

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas
Honorable Roger M. Young, Sr.

Case No. 2013-CP-26-0488
Appellate Case No. 2014-001685

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SC Court of Appeals

Horry Electric Cooperative, Inc., ... Appellant,

v.

South Carolina Public Service Authority and Southern
Electric International, Inc., ... Defendants,

Of whom South Carolina Public Service Authority is the.... Respondent.

**RESPONDENT SOUTH CAROLINA PUBLIC SERVICE AUTHORITY'S
RETURN IN OPPOSITION TO APPELLANT'S MOTION TO STRIKE A
PORTION OF RESPONDENT'S INITIAL BRIEF
AND
RESPONDENT'S MOTION TO STAY APPEAL**

Pursuant to Rule 240(e), SCACR, Respondent South Carolina Public Service Authority ("Santee Cooper") files this return in opposition to Appellant Horry Electric Cooperative Inc.'s ("HEC") motion to strike a portion of Santee Cooper's initial brief. HEC contends that this Court should not consider indisputable public records cited in Santee Cooper's initial brief. This Court should deny HEC's motion.¹

Santee Cooper has complied with the appellate court rules. All matter designated by Santee Cooper for inclusion in the record on appeal was presented to the circuit court.

¹ Short of outright denial of the motion to strike at this time, at a minimum, the Court should delay ruling on HEC's motion until oral argument is held in this matter to permit the parties to argue their respective positions respecting the import of the records cited by Santee Cooper.

All other items cited by Santee Cooper on appeal were matters of public record, and most of the items to which HEC objects were placed into issue before the circuit court *by HEC*. Santee Cooper's citation to those matters of public record in its brief is permitted under the Rules and by prior decisions of this Court and the Supreme Court. Moreover, this Court can take judicial notice of court and other public records on appeal.

Alternatively, Santee Cooper hereby moves this Court to stay this appeal until resolution of its pending motion to dismiss in *Horry Electric Cooperative, Inc. v. South Carolina Public Service Authority*, Civil Action No. 2014-CP-26-6571 ("*HEC II*"). This second action involves the same parties and the same claim for equitable indemnification as reflected in the court records cited by Santee Cooper and attached hereto. Thus, holding this appeal in abeyance until the circuit court adjudicates the motion to dismiss now pending before it will resolve any concerns raised by HEC's motion as both actions can later be consolidated by this Court. Santee Cooper will apprise the Court of the status of the circuit court's adjudication of the pending motion to dismiss within sixty (60) days of this motion to stay.

Background

This is an appeal from an order dismissing an action for equitable indemnification in which HEC sought to recover monies to be paid in connection with the settlement of a separate civil action captioned *Ronnie Ferrell, Tammy Vance, and David Montorio, on behalf of themselves and all others similarly situated v. Horry Electric Cooperative, Inc.*, Civil Action No. 2011-CP-26-1266 (hereinafter "*Montorio*").² The *Montorio* action was the basis for HEC's action for equitable indemnification, identified as such in the

² Santee Cooper refers this Court to its initial brief, which sets forth a detailed background of the *Montorio* class action.

Amended Complaint, and presented for the circuit court's consideration in connection with both Santee Cooper's motion to dismiss and HEC's motion to continue the hearing. In its appeal, HEC argues that the circuit court erred in dismissing its action for equitable indemnification and in denying its motion to continue, and that it was prejudiced by the circuit court's orders despite the fact that the dismissal was without prejudice as to the cause of action for equitable indemnification. In its motion, HEC asks this Court to strike selected references to the *Montorio* action and certain matters of public record.

HEC's motion to strike is addressed to four categories of matter, each of which is properly before this Court in light of the issues raised and arguments made by HEC in the court below and in this appeal.

First, HEC objects to materials from the *Montorio* action (items 1, 2, 7, 9, and 11, HEC's Memo. in Supp. of Mot. at pp. 2-7.) These materials, however, were placed in issue by the allegations of HEC's Amended Complaint and its motion to continue the hearing. Having premised its action against Santee Cooper on the *Montorio* action, having expressly referred to the *Montorio* action in its pleadings and its motion to continue in this case, and having argued the *Montorio* action at length in its own appellate brief, HEC cannot complain of Santee Cooper's argument based on the record in the *Montorio* action.

Second, HEC objects to two orders of recusal from the court below (item 4, HEC's Memo. in Supp. of Mot. at p. 3.) There is no conceivable reason to exclude these orders, because they are matters of record in this action, expressly identified in Santee Cooper's opposition to HEC's motion to continue.

Third, HEC objects to references to HEC's second action for equitable indemnification, which replicates claims at issue on appeal and was filed by HEC after its notice of appeal (items 3, 5, and 10, HEC's Memo. in Supp. of Mot. at pp. 3 and 7.) The subsequently filed action, however, is properly before this Court because (a) it is a matter of court record; (b) the order on appeal, issued without prejudice as to the claim for equitable indemnification, left HEC free to re-file; and (c) HEC argued that it would be prejudiced "[i]f this action is dismissed and then has to be re-filed"—even though it had already re-filed the action prior to filing its initial brief with this Court. Because HEC raised the issue of prejudice related to re-filing the action, the re-filing of the action is properly before this Court.

Fourth, HEC has objected to reference to instruments of public record showing that mortgages securing the property at issue were filed in October 1997 and February 1998 (items 6, 8, and 12, HEC's Memo. in Supp. of Mot. at pp. 3-8). These instruments, however, are properly before the Court because the appellate court can take judicial notice of the indisputable fact that the instruments were recorded on the dates reflected on their face. Among other things, the date of recordation bears directly on HEC's argument to the circuit court and this Court that in view of the statute of repose, it is prejudiced by the circuit court's handling of the motion to continue and dismissal without prejudice.

Argument

I. Santee Cooper has complied with the Appellate Court Rules.

A. There is no violation of Rule 210(c).

HEC cites Rule 210(c) as the sole basis for its motion to strike. Santee Cooper's designation of matters for inclusion in the record on appeal is attached hereto as Exhibit

A, and it complies with the appellate court rules. Every matter listed on the designation was presented to the circuit court by HEC or Santee Cooper. The orders of recusal that HEC objects to (item 4 at page 3 of HEC's Memorandum in Support of Motion) were expressly referred to in paragraph 2 of Santee Cooper's Objection to Motion to Continue.

As for the court records and instruments of public record that HEC objects to, Santee Cooper did not designate these materials for inclusion in the record on appeal because this Court can readily access such records given that they are readily available to the court and the existence of the filings is indisputable.³ Therefore, Santee Cooper complied with Rule 210, and HEC's motion to strike is baseless.

B. Because HEC placed the entire *Montorio* action before the circuit court, it cannot selectively exclude certain parts of the matter from consideration in this appeal.

HEC's entire action against Santee Cooper is premised on the *Montorio* action. Moreover, HEC based its motion to continue in the court below—which HEC contends was erroneously denied—and many of the arguments in its brief on the *Montorio* action. Yet HEC's motion to strike aims to prevent Santee Cooper from making certain references to the *Montorio* action in its brief. This Court, however, should not ignore matters of record in the *Montorio* action.

South Carolina law is clear—our appellate courts properly consider the court records of related matters when a complaint expressly references or relies upon that prior action. *See Red Oak Lands, Inc. v. Lane*, 268 S.C. 631, 235 S.E.2d 718 (1977)

³ Santee Cooper submits that it could have designated matters from the *Montorio* action for inclusion in the Record on Appeal because they were effectively presented to the lower court when HEC referred expressly to the underlying action in its Complaint and Amended Complaint. (*See* discussion at pp. 5-7, *infra*.) Santee Cooper could also, should the Court desire, move to supplement the record under Rule 212(b). (*See* related discussion at p. 8, *infra*.)

(dismissing an action and noting the complaint’s description and reference to another related action); *see also National Grange Mut. Ins. Co. v. Butler*, 253 S.C. 325, 327, 170 S.E.2d 371, 327 (1969) (relying on court records from a subsequent action in deciding an appeal); *S.C. Pub. Interest Found. v. Greenville County*, 401 S.C. 377, 737 S.E.2d 502 (Ct. App. 2013) (detailing prior court proceedings in another action).

HEC’s Amended Complaint made many references to the *Montorio* action—as it naturally would, insofar as HEC’s claims against Santee Cooper were premised on the *Montorio* action and HEC’s settlement of the case. (See Exhibit B, Amend. Compl. at ¶¶ 12, 14, 16, 17, 18, 32, Prayer for Relief, and internal exhibit D). HEC also relied on the *Montorio* action in its Rule 59(e) motion. (See Exhibit C, HEC’s Rule 59(e) Mot. at pp. 1, 2, 4, 6, and 7.) Moreover, HEC relies on *Montorio* in support of its arguments for reversing the circuit court’s dismissal order in this appeal; HEC’s citations to *Montorio* are numerous. (See HEC Int. Br. at pp. 1, 3, 4, 5, 8, 10, 11, 13, and 14.) HEC’s reliance on *Montorio* and the settlement in that case placed issues arising in connection with that action squarely before the circuit court below and this Court on appeal.

Tellingly, HEC recognizes that the circuit court considered certain matters from the *Montorio* action but omits this information from the present motion. In moving the circuit court to alter or amend its Order dismissing the case, HEC argued “the [circuit] Court did not limit its analysis to the allegations of the Amended Complaint but instead relied upon unidentified matters considered by *judicial notice* and arguments of counsel” (Exhibit C, HEC Rule 59(e) Mot. at p. 7) (emphasis added). For HEC to claim now that the *Montorio* case and its record were not considered by the circuit court runs counter to the very arguments it raised to the circuit court on reconsideration.

This Court should reject HEC's attempt to cherry-pick the parts of the court record in the related *Montorio* action, deny the motion to strike, and take into account all of the proceedings in that case, in accordance with such cases as *Red Oak Lands* and *National Grange*.

C. HEC's reliance on the *Montorio* action and its "prejudice" arguments necessarily implicate the second suit against Santee Cooper (*HEC II*).

HEC argued that the circuit court's order of dismissal *without prejudice* is prejudicial to HEC because "HEC will have to re-file its action, pay a second filing, and arrange for service." (HEC Int. Br. at pp. 4-5.) HEC also argued that "dismissing this action and having to re-file it would be financially prejudicial to HEC in addition to the prejudice to HEC in having to re-file and pay another filing fee and have a delayed trial date." (HEC Int. Br. at p. 13.) HEC's prejudice argument necessarily puts before this Court the re-filing of the action, and for this reason it is appropriate for Santee Cooper to cite for this Court's consideration the re-filing of the action—which actually pre-dated the filing of HEC's brief.

HEC filed a second action against Santee Cooper on October 7, 2014. (*See* Exhibit D.) Counsel for Santee Cooper accepted service on behalf of Santee Cooper on October 20, 2014. (*See* Exhibit E.)⁴ Santee Cooper has moved to dismiss the second action. (*See* Exhibit F.) In light of the issues HEC raised to this Court and the circuit court as to alleged prejudice, Santee Cooper properly cited to the court records

⁴ As with HEC's filing of the complaint in the second action and Santee Cooper's filing of a motion to dismiss, the Court can take judicial notice of the indisputable fact that Santee Cooper accepted service of process. It should do so because HEC has argued prejudice resulting from, among other things, having to "arrange for service." (HEC Int. Br. at pp. 4-5.) If the Court is going to decide whether arranging for service prejudiced HEC, it should know that HEC was able to accomplish service with an email and an acceptance of service letter. (Exhibit E.)

establishing that the second action has been filed and that Santee Cooper has moved to dismiss it. Having placed the re-filing of the action before this Court, HEC has no basis upon which to ask this Court to strike Santee Cooper's references to re-filed action.

Additionally, this Court can consider subsequent events that render matters on appeal moot. *See Treasured Arts v. Watson*, 319 S.C. 560, 564, 463 S.E.2d 90, 92 (1995) (holding that an appeal was moot based on events occurring after appeal); *see also Butler*, 253 S.C. at 327, 170 S.E.2d at 327 (1969) (holding the appeal to be moot based on admissions made in a later filed civil action). In this instance, events dictated by HEC (*i.e.*, the act of filing *HEC II*) have arguably rendered any issues on appeal pertaining to its equitable indemnification claim moot. Apprising the Court of such events is permissible and should be considered by this Court on appeal consistent with *Watson* and *Butler*.

II. Rule 212 permits this Court to supplement the Record to the extent necessary.

Contrary to HEC's position, the Appellate Court Rules address the very scenario it now places before the Court. Rule 212 states "[t]he appellate court may require copies of all or any part of . . . **other matter** which was before the lower court . . . to be sent up for its inspection." Rule 212(a), SCACR (emphasis added). This Rule also permits this Court to "require a report . . . of any matter relative [to the proceeding below]." *Id.*

Thus, should the Court desire, it can request and inspect the entirety of the cited court records under the Rules and make such matters a part of this Record should it be so inclined.

III. This Court can take judicial notice of public records in any event.

HEC's motion takes issue with Santee Cooper's citation to court records and two matters of public record on file with the Horry County Register of Deeds. All of these matters are properly cited to the Court given their existence in court records in related matters. Moreover, this Court is empowered to take judicial notice of these records on appeal.

A. Court records are proper records for judicial notice on appeal.

Each of Santee Cooper's citations to the two related proceedings, the *Montorio* action and *HEC II*, contain a citation and link to a publicly filed court document or authority. Tellingly, HEC does not deny the existence of the court records; it simply desires for this Court to be ignorant of some of the records.

"A court can take judicial notice of its own records, files [,] and proceedings for all proper purposes including facts established in its records." *Wise v. Wise*, 394 S.C. 591, 601, 716 S.E.2d 117, 122 (Ct. App. 2011) (citing *Freeman v. McBee*, 280 S.C. 490, 494, 313 S.E.2d 325, 327 (Ct. App. 1984)). An appellate court will take judicial notice of filings in related proceedings when the facts cited concerning the other action are indisputable. *Wise*, 394 S.C. at 601, 716 S.E.2d at 122 (taking judicial notice of court records reflecting the disposition of another action involving the same plaintiff).

HEC does not dispute the cited records. It cannot; the existence of the cited records is beyond dispute. Furthermore, these records should be considered by this Court *because of the arguments that HEC has made*—specifically its "prejudice" arguments, which raise the question of whether the effects of the circuit order's order constitute legal prejudice justifying reversal of the order. For example, in Sections I and VII of its initial

brief, HEC argues prejudice resulting from the circuit court's dismissal without prejudice and denial of a continuance, in light of the statute of repose. Arguing that a party cannot complain of legal prejudice when it has sat on its rights, Santee Cooper pointed out that HEC had raised but never prosecuted to conclusion the statute of repose in the *Montorio* action, even though public records indicated that the defense was viable. (See Santee Cooper Int. Br. at pp. 10-16.) HEC objected to Santee Cooper's reference to the proceedings below that show, without question, that HEC's motion for summary judgment on the statute was twice denied—***because HEC failed to appear at the hearing of the motion.*** (*Id.* at pp. 13-13.)⁵ As in *Wise*, this Court is empowered to take judicial notice of court records on appeal. In this case, the Court should do so because HEC itself raised the issue of prejudice due to the working of the statute of repose, which necessarily implicates the question whether the party asserting prejudice has acted to protect its rights under the statute of repose or not.

HEC also relied upon *Montorio* as the basis for: 1) why the circuit court should delay hearing Santee Cooper's motion to dismiss until the court approved the class settlement (HEC Int. Br. at pp. 3-5) and 2) why Santee Cooper is alleged to be liable under the theory of equitable indemnification for the amounts to be paid in connection with the *Montorio* settlement (HEC Int. Br. at pp. 9-11.) For these reasons also, the Court should take judicial notice of the record in the *Montorio* action.

⁵ The failure to make this argument was especially noteworthy in light of the fact that mortgages for the Vance and Montorio properties were recorded on October 31, 1997 and February 2, 1998, while their lawsuit against HEC was filed on February 9, 2011, more than 13 years after the mortgages were recorded. (*Id.* at 14.) (See discussion at pp. 10-11 *infra* regarding judicial notice of these instruments.)

B. Public records from the Horry County Register of Deeds.

Santee Cooper also cites to public real estate records concerning the dates the mortgages and deeds were filed in Horry County for the two named plaintiffs in the *Montorio* action. Like the court records, these matters are properly cited in Santee Cooper's brief.

First, this Court is permitted to take judicial notice of the *dates* in public indexes for deeds and mortgages. *See Masters v. Rodgers Dev. Grp.*, 283 S.C. 251, 256, 321 S.E.2d 194, 197 (Ct. App. 1984) (affirming adherence to distinction between indisputable facts and other facts). Before the circuit court, Santee Cooper argued that HEC's claim for equitable indemnification was barred by the statute of repose based on when construction was substantially completed. Santee Cooper has cited this Court authority in support of that argument—the publically filed deeds and mortgages from Tammy Vance and David Montorio—showing that the named plaintiffs in *Montorio* had homes constructed outside of the statute of repose. Second, these public records are referenced in Santee Cooper's motion to dismiss in *HEC II* and, therefore, are part of the court records cited by Santee Cooper. These indisputable facts were properly cited to the Court. The motion to strike should be denied.

IV. Alternatively, this Court should stay the current appeal until the circuit court adjudicates the now pending motion to dismiss in *HEC II*.

In the event this Court is concerned about the existence of the second action for equitable indemnification, the solution is not, as HEC contends, for this Court to conduct its review without considering the re-filed action and other matters of public record. Instead, if there is a concern, the solution is to stay this appeal pending the circuit court's decision on Santee Cooper's currently pending motion to dismiss.

Santee Cooper's motion to dismiss is grounded in part on the fact that the named plaintiffs' in the *Montorio* action completed construction of their homes more than 13 years prior to the filing of the action for equitable indemnification, such that HEC's claim for equitable indemnification arising from the settlement with the named plaintiffs is barred. (See Exhibit F.) In support of its motion, Santee Cooper relies on the materials that are the subject of HEC's motion to strike. (*Id.*) If the circuit court were to grant Santee Cooper's now pending motion to dismiss, HEC would likely appeal to this Court. Therefore, the Court should stay this appeal until the circuit court adjudicates the motion to dismiss in *HEC II* and consolidate any later appeal. This Court has stayed appeals in similar circumstances previously. See *Spivey v. Carolina Crawler*, 367 S.C. 154, 624 S.E.2d 435 (Ct. App. 2005) (staying an appeal until the lower tribunal adjudication a second, subsequent action and the Court of Appeals consolidated the two appeals).

Conclusion

This Court should deny HEC's motion to strike. The Court can properly consider the court records and other public records cited by Santee Cooper. HEC's motion is not supported by the Appellate Court Rules. HEC's motion is a blatant attempt to shield this Court from public records only when the existence of such records is deemed unfavorable to HEC.

Alternatively, the Court should grant Santee Cooper's request to stay this action pending the circuit court's adjudication of its motion to dismiss in *HEC II* and consolidate any later appeal arising from that matter with the present appeal.

Respectfully submitted,

Signatures Attached

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*Attorneys for Respondent South Carolina Public
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Columbia, South Carolina
January 9, 2015

Exhibit A

**(December 17, 2014 - Santee Cooper Designation of Matters to be included in
the record on appeal)**

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas
Honorable Roger M. Young, Sr.

Case No. 2013-CP-26-0488
Appellate Case No. 2014-001685

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SC Court of Appeals

Horry Electric Cooperative, Inc., ... Appellant,

v.

South Carolina Public Service Authority and Southern
Electric International, Inc., ... Defendants,

Of whom South Carolina Public Service Authority is the.... Respondent.

RESPONDENT'S DESIGNATION OF MATTER

Pursuant to Rule 209, SCACR, Respondent South Carolina Public Service Authority designates the following material for inclusion in the record on appeal. The undersigned certifies that the Designation of Matter to be Included in the Record on Appeal contains no matter which is irrelevant to the appeal.

ORDERS

1. Order Granting Public Service Authority's Motion to Dismiss, filed June 13, 2014
2. Form 4 Order, dated October 1, 2013
3. Form 4 Order, dated December 4, 2013

PLEADINGS

4. Complaint with exhibits, filed January 23, 2013
5. Motion to Dismiss Complaint, dated July 5, 2013
6. Amended Complaint with exhibits, dated July 26, 2013

7. Motion to Dismiss Amended Complaint, dated August 21, 2013
8. Plaintiff's Notice of Motion and Motion for Continuance and/or to Stay any Decision with exhibits, dated May 13, 2014
9. Defendant South Carolina Public Service Authority's Objection to Plaintiff's Motion to Continue, dated May 22, 2014
10. Plaintiff's Rule 59(e) Motion to Reconsider, Alter and/or Amend with exhibits, dated July 1, 2014

TRANSCRIPTS

11. Transcript of Hearing dated May 27, 2014

OTHER MATERIALS

12. Notice of Appeal with attachments, dated July 31, 2014

[Signature on following page]

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12/17, 2014

Exhibit B

(July 30, 2013 - Horry Electric's Amended Complaint)

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS

Horry Electric Cooperative, Inc.,)
Plaintiff,)

Civil Action No. 2013-CP-26-488

vs.)

AMENDED SUMMONS

South Carolina Public Service)
Authority and Southern Electric)
International, Inc.,)
Defendants.)

(Jury Trial Demanded)

FILED
HORRY COUNTY
2013 JUL 30 PM 2:43
MELANIE HUGGINS-WARD
CLERK OF COURT

TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Amended Complaint in this action. A copy of the Amended Complaint is attached to this Amended Summons and is herewith served upon you. Your answer must be in writing and signed by you or by your attorney and must state your address or the address of your attorney if signed by your attorney. Your answer must be served upon the undersigned attorneys for the plaintiff within thirty (30) days after the service hereof, exclusive of the day of service at 1230 Richland Street, Columbia, SC 29201.

YOU ARE HEREBY GIVEN NOTICE FURTHER that, if you fail to appear and defend and fail to answer the Amended Complaint as required by this Amended Summons within thirty (30) days after the service hereof, judgment by default will be rendered against you for the relief demanded in the Amended Complaint.


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Columbia, South Carolina
July 26, 2013

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS

Horry Electric Cooperative, Inc.,)
Plaintiff,)

Civil Action No. 2013-CP-26-488

vs.)

AMENDED COMPLAINT

South Carolina Public Service)
Authority and Southern Electric)
International, Inc.,)
Defendants.)

(Jury Trial Demanded)

FILED
HORRY COUNTY
2013 JUL 30 PM 2:43
MELANIE HUGGINS-WARD
CLERK OF COURT

That Horry Electric Cooperative, Inc. ("Horry Electric") alleges as follows:

FACTUAL BACKGROUND

1. That Horry Electric is a member owned, non-profit cooperative which distributes electricity to its members, with its principal place of business being in Horry County.

2. That Defendant South Carolina Public Service Authority ("Santee Cooper") generates and sells electricity to its members and to some or all electric cooperatives including Horry Electric.

3. That, upon information and belief, Defendant Southern Electric International, Inc. ("Southern Electric") is a Georgia corporation which developed and marketed the Good Cents Program and sold and/or licensed it to Santee Cooper.

4. That in 1987, Santee Cooper offered the Good Cents program which had been developed, marketed and sold by Southern Electric to the South Carolina electric cooperatives, including Horry Electric, and Horry Electric agreed to participate and the parties entered into a contract, a copy of which is attached as Exhibit A.

5. That, upon information and belief, Santee Cooper entered into an agreement with Southern Electric in which Santee Cooper acquired the right to use Southern Electric's Good Cents Program and Horry Electric signed a licensing agreement with Southern Electric, as required by the Agreement marked Exhibit A.

6. That Horry Electric adopted the program developed and/or offered by the defendants including all of the design and design standards provided with the program and passed along a Good

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Cents savings rate provided by Santee Cooper to its members.

7. That Horry Electric received no direct benefit or financial benefit for offering the Good Cents Program to its members and incurred substantial costs in offering and administering the program and all benefits, financial or otherwise, went to the defendants.

8. That, upon information and belief, the defendants represented through words, conduct and otherwise that participating new home Good Cents members would, by qualifying for the Good Cents Program, have better insulated and constructed houses and would benefit by receiving the Good Cents rate as well as by using less electricity because of the insulating requirements of the Good Cents Program.

9. That, prior to Horry Electric's and South Carolina's entry into the said Agreement, it appears that Santee Cooper and Southern Electric knew use of vapor barrier which was required by the Good Cents Program may cause moisture problems in the coastal areas, as is shown by the attached letter dated October 8, 1986 and the attached letter dated October 22, 1986, marked as Exhibit B and Exhibit C respectively.

10. That the defendants failed to disclose the information contained in Exhibits B and C to Horry Electric and failed to advise Horry Electric that the vapor barrier should be a recommendation rather than a requirement.

11. That the defendants did not disclose to the plaintiff any problem with the vapor barrier requirements of the Good Cents Program but instead South Carolina promoted the Good Cents Program as being an environmental friendly program and a win-win situation for the participating Good Cents members.

12. That Horry Electric has been sued in the civil action titled *Ronnie Ferrell, Tammy Vance and David Montorio, on behalf of themselves and all others similarly situated v. Horry Electric Cooperative*, Civil Action No. 2011-CP-26-1266, a copy of the Complaint being attached hereto as Exhibit D.

13. That the Good Cents Program was a pass through program and Santee Cooper had the right to audit for Horry Electric's compliance with the requirements of the program.

14. That the fault alleged by the plaintiff in Civil Action No. 2011-CP-26-1266 is imputed fault to Horry Electric, which merely offered its members participation in the pass through Good Cents Program.

15. That a special relationship existed between Horry Electric and the defendants, given the contractual relationships and Horry Electric's participation in a pass through program, which upon information and belief benefits the defendants only.

16. That the plaintiff is not liable for causing damage to the plaintiffs in Civil Action No. 2011-CP-26-1266 and upon information and belief, the plaintiff will be exonerated from any liability for those damages.

17. That Horry Electric has incurred attorney's fees and costs in defending Civil Action No. 2011-CP-26-1266 for which the defendants are liable.

18. That, to the extent Horry Electric is exonerated from liability to the plaintiffs in Civil Action No. 2011-CP-26-1266, Horry Electric is informed and believes that the defendants are or may be liable to it for the expenses including attorney's fees and costs and any settlement costs incurred by Horry Electric in protecting its interest in Civil Action No. 2011-CP-26-1266.

FOR A FIRST CAUSE OF ACTION

(Negligence)

19. That the allegations of paragraphs 1 through 18 hereof are realleged and incorporated herein by reference.

20. That, upon information and belief, the defendants, who were offering and promoting participation in the Good Cents Program owed a duty of due care to disclose any problems and/or potential problems with the requirements of the program, including those related to the vapor barrier.

21. That the defendants breached their duty of due care and were negligent by failing to disclose to the plaintiff the information contained in Exhibits B-C.

22. That as a direct and proximate result thereof, the plaintiff has incurred attorney's fees and expenses and may suffer other damages.

23. That as a result thereof, the plaintiff is entitled to a judgment against the defendants for all actual damages suffered as a result of the negligence of the defendants, plus punitive damages.

FOR A SECOND CAUSE OF ACTION

(Breach of Duty of Good Faith and Fair Dealing)

24. That the allegations of paragraphs 1 through 23 hereof are realleged and incorporated herein by reference.

25. That the defendants, by failing to disclose the information in Exhibits B and C,

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breached their implied duty of good faith and fair dealing which they owed to Horry Electric as a result of their contractual relationship, all to Horry Electric's damage, and Horry Electric is entitled to recover from the defendants its actual damages and punitive damages as a result thereof.

FOR A THIRD CAUSE OF ACTION

(Breach of Warranty)

26. That the allegations of paragraphs 1 through 25 hereof are realleged and incorporated herein by reference.

27. That, upon information and belief, the defendants, by offering and promoting the program as they did, expressly and impliedly represented and warranted that the Good Cents Program was appropriate for use by Horry Electric and its members and failed to disclose the information in Exhibits B and C.

28. That the defendants breached their representation and warranties as aforesaid and as a result thereof, Horry Electric has suffered actual damages for which the defendants are liable.

FOR A FOURTH CAUSE OF ACTION

(Civil Conspiracy)

29. That the allegations of paragraphs 1 through 28 hereof are realleged and incorporated herein by reference.

30. That, upon information and belief, the defendants, who knew the information in Exhibits B to C but failed to disclose it to Horry Electric combined and joined for the purpose of injuring Horry Electric and caused Horry Electric to suffer actual and special damages for which the defendants are liable.

FOR A FIFTH CAUSE OF ACTION

(Equitable Indemnity)

31. That the allegations of paragraphs 1 through 30 hereof are realleged and incorporated herein by reference.

32. That, to the extent Horry Electric is exonerated from liability to the plaintiffs in Civil Action No. 2011-CP-26-1266, Horry Electric is informed and believes that the defendants are or may be liable to Horry Electric for all expenses incurred by Horry Electric in protecting its interests.

WHEREFORE, Horry Electric prays for judgment as set forth above in the First, Second, Third and Fourth Causes of Action and for its expenses in Civil Action No. 2011-CP-26-1266 as set

forth in the Fifth Cause of Action and for such other and further relief as may be just and proper.



Pope D. Johnson, III
Johnson & Barnette, LLP
1230 Richland Street
Columbia, SC 29201
803-799-9791
803-253-6084 (fax)
pdjohnson@johnsonbarnette.com
Attorney for the Plaintiff

Columbia, South Carolina
July 26, 2013

#5

AGREEMENT

This Agreement made and entered into this 22nd day of July, 1987, by and between the South Carolina Public Service Authority, hereinafter referred to as "Santee Cooper" and Horry Electric Cooperative, Inc., hereinafter referred to as "Participating Distributor."

WHEREAS, Santee Cooper has acquired the rights to use the Good Gents Programs which presently consist of three (3) Programs as follows:

- (1) Good Gents Home Program (New Residential)
- (2) Good Gents Improved Home Program (Retrofit Residential)
- (3) Good Gents Commercial Program

PLAINTIFF'S
EXHIBIT

for itself and those distributors of its electric power who choose to participate in said Program(s); and,

2 10/12/11

WHEREAS, the Participating Distributor has requested to implement the Program(s) within its retail service area,

NOW THEREFORE, in consideration of the premises and of the mutual covenants and obligations contained herein, the parties agree as follows:

1. The Participating Distributor shall have the right to implement the Good Gents Program(s) hereinbefore contained, within its retail service area in accordance with standards developed by Santee Cooper to the extent Santee Cooper is authorized under the agreement with Southern Electric International,

EXHIBIT
A
PET/040 100-631-008

Inc., dated June 24, 1986.

2. The Participating Distributor will execute the licensing agreement with Southern Electric International, Inc. and, if applicable, the software licensing agreement.

3. The Participating Distributor shall submit upon request by Santee Cooper properly completed Exhibits VII and VIII contained in Santee Cooper's Good Funds Manual. Santee Cooper reserves the right to amend or revise any or all of the Exhibits contained in Santee Cooper's Good Funds Manual from time to time, in whole or in part, to reflect changed conditions.

4. Santee Cooper reserves the right to audit any of the Participating Distributor's records pertaining to the Good Funds Program(s) which it deems necessary to satisfy itself as to the accuracy of its related payments, credits, etc., to the Participating Distributors, through Central Electric Power Cooperative, Inc.

IN WITNESS WHEREOF, the South Carolina Public Service Authority and Horry Electric Cooperative, Inc. have caused this instrument to be executed by their respective duly authorized officers, as of the day and year first above written.

ATTEST:

ESB

SANTEE COOPER

By:

Wrescher
Title

ATTEST:

John J. [Signature]

By:

Charles [Signature]
Title Manager

FILE



Energy Management, 2003 Oak Street, Myrtle Beach, South Carolina 29577-3198 (803) 448-1503

October 8, 1986

OCT 15 1986
(H. H.)

Mr. Geoff Hartman
Southern Electric International
3500 Piedmont Road, N. E., Suite 500
Atlanta, Georgia 30305

Mr. Hartman:

I am responding to your letter of September 25, 1986 concerning the technical design report and standards for the Good Gents Program.

Santee Cooper agreed to accept the State of South Carolina's standards in our contract with SEI; however, it was our understanding with SEI that we would have some input into what the standards should be. This is the first time I have had any word from SEI on the standards. Obviously, we cannot comply with the proposed timetable for review of the technical standards; it was to be October 1, 1986.

As we discussed, I have some concerns with some minor details in the standards. Following is an outline of some questions that I feel sure we can resolve next week:

1. We are getting different results on RIGHT J and RESCALC. Also, we seek approval for our company's load calculation procedure to be used in the Good Gents program.
2. Hybrid Good Gents Houses - We would like to be able to waive the requirements for written certification from an architect or engineer. *GET BUILDING TO WAIVE SEI TO GIVE PRIZE OF THEM*
3. Prescriptive Standards - We are opposed to qualifying any home using prescriptive standards. *UP TO US OR LESS THAN PRESCRIPTIVE? V. AT*
4. Vapor Barriers - This is a touchy subject in coastal areas. See ASHRAE '85 Fundamentals - 21.17. It may be best not to mention. *150.111/sf*
5. Attic Ventilation - Use a 1 to 150 ratio and don't mention vapor barrier, or simply say HUD/MPS.
6. Equipment Sizing - We prefer to limit oversizing to 15%, unless an exception is granted. Second-stage heating on heat pumps *OUR OPTION*

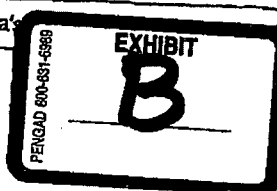
REPAIR

Santee Cooper 000141
Montorio v. Foxworth

One of America's

files.

Santee Cooper 2506



Mr. Geoff Hartman
October 8, 1986
Page 2

SEND SPECS TO SEI

should not exceed 50% of design heat loss unless it can be shown that it will not provide "design" comfort.

7. Fossil-Fired Heating Systems - Not allowed.
8. Hybrid Heat Pumps - Only if the heat pump is the primary source of heating.
9. Radon Gas - Should not be mentioned.
10. House "A" - I do not agree that the values given for the baseline home "generally represents conventional insulation and construction practices within the South Carolina service area." (Neither do the other utilities.) A realistic "baseline" would be R-19, R-11, R-11 with a builder's model heat pump, and probably with insulated glass. For this reason, we cannot support a promotional standard up to 50% savings.

I look forward to meeting with you and the other SEI people next week. SCE&G, Santee Cooper and the participating co-ops are very excited about the Good Gents Programs. We are already getting good feedback from the building community and have started working with some future projects.

Yours truly,

Glenn S. Cannon
Glenn S. Cannon
Energy Programs Supervisor

GSC/mm

cc Mr. Buddy Clark
S. C. Electric & Gas Company
P. O. Box 764 J-036
Columbia, S.C. 29219

cc Mr. Robert Eggleston
S. C. Electric & Gas Co.

*4 PWSH / 36 TANK AREA WATER HEATER
WATER TANK
ADD LATER*

Santee Cooper 2507
Santee Cooper 000142
Montorio v. Foxworth

FILE: Good Gents - S.E. - 2



Energy Management, 2003 Oak Street, Myrtle Beach, South Carolina 29577-3196 (803) 448-1503

October 22, 1986

Mr. Geoff Hartman
Southern Electric International, Inc.
Suite 500
3500 Piedmont Road, NE
Atlanta, GA 30305

Dear Geoff:

Re: Good Gents Standards

At our meeting in Atlanta, you stated SEI's position on requiring a vapor barrier on the interior of all exterior walls.

Originally, Santee Cooper required this under our Energy Efficient Home Awards Program, similarly to help reduce infiltration and to coincide with manufacturers' recommendations for the same. Lately we are getting a lot of concern expressed from the building community on this requirement.

Our concern is future liability. We don't want to create any situations that would hurt us or the Good Gents Program. Enclosed is a recent article on this subject from Energy Design Update. Summarized, they state: "In warm climates, interior vapor barriers may in fact create moisture condensation problems."

Could we consider not mentioning vapor barriers and simply say to follow manufacturers' recommendations? I would rather customers use Tyvek or a similar product if they want to. Again, the concern is being required to require.

Yours truly,

Glenn S. Cannon
Energy Programs Supervisor

GSC/rh

Enclosure (Article entitled "The Vapor Barrier Goes On The Outside???)

cc Mr. Buddy Clark (W/Enclosure)
S. C. Electric & Gas Company.

One of Ar



Santee Cooper 2501

Santee Cooper 000148
Montorio v. Foxworth

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Ronnie Ferrell, Tammy Vance
and David Montorio on behalf of themselves
and all others similarly situated,

Plaintiffs,

vs.

Horry Electric Cooperative,

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO: 2011-CP-26- 1266

COMPLAINT
(Jury Trial Demanded)

The Plaintiffs, individually, and as class representatives, complaining of the Defendants herein, would respectfully show unto this Honorable Court as follows:

PARTIES AND JURISDICTION

1. Plaintiff Ronnie Ferrell, individually and as class representative, is a citizen and resident of Horry County, South Carolina.
2. Plaintiff Tammy Vance, individually and as class representative, is a citizen and resident of Horry County, South Carolina.
3. Plaintiff David Montorio, individually and as class representative, is a citizen and resident of Horry County, South Carolina.
4. On information and belief, Defendant Horry Electric Cooperative is a company organized and existing under the laws of the State of South Carolina and does business through its agents and servants in Horry County, South Carolina.
5. This is a matter within the jurisdiction of this Court.



FACTUAL SUMMARY

6. Plaintiffs are the owners of residences in Horry County and reside in Horry County, South Carolina. The Defendant is the electrical service provider for each Plaintiff.
7. Each residence owned by the Plaintiffs and Plaintiff Class was constructed between 1988 and 2003 according to standards and specifications set forth and required by Defendant through the Defendant's "New Good Cents Program" (hereinafter the "Program"). All Program Homes were homes that were newly constructed as opposed to retrofits of existing structures.
8. The Defendant sets forth the design specifications requirements for a home to qualify for the Program.
9. The Defendant adopted and references ASHRAE (American Society of Heating Refrigeration and Air Conditioning Engineers) standards in its Program specifications.
10. The Defendant set forth the design and design standards for these Horry County residences.
11. The homes would not be accepted into the Program unless Defendant completed a final inspection of the home.
12. On information and belief, in 1988 Defendant adopted the Program from another electrical service provider without performing any of its own due diligence or research regarding the specifications and requirements that it required for new homes. On information and belief, Defendant never performed any research regarding the Program specifications and requirements.
13. The Defendant offered the Program in an effort to keep the cost of power low for both it and its members.
14. Defendant provided design specifications and requirements for the Program. On a

systematic basis, the Defendant required the design specifications be followed for the home to be accepted into the Program.

15. The documentation and process used by Defendant for Good Cents homes were nearly identical for each home in the Program.

16. The specification and requirements had to be implemented as designed and set out by Defendant for acceptance of the home by Defendant into the Program.

17. Defendant required a vapor barrier to be installed on the inside of the exterior walls of all residences. The Defendant set forth specifications to meet the infiltration barrier requirements. The Defendant specified two methods of achieving superior infiltration and vapor protection:

(a) Method One

- (i) 4 or 6 mil polyethylene vapor barrier installed on the inside surface of the exterior walls and ceilings.
- (ii) properly installed friction fit batts.
- (iii) properly installed house wrap (such as Tyvek) as an air barrier.

(b) Method Two

- (i) properly installed Kraft or foil-faced insulation batts.
- (ii) taped and painted gypsum board installed on the inside of the exterior wall.
- (iii) properly installed house wrap (such as Tyvek) as an air barrier.

18. Defendant further required that Defendant inspect the installation of a vapor barrier during construction so that Defendant could verify that it was installed.

19. Each Plaintiff's Residence has a vapor barrier in accordance with Defendant's design specifications, requirements and standards.
20. Each Program residence was inspected by Defendant.
21. Each Program residence was accepted into the Program by the Defendant.
22. On information and belief, Defendant inspected each of the Plaintiffs' and Plaintiff Class' homes during construction to verify that the vapor barrier was installed on the inside of the exterior walls.
23. The existence of a vapor barrier on the inside of the exterior walls creates a condition where condensation forms on the outer surface of the vapor barrier. The presence of condensation causes, among other things, mold growth on the surface of the vapor barrier and inside the Plaintiffs' and Plaintiff Class' homes.
24. In 2003 Defendant finally stopped requiring the installation of vapor barriers on the heated side of studs in Horry County.
25. By virtue of writings and articles from ASHRAE, Defendant knew or should have known about the likelihood of condensation problems caused by the required vapor barrier as early as 1985 and no later than 1987. In 1986, an energy design update article stated, "In warm climates interior vapor barriers may in fact create moisture condensation problems." Yet Defendant ignored its design defect and continued to specify and require its flawed designs to be used in the Program Homes.
26. There are more than 1,000 Program Homes in Horry County which were constructed in accordance with the design flaw, vapor barriers on the heated side of the studs, in Horry County, in accordance with the Defendant's design specifications.

27. The Class is so numerous that joinder of all members is impractical. There are questions of law or fact common to the Class, including, but not limited to, the design defects inherent in the Program, when Horry Electric knew of such design defects, and whether Horry Electric was reckless in disregarding industry knowledge concerning its design defects.
28. Claims of the representative parties are typical of the claims of the Class. The representative Plaintiffs will fairly and adequately protect the interest of the Class and have engaged qualified counsel.
29. The amount in controversy for each Class Member exceeds One Hundred Dollars (\$100.00). The cost of removal of the inappropriate materials is more than \$100.00 (\$100.00) per home.
30. The design defect was well known or should have been obviously known to the Defendant years in advance of the construction of the Plaintiff and Plaintiff Class homes.
31. The Defendant traded off the extremely high likelihood of long term mold problems with the homes in exchange for the short term benefit of reducing peak demand so that Defendant would not have to build new power plants.
32. The Defendant has violated the covenant of good faith and fair dealing and violated its agreement to provide a suitable design for living quarters.
33. The specified vapor barrier is not suitable for habitable dwellings in the coastal county of Horry.
34. The Class is defined as each and every Horry County homeowner of a Program Home that has a vapor barrier, on the inside of its exterior walls and was included by the Defendant in the Program upon its construction during years 1988 through 2003.

FOR A FIRST CAUSE OF ACTION
(Design Defect – Breach of Warranty)

35. Not inconsistent herewith, Plaintiffs and Plaintiff Class reallege each and every allegation above as if repeated verbatim herein.

36. Upon information and belief, Defendant made design specifications and requirements and express warranties in connection with its design and implementation of the Program to the effect that the design of the vapor barrier specifications would be free of defects.

37. Defendant set forth the design standards which were incorporated into the homes. Defendant impliedly warranted that the Program and its systems, recommendations, standards and requirements and details, would be free from deficiencies.

38. Defendant used design specifications and requirements which it knew would cause mold in coastal southeastern counties including Horry County.

39. Defendant breached its express and implied warranties in the following particulars:

- (a) in failing to properly design and implement the Program into the Residences by failing to employ design specifications conforming to the customary and ordinary design standards of the construction industry;
- (b) in specifying and requiring inappropriate design or materials for a coastal county;
- (c) in specifying and requiring inappropriate materials in violation of industry standards;
- (d) in providing deficient and/or defective requirements, specifications and design, which was not in conformity with industry standards; and/or

- (e) in failing to adequately research, design, and specify an air infiltration reduction system that would prevent moisture from occurring on the inside of the Residences.

40. As a direct and proximate result and consequence of Defendant's breach of its express and implied warranties, Plaintiffs have suffered injuries and damages in the amount equal to the extraordinary repair, maintenance and reconstruction costs required and to be required over the expected life of the structure, and will suffer from loss of use of the Residence.

41. The Plaintiff and Plaintiff Class have suffered damages due to the breach and are entitled to the same plus costs.

FOR A SECOND CAUSE OF ACTION
(Negligence/Gross Negligence)

42. Not inconsistent herewith, Plaintiffs and Plaintiff Class reallege each and every allegation above as if repeated verbatim herein.

43. Defendant owed a duty to Plaintiffs to exercise that degree of skill necessary to design, specify, and set standards in a manner that would not cause a condition for moisture and condensation to occur within the residence and to insure that the Defendant's designs were designed in conformity with the customary and ordinary standards of the building and construction industry, including standards set forth by ASHRAE.

44. The defects and deficiencies that exist at the Residence are the direct and proximate result of the negligence and/or gross negligence of Defendant in one or more of the following particulars:

- (a) in requiring an improper standard, or in failing to set forth the appropriate design for the residence, by failing to employ practices and design methods of construction conforming with accepted industry standards; and/or requiring materials that Defendant knew or should have known was improper and which would cause damage to the Residences; and/or requiring the presence of a vapor barrier, which was in violation of the industry standards and/or accepted wise building methods;
- (b) in failing to research and determine the effect of the specifications and requirements of the Program, which it knew would affect thousands of homeowners;
- (c) in accepting and requiring inappropriate materials, which, when installed, would cause moisture and mold within the Plaintiffs' Residences;
- (d) in failing to review ASHRAE standards on the use of vapor barriers in coastal counties in the southeast.

45. As a direct and proximate result and consequence of the Program's design defects, the owners of the Residences have suffered damages. The Program Homes have suffered actual damage caused by moisture being trapped in the walls that resulted from the negligent design of the Defendant and specifications and requirements of Defendant's Program.

46. As a direct and proximate result and consequence of the negligence and/or gross negligence of Defendant, Plaintiffs have suffered injuries and damages in the amount equal to the extraordinary repair, maintenance and reconstruction costs required and to be required over the

expected life of the structure and such other damages as may be appropriate. Plaintiffs and the Class are also entitled to punitive damages.

FOR A THIRD CAUSE OF ACTION
(Breach of Contract/Covenant of Good Faith and Fair Dealing)

47. Not inconsistent herewith, Plaintiffs and Plaintiff Class reallege each and every allegation above as if repeated verbatim herein.

48. The Program Homes of the Plaintiffs and the Plaintiff Class were all constructed after the Defendant made an offer of the Good Cents Program.

49. To accept the offer, the Program Homes had to be constructed in accordance with the Defendant's design specifications.

50. The construction of the home in accordance with the Defendant's specifications and the subsequent approval of the construction and acceptance into the Good Cents Program by Defendant constitutes an agreement.

51. The agreement or the Program contract had the implied covenant of good faith and fair dealing within it.

52. The Defendant has violated the covenant of good faith and fair dealing by not disclosing obvious design defects and design flaws with respect to its vapor barrier specifications and standard/recommendation it required.

53. The design defect was well known or should have been obviously known to the Defendant years in advance of the construction of the Plaintiffs and Plaintiff Class homes.

54. The Defendant traded off the extremely high likelihood of long term mold problems with the homes in exchange for the short term benefit of reducing peak demand so that Defendant

would not have to build new power plants.

55. The Defendant has violated the covenant of good faith and fair dealing and violated its agreement to provide a suitable design for living quarters.

56. The plastic vapor barrier is not suitable for habitable dwellings in the coastal county of Horry.

57. As a result Plaintiffs and Plaintiff Class have suffered damages.

58. Plaintiffs and Plaintiff Class are informed and believe they are entitled to damages, punitive damages plus costs.

WHEREFORE, the Plaintiffs and Plaintiff Class pray for the following relief:

- a. Actual damages;
- b. Punitive damages; and
- c. Any costs of this action.



Nate Fata SC Bar #9866
NATE FATA, P.A.
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Surfside Beach, SC 29587
Tel.: (843) 238-2676
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Mark A. Brunty, Esquire
Brunty Law Firm
SC Bar No. 68295
Post Office Box 70907
Myrtle Beach, SC 29577
843-449-1500

Attorneys for Plaintiffs and Plaintiff Class

Myrtle Beach, South Carolina
February 9, 2011

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS

Horry Electric Cooperative, Inc.,)
Plaintiff,)

Civil Action No. 2013-CP-26-488

vs.)

CERTIFICATE OF SERVICE

South Carolina Public Service)
Authority and Southern Electric)
International, Inc.,)
Defendants.)

I, Sherry W. Wise, of Johnson & Barnette, LLP, hereby certify that I have served B. Rush Smith, attorney for Defendant South Carolina Public Service Authority, with the foregoing pleading(s) by mailing a copy of same, postage prepaid and return address clearly indicated, to him at the following address on the 26th day of July, 2013.

COUNSEL SERVED:

B. Rush Smith, Esquire
Nelson Mullins Riley & Scarborough, LLP
Meridian/17th Floor
1320 Main Street
Columbia, SC 29201

PLEADINGS:

Amended Summons and Amended Complaint

FILED
HORRY COUNTY
2013 JUL 30 PM 2:48
MELANIE HUGGINS-WARD
CLERK OF COURT

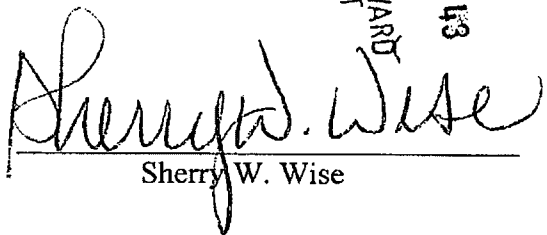

Sherry W. Wise

Exhibit C

(July 1, 2014 - Horry Electric's Rule 59(e) Motion to Alter or Amend)

STATE OF SOUTH CAROLINA	)	BUSINESS COURT CASE
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	FIFTEENTH JUDICIAL CIRCUIT
 Horry Electric Cooperative, Inc.,	)	 Civil Action No. 2013-CP-26-488
	)	
Plaintiff,	)	
	)	
vs.	)	PLAINTIFF'S RULE 59(e) MOTION
	)	TO RECONSIDER, ALTER AND/OR
South Carolina Public Service	)	AMEND
Authority and Southern Electric	)	
International, Inc.,	)	
	)	
Defendants.	)	
_____	)	

The plaintiff hereby moves the Court, pursuant to Rule 59(e), SCRCP, to reconsider, alter and/or amend the Order dated June 11, 2014, a copy of which is attached, upon the following grounds:

1. The Court should reconsider its decision to dismiss the claim for equitable indemnification as not being ripe and deny the motion to dismiss that claim for the following reasons:

(a) The Amended Complaint alleged that the plaintiff had "incurred attorney's fees and costs in defending Civil Action No. 2011-CP-26-1216 for which the defendants are liable. This allegation must be accepted as being true. Thus, the plaintiff has in fact suffered damages that are ascertainable.

(b) There is no requirement that all damages be quantified or in existence at the time an action is commenced. It is only necessary that the plaintiff have sustained some damages to support the claim. The plaintiff alleged sufficient damages for its action to

Handwritten signature

proceed.

(c) There is no authority and none is cited for dismissing the cause of action for equitable indemnification on the grounds that it is not ripe.

(d) Even if there was a basis for dismissing the claim that was "not yet ripe" since the Court in the underlying action had not yet considered and approved the settlement agreement, this Court should have delayed a ruling on the motion, until the settlement agreement was approved. The hearing to approve the settlement in the underlying action was scheduled to be heard on May 30, 2014.

(e) The Court should take judicial notice of the attached Order filed May 30, 2014 in the underlying action, approving the attached Settlement Agreement of the parties, and should set aside its Order in this action dismissing the cause of action for equitable contribution as not being ripe.

2. The Court should reconsider its finding that there is no basis for a breach of covenant of good faith and fair dealing as set forth in footnote 3 on page 4 and should deny the motion to dismiss the claim for breach of covenant of good faith and fair dealing for the following reasons:

(a) The second cause of action alleges a cause of action for breach of implied duty of good faith and fair dealing as a result of their contractual relationship. Thus, the second cause of action alleges a cause of action for breach of contract. Stated differently, the second cause of action pleads an action for breach of contract, based upon the implied duty of good faith and fair dealing having been breached.

(b) The Amended Complaint does not allege that a specific provision was breached but alleges a breach of implied duty of good faith and fair dealing which is part of

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ms

every contract.

3. The Court should reconsider its decision to dismiss the claims for negligence, breach of covenant of good faith and fair dealing, breach of warranty and civil conspiracy based upon a purported concession by the plaintiff that the 13 year statute of repose applies. The Court should deny the motion to dismiss upon that ground for the following reasons:

(a) The Court has misconstrued the thirteen year statute of repose. The thirteen year statute of repose does not begin to run as to any improvement to real property until there has been substantial completion of such improvement. Section 15-3-640 states the following:

"No action to recover damages based upon or arising out of the defective or unsafe condition of an improvement to real property may be brought more than thirteen years after substantial completion of such an improvement."

This action was commenced on January 23, 2013 and bars claims related to any improvements that was substantially completed more than 13 years prior thereto but bars none since that time.

(b) The Court erred in finding that the thirteen year period began to run in 1988 or 1991 with respect to houses which were not even constructed, much less substantially completed. Claims related to any houses which were substantially completed after January 23, 2000 through 2003 are not barred by the statute of repose.

(c) The Court should reconsider its order in finding that the statute of repose bars the remaining causes of action, as set forth below:

"The Court finds that the statute of repose bars the remaining claims. These claims are predicated on letters written by a Santee Cooper employee in 1986 concerning, among other things, the vapor barrier design specifications for the Good Cents program. These specifications were then incorporated into construction completed as

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early as 1988 or, accepting for the sake of argument HEC's position asserted during the hearing, in 1991. (At the hearing, counsel for HEC stated that while the letters were written in 1986, the vapor barrier design specification was not implemented until 1991). HEC further argues that HEC did not discover the existence of these Santee Cooper letters until the *Ferrell* suit was being litigated. HEC further argues that the 1986 letters demonstrate that Santee Cooper had knowledge about the vapor barrier design specification that it should have disclosed to HEC in 1986 (or 1991). Santee Cooper disputes these arguments. Reading the Amended Complaint and drawing all inferences in the light most favorable to HEC, the Court concludes that these claims are based on the theory that if HEC had been informed of the contents of the letters when they were written, HEC would not have adopted the vapor barrier design specifications and, consequently, these design specifications would not have been incorporated into the homes of its customers. As noted above, counsel for HEC argued that the operative date for incorporation of the design standards into customers' homes was 1991, rather than 1986 (the date of the letter) or 1988 (the date construction commenced according to the underlying complaint). Even if 1991 were the operative date on which the design specifications were incorporated into the construction of class members' homes, the statute of repose would bar the claims for negligence, breach of the covenant of good faith and fair dealing, breach of warranty, and civil conspiracy."

This is not a correct or accurate description of the plaintiff's Amended Complaint. The plaintiff is not seeking damages related to construction completed as early as 1986 or 1991. The plaintiff's claim for damages relates to periods for which claims were allowed in the civil action entitled *Ronnie Ferrell, Tammy Vance and David Montorio, on behalf of themselves and other similarly situated v. Horry Electric Cooperative*, Civil Action No. 2011-CP-26-1216. The claims in the *Ferrell* action relate to the improvements constructed in the period of 1998-2003. The Amended Complaint states:

"17. That Horry Electric has incurred attorney's fees and costs in defending Civil Action No. 2011-CP-26-1266 for which the defendants are liable.

18. That, to the extent Horry Electric is exonerated from liability to the plaintiffs in Civil Action No. 2011-CP-26-1266, Horry Electric is informed and believes that the defendants are or may be liable to it for the expenses including attorney's fees and costs and any settlement costs incurred by Horry Electric in protecting its interest in Civil Action No. 2011-CP-26-1266."

4. The Court should reconsider the decision that the claims of negligence breach of duty of good faith and fair dealing, breach of express or implied warranty and civil conspiracy are barred based upon the two year statute of limitation in the TCA. The Court erred in relying upon the 1986 letters as a basis for this finding:

“On their face, argues Santee Cooper, the 1986 letters show that HEC could have discovered the information that HEC alleges Santee Cooper should have divulged to HEC, because the letters show that this information was contained in engineering standards and a trade publication, and was the subject of some discussion in the local building community. According to this argument, the statute of limitations began to run in 1986. The Court agrees. Alternatively, argues Santee Cooper, the Amended Complaint alleges that Santee Cooper later altered the vapor barrier design specifications in 2003 and this change put HEC on notice to inquire about the reasons for the change. Thus, under this argument, the statute of limitations began to run in 2003. The Court finds that this alternative argument from HEC actually supports dismissal of the claims other than equitable indemnification. The Court so rules after carefully considering and rejecting all of HEC’s arguments relevant to the statute of limitations, regardless of whether such arguments are expressly enumerated herein.”

The deposition testimony from the plaintiff’s 30(b)(6) deposition in the underlying action establishes that the plaintiff had no prior knowledge that the use of vapor barriers may cause moisture problems. All the letter dated October 8, 1986 says is as follows:

“4. Vapor Barriers – This is a touchy subject in coastal areas. See ASHRAE ’85 Fundamentals – 21.17. It may be best not to mention.”

There is nothing to show that ASHRAE 1985 -21.17, Exhibit B to the Amended Complaint, is an engineering standard or what it does or actually says. The same is true regarding the October 22, 1986 letter, Exhibit C to the Amended Complaint. There is nothing to identify Energy Design Update as a trade publication and there is nothing to describe what it actually says. There is nothing to show whether either had a wide or limited construction. Equally important, there is nothing to show that the plaintiff had a duty to go behind Santee Cooper to research and find and review these

items. This is especially true when the plaintiff has alleged the following:

“8. That, upon information and belief, the defendants represented through words, conduct and otherwise that participating new home Good Cents members would, by qualifying for the Good Cents Program, have better insulated and constructed houses and would benefit by receiving the Good Cents rate as well as by using less electricity because of the insulating requirements of the Good Cents Program.

11. That the defendants did not disclose to the plaintiff any problem with the vapor barrier requirements of the Good Cents Program but instead South Carolina promoted the Good Cents Program as being an environmental friendly program and a win-win situation for the participating Good Cents members.”

Surely, the plaintiff was entitled to believe and rely upon these representations by Santee Cooper, a governmental entity. Finally, there is nothing to show that vapor barriers in humid climates were the subject “of some discussion in the local building community”. To make these findings, the Court had to go outside the Amended Complaint, which should not be done when considering a motion to dismiss.

5. The Court should reconsider and/or alter and/or amend its following finding and deny the defendant’s motion.

“Alternatively, argues Santee Cooper, the Amended Complaint alleges that Santee Cooper later altered the vapor barrier design specifications in 2003 and this change put HEC on notice to inquire about the reasons for the change. Thus, under this argument, the statute of limitations began to run in 2003. The Court finds that this alternative argument from HEC actually supports dismissal of the claims other than equitable indemnification.”

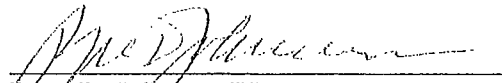
The Amended Complaint contains no such allegation. This is yet another erroneous description of the plaintiff’s position and the plaintiff’s Amended Complaint.

6. The Court should reconsider its Order and deny the motion and should grant the plaintiff’s motion for a continuance and/or stay the action such that no ruling be made until May 30,

2014 when Judge Culbertson was to consider and approve the settlement in the underlying action, which he did on May 30, 2014.

7. The Court should reconsider its Order and deny the motion to dismiss since the Court did not limit its analysis to the allegations of the Amended Complaint but instead relied upon unidentified matters considered by judicial notice and arguments of counsel which are not evidence in the case.

If the issue is presented to the trial court but not ruled upon, the omission must be brought to the trial court's attention by a Rule 59(e), SCRPC, motion for the issue to be preserved for review. *Great Gaines, Inc. v. South Carolina Dep't of Revenue*, 339 S.C. 79, 529 S.E.2d 61 (2000). The plaintiff moves and requests that the Court rule specifically on each of these issues and determine whether, based on each and all grounds and issues raised thereby, the Court should alter and amend its Order and deny the defendant's motion to dismiss.


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Columbia, South Carolina
July 1, 2014

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STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

BUSINESS COURT CASE
IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

Horry Electric Cooperative, Inc.,)

Civil Action No. 2013-CP-26-0488

Plaintiff,)

vs.)

South Carolina Public Service Authority)
and Southern Electric International, Inc.,)

Defendant.)

ORDER GRANTING
PUBLIC SERVICE AUTHORITY'S
MOTION TO DISMISS
(Ending case as to all parties)

This matter comes before this Court on Defendant South Carolina Public Service Authority's ("Santee Cooper") Motion to Dismiss the Amended Complaint pursuant to Rule 12(b)(6), SCRCF. A hearing on the motion was held at 10:00 a.m. on Tuesday, May 27, 2014, at the Horry County Courthouse. Defendant Santee Cooper appeared through counsel and Horry Electric Cooperative's ("HEC") counsel attended via teleconference. Defendant Southern Electric International, Inc., did not appear, having never been served the Summons and Complaint by HEC, and thus this Court will dismiss the claims against that defendant, without prejudice, for lack of prosecution.

HEC's Amended Complaint asserts the following causes of action against Santee Cooper: (1) equitable indemnification; (2) negligence; (3) breach of the covenant of good faith and fair dealing; (4) breach of warranty; and (5) civil conspiracy. Pursuant to each of these theories, HEC seeks reimbursement from Santee Cooper in connection with a class action styled *Ronnie Ferrell, Tammy Vance, and David Montorio, et al. v. Horry Electric Cooperative*, Civil Action No. 2011-CP-26-1266 ("the *Ferrell* action"). In the underlying *Ferrell* action, the plaintiffs were customers of HEC and claimed that HEC's

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requirements for participation in its "Good Cents Program"—an energy efficiency program through which the plaintiffs would modify their homes and in return receive a lower electric rate—incorporated a design specification for a vapor barrier that led to subsequent moisture problems in the plaintiffs' homes. HEC now sues Santee Cooper, alleging that responsibility for any damages arising from the vapor barrier requirement lies with Santee Cooper.

Santee Cooper moved for dismissal of the Amended Complaint on the following grounds:

- The claims are barred by the statute of repose because the underlying action is based on construction completed in the 1980s and 1990s;
- The claims other than equitable indemnity are barred by the applicable statute of limitations; and
- HEC failed to state facts sufficient to constitute a cause of action against Santee Cooper.

As required by Rule 12(b)(6), SCRCP, the Court confined its decision to the amended Complaint, attachments thereto, matters of which the Court may take judicial notice, and the arguments of the parties at the hearing. All arguments of the parties were carefully considered. After considering all arguments, the Court **GRANTS** Santee Cooper's motion for the reasons set forth below and dismisses this case in its entirety. The claim for equitable indemnification is dismissed *without prejudice*, as the Court finds it is not yet ripe. All other claims are dismissed *with prejudice*.

1. **Equitable Indemnification.** As stated above, the claim for equitable indemnification is not yet ripe for adjudication. The parties in the *Ferrell* action have entered into a Settlement Agreement, which will require Court approval, but as of the date of the hearing in this matter, that approval had not yet occurred. Pursuant to the Settlement Agreement, HEC and/or its insurer will pay class members to settle their

damages claims and will pay class counsel their attorneys' fees and costs. In the action at bar, HEC is seeking indemnification for such payments. Counsel for HEC reported that while some class members had submitted claims and class counsel had petitioned for attorneys' fees pursuant to the Settlement Agreement, court approval of the settlement had not been granted as of the date of this hearing.¹ More importantly, no payments had been made pursuant to the Settlement Agreement. Accordingly, this Court finds that HEC's claims for indemnification are not yet ripe. The Court makes this finding after carefully considering and rejecting all of HEC's arguments relevant to the question of ripeness, regardless of whether such arguments are expressly enumerated herein. Finding that dismissal with prejudice would be premature, this Court dismisses the claim for equitable indemnification *without prejudice*.²

2. **Statute of Repose.** The Court finds that the statute of repose bars the remaining claims. These claims are predicated on letters written by a Santee Cooper employee in 1986 concerning, among other things, the vapor barrier design specifications for the Good Cents program. These specifications were then incorporated into construction completed as early as 1988 or, accepting for the sake of argument HEC's position asserted during the hearing, in 1991. (At the hearing, counsel for HEC stated that while the letters were written in 1986, the vapor barrier design specification was not implemented until 1991). HEC further argues that HEC did not discover the existence of these Santee Cooper letters until the *Ferrell* suit was being litigated. HEC further argues

¹ This settlement approval was pending before another Court. Approval was subsequently granted on May 30, 2014.

² The Court does not reach Santee Cooper's other arguments for dismissal of the equitable indemnification claim and, therefore, this ruling is without prejudice to Santee Cooper's raising those arguments in a subsequent action, if any.

that the 1986 letters demonstrate that Santee Cooper had knowledge about the vapor barrier design specification that it should have disclosed to HEC in 1986 (or 1991). Santee Cooper disputes these arguments. Reading the Amended Complaint and drawing all inferences in the light most favorable to HEC, the Court concludes that these claims are based on the theory that if HEC had been informed of the contents of the letters when they were written, HEC would not have adopted the vapor barrier design specifications and, consequently, these design specifications would not have been incorporated into the homes of its customers. As noted above, counsel for HEC argued that the operative date for incorporation of the design standards into customers' homes was 1991, rather than 1986 (the date of the letter) or 1988 (the date construction commenced according to the underlying complaint). Even if 1991 were the operative date on which the design specifications were incorporated into the construction of class members' homes, the statute of repose would bar the claims for negligence, breach of the covenant of good faith and fair dealing,³ breach of warranty, and civil conspiracy.

In candor, HEC concedes that the statute of repose applies but contests the period asserted by Santee Cooper. The statute of repose currently states that "no actions to recover damages based upon or arising out of the defective . . . condition of an improvement to real property may be brought more than eight (8) years after substantial completion of the improvement." S.C. Code Ann. § 15-3-640. Prior to July 1, 2005, the statute of repose cut off all claims after thirteen (13) years. HEC argues that the 13-year

³ The Court recognizes that this is not a freestanding claim under South Carolina law. "[T]he implied covenant of good faith and fair dealing is not an independent cause of action separate from the claim for breach of contract." *RoTec Services, Inc. v. Encompass Services, Inc.*, 359 S.C. 467, 473, 597 S.E.2d 881, 884 (Ct. App. 2004). HEC does not assert a breach of contract claim. Consequently, there is no basis for the claim for breach of the covenant of good faith and fair dealing.

statute and not the 8-year statute applies. *See* S.C. Code Ann. § 15-3-640, Editor's Notes. Again construing the matter in the light most favorable to HEC, without deciding the issue, this Court applies the 13-year statute of repose.

According to the Amended Complaint and attachments, HEC adopted the Good Cents program and offered the program to customers in 1987. Complaint ¶¶ 4-7. Construction of Good Cents homes began in 1988. *Id.*, Exhibit D. Even if the design specification were not included in homes until 1991, as argued by counsel for HEC, homes constructed in 1991 would be far outside the period allowed by the statute of repose for a suit filed in 2013. The statute of repose creates an absolute, substantive right to be free from suit after a period of time set by the General Assembly. *Langley v. Pierce*, 313 S.C. 401, 403-04, 438 S.E.2d 242, 243 (1993). "[S]tatutes of repose are based upon considerations of the economic best interests of the public as a whole and are substantive grants of immunity based upon a legislative balance of the respective rights of potential plaintiffs and defendants, struck by determining a time limit beyond which liability no longer exists." *Id.* at 404, 438 S.E.2d at 244. "A statute of repose . . . is not tolled for any reason because to do so would upset the economic balance struck by the legislative body." *Capco of Summerville, Inc. v. J.H. Gayle Constr. Co.*, 368 S.C. 137, 142, 628 S.E.2d 38, 41 (2006) (internal citations omitted). Because the time limit is absolute, a statute of repose may extinguish a claim before it is discovered or even arises. *Id.* Based on the pleadings, HEC is seeking damages related to construction completed as early as 1988, arguing that it would not have adopted the vapor barrier design specifications of the Good Cents program if it had been informed of the information contained in the 1986 letters. Even if the 13-year period from the former statute of

repose is used and even if, as HEC argues, the design specifications were incorporated into Good Cents homes in 1991, the statute of repose bars HEC's claims for negligence, breach of the covenant of good faith and fair dealing, breach of warranty, and civil conspiracy. The Court so rules after carefully considering and rejecting all of HEC's arguments relevant to the statute of repose, regardless of whether such arguments are expressly enumerated herein. Accordingly, these claims are dismissed *with prejudice*.

3. **Statute of Limitations.** The Court notes that Santee Cooper also moved for dismissal of HEC's claims for negligence, breach of the duty of good faith and fair dealing, breach of express and implied warranties, and civil conspiracy on the basis of the two-year statute of limitations contained in the Tort Claims Act ("TCA"). See S.C. Code Ann. § 15-78-110; see also *Hodges v. Ratney*, 341 S.C. 79, 91-92, 533 S.E.2d 578, 584 (2000) (recognizing TCA applies to Santee Cooper). The Court finds that the statute of limitations provides an additional reason for dismissal of these claims.

In oral argument, HEC asserted that actions brought under the TCA are subject to the discovery rule, *Joubert v. S.C. Dep't. of Soc. Services*, 341 S.C. 176, 190, 534 S.E.2d 1, 8 (Ct. App. 2000), and that it did not have knowledge of the 1986 letters until discovery began in the underlying *Ferrell* case. "According to the discovery rule, the statute of limitations begins to run when a cause of action reasonably ought to have been discovered." *Id.* See also *Anonymous Taxpayer v. S.C. Dep't. of Revenue*, 377 S.C. 425, 661 S.E.2d 73 (2008) ("The limitations period begins to run when a party knows or should know, through the exercise of due diligence, that a cause of action might exist."). "The date on which discovery should have been made is an objective rather than subjective question." *Dorman v. Campbell*, 331 S.C. 179, 184, 500 S.E.2d 786, 789 (Ct.

App. 1998). "The critical inquiry, then, is whether [HEC] *could* have discovered its claim against the defendant." See *Republic Contracting Corp. v. S.C. Dep't of Highways & Public Trans.*, 332 S.C. 197, 207, 503 S.E.2d 761, 767 (Ct. App. 1998) (emphasis added).

On their face, argues Santee Cooper, the 1986 letters show that HEC could have discovered the information that HEC alleges Santee Cooper should have divulged to HEC, because the letters show that this information was contained in engineering standards and a trade publication, and was the subject of some discussion in the local building community. According to this argument, the statute of limitations began to run in 1986. The Court agrees. Alternatively, argues Santee Cooper, the Amended Complaint alleges that Santee Cooper later altered the vapor barrier design specifications in 2003 and this change put HEC on notice to inquire about the reasons for the change. Thus, under this argument, the statute of limitations began to run in 2003. The Court finds that this alternative argument from HEC actually supports dismissal of the claims other than equitable indemnification. The Court so rules after carefully considering and rejecting all of HEC's arguments relevant to the statute of limitations, regardless of whether such arguments are expressly enumerated herein.

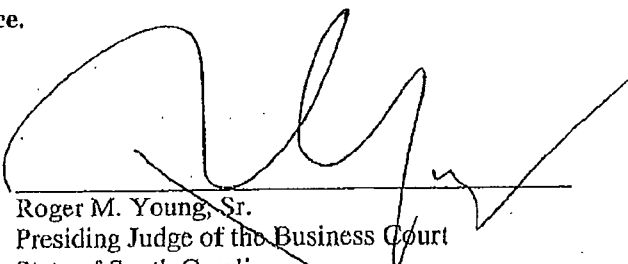
Finally, as to both defenses upon which this Court is dismissing this lawsuit, HEC argues that the issues raised by Santee Cooper are affirmative defenses, and in a 12(b)(6) motion, the Court cannot reach beyond the Complaint and consider evidence of affirmative defenses. Even though this motion has not been converted to a summary judgment motion under Rule 56, SCRCP, this Court is unpersuaded by this argument. "Most courts allow such [affirmative] defenses to be raised in a motion to dismiss under

Rule 12(b) 'when there is no disputed issue of fact raised by an affirmative defense, or the facts are completely disclosed on the face of the pleadings, and realistically nothing further can be developed by pretrial discovery or a trial on the issue raised by the defense.'" *Spence v. Spence*, 368 S.C. 106, 124, 628 S.E.2d 869, 878 (2006) (citations omitted). See also *Goodman v. PraxAir*, 494 F.3d 458, 464 (4th Cir. 2007) ("[I]n the relatively rare circumstances where facts sufficient to rule on an affirmative defense are alleged in the complaint, the [statute of limitations] defense may be reached by a motion to dismiss filed under Rule 12(b)(6)."). This is clearly such a case.

CONCLUSION

For the foregoing reasons, this Court **dismisses** the claim for equitable indemnification **without prejudice**, and **dismisses** all other claims asserted in the Amended Complaint, **with prejudice**.

IT IS SO ORDERED.



Roger M. Young, Sr.
Presiding Judge of the Business Court
State of South Carolina

JUDGE ROGER YOUNG
CIRCUIT COURT
OF SC #2134

Charleston, South Carolina

June 16, 2014

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Ronnie Ferrell, Tammy Vance and
David Montorio, on behalf of themselves
and all others similarly situated,

Plaintiffs,

vs.

Horry Electric Cooperative,

Defendant.

IN THE COURT OF COMMON PLEAS

FIFTEENTH JUDICIAL CIRCUIT

CASE NO. 2011-CP-26-1266

FINAL APPROVAL ORDER

FILED
14 MAY 30 AM 10:20
CLERK OF COURT
Horry County

WHEREAS the Court held a final approval hearing on May 30, 2014 to determine whether (i) whether the terms and conditions of the settlement agreement ("Agreement") preliminarily approved on March 3, 2014 are fair, reasonable and adequate for the settlement of all claims released by Plaintiffs against Defendant in this litigation; (ii) whether judgment should be entered dismissing the Defendant with prejudice; (iii) whether and in what amount to award incentive payments to some or all of the class representatives; and (iv) whether and in what amounts attorneys' fees and expenses will be awarded to Class Counsel.

WHEREAS the Court, having considered all matters submitted to it at the hearing and otherwise; and having previously certified the Class pursuant to S.C.R.C.P. 23, HEREBY FINDS that:

a. The Court has jurisdiction over the parties and has subject matter jurisdiction to approve the Agreement;

b. The Court has held a hearing to consider the fairness, reasonableness and adequacy of the Agreement;

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- c. There were no objections to the Agreement;
- d. The Settlement is the result of arm's length negotiations, taken in good faith, between counsel for Plaintiffs and Defendant; and
- e. The terms of the Agreement is in all respects fair, reasonable and adequate -- in light of the risks of the litigation -- and in the best interests of the class.

ACCORDINGLY, the Agreement is hereby fully and finally APPROVED and it is hereby ORDERED, ADJUDGED AND DECREED that:

1. The Court grants final approval to the Agreement as fair, reasonable and adequate.
2. Notice to the Class including, but not limited to, the forms of notice and methods of identifying and notifying members of the Class, has been given in an adequate and sufficient manner, constituting the best notice practicable, satisfying and complying in all respects with S.C.R.C.P. 23 and due process.
3. The parties are directed to implement and consummate the Agreement according to its terms and conditions.
4. The persons identified on Exhibit A of this Order of Final Judgment have timely and validly requested exclusion from the Class, and are excluded from the Class. Such persons are not included in, or bound by, this Order of Final Judgment, nor are they entitled to any recovery provided for by the Agreement.
5. Neither the Agreement, nor any of its terms or provisions, nor any of the negotiations or proceedings in connection therewith, shall be construed as an admission or concession by Defendant of the truth of any of the allegations in the litigation, or of any liability, fault or wrongdoing of any kind.

6. Class representatives David Montorio and Tammy Vance will each receive an award of \$5000 each as compensation for their time and effort in this litigation.

7. An award of attorneys' fees and reimbursement of costs is warranted in this case under the South Carolina common law, which holds that attorneys' fees may be awarded from a common fund created by counsel. *Petition of Crum Johnson v. Williams*, 196 S.C. 528, 531, 14 S.E.2d 21, 23 (1941) ("[A] court exercising equitable jurisdiction may make an allowance of a reasonable fee out of the common fund or property created or preserved, for an attorney representing a party who, at his own expense, has maintained a suit for the recovery, preservation, protection, or increase of a common fund or common property, or has created or brought into the Court a fund in which others are entitled to share."); *First Union Nat'l Bank of S.C. v. Soden*, 333 S.C. 554, 511 S.E.2d 372 (Ct. App. 1998); *Laymen v. State*, 376 S.C. 434, 452, 658 S.E.2d 320, 329 (2008). "The justification for awarding attorneys' fees in this manner is based on the principle that 'one who preserves or protects a common fund works for others as well as for himself, and the others so benefited should bear their just share of the expenses.'" *Laymen*, 376 S.C. at 452, 658 S.E.2d at 329 (2008) (quoting *Petition of Crum Johnson v. Williams*, 196 S.C. 528, 531, 14 S.E.2d 21, 23 (1941)).

8. Before attorneys' fees can be charged to a fund in which others are entitled to share, the following elements much be met: (1) the attorney must preserve or protect a common fund; (2) the attorney's services much have aided in creating, preserving, or protecting the fund, and the services must prove fruitful to the general class; and (3) there must be a "principle of representation or agency *as in a class suit*, that is, before one may be allowed compensation out of the common fund belonging to others for services rendered on behalf of the common interest there must be a contract of employment, either expressly made or superinduced by the law upon

the facts.” *First Union Nat’l Bank*, 333 S.C. at 573-74, 511 S.E.2d at 382 (emphasis added) (citations omitted).

9. In this case, Class Counsel has met each of the elements set forth by the Court of Appeals in *First Union Nat’l Bank*. First, Class Counsel has created a common fund represented by the monies paid by the Defendant in accordance with the terms of the Agreement. Second, Class Counsel’s services clearly aided in creating and preserving that fund, and their services have proved fruitful to the general class. Each qualifying Class member will derive a benefit from the settlement achieved by Class Counsel. Third, this is a class suit and the Named Plaintiffs and Class Counsel, by virtue of Rule 23 and by order of this Court, have been appointed representatives of the class. Moreover, the contingency fee agreement between the named Plaintiff and Class Counsel provides for the payment of an attorneys’ fee of one-third of any recovery in this case. Accordingly, based upon the common law of this state, Class Counsel is entitled to a reasonable award of attorneys’ fees. In further support of an award of attorneys’ fees and litigation expenses from the common fund, the Court finds that the prosecution of this matter was an immense and highly risky undertaking for Class Counsel given the complexity of the issues presented and the defense mounted by Defendant, as the discussions below clearly support.

10. **Analysis of Pertinent Factors.** In *Jackson v. Speed*, 326 S.C. 289, 308, 486, S.E.2d 750, 760 (1997), the South Carolina Supreme Court set forth factors for courts in South Carolina to consider when deciding whether to award attorneys’ fees. While these factors were not issued in the context of a class action suit, this Court chooses to analyze those factors in this case. In doing so the Court has determined that the amount of attorneys’ fees and costs requested is more than reasonable.

i. *The nature, extent, and difficulty of the case.* The case involved numerous complex factual and legal issues. The breadth and scope of fact and expert discovery, coupled with the complex legal issues, demonstrates that the requested fee is justified by the nature, extent, and difficulty of the case.

ii. *The time necessarily devoted to the case.* Class Counsel expended significant time on the litigation and settlement of this case over a period of three years and will continue to expend significant time while the settlement is implemented. The case could only be settled on the eve of trial.

iii. *Professional standing of counsel.* Class Counsel are experienced in civil litigation and have particular expertise in class actions. Further, Class Counsel enjoy excellent reputations in the legal community. Finally, Class Counsel have consistently demonstrated their competence, preparedness, tenacity, skill, and perseverance to the Court over the course of this litigation.

iv. *Contingency of compensation.* As previously noted, the contingency fee agreements between the named Plaintiffs and Class Counsel provide for a contingency fee of one-third of the recovery, if any. The Court is well aware of the risk inherent in contingency fee litigation, where neither recovery for the plaintiff nor compensation for the attorneys who undertake the risk is guaranteed. Additionally, Class Counsel advanced expenses with no assurance of reimbursement.

v. *Beneficial results obtained.* Class Counsel have secured a real, valuable benefit for the Class totaling \$6 million (including the award of attorneys' fees and costs), and all Class members are entitled to receive a cash payment.

vi. *Customary legal fees for similar services.* The attorneys' fee request is consistent

[Handwritten signature]

with the fees customarily awarded in similar cases. "When awarding attorneys' fees to be paid from a common fund, courts often use the common fund itself as a measure of the litigation's 'success.'" *Laymen*, 376 S.C. at 453, 658 S.E.2d at 330 (2008). Consequently, courts customarily base the award of attorneys' fees on a percentage of the common fund created. *Id.* The South Carolina Supreme Court has acknowledged that this percentage-of-the-recovery approach "may be appropriate under circumstances in which a court is given jurisdiction over a common fund from which it must allocate attorneys' fees among a benefited group of litigants." *Id.* at 453-54, 658 S.E.2d at 330; *see also Ex parte Condon*, 354 S.C. 634, 636-37, 583 S.E.2d 430, 431 (2003) (approving a circuit court's award of attorneys' fees based on a percentage-of-the-recovery approach where the parties' agreement stipulating that the circuit court would calculate and award attorneys' fees clearly contemplated an award based on a percentage of the common fund recovered).

11. The attorneys' fees requested here are only 16% of the total common fund. This percentage is well within the range of reasonableness for attorneys' fees in class actions. *See Fairey v. Exxon Corp.*, No. 94-CP-38-118, Order filed October 9, 2003 (First Judicial Circuit) (J. Goodstein) (approving attorneys' fees and costs representing 40% of recovery); Alba Conte & Herbert Newberg, *Newberg on Class Actions* § 14:6 (4th ed. 2002) ("Empirical studies show that . . . fee awards in class actions average around one-third of the recovery."). It is also well below what federal district courts within the Fourth Circuit have previously awarded in the percentage of the fund context. *See, e.g., In re: The Mills Corp. Sec. Litig.*, 265 F.R.D. 246, 264 (E.D.Va. 2009) (chart outlining fee awards).

12. The Agreement calls for an award of attorneys' fees and costs in the total amount of Nine Hundred Ninety Thousand and no/100 (\$990,000.00) dollars. Class Counsel already

incurred over \$40,000 in out-of-pocket expenses. Defendant set forth in the Agreement, and has advised the Court, that it has no opposition to an award in that amount, and agrees to the payment of such amount.

13. After consideration of the factors noted above, Class Counsel are awarded attorneys' fees and reimbursement of reasonable expenses incurred in connection with the Action in the total amount of \$990,000.00, which sum the Court finds to be fair and reasonable, and which shall be paid from the common fund as set forth in the Agreement.

14. Final approval operates as a release to Defendant and its present or former officers, directors, employees, agents, heirs, executors, administrators, successors, reorganized successors, assigns, subsidiaries, affiliates, parents, divisions, and predecessors, that they shall forever be released and discharged from any and all claims by the Class members and their assigns against Defendant which arise out of or are in any way related to vapor barriers installed under the Good Cents Program. This release and discharge will discharge the common liability of any joint tortfeasors and will be binding on any subsequent purchasers of the subject homes.

15. The Action is hereby dismissed with prejudice as to the Defendant and against Plaintiffs and all other members of the Class on the merits and, except as provided in the Agreement, without costs.

16. Without affecting the finality of this Order and Final Judgment in any way, this Court reserves jurisdiction over all matters relating to the administration and consummation of the Agreement.

IT IS SO ORDERED.

DATE: May 30, 2014

Benjamin H. Culbertson

BENJAMIN H. CULBERTSON
PRESIDING JUDGE
FIFTEENTH JUDICIAL CIRCUIT

EXHIBIT

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MHC

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) CASE NO: 2011.CP.26.1266

) CASE NO: 2011.CP.26.1266

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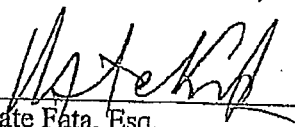
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2. Donald Wayne Anderson
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3. Leonard D. Rodwell
329 Cloverbrook Circle
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4. Carol A. Hinkle
106 Fox Haven Bl.
Myrtle Beach, SC 29588
5. Craig Larry Booth
3879 Bakers Chapel Road
Aynor, SC 29511

FILED
HURRY COUNTY
2014 MAY 16 PM 2:50
MELANIE HUGGINS-YARD
CLERK OF COURT

Respectfully submitted,



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Class Counsel

May 14, 2014

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) CASE NO: 2011-CP-26-1266

) FIFTEENTH JUDICIAL CIRCUIT
) CASE NO: 2011-CP-26-1266

CERTIFICATE OF SERVICE

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Sally J. Huffman
Legal Assistant to Nate Fata, P.A.

FILED
HURRY COUNTY
2014 MAY 16 PM 2:50
MELANIE HUGGINS-WARD
CLERK OF COURT

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO: 2011-CP-26-1266

) CASE NO: 2011-CP-26-1266

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SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT is entered into this 28 day of February, 2014, by and between Plaintiffs Tammy Vance, and David Montorio, on behalf of themselves and all others similarly situated ("Plaintiffs") and Defendant Horry Electric Cooperative ("HEC") and Carrier Federated Rural Electric Insurance Exchange ("Federated") (collectively the "Parties");

WHEREAS, Plaintiffs are the named class representatives in a class action against HEC (the "Litigation") pending in Horry County, South Carolina (the "Court"), which was filed in February 2011;

WHEREAS, HEC denies the material allegations in the Complaint and denies any wrongdoing of any kind and Federated is HEC's liability carrier which has insurance coverage applicable to the claim of the Class,

WHEREAS, on August 28, 2012 and modified thereafter, the Court certified a class action pursuant to S.C.R.C.P. 23;

WHEREAS, the Parties, having engaged in discovery and having conducted independent investigations and analyses of the facts and legal issues, recognize the uncertainties of the outcome in the Litigation, and appreciate the likelihood that any final result would require further significant efforts at considerable time and expense to advance this class action to conclusion;

WHEREAS, Class Counsel, on behalf of the Class, believe that settlement at this time as provided in this Settlement Agreement will be in the best interests of the Class as defined herein;

WHEREAS, Class Counsel and Class Representatives agree that the settlement as set forth herein which requires the establishment of two funds totaling \$6,000,000, is a fair, reasonable, and adequate resolution of the Litigation and HEC and Federated are willing to buy their peace and to settle the claim of the Class;

WHEREAS, the Parties desire to compromise and settle in the Litigation all issues and claim which have been brought, or which could have been brought, by or on behalf of persons who are included in the Class;

WHEREAS, the Parties desire and intend to seek preliminary approval of the settlement of the Litigation as set forth in this Settlement Agreement and, upon preliminary approval, the Parties intend thereafter to seek a Final Order and Judgment from the Court dismissing the claim of all members of the Class with prejudice;

NOW, THEREFORE, it is agreed that in consideration of the promises and mutual covenants set forth in this Settlement Agreement and the entry by the Court of a Final Order and Judgment dismissing with prejudice the claim asserted in this Litigation by all members of the Class and approving the terms and conditions of the settlement as set forth in this Settlement Agreement, as required by applicable law, the Litigation shall be settled and compromised under the terms and conditions contained herein.

DEFINITIONS

1. As used in this Settlement Agreement, in addition to any definitions elsewhere in this Settlement Agreement, the following terms shall have the meanings set forth below:

- a) **"Claim Form"** means the form attached hereto in Exhibit C.
- b) **"Claim Period"** means the period from the date of mailing of the Class Notice to Class members up to and including ninety (90) days after the date that Class Notice is disseminated. This period excludes the additional time made available to claim Reimbursable Remediation Expenses pursuant to paragraph 4.
- c) **"Class"** means each person on the HEC list attached hereto as Exhibit A, but excluding those persons who previously opted out of the Class as indicated on Exhibit B.
- d) **"Class Counsel"** shall mean Nate Fata, T. Christopher Tuck and James L. Ward, Jr.
- e) **"Class Notice"** means the form attached hereto as Exhibit C.
- f) **"Documented"** shall mean, with respect to remediation expenses eligible for reimbursement, costs incurred by a Class member for removal of the entire vapor barrier which are evidenced by contemporaneous copies of cancelled checks, credit or debit card receipts, receipts for materials used for repairs, credit card statements, affidavits, declarations and/or repair invoices or repair orders, which documents, singly or cumulatively, show Reimbursable Remediation Expenses. In addition, photographs of the remediated exterior wall space without the vapor barrier shall be included as proof of remediation.
- g) **"Effective Date of Settlement"** means the later of (i) the thirty-first day after the Final Order and Judgment is entered if notice of appeal is not filed or (ii) if any appeal is

filed, on the day following the date on which the Final Order and Judgment is not subject to further judicial review or appeal either by reason of affirmance by a court of last resort or by reason of lapse of time or otherwise, provided that the Final Order and Judgment are not reversed or substantially modified by the Court or an appellate court.

- h) "Final Order and Judgment" means the Final Order and Judgment when entered of record if notice of appeal is not filed or if any appeal is filed on the day following the date the Final Order and Judgment is no longer subject to further judicial review.
- i) "Good Cents Program" means Defendant's marketing of its Good Cents Program for New Homes which required a vapor barrier on the inside of exterior walls via a licensing program by the South Carolina Public Service Authority.
- j) "Reimbursable Remediation Expenses" means Documented expenses incurred by a Class member for repairs associated with the vapor barrier removal, including, without limitation, moisture accumulation, mold growth, remediation of mold and mildew, repainting or sheetrocking of walls, re-insulating of walls, moving of furniture, storage of personal items and furniture during remediation, and any relocation expenses incurred during the remediation. This amount shall not exceed \$12,000 per Class Member.

- k) "Request for Exclusion" shall mean the opt-out form attached hereto as Exhibit D.

SETTLEMENT CONSIDERATION

2. The Class has asserted a claim against HEC for breach of warranty, negligence/gross negligence and breach of contract/covenant of good faith and fair dealing. This claim is related to property damage arising out of the Good Cents program for new homes which required a vapor barrier on the inside of the exterior walls. The Class Counsel and Class Representatives maintain

that the vapor barrier has caused property damage. The Good Cents program which HEC offered to its members was a program which South Carolina Public Service Authority and Southern Electric International, Inc. developed and licensed. The evidence established that South Carolina Public Service Authority and Southern Electric International, Inc. had knowledge that the vapor barrier requirement could cause mold and mildew problems in the homes prior to the program being licensed of HEC, as indicated in its two 1986 letters to Southern Electric. The evidence has also indicated that the South Carolina Public Service Authority did not provide those two letters or that information to HEC, before HEC offered the Good Cents program to the Class Members. HEC offered the Good Cents program for new homes to its members that the South Carolina Public Service Authority offered to it. HEC contends it learned of the knowledge the South Carolina Public Service Authority had about the vapor barrier causing mold and mildew problems through discovery in this action.

3. Class Counsel and Defendant shall present this Settlement Agreement to the Court as soon as practicable and shall take all appropriate steps to obtain an Order (a) finding the settlement sufficiently fair, reasonable, and adequate; and (b) scheduling a final hearing on the fairness of the proposed settlement.

4. In consideration for dismissal of the Litigation with prejudice under the terms of this Settlement Agreement, Defendant's insurance carrier, Federated, will pay the claim from the two settlement funds. Class members may participate in one fund, but not both, by selecting a fund preference on the Claim Form that is postmarked no later than ninety (90) days from the issuance of Class Notice.

a) The Automatic Payment Fund: Defendant and Federated shall establish a fund of \$2,400,000. In no event will Defendant and/or Federated be required to increase the

amount to be funded. Class members may claim an automatic payment of \$2,000 by submission of a Claim Form and declaration under penalties of perjury of current home ownership. If the Automatic Payment Fund is insufficient to pay all qualifying Class members at \$2000 per claim, then the payments shall be made with a pro rata reduction. Defendant shall make payments to the Class members selecting the Automatic Payment fund within the later of 60 days after the Effective Date of Settlement or 60 days after the Claim Period, whichever is later, provided, however, no payments are due until HEC has all Automatic Payment claim forms necessary to determine the amount due on each Automatic Payment claim. .

- b) The Remediation Fund: Defendant shall establish a fund of \$3,600,000. In no event will HEC or Federated be required to increase the amount to be funded. Class members may claim reimbursement for Reimbursable Remediation Expenses by removing the vapor barrier from the home and by submission of a Claim Form and Documented proof. The Documented proof shall be due no later than 180 days from the Effective Date of Settlement and each claim shall be capped at \$12,000. Class members who elect the Remediation Fund shall be mailed a Notice advising them of the Effective Date of Settlement and the 180 day deadline to submit documentation for reimbursement. If the Remediation Fund is insufficient to pay all qualifying Class members their actual Reimbursable Remediation Expenses at an amount up to \$12,000 per claim, then the payments shall be made with a pro rata reduction. If less than 250 Class Members select the Remediation Fund preference on the Claim Form, then Defendant shall make payment within thirty days of Defendant's receipt of the Class member's Documented Reimbursable Remediation Expenses. Otherwise, Defendant

shall make payment within the later of thirty days of the expiration of the period to submit Documented Reimbursable Remediation Expenses or thirty days after the last decision by the arbitrator of all claim submitted in arbitration, whichever is later, provided, however, no Remediation payments are due until HEC has all Remediation claim forms necessary to determine the amount due on each Remediation claim. .

- c) Within thirty (30) days of its receipt of a Class Member's documentation for reimbursement and if the claim is to be denied in whole or in part, Defendant shall send to the Class Member in writing an explanation of the reasons for any denial of the claim, in whole or in part. In the event of any disputes regarding Reimbursable Remediation Expenses, the Parties shall meet and confer and use their best efforts to resolve the claim for the Class member. If the parties cannot reach agreement, the dispute shall be resolved by final, binding arbitration. The Class Member shall have fifteen (15) days from the receipt of Defendant's partial or complete denial of the claim to request Arbitration in writing by stating "I hereby request arbitration." Such request must be mailed to Class Counsel and Defendant's Counsel. The arbitrator shall be a South Carolina licensed attorney practicing in Horry County as agreed upon by Class Counsel and Defendant. Unless the arbitrator requests additional matters, the arbitration shall be limited to a paper review only of the Class member's claim submission and Defendant's response. The Arbitrator shall render a decision within 45 days of the Class member's request for arbitration. Defendant is responsible for the arbitrator's fees.

- d) As compensation for services as class representatives, and subject to approval by the Court, Defendant agrees to pay \$5000 to Class Representative Vance and Class

Representative Montorio. Such payment shall be made pro rata from the two funds within ten days of the Effective Date of Settlement such payment shall be paid prior to payment of any claim.

- e) Any amounts not claimed in the funds by Class Members shall, at the expiration of all claim periods, be retained by Federated.

EFFECT OF SETTLEMENT

5. This Settlement Agreement is for settlement purposes only, and neither the fact of, nor any provision contained in, this Settlement Agreement nor any action taken hereunder shall constitute or be construed or cited in any context or manner whatever as any admission of the validity of any claim or any fact alleged by Plaintiff in the Litigation or of any wrongdoing, fault, violation of law, or liability of any kind on the part of Defendant or any admission by Defendant of any claim or allegation made in any action or proceeding against Defendant. This Settlement Agreement shall not be offered or be admissible in evidence against Defendant or cited or referred to in any action or proceeding, except in any action or proceeding brought by or against the named Plaintiff, the Class, or Defendant to enforce its terms, or by Defendant in defense of any claim brought by the Class or by Defendant in any action against any other joint tortfeasor or any other person or entity which is or may be liable to Defendant by way of indemnification or otherwise.

NOTICE

6. Notice of this settlement shall be provided to Class members. The Parties will request that the Court determine that the proposed procedures for notice set forth below constitute the best practicable notice to the Class.

7. Defendant shall be responsible for preparing, printing, and mailing to all Class members the Class Notice, as directed and approved by the Court in its Preliminary Approval Order.

Defendant shall discharge this responsibility by mailing the Court-approved Class Notice to all Class members, which shall provide instructions and information concerning the settlement and their right to receive a share of the funds, as well as their objection rights and opt-out rights within ten (10) business days after the Court has entered the Preliminary Approval Order. Any Class Notice returned to the Defendant as non-delivered before the deadline for opting-out of the settlement shall be sent to the forwarding address affixed thereto. The Parties will update addresses based on any forwarding address received and/or requests to do so received from Class members. Other than as set forth in Par. 4(b) regarding the Remediation Fund, Defendant shall have no further or other responsibility for preparing, printing or mailing the Class Notice to the Class Members. It shall be the responsibility of Class Counsel or their designees to respond to all inquiries from Class members as appropriate, with the exception of correspondence and other communications with the Defendant as necessary for administration and payment of settlement funds.

REQUESTS FOR EXCLUSION

8. Any Class member shall be allowed to make a Request for Exclusion from the settlement by mailing or delivering such Request for Exclusion to Class Counsel and Defendant's Counsel at the addresses set out in the Class Notice. Any Request for Exclusion must be in writing and postmarked or delivered no later than the date specified in the Court's Preliminary Approval Order. The Request for Exclusion shall state (i) the Class member's full name and current address and (ii) in express and clear terms the Class member's desire to be excluded from the settlement and from the Class. Failure to comply with these requirements and to timely submit the Request for Exclusion shall result in the Class member being bound by the terms of the Settlement.

9. Any Class Member who submits a timely Request for Exclusion may not file an objection

to the Settlement and shall be deemed to have waived any rights or benefits under this Settlement Agreement.

10. The Parties shall jointly report the names of all individuals who have submitted a Request for Exclusion to the Court no less than ten (10) days prior to the final fairness hearing.

11. For up to five (5) days following the Request for Exclusion deadline, Defendant has the option to terminate the Settlement Agreement if more than ten percent (10%) of the Class Members timely opt out of the action. If Defendant elects to terminate, it must file a Notice of Intent to Terminate within five (5) days following the opt out deadline

OBJECTIONS

12. Subject to Court approval, any Class member who intends to object to the fairness of any aspect of the proposed settlement must mail any such objection to the Court postmarked no later than fifteen (15) days prior to the date of the final fairness hearing and must serve any objections to the settlement, in writing, upon counsel no later than fifteen (15) days prior to the date of the final fairness hearing. Objectors to the settlement must set forth their full name and current address and must state in writing all specific objections and the reasons in support thereof, and include any and all supporting papers, including proof of a home address designated for the Good Cents Program and, if applicable, the objector's statement of intent to appear at the final fairness hearing. If the objector intends to appear through counsel, the objector's counsel shall append to the statement of intent to appear a list of all prior objections previously filed by such counsel in state and federal courts.

13. Any Class member who does not properly file and serve timely written objections to the settlement and notice of his or her intent to appear at the final fairness hearing shall not be

permitted to object to the settlement at the final fairness hearing, and shall be foreclosed from seeking review of the settlement by appeal or otherwise.

FINAL JUDGMENT

14. Following final approval by the Court to this Settlement Agreement and the settlement contemplated hereby, the parties shall seek entry of a Final Order and Judgment dismissing the action with prejudice and without further costs.

15. If (i) the preliminary or final approval of this Settlement Agreement and the settlement described herein is not obtained or is reversed on appeal or (ii) the effective date of settlement as defined herein does not occur for any reason or (iii) entry of the Final Order and Judgment is finally reversed or (iv) the judgment is substantially modified by the Court, or on appeal, and either Plaintiff or Defendant so elects, this Settlement Agreement shall be null and void, shall have no further force and effect with respect to any party in the Litigation

RELEASE AND DISCHARGE

16. Upon the effective date of settlement, HEC and Federated, their present or former officers, directors, employees, agents, heirs, executors, administrators, successors, reorganized successors, assigns, subsidiaries, affiliates, parents, divisions, and predecessors, shall forever be released and discharged from any and all claims by the Class members and their heirs, successors and assigns against Defendant which arise out of or are in any way related to vapor barriers installed under the Good Cents Program. This release and discharge discharges common liability of any joint tortfeasors and will be binding on any subsequent purchasers of any homes of a Class Member.

COSTS AND ATTORNEYS' FEES

17. At least twenty-five (25) days prior to the Final Fairness Hearing, Class Counsel shall file a Motion for Attorneys' Fees and Expenses in an amount not to exceed \$990,000.00 to be paid pro rata from the Automatic Payment Fund and the Remediation Fund.

Defendant shall not object or assist or encourage any objection to Class Counsel's request for attorneys' fees and expenses to be paid out of the total settlement fund of Six Million Dollars (\$6,000,000). Counsel's fees and costs shall be made prior to any payment of any claim. These amounts will compensate Class Counsel for more than three years of contentious litigation work already performed in this case and all of the work remaining to be performed in this case, including but not limited to documenting the settlement, securing Court approval of the settlement, making sure that the settlement is fairly administered and implemented, and obtaining dismissal of the Litigation. Within ten business days after the Effective Date of Settlement, Defendant shall deduct approved fees and costs from the Automatic Payment Fund and the Remediation Fund and pay those amounts to Class Counsel.

COSTS OF ADMINISTRATION

18. Defendant shall bear all costs associated with administration of the settlement. The Parties agree to cooperate in the settlement administration process. Defendant shall provide to Class Counsel a copy of any correspondence it receives from Class members concerning settlement administration.

BEST EFFORTS

19. The Parties will use their best efforts to effectuate this Settlement Agreement and secure its approval by the Court and shall confer and consult with each other as appropriate to implement such best efforts. The Parties shall not encourage Class members to exclude themselves from the

settlement or object to any portion of this Settlement Agreement.

MISCELLANEOUS

20. This Settlement Agreement and its attachments shall constitute the entire Settlement Agreement of the parties and shall not be subject to any change, modification, amendment, or addition without the express written consent of counsel on behalf of all parties to this Settlement Agreement.

21. This Settlement Agreement shall be binding upon and inure to the benefit of the parties hereto and their representatives, heirs, successors, and assigns.

22. Time is of the essence.

23. This Settlement Agreement, and all terms and provisions thereof, shall be construed under and governed exclusively by the laws of the State of South Carolina, without application of any choice of law principles.

24. In the event any one or more of the provisions contained in this Settlement Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision if Defendant and Plaintiff's Counsel, on behalf of the parties, mutually elect to proceed as if such invalid, illegal, or unenforceable provision had never been included in this Settlement Agreement.

25. The Court shall retain continuing and exclusive jurisdiction over the parties hereto, including all members of the Class, and over the enforcement of the settlement and the benefits to the Class hereunder. Any disputes or controversies arising with respect to the interpretation, enforcement, or implementation of the settlement must be made by motion to the Court except the Remediation Reimbursement claim disputes to be arbitrated as set forth above.

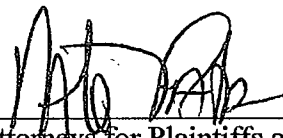
26. This Settlement Agreement may be executed in counterparts by the parties hereto, and a facsimile signature shall be deemed an original signature for purposes of this Settlement Agreement.

27. None of the Parties, or their respective counsel, will be deemed the drafter of this Settlement Agreement for purposes of construing the provisions thereof. The language in all parts of this Settlement Agreement will be interpreted according to its fair meaning, and will not be interpreted for or against any of the parties as the drafter thereof.

28. All agreements made and orders entered during the course of the Litigation relating to the confidentiality of information will survive this Settlement Agreement.

Dated this 28 day of February, 2014.

By:



Attorneys for Plaintiffs and the Class

Nate Fata, Esq.

Nate Fata, P.A.

Post Office Box 16620

1500 U.S. Hwy. 17 North

The Courtyard, Suite 215

Surfside Beach, SC 29587

(843) 238-2676

T. Christopher Tuck, Esq.

James L. Ward, Jr., Esq.

Catherine H. McElveen, Esq.

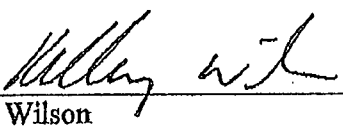
Richardson, Patrick, Westbrook & Brickman, LLC

1037 Chuck Dawley Blvd., Bldg. A

Mount Pleasant, SC 29464

(843) 727-6500

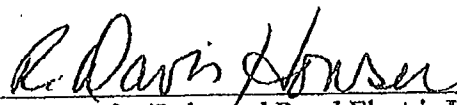
Attorney for Defendant, Horry Electric Cooperative, Inc.
Pope D. Johnson, III, Esq.
1230 Richland Street
Columbia, SC 29201
(803) 799-9791

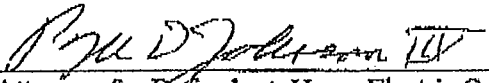

Kelley Wilson
Claim Attorney
Federated Rural Electric Insurance Exchange

Attorney for Federated Rural Electric Insurance Exchange
R. Davis Howser, Esq.
Howser Newman & Besley, LLC
P.O. Box 12009
Columbia, SC 29211
803-758-6000

Attorney for Defendant, Horry Electric Cooperative
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Kelley Wilson
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803-758-6000

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

Horry Electric Cooperative, Inc.,)

Plaintiff,)

vs.)

South Carolina Public Service)

Authority and Southern Electric)

International, Inc.,)

Defendants.)

IN THE COURT OF COMMON PLEAS

Civil Action No. 2013-CP-26-488

CERTIFICATE OF SERVICE

I, Sherry W. Wise, of Pope D. Johnson, III, Attorney at Law, hereby certify that I have served B. Rush Smith, III, attorney for Defendant South Carolina Public Service Authority, with the foregoing pleading(s) by mailing a copy of same, postage prepaid and return address clearly indicated, to him at the following address on the 1st day of July, 2014.

COUNSEL SERVED:

B. Rush Smith, III, Esquire
Nelson Mullins Riley & Scarborough, LLP
Meridian/17th Floor
1320 Main Street
Columbia, SC 29201

PLEADINGS:

Plaintiff's Rule 59(e) Motion to Reconsider, Alter and/or Amend

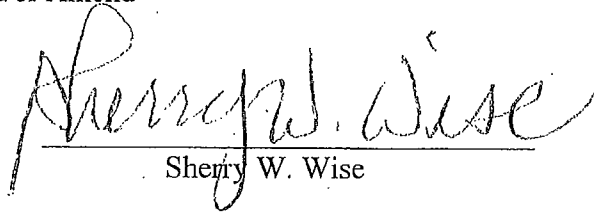

Sherry W. Wise

Exhibit D

(October 7, 2014 - Horry Electric v. Santee Cooper Complaint)

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Horry Electric Cooperative, Inc.,

Plaintiff(s)

vs.

South Carolina Public Service Authority,

Defendant(s)

(Please Print)

Submitted By: Pope D. Johnson, III

Address: 1230 Richland Street, Columbia, SC 29201

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2014-CP-26-6571

SC Bar #: 3048

Telephone #: 803-799-9791

Fax #: 803-253-6084

Other:

E-mail: pope@popejohnsonlaw.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

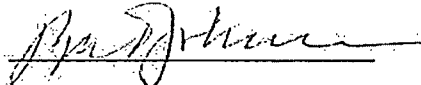
*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
- ☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- ☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- ☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

Contracts	Torts - Professional Malpractice	Torts - Personal Injury	Real Property
☐ Constructions (100)	☐ Dental Malpractice (200)	☐ Assault/Slander/Libel (300)	☐ Claim & Delivery (400)
☐ Debt Collection (110)	☐ Legal Malpractice (210)	☐ Conversion (310)	☐ Condemnation (410)
☐ Employment (120)	☐ Medical Malpractice (220)	☐ Motor Vehicle Accident (320)	☐ Foreclosure (420)
☐ General (130)	Previous Notice of Intent Case #	☐ Premises Liability (330)	☐ Mechanic's Lien (430)
☐ Breach of Contract (140)	20 -CP-	☐ Products Liability (340)	☐ Partition (440)
☐ Other (199)	☐ Notice/ File Med Mal (230)	☐ Personal Injury (350)	☐ Possession (450)
	☐ Other (299)	☐ Wrongful Death (360)	☐ Building Code Violation (460)
		☒ Other (399)	☐ Other (499)
-
Inmate Petitions	Judgments/Settlements	Administrative Law/Relief	Appeals
☐ PCR (500)	☐ Death Settlement (700)	☐ Reinstate Driver's License (800)	☐ Arbitration (900)
☐ Mandamus (520)	☐ Foreign Judgment (710)	☐ Judicial Review (810)	☐ Magistrate-Civil (910)
☐ Habeas Corpus (530)	☐ Magistrate's Judgment (720)	☐ Relief (820)	☐ Magistrate-Criminal (920)
☐ Other (599)	☐ Minor Settlement (730)	☐ Permanent Injunction (830)	☐ Municipal (930)
	☐ Transcript Judgment (740)	☐ Forfeiture-Petition (840)	☐ Probate Court (940)
	☐ Lis Pendens (750)	☐ Forfeiture-Consent Order (850)	☐ SCDOT (950)
	☐ Transfer of Structured Settlement Payment Rights Application (760)	☐ Other (899)	☐ Worker's Comp (960)
	☐ Other (799)		☐ Zoning Board (970)
-
Special/Complex/Other	
☐ Environmental (600)	☐ Pharmaceuticals (630)
☐ Automobile Arb. (610)	☐ Unfair Trade Practices (640)
☐ Medical (620)	☐ Out-of State Depositions (650)
☐ Other (699)	☐ Motion to Quash Subpoena in an Out-of-County Action (660)
	☐ Sexual Predator (510)

Submitting Party Signature:



Date: October 3, 2014

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 1.1, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

Horry Electric Cooperative, Inc.,)

Plaintiff,)

vs.)

South Carolina Public Service
Authority,)

Defendant.)

IN THE COURT OF COMMON PLEAS

Civil Action No.

SUMMONS

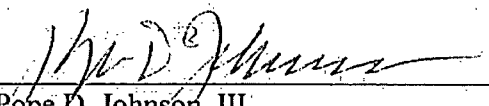
(Non-Jury)

2014 OCT -7 PM 3:06
MELANIE HUGGINS-WARD
CLERK OF COURT
Horry County

TO THE ABOVE NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Complaint in this action. A copy of the Complaint is attached to this Summons and is herewith served upon you. Your answer must be in writing and signed by you or by your attorney and must state your address or the address of your attorney if signed by your attorney. Your answer must be served upon the undersigned attorneys for the plaintiff within thirty (30) days after the service hereof, exclusive of the day of service at 1230 Richland Street, Columbia, SC 29201.

YOU ARE HEREBY GIVEN NOTICE FURTHER that, if you fail to appear and defend and fail to answer the Complaint as required by this Summons within thirty (30) days after the service hereof, judgment by default will be rendered against you for the relief demanded in the Complaint.


Pope D. Johnson, III

Attorney at Law
1230 Richland Street
Columbia, SC 29201
803-799-9791
803-253-6084 (fax)
pope@popejohnsonlaw.com
Attorney for the Plaintiff

Columbia, South Carolina,
October 3, 2014

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS

Horry Electric Cooperative, Inc.,)
Plaintiff,)

Civil Action No. 2013-CP-26-488

vs.)

COMPLAINT

South Carolina Public Service)
Authority,)
Defendant.)

(Non-Jury)

FILED
HORRY COUNTY
2014 OCT -7 PM 3:06
KELANIE HUGGINS-WARD
CLERK OF COURT

That Horry Electric Cooperative, Inc. ("Horry Electric") alleges as follows:

FACTUAL BACKGROUND

1. That Horry Electric is a member owned, non-profit cooperative which distributes electricity to its members, with its principal place of business being in Horry County.

2. That Defendant South Carolina Public Service Authority ("Santee Cooper") generates and sells electricity to its members and to some or all electric cooperatives including Horry Electric.

3. That in 1987, Santee Cooper offered the Good Cents program to the South Carolina electric cooperatives, including Horry Electric, and Horry Electric agreed to participate and the parties entered into a contract.

4. That Horry Electric adopted the program developed and/or offered by Santee Cooper including all of the design and design standards provided with the program.

5. That Santee Cooper represented through words, conduct and otherwise that participating new home Good Cents members would, by qualifying for the Good Cents Program, have better insulated and constructed houses and would benefit by receiving the Good Cents rate as well as by using less electricity because of the insulating requirements of the Good Cents Program.

6. That, prior to Horry Electric's entry into the said Agreement, Santee Cooper knew the use of vapor barriers which were required by the Good Cents Program may cause moisture problems in the coastal areas.

7. That Santee Cooper failed to disclose the potential moisture problem issue to Horry Electric and failed to advise Horry Electric that the vapor barrier should be a recommendation rather

#1
M

than a requirement.

8. That Santee Cooper did not disclose to Horry Electric any problem with the vapor barrier requirements of the Good Cents Program but instead South Carolina promoted the Good Cents Program as being an environmental friendly program and a win-win situation for the participating Good Cents members.

9. That Horry Electric was sued in the civil action titled *Ronnie Ferrell, Tammy Vance and David Montorio, on behalf of themselves and all others similarly situated v. Horry Electric Cooperative*, Civil Action No. 2011-CP-26-1266.

10. That the Good Cents Program was a pass through program and Santee Cooper had the right to audit for Horry Electric's compliance with the requirements of the program.

11. That the fault alleged by the plaintiff in Civil Action No. 2011-CP-26-1266 is imputed fault to Horry Electric, which merely offered its members participation in the pass through Good Cents Program and Horry Electric was personally negligent with respect to the claims asserted in Civil Action No. 2011-CP-26-1266.

12. That a special relationship existed between Horry Electric and Santee Cooper, given the contractual relationships and Horry Electric's participation in a pass through program, which upon information and belief benefits Santee Cooper only.

13. That Horry Electric is not liable for causing damage to the plaintiffs in Civil Action No. 2011-CP-26-1266 but has settled the action, which settlement has been approved by the Court.

14. That Horry Electric has incurred attorney's fees and costs in defending Civil Action No. 2011-CP-26-1266 for which Santee Cooper is liable and Santee Cooper is liable to Horry Electric for the amounts paid to the class members, the class representatives and their attorneys.

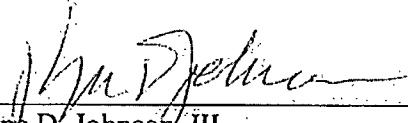
15. Horry Electric is informed and believes that Santee Cooper is liable to it for the expenses including Horry Electric's attorney's fees and costs and any settlement costs incurred by Horry Electric in protecting its interest in Civil Action No. 2011-CP-26-1266.

16. That Horry Electric is informed and believes that the defendants are liable to Horry Electric for all fees, expenses and expenditures incurred by Horry Electric in protecting its interests in Civil Action No. 2011-CP-26-1266.

WHEREFORE, Horry Electric prays for judgment by way of indemnification against Santee Cooper in the amount of its fees, expenses and expenditures and the costs in defending and settling

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in Civil Action No. 2011-CP-26-1266 and for such other and further relief as may be just and proper.



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Attorney at Law
1230 Richland Street
Columbia, SC 29201
803-799-9791
803-253-6084 (fax)
pope@popejohnsonlaw.com
Attorney for the Plaintiff

Columbia, South Carolina
October 3, 2014

#3

Exhibit E

**(2014.10.20 - Smith letter w/ Acceptance of Service of October 7, 2014
Complaint)**

Nelson Mullins

Nelson Mullins Riley & Scarborough LLP
Attorneys and Counselors at Law
1320 Main Street / 17th Floor / Columbia, SC 29201
Tel: 803.799.2000 Fax: 803.255.9026
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B. Rush Smith III
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October 20, 2014

Pope D. Johnson, III, Esquire
1230 Richland Street
Columbia, SC 29201

RE: Horry Electric Cooperative, Inc. v. South Carolina Public Service Authority
Civil Action No. 2014-CP-26-6571
Our File No. 01617/01549

Pope,

Please find enclosed the signed Acceptance of Service in the above-referenced matter.

Thank you.

Very truly yours,



B. Rush Smith III

BRSIII:jlt
Enclosure

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS

Horry Electric Cooperative, Inc.,)
Plaintiff,)

Civil Action No. 2014-CP-26-6571

vs.)

ACCEPTANCE OF SERVICE

South Carolina Public Service)
Authority,)
Defendant.)

RECEIVED

JAN 09 2015

SC Court of Appeals

I, B. Rush Smith, III, attorney for the Defendant, hereby accept service of the
Summons and Complaint in the above-captioned action this 20th day of October, 2014,
and acknowledge that I have been furnished a copy of the Summons and Complaint.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 

B. Rush Smith III
SC Bar No. 012941
E-Mail: rush.smith@nelsonmullins.com
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(803) 799-2000

Attorneys for South Carolina Public Service Authority

Columbia, South Carolina

10/20, 2014

Exhibit F

**(December 19, 2014 - Santee Cooper's Motion to Dismiss October 7, 2014
Complaint)**

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

Horry Electric Cooperative, Inc.,)

Plaintiff,)

vs.)

South Carolina Public Service Authority,)

Defendant.)

Civil Action No. 2014-CP-26-6571

MOTION TO DISMISS
COMPLAINT

Defendant, South Carolina Public Service Authority ("Santee Cooper"), moves to dismiss the Complaint of Plaintiff, Horry Electric Cooperative, Inc. ("HEC"), pursuant to Rule 12(b)(6), SCRCP, on the grounds that (a) the statute of repose bars the Complaint, regardless of whether the 8-year or 13-year period of repose applies; (b) the doctrine of laches bars the Complaint; and (c) HEC has failed to state facts sufficient to constitute a cause of action against Santee Cooper. This motion is based on the pleadings and the attached exhibits, of which the Court may take judicial notice. HEC has failed to state a cause of action and the Complaint should be dismissed for the reasons stated herein.

Background

HEC is suing Santee Cooper because HEC was sued by some of its customers in *Ronnie Ferrell, Tammy Vance, and David Montorio, et al. v. Horry Electric Cooperative*, Civil Action No. 2011-CP-26-1266 ("the *Montorio* action"), and HEC thereafter settled the case as a putative class action pursuant to an agreement entered into by and among HEC, its insurer, and plaintiffs Tammy Vance and David Montorio. (Compl. ¶¶ 9, 13, 14, and 15.) The *Montorio* complaint against HEC alleged, among other things, that the plaintiffs built new homes in accordance with the "Good Cents" standards in HEC's

“New Good Cents Program.” (See Exhibit A, *Montorio* Compl. ¶ 7.) The *Montorio* complaint did not name Santee Cooper as a defendant¹ or otherwise attempt to impose liability on HEC because of the conduct or acts of Santee Cooper.

HEC’s settlement of the *Montorio* action is embodied in a court-approved settlement agreement, attached hereto as Exhibit B, of which this Court may take judicial notice. (Exhibit B, Final Approval Order.) The parties to the agreement were plaintiffs Tammy Vance and David Montorio, HEC, and HEC’s insurance carrier, Federated Rural Electric Insurance Exchange (“Federated”). (See Exhibit C, *Montorio* Settlement Agreement at 1.) Ronnie Ferrell, identified as a plaintiff in the caption of the underlying case, was not party to the settlement agreement, having been found unsuitable as a class representative. (See Exhibit D, Order Granting Class Certification at 7.)

This action was filed on October 7, 2014. This is the second action for indemnification filed by HEC against Santee Cooper. The first, Civil Action No. 2013-CP-26-0488, filed on January 23, 2013, is currently on appeal after having been dismissed upon Santee Cooper’s Rule 12(b)(6) motion. (See Exhibits E and F, Compl. and Amended Compl., Civil Action No. 2013-CP-26-0488.)

HEC has conceded that its claim for indemnification is barred by the statute of repose for homes built before January 2000. (Exhibit G, Mot. Dismiss Tr. at 14:7-19, Civil Action No. 2013-CP-26-0488; Exhibit H, Initial Brief of Appellant at 12.)

The homes of David Montorio and Tammy Vance, with whom HEC elected to enter into the class-action settlement agreement, were substantially completed prior to

¹ The *Montorio* plaintiffs did allege that Horry Electric “adopted the [Good Cents] Program from another electrical service provider without performing any of its own due diligence or research” regarding program requirements and specifications. (Exhibit A, *Montorio* Compl. ¶ 12.)

January 2000. Public records of which this Court may take judicial notice disclose that the deed and mortgage for the David Montorio property, located at 303 Worthington Circle, Myrtle Beach, South Carolina, were recorded on February 8, 1998, and that the deed and mortgage for the Tammy Vance property, located at 326 Worthington Circle, Myrtle Beach, South Carolina, were recorded on October 31, 1997. (See Exhibits I-L, Deeds and Mortgages for the Montorio and Vance properties.)

Rule 12(b)(6) Standard

Santee Cooper denies the material allegations of the Complaint, including but not limited to the contentions that it wrongfully concealed information from HEC and breached a duty to or injured HEC, as well with the suggestion that the vapor barrier standards of the Good Cents program were defective. A motion to dismiss pursuant to Rule 12(b)(6), however, is based on the law and the allegations set forth in the complaint, and for purposes of the motion, the court accepts all well-pled facts as true. *Overcash v. S.C. Elec. & Gas Co.*, 364 S.C. 569, 614 S.E.2d 619 (2005). Additionally, in ruling on a motion to dismiss, the court may take judicial notice of facts which may be verified by reference to the public record, *Masters v. Rodgers Dev. Grp.*, 283 S.C. 251, 256-57, 321 S.E.2d 194, 197 (Ct. App. 1984), facts established in its own records, files, and proceedings, *Wise v. Wise*, 394 S.C. 591, 601, 716 S.E.2d 117, 122 (Ct. App. 2011), and statements in former opinions in a prior action of the same case. *Id.* Doing so will not convert the motion to dismiss to a motion for summary judgment. See, e.g., *Doe v. Bishop of Charleston*, 407 S.C. 128, 135, 754 S.E.2d 494, 498 n.2 (2014), *reh'g denied* (Mar. 6, 2014) ("The trial court's reliance on transcripts and court orders in the underlying class action did not convert the motion to one for summary judgment.").

Grounds for Dismissal of Complaint

1. HEC's Complaint is barred by the statute of repose.

The construction statute of repose bars claims arising from allegedly defective construction substantially completed more than a certain, specified period of years prior to commencement of the action. S.C. Code Ann. § 15-3-640. HEC has conceded that, pursuant to the statute of repose, Santee Cooper has no liability for construction that was substantially completed before the year 2000. (Exhibit G, Mot. Dismiss Tr. 14:7-19, Civil Action No. 2013-CP-26-0488.) Both of the settling plaintiffs in the underlying action, David Montorio and Tammy Vance, completed construction of their new homes before 2000, as evidenced by deeds and mortgages filed in 1998 and 1997. (Exhibits I-L, Deeds and Mortgages for the Montorio and Vance properties.) Accordingly, HEC's claim for equitable indemnification is barred by the statute of repose, regardless of whether the 8-year or 13-year period of repose applies.

Since 2005, the statute of repose has specified an 8-year period of repose, barring actions filed more than eight years after substantial completion of construction. *See* S.C. Code Ann. §§ 15-3-640 (barring "actions to recover damages based upon or arising out of the defective or unsafe condition of an improvement to real property" if brought more than 8 years "after substantial completion of the improvement"); 15-3-640(4) (including within scope of statute actions "to recover damages for economic or monetary loss"); and 15-3-640(6) (including within scope of statute actions for "indemnification for damages sustained on account of an action described in this section"); *see also Posey v. Bldg. Materials Corp. of Am. (In re Bldg. Materials Corp. of Am. Asphalt Roofing Shingle Prods. Liab. Litig.)*, MDL No. 8:11-mn-02000-JMC, CA No.: 3:11-cv-02784-JMC, 2013

U.S. Dist. LEXIS 44137, at *12 (D.S.C. Mar. 27, 2013) (finding complaint filed in 2011 based on shingle replacement in 1999 was “well beyond the eight-year statute of repose,” but allowing claim to proceed because plaintiff showed repose period had been extended by certain warranties); *Langley v. Pierce*, 313 S.C. 401, 403-04, 438 S.E.2d 242, 243 (1993), *quoted in Florence Cty. Sch. Dist. v. Interkal, Inc.*, 348 S.C. 446, 453, 559 S.E.2d 866, 869 (Ct. App. 2002) (“[A] statute of repose is typically an absolute time limit beyond which liability no longer exists and is not tolled for any reason because to do so would upset the economic balance struck by the legislative body.”).

Prior to its amendment in 2005, the statute specified a 13-year period of repose. S.C. Code Ann. § 15-3-640 (1986); *see also* 2005 S.C. Acts 27 (H.B. 3008) (implementing the eight-year statute of repose).

Regardless of which period applies, the statute of repose bars HEC’s Complaint, which was not filed until October 7, 2014, because construction of the homes of David Montorio and Tammy Vance, the class representatives who were parties to the settlement agreement that allegedly gives rise to the indemnification claim, was substantially completed more than thirteen years prior to the filing of the Complaint. Mr. Montorio’s new-home construction was substantially completed by February 2, 1998, when the deed and mortgage for his property were recorded—more than 16 years prior to the filing of Complaint in this action. (*See* Exs. I-J, Montorio Deed and Mortgage.) Ms. Vance’s new-home construction was substantially completed by October 31, 1997, when the deed and mortgage for her property were recorded—almost 17 years prior to the filing of the Complaint in this action. (*See* Exs. K-L, Vance Deed and Mortgage.) Accordingly, HEC’s Complaint is barred, regardless of whether the 8-year period or the 13-year period

applies. See, e.g., *Florence County School Dist. No. 2 v. Interkal, Inc.*, 348 S.C. 446, 559 S.E.2d 866 (Ct. App. 2002) (statute of repose barred contribution action filed more than 13 years after substantial completion of allegedly defective construction).²

2. HEC's Complaint is barred by the doctrine of laches.

Apart from the statute of repose, the action is barred by the doctrine of laches. "Laches" is defined as 'neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done.' . . . Delay alone is not enough to constitute laches; it must be unreasonable, and the party asserting laches must show prejudice." *Gordon v. Drews*, 358 S.C. 598, 612, 595 S.E.2d 864, 871 (Ct. App. 2004) (internal citations omitted).

HEC premises its action on conduct that occurred in the mid-1980s (Compl. ¶¶ 3-8) and on construction that occurred as early as 1988. (*Id.* ¶¶ 11 and 13 (referring to the *Montorio* action)). Because Santee Cooper is prejudiced by the various delays and omissions associated with HEC's claim for indemnification, the doctrine of laches bars the action.

First, Santee Cooper is prejudiced insofar as HEC attempts to premise its claims on evidence of what parties knew or did not know, and communicated or failed to communicate, in the mid-1980s—so long ago that access to relevant documents, witnesses, and reliable recollections makes the fair adjudication of the claims impossible. HEC alleges that it adopted the Good Cents Program offered by Santee Cooper in 1987. (Compl. ¶¶ 3-4.) HEC alleges that Santee Cooper knew of issues with the use of vapor

² The same result would obtain even if the January 2013 filing date of HEC's previously filed action for indemnification were used in the analysis. Moreover, as the complaint in the *Montorio* action was not filed until February 9, 2011, it appears that HEC could have successfully asserted the statute of repose in that action as well. See *infra* pp. 7-10.

barriers in coastal areas and failed to inform HEC. (*Id.* at ¶¶ 6-7.) These allegations are based on letters written by a Santee Cooper representative in October 1986, as evidenced by the complaint in HEC's prior action against Santee Cooper, Civil Action No. 2013-CP-26-0488. (See Exhibit E, Compl. filed January 23, 2013, Civil Action No. 2013-CP-26-0488, ¶ 6 and Exhibits C and D thereto; *see also* Exhibit F, Am. Compl. with Exhibits.) HEC admitted in the *Montorio* action that it offered the Good Cents program to its customers "without having performed any research regarding the specifications and requirements of the Good Cents Program as offered by the South Carolina Public Service Authority." (Exhibit M, *Montorio* Answer ¶ 9.) Presumably, HEC never conducted any research on the Good Cents specifications in the 24 years between adoption of the program and the filing of the *Montorio* complaint. Had it done so, it could have located the articles and concerns contained in the 1986 Santee Cooper letters. This extremely long delay prejudices Santee Cooper's ability to defend itself. *See Richey v. Dickinson*, 359 S.C. 609, 613, 598 S.E.2d 307, 310 (Ct. App. 2004) (applying laches to dismiss a claim arising out of an incident that occurred eleven years prior to the assertion of the claim because the defendant would be materially prejudiced by the lack of evidence still in existence).

Second, Santee Cooper is prejudiced because HEC failed to advance effectively the statute of repose in the *Montorio* action. The Court may take judicial notice of the record in the *Montorio* action, which shows that HEC failed to prosecute the statute of repose, twice failing to appear for a hearing, and then, after finally litigating the issue, HEC failed to reduce the statute of repose issue to judgment:

- On May 27, 2011, HEC filed a motion for summary judgment based on the statute of repose. (See Exhibit N, 5/27/11 Mot. Summ. J.)

- On August 29, 2011, the court entered a Form 4 Order (filed September 1, 2011) denying the May 27, 2011 motion without prejudice because HEC failed to appear for the hearing. (Exhibit O, 9/01/11 Form 4 Order.)
- On September 28, 2011, HEC filed a motion seeking summary judgment on the grounds that the statute of repose barred the action and a prior class action settlement included a release of claims that prevented some class members from obtaining relief. (See Exhibit P, 9/28/11 Mot. Summ. J.)
- The September 28, 2011 motion was denied by order dated August 13, 2012, for failure to prosecute, because HEC failed to appear for the hearing after having received notice. (Exhibit Q, 8/21/12 Form 4 Order.)
- On August 17, 2012, HEC filed yet another summary judgment motion, this one duplicating the motion filed on September 28, 2011, seeking summary judgment on the basis of the statute of repose and the prior class action settlement. (Exhibit R, 8/17/12 Mot. Summ. J.)
- On August 21, 2012, the court in the *Montorio* action entered an order (filed August 28, 2012) granting class certification. (Exhibit D, Order Granting Class Certification.) The class certification order provided that HEC could assert the statute of repose against certain class members. (*Id.* at 8.)
- A Form 4 Order entered November 7, 2012, and filed November 26, 2012, indicates that HEC's August 17, 2012 motion for summary judgment was granted in part and denied in part, with a formal order to follow by Attorney Pope Johnson. (Exhibit S, 11/26/12 Form 4 Order.) The public index does not reflect entry of a subsequent formal order. (See Exhibit T, Public Index, Civil Action No. 2011-CP-26-01266.)

It appears that HEC reacted to the class certification order by opting to pursue its purported indemnification claim against Santee Cooper rather than pursue the statute of repose defense against the plaintiffs. On September 20, 2012, HEC moved for leave to file a third-party complaint against Santee Cooper. (See Exhibit U, Mot. for Leave to File Third Party Compl.) From the public index, it appears that HEC never addressed, either in a formal order or by subsequent motion, the effect of the statute of repose on the class representatives—even though the Form 4 Order granting HEC's August 17, 2012 motion for summary judgment indicates that a formal order was to be prepared by HEC's

counsel, and even though the class certification order allowed for the assertion of the statute of repose. Whatever the reason, HEC's failure to pursue the statute of repose effectively in the *Montorio* action prejudices Santee Cooper now.

Third, Santee Cooper is prejudiced because it appears that HEC entered into a settlement agreement with persons whose homes were substantially completed more than 13 years prior to the commencement of the *Montorio* action. As detailed above, the public record indicates the dates upon which the homes of Tammy Vance and David Montorio were substantially completed. Tammy Vance's deed and mortgage were recorded on October 31, 1997, which is more than 13 years and 3 months prior to the filing of the *Montorio* action; and David Montorio's deed and mortgage were recorded on February 2, 1998, which is 13 years and 1 week prior to the filing of the *Montorio* action. Therefore, it appears that the statute of repose barred the *Montorio* action against HEC—yet HEC nevertheless chose to enter into a settlement agreement with Mr. Montorio and Ms. Vance.

A putative class representative whose claims are barred by a statute of repose or statute of limitations is not an adequate class representative, and his or her claims are subject to typicality challenges also insofar as such a defense applies. *See Doe v. Chao*, 306 F.3d 170, 184 (4th Cir. 2002) (finding that denial of class certification was appropriate where class was drafted without regard to statute of limitations, so claims of named representatives would be atypical of those of potentially time-barred class members); *see also Hill v. W. Elec. Co.*, 672 F.2d 381, 389 (4th Cir. 1982) (discussing effects on outcome and adequacy of representation if class representative's claim is demonstrated to be meritless). HEC appears not to have raised any objection to the

adequacy of representation by Mr. Montorio and Ms. Vance. (See Exhibit D, Order Granting Class Certification at 8 (“Here, there is no argument that Plaintiffs Vance and Montorio will not fairly and adequately protect the interests of the class . . .”).) Santee Cooper is prejudiced by HEC’s various delays and its failure to effectively assert the statute of repose.

Now HEC turns to Santee Cooper to seek indemnification for attorneys’ fees and other costs and expenses incurred in the settlement of the action. Under the circumstances of this case, however, HEC’s various delays and omissions greatly prejudice Santee Cooper, calling for application of the doctrine of laches.

3. HEC’s Complaint fails to allege facts sufficient to constitute a cause of action for equitable indemnity.

While HEC makes the conclusory assertion that it is without fault and was sued only on a theory of imputed liability, this is not a well-pled factual allegation but is instead an unsupported legal conclusion. Consequently, the Court need not accept it as true. See *Morrow Crane Co. v. T.R. Tucker Const. Co.*, 296 S.C. 427, 429, 373 S.E.2d 701, 702 (Ct. App. 1988) (stating that, in ruling upon a motion to dismiss, the trial court only must accept “all *well pled facts* to be true.” (emphasis added)). Because HEC has failed to plead facts showing that it is free from liability and its admissions establish that it was in fact guilty of the omissions of that afford the basis for liability in the underlying suit, HEC cannot state facts sufficient to constitute a cause of action for indemnification against Santee Cooper.

The pleadings and exhibits show that the *Montorio* plaintiffs do not premise their claims on imputed liability; the *Montorio* complaint makes no claims or allegations about Santee Cooper’s conduct but is instead predicated on HEC’s alleged wrongdoing. “In

order to sustain a claim for equitable indemnity, the existence of some special relationship between the parties must be established.” *Toomer v. Norfolk S. Ry. Co.*, 344 S.C. 486, 492, 544 S.E.2d 634, 637 (Ct. App. 2001). In addition to a special relationship, the party seeking indemnity must establish the following elements: (1) the first party (indemnitor) was liable for causing the plaintiff’s damages in the suit against the second party (indemnitee); (2) the indemnitee was exonerated from any liability for those damages; and (3) the indemnitee suffered damages as a result of the plaintiff’s claims against it, which were eventually proven to be the fault of the indemnitor. *Fowler v. Hunter*, 388 S.C. 355, 363, 697 S.E.2d 531, 535 (2010). “The most important requirement for the finding of equitable indemnity is that the party seeking to be indemnified is adjudged without fault and the indemnifying party is the one at fault.” *Vermeer Carolina’s, Inc. v. Wood/Chuck Chipper Corp.*, 336 S.C. 53, 63, 518 S.E.2d 301, 307 (Ct. App. 1999); see also *Atlantic Coast Line R.R. Co. v. Whetstone*, 243 S.C. 61, 70, 132 S.E.2d 172, 176 (1963) (“Ordinarily, if one person is compelled to pay damages because of negligence imputed to him as the result of a tort committed by another, he may maintain an action over for indemnity against the person whose wrong has thus been imputed to him; but this is subject to the proviso that no personal negligence of his own has joined in causing the injury.” (internal quotations omitted)).

HEC’s Complaint reveals an absence of factual allegations to support the essential elements of the claim for equitable indemnification. For example, it alleges no facts showing that HEC was or could be exonerated of fault. In its answer to the *Montorio* complaint, HEC admitted that it did not research or investigate the Good Cents standards before offering the program to its customers. (Exhibit M, *Montorio* Answer ¶ 9.) Under

the circumstances, HEC cannot show that it is an innocent party. See *Vermeer Carolina's, Inc.*, 336 S.C. at 61, 518 S.E.2d at 305 (stating that equitable indemnity is intended to protect an *innocent party* from being subjected to damages on the basis of another party's conduct); see also *Atlantic Coast Line R.R. Co. v Whetstone*, 243 S.C. 61, 70, 132 S.E.2d 172, 176 (1963) (holding that equitable indemnity is not available to alleged joint tortfeasors).

Conclusion

This motion is based on the pleadings, the exhibits attached hereto, the law of South Carolina, and on such further briefing, authorities, and argument as may be submitted to the Court prior to or at the time of the hearing on this motion. For the reasons stated herein and as may be more fully explained in subsequent briefing and argument, Santee Cooper respectfully requests that HEC's Complaint be dismissed for failure to state facts sufficient to constitute a cause of action against Santee Cooper.

[signature page attached]

Respectfully submitted,

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 

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South Carolina Public Service Authority
Post Office Box 294601
Moncks Corner, SC 29461

Attorneys for Respondent South Carolina Public
Service Authority

Columbia, South Carolina

12/17, 2014

Exhibit A

Montorio Complaint

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Ronnie Ferrell, Tammy Vance,
and David Montorio, on behalf of
themselves and all others similarly situated

Plaintiffs,

vs.

Horry Electric Cooperative,

Defendant.

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) CASE NO: 2011-CP-26- 12666

SUMMONS

TO THE DEFENDANT:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this Complaint upon the subscribers, at the addresses shown below, within thirty (30) days after service hereof, exclusive of the day of service, and if you fail to answer the Complaint, judgment by default will be rendered against you for the relief demanded in the Complaint.



Nate Fata
NATE FATA, P.A.
Attorney for Plaintiffs
P.O. Box 16620
1500 US Hwy. 17 North
The Courtyard, Suite 215
Surfside Beach, SC 29587
Tel. (843) 238-2676
Fax (843) 238-0240

Surfside Beach, South Carolina
February 9, 2011

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

Ronnie Berrell, Tammy Vance)
and David Montorio on behalf of themselves)
and all others similarly situated,)

Plaintiffs,)

vs.)

Horry Electric Cooperative,)

Defendant.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO: 2011-CP-26- 1264

COMPLAINT
(Jury Trial Demanded)

FILED
2011-09-14 PM 1:52
CLERK OF COURT

The Plaintiffs, individually, and as class representatives, complaining of the Defendants herein, would respectfully show unto this Honorable Court as follows:

PARTIES AND JURISDICTION

1. Plaintiff Ronnie Berrell, individually and as class representative, is a citizen and resident of Horry County, South Carolina.

2. Plaintiff Tammy Vance, individually and as class representative, is a citizen and resident of Horry County, South Carolina.

3. Plaintiff David Montorio, individually and as class representative, is a citizen and resident of Horry County, South Carolina.

4. On information and belief, Defendant Horry Electric Cooperative is a company organized and existing under the laws of the State of South Carolina and does business through its agents and servants in Horry County, South Carolina.

5. This is a matter within the jurisdiction of this Court.

FACTUAL SUMMARY

6. Plaintiffs are the owners of residences in Horry County and reside in Horry County, South Carolina. The Defendant is the electrical service provider for each Plaintiff.

7. Each residence owned by the Plaintiffs and Plaintiff Class was constructed between 1988 and 2003 according to standards and specifications set forth and required by Defendant through the Defendant's "New Good Cents Program" (hereinafter the "Program"). All Program Homes were homes that were newly constructed as opposed to retrofits of existing structures.

8. The Defendant sets forth the design specifications requirements for a home to qualify for the Program.

9. The Defendant adopted and references ASHRAE (American Society of Heating Refrigeration and Air Conditioning Engineers) standards in its Program specifications.

10. The Defendant set forth the design and design standards for these Horry County residences.

11. The homes would not be accepted into the Program unless Defendant completed a final inspection of the home.

12. On information and belief, in 1988 Defendant adopted the Program from another electrical service provider without performing any of its own due diligence or research regarding the specifications and requirements that it required for new homes. On information and belief, Defendant never performed any research regarding the Program specifications and requirements.

13. The Defendant offered the Program in an effort to keep the cost of power low for both it and its members.

14. Defendant provided design specifications and requirements for the Program. On a

systematic basis, the Defendant required the design specifications be followed for the home to be accepted into the Program.

15. The documentation and process used by Defendant for Good Cents homes were nearly identical for each home in the Program.

16. The specification and requirements had to be implemented as designed and set out by Defendant for acceptance of the home by Defendant into the Program.

17. Defendant required a vapor barrier to be installed on the inside of the exterior walls of all residences. The Defendant set forth specifications to meet the infiltration barrier requirements. The Defendant specified two methods of achieving superior infiltration and vapor protection:

(a) Method One

- (i) 4 or 6 mil polyethylene vapor barrier installed on the inside surface of the exterior walls and ceilings.
- (ii) properly installed friction fit batts.
- (iii) properly installed house wrap (such as Tyvek) as an air barrier.

(b) Method Two

- (i) properly installed Kraft or foil-faced insulation batts.
- (ii) taped and painted gypsum board installed on the inside of the exterior wall.
- (iii) properly installed house wrap (such as Tyvek) as an air barrier.

18. Defendant further required that Defendant inspect the installation of a vapor barrier during construction so that Defendant could verify that it was installed.

19. Each Plaintiff's Residence has a vapor barrier in accordance with Defendant's design specifications, requirements and standards.

20. Each Program residence was inspected by Defendant.

21. Each Program residence was accepted into the Program by the Defendant.

22. On information and belief, Defendant inspected each of the Plaintiffs' and Plaintiff Class' homes during construction to verify that the vapor barrier was installed on the inside of the exterior walls.

23. The existence of a vapor barrier on the inside of the exterior walls creates a condition where condensation forms on the outer surface of the vapor barrier. The presence of condensation causes, among other things, mold growth on the surface of the vapor barrier and inside the Plaintiffs' and Plaintiff Class' homes.

24. In 2003 Defendant finally stopped requiring the installation of vapor barriers on the heated side of studs in Horry County.

25. By virtue of writings and articles from ASHRAE, Defendant knew or should have known about the likelihood of condensation problems caused by the required vapor barrier as early as 1985 and no later than 1987. In 1986, an energy design update article stated, "In warm climates interior vapor barriers may in fact create moisture condensation problems." Yet Defendant ignored its design defect and continued to specify and require its flawed designs to be used in the Program Homes.

26. There are more than 1,000 Program Homes in Horry County which were constructed in accordance with the design flaw, vapor barriers on the heated side of the studs, in Horry County, in accordance with the Defendant's design specifications.

27. The Class is so numerous that joinder of all members is impractical. There are questions of law or fact common to the Class, including, but not limited to, the design defects inherent in the Program, when Horry Electric knew of such design defects, and whether Horry Electric was reckless in disregarding industry knowledge concerning its design defects.

28. Claims of the representative parties are typical of the claims of the Class. The representative Plaintiffs will fairly and adequately protect the interest of the Class and have engaged qualified counsel.

29. The amount in controversy for each Class Member exceeds One Hundred Dollars (\$100.00). The cost of removal of the inappropriate materials is more than \$100.00 (\$100.00) per home.

30. The design defect was well known or should have been obviously known to the Defendant years in advance of the construction of the Plaintiff and Plaintiff Class homes.

31. The Defendant traded off the extremely high likelihood of long term mold problems with the homes in exchange for the short term benefit of reducing peak demand so that Defendant would not have to build new power plants.

32. The Defendant has violated the covenant of good faith and fair dealing and violated its agreement to provide a suitable design for living quarters.

33. The specified vapor barrier is not suitable for habitable dwellings in the coastal county of Horry.

34. The Class is defined as each and every Horry County homeowner of a Program Home that has a vapor barrier, on the inside of its exterior walls and was included by the Defendant in the Program upon its construction during years 1988 through 2003.

FOR A FIRST CAUSE OF ACTION
(Design Defect – Breach of Warranty)

35. Not inconsistent herewith, Plaintiffs and Plaintiff Class reallege each and every allegation above as if repeated verbatim herein.

36. Upon information and belief, Defendant made design specifications and requirements and express warranties in connection with its design and implementation of the Program to the effect that the design of the vapor barrier specifications would be free of defects.

37. Defendant set forth the design standards which were incorporated into the homes. Defendant impliedly warranted that the Program and its systems, recommendations, standards and requirements and details would be free from deficiencies.

38. Defendant used design specifications and requirements which it knew would cause mold in coastal southeastern counties including Horry County.

39. Defendant breached its express and implied warranties in the following particulars:

- (a) in failing to properly design and implement the Program into the Residences by failing to employ design specifications conforming to the customary and ordinary design standards of the construction industry;
- (b) in specifying and requiring inappropriate design or materials for a coastal county;
- (c) in specifying and requiring inappropriate materials in violation of industry standards;
- (d) in providing deficient and/or defective requirements, specifications and design, which was not in conformity with industry standards; and/or

- (e) in failing to adequately research, design, and specify an air infiltration reduction system that would prevent moisture from occurring on the inside of the Residences.

40. As a direct and proximate result and consequence of Defendant's breach of its express and implied warranties, Plaintiffs have suffered injuries and damages in the amount equal to the extraordinary repair, maintenance and reconstruction costs required and to be required over the expected life of the structure, and will suffer from loss of use of the Residence.

41. The Plaintiff and Plaintiff Class have suffered damages due to the breach and are entitled to the same plus costs.

FOR A SECOND CAUSE OF ACTION
(Negligence/Gross Negligence)

42. Not inconsistent herewith, Plaintiffs and Plaintiff Class reallege each and every allegation above as if repeated verbatim herein.

43. Defendant owed a duty to Plaintiffs to exercise that degree of skill necessary to design, specify, and set standards in a manner that would not cause a condition for moisture and condensation to occur within the residence and to insure that the Defendant's designs were designed in conformity with the customary and ordinary standards of the building and construction industry, including standards set forth by ASHRAE.

44. The defects and deficiencies that exist at the Residence are the direct and proximate result of the negligence and/or gross negligence of Defendant in one or more of the following particulars:

- (a) in requiring an improper standard, or in failing to set forth the appropriate design for the residence, by failing to employ practices and design methods of construction conforming with accepted industry standards; and/or requiring materials that Defendant knew or should have known was improper and which would cause damage to the Residences; and/or requiring the presence of a vapor barrier, which was in violation of the industry standards and/or accepted wise building methods;
- (b) in failing to research and determine the effect of the specifications and requirements of the Program, which it knew would affect thousands of homeowners;
- (c) in accepting and requiring inappropriate materials, which, when installed, would cause moisture and mold within the Plaintiffs' Residences;
- (d) in failing to review ASHRAE standards on the use of vapor barriers in coastal counties in the southeast.

45. As a direct and proximate result and consequence of the Program's design defects, the owners of the Residences have suffered damages. The Program Homes have suffered actual damage caused by moisture being trapped in the walls that resulted from the negligent design of the Defendant and specifications and requirements of Defendant's Program.

46. As a direct and proximate result and consequence of the negligence and/or gross negligence of Defendant, Plaintiffs have suffered injuries and damages in the amount equal to the extraordinary repair, maintenance and reconstruction costs required and to be required over the

expected life of the structure and such other damages as may be appropriate. Plaintiffs and the Class are also entitled to punitive damages.

FOR A THIRD CAUSE OF ACTION

(Breach of Contract/Covenant of Good Faith and Fair Dealing)

47. Not inconsistent herewith, Plaintiffs and Plaintiff Class reallege each and every allegation above as if repeated verbatim herein.

48. The Program Homes of the Plaintiffs and the Plaintiff Class were all constructed after the Defendant made an offer of the Good Cents Program.

49. To accept the offer, the Program Homes had to be constructed in accordance with the Defendant's design specifications.

50. The construction of the home in accordance with the Defendant's specifications and the subsequent approval of the construction and acceptance into the Good Cents Program by Defendant constitutes an agreement.

51. The agreement or the Program contract had the implied covenant of good faith and fair dealing within it.

52. The Defendant has violated the covenant of good faith and fair dealing by not disclosing obvious design defects and design flaws with respect to its vapor barrier specifications and standard/recommendation it required.

53. The design defect was well known or should have been obviously known to the Defendant years in advance of the construction of the Plaintiffs and Plaintiff Class homes.

54. The Defendant traded off the extremely high likelihood of long term mold problems with the homes in exchange for the short term benefit of reducing peak demand so that Defendant

would not have to build new power plants.

55. The Defendant has violated the covenant of good faith and fair dealing and violated its agreement to provide a suitable design for living quarters.

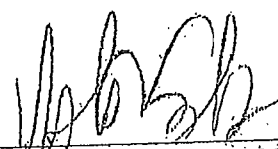
56. The plastic vapor barrier is not suitable for habitable dwellings in the coastal county of Horry.

57. As a result Plaintiffs and Plaintiff Class have suffered damages.

58. Plaintiffs and Plaintiff Class are informed and believe they are entitled to damages, punitive damages plus costs.

WHEREFORE, the Plaintiffs and Plaintiff Class pray for the following relief:

- a. Actual damages;
- b. Punitive damages; and
- c. Any costs of this action.


Nate Fata SC Bar #9866
NATE FATA, P.A.
1500 US Highway 17 North, Suite 215
Post Office Box 16620
Surfside Beach, SC 29587
Tel.: (843) 238-2676
Fax: (843) 238-0240

Mark A. Brunty, Esquire
Brunty Law Firm
SC Bar No. 68295
Post Office Box 70907
Myrtle Beach, SC 29577
843-449-1500

Attorneys for Plaintiffs and Plaintiff Class

Myrtle Beach, South Carolina
February 9, 2011

Exhibit B

Final Approval Order

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Ronnie Ferrell, Tammy Vance and
David Montorio, on behalf of themselves
and all others similarly situated,

Plaintiffs,

vs.

Horry Electric Cooperative,

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2011-CP-26-1266

FINAL APPROVAL ORDER

RECEIVED COUNTY
CLERK OF COURT
14 MAY 30 AM 10:20
JELANE HARRIS, CLERK

WHEREAS the Court held a final approval hearing on May 30, 2014 to determine whether (i) whether the terms and conditions of the settlement agreement ("Agreement") preliminarily approved on March 3, 2014 are fair, reasonable and adequate for the settlement of all claims released by Plaintiffs against Defendant in this litigation; (ii) whether judgment should be entered dismissing the Defendant with prejudice; (iii) whether and in what amount to award incentive payments to some or all of the class representatives; and (iv) whether and in what amounts attorneys' fees and expenses will be awarded to Class Counsel.

WHEREAS the Court, having considered all matters submitted to it at the hearing and otherwise; and having previously certified the Class pursuant to S.C.R.C.P. 23, HEREBY FINDS that:

a. The Court has jurisdiction over the parties and has subject matter jurisdiction to approve the Agreement;

b. The Court has held a hearing to consider the fairness, reasonableness and adequacy of the Agreement;

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mtc

- c. There were no objections to the Agreement;
- d. The Settlement is the result of arm's length negotiations, taken in good faith, between counsel for Plaintiffs and Defendant; and
- e. The terms of the Agreement is in all respects fair, reasonable and adequate -- in light of the risks of the litigation -- and in the best interests of the class.

ACCORDINGLY, the Agreement is hereby fully and finally APPROVED and it is hereby ORDERED, ADJUDGED AND DECREED that:

1. The Court grants final approval to the Agreement as fair, reasonable and adequate.
2. Notice to the Class including, but not limited to, the forms of notice and methods of identifying and notifying members of the Class, has been given in an adequate and sufficient manner, constituting the best notice practicable, satisfying and complying in all respects with S.C.R.C.P. 23 and due process.
3. The parties are directed to implement and consummate the Agreement according to its terms and conditions.
4. The persons identified on Exhibit A of this Order of Final Judgment have timely and validly requested exclusion from the Class, and are excluded from the Class. Such persons are not included in, or bound by, this Order of Final Judgment, nor are they entitled to any recovery provided for by the Agreement.
5. Neither the Agreement, nor any of its terms or provisions, nor any of the negotiations or proceedings in connection therewith, shall be construed as an admission or concession by Defendant of the truth of any of the allegations in the litigation, or of any liability, fault or wrongdoing of any kind.

6. Class representatives David Montorio and Tammy Vance will each receive an award of \$5000 each as compensation for their time and effort in this litigation.

7. An award of attorneys' fees and reimbursement of costs is warranted in this case under the South Carolina common law, which holds that attorneys' fees may be awarded from a common fund created by counsel. *Petition of Crum Johnson v. Williams*, 196 S.C. 528, 531, 14 S.E.2d 21, 23 (1941) ("[A] court exercising equitable jurisdiction may make an allowance of a reasonable fee out of the common fund or property created or preserved, for an attorney representing a party who, at his own expense, has maintained a suit for the recovery, preservation, protection, or increase of a common fund or common property, or has created or brought into the Court a fund in which others are entitled to share."); *First Union Nat'l Bank of S.C. v. Soden*, 333 S.C. 554, 511 S.E.2d 372 (Ct. App. 1998); *Laymen v. State*, 376 S.C. 434, 452, 658 S.E.2d 320, 329 (2008). "The justification for awarding attorneys' fees in this manner is based on the principle that 'one who preserves or protects a common fund works for others as well as for himself, and the others so benefited should bear their just share of the expenses.'" *Laymen*, 376 S.C. at 452, 658 S.E.2d at 329 (2008) (quoting *Petition of Crum Johnson v. Williams*, 196 S.C. 528, 531, 14 S.E.2d 21, 23 (1941)).

8. Before attorneys' fees can be charged to a fund in which others are entitled to share, the following elements must be met: (1) the attorney must preserve or protect a common fund; (2) the attorney's services must have aided in creating, preserving, or protecting the fund, and the services must prove fruitful to the general class; and (3) there must be a "principle of representation or agency as in a class suit, that is, before one may be allowed compensation out of the common fund belonging to others for services rendered on behalf of the common interest there must be a contract of employment, either expressly made or superinduced by the law upon

the facts." *First Union Nat'l Bank*, 333 S.C. at 573-74, 511 S.E.2d at 382 (emphasis added) (citations omitted).

9. In this case, Class Counsel has met each of the elements set forth by the Court of Appeals in *First Union Nat'l Bank*. First, Class Counsel has created a common fund represented by the monies paid by the Defendant in accordance with the terms of the Agreement. Second, Class Counsel's services clearly aided in creating and preserving that fund, and their services have proved fruitful to the general class. Each qualifying Class member will derive a benefit from the settlement achieved by Class Counsel. Third, this is a class suit and the Named Plaintiffs and Class Counsel, by virtue of Rule 23 and by order of this Court, have been appointed representatives of the class. Moreover, the contingency fee agreement between the named Plaintiff and Class Counsel provides for the payment of an attorneys' fee of one-third of any recovery in this case. Accordingly, based upon the common law of this state, Class Counsel is entitled to a reasonable award of attorneys' fees. In further support of an award of attorneys' fees and litigation expenses from the common fund, the Court finds that the prosecution of this matter was an immense and highly risky undertaking for Class Counsel given the complexity of the issues presented and the defense mounted by Defendant, as the discussions below clearly support.

10. **Analysis of Pertinent Factors.** In *Jackson v. Speed*, 326 S.C. 289, 308, 486, S.E.2d 750, 760 (1997), the South Carolina Supreme Court set forth factors for courts in South Carolina to consider when deciding whether to award attorneys' fees. While these factors were not issued in the context of a class action suit, this Court chooses to analyze those factors in this case. In doing so the Court has determined that the amount of attorneys' fees and costs requested is more than reasonable.

i. *The nature, extent, and difficulty of the case.* The case involved numerous complex factual and legal issues. The breadth and scope of fact and expert discovery, coupled with the complex legal issues, demonstrates that the requested fee is justified by the nature, extent, and difficulty of the case.

ii. *The time necessarily devoted to the case.* Class Counsel expended significant time on the litigation and settlement of this case over a period of three years and will continue to expend significant time while the settlement is implemented. The case could only be settled on the eve of trial.

iii. *Professional standing of counsel.* Class Counsel are experienced in civil litigation and have particular expertise in class actions. Further, Class Counsel enjoy excellent reputations in the legal community. Finally, Class Counsel have consistently demonstrated their competence, preparedness, tenacity, skill, and perseverance to the Court over the course of this litigation.

iv. *Contingency of compensation.* As previously noted, the contingency fee agreements between the named Plaintiffs and Class Counsel provide for a contingency fee of one-third of the recovery, if any. The Court is well aware of the risk inherent in contingency fee litigation, where neither recovery for the plaintiff nor compensation for the attorneys who undertake the risk is guaranteed. Additionally, Class Counsel advanced expenses with no assurance of reimbursement.

v. *Beneficial results obtained.* Class Counsel have secured a real, valuable benefit for the Class totaling \$6 million (including the award of attorneys' fees and costs), and all Class members are entitled to receive a cash payment.

vi. *Customary legal fees for similar services.* The attorneys' fee request is consistent

with the fees customarily awarded in similar cases. "When awarding attorneys' fees to be paid from a common fund, courts often use the common fund itself as a measure of the litigation's 'success.'" *Laymen*, 376 S.C. at 453, 658 S.E.2d at 330 (2008). Consequently, courts customarily base the award of attorneys' fees on a percentage of the common fund created. *Id.* The South Carolina Supreme Court has acknowledged that this percentage-of-the-recovery approach "may be appropriate under circumstances in which a court is given jurisdiction over a common fund from which it must allocate attorneys' fees among a benefited group of litigants." *Id.* at 453-54, 658 S.E.2d at 330; see also *Ex parte Condon*, 354 S.C. 634, 636-37, 583 S.E.2d 430, 431 (2003) (approving a circuit court's award of attorneys' fees based on a percentage-of-the-recovery approach where the parties' agreement stipulating that the circuit court would calculate and award attorneys' fees clearly contemplated an award based on a percentage of the common fund recovered).

11. The attorneys' fees requested here are only 16% of the total common fund. This percentage is well within the range of reasonableness for attorneys' fees in class actions. See *Fairey v. Exxon Corp.*, No. 94-CP-38-118, Order filed October 9, 2003 (First Judicial Circuit) (J. Goodstein) (approving attorneys' fees and costs representing 40% of recovery); Alba Conte & Herbert Newberg, *Newberg on Class Actions* § 14:6 (4th ed. 2002) ("Empirical studies show that . . . fee awards in class actions average around one-third of the recovery."). It is also well below what federal district courts within the Fourth Circuit have previously awarded in the percentage of the fund context. See, e.g., *In re: The Mills Corp. Sec. Litig.*, 265 F.R.D. 246, 264 (E.D.Va. 2009) (chart outlining fee awards).

12. The Agreement calls for an award of attorneys' fees and costs in the total amount of Nine Hundred Ninety Thousand and no/100 (\$990,000.00) dollars. Class Counsel already

incurred over \$40,000 in out-of-pocket expenses. Defendant set forth in the Agreement, and has advised the Court, that it has no opposition to an award in that amount, and agrees to the payment of such amount.

13. After consideration of the factors noted above, Class Counsel are awarded attorneys' fees and reimbursement of reasonable expenses incurred in connection with the Action in the total amount of \$990,000.00, which sum the Court finds to be fair and reasonable, and which shall be paid from the common fund as set forth in the Agreement.

14. Final approval operates as a release to Defendant and its present or former officers, directors, employees, agents, heirs, executors, administrators, successors, reorganized successors, assigns, subsidiaries, affiliates, parents, divisions, and predecessors, that they shall forever be released and discharged from any and all claims by the Class members and their assigns against Defendant which arise out of or are in any way related to vapor barriers installed under the Good Cents Program. This release and discharge will discharge the common liability of any joint tortfeasors and will be binding on any subsequent purchasers of the subject homes.

15. The Action is hereby dismissed with prejudice as to the Defendant and against Plaintiffs and all other members of the Class on the merits and, except as provided in the Agreement, without costs.

16. Without affecting the finality of this Order and Final Judgment in any way, this Court reserves jurisdiction over all matters relating to the administration and consummation of the Agreement.

IT IS SO ORDERED.

DATE: May 30, 2014

Benjamin H. Culbertson

BENJAMIN H. CULBERTSON
PRESIDING JUDGE
FIFTEENTH JUDICIAL CIRCUIT

EXHIBIT

A

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Tammy Vance and David Montorio,
on behalf of themselves and all others
similarly situated,

Plaintiffs,

vs.

Horry Electric Cooperative,

Defendant.

) IN THE COURT OF COMMON PLEAS

) FIFTEENTH JUDICIAL CIRCUIT

) CASE NO: 2011.CP.26.1266

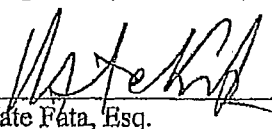
) SETTLEMENT CLASS
) NOTICE OF OPT OUTS

The following persons provided notice by mail postmarked by May 1, 2014 of their
intention to opt out of the Class Action Settlement:

1. James R. Blackmon, Sr. and Mary Lou Blackmon
7211 Old Reaves Ferry Road
Conway, SC 29526
2. Donald Wayne Anderson
4011 Bakers Chapel Road
Aynor, SC 29511
3. Leonard D. Rodwell
329 Cloverbrook Circle
Conway, SC 29526
4. Carol A. Hinkle
106 Fox Haven Bl.
Myrtle Beach, SC 29588
5. Craig Larry Booth
3879 Bakers Chapel Road
Aynor, SC 29511

FILED
HORRY COUNTY
2014 MAY 16 PM 2:50
HELANIE HUGHES-WARD
CLERK OF COURT

Respectfully submitted,



Nate Fata, Esq.

Nate Fata, P.A.

Post Office Box 16620

1500 U.S. Hwy. 17 North

The Courtyard, Suite 215

Surfside Beach, SC 29587

(843) 238-2676

T. Christopher Tuck, Esq.

James L. Ward, Jr., Esq.

Catherine H. McElveen, Esq.

Richardson, Patrick, Westbrook & Brickman, LLC

1037 Chuck Dawley Blvd., Bldg. A

Mount Pleasant, SC 29464

(843) 727-6500

Class Counsel

May 14, 2014

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Ronnie Ferrell, Tammy Vance
and David Montorio, on behalf of
themselves and all others similarly
situated,

Plaintiffs,

vs.

Horry Electric Cooperative,

Defendant.

) IN THE COURT OF COMMON PLEAS

) FIFTEENTH JUDICIAL CIRCUIT

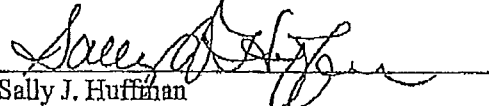
) CASE NO: 2011-CP-26-1266

CERTIFICATE OF SERVICE

I, Sally J. Huffman, legal assistant to Nate Fata, do hereby certify that a copy of Settlement Class Notice of Opt Outs was served upon counsel via United States mail, proper postage affixed thereto, on May 15, 2014:

Pope D. Johnson, Esq.
Johnson & Barnette, LLP
1230 Richland Street
Columbia, SC 29201

James L. Ward, Jr., Esquire
T. Christopher Tuck, Esquire
Catherine McElveen, Esquire
Richardson, Patrick, Westbrook & Brickman, LLP
P.O. Box 1007
Mt. Pleasant, SC 29465


Sally J. Huffman
Legal Assistant to Nate Fata, P.A.

FILED
HORRY COUNTY
2014 MAY 16 PM 2:50
MELANIE HUGGINS WARD
CLERK OF COURT

Exhibit C

Settlement Agreement

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO: 2011-CP-26-1266

Plaintiffs,

vs.

Defendant.

SETTLEMENT AGREEMENT

WHEREAS, Plaintiffs are the named class representatives in a class action against HEC (the "Litigation") pending in Horry County, South Carolina (the "Court"), which was filed in February 2011;

WHEREAS, on August 28, 2012 and modified thereafter, the Court certified a class action

pursuant to S.C.R.C.P. 23;

WHEREAS, the Parties, having engaged in discovery and having conducted independent investigations and analyses of the facts and legal issues, recognize the uncertainties of the outcome in the Litigation, and appreciate the likelihood that any final result would require further significant efforts at considerable time and expense to advance this class action to conclusion;

WHEREAS, Class Counsel, on behalf of the Class, believe that settlement at this time as provided in this Settlement Agreement will be in the best interests of the Class as defined herein;

WHEREAS, Class Counsel and Class Representatives agree that the settlement as set forth herein which requires the establishment of two funds totaling \$6,000,000, is a fair, reasonable, and adequate resolution of the Litigation and HEC and Federated are willing to buy their peace and to settle the claim of the Class;

WHEREAS, the Parties desire to compromise and settle in the Litigation all issues and claim which have been brought, or which could have been brought, by or on behalf of persons who are included in the Class;

WHEREAS, the Parties desire and intend to seek preliminary approval of the settlement of the Litigation as set forth in this Settlement Agreement and, upon preliminary approval, the Parties intend thereafter to seek a Final Order and Judgment from the Court dismissing the claim of all members of the Class with prejudice;

NOW, THEREFORE, it is agreed that in consideration of the promises and mutual covenants set forth in this Settlement Agreement and the entry by the Court of a Final Order and Judgment dismissing with prejudice the claim asserted in this Litigation by all members of the Class and approving the terms and conditions of the settlement as set forth in this Settlement Agreement, as required by applicable law, the Litigation shall be settled and compromised under the terms and conditions contained herein.

DEFINITIONS

1. As used in this Settlement Agreement, in addition to any definitions elsewhere in this Settlement Agreement, the following terms shall have the meanings set forth below:

- a) **"Claim Form"** means the form attached hereto in Exhibit C.
- b) **"Claim Period"** means the period from the date of mailing of the Class Notice to Class members up to and including ninety (90) days after the date that Class Notice is disseminated. This period excludes the additional time made available to claim Reimbursable Remediation Expenses pursuant to paragraph 4.
- c) **"Class"** means each person on the HEC list attached hereto as Exhibit A, but excluding those persons who previously opted out of the Class as indicated on Exhibit B.
- d) **"Class Counsel"** shall mean Nate Fata, T. Christopher Tuck and James L. Ward, Jr.
- e) **"Class Notice"** means the form attached hereto as Exhibit C.
- f) **"Documented"** shall mean, with respect to remediation expenses eligible for reimbursement, costs incurred by a Class member for removal of the entire vapor barrier which are evidenced by contemporaneous copies of cancelled checks, credit or debit card receipts, receipts for materials used for repairs, credit card statements, affidavits, declarations and/or repair invoices or repair orders, which documents, singly or cumulatively, show Reimbursable Remediation Expenses. In addition, photographs of the remediated exterior wall space without the vapor barrier shall be included as proof of remediation.
- g) **"Effective Date of Settlement"** means the later of (i) the thirty-first day after the Final Order and Judgment is entered if notice of appeal is not filed or (ii) if any appeal is

1/
filed, on the day following the date on which the Final Order and Judgment is not subject to further judicial review or appeal either by reason of affirmance by a court of last resort or by reason of lapse of time or otherwise, provided that the Final Order and Judgment are not reversed or substantially modified by the Court or an appellate court.

- h) "Final Order and Judgment" means the Final Order and Judgment when entered of record if notice of appeal is not filed or if any appeal is filed on the day following the date the Final Order and Judgment is no longer subject to further judicial review.
- i) "Good Cents Program" means Defendant's marketing of its Good Cents Program for New Homes which required a vapor barrier on the inside of exterior walls via a licensing program by the South Carolina Public Service Authority.
- j) "Reimbursable Remediation Expenses" means Documented expenses incurred by a Class member for repairs associated with the vapor barrier removal, including, without limitation, moisture accumulation, mold growth, remediation of mold and mildew, repainting or sheetrocking of walls, re-insulating of walls, moving of furniture, storage of personal items and furniture during remediation, and any relocation expenses incurred during the remediation. This amount shall not exceed \$12,000 per Class Member.
- k) "Request for Exclusion" shall mean the opt-out form attached hereto as Exhibit D.

SETTLEMENT CONSIDERATION

2. The Class has asserted a claim against HEC for breach of warranty, negligence/gross negligence and breach of contract/covenant of good faith and fair dealing. This claim is related to property damage arising out of the Good Cents program for new homes which required a vapor barrier on the inside of the exterior walls. The Class Counsel and Class Representatives maintain

that the vapor barrier has caused property damage. The Good Cents program which HEC offered to its members was a program which South Carolina Public Service Authority and Southern Electric International, Inc. developed and licensed. The evidence established that South Carolina Public Service Authority and Southern Electric International, Inc. had knowledge that the vapor barrier requirement could cause mold and mildew problems in the homes prior to the program being licensed of HEC, as indicated in its two 1986 letters to Southern Electric. The evidence has also indicated that the South Carolina Public Service Authority did not provide those two letters or that information to HEC, before HEC offered the Good Cents program to the Class Members. HEC offered the Good Cents program for new homes to its members that the South Carolina Public Service Authority offered to it. HEC contends it learned of the knowledge the South Carolina Public Service Authority had about the vapor barrier causing mold and mildew problems through discovery in this action.

3. Class Counsel and Defendant shall present this Settlement Agreement to the Court as soon as practicable and shall take all appropriate steps to obtain an Order (a) finding the settlement sufficiently fair, reasonable, and adequate; and (b) scheduling a final hearing on the fairness of the proposed settlement.

4. In consideration for dismissal of the Litigation with prejudice under the terms of this Settlement Agreement, Defendant's insurance carrier, Federated, will pay the claim from the two settlement funds. Class members may participate in one fund, but not both, by selecting a fund preference on the Claim Form that is postmarked no later than ninety (90) days from the issuance of Class Notice.

- a) The Automatic Payment Fund: Defendant and Federated shall establish a fund of \$2,400,000. In no event will Defendant and/or Federated be required to increase the

amount to be funded. Class members may claim an automatic payment of \$2,000 by submission of a Claim Form and declaration under penalties of perjury of current home ownership. If the Automatic Payment Fund is insufficient to pay all qualifying Class members at \$2000 per claim, then the payments shall be made with a pro rata reduction. Defendant shall make payments to the Class members selecting the Automatic Payment fund within the later of 60 days after the Effective Date of Settlement or 60 days after the Claim Period, whichever is later, provided, however, no payments are due until HEC has all Automatic Payment claim forms necessary to determine the amount due on each Automatic Payment claim.

- b) The Remediation Fund: Defendant shall establish a fund of \$3,600,000. In no event will HEC or Federated be required to increase the amount to be funded. Class members may claim reimbursement for Reimbursable Remediation Expenses by removing the vapor barrier from the home and by submission of a Claim Form and Documented proof. The Documented proof shall be due no later than 180 days from the Effective Date of Settlement and each claim shall be capped at \$12,000. Class members who elect the Remediation Fund shall be mailed a Notice advising them of the Effective Date of Settlement and the 180 day deadline to submit documentation for reimbursement. If the Remediation Fund is insufficient to pay all qualifying Class members their actual Reimbursable Remediation Expenses at an amount up to \$12,000 per claim, then the payments shall be made with a pro rata reduction. If less than 250 Class Members select the Remediation Fund preference on the Claim Form, then Defendant shall make payment within thirty days of Defendant's receipt of the Class member's Documented Reimbursable Remediation Expenses. Otherwise, Defendant

shall make payment within the later of thirty days of the expiration of the period to submit Documented Reimbursable Remediation Expenses or thirty days after the last decision by the arbitrator of all claim submitted in arbitration, whichever is later, provided, however, no Remediation payments are due until HEC has all Remediation claim forms necessary to determine the amount due on each Remediation claim. .

c) Within thirty (30) days of its receipt of a Class Member's documentation for reimbursement and if the claim is to be denied in whole or in part, Defendant shall send to the Class Member in writing an explanation of the reasons for any denial of the claim, in whole or in part. In the event of any disputes regarding Reimbursable Remediation Expenses, the Parties shall meet and confer and use their best efforts to resolve the claim for the Class member. If the parties cannot reach agreement, the dispute shall be resolved by final, binding arbitration. The Class Member shall have fifteen (15) days from the receipt of Defendant's partial or complete denial of the claim to request Arbitration in writing by stating "I hereby request arbitration." Such request must be mailed to Class Counsel and Defendant's Counsel. The arbitrator shall be a South Carolina licensed attorney practicing in Horry County as agreed upon by Class Counsel and Defendant. Unless the arbitrator requests additional matters, the arbitration shall be limited to a paper review only of the Class member's claim

submission and Defendant's response. The Arbitrator shall render a decision within 45 days of the Class member's request for arbitration. Defendant is responsible for the arbitrator's fees.

d) As compensation for services as class representatives, and subject to approval by the Court, Defendant agrees to pay \$5000 to Class Representative Vance and Class

Representative Montorio. Such payment shall be made pro rata from the two funds within ten days of the Effective Date of Settlement such payment shall be paid prior to payment of any claim.

- e) Any amounts not claimed in the funds by Class Members shall, at the expiration of all claim periods, be retained by Federated.

EFFECT OF SETTLEMENT

5. This Settlement Agreement is for settlement purposes only, and neither the fact of, nor any provision contained in, this Settlement Agreement nor any action taken hereunder shall constitute or be construed or cited in any context or manner whatever as any admission of the validity of any claim or any fact alleged by Plaintiff in the Litigation or of any wrongdoing, fault, violation of law, or liability of any kind on the part of Defendant or any admission by Defendant of any claim or allegation made in any action or proceeding against Defendant. This Settlement Agreement shall not be offered or be admissible in evidence against Defendant or cited or referred to in any action or proceeding, except in any action or proceeding brought by or against the named Plaintiff, the Class, or Defendant to enforce its terms, or by Defendant in defense of any claim brought by the Class or by Defendant in any action against any other joint tortfeasor or any other person or entity which is or may be liable to Defendant by way of indemnification or otherwise.

NOTICE

6. Notice of this settlement shall be provided to Class members. The Parties will request that the Court determine that the proposed procedures for notice set forth below constitute the best practicable notice to the Class.

7. Defendant shall be responsible for preparing, printing, and mailing to all Class members the Class Notice, as directed and approved by the Court in its Preliminary Approval Order.

Defendant shall discharge this responsibility by mailing the Court-approved Class Notice to all Class members, which shall provide instructions and information concerning the settlement and their right to receive a share of the funds, as well as their objection rights and opt-out rights within ten (10) business days after the Court has entered the Preliminary Approval Order. Any Class Notice returned to the Defendant as non-delivered before the deadline for opting-out of the settlement shall be sent to the forwarding address affixed thereto. The Parties will update addresses based on any forwarding address received and/or requests to do so received from Class members. Other than as set forth in Par. 4(b) regarding the Remediation Fund, Defendant shall have no further or other responsibility for preparing, printing or mailing the Class Notice to the Class Members. It shall be the responsibility of Class Counsel or their designees to respond to all inquiries from Class members as appropriate, with the exception of correspondence and other communications with the Defendant as necessary for administration and payment of settlement funds.

REQUESTS FOR EXCLUSION

8. Any Class member shall be allowed to make a Request for Exclusion from the settlement by mailing or delivering such Request for Exclusion to Class Counsel and Defendant's Counsel at the addresses set out in the Class Notice. Any Request for Exclusion must be in writing and postmarked or delivered no later than the date specified in the Court's Preliminary Approval

Order. The Request for Exclusion shall state (i) the Class member's full name and current address; and (ii) in express and clear terms the Class member's desire to be excluded from the settlement and from the Class. Failure to comply with these requirements and to timely submit the Request for Exclusion shall result in the Class member being bound by the terms of the Settlement.

9. Any Class Member who submits a timely Request for Exclusion may not file an objection

to the Settlement and shall be deemed to have waived any rights or benefits under this Settlement Agreement.

10. The Parties shall jointly report the names of all individuals who have submitted a Request for Exclusion to the Court no less than ten (10) days prior to the final fairness hearing.

11. For up to five (5) days following the Request for Exclusion deadline, Defendant has the option to terminate the Settlement Agreement if more than ten percent (10%) of the Class Members timely opt out of the action. If Defendant elects to terminate, it must file a Notice of Intent to Terminate within five (5) days following the opt out deadline

OBJECTIONS

12. Subject to Court approval, any Class member who intends to object to the fairness of any aspect of the proposed settlement must mail any such objection to the Court postmarked no later than fifteen (15) days prior to the date of the final fairness hearing and must serve any objections to the settlement, in writing, upon counsel no later than fifteen (15) days prior to the date of the final fairness hearing. Objectors to the settlement must set forth their full name and current address and must state in writing all specific objections and the reasons in support thereof, and include any and all supporting papers, including proof of a home address designated for the Good Cents Program and, if applicable, the objector's statement of intent to appear at the final fairness hearing. If the objector intends to appear through counsel, the objector's counsel shall append to the statement of intent to appear a list of all prior objections previously filed by such counsel in

state and federal courts.

13. Any Class member who does not properly file and serve timely written objections to the settlement and notice of his or her intent to appear at the final fairness hearing shall not be

permitted to object to the settlement at the final fairness hearing, and shall be foreclosed from seeking review of the settlement by appeal or otherwise.

FINAL JUDGMENT

14. Following final approval by the Court to this Settlement Agreement and the settlement contemplated hereby, the parties shall seek entry of a Final Order and Judgment dismissing the action with prejudice and without further costs.

15. If (i) the preliminary or final approval of this Settlement Agreement and the settlement described herein is not obtained or is reversed on appeal or (ii) the effective date of settlement as defined herein does not occur for any reason or (iii) entry of the Final Order and Judgment is finally reversed or (iv) the judgment is substantially modified by the Court, or on appeal, and either Plaintiff or Defendant so elects, this Settlement Agreement shall be null and void, shall have no further force and effect with respect to any party in the Litigation

RELEASE AND DISCHARGE

16. Upon the effective date of settlement, HEC and Federated, their present or former officers, directors, employees, agents, heirs, executors, administrators, successors, reorganized successors, assigns, subsidiaries, affiliates, parents, divisions, and predecessors, shall forever be released and discharged from any and all claims by the Class members and their heirs, successors and assigns against Defendant which arise out of or are in any way related to vapor barriers installed under the Good Cents Program. This release and discharge discharges common liability of any joint tortfeasors and will be binding on any subsequent purchasers of any homes of a Class Member.

COSTS AND ATTORNEYS' FEES

17. At least twenty-five (25) days prior to the Final Fairness Hearing, Class Counsel shall file a Motion for Attorneys' Fees and Expenses in an amount not to exceed \$990,000.00 to be paid pro rata from the Automatic Payment Fund and the Remediation Fund.

Defendant shall not object or assist or encourage any objection to Class Counsel's request for attorneys' fees and expenses to be paid out of the total settlement fund of Six Million Dollars (\$6,000,000). Counsel's fees and costs shall be made prior to any payment of any claim. These amounts will compensate Class Counsel for more than three years of contentious litigation work already performed in this case and all of the work remaining to be performed in this case, including but not limited to documenting the settlement, securing Court approval of the settlement, making sure that the settlement is fairly administered and implemented, and obtaining dismissal of the Litigation. Within ten business days after the Effective Date of Settlement, Defendant shall deduct approved fees and costs from the Automatic Payment Fund and the Remediation Fund and pay those amounts to Class Counsel.

COSTS OF ADMINISTRATION

18. Defendant shall bear all costs associated with administration of the settlement. The Parties agree to cooperate in the settlement administration process. Defendant shall provide to Class Counsel a copy of any correspondence it receives from Class members concerning settlement administration.

BEST EFFORTS

19. The Parties will use their best efforts to effectuate this Settlement Agreement and secure its approval by the Court and shall confer and consult with each other as appropriate to implement such best efforts. The Parties shall not encourage Class members to exclude themselves from the

settlement or object to any portion of this Settlement Agreement.

MISCELLANEOUS

20. This Settlement Agreement and its attachments shall constitute the entire Settlement Agreement of the parties and shall not be subject to any change, modification, amendment, or addition without the express written consent of counsel on behalf of all parties to this Settlement Agreement.
21. This Settlement Agreement shall be binding upon and inure to the benefit of the parties hereto and their representatives, heirs, successors, and assigns.
22. Time is of the essence.
23. This Settlement Agreement, and all terms and provisions thereof, shall be construed under and governed exclusively by the laws of the State of South Carolina, without application of any choice of law principles.
24. In the event any one or more of the provisions contained in this Settlement Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision if Defendant and Plaintiff's Counsel, on behalf of the parties, mutually elect to proceed as if such invalid, illegal, or unenforceable provision had never been included in this Settlement Agreement.
25. The Court shall retain continuing and exclusive jurisdiction over the parties hereto, including all members of the Class, and over the enforcement of the settlement and the benefits to the Class hereunder. Any disputes or controversies arising with respect to the interpretation, enforcement, or implementation of the settlement must be made by motion to the Court except the Remediation Reimbursement claim disputes to be arbitrated as set forth above.

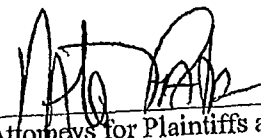
26. This Settlement Agreement may be executed in counterparts by the parties hereto, and a facsimile signature shall be deemed an original signature for purposes of this Settlement Agreement.

27. None of the Parties, or their respective counsel, will be deemed the drafter of this Settlement Agreement for purposes of construing the provisions thereof. The language in all parts of this Settlement Agreement will be interpreted according to its fair meaning, and will not be interpreted for or against any of the parties as the drafter thereof.

28. All agreements made and orders entered during the course of the Litigation relating to the confidentiality of information will survive this Settlement Agreement.

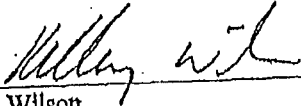
Dated this 28 day of February, 2014.

By:

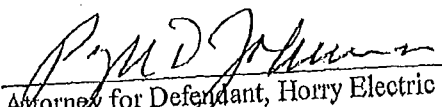

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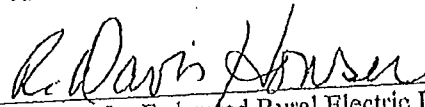
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MURRELLS INLET SC 29576

WILLIAM WOMBLE
307 GENTRY RUN
GREENWOOD SC 29649

MERLINE HILL
PO BOX 3608
TRENTON NJ 08629

ELIZABETH S RISK
201 ANGELL RD
LINCOLN RI 02865

ALICE Y MCDOWELL
2118 KARA DR
CONWAY SC 29527

ANNE C REDFIELD
6915 ASHLEY COVE DR
MYRTLE BEACH SC 29588

JEREMY T CARTER
2774 STAPLES RD
AYNOR SC 29511

GLADYS DEESE
6949 ANTONIO LN #40
MYRTLE BEACH SC 29588

TERESA ANN GARCIA
3570 REAVIS LN #17
MYRTLE BEACH SC 29579

ROBERT A ALLEN
1216 CLEVELAND DR
CONWAY SC 29526

MARJORIE SMALL
3773 COMFORT CT
CONWAY SC 29527

ROBERT D GARCIA
176 OONEECAN CT
MYRTLE BEACH SC 29579

APRIL L DAY
925 MEADOWBROOK DR
CONWAY SC 29526

LORBE A MCCANTS
1858 GEMINI CIR #13
CONWAY SC 29527

STEPHEN FENNEY
4382 DAPHNE LN #B
MURRELLS INLET SC 29576

ZACK SAWYER
10670 CHURCH LANDING RD
NICHOLS SC 29581

ARMAND J MCDUFF
1515 DAISY RD
LORIS SC 29569

BILLIE HUTCHINS
PO BOX 1367
CONWAY SC 29528

KATHLEEN SHIELDS
3097 DOGWOOD RD
LONGS SC 29568

TOBIE RABON
5321 PAULEY SWAMP RD.
CONWAY SC 29527

DARREN BAKER
267 ASHLAWN DR
LORIS SC 29569

JOSHUA MCDANIEL
5730 HIGHWAY 707 LOT 87
MYRTLE BEACH SC 29588

DAVID K FBASER
966 GRACE DR
CONWAY SC 29527

JOHN DOYLE
1151 DOYLE RD
AYNOR SC 29511

DAVID E HERRING
131 UNION RD
CONWAY SC 29527

JOHN C COOKE
465 FLOYD PAGE RD
GALIVANTS FERRY SC 29544

JUDY G WATSON
665 WILLARD RD
CONWAY SC 29526

JOHNNY GIBSON
627 GORETOWN LOOP #4B
LORIS SC 29569

CYNTHIA MARTIN
3574 REAVIS LN MH LOT 18
MYRTLE BEACH SC 29579

CHELICIA MOORE
4613 AMBER LN
GALIVANTS FERRY SC 29544

CHURCHILL FARMS
3325 HIGHWAY 501 W (RES)
CONWAY SC 29526

DUANE B LOVEDAY
4983 PEE DEE HWY
CONWAY SC 29527

JAMES DANIEL TYLER
3901 GREEN SEA ROAD
GREEN SEA SC 29545

MICHAEL S SILK
1469 NEW LONDON TPKB
GLASTONBURY CT 06033

ANDY J JOHNSON
1731 BRUNSON SPRING RD
GALIVANTS FERRY SC 29544

JOSE M CABRERA
120 HENRY C LN
CONWAY SC 29527

BRITTANY GRILLS
1771 BRIDGEWATER DR #5
CONWAY SC 29526

REGGIE GORB
PO BOX 326
LONGS SC 29568

GREGORY FREUDENBERG
1767 BRIDGEWATER DR #7
CONWAY SC 29526

HOWARD TONY MARTIN
6582 SHAWN LN
CONWAY SC 29527

ALAN HOFFMAN
8961 POLO CIR #A
MURRELLS INLET SC 29576

JASON P MISHOE
8963 POLO CIR
MURRELLS INLET SC 29576

TOMMY L WEATHERFORD
8967 POLO CIR #C
MURRELLS INLET SC 29576

NICOLE M MECK
8969 POLO CIR #D
MURRELLS INLET SC 29576

RONNIE CURTIS JORDAN
2230 LITTLE LAMB RD
CONWAY SC 29527

SONJA PRICE
PO BOX 1412
MYRTLE BEACH SC 29578

JOSEPH S NOVAK JR
318 KANAWHA TRL
LONGS SC 29568

SHERRY SPENCER
6021 PAULEY SWAMP RD
CONWAY SC 29527

LAURA K KOSINSKI
8023 RESIN RD
MURRELLS INLET SC 29576

CHRIS LAWSON
2828 TRULUCK JOHNSON RD
AYNOR SC 29511

ROBERT D FARRAND
5403 BENS CT
CONWAY SC 29527

DAWN MARIE PYLES
1110 LANCELOT LN
CONWAY SC 29526

HORACE BEVAN HUNTER
5503 PRIVETTS RD
CONWAY SC 29526

RANDY FLOYD
10004 LAKE SWAMP RD
NICHOLS SC 29581

ANTHONY JASPER SMITH
5401 DOCK RIDGE RD SHED/LIGHT
GALIVANTS FERRY SC 29544

KAREN LEE DEATON
PO BOX 30354
MYRTLE BEACH SC 29588

PHYLLIS HARDEE
5566 WHISPERING WOODS RD
CONWAY SC 29526

THOMAS DARIN BELLAMY
5840 HIGHWAY 905 HOUSE
CONWAY SC 29526

TAMMY MICHELLE SARVIS
5727 PAULEY SWAMP RD
CONWAY SC 29527

VERNA REYNOLDS
141 WEST CLARKE ROAD
FLORENCE SC 29501

SANDRA TRIPLETT
321 BIVINS RD
HILLSBOROUGH NC 27278

T L COLLINS
9957 CONIFER LN
MURRELLS INLET SC 29576

PETER LEUZE
8076 RESIN RD
MURRELLS INLET SC 29576

CYNTHIA BACON
8049 RESIN RD
MURRELLS INLET SC 29576

KATHY L ANDERSON
304 WORTHINGTON CIR
MYRTLE BEACH SC 29588

HORACE N JORDAN
2115 LUCK RD
GALIVANTS FERRY SC 29544

WENDELL D FOWLER
PO BOX 192
LORIS SC 29569

TERRY LUCAS
702 RIVERWALK DR #303
MYRTLE BEACH SC 29579

HYONG CHA HOLMES
1068 COURTYARD DR
CONWAY SC 29526

MARLON GRAINGER
9150 DIDAPPER DR
CONWAY SC 29527

RICHARD PROFFITT
2078 RIDGEFIELD CIR
CONWAY SC 29526

SHERRIE MYERS
978 GRACE DR
CONWAY SC 29527

CHAD S DIEDRICKSON
952 JAMESTOWN RD
CONWAY SC 29526

JOHN M TURNER
243 FOLLY RD
MYRTLE BEACH SC 29588

STEVE LEWIS
1379 HORRY RD
AYNOR SC 29511

KENNETH LBE JOHNSON
3101 CLEARFIELD RD
GALIVANTS FERRY SC 29544

CHRISTOPHER BABCOCK
212 CAIN WILSON RD
CONWAY SC 29526

TERRI FOX
734 MCNABB SHORTCUT RD
LORIS SC 29569

KENNETH UJCZO
2645 FACTOR WALK BLVD
SUWANEE GA 30024

MARGARET A SMITH
7968 SPRUCE LN #129
MURRELLS INLET SC 29576

PETER A MAZZARACO
6917 ASHLEY COVE DR
MYRTLE BEACH SC 29588

HEATHER E DUNN
6959 ANTONIO LN
MYRTLE BEACH SC 29588

DAN MYERS
9062 HIGHWAY 707
MYRTLE BEACH SC 29588

KATHY BROWN BARRETT
6728 COASTAL OAKS DR
CONWAY SC 29527

LOU KAMP
374 WORTHINGTON CIR
MYRTLE BEACH SC 29588

HUGH E HUDNALL
2084 SHELLBARK RD
ARMAGH PA 15920

DONALD M HOLLINGSWORTH
706 RIVERWALK DR #202
MYRTLE BEACH SC 29579

ALISON N JACOBS
705 RIVERWALK DR #302
MYRTLE BEACH SC 29579

WILLIAM H HECKMAN
683 RIVERWALK DR #302
MYRTLE BEACH SC 29579

MAUREEN PAURO
253 MESSINA AVE
HAMMONTON NJ 08037

ANTHONY J ZITO
117 ROSEWOOD DR
GREENTOWN PA 18426

SAMUEL H BROWNE JR
108 GREEN TREE LN
ROCHESTER NY 14606

HANSEL BARRY ABRAMS
4791 A TARPON BAY RD
MYRTLE BEACH SC 29579

JENNIFER FERGUSON
4791 TARPON BAY RD #B
MYRTLE BEACH SC 29579

CASEY CLARK
8167 HIGHWAY 814
MYRTLE BEACH SC 29588

JOSEPH W O'SHIELDS
6967 ANTONIO LN
MYRTLE BEACH SC 29588

THOMAS L SMITH
122 DEER TRACE CIR
MYRTLE BEACH SC 29588

MARIE L BARRINGTON
354 WORTHINGTON CIR #12
MYRTLE BEACH SC 29588

STEPHEN L GEORG
413 ALABASTER CT #84
LITTLE RIVER SC 29566

LINDA A HOLLISTER
330 WORTHINGTON CIR
MYRTLE BEACH SC 29588

ISAAC JENEBETTE
2164 EASTWOODS DR
CONWAY SC 29526

JANICE E MOORE
506 KEYSTONE LN #9
MYRTLE BEACH SC 29588

WILLIAM STANLEY BARCHAK
4815 RUSHMORE DR LOT 66
CONWAY SC 29526

STEVEN E WILSON
698 RIVERWALK DR #301
MYRTLE BEACH SC 29579

ROSE MARIE DERREBERRY
PO BOX 13
DRYBRANCH 25061

DOROTHY BROWN
8065 YOUNGWOOD TURN
MYRTLE BEACH SC 29588

DELBERT D LARRIMORE
6559 SHAWN LN
CONWAY SC 29527

JOEY D PARROTT
1762 BRIDGEWATER DR
CONWAY SC 29526

KENNETH G HALLSWORTH
1050 PALM DR #272
CONWAY SC 29526

NANCY LEE BENBROSKI
8099 BARK CT
MURRELLS INLET SC 29576

LINDA A TEMPLETON
3676 KATES BAY HWY
CONWAY SC 29527

MILKENIA A RUIZ SUJAT
6448 SWEET GUM TRL #10
MYRTLE BEACH SC 29588

LLOYD COX
710 HLENA DR
LORIS SC 29569

BRYAN K TYLER
781 APPLE VALLEY RD
LORIS SC 29569

STEFANI A HUTCHISON
3720 FAITH DR
CONWAY SC 29527

KAREN JACKSON
810 SIOUX SWAMP DR
CONWAY SC 29527

CARL R MOGILKA
9193 HIGHWAY 90
LONGS SC 29568

JEFF RANDALL RICHARDSON
1412 RICHARDSON RD
GALIVANTS FERRY SC 29544

JAMES W SCHUESSLER
6035 PEE DEE HWY
CONWAY SC 29527

PEGGY H SABATINO
8659 LAUREL WOODS DR
MYRTLE BEACH SC 29588

JAMES HUGH GERRALD
4141 NICHOLS HWY
GALIVANTS FERRY SC 29544

GILBERT D WASHAM
PO BOX 674
AYNOR SC 29511

RAY REALTY
2678 HIGH BRASS TRL
MYRTLE BEACH SC 29588

PATRICIA MAGGI
9034 TEAL DR #28
MURRELLS INLET SC 29576

BENIKA SMITH
691 RIVERWALK DR #302
MYRTLE BEACH SC 29579

DANIEL C YEARWOOD
186 OLD WILSON RD
LONGS SC 29568

WANDA A FAIRCLOTH
422 FAULK LANDING RD
CONWAY SC 29526

SONYA A WHITE
1208 CHESAPEAK DR
AYNOR SC 29511

ROBERT W FORSON
209 LONGRIDGE DR LT 7
MURRELLS INLET SC 29576

LAUREN DAVIS
3803 PALMETTO DR
MYRTLE BEACH SC 29577

MARY LOU MAJKA
9608 INDIGO CREEK BLVD
MURRELLS INLET SC 29576

CLARENCE POPE
702 RIVERWALK DR #203
MYRTLE BEACH SC 29579

ADAM PRACK
PO BOX 30515
MYRTLE BEACH SC 29588

FRED CAPLAN
3590 CEDAR CREEK RUN #37
LITTLE RIVER SC 29566

KIMBERLY L HARPER
5303 KATES BAY HWY
CONWAY SC 29527

GINA M MOORE
8081 RESIN RD
MURRELLS INLET SC 29576

JACQUELINE LUMLEY
371 HAMILTON BLVD
WARSAW VA 22572

JAMES B PASCOCELLO
1034 PALM DR
CONWAY SC 29526

DIANNE L SKINNER
1039 LEEBURY LN
CONWAY SC 29526

DENNIS W MCBLIVEN
3382 WOODSTOCK LN
MURRELLS INLET SC 29576

JOANN E NASH
23 GOLDENROD AVE
NORTHPORT NY 11768

REBEKAH BARNES
2201 DELAINE PT
HIGH POINT NC 27265

ROBERT SMITH
8460 IDLEWOOD DR
MYRTLE BEACH SC 29588

ELIZABETH R NIXON
404 ALABASTER CT
LITTLE RIVER SC 29566

CHRISTOPHER L HARSHAW
1473 GRASSY LN MH L E25
CONWAY SC 29526

ISADORA MACK
9586 SCIPIO LN
MYRTLE BEACH SC 29588

DONALD E ANDERSON
880 OLD MAGNOLIA DR #10
CONWAY SC 29526

MICHAEL T GROWLEY
694 RIVERWALK DR #304
MYRTLE BEACH SC 29579

THOMAS H SUTTON
4374 PARKLAND DR
MYRTLE BEACH SC 29579

MARK J DURST
1951 COATS RD
LORIS SC 29569

DAVE W HENDRICKS
702 RIVERWALK DR #302
MYRTLE BEACH SC 29579

SPECHLE MAZYCK
3941 HAYWARD WAY #D5
MYRTLE BEACH SC 29579

SUZANNE B DART
1747 BRIDGEWATER DR
CONWAY SC 29526

ALLEN COOKE
6337 ADRIAN HWY
CONWAY SC 29526

ALICIA J SHELLEY
2770 HIGHWAY 984
GALIVANTS FBRRY SC 29544

SHIRLEY H MILLER
2108 HIDDEN OAK DR
CONWAY SC 29527

KRISTA DEMBY
PO BOX 551
CHESTERFIELD SC 29709

GARY HAMM
302 KANAWHA TRL
LONGS SC 29568

ALEXIS W CALDER
3772 LONG AVENUE EXT
CONWAY SC 29526

CHASITY HERRING
1203 LEE'S LANDING CIR
CONWAY SC 29526

ROBERT J FEDORTION
1024 HIGHWAY 348 #2
LORIS SC 29569

JUDITH A KERCHER
631 LINKSVIEW DR #6
LONGS SC 29568

WILLIAM A BOOKER
1046 PALM DR
CONWAY SC 29526

DANIEL B REEVES
1337 MICHIGAN BLVD
SANFORD NC 27332

JOSEPH T CLANCY
300 KANAWHA TRL #31
LONGS SC 29568

CAROLYN E. MILES
9962 CONIFER LN
MURRELLS INLET SC 29576

SALLY K HOWARD
402 CEDAR RUN
MYRTLE BEACH SC 29588

FRANCES B TARR
480 APONTE DR
CONWAY SC 29527

RICHARD D JORDAN
112 TOMOKA TRL
LONGS SC 29568

JAMES PITT
357 VALLEY STREAM RD
SEVERNA PARK MD 21146

KATHY GARNES
4409 DUDDEN FORK RD
KENNA WV 25248

WILLIAM H FUNDERBURKE
129 COLD STREAM COVE LOOP #1404
MURRELLS INLET SC 29576

SONYA CATOB
8026 CONE CT
MURRELLS INLET SC 29576

SANDRA L LEAMAN
8041 LONG NEEDLE CT
MURRELLS INLET SC 29576

RONALD CLUTTER
3902 HANLIN WAY
WEIRTON WV 26062

MICHAEL PERROTTO
8009 CONE CT #20
MURRELLS INLET SC 29576

BRIAN CRISP
8015 CONE CT
MURRELLS INLET SC 29576

WILMA J BUEGER
9965 CONIFER LN #23
MURRELLS INLET SC 29576

BARBARA J BARNWELL
8038 LONG NEEDLE CT
MURRELLS INLET SC 29576

THOMAS ADAM BRYCHIK
8040 LONG NEEDLE CT
MURRELLS INLET SC 29576

GRISelda RUIZ-VELEZ
9953 CONIFER LN
MURRELLS INLET SC 29576

DAVID MCLEAN
CT 8042 BOX CT
MURRELLS INLET SC 29576

MARGARET FARLEY
CT 8046 BOX CT
MURRELLS INLET SC 29576

WILLIAM J MULDOON
7965 SPRUCE LN
MURRELLS INLET SC 29576

TODD E CARY
7967 SPRUCE LN #L-118
MURRELLS INLET SC 29576

ROBYN L WILCOX
7998 SHORT NEEDLE CT
MURRELLS INLET SC 29576

ANALLY BOWSER
266 SOUTHERN BREEZES CIR
MURRELLS INLET SC 29576

JIM MAIORANA
7990 SHORT NEEDLE CR LOT 140
MURRELLS INLET SC 29576

PHILLIP S THOMPSON
7958 SPRUCE LN #124
MURRELLS INLET SC 29576

OLA JACKSON
7960 SPRUCE LN #L-125
MURRELLS INLET SC 29576

RONDA G NORRIS
7962 SPRUCE LN
MURRELLS INLET SC 29576

DAVID A WASLICKI
7970 SPRUCE LN
MURRELLS INLET SC 29576

RUSSELL GUERRERO PASCUA
1933 LAKH LN
SURFSIDE BEACH SC 29575

LARRY R WADE
9958 CONIFER LN
MURRELLS INLET SC 29576

NANCY GUNDICH
103 OXFORD PL
MYRTLE BEACH SC 29588

KYLE T HINSON
7963 SPRUCE LN
MURRELLS INLET SC 29576

REBEKAH TRASK KILBOURNE
9929 CONIFER LN
MURRELLS INLET SC 29576

CURRENT RESIDENT
625 KINLAW LN
CONWAY SC 29527

CELESTINE YOUNG
694 RIVERWALK DR #303
MYRTLE BEACH SC 29579

LEON P GRAHAM
471 FREEDOM CIR #97
MYRTLE BEACH SC 29588

GERALD JEAN SUTTERFIELD
316 KANAWHA TRL
LONGS SC 29568

A J MARTIN
326 OLD TODD FERRY RD
LORIS SC 29569

JOHN H. ZIMMER
8012 CONE CT
MURRELLS INLET SC 29576

FELICIA ANN JOHNSON
5735 NEW DAWN RD
CONWAY SC 29526

SHIRLEY E LOWE
319 KANAWHA TRL #327
LONGS SC 29568

PAUL J BROOKS
1203 MATAOKA TRL
LONGS SC 29568

JUSTIN AMMONS
719 KNOTTY BRANCH RD
CONWAY SC 29527

JAMES K HYMAN
915 HOPE CIR
CONWAY SC 29527

PAUL A MAGGENTI
2772 KING FARM RD
AYNOR SC 29511

RICHARD C BOZZUTO
2117 GOODSON DR
LONGS SC 29568

JERIC GRAHAM
1005 AIRPORT RD
LORIS SC 29569

ROMEO DOZIER
5938 HIGHWAY 905
CONWAY SC 29526

WALTER C JOHNSON
684 COX FERRY RD W
CONWAY SC 29526

EDITH M GERELL
2301 ZBEK DR
LORIS SC 29569

WILLIAM B STARK
4371 WINGED FOOT CT
MYRTLE BEACH SC 29579

JERRY W ALLEN
3048 HIGHWAY 90
CONWAY SC 29526

CTH CASTLEWOOD
250 VICTORY LN
CONWAY SC 29526

LYNNDALE LEWIS
791 BRANCH RD S
LORIS SC 29569

JANET HARDWICK CANNON
5460 TWBETY AVE
CONWAY SC 29527

FELISHEA COX FRINKS
1999 HIGHWAY 746
LORIS SC 29569

OSWOOD JORDAN
149 BLUE JACKET DR
GALIVANTS FERRY SC 29544

DOUGLAS R FLOYD
6429 GRAINGER RD
NICHOLS SC 29581

ROCHELL C CRAWFORD
1106 OSCAR RD
LITTLE RIVER SC 29566

JUDY OVERHOLT
513 SUMMER DR
CONWAY SC 29526

SIMS DEAN
302 34TH ST W
LUMBERTON NC 28358

DONNA E SMITH
277 IROQUIS TRL
LONGS SC 29568

LEISTER B BUTLER
6560 SHAWN LN
CONWAY SC 29527

DANIEL GIBSON
686 RIVERWALK DR #304
MYRTLE BEACH SC 29579

ANSLEY M GARCIA
8072 RESIN RD
MURRELLS INLET SC 29576

DEBBIE F LYDIA
345 WORTHINGTON CIR
MYRTLE BEACH SC 29588

MARY L HILL
109 DIFF AVE
LORIS SC 29569

GREGORY J CAPITELLI
8664 LAUREL WOODS DR #192
MYRTLE BEACH SC 29588

ASTRID P OTTER
8030 RESIN RD
MURRELLS INLET SC 29576

CHRISTOPHER C. LEE
PO BOX 2598
MURRELLS INLET SC 29576

CARL W KRUGER
301 NOTTINGHAM DR
BROOKLYN MI 49230

PAUL HARRY KLEIN
958 GRACE DR
CONWAY SC 29527

PATRIC D CRIST
2975 ROOSEVELT DR
CHAMBERSBURG PA 17201

ANN BEATRICE ROSCHY
7723 MULE TRACE DR #4
CONWAY SC 29526

JAMES ALLEN
150 SHANDA LN
AYNOR SC 29511

GLORIA LILLY
2323 HARVEY RD
LORIS SC 29569

PHYLLIS F FLOYD
2837 FOWLER RD
LORIS SC 29569

GEORGE L SMITH
9741 SMALLS DR
MYRTLE BEACH SC 29588

RUSSELL W EDGE
5626 HIGHWAY 65
CONWAY SC 29526

EDUARDO L CHAVIANO
7183 MARSH DR
CONWAY SC 29527

GARY/ALICE PRATT
5596 HIGHWAY 668
CONWAY SC 29526

DEBORAH K PAUL
1850 NATHAN DR
LORIS SC 29569

JOHNNY C ALLEN
2132 HIDDEN OAK DR
CONWAY SC 29527

DEAN O JAMES
1976 JORDANVILLE RD
GALIVANTS FERRY SC 29544

ROBERT KEGEL
1905 MEADOWOOD LN
LONGS SC 29568

JOSEPH A CHUCCI
8019 RESIN RD
MURRELLS INLET SC 29576

TAMERA H HOLT
4986 LUMBERJACK LN
CONWAY SC 29526

REGINA D WILLIS
1115 LANCELOT LN
CONWAY SC 29526

MICHAEL ALEXANDER WEDDING
1283 CANE BRANCH RD
LORIS SC 29569

MARY LYNN HORN
5450 TWEETY AVE
CONWAY SC 29527

TAMARA W HUDSON
6954 ANTONIO LN
MYRTLE BEACH SC 29588

GREGORY T GASQUE
3153 HUGHES GASQUE RD
AYNOR SC 29511

ENOCH THOMAS LILLY
1725 KNOTTY BRANCH RD
CONWAY SC 29527

WILLIAM P SKARZYNSKI
1210 WALTHAM LN
BARTLETT IL 60103

JUSTIN D WOLOSZEN
691 RIVERWALK DR #102
MYRTLE BEACH SC 29579

PHILLIP VARLEY
22 OLD ST JOHN'S RD ST HELIER
JERSEY
CHANNEL ISLANDS UK JE2 3LG

RONALD M WALTON
2780 NEIL BRANCH RD
LORIS SC 29569

ARTHUR D WILLMS
619 BUCKS TRL
LONGS SC 29568

TONYA T TODD
1018 ACADEMY DR
CONWAY SC 29526

LYNETTE J SINGLETON
2430 CORNWALL CIR
CONWAY SC 29526

MERRY J SHELLEY
1488 HIGHWAY 129
GALIVANTS FERRY SC 29544

JACK M BENSON
4136 SEASIDE DR
CONWAY SC 29526

MONTE LEE UHRIG
2629 BRICK DR
LONGS SC 29568

RICHARD A RABON
472 WILLARD RD
CONWAY SC 29526

ROBERT SIMON
1207 3RD AVE S #H
MYRTLE BEACH SC 29577

D E FULMER
1160 HIGHWAY 90
CONWAY SC 29526

PETER SPECIAL
15 BEDFORD ST
HOLLIDAYSBURG PA 16648

LINDA H BARCZAK
698 RIVERWALK DR UN 103
MYRTLE BEACH SC 29579

LEROY EDWARDS
6252 DEBORAH CIR
CONWAY SC 29527

JOSEPH R BARBE
346 WORTHINGTON CIR #L-14
MYRTLE BEACH SC 29588

HELEN J MURANO
2421 BITTAR SPAR RD
LITTLE RIVER SC 29566

RUSSELL G STRICKLAND
3496 BEVERLY RD
CONWAY SC 29527

VIRGINIA R EVANS
2590 DOWS RD
LORIS SC 29569

JERD POSTON
3392 WOODSTOCK LN.
MURRELLS INLET SC 29576

WILLIE JOE MARTIN
435 SUMMER DR
CONWAY SC 29526

THOMAS R BARBER
8017 TAG CT #70
MURRELLS INLET SC 29576

PEREZ A MANUEL
1037 TIGGER LOOP #10
CONWAY SC 29527

LORI HAGERUD
5801 REBA RD
CONWAY SC 29527

MELISSA A STRICKLAND
9945 CONIFER LN
MURRELLS INLET SC 29576

DELBERT J CONWAY
8060 RESIN RD
MURRELLS INLET SC 29576

RANDY DURANT
4075 BAKERS CHAPEL RD
AYNOR SC 29511

STEPHEN HAJBA
6297 DEBORAH CIR
CONWAY SC 29527

HENRY P FRANKLIN
560 FLOYD PAGE RD
GALIVANTS FERRY SC 29544

MIRIAM B SILK
1131 MEHER LN HOUSE
LITTLE RIVER SC 29566

SHARON J SIMMONS
282 LAMBERT RD
CONWAY SC 29526

JOHNNIE RAY BLANTON
11065 HIGHWAY 19 W
LORIS SC 29569

STARR L UNWIN
7 MONARCH RD
DANBURY CT 06811

CLAYTON H TEMPLE
1093 PALM DR #196
CONWAY SC 29526

NICOLE S YOUNG
334 WORTHINGTON CIR #17
MYRTLE BEACH SC 29588

KATHRYN CHRISTINE HART
2769 CANVASBACK TRL
MYRTLE BEACH SC 29588

TRACY ALLEY
121 HIGHWAY 471
CONWAY SC 29526

HUGH STRICKLAND
3025 POPLAR CHURCH RD
AYNOR SC 29511

KENNETH ROBERTS
2843 PECAN LN
CONWAY SC 29526

CURRENT RESIDENT
500 KEYSTONE LN #6
MYRTLE BEACH SC 29588

DANIEL/ DEBRA GODWIN
373 EDISON CIR
CONWAY SC 29526

RICHARD C SCHWARZ
PO BOX 898
AYNOR SC 29511

MAUREEN T WHITWORTH
674 RIVERWALK DR #201
MYRTLE BEACH SC 29579

RENATE BAERNCOFF
1946 GEMINI CIR
CONWAY SC 29527

TRACY CHEATHAM
6525 ADRIAN HWY
CONWAY SC 29526

MABLE BEATY
812 ESTHER CT #3
CONWAY SC 29526

WINFORD LEE GORE
843 WHITE FAWN DR
HOPKINS SC 29061

CRYSTAL D GOINGS
2624 DOWS RD
LORIS SC 29569

TOMMY W JOHNSON
PO BOX 131
GREEN SEA SC 29545

DEBORAH HOUSE
113 POPLAR DR
FREDERICKSBURG VA 22401

JANET MCKAY
325 KANAWHA TRL
LONGS SC 29568

SHAWN W FLINN
6788 J AND T CIR
CONWAY SC 29527

TEAL BRITTON
PO BOX 1544
CONWAY SC 29528

TIMOTHY M PATTON
2395 HUNTERS TRL
MYRTLE BEACH SC 29588

LISA WOODLE
5731 PAULBY SWAMP RD
CONWAY SC 29527

HEATHER M LEWIS
3334 HENRY LEWIS RD
LORIS SC 29569

THERESA SHIPWASH
708 GOLF HOUSE RD W
WHITSETT NC 27377

JAMES W MAJOR
3096 WILDHORSE DR
CONWAY SC 29526

AUBREY APPERSON
162 PINFBATHER TRL
MYRTLE BEACH SC 29588

RENATO M NUNES
8021 RESIN RD #84
MURRELLS INLET SC 29576

JOHN WALKLIN
1066 BEAR LAKE DR
LONGS SC 29568

JOSEPH W MURRAY
6950 ANTONIO LN
MYRTLE BEACH SC 29588

PATSY C RAY
3019 INHERITANCE RD
CONWAY SC 29527

SCOTT WACHTER
919 LONNIE ST
MYRTLE BEACH SC 29588

EUGENE HARRIOTT
11006 FREEWOODS RD
MYRTLE BEACH SC 29588

MARY L BOYD
826 HUCKS RD
AYNOR SC 29511

GEORGE F MOLNER
1218 GAILARD DR
CONWAY SC 29526

SAM T GIBSON
185 CUPOLA DR #376
LONGS SC 29568

WILLIAM F FLOYD
5873 PAULEY SWAMP RD
CONWAY SC 29527

BOBBY A GOWANS
3729 LOVE LN
CONWAY SC 29527

CHRIS A SAENZ
3704 FAITH DR
CONWAY SC 29527

DOUGLAS RAY HYMAN
1142 CARLEITA CIR
CONWAY SC 29527

AMBER C FICKLIN
9739 SMALLS DR
MYRTLE BEACH SC 29588

CHERYL TYREE
3921 SOCASTEE BLVD MH
MYRTLE BEACH SC 29588

BEN C DEWITT
2359 BARNEY RD
LONGS SC 29568

ROY ROGERS
PO BOX 468
ASCUTNEY VT 05030

JIMMY E POORE
1448 FORESTBROOK RD
MYRTLE BEACH SC 29579

MALCOLM DILL
8416 BLOOMWOOD DR LT143
MYRTLE BEACH SC 29588

JOSEPHINE KROMMINGA
829 ESTHER CT
CONWAY SC 29526

HAZEL M ADAMS
2184 MEADOWOOD LN
LONGS SC 29568

TIMOTHY E PAUL
PO BOX 1721
CONWAY SC 29528

CHUCK W JACOBS
406 HULLS ISLAND RD
LORIS SC 29569

HARRY GRAHAM
721 MONFORD CON HAR LN
LONGS SC 29568

RICHARD ALFIERI
175 BUCK DOVE TRAIL
AUGUSTA ME 04330

JOHN KELLEY-STROUD
9735 HIGHWAY 917
NICHOLS SC 29581

JAMES THOMPkins
2112 HIDDEN OAK DR
CONWAY SC 29527

BOBBY F BUCHANAN
8053 RESIN RD #L-67
MURRELLS INLET SC 29576

TAMMY V HOLMES
811 ESTHER CT
CONWAY SC 29526

KATHLEEN STRUNCIOUS
970 LOOP CIR
LONGS SC 29568

GENNIE SUB BOOTH
8267 MORGAN LN
AYNOR SC 29511

VALERIE DALTON
255 CANADA DR
STJOHNS NEWFOUNDLAND A1E5L2

PATRICK KERR
32731 SPRING WATER DR
MILLSBORO DE 19966

STEPHANIE JENKINS
8057 RESIN RD
MURRELLS INLET SC 29576

MIRIAM SHERMAN
8861 CLOISTER DR APT E
SURFSIDE BEACH SC 29575

JAMES V GROSE
214 FOX CATCHER DR
MYRTLE BEACH SC 29588

ESTHER GOFF
3150 MOUNT OLIVE RD
LORIS SC 29569

DANIEL C HENSLEY
4263 HIGHWAY 90
CONWAY SC 29526

MICHAEL WAYNE JORDAN
6718 HIGHWAY 981
CONWAY SC 29527

LAURIN CROCKER
8014 TAG CT
MURRELLS INLET SC 29576

MAURICE C STEPHENS
963 CHATEAU DR
CONWAY SC 29526

SCOTTY D ANDERSON
255 DUKES RD
CONWAY SC 29526

CHARLES D FRYE
2936 PBE DEB HWY
CONWAY SC 29527

ALLEN MORRELL
3 PINE VALLEY RD
NEWTON NJ 07860

PATRICK P MARTTINE
86 SAW CREEK EST
BUSHKILL PA 18324

THOMAS C COOK
7079 WILDLIFE RIDGE
OXFORD NC 27565

W HORACE JORDAN
3764 WILLOW SPRINGS RD
CONWAY SC 29527

LILLIAN S HENDRICK
6223 PBE DEB HWY
CONWAY SC 29527

MARION DEMAYO
6919 ASHLEY COVE DR
MYRTLE BEACH SC 29588

JEANNE C NORRIS
5397 HIGHWAY 712
GALIVANTS FERRY SC 29544

HUBERT W MARTIN
2112 KARA DR
CONWAY SC 29527

BRANDIE HAGER
8073 RESIN RD
MURRELLS INLET SC 29576

JEFFREY S MORTENSON
3377 SHADOWMOSS LN
MURRELLS INLET SC 29576

CARL F OLNICK
606 GARFIELD DR
ELIZABETHTOWN PA 17022

CHRISTINE A WINNS
8040 RESIN RD #93
MURRELLS INLET SC 29576

BRIAN PAUL BARLOW
6446 KINFOLK RD
CONWAY SC 29527

ANGELA E WHITESIDES
8097 BARK CT
MURRELLS INLET SC 29576

ELAINE COATES
601 FRENCH COLLINS RD
CONWAY SC 29526

MICHAEL KROKOWSKI
6932 BAY RD
MYRTLE BEACH SC 29588

JOAN CAHILL
PO BOX 75
GLYNDON MD 21071

LORRIANNE HOLLIDAY
825 ESTHER CT #16
CONWAY SC 29526

RONALD POUGNAUD
2892 MCNAIR LN
CONWAY SC 29526

JOHN P HAGY
PO BOX 30033
MYRTLE BEACH SC 29588

TERRY BUFFKIN
4485 RED BLUFF RD
LORIS SC 29569

BLAISE S GEORGE
3811 MAYPOPE CIR #B
MYRTLE BEACH SC 29588

SHERYL DAVENPORT
2440 HUNTERS TRL
MYRTLE BEACH SC 29588

THOMAS DUKE
1109 BUSY CORNER RD
CONWAY SC 29527

PAUL HOLT
2902 HIGHWAY 905
CONWAY SC 29526

MARSHALL JORDAN
3739 FAITH DR
CONWAY SC 29527

REMAX SOUTHERN SHORES
2339 HIGHWAY 17 S
MURRELLS INLET SC 29576

THOMAS SEIVERLING
135 DANUBE DR
PITTSBURGH PA 15209

RICHARD NATALE
PO BOX 298
PEMBROKE MA 02359

BRUNO DELUCA
3557 BALZAC
BOISBRIAND QUEBEC J7H1P4

MICHAEL SMITH
602 FRENCH COLLINS RD
CONWAY SC 29526

PATRICIA TRAPP
6801 PINEHAVEN LN
CONWAY SC 29526

TRAEANNAH CHISOEM
813 ESTHER CT #22
CONWAY SC 29526

DAVID V JOHNSON
819 ESTHER CT #19
CONWAY SC 29526

JAMES DERRICK HOLMES
831 ESTHER CT #13
CONWAY SC 29526

THOMAS M RIDLEY
1047 MARTIN LN
CONWAY SC 29526

JANCY L DORMAN
104 FOX HAVEN BLVD
MYRTLE BEACH SC 29588

DANIEL BOYLE
308 FOXRIDGE DR
MYRTLE BEACH SC 29588

RYAN E ROLLINGS
310 FOXRIDGE DR #L-123
MYRTLE BEACH SC 29588

JUAN HOLMES
4122 BEAGLE TRL
CONWAY SC 29526

NATHAN ALFORD
3035 COOPER COLLINS RD
AYNOR SC 29511

J ROBERT KENNEY
635 BUCKS TRL #41
LONGS SC 29568

WILLIAM JR EDWARDS
6609 JOYNER SWAMP RD
GALIVANTS FERRY SC 29544

DONALD F CUNHA
25 KING ST
GROVELAND MA 01834

ADAM VICK
6828 OLD REAVES FERRY RD
CONWAY SC 29526

CHRISTOPHER TODD
5820 HIGHWAY 905
CONWAY SC 29526

PAULA C BAIN
2174 MEADOWOOD LN
LONGS SC 29568

PATRICIA H KINDZIA
806 CAROLINA FARMS BLVD
MYRTLE BEACH SC 29579

JOHN S BROWN
1975 GEMINI CIR
CONWAY SC 29527

DAVID QUANTE
907 FOLLY RD
MYRTLE BEACH SC 29588

JUSTIN R BOWDEN
4373 PARKLAND DR #7
MYRTLE BEACH SC 29579

LINDA L BOYD
216 FOX CATCHER DR
MYRTLE BEACH SC 29588

CHRISTINE CASELLA
211 FOX CATCHER DR
MYRTLE BEACH SC 29588

ROBERT STANKELIS
111 FOX HAVEN BLVD
MYRTLE BEACH SC 29588

DARREN OTTO COOK
4499 WILLOW SPRINGS RD
CONWAY SC 29527

SANDRA J COOK
4487 WILLOW SPRINGS RD
CONWAY SC 29527

CHERYL DEPIERO HULL
1824 SARVIS DR
LORIS SC 29569

JOHN J SMITH
3732 LOVE LN
CONWAY SC 29527

ROBERT GESCHLECHT
3770 CHARITY LN
CONWAY SC 29527

DEBERA TERPENING
523 SIX LAKES DR
MYRTLE BEACH SC 29588

JOHY B DOYLE
1160 DOYLE RD
AYNOR SC 29511

SONJA WHITE
116 FOX HAVEN BLVD
MYRTLE BEACH SC 29588

ARTHUR F PROSS
122 FOX HAVEN BLVD
MYRTLE BEACH SC 29588

MELISSA D ROBERTS
117 FOX HAVEN BLVD #118
MYRTLE BEACH SC 29588

JEREMY H PRINCE
3181 HIGHWAY 348
LORIS SC 29569

NORMA F WRIGHT
1684 COX RD
GALIVANTS FERRY SC 29544

JULIE GOLOMB
670 RIVERWALK DR #303
MYRTLE BEACH SC 29579

TRUDY LYNN FAIRCLOTH
1960 BEAR GRASS RD W
LONGS SC 29568

CAROLE A STEARNS
PO BOX 576
HERKIMER NY 13350

CONSTANCE S REDDINGTON
670 RIVERWALK DR #302
MYRTLE BEACH SC 29579

FRED BOYLES
124 HIGH TIDE DR
WILMINGTON NC 28411

TODD JACKSON
686 RIVERWALK DR #102
MYRTLE BEACH SC 29579

PETER THIELMANN
670 RIVERWALK DR #104
MYRTLE BEACH SC 29579

JIMMIE C TAYLOR
3607 BRAMPTON DR
MYRTLE BEACH SC 29588

THOMAS F SULLIVAN
8011 TAG CT
MURRELLS INLET SC 29576

ROBERT BUTLER
PO BOX 859
CONWAY SC 29528

JERRY G SKIPPER
3263 HUGHES GASQUE RD
AYNOR SC 29511

JULIE BENSON
150 BELLETERRE LN
LORIS SC 29569

PHILLIP L HENDRICK
5868 JUNIPER BAY RD
CONWAY SC 29527

COLLEEN MCKEE
280 CENTER CHURCH RD
CANONSBURG PA 15317

MARK J GRAY
899 COX FERRY RD W
CONWAY SC 29526

BRYAN S TODD
3193 GAUSE RD
LORIS SC 29569

MARK E TILGHMAN
1104 TAP ROOT CT
MURRELLS INLET SC 29576

JAMES D HEWETT
3259 HUGHES GASQUE RD
AYNOR SC 29511

NYRA N SCOTT
1750 BRIDGEWATER DR #40
CONWAY SC 29526

BRUCE A BOLK
288 LAMBERT RD
CONWAY SC 29526

MARC DIPIETRO
971 GRACE DR
CONWAY SC 29527

DAMIEN DAVISON
8026 CLEARFIELD DR
MYRTLE BEACH SC 29588

PATRICIA L WILLIS
1785 GREENPOND RD
LORIS SC 29569

JESSY D FISHER
1100 TAP ROOT CT #L-155
MURRELLS INLET SC 29576

LORRAINE E DELANEY
951 GRACE DR
CONWAY SC 29527

BRYAN H BELLIOTT
583 SUNDOWN TRL
MYRTLE BEACH SC 29588

ANGELA W GRAINGER
5665 HIGHWAY 905
CONWAY SC 29526

JERRY BRNEST JAMES
5300 TWEETY AVE
CONWAY SC 29527

JOESPH KLINEFELTER
8042 LONG NEEDLE CT #30
MURRELLS INLET SC 29576

ROBERT MEEK
2068 MARTIN ST
LORIS SC 29569

JAMES SAMUEL CROSS
105 FOX HAVEN BLVD
MYRTLE BEACH SC 29588

EARL BIBBER
120 FOX HAVEN BLVD
MYRTLE BEACH SC 29588

ROBERT J SMITH
6901 GINA CT
MYRTLE BEACH SC 29588

EDWARD J WELSH
6905 GINA CT
MYRTLE BEACH SC 29588

KENNETH THOMPSON
985 BROWN SWAMP RD
CONWAY SC 29527

WILLIAM HEUSTESS
4137 HIGHWAY 813
CONWAY SC 29526

KENNETH PORTER
1828 OAK DALE RD
LORIS SC 29569

JOYCE F WISSMAN
6903 GINA CT
MYRTLE BEACH SC 29588

TODD HEBNICH
3012 HERDSMAN WAY
RALEIGH NC 27614

LARRY A HINCHER
1560 GREEN SEA RD S
LORIS SC 29569

HARMON D GRAHAM
916 JACKSON BLUFF RD
CONWAY SC 29526

PATRICIA R HULIT
1103 TAP ROOT CT #L-160
MURRELLS INLET SC 29576

RONALD HARRIS ROGERS
1514 LANTERNS REST RD B3 301
MYRTLE BEACH SC 29579

CARLIS L GASQUE
3748 VALLEY FORGE RD
AYNOR SC 29511

MARTHA E GUTHRIE
9737 SMALLS DR
MYRTLE BEACH SC 29588

RICHARD DONOVON GRAINGER
839 SISTERS RD
LORIS SC 29569

MICHAEL B WILLIAMSON
3584 GOOD LUCK RD
AYNOR SC 29511

ZORAN ASANIN
1514 LANTERNS REST RD #303
MYRTLE BEACH SC 29579

LAYNE R HOLLAND
218 FOX CATCHER DR
MYRTLE BEACH SC 29588

MICHAEL GILLAND
314 FOXRIDGE DR
MYRTLE BEACH SC 29588

EDWARD W HARROP
1285 AUTUMN DR LOT 188
MURRELLS INLET SC 29576

JEFFREY F TODD
4701 COUNTRY TRL
AYNOR SC 29511

ROXANA J BEAULIEU
823 ESTHER CT #18
CONWAY SC 29526

JULIE A ALLABACH
210 FOX CATCHER DR
MYRTLE BEACH SC 29588

PATRICIA WADE
6302 ADRIAN HWY
CONWAY SC 29526

JERALLYN A GRASSIE
1279 POLLEN LOOP #189
MURRELLS INLET SC 29576

WILLIAM STEWART DERR
1020 AUTUMN DR
MURRELLS INLET SC 29576

HEATHER L PRITCHARD
1033 AUTUMN DR
MURRELLS INLET SC 29576

JIMMY TODD
2279 CHERRY HILL RD
LORIS SC 29569

KAREN S ROGERS
1030 AUTUMN DR
MURRELLS INLET SC 29576

NANCY HALE
1028 AUTUMN DR
MURRELLS INLET SC 29576

DENNIS GENE COATS
3311 BROAD ST
LORIS SC 29569

HEATH R LAMBERT
1707 COX RD
GALIVANTS FERRY SC 29544

WILLIAM L SCHUMAN
522 SAINT CHARLES CIR
MYRTLE BEACH SC 29588

DAVID KEVIN BULLOCK
5960 GRACE LN
MYRTLE BEACH SC 29588

HANNELORE MCRAY
2497 HUNTERS TRL LT38
MYRTLE BEACH SC 29588

MICHELLE L JENNINGS
338 WORTHINGTON CIR
MYRTLE BEACH SC 29588

LAURIE KNAPP
104 BAY BERRY LANE
EASTON CT 06612

TERRI K SELLERS
1043 CAUSEY RD
CONWAY SC 29526

DAVID D FELDER
2659 HIGH BRASS TRL
MYRTLE BEACH SC 29588

JOHNATHAN B BLACK
2411 MEMORY LN
LORIS SC 29569

STEPHEN KOCOT
8069 RESIN ROAD PINES OF ST
MURRELLS INLET SC 29576

AMANDA G SPRINGS
6088 KATES BAY HWY
CONWAY SC 29527

MICHELLE LIVINGSTON
737 HIGHWAY 66
CONWAY SC 29526

MELITA WALDEN
PO BOX 50361
MYRTLE BEACH SC 29579

RONALD H ADCOCK
5419 WOOD RIDGE RD
WILMINGTON NC 28409

CHARLOTTE BAFILE
980 GRACE DR #35
CONWAY SC 29527

MICHAEL CHRISTOPHER ELLIOTT
974 GRACE DR
CONWAY SC 29527

MICHAEL T SPIRES
4971 BETHEL RD
AYNOR SC 29511

ELIZABETH T LESTER
8068 RESIN RD
MURRELLS INLET SC 29576

SLOAN INC
3007 A CHURCH ST
MYRTLE BEACH SC 29577

BOBBY E HAZELTON
4413 OLD BUCK CREEK RD
LONGS SC 29568

RANDALL JORDAN
3100 WAYSIDE RD
CONWAY SC 29527

DAVID H EDWARDS
2527 BEAR STAND TRL
MYRTLE BEACH SC 29588

KARL NEMETH
1026 LINDA DR
CONWAY SC 29526

ALMON WHITMAN
8064 RESIN RD
MURRELLS INLET SC 29576

MATTHEW TRUDEAU
1276 POLLEN LOOP
MURRELLS INLET SC 29576

MICHAEL BRIDE
1274 POLLEN LOOP #L-260
MURRELLS INLET SC 29576

RALPH FISHER
8088 BARK CT
MURRELLS INLET SC 29576

JEFFREY COLE
1032 AUTUMN DR
MURRELLS INLET SC 29576

JENNY KEARNS
1264 POLLEN LOOP #255
MURRELLS INLET SC 29576

DARLA MOREHEAD
8013 TAG CT
MURRELLS INLET SC 29576

JUNE ROSE VEACH
1265 POLLEN LOOP
MURRELLS INLET SC 29576

JAMES E ROBERTS
480 BRUNSON SPRING RD
GALIVANTS FERRY SC 29544

WINIFRED M BROWN
967 GRACE DR
CONWAY SC 29527

TIMOTHY TROXELL
1420 FOUR MILE RD
CONWAY SC 29526

HINSON RABON
11172 HIGHWAY 905 N
LONGS SC 29568

WOODY MCDOWELL
2981 DUSTY RD
LORIS SC 29569

ROBERT W HOUSE
828 ESTHER CT LOT 11
CONWAY SC 29526

NICOLET KIM RYAN
216 DEER TRACE CIR LOTB8
MYRTLE BEACH SC 29588

LOUIS J MOLNAR
6931 ANTONIO LN
MYRTLE BEACH SC 29588

GARY RAUCH
625 TIDAL POINT LN
MYRTLE BEACH SC 29579

WILLIAM HOLT
3305 HIGHWAY 905
CONWAY SC 29526

ELENA DIAZ
1006 AUTUMN DR
MURRELLS INLET SC 29576

JAMES E HOLMES
207 BEATY ST
CONWAY SC 29526

ROBERT R RUSH
5417 PRIVETTS RD
CONWAY SC 29526

JAMES THEN
975 GRACE DR
CONWAY SC 29527

STEPHEN SUMPTER
3791 GREEN SEA RD
GREEN SEA SC 29545

EUGENIA COOPER MERCHANT
214 SUGAR TREE DR
MYRTLE BEACH SC 29588

JASPER W STOCKS
4948 RED BLUFF RD
LORIS SC 29569

JAMES A BARGIOL
198 SHAMROCK DR
CONWAY SC 29526

RAYMOND G FORCIER
1699 HILLY LN
CONWAY SC 29527

BILL KUNKLE
7249 HIGHWAY 134
CONWAY SC 29527

MICHAEL A MCCLELLAN
1021 MARTIN LN
CONWAY SC 29526

DAVID H PRINCE
4613 RED BLUFF RD
LORIS SC 29569

BARBARA W SMALL
3221 SHELTON LN
MYRTLE BEACH SC 29577

CLARENCE W YOUNG
9640 INDIGO CREEK BLVD
MURRELLS INLET SC 29576

SIMON GARY
9563 INDIGO CREEK BLVD #54
MURRELLS INLET SC 29576

SHANNON WELCH
5437 DEERE DR
CONWAY SC 29527

JANIS M SECKMAN
876 MCNABB SHORTCUT RD
LORIS SC 29569

TOMMY N COX
1490 LAWNDALE DR
LORIS SC 29569

CHRISTIE LONG
2769 COATS RD
LORIS SC 29569

DANIEL S STALVEY
330 FOUR MILE RD
CONWAY SC 29526

RONALD S CUMMINGS
1960 MEADOWOOD LN
LONGS SC 29568

JOSEPH W. HOWELL
2346 LITTLE LAMB RD
CONWAY SC 29527

EDWARD LEE COFFEY
9601 INDIGO CREEK BLVD
MURRELLS INLET SC 29576

EDWARD W WALKER
1011 AUTUMN DR
MURRELLS INLET SC 29576

ANGELA KNIGHT
1003 AUTUMN DR
MURRELLS INLET SC 29576

RODERICK R TROSTLE
1001 AUTUMN DR
MURRELLS INLET SC 29576

CONSTANCE R DAVID
2391 HUNTERS TRL
MYRTLE BEACH SC 29588

JACQUELINE M. MORRIS
1042 AUTUMN DR
MURRELLS INLET SC 29576

DEBORAH L GAROFALO
1130 CARLEITA CIR
CONWAY SC 29527

JOHN C REGAN
950 GRACE DR #52
CONWAY SC 29527

JOHN TARMY
1516 HIGHWAY 129
GALIVANTS FERRY SC 29544

KAREN S PRICE
4251 BNOCH RD
AYNOR SC 29511

JOHN K HERRINGTON
2216 JOYNER SWAMP RD
GALIVANTS FERRY SC 29544

JULIE J KANNIARD
1018 MARTIN LN #16
CONWAY SC 29526

EDWARD W WALKER
1013 AUTUMN DR
MURRELLS INLET SC 29576

HAYDEE SALVATO
8036 RESIN RD #92
MURRELLS INLET SC 29576

MICHAEL L HUCKS
1036 MARTIN LN
CONWAY SC 29526

CARRIE HANNO
1283 POLLEN LOOP RD
MURRELLS INLET SC 29576

FRANKIE HARRELSON
4467 BOTTLE BRANCH RD
CONWAY SC 29527

CHRIS CANNON
6730 KATES BAY HWY
CONWAY SC 29527

DONNA RAB RUTHERFORD
4149 HIGHWAY 813
CONWAY SC 29526

CAROL L SMALL
2217 KIRKLAND DR
CONWAY SC 29526

KAREN B GORE
3058 HUGHES GASQUE RD
AYNOR SC 29511

NORMAN MCCULLOCH
5637 HIGHWAY 905
CONWAY SC 29526

JAMES L CARROLL
439 NIGHT OWL LN
CONWAY SC 29527

KEVIN S HEARL
4387 PARTY PINES RD
CONWAY SC 29526

SCOTTY W CANNON
1541 COATS RD
LORIS SC 29569

ROSEMOND AMUSTEN
1004 AUTUMN DR #148
MURRELLS INLET SC 29576

JUANITA MEY
175 MOUNTAIN ASH DR.
BLUEFIELD WV 24701

DIANA L BRADSHAW
7956 SPRUCE LN
MURRELLS INLET SC 29576

ROBERT MCCURLEY
2025 KEEVER RD
LEBANON OH 45036

SANDRA C TAYLOR
309 FOXRIDGE DR #5
MYRTLE BEACH SC 29588

JOHN ALLEN BROWNE
PO BOX 1192
CONWAY SC 29528

HEATH S ALLEN
2807 JOYNER SWAMP RD
GALIVANTS FERRY SC 29544

RICHARD JAKELL
1040 MARTIN LN
CONWAY SC 29526

GLENDA P KEBEL
3806 MAYPOP CIR #C
MYRTLE BEACH SC 29588

JANET SORCE
3806 MAYPOP CIR #A
MYRTLE BEACH SC 29588

CORY B RICHARDSON
5686 SPRING BEAUTY DR
CONWAY SC 29527

CHRISTOPHER R COLLINS
14007 HIGHWAY 19
NICHOLS SC 29581

DARLENE A LUCIDO
6911 ASHLEY COVE DR
MYRTLE BEACH SC 29588

ANDREW J FEDEROVITCH
2402 HUNTERS TRL #41
MYRTLE BEACH SC 29588

JAMARIS E YOUNG
1007 AUTUMN DR #183
MURRELLS INLET SC 29576

DOROTHY G TYSON
4461 WILLOW SPRINGS RD
CONWAY SC 29527

KARL D FLEMING
1209 CHESAPEAK DR
AYNOR SC 29511

WILLIAM CROSS
3427 HIGH HILL DR
LITTLE RIVER SC 29566

JOHN LEHOTSKY
3151 CHERRY CIR
LONGS SC 29568

LOUISE MANGIONE FLOWERS
3113 CLEMMONS RD
LORIS SC 29569

DOUGLAS M. PATTON
2216 KIRKLAND DR
CONWAY SC 29526

LEE ANNA WILLIAMS
120 BLUE RIDGE CIR
LONGS SC 29568

LISA R SOLES
520 HIGHWAY 348
LORIS SC 29569

MICHAEL HAL NOBLES
4155 LIBERTY LN
CONWAY SC 29527

DANIELLE TAYLOR
1908 BELLAMY RD
CONWAY SC 29526

ARRON B MILLER
PO BOX 30392
MYRTLE BEACH SC 29588

KIM MASSIE
818 ESTHER CT
CONWAY SC 29526

J FLINT MINCEY
735 DOGWOOD RD W
LORIS SC 29569

HAL M HEIDT
3454 WILDERNESS LN
MURRELLS INLET SC 29576

DEBORAH H MCCrackEN
3379 HIGHWAY 19
CONWAY SC 29526

MARY LOU BLACKMON
7211 OLD REAVES FERRY RD
CONWAY SC 29526

GARY D ROSE
6943 ANTONIO LN
MYRTLE BEACH SC 29588

LANCE D POE
5609 BLACKMOOR DR S
MURRELLS INLET SC 29576

JANICE J WEST
9275 PEE DEE HWY
CONWAY SC 29527

WANDA R JORDAN
1023 MARTIN LN #22
CONWAY SC 29526

JULIAN JEFFERY STANLEY
3722 PFACE CT
CONWAY SC 29527

AUDRA BARNETT
1024 AUTUMN DR
MURRELLS INLET SC 29576

TERESA A ZELLER
1280 POLLEN LOOP #263
MURRELLS INLET SC 29576

TALMADGE COLLINS
9915 CONIFER LN
MURRELLS INLET SC 29576

JUANITA MOREHOUSE
821 ESTHER CT
CONWAY SC 29526

RICKY/JACKIE NORRIS
522 GUMTREE RD
GALIVANTS FERRY SC 29544

JANET C BURKE
1034 AUTUMN DR #16
MURRELLS INLET SC 29576

MARTIN L CLINE
6161 INMAN CIR
CONWAY SC 29526

HILDA CORUM SPRINKLE
3084 WAYSIDE RD
CONWAY SC 29527

KISHA LILLY ROBERTS
223 RABON RD
AYNOR SC 29511

DAVID JOHNSON
4107 BARNHILL RD
GALIVANTS FERRY SC 29544

RANDOLPH W BMERY
PO BOX 666
AYNOR SC 29511

JAMES MCDOWELL
425 AMANDA WAY
CONWAY SC 29526

KENNY TINDALL
1046 DUNN SHORT CUT RD
CONWAY SC 29527

SAM KLEIN
218 DEER TRACE CIR
MYRTLE BEACH SC 29588

GERALD BAXTER
1165 POLLEN LOOP
MURRELLS INLET SC 29576

DAVID G ALLEN
1027 AUTUMN DR
MURRELLS INLET SC 29576

BARRY M HALPERN
1156 POLLEN LOOP #22
MURRELLS INLET SC 29576

WANDA GAIL JENKINS
8027 RESIN RD
MURRELLS INLET SC 29576

PHILLIP ROSS CAWTHON
8091 BARK CT
MURRELLS INLET SC 29576

WILLIAM E ISBLE
524 BASHORE DR
MARTINSBURG WV 25404

KAREN MAGUIRE
4267 CONGRESSIONAL DR
MYRTLE BEACH SC 29579

ALLEN R RENSTROM
157 HUMMINGBIRD CT
MYRTLE BEACH SC 29579

SUSAN NOLAN
1106 TAP ROOT CT
MURRELLS INLET SC 29576

ROBERT J SMITH
3021 SABAL CT #224
MURRELLS INLET SC 29576

LILLIE B DAVIS
7954 SPRUCE LN
MURRELLS INLET SC 29576

JONATHAN SIMMONS
1284 POLLEN LOOP
MURRELLS INLET SC 29576

ANNETTE HANLEY
1282 POLLEN LOOP #264
MURRELLS INLET SC 29576

WICKY PRETRICK
1192 POLLEN LOOP #237
MURRELLS INLET SC 29576

LONNIE J SIMMONS
1191 POLLEN LOOP #206
MURRELLS INLET SC 29576

BRETT A ALLEN
4035 J AND S COUNTRYSIDE RD
CONWAY SC 29527

TRENT HARDEE
2529 HIGHWAY 129
GALIVANTS FERRY SC 29544

KENNETH PAVKOVIC
126 HAWTHORNE CIR
ALBENTOWN PA 18104

CAROL S REDAR
2205 SPRINGWOOD PL
LONGS SC 29568

LUCILLE C SKIPPER
13466 PEE DEE RD S
GALIVANTS FERRY SC 29544

JESSICA RAE GERLACH
822 ESTHER CT
CONWAY SC 29526

JOSHUA LEE TRUETT
5050 HAMPTON RD
CONWAY SC 29527

SAMMY T CARROLL
6215 HUNTING SWAMP RD
CONWAY SC 29527

ROBERTA LIPMAN
318 FOXRIDGE DR #131
MYRTLE BEACH SC 29588

DAVID P GORE
4144 LONG AVENUE EXT
CONWAY SC 29526

JACKSON L COBB
1126 PINE CROFT DR
WEST COLUMBIA SC 29170

DAVID ALAN FECTEAU
956 NOTTINGHAM COURT
CONWAY SC 29526

JIMMY SIMMONS
2004 ACACIA LN
MURRELLS INLET SC 29576

WENDY LEVESQUE
7969 SPRUCE LN #117
MURRELLS INLET SC 29576

NEW HOMES REALTY INC
101 ASCOT DR
MYRTLE BEACH SC 29588

THOMAS KOST
3001 SABAL CT
MURRELLS INLET SC 29576

BRADLEY K NEUHART
2545 COUNTY ROAD 24
CARDINGTON OH 43315

VICTOR GRBICH
CT 8045 BOX CT
MURRELLS INLET SC 29576

ARTHUR HYATT
3000 SABAL CT #L-213
MURRELLS INLET SC 29576

LINDA LIENHOP
3006 SABAL CT
MURRELLS INLET SC 29576

TIMOTHY M SUGGS
PO BOX 855
LORIS SC 29569

GARY L BRYANT
2166 MEADOWOOD LN
LONGS SC 29568

DAVID WILLIAMSON
311 FOXRIDGE DR #6
MYRTLE BEACH SC 29588

H LUNDY BOOTH
3946 LONG AVENUE EXT
CONWAY SC 29526

LADAIN POPE
605 LOOP CIR
LONGS SC 29568

JOSEPH E MILEY
5621 BLACKMOOR DR S
MURRELLS INLET SC 29576

MASSOUD RAHNAVARD
455 SUNNEHANNA DRIVE BOX 179
ISL
MYRTLE BEACH SC 29588

LENORE HASLER
1256 POLLEN LOOP #253
MURRELLS INLET SC 29576

ERIK O GRANT
1168 POLLEN LOOP
MURRELLS INLET SC 29576

GEORGE CANTRELL
3011 SABAL CT
MURRELLS INLET SC 29576

JEREMY T LEACH
190 HILL DR
PAWLBYS ISLAND SC 29585

JASON HARPER
1009 AUTUMN DR #182
MURRELLS INLET SC 29576

HAROLD WAYNE RABON
3869 HORSE PEN BAY RD
AYNOR SC 29511

DAWN M BURR
5605 HIGHWAY 378
CONWAY SC 29527

JOSEPH L JOHNSON
1528 BUSY CORNER RD
CONWAY SC 29527

JULIE G BOSTIAN
413 COCO PLUM CT
LONGS SC 29568

VIVISTINE M. GOUDE
9180 PEB DEE HWY
CONWAY SC 29527

PATRICK A PARKER
488 HUCKS RD
AYNOR SC 29511

JAMES GARY SMITH
4407 ENOCH RD
AYNOR SC 29511

JOSHUA DALE NORTON
3799 ASBURY RD
AYNOR SC 29511

CRAIG LARRY BOOTH
3879 BAKERS CHAPEL RD
AYNOR SC 29511

PATRICIA BATEN
740 BUCKSVILLE DR
CONWAY SC 29527

ROBERT MONTHIE
303 BLENHEIM CT #350
CONWAY SC 29526

GREGORY W HILL
2464 HUNTERS TRL
MYRTLE BEACH SC 29588

JAMES S HALL
4185 LONG AVENUE EXT
CONWAY SC 29526

DEBBIE SINCLAIR
815 ESTHER CT
CONWAY SC 29526

DONNA T CAUSEY
2208 STAR BLUFF RD
LONGS SC 29568

JOSEPH T COONS
895 OLD MAGNOLIA DR
CONWAY SC 29526

JOYCE OVERHOLT
751 JUNGLE RD
CONWAY SC 29526

SHARON L SPRINGER
220 7TH ST #220
OAKMONT PA 15139

NICOLETTE C ROBESY
2006 ACACIA LN #20
MURRELLS INLET SC 29576

MARY BETH CARROLL
3652 GOOD LUCK RD
AYNOR SC 29511

JEANNE L ATKINSON
3915 GOFF RD
AYNOR SC 29511

DANIEL ARROWOOD
5000 HAMPTON RD
CONWAY SC 29527

PHILLIP H EDWARDS
1258 KNOTTY BRANCH RD
CONWAY SC 29527

REGINALD BOB GROOMS
466 MAPLEWOOD CIR
CONWAY SC 29526

RICHARD W DICKINSON
3849 PALMETTO ST
MYRTLE BEACH SC 29579

DAVID LEE TROUT
2777 HIGHWAY 545
CONWAY SC 29526

BELVA G PATTON
208 FOX CATCHER DR #L86
MYRTLE BEACH SC 29588

MARLENE GIELAROWSKI
6904 GINA CT
MYRTLE BEACH SC 29588

STANLEY W CASTOR
1852 HERITAGE RD
LORIS SC 29569

RANDOLPH ELVINGTON
1290 CAINES LANDING RD
CONWAY SC 29526

STEPHANIE M ELLIOTT
8012 TAG CT
MURRELLS INLET SC 29576

BURROUGHS NOBLES
993 WILLIAM NOBLES RD
AYNOR SC 29511

ROBERT A PERRINE
2003 ACACIA LN
MURRELLS INLET SC 29576

CHRISTINE A MCSWENEY
212 FOX CATCHER DR
MYRTLE BEACH SC 29588

WILLIAM LAMBERT
4115 JOYNER SWAMP RD
GALIVANTS FERRY SC 29544

TERRY BROWN
6046 RENATA LN
MYRTLE BEACH SC 29588

JAMES CORDELL HUCKS
2946 LUCAS BAY RD
CONWAY SC 29527

DANIEL DIETRICH
545 CRUSADE CIR
CONWAY SC 29526

CAROLYN AMOS
2416 HUNTERS TRL
MYRTLE BEACH SC 29588

CAROL D MABEN
6444 J AND T CIR
CONWAY SC 29527

CHRISTINA FINN
312 FOXRIDGE DR
MYRTLE BEACH SC 29588

JERRY PHILLIPS
2875 OLD REAVES FERRY RD
CONWAY SC 29526

DONNA LYNN JOHNSON
1151 POLLEN LOOP
MURRELLS INLET SC 29576

JULIA C BAURLE
1149 POLLEN LOOP PINES OF ST
MURRELLS INLET SC 29576

JAMES PROSSER
4988 PROSSERS SHORTCUT RD
AYNOR SC 29511

CRAIG T SQUIRES
6201 HENDRICKS SHORT CUT RD
CONWAY SC 29527

APRIL J HARDWICK
4091 HIGHLAND DR
AYNOR SC 29511

RICHARD DIETRICH
543 CRUSADE CIR #358
CONWAY SC 29526

GARY A BAUM
2002 ACACIA LN
MURRELLS INLET SC 29576

JAMIE WILLIAMS
5 AUDUBON CT
MURRELLS INLET SC 29576

ERNEST BAYLOR
1105 TAP ROOT CT #159
MURRELLS INLET SC 29576

RYAN LAMBERT
3781 QUAIL DR
GALIVANTS FERRY SC 29544

BETTY SHELLEY
152 MCNEIL CHAPBL RD
LONGS SC 29568

GARY ARMSTRONG
PO BOX 30505
KNOXVILLE TN 37930

KAREN CARPENTER
118 FOX HAVEN BLVD #113
MYRTLE BEACH SC 29588

JAMES L MOLYNEAUX
1448 WILDERNESS LN
LORIS SC 29569

ELLA S CHADMON
827 ESTHER CT
CONWAY SC 29526

TRACEY W ABERCROMBIE
1037 MARTIN LN
CONWAY SC 29526

JAMES R REINER
3023 SABAL CT
MURRELLS INLET SC 29576

HAROLD STALVEY
3554 JORDANVILLE RD
GALIVANTS FERRY SC 29544

MATTHEW W BRATCHER
5055 OLD REAVES FERRY RD
CONWAY SC 29526

CHRISTOPHER M WALLER
1304 FOUR MILE RD
CONWAY SC 29526

DARREN J KRESS
406 COCO PLUM CT #78
LONGS SC 29568

LINDA HARRELSON
2301 WILDERNESS RD
CONWAY SC 29526

JEFFREY T SPIVEY
978 WILLIAM NOBLES RD
AYNOR SC 29511

ADAM M JORDAN
309 CLOVERBROOK CIR
CONWAY SC 29526

PHYLLIS A CAUSEY
2021 KIRKLAND DR
CONWAY SC 29526

KATHY MANGERS
4883 BEAR BLUFF RD
CONWAY SC 29526

VICTORIA LYNN HUCKS
3012 SABAL CT
MURRELLS INLET SC 29576

CHRISTOPHER J STUBBS
1216 POLLEN LOOP #243
MURRELLS INLET SC 29576

GAIL M CIAMPOLI
1208 POLLEN LOOP #241
MURRELLS INLET SC 29576

GEORGE COLLINS
PO BOX 10471
HAMILTON NJ 08650

TAMALA BUCKNER
3005 SABAL COURT PINES OF ST
MURRELLS INLET SC 29576

BETH CHRISTINE CHARLETTE
1233 POLLEN LOOP
MURRELLS INLET SC 29576

TIFFANY WALTERS
1260 POLLEN LOOP
MURRELLS INLET SC 29576

VICKY J TINDALL
5305 BOTTLE BRANCH RD
CONWAY SC 29527

NICHOLAS B CLEM
1718 HOLLY RIDGE DR
LONGS SC 29568

CURRENT RESIDENT
5253 KATES BAY HWY
CONWAY SC 29527

RUTH H CARROLL
1047 ACADEMY DR
CONWAY SC 29526

ABDELGHANI RAHMOUDI
PO BOX 16115
SURFSIDE BEACH SC 29587

DONNA S SMITH
8975 POLO CIR #F
MURRELLS INLET SC 29576

DEBORAH CARROLL
1145 POLLEN LOOP
MURRELLS INLET SC 29576

RANDOLPH GRAHAM
PO BOX 87
LONGS SC 29568

JOHN W. MOSLEY
4286 MILL HILL RD
CONWAY SC 29526

WILLIAM DECKER
3321 CEDAR CREEK RUN
LITTLE RIVER SC 29566

JODY L LEWIS
992 GRACE DR
CONWAY SC 29527

MARGIE M LEE
115 FOX HAVEN BLVD
MYRTLE BEACH SC 29588

PAULA SCHEIDERER
13331 PEB DEB RD S
GALIVANTS FERRY SC 29544

JOHN S BALDEA
202 FOX CATCHER DR
MYRTLE BEACH SC 29588

RICHARD H HINKLE
106 FOX HAVEN BLVD
MYRTLE BEACH SC 29588

JOHN BISHOP
6909 ASHLEY COVE DR
MYRTLE BEACH SC 29588

WILLIAM L ISHMAEL
826 ESTHER CT #10
CONWAY SC 29526

AMYL WISDO
317 FOXRIDGE DR #9
MYRTLE BEACH SC 29588

BARBARA LUESCHER
406 CALLIE DR #77
MYRTLE BEACH SC 29588

CHAD M MARKULICS
4038 DEWITT RD
LONGS SC 29568

LAMAR BOULWARE
2502 SMILEY LN
CONWAY SC 29526

TARA S CHESTNUT
2985 OLD REAVES FERRY RD
CONWAY SC 29526

DAVID SCHMECK
111 CROSS CREEK DR
POTTSVILLE PA 17901

ROGER TEETS
1538 LANTERNS REST RD #203
MYRTLE BEACH SC 29579

DANIEL ROCHE
334 TRESTLE WAY
CONWAY SC 29526

LAWANDA HICKMAN
2449 FARMWOOD CIR #6
CONWAY SC 29527

SHERRI L WALKER
1019 AUTUMN DR
MURRELLS INLET SC 29576

SAUNDRA L RHODES
2451 FARMWOOD CIR
CONWAY SC 29527

EDWARD WOLANIK
PO BOX 2281
CONWAY SC 29528

WILLIAM DEREK MARTIN
6906 MAR CAP RD
GALIVANTS FERRY SC 29544

PATRICIA A DELANBY
957 GRACE DR
CONWAY SC 29527

JAMES VANDERGAAG
4173 HIGHWAY 66
LORIS SC 29569

KERRY A COOK
302 TROON LN
MYRTLE BEACH SC 29588

MIKE L SMITH
1237 POLLEN LOOP PINES OF ST
MURRELLS INLET SC 29576

SEAN P CARROLL
3026 SABAL COURT PINES OF ST
MURRELLS INLET SC 29576

SIGRID HARPER
3022 SABAL CT #217
MURRELLS INLET SC 29576

CLAUDINE BARD
3031 SABAL CT #222
MURRELLS INLET SC 29576

KELLI GBLWICKS
3030 SABAL CT #219
MURRELLS INLET SC 29576

JIMMY DEAN RABON
1665 HEMINGWAY CHAPEL RD
CONWAY SC 29527

BRADLEY S TUNNELLS
11826 HIGHWAY 19 W
LORIS SC 29569

DWAYNE PATRICK
472 MCNEIL CHAPEL RD
LONGS SC 29568

WYNNETTE F SMITH
319 FOXRIDGE DR
MYRTLE BEACH SC 29588

JAY KELLY CARTER
3545 ROENA DR
CONWAY SC 29527

WUYI ZHANG
320 FOXRIDGE DR
MYRTLE BEACH SC 29588

HELEN JACOBSON
1301 GRASSY HILL CT
HANAHAN SC 29410

LENORA HARRELSON
2303 WILDERNESS RD
CONWAY SC 29526

JOHN R FOWLER
327 KEYSFIELD CIR
CONWAY SC 29527

SANDY PETERSON
3036 SABAL CT
MURRELLS INLET SC 29576

SHAWNA B TECCO
1236 POLLEN LOOP
MURRELLS INLET SC 29576

STAN H SARVIS
2481 FOWLER SCHOOL RD WELL
LORIS SC 29569

DUANE BROWN
581 KNOTTY BRANCH RD
CONWAY SC 29527

RAMONA KAY MARTINET
3700 TRAVIANA RD
CONWAY SC 29526

LONNIE R MARTIN
841 BRUNSON SPRING RD
GALIVANTS FERRY SC 29544

WILLIAM F LAVOIE
184 LONG RIDGE DR
MURRELLS INLET SC 29576

FRANK B KING
4101 CARLISLE RD
DOVER PA 17315

DEVAN DORA SHELLEY
2904 MOORES MILL RD
AYNOR SC 29511

TARA HOLMES
6020 OLD PLACE RD
LORIS SC 29569

ROBERT CASEY ALTMAN
1020 WHITE CEDAR LN
MURRELLS INLET SC 29576

ALEX MURZSA
1061 MARIE CT
CONWAY SC 29526

JOHN HEATON
4147 HAGWOOD CIR
CONWAY SC 29526

WILLIE B ROBERTS
3631 JUNIPER BAY RD
CONWAY SC 29527

STARLA RENEE LITTLE
1117 PANTHON DR
CONWAY SC 29526

ROSCOB N JONES
6908 ASHLEY COVE DR
MYRTLE BEACH SC 29588

CARL SWANSON
1138 CARLEITA CIR #14
CONWAY SC 29527

HENRY J HETU
3093 LONG AVENUE EXT
CONWAY SC 29526

S BRAD DAWSEY
339 FRYE RD
GALIVANTS FERRY SC 29544

VICKI J CROFT
57 SMITH BLVD
MYRTLE BEACH SC 29588

JOHN A LINTECUM
3053 AIRPORT RD
HILLSVILLE VA 24343

KARIN TEAGUE
501 CLOVERFIELD LN #43
CONWAY SC 29526

CURTIS MELTON
PO BOX 634
ROCKINGHAM NC 28380

TODD A COOKE
505 KEYSTONE LN #88
MYRTLE BEACH SC 29588

RALPH N WILCOX
1015 AUTUMN DR #179
MURRELLS INLET SC 29576

WILLIAM DALLAS
124 DEER TRACE CIR
MYRTLE BEACH SC 29588

WILLIAM F JOHNSON
5664 NEW DAWN RD
CONWAY SC 29526

2410 BLAKE ST
CONWAY SC 29526

GLENN W HUGHES
7150 PEB DEE HWY
CONWAY SC 29527

MATTHEW V LANZER
6930 ANTONIO LN
MYRTLE BEACH SC 29588

VAN BUREN DUNCAN
2570 HIGHWAY 348
LORIS SC 29569

JANET SPENCER
259 FOX CATCHER DR #92
MYRTLE BEACH SC 29588

LARRY D SMITH
1820 PITCH LANDING RD
CONWAY SC 29527

GARRETT GASQUE
3197 HUGHES GASQUE RD
AYNOR SC 29511

JESSIE NORRIS
3698 STILL POND RD
CONWAY SC 29526

JUDY M. TURNER
6230 CHINABERRY DR
CONWAY SC 29527

CHRIS M MCMURRAY
6269 SALBM RD
MYRTLE BEACH SC 29588

JOSE MIRELES
510 SIX LAKES DR
MYRTLE BEACH SC 29588

KELLI CARROLL
1605 OAK LAWN DR #12
AYNOR SC 29511

RICHARD W BOYD
1651 HIGHWAY 66
CONWAY SC 29526

HELEN T WACK
1501 HOLLY HILL RD
LORIS SC 29569

STEVEN LANE
113 CORAL CREST DR
CONWAY SC 29527

ANNETTE STANLEY
1124 BLKFORD DR #39
CONWAY SC 29526

JAMES R. MEW
6250 JUNIPER BAY RD
CONWAY SC 29527

DANIELLE PAESE
2704 WOODCRBEK LN
CONWAY SC 29527

CHARLES W GOSNELL
9673 CONIFER LN
MURRELLS INLET SC 29576

DONALD W ANDERSON
4011 BAKERS CHAPEL RD
AYNOR SC 29511

JAMBY SCHEUCH
1212 POLLEN LOOP
MURRELLS INLET SC 29576

MARY D WINEGLASS
7650 ENTERPRISE RD #F1
MYRTLE BEACH SC 29588

ROBERT PUORRO
1209 FOXBORO DR
NORWALK CT 06851

CHARMAINE TOMCZYK
11025 HIGHWAY 19 W
LORIS SC 29569

MARK TODD
500 HUCKS RD
AYNOR SC 29511

KEVIN MCCANN
505 CLOVERFIELD LN #42
CONWAY SC 29526

MICHAEL J LOFLAND
1196 POLLEN LOOP
MURRELLS INLET SC 29576

BETH SEMENTELLI
3018 SABAL CT
MURRELLS INLET SC 29576

STEVEN B MATHISON
1021 AUTUMN DR
MURRELLS INLET SC 29576

TARA JOSEY
3602 FARMINGTON PL #20
MYRTLE BEACH SC 29579

MATT WINBURN
2142 WINBURN RD
CONWAY SC 29527

FRANKLIN DEAN ROBERTS
6536 GUNTERS ISLAND RD
GALIVANTS FERRY SC 29544

ERIC GASQUE
5545 ENOCH RD
CONWAY SC 29526

FRANK D BOWE
3755 CHARITY LN
CONWAY SC 29527

SCOTT BEERS
1220 POLLEN LOOP
MURRELLS INLET SC 29576

BETH ANN VITALE
1036 AUTUMN DR
MURRELLS INLET SC 29576

JAMIE L BESS
9727 CONIFER LN #316
MURRELLS INLET SC 29576

DANIEL SKUCHKO
9685 CONIFER LN
MURRELLS INLET SC 29576

JAMES W METTS
1252 POLLEN LOOP
MURRELLS INLET SC 29576

DENNIS A WILLIAMS
1041 MARTIN LN
CONWAY SC 29526

MATTHEW L JOHNSON
1559 BRUNSON SPRING RD
GALIVANTS FERRY SC 29544

DUSTIN L RICHARDSON
1560 BETSY LN
GALIVANTS FERRY SC 29544

JAMES BRYAN SUGGS
6000 BROWNS WAY SHORTCUT RD
CONWAY SC 29527

CYNTHIA D TANNER
108 ADRIANNA CIR
CONWAY SC 29526

PEARLINE R PARKER
1123 CARLEITA CIR
CONWAY SC 29527

ERMA JOHNSON
7339 JOHNSON SHORTCUT RD
CONWAY SC 29527

DAVID FULLWOOD
2708 FORK OF SWAMP RD
GALIVANTS FERRY SC 29544

GERALDINE SHEEHAN
9684 CONIFER LN #381
MURRELLS INLET SC 29576

MARK D COYNER
9681 CONIFER LN LT 279
MURRELLS INLET SC 29576

L T ROGERS
1232 POLLEN LOOP
MURRELLS INLET SC 29576

ANTHONY P BRAYBOY
1240 POLLEN LOOP #249
MURRELLS INLET SC 29576

SHEILA MCCAULEY
9899 CONIFER LN
MURRELLS INLET SC 29576

THEODRIC WILLIAMS
PO BOX 1236
MYRTLE BEACH SC 29578

KRISTEN DOWLING
1188 POLLEN LOOP ROAD
MURRELLS INLET SC 29576

MITCHELL L KOLB
1207 POLLEN LOOP
MURRELLS INLET SC 29576

GAIL MARCHESA
1172 POLLEN LOOP
MURRELLS INLET SC 29576

LANNY H WHITE
9887 CONIFER LN
MURRELLS INLET SC 29576

CARMELLA A HUGHES
4003 DOUGLAS FIR LN
MURRELLS INLET SC 29576

WALTER W LAWRENCE
6926 ASHLEY COVE DR
MYRTLE BEACH SC 29588

MITCHELL FLOYD
4023 CAROLINA RD
GREEN SEA SC 29545

JODY L NOBLES
4083 HIGHLAND DR
AYNOR SC 29511

KENNETH H. DIXON
2085 DIXON RD
AYNOR SC 29511

HARRY E CHRISTIAN
125 WHITE ROSE LN
CONWAY SC 29527

SUSAN M BOTHWELL
604 CUTLIP CT
CONWAY SC 29527

JOYCE JONES
3786 VALLEY FORGE RD
AYNOR SC 29511

TRENA BLIS
4024 DOUGLAS FIR LN
MURRELLS INLET SC 29576

HENRY BROOKS LEWIS
936 HIGHWAY 67 W
LORIS SC 29569

JOHN S BALDRA
6928 ASHLEY COVE DR
MYRTLE BEACH SC 29588

SHARON KERRIGAN
32 OAK ST E
WEST HAZLETON PA 18202

CINDY M CUPPS
1134 CARLEITA CIR
CONWAY SC 29527

WILLIAM E CUTTS
1231 DUNN SHORT CUT RD
CONWAY SC 29527

ANTHONY RANDALL EDWARDS
PO BOX 2136
CONWAY SC 29528

COSMO PITTARELLI
145 UNION RD
CONWAY SC 29527

JOSEPH M LEIGH
525 COX FERRY RD W
CONWAY SC 29526

MARSHALL VAN DABBS
7106 HIGHWAY 134
CONWAY SC 29527

BERNIE KIRK HARDWICK
426 BRIARWOOD LN
CONWAY SC 29526

JAMES LEONARD
1003 WHITE CEDAR LN
MURRELLS INLET SC 29576

ELLEN GREENWALD
1000 WHITE CEDAR LN
MURRELLS INLET SC 29576

MICHAEL A LOWE
9677 CONIFER LN
MURRELLS INLET SC 29576

MARK ERIC JACKSON
9883 CONIFER LN
MURRELLS INLET SC 29576

DAVID L CORNETT
9708 CONIFER LN
MURRELLS INLET SC 29576

ANGELA GILLIANS
4028 DOUGLAS FIR LN LT309
MURRELLS INLET SC 29576

BONNIE L ADKINS
1204 POLLEN LOOP
MURRELLS INLET SC 29576

JOHN T ANDERSON
313 CORINNE LN
CONWAY SC 29526

DEBBIE DREW
4160 RED BLUFF RD
LORIS SC 29569

LISA G BEVERLY
4031 GOFF RD
AYNOR SC 29511

BRADLEY COX
2787 COATS RD
LORIS SC 29569

JOHN A KENDRICK
9696 CONIFER LN
MURRELLS INLET SC 29576

WENDELL A. GRAINGER
9251 HIGHWAY 701 S
CONWAY SC 29527

TERRY LUNDSFORD
2995 OLD ALTMAN RD
CONWAY SC 29526

LINDA S SHELLEY
4736 SHELL RD
CONWAY SC 29526

JAMES M NUZZI
6798 PINRHAVEN LN
CONWAY SC 29526

JOHN L MINNIGH
616 BUCKS TRL
LONGS SC 29568

LEE H MCCORMICK
6203 HIGHWAY 19 E
LORIS SC 29569

JAMES REUTER
141 NEWBURG AVE
CATONSVILLE MD 21228

JAMES LEE THOMAS
190 DUCK BLIND TRL
MYRTLE BEACH SC 29588

PETER F BARFIELD
997 GRACE DR
CONWAY SC 29527

TIMOTHY W HUCKS
2685 DAWSEY RD
AYNOR SC 29511

JAMES MCCLAIN
113 KINGSTON OAKS DR
CONWAY SC 29526

MARY AMY MARTIN
7588 ENTERPRISE RD
MYRTLE BEACH SC 29588

CHRIS BUFFKIN
4033 CAROLINA RD
GREEN SEA SC 29545

JAMES B LUCKETT
571 BUCKS TRL
LONGS SC 29568

LEONARD RODWELL
329 CLOVERBROOK CIR
CONWAY SC 29526

AMANDA SIEFERS
2005 ACACIA LN
MURRELLS INLET SC 29576

MELSIA CARTER
4027 DOUGLAS FIR LN LT305
MURRELLS INLET SC 29576

JILL M WARREN
2353 OLD CLEARPOND RD
CONWAY SC 29526

CHRISTOPHER R COLLINS
14007 HIGHWAY 19
NICHOLS SC 29581

DAYNA H LEWIS
940 BROWN SWAMP RD
CONWAY SC 29527

JOHNNY REED COOPER
1261 KNOTTY BRANCH RD
CONWAY SC 29527

KAREN L BELL
475 AMANDA WAY
CONWAY SC 29526

ALYSSA GOODMAN
9692 CONIFER LN
MURRELLS INLET SC 29576

JOHN E STROUD
1387 HIGHWAY 67 W
LORIS SC 29569

BARBARA R MILLER
4020 DOUGLAS FIR LN
MURRELLS INLET SC 29576

TIM M LEE
923 GRACE DR
CONWAY SC 29527

BILLY BRYANT
PO BOX 1051
CONWAY SC 29528

GLORIA WILSON
110 ADRIANNA CIR
CONWAY SC 29526

EDWARD DEAN FLOYD
152 LONG RIDGE DR
MURRELLS INLET SC 29576

MICHELE L TURNER
2054 HAWKSMOOR DR
CONWAY SC 29526

KATHLEEN E. HODUM
3602 EAGLE TRACE DR #5
MYRTLE BEACH SC 29579

DOROTHY J GRAHAM
460 KNOTTY BRANCH RD
CONWAY SC 29527

FRANCIS C PARKER
1529 LANTERNS REST RD #201
MYRTLE BEACH SC 29579

BARBARA WILLARD
6066 BEAR BLUFF RD
CONWAY SC 29526

HENRY DUBIEL
4560 HIGHWAY 472
CONWAY SC 29526

TIMOTHY CARTER
452 BEAR GRASS RD E
LONGS SC 29568

BARBARA A STARK
208 LONG RIDGE DR #34
MURRELLS INLET SC 29576

NEIL CAMPBELL
9900 CONIFER LN LT268
MURRELLS INLET SC 29576

KELLY R NOVAK
9700 CONIFER LN LT 377
MURRELLS INLET SC 29576

LORENZO WILSON
9724 CONIFER LN #372
MURRELLS INLET SC 29576

LORRAINE ORELLANO
9688 CONIFER LN
MURRELLS INLET SC 29576

ANGIE R CARLSON
3341 LUPINE DR
FLORENCE SC 29501

BRIAN CARROLL
200 ZION RD
GALIVANTS FERRY SC 29544

PAMELA M. BELLAMY
3679 EAGLE TRACE DR
MYRTLE BEACH SC 29579

CURTIS PIKE
3595 HIGHWAY 777
LORIS SC 29569

SEIVAL M GOINGS
3726 RAINBOW DR
LONGS SC 29568

SILVIA RIVERS
900 SHEM CREEK CIR
MYRTLE BEACH SC 29588

KIMBERLY OWENS PRYOR
1337 EAGLE TERRACE CT
MYRTLE BEACH SC 29579

KAREN GREENE
1377 EAGLE CREST DR
MYRTLE BEACH SC 29579

CRISTY DUDLEY
1262 PINETUCKY DR
GALIVANTS FERRY SC 29544

JACK L BROUGHMAN
168 CAT TAIL BAY DR LT17
CONWAY SC 29527

CHRISTINE M WANDALL
9864 CONIFER LN
MURRELLS INLET SC 29576

BLAINE SHIELLS
142 PINFEATHER TRL
MYRTLE BEACH SC 29588

EXHIBIT

B

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Ronnie Ferroll, et al.

☒ Plaintiff

v.

Horry Electric Cooperative,

☐ Defendant

IN THE COURT OF COMMON PLEAS

CASE NO.

2011-CP-26-1266

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:

Nate Fata, Esq., Bar No. 09866

Address:

P.O. Box 16620

Surfside Beach, SC 29587

phone: 843-238-2676 fax: 843-238-0240

e-mail: nfata@fatalaw.com other:

Defendant's Attorney:

Pope D. Johnson, III, Bar No.

Address:

P.O. Drawer 11209

Columbia, SC 29211-1209

phone: 803-799-9791 fax: 803-253-6084

e-mail: other:

☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)

☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)

☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion:

Estimated Time Needed:

Court Reporter Needed: ☐ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff / ☐ Defendant

March 20, 2013

Date submitted

SECTION III: Motion Fee

☐ PAID - AMOUNT: 25.00

☐ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

☒ Other: Notice of Opt Outs

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other:

JUDGE

CODE:

Date:

CLERK'S VERIFICATION

Date Filed:

Collected by: _____

☐ MOTION FEE COLLECTED: _____

☐ CONTESTED - AMOUNT DUE: _____

HORRY COUNTY
CLERK OF COURT
MELANIE JENNINGS-WARD
13 MAR 21 PM 4:08

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

Ronnie Ferrell, Tammy Vance,
and David Montorio, on behalf of
themselves and all others similarly
situated.

PLAINTIFFS

vs.

Horry Electric Cooperative,

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO: 2011.CP.26.1266

PLAINTIFFS AND PLAINTIFF
CLASS NOTICE OF OPT OUTS

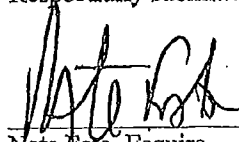
The following persons provided notice by mail postmarked by February 15, 2013 of their
intention to opt out of the Class Action:

1. Adkins, Bonnie L.
2. Adams, Hazel M.
3. Allen, Johnny C.
4. Apperson, Aubrey Lee
5. Booth, H. Lundy
6. Bowden, Callie Y.
7. Brown, Hugh A.
8. Bullock, David K.
9. Cannon, Scotty W.
10. Cantrell, George
11. Clem, Kathryn & Nicholas
12. Collins, Alethia W.
13. Cooper, Johnny Reed
14. Cox, Timothy Bradley
15. Currey, Wanda Virginia
16. Dozier, Romeo (Estate Representative Phyllis Dozer)
17. Durant, Randy G.
18. Durst, Mark J.
19. Edwards, David H.
20. Gasque, Garrett
21. Gore, David P.
22. Hardee, Trent B.

HORRY COUNTY
13 MAR 21 PM 4:00
MELANE JUDGINS-WARD
CLERK OF COURT

23. Harper, Kimberly L.
24. Harriett, Eugene
25. Hallsworth, Kenneth (Estate Representative Stephanie H. Folker)
26. Holmes, Etta Juan
27. Johnson, Matthew Levon
28. King, Frank & Sherry
29. Lilly, Enoch Thomas
30. Martinet-Olson, Ramona
31. Miley, Joseph E.
32. Nobels, Michael Hal
33. Norris, III, Jesse R.
34. Proffitt, Richard A.
35. Redfield, Anne C.
36. Reiner, James R.
37. Renstom, Allen
38. Roberts, Kisha Lilly
39. Sawyer, Zack S.
40. Schuessler, James W.
41. Simmons, James L.
42. Small, Barbara W.
43. Stearns, Carole A.
44. Sutton, Thomas, Harlin
46. Tellier, Sylvain
47. Whitesides, Angela

Respectfully submitted:



Nate Fata, Esquire
NATE FATA, P.A.
Post Office Box 16620
1500 U.S. Hwy. 17 North
The Courtyard, Suite 215
Surfside Beach, SC 29587
Tel. (843) 238.2676
Fax (843) 238.0240

Class Counsel

Surfside Beach, South Carolina

March 20, 2013

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

Ronnie Ferrell, Tammy Vance
and David Montorio, on behalf of
themselves and all others similarly
situated,

Plaintiffs,

vs.

Horry Electric Cooperative,

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO: 2011-CP-26-1266

CERTIFICATE OF SERVICE

I, Sally Huffman, legal assistant for Nate Fata, counsel for Plaintiff and Plaintiff Class, do hereby certify that a copy of Plaintiffs and Plaintiff Class Notice of Opt Outs was served upon Pope Johnson, counsel for Defendant, via U.S. Mail on March 20th, 2013, postage prepaid as follows:

Pope D. Johnson, Esq.
Johnson & Barnette, LLP
P.O. Drawer 11209
Columbia, SC 29211 1209

Sally J. Huffman
Sally J. Huffman
Legal Assistant to Nate Fata, P.A.

HORRY COUNTY
13 MAR 21 PM 4:08
MELANIE HUGGINS-WARD
CLERK OF COURT

EXHIBIT

C

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

Plaintiffs,

vs.

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO: 2011-CP-26-1266

You are NOT being sued. You MUST submit a claim to be eligible for payment.

This notice informs you of a proposed settlement of certain class action claims against Horry Electric Cooperative ("Horry Electric") concerning Horry Electric's 'Good Cents Program and the vapor barrier specifications. **This notice advises you of your rights with respect to the settlement, including the possible right to make a claim for payment, as well as your right to opt out of the settlement or object to the settlement.** This notice is being sent to you because you have been identified as a member of a class of persons who may be entitled to the benefits provided by the Settlement Agreement.

This Notice affects your legal rights -- Please read this Notice carefully.

READ THIS FIRST

WHY DID I RECEIVE THIS NOTICE? You were sent this notice because you are in the Class certified by the Court, and you previously were mailed a Class Action Notice in January 2013. You may be entitled to receive benefits under a settlement of legal claims relating to the vapor barrier required by Horry Electric's Good Cents Program for New Homes.

DO I HAVE TO DO ANYTHING? If the court approves the settlement and it becomes effective, you will be entitled to file a claim form together with proper supporting documentation showing your entitlement to a payment under the Automatic Payment Fund or the Remediation Fund. You may object to the proposed settlement during the Objection Period if you wish, and you may exclude yourself from the class, in which case you will have the right to file any claim you may have against Horry Electric on your own at your own expense.

WHAT IF MY ADDRESS HAS CHANGED? To assure correct delivery, if your address is different from the one on this envelope, or if you are moving, please notify Class Counsel at 843-238-2676 or by email at nfata@fatalaw.com.

The Basis of the Claims Against Horry Electric. This matter is before the Court because the Class Representatives have alleged that the Horry Electric Good Cents Program's vapor barrier requirement for the interior side of the exterior walls was inappropriate and a design defect, which caused property damage to the homes. The Plaintiffs have asserted claims for breach of warranty, gross negligence, breach of contract, and breach of the covenant of good faith and fair dealing. The Defendant has denied the allegations and has asserted several defenses. The parties engaged in discovery and multiple mediations of the claims, resulting in the proposed settlement here.

Reasons for Settlement. The settlement is between the Class on the one hand and the Defendant on the other, and it includes a release and dismissal with prejudice of the claims of the Class against the Defendant. Class Counsel view this settlement's benefits as advantageous to the Class in light of risks to recovery if litigation continues. The Defendant, while denying that it is liable to anyone and denying that it has committed any wrongdoing, wishes to avoid further lengthy, costly, and time-consuming litigation, to obtain total and final settlement of the Class claims, and to extinguish any liability of the Defendant with respect to the Class claims, as well as the common liability of any joint tortfeasors.

Who is In the Class and What is the Settlement. The "Class" consists of all persons whose homes were enrolled in the Horry Electric Good Cents Program for New Homes who were mailed a Notice of Class Action in January 2013. Under the settlement, you are entitled to file the Claim Form, which is included in this Notice, for either an automatic payment of Two Thousand Dollars (\$2,000.00) OR a reimbursement claim of up to Twelve Thousand Dollars (\$12,000.00) if you remove the vapor barrier, subject to the terms of the Settlement Agreement.

You have received this Notice because you were previously determined to be a member of the Class.

Binding Effect. In completing the settlement approval process, Plaintiffs and the Defendant will petition the Court for a Final Order dismissing this Action as to the Class Members with prejudice, and any person in the Class who does not request exclusion from ("opt out of") the settlement will be bound by it.

Attorneys' Fees and Costs. Class Counsel will petition the Court for a class representative incentive award for plaintiffs Tammy Vance and David Montorio of Five Thousand Dollars (\$5,000.00) each for their work on behalf of the Class and for an award of attorneys' fees and costs of Nine Hundred Ninety Thousand Dollars (\$990,000.00) out of the Six Million Dollar (\$6,000,000.00) settlement fund as more fully described in the Settlement Agreement.

Obtaining Benefits Under the Settlement. If you are a Class Member as reflected in Defendant's records, you will be entitled to elect between the Automatic Payment Fund or The Remediation Fund by timely submitting the enclosed Claim Form. If the proposed settlement is finally approved, settlement benefits will be administered in accordance with the Settlement Agreement.

Exclusion Requests - "Opting Out." You have the right to request exclusion from ("opt out of") this settlement by advising Class Counsel and Defendant's Counsel in writing at the addresses given below. If you elect to opt out, then you will not receive a payment or receive any other benefits of the settlement. If you elect to opt out, you must mail a request for exclusion on or before _____, 2014 (*a date certain forty five (45) days after the first mailing of this Notice to Class Members*). Opt-out requests received after such date shall be of no force or effect. If you elect to opt out, you must fill out, sign, and date the enclosed Opt-Out Form and mail it to Class Counsel and Defendant's Counsel on or before _____, 2014.

Objections. If you are a member of the Class, you have the right to object in writing to any part of the proposed settlement. To object, you must both file with the Court and mail to Class Counsel and Defendant's Counsel, no later than _____ (a date certain fifteen (15) days prior to the final fairness hearing, or such other date as the Court may order), a written objection referring specifically to the Vance vs. Horry Electric Class Action pending before the Court of Common Pleas for Horry County, Civil Action No. 2011-CP-26-1266, that includes: (a) your full name and address sufficient to identify your membership in the Class; (b) a notice of intention to appear; (c) the specific grounds for the objection, as well as all documents or writings that you desire the Court to consider; and (d) identification of any previously filed objections in state or federal courts by the Class member and any attorney representing the Class Member. Except for good cause shown, an objector who has not timely filed and served written objections with the requisite information will not be allowed to be heard at the hearing. Any person who fails to appear at the hearing will be deemed to have waived any such objections. To file the objection with the Court, you must mail or personally deliver the original of the written objection by the date specified in this Paragraph to:

Horry County Clerk of Court
Horry County Government & Justice Center
Conway, South Carolina, 29526

PLEASE DO NOT CALL THE COURT.

You must also mail copies of your written objections by the same date specified in the paragraph above to these attorneys' offices:

Class Counsel:

Nate Fata, Esq.
Nate Fata, P.A.
P. O. Box 16620
Surfside Beach, SC 29587

Class Counsel:

T. Christopher Tuck, Esq.
James L. Ward, Jr., Esq.
Richardson, Patrick, Westbrook & Brickman, LLC
P.O. Box 1007
Mount Pleasant, SC 29465

Defendant's Counsel:

Pope Johnson, Esq.
Johnson and Barnette, LLC
P.O. Drawer 11209
Columbia, SC 29211

Hearing on the Settlement. The Court will hold a hearing to consider the fairness and adequacy of this proposed settlement and to consider Class Counsel's petition for fees and costs on _____, at _____ (a date certain within 85 days after the mailing of this Notice to Class Members) at the Horry County Courthouse, 1301 Second Avenue, Conway, South Carolina 29526.

Release. The proposed settlement is intended to resolve and terminate all claims that were raised by or on behalf of the Class members concerning the vapor barrier required by Horry Electric's specifications. The proposed settlement, if finally approved by the Court, will result in the release by

each Class member of all such claims, as more specifically provided in the Settlement Agreement. The claims against the Defendant alleged in the Complaint will be dismissed with prejudice as to all Class members.

Further Information. The descriptions in this Notice of the claims and settlement documents in this case are only summaries. The Settlement Agreement and all papers filed in the lawsuit may be inspected at the Office of the Clerk of Court for Horry County, Horry County Courthouse, 1301 Second Avenue, Conway, South Carolina 29526. If you have any questions with respect to this Notice or the lawsuit generally, please call Class Counsel at the Law Offices of Nate Fata, Esquire, Nate Fata, P.A., P.O. Box 16620, Surfside Beach, SC 29587 www.fatalaw.com (843) 238-2676 or T. Christopher Tuck, Esquire, Richardson, Patrick, Westbrook & Brickman, LLC, P.O. Box 1007, Mount Pleasant, SC 29465. In addition you may view the settlement documents at www.rpwb.com.

PLEASE DO NOT CONTACT THE COURT OR THE CLERK'S OFFICE FOR INFORMATION.

Date of Notice: _____, 2014

Presiding Judge, Court of Common Pleas
FOR HORRY COUNTY

OPT-OUT FORM

I, _____, am an owner of a Good Cents
*Print Full Name

Home and do hereby opt out of the Class Action lawsuit entitled Vance, et al v. Horry Electric,
2011-CP-26-1266. I understand that by opting out I will receive no benefits or compensation
from the lawsuit.

*Date: _____

*Signature of Home Owner

*Street Address: _____

*City, State and Zip Code: _____

*Area Code and Phone Number: _____

MUST BE POSTMARKED BY _____, 2014

TO BE RETURNED TO:

Class Counsel
Nate Fata, Esquire
Nate Fata, P.A.
P.O. Box 16620
Surfside Beach, SC 29587
and a copy to

Defendant's Counsel
Pope Johnson, Esq.
Johnson and Barnette, LLC
P.O. Drawer 11209
Columbia, SC 29211

*****PLEASE COMPLETE ENTIRE FORM*****

CLAIM FORM

VANCE VS. HORRY ELECTRIC

I, _____, hereby declare under penalties of perjury
Print Full Name

pursuant to 28 U.S.C.A. 1746 that I am a current homeowner of a home located at:

Street Address City Zip Code

Signature of homeowner

Date

I hereby elect to obtain one of the following benefits (check one):

(1) Automatic Payment Fund with automatic payment
of Two Thousand Dollars (\$2,000.00)

OR

(2) Remediation Fund with reimbursement of incurred
Expenses up to Twelve Thousand Dollars (\$12,000.00)
after vapor barrier is removed

This CLAIM FORM must be mailed and postmarked no later than _____, 2014 to
the following address: _____, South Carolina

I understand I may only elect either the Automatic Payment Fund benefit OR the Remediation
Fund benefit and NOT BOTH.

Please see next page for an explanation of each Fund.

AUTOMATIC PAYMENT FUND EXPLANATION

Class members may claim an automatic payment of \$2,000 by timely submitting the properly completed Claim Form. If the Automatic Payment Fund is insufficient to pay all qualifying Class members at \$2000 per claim, then the payments shall be made with a pro rata reduction. Payments to the Class members electing the Automatic Payment Fund shall be made within the later of 60 days after the Effective Date of the Settlement or 60 days after the Claims Period.

REMEDIATION FUND EXPLANATION

Class members may claim reimbursement for **Reimbursable Remediation Expenses** by submission of a Claims Form and Documented proof. The Documented proof shall be submitted to [address] no later than _____ [180 days from the Effective Date of Settlement], and the claim shall not exceed \$12,000. If the Remediation Fund is insufficient to pay all qualifying Class members their actual Reimbursable Remediation Expenses at an amount up to \$12,000 per claim, then the payments shall be made with a pro rata reduction.

Documented Proof, with respect to remediation expenses eligible for reimbursement, means costs incurred by a Class member for removing the vapor barrier. Some examples of common documentation are copies of cancelled checks, credit or debit card receipts, receipts for materials used for repairs, credit card statements, affidavits, declarations and/or repair invoices or repair orders, which documents, singly or cumulatively, show Reimbursable Remediation Expenses. **In addition, photographs of the remediated exterior wall space without the vapor barrier shall be included as proof that the vapor barrier was removed.**

Payments to Class members electing the Remediation Fund shall be made within 30 days of Defendant's receipt of the Class Member's Documented Reimbursable Remediation Expenses. If more than 250 Class members select the Remediation Fund, the Defendant shall make payment within the later of thirty days of the expiration of the period to submit Documented Reimbursement Remediation Expenses or thirty days after the last decision by the arbitrator of all claims submitted in arbitration.

Reimbursable Remediation Expenses means Documented expenses incurred by a Class member for repairs associated with the vapor barrier removal, including, without limitation, moisture accumulation, mold growth, remediation of mold and mildew, repainting or sheet rocking of walls, re-insulating of walls, moving of furniture, storage of personal items and furniture during remediation, and any relocation expenses incurred during the remediation.

You should not undertake any remediation until after the Effective Date of Settlement, as defined in the Settlement Agreement.

If you elect the Remediation Fund, you must remove the vapor barrier in the exterior walls and submit the reverse side of this Form with documentation for reimbursement to: _____ [HEC address] _____ within (180 days from Effective Date of Settlement).

REIMBURSEMENT REQUEST FORM

I submit the following documents in support of my reimbursement claim:

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.
- 9.
- 10.

I also submit the _____ photographs as evidence that I removed the vapor barrier.
Number

I am requesting a total of \$_____ for reimbursement.

Sign here Date

Print Name

Physical address of home

This Reimbursement Form with documentation must be submitted NO LATER than One Hundred Eighty (180) days from the Effective Date of Settlement, as defined in the Settlement Agreement to _____
[HEC address]

Exhibit D

Order Granting Class Certification

$$\frac{1}{\text{BNC}}$$

Program from Santee Cooper, which was implementing the Program with many electric cooperatives across the state.

Integral to this action is Horry Electric's Program requirement that all homes built under the Program have a vapor barrier installed on the heated side of the exterior walls. According to the Plaintiffs, the installation of the vapor barrier in this location does cause, and was known at the time of the adoption of the Program, to cause condensation, moisture, and mildew in the wall cavities of structures in warm humid climates such as Horry County. Plaintiffs contend Horry Electric traded off long-term moisture and mold problems in Class Member homes in exchange for the short-term benefit of reducing peak demand so that Horry Electric or its power providers would not have to spend money to build new power plants. Set forth below are the findings of fact and conclusions of law in favor of class certification.

CLASS FACTS

To receive the Good Cents Home approval as being energy efficient, the new home builder was required to follow Horry Electric's design instructions. The Program design instructions did not change during the years 1988-2003. One critical requirement was that a specified vapor barrier be installed on the heated side of the studs. From 1988-2008 Horry Electric's two specified methods to meet its vapor barrier requirement in new homes were:

- (a) Method One
 - (i) 4 or 6 mil. Polyethylene vapor barrier installed on the inside surface of the exterior walls and ceilings
 - (ii) properly installed friction fit batts
 - (iii) properly installed house wrap (such as Tyvek) as an air barrier

(b) Method Two

- (i) properly installed Kraft or foil-faced insulation
- (ii) taped and painted gypsum board installed on the inside of the exterior wall
- (iii) properly installed house wrap (such as Tyvek) as an air barrier

Through 2003 all homes were required to have one of the two vapor barriers installed on the interior side of the exterior wall. The specifications did not change during the class period, 1988-2003. All new homes enrolled in the program were inspected by Horry Electric and were certified as having met the vapor barrier specifications. More than one thousand new homes, 1434, were built according to Horry Electric's vapor barrier specification.

Horry Electric required the same documentation for each home and used a systematic or classwide approach for approving the new homes and documenting the same. Horry Electric would use an inspection form to verify the required vapor barrier was installed. All homes have the same required Horry Electric documentation.

Although it knew of no building code that required a vapor barrier during 1988 to 2003, Horry Electric required one because Santee Cooper required it. Horry Electric did not permit homeowners or contractors to deviate from the Good Cents New Home requirement of vapor barriers installed on the inside of the exterior walls.

ANALYSIS

In South Carolina, the class action rule is more expansive than its federal counterpart, Rule 23 of the Federal Rules of Civil Procedure, and it is appropriately used to effectuate class wide resolution of claims. In *Grazia v. South Carolina State Plastering, LLC*, 390 S.C. 562, 703 S.E.2d 197, 198 (2010) the Supreme Court again held that class actions are favored in this State, and that we have a more expansive view of class actions than our federal counterparts.

CLASS DEFINITION

The class is defined as each and every Horry County homeowner of a new Good Cents Program Home that has a vapor barrier, on the inside of its exterior walls and was included by the Defendant in the new Good Cents Program Home upon its construction during years 1988 through 2003. All persons within the Class who do not elect to exclude themselves from ("opt out of") the Class are referred to as class members.

RULE 23 REQUIREMENTS ARE MET

The prerequisites of South Carolina Rules of Civil Procedure Rule 23 are met in this action and are set forth below:

- (a) the class is so numerous that joinder of all members is impracticable;
- (b) there are questions of law or fact common to the class;
- (c) the claims or defenses of the representative parties are typical of the claims or defenses of the class;
- (d) the representative parties will fairly and adequately protect the interests of the class; and
- (e) . . . the amount in controversy exceeds one hundred dollars for each member of the class.

In ruling on a motion for class certification, the merits of the case are not to be considered by the trial court. *Tilley v. Pacesetter Corp.*, 333 S.C. 33, 508 S.E.2d 16 (1988). Rather, the appropriate inquiry is whether or not the case is suitable for treatment as a class action. Plaintiffs bear the burden of proving all five requirements for class certification. *Gardner v. South Carolina Dept. of Revenue*, 353 S.C. 1, 21, 577 S.E.2d 190, 200 (S.C. 2003).

A. Numerosity

The class is so numerous that joinder of all members of the class as petitioners herein is impracticable. No definite standard exists as to what size class satisfies the requirements of Rule 23(a)(1). *Haywood v. Barnes*, 109 F.R.D. 568, 576 (E.D.N.C. 1986). However, where the class numbers at least 40, joinder is usually impracticable, and where the class numbers in the hundreds, joinder is clearly impracticable. See, e.g., *Swanson v. American Consumer Industries*, 415 F.2d 1326, 1333 (7th Cir. 1969) (reversing denial of class certification in a securities case involving 151 class members). Here, the 30 (b)(6) designee of Horry Electric clearly states that more than 1000 new homes with vapor barriers were accepted into the Good Cents Program by Horry Electric from 1988-2003. Horry Electric later stated that 1434 new homes were included in the Good Cents Program. As a result, the numerosity test has been met and, accordingly, the first prong of Rule 23, SCRCF is met.¹

B. Commonality

Common questions of law and fact exist as to all members of the class. The commonality requirement is liberally construed and given permissive application so that common questions have been found to exist in a wide range of contexts. *Haywood v. Barnes*, 109 F.R.D. 568, 577 (E.D.N.C. 1986). See also *McGann v. Mungo*, 287 S.C. 561, 568, 340 S.E.2d 154, 157-58 (Ct.App. 1986) holding:

It is important to note that the subsection does not demand all questions of law and fact to be common, only that there be common issues among the class. In fact, a single common issue will suffice if it is important enough. (Emphasis added).

In this case, common issues abound as to all homeowners: the alleged vapor barrier design defect and the improper requirement of a vapor barrier in the warm humid climate of

¹A class action may proceed upon estimates as to the size of the proposed class. *In re Alcoholic Beverages Litigation*, 95 F.R.D. 321 (E.D.N.Y. 1982); *Letsj v. Shawano Cty*, 91 F.R.D. 64 (D. Wis. 1981); *Amswiss Int'l Corp. v. Heublein, Inc.*, 69 F.R.D. 663 (N.D. Ga. 1975).

Horry County. Under well-established South Carolina law, a defendant may be liable in negligence and under implied warranty for furnishing plans and specifications, even where no contractual privity exists between the furnisher and the home buyer. *Beachwalk Villas v. Martin*, 305 S.C. 144, 406 S.E.2d 372 (S.C. 1991); *APAC Carolina Inc. v. Town of Allendale, S.C.*, 41 F.3d 157 (D.S.C. 1994). Common issues of fact and law easily exceed the threshold of commonality required by SCRCP 23(a).

All Class Members live in Horry County and are subject to the same warm humid climate and suffer from the same alleged design defect. Horry Electric used the same uniform documents and inspections for each class member. The common design defect, uniform documents and warm humid climate all favor class certification. To summarize, the commonality requirement of Rule 23, SCRCP has been satisfied.

Defendant contends that individual issues exist for damages and causation issues. However, the action centers on the alleged design defect which all Class Members have in common. The existence of some possible individual issues does not defeat class certification. Moreover, our courts have refused to deny certification on that ground. *McGann v. Mungo*, 287 S.C. 561, 340 S.E.2d 154 (Ct. App. 1986). In *McGann* residents and owners of improved residential property in a subdivision near Columbia filed a class action concerning negligent design and construction of streets and drainage. The defendants argued each class member's damages prevented class certification. In rendering its decision, the South Carolina Court of Appeals stated, "The mere fact that the Plaintiffs may be entitled to different amounts of damages does not prevent them from banding together and asserting their rights jointly in one action." *McGann*, 340 S.E.2d at 158. *McGann* has been cited consistently by the South Carolina appellate courts and on many occasions by the South Carolina Supreme Court in ruling on class certification issues.

6/mk

As the Supreme Court has previously recognized, this type of case is ideal for class certification because there is one main issue of law, i.e., was the Defendant's vapor barrier requirement a design defect in the warm humid climate of Horry County? Answering this common issue alone justifies class certification.

C. Typicality

The tenets of commonality and typicality most often are dealt with as one in terms of class certification. *General Telephone Company of the Southwest v. Falcon*, 457 U.S. 147, 158 (1982) (The commonality and typicality requirements of Rule 23(a) tend to merge.). The "typicality" requirement of Rule 23(a)(3), SCRPC requires that the claims or defenses of the class be typical. To satisfy the typicality requirement, the named representatives' claims must be similar enough to those of the class to assure that the class' interests are vigorously prosecuted. 7A Charles Alan Wright & Arthur R. Miller, *Federal Practice & Procedure*, 1764 (2d. Ed. 1986).

Here, the claims and defenses of the representative parties are typical of the claims and defenses of the class. Plaintiffs Vance and Montorio are each in the Good Cents Program per Horry Electric's billing and Good Cents records. The Defendant documented their homes and inspections. Their claims are typical of the Class claims. Mr. Ferrell, on the other hand, appears to not be in the Program and, therefore, he is not a suitable Class Representative.

D. Adequacy of Representation

South Carolina Rule of Civil Procedure 23(a)(4) requires that the named plaintiff fairly and adequately protect the interests of the class. That protection involves two factors: (1) counsel must be qualified, experienced and generally able to conduct the proposed litigation; and (2) plaintiffs' claims must be sufficiently interrelated and not antagonistic to the class claims. *Lott v.*

7/mk

Westinghouse Savannah River Co., 200 F.R.D. 539 561 (D.S.C. 2000); *Waller v. Seabrook Island Property Owners Ass'n*, 300 S.C. 465, 468, 388 S.E.2d 799, 801 (S.C. 1990).

Here, there is no argument that Plaintiffs Vance and Montorio will not fairly and adequately protect the interest of the class or that their interests conflict with the economic interests of the Class. Vance and Montorio's claims are typical of the class. They and the other class members were subjected to the same allegedly defective vapor barrier requirement. In addition, they have been involved and have participated in the litigation. Vance and Montorio have opened their homes to inspection and investigation by not only the Plaintiffs' expert but also the Defendant's experts. Their interests do not conflict with those of the Class. See *Waller v. Seabrook Island Property Owners Ass'n*, 300 S.C. 465, 468, 388 S.E.2d 799, 801 (S.C. 1990).

Vance and Montorio have and will continue to fairly and adequately protect the interests of the Class and are appointed as Class Representatives. They have engaged counsel with over a decade of experience in class actions as class counsel and complex litigation. The Court has reviewed the Affidavit of Nate Fata and concluded that he and Mr. Brunty are qualified, experienced and generally able to conduct the proposed litigation. Accordingly, Mr. Fata and Mr. Brunty are hereby appointed as Class Counsel.

E. Amount in Controversy

The final prong of Rule 23, SCRCP requires that each class member have a claim in excess of One Hundred Dollars (\$100.00). Here, according to the Affidavit of Larry Elkin, Plaintiffs' expert, each class member will suffer at least \$100 of damages due to the removal of the vapor barrier. As a result, the final prong of Rule 23, SCRCP has been easily met.

IT IS HEREBY ORDERED that:

1. The Class is hereby certified on all causes of action; *provided however, (BHC) the defendant may assert the Statute of Repose as a defense to certain members of the class;*

2. Tammy Vance and David Montorio are found to be representative Plaintiffs who will adequately protect the interests of the Class;

3. Nate Fata and Mark Brunty are designated as Class Counsel; and

4. Defendants shall provide the names and addresses of all Class Members to Class Counsel within 30 days of the filing of this Order so that Class Counsel can send Class Notice with an opt out deadline to Class Members within 30 days of Class Counsels' receipt of the Class Member names and addresses.

AND IT IS SO ORDERED.

Benjamin H. Culbertson
BENJAMIN H. CULBERTSON
PRESIDING JUDGE
FIFTEENTH JUDICIAL CIRCUIT

Georgetown, SC

The 21st day of August, 2012

It is further Ordered that the defendant's requests for further arguments and another hearing on this motion are DENIED.

Benjamin H. Culbertson

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Ronnie Ferrell, et al.
☒ Plaintiff

v.

Horry Electric Cooperative
☐ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.
2011-CP-26-1266

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

COPIES
MAILED

Plaintiff's Attorney:
Nate Fata, Esq., Bar No. 09866
Address:
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P.O. Box 16620
Surfside Beach, SC 29587
phone: 843-238-2676 fax: 843-238-0240
e-mail: nfata@fatalaw.com other:

Defendant's Attorney:
Pope D. Johnson, III, Bar No.
Address:
P.O. Drawer 11209
Columbia, SC 29211 1209
phone: 803-799-9791 fax: 803-253-6083
e-mail: other:

- ☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☒ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion:

Estimated Time Needed:

Court Reporter Needed: ☐ YES / ☐ NO

SECTION II: Motion/Order Type

- ☐ Written motion attached
☒ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff / ☐ Defendant

August 27, 2012

Date submitted

SECTION III: Motion Fee

☐ PAID - AMOUNT: \$

☐ EXEMPT:

- (check reason) ☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

☐ Other:

JUDGE'S SECTION

- ☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

JUDGE

CODE:

Date:

CLERK'S VERIFICATION

Date Filed:

Collected by:

☐ MOTION FEE COLLECTED:

SCCA/233 (11-03)

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Ronnie Ferrell, et al.

☒ Plaintiff

v.

Horry Electric Cooperative

☐ Defendant.

IN THE COURT OF COMMON PLEAS

COPIES
MAILED

CASE NO.
2011-CP-26-1266

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:
Nate Fata, Esq., Bar No. 09866
Address:
Nate Fata, P.A.
P.O. Box 16620
Surfside Beach, SC 29587
phone: 843-238-2676 fax: 843-238-0240
e-mail: nfata@fatalaw.com other:

Defendant's Attorney:
Pope D. Johnson, III, Bar No.
Address:
P.O. Drawer 11209
Columbia, SC 29211 1209
phone: 803-799-9791 fax: 803-253-6088
e-mail: other:

- ☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
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SECTION I: Hearing Information

Nature of Motion:

Estimated Time Needed: Court Reporter Needed: ☐ YES / ☐ NO

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I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff / ☐ Defendant

August 27, 2012

Date submitted

SECTION III: Motion Fee

- ☐ PAID - AMOUNT: \$
☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support
(check reason) ☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
☐ Other:

JUDGE'S SECTION

- ☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

JUDGE

CODE:

Date:

CLERK'S VERIFICATION

Date Filed:

Collected by: _____

☐ MOTION FEE COLLECTED: _____

SCCA/233 (11-03)

Exhibit E

Complaint

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

Horry Electric Cooperative, Inc.,)

Plaintiff,)

vs.)

South Carolina Public Service
Authority,)

Defendant.)

IN THE COURT OF COMMON PLEAS

Civil Action No. 13

SUMMONS

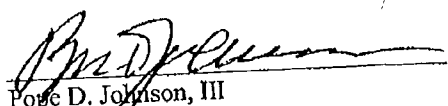
(Jury Trial Demanded)

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FILED
HORRY COUNTY
2013 JAN 23 PM 3:05
KELANIE HUGGINS-WARD
CLERK OF COURT

TO THE ABOVE NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Complaint in this action. A copy of the Complaint is attached to this Summons and is herewith served upon you. Your answer must be in writing and signed by you or by your attorney and must state your address or the address of your attorney if signed by your attorney. Your answer must be served upon the undersigned attorneys for the plaintiff within thirty (30) days after the service hereof, exclusive of the day of service at 1230 Richland Street, Columbia, SC 29201.

YOU ARE HEREBY GIVEN NOTICE FURTHER that, if you fail to appear and defend and fail to answer the Complaint as required by this Summons within thirty (30) days after the service hereof, judgment by default will be rendered against you for the relief demanded in the Complaint.


Pope D. Johnson, III
Johnson & Barnette, LLP
1230 Richland Street
Columbia, SC 29201
803-799-9791

803-253-6084 (fax)
pdjohnson@johnsonbarnette.com
Attorney for the Plaintiff

Columbia, South Carolina
January 18, 2013

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

Horry Electric Cooperative, Inc.,)
Plaintiff,)

vs.)

South Carolina Public Service)
Authority,)
Defendant.)

IN THE COURT OF COMMON PLEAS

Civil Action No. 13

COMPLAINT

(Jury Trial Demanded)

FILED
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MELANIE HUGGINS-WARD
CLERK OF COURT

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That Horry Electric Cooperative, Inc. ("Horry Electric") alleges as follows:

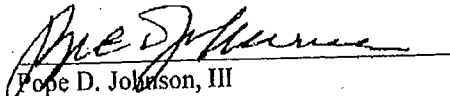
1. That Horry Electric is a member owned, non-profit cooperative which distributes electricity to its members, with its principal place of business being in Horry County.
2. That Defendant South Carolina Public Service Authority ("Santee Cooper") generates and sells electricity to its members and the electric cooperatives including Horry Electric.
3. That in 1987, Santee Cooper offered the Good Cents program to the electric cooperatives, including Horry Electric, and Horry Electric agreed to participate and the parties entered into a contract, a copy of which is attached as Exhibit A.
4. That Horry Electric adopted the program offered by Santee Cooper including all of the design and design standards provided with the program and passed along a Good Cents savings rate provided by Santee Cooper to its members.
5. That Horry Electric has been sued in the civil action titled *Ronnie Ferrell, Tammy Vance and David Montorio, on behalf of themselves and all others similarly situated v. Horry Electric Cooperative*, Civil Action No. 2011-CP-26-1266, a copy of the Complaint being attached hereto as Exhibit B.
6. That, prior to the entry into the said Agreement, Santee Cooper knew use of vapor barrier may cause moisture problems in the coastal areas, as is shown by the attached letter dated October 8, 1986 and the attached letter dated October 22, 1986, marked as Exhibit C and Exhibit D respectively, and failed to disclose that information to Horry Electric and failed to advise Horry Electric that the vapor barrier should be a recommendation rather than a requirement.

#1
[Signature]

7. That Santee Cooper, by failing to disclose this information to Horry Electric, breached its duty of good faith and fair dealing owed to Horry Electric.

8. That, to the extent Horry Electric is liable to the plaintiffs in Civil Action No. 2011-CP-26-1266, Horry Electric is informed and believes that Santee Cooper is or may be liable to it for all or part of the plaintiffs' claims against Horry Electric and that Horry Electric is entitled to indemnification from Santee Cooper for all or part of the plaintiffs' claims against Horry Electric in Civil Action No. 2011-CP-26-1266.

WHEREFORE, Horry Electric prays for judgment by way of indemnification against Santee Cooper for any amount which the plaintiffs in Civil Action No. 2011-CP-26-1266 recover against Horry Electric and for such other and further relief as may be just and proper.


Pope D. Johnson, III
Johnson & Barnette, LLP
1230 Richland Street
Columbia, SC 29201
803-799-9791
803-253-6084 (fax)
pdjohnson@johnsonbarnette.com
Attorney for the Plaintiff

Columbia, South Carolina
January 18, 2013

Exhibit 6

AGREEMENT

This Agreement made and entered into this 22nd day of July, 1987, by and between the South Carolina Public Service Authority, hereinafter referred to as "Santee Cooper" and Horry Electric Cooperative, Inc., hereinafter referred to as "Participating Distributor,"

WHEREAS, Santee Cooper has acquired the rights to use the Good Gents Programs which presently consist of three (3) Programs as follows:

- (1) Good Gents Home Program (New Residential)
- (2) Good Gents Improved Home Program (Retrofit Residential)
- (3) Good Gents Commercial Program

for itself and those distributors of its electric power who choose to participate in said Program(s); and,

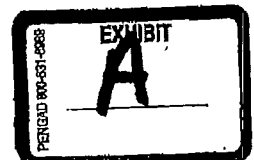
PLAINTIFF'S
EXHIBIT

2 10/12/11

WHEREAS, the Participating Distributor has requested to implement the Program(s) within its retail service area,

NOW THEREFORE, in consideration of the premises and of the mutual covenants and obligations contained herein, the parties agree as follows:

1. The Participating Distributor shall have the right to implement the Good Gents Program(s) hereinbefore contained, within its retail service area in accordance with standards developed by Santee Cooper to the extent Santee Cooper is authorized under the agreement with Southern Electric International,



Inc., dated June 24, 1986.

2. The Participating Distributor will execute the licensing agreement with Southern Electric International, Inc. and, if applicable, the software licensing agreement.

3. The Participating Distributor shall submit upon request by Santee Cooper properly completed Exhibits VII and VIII contained in Santee Cooper's Good Gents Manual. Santee Cooper reserves the right to amend or revise any or all of the Exhibits contained in Santee Cooper's Good Gents Manual from time to time, in whole or in part, to reflect changed conditions.

4. Santee Cooper reserves the right to audit any of the Participating Distributor's records pertaining to the Good Gents Program(s) which it deems necessary to satisfy itself as to the accuracy of its related payments, credits, etc., to the Participating Distributors, through Central Electric Power Cooperative, Inc.

IN WITNESS WHEREOF, the South Carolina Public Service Authority and Horry Electric Cooperative, Inc. have caused this instrument to be executed by their respective duly authorized officers, as of the day and year first above written.

ATTEST:

ESB

SANTEE COOPER

By:

Title

W. J. Reacher

ATTEST:

Steven J. [Signature]

By:

Title Manager

Charles W. [Signature]

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Ronnie Ferrell, Tammy Vance
and David Montorio on behalf of themselves
and all others similarly situated,

Plaintiffs,

vs.

Horry Electric Cooperative,

Defendant.

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) CASE NO: 2011-CP-26- 1266

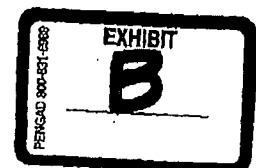
COMPLAINT
(Jury Trial Demanded)

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2011

The Plaintiffs, individually, and as class representatives, complaining of the Defendants herein, would respectfully show unto this Honorable Court as follows:

PARTIES AND JURISDICTION

1. Plaintiff Ronnie Ferrell, individually and as class representative, is a citizen and resident of Horry County, South Carolina.
2. Plaintiff Tammy Vance, individually and as class representative, is a citizen and resident of Horry County, South Carolina.
3. Plaintiff David Montorio, individually and as class representative, is a citizen and resident of Horry County, South Carolina.
4. On information and belief, Defendant Horry Electric Cooperative is a company organized and existing under the laws of the State of South Carolina and does business through its agents and servants in Horry County, South Carolina.
5. This is a matter within the jurisdiction of this Court.



FACTUAL SUMMARY

6. Plaintiffs are the owners of residences in Horry County and reside in Horry County, South Carolina. The Defendant is the electrical service provider for each Plaintiff.

7. Each residence owned by the Plaintiffs and Plaintiff Class was constructed between 1988 and 2003 according to standards and specifications set forth and required by Defendant through the Defendant's "New Good Cents Program" (hereinafter the "Program"). All Program Homes were homes that were newly constructed as opposed to retrofits of existing structures.

8. The Defendant sets forth the design specifications requirements for a home to qualify for the Program.

9. The Defendant adopted and references ASHRAE (American Society of Heating Refrigeration and Air Conditioning Engineers) standards in its Program specifications.

10. The Defendant set forth the design and design standards for these Horry County residences.

11. The homes would not be accepted into the Program unless Defendant completed a final inspection of the home.

12. On information and belief, in 1988 Defendant adopted the Program from another electrical service provider without performing any of its own due diligence or research regarding the specifications and requirements that it required for new homes. On information and belief, Defendant never performed any research regarding the Program specifications and requirements.

13. The Defendant offered the Program in an effort to keep the cost of power low for both it and its members.

14. Defendant provided design specifications and requirements for the Program. On a

systematic basis, the Defendant required the design specifications be followed for the home to be accepted into the Program.

15. The documentation and process used by Defendant for Good Cents homes were nearly identical for each home in the Program.

16. The specification and requirements had to be implemented as designed and set out by Defendant for acceptance of the home by Defendant into the Program.

17. Defendant required a vapor barrier to be installed on the inside of the exterior walls of all residences. The Defendant set forth specifications to meet the infiltration barrier requirements. The Defendant specified two methods of achieving superior infiltration and vapor protection:

(a) Method One

- (i) 4 or 6 mil polyethylene vapor barrier installed on the inside surface of the exterior walls and ceilings.
- (ii) properly installed friction fit batts.
- (iii) properly installed house wrap (such as Tyvek) as an air barrier.

(b) Method Two

- (i) properly installed Kraft or foil-faced insulation batts.
- (ii) taped and painted gypsum board installed on the inside of the exterior wall.
- (iii) properly installed house wrap (such as Tyvek) as an air barrier.

18. Defendant further required that Defendant inspect the installation of a vapor barrier during construction so that Defendant could verify that it was installed.

19. Each Plaintiff's Residence has a vapor barrier in accordance with Defendant's design specifications, requirements and standards.

20. Each Program residence was inspected by Defendant.

21. Each Program residence was accepted into the Program by the Defendant.

22. On information and belief, Defendant inspected each of the Plaintiffs' and Plaintiff Class' homes during construction to verify that the vapor barrier was installed on the inside of the exterior walls.

23. The existence of a vapor barrier on the inside of the exterior walls creates a condition where condensation forms on the outer surface of the vapor barrier. The presence of condensation causes, among other things, mold growth on the surface of the vapor barrier and inside the Plaintiffs' and Plaintiff Class' homes.

24. In 2003 Defendant finally stopped requiring the installation of vapor barriers on the heated side of studs in Horry County.

25. By virtue of writings and articles from ASHRAE, Defendant knew or should have known about the likelihood of condensation problems caused by the required vapor barrier as early as 1985 and no later than 1987. In 1986, an energy design update article stated, "In warm climates interior vapor barriers may in fact create moisture condensation problems." Yet Defendant ignored its design defect and continued to specify and require its flawed designs to be used in the Program Homes.

26. There are more than 1,000 Program Homes in Horry County which were constructed in accordance with the design flaw, vapor barriers on the heated side of the studs, in Horry County, in accordance with the Defendant's design specifications.

27. The Class is so numerous that joinder of all members is impractical. There are questions of law or fact common to the Class, including, but not limited to, the design defects inherent in the Program, when Horry Electric knew of such design defects, and whether Horry Electric was reckless in disregarding industry knowledge concerning its design defects.

28. Claims of the representative parties are typical of the claims of the Class. The representative Plaintiffs will fairly and adequately protect the interest of the Class and have engaged qualified counsel.

29. The amount in controversy for each Class Member exceeds One Hundred Dollars (\$100.00). The cost of removal of the inappropriate materials is more than \$100.00 (\$100.00) per home.

30. The design defect was well known or should have been obviously known to the Defendant years in advance of the construction of the Plaintiff and Plaintiff Class homes.

31. The Defendant traded off the extremely high likelihood of long term mold problems with the homes in exchange for the short term benefit of reducing peak demand so that Defendant would not have to build new power plants.

32. The Defendant has violated the covenant of good faith and fair dealing and violated its agreement to provide a suitable design for living quarters.

33. The specified vapor barrier is not suitable for habitable dwellings in the coastal county of Horry.

34. The Class is defined as each and every Horry County homeowner of a Program Home that has a vapor barrier, on the inside of its exterior walls and was included by the Defendant in the Program upon its construction during years 1988 through 2003.

FOR A FIRST CAUSE OF ACTION
(Design Defect - Breach of Warranty)

35. Not inconsistent herewith, Plaintiffs and Plaintiff Class reallege each and every allegation above as if repeated verbatim herein.

36. Upon information and belief, Defendant made design specifications and requirements and express warranties in connection with its design and implementation of the Program to the effect that the design of the vapor barrier specifications would be free of defects.

37. Defendant set forth the design standards which were incorporated into the homes. Defendant impliedly warranted that the Program and its systems, recommendations, standards and requirements and details would be free from deficiencies.

38. Defendant used design specifications and requirements which it knew would cause mold in coastal southeastern counties including Horry County.

39. Defendant breached its express and implied warranties in the following particulars:

- (a) in failing to properly design and implement the Program into the Residences by failing to employ design specifications conforming to the customary and ordinary design standards of the construction industry;
- (b) in specifying and requiring inappropriate design or materials for a coastal county;
- (c) in specifying and requiring inappropriate materials in violation of industry standards;
- (d) in providing deficient and/or defective requirements, specifications and design, which was not in conformity with industry standards; and/or

(e) in failing to adequately research, design, and specify an air infiltration reduction system that would prevent moisture from occurring on the inside of the Residences.

40. As a direct and proximate result and consequence of Defendant's breach of its express and implied warranties, Plaintiffs have suffered injuries and damages in the amount equal to the extraordinary repair, maintenance and reconstruction costs required and to be required over the expected life of the structure, and will suffer from loss of use of the Residence.

41. The Plaintiff and Plaintiff Class have suffered damages due to the breach and are entitled to the same plus costs.

FOR A SECOND CAUSE OF ACTION
(Negligence/Gross Negligence)

42. Not inconsistent herewith, Plaintiffs and Plaintiff Class reallege each and every allegation above as if repeated verbatim herein.

43. Defendant owed a duty to Plaintiffs to exercise that degree of skill necessary to design, specify, and set standards in a manner that would not cause a condition for moisture and condensation to occur within the residence and to insure that the Defendant's designs were designed in conformity with the customary and ordinary standards of the building and construction industry, including standards set forth by ASHRAE.

44. The defects and deficiencies that exist at the Residence are the direct and proximate result of the negligence and/or gross negligence of Defendant in one or more of the following particulars:

- (a) in requiring an improper standard, or in failing to set forth the appropriate design for the residence, by failing to employ practices and design methods of construction conforming with accepted industry standards; and/or requiring materials that Defendant knew or should have known was improper and which would cause damage to the Residences; and/or requiring the presence of a vapor barrier, which was in violation of the industry standards and/or accepted wise building methods;
- (b) in failing to research and determine the effect of the specifications and requirements of the Program, which it knew would affect thousands of homeowners;
- (c) in accepting and requiring inappropriate materials, which, when installed, would cause moisture and mold within the Plaintiffs' Residences;
- (d) in failing to review ASHRAE standards on the use of vapor barriers in coastal counties in the southeast.

45. As a direct and proximate result and consequence of the Program's design defects, the owners of the Residences have suffered damages. The Program Homes have suffered actual damage caused by moisture being trapped in the walls that resulted from the negligent design of the Defendant and specifications and requirements of Defendant's Program.

46. As a direct and proximate result and consequence of the negligence and/or gross negligence of Defendant, Plaintiffs have suffered injuries and damages in the amount equal to the extraordinary repair, maintenance and reconstruction costs required and to be required over the

expected life of the structure and such other damages as may be appropriate. Plaintiffs and the Class are also entitled to punitive damages.

FOR A THIRD CAUSE OF ACTION
(Breach of Contract/Covenant of Good Faith and Fair Dealing)

47. Not inconsistent herewith, Plaintiffs and Plaintiff Class reallege each and every allegation above as if repeated verbatim herein.

48. The Program Homes of the Plaintiffs and the Plaintiff Class were all constructed after the Defendant made an offer of the Good Cents Program.

49. To accept the offer, the Program Homes had to be constructed in accordance with the Defendant's design specifications.

50. The construction of the home in accordance with the Defendant's specifications and the subsequent approval of the construction and acceptance into the Good Cents Program by Defendant constitutes an agreement.

51. The agreement or the Program contract had the implied covenant of good faith and fair dealing within it.

52. The Defendant has violated the covenant of good faith and fair dealing by not disclosing obvious design defects and design flaws with respect to its vapor barrier specifications and standard/recommendation it required.

53. The design defect was well known or should have been obviously known to the Defendant years in advance of the construction of the Plaintiffs and Plaintiff Class homes.

54. The Defendant traded off the extremely high likelihood of long term mold problems with the homes in exchange for the short term benefit of reducing peak demand so that Defendant

would not have to build new power plants.

55. The Defendant has violated the covenant of good faith and fair dealing and violated its agreement to provide a suitable design for living quarters.

56. The plastic vapor barrier is not suitable for habitable dwellings in the coastal county of Horry.

57. As a result Plaintiffs and Plaintiff Class have suffered damages.

58. Plaintiffs and Plaintiff Class are informed and believe they are entitled to damages, punitive damages plus costs.

WHEREFORE, the Plaintiffs and Plaintiff Class pray for the following relief:

- a. Actual damages;
- b. Punitive damages; and
- c. Any costs of this action.


Nate Fata SC Bar #9866
NATE FATA, P.A.
1500 US Highway 17 North, Suite 215
Post Office Box 16620
Surfside Beach, SC 29587
Tel.: (843) 238-2676
Fax: (843) 238-0240

Mark A. Brunty, Esquire
Brunty Law Firm
SC Bar No. 68295
Post Office Box 70907
Myrtle Beach, SC 29577
843-449-1500

Attorneys for Plaintiffs and Plaintiff Class

Myrtle Beach, South Carolina
February 9, 2011

FILE: *Good Gents - SEI*



Energy Management, 2003 Oak Street, Myrtle Beach, South Carolina 29577-3196 (803) 448-1503

October 22, 1986

Mr. Geoff Hartman
Southern Electric International, Inc.
Suite 500
3500 Piedmont Road, NE
Atlanta, GA 30305

Dear Geoff:

Re: Good Gents Standards

At our meeting in Atlanta, you stated SEI's position on requiring a vapor barrier on the interior of all exterior walls.

Originally, Santee Cooper required this under our Energy Efficient Home Awards Program, similarly to help reduce infiltration and to coincide with manufacturers' recommendations for the same. Lately we are getting a lot of concern expressed from the building community on this requirement.

Our concern is future liability. We don't want to create any situations that would hurt us or the Good Gents Program. Enclosed is a recent article on this subject from Energy Design Update. Summarized, they state: "In warm climates, interior vapor barriers may in fact create moisture condensation problems."

Could we consider not mentioning vapor barriers and simply say to follow manufacturers' recommendations? I would rather customers use Tyvek or a similar product if they want to. Again, the concern is being required to require.

Yours truly,

Glenn S. Cannon
Energy Programs Supervisor

GSC/rh

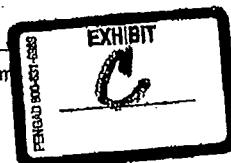
Enclosure (Article entitled "The Vapor Barrier Goes On The Outside???)

cc Mr. Buddy Clark (W/Enclosure)
S. C. Electric & Gas Company.

Santee Cooper 2501

Santee Cooper 000148
Montorio v. Foxworth

One of Am



electric utilities.

FILE: *100-1-10-10*



Energy Management, 2003 Oak Street, Myrtle Beach, South Carolina 29577-3198 (803) 448-1503

October 8, 1986

OCT 15 1986
(9.4)

Mr. Geoff Hartman
Southern Electric International
3500 Piedmont Road, N. E., Suite 500
Atlanta, Georgia 30305

Mr. Hartman:

I am responding to your letter of September 25, 1986 concerning the technical design report and standards for the Good Cents Program.

Santee Cooper agreed to accept the State of South Carolina's standards in our contract with SEI; however, it was our understanding with SEI that we would have some input into what the standards should be. This is the first time I have had any word from SEI on the standards. Obviously, we cannot comply with the proposed timetable for review of the technical standards; it was to be October 1, 1986.

As we discussed, I have some concerns with some minor details in the standards. Following is an outline of some questions that I feel sure we can resolve next week:

1. We are getting different results on RIGHT J and RESCALC. Also, we seek approval for our company's load calculation procedure to be used in the Good Cents program.
2. Hybrid Good Cents Houses - We would like to be able to waive the requirements for written certification from an architect or engineer. *GET BUILDERS TO WAIVE | SEI TO GIVE PART OF THING*
3. Prescriptive Standards - We are opposed to qualifying any home using prescriptive standards. *UP TO US OR LESS THAN PRESCRIPTIVE? 1/2 AT*
4. Vapor Barriers - This is a touchy subject in coastal areas. See ASHRAE '85 Fundamentals - 21.17. It may be best not to mention.
5. Attic Ventilation - Use a 1 to 150 ratio and don't mention vapor barrier, or simply say HUD/MPS. *150.00/sf*
6. Equipment Sizing - We prefer to limit oversizing to 15%, unless an exception is granted. Second-stage heating on heat pumps

REPAIRS

OUR OPTION

Santee Cooper 000141
Montorio v. Foxworth

One of America's *Electric* Utilities.

Santee Cooper 2506



Mr. Geoff Hartman
October 8, 1986
Page 2

SEND SPECS TO SET

should not exceed 50% of design heat loss unless it can be shown that it will not provide "design" comfort.

7. Fossil-Fired Heating Systems - Not allowed.
8. Hybrid Heat Pumps - Only if the heat pump is the primary source of heating.
9. Radon Gas - Should not be mentioned.
10. House "A" - I do not agree that the values given for the baseline home "generally represents conventional insulation and construction practices within the South Carolina service area." (Neither do the other utilities.) A realistic "baseline" would be R-19, R-11, R-11 with a builder's model heat pump, and probably with insulated glass. For this reason, we cannot support a promotional standard up to 50% savings.

I look forward to meeting with you and the other SET people next week. SCE&G, Santee Cooper and the participating co-ops are very excited about the Good Gents Programs. We are already getting good feedback from the building community and have started working with some future projects.

Yours truly,

Glenn S. Cannon
Glenn S. Cannon
Energy Programs Supervisor

GSC/mm

cc Mr. Buddy Clark
S. C. Electric & Gas Company
P. O. Box 764 J-036
Columbia, S.C. 29219

cc Mr. Robert Eggleston
S. C. Electric & Gas Co.

*4 / 10 / 86 / 3F
TALL 3/11 WATER HEATER
WATER TANK
ADD WATER*

Santee Cooper 2507

Santee Cooper 000142
Montorio v. Foxworth

Exhibit F

Amended Complaint

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

Horry Electric Cooperative, Inc.,)
Plaintiff,)

vs.)

South Carolina Public Service)
Authority and Southern Electric)
International, Inc.,)
Defendants.)

IN THE COURT OF COMMON PLEAS

Civil Action No. 2013-CP-26-488

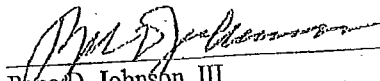
AMENDED SUMMONS

(Jury Trial Demanded)

TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Amended Complaint in this action. A copy of the Amended Complaint is attached to this Amended Summons and is herewith served upon you. Your answer must be in writing and signed by you or by your attorney and must state your address or the address of your attorney if signed by your attorney. Your answer must be served upon the undersigned attorneys for the plaintiff within thirty (30) days after the service hereof, exclusive of the day of service at 1230 Richland Street, Columbia, SC 29201.

YOU ARE HEREBY GIVEN NOTICE FURTHER that, if you fail to appear and defend and fail to answer the Amended Complaint as required by this Amended Summons within thirty (30) days after the service hereof, judgment by default will be rendered against you for the relief demanded in the Amended Complaint.


Pope D. Johnson, III
Johnson & Barnette, LLP
1230 Richland Street
Columbia, SC 29201
803-799-9791
803-253-6084 (fax)
pdjohnson@johnsonbarnette.com
Attorney for the Plaintiff

Columbia, South Carolina
July 26, 2013

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	
Horry Electric Cooperative, Inc.,	)	Civil Action No. 2013-CP-26-488
	)	
Plaintiff,	)	
	)	
vs.	)	AMENDED COMPLAINT
	)	
South Carolina Public Service	)	(Jury Trial Demanded)
Authority and Southern Electric	)	
International, Inc.,	)	
	)	
Defendants.	)	

That Horry Electric Cooperative, Inc. ("Horry Electric") alleges as follows:

FACTUAL BACKGROUND

1. That Horry Electric is a member owned, non-profit cooperative which distributes electricity to its members, with its principal place of business being in Horry County.
2. That Defendant South Carolina Public Service Authority ("Santee Cooper") generates and sells electricity to its members and to some or all electric cooperatives including Horry Electric.
3. That, upon information and belief, Defendant Southern Electric International, Inc. ("Southern Electric") is a Georgia corporation which developed and marketed the Good Cents Program and sold and/or licensed it to Santee Cooper.
4. That in 1987, Santee Cooper offered the Good Cents program which had been developed, marketed and sold by Southern Electric to the South Carolina electric cooperatives, including Horry Electric, and Horry Electric agreed to participate and the parties entered into a contract, a copy of which is attached as Exhibit A.
5. That, upon information and belief, Santee Cooper entered into an agreement with Southern Electric in which Santee Cooper acquired the right to use Southern Electric's Good Cents Program and Horry Electric signed a licensing agreement with Southern Electric, as required by the Agreement marked Exhibit A.
6. That Horry Electric adopted the program developed and/or offered by the defendants including all of the design and design standards provided with the program and passed along a Good

H. S. Cooper

Cents savings rate provided by Santee Cooper to its members.

7. That Horry Electric received no direct benefit or financial benefit for offering the Good Cents Program to its members and incurred substantial costs in offering and administering the program and all benefits, financial or otherwise, went to the defendants.

8. That, upon information and belief, the defendants represented through words, conduct and otherwise that participating new home Good Cents members would, by qualifying for the Good Cents Program, have better insulated and constructed houses and would benefit by receiving the Good Cents rate as well as by using less electricity because of the insulating requirements of the Good Cents Program.

9. That, prior to Horry Electric's and South Carolina's entry into the said Agreement, it appears that Santee Cooper and Southern Electric knew use of vapor barrier which was required by the Good Cents Program may cause moisture problems in the coastal areas, as is shown by the attached letter dated October 8, 1986 and the attached letter dated October 22, 1986, marked as Exhibit B and Exhibit C respectively.

10. That the defendants failed to disclose the information contained in Exhibits B and C to Horry Electric and failed to advise Horry Electric that the vapor barrier should be a recommendation rather than a requirement.

11. That the defendants did not disclose to the plaintiff any problem with the vapor barrier requirements of the Good Cents Program but instead South Carolina promoted the Good Cents Program as being an environmental friendly program and a win-win situation for the participating Good Cents members.

12. That Horry Electric has been sued in the civil action titled *Ronnie Ferrell, Tammy Vance and David Montorio, on behalf of themselves and all others similarly situated v. Horry Electric Cooperative*, Civil Action No. 2011-CP-26-1266, a copy of the Complaint being attached hereto as Exhibit D.

13. That the Good Cents Program was a pass through program and Santee Cooper had the right to audit for Horry Electric's compliance with the requirements of the program.

14. That the fault alleged by the plaintiff in Civil Action No. 2011-CP-26-1266 is imputed fault to Horry Electric, which merely offered its members participation in the pass through Good Cents Program.

15. That a special relationship existed between Horry Electric and the defendants, given the contractual relationships and Horry Electric's participation in a pass through program, which upon information and belief benefits the defendants only.

16. That the plaintiff is not liable for causing damage to the plaintiffs in Civil Action No. 2011-CP-26-1266 and upon information and belief, the plaintiff will be exonerated from any liability for those damages.

17. That Horry Electric has incurred attorney's fees and costs in defending Civil Action No. 2011-CP-26-1266 for which the defendants are liable.

18. That, to the extent Horry Electric is exonerated from liability to the plaintiffs in Civil Action No. 2011-CP-26-1266, Horry Electric is informed and believes that the defendants are or may be liable to it for the expenses including attorney's fees and costs and any settlement costs incurred by Horry Electric in protecting its interest in Civil Action No. 2011-CP-26-1266.

FOR A FIRST CAUSE OF ACTION

(Negligence)

19. That the allegations of paragraphs 1 through 18 hereof are realleged and incorporated herein by reference.

20. That, upon information and belief, the defendants, who were offering and promoting participation in the Good Cents Program owed a duty of due care to disclose any problems and/or potential problems with the requirements of the program, including those related to the vapor barrier.

21. That the defendants breached their duty of due care and were negligent by failing to disclose to the plaintiff the information contained in Exhibits B-C.

22. That as a direct and proximate result thereof, the plaintiff has incurred attorney's fees and expenses and may suffer other damages.

23. That as a result thereof, the plaintiff is entitled to a judgment against the defendants for all actual damages suffered as a result of the negligence of the defendants, plus punitive damages.

FOR A SECOND CAUSE OF ACTION

(Breach of Duty of Good Faith and Fair Dealing)

24. That the allegations of paragraphs 1 through 23 hereof are realleged and incorporated herein by reference.

25. That the defendants, by failing to disclose the information in Exhibits B and C,

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P

breached their implied duty of good faith and fair dealing which they owed to Horry Electric as a result of their contractual relationship, all to Horry Electric's damage, and Horry Electric is entitled to recover from the defendants its actual damages and punitive damages as a result thereof.

FOR A THIRD CAUSE OF ACTION

(Breach of Warranty)

26. That the allegations of paragraphs 1 through 25 hereof are realleged and incorporated herein by reference.

27. That, upon information and belief, the defendants, by offering and promoting the program as they did, expressly and impliedly represented and warranted that the Good Cents Program was appropriate for use by Horry Electric and its members and failed to disclose the information in Exhibits B and C.

28. That the defendants breached their representation and warranties as aforesaid and as a result thereof, Horry Electric has suffered actual damages for which the defendants are liable.

FOR A FOURTH CAUSE OF ACTION

(Civil Conspiracy)

29. That the allegations of paragraphs 1 through 28 hereof are realleged and incorporated herein by reference.

30. That, upon information and belief, the defendants, who knew the information in Exhibits B to C but failed to disclose it to Horry Electric combined and joined for the purpose of injuring Horry Electric and caused Horry Electric to suffer actual and special damages for which the defendants are liable.

FOR A FIFTH CAUSE OF ACTION

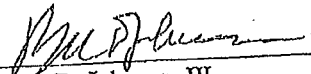
(Equitable Indemnity)

31. That the allegations of paragraphs 1 through 30 hereof are realleged and incorporated herein by reference.

32. That, to the extent Horry Electric is exonerated from liability to the plaintiffs in Civil Action No. 2011-CP-26-1266, Horry Electric is informed and believes that the defendants are or may be liable to Horry Electric for all expenses incurred by Horry Electric in protecting its interests.

WHEREFORE, Horry Electric prays for judgment as set forth above in the First, Second, Third and Fourth Causes of Action and for its expenses in Civil Action No. 2011-CP-26-1266 as set

forth in the Fifth Cause of Action and for such other and further relief as may be just and proper.


Pope D. Johnson, III
Johnson & Barnette, LLP
1230 Richland Street
Columbia, SC 29201
803-799-9791
803-253-6084 (fax)
pdjohnson@johnsonbarnette.com
Attorney for the Plaintiff

Columbia, South Carolina
July 26, 2013

#5

Exhibit 6

AGREEMENT

This Agreement made and entered into this 22nd day of July, 1987, by and between the South Carolina Public Service Authority, hereinafter referred to as "Santee Cooper" and Horry Electric Cooperative, Inc., hereinafter referred to as "Participating Distributor,"

WHEREAS, Santee Cooper has acquired the rights to use the Good Kents Programs which presently consist of three (3) Programs as follows:

- (1) Good Kents Home Program (New Residential)
- (2) Good Kents Improved Home Program (Retrofit Residential)
- (3) Good Kents Commercial Program

for itself and those distributors of its electric power who choose to participate in said Program(s); and,

WHEREAS, the Participating Distributor has requested to implement the Program(s) within its retail service area,

NOW THEREFORE, in consideration of the premises and of the mutual covenants and obligations contained herein, the parties agree as follows:

1. The Participating Distributor shall have the right to implement the Good Kents Program(s) hereinbefore contained, within its retail service area in accordance with standards developed by Santee Cooper to the extent Santee Cooper is authorized under the agreement with Southern Electric International,

PLAINTIFF'S
EXHIBIT

2 10/12/11



Inc., dated June 24, 1986.

2. The Participating Distributor will execute the licensing agreement with Southern Electric International, Inc. and, if applicable, the software licensing agreement.

3. The Participating Distributor shall submit upon request by Santee Cooper properly completed Exhibits VII and VIII contained in Santee Cooper's Good Gents Manual. Santee Cooper reserves the right to amend or revise any or all of the Exhibits contained in Santee Cooper's Good Gents Manual from time to time, in whole or in part, to reflect changed conditions.

4. Santee Cooper reserves the right to audit any of the Participating Distributor's records pertaining to the Good Gents Program(s) which it deems necessary to satisfy itself as to the accuracy of its related payments, credits, etc., to the Participating Distributors, through Central Electric Power Cooperative, Inc.

IN WITNESS WHEREOF, the South Carolina Public Service Authority and Horry Electric Cooperative, Inc. have caused this instrument to be executed by their respective duly authorized officers, as of the day and year first above written.

ATTEST:

ESB

SANTEE COOPER

By:

W. Reacher
Title

ATTEST:

Steve J. [Signature]

By:

Charles [Signature]
Title Manager

FILE



Energy Management, 2003 Oak Street, Myrtle Beach, South Carolina 29577-3198 (803) 448-1603

October 8, 1986

OCT 15 1986
A. P.

Mr. Geoff Hartman
Southern Electric International
3500 Piedmont Road, N. E., Suite 500
Atlanta, Georgia 30305

Mr. Hartman:

I am responding to your letter of September 25, 1986 concerning the technical design report and standards for the Good Gents Program.

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2. Hybrid Good Gents Houses - We would like to be able to waive the requirements for written certification from an architect or engineer. *GET BUILDING TO WAIVE | SEI TO GIVE POWER OF ATTORNEY*
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4. Vapor Barriers - This is a touchy subject in coastal areas. See ASHRAE '85 Fundamentals - 21.17. It may be best not to mention.
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6. Equipment Sizing - We prefer to limit oversizing to 15%, unless an exception is granted. Second-stage heating on heat pumps *OUR OPTION*

REMARKS

Santee Cooper 000141
Montorio v. Foxworth

One of America's



Santee Cooper 2506

Mr. Geoff Hartman
October 8, 1986
Page 2

SENA SPECS TO SFC

should not exceed 50% of design heat loss unless it can be shown that it will not provide "design" comfort.

7. Fossil-Fired Heating Systems - Not allowed.
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I look forward to meeting with you and the other SFC people next week. SCEE, Santee Cooper and the participating co-ops are very excited about the Good Cents Programs. We are already getting good feedback from the building community and have started working with some future projects.

Yours truly,

Glenn S. Cannon
Glenn S. Cannon
Energy Programs Supervisor

GSC/mm

cc Mr. Buddy Clark
S. C. Electric & Gas Company
P. O. Box 764 J-036
Columbia, S.C. 29219

cc Mr. Robert Eggleston
S. C. Electric & Gas Co.

*4/10/87 / SFC
TAKY MIA WATER HEATER
WATER TANK
ADD LATER*

Santee Cooper 2507

Santee Cooper 000142
Montorio v. Foxworth

FILE: *Good Gents - SEI*



Energy Management, 2003 Oak Street, Myrtle Beach, South Carolina 29577-3196 (803) 448-1503

October 22, 1986

Mr. Geoff Hartman
Southern Electric International, Inc.
Suite 500
3500 Piedmont Road, NE
Atlanta, GA 30305

Dear Geoff:

Re: Good Gents Standards

At our meeting in Atlanta, you stated SEI's position on requiring a vapor barrier on the interior of all exterior walls.

Originally, Santee Cooper required this under our Energy Efficient Home Awards Program, similarly to help reduce infiltration and to coincide with manufacturers' recommendations for the same. Lately we are getting a lot of concern expressed from the building community on this requirement.

Our concern is future liability. We don't want to create any situations that would hurt us or the Good Gents Program. Enclosed is a recent article on this subject from Energy Design Update. Summarized, they state: "In warm climates, interior vapor barriers may in fact create moisture condensation problems."

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Glenn S. Cannon
Energy Programs Supervisor

GSC/rh

Enclosure (Article entitled "The Vapor Barrier Goes On The Outside???)

cc Mr. Buddy Clark (W/Enclosure)
S. C. Electric & Gas Company.



Santee Cooper 2501

Santee Cooper 000148
Montorio v. Foxworth

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

Ronnie Ferrell, Tammy Vance
and David Montorio on behalf of themselves
and all others similarly situated,

Plaintiffs,

vs.

Horry Electric Cooperative,

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO: 2011-CP-26- 1246

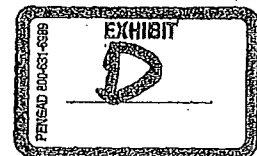
COMPLAINT
(Jury Trial Demanded)

FILED
CLERK OF COURT
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2011

The Plaintiffs, individually, and as class representatives, complaining of the Defendants herein, would respectfully show unto this Honorable Court as follows:

PARTIES AND JURISDICTION

1. Plaintiff Ronnie Ferrell, individually and as class representative, is a citizen and resident of Horry County, South Carolina.
2. Plaintiff Tammy Vance, individually and as class representative, is a citizen and resident of Horry County, South Carolina.
3. Plaintiff David Montorio, individually and as class representative, is a citizen and resident of Horry County, South Carolina.
4. On information and belief, Defendant Horry Electric Cooperative is a company organized and existing under the laws of the State of South Carolina and does business through its agents and servants in Horry County, South Carolina.
5. This is a matter within the jurisdiction of this Court.



FACTUAL SUMMARY

6. Plaintiffs are the owners of residences in Horry County and reside in Horry County, South Carolina. The Defendant is the electrical service provider for each Plaintiff.
7. Each residence owned by the Plaintiffs and Plaintiff Class was constructed between 1988 and 2003 according to standards and specifications set forth and required by Defendant through the Defendant's "New Good Cents Program" (hereinafter the "Program"). All Program Homes were homes that were newly constructed as opposed to retrofits of existing structures.
8. The Defendant sets forth the design specifications requirements for a home to qualify for the Program.
9. The Defendant adopted and references ASHRAE (American Society of Heating Refrigeration and Air Conditioning Engineers) standards in its Program specifications.
10. The Defendant set forth the design and design standards for these Horry County residences.
11. The homes would not be accepted into the Program unless Defendant completed a final inspection of the home.
12. On information and belief, in 1988 Defendant adopted the Program from another electrical service provider without performing any of its own due diligence or research regarding the specifications and requirements that it required for new homes. On information and belief, Defendant never performed any research regarding the Program specifications and requirements.
13. The Defendant offered the Program in an effort to keep the cost of power low for both it and its members.
14. Defendant provided design specifications and requirements for the Program. On a.

systematic basis, the Defendant required the design specifications be followed for the homes to be accepted into the Program.

15. The documentation and process used by Defendant for Good Cents homes were nearly identical for each home in the Program.

16. The specification and requirements had to be implemented as designed and set out by Defendant for acceptance of the home by Defendant into the Program.

17. Defendant required a vapor barrier to be installed on the inside of the exterior walls of all residences. The Defendant set forth specifications to meet the infiltration barrier requirements. The Defendant specified two methods of achieving superior infiltration and vapor protection:

(a) Method One

- (i) 4 or 6 mil polyethylene vapor barrier installed on the inside surface of the exterior walls and ceilings;
- (ii) properly installed friction fit batts.
- (iii) properly installed house wrap (such as Tyvek) as an air barrier.

(b) Method Two

- (i) properly installed Kraft or foil-faced insulation batts.
- (ii) taped and painted gypsum board installed on the inside of the exterior wall.
- (iii) properly installed house wrap (such as Tyvek) as an air barrier.

18. Defendant further required that Defendant inspect the installation of a vapor barrier during construction so that Defendant could verify that it was installed.

19. Each Plaintiff's Residence has a vapor barrier in accordance with Defendant's design specifications, requirements and standards.

20. Each Program residence was inspected by Defendant.

21. Each Program residence was accepted into the Program by the Defendant.

22. On information and belief, Defendant inspected each of the Plaintiffs' and Plaintiff Class' homes during construction to verify that the vapor barrier was installed on the inside of the exterior walls.

23. The existence of a vapor barrier on the inside of the exterior walls creates a condition where condensation forms on the outer surface of the vapor barrier. The presence of condensation causes, among other things, mold growth on the surface of the vapor barrier and inside the Plaintiffs' and Plaintiff Class' homes.

24. In 2003 Defendant finally stopped requiring the installation of vapor barriers on the heated side of studs in Horry County.

25. By virtue of writings and articles from ASHRAE, Defendant knew or should have known about the likelihood of condensation problems caused by the required vapor barrier as early as 1985 and no later than 1987. In 1986, an energy design update article stated, "In warm climates interior vapor barriers may in fact create moisture condensation problems." Yet Defendant ignored its design defect and continued to specify and require its flawed designs to be used in the Program Homes.

26. There are more than 1,000 Program Homes in Horry County which were constructed in accordance with the design flaw, vapor barriers on the heated side of the studs, in Horry County, in accordance with the Defendant's design specifications.

27. The Class is so numerous that joinder of all members is impractical. There are questions of law or fact common to the Class, including, but not limited to, the design defects inherent in the Program, when Horry Electric knew of such design defects, and whether Horry Electric was reckless in disregarding industry knowledge concerning its design defects.

28. Claims of the representative parties are typical of the claims of the Class. The representative Plaintiffs will fairly and adequately protect the interest of the Class and have engaged qualified counsel.

29. The amount in controversy for each Class Member exceeds One Hundred Dollars (\$100.00). The cost of removal of the inappropriate materials is more than \$100.00 (\$100.00) per home.

30. The design defect was well known or should have been obviously known to the Defendant years in advance of the construction of the Plaintiff and Plaintiff Class homes.

31. The Defendant traded off the extremely high likelihood of long term mold problems with the homes in exchange for the short term benefit of reducing peak demand so that Defendant would not have to build new power plants.

32. The Defendant has violated the covenant of good faith and fair dealing and violated its agreement to provide a suitable design for living quarters.

33. The specified vapor barrier is not suitable for habitable dwellings in the coastal county of Horry.

34. The Class is defined as each and every Horry County homeowner of a Program Home that has a vapor barrier, on the inside of its exterior walls and was included by the Defendant in the Program upon its construction during years 1988 through 2003.

FOR A FIRST CAUSE OF ACTION
(Design Defect -- Breach of Warranty)

35. Not inconsistent herewith, Plaintiffs and Plaintiff Class reallege each and every allegation above as if repeated verbatim herein.

36. Upon information and belief, Defendant made design specifications and requirements and express warranties in connection with its design and implementation of the Program to the effect that the design of the vapor barrier specifications would be free of defects.

37. Defendant set forth the design standards which were incorporated into the homes. Defendant impliedly warranted that the Program and its systems, recommendations, standards and requirements and details, would be free from deficiencies.

38. Defendant used design specifications and requirements which it knew would cause mold in coastal southeastern counties including Horry County.

39. Defendant breached its express and implied warranties in the following particulars:

- (a) in failing to properly design and implement the Program into the Residences by failing to employ design specifications conforming to the customary and ordinary design standards of the construction industry;
- (b) in specifying and requiring inappropriate design or materials for a coastal county;
- (c) in specifying and requiring inappropriate materials in violation of industry standards;
- (d) in providing deficient and/or defective requirements, specifications and design, which was not in conformity with industry standards; and/or

(e) in failing to adequately research, design, and specify an air infiltration reduction system that would prevent moisture from occurring on the inside of the Residences.

40. As a direct and proximate result and consequence of Defendant's breach of its express and implied warranties, Plaintiffs have suffered injuries and damages in the amount equal to the extraordinary repair, maintenance and reconstruction costs required and to be required over the expected life of the structure, and will suffer from loss of use of the Residence.

41. The Plaintiff and Plaintiff Class have suffered damages due to the breach and are entitled to the same plus costs.

FOR A SECOND CAUSE OF ACTION
(Negligence/Gross Negligence)

42. Not inconsistent herewith, Plaintiffs and Plaintiff Class reallege each and every allegation above as if repeated verbatim herein.

43. Defendant owed a duty to Plaintiffs to exercise that degree of skill necessary to design, specify, and set standards in a manner that would not cause a condition for moisture and condensation to occur within the residence and to insure that the Defendant's designs were designed in conformity with the customary and ordinary standards of the building and construction industry, including standards set forth by ASHRAE.

44. The defects and deficiencies that exist at the Residence are the direct and proximate result of the negligence and/or gross negligence of Defendant in one or more of the following particulars:

- (a) In requiring an improper standard, or in failing to set forth the appropriate design for the residence, by failing to employ practices and design methods of construction conforming with accepted industry standards; and/or requiring materials that Defendant knew or should have known was improper and which would cause damage to the Residences; and/or requiring the presence of a vapor barrier, which was in violation of the industry standards and/or accepted wise building methods;
- (b) In failing to research and determine the effect of the specifications and requirements of the Program, which it knew would affect thousands of homeowners;
- (c) in accepting and requiring inappropriate materials, which, when installed, would cause moisture and mold within the Plaintiffs' Residences;
- (d) in failing to review ASHRAE standards on the use of vapor barriers in coastal counties in the southeast.

45. As a direct and proximate result and consequence of the Program's design defects, the owners of the Residences have suffered damages. The Program Homes have suffered actual damage caused by moisture being trapped in the walls that resulted from the negligent design of the Defendant and specifications and requirements of Defendant's Program.

46. As a direct and proximate result and consequence of the negligence and/or gross negligence of Defendant, Plaintiffs have suffered injuries and damages in the amount equal to the extraordinary repair, maintenance and reconstruction costs required and to be required over the

expected life of the structure and such other damages as may be appropriate. Plaintiffs and the Class are also entitled to punitive damages.

FOR A THIRD CAUSE OF ACTION
(Breach of Contract/Covenant of Good Faith and Fair Dealing)

47. Not inconsistent herewith, Plaintiffs and Plaintiff Class reallege each and every allegation above as if repeated verbatim herein.

48. The Program Homes of the Plaintiffs and the Plaintiff Class were all constructed after the Defendant made an offer of the Good Cents Program.

49. To accept the offer, the Program Homes had to be constructed in accordance with the Defendant's design specifications.

50. The construction of the home in accordance with the Defendant's specifications and the subsequent approval of the construction and acceptance into the Good Cents Program by Defendant constitutes an agreement.

51. The agreement or the Program contract had the implied covenant of good faith and fair dealing within it.

52. The Defendant has violated the covenant of good faith and fair dealing by not disclosing obvious design defects and design flaws with respect to its vapor barrier specifications and standard/recommendation it required.

53. The design defect was well known or should have been obviously known to the Defendant years in advance of the construction of the Plaintiffs and Plaintiff Class homes.

54. The Defendant traded off the extremely high likelihood of long term mold problems with the homes in exchange for the short term benefit of reducing peak demand so that Defendant

would not have to build new power plants.

55. The Defendant has violated the covenant of good faith and fair dealing and violated its agreement to provide a suitable design for living quarters.

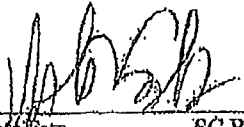
56. The plastic vapor barrier is not suitable for habitable dwellings in the coastal county of Horry.

57. As a result Plaintiffs and Plaintiff Class have suffered damages.

58. Plaintiffs and Plaintiff Class are informed and believe they are entitled to damages, punitive damages plus costs.

WHEREFORE, the Plaintiffs and Plaintiff Class pray for the following relief:

- a. Actual damages;
- b. Punitive damages; and
- c. Any costs of this action.


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Attorneys for Plaintiffs and Plaintiff Class

Myrtle Beach, South Carolina
February 9, 2011

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS

Horry Electric Cooperative, Inc.,)

Plaintiff,)

Civil Action No. 2013-CP-26-488

vs.)

CERTIFICATE OF SERVICE

South Carolina Public Service
Authority and Southern Electric
International, Inc.,)

Defendants.)

I, Sherry W. Wise, of Johnson & Barnette, LLP, hereby certify that I have served B. Rush Smith, attorney for Defendant South Carolina Public Service Authority, with the foregoing pleading(s) by mailing a copy of same, postage prepaid and return address clearly indicated, to him at the following address on the 26th day of July, 2013.

COUNSEL SERVED:

B. Rush Smith, Esquire
Nelson Mullins Riley & Scarborough, LLP
Meridian/17th Floor
1320 Main Street
Columbia, SC 29201

PLEADINGS:

Amended Summons and Amended Complaint

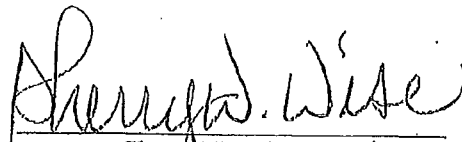

Sherry W. Wise

Exhibit G

Motion to Dismiss Transcript

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF HORRY) Court of Common Pleas
3 Horry Electric) Case No. 2013-CP-26-0488
4 COOPERATIVE, INC.)
5 Plaintiff,)
6 vs.) Transcript of Record
7 SOUTH CAROLINA PUBLIC)
8 SERVICE AUTHORITY AND)
9 INTERNATIONAL, INC.,)
10 Defendants.)
11 DATE: May 27, 2014

11 B E F O R E:

12 The Honorable Roger M. Young, Sr.

13

A P P E A R A N C E:

14

15 Pope D. Johnson, III (via telephone)
Attorney for the Plaintiff

16

B. Rush Smith, III
Attorney for the South Carolina Public Service Authority

17

18 J. Michael Baxley and Elizabeth Henry Warner
Attorneys for Santee Cooper

19

20

Karen V. Andersen, RMR, CRR
Circuit Court Reporter

21

22

23

24

25

1 MR. JOHNSON: I apologize for being in Charleston
2 while you are in Horry County.

3 THE COURT: That happens. All right. Well, we've
4 got -- this is Horry Electric Cooperative vs. South Carolina
5 Public Service Authority and Southern Electric
6 International, 2013-CP-26-488.

7 This case got assigned to me, and we are here today
8 on the defendant, South Carolina Public Service Authority's,
9 motion to dismiss. And then I think the plaintiffs have
10 filed a motion for summary judgment as well; is that right?

11 MR. JOHNSON: That's correct; correct.

12 THE COURT: Now, what about Southern Electrical
13 International, have they filed anything to join in with your
14 motion?

15 MR. JOHNSON: No, we have not gotten service.

16 MR. SMITH: I don't know if they've been served,
17 Your Honor. Have they been served?

18 MR. JOHNSON: No.

19 THE COURT: Well, they must not have any money.

20 MR. JOHNSON: I think that's correct.

21 THE COURT: All right. Well, I know that you
22 had -- the plaintiffs had filed a motion to stay this case.

23 MR. JOHNSON: Yes, Your Honor. We had asked you to
24 either continue the hearing today or stay a decision until a
25 determination is made Friday as well. The court will

1 approve -- Judge Culbertson will approve the settlement
2 that's been reached. There's been no opposition to -- they
3 will require -- anybody who opposes it would be required to
4 pay the filing. None of that has occurred. We expect his
5 order to be, on the settlement agreement, to be approved by
6 him Friday. And we think it would be important that you at
7 least not make any decision until after his decision and
8 that -- because it may impact your decision. And we would
9 ask you to stay it until then and take judicial notice of
10 whatever he does Friday.

11 THE COURT: Well, it's a class action in which you
12 are basically claiming, as I understand it, that you can be
13 indemnified for some of the costs that you have paid out or
14 will pay out, if that's approved.

15 MR. JOHNSON: That's correct.

16 THE COURT: Well, they've raised some defenses
17 here, as I understand it, that I'm not sure how they would
18 be impacted regardless of whether or not lawsuit is approved
19 or not approved, namely, that statute of repose and the
20 statute of limitations, which I think, in any event, we
21 could hear regardless of what that outcome is today.

22 MR. JOHNSON: Since we are having a hearing, I
23 understood it won't be continued. I'm just asking that no
24 decision be made by the Court until after Friday and the
25 Court acknowledge it will take judicial notice of whatever

1 Judge Culbertson does. One of the things they've argued in
2 their papers is that we are only making a claim for
3 attorney/clients fees and costs, which is not what we've
4 alleged. And they say they aren't recoverable on several of
5 these causes of action. What we are seeking to recover is
6 what we've had to pay in settlement, plus fees and costs.
7 And it will establish what those actual damages are, which
8 is the reason we want you to withhold ruling until after he
9 renders his order.

10 THE COURT: Well, I guess -- I'm having a little
11 bit of trouble getting around my head how that would be
12 impacted at all if the statute of repose in particular
13 applies.

14 MR. JOHNSON: I don't think it does.

15 THE COURT: In no event would they be responsible
16 for those costs.

17 MR. JOHNSON: Your Honor, I would agree with you as
18 to those two positions. The reason I'm asking you to stay
19 it is that if you don't rule in their favor on those two
20 issues, it becomes relevant to the other issues.

21 THE COURT: Well, let's go forward on their motion
22 to dismiss until I've concluded it doesn't make any sense to
23 me otherwise; how about let's go that route?

24 MR. JOHNSON: That's fine with me, Your Honor.

25 THE COURT: Now, Mr. Rush Smith is here. Mike

1 Baxley, who is making his first -- I think first
2 post-judicial appearance. And Elizabeth Warner is also
3 present for Santee Cooper. So I have got the great
4 privilege of putting Mr. Baxley on the spot, but I assume
5 that Mr. Smith is going to do all the argument unless and
6 until I can drag Mr. Baxley in on a relevant question. Is
7 that how y'all propose to do this, or are you going to
8 actually enlighten me in some respects on this?

9 MR. BAXLEY: This is Mike Baxley. What we would
10 ask you to do, Your Honor, is Rush will argue our main
11 motion. And then we assume Mr. Johnson will respond. And
12 then I would ask the privilege of a reply.

13 THE COURT: All right. Mr. Smith, because you led
14 with it, it's your best argument, it's certainly the one I
15 think we need to discuss first, is the statute of repose,
16 the statute of limitations.

17 MR. SMITH: Yes.

18 THE COURT: I usually have a brief metaphysical
19 moment in time where I understand the application of the
20 statute of repose as opposed to statute of limitations. So
21 I read a little bit on it again in anticipation of this, so
22 let's go with that before I forget what I know.

23 MR. SMITH: Yes, sir. Those two are the ones that
24 we had planned to lead with, because we do believe that they
25 dispose of the case.

1 On the statute of repose, the parties are actually
2 in agreement that the statute of repose is contained in
3 Section 15-3-640, and it applies. The only question raised
4 by Horry Electric is whether it's an 8-year or 13-year
5 period. We have argued for the 8-year period, Your Honor,
6 which would totally bar the complaint. If Your Honor were
7 to agree with the plaintiff and find that the 13-year period
8 applied, then the complaint would be dismissed in part.

9 Looking back from the filing date of January 23,
10 2013, the 13-year cutoff, if you will, is January 23, 2000.
11 So all claims based on construction completed before then
12 would be barred.

13 And if the 8-year cutoff applies, the cutoff date
14 is January 23, 2005. And that would bar all of the claims
15 for indemnification. The complaint for indemnification
16 is -- and the other claims in the amended complaint -- seek
17 indemnification for the underlying complaint in Ferrell vs.
18 Horry Electric case. The complaint in that case alleges
19 defects for construction begun as early as 1988. The class
20 period in that case concludes in 2003. I believe the class
21 has been defined as people who became members of the Good
22 Cents Program in the period 1998 through 2003. So with that
23 8-year cutoff, the entire complaint is barred. If you adopt
24 Horry Electric's reading of the statute of repose, we
25 believe a substantial portion of the complaint is barred.

1 We've argued, Your Honor, for application of the
2 8-year statute of repose based on a couple of cases that
3 have applied the statute of repose that was in existence as
4 of the time of the filing of the complaint. One of those is
5 Hollywoods Association vs. Hiller, 392 S.C. 172. I believe
6 it's cited in our motion. Also, In Re: Building Materials
7 Corporation, it's a case from the Federal District Court,
8 Judge Childs, 2013 Westlaw 1316562. In both of those
9 cases --

10 THE COURT: 131 what?

11 MR. SMITH: 1316562. Now, in that case, the judge
12 found that the 8-year -- analyzed the case with the 8-year
13 statute, found in the end that the statute of repose was not
14 available to the defendant in that case. Likewise, in
15 Hollywoods Association, the court applied the 8-year statute
16 in its analysis, but held in the end that because the
17 construction had continued, the statute of repose was not
18 available there.

19 But we have cited the 8-year period based on those
20 cases that applied the 8-year period. And as we say, even
21 if Horry Electric's reading of the statute is correct, then
22 the complaint should be dismissed in part pursuant to the
23 statute of repose.

24 Now, the statute of limitations we believe takes
25 care of everything. The statute of repose -- the statute of

1 limitations is in the Tort Claims Act. It's Code Section
2 15-78-110.. As I said, the complaint was filed January 23,
3 2013. And the claims in the complaint -- that's a two-year
4 statute of limitations, by the way. And the claims that are
5 in the complaint clearly arose far, far in advance of two
6 years prior to the filing date of the complaint.

7 Under this code section, the court applies the
8 discovery rule. As Your Honor knows, the standard is
9 objective, not subjective. The question is not what Horry
10 Electric actually knew, but whether it could have discovered
11 the cause of action through the exercise of reasonable
12 diligence.

13 As disclosed on the face of the Horry Electric's
14 complaint, the cause of action adheres in the alleged
15 failure on Santee Cooper's part to disclose the contents of
16 a couple of letters written in 1986. Now, they sort of cry
17 out for the application of the statute of limitations. We
18 cited one of the seminal cases on the purpose of the statute
19 of limitations. And it is to ensure litigation is brought
20 within a reasonable time in order that evidence be
21 reasonably available to the parties to try the case. And
22 when we are talking about a 1986 letter, Your Honor, we
23 think this case really calls out for the application of the
24 statute.

25 If we look at the discovery rule and how it would

1 be applied in this case, there are a couple of reasons that
2 the statute began to run and ran far sooner than two years
3 prior to the commencement of the action. One of the reasons
4 it's disclosed on the face of the letter is in question.
5 They are attached to Horry Electric's complaint. They were
6 written in 1986 by a gentleman who worked for Santee Cooper
7 named Glen Cannon. And the contents, the subject matter of
8 the letter, comprise references to a publication called
9 Energy Design Update, discussions in the building community,
10 and something called Ashrae 85 Fundamentals, 21.17. That
11 is a citation to an engineering standard.

12 So on the face of the letter, the contents, the
13 subject matter that Horry Electric claims should have been
14 disclosed, were available in the public domain. As of 1986,
15 Horry Electric, Your Honor, sophisticated business, it is an
16 electrical co-op, it purchases electricity from Santee
17 Cooper and sells electricity to its customers. It bills its
18 customers. It interacts with its customers. It deals with
19 its customers.

20 And in the process of employing the Good Cents
21 Program -- just by way of background, the Good Cents Program
22 was an energy efficiency program. Customers could build
23 their homes to certain standards or specifications and
24 qualify for a special rate. And in the course of that,
25 Horry Electric would administer the program. And that

1 included inspecting customers' homes.

2 Now, as I said, there are two reasons that the
3 statute ran far sooner than two years prior to the
4 commencement of the complaint. On the face of the letters,
5 they referred to information in the public domain. Now,
6 could Horry Electric have learned that through the exercise
7 of reasonable diligence? Obviously, they could have,
8 because these are matters in the public domain.

9 What we have here is an interesting situation in
10 the way the case is presented to this Court. In the
11 underlying case, the Ferrell plaintiffs alleged that Horry
12 Electric implemented the Good Cents Program without
13 conducting any investigation of the program itself. The
14 plaintiff alleged Horry Electric adopted the program from
15 another electrical service provider without performing any
16 of its own due diligence or research regarding the
17 specifications and requirements. Defendant never performed
18 any research regarding the program specifications and
19 requirements.

20 Now, as the case cited in our briefing points out,
21 unanswered allegations of the underlying complaint might not
22 be dispositive of anything. But in Horry Electric's answer,
23 Your Honor, they admitted that allegation. And that is
24 dispositive. We ask Your Honor to take judicial notice of
25 that answer. Taking judicial notice of a court record does

1 not convert this motion to dismiss to a motion for summary
2 judgment. The case -- most recent case on that is Doe vs.
3 Bishop of Charleston, 407 S.C. 128. By looking at the court
4 record, the Court is not converting this motion to dismiss
5 to a motion for summary judgment.

6 What do we find in the answer? Well, at Paragraph
7 9, Horry Electric admits that it offered to its members the
8 Good Cents Program that was offered through the South
9 Carolina Public Service Authority without having performed
10 any research regarding the specifications and requirements.
11 In other words, Horry Electric admitted no due diligence.
12 With due diligence, it could have discovered what's on the
13 face of the letters. And the statute began to run in 1986.

14 Alternatively, Your Honor, based on the pleadings,
15 the Court can find the statute began to run in 2003, barring
16 any complaints filed after 2005. And the reason for that
17 lies, once again, in the allegations of the underlying
18 complaint and in Horry Electric's answer.

19 At Paragraph 16 of Horry Electric's answer, the
20 defendant admitted that in 2003, the vapor barrier
21 requirement that is at issue in the underlying case was
22 changed. So, based on the pleadings in the underlying case,
23 we know that there's an allegation that the Good Cents
24 Program at one point included a vapor barrier requirement,
25 requiring the installation of a vapor barrier on the

1 interior side of the exterior walls. And we know that in
2 2003, that standard changed.

3 At that point, Your Honor, Horry Electric was on
4 notice of the subject matter of the letters. And that is,
5 there is an issue about vapor barriers in the walls of homes
6 in this part of the country. And they were on notice at
7 that point to investigate the claims. They did nothing.
8 And we are now faced with a complaint filed some 27 1/2 --
9 26 1/2 years after these letters were written. So the
10 two-year statute of limitations, Your Honor, bars the claims
11 that Horry Electric has asserted in this case.

12 Those are the first two reasons we sought
13 dismissal, Your Honor. We are asking for dismissal of
14 complaint with prejudice. I will say that I will take issue
15 with Mr. Johnson's contention that this Court should delay
16 hearing anything or delay deciding anything on the rest of
17 our motion to dismiss because it needs the settlement
18 agreement to establish that he's going to have what would
19 essentially be damages in this case.

20 Of course, our motion to dismiss requires the Court
21 to take as true all the allegations of the complaint. And
22 he's alleged he's got damages. So the fact of the
23 settlement agreement is not going to make a difference one
24 way or another.

25 There's also a suggestion in his motion that the

1 settlement agreement would establish that Horry Electric had
2 been exonerated of any liability. But, Your Honor, based on
3 my understanding of what the dictionary definition of
4 exonerated is and what a settlement agreement does,
5 settlement agreements by definition don't define whether
6 anybody is at fault or not. They, in fact, stop short of
7 it.

8 So with your permission, I will go ahead with the
9 other parts of our argument.

10 THE COURT: Let me have -- is that all of your
11 argument on the statute of limitations and statute of
12 repose?

13 MR. SMITH: Unless Your Honor has some questions,
14 yes.

15 THE COURT: Let's stop on those issues and hear
16 from Mr. Johnson.

17 MR. JOHNSON: Your Honor, thank you. On the
18 statute of repose, I concede that 13-year statute of repose
19 applies. I did not concede the 8-year statute of repose
20 applies that was enacted in 2005. As we submitted with our
21 memorandum in opposition to the motion, the editor's notes
22 state: Section 2 amending this action dated July 1st, 2005
23 applies to improvements to real property for which
24 certificates of occupancy are issued by the county,
25 municipality, or completion of the final inspection by local

1 business official after that date.

2 So it's our position applies only to improvements
3 that occurred after 2005. We are not seeking to recover
4 anything from improvements after 2005. And so we think the
5 amended statute doesn't apply.

6 As to the statute of limitations --

7 THE COURT: Does that mean you are only looking for
8 damages from, what, 2003?

9 MR. JOHNSON: In the underlying action, our
10 exposure was for claims from 1998 to 2003. I've agree the
11 13-year statute would apply here, anything prior to that.
12 So let's see, we brought --

13 THE COURT: It would be 2000 to 2003, wouldn't it?

14 MR. JOHNSON: That's correct.

15 THE COURT: So that would be the limit on your
16 damages, is 2000 to 2003?

17 MR. JOHNSON: Correct.

18 THE COURT: Not '98 to 2003?

19 MR. JOHNSON: That's correct.

20 THE COURT: Y'all didn't raise this issue in your
21 underlying case?

22 MR. JOHNSON: We did. They started earlier.

23 THE COURT: Okay.

24 MR. JOHNSON: The period was 13 years after '98.

25 THE COURT: All right.

1 MR. JOHNSON: The judge applied the statute to
2 anything before that; Judge Culbertson did.

3 THE COURT: So you agree then that your damages, if
4 you are allowed to prevail, are limited to 2000 to 2003?

5 MR. JOHNSON: Correct.

6 THE COURT: Okay.

7 MR. JOHNSON: As to the statute of limitations,
8 I've always understood that the statute does not run until
9 all of the elements of the claim are in existence. There
10 was no damage incurred at any time until after the
11 underlying action was initiated. So we would have had no
12 damage to seek indemnification for or damage for any of the
13 other claims we are making prior to starting to incur
14 damages at that time. So that would be my first position.

15 THE COURT: Say that again. Say that again. You
16 are saying your cause of action didn't arise until --

17 MR. JOHNSON: Until we had damage.

18 THE COURT: Until you got sued?

19 MR. JOHNSON: Until we got sued.

20 THE COURT: Well, then by definition, you didn't
21 have any damages in 2000 and 2003. You are arguing a theory
22 of liability on one hand with damages on the other. If your
23 damages are a result of an act, and that act did not occur
24 until you got sued, that seems inconsistent with the
25 argument of statute of repose.

1 MR. JOHNSON: I don't think so, because until those
2 plaintiffs brought a claim for damages for that period of
3 time, we had nothing to sue over. Until we became exposed
4 to damages which we are seeking indemnification, we would
5 have had no claim for indemnification. In other words, in
6 2000 or 2001, 2002, 2003, there would be no -- until
7 somebody asserts a claim against us for damages for which
8 they say we are liable, we have no claim over to be
9 indemnified. That didn't occur until this suit was brought,
10 the underlying suit was brought.

11 THE COURT: Yeah, but, I mean, that might --
12 there's an argument I can see that you are trying to make,
13 is that you didn't have -- you didn't need to be indemnified
14 until then. But I'm not sure that the theory behind
15 indemnification is necessarily not ripen for statute of
16 limitations purposes until the time that you got sued. You
17 are basically saying, we had to stand and respond to this
18 lawsuit and it's only fair that these people reimbursed us
19 for that, but --

20 MR. JOHNSON: Your Honor, isn't it a little bit
21 like the --

22 THE COURT: Well, let me give you an example, maybe
23 to make it clearer. If you had gotten sued by these -- in
24 this class action lawsuit, and the judge would have thrown
25 the case out because of statute of limitations or statute of

1 repose, or any theory, is it your position that you would
2 still be entitled to indemnification for your attorney's
3 fees simply because you had to stand -- that you got sued
4 and you had to defend yourself? Even though you would have
5 been successful in defending it and not had to pay out any
6 damages, you would still be entitled to indemnification for
7 attorney's fees, which is what you seem to be asking for as
8 your damages, is attorney's fees.

9 MR. JOHNSON: Well, not really. I'm asking for
10 what we are having to pay in settlement of the case plus
11 attorney's fees and costs, which are, I believe, recognized
12 damages for which -- recovering claim for indemnification.

13 THE COURT: How much are you all purporting to --
14 what's the settlement for?

15 MR. JOHNSON: The settlement agreement has actually
16 been submitted with our motion to continue or motion to
17 stay. And the settlement agreement establishes two funds
18 from which class members can apply for benefits. One fund
19 is, they can apply to -- if they're not going to remediate
20 the damage to the house, they can apply and receive \$2,000.

21 The other fund provides for, if they remediate the
22 damage, they can recover up to 13,000, I believe it is. And
23 so there's one fund that's established for \$4 million and
24 one for 2. They can't claim out of both of them.

25 THE COURT: So \$6 million.

1 MR. JOHNSON: \$6 million, but what is not claimed
2 is returned to us. And, frankly, the class members, we've
3 been amazed how few have made claims. I think there are
4 like 130 plus who have made claims against the \$2,000 fund.
5 And then one or two that have made claims against the
6 \$13,000 fund. So the exposure will be certainly less than
7 the money put up.

8 THE COURT: So you are asking for whatever the math
9 is that just totaled up on what you asked for there, plus
10 attorney's fees?

11 MR. JOHNSON: And costs.

12 THE COURT: And costs. And how much are you
13 estimating you got in attorney's fees that you are asking
14 for? Have you got that number together yet?

15 MR. JOHNSON: Judge, I think it's 100- to 120,000,
16 something in that range. Now, I will tell you, the \$6
17 million funds being put up, plaintiff's attorneys are making
18 a claim for a fee and costs of \$1 million. And, of course,
19 the judge has got to decide what he's going to award.

20 THE COURT: So, all right, do the math real quick
21 for me. On the two funds, class members have so far
22 submitted claims totaling what out of those two funds
23 combined?

24 MR. JOHNSON: Give me just a second. I think --
25 don't hold me to this, but I think it's around \$300,000.

1 THE COURT: Okay. So you are basically looking at
2 asking Santee Cooper in the end, if the settlement plays out
3 the way that you anticipate it will right now, you want to
4 get 120 back in attorney's fees that you've had to pay, a
5 million dollars that the plaintiffs are going to get in your
6 class suit, and 300,000 in damages, so roughly about 1.5
7 million?

8 MR. JOHNSON: That's correct. But they have until
9 Friday to submit claims.

10 THE COURT: I understand. These numbers are
11 subject to change. I'm just trying to get a ballpark figure
12 as to what we are talking about.

13 MR. JOHNSON: We are hoping Judge Culbertson
14 doesn't give them a million dollars in fees, but we are not
15 going to oppose a request.

16 THE COURT: Okay. All right. So your theory, as I
17 understand it, is your cause of action did not arise until
18 you got sued and --

19 MR. JOHNSON: My theory is until all the elements
20 of the claim are present, you can't sue. One of the
21 elements is damage.

22 THE COURT: Well, that would be for equitable
23 indemnification, but you've sued on other theories.

24 MR. JOHNSON: I think the same would apply to the
25 other theories as well with statute of limitations. And

1 you've got to have all the elements.

2 THE COURT: Yeah, but you've got negligence.
3 You've got civil conspiracy. You've got unfair trade
4 practices, I'm sure. I mean, you've got a kitchen sink
5 worth of stuff, all of which are subject to discovery rules
6 that are in the more traditional -- well, that's why I
7 certainly see a statute of repose being -- perhaps governing
8 the outcome of this case, more so than the statute of
9 limitations. And then -- so, the only other thing that does
10 not ripen until you get this case resolved would be
11 equitable indemnification, because I understand there's no
12 express or indemnification agreement. Correct?

13 MR. JOHNSON: Correct.

14 THE COURT: So you might have just -- you might
15 have jumped the gun a little bit early on equitable
16 indemnification, because you haven't paid out anything that
17 you are entitled to get back yet on equitable
18 indemnification. If that's your theory, is, our damages are
19 not complete yet because we don't know how much we've gotten
20 paid out, then that's almost, by definition, equitable
21 indemnification that's not ripe.

22 MR. JOHNSON: Your Honor, I would respectfully
23 differ. I think we are entitled to -- if we have a valid
24 claim for equitable indemnification, then we can recover our
25 attorney's fees and costs even if we had no other expense.

1 But since we have other expenses, all three --

2 THE COURT: I don't think maybe you understood what
3 I said. You don't have a final number yet that you've had
4 to pay out. And until you get a number that you have had to
5 stroke a check for, I don't think you have a valid claim for
6 equitable indemnification. Because equitable
7 indemnification says, look, it's only fair that they pay us
8 back because we had to pay this out. Well, you haven't had
9 to pay it out yet. You are real close, but you are not
10 there yet.

11 MR. JOHNSON: Well, Your Honor, when I first filed
12 this lawsuit, I had a claim for equitable indemnification.
13 We got a motion to dismiss that said we haven't paid out any
14 money, therefore, you don't have a claim.

15 THE COURT: Well, I think that's what I just said.

16 MR. JOHNSON: They admitted it and, of course,
17 Mr. Smith said earlier in his argument, they admit I have
18 damages. The fact that all of my damages as alleged in the
19 complaint has to be accepted as true for the purposes of a
20 motion to dismiss, and he said it doesn't matter what the
21 judge says, we've already met that element on equitable
22 indemnification. And we obviously incurred and we are
23 entitled to recover attorney's fees and costs. We are
24 entitled to get that. And I don't think the fact that our
25 damages aren't finalized close the claim. Because we were

1 speaking about the statute of limitations, and I told you my
2 first position on that.

3 I would further point out to the Court that the
4 statute of limitations is an affirmative defense. It has to
5 be proved and -- pled and proved. They have not filed an
6 answer. I would take the position that until they do and
7 raise the defense that's not before the Court, but on a
8 12b -- on a motion to dismiss, the Court -- or the party
9 submits material in addition to the complaint, the Court can
10 convert it to a motion for summary judgment.

11 We have submitted as part of our motion for summary
12 judgment and part of -- and we would ask their motion be
13 converted that essentially makes up elements of our claim.
14 They have not allowed us to take discovery in this case by
15 filing a motion for protective order, but we took discovery
16 in the underlying action.

17 And in that discovery, we took a 30(b)(6)
18 deposition from Santee Cooper. And Santee Cooper's witness
19 testified and admitted that the claim was -- that Santee
20 Cooper knew about this problem with the vapor barrier
21 causing a moisture problem in 1988.

22 THE COURT: I thought it was '86. Are you sure
23 it's not '86?

24 MR. JOHNSON: Her testimony -- the letters are
25 written in -- you are right, '86. They knew of the problem

1 in 1986. She admitted that Santee Cooper did not disclose
2 the ventilation to the co-op, so that co-ops could make
3 their determination as to what to do. Of course, the co-ops
4 are, as far as I know, the only customers of Santee Cooper,
5 and they've been customers for decades, and that Santee
6 Cooper never came forward and told them.

7 The other thing she said was that it was the kind
8 of information that Santee Cooper should have given. And it
9 was a federal right and fair thing to do for Santee Cooper
10 to have told the co-ops about this at the time.

11 So, you've got Mr. Smith arguing that the letters
12 showed that we could have figured it out ourselves. You've
13 got her testimony and the testimony of Horry Electric
14 30(b)(6) who said that they relied upon Santee Cooper with
15 respect to the requirements of the program. So at a
16 minimum, between the two, you have a lawyer arguing they
17 should have known. You've got witnesses who have given
18 sworn testimony saying to the contrary. We would say it is
19 premature to -- if you convert it to amounts outside of the
20 complaint, you should deny the motion.

21 THE COURT: Well, let me ask you this. Is the
22 letter written in 1986 the basis for the bad act behind all
23 of your other causes of action?

24 MR. JOHNSON: The letters written in 1986 are the
25 basis for our claim. They never disclosed that information.

1 They have a responsibility to disclose it.

2 THE COURT: Okay. And they didn't. I think
3 everybody admits or -- admits that; they didn't. So that's
4 an undisputed fact. And if that's the basis of your
5 liability, then I think you are out because of the statute
6 of repose. Because, basically, as I understand the statute
7 of repose, the theory behind it, the defendants will say,
8 well, it's not fair for us to have to come in and defend
9 something that's so old. The plaintiffs will say that you
10 got away with it, a bad act.

11 But bottom line, if that's the bad act, and it
12 occurred in 1986, and all of your theory of liability for
13 all of your other causes of action flows from that, then you
14 are out because of the statute of repose no matter when you
15 discovered it. Because the theory behind the statute of
16 repose is there's just got to be some cutoff on this. And
17 even if you didn't discover it until yesterday, the fact
18 that that bad act took place in 1986 is just -- the
19 legislature said 8 years, 13 years, that's just so long ago
20 that we are not going to allow you to sue them over it.

21 MR. JOHNSON: Your Honor, respectfully, I believe
22 the statute of repose relates -- or applicable 13-year
23 statute relates to improvements to real estate, not bad
24 acts.

25 THE COURT: Well, we are talking about improvements

1 to real estate that you should have known -- they should
2 have told you not to install vapor barriers, presumably, and
3 they knew that back as early as 1986.

4 MR. JOHNSON: Your Honor, I don't think 1986 -- I
5 don't think a bad act then has to do with construction that
6 took place in '98 for a 2003. It has to do with
7 improvements to real estate in this 13 years after, within
8 13 years of the suit being filed. So I don't think you
9 reach back before that to look at a program. You are
10 looking at improvements to real estate, would be my
11 response.

12 THE COURT: Okay.

13 MR. JOHNSON: But, Your Honor, as to the statute of
14 limitations, we think if you convert it, it becomes obvious
15 disputes between the plaintiff's and the defendant's
16 position.

17 THE COURT: Stop. The court reporter couldn't
18 understand what you were just saying.

19 MR. SMITH: I think I've addressed the statute of
20 limitations and given you my position as set out in my
21 memorandum.

22 THE COURT: Okay. Well, who is responding now, you
23 or Mr. Baxley? I don't know what etiquette is, because it
24 seemed to me it would be appropriate to call you Judge
25 Baxley, because that's an earned title. But, you know, if I

1 were in front of a jury, I would definitely call you
2 Mr. Baxley, because I think that might give them an
3 unfair -- but, Judge Baxley, would you like to respond?

4 MR. BAXLEY: I'm just a lowly lawyer and I would
5 prefer Mike Baxley.

6 And may I step and speak to Mr. Smith a moment,
7 Mr. Johnson, and then we will be right back with you? Just
8 one moment.

9 MR. JOHNSON: Sure. Sure.

10 (Whereupon, a brief recess is taken.)

11 MR. BAXLEY: Thank you for that courtesy, Your
12 Honor. And, Mr. Johnson, let me ask, can you hear me?

13 MR. JOHNSON: I can hear you fine.

14 MR. BAXLEY: Our court reporter, Ms. Andersen, your
15 back is towards me, ma'am, but can you hear me?

16 THE COURT REPORTER: Yes, I can. Thank you.

17 MR. BAXLEY: Judge, what I would like to do is
18 speak briefly, if I may. And, first of all, I want to pose
19 an objection. We did not break into Mr. Johnson's comments,
20 because, number one, the acoustics are somewhat difficult on
21 all of us, but, secondly, we let him finish his argument.
22 But we have not made a motion for summary judgment. This is
23 a motion to dismiss under Rule 12B. We have not converted
24 it to a summary judgment issue.

25 Mr. Johnson went into some length on some evidence

1 which was apparently adduced in the case below. And we
2 would respectfully object to that being part of this
3 determination because we have asked for a judgment on the
4 pleadings.

5 And what I respectfully believe has happened here
6 is that Mr. Johnson has jumbled his claims for negligence
7 and breach of good -- duty of good faith and fair dealing,
8 his claim for breach of warranty, civil conspiracy, with his
9 claim for equitable indemnity. And we respectfully stand on
10 Mr. Smith's arguments that the statute of limitation and
11 repose would prevent all of those other claims, other than
12 the equitable indemnity claim which may evolve as a result
13 of damages accruing and the equitable indemnity claim
14 accruing as of the settlement in this case. But all the
15 other claims we respectfully believe have long ago lost any
16 vitality due to the repose and limitation statutes.

17 And so if you let me, I would just like to briefly
18 discuss the equitable indemnity claim, if I may. First of
19 all, I should say, should have begun by saying, this is a
20 privilege. This is the first time in 15 years I've stood on
21 this side of the bench. I count it an honor to be back in
22 the courtroom, and your courtroom specifically, Judge Young.
23 And thank you for hearing us today.

24 We are in business court here. And we've all heard
25 the chief justice say it a dozen times, that the business

1 court was established because of particular needs of the
2 business community for a speedy, fair, and final resolution
3 of disputes in the courts so that the businesses can get
4 back on the job of running their businesses and not being
5 tangled in ongoing litigation. And, respectfully, I will
6 submit to you this case, and again specifically equitable
7 indemnity claim here, we believe cries out for an early
8 conclusion for some of the reasons that were just argued so
9 we can all move forward.

10 THE COURT: Whatever you are doing over there, it's
11 rattling and sounds like rattling papers. You must be on
12 speaker phone.

13 MR. JOHNSON: I apologize. I will take my hands
14 off. I didn't realize.

15 THE COURT: That's okay.

16 MR. BAXLEY: Paragraph 12 of the complaint in the
17 underlying case, which the complaint in the underlying case
18 is attached to the pleadings in this specific case we are
19 here before today as Attachment D. And Paragraph 12 is
20 instructive. And this, again, on the issue of equitable
21 indemnity -- I should say, actually, the complaint below is
22 instructive. That litigation was brought by Nate Fata, who
23 is a well-respected attorney here in the 15th Circuit who
24 specializes in class actions and class actions against
25 governmental entities, which Santee Cooper is. And you will

1 note in that complaint that Santee Cooper was not a party to
2 the underlying action. And there's a reason for that.
3 There's no need to get into the specifics of that. I will
4 just point out that we are not a party.

5 And, of course, plaintiff's counsel would have a
6 fiduciary duty, an advocacy duty, and a representative duty
7 to name a culpable party. And Santee Cooper was not named
8 in the case below. So we are here today on what really
9 essentially is a subrogation claim.

10 And when you talk about equitable indemnity, it's
11 appropriate to look at who are the parties in interest under
12 Rule 17? Mr. Johnson referred earlier to the settlement
13 agreement which is going to be heard by Judge Culbertson
14 this Friday. And in that settlement agreement, there is a
15 paragraph, and I believe it's Paragraph 4, which states that
16 Federated Insurance Company, which is the carrier for Horry
17 Electric Cooperative, has funded the settlement. So I will
18 just point out with regard to equitable damages, Horry
19 Electric Cooperative may not yet have any skin in the game,
20 and that Federated may be the Rule 17 party in interest.

21 Paragraph 9 of the plaintiff's complaint in this
22 case refers to the two letters we referred to from October
23 1986, as what I will call smoking guns in this case, that
24 they were hidden by Santee Cooper, they were not disclosed.
25 And I just simply would say to you that to go back 28 years

1 and to allege liability on some document of that antiquity
2 violates every tenet of fairness and due process in these
3 courts, Your Honor.

4 And, specifically, as Mr. Johnson noted, we have
5 not answered, but when we answer, we will also raise a
6 defense of laches. Because it's almost impossible to defend
7 on an equitable indemnity claim something that happened 30
8 years ago.

9 And there's precedent for this. Mr. Johnson argued
10 that you have to first file your answer, assert an
11 affirmative defense, and then raise a dispute that
12 affirmative defense. So you can't win or have a case
13 dismissed on affirmative defense on a 12(b)(6) motion. And
14 I had a copy here for Mr. Johnson. I've given a copy to our
15 court reporter of some precedent right on point, which is
16 from the Fourth Circuit. There's no state case. But it's
17 Goodman vs. Praxair, Inc. And I have a copy for the Court,
18 which may be found at 494F 3rd, 458, a 2007 case.

19 THE COURT: 458?

20 MR. BAXLEY: Yes, sir, 494F 3rd 458. That was a
21 suit over \$627,000 on a breach of contract where the
22 plaintiff put in his complaint that the money had been due
23 and owing since December 19th of 2000, but he filed a suit
24 over three years later. And the court dismissed it because
25 in the face of the complaint was an affirmative defense that

1 could appropriately be discerned, and granted the
2 affirmative defense and granted the 12(b)(6) motion.

3 And what the court says is that where facts
4 sufficient to rule on an affirmative defense are alleged in
5 the complaint, the defense may be reached by a motion to
6 dismiss filed under Rule 12(b)(6).

7 And, respectfully, when he alleges a 28-year-old
8 document is the basis for all of this later litigation
9 against Santee Cooper, then the doctrine of laches would
10 apply and prevent that case from going forward.

11 And then finally, Your Honor, I would just
12 simply -- if you will just permit me. We are here today --
13 go back to where I started. We are here in business court.
14 And this court does not occur in a vacuum. Santee Cooper
15 has substantial business interests, as does Horry Electric
16 Cooperative, I'm sure. The newspapers are full of the fact
17 that we are in the business of building nuclear plants at
18 this time. It's highly capital intensive. It's highly
19 leveraged. That's why we are in the business court, for one
20 example.

21 In order to build a nuclear plant, you borrow
22 money. The way the state agency borrows money is by the
23 issuance of bonds. When the bond council comes and take a
24 look at what's going on with Santee Cooper, they look to see
25 whether there may be pending litigation, contingent

1 liabilities, and other things that may bear upon Santee
2 Cooper's fiscal responsibility. And if the bonds are
3 downgraded, then the two million ratepayers for Santee
4 Cooper, the thousands who hold those bonds, the 1,700
5 employees, and all of those here today, are held hostage by
6 what's really an unfair and inappropriate, I would
7 respectfully say, due process violation to go forward on
8 this theory of liability.

9 So for these reasons, Your Honor, we ask you to
10 dismiss this case, including the equitable indemnity claim,
11 with prejudice, and end this matter now out of fairness to
12 the parties.

13 And thank you, Your Honor. I will be glad to
14 answer any questions that you may have.

15 THE COURT: Well, let me ask you this. If I were
16 to agree that all except the equitable indemnity are ripe
17 for ruling and that statute of repose applies that bars them
18 from going forward, wouldn't the dismissal of the equitable
19 indemnity claim with prejudice be improper? Wouldn't it
20 need to be without prejudice so that then if they have to
21 pay out, they could revive that claim after they've paid out
22 money, whether or not they would be entitled to be
23 reimbursed by you because of, say, problems with -- for
24 instance, they weren't exonerated and the application of the
25 principle would not allow them to recover?

1 But to dismiss an equitable indemnification with
2 prejudice, I'm not sure that would be the right thing to do,
3 simply because they haven't had -- they haven't fully funded
4 a settlement yet.

5 There's a certain amount of discomfort that any
6 court has where one party settles a lawsuit and then says to
7 somebody else, you've got to pay. And I agree that you've
8 got some issues about why weren't we brought into that, and
9 if we were -- if we are going to be responsible, maybe we
10 should have been in there. Because, again, they don't
11 really have any skin in the game, one, because of insurance,
12 but, two, on the fundamental principle of you settle a claim
13 and ask somebody else to pay for it. I think that ought to
14 be raised on another day. Dismissal without prejudice would
15 be, I think, more appropriate.

16 MR. BAXLEY: Well, we respect your decision, Your
17 Honor. And we, of course, will respond appropriately. And
18 thank you for hearing us today.

19 MR. JOHNSON: Your Honor, can I make just one brief
20 point on the statute of repose?

21 THE COURT: Sure.

22 MR. JOHNSON: The motion to dismiss based upon the
23 statute of repose is to dismiss based upon the 8-year
24 statute. There's no motion to dismiss addressing the
25 13-year statute. As I said, the statute itself, the

1 comments, the editorial comments, that only applies after
2 constriction after 2005. My position would be that they
3 have not raised in their motion the application of a 13-year
4 statute. And you would be -- even if you -- I certainly
5 hope you don't grant them any relief, but to the extent you
6 will grant relief upon the 13-year statute, that's not a
7 matter that's been raised by the defendant.

8 If you look on Page 4 of their motion, that's where
9 that's addressed.

10 THE COURT: What about that?

11 MR. SMITH: Your Honor, the statute is the statute.
12 It's 15-3-640. I believe the argument I'm hearing is one of
13 lack of notice. The plaintiff actually asserted that the
14 13-year statute applies. Therefore, there's no surprise.
15 He's not caught off guard. And if the 13-year statute
16 applies, it's rooted in the same code section. That's
17 simply a matter of whether you apply the statute as amended
18 in July of 2005 or as it existed before. It's not like
19 there are two separate statutes and two parts of the code
20 that Horry Electric had no notice of the 13-year statute.
21 We've raised the issue.

22 THE COURT: All right.

23 MR. JOHNSON: Your Honor, I would just ask you to
24 read Page 4 and 5 of the memo. I think it's clear what they
25 move for.

1 THE COURT: Well, it's an argument in a memo that's
2 not in the pleadings, correct?

3 MR. JOHNSON: It's not in the motion, correct.

4 THE COURT: Okay. But it's not in their -- all
5 right -- in their motion. The body of the motion doesn't
6 say the 8-year one applies. It just says statute of repose?

7 MR. JOHNSON: No. Actually, Judge, I believe it
8 does. Statute of repose bars claims arising over eight
9 years prior to commencement of the action. That's what
10 their motion on Page -- their motion listed to the amended
11 complaint on Page 4 and 5 --

12 THE COURT: Well, in any event, you would amend
13 that, I'm sure?

14 MR. SMITH: We hereby do so, to the extent
15 necessary, move in open court that the motion be amended to
16 assert the statute as argued by Horry Electric, yes, sir.

17 THE COURT: Ms. Warner, we haven't heard from you.
18 Would you like to say anything?

19 MS. WARNER: Your Honor, I appreciate your time and
20 consideration. I will not belabor, but it's always an honor
21 to appear before you.

22 THE COURT: Thank you. Well, I think that the
23 issue, as I understand your argument, is that this all arose
24 because of actions that occurred prior to the 13-year
25 statute of limitations, which is what our rule applies, well

1 in excess of it. And it all arises out of their knowledge
2 of a condition or -- what would be the exact phrase I'm
3 looking for? Santee Cooper's knowledge that there may be
4 problems with a particular form of -- of a requirement to
5 put a vapor barrier in place. And it all flows from there.

6 No matter when the house got constructed, the bad
7 act, as I understand the theory of the plaintiff's case, the
8 bad act took place back in 1986. And so all of the claims,
9 other than equitable indemnity, are barred by the statute of
10 repose.

11 I might also note that there is no cause of action
12 for breach of a good faith duty to deal -- that's implied in
13 a breach of contract. And there is no breach of contract
14 placed here. So that would be dismissed on those grounds as
15 well. But as far as the negligence and all the others,
16 those are all arising out of that bad act of not disclosing,
17 as I understand the arguments, theories and things I've
18 read.

19 So the statute of repose, the 13-year statute of
20 repose would bar the plaintiff's claims except for equitable
21 indemnity, which I find it's premature for you to have
22 brought that claim at this time, because you haven't paid
23 out anything that you are entitled to be reimbursed for. So
24 I will dismiss that, the equitable indemnity without
25 prejudice. But all the other ones are dismissed with

1 prejudice. I heard you rattling papers and you started to
2 speak, I think.

3 MR. JOHNSON: I did, but I didn't want to cut you
4 off.

5 THE COURT: That's okay.

6 MR. JOHNSON: Judge, were you considering matters
7 outside of the pleadings in doing this?

8 THE COURT: I don't think so.

9 MR. JOHNSON: Matters outside of the pleadings
10 reflect the affidavit or the testimony of the Horry --
11 excuse me, the Santee Cooper 30(b)(6) that the vapor barrier
12 was not put in initially as a requirement for construction.
13 And they did not occur and did not become a requirement
14 until 19 -- I will look and see if I can find what she said.
15 Give me a moment, if you can.

16 If you are considering matters outside of the
17 pleadings, it would move the date up, I believe.

18 THE COURT: I'm only considering what you told me
19 your theory of liability was, and that it flows from the bad
20 act of not disclosing when they had a duty to disclose; for
21 instance, on negligence, conspiring with another party to
22 not tell them about this knowledge that they had. All of
23 those things are what you've told me. At least that's what
24 my questioning was, to get to what exactly your theory of
25 liability was. And it all seemed to go back to this 1986

1 bad act.

2 MR. JOHNSON: And, Your Honor, I think I found what
3 I was looking for, and I don't think it matters. I withdraw
4 my argument. They didn't make it a requirement until 1991,
5 but it would still be under your ruling.

6 THE COURT: It would still be covered by the
7 statute of repose?

8 MR. JOHNSON: Right, under your ruling.

9 THE COURT: No matter what your -- no matter when
10 these acts or the particular act took place, your theory is
11 they should have told you because they knew. And the only
12 two dates that I'm hearing that they knew that they should
13 have told you, would have been '86 when they had knowledge
14 of it through these letters, or '91 when they made it a
15 requirement, which was a continuing, presumably, bad act
16 every day. But that's when the bad act took place that
17 triggered liability, would be the date of the discovery or
18 this letter in 1986 or the requirement that they implement
19 this in 1991. From that point on, their liability was
20 established, and is well passed the statute of repose.

21 So those are all dismissed with prejudice. But
22 your equitable indemnification, if you have any theory which
23 you can recover, it would be that one. But that will just
24 have to be decided another day, and you can refile. It's
25 dismissed without prejudice.

1 MR. JOHNSON: Yes.

2 THE COURT: And then a court can flesh out whether
3 or not you are entitled to it.

4 MR. JOHNSON: Correct.

5 THE COURT: And if you want me back to hear that
6 one, well, then just file a new lawsuit.

7 MR. JOHNSON: I may.

8 THE COURT: You probably want it in front of any
9 other judge at this point.

10 MR. JOHNSON: Do what you think is right. Pleased
11 to appear before you any time.

12 THE COURT: I'm going to ask Mr. Smith to prepare
13 an order for me; send it to you. Make sure that -- I know
14 you don't agree with it -- but that you think it's in proper
15 form, and then forward it on to me in Charleston, because --

16 MR. SMITH: Yes.

17 THE COURT: After Friday, I'm not traveling the
18 rest of the year at this point. So thank you so much. And
19 I'm sorry you made the wrong trip. Although, you know,
20 Charleston is a nice place to have to spend the day.

21 MR. JOHNSON: Well, I apologize again for that.
22 Thank you for doing this with me by phone.

23 THE COURT: Okay. Good luck. Have a safe trip
24 back.

25 MR. SMITH: Thank you.

1 MR. BAXLEY: Thank you, Mr. Johnson.

2 MR. JOHNSON: Okay. Thank you.

3 (Proceedings are concluded.)

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I, Karen V. Andersen, Registered Merit Reporter,
Certified Realtime Reporter, and Notary Public for the State
of South Carolina at Large, do hereby certify that the
foregoing transcript is a true, accurate and complete
Transcript of Record of the proceedings.

I further certify that I am neither related to nor
counsel for any party to the cause pending or interested in
the events thereof.

Witness my hand, I have hereunto affixed my official
seal this 12th day of August, 2014, at Charleston,
Charleston County, South Carolina.

Karen V. Andersen
Registered Merit Reporter
Certified Realtime Reporter
My Commission expires:
September 14, 2016

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Exhibit H

Initial Brief of Appellant

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Roger M. Young, Sr., Circuit Court Judge

Case No. 2013-CP-26-0488

RECEIVED

OCT 17 2014

SC Court of Appeals

Horry Electric Cooperative, Inc. Appellant

vs.

South Carolina Public Service Authority and Southern Electric International, Inc., Defendants,

Of whom South Carolina Public Service Authority is the Respondent

APPELLANT'S INITIAL BRIEF

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STATEMENT OF THE CASE

This action arises out of an underlying class action against Horry Electric Cooperative, Inc. ("HEC") titled *Ronnie Ferrell, Tammy Vance and David Montorio, on behalf of themselves and all others similarly situated v. Horry Electric Cooperative*, Civil Action No. 2011-CP-26-1266. [Amended Complaint R.p. ___] In the underlying action, the plaintiffs alleged that HEC offered a Good Cents program under which members could receive a favorable electric rate provided they complied with the requirements of the Good Cents program regarding insulation and other energy saving matters. One of the requirements for participation in the Good Cents program was installation of a vapor barrier on the interior of the exterior walls. The class representatives alleged that the vapor barrier requirement was a design defect that caused moisture to accumulate inside the walls which in turn caused mold, mildew and moisture damage to the structure. The plaintiffs alleged three causes of action against HEC: (1) design defect/breach of warranty; (2) negligence/gross negligence; and (3) breach of contract/covenant of good faith and fair dealing. [Amended Complaint R.p. ___] The underlying action was filed on or about February 9, 2011. [Complaint R.p. ___] A settlement was reached in the underlying action which was preliminarily approved by an Order dated March 3, 2014. [Settlement Agreement and Order R.p. ___] A final approval hearing was set on May 30, 2014. [Order R.p. ___]

On January 23, 2013, HEC filed this action against the South Carolina Public Service Authority ("Santee Cooper"). Santee Cooper was a developer and promoter of the Good Cents program. HEC's initial complaint sought damages by way of equitable indemnification. [Complaint R.p. ___] On July 5, 2013, Santee Cooper moved to dismiss the complaint. [Motion to Dismiss R.p. ___] On July 30, 2013, HEC filed and served an Amended Complaint asserting causes of action

for negligence, breach of warranty, civil conspiracy and equitable indemnification. [Amended Complaint R.p. __]

By an Order dated March 5, 2014 issued by the Chief Justice, this action was transferred to the business court and assigned to the Honorable Roger M. Young, Sr. [Order R.p. __]

On August 21, 2013, Santee Cooper moved to dismiss the Amended Complaint upon the following grounds:

"(a) the claim for equitable indemnity is barred by the statute of repose because the Complaint was filed on January 18, 2013, more than 8 years after the homes involved in the underlying action were constructed;

(b) the other purported claims are barred by the applicable statute(s) of limitation; and

(c) HEC has failed to state facts sufficient to constitute a cause of action against Santee Cooper."1 [Santee Cooper's Motion to Dismiss R.p. __]

No discovery took place in this action because Santee Cooper moved for a protective order but HEC was able to take a 30(b)(6) deposition of Santee Cooper in the underlying action. The 30(b)(6) deposition established that Santee Cooper knew of the vapor barrier problem before offering the Good Cents program to HEC and failed to disclose the potential problem to HEC. [Santee Cooper's 30(b)(6) Deposition R.p. __] On October 2, 2013, HEC filed a Motion for Partial Summary Judgment supported by the 30(b)(6) deposition. [HEC's motion for summary judgment R.p. __]

On May 16, 2014, HEC filed a motion to continue and/or stay any decision on Santee Cooper's motions on the following grounds:

"1. Upon information and belief, Santee Cooper will argue that the equitable indemnity claim should be dismissed because the claim for equitable indemnity requires proof that the party seeking indemnity have no personal negligence of his own. Santee Cooper may also argue that the above-captioned

1 Judge Young, in his order filed June 13, 2014, failed to state correctly the motion which Santee Cooper made. He changed subparagraph (a) to the following: "The claims are barred by the statute of repose because the underlying action is based on construction completed in the 1980s and 1990s."

action is premature and should be dismissed since Horry Electric has not yet suffered any damages in Civil Action No. 2011-CP-26-1266.

2. The proposed Settlement Agreement, attached hereto as Exhibit A, contains certain allegations regarding absence of personal negligence on the part of Horry Electric and Settlement Agreement, if approved, will establish the damage incurred by Horry Electric and absence of fault on the part of Horry Electric.

3. Upon information and belief, the Settlement Agreement dated February 28, 2014 will be approved by the Court on May 30, 2014 and if so, Horry Electric will ask that the Court take judicial notice of the approval of the Settlement Agreement and consider it in connection with the motion to dismiss." [Motion to Continue R.p.]

On May 27, 2014, Judge Young heard the above-referenced motions. By an Order filed June 13, 2014, Judge Young dismissed the claim for equitable indemnification without prejudice finding that the class action settlement had not been approved and no payments had been made pursuant to the purported settlement and, as a result thereof, the action was not ripe. Judge Young granted Santee Cooper's motion to dismiss all other claims with prejudice. Judge Young found that these claims were barred by the statute of repose and statute of limitations. (Order filed 6/13/14)

On July 2, 2014, HEC filed its Rule 59(e) Motion to Reconsider, Alter and/or Amend the Order filed June 13, 2014. [HEC's Rule 59(e) Motion R.p.] Judge Young summarily denied HEC's motion to reconsider by an Order dated July 14, 2014. [Order R.p.]

HEC filed its Notice of Appeal of the Order filed June 13, 2014 and the Order filed July 14, 2014. [Notice of Appeal R.p.]

I.

DID JUDGE YOUNG ERR IN FAILING TO DELAY THE HEARING AND/OR ANY RULING ON SANTEE COOPER'S MOTIONS UNTIL AFTER MAY 30, 2014 WHEN COURT APPROVAL OF THE SETTLEMENT OF THE CLASS ACTION WAS HEARD?

Judge Young held a hearing on the motions before him on May 27, 2014. A hearing before

Judge Culbertson to approve the class action settlement was scheduled for three days later on May 30, 2014.

Judge Young did not sign his written order until June 11, 2014. His order was not filed until June 13, 2014.

Judge Young's Order filed June 13, 2014 stated:

"1. Equitable Indemnification. As stated above, the claim for equitable indemnification is not yet ripe for adjudication. The parties in the *Ferrell* action have entered into a Settlement Agreement, which will require Court approval, but as of the date of the hearing in this matter, that approval had not yet occurred. Pursuant to the Settlement Agreement, HEC and/or its insurer will pay class members to settle their damages claims and will pay class counsel their attorneys' fees and costs. In the action at bar, HEC is seeking indemnification for such payments. Counsel for HEC reported that while some class members had submitted claims and class counsel had petitioned for attorneys' fees pursuant to the Settlement Agreement, court approval of the settlement had not been granted as of the date of this hearing. More importantly, no payments had been made pursuant to the Settlement Agreement. Accordingly, this Court finds that HEC's claims for indemnification are not yet ripe. The Court makes this finding after carefully considering and rejecting all of HEC's arguments relevant to the question of ripeness, regardless of whether such arguments are expressly enumerated herein. Finding that dismissal with prejudice would be premature, this Court dismisses the claim for equitable indemnification *without prejudice*." [Order filed June 13, 2014 R.p. __]

Judge Young dismissed the equitable indemnification claim on the ground that the class action settlement had not been approved and payments had not been made. However, he knew before he issued his order that Judge Culbertson had already approved the class action settlement on May 30, 2014. This is undisputed. This is proved by a footnote in Judge Young's Order.

"This settlement approval was pending before another Court. Approval was subsequently granted on May 30, 2014." [Order filed June 13, 2014 R.p. __]

Judge Young erred in issuing an order finding that the settlement had not been approved when, by the time he signed his order, the settlement had been approved and he knew it. His order is

prejudicial to HEC. If his order is affirmed, HEC will have to re-file its action, pay a second filing fee, and arrange for service. The Clerk of Court will have to set up a new file. Disposition of the action will unnecessarily be delayed. Obviously, delay and duplication is not what is needed in our judicial system. Other significant prejudice to HEC is set forth below. His order should be reversed.

II.

DID JUDGE YOUNG ERR IN ISSUING AN ORDER DISMISSING THE CAUSE OF ACTION FOR EQUITABLE INDEMNIFICATION BASED ON A FALSE PREMISE?

Judge Young granted Santee Cooper's motion to dismiss the equitable indemnity claim on the basis that the class action settlement had not been approved and no payments had been made pursuant to the Settlement Agreement. Yet at the time he signed his order, he knew this was not correct.

The hearing before Judge Young was on May 27, 2014. The approval hearing of the class action settlement was scheduled for hearing just three days later on May 30, 2014. Judge Young's order was not signed until June 11, 2014 and was not filed until June 13, 2014. The footnote in his order proves that Judge Young knew of the approval of the class action settlement prior to issuing his order on June 13, 2014, but he dismissed the equitable indemnity claim anyway. All Judge Young had to do was to take judicial notice of Judge Culbertson's order. His order states that he had "confined his decision to the amended Complaint, attachments thereto, matters of which the Court may take judicial notice, and the arguments of the parties at the hearing." Rule 201, SCRE provides that judicial notice "may be taken at any stage of the proceeding". His order dismissing the equitable indemnification claim was based on a false premise and should be reversed.

III.

WAS THE DISMISSAL OF THE EQUITABLE INDEMNIFICATION ACTION INCONSISTENT WITH THE PURPOSES OF THE BUSINESS COURT?

When Judge Young dismissed the cause of action for equitable indemnification, he found that since the class action settlement had not been approved and no payments had been made, HEC had no damage. [Order filed June 13, 2014 R.p. __]

This action had been transferred to the business court. Santee Cooper's counsel made the following argument regarding the purpose of the business court:

"because of particular needs of the business community for a speedy, fair, and final resolution of disputes in the courts so that the businesses can get back on the job of running their businesses and not being tangled in ongoing litigation." [Transcript p.28, line 2-5, R.p. __]

Granting a motion to dismiss the cause of action for equitable indemnification without prejudice does nothing to facilitate "a speedy, fair and final resolution" of the dispute. Dismissing the equitable indemnification claim will have the opposite effect and will unnecessarily delay the trial and will waste judicial time and resources. Judge Young's order dismissing HEC's action for equitable indemnification should be reversed.

IV.

DID JUDGE YOUNG ERR IN DISMISSING THE EQUITABLE INDEMNITY CLAIM BASED UPON A GROUND NOT RAISED BY SANTEE COOPER'S MOTION?

Judge Young dismissed the claim for equitable indemnification on a ground not raised by Santee Cooper in its motion. Santee Cooper's motion did not mention ripeness. Santee Cooper's counsel did not argue "ripeness" at the hearing. HEC had no notice that "ripeness" would be

considered by Judge Young and no opportunity to meet and be prepared to address the issue of ripeness.

According to Rule 7(b)(1), SCRCP:

"An application to the court for an order shall be by motion which, unless made during a hearing or trial in open court with a court reporter present, shall be made in writing, shall state with particularity the grounds therefore, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion." Emphasis supplied.

The particularity requirement of Rule 7(b)(1) was discussed by the Supreme Court in *Camp v. Camp*, 386 S.C. 571, 689 S.E.2d 634 (2010).

"Rule 7(b)(1), SCRCP required that motions 'shall state with particularity the ground therefore, and shall set forth the relief or order sought.' The particularity requirement 'is to be read flexibly in 'recognition of the peculiar circumstances of the case.' *Cambridge Plating Co., Inc. v. Napco, Inc.*, 85 F.3d 752, 760 (1st Cir. 1996) (quoting *Registration Control Sys., Inc. v. Compusystems, Inc.*, 922 F.2d 805, 808 (Fed. Cir. 1990)). 'By requiring notice to the court and the opposing party of the basis for the motion, rule 7(b)(1) advances the policies of reducing prejudice to either party and assuring that 'the court can comprehend the basis of the motion and deal with it fairly.' *Calderon v. Kansas Dept. of Soc. And Rehab. Servs.*, 181 F.3d 1180, 1186 (10th Cir. 1999) (quoting 5 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* Section 1192 at 42 (2d ed. 1990))." Therefore, when a motion is challenged for a lack of particularity, the court should ask 'whether any party is prejudiced by a lack of particularity or 'whether the court can comprehend the basis for the motion and deal with it fairly.' *Registration Control*, 922 F.2d at 807-08 (quoting 5 Wright & Miller, *Federal Practice and Procedure* Section 1192 at 42). 'The particularity requirement should not be applied in an overly technical fashion when the purpose behind the rule is not jeopardized.' *Andreas v. Volkswagen of Am., Inc.*, 336 F.3d 789, 793 (8th Cir. 2003) (citations omitted). Emphasis supplied.

Santee Cooper moved to dismiss the claim for equitable indemnification and stated the single ground of its motion with particularity. Santee Cooper sought to have the claim for equitable indemnification dismissed upon the following ground:

"(a) the claim for equitable indemnity is barred by the statute of repose because the

Complaint was filed on January 18, 2013, more than 8 years after the homes involved in the underlying action were constructed;" [Santee Cooper's Motion to Dismiss R.p. __]

Santee Cooper did not move to dismiss based upon the 13 year statute of repose. At the hearing, Santee Cooper's counsel admitted that if the thirteen year statute of repose was the applicable statute rather than the 8 year statute, then HEC had claims that were not barred by the statute. Santee Cooper's counsel argued:

"On the statute of repose, the parties are actually in agreement that the statute of repose is contained in Section 15-3-640, and it applies. The only question raised by Horry Electric is whether it's an 8-year or 13-year period. We have argued for the 8-year period, Your Honor, which would totally bar the complaint. If Your Honor were to agree with HEC and find that the 13-year period applied, then the complaint would be dismissed in part." [Transcript p. __, line __, R.p. __]

Judge Young found that the 8 year statute of repose did not apply. Once he ruled on the 8 year statute of repose, he should have stopped and denied Santee Cooper's motion on that cause of action. Instead, Judge Young, on his own, came up with a new ground for dismissal of the equitable indemnification claim. Judge Young's new ground was that the claim was not "ripe" since, according to Judge Young, the class action settlement has not been approved and no payments had been made pursuant to the settlement agreement. This was clear error.

A circuit court judge is not and should not become an advocate for one side or the other. Instead, a circuit court judge should sit as a referee to rule on the matters that are brought before him. Had Judge Young done that, he would have denied Santee Cooper's motion that was made based on the 8 year statute of repose and stopped there. HEC had no notice that an issue of ripeness would be raised. HEC had no time to prepare for an argument on ripeness. Arguing against some new theory the judge has raised is usually a hopeless task.

It was clear error for Judge Young to grant the motion on a ground not raised by the moving party. In *State v. Dicapua*, 383 S.C. 394, 680 S.E.2d 292 (2009), the Supreme Court stated:

"We now turn to the legal issue which resolves this case – may a trial court in a criminal case *sua sponte* order a new trial on a ground not raised by a party? We answered this question 'no' in the context of a civil proceeding in *Southern Railway Co. v. Coltex, Inc.*, 285 S.C. 213, 214, 329 S.E.2d 736 (1985) ('The sole issue is whether a trial judge *ex mero moto* can grant a new trial on a ground not raised by a party. We hold he cannot'). We hold the same result must follow in a criminal case. Moreover, to affirm the grant of a new trial on a waived issue in a criminal case would lend this Court's imprimatur to a trial court's impromptu grant of post conviction relief."

In *Standard Roofing Co., Inc. v. Dean Construction Co., Inc.*, 284 S.C. 40, 324 S.E.2d 334 (Ct. App. 1984), the Court of Appeals stated:

"As noted, Dean asked for relief based on reformation and indemnification; it did not seek relief under the contract documents or restitution. Therefore, the trial court erred by going beyond the scope of the pleadings and granting relief on theories not pleaded. Judgements 'not supported by the theor[ies] of action on which the pleadings [are] framed [are] fatally defective.' *Crocker v. Crocker*, 281 S.C. 154, 314 S.E.2d 343, 346 (Ct. App. 1984); *Bryan v. Bryan*, 282 S.C. 506, 319 S.E.2d 360 (Ct. App. 1984); *Glass v. Glass*, 276 S.C. 625, 281 S.E.2d 221, 222 (1981)." At page 295 of 680 S.E.2d.

These holdings should apply with equal force to a circuit court judge considering a motion to dismiss. Judge Young's order granting the motion to dismiss the cause of action for equitable indemnification should be reversed.

V.

DID JUDGE YOUNG ERR IN GRANTING THE MOTION TO DISMISS BY FAILING TO ACCEPT THE ALLEGATIONS OF THE AMENDED COMPLAINT AS BEING TRUE?

The law is clear that a judge, in considering and deciding a motion to dismiss, must accept the well pled allegations of the complaint as being true. *Gressette v. South Carolina Electric & Gas Co.*,

370 S.C. 377, 635 S.E.2d 538 (2006). Santee Cooper conceded as much in its motion:

"A motion to dismiss pursuant to Rule 12(b)(6), however, is based solely on the allegations set forth in the complaint, and for purposes of the motion, the court accepts well-pled facts as true. *Overcash v. S.C. Elec. & Gas Co.*, 364 S.C. 569, 614 S.E.2d 619 (2005)."

It is clear that Judge Young failed to do so. Judge Young dismissed the claim for equitable indemnification, finding that since the class action settlement had not yet been approved and no payments made pursuant to the settlement agreement, the action was not ripe. In essence, Judge Young found that HEC had no damages as of the time of the hearing and as a result, the action was not ripe for determination.

Judge Young made this finding even though HEC had pled that it had damages. Actually, the Amended Complaint contained allegation after allegation of damages. These allegations of damages are as follows:

17. That Horry Electric has incurred attorney's fees and costs in defending Civil Action No. 2011-CP-26-1266 for which Santee Coopers are liable.

18. That, to the extent Horry Electric is exonerated from liability to HECs in Civil Action No. 2011-CP-26-1266, Horry Electric is informed and believes that Santee Coopers are or may be liable to it for the expenses including attorney's fees and costs and any settlement costs incurred by Horry Electric in protecting its interest in Civil Action No. 2011-CP-26-1266.

22. That as a direct and proximate result thereof, HEC has incurred attorney's fees and expenses and may suffer other damages.

25. That Santee Coopers, by failing to disclose the information in Exhibits B and C, breached their implied duty of good faith and fair dealing which they owed to Horry Electric as a result of their contractual relationship, all to Horry Electric's damage, and Horry Electric is entitled to recover from Santee Coopers its actual damages and punitive damages as a result thereof.

28. That Santee Coopers breached their representation and warranties as aforesaid and as a result thereof, Horry Electric has suffered actual damages for which Santee Coopers are liable.

30. That, upon information and belief, Santee Cooper, who knew the information in Exhibits B to C but failed to disclose it to Horry Electric combined and joined for the purpose of injuring Horry Electric and caused Horry Electric to

suffer actual and special damages for which Santee Coopers are liable.

32. That, to the extent Horry Electric is exonerated from liability to HECs in Civil Action No. 2011-CP-26-1266, Horry Electric is informed and believes that Santee Coopers are or may be liable to Horry Electric for all expenses incurred by Horry Electric in protecting its interests." [Amended Complaint R.p.]

Obviously, if the foregoing allegations are accepted as being true, as required by law on a motion to dismiss, HEC had suffered damages and the action could not be dismissed on the ground that the action was not ripe because HEC had no damages. Since Judge Young failed to follow the law by failing to accept HEC's allegations as true, his Order dismissing the cause of action for equitable indemnification should be reversed.

VI.

DID JUDGE YOUNG ERR IN DISMISSING THE CLAIM FOR EQUITABLE INDEMNIFICATION BASED UPON LACK OF RIPENESS WHEN RULE 12(b), SCRPC DOES NOT PROVIDE FOR A MOTION TO DISMISS FOR LACK OF RIPENESS?

Rule 12(b), SCRPC, provides:

"Every defense, in law or fact, to a cause of action in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state facts sufficient to constitute a cause of action, (7) failure to join a party under Rule 19, (8) another action is pending between the same parties for the same claim."

Rule 12(b) provides for a limited number of defenses which can be asserted by way of a motion to dismiss. Rule 12(b) does not provide for or authorize a motion to dismiss based upon lack of ripeness. The ripeness is frequently raised in declaratory judgment actions where there is a question involving whether there is a controversy.

"Appellants' constitutional claim is not ripe for determination at this time. 'A

justicible controversy is a real and substantial controversy which is ripe and appropriate for judicial determination, as distinguished from a contingent, hypothetical or abstract dispute.' *Pee Dee Elec. Coop., Inc. v. Carolina Power & Light Co.*, 279 S.C. 64, 66, 301 S.E.2d 761, 762 (1983) (see also *Hitter v. McLeod*, 274 S.C. 616, 266 S.E.2d 418 (1980)."

Here, if the plaintiff did not have or allege any damages, the proper motion would be a Rule 12(b)(6) motion. A circuit court judge should not be allowed to grant a motion to dismiss for lack of ripeness when such is not permitted by Rule 12(b). Judge Young's order should be reversed.

VII.

WAS THE DISMISSAL OF THE CLAIM FOR EQUITABLE INDEMNIFICATION PREJUDICIAL TO HEC?

HEC's claim against Santee Cooper for equitable indemnification was subject to a defense of the 13 year statute of repose. Since the action was filed on January 23, 2013, HEC acknowledged that the statute of repose would bar all claims for residences that were substantially complete more than 13 years prior to this action being commenced. Santee Cooper's counsel, in argument, admitted that if the 13 year statute of repose applied, there were claims asserted that would not be barred. Counsel argued:

"On the statute of repose, the parties are actually in agreement that the statute of repose is contained in Section 15-3-640, and it applies. The only question raised by Horry Electric is whether it's an 8-year or 13-year period. We have argued for the 8-year period, Your Honor, which would totally bar the complaint. If Your Honor were to agree with HEC and find that the 13-year period applied, then the complaint would be dismissed in part." [Transcript p. __, line __, R.p. __]

"because of particular needs of the business community for a speedy, fair, and final resolution of disputes in the courts so that the businesses can get back on the job of running their businesses and not being tangled in ongoing litigation." [Transcript p.28, line 2-5, R.p. __]

This argument was binding on Santee Cooper. *Smith v. Pearson*, 210 S.C. 524, 530, 43 S.E.2d 479,

482 (1947) (a party is bound by statements of its counsel).

This action was filed on January 23, 2013. Claims in the underlying action based on substantial completion dates prior to January 23, 2000 would be barred by the 13 year statute of repose. If this action is dismissed and then has to be re-filed, then claims for residences with substantial completion dates between January 23, 2000 and whenever suit is re-filed will be barred. Obviously, dismissing this action and having to re-file it would be financially prejudicial to HEC in addition to the prejudice to HEC in having to re-file and pay another filing fee and have a delayed trial date as set forth above. Judge Young's order should be reversed.

VIII.

DID JUDGE YOUNG ERR IN GRANTING HEC'S OTHER CAUSES OF ACTION BASED ON THE STATUTE OF REPOSE WHICH WAS NOT RAISED AS A GROUND FOR DISMISSAL BY Santee COOPER'S MOTION?

Judge Young dismissed HEC's other causes of action on the ground that they were barred by the statute of repose. However, this ground was not raised in Santee Cooper's motion to dismiss the other causes of action. See Argument IV above and the authority referenced therein. For the reasons stated in HEC's Argument IV, Judge Young's order should be reversed as to the other causes of action.

IX.

DID JUDGE YOUNG MISINTERPRET AND MISAPPLY THE STATUTE OF REPOSE IN FINDING THAT THE STATUTE OF REPOSE BEGAN TO RUN BASED UPON THE OCCURRENCE RATHER THAN OF CERTAIN EARLIER ACTS WHEN SUBSTANTIAL IMPROVEMENT OCCURRED?

Judge Young found that the other claims asserted by HEC were barred by the statute of repose,

finding as follows:

"2. Statute of Repose. The Court finds that the statute of repose bars the remaining claims. These claims are predicated on letters written by a Santee Cooper employee in 1986 concerning, among other things, the vapor barrier design specifications for the Good Cents program. These specifications were then incorporated into construction completed as early as 1988 or, accepting for the sake of argument HEC's position asserted during the hearing, in 1991. (At the hearing, counsel for HEC stated that while the letters were written in 1986, the vapor barrier design specifications was not implemented until 1991). HEC further argues that HEC did not discover the existence of these Santee Cooper letters until the *Ferrell* suit was being litigated. HEC further argues that the 1986 letters demonstrate that Santee Cooper had knowledge about the vapor barrier design specification that it should have disclosed to HEC in 1986 (or 1991). Santee Cooper disputes these arguments. Reading the Amended Complaint and drawing all inferences in the light most favorable to HEC, the Court concludes that these claims are based on the theory that if HEC had been informed of the contents of the letters when they were written, HEC would not have adopted the vapor barrier design specifications and, consequently, these design specifications would not have been incorporated into the homes of its customers. As noted above, counsel for HEC argued that the operative date for incorporation of the design standards into customers' homes was 1991, rather than 1986 (the date of the letter) or 1988 (the date construction commenced according to the underlying complaint). Even if 1991 were the operative date on which the design specifications were incorporated into the construction of class members' homes, the statute of repose would bar the claims for negligence, breach of the covenant of good faith and fair dealing, breach of warranty, and civil conspiracy." [Order filed June 13, 2014 R.p. __]

The 13 year statute of repose is clear and unambiguous. A reading of the plain language of the 13 year statute of repose readily establishes that Judge Young misinterpreted and misapplied the statute of repose. The plain and unambiguous language of the statute of repose is that it begins to run "after substantial completion" of the improvement.

Section 15-3-640 provides in part as follows:

"No actions to recover damages based upon or arising out of the defective or unsafe condition of an improvement to real property may be brought more than thirteen years after substantial completion of such an improvement." Emphasis supplied.

Section 15-3-640 also states:

"This section describes an outside limitation of thirteen years after the **substantial completion** of the improvement, within which normal statutes of limitations continue to run." Emphasis supplied.

As Santee Cooper's counsel conceded, the class action consisted of claims involving homes in which substantial completion occurred within thirteen years of the commencement of the class action.

Santee Cooper's counsel conceded that those claims were not barred by the 13 year statute of repose.

"On the statute of repose, the parties are actually in agreement that the statute of repose is contained in Section 15-3-640, and it applies. The only question raised by Horry Electric is whether it's an 8-year or 13-year period. We have argued for the 8-year period, Your Honor, which would totally bar the complaint. If Your Honor were to agree with HEC and find that the 13-year period applied, then the complaint would be dismissed in part," [Transcript p. __, line __, R.p. __]

Judge Young disregarded this concession and ruled that all claims were barred. This Court should find that the circuit court judge misinterpreted the statute of repose as written and reverse his order dismissing the other causes of action based upon the 13 year statute of repose.

X.

DID THE CIRCUIT COURT JUDGE ERR IN FINDING THAT ALL OTHER CLAIMS WERE BARRED BY THE STATUTE OF LIMITATIONS?

Judge Young stated in his order that he was not converting the motion to dismiss to a motion for summary judgment. He found that HEC's other claims were barred by the two year statute of limitations in Tort Claims Act. He found:

"3. Statute of Limitations. The Court notes that Santee Cooper also moved for dismissal of HEC's claims for negligence, breach of the duty of good faith and fair dealing, breach of express and implied warranties, and civil conspiracy on the basis of the two-year statute of limitations contained in the Tort Claims Act ('TCA'). See S.C. Code Ann. §15-78-110; *see also* *Hodges v. Rainey*, 341 S.C. 79, 91-92, 533 S.E.2d 578, 584 (2000) (recognizing TCA applies to Santee Cooper). The Court finds that the statute of limitations provides an additional reason for

dismissal of these claims.²

In oral argument, HEC asserted that actions brought under the TCA are subject to the discovery rule, *Joubert v. S.C. Dep't of Soc. Services*, 341 S.C. 176, 190, 534 S.E.2d 1, 8 (Ct. App. 2000), and that it did not have knowledge of the 1986 letters until discovery began in the underlying *Ferrell* case. 'According to the discovery rule, the statute of limitations begins to run when a cause of action reasonably ought to have been discovered.' *Id.* See also *Anonymous Taxpayer v. S.C. Dep't of Revenue*, 377 S.C. 425, 661 S.E.2d 73 (2008) ('The limitations period begins to run when a party knows or should know, through the exercise of due diligence, that a cause of action might exist.'). 'The date on which discovery should have been made is an objective rather than subjective question.' *Dorman v. Campbell*, 331 S.C. 179, 184, 500 S.E.2d 786, 789 (Ct. App. 1998). 'The critical inquiry, then, is whether [HEC] could have discovered its claim against Santee Cooper.' See *Republic Contracting Corp. v. S.C. Dep't of Highways & Public Trans.*, 332 S.C. 197, 207, 503 S.E.2d 761, 767 (Ct. App. 1998) (emphasis added).

On their face, argues Santee Cooper, the 1986 letters show that HEC could have discovered the information that HEC alleges Santee Cooper should have divulged to HEC, because the letters show that this information was contained in engineering standards and a trade publication, and was the subject of some discussion in the local building community. According to this argument, the statute of limitations began to run in 1986. The Court agrees. Alternatively, argues Santee Cooper, the Amended Complaint alleges that Santee Cooper later altered the vapor barrier design specifications in 2003 and this change put HEC on notice to inquire about the reasons for the change. Thus, under this argument, the statute of limitations began to run in 2003. The Court finds that this alternative argument from HEC actually supports dismissal of the claims other than equitable indemnification. The Court so rules after carefully considering and rejecting all of HEC's arguments relevant to the statute of limitations, regardless of whether such arguments are expressly enumerated herein."

Judge Young, in so ruling, made findings that had to be based upon matters outside of the four corners of the Amended Complaint. Although the letters attached to the Amended Complaint refer to ASHRAE 85' Fundamental - 21.17 and Energy Design Update, there is nothing in the Amended Complaint that shows that letters contained information regarding "engineering standards and a trade publication". Even if there were, there is simply nothing to show how, when and why the information should have

² It should be noted that the cause of action for breach of the duty of good faith and fair dealing and breach

been discovered by HEC. While it is true that Santee Cooper's attorney argued that the ASHRAE '85 Fundamental -21.17 set forth "engineering standards" and that Energy Design Update is a "trade publication", but argument of counsel is not evidence. There is also nothing to show that the vapor barrier issue was the subject of some discussion in the local building community. However, even if there were, there is nothing to show what the "some discussion" consisted of and how HEC could have learned of the discussion.

Even if HEC should have learned of the vapor barrier problem in 1986 or 1991, mere knowledge of the vapor barrier problem would not start the statute of limitations begin to run.

"The statute of limitations begins to run at the time the cause of action accrues. *Harvey v. S.C. Dep't of Corr.*, 338 S.C. 500, 508, 527 S.E.2d 765, 769 (Ct. App. 2000) (citing *Matthews v. City of Greenwood*, 305 S.C. 267, 269, 407 S.E.2d 668, 669 (Ct. App. 1991)). In analyzing a limitations defense, '[t]he fundamental test for determining whether a cause of action has accrued is whether the party asserting the claim can maintain an action to enforce it.' *Id.* (quoting *Matthews*, 305 S.C. at 269, 407 S.E.2d at 669). Thus, a particular cause of action accrues 'at the moment when the plaintiff has a legal right to sue on it.' *Id.*"

HEC had no legal right to sue until it had damage. HEC had no damage until it was sued in the underlying action. Damages are an essential element of each of the causes of action asserted in this action.³ Judge Young's order dismissing this cause of action based upon the statute of limitations should be reversed.

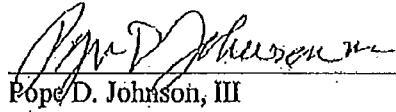
CONCLUSION

As then Chief Judge Alex Sanders so aptly stated "[A]ppellate courts like well behaved children do not speak unless spoken to and do not answer questions they were not asked." *State v.*

of express and implied warranties are not torts which are subject to the Tort Claims Act.

³ Judge Young dismissed the cause of action for equitable indemnification because he found that there were no damages, but in the same order found that the statute of limitations had run on the other causes of action. While HEC denies that Judge Young was correct in his ruling on the cause of action for equitable

Austin, 306 S.C. 9, 19, 409 S.E.2d 811, 817 (Ct. App. 1990). This principle applies with equal force to the circuit court judge. Judge Young, who enjoys an excellent reputation, somehow went astray in this case. He answered questions which were not asked and he answered them incorrectly. He misinterpreted the clear language of the statute of repose. He dismissed causes of action based on the statute of limitations while, in the same order, he dismissed the equitable indemnification claim finding that HEC had not yet suffered any damage. His order is flawed for multiple reasons. This Court should reverse Judge Young's order.



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pope@popejohnsonlaw.com
Attorney for Appellant

Columbia, South Carolina
October 16, 2014

Indemnification, this demonstrates one of the glaring inconsistencies in Judge Young's order.

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Roger M. Young, Sr., Circuit Court Judge

Case No. 2013-CP-26-0488

RECEIVED

OCT 17 2014

SC Court of Appeals

Horry Electric Cooperative, Inc., ...Appellant

vs.

South Carolina Public Service Authority and Southern Electrical International, Inc.,
Defendants

Of whom South Carolina Public Service Authority is the Respondent

PROOF OF SERVICE

I, Sherry W. Wise, of Pope D. Johnson, III, Attorney at Law, hereby certify that I have served B. Rush Smith, III, attorney for the Respondent, with the following pleadings by mailing a copy of same, postage prepaid and return address clearly indicated, to him at the following address on the 17th day of October, 2014.

COUNSEL SERVED:

B. Rush Smith, III, Esquire
Nelson Mullins Riley & Scarborough, LLP
1320 Main Street, 17th Floor
Columbia, SC 29201

PLEADINGS:

Appellant's Initial Brief

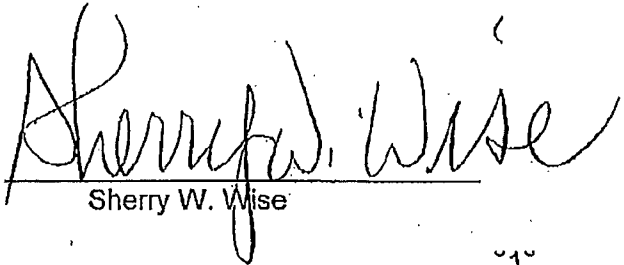

Sherry W. Wise

Exhibit I

Montorio Deed

654699

Prepared By and Return to:
N. David DuRant & Associates, P.A.
1801 Glens Bay Road
Surfside Beach, SC 29575
98-8806NDD

FILED
HORRY COUNTY

98 FEB -2 PM 3:47

R.M.C.

HORRY COUNTY ASSESSOR

Parcel ID# 179-12-01-113

Map Blk Parcel 2-3-98 *jc*

STATE OF SOUTH CAROLINA)

)

WARRANTY DEED

COUNTY OF HORRY)

)

KNOW ALL MEN BY THESE PRESENTS, that H, J. A. FOX, INC., in the State

aforesaid, for and in consideration of the sum of Ninety-four Thousand Four Hundred and no/100

(\$94,400.00) Dollars to it paid by DAVID E. MONTORIO and HOLLY S. MONTORIO, in

the State aforesaid, the receipt whereof is hereby acknowledged, has granted, bargained, sold and

released and by these presents does grant, bargain, sell and release unto the said DAVID E.

MONTORIO and HOLLY S. MONTORIO, as tenants in common, for and during their joint

lives, and upon the death of either of them, then to the survivor of them, their heirs and assigns,

forever, in fee simple, together with every contingent remainder and right of reversion, the

following described property, to wit:

ALL AND SINGULAR, that certain piece, parcel or lot of land lying, situate and being in Horry County, South Carolina and shown as LOT TWENTY-EIGHT (28) of WORTHINGTON ESTATES on that certain plat prepared by Michael S. Culler, Jr., P.L.S., of Culler Land Surveying Co., Inc., for J. A. Fox, Inc., dated November 6, 1996 and recorded January 15, 1997 in Plat Book 145 at Page 203, in the Office of the R.M.C. for Horry County, South Carolina. Said lot being more particularly described on said Plat and reference to which is craved as forming a part of this description.

This is the identical property conveyed to the Grantor herein by Deed of Foxworth Porter Development, LLC, dated October 20, 1997, and recorded in the Office of the RMC for Horry County, South Carolina on October 20, 1997, in Deed Book 1984 at Page 508.

Grantee(s)' Address: 303 WORTHINGTON CIRCLE, MYRTLE BEACH, SC 29577

BOOK 2009 PAGE 476

476

STATE 24570 COUNTY 103.93
EXEMPT YES NO
ASSESSOR

Exhibit J

Montorio Mortgage

Record and return to:
N. David DuRant & Associates, PA
1801 Glenns Bay Road
Surfside Beach, SC 29575
98-8806NDD

972419711

656699
FILED
Horry County

98 FEB -2 PM 3:48

R.M.C.

[Space Above This Line For Recording Data]

MORTGAGE

THIS MORTGAGE ("Security Instrument") is given on January 30, 1998
David E. Montorio and Holly S. Montorio

The mortgagor is

DEM HSM
DEM HSM

("Borrower"). This Security Instrument is given to American Home Funding, Inc.

which is organized and existing under the laws of the State of New York
address is 2411 North Oak Street, Myrtle Beach, SC 29577

, and whose

("Lender"). Borrower owes Lender the principal sum of

Eighty Nine Thousand Six Hundred and 00/100

Dollars (U.S. \$89,600.00).

This debt is evidenced by Borrower's note dated the same date as this Security Instrument ("Note"), which provides for monthly payments, with the full debt, if not paid earlier, due and payable on February 1, 2028.

This Security Instrument secures to Lender: (a) the repayment of the debt evidenced by the Note, with interest, and all renewals, extensions and modifications of the Note; (b) the payment of all other sums, with interest, advanced under paragraph 7 to protect the security of this Security Instrument; and (c) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to Lender and Lender's successors and assigns the following described property located in Horry County, South Carolina:

LOT TWENTY-EIGHT (28) of WORTHINGTON ESTATES as is more fully described on Exhibit "A" attached hereto and made a part hereof.

SUBJECT TO COVENANTS OF RECORD.

DEM HSM
DEM HSM

VOL 2239 805

which has the address of 303 Worthington Circle, Myrtle Beach
South Carolina 29577

[Zip Code] ("Property Address");

(Street, City)

SOUTH CAROLINA Single Family FNMA/FHLMC
UNIFORM INSTRUMENT Form 3041 9/90
Amended 10/94

① 6R(SC) (6512)

VMP MORTGAGE FORMS - (800) 621-7281

Page 1 of 8 1556540

Initials: _____



TO HAVE AND TO HOLD this property unto Lender and Lender's successors and assigns, forever, together with all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. **Payment of Principal and Interest; Prepayment and Late Charges.** Borrower shall promptly pay when due the principal of and interest on the debt evidenced by the Note and any prepayment and late charges due under the Note.

2. **Funds for Taxes and Insurance.** Subject to applicable law or to a written waiver by Lender, Borrower shall pay to Lender on the day monthly payments are due under the Note, until the Note is paid in full, a sum ("Funds") for: (a) yearly taxes and assessments which may attain priority over this Security Instrument as a lien on the Property; (b) yearly leasehold payments or ground rents on the Property, if any; (c) yearly hazard or property insurance premiums; (d) yearly flood insurance premiums, if any; (e) yearly mortgage insurance premiums, if any; and (f) any sums payable by Borrower to Lender, in accordance with the provisions of paragraph 8, in lieu of the payment of mortgage insurance premiums. These items are called "Escrow Items." Lender may, at any time, collect and hold Funds in an amount not to exceed the maximum amount a lender for a federally related mortgage loan may require for Borrower's escrow account under the federal Real Estate Settlement Procedures Act of 1974 as amended from time to time, 12 U.S.C. Section 2601 *et seq.* ("RESPA"), unless another law that applies to the Funds sets a lesser amount. If so, Lender may, at any time, collect and hold Funds in an amount not to exceed the lesser amount. Lender may estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with applicable law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is such an institution) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items. Lender may not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and applicable law permits Lender to make such a charge. However, Lender may require Borrower to pay a one-time charge for an independent real estate tax reporting service used by Lender in connection with this loan, unless applicable law provides otherwise. Unless an agreement is made or applicable law requires interest to be paid, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender may agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds, showing credits and debits to the Funds and the purpose for which each debit to the Funds was made. The Funds are pledged as additional security for all sums secured by this Security Instrument.

If the Funds held by Lender exceed the amounts permitted to be held by applicable law, Lender shall account to Borrower for the excess Funds in accordance with the requirements of applicable law. If the amount of the Funds held by Lender at any time is not sufficient to pay the Escrow Items when due, Lender may so notify Borrower in writing, and, in such case Borrower shall pay to Lender the amount necessary to make up the deficiency. Borrower shall make up the deficiency in no more than twelve monthly payments, at Lender's sole discretion.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender. If, under paragraph 21, Lender shall acquire or sell the Property, Lender, prior to the acquisition or sale of the Property, shall apply any Funds held by Lender at the time of acquisition or sale as a credit against the sums secured by this Security Instrument.

3. **Application of Payments.** Unless applicable law provides otherwise, all payments received by Lender under paragraphs 1 and 2 shall be applied: first, to any prepayment charges due under the Note; second, to amounts payable under paragraph 2; third, to interest due; fourth, to principal due; and last, to any late charges due under the Note.

4. **Charges; Liens.** Borrower shall pay all taxes, assessments, charges, fines and impositions attributable to the Property which may attain priority over this Security Instrument, and leasehold payments or ground rents, if any. Borrower shall pay these obligations in the manner provided in paragraph 2, or if not paid in that manner, Borrower shall pay them on time directly to the person owed payment. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this paragraph. If Borrower makes these payments directly, Borrower shall promptly furnish to Lender receipts evidencing the payments.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender; (b) contests in good faith the lien by, or defends against enforcement of the lien in, legal proceedings which in the Lender's opinion operate to prevent the enforcement of the lien; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which may attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Borrower shall satisfy the lien or take one or more of the actions set forth above within 10 days of the giving of notice.

5. **Hazard or Property Insurance.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage" and any other hazards, including floods or flooding, for which Lender requires insurance. This insurance shall be maintained in the amounts and for the periods that Lender requires. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's approval which shall not be unreasonably withheld. If Borrower fails to maintain coverage described above, Lender may, at Lender's option, obtain coverage to protect Lender's rights in the Property in accordance with paragraph 7.

All insurance policies and renewals shall be acceptable to Lender and shall include a standard mortgage clause. Lender shall have the right to hold the policies and renewals. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower.

Unless Lender and Borrower otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged, if the restoration or repair is economically feasible and Lender's security is not lessened. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with any excess paid to Borrower. If Borrower abandons the Property, or does not answer within 30 days a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may collect the insurance proceeds. Lender may use the proceeds to repair or restore the Property or to pay sums secured by this Security Instrument, whether or not then due. The 30-day period will begin when the notice is given.

Unless Lender and Borrower otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly payments referred to in paragraphs 1 and 2 or change the amount of the payments. If under paragraph 21 the Property is acquired by Lender, Borrower's right to any insurance policies and proceeds resulting from damage to the Property prior to the acquisition shall pass to Lender to the extent of the sums secured by this Security Instrument immediately prior to the acquisition.

6. **Occupancy, Preservation, Maintenance and Protection of the Property; Borrower's Loan Application; Leaseholds.** Borrower shall occupy, establish, and use the Property as Borrower's principal residence within sixty days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control. Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate, or commit waste on the Property. Borrower shall be in default if any forfeiture action or proceeding, whether civil or criminal, is begun that in Lender's good faith judgment could result in forfeiture of the Property or otherwise materially impair the lien created by this Security Instrument or Lender's security interest. Borrower may cure such a default and reinstate, as provided in paragraph 18, by causing the action or proceeding to be dismissed with a ruling that, in Lender's good faith determination, precludes forfeiture of the Borrower's interest in the Property or other material impairment of the lien created by this Security Instrument or Lender's security interest. Borrower shall also be in default if Borrower, during the loan application process, gave materially false or inaccurate information or statements to Lender (or failed to provide Lender with any material information) in connection with the loan evidenced by the Note, including, but not limited to, representations concerning Borrower's occupancy of the Property as a principal residence. If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

7. **Protection of Lender's Rights in the Property.** If Borrower fails to perform the covenants and agreements contained in this Security Instrument, or there is a legal proceeding that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture or to enforce laws or regulations), then Lender may do and pay for whatever is necessary to protect the value of the Property and Lender's rights in the Property. Lender's actions may include paying any sums secured by a lien which has priority over this Security Instrument, appearing in court, paying reasonable attorneys' fees and entering on the Property to make repairs. Although Lender may take action under this paragraph 7, Lender does not have to do so.

Any amounts disbursed by Lender under this paragraph 7 shall become additional debt of Borrower secured by this Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

8. **Mortgage Insurance.** If Lender required mortgage insurance as a condition of making the loan secured by this Security Instrument, Borrower shall pay the premiums required to maintain the mortgage insurance in effect. If, for any reason, the mortgage insurance coverage required by Lender lapses or ceases to be in effect, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the mortgage insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the mortgage insurance previously in effect, from an alternate mortgage insurer approved by Lender. If substantially equivalent mortgage insurance coverage is not available, Borrower shall pay to Lender each month a sum equal to one-twelfth of the yearly mortgage insurance premium being paid by Borrower when the insurance coverage lapsed or ceased to be in effect. Lender will accept, use and retain these payments as a loss reserve in lieu of mortgage insurance. Loss reserve

payments may no longer be required, at the option of Lender, if mortgage insurance coverage (in the amount and for the period that Lender requires) provided by an insurer approved by Lender again becomes available and is obtained. Borrower shall pay the premiums required to maintain mortgage insurance in effect, or to provide a loss reserve, until the requirement for mortgage insurance ends in accordance with any written agreement between Borrower and Lender or applicable law.

9. **Inspection.** Lender or its agent may make reasonable entries upon and inspections of the Property. Lender shall give Borrower notice at the time of or prior to an inspection specifying reasonable cause for the inspection.

10. **Condemnation.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Property, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender.

In the event of a total taking of the Property, the proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with any excess paid to Borrower. In the event of a partial taking of the Property in which the fair market value of the Property immediately before the taking is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the taking, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the taking, divided by (b) the fair market value of the Property immediately before the taking. Any balance shall be paid to Borrower. In the event of a partial taking of the Property in which the fair market value of the Property immediately before the taking is less than the amount of the sums secured immediately before the taking, unless Borrower and Lender otherwise agree in writing or unless applicable law otherwise provides, the proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the condemnor offers to make an award or settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the proceeds, at its option, either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due.

Unless Lender and Borrower otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly payments referred to in paragraphs 1 and 2 or change the amount of such payments.

11. **Borrower Not Released; Forbearance By Lender Not a Waiver.** Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to any successor in interest of Borrower shall not operate to release the liability of the original Borrower or Borrower's successors in interest. Lender shall not be required to commence proceedings against any successor in interest or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or Borrower's successors in interest. Any forbearance by Lender in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

12. **Successors and Assigns Bound; Joint and Several Liability; Co-signers.** The covenants and agreements of this Security Instrument shall bind and benefit the successors and assigns of Lender and Borrower, subject to the provisions of paragraph 17. Borrower's covenants and agreements shall be joint and several. Any Borrower who co-signs this Security Instrument but does not execute the Note: (a) is co-signing this Security Instrument only to mortgage, grant and convey that Borrower's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower may agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without that Borrower's consent.

13. **Loan Charges.** If the loan secured by this Security Instrument is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge under the Note.

14. **Notices.** Any notice to Borrower provided for in this Security Instrument shall be given by delivering it or by mailing it by first class mail unless applicable law requires use of another method. The notice shall be directed to the Property Address or any other address Borrower designates by notice to Lender. Any notice to Lender shall be given by first class mail to Lender's address stated herein or any other address Lender designates by notice to Borrower. Any notice provided for in this Security Instrument shall be deemed to have been given to Borrower or Lender when given as provided in this paragraph.

15. **Governing Law; Severability.** This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. In the event that any provision or clause of this Security Instrument or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision. To this end the provisions of this Security Instrument and the Note are declared to be severable.

16. **Borrower's Copy.** Borrower shall be given one conformed copy of the Note and of this Security Instrument.

17. **Transfer of the Property or a Beneficial Interest in Borrower.** If all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) without Lender's prior written consent, Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if exercise is prohibited by federal law as of the date of this Security Instrument.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is delivered or mailed within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

18. **Borrower's Right to Reinstate.** If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earlier of: (a) 5 days (or such other period as applicable law may specify for reinstatement) before sale of the Property pursuant to any power of sale contained in this Security Instrument; or (b) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees; and (d) takes such action as Lender may reasonably require to assure that the lien of this Security Instrument, Lender's rights in the Property and Borrower's obligation to pay the sums secured by this Security Instrument shall continue unchanged. Upon reinstatement by Borrower, this Security Instrument and the obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under paragraph 17.

19. **Sale of Note; Change of Loan Servicer.** The Note or a partial interest in the Note (together with this Security Instrument) may be sold one or more times without prior notice to Borrower. A sale may result in a change in the entity (known as the "Loan Servicer") that collects monthly payments due under the Note and this Security Instrument. There also may be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change in accordance with paragraph 14 above and applicable law. The notice will state the name and address of the new Loan Servicer and the address to which payments should be made. The notice will also contain any other information required by applicable law.

20. **Hazardous Substances.** Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property that is in violation of any Environmental Law. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property.

Borrower shall promptly give Lender written notice of any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge. If Borrower learns, or is notified by any governmental or regulatory authority, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law.

As used in this paragraph 20, "Hazardous Substances" are those substances defined as toxic or hazardous substances by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. As used in this paragraph 20, "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

21. **Acceleration; Remedies.** Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under paragraph 17 unless applicable law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument, foreclosure by judicial proceeding and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Borrower to acceleration and foreclosure. If the default is not cured on or before the date specified in the notice, Lender, at its option, may require immediate payment in full of all sums secured by this Security Instrument without further demand and may foreclose this Security Instrument by judicial proceeding. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this paragraph 21, including, but not limited to, reasonable attorneys' fees and costs of title evidence, all of which shall be additional sums secured by this Security Instrument.

D. M. M.

22. Release. Upon payment of all sums secured by this Security Instrument, this Security Instrument shall become null and void. Lender shall release this Security Instrument without charge to Borrower. Borrower shall pay any recordation costs.

23. Waivers. Borrower waives all rights of homestead exemption in the Property.

24. Future Advances. The lien of this Security Instrument shall secure the existing indebtedness under the Note and any future advances made under this Security Instrument up to one hundred fifty percent (150%) of the original principal amount of the Note plus interest thereon, attorneys' fees and court costs.

25. Riders to this Security Instrument. If one or more riders are executed by Borrower and recorded together with this Security Instrument, the covenants and agreements of each such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Security Instrument as if the rider(s) were a part of this Security Instrument.

[Check applicable box(es)]

- ☐ Adjustable Rate Rider
☐ Graduated Payment Rider
☐ Balloon Rider
☐ VA Rider

- ☐ Condominium Rider
☒ Planned Unit Development Rider
☐ Rate Improvement Rider
☐ Other(s) [specify]

- ☐ 1-4 Family Rider
☐ Biweekly Payment Rider
☐ Second Home Rider

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any rider(s) executed by Borrower and recorded with it.

Signed, sealed and delivered in the presence of:

Juni Jullwood
Witness

David E. Montorio (Seal)
-Borrower

Debra E. Hermann
Witness

Holly Montorio (Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

STATE OF SOUTH CAROLINA,

County of Horry

Personally appeared before me

the undersigned witness

and made oath that

s/he saw the within named Borrower sign, seal, and as

their

act and deed, deliver the within written

Mortgage; and that s/he

with the other subscribing witness above,

witnessed the execution thereof.

Juni Jullwood

Sworn to before me this 30th

day of

January, 1998

Debra E. Hermann

Notary Public for South Carolina

My Commission Expires: 11/23/04

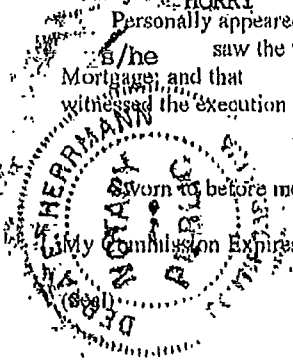


EXHIBIT "A"

ALL AND SINGULAR, that certain piece, parcel or lot of land lying, situate and being in Horry County, South Carolina and shown as LOT TWENTY-EIGHT (28) of WORTHINGTON ESTATES on that certain plat prepared by Michael S. Culler, Jr., P.L.S., of Culler Land Surveying Co., Inc., for J. A. Fox, Inc., dated November 6, 1996 and recorded January 15, 1997 in Plat Book 145 at Page 203, in the Office of the R.M.C. for Horry County, South Carolina. Said lot being more particularly described on said Plat and reference to which is craved as forming a part of this description.

This being the identical property conveyed to the Mortgagor herein by Deed of J. A. Fox, Inc., dated January 30, 1998, and recorded February 2, 1998, in the Office of the RMC for Horry County, South Carolina, in Deed Book 2009 at Page 476.

PLANNED UNIT DEVELOPMENT RIDER

THIS PLANNED UNIT DEVELOPMENT RIDER is made this 30th day of January, 1998, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust or Security Deed (the "Security Instrument") of the same date, given by the undersigned (the "Borrower") to secure Borrower's Note to American Home Funding, Inc.

(the "Lender")
of the same date and covering the Property described in the Security Instrument and located at:

303 Worthington Circle
Myrtle Beach, SC 29577

[Property Address]

The Property includes, but is not limited to, a parcel of land improved with a dwelling, together with other such parcels and certain common areas and facilities, as described in Worthington Estate Declaration of Covenants, Restrictions and Easements recorded January 27, 1997, in Horry County Deed Book 1916 at page 753 (the "Declaration"). The Property is a part of a planned unit development known as Worthington Estates

[Name of Planned Unit Development]

(the "PUD"). The Property also includes Borrower's interest in the homeowners association or equivalent entity owning or managing the common areas and facilities of the PUD (the "Owners Association") and the uses, benefits and proceeds of Borrower's interest.

PUD COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

MULTISTATE PUD RIDER - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

Form 3150 9/90

Page 1 of 3

 -7U (9806).01

VMP MORTGAGE FORMS - (800)521-7291

Initials: *MSK*



1556555

A. PUD Obligations. Borrower shall perform all of Borrower's obligations under the PUD's Constituent Documents. The "Constituent Documents" are the: (i) Declaration; (ii) articles of incorporation, trust instrument or any equivalent document which creates the Owners Association; and (iii) any by-laws or other rules or regulations of the Owners Association. Borrower shall promptly pay, when due, all dues and assessments imposed pursuant to the Constituent Documents.

B. Hazard Insurance. So long as the Owners Association maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy insuring the Property which is satisfactory to Lender and which provides insurance coverage in the amounts, for the periods, and against the hazards Lender requires, including fire and hazards included within the term "extended coverage," then:

(i) Lender waives the provision in Uniform Covenant 2 for the monthly payment to Lender of the yearly premium installments for hazard insurance on the Property; and

(ii) Borrower's obligation under Uniform Covenant 5 to maintain hazard insurance coverage on the Property is deemed satisfied to the extent that the required coverage is provided by the Owners Association policy.

Borrower shall give Lender prompt notice of any lapse in required hazard insurance coverage provided by the master or blanket policy.

In the event of a distribution of hazard insurance proceeds in lieu of restoration or repair following a loss to the Property, or to common areas and facilities of the PUD, any proceeds payable to Borrower are hereby assigned and shall be paid to Lender. Lender shall apply the proceeds to the sums secured by the Security Instrument, with any excess paid to Borrower.

C. Public Liability Insurance. Borrower shall take such actions as may be reasonable to insure that the Owners Association maintains a public liability insurance policy acceptable in form, amount, and extent of coverage to Lender.

D. Condemnation. The proceeds of any award or claim for damages, direct or consequential, payable to Borrower in connection with any condemnation or other taking of all or any part of the Property or the common areas and facilities of the PUD, or for any conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender. Such proceeds shall be applied by Lender to the sums secured by the Security Instrument as provided in Uniform Covenant 10.

E. Lender's Prior Consent. Borrower shall not, except after notice to Lender and with Lender's prior written consent, either partition or subdivide the Property or consent to:

(i) the abandonment or termination of the PUD, except for abandonment or termination required by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain;

(ii) any amendment to any provision of the "Constituent Documents" if the provision is for the express benefit of Lender;

(iii) termination of professional management and assumption of self-management of the Owners Association; or

(iv) any action which would have the effect of rendering the public liability insurance coverage maintained by the Owners Association unacceptable to Lender.

F. Remedies. If Borrower does not pay PUD dues and assessments when due, then Lender may pay them. Any amounts disbursed by Lender under this paragraph F shall become additional debt of Borrower secured by the Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and provisions contained in this PUD Rider.

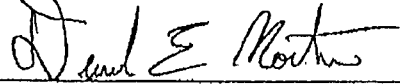
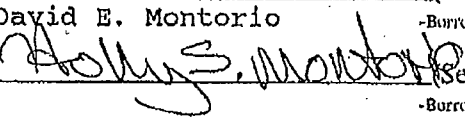
	(Seal)	_____	(Seal)
David E. Montorio	-Borrower		-Borrower
	(Seal)	_____	(Seal)
	-Borrower		-Borrower
_____	(Seal)	_____	(Seal)
	-Borrower		-Borrower
_____	(Seal)	_____	(Seal)
	-Borrower		-Borrower

Exhibit K

Vance Deed

271023

FILED
HORRY COUNTY, S.C.
97 OCT 31 PM 1:54
R.M.C.

Prepared by and return to:
Law Offices of N. David DuRant
and Associates, P.A.
1801 Glenns Bay Road
Surfside Beach, SC 29575
97-8599NDD

HORRY COUNTY ASSESSOR
Parcel ID# 179-12-01-105
Map Blk Parcel 11-3-97

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY) WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, that J. A. FOX, INC., in the State aforesaid, for and in consideration of the sum of Mighty-nine Thousand Five Hundred Twenty-seven and no/100 Dollars (\$89,527.00) to It paid by GARY A. VANCE and TAMMY R. VANCE, in the State aforesaid, the receipt whereof is hereby acknowledged, has granted, bargained, sold and released and by these presents does grant, bargain, sell and release unto the said GARY A. VANCE and TAMMY R. VANCE, for and during their joint lives, and upon the death of either of them, then to the survivor of them, its heirs and assigns, forever, in fee simple, together with every contingent remainder and right of reversion, the following described property to wit:

ALL AND SINGULAR, that certain piece, parcel or lot of land lying, situate and being in Horry County, South Carolina and shown as Lot Nineteen (19) of Worthington Estates on that certain plat prepared by Michael S. Culler, Jr., P.L.S., of Culler Land Surveying Co., Inc., for J. A. Fox, Inc., dated November 6, 1996 and recorded January 15, 1997 in Plat Book 145 at Page 203, in the Office of the R.M.C. for Horry County, South Carolina. Said lot being more particularly described on said Plat and reference to which is craved as forming a part of this description.

STATE 234.00 COUNTY 99.00
EXEMPT YES NO
ASSESSOR _____

BOOK 1987 PAGE 791
791

This is the identical property conveyed to the Grantor herein by Deed of Foxworth Porter Development, LLC dated July 17, 1997 and recorded July 17, 1997 in Deed Book 1958 at Page 256.

Grantee(s)' Address: 326 WORTHINGTON CIRCLE
MYRTLE BEACH SC 29575

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said GARY A. VANCE and TAMMY R. VANCE, for and during their joint lives, and upon the death of either of them, then to the survivor of them, their heirs and assigns, forever, in fee simple, together with every contingent remainder and right of reversion.

And Grantor does hereby bind itself and its successors, administrators and assigns, to warrant and forever defend all and singular the said premises unto the said GARY A. VANCE and TAMMY R. VANCE, for and during their joint lives, and upon the death of either of them, then to the survivor of them, his or her heirs and assigns, forever, in fee simple, together with every contingent remainder and right of reversion against it and its successors, administrators and assigns and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

IN WITNESS WHEREOF, the Grantor has caused its corporate hand and seal to be set hereunto by its duly authorized officer, this 31st day of October in the year of our Lord one thousand

nine hundred and ninety-seven and in the two hundred and twenty-second year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED J. A. Fox, Inc.
IN THE PRESENCE OF:

James Dullwood (L.S.)
1st Witness
Allen B. Foxworth
By Allen B. Foxworth
Its President
Debra E. Herrmann
Notary

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY) PROBATE

Personally appeared before me, the undersigned witness and made oath that he/she saw the within named Grantor, J. A. FOX, INC., by Allen B. Foxworth, Its President and duly authorized officer, Sign, Seal and as Its Act and Deed, deliver the within written Deed for the uses and purposes herein mentioned; and that he/she with the other witness subscribed above witnessed the execution thereof.

James Dullwood
1st Witness

Sworn to before me this 31st
day of October, 1997.

Debra E. Herrmann (L.S.)
Notary Public for South Carolina..

My Commission Expires 11/23/04

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

A F F I D A V I T

PERSONALLY appeared before me, the undersigned, who being duly sworn, deposes and says:

1. Property located at Lot 19, Worthington Estates, bearing HORRY County Tax Map Number 179-12-01-105 was transferred by J. A. FOX, INC. to GARY A. VANCE and TAMMY R. VANCE this 31st day of October, 1997. The transaction was:

XXX an arm's length real property transaction and the sales price paid or to be paid in money or money's worth was \$89,527.00.

 not an arm's length real property transaction and the fair market value of the property is \$.*

The above transaction is exempt, or partially exempt, from the recording fee as set forth in S.C. Code Ann. Section 12-24-10 et. seq. because the deed is .

As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as purchaser, legal representative or other responsible party connected with the transaction.

I further understand that a person required to furnish this affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and upon conviction, must be fined not more than \$1,000 or imprisoned not more than one year or both.

Gary A. Vance

SWORN to before me this 31st day of October, 1997.

Debra E. Herrmann
Notary Public for South Carolina

My Commission Expires 11/23/04

*The fee is based on the real property's value. Value means the realty's fair market value. In arm's length real property transactions, this value is the sales price to be paid in money or money's worth (e.g., stocks, personal property, other realty, forgiveness of debt, mortgages assumed or placed on the realty as a result of the transaction). However, a deduction is allowed from this value for the amount of any lien or encumbrance existing on land, tenement, or realty before the transfer and remaining on it after the transfer.

BOOK 1987 PAGE 794

794

Exhibit L

Vance Mortgage

Record and return to:
Law Offices of N. David DuRant
1801 Glenns Bay Road
Surfside Beach, SC 29575
97-8599NDD

271023

FILED
HORRY COUNTY, S.C.
97 OCT 31 PM 1:54
R.M.C.

1096

[Space Above This Line For Recording Data]

MORTGAGE

0060879095

THIS MORTGAGE ("Security Instrument") is given on **OCTOBER 31, 1997**

The mortgagor is

GARY A. VANCE AND TAMMY R. VANCE,

("Borrower"). This Security Instrument is given to **INVESTORS MORTGAGE COMPANY**

which is organized and existing under the laws of **SOUTH CAROLINA**, and whose
address is **4603 OLEANDOR DR STE 7, MYRTLE BEACH SC 29577**

("Lender"). Borrower owes Lender the principal sum of
EIGHTY FIVE THOUSAND FIFTY & 00/100

Dollars (U.S. \$ **85,050.00**).

This debt is evidenced by Borrower's note dated the same date as this Security Instrument ("Note"), which provides for monthly payments, with the full debt, if not paid earlier, due and payable on **NOVEMBER FIRST, 2027**. This Security Instrument secures to Lender: (a) the repayment of the debt evidenced by the Note, with interest, and all renewals, extensions and modifications of the Note; (b) the payment of all other sums, with interest, advanced under paragraph 7 to protect the security of this Security Instrument; and (c) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to Lender and Lender's successors and assigns the following described property located in **HORRY** County, South Carolina:

Lot 19 Worthington Estates as is more fully described in Exhibit "A" attached hereto and made a part hereof by reference.

which has the address of **326 WORTHINGTON CIR, MYRTLE BEACH** [Street, City],
South Carolina **29577** [Zip Code] ("Property Address");

SOUTH CAROLINA - Single Family - FNMA/FHLMC
UNIFORM INSTRUMENT Form 3041 9/90

AMENDED 10/94
VMP MORTGAGE FORMS - (800) 621-7291
Page 1 of 6 Initials _____



Law
TRV

598

2007 2214 598

TO HAVE AND TO HOLD this property unto Lender and Lender's successors and assigns, forever, together with all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record, Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. Payment of Principal and Interest; Prepayment and Late Charges. Borrower shall promptly pay when due the principal of and interest on the debt evidenced by the Note and any prepayment and late charges due under the Note.

2. Funds for Taxes and Insurance. Subject to applicable law or to a written waiver by Lender, Borrower shall pay to Lender on the day monthly payments are due under the Note, until the Note is paid in full, a sum ("Funds") for: (a) yearly taxes and assessments which may attain priority over this Security Instrument as a lien on the Property; (b) yearly leasehold payments or ground rents on the Property, if any; (c) yearly hazard or property insurance premiums; (d) yearly flood insurance premiums, if any; (e) yearly mortgage insurance premiums, if any; and (f) any sums payable by Borrower to Lender, in accordance with the provisions of paragraph 8, in lieu of the payment of mortgage insurance premiums. These items are called "Escrow Items." Lender may, at any time, collect and hold Funds in an amount not to exceed the maximum amount a lender for a federally related mortgage loan may require for Borrower's escrow account under the federal Real Estate Settlement Procedures Act of 1974 as amended from time to time, 12 U.S.C. Section 2601 *et seq.* ("RESPA"), unless another law that applies to the Funds sets a lesser amount. If so, Lender may, at any time, collect and hold Funds in an amount not to exceed the lesser amount. Lender may estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with applicable law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is such an institution) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items. Lender may not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and applicable law permits Lender to make such a charge. However, Lender may require Borrower to pay a one-time charge for an independent real estate tax reporting service used by Lender in connection with this loan, unless applicable law provides otherwise. Unless an agreement is made or applicable law requires interest to be paid, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender may agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds, showing credits and debits to the Funds and the purpose for which each debit to the Funds was made. The Funds are pledged as additional security for all sums secured by this Security Instrument.

If the Funds held by Lender exceed the amounts permitted to be held by applicable law, Lender shall account to Borrower for the excess Funds in accordance with the requirements of applicable law. If the amount of the Funds held by Lender at any time is not sufficient to pay the Escrow Items when due, Lender may so notify Borrower in writing, and, in such case Borrower shall pay to Lender the amount necessary to make up the deficiency. Borrower shall make up the deficiency in no more than twelve monthly payments, at Lender's sole discretion.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender. If, under paragraph 21, Lender shall acquire or sell the Property, Lender, prior to the acquisition or sale of the Property, shall apply any Funds held by Lender at the time of acquisition or sale as a credit against the sums secured by this Security Instrument.

3. Application of Payments. Unless applicable law provides otherwise, all payments received by Lender under paragraphs 1 and 2 shall be applied: first, to any prepayment charges due under the Note; second, to amounts payable under paragraph 2; third, to interest due; fourth, to principal due; and last, to any late charges due under the Note.

4. Charges; Liens. Borrower shall pay all taxes, assessments, charges, fines and impositions attributable to the Property which may attain priority over this Security Instrument, and leasehold payments or ground rents, if any. Borrower shall pay these obligations in the manner provided in paragraph 2, or if not paid in that manner, Borrower shall pay them on time directly to the person owed payment. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this paragraph. If Borrower makes these payments directly, Borrower shall promptly furnish to Lender receipts evidencing the payments.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender; (b) contests in good faith the lien by, or defends against enforcement of the lien in, legal proceedings which in the Lender's opinion operate to prevent the enforcement of the lien; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which may attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Borrower shall satisfy the lien or take one or more of the actions set forth above within 10 days of the giving of notice.

•CR(SG)0612

Page 2 of 6

Form 3041, 9/90
Initials: JRV.

5. Hazard or Property Insurance. Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage" and any other hazards, including floods or flooding, for which Lender requires insurance. This insurance shall be maintained in the amounts and for the periods that Lender requires. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's approval which shall not be unreasonably withheld. If Borrower fails to maintain coverage described above, Lender may, at Lender's option, obtain coverage to protect Lender's rights in the Property in accordance with paragraph 7.

All insurance policies and renewals shall be acceptable to Lender and shall include a standard mortgage clause. Lender shall have the right to hold the policies and renewals. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower.

Unless Lender and Borrower otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged. If the restoration or repair is economically feasible and Lender's security is not lessened. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with any excess paid to Borrower. If Borrower abandons the Property, or does not answer within 30 days a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may collect the insurance proceeds. Lender may use the proceeds to repair or restore the Property or to pay sums secured by this Security Instrument, whether or not then due. The 30-day period will begin when the notice is given.

Unless Lender and Borrower otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly payments referred to in paragraphs 1 and 2 or change the amount of the payments. If under paragraph 21 the Property is acquired by Lender, Borrower's right to any insurance policies and proceeds resulting from damage to the Property prior to the acquisition shall pass to Lender to the extent of the sums secured by this Security Instrument immediately prior to the acquisition.

6. Occupancy, Preservation, Maintenance and Protection of the Property; Borrower's Loan Application; Leaseholds. Borrower shall occupy, establish, and use the Property as Borrower's principal residence within sixty days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control. Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate, or commit waste on the Property. Borrower shall be in default, if any forfeiture action or proceeding, whether civil or criminal, is begun that in Lender's good faith judgment could result in forfeiture of the Property or otherwise materially impair the lien created by this Security Instrument or Lender's security interest. Borrower may cure such a default and reinstate, as provided in paragraph 18, by causing the action or proceeding to be dismissed with a ruling that, in Lender's good faith determination, precludes forfeiture of the Borrower's interest in the Property or other material impairment of the lien created by this Security Instrument or Lender's security interest. Borrower shall also be in default if Borrower, during the loan application process, gave materially false or inaccurate information or statements to Lender (or failed to provide Lender with any material information) in connection with the loan evidenced by the Note, including, but not limited to, representations concerning Borrower's occupancy of the Property as a principal residence. If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

7. Protection of Lender's Rights in the Property. If Borrower fails to perform the covenants and agreements contained in this Security Instrument, or there is a legal proceeding that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture or to enforce laws or regulations), then Lender may do and pay for whatever is necessary to protect the value of the Property and Lender's rights in the Property. Lender's actions may include paying any sums secured by a lien which has priority over this Security Instrument, appearing in court, paying reasonable attorneys' fees and entering on the Property to make repairs. Although Lender may take action under this paragraph 7, Lender does not have to do so.

Any amounts disbursed by Lender under this paragraph 7 shall become additional debt of Borrower secured by this Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

8. Mortgage Insurance. If Lender required mortgage insurance as a condition of making the loan secured by this Security Instrument, Borrower shall pay the premiums required to maintain the mortgage insurance in effect. If, for any reason, the mortgage insurance coverage required by Lender lapses or ceases to be in effect, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the mortgage insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the mortgage insurance previously in effect, from an alternate mortgage insurer approved by Lender. If substantially equivalent mortgage insurance coverage is not available, Borrower shall pay to Lender each month a sum equal to one-twelfth of the yearly mortgage insurance premium being paid by Borrower when the insurance coverage lapsed or ceased to be in effect. Lender will accept, use and retain these payments as a loss reserve in lieu of mortgage insurance. Loss reserve

payments may no longer be required, at the option of Lender, if mortgage insurance coverage (in the amount and for the period that Lender requires) provided by an insurer approved by Lender again becomes available and is obtained. Borrower shall pay the premiums required to maintain mortgage insurance in effect, or to provide a loss reserve, until the requirement for mortgage insurance ends in accordance with any written agreement between Borrower and Lender or applicable law.

9. Inspection. Lender or its agent may make reasonable entries upon and inspections of the Property. Lender shall give Borrower notice at the time of or prior to an inspection specifying reasonable cause for the inspection.

10. Condemnation. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Property, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender.

In the event of a total taking of the Property, the proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with any excess paid to Borrower. In the event of a partial taking of the Property in which the fair market value of the Property immediately before the taking is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the taking, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the taking, divided by (b) the fair market value of the Property immediately before the taking. Any balance shall be paid to Borrower. In the event of a partial taking of the Property in which the fair market value of the Property immediately before the taking is less than the amount of the sums secured immediately before the taking, unless Borrower and Lender otherwise agree in writing or unless applicable law otherwise provides, the proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the condemnor offers to make an award or settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the proceeds, at its option, either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due.

Unless Lender and Borrower otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly payments referred to in paragraphs 1 and 2 or change the amount of such payments.

11. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to any successor in interest of Borrower shall not operate to release the liability of the original Borrower or Borrower's successors in interest. Lender shall not be required to commence proceedings against any successor in interest or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or Borrower's successors in interest. Any forbearance by Lender in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

12. Successors and Assigns Bound; Joint and Several Liability; Co-signers. The covenants and agreements of this Security Instrument shall bind and benefit the successors and assigns of Lender and Borrower, subject to the provisions of paragraph 17. Borrower's covenants and agreements shall be joint and several. Any Borrower who co-signs this Security Instrument but does not execute the Note: (a) is co-signing this Security Instrument only to mortgage, grant and convey that Borrower's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower may agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without that Borrower's consent.

13. Loan Charges. If the loan secured by this Security Instrument is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge under the Note.

14. Notices. Any notice to Borrower provided for in this Security Instrument shall be given by delivering it or by mailing it by first class mail unless applicable law requires use of another method. The notice shall be directed to the Property Address or any other address Borrower designates by notice to Lender. Any notice to Lender shall be given by first class mail to Lender's address stated herein or any other address Lender designates by notice to Borrower. Any notice provided for in this Security Instrument shall be deemed to have been given to Borrower or Lender when given as provided in this paragraph.

15. Governing Law; Severability. This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. In the event that any provision or clause of this Security Instrument or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision. To this end the provisions of this Security Instrument and the Note are declared to be severable.

16. **Borrower's Copy.** Borrower shall be given one conformed copy of the Note and of this Security Instrument.

17. **Transfer of the Property or a Beneficial Interest in Borrower.** If all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) without Lender's prior written consent, Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if exercise is prohibited by federal law as of the date of this Security Instrument.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is delivered or mailed within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

18. **Borrower's Right to Reinstate.** If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earlier of: (a) 5 days (or such other period as applicable law may specify for reinstatement) before sale of the Property pursuant to any power of sale contained in this Security Instrument; or (b) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees; and (d) takes such action as Lender may reasonably require to assure that the lien of this Security Instrument, Lender's rights in the Property and Borrower's obligation to pay the sums secured by this Security Instrument shall continue unchanged. Upon reinstatement by Borrower, this Security Instrument and the obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under paragraph 17.

19. **Sale of Note; Change of Loan Servicer.** The Note or a partial interest in the Note (together with this Security Instrument) may be sold one or more times without prior notice to Borrower. A sale may result in a change in the entity (known as the "Loan Servicer") that collects monthly payments due under the Note and this Security Instrument. There also may be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change in accordance with paragraph 14 above and applicable law. The notice will state the name and address of the new Loan Servicer and the address to which payments should be made. The notice will also contain any other information required by applicable law.

20. **Hazardous Substances.** Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property that is in violation of any Environmental Law. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property.

Borrower shall promptly give Lender written notice of any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge. If Borrower learns, or is notified by any governmental or regulatory authority, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law.

As used in this paragraph 20, "Hazardous Substances" are those substances defined as toxic or hazardous substances by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. As used in this paragraph 20, "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

21. **Acceleration; Remedies.** Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under paragraph 17 unless applicable law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument, foreclosure by judicial proceeding and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Borrower to acceleration and foreclosure. If the default is not cured on or before the date specified in the notice, Lender, at its option, may require immediate payment in full of all sums secured by this Security Instrument without further demand and may foreclose this Security Instrument by judicial proceeding. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this paragraph 21, including, but not limited to, reasonable attorneys' fees and costs of title evidence, all of which shall be additional sums secured by this Security Instrument.

22. **Release.** Upon payment of all sums secured by this Security Instrument, this Security Instrument shall become null and void. Lender shall release this Security Instrument without charge to Borrower. Borrower shall pay any recordation costs.

23. **Waivers.** Borrower waives all rights of homestead exemption in the Property.

24. **Future Advances.** The lien of this Security Instrument shall secure the existing indebtedness under the Note and any future advances made under this Security Instrument up to one hundred fifty percent (150 %) of the original principal amount of the Note plus interest thereon, attorneys' fees and court costs.

25. **Riders to this Security Instrument.** If one or more riders are executed by Borrower and recorded together with this Security Instrument, the covenants and agreements of each such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Security Instrument as if the rider(s) were a part of this Security Instrument.

[Check applicable box(es)]

- ☐ Adjustable Rate Rider
☐ Graduated Payment Rider
☐ Balloon Rider
☐ VA Rider

- ☐ Condominium Rider
☒ Planned Unit Development Rider
☐ Rate Improvement Rider
☐ Other(s) [specify]

- ☐ 1-4 Family Rider
☐ Biweekly Payment Rider
☐ Second Home Rider

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any rider(s) executed by Borrower and recorded with it.
 Signed, sealed and delivered in the presence of:

Debra E. Herrmann
 Witness
Debra E. Herrmann
 Witness

Gary A. Vance (Seal)
 GARY A. VANCE -Borrower

Tammy R. Vance (Seal)
 TAMMY R. VANCE -Borrower

____ (Seal) _____ (Seal)
 -Borrower -Borrower

STATE OF SOUTH CAROLINA,

County ss:

Personally appeared before me the undersigned witness and made oath that
 s/he saw the within named Borrower sign, seal, and as their act and deed, deliver the within written
 Mortgage, and that s/he with the other subscribing witness hereon,
 witnessed the execution thereof.

Sworn to before me this 31st day of October, 1997

My Commission Expires: 11/23/04

(Seal)

Debra E. Herrmann
 Notary Public for South Carolina

PLANNED UNIT DEVELOPMENT RIDER

467

0060879095

THIS PLANNED UNIT DEVELOPMENT RIDER is made this 31 day of OCTOBER, 1997, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust or Security Deed (the "Security Instrument") of the same date, given by the undersigned (the "Borrower") to secure Borrower's Note to

INVESTORS MORTGAGE COMPANY

(the "Lender")

of the same date and covering the Property described in the Security Instrument and located at:

326 WORTHINGTON CIR, MYRTLE BEACH, SOUTH CAROLINA 29577

[Property Address]

The Property includes, but is not limited to, a parcel of land improved with a dwelling, together with other such parcels and certain common areas and facilities, as described in

COVENANTS, CONDITIONS AND RESTRICTIONS

(the "Declaration").

The Property is a part of a planned unit development known as

WORTHINGTON ESTATE

[Name of Planned Unit Development]

(the "PUD"). The Property also includes Borrower's interest in the homeowners association or equivalent entity owning or managing the common areas and facilities of the PUD (the "Owners Association") and the uses, benefits and proceeds of Borrower's interest.

PUD COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

A. PUD Obligations. Borrower shall perform all of Borrower's obligations under the PUD's Constituent Documents. The "Constituent Documents" are the: (i) Declaration; (ii) articles of incorporation, trust instrument or any equivalent document which creates the Owners Association; and (iii) any by-laws or other rules or regulations of the Owners Association. Borrower shall promptly pay, when due, all dues and assessments imposed pursuant to the Constituent Documents.

B. Hazard Insurance. So long as the Owners Association maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy insuring the Property which is satisfactory to Lender and which provides insurance coverage in the amounts, for the periods, and against the hazards Lender requires, including fire and hazards included within the term "extended coverage," then:

(i) Lender waives the provision in Uniform Covenant 2 for the monthly payment to Lender of the yearly premium installments for hazard insurance on the Property; and

(ii) Borrower's obligation under Uniform Covenant 5 to maintain hazard insurance coverage on the Property is deemed satisfied to the extent that the required coverage is provided by the Owners Association policy.

Borrower shall give Lender prompt notice of any lapse in required hazard insurance coverage provided by the master or blanket policy.

In the event of a distribution of hazard insurance proceeds in lieu of restoration or repair following a loss to the Property, or to common areas and facilities of the PUD, any proceeds payable to Borrower are hereby assigned and shall be paid to Lender. Lender shall apply the proceeds to the sums secured by the Security Instrument, with any excess paid to Borrower.

C. Public Liability Insurance. Borrower shall take such actions as may be reasonable to insure that the Owners Association maintains a public liability insurance policy acceptable in form, amount, and extent of coverage to Lender.

MULTISTATE PUD RIDER - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

Form 3150 9/90

VMP-7 (0100)

Page 1 of 2

VMP MORTGAGE FORMS - (313)293-6100 - (800)621-7291

Initials: *Law*
FRV

D. Condemnation. The proceeds of any award or claim for damages, direct or consequential, payable to Borrower in connection with any condemnation or other taking of all or any part of the Property or the common areas and facilities of the PUD, or for any conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender. Such proceeds shall be applied by Lender to the sums secured by the Security Instrument as provided in Uniform Covenant 10.

E. Lender's Prior Consent. Borrower shall not, except after notice to Lender and with Lender's prior written consent, either partition or subdivide the Property or consent to:

(i) the abandonment or termination of the PUD, except for abandonment or termination required by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain;

(ii) any amendment to any provision of the "Constituent Documents" if the provision is for the express benefit of Lender;

(iii) termination of professional management and assumption of self-management of the Owners Association; or

(iv) any action which would have the effect of rendering the public liability insurance coverage maintained by the Owners Association unacceptable to Lender.

F. Remedies. If Borrower does not pay PUD dues and assessments when due, then Lender may pay them. Any amounts disbursed by Lender under this paragraph F shall become additional debt of Borrower secured by the Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and provisions contained in this PUD Rider.

Gary A. Vance (Seal)
GARY A. VANCE -Borrower

Tammy R. Vance (Seal)
TAMMY R. VANCE -Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

Exhibit "A"

ALL AND SINGULAR, that certain piece, parcel or lot of land lying, situate and being in Horry County, South Carolina and shown as Lot Nineteen (19) of Worthington Estates on that certain plat prepared by Michael S. Culler, Jr., P.L.S., of Culler Land Surveying Co., Inc., for J. A. Fox, Inc., dated November 6, 1996 and recorded January 15, 1997 in Plat Book 145 at Page 203, in the Office of the R.M.C. for Horry County, South Carolina. Said lot being more particularly described on said Plat and reference to which is craved as forming a part of this description.

This is the identical property conveyed to the Mortgagors herein by Deed of J. A. Fox, Inc., dated October 31, 1997 and recorded in the Office of the RMC for Horry County, South Carolina on 10-31, 1997 in Deed Book 1989 at Page 791.

Exhibit M

Montorio Answer

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS

Ronnie Ferrell, Tammy Vance and)
David Montorio, on behalf of)
themselves and all others similarly)
situated,)

Civil Action No. 2011-CP-26-1266

Plaintiffs,)

DEFENDANT'S ANSWER

vs.)

Horry Electric Cooperative,)

Defendant.)

FILED
HORRY COUNTY
JULY 11 AM 10:52
CELANIE HUGGINS WARD
CLERK OF COURT

The defendant answers the Complaint herein as follows:

FOR A FIRST DEFENSE

1. That the defendant denies each and every allegation of the Complaint not hereinafter specifically admitted.

2. That, in response to the allegations of paragraphs 1, 2 and 3, the defendant admits only that the individual plaintiffs are citizens and residents of Horry County, South Carolina and denies the remaining allegations.

3. That, in response to the allegations of paragraph 4, this defendant admits only that it is a member owned, non-profit electric cooperative formed under the law of the State of South Carolina and the defendant does business in Horry County.

4. That the allegations of paragraphs 5 are admitted upon information and belief.

5. That, in response to the allegations of paragraph 6, the defendant admits only that each of the plaintiffs reside in Horry County and are members of the defendant Cooperative and receive electricity from the defendant.

6. That the allegations of paragraph 7 are denied.

7. That, in response to the allegations of paragraph 8, the defendant admits only that the Good Cents Program was developed and offered to the cooperatives for offering to the members by the South Carolina Public Service Authority which set the requirements for a home to qualify for the

#1
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program.

8. That the allegations of paragraphs 9, 10 and 11 are denied.

9. That, with respect to the allegations of paragraph 12, the defendant admits only that it offered to its members the Good Cents Program that was offered through the South Carolina Public Service Authority without having performed any research regarding the specifications and requirements of the Good Cents Program as offered by the South Carolina Public Service Authority.

10. That the allegations of paragraph 13 are denied but the defendant would show that members who qualified for the Good Cents received a special rate.

11. That the allegations of paragraph 14 and 15 are denied.

12. That, in response to the allegations of paragraph 16, the defendant admits only that it identified certain stipulations which had to be met for a home to be accepted into the Good Cents Program.

13. That the allegations of paragraph 17 are denied.

14. That, in response to the allegations of paragraph 18, the defendant admits only that it conducted inspections to determine whether the construction complied with the stipulations for qualification for the Good Cents program.

15. That the allegations of paragraphs 19, 20, 21, 22 and 23 are denied.

16. That, in response to the allegations of paragraphs 24, the defendant admits only that it discontinued stipulating installation of the alternative of insulation of vapor barriers, once it learned that the South Carolina Public Service Authority was no longer including that stipulation in the Good Cents Program.

17. That the allegations of paragraphs 25, 26, 27, 28, 29, 30, 31, 32, 33 and 34 are denied.

18. That the allegations of paragraphs 1 through 17 hereof are realleged in response to the allegations of paragraph 35.

19. That the allegations of paragraphs 36, 37, 38, 39, 40 and 41 are denied.

20. That the allegations of paragraphs 1 through 19 hereof are realleged in response to the allegations of paragraph 42.

21. That the allegations of paragraphs 43, 44, 45 and 46 are denied.

22. That the allegations of paragraphs 1 through 21 hereof are realleged in response to the allegations of paragraph 47.

#2
N

23. That the allegations of paragraphs 48, 49, 50, 51, 52, 53, 54, 55, 56, 57 and 58 and the remaining allegations of the Complaint are denied.

FOR A SECOND DEFENSE

24. That the Complaint should be dismissed for failure to state facts sufficient to constitute a cause of action on the grounds that this action is barred by the release in the Class Action Settlement Agreement in Civil Action No. 95-CP-40-0991 and 00-CP-40-02681R.

FOR A THIRD DEFENSE

25. That the defendant pleads the thirteen year, Section 15-3-640 (1976), statute of repose, as a defense to this action.

FOR A FOURTH DEFENSE

26. That the defendant pleads the eight year statute of repose, Section 15-3-640 (2009 Supp.) as a defense to this action.

FOR A FIFTH DEFENSE

27. That the Complaint fails to state facts sufficient to constitute a cause of action against the defendant and therefore should be dismissed as the stipulations set by the defendant for qualification in the Good Cents Program allowed the member applicant to select alternatives for insulation of the walls and, to the extent the homeowner selected a method that has caused damage, such would be the responsibility of the homeowner who made the selection and the defendant would have no liability for the selection that was made.

FOR A SIXTH DEFENSE

28. That the defendant pleads the three year statute of limitations as a complete bar and defense to this action.

FOR A SEVENTH DEFENSE

29. That there is no privity of contract between the plaintiffs and the defendant and therefore the cause of action for breach of contract/covenant of good faith and fair dealing must be dismissed.

FOR A EIGHTH DEFENSE

30. That if the plaintiffs or their predecessor in title and interest choose an improper method for insulation of the walls, then they were negligent and reckless for failing to properly investigate the insulation of the walls and/or for selecting an improper method and their negligence

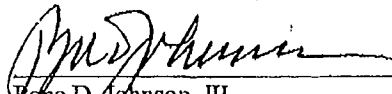
#3
m

was greater than any negligence of the defendant and the plaintiffs are not entitled to recover and/or their recovery should be reduced in proportion to their negligence and recklessness.

FOR A NINTH DEFENSE

31. That upon information and belief, Plaintiff Ferrell did not construct his home to meet the requirements of the Good Cents Program and his house was not accepted for the Good Cents rate and as a result thereof, his claims against the defendant must be denied.

WHEREFORE, having answered, the defendant demands that the Complaint against it be dismissed and for such other and further relief as may be just and proper.



Pope D. Johnson, III
Johnson & Barnette, LLP
1230 Richland Street
Columbia, SC 29201
803-799-9791
803-253-6084 (fax)
pdjohnson@johnsonbarnette.com
Attorney for the Defendant

Columbia, South Carolina
May 10, 2011

#4

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS

Ronnie Ferrell, Tammy Vance and)
David Montorio, on behalf of)
themselves and all others similarly)
situated,)

Civil Action No. 2011-CP-26-1266

Plaintiffs,)

CERTIFICATE OF SERVICE

vs.)

Horry Electric Cooperative,)

Defendant.)

FILED
HORRY COUNTY
2011 MAY 11 AM 10:52
MELANIE HUGGINS-WARD
CLERK OF COURT

I, Sherry W. Wise, of Johnson & Barnette, LLP, hereby certify that I have served Nate Fata and Mark A. Brunty, attorneys for the Plaintiffs, with the foregoing pleading(s) by mailing a copy of same, postage prepaid and return address clearly indicated, to them at the following addresses on the 10th day of May, 2011.

COUNSEL SERVED:

Nate Fata, Esquire
P.O. Box 16620
Surfside Beach, SC 29587

Mark A. Brunty, Esquire
Brunty Law Firm
P.O. Box 70907
Myrtle Beach, SC 29577

PLEADINGS:

Defendant's Answer

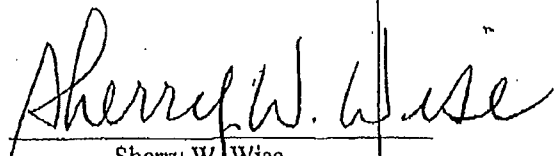

Sherry W. Wise

Exhibit N

5/27/11 Motion for Summary Judgment

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS

Ronnie Ferrell, Tammy Vance and)
David Montorio, on behalf of)
themselves and all others similarly)
situated,)

Civil Action No. 2011-CP-26-1266

Plaintiffs,)

**DEFENDANT'S NOTICE OF MOTION
AND MOTION FOR PARTIAL SUMMARY
JUDGMENT**

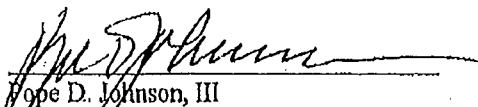
vs.)

Horry Electric Cooperative,)

Defendant.)

TO: THE PLAINTIFFS and their attorneys

YOU WILL PLEASE TAKE NOTICE that the defendant will move for partial summary judgment that the 13 year statute of repose, Section 15-3-640 (1976), bars any claim or action to recover damages based upon or arising out of defective or unsafe conditions of an improvement to real property brought more than 13 years after substantial completion of such improvement.



Pope D. Johnson, III
Johnson & Barnette, LLP
1230 Richland Street
Columbia, SC 29201
803-799-9791
803-253-6084 (fax)
pdjohnson@johnsonbarnette.com
Attorney for the Defendant

Columbia, South Carolina
March 8, 2011

FILED
COUNTY
2011 MAY 27 PM 3:30
CLERK OF COURT
MICELANIE HUGHES-WEARD

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS

Ronnie Ferrell, Tammy Vance and)
David Montorio, on behalf of)
themselves and all others similarly)
situated,)

Civil Action No. 2011-CP-26-1266

Plaintiffs,)

CERTIFICATE OF SERVICE

vs.)

Horry Electric Cooperative,)

Defendant.)

FILED
Horry County
2011 MAY 27 PM 3:07
JELANIE HIGGINS-WARD
CLERK OF COURT

I, Sherry W. Wise, of Johnson & Barnette, LLP, hereby certify that I have served Nate Fata and Mark A. Brunty, attorneys for the Plaintiffs, with the foregoing pleading(s) by mailing a copy of same, postage prepaid and return address clearly indicated, to them at the following addresses on the 26th day of May, 2011.

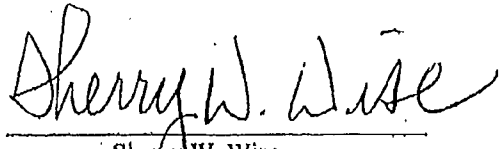
COUNSEL SERVED:

Nate Fata, Esquire
P.O. Box 16620
Surfside Beach, SC 29587

Mark A. Brunty, Esquire
Brunty Law Firm
P.O. Box 70907
Myrtle Beach, SC 29577

PLEADINGS:

Defendant's Notice of Motion and Motion for Partial Summary Judgment


Sherry W. Wise

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

PAID

IN THE [X] COURT OF COMMON PLEAS
[] FAMILY COURT

Ronnie Ferrell, Tammy Vance, and David
Montorio, on behalf of themselves and all other
similarly situated,
[] Plaintiff,

vs.

Horry Electric Cooperative,
[X] Defendant

check box above indicating submitting party

Civil Action No. 2011-CP-26-1266

**MOTION AND ORDER INFORMATION
FORM AND COVER SHEET**

FILED
CLERK OF COURT
HARRIS
APR 27 PM 3:01
COUNTY

name, SC Bar no. and address of Plaintiff's Atty:

Nate Fata

P.O. Box 16620, Surfside Beach, SC 29587

telephone: 843-238-2676

fax: 843-238-0240

e-mail: natefata@seconst.net

other:

name, SC Bar no. and address of Defendant's Atty:

Pope D. Johnson, III

P.O. Drawer 11209, Columbia, SC 29211-1209

telephone: 803-799-9791

fax: 803-253-6084

e-mail: pdjohnson@johnsonbarnette.com

other:

Mark A. Brunty

P.O. Box 70907, Myrtle Beach, SC 29577

telephone: 843-449-1500

fax: 843-492-5675

e-mail: mbrunty@bruntylaw.com

other:

[X] MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)

[] FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)

[] PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II AND III)

SECTION I: Hearing Information

Nature of Motion: Defendant's Notice of Motion and Motion for Partial Summary Judgment

Estimated Time Needed: 15 minutes

Court Reporter Needed: No

SECTION II: Motion Type

[] Written Motion Attached

[] Form Motion / Order --

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for [] Plaintiffs [] Defendants

DATE SUBMITTED:

SECTION III: Motion Fee

[X] PAID - AMOUNT: \$25.00

[] EXEMPT: [] Rule to Show Cause in Child or Spousal Support

[] Domestic Abuse or Abuse and Neglect

[] Indigent Status [] State Agency v. Indigent Part

[] Sexually Violent Predator Act [] Post Conviction Relief

[] Motion for Stay in Bankruptcy

[] Motion for Publication [] Motion for Execution (Rule 69, SCRPC)

[] Proposed order submitted at request of the court; or,
reduced to writing form motion made in open court per judge's instructions

Name of Court Reporter: _____

[] Other

JUDGE'S SECTION

[] Motion Fee to be paid upon filing of the attached order.

[] Other:

JUDGE _____

CODE:

DATE:

CLERK'S VERIFICATION		DATE FILED
Collected by:	<u>H 25.00</u>	5/27/11
☐ MOTION FEE COLLECTED: _____		
☐ CONTESTED - AMOUNT DUE: _____		

Exhibit O

9/10/11 Form 4 Order

FORM 4

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

RECEIVED SEP 14 2011
JUDGMENT IN A CIVIL CASE

CASE NO. 2011-CP-26-1266

Ronnie Ferrell et al

Horry Electric Cooperative

MELANIE HUGGINS-WARD
CLERK OF COURTS.

PLAINTIFF(S)

DEFENDANT(S)

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues Have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ 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.

Defendant's Motion for Summary Judgment is Dismiss without prejudice.

Defendant failed to appear for hearing

Dated at Conway, South Carolina, this 29th day of August, 2011.

Margaret Culberson
PRESIDING JUDGE

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

Nate Fata

Pope D Johnson III

(not present)

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Exhibit P

9/28/11 Motion for Summary Judgment

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS

Ronnie Ferrell, Tammy Vance and)
David Montorio, on behalf of)
themselves and all others similarly)
situated,)

Civil Action No. 2011-CP-26-1266

Plaintiffs,)

**DEFENDANT'S NOTICE OF MOTION
AND MOTION FOR PARTIAL SUMMARY
JUDGMENT**

vs.)

Horry Electric Cooperative,)

Defendant.)

FILED
HORRY COUNTY
11 SEP 28 PM 4:00
MELANIE HUGGINS-WARD
CLERK OF COURT

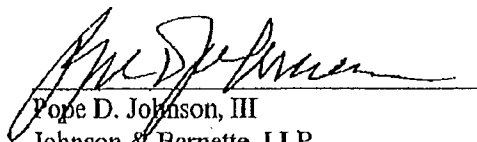
TO: THE PLAINTIFFS and their attorneys, NATE FATA and MARK A. BRUNTY

YOU WILL PLEASE TAKE NOTICE that the defendant will move for partial summary judgment that the 13 year statute of repose, Section 15-3-640 (1976), bars any claim or action to recover damages based upon or arising out of defective or unsafe conditions of an improvement to real property brought more than 13 years after substantial completion of such improvement. This motion is made upon the grounds that there is no genuine issues of material fact regarding whether the plaintiff is entitled to summary judgment that the 13 year statute of repose, Section 15-3-640 (1976) bars any claim or action to recover damages based upon or arising out of defective or unsafe conditions of an improvement to real property brought more than 13 years after substantial completion of improvement and the motion presents a pure question of law for which the defendant is entitled to judgment in its favor.

YOU WILL TAKE FURTHER NOTICE that the defendant will move for an order for partial summary judgment that the claims of any potential class members who were class members in Civil

#1
[Signature]

Action Nos. 95-CP-40-0991 and 00-CP-40-02681R, who did not opt out of that class are barred from participating as class members in this action. This motion is based upon the attached Class Action Settlement Agreement and Final Order approving the same in Civil Action No. 00-CP-40-02681R. This Court is asked to take judicial notice of the public record in Civil Action No. 00-CP-40-02681R.


Pope D. Johnson, III
Johnson & Barnette, LLP
1230 Richland Street
Columbia, SC 29201
803-799-9791
803-253-6084 (fax)
pdjohnson@johnsonbarnette.com
Attorney for the Defendant

Columbia, South Carolina
September 27, 2011

#2

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS

Ronnie Ferrell, Tammy Vance and)
David Montorio, on behalf of)
themselves and all others similarly)
situated,)

Civil Action No. 2011-CP-26-1266

Plaintiffs,)

CERTIFICATE OF SERVICE

vs.)

Horry Electric Cooperative,)

Defendant.)

HORRY COUNTY
11 SEP 28 PM 4:00
KELANIE HUGGINS-WARD
CLERK OF COURT

I, Sherry W. Wise, of Johnson & Barnette, LLP, hereby certify that I have served Nate Fata and Mark A. Brunty, attorneys for the Plaintiffs, with the foregoing pleading(s) by mailing a copy of same, postage prepaid and return address clearly indicated, to them at the following addresses on the 27th day of September, 2011.

COUNSEL SERVED:

Nate Fata, Esquire
P.O. Box 16620
Surfside Beach, SC 29587

Mark A. Brunty, Esquire
Brunty Law Firm
P.O. Box 70907
Myrtle Beach, SC 29577

PLEADINGS:

Defendant's Notice of Motion and Motion For Partial Summary Judgment

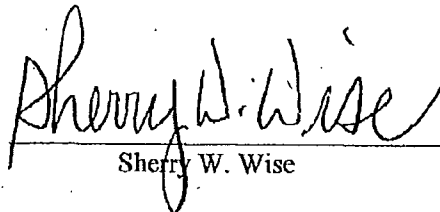

Sherry W. Wise

Exhibit Q

8/21/12 Form 4 Order

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

FORM 4

JUDGMENT IN A CIVIL CASE

Ronnie Ferrell et al

FILED
HORRY COUNTY
12 AUG 21 PM 2:57

CASE NO. 2011- CP-26-1268

Horry Electric Cooperative

PLAINTIFF(S)

CLERK OF COURT

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant

or
☐ 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.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ 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; Defendant's Motion for Summary Judgment and Motion for Protective Order are Dismissed for failure to prosecute. Proper notification was given and no one appeared for the hearing.

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk:

INFORMATION FOR THE PUBLIC INDEX		
Complete this section below when the judgment reflects a cash or personal judgment 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

2152
Judge Code

August 13, 2012

Date

For Clerk of Court Office Use Only

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

Nate Fata

Pope D Johnson III

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

Exhibit R

8/17/12 Motion for Summary Judgment

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS

Ronnie Ferrell, Tammy Vance and)
David Montorlo, on behalf of)
themselves and all others similarly)
situated,)

Civil Action No. 2011-CP-26-1266

Plaintiffs,)

**DEFENDANT'S NOTICE OF MOTION
AND MOTION FOR PARTIAL SUMMARY
JUDGMENT**

vs.)

Horry Electric Cooperative,)
)
Defendant.)

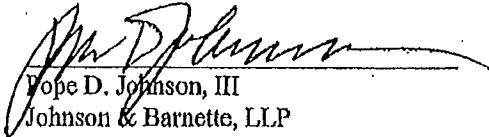
PAID
HORRY COUNTY
12 AUG 17 PM 3:20
JELANIE HUGHES-WARD
CLERK OF COURT

TO: THE PLAINTIFFS and their attorneys, NATE FATA and MARK A. BRUNTY

YOU WILL PLEASE TAKE NOTICE that the defendant will move for partial summary judgment that the 13 year statute of repose, Section 15-3-640 (1976), bars any claim or action to recover damages based upon or arising out of defective or unsafe conditions of an improvement to real property brought more than 13 years after substantial completion of such improvement. This motion is made upon the grounds that there is no genuine issues of material fact regarding whether the plaintiff is entitled to summary judgment that the 13 year statute of repose, Section 15-3-640 (1976) bars any claim or action to recover damages based upon or arising out of defective or unsafe conditions of an improvement to real property brought more than 13 years after substantial completion of improvement and the motion presents a pure question of law for which the defendant is entitled to judgment in its favor.

YOU WILL TAKE FURTHER NOTICE that the defendant will move for an order for partial summary judgment that the claims of any potential class members who were class members in Civil

Action Nos. 95-CP-40-0991 and 00-CP-40-02681R, who did not opt out of that class are barred from participating as class members in this action. This motion is based upon the attached Class Action Settlement Agreement and Final Order approving the same in Civil Action No. 00-CP-40-02681R. This Court is asked to take judicial notice of the public record in Civil Action No. 00-CP-40-02681R.


Pope D. Johnson, III
Johnson & Barnette, LLP
1230 Richland Street
Columbia, SC 29201
803-799-9791
803-253-6084 (fax)
pdjohnson@johnsonbarnette.com
Attorney for the Defendant

Columbia, South Carolina
August 16, 2012

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS

Ronnie Ferrell, Tammy Vance and)
David Montorio, on behalf of)
themselves and all others similarly)
situated,)

Civil Action No. 2011-CP-26-1266

Plaintiffs,)

CERTIFICATE OF SERVICE

vs.)

Horry Electric Cooperative,)

Defendant.)

HORRY COUNTY
12 AUG 17 PM 3:20
KELANIE HIGGINS-WARD
CLERK OF COURT

I, Sherry W. Wise, of Johnson & Barnette, LLP, hereby certify that I have served Nate Fata and Mark A. Brunty, attorneys for the Plaintiffs, with the foregoing pleading(s) by mailing a copy of same, postage prepaid and return address clearly indicated, to them at the following addresses on the 16th day of August, 2012.

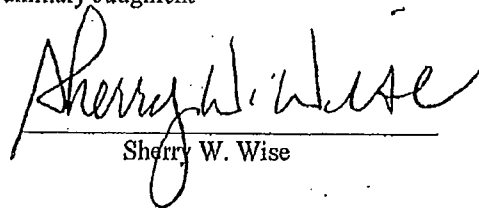
COUNSEL SERVED:

Nate Fata, Esquire
P.O. Box 16620
Surfside Beach, SC 29587

Mark A. Brunty, Esquire
Brunty Law Firm
P.O. Box 70907
Myrtle Beach, SC 29572

PLEADINGS:

Defendant's Notice of Motion and Motion For Partial Summary Judgment


Sherry W. Wise

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE [X] COURT OF COMMON PLEAS
[] FAMILY COURT

Ronnie Ferrell, Tammy Vance, and David
Montorio, on behalf of themselves and all other
similarly situated,
[] Plaintiff,

vs.

Civil Action No. 2011-CP-26-1266

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Horry Electric Cooperative,
[X] Defendant
check box above indicating submitting party

<u>name, SC Bar no. and address of Plaintiffs Atty:</u> Nate Fata P.O. Box 16620, Surfside Beach, SC 29587 telephone: 843-238-2676 fax: 843-238-0240 e-mail: natefata@secoast.net other:		<u>name, SC Bar no. and address of Defendant Atty:</u> Pope D. Johnson, III P.O. Drawer 11209, Columbia, SC 29211-1209 telephone: 803-799-9791 fax: 803-253-6084 e-mail: pdjohnson@johnsonbarnette.com other:	
<u>Mark A. Brunty</u> P.O. Box 70907, Myrtle Beach, SC 29577 telephone: 843-449-1500 fax: 843-492-5675 e-mail: mbrunty@bruntylaw.com other:			
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II AND III)			
SECTION I: Hearing Information			
Nature of Motion: Defendant's Notice of Motion and Motion for Partial Summary Judgment Estimated Time Needed: 15 minutes Court Reporter Needed: No			
SECTION II: Motion Type			
☐ Written Motion Attached ☐ Form Motion / Order -- I hereby move for relief or action by the court as set forth in the attached proposed order.			
Signature of Attorney for ☐ Plaintiffs ☐ Defendants		DATE SUBMITTED:	
SECTION III: Motion Fee			
☒ PAID - AMOUNT: \$25.00 ☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Part ☐ Sexually Violent Predator Act ☐ Post Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC) ☐ Proposed order submitted at request of the court; or, reduced to writing form motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other			
JUDGE'S SECTION			
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:		JUDGE _____ CODE: DATE:	

PAID

HORRY COUNTY
12 AUG 17 PM 3:20
KEL AINE HOGGINS-WARD
CLERK OF COURT

CLERK'S VERIFICATION		DATE FILED
Collected by:	<u>Jaab</u>	<u>8/17/12</u>
☐ MOTION FEE COLLECTED:	<u>25</u>	
☐ CONTESTED - AMOUNT DUE:		

Exhibit S

11/26/12 Form 4 Order

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

FORM 4

JUDGMENT IN A CIVIL CASE

FILE NO. 2011-CP-26-1266
HORRY COUNTY

Ronnie Ferrell et al.

Horry Electric Cooperative

12 NOV 26 AM 10:17

PLAINTIFF(S)

MELANIE HUBBARD(S)

Submitted by

Clerk of Court

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.
- ☐ 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: Plaintiff's (Ronnie Ferrell) Motion to compel is withdrawn. Defendant's Motion for Summary Judgment was heard, a formal order followed by Atty. Pope D. Johnson III. *partially granting & partially denying motion*

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk:

JUDGMENT INFORMATION		
Judgment in Favor of (List name(s) below)	Judgment against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A	N/A	N/A
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.

Margaret T. Culbertson

Circuit Court Judge

2148

Judge Code

November
7th, 2012

Date

For Clerk of Court Office Use Only

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

Nate Fata

Pope D Johnson III

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: Henry Young

Exhibit T

Public Index



Horry County Fifteenth Judicial Circuit Public Index



[Horry County Home Page](#)
[South Carolina Judicial Department Home Page](#)
[SC.GOV Home Page](#)

Switch View

Ronnie Ferrell , plaintiff, et al VS Horry Electric Cooperative

Case Number:	2011CP2601266	Court Agency:	Common Pleas	Filed Date:	02/09/2011
Case Type:	Common Pleas	Case Sub Type:	Contract/Other 199	File Type:	Jury
Status:	Dismissed	Assigned Judge:	Clerk Of Court C P, G S, And Family Court		
Disposition:	Dismissed by Court - not Rule 40J	Disposition Date:	05/30/2014	Disposition Judge:	Culbertson, Benjamin H.
Original Source Doc:		Original Case #:			
Judgment Number:		Court Roster:			

Case Parties Judgments Tax Map Information Associated Cases Actions Financials

Name	Description	Type	Motion Roster	Begin Date	Completion Date	Documents
Ferrell, Ronnie	Form 4 issued	Filing		11/14/2014 -15:21		
Vance, Tammy	Form 4 issued	Filing		11/14/2014 -15:21		
Montorio, David	Form 4 issued	Filing		11/14/2014 -15:21		
Ferrell, Ronnie	Filing/Filing Of supplemental aff. of Eaddy Blackburn	Filing		11/13/2014 -08:44		
Ferrell, Ronnie	Affidavit/Affidavit of suzy busse	Filing		11/10/2014 -14:23		
Ferrell, Ronnie	Affidavit/Affidavit of Giorgia welsh	Filing		11/07/2014 -12:47		
Ferrell, Ronnie	Affidavit/Affidavit of Malcolm K. Dill/cert. of svc	Filing		10/31/2014 -13:08		
Ferrell, Ronnie	Affidavit/Affidavit of James T. Phillips/cert of svc	Filing		10/31/2014 -13:01		
Ferrell, Ronnie	Motion/Strike/cert. of svc	Motion		10/30/2014 -14:40		
Ferrell, Ronnie	Plaintiff's Memorandum in Opposition To Defendant's Motion	Filing		10/28/2014 -13:00		
Ferrell, Ronnie	Filing/Filing Of returned mail	Filing		10/27/2014 -10:14		
Ferrell, Ronnie	Affidavit of Roberta Lipman, Certificate of Service	Filing		10/24/2014 -13:28		
Ferrell, Ronnie	Service/Certificate Of Service-2	Filing		10/09/2014 -14:32		
Ferrell, Ronnie	Affidavit/Affidavit of David Montorio	Filing		10/07/2014 -09:38		
Ferrell, Ronnie	Affidavit/Affidavit of Dayna Lewis	Filing		10/07/2014 -09:38		

Ferrell, Ronnie	Motion/Enforce Final Order (Judge Culbertson)	Motion	09/25/2014 -13:14		
Horry Electric Cooperative	Motion For order confirming (Judge Culbertson)	Motion	08/20/2014 -15:06		
Ferrell, Ronnie	Service/Certificate Of Service	Filing	06/02/2014 -14:55		
Ferrell, Ronnie	COC Mailing Copies of Order/Granting Motion filed 5-30-14	Action	06/02/2014 -10:55		
Ferrell, Ronnie	Form 4 issued Motion to Intervene by Santee Cooper granted.	Filing	05/30/2014 -10:40	05/30/2014 -10:46	
Ferrell, Ronnie	Order/Order granting motion to intervene for limited	Order	05/30/2014 -10:21		
Ferrell, Ronnie	Final Order/Approval	Order	05/30/2014 -10:20		
Ferrell, Ronnie	Supplemental Affidavit of Pope D. Johnson, III, Notice of	Filing	05/29/2014 -16:31		
Ferrell, Ronnie	Filing/Filing Of supplemental affidavit of Nate Fata/cert of	Filing	05/22/2014 -13:57	05/30/2014 -08:12	
Smith, Benjamin Rush III	Motion/Intervene for limited purpose/cert. of svc	Motion	05/20/2014 -08:31	05/30/2014 -08:31	
Ferrell, Ronnie	Filing/Filing Of settlement class notice of opt outs/	Filing	05/16/2014 -14:50	05/30/2014 -16:00	
Ferrell, Ronnie	Affidavit/Affidavit of Christopher Tuck	Filing	05/07/2014 -13:57	05/30/2014 -09:55	
Ferrell, Ronnie	Affidavit/Affidavit of Gene Connell in support of atty fee	Filing	05/02/2014 -11:42	05/30/2014 -15:27	
Ferrell, Ronnie	Motion/Motion For final approval of class action settlement/	Motion	05/02/2014 -11:41	05/30/2014 -11:41	
Ferrell, Ronnie	Form 4 Issued MOTION/APPROVAL SETTLEMENT CON'T	Filing	04/25/2014 -11:34	05/30/2014 -13:08	
Ferrell, Ronnie	Mediation/Mediation Report/Agreement	Filing	03/21/2014 -14:54	05/30/2014 -09:45	
Fata, Natale	Roster/Notice of Motions Roster Publication Sent	Action	03/20/2014 -11:19	03/21/2014 -11:19	
Johnson, Pope D. III	Roster/Notice of Motions Roster Publication Sent	Action	03/20/2014 -11:19	03/21/2014 -11:19	
Ward, James L. Jr.	Roster/Notice of Motions Roster Publication Sent	Action	03/20/2014 -11:19	03/21/2014 -11:19	
Tuck, Thomas Christopher	Roster/Notice of Motions Roster Publication Sent	Action	03/20/2014 -11:19	03/21/2014 -11:19	
Graves, Sanford Cox	Roster/Notice of Motions Roster Publication Sent	Action	03/20/2014 -11:19	03/21/2014 -11:19	
Ferrell, Ronnie	Affidavit/Affidavit of Pope D. Johnson, III, Notice of	Filing	03/17/2014 -15:00	03/21/2014 -10:41	
Ferrell, Ronnie	COC Mailing Copies of Court Orders/Preliminary Approval	Action	03/06/2014 -11:32	03/21/2014 -11:32	
Ferrell, Ronnie	Form 4 issued/ Preliminary approval of class action	Filing	03/05/2014 -14:16	03/21/2014 -10:05	
Ferrell, Ronnie	Certificate/Certificate of Service	Action	03/05/2014 -13:50	03/21/2014 -09:33	
Ferrell, Ronnie	Order/Order- preliminary approval order	Order	03/03/2014 -10:34	03/21/2014 -08:17	
Vance, Tammy	Motion/Motion For approval of settlement, Settlement	Motion	03/03/2014 -09:21	03/21/2014 -09:21	
		Motion			

Ferrell, Ronnie	Motion/Continuance(ORDER), Certificate of Service			02/26/2014 -12:13	02/28/2014 -12:13
Ferrell, Ronnie	COC Mailing Copies of Order/Continuance filed 2-10-14 mailed	Action		02/10/2014 -12:40	03/21/2014 -12:40
Ferrell, Ronnie	Order/Order for continuance of trial	Order		02/10/2014 -12:32	03/21/2014 -11:09
Fata, Natale	Roster/Notice of Case Roster Publication Sent	Action		02/07/2014 -16:41	03/21/2014 -16:41
Graves, Sanford Cox	Roster/Notice of Case Roster Publication Sent	Action		02/07/2014 -16:41	03/21/2014 -16:41
Tuck, Thomas Christopher	Roster/Notice of Case Roster Publication Sent	Action		02/07/2014 -16:41	03/21/2014 -16:41
Ward, James L. Jr.	Roster/Notice of Case Roster Publication Sent	Action		02/07/2014 -16:41	03/21/2014 -16:41
Johnson, Pope D. III	Roster/Notice of Case Roster Publication Sent	Action		02/07/2014 -16:41	03/21/2014 -16:41
Ferrell, Ronnie	Order/Form 4- trial cont. beyond 1/27/14 to next avail term	Order		02/06/2014 -16:35	03/21/2014 -16:35
Ferrell, Ronnie	Form 4 issued	Filing		01/16/2014 -10:05	03/21/2014 -10:14
Ferrell, Ronnie	Motion/Continuance/Certificate of Service	Motion		01/14/2014 -15:12	02/10/2014 -15:12
Fata, Natale	Roster/Notice of Case Roster Publication Sent	Action		12/19/2013 -12:23	03/21/2014 -12:23
Johnson, Pope D. III	Roster/Notice of Case Roster Publication Sent	Action		12/19/2013 -12:23	03/21/2014 -12:23
Tuck, Thomas Christopher	Roster/Notice of Case Roster Publication Sent	Action		12/19/2013 -12:23	03/21/2014 -12:23
Graves, Sanford Cox	Roster/Notice of Case Roster Publication Sent	Action		12/19/2013 -12:23	03/21/2014 -12:23
Ward, James L. Jr.	Roster/Notice of Case Roster Publication Sent	Action		12/19/2013 -12:23	03/21/2014 -12:23
Ferrell, Ronnie	Form 4 issued MOTION TO QUASH RESOLVED. OTHER MOTIONS CON'T	Filing		11/22/2013 -12:01	03/21/2014 -12:41
Ferrell, Ronnie	Memo/Memo in Opposition to def's motion for partial summary	Filing		11/12/2013 -14:01	03/21/2014 -10:49
Ferrell, Ronnie	Motion/Protective Order/cert. of svc.	Motion		10/17/2013 -14:41	01/13/2014 -14:41
Fata, Natale	Roster/Notice of Motions Roster Publication Sent	Action		10/16/2013 -08:17	03/21/2014 -08:17
Fata, Natale	Roster/Notice of Motions Roster Publication Sent	Action		10/16/2013 -08:17	03/21/2014 -08:17
Fata, Natale	Roster/Notice of Motions Roster Publication Sent	Action		10/16/2013 -08:17	03/21/2014 -08:17
Fata, Natale	Roster/Notice of Motions Roster Publication Sent	Action		10/16/2013 -08:17	03/21/2014 -08:17
Fata, Natale	Roster/Notice of Motions Roster Publication Sent	Action		10/16/2013 -08:17	03/21/2014 -08:17
Fata, Natale	Roster/Notice of Motions Roster Publication Sent	Action		10/16/2013 -08:17	03/21/2014 -08:17
Fata, Natale	Roster/Notice of Motions Roster Publication Sent	Action		10/16/2013 -08:17	03/21/2014 -08:17
Fata, Natale	Roster/Notice of Motions Roster Publication Sent	Action		10/16/2013 -08:17	03/21/2014 -08:17
Fata, Natale	Roster/Notice of Motions Roster Publication Sent	Action		10/16/2013 -08:17	03/21/2014 -08:17

Tuck, Thomas Christopher						
Tuck, Thomas Christopher	Roster/Notice of Motions Roster Publication Sent	Action		10/16/2013-08:17	03/21/2014-08:17	
Tuck, Thomas Christopher	Roster/Notice of Motions Roster Publication Sent	Action		10/16/2013-08:17	03/21/2014-08:17	
Tuck, Thomas Christopher	Roster/Notice of Motions Roster Publication Sent	Action		10/16/2013-08:17	03/21/2014-08:17	
Tuck, Thomas Christopher	Roster/Notice of Motions Roster Publication Sent	Action		10/16/2013-08:17	03/21/2014-08:17	
Tuck, Thomas Christopher	Roster/Notice of Motions Roster Publication Sent	Action		10/16/2013-08:17	03/21/2014-08:17	
Tuck, Thomas Christopher	Roster/Notice of Motions Roster Publication Sent	Action		10/16/2013-08:17	03/21/2014-08:17	
Tuck, Thomas Christopher	Roster/Notice of Motions Roster Publication Sent	Action		10/16/2013-08:17	03/21/2014-08:17	
Graves, Sanford Cox	Roster/Notice of Motions Roster Publication Sent	Action		10/16/2013-08:17	03/21/2014-08:17	
Graves, Sanford Cox	Roster/Notice of Motions Roster Publication Sent	Action		10/16/2013-08:17	03/21/2014-08:17	
Graves, Sanford Cox	Roster/Notice of Motions Roster Publication Sent	Action		10/16/2013-08:17	03/21/2014-08:17	
Graves, Sanford Cox	Roster/Notice of Motions Roster Publication Sent	Action		10/16/2013-08:17	03/21/2014-08:17	
Graves, Sanford Cox	Roster/Notice of Motions Roster Publication Sent	Action		10/16/2013-08:17	03/21/2014-08:17	
Graves, Sanford Cox	Roster/Notice of Motions Roster Publication Sent	Action		10/16/2013-08:17	03/21/2014-08:17	
Graves, Sanford Cox	Roster/Notice of Motions Roster Publication Sent	Action		10/16/2013-08:17	03/21/2014-08:17	
Graves, Sanford Cox	Roster/Notice of Motions Roster Publication Sent	Action		10/16/2013-08:17	03/21/2014-08:17	
Johnson, Pope D. III	Roster/Notice of Motions Roster Publication Sent	Action		10/16/2013-08:17	03/21/2014-08:17	
Johnson, Pope D. III	Roster/Notice of Motions Roster Publication Sent	Action		10/16/2013-08:17	03/21/2014-08:17	
Johnson, Pope D. III	Roster/Notice of Motions Roster Publication Sent	Action		10/16/2013-08:17	03/21/2014-08:17	
Johnson, Pope D. III	Roster/Notice of Motions Roster Publication Sent	Action		10/16/2013-08:17	03/21/2014-08:17	
Johnson, Pope D. III	Roster/Notice of Motions Roster Publication Sent	Action		10/16/2013-08:17	03/21/2014-08:17	
Johnson, Pope D. III	Roster/Notice of Motions Roster Publication Sent	Action		10/16/2013-08:17	03/21/2014-08:17	
Johnson, Pope D. III	Roster/Notice of Motions Roster Publication Sent	Action		10/16/2013-08:17	03/21/2014-08:17	
Johnson, Pope D. III	Roster/Notice of Motions Roster Publication Sent	Action		10/16/2013-08:17	03/21/2014-08:17	
Ward, James L. Jr.	Roster/Notice of Motions Roster Publication Sent	Action		10/16/2013-08:17	03/21/2014-08:17	
Ward, James L. Jr.	Roster/Notice of Motions Roster Publication Sent	Action		10/16/2013-08:17	03/21/2014-08:17	
Ward, James L. Jr.	Roster/Notice of Motions Roster Publication Sent	Action		10/16/2013-08:17	03/21/2014-08:17	

Ward, James L. Jr.	Roster/Notice of Motions Roster Publication Sent	Action	10/16/2013 -08:17	03/21/2014 -08:17
Ward, James L. Jr.	Roster/Notice of Motions Roster Publication Sent	Action	10/16/2013 -08:17	03/21/2014 -08:17
Ward, James L. Jr.	Roster/Notice of Motions Roster Publication Sent	Action	10/16/2013 -08:17	03/21/2014 -08:17
Ward, James L. Jr.	Roster/Notice of Motions Roster Publication Sent	Action	10/16/2013 -08:17	03/21/2014 -08:17
Ward, James L. Jr.	Roster/Notice of Motions Roster Publication Sent	Action	10/16/2013 -08:17	03/21/2014 -08:17
Horry Electric Cooperative	Motion/Protective Order/Cert of Counsel/Plaintiffs'	Motion	10/02/2013 -14:10	01/13/2014 -14:10
Ferrell, Ronnie	Filing of Plff's Supplemental Memorandum in Support of	Filing	10/01/2013 -13:35	03/21/2014 -14:00
Horry Electric Cooperative	Motion/Compel/cert. of svc/exhibits	Motion	09/27/2013 -14:16	01/13/2014 -14:16
Horry Electric Cooperative	Motion/Compel/exhibits	Motion	09/27/2013 -14:15	01/13/2014 -14:15
Ferrell, Ronnie	Filing/Filing Of deposition of David Montorio	Filing	09/27/2013 -13:46	03/21/2014 -16:32
Ferrell, Ronnie	Memo/Memo in response to motions to quash subpoenas &	Filing	09/27/2013 -13:46	03/21/2014 -16:32
Graves, Sanford Cox	Motion/Quash/protective order	Motion	09/23/2013 -12:55	11/15/2013 -12:55
Vance, Tammy	Motion/Quash/cert. of svc	Motion	09/20/2013 -13:51	01/13/2014 -13:51
Ferrell, Ronnie	COC Mailing Copies of Amend Sched Order filed 9-3-13 mailed	Action	09/03/2013 -10:17	03/21/2014 -10:17
Ferrell, Ronnie	Order/Consent Scheduling Order	Order	09/03/2013 -09:45	03/21/2014 -12:14
Vance, Tammy	Motion/Amended scheduling (ORDER) consent	Motion	08/16/2013 -15:47	09/03/2013 -15:47
Ferrell, Ronnie	Form 4 issued MOTION FOR APPOINT ADDITIONAL CLASS COUNSEL	Filing	08/15/2013 -09:12	03/21/2014 -12:33
Ferrell, Ronnie	Affidavit/Affidavit of Bradley Neuhart/cert. of svc	Filing	08/14/2013 -14:57	03/21/2014 -16:40
Ferrell, Ronnie	Motion/Protective Order/Pantiffs' Memorandum in Support	Motion	08/08/2013 -12:12	01/13/2014 -12:11
Horry Electric Cooperative	Motion/Summary Judgment partial/Cert of Ser/see scanned docs	Motion	07/30/2013 -15:13	01/13/2014 -15:13
Ferrell, Ronnie	COC Mailing Copies of Order/Adding Co-Counsel filed 7-22-13	Action	07/22/2013 -13:50	03/21/2014 -10:55
Ferrell, Ronnie	Consent Order Adding T. Christopher Tuck and James L. Ward-	Order	07/22/2013 -13:48	03/21/2014 -12:13
Horry Electric Cooperative	Amended Answer/Cert of Service	Filing	07/11/2013 -09:30	03/21/2014 -16:01
Horry Electric Cooperative	Motion/Alter and/or Amend/Cert of counsel	Motion	07/11/2013 -09:29	01/13/2014 -09:29
Johnson, Pope D. III	Roster/Notice of Motions Roster Publication Sent	Action	07/11/2013 -08:30	03/21/2014 -08:30
Johnson, Pope D. III	Roster/Notice of Motions Roster Publication Sent	Action	07/11/2013 -08:30	03/21/2014 -08:30
Fata, Natale		Action		

	Roster/Notice of Motions Roster Publication Sent			07/11/2013 -08:30	03/21/2014 -08:30	
Fata, Natale	Roster/Notice of Motions Roster Publication Sent	Action		07/11/2013 -08:30	03/21/2014 -08:30	
Ward, James L. Jr.	Roster/Notice of Motions Roster Publication Sent	Action		07/11/2013 -08:30	03/21/2014 -08:30	
Ward, James L. Jr.	Roster/Notice of Motions Roster Publication Sent	Action		07/11/2013 -08:30	03/21/2014 -08:30	
Ferrell, Ronnie	Plaintiff's Memo in Opposition to Defendant's motion for	Filing		06/20/2013 -14:27	03/21/2014 -13:23	
Ferrell, Ronnie	Filing/Filing Of Plaintiffs' Memorandum in support of their	Filing		06/14/2013 -09:26	03/21/2014 -15:35	
Ferrell, Ronnie	Defendant's Memorandum in Opposition to Plaintiffs' Pending	Filing		06/07/2013 -13:35	03/21/2014 -09:24	
Horry Electric Cooperative	Response/Cert of Service	Filing		06/06/2013 -15:16	03/21/2014 -10:47	
Ferrell, Ronnie	Affidavit/Affidavit of J. Lawrence Elkin , P.E./Exhibits	Filing		06/03/2013 -14:16	03/21/2014 -09:09	
Ferrell, Ronnie	Motion/Compel/Cert of Service (see scanned documents)	Motion		05/28/2013 -09:53	08/13/2013 -09:54	
Ferrell, Ronnie	Motion/Motion For appoint additional class counsel	Motion		05/23/2013 -12:39	07/22/2013 -12:39	
Ferrell, Ronnie	Notice/Notice of apperance/T. Christopher/James Ward Jr/	Filing		05/15/2013 -14:04	03/21/2014 -09:42	
Johnson, Pope D. III	Roster/Notice of Motions Roster Publication Sent	Action		05/10/2013 -10:50	03/21/2014 -10:50	
Fata, Natale	Roster/Notice of Motions Roster Publication Sent	Action		05/10/2013 -10:50	03/21/2014 -10:50	
Fata, Natale	Roster/Notice of Motions Roster Publication Sent	Action		05/10/2013 -10:50	03/21/2014 -10:50	
Johnson, Pope D. III	Roster/Notice of Motions Roster Publication Sent	Action		05/10/2013 -10:50	03/21/2014 -10:50	
Johnson, Pope D. III	Roster/Notice of Motions Roster Publication Sent	Action		05/10/2013 -10:49	03/21/2014 -10:49	
Fata, Natale	Roster/Notice of Motions Roster Publication Sent	Action		05/10/2013 -10:49	03/21/2014 -10:49	
Fata, Natale	Roster/Notice of Motions Roster Publication Sent	Action		05/10/2013 -10:49	03/21/2014 -10:49	
Johnson, Pope D. III	Roster/Notice of Motions Roster Publication Sent	Action		05/10/2013 -10:49	03/21/2014 -10:49	
Johnson, Pope D. III	Roster/Notice of Motions Roster Publication Sent	Action		05/10/2013 -10:49	03/21/2014 -10:49	
Fata, Natale	Roster/Notice of Motions Roster Publication Sent	Action		05/10/2013 -10:49	03/21/2014 -10:49	
Fata, Natale	Roster/Notice of Motions Roster Publication Sent	Action		05/10/2013 -10:49	03/21/2014 -10:49	
Johnson, Pope D. III	Roster/Notice of Motions Roster Publication Sent	Action		05/10/2013 -10:49	03/21/2014 -10:49	
Johnson, Pope D. III	Roster/Notice of Motions Roster Publication Sent	Action		05/10/2013 -10:49	03/21/2014 -10:49	
Fata, Natale	Roster/Notice of Motions Roster Publication Sent	Action		05/10/2013 -10:49	03/21/2014 -10:49	
Fata, Natale	Roster/Notice of Motions Roster Publication Sent	Action		05/10/2013 -10:48	03/21/2014 -10:48	
Johnson, Pope D. III	Roster/Notice of Motions Roster Publication Sent	Action		05/10/2013 -10:48	03/21/2014 -10:48	
Johnson, Pope D. III	Roster/Notice of Motions Roster Publication Sent	Action		05/10/2013 -10:48	03/21/2014 -10:48	
Fata, Natale		Action				

<http://publicindex.sccourts.org/Horry/PublicIndex/CaseDetails.aspx?County=26&CourtA...> 12/17/2014

Fata, Natale	Roster/Notice of Motions Roster Publication Sent	Action	04/23/2013 -16:08	03/21/2014 -16:08	
Fata, Natale	Roster/Notice of Motions Roster Publication Sent	Action	04/23/2013 -16:08	03/21/2014 -16:08	
Fata, Natale	Roster/Notice of Motions Roster Publication Sent	Action	04/23/2013 -16:08	03/21/2014 -16:08	
Fata, Natale	Roster/Notice of Motions Roster Publication Sent	Action	04/23/2013 -16:08	03/21/2014 -16:08	
Fata, Natale	Roster/Notice of Motions Roster Publication Sent	Action	04/23/2013 -16:08	03/21/2014 -16:08	
Fata, Natale	Roster/Notice of Motions Roster Publication Sent	Action	04/23/2013 -16:08	03/21/2014 -16:08	
Horry Electric Cooperative	Reply/Motion to Compel/Cert of Service	Filing	04/23/2013 -13:51	03/21/2014 -14:52	
Ferrell, Ronnie	Filing/Filing Of Plaintiff's memorandum in response to def's	Filing	04/16/2013 -11:18	03/21/2014 -12:09	
Ferrell, Ronnie	Filing/Filing Of class notice of non-deliverable opt out	Filing	04/09/2013 -08:58	03/21/2014 -11:02	
Ferrell, Ronnie	Memo/Memo in Support of motion to compel discovery/	Filing	04/04/2013 -14:05	03/21/2014 -13:29	
Ferrell, Ronnie	Motion/Reconsider/Cert of Service/See Scanned Documents	Motion	04/01/2013 -16:45	06/03/2013 -16:45	
Ferrell, Ronnie	Motion/Add Party/Cert of Service/See Scanned Documents	Motion	03/21/2013 -14:54	06/03/2013 -14:54	
Ferrell, Ronnie	Motion/Compel/cert of ser/see scanned docs	Motion	03/20/2013 -13:54	06/03/2013 -13:54	
Ferrell, Ronnie	Form 4 issued 3 RULINGS ON ORDER. MOTION TO AMEND SCH ORD	Filing	03/06/2013 -15:20	03/21/2014 -15:44	
Ferrell, Ronnie	Motion/Add Party/cert. of svc.	Motion	03/05/2013 -09:27	06/03/2013 -09:27	
Horry Electric Cooperative	Motion/Compel/cert. of counsel/exhibits/cert. of svc.	Motion	03/05/2013 -08:54	06/03/2013 -08:54	
Ferrell, Ronnie	Motion/Protective Order/exhibits/cert. of svc.	Motion	02/27/2013 -14:32	06/03/2013 -14:33	
Horry Electric Cooperative	Motion/Protective Order/Cert of counsel	Motion	02/21/2013 -13:54	06/03/2013 -13:54	
Ferrell, Ronnie	Motion/Protective Order/exhibit/cert of svc.	Motion	02/19/2013 -16:02	06/03/2013 -16:02	
Ferrell, Ronnie	Certificate/Of COC Mailing Copies form 4.1/25/13	Action	02/12/2013 -14:08	03/21/2014 -14:08	
Ferrell, Ronnie	COC Mailing Copies of Order/Denying Reconsideration filed	Action	02/06/2013 -16:16	03/21/2014 -16:16	
Ferrell, Ronnie	Order/Order Denying Defendant's Motion for Reconsideration	Order	02/06/2013 -15:18	03/21/2014 -15:44	
Ferrell, Ronnie	COC Mailing Copies of Order/Denying Motion to File 3rd Party	Action	02/06/2013 -10:20	03/21/2014 -10:20	
Ferrell, Ronnie	Order/Order Denying Defendant's Motion for Leave to file	Order	02/06/2013 -10:13	03/21/2014 -15:45	
Ferrell, Ronnie	Order/Order Denying Defendant's Motion for Summary Judgment	Order	02/06/2013 -10:13	03/21/2014 -15:47	
	Response/Cert of Service	Filing			

Ferrell, Ronnie				01/31/2013 -08:58	03/21/2014 -09:27
Vance, Tammy	Response/Cert of Service	Filing		01/31/2013 -08:58	03/21/2014 -09:27
Montorio, David	Response/Cert of Service	Filing		01/31/2013 -08:58	03/21/2014 -09:27
Ferrell, Ronnie	Motion/Compel/Cert of Service	Motion		01/25/2013 -15:07	06/03/2013 -15:07
Ferrell, Ronnie	Certificate/Certificate of Service	Action		01/25/2013 -13:50	03/21/2014 -14:33
Ferrell, Ronnie	Notice/Notice of Mediation	Filing		01/25/2013 -13:50	03/21/2014 -13:12
Ferrell, Ronnie	Form 4 issued	Filing		01/25/2013 -11:51	03/21/2014 -13:30
Horry Electric Cooperative	Motion/Motion of motion of notice/Cert of Counsel/	Motion		01/25/2013 -08:55	03/06/2013 -08:55
Ferrell, Ronnie	Service/Certificate Of Service-3	Filing		01/23/2013 -16:23	03/21/2014 -09:09
Ferrell, Ronnie	Motion/Protective Order/Cert of Service	Motion		01/16/2013 -13:46	06/03/2013 -13:46
Ferrell, Ronnie	Memo/Memo in Opposition to def's motion to file a third	Filing		01/16/2013 -13:46	03/21/2014 -10:29
Ferrell, Ronnie	Memo/Memo in Opposition to def's motion for Summary Jmt.	Filing		01/16/2013 -13:46	03/21/2014 -10:31
Ferrell, Ronnie	Motion/Compel discovery/cert. of counsel/cert. of svc.	Motion		01/16/2013 -13:45	06/03/2013 -13:45
Ferrell, Ronnie	Service/Affidavit Of Service of class action notice by nate	Filing		01/16/2013 -13:45	03/21/2014 -13:24
Horry Electric Cooperative	Motion/Compel/Cert of Service	Motion		01/16/2013 -13:45	06/03/2013 -13:22
Ferrell, Ronnie	Affidavit/Affidavit of Eddy Blackburn	Filing		01/16/2013 -13:27	03/21/2014 -10:30
Horry Electric Cooperative	Motion/Reconsider/cert. of svc.	Motion		01/16/2013 -13:26	02/06/2013 -13:26
Horry Electric Cooperative	Motion/Summary Judgment/cert. of svc.	Motion		01/16/2013 -13:24	06/03/2013 -13:24
Ferrell, Ronnie	Return Mail	Filing		01/15/2013 -08:09	03/21/2014 -11:36
Ferrell, Ronnie	COC Mailing Copies of Scheduling Order filed 1-3-13 mailed	Action		01/03/2013 -15:35	03/21/2014 -15:35
Fata, Natale	Order/Scheduling Order	Action		01/03/2013 -15:29	03/21/2014 -16:40
Horry Electric Cooperative	Motion/Compel/Cert of Counsel/Cert of Service	Motion		01/03/2013 -13:30	06/03/2013 -13:30
Ferrell, Ronnie	ADR/Mediation Results Report	Filing		12/18/2012 -14:45	12/13/2012 -14:45
Ferrell, Ronnie	Certificate/Of COC Mailing Copies of Court Orders	Action		12/18/2012 -08:25	03/21/2014 -08:25
Ferrell, Ronnie	Order/Order	Order		12/17/2012 -16:42	03/21/2014 -08:26
Fata, Natale	Notice of Motions Roster Publication Sent	Action		12/13/2012 -15:43	03/21/2014 -15:43
Fata, Natale	Notice of Motions Roster Publication Sent	Action		12/13/2012 -15:43	03/21/2014 -15:43
Fata, Natale	Notice of Motions Roster Publication Sent	Action		12/13/2012 -15:43	03/21/2014 -15:43

Johnson, Pope D. III	Notice of Motions Roster Publication Sent	Action	12/13/2012 -15:43	03/21/2014 -15:43
Johnson, Pope D. III	Notice of Motions Roster Publication Sent	Action	12/13/2012 -15:43	03/21/2014 -15:43
Johnson, Pope D. III	Notice of Motions Roster Publication Sent	Action	12/13/2012 -15:43	03/21/2014 -15:43
King, Robert Thomas	Notice of Motions Roster Publication Sent	Action	12/13/2012 -15:43	03/21/2014 -15:43
King, Robert Thomas	Notice of Motions Roster Publication Sent	Action	12/13/2012 -15:43	03/21/2014 -15:43
King, Robert Thomas	Notice of Motions Roster Publication Sent	Action	12/13/2012 -15:43	03/21/2014 -15:43
King, Robert Thomas	Notice of Motions Roster Publication Sent	Action	12/13/2012 -15:25	03/21/2014 -15:25
King, Robert Thomas	Notice of Motions Roster Publication Sent	Action	12/13/2012 -15:25	03/21/2014 -15:25
King, Robert Thomas	Notice of Motions Roster Publication Sent	Action	12/13/2012 -15:25	03/21/2014 -15:25
Johnson, Pope D. III	Notice of Motions Roster Publication Sent	Action	12/13/2012 -15:25	03/21/2014 -15:25
Johnson, Pope D. III	Notice of Motions Roster Publication Sent	Action	12/13/2012 -15:25	03/21/2014 -15:25
Johnson, Pope D. III	Notice of Motions Roster Publication Sent	Action	12/13/2012 -15:25	03/21/2014 -15:25
Fata, Natale	Notice of Motions Roster Publication Sent	Action	12/13/2012 -15:25	03/21/2014 -15:25
Fata, Natale	Notice of Motions Roster Publication Sent	Action	12/13/2012 -15:25	03/21/2014 -15:25
Fata, Natale	Notice of Motions Roster Publication Sent	Action	12/13/2012 -15:25	03/21/2014 -15:25
Ferrell, Ronnie	Motion/Motion For status conference/Cert of Service	Motion	12/05/2012 -14:27	01/03/2013 -14:27
Ferrell, Ronnie	Certificate/Of COC Mailing Copies Form 4 11/26/12	Action	12/04/2012 -12:22	03/21/2014 -12:58
Ferrell, Ronnie	Form 4 issued	Filing	11/26/2012 -10:17	03/21/2014 -10:45
Horry Electric Cooperative	Motion/Summary Judgment/Cert of Service/See Scanned Document	Motion	11/16/2012 -09:27	01/16/2013 -09:26
Ferrell, Ronnie	Affidavit/Affidavit(2) of J Lawrence Elkin and L Sidney	Filing	11/07/2012 -13:47	03/21/2014 -11:46
Ferrell, Ronnie	Memorandum in Opposition to Defendant's Motion for Partial	Filing	11/07/2012 -13:46	03/21/2014 -11:35
Fata, Natale	Notice of Motions Roster Publication Sent	Action	10/04/2012 -13:06	03/21/2014 -13:06
Fata, Natale	Notice of Motions Roster Publication Sent	Action	10/04/2012 -13:06	03/21/2014 -13:06
Johnson, Pope D. III	Notice of Motions Roster Publication Sent	Action	10/04/2012 -13:06	03/21/2014 -13:06
Johnson, Pope D. III	Notice of Motions Roster Publication Sent	Action	10/04/2012 -13:06	03/21/2014 -13:06
King, Robert Thomas	Notice of Motions Roster Publication Sent	Action	10/04/2012 -13:06	03/21/2014 -13:06
King, Robert Thomas	Notice of Motions Roster Publication Sent	Action	10/04/2012 -13:06	03/21/2014 -13:06
Horry Electric Cooperative	Motion/Alter and/or Amend/cert. of svc.	Motion	09/20/2012 -14:49	01/16/2013 -14:49
Horry Electric Cooperative	Motion/Motion Filing Fee to file thrd party complaint/cert.	Filing	09/20/2012 -14:20	01/16/2013 -14:20
		Action		

Ferrell, Ronnie	COC Mailing Copies of Order/Motion Denied filed 9-19-12			09/19/2012-15:41	03/21/2014-15:41	
Ferrell, Ronnie	Form 4 issued Motion for Reconsideration is Denied/Letter	Filing		09/19/2012-15:36	03/21/2014-13:56	
Horry Electric Cooperative	Motion/Reconsider/cert. of svc.	Motion		09/07/2012-14:13	09/19/2012-14:13	
Ferrell, Ronnie	Order/Order Granting Class Certification	Order		08/28/2012-13:39	03/21/2014-11:19	
Ferrell, Ronnie	Certificate/Of COC Mailing Copies of Court Orders/Granting	Action		08/28/2012-13:39	03/21/2014-11:24	
Ferrell, Ronnie	Certificate/Of COC Mailing Copies of Court Orders	Action		08/22/2012-09:15	03/21/2014-09:15	
Ferrell, Ronnie	Form4/Def's Motion for Summary Judgment and Motion for	Filing		08/21/2012-14:27	03/21/2014-09:16	
Ferrell, Ronnie	Motion/Compel/Cert of Service	Motion		08/17/2012-15:33	11/07/2012-15:33	
Horry Electric Cooperative	Motion/Summary Judgment/Cert of Service	Motion		08/17/2012-15:18	11/07/2012-15:18	
Ferrell, Ronnie	Letter/Letter	Filing		08/15/2012-13:45	03/21/2014-12:43	
Ferrell, Ronnie	Certificate/Of COC Mailing Copies of Court Orders	Action		08/02/2012-16:09	03/21/2014-16:09	
Ferrell, Ronnie	Order/Plt's Motion Class Certification granted and Motion to	Order		07/31/2012-14:44	03/21/2014-16:11	
Ferrell, Ronnie	Certificate Of Service	Filing		07/30/2012-13:17	03/21/2014-08:50	
Ferrell, Ronnie	Affidavit of/Nate Fata	Filing		07/25/2012-09:13	03/21/2014-15:50	
Ferrell, Ronnie	Letter/Affidavit of Eddy Blackburn/Deposition-2/Defendant's	Filing		07/25/2012-08:32	03/21/2014-15:19	
Fata, Natale	Notice of Motions Roster Publication Sent	Action		07/09/2012-10:59	03/21/2014-10:59	
Fata, Natale	Notice of Motions Roster Publication Sent	Action		07/09/2012-10:59	03/21/2014-10:59	
Johnson, Pope D. III	Notice of Motions Roster Publication Sent	Action		07/09/2012-10:59	03/21/2014-10:59	
Johnson, Pope D. III	Notice of Motions Roster Publication Sent	Action		07/09/2012-10:59	03/21/2014-10:59	
King, Robert Thomas	Notice of Motions Roster Publication Sent	Action		07/09/2012-10:59	03/21/2014-10:59	
King, Robert Thomas	Notice of Motions Roster Publication Sent	Action		07/09/2012-10:59	03/21/2014-10:59	
King, Robert Thomas	Notice of Motions Roster Publication Sent	Action		06/18/2012-14:31	03/21/2014-14:31	
King, Robert Thomas	Notice of Motions Roster Publication Sent	Action		06/18/2012-14:31	03/21/2014-14:31	
King, Robert Thomas	Notice of Motions Roster Publication Sent	Action		06/18/2012-14:31	03/21/2014-14:31	
King, Robert Thomas	Notice of Motions Roster Publication Sent	Action		06/18/2012-14:31	03/21/2014-14:31	
Johnson, Pope D. III	Notice of Motions Roster Publication Sent	Action		06/18/2012-14:31	03/21/2014-14:31	
Johnson, Pope D. III	Notice of Motions Roster Publication Sent	Action		06/18/2012-14:31	03/21/2014-14:31	

Johnson, Pope D. III	Notice of Motions Roster Publication Sent	Action	06/18/2012 -14:31	03/21/2014 -14:31
Johnson, Pope D. III	Notice of Motions Roster Publication Sent	Action	06/18/2012 -14:31	03/21/2014 -14:31
Fata, Natale	Notice of Motions Roster Publication Sent	Action	06/18/2012 -14:31	03/21/2014 -14:31
Fata, Natale	Notice of Motions Roster Publication Sent	Action	06/18/2012 -14:31	03/21/2014 -14:31
Fata, Natale	Notice of Motions Roster Publication Sent	Action	06/18/2012 -14:31	03/21/2014 -14:31
Fata, Natale	Notice of Motions Roster Publication Sent	Action	06/18/2012 -14:31	03/21/2014 -14:31
Ferrell, Ronnie	Motion/Compel/Cert of Service/Exh	Motion	05/04/2012 -14:18	07/25/2012 -14:21
Horry Electric Cooperative	Motion/Protective Order/cert. of counsel/cert. of svc.	Motion	04/26/2012 -15:37	08/13/2012 -15:37
Ferrell, Ronnie	Affidavit/Affidavit of penelope hinson	Filing	04/18/2012 -08:28	03/21/2014 -12:41
Ferrell, Ronnie	Affidavit/Affidavit of eddy blackburn	Filing	04/18/2012 -08:28	03/21/2014 -12:42
Ferrell, Ronnie	Affidavit/Affidavit of ricky lowder	Filing	04/18/2012 -08:27	03/21/2014 -12:40
Horry Electric Cooperative	Motion/Protective Order/cert. of counsel/cert of svc.	Motion	04/16/2012 -15:23	07/25/2012 -15:23
Ferrell, Ronnie	COC Mailing Copies of Scheduling Order (filed 3-1-12)	Action	03/01/2012 -10:15	03/21/2014 -10:15
Ferrell, Ronnie	Order/Scheduling Order	Action	03/01/2012 -09:22	03/21/2014 -10:16
Fata, Natale	Notice of Motions Roster Publication Sent	Action	01/09/2012 -18:31	03/21/2014 -18:31
Fata, Natale	Notice of Motions Roster Publication Sent	Action	01/09/2012 -18:31	03/21/2014 -18:31
Fata, Natale	Notice of Motions Roster Publication Sent	Action	01/09/2012 -18:31	03/21/2014 -18:31
Johnson, Pope D. III	Notice of Motions Roster Publication Sent	Action	01/09/2012 -18:31	03/21/2014 -18:31
Johnson, Pope D. III	Notice of Motions Roster Publication Sent	Action	01/09/2012 -18:31	03/21/2014 -18:31
Johnson, Pope D. III	Notice of Motions Roster Publication Sent	Action	01/09/2012 -18:31	03/21/2014 -18:31
King, Robert Thomas	Notice of Motions Roster Publication Sent	Action	01/09/2012 -18:31	03/21/2014 -18:31
King, Robert Thomas	Notice of Motions Roster Publication Sent	Action	01/09/2012 -18:31	03/21/2014 -18:31
King, Robert Thomas	Notice of Motions Roster Publication Sent	Action	01/09/2012 -18:31	03/21/2014 -18:31
Ferrell, Ronnie	Motion/Complex Case Designation (Set during week of 07-23-12)	Motion	12/13/2011 -15:25	07/25/2012 -15:25
Fata, Natale	NOTICE ADR SANCTION ROSTER PUBLICATION	Action	12/12/2011 -16:12	03/21/2014 -16:12
Johnson, Pope D. III	NOTICE ADR SANCTION ROSTER PUBLICATION	Action	12/12/2011 -16:12	03/21/2014 -16:12
King, Robert Thomas	NOTICE ADR SANCTION ROSTER PUBLICATION	Action	12/12/2011 -16:12	03/21/2014 -16:12
Ferrell, Ronnie	Motion/Class Certification (Set during week of 07-23-2012)	Motion	11/15/2011 -14:08	07/25/2012 -14:08
Ferrell, Ronnie	Certificate/Of COC Mailing Copies of Court Orders	Action	10/20/2011 -13:39	03/21/2014 -13:39
		Order		

Ferrell, Ronnie	Order/Consent Protective [Confidential --Sealed]			10/20/2011 -13:18	03/21/2014 -08:10
Fata, Natale	Notice of Motions Roster Publication Sent	Action		10/13/2011 -13:39	03/21/2014 -13:39
Fata, Natale	Notice of Motions Roster Publication Sent	Action		10/13/2011 -13:39	03/21/2014 -13:39
Johnson, Pope D. III	Notice of Motions Roster Publication Sent	Action		10/13/2011 -13:39	03/21/2014 -13:39
Johnson, Pope D. III	Notice of Motions Roster Publication Sent	Action		10/13/2011 -13:39	03/21/2014 -13:39
Beard, Grady Larry	Notice of Motions Roster Publication Sent	Action		10/13/2011 -13:39	03/21/2014 -13:39
Beard, Grady Larry	Notice of Motions Roster Publication Sent	Action		10/13/2011 -13:39	03/21/2014 -13:39
King, Robert Thomas	Notice of Motions Roster Publication Sent	Action		10/13/2011 -13:39	03/21/2014 -13:39
King, Robert Thomas	Notice of Motions Roster Publication Sent	Action		10/13/2011 -13:39	03/21/2014 -13:39
Ferrell, Ronnie	Affidavit/Affidavit of Eddy Blackburn/Cert of Service	Filing		10/12/2011 -15:42	03/21/2014 -08:50
Horry Electric Cooperative	Motion/Protective Order & Cert of Counsel, Affid of	Motion		10/06/2011 -16:45	10/20/2011 -16:45
Horry Electric Cooperative	Motion/Summary Judgment	Motion		09/28/2011 -16:00	08/13/2012 -16:00
Ferrell, Ronnie	Motion/Protective Order	Motion		09/27/2011 -13:40	10/20/2011 -13:40
Ferrell, Ronnie	ADR/Notice of ADR	Filing		09/09/2011 -15:33	03/01/2012 -15:33
Ferrell, Ronnie	Certificate/Of COC Mailing Copies of Court Orders	Action		09/01/2011 -14:29	03/21/2014 -14:29
Ferrell, Ronnie	Form 4 issued	Filing		09/01/2011 -09:02	03/21/2014 -14:29
Fata, Natale	Notice of Motions Roster Publication Sent	Action		07/26/2011 -13:54	03/21/2014 -13:54
Johnson, Pope D. III	Notice of Motions Roster Publication Sent	Action		07/26/2011 -13:54	03/21/2014 -13:54
Ferrell, Ronnie	Certificate/Of COC Mailing Copies consent order 5/12/11	Action		06/27/2011 -08:06	03/21/2014 -08:53
Horry Electric Cooperative	Motion/Summary Judgment/Cert of Service	Motion		05/27/2011 -15:07	08/29/2011 -15:08
Horry Electric Cooperative	Motion/Motion For Consent Order	Motion		05/12/2011 -15:43	05/12/2011 -15:43
Ferrell, Ronnie	Consent Order	Order		05/12/2011 -15:44	03/21/2014 -10:23
Horry Electric Cooperative	Answer/Cert of Service	Filing		05/11/2011 -10:52	03/21/2014 -15:53
Horry Electric Cooperative	Motion/Dismiss/Cert of Service/Exh	Motion		03/10/2011 -10:49	05/12/2011 -10:47
	Verified	Filing		02/14/2011 -14:14	03/21/2014 -14:14
Ferrell, Ronnie	ADR/Alternative Dispute Resolution (Workflow)	Filing		02/09/2011 -13:52	09/09/2011 -13:52
Ferrell, Ronnie	Summons & Complaint	Filing		02/09/2011 -13:52	03/21/2014 -13:50

Exhibit U

Motion for Leave to File Third Party Complaint

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS

Ronnie Ferrell, Tammy Vance and)
David Montorio, on behalf of)
themselves and all others similarly)
situated,)

Civil Action No. 2011-CP-26-1266

Plaintiffs,)

**DEFENDANT'S MOTION TO FILE
THIRD PARTY COMPLAINT**

vs.)

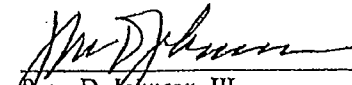
Horry Electric Cooperative,)

Defendant.)

HORRY COUNTY
12 SEP 20 PM 2:21
KELANIE HUGGINS-WARD
CLERK OF COURT

TO: THE PLAINTIFFS AND THEIR ATTORNEYS

YOU WILL PLEASE TAKE NOTICE that the defendant hereby moves pursuant to Rule 14(a), SCRCP, for an order authorizing it to file and serve the attached Third Party Complaint and join the South Carolina Public Service Authority as a party to this action. Joinder will promote judicial economy and eliminate the risk of inconsistent rulings and findings.


Pope D. Johnson, III
Johnson & Barnette, LLP
1230 Richland Street
Columbia, SC 29201
803-799-9791
803-253-6084 (fax)
pdjohnson@johnsonbarnette.com
Attorney for the Defendant

Columbia, South Carolina
September 18, 2012

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

Ronnie Ferrell, Tammy Vance and)
David Montorio, on behalf of)
themselves and all others similarly)
situated,)

Plaintiffs,)

vs.)

Horry Electric Cooperative,)

Defendant.)

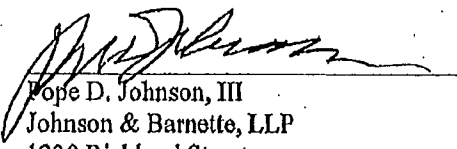
IN THE COURT OF COMMON PLEAS

Civil Action No. 2011-CP-26-1266

CERTIFICATE OF COUNSEL

HORRY COUNTY
17 SEP 20 PM 2:21
MELANIE HUGGINS-WARD
CLERK OF COURT

The undersigned attorney hereby certifies that prior to filing this motion, he has communicated or attempted to communicate with opposing counsel in order to resolve this matter by agreement and such has been unavailing.


Pope D. Johnson, III
Johnson & Barnette, LLP
1230 Richland Street
Columbia, SC 29201
803-799-9791
803-253-6084 (fax)
pdjohnson@johnsonbarnette.com
Attorney for the Defendant

Columbia, South Carolina
September 18, 2012

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

Ronnie Ferrell, Tammy Vance and)
David Montorio, on behalf of)
themselves and all others similarly)
situated,)

Plaintiffs,)

vs.)

Horry Electric Cooperative,)

Defendant.)

IN THE COURT OF COMMON PLEAS

Civil Action No. 2011-CP-26-1266

CERTIFICATE OF SERVICE

HORRY COUNTY
12 SEP 20 10 21
MELANIE HUGHES, MAR.
CLERK OF COURT

I, Sherry W. Wise, of Johnson & Barnette, LLP, hereby certify that I have served Nate Fata and Mark A. Brunty, attorneys for the Plaintiffs, with the foregoing pleading(s) by mailing a copy of same, postage prepaid and return address clearly indicated, to them at the following addresses on the 18th day of September, 2012.

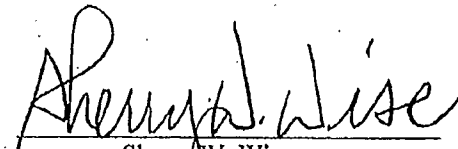
COUNSEL SERVED:

Nate Fata, Esquire
P.O. Box 16620
Surfside Beach, SC 29587

Mark A. Brunty, Esquire
Brunty Law Firm
P.O. Box 70907
Myrtle Beach, SC 29572

PLEADINGS:

Defendant's Motion to File Third Party Complaint


Sherry W. Wise

CERTIFICATE OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Defendant, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings:

Motion to Dismiss Re-Filed Action

Counsel Served:

Pope D. Johnson, III, Esquire
PO Drawer 11209,
Columbia, SC 29211


Lillian Stowe
Administrative Assistant

December 17, 2014

14 DEC 19 AM 8:18
CLERK OF COURT
WARD

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas
Honorable Roger M. Young, Sr.

Case No. 2013-CP-26-0488
Appellate Case No. 2014-001685

RECEIVED

JAN 09 2015

SC Court of Appeals

Horry Electric Cooperative, Inc., ... Appellant,

v.

South Carolina Public Service Authority and Southern
Electric International, Inc., ... Defendants,

Of whom South Carolina Public Service Authority is the.... Respondent.

PROOF OF SERVICE

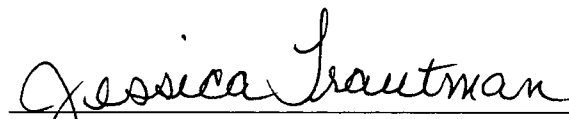
I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Respondent, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same to the following address(es):

Pleadings:

SOUTH CAROLINA PUBLIC SERVICE AUTHORITY'S
RETURN TO MOTION TO STRIKE AND REQUEST TO
STAY

Counsel Served:

Pope D. Johnson, III, Esquire
1230 Richland Street
Columbia, SC 29201



Jessica Trautman
Administrative Assistant

January 9, 2015

Nelson Mullins

Nelson Mullins Riley & Scarborough LLP
Attorneys and Counselors at Law
1320 Main Street / 17th Floor / Columbia, SC 29201
Tel: 803.799.2000 Fax: 803.255.5916
www.nelsonmullins.com

A. Mattison Bogan
Tel: 803.255.9589
Fax: 803.255.5916
matt.bogan@nelsonmullins.com

January 9, 2015

Via: Hand Delivery

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201

RECEIVED

JAN 09 2015

SC Court of Appeals

RE: Horry Electric Cooperative, Inc. v. South Carolina Public Service Authority
Civil Action No. 2013-CP-26-0488
Appellate Case No. 2014-001685
Our File No. 01617/01549

Dear Ms. Kitchings:

Please find enclosed for filing an original and four copies of South Carolina Public Service Authority's Return to Motion to Strike and Request to Stay. As an alternative request, Respondent South Carolina Public Service Authority has requested a stay of the appeal. Should the Court require it, included is a \$25 check for the filing fee in connection with that alternative request.

Thank you.

Very truly yours,



A. Mattison Bogan

AMB:jlt
Enclosures
cc: Pope D. Johnson, III