

5 A. Because the sewer line is still there.

6 Q. Okay. Thank you.

7 THE COURT: Any cross?

8 MR. PLYLER: Yes, Your Honor.

9 CROSS-EXAMINATION

10 BY MR. PLYLER:

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

13 A. Yes, sir.

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

17 A. No, sir.

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

20 A. Highland Drive.

21 Q. Highland Drive?

22 A. Yes, sir.

23 Q. Okay. You ever lived on Bamburg Street?

24 A. No.

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

1 talking about today before you bought it?

2 A. Yes, sir.

3 Q. Okay. How did you know about it? Growing up?

4 A. Yes, sir.

5 Q. And there is a ditch, a rather large ditch, that runs
6 behind that house; is that correct?

7 A. Yes, sir.

8 Q. In fact I think you mentioned a minute ago the pipe
9 spanning it that's 6 or -- 6 to 8 feet of pipe that you
10 can see going across that ditch; is that right?

11 A. That's my estimate, yes, sir.

12 Q. And that ditch is directly behind the house that you
13 bought, correct?

14 A. Correct.

15 Q. And you and your wife, Vickie, bought that house in
16 1989 for \$60,000; is that correct?

17 A. That sounds correct. Yes, sir.

18 Q. And, of course, before you bought that house you had
19 it inspected, didn't you?

20 A. Had it inspected?

21 Q. Yes. Professionally inspected. Home inspector,
22 somebody to go in and look at it and tell you it was okay?

23 A. No, sir.

24 Q. You had it surveyed, didn't you?

25 A. No, sir.

1 Q. All right. Well, you at least walked around and
2 checked out that ditch behind the house, didn't you?

3 A. No, sir.

4 Q. Well, you knew the ditch was there?

5 A. Yes, sir.

6 Q. And there was nothing preventing you from looking in
7 that ditch, was there?

8 A. No, sir.

9 Q. In fact I think you said a minute ago that you
10 installed a vinyl fence in 2007; is that correct?

11 A. I did not, but I had one installed.

12 Q. Well, you paid for it to be installed?

13 A. Yes, sir.

14 Q. At your direction it was installed, wasn't it?

15 A. Yes, sir.

16 Q. Okay. And before that ditch was installed -- I mean
17 that fence was installed you could see into the ditch,
18 couldn't you? There was nothing preventing you from your
19 backyard into the ditch; is that correct?

20 A. Shrubbery all across the back there.

21 Q. Okay. Shrubbery. But you didn't see this pipe that
22 spans that ditch, 6 to 8 feet of pipe, before you bought
23 this house? Is that what you're telling us?

24 A. I didn't know, sir. No, sir.

25 Q. Okay. Now, let's talk about September 5th and 6th of

1 2008 when Tropical Storm Hanna came through and dumped a
2 whole bunch of rain on Latta and Dillon County. Now, you
3 would agree with me that you were amazed at the amount of
4 rain, the amount of water that was present when you woke
5 up that morning.

6 A. I was amazed at the fact that the water was in my
7 yard filled with sewage. Yes, sir.

8 Q. You were amazed at the amount of water there, weren't
9 you?

10 A. It was a lot.

11 Q. In fact it got all the way to just below the front
12 door of your house; isn't that right?

13 A. Yes, sir.

14 Q. Now, leading up to your front door how many steps are
15 there going to the front door?

16 A. I really don't ---

17 Q. You don't know how many steps are to your front door?

18 A. No, sir.

19 Q. You've lived there from 1989 to way 2008; is that
20 correct?

21 A. Yes, sir.

22 Q. All right. But none of that water got inside the
23 living area of your house, did it?

24 A. No, sir.

25 Q. Okay. Now these appliances that you told us about

1 earlier that you had bought those appliances are in fact
2 inside the living area of your house; are they not?

3 A. That's correct.

4 Q. Okay. Well, you're not claiming that this water has
5 ruined those appliances, are you?

6 A. No, sir.

7 Q. Okay. So those appliances, you could clean them and
8 move them and use them wherever you want, isn't that
9 correct?

10 A. There's a great deal of questions about that.

11 Q. Now, in fact I think you mentioned this as well. The
12 Town offered to have somebody professional come down from
13 North Carolina and pump the water out from underneath your
14 house; is that right?

15 A. Yes, sir.

16 Q. Okay. And that company was not just going to pump
17 the water, was it? That company was recommended to them
18 by D.H.E.C. as being qualified to deal with this sort of
19 situation; isn't that correct?

20 A. I don't know.

21 Q. Okay. But you declined that offer, isn't that right?

22 A. I was already doing it.

23 Q. So you declined the offer, isn't that right?

24 A. Yes, sir. I was already doing that.

25 Q. Okay?

1 A. . Didn't see any need for the Town to pay for what I
2 was already doing.

3 Q. Now, Mr. Graham, you would agree with me that you
4 believed that there is a sewer pipe running underneath
5 your house; isn't that right?

6 A. Yes, sir.

7 Q. And it runs underneath your house and it starts in
8 that ditch out behind your house and it connects with the
9 manhole out on East Rice Street; is that right?

10 A. No, sir.

11 Q. You don't agree with that?

12 A. No, sir.

13 Q. Okay. So what pipe is running underneath your house?

14 A. It didn't start there at that ditch.

15 Q. Oh, I'm sorry. For your property, coming across your
16 property and then going under your house?

17 A. Yes, sir.

18 Q. You can see the pipe in the ditch?

19 A. That's correct.

20 Q. And you can see the manhole out in front on Rice
21 Street; isn't that right?

22 A. No, sir, not there .

23 Q. You can't see the manhole?

24 A. Not where that line goes. No, sir.

25 Q. Are you sure about that?

1 A. Yes, sir.

2 Q. Okay. Have you mapped that particular pipe?

3 A. I'm sorry.

4 Q. Have you mapped that pipe? Have you done anything to
5 try to map that pipe?

6 A. Map it?

7 Q. Yes, map it?

8 A. No, sir.

9 Q. Put a GPS sensor on it. Try to get GIS technology.
10 Hire somebody to come out and map this pipe. Have you
11 done any of that?

12 A. No, sir.

13 Q. Have you had an engineer come out and try to figure
14 out exactly where this pipe runs?

15 A. No, sir.

16 Q. All right. The plumber that you had that you said
17 told you this pipe ran underneath your house that was
18 before this September 5th 2008 storm event, wasn't it?

19 A. Wasn't him that told me there was a line running up
20 under my house.

21 Q. Okay. Well, maybe I misunderstood your testimony a
22 while ago. I thought you testified that a plumber came out
23 when you were having problems with your toilet and pointed
24 out the pipe to you. And told you it was running
25 underneath your house. Is that not what he said?

1 A. No. He said there was a line there that mine fed
2 into that line. Mr. Jackson is the one that told me it
3 ran up under the house.

4 MR. PLYLER: Court's indulgence.

5 BY MR. PLYLER:

6 Q. Do you remember giving a deposition before we came to
7 trial? You know what a deposition is, correct?
8 Deposition? You remember giving a deposition, correct?

9 A. Yes, sir.

10 Q. All right. And know its been a while ago. I think
11 it's been about two years a little more since you took
12 that deposition; is that correct?

13 A. I'm not exactly sure, but if -- yeah, I would say
14 that's probably about correct.

15 Q. Well, how does September 24th 2010, does that sound
16 about right?

17 A. I guess.

18 Q. All right. You would agree with me that two years
19 ago your memory on these issues might have been a little
20 better than it is today; is that right?

21 A. Was it better?

22 Q. Would you agree with me that two years ago, two years
23 closer to all the events we're talking about, your memory
24 on this issues would be better than it is here today?

25 A. Well, you would think it would be.

1 Q. Okay. Why don't you -- you've got those notes with
2 you still? Does it say when that plumber came look at
3 your house?

4 A. I don't have what you're talking about.

5 Q. Didn't you have a -- some notes that you've been
6 looking at this entire testimony?

7 A. No. There is nothing about the plumber on there.

8 Q. You want to check and make sure.

9 A. Nothing about the plumber in these papers.

10 Q. Okay. Well, you were asked about that plumber and
11 that incident during your deposition, do you recall?

12 A. No, sir, I don't really recall.

13 Q. I'm going to show you your deposition?

14 MR. PLYLER: Your Honor, may I open the original
15 deposition of Mr. Graham?

16 THE COURT: Yes, sir.

17 MR. PLYLER: Taped it up pretty good. I'm going to
18 do the best I can, okay.

19 BY MR. WREN:

20 Q. Mr. Graham, I'm going to hand you -- and you
21 understood when we took your deposition, our office took
22 your deposition, that it was being recorded by a court
23 reporter, and she was going to put together a transcript?

24 A. Yes, sir.

25 Q. Okay. And you were under oath at that time?

1 A. Yes, sir.

2 Q. What I'm going to do is I'm going to hand you this.

3 We're going to start with Page 16. I'll tell you the line
4 number in just a second. All right. I'm going to start
5 with Page 16. I'm going to read it. You tell me if I get
6 it right. Start at Line 13.

7 Says, "Well, we called the plumber because we
8 thought, maybe, it was something with our system." Says,
9 "Okay. So was it in the," and you interrupt and said,
10 "And." And then it says, "House."

11 Question, "He came and started -- yes. It was -- the
12 toilets and all were not working properly." The next
13 question was, "All of them?" Your answer was, "All of
14 them."

15 Question, "Okay. And what -- excuse me. What
16 plumber did you call if you remember?" Answer, "I don't
17 remember his name."

18 Line 25, question, "Don't know? That's okay. All
19 right what did the plumber do or --" Answer, "Well," and
20 the question continues. "What did he tell you?" Answer,
21 "he investigated the situation and discovered that in fact
22 it was that our sewer -- our lines actually feed into that
23 line that goes up under the house and -- uh huh. Answer,
24 "He found that that line was completely stopped up." Did
25 I read that correctly?

1 A. Yes, sir.

2 Q. Okay. So in your deposition you said he told you
3 that your service line runs into the line that runs up --
4 that goes up under the house?

5 A. He didn't say that. That's not what that says.

6 Q. Okay. Well then, you read it to me cause ---

7 A. --- says he ---

8 Q. --- like it says. Hold on. Let me finish the
9 question. "Our lines actually feed into that line that
10 goes up under the house," and this is you answering what
11 the plumber told you, correct?

12 A. That's me answering the question.

13 Q. Of what the plumber told you, correct? That was the
14 question. Look at the first line on that page, on Page
15 17. What did the plumber do or what did he tell you, and
16 your answer was?

17 A. "He investigated the situation and discovered that in
18 fact it was that our sewer, our lines actually feed into
19 that line."

20 Q. Go ahead. Finish it.

21 A. "And that goes up under." This is me saying it.

22 Q. Go ahead.

23 A. Not him.

24 Q. Read it.

25 A. This is me saying it.

1 Q. Just read it, sir.

2 A. Me saying it.

3 Q. Just read it.

4 A. Me saying it. "Actually feed into that line that
5 goes under the house."

6 Q. Okay. So now you're saying that's not what the
7 plumber told you; is that right?

8 A. No. I said that's what I said. That's what I said.

9 Q. Read the answer then.

10 A. That's what I said.

11 Q. And answer ---

12 A. By this point in time Mr. Jackson had already told me
13 it went under the house.

14 Q. Okay. So when did Mr. Jackson tell you that? When
15 did Mr. Jackson tell you that pipe went up under your
16 house?

17 A. I don't recall the actual date.

18 Q. But it was before this September 5th 2008 storm event

19 ---

20 A. Yes, sir.

21 Q. --- wasn't it?

22 A. Yes, sir.

23 Q. I think -- did you hire another plumber to come back
24 out after this storm event and try to figure out if that
25 pipe that runs up under your house was leaking?

1 A. No, sir.

2 Q. Did you do any investigation to try the figure out if
3 this pipe that you believe goes under your house was in
4 fact leaking?

5 A. No, sir.

6 Q. In fact after November 2008 you just left your house
7 and moved to the beach; isn't that correct?

8 A. I moved to the beach, yes, sir.

9 Q. Well, you're not living in that house anymore, are
10 you? The house?

11 A. Yes, sir.

12 Q. Your house on East Rice Street?

13 A. I moved to the beach, yes, sir.

14 Q. I think earlier you said that this in fact happened
15 again around the 25th of September of 2008; is that right?

16 A. Yes, sir.

17 Q. Okay. You're aware of what a complaint is?

18 A. A complaint?

19 Q. Yes. In this lawsuit, you know, you filed a
20 complaint that starts the lawsuit.

21 A. Yes, sir.

22 Q. Okay. That is your complaint; is it not? You might
23 want to take a minute and look at it.

24 A. I'd have to ask my attorney if this is the one that
25 we filed.

- 1 Q. Let's just look at the caption for a minute. Claude
2 W. Graham; that's you, correct?
- 3 A. Yes.
- 4 Q. Versus Town of Latta. That's this case, correct?
- 5 A. Yes, sir.
- 6 Q. All right. See where it says, 'filed'? Over there
7 there is a little stamp on the right hand side, filed?
- 8 A. Yes, sir.
- 9 Q. Gwen T. Hyatt.
- 10 A. Right.
- 11 Q. 2008, November 19. Move to the last page. See where
12 it's dated November 14th 2008?
- 13 A. Yes, sir.
- 14 Q. Okay. And you see it was signed by your attorney?
- 15 A. Signed by Jim Rushton.
- 16 Q. Who was your attorney, correct?
- 17 A. At that time.
- 18 Q. Correct. When you filed this lawsuit that was your
19 attorney?
- 20 A. Yes, sir. At this time he was my attorney.
- 21 Q. All right. Well, flip through that complaint and
22 tell me where you allege anything that occurred on
23 September 25th 2008?
- 24 A. No, sir.
- 25 Q. In fact the last date you allege in here is

1 September 13th 2008; isn't that correct?

2 A. According to this document, yes, sir.

3 Q. Okay. Well, do you believe that there's been an
4 amended complaint filed on behalf of you?

5 A. I would have to ask my attorney.

6 Q. I'm just asking you what you know, sir.

7 A. I would have to ask m attorney.

8 Q. So you don't know the answer to that question?

9 A. No, sir.

10 MR. PLYLER: Court's indulgence. I may almost be
11 finished.

12 BY MR. PLYLER:

13 Q. All right, sir. I want to show you a few
14 photographs. Well, first off, you've shown us some
15 photographs, correct, that we talked about a minute ago?

16 A. Yes, sir.

17 Q. Plaintiff's exhibits -- the jury has them. And those
18 are photographs you took on or about September 6th 2008;
19 is that correct?

20 A. Yes, sir.

21 Q. And did you take any additional photographs after
22 September 5th 2008 to show any of these other alleged
23 overflows or flooding situations?

24 A. Excuse me. Yes, sir.

25 Q. Where are they?

1 A. I'm not sure where they aer right now.

2 Q. All right. I'm going to show you a series of
3 photographs which have been marked for identification
4 purposes as Defendant's Five through 12.

5 MR. PLYLER: I'm going to go ahead and give this
6 deposition back to our court reporter.

7 (WHEREUPON, Court's Exhibit No. 1 was marked for
8 identification and received into evidence.)

9 BY MR. PLYLER:

10 Q. Do you recognize what these photographs show?

11 A. Underneath my house.

12 Q. All right. And what's been marked as Defendant's
13 Exhibit Five, is that the pipe that you're alleging in
14 this case?

15 A. No, sir.

16 Q. Okay. What's that pipe?

17 A. That appears to be one coming out from under my sewer
18 system for the house.

19 Q. Your drain line?

20 A. Yes, sir.

21 Q. It connects to what would be called a service line;
22 is that correct?

23 A. I'm not really sure, but it's coming out from up
24 under my house. Yes, sir.

25 Q. Mr. Graham, you were the County Administrator in

1 three different counties in South Carolina over the course
2 of almost 30 years; is that correct?

3 A. Yes, sir.

4 Q. That was your career?

5 A. Yes, sir.

6 Q. And, of course, a county administrator deals with as
7 you said the day to day operations of the County; is that
8 right?

9 A. Correct.

10 Q. Are you saying you never had the opportunity to work
11 with a sewer system or waste water system?

12 A. No, sir.

13 Q. Never had the opportunity?

14 A. No, sir.

15 Q. Okay. Defendant's Exhibit Six, do you recognize what
16 that is?

17 A. I'm assuming this is coming out from under my house.

18 Q. I don't want you to assume. I just want you to tell
19 me if you recognize it?

20 A. No, sir.

21 Q. But have you been under your house before?

22 A. Yes, sir.

23 Q. Did you go under your house before the September the
24 5th 2008 incident?

25 A. Yes, sir.

- 1 Q. Did you go under the house before you bought it?
- 2 A. Yes, sir.
- 3 Q. Did you notice the pipe? The service pipe?
- 4 A. Did I notice a service pipe under there?
- 5 Q. Yes, sir.
- 6 A. I did, but I can't recognize it from that photo.
- 7 Q. I'm just asking if you did? So you agree with me ---
- 8 A. Did I go up under there? Yeah, I went up under
- 9 there.
- 10 Q. You agree with me there is a service pipe running
- 11 from underneath your house, correct?
- 12 A. Yes, sir.
- 13 Q. And it exits from under your house at some point; is
- 14 that correct?
- 15 A. Yes, sir.
- 16 Q. All right. Do you recognize Defendant's Exhibit
- 17 Seven?
- 18 A. Not from that photo, but I'm assuming it up under our
- 19 house.
- 20 Q. Okay. I don't need -- if you don't know that's fine.
- 21 Defendant's Exhibit Eight, do you recognize that
- 22 photograph?
- 23 A. Again, I have to assume it's up under my house.
- 24 Q. Defendant's Exhibit Nine?
- 25 A. Same response.

1 Q. Defendant's Exhibit Ten, you recognize that
2 photograph?

3 A. Yes, sir.

4 Q. What is this photograph show?

5 A. That is where it comes out from under my house.

6 Q. Did the take that photograph?

7 A. No, sir.

8 Q. How about Defendant's Exhibit 11? If you don't know
9 what it is that's fine.

10 A. I'm not exactly sure what that is. Looks like a
11 sewer line.

12 Q. Defendant's Exhibit 12, you recognize that
13 photograph?

14 A. Yes, sir.

15 Q. What's that?

16 A. Sewer line.

17 Q. Is that the sewer line that runs behind your house
18 through that ditch that we already talked about?

19 A. I am assuming that it is based on the fact that that
20 looks like a piece of lumber from the old fence.

21 Q. Piece of the lumber from the old fence?

22 A. Yes right there.

23 Q. On the left hand side ---

24 A. Yes, sir.

25 Q. --- of that photograph?

1 A. Yes, sir.

2 Q. Do you recall during the course of this litigation
3 hiring a man named Wilbur Pole to do an investigation at
4 your home?

5 A. Did I hire him?

6 Q. Well, or was he hired on your behalf? Either way?
7 Did he do an investigation on your home? Do you remember
8 that?

9 A. Mr. Rushton hired him.

10 Q. So you do recall him being hired to do an
11 investigation of your home?

12 A. An investigation? No, sir.

13 Q. All right. Then what was he hired to do?

14 A. To look at the house.

15 Q. And what was the purpose of him going to look at your
16 house?

17 A. See if he could clean it up.

18 Q. What aspects?

19 A. I'm sorry?

20 Q. From what aspect? I mean was he a maid service?
21 What was he going to do?

22 A. I don't know whether he had a maid service or not.
23 He was looking at my house for contamination.

24 Q. All right.

25 A. I mean I assume that's what he was looking for.

1 Q. So you're saying that you didn't know that he was a
2 mold remediator? A mold remediator?

3 A. Not at the time, no, sir, I did not.

4 Q. With a company called Air Quality Control out of
5 Florence?

6 A. Could have been.

7 Q. And didn't he in fact produce two reports that he
8 turned over in this particular litigation?

9 A. He could have.

10 Q. Did you review any of those reports?

11 A. No, sir.

12 Q. Were you aware that he produced photograph that he
13 took from your property -- of your property in September
14 or October of 2010?

15 A. No, sir.

16 Q. So you didn't review any of those photographs?

17 A. No, sir. I don't think I did.

18 MR. PLYLER: Court's indulgence.

19 BY MR. PLYLER:

20 Q. Mr. Graham, did I understand you correctly that when
21 you first went to look at the house on East Rice Street
22 after you learned that it had become available for sale
23 that you found that there were a bunch of cats living
24 inside of it?

25 A. We were told that there were cats that had been

1 living inside the house. Yes, sir.

2 Q. And in fact two of them had died?

3 A. One of them had died.

4 Q. I thought you said two earlier. You're saying it was
5 one?

6 A. We were told I think it was that one died.

7 Q. All right. And you said that they had been using it
8 as a restroom?

9 A. Yes, sir.

10 Q. So there was cat fecal material everywhere?

11 A. No, sir.

12 Q. Well, how were they using it as a restroom?

13 A. Wee weeing all over it.

14 Q. So it had cat urine everywhere?

15 A. Yes, sir.

16 Q. But no cat feces?

17 A. No, sir.

18 Q. And the fact that the inside of that house was
19 clean -- that inside of that house was cleaned before you
20 moved in it, wasn't it?

21 A. No, sir.

22 Q. So you moved in it with all the cat urine and feces
23 and stuff?

24 A. No, sir. I tore all the floors out.

25 Q. That would be a way to clean it, wouldn't it? Would

1 that not be a way to clean it? To remove all that?

2 A. Well, that's what I was trying to do.

3 Q. Okay. You made sure that it was removed before you
4 moved in; is that right?

5 A. Correct.

6 Q. And then you lived in the house from 1989 until 2008,
7 correct?

8 A. That is correct.

9 Q. No further questions. Thank you for your time.

10 MR. WILLIAMS: Redirect, Your Honor? May it please
11 the Court.

12 THE COURT: Yes, sir.

13 REDIRECT EXAMINATION

14 BY MR. WILLIAMS:

15 Q. After you removed all those boards did you invite a
16 bunch of cats to come back in the house and move in with
17 you?

18 A. No, sir.

19 Q. Okay. You and Mr. Plyler used a term. I know I
20 don't under it. Maybe the jury doesn't understand it
21 either. What is a service line?

22 A. When you have a toilet and you flush the toilet you
23 have got to get it out to the main system. And my
24 terminology with that is that's the service line. It
25 takes it out to a main line..

1 Q. So the service line is the line that runs from the
2 commode to the main sewer line?

3 A. Yes, sir.

4 Q. Okay?

5 A. That's my definition of it.

6 Q. Okay. And when you were answering his questions
7 that's the way you were answering?

8 A. Yes, sir.

9 Q. And when he was asking the question did you assume
10 that's what he meant?

11 A. Yes, sir.

12 Q. Okay. Are the houses with indoor plumbing that do
13 not have service lines?

14 A. I wouldn't think so.

15 Q. So it's nothing unusual about seeing a service line
16 somewhere, is there?

17 A. No, sir.

18 Q. Okay. Now, let me ask you about the ditch. That's
19 Defendant's Exhibit Number 12. I think its been marked
20 for identification. I think you said that's a line that
21 passes across the ditch or through the ditch behind your
22 house, correct?

23 A. Well, I'm assuming, because this looks like an old
24 piece of lumber that was from the original fence that was
25 back there behind the house.

1 Q. So you recognize a piece of lumber?

2 A. Yes, sir.

3 Q. And you don't disagree?

4 A. No, sir.

5 Q. That that's Mr. Plyler's assertion that that's behind
6 your house?

7 A. No, sir.

8 Q. I think you testified earlier that that ditch has
9 been there since you were a little child; is that right?

10 A. Long as I can remember its been in there.

11 Q. Is that a sewage ditch?

12 A. No, sir.

13 Q. What kind of water goes through that ditch?

14 A. It's a drainage ditch.

15 Q. Okay. And when you say drainage what does it drain?

16 A. Surface water.

17 Q. Does that mean like rain water?

18 A. Yes, sir.

19 Q. Snow water, dew, that kind?

20 A. Whatever.

21 Q. Just normal water?

22 A. Normal drainage water. Yes, sir.

23 Q. And does it have fish in that ditch?

24 A. Could. Unlikely but it could.

25 Q. Frogs?

1 A. Yes, sir.

2 Q. Crawfish?

3 A. Yes, sir. We have caught crawfish out of the
4 ditches. I'm not saying this one but some of them around
5 there.

6 Q. Is that ditch any different from every other ditch
7 you are familiar with in Dillon County? Marion County?
8 Florence County?

9 A. No, sir.

10 Q. Okay. Does the presence of the ditch give any
11 indication that there is going to be sewage running
12 through it?

13 A. No, sir.

14 Q. In the absence of negligence of some sort?

15 MR. WREN: Objection, Your Honor.

16 THE COURT: You may rephrase the question.

17 BY MR. WILLIAMS:

18 Q. Just cause a ditch is there what conclusion do you
19 draw when you see a ditch?

20 MR. PLYLER: Objection, Your Honor. Calls for lay
21 opinion.

22 THE COURT: I think you need to be more specific.

23 BY MR. WILLIAMS:

24 Q. When you, as a human being or as a County
25 Administrator, when you see a ditch do you draw any

1 conclusion from the presence of the ditch? Just answer
2 yes or no.

3 A. Yes, sir.

4 Q. What conclusion do you draw when you see a ditch?

5 MR. PLYLER: Objection, Your Honor. Same thing. It
6 calls for speculation. A lay witness.

7 BY MR. WILLIAMS:

8 Q. Based on your personal observation what conclusion do
9 you draw?

10 MR. PLYLER: Your Honor, he can phrase it however he
11 wants but its still calling for an opinion.

12 THE COURT: Overruled.

13 THE WITNESS: It's a drainage ditch. Draining
14 surface water ---

15 BY MR. WILLIAMS:

16 Q. I'm sorry. Excuse me.

17 A. It's a drainage ditch draining surface water.

18 Q. Does it cause any antenna to go off in your head
19 that, my goodness, that might be some sewage in there?

20 A. No, sir. It shouldn't.

21 Q. Thank you.

22 THE COURT: Anything further?

23 MR. PLYLER: No, Your Honor.

24 THE COURT: You may step down. Thank you. Yes, you
25 can just leave all the exhibits there. You may take those

1 with you. You may call your next witness.

2 MR. WILLIAMS: I call Johnny Burden.

3 JOHNNY BURDEN, after being duly sworn, testified
4 as follows:

5 CLERK OF COURT: Have a seat in the witness box.
6 State your full name for the Court spelling your last.

7 THE WITNESS: John Burden. B-U-R-D-E-N.

8 DIRECT EXAMINATION

9 BY MR. WILLIAMS:

10 Q. Mr. Burden, you've been patiently waiting all
11 afternoon. I'll try to do this as quickly as I can. Tell
12 the jury where you live and what you do for a living.
13 Just tell them who you are?

14 A. I live in the Town of Latta. I work in Florence at
15 U.P.S. Freight. And I've been in Latta for years and
16 years.

17 Q. Are you any relation to Claude or Vickie Graham?

18 A. No.

19 Q. You have any relation to any of their children or any
20 of their family?

21 A. No.

22 Q. Are you friends with Claude and Vickie Graham?

23 A. No.

24 Q. You have anything that would -- to tell us that
25 should help the jury evaluate whether you have any bias or

1 prejudice in this case?

2 A. I mean I just know him. I've known him all my life.
3 We went to the some high school. We played basketball,
4 but I haven't any personal relationship with him.

5 Q. Okay, you heard him testify about September the 5th
6 and 6th 2008, correct?

7 A. Correct.

8 Q. Did you have any interaction with Claude at or about
9 that time or afterwards?

10 A. Well, we just had this big storm come through Latta,
11 and we had a lot of water, surface water. A lot of rain
12 water, and I happen to be out the next morning. Took some
13 pictures all around town. Not just in front of his house,
14 but all around town. I happen down his street and the
15 manhole cover in the front of his house was jumping up and
16 down like a geyser.

17 And I filmed it, motion picture film. And took some
18 still pictures of the area, and I think he kind of like --
19 he was talking to my wife when they -- where she works at
20 Flying J. They were talking about the problems she was
21 having. And I just decided to ask them do they want the
22 pictures. And he said he did so I gave him what I had.

23 Q. And how long was that after the events?

24 A. I really can't recall. I'm sure it was a good many
25 months.

1 Q. That's close enough. I just didn't know if it was
2 hours or days?

3 A. Oh, no. It was many days after.

4 Q. Okay. And what form did you give it to him in?

5 A. I printed them on a C.D. ROM, and put it in a cover
6 and gave it to him.

7 Q. Okay. Now, you were at his house when you took the
8 pictures?

9 A. In front of his house.

10 Q. In front of his house?

11 A. In the street.

12 Q. In the street?

13 A. Yes, sir.

14 Q. In the street in front of his house?

15 A. That is correct.

16 Q. And how long -- you'd been all over town that day; is
17 that correct?

18 A. I did, yes.

19 Q. Okay. You took a lot of film?

20 A. I did.

21 Q. Okay. Do you recall anything different or unusual
22 about his house?

23 A. Just there was a lot of water all over his yard up to
24 his front door steps near about, and all that sewer was
25 coming up out of that manhole cover. I mean that all ever.

1 seen.

2 Q. That's what I'm asking you. Could you see that it
3 was sewer material that was coming up?

4 A. I cannot say that I saw any signs of anything other
5 than just water coming out of that manhole cover. And I
6 see water coming out of the manhole cover I certainly is
7 telling me that it was sewer.

8 Q. Okay. Cause that manhole cover covers the sewer
9 line, right?

10 A. Yes, sir. It does.

11 Q. Okay. I'm going to -- if I might see Plaintiff's
12 Exhibit Number Two that was in this folder. Yeah.
13 Plaintiff's Exhibit Number Six, I'm sorry.

14 MR. WILLIAMS: Your Honor, I'm offering Plaintiff's
15 Exhibit Number Six into evidence. This is a copy of Mr.
16 Burden's videotape. I'm going to play it for him. It
17 only lasts 7 seconds. I'm going to play it for him and
18 let him actually look at it and identify it unless
19 opposing counsel wants to stipulate it's the same one.

20 MR. PLYLER: I still would like ---

21 MR. WILLIAMS: I'm going to play it for him ---

22 MR. PLYLER: --- to see it because I may have
23 questions about the video, but at this point I have no
24 reason to doubt that that's the video.

25 THE COURT: All right. So there is no objection to

1 admitting it?

2 MR. PLYLER: No, Your Honor. I have no reason to
3 believe this isn't the video he took.

4 MR. WILLIAMS: Let me make sure I know what to do.

5 (WHEREUPON, Plaintiff's Exhibit No. 6 was admitted
6 into evidence.)

7 MR. PLYLER: Your Honor, may I approach just to watch
8 the video?

9 THE COURT: Yes, sir.

10 MR. WILLIAMS: Please.

11 (WHEREUPON, Plaintiff's Exhibit Number Six was played
12 in open Court.)

13 BY MR. WILLIAMS:

14 Q. Is that the video that you took?

15 A. Yes, sir, it is.

16 Q. Now, how long was the video you took of the front of
17 Claude Graham's house?

18 A. Minutewise?

19 Q. Yes, sir?

20 A. Not -- very little. I mean I wasn't taping very
21 long.

22 Q. Does it look to you like I've set it up on here so
23 that it will just keep repeating the same 7 or 8 seconds?

24 A. Yes, sir.

25 Q. Okay. And it starts when you see the whole street

1 and then you zoom in; is that correct?

2 A. That's exactly what I did. Yes, sir.

3 MR. WILLIAMS: Your Honor, I offer this into evidence
4 Your Honor, and then ask permission to display it to the
5 jury.

6 MR. PLYLER: No objection, Your Honor.

7 THE COURT: Without objection it's admitted. You may
8 publish it.

9 MR. WILLIAMS: Thank you, Your Honor.

10 MR. PLYLER: It think he's made it clear that this is
11 like a 7 second loop being replayed over and over again.

12 THE COURT: That is correct.

13 MR. WILLIAMS: They call loop as I under it. It is
14 going to be the same thing over and over again. It zooms
15 in to the manhole cover. And, Your Honor, I believe you
16 saw it from the bench?

17 THE COURT: Yes, sir, I did.

18 MR. WILLIAMS: That's all the questions I have of Mr.
19 Burden. I often the disk into evidence at this time.

20 THE COURT: It was admitted.

21 MR. WILLIAMS: Okay. And that's all I have for
22 Mr. Burden.

23 THE COURT: Any cross?

24 MR. PLYLER: Very briefly, Your Honor.

25 CROSS-EXAMINATION

1 BY MR. PLYLER:

2 Q. Mr. Burden, I want to make sure I understood you
3 correctly. It rained a lot that time period, didn't it?

4 A. Yes, sir. It was a tropical -- it was the morning
5 after a tropical storm.

6 Q. Tropical Storm Hanna?

7 A. I don't remember the name, but it was a tropical
8 storm. Yes, sir.

9 Q. In fact it flooded all over Latta, didn't it? Not
10 just I front of the Graham's residence?

11 A. Not all over Latta, but in areas of it. Numerous
12 areas, yes.

13 Q. Right. But it doesn't just flood in front of the
14 Graham's residence, correct?

15 A. That's correct.

16 Q. And you didn't do anything to test the water out in
17 front of the Graham's residence, did you?

18 A. No, sir.

19 Q. That's all the questions I have for you. Thank you.

20 THE COURT: Any redirect?

21 MR. WILLIAMS: No, Your Honor.

22 THE COURT: You may step down. Thank you.

23 COLLOQUY

24 MR. WILLIAMS: Your Honor, my next witness is going
25 to be sort of lengthy, and I would ask the Court's

1. come in through ---

2. MR. WILLIAMS: Seven, Eight, 10 and 12 are the one
3. you didn't get?

4. THE COURT: That's what they told me.

5. MR. WREN: That is correct.

6. MR. WILLIAMS: You did get the June 23rd?

7. THE COURT: They got Numbers Nine and 11..

8. MR. WREN: Correct.

9. MR. WILLIAMS: I've got them. Thank you.

10. MR. WREN: And I'm going to leave these up here,
11. Judge, if it's okay, Those are the four that we just
12. pulled. They're still here. And just by way of example
13. we still have the easement up here that we just talked
14. about that had been identified. But I'm fine leaving
15. everything here until we them moved into evidence.

16. MR. WILLIAMS: I'm fine with that. I'm fine if you
17. leave them up here. We can set them to the side. Is that
18. suitable? Is that fine, Judge.

19. THE COURT: That's fine.

20. MR. WILLIAMS: Okay.

21. THE COURT: Now, let's talk about the second issue.

22. MR. WILLIAMS: Yes, Your Honor. You ready?

23. THE COURT: Yes.

24. MR. WREN: Judge, the other problem, and perhaps,
25. frankly, more important issue that we have is -- and

1 because I sense a little bit of this in some of the
2 testimony yesterday, but we anticipate or perhaps assume
3 with Mr. Henry or perhaps any other witness for that
4 matter, might as well address it now, is this introduction
5 or of course any kind of opining about subsequent events
6 or flooding or sewer for that matter at the Grahams
7 property. And perhaps more importantly at other locations
8 in the Town of Latta.

9 Your Honor, we in South Carolina, of course, as I've
10 already indicated we have been doing discovery in this
11 case for a significant period of time. Ms. Graham has in
12 fact amended her complaint twice. They've included their
13 claims in this case. But these flooding events that
14 occurred in September of 2008, and it's the intention
15 through questioning to try to elicit subsequent events and
16 problems.

17 Your Honor, I think that is incredibly prejudicial.
18 It's not what we've spent three years doing discovery on
19 in these matters. And I don't think any of that
20 information or testimony or evidence should be admissible.

21 MR. WILLIAMS: Please the Court.

22 THE COURT: Yes, sir.

23 MR. WILLIAMS: The relevance of that testimony goes
24 to the heart of the case, goes to the heart of the
25 damages. The damages -- the Plaintiff's theory of damages

1 includes the proposition that these problems have not been
2 addressed. They haven't been much less fixed; that the
3 problem still exists and that the house is unlivable and
4 will be unlivable until the problems are fixed.

5 Now, the recurrence of the problems in that
6 neighborhood, at this house and in this closely
7 surrounding neighborhood I think it's important for the
8 jury to be able to consider as they assess damages.

9 THE COURT: I can tell you now that I'm not going to
10 let them talk about the neighborhood. I don't necessarily
11 have a problem with them talking about their particular
12 property and the fact that, you know, what I heard from
13 Mr. Graham yesterday was that it hadn't been fixed. The
14 sewer line hadn't been fixed. Whatever the problem is, if
15 there is a problem with the sewer line, whatever it is,
16 hasn't been fixed. And in his view there was no reason to
17 spend any money to repair his home and to correct the
18 problems with the home until the sewer line was fixed.

19 And I've accepted that. I think that would be
20 appropriate, but I'm not going to let anyone talk about
21 the neighborhood or what's happening next door or other
22 places. I think it is relevant that if there is a problem
23 with the sewer, the sewer line that runs across their
24 property, and it is creating -- it has not been fixed or
25 has not been addressed or whatever way you want to couch

1 it. And there is still an issue. There's been no
2 remediation, and then, you know, I think that's certainly
3 relevant in terms of the damages and being able to return
4 to the home and to live in the home.

5 MR. WILLIAMS: Thank you, Your Honor.

6 MR. WREN: And, Your Honor, if I may add. I
7 understand completely, and I, in and of itself, Judge, any
8 testimony from either party in regards to the fact that
9 whatever the problem is, the fact that has done a remedial
10 measure. I don't -- we don't -- well, I hate to say we.
11 I don't want to go there, but I don't have a problem with
12 the fact that it is what it is and the testimony in that
13 regard.

14 The one thing I would just point out, Judge, on this
15 point, and I understand your ruling, but I do want to
16 clarify that in the trespass cause of action, which again
17 would rest solely with Ms. Graham as pled as the property
18 owner, it states, "At some unknown time in the distant
19 past the Town of Latta began to trespass upon the property
20 know by the Plaintiff, Vickie Graham."

21 Their claim for trespass here, Judge, I think it's
22 important to note is not for this issue of this continuing
23 problem with water or sewage or anything else. The claim
24 for trespass is pled clearly as to do with the location
25 operation of this sewer line on their property. And so I

1 just wanted to distinguish that, Judge. That's part of
2 our hesitation with regards to these issues coming in.
3 How this has been pled.

4 MR. WILLIAMS: May it please the Court. I believe
5 that covers the continuing trespass, but if it doesn't I
6 would move to amend the complaint to conform to the
7 evidence; that the trespass is a continuing one, and
8 continues to this very day.

9 THE COURT: I guess maybe I need to ask a question.
10 What are you claiming as the trespass? Is the trespass
11 the very existence of the sewer line across the property
12 or is the trespass events that have occurred because the
13 sewer line has not been maintained or there has been some
14 other breach or some other problem with the sewer line?

15 MR. WILLIAMS: The trespass is the existence of the
16 sewer line across their property with the -- on top of the
17 fluid that comes from the sewer line. Existence of the
18 sewer line is the trespass and each episode of the
19 discharge is a trespass.

20 MR. WREN: Your Honor, may we briefly be heard on
21 that? That not how it's pled, Judge.

22 THE COURT: Yes, Mr. Wren. Your argument.

23 MR. WILLIAMS: Oh, I thought you said Mr. Wren.

24 THE COURT: I did.

25 MR. WREN: Okay.

1 THE COURT: You said you wanted to respond to the
2 arguments that were made because you said that's not the
3 way it was pled.

4 MR. WREN: Well, Your Honor, yes. Under the
5 Plaintiff's second amended complaint Ms. Graham addressed
6 this claim. The language I read that, "now and again the
7 trespass upon the property ---

8 THE COURT: Look at Paragraph 24.

9 MR. WREN: I see that, Your Honor. "To operate a
10 sewer line."

11 THE COURT: So it says that, "The Town of Latta has
12 no legal right to construct or operate its main sewer
13 line on the Plaintiff's property. Received no such
14 permission from the Plaintiff."

15 MR. WREN: Agree, Your Honor. I understood that, of
16 course, to be the presence of the line on their property.
17 Not the emission of the fluid or some other activity and
18 could potentially constitute a trespass.

19 THE COURT: Okay. I see what you're saying. You're
20 saying that his cause of action only goes to the existence
21 of the sewer line not, basically, the negligence claim
22 covers the failure to maintain the line or whatever and,
23 therefore, the resulting problems?

24 MR. WREN: We're taught not to assume, Judge, but,
25 obviously, that assume that's where the negligence claim

1 comes in.

2 MR. WILLIAMS: If I might respond when you finish.
3 Your Honor, my point is, of course, looking at Paragraph
4 23, I do say that the trespass is continued and is
5 continuing. My point would be at least possible for the
6 jury to find that there has been no negligence by the
7 Town, but there is a trespass. In which case the damages
8 for the trespass are not just a mere existence of a line,
9 but what the existence of the line has caused.
10 Negligence, the damages, Your Honor.

11 It's at least theoretically possible that a jury
12 could find not negligence but surely a trespass and then
13 they have to determine what the damages in the trespass.
14 Now the damages, obviously, would be the same. Wouldn't
15 be two different types of damages. The fluid makes
16 damages from the trespass and the damages.

17 THE COURT: I'll allow the testimony on that. I
18 think it's broad enough, and I think it's -- I don't think
19 it's a surprise, and I don't think it's something that the
20 Town is not discovered or anticipated. And so I'll allow
21 evidence that would support the issues relating to the
22 trespass. Not only being the line itself, but also the
23 continuing trespass based upon the release of the sewage
24 on the property. Anything else we need to take up?

25 MR. WREN: Thank you, Your Honor.

1 MR. WILLIAMS: Nothing from the Plaintiff.

2 THE COURT: Then we can ask the jury to come in.

3 (WHEREUPON, the jury panel enters the courtroom at
4 10:11 a.m.)

5 THE COURT: Good morning, ladies and gentlemen. I'm
6 sorry for the delay in getting started. We had a couple
7 of issues that we had to take up this morning. Hopefully
8 that will make things run a little smoother. You may call
9 your next witness.

10 MR. WILLIAMS: Thank you, Your Honor. May it please
11 the Court. Call Benton Henry.

12 THE COURT: You step forward, sir, and be sworn.

13 BENTON HENRY, after being duly sworn, testified
14 as follows:

15 CLERK OF COURT: Be seated. State your full name for
16 the Court spelling your last, please.

17 THE WITNESS: William Benton Henry. H-E-N-R-Y.

18 THE COURT: Yes, sir.

19 DIRECT EXAMINATION

20 BY MR. WILLIAMS:

21 Q. Mr. Henry, where do you live?

22 A. I live in Latta.

23 Q. How long have you lived in Latta?

24 A. All my life.

25 Q. What do you do for a living?

- 1 A. I'm a commercial photograph.
- 2 Q. And what's that mean?
- 3 A. Photograph for advertising agencies and companies. I
- 4 provide them pictures for their use.
- 5 Q. And they pay you for what you do?
- 6 A. Yes.
- 7 Q. Okay. And how long have you been doing that?
- 8 A. Professionally, about 20 years.
- 9 Q. Okay. where exactly do you live in Latta?
- 10 A. I live on -- 224 East Bamberg Street.
- 11 Q. And do you have family in Latta?
- 12 A. Yes, sir.
- 13 Q. Who?
- 14 A. My mother.
- 15 Q. Where does your mother live?
- 16 A. She lives on Rice Street.
- 17 Q. What's her address?
- 18 A. 225 East Rice Street.
- 19 Q. Where is that in relation to 200 East Rice Street?
- 20 A. It's ---
- 21 Q. The Graham house?
- 22 A. Diagonally across. It's one house up on the opposite
- 23 side of the street.
- 24 Q. Across the street one house down?
- 25 A. Yes, sir.

- 1 Q. If you're standing on your momma's front porch which
2 direction would you look to see the Graham house?
- 3 A. The left.
- 4 Q. Okay. So catty corner? Half way?
- 5 A. Yes.
- 6 Q. Okay. And is that the house you grew up in or did
7 your momma move into there?
- 8 A. I grew up there.
- 9 Q. So you're familiar with that neighborhood?
- 10 A. Yes, sir.
- 11 Q. Okay. Do you know the Grahams?
- 12 A. Yes, sir.
- 13 Q. How long have you known them?
- 14 A. All my life.
- 15 Q. You have any special relationship with them other
16 than being neighbors or having been neighbors?
- 17 A. We're in the same church.
- 18 Q. How far is your house on Bamburg Street from your
19 Momma's and the Graham house on Rice Street?
- 20 A. My property butts up with my mother's. My backyard
21 and her backyard join.
- 22 Q. So you can see your house from the Graham house if
23 your mother's house wasn't in the way?
- 24 A. Yes.
- 25 Q. Okay. Do you remember the events of September 5th

1 and 6th 2008?

2 A. Not really.

3 Q. Okay.

4 A. Not specifically.

5 Q. Do you remember any occasions where there had been
6 sewage overflows out of the manhole on Rice Street?

7 A. Yes.

8 Q. Okay. What's the earliest one you remember?

9 A. It's early 2000s. Somewhere -- I don't

10 Q. Okay. Have you taken any such photographs of any
11 such sewage overflows?

12 A. Yes, sir.

13 Q. On how many different occasions?

14 A. I know of twice, but I know there are more than that.

15 Q. Okay. When you became aware of a sewage overflow
16 what did you do?

17 A. First time I knew there was a problem I contacted the
18 Town.

19 Q. Okay. What did you to do -- did you do anything to
20 observe the actual overflow?

21 MR. PLYLER: Your Honor, objection. And we may need
22 to have a side bar.

23 THE COURT: Yes, sir.

24 (WHEREUPON, a bench conference was held off the
25 record in the presence of the jury, but out of the

1 hearing of the jury.)

2 BY MR. WILLIAMS:

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

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

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

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

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

13 A. Yes.

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

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

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

20 A. I take a lot of pictures.

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

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

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

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

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

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

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

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

15 BY MR. WILLIAMS:

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

18 A. It mean I took these.

19 Q. Okay. Do you now remember taking them?

20 A. Yes, sir.

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

25 A. The water was covering the street from pretty much

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

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

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

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

14 A. Yes, sir.

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

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

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

23 A. Yes, sir.

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

1 property on May 28th 2011?

2 A. It was the same type flooding. Water covers the
3 entire street, and the house across from my mother's and
4 it goes up -- well up into their yard, the Graham yard and
5 then the house to the left of my mother's. It's up into
6 their yard.

7 Q. And you saw that?

8 A. Yes, sir.

9 Q. And I know you are reluctant to say. You keep
10 saying -- you say 'water'. Was it more than water? Was
11 it sludge?

12 A. Well, it was material coming out of the manhole.

13 Q. Sewage?

14 A. Sewage, yes, sir.

15 Q. Okay. Now, let me show you what's been marked for
16 identification as Plaintiff's Exhibit Number Nine. Can
17 your identify those photographs in Plaintiff's Exhibit
18 Nine?

19 A. Yes, sir.

20 Q. What is that?

21 A. That's another flooding of the same area on Rice
22 Street.

23 Q. And did you take those photographs?

24 A. Yes, sir.

25 Q. And are those photograph dated?

1 A. Yes, sir.

2 Q. What date?

3 A. 3/18/12, 2012.

4 Q. And what do they depict? Not in particular, just in
5 general. What do they depict?

6 A. The area in front of my mother's house and Claude and
7 Vickie's house and, yeah, the flooding and the street.

8 Q. I would offer these into evidence without objection,
9 I believe, Your Honor?

10 THE COURT: Any objection to Exhibit Nine?

11 MR. PLYLER: Subject to our earlier objection.

12 THE COURT: Yes. It's admit.

13 (WHEREUPON, Plaintiff's Exhibit No. 9 was admitted
14 into evidence.)

15 BY MR. WILLIAMS:

16 Q. And what was the date of those pictures?

17 A. 3/18/12, 2012.

18 Q. And, again, the water depicted there is it rain water
19 or some other kind of water?

20 A. It's both. I mean there's sewage from the manhole.

21 Q. Okay. Let me show you what's been marked for
22 identification as Plaintiff's Exhibit Number Ten. Does
23 that refresh your recollection?

24 A. Yes, sir, I remember taking the picture.

25 Q. Of the events of April of 2012?

1 A. Yes, sir.

2 Q. And what were the conditions at your mother's house
3 and on Rice Street on April 10th 2012?

4 A. The photograph is the ditch that next to my property
5 and that's ---

6 MR. PLYLER: Your Honor.

7 THE COURT: I'll sustain that objection.

8 BY MR. WILLIAMS:

9 Q. I'm not asking what's in the photograph. What I'm
10 asking you is does that photograph help you remember what
11 conditions were like on Rice Street, at your mother's
12 house and at the Graham's house?

13 A. Yes, sir.

14 Q. And what were the conditions? Don't tell me about
15 your house what it was like. Talk about Rice Street and
16 the street between your mother's house and the Graham's
17 house and at the Graham's house?

18 A. This ditch goes downstream from my house. So the
19 sewer -- the things that are in my ditch are -- it's the
20 same ditch.

21 MR. PLYLER: Your Honor, this is the same issue.

22 THE COURT: I think you need to move on. I sustain
23 that objection.

24 MR. WILLIAMS: Okay.

25 BY MR. WILLIAMS:

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

7 A. Yes, sir.

8 Q. And what does that depict?

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

11 Q. And when was that?

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

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

15 A. That sounds right.

16 Q. Okay. Did you take those pictures?

17 A. Yes, sir.

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

20 A. Yes, sir.

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

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

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

1 888

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

4 BY MR. WILLIAMS:

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

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

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

13 A. Yes, sir.

14 Q. With on June the 23, 2012.

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

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

19 THE COURT: Let me hear the question first.

20 BY MR. WILLIAMS:

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

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

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

1 like on or about July June 23 2012?

2 A. It was flooding, another flooding event.

3 Q. Okay. Same type you've described before?

4 A. Yes, sir.

5 Q. Was there -- was there sewage flooding or water
6 flooding or both?

7 A. There would have been both. Yes, sir.

8 Q. All mixed together?

9 A. Mixed together, yes, sir.

10 Q. On that date did you -- please, state whether or not
11 you did see sewage materials in the water?

12 A. I did from the manhole.

13 Q. Okay. All right. Now, let's talk about Plaintiff's
14 Exhibits Nine and 11 which I believe are already in
15 evidence and should be right in front of you? If you
16 would let me?

17 MR. WILLIAMS: And with the Court's permission, let
18 me get you to come down and stand in front of the jury
19 with Plaintiff's Exhibits Nine and 11.

20 BY MR. WILLIAMS:

21 Q. And let's go through. Let's just do -- have Nine and
22 11 in front of you?

23 A. Yeah.

24 Q. But let's just do one at a time. Let's do Number
25 Nine right now.

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

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

9 BY MR. WILLIAMS:

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

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

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

17 A. Right in this area.

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

20 A. Yes.

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

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

25 Q. Okay. And what is the third page?

1 A. The similar view. Less of the street and more up
2 street. Little more where the house and the ditch and the
3 manhole is.

4 Q. Are you able to actually see the manhole in any of
5 the street pictures or you just know where it is?

6 A. No, I cannot see it.

7 Q. Okay. So when You were pointing to it you just know
8 where it is?

9 A. Yes, sir.

10 Q. Okay. Now, let's look at Number 11. And let's go
11 through the same situation. These photographs were taken
12 on May 17 2012 as I recall; is that right?

13 A. I think that's right.

14 Q. All right. The first sheet?

15 A. Again, I'm standing on my mother's property, and
16 that's the Graham house across the street.

17 Q. You know what that orange cone is?

18 A. I'm pretty sure ---

19 MR. PLYLER: Objection, Your Honor. Speculation.

20 THE COURT: If he knows what it is he can testify as
21 to what it is.

22 MR. PLYLER: As far as an answer I'm pretty sure he
23 doesn't know.

24 BY MR. WILLIAMS:

25 Q. Do you know what it is?

1 A. I do not know.

2 Q. Okay. Did you put it there?

3 A. No, sir.

4 Q. Did you see anybody else put it there?

5 A. No, sir.

6 Q. Is it near anything that you know about?

7 A. There's a patch in the road.

8 Q. And how do you know there is a patch in the road?

9 A. I mean you can see it out there after -- I think

10 it -- may be the other picture shows that.

11 Q. I show the second page of Plaintiff's Exhibit 11.

12 A. This is -- the Graham house is on the left side.

13 This is the Coxes live over here and the road in between.

14 Q. And you said over here on the right side?

15 A. On the right. Excuse me.

16 Q. And the road in between the Coxes and the Grahams?

17 A. Right. Well, between them is their property line,

18 but Rice Street runs up to the left in the ditch.

19 Q. On the right hand side of the picture is that Rice

20 Street or is that a yard?

21 A. That's a yard.

22 Q. Okay. Whose yard is that?

23 A. That's the Cox.

24 Q. Okay. On the left hand side of the picture where the

25 sewage is covering?

1 A. That's the Graham house, and that's the front of
2 their house.

3 Q. Okay. You can just see a little teeny bit of the
4 front of their house?

5 A. Yes, sir.

6 Q. Okay. And the oak tree right in the middle, whose
7 yard is that if you know?

8 A. That would be the Coxes.

9 Q. Okay. And that light pole, is that a boundary more
10 or less?

11 A. The ---

12 Q. Between the properties?

13 A. The green part, that's my understanding, is the
14 boundry line is where the ditch would be.

15 Q. The green hedge?

16 A. Hedge, yes, sir.

17 Q. Okay. All right. The third sheet of paper? What is
18 that?

19 A. That's the entrance under Claude and Vickie's house.

20 Q. You took that picture?

21 A. I took take picture.

22 Q. And what does it show?

23 A. You can see the water underneath the house.

24 Q. And did you observe that with your own eyes?

25 A. Yes, sir.

1 Q. Did you see any evidence of sewage under the house on
2 that particular day?

3 A. I could smell sewage.

4 Q. Okay. What's the next picture?

5 A. That's actually a picture inside up underneath their
6 house from that same hole. I'm actually in the hole or in
7 the ditch.

8 Q. And then was there still a smell?

9 A. Yes, sir.

10 Q. And the next picture?

11 A. That's their backyard on their back steps looking to
12 the right hand corner of their property.

13 Q. Is there a swimming pool in that picture?

14 A. Yes, sir, that's the swimming pool.

15 Q. Covered up?

16 A. Yes, sir, covered.

17 Q. And when you said, 'their property' you're talking
18 about the Grahams?

19 A. The Graham property, yes.

20 Q. And the very last page of that exhibit what's that?

21 A. That's the manhole on Rice Street.

22 Q. Okay. And that's when the sewage was coming out of
23 it? You can see it coming out while you were taking the
24 pictures?

25 A. Yes, sir.

1 Q. Okay. That's all on those pictures.

2 MR. WILLIAMS: Bear with me one moment, Your Honor.

3 That's all the questions I have, Your Honor.

4 BY MR. WILLIAMS:

5 Q. Please answer any questions Mr. Wren may have.

6 THE COURT: You may cross.

7 MR. PLYLER: Yes, Your Honor, but I would like to ask
8 for a short break.

9 THE COURT: You want to approach?

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

13 COLLOQUY

14 THE COURT: Ladies and gentlemen, I'm going to ask
15 that we take a short break to address some issues. So I'm
16 going to ask that you retire to the jury room and not to
17 begin to have any discussions about the testimony as you
18 still have not heard all the testimony that has to be
19 presented in this case. Let's take a brief break and we
20 will come back.

21 (WHEREUPON, the jury panel was excused from the
22 courtroom at 10:39 a.m.)

23 THE COURT: Mr. Henry, you may step down for a
24 moment, but I ask that you not discuss your testimony.
25 You have not concluded it so it would be inappropriate to

1 discuss it at this time. Let's take a brief break.

2 (WHEREUPON, Court was in recess at 10:39 a.m. and
3 reconvened at 10:45 a.m.)

4 MR. PLYLER: And I'm not sure that the side bar was
5 audible to the court reporter or not, so I just wanted to
6 address.. We did have a brief side bar in which it was
7 discussed the Defendant's position that we have been
8 highly prejudiced by Mr. Benton Henry's testimony which we
9 believe was in, essentially, in direct conflict with Your
10 Honor's ruling right before he took the stand.

11 During his testimony he was allowed to refer to
12 photographs which we established had not been produced in
13 the discovery process. And even though we didn't take
14 Mr. Henry's deposition until late September of this year,
15 just two or three weeks ago, they had not been produced to
16 us before his deposition.

17 It was our understanding that they were going to be
18 excused based on that prejudice. The surprise and the
19 inability to develop discovery on these photographs and
20 questioning Mr. Henry about the photographs. However, he
21 was allowed to refer to them in front of the jury to
22 "refresh his recollection." The jury saw him referring to
23 the photographs. And then he was allowed to testify about
24 what is depicted in the photographs and/or his memory from
25 the events when these photographs was taken.

1 The conundrum that I find myself in is he's referring
2 to photographs that he says shows certain things or
3 refreshes his recollection as to certain events that now
4 the jury is not going to get to see because the
5 photographs were produced so late it prejudiced us in
6 trial. However, his testimony gets to be heard by the
7 jury. And we don't have any affective way of
8 contradicting that testimony without showing the jury the
9 photographs.

10 Obviously, I can't consent to their admissibility
11 because we just spent all that time dealing with the fact
12 that these photographs were prejudicial because of the
13 late production. But at the same time I'm prejudiced in
14 the trial itself because he was allowed to testify about
15 the photographs without the jury ever seeing them. So I
16 ---

17 THE COURT: When you say he testified about the
18 photographs what are you referring to cause I didn't --
19 what I heard was that he testified about the events on the
20 particular day that those photographs were taken.

21 MR. PLYLER: And he was ---

22 THE COURT: But not specifically about what was in
23 the photograph other than Rice Street and the property,
24 either his mother's property and/or the Plaintiff's
25 property.

1 MR. PLYLER: Right. But Mr. Reynolds would say, "Im
2 going to show you what's been marked as Exhibit 7. These
3 will refresh your recollection as to the events that
4 occurred." And then he flipped through those photographs
5 and he said, "Yes, it does." Well, what do you remember
6 about that? So he's essentially telling the jury or
7 suggesting to the jury that these photographs show what he
8 just testified to.

9 THE COURT: Which was flooding in the area. So you
10 are saying that in his deposition that he never -- he was
11 never asked about subsequent flooding or you never
12 testified about flooding or seeing sewage or the manhole
13 bubbling or any of those things during his deposition?

14 MR. WREN: What he was asked was, "Have we talked
15 about all the photographs that deal with the Graham
16 property and this lawsuit," cause again, he was named as a
17 witness having information and having photographs showing
18 "environs and other materials in flooding events." So I
19 asked him. I went through the photographs I had. I said,
20 "Are these all the photographs you produced?" And he
21 said, "Yes." So that's where the prejudice of those not
22 being produced.

23 And they obviously existed. Some of them date back
24 to April of 2009. Over three years before this
25 deposition. He had an opportunity to say right then to

1 say, "Well, I have other photographs. I have other
2 photographs showing the Graham property. I have other
3 events that I've documented using photography." Then I
4 could have followed up at that point.

5 But the prejudice becomes we were told, 'these are
6 the two sets of photographs showing a March 2012 event and
7 a May 2012 event. We questioned him about those
8 photographs. We asked, "Are these all the photographs you
9 have," and he said, "Yes."

10 THE COURT: You're still missing my question. My
11 question to you is did he not testify that there were
12 other events, other flooding events in that area in that
13 community whether he had photographs or not.

14 MR. PLYLER: I don't specifically remember. I know
15 he talked about ---

16 THE COURT: Well, you've got the deposition.

17 MR. PLYLER: I know he talked about his ditch and
18 flooding events with his ditch that runs along his
19 property. And as a -- before his testimony we brought
20 that issue up claiming whatever is happening in other
21 places in Town is irrelevant to the matters in this
22 lawsuit.

23 THE COURT: Right. But my question still is did you
24 specifically ask him or did he testify about other
25 flooding events on Rice Street in that neighborhood on the

1 Graham property other than those two sets of photographs
2 from March of 2012 and May of 2012?

3 MR. PLYLER: And, Your Honor, my understanding is
4 that he did say, "I know that ditch floods sometimes, but
5 my main concern has been my ditch, not the ditch behind
6 their house." And I don't believe he ever said anything
7 about sewage overflows. Now, he did with this May and May
8 event. He did.

9 We questioned him specifically about those, but I had
10 no reason to follow up with him on this when I asked so
11 many questions like, "Do you have any other photographs
12 that would be relevant to the Graham property" which he
13 clearly did. You see them here now. The Exhibit Seven,
14 Eight, 10 and 12 that we received late last week. So I'm
15 not trying to dodge your question I really just ...

16 THE COURT: Well, my view is this. Number One, you
17 know, I think you objected when the first photographs were
18 brought up, but you didn't make a specific objection as to
19 specifically these grounds as the basis for objecting to
20 it. Had I understood that my ruling may have been
21 different. In least even if you missed it with the first
22 one it didn't come up with Exhibit Eight, Exhibit Ten,
23 Exhibit 12.

24 I mean I think you did object to Exhibit 10 because
25 it showed specifically the ditch behind his house, and I

1 agree with that. But the testimony is that those
2 photographs, based upon whatever these dates are, refresh
3 his recollection that there were flooding events on that
4 particular street in which there was sewage.

5 So you can cross-examine him on that. You can
6 cross-examine him on what he saw, and if that's what you
7 wish to do, but the testimony is simply that subsequent to
8 September of 2008 there were other flooding events in
9 which the manhole was bubbling, there was sewage and water
10 and it flooded Rice Street and it flooded the Plaintiff's
11 property.

12 You don't have to discuss those photographs, and I'm
13 perfectly willing to instruct the jury that the
14 photographs were excluded because they hadn't been
15 produced and they weren't discussed before today's date
16 and that's why their not come willing into evidence. So
17 what the pictures show and exactly what the condition was
18 the jury won't be able to see that, but the testimony was
19 that there were other events that flooded. And that seems
20 to corroborate Mr. Graham's testimony yesterday that there
21 had been subsequent floodings while he may not remember
22 the dates.

23 So I'm sure that I understand what you're getting at
24 in terms of what your objection is and what you think the
25 remedy ought to be.

1 MR. PLYLER: With the Court's indulgence far just a
2 second, Your Honor. I guess my problem is I don't think
3 the photographs show -- don't support what some of the
4 testimony of Mr. Henry said. So, obviously I would like
5 the jury to see that now that he's been able to testify to
6 it. But I don't want to waive my objection to its
7 admissibility. So that's the catch 22 I'm put in in this
8 particular situation. So what I would like to ask is that
9 ---

10 THE COURT: Well, you can make a proffer whatever
11 that testimony is, and once I hear it I can determine
12 whether or not it should be admissible before the jury.
13 But without hearing what your questions are and what
14 you're claiming specifically doesn't match what's in the
15 picture, doesn't match what his testimony is, I can't help
16 you out on that one.

17 MR. PLYLER: And all I was going to suggest, Your
18 Honor, is I would like to have these at this point allow
19 the jury to see them. So I guess be admitted into
20 evidence, but subject to our objection; that's prejudice.
21 Because I think the only way I can avoid some of this
22 prejudice in this situation is to not look like we're
23 trying to hide these photographs from them. That's my
24 main concern. So as long as the record would reflect that
25 I'm preserving our objection as to prejudice but believe

1 these should be put into evidence. I should be allowed to
2 question him on the photographs, and the jury should be
3 allowed to see them at this point.

4 MR. WILLIAMS: Please the Court. I just don't think
5 you can have your cake and eat it. I done have any
6 objection to putting them into evidence and question the
7 witness until doomsday. It's fine. But I just think this
8 conditional admission into evidence is unprecedented and
9 should not be allowed.

10 THE COURT: I'm not so sure that you're going to be
11 able to maintain your objection and be able to
12 cross-examine him and/or admit the pictures as well.

13 MR. PLYLER: And if I may just briefly address that.
14 It's not a question of their admissibility. Under the
15 rules these are photographic evidence that he took he can
16 lay the foundation. He's already authenticated them that
17 these are photographs he took.

18 So as to admissibility that's not the question. The
19 issue is we're prejudiced because they weren't properly
20 produced.

21 THE COURT: Well, you asked me to exclude them on the
22 basis of prejudice which I did. So that you now attempt
23 to introduce them so that you can discuss the prejudice.
24 I'm not getting that one. I don't think that you can have
25 them admitted and maintain any objection to them. I think

1 you've got to go one way or the other.

2 Like I said I'm more than perfectly willing to give a
3 curative instruction to the jury about what -- about those
4 photographs and why they weren't admitted and that they
5 were used solely to refresh the witness' testimony about
6 those particular days and that to the extent that there
7 was any testimony as to what specifically was in the
8 picture that has to be excluded and disregarded. They're
9 simply to refresh the witness' recollection as to what
10 occurred on that particular day.

11 MR. PLYLER: Just a moment, Your Honor. Okay, Your
12 Honor. Thank you. I'm ready to proceed.

13 THE COURT: Mr. Williams, I addressed your wish with
14 Miss Hyatt if you wish to talk to her more later.
15 Basically, what she told me is that they knock -- if the
16 door is locked they will knock on the door she will let
17 them in. But I think she's addressing the issue about
18 locking the doors at all. So I don't know.

19 MR. WILLIAMS: I request that they not be locked at
20 all.

21 THE COURT: You know, I don't know whether your able
22 to reach your witnesses and have them return.

23 MR. WILLIAMS: Not so far, Your Honor. We're trying.
24 And I suspect we will be successful during lunch. If not
25 it will have to be later today sometime. Nobody is aware

1 of a working phone number. That's what makes it a little
2 bit harder.

3 THE COURT: Any else we need to take up before we
4 bring the jury in?

5 MR. WILLIAMS: Not from the Plaintiff.

6 MR. PLYLER: No, Your Honor.

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

8 (WHEREUPON, the jury panel enters the courtroom at
9 11:04 a.m.)

10 THE COURT: Oh, I'm sorry. Mr. Henry, if you will
11 return to the witness stand.

12 MR. WILLIAMS: Plaintiff's through with this witness.

13 THE COURT: I'm sorry.

14 MR. WILLIAMS: Plaintiff is through examining this
15 witness, Your Honor.

16 MR. PLYLER: Your Honor. I'm ready to proceed.

17 THE COURT: Yes, sir.

18 MR. PLYLER: May it please the Court.

19 THE COURT: Yes, sir.

20 CROSS-EXAMINATION

21 BY MR. PLYLER:

22 Q. Mr. Henry, we actually met not too long ago; isn't
23 that right?

24 A. Yes, sir.

25 Q. I took your deposition on September 28th 2012; isn't

1 that right?

2 A. I believe so.

3 Q. Right at two weeks ago?

4 A. About two weeks ago, yes, sir.

5 Q. And you understood when you were being deposed at
6 that time you were under oath, correct?

7 A. Yes, sir.

8 Q. And that means just like today you've sworn to tell
9 the truth, right?

10 A. Yes, sir.

11 Q. And you understood that you were being deposed about
12 this lawsuit, correct?

13 A. Yes, sir.

14 Q. All right. And you knew that that was the only
15 purpose I wanted to speak with you?

16 A. Yes, sir.

17 Q. Okay. Now, make sure I got these exhibit numbers
18 right. You still got the one you talked about a minute
19 ago?

20 A. I think it's Nine and 11.

21 Q. All right. Show you Plaintiff's Nine here for a
22 minute. This first photograph from Plaintiff's Nine, and
23 these are from March of this year, correct?

24 A. Yes, sir.

25 Q. All right. These little what? Rain drops on the

1 water?

2 A. I think so.

3 Q. Okay. Those -- so it was actively raining while you
4 were taking these photographs?

5 A. Yes, sir.

6 Q. All right. And that's the Graham house that we see
7 in that picture?

8 A. Yes, sir.

9 Q. Okay. And that second photograph that shows more
10 rain drops?

11 A. Yes, sir.

12 Q. And the Graham house again? Is that right?

13 A. Yes.

14 Q. The third, I guess, essentially the same thing; is
15 that correct?

16 A. Yes, same.

17 Q. Okay. And then we look at Number 11. These were
18 taken May of this year; is that right?

19 A. Yes, sir.

20 Q. Are those rain drops hitting the water surface again?

21 A. Yes, sir.

22 Q. Okay. Same thing in the second one?

23 A. Yes, sir.

24 Q. All right. And this fifth one, the last one in the
25 stack, I believe you just testified that that's the

1 manhole on East Rice Street, correct?

2 A. Yes, sir.

3 Q. Near the Graham's residence?

4 A. Yes, sir.

5 Q. And you believe this is evidence of it bubbling over?

6 A. Yes.

7 Q. Okay. And you took this photograph to show that,
8 correct?

9 A. Correct.

10 Q. And you know where that manhole is, am I right?

11 A. Yes.

12 Q. But you know where it is? You grew up right across
13 the street from it?

14 A. Correct.

15 Q. Okay. Now, you referred to a bunch of other
16 photographs during your testimony earlier, and referring
17 to those to refresh your recollection, am I correct?

18 A. Yes.

19 Q. I looked through them, and I want you to go ahead and
20 look through them again to refresh your recollection, but
21 there is not a single photograph in that bunch, is there,
22 that shows that manhole bubbling over? Go ahead. Take
23 your time and look at it. You've got photograph here from
24 May showing this manhole bubbling over, but there is not a
25 single photograph in those pictures showing that manhole

1 bubbling over, is there?

2 A. Can't be sure, but ...

3 Q. Can't be sure. But if you know for a fact you tell

4 us. You can't be sure, that's speculation?

5 A. Okay. I can't be sure. I mean I don't know.

6 Q. And, sir, you're a professional photographer; is that

7 correct?

8 A. That is correct.

9 Q. That's what you do for a living?

10 A. Yes, sir.

11 Q. In fact you maintain a website advertising that

12 you're a professional photographer; isn't that correct?

13 A. Yes, sir.

14 Q. And on that website you have a quote which basically

15 states your goal in taking photographs; is that right?

16 A. Yes.

17 Q. Are you familiar enough with that quote that if I

18 read it you will know if I'm right?

19 A. If you read it I'll remember it.

20 Q. Says, "As a photographer my purpose is to make you

21 feel something from what you see"?

22 A. Yes.

23 Q. Is that right?

24 A. Yes, sir.

25 Q. And where is -- who is that from? Nick something. I

1 can't -- his first name is like a last name. Do you
2 remember? That's fine?

3 A. Oh, me. You're talking about me.

4 Q. Yes.

5 A. Okay, yes. I wrote that.

6 Q. You wrote that. All right.

7 A. Yeah. I mean I put it on my website.

8 Q. Okay. And the fact that your goal in taking these
9 photographs is to put somebody in the position you were
10 when you were seeing this? You want them to see what you
11 were seeing?

12 A. Yes.

13 Q. And want them to see what you were seeing?

14 A. Yes.

15 Q. Okay. And you testified that you saw the manhole
16 overflowing on these dates that you talked about, correct?

17 A. Yes.

18 Q. We just looked at the photographs, and there is not a
19 photograph of that manhole overflowing, is there?

20 A. You can't see it bubble out until it gets to a
21 certain level.

22 Q. Okay. But you didn't -- you don't have a paragraph
23 in that stack showing this manhole bubbling over, do you?

24 A. Not that you can see.

25 Q. Okay. You've known the Grahams all your life; is

1 that right? Or at least Claude Graham?

2 A. Yes.

3 Q. Now, I think you testified earlier, I think it's the
4 May photographs that show the crawl space under the Graham
5 house? Is that right? You want me to show them to you
6 again?

7 A. No. I mean -- yeah, I know what you're talking
8 about.

9 Q. I'll be happy to. It's Exhibit 11. I think there
10 are two photographs in here showing the crawl space?

11 A. Yes.

12 Q. And that's the other one; is that right?

13 A. That's right.

14 Q. And you took those photographs?

15 A. I did.

16 Q. I think you testified earlier that you didn't do any
17 testing of the water to see if there was actually sewage
18 in it, did you?

19 A. That's right.

20 Q. And the only way you knew or that you believed that
21 it was sewage in that water is from the smell; is that
22 correct?

23 A. Yes.

24 Q. And you testified that you could smell it under the
25 house; is that right?

- 1 A. Yes, sir.
- 2 Q. And you were out in the road taking these
- 3 photographs, correct?
- 4 A. The ...
- 5 Q. I'm not talking about the ones under the house?
- 6 A. Oh.
- 7 Q. Just photographs in general?
- 8 A. Yes, sir.
- 9 Q. You were in and out in the road at some point taking
- 10 these photographs?
- 11 A. Yes.
- 12 Q. And you didn't smell sewage out there, did you?
- 13 A. Yes, sir.
- 14 Q. You smelled it under the house, but you didn't smell
- 15 it out in the road near that manhole, did you?
- 16 A. No.
- 17 Q. You're agreeing with me on that? That's a no
- 18 agreeing with me, correct?
- 19 A. A no agreeing with you, yes. Correct.
- 20 Q. Now, you had discussions with Claude Graham about the
- 21 issues he was having at his house, correct?
- 22 A. At some time, yes.
- 23 Q. I mean, some time way before today, correct?
- 24 A. Yes.
- 25 Q. Okay. And he told you, didn't he, that there was a

1 sewer line running across the ditch behind his property
2 and going up under his house, isn't that right?

3 A. I knew that there was a sewer line up under his
4 house. I don't know if he told me.

5 Q. So Claude didn't tell you that there was an issue
6 with sewer up under his house that was caused by that
7 sewer line that went directly up under his house?

8 A. No. He did tell me.

9 Q. He did tell you that?

10 A. Yes. Sewer line under his house.

11 Q. But you already knew there was a sewer line going
12 across his property, didn't you?

13 A. I knew there was a sewer line in the ditch behind his
14 property. Yes.

15 Q. In fact I think you said you've known that since you
16 were a kid?

17 A. Yes.

18 Q. You grew up in that area, and you actually crossed
19 this sewer line like it was a bridge; isn't that right?

20 A. That's true.

21 Q. Okay. And it points kind of directly towards their
22 house, doesn't it?

23 A. It does.

24 Q. Okay. It's 6 feet long, something like that in that
25 ditch?

1 A. Yes.

2 Q. Okay. I mean you can stand on it and you look and
3 you're looking right at their house?

4 A. Yes.

5 Q. Okay. And that was open and obvious to you, wasn't
6 it?

7 A. Yes.

8 Q. So there was nothing hiding that sewer pipe, was it?

9 A. No.

10 Q. Okay. And this is a fairly large pipe? I mean it
11 was big enough for you to stand on it and use it as a
12 bridge, correct?

13 A. Yes.

14 Q. And it didn't fall apart while you were standing on
15 it, did it?

16 A. No.

17 Q. I just want to make sure. Claude told you there was
18 sewage coming up under his house from that pipe, correct?

19 A. Yes. From the sewer pipe.

20 Q. Sewer pipe?

21 A. Yes.

22 Q. Well, the reason I said that is because in your
23 deposition you said, 'that pipe', but you were referring
24 to the sewer pipe, correct? Okay. Let me try this again.

25 A. Okay.

1 Q. The reason I said 'that pipe' is because in your
2 deposition you said 'that pipe'?

3 A. Okay?

4 Q. But when you say 'that pipe' you're referring to that
5 sewer pipe that we just discussed? The one you can see in
6 the ditch? The one that he says goes under his house?

7 A. I mean you've asked me not to say what I don't know,
8 and I mean it seems obvious that that pipe goes under his
9 house. I know there is -- like I could smell sewer under
10 the house. Whether it's that pipe -- I don't know if
11 there are two pipes under there. I don't know where that
12 sewer comes from.

13 Q. Well, when Mr. Graham told you that the sewer under
14 his house is coming from that pipe that's what you
15 believed him to be referring to; isn't that correct? The
16 pipe that runs through the ditch and allegedly goes under
17 his house?

18 A. Again, I knew it was a sewer line from Rice Street.

19 Q. Okay. You actually used to go to church with the
20 Grahams; is that correct?

21 A. That's correct.

22 Q. And, your mother, is she still living?

23 A. Yes.

24 Q. She still lives right there across the street from
25 the Grahams?

1 A. Yes.

2 Q. Now, that deposition wasn't so long ago that you
3 don't remember it, am I right?

4 A. I remember it. Yes.

5 Q. Okay. And I think you said that you'd only been
6 deposed one other time. So it's not like you're going to
7 get confused as to which deposition I'm talking about?

8 A. Right. I think I can remember.

9 Q. All right. And I discussed two sets of photographs
10 with you during that deposition, didn't I?

11 A. Yes.

12 Q. Sixteen photographs you took in March of 2012, and 21
13 photographs you took in May of 2012, correct?

14 A. Yes.

15 Q. And I asked you, I said, "Are these all the
16 photographs that you've taken that are relevant to this
17 lawsuit?" Do you remember that?

18 A. I don't remember that.

19 Q. Okay. So you don't remember telling me that these
20 are the only photographs that you've provided in your role
21 in this lawsuit?

22 A. No. I did tell you those were the only ones I
23 provided.

24 Q. Okay. You didn't tell me though that you'd
25 apparently taken other photographs; is that right?

1 A. Is that right.

2 Q. Those are all the questions I have enter you.

3 THE COURT: Any redirect?

4 MR. WILLIAMS: Just a little bit, Your Honor.

5 REDIRECT EXAMINATION

6 BY MR. WILLIAMS:

7 Q. So the photographs that you looked at in certain
8 exhibits that did not show the manhole bubbling up, let me
9 ask you a few questions about that. Here is a picture
10 that does show the manhole cover? Yes, Plaintiff's
11 Exhibit Number 11, right?

12 A. Yes, sir.

13 Q. Is that because you can't see the sewage bubbling up
14 only overflowing if it's ---

15 MR. PLYLER: Objection, Your Honor. Leading.

16 BY MR. WILLIAMS:

17 Q. Describe if you can the relationship between the
18 water level and the sewage level relative to the ability
19 to see the manhole boiling up?

20 A. If it's too deep you can't see it. It's not a --
21 it's not coming up a foot high or 2 feet high. It's only
22 a few inches that's bubbling out. Also, if the water is a
23 foot deep you wouldn't see it coming out until it got down
24 which is about this level.

25 Q. So every photograph that covers the area where the

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

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

5 THE COURT: Rephrase the question.

6 BY MR. WILLIAMS:

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

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

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

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

16 THE WITNESS: Say it again.

17 BY MR. WILLIAMS:

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

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

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

25 A. Yes, sir.

1 Q. What does the level of the water have to do with your
2 ability to smell the sewage if anything?

3 A. Well, it dilutes it. When you have a lot more water
4 it's more diluted. I mean you just wouldn't smell it. It
5 wouldn't be as obvious.

6 Q. Thank you.

7 MR. WILLIAMS: That's all I have.

8 MR. PLYLER: Your Honor, may I have a brief recross?

9 THE COURT: Yes, sir.

10 RECROSS-EXAMINATION

11 BY MR. PLYLER:

12 Q. I think I just have one or two questions Mr. Henry.
13 If the water is so high you can't see how the manhole
14 bubbling how do you know it was bubbling?

15 A. When it goes down.

16 Q. You didn't go back out and take pictures of it when
17 it went down, did you?

18 A. No.

19 Q. All right. That's all the questions I have for you.

20 MR. WILLIAMS: May the witness be excused, Your
21 Honor?

22 THE COURT: Yes, you may step down and you may be
23 excused. Thank you.

24 MR. WILLIAMS: We call Danielle Watson.

25 DANIELLE WATSON, after being duly sworn,

1 testified as follows:

2 CLERK OF COURT: Be seated. State your full name for
3 the Court spelling your last.

4 THE WITNESS: Danielle Renee Watson. W-A-T-S-O-N.
5 D-A-N-I-E-L-L-E.

6 THE COURT: Yes, sir.

7 DIRECT EXAMINATION

8 BY MR. WILLIAMS:

9 Q. Good morning?

10 A. Good morning.

11 Q. Tell the jury where you live and what you do for a
12 living?

13 A. I live in Marion County out in Tiptonville. And I
14 work for the Department of Health and Environmental
15 Control.

16 Q. And what is your position with the Department of
17 Health and Environmental Control?

18 A. I'm an Environmental Health Manager Two.

19 Q. Okay. Everybody calls that D.H.E.C?

20 A. Yes, sir.

21 Q. Okay. And what in general is D.H.E.C. responsible
22 for?

23 A. The department that I work for, we are environmental
24 compliance.

25 Q. Okay. And how long have you worked for D.H.E.C?

1 A. Twenty-four years.

2 Q. And what is your educational background?

3 A. Biology degree, B.S. degree, and Associate's degree
4 in human services.

5 Q. And tell me exactly what you do in connection with
6 your duties, and if you will focus on the period from the
7 2000s forward?

8 A. Okay. I am a compliance officer. I do the waste
9 water, storm water and industrial water and emergency
10 response.

11 Q. Okay. Is the Town of Latta within your jurisdiction?

12 A. Yes, sir.

13 Q. Okay. How long has it been within your jurisdiction?

14 A. Since I've worked with D.H.E.C.

15 Q. The whole time?

16 A. Yes, sir.

17 Q. Okay. Are there other people that are responsible
18 for the Town of Latta? Or is it just you or other people
19 in your -- in D.H.E.C. that look after Latta?

20 A. Yes, sir. We have several people.

21 Q. Okay. And what kind of skills do they have?

22 A. That I work with?

23 Q. Yes, ma'am.

24 A. Okay. We have another person that handles the
25 drinking water, and we have a solid waste person. And

1 whatever permits that Latta has we have somebody that will
2 handle those permits.

3 Q. And are those people subordinates of yours or equals
4 of yours?

5 A. Equals.

6 Q. Or in different departments?

7 A. Equals.

8 Q. Okay. And precisely what are your duties with
9 respect to the Town of Latta's waste water system?

10 A. I am the facility evaluator. I evaluate the waste
11 water facility, the collection system, their storm water
12 permit.

13 Q. Okay. And tell the jury what the difference between
14 storm water and waste water is?

15 A. Storm water would be what's coming out of the sky,
16 falling on the ground and how you handle it. In certain
17 areas waste water is, of course, sewage that you get rid
18 of. Flushing the commodes, washing, anything that's a
19 waste.

20 Q. With there been any defects in the Town of Latta's
21 sewage collection and disposal system prior to September
22 2008?

23 A. Yes, sir.

24 Q. In general what were the nature of the defects?

25 A. They had some infiltration problem. They've had some

1 compliance problems before with their waste water.

2 Q. What's an infiltration problem?

3 A. That's where water that's outside of the system is
4 getting into the system.

5 Q. Okay. Outside of which system getting into the
6 system?

7 A. Outside of the waste -- outside of the sewer system.

8 Q. And so are you saying that the water outside of the
9 sewage system gets into the sewage system or are you
10 saying that the sewage system gets into the water outside
11 the sewer system?

12 A. Well, it can go both ways.

13 Q. Both ways?

14 A. Yes, sir.

15 Q. Of those two which one is bad?

16 A. Well, neither one of them is good. We don't like to
17 see, because when you have water getting in your system
18 then you're having to treat water that is actually not
19 what you want to treat because it's very costly to treat
20 water. So any time you can keep water from getting in
21 your system you don't want it in there. So that's not
22 good, but then you don't want it to come out either
23 because it's, you know, a hazard.

24 Q. A health hazard?

25 A. Sure.

1 Q. When D.H.E.C. discovered those D.H.E.Cs -- those
2 defects -- when D.H.E.C. discovered the defects did your
3 or did you not advise the Town of the Latta about that?

4 A. Sure we did.

5 Q. How did you do that?

6 A. We have set up meetings with the Town and talked to
7 them about that. If it was found during an inspection it
8 was written up in the inspection. If it was on their
9 D-M-Rs, if they didn't pass their certain perimeter, then
10 it was addressed in a letter to them. There are several
11 different ways we can process that.

12 Q. And did D.H.E.C. or did it not make recommendations
13 to the Town of Latta on what to do?

14 A. I wouldn't call them recommendations. What we call
15 them is they have to be in compliance.

16 Q. Okay.

17 A. With their permit.

18 Q. Okay. So that's stronger than a recommendation,
19 correct?

20 A. Yes, sir.

21 MR. PLYLER: Objection, Your Honor.

22 THE COURT: Sustained. Rephrase.

23 BY MR. WILLIAMS:

24 Q. You were reluctant to use the phrase,
25 'recommendation'. What word would you use instead of

1 recommendation?

2 A. Compliance.

3 Q. Okay. Explain what you mean by that?

4 A. Compliance is they have a permit that they are under.
5 And they have to comply with that permit. They have to,
6 in other words, do what's in that permit to meet our
7 standards. And if they don't then they're not in
8 compliance.

9 Q. Okay. How does D.H.E.C. notify the Town that it
10 needs to get into compliance?

11 A. Usually by a letter.

12 Q. And did you all write letters to the Town of Latta
13 prior to September of 2008?

14 A. Sure there have been letters.

15 Q. Approximately how many?

16 A. I have no idea of how many.

17 Q. More than half a dozen, correct?

18 A. I'm not sure. I can't answer that.

19 Q. Do you know what the content of those recommendations
20 were?

21 A. If they were ---

22 Q. Those compliance efforts?

23 A. If they were associated with a inspection that I did
24 then it was a notice of violation. In those letters they
25 note what the violations are and what they have to do to

1 comply.

2 Q. And have all of those violations been completely
3 corrected?

4 A. I'm not real sure what you're asking.

5 Q. Did some of those violations continue to this date or
6 not?

7 MR. PLYLER: Your Honor, I'm really biting my tongue
8 here, but I'm not sure how this is relevant. We're
9 getting some irrelevant material here.

10 THE COURT: What's the relevance?

11 MR. WILLIAMS: Let me withdraw that question and move
12 in a different angle, okay.

13 BY MR. WILLIAMS:

14 Q. Forget that question?

15 A. Okay.

16 Q. September 6th of 2008, were you summoned or asked to
17 come to the Town of Latta?

18 A. If this was -- I don't remember the date, but I was
19 called during an event, a rain event, that was causing
20 problems in the Town, and yes, Latta did call me to come.

21 Q. Okay. Did you go to or meet Mr. and Mrs. Claude
22 Graham, my clients, the Plaintiff's in this case?

23 A. I don't remember meeting them on certain dates, but I
24 did go to the Town and I met with some Town people.
25 Sometimes I meet with clients that are having problems. I

1 don't remember the dates.

2 Q. Did there come a time when you went to the Grahams
3 house?

4 A. Yes, sir.

5 Q. Tell the jury what you remember about going to the
6 Graham's house?

7 A. I went because the Town called me and said they were
8 having a problem with the line overflowing on that street.
9 They got down into the yard cause it's lower than the
10 street, and it had gotten under his house and I went to
11 look, observed it. See what was going on.

12 Q. How long after the rain event, for lack of a better
13 word, was it that you were there? Was it in a matter of
14 days or hours or weeks?

15 A. The day they called me.

16 Q. Okay. All right. And what did -- what precisely did
17 you observe? How deep was the water?

18 A. It was pretty extensive. In fact, I mean the Town
19 was inundated with water. They had a large rain event,
20 and they were having drainage problems and the sewer line
21 was inundated with water overflow. Storm water got in and
22 it had caused overflows over the Town.

23 Q. Storm water got into the sewage system?

24 A. Yes, sir.

25 Q. Which filled up the sewage line, and then the sewage

1 line, it started spewing out of it? Is that basically
2 what happens?

3 A. Yes, that were overflowing.

4 Q. Okay. So did you see -- I'm going to call it sewage
5 material. By that I mean fecal matter; toilet paper or
6 over cloth paper items; that sort of thing?

7 A. There was some debris, yes, sir, in areas.

8 Q. You saw that yourself?

9 A. Yes, sir.

10 Q. Including at the Graham's property?

11 A. Yes, sir.

12 Q. Okay. Did you go up under the house?

13 A. No. That's a confined space, we're not allowed to
14 go. No.

15 Q. Okay.

16 A. I did look under it.

17 Q. Okay. When did you observe when you looked under
18 there?

19 A. I mean it was water or sewer under the house. It was
20 wet and

21 Q. Were you able to tell how deep that sewage water had
22 been?

23 A. No.

24 Q. You couldn't see a line under, say ---

25 A. I don't recall seeing a line.

- 1 Q. Okay.
- 2 A. But I know it was wet.
- 3 Q. How deep was it when you were there?
- 4 A. I'm not real sure. I don't remember to tell you the
- 5 truth.
- 6 Q. Okay.
- 7 A. It's been a while.
- 8 Q. If you don't remember you don't remember. Whose
- 9 responsibility is it to maintain, operate, install,
- 10 correct, etc. a municipal sewage system?
- 11 A. The owner of the sewer system.
- 12 Q. In the case of Latta who is the owner of the sewer
- 13 system?
- 14 A. It would be the Town of Latta.
- 15 Q. Town of Latta, okay. Did you discuss with any
- 16 officials of the Town of Latta its responsibilities with
- 17 respect to the Grahams?
- 18 A. Yes, sir.
- 19 Q. Pardon?
- 20 A. Yes, sir.
- 21 Q. What -- who did you talk about it with?
- 22 A. The Mayor.
- 23 Q. Okay.
- 24 A. And the Operator.
- 25 Q. I'm sorry. Mayor and the Operator?

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

1 Q. And where those studies done to your knowledge?

2 A. I know a smoke and stuff was done. Yes.

3 Q. Have you the problems that were identified been
4 corrected to your satisfaction?

5 A. Some of them have, but not all of them that I know
6 of.

7 Q. Were you present in the courtroom and heard some
8 testimony about sewage overflow occurring as recently as
9 June of this year?

10 A. Yes, sir.

11 Q. Is that consistent with your understanding of the
12 situation in Latta?

13 A. There was some problems and in the area that caused.

14 Q. That's all the questions I have. Thank you,
15 Miss Watson.

16 THE COURT: Any cross?

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

19 THE COURT: Yes.

20 CROSS-EXAMINATION

21 BY MR. PLYLER:

22 Q. Hello, Ms. Watson?

23 A. Hello.

24 Q. We met recently, didn't we?

25 A. Yes, sir.

1 Q. September 26th of this year, correct?

2 A. I think so.

3 Q. Talked about this case, right?

4 A. Yes, sir.

5 Q. Now, let's talk about September 5th/6th of 2008. I
6 know you're a little fuzzy on the date, but the big rain
7 event?

8 A. Um huh?

9 Q. Would you agree with me that that was a big rain
10 event in Latta?

11 A. Yes, it was.

12 Q. And they had flooding all over the Town of Latta?

13 A. Yes.

14 Q. The had multiple places where this system overflowed,
15 unfortunately?

16 A. Yes, they did.

17 Q. Now, I think you said a minute ago that you deal with
18 two permits for the Town of Latta; is that right?

19 A. Yes, sir.

20 Q. You deal with the waste water permit?

21 A. Yes, sir.

22 Q. And then you said the storm water permit?

23 A. Which is industrial storm water.

24 Q. Right. It's a little more than just storm water;
25 isn't it? It's a specific location of the Town that you

1 deal with the storm water permit, correct?

2 A. Yes, sir.

3 Q. Only for the waste water treatment facility; isn't
4 that right?

5 A. That's correct.

6 Q. In fact you don't actually permit the storm water
7 system going through Latta, do you?

8 A. No, sir.

9 Q. Okay. I just to make sure we're clear. The Town has
10 one waste water treatment facility, correct?

11 A. Correct.

12 Q. And they're waste water system is primarily gravity
13 driven; is that correct?

14 A. It has some forced movement, but mostly gravity.

15 Q. Okay. And just to help me and the jury understand
16 this a little better when you say, 'gravity driven' we're
17 saying it runs downhill?

18 A. Yes, sir.

19 Q. Okay. And it's running downhill through the Town to
20 the waste water treatment facility, correct?

21 A. Yes, sir.

22 Q. All right. So the waste water treatment facility is
23 the end of the line, so to speak?

24 A. Yes, sir.

25 Q. Okay. And you permit the storm water at the waste

1 water treatment facility?

2 A. Yes, sir.

3 Q. Okay. So you don't do a permit inspection dealing
4 with storm water throughout the Town?

5 A. No, sir.

6 Q. I want to make sure that was clear. Now, when I
7 deposed you in September 26th 2012 I told you that you'd
8 been named as a witness in this case, right?

9 A. Yes, sir.

10 Q. I think you told me that you suspected that was going
11 to happen, but you didn't actually know you had been named
12 as a witness; is that correct?

13 A. That's correct.

14 Q. Okay. All right. Now, the problems that you kind of
15 generally described with the Town's system the one that
16 would have relevance to the issue that happened in
17 September of 2008 that's the infiltration problem,
18 correct?

19 A. Yes, sir.

20 Q. And I just want to make sure we are right on this.
21 Infiltration is where roots and cracks and other things
22 happen in the system and water can find it's way in?

23 A. Yes, sir.

24 Q. Exfiltration is when things are coming out?

25 A. Yes, sir.

1 Q. So infiltration is different than exfiltration; am I
2 correct?

3 A. Um hum.

4 Q. Now, infiltration can eventually, assuming you have
5 enough water enter the system cause an overflow; is that
6 right?

7 A. Yes, sir.

8 Q. And you will agree with me that infiltration problems
9 are fairly common in municipal sewer systems; aren't they?

10 A. Yes, sir.

11 Q. In fact you do the Pee Dee region?

12 A. Yes, sir.

13 Q. And I think you have a superior -- what's his name?
14 Buck? Buck Graham?

15 A. Buck Graham.

16 Q. And he's the director for the Pee Dee region?

17 A. Yes, sir.

18 Q. And he kind of -- that's where the buck stops, so to
19 speak?

20 A. Yes, sir.

21 Q. Okay. And you inspect, I guess, a lot of waste water
22 permits in the Pee Dee region; is that right?

23 A. Yes, sir.

24 Q. And you would agree with me that of the
25 municipalities you inspect it's common to find

1 infiltration problems in the system?

2 MR. WILLIAMS: Objection. Relevance, Your Honor.

3 THE COURT: I'll ask you to rephrase the question.

4 MR. PLYLER: May I be heard on the issue, Your Honor?

5 THE COURT: I understand what you're claiming the
6 relevance is, but I think you can rephrase the question.

7 BY MR. PLYLER:

8 Q. Let me try it from a different angle. The
9 infiltration problems you have either documented or
10 observed for the Town of Latta, correct? You've seen
11 infiltration problems?

12 A. Yes, sir.

13 Q. You've been able to discover infiltration problems?

14 A. Yes, sir.

15 Q. And you agree with me that those are common problems
16 for municipal sewer systems, correct?

17 A. Yes, sir.

18 Q. And in your experience when you have identified a a
19 problem, D.H.E.C. has identified a problem with the waste
20 water system for the Town of Latta and then inform the
21 Town of Latta of it, in your experience they have be
22 responsive to that finding; is that correct?

23 A. Yes.

24 Q. And they have cooperated with you to try to fix that
25 problem; is that correct?

1 A. Yes, sir.

2 Q. Now, correct me if I'm wrong, but D.H.E.C, I think
3 you told me, adopts the E.P.A. regulations?

4 A. Yes, sir.

5 Q. Okay. And the E.P.A. regulations are passed for the
6 public good; is that correct?

7 A. Yes, sir.

8 Q. All right. And the permit that you issued for the
9 Town's waste water system is in the interest of enforcing
10 the E.P.A. regulations, right?

11 A. Yes, sir.

12 Q. So those regulations and that permit are designed for
13 the public good; is that correct?

14 A. Yes, sir.

15 Q. Now, waste water system overflows are not uncommon,
16 are they?

17 A. No, sir.

18 Q. For any municipal waste water system; is that
19 correct?

20 A. Yeah, that is correct.

21 Q. And this isn't the first incident where you have seen
22 an overflow go under somebody's house?

23 A. No, sir.

24 Q. In fact you've seen quite a few of those; is that
25 right?

1 A. Yes, sir.

2 Q. And those overflows can be cleaned, correct?

3 A. Yes, sir.

4 Q. In fact D.H.E.C. maintains a contractor's list, I
5 think you said, won't recommend but you will suggest
6 people to use to perform that cleanup; is that correct?

7 A. We usually try to get the closest contractor and give
8 them at least three names that can do the work and then
9 it's up to them to get the contract ---

10 Q. Right.

11 A. --- if they want to do that.

12 Q. But you do it from a list, I think you said hundreds
13 of names?

14 A. Yes, sir.

15 Q. And it's not just to pump the water out from under
16 the house, is it?

17 A. No, sir.

18 Q. Okay. This is actually sanitizing and cleaning the
19 overflow, correct?

20 A. Yes, sir.

21 Q. And you gave some of those names, three of those
22 names or however many, to the Town of Latta following the
23 September 2008 event, correct?

24 A. Yes, sir.

25 Q. Now, did you do any testing of the water -- or excuse

1 me. You did not do any testing, did you, of the water
2 underneath the Graham's house that you saw?

3 A. No, sir.

4 Q. Okay. And I am correct, am I not, that D.H.E.C.
5 considers any time sewage mixes with storm water that all
6 of it is sewage?

7 A. Yes, sir, all of it is sewage.

8 Q. And no threshold on how much sewage has to go into
9 it, right?

10 A. No, sir.

11 Q. So you've got a million gallons of storm water and
12 one gallon of sewage and that's sewer, isn't it?

13 A. Yes, sir.

14 Q. The dilution doesn't matter, does it?

15 A. No, sir.

16 MR. PLYLER: With the Court's indulgence. Your
17 Honor, we do have one document that I would like to get
18 premarked as an exhibit that we did not realize we were
19 going to be entering. This is from her file, and
20 obviously, it would be subject to her identifying it. But
21 for the Court's edification.

22 THE COURT: You want it marked as a Defense exhibit?

23 MR. PLYLER: Yes, Your Honor. I believe it would be
24 Number 14.

25

1 (WHEREUPON, Defendant's Exhibit No. 14 was marked for
2 identification only.)

3 BY MR. PLYLER:

4 Q. Now, Ms. Watson --

5 MR. PLYLER: May I approach the witness, Your Honor?

6 THE COURT: Yes, sir.

7 BY MR. PLYLER:

8 Q. Ms. Watson, I'm going to hand you what's been marked
9 as Defense's Exhibit 14. Tell me, without reading
10 anything out loud yet, tell me if you recognize that
11 document?

12 A. Yes, sir.

13 Q. What is this document?

14 A. It's our recommendations for sewer clean up in
15 residential homes.

16 Q. And when you say 'ours' you're talking about D.H.E.C.

17 A. Yes, sir.

18 Q. Is this a standard form that D.H.E.C. keeps?

19 A. Yes, sir.

20 Q. And is this a form that you would hand out to home
21 owners?

22 A. We hand it out to home owners, towns and
23 municipalities. Whatever that need one.

24 Q. Okay. And this is regularly maintained in D.H.E.C.
25 records?

1 A. Yes, sir.

2 Q. Okay. You are familiar with the document? This
3 isn't the first time you've seen it?

4 A. No, sir, this is not the first time I've seen it.

5 Q. Okay:

6 MR. PLYLER: Your Honor, I'd like to offer this
7 document into evidence at this time.

8 THE COURT: Any objection?

9 MR. WILLIAMS: No, Your Honor.

10 THE COURT: It's admitted.

11 (WHEREUPON, Defendant's Exhibit No. 14 was admitted
12 into evidence.)

13 BY MR. PLYLER:

14 Q. Now, this document lists the recommendations that
15 D.H.E.C. provides to, I guess, the residential home owners
16 of what needs to be done following a sewer overflow or
17 backup; is that correct?

18 A. Yes, sir.

19 Q. It includes all furnishings, especially rugs, should
20 be discarded. Now, to your knowledge does that mean that
21 the sewage actually gets into the rug?

22 A. Yes, sir:

23 Q. Okay. So if the sewer didn't get into the rug or
24 didn't get into, let's say, the living area of a home then
25 that would need to be discarded, wouldn't it?

1 A. No, sir.

2 Q. And all non-porous surfaces which haven't been
3 damaged by water should be washed down with a disinfectant
4 solution? What is that?

5 A. It means if it's like the floors or porcelain or
6 something that is not porous that can absorb water can be
7 disinfected.

8 Q. And that means if its been actually inundated with
9 this sewer, correct?

10 A. Um hum.

11 Q. Is that a yes?

12 A. I'm sorry. Yes, sir.

13 Q. All right. All right. Now, Number Three says,
14 "Prior to doing any work within crawl spaces it is
15 suggested that the soil be treated with a disinfectant to
16 reduce the risk of disease transmission or impairment.
17 The nature and extent of this treatment will depend on the
18 amount of waste water/fecal material that could have
19 entered the crawl space through the floor above;" is that
20 right?

21 A. Yes, sir.

22 Q. You know what that disinfectant is?

23 A. You can -- well, there are several. Anything that
24 would be -- that could kill bacteria.

25 Q. And I skipped one there, but Number Two talks about

1 insulation, if its been exposed to the sewage it should be
2 replaced; is that right?

3 A. Yes, sir.

4 Q. All right. And I don't mean to skip around too much,
5 but that second sentence that starts with 'even' and under
6 comments it says, "The saturated insulation materials
7 could pose a mold/mildew problem as it is unlikely to dry
8 out in the crawl space. Such a problem could adversely
9 affect an individual's health," correct?

10 A. Yes, sir.

11 Q. And that's one of the reasons that D.H.E.C recommends
12 that if that insulation has been exposed to sewer get it
13 on out of here?

14 A. Right.

15 Q. Did you see insulation under the Graham's house when
16 you looked under it that day? And I know I'm asking you
17 to go back four years.

18 A. I don't remember.

19 Q. That's fine.

20 A. Usually there is, but to say, I don't remember.

21 Q. Well, let's just assume for a minute that there is.
22 Do you know if that insulation has been discarded?

23 A. I do not know.

24 Q. And then Number Four. It deals with the H.V.A.C.
25 system; is that correct?

1 A. Um hum.

2 Q. And the -- is that a yes?

3 A. Yes, sir.

4 Q. That's all right. I'm just afraid she'll take it
5 down wrong. That's okay. And deals with the duct work
6 dealing with those H.V.A.C. systems; is that right?

7 A. Yes, sir.

8 Q. And that y'all recommend those be removed and
9 replaced instead of trying to be disinfected; is that
10 correct?

11 A. Yes, sir.

12 Q. But it's also dependent upon the specific heating
13 unit in the house?

14 A. That is correct.

15 Q. And I'm assuming y'all let the H.V.A.C. repairmen
16 make that decision?

17 A. Yes, sir.

18 Q. Okay. But that's the recommendation?

19 A. Yes, sir.

20 Q. Did I miss any other recommendations on this list?
21 Take your time.

22 A. I don't see any.

23 Q. I sure appreciate your time. Please answer any
24 additional questions Mr. Williams has.

25 THE COURT: You may redirect.

1 MR. WILLIAMS: Just a few, Your Honor.

2 REDIRECT EXAMINATION

3 BY MR. WILLIAMS:

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

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

9 Q. Anywhere in the area?

10 A. Um hum. Yes, sir.

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

13 A. Pretty much.

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

16 A. Yes, sir.

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

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

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

1 and responsibilities.

2 BY MR. WILLIAMS:

3 Q. Have you observed whether conditions in Dillon County
4 to be significantly different from weather conditions in
5 Marion County?

6 A. Sometimes. Sometimes it's different. Sometimes it's
7 not.

8 Q. I understand a particular day's weather, but I'm
9 talking about just conditions in general?

10 A. Usually they're about the same.

11 Q. Okay. Does the significance of a rain event
12 diminish, alter or increase a town's responsibility to
13 maintain their sewage system?

14 A. Can you say that again?

15 Q. Does a significant rain event affect a town's
16 responsibility to maintain and operate their sewage system
17 in a healthy and environmentally clean way?

18 A. They should be able to maintain their system.
19 Sometimes rain events or storm events causes problems in
20 the systems that the system is not able to take care of.

21 Q. Okay. In this area of the State are significant rain
22 events a predictable occurrence?

23 MR. PLYLER: Your Honor, objection. It's leading.
24 Again, we're getting into opinion testimony. She hasn't
25 been qualified as an expert..

1 THE COURT: Rephrase the question.

2 BY MR. WILLIAMS:

3 Q. In your experience is a significant rain event a rare
4 thing or does that happen with some frequency even though
5 not a predictable frequency?

6 MR. PLYLER: Objection, Your Honor. That's lay
7 opinion.

8 THE COURT: Overruled.

9 BY MR. WILLIAMS:

10 Q. You may answer the question?

11 A. Ask the question again.

12 Q. Do you know or do you not know whether a significant
13 rain event is going to happen periodically around here?

14 A. Sometimes you know, yeah. A lot of times you do
15 know?

16 Q. I'm talking about looking forward ---

17 A. You mean like ---

18 Q. From now for the next, let's say three to five years
19 out in the future, do you think we're going to have some
20 significant rain events?

21 A. I don't ---

22 MR. PLYLER: Your Honor, this is speculation and lay
23 opinion.

24 MR. WILLIAMS: Let me rephrase the question.

25 BY MR. WILLIAMS:

1 Q. Looking back in the past for the last three to five
2 years ---

3 A. Um hum.

4 Q. --- I want to let you look back at all 24 years since
5 you've been working with D.H.E.C.

6 A. Okay.

7 Q. Have there been almost no significant rain events?
8 Or very, very few significant rain events? Some
9 significant rain events? Or fairly common to have a
10 significant rain event?

11 THE COURT: Overruled.

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

15 Q. Are you or Mr. Plyler or I in a better position to
16 predict that there will be significant rain events than
17 you are? Does it require any special knowledge?

18 A. Well, I guess if you were a meteorologist it would be
19 easier for you to predict it, but I'm not one of those.

20 Q. I'm not talking about what day they will happen on.
21 I'm just saying that they will happen.

22 A. Well, most of the time, yes, they will happen.

23 Q. And if you build a house or sewer system or waste
24 water system or storm water system is the occurrence of
25 significant rain events something you should plan for?

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

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

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

11 THE COURT: Overruled.

12 BY MR. WILLIAMS:

13 Q. You may answer the question?

14 A. Can your ask the question again?

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

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

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

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

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

7 A. Yes, sir.

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

10 A. Yes, sir.

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

14 A. Stuff that cannot absorb water.

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

17 A. Anything that would be able to absorb water.

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

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

21 Q. Gases. Smelly gases?

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

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

25 MR. PLYLER: Objection, Your Honor.

1 THE COURT: She can answer if she knows.

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

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

11 A. Yes, sir.

12 Q. Is that about right?

13 A. Yes, sir.

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

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

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

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

24 THE COURT: I sustain the objection.

25 BY MR. WILLIAMS:

1 Q. Does D.H.E.C. recommend -- please state whether or
2 not D.H.E.C. recommends that people put that kind of money
3 into a cleanup if a predictable rain event is going to
4 start it up all over again?

5 A. We do not recommend -- we can't tell people what --
6 how many money they spend in cleaning up. We don't -- we
7 tell them how it should be done, and it's their choice to
8 do it. They can do it. If they don't choose to do it
9 then they don't choose to do it.

10 Q. Okay. That's all I have. Thanks.

11 A. Okay.

12 MR. WREN: Your Honor, may I just briefly cross?

13 THE COURT: Yes, sir.

14 RECROSS-EXAMINATION

15 BY MR. WREN:

16 Q. Miss Watson, when I was talking to you a few minutes
17 ago you mentioned that you had seen other events where
18 houses have had sewage overflows underneath them?

19 A. Yes, sir.

20 Q. Now, were those houses bulldozed?

21 A. No, sir.

22 Q. Were the people living in them after the clean up?

23 A. Yes, sir.

24 Q. Have you ever heard of Febreeze?

25 A. Yes, sir.

1 Q. What does it do?

2 A. Supposedly it takes away odors in fabrics and stuff.

3 Q. That's all the questions I have for you. Thank you.

4 MR. WILLIAMS: One follow-up question on that.

5 FURTHER REDIRECT EXAMINATION

6 BY MR. WILLIAMS:

7 Q. Have you ever seen a house as he just asked you about
8 that had a sewage line running through the property where
9 the house is located?

10 MR. PLYLER: Objection, Your Honor.

11 THE COURT: It's outside the scope of the question.
12 I sustain the objection.

13 BY MR. WILLIAMS:

14 Q. The houses that you just described did any of them
15 include a sewage line running underneath the house or
16 through the property the house was located on?

17 MR. PLYLER: Same objection, Your Honor.

18 THE COURT: Sustained.

19 MR. WILLIAMS: I'm sorry.

20 THE COURT: I sustain the objection.

21 MR. WILLIAMS: Thank you, Your Honor.

22 THE COURT: You may step down.

23 MR. WILLIAMS: May Ms. Watson be excused, Your Honor?

24 THE COURT: You may be excused. Thank you. You may
25 call your next witness.

1 MR. WILLIAMS: I call Vickie Graham.

2 VICKIE GRAHAM, after being duly sworn, testified
3 as follows:

4 CLERK OF COURT: Have a seat in the witness box.
5 state your full name for the Court spelling your last,
6 please, ma'am.

7 THE WITNESS: Vickie Buster Graham. G-R-A-H-A-M.

8 DIRECT EXAMINATION

9 BY MR. WILLIAMS:

10 Q. Obviously, you're Vickie Graham as the jury knows,
11 correct?

12 A. Correct.

13 Q. And where did you grow up, Vickie?

14 A. My father was in the Air Force so I was all around
15 Myrtle Beach, Germany, Washington D.C, Virginia. I live
16 in a lot of different areas.

17 Q. Okay. Describe your educational background and your
18 work history?

19 A. I graduated from Robert E. Lee High School in
20 Springfield, Virginia. And then I went to the University
21 of South Carolina, and I taught English for four years and
22 then I took more courses and became a librarian in Latta.

23 Q. And when you say, 'librarian in Latta' is that for
24 the Town library or a school library?

25 A. A school library.

- 1 Q. What school was that?
- 2 A. Latta Elementary School.
- 3 Q. And how long were you a librarian at Latta Elementary
- 4 School?
- 5 A. I was a librarian at the school for 31 years.
- 6 Q. So it's a total of 35 years with the school system?
- 7 A. Yes, sir.
- 8 Q. In Latta?
- 9 A. Yes, sir.
- 10 Q. Okay. Do you have any children? Do you and Claude
- 11 have any children?
- 12 A. We have one daughter.
- 13 Q. How old is she?
- 14 A. She's -- she will turn 38 soon.
- 15 Q. Okay. And when were you and Claude married?
- 16 A. We were married in 1970.
- 17 Q. Okay. During the 35 years you were teaching where
- 18 did you live?
- 19 A. Well, we started out in Dillon and then we moved over
- 20 to Latta. And the remainder of the time was in Latta.
- 21 Q. When you moved to Latta did you move to 220 East Rice
- 22 Street or did you have another house in Latta?
- 23 A. We rented a house at the beginning and then we -- my
- 24 husband, his uncle built a house and then we moved to the
- 25 one on Rice Street.

1 Q. Describe the house on Rice Street. We know -- we've
2 seen the pictures from the outside. Tell us about the
3 inside of the house?

4 A. Well, it was two bedrooms upstairs and one bedroom
5 and a little office downstairs which was good for him.
6 And it had a living room, a dining room and a den. It was
7 a nice house.

8 Q. How big were the rooms?

9 A. They were spacious.

10 Q. How were they trimmed out?

11 A. You mean like molding.

12 Q. Yes, ma'am.

13 A. Most of them had molding in them. It was there when
14 we bought it. Nice moldings around the ceiling.

15 Q. And how was it decorated? What did you do with
16 respect to the furniture, the drapes, etc?

17 A. Well, I had, you know, wooden blinds in the house and
18 I just chose furniture that I liked and that my husband
19 liked. And that's how I decorated.

20 Q. How would you describe the quality of that house if
21 you were telling somebody far away over the phone. You
22 just wanted to just use words to describe the quality of
23 the house. How would you describe it?

24 A. I would say it was a very nice house. It was a nicer
25 house than I ever thought I'd ever live in. Just kind of

1 like my dream house.

2 Q. Okay. How does it compare in terms of comparing it
3 to other houses in Dillon County? Not by anybody's name,
4 but just ...

5 A. Right. I would say it's nice as other people -- you
6 know, a lot of other people's houses and maybe nicer than
7 some.

8 Q. Do you know of any that are nicer?

9 A. I do know of some that are nicer, but you know, I
10 thought mine was very nice.

11 Q. Okay. When you bought the house it was put in your
12 name, is that correct?

13 A. That is correct.

14 Q. Before you bought it did you -- describe to the jury
15 what you did as far as walking around looking at the
16 property, looking at the house?

17 A. I'm sure we walked around the yard. The yard was
18 over run by shrubbery. I mean it was full of shrubbery.
19 The lady who owned it perviously had a gardener, and so
20 there was shrubbery everywhere. It was beautiful. And,
21 you know, I'm sure I walked around the backyard a little
22 bit and went in the house one time before we bought it.

23 Q. Did you, when you were considering buying it and when
24 you bought it, did you know there was a ditch that was the
25 back property line?

1 A. I'm sure I knew that there was a ditch back there. I
2 didn't go looking in no ditch because, you know, I just
3 don't do that, but there are ditches everywhere in Latta.

4 Q. Okay. Did you or did you not know whether there was
5 a sewer line anywhere near your house?

6 A. I had no idea there was a sewer line. I would never
7 have bought that house.

8 Q. Did you know that there was a pipe cutting across the
9 ditch?

10 A. I did not know that.

11 Q. When did you learn that there was a sewer line at
12 your house?

13 A. We had trouble with the toilets and we got a plumber
14 to come. And then at some point in time someone told my
15 husband that there was a sewer line.

16 Q. And he told you?

17 A. And he told me, and I was horrified.

18 Q. All right. Did there come a point when you learned
19 that the Town believed it had an easement for that sewer
20 line?

21 A. I believe that was brought to light.

22 Q. Okay. Did there come a time when you determined that
23 the Town did not in fact have an easement?

24 A. Yes, sir.

25 MR. WREN: Objection, Your Honor. This is getting a

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

3 THE COURT: Rephrase the question.

4 BY MR. WILLIAMS:

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

7 A. Yes.

8 Q. When was that?

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

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

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

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

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

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

20 A. Okay.

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

23 A. Yes, sir.

24 Q. You remember it was amended at one point?

25 A. Right.

1 Q. That I amended it?

2 A. Yes, sir.

3 Q. Was it before that day?

4 A. It was before that day. Yes, sir.

5 Q. Was it a long time before that day or a few weeks or
6 a few months?

7 A. I just don't know how long it was before.

8 Q. Did Mr. Rushton -- was it Mr. Rushton or was it I
9 that lead you to believe that the Town did not have an
10 easement?

11 A. I think it was you.

12 Q. Okay. Let me show you -- well, let me not do that.
13 Do you remember the events of September 5th and 6th 2008
14 that we're talking about here today?

15 A. Yes, sir.

16 Q. Tell the jury how you -- what happened when you woke
17 up that morning or in the middle of the night, whenever it
18 was?

19 A. Well, when I woke up and went to the back door and
20 opened the back door to -- I don't know if I was taking
21 the dog out of what, but there was water almost to come
22 into the door. I thought what in the world has happened
23 here. And then I went looking out the windows to see, you
24 know, where the water was and it was surrounding. And I
25 went to the front door and it was up on the steps and all.

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

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

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

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

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

21 Q. Is your porch a raised porch?

22 A. It is.

23 Q. Okay. How many steps, roughly?

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

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

1 porch?

2 A. It covered the flat part.

3 Q. Okay. But didn't reach up to the door?

4 A. No.

5 Q. Didn't reach other parts of the wood down there near
6 the door frame?

7 A. Right under it kind of. A little bit under.

8 Q. Okay. And again I don't want to belabor this point,
9 but was it just water or was it other stuff too?

10 A. It was other stuff too.

11 Q. Okay. No water -- I think Claude testified that no
12 water actually got inside the house; is that correct?

13 A. No, sir. no water came into the house.

14 Q. Okay. What all did -- what sort of precautionary or
15 other measures did you and he take that day and the next?

16 A. You mean as far as cleaning up?

17 Q. Yeah, cleaning up and tending to the situation?

18 A. Well, we had to wait until the water subsided so we
19 could get out, actually. And so as it went down we went
20 outside, and I think there was debris and stuff

21 everywhere. And I think I started washing down some of

22 the walls outside the -- under the carport and maybe

23 breaking up some. And he had to call somebody to see

24 about the duct work and all under the house.

25 Q. And when you say 'stuff' everywhere you're talking

1 about foul, filthy, disgusting stuff?

2 A. Yes, sir.

3 Q. Okay. After the water had subsided describe whether
4 there were or not odors?

5 A. There were odors.

6 Q. Did y'all stay in the house after? Did you get it
7 cleaned up any?

8 A. We did get it cleaned up some. We worked all that
9 afternoon trying to clean it up.

10 Q. Did you stay in the house?

11 A. Yes, we did.

12 Q. Okay. When you went out on the -- after the water
13 had subsided and wanted to go somewhere and tend to
14 things, did you observe your cars?

15 A. We did.

16 Q. Tell me the situation with your cars?

17 A. It was in the cars. The carpets and all were wet
18 inside the cars. And the Taurus and the Avalon, the two
19 cars, and you could see from, you know, around the cars
20 where like, I don't know, grass and whatever, you kind of
21 see the level that it had been.

22 Q. Did you have to drive anywhere even though your car
23 is in that condition?

24 A. I think we took the truck. I can't remember exactly,
25 but I think we took his truck.

1 Q. That's a third vehicle?

2 A. Right. Right.

3 Q. Okay.

4 A. I mean I know we took the car over to the Toyota
5 place, the Avalon, at some point in time because it was so
6 bad you couldn't stand the smell. And we took it over
7 there. We had to drive it over there to get it -- to get
8 them to try to decontaminate it.

9 Q. Okay. Anyway, after you got over the immediate
10 crisis of that weekend as I recall September 5th was a
11 Friday, and the 6th was a Saturday; is that correct?

12 A. Yes.

13 Q. Once you got over that weekend did you continue to
14 live in the house for a while?

15 A. We did. We didn't have anywhere else to go.

16 Q. And what if anything happened?

17 A. We kept getting sick. My husband and I kept getting
18 sick and our dog got sick. And we kept going back and
19 forth to the doctor and taking to dog to the vet and all.
20 And you know, we were on medication and all.

21 Q. What doctor did you go to?

22 A. Doctor Culpepper.

23 Q. Okay. And during what period of time did you go to
24 him?

25 A. Whenever we started getting sick.

1 Q. How long after the 5th and 6th?

2 A. Might have been a week, a couple weeks. I don't know
3 the exact date.

4 Q. Okay. As a result -- well, let me scratch the
5 question about Dr. Culpepper. While you were still living
6 in the house did any similar events happen?

7 A. They did.

8 Q. Tell me -- tell the jury about that?

9 A. Several more times, and I don't know the exact
10 number, but several more times we had it in your yard and
11 under our house again.

12 Q. As bad as the first time?

13 A. Maybe not quite as bad as the first time.

14 Q. Okay. And what did you all have to do to deal with
15 it each of those subsequent occasions?

16 A. Well, we -- I think the -- he tried to get the man to
17 come and look at the duct work again, but he said that
18 there is no point in doing anything about that as long as,
19 you know, this keeps happening. And we just tried to
20 clean up the yard as best we could. And I think lime was
21 put out or something at some point in time.

22 Q. Now, let me question you. During that time did you
23 yourself have any conversations with Mayor Brigman?

24 A. No.

25 Q. Okay. Now, let's return to your treatment by Dr.

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

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

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

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

12 MR. WILLIAMS: Thank you, Judge.

13 BY MR. WILLIAMS:

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

15 A. Okay.

16 Q. Just say what treatment you ---

17 A. I ---

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

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

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

24 A. We did.

25 Q. In great detail or just casually presented it?

1 A. You know, I think my husband spoke to him more about
2 that than I did.

3 Q. Okay. Did you discuss with -- did you discuss with
4 Dr. Culpepper your living situation?

5 A. I did. I'm sure I did.

6 Q. As a result of that discussion what did you and
7 Claude do?

8 A. We moved out of the house.

9 Q. And have you lived in the house since then, since you
10 moved out?

11 A. I have not been, no. I have not been back in the
12 house since 2009.

13 Q. Okay. Do you recall when it was that you moved out
14 the house?

15 A. We moved out, it was 2008 around November because my
16 brother knew we were all sick and the dog was sick. And
17 so he offered us a place to live. So we were able to move
18 into his house.

19 Q. And you said you hadn't been back in the house since
20 2009. Why were you in the house in 2009?

21 A. I went back occasionally to get some clothes out of
22 there. And then I had to go -- we had a copy machine
23 upstairs and make some copies from my Sunday school class.
24 So I went upstairs to make copies for my Sunday school
25 class and I got so I couldn't breathe. And I couldn't get

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

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

8 A. No, I didn't.

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

10 A. No. I'm scared.

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

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

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

16 A. I haven't seen him go in.

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

19 A. My brother.

20 Q. To your brother's house?

21 A. Right.

22 Q. And you lived there until when?

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

1 longer.

2 Q. For two and a half years, in effect, it was your and
3 Claude's sole residence?

4 A. Right. Right.

5 Q. Then your brother and his son needed to move back
6 into the house so you and Claude move somewhere else?

7 A. Right.

8 Q. Where did you move to?

9 A. We rented a house in Lynchville.

10 Q. Okay. How far was that from your brother's house
11 where you had been living?

12 A. Probably about six miles.

13 Q. Okay. And then at some point after Claude's mother
14 died y'all came back to Latta?

15 A. We came back to Latta. His mother had passed away,
16 and so his brother and sister said it was okay if we
17 stayed in that house. You know, we're fixing it up so
18 they could sell it. You know, they want to sell the
19 house, and so they said we could stay there until we got
20 to house fixed up.

21 Q. Okay. Had it ever been part of yours and Claude's
22 plans and goals to retire to the beach or go somewhere
23 other than Latta to live?

24 A. Our plan was to stay right in our house. That summer
25 we had just, you know, done some updating to the house

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

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

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

9 Q. Doctor Culpepper?

10 A. Doctor Culpepper.

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

13 A. Oh, okay. Yes, sir.

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

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

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

20 A. That's not part of that.

21 Q. Okay.

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

24 BY MR. WILLIAMS:

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

1 Defendant's Exhibit Number Four.

2 MR. WILLIAMS: Madam Clerk, let me look through your
3 stack.

4 BY MR. WILLIAMS:

5 Q. Okay. Is this a copy of Defendant's Exhibit Number
6 Four. Take a look at that. It's an aerial photograph.
7 Do you recognize it?

8 A. Yes, this is Rice Street.

9 Q. It's Rice Street?

10 A. Well, it's an aerial view of Rice Street and part of
11 Vail Street and all.

12 Q. Do you recognize what it depicts?

13 A. Well, I see my house.

14 Q. Okay. Are you looking at that picture can you tell,
15 not with the accuracy of a surveyor, but can you tell what
16 your lot lines are for your house?

17 A. Pretty much.

18 Q. Okay. Let me give you this marker, a black magic
19 marker, and ask you if you would to outline y'all's
20 property?

21 MR. WREN: Your Honor, only thing for housekeeping.
22 Is that the original exhibit?

23 MR. WILLIAMS: No.

24 MR. WREN: Okay.

25 MR. WILLIAMS: It's a copy.

1 MR. WREN: Thank you.

2 (WHEREUPON, the witness draws on the exhibit.)

3 BY MR. WILLIAMS:

4 Q. Okay. I think I understand. It's a little -- make
5 it a little bolder if you would?

6 MR. WREN: Your Honor, may I see the picture before
7 the questions are asked? May I approach ---

8 MR. WILLIAMS: Sure.

9 MR. WREN: --- to see the exhibit?

10 MR. WILLIAMS: My question is to make it a little bit
11 bolder. Make the lines a little bolder and easier to see.

12 THE WITNESS: Okay. I mean this may not be exact
13 cause I don't really ...

14 MR. WILLIAMS: Let me mark this if I can. I can mark
15 it for identification at this point as Plaintiff's next
16 exhibit.

17 MR. WREN: May I see that?

18 MR. WILLIAMS: Okay. All right. Madam Clerk.

19 (WHEREUPON, Plaintiff's Exhibit No. 18 was marked for
20 identification only.)

21 MR. WILLIAMS: Plaintiff's 18.

22 BY MR. WILLIAMS:

23 Q. Again, while you have a free hand, Plaintiff's 18.

24 So that we'll know later who made what lines if you would
25 put your initials right by -- anywhere on there right

1 along your property lines so we'll know those are the
2 lines that you drew. And they're represented by black
3 ink; is that correct?

4 A. Yes. Yes, sir.

5 Q. Okay.

6 MR. WILLIAMS: Your Honor, I'm not offering this into
7 evidence at this time. I'm just marking it for
8 identification. I'll tie it up later. And that's all the
9 questions I have. Thank you.

10 MR. WREN: Your Honor, may it please the Court. And
11 if we've got time.

12 THE COURT: How long to you anticipate?

13 MR. WREN: I will do it as quickly as I can, Judge.
14 It may be easier to finish the witness up.

15 THE COURT: We'll start and see how far we get.

16 MR. WREN: Thank you, Judge.

17 CROSS-EXAMINATION

18 BY MR. WREN:

19 Q. I was getting ready to say good morning, Ms. Graham,
20 but good afternoon. For our mutual accommodations and the
21 jury as well I'll do this as quickly as I can, okay. Ms.
22 Graham, you testified that your husband, Claude, or I've
23 inferred from your testimony that Claude was the one that
24 handled a lot of the issues and perhaps negotiations for
25 the purpose of your house on East Rice Street in Latta; is

1 that correct?

2 A. That is correct.

3 Q. And that house was purchased in 1989; is that right?

4 A. To the best of my knowledge.

5 Q. And that house actually is -- was purchased in your
6 name, correct?

7 A. Correct.

8 Q. Okay. The deed was in your name; is that right?

9 A. Correct.

10 Q. The house was purchased for \$60,000 purchased by Ms.
11 Vickie Graham, correct?

12 A. Correct.

13 Q. All right. Now, the same time you and your husband
14 were buying this house to live in together; is that right?

15 A. Yes, sir.

16 Q. You already testified to the fact that you had the
17 opportunity and if fact did walk around that property I
18 understood you to say before you purchased the house,
19 correct?

20 A. Correct.

21 Q. Okay. And at the time of purchase -- now, y'all
22 were -- you had purchase property before; is that right?

23 A. We had built a home.

24 Q. And it was on property that you purchased, correct?

25 A. It was my mother in law's property.

1 Q. Fair enough. At the time of the construction of that
2 house you watched and you saw what was done? You
3 inspected it; is that right?

4 A. Well, I saw it being built. I was away a lot of that
5 time. I was taking course at Winthrop.

6 Q. Okay. Well, let's say that you don't have much
7 experience at this. So in 1989 when you purchased the
8 house on East Rice Street you should have been very, very
9 cautious about checking out the house and making sure
10 things were in order and to your satisfaction before
11 buying it, correct?

12 A. You know, I just wanted the house. I mean I was
13 young. I don't know what you're referring to what I
14 needed to check out.

15 Q. How about this. Did you have a survey of the
16 property done?

17 A. Not that I know of. I mean my husband handled that.

18 Q. Yes, ma'am. And all I can do is ask you to the best
19 of your knowledge, right?

20 A. To the best of my knowledge I didn't have it done.

21 Q. Okay. And you didn't have a home inspection done,
22 did you?

23 A. No, sir, I did not have one done.

24 Q. Okay. And things like the -- you recall from your
25 husband's testimony that some of the smells and things

1 when you first purchased the house. You at least noticed
2 those sorts of things, didn't you?

3 A. Well, when we ---

4 Q. The cats?

5 A. The first time we went in it, yes, I noticed there
6 were some cat odors.

7 Q. Okay, so at least enough that you knew that there
8 were some -- did that give you a little bit of concern?

9 A. Well, it wasn't that much that it should, you know --
10 I mean we knew we were going to redo it so.

11 Q. And you refurbished it and cleaned it, correct?

12 A. Yes, sir.

13 Q. Before you moved in?

14 A. Right.

15 Q. Now, you can tell as part of this lawsuit, the
16 lawsuit that's titled in your name, Mr. Williams asked
17 you, its been amended and so forth, that you contend there
18 is a sewer line that runs underneath your house on East
19 Rice Street; is that correct?

20 A. That's right.

21 Q. And as we sit here today you contend that that sewer
22 line is leaking on your property; is that right?

23 A. Yes, sir.

24 Q. Okay. Now, Ms. Graham, in all the years that you've
25 lived on that property or since these events in September

1 of 2008 you've never had this sewer line or located, have
2 you?

3 A. Have I personally, no.

4 Q. Have you haven't personally. You're not a -- you
5 don't know how to GIS? You're not a surveyor, correct?

6 A. Right.

7 Q. Have you paid someone to be it?

8 A. Did I pay someone to do it?

9 Q. Yes, ma'am..

10 A. I mean are you saying when we bought the house or
11 later or what? I don't know.

12 Q. At any time, ma'am?

13 A. Oh, no, I did not.

14 Q. Okay. You haven't requested that to be done, have
15 you? To determine where that line is, have you?

16 A. Personally, I have not.

17 Q. Yes, ma'am. And you haven't requested anyone to do
18 so, have you?

19 A. Are you -- I don't know who you're saying I'm
20 supposed to request it to.

21 Q. Well, ma'am, if you have requested someone to do it
22 you can tell me who that person is; is that right?

23 A. I mean whether my husband did or not I don't know. I
24 have not personally.

25 Q. You have not?

1 A. Not. I have not personally.

2 Q. And you have not done any testing or asked anyone to
3 do any testing on any lines on your property; is that
4 correct?

5 A. I have not personally done that.

6 Q. Okay. To find out if there is an issue, what the
7 issue is, you haven't done that. You don't know; is that
8 right?

9 A. I have not personally done that. No, sir.

10 Q. Now, in September 2008 as we discussed that was a
11 major rain event, correct?

12 A. Correct.

13 Q. All right. It's in fact entitled -- had a name. It
14 was Tropical Storm Hanna; is that right?

15 A. Yes, sir.

16 Q. Significant rain fall, correct?

17 A. Yes, sir.

18 Q. It was flooding all in Latta, correct?

19 A. I assume.

20 Q. Well, where you ---

21 A. Where I was there was.

22 Q. And you saw flooding?

23 A. Where I was.

24 Q. All right.

25 A. I don't know about the rest of Latta, but where I

1 was.

2 Q. Fair enough. Now, at your residence, though, from
3 your observation point I think I understood you to say
4 looking in the backyard and also the front yard, the water
5 never entered your residence, correct?

6 A. No, it never came in the first floor.

7 Q. And prior to these events that we've been taking
8 about in September of 2008, now, you had seen some
9 flooding around your property before; is that right?

10 A. At times.

11 Q. Okay. And that was before these events, correct?

12 A. Nothing like this. No.

13 Q. Okay. But you've seen ---

14 A. Rain fall.

15 Q. Yes, ma'am. But you've seen that before?

16 A. I've seen some.

17 Q. After a rain you'd see some standing water?

18 A. Some water. Some standing water in different places.

19 Q. Okay. The water you saw on September 2008 -- you've
20 had your deposition taken in this matter, correct? Do you
21 recall that?

22 A. I have.

23 Q. Okay. And I think you stated, correct me if I'm
24 wrong, you said that it was unbelievable; is that right?

25 A. It was.

1 Q. Okay. And with all these events -- now, you
2 testified a little bit about what your husband, Claude,
3 did. You never contacted anyone with the Town about any
4 of this, did you?

5 A. No, I didn't.

6 Q. And the vehicles that y'all talked about a moment
7 ago, now, one of the vehicles was a Toyota Avalon and one
8 of them was an older Ford Taurus; is that correct?

9 A. That is correct.

10 Q. And your husband has already testified to this, and I
11 don't know if you knew all the details, but about them
12 being sold or traded in afterwards; correct?

13 A. Correct.

14 Q. And after this you got another car, didn't you?

15 A. I did.

16 Q. And you got a Mercedes?

17 A. I did.

18 Q. The pool in your backyard, you never had that
19 cleaned, did you?

20 A. No, sir.

21 Q. All right. The storage room on the side -- over by
22 the driveway of the house, you never did anything to clean
23 or correct that, did you? Is that a no for Madam Court
24 Reporter?

25 A. Oh, no... I'm sorry. No, I did not. I was scared to

1 go in there.

2 Q. All right. But what you are sure of and what you've
3 said here today is that you're not going back in that
4 house; is that right?

5 A. I'm scared to go in the house the way it is now.

6 Q. Okay?

7 A. Because I had -- I almost died.

8 Q. Yes, ma'am. Well what we talked about just a moment
9 ago you don't know what the problem is, do you?

10 A. It's the sewage that is leaking under my house. And
11 I have seen that on numerous occasions.

12 Q. And you've not had that leak as you put it fixed,
13 have you?

14 A. Well, it's the -- it's not my sewage pipe.

15 Q. That's your contention, isn't it?

16 A. Are you talking about going from my toilet?

17 Q. Ma'am, I'm asking you what -- this is your lawsuit.
18 I'm asking you what you contend the problem is and why
19 you're not going back to your house and why you believe
20 that you've been damaged here?

21 A. I feel like the Town sewage is leaking under my
22 house. I see it under my house. I have no water running
23 in my house. We have not had our water on in three years
24 or two years. And I don't -- I see sewer under my house.

25 Q. Just so we don't get confused, ma'am. water is not

1 running to your house cause you had it cut off, correct?

2 A. Right.

3 Q. Okay. Bottom line is you haven't done any testing to
4 determine what the problem is, have you?

5 A. I personally have not.

6 Q. Yes, ma'am. We've ruled that out?

7 A. Yes.

8 Q. But as we sit here today you cannot tell me what the
9 problem is; is that right?

10 A. Do I what?

11 Q. As we sit here today, based upon someone doing the
12 investigation and testing, you can't tell me what the
13 problem is?

14 A. I just said it is the sewage.

15 Q. That's what you contend, correct?

16 A. Right. And as we talked about a moment ago you saw
17 Dr. Culpepper back in 2008; is that correct?

18 A. That is correct?

19 Q. Dr. Culpepper was your family physician; is that
20 correct?

21 A. That is correct.

22 Q. The doctor you would go to see for various things?

23 A. That is correct.

24 Q. And you've seen other doctors, of course, throughout
25 the years; is that right?

- 1 A. Gynecologist, a variety of different ones.
- 2 Q. Yes, ma'am.
- 3 A. Dentist.
- 4 Q. Yes, ma'am. I wasn't -- I didn't mean that to the
- 5 cute or a trick question.
- 6 A. Right.
- 7 Q. I understand that, but you've seen other doctors?
- 8 A. I have.
- 9 Q. And what you saw Dr. Culpepper for was for
- 10 respiratory issues; is that right?
- 11 A. Right.
- 12 Q. That is was the late 2008?
- 13 A. 2008.
- 14 Q. Okay. Now, you have seen doctors and had complaints
- 15 and been treated for respiratory problems well before
- 16 September 2008; is that correct?
- 17 A. I mean I don't -- I've had colds and, you know,
- 18 things like that that most people have, and I've gone to
- 19 doctors for it.
- 20 Q. Okay. Fair enough. You had bronchitis before
- 21 September 2008, correct?
- 22 A. I've had that before.
- 23 Q. Yes, ma'am. That's a respiratory issue, isn't it?
- 24 A. Right.
- 25 Q. Okay. You've been diagnosed with pneumonia before;

1 isn't that correct?

2 A. I've had it twice since this happened.

3 Q. Yes, ma'am. My question to you though is before
4 September 2008?

5 A. I had it maybe in 1990 something.

6 Q. Yes, ma'am. You've had pneumonia before, correct?

7 A. Um hum.

8 Q. And you had bronchitis well after September 2008 or
9 since the fall of 2008; is that correct?

10 A. Not since I moved out of that house.

11 Q. Okay. Since moving out in November of 2008 you've
12 not had bronchitis?

13 A. Well, I had some respiratory problem cause I kept
14 going back in. I went back in to run my papers off and
15 all and I had -- but since 2009 when I have not step foot
16 in that house I have not been sick.

17 Q. Okay. And you've actually been down to M.U.S.C. in
18 2010; is that correct?

19 A. That is correct.

20 Q. Okay. Do you recall talking with doctors, nurses
21 about relating emphasis of bronchitis once or twice every
22 year? Does that not sound familiar?

23 A. No.

24 Q. Okay?

25 A. Not in several years. I don't have it every year.

1 Q. But you've had these problems before, and you've had
2 them since; is that correct?

3 A. I have not had them since I moved out of the house.
4 I had not been to see Dr. Culpepper in two years.

5 Q. And, Ms. Graham, you're familiar with your lawsuit in
6 this case, correct?

7 A. Yes, sir.

8 Q. I think the question was posed to you earlier by your
9 own attorney that it is in fact actually been amended
10 since it was originally filed, correct?

11 A. Correct. That's what he said.

12 Q. Okay. Let me hand you a copy of your second amended
13 complaint. And if you can just take a quick moment. Of
14 course, it's several pages long. I'd ask simply that you
15 flip through that. Verify that that is indeed your
16 complaint in this case. Ms. Graham, I don't want to rush
17 you. I'm ready as soon as you are. You're still
18 reviewing the document.

19 MR. PLYLER: Your Honor, may I step out to the
20 restroom?

21 BY MR. WILLIAMS:

22 Q. And, Ms. Graham, when you're ready you just let me
23 know.

24 A. What would you like to know about this?

25 Q. That's a good question. I see you reading the

1 document. You certainly read your lawsuit before?

2 A. Oh, yeah.

3 Q. Okay. You were just looking through it to confirm?

4 A. Right. I mean it's -- um hum. I didn't know if
5 there is something you wanted to ask. I didn't know what
6 you were.

7 Q. Yes, ma'am. No, and I have not asked the question.
8 I wanted you to make sure you recognized it and identified
9 the document?

10 A. Oh, yes, sir.

11 Q. That is your lawsuit in this case, correct?

12 A. Its got my name on it.

13 Q. Okay. And in fact it's signed by your attorney and
14 dated January 25th 2011; is the correct?

15 A. Yes, sir.

16 Q. Okay. And in this lawsuit against the Town of Latta
17 you allege that you were damaged, your property was
18 damaged at 220 East Rice Street for events that occurred,
19 and you can look with me if you like. In Paragraph Eight
20 of the complaint for events that occurred on September 5th
21 and 6th and September 13th 2008; is that correct?

22 A. We're looking at Number Eight?

23 Q. Yes, ma'am.

24 A. Is that what you're saying?

25 Q. Yes, ma'am.

1 A. That's what it says what you just read.

2 Q. Okay. And all this is true and accurate, correct?

3 A. Yes, sir.

4 Q. Okay. This is your lawsuit in this matter; is that
5 right?

6 A. Yes..

7 Q. Not suing about something that happened in 2007, are
8 you?

9 A. No. This happened in 2008.

10 Q. It's laid out in the lawsuit, September 5th, 6th and
11 13th 2008; is that correct?

12 A. That's what it says on this paper.

13 Q. Doesn't say 2009, does it?

14 A. No, sir.

15 Q. Doesn't say 2010, does it?

16 A. No, sir.

17 Q. And this was drafted and filed in 2011; is that
18 correct?

19 A. That's what it says right here.

20 Q. Your lawsuit in this case has to do with the flooding
21 event that happened in September of 2008; is that correct?

22 A. My lawsuit has to do with the continual damage that I
23 am suffering under my house, and it continues.

24 Q. Yes, ma'am. That's not what you're suing about
25 though, is it?

1 A. That's what I'm -- yes.

2 Q. And it's your contention this the is a sewer line
3 under your house leaking causing sewage to go under your
4 house and cause damage to your house, correct?

5 A. That's what it says right hear, the flooding under my
6 house.

7 Q. Thank you, Ms. Graham. No further questions. I
8 appreciate your time.

9 THE COURT: Any redirect?

10 MR. WILLIAMS: Just a few questions, Your Honor.

11 REDIRECT EXAMINATION

12 BY MR. WILLIAMS:

13 Q. Vickie, looking at that same lawsuit look at
14 Paragraphs 21, 22 and 23. Does it or does it not say
15 anything about that you're injury is continuing?

16 A. Yes.

17 Q. Did you say yes?

18 A. Which one are you asking me?

19 Q. Does the lawsuit say anything about your injury
20 continuing and not being limited to the September 2008?

21 A. Which numbers were you?

22 Q. Look at I think it's 21, 22 and 23. Specifically
23 look at Paragraph 23 and read that one sentence?

24 A. It says, 'continues' ---

25 Q. To yourself.

1 A. It says, 'continues'.

2 Q. Okay. All right. Let's talk about the upgrade in
3 your car situation. Tell us about that Mercedes that Mr.
4 Wren asked you about.

5 A. Whenever our car -- well, we had no cars because of
6 the damage, and a man in our church passed away and his
7 family was selling his car which happened to be a
8 Mercedes. And so, you know, they asked us if we wanted to
9 buy it cause they knew our situation. And they gave us a
10 very good price and so we bought it. We had to have a
11 car.

12 Q. It was a used Mercedes?

13 A. Yes, sir.

14 Q. And was it a satisfactory car?

15 A. It was.

16 Q. Did you keep it a long time?

17 A. We kept it for -- well, we gotten rid of it since.

18 Q. What do you drive now?

19 A. I have a Camry.

20 Q. Toyota?

21 A. Toyota Camry.

22 Q. That's all I've got. Thank you.

23 MR. WREN: No further questions, Judge. Thank you.

24 COLLOQUY

25 THE COURT: You may step down. Thank you. Ladies

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

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

5 MR. WILLIAMS: No, Judge.

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

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

8 (WHEREUPON, the jury panel enters the courtroom at
9 2:17 p.m.)

10 THE COURT: Good afternoon, ladies and gentlemen.
11 You may call your next witness.

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

14 THE COURT: Yes, sir.

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

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

1 THE COURT: Thank you.

2 MR. WREN: That is correct, Your Honor.

3 THE COURT: Court's exhibit.

4 (WHEREUPON, Court's Exhibit No. 2 was marked for
5 identification and received into evidence.)

6 MR. WILLIAMS: Your Honor, I now call Dr. David
7 Culpepper.

8 DAVID CULPEPPER, after being, duly sworn,
9 testified as follows:

10 CLERK OF COURT: Be seated in the witness box. State
11 your full name for the Court spelling your last.

12 THE WITNESS: David Melton Culpepper.
13 C-U-L-P-E-P-P-E-R.

14 DIRECT EXAMINATION

15 BY MR. WILLIAMS:

16 Q. Good afternoon, Dr. Culpepper?

17 A. Good afternoon.

18 Q. I know you've got patients to see, etc. so I'm going
19 to try to go through this as quickly as I can, but if you
20 would tell the jury your educational background and
21 training and where you practice medicine at?

22 A. I graduated from high school in Greenville, South
23 Carolina. Went one year to Furman University.
24 Transferred to the University of South Carolina School of
25 Pharmacy. Graduated from there with a degree in pharmacy.

1 Went to medical school at the University of South
2 Carolina. Residency in internal medicine at the
3 University of South Carolina Dorm BA and practiced in
4 Florence, South Carolina for 25 years.

5 Q. What type of practice in Florence, South Carolina?
6 Private practice or?

7 A. Private practice, central medicine.

8 Q. And are you a specialist in internal medicine?

9 A. Internal medicine is a basic primary care specialty
10 like family practice. So I am board certified and a
11 fellow in the American College of Physicians.

12 Q. Okay. Did there come a time when you began treating
13 Claude and/or Vickie Graham?

14 A. Sir?

15 Q. Did there come a time when you began treating Claude
16 and Vickie Graham as a -- or Vickie Graham, either one, as
17 a patient?

18 A. Yes. In the recent practice that I had with my
19 previous partner, Dr. Jeffery Crane, I did assume their
20 care after he -- during his time there and after he left
21 the practice I assumed their full care.

22 Q. When was that? Approximately?

23 A. Approximately 2000 -- I don't have my notes in front
24 of me. About 2002 when the practice opened.

25 Q. Okay. Did you recall an occasion in the fall I

1 recall, fall of 2008, when they came to see you at that
2 practice?

3 A. Yes, sir. The first visit was by Mr. Graham with
4 respiratory symptoms, and they both had repeated visits
5 very rapidly for lower respiratory tract symptoms and
6 upper respiratory tract symptoms.

7 Q. First was by Mr. Graham, you said, then they both
8 came?

9 A. Yes, sir. As best I can recall it was about October.

10 Q. Okay. 2008?

11 A. Yes.

12 Q. And when you say 'repeated' how many does that mean,
13 roughly?

14 A. Half a dozen each.

15 Q. Okay. What did you do in order to diagnosis and/or
16 treat? Let's say Claude Graham first?

17 A. In private practice you tend to take the most common
18 thing. And so we attempted to think they probably had
19 either a viral or bacterial infection because of the
20 severe symptoms. We treated with antibiotics. A short
21 burst of steroids at times a concerted measures that we
22 would teach them. Fluids, over the counter medications,
23 gargles, and at some point in one patient we did a
24 pulmonary function test to see if there was an underlying
25 problem, but that was normal. And we also a one point did

1 x-ray to check a neck, chest x-ray and then a C.T. scan.

2 Q. Does that answer apply to both Mr. and Mrs. Graham?

3 A. No. That's pretty much compiled. The initial part,
4 yes. The x-rays and C.T. scans depending on which patient
5 we're talking about.

6 Q. Okay. Did you do any other testing or gather any
7 additional information other than what you just described?

8 A. Mrs. Graham was referred to a specialist to check for
9 allergies during this time period.

10 Q. Did you talk with the patients about their family
11 history and background?

12 A. That's a regular yearly review. We already had
13 family history, so that was not an item that we bring up
14 each year unless there has been a change.

15 Q. Is happened in October whatever of 2008. Did you
16 talk to them about their living situation at that time?

17 A. Initially that was not an issue, but -- with the
18 first respiratory symptoms, but then they informed me that
19 there had been liquid, floating liquid, in the basement by
20 what appeared to be sewage in their basement and mold.
21 And they were concerned that there had been some type of
22 lead into their basement.

23 Q. What significance, if any, did you attach to that
24 information?

25 A. I pretty much made the correlation because they were

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

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

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

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

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

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

1 MR. WREN: May it please the Court, Your Honor?

2 THE COURT: Yes, sir.

3 CROSS-EXAMINATION

4 BY MR. WREN:

5 Q. Dr. Culpepper, good afternoon.

6 A. Good afternoon.

7 Q. We were talking just a second ago with your patients
8 who are Claude and Vickie Graham who are here with us
9 today, told you back in 2008, correct? That's what Mr.
10 Williams was just asking you about?

11 A. That is correct.

12 Q. You understood them to relate to you that they had a
13 leaking sewage pipe that was leaking sewage in their
14 basement; is that correct?

15 A. That is correct.

16 Q. Okay. Said it to you that would a continuance. If
17 there is a lead it doesn't happen one time and just stop,
18 right? It continues to leak?

19 A. The impression that they gave me is that they were
20 not aware of it until they had some rainy weather, and
21 apparently, the rain caused the main sewer system to
22 overflow and, apparently, this sewage line that has been
23 apparently forgotten began to overflow into their
24 basement. And that may have been why this was
25 intermittent, hadn't been noted before. And I got the

1 impression when it wasn't raining it wasn't as much of a
2 problem.

3 Q. Okay. Well, did you -- it sounds like from what
4 you're saying is that you also got the impression that it
5 was something that was going -- that could be resolved, to
6 be cleaned up and resolved; is that correct?

7 A. I would -- the sewage line would have to be blocked
8 off, I would assume. And plus it would need to be removed
9 I would think because there is sewage in the soil
10 underneath the house now.

11 Q. Okay. Well, Doctor, your basis then for telling the
12 Grahams to leave their residence would be based upon the
13 fact that you understood that there was still a problem
14 there, correct?

15 A. Yes, sir.

16 Q. You just don't know what that problem is though, is
17 that right.

18 A. Could you restate the question?

19 Q. Yes, sir. You just don't know exactly what that
20 problem is though; is that correct?

21 A. I had to go completely on what the patients were
22 telling me. They were telling me that there was a broken
23 sewer line under the house, and I assumed it was related
24 to the mold that was visible on the walls by their
25 account. And then also the fact that there was floating

1. sewage in their basement.

2. Q. All right. Thank you, Doctor. You didn't
3. independently do anything to confirm or verify any of that
4. information, correct?

5. A. No, sir. I've never been to their house.

6. Q. Okay. Didn't do any testing, anything like that,
7. correct?

8. A. No, sir.

9. Q. All right. Dr. Culpepper, I know have you been
10. practicing here in Florence for some period of time.
11. You've seen Mr. and Mrs. Graham on several occasions.
12. Just so I got the background straight to share with the
13. jury. Did I understand you to say that your practice back
14. in the time period of 2008 would have been while you were
15. with Palmetto Internal Medicine, correct?

16. A. That is correct.

17. Q. And you have -- at some period of time, and I won't
18. get us confused on the date, you worked with Dr. Crane in
19. that practice, correct?

20. A. Yes. We started Palmetto Internal Medicine together.

21. Q. Okay. And Dr. Crane then at some point left and
22. that's when you assumed the patient/doctor care of
23. Mrs. and Mr. Graham, is that right?

24. A. That's a good question. I would -- I think there
25. were a point where I did care for them just to cover him.

1 When he was busy I might have done an office visit for
2 another -- an item. Giving them refills or something. So
3 I had seen them intermittently in that practice. But they
4 had apparently followed us from the previous practice we
5 were in, together.

6 Q. All right. And, Doctor, going to this point of the
7 timing of all this and when you saw the Grahams. If I am
8 correct to understand you were never told or just don't
9 know when this alleged sewage leak or sewage in the
10 basement occurred; is that correct?

11 A. That's correct. I don't think they were really sure
12 when it started.

13 Q. Okay. And so going back to -- with your practice at
14 Palmetto Internal Medicine you saw the Grahams numerous
15 times throughout the year; is that correct?

16 A. That is correct.

17 Q. However, you haven't seen them since 2009 with the
18 exception of Ms. Graham on more recently on a totally
19 unrelated matter? Is that a fair representation?

20 A. That is correct.

21 Q. Okay. So any medical treatment the Grahams have done
22 since that time or what other doctors have looked at and
23 done you don't have that information?

24 A. No, sir.

25 Q. All right. What you do know is from before they came

1 to you in 2008 with these complaints, is that right?

2 A. Yes, sir.

3 Q. And you got all of your medical records from when you
4 saw them throughout the 2000s, correct?

5 A. That is correct.

6 Q. And for purposes of your deposition in this matter
7 and your appearance and testimony before the jury today
8 you've reviewed those record; is that correct?

9 A. Yes, sir.

10 Q. Okay. I won't hold you to any higher level. Now,
11 with reference from memorization or knowledge of the
12 records ---

13 A. I have my computer if you need me to pull it up. I
14 would be happy to.

15 Q. Well, Doctor, I'm going to let you save your time.
16 All of our time, and I think some of this you will quickly
17 recognize and recall. As early as May of 2000 Claude
18 Graham had been at Palmetto Internal Medicine, your
19 practice, all be it with Dr. Crane, with complaints of
20 cough and having x-rays done; that is correct?

21 A. That is true.

22 Q. Okay. And in 2003 Claude again presented. This
23 being in February with the cough, sore throat and
24 diagnosed with acute bronchitis; is that correct?

25 A. That is correct.

1 Q. In later 2003 and November Mr. Graham also presented
2 with a history of coughing and further patient passing
3 out. It was again diagnosed with acute bronchitis; is
4 that correct?

5 A. I would have to defer to you on that. I don't have
6 my notes in front of me, but I did provide you a copy. I
7 assume that's what you're reading from.

8 Q. It is. But I don't want to misrepresent or act like
9 I'm trying to pull some stunt from here. I relied upon
10 your records, but I want you, if I state something that in
11 inaccurate or wrong I want you to certainly correct me.
12 Is that fair?

13 A. If I need to look at the records to confirm a date
14 I'll be happy to, sir.

15 Q. Okay.

16 A. I did provide you with a list of the dates that they
17 were seen and the intermittent respiratory symptoms that
18 they had which is very common. It was the intensity of
19 the recurrent visits that began about this time that
20 brought up a red flag to me.

21 Q. Okay. Well, again, in this time period Mr. Graham
22 again came in 2004 talking about recurrence and persistent
23 issues with complaints of cough. Again, diagnosed in
24 November of 2004 with acute bronchitis. Do you recall
25 that?

1 A. That would be correct.

2 Q. All right. And in April of 2006, different time of
3 year, Mr. Graham presents again with cough, sore throat
4 and he's treated for such. Do you remember that?

5 A. According to my notes that I gave to you, yes, sir.
6 That's from my record.

7 Q. Okay. Well, how about more specifically in October
8 of that year, 2006, Mr. Graham presenting with complaints
9 of cough and there being diagnosed again with acute
10 bronchitis. Does that sound familiar?

11 A. I would have to look at my notes to give you
12 specifics, sir.

13 Q. All right. And I want you to have that opportunity
14 if there is any question in my mind. I -- do not hesitate
15 if you would like to look at any of your records. I
16 actually have a copy of them here with me.

17 A. I have a copy also if you like you let me pull them
18 out.

19 Q. Please do, Doctor. I want you to verify. I just
20 don't want to waste your time.

21 A. Thank you. What was the date again, sir?

22 Q. The last one I referenced to you was the last one in
23 2006. It would have been October 10th 2006. Presents
24 with a cough. Actually, per narrative that indicates
25 coughing to the point of passing out and diagnosis of

1 acute bronchitis?

2 A. Yes, I have summarized that as he had five total
3 upper respiratory tract symptoms prior to 9/21/07.

4 Q. And, again, you saw him on 9/21/07 with complaints of
5 a bad cough and diagnosis of acute bronchitis; is that
6 correct?

7 A. That is correct.

8 Q. All of those preceding the events that were related
9 to you by the Grahams in 2008; is that correct?

10 A. Yes, sir.

11 Q. Similarly, for Miss Vickie Graham who is also your
12 patient, correct?

13 A. That is correct.

14 Q. Dr. Crane saw her as early from records that were in
15 your possession, 2000, 2001 where actually chest x-rays
16 were performed for coughing symptomology; is that correct?

17 A. That is correct.

18 Q. And again in 2003, November of that year, Ms. Graham
19 presented with onset of cough. Diagnosis be acute
20 bronchitis.

21 A. That is correct.

22 Q. And also September 21st 2007, which my notes indicate
23 correctly, you, please, verify otherwise, is the same date
24 you saw Mr. Claude Graham presenting with a bad cough.

25 This being Ms. Vickie Graham and diagnosis of acute

1 bronchitis?

2 A. I'm not sure that he was seen exactly the same date,
3 but she had -- there was the mention of her husband was
4 sick also. That is correct.

5 Q. And that would have been in September of 2007;
6 correct?

7 A. That is correct.

8 Q. Okay. All right, Doctor. Well, I again greatly
9 appreciate your time. And I'm sorry for any confusion. I
10 appreciate you referring to your notes to confirm we're
11 all on the same page. Thank you.

12 THE COURT: Any redirect?

13 MR. WILLIAMS: Just a couple questions, Your Honor.

14 REDIRECT EXAMINATION

15 BY MR. WILLIAMS:

16 Q. Dr. Culpepper, the conditions that you all just
17 talked about between 2000 and 2007, were that connected in
18 any way in your opinion to the problem and treatment that
19 you undertook in October of 2008 through May of 2009?

20 A. That's a good question. I can answer either way. I
21 can tell you that it's common for patients to come in with
22 an occasional upper respiratory tract symptoms. We see
23 that. Particularly, people who are prone to it.

24 The difference is is there a possibility there were
25 leaks during that time period when there was rain and mold

1 developing that they just weren't aware of? That's a
2 possibility. The difference is the intensity of the
3 frequency of visits that began in 2008 with both patients
4 experiencing symptoms.

5 Particularly the wife who had not been in as
6 frequently as the husband for health related matters.
7 Particularly more respiratory tract symptoms.

8 Q. Thank you.

9 MR. WILLIAMS: Do you have any more questions?

10 MR. WREN: No further questions.

11 MR. WILLIAMS: Your Honor, I would like to offer into
12 evidence Exhibits Two and 13. They are two sets of bills
13 that have been previously identified by Mrs. Graham and
14 Mr. Graham.

15 MR. WREN: And, Judge, I hate to do the same
16 objection. I don't have a problem with them, but they --
17 there haven't been a foundation that can be cured. But
18 they were set forth with the Doctor, Judge.

19 MR. WILLIAMS: Well, Mr. and Mrs. Graham laid the
20 foundation. I'll be glad to show them to doctor also if
21 that -- the Court feels that's necessary.

22 THE COURT: Well, you need to lay whatever foundation
23 you feel is appropriate. I understand that they were --
24 that there was some testimony by the Plaintiffs but ...

25 BY MR. WILLIAMS:

1 Q. While I look for it the Defendant -- Plaintiff's
2 Exhibit 13, take a look at Plaintiff's Exhibit Two,
3 please, Doctor.

4 MR. WREN: And, Your Honor as long as the doctor
5 verifies those are his bills I have no objection to those
6 coming in as exhibits.

7 MR. WILLIAMS: Thank you.

8 BY MR. WILLIAMS:

9 Q. And here is Number 13 also, Dr. Culpepper. Can you
10 verify that those are in fact the bills -- y'all's bills
11 from Internal Medicine?

12 A. To the best of my knowledge. I have never actually
13 seen a bill. I take care of the patients and their
14 paperwork which is processed by my employees, but it does
15 bear our letterhead and the appropriate dates.

16 MR. WILLIAMS: Any further objection.

17 MR. WREN: Without objection, Judge.

18 MR. WILLIAMS: Thank you. Your Honor, may the
19 witness be excused?

20 THE COURT: Witness may be excused and the exhibits
21 are admitted.

22 MR. WILLIAMS: Thank you, Doctor.

23 THE COURT: Thank you.

24 (WHEREUPON, Plaintiff's Exhibit Nos. 2 and 13 were
25 admitted into evidence.)

1 MR. WILLIAMS: Call Tom Robinson.

2 TOM ROBERTSON, after being duly sworn, testified
3 as follows:

4 CLERK OF COURT: Be seated and state your full name
5 for the Court spelling your last.

6 THE WITNESS: Thomas Manning Robertson.
7 R-O-B-E-R-T-S-O-N.

8 DIRECT EXAMINATION

9 BY MR. WILLIAMS:

10 Q. Mr. Robertson, speak up please, sir, so that even the
11 last juror on the back row can hear you. You're a soft
12 spoken man. Your name is Tom Robertson. Where do you
13 live?

14 A. Florence, South Carolina.

15 Q. What do you do for a living?

16 A. I do building inspections, catch team and various
17 type construction products and things associated with
18 construction. Air quality, mold, radon, synthetic stucco,
19 general building inspections, home inspections, commercial
20 building inspections.

21 Q. So you're a building and home inspector?

22 A. Yes, sir.

23 Q. You have to have any licenses to do that kind of
24 work?

25 A. Yes, sir.

1 Q. What kind of license do you have?

2 A. You have to have a builder's license. Either a home
3 builder's license or a general contractor's license and
4 also an inspector's license.

5 Q. You have all of that?

6 A. I have a general contractor's license and an
7 inspector's license.

8 Q. What is your educational background?

9 A. I went to school in Spartanburg, South Carolina. I
10 attended Clemson University. Majored in civil
11 engineering. And had more classes through the years. As
12 you can tell from my age I can remember, but at the
13 present time I'm required to take a minimum of 20 hours a
14 year of continuing education.

15 Q. Does that requirement continue to this day? The
16 continuing education requirements?

17 A. I'm sorry.

18 Q. You still have to do that now?

19 A. Oh, yes, sir.

20 Q. Okay. Every year?

21 A. Yes, sir.

22 Q. Okay. And tell the jury what your work history has
23 been. Not each and every employer, but just what
24 occupations have you had over your life?

25 A. I worked for a general contractor firm for basically

1 10 years. I did specialty concrete work for about 12
2 years plus some building, some residential building at
3 that time. I worked for two other general contractors,
4 Turner International from out of New York. They bought a
5 local company in Florence. It was the last general
6 contracting.

7 After that I worked for an architectural firm from
8 Florence. It was Moseley, Wilkins and Woods. It was
9 later bought out by Moseley Architects. Architectural
10 firm from Richland, Virginia who have offices up and down
11 the east coast. And the construction part with project
12 management. Just about any phase of the construction
13 industry.

14 With the architectural firm I review drawings. I
15 worked with young architects on buildability. I saw their
16 plans before they went out for bid on. I also did field
17 work as far as the inspections for the architectural firm.

18 I've worked with the State Board of Prisons on the
19 buildings we did for them. Many, many school house
20 facilities and structures throughout the State of South
21 Carolina.

22 Q. Excuse me for interrupting, but let's get to the part
23 about with respect to home inspections, when did you start
24 that line of work?

25 A. 1990. Actually, in earnest then I've done it through

1 the years kind of for people that I knew, but about 1990
2 is when home inspections became a viable or popular ---

3 Q. Occupation?

4 A. --- occupation, right.

5 Q. Did you start doing that full time along about 1990?

6 A. Kind of worked into it. I'd say full time about the
7 late '90's, '98.

8 Q. Did you work for yourself or for somebody else?

9 A. I worked for myself.

10 Q. And you worked for yourself since when? When did you
11 start working for yourself rather than for somebody else?

12 A. Like I said the mid '90s.

13 Q. Okay. What's involved in home inspection?

14 A. Home inspection is basically you review everything
15 that you can see without doing any intrusive ---

16 MR. WREN: Your Honor, I'm sorry to interrupt the
17 witness. I'm not quite sure where we're going with this.

18 Mr. Robertson was not identified as an expert witness or
19 any kind of a witness for the purposes of home inspection
20 or construction. I have his designation. He's been
21 deposed. I'll be happy to discuss it with Your Honor
22 outside of the jury's presence if necessary.

23 THE COURT: Counsel, you want to approach.

24 (WHEREUPON, a bench conference was held off the
25 record, in the presence of the jury, but out of the

1 hearing of the jury.)

2 BY MR. WILLIAMS:

3 Q. In general terms what is involved in home
4 inspections?

5 A. Basically, like I say review of everything that is
6 visible without doing any intrusive inspection. In other
7 words damaging any materials in the home including
8 H.V.A.C, electrical, plumbing, the foundation, structure,
9 roof, insulation, windows, doors. Everything to do with
10 the house that you can observe.

11 Q. What role, if any, do environmental molds, toxins,
12 things like that play in the home inspection process?

13 A. Directly, none. In fact it's stipulated in a
14 standard home inspection that, you know, mold is excluded
15 from the home inspection or any type environmental items
16 are excluded.

17 Q. What training and experience do you have if any in
18 environmental molds, toxins, inspections?

19 A. As I mentioned earlier we are required to take a
20 minimum of 20 hours a year in continuing education. And
21 in the mid.'90s I became aware of the mold issues. Did
22 some studying on my own on that and became very, very
23 interested in it and devoted everything I could in my
24 continuing education to the subject of mold or air quality
25 in homes.

1 I went to a class a taught by a professional
2 laboratory to become certified in air quality testing and
3 sampling of materials for contamination, mold, whatever.

4 Q. As a result of that have you been able to make a
5 living in part as a tester of that nature?

6 A. Yes, sir.

7 Q. Okay. For whom do you do that kind of work?

8 A. We have done it for schools, public buildings, for
9 cities, court houses such as this, a lot of health care
10 facilities, homes, commercial office buildings, commercial
11 work spaces of other types.

12 Q. I'm not going to ask you what's involved in doing
13 testing in general because I want to focus in on Claude
14 and Vickie Graham's house on Rice Street in Latta. Were
15 you engaged to do some mold and environmental toxin
16 testing on their house?

17 A. Yes, sir.

18 Q. Tell the jury what you did in order to perform that
19 work?

20 A. Okay. Basically, starting a square one, we were
21 contacted to do the testing. I ordered the testing
22 materials from the lab. Then we made an appointment to go
23 to the home to do the testing. First thing we do is we
24 just a general walk through and around to make visual
25 observations of the general conditions that we observe.

1 After that we take swab tests which is a process of,
2 basically, if you see an area or an area of suspected
3 contamination of possible mold or any kind of contaminate
4 you swab that area. It's immediately sealed and labeled
5 as to where the test was, the time and that sort of thing.

6 Then we do -- we did an air quality test. That is
7 where we take a sample of the inside air of the home and
8 sample of the outside air of the home. The time limit and
9 the volume of air taken are measured precisely so they
10 vary equally as far as in terms of air or the amount of
11 air.

12 And those are, after that test is completed, they're
13 sealed. They're immediately, within as quick as we can
14 get to the Fed Ex Fed Ex'd overnight back to the lab for
15 their testing.

16 Q. And then do you get results back from the lab?

17 A. I did.

18 Q. Okay. And you know as part of your job to read and
19 interpret these results?

20 A. It's part of my job to, as far as the chain of
21 custody goes, which is from the time test facility leave
22 the lab there's a chain of custody kept until the test is
23 done and back to me. The test results do come back to me.
24 Not so much for interpretation or anything, but to verify
25 that it is the same materials that I sent to the lab.

1 Then it is given to the people we did the test for.

2 Q. When did you do this examination of the Grahams house
3 if you recall?

4 A. I've got it here. It's been a couple years ago.
5 Early June 2010.

6 Q. Early June 2010?

7 A. Yes, sir.

8 Q. And did you prepare any kind of written analysis of
9 those results?

10 A. I did not prepare -- the analysis was prepared by the
11 laboratory?

12 Q. By the lab?

13 A. Yes, sir.

14 Q. Did you present it to the Grahams?

15 A. I presented it to the Hyman Law Firm.

16 Q. Take a look at what's been marked Plaintiff's Exhibit

17 17.

18 A. That's it.

19 Q. Is that the lab results?

20 A. Yes, sir.

21 Q. Okay. Are you able to read the lab results?

22 A. I can read, yes, sir.

23 Q. Okay. Read the lab results and tell the jury whether
24 there is or isn't anything out of the normal.

25 MR. WREN: Objection, Your Honor. Mr. Robertson

1 hasn't been qualified to be an expert and asking his own
2 witness.

3 THE WITNESS: Read ---

4 MR. WREN: I guess your witness has a question for
5 me, Your Honor, as to reading.. If his only job is to read
6 in an exhibit then questions Mr. Williams, I don't know.

7 MR. WILLIAMS: Your Honor, I would offer the
8 certificate of analysis into evidence at this time.

9 MR. WREN: I'd object, Your Honor. There hasn't been
10 any foundation other than the fact that it's a chain of
11 custody that came to Mr. Robertson.

12 MR. WILLIAMS: Let me ask a few more particular
13 questions.

14 BY MR. WILLIAMS:

15 Q. Mr. Robertson, why do you send this to the lab?

16 A. For them to analyze it and say what's present or not
17 present.

18 Q. And do they send you back a report saying what's
19 present or not present?

20 A. Yes, sir.

21 Q. And does this report state the things that are or are
22 not present in an particular examination?

23 A. Yes, sir.

24 MR. WILLIAMS: Your Honor, I would offer it again?

25 MR. WREN: And, Your Honor, I'm fine with that. It's

1 not for an expertise versus rendering opinions. Sounds
2 like he's just going to publish information in the report.
3 I don't have an objection to that.

4 THE COURT: So are you objecting to the introduction
5 of the exhibit or are you objecting to him reading the
6 exhibit.

7 MR. WREN: Well, neither, Judge. What I was
8 objecting to if there is opinion or interpretation. So I
9 will preserve it and I apologize for that. Obviously,
10 Judge, the question asked originally was for him to let
11 him is what I understood it to be.

12 BY MR. WILLIAMS:

13 Q. Mr. Robertson ---

14 MR. WILLIAMS: Am I to understand that this exhibit
15 is in evidence, Your Honor?

16 THE COURT: If there is no objection to it it will be
17 admitted.

18 MR. WILLIAMS: Thank you, Your Honor.

19 (WHEREUPON, Plaintiff's Exhibit No. 17 was admitted
20 into evidence.)

21 BY MR. WILLIAMS:

22 Q. Mr. Robertson, so that when the jury looks at this so
23 that they will be better able to understand it would you
24 step down in front of the jury with me and just show me
25 how this is set up and how they can read it?

1 A. Okay, well, basically, the cover sheet tells them
2 where it was, when it was.

3 THE COURT: Mr. Robertson, we're going to have
4 difficulty hearing your voice. You need to speak up to
5 make sure the court reporter can hear you and so the rest
6 of us can hear you as well.

7 THE WITNESS: Sorry.

8 BY MR. WILLIAMS:

9 Q. Speak up really loud. She's right. Sit right here,
10 but your back is turned to her?

11 A. How about I move back this way. Would that be
12 better? The cover sheet is basically just general
13 information about the address and the time and just the
14 number of the test and that sort of thing. The next page
15 is the chart of the tests that were done, a part of the
16 tests that were done.

17 The first two columns are for the swabs. It says
18 where they were done and it gives the result. Both of
19 them are unusual.

20 MR. WREN: Your Honor, if that's not opinion I don't
21 know what it is. He's not been qualified or found to be
22 an expert witness. Your Honor, it's leading ---

23 THE WITNESS: I'm read what's on the report.

24 THE COURT: I think we need to take up this issue
25 outside the presence of the jury. Ladies and gentlemen,

1 I'm going to ask that you retire to the jury room and not
2 to have any discussions about this matter. You've still
3 not heard all the evidence. We will bring you back
4 shortly.

5 (WHEREUPON, the jury panel was excused from the
6 courtroom at 2:53 p.m.)

7 COLLOQUY

8 MR. WREN: And, Your Honor, I apologize. I'm not
9 trying to create an undue delay here. Mr. Williams and I
10 was just talking, and his representation to me is he was
11 just asking Mr. Robertson to read this in. If that is
12 truly the case I apologize. I'm trying to protect it up
13 front. It harder to unring a bell. I don't have any
14 problem with him publishing information contained in it.
15 But that's -- I don't know why we need that. Anyway, as
16 long as there is not interpretation and opinion.

17 MR. WILLIAMS: Your Honor, his charts and graphs, and
18 I just wanted them to help assist the jury how to
19 understand it.

20 MR. WREN: All right, Judge. We may have resolved
21 it. I'll state it first, and if it's fine with Mr.
22 Williams -- correct me if I'm wrong. I get the impression
23 and understand, of course, Ms. Robertson showed this. He
24 took the samples, took them to a laboratory, this is what
25 he got back in return. Mr. Williams, as I did partly

1 understand, 'wants to get this in front of the jury. I
2 don't have an objection to that, and I'm not questioning
3 change of custody or anything there.

4 My concern was with interpretation and opinion.
5 Mr. Williams advises me that, essentially, what he wants
6 Mr. Robertson -- or my position was what Mr. Robertson
7 would do is confirm this is what I got back from the lab.
8 And one thing further is if Mr. Williams wanted to do is
9 clarify what the word, 'control' ---

10 MR. WILLIAMS: One of the columns is headed
11 'control', Your Honor. And I just like for me to explain
12 what that means, the testing and the area called,
13 'Control'. I'd like for him to state that.

14 MR. WREN: And if that's all there is then I be fine.
15 Would not have an objection to this coming to the jury
16 being noted as an exhibit. And I assume that means no
17 further questions or interpretations?

18 MR. WILLIAMS: No. Just ask him what that means. If
19 he gives a vague answer I would like to ask him to
20 clarify.

21 MR. WREN: With that stipulation, Your Honor, we can
22 move this along.

23 THE COURT: Okay.

24 THE WITNESS: Should I say what I'm going to say for
25 control before they come back?

1 MR. WREN: Yeah.

2 MR. WILLIAMS: Please. Go ahead.

3 THE WITNESS: Controls is the outside air sample, and
4 that's the basis of determining the difference between
5 normal and unusual.

6 MR. WILLIAMS: That literally is all the questions I
7 wanted to ask him.

8 MR. WREN: Your Honor, with that said one other
9 question that I don't want to created confusion with the
10 jury is, and I'm not trying to go back end of what we just
11 argument, but of just having this record in with the jury
12 that's not going to be -- create more question than it is
13 answer.

14 MR. WILLIAMS: Your Honor, I think it speaks for
15 itself or not. If I haven't given the jury persuasive
16 enough evidence I won't persuade them.

17 THE COURT: Anything else we need to take up?

18 MR. WREN: I think that will resolve it, Judge.

19 THE COURT: So what I gather is that there is no
20 objection to Exhibit Number 17. I admitted it as evidence
21 as an exhibit in this case. And the witness is going to
22 explain what's on the form?

23 MR. WILLIAMS: Just that one column, Your Honor. I'm
24 just asking what does this column that's headed,
25 'Control', what does control signify? What does that

1 mean.

2 THE COURT: Okay. So he's not going to go through
3 each and every thing on the form?

4 MR. WILLIAMS: No, Your Honor. I'm not going to ask
5 him any other questions at all.

6 THE COURT: All right.

7 MR. WREN: Okay. With that, Judge, as we discussed
8 I'm okay.

9 THE COURT: Okay. We ready?

10 MR. WILLIAMS: I'm am, Judge.

11 MR. WREN: Yes, Judge.

12 THE COURT: Everybody ready? You may ask the jury to
13 come in, please. Thank you.

14 (WHEREUPON, the jury panel enters the courtroom at
15 3:02 p.m.)

16 THE COURT: Yes, sir. You may continue.

17 MR. WILLIAMS: May it please the Court.

18 CONTINUED DIRECT EXAMINATION

19 BY MR. WILLIAMS:

20 Q. Mr. Robertson, you can remain seated. I will just
21 show the jury. I have just one more question. On Page
22 Two of Exhibit 17 there is a set of columns. Do you see
23 what I'm talking about?

24 A. Yes, sir.

25 Q. And the columns are headed up here in the green area.

1 In the extreme right hand column has headed with the word
2 'control'. You see that?

3 A. Yes, sir.

4 Q. Tell the jury what the word control means?

5 A. All right. That particular column is the results of
6 the outside air which is what the inside air is compared
7 to: So that is the control.

8 Q. Okay. Thank you.

9 MR. WILLIAMS: That's all the questions I have.

10 MR. WREN: May it please the Court, Judge.

11 THE COURT: Yes, sir.

12 CROSS-EXAMINATION

13 BY MR. WREN:

14 Q. Mr. Robertson, sorry for that delay there. We'll get
15 it worked out and understand what we've got here. Because
16 what we've got and what's going in as an exhibit to the
17 jury is the results of some testing that was done on the
18 Graham's residence back in June of 2010; is that correct?

19 A. Yes, sir.

20 Q. All right. And your role in all this was you went --
21 physically went to the property June of that year and did
22 the swabbing -- obtained the samples if you will to send
23 to the laboratory, correct?

24 A. Yes, sir.

25 Q. All right. And you've not been at the Graham's

1 residence in the past? Done any testings or any
2 inspections or anything prior to that time period,
3 correct?

4 A. Prior or since?

5 Q. And hadn't done anything since that time. Now, you,
6 from your conversations either her or the Grahams
7 themselves or from just looking at the house, you
8 understood, of course, when you were there in June of 2010
9 there was nobody living in that house; is that right?

10 A. There was ---

11 Q. No one was living in that house, correct?

12 A. It was not being occupied. It was furnished and all,
13 but it was not being occupied.

14 Q. Okay. You didn't have any -- I mean you didn't see
15 anyone living there? You didn't have any understanding
16 that anyone was living there, did you?

17 A. I was told that nobody was living there.

18 Q. Okay. But that would suffice. And you understood
19 that they hadn't been living there for some period of
20 time, correct?

21 A. Say again, please.

22 Q. You understood that they had not been living there
23 for some period of time, correct?

24 A. I don't have any knowledge of how long or anything.

25 Q. Okay. Fair enough. Now, a property, residential,

1 commercial; you've been in a bunch of them to collect
2 these samples and do this kind of work, correct?

3 A. Yes, sir.

4 Q. And things, when it comes to mold and just upkeep of
5 property as Ms. Williams asked you about, your background
6 with building inspections and so forth, there are certain
7 things you have to do to maintain and upkeep a property;
8 is that right?

9 A. Yes, sir.

10 Q. Okay. One of those, especially when it comes to
11 mold, is moisture, correct?

12 A. Very much so.

13 Q. Okay. Whether it be using something as simple as an
14 air conditioner, things like that, fans, dehumidifiers,
15 those sorts of things can control mold in a residence,
16 right?

17 A. They can control it?

18 Q. Well, I should say control moisture?

19 A. I don't think control is the right word. They can
20 affect moisture either positively or negatively.

21 Q. Well, true. You can do the exact opposite and bump
22 up the moisture in a residence, correct?

23 A. Exactly.

24 Q. And giving a breeding ground for mold, right?

25 A. The moisture is one of the three elements required

1 for mold to grow.

2 Q. That's right. You need a food source, too, don't
3 you?

4 A. Food source and temperature.

5 Q. And temperature. And you combine those to create a
6 fertile ground for mold growth; is that right?

7 A. Yes, sir.

8 Q. And in this case you don't know -- you do know that
9 no one was living in the house at the time, but you don't
10 know how long it had been that way, correct?

11 A. Correct?

12 Q. And you don't know what kind of events the
13 precipitated your arrival in June of 2010, do you? You
14 don't know what had taken place at that house, do you?

15 A. Just from hearsay.

16 Q. Well, okay. So you did. Did you have an
17 understanding that there had been some period of time?

18 A. I have -- when you said I didn't know what took place
19 at the house I know that there were some flooding in the
20 area. Like I say from hearsay and knowledge of the area.
21 Other than that ...

22 Q. You don't know how long it had been?

23 A. No, sir.

24 Q. And you don't know what the property owners had done
25 or not to their residence? You don't keep up with that

1 sort of thing?

2 A. That is correct.

3 Q. The results that you got back from the laboratory
4 they indicated readings, as you pointed out, of what they
5 came up with both inside and outside; is that right? You
6 indicated control is outside and the other is inside,
7 correct?

8 A. The last two columns have to do with that. Yes, sir.

9 Q. Those numbers just indicate what they found; is that
10 right?

11 A. That's the quantity of mold.

12 Q. Okay. And not surprising, you've seen other reports
13 and so forth? Mold can be found anywhere, right?

14 A. Oh, yeah.

15 Q. Okay. And so the data that is captured here is just
16 what they found on this day in June of 2010 from your
17 swabs, correct?

18 A. The last two columns are from the air samples. The
19 first two are from the swabs.

20 Q. From the swabs. Correct. Excuse me if I misstated
21 that from your sampling?

22 A. Yes, sir.

23 Q. And that's all it is; that snapshot in time in June
24 of 2010, correct?

25 A. Yes, sir.

1 Q. All right. Mr. Robertson, thank you again for your
2 time. I appreciate it.

3 THE COURT: Any redirect?

4 MR. WILLIAMS: None, Your Honor. The witness can be
5 excused, please?

6 THE COURT: You may step down. Thank you. You just
7 leave the exhibit with us. Just pass it to the court
8 reporter. Thank you.

9 MR. WILLIAMS: Call Roger Davis.

10 ROGER DAVIS, after being duly sworn, testified
11 as follows:

12 CLERK OF COURT: Be seated in the witness box. State
13 your full name for the Court spelling your last, please,
14 sir.

15 THE WITNESS: My name is Roger E. Davis.

16 DIRECT EXAMINATION

17 BY MR. WILLIAMS:

18 Q. Where do you live, Mr. Davis?

19 A. I live in Columbia.

20 Q. And what do you do for a living?

21 A. I'm a consulting engineer. This firm is located in
22 Irmo just outside of Columbia.

23 Q. Okay. What is the name of the firm?

24 A. It's the Warren Group.

25 Q. Okay. Where did you grow up, Mr. Davis?

1 A. I grew up in West Columbia.

2 Q. Okay. Have you live in South Carolina essentially
3 your whole life?

4 A. For the most part.

5 Q. Tell the jury about your educational background?

6 A. I have a Bachelor of Science in mechanical
7 engineering. I have a Master's in business
8 administration.

9 Q. And tell the jury about your work history?

10 A. Well, I worked for the federal government, state
11 government, and private industry starting with -- fresh
12 out of school I worked for the Department of the Navy in
13 the Nuclear Power Division of Charleston Naval Ship Yard.
14 Following that I was in the Air National Guard briefly.
15 Then I went to work for the Department of Health and
16 Environmental Control. I worked there for 12 years.

17 Following that I worked for a waste management
18 company for 12 years. Following that I went into
19 partnership with two other people and founded a land
20 development company. I sold my interest in that after a
21 few years and started working in consulting engineering,
22 and I've been doing that for about 13 years.

23 Q. And in what fields have you been doing consulting
24 engineering?

25 A. Well, my field is mechanical engineering. The work

1 that we do is what we call forensic engineering. That is
2 we investigate accidents, incidents, injuries, deaths,
3 things of that type to explain what happened using
4 engineering principles.

5 Q. What experience and training if any have you had
6 relative to sewer systems. Water and sewer systems?

7 A. Well, that would primarily be my 12 years at the
8 Department of Health and Environmental Control or what we
9 call and you may know it as D.H.E.C. When I started there
10 it was actually the State Board of Health but became --
11 later became D.H.E.C. I worked for a few years as a field
12 investigator in environmental engineering working on
13 things like water and sewer systems, land fills, public
14 swimming pools, things of that type.

15 Following that assignment I worked probably -- I
16 can't remember exactly. It may be six years as the
17 director of the Division of Domestic Waste Water. That
18 dealt with private and public sewer systems including
19 those like in the Town of Latta. As part of that
20 responsibility I ran a federal grants program to provide
21 funding for upgrading of sewer systems and municipalities
22 throughout the State.

23 I guess my other relevant experience would be to some
24 degree in the land developing work that I've done.

25 Q. What about your work from 1983 to 1995 and Laid Out

1. ---

2. A. Lay law.

3. Q. Lay Law Environmental Services. Does that have
4 anything to do with place ---

5 A. To some degree it had to do with waste water in that
6 that we provided industrial services for handling
7 industrial waste materials including things like
8 incineration, landfills. And with respect, perhaps
9 relevant here, would be waste water treatment facilities.

10 Q. Are you -- do you have any licences that are
11 pertinent to your qualifications?

12 A. I do. I'm a licensed professional engineer in -- I
13 think in five states.

14 Q. Including South Carolina?

15 A. Yes.

16 Q. Are the other states all in the south?

17 A. Yes.

18 Q. Okay. Are you have any other professional
19 affiliations?

20 A. Well, I have a national certification. It's call N-C
21 double E-S. And I can't remember exactly what that all
22 stands for, but it's a National Counsel for Engineering
23 Examining something or other. It has something to do with
24 licensing for any state in the country and it facilitates
25 that process.

1 Q. And you're -- what's your affiliation with that
2 group?

3 A. I'm a member.

4 Q. Okay. As a board member or examiner?

5 A. No. I'm one of the engineers that they regulate.

6 Q. Okay. Are you a member of any other professional
7 organizations?

8 A. Not currently.

9 Q. Have you ever done any publishing or speaking to or
10 training of other engineers?

11 A. I have.

12 Q. Okay. Any of those related do solid waste or waste
13 management treatment?

14 A. Yes, I did. Speaking while I was with D.H.E.C. for
15 those 12 years from time to time. And also in my role
16 with Lay Law Environmental.

17 Q. Okay. Were you engaged to examine and render opinion
18 with respect to the Graham house in Latta, South Carolina?

19 A. I was. Yes, sir.

20 Q. And by whom?

21 A. Mr. Rushton of the Hyman Law Firm.

22 Q. Okay. Their attorney at the time?

23 A. Yes, sir.

24 Q. Okay. In preparation for forming your opinions what
25 did you do?

1 A. Well, I conducted an inspection at the Graham
2 residence. I interviewed Mr. and Mrs. Graham. I reviewed
3 records that were on file at D.H.E.C. for the Town of
4 Latta sewer system. I researched some regulations and
5 federal laws.

6 Q. Did you do any on site work?

7 A. I did an inspection at the Graham -- in and around
8 the Graham residence. Yes, sir.

9 Q. All right. Describe for the jury what that
10 inspection entailed?

11 A. Well, I went to the Graham residence. Mr. Graham
12 showed me what had occurred. She me little -- water
13 levels had risen up on his house on the date in question
14 which I believe was June 5th and 6th of 2008. He gave me
15 a chronological record that he had written about incidents
16 that lead up to that event including prior complaints and
17 what had happened since the incident.

18 I looked around his yard. I looked at the
19 surrounding neighborhood. I went to some of the adjacent
20 streets to get an idea of the layout of the sewer system.
21 I believe that -- that's probably about it as far as the
22 on site inspection went.

23 Q. In the course of that answer you said June 5th and
24 6th 2008. Would you check your notes and verify whether
25 that's the correct date?

1 A. Maybe it's 2009. I believe it is 2009.

2 Q. Check your notes?

3 A. I will. I'm sorry. September 5th and 6th 2008.

4 Q. September not June?

5 A. Correct.

6 Q. Okay. When did you do your inspection and review?

7 A. I did that in May of -- my on site inspection was
8 done in May of 2009.

9 Q. Okay. So your on site inspection was in May of 2009?

10 A. Yes.

11 Q. For events arising out of September 2008?

12 A. Correct.

13 Q. Okay. As a result of the work and analysis you
14 described in your training, background and experience did
15 you form any opinions with respect to the flooding and
16 sewage discharge at the Graham's house?

17 MR. WREN: Objection, Your Honor. This witness is
18 not been qualified as an expert.

19 MR. WILLIAMS: Your Honor, I would offer the witness
20 up as an expert in mechanical engineering and
21 environmental waste disposal.

22 MR. WREN: And, Judge, if I may just be allowed some
23 quick voir dire.

24 THE COURT: Mechanical engineering and waste --
25 Mr. Williams?

1 MR. WILLIAMS: Pardon?

2 THE COURT: You're tendering him as an expert in
3 mechanical engineering and what else?

4 MR. WILLIAMS: Waste disposal. Environmental waste
5 disposal.

6 THE COURT: Environmental waste disposal?

7 MR. WILLIAMS: Yes, Your Honor.

8 THE COURT: Yes, sir, Ms. Wren. You may voir dire.

9 MR. WREN: Thank you, Judge.

10 THE COURT: That was environmental waste disposal?

11 MR. WILLIAMS: Yes, sir.

12 VOIR DIRE EXAMINATION

13 BY MR. WREN:

14 Q. Mr. Davis, how are you, sir?

15 A. I'm fine.

16 Q. Good. A moment ago Mr. Williams touched on a little
17 bit of your background and information for the jury's
18 benefit. Now, I understood and heard you to say you have
19 an undergraduate degree in mechanical engineering,
20 correct?

21 A. Correct.

22 Q. Mechanical engineering. Now, there are several
23 different disciplines of engineering; is that right?

24 A. Yes, sir. At least four I guess that some lay
25 person. Four traditional and there are other branches.

1 Q. Chemical and so forth, but importantly, civil
2 engineer is another discipline, correct?

3 A. Correct, yes.

4 Q. Yours was in mechanical engineering, though; is that
5 right?

6 A. Yes, sir.

7 Q. Civil engineers, they're the ones we typically think
8 of that do things like road design and sewers and so
9 forth, correct?

10 A. Yes, sir.

11 Q. Okay. Yours is mechanical engineering?

12 A. Yes, sir. That is correct.

13 Q. And to further your further studies took you off to
14 get a Master's degree in business administration; is that
15 right?

16 A. Correct.

17 Q. And I'm not insinuating. It has nothing to do with
18 any knowledge or any work that you've done with regards to
19 municipal waste water systems, right?

20 A. I would agree. Yes.

21 Q. Okay. Now, importantly, because you obviously heard
22 what's been going on today with this situation. And when
23 it comes to professional designing waster water systems
24 you've not had any experience, professional or otherwise,
25 in that realm; is that correct?

1 A. Correct. I didn't do the actual design, but I
2 reviewed and approved designs prepared by professional
3 engineers throughout the State and outside the state,
4 actually, for municipalities, private developments and as
5 an employee of a private business on their behalf as well.

6 Q. Okay. So you've seen them in some different
7 capacities that you hadn't done yourself; is that right?

8 A. I have not put the pencil to the paper. That is
9 correct.

10 Q. And the term I heard a moment ago, first two areas.
11 And you heard the same thing I'm assuming I did. First of
12 all, mechanic -- an expert realm of mechanical
13 engineering. We've established, correct, that's not what
14 roads and sewers? That's not the same area, correct?

15 A. Well, correct. But mechanical engineers commonly
16 work in those fields as well.

17 Q. Okay. And then environmental waste disposing.
18 That's not a term you typically use, is it?

19 A. I consider myself an environmental engineer as well
20 as a mechanical engineer.

21 Q. Okay.

22 A. And I have experience in the field of waste disposal.

23 Q. All right. Well, and area -- perhaps an area of
24 expertise would be an individual, whether they were a
25 professional engineer or otherwise, was in the business of

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

3 A. Yes.

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

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

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

14 A. And subsequent to that add Lay Law.

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

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

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

24 MR. WREN: Thank you, Judge.

25 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 qualifications 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

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

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

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

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

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

1 property and under their house?

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

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

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

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

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

1 Q. And in part what did you base that opinion on?

2 A. That was based on responses to what the legal folks
3 would call responses to interrogatories or information
4 provided on behalf of the Town of Latta.

5 Q. Okay. What were sewer lines made out of back in
6 1924?

7 A. Most commonly they were terra cotta. What's called
8 terra cotta or unfired, unblazed clay.

9 Q. What is the lifespan of a terra cotta pipe?

10 A. Well, terra cotta itself can last a long time. Clay
11 pipe can last a long time. Typically what happens is the
12 joints degrade and the typical life span of a sewer line
13 of that type is 50 years...

14 Q. Were you able to find anything in the records of the
15 Town of Latta that you examined to indicate that that line
16 had ever been replaced with a more durable line or
17 different materials?

18 A. No.

19 Q. Did you determine anything about the waste water
20 collection system in the Town of Latta itself and
21 especially think about it in terms of infiltration and
22 exfiltration?

23 A. I did. I read the records, and confirm my suspicions
24 that there was a significant amount of what we engineers
25 call infiltration and inflow. That's water coming in from

1 the inside coming into the sewer line that's not intended.

2 And it may be i need to explain those terms.

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

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

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

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

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

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

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

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

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

1 infiltration inflow.

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

7 Q. You said before this incident?

8 A. Yes, sir.

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

12 A. Yes, sir.

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

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

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

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

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

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

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

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

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

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

1 example.

2 Q. And I think you touched on this, but let me get you
3 to elaborate on it. You indicate, I believe, that the
4 Town of Latta was aware of the inflow infiltration,
5 exfiltration problem?

6 A. Yes.

7 Q. How do you know they were aware?

8 A. Well, because the D.H.E.C. reports indicate and warn
9 the Town that they need to investigate and take action on
10 those issues.

11 Q. Based on what you observed in May of 2009 what work
12 would need doing in order to keep the -- that type of
13 problem from recurring in the future?

14 A. Well, with an old sewer line -- sewer system like
15 this, you know, the options are you can either replace the
16 lines that are determined to be bad or you can use a
17 pressure grouting to inject a concrete like material in
18 the joints of the pipe to seal it up or you can what's
19 called slip lining the pipe. Put a -- typically, a
20 plastic type liner material in the sewer system to seal
21 off the leaks. So those are the options.

22 Q. See if I understand that last thing you said. I
23 think it's slip line. Would that be like putting a little
24 straw inside a big straw?

25 A. Yes, sir.

1 Q. Little straw that works inside a big straw that
2 doesn't?

3 A. Right.

4 Q. Okay. In the absence of either replacing the pipe,
5 pressure grouting to in effect block it out or to slip
6 line it, would you expect the problem to recur or not?

7 A. It would only get worse if you don't do something
8 about it.

9 Q. Would it make any sense to repair, replace, refurbish
10 and put significant money into fixing up this house?

11 A. This house?

12 Q. Uh huh. Without any replacing of the pipe, pressure
13 grouting or slip lining?

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

18 THE COURT: You need to rephrase the question.

19 BY MR. WILLIAMS:

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

22 MR. WREN: The same objection, Judge.

23 THE WITNESS: These are the method ---

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

1 MR. WREN: Thank you.

2 BY MR. WILLIAMS:

3 Q. You play answer.

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

6 Q. Any other method?

7 A. I can't think of any others.

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

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

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

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

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

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

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

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

1 (WHEREUPON, the jury panel enters the courtroom at

2 3:55 p.m.)

3 THE COURT: Yes, sir, Mr. Wren, you may proceed.

4 MR. WREN: Thank you, Your Honor. May it please the
5 Court.

6 CROSS-EXAMINATION

7 BY MR. WREN:

8 Q. Good afternoon, Mr. Davis. How are you?

9 A. I'm fine.

10 Q. Well, good. Thank you for being here. Mr. Williams
11 has been talking with you a little bit about some work you
12 had done in or around looking at some things at the
13 Graham's property. Now, your appearance in this case is
14 on behalf of the Grahams as an expert witness; is that
15 correct?

16 A. Yes. I was hired by their attorney.

17 Q. Okay. And your appearance here today, the work
18 you've done in this matter, you're being compensated by
19 them, correct? You're being paid to provide your opinions
20 here today, correct?

21 A. Yes, sir. I sure hope so.

22 Q. By the Grahams; is that right?

23 A. I would assume so by the law firm.

24 Q. By the law firm, okay. And what you've done over the
25 course of the last couple of years is look at some

1 documents. You've identified those in response to the
2 questions earlier, gone to the property and had some -- a
3 couple of conversations; is that correct? You looked --
4 you pursued, looked for some other documents, too,
5 correct?

6 A. Yes, sir.

7 Q. D.H.E.C. and otherwise?

8 A. Yes.

9 Q. One thing I talked to you a moment ago, I know, in
10 regards to your expertise in the areas you've been set
11 forth for it. And honestly, you're A certified fire and
12 explosion investigator; is that right? C.F.E.I.?

13 A. Correct.

14 Q. Okay. That has nothing to do with flooding, does it?

15 A. No.

16 Q. Okay. You've given expert opinions in that area,
17 correct?

18 A. In that area?

19 Q. Yes, sir.

20 A. Actually, I have not. I've done some fire
21 investigations, but I've never rendered an expert opinion.

22 Q. Perhaps I should say consulting and so forth?

23 A. I'm sorry.

24 Q. Perhaps I should have said consulting. Working with
25 clients about those kinds of issues?

1 A. Yes.

2 Q. Okay. And in the course of what you've done here
3 you've come up with some ideas and you've shared those
4 here with myself and with the jury a moment ago. Now, one
5 of the things that you touched upon a moment ago was it is
6 your contention, based on things you reviewed, sewer line
7 that we're talking about in the vicinity of the Graham's
8 built in the 1920s; is that correct?

9 A. Yes, sir.

10 Q. All right. And you further made the statement that
11 at that time pipes, as I understood you, and if I
12 misphrase you or mischaracterize you correct me. I
13 understood you to say pipes at that time were made of
14 terra cotta; is that right?

15 A. Commonly made of terra cotta.

16 Q. Commonly made of terra cotta. And for the jury's
17 benefit so there is no confusion or misunderstanding,
18 terra cotta, if you've ever had a flower pot with the
19 drain in it, pretty simple material, right?

20 A. Yes, sir.

21 Q. Clay. It's a clay type material?

22 A. Yes.

23 Q. It's, actually, you know, if it's not secured as in
24 whether it's soil or somewhere like a clay pot you drop it
25 it could shatter, right?

1 A. It will. Yes.

2 Q. Okay. And you've been to the Graham's property; is
3 that right?

4 A. Yes, sir.

5 Q. You've been to that ditch behind their property; is
6 that correct?

7 A. Yes.

8 Q. You've seen that sewer line back there, is that
9 correct?

10 A. Yes.

11 Q. That's not terra cotta, is it?

12 A. Not across the creek. You don't put terra cotta
13 pipes across creeks. You typically use cast iron, ductal
14 iron, something more substantial than terra cotta in those
15 situations.

16 Q. Agree. But it's not what you observed was not terra
17 cotta, was it?

18 A. What I observed was not. I said -- nor have I said
19 the pipe that is underneath their house terra cotta. What
20 I said was typically pipes from that era, 1920s, were
21 terra cotta pipes.

22 Q. Okay. The pipe -- the sewer line on the Graham's
23 Property, you never stuck a shover in the ground to get
24 down and see what it was, did you?

25 A. Did not. No, sir.

1 Q. You never laid your eyes on that pipe anywhere except
2 for where it runs across that ditch?

3 A. Correct.

4 Q. And so when you say commonly used terra cotta at that
5 time that's just an assumption on your part; is that
6 right?

7 A. No, that's a fact.

8 Q. No, true. That's a fact that they did. What's down
9 on that ground on the Graham's property you don't know
10 because you didn't dig up and look at it, correct?

11 A. I did not look at it, correct.

12 Q. That would be a common way for someone that was
13 inquisitive as to where a sewer line may be, what if any
14 problems it has. A great way to determine that would be
15 to dig down in the ground; is that right?

16 A. That would be one way.

17 Q. Okay. There's others, too, correct?

18 A. Yes.

19 Q. Okay. For location purposes you could run it -- you
20 could do a G.I.S, correct? Use technology to determine
21 the location of a line?

22 A. I don't think there are any tracer wires put on sewer
23 lines in that era, so I wouldn't expect that you could
24 find it that way. But other things you could do, you
25 could run a camera through the line.

1 Q. You could run a camera. So you contend using G.P.S,
2 G.I.S. technology you don't think you could determine the
3 location of the line?

4 A. Using technology with tracer wires to locate sewer
5 lines, no, I don't believe that they would have put a
6 tracer line on a sewer line in that era.

7 Q. I'm not talking about the 1920s. I'm talking about
8 today. I want to go up there today and do it. I'm not
9 contending G.I.S. existed in the 1920s. Automobiles were
10 fairly recent. My point is today you could do that,
11 right?

12 A. You could locate the sewer line there if you chose to
13 using current technology. Yes, sir.

14 Q. Yes, sir. That's my question. Regardless of how
15 complex or difficult, and I contend it's not, but today I
16 can answer that question where is that line; is that
17 correct?

18 A. Yes.

19 Q. Okay. You have not done that?

20 A. I have not done that.

21 Q. You have not?

22 A. I have not.

23 Q. Okay. What make sure I understood you?

24 A. Okay.

25 Q. Furthermore, there are tests. There are

1 investigatory tests that you could do on a sewer line if
2 you have concerns or questions about whether there is a
3 problem with a given line; is that correct?

4 A. Sure. You can do infiltration/inflow analyses, sewer
5 system evaluation surveys. You can run various kinds of
6 tests to determine the condition of the line. You can use
7 camera to investigate the internal condition of the sewer
8 line.

9 Q. There are a number of options available, correct?

10 A. There are.

11 Q. Okay. You did not do any of those, did you?

12 A. No. But you can also look at other data which I did
13 to make that determination.

14 Q. We'll talk about that in just a moment or two. But
15 of those tests one of the important ones, one you could do
16 would be a smoke test would be one, correct? If you want
17 to look for infiltration and leaks you could do a smoke
18 test?

19 A. You can do that.

20 Q. Just for the jury's benefit, and they may hopefully
21 learn a little more about what this is. Smoke test,
22 essentially, what you're doing is you are physically
23 putting smoke through a line to determine whether if there
24 is a hole or a problem or a break or leakage cause that
25 smoke will come up, correct?

- 1 A. Correct.
- 2 Q. It will indicate to you where there is a problem?
- 3 A. Correct.
- 4 Q. You did not do that?
- 5 A. No.
- 6 Q. And other testing as you eluded to, analyses inflow,
7 infiltration studies and so forth, those exist as well,
8 correct?
- 9 A. Technologies?
- 10 Q. Yes, sir. The methods of investigating?
- 11 A. Certainly. All right.
- 12 Q. Okay. And, now, you did say you looked at some other
13 things? You said you looked at some D.H.E.C. records,
14 correct?
- 15 A. Correct.
- 16 Q. Now, you were in the courtroom just like we were a
17 little bit earlier, I believe. And you correct me if I'm
18 wrong, when a representative on behalf of D.H.E.C.
19 testified; is that right?
- 20 A. No.
- 21 Q. Ms. Danielle Watson, you were not present?
- 22 A. No.
- 23 Q. You don't know what D.H.E.C. has to say in regards to
24 the sewer line on the Graham's property then, do you?
- 25 A. I went over their records.

1 Q. Okay. Certainly, you would assume that a D.H.E.C.
2 representative, a person familiar with the issue and with
3 the property, would have privy to those same records,
4 correct?

5 A. I would think so. Probably produce some of those
6 records.

7 Q. Okay. And with respect to another topic you touched
8 on. Now, this one I do know that you were present cause I
9 had actually turned around and had seen you in the
10 courtroom. With respect to mold, regardless, and I know
11 that -- you tell me your thoughts on this, but if you're
12 an expert in the environmental waste type stuff to the
13 degree that it relates to this, all mold needs is a food
14 source, moisture and temperature to grow, correct?

15 A. I'm not a mold expert, but I do know that that's
16 true.

17 Q. Okay. Regardless of sewage or anything else, that's
18 what it takes to have mold?

19 A. It has to have a food source, correct.

20 Q. And you also touched on a moment ago. Now, this one
21 I will agree I think you're the only one that had come up
22 with this, was that one of your opinions or thoughts on
23 this matter is that you could have sewer gases underneath
24 the Graham's residence; is that correct?

25 A. Yes, sir.

1 Q. All right. Now, if you have sewer gases in a
2 controlled space you can easily determine and ascertain
3 that they exist, correct?

4 A. At any point in time. Yes.

5 Q. Okay. And I'm no scientist. I'm no chemist. I got
6 to assume one of those elements would be methane; is that
7 right?

8 A. Yes.

9 Q. Easily detectible, correct?

10 A. Yes, sir.

11 Q. You can test for it, correct?

12 A. Yes, sir.

13 Q. You can conclusively determine its presence, correct?

14 A. Yes, sir.

15 Q. You did not do that here, did you?

16 A. No, I did not.

17 Q. Now, you had your deposition taken in this matter
18 some ways back; is that right?

19 A. Yes, sir.

20 Q. And you were asked about some of these opinions that
21 you shared with us here today; is that correct?

22 A. Yes.

23 Q. All right. Now, one of the things you had touched on
24 a little bit earlier was the fact that the location of
25 this sewer line, about exactly where it was. Now, as we

1 sit here today you're not entirely certain where that line
2 is, are you?

3 A. No.

4 Q. Okay. And in fact when you were questioned you're
5 not even sure, at the -- whenever the time it went in,
6 1920s as you related, whose responsibility it would have
7 been to put in a recording of that line; is that correct?

8 A. Would you run that by me one more time?

9 Q. Yes, sir?

10 A. I'm not sure I understood that.

11 Q. Let me see if I can just state it a little bit
12 better. Now, an easement, and the jury heard this a
13 little bit ago; some language we came together trying to
14 deal with this issue. Easement is a recorded legal
15 instrument, is that right?

16 A. That's what my understanding is.

17 Q. Okay. And I'm not holding you out to be. You're not
18 an expert in legal conclusions or anything?

19 A. Exactly.

20 Q. But that being what they are you would commonly deal
21 we those residential, commercial property situations?

22 A. I would, yes.

23 Q. And have you dealt with that in your professional
24 career?

25 A. I have.

1 Q. It's your understanding, correct, that typically the
2 way the process works is a survey would note such an
3 easement on the plat, correct?

4 A. Yes, sir.

5 Q. And a surveyor is a person holds a job just like
6 anyone else, but their job though as a private employee is
7 to go out and map and site property; tell you what the
8 dimensions are and what's on the property; is that
9 correct?

10 A. Yes, sir.

11 Q. Okay. And you further said that any such, once
12 that's done and the easement locate or determined, that it
13 would be recorded by the person selling the property;
14 isn't that correct, is your experience?

15 A. Well, the owner of the property at the time the
16 easement was award, correct?

17 Q. That's right. And in this situation with the
18 Graham's property the owner of the property would have
19 been the Toalers or the predecessor owner going way back
20 to whenever this line was put in, correct?

21 A. Repeat that question for me, please.

22 Q. Yes, sir. In this situation the owner of that
23 property would have been whoever it was back in the 1920s
24 that owned that property where the Graham residence is?

25 A. I believe that was Mr. Bass.

1 Q. Correct. Okay. Going back some point in time. And
2 as it stands, now, you've looked, correct, to try to
3 determine exactly where this was, where -- whether there
4 was an easement, whether there wasn't an easement, whether
5 it was recorded, all that, correct?

6 A. I did.

7 Q. And those are real property records kept at the court
8 house; is that right?

9 A. Typically, yes.

10 Q. Typically. And here as with every -- all 46 counties
11 in South Carolina that would be -- locally, it would be
12 here in the Dillon County Court House; is that right?

13 A. I would assume so.

14 Q. Okay. To the best of your knowledge, and that's
15 separate from the Town of Latta? Town of Latta is 10, 12
16 miles down the way, correct?

17 A. Correct.

18 Q. Okay. From your investigation, what you looked at,
19 you couldn't find it; is that right?

20 A. Well, I didn't personally look for it. I asked the
21 attorney I was working for to determine whether such an
22 easement existed.

23 Q. Okay. All right. And you did not have any other
24 information other than what I just touched on with your
25 understanding of how that process worked?

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

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

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

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

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

18 Q. That's where we are, correct?

19 A. I am not.

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

23 A. That's correct.

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

1 foundation and building that house, correct?

2 A. Well, that would be the responsibility of the owner
3 to ascertain whether easements existed. There were none
4 recorded. I'm not sure how he would have done that, but
5 for whatever reason back in the day when this house was
6 built, I think in the 1960's there was no recorded
7 easement for this subdivided property.

8 And, apparently, there was no knowledge that the
9 sewer line existed there.

10 Q. All right. And sewer lines don't just appear,
11 correct?

12 A. No, they don't.

13 Q. Okay. And in fact the -- now, you contend the sewer
14 line is underneath the Graham's house' is that right?

15 A. Mr. Graham indicated to me that it ran under his
16 house. Yes.

17 Q. Okay. And as with any -- well, let me not say any.
18 But most residences the -- when you flush the toilet, the
19 commode in the house, it's connected to the sewer line;
20 isn't it?

21 A. Correct.

22 Q. You have a service line which is the home owner's
23 responsibility, correct?

24 A. It is.

25 Q. It goes out through and under the house to connect to

1 a sewer line at some point; is that right?

2 A. Correct.

3 Q. That would be the owner's responsibility, correct?

4 A. Yes, sir.

5 Q. Okay. But the thing is when yo flush it it's got to
6 connect at some point to the sewer line, right?

7 A. Of course.

8 Q. All right. And for the property to use that Sewer
9 line, correct? You tap into it?

10 A. The one that's under the house?

11 Q. Well ---

12 A. I don't know where it's connected.

13 Q. Okay. Fair enough. Your further opinion was that
14 the Town's system is significantly influenced by
15 infiltration and inflow, correct?

16 A. Yes, sir.

17 Q. I'm paraphrasing what you stated a moment ago?

18 A. You did it correctly.

19 Q. But just so we're clear I touched on all the types of
20 testing, the mapping, location issues, all of that. You
21 personally have not performed any of that?

22 A. No. Those are things the Town should have done.

23 Q. And you don't know if the Town's done them, do you?

24 A. Well, I do. Yes, I do.

25 Q. You do?

1 A. I do.

2 Q. Okay. If there is a leak in the sewer line at the
3 Graham's residence, remember I asked you about smoke
4 testing, things like that, you can easily determine that,
5 can't you?

6 A. You can determine the presence of leaks through smoke
7 testing, yes.

8 Q. Yes, sir. And if you can determine the location of a
9 leak you can fix that problem; is that right?

10 A. Depends on what the problem is. Yeah, you can fix
11 it. You can replace the sewer line, for example. I don't
12 believe that it would be feasible to replace the sewer
13 line where it exists.. But instead you would have to move
14 it to property where there is no structure.

15 Q. Well, that's an option, right?

16 A. That's on option. One in fact that was recommended
17 by the Town's engineer.

18 Q. Indeed. Well, another thing is if you're actually
19 able to identify and locate a leak is you can repair it,
20 correct?

21 A. I'm sorry. Repeat that.

22 Q. If you identify and locate a leak you can repair it,
23 correct?

24 A. A leak in what?

25 Q. In a pipe. It's as simple as that. A trench pipe

1 under someone's sink, something we can all relate to,
2 right? If I've got a leak I can patch it?

3 A. If you can get to it to repair it.

4 Q. Well, you've got to locate it, right?

5 A. Correct.

6 Q. You haven't done that, have you?

7 A. I'm not repairing it.

8 Q. Well, yeah. Okay, then sir?

9 A. Why would I repair it?

10 Q. So you haven't done any of it?

11 A. No.

12 Q. Infiltration inflow analyses, sewer system evaluation
13 surveys, very helpful tools. You have not reviewed them,
14 have you, in regards to the sewer line in the vicinity of
15 the Graham's residence?

16 A. No. I attempted to get those documents. Those
17 documents were done some time back in the 1970's. I went
18 to D.H.E.C. to get a copy. They were not there. Further
19 inquiry indicated to me that they had been returned to,
20 E.P.A., and thrown away under their record's retention
21 policy. So they don't exist as far as the public entities
22 go. They may exist in the Town records or in the records
23 of their engineers, but I have not been provided with that
24 information.

25 Q. Further, you don't have any knowledge that this sewer

1 line collapsed, do you?

2 A. Collapsed?

3 Q. Yes, sir.

4 A. No, I don't.

5 Q. That would be ---

6 A. To my knowledge it has not collapsed.

7 Q. All right. If it had you would be able to determine
8 that, right? You would find the problem and be able to
9 come up with some solution to fix it, right?

10 A. Not me, but somebody would.

11 Q. Somebody would. All right. You looked at F.E.M.A.
12 flood maps with regards to the Graham residence, didn't
13 you?

14 A. I did.

15 Q. Their property?

16 A. Yes, sir.

17 Q. This property is in the flood plain, isn't it?

18 A. At least in part. I don't know how much of their
19 property it covers, but certainly the ditch abutting their
20 property is in the flood plains.

21 Q. Now, F.E.M.A. -- I'll just quote the agencies. There
22 are all these acronyms, of course, but Federal Emergency
23 Whatever?

24 A. Management.

25 Q. Management, thank you. That's a commonly accepted

1 industry standard for determining whether or not a
2 property is or is not in the flood plain, correct?

3 A. It's delineated, and what I mean by that it's a map.
4 There is a line you can tell where the property is.

5 Q. Correct.

6 A. And establishes a federal program for insurance for
7 those folks?

8 Q. And when you looked at it you at least will concede
9 at least a part of that property is in the flood plain?

10 A. Yes.

11 Q. Something like a detailed survey with using that
12 could determine that, too, correct?

13 A. I'm sorry.

14 Q. A detailed survey overlaying the flood plain could
15 determine that, too, correct?

16 A. It could, yes.

17 Q. You did not do that?

18 A. No, I did not.

19 Q. All right. Don't have any opinion with regards to
20 the Town's property rights in and of itself? Just simply
21 what we talked about earlier without the fact that there
22 is some non-clarity with what's recorded at the court
23 house; is that correct?

24 A. The property rights with respect to the sewer line?

25 Q. Yes, sir. The Town's property rights.

1 A. Well, it was -- my information is it was put in by
2 the City in 1924, and apparently, they've operated it
3 since that point in time. So I assume it's there.

4 Q. Okay. September 2008, your research what you found
5 out, and of course, you did identify that it was a very
6 large storm event, correct?

7 A. Yes.

8 Q. Tropical Storm Hanna; is that right?

9 A. Correct.

10 Q. All right. Did you look at it as like a pretty
11 significant rainfall occurred during that time period; is
12 that correct?

13 A. Yes.

14 Q. Now, regardless of any thoughts you have with the
15 inflow infiltration and whether there is leaks and waters
16 getting into the sewer system, that storm, Tropical Storm
17 Hanna, and large rain events, the Graham's property is
18 going to flood there, isn't it?

19 A. I would expect so. Yes.

20 Q. And in fact ---

21 A. It did.

22 Q. --- it did. And if you have a flood you're going to
23 have problems with things like moisture and water,
24 correct?

25 A. Certainly.

1 Q. You stuck your head, at least, underneath the
2 Graham's house, didn't you?

3 A. I did.

4 Q. The crawl space?

5 A. I did.

6 Q. Well, it's well below the grade, isn't it? Their
7 crawl space?

8 A. You talking about the surrounding grade from the
9 outside to the inside?

10 Q. The grade surrounding, for purposes of the jury, let
11 me clarify. The ground around the residence, you look
12 into that crawl space it's lower than the rest of the
13 ground, isn't it?

14 A. I think it may be a little bit lower. Let me look at
15 my photos, and I can verify that, but I believe that is
16 the case. Slightly lower than the surrounding ground. I
17 don't really have a good photograph, but my recollection
18 is it is slightly below -- a few inches below the
19 surrounding ground on the outside of the curtain wall.

20 Q. Very good. It is something that can be measured,
21 correct, and determined if it is below grade in the crawl
22 space; isn't that right?

23 A. Well, you can pick grade at a certain point and
24 measure another certain point and determine the difference
25 surface.

1 Q. Well, I guess from my standpoint you don't have to be
2 an engineer or any other occupation. You can take a tape
3 measure and see if it's lower; is that right?

4 A. Sure, you can do that.

5 Q. Okay. Any of the things you looked at you didn't
6 find any indication of backup or blockage with the sewer
7 line at the Graham's property; is that correct?

8 A. It was not leaking at the time I was there. No?

9 Q. Okay. And with regards to the Town's sewer system
10 you don't have any information, documents specific that
11 the Town's sewer system violates any laws or applicable
12 regulations with regards to its operation, do you?

13 A. Repeat that for me.

14 Q. With regards to the capacity for the sewer system in
15 the Town of Latta and specific to where the Graham's
16 residence is locate, you don't have any evidence that the
17 Town's system violates any laws or regulations that would
18 be applicable to sanitary sewer systems, do you?

19 A. Yes.

20 Q. Well, actually, you were questioned about that in
21 your deposition, do you recall?

22 A. No.

23 Q. You do not recall that?

24 A. Maybe you can refresh my memory.

25 Q. Well, let's do it this way. What would your

1 contention be with regards to any violations or problems?

2 A. Well, I'm not sure what you're asking back then, but
3 if your asking me whether the municipality operation of a
4 municipal sewer system about -- in violation of any state
5 or federal regulations or permits then it does. The
6 record is -- has a lot of instance where that in fact has
7 occurred with respect to the treatment process, the flow
8 through the system, things of that type.

9 Q. Fair enough. My question now was probably far too
10 broad because -- let's just go ahead and clarify. Things
11 like the treatment plant has nothing to do with the Graham
12 residence?

13 A. Sure. It does.

14 Q. Well, it does. I mean that's where the water is
15 treated and where it goes, correct?

16 A. Yes, sir, it's supposed to. Most of it gets there.
17 A lot of it leaks out before it gets there.

18 Q. Okay. And that goes to some of these issues with
19 D.H.E.C's involvement and this infiltration issue and so
20 forth, correct?

21 A. Correct.

22 Q. Okay. And that, again, witness testified. I thought
23 you were here earlier today, but that where they have gone
24 and they have cited the Town of Latta as with most
25 municipalities for places where there are issues and

1 problems, correct? I'm not trying to act like that's not
2 the case?

3 A. I would think so. Yes.

4 Q. Okay. And, now, you saw evidence where the Town of
5 Latta also had responded to those problems and had them
6 corrected; is that right?

7 A. Responded, I didn't -- could not verify whether their
8 response had any positive or any action was taken to
9 correct it, actually, but it was a report indicating this
10 is what ought to be done. Never saw any evidence that
11 that was in fact done.

12 Q. Fair enough into that point as far as the evidence of
13 where the testing was done, where they located certain
14 problems, specifically, what was done, that's just not
15 information you're privy to? You just know some of that
16 occurred, correct?

17 A. Yes.

18 Q. Fair enough. And so for this whole issue, as you
19 concluded a little bit ago when Mr. Williams proposed
20 fixing a problem, about relocating a line, or a new line
21 or the pressure grinding thing we talked about, that's all
22 because of issues which you would attribute to
23 infiltration; is that right? Inflow and infiltration?

24 A. Well, the need to relocate the line is not solely
25 because of the infiltration inflow problems, but because

1 the line is present under a structure where you can't get
2 to it through proper maintenance. So.

3 Q. Okay.

4 A. So there is a need to move the line, but there is
5 also a need to move the line because it been leaking under
6 the house and creating those kinds of problems.

7 Q. Okay. So that issue about the location if it is
8 under the house as you contend or understand that
9 specific -- otherwise, your issues are with this
10 infiltration thing we talked about, correct?

11 A. With respect to the damage that it caused, yes.

12 Q. Okay. And with that said that's assuming
13 infiltration or leaking is occurring in the vicinity of
14 the Graham residence, right?

15 A. No. The infiltration can be throughout the system,
16 and in the fact probably is throughout the system. You
17 know, every joint probably contributes somewhat to excess
18 flows through the sewer line, excess soil getting into the
19 sewer line, stopping it up, creating excess flows which go
20 to the sewer treatment plant which limit its ability to
21 properly operate. So the problem most likely occurs
22 throughout the collection system because of the age of it.

23 Q. Using terms like 'most likely', you're an expert
24 witness in this matter, for purposes of our jury, ladies
25 and gentlemen of this jury, I want to be very clear, you

1 have not determined or located sources of infiltration
2 inflow into this sewer system, have you?

3 A. No, I have not. I have only reviewed the records
4 which indicate to me that it exists.

5 Q. Thank you, sir.

6 MR. WREN: I have no further questions.

7 MR. WILLIAMS: Please the Court.

8 REDIRECT EXAMINATION

9 BY MR. WILLIAMS:

10 Q. Mr. Davis, there is one known leak, and that's at a
11 manhole out on Rice Street; isn't that right?

12 A. Well, I saw evidence of that. I mean that occurs in
13 municipalities. You will from time to time get leaks, and
14 you know, that one instance, you know, you couldn't say is
15 indicative that the City is not properly maintaining their
16 system.

17 What you can say, though, is that if you have on
18 going problems over a period of time and the City -- and I
19 understand that small municipalities are really strapped
20 for cash. They can't really necessarily put a lot of
21 money into these problems, but they are supposed to
22 develop sewer user charges.

23 MR. WREN: Objection, Your Honor. This is clearly
24 outside the witness' expertise as to operations of a
25 municipal government.

1 THE WITNESS: I'd be glad to address that, if I
2 could.

3 MR. WREN: My objection would be to expertise, Judge.
4 I could explain municipalities as well.

5 THE COURT: I'll sustain that one unless there is a
6 foundation laid.

7 MR. WREN: Thank you, Judge.

8 BY MR. WILLIAMS:

9 Q. Mr. Davis, what expertise if any do you have with
10 respect to the operation of municipal water?

11 A. What I was referring to was sewer user charges.

12 MR. WREN: Your Honor, objection.

13 BY MR. WILLIAMS:

14 Q. My question is what expertise do you have in that
15 area?

16 A. Well, when I was director of the Domestic Waste Water
17 Division at D.H.E.C every municipality that applied for a
18 federal grant, and most of them did, had to provide an
19 adequate sewer user charge system adequate to operate and
20 maintain the system and provide sufficient fundings to
21 replace parts of the system that eventually wear out.

22 Q. And did your job entail reviewing, analyzing, reading
23 that type of presentation?

24 A. It did.

25 MR. WILLIAMS: May the witness answer the question

1 now, Your Honor?

2 MR. WREN: Your Honor, the only thing, if I may
3 briefly voir dire? He is going to be submitted as an
4 expert in municipal -- I don't know what this area is
5 called.

6 THE COURT: I think you need to specify a timeframe
7 for when that work occurred.

8 MR. WILLIAMS: Let me just withdraw the question,
9 Your Honor. It's peripheral at this point. Let me go on
10 to something that Mr. Wren.. That is short for---

11 MR. WREN: It's obvious we worked together.

12 BY MR. WILLIAMS:

13 Q. --- that Mr. Wren asked you about. It's getting late
14 in the day. With respect to an easement in whose interest
15 is it to record an easement? The one who gets the
16 easement or the one who gives up the easement?

17 A. Well, as a layman I'm not an attorney, but it seems
18 to me that the person acquiring the easement who has the
19 need to use the property for that specific purpose is the
20 one who needs the document.

21 Q. And recording an easement does what as far as the
22 public goes?

23 A. It puts everybody on notice that that property is
24 reserved for a specific use to the exclusion of certain
25 other uses.

1 Q. You didn't do a G.P.S, global positioning satellite,
2 test to locate the Graham's sewer line, did you?

3 A. I did not.

4 Q. Or the Town of Latta's sewer line on the Graham's
5 property?

6 A. No, you -- there has to be data input to access that
7 sort of thing. I have no information as to whether that's
8 ever been done for the Town of Latta sewer system. It may
9 have been, but I'm not aware.

10 Q. You didn't do any of those things that Mr. Wren
11 described?

12 A. I didn't feel I needed to.

13 Q. All right. And my question is why didn't you need
14 to?

15 A. Well, I didn't feel I needed to because the
16 information provided by Mr. Graham and the records that I
17 reviewed indicated to me that, indeed, a problem existed.
18 I knew the nature of the problem, what caused the problem.
19 I didn't need to know exactly where the sewer line was or
20 where exactly the leak from the sewer line was to know
21 that the problem existed.

22 Q. That's all I have. Thank you.

23 MR. WILLIAMS: No further questions, Judge. Thank
24 you. May the witness be excused?

25 THE COURT: Yes, sir. You may step down. You may be