

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG
IN THE COURT OF COMMON PLEASJUDGMENT IN A CIVIL CASE
CASE NUMBER 2009CP4208781

Ray Long

Mary Long

Tuck & Howell Inc

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (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. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit);
☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

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

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.Additional Information for the Clerk: SEE PAGE 2

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

2053

Judge Code

9/18/13

Date

For Clerk of Court Office Use Only

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS

Ray and Mary LONG,

PLAINTIFFS,

-VS-

TUCK and HOWELL, Inc.,

DEFENDANT.

CIVIL ACTION NO: 09-CP-42-0781

VERDICT FORM

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2013 SEP 19 AM 9:08
M. HOPE BLACKLEY

✓ We, the jury in the above-entitled action, find for the plaintiffs and award damages as a natural consequence of the defendant's breach of the implied warranty in the sum of:

Six Thousand, Five Hundred Dollars
(\$ 6,500.00).

_____ We, the jury in the above-entitled action, find for the defendant.

Wm. C. Howell
Foreperson

September 18, 2013

This judgment was entered on 1 day of October, 2013, and a copy mailed first class or placed in the appropriate attorney's box on 1 day of October, 2013, to attorneys of record or to parties (when appearing pro se) as follows:

Oscar W. Bannister PO Box 10007 Greenville, SC 29603

James P. Walsh PO Box 6728 Greenville, SC 29606

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

M. Hope Blackley / Martha Long, D.C.
M Hope Blackley - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

**VERDICT FOR PLAINTIFF IN THE AMOUNT OF SIX THOUSAND,
FIVE HUNDRED DOLLARS. (\$6, 500.00).**

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2013 OCT - 1 AM 10:55
M. HOPE BLACKLEY

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) COURT OF COMMON PLEAS

3
4 RAY AND MARY LONG,)
5 PLAINTIFFS,)
6 VS.)
7 TUCK & HOWELL, INC.,)
8 DEFENDANT.)
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TRANSCRIPT
OF
RECORD
2009-CP-42-0781

September 16th - 18th, 2013
Spartanburg, South Carolina

B E F O R E:

THE HONORABLE J. DERHAM COLE, Judge, and a jury.

A P P E A R A N C E S:

BILL BANNISTER
ESQ.
Attorney for the Plaintiffs

JAMES WALSH and JOHN D. HARJEHAUSEN
ESQ.
Attorneys for the Defendant

LINDA D. MOFFITT
Circuit Court Reporter
Seventh Judicial Circuit

Transcribed by Pamela E. Green, Circuit Court Reporter

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E X H I B I T S

<u>NOS.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
	<u>Plaintiff's Exhibits</u>		
P-1	Proposal		20
P-2	Steamatic Bill		43
P-3	General Bill		62
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1	<u>NOS.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
2		<u>Defendant's Exhibits</u>		
3				
4	D-1	Letter		7
5	D-2	Office Note		7
6	D-3	Office Note		7
7	D-4	Office Note		7
8	D-5	Office Note		7
9	D-6	Letter		7
10	D-7	Report		7
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22	D-19	Bill		7
23	D-20	Offer		7
24	D-21	Cash Rebate Form		7
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1	<u>NOS.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
2				
3	D-23	Invoice		7
4	D-24	Photograph		7
5	D-25	Photograph		7
6	D-26	Photograph		7
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10	D-30	Photograph		7
11	D-31	Photograph		7
12	D-32	Photograph		
13	D-33	Bill		70
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1 P R O C E E D I N G S

2
3 (WHEREUPON, the following takes place in the presence
4 of the jury.)

5 THE COURT: Mr. Pryor, you can go ahead and take that
6 seat. You're gonna be the 12th juror. One of your fellow
7 jurors is unable to continue. So, both of the alternates
8 are now the 12th juror. So, we are going to now begin with
9 the presentation of the plaintiff's case.

10 Mr. Bannister.

11 MR. BANNISTER: May it please the Court.

12 Your Honor, by agreement, we have marked certain
13 exhibits, and I would like to offer those into evidence at
14 this time.

15 THE COURT: All right. And those are Plaintiff's
16 Exhibits 1 through what?

17 MR. BANNISTER: Well, they're actually Defendant's
18 Exhibits, marked as Defendant's Exhibits, but they are
19 Exhibit No. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14,
20 excuse me, 15, 16, 17, 18, 19, 20, 21, 22, 23, and pictures
21 of the house, 24, 25, 26, 27, 28, 29, 30, and 31.

22 THE COURT: Without objection, they're admitted.

23 MR. WALSH: No objection.

24 MR. BANNISTER: Thank you, Your Honor.

25 (WHEREUPON, Defendant's Exhibit Nos. 1 through 31 were

1 received into evidence at this time.)

2 MR. BANNISTER: We call Mrs. Mary Long.

3 Come around, Mrs. Long.

4 MARY LONG, having been first duly
5 sworn, testified as follows:

6 THE COURT: Mrs. Long, if you'll, if you'll pull your
7 seat up there, and that microphone, that black microphone
8 is the one that benefits the jury. So, if you'll adjust
9 that as you need to. If you need to move it you can.

10 DIRECT EXAMINATION

11 BY MR. BANNISTER:

12 Q Are you Mrs. Mary Long?

13 A Yes, sir.

14 Q And, Mrs. Long, how old are you?

15 A Seventy.

16 Q And Ray Long, who's here at the table, is your husband?

17 A Yes, sir.

18 Q And how long have y'all been married?

19 A Twenty-two years.

20 Q Does Mr. Long have a, a hearing problem?

21 A Very bad.

22 Q So, he's hearing impaired?

23 A Yes, sir.

24 Q Is that correct?

25 A Yes, sir.

Mary Long - Direct examination
by Mr. Bannister

1 Q Now, Mrs. Long, I want to kind of go a little bit with
2 your health.

3 Do you have any health problems?

4 A Yes, sir.

5 Q And primarily what are they?

6 A A lot of inflammation problems, myalgia, arthritis,
7 very bad muscle problems, bone problems, thyroid problems.

8 Q All right. I want you to go back to nineteen --
9 approximately 1983.

10 What kind of problems did you have in 1983?

11 A I was having allergy problems. I was allergic to real
12 strong scents, odors like perfume, laundry detergent that
13 was heavy scented, and chemical odors. Anything like that
14 that was a real strong odor.

15 Q All right. Let me show you what's been marked really
16 as Exhibit, Defendant's Exhibit 1 dated February 14th, 1980,
17 from Doctor C. Allen Bruce.

18 Now, who is Doctor Bruce?

19 A He's an allergy and immunology doctor.

20 Q And you saw him for health problems you had?

21 A For the allergy problems.

22 MR. BANNISTER: Okay. And, Your Honor, with your
23 permission, I'll publish just a short part of this.

24 THE COURT: You may.

25 MR. BANNISTER: Defendant's Exhibit 1 dated

Mary Long - Direct examination
by Mr. Bannister

1 February 14th, 1980. She has had some sinus ear and
2 headaches. She has not had cough or wheezing. However,
3 she has had some sinus -- I'm sorry. Headaches, especially
4 frontal area around the eyes, nasal stuffiness, and
5 sniffing and she has hoarseness, and he prescribed for you
6 that you stay away from strong odors.

7 Now, that's the condition that you -- such as?

8 A Yes, sir.

9 Q What kind of strong odors set off your allergies?

10 A Perfume, laundry detergent, chemical odors. Anything
11 really. Cigarette smoke. Anything with a real strong odor.

12 Q All right. What did you do about these odors?

13 A He taught me how to, by avoidance, that I could just
14 avoid those things. Once I learned what I was -- was
15 irritating me like that and bothered me, I just stayed away
16 from them. I bought unscented detergent. Didn't use the
17 perform -- perfume. I stayed away from cigarette smoke.
18 So, I just avoided those things and I was able to get it
19 under control by avoidance.

20 Q All right. Did you continue to take medication for it?

21 A Not for a period of years except like on seasonal
22 allergies mainly. Occasionally I would have to take
23 something if I did get around something, and if I didn't
24 avoid something maybe. But mainly in the springtime with
25 the pollen and in the fall with the ragweeds. That's

Mary Long - Direct examination
by Mr. Bannister

1 something you just can't hardly get away from, and -- but
2 not on a regular basis, no.

3 Q All right. And did you continue to be treated for
4 allergies and problems you had with allergies all the way up
5 to 2000?

6 A No, sir, the last time I seen him was 1983, and then I
7 started having severe problems after we were exposed to the
8 heavy metal powder and the mold and all that.

9 Q And that was after 2000, correct?

10 A Yes.

11 Q Now, you have a house, I believe, that was built by
12 your first husband, is that correct?

13 A It was, it was subcontracted out, a lot of the work
14 like the brick work, the plumbing and electrical work. But
15 he did like a -- the cabinets and sheet rocking and all of
16 that, the finish work, he did himself on the inside.

17 Q All right. I want you to look at those pictures if you
18 would. I believe they're numbered Exhibits 25 through 31.

19 Is that the exterior and interior of your house?

20 A Yes, sir.

21 Q Is it a brick home?

22 A Yes, sir, and we -- we had just -- we had been updating
23 it over the past few years, and---

24 Q All right. Just look at those and see if that's --.

25 A That -- this -- yeah, this is my home.

Mary Long - Direct examination
by Mr. Bannister

1 Q These pictures were taken in what year?

2 Do you recall?

3 A They took these -- I don't know who took these
4 pictures. I guess the -- one of the attorneys cause it
5 was---

6 Q It was after you moved out?

7 A Yes, these have been taken since we moved out.

8 Q Okay.

9 A But I don't know who took those.

10 Q Okay.

11 A I guess it was one of the---

12 Q Is that a fair representation of your house --

13 A Yes.

14 Q -- the way it looks?

15 A Yes, sir.

16 Q All right. Now, Mrs. Long, you, you mentioned that you
17 had made some repairs on the house or -- had made some
18 changes in it.

19 Up until 2004, what, what improvements had you made on
20 this house?

21 A Well, we had really almost finished completion, you
22 know, of the updating it. We put down -- took up all the
23 carpet and put down hardwood floors throughout, a new roof
24 with, with StormGuard to prevent damage from storms, new
25 doors, new heat registers all the way through, new doorknobs

1 all the way through, all new appliances. We remodeled --
2 redid the kitchen and updated it with -- made more storage,
3 and the only thing we had not replaced in the kitchen was
4 the oven and surface unit and I think the sink, and we
5 hadn't decided if we was gonna go ahead and change the
6 countertops or not right now because they still looked real
7 good, but we was thinking about it.

8 But then we would have had a complete -- the kitchen
9 was completely remodeled and with all new appliances except
10 the oven and cooktop and custom blinds. We were updating
11 trying to get ready for our retirement years, and making it
12 as carefree as we could so we wouldn't have, you know, much
13 to do and --.

14 Q And the house is on a single level, is that correct?

15 A Yes, sir.

16 Q And it has a crawl space underneath it?

17 A Yes, sir.

18 Q Now, is -- do you have any other relatives that live
19 nearby?

20 A Yes, sir.

21 Q And who would that be?

22 who would that be?

23 A My daughter and son-in-law.

24 Q And where are they in proximity to your house?

25 A They're the next door, next door down.

Mary Long - Direct examination
by Mr. Bannister

1 Q was the land that your house is on at one time part of
2 their -- currently your daughter's land?

3 A No, it was our land and we -- they moved -- they built
4 there to be close to us, and, you know, to help us out, you
5 know, if we needed it especially for in our later years.
6 They moved there to be close to us. So, I gave them a lot
7 to build on. I mean sold them a lot.

8 Q Okay. Sometime around 2000 did you experience some
9 allergy problems that caused you to be concerned about your
10 roof?

11 A What year did you say, sir?

12 I'm sorry.

13 Q Prior to 2004.

14 A It was 2001 we had had a storm, and it leaked in our
15 family room, and it leaked in-between maybe five I think it
16 was ceiling tiles, and it came through a little bit, you
17 know, inside. And, so, we didn't notice it right away. It
18 was -- I don't know how much time had passed. I started
19 seeing a little discoloration in the -- between the ceiling
20 tiles. So, I called the environmentalist out to just check
21 it and see if it was just from the water stain or if it's
22 actually -- to check for mold, to see if we had mold.

23 Q Why were you particularly checking for mold?

24 A I wasn't sure, sir. We didn't know cause we had had
25 the leak see, and it had some discoloration in-between the

Mary Long - Direct examination
by Mr. Bannister

1 ceiling tiles cause we didn't know whether it was mold or
2 not. It was just a little something.

3 Q what effect does mold have on you?

4 A I have severe allergy problems from it, headaches and
5 shortness of breath and things in, in that nature.

6 Q were these symptoms occurring at the time that you saw
7 the water discoloration?

8 A Yeah, yeah, another reason I called the
9 environmentalist out -- I'm sorry. I just blanked. I'm
10 sorry.

11 Q well, was the -- did the mold cause you or---

12 A Oh, I'm sorry.

13 Q Does mold cause you any problems?

14 A Yes, sir, and the reason I called him out, I was having
15 problems and we also had an odor in there. We had an odor
16 in the house and that didn't start right away. It started
17 later. So, I thought -- that's one reason, Mr. Bannister,
18 I'm sorry. That's one reason I called him out too was to
19 check the odor, and I, I was afraid that it was mold. So,
20 that's why I had him out, and then when the man came out and
21 checked it, the environmentalist, he said---

22 MR. WALSH: Objection, Your Honor, that would---

23 Q You can't go into what the environmentalist said.

24 Did you have a discussion with the environmentalist?

25 A Yes, sir.

Mary Long - Direct examination
by Mr. Bannister

1 Q And as a result of that discussion with the
2 environmentalist, what did you do?

3 A Well, I, I called the insurance company and told them
4 that we had the problem and we needed to get the ceiling
5 fixed. So, they wanted to just take the five -- the several
6 ceiling tiles down that was -- had the discoloration and
7 had the -- it was like one percent. The mold testing came
8 back and showed we had between one percent---

9 MR. WALSH: Your Honor, I would object to the
10 testimony.

11 THE COURT: Sustained.

12 Q All right. You have it tested?

13 A Yes, sir.

14 Q You did have it tested for mold?

15 A Yes, sir.

16 Q As a result of having it tested for mold, what did you
17 do?

18 Did you have repairs made?

19 A Yes, sir, am I not allowed to tell it's just a tiny
20 small amount?

21 No?

22 Q Was it repaired?

23 THE COURT: Somebody else will have to testify to
24 that, Mrs. Long.

25 Q Did you have it repaired and removed?

Mary Long - Direct examination
by Mr. Bannister

1 A Yes, sir.

2 Q And once that was done, what effect did it have on your
3 allergies, the conditions you had?

4 A Well now let me back up. We had the -- just the
5 ceiling tiles taken down at that time because that's all the
6 insurance company wanted to do. But we continued to have
7 the odor, but the environmental -- when I had the testing
8 done, I found out that the odor wasn't coming from that
9 little small amount of mold. It was coming from---

10 MR. WALSH: Your Honor, I would object again.

11 THE COURT: Mrs. Long, now I know you're not a lawyer.
12 But you understand you can't testify to what somebody else
13 did or what they said. Those people will have to come to
14 court and testify. You can testify to what you know of
15 your own personal knowledge and perceptions.

16 THE WITNESS: Well---

17 THE COURT: But you can't testify to what somebody
18 else did or what somebody else -- a test somebody else
19 conducted, what those results were. That person will have
20 to come testify so they can be examined just like you were.

21 THE WITNESS: Can I ask you a question?

22 (The Court nods affirmatively.)

23 THE WITNESS: Can I present the lab test?

24 THE COURT: Your lawyer---

25 THE WITNESS: The result?

Mary Long - Direct examination
by Mr. Bannister

1 THE COURT: Your lawyer knows what to present. What
2 I'm saying is---

3 THE WITNESS: Oh, okay. I'm sorry.

4 THE COURT: ---that test you've done---

5 THE WITNESS: I'm sorry.

6 THE COURT: ---that person who did the testing will
7 have to come testify.

8 THE WITNESS: Okay. I'm sorry.

9 Q All right. Did you take any action to have the odor
10 abated or removed?

11 A Yes, sir.

12 Q What did you do?

13 A We took -- the remediation company took all the ceiling
14 tiles down, all the insulation out, and the plywood,
15 everything. They took everything out and replaced it.
16 Everything.

17 Q Did that cause your condition with the allergies to
18 lessen or cease?

19 A Well, yes, sir, it went, it went away once they took
20 that out.

21 Q Okay. And that would have been about when, about 2004?

22 A Well, I had the testing done -- no, sir, it was -- I
23 had the testing done December the 28th of 2001.

24 Q All right. And when was the work completed?

25 A I was---

Mary Long - Direct examination
by Mr. Bannister

1 Q The best you can recollect.

2 A I believe it was 2002. But I would have to look at my
3 records to make sure.

4 Q Okay. All right. But it was done before you decided
5 to have -- Tuck & Howell replaced your furnace with a heat
6 pump?

7 A Oh, yes, sir.

8 Q All right. Now, why did you decide to have the furnace
9 replaced?

10 A Other than the furnace was a gas furnace and it went
11 out. We just turned it on in the fall, and when you turned
12 it on, it didn't, it didn't work. So, we had already been
13 thinking about changing it. So, we just went ahead and
14 changed it and changed the duct work and put a new heat pump
15 in.

16 Q All right. And that was -- do you recall who you got
17 to do the work?

18 A Tuck & Howell.

19 Q And did Tuck & Howell send any of its agents out---

20 A They---

21 Q ---to give you an estimate?

22 A Yes, sir, Scott Cooper.

23 Q Is that Mr. Cooper who's seated here?

24 A Yes, sir, the middle -- the guy in the middle.

25 Q All right. And I'm gonna show you this document and

Mary Long - Direct examination
by Mr. Bannister

1 ask you if you recognize it.

2 A Yes, sir, that's the estimate, and --.

3 Q Is that, that what Mr. Cooper gave you?

4 A Yes, sir.

5 Q All right.

6 A They's some more on the back.

7 Q Did he write that?

8 A Yes, sir, he signed it. We had got him to sign it.

9 MR. BANNISTER: Your Honor, we would offer -- excuse
10 me. We would offer this as Exhibit 1.

11 MR. WALSH: No objection, Your Honor.

12 THE COURT: It is admitted.

13 (WHEREUPON, the proposal was marked as Plaintiff's
14 Exhibit No. 1 and received into evidence at this time.)

15 Q This was a proposal made by Tuck & Howell to replace
16 the or to put in the --?

17 A Heat pump---

18 Q -- heat pump?

19 A ---and the duct work.

20 Q Okay.

21 A Replace the duct work.

22 Q All right. Now, Exhibit 1 has in here, and I'm gonna
23 ask you to read this if you will, starting where proposal
24 includes, read these parts that Tuck & Howell was proposing
25 to do for you.

Mary Long - Direct examination
by Mr. Bannister

1 A It says removing existing air handler and heat pump.
2 Remove existing return and air ducts in the crawl space, and
3 blank off the boots with metal caps.

4 Q So, part of the proposal was the Tuck & Howell---

5 MR. WALSH: Objection, Your Honor. I think the
6 witness can testify to what it said, but not the leading
7 question Mr. Bannister's trying to ask.

8 THE COURT: Well, I think it's all right.

9 Go ahead. You can ask your question.

10 Q Part of the proposal was to have the duct work in the
11 crawl space removed and replaced?

12 A Yes, sir, we was removing, we was removing everything
13 because we was getting ready for retirement and we --
14 everything's new except the windows in the house.

15 Q Okay. And they gave you a price --

16 A Yes, sir.

17 Q -- Tuck & Howell?

18 And did you agree to it?

19 A Yes, sir.

20 Q Okay. And did the work commence to be done?

21 A Yes, sir.

22 Q All right. And was it put in?

23 A Yes, sir.

24 Q All right. And when about was it completed?

25 Do you recall?

Mary Long - Direct examination
by Mr. Bannister

1 A November the 11th of 2004.

2 Q All right. After the heat pump was put in, 2004, and
3 you, you were, at that time, living in the house, is that
4 correct?

5 A Yes, sir.

6 Q What happened next in regard to this heat pump?

7 A Well, right after we turned it on it started smelling.
8 It had a real strong odor and we called Mr. Scott Cooper and
9 told him that we was having a terrible odor, and he said it
10 was just the newness burning off, and it smelt like a, like
11 rubber or the best way I could explain it at the, at the
12 time, you know. It smelt like rubber or either plastic
13 maybe burning. But I found out later it was a metallic
14 odor.

15 MR. WALSH: Objection, Your Honor. I think this---

16 THE WITNESS: Oh, okay. All right. Sorry.

17 THE COURT: Don't testify to what somebody else said.

18 THE WITNESS: Sorry.

19 Q And, so, you had this odor and you had a conversation
20 with Mr. Cooper?

21 A Yes, sir.

22 Q And did Mr. Cooper take any action to correct it?

23 A No, sir, he didn't. You know, he said it was the
24 newness wearing off, and we just, you know, took his word
25 for it, and we wasn't -- he said it wasn't harmful. So, we

1 wasn't concerned about it.

2 Q This would had been about what time frame?

3 A Immediately after we turned -- I think it was the
4 second day we called him after we -- after they finished
5 installing.

6 Q Okay. And did the smell go away?

7 A Well, not right away. It, it continued to be pretty
8 strong there at the beginning, and then it sort of like just
9 got weaker and weaker. But then, later on, we started
10 having it again and I don't -- I can't tell you exactly when
11 the dust, the heavy dust started. We started having a real
12 heavy dust that we hadn't never had, and it was settling all
13 over the furniture and all, and I said -- I didn't -- we
14 couldn't figure out where the dust was coming from.

15 But it was probably around, the best I can remember, it
16 was maybe around two months after we had installed it when
17 we picked up on the dust being so heavy. But we feel like
18 that it may have been coming in all the time and it wasn't
19 heavy enough for us to, you know, pick up on it on the
20 furniture and all. But that's when it got real heavy, and
21 it was -- we thought, at first, it was just maybe house
22 dust, but we didn't know. We had never had it before and
23 didn't know where it was coming from.

24 But then, later on, we found out that it was a white
25 powder. But that was 11 months later that we found out it

1 was the aluminum metal.

2 MR. WALSH: Objection, Your Honor. Again---

3 THE COURT: Sustained.

4 Q It was a white powder coming out?

5 A Yes, sir.

6 Q And did the smell persist?

7 A Well, it would, it would come and go and we don't have
8 any answers for that. We don't know why it was coming and
9 going, but the powder never went away. The dust never went
10 away. It, it stayed there and we checked, you know,
11 everything and we couldn't find out what was, what was
12 causing it. And, like I said, at the time, for 11 months,
13 we didn't know that it was a powder, a white powder. We
14 just thought it was, you know, dust, house dust. So, we
15 didn't even suspect it was anything harmful until 11 months
16 later.

17 Q All right. Did you contact Tuck & Howell again
18 regarding dust or the smell?

19 A You mean up before we found it coming out of the---

20 Q In this 11 month period.

21 A I know -- I know, I know we mentioned to them about
22 dirt, finding dirt, you know, around the heat registers, and
23 I spoke to Mr. Cooper again about that, and I asked him, I
24 said -- I called him and talked to him on the phone.

25 I said Scott, there's dirt around the heat registers.

Mary Long - Direct examination
by Mr. Bannister

1 You know, I had, I had dusted with some whitewash cloths,
2 old whitewash cloths, and I said could it be coming from the
3 duct work, and he said well, it could be if it wasn't
4 installed properly, but said I know my men installed it
5 properly. So -- but then later on, after we started seeing
6 the powder and soon found out that it was the white powder
7 and all, I had --.

8 Q Go ahead.

9 A I had called another company out, you know, to come out
10 and tell us, you know, what was going on, to help us going
11 on, and he said that the---

12 MR. WALSH: Your Honor, objection.

13 THE COURT: You can't testify to what they said.

14 Q All right.

15 A Well, anyway, it was pouring in dirt. The duct work
16 was not sealed.

17 MR. WALSH: Your Honor, I believe that this testimony
18 would be coming from---

19 THE COURT: Now, Mrs. Long, if you---

20 THE WITNESS: That is now---

21 THE COURT: Excuse me, Mrs. Long. Keep in mind, you
22 can't testify as to what somebody else told you about any
23 evaluation they made. They'll have to testify---

24 THE WITNESS: Okay.

25 THE COURT: ---if they wish to testify. You can

Mary Long - Direct examination
by Mr. Bannister

1 testify to what you saw, what you felt, what you know from
2 your own perceptions using your own senses. You can't
3 testify to what somebody else perceived and told you.

4 THE WITNESS: Okay.

5 Q All right. Mrs. Long, let's go to the period now about
6 11 months.

7 You were noticing some type of dust or powder, is that
8 correct?

9 A Yes, sir.

10 Q Yes.

11 Describe the powder by color.

12 A It was a white powder.

13 Q Did you feel it?

14 A No, I did not feel it, but---

15 Q Did you clean it up?

16 A Yes, sir.

17 Q Where did it appear to be coming from?

18 A Oh, we knew it was coming from the heat register.

19 That's when we found where the dust was coming from. Well,
20 we had been off on vacation, and when we came back -- see, I
21 had not continued to dust, and that's when it really got
22 heavy while we were gone. And when we came in, you could
23 just see it all over everything, our, our furniture and
24 everything, and I just -- I hadn't been home but just a few
25 minutes, and I looked and I seen this white powder piled up

Mary Long - Direct examination
by Mr. Bannister

1 cause we got -- we had hardwood floors, and I seen this
2 white powder piled up in front of the heat registers.

3 Q These are the heat register that blow air --

4 A Out.

5 Q -- from the heat pump?

6 A Yes, sir.

7 Q So, the air comes through the duct work to the heat --
8 from the heat pump into your house?

9 A Yes, sir.

10 Q Is that correct?

11 A Yes, sir.

12 Q And where it comes out is where you saw this dust?

13 A Yes, sir.

14 Q Did you see other concentrations of anything other than
15 the white powder there by the heat register?

16 A No. No, not anything I could see, but we -- you could
17 smell. We had terrible -- two terrible odors. There was
18 two different odors in our home. It was real bad.

19 Q Describe, describe those odors to us.

20 A Well, the -- one of them was a -- like a musty odor,
21 and the guys -- Mr. Cooper -- wait. I'm sorry. Anyway,
22 they, they called it Stinky Sock Syndrome.

23 Q Now, who called it that?

24 A The guys from Tuck & Howell. All of them. They --
25 Mr. Tuck, Scott Cooper and all of them called it Stinky Sock

1 Syndrome.

2 Q So, you called them back out to -- for this odor?

3 A No, they came that same day for all the problems, the
4 odors and the powder.

5 Q Okay. And that was Mr. Tuck?

6 A Mr. Tuck didn't come the first day. He sent Scott
7 Cooper and another man.

8 Q And did you have discussions with them?

9 A Yes, sir.

10 Q And what did they tell you about the Stinky Sock
11 Syndrome?

12 A They said they knew what that odor was, but they had
13 never seen the powder. They said they had never seen the
14 white powder before.

15 Q What did they tell you the odor was?

16 A They said it was Stinky Sock Syndrome odor.

17 Q Where did it come from?

18 A The air conditioner.

19 Q That is the heat pump?

20 A Yes, sir, the heat pump system.

21 Q And what did they do about it, if anything?

22 A They, they called the Trane Company right then there
23 after they found it while we were -- the four of us was
24 standing in the family room. My husband and I and the two,
25 the two workers. He called someone at the Trane Company.

Mary Long - Direct examination
by Mr. Bannister

1 Q And he being Scott Cooper?

2 A Yes, sir.

3 Q All right.

4 A And---

5 Q And you could hear the conversation?

6 A Yes, sir.

7 Q What was the conversation?

8 A He was told that it was -- but whoever he spoke with --
9 now I don't know this first time. I know he talked to Glenn
10 Bell at least the second time he called. But I don't know
11 who he spoke with the first time. But they told them it was
12 aluminum oxide.

13 MR. WALSH: Your Honor?

14 Your Honor, I would object to this unidentified person
15 as hearsay.

16 THE COURT: Yeah, now -- it's not somebody that was
17 working for the defendant's company?

18 THE WITNESS: Yes, sir, it was.

19 THE COURT: Well, this---

20 THE WITNESS: They told us this, yes, sir.

21 THE COURT: That's what I'm talking about.

22 THE WITNESS: Mr. Cooper and then another man was with
23 him.

24 THE COURT: You can testify as to what somebody
25 working for their company told you.

Mary Long - Direct examination
by Mr. Bannister

1 THE WITNESS: Yeah. Well, it's Mr. Cooper and I, and
2 I don't know who the other man was.

3 THE COURT: Okay. But he was with Mr. Cooper?

4 THE WITNESS: Yeah, he came out first and they --
5 Mr. Cooper was suppose to meet him there and he was late.
6 So, the man said I'm gonna go back to the office and get
7 Mr. Cooper and I'll be right back. So, he wasn't gone but
8 just a few minutes and he came back. So, I think -- it was
9 my understanding that he met Mr. Cooper at the road on his
10 way to our home. So then he came back in with him. Then
11 it's the two of them.

12 THE COURT: It was somebody Mr. Cooper brought to your
13 house?

14 THE WITNESS: Yes, sir.

15 MR. BANNISTER: Your Honor, it was also -- was it an
16 employee of Tuck & Howell?

17 A Yes, sir.

18 Q Okay. So, then they had this conversation?

19 A Yes, they called the --.

20 Q Trane man, right?

21 A The Trane. I think it was the distributing company
22 where they bought it from, and -- that they called and cause
23 they was a man that worked, from what I understood, it was
24 the Trane representative, Glenn Bell, Mr. Glenn Bell that
25 worked -- it was the South Carolina Trane representative for

Mary Long - Direct examination
by Mr. Bannister

1 the state, and he, he told Scott that they had the
2 problem---

3 MR. WALSH: Your Honor?

4 MR. BANNISTER: She heard the conversation.

5 MR. WALSH: It's still not a representative of Tuck &
6 Howell. This is some other person that she's describing
7 having a conversation on the phone.

8 THE COURT: Okay. You can't testify as to what this
9 other person said unless they worked for Tuck & Howell.
10 But you can testify as to what Mr. Cooper said to you---

11 THE WITNESS: Okay.

12 THE COURT: ---as a result of the conversation.

13 THE WITNESS: Okay.

14 THE COURT: Okay.

15 A Well, I could hear the conversation, but then when Mr.
16 Cooper got off of the phone, he told us that whoever he
17 spoke with said it was aluminum oxide, and that they had had
18 the problem before.

19 Q That's what Scott Cooper told you?

20 A Yes, sir.

21 Q All right. What did he propose to do about it,
22 Mr. Cooper?

23 A He, he said -- I don't think he told me anything right
24 then. I think he called me back later. I think -- I don't
25 know if he had to speak with Mr. Tuck about it or what. But

1 he called me -- I think he called me back or came back. I'm
2 not sure about that. But he told me that the Trane Company
3 was gonna furnish replacement costs, and Tuck & Howell was
4 gonna install them, and that's what they did, and it seemed
5 like it took maybe a couple of days for them to get the
6 coils in before they changed them.

7 Q All right. And---

8 A Two or three days. Seems like it was a couple days.
9 I'm not sure about that.

10 Q All right. After the coil was replaced, did you
11 continue to experience problems?

12 A Yes, sir.

13 Q And what were the problems?

14 A Well, we continued to have the odors and the powder.

15 Q And that's -- now describe the odors.

16 A Well, we had what they call Stinky Sock Syndrome odor,
17 and then we also had that metallic odor. We had two --
18 really two different odors in there.

19 Q Okay. And now I want to stop you there and ask you
20 to -- excuse me.

21 During this 11-month period, how did those odors and
22 the powder affect your allergies if they did?

23 A Real bad.

24 Q And---

25 A It was---

Mary Long - Direct examination
by Mr. Bannister

1 Q What were the symptoms?

2 A Shortness of breath, muscle pain. Having -- I was
3 really having difficulty breathing. Headaches.

4 You talking -- now, let's see.

5 You're saying the 11 months?

6 Q During this period before Mr. Scott Cooper came out and
7 had this, had the conversation about the---

8 A Oh, I was having the regular allergy problems with
9 shortness of breath and headaches and things in that line.
10 But then they got worse.

11 Q Okay. Now, after the coils were replaced, did the odor
12 continue and did you---

13 A Oh, yes, everything continued. The powder---

14 Q The powder -- the white powder that was told to you by
15 Mr. Scott Cooper to be aluminum oxide, did that continue?

16 A Yes, sir.

17 Q All right. So what did you do?

18 A I called Mr. Cooper back and told him that we was still
19 having the problems. It was still -- the powder was
20 settling all over the furniture and still coming out of the
21 duct work, and, and he sent -- I don't know if Mr. Tuck sent
22 these two men back out, which is J. P. or T. -- I don't know
23 if it's T. J. or J. P. I'm sorry.

24 But, anyway, he sent -- he's the one that installed our
25 system, Mr. J. P. McConnell sitting over there. He and the

1 guy that was his helper, they came back out and I don't know
2 who sent them out. I don't know if it was Mr. Tuck or
3 Mr. Cooper. Oh, yeah, I'm sorry. It was Mr. Tuck because
4 he told us Mr. Tuck sent them out there.

5 He came back out there and he wanted to dust -- asked
6 me if I had a zip-lock bag and maybe something he could
7 brush the powder off. So, I gave him one of my basting
8 brushes out of the kitchen and gave him a zip-lock bag to
9 get a sample of the powder. Mr. Tuck wanted a sample of it
10 to have it tested, and he also had him to take out eight,
11 about an eight foot section of duct work out to bring back
12 to him, to Mr. Tuck to have tested.

13 Q Did he do that?

14 A He did. No.

15 Did Mr. Tuck do that?

16 Q No, no.

17 Did J. T. or T. J.?

18 A Oh, yes, sir. Well, see, J. T. had Ray come in the
19 house and get me. He wanted me -- he wanted to show me how
20 bad it was. But see, at the time he didn't know if they was
21 anything wrong on their part when he was showing all of this
22 to me. He didn't know---

23 Q Okay. What did J. T. show you?

24 A He showed me the -- well, see, I already knew it was in
25 the, on the coils. We called them about that. But he, he

Mary Long - Direct examination
by Mr. Bannister

1 wanted to see how heavy it was in the coils -- I mean in the
2 duct work. I'm sorry.

3 Q Okay. wanted to see how heavy what was in the coils?

4 A The powders.

5 Q That was identified to you as aluminum oxide?

6 A Yes, sir.

7 MR. WALSH: Your Honor, to be fair, the phrase they're
8 using was a conversation that the witness heard from
9 somebody else, which would be -- I think it's
10 mischaracterizing the context of that conversation. To
11 keep repeatedly referring to it when that's how the
12 conversation went -- somebody told Mr. Cooper. He didn't
13 know what it was, and the witness didn't say he did know
14 what it was. In fact, the witness said he had never seen
15 it before, that Mr. Cooper had told him that. So, I think
16 it's miss -- it's unfair to characterize it the way
17 Mr. Bannister is repeatedly doing it.

18 So, I would object to that kind of characterization
19 cause that testimony was Mr. Cooper heard from somebody on
20 the other line. We don't even know who it was. That
21 person wasn't even there.

22 THE COURT: Well, I understand. I assume there's
23 gonna be some other witnesses in this case. But what this
24 witness can testify is to what Mr. Cooper said. If he made
25 that as a representation, she can testify to what he said.

Mary Long - Direct examination
by Mr. Bannister

1 MR. WALSH: I agree. But the question -- so, I object
2 to the question as leading and lack of foundation---

3 THE COURT: I see.

4 MR. WALSH: ---to how that question's being phrased
5 cause he didn't -- he has no personal knowledge of that.
6 The witness didn't establish that. The witness established
7 she was told that, which, if she says that, that's her
8 testimony. But that's not a fact that he knew and she
9 hasn't established that---

10 THE COURT: Well, I understand. I---

11 MR. WALSH: ---and the question is prejudicial.

12 THE COURT: I don't disagree.

13 All right. Do you understand the objection,
14 Mr. Bannister?

15 MR. BANNISTER: I do.

16 THE COURT: I'll sustain the objection.

17 Q All right. Now, we now have a section of your duct
18 work taken out by somebody from Tuck & Howell?

19 A Yes, sir.

20 Q Did, did that employee of Tuck & Howell say anything
21 about the duct work to you?

22 A He, he told me that -- he wanted me to see how bad it
23 was.

24 Q And what did you see?

25 A It was real heavy with -- it was really more than white

Mary Long - Direct examination
by Mr. Bannister

1 powder. It, it looked like some grayish looking powder, you
2 know, mixed in with the white powder. But the heaviest part
3 of it was the white powder.

4 Q Okay. And, and what did he do with the section of
5 pipe?

6 A He took it to Mr. Duck -- Mr. Tuck's the one that sent
7 him to get it. So, I assume he gave it to Mr. Tuck.

8 Q He left with it. That's all you know.

9 A Yeah, he left with it.

10 Q All right. And then what happened?

11 A Well, I called Mr. Tuck. I gave him about two weeks
12 and I called and asked him what the results were. I would
13 like to see a copy of the results, and he said he didn't
14 have it tested, and I said well, why not, and he said well,
15 Glenn Bell -- now, Glenn Bell had got involved in there. He
16 is the Trane Company representative for the State of South
17 Carolina.

18 MR. WALSH: Your Honor, I ---

19 THE COURT: You're not gonna be able to testify to
20 what Mr. Bell said.

21 Q All right.

22 A I'm sorry.

23 Q Confirm -- confine it to what Mr. Tuck told you.

24 A Mr. Tuck---

25 MR. WALSH: Your Honor, I would object to the extent

Mary Long - Direct examination
by Mr. Bannister

1 that if that's hearsay of -- even though of -- he's, he's a
2 party, what he's saying is still an out-of-court statement
3 that she says he said. So, I mean that, that---

4 THE COURT: I understand. I'm going to allow that.

5 Q Go ahead.

6 What did Mr. Tuck tell you?

7 He said he had not had this white powder tested.

8 A I waited about two weeks and gave him time to have it
9 tested and he -- and I called him, and I said---

10 Q Mr. Tuck?

11 A Mr. Tuck. I'm sorry. And I would like to find out
12 about it, and I would like a copy of it. He said he didn't
13 have it tested, that he was told that it wasn't necessary to
14 have it tested, that it was aluminum oxide.

15 Q Did he tell you who told him that?

16 A He said Glenn Bell told him that.

17 Q All right.

18 A And he's the Trane representative.

19 Q All right. And what happened next?

20 Was there anything done about it?

21 What happened next?

22 A You know, I'm sorry. I got upset now. I'm just almost
23 drawing a blank.

24 Q Now, after -- while you had this discussion with

25 Mr. Tuck, did he offer to do anything?

Mary Long - Direct examination
by Mr. Bannister

1 A No. Well, see, I just took his word for it. Now they
2 had already made that clear. Scott had already told me it
3 was aluminum oxide and Mr. Tuck told me it was aluminum
4 oxide, and Mr. Bell told him it wasn't necessary to be
5 tested, and it wasn't harmful. They all told me, told us it
6 wasn't harmful, and we found out by the doctor---

7 MR. WALSH: Your Honor?

8 THE COURT: You can't testify to what the doctor said.
9 The doctor will have to testify.

10 Q Mrs. -- now, Mrs. Long, after -- when you had this
11 conversation with Mr. Tuck, was there any further action
12 taken on the heat pump?

13 A Well, those arguments going on between Mr. Tuck and
14 Glenn Bell, the Trane representative. Mr. Tuck was blaming
15 the Trane Company for the problems and said we would have to
16 deal with -- every time I'd call them, call Scott, Scott
17 would say it's not our responsibility, the Trane Company
18 made the unit, and so you've got to deal with them, you call
19 Glenn Bell and get -- they'll have to take care of the
20 problems.

21 We've changed the coils. The Trane Company furnished
22 us the coils. We changed the coils. We installed them and
23 that's all we're going to do.

24 Now, we -- he put us off on Glenn Bell and Glenn Bell
25 said---

Mary Long - Direct examination
by Mr. Bannister

- 1 MR. WALSH: Your Honor?
- 2 Q Don't go into what Glenn Bell said.
- 3 A Okay.
- 4 Q But did you have a conversation with Mr. Bell?
- 5 A Yes, sir.
- 6 Q As a result of those conversations, did Mr. Bell do
- 7 anything?
- 8 A No, he said he furnished---
- 9 MR. WALSH: Your Honor.
- 10 THE COURT: You can't testify to what he said.
- 11 Q Did Mr. Bell do anything?
- 12 Just yes or no.
- 13 A Yes.
- 14 Q What did he do?
- 15 A He furnished the coils.
- 16 Q Okay. And were they put in by Tuck & Howell?
- 17 A Yes.
- 18 Q Did that cure the problem?
- 19 A No, sir.
- 20 Q Why not?
- 21 What happened next?
- 22 Did you continue to have white powder?
- 23 A Yes, sir, they didn't do anything about anything. They
- 24 left all the powder in the house and in the duct work and
- 25 everything. They didn't clean anything out.

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by Mr. Bannister

1 They, they went and they installed the replacement
2 coils, and I told Mr. Tuck and told Scott Cooper, I said,
3 now if you replace the -- put those replacement coils in
4 there, you're just gonna contaminate those also, and I tried
5 to explain to them that everything in the home needed to be
6 cleaned. Everything -- the replacement -- the duct work
7 needed to be replaced before they ever put the replacement
8 coils in. But they said no, that's all they were gonna do.

9 And Mr. Cooper told me to, Scott Cooper, told me to put
10 four layers of cheesecloth, fold that together, put it over
11 my duct work, and turn the air conditioning on full blast,
12 and that would blow the powder out, and the cheesecloth
13 would catch it. But that didn't work either and---

14 Q Did you try it?

15 A Yes, sir.

16 Q But it didn't stop?

17 A No, sir, it didn't stop.

18 Q All right. Did you contact Tuck & Howell further?

19 A Yes, sir.

20 Q And tell us about that contact.

21 A That's when Mr. Tuck -- that's the time he sent --
22 Mr. Tuck sent Mr. McConnell and the other guy out to brush
23 the powder off and take the section of dirt. Now, I believe
24 that was right, at that time, Mr. Bannister, I can't be a
25 hundred percent sure of that. I got to see what follows

Mary Long - Direct examination
by Mr. Bannister

1 this, but I'm sorry.

2 what was your question again?

3 Q well, after the coil's replaced and you put the cloth
4 over the air return---

5 A Okay. well, I told Scott, after I seen -- I mean I
6 told J. P., after I seen how bad it was when he showed me
7 the section he took out from under the house, it was so
8 heavy, I told J. P. that I was gonna call someone out to
9 clean it out myself, and to get them to clean it out myself,
10 and I said who should I send the bill to at Tuck & Howell,
11 and he said I'll call Mr. Tuck. He picked -- he called
12 Mr. Tuck and Mr. Tuck told him to tell me that he would
13 call -- he had somebody that does that kind of work for him,
14 and he would send somebody out, and he sent Steamatic out to
15 try to vacuum it out. But that didn't work.

16 Q All right. Did you get a document showing the work of
17 Steamatic?

18 A Yes, sir.

19 Q Let me show you this.

20 Is this what you were furnished?

21 A Yes, sir.

22 Q Do you need some water?

23 A (Witness nods affirmatively.)

24 Q All right. There's your water.

25 A Thank you.

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by Mr. Bannister

1 Q Okay. Is that a document that was furnished to you?

2 A Yes, sir.

3 Q Who furnished it to you?

4 A The workers that did the work.

5 Q And this is something Mr. Tuck & Howell paid for?

6 A Yes, sir.

7 Q As far as you know?

8 A Yes, sir.

9 MR. BANNISTER: We would offer this, Your Honor.

10 MR. WALSH: I have no objection, Your Honor.

11 THE COURT: It is admitted.

12 (WHEREUPON, the Steamatic bill was marked as
13 Plaintiff's Exhibit No. 2 and received into evidence at
14 this time.)

15 Q Now, Mrs. Long, when you read this, did you see the
16 second line, Exhibit 2?

17 A No.

18 Q Could you read that?

19 A No, sir, not -- no, I didn't. I just looked at what he
20 charged and filed it away.

21 Q All right. And did you go back and review it later?

22 A Yes, sir, I was -- I was telling the, our insurance
23 company. I was trying to get them to help us, and I called
24 the insurance company. I was gonna try to file a claim
25 cause I couldn't get any help, couldn't get the Trane

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1 Company or Tuck & Howell to do anything. I was gonna try to
2 get our insurance, homeowner's insurance, to help us to, you
3 know, get it cleaned up and the man told me---

4 MR. WALSH: Your Honor---

5 Q Don't tell us what the man told you.

6 MR. WALSH: ---I would object to the statement of the
7 insurance company.

8 THE COURT: You can't testify to what somebody else
9 told you.

10 THE WITNESS: Okay. I'm sorry.

11 Q Do you know what a Microban application is?

12 A I do now.

13 Q What is it?

14 A It's a mold treatment.

15 Q So, the mold treatment was made the same time that you
16 were complaining about the white powder and the smell, is
17 that correct?

18 A Repeat that, sir. You was walking away.

19 Q Was the mold treatment made by Steamatic at that time?

20 A Yes, sir.

21 MR. WALSH: Your Honor, I would, I would object. The
22 reference in the report to a Microban doesn't prove that
23 Steamatic did anything. Unless the witness saw them do it
24 or has some testimony, I think it's mischaracterizing this
25 document to say that there's some treatment done other than

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1 that work.

2 THE COURT: It's her interpretation of the contents of
3 that document based upon her conversation with somebody
4 else?

5 MR. BANNISTER: No, sir, it's what she found out a
6 Microban treatment is.

7 THE COURT: Well, I know. But she found out from the
8 people performing the clean-up?

9 MR. BANNISTER: I can ask her.
10 who told you that or how did you find out that
11 Microban was a treatment for mold?

12 A I called the Steamatic Company and talked to them.

13 MR. WALSH: Your Honor, again.

14 THE COURT: I sustain the objection.

15 You can't testify to what somebody else told you.
16 They have to testify to those facts. Unless you know of
17 your own personal knowledge, you cannot testify as to what
18 somebody else said unless it happened to be someone
19 employed by Tuck & Howell.

20 MR. BANNISTER: Well, Judge, I would submit, not to
21 argue with you, but I would submit that Tuck & Howell hired
22 them and they were employed by Tuck & Howell.

23 THE COURT: Well, that hasn't been established because
24 I thought she's testified she didn't know who paid them.

25 MR. BANNISTER: She said---

1 THE COURT: She just knows she didn't.

2 MR. BANNISTER: She said Tuck & Howell---

3 THE COURT: Let me see y'all just a minute.

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

7 THE COURT: I sustain the objection.

8 Q Okay. After the Steamatic people came out, and you've
9 seen the document, what did you do next?

10 A I wanted to know what that was. So, I called
11 Steamatic.

12 Q Don't go into what Steamatic told you, but did
13 Steamatic answer your question?

14 A Yes, sir.

15 Q Just yes or no.

16 A Yes, sir.

17 Q Did that cause any concern on your part?

18 A Yes, sir.

19 Q What did it cause concern for?

20 A I found out that they didn't know---

21 THE COURT: No, that's just getting hearsay in back,
22 through the back door now. We're not going to do that.

23 Q All right. After you talked to Steamatic, what did you
24 do?

25 Did you have anybody else come out?

Mary Long - Direct examination
by Mr. Bannister

1 A What do you mean?

2 You know, there's a lot of people, had a lot of people
3 in and out. I don't know what you're referring to.

4 Q After, after you got the report from Steamatic, did you
5 investigate any further?

6 Did you have anyone else come out and make an
7 examination?

8 A No, I already had found out what it was. There was not
9 need -- there wasn't any need for me to call anyone else
10 out. I already was -- I knowed -- I already knew what it
11 was.

12 Q Okay. Did you have anybody else examine the duct work
13 in the, the heat exchange or the heat pump?

14 A Yes, sir.

15 Q Who?

16 A General Heating and Air out of Greenville.

17 Q And when did you call them?

18 A We found, we found the powder coming out of the duct
19 work. It was in October and I believe it was around the
20 14th of October. We continued to have problem after problem
21 after problem for three and a half more months even after
22 they had replaced the coils. Nothing, nothing had changed.
23 we still had all that. And when they changed the coils,
24 everything got worse.

25 They started refrigerant leaks. They didn't install

Mary Long - Direct examination
by Mr. Bannister

1 the replacement coils properly, and they started refrigerant
2 leaks, and we called them out. Three months a day the
3 refrigerant was leaking onto the coils and burning and
4 putting off a toxic odor. So, there for three and a half
5 more months, now we were not only exposed to the mold and
6 the aluminum oxide, now we was exposed to refrigerant that
7 was leaking and burning off the coils.

8 So then we really had a terrible odor in there. That's
9 when our health started falling out, and we started spitting
10 up blood, and spitting up, spitting up on mucus, excuse me,
11 a thick mucus and phlegm, and just getting worse by the day.
12 And that's when, after three and a half months, I called
13 General Heating and Air, and I told them the problems we
14 were having, that we had another company install a new heat
15 pump system and duct work, and we had not had anything but
16 problems out of it, and even after they found the powder,
17 they didn't stop it. They didn't stop the water. They went
18 ahead and installed the replacement coils, and the water
19 backed up on the replacement coils.

20 MR. WALSH: Your Honor, I would object to the
21 technical testimony about the operation of the system.

22 THE COURT: I sustain the objection.

23 Somebody from the company will have to testify about
24 that, Mrs. Long.

25 THE WITNESS: well, they will. I'm sorry, sir.

1 Q But you got, you got another company to come out?

2 A Yes, sir.

3 Q All right. Now, you had mentioned a refrigerant leak
4 in the heat pump.

5 A Yes, sir.

6 Q Did you have any discussions or get any documentation
7 from Jerry Tuck or anybody at Tuck & Howell?

8 A If you'll look at the---

9 Q Listen to my question.

10 A I'm sorry.

11 Q About the leaks, the refrigerant leaks.

12 A Oh, yeah. He had -- I had to call them to get them to
13 come out and repair the holes and fill it up with freon
14 again, but if you'll look at Mr. Tuck's letter he sent to me
15 dated February the 8th of 2006 I believe, he will -- he says
16 on there that they came out to the refrigerant leaks and the
17 holes and, and repaired the holes. He sent, he sent that in
18 the letter he sent me.

19 Q All right. Let me show you this and see if you
20 recognize it.

21 A This is it and he also -- he mentions our power bill.

22 Q Well, there---

23 A I'm sorry.

24 MR. BANNISTER: Okay. Your Honor, there's some marks
25 on this one. He's got a clean copy. So, we're gonna offer

1 this into evidence and substitute a clean copy with it.

2 THE COURT: Where is that?

3 MR. WALSH: Well, we're trying to find a copy of that.
4 So, I don't mind him marking it and then substituting it.

5 THE COURT: Well, it doesn't work like that and the
6 court reporter has got to keep it all. So, let's just get
7 the one you want in.

8 MR. BANNISTER: All right.

9 THE COURT: Let me see what you have there.

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

13 Q All right. Mrs. Long, I show you a letter, which
14 there's no objection to it, we'll substitute a copy, dated
15 February the 8th, 2006, and I wanted to refer you -- if you
16 would, just read that to the jury. All the way. Just read
17 it.

18 A This says "Dear Mr. and Mrs. Long. In November of 2004
19 Tuck & Howell Incorporated installed a new heat pump
20 system -- heat -- a -- excuse me. Installed a new Trane
21 heat pump system in your home at the cost of \$6,053. On
22 September the 30th, 2005, we came out in response to a white
23 powder substance coming from the duct work. In addition to
24 this, in October, you -- excuse me.

25 In addition to this, in October, you reported an odor

Mary Long - Direct examination
by Mr. Bannister

1 also coming from the same duct work. The Trane Company
2 furnished the coils with a special coating to prevent Dirty
3 Sock Syndrome and aluminum oxidation. We replaced the coils
4 and had all the duct work cleaned by Steamatic Corporation.
5 The odor persisted in the back bedroom.

6 In November of 2005 we repaired a leak at the coil and
7 new charge with refrigerant.

8 In December of 2005 we were out and adjusted the
9 refrigerant charge and repaired an additional leak in the
10 same coil.

11 In January you reported the Dirty Sock Syndrome smell
12 was still present in the back bedroom.

13 In January of 2006 Scott Cooper, with Tuck & Howell,
14 Inc., contacted you to inform you that if you were unhappy
15 with the work we would refund the contract amount. In
16 February 1st of 2006, I called and asked if Hayden Howell
17 and I could come and talk with you about your problems.
18 When we met you told us about the high electric bills in
19 December and January, and the odor was still in the back
20 bedroom. Also you had another company out that had made an
21 evaluation.

22 We offered to replace all your duct work, pay the bill
23 of the other company, and pay half of the electric bills for
24 November, December, and January.

25 Please let us know what we can do to make you

Mary Long - Direct examination
by Mr. Bannister

1 comfortable and happy with Tuck & Howell, Inc.

2 Q Okay. Now, he makes reference to a refrigerant leak.

3 A Yes, sir.

4 Q Was that a different smell from what you had had
5 previously?

6 A It was added to it. It got worse. When they got
7 the -- put the -- the refrigerant started burning, and then
8 we had the, the powder, the mold, the refrigerant, and the
9 odors. All of that was -- then we had all of that burning
10 on the coils at the same time, and the odor was really
11 just -- it was just a real toxic odor.

12 Q How was it affecting your allergies?

13 A Terrible. It was, it was, it was not only -- could I
14 say my husband?

15 Q Go ahead.

16 A He didn't have allergy problems before this, and he was
17 having problems. Having problems, you know, breathing and
18 headaches and all the same -- everything got worse, and,
19 see, we had all -- we left our home around the last of
20 December when we started spitting up -- when they put the
21 refrigerant in on us, and everything got so bad, and we was
22 getting bad -- just getting worse by the day. Just looking
23 in the mirror, we could see that we was just, you know,
24 dying. We was just so deathly sick and we was vomiting up
25 blood.

1 Our hair was falling out. We was choking on our mucus
2 and phlegm. And, so, I told my husband, I said we've been
3 poisoned. I said we got to get out of here. And, so, we
4 put on some masks and we had, we had the painters tape, and
5 we went and taped all of our closets up. Thought we could
6 maybe save, you know, our nice clothes, and we taped all of
7 those up, and grabbed us a few, just a few jeans and things
8 like that like you would just wear around for every day, and
9 this was in the wintertime.

10 I didn't even get a coat out. I didn't get Ray a coat
11 out. We just went and bought us one later. But we just
12 threw them in some big leaf bags, put them in the trunk of
13 the car, and took them to the laundromat and tried to wash
14 them several times, and we was having rashes. Even after we
15 had washed them and tried to wear them, we were having
16 rashes, you know, all over us. We was having the rashes
17 before this, but it just seemed like -- we thought once we
18 got out and got us a good shower and got in a clean place,
19 but our health problems still just continued to get worse
20 and worse because, see, all that, Mr. Bannister, was still
21 in us.

22 They didn't, they didn't just leave our bodies when we
23 left our home.

24 MR. WALSH: Your Honor, I think this is medical
25 testimony.

1 THE COURT: Let me see y'all just a minute.

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

5 THE COURT: All right. Mrs. Long, I'm going to break
6 for the day. So, I'm going to ask you to step down. Just
7 have a seat over there with Mr. Bannister, and we'll resume
8 with your examination in the morning.

9 THE WITNESS: Okay, sir. I'm sorry. I've never been
10 through anything like this before.

11 THE COURT: That's all right. Just step down with
12 Mr. Bannister.

13 All right. Ladies and gentlemen, we're going to
14 recess for the afternoon. Let me caution you that, once
15 you get selected in a case, you have to base your decision
16 upon what you see and hear during the trial and the law
17 that I provide you at the trial's conclusion. You're never
18 permitted to supplement your knowledge by conducting any
19 outside research or doing your own investigation into any
20 issue that might arise during the trial.

21 You're also not permitted to discuss the case with
22 anyone. So, when you go home tonight, you might have a
23 husband or a wife or a child or a friend that knows you
24 have jury duty this week, and they want to know what you're
25 doing down here.

1 well, you can't tell them. You just tell them you're
2 not permitted to talk about the case until its over. And
3 after you have reached a decision, you can talk about it
4 all you want to to as many or as few as you want to. But
5 until you've reached a decision you can't discuss the case,
6 and that includes discussions with your fellow jurors.
7 You're only permitted to discuss the case with your fellow
8 jurors when you are involved in jury deliberations.

9 So, no discussions with anybody at any time until
10 you're instructed to begin jury deliberations at the
11 trial's conclusion. And, as I say, don't conduct any
12 research. Don't do your own investigation.

13 You got to base your decision upon the evidence
14 presented or the lack of evidence for that matter, but you
15 can't supplement the evidence by conducting outside
16 research. So, none of that during the overnight recess.

17 Do have a good evening and please report to your jury
18 room at 9:30 in the morning. 9:30 in the morning.

19 Have a good afternoon.

20 (WHEREUPON, the following takes place outside the
21 presence of the jury.)

22 THE COURT: All right. As we recess, Mr. Bannister,
23 be sure to remind Mrs. Long that while she can testify as
24 to what she felt, she can testify as to what she saw, she
25 can testify to what she smelled, she can testify to what

1 she felt, but she's not gonna be able to testify to what
2 any doctor told her her condition was. She can testify to
3 what she understands her condition to be based upon her own
4 perception, but she can't testify to what the doctor said.
5 The doctor will have to testify.

6 okay?

7 MR. BANNISTER: Yes, sir.

8 THE COURT: All right. Court's in recess until
9 9:30 in the morning.

10 MR. WALSH: Your Honor, could I have one -- I
11 apologize.

12 I think Mrs. Long is still under oath. So, I would
13 just ask that she not to---

14 THE COURT: Oh, I'm sorry.

15 MR. WALSH: ---have any or do any research---

16 THE COURT: No, I'm sorry.

17 Mrs. Long, let me say one other thing. We're having
18 to break up your testimony just because of the time of day,
19 but you're still on the witness stand --

20 THE WITNESS: Okay.

21 THE COURT: -- for purposes of this trial. Although
22 I'm not gonna make you stay here all night on the witness
23 stand, but you can't talk about the case or -- with anybody
24 during the overnight recess because you wouldn't be able to
25 do that if you were on the witness stand.

1 THE WITNESS: Okay.

2 THE COURT: So, during the overnight recess, you can't
3 talk about your testimony with anybody.

4 Okay?

5 THE WITNESS: Okay.

6 THE COURT: Court's in recess until 9:30 in the
7 morning.

8

9 (WHEREUPON, Court was in recess for the evening.)

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1 Tuesday, September 17th, 2013

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3 (WHEREUPON, the following takes place outside the
4 presence of the jury.)

5 MR. BANNISTER: Judge, I talked to the other side. We
6 have a short witness who's a working man, Mr. Burton, who's
7 here. He will be very short, introduce a document, and
8 they do not object to me taking him out of turn so we can
9 let him go back to work.

10 THE COURT: Okay.

11 All right. Bring the jury in please.

12 (WHEREUPON, the following takes place in the presence
13 of the jury.)

14 THE COURT: Good morning, ladies and gentlemen.

15 As you know, when we recessed yesterday, one of the
16 plaintiffs, Mary Long, was presenting her direct testimony,
17 and we interrupted that testimony for the overnight recess,
18 and we were going to resume with that testimony this
19 morning. But we have an additional witness that might have
20 a scheduling issue and might not be available later in the
21 day or the week.

22 So, we're gonna take that witness' testimony first,
23 and then, after that witness testifies, we will resume with
24 the direct examination of Mary Long.

25 Okay.

Eric Burton - Direct examination
By Mr. Bannister

1 MR. BANNISTER: Thank you, Your Honor.

2 We call Mr. Eric Burton.

3 ERIC BURTON, having been first
4 duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. BANNISTER:

7 Q You're Mr. Eric Burton?

8 A Yes, sir.

9 Q And, Mr. Burton, where are you employed?

10 A The General.

11 Q General what?

12 A Air Conditioning.

13 Q Air Conditioning.

14 How long have you been so employed?

15 A I been reemployed for about almost three years, a
16 little over three years.

17 Q Prior to that where were you employed?

18 A A three year spell where I worked for two other
19 companies, which was J. H. Stewart and Rentals Mechanical,
20 and both of those went out of business.

21 Q All right. Are you -- have you been employed in the
22 heating and air conditioning business for some period?

23 A Yes, sir, approximately 20 years.

24 Q And what do you do?

25 Do you repair/replace?

Eric Burton - Direct examination
By Mr. Bannister

1 A Repair.

2 Q Repair?

3 A Yes, sir.

4 Q All right. Have you had any technical training on
5 repairing?

6 A Yes, sir.

7 Q And what has that been?

8 A Just your manufacturer schools and one they have at
9 supply houses and M. A. I. T. certified now and G. A.
10 certified.

11 A All right.

12 THE COURT: Excuse me just a minute.

13 Let me ask you to get a little bit closer to that black
14 microphone. You can adjust it if you need to. Speak into
15 it please.

16 THE WITNESS: Okay.

17 Q So, you've been in the air conditioning -- does that
18 include heat pumps as well?

19 A Yes, sir.

20 Q You've been actually doing the repairs on those for 20
21 years?

22 A Yes, sir.

23 Q Okay. Was there an occasion that you were called out
24 to the residence of Mary Long and do you remember that?

25 A I don't recall the service call, no, sir.

Eric Burton - Direct examination
By Mr. Bannister

1 Q Okay. When you, when you make a service call, do you
2 make notes or records of your call?

3 A Yes, sir.

4 Q And are those records kept by your company?

5 A I don't know. For an extended period of time -- I
6 guess they get rid of them. I don't know.

7 Q Were you asked, at one point, to identify a record from
8 your company---

9 A Yes, sir.

10 Q ---dealing with Mrs. Long?

11 A Yes, sir.

12 Q And did you identify that record---

13 A Yes, sir.

14 Q ---previously?

15 I'm gonna just hand it to you and ask you if you
16 recognize your signature in the billing portion of it and
17 the description of the work that you did?

18 A Yes, sir.

19 Q Do you recognize that?

20 A Yes, sir.

21 Q That's your signature?

22 A That's my signature, yes, sir.

23 Q Would that be a record you would keep in the ordinary
24 course of your business?

25 A That gets in with the offices. Like I said, I'm just a

Eric Burton - Direct examination
By Mr. Bannister

1 service technician. I don't know.

2 Q You make it in the ordinary course of business?

3 A Yes, sir.

4 Q And that would be about the same time that you would
5 perform the work or shortly thereafter, correct?

6 A Yes, sir, right after we do it.

7 MR. BANNISTER: Okay. Your Honor, I would offer this
8 into evidence.

9 MR. HARJEHAUSEN: No objection, Your Honor.

10 THE COURT: It is admitted.

11 (WHEREUPON, the bill was marked as Plaintiff's Exhibit
12 No. 3 and received into evidence at this time.)

13 Q Mr. Burton, I want to show you what's been marked as
14 Exhibit 3 of the record you made and tell the jury---

15 THE COURT: Before you do that, let me check
16 something.

17 (Pause.)

18 Q I want to show you what's been marked as Plaintiff's
19 Exhibit 3.

20 Is that your handwriting on that, Mr. Burton, from what
21 you did?

22 A Yes, sir.

23 Q Well, just tell the jury what you did on this --
24 according to your records, what you did on that service
25 call.

Eric Burton - Direct examination
By Mr. Bannister

1 A Just read the invoice?

2 Q Yes, sir.

3 A Says installed by another company. Due to several
4 trips out, customer had not made -- the customer had not --
5 I can't read my -- I'm sorry. Installed by another company
6 due to several trips out and customer not happy. They
7 called us to check overall installation of the system and
8 duct work. Nick, Nick Maxwell was taking pictures and will
9 be addressing these concerns of mine.

10 With the mechanic service system, I found the blower
11 speed set for three and a half tons with a three ton heat
12 pump. Set the dip switches properly. Checked control
13 wiring. Added one and a half pounds of R410-A to the unit
14 to bring the charge to the manufacture's recommendations.
15 Unit is operational at this time.

16 And then it looks like I ran out of room. So, I went
17 up here and noted installation errors, multiple return
18 leaks, exposed wood on pan floor joists returns. Float
19 safety on the condensate pumps not wired in. The receptacle
20 power by switch never crawl space door, if turned off like I
21 found it, it cut the power off to the condensate pump
22 allowing the water to back up inside the air handler and run
23 looks like into supply pump. I corrected the wiring.

24 That's all it says.

25 Q Okay. So, according to that, you found some leaks in

Eric Burton - Direct examination
By Mr. Bannister

1 the---

2 MR. WALSH: Your Honor, I think the witness is being
3 led at this point. He's testified to the document.

4 THE COURT: well, I understand it. The document's in
5 evidence. So, overruled.

6 Go ahead. But if he misstates something, you let me
7 know.

8 Q You found some leaks in the duct work?

9 A Evidently.

10 Q All right. And then would those leaks in the duct work
11 cause air, outside air, in the crawl space to get into the
12 duct work and be blown out in the house?

13 would you expect that?

14 A It just depends on where the leak is. I mean it could
15 have been in the supply duct, which would be blowing air out
16 of the duct work.

17 Q Okay. So, you didn't identify where?

18 A No, sir, not on here.

19 Q Okay.

20 A No, I didn't.

21 Q And you also found that the -- it was an undersized or
22 not the right sized setting for that size air conditioning?

23 A Yeah, I had to change the dip switch settings on it.

24 Q Tell, tell the jury what that, what that means, what
25 effect it has.

Eric Burton - Direct examination
By Mr. Bannister

1 A Just C. F. M.s for the blower, how much air it can
2 move. Evidently it was moving three and a half tons. A
3 little too much air. Not much.

4 Q Too much air.

5 A Uh-huh. (Affirmative).

6 Q Okay. And the pump, the condensation pump, was not
7 properly wired and you found that according to your
8 inspection?

9 A The power supply for it, correct.

10 Q So, the switch cut off the pump, which would not allow
11 the pump to discharge the water out from under the house.

12 Is that a fair statement?

13 A Yeah, I guess. You know, it's---

14 Q Like you said, that's---

15 A If you cut the switch off by the door, yeah. It says
16 if you cut the switch off by the door it would cut the power
17 off to the condensate pump.

18 Q And you corrected that?

19 A Yeah.

20 Q All right. And what was the day of your visit out
21 there if you can tell?

22 A 1/16/06.

23 Q January 16th of '06?

24 A Yes, sir.

25 Q All right. And did -- were you paid for that?

Eric Burton - Direct examination
By Mr. Bannister

1 Did you make a chart and were you paid for that?

2 A Yes, sir, \$221.

3 Q Okay. All right. Thank you. Answer any questions Mr.
4 Harjehausen has.

5 CROSS-EXAMINATION

6 BY MR. HARJEHAUSEN:

7 Q Mr. Burton, you don't have any recollection of actually
8 going out to the Long residence, residence, is that right?

9 A That's correct.

10 Q And you don't recall meeting Mrs. Long, is that right?

11 A Yes, sir.

12 Q Or Mr. Long?

13 A Correct.

14 Q And your recollection is limited to what's on that
15 invoice, is that right?

16 A Yes, sir.

17 Q And is there a customer signature on that invoice?

18 A Yes, sir.

19 Q And is there, is there a signature that says Mary Long
20 on there?

21 A I believe so, yes, sir.

22 Q All right. And your invoice doesn't say anything about
23 the bad smells in the house, does it?

24 A No, sir, not at all.

25 Q It doesn't say anything about dust coming from the

Jeff Burton - Cross-examination
By Mr. Harjehausen

1 coil, is that right?

2 A No, sir, none that I can see.

3 Q Okay. And it doesn't say anything about powder in the
4 ducts?

5 A No, sir.

6 Q And Mrs. Long didn't tell you anything about prior mold
7 problems in her house, did she?

8 A I don't recall.

9 Q Well, that would have been important to know, wouldn't
10 it?

11 A I guess. I mean we're not mold people, but---

12 Q Okay. And when you went out there on January 16th,
13 2006, you didn't see anything that raised any concerns about
14 mold, did you?

15 A There's nothing documented, no.

16 Q And, in fact, General Air's policy is to document it,
17 isn't it?

18 A Well, yes, sir, we write something and tell them to
19 call because we're not the mold specialist. We tell them to
20 call mold remediation if there's something that concerns us,
21 but --.

22 Q So, if you had seen something about mold that concerned
23 you, you would of put it in that, that document?

24 A Correct.

25 Q Because General Air wants to cover itself, right, in

Jeff Burton - Cross-examination
By Mr. Harjehausen

1 case somebody comes back and says they didn't do what they
2 were supposed to do?

3 A Yes, sir.

4 Q And there's nothing in that document about anything
5 about causing any sort of mold condition, is there?

6 A None that I see.

7 Q Now, when you left January 16th of 2006, the equipment
8 was fully functional and operational?

9 A Yes, sir, minus the things that Nick Maxwell needed to
10 look at. I don't remember what those were.

11 Q But that's what your invoice says, is that the system
12 was fully functional and operational, doesn't it?

13 A Yes, sir.

14 Q So, it was operating, at that time, as it properly
15 should?

16 A Yes, sir.

17 Q And if it wasn't, you would of, you would of noted
18 that -- you wouldn't have said it's fully functional and
19 operational, is that right?

20 A I couldn't have. It wouldn't have been.

21 Q Now, you were asked -- and when you went out there you
22 just never looked at the, the coil, is that right?

23 A Any time we do a -- I mean a diagnosis, I mean that's
24 what we're there for, to diagnose what's wrong with the
25 entire system.

Jeff Burton - Cross-examination
By Mr. Harjehausen

1 Q Okay. So, if you had saw something wrong with the coil
2 or the dust, you would of noted it on that form?

3 A Yes, sir.

4 Q And let me ask you a couple questions about this issue
5 of the, the light switch and the condensate pump.

6 Now, the condensate pan collects water underneath the
7 coil, doesn't it?

8 A Yes, sir.

9 Q And it drains through a P. V. C. pipe from the pan down
10 to the condensate pump, right?

11 A Yes, sir, if it has a pump.

12 Q Okay. And if that pump is not wired, it will just
13 drain out of the condensate pump, won't it?

14 A Yeah, up under the -- into the house. I mean -- yeah,
15 into the crawl space, right.

16 Q Now, have you -- you've heard of the condition of Dirty
17 Sock Syndrome?

18 A Yes, sir.

19 Q And, in fact, what is Dirty Sock Syndrome?

20 A I don't know. It's a horrible smell---

21 Q Okay.

22 A ---that you get from units.

23 Q Okay. You get it from new units, don't you?

24 A Yes, sir.

25 Q And you get it from new units sometimes that are

Jeff Burton - Cross-examination
By Mr. Harjehausen

1 absolutely perfectly installed?

2 A Right.

3 Q So, a technician can install the unit, do everything
4 according to the manufacturer's recommendations in
5 compliance with code, and you can still get a dirty sock
6 smell from a brand new system, isn't that right?

7 A That's correct.

8 Q And, in fact, nobody knows really what causes that,
9 isn't that right?

10 A I've never been given a straight answer, correct.

11 Q Okay. And often the solution is to replace the coil on
12 the H. V. A. C. system, is that right?

13 A Yes, sir.

14 Q And with a coated coil?

15 A Correct.

16 Q And, in fact, you had Dirty Sock Syndrome at your own
17 home, haven't you?

18 A Correct.

19 Q Now, you were out there on January 16th, 2006, but you
20 also went out there a year later, is that right?

21 A I don't recall. I believe it was on the invoice I
22 assume.

23 Q Mr. Burton?

24 A Yes, sir.

25 Q Let me show you this document. See if you recognize

Jeff Burton - Cross-examination
By Mr. Harjehausen

1 that.

2 A Yeah.

3 Q Okay. So, Mr. Burton, that's another General Air
4 Service Corporation document, is that right?

5 A Yes, sir.

6 Q And it's got your signature on it, is that right?

7 A That's correct.

8 Q It was rendered in the ordinary course of business for
9 General Air?

10 A Yes, sir.

11 Q And that document's a visit when you went out to the
12 Long's house in 2007, early 2007, is that right?

13 A Yes, sir.

14 Q Okay. And the Longs called you up.

15 So, in other words, they said, you know, something
16 that---

17 A They called our office. I mean they don't call me
18 direct.

19 Q Okay. And, and you went out there and serviced their
20 system?

21 A Yeah. Well, just a -- they had evidently a service
22 problem that wasn't working.

23 Q And what was the problem that was listed on the service
24 call in 2007?

25 A The module -- the D. C. module was bad on the blower

Jeff Burton - Cross-examination
By Mr. Harjehausen

1 motor.

2 Q Okay. And that's a manufacturer part, is that right?

3 A Yes, sir.

4 Q So, that, that D. C. module would have come with the
5 original unit, is that right?

6 A Correct. Unless it -- we didn't have any history of
7 replacing it.

8 Q And, in fact, the D. C. module that you replaced it
9 with was under warranty, is that right?

10 A It had to have been cause there's no price for the
11 module itself.

12 Q Okay. And that invoice, there's nothing on that
13 invoice about a, a white powder in the ducts, is there?

14 A No, sir.

15 Q There's nothing on that invoice about any conditions
16 about mold or the H. V. A. C. system, is there?

17 A That's correct.

18 Q There's nothing on that invoice about any complaints by
19 the customer, Mrs. Long, about any smells in the house, is
20 there?

21 A Correct.

22 Q And, in fact, when you left in early 2007, the system
23 was fully functional and operational at that time, isn't
24 that right?

25 A Yes, sir, it says unit operational.

Jeff Burton - Cross-examination
By Mr. Harjehausen

1 Q And if you thought the system had issues that you
2 thought would cause Mr. or Mrs. Long any sort of health
3 problems or issues with their home, you would have noted it
4 on that invoice, isn't that right?

5 A Yes, sir.

6 Q Or you would have taken care of the problem at that
7 time, is that right?

8 A Yes, sir, something would have been noted.

9 MR. HARJEHAUSEN: One moment, Your Honor.

10 (Pause.)

11 MR. HARJEHAUSEN: Your Honor, we would move the 2007
12 invoice into evidence. I believe that's Exhibit No. 33.

13 MR. BANNISTER: No objection.

14 THE COURT: It's admitted.

15 (Whereupon, the invoice was marked as Defendant's
16 Exhibit No. 33 and received into evidence at this time.)

17 Q Thank you, Mr. Burton.

18 REDIRECT EXAMINATION

19 BY MR. BANNISTER:

20 Q Mr. Burton, when the module goes out on the heat pump,
21 what happens?

22 Does it stop functioning?

23 A The---

24 Q The unit.

25 A The module on the blower motor?

Jeff Burton - Redirect examination
By Mr. Bannister

1 Q Yes, sir.

2 A Yeah, it causes it not to work.

3 Q So, if this is the dead of winter and the blower
4 doesn't work, there's gonna be no heat coming into the
5 house, is there?

6 A Correct.

7 Q So, you were sent out to correct that?

8 A Yes, sir.

9 Q And you have no recollection of any conversation with
10 Mrs. Long and Mr. Long or anyone else?

11 A No, sir.

12 Q If they told you anything about their health, you
13 just -- you didn't note it and you don't remember it?

14 A Honestly I do not recall.

15 Q Okay.

16 A Sorry.

17 Q Thank you. That's all.

18 MR. HARJEHAUSEN: No other questions, Your Honor.

19 THE COURT: You may step down.

20 MR. BANNISTER: Judge, may he be excused?

21 THE COURT: He may be.

22 MR. BANNISTER: Thank you.

23 (Whereupon, the witness was excused.)

24 MR. BANNISTER: Mrs. Long, come back around please.

25 MARY LONG, having been previously

Mary Long - Direct examination
By Mr. Bannister

1 sworn, testified as follows:

2 CONTINUED DIRECT EXAMINATION

3 BY MR. BANNISTER:

4 Q Mrs. Long, I think at the place in your testimony
5 yesterday we were talking about the time you moved out of
6 the house.

7 A Yes, sir.

8 Q All right. And subsequent to moving out -- and, again,
9 tell us the date that you actually, you and your husband
10 actually moved out.

11 A The last of December of, of 2005.

12 Q And the reason you moved out?

13 A We was very, very sick. We had -- those last three and
14 a half months, from the time we first found the powder and
15 the odor and all, came home from vacation and found it, they
16 continued to put things in our home for three and a half
17 more months. They caused the refrigerant leaks, and all of
18 that was leaking and burning and putting off a terrible
19 toxic odor. They did a mold treatment while we were in the
20 house, home breathing it.

21 MR. WALSH: Your Honor, I would object to that.

22 That's -- we went over that yesterday.

23 THE COURT: Mrs. Long, now keep in mind, I understand
24 you hear things from other people, but those people have to
25 testify as to what they observe. You can only testify to

Mary Long - Direct examination
By Mr. Bannister

1 what you have observed or perceived. You can't testify to
2 what somebody else told you they might have perceived.

3 THE WITNESS: Well, can I just tell you what I did
4 observe while they were there?

5 THE COURT: You can testify to what you observed.

6 THE WITNESS: Okay.

7 THE COURT: You can't testify to what they told you
8 they observed is the point.

9 THE WITNESS: Okay. Well, I would like to say what I
10 seen that I---

11 THE COURT: You can testify as to what you perceived.
12 You just can't testify to what somebody else told---

13 THE WITNESS: Okay.

14 THE COURT: ---you they perceived.

15 THE WITNESS: Okay.

16 Q Tell us what you saw.

17 A When -- they was two men came out. One was a younger
18 gentleman, and he was inside trying to get the aluminum
19 oxide. See, at this time we only knew about the aluminum
20 oxide. We didn't know about the condensate pump being wired
21 to the light switch under our home, and when you turn the
22 light off the power to the pump was off. We didn't know any
23 of this.

24 Tuck & Howell had not searched until they found it, and
25 they went ahead and put the second coils in there me asking

Mary Long - Direct examination
By Mr. Bannister

1 them not to do that until it was cleaned, everything was
2 cleaned. But they went ahead and put the replacement coils
3 in there, and had never found the problem, what caused the
4 water in the first place to mess the first heat pump up.

5 So, they contaminated the second coils.

6 MR. WALSH: Your Honor, again, I think that's
7 speculative. It's---

8 THE COURT: Well, how does she know that?

9 Is she qualified as an expert in this field?

10 MR. BANNISTER: No, sir, she's testifying to what she
11 saw or was told by them.

12 THE COURT: Well, let me see y'all just a minute.

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

16 Q Mrs. Long, I want you to just confine your testimony as
17 to what you saw with your eyes, yourself, or what you were
18 told by somebody at Tuck & Howell.

19 So, let me go back to Tuck & Howell did come out and
20 perform some work?

21 A Yes, sir.

22 Q Did that stop your symptoms in the house?

23 A No, sir.

24 Q And then you moved out.

25 Did that help your symptoms?

Mary Long - Direct examination
By Mr. Bannister

1 A No, sir, it helped some of them, but then they just
2 gradually -- the spitting up the blood stopped within
3 several days after being out of the home. Our hair
4 continued to come out. The old mucus and phlegm that was
5 choking us, it continued because the poisons were still in
6 our body. They didn't leave our bodies when we left our
7 home.

8 So, we were still having the symptoms. In fact, they
9 got worse and worse and worse, our symptoms. We got to
10 where we couldn't hardly walk, and when we would go to our
11 doctor, our doctors were in Greenville, I would have to
12 drive half of the way and Ray would have to drive half of
13 the way because of the muscle spasms. When you go to stop
14 at a red light or you go to stop at a stop sign, and put
15 pressure on to hold the brakes down, if you had to sit
16 there, then the spasms would just run up our legs.

17 So, we would have to take turns driving, and if Ray was
18 driving and he -- for instance, one time we'd been to the
19 doctor and it was raining, and he said can you drive. I
20 told him before I left home that he was gonna have to drive.
21 I didn't feel like I could drive.

22 But when we was coming back, we had to pull over over
23 there next to Bob Jones University and it was raining. He
24 said can you drive. He said I don't think I can drive any
25 more. Said the spasms was so bad in my legs and feet. So,

Mary Long - Direct examination
By Mr. Bannister

1 he had to get out in the rain, come around, and I had to get
2 out and go around and drive us back home.

3 You see, all of this just continued, Mr. Bannister, to
4 get worse and worse and worse. Things like that, and muscle
5 spasms. And if we sit on anything, like it's real firm or
6 hard, it causes the spasms to be worse like in the buttocks
7 and it just runs down your legs and into your feet, and ray
8 has neuropathy real bad, and, in fact, he's got two pair of
9 socks on right now trying to keep his feet warm to keep him
10 from hurting so bad, and it's affected us in terrible,
11 terrible ways.

12 The doctors could not -- can I go on?

13 Q No, don't, don't---

14 A I'm sorry.

15 Q You did consult doctors?

16 A Yes, sir.

17 Q Yes.

18 Now, let me switch back.

19 Did you make any other attempts to get your house back
20 into shape so you could move back in?

21 A Oh yes, sir. When we---

22 Q who did you contact?

23 A well, when we first left we were so sick we just was
24 trying to -- we was just so sick to even deal with it right
25 at that time, Mr. Bannister. We was deathly sick. So,

Mary Long - Direct examination
By Mr. Bannister

1 we -- when we left our home, we didn't really want to bother
2 the children at that time. We just wanted a little time
3 alone and trying to figure out what we was gonna do.

4 So, we stayed in hotels for about a week, and going
5 back and forth and just trying to decide cause we couldn't
6 get Mr. Tuck or Mr. -- or, or the Trane Company to do
7 anything. Our insurance company wouldn't do anything. So,
8 we was just trying to get things together to figure out what
9 we was gonna do.

10 So, we decided that we needed to try to look for just a
11 little small place. Just something clean. Just a place,
12 you know, to sleep and fix us something to eat.

13 So, we started looking around and nobody in the decent
14 places to stay would -- see, I can't stay in just any kind
15 of place. So, they didn't want to rent to us. They wanted
16 to lease a year's lease. And, so, we didn't think we would
17 be in this mess that long. We thought this would be -- we
18 would really finally, finally get through to Mr. Tuck and
19 the Trane Company and we would get back, you know, get back
20 in our home. So, finally, we had to go ahead and sign a
21 lease and got us a little 3-room apartment and, and moved in
22 there.

23 But in the meantime though, back up a little bit, when
24 our daughter found out that we was in the hotel, she called
25 my sister and said do you know where mother and Ray's at.

Mary Long - Direct examination
By Mr. Bannister

1 said they not, they not answering their phone. At the time
2 we didn't have a cell phone. We had our phone out in the
3 garage where we was going back and forth and getting our
4 messages. And, so, she said -- my sister knew for---

5 MR. WALSH: Your Honor, I would just ask the witness to
6 confine just the content of her testimony to what she---

7 MR. BANNISTER: I'll, I'll -- Mrs. Long, as a result of
8 the conversations you had with your daughter and your
9 sister, where did you go to live?

10 A My sister came -- I mean my daughter came to the hotel,
11 and the daughter that's with me here, she didn't even know,
12 and my son-in-law. They didn't even know until my other
13 daughter told them that we was in a hotel.

14 Q All right.

15 A So, she came to the hotel and got us, she and her
16 husband, and told us that we was going to stay with them.
17 So, we went and lived with them for -- I can't remember.
18 It's on the paperwork and it's two and a half, two and a
19 half -- between two and a half and three years and things --
20 they were very good to us there, but it was putting a stress
21 on them. So, we found a place and moved out on our own.

22 Q Now, this is not the daughter that lives next to you?

23 A No, sir, she didn't know---

24 Q Okay.

25 A She didn't know it. She wasn't aware of it.

Mary Long - Direct examination
By Mr. Bannister

1 Q Did you take any action to try to -- other than talking
2 to Tuck & Howell, did you take any action to try to end the
3 problem or clean your house or fix it?

4 A Yes, sir, we was dealing with these health problems and
5 dealing with that at the same time, and it was just a matter
6 of a few weeks and then we got back on the house, and we
7 just sort of -- I went into it full blast trying to get
8 people to see -- see, we had just updated the home and we
9 wanted to get it cleaned up and get back in it. We had a
10 nice home.

11 Q Who did you contact about cleaning it up?

12 A About 13 -- there was 13 different companies.

13 Q Did any of them come out and interview or, or do
14 anything?

15 A Yes, sir.

16 Q All right. Who did that?

17 Who was the first one that you recollect did it?

18 A I don't know that. I was just having one right after
19 another. I had -- most of them, most of them -- there was
20 one from Anderson and two from North Carolina, and the rest
21 of them was in the Greenville area, but the one, the -- I
22 had a company that -- from Spartanburg came out. You had
23 deposed him and he's the one that---

24 Q You can't go into what he said, but who, who was the
25 person from Spartanburg?

Mary Long - Direct examination
By Mr. Bannister

1 A Jerry Fortenberry.

2 Q And when did you get his name?

3 A I think -- I'm pretty sure Robert Beasley gave me his
4 name.

5 Q Now, who is Robert Beasley?

6 Not what Mr. Beasley said. Just tell me who he was.

7 A He was an environmentalist doctor -- environmental
8 person.

9 Q Where did you get his name?

10 A I had -- in 2001 -- see all of this is mixed up about
11 the mold problem, and I'd like to correct that right now and
12 show you the evidence, when it happened, when it was taken
13 care of, and everything, Mr. Bannister. They have, they
14 have brought it in saying it was in 2004 before we had the
15 H. V. A. C. system put in and that's not true. There was no
16 mold in there when the H. V. A. C. system was put in.

17 But in 2001, we had had a leak in the -- from the storm
18 in-between a few ceiling tiles, and we didn't see anything
19 wrong there at first. But then, later on, I noticed some
20 discoloration in-between the ceiling tiles, between maybe
21 four or five, five or six. It was just several ceiling
22 tiles, and when I seen that discoloration, I --.

23 Q Could I give you some water?

24 A Yes, please.

25 I called -- I just looked in the phone book, and called

Mary Long - Direct examination
By Mr. Bannister

1 an environmental company out of Greenville, and asked them
2 would they come out and check and see if it was mold.

3 Q Did they?

4 A They did.

5 Q As a result of that checking, did you have anything
6 done to your home?

7 A Yes, sir, it showed that there was between one percent
8 and---

9 MR. WALSH: Your Honor, again.

10 THE COURT: Sustained.

11 A The records show when they gave me---

12 THE COURT: Ma'am, ma'am -- Mrs. Long, again, I'm
13 gonna say that person will have to testify if there's gonna
14 be testimony since you didn't perform that evaluation,
15 assessment, or evaluation. The person who performed the
16 test will have to provide the testimony.

17 Q As a result of your having an environmental person come
18 out, was any action taken in your home?

19 A Yes, sir, we took the ceiling tiles down. The
20 insurance company took the ceiling tiles down that was just
21 in the area where we had the leak, and that's all they
22 wanted to do, and there was an odor in there also, and we
23 thought it was really the mold, but it turned out that it
24 was the mold. We had the old ceiling tiles, and they were
25 made of ground up cardboard. And when they get damp, they

Mary Long - Direct examination
By Mr. Bannister

1 have -- I don't know. You probably smelled wet, damp
2 cardboard before. It has a bad odor.

3 So, they told us it wasn't the mold. It was the
4 cardboard. So, the insurance company didn't want to take
5 the whole -- the entire ceiling down. They just wanted to
6 take the ceiling tiles down, and that's what we did at
7 first, at first. But then we kept arguing with them that
8 the odor was still there and the remediation company told us
9 they could not get the odor out without just taking it out.
10 They -- the insurance company wanted to spray it, and he
11 said we've tried that before.

12 So, they did give in and took the whole ceiling down,
13 the plywood, the insulation up in the attic, and put
14 everything back in new, and then the odor completely went
15 away.

16 Q And when was that work completed?

17 A Well, the shingle -- I mean the ceiling tiles were
18 taken out when it first happened.

19 Q What year would that have been?

20 A That would have been --.

21 Q The best of your recollection.

22 A 2001. And then, see, we dealt with them about the
23 cardboard odor for I don't know exactly how long. I don't
24 know if it was quite a year. You know, it wasn't harmful.
25 So, they was just gonna make us, try to make us deal with

Mary Long - Direct examination
By Mr. Bannister

1 it. But, finally, they did agree to, back and forth, back
2 and forth, they agreed to repair it and they -- we called
3 the -- a restoration company out and they came out and fixed
4 it, and everything was -- the odor went away and that's when
5 we had the little bit of mold problem. It wasn't in 2004
6 like they're saying, and I want to explain that too.

7 Q Ma'am -- okay. Was it -- was that work done prior to
8 the installation?

9 A Yes.

10 Q The heat pump by Tuck & Howell?

11 A Yes, sir.

12 Q Okay.

13 A It was in --.

14 Q Now, now I want to go to the, to the environmental
15 folks that you called out.

16 After the heat pump's installed by Tuck & Howell and
17 you moved out of your house and you told me you contacted an
18 environmental cleaning company after you had moved out, do
19 you recall who that was?

20 A Well, see, we first called Robert Beasley back out.
21 He's the man that came out in 2001, and he wasn't able to
22 come out. So, he sent James Kellet out and --.

23 Q Now don't go into anything Mr. Kellet said.

24 A Okay.

25 Q Did Mr. Kellet give you a proposal?

Mary Long - Direct examination
By Mr. Bannister

1 A We had --.

2 Q Did he give you a proposal?

3 A Well, I'm trying to think what he came out for,
4 Mr. Bannister. The only thing we knew about at this time --
5 to tell you the truth, it was a long time before we got the
6 whole picture. We just kept finding out little things that
7 was wrong with the home.

8 But James Kellet came out about the -- after they had
9 changed the coils, after Steamatic had been there and tried
10 to vacuum it out, after we had cleaned everything inside,
11 wiped everything down with wet cloths, and cleaned all the
12 hardwood floors and damp mopped those, we could still see
13 this stuff just blowing heavy, and we already knew what it
14 was. We knew that from the beginning. They told us within
15 the day we found it, Tuck & Howell and them did.

16 So, we knew. The only thing we knew any was the
17 aluminum oxide powder, and it was still blowing real heavy
18 even after we cleaned, and they had done took the coils out
19 and put some more in. And after Steamatic had been there,
20 it was still real heavy. So, I called them to come out. I
21 called Mr. Robert Beasley, but he couldn't come.

22 So, I called -- he, he either sent James Kellet or gave
23 me his number. I don't know how that went about, but I
24 think he had James to call me, and I told him I wanted him
25 just to come out. We knew what we had. We had aluminum

Mary Long - Direct examination
By Mr. Bannister

1 oxide, and I said it's still just real real heavy in here,
2 and at the time we didn't -- we were told it wasn't harmful.
3 We wasn't really concerned, Mr. Bannister, at the time cause
4 we didn't know it was harming us. We was staying in there.

5 So, Mr. Kellet, I told him -- asked him to come out and
6 do some testing in front of the heat, the duct work in the,
7 the---

8 Q Heater?

9 A Register. In front of the heat register, and on the
10 back side of the house or even, even in-between those two
11 bedrooms there, I said see if you can see how bad it's
12 coming out, still coming out. So, a week later, I don't
13 think it was quite a week, but pretty close to it, Mr.
14 Kellet called me.

15 MR. WALSH: Your Honor.

16 Q Don't go into what Mr. Kellet said.

17 A Okay.

18 Q But after you had the conversation with Mr. Kellet,
19 what did you do?

20 A Well, he can't do -- he can't clean up and give you an
21 estimate too. So, he -- you can't do both. That's the law.
22 So, he didn't do anything. He did what he was called out to
23 do. And, so, he couldn't give an estimate. They -- you
24 know, they can't do that.

25 So, I just got -- I think -- I'm pretty sure, at that

1 time, I just got the phone book out and started calling
2 everybody in the phone book in the yellow pages, and having
3 just one right after the other. Sometime I'd have two, two
4 a day to come out, one in the morning and one in the
5 afternoon.

6 Q And the purpose of having them come out?

7 A To see if they could -- knew how to clean it up, and,
8 and clean the whole house up, clean everything up, and at
9 the time I couldn't get anybody, like I said, any of them to
10 do anything, but we was gonna borrow the money and do it
11 ourself, and then just deal with them in court later cause
12 we had just updated our home and had done a -- been doing it
13 for several years, and we wasn't about to let our home go.

14 And, so, we just was gonna do whatever we had to do,
15 and then just take them to court later. So, we was gonna
16 borrow the money. So, we started calling all of these
17 companies out and they would come out and they would say---

18 MR. WALSH: Your Honor.

19 Q Not what they said.

20 As a result of that, did you contact Mr. Fortenberry?

21 A I guess I did, Mr. Bannister. He came out.

22 Q So, Mr. Fortenberry came out?

23 A Y'all got, y'all got me so confused. I'm sure I called
24 him out. He came out.

25 Q Do you recall him coming?

Mary Long - Direct examination
By Mr. Bannister

1 A Sir?

2 Q Do you recall Mr. Fortenberry coming?

3 A Yes, sir.

4 Q Do you recall that he was in your house and you
5 discussed the problems with him?

6 A Yes, sir.

7 Q And as a result of that, did he make you a proposal?

8 A Yes, sir.

9 Q To clean the house?

10 Did he make---

11 A I don't know what I can say. He, he gave me a
12 proposal---

13 THE COURT: Ma'am, it's just a yes or no answer to the
14 question.

15 THE WITNESS: Well, he gave me a -- not to clean the
16 aluminum oxide, sir.

17 THE COURT: No, ma'am.

18 THE WITNESS: He---

19 THE COURT: Mr. Bannister asked you if he gave you a
20 proposal. So, the answer is yes or no.

21 THE WITNESS: He gave me a proposal about cleaning
22 mold out, but not the other.

23 MR. WALSH: Your Honor, I object and I move to strike.

24 THE COURT: Sustained.

25 Strike it.

Mary Long - Direct examination
By Mr. Bannister

1 Let me ask the jury to please go to your jury room
2 please. I've got one matter I'll need to address and I'll
3 bring you right back.

4 (Whereupon, the following takes place outside the
5 presence of the jury.)

6 THE COURT: Now, Mrs. Long, I understand that you have
7 a lot of information that you'd like to share with the
8 Court and this jury. But in order for you to share that
9 information, it has to be done under the rules, and I'm the
10 person that has to enforce the rules. And if you can't
11 comply with the rules, you're not gonna be able to provide
12 any testimony before this jury.

13 I'm certain that Mr. Bannister has discussed with you
14 what you can testify to and what you can not testify to. I
15 recognize that you're not a lawyer. This is probably
16 perhaps your first experience in court. But, nevertheless,
17 you must comply with the rules. You must adhere to my
18 rulings. If you cannot do that, you cannot testify in this
19 trial.

20 Do you understand?

21 THE WITNESS: Yes, sir, it just comes out. I don't
22 mean to intentionally -- do it intentionally, sir.

23 THE COURT: I understand. Well, that's why I've sent
24 this jury out. But you understand there are things that
25 you know, but you only know them because somebody else told

1 you that, and the purpose of that person having to come
2 into court to testify as to what they told you is so that
3 the other side can examine them on their assessment or
4 their evaluation or their test. So they can test the
5 reliability of that information.

6 If you provide it, there's no way to test the
7 reliability of that information because you're just stating
8 what somebody else said.

9 THE WITNESS: Okay.

10 THE COURT: You know, if I told you I'm driving a red
11 car, that doesn't mean that I am. That means you heard me
12 say it, but you don't know.

13 Do you understand?

14 THE WITNESS: Yes, sir.

15 THE COURT: So, you can testify as to what you
16 personally see, feel, observe. Whatever you perceive by
17 use of your own senses you can testify to, and you are
18 permitted to testify as to what anybody working for the
19 defendant said to you. If the, if the defendant sent
20 somebody out there to look at your house, and they said
21 they found aluminum oxide in the house, then you can
22 testify to that because that information is within their
23 control and possession. They understand it. They know it.
24 They said it.

25 So, you're permitted to testify as to what they may of

Mary Long - Direct examination
By Mr. Bannister

1 said. But you're not permitted to testify to what somebody
2 else did that you called out there. You can call that
3 person as a witness. These people that you called to come
4 to your house, they can come into court. They can testify
5 just like Mr. Burton did. He can -- they can testify as to
6 what they did at your house or what they found or what
7 tests they conducted or what results they found or what
8 they concluded. They have to do it. But you can't do it.

9 THE WITNESS: Okay.

10 THE COURT: You understand you cannot do it?

11 THE WITNESS: Yes, sir.

12 THE COURT: So, let's don't let that happen again.
13 It's not fair to the jury, you see, because when there's
14 lots of objections and statements that are made that are
15 objectionable, we have to stop and the jury loses all the
16 ability to concentrate and the continuity of testimony
17 because all they're hearing are objections, and either
18 those being overruled or sustained or being sent out to,
19 for things to be addressed. So, if you comply with the
20 rules it makes it simple for the jury. They get to
21 listen---

22 THE WITNESS: I understand---

23 THE COURT: ---to the testimony.

24 THE WITNESS: ---and I'm gonna try to my best not to
25 do it again.

Mary Long - Direct examination
By Mr. Bannister

1 THE COURT: Okay. Well, just understand that, unless
2 I have told you differently, as I've already tried to
3 explain it, you cannot testify as to what someone else told
4 you. You can't testify as to what some other test or what
5 test some other person conducted, and what those results
6 were because you didn't conduct the test. Those people
7 have to come to court to testify.

8 Are we clear?

9 THE WITNESS: Yes, sir.

10 THE COURT: Okay. Bring the jury back.

11 (WHEREUPON, the following takes place in the presence
12 of the jury.)

13 THE COURT: All right. Mr. Bannister.

14 CONTINUED DIRECT EXAMINATION

15 BY MR. BANNISTER:

16 Q Mrs. Long, did you have Mr. -- take you back.

17 You had Mr. Fortenberry come out and examine your home?

18 A Yes, sir.

19 Q Were you there when he did that?

20 A Yes, sir.

21 Q And, subsequently, did he present you a proposal?

22 Just yes or no.

23 A Yes, sir.

24 Q Did you, did you accept the proposal?

25 A No, sir.

Mary Long - Direct examination
By Mr. Bannister

1 Q why not?

2 A He---

3 THE COURT: All right. Let me, let me see y'all just
4 a minute before you answer it.

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

8 Q Mrs. Long, did Mr. Fortenberry's proposal come with a
9 guarantee that all of the substances you wanted removed from
10 the house would be removed?

11 A No, sir.

12 MR. WALSH: Your Honor, I object to that.

13 A No, sir.

14 MR. WALSH: I don't---

15 THE COURT: Overruled.

16 Go ahead.

17 Q Okay. So, now, you had been to doctors about your
18 conditions?

19 A Yes, sir.

20 Q Is that correct?

21 A Yes, sir.

22 Q And have you discussed with the doctor -- then this is
23 yes or no.

24 Did you discuss with the doctors your symptoms?

25 A Yes, sir.

Mary Long - Direct examination
By Mr. Bannister

1 Q And what your -- and your suspicions---

2 A Yes, sir.

3 Q ---based upon what you have been told?

4 Have you received any treatment for that, for your
5 symptoms other than your allergies?

6 A Yes, sir.

7 Q And what treatments have you received?

8 A Lots of antibiotics and Prednisone and things like
9 that.

10 Q All right. Now, Mrs. Long, I want to ask you, if you
11 will, in, in terms of damages, in terms of money you're
12 asking for, how much are you asking the jury to award you in
13 damages that you have suffered?

14 A Well, we're asking to have back what we had, and that
15 was including our home and what we lost inside our home, and
16 everything we lost from them coming in and destroying our
17 home.

18 Q All right.

19 A And then we was -- we're asking for -- to be
20 compensated for being -- what they, how they put us out of
21 our home for eight years.

22 Q All right.

23 A And all of our health, health problems. We're asking,
24 you know --.

25 Q Okay.

Mary Long - Direct examination
By Mr. Bannister

1 A So that --.

2 Q Let me ask you. Let me take your home.

3 Do you, do you have a value that you put---

4 MR. WALSH: Your Honor, I apologize.

5 Can we approach a second please?

6 THE COURT: Okay.

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

10 THE COURT: All right. Let me ask the jury to go out
11 one more time, and I'll bring you back in just a few
12 minutes.

13 (WHEREUPON, the following takes place outside the
14 presence of the jury.)

15 THE COURT: All right. Mr. Bannister, as I understand
16 it, you're getting ready to ask Mrs. Long what damages she
17 is seeking based upon what she contends harm was caused by
18 the defendant. So --

19 MR. BANNISTER: Yes, sir.

20 THE COURT: -- you need to break that down, and then
21 the defendant can, you know, object to it or not. We'll
22 have to address the foundation for it.

23 MR. BANNISTER: All right. And I ask her do you
24 have---

25 THE COURT: You can ask her anything you want to right

1 now cause the jury's out.

2 Q Do you have that list of damages?

3 A Yes.

4 Could you just go over, over that, Mr. Bannister?

5 You have the copies. I'm just worn out.

6 Q All right.

7 A Could you just please do it?

8 Q I need to give you a copy.

9 A I've got a copy, but I just wish you'd take care of it.

10 Please.

11 Q All right. Mrs. Long, let me go over it.

12 You got your list of damages there?

13 A Yes, sir.

14 Q All right. If you look at them, just take the house
15 first.

16 What are you seeking in damages for the house?

17 Just the structure itself. The one right here.

18 A No, that's the contents---

19 Q Okay.

20 A ---we lost.

21 Q All right. Go to the house.

22 A As of -- let me see if there's another update. That

23 was June the 11th, what they gave us an estimate on. I

24 guess June -- this is probably the last date we talked to

25 them, Mr. Bannister. June of -- June 2011 is when we talked

Mary Long - Direct examination
By Mr. Bannister

1 to the builder about what it would cost to, to build it
2 back, and it was 2-0-2 \$860.

3 Q All right. So, you're asking---

4 A And that was just the -- that was just the builder, and
5 then the demolition and disposal of the polymers.

6 Q All right. So, you're asking for---

7 A Ten thousand.

8 Q Cost of removal of the house?

9 A Yes, sir.

10 Q And for the replacement?

11 A Yes, sir.

12 Q And how much is the removal?

13 A Ten thousand.

14 Q And how much is the replacement?

15 A 2-0-2 \$860.

16 MR. BANNISTER: Do you want to take them one at a time,
17 Judge?

18 THE COURT: Yeah, we'll take them one at a time.

19 Do you have an objection to that?

20 MR. WALSH: Yes, Your Honor.

21 THE COURT: What's the objection?

22 MR. WALSH: Well, the, the -- apparently she's looking
23 at some sort of information from a builder. There's been
24 no builder disclosed. There's no builder on the witness
25 list.

Mary Long - Direct examination
By Mr. Bannister

1 THE COURT: All right. I sustain the objection.

2 Q Okay. Mrs. Long, you are the owner of this house, is
3 that correct?

4 A Yes, sir.

5 Q And is it your testimony the house has been made
6 unusable by you---

7 A Yes.

8 Q ---and your husband?

9 A Yes, sir.

10 Q And what is your opinion of the value of the house that
11 you have been deprived of by the acts of Tuck & Howell?

12 A I didn't have it appraised because I wasn't gonna---

13 Q You can give your---

14 A We had, we had updated it and see that put the estimate
15 way up because we completely remodeled it, and I don't, I
16 don't know that.

17 Q Do you have an opinion as to the value of it?

18 A Not really, but I could have it for you tomorrow.

19 Q Okay. You have had some medical treatments,
20 Mountainview Family Practice, Doctor Brunson, is that
21 correct?

22 A Yes, sir, not only him. It's a lot of doctors.

23 Q Well, let's take it one at a time.

24 Have you been treated by Doctor Brunson as a result
25 of---

Mary Long - Direct examination
By Mr. Bannister

1 A Yes, sir.

2 Q ---the work of Tuck & Howell in your home?

3 A Yes, sir.

4 Q And what are the, what are the bills that you've
5 received and paid for that, Doctor Brunson?

6 A I'm sorry. This is broken down. This is broken down
7 in years. You know, we totaled it up every so often as the
8 years went by, and it isn't listed like that. It's listed
9 total medical. It's not listed each doctor. It was just
10 too much to do it that way.

11 Q What was your, what was your total medical from all
12 sources?

13 A Here it is. Total of all medicals through December of
14 2012 is when this was updated. Let me see. It's 26 -- let
15 me see if there's another one since then because that was,
16 that was updated in December of 2012. So, another year.

17 No, it would be half a year went by, wouldn't it?

18 well, let's just go -- do you want to just go with that
19 one?

20 Q well---

21 A It's \$26,111.43 as of December of 2012.

22 Q All right. And who were the suppliers of that medical
23 treatment?

24 A It's several doctors. It would be Doctor---

25 Q Have you got it broken out per doctor and what it, what

Mary Long - Direct examination
By Mr. Bannister

1 it was?

2 A I thought we had it listed like that at the beginning,
3 and then we totaled it all up and put a total. Let me see
4 here a minute.

5 okay?

6 MR. WALSH: Your Honor?

7 A It's just totaled, it's just totaled all together.

8 MR. WALSH: May we approach?

9 Q And what's your total?

10 THE COURT: All right. Just a minute. Hold on.

11 (WHEREUPON, a bench conference was held off the
12 record.)

13 THE COURT: All right. Mrs. Long, let me ask you to
14 step down please, and don't discuss your testimony during
15 the break. I'm gonna take a short recess.

16 (WHEREUPON, a recess was taken.)

17 THE COURT: All right. Mrs. Long, you can come back
18 and resume your seat on the witness stand please, ma'am.

19 (Witness returns to the stand.)

20 THE COURT: All right. Are we ready for the jury now?

21 MR. BANNISTER: We are.

22 THE COURT: Bring them in.

23 (WHEREUPON, the following takes place in the presence
24 of the jury.)

25 THE COURT: All right. Mr. Bannister, you may

Mary Long - Direct examination
By Mr. Bannister

1 continue.

2 CONTINUED DIRECT EXAMINATION

3 BY MR. BANNISTER:

4 Q Mrs. Long, I'm gonna show you a list of the household
5 items or a list and ask you if you recognize these as being
6 items.

7 Do you see those?

8 Do you recognize those as items?

9 A Yes, sir.

10 Q What, what does the list represent?

11 Does it represent items you threw away?

12 A Yes, sir.

13 Q Does it represent replacement value of the value of the
14 items---

15 A Yes, sir.

16 Q ---in your opinion?

17 All right. And what is the total?

18 A You've got down here -- somebody's got down here
19 \$12,538, but that's not right.

20 Q All right. Well, that's what's on -- that's what's on
21 the list, is it not?

22 A No, sir, I mean I don't know where this -- this is not
23 the list I gave you.

24 Q Okay. Is it a list -- look, look at the items,
25 Mrs. Long, and tell me if all those items are items you

Mary Long - Direct examination
By Mr. Bannister

1 discarded.

2 Not, not all the items, but --.

3 A It's some of them, yes. It's not all of them.

4 Q Okay. I'm gonna show you a second page, and ask you if
5 you recognize that list.

6 A Yes, sir.

7 Q And it has a total also?

8 A Yes, sir.

9 Q And what is that total?

10 A \$2,730.92.

11 Q Okay. Are those items, items that also were discarded?

12 A Yes, sir.

13 Q Okay. Let me have that and I'm gonna show you another
14 list, and ask you if you recognize that list.

15 Is that a list of items that have either been thrown
16 away or damaged beyond use?

17 A Yes, sir.

18 Q And what is the total of that?

19 A \$50,572.81.

20 Q Okay. And then finally I'm gonna show you that. There
21 is one mark out.

22 Is that list expenses that you incurred being out of
23 your house?

24 A I can't say that this is all of them. I don't know
25 cause this is not my copy that I came up with.

Mary Long - Direct examination
By Mr. Bannister

1 Q Well, the ones you have on there are items that you
2 have incurred.

3 Is that a fair statement?

4 A Yes, sir, if there -- I don't know that this is
5 everything that was supposed to be on here or not. I don't
6 know that.

7 Q All right. Well, what is the total written in at the
8 bottom?

9 A \$23,560 it looks like four.

10 Q Okay. And those are items out of your house and
11 expenses you've incurred since being gone or you had to
12 throw away?

13 A Yes, sir.

14 MR. BANNISTER: All right. Your Honor, we would offer
15 these as a summary.

16 MR. WALSH: They're offering this as what?

17 I'm sorry.

18 THE COURT: A summary.

19 MR. BANNISTER: A summary of hers --.

20 MR. WALSH: No objection, Your Honor.

21 THE COURT: Let me see that last one.

22 MR. WALSH: I just want to make sure I know what's on
23 there.

24 MR. BANNISTER: Judge, we would offer these as a
25 summary.

Mary Long - Direct examination
By Mr. Bannister

1 THE COURT: They're admitted without objection.

2 (WHEREUPON, the summary was marked as Plaintiff's
3 Exhibit No. 5 and received into evidence at this time.)

4 Q Mrs. Long, answer any questions that Mr. Walsh has for
5 you or Mr. Harjehausen.

6 MR. WALSH: May it please the Court.

7 Thank you.

8 CROSS-EXAMINATION

9 BY MR. WALSH:

10 Q Mrs. Long, how you doing today?

11 A Okay.

12 Q Okay. I'm gonna ask you some questions. I know you've
13 been testifying yesterday and you've been testifying today,
14 and I know you're tired and I'm gonna try to go through it
15 as quickly as I can, but there is a number of things that
16 I'd like to go over with you and are you good?

17 Do you need some water before we start?

18 A I've got some.

19 Q Okay. So, the first thing I wanted to talk about was
20 back at the -- go back to the beginning of the installation
21 with Tuck & Howell.

22 Okay. So, I think you had testified, and since it
23 happened, some happened yesterday and some of it happened
24 today, I'm kind of looking at my notes a little bit, but I
25 thought you said that had -- you were, you were concerned

Mary Long - Cross-examination
By Mr. Walsh

1 about your gas heater and you wanted to replace it with a
2 non-gas heater, is that right?

3 A We had been thinking about it for a few years because I
4 had gotten -- I'd been seeing a lot on T. V. about problems
5 with gas, but I had never been afraid of it until I started
6 hearing all this cause we had it for many years, and my
7 husband liked gas. It is warmer heat and all. And we said
8 well, when it goes out, we'll just change to a heat pump,
9 and we turned it on in 2004 in the Fall when it got cool and
10 it wouldn't come on. So, it was time to make a decision.

11 Q All right. And you were afraid of the gas from all you
12 had heard?

13 A Yes, sir.

14 Q Okay. You were afraid of the -- you were actually
15 afraid of the carbon monoxide too as well, weren't you?

16 A Yes, sir.

17 Q Okay.

18 A Explosion. I heard of them blowing up and everything.

19 Q Okay. Would it surprise you to know that you didn't
20 even have a gas heater at that time?

21 A We did have gas.

22 Q That, that what they replaced was a, was a heat pump?
23 would you---

24 A We never had a heat pump until Jerry Tuck and them put
25 it in in 2004. Never.

Mary Long - Cross-examination
By Mr. Walsh

1 Q Okay.

2 A We've had gas.

3 Q So, you think you had gas?

4 A We had gas. I paid gas bills.

5 Q Okay. And, in any event, you were afraid of the gas.

6 So, you wanted to get -- go and get the electric heat
7 pump, is that right?

8 A That's right.

9 Q Okay. All right. Now, when the Tuck & Howell folks
10 went out there, you didn't ask them to replace the ducts.
11 You just wanted the heat pump replaced.

12 Right?

13 A No, not right.

14 Q Okay. Do you know what an air return duct is?

15 A I certainly do.

16 Q Okay. And that's different than the supply ducts,
17 isn't it?

18 A Yes, sir.

19 Q Okay. And on their proposal, they talked about
20 removing the return ducts, but not removing the supply ducts
21 and replacing them, right?

22 A No, they -- we told them, when we came out, we told
23 Mr. Cooper that we was remodeling the house completely to
24 get ready for retirement, and we wanted everything taken
25 out, all the duct work taken out, and a new heat pump system

Mary Long - Cross-examination
By Mr. Walsh

1 put in.

2 Q Okay.

3 A And it's on there what they said to do, and he didn't
4 have it really clear. So, we had him to write on the back
5 of there that -- we asked him said, now, you gone take it
6 all out and he said he was.

7 Q Do you remember telling Mr. Cooper or Mr. McConnell,
8 who are sitting over there -- I will try to make this --
9 that you had had a water overflow in your bathroom, and it
10 went into the duct and you wanted them to check that out?

11 A No, sir, that is a lie.

12 Q Okay.

13 A I have never told anyone that. That never happened.

14 Q Okay. And did they, in fact, then pull out the duct
15 and look in the duct and see---

16 A Just---

17 Q Let me finish my question please.

18 And look in the duct and see sort of a smelly kind of
19 damp grayish stuff in that duct?

20 A No, sir, they did not.

21 Q Okay. And did you then look yourself into the duct and
22 say to your husband Ray, we got mold?

23 A Lord, no, sir.

24 Q Okay. That didn't happen?

25 A That did not happen.

Mary Long - Cross-examination
By Mr. Walsh

1 Q Okay. And then, after that, did you then talk to
2 Mr. Cooper in an excitable way that he will describe and
3 demand that the ducts be replaced completely?

4 A I didn't demand anything.

5 Q Okay.

6 A We called him and asked him to give us an estimate on
7 it and I didn't demand anything.

8 Q Okay.

9 A We just asked for an estimate and he gave it to us.

10 Q Now, when you were present -- were you present when
11 they installed your system?

12 A In and out. We had a death in the family---

13 Q Okay.

14 A ---and I was in and out.

15 Q Do you wash your groceries when you bring them home?

16 Do you take your cans or your milk jug and wash it in
17 the sink because you don't know what's on the, the shelves?

18 A No, sir.

19 Q So, did you do that when Mr. McConnell was there at the
20 house?

21 A Mr. McConnell?

22 I don't know if he's ever been in there watching me in
23 the kitchen.

24 Q Okay. Well, he was there doing the installation,
25 right?

Mary Long - Cross-examination
By Mr. Walsh

1 A Yeah, he wasn't in my kitchen watching me do anything,
2 sir.

3 Q So, that didn't happen?

4 A No, it did not happen.

5 Q Okay. All right. Did you tell them that you had all
6 kinds of bad allergies and you were allergic to a lot of
7 things?

8 A In the past, yes, sir.

9 Q So, that, that happened.

10 Okay. Did you tell him that you were even allergic to
11 your own hair and you had to wash it multiple times because
12 of the dander?

13 A Lord, I have not had that -- you're trying to get me
14 upset and make me mad. But no, sir, these are all lies.

15 Q Okay.

16 A All lies.

17 Q Ma'am, I'm not trying to get you upset.

18 A And how they came up with all this is just a---

19 Q Okay.

20 A Oh, my goodness.

21 Q Okay. All right. So, the installation is put in and
22 11 months go by, and then there's this issue you described
23 with the odor and this dust that you saw?

24 A No, not 11 months. Two days after they installed it,
25 sir. Two days.

Mary Long - Cross-examination
By Mr. Walsh

1 Q Well, in your deposition you said you didn't notice the
2 dust for about three months.

3 A I said I noticed it about two months. I didn't know it
4 was any kind of powder. I just noticed we was having heavy
5 dust that we hadn't had before. But you couldn't tell what
6 color it was at that time because I was dusting and cleaning
7 it up so much you couldn't see it built up.

8 Q Well, let me be sure I understand it.

9 Was it two days or two months?

10 A It was two days when we found the odor, sir.

11 Q Okay. Let's talk about---

12 A And we started having the odor -- as soon as we turned
13 it on we started having the odor.

14 Q All right. And that was what you described as sort of
15 a burning odor that you were told was a system working
16 itself out and it would go away?

17 A It, it smelled like rubber or the best way I could
18 explain it, at the time, it smelt like rubber burning or
19 either a plastic or something in that order.

20 Q Okay. Now, that went away, didn't it?

21 A Not know -- it lasted a long time like it was something
22 what I was told it was burning off, and the way it was
23 happening it was like something was burning off --

24 Q Okay. And it---

25 A Because it was pretty strong at the beginning and then

Mary Long - Cross-examination
By Mr. Walsh

1 it sort of tapered off. But now that odor would come and
2 go.

3 Q Okay.

4 A Now, we don't have any answers for that, but no, the
5 powder -- we started noticing the -- what did I say, powder?

6 I didn't know it was the powder. We started noticing
7 the heavy dust several weeks -- I'm saying several weeks to
8 two months we started seeing the dust.

9 Q Now, let's see if we can agree.

10 Did you tell, tell us, in a deposition, it was three
11 months?

12 A I said two or three months. I didn't really know for
13 sure.

14 Q All right. So, we didn't even see a problem with this
15 dust for three months.

16 Okay. And you never saw it coming out of the air
17 ducts?

18 Never saw it coming out of the air ducts, did you?

19 A I was cleaning it up as fast as it was coming up and it
20 didn't have time to build up.

21 Q Okay. Let me make sure you understand my question.

22 You never saw it blowing out of the air ducts?

23 A No, sir.

24 Q You found it on the ground?

25 A Not at that time.

Mary Long - Cross-examination
By Mr. Walsh

1 Q Okay.

2 A Not at that time I didn't see it coming out of the duct
3 work when I first found it, no.

4 Q Okay. All right. You described the situation where
5 you came home around the time you complained and you saw
6 some accumulated buildup around the register.

7 Is that what you said?

8 A It was in front of the register and all over everything
9 in the house, the furniture and everything.

10 Q Okay.

11 A You could see it everywhere.

12 Q All right. So---

13 A We had been gone a week.

14 Q So, it took a few months to get there. You would see,
15 you would see this dust, never saw it coming out of the
16 register, but then when you came home being away a few days
17 you saw some of it around the register?

18 That's what -- your description?

19 A And all over the home.

20 Q Okay. All right. Now, I think -- I'm looking at my
21 notes here. I think I remember you saying to your attorney
22 yesterday that you, from the very beginning, you were
23 deathly sick from the time that, that unit was installed,
24 all through that year, and then it just got worse every day?

25 A I didn't say deathly sick at the beginning.

Mary Long - Cross-examination
By Mr. Walsh

1 Q Okay.

2 A I was having health problems, yes.

3 Q Okay.

4 A But then when they started putting all that other stuff
5 in on us is when we just got deathly sick and started
6 spitting up the blood and our hair started falling out and
7 all of that.

8 Q Okay. So, but I went -- I went and looked at your
9 medical records. You didn't go see a doctor that whole year
10 though until, till the Fall of '05. So, if you were sick
11 and having all these problems, you didn't go to the doctor
12 until October of 2005. Not December, January, February.

13 All this stuff was happening, you don't go to the
14 doctor, right?

15 A When -- the first few months of that. See we was only
16 breathing -- I don't know what we were breathing. Probably
17 the, the dust powder and stuff. But then when they --
18 months later -- if you'll look at my medical records. This
19 started -- when I really had to go to the doctor and I was
20 having muscle pain and stiffness all over me was the same
21 time that they was putting all those extra poisons in on us.

22 Q Okay.

23 A And that's when I got bad.

24 Q Here's my question.

25 A I was---

Mary Long - Cross-examination
By Mr. Walsh

1 Q I thought you said -- if you didn't, we'll let the jury
2 try to remember what you really said.

3 But my notes say that you said that you got sick from
4 the beginning, and you were so bad, and, you know, by the
5 first of the year, you were terrible and you had, you know,
6 you had all these issues. But I looked at the medical
7 records and you didn't go to the doctor for any treatment.

8 Do you agree with that?

9 A I was taking allergy medicine over-the-counter.

10 Q Do you agree with that?

11 A Yes.

12 Q Okay.

13 A I was taking allergy medicine over-the-counter.

14 Q Okay. So, no visits to the doctor for about a year and
15 then you started to go.

16 okay?

17 A No, it wasn't a year. It was a few months.

18 Q Well---

19 A It was a few months.

20 Q It was October 21 of '05.

21 Do you believe that to be true when you got to the
22 doctor---

23 A When I got so bad?

24 Q The last time you went was November of 2004 and then
25 October of 2005.

Mary Long - Cross-examination
By Mr. Walsh

1 Do you agree with that?

2 A I don't know exactly on the dates there. I don't have
3 my records right here before me.

4 Q Okay.

5 A So, I don't know whether -- where you're telling the
6 truth or not.

7 Q Okay. I'm just asking if you know.

8 A You know, I can't remember every little single thing.

9 Q Okay.

10 A I mean---

11 Q All right. So now you have the problem with the, with
12 the unit, and you call Tuck & Howell and they come out
13 promptly, don't they?

14 A No, sir.

15 Q Not promptly?

16 A No, sir.

17 Q Okay.

18 A No, sir.

19 Q And they immediately get Trane involved, don't they?

20 A Yes, sir.

21 Q Okay. And they identify the problem with the coil,
22 don't they?

23 A Yes, sir.

24 Q Okay. And then they go to Trane and you've described
25 the conversations about this, this individual, Glenn Bell,

Mary Long - Cross-examination
By Mr. Walsh

1 and you said that Scott Cooper was on the phone with
2 Mr. Bell, right?

3 A That's right.

4 Q Okay. And you said Mr. Cooper said they had never seen
5 this problem with the dust before.

6 A He said they'd seen the Stinky Sock Syndrome odor and
7 that problem.

8 Q Right.

9 A But they had not seen the powder.

10 Q Okay. But then you understood Mr. Bell may have told
11 something to Mr. Cooper to explain that maybe Trane had seen
12 the problem before you overheard this conversation?

13 A Yes, sir.

14 Q Okay. All right. So, Tuck & Howell then responded and
15 immediately submitted a claim to Trane to get this coil
16 replaced, right?

17 A I guess. They got a coil a couple of days later. So,
18 I assume they did.

19 Q Well, we have a document marked as Exhibit 16, which is
20 called the Dirty Sock Syndrome report, and it says that Tuck
21 & Howell had contacted Trane and indicated that there was a
22 problem that they needed to get the coil.

23 You know that happened, right?

24 A Yes, sir.

25 Q Okay. All right. And, so, we'll, we'll have the Tuck

Mary Long - Cross-examination
By Mr. Walsh

1 & Howell people testify specifically to what they did, but
2 that was done and there were no charges, right?

3 It was all done under the warranty, right?

4 A We had a ten year warranty with it.

5 Q Okay. And, so, you understood that the, that this coil
6 that we're talking about, I didn't really know what a coil
7 was until they showed me, but it's, it's, it's part of the
8 machine that comes with the machine. It's not something
9 that Tuck & Howell puts in there themselves.

10 Do you understand that?

11 A The -- when they put the replacement coils in they
12 didn't take all that out. They just took the coils out---

13 Q But when they---

14 A ---and replaced them.

15 Q I'm sorry.

16 When the machine comes, like your car, it's got a
17 transmission in it. It's got a battery in it. It's got a
18 steering wheel. The coil is just like that.

19 It comes with the unit, right?

20 A It wasn't like this. It didn't look, it didn't look
21 anything like this unit here.

22 Q Okay.

23 A I've got pictures of the unit and it doesn't even --
24 if -- you know, you should look at those, but that unit over
25 there is not the unit we had.

Mary Long - Cross-examination
By Mr. Walsh

1 Q Well, I didn't say that was the unit. That unit is
2 still in your house. According to Eric Burton, it's still
3 working and operational.

4 A No.

5 Q That's still there.

6 A No, the unit's out in the -- in a back building behind
7 the house in a---

8 Q In a box.

9 A ---in a pasteboard box.

10 Q So then you've removed it.

11 This coil came with the unit, didn't it?

12 A Wait. Let me tell you what -- I didn't remove it.

13 They removed it and put another set of coils in. I didn't
14 remove it.

15 Q We're talking about the unit, ma'am. The whole
16 machine.

17 That's still under your house, isn't it?

18 A The replacement.

19 Q Right.

20 A Yes.

21 Q All right. And, in fact, it's working because we heard
22 Mr. Burton testify, the last time he saw it, it was
23 operational?

24 A But it was contaminated.

25 Q Is that right?

Mary Long - Cross-examination
By Mr. Walsh

1 A It's full of poisons.

2 Q That's not what he said, did he?

3 A He, he wasn't there to do that, sir. He wasn't there
4 to---

5 THE COURT: Excuse me.

6 A ---to check the mold.

7 THE COURT: Excuse me. Hold on. Just a second.

8 THE COURT REPORTER: I can't get them both at the same
9 time.

10 MR. WALSH: I apologize.

11 THE COURT: All right. Y'all don't talk over each
12 other. You got to take turns. The court reporter has to
13 take down everything each of you say.

14 THE WITNESS: I'm sorry, ma'am.

15 Q But we'll get to that. We'll talk about him in a
16 little bit. That wasn't really what I was talking about.

17 My question right now is, this coil, do you believe
18 that Tuck & Howell put the original coil in the unit when
19 they got the unit or did it come with it?

20 A It was with it I suppose.

21 Q All right. Okay. So, the unit comes in. They install
22 it. It's already got the coil in there. The coil
23 apparently has some issue and they get Trane to get involved
24 and Trane sends them another coil.

25 That's what happened, right?

Mary Long - Cross-examination
By Mr. Walsh

1 A That's what happened.

2 Q Okay. And, so, that was put in and then Tuck & Howell
3 has Steamatic come out and clean the ducts, right?

4 A After I told them -- after begging them and when they
5 wouldn't do it. I told them I was gonna do it and then they
6 sent somebody out.

7 Q Well, wasn't the -- oh, yeah.

8 Well, wasn't it within just a couple of weeks that the
9 Steamatic did their work from the time the coils were
10 replaced?

11 A First Mr. Cooper told me to put the cheesecloth over
12 there. I told you that yesterday. He told me to put four
13 layers of cheesecloth over it, and I was trying to get them
14 to vacuum it out. He said just put four layers of
15 cheesecloth across, across it, turn the air on full blast,
16 and the cheesecloth will catch it and you can throw it away
17 and it will blow it all out.

18 Well, that didn't work. I tried that. So, I'm saying
19 I was -- I don't really -- I wasn't taking notes at that
20 time, sir. So, I don't know -- I was guessing at two weeks.
21 It may have been longer. I do not know.

22 Q Okay. So, within a couple of weeks of the coil being
23 replaced, Steamatic came out and cleaned it up?

24 A A few weeks I'd say after I did the, trying the
25 cheesecloth method for about a week.

Mary Long - Cross-examination
By Mr. Walsh

1 Q The coil was replaced on October 10th, and it was --
2 and Steamatic was requested to clean the ducts on
3 October 20th, and they replaced it October 26th.

4 A Now, there's, again, they didn't have a time. They
5 didn't have a date on their estimate. I was just trying to
6 guess at what -- when Steamatic was out there. I don't
7 really know cause they didn't even put a time -- I mean a
8 date or anything when they was out there. So, I don't
9 really know about that.

10 Q You don't really know that.

11 Okay.

12 A No, what day.

13 Q Okay. So---

14 A But it was sometime in October let's say.

15 Q Okay. So, if it was a couple of weeks, you don't know,
16 we'll find out from other witnesses when exactly it was.

17 But it sounds like to me that you made the call. Tuck
18 & Howell got on the phone with Glenn Bell at Trane that day
19 in your house.

20 A He did.

21 Q Okay. And then orders the coil, files the form, gets
22 the form, gets the coil in, puts it in, and has Steamatic
23 out there all in a couple of weeks. It sounds like a pretty
24 prompt response.

25 A I don't -- he did not do it because he wouldn't do it

Mary Long - Cross-examination
By Mr. Walsh

1 until he found out that I was gonna call somebody out there
2 and he told---

3 Q Okay.

4 A ---T. J. that he would send somebody that does that
5 type work for him.

6 Q Okay.

7 A So, he did finally do it after he seen I was gonna do
8 it.

9 Q Okay. All right. So, at some point though you
10 described a situation where you were not satisfied with Tuck
11 & Howell, and you decided to go get someone else to look at
12 it, and we saw Mr. Burton come in and testify from The
13 General, correct?

14 A Yes.

15 Q Okay. Before The General came, Mr. Burton, you had
16 your electrician out there, didn't you?

17 A Well, first of all---

18 Q Is that true or not?

19 A Yes.

20 Q Okay.

21 A But the power -- yes.

22 Q Okay. All right. So, Tuck & Howell was not invited to
23 meet the electrician at the air unit, was he?

24 They were not asked to come, were they?

25 A Now repeat that.

Mary Long - Cross-examination
By Mr. Walsh

1 Q You did not ask Tuck & Howell to come to your home and
2 meet with the electrician, did you?

3 A well, see, I had called. They was already had an
4 appointment to come out to our home.

5 Q Yes or no and then you can explain if you'd like.

6 Did you ask Tuck & Howell to come out and meet your
7 electrician out?

8 A No, not that day -- not at that time I didn't.

9 Q Okay. All right. And then when Eric Burton came out,
10 Tuck & Howell wasn't asked to be there either, were they?

11 A They already had -- sir, may I say something?

12 Can I say what they said, Tuck & Howell and them?

13 Can I say what Tuck & Howell said?

14 Q well---

15 THE COURT: Yes, ma'am, you may.

16 A well---

17 Q If you would, just answer my question.

18 THE COURT: If it's in response to a question.

19 Q My questions was---

20 A well, it is---

21 Q ---did you ask Tuck & Howell to meet Eric Burton there
22 at the unit when he went out there?

23 A We already had an appointment with them for them to
24 come out the next day, the 17th.

25 Q Okay. So, that means no, you did not ask---

Mary Long - Cross-examination
By Mr. Walsh

1 A No.

2 Q ---Tuck & Howell?

3 A They was already coming.

4 Q So, whatever work Burton did, Tuck & Howell never got
5 the opportunity to see it and look at it and determine what
6 might have been wrong?

7 A They had been coming in and out for three and a half
8 months and couldn't find anything.

9 Q Okay.

10 A That's when I decided to call someone else.

11 Q That wasn't my question.

12 My question was, by the time -- you knew Tuck & Howell
13 was coming out the next day, but yet you had Burton come in
14 the day before. So, Tuck & Howell never got the opportunity
15 to see what Burton says was wrong.

16 You never gave them that chance, did you?

17 A After three and a half months I'm afraid not.

18 Q Okay.

19 A They was -- we already had an appointment for four days
20 for them to come out.

21 Q Okay. And then Mr. Harjehausen talked to Mr. Burton,
22 asked him some questions, and he did these reports where
23 your attorney introduced one. Mr. Harjehausen introduced
24 one, and let's, let's sort of orient ourselves to that
25 moment.

Mary Long - Cross-examination
By Mr. Walsh

1 You are frustrated with Tuck & Howell, aren't you?

2 A You better believe it.

3 Q Three and a half months they don't do anything, do
4 they?

5 A They come out and make everything worse.

6 Q All right.

7 A Every time they come out they put more poisons in our
8 home.

9 Q Terrible situation at your house.

10 You call Tuck & Howell out for there for a second
11 opinion. You hear Eric Burton testify.

12 He noted no dust, no mold, no smell, no coil problems,
13 nothing, did he?

14 A Eric didn't even come in the house.

15 Q Okay. So, the man---

16 A He was under the house.

17 Q Okay. So, the man that you call out for your second
18 opinion, you don't even have them come in the house?

19 A He wasn't there about the aluminum oxide or anything.

20 Q Okay.

21 A He was there just to check the work.

22 Q Okay.

23 A The installation work of the -- that's all he was there
24 for.

25 Q He sees nothing. He's there at the system, and you

Mary Long - Cross-examination
By Mr. Walsh

1 think the system is causing the problem. He doesn't see any
2 problem with the system.

3 In fact, he writes on there it's operational, doesn't
4 he, writes in his report?

5 It's operational. So, the very man that is called out
6 there to look at the unit, to find the problem with the
7 unit, the H. V. A. C. man, the second opinion, doesn't find
8 anything wrong with it.

9 A That's not true.

10 Q Well, that's what you said. We all heard what he said
11 and the jury can remember what he said.

12 A He -- look at all the list of things. He found the
13 condensate pump wired to the light switch. He found
14 something else was not wired up. He, he found duct work
15 that had never been sealed.

16 Where are you coming from?

17 Q Did he---

18 A What's on his report, he read all that.

19 Q But he testified that he didn't find any powder or
20 dust, he didn't find any smells, and he didn't find any
21 mold.

22 A Sir, read about him saying they was gray powder in
23 there.

24 Q Okay. Ma'am---

25 A Somebody's not reading it correct.

Mary Long - Cross-examination
By Mr. Walsh

1 Q Okay.

2 A Read that.

3 Q You can read better than what Mr. Burton read and
4 wrote, right?

5 You---

6 A Well, he was having difficulty reading it himself.

7 Yeah, it's my---

8 MR. BANNISTER: Judge, that's, that's argumentative
9 and I object.

10 THE COURT: Sustained.

11 Q Mr. Burton went out there a second time, a year later,
12 and, again, found the unit operational, running fine, he had
13 offered no testimony about any problems that you've
14 described that you thought was occurring about the dust, the
15 smells, and so forth?

16 A If it was running fine, why did I call him out there?

17 If it was running fine, why was he out there in the
18 first place, sir?

19 You're switching everything around and making it---

20 Q If there was a service call he needed to make.

21 A It wasn't working.

22 Q And we all had that happen where we turn it on and
23 nothing works, but that has nothing to do with what this
24 case is about, the fact that he found no coiled -- found no
25 powder in the system. He found---

Mary Long - Cross-examination
By Mr. Walsh

1 A He did.

2 Q Well, we just heard his testimony and he said he
3 didn't.

4 A Well, he just looked over it and he's reading it. You,
5 you have to read it yourself then.

6 You want to see it?

7 There's gray powder in there and he says that in the
8 report.

9 Q Okay. Okay. So, this is going on. Apparently 13
10 environmentalist were called out there, but at some point
11 Scott Cooper tells you look, you're not happy, we're just
12 gonna give you your money back is what he says, right?

13 A After they put a, filled up our home full of poisons,
14 who wouldn't give us our money back?

15 Q Okay.

16 A That would be cheaper than getting out like that than
17 having---

18 Q All right.

19 A ---to clean the poisons out of the home, wouldn't it?
20 wouldn't you do the same thing.

21 Q Did he offer to give you your money back?

22 A Yes, he did.

23 Q All right. And then, in addition to that, Jerry Tuck
24 met out there with you, didn't he, and you refused the
25 refund.

Mary Long - Cross-examination
By Mr. Walsh

1 You spoke with Mr. Tuck personally at your home, didn't
2 you?

3 A Do you know when he came out?

4 Q Did you---

5 A Three and a half months after we first found the
6 problem.

7 Q All right. Did he or did he not come to your house?

8 A After we had General Heating and Air out, and I sent
9 the word to Mr. Tuck what they had found, then he wanted to
10 come and talk.

11 Q Okay.

12 A After General Heating and Air found all those things
13 wrong, he then wanted to come and talk.

14 Q Okay. So, he, he came to your house to talk?

15 Yes?

16 A Three -- yes, sir, three and a half months after all
17 this mess started.

18 Q All right. And he also came with his partner, Hayden
19 Howell, right?

20 A That's right.

21 Q Okay. And he came and met with you?

22 A Yes, sir.

23 Q And met with you the first of February, didn't they?

24 A No, I think it was in January when they first come.

25 Q Okay. January.

Mary Long - Cross-examination
By Mr. Walsh

1 All right. And they told you that they
2 reiterated/repeated---

3 A I'm not sure about that. It might have been February
4 seems like.

5 Q Told you again that they would give you your money back
6 on the unit, right?

7 They met with you and told you this, right?

8 A No, they didn't tell us what you're saying.

9 Q Okay. They offered to replace the ducts, didn't they?

10 A At that time---

11 Q Did they?

12 Yes or no.

13 If it's no, tell me. If it's yes, tell me.

14 A I don't know if they -- I'd have to look at my records
15 or I'd have to look at their records and see what --.

16 Q Well, you read in yesterday I recall a letter. Your
17 attorney gave you a letter purportedly from Jerry Tuck.

18 A Okay. I read it yesterday.

19 Q Okay.

20 A But I can't keep all that -- I can't keep everything in
21 my mind. I could get my records and read it again---

22 Q You're doing---

23 A ---if that's what you want me to do.

24 Q You're doing fine.

25 And in there I think they offered to replace the

Mary Long - Cross-examination
By Mr. Walsh

1 system. They offered to replace the ducts, which Tuck &
2 Howell contends they never even were paid for to begin with,
3 and they offered to pay half the power bill for this, for
4 the, for the months that you said you had an issue, and they
5 also offered to pay The General man's time and bill that we
6 went out there.

7 They offered all those things, didn't they?

8 A What about all the poisons that was still in there, and
9 they wouldn't dare clean anything up.

10 Q The question, the question was, and I know you keep
11 wanting to talk about that, the question was is that what
12 they offered you, a full refund, including the ducts,
13 including General Air's work, and, and half the power bills?

14 A Well, I'd have to look. But from what I'm remembering,
15 they offered to give us the money back and we could get
16 whoever we wanted to to do that work.

17 Q Okay.

18 A I'm not -- I'm gonna have to look at my records and
19 look at it again. I can't keep all this in my mind, but the
20 best I can remember, they said we'll give you your money
21 back, and you can get whoever you want to to do it.

22 Q Okay. So---

23 A But \$6,000 would not get those poisons out of our home
24 and redo anything.

25 Q Okay. So, from the time that Steamatic cleaned the

Mary Long - Cross-examination
By Mr. Walsh

1 ducts the end of October to sometime in January, we're
2 not -- we're talking about November, December, and January.

3 In the, in the three month period, they had gotten the
4 coil replaced, they had gotten the ducts done, and then they
5 made you these offers to repair. They went out to your
6 house.

7 That seems like they were pretty concerned about your
8 issues and trying to make you satisfied, don't you think?

9 A No, sir. Don't you think they would of searched till
10 they found the -- what caused the water problem, and not --
11 and I had, I had to call another company out to find out
12 what was causing the water.

13 Q Okay.

14 A They did not search until they found out what was
15 causing the water problem and stopped it before they put
16 another unit under our home and messed it up with water.
17 They back, they backed -- they continued to back the water
18 up in, on the new system and probably caused mold on the new
19 system.

20 Q Okay.

21 A I don't know what's on there.

22 Q Okay.

23 A But I don't know what all's on there.

24 Q Okay.

25 A But I do know that all the aluminum oxide was still in

Mary Long - Cross-examination
By Mr. Walsh

1 there, all the mold.

2 MR. WALSH: Your Honor, that is not responsive to any
3 question.

4 THE COURT: Please keep in mind the question, and just
5 be responsive to the question.

6 Q Okay. So now I want to talk a little bit about some
7 other things.

8 When Tuck & Howell went out there to do your work, they
9 didn't know about this mold problem you admit you had in
10 2001, did they?

11 You never told them about that, did you?

12 A Why should I tell them?

13 That was in the ceiling in the family room, and it had
14 been cleaned up and it was only a small amount.

15 Why should I have told them about something like that?

16 Q So, the answer would be no?

17 A No, we didn't have a problem in the house when they
18 come and -- came and did the work. We didn't have a
19 problem.

20 Why should I tell them about something that happened
21 four years prior to that and it was cleaned up?

22 Everything was replaced.

23 Q Okay.

24 A That's not something you just even think to tell them.
25 I didn't think to tell them if it was important.

Mary Long - Cross-examination
By Mr. Walsh

1 Q And, and I think you deny telling them that you had
2 this, this problem in the bathroom that ran into the duct
3 and there was an odor that you had, did you not?

4 A No, sir, I did not tell that. That's a lie.

5 Q Okay.

6 A That is a lie.

7 Q All right. Now, the house though you have felt, over
8 the years, that there were problems with the house that were
9 making you allergic, didn't you?

10 A No, sir, I did not.

11 Q Okay. All right. Well, let's talk a little bit about
12 that.

13 A When we had, had work done like painting or something
14 like that, yes, I would have a flare-up. But once the
15 painting was over and the house was aired out, everything
16 was okay again. And once I learned what was causing all of
17 these health problems is when I learned to control them and
18 avoid them. But you're talking like it was a continuous
19 thing. It wasn't.

20 Q Okay. Now, in -- so, you said that you had a problem
21 before the mold in 2001 and two when they painted your house
22 and put hardwood floors in?

23 A I told you any time I did something like that I had a
24 flare-up. Once it got -- the odor got out of the house I
25 was fine, sir.

Mary Long - Cross-examination
By Mr. Walsh

1 Q Okay. And, so -- so then you had a flare-up, as you've
2 described it --

3 A A flare-up, yes, sir.

4 Q Okay. And that caused you to have a big increase in
5 your allergies and your headaches and all sorts of shortness
6 of breath and problems like that because of the hardwood
7 floors?

8 A When we had the flare-up.

9 Q Okay.

10 A When I had a flare-up, yes.

11 Q Okay. And---

12 A But that was just temporary. Once you opened the house
13 up and let it air out, then all of that's gone, you're fine.

14 Q Okay. Now, if you could look on Exhibit 5, and I will
15 be able to show it to you. Hand you that if you don't mind.

16 Okay. And I've got Exhibit 5 here on my board. And,
17 so -- okay. So then we've got here Doctor Goforth and this
18 is identified and premarked and introduced into evidence.

19 He was your ear, nose, and throat doctor, wasn't he?

20 A That's right.

21 Q So, that's Doctor Goforth, and over here,
22 November 29th of 2001, okay, you're the, you're the Mary
23 Long, 11/11/42, that's you, right?

24 A Yes, sir.

25 Q Is that your birthday?

Mary Long - Cross-examination
By Mr. Walsh

1 A Yes.

2 Q Okay. All right. And you have a history of sinus and
3 chest problems, and we'll talk a little bit about your
4 health history in a little bit, but what I want to talk
5 about is the house right now, and it says here she thinks
6 she is allergic to something in her house, but is unable to
7 confirm this. She is to attempt -- contract with a company
8 to assess for possible allergens.

9 Okay. That's 2001.

10 A Right.

11 Q So, you thought that you were allergic to something in
12 your house in 2001, didn't you?

13 A I was allergic to something.

14 Q Okay.

15 A That's when we had the leak in the ceiling, sir---

16 Q Okay.

17 A ---and had those old---

18 Q Okay.

19 A ---cardboard---

20 Q Okay. So then we go?

21 A That was short term. And once they finished it, took
22 it all out and fixed it, I didn't have any problems.

23 Q Okay.

24 A It was just temporary.

25 Q And then we will go -- we'll talk about the

Mary Long - Cross-examination
By Mr. Walsh

1 temporariness of it as we go forth.

2 A Okay.

3 Q Okay. And then we've got December 13th, 2002, which is
4 the same part of this exhibit, and now it says there's a
5 large amount of mold in the ceiling.

6 Now, you said it was some, limited to some ceiling
7 tiles. It was a little discoloration. It wasn't really a
8 big deal, but you told your doctor that it was a large
9 amount of mold in the ceiling.

10 A No, sir, I did not tell my doctor.

11 Q You didn't tell your doctor?

12 A No, sir.

13 Q All right. So, a large amount of mold in the ceiling
14 of your den and are, and are -- symptoms have markedly
15 worsened.

16 Okay. It was prevalent after an ice storm. You have
17 fairly, fairly severe allergies.

18 So, was it a large area of mold that you were worried
19 about?

20 A No, sir.

21 Q Okay. But you did have a problem with mold back then,
22 but you just don't believe it was a large area?

23 A It wasn't.

24 Q Okay. Okay. And it sounds like, to me, that you
25 had -- that you ended up, as you've described, sort of this

Mary Long - Cross-examination
By Mr. Walsh

1 protracted ongoing debate with the insurance company about
2 them fixing a few ceiling tiles as you described, right?

3 A No, sir, it wasn't about the few ceiling tiles. The
4 odor was still there after they took the ceiling tiles out.
5 The odor was not coming from the mold. It was coming from
6 the ground up cardboard---

7 Q Okay.

8 A ---ceiling tiles when they got damp.

9 Q Okay.

10 A Sir, even after it dried, the -- it still has the odor
11 and you know that if you've ever smelt cardboard. It will
12 have that odor till you get it, get rid of it.

13 Q So, it took about two years you said. You had to deal
14 with your insurance company.

15 A No, I didn't say two years. The ceiling -- we found it
16 in December of 2001. I think it was -- I don't know what
17 date, 2001, and at that time we had the ceiling tiles taken
18 out.

19 Q So, the---

20 A And the insurance company would not replace the whole
21 ceiling because they said that that could be sprayed, and
22 the restoration company said it can't be sprayed. We've
23 tried it before, and we're gonna have to take it out.

24 Q Okay.

25 A So, they argued with the insurance company, and got the

Mary Long - Cross-examination
By Mr. Walsh

1 insurance company to take it down, then everything was fine
2 after that.

3 Q Everything was fine.

4 So, when was the -- when was it all fine?

5 A After they finished -- took it down.

6 Q When was that?

7 A I'd have to look at the date. I told you I think it
8 was 2002 that they, restoration company was there.

9 Q Okay.

10 A And you've got those records, sir.

11 Q Well---

12 A You've got them.

13 Q I'm asking if you know, ma'am.

14 A I can't -- I know. I know. But I just can't hold it
15 all in my head.

16 Q Well, we know about December of 2002 it wasn't fixed
17 cause there's a large amount of mold in the ceiling?

18 A That was not true.

19 Now where did you get that?

20 Q If you look on the exhibit I've handed you, the second
21 page, okay, if you look under R. O. S. See that section
22 there, December 13th, 2002, under R. O. S.?

23 Patient has found a large amount of mold in the ceiling
24 of her den and states her allergies have increased---

25 A Just let me read it.

Mary Long - Cross-examination
By Mr. Walsh

1 Q Sure, if you'd like to.

2 A Just be quiet just a minute and let me read it.

3 Q Yes, ma'am.

4 (Pause.)

5 A What is this date on here stamped -- why is this date
6 on here stamped right above that?

7 That's very unusual to have a stamped date on here---

8 Q Okay.

9 A ---in the middle of a page --

10 Q Okay.

11 A -- like that was added.

12 Q Okay.

13 A But I'm trying to think -- see at the first we
14 thought -- we may have a large amount by the smell, but we
15 didn't know it was the cardboard smell. We thought it was
16 mold.

17 Q Okay.

18 A And, so, I might of told him that --.

19 Q Okay. So now you did tell him?

20 A Wait a minute. I don't know.

21 Q Oh.

22 A Let me see when I had it tested.

23 Sir, could I pull my records and see when I had it
24 tested?

25 THE COURT: If you need to you certainly can.

Mary Long - Cross-examination
By Mr. Walsh

1 Mr. Bannister, do you have her records?

2 A And see they's something -- this date here has been
3 stamped on, and I don't think the doctor -- they got their
4 dates -- I don't think they would stamp something in the
5 middle of a page like that.

6 Q Okay.

7 A But let me find my records and see when I had it --.

8 MR. WALSH: Your Honor?

9 A I can pull them quicker than you can.

10 THE COURT: She has her, she has her file.

11 MR. WALSH: I don't know what kind of records she has.

12 I don't know if I've ever seen any records. So --.

13 A Well, yes, you -- you might not have them, but---

14 THE COURT: Mrs. Long, don't, don't---

15 THE WITNESS: I'm sorry.

16 THE COURT: ---engage in an argument with Mr. Walsh.

17 THE WITNESS: Could I tell you when I gave them to
18 you, to him?

19 THE COURT: No, ma'am. I just want you to find
20 whatever records---

21 THE WITNESS: Okay.

22 THE COURT: ---you think will help your memory.

23 THE WITNESS: Okay. Just give me a minute.

24 (Pause.)

25 THE COURT: But they already have these records. I

Mary Long - Cross-examination
By Mr. Walsh

1 gave them to Mr. Harjehausen.

2 THE COURT: Okay. Just, just find the record that you
3 need to refresh your memory.

4 MR. WALSH: And, Your Honor, I'm not exactly sure what
5 she's refreshing.

6 THE WITNESS: Well, you're gonna find out in just a
7 second. In just a second -- you're gonna find in just a
8 minute. I got to find out when we had---

9 THE COURT: Mrs. Long. Mrs. Long.

10 THE WITNESS: I'm sorry, Mr. -- I'm sorry.

11 THE COURT: Mr. Walsh is not talking to you right now.

12 THE WITNESS: I'm sorry.

13 THE COURT: So, don't engage in a conversation with
14 him.

15 MR. WALSH: Your Honor, my question was did she tell
16 the doctor about the mold, yes or no. I don't -- I'm
17 not -- I didn't ask about testing---

18 THE COURT: I understand.

19 MR. WALSH: ---or repairs or anything.

20 THE COURT: I understand. But she's, she's trying to
21 find a record she says will help her remember when she --
22 if she did tell the doctor that based upon when she went to
23 the doctor. I don't know. She says she has a record.

24 THE WITNESS: Yes, I have a record of when I tested
25 it, and I pulled it out back there because --

Mary Long - Cross-examination
By Mr. Walsh

1 THE COURT: I thought you---

2 THE WITNESS: I think I found it. I think I got it
3 right here.

4 MR. WALSH: Your Honor, I'd like to maybe have
5 Mr. Bannister take the record, and let's approach and see
6 what it is before she starts talking about it.

7 THE COURT: Okay. Mrs. Long?

8 THE WITNESS: Okay.

9 THE COURT: Hand that record -- Mr. Bannister's gonna
10 take---

11 THE WITNESS: Okay.

12 THE COURT: ---that record from you.

13 THE WITNESS: Okay. Just give me a minute.

14 THE COURT: And show him what you're referring to, but
15 don't say anything about it until I look at it.

16 THE WITNESS: Okay.

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

20 THE COURT: Let me ask the jury to please go to your
21 jury room. I've got one evidentiary matter I'll need to
22 address and I'll bring you back in just a few minutes.

23 (WHEREUPON, the following takes place outside the
24 presence of the jury.)

25 THE COURT: All right. Mrs. Long, those are the two

Mary Long - Cross-examination
By Mr. Walsh

1 records you pulled out to help you respond to Mr. Walsh's
2 question.

3 THE WITNESS: Yes, sir.

4 THE COURT: All right. Tell Mr. Walsh how that helps
5 you.

6 THE WITNESS: I'm gonna look here just at the dates.
7 This was -- I had them out on December the 12th of 2000 and
8 -- do you want me to go ahead?

9 THE COURT: Yes, ma'am.

10 THE WITNESS: I had the E. I., that's the
11 environmentalist, I had them on out on December the 12th of
12 2001 to check to see if that was mold, the discoloration.
13 I received the records back from them on December the 28th.
14 This here is stamped here December the -- this is
15 stamped -- this is stamped December the 13th of 2002. Now
16 let me see when the restoration company was out there.

17 MR. WALSH: Ma'am, may I look at this while you're
18 looking at that?

19 THE WITNESS: You've got your copy, sir.

20 MR. WALSH: I don't have a copy. I'm sorry.

21 THE WITNESS: Yes, you do. I gave it to Mr.
22 Harjehausen on -- at my deposition, I gave it to you on the
23 15th.

24 MR. WALSH: Your Honor?

25 THE WITNESS: My first deposition.

Mary Long - Cross-examination
By Mr. Walsh

1 MR. WALSH: Your Honor, may I just see the document?

2 THE COURT: Okay. Let him look at the document
3 please.

4 THE WITNESS: I'm getting all just, just tired and
5 worn out and so stressed out I can't think.

6 MR. WALSH: Take your time.

7 THE WITNESS: I'm just -- my mind's just getting
8 overloaded. I can't pull things together like I need to.

9 (Pause.)

10 THE WITNESS: See this date that's stamped on here says
11 December the 13th, 2002. I called the environmentalist out
12 there December the 12th of 2001, and I got the report back
13 December the 28th, 2001. And we went immediately and had
14 the ceiling tiles taken out right after that. So there
15 wouldn't have been any mold in the home on December the
16 13th, 2002. It had already been -- now the ceiling tiles
17 where the mold was at had been taken out, but the -- when
18 they came back and took the, took the odor out, which we
19 thought was mold---

20 THE COURT: All right. Well, let's don't---

21 THE WITNESS: When they first came back, when they
22 came back and finished everything was---

23 THE COURT: Mrs. Long, Mrs. Long, listen to me. The
24 question is much simpler than that. The question was
25 simply did you tell your doctor on December 13th of 2002---

Mary Long - Cross-examination
By Mr. Walsh

1 THE WITNESS: I don't think so, sir---

2 THE COURT: Let me finish my---

3 THE WITNESS: I think it was all---

4 THE COURT: Mrs. Long, you're not letting me finish my
5 question even before you answer it.

6 THE WITNESS: I'm sorry.

7 THE COURT: The question Mr. Walsh asked was did you
8 tell your doctor, on that visit to your doctor on
9 December 13th of 2002, about mold having been in your home.

10 THE WITNESS: I don't see why I would have cause it
11 wasn't there any more.

12 THE COURT: Well, is your answer that you did not tell
13 him?

14 THE WITNESS: No, I didn't. It was already cleared
15 up.

16 THE COURT: So, you didn't tell the doctor about the
17 mold in your home?

18 THE WITNESS: He may have brought it -- let me explain
19 something. When you go to the doctor, look at your
20 records, everything -- every problem you have stays on your
21 record, okay, and they bring it forward. They bring it
22 forward. And when you go back in, maybe a year later, they
23 still bring that up. It's still on your records and they
24 might still bring it up. That is---

25 THE COURT: Well, but Mr. Walsh is asking you---

Mary Long - Cross-examination
By Mr. Walsh

1 THE WITNESS: I don't---

2 THE COURT: ---about a December 13th visit.

3 THE WITNESS: I couldn't have said, I couldn't have
4 said that at that time, no, sir, I couldn't have.

5 THE COURT: All right. Well then just say no.

6 THE WITNESS: Okay.

7 THE COURT: All right. The answer to that would be
8 no.

9 Okay. We'll bring the jury back.

10 MR. WALSH: One, one moment.

11 Can I see the other record before --?

12 THE COURT: Oh, sure. Well, if she doesn't need to
13 refer -- her answer is no to the question.

14 MR. WALSH: Well, I think, Your Honor, that I have not
15 seen that record. I don't want to get in an argument with
16 Mrs. Long about it. But since she looked at it, I don't
17 know that I've ever seen the fall restoration document.

18 THE COURT: Okay.

19 MR. WALSH: But since she now has revealed it I'd like
20 to see it.

21 THE COURT: Okay.

22 MR. WALSH: If you don't mind.

23 THE COURT: Anything---

24 THE WITNESS: Well, Mr. Harjehausen has them. Can
25 you---

Mary Long - Cross-examination
By Mr. Walsh

1 THE COURT: Okay. Just show him the document you
2 referred to.

3 THE WITNESS: He's got it. It was in my first
4 deposition you did with me.

5 THE COURT: Mrs. Long?

6 THE WITNESS: I'm sorry.

7 THE COURT: Nobody has asked, nobody has asked a
8 question.

9 MR. WALSH: Okay. Thank you.

10 I'm good, Your Honor.

11 THE COURT: All right.

12 MR. BANNISTER: Can we possibly take about five
13 minutes?

14 We haven't had a bathroom break since 9:30.

15 THE COURT: We haven't?

16 I thought we had a lot of breaks since 9:30. But if
17 we need one we'll take one.

18 We'll take ten minutes.

19 MR. WALSH: I would like---

20 THE COURT: Mrs. Long, you can step down. You can
21 step down. But, again, don't discuss your testimony during
22 the break.

23 Mrs. Long, you can, you can step down.

24 THE WITNESS: I am. I got to get my stuff back up,
25 sir.

Mary Long - Cross-examination
By Mr. Walsh

1 THE COURT: Okay.

2 THE WITNESS: Got to put it back where it belongs.

3 THE COURT: All right.

4 (Whereupon, a recess was taken.)

5 THE COURT: All right. Mrs. Long, you can come back
6 and have your seat on the witness stand please.

7 why don't y'all look at this?

8 This is that exhibit that have been --.

9 MR. WALSH: That's fine, Your Honor.

10 THE COURT: Just attach it to that.

11 MR. WALSH: Yes, sir.

12 THE COURT: Talking about one exhibit?

13 MR. BANNISTER: One, yes, sir.

14 THE COURT: All right. Are we ready for the jury now?

15 MR. WALSH: Yes, sir, Your Honor.

16 THE COURT: Bring them in.

17 (WHEREUPON, The following takes place in the presence
18 of the jury.)

19 THE COURT: Mr. Walsh.

20 MR. WALSH: Thank you, Your Honor.

21 CONTINUED CROSS-EXAMINATION

22 BY MR. WALSH:

23 Q Ma'am, I think when we adjourned a few moments ago I
24 was asking you about this note from Doctor Goforth's
25 records, specifically it's December 13th of 2002 entry, that

Mary Long - Cross-examination
By Mr. Walsh

1 indicated that you had indicated to him that there was a
2 large amount of mold found in your home, and I think that's
3 where we broke down. My question was did you tell Doctor
4 Goforth that.

5 A No, sir.

6 Q Okay.

7 A That was after it was cleaned up.

8 Q Okay.

9 A That date --.

10 Q Okay. So, even after it was cleaned up, you were still
11 telling him about the large amount of mold in the house?

12 A No, sir, I said he probably brought that forward from
13 the past. They do -- doctors does that every day, and if
14 you'll look at your medical records, your doctor's probably
15 done the same thing.

16 Q Okay. So, the record before that, Exhibit 5, just
17 talks about you allergic to something in the house. It
18 doesn't talk about the mold.

19 But yet after it's cleaned up, in 2002, you're still
20 complaining about the large amount of mold?

21 A No, you don't know, sir. He might not have written it
22 down when I had the problem.

23 Q Okay. Well, that would be, I guess, possible. But on
24 December 16th, if you turn to Exhibit 6, which is there in
25 front of you, right here, ma'am, he writes a letter. The

Mary Long - Cross-examination
By Mr. Walsh

1 letter says she has severe allergy problems in the 80s.

2 Done well till recently. Appears to be secondary to a mold
3 and mildew problem in the ceiling of her den. If it can be
4 repaired and in a timely fashion this would be significant.

5 So, obviously you either had the problem going on or it
6 was over and you were still complaining about it, right?

7 A The mold had cleaned up, but the -- the whole
8 installation -- the, the ceiling tiles that really was
9 causing the odor with the ground up cardboard was still in
10 there, sir.

11 Q So, it wasn't over?

12 A Yes, the mold was over.

13 Q Well---

14 A And I, I probably might have told him that they still
15 hadn't got it cleaned, cleaned up and thought it was still
16 mold at that time.

17 Q Okay. So, you did tell him the problem was still
18 there?

19 A I don't know.

20 Q All right.

21 A I don't know.

22 Q Well, did you ask him to write a letter?

23 A No, I did not.

24 Q So, he just wrote this on his own you think?

25 A You've got it here I guess. I've never seen this. But

Mary Long - Cross-examination
By Mr. Walsh

1 it's got his -- it says Carolina E. T. and T. up at the top.
2 Q Okay. So, you think that because you told them you had
3 a mold problem, mold and mildew in the ceiling, and it needs
4 to be repaired, you think that that's something you asked
5 him to do, that's why he wrote it?

6 A If this had of been like this it was to try to help us
7 with the insurance company to get them to clean it up if he
8 wrote something like this would be the only reason he would
9 of even done this if he was trying to help me to get it
10 cleaned up with the insurance company. But I don't
11 understand this date on here.

12 Q Okay.

13 A Could, could you look back?

14 Q All right, ma'am.

15 A Could I look back at that, at the restoration company
16 now to see what they, when they cleaned it up again?

17 Q Well, we already looked at it. That's what we took the
18 break for.

19 A I know. But you get -- put too many things in my mind,
20 and I can't, I can't pull this together.

21 Q Well, I'm gonna ask you to turn to Exhibit 10.

22 A I can't, I can't understand this either.

23 Q Okay. Well, I can't either.

24 A Well, now, now the mold was taken out when it first
25 happened, but then we had to argue back and forth with them

Mary Long - Cross-examination
By Mr. Walsh

1 to get, to get them to take the whole ceiling out and fix
2 it.

3 Q Okay. I want to turn your attention to Exhibit 10 now,
4 which I just put in front of you. This is now to another
5 doctor at Mountainview Family Practice.

6 That's Doctor Brunson, isn't it?

7 Right here, ma'am. Sorry.

8 Do you see that?

9 Is Doctor Brunson at Mountainview Family Practice?

10 A Yes, sir.

11 Q Okay. So now we're in June of '04. Okay. We've fast
12 forwarded from all those notes in 2002.

13 Well now we're only a few months away from when Tuck &
14 Howell is gonna be there, right?

15 They're there in November of 2000 and -- October of
16 2004, right?

17 A Now, you've got, you've got to let me get this
18 straightened out, sir.

19 Q Well, my question is -- I'm not asking about that
20 document yet. Okay. We'll get to that document. You can
21 read it if you'd like.

22 Tuck & Howell did the work in October of 2004, is that
23 right?

24 A November.

25 Q November?

Mary Long - Cross-examination
By Mr. Walsh

1 okay. All right. The date of this record is 6/28/04,
2 June 28th of 2004.

3 Mountainview Family Practice, is that your family
4 practice doctor, Doctor Brunson?

5 A Yes, sir.

6 Q Okay. Okay. We'll come back to your medical problems
7 in a little bit, but let's talk about what it says.

8 Okay. Has been dealing with a mold problem in her home
9 since the ice storm back in January.

10 So, did you have some problem in January of '04?

11 A No.

12 Q Okay.

13 A He's brought that forward, and if you'll look at my
14 medical records, he even took it into 2005. He brings the
15 same problem up in 2005 --

16 Q Okay.

17 A -- on my records. So, he just kept bringing it
18 forward. I got this straightened out with him if you'll let
19 me explain that to you.

20 Q Okay.

21 A After---

22 Q I don't want you to tell me what you and your doctor
23 talked about.

24 What I want to know is did you tell him that you had an
25 odor in your house all the time that smells musty and

Mary Long - Cross-examination
By Mr. Walsh

1 mildew?

2 Did you tell him that in 2004, in June of 2004?

3 A No, sir, that was in -- way back in -- he brought that
4 forward from like 2001 or 2002 --

5 Q Okay.

6 A -- when we was having the problem.

7 Q But that was Doctor Goforth that we were just looking
8 at.

9 A No, both of them.

10 Q Okay. This is Doctor Brunson.

11 A I know who I'm---

12 Q Okay.

13 A I know who you're talking about.

14 Q Okay. And then it says here that you've been using an
15 apartment --

16 A No, sir.

17 Q -- owned by her daughter and symptoms have been minimal
18 there and then it says those symptoms are better even when I
19 just leave my house and go out in the yard for a little
20 while.

21 A My daughter---

22 Q Do you see that in your record?

23 A I know it's in there. I been trying to get this
24 straightened out with you.

25 Q Okay.

Mary Long - Cross-examination
By Mr. Walsh

1 A And straightened out with him.

2 Q So -- well, you can, you can talk to your doctor when
3 we're finished, but my question today is---

4 A I already have, sir.

5 Q ---is your doctor reports, in 2004, just a few months
6 before Tuck & Howell got there, that you had a odor in the
7 house, it smells musty and moldy, okay, which you've been
8 complaining about a mold problem.

9 Now, isn't it interesting that J. P. McConnell at Tuck
10 & Howell are talking about looking at a duct that has mold
11 in it, but you deny that, right?

12 A That's where they got this from I guess.

13 Q Okay.

14 A That's where they came up with that idea---

15 Q Okay.

16 A ---and put it in there that particular time.

17 Q They came up with that. Okay.

18 A But the doctor's the one that got this messed up, mixed
19 up.

20 Q Okay.

21 A He's brought it forward from 2001 or, or either 2002.

22 Q Okay. Let's, let's, let's go on a little bit further.
23 If we look at Exhibit 12 -- I'll show you that. well, first
24 Exhibit 11 and then Exhibit 12. I might not have 12 on
25 here.

Mary Long - Cross-examination
By Mr. Walsh

1 Okay. well, let's just talk about 12 cause that's what
2 I have in front of the jury right here.

3 Do you have 12 in front of you, ma'am?

4 A No, you didn't let me get this straightened out. I
5 found this out---

6 Q Ma'am, that's, that's -- I'm sorry. That's not my
7 questions.

8 A Well, you have -- I have the right to explain this to
9 you.

10 Q Your attorney, ma'am, can ask you, after I'm through if
11 he'd like, to explain whatever you want to explain about
12 whatever subjects I've covered.

13 A Well, I can correct---

14 Q Okay.

15 A ---or get that straightened out---

16 Q Okay.

17 A ---if you'd just let me.

18 Q Okay. what do you want to get straightened out?

19 A I found this out when they -- Mr. Harjehausen was
20 depositioning our lawyer -- our doctor.

21 Q And I don't want to know what you and your doctor
22 talked about, ma'am.

23 Okay. That's not what we want to talk about here.

24 A That's when I found out---

25 MR. WALSH: Your Honor, please, I think she's---

Mary Long - Cross-examination
By Mr. Walsh

1 THE COURT: Ma'am, Mrs. Long, you're gonna have to be
2 responsive to the question. So, listen to his question and
3 please respond to it as best you can.

4 Q So, if you deny saying it, that's fine. I'm moving on
5 now to Exhibit 12.

6 A Well, I -- then I deny saying it at that time.

7 Q Okay.

8 A It happened in 2001---

9 Q Okay.

10 A ---is when I told him.

11 Q All right. Because then when we look at Exhibit 12,
12 there's another note from Mountainview Family Practice,
13 July 6th of '04, it's a phone note regarding mold problem,
14 Doctor Brunson.

15 Okay. And it says here that Doctor Brunson wrote
16 please take a look at this note and then call this
17 individual, Cindy, who's not a party to this case, and ask
18 if it will be okay to put this lady in touch with her.
19 Okay. She has a mold problem similar to what Cindy's been
20 dealing with, and I thought Cindy might be willing to share
21 some of that experience, and possibly put her on to some
22 resources that may help Mrs. Long out. Mrs. Long said it
23 would be okay to give Cindy her phone number.

24 Did you call Doctor Brunson and ask him to help you
25 talk to this lady about your mold problem?

Mary Long - Cross-examination
By Mr. Walsh

1 A 2001.

2 Q Okay. Well, this is a phone message at 7:54AM on
3 June 29th, 2004, a few months before Tuck & Howell got out
4 there.

5 You deny that that occurred then?

6 A It didn't occur---

7 Q Okay.

8 A ---in 2004, sir.

9 Q Okay. And then it says per Angie, Cindy had no luck
10 with her mold problem. They moved to a new home, and then
11 Doctor Mountain says oh -- and then Doctor Mountain says I
12 understand. What Mrs. Long needed was some advice as to
13 how, how to get the mold problem documented as to what level
14 of contamination in her house and possibly referral to an
15 attorney who can help her deal with insurance company, which
16 is stonewalling her. She is moved to a condo and is better.

17 So---

18 A I never -- we never lived in a condo, sir, until now.

19 Q So, according to Doctor Brunson's note on July 6th of
20 2004, he was aware that you had called in, asked about some
21 other patient who might have a problem, had an attorney, had
22 moved out of the house in June of 2004 because of the odor
23 and the continuing mold problems?

24 A That happened in 2001, and the lady from Doctor
25 Brunson's office called me. I did not call her.

Mary Long - Cross-examination
By Mr. Walsh

1 Mr. Brunson had her to call me when we was having the
2 problem in 2001. It did not happen in 2004.

3 Q So, despite what your doctors' records say, and these
4 are in evidence, ma'am. This is what -- these are what---

5 A I know that's all on there.

6 Q Okay.

7 A I know all that before you did.

8 Q Okay. Well good.

9 But that's not something Tuck & Howell knew, is it?

10 A He didn't have no right to know anything. There wasn't
11 anything in there. There wasn't anything in the house at
12 that time.

13 Q If Tuck & Howell had known that the house was
14 contaminated with mold and odors and you had gotten an
15 attorney and had moved out---

16 A I didn't get an attorney. They -- the insurance
17 company settled it---

18 Q Oh.

19 A ---and the restoration company talked back and forth
20 with them and got them to fix it.

21 Q So, you---

22 A I did not need no attorney.

23 Q So, you settled just a few months before Tuck & Howell
24 came in then?

25 A What do you mean settled?

Mary Long - Cross-examination
By Mr. Walsh

1 I didn't have no---

2 Q You just said you settled.

3 A I didn't say I settled. I said that restoration
4 company was dealing with the insurance company, and they
5 fixed the problem.

6 Q Ma'am?

7 A Restoration company got them to fix the problem.

8 Q When you go to---

9 A Not an attorney.

10 Q How long have you been seeing Doctor Brunson?

11 A Well, it -- I'm---

12 Q When did you start going to him?

13 A Two thousand and -- well, it -- now, this is what our
14 records show.

15 Q Just answer---

16 A He got them and I got them.

17 Q Just answer the questions if you can.

18 A Well, I'm gonna try to explain to you.

19 Q Well, if you would, just answer my question.

20 When did you start to see Doctor Brunson?

21 A 2001.

22 Q Okay. All right. And you're still seeing him to this
23 day?

24 A No, sir.

25 Q When did you stop seeing them?

Mary Long - Cross-examination
By Mr. Walsh

1 A Because y'all didn't pay his bill, that's why, and
2 he -- I've got bad credit with him.

3 Q All right.

4 A \$619.

5 MR. WALSH: Your Honor?

6 THE WITNESS: No, let the jury know this.

7 MR. WALSH: Your Honor?

8 THE WITNESS: It's the truth, sir.

9 MR. WALSH: It's a simple question, when did she stop
10 seeing him.

11 THE COURT: Mrs. Long, the question is simply when did
12 you stop.

13 THE WITNESS: I stopped seeing him at the time -- the
14 deposition because they wouldn't pay it.

15 Q When was that, ma'am?

16 Do you have a date?

17 A The day of his deposition. They'll have it.

18 Q So---

19 A I didn't go back because they never paid the bill.

20 Q So, you have been seeing him -- you saw him for six,
21 eight, ten years?

22 A No, sir, I told you 2001.

23 Q All right. Until 2010?

24 A I don't know.

25 Q 2011?

Mary Long - Cross-examination
By Mr. Walsh

1 A I don't know when that stopped. Whenever we
2 depositioned -- whenever they depositioned him---

3 Q Okay.

4 A ---and then they didn't pay the bill.

5 Q That was last year.

6 So, for ten or eleven years---

7 A No, it wasn't last year.

8 Q Okay.

9 A They have -- it's been two and a half years at least---

10 Q All right.

11 A ---and they haven't -- still haven't paid the bill,
12 sir.

13 Q Okay. So---

14 A Their company still hasn't paid my doctor, that doctor.
15 So, I quit going to him.

16 Q Ma'am?

17 A No, that needs to be got out, sir.

18 Q Tuck & Howell has nothing to do with paying an expense
19 in a, in a lawsuit.

20 Okay?

21 A They had---

22 Q If there's an issue with the bill -- please let me
23 finish.

24 If there's an issue with some bill, which I'm unaware
25 of, that's not Tuck & Howell's responsibility.

Mary Long - Cross-examination
By Mr. Walsh

1 Okay?

2 A Mr. Harjehausen deposed the attorney. We didn't
3 do it. He called Doctor Brunson, made the appointment with
4 him, and it was his responsibility, and this is what
5 Mr. Brunson -- Doctor Brunson---

6 THE COURT: Mrs. Long, I think you're, you're losing
7 focus on the question which is when did you stop seeing
8 Doctor Brunson.

9 THE WITNESS: I'm not sure. Whatever day his
10 deposition was.

11 THE COURT: Okay. So, if you don't know you just
12 don't know.

13 THE WITNESS: But it's been around three years---
14 Q Okay.

15 THE WITNESS: ---cause I know I argued---

16 THE COURT: That's a, that's a sufficient answer.

17 A It's been about three years I guess.

18 Q All right. So, for about nine years you saw Doctor
19 Brunson, right?

20 A From 2001 to two thousand and -- it would have been
21 2010.

22 Q Okay. Nine years, eight years, eleven years, whatever
23 you want to say, a good long time, right?

24 A I didn't just see him. I seen anybody that was in
25 there.

Mary Long - Cross-examination
By Mr. Walsh

1 Q Yeah.

2 And what was the---

3 A It was a group of doctors.

4 Q Okay.

5 A At first I was seeing somebody else.

6 Q Okay.

7 A I don't know when I actually -- I think -- I'm not
8 sure.

9 Q Well, so, if you saw all these other doctors besides
10 him, how's he suppose to know about all these other problems
11 that you had in 2001?

12 It seems like the reason that---

13 A It's in my records.

14 Q Ma'am, can I finish please?

15 It seems the reason that he wrote, in 2004, about these
16 problems you were having is because that's when you were
17 having these problems, but you aren't, right?

18 A No, sir.

19 Q You weren't having an odor in the house in 2004?

20 A No, sir.

21 Q Okay.

22 A I wouldn't of put a new system in---

23 Q Okay.

24 A ---and something like that going on.

25 Q Okay. And then when they, when they pulled out the

Mary Long - Cross-examination
By Mr. Walsh

1 duct, that wasn't the odor problem that you were having?

2 A No, sir, there wasn't---

3 Q Okay.

4 A ---an odor in there.

5 Q All right. And you did not talk to an attorney despite
6 the note indicating that you were?

7 A I did not need no attorney.

8 Q Okay. And---

9 A The restoration company took care of it for me.

10 Q All right. And you had not moved out of the condo nor
11 into a condo in July of 2004?

12 A No, sir, I never lived in a condo until now. Never in
13 my life.

14 Q Okay.

15 A And my daughter doesn't have an apartment.

16 Q All right. So, you would agree with me, I think, that
17 if your house had all kinds of problems in 2004, just a few
18 months before Tuck & Howell went in there, they should have
19 been told if your house did have those problems, shouldn't
20 they?

21 A No, sir.

22 Q They shouldn't have been?

23 A There was not a problem in there.

24 Q That wasn't my question.

25 My question was---

Mary Long - Cross-examination
By Mr. Walsh

1 A I said no, sir.

2 Q My question was if there was a problem---

3 A No.

4 Q ---they shouldn't have been told?

5 A If there was a problem I wouldn't have called them in
6 in the first place, sir.

7 Q Oh, that's not my question.

8 My question is if there was a problem in 2004, as
9 depicted in these medical records, they would of had a right
10 to know that, wouldn't they?

11 A If they was anything---

12 Q Okay.

13 A ---going on.

14 Q Okay.

15 A But there wasn't anything going on.

16 Q Okay.

17 A It wasn't any mold in the house, sir.

18 Q All right.

19 A You know.

20 Q Now, let's talk about your, your medical condition for
21 a while.

22 Okay. So, your attorney, at the very beginning of the
23 case, talked about the problems you had since 1980 all the
24 way back to Doctor Bruce, and, in fact, it even says that
25 those problems have been going on for the last three years.

Mary Long - Cross-examination
By Mr. Walsh

1 So, really since the late 70s you've been having problems
2 with ear infections, with chest swelling, with pain in your
3 sternum, with wheezing, sniffing, redness of the eyes,
4 stuffiness, all those types of things, right?

5 A Read it all, sir.

6 Q Right?

7 Is that true?

8 A Back in the -- in 18 -- I mean 19 and 80, yes.

9 Q Okay.

10 A But I did not see that doctor again until from 1983
11 until 2006 when I got bad again. I did not see him for all
12 those years, and you're making it sound like I was having
13 continuous problems. I had that under control by -- they
14 had taught me how to avoid those things that bothered me
15 like the scents. I was allergic to scents.

16 Q Okay.

17 A I learned how to control that, and I didn't have any
18 problems with that, and you won't find that on any record
19 with no -- from no doctor for all those years---

20 Q Okay. What was the---

21 A ---that I was still bothered with scents.

22 Q We'll get to that, okay, factors which exacerbate
23 symptoms to include being in a draft, being around tobacco.

24 A Now, that came from 19 and 80s, sir.

25 Q Chest hurts.

Mary Long - Cross-examination
By Mr. Walsh

1 A Nineteen and eighty.

2 Q Cut grass, strong odors, perfume.

3 Okay. So---

4 A You're putting that where you want it to be. You're
5 putting it in the year you want it to be, but that happened
6 in 19 and 80 and I---

7 Q Ma'am, I understand. But we're gonna, we're gonna get
8 to the -- we're gonna move along.

9 Okay?

10 A Well, let me -- no, you won't move along until I get to
11 say -- clear this up cause you're putting things out of
12 order.

13 Q Okay.

14 A You're bringing things, you're bringing things forward
15 to 2004 and making it look like I was having problems when
16 Tuck & Howell put the heat system, heat pump system in, and
17 I wasn't.

18 Q Okay. So---

19 A You pulled, you pulled that from 19 and -- somewhere
20 from 1982 and back. You pulled that off of my records from
21 33 years ago, sir. Thirty-three years ago you pulled that
22 in, and the year before, when they put the approximate
23 H. V. A. C. system in, I was having reflux. That -- all
24 those appointments -- times there. I was there for reflux,
25 and Mr. Bannister was -- I mean Mr. Brunson was treating me

Mary Long - Cross-examination
By Mr. Walsh

1 for the wrong problem, and if you'll read that in the
2 records. Read that.

3 Q Okay.

4 A You're leaving all that out that he was treating me for
5 the wrong problems --

6 Q Okay.

7 A -- and finally find out that I was having reflux and
8 gave me Nexium and I got better.

9 Q Okay. So what I wanted to talk about was -- well,
10 let's just go back to 1980 for one second. It also says
11 down here you have a problem with your nerves.

12 Do you agree that you have a problem with your nerves?

13 A Yeah, right now I do.

14 Q Okay. Well, I can understand that.

15 But you've had that for a long time, haven't you?

16 A No, sir.

17 Q So---

18 A No, sir, I sure haven't.

19 Q So, back in 1980, you had that problem with nerves?

20 A That might of been a short term. I don't know -- I not
21 have -- I don't know where you came up with that. It might
22 be on there, but I'd have to look at my records because I
23 haven't taken --.

24 Q Okay.

25 A Hey, hey, look on my records for a nerve pill, where

Mary Long - Cross-examination
By Mr. Walsh

1 they gave me nerve pills.

2 Q All right.

3 A If I had any problems for nerves, don't you think I
4 would of been taking nerves pills all these years?

5 You won't find where they gave me -- now, when my -- I
6 had the -- my husband was in a hospital real bad off and had
7 a heart attack and all. They gave me something. One, one,
8 one prescription, but I didn't take it because it didn't
9 make me feel right. I mean it made -- you know, it made me
10 feel worse, but I got okay once I got out from under the
11 stress, and I didn't need nerve pills, and I've not never
12 taken nerves pills maybe one or two times, and you're making
13 it sound like a -- anybody can have problems with their
14 nerves every once and a while when they're under stress.

15 MR. WALSH: Your Honor?

16 A It's not a continuous thing.

17 MR. WALSH: Your Honor, I meant to -- I have them on
18 the board, but can I give the jury a couple of the exhibits
19 to pass along as we're going along?

20 THE COURT: You may.

21 MR. WALSH: Okay. I'm gonna hand the jury Exhibit 6.
22 This is the letter from the doctor. This is Exhibit 10
23 that I was referring to earlier. I apologize for not
24 having to do that.

25 I tell you what, sir, if you would just hand me one of

Mary Long - Cross-examination
By Mr. Walsh

1 the documents. I will let the back row -- we'll split them
2 up so we can sort of start like that.

3 Okay. So, if -- I want to talk about Exhibit 2. I
4 don't have it on the board. So, I want to briefly talk
5 about it though. It's another Doctor Bruce note, and this
6 talks about that you left the house, you vacated the house
7 in April of 1993 because they were working on the floor,
8 sanding and glueing, and you will not go back into the
9 house until the work is finished or the odor is decreased.

10 Do you remember doing that back in the early 80s?

11 A It wasn't in the 90s. It wasn't in the 80s.

12 Q So, that you don't---

13 A We didn't have hardwood floors done then. Something's
14 not right there, sir.

15 Q Okay. So, that record's not right either?

16 A You look at -- you look at -- no, you look at it.

17 Q Okay. So, you don't think that, that Doctor Bruce's
18 record is right, and the jury will have all these records
19 that they can review. But that's Exhibit 2, and then I do
20 have Exhibit 3 here which is Doctor Bruce, November 1983,
21 and just a few points here. Your nose was burning. You're
22 taking allergy medicines night and day. It says can't go on
23 like this. It's got her depressed.

24 Do you remember -- you were crying throughout the
25 interview and exam?

Mary Long - Cross-examination
By Mr. Walsh

1 Do you remember back then in those times where you
2 were---

3 A No, that sounds like something you made up, sir.

4 Q Okay.

5 A And I, and I pulled my records, the same records
6 you-all got, and I been over my records, and I don't
7 remember seeing none of this junk on my records.

8 Q Well, ma'am, let me, let me explain something to you.

9 A Thirty-three years ago.

10 Q These records have been reviewed by your lawyer, and he
11 has agreed that they are evidence in this case, that they're
12 not made up, that they're evidence, and they're in this case
13 as an exhibit.

14 A Thirty-three years ago and maybe happened one time?

15 Q Do you understand that, that those records are in
16 evidence and were agreed upon by your lawyer as being proper
17 and authentic records?

18 A For -- from 33 years ago, I don't think so. I don't
19 think things should be brought in if it was just temporary.

20 Q Okay. I understand.

21 A Well, I didn't continue to do this.

22 Q I understand you don't want it to be brought in.

23 Okay. But it happened though, didn't it?

24 You had these problems for a very long time, and, in
25 fact, you had these problems throughout most of your life.

Mary Long - Cross-examination
By Mr. Walsh

1 You've had these problems leading up to the installation of
2 this unit. In fact, all your problems today are caused by a
3 history that you've had throughout your life, not anything
4 that Tuck & Howell did, it's just things that you have had
5 for your whole life, and this is just showing that you had
6 them since the early 80s up through now.

7 It has nothing to do with this unit, isn't that right?

8 A You're not letting -- you're taking things out of
9 doctor -- the allergy doctor's report. You're not reading
10 the whole thing, sir. He tells you in there that he has not
11 seen me since 19 and 83, and by learning to avoidance of
12 allergins, she has been doing well all these years with
13 these problems until she had the mold and the aluminum
14 oxide---

15 Q Okay.

16 A ---and all that's in there. But you're not telling the
17 jurors all this. You're just getting bits and pieces and
18 pulling it out here.

19 Q Okay.

20 A Give them the -- give them all of the records.

21 Q Okay.

22 A Give them all of the records and let them decide from
23 that. That's what I want you to do. I've got them ready
24 for them.

25 Q November 11th, 1983, did Doctor Bruce tell you I

Mary Long - Cross-examination
By Mr. Walsh

1 explained to her that her reaction to the symptoms is more
2 than one would expect from the findings I see, and with her
3 reporting the fact that this has gotten her down and she is
4 depressed, I suggest she see a psychologist for counseling
5 concerning her inability to handle the level of symptoms she
6 has.

7 A No.

8 Q Did he tell you that in 1983?

9 A No, I want to see that on his records. You show it to
10 me.

11 Q It's Exhibit 3 if you want to look at it. Yes, ma'am.
12 Be happy for you.

13 You see on the recommendations?

14 Did you ever see a psychologist because of your
15 inability to handle these symptoms?

16 A No, I never been to no psychologist and I don't need a
17 psychologist.

18 Q You don't?

19 A You think if I needed a psychologist I could of did all
20 this?

21 No.

22 Q Okay.

23 A Wait just a minute. Give me a minute.

24 (Pause.)

25 A This is 19 and 83, sir. I didn't continue to have

Mary Long - Cross-examination
By Mr. Walsh

1 these. See, you're making it sound to these people like --
2 I told you I had problems back in, in the early 80s. You
3 knew that. I mean I wasn't trying to hide anything. But
4 this did not continue -- he's pulled this from the -- he's
5 pulling these records that this is November of 1983 where
6 he's got these records.

7 Q Okay, ma'am.

8 A They're not happening now and they weren't happening
9 when I had, in 2004, when I had the H. V. A. C. system put
10 in.

11 Q Okay.

12 A He's just pulling something that happened 33 years ago
13 and maybe I was in there, and I'd, I'd like another thing.
14 I'd like for you to tell them how many times I went to the
15 doctor. This might of been---

16 Q Did you go a lot?

17 A This might of been -- no, I did not. This might of
18 been one visit and you making it look like it was going on a
19 long time.

20 Q So, so, we do agree then, now that you've read it and
21 we've talked about it, your contention is it happened so
22 long ago, but it didn't happen?

23 while you were crying in the session and he told you to
24 go see the psychologist---

25 A No, sir.

Mary Long - Cross-examination
By Mr. Walsh

- 1 Q He didn't tell you that?
- 2 A No.
- 3 Q Okay.
- 4 A No, sir.
- 5 Q But now if we turn to the next page of this Exhibit 3,
- 6 we see this list of, in your handwriting, isn't it?
- 7 A This is 33 -- this is 33 years ago.
- 8 Q Is this your handwriting, ma'am?
- 9 A Yes, and that was 19 and 80 I told you.
- 10 Q Okay.
- 11 A It's not going on now. It wasn't going on in 2004.
- 12 Q Severe allergies, respiratory problems, shortness of
- 13 breath, headaches, and coughing, fatigue and wheezing,
- 14 memory problems, hair coming out. I think that was one you
- 15 testified to that was happening because of this. Hair
- 16 coming out again. So, apparently that's been happening,
- 17 been having saliva congealing. That's something that you
- 18 had.
- 19 A Yeah, you---
- 20 Q You weren't exposed to---
- 21 A You wrote it down two or three times I guess.
- 22 Q I'm sorry?
- 23 A I said you, you probably wrote the same thing down two
- 24 or three different times there.
- 25 Q Well, I didn't write this, ma'am.

Mary Long - Cross-examination
By Mr. Walsh

1 A Hair falling out and all that junk.

2 Q I didn't write this, ma'am. It's your handwriting.

3 Okay. So, this is a long list of, of problems that
4 don't have anything to do with any type of exposure. This
5 is just, this is just you having problems that just exist
6 because unfortunately---

7 A Where---

8 Q ---you're having problems?

9 A Where are you seeing about hair falling out?

10 I don't, I don't see that on here.

11 Q Eighth line down. Says air coming out again underlined
12 twice.

13 A Yeah, I see it.

14 Q See that now?

15 Okay. And that's all true, right?

16 That's all true?

17 A I don't know what happened 33 years ago.

18 Q Okay. All right. So, we'll, we'll---

19 A I do know I was having allergy problems.

20 Q Yeah.

21 Now we're gonna---

22 A But I don't know where all this was going on.

23 Q But I do have an Exhibit 4. We're gonna fast forward
24 now a little bit into the more recent time. This is 1999.
25 This is Exhibit 4.

1 Okay. And this is saying -- so now we're not of the
2 80s. We're almost at 2000 now, and it says -- this is
3 Doctor Goforth, and we talked a little bit about him
4 earlier, but this is talking about daily headaches for six
5 months. Pressure sensation in the facial area, earaches.
6 Also had an automobile accident in 2000 and hurt your back
7 some.

8 Did you do that?

9 A In when?

10 Q 2000 -- September 29th of 2000.

11 A I don't remember nothing about that.

12 Q Okay.

13 A I guess.

14 Q All right. And, so -- so, then, in '99, you're having
15 these -- all these symptoms in Exhibit 4, and then that's
16 what we've talked about. The leaving cause the painting of
17 the hardwood floors was just the second time a record of
18 that, and then we move into this 2001 record, which is
19 Exhibit 5, which we've talked already about with the
20 allergies in the house, but what we didn't talk about was
21 what was going on about you having this shortness of breath,
22 the sinus and chest problems, intermittent hoarseness.

23 So, you're having -- you're having ear problems. So --
24 okay. Now, in 2001, these problems are all back and you're
25 having them again, aren't you?

Mary Long - Cross-examination
By Mr. Walsh

1 A I was probably exposed to something there---

2 Q Okay.

3 A ---in that---

4 Q All right.

5 A ---in that period of time. Exposed to something that
6 bothered me.

7 Q Okay. And then, in 2002, we talked about the mold that
8 you said didn't say, but you were having fairly severe
9 allergy symptoms since then. So, you had all kinds of
10 problems there, and then you have the letter that you wrote.
11 Than we go to 2003, which I don't think I have on here. I
12 have it over here. This is a record from Doctor Goforth,
13 the E. N. T., where it says that you were having some
14 discharge from your ear and ear pain. You were having
15 increasing hair loss. This is 2003 now. This is a year
16 before Tuck & Howell is out there.

17 Do you remember that?

18 Do you remember having hair loss in 2003?

19 A No, sir.

20 Q Okay. Frequent ear infections.

21 Do you remember having -- do you remember complaining
22 about that in 2003?

23 okay?

24 A No, sir.

25 Q This isn't 1983. This is 2003.

1 And then if we go to Exhibit 7, Exhibit 7, the second
2 page, it also says you have congestion. You have chest pain
3 and irregular heartbeat, ingestion, diarrhea, nausea,
4 vomiting, back pain, migraine headaches, seasonal allergies,
5 bronchitis, and congestion.

6 Do you remember having all those problems?

7 A When is this?

8 Q In -- October 30th, 2003. Telling your E. N. T. that.

9 You go to an E. N. T. because you got problems
10 specifically for that area, right?

11 That's why you go to a specialist?

12 That's what an E. N. T. is, right?

13 A Well, you didn't -- it's like I said, they're putting,
14 they're -- your records -- when you go to the doctor,
15 everything you've ever had since you been going to them is
16 gonna continue on your records.

17 Q Well---

18 A It doesn't mean that I was having that problem that
19 day, all of those problems, but that's still on my records.

20 Q Well, what it says is it says present bronchitis and
21 congestion, present chest pain and irregular heart beat,
22 present indigestion, diarrhea, nausea, present kidney
23 problems, present back pain, present migraine headaches.

24 This is all what you reported that day, ma'am. That's why
25 it says present. It didn't say past.

1 Please, under history and physical report, that's why
2 it says present, right?

3 It says all other systems negative. So, this is your
4 physical that the doctor gives you and notes the problems
5 you're having. So, again, this is 1983 now. This is 2003
6 and all the very things you're saying you got now you had
7 then before Tuck & Howell did the work.

8 So, the work -- the problems you're complaining about
9 now have nothing to do with Tuck & Howell?

10 You had them already, right?

11 A I had allergies off and on, but it -- they wasn't
12 something that I was continuing to have to go to the doctor
13 for every week. I wish you would just count the times that
14 I went to the doctor, maybe once a year, for these problems
15 when I'd been around something. It wasn't a continuing
16 thing. It might have been once a year. It might have been
17 once every two years. But it wasn't often.

18 Q I don't think -- so, if we look at Exhibit 8, I'll just
19 put that in front of you here, ma'am.

20 would you like to see it or should I leave it here?

21 Thank you.

22 Okay. We've talked about Exhibit 8. Well, actually we
23 haven't talked about this one. This is Doctor Brunson a few
24 months before the mold comments that you said you didn't
25 make and the telephone call that you said you didn't make

Mary Long - Cross-examination
By Mr. Walsh

1 and the attorney and the mold and all of that stuff.

2 A I didn't say that didn't happen. I said it happened in
3 2001.

4 Q Oh.

5 A Not 2004.

6 Q Okay.

7 A He has brought that forward.

8 Q Okay. Okay. So, this says history of present illness.
9 Productive cough, tightness in chest, nausea, irregular
10 heartbeat. This is February of 2004, months before Tuck &
11 Howell's out there. I'm afraid to go to sleep for fear I
12 won't wake up.

13 Did you tell him that?

14 A You don't -- you got to read the rest of this.

15 Q Well, I will.

16 But my question is did you tell him that, that, in
17 2004, February of 2004, you were afraid to go to sleep for
18 fear you wouldn't wake up?

19 A I was, I was choking.

20 Q Okay.

21 A And they finally got down to the root of my problem and
22 gave me reflux medicine and I got okay.

23 Do you not know of anybody that's ever had reflux?

24 Q Well, it says discomfort not related to food, and where
25 it---

Mary Long - Cross-examination
By Mr. Walsh

1 A well, he was wrong.

2 Q Okay.

3 A He found out later that I had reflux.

4 Q Okay. So, you were---

5 A A month after this he found out it was reflux.

6 Q Okay. So, the tightness in chest, productive cough,
7 nausea, heartbeat, shortness of breath, afraid you're not
8 going to wake up in the morning, you got chills, sweats,
9 anorexia, fatigue, malaise, weight loss, got all those
10 things.

11 Did you have all those things?

12 A Where are you---

13 Q That's in there.

14 A Anorexia, I never been anorexic till now. I lost a lot
15 of weight, but I was not -- had not lost weight back then.

16 Q Okay. Well, that was, under review of systems, it says
17 general -- I mean I'm not -- and I apologize. I'm not
18 making these, this information up. It's on the record.
19 It's in evidence, okay, and that's what it says.

20 It says complaints of chills, sweats, anorexia,
21 fatigue, malaise, weight loss.

22 Okay. Again, months and months before Tuck & Howell
23 was out there.

24 Those are all of the things you had, right?

25 You wouldn't tell the doctor things you didn't have.

Mary Long - Cross-examination
By Mr. Walsh

1 You told him what you had, right?

2 A There again, it was probably in the past and brought
3 forward.

4 Q Okay. well, I thought in the past you were all fine
5 until the exposure.

6 So, this is all from several years ago that he was just
7 reporting as a, as a review of systems?

8 A This never leaves your record.

9 Q Okay.

10 A If you go one time and report something it will be on
11 there. If you go back with another problem he will add that
12 to the list.

13 Q Okay.

14 A And all that list, if you'll look on your records, it's
15 on your records too if you go to the -- if you've ever been
16 to the doctor. They bring it -- they just keep bringing it
17 forward, bringing it forward keeping it on your records.
18 Just because you've got better, they don't take that off of
19 your medical -- they don't take that off of your medical
20 records.

21 Q Okay.

22 A It's with you the rest of your life. If you've had it
23 50 years ago, it's still on your medical records.

24 Q It says history of present illness.

25 A I don't care what they said.

Mary Long - Cross-examination
By Mr. Walsh

1 Q Present is not the past.

2 It's the opposite of the past, isn't it, present?

3 A They brought this in the past. I had reflux.

4 Q They brought it in the past.

5 They got a section here for past history. But then
6 they got a section for present history.

7 So, ma'am, this is what you complained of in February
8 of '04, which is exactly what you're complaining of now. In
9 fact, it almost sounds worse. You were afraid to go to
10 sleep because you won't wake up, and then it says down here
11 you complain about anxiety and weight loss.

12 A Have you---

13 Q Did you complain about all of those things in February
14 of 2004?

15 A No.

16 Q No. Okay.

17 A I was having reflux and that makes you feel like you're
18 gonna die. If you, if you've ever -- just ask anybody
19 that's ever had reflux, and you feel like you're having a
20 heart attack. Your chest squeezes in on you, and you
21 can't -- you vomit. In the mornings I would vomit, and my
22 husband went to the doctor with me and he's the one that got
23 through to them. He says she vomits in mornings when she
24 eats breakfast, and then I told him I said I think I'm
25 having reflux.

Mary Long - Cross-examination
By Mr. Walsh

1 You're treating me for the wrong thing. You're making
2 me worse. He put me on Advil and antibiotics, and that was
3 just squeezing me tighter, making me worse and worse and
4 worse. And I told him, I said, Mr. Brunson, you're treating
5 me for the wrong thing. I said I took some Tums last night
6 when I was hurting real bad, and it seemed to help me. I
7 believe I've got reflux, and I said will you please give me
8 something for reflux.

9 Q Okay.

10 A And he did.

11 Q All right.

12 A And he gave it to me for a few months and I haven't had
13 any more problems with reflux.

14 Q Okay. Now, it says here on the assessment, on the
15 second page of this document, lots of complaints, few
16 physical findings.

17 So, was this just sort of going on in your head, these
18 things that you thought you were having problems with, lots
19 of complaints?

20 A I told you I was having reflux. It's just the doctor
21 couldn't figure---

22 Q Few physical problems.

23 A He couldn't diagnose what was going on. He was just
24 guessing.

25 Q Okay.

Mary Long - Cross-examination
By Mr. Walsh

1 A Making me worse.

2 Q All right. We're gonna go to Exhibit 9.

3 May I have 8 please?

4 A I want to look at something here.

5 THE COURT: Mr. Walsh, let me ask you, if you will, to
6 get to a convenient stopping place so we can have lunch and
7 then we'll resume after lunch.

8 MR. WALSH: Yes, Your Honor. I think I'm just about
9 through with the medical records and that would be five
10 minutes on that if that's okay.

11 THE COURT: Okay.

12 A Could I see -- I want to show you something.

13 Can I see all four of those visits?

14 I went to the doctor four times in a year with this,
15 and, finally, when he got -- finally got down to---

16 MR. WALSH: Your Honor, I'm not sure this is responsive
17 to any question.

18 THE COURT: Let's hear the question first, Mrs. Long,
19 before you start.

20 Q Okay. Mrs. Long, I'd like to publish that exhibit to
21 the jury please.

22 A I want to see -- I want to tell you what's in front of
23 this.

24 Q Well, I'm not interested in that. I'm interested in
25 that document.

Mary Long - Cross-examination
By Mr. Walsh

1 A Well, I am. I want to clear up something.

2 Q Your attorney can clear it up.

3 THE COURT: Mr. Bannister will assist you with that.

4 THE WITNESS: Oh, mercy.

5 Q Exhibit 8 is the one I was referring to. That was the
6 February of '04 record, and now Exhibit 9, which is March,
7 and, again, just not trying to go over this too much, much,
8 but since you're denying it all, breathing problems are
9 worse at night. Symptoms did not improve. Throat still
10 swollen, mouth burning, not eating well, symptoms have not
11 improved, fatigue, malaise, weight loss.

12 A That's what I told him.

13 Q These are all the things you told him in March of 2004,
14 right?

15 A Yes, sir.

16 Q Okay.

17 A And that's when they had me on the Advil or the
18 Advair---

19 Q Okay.

20 A ---and the antibiotics and it was making me worse, sir.

21 Q What was the---

22 A I was having reflux and they was treating me with the
23 wrong medicine.

24 Q You've had a history of anxiety, haven't you?

25 A No, sir.

Mary Long - Cross-examination
By Mr. Walsh

1 Q Well, back in '83 he wanted you to go to a
2 psychologist.

3 A That's when my husband was in the hospital with a bad
4 heart attack and they put me through all that trouble.

5 Q Okay.

6 A One time.

7 Q Well, it was---

8 A But I didn't even take the medicine. It didn't make me
9 feel good. I went to the doctor one time and got something
10 for my nerves at the time. I had been through a lot with
11 him and can't hear and having to get somebody to go in
12 surgery with him to tell him, tell him what he was -- I
13 couldn't go in with him. I always have to try to help him,
14 and I couldn't go in surgery with him. So, I had to get a
15 nurse to promise me she'd go in there with him and stand---

16 THE COURT: All right. Mrs. Long, you're, you're
17 veering away from the question. Please listen to the
18 question.

19 Q Okay.

20 A But I was under a lot of stress with him---

21 Q Okay.

22 A ---in the hospital---

23 Q I understand.

24 A ---when this happened.

25 Q I understand.

Mary Long - Cross-examination
By Mr. Walsh

1 Did, did -- have you been -- do you understand that you
2 have -- you have been informed that you have some sort of
3 emotional component to your physical problems?

4 When the doctors told you about seek a psychologist for
5 your anxiety, that maybe there was some of this, this
6 sensitivity that you had is some sort of psychological issue
7 and not a physical problem?

8 A No, sir, that did not happen. Now, let me tell you
9 where you got that from. That came from the Onanetchiton
10 (phonetic) with doctor, if doctor---

11 MR. WALSH: Now, Your Honor?

12 A No, I have to straighten, I have to straighten it out
13 where you got that.

14 MR. WALSH: I didn't ask her anything about it.

15 THE COURT: Mrs. Long, listen to the question.

16 Q All right. So, so, you think all of your problems are
17 physical problems?

18 A Certainly.

19 Q Okay. All right. So, now this goes to that document
20 in June of 2004 which we talked about the attorney and the
21 moving out and the mold and all that stuff. But here,
22 again, the problems are chest tightness, palpitations in the
23 heart. We've got respiratory complaints. Okay. Chest
24 tightness, sore throat, nasal congestion, coughing and
25 sneezing.

Mary Long - Cross-examination
By Mr. Walsh

1 But, but the symptoms improve when you leave the house
2 and go out in the yard, is that true, back in 2004 before
3 Tuck & Howell was out there?

4 A No, sir.

5 Q Okay. That wasn't true.

6 So, all these records -- so, all these records are just
7 wrong is what you're saying, right?

8 A That's something that -- you got that from that doctor
9 that you hired and paid big money to come against me.

10 Q Okay.

11 A You got those records. I know where exactly you got
12 those records from. You got them from him.

13 Q Ma'am, I'm reading Doctor Brunson's record from June of
14 2004, that's your doctor, where it says you had chest
15 tightness, sore throat, nasal congestion, sneezing.

16 A You're putting things together with that with the
17 anxiety.

18 Q Okay.

19 A The anxiety happened after all of this mess started,
20 and if you'll look at my records, the medical doctor says
21 it's situational.

22 Q Okay.

23 A She -- she's suffering from depression---

24 Q Okay.

25 A ---or anxiety. But it's the situation---

Mary Long - Cross-examination
By Mr. Walsh

- 1 Q Okay.
- 2 A ---and she puts that in there in those medical
3 records---
- 4 Q All right.
- 5 A ---throughout the thing. It's situational. It's the
6 situation she's going through that's causing the anxiety and
7 the depression.
- 8 Q Okay.
- 9 A You don't tell them that.
- 10 Q All right. I appreciate that.
- 11 A And she says it's the problems I'm going through that's
12 causing the anxiety and the depression. She tells you that.
- 13 Q Okay.
- 14 A But you don't, you don't bring that in. You just bring
15 in that I was having anxiety and depression.
16 who wouldn't if they lost their home and everything
17 they worked for all their life?
18 who wouldn't have depression?
- 19 Q That was before the---
- 20 A Maybe -- yeah, I was having the trouble with his heart
21 attack.
- 22 Q Okay.
- 23 A And he can't hear.
- 24 Q Okay.
- 25 A And all this stress I was under, yes, sir, I was having

Mary Long - Cross-examination
By Mr. Walsh

1 anxiety temporary. But you don't stay that way.

2 Q And then you---

3 A I won't let myself stay that way.

4 Q And then in February of 2004 -- I'm sorry. This is
5 June of 2004.

6 You were told to contact D. H. E. C. and the insurance
7 commission about your problem resulting from that
8 environmental hazard. That was all---

9 A That was 2001 and he's brought it forward.

10 Q Okay. Okay.

11 A And I went down and I took him letters. After I found
12 out that he had put this on my records, I wrote him a letter
13 and took all the reports to him and showed him. I said
14 where this happened in 2001.

15 Q And then---

16 A And I want you to get this straightened out on my
17 medical records---

18 Q Okay.

19 A ---because you've got people---

20 MR. WALSH: Your Honor, again, nonresponsive to any
21 question I've asked.

22 THE WITNESS: Sir, I have the right to tell him when it
23 happened.

24 THE COURT: That's all, Mrs. Long. Listen to the
25 question.

Mary Long - Cross-examination
By Mr. Walsh

1 Q Okay. Exhibit 13, ma'am.

2 Is that your handwriting?

3 A That's the same list you had earlier.

4 Q Okay. Well, actually it's not.

5 Okay. But that's your handwriting, isn't it?

6 A Yes, sir, but that's just -- sorry.

7 Q So, you're in the habit of writing those long lists of
8 what you're allergic to it looks like.

9 A That's the way the doctor taught, taught me how to
10 handle it.

11 Q Okay.

12 A He said -- he told me to write a list of the things
13 that bothers me and I did.

14 Q Okay.

15 A And he told me, he said, Mrs. Long, you're gonna have
16 to learn to just avoid those things, and you won't have any
17 problems with them.

18 Q Okay.

19 A And that's what I did. And, so, I wrote him a list.
20 He had me to write him a list of the things that had
21 bothered me that I was aware of. This wasn't going on at
22 one time. This is what had been going on all the years of
23 my life that I was allergic to -- I had a reaction to lawn
24 supplies one time. I had -- allergic to house paint.

25 How many times do you paint your house a year or how

Mary Long - Cross-examination
By Mr. Walsh

1 many times maybe several years?

2 I had a problem with paint. He told me how to do that.
3 Just open up the house and stay away from it till it dries
4 out.

5 MR. WALSH: Your Honor?

6 A He's the one that told me how to get rid of all this
7 stuff and I did. This was not going on, sir, at one time.

8 Q Well---

9 A This happened over a lot of years.

10 Q Let me ask you this. If we go back to the other list,
11 we're talking about some grass and so forth, but here's a
12 couple of things that we did talk about.

13 Talk about, in this list, pollen, is around a lot.

14 A I still have that.

15 Q But house dust.

16 So, house dust, you are allergic to house dust?

17 I mean that's around---

18 A That, that---

19 Q ---all the time, isn't it?

20 A That was years -- that was back in the 80s. House dust
21 doesn't bother me that much if it's just regular house dust.
22 It's that aluminum oxide powder and all did, about killed
23 me. But just regular house dust, sir, when you get your --
24 I found out too, the doctor helped me, and I got books, when
25 your immune system is down---

Mary Long - Cross-examination
By Mr. Walsh

1 MR. WALSH: Your Honor, again, this is expert testimony
2 I think she's trying to put in.

3 THE WITNESS: No, it's my expert.

4 THE COURT: Mrs. Long, Mrs. Long, don't respond to
5 Mr. Walsh's comments to the Court. We're gonna take a
6 break for lunch.

7 So, Mrs. Long, you can step down.

8 THE WITNESS: I found this.

9 THE COURT: Well, give it -- show it to Mr. Bannister
10 when you step down. You can leave your cushion there if
11 you'd like cause you'll be coming back.

12 We will recess for lunch. I'll ask the jury to keep
13 in mind, no discussions about the case. Please report to
14 your jury room at 2:45, at 2:45 this afternoon.

15 Have a good lunch.

16 (WHEREUPON, the following takes place outside the
17 presence of the jury.)

18 THE COURT: Mrs. Long, keep in mind the caution I have
19 previously given you. That is you can't discuss your
20 testimony during the lunch recess.

21 THE WITNESS: Okay.

22 THE COURT: Court is in recess until 2:45.

23 (Whereupon, a recess was taken.)

24 THE COURT: All right. We ready for the jury?

25 MR. WALSH: Yes, sir, Your Honor.

Mary Long - Cross-examination
By Mr. Walsh

1 THE COURT: All right. Mrs. Long, you can come back
2 and resume your seat on the witness stand.

3 (Witness returns to the stand.)

4 THE COURT: All right. Bring the jury in please.

5 (WHEREUPON, the following takes place in the presence
6 of the jury.)

7 THE COURT: All right. We're going to continue with
8 the cross-examination of the witness.

9 MR. WALSH: Thank you, Your Honor.

10 CONTINUED CROSS-EXAMINATION

11 BY MR. WALSH:

12 Q Mrs. Long, what I'd like to do now is talk a little bit
13 about, about your claim for damages. So, I was just sort of
14 thumbing through some of these things. I wanted to ask you a
15 little bit about them.

16 In some of the items that you've claimed, and this is
17 a -- there's a summary sheet that the jury will see. It's
18 been marked as Exhibit, Plaintiff's Exhibit 5 and there's a
19 long list of things. So, for example, I see that you've
20 claimed, in the, in the numbers that you're claiming,
21 mileage.

22 So, my understanding is, is that you, you moved out of
23 the house and then were living with your daughter for a
24 while, is that right?

25 A Two and a half -- between two and a half and three

1 years.

2 Q Okay. And, so, you would go -- I think you said you'd
3 go to your house to check your phone messages?

4 A We had our -- we didn't want to remove -- take our
5 phone up there. We didn't have cell phones at the time. We
6 just had our home phone, and we didn't want to give our
7 daughter's number out to doctors and our friends.

8 So, we had our phone set up in the garage, and we would
9 just go in and out the back and get our messages, and then
10 we had to go home and get our mail in the afternoons after
11 the mailman had been by, and we'd go get our mail, our
12 messages in the morning, and then we'd go back in the
13 afternoon and get our paper -- I mean our mail and check the
14 messages again.

15 Q Okay.

16 A And just look around the house to see if anyone had
17 broken in.

18 Q But you're claiming \$11,000 in mileage money.

19 A That's for---

20 Q Is that true?

21 Is that what you're claiming?

22 A I don't know what it finally came to.

23 Q Okay. Well---

24 A See, when we moved there, out of there, we moved to an
25 apartment.

Mary Long - Cross-examination
By Mr. Walsh

1 Q Right.

2 Well---

3 A And then we moved -- had to move from there because it
4 was so noisy. These people up there on each side of us.
5 So, we moved twice.

6 Q Well, couldn't you have just gotten your mail put to
7 your apartment or somewhere else so you didn't have to drive
8 every day to your house and incur thousands of dollars of
9 mileage?

10 A Well, I had to go home. We had to go home anyway and
11 get our -- check our messages and all.

12 Q Okay. Well, couldn't you have had your phone
13 transferred to wherever you were living?

14 A I just told you, sir, that we didn't -- we was putting
15 our family out enough. We didn't want our phone ringing
16 there and disturbing them there with their phone ringing and
17 our phone ringing.

18 Q Okay. Now, your daughters -- one of your daughters
19 lives next door to you, right?

20 A Yes.

21 Q Okay. So, so, she couldn't get your mail in the
22 afternoon when she came home?

23 You said you had to drive every day?

24 A I told you we had to come home and get our messages and
25 she works. I can't -- we couldn't just put all that on, on

Mary Long - Cross-examination
By Mr. Walsh

1 them.

2 Q Okay.

3 A And we wanted to go home and check everything out
4 anyway and---

5 Q Okay. Now---

6 A And check our messages and things like that.

7 Q Okay. And then also you've got a lot of household
8 items and so forth that you're claiming. I want to ask you
9 a few things about these.

10 One thing that I saw was you're claiming an expense,
11 \$3,120, for the use of the public laundromat.

12 Now, you had a washer and dryer in your home, didn't
13 you?

14 A That was not at home. That was when we had to move to
15 the apartment. Yes, but it was contaminated.

16 Q Okay. So, you had a washer and dryer and you just
17 didn't want to take that---

18 A No, sir, I didn't.

19 Q ---and do your laundry at your apartment?

20 A No, we wasn't gonna take this mess and contaminate
21 someone else's property.

22 Q Okay.

23 A In fact, I wasn't gonna take, take it anyway because I
24 didn't want -- we didn't want to breathe any more of it.

25 Q Okay. And then you've, you've got a number of

Mary Long - Cross-examination
By Mr. Walsh

1 appliances. You've got a refrigerator that you didn't want
2 to take the refrigerator.

3 A I didn't want to take any of it, sir.

4 Q Okay. You've got toaster, coffee maker, oven, all
5 these things you just left behind?

6 A I certainly did.

7 Q Okay.

8 A When you're suffering like we are, you don't want, you
9 don't want to -- you don't want no more of that in your
10 body.

11 Q Okay.

12 A Not another drop of it.

13 Q And then I see things like, like from your medicine
14 cabinet. Like I presume a bottle of, of rubbing alcohol and
15 hydrogen peroxide and toothpaste.

16 A Yes, sir.

17 Q These things are all in containers---

18 A Well, you---

19 Q ---and closed up, aren't they?

20 A We left, we left everything in there.

21 Q Okay.

22 A And it was four months before we even went back in
23 there I told you because we were so sick. We've already
24 been through this. We were so sick we didn't go near, near
25 the home and all of that was just left in there just getting

Mary Long - Cross-examination
By Mr. Walsh

1 worse and worse and worse.

2 Q Okay.

3 A And we didn't want to use those things that had been in
4 there for months and months and months.

5 Q Okay.

6 A You know, we don't have to stoop that low.

7 Q Well, but now you're claiming it here as damages.

8 You're claiming---

9 A Yes, I could of, I could of---

10 Q Ma'am, could I finish please?

11 You're claiming property damages of tens of thousands
12 of dollars. So, that's why I'm asking about it. We
13 wouldn't be asking about them if you weren't asking to be
14 paid for them.

15 A You're, you're asking -- that's totally -- that's not
16 just one thing. That's a lot of things that add up to that.

17 Q I understand.

18 A And it was---

19 Q Like batteries.

20 Did they get contaminated?

21 A The what?

22 Q The batteries.

23 Those hearing aid batteries, were those contaminated?

24 A Yes.

25 Do you think Ray would want to put those in his ears

Mary Long - Cross-examination
By Mr. Walsh

1 after they'd---

2 Q well, I'm just asking.

3 A ---after they'd been in there for months after months?

4 No, I don't think you would do, sir -- either, sir.

5 Q Okay. What about your -- you had wooden blinds.

6 The wood's contaminated?

7 You have a piano.

8 That was contaminated?

9 A It certainly was.

10 Q Okay.

11 A That -- those were heavy metals.

12 Q Okay.

13 A That wasn't just something that wasn't toxic we been
14 told.

15 Q All right.

16 A And you know that.

17 Q Ma'am---

18 A On the test that -- it was heavy metals---

19 Q Ma'am, please.

20 A I'm sorry.

21 MR. WALSH: Your Honor, again---

22 THE COURT: Sustain the objection.

23 Mrs. Long, don't testify to something that you don't
24 know anything about or you didn't do personally. We'll let
25 that witness testify.

Mary Long - Cross-examination
By Mr. Walsh

1 THE WITNESS: Okay.

2 Q Okay. Now, so -- so, you also have got some rent.

3 Now, some of the rent you've, you've attributed for
4 your daughter that you were gonna pay her for like expenses,
5 is that right?

6 A Four hundred dollars a month and that was cheap rent.

7 Q But you haven't actually paid her for that, have you?

8 A No, sir.

9 Q All right. So, that \$9,600 is money that you say you
10 owe your daughter for some extra utilities and so forth in
11 her house?

12 A They had two heat pumps. We was in a -- they fixed up
13 a room up over their garage for us to live in.

14 Q Okay.

15 A And they had two heat pumps running 24 hours a day and
16 they worked and they left early in the morning and came home
17 late, and it was us that was doing all of these, you know,
18 extra expenses. It was us running the bills up---

19 Q Okay.

20 A ---and trying to stay warm and stay cool.

21 Q Okay. And that was the---

22 A That wasn't their responsibility, sir.

23 Q Okay. And then you got the power bills, 2006, seven,
24 eight, nine, ten, and eleven.

25 So, you were, you were running -- you had your electric

Mary Long - Cross-examination
By Mr. Walsh

1 on and you were running your, your heat and air conditioner
2 during all the months, weren't you?

3 A We were told by the environmental people to leave the
4 heat---

5 MR. WALSH: Your Honor?

6 Your Honor, I'm not asking what she was told.

7 THE COURT: Don't testify to what somebody else said.

8 THE WITNESS: Okay. We had, we had to leave it on to
9 keep it---

10 Q Okay. All right. So, that was -- that air conditioner
11 and heater was running all through these years because
12 you're asking for those power bills for that?

13 A It's still running. I still run them.

14 Q All right. So, there was a time when some pictures
15 were taken, I think, may of been asked about these the other
16 day, I can't remember now honestly, but I think you said you
17 didn't know who took them and, and these are of your home.

18 Just I'd ask you to look through those and see if that
19 is, in fact, your home. I think your distinguished attorney
20 there, is there in one of the pictures as well.

21 A This was -- this was after it was emptied out.

22 Q Okay.

23 A These pictures were taken. Mr. Harjehausen must of
24 taken these pictures.

25 Q So, is that your home, ma'am?

Mary Long - Cross-examination
By Mr. Walsh

1 A Yes, sir.

2 Q Okay. May I have those photographs back, please?

3 I'd like to show them to the jury.

4 (Witness complies.)

5 Q Thank you.

6 So, that's the condition of your home the day -- that
7 was taken some years after you were out of the house, is
8 that right?

9 A I think it was taken last year.

10 Q Okay.

11 A Maybe about a year ago.

12 Q Okay. And that's with the air conditioner running, and
13 you say all the dust and so forth continuing to put out into
14 the atmosphere of your home, right?

15 A Yes, sir.

16 Q Okay. When you were testifying earlier you said
17 something about as early as right around the time of this
18 problem you were, you were figuring you needed to sue Tuck &
19 Howell.

20 You thought that from the beginning you said, didn't
21 you?

22 A I didn't say that.

23 Q You didn't say that.

24 Okay. So, you, you originally wanted to sue Trane
25 though.

Mary Long - Cross-examination
By Mr. Walsh

1 You blamed Trane, didn't you?

2 A No, they did.

3 Q Well, you---

4 A They made me believe that Trane was responsible, but I
5 didn't know they had wired the pump to the light switch, and
6 caused all the problems themselves. And, so, I believed
7 them for a long time, what they were telling me.

8 Q Well, you testified in your deposition that you
9 believed Trane should have been sued, right?

10 A I don't know who should be sued. They, they argued
11 back and forth that -- Mr. Tuck and them said that the---

12 Q Ma'am, I would ask you not to comment on conversations
13 that Mr. Tuck and Mr. -- and Trane had unless you---

14 A Well, I thought you told me I could answer -- say what
15 they said.

16 Q No.

17 THE COURT: You can testify to what they told you.
18 You and they -- you and Mr. Tuck had a conversation, you
19 can testify---

20 THE WITNESS: Okay.

21 THE COURT: ---about what that conversation was.

22 THE WITNESS: Okay.

23 Q All right. So -- but my question is you felt like
24 Trane was responsible and you wanted to sue Trane, didn't
25 you?

Mary Long - Cross-examination
By Mr. Walsh

1 A I didn't know who to sue cause it was back and forth
2 between them who was responsible.

3 Q But you testified in your deposition that you thought
4 Trane should be sued because you thought they were
5 responsible?

6 A I was just gonna let the lawyer, let the lawyer -- let
7 somebody decide who was at fault. Just bring them both in
8 it and let them, let them fight it out between them some way
9 or other because neither one of them would admit who was at
10 fault.

11 Q Okay. Ma'am, those are all the questions I have for
12 you. I appreciate it. Thank you.

13 REDIRECT EXAMINATION

14 BY MR. BANNISTER:

15 Q Let me ask you, you had a list of items that you had
16 thrown away and those items were in the house?

17 A Yes, sir.

18 Q Did you have conversations with anyone concerning what
19 you should do with household items if your house was
20 contaminated?

21 MR. WALSH: Your Honor, to the extent there's gonna
22 be---

23 Q Yes or no.

24 A Repeat the question, please.

25 Q Did you have a conversation or any information from

Mary Long - Redirect examination
By Mr. Bannister

1 anybody concerning what you should do with household items
2 that had been exposed to contamination?

3 A Yes, sir.

4 Q As a result of that conversation, did you throw these
5 things away?

6 A Yes, sir.

7 Q Now, some of them are furniture, am I correct?

8 A Yes, sir.

9 Q Pretty nice furniture?

10 A Yes, sir.

11 Q And yet all of these things were moved out of the
12 house.

13 A No, sir.

14 Q Most of them?

15 A We -- yes, sir, we'd taken a couple of truckloads and
16 trailer load to the dumpster, and then Ray got so upset we
17 was throwing all that away I had to stop and rush him to the
18 hospital with his heart. And, so, then we didn't go -- we
19 didn't fool with anymore of it. We just left it in there
20 and it's still in there because it, it was all contaminated
21 just like what we had to throw away. It was the same kind
22 of stuff. And, so, we didn't, we didn't try to even fool
23 with it anymore to see if they could, you know --.

24 Q You, you -- it's not your intention though to use it
25 anymore?

Mary Long - Redirect examination
By Mr. Bannister

1 A No, sir.

2 Q Okay.

3 A No, sir.

4 Q Now, you were asked a lot about an earlier incident
5 when you had mold.

6 When was the first time you discovered you had any mold
7 or suspected mold in your house?

8 A December the -- some time in December of '01. I don't
9 know. It seems like it was the 28th, but I'm not sure if --
10 it was in December or 2001.

11 Q And how long did it take you to get that removed?

12 A Well, they took the ceiling tiles out right away, you
13 know, where the mold was at, and they was -- where, where we
14 had the leak, and there was a little bit. They tested above
15 it and up in the attic, and there was a little small amount.
16 I don't remember what, just tiny small amount in the
17 insulation right up over this area, and they took that out
18 all at the same time, and the, the odor still was there in
19 which we thought, in the beginning before we had it tested,
20 we thought that odor was coming from the mold. But after we
21 had it tested, it wasn't coming from the mold.

22 It was just a small amount and they said the odor
23 wasn't coming from the mold, that it was coming from -- and
24 we didn't even know this, but the ceiling tiles were made
25 out of ground up -- they were old. You know, old ceiling

Mary Long - Redirect examination
By Mr. Bannister

1 tiles and since the house had been built, and said they were
2 made out of ground cardboard, ground up cardboard. And when
3 they got damp, they have a bad odor. I don't know if you
4 have ever smelt wet cardboard or damp cardboard.

5 But even after they dried, they still have that odor.
6 And, so, we was in -- back and forth with the insurance
7 company about just removing everything cause we were told
8 that they couldn't get the odor out by just spraying it.
9 They would have to remove it. So, finally they---

10 MR. WALSH: Your Honor, I'm sorry to interrupt. But I
11 don't know what it's in response to and it was already
12 covered. It seems like his redirect---

13 MR. BANNISTER: I'm trying to---

14 MR. WALSH: ---ought to be limited so we can -- just
15 things that might have been raised and weren't covered in
16 the direct.

17 THE COURT: Okay. I understand.

18 MR. BANNISTER: Judge, this is in response to the
19 introduction of medical records which she was
20 cross-examined about.

21 THE COURT: All right. You may continue.

22 Q Well, in that instance, when was the last bit of repair
23 done to your house, the best you can recollect in terms of
24 time?

25 A I, I had it back there. 2002.

Mary Long - Redirect examination
By Mr. Bannister

1 Q Late---

2 A I should of remembered that because I just read it when
3 I went for lunch, but I'm sorry, Mr. Bannister. But it was
4 2002.

5 Q And it was done by then?

6 A Yes, sir, it was finished.

7 Q Okay. Now, I want to ask you just one on there.

8 You were asked about a letter from Carolina E. N. T.

9 Now, that's when you went to Carolina E. N. T., the
10 ear, nose, and throat specialist?

11 A Yes, sir.

12 Q And Exhibit 6 is dated December 16th of 2006. I'm
13 sorry. 2002.

14 That would have been -- would that have been about the
15 time these repairs were being made or were trying to get
16 made?

17 A I don't remember, sir. It must have been, but I don't
18 even remember seeing that. But it might have -- I don't
19 know. I'm trying to figure this out, and it's just too much
20 in my mind right now to even---

21 Q Well, anyway---

22 A But it was somewhere along in there.

23 Q Anyway, you went to Carolina E. N. T. because of the
24 problems you were having?

25 A Yes, sir.

Mary Long - Redirect examination
By Mr. Bannister

1 Q All right. And the letter says that she has done well
2 until recently. That would be December sometime in 2002.

3 Is that fairly accurate?

4 A As far as I know, sir.

5 Q Until recently -- this appears to be secondary to mold
6 and mildew problems in the ceiling of her den.

7 That would have been the -- then damaged by the ice
8 storm?

9 A Yes, sir.

10 Q Right?

11 A Yes, sir.

12 Q And then it says if this can be repaired in a timely
13 fashion, this would significant -- this would be significant
14 in preventing patient's continued medical problems.

15 A That sounds like something they wrote to help me with
16 the insurance company so---

17 Q Do you, do you agree, if the repairs were done in a
18 timely fashion, it would help -- it did prevent your
19 continued problems with the respiratory problems?

20 A Well, yes -- yes, sir, it -- the odor was, you know,
21 bothering me. But I don't think that it was really -- it
22 was causing me to have allergy problems. But as far as
23 causing me any severe problems, since the mold had already
24 been cleaned out the year before, I don't think it was
25 really doing me any permanent harm.

Mary Long - Redirect examination
By Mr. Bannister

1 You know what I'm saying?

2 It was just aggravating my allergies, the odor. I
3 don't -- I'm trying to figure that out, but I don't even
4 remember seeing that note. But it sounds like it was -- he
5 was writing a note to the insurance company.

6 Q Well, it was---

7 A But I don't know, Mr. Bannister.

8 Q But it's---

9 A It was somewhere---

10 Q ---some doctor who treated you?

11 A Yeah, and that was somewhere along with -- at the same
12 time. So, I don't know how to figure it out.

13 Q And says it could be repaired in a timely fashion, that
14 would be significant in preventing your medical problems.

15 That's what he said?

16 A Yes, sir.

17 Q Okay. Just give me one minute.

18 (Pause.)

19 Q That's all. Thank you. Answer any questions Mr. Walsh
20 has.

21 MR. WALSH: No questions, Your Honor.

22 THE COURT: All right. You may step down.

23 MR. BANNISTER: Come down, Mrs. Long.

24 We call Mr. Fortenberry.

25 JERRY FORTENBERRY, having been first

1 duly sworn, testified as follows:

2 MR. WALSH: Your Honor, may I approach a second,
3 please?

4 THE COURT: You may.

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

8 THE COURT: All right. Let me ask the jury to please
9 go to your jury room. I've got one issue to address and
10 then I'll bring you right back.

11 (WHEREUPON, the following takes place outside the
12 presence of the jury.)

13 THE COURT: Now, Mr. Walsh, do you have an objection
14 to Mr. Fortenberry's testimony?

15 MR. WALSH: Well, Your Honor, I think my, my objection
16 is, to just to know what the scope of his testimony will be
17 because the witness, I understood, went out there and did a
18 estimate of repair, but did no testing of the home. And,
19 so, anything that he would say about what might be in the
20 home, if he said he's gonna testify about aluminum oxide or
21 mold or any contamination, I don't think he has any
22 evidence of that, and I would ask that he not be allowed to
23 say what he may have been told by Mrs. Long or somebody
24 unless he knows.

25 Also -- and this was -- this came out in his

1 deposition, these issues, and also the issue of what might
2 have caused things that might be there. Things that he
3 didn't know were there, how they got there. He has been
4 told that it might have been come from a faulty H. V. A. C,
5 but he didn't inspect the H. V. A. C. and doesn't know
6 that. And, so, I just don't want any of this testimony to
7 kind of just come out because I think it lacks foundation,
8 and he's not qualified as an expert to testify to those
9 things.

10 I think he is qualified to testify to what he, his
11 expertise in bidding a job, but not for what he thinks he's
12 cleaning unless he has some reason to have a test to tell
13 him that.

14 THE COURT: All right. Mr. Bannister.

15 MR. BANNISTER: Well, Your Honor, he, he obviously was
16 sent out there to get an estimate of what it would take to
17 clean a -- any residence of a certain substance or
18 substances, and that's his expertise.

19 THE COURT: Well, what's he gonna testify?

20 what, what's he gonna testify to as to why he was
21 there?

22 MR. BANNISTER: I'm sorry?

23 THE COURT: What will he be testifying to as to why he
24 was there?

25 what was he there---

1 MR. BANNISTER: Because he was asked, excuse me, he
2 was asked to come and to give an estimate to the scope of
3 work on the -- to the residence, to clean anything, mold,
4 aluminum oxide, or anything else except asbestos out of the
5 house.

6 THE COURT: Okay. So, he's just gonna -- he's just
7 gonna -- is, is the sole content of his testimony is he's
8 gonna testify that he was asked to clean the residence of
9 anything that was there that, that doesn't belong there?

10 MR. BANNISTER: Yes.

11 THE COURT: So, he's not gonna testify about what
12 substances may or may not have been there?

13 He's just gonna testify he just cleaned the residence?

14 MR. BANNISTER: No, he's gonna testify that, if these
15 substances were there, that then he would -- this is what
16 he would do.

17 THE COURT: Okay. Well, does he -- does he -- does he
18 have an expertise in identifying mold?

19 MR. BANNISTER: He does not. He has an expertise
20 in---

21 THE COURT: Does he have an expertise in identifying
22 aluminum oxide?

23 MR. BANNISTER: No, but he has an expertise in
24 removing it.

25 THE COURT: Well, how would he know, if he's removing

1 it, if he can't identify what it is?

2 MR. BANNISTER: Because the methods that he uses are
3 acceptable for removing those things from the house.

4 THE COURT: All right. So, he's not gonna be
5 testifying that he found any mold or aluminum oxide?

6 He's just gonna say he cleaned the house as if
7 anything were there?

8 MR. BANNISTER: He made a proposal to clean it as
9 though it was there.

10 THE COURT: But he will not be testifying that it was
11 or was not?

12 MR. BANNISTER: He will not. He did not do any
13 testing.

14 THE COURT: I understand that, but did anybody?

15 MR. BANNISTER: Not really, no.

16 MR. WALSH: My expert did. He will be here shortly.

17 THE COURT: Are you gonna let him -- are you gonna let
18 the plaintiff have him?

19 well -- all right. So, do I understand then the sole
20 content of his testimony is that he was asked to come to
21 the residence to clean it?

22 MR. BANNISTER: He was asked to come, Judge, to give
23 an estimate of the work that needed to be done and what it
24 would cost to clean the residence of either mold or
25 aluminum oxide.

1 THE COURT: And, so, you can clean a residence of mold
2 even if you don't know any mold is there?

3 MR. BANNISTER: Well---

4 THE COURT: Because you said he can't identify it.

5 So, how would he know what he was doing if he can't
6 identify mold being there?

7 How would he -- how would you know you cleaned it?

8 MR. BANNISTER: Because of the tests that he
9 conducts---

10 THE COURT: I thought you said he---

11 MR. BANNISTER: ---and the monitoring that he does as
12 he goes along.

13 THE COURT: So, so, he has a test to determine if mold
14 or aluminum oxide is present?

15 MR. BANNISTER: He has a method to remove mold and
16 oxide if it's present.

17 THE COURT: Okay. And you -- but you said he has a
18 test to determine if it's there, but he didn't conduct any
19 test as I understood it.

20 MR. BANNISTER: He didn't do the work. He gave an
21 estimate of what it would take to clean the house.

22 THE COURT: Okay. Anything?

23 MR. WALSH: Your Honor, I don't see how this, this
24 number, without any basis of -- to know that it's based on
25 any science, it's just speculative. It's a, it's a number

Jerry Fortenberry - Direct examination
By Mr. Bannister

1 not based on any test to say it's even necessary.

2 THE COURT: What number you talking about?

3 MR. WALSH: He's gonna testify to a clean up number.

4 THE COURT: You mean his cost to clean it?

5 MR. WALSH: Yes, sir, and it's not based on any test.

6 THE COURT: Well, there's some evidence that the
7 defendant agreed that aluminum oxide was in the residence.
8 So, there is some evidence of that.

9 Now, as far as the mold goes, I don't recall any
10 testimony---

11 MR. BANNISTER: There was some---

12 THE COURT: ---that there was some mold that was
13 caused by something the defendant's have done.

14 MR. BANNISTER: There was testimony that there was
15 some mold there, yes, sir.

16 THE COURT: But who testified to what was the source
17 of the mold or the cause of it?

18 MR. BANNISTER: If I remember correctly, one of the
19 Tuck & Howell people showed the air duct and said it was
20 mold.

21 THE COURT: But they didn't say that they caused it.

22 MR. BANNISTER: They replaced the duct work. There
23 was the leak of air -- I mean the leak of water, and he
24 came out and said you got mold. There's mold in here.

25 MR. WALSH: I'm not sure where that came, that's what

1 he testified.

2 MR. BANNISTER: That's what she testified to.

3 THE COURT: Okay. But I understand that.

4 But the point being is -- you know, if -- I mean if
5 they came up to my house and took a piece of duct down and
6 found mold in it, that doesn't mean that somebody who put
7 in my air conditioner was responsible for it. That's got
8 to be connected up somehow. I assume the plaintiff would
9 have a heating and air person that could testify to that.

10 MR. BANNISTER: Judge, if there's no mold---

11 THE COURT: Not just from her.

12 MR. BANNISTER: There's no mold before, and there's
13 mold there after, then that's a circumstance that that's
14 where the mold came from.

15 THE COURT: If you have an expert that says that's
16 likely the cause.

17 MR. BANNISTER: Judge, I believe that's common
18 knowledge that if you have moisture in a, in a, under the
19 house, that that is more likely to cause mold if mold is
20 present.

21 THE COURT: Well, that might be true for somebody who
22 has had that experience or education or training, but
23 that's not just -- anybody can't just say mold is caused by
24 some moisture in that evaporator coil.

25 MR. BANNISTER: Well, causes -- I mean it aids the

Jerry Fortenberry - Direct examination
By Mr. Bannister

1 mold. Mrs. Long testified that that's what set off her
2 allergies. She made that causal connection, aluminum
3 oxide.

4 THE COURT: I understand she made that. But I thought
5 I was told he -- well, she might have made that connection,
6 but I thought I understood that no doctor did, and I'm
7 satisfied that a doctor can make that connection if one
8 exists.

9 Did I misunderstand?

10 MR. BANNISTER: Well, I just read what a doctor said
11 that she had from the doctor's report that if the mold was
12 eliminated from the home that would likely decrease her
13 symptoms.

14 THE COURT: Okay.

15 MR. BANNISTER: That being true and there's -- she has
16 these symptoms caused by the mold, if they're removed, then
17 that would improve her systems.

18 THE COURT: And there's testimony in the record --
19 you're telling me there's testimony in the record that says
20 the defendants caused the mold.

21 MR. BANNISTER: There's testimony in the record that
22 you could conclude that that caused mold.

23 THE COURT: Do you want to be heard?

24 MR. WALSH: Your Honor, I do disagree. There is,
25 there is just -- the words been thrown around. But no

Jerry Fortenberry - Direct examination
By Mr. Bannister

1 one's testified that the man -- that the H. V. A. C. man
2 that came didn't find any mold and didn't find any test,
3 and that's the man who should have found it and didn't.
4 And, so, now we have a witness who's saying if there's
5 something there, and I don't know if it is, here's a
6 number. It just seems that without some foundation to
7 establish this.

8 THE COURT: Well, I understand that, but there is
9 testimony in the record it was aluminum oxide, aluminum
10 oxide in the residence that wasn't supposed to be there.

11 MR. WALSH: But he's also talking about doing some
12 sort of mold clean up. That's why he says he was there.

13 THE COURT: Okay. Or for both. Clean up whatever
14 wasn't suppose to be in the house, which would be both, but
15 I don't know if there's a difference in the treatment.

16 Is there?

17 Do you know, Mr. Bannister?

18 MR. BANNISTER: I don't. I know what he, his report
19 says he was going to do to clean it.

20 THE COURT: Well, I guess we'll need to proffer some
21 of that testimony then. We will see.

22 Would you like to proffer it?

23 MR. BANNISTER: Yes, sir.

24 DIRECT EXAMINATION

25 BY MR. BANNISTER:

Jerry Fortenberry - Direct examination
By Mr. Bannister

1 Q State your name for me please, sir.

2 A Jerry Fortenberry.

3 Q Mr. Fortenberry, do you -- what is your educational
4 background?

5 A I have a Bachelor of Science in Science, Chemistry,
6 Biology, College of Geology.

7 Q Have you had any training in cleaning up contaminated
8 sites with mold or other contaminants---

9 A Yes, sir.

10 Q ---like that?

11 Do you have licenses that you hold?

12 A I do, yes, sir.

13 Q What licenses have you held in your professional
14 career?

15 A I'm a D. H. E. C. licensed building consultant and
16 inspector, asbestos inspector, asbestos supervisor, mold
17 supervisor, mold remediation.

18 Q Is there a license for aluminum oxide?

19 A No, sir, not that I'm aware of.

20 Q Have you had experience personally with aluminum oxide?

21 A Not in a house.

22 Q Have you had experience in aluminum oxide -- in
23 protecting measures you take from aluminum oxide?

24 A Well, we treat everything that we clean as if it's
25 dangerous to our health.

Jerry Fortenberry - Direct examination
By Mr. Bannister

1 Q Okay.

2 A Everything.

3 Q But you personally have had experience with aluminum
4 oxide?

5 A I have had experience with aluminum oxide on a
6 manufacturing level, yes, sir.

7 Q Was it dust or ground---

8 A Yes.

9 Q All right, sir. Were you requested -- first of all,
10 explain to the Court how clean-ups take place.

11 Are there more than one party involved in clean-ups or
12 more than one organizations?

13 A Yes, sir, this is kind of a, a cooperative effort. In
14 this particular case, a man named Robert Beasley was to act
15 as the consultant. I was gonna work basically under his
16 direction. Sometimes I work under my own direction, and
17 sometimes I'll bring in a third party to work under them or
18 have somebody oversee the work. But in this particular case
19 I was gonna be working under Mr. Beasley's direction.

20 Q So, you were gonna do the, the actual on the hand work?

21 A Yes, sir.

22 Q And what, what function did Mr. Beasley have?

23 A He probably -- most likely, at least at my request, he
24 would of done some indoor air quality sampling to begin with
25 before we started to get some background data. Then we

1 would come up with a plan about how we're going to approach
2 it, how we're going to control what we're doing, and then
3 how to resolve the fact that it is, in fact, clean and get
4 what we call a clearance results so she can reoccupy her
5 house.

6 Q All right, sir. Does at least some people have a sense
7 of smell that they can detect mold?

8 A Yes, sir. Oh, yeah.

9 Q Do you actually have someone who smells mold for you?

10 A I don't now. I had a Spanish worker worked for me. We
11 use to call him the Mold Dog when we were in New Orleans
12 right after Hurricane Katrina and Rita. We had seven hotels
13 in the downtown area. He can actually walk along the walls
14 and just kind of sniff and this one, this one, this one, and
15 he could smell it, smell the odorants.

16 Q Did he---

17 A I can't smell it, but other people can. Other people
18 can.

19 Q Correct.

20 Aluminum oxide---

21 A Dogs, I think, also do that.

22 Q Aluminum oxide is odorless?

23 A Aluminum oxide, to my knowledge, is odorless.

24 Q All right. Now, did you go to the Long's house?

25 A Yes, sir.

1 Q And what was the purpose of going there?

2 A To give a quote to do the clean up.

3 Q And what were you to clean up for?

4 A Cleaning up for, initially for mold, and then I don't
5 know at what point the aluminum oxide came in. I don't
6 recall. But we would treat it the same way basically as we
7 would if it was asbestos or anything else. Basically the
8 same kind of techniques.

9 Q So, there's a process you went through to clean it?

10 A Sir?

11 Q There's a process---

12 A Yes.

13 Q ---that you went through?

14 A Uh-huh. (Affirmative).

15 Q All right. And did you render a quote and describe the
16 activity that you would be necessary to render---

17 A I did.

18 Q ---the whole house clean?

19 A I gave her an initial quote with basically kind of
20 what we're going to do. Asked her and Mr. Beasley both to
21 review it, and then we would determine what could be
22 changed, added, deleted, or whatever to come up with a scope
23 of work before we started.

24 Q All right. During that work, did you have quality
25 control to be sure you were cleaning out the particles that

1 were there?

2 A Yes, sir.

3 Q Either mold or aluminum oxide?

4 A Somebody would be monitoring. Not me. Mr. Beasley.

5 Q He would do the testing?

6 A Yes, sir, I wouldn't do---

7 Q You'd do the physical work?

8 A I'd do the physical work. Somebody else -- there's no
9 conflict of interest that way.

10 Q And why is that?

11 A Well, it's just kind of a conflict of interest. If I
12 clean it, and then test, and then say that it's clean, then,
13 to me, that's kind of a legal conflict of interest. It kind
14 of leaves the door open, did you conduct the test correctly
15 or properly, that sort of thing.

16 So, quite often, even today, you know, jobs that I do
17 right now, no matter what it is, we often bring in third
18 party consultants to either oversee or do the testing to let
19 us know that we're doing what we're supposed to be doing,
20 and by the end that, in fact, that the job is complete and
21 satisfactory.

22 THE COURT: well, let me be sure I understand it.

23 Mr. Beasley is the person that would come into the
24 home and determine whether or not there's some substance
25 there that you need to clean?

1 THE WITNESS: He had already made the determination.

2 THE COURT: Well, my question -- okay. Let's say he
3 did or he didn't. It doesn't make any difference. The
4 point is Mr. Beasley or some other person like him would be
5 the person who would tell you what is in the home that
6 needs to be cleaned up?

7 THE WITNESS: In this particular case. Not every
8 case. If you called me today and you think you have a mold
9 problem, then I can come in and I can test it myself and
10 determine whether or not you have mold and what to do.
11 But, in this particular case, he was hired by Mrs. Long.

12 THE COURT: Well, well, I'm talking about this case.

13 So, you, you didn't test for mold or aluminum oxide or
14 any other substance?

15 THE WITNESS: I didn't.

16 THE COURT: Is that a fair statement?

17 THE WITNESS: I did not test for anything, no, sir.

18 THE COURT: Okay. So, then, as I've already said,
19 then you had to rely on what Mr. Beasley did to determine
20 if there was anything for you to clean up?

21 THE WITNESS: That's correct.

22 THE COURT: And, so, you relied on whatever he said to
23 do a clean up?

24 THE WITNESS: He's the responsible person. He's the
25 person who's in charge of the project.

1 THE COURT: So, you wouldn't have the slightest idea
2 what you were cleaning up, you arrived---

3 THE WITNESS: Well, you normally don't see it.

4 THE COURT: Just listen to my question.

5 THE WITNESS: Oftentimes you don't see.

6 THE COURT: Just listen to my question.

7 THE WITNESS: I'm sorry.

8 THE COURT: Okay. You don't have the slightest idea
9 what you were cleaning up if Mr. Beasley didn't tell you
10 what was present and what you needed to clean?

11 THE WITNESS: He told me to be cleaning. I said it
12 was a mold project. Treat it as if it was a mold project
13 or asbestos project.

14 THE COURT: Okay. And, so, you developed your
15 treatment plan based upon what Mr. Beasley told you?

16 THE WITNESS: And the D. H. E. C. guidelines.

17 THE COURT: You developed a treatment plan based upon
18 what some other people told you were present in the home?

19 THE WITNESS: Yes.

20 THE COURT: You didn't do any of the testing yourself?

21 THE WITNESS: I didn't do any testing.

22 THE COURT: You don't know what was present?

23 THE WITNESS: No, sir.

24 THE COURT: Okay. Mr. Walsh, do you want to ask him
25 anything?

Jerry Fortenberry - Direct examination
By Mr. Bannister

1 MR. WALSH: Your Honor, you asked all the questions I
2 was gonna ask.

3 THE COURT: Well, let me ask another question.

4 Is Mr. Beasley coming to testify?

5 MR. BANNISTER: Your Honor, he is in North Carolina,
6 and I have been unable to obtain his attendance.

7 THE COURT: What about the gentleman or the lady from
8 DHEC that Mr. Fortenberry said did some testing?

9 THE WITNESS: No, I didn't say a lady from D. H. E. C.
10 did testing.

11 MR. BANNISTER: There is nobody from D. H. E. C.

12 THE COURT: What did you say about D. H. E. C.?

13 THE WITNESS: He had guidelines. They regulate
14 asbestos projects. There's a, there's a rule.

15 THE COURT: Well, I misunderstood.

16 So, you, you -- so, then again, my original question
17 was did you just rely upon what Mr. Beasley told you and
18 would the answer to that be yes?

19 THE WITNESS: Did I what, sir?

20 THE COURT: Did you just rely upon what Mr. Beasley
21 told you to clean up in developing, in developing your---

22 THE WITNESS: Yes, Mr. Beasley told me I was doing a
23 mold remediation.

24 THE COURT: You're just not gonna let me finish my
25 question---

Jerry Fortenberry - Cross-examination
By Mr. Walsh

1 THE WITNESS: I'm sorry.

2 THE COURT: ---before you answer it, are you?

3 THE WITNESS: I'm sorry. Go ahead.

4 THE COURT: I don't have any other questions.

5 Do y'all?

6 CROSS-EXAMINATION

7 BY MR. WALSH:

8 Q My understanding, Mr. Fortenberry, is that Mr. Beasley
9 never did any testing either.

10 A I don't know, sir.

11 Q All right. You've never seen anything?

12 A I have not.

13 Q All right. So, as far as you know, Mr. Beasley just
14 made up something for you to do and you didn't do any
15 testing either?

16 A I have no idea, sir.

17 Q Okay. And, and you didn't see any the last time when
18 you are there?

19 A No, sir.

20 Q And you didn't see any mold?

21 A I don't recall.

22 MR. WALSH: Okay. So, Your Honor, I don't see -- when
23 you went out there, you just were asked to give a quote on
24 sort of, based on somebody else's idea of what you might
25 need to do a quote on?

Jerry Fortenberry - Cross-examination
By Mr. Walsh

1 A Project designer.

2 Q Right.

3 A Project manager, yes, sir.

4 Q And you never did anything beyond that?

5 A No, sir.

6 MR. WALSH: Your Honor, I don't see how this witness
7 has any basis to offer any sort of testimony that, that has
8 any relevance to the issues in the case because he didn't
9 know anything about the house other than he just said
10 there's a number.

11 THE COURT: I understand that.

12 Well, as I previously said, there is some testimony
13 that there was aluminum oxide in the residence. So, if he
14 can tell us what he did to clean that up, then that cost
15 would be an appropriate expenditure, and could be claimed
16 against the defendants if they're the cause of it. I don't
17 know if he can separate that out or if it would be the same
18 treatment. I don't know.

19 Obviously you're gonna ask him, and I'm sure, sure you
20 will, ask him if he ever saw any aluminum oxide there or
21 did any test to determine it, and he'll have to say no.
22 But there is some evidence in this record from which a jury
23 could find that there was aluminum oxide in the residence.

24 MR. WALSH: Your Honor, I would just point out that
25 the evidence was a phone call from Trane, from an

1 individual who had never been there, to my man who then
2 repeated it.

3 THE COURT: I understand that. But your -- Mr. Tuck,
4 I think it was, told Mrs. Long they didn't have to test,
5 according to her testimony, they didn't have to test it,
6 that there was aluminum oxide in the residence. So, that's
7 in evidence.

8 Now, I'm not suggesting that you can't refute it. But
9 I'm saying, right now, that's the evidence in the record.

10 MR. WALSH: Your Honor, my only other point would be
11 that if, if he's, he's gonna test for aluminum oxide and he
12 didn't see any aluminum oxide, how can we -- I mean not
13 test. Quote a repair. How can he give a quote when he
14 doesn't see it?

15 THE COURT: Well, that's a, that's a question you'll
16 have to ask him when he testifies. But, but he says,
17 whether he sees it or not, he cleans like it's present. He
18 has a standard treatment procedure if there's aluminum
19 oxide in the residence, is the way I understood it.
20 Perhaps I misunderstood it. I thought he performed the
21 same treatment in a residence for any residence where it
22 was claimed there was aluminum oxide present, and he came
23 in and he cleaned the residence.

24 Did I, did I not understand that?

25 MR. WALSH: well, he didn't actually clean it. He

1 just gave a quote.

2 THE COURT: Well, he would, he would be using the same
3 treatment plan if there were aluminum oxide in the
4 residence.

5 MR. WALSH: That's right. But then that gets back to
6 the initial point I made on the side bar was if he doesn't
7 know that there's aluminum oxide there, apparently he
8 starts talking about cleaning aluminum oxide, when he
9 doesn't know it's there, then that's, that's just creating
10 evidence that really is an inference that doesn't exist.

11 THE COURT: He's going to testify that he cleaned the
12 residence based upon a request that he -- that aluminum
13 oxide was present, and, therefore, he was to clean the
14 residence. There is evidence in the record that aluminum
15 oxide was present in the residence.

16 MR. WALSH: But the individual who told him that, I
17 don't think he even knew that. He's relying on Mr. Beasley
18 and there's no evidence---

19 THE COURT: No, no, no, no, no. He's relying upon
20 Mrs. Long now. Mr. Tuck told Mrs. Long aluminum oxide was
21 in the residence.

22 MR. WALSH: Well, I'm sorry. I thought he said he was
23 relying on Mr. Beasley.

24 THE COURT: He was relying on Mr. Beasley to formulate
25 his plan. But, but there is -- what my point is, is that

Jerry Fortenberry - Cross-examination
By Mr. Walsh

1 there is evidence in the record to establish that aluminum
2 oxide was in the residence, and he was hired to clean the
3 residence for aluminum oxide.

4 Now, to the extent of that, I don't know. Y'all can
5 proffer that if you'd like to. I don't know whether you
6 have to clean the whole house or you have to clean one room
7 or you clean the basement. I don't know about that.
8 That's generally what direct and cross-examination is
9 about, but apparently there hasn't been any discovery in
10 the case I'm guessing.

11 Do y'all know what he's going to testify to?

12 MR. WALSH: Yes, sir.

13 MR. BANNISTER: Yes, sir.

14 MR. WALSH: We took his deposition.

15 THE COURT: Okay.

16 MR. WALSH: That's why I brought it up because he
17 doesn't know cause he didn't do any tests.

18 THE COURT: He -- well, he doesn't know, but, but, you
19 know, if I ask somebody to come by my house and clean the
20 house for dust, they don't care if dust is there or not,
21 they still vacuum the house.

22 You know what I'm saying?

23 They're not gonna say I saw it. They're just gonna
24 say I'm vacuuming the house.

25 He was hired to come clean it for aluminum oxide. He

Jerry Fortenberry - Cross-examination
By Mr. Walsh

1 doesn't care whether it's there or not. He's being paid to
2 clean it. He has to clean it as if it's there. In this
3 case, there is some evidence that aluminum oxide was
4 present. So, he's cleaning it. He will not, as he has
5 already testified to, he will not be testifying that he saw
6 aluminum oxide there or that he even knows it was there.
7 He just went to clean it in the event it wasn't there.

8 Is that what I'm understanding his testimony to be?

9 MR. BANNISTER: Yes, sir.

10 THE COURT: You still object to it?

11 MR. WALSH: I will note my objection, but I understand
12 the Court's ruling.

13 THE COURT: All right. Note your objection.

14 Bring the jury back in.

15 (WHEREUPON, the following takes place in the presence
16 of the jury.)

17 THE COURT: All right. Mr. Bannister.

18 DIRECT EXAMINATION

19 BY MR. BANNISTER:

20 Q You're Mr. Jerry Fortenberry?

21 A Yes, sir.

22 Q And, Mr. Fortenberry, what is your educational
23 background?

24 A My educational background's a Bachelor of Science in
25 Science, Geology, Ecology, Chemistry, and Biology.

1 Q And do you -- what is your -- I'm sorry.
2 what is your occupation?

3 A I'm manager, industrial hygiene services and facilities
4 manager for J. B. R. Environmental.

5 Q And what does J. B. R. Environmental do?

6 A Just about everything. We do indoor quality
7 investigations, mold testing, remediation, lead paint
8 emergency spill response, sod -- solidification for
9 regulated wastes, hazardous wastes clean up, railroad
10 division, 20-K, 40-K hydro-blasting. A lot of different
11 things.

12 Q So, you do the clean up---

13 A Yes, sir.

14 Q ---of the---

15 A We, we basically clean.

16 Q All right. Do you have any licenses for that?

17 A Yes, sir.

18 Q And who issues those licenses?

19 A South Carolina D. H. E. C. does for asbestos. Mold in
20 South Carolina is not regulated.

21 Q All right. And -- excuse me. Have you had any
22 experience cleaning up aluminum oxide?

23 A Not in houses, no, sir. Not for remediation purposes.

24 Q Do you have any personal experiences with it---

25 A Yes, sir.

1 Q ---aluminum oxide?

2 what was that experience?

3 A In manufacturing.

4 Q And was it dust, aluminum dust?

5 A Yes, sir.

6 Q what cautions did, did the employees take when they
7 were handling aluminum oxide?

8 A Dress---

9 MR. WALSH: Your Honor, I'm gonna object. I don't
10 know that the witness' experience in industrial setting has
11 any relevance to this household setting, and I think that
12 the witness would admit that he didn't see any aluminum
13 oxide there.

14 So, how could he compare what could of been there when
15 he didn't know?

16 So, he's speculating now about what precautions might
17 be taken.

18 THE COURT: well, I think he's -- since he does the
19 clean up work, I think he's qualified to testify as to
20 precautions he takes in cleaning up aluminum oxide.

21 MR. WALSH: But he says he never has in a house.

22 THE COURT: well, is it different in a house than a
23 manufacturing facility?

24 Q Mr. Fortenberry, is aluminum oxide in industrial
25 setting different from the aluminum oxide that would be say

1 in a house?

2 A I would treat it differently or I have treated it
3 differently, yes, sir.

4 Q In what way would you treat it differently?

5 A Well, if it's a house, it's a residence, and we would
6 treat it as if it could potentially be really hazardous
7 because, with a lot of things, we don't know whether it's
8 hazardous or what the level of being hazardous to your
9 health is. In this particular case, for manufacturing, it
10 was just for part of the manufacturing process for technical
11 surroundings.

12 Q What cautions did you take, in the industrial setting,
13 for workers who had to handle aluminum oxide?

14 A Just try to minimize the dust and, and dust masks.

15 Q Dust masks you actually put over your face?

16 A Yes, sir.

17 Q You also have gloves?

18 Do you need---

19 A It's not required.

20 Q All right. And that's to keep you from breathing it---

21 A Yes, sir.

22 Q ---the mask is?

23 All right.

24 A That's to minimize the exposure, yes, sir.

25 Q Tell, tell the jury how you operate in cleaning up a

1 hazardous site such as mold or aluminum oxide, excuse me, in
2 a house.

3 A Well, I put in under negative pressure enclosure.
4 That's a H. E. P. A. vacuum system, and I build a decon,
5 decontamination unit, three stage or five stage, depending
6 on the state and the regulations for entry and exit. We
7 have to establish criticals where they are necessary. We
8 wear full P. P. E., half face respirator, suits, gloves, and
9 boots.

10 Q All right. Do you have anyone that you worked with in
11 regard to the Long house?

12 A Do I have what, sir?

13 Q Did you have anybody that, that you were working with
14 in regard to giving an estimate for cleaning up the Long
15 house?

16 A I just got information from Mr. Beasley. He said to
17 treat it as if it is a mold---

18 MR. WALSH: Objection, Your Honor. Now, that -- I'm
19 sorry.

20 THE COURT: Sustained.

21 You're not gonna be able to talk about Mr. Beasley.

22 THE WITNESS: Oh.

23 THE COURT: If he wants to testify, he can come in
24 here and do so. You testify as to what you did. Not what
25 somebody else told you.

1 THE WITNESS: I misunderstood the question. I'm
2 sorry.

3 Q Okay. Do you cooperate with any other environmental
4 agency in cleaning the site?

5 A Do I cooperate with any other---

6 Q Yes, sir.

7 A ---environmental agencies?

8 Q Sure.

9 A It depends on what the job is and what state I'm in.

10 Q In the Long house, did you have -- did you intend to
11 cooperate with anyone else?

12 A No.

13 Q Just you would do it alone?

14 A Me do it alone, yes, sir.

15 Q All right.

16 A With a third party consultant.

17 Q Did you have any testing done after you cleaned the
18 house?

19 A Yes, sir.

20 Q And who, who did you select to do that testing?

21 A The third party consultant would do that also.

22 Q And why would you have a third party consultant do it?

23 A So there's no conflict of interest.

24 Q So, you would not be testing your own work?

25 A That's correct.

1 Q Did you make a proposal to the Longs in regard to what
2 you would do and what the cost would be?

3 A I did.

4 Q I'm gonna ask you to look at this document. Tell me if
5 you recognize it.

6 A Yes, sir.

7 Q What is it?

8 A Sir?

9 Q What is it?

10 A It's my proposal for cleaning.

11 Q The Long residence?

12 A The Long residence, yes, sir.

13 MR. BANNISTER: Your Honor, we would offer this into
14 evidence.

15 MR. WALSH: Your Honor, consistent with my objections
16 raised earlier.

17 THE COURT: Okay. Let me see it, please.

18 (Pause.)

19 THE COURT: All right. It's admitted over objection.

20 (WHEREUPON, the proposal was marked as Plaintiff's
21 Exhibit No. 6 and received into evidence at this time.)

22 Q Mr. Fortenberry, what do you -- how do you treat the
23 contents inside of a house that -- is that what you're
24 cleaning for some contaminate?

25 A For any contaminate?

Jerry Fortenberry - Direct examination
By Mr. Bannister

1 Q Yes, sir.

2 A Pretty much based like any hard surfaces like this
3 furniture, if it, if it can be saved, and they want it to be
4 saved, we will try to H. E. P. A. vac that, and then use a
5 antimicrobial cleaner on it. We have an area where we're
6 gonna try to separate some of her furniture, some of those
7 things she could save, pots, panes, whatever, set that off
8 into a decon area for cleaning, and then, at some point,
9 somebody would tell me whether they want to throw that away,
10 keep out, or what.

11 Q How do you---

12 A The softer surfaces---

13 Q ---clean clothes and porous surfaces like---

14 A In this particular -- it depends on, on the situation.
15 In this particular case I would just bag that material up
16 and let Mary Long and Robert Beasley make the determination
17 on it.

18 Q As to whether to throw it away or not?

19 A Yes, sir, in some cases.

20 Q And what do you---

21 A In this particular case that's what I would do.

22 Q All right.

23 A And I spell it out in my quote.

24 Q In the quote there, the removal---

25 A The quote---

1 Q why didn't you take everything out of the house?

2 A Take out those kinds of things, yes, sir. They'll be
3 staged, hard surfaces, pots, pans, dishes, glass, things
4 like that would be in one category, one storage area, one
5 containment area. Soft surfaces, a rug, a couch, something
6 like that, would be handled differently.

7 Q And in what way would you handle that?

8 A Well, we just H. E. P. A. vacuum it and check -- and
9 clean it with a Biocycline, if possible, make the
10 determination whether or not it can, in fact, be cleaned
11 satisfactorily, and then when we do clean it, somebody would
12 make the determination whether it is clean enough.

13 Q And if it's not clean enough, you recommend it be
14 thrown away?

15 A Or recleaned.

16 Q You mentioned a term of an application that you make.
17 I want to show you what's been marked as Exhibit 2, and ask
18 you to look at the second line in that, and tell me if you
19 recognize that item.

20 A Says Microban application. well, I assume that's an
21 antimicrobial application. It's probably a trade name. I'm
22 not particularly familiar with that, excuse me, that trade
23 name, but it's an antimicrobial is what I would guess.

24 Q Anti -- would it be something used to clean mold?

25 A Yes, sir.

Jerry Fortenberry - Direct examination
By Mr. Bannister

1 Q Okay. And what was your quote to the Longs to clean
2 this house out of whatever substances were in there?

3 A What was a dollar amount?

4 Q Yes, sir.

5 A \$31,950.

6 Q All right, sir. Have you been successful in cleaning
7 houses of whatever substances is in there that shouldn't be
8 like in the past?

9 A I've probably done seven million dollars worth of work.

10 Q Answer any questions Mr. Walsh has for you.

11 CROSS-EXAMINATION

12 BY MR. WALSH:

13 Q Mr. Fortenberry, so what I'm trying to figure out, I
14 guess, is when you went there -- you were called out there
15 and you gave a quote and in this report.

16 Did you do any testing?

17 A No, sir.

18 Q Did you check for mold?

19 A I just walked through and look to see if I could see
20 anything visual or if I could detect any odor, but I did no
21 scientific testing.

22 Q And you didn't see anything when you walked through,
23 did you?

24 A I don't recall.

25 Q Okay.

Jerry Fortenberry - Cross-examination
By Mr. Walsh

1 A I don't recall.

2 Q You didn't see any of that.

3 You didn't see aluminum oxide in there either, did you?

4 A Not that I recall, no, sir.

5 Q All right. And normally, it's my understanding in your
6 business, that for you to do a clean up, you get somebody
7 else to tell you the scope of the job and what needs to be
8 cleaned, isn't that right?

9 A It's usually a coordinated effort, yes, sir.

10 Q Okay. And that didn't happen here, did it?

11 A Well, it did because Robert gave me the guidelines as
12 to what he wanted to do.

13 Q You didn't see testing from Robert?

14 A No, no, that was his verbal, verbal guidelines.

15 Q Okay. So, there's pretty---

16 A Treated it as if---

17 Q ---much no evidence that you have that this house was
18 ever tested for anything that needed to be cleaned?

19 A No, sir.

20 Q Okay. So, this quote is just sort of your experience
21 in cleaning houses, but it doesn't -- it's not based on this
22 house, is it, because you don't know what's in that house,
23 do you?

24 A I have no idea what's in that house, no, sir.

25 Q Okay. So, is it really fair to give a \$32,000 quote

Jerry Fortenberry - Cross-examination
By Mr. Walsh

1 when you don't even know what's in the house?

2 A Yes, sir.

3 Q Cause until you know what's in the house and what needs
4 to be cleaned, you don't really know how much it's gonna
5 cost, do you?

6 A I do. I know how long it's gonna take to do what I
7 needed to do based on the scope of the work that was given
8 to me.

9 Q well, let me ask you something.

10 If there's a little spec of mold on the, on the shower
11 wall, are you gonna spend \$32,000 to clean the house?

12 A No, sir.

13 Q No, you're not.

14 A Hu huh. (Negative)

15 Q Because it matters, doesn't it?

16 It matters how much there is to the price that you're
17 gonna charge, right?

18 A That's correct.

19 Q But you don't even know that cause you didn't do any
20 testing. So, it does matter.

21 You can't just say I'm gonna give you a price, you got
22 to know what the clean-up is gonna be before you can really
23 give a fair price to somebody, right?

24 A And it's described in that quote.

25 Q Okay. That's right.

Jerry Fortenberry - Cross-examination
By Mr. Walsh

1 So, in this case, there's no testing done. You didn't
2 see an aluminum oxide. You didn't see any mold, but then
3 you gave sort of the worst case kind of number---

4 A Not necessarily worst case.

5 Q ---in this case.

6 A I put in there many times there could be opportunities
7 for change orders. I would have done that myself.

8 Q And you didn't look at the air conditioner system?

9 A I think I may have looked underneath the house, just
10 looked to see, cause I think she wanted that taken out as I
11 recall.

12 Q She being Mrs. Long?

13 A Yes, I think Mrs. Long or Robert. Somebody, somebody
14 wanted all that removed.

15 Q Okay.

16 A I don't recall which one it was.

17 Q All right.

18 A I think it's in the quote though.

19 Q Okay. And, so -- but you want to remove it, but you
20 don't even know if there's anything wrong with it?

21 A I don't know.

22 Q Okay. All right.

23 A I was just told to quote it.

24 Q Okay. Just told to quote it.

25 Okay. Now, let's talk about the, the, the property,

Jerry Fortenberry - Cross-examination
By Mr. Walsh

1 the furniture.

2 Stuff like this wooden piece that might be a table or
3 dresser or something, typically just wipe that down, right,
4 and clean it and maybe put some kind of---

5 A It depends on the condition. If it was visible mold or
6 not and what condition it is.

7 Q Okay.

8 A And what kind of surface it is.

9 Q But, again, you didn't see visible mold?

10 A No, sir.

11 Q And, so, if there's no visible mold, you would pretty
12 much just wipe it down?

13 A I would H. E. P. A. vacuum it and wipe it down anyway,
14 yes, sir.

15 Q Okay. And that's routinely saved if you---

16 A Yes, sir.

17 Q So, routinely things like hard, hard tables, dining
18 room tables, bedroom furniture, anything that's wood, is
19 typically saved and, and it's fine, right?

20 A In a hard surface, non -- basically not too porous
21 surface, yes, sir.

22 Q Okay. And then, even then the, the couches and things,
23 you have a lot of success and typically are successful in
24 cleaning most of that type of stuff as well, aren't you?

25 A Oftentimes, yes, sir.

Jerry Fortenberry - Cross-examination
By Mr. Walsh

1 Q Right.

2 Okay. And you did no testing of any of Mrs. Long's
3 furniture to know if it could be cleaned or not?

4 A I did no testing whatsoever.

5 Q But you wouldn't throw something out until you tested
6 it, right, that would be---

7 A No, I wouldn't even clean it without testing it first.

8 Q Okay. All right.

9 A Because she was fussy about her furniture.

10 Q So, it -- so, your position is, when you do something
11 in your job, is you would, before throwing it out, you want
12 to test it to see what the condition of it was?

13 A I want to make -- somebody to make the determination of
14 whether or not they want to save this or not.

15 Q Okay.

16 A And then if that determines---

17 Q You didn't do that in this case?

18 A Sir?

19 Q You didn't do that in this case?

20 A No, sir.

21 Q Okay. Now, also in your quote you talk about
22 appliances being cleaned.

23 Do you routinely clean appliances?

24 A Clean everything, yes, sir.

25 Q You routinely clean refrigerators?

Jerry Fortenberry - Cross-examination
By Mr. Walsh

1 A Yes, sir.

2 Q You routinely clean washers and dryers?

3 A Yes, sir.

4 Q Okay. Stoves?

5 A Yes, sir.

6 Q What about like microwaves, toasters, that kind of
7 stuff?

8 A Yes, sir.

9 Q Okay. So, that's all routinely done?

10 A Yes, sir.

11 Q Okay. And would you advise Mrs. Long that you could
12 clean all those things?

13 A I don't recall, but it may be in the quote.

14 Q Well, it mentions in here -- it says appliances, on
15 Page 2, it says appliances will be cleaned.

16 A Okay. Then that's, that's what I made the offer to do.

17 Q Okay. So, you had that discussion and you, you advised
18 her that you could clean all of her appliances?

19 A I had the discussion with, with someone, yes, sir.

20 Q Okay. But to get back to the beginning, at the end of
21 the day, all this is sort of speculation on what might be in
22 the house?

23 A That's correct.

24 Q Okay. So, this is all sort of contingent on somebody
25 doing a test and telling you that, in fact, these things

Jerry Fortenberry - Cross-examination
By Mr. Walsh

1 need to be done?

2 A That's correct.

3 Q And if sort of all these things need to be done, your
4 quote is 31,900, but if it's that spec on the wall in the
5 bathroom I was doing, it wouldn't be 31,900, would it?

6 A No, sir.

7 Q It would be a few hundred dollars potentially, right?

8 A Could be.

9 Q You've quoted a job for a few hundred dollars before?

10 A I've done many two hundred dollar, two hundred dollar
11 jobs, yes, sir.

12 Q Okay. I'm sure you prefer the \$31,900 jobs, but there
13 are plenty of \$200 jobs?

14 A Both. Plenty of both.

15 Q Right.

16 Okay. That's all I have, sir. Thank you.

17 REDIRECT EXAMINATION

18 BY MR. BANNISTER:

19 Q Mr. Fortenberry, aluminum dust would not be confined to
20 one area if it was blowing through an air conditioning unit,
21 would it?

22 MR. WALSH: Your Honor, I would object to this. The
23 witness testified he has no experience with a household
24 setting with this dust.

25 THE COURT: Sustained.

Jerry Fortenberry - Redirect examination
By Mr. Bannister

1 Q Describe aluminum dust.

2 Is it fine particles?

3 A I'm not real familiar with aluminum dust. I'm familiar
4 with aluminum oxide dust. It's, it's just---

5 Q I'm sorry. Aluminum oxide dust.

6 A It's different. The aluminum oxide dust that I am
7 familiar with is fine. Yes, sir, it's micro, micro grains.

8 Q Is it easily spread?

9 A Yes, sir, it's like a nuisance dust.

10 Q In industrial settings, did you take any cautions to
11 keep it from spreading out?

12 A We, we do. We try to contain the area and we try to
13 keep the area wet as possible. We spill some, we wash it
14 down, and keep it wet.

15 Q Did you observe any potential washing down in the Long
16 household?

17 A Did I have what?

18 Q Did you observe any washing down in the Long household
19 to keep the dust down, the aluminum oxide?

20 A I don't know anything that occurred for aluminum oxide
21 at the Long house.

22 Q Okay. Would you expect, in your experience with the
23 aluminum oxide, to be spread throughout the house?

24 MR. WALSH: Objection. It's the same question.

25 THE COURT: Sustained.

Jerry Fortenberry - Redirect examination
By Mr. Bannister

1 Q Is it possible to spot aluminum oxide in one little
2 confined area in a house?

3 MR. WALSH: I'm sorry.

4 Q Be likely or unlikely?

5 MR. WALSH: I missed that last part, Bill.

6 THE COURT: Would it be likely or unlikely for it to
7 be in one confined space.

8 MR. WALSH: Well, I think this is just a similar kind
9 of question about the house. He has no experience in it.

10 THE COURT: Sustained.

11 Q All right. Let me ask you about your cleaning agents.

12 Do you use cleaning agents that contain, on occasion,
13 furniture?

14 A Yes, sir.

15 Q How do you handle that when you're making a
16 determination to throw away or not?

17 A Well, before I clean it, I ask, you know, is this to be
18 saved or not. And if it is to be saved, I'll try to go to
19 some area where you can't see it and apply my cleaning agent
20 there, let it sit for an hour or two, and make sure it
21 doesn't stain or discolor it or anything, and then I have
22 someone come back, in this case, Mr. Beasley or whoever, and
23 I say here's what I have, here's the results, do you want me
24 to continue cleaning or do you want to do something else
25 with it.

Jerry Fortenberry - Redirect examination
By Mr. Bannister

1 Q Okay. But it is possible for it to stain your
2 furniture?

3 A Yes, sir, anything you put on furniture can stain it.

4 Q How about metal?

5 A Sir?

6 Q How about metal?

7 A Metal?

8 Can metal stain it?

9 Q No, can your cleaning agent stain the metal.

10 A Cleaning agent stain metal. I have not seen it stain
11 any metal. I'm not saying that it can't. I've just not
12 seen it stain any metal.

13 Q Thank you, sir.

14 A Yes, sir.

15 Q That's all I have.

16 MR. WALSH: Briefly, if I may.

17 RECROSS-EXAMINATION

18 BY MR. WALSH:

19 Q Mr. Fortenberry, you talked about nuisance dust.

20 A Yes, sir.

21 Q That's just -- that could be -- that's just kind of
22 like you sliding into third base and you kick up some dust?

23 A That's correct.

24 Q That's the same thing, right?

25 A Yes, sir.

Jerry Fortenberry - Recross examination
By Mr. Walsh

1 Q Just like the dust you might get just from being out in
2 the yard running around with your dog, right?

3 A That's correct.

4 Q And when you were in the, the Long household, you found
5 it to be very clean, didn't you?

6 A The house was very clean, yes, sir.

7 Q Right.

8 Okay. That's all I have. Thank you.

9 THE COURT: You may step down.

10 MR. BANNISTER: May he be excused?

11 THE COURT: He may be.

12 MR. WALSH: No objection, Your Honor.

13 THE WITNESS: Good.

14 MR. BANNISTER: Thank you.

15 THE WITNESS: Okay.

16 (WHEREUPON, the witness was excused.)

17 THE COURT: Mr. Bannister, do you need a short break?

18 MR. BANNISTER: Just a minute, Judge, if we could.

19 THE COURT: Okay. We'll take ten minutes.

20 Let me ask the jury to please go to your jury room.

21 Don't talk about the case. I'll bring you back after that
22 break.

23 (WHEREUPON, the following takes place outside the
24 presence of the jury.)

25 THE COURT: We'll take ten minutes.

1 MR. WALSH: Your Honor, if I may, if we can just
2 approach a second?

3 (WHEREUPON, a bench conference was held off the
4 record.)

5 THE COURT: Okay. The plaintiff's going to rest?

6 MR. BANNISTER: Yes, sir.

7 THE COURT: Okay. Mr. Walsh.

8 MR. WALSH: Yes, Your Honor.

9 Your Honor, my understanding is the plaintiff has
10 asserted a negligence claim as well as a breach of warranty
11 claim.

12 In terms of the negligence claim, there's, there's
13 been a discussion about the presence of some dust that came
14 out of the coil and a smell, and there's also some talk
15 about this pump and some installation questions that were
16 raised. But in terms of the, of the smell and the dust,
17 the dust and the testimony is uncontroverted in this case,
18 I believe, that that was the coil issue that came from
19 Trane. It didn't have anything to do with the installation
20 of the work of Tuck & Howell.

21 And, so, it would seem to me that claim of negligence
22 for fault would not be present in this case, and that,
23 that, at best, it could be a warranty claim, but not a
24 negligence claim because then the second part of that is
25 what is the -- what, what -- if there's some -- there,

1 there is evidence of some faulty work by Tuck & Howell.
2 The question is did that have anything to do with the
3 damages claimed then in the case.

4 So, I think that those are a distraction to what the
5 plaintiff's damages would be. There was this -- if you
6 believe Mr. Burton, for the purposes of this motion you
7 would for a directed verdict motion, the question then
8 would be did that have any proximate cause to the injuries.
9 There's no evidence in the case that I'm aware of that the
10 damages claimed are related to anything that Tuck & Howell
11 did. Really, for that matter, for any defect in the coil
12 because the plaintiff testified that she moved out of the
13 house, and she testified that she got sick, and she
14 testified she lost her personal property. But there's been
15 no evidence offered to establish that, that those damages
16 were caused by the alleged negligence or the breach of
17 warranty of Tuck & Howell.

18 There's been no evidence that the aluminum oxide is
19 toxic, that it, that it's harmful, that the odor caused any
20 harm. There's no evidence of mold. There's some
21 discussion about it, but there's no evidence that it really
22 existed. There's been no testing done. There's been no
23 evidence offered by the H. V. A. C. man they brought in
24 that anything in that system was malfunctioning and causing
25 these problems.

1 And, so, we think that the negligence claim would fail
2 on the, on the fault question in and of itself, but then
3 both claims would also fail on the causation question of
4 all the things that haven't been proven that we've
5 discussed over the case of the case.

6 So, that's the basis of our directed verdict motion.

7 THE COURT: All right. Mr. Bannister.

8 MR. BANNISTER: Your Honor, as to the negligence
9 claim, I believe there was testimony as well that there
10 were leaks of freon on several occasions. There were holes
11 in the duct work that pulled air in, and Mrs. Long's
12 testimony that those made her sick.

13 So, there is evidence that there would of been
14 negligence in having these leaks, freon, and holes in the
15 duct work which led to her testimony as to her being made
16 sick.

17 THE COURT: And who, who -- what witness connected
18 that to anything Tuck & Howell did?

19 MR. BANNISTER: Their letter, Mr. Howell's letter of
20 --.

21 THE COURT: Is that the one that was marked up and a
22 clean copy of it --?

23 MR. BANNISTER: Yes, sir.

24 THE COURT: Okay. I haven't read it.

25 Okay. They, they do say in the, in the letter that

1 they repaired -- they replaced the coil and repaired a
2 leak, adjusted the refrigerant.

3 But is that something that Tuck & Howell does or is
4 that something that Trane manufactured?

5 MR. BANNISTER: That's something Tuck & Howell did,
6 Your Honor, I believe the testimony was. All that recorded
7 in the letter, that's something they did.

8 THE COURT: well, they, they did a repair, but my
9 point is they're repairing something that was -- is this a
10 manufacturing defect or is it a defect based upon faulty
11 installation?

12 MR. BANNISTER: You could conclude it's faulty
13 installation.

14 THE COURT: From what?

15 MR. BANNISTER: From just the circumstances of putting
16 it in as one unit. They put it in. They had one leak and
17 repaired it, and they had another leak, and they're the
18 ones that worked on it.

19 MR. WALSH: Your Honor, I think expert testimony's
20 required to establish that there's some defect in the work
21 that they did.

22 THE COURT: well, that's what I'm trying to figure
23 out. I'm trying to figure out if there's something that
24 you can infer from the evidence that we have or it's
25 something that requires an expert to say it was a

1 manufacturing defect or it was an installation defect.

2 why would it not require expert testimony?

3 I mean Mr. Burton is the only person who's been
4 qualified, presumably, as an expert in installation or
5 repairs, and I don't think---

6 MR. BANNISTER: And Mr. Burton testified, Your Honor,
7 that he found that it had been wired wrongly, which is the
8 installation of Tuck & Howell, which occasioned at least
9 some damages of the bill that Mrs. Long had to pay.

10 THE COURT: which would have been which ones?

11 MR. BANNISTER: Mr. Burton's bill, two hundred and
12 some odd dollars, and his testimony was it was wired -- the
13 pump was wired wrongly and he had to repair it. He had to
14 wire it correctly.

15 THE COURT: Okay. There is some evidence. I'm going
16 to deny the motion.

17 what else?

18 MR. WALSH: Nothing. If Your Honor's denying the
19 causation motion as well, then we have nothing else.

20 THE COURT: I am.

21 Okay. All right. Now, you have a witness you want to
22 get in this afternoon?

23 MR. WALSH: If it, if it would please the Court, yes,
24 sir.

25 THE COURT: How long do you anticipate the testimony

1 to be?

2 MR. WALSH: Well, I could say we -- maybe 45 minutes
3 by the time we do direct and cross.

4 THE COURT: Okay. All right. Bring the jury in
5 please.

6 (WHEREUPON, the following takes place in the presence
7 of the jury.)

8 THE COURT: All right. Mr. Bannister.

9 MR. BANNISTER: May it please the Court.

10 The plaintiff rests.

11 THE COURT: All right. That's all the testimony or
12 other evidence to be offered by the plaintiff. So, we're
13 now going to proceed with any to be offered by the defense.

14 Mr. Walsh.

15 MR. WALSH: Thank you, Your Honor.

16 Your Honor, the defendant calls Sherman Woodson as our
17 first witness.

18 SHERMAN WOODSON, having been first
19 duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. WALSH:

22 Q Can you state your name for the jury please?

23 A It's Sherman Woodson.

24 Q And, Mr. Woodson, if you can speak into that black
25 microphone or adjust it as you need it. That's the one that

1 comes out for us to hear please.

2 Sir, what is your profession?

3 A I'm a safety professional. Industrial hygienist.

4 Q What does a safety professional industrial hygienist
5 mean?

6 A Well, I, I look at hazards in the workplace in public
7 buildings, try to identify if there is a hazard present and
8 do that evaluation, and then if there is a hazard, how to
9 control that hazard and try to protect the employees and the
10 public from those hazards.

11 Q What do you mean by hazard?

12 A Well, I typically deal with chemical hazards.

13 A Biological hazards, physical hazards, any, anything
14 basically that's regulated by O. S. H. A., anything that's a
15 known health hazard, safety hazards.

16 Q So, you -- are you testing the air?

17 A That's a lot of what I do, yes. I do, I do -- if
18 there's a potential health hazard, we do sampling as part of
19 that evaluation.

20 Q All right. You also can test furniture and walls and
21 so forth too?

22 A Yeah. Yes, if there's surface, possibly, some kind of
23 surface sampling needed.

24 Q Okay. What does -- what did you do to become an
25 industrial hygienist?

1 Give the jury a little bit about your educational
2 background and experience.

3 A All right. I have a Bachelor's Degree in Biology,
4 Master's in Public Health, and that's basically where I
5 learned how to evaluate workplace hazards. I've done almost
6 30 years now of experience in health and safety consulting,
7 and since 1993 I've been a certified industrial hygienist,
8 and since 1995 a certified safety professional.

9 Q And what does it take to become a certified industrial
10 hygienist?

11 A Well, that's a Bachelor's Degree from either a science
12 program or engineering program, and then five years
13 experience in health and safety career, and then passing, at
14 the time I took it, it was a two day class, a two day test,
15 and sort of -- almost I guess the equivalent of P. E. for
16 engineering.

17 Q What's a P. E.?

18 A Professional engineer.

19 Q Okay.

20 A So---

21 Q And you said there you're also a certified safety
22 professional?

23 A Right. And that's, and that's also -- I guess the
24 difference between industrial hygiene and safety, in the,
25 you know, if you wanted to make that distinction, industrial

1 hygiene is more health hazards. That's, you know, what can
2 affect our health adversely. Safety is more, you know, how
3 can we protect employees from being injured severely.

4 Q Okay.

5 A Cuts, you know, falls, you know, fatalities from safety
6 hazards.

7 Q I see.

8 who do you work for?

9 A Since 2000, so the last 13 years, 13 and a half years,
10 I work for S&ME. It's an engineering environmental
11 consulting firm.

12 Q Okay. And where is that located?

13 A Well, my office is in Greenville. We have an office in
14 Spartanburg, and all over the southeast basically.

15 Q Okay. If you could tell the jury some representative
16 projects or clients you've worked for over the years.

17 A Sure.

18 well, I do mostly, mostly industry. The big clients, I
19 guess, that I've had over the years is the G. E. Plant in
20 Greenville, Mitsubishi Plant in Greer, and I do also a lot
21 of indoor air quality and mold testing for Greenville school
22 districts for the last 13 years.

23 Q So, when we hear on the news about some school that
24 somebody has gone out to look at the air and the mold, that
25 would be somebody like you doing that?

1 A Yeah, I've been doing that for, you know, quite, quite
2 a few years, yes.

3 Q Okay. And, so, when you do that indoor air testing,
4 what do you typically do?

5 A Well, again, you know, the part of, part of -- the
6 first thing is recognizing what is a potential hazard, and
7 if it's certainly a mold issue, we would sample for mold,
8 types of mold in the air, and on any kind of contaminated
9 surfaces. If it's other hazards, then the equivalent test
10 methods for those.

11 Like I said, a big part of my job is welding, you know,
12 welding hazards and metals and things associated with that.

13 Q All right.

14 A Organic type chemicals that employees are exposed to
15 from chemical exposures.

16 Q Now, we're here in this case talking about the Long
17 residence.

18 Did you have an occasion to work and do some
19 investigation into that residence?

20 A Yes, I've, I've been there twice. The first time
21 was---

22 Q Before you go into that, just do -- what were you asked
23 to do?

24 A Well, I think that my initial request was to go there,
25 and I think it had been a number of years since the Longs

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1 have lived in that residence. I do recall that, that it
2 could have been, you know, even by the time I had been
3 there, up to five years since they had occupied that house.
4 I think I was asked to look at the house and make an
5 evaluation if there was any potential hazards there in the,
6 in the residence at that time, and if there were, you know,
7 what recommendations would be made to correct those.

8 MR. WALSH: All right. Your Honor, at this time we
9 would offer Mr. Woodson as an expert in industrial hygiene
10 and also be able to render some opinions about the work he's
11 done in this matter.

12 MR. BANNISTER: Well, industrial, Judge, is not
13 residential. So, his expertise would be in the industrial
14 setting, would it not?

15 I mean I'm objecting to him on that basis.

16 THE COURT: All right. Well, lay a foundation for his
17 experience in a residential setting if it's similar or same
18 as or different than industrial.

19 MR. WALSH: Yes, sir.

20 Q Mr. Woodson, have you worked in residential sites
21 before?

22 A Yes, typically, typically I guess the answer to that
23 question, my expertise is, is in occupational settings.
24 That's -- O. S. H. A. tends to be the one that drives most
25 safety regulations. But for, for, you know, a variety of

1 reasons, whether it's an insurance claim, whether it is, you
2 know, a potential mold case, then we do go into public
3 buildings that are not, not industrial, not manufacturing,
4 and we do go into residential settings for those, and, you
5 know, hundreds of projects in both those types of settings
6 over the years.

7 Q Okay. And when you go into those residential settings
8 to look at the quality, air quality issues and so forth, is
9 the methodology and testing that you do in industrial
10 settings similar to what you do in the home?

11 A It's similar. We do, we do obviously have to take into
12 account that in a residential setting there are, you know,
13 possibly children involved, elderly people. So, we do look
14 at, you know, residential at least, you know, a higher
15 standard of, you know, protection for those situations.

16 Q And the -- but the, the testing and the evaluation, the
17 types of things you do, how you measure and analyze the,
18 the, the room that you're in, is that the same thing?

19 A It's, it's the same.

20 Q And is there a -- is it the equivalent of your
21 expertise in either, in either setting is equivalent?

22 There's not something else you're supposed to know to
23 do residential versus industrial and vice versa?

24 A No, no, not at all.

25 MR. WALSH: Okay. Your Honor, I believe, I believe

1 that foundation qualifies him to render an opinion in this
2 case.

3 THE COURT: Any objection?

4 MR. BANNISTER: No, sir.

5 THE COURT: He is so qualified.

6 Q All right. Mr. Woodson, so do you recall how many
7 times you went out to the site?

8 A Like I said, I think I made an inspection type visit
9 the first time, October of 2010, I believe, and then
10 returned June of 2011 for some additional testing.

11 Q Okay. So, tell the jury then what you did the first
12 time you were out there.

13 A Well, I think that, like I said, it was basically an
14 inspection evaluating, you know, for more visual
15 observations and, and looking at the different rooms in the
16 house of, you know, was there, you know, a presence of any
17 visible signs of mold, dust, the things that I had been told
18 were, you know, obviously of concern to the, to the
19 residents of that house and the owners of that house.

20 Q Okay. So, when you went in there, were you looking to
21 try to see if you could find problems?

22 A That was the -- yes, yes, like I said, that was the,
23 the request.

24 Q Okay.

25 A Is there a problem there as, as of 2010, and, if so,

1 you know, what would, what would be the recommendations.

2 Q All right. And when you went into the home, do you
3 know if the, the electricity was on?

4 Was the home functioning as if it was normally being
5 lived in?

6 A Well, it appeared to me that it was. I mean I know it
7 was vacant. I know that no one was living there. I believe
8 that they might have been on the front porch the day I was
9 there, and maybe made some visits on and off to the house.

10 Q Mr. and Mrs. Long you're referring to?

11 A Yes, I believe so.

12 Q Okay.

13 A And, and, so, I didn't meet, meet who I thought was the
14 owners and was introduced as the owners. So -- but I, you
15 know, I guess either somebody had told me, or through
16 conversation, had determined that they did not live in the
17 house.

18 Q All right. Did you---

19 A I was a little concerned about that, especially from
20 potential mold, just being vacant and closed up, and
21 possibly, you know, the temperature and air not being
22 controlled in the house, but---

23 Q Well, let's talk a little bit about, about mold. You
24 used that word.

25 What is mold?

1 A well, it's microorganisms that, you know, are, are --
2 you know, I guess the more scientific name is fungi, but
3 they're microorganisms that grow in the environment.

4 Q where do they grow?

5 A well, they're, they're outside. They're outside
6 everywhere, tree, plants, you know, soil. They're certainly
7 indoors. They, you know, are everywhere.

8 Q Are we -- would you believe that we're breathing mold
9 in this room right now?

10 A There's, there's a background level of mold anywhere we
11 go, yes. So --.

12 Q Okay. So, it's -- it exists sort of in nature?

13 Is that what you're saying?

14 A Yes.

15 Q Okay. All right. And, so, when you go into a project,
16 if you find some evidence of mold, is that -- does that, in
17 and of itself, have significance or what, what makes it
18 important?

19 A well, I guess the, the main thing that makes it
20 important is we don't want to create a building situation
21 that's causing mold to grow at higher than normal levels.
22 So, when, when it's present everywhere, and part of the
23 natural environment, they're certain things that happen and
24 certain conditions of a building that can actually cause
25 those levels to become elevated. So, we always look for

1 that, and a typical, a typical thing that we would look for
2 any source of visible mold, any source of water intrusion,
3 you know, roof leaks, flooding, things like that that will
4 cause mold to grow inside.

5 Q When you went to the Long residence, did you understand
6 that the, the air conditioner and heat pump was running?

7 A I'm not sure, I'm not sure if I knew exactly. I, I
8 would say that, you know, my take was that the temperature
9 and humidity and all those things were normal. So, I would
10 almost assume that, but---

11 Q So, you didn't walk in and it was like sweltering hot
12 or super cold?

13 A No, no. Neither time that I went. I thought the
14 temperature was normal.

15 Q All right. So, so, then when you're looking at mold
16 and making an assessment, how do you determine, you know,
17 whether there's a problem or there's not a problem?

18 A Well, again, the first -- probably the first step is a
19 visual evaluation, and then if there is either some alleged,
20 you know, health problems or some indication that there
21 might be mold, then we can also sample for those types of
22 micro organisms.

23 Q Okay. So, let's, let's talk about the visual first.

24 Tell the jury about your visual observations in the
25 Long residence on the two occasions you were there.

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1 A well, the -- I'd say, overall, like I said, I had some
2 concerns going in that usually when I think of a house
3 that's been closed up, especially for a number of years, I
4 do think of, you know, dusty situations, you know, musty
5 odors. I know lots of times I'll close my house up for a
6 week on vacation and it already smells musty, but I was
7 surprised. I was, I was, you know, a little bit surprised
8 that, after the number of years that the house had not been
9 occupied, that it was so clean, so, you know, so, you
10 know -- it's obviously that the house had been well taken
11 care of, and also, you know, had not deteriorated during the
12 time it was closed.

13 So, the only, the only evidence I saw of moisture
14 intrusion appeared that, at some point, that water could
15 have come down through the, you know, maybe the ceiling from
16 the attic. It looked like almost around the chimney there
17 had been a leak at one time. I saw a little bit of damage
18 on the ceiling in places. Maybe a little bit of wallpaper
19 peeling. Some of the spray-on material on the ceiling
20 looked like it had kind of loosened in areas.

21 Those are indications of, you know, maybe a roof leak,
22 like I said, maybe around the chimney. But no visible mold,
23 you know. Again, the house was -- the house was very clean
24 and---

25 Q Did you walk around the house?

1 A Every -- I think I went in every room in the house both
2 times.

3 Q Is that your normal procedure to do that?

4 A Again, when we're doing a thorough evaluation of
5 somebody -- if I'm, I'm being asked to look at a house
6 that's, you know, hasn't been occupied for a number of
7 years, I'm obviously gonna try to look everywhere I can, and
8 including the crawl space, the attic, you know, everywhere I
9 could find in the house.

10 Q Okay. Did you do any testing that day?

11 A The first day, no. That was just an inspection.

12 Q Okay. And, so, you described what you sort of found
13 there that day, and then you went out the next time.

14 what did you do?

15 A Well, the next time I think we specifically had
16 requested that we be made available to the house to do mold
17 testing, and also look for the dust, and test for that if
18 there was any evidence there.

19 Q So, then what test -- before you tell us what the
20 results were, tell us what tests you did.

21 A Well, we did two types of mold testing. Both for air
22 samples. And I believe we did outside samples is usually
23 the, how we compare mold levels on any given day. So, we
24 did---

25 Q what do you mean by that?

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1 A Again, just samples out in the, out in the outside.

2 The front porch was maybe the outdoor location, and then we
3 took some samples inside the house, and that's, that's sort
4 of the comparison. You know, is the, is the house, compared
5 to outside, similar or worse or, you know, better and, and
6 mold---

7 Q Okay.

8 A ---there's no, there's no definite levels at which
9 mold's been determined to be hazardous. So, it's almost
10 always related to the current environmental conditions.

11 Q Okay. So, so, if you tell the jury what, what's a
12 typical -- is there a typical outside reading at any given
13 time or is it bare?

14 A Well, the lowest, the lowest times, if you look at the
15 seasons, the lowest time for mold spore concentrations is
16 gonna be in the summertime. It's very, very hot, except for
17 this summer, it's usually fairly dry. So, mold doesn't grow
18 well in that, and then it's always usually low in the
19 wintertime.

20 Q Okay.

21 A Again, it doesn't -- mold doesn't really like extreme
22 temperatures, and then the opposite of that, spring and
23 fall, are the highest levels of outdoor mold.

24 Q Okay. And, so, it -- are you saying that the, the
25 outside number is compared to the inside number, and there's

1 sort of a ratio that you look at?

2 Is that what you're doing?

3 A Yes, again, it's compared to the outside sample, and
4 one reason is, again, we realize that, you know, an
5 individual, a person would be exposed to mold outside,
6 whenever they go out of the house, and then, at the same
7 time, we're also trying to determine is the mold inside the
8 house from an indoor source or did it just come in when the
9 doors and windows were opened. So, so, we're sort of
10 looking at, again, relative to outside, is this person
11 better off when they're in their house or are they worse off
12 --

13 Q Okay.

14 A -- compared to outdoors.

15 Q How do you measure -- how do you do the test to measure
16 indoor and outdoor?

17 What do you do?

18 A Well, it's a short air sample, three to five minutes,
19 and we can, we can -- you know, like I say, we did two
20 separate samples. One is for what we call viable or living
21 types of mold, and basically if you've, you know, ever seen
22 science projects where they use those small auger plates,
23 and we collect the air sample on those. The lab incubates
24 that. They grow those samples, and it tells what kind of
25 mold was in the air, and what concentrations.

1 The other sample is similar, but it's, it's for total
2 mold spores and doesn't require the -- it's just a little
3 cassette that the lab evaluates under the microscope.

4 Q Okay. And then did you do that inside and outside?

5 A Yes, again, the outside samples are, you know, good
6 for, you know, knowing what season it is, and what, what
7 could have been possibly, you know, coming into the house
8 from outside.

9 Q Okay. So, tell the jury what you found in this case
10 with the mold tests.

11 A Well, the viable, the viable results were very similar
12 inside and outside. Almost, you know, almost identical.
13 So, the total mold spores were much higher outside than
14 inside. And, again, I sort of expected the worst. You
15 know, usually a house closed up I would of thought would be,
16 you know, possibly having some mold, some higher levels of
17 mold inside than outside. But in this case it was much
18 lower inside the house than outside.

19 Q And can you draw conclusions from that, that set of
20 tests results about the condition of the Long home regarding
21 mold?

22 A Well, normal. I'd say, I'd say certainly normal. No
23 hazardous, hazardous conditions were identified on mold.

24 Q Okay. So, you did a visual and didn't see anything,
25 and then did the testing and confirmed it?

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1 A Right.

2 Q Okay. All right. And then -- now, there's, there's
3 also this question in this case about this dust and the
4 issue of this aluminum oxide dust.

5 Were you asked to look at that as well?

6 A Yes, I was pretty, pretty much asked to investigate if
7 there was dust and I probably knew that it was aluminum at
8 some point. I also knew that it was alleged that it was
9 coming from the air handler that was in the crawl space.
10 So---

11 Q Now, before you tell us what, what you did with that,
12 let me ask you this.

13 what if -- what would -- how do you characterize
14 aluminum dust or aluminum oxide dust?

15 what, what is it?

16 Is there a characterization of that under any standard?

17 A Well, O. S. H. A. regulates it as a nuisance dust.

18 Q What is O. S. H. A.?

19 A O. S. H. A. is Occupational Safety and Health
20 Administration. So, it is regulated and, and classified as
21 a nuisance dust.

22 Q Okay. And what is a nuisance dust?

23 A Well, a nuisance dust is any -- you know, it can be
24 hazardous at very high levels, but it has no particular
25 hazard at lower levels. So, it's -- you know, if the dust

1 level is high enough that you start coughing, and it gets,
2 you know, to the point where you're having difficulty
3 breathing, then certainly it's a hazard. But it's no more
4 hazardous than any other type of dust. It's not regulated
5 differently.

6 Q Like what -- what other kind?

7 I use an example. Were you here when Mr. Fortenberry,
8 his testimony, and I used an example of some of the baseball
9 field dust, if you slide into third base.

10 Is that what we're talking about?

11 A That would, that would be -- that would probably be a
12 good example. Walking in a -- I think of walking in a dusty
13 road kicking up dust. You know, you see, you see dust in
14 the air, and that's---

15 Q Now, aluminum oxide, is that -- does that exist in
16 nature?

17 A Yeah, aluminum is a very common element and, you know,
18 certainly, yeah.

19 Q So, if we were to go out and take a scoop of dirt out
20 in front of the courthouse and analyze it, what would you
21 expect to find?

22 A Well, you would find metals in it. You know, metals
23 are part of the earth and aluminum would be present.

24 Q Okay. Now, so, you said it was regulated, and is there
25 some sort of threshold level that's been determined?

1 A Yeah, the nuisance dust level is, is an air
2 concentration of 15 milligrams per cubic meter of air. So
3 --.

4 Q Okay. Now, I don't know what that really means in
5 layman's terms.

6 If, if we were to, to -- without having the ability to
7 measure it, is that visible kind of dust?

8 A That's a lot less than we would have in this room right
9 now. I mean it's a lot more than what we would have in this
10 room right now. But, at the same time, it would probably be
11 closer to, you know, like you said, the dust levels you see
12 sliding in a base, dust levels you would kick up if you were
13 in a really dusty type of road. It's visible dust.

14 Q So, if you were to open the door in a room that had
15 greater than this 15 -- what was it?

16 A Fifteen milligrams per cubic meter, yes.

17 Q Fifteen milligrams, you'd be able to see it in the air?

18 A Yes, it's certainly visible. Aluminum is not like some
19 of these other hazardous materials that we're worried about.
20 It's not microscopic like mold.

21 Q Okay. Certainly -- well, would it, would it be like,
22 like looking into like a smoky room if everybody's smoking
23 cigars or something?

24 A That, that's a -- yeah, that's pretty close.

25 Q Okay.

1 A You know, it's visible.

2 Q And, so -- and then is there some sort of time
3 requirement associated with that exposure?

4 A Well, in an occupational setting it's an eight hour day
5 for a long time. But like I said, certainly, in a
6 residential area, residential, we're gonna protect a lot
7 lower standard than that.

8 Q Okay. Now -- so, then you went to the Long residence.
9 Did you see any evidence visually of this type of dust?

10 A Again, I was there in 2010, 2011, and, and really
11 didn't. You know, I took photos while I was there, and, you
12 know, the registers on the floor level, air between the wall
13 and the floor, were clean. The floor was clean. The house
14 was clean.

15 I, I found one area in the rear bedroom, I think the
16 rear bedroom was a questionable area, because I believe the
17 air handler might be right below that in the crawl space,
18 and it was like, some piece of furniture, like a dresser or
19 something that had some white powder that was, you know, I
20 would say a light coating of white powder and I did take a
21 wipe sample of that. It wasn't present in the air, but, you
22 know, you could tell some dust had settled like if it was on
23 this, this rail.

24 Q So -- and how, how hard did you look through the house
25 to look for this dust?

Sherman Woodson - Direct examination
By Mr. Walsh

1 A well, like I say, we, we did a visual observation of
2 each room that I could and---

3 Q And, so, you understood that the house had been vacant
4 for numerous years?

5 A I, I -- you know, for some reason, I was under the
6 impression it was up to maybe five years.

7 Q Okay. And, and you understood that the, the air
8 handler was working that whole time?

9 A I -- yeah, I think especially when I went back in June
10 and I think I even, you know, checked temperature and
11 humidity, things like that, and it was pretty, it was pretty
12 well what you would have at your house.

13 Q Okay. And -- all right. And, so, did you find any
14 results from that, from that swipe you took?

15 A well, there was aluminum, yes. We had it analyzed by
16 my lab and there was aluminum present in it.

17 Q And would you be able to comment on whether the
18 presence of that had any relationship to this 15 limit
19 threshold that you talked about?

20 A well, like I said, you know, maybe if I took a hair
21 dryer and blew it up I could suspend some of that. But, you
22 know, certainly the bedroom wasn't -- didn't have the
23 visible dust in it, and you can, you know, maybe suspend
24 some of that air, but I just didn't see a lot of other
25 surfaces, you know---

1 Q Did you see any other surfaces?

2 A I didn't, I didn't see any other surfaces where that
3 kind of dust could get suspended in the air.

4 Q Okay. All right. So, then did you reach a conclusion
5 or opinion on the, this aluminum oxide dust, aluminum oxide
6 dust in the house?

7 A Well, again, my, my best -- I guess my best opinion is
8 if there was ever a dust problem in that house it has
9 already been, you know, vacuumed up and cleaned up and
10 didn't exist at that time in 2011.

11 Q Is the air handler, and then this is the question
12 that's hypothetically, if the air handler was producing the
13 dust and blowing for that many years, would you have
14 expected to see a lot of dust in the house?

15 MR. BANNISTER: Now, Judge, I don't know that he's
16 qualified as an expert---

17 THE COURT: Sustained.

18 MR. BANNISTER: ---in that area.

19 THE COURT: Unless you can qualify him.

20 Q Well, let me ask it a different way.

21 If the air handler had been on all those years, while
22 the house was vacant, did you see any accumulation of dust
23 anywhere in the house?

24 A No. No.

25 Q Did you see any -- Okay. So, then if, if you were

1 asked to give an opinion then about whether that house, I
2 don't know if you say passed or it's acceptable or what --
3 how do you clear a house?

4 A Well, again, I think the -- you know, from a, from a
5 residential standpoint, I think those kinds of evaluations
6 we basically are trying to give advice or some
7 recommendations on is your house normal compared to other
8 houses---

9 Q Did you---

10 A Is it within what somebody that would live in a typical
11 house have in their house, and my answer is yes, that house
12 was normal both for mold and dust.

13 Q Would you have or do you recommend any sort of -- well,
14 let's go back a step.

15 Mr. Fortenberry that was here, what is he?

16 What kind of job is he in your business?

17 What do they do?

18 A A remediation contractor.

19 Q So, they're like a clean up man?

20 A Right.

21 Q They do the clean up?

22 A Right.

23 Q Well, in this particular setting with the Long house,
24 would you recommend that this house be remediated by some
25 professional?

Sherman Woodson - Direct examination
By Mr. Walsh

1 A I wouldn't, no, not, not by a professional remediation
2 contractor, no.

3 Q You felt---

4 A I didn't see anything there that, that would of led me
5 to either recommend that or suggest that.

6 Q So, what you're saying is that, I understand that
7 somebody like Mr. Fortenberry might have some special
8 training in how to clean homes that might have hazards, but
9 you wouldn't have recommended that and you don't recommend
10 that in this case?

11 A No. No.

12 Q All right, sir. Those are all the questions I have.
13 Answer anything that Mr. Bannister may have for you. Thank
14 you.

15 CROSS-EXAMINATION

16 BY MR. BANNISTER:

17 Q Were you furnished any prior tests that were conducted
18 on that house?

19 A I've reviewed other tests, yes.

20 Q Did you review one by Mr. Kellet?

21 A Yes.

22 Q And Mr. Kellet actually conducted his test in '06, did
23 he not?

24 A I don't remember the date, but I know it was -- like I
25 said, I knew I had some idea that the house had been --.

Sherman Woodson - Cross-examination
By Mr. Bannister

1 Q All right. Look at the, look at that and see if that
2 kind of refreshes your memory.

3 A Like I said, I don't think -- I'm pretty sure this
4 isn't Mr. Kellet's report.

5 Q Do you recognize as seeing that one?

6 A I haven't seen this one, no.

7 Q Okay.

8 A That looks like one that maybe H. V. A. C. type service
9 company would have done.

10 Q Do they do -- also do those contents?

11 A I'm sure they can do some limited testing. I'm not
12 sure, you know, what kind of credentials or what kind of
13 laboratory, you know, results they get---

14 Q Did you---

15 A ---and what type of laboratories they use.

16 Q I'm sorry. Go ahead. I didn't mean to cut you off.

17 A No.

18 Q The results that you were shown, were they, were they
19 dated back 2005/2006?

20 A That, that makes sense. I mean I don't recall exactly
21 when. But, like I say, at some point I know I became aware
22 that, that, you know, the house had been empty for a while.

23 Q No, sir, but I mean the testing that you were shown
24 before you made your investigation, did you, do you -- did
25 it show elevated levels of aluminum oxide?

Sherman Woodson - Cross-examination
By Mr. Bannister

1 A well, I reviewed a mold test from Mr. Kellet.

2 Q Mr. Kellet had done a mold test?

3 A I believe so.

4 Q Did it show mold in part of the house?

5 A He -- you'd have to---

6 Q Give me a yes or no and then you can explain it.

7 A I, I believe so. I mean it's been a while since I've
8 looked at that report. I think it was.

9 Q All right. At any time---

10 A And I don't remember exactly what year, but I think it
11 was -- I think you're right.

12 Q And Mr. Kellet's test showed mold present in the house
13 in an elevated level?

14 A well, I don't know if I would say elevated, but I think
15 it was higher than the outdoor concentration that day, but
16 again --.

17 Q Okay. And that would of been prior to the time you
18 went in in 2011?

19 A Yes, I'm pretty sure it was a number of years before
20 that.

21 Q Did you review any tests from 2005 to 2010 other than
22 Mr. Kellet's test to find mold?

23 A I don't think so.

24 Q Okay.

25 A I don't, I don't believe so.

Sherman Woodson - Cross-examination
By Mr. Bannister

1 Q And now, let me ask you a little bit about the mold.

2 I heard you, if I heard you correctly, mold is an
3 environmental hazard or it is a---

4 A It can be.

5 Q Can be?

6 A It can be. Yes, it can be.

7 Q And what determines whether it's a hazard or not?

8 A Well, the -- I would say -- the, the rule of thumb that
9 we use is are we growing mold as an indoor source. We're --
10 something has happened to that building that's it's become
11 the source of the mold instead of what would just naturally
12 come into the building.

13 Q Does mold grow better in water?

14 A Wet, wet building materials. It has to have two things
15 to grow. Moisture is one of them. So, yes, there is a
16 certain amount of water that's needed, and then some is some
17 kind of organic material such as, you know, in this, this
18 room here it would be sheetrock, ceiling tiles, those types
19 of building materials.

20 Q Would mold be more prevalent in, in a crawl space under
21 a house?

22 A Often it is, yes, just because it's not a conditioned
23 space. We're not controlling the temperatures. We're not
24 controlling humidity. It's present in soil. So, especially
25 if a crawl space doesn't have a vapor barrier, you know,

Sherman Woodson - Cross-examination
By Mr. Bannister

1 whatever organisms are in the soil are gonna be present in
2 the crawl space.

3 Q Did you look in the crawl space in the Long's house?

4 A Yes, sir.

5 Q Did it have a vapor barrier?

6 A I don't remember that.

7 Q Okay.

8 A I didn't see -- I do recall I didn't see any evidence
9 of mold on the, you know, house itself, but --.

10 Q All right. If water from a malfunctioning pump, say
11 air conditioning pump, was introduced into the crawl space,
12 would that be conducive to mold growth?

13 A It could. It could.

14 Q Would you expect it to?

15 A Well---

16 MR. WALSH: Your Honor, I'm gonna object. This is the
17 same question I was objected to when I was asking questions
18 about his expertise, and I was told he didn't have it, and
19 so now he's being asked the question himself.

20 MR. BANNISTER: Judge, I don't remember objecting to
21 anything he said about mold.

22 MR. WALSH: Well, that wasn't the question. The
23 question was about a pump, and I didn't think he was found
24 to be qualified to talk about that. He can certainly talk
25 about how conditions of mold are formed.

Sherman Woodson - Cross-examination
By Mr. Bannister

1 THE COURT: well, yeah, he can testify as to what he
2 knows from his professional experience, but I don't know
3 what he knows about the mechanism in this case if there is
4 one.

5 MR. BANNISTER: well, Judge, he is qualified him as an
6 expert and had him testify about mold. I think I would be
7 able to ask him a hypothetical.

8 THE COURT: Okay. You can ask him a hypothetical.

9 Q Hypothetically, if a heat pump has a pan that collects
10 moisture and drains it out from under the house, and that
11 malfunctions, and the water was not pumped out from under
12 the house, it was spread under the house, would you expect
13 that to be a good post for mold?

14 A well, what I would expect is if it was somehow coming
15 in, you know, that water vapor was coming into contact with
16 the wood framing in the crawl space, the subfloor of the
17 crawl space, as we could grow mold on that, on that wood
18 from excess moisture.

19 Q How about just on the ground itself?

20 A well, like I said, if it, if it -- you know, if it's
21 dirt, it's already got mold in it. But it probably wouldn't
22 add that much to it. You know, dirt has water in it already
23 and it has, you know, certainly microorganisms in it
24 already. I think usually when we look at the building,
25 materials themselves becoming a source of mold, it's stuff

Sherman Woodson - Cross-examination
By Mr. Bannister

1 like wood that gets saturated with water. You see that a
2 lot with piping that bursts and saturates the subfloor and
3 the floor joists and those kinds of things.

4 Q Well, now, moisture in the crawl space, of course,
5 would let that moisture environment up into the wood and
6 basically---

7 A That's what I said. If the water vapor got high
8 enough, it could, it could saturate that wood.

9 Q And, of course, you didn't do any testing in 2005, six,
10 seven, eight, or nine?

11 A No.

12 Q And, of course, if the pump was repaired so that the
13 moisture was not left under the house, that would be a less
14 favorable environment for, for mold?

15 A That's, that's---

16 MR. WALSH: Your Honor, I object to that cause this
17 gets to this pump question again, and I don't think he has
18 established this witness has any knowledge of this.

19 THE COURT: Well, you can lay a foundation, if you
20 can, of his knowledge of it.

21 Q Did -- you are -- did you study, in your course, that
22 growing environments for mold, what environments are more
23 conducive to having a concentration of mold?

24 A Certainly, yeah. Yes.

25 THE COURT: Okay. Go ahead and ask him the question.

Sherman Woodson - Cross-examination
By Mr. Bannister

1 Q And if the pump was repaired, on my hypothetical, so
2 that water was no longer under the house, you would expect
3 the mold, over the years, to dissipate, would you not?

4 A It could, yes. I mean that would be---

5 Q It would certainly be---

6 A Certainly, yeah, if we've reduced moisture, and water,
7 a source of water, certainly we would expect---

8 Q And you are---

9 A ---that to be less favorable for mold growth.

10 Q I'm sorry. I didn't mean to cut you off.

11 A I said we would expect that to be less favorable for
12 mold growth.

13 Q When you look at Mr. Kellet's report about mold, did
14 you check out the place he found mold or he indicated there
15 was mold in the house?

16 A I think, I think, I think he took only one indoor
17 sample in the rear bedroom I believe.

18 Q Did you check the rear bedroom to see if he---

19 A Yes, when we -- when I sample, I took one or, you know,
20 samples in the rear bedroom and then the -- more the front
21 of the house or the other end of the house I guess. I would
22 say in the den.

23 Q Did you confirm that Mr. Kellet was correct that there
24 was mold in the rear of the house?

25 A Well, there was, there was mold. It was probably, you

Sherman Woodson - Cross-examination
By Mr. Bannister

1 know, again, less than outdoors. I think maybe it was
2 slightly above outdoors the day that he had sampled.

3 Q Now, you made the statement that mold affects people
4 different ways or different molds affect people.

5 Is that a fair statement?

6 A There's individual differences in how we're, how we're
7 susceptible to any kind of potential environmental stressor.

8 Q All right. Now, is that an individual -- each
9 individual such as Mrs. Long or Mr. Long would be more
10 susceptible to having allergies from mold or be---

11 A I would, I would agree with that, that people do have
12 different levels at which they're allergic to different---

13 Q Environmental hazards.

14 A ---environmental hazards.

15 Q Would that also apply to aluminum oxide dust?

16 A Well, again, I don't think aluminum oxide is quite the
17 allergic type contaminate that mold is. So, only, only if
18 they're, you know, somehow more allergic to the dust, you
19 know, typical dust, then that aluminum oxide could affect
20 them differently.

21 Q So, it is possible that aluminum oxide could affect
22 individuals in different ways?

23 A Possible, yes.

24 Q All right. In your study and expertise, did you become
25 aware of some of the protections that people take that are

Sherman Woodson - Cross-examination
By Mr. Bannister

1 acquired when they work with aluminum oxide?

2 Excuse me.

3 For example, do they wear masks?

4 Is that required?

5 A Again, you know, if you're in a, if you're in a work
6 environment, and the dusty levels are, you know, high
7 enough, sure, you would, you would need to wear some kind of
8 respirator.

9 Q And that would apply to aluminum oxide as well?

10 A Right.

11 Q Okay. And that's to protect the lungs and the---

12 A That's correct.

13 Q ---people?

14 Okay. Now, you found -- I believe you said you found
15 some aluminum oxide present?

16 A Right.

17 Q All right. That was in 19 -- oh, I'm sorry. 2011.

18 A That's correct.

19 Q And you -- now, when you were inside the house, did you
20 see where, where they had a normal contingency of furniture
21 in there or not?

22 A There was furniture and it was, you know, again---

23 Q Fully furnished?

24 Was it fully furnished?

25 A I don't -- you know, I don't know. It wasn't

Sherman Woodson - Cross-examination
By Mr. Bannister

1 probably -- I would say that they did not take many items
2 out of the house from what I could tell. There was, you
3 know --.

4 Q Did you see -- just look at these pictures cause I
5 think these are the only ones we've got, and let me ask you,
6 did you take those or---

7 A No, I did not.

8 Q Do you recognize them as being pictures---

9 A I do.

10 Q ---of the house?

11 A Right. Right.

12 Q Do you see any, any rugs or --?

13 A No, it's just hardwood floors.

14 Q Just -- chairs?

15 A Uh-huh. (Affirmative).

16 Q Rocking chairs, those kind of things?

17 I believe there's a den in there?

18 A Right.

19 Q So, your recollection is there was furniture?

20 A There was furniture.

21 Q So---

22 A And, again, it may be sparse, I guess, compared to what
23 most people have in their house.

24 Q Sure.

25 A But certainly it wasn't -- it hadn't been emptied. It

Sherman Woodson - Cross-examination
By Mr. Bannister

1 wasn't an empty house.

2 Q Did you go outside and look in the garage or the
3 storage room to see if there was stuff back there?

4 A No, I think we, we went around the back and entered the
5 crawl space, and I don't believe I went into the garage
6 area.

7 Q All right. Did you see any clothes hanging in the
8 closets?

9 A I don't recall that again.

10 Q Did you see any towels or pillow cases or things of
11 that sort?

12 A Again, if it, if it was, I didn't really notice---

13 Q Cans of food?

14 A ---if there were.

15 I don't -- no, I don't recall that kind of stuff.

16 Q Okay. All right. Was the -- did you ever observe the
17 air or the heat pump removed from the house?

18 A They, they -- the first time I visited I believe they
19 had that on the front porch maybe. It was in a, maybe a
20 plastic bag or, you know, some kind of covering over it.
21 They did show it to me then.

22 Q And that was the heat pump?

23 A Or the coils from the---

24 Q The coils?

25 A Yes.

Sherman Woodson - Cross-examination
By Mr. Bannister

1 Q Did you observe the coils?

2 A Yes.

3 Q Did they have aluminum oxide on them?

4 A I -- it looked like it was---

5 Q It was a white powder?

6 A No, I wouldn't say, I wouldn't say that anything like
7 that was, looked abnormal to me as far as coils.

8 Q Okay. You didn't notice anything on it?

9 Nothing white?

10 A No, I mean they, they might of had a white tint to the
11 coils, but again --.

12 Q And you -- did you review any medical records of
13 Mr. and Mrs. Long?

14 A No, sir.

15 Q You would agree with me though, as a, as a safety
16 person, that someone who has got a high degree of allergies
17 could be affected by a lower level of mold normally?

18 MR. WALSH: Your Honor, I object. I don't think---

19 THE COURT: Sustained.

20 MR. BANNISTER: Your Honor, if he's qualified to
21 answer -- are you qualified to answer that?

22 THE COURT: He's not a medical expert. I sustain the
23 objection.

24 THE WITNESS: No.

25 Q Okay.

Sherman Woodson - Cross-examination
By Mr. Bannister

1 A No.

2 Q All right. One minute.

3 (Pause.)

4 Q Let me show you this and ask you if that's the Kellet
5 document that you saw.

6 A I believe so, yes.

7 Q It is?

8 A I believe, yeah. It's got his name on here, and---

9 Q Have you reviewed that in making your opinion?

10 A That's correct, yes. This is November of 2005. That's
11 a swab sample he took from that same day, November of 2005,
12 and that's his chain of custody from, from, I assume, that
13 day.

14 Q All right, sir. If you would, Mr. Kellet---

15 MR. WALSH: Your Honor, may we approach please?

16 THE COURT: You may.

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

20 MR. WALSH: I just have one follow-up. Should I,
21 should we---

22 THE COURT: Let's see if he has any more.

23 Q Just one other question.

24 Have you ever heard of the Stinky Sock Syndrome?

25 A In general terms, yes.

Sherman Woodson - Cross-examination
By Mr. Bannister

1 Q What is it?

2 A Well, it's usually, in a ventilation system, some kind
3 of a situation where the -- either the drip pan or the drain
4 pipes, somehow in that system, has quit draining water and
5 what happens is, you know, when the air system operates,
6 then whatever bacteria is growing in that stagnant water,
7 you know, produces a musty odor, and it, it, I guess, smells
8 like a gym locker or stinky socks is where it got its name.

9 MR. BANNISTER: All right, sir. I think that's all I
10 have.

11 REDIRECT EXAMINATION

12 BY MR. WALSH:

13 Q Mr. Woodson, just to make sure I understand.

14 Finding some mold is not what you are concerned about
15 in reference to you finding mold in this room?

16 A That's right.

17 Q Right.

18 So, it's a little more complicated and sophisticated
19 than just finding mold cause you would expect that---

20 A Sure.

21 Q ---anywhere in the world?

22 A Yes, I agree with that.

23 Q That's all I have. Thank you.

24 THE COURT: All right. You may step down.

25 MR. WALSH: Your Honor, I'd ask this witness be

Sherman Woodson - Cross-examination
By Mr. Bannister

1 excused.

2 THE COURT: well, he can't be yet, but he will be
3 shortly.

4 MR. WALSH: Oh, I'm sorry. I'm sorry.

5 THE COURT: All right. Ladies and gentlemen, we're
6 gonna recess for the afternoon. Keep in mind my caution.
7 No discussions, no research, no investigation.

8 Have a good evening. Please report to your jury room
9 at 9:30 in the morning, 9:30 in the morning.

10 (WHEREUPON, the following takes place outside the
11 presence of the jury.)

12 THE COURT: All right. Mr. Woodson, if you'll come
13 back around please.

14 THE WITNESS: Okay.

15 THE COURT: Take -- resume your seat. He's going to
16 ask some other questions.

17 SHERMAN WOODSON, having been
18 previously sworn, testified as follows:

19 CROSS-EXAMINATION

20 BY MR. BANNISTER:

21 Q All right. Mr. Woodson, in reviewing Mr. Kellet's
22 sample which I believe it shows it was taken in 2005, is
23 that correct?

24 A I think so, yes. November 4th, 2005.

25 Q And---

Sherman Woodson - Cross-examination
By Mr. Bannister

1 A Well, it doesn't -- actually it doesn't have a sample
2 date, but it got to the lab on November 4th of 2005. So, I
3 would assume it's the same day or maybe the day after.

4 Q And he found the outside area in the back bedroom area,
5 he found a reading on those.

6 A That's right.

7 Q And what was his reading on the---

8 A 2,480---

9 Q That was---

10 A ---total spores per cubic meter.

11 Q And that's in the bedroom?

12 A Right.

13 Q And then outside he found --?

14 A 1,100 spores.

15 Q Is that a significant difference?

16 A Well, again, like I said, the outside is usually low in
17 the winter. So, we're starting to get into the, at least
18 the late fall. Then -- so, the outside was pretty low that
19 day. So, you know, that's notable.

20 The bedroom was over twice the, the indoor. So, we
21 don't typically like to see indoor samples higher than
22 outside. But I would say that still is within the normal
23 just because the outside was low that day.

24 Again, that's, you know, that was -- I think it was
25 either higher than the outside due to the outside being low

Sherman Woodson - Cross-examination
By Mr. Bannister

1 that day. But it's, again, probably, probably, at some
2 point, in 2005 might have been a little bit higher than in
3 2011 when I sampled it.

4 Q And is -- would that be significant in the presence of
5 mold?

6 A Again, you know, probably not much outside of normal,
7 if any. Probably in the range of what's normal.

8 Q All right. Thank you, sir. That's all I have.

9 MR. WALSH: No questions, Your Honor.

10 THE COURT: Do you want to ask him anything?

11 MR. WALSH: Well, this is just for proffer. So, I
12 don't think I need to.

13 THE COURT: Okay. Well, I'll ask him something.

14 Mr. Woodson, you were shown a report done by
15 Mr. Kellet, and you reviewed the report because somebody
16 gave it to you to look at.

17 Is that true?

18 THE WITNESS: That's true.

19 THE COURT: Did you utilize that report in any way in
20 formulating your own professional opinion in this case?

21 THE WITNESS: No, sir.

22 THE COURT: All right. Thank you. You may step down.

23 All right. If nothing further, Court is in recess
24 until 9:30 in the morning.

25

1 (WHEREUPON, Court was in recess for the evening.)
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1 wednesday, September 18th, 2013

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3 (WHEREUPON, the following takes place outside the
4 presence of the jury.)

5 MR. HARJEHAUSEN: Your Honor, may we approach?

6 THE COURT: Yes.

7 (WHEREUPON, a bench conference was held off the
8 record.)

9 THE COURT: All right. Any matters that need to be
10 addressed before the jury is brought in?

11 MR. HARJEHAUSEN: No, Your Honor.

12 THE COURT: All right. Bring them in please.

13 (WHEREUPON, the following takes place in the presence
14 of the jury.)

15 THE COURT: Good morning, ladies and gentlemen. We
16 are going to continue with defense's presentation.

17 MR. HARJEHAUSEN: Your Honor, we would call Scott
18 Cooper to the stand.

19 SCOTT COOPER, having been first
20 duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. HARJEHAUSEN:

23 Q Mr. Cooper, can you tell me where, where you're
24 employed?

25 A At Tuck & Howell.

Scott Cooper - Direct examination
By Mr. Harjehausen

1 Q Okay. And how long have you worked at Tuck & Howell?

2 A Going on 26 and a half years.

3 Q And what is your, what is your title or position at
4 Tuck & Howell?

5 A I'm a project manager salesman.

6 Q Okay. And can you give or tell the jury a little bit
7 about your education and work experience in the H. V. A. C.
8 industry?

9 A Yes. Well, after I graduated -- left the Army in '87.
10 I got a job at Tuck & Howell. Started out as a helper. I
11 worked my way up to installation, and during that time I
12 would go to classes on how to install, how to run the duct
13 systems, and then, as I progressed up through the company
14 and moved into sales, we would keep going on educational,
15 refrigerant education. Trane and Carrier would put us
16 through these classes that we had to go through to earn the
17 certificates for ongoing education.

18 So, I earned several certificates on ongoing education,
19 how to install the equipment. Went to the factories to see
20 how the equipment was made, and from that point, yes.

21 Q Okay. And how many years have you worked installing
22 H. V. A. C. systems?

23 A I installed for 17 years with Tuck & Howell before I
24 moved into sales.

25 Q Okay. And does that include residential heat pump

Scott Cooper - Direct examination
By Mr. Harjehausen

1 systems?

2 A Yes, sir.

3 Q And how long has Tuck & Howell been in business?

4 A I think it's a little over 43 years we been in
5 business.

6 Q Okay. And has Tuck & Howell gotten any awards over the
7 years?

8 A Yes, we've received numerous awards from the
9 dealerships we sold the equipment from. We received, in
10 2009, we received a Better Business Bureau award for
11 integrity for that year.

12 THE COURT: Let me ask y'all to stop just a minute.

13 Mr. Harjehausen, do you see that microphone right
14 above your head?

15 MR. HARJEHAUSEN: Yes, sir.

16 THE COURT: Can you back -- can you bend it down and
17 stay behind there so the court reporter can hear
18 everything?

19 Q And you've worked with Mr. McConnell, is that right?

20 A Yes, J. P., when he came to work at Tuck & Howell, he
21 worked under my supervision, that's correct.

22 Q Okay. And how long approximately has he worked there?

23 A You know, I really don't know. I think it was around
24 seven years or so before we had the accident, his car
25 accident. But I'm not quite sure how many years he worked

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1 there.

2 Q Okay. Now, how did you first come into contact with
3 the plaintiffs, the Longs, in this case?

4 A Well, our secretary at Tuck & Howell takes down calls
5 that come in that's called leads that generates the leads
6 when a customer calls and wants someone to come out and look
7 at their heating and air system. The secretary will take
8 the information, and then I will call the customer, and
9 schedule an appointment to come out and look at their home
10 and the heat and air system and to, to sell them a system.

11 So, I received the note from the secretary and then I
12 called the Longs and made an appointment to go out on a
13 sales call in October.

14 Q Okay. And is that October of 2004?

15 A 2004, yes, sir, that's correct.

16 Q All right. And where did you meet them?

17 A I came to the front door. Mrs. Long came and answered
18 the door. Mr. Long was inside and then she invited me in.
19 So, I came in. She said she was busy unpacking groceries.
20 So, I met Mr. Long, and then the opening -- there was an
21 opening between the kitchen and the living room where we
22 were talking, and I noticed that Mrs. Long, when she went
23 back in the kitchen, she started washing her groceries, her
24 milk jug, and I seen a couple of cans and me and Mr. Long
25 was talking. Then she would come back in there every once

1 in a while.

2 And what I do, with the homeowners, I'll sit down and
3 ask them if they're any concerns that you have anything we
4 need to address, and we look at -- before I look at the
5 system. I try to go over the complaints, if there's any air
6 flow issues, if there's anything that we need to look at as
7 far as putting a system in for a homeowner.

8 Q Okay. And did it strike you as unusual that she was
9 washing the groceries?

10 A Well, yes, I've never seen that before, but I didn't
11 ask. I'm not -- I wasn't going to bring it up to the
12 homeowner, why are you doing that, because I didn't know
13 why. Everybody's got their own reasons for doing things.
14 So, I didn't say anything.

15 Q And as far as -- what did they tell you about any
16 issues they were having or why they needed a new system?

17 A The system had age to it, and they just were wanting to
18 update the system that they had and install a new one.

19 Q Did they ever mention any sort of prior experience with
20 mold?

21 A No, sir.

22 Q Did they tell you that they were having any sort of air
23 flow problems at that time?

24 A Nothing about the air flow issues, no. What don't --
25 what we did discuss was each room had an individual return,

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1 a baseboard return. So, what I told her what would be good
2 for the house to put a central return in the hallway so they
3 could change the filter in their house instead of crawling
4 in a crawl space to change the filter. So, I did recommend
5 that we put a central return in the home and do away with
6 those individual returns in the bedrooms and cap them off
7 from underneath.

8 Q And did you, did you prepare a proposal?

9 A Yes, I did.

10 MR. HARJEHAUSEN: Your Honor, if I may approach for a
11 second?

12 THE COURT: Yes, sir.

13 Q I hand you what's been marked as Plaintiff's Exhibit 1.
14 Mr. Cooper, do you recognize that document?

15 A Yes, sir.

16 Q All right. And -- excuse me, Your Honor.

17 (Pause.)

18 Q What is that document?

19 A That is a proposal prepared for Mary -- Ray and Mary
20 Long on November 3rd, 2004, to replace their heating and air
21 system with a Trane heat pump system.

22 Q Okay, sir. So, Trane was the manufacturer of the
23 equipment that you proposed to install on behalf of---

24 A Well, I tried -- I offered them Carrier, but they did
25 not want Carrier. They said they wanted Trane. So, I --

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1 that's, again, while we discussed, you know, what kind of --
2 there's so many different kinds of efficiencies and seer
3 into the systems. We kind of have to narrow it down to what
4 they were looking for to suit them at their home.

5 Q Okay. And if you can just kind of tell me the type of
6 equipment that you proposed to install?

7 A Yes, it was a Trane, 3-ton 14 seer heat pump, and the
8 air handler was a Trane air handler, which was a variable
9 speed which ramps up and down in speed---

10 Q Okay.

11 A ---when it runs.

12 Q And there's a line on that document that says proposal
13 includes.

14 Do you see that?

15 A Yes, sir.

16 Q And then below that it says remove existing return air
17 ducts and crawl space and blank off those with metal caps.

18 What, what does that refer to?

19 A That's what I was talking about earlier when I, when I
20 spoke with the homeowners. I told them they needed -- if
21 they wanted a central return to where they didn't have to
22 crawl underneath the house to change the filter, that we
23 would put the central return and blank off the individual
24 return that was in each room because there's not enough air
25 flow through those for the new system. It'd have to have so

1 much square inches and the duct has to be a certain size to
2 handle that amount of air flowing through it.

3 Q Okay. And by -- and this is your language in the
4 proposal, is that correct?

5 A That's correct.

6 Q And that language, did you mean to replace all of the
7 ducts in the house?

8 A No, sir, the supply ducts were never discussed on
9 replacing at the beginning.

10 Q And can you tell the jury what you mean -- we've heard
11 some talk about return ducts and supply ducts.

12 Just---

13 A Okay. If you look at the system that's up here now,
14 the side that's facing me, the supply blows the air out
15 through your vents. That's what blows the air out. On the
16 rear of the system there, the other -- the bigger hole on
17 the other side is the return side. That's what draws the
18 air into the system. That's the coil that's mounted on the
19 back.

20 So, what happens is the return air is drawn through the
21 system, and where that drain is on the side, it removes the
22 humidity from the house and that's what drains the water out
23 into the pump as it removes humidity from the house, and
24 then it blows out the cool air on this end, and the freon
25 flows through the coil on the side there before the, the

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1 cool air comes on this side.

2 Q All right. And if you look at the proposal included,
3 again, on that exhibit, down below it says add supply and
4 veteran onto existing return duct.

5 What was your understanding of that included on the
6 proposal?

7 A There was a return that we converted into a supply
8 because it was not enough air flow in that front bedroom
9 that they said. So, I said we can use that return
10 baseboard. It's the same size as the supply duct, the
11 return ducts were. So, I said we can use that return duct,
12 make it into a supply without having to cut one in, and then
13 that way we would be good on the air flow for that room, to
14 increase air flow to that area.

15 Q Okay. So, by that statement, you're not saying you're
16 gonna replace all the ducts underneath the crawl space?

17 A No, sir.

18 Q All right. And down below on the proposal it also
19 includes language install 16-inch return duct in crawl
20 space.

21 Can you explain to the jury what that referenced?

22 A The 16-inch return duct is the size that a three, a
23 3-ton system would need as far as the inches and what size
24 round it has to be to carry a 3-ton with air through it.

25 Q And the proposal that you made to the Longs, did they

1 accept that proposal?

2 A Yes, they did.

3 Q And what, what happened after that?

4 If you will, tell me about it.

5 A Okay. Here's what transpired next.

6 We set a date to start installation. It was some time
7 early November to start installation of the job, and what we
8 is, at the office, everybody comes in at seven o'clock in
9 the mornings, and then I have the job folder set out, and I
10 go over with the teams where they're going and what job
11 they're gonna do, and we pull the equipment that's ordered
12 for that particular job.

13 So, J. P., I got him and his helper prepared to do that
14 job that morning, went over the job with them. We always go
15 over the proposal with our, with our guys and tell them what
16 needs to be done to go by what we have on the proposal.

17 So, I told J. P. -- and I'm usually real busy in the
18 morning. So, I told J. P., I said y'all go on to the job
19 and get started, and when I get cleared up I'll come over to
20 the home and meet you. So, that's exactly what was done
21 that morning.

22 Q Okay. And at some point that day did J. P. go out
23 there or did you go out there?

24 A Yes, later that morning, as soon as I got cleared up,
25 unusually it's around 9:00/9:30, and it wasn't six miles

1 from the office, the job wasn't.

2 So, I went on to the job site, and when I got to job
3 site J. P. was tearing out the equipment, the old equipment.
4 He introduced himself to the Longs, and then, when I got
5 there, I was approached by Mr. and Mrs. Long and said we
6 need to check a duct that had some water issues was either
7 overflow or something happened and it got water into the
8 duct. It was a bathroom off the side of the living room in
9 the back of the house, and I told J. P., I said well, go
10 ahead and tear out the equipment, put the new equipment up
11 cause it's a two day job. That's all I had labor on it.

12 I said when you get to the point, when everything's up
13 and running, check that duct and, and see what they want and
14 see if it needs to be replaced, and we'll replace that one
15 piece of duct work because they had real concerns about
16 water in that duct at one time.

17 Q And, so, both Mr. Long and Mrs. Long were home when
18 that conversation occurred?

19 A Yes. Absolutely, yes.

20 Q And who, who told you about the duct if you recall?

21 A I think it was Mrs. Long. I'm not sure which one. I
22 know we had the conversation because both of them was there
23 and both was talking to me. But I think it was Mrs. Long
24 that brought it up.

25 Q Okay. And -- now, do you recall there being some

1 concern about that duct when it was removed?

2 A Yes, the next day -- after I left that job, I did not
3 go back to that job that day. I said if you need me call me
4 because I had other jobs to go look at and check on.

5 So, the next day I asked, the next morning I asked him
6 how everything is going and I said good. I said are you
7 going to get a chance to finish today. He said I don't
8 know. I said well, we got to get done today. We only got
9 two days labor on the job. So, I was kind of getting on to
10 him about that, about getting done.

11 So, he got to the job and it was sometime late morning
12 when I received a phone call, and he called me and he said,
13 man, you've got to get over here, we've got problems. I
14 said calm down. I said what's the matter. He said she's
15 over here in the back yard screaming at me saying there's
16 mold in the duct, that we got to replace---

17 MR. BANNISTER: Your Honor, I got to object. That's
18 hearsay.

19 THE COURT: Overruled.

20 Q Go ahead.

21 Tell me, tell her what -- tell the jury what she said.

22 THE COURT: Excuse me just a minute. The other
23 person, employee is going to be testifying in this case?

24 THE WITNESS: Yes.

25 MR. HARJEHAUSEN: Yes.

1 THE COURT: Okay. Overruled.

2 A So, he did call me and he did say I need to get over,
3 over there, she was freaking out. That's what he said, and
4 I needed to solve this issue, that she's screaming they got
5 mold in their house---

6 Q Okay. And so---

7 A ---in the duct work.

8 Q Did you go over there?

9 A I was there within 30 minutes. I was there and
10 everyone was in the back yard. So, when I got there, I went
11 around back and they were running around in the back yard,
12 and her and Ray was upset, and then I said well, what's the
13 issue here. I said well, let's see what the problem is, and
14 I went and looked at the duct myself, and I could tell it
15 was dried up. But it was water streaks that had been in the
16 duct, and there was some gray material, I don't know what it
17 was, inside the duct. But it did have a odor to it, a
18 musty, mildewy smell to it.

19 And then she kept on. And then she started with me,
20 you're gonna replace our ducts. You're gonna replace our
21 duct work, and I said well, let's just go inside and talk.
22 I said J -- let J. P. get back to work. So, we went inside
23 and then we went to the kitchen, and then she had me in the
24 kitchen trapped in the corner and started cursing at me
25 saying we was going to replace the duct work.

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1 MRS. LONG: I didn't.

2 A And then---

3 THE COURT: Mr. Bannister, you'll have to instruct
4 your client that she'll have to remain quiet during this
5 testimony.

6 Q Okay. When you went back into the kitchen, tell us
7 what, what occurred there.

8 Did you, did you explain to her what the proposal was?

9 A Yes, I did. I said ma'am, I said, we didn't have the
10 money in the job to replace all your duct work. I said that
11 costs about 2,500 extra dollars to, to replace the duct
12 work. I said we didn't -- I just don't have the money to
13 replace it. They said you're gonna replace our duct work,
14 and they were very adamant about it.

15 And then she -- after she cursed me, and had me trapped
16 in the corner, she just turned around and took off running
17 and screaming down the hallway, and I heard a door slam. I
18 don't know. She just ran back in the hallway. So, I was
19 alone with Mr. Long there in the kitchen, and then I told
20 him, I said, I am so sorry for this. I said, I'll tell you
21 what. I said we want, we want to make you happy. I said we
22 will replace the duct work. If that's what it takes to make
23 you happy, I said I'll be glad to do it. I said we don't
24 have the money in it. I said the job's not gonna come out.
25 I said, but I'll be glad to do it just to make you happy I

1 said if it's that big an issue to you.

2 I said all we wanting -- you know, I care about Tuck,
3 Tuck & Howell's reputation. I said I don't want you going
4 around telling bad things about us and we'll take care of
5 you. And, so, I instructed J. P. that we were changing the
6 duct work, and I told him -- and I called another crew in to
7 help him so we could try to get done in another day, an
8 extra day, to get it all out and get it back in so I
9 wouldn't have -- we'd make something off the job, and then I
10 was worried about, you know, what I was going to get told by
11 the owner of the company.

12 Q All right. And -- now, I'd like to step back a little
13 bit in time.

14 When you were out there talking to them about the
15 installing the return in the home, did the Longs have any
16 concerns about that opening, anything to do with that
17 opening?

18 A Yeah, not on the sales visit, but the visit when J. P.
19 went out. Again, when I came out and went over the job with
20 them and after the discussion about the supply duct, she
21 also mentioned to me then that she was highly allergic to
22 dust and that we needed to seal that hallway off cause we
23 have to cut sheetrock and that scares up dust, and then you
24 got dust from the plywood and that we had to cut through the
25 floor.

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1 So, I instructed J. P. to seal the hallway off when he,
2 when he done that return duct so all the dust is contained,
3 and as soon as they're done, clean it up.

4 Q And did it appear that the Longs were satisfied with
5 how you had it sealed off and that was put in?

6 A Well, I wasn't there when that was put in, but I -- but
7 J. P. told me and he'll testify that he sealed it off.

8 Q Now, when that duct was pulled out in the yard, did the
9 Longs ever tell you about any other problems they may of had
10 with the house in the past?

11 A Before the duct they told me that they had a water
12 issue before. Before we pulled it out. So, he, he pulled
13 it out the next day after we were told when the job was just
14 getting started. After that, no, there was never a mention
15 of any other thing, any issues that they had had in the
16 past. It's just that one duct that they were concerned with
17 where they had water going to it.

18 Q But you were present in the courtroom when Mrs. Long
19 was testifying, right?

20 A Yes, sir.

21 Q And you heard some testimony about a prior leak through
22 the roof, did you not?

23 A Yes, sir.

24 Q Was there any conversation between you and the Longs
25 about, you know, any leaks through the roof or remediation

1 or anything like that---

2 A No, sir.

3 Q ---at the time that you went out there to make this
4 proposal?

5 A No, sir.

6 Q And when was the next time -- so, this system was
7 installed and complete in approximately November, is that
8 right?

9 A Yes, sir. The next time I went out to the job was
10 after the duct was installed. So, I go out and check the
11 job to make sure the system is running, and I go out to
12 collect the job. So, when I went out to collect the job,
13 they wouldn't give me a check until I wrote on the back of
14 the proposal that we replaced the duct work in it. You'll
15 see on the proposal it says replaced. Not replace the duct
16 work. And then I signed it that we did replace the duct
17 work, and they wanted that, that wrote down before they
18 would give me a check.

19 Q Mr. Cooper, I just want to show you what's already in
20 evidence as Defendant's Exhibit 18.

21 Do you recognize that document?

22 A Oh, yes, that's my handwriting before I typed it on a,
23 on the proposal.

24 Q Okay. So, that's -- those are your handwritten notes
25 before it was typed up, is that right?

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1 A That's correct.

2 Q Okay. And does the proposal include the, the same
3 language?

4 A It's the exact same thing without the, replacing the
5 supply duct that's not on this.

6 Q Okay. And I think you mentioned that there was some
7 writing on the back there.

8 Is that your handwriting?

9 A That is. That is my handwriting because if we were
10 gonna replace the supply duct from the beginning of the job
11 it would of been on the front of the proposal. I wouldn't
12 have wrote it on the back and put past tense replaced on
13 there. I had to do that to get a check. They said I needed
14 to write on the back that we replaced the duct work and sign
15 it and I did it so I could get our money.

16 Q Okay. After the system was installed, when was the
17 next time that you heard anything about the Longs?

18 A After it was installed and then I went out and checked
19 and everything was working fine. I always tell the
20 homeowners call us in a couple of weeks if there's any
21 issues. I did say that the system, when it starts up in
22 heat, it does a little oil on the fan and all that comes
23 from the manufacturer, that it would have a little smell.
24 It burns off. Every new system has it, and I said if you
25 have any issues, call me. If you have any issues after five

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1 o'clock or weekends, we have someone on call.

2 So, when I left that job, the next time I heard from
3 the Longs was the following year when they said we had a
4 powder.

5 Q Okay. Does -- you had mentioned that you went up there
6 to look at it after it was installed, is that right?

7 A Yes, sir.

8 Q Okay. And what is the purpose of that and why would
9 you do that?

10 A Well, the purpose is to collect the job, and then make
11 sure that everything's working properly, and make sure that
12 the homeowners are satisfied with what's done. And while I
13 have the, them there, if there's any corrections that need
14 to be made to improve the air, I can get the corrections
15 made to make sure I can get the job collected.

16 Q And the best you recollect, the Longs were satisfied at
17 that point?

18 A Yes, sir, their system was running and they were
19 satisfied, yes.

20 Q And now let's talk a little bit about you said that you
21 next heard from them roughly a year later?

22 A Roughly a year later. I think it was October, late
23 October, early November.

24 Q How did you learn or how were you contacted about the
25 Longs?

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1 A well, I give every homeowner my card, and say if you
2 need me, you call me any time because my cell number's on
3 there. I never turn it off, and, and she called me. It was
4 October and she sounded a little frantic on the phone. She
5 called me and said you need to get over here, we got
6 problems, there's some kind of dust coming out of the unit.

7 Q Okay. And did you schedule an appointment to go over
8 there?

9 A I came -- I went straight over there then. As soon as
10 she called about that, we try to react. So, I was there
11 within 20 minutes.

12 Q And tell me about what happened when you arrived.

13 A Okay. When I arrived, again, I came through the front
14 door, went into the living room, and they were noticeably
15 upset, and she said there's something wrong. And I said,
16 you know, what's the issue. She said well, we've got dust.
17 Look at our coffee table and there was a thin, like a dust.
18 You know, if you hadn't dusted in two or three weeks, could
19 be a little dust buildup on the coffee table, and I noticed
20 it.

21 And, so, I run my finger across the coffee table. I
22 said, gosh, I've never seen that. I said I don't know what
23 this is. I said I've never seen this before. So, I went to
24 one of the vents where the -- in the living room there, and
25 there was a little bit of -- like it was -- hadn't been

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1 dusted or vacuumed for a couple of weeks or so, and there
2 was a little dust around it. And, and then I told her, I
3 said, I have no clue what this is. I said can I make a
4 phone call, and we'll try to get to the bottom of it right
5 now.

6 Q Okay. And what -- did you make a phone call?

7 A I did right there in front of the Longs, yes.

8 Q And who did you, who did you call?

9 A I called Glenn Bell with Trane.

10 Q And who is Mr. Bell?

11 A He was a representative from Trane that handled their,
12 their cases when there was a problem with the systems. We'd
13 call and ask if there was issues that we, we couldn't answer
14 with servicing issues or anything. He knew -- he was the
15 expert on their equipment.

16 Q And what did you do after that?

17 A After I called Mr. Bell?

18 Q Yeah.

19 what happened when you called Mr. Bell?

20 A Can I say what I was told?

21 We come to a conclusion it was Dirty Sock Syndrome.

22 Q And have you ever heard of Dirty Sock Syndrome?

23 A Never heard of it before then. Never.

24 Q Okay.

25 A And didn't have a clue what that dust was.

1 Q And what was your understanding as to the, the solution
2 and how to address this?

3 A The solution was to call Trane in Greenville. There
4 was a form that Trane has that, that they have to issue
5 before. So, there was a form to fill out to cover that.
6 You had to fill out a form. It said Dirty Sock Syndrome
7 form.

8 You fill out the form. You put the model number, the
9 unit, serial number. You're supposed to send the old coil
10 back and they send a coated coil out because they know the
11 issue exists, and there was a form to fill out. And, so,
12 that's exactly what we done. I turned it over to our
13 service department to handle that. So, they, they filled
14 out the form and got that taken care of.

15 Q All right. Now, I'll show you what's been marked as
16 Defendant's Exhibit 16, which is already in evidence.

17 Is that the form that you just mentioned that Trane or
18 the distributor required you to fill out?

19 A Yes, that's correct.

20 Q So, what happened after you submit this report?

21 A Well, service handled it. After, after you submit the
22 report, the coil -- I send the coil in our office. Three to
23 five days later we had the new coil, and then service
24 scheduled to go out and replace the coil within that
25 timeframe of those three to five days.

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1 MR. HARJEHAUSEN: And, Your Honor, if I could ask the
2 witness, with the Court's permission, to step down. I'd
3 like to ask him some questions about this particular exhibit
4 in front of us.

5 THE COURT: All right. You may step down. But be
6 sure you speak up loudly because the court reporter still
7 has to hear what you're saying and you're away from the
8 microphone.

9 THE WITNESS: Yes, sir.

10 (Witness comes down from the stand.)

11 Q Mr. Cooper, we've heard a lot of talk about the coil in
12 this case.

13 Can you point out to the jury what constitutes the
14 coil?

15 A This is the coil. You have the refrigerant that flows
16 through the coil, circulates through the coil, and that's
17 what makes the cold on the heat pump -- there's a reversing
18 valve on the outdoor unit. So, the freon flows through one
19 way through the system, and then once it's in the heat
20 mode---

21 THE COURT: Excuse me. Excuse me. The court reporter
22 can't understand you. You got to make some other
23 arrangements.

24 THE WITNESS: Do you want me to face her and then that
25 way---

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1 THE COURT: well, you can't just face her cause the
2 jury has to hear you too.

3 THE WITNESS: Okay.

4 MR. HARJEHAUSEN: Could we move the exhibit, Your
5 Honor, such that he could stand over here?

6 THE COURT: why don't you, why don't you move that
7 exhibit a little bit closer to the jury, and then he can
8 stand sort of behind the exhibit when he's talking so that
9 she can see his face?

10 That helps.

11 MR. HARJEHAUSEN: Okay.

12 THE COURT: All right. Now, if you will move that
13 over a little bit closer to the jury. That should be good.
14 That's good.

15 All right. Now, if you'll stand on this side over
16 here.

17 THE WITNESS: Over here?

18 THE COURT: when you talk at that jury.

19 THE WITNESS: All right. Over here?

20 THE COURT: Yeah. Now, when you, when you're speaking
21 to the jury, be sure the court reporter can see your face.
22 If you can see her she can see you.

23 THE WITNESS: Okay.

24 Q All right. Mr. Cooper, we've been talking about what
25 constitutes the coil, and if you can just stand there and

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1 tell us again the -- point out the part of the equipment
2 that is the coil.

3 A It's the part in the rear here that's the cooling coil,
4 and, again, a heat pump, the refrigerant flows one way to
5 cool the system. Then it has a reversing knob when you put
6 it in heat mode. It flows the other way, and that's what
7 causes the heat and it flows out the other end of the
8 system.

9 Q Okay. And the end that you're on, is that what is
10 connected to the return duct in the hallway?

11 A Yes, sir, that's what's connected to the return side.
12 The, the air goes through the coil this way into the supply.

13 Q And I believe you said something about a coated coil.
14 Can you tell us what that is?

15 A Well, a coated coil, it's got a little -- it's what
16 they dip it in to prevent that Dirty Sock Syndrome. There's
17 something they have that they can prevent that from -- that
18 they can dip the coil in, and this is not a, a coated coil
19 that's in this one.

20 Q Okay. But the part that was supplied by Trane under
21 warranty was a coated coil, is that right?

22 A Under the warranty, the replacement coil was a coated
23 coil, yes, sir.

24 Q Now, you didn't actually install the replacement coil,
25 is that right, in Mrs. Long's house?

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1 A No, sir, the service department replaced that.

2 Q Okay. Is, is -- can you tell us how this particular
3 unit on the table compares with what's underneath Mrs.
4 Long's house?

5 A Yes, it's similar in some ways. Usually every year, a
6 couple of years ago, they will have a product change where
7 they'll update their products to try to improve upon them,
8 but the model number on this is similar to what she has a
9 four P-E-E, and hers is a four P-E-E, but the only
10 difference is it's a four ton system. Hers was a three ton,
11 and it's a variable speed fan motor. So, the motor ramps up
12 and down on the speed.

13 Q And tell me -- when we're talking about ton, we're
14 not -- can you tell us the temperature and what that
15 reference is?

16 A Tonnage is based upon the square footage of the house,
17 how you, how you size the system.

18 Q Okay.

19 A What air flow you need through the house.

20 Q And what's different, if anything, based upon tonnage,
21 for purposes of explaining the difference, this versus
22 what's in Mrs. Long's house?

23 A A three ton system is made to handle around 18 to 2,000
24 square feet. A four ton system's made to handle around
25 2,500 square feet, and you don't -- they have a three and a

1 half that's made to go in-between that, but variable speed
2 units, it ramps up and down. They don't come in half tons.
3 So, you have whole tonnages on those.

4 Q But this unit on the table is substantially similar to
5 what's in, under Mrs. Long's house?

6 A Very much, yes.

7 Q Now, can you point out to the jury where the, the
8 condensate pan is on that?

9 A Right here, the lower part of the, the coil is the
10 condensate pan. As the freon flows through, and it removes
11 humidity from the house, in the summertime the coil drips
12 into this pan and exits out the drain here.

13 Q And that pan, is it, is it flat?

14 Is it horizontal?

15 Is it angled?

16 A It's, it's angled back toward the drain so all the
17 water will drain out through the pan, and drain -- if, if we
18 can get the unit high enough, we put the P. V. C. pipe all
19 the way to the outside of the house. Their houses and other
20 houses have a step down into the crawl space, and that way
21 you can't drain it directly out. You have to put a pump on
22 it so the pump pumps the water out as it fills up.

23 Q And when you refer to a pump, is that what we've heard
24 testimony about, condensate pump?

25 A Yes, sir, that is the condensate pump that's there.

1 Q All right. And, if you would, tell the jury how this
2 type of system is typically wired to the electrical system
3 in a house.

4 A Well, you have a high voltage wire that comes in. We
5 have to put disconnects beside every piece of equipment.
6 Codes change every year. So, we have to adapt to that too.
7 But you have a high voltage and a low voltage that wires in
8 the front of the system. There's a thermostat that wires
9 into the system and then you have a high voltage that powers
10 the unit.

11 Q Okay. And what kind of electrical voltage would be
12 required for this type of system or for what was in this
13 system?

14 A It's according to what size heater you put in it. I
15 think a three ton 10-K-W heater would have a sixty amp
16 breaker. It would be sixty amps. It would have like eight
17 wires. You wire to the minimum circuit amps, but fuse it to
18 the max codes on it.

19 Q All right. And I see a cord off what you pointed to
20 earlier is the condensate pump.

21 Tell me how that's wired.

22 A That is a 110 condensate pump. It's just like a
23 regular receptacle you have in your home that you plug a
24 lamp or anything into. When we install a job, if we needed
25 to install a condensate pump, if there's not 110 volt power

1 there we pull one or we catch it from the light or the
2 switch from underneath the house and mount a receptacle to
3 plug the condensate pump into so when it fills up it, it
4 works and pumps the water out.

5 Q what happens if, if the pump fails due to a malfunction
6 or electricity is off or, you know, it's, it's not wired?

7 what happens?

8 A The water will drain into the pump and eventually --
9 the pumps not solid or sealed anywhere. So, water just
10 overflows the pump onto the ground.

11 Q Okay. So, that plastic container that's underneath the
12 pump here on the table, is -- that's not something that's
13 normally installed?

14 A Court purposes only.

15 Q Court purposes only.

16 All right.

17 A Yeah, to catch water.

18 Q All right. And I see that you've got a container on
19 the table there.

20 with Your Honor's permission, I'd like to ask the
21 witness to demonstrate how the water from the condensate pan
22 drains into the pump.

23 THE COURT: He may.

24 A It fills the P-trap up and that's why that trap is
25 there because water flows above it. So, the water will, the

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1 water will drain and air flows above the water. If you see
2 it overflowing the pump now because the pump got too full,
3 and you see how it comes out every crack and where it's not
4 sealed it just overflows.

5 Q And were you present when Mr. Burton was testifying in
6 the courtroom?

7 A Yes, sir.

8 Q And do you have an opinion as to whether the, if the
9 condensate pump is not wired, what would happen to water
10 that flows down the condensate pump?

11 A Exactly what just happened.

12 Q So, the water would not back up?

13 It would flow on the ground?

14 A That's correct.

15 Q So, it wouldn't back up into the pan?

16 A No, I poured that one too fast.

17 Q Now, you can go ahead and sit back on the stand.

18 A Thank you.

19 (WHEREUPON, the witness returned to the stand.)

20 Q All right. Mr. Cooper, now -- did you have any
21 conversation or contact with the Longs after the replacement
22 coil was put in?

23 A After the replacement coil was put in I got approval
24 from the owner of our company to have the ducts cleaned by
25 Steamatic to make sure if there was anything in the ducts

1 that we, we got it out. I did offer to have the house
2 cleaned, but she had mentioned that she -- then she had
3 mentioned she's allergic to certain stuff that she didn't
4 have to -- she didn't know what she could do and what were
5 they gonna use to clean the house with. So, I did offer
6 that to have the dust removed.

7 Q And, to your knowledge, did Steamatic come out and---

8 A Yes, Steamatic did come out to the job.

9 Q Okay. And did you have contact with Mrs. Long after
10 that?

11 A It was -- yes, I had another contact with Mrs. Long
12 when service was there because they called me like at
13 6:00 at night and said I needed to come over there and help
14 them, them because she was jumping on them and fussing at
15 them, and I needed to come over there and resolve the
16 situation, and kind of keep her out of the way so they could
17 do their job.

18 Q And did that have something to do with the refrigerant
19 leak?

20 A That's correct.

21 Q Okay.

22 A The coil that we put in, again, the manufacturer had a
23 leak at the manufacturer's spot that, that they had had on
24 there and it just happened to be a bad coincidence there.
25 But twice, the manufacturer, something went wrong with that

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1 coil.

2 Q And the refrigerant leaks, how common are they when
3 you're going out to do a service call or installing a
4 system?

5 A Oh, they're, they're common. We have customers that,
6 that fill there's up once, twice a year, rather than replace
7 the system because it's a cheaper fix for them if the unit
8 will run. If we're on the last six, eight months, and you
9 pay a hundred dollars to have it charged rather than the
10 \$8,000 to have your system replaced, then they're going to
11 choose to do that over several years until something else
12 goes wrong. We usually have a rule of thumb that until it
13 gets to the point where it costs them too much to operate,
14 then it's time to replace the system.

15 Q And -- now, there was some testimony in this case about
16 smell of refrigerant.

17 Can you tell the jury, in your experience as an
18 H. V. A. C. technician, about that?

19 A I have never had a customer that had refrigerant leaks
20 tell me that they smelled refrigerant in their home. The
21 only time you can smell it, if you stick a direct flame to
22 it as you're soldering it, then it -- yeah, it will hurt
23 your eyes and stuff then. It has an odor.

24 But as far as refrigerant leaking to a system, it
25 doesn't get into the air stream for -- as far as smell

1 because one of the refrigerant leaks was on the outside
2 unit. It couldn't have got to an air stream. It was
3 outside.

4 Q If -- one of the refrigerant leaks was on the outside
5 of her house?

6 A Yes.

7 Q And is, is it your opinion that there was no way that
8 that could cause any sort of smells inside the house from
9 that leak?

10 A No, sir.

11 Q And as far as the open flame for this type of system,
12 is there any sort of open flame to come into contact with
13 the refrigerant to this type of system?

14 A No, cause what you have to do, you have to recover
15 refrigerant out of the system before you can fix a leak.
16 The refrigerant has to be pumped down out of the system,
17 and, and then you, then you fix the leak, and then what you
18 do, you purge the system. You put a -- like it's called a
19 vacuum. That way you don't want any moisture or anything in
20 the system.

21 So, you put a vacuum on it to make sure you reach a
22 certain micron, and then once that reaches and holds for a
23 certain time, then you can put the refrigerant -- you weigh
24 the refrigerant back into the system.

25 Q Now, when a system like this is installed and a new

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1 system like this is installed in a home, does this box come
2 in parts or does it come together?

3 Can you tell us how it comes?

4 A The only difference between this system and what's hers
5 are the doors. The front doors has the name of the company
6 on it, which would be Trane, and then it would have the
7 model and serial number, which we have to record on records.
8 But that system comes complete, ready to install.

9 Q So, when you go out there to install a new system,
10 you're not putting the coil in and screwing it in yourself?

11 A No, sir.

12 Q And your understanding in this case is that the only
13 reason a different coil was put in was because of the
14 problem with the one provided by Trane?

15 A That's correct.

16 Q Now, you were here again for Mr. Burton's testimony, is
17 that right?

18 A Yes, sir.

19 Q And he, he mentioned some things on -- about a work
20 order when he had gone out there to work on Mrs. Long's
21 system apparently.

22 Did you hear some of that?

23 A I did.

24 Q All right. One of the things that he talked about was
25 the tonnage of the pump, setting the dip switches from three

1 and a half to three.

2 Can you tell the jury what the dip switches do?

3 A You have different dip switches for different
4 capabilities that the system can have. Especially the high
5 end systems that have variable speeds. If you hook a
6 humidifier or an air cleaner up to a system, you can set the
7 dip switches that will show that that equipment is part of
8 that system. The air flow -- a variable speed, that's why
9 they call it a variable speed. It can ramp anywhere up
10 form, from 200 C. F. M.s up to a maximum of 1,200, which is
11 say a three ton system.

12 For a dip switch, you can set it at certain, to reach a
13 certain C. F. M. to reach a certain air flow and then stop
14 at that point, and, again, usually that's what I tell a
15 homeowner, after a couple of weeks, let me know how the air
16 flow is in the house, let me know how everything works so if
17 we need to come back and make those adjustments we can do
18 that.

19 Q Okay. So, it's intended to have different settings to,
20 to adjust to the air flow and conditions of the home?

21 A Yes, sir, that's exactly right, yes.

22 Q So, if, if Mr. Burton switched it from a three and a
23 half ton dip switch to three, he's just switching the
24 settings to allow better air flow in the home or in his
25 opinion?

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1 A Right. You can cut -- if it's too much air flow, you
2 can cut the air flow back some from three and a half to
3 three. Yes, you can cut 200 C. F. M.s out of it.

4 Q Now, I think there was also some testimony by
5 Mr. Burton about some -- the pan or something in the return
6 duct.

7 Can you tell the jury about what's typically installed?

8 A Yes.

9 When we cut a return in, say we usually pick a closet
10 that's in the interior of a home or center so it, so it
11 meets into the hallway cause you want all your return air
12 to, to go central to the home. You got -- your supplies are
13 on the outside. It runs the air up and your returns are all
14 there across, and that's what pulls the humidity out of the
15 air going to the return.

16 So, when we cut a return in, say into a closet, it
17 backs up. We cut the floor out first, and if there's a
18 joist there and we see it might be structurally, we don't
19 want to, you know, have, have anything structural, then
20 we'll leave that joist in, in the bottom, and what we'll do
21 is there will be plywood exposed. But we will pan the
22 underneath with metal, and cut our duct out and seal the
23 side. We even nail boards into the sides and we seal
24 everything inside that so you can, you can see wood, but you
25 can see that it's sealed from underneath and then we cut our

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1 16-inch round duct out from underneath and tie it into the
2 system itself.

3 Q And are you generally familiar with mechanical codes?

4 A Yes, there's a lot to them. But when I have to look
5 something up, then I -- you've got to look it up. But I
6 know some of them. Not all of them.

7 Q You mean if you have to -- if you have a question, you
8 have to look at the book and---

9 A That's correct. If we question any job, if there's a
10 code question, we either call the code office or we look in
11 the book ourself and ask, and find out what we need to do.

12 Q And are you aware of any mechanical code that prohibits
13 exposed wood when you pan off of a return like this?

14 A No, because we did have an issue at one time where they
15 wanted everything metal, and then we got into it with the
16 codes office in Greenville, and that was -- it was done away
17 with so you could have exposed wood in a return situation.
18 Not a supply. Just in a return.

19 Q And, in any event, is that a fire code issue?

20 A No.

21 Q Okay. Now, did you talk to -- with Mrs. Long about any
22 sort of offer to replace her equipment if she wasn't happy?

23 A Yes, after we replaced the coil and service had been
24 out, now we're going into I guess it would be January '06.
25 I was coaching basketball at church and I received a phone

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1 call from Mrs. Long. So, I excused myself and went outside,
2 and then she started fussing at me again saying nothing's
3 right, you're making me sick, and all of this, and I said
4 well, I've got to talk to my boss and see what I can do. I
5 said you're getting past my point of authority here with
6 what I can offer you.

7 So, I, I remember calling Jerry. I said I need to
8 refund this lady her money. I said I'm asking you if I can.
9 I said we just -- I said it's got me upset. I said I can't
10 sleep. I don't know what's going on. I said she's just
11 chewing me out over stuff, and I said we -- I done
12 everything I can do to try to make her happy and she's not
13 happy.

14 Q And what did you do after that?

15 A I called, I called her and told her that we would
16 refund her her money. I told her she could have any other
17 company come back in and replace that equipment. I said
18 we'll even take it out for you or even give you your money
19 and you can get whoever you want to put it in, and get
20 somebody you're happy with. If you're not happy with Tuck &
21 Howell, be glad to, to, you know, just get this behind us.
22 We just want you to be happy and get this behind us.

23 She said no, nobody else will put it in for that price.
24 I said yeah, you got that right, and I said -- that's when I
25 told the owner of the company, I have to wash my -- I said

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By Mr. Harjehausen

1 you've got to handle it from this point on. I said, I'm,
2 I'm through. I don't know what else to do. So, that was my
3 last contact.

4 Q And ask you to take a look at Plaintiff's Exhibit 4,
5 and at the bottom there it's got a signature.

6 Do you recognize that signature?

7 A Yes, sir, it's Mr. Tuck.

8 Q And did he reiterate your offer to Mrs. Long to
9 replace, excuse me, to replace the equipment if, if she
10 wanted it from some third party?

11 A Yes, because I told them that there was no satisfying
12 her. We were past the point of any satisfying her at that
13 point. So, yes, he did make the offer to, to replace it or
14 to refund her her money back for replacement.

15 MR. HARJEHAUSEN: Your Honor, if I could have just a
16 moment?

17 (Pause.)

18 Q Mr. Cooper, you were in the courtroom and there was
19 some testimony apparently about or alleging some prior mold
20 in the home of Mrs. Long, and some remediation related to
21 that prior to Tuck & Howell's installation of the system, is
22 that right?

23 A Yes.

24 Q Did you have any knowledge about that?

25 A No, sir. If I had any knowledge that there's any

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By Mr. Harjehausen

1 condition conducive to mold in the home or had any problems
2 like that -- and I've run into this before. I've told them
3 they need to get a specialist to test it before we would
4 install any system. I would have, I would have turned the
5 job down is what I would have done.

6 Q Please answer any questions Mr. Bannister may have.

7 CROSS-EXAMINATION

8 BY MR. BANNISTER:

9 Q Did you ask if there'd been a mold problem of---

10 A No, sir.

11 Q ---the Longs?

12 So, it wasn't important enough to you to ask?

13 A No, sir.

14 Q Okay. Let me ask you about this air conditioning
15 system.

16 Is there any place that, that air is actually brought
17 into the system from outside other than I guess inside the
18 house when you open a window or open a door?

19 Does the system itself introduce any fresh air?

20 A You can, but that system did not.

21 Q Did not?

22 A No.

23 Q So, the only new air, for lack of a better term, would
24 be the air that would come in through the house, open door,
25 open window, whatever?

Scott Cooper - Cross-examination
By Mr. Bannister

1 A That's correct.

2 Q Okay. So, the air would basically be recirculated
3 throughout the house over and over again?

4 A That's correct.

5 Q And the air conditioning unit regulates, I guess by the
6 dip switch, how often it comes on and blows the air through
7 the house?

8 A No, sir, that's controlled by the thermostat, what you
9 set your temperature on and everyone's different. You can
10 keep it on 79 or 72.

11 Q All right. So, in order to adjust the heat, whatever
12 the heat is, it would come -- the air conditioning or the
13 heat, heat pump comes on to cool it to that desired
14 temperature or to heat it up to that desired temperature,
15 whatever it is?

16 A Yes, sir.

17 Q Now, when you, you got there at the house the first
18 time, initially, did you have to wait on the Longs to come
19 or were they already there?

20 A They were already there.

21 Q Did you have any problems with Mr. Long's hearing?

22 A They had mentioned I couldn't hear very well. I sat
23 right beside him on the couch.

24 Q Faced him?

25 Faced him?

Scott Cooper - Cross-examination
By Mr. Bannister

1 A Yes, right side-by-side.

2 Q Now, you say -- Mrs. Long met you there and then you
3 went back in the kitchen and you saw her washing some
4 produce?

5 A Yeah, there's a case opening between the doorway, and
6 as I'm sitting on the couch, I can see over my shoulder, as
7 I'm talking to Mr. Long, that she's washing -- I seen a milk
8 jug go into the sink and her wiping it off, and I seen a
9 couple of can items. I don't know actually what it was, it
10 was.

11 Q Okay. Are you sure that she was not washing those out
12 to recycle?

13 A No, cause she said she had just got back from the
14 grocery store.

15 Q She told you that?

16 A Yes.

17 Q All right. So -- and your conversation primarily was
18 with Mr. Long initially?

19 A Yes, that's correct.

20 Q Did you have to repeat it for her?

21 A She was listening and she would come in every once and
22 a while, and if she needed to make a statement or let me
23 know anything. But she was there. I mean she was, I would
24 say, eight feet from us.

25 Q Okay. All right. And the proposal that you made to

Scott Cooper - Cross-examination
By Mr. Bannister

1 her, remove existing air handler and heat pump, remove
2 existing return air ducts in crawl space and block off boots
3 with metal caps, now, the duct work that's under the house
4 is, if I understand you correctly, comes out -- when the
5 air's blowing out, you have duct work that takes it into the
6 house and then you have duct work then that returns it?

7 A That's correct.

8 Q Okay. And did you explain to the Longs the difference
9 between the return duct work and the -- I guess whatever you
10 call it, the supply --

11 A The supply.

12 Q -- supply duct work?

13 A Yes, because we talked about adding the central return,
14 and that's when I told her the, the return boots in each
15 bedroom that had individual returns, I said we would blank
16 those off and we would add a central return on there, and I
17 said if there's any air flow issues or -- and that's when
18 she had mentioned, when we brought J. P. out, or, or during
19 the sale about she -- the front bedroom needed more air
20 flow, and I said we can convert that one return into a
21 supply so you'll have more air in that bedroom.

22 Q So, you were going to -- some of the supply duct work,
23 you were changing that?

24 A No, we were just adding that one.

25 Q Don't you have to connect it to the other?

Scott Cooper - Cross-examination
By Mr. Bannister

1 A We were going to connect it to the, to the new unit at
2 the plenum and run it back.

3 Q Okay. And subsequently I believe you testified that
4 you did, in fact, take out a piece of the supply air duct?

5 A At the homeowner's request, yes.

6 Q So, you took that out and who took it out?
7 Did the other worker or did you take it out?

8 A J. P. took it out.

9 Q When you looked in it, what, what did you see inside?

10 A I seen grayish -- I don't know if it was mildew, mold.
11 I seen where water had been in there. It had streaked.
12 Water will dry in duct work as a white streak. So, you can
13 tell when water's ran in something. It dries white. And I
14 did see that and I did smell it. I did stick my face in
15 there.

16 Q Did it smell like mildew or---

17 A Mildew, musty, that's what it smelled like.

18 Q Mildew, musty?

19 A Yes.

20 Q And, so, that -- did -- Mrs. Long then insisted that be
21 taken out?

22 A Insisted the whole supply system be taken out.

23 Q And you agreed to do it?

24 A After I was pressed very hard, yes.

25 Q But you did agree?

Scott Cooper - Cross-examination
By Mr. Bannister

- 1 A Yes.
- 2 Q You put it in?
- 3 A Yes, sir.
- 4 Q So, the system had new duct work?
- 5 A Yes.
- 6 Q Correct?
- 7 A At Tuck & Howell's expense.
- 8 Q Both return and supply?
- 9 A Yes, sir.
- 10 Q That was all done by, by you at Tuck & Howell?
- 11 A Yes, sir.
- 12 Q So, any substance in there, mold or mildew smell, it
- 13 had been removed?
- 14 A That's correct.
- 15 Q You would have had a whole new---
- 16 A In the duct work, yes.
- 17 Q In the duct work?
- 18 A Just in the duct work.
- 19 Q Okay. Subsequently you also had Steamatic come out and
- 20 clean the new duct work?
- 21 This is about a year later?
- 22 A After the powder, yes, sir.
- 23 Q Okay. So, they did come out and they -- Steamatic did
- 24 clean it?
- 25 A Yes, sir.

Scott Cooper - Cross-examination
By Mr. Bannister

1 Q Did they do that at your direction?

2 A That's correct, yes.

3 Q All right. Now, the powder that was in there, the
4 stinky sock syndrome, that's a powder and a smell, as I
5 understand it, the, the stinky sock smell?

6 A Right. I didn't smell anything. I just seen the
7 powder.

8 Q Okay. But in any event, that's common in your industry
9 to have this smell?

10 A It's very uncommon for it to happen, but it does
11 happen. At Tuck & Howell, 43 years, I think we've had it
12 happen twice, three times at the max.

13 Q Okay. But it happened in this occasion?

14 A Yes, sir, it sure did.

15 Q And, so -- and, and you-all are aware that the stinky
16 sock syndrome is a smell?

17 A Yes, sir. Yes, sir.

18 Q It is a smell---

19 A It smells like a men's locker room, yes.

20 Q All right. But it's not mold.

21 A No, sir, it is not mold.

22 Q All right. And when Steamatic came out, are you
23 familiar with the term Micro---

24 A Microban.

25 Q ---Microban?

Scott Cooper - Cross-examination
By Mr. Bannister

1 Are you familiar with that term?

2 A Yes, I am familiar with that now, yes.

3 Q What, what, what do you understand it does?

4 A It's a preventative. We've had it where we've changed
5 systems out and it can be a preventative measure because if
6 there's mold in a system, it needs to be cleaned out. A --
7 Microban is a preventative to prevent that or kill any
8 spores that just might be in there for that.

9 Q Does the Stinky Sock Syndrome supply mold spores to
10 your knowledge?

11 MR. HARJEHAUSEN: Object, Your Honor. I don't know
12 the foundation has been established with this witness.

13 MR. BANNISTER: Well, I asked him if he knows.

14 Do you know if---

15 THE COURT: Is there any training, education, or
16 experience in it?

17 Q Have you had any training, education, or experience in
18 the Stinky Sock Syndrome?

19 A No, sir, that's the first and only time I've ever dealt
20 with it.

21 Q All right. Now, were you aware, at that point, that
22 the pump allegedly did not work and spilled water out into
23 the, overflowed into the basement, the crawl space?

24 A At that time I was not aware of any pump issue, no,
25 sir.

Scott Cooper - Cross-examination
By Mr. Bannister

1 Q All right. But, nevertheless, you had Steamatic out,
2 and that was at your direction, and they applied a
3 bacteria---

4 MR. HARJEHAUSEN: Object, Your Honor. I believe that
5 that mischaracterizes the testimony.

6 MR. BANNISTER: How does it mischaracterize it, Judge?

7 THE COURT: Well, I don't know.

8 Go ahead.

9 You can clean it up if you need to.

10 Q You directed or, or Steamatic treated this new duct
11 work, cause it's about a year old then, treated it for mold
12 as a preventative measure?

13 You say a preventative measure?

14 A No, because there was a note on what we had sent them
15 not to treat it because she was highly allergic to stuff.
16 So, we told them not to do that.

17 Q You told Steamatic not to treat it with this cleaning
18 agency?

19 A Yes, sir, just clean the ducts is all we wanted.

20 Q All right. And by cleaning them, you mean just to get
21 the powder out?

22 A Yes, just have a spiral brush that goes through and it
23 vacuums out the duct work, yes.

24 Q Now, was the white powder identified to you as aluminum
25 oxide?

Scott Cooper - Cross-examination
By Mr. Bannister

1 A Through a Trane representative.

2 Q So, the conversation that Mrs. Long testified she heard
3 was correct in that it was aluminum oxide coming off the
4 coils?

5 MR. HARJEHAUSEN: Objection, Your Honor.
6 Mischaracterize the testimony.

7 THE COURT: Overruled.

8 A Mrs. Long did not -- I don't know if she heard Glenn
9 Bell, but I relayed the message of what I was told from
10 Glenn Bell.

11 Q And that is the Stinky Sock Syndrome in the coils put
12 off aluminum oxide?

13 A Yes.

14 Q All right. In addition to a smell that you say you,
15 you didn't smell yourself?

16 A That's correct.

17 Q And despite the instructions from you not to use a
18 microbiology treatment, your understanding is, or from the
19 document, that the Stanley Steamer people -- I got that
20 wrong.

21 A Steamatic.

22 Q Steamatic people did clean it out with this mold
23 killer?

24 A Not on the signed proposal we have from Steamatic.

25 Q But all---

Scott Cooper - Cross-examination
By Mr. Bannister

1 A Mr. Long said that it was not to be used---

2 Q All right.

3 A ---from the client.

4 Q But you've seen the bill?

5 A I have not seen the piece, piece of paper.

6 Q All right. You heard the testimony that that's---

7 A I did hear testimony.

8 MR. HARJEHAUSEN: Objection, Your Honor. Foundation.

9 I don't think Mr. Bannister is established that he has any
10 knowledge about the Steamatic invoice that has been already
11 admitted into evidence.

12 MR. BANNISTER: I mean---

13 THE COURT: Well, he just testified he didn't have any
14 knowledge of it. He's not seen it I think is what he said.

15 Q All right. I'm going to show you Plaintiff's
16 Exhibit 2, and I want you to look at the second line up
17 there.

18 There's a charge I believe for -- can I point it out to
19 you?

20 A Oh, I see it. Yes, sir, I see it right here, the
21 second line down.

22 Q And what does it say?

23 A It says Microban application.

24 Q And that's the application for mold?

25 A Yes.

Scott Cooper - Cross-examination
By Mr. Bannister

1 Q Prevent mold---

2 A Yes.

3 Q ---or prevent whatever?

4 A Yes.

5 Q All right. So, is it fair to say, despite your
6 instructions, Steamatic treated the pipes for, with this
7 Microban application?

8 A By looking at that paper.

9 Q Okay. Now, you actually went into the house and you
10 saw this dust---

11 A Yes, sir.

12 Q ---dust complaint?

13 Was it colored white?

14 A Yes, it did have a whitish tint. It did look like
15 that, you know, like a coffee table looks after two or three
16 weeks of not dusting or something. It just had like a
17 little film on it from what I seen.

18 Q All right. And you also went to the register where the
19 air blows out?

20 A I went to one register in that same room, yes, sir.

21 Q And that -- you saw the dust in front of the register?

22 A Yes, sir.

23 Q No question it came from the air conditioning in your
24 mind?

25 A At that point I didn't know, at that time, until I

Scott Cooper - Cross-examination
By Mr. Bannister

1 talked to Glenn Bell, and then there was no question in my
2 mind it came from---

3 Q Came from the air handler?

4 A Came out of the air handler, yes.

5 Q Okay. And this would have been about a year?

6 A A year -- it's about a year after.

7 Q A year after---

8 A A year after we installed it.

9 Q And, so, if the air conditioner had been blowing, it
10 had been blowing that out, it had been blowing it out for
11 approximately a year?

12 A Yeah. But I would think you would see a lot more of
13 it, but I don't know anything -- I didn't know anything
14 about it. So, I don't know, yes, sir, if it did that.

15 Q Okay. But if it didn't clean it up you would?

16 A That's right.

17 Q So, it's quite possible that the air conditioning unit
18 had been circulating this aluminum oxide throughout the
19 house, depending on the heat and how often it came on, for
20 approximately a year?

21 A If it started right after we installed it, then
22 absolutely it's possible.

23 Q All right. Now, the freon leaks -- the leaks that,
24 that, of freon, you said one of them was outside the unit?

25 A Yes.

Scott Cooper - Cross-examination
By Mr. Bannister

1 Q One was in the crawl space, but it was outside?

2 A One was, yes, sir.

3 Q All right. And the others were, I assume, inside under
4 the crawl space?

5 A The one other was in, in the new coated coil from the
6 manufacturer that had to be fixed.

7 Q Okay. So, the freon leak occurred after the coil was
8 replaced to your knowledge?

9 A That's correct. After my knowledge, yes.

10 Q All right.

11 A Usually service handles those things.

12 Q And did you know, know specifically where the leak was?

13 A No, sir, I just know service was contacted to go fix
14 the leak, and I was informed, but I didn't go out there.
15 Service went to fix it.

16 Q Okay.

17 A I just let them handle it.

18 Q And, so, the freon leak, if I understood your
19 testimony, could not get into the air flow system?

20 A It's according to where it is. I mean there is a
21 possibility---

22 Q But it could---

23 A Because the coils leak from the inside when they
24 develop little holes sometimes. We run across this
25 frequently with homes that need to be replaced. The coils

Scott Cooper - Cross-examination
By Mr. Bannister

1 can develop a pin hole or leak from the inside. So, yes, it
2 can get in the house.

3 Q All right. So, it could leak and get into the air
4 flow?

5 A Yea.

6 Q And, if so, it would have been blown through the house
7 every time the air changer comes on and it just blows it
8 through there?

9 A Yes, but you would notice it quickly because the unit
10 would freeze. It would ice up when it gets too low.

11 Q Okay. Depending on, on how fast it leaks?

12 A That's correct.

13 Q All right. Now, the water, and you demonstrated the
14 pump here, the water -- if the pump doesn't work, for
15 whatever reason, and the water flows over into the crawl
16 space, into the ground, and that's moisture in there?

17 A Yes, sir.

18 Q Now, did you -- after you went back out there, did you
19 inspect the duct work to see if you could find any places
20 where the duct work could allow the introduction of air
21 under the crawl space into it?

22 A When I -- are you talking about the time I talked, when
23 I talked to Glenn Bell and seen the powder?

24 Q Before that, yes.

25 A Before that I crawled underneath the house when J. P.

Scott Cooper - Cross-examination
By Mr. Bannister

1 finished the job to collect the job. Again, I crawled
2 underneath the house and looked at the system installed with
3 it running to make sure everything was working and then went
4 into the home with the homeowner. I was probably under
5 there two minutes.

6 Q So, two minutes you, you---

7 A That was in the wintertime. So, the pump doesn't
8 drain---

9 Q All right. And then that was the last time you saw it,
10 the last time you went under and inspected it?

11 A Until a year later.

12 Q Until a year later.

13 And, at that time, did you inspect the duct work again?

14 A I looked under the crawl space. I didn't look, open
15 the unit or look in the duct work, but I did look in the
16 crawl space around the unit.

17 Q And if there were some misconnections in the duct work,
18 particularly on the, on the return side or the supply side,
19 it could introduce air into the house from in the inside
20 crawl space?

21 A If there's a crack, yes.

22 Q All right.

23 A I mean if it is not, yeah.

24 Q All right. And did you ever check -- and if I
25 understand you correctly, you're not telling us that Mr.

Scott Cooper - Cross-examination
By Mr. Bannister

1 Burton didn't find the pump miswired?

2 A I'm not saying he did.

3 MR. HARJEHAUSEN: Objection, Your Honor. Foundation.

4 Q Well, you heard Mr. Burton's testimony?

5 A Oh, I heard it, but I didn't -- never did check the
6 outlet to see how it was wired. I don't---

7 Q Okay. So---

8 A I know it was working when I was there---

9 Q All right. Do you remember---

10 A ---a year later.

11 Q ---whether the light switch was on or off?

12 A I turned it on when I go under there and turned it off
13 when I leave. So, yeah, you know---

14 Q So, you don't have---

15 A Right.

16 Q You don't have any personal knowledge about that?

17 A I don't know.

18 MR. BANNISTER: All right. Judge, I have a matter I'd
19 like to approach the bench with.

20 THE COURT: Okay.

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

24 THE COURT: All right. Let me ask the jury to please
25 go to your jury room. I'll address this issue and bring

Scott Cooper - Cross-examination
By Mr. Bannister

1 you back in a few minutes.

2 (WHEREUPON, the following takes place outside the
3 presence of the jury.)

4 THE COURT: All right. Mr. Bannister.

5 MR. BANNISTER: Judge, you previously ruled we could
6 not bring up Tuck & Howell's complaint or the complaint
7 lodged against them in Columbia and any admission on their
8 part, and I, I propose that he opened the door by saying
9 that they had gotten some awards in Greenville County and
10 was talking about the code kind of as a character reference
11 to how good Tuck & Howell performed. I think he's opened
12 the door for me to ask him if he's aware that a complaint
13 was logged, was found, was filed and they admitted that
14 they didn't get a permit.

15 THE COURT: Okay.

16 MR. WALSH: Do you prefer Mr. Harjehausen address
17 that?

18 THE COURT: I don't care.

19 MR. WALSH: Your Honor, I don't see how some
20 administrative matter involving the license -- again, we
21 argued this earlier in the case. It establishes no duty.
22 I don't see how talking about some Better Business Bureau
23 awards opens the door to something and creates a legal duty
24 and there's no legal significance.

25 THE COURT: I don't believe that any door has been

Scott Cooper - Cross-examination
By Mr. Bannister

1 opened. But even if, even if it had been, the fact of
2 whether or not they had a license has nothing to do with
3 the allegations in this case.

4 MR. BANNISTER: Right. That's just a permit.

5 THE COURT: Excuse me. Permit.

6 All right. It has nothing to do with the allegations
7 in this case. So, I'm not going to permit it.

8 MR. BANNISTER: All right.

9 THE COURT: Okay. Let's take 15 minutes.

10 Let me ask the witness if you'll step down. Don't
11 discuss your testimony during the break because you're
12 still on the witness stand.

13 THE WITNESS: Yes, sir.

14 THE COURT: We'll take 15 minutes.

15 (Whereupon, a recess was taken.)

16 THE COURT: Are y'all going to use that equipment
17 again?

18 MR. HARJEHAUSEN: No, we can move it out of the way,
19 Your Honor.

20 THE COURT: All right. Be careful of the water.

21 All right. Are we ready for the jury?

22 MR. BANNISTER: Yes, sir.

23 THE COURT: Bring them in please.

24 (WHEREUPON, the following takes place in the presence
25 of the jury.)

Scott Cooper - Cross-examination
By Mr. Bannister

1 THE COURT: Mr. Bannister.

2 MR. BANNISTER: That's all I have for him, Your Honor.

3 MR. HARJEHAUSEN: Your Honor, a couple of questions on
4 redirect?

5 THE COURT: Yes, sir.

6 REDIRECT EXAMINATION

7 BY MR. HARJEHAUSEN:

8 Q Mr. Cooper, you were asked about when you went out to
9 the Long's home, and, and then some follow-up with Mr. Glenn
10 Bell at -- is that -- do you recall that testimony?

11 A Yes.

12 Q Okay. Did Glenn Bell ever come out, as far as you
13 know, to the Long's house?

14 A No.

15 Q Okay. And as far as -- all you did was report Glenn
16 Bell, what he said to the, the Longs?

17 A He told me what to do to resolve the situation. Fill
18 the form out and replace the coil.

19 Q Okay. As far as you know that's what was done?

20 A Yes, sir.

21 Q All right. You were asked a couple other questions
22 about Steomatic, and I want to ask you some questions about
23 that. I just need to find the exhibit.

24 A There's some here.

25 Q All right. That's not it.

1 while I'm looking for that, let me ask you, were you
2 the one that called Steamatic?

3 A No, sir.

4 Q Okay. Let me show you this document, which has already
5 been admitted into evidence as Defendant's Exhibit 20, and
6 ask you to take a look at the writing on that and see if you
7 recognize that writing.

8 A Yes, sir, that's Jerry Tuck's handwriting.

9 Q Okay. And there's a signature on there, is that right?

10 A Yes.

11 Q And, and based on your work experience with Mr. Tuck,
12 is that his signature?

13 A Yes, it is.

14 Q Okay. And, and does that appear to be a, a letter that
15 he sent to Steamatic or a note sent to Steamatic?

16 A Yes, sir, it looks like it would have been faxed over
17 to him.

18 Q Okay. And what does it say about their -- about
19 cleaning the ducts?

20 A It says please clean duct and fan coil. Send Tuck &
21 Howell the bill.

22 Q All right. Let me ask you if you have seen this
23 document before.

24 A Yes, this one I have seen.

25 Q Okay. And what is that?

Scott Cooper - Redirect examination
By Mr. Harjehausen

1 A It is from Steamatic of Greenville, and it's got the
2 homeowner's name and address, and there's been a post-it
3 note stuck to it.

4 Q Okay. Where have you seen that document?

5 A In our office.

6 Q Okay. And what does the post-it note say?

7 A It says do not use Microban duct seal. Customer has
8 white gray material in the duct.

9 Q Okay. And on the top of that document, what does the
10 header say?

11 A Steamatic of Greater Greenville.

12 Q And is there a, is there a signature on that document?

13 A It does have Ray Long's signature.

14 Q Well, based on that document, do you have an
15 understanding as to whether or not Microban was used?

16 A My understanding, it was not used.

17 MR. HARJEHAUSEN: No other questions, Your Honor.

18 RECROSS-EXAMINATION

19 BY MR. BANNISTER:

20 THE COURT: Is that document---

21 Q Is that the document you received---

22 THE COURT: Excuse me.

23 Is this document an exhibit?

24 MR. HARJEHAUSEN: I do not believe that's been marked
25 as an exhibit, Your Honor.

Scott Cooper - Recross examination
By Mr. Bannister

1 MR. BANNISTER: Give me one minute.

2 (Pause.)

3 MR. BANNISTER: Your Honor, we would offer this into
4 evidence.

5 THE COURT: Okay. No objection?

6 MR. WALSH: No objection, Your Honor.

7 THE COURT: It's admitted.

8 (WHEREUPON, the bill was marked as Plaintiff's Exhibit
9 No. 7 and received into evidence at this time.)

10 Q You have been questioned about Exhibit 7, which had a
11 sticky note.

12 I wanted to ask you, the customer's authorization was
13 Mr. Long according to the document?

14 A According to the document, yes, sir.

15 Q Okay. And it says do not uses Microban. Customer has
16 a white gritty material in the duct work. Microban or duct
17 seal. Customer has a white gray material in the duct work.

18 This document came with that note on it?

19 A I don't know who wrote the note on it. I just informed
20 my owner, Jerry Tuck, that she had allergies, that she was
21 allergic to dust and all, and that, you know, I don't know
22 from that point if they decided not to use that or what. I
23 was involved in that part of it.

24 Q Okay. And I'm gonna show you Plaintiff's Exhibit 2,
25 which shows Microban, \$442.50, and that's the bill, duct

Scott Cooper - Recross examination
By Mr. Bannister

1 work.

2 A Yes, sir.

3 Q Okay.

4 A I see that.

5 Q So, let me understand, Mr., Mr. Long would be the
6 customer.

7 He would have been the person, the homeowner?

8 A Yes, sir.

9 Q He authorized the treatment?

10 A Yes, sir.

11 Q And he said don't use Microban or Pack Seal. Customer,
12 I assume he's referring to himself as the customer, or Mary
13 Long---

14 A Yes.

15 Q ---as a substance.

16 All right. And then says on here---

17 A Count all openings.

18 Q Office will---

19 A Price out.

20 Q Count all openings.

21 A That's the supply and return openings of that's --
22 what they would -- that's how they price a job per opening.

23 Q All right. So, this would have been something Mr. Long
24 put on there?

25 A No, sir, that would have been from Steamatic.

Scott Cooper - Recross examination
By Mr. Bannister

1 Q Okay.

2 A That would have been directed from the client or
3 someone at Steamatic.

4 Q And you worked with Steamatic before?

5 A Yes, sir.

6 Q All right. So, are you -- you, you're not telling me
7 that Steamatic did not use Microban and charge Tuck & Howell
8 for it?

9 A My knowledge of that is just that one piece of paper is
10 all I know the whole job as far as Steamatic being involved.

11 Q So, you can't, you can't tell the jury whether
12 Steamatic, whether Steamatic -- all you know is that
13 document shows they charged you for it?

14 A Yeah, I can't, I can't say whether they did. I just go
15 by the paper.

16 Q You don't know whether they did or not?

17 A That's correct.

18 Q But they were instructed apparently not to because of
19 the gray material in the duct work?

20 A Yes.

21 Q Okay.

22 A Yes.

23 Q All right. That's all. Thank you.

24 MR. HARJEHAUSEN: No other questions, Your Honor.

25 THE COURT: You may step down.

J. P. McConnell - Direct examination
By Mr. Harjehausen

1 MR. HARJEHAUSEN: Your Honor, if it please the Court.
2 we'd like to call our next witness, Mr. J. P.
3 McConnell.

4 J. P. MCCONNELL, having been first
5 duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MR. HARJEHAUSEN:

8 Q Good afternoon, Mr. McConnell.

9 Before we get started, a lot of people refer to you as
10 J. P. McConnell.

11 Can you tell us your full name please?

12 A James Perry McConnell.

13 Q Okay. But you tend to go by J. P.?

14 A Yes, sir.

15 Q Where are you employed?

16 A Currently listed as disabled.

17 Q Okay. And can you briefly tell the, the jury what is
18 the nature of the disability or---

19 A I was in a car accident and sustained a spinal cord
20 injury and still have neurology issues from my shoulders
21 down.

22 Q Okay. And before that incident occurred, where were
23 you working?

24 A At Tuck & Howell.

25 Q Okay. And in what occupation or capacity?

1 A I was a job foreman in the residential department
2 installing heating and air conditioning.

3 Q How long had you worked -- how long, before you left
4 Tuck & Howell, did you work for them?

5 A I was with Tuck & Howell approximately -- between seven
6 and eight years.

7 Q And can you tell the jury a little bit about your
8 education, background, or training with regard to
9 H. V. A. C. systems?

10 A I was first employed by Baldwin Heating & Air out of
11 Belton, South Carolina, Honea Path. Worked with them for
12 quite some time. I had ran industrial duct work with a
13 sheet metal company prior to coming to residential heating
14 and air conditioning.

15 while employed with Baldwin Heating & Air I was taught
16 residential practices as far as installing. After a period
17 of time with him he was kind of downsizing, getting out of
18 the install of heating and air conditioning. So, I actually
19 bought him out and started up my own company in Anderson,
20 South Carolina, and was self-employed for several years
21 until I went through a divorce, and when I moved to
22 Spartanburg, I was -- I become employed through Tuck &
23 Howell.

24 Q Okay. Approximately when did you start working for
25 Tuck & Howell?

J. P. McConnell - Direct examination
By Mr. Harjehausen

1 A Not real sure of the year. 2003 maybe.

2 Q Okay. But it's your recollection you worked for them
3 for seven or eight years?

4 A Between seven and eight, yes, sir.

5 Q And over those years, how many residential H. V. A. C.
6 systems have you installed?

7 A Many. Quite a few. I mean we, we averaged several
8 units in a, in a month time. So, I mean probably -- over
9 that period you're probably looking at a hundred.

10 Q Okay. Can you tell me how you first came to meet or
11 come in contact with the Longs?

12 A Yes, sir. When I arrived to work that morning -- Scott
13 Cooper is my supervisor. They come to us and tell us what,
14 what they have lined up for us for the day. He told me --
15 he showed me the job folder, went over the, all the
16 information that was gonna be involved, what we was
17 installing, what we were to do, what was included, and give
18 me directions to the home, make sure I knew where I was
19 going, the list of everything I needed, and we -- when we
20 were loaded up, he instructed me to go on out to the job
21 site and get started, and then he would follow me out as
22 soon as he got cleared up at the office.

23 Q So, when you went out to the job site, did you meet
24 Mr. or Mrs. Long?

25 A Yes, sir, whenever we arrived to a job site, while my

1 helpers are unloading the truck, getting everything ready to
2 start work, I typically go in and introduce myself to the
3 homeowners, let them know what we're about to start doing,
4 if they have any concerns that I need to address before we
5 begin.

6 Q Okay. And did the Longs express any concerns to you
7 before you began?

8 A The only real concern at that time when I first arrived
9 was the fact that we were gonna be -- I had explained to
10 them that we would be in and out of the house a little bit
11 to start installing the central return in the hallway in
12 their home, and due to the fact that she had allergies, we
13 needed to protect the -- keep the dust confined and make
14 every effort we could to get it cleaned up and be as neat as
15 possible with it.

16 Q Okay. And what did you do in order to, you know,
17 confine the area where you were gonna cut out the area for
18 the return duct?

19 A We always take in rolls of plastic with us, and
20 generally we just lay the plastic down so we don't get
21 anything on the carpet, cover everything in plastic while
22 we're doing the cutting, and then we kind of clean up after
23 ourselves. Since she did voice that she had bad allergies,
24 what we actually done was I created a tent of plastic around
25 me and confined myself to that one section of wall in the

1 hallway. That way anything -- we take the plastic up on the
2 walls from ceiling to floor, cover the floor, and that way
3 any dust would stay right there with me.

4 Q And when you say, you refer to she, I assume you're
5 referring to Mrs. Long, is that right?

6 A Yes, sir.

7 Q Can you tell us what you recall about the conversation
8 where she was informing you about allergies?

9 A That she had really, really bad allergies and we were
10 actually standing in the hallway at that point cause I was,
11 I was kind of showing her what I would do to protect the
12 home and to keep her free of the dust. We were standing in
13 the hallway, and I was, I was showing her everything and she
14 was telling me that she was allergic to, you know, dust and
15 mold and mildew, and, you know, she just kept naming off
16 things she was allergic to.

17 She had her -- like a Terry cloth towel around her
18 hair, and said that she washed her hair several times a day
19 because she was allergic to the dander in her hair. It
20 would cause her to have issues. So, I told her, I said
21 well, we will make every effort to protect you from anything
22 we're gonna, we're gonna do here.

23 Q Now, you were responsible for installing the system in,
24 underneath her crawl space, is that right?

25 A Yes, sir.

1 Q Can you tell the jury how that's wired?

2 Was there, was there power down in the crawl space?

3 A Yes, sir, the power was there already.

4 Q Okay. And so far as wiring the system, tell the jury
5 about your role in wiring it.

6 A We -- our, our role is, is the wires -- the wiring is
7 existing. As long as it is up to code, size wise, fuse
8 wise, we just take the existing wire, put it into our unit
9 and make the connections inside the unit as far as high
10 voltage. We connect our low voltage, the low voltage
11 wiring. We connect it to the terminals inside the units.

12 Q Okay. And how about like the condensate pump, how is
13 that wired?

14 A The condensate pump itself comes with a plug in perk --
15 you have to plug it into a receptacle.

16 Q Okay. And when you went to install it, was there a
17 receptacle there?

18 A No, sir.

19 Q Who installed the receptacle?

20 A I did.

21 Q Okay. And was there a light switch there?

22 A No, sir.

23 Q And who installed that?

24 A I did.

25 Q And tell me how you do that to make sure the power's

1 running to the condensate pump.

2 A The way I have always done it in my career, you -- we
3 bring the power -- just to, just to kind of understand a
4 little of the electricity part of it, the outlet has to
5 always have voltage on it. So, we bring power to the
6 receptacle, and leave the receptacle and go to a light
7 switch that controls a light by the unit, which is a service
8 light so we can have light while we're in there working.
9 So, you go from the power source to the receptacle, from the
10 receptacle -- from the receptacle to the switch, and then
11 leave the switch to the light.

12 Q And what is your recollection about whether you
13 properly wired that system in Mrs. Long's house?

14 A It was properly done.

15 Q Now, I think you, you were in the courtroom here and
16 heard some testimony from Mr. Cooper about, assuming
17 hypothetically that the condensate pump is not wired or that
18 the condensate pump malfunctions or, for whatever reason
19 it's not working.

20 In your experience, what happens to water that, that
21 collects in the condensate pan?

22 A If the pump doesn't come on for any, any reason, it
23 just flows out of the pump onto the ground.

24 Q It doesn't back up into the pan?

25 A No, sir.

1 Q Now, when you were doing the installation, did, did you
2 remove any of the existing ducts before you did the
3 installation?

4 A When we were tearing out the old equipment, during
5 that, during that time, sometime during that morning, Scott
6 had come by just to kind of check on everything, and through
7 a conversation with the homeowners, Mr. and Mrs. Long, an
8 issue was brought up that something, something had
9 overflowed or somehow water had gotten down into a piece of
10 duct work, and we were asked to check on that, and, and to,
11 to see what the condition of the duct was.

12 Q Okay. And did you have any role in looking at that
13 duct?

14 A Yes, sir, I actually did not get to it that day. So,
15 the, the next day when we -- when I went out, I personally
16 crawled back and disconnected that duct to, to check inside
17 of it.

18 Q Okay. And did you bring it outside of the crawl space?

19 A Yes, sir.

20 Q And what happened after that?

21 A I brought it out the crawl space, looked at it,
22 determined that it needed to be replaced, in my opinion, and
23 I had already been authorized, if I thought it needed to be
24 replaced, to replace that section of duct.

25 Q Okay. Was Mr. or Mrs. Long present when that duct was

1 outside?

2 A When I first brought it out Mr. Long was sitting at a
3 patio table there in close proximity to where we were at. I
4 don't remember exactly how many feet away, but he was
5 sitting out there. We had actually chitchatted back and
6 forth, and then after I had brought it out and it was laying
7 out in the yard, Mrs. Long actually come outside and looked
8 at the duct.

9 Q Okay. And when she looked at the duct or what did she
10 do when she looked at the duct?

11 A She asked was this the duct that had gotten wet. I
12 said yes, ma'am, I said we're gonna go ahead and replace
13 that duct. In my opinion, it, it needs to be changed, and
14 she picked up the end of it and looked in it with her face
15 just inches from the duct and her, her response was Ray,
16 we've got problems. She repeated that, Ray, we've got
17 problems, we've got mold.

18 Q And did you have any sort of conversation with her
19 about other ducts or the entire duct system?

20 A Once she looked at the duct and, and decided for
21 herself that it was mold and voiced her opinion, I told her,
22 I said well, I'm gonna replace it. So, you don't have to --
23 you know, there's no worry. It's gonna have a new piece of
24 duct there. She said no, no, no, you have to change all my
25 duct. All my ducts got to be ripped out. I want it all

1 changed, and I told her, I said, ma'am, I'm -- that's not
2 what we had quoted to do. I can't just change your duct.

3 She said no, it's gonna be changed. You have to. I, I
4 told her, I said, I tell you what, I said let me call my
5 supervisor. I cannot make that call. He'll have to, he'll
6 have to come out and address that issue.

7 Q What was her demeanor when, when she said these things?

8 A She was highly upset. Highly upset.

9 Q And after this conversation, who did you -- how did
10 you -- what did you do after that?

11 A After my conversation with her, I went ahead and got on
12 the phone and called Scott, and told him look, you need to
13 come out here. We've got an issue that you're gonna have to
14 fix, I can't do it, and I told him that she wanted her ducts
15 replaced. He said all right, I'll be there in, just as
16 quick as I can get there. And, so -- and I told Mrs. Long.
17 I said Scott's on his way. He'll discuss it with you,
18 and -- but until he gets here, I'm gonna go ahead and go
19 about putting in your system.

20 Q And at some point were you instructed to replace all
21 the ducts?

22 A Yes, sir, when Scott arrived, him and the homeowners
23 talked. There again, I had went back to installing the new
24 system and he called me out there and told me look, just
25 replace all -- we're gonna replace all of the ducts. So, he

J. P. McConnell - Direct examination
By Mr. Harjehausen

1 was gonna have a -- have someone bring me some duct and try
2 to get me some more help out there so we can go ahead and
3 get it done as quickly as possible. But he instructed me to
4 go ahead and start tearing out the rest of the duct work.

5 Q And I think there's been some testimony about it, but
6 when -- what, what do you call this piece of equipment?

7 A An air handler.

8 Q When the air handler is installed underneath -- a new
9 air handler is installed underneath, is it a single piece of
10 equipment?

11 A Yes, sir.

12 Q It comes as one box?

13 A Yes, sir.

14 Q The coil's already part of it when it comes from the
15 manufacturer?

16 A Yes, sir.

17 Q So, did you have any role, when you installed this air
18 handler underneath or the air handler that was installed
19 underneath Mrs. Long's house, did you have any role or do
20 anything with the coil?

21 You didn't install a new coil or anything like that,
22 did you?

23 A No, sir.

24 MR. HARJEHAUSEN: One moment, Your Honor.

25 (Pause.)

1 MR. HARJEHAUSEN: No more questions, Your Honor.
2 Please answer any questions Mr. Bannister has for you, sir.

3 CROSS-EXAMINATION

4 BY MR. BANNISTER:

5 Q J. P., what do you -- how did you learn, when you first
6 got there, that Mrs. Long had severe allergies?

7 Were you told that by somebody or did you -- or did she
8 tell you?

9 A Mrs. Long was telling me that she was, she had severe
10 allergies.

11 Q Okay. And, and you did not know it until she told you?

12 A No, sir.

13 Q All right. So -- and she specifically said she had
14 allergies, she was -- that were affected by mold, mildew,
15 dust?

16 A Yes, sir.

17 Q Okay. Okay. So, you took cautions not to cause those
18 things to occur inside the house?

19 A Yeah, we took precautions to keep the dust out.

20 Q All right. Now, you said that you were authorized to
21 take out a piece of the duct work.

22 Who authorized you to do that?

23 A Scott Cooper did after the request from Mrs. Long that
24 we checked that duct.

25 Q Okay. And was there any other -- any specific thing,

J. P. McConnell - Cross-examination
By Mr. Bannister

1 just moisture or powder, that, that you were checking for in
2 that piece of duct work?

3 A When we're asked to check a piece of duct, we, we
4 generally -- what we're looking for is any debris inside the
5 duct showing age. Whether it be, you know, I'm no expert,
6 but if it looks dirty, nasty, there again, if it looks like
7 it's had water inside of it, generally we'll go ahead and
8 replace that section to, to put a new piece in it.

9 Q All right. But that was approved by Scott Cooper?
10 He told you to go ahead and take it out---

11 A Yes, sir.

12 Q ---or take it out?

13 A Yes, sir.

14 Q And you looked in it and you saw some foreign substance
15 in there, and Mrs. Long looked in it and saw some foreign
16 substance?

17 A Yes, sir.

18 Q Did, did anybody, to your knowledge, tell her that the
19 additional duct work would be a change order---

20 A The---

21 Q A change order?

22 A What additional duct work?

23 Q The, the supply duct work would be a change order.

24 A The one that we pulled out?

25 Q Right.

J. P. McConnell - Cross-examination
By Mr. Bannister

1 A Not to my knowledge.

2 Q You, you're familiar with the term change order?

3 A Yes, sir.

4 Q And that's when a customer adds something to the
5 contract?

6 A Yes, sir.

7 Q And he has to pay for it?

8 A Yes, sir.

9 Q All right. And that was not done in this case to your
10 knowledge?

11 A Not to my knowledge.

12 Q Okay. All right. Now, the -- when Mrs. Long looked in
13 the duct work, she said Ray, we've got a problem, and she
14 was highly upset?

15 A Yes, sir.

16 Q And then y'all did change out all of the duct work?

17 A Yes, sir, at a -- later or some time later after Scott
18 Cooper's discussion with the Longs I was instructed to
19 change the duct work out.

20 Q All right. Now, let me go to the switch with the pump
21 on the air conditioner.

22 A Okay.

23 Q Was there a light already in the crawl space?

24 A No, sir.

25 Q There was no light there at all?

J. P. McConnell - Cross-examination
By Mr. Bannister

1 A No, sir.

2 Q When you installed the light, did you put a switch on
3 it to turn the light off?

4 A Yes, sir.

5 Q So, did you have a switch to turn the light off as you
6 go under the, into the crawl space?

7 A Yes, sir, as soon as you open the crawl space door the
8 switch is there.

9 Q All right. And that's the -- you ran that power
10 source, I guess, from outside or somewhere?

11 A I don't recall exactly where we got the power source
12 from, but, yes, sir, we, we powered it from a, a 110-volt
13 source.

14 Q Through the light switch, cut the light on in the crawl
15 space on and off, and then over to your heat exchanger or,
16 or to your pump?

17 A No, sir.

18 Q Did not go to the pump?

19 A Not in that order, no, sir.

20 Q Okay. Well, I'm sorry. I misunderstood how you did
21 it.

22 So, you're coming outside. I assume it goes to the
23 light switch first?

24 A No, sir.

25 Q It does not?

J. P. McConnell - Cross-examination
By Mr. Bannister

1 A No, sir.

2 Q It goes some other direction?

3 A You come from the power source and it goes to the
4 receptacle.

5 Q On the pump?

6 A Which is over by, at the unit where the, where the
7 pump's located.

8 Q All right. So, then the pump is hooked up to that
9 power source?

10 A Yes, sir.

11 Q Was that power source then continued on to the light
12 switch?

13 A Yes, sir.

14 Q All right. So, the light switch and the power source
15 ultimately are on the same current?

16 A The light switch is being powered by the receptacle.

17 Q That comes in?

18 A Yes, sir.

19 Q All right. Did you ever test it?

20 Did you ever cut the light switch off and then go and
21 check the pump to see if it was getting source?

22 A Not that I recall.

23 Q Okay. I think -- that's all I have. Just give me one
24 second.

25 (Pause.)

1 MR. HARJEHAUSEN: No questions, Your Honor.

2 MR. WALSH: Your Honor, may we approach?

3 MR. BANNISTER: No questions.

4 THE COURT: Okay.

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

8 THE COURT: All right. Anything further from this
9 witness?

10 MR. HARJEHAUSEN: No, Your Honor.

11 THE COURT: All right. You may step down.

12 I've got one matter I'll need to address outside of
13 your presence. So, please go to your jury room. Don't yet
14 discuss the case. I'll bring you back in just a few
15 minutes.

16 (WHEREUPON, the following takes place outside the
17 presence of the jury.)

18 THE COURT: You need ten minutes?

19 MR. WALSH: Five is fine, Your Honor.

20 THE COURT: Okay. Five minutes.

21 (Whereupon, a recess was taken.)

22 THE COURT: Okay.

23 MR. WALSH: Your Honor, the defense rests.

24 THE COURT: Okay. Is there any reply?

25 MR. BANNISTER: Just briefly.

1 THE COURT: Okay.

2 MR. WALSH: Your Honor, may I inquire what the, who
3 the witness basically will be?

4 MR. BANNISTER: Mrs. Long, just briefly.

5 MR. WALSH: And I would ask that -- it would seem to
6 me that she was on the stand for hours and hours, and I
7 don't know that, unless there's some very limited thing
8 that she's gonna talk about, she had a full opportunity to
9 --.

10 THE COURT: Well, it's, it's reply.

11 MR. WALSH: Well, I realize. I just didn't want to
12 get into another long, you know, protracted situation. So,
13 if it's limited, then --.

14 MR. BANNISTER: Judge, I'll make it as absolutely
15 limited as I can. Just a, just a very few questions.

16 THE COURT: Okay. Bring the jury in please.

17 (WHEREUPON, the following takes place in the presence
18 of the jury.)

19 THE COURT: Anything further on behalf of the
20 defendant?

21 MR. WALSH: No, Your Honor. The defense rests.

22 THE COURT: Any reply, Mr. Bannister?

23 MR. BANNISTER: Just briefly, Your Honor.

24 We would call Mrs. Long on just a couple of matters.

25 THE COURT: Mrs. Long, you have already previously

Mary Long - Direct examination
By Mr. Bannister

1 been placed under oath.

2 THE WITNESS: Yes, sir.

3 THE COURT: You're still under oath now.

4 THE WITNESS: Okay.

5 MARY LONG, having been previously
6 sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. BANNISTER:

9 Q Mrs. Long, the time that you first contacted Tuck &
10 Howell to place the air -- the heat pump under your house,
11 was there a light source under the house?

12 A Yes, sir, it's been there since the day it was built.

13 Q All right.

14 A You couldn't go under there and work if there wasn't.

15 Q Now, just---

16 A Okay.

17 Q Very briefly.

18 when the original heat pump was put in in 2004, was all
19 of the duct work replaced at that time?

20 A Eventually, yes.

21 But you mean like when they first started?

22 Q In the initial installation of the heat pump by Tuck &
23 Howell, was all your duct work replaced?

24 A Yes, sir.

25 Q All right. At that time was any duct -- your old duct

Mary Long - Direct examination
By Mr. Bannister

1 cut out and shown to you at that time?

2 A No, sir.

3 Q All right. After the problems occurred a year later
4 and Tuck & Howell came back out, was a piece of the duct
5 work that was put in by Tuck & Howell then cut out?

6 A Yes, sir.

7 Q And that's -- did you look at that duct work?

8 A Yes, sir, J. P. McConnell told Ray to come and get me,
9 he wanted to show it to me.

10 Q That's the duct work that was replaced in 2004 by Tuck
11 & Howell?

12 A Yes, sir, that's the one that had the powder and all in
13 it.

14 Q All right. And as a result of that piece of duct work
15 being cut out, was that when Steamatic came in and vacuumed
16 out the duct work?

17 A Yes, sir.

18 Q All right. And that would be in 2005?

19 A No -- yes, sir. I'm sorry.

20 Q 2005?

21 A Yes, sir.

22 Q All right. That's all the questions I have for you.

23 CROSS-EXAMINATION

24 BY MR. WALSH:

25 Q Mrs. Long, you were not under the house when Mr.

Mary Long - Cross-examination
By Mr. Walsh

1 McConnell did his work, were you?

2 A No, sir.

3 Q So, what he did or didn't do, you have no personal
4 knowledge of, do you?

5 A Yes, sir.

6 Q Okay. And---

7 A I mean yes, sir, I do. We went and looked under the
8 house.

9 Q Okay.

10 A My husband and I did.

11 Q Do you have any training in electricity, in electrical
12 installation?

13 A No.

14 Q No.

15 Okay. So, you weren't there when he did his
16 installations, his connections, and his wiring?

17 You weren't under there next to him watching, were you?

18 A Well, there wasn't any need for him to put a light
19 under there because the light was already there, sir.

20 Q That really wasn't my question.

21 My question was you weren't under there when he did his
22 work, were you?

23 A No, sir.

24 Q Okay. So, what he did or didn't do you don't know?

25 A I told you yes, sir. We went back and forth and looked

Mary Long - Cross-examination
By Mr. Walsh

1 under there to see if they was doing it like they was
2 suppose to do it.

3 Q Okay. So, tell me---

4 A I've got my---

5 Q Go through the steps of how you install an H. V. A. C.
6 system then.

7 A I didn't say I knew that.

8 Q Okay. Fine.

9 well, you were there.

10 A I knew---

11 Q You were out there?

12 A I knew where they had the duct work taken out and put
13 in like we asked them to do, paid them to do.

14 Q You had an electrician go under there at some point
15 after the -- Tuck & Howell did the installation?

16 A No, it was before.

17 Q It was before?

18 A We had -- when you change over from a gas furnace to a
19 heat pump, you have to -- it pulls more power. So, I had
20 electrician that works for the power company in Greer,
21 Commission Of Public works, he had to come out and do some
22 electrical work before they could even install the heat pump
23 to make sure there was enough power---

24 Q Before---

25 A ---going to each room and nothing was gonna be

Mary Long - Cross-examination
By Mr. Walsh

1 overloaded.

2 Q Before Eric Burton came out, didn't you have an
3 electrician tell you to get an H. V. A. C. man to come over
4 and look at it?

5 A No.

6 Q But before Eric Burton came out from The General,
7 wasn't there an electrician that you had out there and told
8 you to go get an H. V. A. C. man and look at the system?

9 A He did.

10 Q Okay. So, you did have an electrician---

11 A But he---

12 Q ---out there?

13 A No, no, no. He didn't go under there.

14 Q I understand.

15 You had an -- you called an electrician to come to your
16 house, didn't you?

17 A Yes, and they know that.

18 Q Right.

19 Before Eric Burton came out?

20 A Yes, sir.

21 Q Okay. That's all I have. Thank you.

22 MR. BANNISTER: Nothing further.

23 THE COURT: You may step down.

24 MR. BANNISTER: That would be all the reply, Your
25 Honor.

1 THE COURT: You may step down.

2 Ladies and gentlemen, that is all of the testimony or
3 evidence to be offered in the trial of the case, and what
4 remains to be done are the lawyers' final summations after
5 which I'll provide you an instruction on the law, and then
6 you'll begin deliberations. We'll do that after lunch.

7 So, you're gonna be excused now for lunch. Please
8 report to your jury room at two o'clock, at two o'clock
9 this afternoon.

10 (WHEREUPON, the following takes place outside the
11 presence of the jury.)

12 THE COURT: All right. Any matters to address before
13 we recess for lunch?

14 MR. BANNISTER: None from us.

15 MR. WALSH: Yes, Your Honor.

16 MR. BANNISTER: I'm sorry. Nothing from us.

17 MR. WALSH: Your Honor, we would renew our motion for
18 directed verdict and address specifically the point that
19 was raised on the negligence claim where we had raised that
20 issue of the evidence that was offered to establish any
21 sort of breach of the duty by the defendant.

22 Mr. Bannister raised an issue about this work by
23 Mr. Burton, but Mr. Burton, I believe, never testified that
24 he knew who did that work and he didn't blame us. He just
25 said that this work was done, this miswiring occurred on

1 the pump.

2 well, I would believe that there has to be -- just
3 because that was found, what we know is there were lots of
4 people under that house including an electrician that the
5 Longs had called out to that house. So, there's no
6 evidence though that we did that work that miswired that
7 pump, and I believe, just because the pump is found over a
8 year later to be miswired, isn't evidence that my clients
9 did it, and I think somebody has to show that our work was
10 a deviation. Not that there just was found a deviation 14,
11 16 months later.

12 So, we also renew the arguments on the causation
13 issue, but I specifically wanted to address that issue on
14 the negligence claim.

15 THE COURT: All right. Mr. Bannister.

16 MR. BANNISTER: I believe there's testimony, Your
17 Honor, that J. P. wired it up. There is testimony that
18 anybody made any changes, did any work whatsoever on it
19 until Mr. Burton went out and found it was miswired. That
20 would be circumstantial evidence, without any intervening
21 cause, if it was, in fact, miswired, it was done by the
22 original installer.

23 THE COURT: All right. Motion for directed verdict on
24 that ground is denied.

25 Any others?

1 MR. WALSH: Your Honor, just to renew the motion on
2 the merchantability as well as motions on causation.
3 There's no evidence that was offered about causation on the
4 damages on any, on any of the injuries that flow and have
5 been alleged in the case, and we would just renew that as
6 well.

7 THE COURT: All right. Motion is denied.

8 All right. We'll be in recess for lunch until two
9 o'clock.

10 Let me see the lawyers in chambers regarding any jury
11 instruction requests.

12 (Whereupon, a recess was taken.)

13 THE COURT: All right. We're ready for the jury?

14 MR. BANNISTER: Yes, sir.

15 THE COURT: And the -- Mr. Bannister, the plaintiff is
16 withdrawing the cause of action relating to negligence and
17 proceeding on the cause of action relating to breach of the
18 implied warranty?

19 MR. BANNISTER: That's correct.

20 THE COURT: Okay. Bring the jury in please.

21 MR. WALSH: Your Honor, one -- I'm sorry. One matter.
22 We, for some reason, could not locate two of the
23 exhibits with the original stickers, and, so, we got copies
24 that Mr. Bannister and I have agreed to.

25 THE COURT: Well, did you look in Mrs. Long's file

1 because when she was on the stand there were a lot of
2 things up there, her stuff and the exhibits. So, I don't
3 know if these things are something that she was looking at
4 or not.

5 THE PLAINTIFF: I didn't go up there -- I didn't take
6 anything the last time I went up there.

7 MR. BANNISTER: Well, did you take it back?

8 THE PLAINTIFF: No, I didn't take back -- bring
9 anything back.

10 THE COURT: Well, it didn't have to be the last time.
11 It could have been the first time.

12 THE PLAINTIFF: Oh, okay. Now, what are we looking
13 for?

14 THE COURT: Just let Mr. Bannister sort through it.
15 He knows what he's looking for. It may not be in there,
16 but it might be.

17 (Pause.)

18 THE COURT: All right. All of the exhibits are in
19 order now?

20 MR. WALSH: Yes, sir.

21 MR. BANNISTER: Yes, sir.

22 THE COURT: Okay. Bring the jury in.

23

24 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

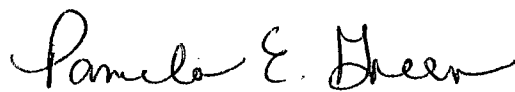
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C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and partial Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Spartanburg County, South Carolina, on the 16th, 17th and 18th days of September, 2013, as reported by Linda Moffitt and transcribed by myself.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

November 13th, 2013



PAMELA E. GREEN, Court Reporter